All aboard
The *Gazette* talks to 148th president Patrick Dorgan about the voyage ahead

One in the eye
A carefully crafted settlement offer can ensure the avoidance of nasty surprises

The spirit of freedom
Ireland's revolutionary period was a time of tremendous upheaval for the profession

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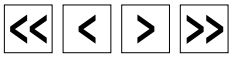

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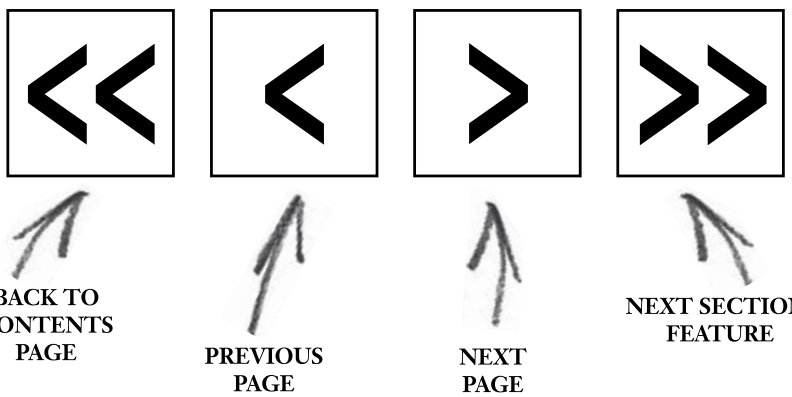

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Does your client have a claim eligible for ASR Hip ADR?

The ADR Process gives claimants a neutral non-binding evaluation of eligible claims

How it works

To apply, submit a completed Form B to McCann FitzGerald solicitors. Form Bs are available from McCann FitzGerald and from *www.hipadr.ie*. On receipt of Form B McCann FitzGerald may ask for additional information or documents, such as necessary medical records or details of any special damages claimed. If the claimant's case is eligible, Form B will be endorsed and returned to the claimant's solicitor. Both parties prepare written submissions which are submitted to an independent Evaluator who issues a written evaluation stating the amount of any damages assessed. The parties have 45 days to accept or reject the evaluation.

- Claimants in the ADR Process do not have to prove liability; only causation and quantum are relevant
- There is no fee to submit a claim to the ADR Process
- If necessary, McCann FitzGerald will collect the claimant's medical records where written authorisation has been provided
- Evaluators are senior counsel or retired Superior Court judges
- A €25,000 payment in respect of the claimant's legal costs, outlay and VAT will be paid within 28 days of settlement of claims within the ADR Process. This is without prejudice to a claimant's right in the circumstances of a case to seek higher costs and outlay through negotiation or taxation

Eligible claims

Claimants may avail of the ADR Process if:

- Proceedings have issued
- The index surgery of the ASR product took place in Ireland
- Revision surgery took place in Ireland not earlier than 180 days and not later than 10 years after the index surgery
- Injuries Board authorisation has been obtained
- The claim is not statute barred
- Revision surgery was not exclusively due to dislocation; trauma; infection; fracture of the femoral head; or any issue related to the femoral stem

For further information, or to discuss settlement of any eligible claim, please contact McCann FitzGerald (DFH/RJB) on 01 829 0000 or email *hipadr@mccannfitzgerald.com*

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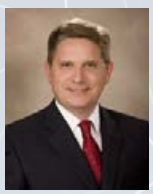

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FEATURES

REGULARS

THE BIG PICTURE

© EPA-EFE/SHAHZAIB AKBER

PIC: ppppppppppp

MERCY MERCY ME

Supporters of the Pakistani Islamic political party, Jamiat Ulma-e-Islam, rally to protest the release of Aasia Bibi, a Christian falsely accused of blasphemy whose death sentence was overturned by the Supreme Court in Karachi on 8 November. The Pakistani foreign office said that Ms Bibi could leave the country – but only if the Supreme Court rejected an appeal challenging her acquittal. Ms Bibi is already in protective custody, and her family is in hiding as hard-line religious groups try to hunt them down

HIDDEN HEARTLAND

Attending the dinner of the Midland Bar Association on 9 November in the Tullamore Court Hotel were Michael Byrne, Judge John O'Donnell (retired), Judge John Hughes and Judge Henry Abbott (retired)

Kelly McNamara, Emma Egan and Roisin O'Shea

ALL PICS: PAULA NOLAN PHOTOGRAPHY

Tom Flynn BL, Anne Marie Kelleher (president, Midland Bar Association), Verona Smyth, Marianne Deely, Audrey Goode and Catriona Keville BL

Judge Catherine Staines, David Nohilly and Donal Farrelly

Mark Scanlon, Mary Clear and Jade Farrelly

Tom Farrell, John Reedy and Marcus Farrell

TAKE ME HOME TO MAYO

PIC: JOHN O'GRADY PHOTOGRAPHY

The AGM of the Mayo Solicitors' Bar Association (MSBA) took place at Breaffy House Hotel, Castlebar, on 17 October. Those present welcomed Law Society President Michael Quinlan and director general Ken Murphy. The new officers appointed were Dermot Morahan (president), Marc Loftus (vice-president), Gary Mulchrone (treasurer) and Aoife O'Malley (secretary); *(front, l to r)*: Rosemarie Loftus, Alison Keane, Aoife O'Malley, Marc Loftus, Michael Quinlan, Dermot Morahan (incoming president, MSBA), Ken Murphy, Catherine Bourke, Ita Feeney and Sandra Murphy; *(back, l to r)*: James Ward, Peter Loftus, Anne Clancy, Myles Staunton, Aileen McGing, James Hanley, Nessa Cox, Pat Moran, Samantha Geraghty, Adrian Bourke, Eanya Egan, Michael Keane, Charlie Gilmartin, James Cahill, Keith Fintan, Mary McGregor, Fintan Morahan, Gary Mulchrone and John Morahan

CONNAUGHT SOLICITORS CONVENE IN CASTLEBAR

PIC: MICHAEL DONNELLY

At the Law Society's Connaught Solicitors Symposium in Castlebar, Co Mayo, were *(l to r)* Linda Kirwan, Attracta O'Regan, Elizabeth Fitzgerald, Ken Murphy (director general), Mary Keane (deputy director general), Michael Quinlan (then president, Law Society), Sorcha Hayes and Katherine Kane

STRICTLY LEGAL EAGLES SOAR TO €20K FOR LOCAL CHARITIES

ALL PICS: BRIAN ARTHUR PHOTOGRAPHY

Amidst a sea of sequins and glitter, Limerick solicitors, barristers, Courts Service staff and the School of Law in the University of Limerick swapped the courtroom for the ballroom to take part in a 'Strictly Legal Eagles' dance-off on 1 November. The dancers, who had dedicated the past number of months to mastering their routines, convened at the Southcourt Hotel to raise funds for two local charities – the Children's Grief Centre and the Mid-Western Cancer Foundation. Pictured are winners Ger O'Neill and Elizabeth Walsh

Ger O'Neill and Elizabeth Walsh

Derek Walsh and Ita Barrett

Pat Barriscale and Sarah Falvey

Bryan Sheehan and Hillary McSweeney

Jennifer Markham and Donal Creaton

Lisa O'Brien and Kieran O'Donovan

John Battles and Sinead Nolan

Maria Lane and Mark Potter

Mary Geary and Philip Moloney

Rebecca Treacy and Olan Buckley

DUBLIN CLUSTER FOCUSES ON PRACTICAL REALITIES OF GDPR

Over 200 Dublin solicitors attended the Practice and Regulation Symposium 2018 at the Mansion House in Dublin on 9 November. Organised by the Dublin Solicitors' Bar Association in partnership with the Law Society Finuas Skillnet, the annual event provides local solicitors with updates on essential areas of law and practice including, this year, the GDPR

John Elliot speaking at the Dublin cluster event

The main speakers, with Richard Susskind at the podium

Richard Susskind and Attracta O'Regan

Deirdre Fox, Carl Nelkin and Evonne Man

HALLOWEEN PARCHMENT CEREMONY

PIC: LENSMEN

The former Tánaiste and Minister for Justice Frances Fitzgerald TD was the guest of honour and guest speaker at a parchment ceremony for newly qualified solicitors at Blackhall Place on 31 October. The other guest speaker, representing the President of the High Court on this occasion, was the newly appointed High Court judge Mr Justice Michael Quinn, who until the middle of this year was a partner in William Fry, solicitors. *(Front)*: Frances Fitzgerald TD and then president Michael Quinlan; *(back, l to r)*: Mr Justice Michael Quinn, Judge Kathryn Hutton (Circuit Court), Elizabeth Lacy (solicitor) and director general Ken Murphy

LONGFORD ON MY MIND

PIC: SHELLEY CORCORAN PHOTOGRAPHY

The Longford Bar Association welcomed then Law Society President Michael Quinlan and director general Ken Murphy to its meeting at the Longford Arms Hotel on 16 October 2018, *writes Lorcan Gearty*. Matters discussed included the Legal Services Regulatory Authority, section 150 letters, limited liability partnerships, simplification of the taxation of costs, and work/life balance for solicitors. Representatives from the Land Registry (Roscommon) made a presentation on the electronic payment of Land Registry fees; *(front, l to r)*: Mark Connellan, Pauline Brady, Ken Murphy (director general), Lorna Groarke (president, Longford Bar Association), Michael Quinlan (then president, Law Society), Edel Powell and Michael O'Byrne; *(second row, l to r)*: Aine Gordon, Maeve Sharpley, Michelle Beirne, Lorcan Gearty (secretary, Longford Bar Association), Karen Clabby, Orlaith Higgins, Nicola McDonnell and Conor Quinn; *(back, l to r)*: Brendan Noone, Gerry Carthy, Thomas Queally, Tom McDonnell, Frank Gearty, Emer Kilroy and Michelle Dolan

LSRA

An tÚdarás Rialála Seirbhísí Dlí
Legal Services Regulatory Authority

ROLL OF PRACTISING BARRISTERS

In June 2018 the LSRA commenced the establishment of the Roll of Practising Barristers as required under the Legal Services Regulation Act 2015.

The Roll of Practising Barristers is a register of all barristers entitled to provide legal services in the State.

Under section 134 (1) of the Legal Services Regulation Act 2015, every person who has been called to the Bar of Ireland and who intends to provide legal services as a barrister ***must*** apply to the Legal Services Regulatory Authority to have their name entered on the Roll.

Under section 136 of the Act, when commenced, it will be a criminal offence for a person to provide legal services as a practising barrister if their name and certain additional information is not on the Roll of Practising Barristers.

The application form for entry to the Roll can be found on the LSRA website at www.lsra.ie along with a number of guidance notes regarding the Roll and the application form itself. Applications should be submitted as soon as possible to facilitate entry on the Roll before the deadline of 29 December 2018.

Completed forms should be returned by email to **lsra-roll@lsra.ie** or by post to:

Roll of Practising Barristers Unit
Legal Services Regulatory Authority
P.O. Box 12906
Dublin 2.

CIRCUIT COURT GOES DIGITAL

Electronic filing at the Circuit Court has begun, with the coming into effect of SI 378 of 2018 on 17 October.

