



From an official sauce
Describing the work of the
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Emergency Brexit
What would be the
implications of Britain
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Show me the money
Does the phenomenon of
'crowdfunding' litigation
have potential in Ireland?

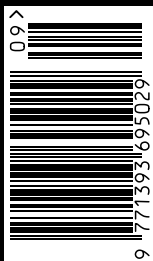
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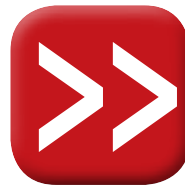
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THOSE HAZY DAYS OF SUMMER

I hope you took time out of your office during the summer, in the company of your family and loved ones, to recharge the batteries and do some of the things you had always hoped to do – if only you had the time! I was privileged to represent the profession at conferences in North America. The American Bar Association annual meeting this year was in Chicago. It's a city with which I have some familiarity, so it was great to be able to return to this most Irish of American cities. The ABA conference comprised 7,000 practitioners attending a slew of events spread over 25 different conference venues. Most of us might find such a scale both overpowering and intimidating, yet the Americans do these things so well – micro-managing events with a mix of smaller gatherings and then larger, plenary-type get-togethers.

From the great State of Illinois (after a week's private holiday in British Columbia), I headed for Calgary in the province of Alberta, Canada, to attend the Canadian Bar Association's legal conference. This was 'chalk and cheese' compared with the ABA offering. One of their senior members met us at the airport and brought us to our

hotel. Another senior member was personally assigned to me as a liaison and personal contact throughout the conference. Their three-day event was a good mix of business and social interaction. I found the Canadians a diverse, interesting, modest and welcoming bunch. One of the highlights was the hosting of simultaneous dinner parties in their own homes, by 20 or so Canadian lawyers, for groups of between 20 to 30 attendees each. This home entertainment is unique in my experience and proved to be a great success. Our hosts could not have been more welcoming.

Autumnal challenges

And so, bright-eyed and bushy-tailed, we look forward to the new challenges of autumn. While the *Legal Services Regulation Bill* does not, I know, play out in colleagues' daily working lives, this should not underplay the huge significance that the ultimate enactment of the legislation will have for the profession. This is why I, in my role as president, and my Law Society colleagues have marshalled the bill at every stage. We have worked most productively with both the Minister for Justice and her officials to ensure that the

legislation, when passed, will be the best it can possibly be – for both the profession and public – and will plot a path for new generations of lawyers well into the future. I earnestly hope that the legislation will be enacted very soon and not become a casualty of political events.

Other important matters on the horizon will be the outcome of the Setanta Insurance case, in which the Law Society has taken a leading role. The case was heard over three days in July, and it is expected that the judgment will be delivered in the early part of the new term. That decision will be of considerable importance to many colleagues.

In my current role, I particularly enjoy getting around the country and meeting practitioners in their own backyards. This month, I will meet my Dublin colleagues at the DSBA conference in Berlin, and also at a specially convened meeting to address an agenda of colleagues' own issues. I will be visiting other parts of the country, too, and am particularly looking forward to attending the CPD Skillnet cluster event at the Connaught Solicitors Symposium in Castlebar on 2 October. I hope to see you there.



“The Setanta decision will be of considerable importance to many colleagues”

Kevin O'Higgins
Kevin O'Higgins
President



gazette

LAW SOCIETY



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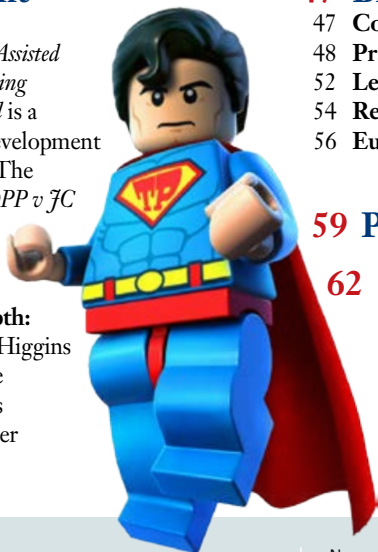
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nationwide

News from around the country



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

DUBLIN

Family lawyers celebrate judicial appointment

Family lawyers are celebrating the appointment of 'one of their own' as a new District Court judge.

The Bar's room in Phoenix House, Smithfield, was a hive of activity coming up to the end of term, but most of the discussions centred not on the cases before the court, but on the choice of one of Dublin's busiest family lawyers, Miriam Walsh of the Legal Aid Board in Tallaght, as a District Court judge.

Miriam has done great service on behalf of her clients in the Law Centre in Tallaght for almost a quarter of a century and has battled on their behalf from the District to the Supreme Court. Known as a hard worker and a straight talker, she will be an excellent addition to the District Court bench. She will be missed, not only by her clients, but by her many family law colleagues and friends in the solicitors' profession and at the Bar. We wish her well in her new appointment.

KILDARE

Kildare *Mikado* – and coconut cream



Niall Farrell (association president), Alan Haugh BL, Muriel Walls, Helen Coughlan (CPD officer) and John Loneragan

The Kildare Bar Association hosted a highly successful day-long CPD conference on 26 June at the Keadeen Hotel, Newbridge. Solicitors attended from Kildare, Meath, Dublin, Laois, Offaly and Wicklow. Thankfully, the sun shone and the attendees enjoyed a barbecue and music afterwards.

President Niall Farrell, fresh from his performance in the *Mikado*, was master of ceremonies for the day. Judge Rosemary Horgan (President of the District Court) spoke on the important topic of listening to the voice of the child in family law cases.

Solicitor Sean Sexton focused on the Solicitors Disciplinary Tribunal and the difficulties practitioners have faced in recent

years. He urged solicitors to keep an eye out for colleagues who may be experiencing a tough time.

Family law solicitor Muriel Walls gave a comprehensive insight to the rights of cohabitants and recent case law in this area. Accountant Des Peelo followed and gave an entertaining and informative talk on running a successful practice.

Barrister Alan Haugh, an acknowledged expert on employment law, updated attendees on the new *Workplace Relations Act*.

John Loneragan (retired governor of Mountjoy Prison) stole the show though, and spoke passionately about the reality of the lives of those who end up in prison.

CORK

September final cliff-hanger?

Our golfing colleagues in Cork informed us about the third outing of the Southern Law Association Golf Society (SLAG) on 3 July at Castlemartyr Golf Club. We're told that the golf matched the weather conditions, which were excellent on the day.

Senior counsel Tom Creed scored an impressive 39 points (two points clear of his nearest challenger). It's all to play for, as the 'Golfer of the Year' title will be decided at the final SLAG outing in September. David O'Mahony leads the field with 27 points, second is Eddie Cogan (23 points), followed in third by Niall O'Sullivan (20 points), while lying in the not-so-long grass at the edge of the fairway is the in-form Tom Creed (17 points). The golf has almost been as impressive as SLAG's ability to secure generous sponsorship from Documatics. Kudos to Mike Shinnick (SLAG captain) and his team of organisers.

GALWAY

Tributes paid to Adrian on his retirement

The Galway Solicitors' Bar Association informs us that one of Galway's most esteemed solicitor colleagues, Adrian Mac Lynn, retired

from practice on 31 July 2015. President James Seymour says: "Adrian has been a great support to the GSBA and to his colleagues and

he will be sorely missed, especially in Galway District Court. We wish both Adrian and his family the very best in his retirement."

DUBLIN

DSBA moves to Dawson St

The DSBA has moved office from Harcourt Street to 54 Dawson Street (first floor), Dublin 2. The new contact numbers are tel: 01 670 6089, fax: 01 670

6090. The DSBA DX number (DX 212011) and all email addresses remain the same: maura@dsba.ie, anna@dsba.ie, and elaine@dsba.ie.

DUBLIN

Golfers for Luttrellstown

Eamonn Shannon of the DSBA is encouraging new members to join the Golf Society. The society is open to all DSBA members and their guests. Its outings provide a

fun and relaxing way of meeting colleagues outside of work. The most recent event took place on 2 September 2015 at Luttrellstown Castle Resort.

representation

News from the Law Society's committees and task forces

TECHNOLOGY COMMITTEE

Blue skies or stormy clouds in Ennis?



Each year, the vast [Legalex exhibition](#) in London provides insights into new products and services for the legal sector. This year's Legalex, held in May, had two significant themes: the growth of cloud-based services and the need for lawyers to make business use of social media.

Many contributors pointed to the widespread personal use of smart devices and their dependence on cloud-based applications. The argument is that personal use will – and must – translate into business use. While all of the usual pitfalls were acknowledged (including concerns about security, confidentiality and contractual ownership of data), the positive aspects of cloud-based services were emphasised – for example, the ability to provide lower-cost services, mobility of the working environment, and the possibility of running a legal practice without needing a physical office.

On the business use of social media, speakers emphasised the benefits of developing prudent professional use, not just for marketing but for providing information and services, as well as for raising business profiles. Management strategies were discussed, specifically how to

make maximum use of postings to the key social media sites using [Hootsuite](#).

Business-use seminar

These two themes have been addressed over the past number of years by the Technology Committee through seminars and guidance material. [Guidance](#) on contractual issues in using [cloud-based services](#), and the recently published [social media policy](#) template, are available on the 'committees' section of the website. The issues will be further addressed in the forthcoming Law Society seminar, 'Blue skies or stormy

clouds – best business use of cloud and social media platforms', which takes place on Friday 16 October, from 2-5.30pm at the Temple Gate Hotel in Ennis.

Speakers on cloud-service issues will include Frank Lanigan (solicitor and long-time supplier of computer and online services to the profession) and Oisín Tobin (senior technology associate at Mason Hayes & Curran).

Social media matters will be dealt with by Flor McCarthy (Cork practitioner and social media author) who will examine how solicitors can make best use of various applications. Adrian

Weckler (journalist, broadcaster and technology editor at the *Irish Independent*) will provide an insight into current trends and likely developments in the use of technology for the wider business world.

This seminar is being organised in conjunction with Law Society Professional Training. Full details are available on the CPD events section of the Law Society's website. Cost is €176 (with a discounted fee of €150 available to Law Society Skillnet members). CPD hours are available for attendance, including one regulatory and two general (by group study).



HUMAN RIGHTS COMMITTEE

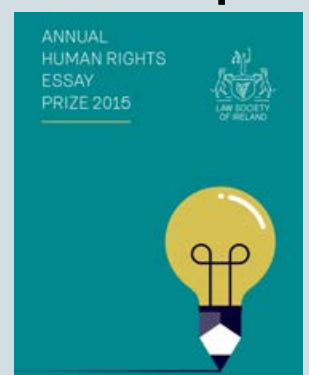
Human Rights Essay Prize 2015 now open

The Law Society's Human Rights Committee is inviting entries for the Annual Human Rights Essay Prize 2015. Law students, including trainee solicitors and barristers, are invited to submit an essay identifying a particular aspect of human rights law that they believe will have importance in the application or interpretation of Irish law.

Entries should be typed and be between 2,000 and 3,500

words in length. They may be co-authored. The first prize is €500, while the second prize is €250.

All entries must be received no later than 10 December 2015 and should be emailed to m.lynch@lawsociety.ie or posted to Michelle Lynch, Human Rights Committee, Law Society of Ireland, Blackhall Place, Dublin 7. For further details, see the competition poster at www.lawsociety.ie/news.





Crowe Horwath Bastow Charleton's THE COMPANIES ACT 2014 AN ANNOTATION

REUTERS/ Sharif Karim

1ST Edition • Brian Conroy

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- Annotations directing the reader to the equivalent provisions in UK legislation

Brian Conroy, BL, LLB (Ling. Fr.), LLM (Cantab.), AITI is a practising barrister. He is also a qualified tax consultant and a member of the Irish Society of Insolvency Practitioners.

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Who ya gonna call? Drugbusters!

The Irish Prison Service has launched a confidential anti-smuggling telephone line – 1800 855 717. In operation since 6 July, the number is available to the general public and prisoners who wish to contact the Prison Service with information relating to smuggling (or attempted smuggling) of prohibited articles into prisons.

Speaking at the launch, Michael Donnellan (director general of the Irish Prison Service) said: “I hope that people in society who may be put under enormous pressure to smuggle drugs, weapons, phones, and so on, into prison can see this as a way out. We want to help these people, to



let them know that they are not alone, that they can talk to us and that we will do everything in our power to help them.”

The phone line will be open

from 8am to 8pm daily and will operate similar to the garda Crimebusters hotline. An answering machine will take calls outside this time.

Injuries Board names new CEO



The Injuries Board has named Conor O'Brien as its new head. Mr O'Brien has almost 30 years' experience in the financial services and IT industries. He has held senior roles with Capita Asset Services, Friends First, IBM, HSBC New Zealand and AIB Group.

He joins the board from his role as chief operating officer at Capita Asset Services, where he was responsible for business operations and strategy. Prior to this, he spent 11 years with Friends First, where he held the position of chief operating officer.

A graduate of Trinity College Dublin, Mr O'Brien will take up his new role on 1 October 2015. He succeeds Patricia Byron, who left the board earlier this year.



Watchdog's bark has bite

Bord na gCon (the Irish Greyhound Board) has brought its first successful prosecution against an individual under its most recently introduced legislation, the *Welfare of Greyhounds Act 2011*.

At Nenagh District Court on 25 June, Paul Nolan (Roscrea, Co Tipperary) was fined €2,500 by Judge Elizabeth McGrath for

failing to comply with a welfare notice issued by Bord na gCon in November 2014. Mr Nolan was also ordered to pay €1,500 costs. The fine is to be paid within six months and 15 days' imprisonment in default of same.

The *Welfare of Greyhounds Act 2011* applies to all breeders, owners and trainers.

Central Bank *Companies Act* update

The Central Bank has issued an [update](#) that clarifies that UCITS management companies, alternative investment fund managers, AIF management companies, fund administrators, depositaries, and investment firms that are companies are not required to convert to designated activity companies (DACs) under the *Companies Act 2014*.

For the avoidance of doubt, the Central Bank quotes section 18(2) of the *Companies Act*, which “prohibits private companies limited by shares from carrying on the activity of a credit institution or insurance



undertaking. Accordingly, existing credit institutions and insurance undertakings must re-register with the Companies

Registration Office as a DAC unless they are public limited companies.”

The update goes on to say: “The *Companies Act 2014* does not require other regulated financial service providers that are companies to convert to DACs. Likewise, the Central Bank will not require the entities mentioned above to convert to DACs, as it is of the view that corporate structuring is a matter for each entity. Notwithstanding the corporate structure chosen, regulated financial service providers must comply with all regulatory requirements applicable to them.”

Cardinal ISIN

The Irish Stock Exchange (ISE) has started its new online application process for international security identification numbers (ISINs).

The online portal www.isedirect.ie facilitates applications for ISINs.

Online ISIN services are available to Irish entities looking for ISINs for unlisted securities. ISIN applications for Irish issuers intending to list shares, debt, funds and exchange traded funds on the ISE's markets will continue to be handled in conjunction with the listing process.

FOCUS ON MEMBER SERVICES

Card payment options

Securing payment is important for your business. Offering your clients as many payment options as possible is a key factor in offering them a quality service.

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

The Law Society has negotiated preferential rates for members for credit/debit card terminals with Elavon Merchant Services. Elavon has several options and packages available for solicitors. Some of their packages include a mobile card terminal that can be operated away from the office – for example, when in court.

Terminal rental starts from €18 per month. Free engineer installation of the terminal and training on the day is provided.

Best of all, you don't have to switch banks in order to take payments with Elavon, and the funds will be in your account next day, regardless of who you bank with.

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

The heir apparent: Finders opens Irish office

Assisting law firms throughout Britain since 1997, probate genealogists **Finders International** are regarded as experts at tracing missing beneficiaries and unknown next of kin. The company has a worldwide reach in tracing people to even the most obscure of destinations.

Finders has been operating in Ireland for many years and, due to an increase in the demand for its services, decided the time was right to set up a dedicated Irish office last March.

While tracing is its core business, Finders provides other services that are proving popular with Irish solicitors, including their very useful missing asset service.

"We are seeing more and more solicitors getting in touch regarding assets overseas and the problems they encounter," says managing director Daniel Curran. "We can repatriate assets, such as property, stocks, shares and bonds from foreign jurisdictions. This process can be very daunting and we are



happy to assist solicitors in any way we can."

Finders International plays an important role in the BBC programme *Heir Hunters*. Season ten is now under way, and Padraic Grennan (business development manager for Ireland) says that filming will take place in Ireland in the coming months.

"We are currently handling some fascinating cases, with some wonderful social history

that I'm sure viewers will find interesting," says Padraic. "The programme is great because it shows how quickly and efficiently we can achieve a successful conclusion to these cases."

If you have any queries regarding missing beneficiaries or unknown next of kin, or wish to discuss the overseas asset service, contact Finders at tel: 01 6917252 or email: contact@findersinternational.ie.

Advertising of legal jobs on the increase



The numbers of jobs in the legal sector continued to grow during the first half of 2015. According to recruitment agency Robert Walters, there has been a 6% increase in legal vacancy advertisements in the second

quarter, compared with the same period last year.

The strongest demand for legal practitioners was for those in the first five years of post-qualification experience. Key areas of growth in private practice were in the areas

of corporate, funds, banking, and property.

There was also a surge in demand in the area of listings and registrations. Company secretarial recruitment was up, due largely to the impact of the *Companies Act 2014*.

Demand was high for in-house lawyers with expertise in commercial law and data privacy (again in the one to five year PQE bracket), particularly in the technology, pharma and aviation sectors.

Solicitors with regulatory experience and in-house funds experience also proved popular, given Ireland's standing as one of the leading domiciles for funds in Europe.

Volunteers sought for Myanmar legal education project



Irish Rule of Law International is planning a legal education project in Myanmar (formerly Burma) in February 2016. The eight-day project is being led by Freda Grealy (head of the Diploma Centre) who is looking for volunteers to assist with facilitating a workshop on mock trials and advocacy skills for law students there. The project is in partnership with a local NGO. Places will be limited.

Previous teaching experience is not essential, as a 'train the trainer' session will be provided

as part of the Diploma Centre Street Law orientation weekend on 9-11 October 2015. All volunteers will be required to attend this orientation weekend.

This is a self-funded project, but volunteers are encouraged to organise fundraising events and/or assist with seeking donor funding.

For further information, contact Emma Dwyer, coordinator, Irish Rule of Law International, at edwyer@irishruleoflaw.ie or Freda Grealy at f.grealy@lawsociety.ie.

Legal swings and roundabouts

The Matheson Foundation, in partnership with Dublin City Council and the Irish Architecture Foundation, is to fund a project to design and build a new play park in Ballyfermot. The park will combine a play area and skate/BMX park.

Turlough Galvin (chairperson of the Matheson Foundation) said: "We are pleased to be involved in this project, which brings together a unique partnership in the Matheson Foundation, the Irish Architecture Foundation, and Dublin City Council. We hope this will encourage other Irish organisations to embark on similar philanthropic activities."



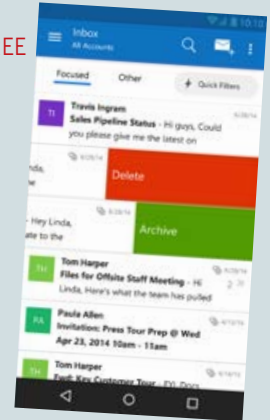
The consultation process is expected to be completed by January 2015, with the construction of the play park due to go out to tender in March 2016. The project is expected to be completed by December 2016.

THERE'S AN APP FOR THAT



Positive outlook

APP: MICROSOFT
OUTLOOK PRICE: FREE



Notwithstanding my love for all things Apple, I cannot seem to shake off Microsoft (MS) apps – nor can I ignore what good sense they make for the iPad, writes Dorothy Walsh. While MS Word, Excel and PowerPoint were available when Microsoft put their apps for the iPad suite together, **Microsoft Outlook** was excluded. It is now available – and it's great! From a housekeeping point of view, it looks the same on the iPad as it does on the desktop when using the most updated version of MS Office, but has some additional brilliant tricks.

MS Outlook for iPad is a free-to-download app that gives so much more than the Mailbox app that comes preinstalled on the iPad. It does what Mailbox does, in that it allows you to add various email accounts and view them all in the one app, it synchronises with your server at the office, calls in your calendar and tasks, and synchronises what you have on your iPad with your iPhone. What more do you want?

Well, you don't realise what functionality you actually need until Microsoft gives it to you. For example, you can add your Dropbox account and your MS OneNote and MS OneDrive content into the MS Outlook app. This becomes something that you cannot live without. MS Outlook becomes your always-open, 'go-to-on-start-up' app. This means that, instead of the inevitable hopping between apps to view, copy, paste or drag content – and then to open, review and send in an email – you can do it all within the Outlook app.

Outlook has separate tabs along the bottom of the screen for emails, calendar appointments, files attached to emails sent to you or by you, and all of your

documents on OneDrive and Dropbox. Quite simply, great! This essentially puts everything in one place.

Outlook's other great feature is being able to schedule emails to be read and dealt with at particular times of the day. Emails pop back up on screen at the appointed times. You can set up schedules for dealing with emails from various groups of people or individuals and deal with all of those when it suits you best. This is brilliant for me and encourages the good habit of dealing with emails rather than putting them on the long finger. This scheduling feature alone is enough to encourage anyone to use the Outlook app.

The other clever aspect of this app is its ability to set up a 'focused' list of emails. At first, I wasn't sure at all what the 'focused' list was doing. As time went on, however, I realised that it was 'looking at' my emails as they came into the inbox – and filtering spam messages, bulk emails and other kinds of content that I don't need to look at immediately. It's extremely reliable and I have yet to find emails in that folder that aren't meant to be there!

This app in the Microsoft suite for iPad was badly needed. It works extremely well and, without a doubt, has been worth the wait.

Scottish summit has an eye to future challenges

Robert Louis Stephenson, author of *Treasure Island*, vividly described the cold, wet and windy climate of his native city: “Edinburgh has the very worst climate known to man. The weak die young, and the strong often envy them their fate.”

Irish people whose only experience of visiting Edinburgh is for rugby internationals in freezing February may be surprised to hear that a summit of leaders of the solicitors’ profession in these islands took place recently in an Edinburgh of blazing sunshine and heatwave temperatures, *writes Ken Murphy*. But look at the photograph: it was taken on the sun-soaked steps of the Law Society of Scotland headquarters in Drumsheugh Gardens.

Mind you, the meeting did take place on 22 June, the day after the longest day of the year. Incidentally, this will probably be the last photograph of this particular group taken on these steps – the Law Society of Scotland has outgrown its current headquarters and will be moving to larger premises in the near future.

Twice a year, rotating from one jurisdiction to the next, the presidents, vice-presidents and CEOs of the law societies of Ireland, Northern Ireland,



On the sunny steps of the Law Society of Scotland’s headquarters are (l to r): Ken Murphy (director general, Law Society of Ireland), Lorna Jack (chief executive, Law Society of Scotland), Arlene Elliot (president, Law Society of Northern Ireland), Jonathan Smithers (president, Law Society of England and Wales), Christine McLintock (president, Law Society of Scotland), Kevin O’Higgins (president, Law Society of Ireland), Catherine Dixon (chief executive, Law Society of England and Wales), John Guerin (vice-president, Law Society of Northern Ireland) and Simon Murphy (vice-president, Law Society of Ireland)

Scotland, and England and Wales meet to discuss matters of mutual interest. The total number of solicitors represented collectively is approximately 180,000.

The observation is made at every meeting, simply because it is true, that the nature and content of the challenges faced by all solicitors and their professional bodies in all four jurisdictions are remarkably similar. The updating

of information and sharing of ideas is immensely valuable for all concerned.

On this occasion, the discussions ranged across legal market reforms resulting from:

- Market changes arising from disruptive technology and the intervention of governments,
- Changes to conveyancing practices and plans to introduce e-conveyancing,

- Legislative changes affecting human rights and concerns about government surveillance of lawyers’ communications,
- Issues and developments in professional indemnity insurance,
- Strategic planning for the profession, and
- The legal world-of-the-future, as well as other topics.

