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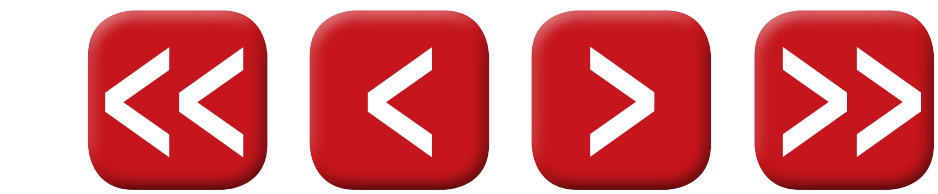

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IRELAND'S CALL

And so my last hurrah! As you read this, I will be about to pass on the mantle to a genial Cork man, Simon Murphy, who will lead our profession with energy, enthusiasm, good humour and humanity. Gaye and I wish Simon and his wife Fiona all the very best. The profession will be well served by his leadership.

In reflecting on the last 12 months, what I can say is that it has been the most fulfilling, satisfying and enriching year of my life. Not a year for everyone, perhaps. It's full on – akin to maybe 52 Christmas weeks on the trot, without respite. So a hardy constitution helps!

Representing the profession throughout the highways and byways of Ireland, and abroad, has been an immense privilege. While always fun, there has been a serious task to accomplish. The Law Society has listened to what you and the wider profession have been saying in recent years. The survey on attitudes to the Law Society was distilled into the Task Force on the Future of the Law Society, which was chaired by my immediate predecessor and friend, John P Shaw. This has demonstrated the importance of standing shoulder to shoulder with you and the thousands of hard-working and diligent colleagues throughout the country.

As the first sole practitioner president in modern times, I have been particularly well placed to recognise that most of us have, in recent years, endured diminishing income, erosion of work, court closures, increased competition, bureaucracy, and the ratcheting up of our tax-collector role, particularly in the conveyancing area.

Two economies

While things are clearly picking up, there is abundant evidence of two distinct legal economies developing: Dublin and Cork – and the rest. Yet nothing gave me more pleasure during my presidential year than getting out and about and meeting colleagues at the many bar associations and CPD cluster events around the country. I have been fortunate to have got to almost every county (though, sadly, not Carlow). This is not to suggest that the cities were ignored. Four visits to Cork, two to Waterford, one to Limerick, but an illness stopped me getting to Galway. As a matter of record, there were four visits to Belfast, not to mention the many Dublin Solicitors' Bar Association events and CPD days throughout the year.

During this period, real progress has been made by the Law Society, in particular relating to its submissions on the four-year-old *Legal Services Regulation Bill*. At long last, as the end game nears, real progress is being made and the patient engagement with Government will bear fruit when the Oireachtas finally passes this piece of legislation.

Memorable highlights

There have been other memorable highlights, too, such as the new requisitions on title, the leadership position adopted by the Law Society on the marriage equality referendum, the opening of new teaching facilities at Blackhall Place, a successful and historic annual conference in Northern Ireland, and the significant improvements in communications from the Society to the membership, and through diverse media.

Together with my colleagues on Council, I am proud to have witnessed how much the Law Society has answered the call to be the trusted voice of the profession – and to turn up the volume when required. The best has yet to come! In conclusion, I have been helped at every stage by Ken Murphy, Mary Keane, Teri Kelly, John Elliot, Cillian MacDomhnaill, TP Kennedy and their respective teams. Most importantly, the Council of the Law Society has been a magnificent resource to me in my role as president, both collectively and individually.

Finally, thank you for affording me the honour of having been your president for the past year. I look forward to seeing you all again soon.

Kevin O'Higgins
President

> **While things are clearly picking up, there is abundant evidence of two distinct legal economies developing: Dublin and Cork – and the rest**

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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

MAYO

Clustering in Mayo

The big guns invaded Mayo at the end of September and were met with a great show of support when over 150 solicitors from Mayo, Galway, Sligo, Roscommon and Longford took part in the Law Society Skillnets cluster event in Breaffy House Hotel.

Mayo Solicitors' Bar Association president Brendan Donnelly welcomed the Law Society and delegates to his home patch. Sligo Bar Association president and Mayo man Maurice Galvin represented the Sligo contingent.

Although the end of his term is nigh, Law Society President Kevin O'Higgins was showing no signs of fading away as he chaired an impressive line-up of speakers, including Suzanne Bainton (conveyancing), John Elliott (regulation), Geoffrey Shannon (on the new *Child and Family Relationships Act*), myself (cohabitation), Padraig Courtney (wills) Ken Murphy (the Setanta case) and Antoinette Moriarty, who had an engaging presentation on mindfulness and looking after yourself.

CORK

O'Sullivan Whelan expands

PIC: GERARD MCCARTHY PHOTOGRAPHY

At the recent opening of the new offices of O'Sullivan Whelan Solicitors on South Terrace Cork were *(l to r)*: Elaine O'Sullivan (principal of O'Sullivan Whelan Solicitors), Barrie O'Connell (president, Cork Chamber of Commerce) and Ms Justice Marie Baker (High Court)

DUBLIN

Shannon in full flow as West is best in Dublin

At the AGM of the Dublin Solicitors' Bar Association on 22 October 2015, Galway man Eamonn Shannon (Shannon O'Connor, Solicitors) was elected president. Tributes were paid to Aaron McKenna, who served the association excellently during his term and managed, with a little help from his wife Deirdre, to produce a son, Alfie, while in office. He can look forward to a busy retirement! 'Nationwide' wishes him and Deirdre well.

Eamonn Shannon

Aine Hynes

A former chair of the Younger Members Committee and CPD coordinator, Eamonn practices in the commercial law and litigation areas. Described as 'a human dynamo' by colleagues, great things are expected of him. His vice-president is Aine Hynes (St John Solicitors), who is chair of the DSBA's Mental Health Law and Capacity Committee and who hails from the west – Sligo to be precise.

In one of the last functions of his presidency, Aaron hosted a luncheon for the 'golden oldies' – solicitors who qualified 50 years ago or more – in the RDS on Friday 17 October 2015. Among the '65ers' are: Quentin Crivon (Ranelagh), Joe Deane (formerly of Longford, long of Dublin), John Lacy, Tom Menton (of Solicitors' Benevolent Association fame), Thomas J Reilly, Ian Scott and Brendan Walsh (former sheriff and one of the infamous Walsh brothers).

CORK

Is fearr Gaeilge briste, ná Béarla cliste

The SLA held its first – possibly the country's first – CPD event *as Gaeilge*. Judge Uinsin Mac Gruairc (retired) gave a comprehensive CPD lecture on 'Dlí agus an Gaeilge'.

Attended by over 50 SLA members, the lecture also afforded an opportunity for those of our colleagues equipped with the Irish language to enjoy its use. Judge Mac Gruairc spoke of the recent case *DPP v Mihai Avadanei* and the status of the language within our legal system. He concluded by reciting some 11th century Brehon law, and it is clear that, while we have come a long way, more needs to be done to preserve, if not strengthen, the role of Irish in our legal system.

Committee for Judicial Studies conferences

National conference 2016: **Friday 18 November 2016. No cases should be listed for any court on Friday 18 November 2016, save on the instruction of the judiciary.**

District Court conference 2016: **may be held on Friday 13 and Saturday 14 May 2016 (these dates are subject to a procurement process that has not yet been completed). No cases should be listed for any District Court on Friday 13 May 2016, until further notice, save on the instruction of the judiciary.**

Circuit Court conference 2016: **may be held on Friday 22 and Saturday 23 April 2016 (these dates are subject to a procurement process that has not yet been completed).**

Supreme Court, Court of Appeal and High Court conference: **will take place on Friday 15 July 2016. No cases should be listed for the Supreme Court, the Court of Appeal or the High Court on Friday 15 July 2016, save on the instruction of the judiciary.**

The following date has been booked provisionally for the same conference in 2017: Friday 14 July 2017.

Lecture in legal bibliography

Felix M Larkin will deliver a lecture titled 'The asinine law: Irish legal cartoons, c1800-2015' in the RDS Library, Ballsbridge, Dublin 4, at 6.30pm on Wednesday 11 November 2015. Replies to Hugh M Fitzpatrick, Lectures in Legal Bibliography, 9 Upper Mount Street, Dublin 2; tel: 01 269 2202, email: hmfitzpa@tcd.ie.

Nobel Prize for bar association

Mohamed Fadhel Mahfoudh

The Union Internationale des Avocats (UIA) – the International Association of Lawyers – has expressed its delight with the awarding of the 2015 Nobel Peace Prize to the Tunisian National Dialogue Quartet, including the Tunisian Bar Association. The prize is for the quartet's contribution to the construction of a pluralist democracy in Tunisia following the 'Jasmine Revolution' in 2011.

Welcoming the recognition of a bar association for the first time, the UIA said the Tunisian Bar's involvement with civil society had helped enable that country to bring its democratic transition to a successful conclusion. Apart from honouring four specific organisations, the Nobel Prize constitutes a recognition of the work that lawyers do as pillars of democracy and of the rule of law.

The UIA honoured Mohamed Fadhel Mahfoudh (president of the Tunisian Bar Association) at the opening ceremony of the UIA's 59th Congress in Valencia, Spain, on 28 October.

ICEL EU job seminar

The Irish Centre for European Law is holding a seminar for those interested in careers in EU law on 24 November at 5pm in the Distillery Building on Church Street. A number of speakers will discuss the wide variety of international opportunities open to those with an interest in EU law, including careers in the European Commission, the European Court of Justice, and the role of a lawyer linguist. In addition, Minister for European Affairs Dara Murphy will outline the Government's support for graduates seeking international experience. The seminar will be followed by a wine reception. See www.icel.ie for details.

SMEs prefer e-payments

The majority of small businesses in Ireland prefer to pay electronically, whether by direct debit, electronic transfer, or credit/debit cards.

According to a Close Brothers' Business Barometer survey carried out in Ireland and Britain, 74% of SMEs said they had moved away from cheques in the past five years in favour of electronic payment methods.

Of those who prefer to make electronic payments, 64% cited ease of use, 18% said it gave them better control of their cash flow, and 18% said it guarantees payment on time.

Training contract seminar

Do you know of any family, friends, sons or daughters of friends looking for a training contract? If so, the 'Finding your training contract' seminar on 26 January 2016 might be of interest to them. For information and to book, visit www.lawsociety.ie/Public/Become-a-Solicitor.

Read all about it!

The Law Society's *Annual Report 2014/15* can now be viewed at annualreport.lawsociety.ie. It has all the usual information, but with several improvements and innovations.

For the first time, the report has been published in interactive web format, making it easier to navigate. It contains video presentations from the president and director general, reports from the Law Society's committees and directors, as well as useful links to other resources.

An *Executive Summary*, which highlights some of the key moments from the past year, is being sent to all members, together with their AGM materials.

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Society's cautious welcome for *Workplace Relations Act*

The Law Society has issued a cautious welcome for the *Workplace Relations Act 2015*, which commenced on 1 October 2015.

Maura Connolly (chair of the Society's Employment and Equality Law Committee), said: "We welcome the new legislation insofar as it has simplified and streamlined certain important aspects of the process of seeking redress in employment matters. However, we have concerns about certain aspects of the new act. The existing legislation, which forms the basis for the claims, has not been brought together or streamlined."

Concerns over private hearings

Ms Connolly added that solicitors were concerned about section 41(13) of the act, which provides that initial hearings before an adjudication officer "shall be conducted otherwise than in public".

"The Law Society's submission called for hearings by adjudication officers to be held in public. This advice has not been taken on board. We feel strongly that these first instance hearings should not be held privately. It is a fundamental constitutional principle that justice should be administered in public."

The chair added that there was a significant public benefit in allowing the media to report on such hearings. Employees could often be alerted to their rights though media reports of employment cases, and this could incentivise employers to adhere to their legal requirements.

Complex and confusing

"Take, for example, an employee with several claims arising from one period of employment – a common occurrence. For example, he may have a complaint that he did not receive a statement of employment, had pay unlawfully deducted, and was subsequently unfairly dismissed without adequate notice.

Maura Connolly: 'The system remains complex and confusing'

"In order to access justice for these complaints, his solicitor has to look to several different pieces of legislation in order to make his claims – the *Terms of Employment Act*, the *Payment of Wages Act*, the *Unfair Dismissals Acts*, and the *Minimum Notice and Terms of Employment Acts*, for example."

Each of these claims can now be filed together and submitted to the new Workplace Relations Commission, but will still need to be argued separately under the relevant legislation. As a result, the system remains complex and confusing.

"A complainant with several valid claims may make mistakes in filing the claim under the correct legislation, making it difficult to reach a just outcome," Ms Connolly commented. "Conversely, we feel it will still prove time-consuming and costly for an employer to deal with claims that have no substance. Injured parties will need to seek solid legal advice from their solicitor to navigate the system."

Connaught cluster in Castlebar

PIC: MICHAEL MC LAUGHLIN

The Law Society of Ireland Skillnet, in partnership with the Mayo Solicitors' Bar Association, hosted the Connaught Solicitors Symposium 2015 at Breaffy House Hotel in Castlebar on 2 October

FOCUS ON MEMBER SERVICES

Buy Sell Merge

'Buy Sell Merge' is a free, anonymous forum for solicitors to advertise their interest in buying, selling or merging a practice. If you decide to buy, sell or merge your practice, one of the first steps is to make contact with a colleague who might be interested in doing business. The challenge is to know who will remain discreet about your approaches.

The Law Society's Buy Sell Merge forum can help you make those initial approaches, safe in the knowledge that your identity is protected.

Firms can also use the forum to advertise an interest in sharing office space or buying/selling office equipment. The forum can only be accessed in the solicitors' area of the Law Society's website (www.lawsociety.ie/buysellmerge).

You will need to register with Buy Sell Merge to post or reply to an advertisement. However, you can browse advertisements without registering.

Once you post an ad, it will remain on the forum for six months unless you remove it. You will receive an email reminder one week before the six-month deadline. You can keep your advertisement live for another six months by updating your profile when you receive the reminder.

To register with Buy Sell Merge, you will need to log in to the solicitors' area of the Law Society's website and select 'running a practice', then click on 'Buy Sell Merge'. The website (www.lawsociety.ie/buysellmerge) will guide you as to how to register and update your details.

For more information, contact s.travers@lawsociety.ie or tel 01 881 5772.

Cork mediators offer services to flood victims

The Cork-based Commercial Mediators group (www.commercialmediators.ie) has called upon the ESB and solicitors representing property owners affected by the 2009 floods in Cork to consider mediation.

The group's advice follows in the wake of a 5 October 2015 High Court judgment that found the ESB to be negligent in releasing 2009 floodwaters that caused major damage throughout Cork City.

Bill Holohan, a solicitor and spokesman for the group, said that mediation would cost only a fraction of the cost of litigation. He offered the services of the members of the group – all of whom are trained and accredited mediators – to the ESB and claimants.

Mr Holohan pointed out that, given that the issue of liability was now largely determined, other affected property owners who wished to pursue claims – in particular homeowners and small businesses – could now mediate their claims in a matter of weeks, rather than pursuing expensive litigation for years to come.

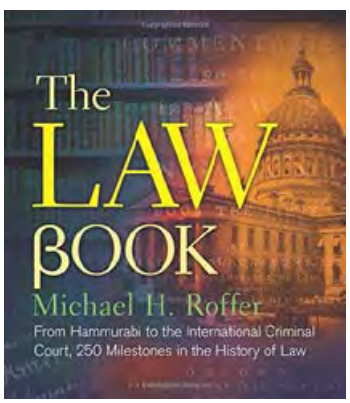
Holohan said: "At this stage, the advantages of mediation over litigation are well known. Disputes can be resolved in a matter of weeks rather than years. The focus in mediation is on workable solutions for the future resolution of the issues – not simply focusing on blame for what happened in the past. The entire mediation process would cost less than a fraction of one day in court. Simply put, mediation can deliver a result, at minimal cost, and very quickly."

Win a copy of *The Law Book*!

The *Gazette*'s attention has been drawn to the publication of *The Law Book*, which is subtitled 'From Hammurabi to the International Criminal Court, 250 milestones in the history of law'. It looks like being an interesting read!

Author Michael H Roffer explores 250 of the most fundamental and often controversial cases, laws and trials that have shaped our world. *The Law Book* covers diverse topics, such as the Code of Hammurabi (c1792 BC), the Draconian Code (c621 BC) the Ten Commandments (c1300 BC), the trial of Socrates (399 BC), the Brehon laws of Ireland (c 250 AD), right up to 2015.

Organised chronologically, the entries consist of short essays on each topic, accompanied by full-colour images. The notes and further reading section provides resources for more in-depth study.



The Law Book is published in hardback and is available at amazon.co.uk (ISBN: 978-1-4549-016-86, price £25).

To win a copy of the book, courtesy of the publisher, answer the following question: 'In what year was the original *M'Naghten Rule* introduced and who was it named after?'

Entries should be emailed no later than Friday 13 November to gazettecompetition@lawsociety.ie. The first correct entry drawn wins.

Like to be a *Gazette* book reviewer?

The *Gazette* is looking to recruit select panels of book reviewers who are prepared to turn around accurate book reviews, swiftly.

This opportunity is open to all solicitor members of at least seven years' standing. If interested, please email your name, telephone and email details to the editor at gazettebooks@lawsociety.ie, outlining your specific field of legal expertise.

Book reviewers are paid a small stipend for each review (which normally falls between 300 – 350 words) and are allowed to keep the review copy of the relevant book.

Go on, you know you want to!

Tribal welcome for LASBA conference

The Local Authority Solicitors' Bar Association (LASBA) held its annual conference in Galway on 27 September, hosted by NUI Galway's School of Law. LASBA represents in-house solicitors employed by the local authorities in Cork city and county, Dublin city, Dun Laoghaire-Rathdown, Fingal, Co Galway, Co Kerry, South Dublin, and Co Wicklow. Law agents for other counties also attended. LASBA is officially recognised by the Law Society of Ireland as a representative bar association.

Pictured at the conference were *(front, l to r)*: Dr Padraic Kenna (School of Law, NUI Galway) with speakers Deirdre Halloran, Mikayla Sherlock, Yvonne Kelly and Prof Donncha O'Connell (head of NUIG's School of Law); *(back, l to r)*: Michael Clancy, Robert Meehan, Joe Noonan, Terence O'Keeffe (president, LASBA) and John P Shaw (past-president, Law Society of Ireland)

CPD in the Rebel County

Munster solicitors will be able to take advantage of a range of CPD events to be held in the Clarion Hotel, Cork, in November. Law Society Skillnet, in partnership with the SLA and the West Cork Bar Association, is hosting a CPD event on 13 November 2015 – the very popular 'practitioner update'. This will provide five general CPD hours, plus one management and professional development skills (by group study).

The fee of €95 will cover the conference, a hot lunch and networking drinks reception. The event starts at 10am and ends at 5.30pm. The Law Society Finuas Network, in collaboration with the SLA, will host two more CPD events on 24 November 2015. The first, on effective delegation and performance management, will begin at 10.30am and finish at 1pm. The second, on using coaching strategies to motivate, will begin at 2pm and end at 4.30pm.

The workshop fees are €150 (or €120 for Finuas members). Each separate event of 2.5 hours provides three hours of management and professional development skills (by group study).

THERE'S AN APP FOR THAT

Easily swayed

APP: OFFICE SWAY **PRICE:** FREE

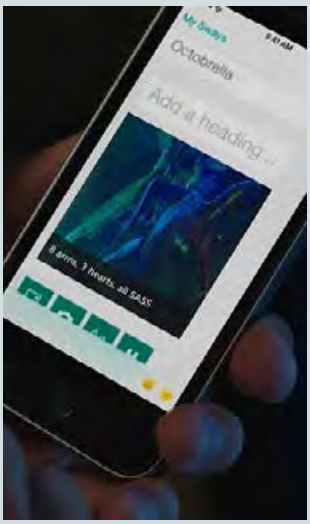
For the past few months I have been thinking about my practice's Facebook page and how I can make the content on it, particularly our client newsletters, a little more interesting and eye-catching, *writes Dorothy Walsh*. I have also been looking at how I have been producing our client newsletter and the time it takes to create it, save it, and upload it. How fantastic it would be to be able to publish the newsletter on various platforms (Facebook, Twitter, LinkedIn and our website), as well as being able to include a link to it in an email! As far as I could tell, there was nothing out there that could do all of these things – and then along came *Office Sway* (a free to download app for iPad) and, honestly, it's amazing.

I carried out some research on *Office Sway* and found that this was an app I could have on my iPad, linked to my MS *Office* account. It's one that is so foolproof that anyone can create professional, innovative and design-rich copy without actually having to be the least bit creative.

It's perfect for people who know what they want to say in presentations or newsletters, but who just do not have the creative touch to produce something that is visually engaging.

I guess the best way to talk about it is to look at a step-by-step creation of one of our newsletters. Firstly, download the app and open it in your iPad, connecting it to your MS *Office* account.

Choose a template design background (much like choosing a template in *Powerpoint*), set out your headings, type in your text under each heading, click 'add media' to add pictures or sound, music or video feed from your camera or from the web. Then, when you're finished with the text, click 'preview'.



What you see unfolding is a sleek, professional, and incredible publication. Your newsletter, webinar or presentation will look like something you have paid a marketing specialist to produce. The piece can be published to your various social media platforms. Alternatively, the link for *Office Sway* can be attached to an email or presentation.

One of its best features is that, if you later discover a typo and then amend it, *Office Sway* will save that change to the published version, automatically. You don't have to republish the corrected content.

This app is, quite simply, ingenious. To see what I mean, visit the following link: https://docs.com/dorothy-walsh/6529/app-article. I dare you not to try it for yourself!

Cabinet approves LLPs in 'giant step' for solicitors' firms

Minister for Justice Frances Fitzgerald has secured approval for the introduction of limited liability partnerships (LLPs) as a modern business-model option for solicitors' firms.

Although both former Justice Minister Alan Shatter and Minister Fitzgerald had, on many occasions, promised to amend the *Legal Services Regulation Bill* to provide for LLPs, formal Cabinet approval for this amendment had not been given. Now it has.

Drafting is now underway in the Attorney General's office. It is expected that provision for LLPs, among a great many other amendments, will be proposed by Minister Fitzgerald at the Seanad committee stage of the bill before the end of November, with all stages of the draft legislation due to be passed into law by Christmas.