The Circuit Court rules have been amended to allow for electronic service of court documents, with the consent of all parties to the proceedings.

The Circuit Court is now in line with the superior courts, where electronic service has been in operation since this time last year, in accordance with SI 475 of 2017.

A plaintiff's solicitor can endorse on the civil bill the correct email address where documents can be sent. The defendant's solicitor will state in court that they consent to receipt of documents electronically, and they will also provide their email address.

Similar rules apply for a plaintiff suing in person or a defendant appearing in person.

BSI FLIES A KITE WITH RELATIVITY CERTIFICATES

Pernilla Smyth and Ines Rubio

Pernilla Smyth and Ines Rubio of the e-discovery and digital forensics team at BSI Cybersecurity and Information Resilience in Sandyford, Dublin, have been awarded prestigious Relativity Certified Administrator and Relativity Certified User certificates by the Relativity software solutions firm in Chicago. They are two of only three professionals to have received the designations in Ireland.

Relativity enables BSI's legal clients to process and review large data sets around litigation, investigations and government requests. Reviews can be carried out across a multitude of communication channels, including platforms like WhatsApp and Skype, at a time when mobile devices and applications are becoming increasingly valuable sources of evidence.

BSI Cybersecurity and Information Resilience is the international centre of the BSI Group, or the British Standards Institution – best known as the globally recognised standards body responsible for the 'kitemark'. The company is the originator of the ISO 27000 series of information security standards.

ARBITRATION IRELAND APPOINTS FIRST EXECUTIVE DIRECTOR

Arbitration Ireland has appointed Rose Fisher as its first executive director. Fisher brings over 17 years of experience to the role, having previously worked for the Bar of Ireland.

She will be focusing on the strategic vision of the association, with the aim of having Dublin recognised as an established venue and seat for international commercial arbitration. She will also be encouraging greater participation by Irish practitioners.

Arbitration Ireland launched a London Chapter in 2017 and a New York Chapter in September 2018.

ACADEMIC SEEKS ASSISTANCE FROM PRACTITIONERS

Dr Colin King (reader in law at Sussex Law School) is a British-based Irish academic who is conducting research on proceeds of crime legislation in both jurisdictions.

He is preparing a book examining the law and practice of civil forfeiture under the *Proceeds of Crime Act 1996* (Ireland) and the *Proceeds of Crime Act 2002* (Britain). He wishes to interview practitioners about their experiences with the legislation.

Practitioners willing to take part in this study should contact Dr King by email at colin.king@sussex.ac.uk.

ARE YOU CPD COMPLIANT?

Practitioners are reminded that compliance with CPD requirements is a statutory obligation. Compliance status must be certified annually on the practising certificate application form.

While non-completion of CPD will not delay the issuing of a practitioner's practising certificate, the non-completion or incorrect completion of section F of the practising certificate application form will result in follow-up and a potential audit by the CPD Scheme Unit.

An explanatory leaflet regarding CPD requirements will be included with the 2019 practising certificate application form pack. Any queries regarding CPD may be directed to cpdscheme@lawsociety.ie.

ALL HAIL TO THE GAEL, AS SOCIETY TEAM TAKES MOOT HONOURS

A Law Society team has taken the laurels for the first time in Bréagchúirt Uí Dhálaigh – the Irish language moot court competition. The team was represented at the Four Courts event on 9 November by Áine Haberlin and Feidhlim Mac Róibín.

The annual Gael Linn event is named after Cearbhall Ó Dálaigh, the former President and Chief Justice of Ireland, and gives law students the opportunity to display their advocacy skills in an authentic courtroom setting.

Teams from UCD and the Law Society progressed to the final, and the Law Society victors, Áine Haberlin and Feidhlim Mac Róibín, received a cheque for €600, along with the Gael Linn perpetual trophy.

Feidhlim Mac Róibín and Áine Haberlin *(centre)* pictured with competition judges Majella Ní Thuama, Luan Ó Braonáin SC, Gael Linn CEO Antoine Ó Coileáin, and competition judge Séamus Ó Tuathail SC

Law School course manager in criminal practice, Maura Butler, described her delight with the team's performance and warmly congratulated them.

Gael Linn CEO Antoine Ó Coileáin commented that career opportunities for lawyers with a high competence in Irish have never been better.

NEW PRESIDENT TO FOCUS ON DIVERSITY AND INCLUSION

Patrick Dorgan is the 148th president of the Law Society, continuing a 177-year tradition since the election of the first president in 1841. Patrick will serve a 12-month term at the head of the Irish solicitors' profession, which comprises over 10,800 practising solicitors. The election was finalised at the 8 November Council meeting.

"It is a great honour to be elected president of the Law Society at a time when there are over 18,000 names on the Roll of Solicitors," he said. "The profession is growing rapidly, with nearly 1,000 solicitors added to the Roll last year."

PIC: LENSMEN

The new president for 2018/19, Patrick Dorgan *(centre)*, with senior vice-president Michele O'Boyle and junior vice-president Daniel O'Connor

Diversity and inclusion

Outlining his priorities for his term in office, Mr Dorgan highlighted diversity and inclusion within the profession.

"We are proud of the strides made in terms of equality and diversity within the Irish solicitors' profession over many years, and never more so than when we became the first legal profession worldwide to achieve gender parity in 2015," he said.

"We are now looking ahead, and one of my priorities as president will be to build on that achievement and further develop the strong policy of diversity and inclusion that is already at the core of the profession's values."

Opportunities

Mr Dorgan highlighted the opportunities that technology holds for solicitors and the wider legal profession in providing future-proof legal services and advice to businesses.

"Business is worried about the effects of Brexit and political change throughout Europe and the US in particular. Technology has profoundly changed the way we do business and go about our lives," he said.

"Approached intelligently, these challenges are opportunities for smart businesses to thrive in new ways, and the solicitors' profession is no different – it is younger, more diverse, more tech savvy, and generally more switched on to what business and consumers need from their lawyers than ever before."

Patrick Dorgan is a partner in the property and real estate group at the Cork headquarters of Ronan Daly Jermyn. He is a leading authority on commercial conveyancing law and practice and is a former chair of the Society's Conveyancing Committee.

He is the chair of the Society's eConveyancing Implementation Board, tasked with the development of and transition to electronic conveyancing. Mr Dorgan has been on the Council for almost 20 years and has served on most of its committees. He was executive chair of the SMDF until its recent trade sale.

COUNCIL ELECTION 2018 RESULTS

The scrutineers' report of the result of the Law Society's election to the Council showed the following candidates declared elected. The number of votes received by each candidate appears after their names.

Florence McCarthy (1,656), Rosemarie Loftus (1,453), Christopher Callan (1,425), Brendan J Twomey (1,389), Michelle Ní Longáin (1,321), Carol Plunkett (1,295), Maura Derivan (1,281), Eamonn Harrington (1,274), Imelda Reynolds (1,235), Barry MacCarthy (1,194), James Anthony Murphy (1,187), Daniel O'Connor (1,166), Áine Hynes (1,136), Richard Grogan (1,081), and David Higgins (989).

As there was only one candidate nominated for each of the two relevant provinces (Leinster and Ulster), there was no election. The candidate nominated in each instance was returned unopposed: Martin Crotty (Leinster), Garry Clarke (Ulster).

WARSAW BAR ASSOCIATION VISITS

On 11 October, the Law Society hosted a group of 28 Polish lawyers from the Warsaw Bar Association on a two-day study visit to Ireland, *writes Eva Massa*.

During their visit to Blackhall Place, the group learned more about the legal profession in Ireland and attended two presentations on specific areas of interest to them: the training of solicitors (delivered by TP Kennedy and Eva Massa) and an overview of company law in Ireland (by Sinead Kelly, A&L Goodbody). The day concluded with a networking reception in the Blue Room.

On Friday, the group visited the Polish Embassy and two Irish law firms, William Fry and O'Brien Murphy Solicitors, which kindly organised a tour and provided them with practical information on the day-to-day work of a law firm in Ireland.

The Society's EU and International Affairs Committee hopes to maintain links with its counterparts in the Warsaw Bar Association to encourage future cooperation and information sharing.

TREASURE TROVE AT YOUR FINGERTIPS

The Law Society Library invites members to browse through its evolving digital archive, which contains a wealth of information on the history of the profession and the Society. Members will need to log into the library catalogue to access the archive section.

The archive is a valuable resource for those interested in genealogy or the history of their firms. Members can access Council minutes (1841-1949), solicitors' Roll books (1840-1936), the *Gazette* (1907-1996), and *Law Directories* (1846-1975).

Of particular interest on the centenary of the conclusion of World War 1 is the memorial

PIC: CIAN REDMOND

archive, which includes the roll of honour, naming and giving short biographical accounts of the 20 solicitors and 18 apprentices who were killed in action. It also includes a list of solicitors and apprentices who enlisted, military distinctions conferred, and a number of articles that appeared in the *Gazette* to commemorate the war.

Everything in the archive can be printed or downloaded and, where possible, we have also made the documents fully searchable. If required, you should contact the library at libraryenquire@lawsociety.ie to receive your login details.

STREET LAW PROVES A HIT

Over 40 PPC1 trainees have volunteered to take part in this year's Street Law programme. Trainees are placed in a number of Dublin-based DEIS schools, which focus on delivering equality of opportunity to children and young people from disadvantaged communities. The programme is run by the Law Society's Diploma Centre

BRITISH BILL COULD SCRAP LAWYER/CLIENT PRIVACY AT AIRPORTS AND PORTS

Those stopped at British borders may be deprived of legal counsel for up to an hour under sweeping new security powers.

The British *Counter-Terrorism and Border Security Bill*, if enacted, would also give British police the right to listen in on lawyer/client consultations, undermining the traditional right to confidentiality in such matters for those stopped at airports and ports.

The bill is being scrutinised in the House of Lords. The Home Office has defended the bill, which limits a detainee's right to consult a solicitor to "only in the sight and hearing of a qualified officer" [of superintendent rank]. It says that the restriction is designed to stop a detainee using legal privilege to pass on instructions to a third party, either through intimidating their solicitor or passing on a coded message.

Those travelling can be stopped without any suspicion that they have committed an offence. If formally detained on suspicion of committing an offence, they must be cautioned and read their rights.

The Law Society of England and Wales has pointed out that everyone under suspicion of a crime should be able to access confidential legal advice, "particularly when facing serious charges". It says the new bill runs contrary to all the usual standards of justice, in that it undermines the confidential nature of communication between a lawyer and client, which has long been seen as a fundamental human right.

The bill could lead to a range of consequences, including interference with evidence, the society points out.

The Home Office has defended the measures as "not new or novel", as they exist in code C of the *Police and Criminal Evidence Act* and schedule 8 of the *Terrorism Act 2000*.

ENDANGERED LAWYERS

SAIF-UL-MALOOK, PAKISTAN

Readers will be aware of the fraught case of Aasia Bibi, the Christian farm labourer in Pakistan accused of blasphemy arising from an argument with two Muslim co-workers over drinking water from the same cup.

Although her conviction was overturned by the Supreme Court on 31 October, a petition has been lodged for a review of the decision, and she is banned from leaving the country as part of a deal reached with the far right TLP party to bring an end to violent protests and disruption. Her lawyer, Saif-ul-Malook (62), is caught up in the reaction against her acquittal and left Pakistan a few days later because of death threats. His family is also vulnerable.