Law School hosts 2015 International Negotiation Competition

The Law School went truly international this summer as law students, academics and negotiators converged on Blackhall Place to participate in the 2015 International Negotiation Competition, *writes Robert Lowney* (competition co-convenor).

In July, 24 teams from 22 countries around the world participated in the competition, which was hosted by the Law School.

The competition places a strong emphasis on teaching and learning.

“What makes the INC truly unique is the range of teams taking part,” said Scottish team member, David Ridley (University of Aberdeen). “There are very few academic competitions that bring together teams from such a diverse range of countries. Negotiation is a concept that is fundamentally the same across the world, but which every country does slightly differently. This made the experience more challenging, but far more interesting than we could have imagined.”

The competition was won by

Shimon Leibel and Andrew Slough (University of Minnesota, Winnipeg, Canada).

Team Ireland 2, comprising Mark Thuillier and Thomas Timlin (PPCI trainees representing the Law Society of Ireland) were placed fourth. Mark and Thomas received a special award for maximising joint gains in each of the negotiation rounds. They were coached by John Darby (Flynn O’Driscoll Solicitors) who stepped into the coaching role due to Jane Moffatt’s commitment as competition convenor.

From somewhere warmer than Edinburgh, the pre-Socratic philosopher Heraclitus’ emphasis on constant change is aptly paraphrased by Plato with the words “No man ever steps in the same river twice”.

Staying abreast of what is happening to the solicitors’ profession and its professional bodies in our neighbouring jurisdictions helps the Law Society of Ireland to penetrate the fog that obscures the future from us all and helps us prepare for the changes – both good and occasionally not-so-good – that are to come.

A sunny disposition, together with actual warm sunshine, always helps.

HLJ's crystal anniversary shines

ALL PICS: PAUL SHERWOOD PHOTOGRAPHY



Rosemary Hennigan (editor-in-chief) with members of the HLJ Editorial Board

The 2015 *Hibernian Law Journal* was launched at Blackhall Place in July. Now in its 15th year, the journal provides a forum for discussion of contemporary legal issues.

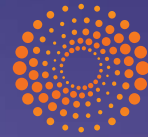
This was reflected in the content of this year's edition, which contains several articles addressing legal problems thrown up by an increasingly digitised society. Other papers looked at the law on referendum campaigns, the accountability of the gardaí, human trafficking, and whether a student's

relationship with their university is governed by public or private law.

Rosie Hennigan (editor-in-chief for 2015) congratulated the authors on their articles and thanked the editorial board for its work. The prize for best article by a trainee solicitor was awarded to Hugh McCarthy for his paper 'Is the writing on the wall for online service providers? Liability for hosting defamatory user-generated content under European and Irish law'.



TP Kennedy, Rosemary Hennigan, Mr Justice Michael Peart and Hugh J McCarthy (winner of the prize for best article by a trainee solicitor)



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Kildare connections and CPD



Lesley Kelly and Marianne Thyne (Wilkinson & Price Solicitors), with Oonagh McCormack (O'Connor McCormack Solicitors)



At the Kildare Bar Association's highly successful CPD conference on 26 June at the Keadeen Hotel, Newbridge, were Deirdre O'Connor (HG Donnelly Solicitors) and Eva O'Brien (Reidy Stafford Solicitors)



Kevin O'Keeffe, Helen Coughlan, Jean Sharkey, Andrew Cody (photobombing), Andrew Vallely, Avril Delaney and Elaine Farrell

Callan Tansey works hard to get the work/life balance right

Callan Tansey Solicitors in Boyle, Co Roscommon, recently invited clinical psychologist Dr David Carey to speak with staff on the

issue of work/life balance.

The event marked the occasion of the seventh anniversary of the firm – as well as 30 years

of diligent service by associate solicitor Orla Moran.

"The nature of the workplace in Ireland has changed hugely

in recent times," Dr Carey said.

"People can be asked to do the jobs of two people. We simply have to have a work/life balance."



Work/life balance doesn't just happen. It demands, eh... work. (From l to r): Christopher Callan (partner), Roger Murray (partner), Brian Gill (managing partner), John Duggan (partner), Dr David Carey and Niamh Ní Mhurchú (partner)



Celebrating 30 years of diligent service by solicitor Orla Moran are (l to r) John Duggan (partner), Brian Gill (partner), Orla Moran (associate), Niamh Ní Mhurchú (partner), Christopher Callan (partner) and Roger Murray (partner)

Donegal's cluster collaboration a complete success

Lough Eske Castle, Co Donegal, was the beautiful venue for the Law Society Skillnet North West General Practice Update 2015 on 26 June. The event, which was a collaboration between Law Society Skillnet and the Donegal and Inishowen Bar Associations, welcomed over 100 colleagues on the day.

Delegates were updated by a panel of experts on the new *District Court Rules*, registration of easements, the *Children and Family Relations Act 2015*, section 68 tips and traps, employment law, and the *Companies Act*. The event closed with an evening drinks networking reception.

For details on the upcoming CPD regional cluster events taking place in Mayo, Monaghan, Dublin, Cork, Kilkenny and Kerry, visit www.lawsociety.ie/cpdclusters or email cpdclusters@lawsociety.ie.



Speakers at the Lough Eske cluster event included (front, l to r): Liz Pope (Property Registration Authority), Moya O'Donnell (Moya O'Donnell & Co), Dr Geoffrey Shannon (State's special rapporteur on child protection), Teri Kelly (director of representation and member services) and Geraldine Conaghan (president, Inishowen Bar Association); (back, l to r): Michelle Nolan (Law Society Skillnet), Paul Keane (Reddy Charlton), Attracta O'Regan (head, Law Society Skillnet), Brendan Twomey (James P Sweeney & Co), Michele O'Boyle (O'Boyle Solicitors), Colette Reid (Law Society), Margaret Mulrine (president, Donegal Bar Association), Michael Cunningham (O'Gorman Cunningham & Co) and Kieran Ryan (Kelly & Ryan Solicitors & Leitrim Bar Association).



At the recent CPD cluster event in Donegal were Sean Boner (Dungloe, Co Donegal), Michelle Ní Longáin (speaker), with her father Sean Ó Longáin BL

Thomas is on top of the world!

PIG: CODY GLENNSPORTSFILE



Team Ireland's Thomas Caulfield returned triumphant from the Special Olympics World Games 2015 bearing a bronze medal for football. From Ballyfermot, Co Dublin, Thomas played in Los Angeles for Ireland's 11-a-side soccer team. He was greeted during the team's homecoming at Dublin Airport on 4 August by family members and friends, including his proud dad Christy (who works in

Facilities at Blackhall Place) and his mother Teresa. His aunt Dolores and uncle Paddy (who also work for the Law Society) shared in the celebrations later that day. Ireland was represented at the Special Olympics World Games by a squad of 88 athletes and 40 coaches. Between them, Team Ireland took home 26 gold, 28 silver and 28 bronze medals, along with 41 placement ribbons and 31 individual personal bests.

Landlord and Tenant Law evicts other titles at book awards

DSBA president Aaron McKenna welcomed Minister for Justice Frances Fitzgerald to the second annual **DSBA Law Book Awards**, held in the Double Tree Hilton (formerly the Burlington) on 26 June 2015, writes *Keith Walsh*.

A capacity crowd of solicitors, barristers, authors, publishers, spouses and supporters were present to celebrate the nominees and winners. Minister Fitzgerald praised the quality of the nominated works and thanked all the authors for the time and effort they had devoted to their works, which they generously shared with the legal profession and all interested readers.

Winner of the DSBA Law Book of the Year Award, sponsored by ByrneWallace Solicitors, was Prof John Wylie for *Landlord and Tenant Law* (3rd edition), published by Bloomsbury Professional.

The Arthur Cox Employment Law Team won the Practical Law Book of the Year Award for their *Employment Law Yearbook 2013*, sponsored by Peter Fitzpatrick and Company, legal cost accountants.

The DSBA Outstanding Contribution to Legal Scholarship Award, in collaboration with Law Society Skillnets, went to David Barniville, Jim O'Callaghan and Bláthna Ruane, co-editors of *Law and Government – A Tribute*



Kevin O'Higgins (president, Law Society), Paul Dougan (chairman, Belfast Solicitors' Association), Peter Groarke (president, Southern Law Association) and Aaron McKenna (president, DSBA)

to *Rory Brady*, published by Roundhall Thomson Reuters.

Mrs Siobhán Brady (widow of Rory Brady) was present as a guest of the publishers. Minister Fitzgerald paid a special tribute to the former attorney general, highlighting his service to his community and his country. Jim O'Callaghan, who devilled with Mr Brady, recalled his legendary directness and his skill in identifying, quickly and clearly, the vital legal points for judges, clients and colleagues.



At the DSBA Law Book Awards on 26 June 2015 were Conor MacGuill (MacGuill & Company), Rachel Hession (Skillnet/Law Society), Minister for Justice Frances Fitzgerald, and Ken Murphy (director general, Law Society)



Chandler Clifford, Jennifer Simpson and Louise Leavy (Bloomsbury Professional)



Maura Smyth, Martin McCann and Pauline Ward (Thomson Reuters)

PIC: TUDOR IMAGES



Attending the recent conferring ceremony on 25 June 2015 for the Diploma in Notarial Law and Practice at Blackhall Place were Mrs Justice Susan Denham (Chief Justice), Michael V O'Mahony (dean of the Faculty of Notaries Public in Ireland), Dr Eamonn G Hall (director of the Institute of Notarial Studies), E Rory O'Connor (dean emeritus of the faculty) and Michael M Moran (secretary) together with recent graduates

'Blind visionary' wants to be a role model for others

PIC: RYAN MAXWELL WWW.NIRUNNING.CO.UK



Sinead Kane with her guide runner John O'Regan

Cork-based solicitor Sinead Kane made a significant piece of running history at the Energia 12-hour race in Belfast on 17 July 2015, writes Mark McDermott. Sinead was the first ever visually impaired athlete to complete the race, finishing second in the women's event. She ran a distance of 109.87k – surpassing the previous record of 105k.

Sinead is no slouch when it comes to her career or her sport. She faced many hurdles when completing her degree and training. Never one to shirk a challenge, however, she is now

doing a Master's in DCU, which involves a gruelling commute from Youghal to DCU three times a week.

Sinead has achieved some impressive goals to date:

- The first visually impaired woman to complete the Dublin Marathon (2014),
- The first visually impaired woman to complete an ultra-event in Ireland, at the Donadea 50k Irish National Championships,
- A race ambassador for Ireland at the 'Wings for Life World Run in Brazil, where she finished 23rd out of 1,413

female competitors,

- A category winner in the VHI Women's Mini Marathon, where she forced the organising committee to change a policy in order to allow male assistants/guides to run with competitors, if required.
- A race ambassador for the Great Pink Run in August.

Says Sinead: "I have gone from people telling me that I won't be able to do something, to now asking, 'What am I doing next?' The reason for that is that people are now starting to believe in me and are judging me on my ability – and not my disability. This is what I set out to do – to be visionary – not blind. I want to be a role model for others."

24 lawyers, 24 hours – it's the Leman Challenge!



The Leman 24-hour cycle race in aid of the Samaritans 24-hour helpline takes place on 11 September. The law firm has set itself an ambitious target of €24,000 – which participants

describe as "still way off", with just a little over €5,000 raised so far. Leman Solicitors are asking for your help. You can make a donation at www.mycharity.ie/event/leman24hour_event.



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If you would like to find out more about AIB Private Banking, contact Patrick Farrell, Head of AIB Private Banking, directly on: (01) 641 7634 or email patrick.a.farrell@aib.ie. Typically our clients have an annual salary or income which exceeds €250,000.

letters

Special 'specialist specialisms' especially specious

From: John Elliot, Registrar of Solicitors and Director of Regulation

I refer to the *President's eBulletin* of 8 June 2015 regarding specialist accreditation for solicitors, and also the article in the June 2015 issue of the *Gazette* by Yvonne Keating on that topic. On reading them, I thought that it might be helpful to clarify the position in relation to claims of specialist knowledge in advertisements.

The matter is dealt with by a practice note issued in 2007, which is available on www.lawsociety.ie/advertisingspecialismsnotice.

The position, as stated in that practice note, is that an advertisement that contains an express or implied assertion that a solicitor has specialist knowledge in any area of law or practice will not be regarded as contravening the *Solicitors Acts* or the *Solicitors (Advertising) Regulations 2002*, provided that:

- Such assertion does not include any assertion that such specialist knowledge is *superior to that of other solicitors*, and
- None of the other mandatory requirements relating to advertisements provided for by subsections 71(2) to (10) of the *Solicitors Act 1954* and the *Solicitors (Advertising) Regulations 2002* is breached and, in particular, that the prohibition on advertisements that are false or misleading in any respect is not breached.

Therefore, it is my view that, within certain limitations, solicitors can claim specialist knowledge in advertisements.

In her article, Ms Keating seeks to summarise the position by saying that, while a solicitor may advertise his or her legal services by stating, for example, a "specialism in employment law", the solicitor may not advertise his or her knowledge as superior to that of other

solicitors by stating, for example, "employment law specialist". With respect to Ms Keating, I do not agree that a solicitor describing himself or herself as an "employment law specialist" would amount to advertising his or her knowledge as superior to that of other solicitors any more than stating that he or she claimed a "specialism in employment law".

In summary, I believe the position is that the Law Society has no general objection to solicitors asserting that they have specialist knowledge, which I believe would include claiming to be a specialist in a particular area of law or practice.

The Law Society has a dedicated service to guide solicitors on any queries they may have in relation to the advertising regulations. Solicitors concerned about compliance with the regulations can send us draft advertisements for

review and comment prior to publication. Contact may be made with the advertising regulations executive at 01 879 8700 or

advertisingregulations@lawsociety.ie. Extensive information and guidance is available at www.lawsociety.ie/solicitor-advertising.

What's going on?



From: John Hussey, John Hussey & Co, Fermoy, Co Cork

I have just received the Law Society's *Objections and Requisitions on Title* (2015 edition), which is a considerable improvement on the previous edition.

Having read the entire document, I am curious as to why, of the 195 questions raised in the requisitions, only no 5, Forestry 4a, alone merits a question mark. Where are the other 194 question marks?

In the words of 4 Non Blondes, "What's going on?"

Requisitions on Title – a call to revolt

From: Bryan Armstrong, Hegarty & Armstrong, Solicitors, Millennium House, Stephen Street, Sligo

I have just completed readying my first set of the new requisitions on title for issue. As a courtesy to my colleagues, I take seriously the instruction to strike out the requisitions that are inapplicable and to remove the pages where convenient. Many do not.

The booklet, as published, contains 32 sheets, printed on both sides of high-quality paper. Since requisitions are issued in duplicate, the number of sheets used is therefore 64.

The subject transaction is a bog-standard purchase of an urban second-hand semi-detached house on a registered title. I find I have removed 17 sheets of paper from each booklet – total 34. These go straight into the recycling, unmarked and unused. My booklets now contain

15 sheets each and, of these, I find that I have struck out the equivalent of five sheets in each, ten in total.

Therefore, of the original 48 pages, only 20 are used. The remaining 28 are totally wasted.

More energetic removal of requisitions that are most unlikely to be relevant would produce even more waste, but I couldn't, for example, take the risk that this semi-d might not be subject to a charge under the *Public Health Acts* (although, in over 35 years of practice, I have never encountered one). Neither was I prepared to eliminate the possibility that there could be a death on title prior to 1975 (although the house was built in the 1980s).

Added to this waste of material is the waste of the time that I have spent readying them, and my colleague will spend replying to them, in longhand, because they

cannot be got into a printer (unless he/she can find a typewriter, of course). There is, also, the waste of very expensive space in the storage of these bulky documents for many years.

What planet is the section of our Law Society responsible for this living on? Why do we even continue to use paper at all? We use computers today. I suspect that many tech-savvy teenagers could write an app that could produce relevant requisitions selected from a drop-down menu of items pertinent to the subject property in any given sale. These could then be emailed to the other party, answered with a click of the mouse, and emailed back. Those who need and want hard copy could then print a much slimmed down document for their (paper) file.

Colleagues, it does not have to be this way. We must revolt!

viewpoint

EQUAL RIGHTS AND ADEQUATE SUPPORTS

The *Assisted Decision-Making (Capacity) Bill* marks a significant development in providing adequate supports to those whose decision-making capacity is in question. **Patricia T Rickard-Clarke** investigates



Patricia T Rickard-Clarke is chair of the Law Society's Mental Health and Capacity Task Force

The *Assisted Decision-Making (Capacity) Bill 2013* (which includes the incorporation of legislative provisions for advance healthcare directives) was initially introduced in July 2013. The bill marks a significant development in providing adequate supports to those whose decision-making capacity is in question or may shortly be in question. It was published following a wide-ranging consultation and provides for a number of important reforms, not least in enabling individuals to make legally binding agreements with others to assist and support them in making their own decisions.

The Law Society's Mental Health and Capacity Task Force made detailed submissions on the bill in 2013 and 2014 to the Joint Oireachtas Committee on Justice, Defence and Equality, to the Minister for Justice, and to the Minister for Health. Initially, there were concerns about the lack of adequate safeguards as provided for in the *United Nations Convention on the Rights of People with Disabilities* (UNCRPD), and issues surrounding the right to autonomy and self-determination.

Recommendations

It was felt that the bill, as originally drafted, failed to provide for prevention against abuse in accordance with international human rights law or to give full effect to the Council of Europe *Recommendation CM/Rec (2009)11* on principles concerning continuing powers of attorney and advance directives for

incapacity. The task force was of the opinion that, where a person who has capacity makes either an enduring power of attorney or an advance healthcare directive to provide for the event of incapacity, the legislation should be clear that such provisions must take precedence over other measures, such as court measures provided for in the bill. Furthermore, *Recommendation CM/Rec (2014)2* on the promotion of human rights of older persons provides that member states

“One of the main challenges for the implementation of the decision-making capacity legislation will be the need for changes in attitudes and practices to ensure that the human rights of people, whose decision-making capacity is in question, is fully respected”

should provide for legislation that allows older persons to regulate their affairs in the event that they are unable to express their instructions at a later stage. Again, the task force emphasised that the bill should give due recognition to this requirement, given the ageing profile of the Irish population and that the need to promote the human rights of older persons, as provided for by the Council of Europe, must

be accommodated also within the legislation. The task force made specific recommendations on providing adequate safeguards for older people arising from article 12 of the UNCRPD.

In its 2014 submission, the task force focused in some detail on the requirements for equal treatment

and, in particular, ensuring that the legislation fully addressed the spirit of the UNCRPD. In this regard, the task force recommended the removal of the total exclusion of patients being treated under part 4 of the *Mental Health Act 2001* from the general schemes for advance healthcare directives, favouring instead a potential review by a court or tribunal.

Similarly, it was felt that the total exclusion of people who lack decision-making capacity from participation in clinical trials was not justified, as such individuals could potentially benefit from those trials. Again, supervision and safeguards, as opposed to total exclusion, were favoured by the task force.

In considering the interface between the bill and the *Mental Health Act 2001*, the task force agreed that the treatment provisions for patients who suffer from a 'mental disorder' should continue to be governed by part 4 of the *Mental Health Act 2001*, but that the proposed legislation must contain detailed provisions for patients who suffer from a mental disorder but also lack decision-making capacity.

In May 2015, the task force felt it necessary to make additional submissions on some points that it considered to be important in the practical implementation of the legislation. Specifically, these submissions focused on issues concerning the availability of legal aid and the need for the immediate enactment of section 3 of the legislation (this section provides that a person's decision-making capacity is to be construed functionally; that is, the ability to understand, at the time a decision has to be made, the



PIC: iSTOCK

look it up

Legislation:

- *Assisted Decision-Making (Capacity) Bill 2013*
- Council of Europe Recommendation CM/Rec (2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity
- Council of Europe Recommendation CM/Rec (2014)2 on the promotion of human rights of older persons
- *European Convention on Human Rights*
- *Mental Health Act 2001*
- *United Nations Convention on the Rights of People with Disabilities*

nature and consequences of that decision in the context of available choices). The task force urges the enactment of the legislation due to the lack of consistency of approach in current practice.

Amendments

The bill was considered in detail by the Select Committee on Justice, Defence and Equality on 17 June 2015, when almost 400 Government amendments were passed. The amendments were informed by the many submissions already received, including the Law Society's submissions. One of the main challenges for the implementation of the decision-making capacity legislation will be

the need for changes in attitudes and practices for those organisation and bodies, and indeed the general public, to ensure that the human rights of people whose decision-making capacity is in question, or may shortly be in question, is fully respected. Therefore, the Law Society very much welcomes the functions being given to the director of what is now to be known as the Decision Support Service (DSS) to:

- Promote public confidence in the process of dealing with matters that affect people who require assistance in exercising their capacity,
- Inform them of the options available,

- Provide information, guidance and supervision to those who interact with such individuals, including healthcare professionals and, importantly,
- Prepare and publish a code of practice, or approve codes of practice prepared by professional bodies and others in relation to matters arising under the legislation.

The director of the DSS will also be given investigative powers to respond to complaints made or, indeed, investigate matters on his or her own initiative. This is an extremely important function, given the published evidence over the past number of years on the abuse of vulnerable adults.

It is expected that the report stage for the legislation is likely to be in September. At that juncture, the Law Society hopes to see the inclusion of legislative provisions on the prohibition of chemical restraint (to provide that the use of medication to control or modify behaviour that cannot be justified on medical or therapeutic grounds is prohibited) and that the gap to address Ireland's breach of article 5

of the *European Convention on Human Rights* on the right to liberty of those who lack decision-making capacity will be addressed. Article 5 provides that no one shall be deprived of liberty, save in accordance with a procedure prescribed by law.

Currently, there are procedures in place for those who are involuntarily detained, either under the mental health and/or criminal codes, but no such procedures exist where a person who lacks decision-making capacity is deprived of his/her liberty. These major gaps must be addressed in the bill currently before the Oireachtas.



FOCAL POINT

sage conference

Sage – the support and advocacy service for older people – is launching quality standards for support and advocacy work with older people at its conference on 16 October 2015. Featuring

special workshops, the conference will be of interest to anyone acting for older/vulnerable clients. For more information, see www.eventbrite.ie (search for 'national conference 2015 and launch').

viewpoint

GREEN GUARDS, GOOD FAITH AND THE EXCLUSIONARY RULE

The decision in *DPP v JC* paves the way for the admissibility of unconstitutionally obtained evidence, where officers of the State claim to have no knowledge of the breach. And that is disappointing, writes **Claire Hamilton**



Claire Hamilton is senior lecturer in law at Maynooth University and is an executive board member of the Irish Council for Civil Liberties

Writing over ten years ago now, a number of well-known Irish criminologists described Irish due process rights as having a “look but do not touch, touch but do not taste” feel to them. Most of the examples in support of this argument still retain purchase today, indeed arguably more so: we have a right to silence, which is heavily qualified; we have a right to jury trial in non-minor cases, yet not if the DPP says otherwise, and the list goes on. Of course, it’s easy to be cynical about such a statement and the left-leaning inclinations of its authors. Less so, however, when at least two of these authors (in a later text), expressly

disavow any affiliation with the so-called ‘liberty lobby’.

Accepting then this state of affairs as read, it is with great disappointment that I learned of the decision of the majority of the Supreme Court in *DPP v JC*. For many decades, the exclusionary rule – or the requirement that evidence obtained in breach of constitutional rights should in most ordinary circumstances be excluded – has operated as one of the most significant exceptions to the above critique of the Irish justice system.

Unusually, in an Irish context, it gave the constitutional rights of citizens real, tangible effect, moving them beyond “mere words on a page” (to use the words of Hardiman J). Sadly, this would appear to be no longer the case, as the refashioning of the rule in *JC*, jettisoning as it does the seminal judgment of *DPP v Kenny*, paves the way for an important exception to the rule based on ‘inadvertence’.

The upshot is that evidence obtained unconstitutionally can now be admitted where officers of the State claim to have no knowledge of the breach (the so-called ‘green garda’ or ‘good faith’ exception).