Director general Ken Murphy warmly welcomed this "giant step in the modernising of business models for solicitors' firms in this jurisdiction. This is something the Law Society has campaigned for since it first submitted a reasoned report on this subject to Government as far back as 2001," he said. "All partnerships, regardless of size, can potentially benefit from this.

Murphy: 'A giant step in modernising solicitors' firms'

Minister: secured the approval of her Cabinet colleagues for LLPs

"Solicitors in Ireland are complete outliers when it comes to limited liability," said Murphy, setting out the following as good public policy reasons why the law needed to be updated.

Firstly, unlike most other professionals in Ireland, solicitors are not entitled to limit their liability. For example, accountants, architects, engineers and pharmacists can all use limited liability companies. In contrast, solicitors (and doctors, dentists and vets) cannot incorporate.

Secondly, solicitors in Ireland are not allowed practise through LLPs or limited liability practices, unlike lawyers in practically every other common law jurisdiction, including Northern Ireland, England and Wales, Scotland, the United States, Canada, Australia, New Zealand, Malaysia, Singapore and India, among others. Ireland has been the glaring exception.

Serious disadvantage

This puts Irish law firms at a serious disadvantage to other law firms when competing for ever-increasing international business, since Irish law firms are alone in being required to seek a limit on their liability by contract in each case where they are competing for instructions.

It is important to bear in mind that the introduction of LLPs will not alter, in any way, the liability of a partner for fraud or theft of clients' funds or other wrongdoings, which will remain just as securely protected before LLPs as after LLPs.

"Consumers, that is to say clients, will also continue to be protected through the requirement for compulsory professional indemnity cover – at one of the highest levels in Europe – and by the existence of the compensation fund," Murphy concluded.

Mason Hayes & Curran creates 75 jobs in 2015

Mason Hayes & Curran has announced that it will have created 75 new jobs by the end of 2015. Minister for Jobs Richard Bruton welcomed the announcement at a seminar on the new Workplace Relations Commission system, organised by the firm on 2 October.

The 75 additional personnel will fill a variety of roles, from lawyers to professional support staff. Hiring started earlier this year and will continue till year-end. Mason Hayes & Curran now employs 410 personnel, including 77 partners. Last year, the firm took on 64 new staff. The firm has been experiencing strong growth across all of its key practice areas, including corporate law, dispute resolution, financial services, employment, real estate, tax, technology, construction, healthcare and energy law.

Commenting on the recruitment, managing partner Declan Black said: "We are obviously pleased to be busy and growing. Clients need well-resourced law firms to deliver quality advice and service at the speed that business operates. Our recruitment initiatives are designed to meet, and indeed anticipate, that client need."

Go beyond your duty to your clients, Annan tells lawyers

Corporate lawyers have a higher duty than meeting their clients' expectations when it comes to business and human rights, former UN secretary general Kofi Annan told the International Bar Association (IBA) conference in Vienna.

Annan was speaking alongside John Ruggie, architect of the UN *Guiding Principles on Business and Human Rights*, who addressed the role of lawyers in implementing those principles.

Adopted in 2011, the principles amount to a non-binding, but UN-endorsed, corporate social responsibility charter. Ruggie described them as being based on three pillars: a state duty to protect rights, a corporate responsibility to respect rights, and access to remedies for victims of abuses.

Annan emphasised the vital role that in-house and corporate lawyers have in turning the principles into practice.

"You are in a unique position of influence. You give your clients the advice they want to hear – but you need to go beyond that," he told the packed conference session. Paying a reasonable salary, for example, should not depend on minimum wage legislation.

"Tell your clients you don't need to wait for a government to pass a new law to do what's right."

Ruggie rejected criticism of the principles on the ground that they were 'soft law', pointing out that the 'black-letter' law of formal international treaties had been in decline for two decades. "The last multilateral treaty to be lodged with the UN was in 2010, and that was a minor revision," he said.

"If you're only going to advise on black-letter law, you are going to have less and less to advise on."

Kofi Annan: 'Corporate lawyers have a higher duty when it comes to business and human rights'

Dust off your data protection cobwebs

Given the recent events in the European Court of Justice and the *Schrems vs Safe Harbour* case, data protection is very much in the news. But what do the latest developments mean for data protection in Ireland? What does it mean to you as a solicitor, business owner or individual?

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THE COMPANIES ACT 2014 AN ANNOTATION

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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Cork's newest merger

(Front, l to r): David A Browne, Juliet Lynch, Shirley Fogarty, Aisling Fitzgerald and William Hanly; *(back, l to r)*: Lorna Helen, Georgina O'Halloran, Joan Byrne, Niall Daly, Patrick Mullins and John Boylan

More good news from down south. The Cork firms of McNulty Boylan and Partners and Mullins Lynch Byrne Solicitors have merged to form the new firm of BDM Boylan Solicitors.

Based in Clarke's Bridge House on Hanover Street, BDM Boylan has a staff of 25, including 11 solicitors, seven of whom are partners, namely: John Boylan, David A Browne, Niall Daly, Patrick Mullins, Joan Byrne, Shirley Fogarty and Juliet Lynch. They are assisted by solicitors Aisling Fitzgerald, William Hanly, Lorna Helen and Georgina O'Halloran.

Find out more at www.bdmboylan.ie.

First steps in this year's Diploma in Law

PIC: JASON CLARKE PHOTOGRAPHY

Pictured on the first day of this year's Diploma in Law programme were Aisling Farrell (student), Caitlinn Gilmartin (student), Alan Kane (student), retired Judge Patrick McMahon (lecturer), John Lunney (course leader, Diploma Centre), Anna Broderick (lecturer, Eversheds), Maeve Mattimoe (student) and Mark D'Arcy (student)

Meeting of minds in the Marble City

KILKENNY BAR ASSOCIATION

PIC: DYLAN VAUGHAN

The Kilkenny Bar Association welcomed Law Society President Kevin O'Higgins and director general Ken Murphy to its annual meeting at the Pembroke Hotel, Kilkenny, on 13 July 2015. *(From l to r)*: Evelyn White, Charlene Butler, Jane Harte, Mary Molloy, Antoinette Hayden, Clare Quinlan, Carol Murphy, Chris Hogan, Rosanne Byrne, John Holland, Alice Gibbons, Con McDonnell, David Dunne, Kevin O'Higgins, Thomas Walsh, Ken Murphy, St John Donovan, Martin O'Carroll, Yvonne Blanchfield (president, Kilkenny Bar Association), Laurie Grace, Maeve Meaney (honorary secretary), John Hickey and Brian Kiely

Leman Solicitors' 24-hour Samaritans cycling challenge

On 11 September, 24 lawyers crawled across the finish line, having covered 530km across four provinces in the Leman Solicitors 24-hour cycling challenge. They pedalled their way to €25,700, which will go to the Samaritans.

Managing partner Larry Fenelon says: "530km in 24 hours was a huge challenge. We knew this from the outset, but we really had no concept of how difficult the experience would be. We cycled through a storm, in pitch darkness and in treacherous conditions. Each year, the race gets more challenging, but this was by far the toughest – both physically and logistically. It's fair to say we were at our lowest ebb between midnight and 3am, coinciding with the Samaritans' helpline's busiest hours."

Larry thanked suppliers Dublin2Bike, ThinkBike, Enterprise and Snap, as well as their clients, friends and family members for their generous donations that helped the firm raise €25,700. "The money will be put to good use by this worthy charity," he said. This is Leman's fifth year to organise a charity race. In that time, the firm has raised over €100,000 for worthy causes.

Having covered 530km across four provinces in 24 hours, the finishing line never looked so welcoming!

Catherine Brogan (executive director, Samaritans Ireland), says: "This is the first time we have received funding from a corporate organisation for our festival branch. The money raised by the firm will enable us to expand our services to reach out to people at events and concerts around Ireland through our festival outreach programme. We want to thank Leman Solicitors sincerely for taking on this enormous challenge on our behalf, and for making a difference to the lives of those who are struggling to cope."

PIC: LENSMEN

Law Society President Kevin O'Higgins hosted a dinner in honour of the Calcutta Run Committee on 23 September 2015. *(Front, l to r)*: Eoin MacNeill (A&L Goodbody), Aidan Stacey (Goal), Kevin O'Higgins, Fr Peter McVerry (Peter McVerry Trust) and Cillian MacDomhnaill (finance director, Law Society). *(Back, l to r)*: Laura Butler, Ciaran Aherne (both A&L Goodbody) Belinda O'Keeffe (Law Society), Auveen Curran, Sinead Smith, Joe Kelly, Tom O'Connor (all A&L Goodbody), Tony Morgan (Law Society), Alan Johnston and Mick Barr (both A&L Goodbody)

Law Society President Kevin O'Higgins and director general Ken Murphy were guests of honour at the Donegal Bar Association meeting in the Yellow Pepper, Letterkenny, recently. *(Front, l to r)*: Ken Murphy, Kevin O'Higgins, Margaret Mulrine (president, Donegal Bar Association) and Joann Carson. *(Back, l to r)*: Garry Clarke, Paddy McMullin, Frank Dorrian, Sean Boner, Ciaran Dillon, Brendan Twomey, Bernie Smith, Donna Crampsie and Jane Flannery

Cork's O'Sullivan Whelan moves to new offices

PIC: GERARD MCCARTHY PHOTOGRAPHY

(From l to r): Tonya O'Mahony (solicitor), Jessica Brennan (trainee solicitor), Elaine O'Sullivan (principal), Orla O'Mahony and Ina Keirns (secretaries)

The expanding Cork-based O'Sullivan Whelan Solicitors has moved into new offices. High Court judge and Cork native Ms Justice Marie Baker officiated at the opening of the firm's new office complex on 16 October.

Having begun as a one-person firm just four years ago, it now employs five staff: two solicitors, a trainee solicitor and two secretaries. It welcomes on board its new trainee solicitor and secretary and says that it's hoping to hire another solicitor and another part-time secretary in the coming months.

Principal Elaine O'Sullivan comments: "Having begun as a one-person firm just four years ago, we are very pleased with our progression and expansion. Our growth is thanks to the personal attention we give to our clients, coupled with a recovering economic landscape. To be creating employment in our native city is very satisfying." The firm specialises in litigation, personal injury, family, criminal law and conveyancing matters.

A warm Roscommon welcome

PIC: GERRY O'LOUGHLIN

The AGM of the Roscommon Bar Association was recently held in the Abbey Hotel Roscommon. The association welcomed Law Society President Kevin O'Higgins and director general Ken Murphy. The association has planned a number of CPD seminars, including sessions on drink-driving prosecutions, licensing law and local authority law. *(Front, l to r)*: Gerard Gannon, Marie Conroy, Conleth Harlow, Ken Murphy, Kevin O'Higgins, Brian O'Connor, Mary Rose McNally and Mary Frances Fahy. *(Middle, l to r)*: Aoife O'Callaghan, Karina Callaghan, Tracey McDermott, Padraig Kelly, John Duggan, Rebecca Finnerty, Mary Mullarkey, Terry O'Keeffe and Bríd Miller. *(Back, l to r)*: Alan Gannon, Declan O'Callaghan, Seán Mahon, Dermot MacDermott, Christopher Callan, Dara Callaghan and Dermot Neilan

On the move

O'Mara Geraghty McCourt has appointed Peter Murphy (centre) as a partner in its employment law team. Peter trained and qualified with the firm and will continue to work on both contentious and non-contentious matters relating to employment law. Peter is pictured with Stephen Maher, James McCourt, Áine Curran and Ciaran O'Mara.

How to apply the law without having access to the law?

Celebrating the graduation of 15 children from IRLI's Child Diversion Programme

Is it possible to apply the law without having access to the law? This apparent contradiction is all too much of a reality for lay magistrates in Malawi. Due to poor resources, the isolated location of many courts, little or no access to computers or the internet, and a lack of training, lay magistrates are often forced to apply the law without having access to even the most basic criminal codes.

Since 2011, Irish Rule of Law International (IRLI) has been working with magistrates, members of the judiciary, and other criminal justice stakeholders in Malawi. The team has organised much-needed workshops on various aspects of the law and has carried out many advocacy efforts seeking to address some of the challenges faced by magistrates and the judiciary.

From 15-17 September, IRLI held a capacity-building workshop for magistrates on jurisdiction and sentencing. The training was organised in conjunction with the Malawi Judicial Training Committee and was funded by the EU Democratic Governance Programme.

'Truly inspirational'

IRLI welcomed experts from Ireland to facilitate the workshop. Roderick Murphy (former High Court judge), Patrick McGrath SC and Brian Storan BL (IRLI director) embarked on the journey from Dublin to Lilongwe, teaming up with local expert facilitators for the training event.

Patrick McGrath says: "I am still reeling from all that I saw in Malawi during my week-long visit. Irish Rule of Law International is quietly doing such fantastic work there, with very limited resources. It was truly inspirational to see what is being done by Irish lawyers, to such good effect."

IRLI director Cillian MacDomhnaill undertook a monitoring visit to Malawi

IRLI's programme in Malawi is funded by Irish Aid and the Human Dignity Foundation, while IRLI itself is a joint initiative of the Law Society of Ireland and the Bar of Ireland. During September, IRLI directors Cillian MacDomhnaill and Brian Storan took part in a monitoring visit. The timing was fortuitous, in that many activities that had been ongoing for a number of months finally came to fruition. This afforded an opportunity to witness almost all aspects of the team's work.

Says Cillian MacDomhnaill: "I wish to thank Emma Weld-Moore, Mark Johnson, Orla Crowe and Sarah McGuckin for the courtesy extended to me, ensuring that I got a very detailed and real exposure to the valuable work they are doing."

letters

DPC tackles 'Water bomb' article claims

From: Helen Dixon, Office of the Data Protection Commissioner, Regus Building Block 4, Harcourt Centre, Harcourt Road, Dublin 2

I refer to the lead article in the August/September 2015 *Gazette*, titled 'Water bomb'. The author's comments were directed at Irish Water and, therefore, I do not consider it appropriate to make a substantive response to the assumptions/presumptions made in the article and the conclusions drawn. Nonetheless, I believe it is incumbent upon me to clarify the following factual and legal inaccuracies in the article relevant to the duties and functions of this office, lest there be any confusion caused by the article.

The author suggested that the data protection commissioner (DPC) is "satisfied with the current scheme" and that we, therefore, would be "unlikely to investigate" any complaint from a tenant that considered it had suffered a breach. It was further suggested that the DPC would be unlikely to investigate so as to save ourselves from an "embarrassing situation". With any guidance the DPC issues to an organisation, it sets out that it is providing guidance as best it can, based on the facts presented to it, and that any advice offered will not in any way prejudice the statutory role of the office in investigating a complaint presented by an individual. It is only in examining the detail of any complaint presented that a potential contravention may ultimately be identified. Based on the author's proposition, if this office is to maintain a role in handling individual complaints, it should cease to offer any guidance to organisations for fear it could be said to have prejudiced a later investigation. Clearly this is not and could not be the case, and such a position would clearly conflict with the statutory role of this office, given its varied functions.

As to the remainder of the article, I make the following points. Section 21 of the *Water Services (No 2) Act 2013* provides that Irish Water "shall charge each customer for the provision by it of water services", thereby obliging Irish Water to bill the occupier of a property for water services. Contrary to what is suggested in the article, Irish Water, to the knowledge of this office, has not demanded that private landlords supply the names of tenants. Indeed, as it appears on its website, Irish Water indicates that landlords can or may provide this information. This position reflects section 21(5) of the *Water Services (No 2) Act 2013*, which provides that "it shall be presumed, unless the contrary is proved" that the owner of premises is also the occupier of that premises. The 'presumption' referred to in the section clearly envisages that Irish Water would have in place a reasonable process or procedure by which a landlord may demonstrate or prove for the purposes of this section that he or she is not also the occupier.

The key issue is that, once section 47 of the *Environmental (Miscellaneous Provisions) Act 2015* commences, it will no longer be the case that a landlord may decide as to whether he or she provides the information. Section 47 of the *Environmental (Miscellaneous Provisions) Act 2015*, when commenced, will not provide, as the author seeks to argue, an enabling provision for landlords to release the name of a tenant. It will, instead, create a new statutory obligation to supply tenancy details. It will place a statutory obligation on a landlord to provide information on a tenancy (that is, the date of its commencement and name of the tenant) within 20 days of its start date. Section 47 also provides that no notification is necessary within the 20-day period in circumstances whereby the information has already been provided by that landlord to Irish Water prior to section 47 coming into effect.

Under the current regime, the decision on whether to provide the information or not is left to the landlord. In the event that a landlord does not provide the information about a tenant to Irish Water, then the landlord will be billed for the water services to the rented premises. Unsurprisingly, many (but not all) landlords do not consider it in their legitimate interests to be discharging a utility bill on behalf of a tenant, and so have decided to provide the names of tenants to Irish Water.

I trust this clarifies matters.

CIF and NAMA are wrong on passive-house standards

From: Philip Lee (managing partner), Philip Lee, 7/8 Wilton Terrace, Dublin 2

In light of Minister Alan Kelly's letter to the four Dublin local authorities on house building, it is disappointing to note that both the Construction Industry Federation (CIF) and NAMA appear to have rounded on Dun Laoghaire Rathdown County Council for its proposal to include in the development plan a requirement that future construction should meet passive-house standards. NAMA suggests that the standards of buildings should be only controlled by the current *Building Control Amendment Regulations 2014*. The CIF suggest that any imposition of standards only increases costs.

Both criticisms deserve a response.

NAMA's comments in relation to building regulations suggest that NAMA is unaware that the current Irish building regulations in respect of non-dwellings has been found to be substantially out of line with both international standards and the requirements set out in the European Commission *Energy Performance of Buildings Directive*. This required all member states to adopt building regulations that were "cost optimal" – that is, that the building regulations would require that investment in energy efficiency construction or use of renewables is such that, over the life of the building, that investment produced a positive cost-benefit return.

The Irish Government did not update its building regulations for non-dwellings to reflect cost optimisation. A recent review of the building regulations carried out for the Government found the regulations to be in excess of the 15% tolerance that the commission had allowed. For example, the report commissioned by the Government and submitted to the commission found that the Irish building regulations in respect of air-conditioned offices allowed for the consumption of 366kWh/m2/yr, whereas a cost-optimal result would only have allowed 102kWh/m2/yr. The Irish building regulations are almost 400% out of line.

In respect of air-conditioned retail offices, the Irish building regulations allow for 726 kWh/m2/yr compared with the cost-optimal level of 239kWh/m2/yr. Once again, over 400% in excess.

Finally, in respect of naturally ventilated offices, the Irish regulations allow for the building to be built to a standard that consumes 247kWh/m2/yr, compared with the cost optimal of 52kWh/m2/yr – almost 500% in excess. That NAMA suggests that we should build to those standards is a cause of grave concern.

It is interesting that the report commissioned by the Government also reported on Britain's building regulations and found them to be in line with the cost-optimal requirement.

As a consequence, our construction industry will now fall substantially behind its British and other European counterparts, which are building the skill sets to design and build to a substantially higher standard.

It is hard to understand why the CIF criticises Dun Laoghaire Rathdown County Council when, in fact, it is well understood that all buildings constructed in Ireland from 2020 and all public buildings from 2018 must meet what is known as the 'nearly zero' energy standard.

It is likely that the passive-house standard will meet the 'nearly zero' energy standard. There has been no real definition of what the Government considers a standard to meet 'nearly zero'. However, what might be of concern is when we look at our European counterparts. Finland, for instance, has declared that it will require 'passive-house' standards for buildings constructed, repaired, or leased after 2015. New buildings in public administration must be built to the passive-house standard after 2015. Denmark states that the 'nearly zero' energy building standards will be introduced in 2016 for all new buildings from 2018. Britain has decided that all homes should be zero carbon from 2016.

Regardless of the moral imperative regarding the threat of climate change, is it not foolish to impose an ongoing cost on homeowners and occupiers of commercial buildings that is greatly in excess of their counterparts across Europe?

At the same time, the CIF is postponing the necessary upskilling of architects, engineers, and construction personnel to compete in the modern world of low-carbon buildings. Dun Laoghaire Rathdown County Council is doing its citizens a great favour in imposing a standard that is inevitable. The only comment that might be made is that it may need to look at defining in more detail what is meant by 'passive house'.

viewpoint

LONG-TERM LEASING – MYTHS AND MISCONCEPTIONS?

For farmers to invest in land so that it can reach its maximum potential, they need security of tenure – which can best be provided by long-term leasing, argues Aisling Meehan

Aisling Meehan is solicitor, tax consultant and qualified farmer specialising in agricultural law and tax, who practises as Aisling Meehan Agricultural Solicitors

There is a perception out there among farmers and policymakers that professionals such as solicitors and auctioneers are discouraging landowners from the long-term letting of land. It has been said to me on more than one occasion that professionals will profit more by having to renew letting/lease arrangements annually – thus, it is in their interest to have shorter-term lettings. Naturally, I defend our profession and my opinion is that it is a solicitor's job to identify the risks to the landowner of committing to a long-term arrangement.

This is often counteracted by an argument that there is very little risk, and that there is more reward in entering a long-term arrangement than a short-term one. With this in mind, it was suggested that an article covering the issue should be published in the *Gazette*. As I am biased towards long-term leasing, I asked that a practitioner experienced in conveyancing would put forward the other side of the argument – that is, against long-term leasing – which Joyce A Good Hammond has kindly agreed to do (see page 24).

> **The availability of suitable land in close proximity to the milking platform is limiting the potential for dairy farmers to expand in the wake of the abolition of milk quotas**

A win-win situation

As a solicitor and tax consultant specialising in agricultural law and taxation, I am a big advocate of leasing land for the long term. This stems from a number of factors. Firstly, being a farmer in my own right and living and working on the family farm, I see the benefit both to the landowner and to myself and family members – as the farmers – of taking land on lease for a longer term. In order for farmers to invest in land so that it can reach its maximum potential, farmers need security of tenure; after all, why would a farmer invest in reclaiming and reseeding land, erecting new fences, improving roadways, and so on, if there was a risk that she might not get the benefit from it over a number of years? Also, it is especially important in accessing bank credit, as financial institutions generally match loan terms to lease duration. Longer duration allows for phased payment on capital investment.