Aasia Bibi was convicted of blasphemy in 2010 and sentenced to death. The tensions around her conviction arose because the religious lobby lost influence when the unpopular military regime of General Perves Musharraf lost out to the left-wing secular Pakistan People's Party in the 2008 elections.

In 2011, two senior politicians were assassinated – the governor of Punjab, Salmaan Taseer, by his bodyguard, and the Minority Affairs Minister Shahbaz Bhatti – because they had indicated they wanted to reform the blasphemy law.

Saif-ul-Malook was the prosecutor in the trial of the bodyguard and took the case because others were afraid to do so. The self-confessed accused was hanged in 2016, and his grave is now a martyr's shrine. Malook's life has been in danger since and, in early November, he sought and was granted temporary refuge in the Netherlands.

Vigilante groups make credible threats against judges, which explains in some part why such cases result in convictions in lower courts. Presumably because Bibi's case was so controversial, the Lahore High Court refrained from allowing her appeal, despite obvious gaps in the evidence.

Now the Supreme Court judges are at risk. Saqib Nisar CJ is due to retire in January and chose to make the decision before he went, overturning Bibi's conviction. Justice Asif Khosa, who previously presided over the appeal of the bodyguard, will succeed Nisar CJ, and is probably at greater risk.

Saif-ul-Malook says he will return to Pakistan for hearings in relation to his client. Meanwhile, he has to make a life elsewhere.

Alma Clissmann is a member of the Law Society's Human Rights Committee.

MEDIATION NUMBERS FALL IN DUBLIN FAMILY LAW CASES

The Legal Aid Board is now mainstreaming mediation services by co-locating family mediation centres with its law centres, according to its recently published *Annual Report 2017*.

The board opened its second co-located office in Dundalk during 2017, with progress on four other venues.

Chairman Philip O'Leary expressed disappointment, however, that the numbers opting for mediation have fallen in Dublin, with 318 first joint information sessions in 2017 compared with 348 in 2016 and 407 in 2015.

The board wants a higher take-up of mediation in applications for guardianship, custody or access in the Dublin area, and it is planning to hone its strategy in this area.

Applications increase

Of the board's 17,103 new applications for civil legal aid or international protection in 2017 (which represented a 3% increase), 68% involved family disputes.

The numbers waiting for legal services dropped for the fifth successive year, to 1,776 at year-end, from a high of over 5,000 in 2013.

A total of 25,049 aid applications were submitted to the board: 15,745 for civil legal aid; 1,358 for international protection; 2,402 relating to home repossession through the Abhaile scheme; and 5,544 for family mediation.

The Legal Aid Board delivers the Garda Station Legal Advice Scheme, the Criminal Assets Bureau Legal Aid Scheme, and the Legal Aid Custody Issues Scheme. Responsibility for the main Criminal Legal Aid Scheme is expected to be transferred to it shortly.

The board processed 4,125 claims for garda station detainee legal counsel, a significant year-on-year increase, with solicitors now entitled to claim fees for time spent at these interviews, as well as waiting time. The total cost of authorised garda station claims in 2017 was €1,527,200, shared between 234 firms.

Payments to solicitors for High Court bail applications under the custody issues scheme totalled €795,500.

The board's 30 law centres use a mixed model of employed staff, including solicitors and private solicitors paid on a fee-per-case basis. Private solicitors provided representation in 6,002 family law cases at the District Court and in 30 hearings at the Circuit Court.

Through the Abhaile scheme, 1,933 vouchers for legal advice were issued to those facing potential repossession of their home.

There were over 500 duty solicitor attendances at court repossession lists, while just under 470 legal aid certificates were issued to enable Circuit Court appeals against the refusal of creditors to approve a personal insolvency arrangement.

ELECTRONIC PAYMENT OF LAND REGISTRY FEES

The Property Registration Authority (PRA) is in the process of phasing out cheques for paying Land Registry fees.

A facility is in place via landdirect.ie to allow solicitors to pay for Land Registry applications online by means of direct debit, credit/debit card, or from a landdirect account balance.

To pay for applications using any of these methods, a 'super-user' must be set up on the firm's landdirect account. The super-user can then assign the relevant fee approver roles to selected users on the account. To nominate a super-user, practitioners should complete Landdirect Form 3 and email it to landdirect@prai.ie. If you need to confirm whether a super user has already been set up on your account, email landdirect@prai.ie.

Fee approver role

Solicitors must assign a 'fee approver' role to at least one landdirect user on their account in order to pay for applications electronically. The following fee approver roles can be selected in landdirect:

- *Fee approver – credit/debit card*: allows a user to pay for Land Registry applications using a debit or credit card.
- *Fee approver – direct debit*: allows a user to avail of a direct-debit facility by paying for an application on receipt of the application in the PRA. To pay by direct debit, you should complete Landdirect Form 4 (payment for land registry applications by direct debit) and post it to the PRA's Finance Unit in Chancery Street, Dublin 7 (eircode D07 R652) or DX 228.
- *Fee approver – landdirect account*: allows a user to pay for Land Registry applications and have the registration fees immediately deducted from their landdirect account balance, provided there are sufficient funds in the landdirect account.

Queries should be directed by email to landdirectfees@prai.ie or tel: 090 663 2606.

Transition phase

In response to a query from the *Gazette* on this matter, the PRA states that it has not formally defined a date in 2019 after which it will not accept cheques. Its position is that it is now in a "transition phase, and we strongly encourage all practitioners to make the necessary arrangements with us to move to electronic payments as soon as possible".

The PRA says it has been engaging extensively with practitioners at recent Law Society/Skillnet cluster events, and with some bar associations, in order to manage the change process as smoothly as possible.

To view the PRA's information note relating to the termination of cheques, visit www.prai.ie/reminder-electronic-payment-of-land-registry-fees. This note sets out all practitioners need to know about the transition to electronic payments.

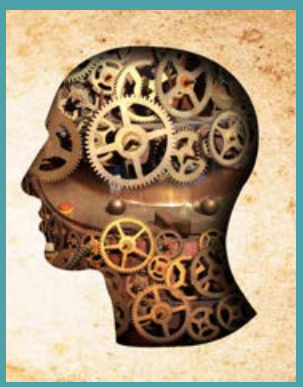
WORKPLACE WELL-BEING

CALLING IT A DAY

At a point in the year, usually in earliest May, I experience a familiar rush of joy. Walking to work transcends the functional by becoming fabulous – in the way marching *en masse*, in early morning sunlight, can be.

Now, in the dying days of the year, that light is all but gone. Your route to work may mean resisting the force of the wind threatening to blow the contents of car-clogged roads into the sea. Your internal world may feel just as unsettled. The end of a year is a complicated hurdle, bringing with it, consciously or unconsciously, an encounter with all endings we have ever had. We are faced with a renewed and often unwelcome connection to our vulnerability. The transience of life is harder to ignore as nature sets about destroying all that was created in the more luscious part of the year. Loss is prevalent and, even as we light fires, layer up and snuggle down, another part of us may be quietly grieving some place, some dream or – perhaps most painfully of all – someone.

And yet we know there is wisdom to be gleaned from aligning with the cycle of seasons. It serves us well to be reminded that we are built for endings, even as we long for beginnings. We are, somehow, equipped to let go of abundance and yield trustingly, perhaps even willingly, to the mini-death that is winter. What we lose leaves in its place a potentially fertile void and the opportunity to feel and appreciate what was.



This complex theme of the hope inherent in loss is neatly captured in the deceptively simple lines of the Passenger song *Let her go:*

'Only need the light when it's burning low,
Only miss the sun when it starts to snow,
Only know you love her when you let her go,
Only know you've been high when you're feeling low,
Only hate the road when you're missing home,
Only know you love her when you let her go
And you let her go.'

The piece that is hopeful here, of course, is that as we let 'her' (as a metaphor for anything lost) go, we are learning about strength. As we navigate loss, we learn about worth. As we feel pain, we are connecting with others.

So as this year ends, let's allow space for the losses and, in doing so, make room for the gains.

Antoinette Moriarty is a psychotherapist and head of the Law School's counselling service.

CALCUTTA RUN HITS €4M TARGET!

"The profession should be very proud," said newly elected Law Society President Patrick Dorgan as he handed over two cheques for €150,000 each to the Peter McVerry Trust and the Hope Foundation, at a Calcutta Run event hosted by William Fry.

"There was an ambitious target set to make the 20th anniversary of the run extra special. A target of €300,000 was set, the achievement of which would bring money raised by the event to a total of €4 million over its 20-year history. All firms rose to this challenge in terms of the number of participants in the run and cycle, the staff who raised sponsorship, and the generosity of firms' own contributions. The profession's unity behind this event is what makes it one of the most successful corporate fund-raising events in the country."

In May, almost 1,400 members of law firms ran, walked or cycled the event, representing 200 firms. Events took place in Dublin, Cork, Kolkata and New York. The Cork event, in its inaugural year, was spectacularly successful, with close to 200 people taking part and raising €10k for the Hope Foundation and SHARE.

As he handed over the cheques, the president referenced the huge challenge in combatting homelessness in Ireland. He remarked that, over the 20 years of the Calcutta Run, while things had improved significantly in Calcutta, ironically in Ireland, homelessness had never been so bad.

ALL PICS: CIAN REDMOND

The Calcutta Run committee, comprising *(front, l to r)*: Cillian MacDomhnaill (Law Society), Pat Doyle (Peter McVerry Trust), Charlotte Nagle (the Hope Foundation) and Kim O'Neill (A&L Goodbody); *(back, l to r)*: Mick Barr (A&L Goodbody), Hilary Kavanagh (coordinator, Calcutta Run), Patrick Dorgan (president, Law Society), Anthony Childs (the Hope Foundation), Joe Kelly (A&L Goodbody), Auveen Curran (A&L Goodbody), Ciarán Ahern (A&L Goodbody) and Erin Mac Neill (A&L Goodbody)

Law Society President Patrick Dorgan

On behalf of the Peter McVerry Trust, Pat Doyle thanked the profession for its longstanding commitment to the charity, which has used the funds to rehouse those living on the streets.

Charlotte Nagle of the Hope Foundation was extremely grateful for the support that the charity had received from the run, which was funding three projects in Calcutta.

The next Calcutta Run will take place on Saturday 18 May 2019.

MIDLANDS

MIDLANDS HONOURS DISTINGUISHED MEMBERS

The president of the Midland Bar Association (MBA), Anne Marie Kelleher, hosted the association's dinner on 9 November at the Tullamore Court Hotel. Members from Offaly and Westmeath attended, along with invited guests from the judiciary and the Bar.

Four distinguished solicitors who have recently retired were honoured at the event: Tom Enright (Birr, admitted to the Roll in 1965), Jim Houlihan (Birr, admitted in 1968), Tom Farrell (Tullamore, admitted in 1968 and continues to attend his office every day) and John Hughes (Tullamore, former state solicitor for Offaly, who has recently been appointed a judge of the District Court).