Of course, the majority may have had good reason for such a radical break with Irish legal tradition. Perhaps, as the DPP submitted in the case, the operation of such an inflexible, strict rule was frustrating the bringing of effective

prosecutions? Perhaps it was causing undue hardship for victims of crime? Or perhaps, as the Balance in the Criminal Law Review Group submitted in their 2007 report, it was quite simply out of step with the times and the new garda accountability structures in place since 2005?

Crucial point

It is difficult to find credible evidence to support any of these contentions in the majority judgments themselves,

or even in the broader literature. Before getting into the meat of the matter, however, it’s worth dwelling on a preliminary but crucial point, and one that the minority in *JC* were at pains to hammer home. While the post-*Kenny* exclusionary rule in Ireland was often described as ‘absolute’ in nature, the reality was that it was qualified in its operation by the ‘extraordinary excusing circumstances’ exception (where, for example, a victim’s life was in peril/ evidence destroyed) and by the (not insignificant) requirement of a causative link between the breach

and the evidence. Most importantly, as any law student will tell you, exceptions already existed in the case law for the admission of evidence obtained on foot of a defective warrant. This provided judges with an important ‘out’ from the rule.

Returning to the substantive issues, let’s take the rate of acquittals as a starting point. According to the most recent Courts Service report, only 7.5%

Do we want officers of the State, entrusted with powers of forcible entry and seizure, to be executing warrants in a situation where they do not know or have not cared to find out key details about time limits and jurisdiction?

Home and away
Law Society conference
explores rule of law issues
at home and abroad

Law and order
High Court rules on liability
of gardai on inaction and
omission in evidence

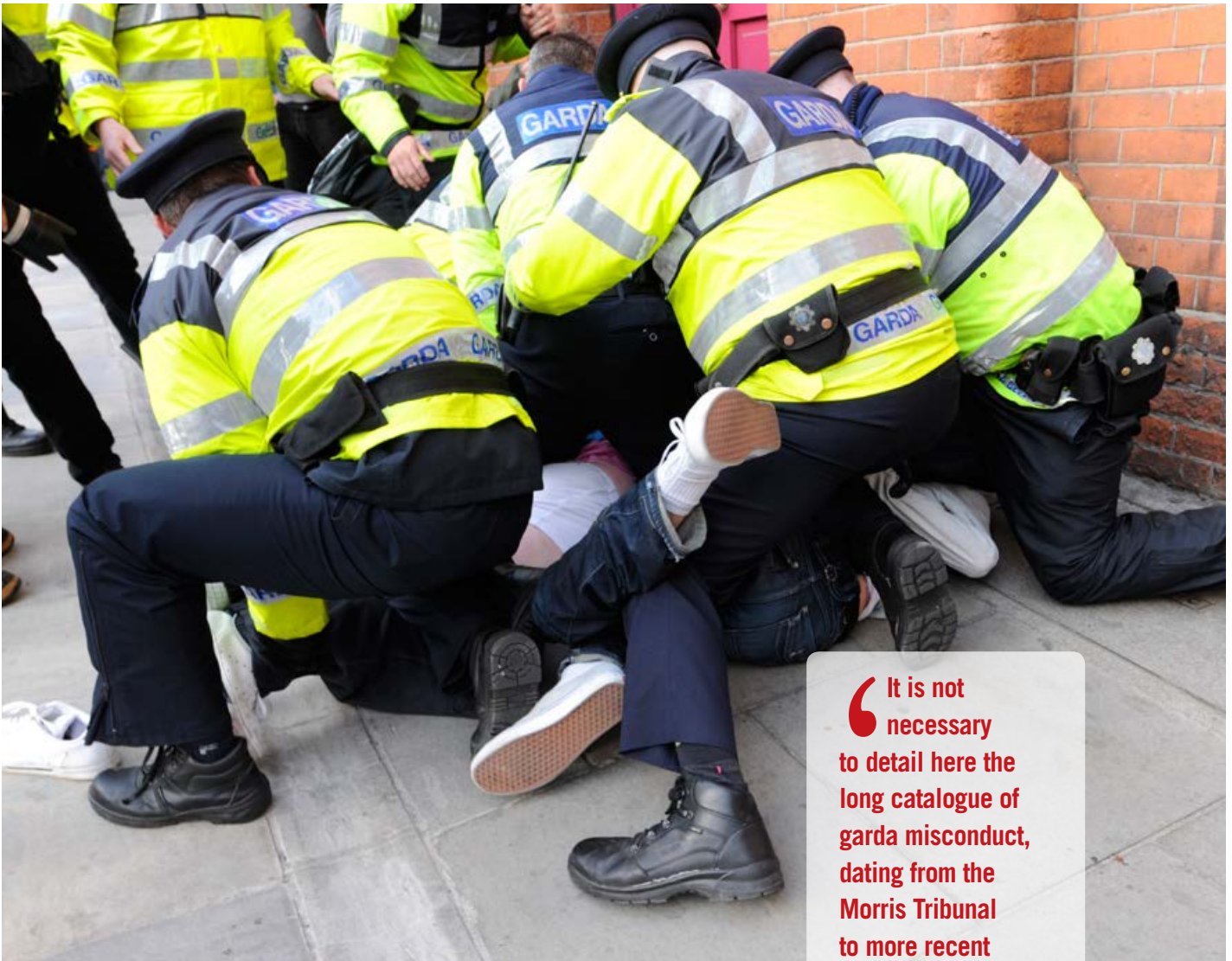
Redemption song
Lifer Stephen Doyle now
assists released prisoners
to re-engage with society

gazette
LAW SOCIETY
€4.00 JUNE 2015

LOVE IT/HATE IT
Supreme Court split on
admissible evidence

IMA
WINNER

9 781556 565254



PIC: ROLLING NEWS

It is not necessary to detail here the long catalogue of garda misconduct, dating from the Morris Tribunal to more recent revelations, in order to demonstrate the serious concerns that remain about the force and its culture

of Circuit Court prosecutions on indictment ended in acquittal – hardly a law enforcement crisis. The high-water mark of the majority's argument in this regard would appear to be a 'random survey' of a number of unnamed cases listed in the judgment of O'Donnell J, in which evidence was (apparently unjustly) excluded. These cases, the Curtin case among them, are neatly dealt with by McKechnie J (who notes this 'evidential gap') through the following question (and I paraphrase): "do we want officers of the State, entrusted with powers of forcible entry and seizure, to be executing warrants in a situation

where they do not know or have not cared to find out key details about time limits and jurisdiction?" I, for one, would rest easier if they troubled themselves with such details.


Blind faith?

Given the absence of any evidence concerning an over-prevalence of acquittals, we may now turn to the consequences of the introduction of the 'good faith' exception to the rule, as *JC* has now done. A disturbing vision of the slippery slope on which we may now be embarked is provided by the US jurisprudence, which, like us, operates an exclusionary rule and

which introduced a 'good faith' exception in 1984. On the accounts of both the Supreme Court majority and the minority in *JC*, the exception in that jurisdiction has now effectively become the rule, stripping it of much of its effect and utility.

A final point must concern the suggestion that developments in policing since 1990 have rendered otiose the 'deterrence' function of the rule or, put simply, the role of the judiciary in disciplining the gardaí through the exclusion of evidence. It is not necessary to

detail here the long catalogue of garda misconduct, dating from the Morris Tribunal to more recent revelations, in

order to demonstrate the serious concerns that remain about the force and its culture. This is done in some detail in Hardiman J's judgment. Suffice it to say that to invoke the currently inadequate and long overdue reform of garda oversight mechanisms in aid of measures seeking to weaken judicial control perhaps invites yet another departure from reality. 

news in depth

PRESIDENT CONDEMNS BIAS IN APPOINTMENT OF JUDGES

President Kevin O'Higgins aired his concerns about certain aspects of the legal system at the Law Society's annual dinner on 10 July. **Mark McDermott** reports



Mark McDermott is editor of the Law Society Gazette

Kevin O'Higgins used the opportunity of the Law Society's annual dinner to lay out his concerns about certain aspects of the legal system. Among them were the insufficient number of solicitors being appointed to judicial positions, the cuts in funding to the justice system, and the unacceptable delays in the taxation of costs system.

With regard to judicial appointments, O'Higgins said that the past 12 months had seen "by far the greatest number of judicial appointments in any such period in the history of the State". This had been

driven primarily by the very welcome introduction of the Court of Appeal.

"Very unwelcome, however, has been the tiny number of judicial appointments from the solicitors' branch of the profession." Solicitors comprise 80% of the legal profession, he said, but had produced just 8% of the senior judicial appointments over the previous 12 years. Solicitors were eligible for all such appointments but, regrettably, that situation had deteriorated during the past 12 months.

This was not simply a matter of a 'division of spoils' between the two branches of the legal profession. "There is a genuine public interest at

stake here," he warned. "As has been recognised by successive governments since a 1999 report on the subject, the public would benefit from appointments to senior judicial office from a wider pool of talent with a more diverse set of relevant legal skills."

"Why is this not happening?" he asked. "Is Ireland's system of selection of judges of every court – outside of the District Court – prejudiced against solicitor candidates and in favour of those from the Bar?" All the evidence suggested to the Law Society that it was, and that had to change.

Degradation of service

The funding of the justice system was his next target. While there had been an active and healthy debate relating to

There has been near radio silence related to the devastating cuts to the funding of the courts



Women of substance! Four of the five most powerful women in the State attended the annual dinner on 10 July, with (front, l to r): Garda Commissioner Nóirín O'Sullivan, Law Society President Kevin O'Higgins, Chief Justice Mrs Susan Denham, Taoiseach Enda Kenny, Minister for Justice Frances Fitzgerald, and Director of Public Prosecutions Claire Loftus; (back, l to r): senior vice-president Simon Murphy, junior vice-president Patrick Dorgan and director general Ken Murphy. (Attorney General Máire Whelan was unable to attend)



Taoiseach Enda Kenny with Michele O'Boyle (Council member), Mary Keane (deputy director general) and Mr Justice George Birmingham of the Court of Appeal



Past-president James McCourt, Minister for Foreign Affairs Charles Flanagan, Minister for Justice Frances Fitzgerald and Noeline Blackwell (director, Free Legal Advice Centres)



Family gathering (from l to r): Louise Clarke, Kevin O'Higgins (Eugene F Collins), Kevin O'Higgins (Law Society President), Dr Gaye Martin-O'Higgins and Hugo O'Higgins



Newly elected president of the Law Society of England and Wales Jonathan Smithers with director general Ken Murphy

the cuts to the budgets for health and education, there had been "near radio silence related to the

devastating cuts to the funding of the courts".

The president pointed out that,

since 2008, there had been 77 court-venue closures across the country. The Society was opposed to any further court-venue closures anywhere in the country, he said.

Understaffing had also become a major problem that had led to delays and a major degradation of service. "Last year, Tipperary became the only county in Ireland without a probate officer, when that office was closed for staffing reasons."

The Law Society had long been concerned, too, about the unacceptable delays in the taxation-of-costs system. "Given that the Law Society is a party to a matter before the courts related to taxation of costs, I will say no more on this particular issue. However, speaking generally, we must be clear: an effective justice system is of vital importance for a functioning democracy and for the cohesion of the State. The State must be prepared to fund it adequately."



faces in the crowd



In animated discussion are Chief Justice Mrs Susan Denham, Garda Commissioner Nóirín O'Sullivan, the Minister for Justice Frances Fitzgerald and Taoiseach Enda Kenny



Senator Paul Coughlan, Taoiseach Enda Kenny and President of the High Court Nicholas Kearns



A reflective moment for David Stanton (chair of the Oireachtas Committee on Justice, Defence and Equality)



Barry Donoghue (deputy director of public prosecutions) enjoys a light moment at the annual dinner

FOCAL POINT

the great and the good

President O'Higgins was speaking in front of an audience that included Taoiseach Enda Kenny, the Minister for Justice, the Minister for Foreign Affairs, and various other members of the Oireachtas. Representing the judiciary were Chief Justice Susan Denham and the Presidents of the Court of Appeal, the High Court, the Circuit Court and the District Court, as well as other members of the judiciary. Also present were the Garda Commissioner and the Director of Public Prosecutions.

Special guests included the presidents of the law societies of Northern Ireland (Arleen Elliott), Scotland (Christine McClintock), and England and Wales (Jonathan Smithers), as well as the former Attorney General of England and Wales Dominic Grieve MP, members of the Law Society's Council, and colleagues.

President O'Higgins described the occasion as "a personal and career highlight" and was accompanied by his wife Gaye and their two sons, Hugo and Kevin.

Water BOMB



Gary Fitzgerald is a Dublin-based barrister and the director of the Irish Centre for European Law

Are landlords legally bound to provide Irish Water with the names of tenants of residential properties so that the consumer can be billed for their use of water – or are they prevented from doing so under data protection rules? Gary Fitzgerald gets his feet wet

Irish Water is no stranger to controversy. In addition to generating more public anger than any other issue since the economic crisis began in 2008, is it now pressuring landlords to breach data protection laws? And in so doing, has it dragged the Office of the Data Protection Commissioner into another controversy?

In February, Irish Water demanded that landlords give it the names of tenants of residential properties so that it could bill the correct people for use of water. Under the *Water Services (No 2) Act 2013*, Irish Water is entitled to bill the owner of a property for water services unless it is proven that the owner is not the occupier of the property.

In effect, Irish Water was threatening landlords that they would be responsible for these bills unless they provided this information. However, do landlords have to provide this information or are they prevented from doing so under data protection rules?

Water you doing?

Data protection is not a new area of law. The primary piece of legislation is the *Data Protection Act 1988*, amended by the *Data Protection (Amendment) Act 2003*. Yet it is an emerging area of law due to the massive increase in data collection by various types of technology,

such as smartphones, and the use that commercial and State bodies are making of that data. Data protection rules are slowly becoming something that individuals and organisations are considering on a daily basis.

at a glance

- Irish Water has demanded that landlords give it the names of tenants of residential properties so that it can bill the correct people for use of water
- However, there is a general obligation on landlords to refrain from disclosing this personal data for any reason unconnected with the purposes for which it was gathered
- In response to this, the Government has enacted legislation that puts an obligation on landlords to provide this information to Irish Water
- As this section has not yet been commenced, it is submitted that any landlord who hands over the names of their tenants to Irish Water prior to the commencement of section 47 of the *Environmental (Miscellaneous Provisions) Act 2015* is in breach of the *Data Protection Acts*





The legitimate interest of landlords is to ensure that they are not billed for water services used by tenants. Similarly, the legitimate interests of Irish Water, as a third party, are to ensure that it bills the occupier and not a landlord

The fundamental rule behind the *Data Protection Acts* is that, if a person or body (the data controller) has personal data on someone (the data subject), there are controls over how that data can be used. Therefore, it is not a simple matter for landlords to simply provide Irish Water (a third party) with the names of their tenants. Each landlord is a data controller under the acts, and each tenant is a data subject. The names of tenants are personal data, and the general obligation on landlords is to refrain from disclosing this information for any reason unconnected with the purposes for which it was gathered. The names of tenants are gathered to allow the landlord know who they are contracting with and to allow registration of the tenancy with the Private Residential Tenancy Board – they are not gathered so that the landlord can disclose this information to third parties.

There are, of course, exceptions and the relevant one is found at [section 2A\(1\)\(d\)](#) of the *Data Protection Acts*. This states that a data subject may process personal data if such processing is “necessary for the purposes of the legitimate interests pursued by the data controller or by a third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the fundamental rights and freedoms or legitimate interests of the data subject”.

Nor any drop to drink

The legitimate interest of landlords is to ensure that they are not billed for water services used by tenants. Similarly, the legitimate interests of Irish Water, as a third

party, are to ensure that it bills the occupier and not a landlord. But the key word here is ‘necessary’. This section of the act is copied out from the parent [EU Directive 95/46/EC](#).

In *NAMA v Commissioner for Environmental Information*, the Supreme Court stated that when national law implementing EU law is being interpreted, it must be interpreted in light of EU law and that the normal national rules of statutory interpretation may not be relevant. That case dealt with the interpretation of a statutory instrument implementing a directive. It is submitted that this general approach should be followed when the national law is an act of the Oireachtas as well.

The purpose of the directive is, broadly, twofold. It seeks to allow for the creation of a common market in data, while protecting the fundamental right to privacy that is enshrined in the [European Convention on Human Rights](#). It is now also enshrined in the [Charter of Fundamental Rights](#).

The Supreme Court considered the meaning of the word ‘necessary’ in *Dunnes Stores v Ryan*. Here the court was examining the power of the Minister for Enterprise to issue directions where “it is necessary to examine the books and documents of the body with a view to determining whether an inspector should be appointed to conduct an investigation of the body under the *Companies Acts*”.

According to Herbert J, the word in this context “is not used in any extreme or

compelling sense in this subsection. In my judgment, it has the meaning of ‘reasonably required’ in contrast to merely optional”.

This would appear to suggest that landlords can release the information to Irish Water. But once the *Data Protection Acts* are interpreted in light of the fundamental rights protection that the parent directive gives to data subjects, this becomes less likely. Further, when the operation of the provisions of the [Water Services Act 2013](#) and one further exception contained in the *Data Protection Acts* are considered, it may be that release

of the information under section 2A(1)(d) would not be ‘reasonably required’.

Under section 8(e) of the *Data Protection Acts*, a landlord can disclose information where such disclosure is “required by or under any enactment or by a rule of law or order of a court”. In order for section 8(e) to apply, Irish Water must find a statutory authority or other rule that allows for disclosure. Section 26 of the *Water Services Act 2013* states that Irish Water may request that a relevant person must provide it with information that it may reasonably require to enable it to perform its functions.

‘Relevant person’ is defined in section 26(5) as including:

- A local authority,
- The Private Residential Tenancies Board,
- The Property Services Regulatory Authority,
- The Revenue Commissioners,
- The Minister for Social Protection, and
- Any other person as prescribed by ministerial order.

But missing from this list is a private landlord. Therefore, in order for this information to be given by a landlord to Irish Water, there would need to be a ministerial order. To date, no such order has been made. Therefore, section 2A(1)(d) is not the only provision open to Irish Water to get access to the information. It could ask the minister to issue an order to this effect. This may not be a politically wise move in the current climate, but political difficulties should in no way allow Irish Water to abuse the language of section 2A(1)(d) and get around the vital purpose of data protection rules by claiming that release of the information is ‘necessary’ for it to carry out its statutory function.

In response to this problem, the government has enacted [section 47](#) of the *Environmental (Miscellaneous Provisions) Act 2015*, which puts an obligation on landlords to provide this information to Irish Water. As this section has not yet been commenced (at the time of going to press), it cannot yet be relied on by either landlords or Irish Water as an exception to the *Data Protection Acts*.

Similarly for landlords, the provisions of the *Water Services (No 2) Act*

are important. Under section 21(5) of that act, a landlord is presumed to be the occupier of a property unless the contrary is proven. It is true that a landlord can prove that he is not the occupier by releasing the name of the tenant to Irish Water, but this is not the only way that this can be proven. For example, it is open to a landlord to simply inform Irish Water that he is a landlord and that there is a tenant in occupation.

If necessary, a lease with the name of the tenant redacted can be provided, and a landlord can swear an affidavit to the same effect. Therefore, the necessity threshold is not met here.

Irish Water claims that it has received legal advice that the only proof is the name of the tenant but, in the absence of such advice being made public, this claim needs to be treated with a good deal of caution.

In hot water?

It is submitted that any landlord who hands over the names of their tenants to Irish Water prior to the commencement of section 47 of the *Environmental (Miscellaneous Provisions) Act 2015* is in breach of the *Data Protection Acts*. This would allow any affected tenant to

complain to the Office of the Data Protection Commissioner (ODPC). However, since the ODPC has said that it is satisfied with the current scheme, it is unlikely to investigate this complaint. Under the *Data Protection Acts*, the ODPC can only refuse to investigate a complaint if it is “frivolous or vexatious”, as per section 10(1)(b)(i) of the *Data Protection Acts*. That test would not apply to this complaint, and therefore any refusal by the


ODPC to investigate would be open to judicial review. This would put the ODPC in the very embarrassing situation of having to explain why it agreed to a scheme that was in breach of the very acts that it was created to uphold. The applicant for review could, of course, ask the High Court for an order requiring Irish Water to delete any data held in breach of the *Data Protection Acts*.

Alternatively, a tenant could sue the landlord for a breach of the acts, but it is unlikely that any such case would succeed, as the tenant would have to prove a loss under Irish law. This was established in *Collins v FBD Insurance plc*. The only loss suffered is the requirement to pay a bill for water that the tenant is actually using.

Off a duck's back

This controversy shows how data protections rules require a new way of thinking about data. It is a precious commodity, and there are complicated rules on what bodies can do with data that they hold on another person. But there is a weakness at the heart of data protection, in that the consequences of breaching those rules are not yet a sufficient

deterrent. This is especially the case when the body tasked with enforcing those rules appears to allow a breach of those rules for the sake of convenience.

Irish Water has been dogged by controversy ever since it was set up. It has failed to state the legal basis on which it has demanded this information. It can be presumed, therefore, that it knows that landlords are not under any obligation to give it the information it needs. The same applies to the Data Protection Commissioner. Further evidence that both bodies know that data protection rules are breached here is the existence of section 47. Why else would that section exist, if not to fix the problem highlighted here? 

This would put the ODPC in the very embarrassing situation of having to explain why it agreed to a scheme that was in breach of the very acts that it was created to uphold

look it up

Cases:

- *Collins v FBD Insurance plc* [2013] IEHC 137
- *Dunnes Stores v Ryan* [2002] IESC 7
- *NAMA v Commissioner for Environmental Information* [2015] IESC 51

Legislation:

- *Data Protection Act 1988*
- *Data Protection (Amendment) Act 2003*
- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data
- *Environmental (Miscellaneous Provisions) Act 2015*
- *Water Services Act 2013*
- *Water Services (No 2) Act 2013*

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The end of the AFFAIR?



Maeve Verdon is lead counsel for the Irish branch of AIG Asset Management (Europe) Limited and is responsible for the legal and regulatory affairs of the Irish segment of the European investment management operations of AIG

The implications of Britain's departure from the EU could be significant and far-reaching for Ireland's financial services industry. Maeve Verdon and Ciaran Brady check out some Brighton rock

Both Ireland and Britain are prominent international financial services centres in Europe, each successful in attracting a large amount of mobile investment each year. They were the only countries among the top ten foreign direct investment (FDI) competitors to achieve growth in 2014 across project numbers, capital investment, and job creation.

Together with Dublin's geographical proximity to London, its English-speaking population, its skilled workforce in financial services, and its favourable tax treatment of investment funds, it is easy to see how there are complementary associated operations based in both financial centres. For example, almost half of fund

promoters that have chosen Ireland as the location for the administration and/or domiciliation of their funds originate from Britain.

Furthermore, Ireland and Britain are both common law jurisdictions, a factor believed by the legal community in both jurisdictions to give more flexibility to business because it can quickly adapt to circumstances without the need to enact legislation. This has arguably also enhanced the attractiveness of Britain and Ireland to large global multinationals seeking to bring innovative ideas quickly to business development in products and services.

The recent modernisation of Irish and British companies legislation, along with similar accounting rules and audit requirements in the two jurisdictions, mean that close synergies exist for the provision of associated professional services, including accountancy, tax and legal services, and management consultancy. As member states of the European Union, both countries' financial services centres are operating on the basis of EU financial services law, and there are a number of European financial services directives and regulations in force that allow financial services firms to sell their fund management and other services across the EU. For example, there are hundreds of banking, investment, and insurance businesses authorised in Britain and operating in Ireland on a branch or cross-border basis.

Journey without maps

What would affect these factors if Britain's EU status were to change?