Secondly, from a financial perspective, when one considers that landowners are being paid up to €250 to €300 per acre per year for leasing out their land, together with a repayment of the value of their Basic Payment Scheme (BPS) entitlements, a landowner should be making a return in excess of this in order to justify their decision to farm the land themselves. For example, take a 150-acre farm that is suitable for dairying and/or within walking distance of the milking platform of a neighbouring dairy farmer. Assuming that the farm is in good condition, it could fetch a rent of approximately €250 per acre per annum, which amounts to an annual rent of €37,500, which could be taken tax free, together with the value of the BPS payment. When one considers that only 37% of farm businesses were economically viable in 2014 and that a further 31% of farms were only sustainable because of the presence of income earned outside of farming – and that almost one in three farm households was economically vulnerable, as the farm business was not viable and there was no off-farm income present in the household – many a landowner could benefit from leasing their land, long term.

Thirdly, from a policy perspective, access to land has become the new 'milk quota', whereby the availability of suitable land in close proximity to the milking platform is limiting the potential for dairy farmers to expand in the wake of the abolition of milk quotas earlier this year.

I was very much involved in the Agri-Taxation Review launched in early 2014. The first main policy objective identified by the review was to increase land mobility and the productive use of land. While the report prepared as part of the review acknowledged that there was an active rental market, the vast majority of these were for shorter-term lettings. The report recommended measures to assist in rebalancing the market in favour of longer-term leases, and Budget 2015 included the retention of existing relief for certain income from leasing of farm land and a package of five new measures.

Some done, more to do

It is worth highlighting some key facts to illustrate the impact of this issue on Irish farms. Less than 0.5% of the total land area is currently sold per annum. As a result, nearly 54,000 farmers (or 41% of farms) rent or lease land from other landowners. Figures provided by Revenue reveal that a total of 3,600 Irish landowners claimed tax relief in 2011 and 2012

PIC: iSTOCK

A cow, Thursday

for signing long-term land leases of greater than five years, which illustrates that the vast majority of land rented is on the short-term conacre (11-month) basis.

While there are cases of long-term leases where things do not work out as planned, these risks can be minimised by both the landowner and farmer having open and frank discussions before the lease is entered into. The IFA master lease, which was updated in February 2015, can act as a sort of discussion document for potential issues that might arise during the currency of the lease and how they could be dealt with – and to give an indication as to each party's views on how the land will be farmed and managed. This can serve to build on the relationship of trust that must exist between both parties.

This article is intended as a general guide only, and professional advice should be sought in all cases. The article is based on the information available on 31 July 2015. While every care is taken to ensure the accuracy of information, neither the author nor Aisling Meehan Agricultural Solicitors accept responsibility for errors or omissions, howsoever arising.

viewpoint

FROM THE OTHER SIDE OF THE FENCE

There are certain important matters that the owner and tenant farmer both need to consider when negotiating the terms of long-term letting, says Joyce A Good Hammond

Joyce A Good Hammond is a partner at Hammond Good in Mallow, Co Cork, and is a member of the Conveyancing Committee of the Law Society of Ireland

Where a lease is for land only, the owner can grant a lease without the farmer having a right to renewal, since it does not satisfy the definition of 'tenement' as set out at section 5, subsection 5(1), of the *Landlord and Tenant (Amendment) Act 1980*.

In order for the farmer to obtain a new tenancy, they must prove that the lease qualifies as a tenement, and the farmer must prove that the premises qualifies as a business equity under section 13(1)(a) of the 1980 act or long possession equity under section 13(1)(b).

If the farm consists mostly of buildings, however, which would arise in the case of intensive pig or poultry farming, the farmer may have a right of renewal of the lease after five years. In this situation, the owner may grant a lease for the farmland only, granting a licence or a letting for the temporary convenience to the farmer of the buildings on the land in order to prevent a right of renewal accruing after the five years have run.

Another solution would be to have the farmer execute a deed of renunciation of any rights they might have to renewal of the lease in advance of signing the lease. The farmer would be advised to obtain independent legal advice in advance of signing the renunciation.

Improvements and capital works

For the protection of the owner and the farmer, it is important that the lease should:

- Specify the process by which alterations or improvements (if sought by the farmer) will be approved by the owner,
- Confirm the contributions of both parties in completing improvements,
- Seek the owner's consent to these within a specified time period, and
- Specify also what sort of capital improvements the owner will allow on the property, and who pays for those improvements.

There should be clear guidance as to whether such improvements are considered permanent fixtures and become the property of the owner, or whether they may be removed by the farmer at the end of the term. The duration of the lease should guide in determining how those costs are shared, bearing in mind the short-term and the long-term benefits of the improvements.

If the farmer intends on making significant capital investment in the land involving the construction of buildings, this should be considered when drafting the lease. Any structure on the property, regardless of who bears the costs of same, belongs to the landowner at the termination of the lease. Provisions that name the farmer as owner and also permit the farmer to remove the structure typically require that the farmer bear the costs of removal, as well as restoring the land to its former condition.

The lease may also provide that, instead of removal, the farmer has the right to sell the structure to any subsequent farmer. For more permanent structures that cannot be removed, the owner should consider if he would be willing to pay for the construction, as it would increase the value of the property and the long-term financial return would, primarily, be to his or her benefit.

> **'For protection of the owner and the farmer, it is important that the lease should specify the process by which alterations or improvements (if sought by the farmer) will be approved by the owner'**

If the works are carried out by the owner, this may result in an increase in the annual rent paid by the farmer. Alternatively, a farmer may be willing to pay the construction costs if the lease commits the owner to pay the farmer the depreciated value of the structure at the end of the lease period. The lease may also provide that, in the event that the owner sells the land to the farmer, the depreciated value of the structure or other capital improvements will be deducted from the purchase price.

In most instances, the owner and the farmer will be neighbours, and a mechanism for dispute resolution should be included that is conscious of the need to preserve good relations. Accordingly, it is prudent to include a mediation/arbitration clause and, if mediation proves unsuccessful, that it will be finally determined by arbitration.

The topics of renewal, improvements and capital works, and dispute resolution should be considered carefully and negotiated at the drafting stage of the lease agreement.

Covenants and conditions

Owners are often concerned that the good condition of the land will fail to be maintained during the time the tenant farmer is in occupation. In that regard, the lease should set out the covenants and conditions that must be adhered to in order to safeguard against any disputes at a later date.

The farmer would ordinarily be

PIC: iSTOCK

Weird space monkey, Friday

responsible for the costs associated with repairs and the routine maintenance needed in order to prevent deterioration of the farm. This can include annual servicing, repainting and repairs of fences, and general upkeep of the land. Farmers have an obligation to adhere to good farming practices and are subject to inspections from the Department of Agriculture in order to obtain payments under the Basic Payment Scheme.

In a long-term lease, an annual walk-around with a checklist and an annual limit of the expenditures expected of the farmer can minimise problems. If the farmer does not comply with these, they may be deemed to be in breach of the lease, and the owner can re-enter the land and the lease will be at an end.

Change in circumstances

Most leases would specify that the lease is to continue even after the death of the owner or farmer, until such time as the lease expires. Owners may need to consider if they wish to have a 'break clause' allowing them to terminate the lease in the event of their death or the death of the farmer.

In the event of the lease being terminated, the owner would not be entitled to avail of the income-tax exemption. It is also worth bearing in the mind that, in the event of the owner dying and if the lease remains in place, this could provide a welcome source of income for the estate of the owner.

The fact that there is a lease is place does not prohibit the sale of the farmland during the course of the administration of the estate of the deceased land owner, as it can be sold with the benefit of, or the burden of, the lease. The tenant farmer may also need to consider what should happen in the event of his or her death, and whether the lease should continue or be at an end. This will depend on the individual circumstances of each farmer, as some may have a partnership or company in place that would enable the farmer to continue with the lease.

viewpoint

SUICIDE PREVENTION LITERALLY A MATTER OF LIFE AND DEATH

Suicide is the biggest killer of young people in Ireland. Noel Smyth has a plan to turn the tide

Noel Smyth is founder of Noel Smyth & Partners Solicitors, Ely Place, Dublin 2. He is chairman of 3TS, a registered charity working to help prevent deaths by suicide through research, intervention and support. See www.3ts.ie

Suicide affects all ages and demographics in every community. Three times more people die by suicide than die on our roads, yet over ten times more is spent on road safety than on suicide prevention. The inexcusable reality for those in crisis is that 90% of the services required to deal with suicide in Ireland are not there.

Suicide is indiscriminate, and many of you reading this piece can undoubtedly call to mind someone you know who has been bereaved through suicide. Worse still, you may have suffered the agonising loss of a beloved family member or friend and are all too familiar with the utter desolation that suicide leaves in its wake.

3TS (Turn The Tide of Suicide) has long been calling for a coordinated approach to suicide and believes that only a 'suicide prevention authority', similar in structure to the Road Safety Authority, can deliver an effective solution.

We hope to secure the support of all solicitors in the country for our proposed *Suicide Prevention Authority Bill*, which will be presented to Government in the coming weeks.

> **'We hope to secure the support of all solicitors in the country to come out in favour of our proposed *Suicide Prevention Authority Bill*'**

Influence in the community

As a practising solicitor, I am very aware of the huge influence that we can have with our clients, which goes way beyond the mere dispensing of legal advice. In truth, solicitors become social workers, confessors, marriage counsellors, interventionists and a whole host of other roles that are always based on the intention to help their client in the best way possible. People in Ireland listen to and seek the advice of their solicitors in a variety of matters. So when solicitors give their support to a particular project, that influence and support is immeasurable.

The extent of this influence was demonstrated prior to the October 2011 referendum in which the Government sought to give the Oireachtas effective powers of investigation in all matters touching and concerning the State.

To a large extent, the opinion polls indicated that the referendum would be carried by a substantial majority. However, on 24 October, eight former attorneys general published a letter of objection stating that the granting of such powers to members of the Oireachtas should not be supported by the public and that the amendment to the Constitution should be rejected.

In the event, the public took notice, and the amendment was soundly defeated. I give this as an example of the huge influence, sometimes subliminal, that both solicitors and barristers can have in our community.

I am convinced that solicitors have their finger on the pulse of their community, that they meet families who have suffered loss as a direct result of suicide and are aware of the fallout and the consequences for these families.

I have seen the influence that solicitors can exert in their community. I have worked in small firms for my entire career – Arthur P McClean on Grafton Street, Vivian C Matthews in Dundrum, James O'Brien & Co in Nenagh, and Michael Fitzsimons in Dublin – before eventually setting up my own practice in 1981. In each of these firms, one thing remained paramount: the importance of the solicitor/client relationship and the inherent trust that a good solicitor will instil in his client. Decisions made as a result of this relationship can be made to reverberate positively in all communities.

Solicitors are not looking for votes, and their advice in all aspects of life is thus of greater importance because of the unique position they hold in the community. If we can tap into this trust and support, the objectives of 3T, to turn the tide of suicide, will receive a huge boost. Our proposals to influence the Oireachtas to pass the *Suicide Prevention Authority Bill* are part of this.

Objectives of the bill

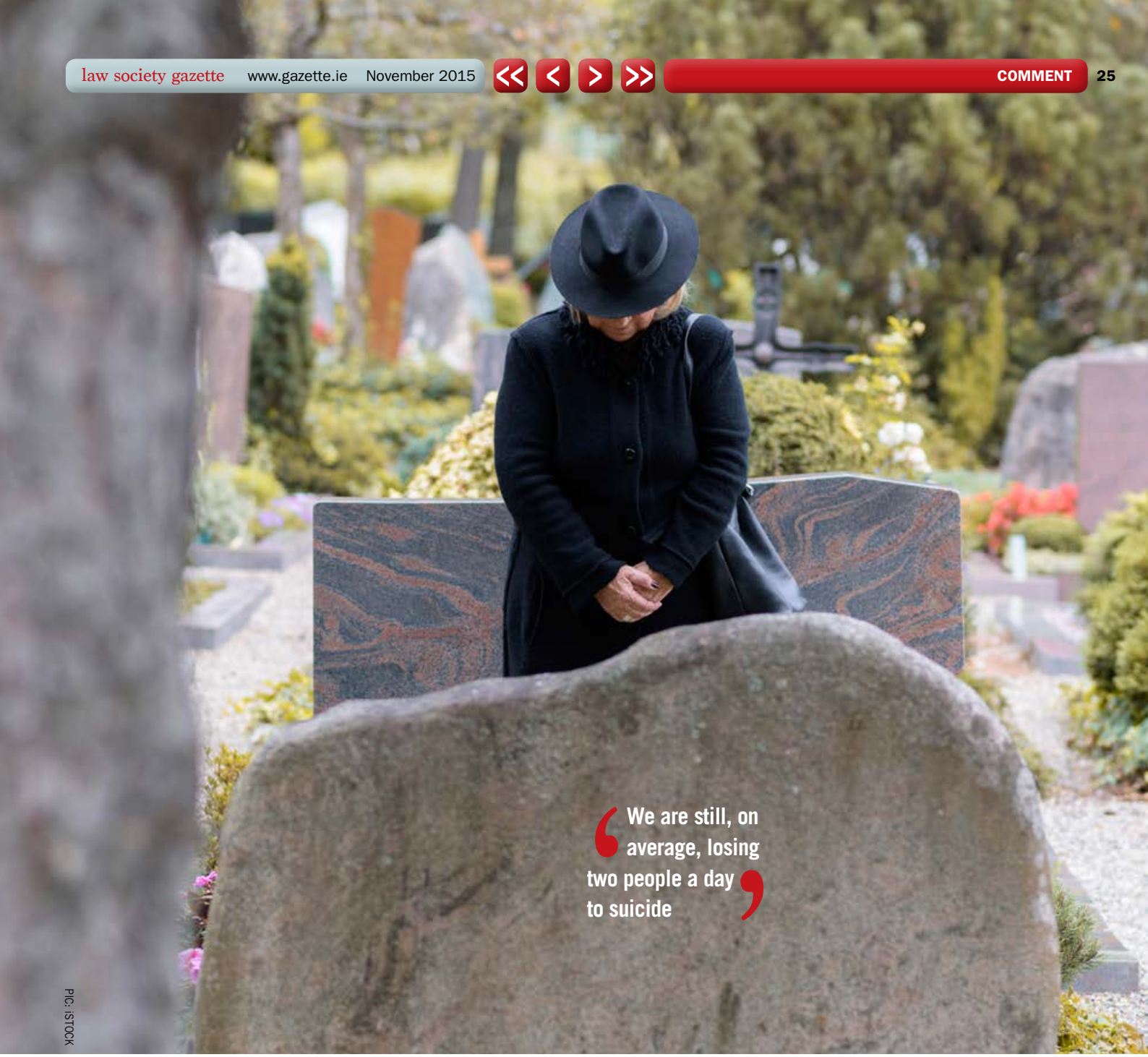
The bill is modelled on the *Road Safety Authority Bill*, and 3TS was fortunate enough to have Margaret O'Driscoll BL draft the bill on a *pro bono* basis. Margaret was instrumental in drafting the *Road Safety Authority Bill*.

The main objects of the bill are to:

- Create a framework for suicide and self-harm prevention in Ireland,
- Set up a committee to investigate how moneys are being spent and adjudge their efficacy,
- Change the current thinking that suicide cannot be prevented, via a sustained public information campaign,
- Accelerate a mental health and suicide prevention education framework at all levels – primary, secondary and tertiary,
- Set up a dedicated suicide prevention service in every A&E unit in Ireland,
- Coordinate service providers so that the best are available to everyone in Ireland.

The proposed authority could also:

- Coordinate, liaise and license all charities involved in suicide



> We are still, on average, losing two people a day to suicide

PIC: iSTOCK

prevention, mental health, and any related matter,
- Instigate a regulation and licensing framework for counsellors, therapists, and all practitioners providing psychological, behavioural, and mental health services,
- Focus on delinquent and pervasive websites and bring court proceedings in its own right, and
- Collect, coordinate, and collate information on the economic loss that occurs through mental illness, depression, and suicide.

An independent board with no hierarchy, similar to the RSA, would run the proposed authority, with board members providing different areas of expertise.

If the bill is successful, it will enable this authority to have its own ring-fenced funds, incapable of being diverted, and would address the patchwork nature of the services that currently exist for those seeking help for mental illness.

The authority would have the ability to tap into all of the Government departments – education, health, justice, social welfare, and so on. It would be independently chaired and would – akin to HIQA – hold to account the services being provided and independently insist on the best standards that can be secured.

The sad fact is that we are still, on average, losing two people a day to suicide.

We are unlikely to change attitudes and save lives until we address this problem as one that will worsen with an increasing population. Greater numbers of young people are currently exposed to circumstances and influences without the necessary care and support that we are capable of giving them.

Most importantly, a suicide prevention authority would set about synthesising suicide charity provision based on the unique offerings and merits of the 500 or so suicide charities currently in existence in Ireland.

We should learn the lesson from the eight attorneys general in 2011 by coming out and saying that we believe the proposed bill is the way forward and that we as solicitors give it our full support.

A copy of the draft bill is available by contacting info@3ts.ie.

The tragic story of JASPER BRETT

Ciaran O'Mara is the managing partner of Dublin firm O'Mara Geraghty McCourt

There is a tragic and unusual story behind the non-inclusion of the name of Jasper Brett, solicitor's apprentice, on the First World War memorial in the Four Courts. Ciaran O'Mara tells it

Readers of the *Gazette* (August/September 2014) would have seen the article on solicitors and apprentice solicitors from all over Ireland – north and south – who lost their lives in the First World War and who are commemorated on the Law Society's war memorial in the Four Courts.

The article pointed out an additional name on the *Gazette's* Roll of Honour, as published at that time, which did not feature on the war memorial. He was referred to in the article as 'Jason Brett', but his real name was Jasper Brett. There is a tragic and unusual story behind the discrepancy in the two lists, which deserves to be told in the 21st century. In dying, Brett had committed what was, at the time, considered to be a crime.

Early life

Jasper Brett was born in Dublin on 8 August 1895, the son of William and Mary Brett. He was one of seven children and lived at 18 Crosthwaite Park in present day Dun Laoghaire. His father, William Brett, was a solicitor practising on Bachelor's Walk on the Dublin quays.

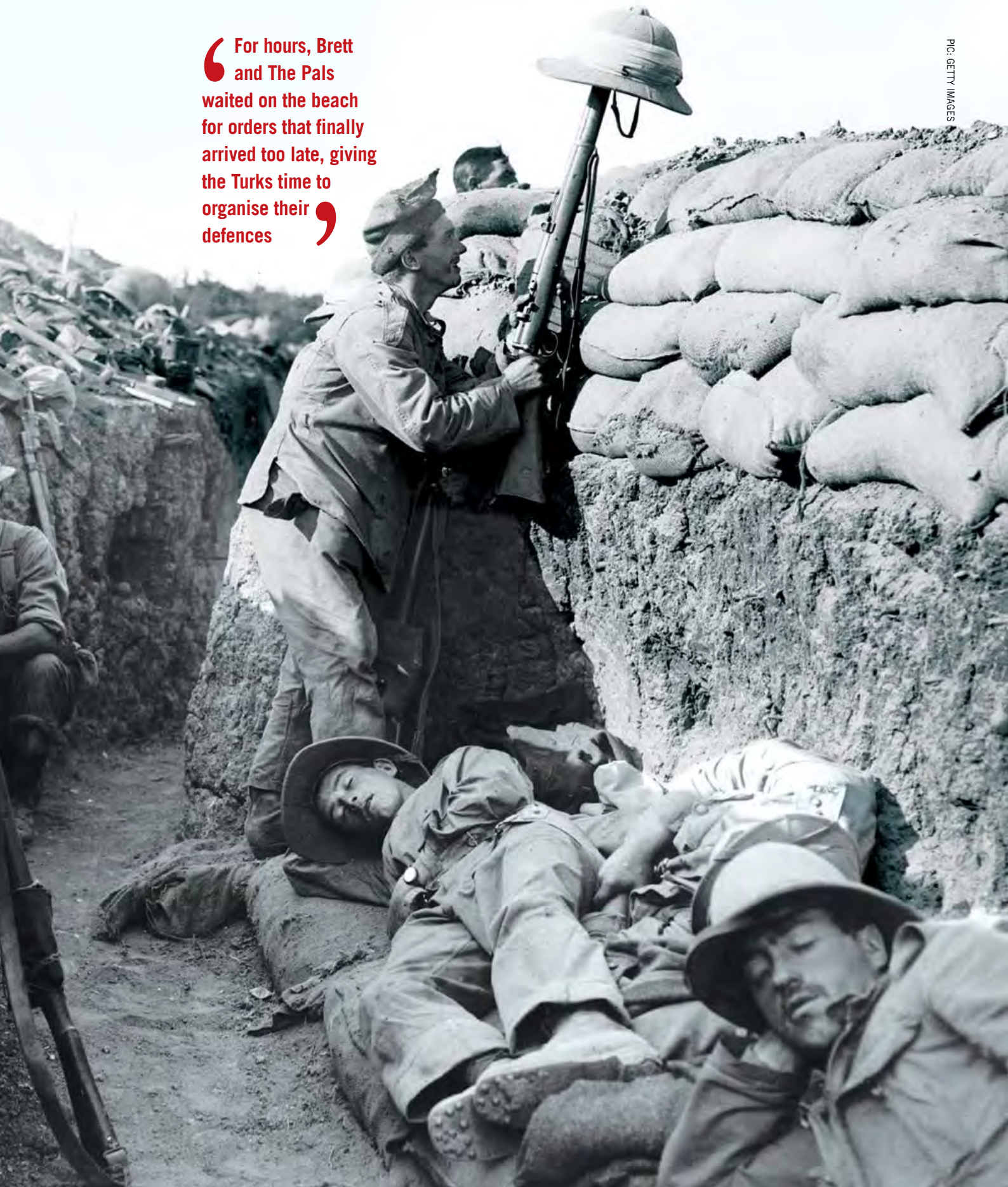
Jasper was educated at Monkstown Park School, near his home, and also at the Royal School in Armagh. From an early age, he was outstanding at sport, playing both rugby and cricket, while also excelling at athletics. On leaving school in 1912, young Jasper decided he wanted to be a solicitor and became apprenticed to his father at the age of 17. By now, he was established on the first team at Monkstown Rugby Club as a winger. He rapidly impressed, and travelled with the Ireland rugby team to Paris and London in 1914 for international matches, but was an unused reserve.