Four guests of honour: Tom Enright, Jim Houlihan, Tom Farrell and Judge John Hughes

Anne Marie made presentations to all four on behalf of her colleagues.

DUBLIN

INSIGHTS INTO MOVING IN-HOUSE

'Private practice to in-house: tips for solicitors making the change' was the theme of the DSBA's Younger Members' Committee, at an event held on 18 October, *writes Deirdre Farrell (Amorys Solicitors).* The MC was professional mentor Barry O'Neill (former partner at Eugene F Collins).

The event, held at the offices of Morgan McKinley, Dublin, offered insights to solicitors who are considering moving in-house, and how this differs from a career in private practice. Young solicitors were also advised on career progression.

The seminar explored how in-house solicitors dealt with increased regulation in the sports and betting industry and the management of data protection compliance.

Speakers included Niamh Flood (director of legal services and head of data protection, CRH plc), Cliodhna Guy (head of licensing, legal and compliance, Irish Horseracing Regulatory Board), and Emma Storan (senior legal counsel, Paddy Power Betfair plc). Bernardo Pina (legal recruitment consultant in Morgan McKinley) discussed the salaries that might be available to in-house solicitors.

Niamh Flood, Cliodhna Guy and Emma Storan

One strong theme that emerged was the importance of in-house counsel being able to deal quickly with issues as they arose. The speakers also cautioned that working in-house was not for everyone – and young practitioners needed to be aware of their motivations for moving away from private practice.

BREXIT REFUGEE SOLICITORS CREATING THEIR OWN 'BACKSTOP'

In ever-increasing numbers, many England and Wales solicitors are seeking to protect their EU practice rights for the future by becoming solicitors in Ireland. **Ken Murphy** reports

KEN MURPHY IS DIRECTOR GENERAL OF THE LAW SOCIETY OF IRELAND

MORE THAN 11% OF ALL THE NAMES ON THE ROLL IN IRELAND ARE ENGLAND AND WALES-QUALIFIED SOLICITORS WHO HAVE JOINED IN THE LAST TWO-AND-A-HALF YEARS

The Brexit divisions in Britain appear to grow deeper and more bitter by the day, and there seems no end in sight to the all-pervasive uncertainty.

In this context, the Law Society has met with leaders of many of the very large international law firms that have chosen to transfer substantial numbers of their solicitors (albeit that each application is individual) to the Roll in this jurisdiction, in addition to their membership of the Roll in England and Wales.

While, no doubt, there are a range of professional or even personal motivations involved, the predominant one, as openly discussed with us by many firms, is the desire of specialist EU and competition law practitioners to protect, as best they can, their status in that field post-Brexit.

Two concerns

Two concerns are mentioned most frequently: the desire to protect rights of audience in the European Court of Justice; and the desire to maintain legal privilege for their communications and advice to clients that may be the subject of EU investigation.

The existence of such privilege was first established in the European Court of Justice case *AM&S* in 1982. To be entitled to this privilege in their dealings with their clients, lawyers must be entitled to practise in one of the member states.

In the years up to 2015, on average every year, about 50 England and Wales-qualified solicitors, together with a much smaller number from Northern Ireland, would take out a second qualification by entering on the Roll in Ireland pursuant to regulations made in implementation of the EU's *Recognition of Higher Education Diplomas Directive of 1989*. Incidentally, under the same regime, Irish qualified solicitors can enter on the Roll of Solicitors in England and Wales, and in Northern Ireland, by a similarly seamless and examination-free administrative process.

Earth-shaking result

The earth-shaking result of the British referendum on Brexit on 23 June 2016 provoked a tsunami of solicitors travelling east to west across the Irish Sea. The number of transferring England and Wales solicitors leaped from some 50 in 2015 to 806 in 2016. The level of annual increase reduced slightly in 2017, to 547, but has surged again to date in 2018 with 601 (up to 15 November 2018), with 156 more applications currently being processed.

As there are currently 18,461 solicitors on the Roll in Ireland, more than 11% of all the names on the Roll are England and Wales-qualified solicitors who have joined in the last two-and-a-half years.

Although it is a very large proportion of the solicitors on the

ADMISSIONS (1 JANUARY 2016 TO 15 NOVEMBER 2018)

	2016	2017	2018 to date	Total	Applications being processed
English & Welsh solicitors	806	547	601	1,954	156
Northern Irish solicitors	27	29	38	94	4
Scottish solicitors	0	0	1	1	0
Total	**833**	**576**	**640**	**2,011**	**2,181**

Roll in this country, that number of England and Wales solicitors – as a proportion of the 192,121 solicitors on the Roll in England and Wales – is very small.

For the third year in a row, the December *Gazette* has published a table listing the largest 'Brexit transfer' firms, together with the previous year's table for comparison purposes. Also published this year, for the first time, are the firms that have chosen, in addition, to take out practising certificates for the current calendar year in this jurisdiction. The largest by a considerable distance, in the number of PC holders, is Freshfields Bruckhaus Deringer with 69, followed by Hogan Lovells with 23 PC holders, and Allen & Overy with 16.

Even though the firms have chosen to take out and pay for practising certificates in this jurisdiction, their regulator remains the Solicitors Regulatory Authority of England and Wales – not the Law Society of Ireland.

Only two of the 20 largest firms on the 2018 list have established offices in this jurisdiction following the Brexit vote, namely Pinsent Mason and, to date in fledgling form, the world's fourth biggest law firm, DLA Piper. gl

TOP 'BREXIT TRANSFER' FIRMS 2017		
1	Eversheds Sutherland LLP	132
2	Freshfields Bruckhaus Deringer LLP	130
3	Slaughter & May	79
4	Latham & Watkins LLP	47
5	Hogan Lovells LLP	42
6	Herbert Smith Freehills LLP	35
7	Allen & Overy LLP	34
8	Bristows LLP	32
9	Linklaters LLP	29
10	Clifford Chance LLP	21
11	Pinsent Mason LLP	15
12	Bird & Bird LLP	13
12	Shearman & Sterling LLP	13
14	Covington & Burling LLP	11
14	White & Case LLP	11
14	CMS Cameron McKenna LLP	11
17	Gibson Dunne & Crutcher LLP	10
17	Ashurst LLP	10
17	Reed Smith LLP	10

TOP 20 'BREXIT TRANSFER' FIRMS 2018			IRISH PC 2018
1	Eversheds Sutherland LLP	132	0
2	Freshfields Bruckhaus Deringer LLP	131	69
3	Allen & Overy LLP	110	16
4	Slaughter & May	109	1
5	Latham & Watkins LLP	92	6
6	Linklaters LLP	53	2
7	Herbert Smith Freehills LLP	44	9
8	Hogan Lovells LLP	43	23
9	Bristows LLP	35	0
10	Google UK Ltd	34	6
11	Clifford Chance LLP	28	1
12	DLA Piper LLP	26	3
13	Baker MacKenzie LLP	22	1
14	Pinsent Mason LLP	19	15
15	Gibson Dunne & Crutcher LLP	17	5
16	Fieldfisher LLP	15	0
16	Ashursts LLP	15	3
16	Travers Smith LLP	15	6
16	White & Case LLP	15	3
20	Bird & Bird LLP	13	3
20	Shearman & Sterling LLP	13	11
20	CMS Cameron McKenna LLP	13	0
20	Norton Rose Fulbright LLP	13	2

THINKING THREE MOVES AHEAD

The *Peart Commission Report* supports major changes in the provision of professional legal education at Blackhall Place. **Carol Plunkett** shares her insights

CAROL PLUNKETT IS CHAIR OF THE EDUCATION COMMITTEE AND OUTGOING VICE-CHAIR OF THE FUTURE OF SOLICITOR EDUCATION REVIEW GROUP AT THE LAW SOCIETY

FOUR FURTHER SPECIALIST LEGAL/PRACTICE-RELATED MODULES OF THE COURSE MAY BE CHOSEN BY STUDENTS AND TAKEN EITHER WITH THE LAW SOCIETY OR WITH OTHER ACCREDITED EDUCATORS. THIS IS QUITE A DEPARTURE

Section 34 of the *Legal Services Regulation Act 2015* mandates the Legal Services Regulatory Authority (LSRA) to review existing professional legal education and, by 1 October 2018, to report to the Minister for Justice with recommendations (among other things) on standards and training, course scope and content, including the teaching methodology of legal education, legal ethics, negotiation, alternative dispute resolution and advocacy.

Past reviews led to significant developments, including the professional and advanced courses in 1978. The 1998 review brought the Education Centre. The last review in 2007 marked the enhancement of skills delivery on the PPC1 and the complete redesign of the PPC2. So a further substantive review was timely.

Anticipating the LSRA consultation, the Law Society commissioned an external review of solicitor education in Ireland, by Prof Jane Ching, Jenny Crewe and Prof Paul Maharg, all renowned experts in the field of legal education. The *Maharg Report*, presented to Council in January 2018, recognised the high standards of professional legal education in the Law School, finding structures of teaching well organised and designed for our PPC courses, and current teaching aligned to assessment practices.

Ahead of the field

Some aspects of how the Law School provides professional education to trainees, including using certain digital technologies, are ahead of the field in legal services education. Continuing professional development (CPD), in the form of Diplomas and MOOCs, leads the field.

Maharg recommended:

- Improving communication with the profession to increase the transparency of the Law Society's activities in education,
- Increasing the educational resource base of the Law Society, and
- Setting benchmarking standards for tutor training.

Following the *Maharg Report* and in response to the LRSA consultation, the Law Society established the Future of Solicitor Education Review Group, chaired by Mr Justice Michael Peart (known as the Peart Commission), to examine the issues set out in section 34(3) of the *Legal Services Regulation Act*. It has made 30 recommendations – all of which have been approved by the Council for implementation.

We are, in fact, a pretty good profession as far as diversity goes. Since 2015, women have outnumbered men. Between 10% and 15% of each new PPC has students who are over the age of 30. We have had an Access Programme since 2000 that waives fees and provides maintenance payments and ongoing assistance to suitably qualified candidates from socio-economically disadvantaged backgrounds. We operate a bursary fund to help with fees, and there is a hardship fund available to trainees. Almost 100 solicitors have qualified through the Access Programme, and 138 trainees are currently in the process of qualifying. That said, there is a lot more that can be done, and the Access Programme will be advertised more widely.

We will expand the outreach programme to explain the solicitor's role, and how to qualify, to those still at school, to university students and all involved in education, with more visits to law firms to ensure the welfare of trainees.

Entrance exams

The Preliminary Examination is prescribed by statute. So it must remain, with wider exemptions being allowed. Legal executives with five years' experience, and accountants who have completed degree-level education programmes, but may not be formal graduates, will be able sit the FE1 without having to pass the Preliminary.


PIC: CIAN REDMOND

The FE1 will be retained. This caused a great deal of discussion; there are divergent views in the profession. However, 19 institutions in Ireland offer law degrees of varying standards and types, aside altogether from students who have not studied law at all. Students must attain the necessary standard to become a trainee, and the FE1 is the best manner of ensuring that.

Further exemptions will be considered, and undergraduate law students may sit the FE1 during the third year of university. One complaint about the FE1 was that it is an unnecessary waste of an entire academic year after university.