First and foremost, all of the prominent structural legislative frameworks applicable to financial services are EU derived. In pursuit of the single market, the

at a glance

- There are complementary associated operations based in the financial centres of Ireland and Britain, and close synergies exist for the provision of associated professional services
- If Britain was no longer in the Eurozone, its legal system would change entirely in the context of financial services
- Should Britain withdraw from EU membership, financial companies who currently have their European operations based in Britain may consider Ireland as an alternative location
- However, Ireland has strong reasons for wanting Britain to remain within the EU



Ciaran Brady is a solicitor working as assistant general counsel in the legal team of the Irish branch of AIG Asset Management (Europe) Ltd



BREXIT



EU has taken a number of measures aimed at harmonising the laws of member states relating to financial services. The intention was to promote the wider economy by removing barriers and increasing competition, making markets more efficient, and reducing the cost of raising capital. The availability and effectiveness of 'passports' for firms and investment funds – permitting cross-border activities within the EU – formed a major part of the plan, and further passports have been introduced over time, for example:

- *Markets in Financial Investments Directive* (MiFID) – MiFID harmonises the regulation of a wide range of investment services and activities and provides firms (including investment managers) with passport rights to offer financial services for which they have been authorised by their home state regulator throughout the EU. Passporting under MiFID is regarded as generally straightforward, as all member states have implemented MiFID in a similar fashion.
- *UCITS Directive* – the *UCITS Directive* provides EU-wide recognition to certain collective investment schemes (funds), allowing them to be marketed to investors across the EU on a notification to a host member state, subject only to local marketing rules. The directive also allows for management companies to be domiciled in a different member state to the fund under a management company passport.
- *Alternative Investment Fund Managers Directive* (AIFMD): AIFMD applies to investments that are not one of the three traditional asset types (bonds, equities and cash) and to managers of all funds that are not UCITS (for example, hedge funds, private equity funds, closed-ended investment trusts and any other collective investment scheme that does not comply with the requirements of the *UCITS Directive*). The cross-border marketing of an alternative investment fund is subject to a notification procedure only, similar to that for investment firms under MiFID and UCITS operators under UCITS IV.
- A new capital markets union, intended to encompass all member states to achieve free movement of capital across the EU, will provide for an alternative, non-bank source of market financing for innovative projects and long-term investments, such as public equity issuance, private equity investment, venture capital, loans made by shadow banks, corporate debt securitisation, corporate bond issues, peer-to-peer lending, private bond placements and hedge funds.
- Cross-border merger regulations – an effective method of corporate restructuring for businesses operating across the EU falls

under the EU framework for cross-border mergers of limited liability companies. The cross-border merger procedure provides a mechanism for the automatic transfer of all assets and liabilities of the transferor by operation of law and the automatic dissolution of the transferor company, without that company going into liquidation.

The lawless roads

If Britain was no longer in the Eurozone, this would mean its legal system would change entirely in the context of financial services. In order to still apply Eurozone

legislation, Britain could join the [European Free Trade Association](#) (EFTA) and sign the [Agreement on the European Economic Area](#) (EEA) to regain access. This way, Britain would continue to abide by EU regulations but would be doing so outside of the EU, effectively as an EU 'policy taker' with no future involvement or representation in the EU legislative process.

Britain would similarly be able to avail of the freedom to trade within the EEA and benefit from the EU's trade deals with other countries, but would have no say over EU trade policy. If an EEA member fails to implement a regulation, the EU can suspend its membership. As an alternative to EFTA membership, Britain could adopt a Swiss-style relationship with the EU, which is based on a limited series of bilateral sectoral arrangements – but its financial services industry would face an enormous challenge if Britain were to propose a bilateral accord with the EU on financial services. As Ireland's most important trading partner, this would have an impact on the currently complementary nature of the financial services industry in the two financial centres. The wide range of sub-sectors in business process outsourcing, including in funds, insurance, financial technology, and payments processing would be subject to commercial instability, and any special bilateral arrangements that may be sought to preserve British/Irish commerce would certainly be subject to a prolonged period of uncertainty.

If Britain were to opt for EFTA membership in lieu of EU membership, Ireland would lose its close ideological link to the only other common law jurisdiction within the EU. Furthermore, as Britain shares Ireland's liberal, free-trade, open economy

A British departure from the EU and the uncertainty surrounding it could have negative consequences for Ireland

FOCAL POINT

the heart of the matter

Commercial property prices and the availability of commercial office space in Dublin is a significant consideration for Ireland to continue to attract global multinational investment.

In December 2012, the Government designated the North Lotts and Grand Canal Docks area of the Dublin Docklands as a strategic development zone (SDZ), following which the Docklands SDZ Scheme was adopted in May 2014, allowing parties with an interest in land within this zone to proceed with planning and development of commercial space.

The Government's [Construction 2020 Strategy](#) was unveiled last year, which aims to streamline planning and appeals to ensure building projects get underway quickly and preparatory work can proceed in relation to vacant sites in the area.

However, while approximately 1.8 million square feet of prime office space is expected to become available in Dublin's central business district over the next 18 to 24 months, there remains evidence to suggest that there is a significant upward tightening trend in the availability of top-quality office space in Dublin.

The IDA's head of property unit, Frank Conlon, has said that the "IDA regularly engages the property market on a national basis regarding existing and proposed commercial property solutions that can meet the needs of multinational clients. Based on our discussions with key property stakeholders in Dublin, the IDA is confident that future investment opportunities will be supported by both the existing portfolio and the healthy pipeline of commercial stock due to come on-stream in the near future across many parts of greater Dublin."



orientation, its views on economic policy and on the progress of the single market, Ireland would be deprived of an essential ally at the negotiating table of key EU institutions. Any political progress on overcoming these challenges, should they arise, would almost certainly be further complicated by Britain's similar anxieties to Switzerland about European migration. This is a source of ongoing political tension between the EU and Switzerland due to Swiss proposals to limit freedom of movement, a principle that is upheld by the institutions of the EU as a core and non-negotiable element of the EU project, and an issue that is similarly driving Britain's EU reform agenda.

Loser takes all

Should Britain withdraw from EU membership, financial companies who currently have their European operations based in Britain, or who are currently using their British home member state authorisation to provide financial services to other member states, may consider Ireland as an alternative member state location for British segments of their European business operations should they wish to maintain their current branch network and passport or merger of business operations

throughout the EU.

International financial services in Ireland is a broad-based industry. Global multinationals operate across a range of established financial services sub-sectors, including insurance, asset management, funds, banking, and payments processing. The government-led *IFS 2020 Strategy* includes a number of

specific actions to manage current challenges facing Ireland's financial services industry, including growing international competition for financial investments and the rapidly transforming financial services business models and products, in a way that will maintain continued growth across the financial services industry. This strategy reflects the importance of the financial services industry to Ireland's open economy.

Ireland's Central Bank has a balanced, risk-based regulatory approach, and efforts should continue to make our regulatory system

as proportionate and facilitative of innovation as it is rigorous, in order to ensure confidence in global multinational investors interested in coming to Ireland.

Ireland's tax treaty network compares favourably with other larger OECD countries and now includes most of the world's


As a potential alternative location within the EU for British-based financial institutions seeking to relocate business operations should Britain leave the EU, Ireland has significant competitive advantages

largest economies. Ireland has a competitive corporate tax rate of 12.5%, an attractive factor for inward investment in Europe.

The last word

It is undeniable that, as a potential alternative location within the EU for British-based financial institutions seeking to relocate business operations should Britain leave the EU, Ireland has significant competitive advantages. Ireland has an existing and strong eco-system in EU headquarters of large global multinationals, and it is currently the fourth largest financial services platform in the EU.

However, Ireland has strong reasons for wanting Britain to remain within the EU. With Ireland and Britain exchanging over €1bn in goods and services every week, common Irish and British membership of the EU forms an instrumental role in strengthening British/Irish relations in a wide range of areas across Ireland's economy, and a British departure from the EU and the uncertainty surrounding it could have negative consequences for Ireland.

The loss of the third most powerful member state in the EU may also bring political instability for the entire union. In this regard, a positive approach would be to focus on the circumstances of Britain's proposed EU reforms rather than on the implications of the different exit scenarios, should Britain elect to leave the EU in the upcoming referendum. Efforts would rightly be placed on supporting Britain in its reform agenda where it is reasonable and achievable. However, experience of treaty change has shown that the process is prolonged, complex, and often has unpredictable results. Other member states' desire to continue the EU's main focus on jobs, investment and growth is therefore understandable. 

look it up

Legislation:

- *Alternative Investment Fund Managers Directive* (2011/61/EU)
- *Companies Act 2006* (Britain)
- *Companies Act 2014*
- *European Communities (Cross-Border Mergers) Regulations 2008*
- *Markets in Financial Instruments (MiFID II) Directive* (2014/65/EC)
- *Markets in Financial Instruments (MIFID) Directive* (2004/39/EC)
- *UCITS IV Directive* (2009/65/EC)
- *UCITS V Directive* (2014/91/EU)

The NUMBERS game



Malachy Ryan is a trainee solicitor with McKeever Rowan Solicitors. He wishes to thank Gerard Walsh and Paul Foley for reviewing this article.

Crowdfunding has been successfully harnessed for financing legal actions in other jurisdictions. But what about Ireland – does this relatively modern phenomenon have potential here? Malachy Ryan crunches the numbers

In jurisdictions outside of Ireland, third-party funding (both crowd and private) has been successfully harnessed in the financing of legal actions. Platforms have developed that focus on specific legal areas. Particular platforms tend to avoid personal injury, divorce, and defamation in favour of commercial actions. Others place their focus on public-interest cases.

Harbour Litigation Funding, a British platform, has capital of Stg£400 million with which to fund cases and is currently the potential funder of a case before the Irish High Court (discussed later in this article), the outcome of which will be critical to the future of crowdfunding in Ireland.

A separate British platform, **CrowdJustice**, works on the donation model (see panel, p34), with excess profits donated to the **Access to Justice Foundation**. This charity fights public-interest cases and is currently funding a case taken by a Colombian trade union against a major British oil company.

Litigation crowdfunding in the US is now an established method of raising finance, with companies such as **LexShares** funding cases, some with a \$40 million claim value. The LexShares model works by allowing plaintiffs and attorneys to register their cases on the website, provided they meet the required criteria (for example, a high probability of success and a credible legal team). Investors also register with the website and choose which actions to fund. Platforms such as **Funded Justice** also fund smaller, less lucrative cases. Michael Helfand,

at a glance

- The high cost of funding legal actions leaves many without redress and has resulted in perceptions of a two-tier legal system
- While the courts uphold the fundamental principles of justice and fairness within the courtroom, the financial barriers to entry are often prohibitive for legitimate plaintiffs
- In light of developments in other jurisdictions and the changes that crowdfunding has introduced, it is difficult to see how the Irish legal sector can continue to be isolated from international trends on the basis of what are seen in other jurisdictions as archaic torts





“ In many ways, Ireland is behind the curve in not allowing crowdfunding for litigation. It is not a panacea to the problem of access to justice, but it certainly is a step in the right direction ”

a Chicago attorney and founder of Funded Justice, gives the example of an abused spouse who cannot fund her divorce as her spouse controls her finances.

The price is right

The Financial Conduct Authority (FCA) in Britain published a 2014 policy statement that, while not specifically addressing crowdfunding for litigation, outlined the rules regulating the crowdfunding sector in general. The FCA has recognised the high-risk nature of investment-based crowdfunding, which is most analogous to crowdfunding for litigation.

The rules it has developed concern the provision of adequate information surrounding the investment. They require, for example, that investors must be sophisticated or high-net-worth individuals, or investing less than 10% of their net assets. When one considers the complexities of a large-scale commercial action, adequate provision of information regarding the risks involved is a high bar indeed, and could lead to disclosure of information to the other side.

The Association of Litigation Funders of England and Wales published a 2014 code of conduct that applies to subscribing members. The code includes provisions requiring members to undergo annual external audits and have a Stg£2 million minimum capital requirement. Crucially, member funders are

prohibited from taking control of litigation or settlement negotiations, and from causing the litigant's lawyers to act in breach of their professional duties. While helpful, these rules only apply to subscribing members.

Third-party financing of litigation in Britain was given an additional level of certainty in the 2005 case of *Arkin v Bochard Lines Ltd and others*. This established what is now known as the 'Arkin cap' – a third-party funder's liability to costs is capped at the amount of its contribution. However, some commentators foresee situations where investors may have to sign up to an indemnity for costs or similar arrangement. This, once again, puts the emphasis on the proper provision of information pre-investment.

Countdown

The main obstacles to Ireland utilising crowdfunding for litigation are the medieval torts of maintenance and champerty.

Maintenance is defined in *Murdoch's Dictionary of Irish Law* as "the giving of assistance or encouragement to one of the parties to an action by a person who has neither

an interest in the action nor any other motive, recognised by law, as justifying his interference".

Champerty is defined by Curzon's *Dictionary of Law* as the "maintenance of a person in a lawsuit on condition that the subject matter of the action is to be shared with the maintainer". Thus, the person funding the case receives a portion of the award.

The prohibition of these torts stems from the belief that people should not be able to 'traffic' in litigation. The courts continue to express their aversion towards both torts due to the fear of encouraging spurious litigation.

England and Wales abolished the torts of champerty and maintenance as far back as 1967 via sections 13 and 14 of the *Criminal Law Act 1967*. New South Wales followed suit in the *Maintenance, Champerty and Barratry Abolition Act 1993*. Ireland, however, has not only kept both torts on the books,

but the Law Reform Commission (LRC 97-2010) recommended that both maintenance and champerty are retained in law in Ireland.

This position was confirmed in the Commercial Court by Mr Justice Clarke in the 2011 case of *Thema International Fund PLC v HSBC Institutional Trust Services (Ireland) Limited and others*. Notwithstanding the judge's reiteration of the prohibition on maintenance and champerty, he went on to find that a shareholder of a company involved in the litigation or an entity in a creditor relationship with the plaintiff could help finance the action.

Further judicial examination came in the 2014 case of *Greenclean Waste Management Limited v Leahy p/a Maurice Leahy Wade & Company Solicitors (No 2)*, which concerned the use of after-the-event insurance. Such insurance is designed to protect the plaintiff from paying the defendant's costs. The plaintiff, a "hopelessly insolvent" company, was suing its solicitors for professional negligence for not adequately advising it of obligations under a covenant to repair contained in a commercial lease. In light of the impecuniousness of the plaintiff, the defendant sought an order for security of costs under section 390 of the *Companies Act 1963*.

The High Court was asked to consider whether assistance via the after the-event (ATE) insurance policy was, in fact, maintenance or champerty. Mr Justice Hogan reiterated that agreements involving maintenance or

The prohibition of maintenance and champerty essentially stems from the belief that people should not be able to 'traffic' in litigation. The courts continue to express their aversion towards both torts due to the fear of encouraging spurious litigation

FOCAL POINT

what it says on the tin

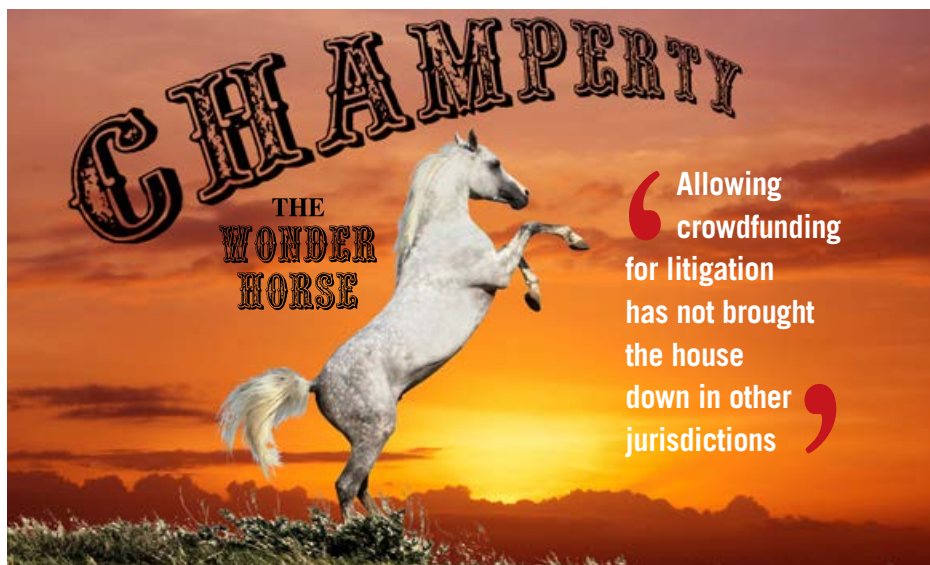
Crowdfunding is as it says – obtaining funding for a variety of purposes from as many parties as are willing to invest or contribute. The purposes of those seeking funding are as varied as the investors who participate. Many successful online platforms designed to facilitate crowdfunding have developed and are now regulated in England and Wales by the Financial Conduct Authority.

Crowdfunding in Ireland is not specifically regulated, therefore funding platforms require careful advice so as to avoid falling under the established definitions of a 'banking business' or within the *Prospectus (Directive 2003/71/EC) Regulations 2005*, the *European Communities (Payment Services) Regulations 2009* or the *Collective Investment Scheme Regulations*. According to the FCA (in a 2015 paper), almost Stg£1.3 billion in financing was raised through crowdfunding in Britain alone in 2014.

Crowdfunding can be divided into two categories:

- The non-financial return category, which is donation based, pre-payment or rewards-based (people give money to receive a reward, service or product), and
- The financial return models (investment in return for the issuing of equity or debt securities or units in a collective investment scheme or the lending of money in return for a financial reward), all of which have different characteristics for those seeking the money and those giving the money.

The concept of the non-financial reward model is not new and has been around for centuries – for example, appeals made to the public for funds to achieve common good objectives, such as the Statue of Liberty. Indeed, crowdfunding has been mentioned as an important source of future funding for charities.



champerty would be held void for public policy. However, he went on to say that “while the general parameters of the torts of champerty and maintenance are clear, the modern application of these principles is not frozen by reference to the social conditions and public policy considerations which pertained several hundred years ago. The law must accordingly move on and assess whether, by reference to modern conceptions of propriety, ATE insurance amounts to trafficking in litigation. For the reasons I have given, I conclude that, on the whole, it does not and that insofar as the insurer provides financial assistance to the litigant, it has a legitimate interest in the outcome.”

It must be noted that this case was appealed to the Court of Appeal, which delivered judgment on 8 May 2015, finding that Judge Hogan had erred in on focusing only on the prospectus clause of the ATE policy, which allowed the insurer the void the policy for a myriad of reasons.

While an ATE policy is conceptually very different to a crowdfunding model of financing litigation, the above cases demonstrate how the Irish legal system is being forced to examine analogous international developments that raise valid questions of both the maintenance and champerty rules.

Deal or no deal?

In light of developments in other jurisdictions and the changes that crowdfunding has introduced, it is difficult to see how the Irish legal sector can continue to be isolated from international trends on the basis of what are seen in other jurisdictions as archaic torts. Indeed, the very question of crowdfunded litigation is now directly before the courts in a case involving the Persona/Sigma consortium.

The consortium was a bidder in the 1996 competition to secure the 2G mobile phone network licence in Ireland awarded to ESAT Digifone.

As the consortium cannot fund the action, it is proposed that the case be funded by the British funder, Harbour Litigation Funding. An affidavit of a director of both companies in the consortium states Harbour Litigation’s role in the process is limited solely to being a funder; it cannot halt proceedings or change counsel, and it must at all times abide by the code of conduct required by Association of Litigation Funders.


Counsel for the defendants are seeking disclosure of the funding arrangement and claim that it is contrary to the rules of maintenance and champerty. Counsel for the plaintiff state that there is no valid reason for this information to be divulged and, indeed, it may give the defendants a significant advantage – it may allow them to know at what point funding would be stopped. The decision of Ms Justice Donnelly is expected in the coming days and will have huge implications for the sector in Ireland.

Wheel of fortune

Access to justice is a cornerstone of common law jurisprudence. The high cost of funding legal actions leaves many without redress and has resulted in a perceived two-tier legal system, in which justice is far from blind. While the courts uphold the fundamental principles of justice and fairness within the courtroom, the financial barriers to entry often prohibit legitimate plaintiffs from even climbing the steps.

Allowing crowdfunding for litigation has not brought the house down in other jurisdictions. In fact, organisations such as CrowdJustice have shown how they can promote and often be the only parties available to facilitate the legal rights

of those who cannot afford it. The litigation funders take their businesses seriously; only cases with a strong chance of success and good legal counsel are funded. This, in itself, reduces the likelihood of spurious litigation. This is underpinned by the judiciary, who have been effective guardians of the floodgates. A regulatory framework similar to that of Britain could be imposed on the sector with the addition of judicial insights, such as the *Arkin* cap.

Depending on Ms Justice Donnelly’s judgement in the Persona/Sigma case, we may see change sooner than rather than later. However, it is more likely that legislative intervention of the type effected in England and Wales and Australia will be required to properly facilitate crowdfunding for litigation in Ireland. In many ways, Ireland is behind the curve in not allowing crowdfunding for litigation. It is not a panacea to the problem of access to justice, but it certainly  is a step in the right direction.

look it up

Cases:

- *Arkin v Bochard Lines Ltd and others* [2005] EWCA Civ 655
- *Greenclean Waste Management Limited v Leahy p/a Maurice Leahy Wade & Company Solicitors (No 2)* [2014] IEHC 314
- *Greenclean Waste Management Ltd v Leahy p/a Maurice Leahy Wade & Company Solicitors* [2015] IECA 97
- *Thema International Fund PLC v HSBC Institutional Trust Services (Ireland) Limited and others* [2011] IEHC 357

Legislation:

- *Criminal Law Act 1967* (Britain)
- *European Communities (Payment Services) Regulations 2009*
- *Maintenance, Champerty and Barratry Abolition Act 1993* (New South Wales)
- *Prospectus (Directive 2003/71/EC) Regulations 2005*

Literature:

- Financial Conduct Authority (Britain) (2014), *A Review of the Regulatory Regime for Crowdfunding and the Promotion of Non-readily Realisable Securities by other Media*
- Law Reform Commission report (97-2010), *Consolidation and Reform of the Courts Acts*

Good SAUCE

Focusing on its implementation of the new merger-review rules, the director of legal services at the Competition and Consumer Protection Commission, **Úna Butler**, dishes out her insights into the body's work



Úna Butler is the director of legal services at the Competition and Consumer Protection Commission

The significant date of 31 October 2014 won't have escaped legal practitioners working in the areas of competition and consumer protection law – it's when the *Competition and Consumer Protection Act 2014* came into force.

The act established a new statutory body – the Competition and Consumer Protection Commission – an amalgamation of the Competition Authority and the National Consumer Agency. The act also introduced a number of substantive changes, notably in the field of merger-review law.

The commission has a vital role to play in making Ireland a good place in which to do business. Its mission is to make markets work better for consumers and businesses. Competitive markets – where businesses can compete and consumers can exercise choice – are a key driver of productivity, innovation and long-term growth. The commission has a dual role in enforcing and promoting compliance with both competition and consumer-protection law across all sectors of the economy, including exercising the merger-review functions previously undertaken by the Competition Authority.

The 2014 act gives the commission an economy-wide remit in relation to both competition and consumer protection law. It strengthens its enforcement powers in respect of serious competition offences, such as price-fixing and bid-rigging. In addition, the commission has been given a new role in the regulation of the grocery

sector in defined aspects of the commercial relationships between suppliers, wholesalers and retailers. It will now be responsible for enforcing and promoting compliance with grocery regulations adopted by the Minister for Jobs, Enterprise and Innovation as soon as they come into effect.

Merger on the Orient Express

The act introduces important changes to the Irish merger-review regime. These changes are perhaps the part of the 2014 act that have had the most immediate impact on businesses and on competition law practitioners in Ireland.

The act introduces a number of important amendments to the merger-review regime set out in the *Competition Act 2002*.

Firstly, the act changes the financial thresholds for

at a glance

- The impact of the work of the Competition and Consumer Protection Commission on businesses in Ireland
- The effect of the main changes on businesses
- New merger-review rules
- Asset acquisition rules
- Media merger rules



mandatory notification of mergers. Under the previous legislation, a merger had to be notified to the Competition Authority if:

- Two or more of the 'undertakings involved' each had a worldwide turnover in the most recent financial year of at least €40 million,
- Two or more of the undertakings involved each carried on business in any part of the island of Ireland, and
- If one of them had a turnover in the State of at least €40 million.