Brett made his debut for his country playing against Wales at Balmoral Showgrounds in Belfast on 14 March 1914, in what was to be the last international rugby match before the First World War. To be capped at 18 years of age is exceptional in rugby terms, and he must surely be one of the youngest players ever capped for his country.

Sadly, this was to be his only cap. The game was played in lashing rain and has been known ever since as 'The Battle of

at a glance

- Jasper Brett was a solicitor's apprentice who fought in WWI, but his name was not recorded on the solicitors' war memorial in the Four Courts
- He was discharged with shell shock after campaigns at Gallipoli and Salonika
- He died in February 1917: in dying, Brett had committed what was, at the time, considered to be a crime – the felony of suicide



> For hours, Brett and The Pals waited on the beach for orders that finally arrived too late, giving the Turks time to organise their defences

PIC: GETTY IMAGES

Balmoral' due to the constant fist-fighting and scuffles between both teams. It is reckoned to have been the dirtiest match ever played by the countries. Ireland ended the match with only 13 players due to injury, and lost the match 3-11. Brett appears to have been a lonely bystander on his wing.

Answering the call

There was to be hardly any more rugby for Jasper Brett. The Great War broke out in the summer of 1914 and, on 4 August, the British Empire (then including Ireland) was the last of the great powers to join in the conflict. The next day, the president of the Irish Rugby Football Union, Frank Browning, issued a call to all rugby players to join the army and started to hold drilling and recruitment sessions at the international ground at Lansdowne Road.

Brett was turning 19 and joined the new unit that became known as 'The Pals'. The idea was that young men would join with their friends and fight together. Hundreds of middle class and professional young men from many walks of life, and of different religious and political views, answered Browning's call and joined D Company, 7th Battalion, Royal Dublin Fusiliers. Many of them refused commissions to become officers in order to stay with their friends. Brett was one such.

Browning was a barrister by profession and worked as examiner of titles at the Land Registry in the Four Courts. He lived in Herbert Park in Ballsbridge and was a neighbour of Eoin MacNeill, the leader of the Irish Volunteers. Browning had been an international cricketer for Ireland for some 20 years, but was involved in rugby also, and had just become president of the IRFU. He was an arch-imperialist and, of course, a unionist. He placed advertisements in the newspapers and drummed up support for a volunteer corps, including The Pals. He had the rugby season cancelled and, like the unionist and nationalist leaders of Ireland, strongly encouraged young men to join the forces, which they did in their thousands. Brett's indentures as an apprentice continued, as the Law Society encouraged the recruitment. A great number of young lawyers and law students joined up.

There was to be one last game of rugby for Brett, in November at College Park, when The Pals played a friendly match. Just at that time, Turkey joined the war on the Central Powers' side. The Pals spent the winter training in the Curragh. They did trench-warfare training in the Phoenix Park and used the Royal Dublin Golf Club course on Bull Island as a shooting range. They left for Basingstoke in Hampshire on 29 April 1915. Units embarking for the front were not allowed to parade from their home towns, but The Pals insisted on being led by a band and pipers from what is now Collins' Barracks, down the quays and around College Green to their ship on the North Wall. As they passed the Four Courts, many judges and lawyers poured onto Inns Quay to wave off their colleague barristers and solicitors to war. Browning, too old to fight, was the last man to leave the ship at North Wall as D Company departed that evening.

Deadlock in the Dardanelles

The Dublin Fusiliers did not go to the Western Front, as the men had envisaged. Instead, as part of the 10th (Irish) Division, they were sent through the Mediterranean to take part in the landing at Suvla Bay in Gallipoli. This expedition was a vain, hopeless and ill-managed attempt to break the deadlock in the Dardanelles. The Pals consisted of young men who had no idea of what to expect. They had never experienced such hot weather before, and hardly any of them had set foot previously in continental Europe.

> The landings on 7 August 1915 were botched from beginning to end. The Pals were landed on the wrong beach. They had no maps. Their pack animals and water supplies were left behind in Egypt

The landings on 7 August 1915 were botched from beginning to end. The Pals were landed on the wrong beach. They had no maps. Their pack animals and water supplies were left behind in Egypt. The retired Indian Army general who was in command never set foot on shore, staying on his yacht. He was deemed utterly incompetent and was sacked a week later by Lord Kitchener.

For hours, Brett and The Pals waited on the beach for orders that finally arrived too late, giving the Turks time to organise their defences. In a letter to his parents, Jasper described the horrors of advancing across a dried-out salt lake under fire, with comrades around him being killed and wounded.

Nevertheless, in a heroic attack, the Irishmen took their objective of Chocolate Hill, which overlooked the sea. They held their position, despite the counter-charge by the Turks. After some days, they were relieved. They had suffered many casualties and were filthy, beset by flies and, worst of all, were mad for water to ease their thirst in the open ground at 35C-degree temperatures. They were under constant fire, day and night, from Turkish snipers.

On 15 August, they regrouped and the whole Irish Division was ordered to attack a ridge known as Keretch Tepe, which dominates the north side of Suvla Bay. This was an almost suicidal operation, but the Irish advanced up a steep cliff and engaged in close-quarter combat with the Turks. Despite their bravery, The Pals could not hold the ridge and the assault failed.

Jasper Brett was very fortunate to be still alive by the end of August. Only 79 of The Pals' company – out of 238 who landed – were still alive by then. He was one of the lucky minority to survive, but his health was very poor. He suffered from enteritis and colitis, to the extent that he had to be hospitalised, and no sooner was he discharged than he relapsed with dysentery and had to return to a hospital ship. The survivors of The Pals unit were dispersed to other units and, by the end of September 1915, the 10th Division was moved to Salonika in Greece.

Due to the shortage of officers, Brett was commissioned in the field to be a second lieutenant in the battalion in September, but he arrived in Salonika a damaged man, both physically and mentally. Many of his friends had died in Gallipoli. He had survived harrowing conditions. Suddenly, he was plunged into mountainous warfare, in freezing conditions, near Lake Dorian in Serbia. The Irish soldiers did not have winter gear and were ill-prepared for the blizzards and hardship of the Balkans. In early 1916, 20-year-old Lieutenant Brett gradually slipped into a state of shell shock. In June, he was taken to a hospital in Malta. At that stage, it was decided to ship him back to England, where he was admitted to Latchmere House, a hospital in Richmond, Surrey, that specialised in shell-shock cases. Treatment was primitive and ignorant. Many considered these young men to be shirkers and cowards, and not ill at all.

Five months later, in January 1917, the hospital discharged him as unfit for military service and he was sent home to Dublin, which was now changed utterly since the 1916 Rising. Frank Browning had been killed by the Irish Volunteers on Northumberland Road while leading his Volunteer Corps back from a route march on Easter Monday 1916.

Bête noire

William Brett hoped his son would recover at home and, for a while, he seemed to improve. On Sunday 4 February 1917, Jasper wrote to a friend, saying somewhat strangely that "water was my *bête noire*". He then asked that everyone should think of him "as I once was" and

PIC: IRISH LIFE MAGAZINE, MARCH 1915

Jasper Brett's last rugby match before heading to war. Taken in College Park around November 1914, while The Pals were in training, Jasper Brett can be seen in the white colours of The Pals, standing fifth from right, middle row. The team in striped jerseys is most likely Trinity College Dublin

concluded with the words "God's will be done." He signed it 'JT'. This was to be his last letter.

At 8.45pm, he left his family home at Crosthwaite Park and walked along the railway at Dalkey to the tunnel known as the 'Khyber Pass'. He lay down on the tracks, putting his neck on the rail. The 9.45pm train from Dublin passed, the driver heard a jolt, and he sent a message back at the next station. Railwaymen investigated and found Jasper's severed head. An inquest was held at Dalkey Railway Station, and the jury returned a verdict that Jasper Brett had committed suicide by putting himself on the railway track. The jury exonerated the railway company and stated that Jasper should not have been discharged from hospital because, in its opinion, "he was insane". It expressed sympathy to the Brett family.

William Brett wanted Jasper's war medals and wrote to the War Office seeking them. He said: "It simply broke his heart to be turned out [of the army] in mufti, without any medal to show he had served. He went through great hardship and danger ... and I have the letters to show that."

Yet, by the manner of his death, Jasper had committed a crime – the felony of suicide. To some, he may have been seen as a coward. This may well be the explanation why he did not feature on the Four Courts' war memorial.

A century has passed. It is a minor miracle that the memorial remains in place. For several decades since the Great War, specifically from the 1940s to the 1980s, it might not have been regarded as politically correct to allow such a memorial to remain. Indeed, I recall suggestions being made not that long ago that it should be removed. Ireland is now a far more mature and confident country, proud of its independence but remembering its complex past. We should continue as a profession, to remember these brave young men who gave their lives for their friends.

An inspector CALLS

It is often overlooked that Revenue investigations are criminal procedures. Admissions may be made by the taxpayer or his adviser that, although made with the best of intentions, can be damaging at a later stage. Setanta Landers points the finger

Setanta Landers is a solicitor in the Litigation Department of Reddy Charlton, Solicitors. He wishes to thank managing partner Paul Keane for reviewing this article

Revenue is entrusted with the authority to collect taxes lawfully owed to the State. Revenue powers, technologies, and sophistication have expanded enormously in the last 20 years. In Revenue enforcement proceedings, persons may find themselves in grave financial circumstances, facing a creditor with near unlimited resources who can utilise powers uniquely conferred on Revenue.

In June this year, a former newspaper delivery man, Mr O'Reilly, was jailed for failing to remit VAT returns from January 2008 to December 2011. His barrister had submitted to the judge that her client's case would have been difficult to prosecute had he not "put his hands up straight away". Judge Nolan in the Dublin Criminal Circuit Court commented that, though the unpaid amounts could be viewed as "modest", Mr O'Reilly had "neglected and ignored his obligations to Revenue". Judge Nolan accepted that O'Reilly was a good family man and a hard worker, but noted that everyone suffered if the State did not receive money, and sentenced him to 18 months.

Mechanics of an audit

Revenue audits are set out in chapter 4 of the 2014 Revenue *Code of Practice*. They are normally carried out at the taxpayer's place of business. The Revenue officer will attend and is required to produce evidence of identity. The taxpayer's agent is expected to attend.

It is important for practitioners to satisfy themselves as to the scope of the audit and the statutory powers on which the Revenue relies, and to seek copies of the written authorisations.

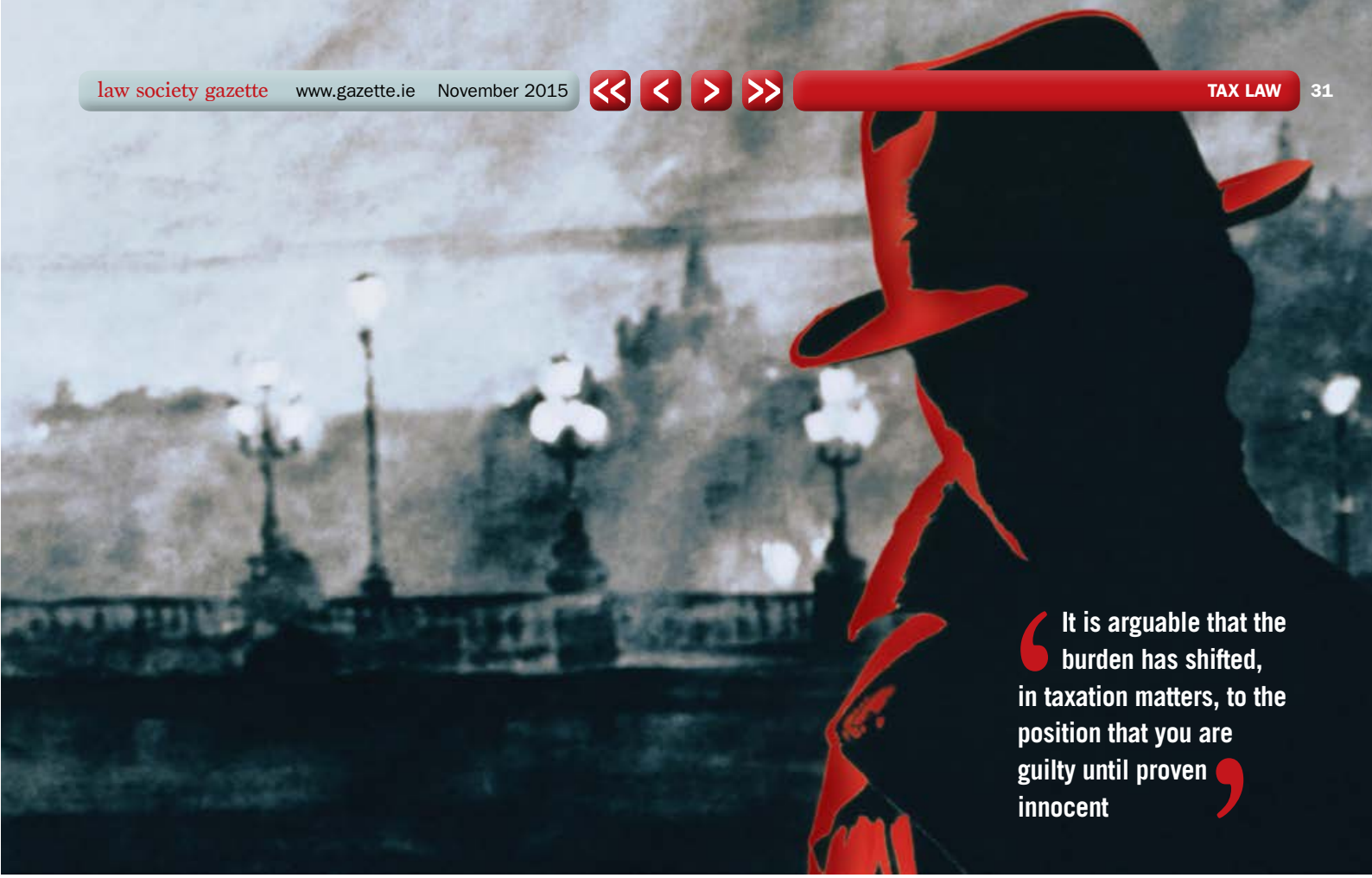
The 2014 *Code of Practice for Revenue Audits* sets out the guidelines to be followed by Revenue, taxpayers, and tax practitioners. It states Revenue's intention: "to serve the community by fairly and efficiently collecting taxes and duties and implementing custom controls".

The key operative words of this mission statement are 'fairly' and 'efficiently'. However, what is efficient might often not be fair, and what is fair might often not be efficient.

The *Code of Practice* sets out the types of audits and investigations that Revenue undertakes:

at a glance

- Revenue investigations are criminal procedures
- It is important for practitioners to satisfy themselves as to the scope of the audit and the statutory powers on which the Revenue relies, and to seek copies of the written authorisations
- Revenue's powers are similar to that of the gardaí investigating a crime. A person is investigated, has a right of appeal, and the sanctions may ultimately be penal
- Practitioners should adopt the approach that audits are the first step in a penal process



> It is arguable that the burden has shifted, in taxation matters, to the position that you are guilty until proven innocent

1) *Revenue non-audit compliance interventions* are assurance checks, aspect queries and profile interviews. A taxpayer is entitled to make an 'unprompted qualifying disclosure' on notification of these interventions.
2) *Revenue audit* is an examination of a tax return, a declaration of liability or a repayment claim, a statement of liability to stamp duty, or the compliance of a person with tax and duty legislation. A taxpayer is entitled to make a 'prompted qualifying disclosure' before examination of the books and records starts.
3) *Revenue investigation* is "an examination of the taxpayer's affairs where Revenue believes, from an examination of the available information, that serious tax or duty evasion may have occurred or a Revenue offence may have been committed. A Revenue investigation may lead to criminal prosecution."

Where a Revenue investigation has already started, a qualifying unprompted disclosure is not available.

Revenue's powers are similar to that of the gardaí investigating a crime. A person is investigated, has a right of appeal, and the sanctions may ultimately be penal. A person can go to jail as readily for deliberately mislabelling a crate of garlic when it enters the country as for the theft of it.

It is clear that properly authorised Revenue officers have exceptionally wide powers. Section 912B of the *Taxes Consolidation Act 1997* is of particular note. It allows an authorised officer to question a person detained in a garda station where the offences concerned are serious indictable offences under Revenue law.

Assessments and appeals

Revenue officers have the power to raise assessments under part 39 of the *Taxes Consolidation Act 1997*. These can be raised where no return has been made by the taxpayer or where a return is unsatisfactory.

Revenue is empowered to raise a notice of assessment under section 811A of the *Taxes Consolidation Act* where they have formed an opinion that a particular transaction is a tax avoidance transaction.

In general, appeals can be made within 30 days of the date of the notice of assessment by giving written notice. The onus is on the applicant to disprove an assessment.

If the inspector is of the opinion that the applicant is not entitled to appeal, they may refuse the appeal application and inform the person in writing.

A refusal of an appeal application may be appealed in writing to the Appeal Commissioners within 15 days. The Appeal Commissioners will obtain a copy of the notice of assessment, and they may also refuse the application and again notify the appellant in writing.

Unless an application for rehearing is made to the Circuit Court or the High Court, the Appeal Commissioners' assessment is final and conclusive.

In general terms, where a person is prevented from making an appeal against a notice of assessment within the normal 30-day limit due to absence, sickness or other reasonable excuse, an appeal may be made within 12 months of the date of the notice of assessment.

An appeal from the Appeal Commissioners must be made to the Circuit Court within ten days of the determination, and 21 days of the determination to the High Court. This timeframe is strict.

Interpretation of statutes by courts

In the Supreme Court in *O'Flynn Construction* (paragraph 70), O'Donnell J upheld that the same principles of statutory interpretation applied to taxation statutes as to other non-criminal statutes. The court stated that this was acknowledged implicitly

FOCAL POINT

revenue powers – obtaining information

TCA SECTION	POWER	REQUIREMENT
900	Power to call for production of books, records or information.	Written notice of not less than 21 days, which may not issue until a person is given a reasonable opportunity to produce the books for inspection.
903	Power to inspect PAYE.	Written authorisation to perform PAYE inspections. Must produce this written authorisation if requested.
904	Power of inspection of payments to certain contractors.	Written authorisation to perform relevant contracts inspections. Must produce this written authorisation if requested.
904A-J	Power of inspection of DIRT, assurance, investment undertakings, authorised insurers, qualifying lenders, savings managers, dividend withholding tax, professional services, notices of attachment.	Written authorisation to perform the appropriate audits. Must produce this written authorisation if requested.
905	Power to inspect documents and records.	Written authorisation to inspect any records in relation to any tax. May seek a District Court search warrant valid for one month from date of issue to enter by force (if required) and search a premises specified in the warrant and to examine, inspect and remove records. The approval of an assistant secretary in the Office of the Chief Inspector is required. Must produce this written authorisation if requested.
906	Authorised officers and An Garda Síochána.	Written authorisation to inspect records relating to PAYE, relevant contracts or any tax. A member of An Garda Síochána may arrest any person who obstructs the authorised officer.
908C	Search warrants for private premises. Power to compel persons there to give name, home address, and occupation and to produce material and give access including passwords to authorised officers.	Application to District Court on oath that there are reasonable grounds that an offence has or is being committed, and that material and evidence is to be found in that place.
908D	Order to produce evidential material.	Application to District Court on oath that there are reasonable grounds that an offence has or is being committed and that material consists of or includes computer records.
908E	Order to produce documents or provide information.	Application to District Court on oath that there are reasonable grounds for that an offence has or is being committed for an order in relation to making documents available or provision by a person of particular information by answering questions or making a statement containing the information.
908F	Power to require review of privileged legal material.	Court application – the Revenue can request that documents over which privilege is claimed be furnished to the court for determination as to whether the document is properly privileged.
909	Power to require a return of property (that is, a statement of affairs for each asset) on oath.	By written notice within a specified time frame, being not less than 30 days.
911	Power to inspect valuation of assets.	Must produce, on request, written evidence of authority to inspect properties for capital gains tax valuations.
912	Power to inspect computer documents and records.	Section is silent on requirement to produce authorisation.
S912B	Power to question suspects in garda custody.	Must be authorised in writing. Relates to a specified offence where a person has been detained under section 4 of the *Criminal Justice Act 1984*: an authorised officer, accompanied by a member of the Garda Síochána, may attend at and participate in the questioning of a person so detained.

FOCAL POINT

revenue enforcement powers

TCA SECTION	OVERVIEW
960A	Expands the section to CGT, VAT, excises, stamp duty, CAT.
960B	Allows Revenue to nominate any Revenue officer to act and discharge functions.
960H	Allows Revenue to set a payment provided for a tax liability to be offset against a separate outstanding liability.
960I	Allows Revenue to sue for the recovery of taxes owed.
960J	A certificate of tax due and owing shall be evidence of the tax owed unless the contrary is proved.
960K	A certificate signed by the collector general shall be enforceable on its face, and there is no need to go to the courts to affirm its enforcement.
960L	Revenue maintains its own network of 16 sheriffs. If the taxpayer does not respond to a final demand, the caseworker can proceed immediately with sheriff enforcement.
960M	The collector general may apply in their own name for the grant of a bankruptcy summons under section 8 of the *Bankruptcy Act 1988* or present a petition for adjudication under section 11 of that act.
960O	Revenue debts have priority where companies are wound up.
960P	Revenue debts have priority in bankruptcy.

in *McGrath v McDermott*. The court applied a purposive interpretation to taxation legislation.

For clarity, a purposive interpretation is where the court looks to interpret the statute with the view as to what the legislature intended when enacting it. Lord Simon explained this approach in *Maunsell v Olins*: "The first task of a court of construction is to put itself in the shoes of the draftsman – to consider what knowledge he had and, more importantly, what statutory objective he had … being thus placed … The court proceeds to ascertain the meaning of the statutory language."

The alternative approach is a literal or constructionist interpretation that applies to criminal matters and is a strict interpretation.

Revenue enforcement

Revenue's enforcement powers were enhanced by the *Finance Act (No 2) 2008*. This centralised Revenue's enforcement powers in the revised sections 960A to 960P of the *Taxes Consolidation Act*.

Revenue maintains, as one would expect, a dedicated enforcement unit. The main measures are:

- Bankruptcy,
- Forced sales of property,
- Committal to prison,
- Mareva injunctions,
- Garnishee orders, and
- Receiver by way of equitable execution.