Interestingly, England and Wales are, by 2021, introducing an examination similar to the FE1. Their experience has been that it is necessary to establish a qualifying standard for admission to train as a solicitor.

New training contract models

Practical in-office experience is invaluable for trainee solicitors. However, a number of changes will be made to the training contract. First, the Law Society will set up an online resource to help those seeking a training contract – details of contracts offered by firms of all sizes will be gathered and published here, and it is hoped that this will become the preferred route for trainees to obtain information on contracts.

New models of training contracts will be introduced. Work has begun to report on the possibilities – including allowing firm-sharing trainees to gain experience in all areas of practice and to assist smaller firms to afford to take on a trainee. More in-house training contracts will be encouraged. There is scope for many more such contracts.

> A DEDICATED CENTRE OF INNOVATION, EDUCATION AND LEARNING WILL BE ESTABLISHED, WHICH WILL BRING TOGETHER LEARNING AND DEVELOPMENT, TECHNOLOGY, INNOVATION AND PSYCHOLOGICAL SERVICES. AN EDUCATIONAL TECHNOLOGIST AND A PROFESSIONAL EDUCATOR WILL BE APPOINTED

PIC: CIAN REDMOND

A part-time PPC will be offered and will include block release, evening, weekend and possibly holiday attendance. This will assist trainees with funding difficulties to work full-time while training and will help smaller practices that rely on having their trainees in the office to operate more efficiently and encourage them to take on a trainee.

The obligatory discrete blocks of practice will be removed from in-office training. Training will be allowed in any three areas of legal practice. An online office training record will monitor training to confirm the trainee is gaining the requisite experience.

The PPC1 and PPC2 'sandwich' will be discontinued, and content from those two courses will be covered in a longer, single PPC, possibly lasting up to eight months.

Project 21

We were privileged to have a number of educationalists on the review group, who introduced us to 'Project 21'. Since the early 1980s, government, academic, non-profit and corporate entities worldwide have been researching the personal and academic skills that are required for the next generation.

Technology now means that content and knowledge – which have formed the basis of education – are easily accessible. While literacy and numeracy are still relevant and essential, they are not enough to deal with the technological and socio-economic changes that are happening. Education systems are changing to provide students with a range of skills to cope. These include competences such as teamwork and collaboration, critical thinking, and problem solving – referred to as '21st century skills'. Most of the current content taught on the PPC will be developed to include 21st century skills.

Specialist modules

Trainees must learn the basics – such as what is required to form a contract, how to issue court proceedings, or close a sale of property – before they can embark on specialist topics.

Four further specialist legal/practice-related modules on the course may be chosen by students, taken either with the Law Society or with other accredited educators. This is quite a departure. It arose from some firms wanting trainees to learn extremely specialised topics, for example, aircraft financing.

Some courses will be offered in collaboration with other professional bodies and educators. Trainees will also be free to attend the Law Society's courses. These modules can be taken immediately after the PPC or over the two years of the training contract.

Centre of innovation

A dedicated Centre of Innovation, Education and Learning will be established, bringing together learning and development, technology, innovation and psychological services. An educational technologist and a professional educator will be appointed.

The centre will help design the new PPC and diploma, certificate and CPD courses, and ensure they are constantly reviewed. It will regularly engage with all involved in the profession, Law Society staff, training firms, and trainees to ensure courses are evaluated and views are canvassed. It will train the part-time faculty to make us better teachers and tutors and will oversee the education function to make sure that trainees are the best that they can be.

Solicitors of course, need to be 'the best' as well. Work will continue to improve the diploma, certificate and CPD courses and to assist solicitors to build towards an LLM or an MSc.

Finally, much work is needed in the Law School buildings, with plans for 10-15 new tutorial rooms and other required premises in the near future.

So big changes are ahead – welcome to the 21st century and beyond! g

> THESE INCLUDE COMPETENCES SUCH AS TEAMWORK AND COLLABORATION, CRITICAL THINKING, AND PROBLEM SOLVING – REFERRED TO AS '21ST CENTURY SKILLS'

CAPACITY ACT IS A 'GOOD STEP IN RIGHT DIRECTION'

The *Assisted Decision-Making (Capacity) Act* recognises inalienable rights that cannot be lost due to diminished decision-making capacity, the 16th Annual Human Rights Conference heard

MARY HALLISSEY IS A JOURNALIST AT GAZETTE.IE

THE 2015 ACT ESTABLISHES A MODERN STATUTORY FRAMEWORK TO SUPPORT DECISION-MAKING BY ADULTS WHO HAVE DIFFICULTY IN MAKING DECISIONS WITHOUT HELP. IT IS CHALLENGING AND DISRUPTIVE LEGISLATION

Carers involved in practical and emotional support may have differing opinions on the new *Assisted Decision-Making (Capacity) Act 2015*, but some believe it will help their loved one live their best life – while, for others, it is a tough sell.

On 20 October, this year's Annual Human Rights Conference heard that the act presents a challenge in how to balance rights and practical realities. The conference explored the legal framework around capacity, the impact this has on all those it affects, and the rights and responsibilities of all those involved.

The 2015 act establishes a modern statutory framework to support decision-making by adults who have difficulty in making decisions without help. It is challenging and disruptive legislation, the conference heard, but – with the right supports and motivation – it can be made to work: human rights can never be merely aspirational.

Preferences paramount

Senator Colette Kelleher described working with a young heroin user in a homeless shelter who refused to meet his family, who were naturally anxious about him. Tragically, he died of an overdose some weeks later, and his mother was distraught and angry that she had not been able to see him, despite her best efforts.

The young man's mother subsequently had both public opinion and the media on her side when she criticised the homeless shelter's privacy policy. Senator Kelleher had the difficult task of explaining that the young man's privacy, will and preference were paramount and had to be honoured and respected.

The same philosophy underpins the *Assisted Decision-Making (Capacity) Act*, Kelleher said – the assumption of adult capacity to make decisions, and not necessarily good ones.

Members of the Law Society's Human Rights Committee with guest speakers

ALL PICS: CIAN REDMOND

Advance planning

"In order to avoid any of the complications that the new structures present, there is everything to recommend engaging in advance planning by way of an enduring power of attorney, which is significantly developed under this act," said solicitor Aine Flynn, who is a member of the Law Society's Human Rights Committee and the director of the Decision Support Service at the Mental Health Commission.

"Capacity and the tools for assessing capacity aren't the foremost concern and purpose of this act," Flynn commented. "It is about assisted decision-making and providing supports so people can, as far as possible, arrive at their own decisions, independently."

The State now recognises that people with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, and they have a legal capacity and entitlement to hold and exercise rights, which is the key to full participation in society.

There are tiers of assistance involved, from 'decision-making assistants', to the middle tier of 'co-decision-maker', and – at the upper level of need, and only if the middle tier won't suffice – a court may move to appoint a 'decision-making representative'.

However, if a decision could lead to harm, then the co-decision-maker is not obliged to follow through on this, though they are involved to the extent that they are asked to be. The act is not about wish-fulfilment, and a person with decision-making capacity may not always be allowed to do what they want: rights-holders live and work in homes and communities with other rights-holders, and the effects on others must also be considered, Flynn said.

How all this plays out when the act commences should be kept under review by all stakeholders, and there is a duty to make and be receptive to recommendations.

Respecting will

Dr Eilionóir Flynn, director of the Centre for Disability Law and Policy at NUIG, said that those of diminished capacity might feel pressurised to formalise existing support arrangements, but that there is no need to do so.

"The act strongly embeds the principle of will and preference rather than of best interest," she said, "but we all know how

A PERSON WITH DECISION-MAKING CAPACITY MAY NOT ALWAYS BE ALLOWED TO DO WHAT THEY WANT: RIGHTS-HOLDERS LIVE AND WORK IN HOMES AND COMMUNITIES WITH OTHER RIGHTS-HOLDERS, AND THE EFFECTS ON OTHERS MUST ALSO BE CONSIDERED

difficult that principle can be to follow in practice. How do we document and monitor and make sure that everyone operating the act is respecting the will and preference of the individuals who are being supported?"

Respecting will and preference is not the same as having to act on those, she said, because there are economic criteria to be factored in, as well as the realities of life. The act may have cost implications and potentially be subject to constitutional challenge. And a question is whether decision-makers may have to fund a court action out of their own pockets.

Dr Flynn said she detected a real appetite for training and engagement with the act, but there are issues to be resolved – such as, if there is more than one decision-maker, how are conflicts to be mediated?

Paul Alford of Inclusion Ireland shared his inspirational story of battling for self-determination in his life.

For many years, he was not allowed to make decisions for himself and had to live with no autonomy in institutional care. "I have had great help in making big decisions," he said. "People with disabilities can make good decisions, but sometimes we need help."

He described working for long hours for low pay in workshop settings and how he longed to travel. "I wasn't allowed to go outside for a last smoke of my pipe at night time," he said. "I didn't like some of the people I lived with, and some of them didn't like me either."

Things started to change when Paul began taking control of decisions in his life. In 2005, he got a job at Inclusion Ireland. "I love going on holidays and trips away," he explained, "and if I work, I should be able to go to a place I choose myself."

He tried to use a credit card to book a trip to China, but the trip was opposed and the authorities said he should consult them first. Paul said that it was his choice. Now he says he has "seen half the world".

"That one great choice has enabled me to go to Australia, New Zealand, the US and all over Europe. It was my money and my choice in life what I did," he said.

A meeting about independent living changed his life, he said, and he eventually realised his dream of moving out of services to live in his own place. "I had never lived in my own place. I had to fight hard for my right to leave," he said. "But it was my life, nobody else's."

Caring concerns

Some carers expressed concerns that the work they are doing in caring for their loved ones will be subject to legal scrutiny, and that the new law will add a layer to their already burdensome lives when they are already relatives, carers, and now also decision-makers.

Some carers say that capacity does not exist in their loved ones at all. So how will it work in practice, they wondered. The act appears to ignore the issue of a lack of capacity and the work of family carers, they said.

They also have concerns around 'unwise decisions' and how to deal with the consequences, such as how to convince a loved one that overeating is unwise.

Some carers may have limited ability themselves, as well as a fear of the legal system, the conference heard. But no one can be compelled to become a decision-making assistant, and there is no imposition on any carer to buy into the act, attendees were told. Also, some carers may be over-protective and inhibit the progress of their loved ones.

John Dunne of the Carers' Association agreed that carers lead a tough life, but said that they don't necessarily always provide the best care. Sometimes they need support to come to the right decision. Carers may also need to be assisted in their decision-making, he said.

Certainty

Finally, solicitor David Stafford pointed out that judges like tests. The 2015 act hinges on issues of capacity, and there may well be a challenge to that definition.

"Judges like certainty and they like support, and they get that support from doctors such as psychiatrists or geriatricians. What guidelines are those experts going to have from the Mental Health Commission?

"In my experience as a solicitor working in the area, you will have to have legal certainty in relation to the definition of what capacity means, what the test is, and how that test is going to be decided by a court," he said.

Courts will hear psychiatric reports and will be guided in their decisions by professional input – but he pointed out that there is a difference between a legal definition of capacity and a medical one.