Under the new rules, the worldwide turnover threshold and the 'carries-on-business' test have been abolished. Mergers must now be notified to the commission if, in the most recent financial year, the aggregate turnover in the State of the undertakings involved is not less than €50 million and the turnover in the State of each of two or more of the undertakings involved is not less than €3 million. However, these financial thresholds do not

FOCAL POINT

sauce for the goose

On 17 February 2015, the commission cleared the proposed acquisition by Valeo Foods UK Ltd of sole control of Wardell Roberts Ltd and Robert Roberts (NI) Ltd, subject to binding divestiture commitments given by Valeo.

During the course of its investigation, the commission identified certain competition concerns relating to the impact of the transaction on the market for brown sauce. The commission ultimately cleared the acquisition, subject to Valeo's commitment to divest the YR brown sauce brand to an independent third party purchaser who would be able to maintain and develop the YR business as an active, competitive force.

apply to 'media mergers', as such mergers are subject to mandatory notification to the commission, irrespective of the turnovers of the undertakings involved.

Secondly, undertakings are no longer under an obligation to notify a merger within any specific time period. Prior to the 2014 act, undertakings were obliged to notify the Competition Authority "within one month after the conclusion of the agreement or the making of the public bid". The only requirement under the new legislation is that the relevant merger cannot be put into effect before the commission issues a clearance decision. In addition, firms are now able to notify the commission from as early as the date on which they can demonstrate to the commission a 'good faith intention' to conclude an agreement – there is no need to wait until an agreement has actually been concluded.

These changes bring the Irish merger-review regime into line with the EU merger-review regime. These developments make the Irish regime more efficient and user-friendly for notifying parties.

The commission has seen an increase in the number of mergers notified to it, although this may in part be reflective of a general increase in merger activity. In the six-month period

FOCAL POINT

citizen kane

The 2014 act has made significant changes to the media merger regime set out in the *Competition Act 2002*. The parties to a media merger are now required to submit two separate merger notifications: one to the commission (focusing on competition issues) and the other to the Minister for Communications (focusing on media plurality issues).

The 2014 act inserts a new part 3a into the *Competition Act*, which provides for a much more comprehensive investigation of media mergers on plurality grounds by the Minister for Communications and, potentially, the Broadcasting Authority of Ireland – including phase 1 and phase 2 reviews similar in both form and length to those undertaken by the commission.

In December 2014, the *Competition Act 2002* was further amended by the *Intellectual Property (Miscellaneous Provisions) Act 2014* to make it clear that a media merger notification cannot be submitted to the

Minister for Communications until after the commission has reached its determination. This is a sequential review process.

The commission does not have any powers to scrutinise media mergers on grounds relating to media plurality or to prohibit a transaction on the basis that it would curtail media diversity. Instead, the commission's only remit is to review media mergers on competition-related grounds – that is, the commission must determine whether the transaction would result in a “substantial lessening of competition” in the affected market(s).

By contrast, the remit of the Minister for Communications (and, where applicable, the Broadcasting Authority of Ireland) is to assess the merger on grounds relating to media plurality. Earlier this year, the Department of Communications carried out a public consultation on draft media merger guidelines, which is expected to be published soon.

between 31 October 2014 (when the new regime came into force) and 30 April 2015, 31 mergers were notified to the commission. This compares with 21 and 27 mergers notified to the Competition Authority during the equivalent six-month periods in 2013/14 and 2012/13, respectively.

Deep impact

The intention of the revised thresholds in the 2014 act is to create a better targeted regime, focusing more closely on mergers that have a potential competitive impact in Ireland. The previous thresholds tended to catch many transactions that had no such impact, creating unwarranted expenses for businesses and inefficiently tying up the Competition Authority's resources.

It is probably too early at this stage to say whether the new thresholds have fully achieved their objective of refocusing the legislation on transactions that may substantially lessen competition in Ireland.

Concerns have been expressed by a number of legal practitioners and others regarding the effect of the new thresholds. They argue that the individual financial threshold of €3 million (now set out in section 18(1)(a) (ii) of the *Competition Act 2002*) is too low, triggering a notification obligation that places an unnecessary and disproportionate burden

on the small and medium enterprises sector.

However, by the end of 2015, the commission will have 12 months of notification data and will be in a better position to assess whether there is merit in some of these comments. It is important to note that any change to the thresholds would require the enactment of amending legislation.

The 2014 act extends the maximum time periods for review of notified mergers, providing for a two-stage review procedure. Where a notified merger does not raise competition concerns, it is cleared by the commission at phase 1. If, at the end of the phase 1 period, the commission is unable to decide that the proposed merger will not substantially lessen competition, it will open a phase 2 investigation.

The commission must generally make its phase 1 determination within 30 working days of the ‘appropriate date’; that is, the date on which the commission receives a complete merger notification (or, if applicable, the date on which the parties respond in full to a formal request for information, issued by

the commission during phase 1). In cases where the commission decides to open a more detailed phase 2 investigation, it must now generally make its phase 2 determination within 120 working days of the appropriate date.

The commission can also, for the first time, ‘stop the clock’ in phase 2 by issuing a formal request for information to the parties. This request must be issued within 30 working days from the date of the commission's decision to open a phase 2 investigation. By contrast, under the previous legislation, phase 1 determinations had to be made within one month of the appropriate date and phase 2 determinations within four months of the appropriate date.

Time bandits

Around the time of the enactment of the 2014 act, some lawyers in private practice expressed concerns about the length of the new Irish merger-review time periods. So far, these concerns have proved to be unwarranted. The move from ‘calendar’ days to ‘working’ days introduced by the 2014 act is welcome, as it brings the Irish merger regime more in line with the EU merger regime and avoids the commission's review periods being considerably shortened by public holidays, particularly during extended holiday periods such as Christmas.

The new time periods allow the commission to undertake a thorough investigation of complex mergers where that is required – something that is clearly in the interests of the parties.

The commission is aware of the potential impact of unnecessary delays on businesses and endeavours to review all notified mergers as quickly as possible.

Notification to the commission does have a ‘suspensory effect’, meaning that parties are unable to implement a transaction until they have received clearance from the commission.

However, in circumstances

where a particular notified merger has not raised any competition concerns, staff in the commission's Mergers Division work to complete their investigation as promptly as possible.

For mergers notified between 31 October 2014 and 30 April 2015, the commission took on average 22.6 working days to issue a decision. The timelines in individual cases varied from 11 to 29 working days, depending

“ The 2014 act strengthens the commission's enforcement powers in respect of serious competition offences, such as price-fixing and bid-rigging ”

on a number of factors, including the complexity of the transaction and the nature of the competition issues involved.

Acquired taste

The Irish merger-review regime applies to mergers or acquisitions where the parties involved satisfy the statutory financial thresholds for notification. The term 'merger or acquisition' is defined broadly in section 16(1) of the *Competition Act 2002* to cover, not only acquisitions of corporate legal entities, but also certain types of asset acquisition. The 2014 act has amended the definition of an 'asset acquisition' to bring it broadly in line with the approach adopted under the EU merger-review regime.

This means that a 'merger or acquisition' is now deemed to occur where a transaction involves the "acquisition of assets that constitute a business to which a turnover can be attributed" and, for these purposes, 'assets' includes goodwill. The change in the definition of an asset acquisition, coupled with the revised financial thresholds introduced


by the 2014 act, mean that the commission is potentially going to see an increased number of commercial property acquisitions being notified. The commission plans to publish guidance for legal practitioners and businesses on its understanding of the statutory provisions governing asset acquisitions.

The competition

When assessing mergers, the commission has to determine whether the notified merger would "substantially lessen competition in markets for goods or services in the State". In effect, the commission has to decide whether to clear the merger, block the merger, or issue a conditional clearance.

The commission has the power – at the end of a phase 2 investigation – to impose conditions in its clearance of a merger. Separately, the parties involved in the merger are entitled to submit proposals to the commission during phases 1 and 2 with a view to remedying any potentially anticompetitive effects of the merger (see panel, p37.)

If the commission concludes (at the end

of a phase 2 investigation) that a notified merger will result in a substantial lessening of competition, it will make a decision prohibiting the merger from being put into effect. In other words, it will block the merger. To date, the commission has not blocked any mergers. By comparison, between 2003 and 2014, the Competition Authority blocked three mergers out of a total of 644 mergers notified to it. (One of these decisions was overturned on appeal by the High Court. The judgment of the High Court is currently under appeal to the Supreme Court.) 

look it up

Legislation:

- *Competition Act 2002*
- *Competition and Consumer Protection Act 2014*
- *Intellectual Property (Miscellaneous Provisions) Act 2014*

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- How and what is Revenue watching,
- Who are 'guardians'/'parents' post the *Children and Family Relationships Act* and the *Marriage Equality Bill 2015*,
- Enduring Powers of Attorney – the effect of *AA and ors v FF* on who is entitled to query the attorney, on what and via what mechanism,
- Shareholder/partnership/co-ownership agreements and the use of trusts, and family partnerships to guard the store when the client is gone,
- Who guards the LPR/Trustees and the options open to disgruntled beneficiaries?

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RISKY *business*



Tim O'Hanrahan is a deputy head in the insurance division of the Central Bank of Ireland and is currently the programme manager of the Solvency II implementation project



Sylvia Cronin was appointed as director of insurance supervision in October 2014 and is a member of the European Insurance and Occupational Pensions Authority Board of Supervisors

Solvency II will have a significant impact on solicitors working in the compliance and legal departments of insurance companies – and those providing services to the insurance industry. Tim O'Hanrahan and Sylvia Cronin weigh up the risks

Insurance regulation in the European Union is being overhauled. The existing regime, which is referred to as Solvency I, is being replaced by Solvency II with an effective implementation date of 1 January 2016.

The current regime has been in place since the 1970s and consists of 14 separate European directives. While there have been modifications to the regime, there was growing concern that Solvency I did not reflect the increasingly complicated and interlinked risks facing the modern insurance industry and that a radical overhaul was needed. Solvency II will result in insurance regulation being harmonised in 28 EU member states and will assist in achieving a level playing field.

Solvency II fundamentally alters how reserves and required capital is calculated for insurance companies, requires significantly enhanced governance, increases the level and quality of reporting that insurance companies must submit to supervisory authorities, and also strengthens supervisory review powers.

The Solvency II regime is based on a three-pillar

approach. Pillar 1 addresses quantitative requirements, which determine the level of reserves and capital that must be held. Pillar 2 addresses qualitative requirements, including governance. Pillar 3 addresses reporting and disclosure.

Legislative framework

The Irish government is currently in the process of transposing into law the *Solvency II Directive* (2009/138/EC), as amended by the *Omnibus II Directive* (2014/51/EC), which will become effective across all 28 EU member states from 1 January 2016. Implementation of Solvency II in Ireland will be given legal effect by secondary legislation in the form of statutory instrument. The *Solvency II Directive* is supplemented by more detailed technical European Commission Level 2 measures contained in the *Commission Delegated Regulation (EU) 2015/35*, and these in turn are supplemented by Level 3 guidance for national supervisors (including the Central Bank) developed and adopted by the *European Insurance and Occupational Pensions Authority* (EIOPA). The legal

at a glance

- Insurance regulation will be overhauled and harmonised across the EU with the introduction of Solvency II on 1 January 2016
- The new regime will fundamentally alter how reserves and required capital are calculated for insurance companies
- Solvency II will require significantly enhanced governance
- The level and quality of reporting that insurance companies must submit to supervisory authorities will increase



‘ In principle, if an insurance company underwrites more risky business or holds more risky assets, their capital requirements should be higher ’

form of the delegated regulation is such that the implementing rules therein have direct application across the EU without needing to be transposed into national regulation. EIOPA's Level 3 guidance is not legally binding; however, insurance companies or supervisors not complying will need to explain their reasons. EIOPA published the second set of draft *Implementation Technical Standards* (ITS) and *guidelines for Solvency II* on 6 July. The publication marks the completion of the Solvency II regulatory framework.

Group and corporate structures

In preparation for Solvency II, many insurers have engaged in critically reviewing legal entity structures, business operating models, and locations of choice. Regulatory, operational, and capital efficiencies in a Solvency II world are the key drivers in most insurers restructuring strategies. Developments include reinsurers moving locations, general insurers seeking to rebalance insurance portfolios to optimise capital structures, and life organisations

revising business operating models. The lead up to Solvency II has seen many insurers review their overall group structure and move from a structure with subsidiaries across Europe to consolidation into one company with branches across Europe, with a view to better use of capital. In addition, the insurance market overall has seen a marked surge in portfolio transfers and mergers and acquisitions activity, and it is likely that Solvency II implementation will see further consolidation in the insurance market.

Group supervision

The financial crisis demonstrated the far-reaching implications when group risks are not fully understood and managed. While the *Solvency II Directive* had its genesis prior to the recent financial crisis, it has sought to introduce supervisory measures appropriate to the complexity and global nature of insurance groups. Solvency II places a focus on a group own risk and solvency assessment (ORSA), group governance and risk management requirements, group solvency calculation, and

reporting of group risk concentrations and intra-group transactions.

Under Solvency II, supervision of insurance groups will be led by a designated group supervisor, a supervisory authority with overall responsibility for coordination and exercise of group supervision. The group supervisor will be supported by establishment of a college of supervisors, made up of the group supervisor, the supervisory authorities of all the member states in which the head offices of all subsidiary undertakings are situated, and EIOPA. Third-country supervisory authorities may also attend as participants. The objective of the college is to enhance, on an ongoing and confidential basis, information exchange and cooperation between supervisors to improve the effective supervision of insurance groups.

Certificates and conditions

Under the existing legislative regime governing the authorisation of insurers, the Central Bank has the power to impose various conditions on an individual insurer upon

authorisation and indeed add, vary, or revoke these at any stage thereafter. In preparation for 1 January 2016, the Central Bank is reviewing the conditions currently attaching to insurers, and also the accompanying certificates confirming an existing insurer's authorisation status, to reflect the transition to Solvency II. Conditions on authorisation can have an impact on insurers' business models and how they organise their operations, thereby necessitating careful consideration on an ongoing basis. A number of the requirements of the Central Bank, such as codes of corporate governance, are legally binding on insurance companies by virtue of their conditions of authorisation.

Procedures for authorisations

As insurance is a regulated business, all insurers are required to be subject to prudential regulation.

Insurers in Ireland seeking prudential regulation by the Central Bank are subject to a comprehensive assessment prior to authorisation, which includes a review of their proposed business model, governance structure, and capital and reserving strategy. With the introduction of Solvency II, the Central Bank is updating all of the authorisation checklists and procedures to ensure consistency with the Solvency II regime.

Corporate governance

The Solvency II regime imposes significant additional governance obligations on insurers compared with the existing Solvency I environment. While, in Ireland, a number of the requirements are already in place through the *Corporate Governance Code for Credit Institutions and Insurance Undertakings*, the *Corporate Governance Code for Captive Insurance and Captive Reinsurance Undertakings* and the fitness and probity standards, there will be further enhancements to governance requirements.

To ensure compliance with the Solvency II regime, many insurance companies have conducted a comprehensive gap analysis between their existing governance structures and the requirements mandated by Solvency II, working closely with their internal and external legal advisors in the process.

Some of the gaps identified include:

- Fitness and probity – Solvency II requires that people who effectively run the insurance company or have other key functions should be subject to notification

requirements to supervisory authorities. Key function holders include the risk management function, the compliance function, the internal audit function, and the actuarial function. In Ireland, the notification requirements are already part of the fitness and probity regime that took effect in 2011. Many insurance companies, particularly smaller companies, are assessing if all of the required key function holders are in place, either through an internal position or through an outsourced arrangement.

- Outsourcing – where a critical or important function of an insurer is outsourced, a written agreement must exist between the insurer and the service provider that satisfies certain Solvency II requirements regardless of whether the outsourcing arrangement/agreement existed prior to 1 January 2016 or is newly entered into thereafter. Consequently, many insurers reliant on internal or external outsource providers – for example, group treasury arrangements or claims handling services – must ensure all outsourcing agreements are reviewed and revised to ensure

Solvency II compliance.

- Compliance – over time, with the increased complexity and volume of regulation, there is an increased level of legal expertise prevalent within insurers, particularly in terms of providing support to the compliance function. The duties of the compliance function include advising the board on compliance with the laws, regulations, and administrative provisions adopted under the *Solvency II Directive*. It also entails an assessment of the possible impact of any changes in the legal environment on the operations of the insurer concerned and the identification and assessment of compliance risk.

Required capital

Required capital refers to the amount of capital a company must hold. Solvency II introduces more risk-sensitive capital requirements. In principle, if an insurance company underwrites more risky business or holds more risky assets, their capital requirements should be higher. The objective of the *Solvency II Directive* is that undertakings will hold sufficient capital so that they will still be in a position, with a probability of at least 99.5%, to meet their obligations to

policyholders and beneficiaries over the following 12-month period.

To comply with the capital requirements, all companies must satisfy both a minimum capital requirement and a solvency capital requirement. To calculate the latter, firms may use a standard formula or a partial or full internal model.

In relation to the standard formula, there is a comprehensive set of requirements in relation to the computation of the required capital. There is also an option, referred to as 'undertaking-specific parameters', to replace some parameters within the standard formula with parameters specific to the insurer concerned when calculating the life, non-life, and health underwriting risk modules.

In relation to internal models, there is a process of prior supervisory approval on the basis of harmonised processes and standards. The approval (or not) of an internal model process requires extensive governance procedures both within companies and also extensive internal governance in the Central Bank. The Central Bank is expecting to receive ten applications for internal models in 2015. The balance of firms, around 200, will use the standard formula.

Available capital

Available capital refers to the amount of capital a company has. Solvency II introduces significant changes as to what can count as capital of an insurance company. Capital is split into three tiers, reflecting its loss-absorbance capacity. Solvency II imposes strict criteria determining whether capital qualifies into each of the tiers. Limits are also in place on the percentage of total capital that can be made up of tier 2 or tier 3 capital.

It is also noted that certain capital items require approval of supervisory authorities.

Solvency II represents a significant reform of the regulatory environment within which insurance companies operate. It will provide many challenges, but also many opportunities for insurance and legal professionals alike to play a key role in the development and maintenance of a robust and resilient insurance regulatory framework in the years ahead.

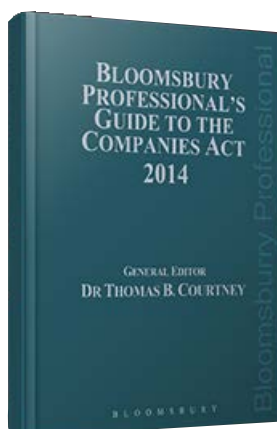


look it up

Legislation:

- *Solvency II Directive* (2009/138/EC)
- *Omnibus II Directive* (2014/51/EC)
- *Commission Delegated Regulation* (EU) 2015/35

Solvency II will result in insurance regulation being harmonised in 28 EU member states and will assist in achieving a level playing field



Bloomsbury Professional's Guide to the Companies Act 2014


Thomas B Courtney, Lyndon MacCann, Irene Lynch-Fannon, William Johnston, Daibhi O'Leary, Nessa Cahill. Bloomsbury Professional (2015), www.bloomsburyprofessional.com. ISBN: 978-1-7804-383-44. Price: €195 (hardback, incl VAT).

The *Companies Act 2014* was commenced pretty much in full on 1 June 2015. There is no doubt that, for those of us practising in company and commercial law, it is the biggest and most challenging overhaul that will occur in the course of our careers. While we have had plenty of time to prepare (the *Companies Bill* having first been published in 2012), we are only really getting to know the legislation, now that we are working with it on a day-to-day basis. Any publication on the new act was therefore eagerly anticipated, and Bloomsbury was first off the blocks with its *Guide to the Companies Act 2014*.

Dr Tom Courtney (who as chair of the Company Law Review Group was essentially the chief architect of the act) is general editor of this publication and has authored the chapters on the anatomy of the act, the changes in the basics (constitutions, share capital and governance) and the changes in the law of directors' duties. The book also covers various other aspects of the new act, such as changes to re-registration, registers and filings, taking security, corporate restructuring (schemes, mergers and divisions),

and compliance and enforcement.

In reality, the book is a nicely bound and annotated version of the presentations given by each chapter's author at a series of seminars on the act organised by Bloomsbury earlier in the year. It is not the type of detailed analysis we are looking forward to when Dr Courtney publishes the next edition of his book on the law of companies and, no doubt, there will be other essential publications on our new company law over time.

In the meantime, this publication is a very useful overview of the structure of the new *Companies Act* and the key changes it introduces. The new act itself makes company law very accessible, as the legislation is very logically structured compared with the previous *Companies Acts*. This guide to the *Companies Act* is of great assistance in identifying key changes and getting to grips with the new legislation. 

Neil Keenan is managing partner of LKG Solicitors and is a member of the Law Society's Business Law Committee.

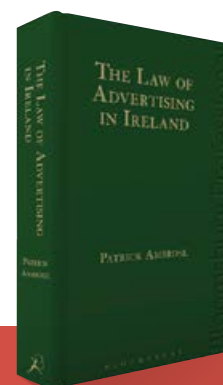


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Patrick Ambrose

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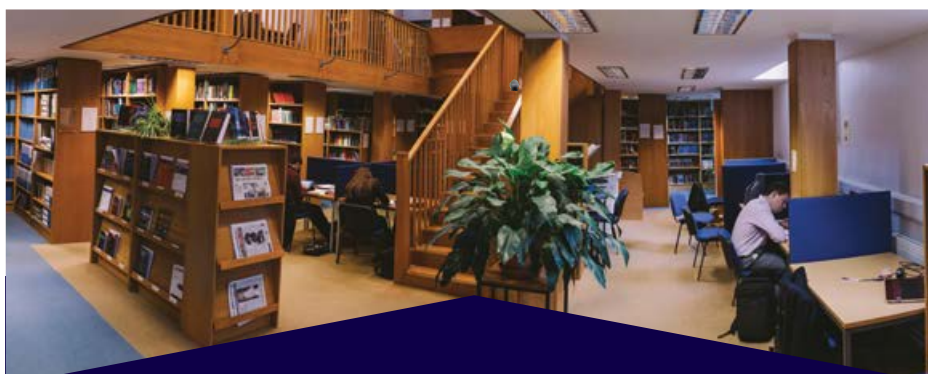
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ANN NOWLAN

1970-2014

It is with immeasurable sadness that we record the untimely death of our dear friend and colleague Ann Nowlan. Ann passed away on 14 September 2014, at the tragically young age of 44, after battling cancer for a number of years.

Ann was a popular and highly regarded solicitor in Co Kildare, having established a successful practice in Newbridge. She was best known for her expertise in family law and medical negligence.

Born in New Ross, Co Wexford, she was the second daughter of Joe and the late Beryl Nowlan. Ann's early experience as a young girl behind the counter of her mother's grocery shop in New Ross taught her valuable lessons for her career as a solicitor. She developed her ethic for hard work and her belief in the right of every individual to be treated with dignity and respect from a young age.

She studied history in NUI Maynooth, where she met her future husband Tom Smith. After completing her degree, she began her apprenticeship with Maeve Breen in MT O'Donoghue & Company in Gorey, Co Wexford. She qualified in 1996 and worked for a number of years with John O'Connor in Clare Street, Dublin. Tom and Ann then moved to Newbridge, Co Kildare, where Ann worked with Boyce Burns Solicitors, which later became Burns Nowlan.

She quickly established herself in Newbridge and became a partner in the firm within a few years. She was, in the very best sense, a general practitioner, but she had a special talent for



both family law and medical negligence. On the family law front, her empathy and common sense were valuable traits, and she was highly regarded among her peers as somebody who would do her utmost to settle a case, adopting a common-sense and pragmatic approach that was always in the best interest of her clients. She qualified as a family mediator and was also one of the founding members of

the Kildare and West Wicklow Collaborative Practitioners' Group. She played a leading role there, holding a number of positions throughout the years.