Revenue has an obligation to publish a list of defaulters pursuant to section 1086 of the *Taxes Consolidation Act* within three months of the end of each quarter, unless a qualifying disclosure is accepted or where the sum does not exceed €33,000 or 15% of the tax ultimately due.

> A person can go to jail as readily for deliberately mislabelling a crate of garlic when it enters the country as for the theft of it

Practical recommendations

Parties advising clients should be mindful of the following:

- Advisors should satisfy themselves whether the Revenue intervention is an audit or an investigation.
- Practitioners should satisfy themselves of the scope of the audit, the statutory authority, and whether the information sought is within the scope of that written authority.
- A pre-audit check should be carried out to ensure that liabilities are identified, if they exist, and what category of behaviour they will likely fall into. The penalty tables (appendix IV of the *Code of Practice*) should be consulted.
- It is crucial to take detailed contemporaneous minutes of all meetings and telephone calls and keep full records of all inter-party correspondence. They may be required for court at a later stage.
- It is important, where litigation is contemplated, to consult a solicitor at an early stage.
- Professional legal advice should be sought before making any disclosures, and prompted disclosures should be carefully considered and structured. They should be made in writing, and no admissions should ever be made orally.

Penal process

Revenue investigations are penal. Revenue prosecutions are penal. Practitioners should adopt the approach that audits are the first step in this penal process. In classic criminal proceedings, defendants have the benefit of legal aid, literal interpretation of statute, and a body of law that balances the right of the individual against the requirement of criminal justice system. We are all familiar with the criminal concept of 'innocent until proven guilty'.

In Revenue proceedings, defendants have no such automatic rights. They suffer from a purposive interpretation by the courts of tax statutes and cannot apply for legal aid at the initial Revenue investigation stage.

Revenue can raise assessments and certificates in lieu of a return, and indeed bring enforcement proceedings based on those assessments and certificates. The burden to overturn those assessments is on the taxpayer. It is arguable that the burden has shifted, in taxation matters, to the position that you are guilty until proven innocent.

Whether that benefits society at large is a social and political question.

look it up

Cases:

- *Maunsell v Olins* [1975] AC 373 House of Lords
- *McGrath v McDermott* [1988] IR 258
- *Revenue Commissioners v O'Flynn Construction & ors* [2011] IESC 47

Legislation:

- *Taxes Consolidation Act 1997*

Literature:

- *Code of Practice for Revenue Audit and other Compliance Interventions*

Modern FAMILY

Aoife Byrne is a solicitor. She has 14 years' experience of working with the Legal Aid Board in the Refugee Legal Service and at Law Centres in Cork and Dublin. The views expressed in this article are her own, and do not necessarily reflect those of the Legal Aid Board

The 'golden thread' linking aspects of the new *Children and Family Relationships Act 2015* may be the best interests of the child but, in practical terms, a dark cobweb of competing interests may engulf its good intentions and put considerable strain on court resources. Aoife Byrne takes a first look at the legislation

"No child should have to face legal insecurity because his or her family is not a married family," stated Minister for Justice Frances Fitzgerald in April 2015. The *Children and Family Relationships Act 2015* seeks to remedy this insecurity.

The act runs to 180 sections and is a multi-layered piece of legislation that significantly amends the (already dissected) *Guardianship of Infants Act 1964*, among numerous other enactments. The Law Reform Commission recommended the 1964 act be replaced; instead, it is further revised.

The 2015 act is intended to protect the best interests of the child with reference to European legislation, the *UN Convention on the Rights of the Child*, and our own Constitution. The relationship between the parents is not at the forefront of the act. Changes envisaged in the act are reflective of new family formations, in particular where the archetypal nuclear family, with married heterosexual parents and 2.5 children, is becoming less standard. Ireland has witnessed a sea change in family types, with many children now growing up in households led by single mothers, single fathers, cohabiting couples, a grandparent or other relative, blended families, or homosexual parent(s). In 2014, almost 40% of births were registered as being outside marriage. The marital family remains recognised in articles 41 and 42 of the Constitution as being the most important social unit in the State. Children born outside marriage should not be unequal.

Family ties

The range of people who may apply for orders in relation to children has been significantly broadened by the act, as has the definition of family members. A mother is still a

at a glance

- The *Children and Family Relationships Act 2015* significantly amends the *Guardianship of Infants Act 1964*
- The 2015 act is intended to protect the best interests of the child
- The range of people who may apply for orders in relation to children has been significantly broadened by the act, as has the definition of family members
- Children can now enjoy a legal relationship with those who care for them on an ongoing basis and play a significant role in their lives
- The new act does not address the issue of surrogacy

mother. The term 'parent' replaces father and mother. A parent is defined as a mother, father, or second female parent of a child. Automatic guardianship rights extend to unmarried fathers if certain criteria are met. The insertion of section 6C(11) to the 1964 act helpfully sets out, for the first time, an exhaustive list of rights and responsibilities of a guardian.

A non-married father in the original *Guardianship of Infants Act 1964* had no right to seek or agree guardianship; the mother of an 'illegitimate' child was the child's sole guardian. The *Status of Children Act 1987* gave an unmarried father the right to apply for joint guardianship. The 2015 act, inserting section 6B(2) and (3) to the 1964 act, now allows an unmarried father automatic guardianship of his child, provided he has cohabited with the mother for a period of 12 months, including three consecutive months following the birth of the baby. Married couples have automatic guardianship rights to a child or children born within that union, regardless of the length of time between wedding and birth. There is a presumption of paternity for married couples.

Children can now enjoy a legal relationship with those who care for them on an ongoing basis and play a significant role in their lives, under the amended section 6C of the 1964 act. Rights may now be sought and granted to those acting *in loco parentis*, with no blood ties to the child in question. O'Hanlon J, in *Hollywood v Cork Harbour Commissioners*, referred to '*in loco parentis*' as "any situation where a person assumes the moral responsibility, not binding in law, to provide for the material needs of another". Now, under the amended section 6C(2)(b) of the 1964 act, a non-parent may apply for guardianship where he or she has been caring for the child on a day-to-day basis for over 12 months, and there is no other parent or guardian able or willing to act.

Under the amended section 6C(2)(a) of the 1964 act, any non-parent who is married, in a civil partnership, or cohabiting for over three years with a parent, and sharing the responsibility for a child's day-to-day care for over two years, may apply to be guardian of that child. This would appear to apply, for example, to situations where both parents are guardians, but the child is residing with one parent and a new partner or step-parent. Any

application for guardianship by a non-parent must be on notice to all other parents or guardians and the Child and Family Agency. The amended section 6C(9) of the 1964 act may restrict the rights/responsibilities of a court appointed non-parent guardian.

Under the amended section 6E(1) of the 1964 act, if a guardian is incapable of exercising his or her guardianship rights or responsibilities due to serious injury or illness, a nominated person may be appointed temporary guardian.

Under the amended section 11E of the 1964 act, certain relatives and other persons may apply for custody of a child, with the consent of all guardians. A relative is a grandparent, brother, sister, uncle or aunt of a child. The category of 'other persons' is similar to those who may apply for guardianship under section 6C(2)(a) and (b).

> Changes envisaged in the act are reflective of new family formations, in particular where the archetypal nuclear family, with married heterosexual parents and 2.5 children, is becoming less standard

Married with children

The 31st amendment to the Constitution (enacted on 28 April 2015) makes specific reference to the voice of the child. In the context of proceedings brought by the State or concerning adoption, guardianship, custody or access, the best interests of the child are paramount, and the views of any capable child shall be ascertained and given due weight according to age or maturity.

How will this be achieved? This is not yet clear, but may take the form of a child meeting with the judge, or an expert report, or evidence from a qualified professional (guardian *ad litem* or others) to determine and convey the views of the child to the court.

Section 31(2) of the 2015 act sets out 11 factors to be taken into account by the court in determining the best interests of the child. This does not appear to be an exhaustive list and includes the views of the child, and the child's physical, psychological and emotional needs.

Section 31(3) goes on to say that a court should have regard to previous or potential household violence. The impact of violence on the safety of the child and other members of the household is to be evaluated, as is the capacity of the perpetrator of the violence to properly care for the child. Domestic violence includes behaviour by a parent, guardian, or household member causing or attempting to cause physical harm to any member of the household, and includes sexual abuse or causing any household member to fear for his or her safety. Cases of this type, where the child's views are to be taken into account, will require deft but delicate handling. The child's views should not be elucidated by fear or undue influence by a dominating party, which can, of course, include a parent.

Diff'rent strokes

Under the amended section 18A of the 1964 act, an option is given to a parent or guardian, with an order for custody or access to a child, to bring enforcement proceedings where it is claimed that access or custody is unreasonably withheld. Enforcement remedies can include additional access in lieu of that withheld, reimbursement for expenses incurred, and an obligation to attend family counselling or a parenting programme. Additional access cannot be granted without the views of the child being taken into account. Section 18D of the 1964 act also gives a parent or guardian the right to apply for reimbursement where another parent or guardian with an order for custody or access in their favour, fails to exercise it, to the financial detriment of the other party (and often the disappointment of the child).

Adoption laws have changed in that, for the first time, same-sex couples and unmarried couples can adopt jointly and be guardians jointly. A second female parent now has the right to be consulted in a situation where her donor-conceived child is being adopted.

Donor-assisted human reproduction can no longer be anonymous. Instead, there will be a national donor-conceived person register, from which a child may request some details of the donor, once he or she reaches 18, under section 34(1) of the 2015 act. As some couples currently undergoing fertility treatment may not agree, this portion of the act will not commence for a minimum of one year after enactment.

The *Children and Family Relationships Act 2015* does not address surrogacy.

Family guy

While safeguarding a child's rights is, of course, the appropriate objective, roadblocks may occur. The rights of a natural parent, including a mother, may be eroded by multiple family members in dispute, each with his or her own ideas as to the best interests of a child. A child may be manipulated by a parent, even unwittingly, to declare a legal scenario as preferred, when the reality is far from the case.

Children are easily swayed by gifts and attention – not so much by discipline and boundaries. Professionals who are available to prepare reports are thin on the ground. The expense of the preparation of a report can be very prohibitive. If a party is legally aided, the cost will be a burden on already stretched services.

The 2015 act does not introduce a national register of guardians. If a child's guardian changes address or leaves the jurisdiction, notification requirements may form an additional burden for the legal process. If a child's guardians are not agreed on a certain course of action that, for example, needs emergency attention – such as medical treatment or a passport application – court proceedings may be necessary. Section 31(5) refers to unreasonable delay in determining court proceedings as contrary to the best interests of the child. Additional conflicting legal rights will create increased legal disputes to be determined by our courts, already burdened with lengthy lists.

This ambitious legislation remains to be fully enacted. The progressive expansion in the law pertaining to many of our most common family law scenarios will add significantly to the detail of family law practices. The implementation of previous recommendations regarding specialist family courts may become increasingly necessary.

This is the first in a series of articles on the new Children and Family Relationships Act 2015.

look it up

Cases:

- *Hollywood v Cork Harbour Commissioners* (1992) 1IR 457

Legislation:

- *Children and Family Relationships Act 2015*
- *Guardianship of Infants Act 1964*
- *Status of Children Act 1987*

PIC: iSTOCK

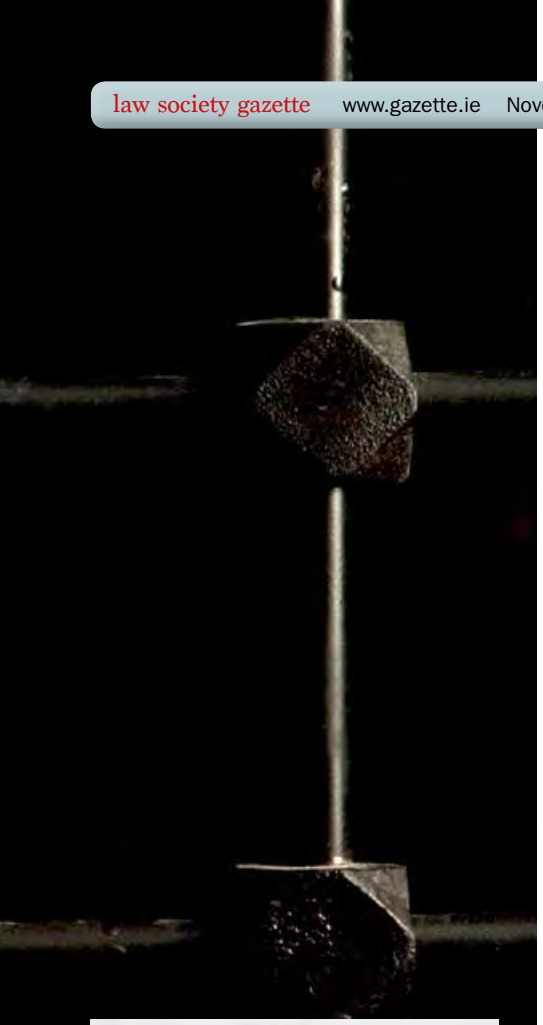
Until proven GUILTY

Maggie Armstrong is a journalist and theatre critic with the Irish Independent

The Irish Innocence Project is one branch of a global network that gives law students casework that could set an innocent person free. The project has between 35 and 40 cases in progress as of September 2015. Maggie Armstrong investigates

at a glance

- A group of some 20 law students from Griffith College, Trinity College and Dublin City University are part of the Irish Innocence Project
- The project is a charity, with limited resources, but it has taken on cases in other jurisdictions: it is currently working with the nephew of an Irishwoman on death row in Kenya and on a case in Greece
- It also secured the first posthumous pardon in the history of the State for a man who was hanged 75 years ago




Harry Gleeson

Mark Marku

An innocent man was hanged. Another is serving a sentence for offences he could not have committed, not least because he was in a different country when they happened. These are two cases of a miscarriage of justice that families of vulnerable people had been fighting alone. The Irish Innocence Project decided to investigate them.

Student years are often remembered as carefree, detached. But a group of some 20 law students from Griffith College, Trinity College and Dublin City University have worked on cases that will profoundly affect what they bring to the working world.

They are part of the Irish Innocence Project, one branch of a global network. It was set up in 2009 by David Langwallner when he became dean of law at Griffith College. A barrister, his students at King's Inns remember him as an original thinker and often outspoken. As dean, he wanted to "create a human rights consciousness in students". One way to do this was by improving the quality of clinical legal education.

The Innocence Project gives students casework that could set an innocent person free. The motivation behind their work, says David, goes right back to Voltaire. "The worst crime anyone can commit is to falsely accuse and falsely convict someone – it's a double injustice to the system."

> **According to the Innocence Project, misidentification is the cause of 72% of wrongful convictions**

In the name of the father

June was a busy month. The project's first international conference was held, where speakers included Gareth Peirce, the defence counsel for Gerry Conlon, one of the Guildford Four. Peirce talked about the emotional trauma of a wrongful conviction. A film festival showed *In the Name of the Father* and other rousing films highlighting injustice.

The project has between 35 and 40 cases in progress as of September 2015. Most of these involve long sentences for murder, rape or sexual assault. The director, student and supervising lawyers who work pro bono on the project apply a rigorous vetting process in taking on cases. "Within the Irish context, we have to rely on whether there's a new or newly discovered fact within the structure of the *Criminal Procedure Act*, which is either a fact that was not known or the full significance of which was not appreciated at the time," Langwallner says.

The project is a registered charity, but has limited resources and is constantly seeking funding. It hadn't planned to take on cases in other jurisdictions. But it is working with the nephew of an Irishwoman on death row in Kenya and on a case in Greece, of which more to follow. Nor had they imagined seeking justice for a man hanged 75 years ago, says the student caseworker who took it on single-handedly.

'Conspiracy of silence'

Tertius Van Eeden had just finished second year law at Griffith College. A chef by trade, he wanted to exercise some legal muscle over the summer. He phoned David Langwallner and, days later, they were in Cashel, Co Tipperary, sitting with an impassioned group called Justice for Harry Gleeson.

Their relative had been hanged for murder in 1941, and they believed he was innocent. It was a famous case, mired in corruption and "a conspiracy of silence", according to Gleeson's barrister, Seán Lemass. Tertius returned to his young family in Kilkenny with a grim assignment.

Harry Gleeson was an unmarried farm manager, a fiddle player and a greyhound lover. He was aged 38 and out walking his dogs when, one morning, he stumbled on the body of a woman. He backed away and reported it to the gardaí. He swiftly became a suspect – the only suspect – in her murder. Five months later, on 23 April 1941, he was hanged in Mountjoy Prison.

The deceased was Moll McCarthy, an unconventional woman who had borne seven children to five men and lived in poverty. She had relationships with prominent figures in the area of New Ross, just near Cashel. Harry knew her, and sometimes gave her potatoes, as he said in a statement that would be used to build a case against him.

Combing through trial transcripts, Tertius was able to pinpoint discrepancies in the case. Once the project established that there was insufficient evidence against Harry Gleeson, he began looking at the records from angles that writers and researchers before him hadn't pursued.

First of all, the time of death had to be re-examined. The body was found on Thursday 21 November 1940. The State had claimed that Harry committed the crime the previous night. But the body temperature recorded by the doctor was consistent with death occurring a

Katie O'Leary, who is working on the case of Mark Marku, an Albanian incarcerated for the past five years in a Greek prison

David Langwallner, dean of law at Griffith College, director of the Irish Innocence Project and co-director of the European Innocence Network

Tertius Van Eeden, the Griffith College student who was instrumental to the posthumous exoneration of the executed Harry Gleeson

couple of hours before the body was found, and not the night before.

To strengthen this, Tertius sought a forensic pathologist – Dr Peter Cummings – who had examined JFK's autopsy materials to give evidence in that cold case. From the trial transcripts, Dr Cummings established "that the earliest the murder could have happened was 5:15am, a time we knew Harry was at home in bed sleeping."

'Slapdash feature'

Harry Gleeson shared lodgings with a labourer, Tommy Reid. They both worked on the farm of Harry's uncle, John Ceasar, and were "inseparable", says Tertius. Statements showed that Harry woke Tommy up at about 7am every morning and they lit a fire, breakfasted, and milked the cows.

As emerged too late, the police tried to force Tommy to say he saw Harry coming in the door on the morning the body was found. When Tommy refused to give false evidence, they beat him. At the trial, the prosecution changed the charge against Gleeson and said he killed Moll McCarthy "on about 20 or 21 November". It was just one slapdash feature in the catastrophic trial.

Another was the weapon used. Harry Gleeson was accused of shooting the victim with a shotgun belonging to his uncle. Evidence against him included a receipt for a box of cartridges bought by John Ceaser. But the actual firearms register documenting the sale was withheld by the prosecution in court. Had it been produced, the judge would have seen there was no entry corresponding to the receipt for cartridges.

The project found another way to show that the weapon used was not John Ceaser's. Pathology reports showed that the victim had been shot twice. A double barrel shotgun has two triggers and the shots go off almost simultaneously. Harry Gleeson's uncle owned a single barrel shotgun, which only fires one shot at a time.

The Innocence Project also secured an affidavit from a nurse, Anne Martin Walsh. In the 1980s, this nurse had tended to a dying woman who told her that she witnessed "her mother being killed in her kitchen, and that an innocent man died". The woman was Moll's daughter Mary. This 'dying declaration' greatly assisted the project in proving Gleeson's innocence.

> I'm lucky to have gone to law school and learnt about all of this. It's good to be able to give something back to people who don't know where to turn

The project opened Harry Gleeson's case file in June 2012. That October, they made a submission to the Minister for Justice. "I had no sleep for about two months. I was up until all hours of the morning reading the trial transcripts before I drafted the submission," says Tertius. "I just had to solve this puzzle."

The file ran to 93 pages. When he opened it, Minister for Justice Alan Shatter's eyes landed on the last words Harry Gleeson said to his defence counsel, Sean MacBride. "I will pray tomorrow that whoever did it will be discovered and that the whole thing will be like an open book. I rely on you then to clear my name. I have no confession to make, only that I didn't do it."

On 1 April this year, Harry Gleeson was granted the first posthumous pardon in the history of the state. David Langwallner says: "There's great justice for the family. There is a sense of closure and healing."

It's complicated

Another case presents the complications of geographical separation and a foreign language and alphabet. Katie O'Leary was in final year at Trinity College when she was assigned to a case in Greece, where there is no Innocence Project. She planned to work on the project for six months. It's now been three years. "I couldn't tear myself away."

The person they believe is wrongly convicted is Mark Marku, an Albanian who, like many

FOCAL POINT

global network

The Innocence Project is a global network, founded in New York in 1992 by two attorneys, Peter Neufeld and Barry Scheck – famous for serving on OJ Simpson's defence team. The project pioneered DNA evidence in seeking exonerations. As of September 2015 in the US, 330 exonerations have been made due to DNA testing. There are now innocence projects in 68 countries around the world.

Albanians after the revolution in 1989, moved to Greece for a better life. In Crete, he met Julie O'Reilly, a preschool teacher from Carlow. The couple married and settled in Ireland in 2009. Mark, a plasterer and waiter, struggled to hold down work. In summer 2010, he was visiting his brothers when he was arrested in Heraklion on the island of Crete. He was convicted of a series of armed robberies and car thefts and sentenced to more than 18 years in prison. But when a number of the offences occurred, Mark was in Ireland.

The robberies, of jewellery shops, occurred over two months. The Innocence Project launched an appeal – together with Marku's Greek lawyer Leonidas Pegiadis, nicknamed 'The Lion' – and caseworkers like O'Leary gathered evidence to show he was in Ireland on most of the dates. O'Leary secured affidavits and records from Aer Lingus, social welfare, the Mount Wolseley Hotel where Marku worked, and from the gym.

The project identified serious holes in the identification evidence used against Marku. The police had used a line-up that was not based on visual identification: the offenders had been wearing balaclavas. Instead, they relied on a 'body mass identification', which relies on the height and build of a suspect. According to innocenceproject.org, misidentification is the cause of 72% of wrongful convictions. Added to this, it emerged that the police had influenced at least one witness by showing them photographs of the suspects before they were put in a line-up.

The DNA evidence used against Marku was also flimsy. The police had claimed to find Marku's DNA on gloves left in a car. But they could not produce the gloves at either the trial or the appeal, which also showed that the chain of custody was less than scrupulous. The project sought a DNA expert, Dr Greg Hampikian, to give evidence on the infinitesimal chance that the DNA on the supposed gloves matched Marku's DNA.