Stafford foresees a great deal of legal challenge to the act. "The Circuit Court won't be able to make law in the area, whereas the High Court will," he told the *Gazette*. "This is a very serious piece of legislation. One case with peculiar facts could blow it up. But it's a good step in the right direction that there is certainty in this area." g

PROSECUTIONS DISABLED?

A person cannot commit an offence of fraudulently using a disabled parking permit issued under the *Road Traffic Act 1961*, as they are not issued under the act itself but regulations thereunder, writes **Ben O'Connor**

BEN O'CONNOR IS A BARRISTER PRACTISING ON THE DUBLIN AND EASTERN CIRCUITS.
HE WISHES TO THANK MARTIN DULLY BL FOR REVIEWING THE ARTICLE

AN ACCUSED COULD APPLY TO THE COURT THAT THEY HAVE NO CASE TO ANSWER, AND ANY CHARGE COULD, IN THEORY, BE DISMISSED, AS IT IS NOT POSSIBLE FOR THE PROSECUTION TO PROCEED IN THE ABSENCE OF THE RELEVANT REGULATIONS

'Operation Enable' was established to address the problem of the illegal use of disabled parking bays and the fraudulent use of disabled persons' parking permits. It is a garda initiative, set up in conjunction with Dublin City Council, Dublin Street Parking Services, the Disabled Drivers' Association of Ireland, and the Irish Wheelchair Association in early 2017.

The initiative has subsequently expanded nationwide and has resulted in numerous prosecutions before the District Courts. The premise of the operation is to ensure that drivers are not 'getting away with' parking in disabled bays or using their disabled friends' or relatives' permits to avoid paying for parking.

Apparent error

However, there appears to be an error in relation to prosecutions for the alleged fraudulent use of a disabled person's parking permit.

Prosecutions for fraudulent use of such a permit in the District Courts are initiated summarily, specifically that an accused did "fraudulently use a permit issued under the *Road Traffic Act 1961*, as amended, to wit a disabled person's parking permit, contrary to section 115 of the *Road Traffic Act 1961*, as amended by section 20 of the *Road Traffic Act 2006*".

The wording above is from a summons for the specific charge before a District Court in Dublin. A person is liable on conviction to a maximum fine of €3,000 or a maximum term of six months' imprisonment for such an offence.

The necessary regulations to prosecute an offence of this nature are not included under section 115(4) of the *Road Traffic Act 1961*, as amended by *section 20 of the 2006 act*.

Disabled persons' parking permits are issued under regulations, not under the *Road Traffic Act 1961*, which are not taken into consideration under section 115 of the *Road Traffic Act 1961*. Section 115(4) of the 1961 act states: "A person shall not forge or fraudulently alter or use, or fraudulently lend to, or allow to be used by, any other person, any licence, plate, badge or certificate issued under this act or under regulations thereunder."

This section was subsequently amended by section 20(c) of the *Road Traffic Act 2006*, by substituting for subsection (4) the following: "A person shall not forge or fraudulently alter or use, or fraudulently lend to, or allow to be used by, any other person, any licence, permit, plate, badge or certificate issued under this act or under regulations made under section 34 of the *Taxi Regulation Act 2003*."

The decision of the legislature to remove the phrase 'or regulations thereunder' after 'under this act' is the crucial oversight – which has undermined any prosecutions of this nature.

Applicable regulations

The regulations that deal with the issuing of disabled persons' parking permits are the *Road Traffic (Traffic and Parking) Regulations 1997*, as amended by the *Road Traffic (Traffic and Parking) (Amendment) Regulations 2011*.

These state: "The *Road Traffic (Traffic and Parking) Regulations 1997* (SI no 182 of 1997) are amended … by substituting for article 43 the following … 43(1) each body specified in the third schedule may grant to a disabled person a disabled person's parking permit; (2) in this article, 'disabled person' means a person with a permanent condition or disability that severely restricts his or her ability to walk; (3) a permit granted under this article shall be valid for two years from the date of its issue."

The third schedule referred to at 43(1) above refers to the bodies that may grant a disabled person's parking permit, those being the Disabled Drivers' Association, the Irish Wheelchair Association, and an authority of any other state, provided that the pictorial symbol of a person sitting in a wheelchair is shown on the permit.

The only regulations to be considered under the above-mentioned prosecutions are regulations made under section 34 of the

PIC: SHUTTERSTOCK/NUALA REDMOND

Taxi Regulation Act 2003, which deals with the endorsements of demerits on taxi licences and is quite obviously inapplicable in cases relating to the fraudulent use of disabled persons' parking permits. The specific regulations in relation to such permits cannot be considered under these prosecutions.

It cannot be suggested in any prosecution that regulations are to be assumed to be considered in the spirit of an act, especially in circumstances where the amendment in these cases clearly removes any consideration for regulations by limiting the scope to only section 34 of the *Taxi Regulation Act 2003*.

Simple oversight

A person cannot have committed an offence of fraudulently using a disabled person's parking permit issued under the *Road Traffic Act 1961*, as they are not issued under the act itself but regulations thereunder. An accused could apply to the court that they have no case to answer, and any charge could, in theory, be dismissed, as it is not possible for the prosecution to proceed in the absence of the relevant regulations, as it could not be considered.

This offence is not one known to law, and the statute it has been brought under has been limited due to an amendment whereby the relevant regulations that would be necessary to be considered for the prosecution are, in fact, not considered. A simple oversight in the drafting presumably – however, it is one that practitioners should note.

I am aware of one case already in which the prosecution was withdrawn by the DPP where oral arguments were made regarding this point at a preliminary stage and, subsequently, written submissions were requested from both the State and counsel for the accused. It will be interesting to see what will happen to those who have already been convicted on foot of a summons and now seek to appeal.

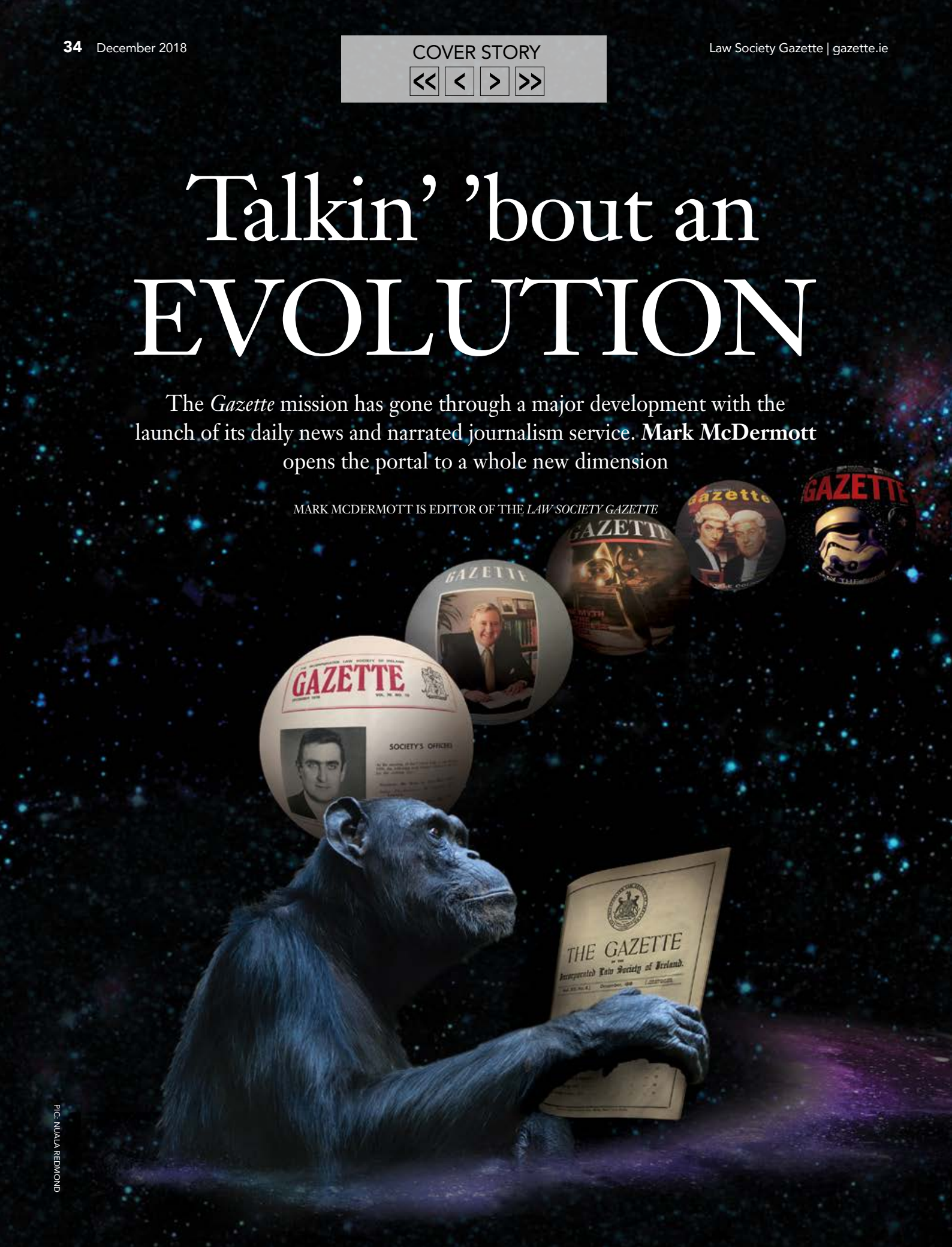
The court may or may not allow extensions of time to appeal the conviction. Those who plead guilty would presumably have less of a chance of an extension of time being allowed. However, on the other hand, as was held in *Attorney General (Lambe) v Fitzgerald* ([1973] IR 195), the Supreme Court found that a person who enters a plea of guilty in the District Court can change the plea to one of not guilty on appeal to the Circuit Court. g

> THE DECISION OF THE LEGISLATURE TO REMOVE THE PHRASE 'OR REGULATIONS THEREUNDER' AFTER 'UNDER THIS ACT' IS THE CRUCIAL OVERSIGHT – WHICH HAS UNDERMINED PROSECUTIONS OF THIS NATURE

Talkin' 'bout an EVOLUTION

The *Gazette* mission has gone through a major development with the launch of its daily news and narrated journalism service. **Mark McDermott** opens the portal to a whole new dimension

MARK MCDERMOTT IS EDITOR OF THE *LAW SOCIETY GAZETTE*



PIC: NUALA REDMOND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New dawn
for the Gazette
Latest news

There is a scene in Stanley Kubrick's iconic film *2001: A Space Odyssey* that came to mind more than once during the past 18 months, when the *Gazette* was in the throes of developing its new website and daily news service:

"Dave, do you mind if I ask you a personal question?"

"No, not at all."

"I've wondered whether you might be having some second thoughts about the mission."

"How do you mean?"

Sometimes it seemed a case of one step forward, two steps back. Many times, things seemed to move beyond our control, just as they had done for Dr Dave Bowman and Dr Frank Poole as they wrestled with the paranoia of the HAL computer system that was bent on maintaining control of their spacecraft *Discovery One*. As one problem was solved or resolved, another would rear its head – was the IT system friend or foe?