She also established an excellent medical negligence practice and represented clients from all over Ireland, such was her reputation. She had a passionate belief in the obligation of the legal profession to represent the most vulnerable

– particularly in medical negligence cases. Her clients, many for whom English was not their first language, benefitted from her dogged approach in taking on the might of the State when defending people's rights.

She was larger than life, and her distinctive voice and laugh brightened up many a social occasion, where she was in her element regaling family and friends with stories. When she was diagnosed with cancer, she treated it as only Ann would and, indeed, could. Throughout the punishing rounds of chemotherapy and surgery, she continued to work full time. Indeed, she said that work helped her get through the treatment. Friends and colleagues marvelled at her stoicism and how dismissive she was of her illness. Complaint and self-pity were not options for Ann. One of her favourite sayings was: "Life isn't about waiting for the storm to pass ... it's about learning to dance in the rain." She continued to work right up to a few days before she succumbed to the disease.

She is sadly missed by her many colleagues and friends. The large crowd at her funeral was testament to the esteem in which she was held, as was the fitting guard of honour by her colleagues.

The biggest loss, however, is for her heartbroken husband Tom and their two young daughters Ella and Alice. Ann is also survived by her father Joe, step-mother Carmel, sisters Margaret and Bridget, as well as a wide circle of friends.

May she rest in peace.

HC

MAURICE R CURRAN

1938 – 2015

Maurice Curran passed away in April this year, the month after his fellow-Mason Hayes & Curran founder partner, Michael Hayes. Maurice was well known to the solicitors' profession for most of his career and was to become more widely known as first Government inspector appointed under the *Companies Act 1990*.

He was born to parents Dermott and Maureen in 1938 in Sandymount, Dublin. Dermott then worked as a law clerk and Maureen had her own Radio Éireann programme, *Ask Mrs Curran*. Dermott was to qualify very much later as a solicitor, for a while heading up the Dublin office of Brown & McCann before joining his son as a partner in his firm.

Maurice attended St Michael's primary school and then Blackrock College. As well as being academic, he was an accomplished sportsman, in his case at cricket and table tennis. At UCD, he took the degrees of BCL and LLB, in which he came joint first. He qualified as a solicitor in 1961, winning the Overend and Findlater Scholarships along the way.

He joined the firm of Walker, Son and Mason and, in 1963 at the age of 25, came to a crossroads: he had won a scholarship to Harvard University for a master's degree and, simultaneously, was being offered a partnership in the firm. He took up the latter, the firm then being renamed as Walker, Mason & Curran. Six years later, when Michael Hayes joined the firm, it renamed itself again as Mason, Hayes & Curran. As managing partner until 1999, Maurice led it to become one of



Ireland's largest firms.

He enjoyed a reputation for principled straight talking and straight dealing. He had a formidable intellect. Harvard's loss was to prove to be the profession's gain.

From the start, Maurice was an active participant in Law Society matters. He became chair of the Society of Young Solicitors in 1970, and in 1973 was elected to Council, where he sat for 20

years, sitting on all the Council's standing committees at various stages. In 1988, he became president of the Society.

During his time on Council, he was part of a group of leading practitioners who initiated and brought through several key reforms – the abolition of the solicitor's premium, the introduction of the (current) more practice-focused system of education, the removal of the

cap on numbers qualifying, the introduction of advertising by solicitors, and the establishment of the Solicitors Mutual Defence Fund.

It was in 1991 that he came to more public prominence, when the then Minister for Industry and Commerce Desmond O'Malley appointed him to investigate the 'Greencore Affair'. His investigation, which took just over three months, produced two reports and enabled a ministerial freezing order to be made over a contested portion of the proceeds of the sale of Sugar Distributors Ltd.

He was a visiting fellow in commercial law at UCD, a member of the Irish Arbitration Committee of the International Chamber of Commerce, a member of the Leinster Society of Published Accounts Awards, and held board positions with McNerney Construction, Thorsman and (in less controversial times) Anglo Irish Bank.

Maurice retired from practice in 2003 and, for a while, was able to keep up his lifelong interest in travelling. He began, however, to suffer from intermittent poor health and, early this year, elected to have a heart bypass. Although he recovered well at first, he subsequently weakened, dying peacefully, with his family present, on 20 April 2015.

Maurice is survived by his daughters Róisín, Sara, Catherine and Rebecca, their mother Noëlle Anne, and his sister Pauline.

Ar dbeis Dé go raibh a anam dílis.

PE



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One delegate €110
 2 delegates from the same firm €190
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Venues and Dates

Dublin: The Davenport Hotel	Wednesday 14th Oct 2015	9.00am to 1.00pm
Kilkenny: Hotel Kilkenny	Thursday 15th Oct 2015	9.00am to 1.00pm
Galway: The Courthouse	Friday 16th Oct 2015	2.00pm to 6.00pm
Cork: The Imperial Hotel	Monday 19th Oct 2015	9.00am to 1.00pm
Limerick: The Savoy Hotel	Tuesday 20th Oct 2015	9.00am to 1.00pm
Athlone: The Sheraton Hotel	Thursday 22nd Oct 2015	9.00am to 1.00pm
Dublin: The Davenport Hotel	Thursday 29th Oct 2015	9.00am to 1.00pm

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10 July 2015

council report

Motion: new CPD Regulations

"That this Council approves the Solicitors (Continuing Professional Development) Regulations 2015."

Proposed: Valerie Peart

Seconded: Brendan J Twomey

The Council approved the proposed new regulations providing for two separate cycles with a minimum CPD hours requirement of 18 hours for 2016 and 20 hours for 2017. In addition, the regulations retained the mandatory three hours' requirement for management and professional development skills, with an increase in the mandatory minimum requirement for regulatory matters from one hour to two hours per CPD cycle. For solicitors in certain categories – that is, a sole practitioner, a compliance partner or an anti-money-laundering compliance partner – the requirement was for three CPD hours, of which at least two would be in accounting and anti-money-laundering compliance.

The new regulations also amended the definition of 'group study' to provide that physical attendance was required and, consequently, participation in a video-conferenced lecture/tutorial would no longer qualify. However, it was also proposed to amend the CPD Scheme so that 50% of the annual CPD requirement could be completed via e-learning and 50% could be completed by means of 'written relevant material'. Finally, solicitors attending meetings of committees and/or working groups of the Society, or other law-related professional bodies, or performing adjudicative

functions would be permitted to claim credits of up to seven hours against all categories of CPD.

Motion: attendance at Council meetings while on maternity leave

"That members of Council who are absent from their employment while on paid leave under maternity and adoptive protection legislation should be credited for attendance or deemed to be in attendance at Council meetings whereby, by reason of such leave, they are unable to attend Council."

Proposed: Aine Hynes

Seconded: Stuart Gilhooly

Aine Hynes explained that her proposal was designed to recognise that, in addition to those Council members who were deemed present at Council meetings when they were absent on Council business, Council members who were on paid maternity or adoptive leave should receive a similar dispensation. To ensure transparency with the electorate, it was proposed that the literature issued by the Society accompanying the ballot papers should clarify the very limited circumstances in which Council members were deemed to be in attendance at Council.

Stuart Gilhooly noted that the Council was interested in encouraging new blood to become involved in the Society's work. In this context, the Society should take any steps necessary to encourage women to participate as Council members.

Some Council members expressed the view that the problem rested with the requirement to

publish attendances at Council meetings on ballot papers. Attending Council meetings was only a minor aspect of the work done by Council members within the Society, with substantial work being done within committees, and yet no credit for that committee work was given by the bye-laws and on the ballot paper. Others noted that there were a wide range of other valid reasons that a Council member might miss a Council meeting – for example, reasons of illness, death of a spouse or parent, and so on – and that those other valid reasons would not be addressed by the proposed motion.

Many Council members argued that the proposal was important so that the Council would become more representative of the profession. While the current convention of listing attendances at Council meetings would not act as a barrier to women standing for election to the Council, it might act as a barrier to women staying on as members of the Council. In addition, the lack of recognition of a Council member on maternity leave was indirect discrimination. The proposal was an exercise in positive discrimination, in order to remove a barrier that would make the prospects of the re-election of Council members on maternity leave significantly more difficult. The proposal represented a positive facility to maintain as diverse a Council as possible.

On a show of hands, the motion was overwhelmingly approved by the Council.


Committee recommendations

The Council considered each of the 15 recommendations made by Symbio Business Solutions in relation to the Society's committees, together with feedback from the committees themselves. Most of the recommendations were approved, with amendments to others and agreement not to pursue a small minority. The Council noted again the hugely positive remarks by Symbio in relation to the service provided to members by the Society's committees.

Council election dates 2015

As required by the bye-laws, the Council approved Monday 21 September 2015 as the final date for receipt of nominations for the Council election and Thursday 29 October 2015 as the close of poll date.

Appointment of judges

The Council noted that, of the three recent judicial appointments – two to the Circuit Court and one to the High Court – none had included solicitors, notwithstanding that the Society was aware that the names of several solicitors had been forwarded by the Judicial Appointments Advisory Board to the Government. The Council agreed that the president should outline the Society's objections to this imbalance in his speech at the annual dinner that evening, at which An Taoiseach, the Minister for Justice and the Minister for Foreign Affairs would be in attendance. 

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practice notes



CONVEYANCING COMMITTEE

Precedent pre-contract enquiries for multi-unit developments

In June 2015, the Conveyancing Committee published two sets of pre-contract enquiries on the Society's website covering sales of units in multi-unit developments, one being an updated set of the existing pre-contract enquiries dealing with units in developments that are subject to the *Multi-Unit Developments Act 2011*, and the other being a new set of pre-contract enquiries for units in developments that are not subject to the act.

Only developments that have the required residential elements are subject to the act. Developments not subject to the act will include shopping centres, office blocks, and other mixed-use developments with no residential units. It is hoped that the use of these pre-contract enquiries will allow vendors' and purchasers'

solicitors to identify any problems that may exist at an early stage.

Please note that there are slight amendments to the previously published enquiries for units to which the act applies. Solicitors should ensure they are using the most up-to-date version, which will always be the [version on the website](#), rather than relying on a previously downloaded copy of an earlier version.

Solicitors acting for prospective vendors of such units would be advised to familiarise themselves with the requirements of these enquiries with a view to equipping themselves to answer the enquiries when received. Some of the information required, particularly that relating to the appointment of managing agents, insurance, service charges, sinking funds, house rules and voting rights,

should have been provided to the vendor as a member of the owners' management company (OMC), but if the vendor cannot produce this information, it should be available from the OMC. In practice, it often turns out that the managing agents will be in possession of this information and be in a position to provide it. It is recommended that a copy of the pre-contract enquiries be sent to the managing agents as soon as possible.

It will be noted that the pre-contract enquiries do not require the certificate of membership of the OMC to be handed over. Membership in an OMC depends on ownership of a unit, so that once a unit is sold, the purchaser automatically becomes a member and the vendor's membership lapses under the act. Vendors' solicitors should notify the secretary of the OMC of the change of ownership as soon as the sale has closed.



CONVEYANCING COMMITTEE

Letters regarding roads and services 'in charge'

The Conveyancing Committee has decided to make changes to its previous recommendation that a purchaser may accept either a letter from the local authority or a vendor's solicitor's certificate, certifying the position as to whether services including roads, lanes, footpaths, sewers, and drains abutting and servicing a property have been taken in charge by a local authority.

The committee has become aware that it happens more frequently than had previously been thought that an 'in charge' road can have its status redesignated to that of a road not in charge. This can happen as a result of changes to the location or path of a roadway or as a result of a new development providing a new means of access to a property and closing off a previous access. It can also happen as a result of a local or road authority abandoning a public road or extinguishing a public right of way under sections 12 and 73, respectively, of the *Roads Act 1993*.

Because of the above possibility, it may be the case that a local authority letter or a solicitor's certificate given in a previous trans-

action may no longer reflect the up-to-date position. It is therefore the recommendation of the committee that an up-to-date certificate from the vendor's solicitor in the current transaction should be obtained from now on and that historical letters or certificates given by vendors' solicitors in previous transactions should no longer be accepted. If you are on enquiry of a possible change in circumstances in relation to an old local authority letter and are not satisfied as to the correct current position, you should obtain an up-to-date local authority letter, with accompanying identifying map where appropriate.

The committee reminds solicitors that they should not give certificates about roads and services (including roads, lanes, footpaths, sewers and drains) abutting and servicing the property having been/not been taken over by the local authority except where this has been verified by an inspection of the local authority records or their own personal knowledge.

The recently published 2015 edition of the Society's *Objections and Requisitions on Title* reflects this revised recommendation.



Compensation fund: submission of claim forms

The number of claims on the compensation fund rose by 56% in 2014 compared with 2013. The volume of claims is continually a strain on the Law Society's resources. The Regulation of Practice Committee has noted that many claims are being submitted to the Law Society that are incomplete, poorly put together, and lack the necessary supporting documentation to enable the claims administrator to deal speedily with the claim.

The Law Society expects that solicitors, when acting for claimants on the compensation fund, would show the same professionalism as when dealing with any other claims to third parties on behalf of their clients.

Solicitors are requested to ensure all parts of the claim application form are comprehensively completed and all available necessary documentation is provided. Solicitors should not assume that the Law Society is in possession of all accounting and rel-

evant documentation in respect of the solicitor against whom the claim is being made. It is the function of a solicitor to prepare a coherent case for his or her client. To assist solicitors in completing the application form, the Law Society has issued a guide to claiming refunds of money paid to a solicitor, which is available on the Society's website at www.lawsociety.ie/public/compensation-fund, and is also sent to solicitors and claimants who request an [application form](#).

It is the stated policy of the Regulation of Practice Committee to direct the claims administrator to return to solicitors any claim forms that are incomplete or lack sufficient documentation to prove the claim. The strict implementation of this policy will take place from 1 October 2015.

*John Elliot,
Registrar of Solicitors and Director of Regulation*



CONVEYANCING COMMITTEE

Loan special condition and revaluation of security by lenders

The committee wishes to alert practitioners to the impact of SI 47 of 2015 (*Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Housing Loan Requirements) Regulations 2015*) on residential conveyancing transactions where there is a secured loan.

Under clause 7(3), a lender (defined in the regulations as a regulated service provider that provides a housing loan to a borrower) is required to carry out a market valuation of the residential property on which the loan is to be secured **not earlier** than a period of two months before the date on which the advance under the housing loan is made. Clause 7(4) applies where a housing loan is for the purchase of land for the construction of a building, and requires a lender to undertake a valuation of the land within the same time period. Clause 4 provides for a limited number of exemptions, including loan agreements entered into prior to the

date of the making of the regulations (9 February 2015).

Given the timelines in conveyancing transactions, in many cases lenders will now have to obtain a second valuation of the property prior to drawdown. This has potentially serious consequences for a purchaser who has entered into a binding contract on the strength of the original loan approval. If a revaluation resulted in a reduction in the loan, the purchaser may not have sufficient funds to complete the contract, resulting in loss of deposit and the possibility of an action for specific performance and/or damages for breach of contract.

Practitioners are advised (a) to include a special condition in the contract for sale, and (b) to warn purchaser clients that their lender will now have to revalue the property before drawdown where two months have elapsed since the first valuation and that this could

result in a reduction in the loan.

Practitioners are also referred to the committee's previous practice note of 5 June 2009, 'Timelines in loan approvals and revaluation of security by lenders' and to the sample special condition, which is reproduced in the panel below.

The committee also wishes to remind practitioners of their obligation under clause 9 of the *Law*

Society Approved Guidelines and Agreement (2011 edition) for residential mortgage lending, which requires the same consideration to be expressed in the letter of offer as in the purchase deed/building agreement. Where there is a discrepancy, this must be notified to the lender prior to drawdown and may also result in a reduction of the loan.

This contract shall be subject to the purchaser obtaining approval for a loan of €_____ from (lender) _____ on the security of the premises, provided always that if this loan has not been approved in writing within four weeks from the date hereof, either party shall be entitled to rescind this contract and in such event the purchaser shall be refunded his deposit without interest costs or compensation thereon.

If the loan approval is conditional on a survey satisfactory to the lend-

ing institution or a mortgage protection or a life insurance policy being taken out or the lending institution being satisfied at any time prior to drawdown of the loan that its valuation of the property has not changed since the date of loan approval or some other condition, compliance with which is not within the control of the purchaser, the loan shall not be deemed to be approved until the purchaser is in a position to accept and draw down the loan on terms which are within his reasonable power or procurement.



Legal advice columns

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

All practising solicitors are reminded that, as per the *Solicitors (Advertising) Regulations 2002 (SI no 518 of 2002)*, an 'advertisement' means any communication that is intended to publicise or otherwise promote a solicitor in relation to the solicitor's practice.

When deciding whether a legal advice column constitutes an advertisement, the advertising exemption as set down by regulation 12 must be considered. Under this test, a publication is not considered to be an advertisement but is, rather, a communication primarily intended to provide information on the law where:

- The publication is an article on a legal topic,
- No part of the space has been paid for by or on behalf of the solicitor,
- The publication has not been repeated with the same or substantially the same content.

Where a legal advice column satisfies this test, the exemption under regulation 12 shall apply and the article would be considered to be a communication primarily intended to give information on the law. Where an article does not satisfy this test, that is, if it has been paid for by or on behalf of the solicitor, or where it has enjoyed repeated publication, the article is subject to the regulations in the normal way.

An example of how the regulations would apply to a legal advice column that falls outside the regulation 12

exemption would be where the column relates to medical negligence. As with all other types of advertising, regulation 8(b) requires that any reference to any subcategory of personal injury must also carry an asterisk that correlates with the disclaimer: "In contentious business, a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement." Therefore, to be fully compliant with the regulations, any legal advice column that has medical negligence as its subject matter, which does not fall under the regulation 12 exemption, must make clear reference to the abovementioned disclaimer in connection with contentious business.

Eamonn Maguire is the Law Society's advertising regulations executive and is contactable at 01 672 4800 or e.maguire@lawsociety.ie.



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9 Sept	REGULATION OF LOBBYING ACT, 2015 – Implications & Obligations on the Solicitor	n/a	€95	1.5 Regulatory Matters (by Group Study)
11 Sept	ESSENTIAL GENERAL PRACTICE UPDATE– Muckcross Park Hotel, Killarney, Kerry	n/a	€95	5 General plus 1 M & PD Skills (by Group Study)
16 Sept	GARDA STATION QUESTIONING WORKSHOP in collaboration with the Criminal Law Committee - Cork	€150	€176	3 General (by Group Study)
17 Sept	THE IMPACT OF MASS SURVEILLANCE ON LAWYER-CLIENT CONFIDENTIALITY in collaboration with the EU & International Affairs Committee	n/a	€95	2 General plus 1 Regulatory Matters (by Group Study)
18 Sept (Fridays) 6-8pm	LAW SOCIETY FINUAS NETWORK/SUTHERLAND SCHOOL OF LAW UCD POST GRADUATE DIPLOMA IN INTERNATIONAL FINANCIAL SERVICES Law - Blended-learning Model	€3,200	€4,000	Full CPD requirement for 2015 (provided relevant sessions attended) Additional CPD hours available for attendance in 2016
25 & 26 Sept & 9 & 10 Oct	THE FUNDAMENTALS OF COMMERCIAL CONTRACTS MODULE 1: Negotiating and Drafting Commercial Contracts MODULE 2: Analysis of Key Commercial Contracts:	€800 (Course fee includes an iPad Mini and interactive eBook on Commercial Contracts)	€1,000 (Course fee includes an iPad Mini and interactive eBook on Commercial Contracts)	10 Hours including 3 M & PD Skills (by Group Study) - for each module
25 & 26 Sept & 9 & 10 Oct	THE FUNDAMENTALS OF DISTRICT COURT CIVIL PROCEDURE, DRAFTING & ADVOCACY SKILLS (Focus on General Tort & Personal Injuries Litigation) MODULE 1: The fundamentals of PI Litigation; District Court Civil Procedure and Drafting Skills MODULE 2: Preparing for trial and court room advocacy	€608	€760	10 Hours including 3 M & PD Skills (by Group Study) - for each module
1 Oct	ANNUAL EMPLOYMENT LAW SEMINAR in collaboration with the Employment & Equality Law Committee	€150	€176	3 General (by Group Study)
2 Oct	PROBATE & CAPITAL TAXES UPDATE presented in collaboration with STEP	€150	€176	2.5 General (by Group Study)
2 Oct	LAW SOCIETY SKILLNET CONNAUGHT SOLICITORS SYMPOSIUM 2015 hosted by Mayo Solicitors' Bar Association – Breafehy House Resort, Castlebar, Co Mayo	n/a	€95	3 General plus 3 M & PD Skills (by Group Study)
2 Oct	PROBATE & CAPITAL TAXES UPDATE 2015 in partnership with the Society of Trust and Estate Practitioners (STEP)	€150	€176	2.5 General (by Group Study)
8 Oct	ANNUAL LITIGATION UPDATE in collaboration with Litigation Committee	€150	€176	3 General (by Group Study)
10 Oct	ANNUAL HUMAN RIGHTS conference presented in collaboration with the Human Rights Committee	Complimentary		3 General (by Group study)
16 Oct	LAW SOCIETY SKILLNET NORTH EAST CPD DAY 2015 in association with Monaghan, Cavan, Drogheda and Louth Solicitors' Bar Associations – Glencarn Hotel, Castleblayney, Co Monaghan	n/a	€95	5 General plus 1 M & PD Skills plus 1 Regulatory Matters (by Group Study)
16 Oct	BLUE SKIES OR STORMY CLOUDS? – ANNUAL TECHNOLOGY CONFERENCE – in collaboration with the Technology Committee – Temple Gate Hotel, Ennis	€150	€176	3.5 hours General (by Group study)
23 Oct	LAW SOCIETY SKILLNET PRACTICE & REGULATION SYMPOSIUM 2015 in partnership with the Small Practice Network and DSBA – Mansion House, Dublin	n/a	€95	5 M & PD Skills plus 1 Regulatory Matters (by Group Study)
29 Oct	ADR DIRECTIVE AND ONLINE DISPUTE RESOLUTIONS REGULATION in collaboration with the ECC, the ADR Committee and the EU and International Affairs Committee	Complimentary		3 General (by Group Study)
12 Nov	ANNUAL IN-HOUSE AND PUBLIC SECTOR CONFERENCE – in collaboration with the In-house and Public Sector Committee	€150	€176	2 M & PD Skills plus 1.5 General (by Group study)
13 Nov	LAW SOCIETY SKILLNET PRACTITIONER UPDATE CORK 2015 in partnership with Southern Law Association and West Cork Bar Association – Clarion Hotel, Cork	n/a	€95	5 General plus 1 M & PD Skills (by Group Study)
13 & 14 Nov & 22 & 23 Jan & 5 & 6 Feb 2016	PROPERTY TRANSACTIONS MASTER CLASSES MODULE 1: The Fundamentals of Property Transactions MODULE 2: Complex Property Transactions MODULE 3: Commercial property transactions	Fee per Module: €484	Fee per Module: €550	CPD Hours per Module: 8 General plus 2 M&PD (by Group Study) Attend 1, 2 or all 3 modules
20 Nov	LAW SOCIETY SKILLNET GENERAL PRACTICE UPDATE 2015 in partnership with Carlow Bar Association, Kilkenny Bar Association, Waterford Law Society and Wexford bar Association – Hotel Kilkenny, Kilkenny	n/a	€95	3 General plus 3 M & PD Skills (by Group Study)
27 & 28 Nov and 15 & 16 Jan 2016	THE FUNDAMENTALS OF TECHNOLOGY & INTELLECTUAL PROPERTY LAW MODULE 1: Intellectual Property Law MODULE 2: Technology Law	€800 (Course fee includes an iPad Mini and interactive eBook on IP and Technology Law)	€1,000 (Course fee includes an iPad Mini and interactive eBook on IP and Technology Law)	10 Hours including 3 M & PD Skills (by Group Study) - for each module
27 Nov	ANNUAL FAMILY & CHILD LAW CONFERENCE 2015 in partnership with the Family & Child Law Committee	€150	€176	4.5 General (by Group Study)

For full details on all of these events plus our full range of Management & professional Development Skills Workshops 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

The 2015 CPD requirement is 16 hours in total, to include a minimum of 3 hours Management & Professional Development Skills and a minimum of 1 hour Regulatory Matters. Please note FIVE hours on-line learning is the maximum that can be claimed in the 2015 CPD Cycle. *Applicable to Law Society Skillnet members.