Shock treatment

There were obstacles in the project's appeal. When Marku was arrested, he signed a statement saying he had been involved in the theft of a car. But, O'Leary says: "It was written in Greek, which isn't his first language, and he doesn't read Greek very well. Marku also says he was beaten and subjected to electric-shock treatment by the police before he signed the statement."

In the courtroom, says O'Leary, there were "racial slurs" from the prosecution against Albanians. The appeal was adjourned six times before the case was heard. They managed to reduce his sentence, but they are taking the case to the Supreme Court in Athens to seek his exoneration. O'Leary has flown to Greece four times and given evidence. She has visited Marku in prison. There are five defendants being tried as a group, and one is Marku's younger brother Andreas, who has been released on parole. Katie says she believes he is innocent too.

Mark Marku has been incarcerated for five years as of September.

Katie O'Leary is now a trainee solicitor at McCann FitzGerald, and promoted to a supervising lawyer with the Irish Innocence Project. "I'm lucky to have gone to law school and learnt about all of this. It's good to be able to give something back to people who don't know where to turn."

NATURAL selection

James Seymour is a partner in Berwick Solicitors and provides immigration advice

The State has often argued that the justice minister's absolute discretion in naturalisation applications should not be subject to supervision by the courts. Recent case law differs strongly, however. James Seymour carries out the character assessment

Most legal practitioners specialising in immigration are familiar with the naturalisation application form (Form 8), issued by the Irish Naturalisation and Immigration Service (INIS). It is a form regularly signed by an applicant, in the presence of a solicitor, seeking to be naturalised in Ireland.

After witnessing the applicant's signature, a solicitor usually has no further involvement in the naturalisation process. The final decision in a naturalisation application lies with the Minister for Justice and Equality under section 15 of the *Irish Nationality and Citizenship Act 1956*. However, if the application is refused, the applicant will often return to the solicitor who witnessed his/her signature for further advice.

In many cases, the reason for refusal for naturalisation can be simply down to errors on the application form or the applicant not having the requisite duration of legal residency in the State prior to making the application. In these cases, correction of the application form and/or completion of the passage of time will remedy the defects in the application.

Section 15 of the *Irish Nationality and Citizenship Act 1956* states that upon "receipt of an application for a certificate of naturalisation, the minister may, in his absolute discretion, grant the application, if satisfied that the applicant complies with the following conditions" for naturalisation:

a) She/he is of full age,
b) Is of good character,
c) Has (in the case of application made after the expiration of one year from the passing of the act) given notice of his/her intention to make the application at least one year prior to the date of the application,
d) Has had a period of one year's continuous residency in the State immediately before the date of application and, during the eight years immediately preceding that period, has had a total residency in the State amounting to four years,
e) Intends in good faith to continue to reside in the State after naturalisation,
f) Has made, either before a justice of the District Court in open court, or in such manner as the minister, for special reasons, allows, a declaration (in the prescribed manner) of fidelity to the nation and loyalty to the State.

at a glance

- Most solicitors are familiar with the naturalisation application form, as it has to be signed by an applicant in the presence of a solicitor
- The solicitor usually has no further involvement following completion of the form, save where naturalisation is refused
- The final decision in a naturalisation application lies with the Minister for Justice and Equality
- The only route of appeal in such an application is by way of an application for judicial review to the High Court
- The High Court has set out what are reasonable – and unreasonable – grounds for refusal in naturalisation applications

Good character

In my experience, many applications for naturalisation are refused by the minister due to the applicant not being of 'good character', by virtue of the applicant having a criminal record, even if for minor road traffic offences.

PIC: PHOTOCALL IRELAND

The application form for naturalisation requires the applicant to supply details of any criminal convictions and the names and addresses of three Irish citizens as referees who can confirm the applicant's 'good character'.

The only route of appeal against the minister's refusal is by way of an application for judicial review to the High Court. Recent High Court decisions give clear guidance as to the extent of the minister's discretion.

It has often been argued by the State that the minister's absolute discretion in these applications should not be subject to supervision by the courts. However, the minister's decision in these cases is not only subject to judicial review, but must be *bona fide*.

In *Hussain v Minister for Justice, Equality and Law Reform*, Hogan J stated: "In the light, therefore, of the Supreme Court's conclusion in the *State (Lynch) v Cooney* (and, indeed, a wealth of subsequent case law to similar effect), the minister's assessment of the good character issue is plainly subject to judicial review."

In *Mallak v Minister for Justice, Equality and Law Reform*, the Supreme Court, referring to the 1987 judgment in *State (Daly) v Minister for Agriculture*, stated: "Such powers may only be exercised in conformity with the Constitution. The view of the minister must be seen to be *bona fide* held, to be factually sustainable and not unreasonable."

> **Many applications for naturalisation are refused by the Minister for Justice and Equality due to the applicant not being of 'good character'**

In *Meadows v Minister for Justice, Equality and Law Reform*, regarding administrative decisions and proportionality, Murray CJ stated: "In examining whether a decision properly flows from the premises on which it is based and whether it might be considered at variance with reason and common sense, I see no reason why

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the court should not have recourse to the principle of proportionality in determining those issues."

Recent decision: *GKN* case

A recent High Court decision on this subject is *GKN v Minister for Justice and Equality*. In this case, the applicant for naturalisation was married to an Irish citizen and had two Irish-born children. He had submitted a covering letter with his application, which notified the minister that he had been involved in a minor road traffic accident and, as a result, disqualified in January 2007 from driving for a period of two months. In the letter, the applicant further stated that he had a clean record since then and had not come to the attention of the gardaí.

The minister sought further information in respect of the accident. A more detailed account of the accident was furnished, confirming that the applicant had scratched a parked car while in his own motor vehicle and that he stopped and tried to locate the owner of the car, but to no avail. The applicant confirmed that he later left the scene and was subsequently arrested by gardaí and convicted of a hit-and-run offence and leaving the scene of the accident. He was disqualified and fined. He duly paid the fine and furnished a copy of the receipt to the minister.

The minister then refused his application for naturalisation "given the serious nature of the offence". In the subsequent judicial review, the court referred to the definition of 'good character' in the British judgment in *Hiri v Secretary of State for the Home Department*: "The defendant must consider all aspects of the applicant's character. The statutory test is not whether applicants have previous criminal convictions – it is much wider in scope than that. In principle, the applicant may be assessed as a person 'of good character' … even if he has a criminal conviction".

And, further, "the defendant ought to have regard to the outline facts of any offence and any mitigating factors".

Mac Eochaidh J in *GKN* held that it was incumbent on the minister to consider the more detailed information supplied in relation to the incident that gave rise to the conviction, and accordingly quashed the decision of the minister to refuse the certificate of naturalisation to the applicant.

Be prepared

When advising on the completion of a naturalisation application, firstly advise applicants that, if they have any criminal convictions, it would be prudent to firstly disclose those convictions in the application form and provide as much detail as is possible, such as a copy of the summons, garda statements, and receipts for payment of any fines. A proper, frank and comprehensive explanation of the convictions may convince the minister to exercise her/his discretion positively.

FOCAL POINT

what is 'good character'?

In *Hussain v Minister for Justice, Equality and Law Reform*, Hogan J acknowledges that there is no settled or fixed interpretation of the words 'good character', but he does state at paragraph 15: "Viewed in this statutory context, it means that the applicant's character and conduct must measure up to reasonable standards of civic responsibility as gauged by reference to contemporary values. The minister cannot, for example, demand that applicants meet some exalted standard of behaviour that would not realistically be expected of their Irish counterparts. Nor can the minister impose his or her own private standard of morality which is isolated from contemporary values."

look it up

Cases:

- *GKN v Minister for Justice and Equality* [2014] IEHC 478
- *Hiri v Secretary of State for the Home Department* [2014] EWHC 254 (Admin)
- *Hussain v Minister for Justice, Equality and Law Reform* [2011] IEHC 171
- *LGH v Minister for Justice, Equality and Law Reform* [2009] IEHC 78
- *Mallak v Minister for Justice, Equality and Law Reform* [2012] IEHC 59
- *Meadows v Minister for Justice, Equality and Law Reform* [2010] IESC 3
- *State (Daly) v Minister for Agriculture* [1987] IR 165
- *State (Lynch) v Cooney* [1982] IR 337
- *Tabi v The Minister for Justice, Equality and Law Reform* [2010] IEHC 109

Legislation:

- *Irish Nationality and Citizenship Act 1956*
- *Irish Nationality and Citizenship Act 1986*
- *Irish Nationality and Citizenship Act 2004*

council report

4 September 2015

System 360

The Council received a presentation from consultants Mazars and from the Society's director of finance and administration on a proposal ('System 360') to replace, modernise and enhance the Society's regulation, membership and education systems, with no increase in the practising certificate fee.

The director general noted that the existing system had been introduced in 1990, at a time when there were 3,500 solicitors on the Roll. The system was severely limited to basic data storage and processing and had very poor reporting capabilities. In addition, investment by the software provider was decreasing, as fewer organisations used its programming language. The capital expenditure on any new system would have to be approved by the members at the annual general meeting.

Liam McKenna (Mazars) noted that the Society's main system was five years older than the internet and could no longer meet the changing needs and expectations of the Society and its members. It was also separate to the education database, thus creating 'silos of functionality and data' that hampered the creation of a connected and complete picture of members' needs. The Society's ability to serve its members in a satisfactory fashion and to add value to the profession was severely limited by very old technology that could not have its life extended indefinitely.

System 360 would provide an integrated solution for education, membership and regulation that would provide members with self-service options over any internet-connected device. Increased automation would reduce the time taken for the Society to deliver its member services. The new system would provide the Society with the ability to support the eConveyancing Project, including advanced electronic signatures. System 360 would support the extension of and increased income from professional training services and would also remove the risks associated with legacy technology.

Director of finance Cillian MacDomhnaill said that System 360 would provide security, integrity, speed and flexibility, with the possibility of customised interfaces. It would enable user-friendly engagement with external users and, indeed, active links with external providers. It would increase member engagement, would make life easier for solicitors' firms in their interaction with the Society, and would assist the Society to achieve the representational model envisioned in the report on the future of the Law Society. Estimated costs at this stage were up to €2.9m. While cost estimates would be more accurate before the AGM, actual costs could not be confirmed until after a three-month discovery phase conducted by the chosen vendor. Importantly, in terms of the Society's finances, System 360 could be introduced without any impact on the practising certificate fee.

Council members raised issues in relation to security features, data protection, data access requests, ownership of the software, design and development of the software, digital signatures, the age and limitations of the current system, the stability of the current system, the importance of staying ahead of technological developments, ease of access, avoidance of risk, the need for tight management of costs, and the value of one cohesive Society-wide system. Most Council members spoke in favour of the proposal.

The president noted that, ultimately, the decision would rest with the members at the annual general meeting.

Motion: professional indemnity insurance

"That this Council approves the Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) Regulations 2015."

Proposed: Michael Quinlan

Seconded: Richard Hammond

The Council approved draft regulations to introduce three changes to the existing PII regime: (1) a regulatory obligation for firms to ensure that their proposal form did not contain any material misrepresentation or non-disclosure, save for an innocent misrepresentation or non-disclosure; (2) an exclusion permitting an insurer to exclude liability to the extent that payment of a claim would cause the insurer to breach financial sanctions in place on a country; and (3) in relation to conduct of claims, the exclusion of any party other than the insured from bringing an application for a direction to the Society and the granting of a discretion to the Society to appoint an independent expert to discharge this function.

Report on meeting with Revenue

The president and the director general reported on a meeting with the chairman of the Revenue Commissioners and others, during which the benefits of having a better relationship had been recognised by both parties. This had followed a period during which the Society's relationship with Revenue had suffered from the lack of genuine consultation with the Society in advance of the introduction of local property tax a few years previously. The Society had raised a number of issues, including stamp duty and LPT, and it had been agreed that the best way forward would include the establishment of small working groups, with representatives from the relevant Law Society committees, with an oversight group to meet occasionally and intervene if matters could not be resolved. Brendan Twomey suggested that, as the Department of Social Protection was a key player in relation to some of the issues, with a nine-week delay in securing PPS numbers, a representative from that department should be included in future meetings.

Setanta case

Stuart Gilhooly reported that judgment had been handed down that morning by Mr Justice Hedigan. He was pleased to report that the High Court had confirmed that the MIBI was liable in respect of claims against the policyholders of Setanta Insurance. The Law Society had presented the legal arguments against the MIBI in the case. An estimated 1,700 claimants could now look to the MIBI to meet their claims. After 17 months of correspondence with the MIBI and the Minister for Transport, there was now clarity for injured claimants, Setanta policyholders and their legal advisors.

eVoting Discussion Paper

The Council considered a discussion paper on electronic voting in Law Society Council elections, which had been prepared in response to a motion passed at the AGM in 2014. The discussion paper summarised the existing voting system, the experiences of other organisations with electronic voting, online engagement between the Society and its members, the bye-laws of the Society, various considerations if electronic voting were to be introduced, and the case against it.

A number of Council members expressed the view that any move towards electronic voting should await the introduction of System 360. Concerns were also expressed about the quality of electronic voting, the low level of engagement online, the need for a familiar interface, the cynicism that attached to the failed Government electronic voting initiative and the attention span online. On the other hand, the importance of engaging with younger members was emphasised, as was the increasing use of technology throughout society generally. The possibility of a hybrid system, or a phased introduction, was suggested. The Council noted that the discussion paper would go back to the members at the annual general meeting in November.

BUSINESS LAW COMMITTEE

Summary Approval Procedure under the *Companies Act*

The Summary Approval Procedure (SAP) is one of the new significant features of the *Companies Act 2014*. The SAP (found in part 4 of the act) implements the recommendations contained in the *First Report of the Company Law Review Group* that a streamlined validation procedure be introduced, with minor variations depending on the transactions. It replaces the procedures contained in sections 60(2) to 60(11) and section 256 of the *Companies Act 1963* and section 31 of the *Companies Act 1990*. The act came into force on 1 June 2015, pursuant to SI 218 of 2015.

Section 201 of the act provides that this procedure will allow certain transactions, which would otherwise be restricted and generally require High Court sanction in order to be approved by the shareholders of a company, to be carried out once the approved procedure is followed.

The Summary Approval Procedure itself is taken, in substance, from sections 60(2) to (11) of the *Companies Act 1963* and section 34 of the *Companies Act 1990*, as inserted by section 78 of the *Company Law Enforcement Act 2001*. The Summary Approval Procedure is comprised of a special resolution and a declaration by the directors in a preceding meeting. Provision is made for the passing of the resolution by a written resolution, as was previously the case.

Such transactions will include the following:

1) Financial assistance for acquisition of own shares,
2) Loans to directors and persons connected to them,
3) Reduction of share capital,
4) Variation of capital on reorganisations,
5) Domestic mergers of certain Irish companies,
6) Members' voluntary windings-up, and
7) Pre-acquisition reserves.

In respect of options (3) to (5) above, a company may elect to use the court-approved process as before; however, for the four remaining transactions, the Summary Approval Procedure must be utilised.

Who can avail of the SAP?

The Summary Approval Procedure can be availed of by private companies limited by shares, designated activity companies, and companies limited by guarantee. It should be noted, however, that a private company that is a subsidiary of a public limited company cannot avail of the procedure.

Public limited companies can only use the SAP for the following matters:

- To effect a members' voluntary winding up,
- Treatment of pre-acquisition profits, and
- For the making of loans to directors or connected persons.

The procedure

The exact procedure will be dependent on the particular transaction. However, there are key steps that will apply to each procedure, including the following:

1) The members will be required to pass a special resolution (and in the case of mergers, a unanimous resolution) to approve and provide the directors with the authority to carry out the restricted activity. The resolution must be passed not more than 12 months prior to the commencement of the activity.
2) The directors of the company will then be required to deliver a declaration containing the information relating to the restricted activity to the Companies Registration Office (CRO) within 21 days of the activity being carried out. If such information is not delivered within the prescribed period, the activity will be declared invalid.

Declaration of directors – general requirements

- The declaration should be signed by a majority of the directors. In companies where there is an even number of directors, in excess of one half of the directors must make the declaration.
- The declaration should be made at a meeting of the directors, which has been held not earlier than 30 days before the passing of the special resolution.
- If the special resolution of the members of the company validating the transaction is passed by the holders of less than 90% in nominal value of the voting shares, then the guarantee or security cannot be given before the expiry of 30 days after the special resolution has passed.
- A copy of this declaration must be delivered to the CRO not later than 21 days after the date of the activity. It should be noted, however, that the High Court can validate an out-of-time filing where it is just and equitable for them to do so. A copy of the special resolution must also be delivered to the CRO within 15 days of the date on which the special resolution was passed.
- Three new forms have been prepared by the CRO in respect of directors' declarations in sections 203, 204 and 205 of the act. The use of these forms for the declarations is not, however, compulsory. It has been indicated by the CRO that these are administrative forms, which were prepared in order to assist the staff of the CRO in processing directors' declarations, and also to assist directors in making such declarations. On the basis that the directors' declaration contains the information required under the act, it is unlikely that the declaration would be rejected by the CRO.

Form of the declaration for particular restricted activities

In relation to particular restricted activities, the act prescribes certain matters that must be addressed in the declaration:

- When the transaction relates to financial assistance validation, the directors are required, under section 203 of the act, to expand on the matters that are to be addressed in the declaration, so as to include the following:

a) The circumstances in which the transaction or arrangement is to be entered into,
b) The nature of the transaction or arrangement,
c) The person or persons to or for whom the transaction or arrangement is to be made,
d) The purpose for which the company is entering into the transaction or arrangement,
e) The nature of the benefit that will accrue to the company directly or indirectly from entering into the transaction or arrangement, and
f) That the declarants have made a full inquiry into the affairs of the company and that they have formed the opinion that the company, having entered into the transaction or arrangement, will be able to pay or discharge its debts and other liabilities in full as they fall due during the period of 12 months after the date of the relevant act.

- Section 204 provides that, where the restricted activity is a reduction in company capital referred to in section 85(1), or a transfer or disposal referred to in section 92(1), the declaration will state the information listed in paragraphs (a) to (g) of section 204 of the act. These matters include, among other things, a declaration that the company will be in a position to pay its debts as they fall due during the next 12 months after

practice notes

the transaction.
- A similar declaration must be made in the event that the restricted activity concerned is to wind up a solvent company in a members' voluntary winding up (see section 207 of the act).

The Summary Approval Procedure does not generally require an independent accountant's report. In relation to reductions of share capital, variations of capital, pre-acquisition reserves, and voluntary winding-ups, however, it will also be necessary for a report to be prepared by an independent person confirming that the directors' declaration as to solvency is not unreasonable. The 'not unreasonable' standard appears to be a lesser standard than the 'reasonable' standard required in other similar reports under current legislation. This requirement was introduced by section 34 of the *Companies Act 1990* as inserted by section 78 of the *Company Law Enforcement Act 2001*. No such provision was previously contained in section 60 of the *Companies Act 1963*.

Directors' liability

Under section 210 of the act, if a director provides an opinion that the company will be able to discharge its debts and other liabilities in full within the 12-month period following the transaction or arrangement, the company, on application by various parties, may find a director to be personally liable without limitation of liability for all debts or other liabilities of the company.

In addition, if the company is subsequently wound up in the 12 months after the date of the making of the declaration, and its debts and liabilities were not discharged in full within that period, a presumption arises that the director made the declaration without reasonable grounds for the opinion provided.

Cancellation of the special resolution

If the special resolution is passed by members of the company holding less than 90% in nominal value of the voting shares, the guarantee or security cannot be given before the expiry of 30 days after the special resolution has been passed.

It is open to the holders of not less than 10% in nominal value of the issued share capital to apply to the court within 30 days after the date on which the special resolution was passed to have the resolution varied. A person who voted in respect of the special resolution initially is not entitled to join an application seeking the cancellation of the resolution.

While the Summary Approval Procedure will result in such transactions being carried out in a more efficient and cost-friendly manner for companies, it will be necessary that caution is exercised in following the procedure in order for transactions not to be subsequently declared invalid.

CONVEYANCING COMMITTEE

Retaining a copy of requisitions and replies with title deeds

The Conveyancing Committee notes that it is usual practice for purchasers' solicitors to retain a copy of the requisitions on title and replies with the title deeds to a property, following completion of a transaction, and lodge them with the lending institution in a certificate-of-title case. The committee notes that the practice of some practitioners is to send the requisitions to the Land Registry along with the application for first registration. However, this means that the replies to requisitions in previous transactions on title are not readily available to the solicitor instructed in the next transaction.

The committee recommends that practitioners retain a copy of the requisitions and replies with the remaining documents of title in cases where the original requisitions and replies are lodged in the Land Registry with the original deeds grounding first registration.

legislation update

11 August – 12 October 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

Thirty-fourth Amendment of the Constitution (Marriage Equality) Act 2015

Amends article 41 of the Constitution by the insertion of a new section 4, which provides that marriage may be contracted in accordance with law by two persons without distinction as to their sex.

SELECTED STATUTORY INSTRUMENTS

Civil Registration (Amendment) Act 2014 (Commencement) Order 2015

Number: 357/2015

Provides for the commencement of various sections of *the Civil Registration (Amendment) Act 2014* with effect from the 18 August 2015.

Commencement: 18/8/2015 for various sections

Urban Regeneration and Housing Act 2015 (Commencement) Order 2015

Number: SI 364/2015.

The *Urban Regeneration and Housing Act 2015* (no 33 of 2015), other than section 34, comes into operation on 1 September 2015.

Commencement: 1/9/2015 all sections except for section 34

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, m.gaynor@lawsociety.ie.*

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 Kevin M O'Gara, solicitor, formerly practising as Kevin O'Gara, Unit 4, Level 1, the Reeks Gateway, Killarney, Co Kerry, and in the matter of the *Solicitors Acts 1954-2011* [8391/DT129/13 and High Court record 2015 no 25 SA]

Law Society of Ireland (applicant)
Kevin M O'Gara (respondent solicitor)

On 4 December 2014, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

First complaint

1) Failed to complete three conveyancing transactions,
2) Deducted fees from moneys received for stamp duty,
3) Failed to reply to multiple correspondence from the Society about the complaint,
4) Failed to comply with a direction of the Complaints and Client Relations Committee on 14 September 2011 that he should furnish a full update in relation to the matter within 21 days,
5) Failed to attend a meeting of the Complaints and Client Relations Committee on 14 December 2011, despite being required to attend,
6) Failed to comply with a further direction of the Complaints and Client Relations Committee, as set out in detail in a letter from the Society to the respondent solicitor dated 16 December 2011,
7) Failed to attend a meeting of the Complaints and Client Relations Committee on 28 February 2012, despite being required to attend,
8) Failed to attend a further meeting of the Complaints and Client Relations Committee on 3 April 2012, despite being required to attend,
9) Failed to attend a further meeting of the Complaints and Client Relations Committee on 15 May 2012, despite being required to attend,
10) Failed to attend a further meeting of the Complaints and Client Relations Committee on 26 June 2012, despite being required to attend.