'Wire frames' – the basic look and feel, as well as structure of the website – were devised, revised and tested. This was followed by the development stage with the techies from web developers, Engage. Once our web and digital media manager Carmel Kelly was satisfied that everything was working as it should, the handover was made to the Society's talented web team, which 'shock-tested' the website to ensure that all facets married seamlessly with the Law Society's new IT set-up, System 360.

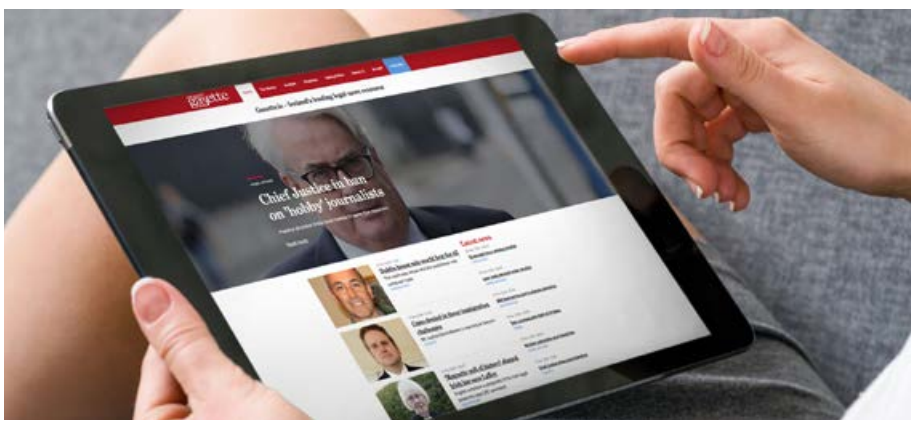
AT A GLANCE

- The *Gazette* has been published since1907
- This November saw a new chapter: the official launch of the Gazette.ie daily news service
- This development aims to ensure that the *Gazette* maintains pole position as the preferred legal news channel for practitioners and the general public

Ex machina

The desire was to move from a static to a highly dynamic website. The site had to be attractive enough to persuade members of the legal profession, and the general public, to want to visit every day.

Providing a daily news service was central to that aim. To make this happen, we brought on board journalist Mary Hallissey (formerly of the *Sunday Business Post*) who has become a key member of the team.



> THE INNOVATION MARKS A MAJOR ADVANCE FOR THE *GAZETTE*, WHICH HAS BEEN OPERATING AS A MONTHLY PUBLICATION SINCE 1907

We researched, developed and trialled content for the site – and introduced mobile journalism techniques to bring a new style of video news on board. To date, our experience in covering legal conferences, seminars and press launches is that the *Gazette* is now one of the few media outlets attending these events. This is due to diminished resources in the daily news media. The silver lining to this cloud is that it augurs well for Gazette.ie and will help to create demand for our online and video news service.

Allied with the Gazette.ie project, we have created dedicated social media channels on YouTube and Twitter that are being used to promote our unique content, with the help of the Society's web and social media coordinator Derek Owens.

The daily news service, allied with the monthly magazine, will allow readers to stay informed on the news and analysis that matters to them. Gazette.ie will prove popular with commuters and those on the move, featuring:

- Daily news updates (Monday to Friday, with a 'long-read' feature on weekends),
- A breaking news service,
- 'Long-read' analysis articles that will appeal to legal and other professionals,
- Short video news clips, with 'one-on-one' interviews with legislators, legal experts, practitioners, and conference keynote speakers,
- Picture and video galleries, and
- Dedicated social media channels.

The day the earth stood still

Following a' soft-launch' period of four weeks, the Gazette.ie website and daily news service officially launched on Wednesday 14 November. Loaded with information, it's a 'one-stop news shop' wrapped with all your favourite *Gazette*-related material.

The innovation marks a major advance for the *Gazette*, which has been operating as a monthly publication since 1907.

"The *Gazette* magazine is a historic pillar of the Law Society of Ireland," says director general Ken Murphy. "With 1,115 issues to date, it has been a treasured source of quality legal news, views, analysis and information since 1907.

"With the launch of Gazette.ie, we are building on that rich history for the digital era, while retaining all the essential elements

> WE HAVE CREATED DEDICATED SOCIAL MEDIA CHANNELS ON YOUTUBE AND TWITTER THAT ARE BEING USED TO PROMOTE OUR UNIQUE CONTENT

'Open the pod bay doors, HAL'.
'I'm afraid I can't do that, Dave'

of the traditional, multi-award-winning *Gazette* magazine."

Director of representation and member services Teri Kelly says: "The vision to turn the *Gazette* magazine into an online daily legal news service has been a dream for quite a while. The *Gazette* and web teams have worked tirelessly to bring the dream to fruition – and it's turned out better than we even imagined.

"Gazette.ie is a new member benefit – all members receive a free subscription to Gazette.ie in addition to the magazine. We will also be reaching a public and non-solicitor audience better than we ever have before. This is a powerful channel to bring the issues that matter to solicitors to the public forefront, including our daily breaking news service, in-depth features, video, audio, and photo galleries.

"Listening to *Gazette* long-read stories being narrated to me on my daily commute using the NOA app (a feature that will soon be available directly on Gazette.ie) has been a real innovation that I have personally enjoyed, and I know our members are going to love it."

These developments, allied with our award-winning magazine, will ensure that the *Gazette* maintains pole position as the preferred news channel for practitioners and the public.

It's a brave new world – and a busier one. To quote HAL: "I am putting myself to the fullest possible use, which is all I think that any conscious entity can ever hope to do."

From 1 January 2019, the online version of the Gazette *and analysis articles on Gazette.ie will be available only to Law Society members and subscribers. To subscribe, visit Gazette.ie and click on the 'subscribe' tag.*

FOCAL POINT

GAZETTE LAUNCHES NARRATED ARTICLES

The *Law Society Gazette* has made a great leap forward with the launch of its new narrated journalism service. In collaboration with our service partner, News Over Audio (NOA), consumers can stay informed by listening to narrated content.

NOA is the global leader in narrated journalism, and Law Society members and *Gazette* subscribers can now listen to the magazine's main features being read by professional voice artists. Download the 'NOA: Journalism narrated' app or visit newsoveraudio.com. From December, this service will become available to our members and subscribers direct from Gazette.ie.

The director general says: "The *Gazette* joins other illustrious publications such as *The Economist*, *The New York Times*, *Financial Times*, *Bloomberg News* and *The Irish Times* in providing this service."

And, in other news, the *Gazette* has yet again been shortlisted for this year's Irish Magazine Awards – in six categories, our highest tally ever.

Master and commander

No stranger to rough sailing, Patrick Dorgan's turn at the tiller as Law Society president looks 'set fair'. **Mark McDermott** plots the course

MARK MCDERMOTT IS EDITOR OF THE *LAW SOCIETY GAZETTE*

Transatlantic sailors must have some kind of madness gene built in. Why else, having survived a force 11 storm in the middle of the Atlantic, would you want to get back into a boat to do it all over again?

Patrick Dorgan's passion for sailing started in his teens. As soon as he could afford it, he invested in a dinghy, but was "a hopeless dinghy sailor. After capsizing for the last time into freezing cold water in Kinsale, I remember abandoning the boat, swimming to the committee boat and climbing aboard – maybe a metaphor for leaving negatives behind and moving on!

"As soon as I could afford it, I bought a small cruiser, and then a couple of bigger boats. I raced and cruised those all around Ireland. I went with the family to England and France and we greatly enjoyed it."

It culminated in 2005, when he bought a bigger boat and took a leave of absence from his firm. Over the course of two six-month stints, he sailed her with friends from Ireland down through Spain and Portugal, as far as Madeira, the Canaries, and then transatlantic to the Caribbean. Following a brief return to the office, he went back to the Caribbean and cruised from there to Cuba.

"There were only about three or four cruising yachts in Cuba at that stage – a fascinating country. When we were checking out of Cuba, the boat was checked from end to end by a sniffer dog – they're very fussy about people smuggling non-official cigars out of the country, which are also extremely expensive there. As we left the harbour, I could see the young customs officials looking at us, and you could see in their faces that they were wondering why we could wander off at will, while they were stuck in their country. We take all the freedoms of democracy very much for granted.

"We sailed up to the US, as far as Miami, and then headed back across the Atlantic. Between the Azores and home, we got hit by a bad storm. We were just about managing, and I was thinking, 'I hope it stays this way, but if it gets much worse – if something breaks or if somebody falls or hurts themselves, or something bad happens, we really are in deep goo! It went up to a force 11. That sounds dramatic, but the seas didn't build up too much, so we were okay. It stayed that way for about two days.

"We sailed back home, and I came into work and wondered whether I would have any clients left. As it turned out, it was the busiest period of my life." That was September 2006 – the great recession was looming.

Weather warning

It wasn't long before he was hit by a different storm – this time, of a professional nature, and one brought about as a result of his service on Council.

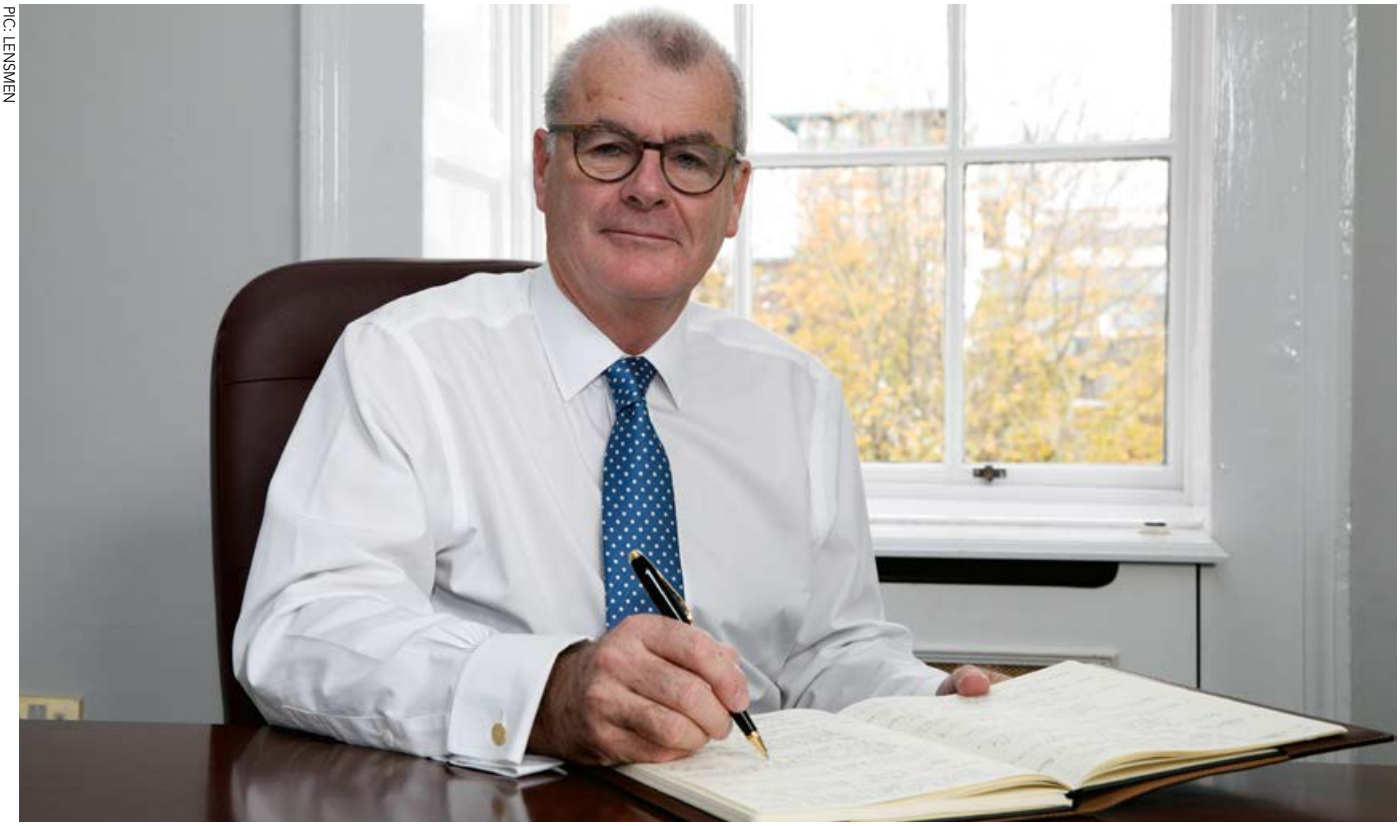
"I was asked to join the board of the Solicitors Mutual Defence Fund (SMDF) – the profession's insurance fund. I arrived just in time for the great collapse! Claims started multiplying like the loaves and fishes in 2008 and 2009 and, roughly at the same time, due to a well-publicised failure in Bloxham Stockbrokers, we lost the bulk of our reserves. I found myself almost by accident in the vanguard, first of all trying to persuade the Law Society Council, and then the profession, to take what ultimately turned out to be the correct decision to save the SMDF.