Claims harvesting websites

This notice is intended as general guidance in relation to the subject matter and does not constitute a definitive statement of law. Reference to a 'solicitor' includes a reference to a firm of solicitors in this context. Any reference made to 'the regulations' is in reference to the *Solicitors (Advertising) Regulations 2002* (SI no 518 of 2002).

As per the article on 'claims-harvesting' websites published in the January/February 2015 issue of the *Gazette*, solicitors are reminded of the professional implications that may arise if they are found to be working in partnership with and/or accepting referrals from such websites.

Section 5 of the *Solicitors (Amendment) Act 2002* prohibits a non-solicitor from advertising

legal services that could otherwise be provided by a solicitor for or in expectation of a fee, gain or reward. Further, non-solicitors are prohibited from advertising professional legal services that make any express or implied reference to claims or possible claims for damages for personal injuries and potential awards thereof.

By extension, section 7 of the *Solicitors (Amendment) Act 2002* amends the definition of misconduct contained in section 3 of the 1960 act to include a solicitor having any direct or indirect association with a person who is acting in contravention of this provision.

Consequently, accepting direct or indirect referrals of personal injury claims that emanate from a 'claims-harvesting' website

operated by a third party may also constitute misconduct on the part of a solicitor and may result in a referral to the Solicitors Disciplinary Tribunal, as per regulation 15(g)(iii).

In addition, solicitors should also be aware that the Advertising Regulations Division of the Regulation of Practice Committee has the power, where appropriate, to:

- Make an application to the High Court for an order prohibiting a solicitor from contravening the regulations, as per section 18 of the *Solicitors (Amendment) Act 2002*,
- Issue a reprimand in writing in such terms as the Society deems appropriate and reasonable, as per regulation 15(g)(ii),
- Impose conditions on practis-

ing certificates that are in force, as per section 59 of the *Solicitors (Amendment) Act 1994*.

Further, it should also be noted that, pursuant to regulation 15(i), the Law Society shall be entitled to publish to the solicitors' profession, in whatever manner the Law Society deems appropriate, the fact of the imposition of a penalty by the Law Society under regulation 15(g)(i) and (ii), subject to the outcome of any appeal and any order made by the High Court under section 11(1) of the *Solicitors (Amendment) Act 1994*.

Eamonn Maguire is the Law Society's advertising regulations executive and is contactable at 01 8724800 or e.maguire@lawsociety.ie.




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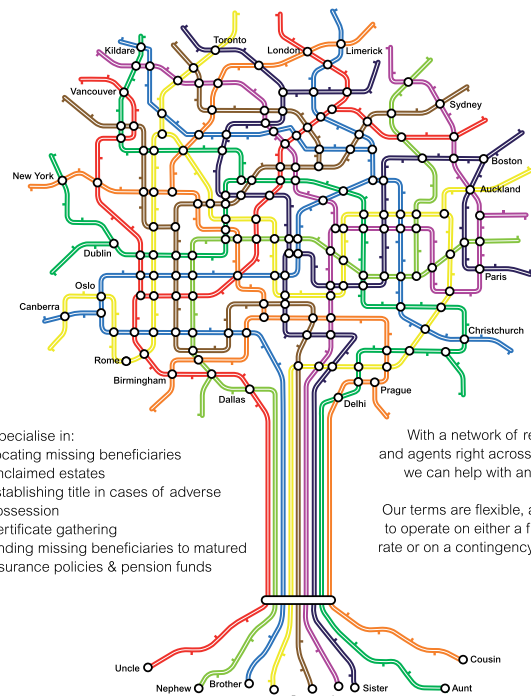
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legislation update

9 June – 10 August 2015

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

ACTS

Urban Regeneration and Housing Act 2015

Number: 33/2015

Makes provision with respect to land in areas in which housing is required and in areas that are in need of renewal to prevent it lying idle or remaining vacant. Establishes a register of vacant sites in those areas. Provides for a vacant site levy to incentivise urban regeneration and the provision of housing in central urban areas. Amends s23 of the *Derelict Sites Act 1990*, amends parts II, III and V of the *Planning and Development Act 2000*, amends the *Housing (Miscellaneous Provisions) Act 2009*, and provides for related matters.

Commencement: Commencement order(s) to be made (per s1(3) of the act)

Personal Insolvency (Amendment) Act 2015

Number: 32/2015

Amends the *Personal Insolvency Act 2012* in relation to the procedures for the approval of debt settlement arrangements and personal insolvency arrangements under that act, and to provide for related matters.

Commencement: Commencement order(s) to be made (per s27(3) of the act)

Teaching Council (Amendment) Act 2015

Number: 31/2015

Amends the *Teaching Council Act 2001*, the *Education Act 1998*, and provides for related matters.

Commencement: Commencement order(s) to be made (per s34(4) of the act)

Children (Amendment) Act 2015

Number: 30/2015

Provides a statutory basis for the amalgamation of the three child detention schools at Oberstown, Co Dublin (for children under 18) and ends the practice of sending children to St Patrick's Institution. Clarifies the position of children who reach the age of 18 while they are in detention and are still subject to a child detention order whether they have been convicted of summary or indictable offences. Provides for remission in child detention schools, incorporating a new disciplinary process and an appeal process where the sanction imposed is forfeiture of remission. Provides for related matters. Amends the *Children Act 2001*, s1 of the *Prevention of Crime Act 1908*, s10 of the *Criminal Justice Administration Act 1914*, s13 of the *Criminal Justice Act 1960*, and amends and extends s42 of the *Criminal Justice Act 1999*.

Commencement: Commencement order(s) to be made (per s1(3) of the act)

Environment (Miscellaneous Provisions) Act 2015

Number: 29/2015

Makes provision for the transfer of certain functions under the *Bourn Vincent Memorial Park Act 1932* to the Minister for Arts, Heritage and the Gaeltacht. Amends and extends the *Finance (Excise Duties) (Vehicles) Act 1952*, the *Air Pollution Act 1987*, the *Environmental Protection Agency Act 1992*, the *Waste Management Act 1996* and s6 of the *Local Government Act 1998*. Amends the *Water Services (No 2) Act 2013* and the *Water Services Act 2014*. Amends other acts and provides for related matters.

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

Civil Debt (Procedures) Act 2015

Number: 28/2015

Provides for the enforcement of court judgments in relation to certain debts; provides for the making by the District Court of attachment of earnings orders and deduction from payments orders in certain circumstances; repeals part I and part IV of the *Debtors Act (Ireland) 1872* and amends s6 of the *Enforcement of Court Orders Act 1940* to remove references to the imprisonment of debtors for non-payment of debt and provides for related matters.

Commencement: Commencement order(s) to be made (per s27(2) of the act)

Industrial Relations (Amendment) Act 2015

Number: 27/2015

Makes provision for a system of registered employment agreements between an employer and trade unions governing remuneration and conditions of employment in individual enterprises. Makes provision for sectoral employment orders to establish minimum rates of remuneration terms and conditions of employment for a specified type, class or group of workers. Amends and extends the *Industrial Relations Act 2001* to reform the current law on employees' right to engage in collective bargaining. Amends and extends the *Industrial Relations (Miscellaneous Provisions) Act 2004*, amends the *Unfair Dismissals Act 1977*, the *Workplace Relations Act 2015*, and certain other enactments, and provides for related matters.

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

Petroleum (Exploration and Extraction) Safety Act 2015

Number: 26/2015

Gives effect to Directive 2013/30/EU and for that purpose amends the *Petroleum and Other Minerals Development Act 1960*, section 6 of the *Continental Shelf Act 1968* and the *Electricity Regulation Act 1999* (previously amended by the *Petro-*

leum (Exploration and Extraction) Safety Act 2010) and provides for related matters.

Commencement: Commencement order(s) required as per s24(2) of the act

Gender Recognition Act 2015

Number: 25/2015

Provides for legal recognition of the preferred gender of transgender persons. This formal legal recognition is for all purposes, including dealings with the State, public bodies and civil and commercial society. It includes the right to marry or enter a civil partnership in the preferred gender and the right to a new birth certificate. The effect of the legal recognition is provided by means of the issuing of a gender recognition certificate. Therefore, all rights, responsibilities and consequences of actions by the person in his/her original gender prior to the date of recognition shall remain unaffected. Amends the *Irish Nationality and Citizenship Act 1956*, the *Civil Registration Act 2004*, the *Passports Act 2008* and the *Adoption Act 2010*, and provides for related matters.

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

Defence (Amendment) Act 2015

Number: 26/2015

Corresponds commissioned army ranks with commissioned naval ranks.

Commencement: 22/7/2015

National Minimum Wage (Low Pay Commission) Act 2015

Number: 22/2015

Amends the *National Minimum Wage Act 2000* to provide for the establishment of the Low Pay Commission to advise on setting a national minimum wage and to provide for related matters.

Commencement: Various – see act

Consumer Protection (Regulation of Credit Servicing Firms) Act 2015

Number: 21/2015

legislation update

Provides for the protection of certain borrowers who are parties to credit agreements in respect of which credit servicing firms undertake certain services and for this purpose amends the *Central Bank Acts 1942-2014* and the *Consumer Credit Act 1995* and provides for related matters.
Commencement: 8/7/2015

Communications Regulation (Postal Services) (Amendment) Act 2015

Number: 20/2015

Ensures that the public interest is satisfied in relation to the undertaking of legitimate postcode activities so that the processing of any personal data in postcode-enabled databases is in compliance with the *Data Protection Acts*.
Commencement: Commencement order(s) required as per s3(3) of the act

Health (General Practitioner Service) Act 2015

Number: 19/2015

Amends the *Health Act 1970* to provide for making available a general practitioner medical and surgical service without charge to persons who are ordinarily resident in the State and who have attained the age of 70 years, and to certain other persons, and to

provide for related matters.

Commencement: Commencement order(s) required as per s4(3) of the act

Customs Act 2015

Number: 18/2015

Revises and partially consolidates the law relating to customs; repeals the *Customs Consolidation Act 1876* and certain other enactments; makes provision in connection with Council Regulation (EEC) 2913/92 of 12 October 1992 establishing the *Community Customs Code*; gives continuing effect to the *Customs Cooperation Convention* drawn up on the basis of article K3 of the *Naples II Convention*; gives effect to the 2009 council convention on centralised customs; gives effect to Council Decision 2009/917/JHA on the use of information technology for customs purposes and provides for related matters.

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

SELECTED STATUTORY INSTRUMENTS

Registration of Farm Partnerships Regulations

Number: SI 247/2015

Provide for the establishment and

maintenance of a register of farm partnerships.

Commencement: 11/6/2015

EU (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015

Number: SI 343/2015

Give effect to Directive 2013/11/EU on alternative dispute resolution for consumer disputes and amend Regulation (EC) no 2006/2004 and Directive 2009/22/EC. Designate the Competition and Consumer Protection Commission as the competent authority in the State for the purposes of the directive and the enforcement of the regulations.

Commencement: 31/7/2015

Rules of the Superior Courts (Judicial Review) 2015

Number: SI 345/2015

Amend order 84, rule 22 and rule 27 of the *Rules of the Superior Courts* to preclude a judge being named as a respondent or notice party in the title to judicial review proceedings in respect of that judge's decision, unless the relief sought therein is grounded on an allegation of *mala fides* such as would deprive the judge of immunity from suit; require that the party or parties to the original proceedings be named as respon-

dent or respondents and enable the court in judicial review proceedings to direct production to it of the record of court proceedings to which the judicial review proceedings relate.

Commencement: 17/8/2015

Circuit Court Rules (Actions for Possession and Well-Charging Relief) 2015

Number: SI 346/2015

Amend order 5B of the *Circuit Court Rules* to (a) prescribe the information to be included in a revised form of civil bill, Form 2R, and expanded form of grounding affidavit, Form 54, in proceedings for possession or well-charging relief; (b) provide for applications under the *Land and Conveyancing Law Reform Act 2009* for an order authorising sale under section 100(3); (c) provide for the information to be furnished by a defendant on an application for an adjournment or other relief under section 101(1).

Commencement: 17/8/2015

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



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regulation

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 Greg (otherwise John G) Casey, formerly practising in the solicitors' firm of Casey & Co, North Main Street, Bandon, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [5355/DT06/09 and 2014 no 158 SA]

Law Society of Ireland (applicant) Greg (otherwise John G)

Casey (respondent solicitor)

On 3 July 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to act on the complainant's instructions to obtain an injunction and/or compensation due to the implementation of the European Union ban on drift-net fishing for tuna,
- 2) Retained papers and files and refused to return these to the complainant and/or the Irish Tuna Association to enable them to instruct new solicitors to carry out the work that the respondent solicitor failed to do,
- 3) Failed to adequately answer correspondence and telephone calls from the complainant and/or the Irish Tuna Association in relation to the case from the receipt of instructions in 2002 until the complaint was lodged with the Society,
- 4) Failed to adequately answer correspondence from the Law Society in relation to this matter and, in particular, letters from the Society dated 15 July 2005, 28 July 2005, 9 August 2005, 17 August 2005, 13 September 2005, 28 September 2005, 6 October 2005 and 12 October 2005 respectively,
- 5) Failed to comply with the requirements of the notice issued pursuant to section 10 of the *Solicitors (Amendment) Act*

1994, dated 29 March 2007, requiring delivery to the Society within ten days of service all documents relating to the complaint of the complainant.

The tribunal ordered that the matter go forward to the High Court, and the President of the High Court, on 12 January 2015, made the following orders:

- 1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) That the Society do recover the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal as against the respondent, to be taxed in default of agreement.

In the matter of Brian Leahy, a solicitor practising as a partner in the firm of Brendan Muldowney & Co, Solicitors, 7 Church Street, Longford, and in the matter of the *Solicitors Acts 1954-2011* [5063/DT156/13]

Named client (applicant)

Brian Leahy (respondent solicitor)

On 15 April 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to register the applicant's title over a period of 12 years, despite a number of opportunities, and at the same time gave assurances to the applicant that were not fulfilled.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a sum of €3,500 to the compensation fund,
- 3) Pay the applicant's expenses, limited to a sum of €500.

NOTICE: THE HIGH COURT

In the matter of Elizabeth Cazabon, a solicitor previously practising as Cazabon Solicitors, Gray Office Park, Galway Retail Park, Headford Road, Co Galway, and in the matter of the *Solicitors Acts 1954-2011* [2015 no 63 SA]

Take notice that, by order of the

High Court made on 20 July 2015, it was ordered that the name of Elizabeth Cazabon be struck from the Roll of Solicitors.

John Elliot, Registrar of Solicitors, Law Society of Ireland, 22 July 2015

In the matter of Michelle Cronin, a solicitor practising as Michelle Cronin Solicitors, Kennedy Buildings, 24 Main Street, Tallaght Village, Dublin 24, and in the matter of the *Solicitors Acts 1954-2011* [15089/DT68/14]

Law Society of Ireland (applicant) Michelle Cronin (respondent solicitor)

On 10 February 2015 and 16 April 2015, the Solicitors Disciplinary Tribunal sat to consider a complaint against the respondent solicitor and found her guilty of misconduct in her practice as a solicitor in that she:

- 1) Failed to ensure there was furnished to the Society an accountant's report for the year ended 31 May 2013, within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 421 of 2001),
- 2) Through her conduct, showed disregard for her statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the *Solicitors Accounts Regulations* for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a sum of €2,000 to the compensation fund,
- 3) Pay the whole of the costs of the Society, as taxed by a taxing master of the High Court in default of agreement.

In the matter of Michael Dowling, a solicitor practising as Michael Dowling & Co, Solicitors, at Church Street, Tralee, Co Kerry, and in the matter of the *Solicitors Acts 1954-2011* [3995/DT200/13]

Law Society of Ireland (applicant) Michael Dowling (respondent solicitor)

On 16 April 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to comply with a solicitor's undertaking, dated 2 June 2005 and given to AIB Plc, up to the date of the swearing of the Society's affidavit,
- 2) Failed to reply to correspondence from AIB Plc relating to his non-compliance with his undertaking,
- 3) Failed to reply to correspondence from the Society, being letters dated 5 June 2012 and 14 December 2012 respectively,
- 4) Failed to attend a meeting of the Complaints and Client Relations Committee on 11 December 2012, despite being required to attend,
- 5) Failed to comply with the direction of the committee,
- 6) Declined to attend the meeting of the committee on 19 February 2013, despite being required to do so.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a sum of €5,000 to the compensation fund,
- 3) Pay the whole of the costs of

the Society, to be taxed by a taxing master of the High Court in default of agreement.

In the matter of Michael Dowling, a solicitor practising as Michael Dowling & Co, Solicitors, at Church Street, Tralee, Co Kerry, and in the matter of the Solicitors Acts 1954-2011 [3995/DT202/13]

Law Society of Ireland (applicant) Michael Dowling (respondent solicitor)

On 16 April 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to comply with a solicitor's undertaking, dated 30 May 2008 and given to Allied Irish Bank Plc, up to the date of the swearing of the Society's affidavit,
- 2) Failed to provide a full update in relation to the matter requested in a letter from the Society, dated 1 February 2013, to be provided within 21 days of the date of the letter,
- 3) Declined to attend the meeting of the Complaints and Client Relations Committee on 19 February 2013, despite being required to do so, and failed to

- arrange for representation,
- 4) Failed to attend a meeting of the Complaints and Client Relations Committee on 9 April 2013, despite being required to do so.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a sum of €5,000 to the compensation fund,
- 3) Pay the whole of the costs of the Society, to be taxed by a taxing master of the High Court in default of agreement.

In the matter of Oisín Nolan, a solicitor practising as Oisín Nolan, Solicitor, at Richmond House, 118/120 Lower Rathmines Road, Dublin 6, and in the matter of the Solicitors Acts 1954-2011 [9683/DT23/14]

Law Society of Ireland (applicant) Oisín Nolan (respondent solicitor)

On 21 May 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional 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 January 2013,

within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001* (SI 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 €250 to the compensation fund,
- 3) Pay a sum of €500 as a contribution towards the whole of the costs of the Society.

In the matter of Brian Grogan, a solicitor practising as principal in the firm of Brian Grogan & Company, Solicitors, Main Street, Lucan, Co Dublin, and in the matter of the Solicitors Acts 1954-2011 [3291/DT100/13 and High Court record 2015 no 56SA]

Named beneficiary (applicant) Brian Grogan (respondent solicitor)

On 13 January 2015 and 3 March 2015, 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 the respondent solicitor executor of the estate of a named testator was guilty of misconduct and of conflict of interest in a sale as he is a co-beneficiary.

The tribunal directed that the matter would be sent forward to the President of the High Court, and the President of the High Court, on 20 July 2015, ordered:

- 1) That the respondent solicitor not be permitted to practise in the area of probate for a period of seven years,
- 2) That the respondent solicitor pay the sum of €15,000 restitution to the applicant without prejudice to her legal rights,
- 3) That the respondent solicitor pay the sum of €3,000 in respect of the costs of the applicant in respect of the disciplinary proceedings,
- 4) That the aforementioned payments be made to the applicant by 31 July 2015. 

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LEGO: IT'S WHAT YOU MAKE OF IT

Lego has been successful in *Best-Lock (Europe) Ltd v OHIM and Lego Juris* (case T395/14), a case that centred on whether its mini figures ought to continue to be classed as protected shapes. Lego had registered its figures as three-dimensional trademarks in 2000, after the expiry of an earlier patent that offered those shapes protection and following changes in trademark rules at the time that favoured such a form of trademark protection.

Shapes such as Lego's mini figures are in principle registrable as trademarks, but the registration of such three dimensional shapes can be an onerous task. Furthermore, it is not possible to register marks that consist exclusively of the shape of goods that is necessary to obtain a technical result. In 2000, Lego registered its three dimensional community trademarks in respect of games and playthings.

Best-Lock has sold figures similar to the Lego toys around the world since the late 1990s and first attempted to get the Lego trademark revoked in 2012.

On 16 June 2015, the General Court dismissed the appeal brought by Best-Lock against Lego in relation to registration of trademarks for its mini figures.

Battle with Mega Brands!

In 2008, Mega Brands Inc – another rival of Lego – sought a declaration from the European community trademarks office that the registration of a trademark for its building blocks was invalid.

This was, it argued, on the basis that the registration was based exclusively on the shape of the goods, which was not necessary to obtain a technical result. The Court of First Instance held in favour of Mega Brands and refused Lego the right to register the its building blocks as a community trademark. Lego then appealed that decision to the CJEU.

In January 2010, Advocate General Mengozzi gave his opinion, stating that there were three procedural stages for the application of article 7(1)(e)(ii) of Regulation (EC) no 40/94. Firstly, the court should identify the most important elements of the shape, with the emphasis being on the functionality of each of the essential characteristics. Secondly, the court should determine

whether the grant of the trademark would prevent competitors from using the essential functional characteristics that the mark would protect. This can be overcome by either restricting the trademark right to the essential and distinctive non-functional elements of the shape or to analyse alternative shapes, taking into account inter-operability and the requirement of availability. Thirdly, it must be determined whether the shape had a distinctive character.

Although the court followed the recommendation to refuse Lego's appeal, it did not apply the procedural steps proposed by the advocate general. Lego attempted to claim that, although article

7(1)(e)(ii) precludes the registration of shapes for which protection as a trademark would illegitimately restrict competitors, this does not include any shape performing a technical function. The court dismissed the appeal and held that, where the shape of the product merely incorporates the technical solution developed by the manufacturer, registration of that trademark after the patent has expired would have a detrimental and long-term effect on the ability of

competitors to use that technical solution. However, the court highlighted that, where competitors' products are 'slavish copies' of the original product shape and incorporate exactly the same technical solution, the position could, where appropriate, be examined in the light of unfair competition rules.

Battle with Best-Lock!

In 2011, Best-Lock challenged the validity of the trademark for mini figures on the basis of article



“The trend is for the court to discourage parties from protecting what may be purely technical IP protections using the trademark route”

51(1)(a) of Regulation no 207/2009, but this was rejected by the OHIM Cancellation Division. Best-Lock then appealed to the OHIM's Fourth Board of Appeal in 2012. Subsequently, on 2 August 2013, the Cancellation Division revoked the contested mark. Best-Lock argued that, because the mini figures move and because the holes under their feet enabled them to be joined with other Lego bricks, their design had a technical function. However, the court held that these were "not among the essential characteristics of the design" because Best-Lock had "neglected to mention what technical result a toy figure might be supposed to achieve".

In the General Court, Best-Lock applied for a declaration of invalidity in respect of the trademarks on the grounds that, firstly, the shape of the goods is determined by the nature of the goods themselves. In response, the court held that Best-Lock had not put forward any argument to support that assertion and had not provided any reasoning to show OHIM's findings were incorrect. Secondly, Best-Lock contended that the toy figures, both as a whole and in their particulars, provided technical solutions. However, no technical result is connected to or entailed by the shape of the essential characteristics of the figures. The General Court dismissed Best-Lock's actions.

Central to the court's decision was its analysis of the essential characteristics of the challenged mark. This was very much fact-specific.

It found that, having regard to the graphical representation of the contested trademark and the fact that it was in the shape of a figure having a human appearance, it must hold that the head, body, arms and legs, which were necessary in order for the figure to have that appearance, constituted the "essential characteristics" of the contested trademark.

However those body parts had a technical function – the

interlocking nature – that was not automatic, and that technical function was separate to the graphical representation, and the technical function element (the 'clickability') did not in the court's view constitute a core element of the shape, which was the element for which Lego had sought trademark protection when it applied for the community trademark.

Awesome result!