Second complaint

1) Failed to reply to multiple letters from the Society in relation to the complaint,
2) Failed to process a claim as instructed by a named client,
3) Failed to comply with a direction of the Complaints and Client Relations Committee that he should furnish a full update in relation to the matter within 21 days,
4) Failed to comply with a further direction of the committee, made on 14 December 2011, that he should, on or before 15 January 2012, furnish the ledger card, his letter pursuant to section 68 of the *Solicitors (Amendment) Act 1994*, and a copy of the bill of costs,
5) Failed to furnish the information sought by a named client's new solicitors,
6) Failed to attend a meeting of the Complaints and Client Relations Committee on 28 February 2012, despite being required to do so,
7) Failed to attend a meeting of the Complaints and Client Relations Committee on 15 May 2012, despite being required to attend,
8) Failed to attend a meeting of the Complaints and Client Relations Committee on 26 June 2012, despite being required to attend.

Third and fourth complaints

1) Failed to comply with an undertaking dated 22 August 2008 relating to a property in Killarney in respect of named clients,
2) Failed to comply with an undertaking dated 10 December 2007 relating to a property at Killarney in respect of a named client,
3) Failed to reply to numerous letters from the Society,
4) Failed to comply with a direction of the Complaints and Client Relations Committee made on 14 September 2011 that, in respect of the undertaking of 22 August 2008, he furnish a full update together with the ledger card within 21 days,
5) Failed to comply with a direction of the Complaints and Client Relations Committee made on 14 September 2011 that, in respect of the undertaking of 10 December 2007, he should furnish a full update together with the ledger card within 21 days,
6) Failed to respond to a copy of a letter in relation to each of these two undertakings from a named client to the Society dated 6 October 2011 when subsequently furnished by the Society to him,
7) Failed to attend a meeting of the Complaints and Client Relations Committee on 14 December 2011, despite being required to attend,
8) Failed to comply with a direction of the Complaints and Client Relations Committee on 14 December 2011 that, in relation to the update previously required, the committee directed that the respondent solicitor should furnish detailed information on or before 20 January 2012 in relation to the title of the properties that was the subject matter of the two undertakings,
9) Failed to attend the meeting of the Complaints and Client Relations Committee on 3 April 2012, despite being required to attend,
10) Failed to attend the meeting of the Complaints and Client Relations Committee on 16 May 2012, despite being required to do so,
11) Failed to attend the meeting of the Complaints and Client Relations Committee on 26 June 2012, despite being required to attend.

Fifth complaint

1) Failed to comply with an undertaking in respect of a named client, dated 4 November 2010,
2) Failed to reply to numerous correspondence from the Society,
3) Failed to attend the meeting of the Complaints and Client Relations Committee on 3 April 2012, despite being required to attend,
4) Failed to comply with a direction of the Complaints and Client Relations Committee on 3 April 2012 that he furnish detailed information on the title that was the subject matter of the complaint,
5) Failed to attend the meeting of the Complaints and Client Relations Committee on 15 May 2012, despite being required to attend,
6) Failed to attend the meeting of the Complaints and Client Relations Committee on 26 June 2012, despite being required to attend.

Five further complaints on behalf of EBS Limited

1) Failed to comply with an undertaking dated 27 November 2006 in respect of a named client,
2) Failed to comply with an undertaking dated 11 May 2009 in respect of a named client,
3) Failed to comply with an undertaking dated 24 March 2006 in respect of a named client,
4) Failed to comply with an undertaking dated 19 May 2006

in respect of a named client,
5) Failed to comply with an undertaking dated 25 April 2006 in respect of a named client,
6) Failed to reply to multiple correspondence from the Society,
7) Failed to attend a meeting of the Complaints and Client Relations Committee on 3 April 2012, despite being required to attend,
8) Failed to comply with a direction of the Complaints and Client Relations Committee made in respect of each of the five outstanding undertakings on 3 April 2012,
9) Failed to attend a meeting of the Complaints and Client Relations Committee on 15 May 2012, despite being required to attend,
10) Failed to attend a meeting of the Complaints and Client Relations Committee on 26 June 2012, despite being required to attend.

Eleventh complaint

1) Failed to comply with an undertaking dated 11 December 2008 to Listowel Credit Union Limited in respect of named clients,
2) Failed to reply to numerous correspondence from the Society about the complaint,
3) Failed to comply with a direction of the Complaints and Client Relations Committee to provide details of the precise state of the transaction within 21 days to the committee or at all,
4) Failed to attend a meeting of the Complaints and Client Relations Committee on 3 April 2012, despite being required to attend,
5) Failed to attend a meeting of the Complaints and Client Relations Committee on 15 May 2012, despite being required to attend,
6) Failed to attend a meeting of the Complaints and Client Relations Committee on 26 June 2012, despite being required to attend.

The tribunal ordered that the matter go forward to the High Court and, on 8 June 2015, the President of the High Court made the following orders:
1) That the name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) That the respondent pay to the Society the costs of the High Court proceedings and the costs of the proceedings before the Solicitors Disciplinary Tribunal, including witness expenses, to be taxed in default of agreement.

In the matter of Christopher (otherwise known as Brendan) Walsh, a solicitor practising as Christopher B Walsh, Solicitor, 90 Park Drive Avenue, Castleknock, Dublin 15, and in the matter of the *Solicitors Acts 1954-2011* [4940/DT107/14]
Law Society of Ireland (applicant) Christopher (Brendan) Walsh (respondent solicitor)
On 9 June 2015, the Solicitors Disciplinary Tribunal sat to consider an application against the respondent solicitor and found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
1) Failed to comply with part or all of the undertaking dated 16 November 2005 to the complainant, EBS Building Society, in a timely manner or at all,
2) Failed to respond adequately to correspondence sent to him by the complainant, EBS Building Society,
3) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Law Society.

The tribunal ordered that:
1) The respondent solicitor do stand censured,
2) The respondent solicitor pay a sum of €500 to the compensation fund, and
3) The respondent solicitor 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 Gregory F O'Neill, a solicitor formerly practising as Greg O'Neill, Solicitor, Suite 109, The Capel Building, Mary's Abbey, Dublin 7, and in the matter of the *Solicitors Acts 1954-2011* [3365/DT107/13]
Law Society of Ireland (applicant) Gregory F O'Neill (respondent solicitor)
On 10 June 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
1) Claimed the benefit of withholding tax, despite the fact that he carried out the relevant work while an employee of the complainant and failed to refund this amount to the complainant,
2) Failed to discharge fees on the completion of cases to the complainant,
3) Failed to reply adequately or at all to the Society's correspondence, in particular, letters dated 19 January 2009, 6 February 2009, 19 February 2009, 15 December 2009 and 19 January 2010.

The tribunal ordered that the respondent solicitor:
1) Do stand censured,
2) Pay a sum of €1,000 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 Paul Madden, a solicitor formerly practising as Paul Madden & Company, Solicitors, Fitzpatrick Square, Clones, Co Monaghan, and in the matter of the *Solicitors Acts 1954-2011* [10035/DT205/13 and High Court record 2015 no 55 SA]
Law Society of Ireland (applicant) Paul Madden (respondent solicitor)
On 11 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
1) Caused or allowed an estimated deficit to arise on the client account in the sum of in or about €1,422,067 as at 11 September 2013,
2) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €242,624 as at 11 September 2013,
3) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €126,841as at 11 September 2013,
4) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €193,500 as at 11 September 2013,
5) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €176,744 as at 11 September 2013,
6) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €175,000 as at 11 September 2013,
7) Caused or allowed a deficit in respect of the client account of a named client of approximately €77,986 as at 11 September 2013,
8) Caused or allowed a deficit in respect of the client account of a named client in the estimated sum of in or about €62,302 as at 11 September 2013,
9) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €60,000 as at 11 September 2013,
10) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €56,858 as at 11 September 2013,
11) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €38,550 as at 11 September 2013,
12) Caused or allowed a deficit in respect of the client account of

a named client in the sum of in or about €36,982 as at 11 September 2013,
13) Caused or allowed a deficit in respect of the client account of a named client in the estimated sum of in or about €27,500 as at 11 September 2013,
14) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €25,000 as at 11 September 2013,
15) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €25,395 as at 11 September 2013,
16) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €25,000 as at 11 September 2013,
17) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €16,625 as at 11 September 2013,
18) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €11,833 as at 11 September 2013,
19) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €12,010 as at 11 September 2013,
20) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €7,965 as at 11 September 2013,
21) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €7,500,
22) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €5,481 as at 11 September 2013,
23) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €4,425 as at 11 September 2013,
24) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €5,000 as at 11 September 2013,
25) Caused or allowed a deficit in respect of the client account of a named client in the sum of in or about €1,500 as at 11 September 2013,
26) Misappropriated clients' money by (a) transferring around €577,912 to the solicitor's office account as purported professional fees and for his own use, (b) using around €716,380 to finance other unrelated client matters through a series of teeming and lading, (c) paying €25,000 to his wife, and (d) using around €103,330, which cannot be accounted for,
27) Made numerous misrepresentations to Mary Devereux, investigating accountant, in respect of her report dated 12 July 2010 in relation to the deficit on the client account of a named client of €156,414.64,
28) Made material misrepresentations to Damien Colton, investigating accountant, in respect of the interim investigation report dated 8 August 2011, in respect of his named client, to conceal a deficit on the client account at that time,
29) Made a material misrepresentation to the Regulation of Practice Committee at its meeting on 12 October 2011, in respect of a named client, to conceal the deficit on the client account,
30) Made material misrepresentations to Damien Colton, investigating accountant, during the course of his investigation on 29-30 August and 2 September 2013 in respect of a fictitious client,
31) Created a fictitious client file, including fictitious correspondence and attendance notes in respect of a fictitious client,
32) Misappropriated client funds of €156,414 belonging to a named client to pay various personal expenses, including some or all of the following: (a) MBNA personal credit card bill of €13,000 on 8 May 2006, (b) purchase of a grand piano for €19,800 on 26 May 2006, (c) further payment of an MBNA personal credit card bill of €15,000 on 3 August 2006, (d) in all, making 13 transactions between 8 May 2006 and 12 May 2007, thereby expending all client funds belonging to a named client,
33) Conducted an extensive practice of teeming and lading between client accounts to mask and conceal the deficit on the client account,
34) Made a material misrepresentation to the Regulation of Practice Committee in respect of the reimbursement of the client account and also the non-disclosure of the estimated deficit of €1.4 million on the client account.

The tribunal ordered that the matter go forward to the High Court and, on 22 June 2015, the President of the High Court ordered that:
1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) The respondent solicitor pay the whole of the Society's costs and witness expenses in the Solicitors Disciplinary Tribunal proceedings, to be taxed in default of agreement,
3) The respondent solicitor pay to the Society the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of Paul Madden, a solicitor formerly practising as Paul Madden & Company, Solicitors, Fitzpatrick Square, Clones, Co Monaghan, and in the matter of the *Solicitors Acts 1954-2011* [10035/DT96/14 and High Court record 2015 no 52 SA]

Law Society of Ireland (applicant) Paul Madden (respondent solicitor)

On 11 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him to AIB Bank on behalf of a named client over property at Ardee, Co Louth, by undertaking dated 10 August 2004.

The tribunal ordered that the matter go forward to the High Court and, on 22 June 2015, the President of the High Court ordered that:
1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) The respondent solicitor pay the whole of the Society's costs and witness expenses in the Solicitors Disciplinary Tribunal proceedings, to be taxed in default of agreement,
3) The respondent solicitor pay to the Society the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of Paul Madden, a solicitor formerly practising as Paul Madden & Company, Solicitors, Fitzpatrick Square, Clones, Co Monaghan, and in the matter of the *Solicitors Acts 1954-2011* [10035/DT98/14 and High Court record 2015 no 53 SA]

Law Society of Ireland (applicant) Paul Madden (respondent solicitor)

On 11 March 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 expeditiously, within a reasonable time, or at all with an undertaking given by him in respect of named clients over property at Clones, Co Monaghan, to the complainant building society/bank dated 15 February 2007,
2) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him on behalf of a named client over property at Clones, Co Monaghan, to the complainant building society/bank dated 5 March 2007,
3) Failed to comply expeditiously,

within a reasonable time, or at all with an undertaking given by him on behalf of named clients over property at Aghaboy, Co Monaghan, to the complainant building society/bank by undertaking dated 26 July 2007,
4) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him on behalf of named clients over property at Clones, Co Monaghan to the complainant building society/bank by undertaking dated 3 December 2007,
5) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him on behalf of named clients over property at Clones, Co Monaghan, to the complainant building society/bank dated 13 December 2007,
6) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him on behalf of a named client over property at Newbliss, Co Monaghan, to the complainant building society/bank dated 26 May 2008.

The tribunal ordered that the matter go forward to the High Court and, on 22 June 2015, the President of the High Court ordered that:
1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) The respondent solicitor pay the whole of the Society's costs and witness expenses in the Solicitors Disciplinary Tribunal proceedings, to be taxed in default of agreement,
3) The respondent solicitor pay to the Society the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of Paul Madden, a solicitor formerly practising as Paul Madden & Company, Solicitors, Fitzpatrick Square, Clones, Co Monaghan, and in the matter of the *Solicitors Acts 1954-2011* [10035/DT104/14 and High Court record 2015 no 54 SA]
Law Society of Ireland (applicant)
Paul Madden (respondent solicitor)
On 11 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him on behalf of a named client over property at Carrick-on-Shannon, Co Leitrim, to KBC Homeloans by undertaking dated 2 November 2008.

The tribunal ordered that the matter go forward to the High Court and, on 22 June 2015, the President of the High Court ordered that:
1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
2) The respondent solicitor pay the whole of the Society's costs and witness expenses in the Solicitors Disciplinary Tribunal proceedings, to be taxed in default of agreement,
3) The respondent solicitor pay to the Society the costs of the High Court proceedings, to be taxed in default of agreement.

In the matter of Gerard Corcoran, a solicitor formerly practising as principal of JH Powell & Sons, Solicitors, at East Green, Dunmanway, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [5559/DT108/14]
Law Society of Ireland (applicant)
Gerard Corcoran (respondent solicitor)
On 23 June 2015, the Solicitors Disciplinary Tribunal sat to consider an application against the respondent solicitor and found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
1) Failed to comply with part or all of the undertaking dated 8 January 2009 to Springboard Mortgages Limited in a timely manner or at all,
2) Failed to respond in a timely and/or adequate manner to one or more letters from Springboard Mortgages Limited,
3) Failed to respond in a timely and/or adequate manner to one or more letters from the Law Society,
4) Failed to comply with a direction of the committee to provide the Society with a progress report on or before 30 June 2013.

The tribunal ordered that:
1) The respondent solicitor do stand censured,
2) The respondent solicitor pay a contribution of €1,000 towards the whole of the costs of the Law Society

In the matter of Francis McArdle, solicitor, formerly practising as McArdle & Associates, Solicitors, 10 Roden Place, Dundalk, Co Louth, and in the matter of the *Solicitors Acts 1954-2011* [2472/DT143/13 and High Court record 2015 no 44 SA]
Law Society of Ireland (applicant)
Francis McArdle (respondent solicitor)
On 4 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to comply with a direction of the Complaints and Client Relations Committee made on 20 September 2012, whereby the respondent solicitor was directed to forward a copy of his file and associated documents to the complainant within 21 days.

The tribunal ordered that the matter go forward to the High Court and, on 29 June 2015, the President of the High Court ordered, on consent, that:
1) The respondent solicitor not be permitted to practise as a sole practitioner or in partnership; that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of no less than ten years' standing, to be approved in advance by the Society,
2) The respondent solicitor pay a sum of €5,000 to the compensation fund,
3) The respondent pay the Society the costs of the Solicitors Disciplinary Tribunal proceedings when taxed or ascertained,
4) The respondent pay the Society the costs of the High Court proceedings when taxed or ascertained.

In the matter of John Hussey, a solicitor practising as principal in the firm of John Hussey and Company, Solicitors, 3 Sráid Uí Rahille, Mainistir Fhear Maí, Co Chorcaí, and in the matter of the *Solicitors Acts 1954-2011* [6113/DT135/14]
Named client (applicant)
John Hussey (respondent solicitor)
On 2 July 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in respect of the following complaint as set out in the affidavit of the applicant. The applicant alleged that the respondent solicitor made a liar of the applicant to the tribunal in that he, the respondent solicitor, had denied any knowledge of having sent a private investigator to the applicant's mother's house with a financial offer to withdraw the complaint that had been made by the applicant to the tribunal. It was on 21 December 2007. The investigator came to the house. The precise statement that the applicant alleged made a liar of him is identified in the passage appearing on pp108-109 of the transcript 6113/DT49/06. The applicant stated that no professional person would give such dubious answers under oath.

The tribunal ordered that the respondent solicitor:
1) Do stand admonished and advised,
2) Pay the reasonable expenses incurred by the applicant in respect of his attendance before the tribunal, to be vouched to the tribunal registrar.

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

A DIGITAL SINGLE MARKET FOR EUROPE

On 6 May, the European Commission published its communication *A Digital Single Market Strategy for Europe* (COM(2015) 192 final). In it, the commission affirms that the creation of a digital single market (DSM) is one of its key priorities. The initiative involves a number of the commission's directorates-general, including DG Connect, DG Internal Market, DG Justice and DG Competition.

A DSM is one in which the free movement of goods, persons, services and capital is ensured and where individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition, and a high level of consumer and personal data protection, irrespective of their nationality or place of residence.

The achievement of a DSM is clearly linked to international competitiveness. The communication contends that the creation of a DSM will ensure that the EU maintains its position as a world leader in the digital economy, helping European companies to grow globally. In that regard, it goes without saying that US digital titans such as Google and Facebook would be viewed by policymakers in Brussels as clear competitive threats to the EU technology sector.

The communication is an acknowledgement that fragmentation and barriers that exist in the EU's digital market are holding the EU back. Bringing down those barriers within the EU could contribute an additional €415 billion to EU GDP. A DSM could also create opportunities for new start-ups and allow existing companies to grow and profit from the scale of a market of over 500 million people.

The DSM strategy will be built on three pillars:

- Better access for consumers and businesses to online goods and services across Europe (this will require the rapid removal of key differences between the online and offline worlds to break down barriers to cross-border online activity),
- Creating the right conditions for digital networks and services to flourish (this requires high-speed, secure and trustworthy infrastructures and content services, supported by the right regulatory conditions for innovation, investment, fair compensation and a level playing field),
- Maximising the growth potential of our European digital economy (this requires investment in ICT infrastructures and technologies such as cloud computing and 'big data', and research and innovation to boost industrial competitiveness as well as better public services, inclusiveness, and skills)

> **45% of companies that have considered selling digital services online have stated that copyright restrictions prevented them from selling abroad**

Preventing geo-blocking

'Geo-blocking' is a practice used for commercial reasons by online sellers that results in the denial of access to websites based in other member states. Sometimes, consumers are able to access the website, but still cannot purchase products or services from it. Geo-blocking sometimes re-routes the consumer to a local website of the same company with different prices or a different product or service on offer. In other cases, the sale is not denied, but geo-localising technology is used, as a result of which different prices are automatically applied on the basis of geographic location. A good example of this is in the EU online car rental sector, where discriminatory prices can be charged depending on the geographic location of a customer's internet protocol (IP) address. In essence, geo-blocking is one of several tools used by companies to segment markets along national borders (territorial restrictions). Ultimately, it limits consumer opportunities and choice, causing significant consumer dissatisfaction and fragmentation of the internal market.

The communication does acknowledge that sometimes these restrictions on supply and ensuring price differentiation can be justified – for example, where a seller needs to comply with specific legal obligations. However, geo-blocking is frequently not justified and, when unjustified, such practices should be expressly prohibited so that EU consumers and businesses can take full advantage of the single market in terms of choice and lower prices.

The communication confirms that the commission will adopt legislative proposals in the second half of 2016 to end unjustified geo-blocking. Such legislative changes may include targeted changes to the e-commerce framework (Directive 2000/31/EC) and the framework set out by article 20 of the *Services Directive* (2006/123/EC).

Better access to digital content

It is undeniable that copyright underpins creativity and the cultural industry in Europe. The EU strongly relies on creativity to compete globally and is a world leader in certain copyright-intensive sectors. Unfortunately, barriers to cross-border access to copyright-protected content services and their portability are still commonplace within the EU, particularly for audiovisual programmes. Arguably, the flip side of this conundrum is the online selling of digital services to parties based abroad. The communication contains the interesting statistic that 45% of companies that have considered selling digital services online have stated that copyright restrictions prevented them from selling abroad.

EU consumers continue to face difficulties when they attempt to access or purchase online copyright protected content from another member state. These challenges are linked mainly to the territoriality of copyright and difficulties associated with the clearing of rights, contractual restrictions between rights holders and distributors, and the role territorial exclusivity plays in the financing of certain types of audiovisual works.

The communication acknowledges that Europe needs a more harmonised copyright regime. Such a regime would provide incentives to create and invest, while allowing transmission and consumption of content across borders, thereby building on the rich cultural diversity of the EU. In this regard, the commission will make legislative proposals before the end of 2015 so as to reduce the differences between national copyright regimes and to allow for wider online access

to works by users across the EU, principally, through further harmonisation measures.

The legislative proposals will include:

- Portability of legally acquired content,
- Ensuring cross-border access to legally purchased online services,
- Greater legal certainty for the cross-border use of content for specific purposes (for example, research, education, text and data mining, and so on) through harmonised copyright exceptions,
- The communication refers to a future review by the commission of the *Satellite and Cable Directive* (93/83/EC) and legislative proposals (to be introduced in 2016) aimed at modernising the enforcement of intellectual property rights.