The judgment confirms that the General Court upheld the decision to register the shape of Lego figures as a community trademark. However, in the *Mega Brands* case, Advocate General Mengozzi highlighted that there is little precedent in this area and therefore we cannot be certain how the European courts will address similar issues in the future. What is clear is that the trend is for the court to discourage parties from protecting what may be purely technical IP protections using the trademark route.

It commented: "When the shape of a product merely incorporates the technical solution developed by the manufacturer of that product and patented by it, protection of that shape as a trademark once the patent has expired would considerably and permanently reduce the opportunity for other undertakings to use that technical solution. In the system of intellectual property rights developed in the European Union, technical solutions are capable of protection only for a limited period, so that subsequently they may be freely used by all economic operators."

From a commercial perspective, the net effect of the case is that any Lego rival cannot compete with Lego by producing confusingly similar-shaped figures, as they run the risk of infringement action. In short, an awesome legal result for Lego at the end of a protracted battle.

Jeanne Kelly is a partner in Mason Hayes & Curran.



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WILLS

Bahar, Abdul, and Lorraine Teresa (deceased), who died 16 June 2014 (Abdul) and 13 January 2011 (Lorraine Teresa), both late of 2 Liffey Crescent, Liffey Valley Park, Lucan, Co Dublin. Would any person having knowledge of the whereabouts of any wills executed by the above-named deceased please contact Caitriona McMahon, Dermot P Coyne, Solicitors, Liffey Bridge House, 1 Main Street, Lucan, Co Dublin; tel: 01 628 1000, email: caitriona@dermotcoyne.com

Brennan, Patricia (deceased), late of 25 Ashcroft, Raheny, Dublin 5, who died on 14 August 2014. Would any person having knowledge of the last will made by the above-named deceased, or its whereabouts, please contact Walter A Smithwick & Son, Solicitors, 43 Parliament Street, Kilkenny; tel: 056 772 1936, email: solrs@wasmithwicklaw.com

Byrne (née Coulahan), Mary (deceased), late of 40 Knocknaree Avenue, Drimnagh, Dublin 12, who died on 16 November 1991. Would any person having knowledge of a will made by the above-named deceased please contact

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Carroll, Eileen (deceased), late of Clonlea, Cross Douglas Road, Cork, who died on 6 May 2014. Would any person having knowledge of a will executed by the above-named deceased, or if

any firm is holding same, please contact Orla O'Connell, solicitor, Eamonn Murray & Co, Solicitors, 6/7 Sheares Street, Cork; tel: 021 493 7000, email: orla@murraysolicitorscork.ie

Cole, Vanessa (deceased), late of 2 Knapton Court, York Road, Monkstown, Co Dublin, who died on 6 May 2015. Would any person having knowledge of the whereabouts of any will made by

the above-named deceased please contact Joynt & Crawford, Solicitors, 8 Anglesea Street, Dublin 2; ref: AJC; tel: 01 677 0335, fax: 01 677 7274, email: info@joyntcrawford.ie

Coulahan, Annie (deceased), late of 40 Knocknaree Avenue, Drimnagh, Dublin 12, who died on 21 March 1989. Would any person having knowledge of a will made by the above-named

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Duffy, John Henry (deceased), late of Main Street, Mountrath, Co Laois; Knockanina, Mountrath, Co Laois; and Teaghlach Uilinn, Nursing Home, Kilrainey, Moycullen, Co Galway, who died on 26 May 2015. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Tom O'Grady, Solicitors, Market Square, Mountrath, Co Laois; tel: 057 873 2214, email: ogradyt@eircom.net

Greehy, Mary (deceased), late of 10 Mountain View, Church Lane, Lismore, Co Waterford, formerly of Feagarid, Ballysagart, Co Waterford, who died on 14 July 2015. Would any solicitor holding/having knowledge of a will made by the above-named deceased please contact William Fitzgibbon, Shinnick Fitzgibbon & Co, Solicitors, Baldwin St, Mitchelstown, Co Cork; tel: 025 84081, email: billy@shinnickfitzgibbon.ie

Guzman, Isabel Jimenez (deceased), late of 154 Boyne View, Johnstown, Navan, Co Meath, who died on 12 April 2015. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Ronan Fla-

herty, Houlihan O'Donnell Flaherty, Solicitors, 105 Ranelagh, Dublin 6; tel: 01 412 7200, fax: 01 412 7201, email: rflaherty@hofsolicitors.com

Hornick, Philip (Thomas) (deceased), late of Ruane, Dunganstown, New Ross, Co Wexford, who died on 29 May 2015. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Cathal O'Dea, Coghlan Kelly, Solicitors, South Street, New Ross, Co Wexford; tel: 051 429 100, email: cod@coghlankelly.com

Jordan, Patrick (deceased), late of Elmhall, Belcarra, Co Mayo, who died on 31 March 2015. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact Patrick J Durcan & Co, Solicitors, Spencer Street, Castlebar, Co Mayo; tel: 094 902 4840, email: admin@patrickjdurcan.ie

Kelly, Peter (deceased), late of Legee, Coolderry, Carrickmacross, Co Monaghan, and of Castleross Nursing Home, Carrickmacross, Co Monaghan, who died on 18 May 2015. Would any person having knowledge of a will made by the above-named deceased, or if any firm is holding same, please contact G Jones & Company, Solicitors, Carrickmacross, Co Monaghan; tel: 042 966 1822, fax: 042 966 1464, email: clynch@gjones.ie

MacGowan, Pdraig (deceased), (otherwise McGowan Pdraig (deceased)), Catholic priest, late of Parochial House, Drinan, Ballymahon, Co Longford, and/or Ballymahon Parochial House, Ballymahon, Co Longford, and also of Cartrontroy, Athlone, Co Westmeath, who died on 13 February 2015. Would any person having knowledge of any will made by the above-named deceased, or if any firm is

holding the same, please contact Mairin Stronge, solicitor, Walker O'Carroll & Hogan, Solicitors, 11 Pearse Street, Athlone, Co Westmeath; tel: 090 649 2692, email: mstronge@athlonesolicitors.ie

McMullen, Jane (deceased), late of Rosary Hill Nursing Home, Castleconnell, Co Limerick, and formerly of 36 Rathmines Avenue, Dublin 6. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Colman O'Donovan, Thornton Solicitors, 88 O'Connell Street, Limerick; tel: 061 315 543, email: codonovan@thorntonsolicitors.ie

O'Connor, John Patrick (otherwise Jack) (deceased), late of Patterson's Nursing Home, Lismacklin, Roscrea, Co Tipperary, and Derry Road, Crumlin, Dublin. Would any person having knowledge of a will made by the above-named deceased, who died on 21 July 2015, please contact James J Kelly & Son, Solicitors, Patrick Street, Co Tipperary; tel: 0504 31278, fax: 0504 31983, email: info@jjkellylaw.ie

O'Driscoll, Dan (deceased), late of Naddbeg, Lyre, Banteer, Co Cork, and Kanturk Community Hospital, who died on 7 February 1955. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact James Lucey & Sons, Solicitors, Kanturk, Co Cork; tel: 029 50300, email: info@luceylaw.ie

O'Mahony, Patrick (deceased), late of Ballybane, Firies, Killarney, Co Kerry, who died on 19 July 2015. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Eoin Brosnan, Niall Brosnan & Co, Solicitors, 5 St Anthony's Place, College Street, Killarney, Co Kerry; tel: 064 663 2505, email: info@brosnanandco.ie

O'Sullivan, Dan (deceased), late of Glounreigh, Kiskeam, Mallow, Co Cork, who died on 13 June 2015. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact James Lucey & Sons, Solicitors, Kanturk, Co Cork; tel: 029 50300, email: info@luceylaw.ie

Price, Brigid (or Brigid) (deceased), late of 10 Seskin Road, Leighlinbridge, Co Carlow, who died on 2 June 2015. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Reidy & Foley Solicitors, Parliament House, Parliament Street, Kilkenny; tel: 056 776 5065, fax: 056 776 3697, email: efoley@reidyandfoley.com

Quinn, Carmel (deceased), late of 624 Clonard Road, Kimmage, Dublin 12. Would any person having knowledge of any will made by the above-named deceased, who died on 4 March 2015, please contact Kay Cogan, Cogan-Daly & Company, Brighton House, 50 Terenure Road East, Rathgar, Dublin 6; tel: 01 490 3394, email: contact.cogandalylaw.ie

Russell, Gerard (deceased), late of 1 Hampton Cove, Balbriggan, Co Dublin, who died on 16 March 2015. Would any person having knowledge of the last will made by the above-named deceased, or its whereabouts, please contact Ursula Geraghty, Doyle Geraghty Solicitors, Pavilion House, 31/32 Fitzwilliam Square, Dublin 2; tel: 01 662 0499, fax: 01 661 9119, email: ursula@doylegeraghty.ie

Scallan, Sean (deceased), late of 22 St Malachy's Road, Glasnevin, Dublin 9. Would any person having knowledge of any will made by the above-named deceased, who died on 17 June 2015, please contact Neil Maguire, Maguire McErlean, Solicitors, 78-80 Upper Drumcondra Road, Dublin 9;

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Smith, Patrick (deceased), late of Kilcogy Upper, Co Cavan, who passed away on 8 March 2012. Would any person having knowledge of the whereabouts of the above-named deceased's original will, dated 28 January 2003, please contact EC Gearty & Company, Solicitors, 4/5 Church Street, Longford; tel: 043 334 6312

Tobin, Philomena (deceased), late of 52 Clune Road, Finglas East, Dublin 11, who died on 5 April 2014. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Eugene Smartt, solicitor, Newlands Retail Centre, Newlands Cross, Clondalkin, Dublin 22; tel: 01 403 7340, email: info@smarttlaw.com

Tyrell, Sheila (deceased), late of Rathshanmore, Hacketstown, Co Carlow, who died on 30 July 2014. Would any person having knowledge of a will executed by the above-named deceased please contact Gillick and Smithwick, Solicitors, Unit 11, Riverside Business Centre, Tinahely, Co Wicklow; tel: 0402 28759, email: info@gillicksmithwick.com

Wardell, Vincent (orise Vinny) (deceased), late of 110 Rory O'Connor House, Hardwicke Street, Dublin 1, who died on 3 October 2014. Would any person having knowledge of any will executed by the above-named deceased please contact Lisa McKenna, Giles J Kennedy & Company, Solicitors, 81 Eccles Street, Dublin 7; 01 830 5321, email: lisa.mckenna@gilesjennedy.com

Winters, Bernard (otherwise Bernie) (deceased), late of Lecarrow (otherwise Kille), Clare Island, Co Mayo, who died on 6 April 2015. Would any person having knowledge of a will made by the above-named deceased

please contact John Morahan, Oliver P Morahan & Son, Solicitors, James Street, Westport, Co Mayo; tel: 098 25075, email: john@morahans.ie

MISCELLANEOUS

Next-of-kin search: Mangan, Margaret (deceased), late of Drumhills Nursing Home and formerly Chapel Street, Lismore, Co Waterford. We, EA Ryan & Co, Solicitors, are endeavouring to trace the next-of-kin to the above-named Margaret Mangan, who died a spinster on 26 January 2005 aged 90 years. We request any person related to the above-named deceased to contact our offices, bringing with you documentary evidence to establish your relationship with the deceased. Please contact EA Ryan, Solicitors, Bridge Street, Dungarvan, Co Waterford; tel: 058 41042, email: info@earyan.ie

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TITLE DEEDS

Ann Marie Pierson (deceased), late of 104 Kenilworth Park, Harold's Cross, Dublin 6W. Would anyone knowing the whereabouts or having any information regarding the title deeds to 104 Kenilworth Park, Harold's Cross, Dublin 6W or to properties at 177 Killester Avenue, Artane, Dublin 5; 9 Craigford Drive, Killester, Dublin 5; 17 Craigford Drive, Killester, Dublin 5; or 1 Abbey Park, Killester, Dublin 5, please contact Messrs Brendan D O'Connor & Co, Solicitors, 179 Crumlin Road, Dublin 12; tel: 01 453 6218, email: brendanoconnor@eircom.net

In the matter of the Landlord and Tenant (Ground Rents) 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 Deirdre McGrath of 13 Duke Street, Dublin 2, and in the matter of property situate at 2 Belmont Court, Donnybrook, Dublin 4

Any person having a freehold interest or any intermediate interest in all that and those the premises known as number 2 Belmont Court, Donnybrook, Dublin 4, more particularly set out in the map annexed to an indenture of sublease dated 3 April 1934 between Robert Briscoe of the one part and Mary Woods of the second part and Anthony Woods of the third part, for a term of 150 years from 29 September 1933 at a rent of five pence per annum and the payment of £52 per annum to Mary Woods for her lifetime.

Take notice that the applicant intends submitting an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the said property are called upon to furnish evidence of title to the same to the below signed within 21 days from the date of this notice.

In default of any such notice as referred to above being received, the applicant intends to proceed with the application before the county registrar at the expiry of the said period of 21 days and will then apply to the county registrar for the county of Dublin for such directions as maybe appropriate on the basis that each person or persons beneficially entitled to the superior interest including the freehold reversion in the said property are unknown or ascertained.

Date: 4 September 2015

Signed: *Seamus Maguire & Co (solicitors for the applicants), 10 Main Street, Blanchardstown, Dublin 15*

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 Frances O'Brien of 2 and 3 Rosedale Terrace, Lower Clanbrassil Street, Dublin 8

Take notice that any person having an interest in the freehold estate of the following property: 2 and 3 Rosedale Terrace, Lower Clanbrassil Street, Dublin 8, held under an indenture of lease made 13 March 1935 between Esther Barron and Patrick J Bermingham for a term of 200 years at a yearly rent of £20.

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

Date: 4 September 2015

Signed: *Ferrys, Solicitors (solicitors for the applicant), Inn Chambers, 15 Upper Ormond Quay, Dublin 7*

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ad hominem

Eats, shoots and leaves behind a parking fine

A woman in the US has escaped a parking fine – because of a missing comma, [washingtonpost.com](http://www.washingtonpost.com) reports.

Andrea Cammelleri had been issued with a parking ticket in Ohio. The law enacted by the town of West Jefferson listed a number of vehicles that could not be parked for more than 24 hours, including a 'motor vehicle camper'.

Due to a comma being missing between 'vehicle' and 'camper', Cammelleri argued that her pick-up truck did not meet the description of a 'motor vehicle camper' and, therefore, had contravened no law.

An [appeals court](#) agreed. Judge Robert Hendrickson found that the law was not an ass on this occasion – it could not apply a parking ban on pick-up trucks. If local authorities wished to ban such vehicles, they should amend the law to include a comma, he said. Hooray for Hendrickson!



San Fran steam-clean streams evaporate

In an effort to combat peeing in public, San Francisco has painted walls with repellent paint that causes splashback for offenders, [foxnews.com](http://www.foxnews.com) reports. The city has been receiving a 'stream' of queries about the product's success from other cities around the country.

The director of the public works department, Mohammad Nuru, got the idea from Germany, where walls in Hamburg's St Pauli quarter are painted with the material to discourage late-night beer drinkers from relieving

themselves in nearby alleyways.

Peeing in public is illegal in San Francisco, but a fine of up to \$500 passed in 2002 has proved ineffective. The new paint appears to be paying off, though. Since January, there has been a 17% drop in requests to steam-clean urine from pathways and other areas compared with the same period last year.

Public urination has been a persistent problem in San Francisco – recently, a street lamp corroded by urine fell on a car.

Chevy to the levee – cracked by hackers

In a controlled car-hacking event, researchers at the University of California, San Diego, have managed to stop a Chevrolet Corvette in its tracks – and then make it accelerate – simply by sending it text messages, www.cse.ucsd.edu reports.

The researchers discovered several security flaws in an aftermarket telematics control unit manufactured by [Mobile Devices](#). The dongle plugs into a car's OBD-II port to provide a stream of data, which is used by companies such as [Metromile](#). Such insurance companies then base their rates on a person's driving performance. Such 'by-the-mile' and 'safe-driver' plans are popular in the US – and closer to home.

The hackers were able to operate the windscreen wipers and, more worryingly, apply and deactivate the brakes at low speeds. Although they only 'attacked' one car under controlled circumstances, they claimed that they could do similarly with just about any vehicle using this type of dongle – including taking control of the steering or transmission.

And the Oscar goes to... the Academy!

A California judge has ruled that nobody can sell an Oscar statuette without first offering the Academy of Motion Picture Arts and Sciences the right of first refusal to purchase it, [ew.com](http://www.ew.com) reports. The rule has been in place since 1951 and was upheld by Superior Court Judge Gail Ruderman Feuer after an auction house sold an Oscar statuette without the academy's permission.

This particular Oscar was awarded to [Joseph Wright](#) for colour art direction on the 1942



film *My Gal Sal*. The statuette was purchased for \$79,200 by a Los Angeles-based auction house – but the court allowed the academy to reclaim it for \$10.

Gary E. Gans, the lawyer who successfully represented the Academy in the case, said: "The Oscar is perhaps the world's most distinctive and prestigious award for achievement in the arts. This case established that the Academy can maintain the dignity and value of such an award by keeping it from becoming a commodity."



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The successful applicant will be joining a firm taking a leading role advising on transactions for banks, financial institutions and corporate borrowers. You will demonstrate a proven track record in building a credible team of banking lawyers. Promoting a full range of legal services and offering high quality work, this is truly one of Ireland's leading and most profitable firms. *Ref 2006*

Construction, Dublin ♦ Partner

The contentious construction team of this firm are committed to delivering a comprehensive service in all aspects of disputes in construction and engineering projects. They are now seeking to recruit a partner with a strong contentious construction and procurement background. The firm has grown from strength to strength and has a well-developed and exciting strategy for the future. *Ref 2034*

Litigation, Dublin ♦ Senior Associate/Partner

You will be responsible for handling a wide range of corporate and commercial disputes. Excellent interpersonal and presentation skills coupled with a client-focussed approach are essential. This role represents an excellent opportunity to join this professional and well-organised firm. Strong evidence of your business development skills will be a major factor in this appointment, although a following is not required. *Ref 2033*

Employment Law, Limerick ♦ Senior Associate/Partner

The department advises on all aspects of the employment relationship from recruitment and selection through to termination of employment. The successful candidate will be experienced in a broad range of employment matters, acting for a wide range of clients, including leading executives, private companies, pension trustees, universities and other educational bodies. *Ref 2035*

Funds, Hong Kong ♦ Associate

This market-leading investment funds practice is currently seeking to recruit a funds lawyer. This global team advises fund managers, other service providers and investors on a range of matters relating to their work and ongoing strategic issues. The new joiner would be working in a cohesive and close-knit team, which actively encourages client contact. *Ref 2024*

Commercial Property, Dublin ♦ Associate/Partner

This leading firm is seeking to recruit a talented and ambitious individual to co-ordinate and lead the firm's commercial property practice. It advises private house builders, landowners, developers, investors and owner occupiers. It is particularly noted for its involvement in the full spectrum of commercial development transactions, including residential, retail, leisure, office and industrial development. This is an excellent opportunity for an ambitious associate to drive their career forward within this progressive firm. *Ref 2035*

Public Law/Litigation, Dublin ♦ Junior/Mid-level

Our client, a leading firm, is now looking to recruit a candidate with experience in administrative law, data protection law, freedom of information law and regulatory law. Candidates would additionally need knowledge of EU law. Solicitors or barristers with a strong litigation background featuring a good level of judicial review will also be considered. *Ref 2030*

Competition Law, Dublin ♦ Junior/Mid-level

Top firm requires a dynamic lawyer to join its Competition & Procurement team. Working with the firm's leading partner, you will provide advice on a wide range of Competition and EU-law related issues, assisting businesses, State and semi-State agencies and individuals. This firm respects work/life balance and has created a friendly and collegiate work environment. *Ref 2032*

Funds In-House, Dublin ♦ Mid-level Associate

This recognisable global financial services entity has instructed us to recruit a commercial funds lawyer for its legal function. You will be involved in providing legal advice and support to all areas of the business. You will focus on drafting and negotiating a broad spectrum of commercial agreements. The business puts a strong emphasis on work/life balance. An excellent salary is on offer with this role. *Ref 2020*

Property In-House, Dublin ♦ Junior/Mid-level

Our client is a leading global retail entity and is now seeking to recruit a commercial property lawyer for its growing in-house team. You will provide strong legal advice and transactional know-how within this fast-paced, dynamic environment. Ideally you will have gained experience within a leading property practice and now wish to develop your career in-house. *Ref 2036*



ROGERS Legal



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Greg Rogers LL.B, Solicitor
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ROGERS is one of Ireland's leading legal recruitment consultancies. Established by Irish qualified solicitor Greg Rogers, our professional service provides bespoke, attentive and confidential career advice designed to maximise your market potential. Our global client base enables us to source outstanding legal opportunities within the domestic and international markets.

LIVE THE DREAM IN THE CAYMAN ISLANDS

ROGERS deal closely with a range of top Cayman Island law firms. Highly lucrative opportunities now exist for Associate Solicitors with experience in the following areas:-

- Investment Funds
- Corporate
- Banking/Finance
- Litigation and Insolvency

"Legal salaries in Cayman are outstanding. Lifestyle on the island is fantastic and with a growing Irish community it is fast becoming a highly attractive destination for bright and ambitious lawyers seeking international experience. Specific criteria are required in order to be considered for a role with a Cayman firm. Contact us to discuss further."

LONDON CALLING

Our Magic Circle, Silver Circle and international client firms are actively recruiting for positions within the London market. Opportunities exist in the following areas of law and range from Newly Qualified to Senior Associate:-

- Real Estate
- Banking & Finance
- Investment Funds
- Litigation & Dispute Resolution

"The legal market in London has seen significant growth in 2015 and there are excellent opportunities for high calibre solicitors. Moreover it's becoming a hugely popular location for Irish professionals due to its proximity to home, the strength of the British Pound and the outstanding career progression one can gain by working in a 'city' firm. Lawyers with London experience are always in hot demand!"

ROGERS
Legal

Whether actively searching for a new position or simply curious to know what options are out there for you, contact:
Greg Rogers LL.B, Solicitor in strict confidence on **+353 (1) 2091917** or via email to grogers@rogers-recruitment.com
Rogers Recruitment, Trinity Street, Dublin 2 www.rogers-recruitment.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.

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.

Conveyancing solicitor – Associate to Senior Associate – PP0228

Our client is a successful and dynamic practice seeking a highly competent practitioner who will take on a broad range of transactions to include commercial developments and acquisitions as well as commercial landlord & tenant matters.

Commercial Litigation – Associate to Senior Associate

A leading Dublin firm is seeking a commercial litigation practitioner to deal with high caliber commercial court work. You will be working with a highly regarded team dealing with challenging and often complex cases.

Corporate/Commercial Lawyer – Newly Qualified to Associate – J00471

This Dublin based firm is seeking a solicitor to join their Corporate/Commercial team. This is a role for an ambitious practitioner with experience gained either in private practice or in house. You will ideally have dealt with M&A, Investments Agreements as well as general commercial law matters.

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.

Environmental – Assistant – J00375

A leading Dublin firm seeks an ambitious practitioner with experience of providing environmental advice. The role will involve, inter alia: Provision of environmental due diligence advice on property; Corporate and banking transactions; Advising on environmental infrastructure projects; Stand-alone environmental compliance advice.

Financial Regulatory – Assistant – J00505

A top flight firm requires an ambitious assistant solicitor to join its financial regulatory team. The role will involve: Advising clients on practical implications of new regulatory developments; Consumer based financing; Sanctions regimes; Insurance regulation.

Intellectual Property Specialist – Associate to Senior Associate

An excellent opportunity has arisen for a specialist intellectual property practitioner to join a leading Irish law firm. You will have experience of acting for a blue chip client base dealing with complex matters. You will also be a team player with strong technical skills. This represents a significant opportunity for career advancement for the right candidate.

Pensions – Newly Qualified to Associate

Top flight firm requires candidates with a strong academic background and an interest in pensions law and practice to join its well established team with a first rate client base.

Tax Lawyer – Associate to 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.

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

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