The proposals will focus on commercial-scale infringements (adopting a 'follow the money' approach) and cross-border application of the enforcement measures.

Telecoms and digital networks

In the section on telecoms, the communication states that the DSM must be built on reliable, trustworthy, high-speed, affordable networks and services that safeguard consumers' fundamental rights to privacy and personal data protection, while also encouraging innovation. This in turn requires a strong competitive and dynamic telecoms sector to carry out the necessary investments and to exploit innovations such as cloud computing, big data tools, or 'the internet of things'.

The communication highlights some of the key problems currently affecting the telecoms sector: isolated national markets, a lack of regulatory consistency and predictability across the EU (particularly for the radio spectrum), and a lack of sufficient investment, notably in rural areas. With a view to injecting greater ambition into this process, the commission will review all of the existing legislation and make proposals for change where necessary. A key first step will be the adoption of the telecoms single market package, which should go a long way towards providing clear and harmonised rules for net neutrality and set in motion the final elimination of roaming surcharges, in particular for data.

In its communication, the commission is quite critical of the national spectrum management. It states that it results in widely varying conditions (for example, different licence durations, and coverage requirements). In addition, the absence of consistent EU-wide objectives and criteria for spectrum assignment at national level creates barriers to entry, hinders competition, and reduces predictability for investors across Europe. The commission concludes that the radio spectrum should be managed by member states under a more harmonised framework that is consistent with the need for a DSM.

In 2016, the commission will present proposals for a comprehensive overhaul of the telecoms regulatory framework. Its proposals will focus on the following:

- Developing a single market approach to spectrum policy and management,
- Delivering the conditions for a true single market by tackling regulatory fragmentation to allow economies of scale for efficient network operators and service providers and effective protection of consumers,
- Ensuring a level playing field for market players and consistent application of the rules,
- Incentivising investment in high-speed broadband networks, including a review of the *Universal Service Directive* (2002/22/EC),

- Reinforcing trust and security in digital services and in the handling of personal data.

This part of the communication states that cyber threats are truly transborder in character and negatively affect our economy, citizens' fundamental rights, and society at large. Cyber offences are multifaceted and multifarious and comprise, for example, data interception, online payment fraud, identity theft, and trade secrets theft.

Cyber security

In a bid to respond effectively to cyber threats, individual member states and EU institutions have adopted both national and EU-level cybersecurity strategies and regulation. The likely adoption of the *Network and Information Security Directive* (commonly called the *Cybersecurity Directive*) towards the end of 2015 should mark an important step forward. Cybersecurity will also be bolstered by the European Cybersecurity Strategy (JOIN (2013) 1 final). In terms of a law enforcement response to online criminal activity, the commission hopes to achieve this by virtue of proposals contained in its *European Agenda on Security* (COM(2015) 185).

The communication also refers to personal data and privacy and states that the EU is committed to the highest standards of protection guaranteed by articles 7 (respect for private and family life) and 8 (protection of personal data) of the *Charter of Fundamental Rights of the EU*. It is confident that the *General Data Protection Regulation* (COM(2012) 11 final) will increase trust in digital services, as it should protect individuals with respect to the processing of personal data by all companies that offer their services on the European market. Once the new EU rules on data protection are adopted (possibly by end-2015), the commission will review the *ePrivacy Directive* (2002/58/EC).

> **There is no doubt that the communication contains an ambitious programme, with many of the reforms expected to be in place by the end of 2016**

Concluding thoughts

There is no doubt that the communication contains an ambitious programme, with many of the reforms expected to be in place by the end of 2016. Given that some of the proposed legislative changes will require the support of the European Parliament and/or council, and a reasonable transposition period for the 28 member states, it seems that the commission's timetable is quite optimistic.

The communication is fairly vague with regard to the the form of any proposed legislative intervention – will it be a directive, regulation, or perhaps not even law, but rather a soft-law instrument instead? Examples of this vagueness can be seen in the sections of the communication pertaining to the copyright framework and the telecoms sector.

A proposal in the communication that has already been acted upon is the review of the 1993 *Satellite and Cable Directive*. The review began on 24 August and will run until 16 November 2015. As part of this public consultation, the commission wishes to firstly assess the extent to which the directive has improved consumers' cross-border access to broadcasting services in the internal market and, secondly, what the impact would be of extending the scope of the directive to TV and radio programmes provided over the internet, notably broadcasters' online services. Separately, on the telecoms front, on 30 June 2015, an important compromise was reached at 'trilogue' meetings (tripartite meetings attended by representatives of the European Parliament, the council and the commission). This compromise envisages the end of roaming charges by June 2017 and the formulation of strong net neutrality rules. These elements will be achieved by an ambitious overhaul of the EU telecoms rules in 2016.

Dr Mark Hyland lectures and researches in the field of intellectual property law at Bangor University Law School, Wales.

professional notices

WILLS

Bermingham, Joseph (deceased), late of 589 Woodview Terrace, Rathfarnham, Co Dublin. Would any person having knowledge of a will made by the above-named deceased, who died on 6 November 2008, please contact Michael Sheil & Partners, Solicitors, Temple Court, Temple Road, Blackrock, Co Dublin; tel: 01 288 1150, email: info@msheil.ie

Bransfield, Gerard (deceased), late of no 1 Fitzgerald's Place, Clondulane, Fermoy, Co Cork, who died on 15 September 2015. Would any person having the knowledge of the whereabouts of any will executed by the said deceased please contact Jeremiah Healy, solicitor, of Healy Crowley & Company, Solicitors, 9 O'Rahilly Row, Fermoy, Co Cork; tel: 025 32066 or email: info@healycrowleysolrs.com

Hyland, Richard (deceased), who died on 18 August 2015, and **Hyland, Martha (deceased),** who died on 3 August 2015, both late of 52 Beaufield Park, Stillorgan, Co Dublin. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Philip Clarke, Philip Clarke Solicitors, 22 Crofton Road, Dun Laoghaire, Co Dublin; tel: 01 280 8088, email: info@philipclarke.ie

McNamara, Thomas Kieran (otherwise Kieran) (deceased), who died on 5 March 2015. Would any person having knowledge of the last will made by the above-named deceased, or its whereabouts, please contact Cashin & Associates, Solicitors, 3 Francis Street, Ennis, Co Clare; tel: 065 684 0060, email: info@cashinlaw.com

Murphy, Brother Martin (deceased), late of Cherryfield Lodge, Ranelagh, Dublin 6, and formerly of St Francis Xavier's Priory, Gardiner Street, Dublin 1, and formerly of 60 Kinvara Road, Navan Road, Dublin 7. Would any person having knowledge of any will made by the above-named deceased, who died on 12 March 2015, please contact Helen McGrath, O'Connor Solicitors, 8 Clare Street, Dublin 2; email: helen.mcgrath@oclegal.ie

O'Neill, Mary (otherwise May) (deceased), late of 6 Lower Main Street, Duleek, Co Meath. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased, who died on 13 August 2015, please contact Paul Smyth of Smyth & Son, Solicitors, Rope Walk, Drogheda, Co Louth; tel:

RATES

professional notice rates

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND. Deadline for December 2015 *Gazette*: 18 November 2015. For further information, contact the *Gazette* office on tel: 01 672 4828 (fax: 01 672 4877).

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

041 983 8616, email: psmyth@smythandson.ie

Scott, Derek (deceased), late of Beechfield Manor Nursing Home, Shankill, Co Dublin, and formerly of 45 Foxrock Park, Dublin 18, who died on 20 July 2015. Would any person having knowledge of any will made by the above-named deceased please contact Coonan Cawley, Solicitors, Wolfe Tone House, Naas Town Centre, Naas, Co Kildare; tel: 045 899 571, email: office@coonancawley.ie

Smith, MacConnell Joseph (deceased), late of 69 Clonkeen Drive, Foxrock, Dublin 18. Would any person having any knowledge of the whereabouts of a will executed by the above-named deceased, who died on 25 July 2015, please contact John O Plunkett, solicitor, Plunkett Kirwan & Company, Solicitors, 175 Howth Road, Killester, Dublin 3; tel: 01 833 8254, email: john.plunkett@plunkett-kirwan.com

MISCELLANEOUS

Dublin: strong long-established general practice. Excellent portfolio/location. High growth potential. Busy WIP. Suit ambitious young solicitor. Flexible transition phase. Reply in strictest confidence to **box no 01/09/15**

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the property at 2C Main Street, Blackrock, Co Dublin, with the application made by Jane Young and Georgina Young, acting by their lawfully appointed attorney (the secretary of Allied Irish Banks plc) (the applicant)

Take notice that any person having any interest in the freehold estate of the following property: 2C Main Street, Blackrock, Co Dublin, all that and those the hereditaments and premises known as 2C Main Street, Blackrock, in the county of Dublin, held by Jane Young and Georgina Young under and by virtue of indenture of lease dated 7 June 1900 and made between William Field of the one part, Robert Ignatius Field and Mary Theresa Field of the second part, and Annie Kellett of the third part for a term of 200 years from 7 June 1900, subject to the rent therein reserved and to the covenants and conditions therein contained.

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

In default of any such notice being received, 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 county/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: 30 October 2015

Signed: Dillon Eustace Solicitors (solicitors for applicant), 33 Sir Rogerson's Quay, Dublin

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the application by Claude Fettes, Annette Cooper and Green Label Property Investments Limited of Ruben House, Ruben Street, Dublin 8, and in the matter of properties situated at Daleview, Ballybrack, Co Dublin

Any person having a freehold interest or any intermediate interest in all that and those the premises known as the site at Daleview, Ballybrack, Co Dublin, more particularly set out in the map annexed to an indenture of lease dated 30 December 1911 between George Pakenham Stewart, Amy Louisa Charlotte Callwell, Gertrude Emma Callwell, May Alberta Callwell, Helen Lindsay May Callwell and Ida Eleanor Callwell of the one part, and James Mulligan of the other part, for a term of 150 years from 25 March 1911, at a rent of £23 per annum.

Take notice that the applicants intend 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 applicants intend 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 may be 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: 30 October 2015

Signed: Gaffney Halligan & Co (solicitors for the applicants), 413 Howth Road, Raheny, Dublin 5

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of *Landlord and Tenant (Ground Rents) (No 2) Act 1978* – description of the property and by whom the application is being made: John McCrea, estates manager, Health Service Executive, HSE Estates, 26-29 Old Kilmainham, Dublin 8

Take notice that any person having an interest in the freehold estate of the following property: 96 Monastery Road, Clondalkin, Dublin 22, held under an indenture of lease made 20 September 1962 between John Sisk & Son (Dublin) Limited and William Gladwelle for a term of 600 years from 1 March 1962 at a yearly rent of £15, payable by two equal half-yearly payments on 1 March and 1 September every year.

Take notice that the applicant, John McCrea, estates manager of the Health Service Executive, 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: 30 October 2015

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

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Blind woman prosecuted over TV

An Post has defended its decision to twice prosecute a blind woman for not having a TV licence.

Suzanne O'Connor (48), who listens to her television "for company and background noise", is entitled to a free TV licence but has been brought to court by An Post on two separate occasions.

Ms O'Connor, from Westmeath, was originally taken to court by An Post in March following a visit by a TV licence inspector, during which she said her cane and her special glasses were fully visible. The first case was struck out, but she received a letter from An Post's solicitor just two weeks later.

During her second court appearance, Judge Seamus Hughes told the court he believed people who are blind should not be prosecuted for having no TV licence. He adjourned the second case until 12 November and ordered that Ms O'Connor be paid expenses.

A spokesperson for An Post said it could not comment on individual cases, before commenting on this individual case: "The decision to award a free licence is made by the Department of Social Protection. If and when a free licence is awarded, the Department of Social Protection notifies An Post and we update our records accordingly. To date, there is no record of a free licence being awarded in this case."

What's the corkage on that?

Ukrainian prosecutors are preparing charges against Crimea's renowned Massandra winery for opening a bottle of 1775 Jeres de la Frontera, newstalk.com reports. The uncorking of one of the world's most expensive wines followed a request from former Italian Prime Minister Silvio Berlusconi to sample some of Massandra's wine.

Berlusconi and Vladimir Putin spent the second weekend in September touring ancient ruins on the recently annexed Crimean peninsula before visiting the winery, which had been owned by the Ukrainian government before Crimea's annexation by Russia. The wine tour led to the pair indulging in a 240-year-old bottle worth €79,500.

The winery's new pro-Russian director, Yanina Pavlenko, is now set to face embezzlement charges for "seizing government assets". Ms Pavlenko is already wanted in Ukraine for treason after voting for Crimea's annexation.

Smartphone 'Smurfs' spy on citizens

Smartphone users can do very little to stop security services getting total control over their devices, US whistleblower Edward Snowden has told the BBC's *Panorama*.

Snowden claims that intelligence services like GCHQ and the NSA could gain access to a handset by sending it an encrypted text message and use it for such things as taking pictures and listening in, as well as seeing who you call, what you've texted, your browser history, your contacts, the places you've been, and the wireless networks your phone is associated with.

He didn't suggest that either agency was actually interested in mass-monitoring of citizens' private communications, but said that both had invested heavily in technology allowing them to hack smartphones.

GCHQ has apparently named its hacking tools after the Smurfs: 'Dreamy Smurf' is a power management tool that can turn your phone on and off without you knowing, 'Nosey Smurf' can turn the phone's microphone on and listen to everything that's going on, and 'Tracker Smurf' is a geo-location tool.

Teen prosecuted for having naked images – of himself

A teenage boy in North Carolina has been prosecuted for having nude pictures of himself on his own mobile phone. The young man, who is now 17 but was 16 at the time the photos were discovered, was prosecuted as an adult under federal child pornography felony laws for sexually exploiting a minor. The minor was himself.

Experts condemned the case as ludicrous. "It's dysfunctional to be charged with possession of your own image," said Justin Patchin, a professor of criminal justice at the University of Wisconsin and co-founder of the research website cyberbullying.org.

Jeff Temple, a psychology expert at the University of Texas Medical Branch, has conducted research suggesting that 30% of teens 'sext' each other. He called for "common sense" from the authorities.

Temple said that, if states used their laws literally, "tens of thousands of kids would be in jail and registered as sex offenders".

"They have an amazing network of offices throughout the world, so if I have cross-border issues, I can draw on their resources to get prompt and reliable advice." *Chambers*, 2015

Dechert in Dublin

With more than 900 lawyers in 27 offices throughout Europe, the United States, Asia and the Middle East, Dechert is a global specialist law firm that delivers practical commercial judgment and deep legal expertise for high-stakes matters. We are consistently recognised as a top international law firm for investment funds by a number of publications, including *Chambers*, *The Legal 500* and *Best Lawyers*.

Founded in 2010, our Dublin office is fast becoming one of the firm's key hubs in Europe. Our investment funds practice continues to grow, and we have now moved to substantially larger premises in the heart of Dublin's international financial services centre to support further growth.

Growth of Irish-authorised funds advised by Dechert's Dublin team

Source: Monterey Fund Encyclopedias and Central Bank of Ireland public registers.
* Irish-authorised funds advised by Dechert as of 1 October 2015.
** Total Irish-authorised funds advised by Dechert, including new entities in the authorisation process.

Opportunities for you

We are currently seeking talented and ambitious solicitors wishing to pursue a career in the world of financial services. Applications from candidates with international legal qualifications or experience are particularly welcome, although these are not prerequisites.

To learn more about the career opportunities at Dechert, contact Pamela Edge directly (pamela.edge@dechert.com) in complete confidence. **dechert.com/careers**

Dechert LLP

mantra international search

Banking ◆ Partner & Team
This firm is growing all its practice areas and is now seeking a determined individual with a real desire to build their own banking and finance practice. You will take a lead role in advising on transactions for banks, financial institutions and corporate borrowers. Ideally you will have a proven track record in building a credible team. *Ref 2046*

Corporate ◆ Equity
Very impressive full-service firm has an opening for an additional partner to join their award-winning corporate group. The firm has an excellent reputation across all practice groups, advising clients from high net-worth owner managed businesses through to multi-jurisdictional listed companies on matters including m&a, private equity and capital markets. *Ref 2048*

Litigation ◆ All Levels
Our client has a leading litigation practice and is currently looking to recruit junior and senior lawyers to join their dispute resolution team. You will manage a wide variety of litigation matters, including arbitrations and mediations, judicial review and chancery matters. The firm is very supportive and has a particular interest in growing its litigation offering. There are great promotional prospects for the appointed candidates. *Ref 2043*

Funds ◆ All Levels
This market-leading investment funds practice is currently seeking to recruit funds lawyers to join its team. This global team advises fund managers, service providers and investors on a range of matters relating to their work and ongoing strategic issues. Joining a market leader, you would be working in a cohesive and close-knit team that actively encourages client contact. *Ref 2049*

Property Lawyers ◆ Mid/Senior-level
Are you an experienced commercial property lawyer seeking a busy and varied caseload, covering the full remit of property matters? Our client is seeking property lawyers for various contract and permanent positions. You will be expected to manage an existing caseload incorporating: sales and purchases; transfer of equity; development work; landlord and tenant disputes; and lease extensions. Excellent terms on offer. *Ref 2047*

Funds, In-house ◆ 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*

Legal Counsel ◆ Junior/Mid-level
Our client is experiencing significant growth. It is recognised in its sector as an innovator and expert. The role will form a key part of the company's legal function. You will assist in managing the production of all commercial contracts and have a good grounding in intellectual property and data-protection legislation. You must work well within a team structure, while finding practical legal solutions to business challenges. *Ref 2045*

Energy ◆ Junior/Mid-level
This progressive commercial law firm is looking to recruit a commercial property lawyer. The role will suit a junior lawyer with an understanding of the wind or solar energy area and, more importantly you will be keen to become an expert in this area. You will be joining a team renowned for its enviable client base. This firm promotes work/life balance and provides excellent prospects for the right individual. *Ref 2046*

Public Law/Litigation ◆ 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*

Legal Counsel ◆ Junior/Mid-level
Our client is now seeking to recruit a corporate lawyer with a strong corporate/commercial background to join its team. Reporting to the General Counsel, you will provide legal advice and transactional know-how within this fast-paced, dynamic environment. Ideally, you will have gained experience within a leading corporate practice and now wish to develop your career in-house. *Ref 2049*

Contact Sharon Swan for a confidential discussion on 01 685 4017
or e-mail sharonswan@mantrasearch.ie. www.mantrasearch.ie
Mantra International Search, 11-12 Baggot Court, Dublin 2

IN-HOUSE AIRCRAFT LEASING SOLICITOR, ASSOCIATE – SENIOR ASSOCIATE LEVEL, DUBLIN

The Primary responsibility will be to support Legal Counsel on the negotiation and project management of aircraft operating leases, aircraft sales and purchase agreements. You will be advising, structuring, drafting, negotiating and executing the full range of aviation-related transaction, documentation and contracts (such as cross-border aircraft purchase, sale, lease agreements, lease restructuring agreements, lease novation's, credit facilities, loan agreements and aircraft maintenance, Board Minutes)

JUNIOR EMPLOYMENT SOLICITOR, DUBLIN

A Top Five Practice and a Boutique Practice based in Dublin 4 are looking to recruit a Junior Solicitor with experience in employment law. The successful candidate will gain exposure to contracts of employment to ensure it clearly specifies the agreed terms and conditions and industrial relations matters. Competitive salary and excellent work/life balance on offer.

IN-HOUSE COMMERCIAL CONTRACT COUNSEL, ASSOCIATE – SENIOR ASSOCIATE LEVEL, DUBLIN

This US MNC is building a large multi-functional legal team in Dublin South. The successful candidate will ensure all contracting processes and procedures are followed with respect to the negotiation and execution of commercial contracts. Ideal for a Practice Solicitor looking to move in-house or somebody already working in commercial contracts.

BANKING SOLICITOR, AVP – VP LEVEL, DUBLIN

Global Investment Bank requires a Banking Solicitor to join their Corporate Services division. The role is ideal for a qualified lawyer with structured finance or corporate structures experience and thorough legal knowledge with a specialisation in financial services. Excellent remuneration and progression prospects on offer.

COMMERCIAL PROPERTY SOLICITOR, JUNIOR – ASSOCIATE LEVEL, DUBLIN

A Top Tier Law Firm is seeking to recruit a number of commercial Property Solicitors. This Law Firm boasts a wide range of clients including private equity funds, developers, investors and financial institutions. This position is suitable for candidates currently working within a top 10 firm or someone in a smaller practice with extensive property experience looking to make the jump.

FUNDS SOLICITOR, ASSOCIATE LEVEL, DUBLIN

This international funds team is going through an aggressive growth stage and is looking to expand their funds practice further. The successful appointment will report directly to a Global Partner and have an opportunity to work on domestic and international work. This position will offer excellent remuneration.

cpl. the best people for the job

To apply for any of the above vacancies or for a strictly confidential discussion, please contact Seán Fitzpatrick on +353 1 5005916 or sean.fitzpatrick@cpl.ie or Tony Glynn on +353 1 500 5918 or tony.glynn@cpl.ie

Corporate Partner

If you are currently at equity, fixed equity or salaried partnership but want to explore lateral options with improved remuneration potential or if you are a dynamic, impressive senior associate looking for a more swift progression to partnership then we have an exceptional opportunity to discuss.

The Firm

With over 80 staff, including 9 partners, and an impressive client list, McDowell Purcell has grown very steadily over the past 10 years. This is a firm on an upward trajectory, with impressive rankings across multiple disciplines in *Legal 500 and Chambers*. Their partners are now seeking an experienced corporate lawyer at partner level to expand their existing corporate offering.

The Role

Advising on all aspects of commercial law including:

- Mergers and acquisitions
- Private equity fundraisings
- Joint ventures
- Venture capital transactions
- Corporate restructuring
- Corporate finance transactions
- General corporate and commercial law advice

The Person

- A corporate law specialist – either an existing partner or a senior associate with requisite number of years experience to operate at partner level
- An excellent communicator and team player
- A business developer
- Ambitious and ready to participate in developing the strategy of the firm

Interested candidates should contact John Macklin for confidential discussion at jmacklin@lincoln.ie, or on (01) 6610444.

Lincoln Recruitment Specialists have been exclusively retained for this assignment. Any applications sent directly to McDowell Purcell will be forwarded to Lincoln Recruitment Specialists.

McDOWELL PURCELL

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