AT A GLANCE

- Patrick Dorgan's passion for sailing culminated in the mid noughties when he sailed with various friends to the Caribbean and back
- He considers his role in the SMDF rescue to be a highlight of his professional career
- His plans for the year include formulating a diversity and inclusion policy for the Law Society and starting the process of putting the Benburb Street site to use

PIC: JOHN SHEEHAN PHOTOGRAPHY

PIC: LENSMEN



"This was a difficult period of negotiation, research and persuasion, all culminating in a great 'town-hall' meeting out in Citywest in May 2011, when the profession – having heard both sides of the story in very great detail – had to decide, in a postal ballot, the fate of the fund. Solicitors were voting on whether to pay an annual subvention to create a support package of €16 million for the SMDF.

"I remember pacing up and down my office on the day of the count, and Ken Murphy rang me around midday to say that the omens weren't too good. This was a low point in my life, because, in common with nearly 3,000 colleagues at the time, the prospect of the SMDF failing would literally have equated to personal bankruptcy, because if a claim were made against you and even if there was no prospect of that claim succeeding, the costs of defending it would have been astronomical.

"We were all very relieved when the profession made the right decision – the collegiate decision – and saved the SMDF. This had the effect of not only preserving the SMDF but stabilising the professional indemnity market, which was critical at a very, very difficult time. It looks like the run-off of the SMDF will be completed successfully, and well within the limits sanctioned by the postal vote, so that the ultimate cost to colleagues will not be as great as expected."

So what course is the mariner plotting for his presidential term of office?

> I SEE MYSELF IN ABOUT A YEAR'S TIME BEING ABLE TO SIT IN A CHAISE LONGUE WITH A SMALL CIGAR AND JUST TALK TO THE DRAGON AND LET IT DO ALL THE WORK

"I want to formulate a diversity and inclusion policy for the Law Society. That work has started, and a proposal will be brought to Council at its next meeting for acceptance – which, hopefully, will lead to a high-level, inclusive working group being constituted.

"The good news is that, at my behest, we've just appointed our first black member to a Society committee. On behalf of the profession, I'd like to welcome on board Ashimedua Okonkwo to the Human Rights Committee. While the Law Society has been a sterling performer in terms of gender balance, we need to become more inclusive of the many races and ethnicities that are now an integral part of Irish society.

"Of course, education is always a significant issue for the Society. The Education Committee brought us the *Mahaffy Report*, which was followed up by the *Peart Commission Report* from the Future of Solicitor Education Review Group – an excellent piece of analysis of the state of legal education in Ireland. This report was approved by Council and submitted to the Legal Services Regulatory Authority as our submission on the topic. This will enable them, in turn, to

> THE SITE IN BENBURB STREET HAS BEEN LYING FALLOW FOR A NUMBER OF YEARS. WE KNEW WHEN WE PURCHASED IT THAT IT WOULD BE NEEDED SOME DAY, AND IT APPEARS THAT DAY HAS COME

make their recommendations to the minister, which, by law, they are obliged to do.

"Separately, I'd like to thank my predecessor Michael Quinlan for the excellent job he did in bringing the market study of sole practitioners and smaller legal practices in Ireland to completion. It identifies that the same challenges are there for small firms as for other SMEs, such as retention of staff and encouraging trainees to complete their practical training outside of the large urban centres. Solicitors, therefore, will have to look outside of their practices for solutions. The challenge will be for the Society to provide some structure around that."

"Finally, the site in Benburb Street has, as you know, been lying fallow for a number of years. We knew when we purchased it that it would be needed some day. It appears that day has come. Our leases of external office buildings are coming to an end at a time when rental levels are above those of the 'Tiger' era.

"In addition, physical resources are urgently needed if we are to maintain our pre-eminent position in the provision of education to our future colleagues.

"On top of that, we badly need new office space for the day-to-day running of the Society, while our bed-and-breakfast offering, so popular with our members, simply can't meet the demand.

"I believe that a perfect storm of demands and challenges has morphed into what I call a 'perfect symphony of serendipity'. The time is now ripe to look seriously at developing the Benburb Street site. I'm determined that, during this year, the governance structures will be put in place that will decide the direction we will need to take."

Whether we build, what we build, how we build it, when we build it, how we pay for it – these are big decisions – and the Council will ensure that they are made in the right way. We're not going to be building on this site again for maybe 100 years. This is not temporary work; this is Thomas Ivory [the architect of Blackhall Place] all over again, and we've got to do it right."

Once all of that is out of the way, what's at the top of his personal bucket list?

"Maybe another Atlantic circuit – but this time at a slower pace. I want to revisit Greenland, which I first saw two years ago on a friend's boat. It's an extraordinary place, and the scenery may not be around for much longer if global warming accelerates. It was an amazing place to go sailing – a bit dangerous, exciting and challenging – but mesmerising". g

SLICE OF LIFE

- **Patrick Dorgan is from Cork and was born in 1958. Married to Maria, they have three children, Jennifer (a solicitor), Frank (a chartered accountant) and David (a deal-desk manager with a software firm).**
- **There was no legal background in the family. "I scraped the points for law in UCC."**
- **His claim to fame: "We were the second Blackhall Place class with Prof Woulfe and Prof Sweeney. I sat between two very interesting and different people – one serious and studious, Patricia Rickard Clarke, late of the Law Reform Commission. The other? The esteemed broadcaster Miriam O'Callaghan."**
- **His first meeting with his wife Maria was on a blind date at an AIB Sports and Social Club dance in the Imperial Hotel in Cork. "I was at the bar and in walked Maria. It was a celestial trumpets moment. Thirty-eight years later and we're still blissfully married, I'm glad to say."**

QUICKFIRE ROUND

- ***Most influential person?*** **Winston Churchill, though he's probably not an ideal candidate for a number of reasons!**
- ***Favourite music?*** **I'm a classical music buff. I like the modern English composers, especially Benjamin Britten and the work of the American composer John Adams. His *Nixon in China* is one of the finest modern operas.**
- ***Favourite app?*** **At the moment, *Dragon Dictate*. It has a scary degree of accuracy and I think it will transform legal offices. It's not just transcription – it also does commands. I see myself in about a year's time being able to sit in a chaise longue with a small cigar and just talk to the *Dragon* and let it do all the work.**
- **What are you reading at present? *The Diary of Anne Frank*. A timely reminder of the fragility of civilisation and the dangers of demagoguery.**
- ***Pet hates of your job?*** **Requisitions on title. The sooner we bring in e-conveyancing, the better!**
- ***Favourite alternative job?*** **A crane driver. I love mechanical stuff, and there are so many moving parts, levers, wheels and dials!**

Slings and arrows

A carefully crafted and drafted settlement offer may result in terms that are acceptable to all sides. If the offer is not accepted, it can be a very useful measure in contesting an application for an award of costs. **Bill Holohan** breaks out the abacus

BILL HOLOHAN IS A SOLICITOR AND MEDIATOR

Mr and Mrs O'Reilly (the plaintiffs) purchased a property built in 2005 by the defendants. The house was a three-bedroom duplex at Hillrace Crescent, Saggart, Co Dublin, which cost €280,000. The O'Reillys alleged that the property was defective. They claimed the property had many defects that were not rectified, including condensation, mould, and fungus growth caused by poor ventilation in the attic and bedrooms. They claimed that this resulted in their sons developing respiratory infections.

After many visits to the GP and the emergency department in Tallaght Hospital, the plaintiffs – who got test results in June 2010 that showed one of their children had a mass on one of his lungs – were given medical advice to leave the property, which they did in August 2010. The plaintiffs remained out of the house and were living in rented accommodation up to the time of the trial.

They sued the builders and developers of the property in 2017, alleging negligence and breach of duty (including that the defendants had failed to ensure that the property was free from defects that would endanger the O'Reilly family's health).

They issued proceedings in the High Court, seeking damages for breach of contract, comprising special damages of €97,000 (which was the estimated cost of the repairs to be undertaken), special damages in respect of the cost of renting alternative accommodation, and general damages in respect of the adverse impact upon the lives of the plaintiffs.

AT A GLANCE

- The plaintiffs sought damages for breach of contract relating to the purchase of a defective property
- The defendants submitted that it was necessary for the court to take into account their efforts to resolve the dispute, pre-hearing, which were rejected by the plaintiffs
- The defendants were awarded all costs incurred by them from the date of the final offer, with the exception of the plaintiffs' claim for the cost of alternative accommodation
- The *Mediation Act 2017* contains radical provisions that now allow a judge to deny a party their costs – even if successful

As you like it

Mr Justice Donald Binchy delivered judgment on 31 July 2017 in *O'Reilly v Neville & ors* and made the costs ruling in January 2018 (*O'Reilly & anor v Neville & ors*).

In the July 2017 judgment, Binchy J made an order of specific performance, requiring the defendants to carry out the repairs to the property. He also awarded damages in respect of the cost of alternative accommodation. He left the issue of costs to be determined, pending submissions from the parties.

The default rule in court proceedings under order 99 of the *Rules of the Superior Courts* is that 'costs

PIC: SHUTTERSTOCK

> THE DEFENDANTS CANNOT BE CRITICISED FOR THE MANNER IN WHICH THEY ADDRESSED THE PLAINTIFFS' COMPLAINTS BEFORE THE ISSUE OF PROCEEDINGS, OR FOR THE MANNER IN WHICH THEY ADDRESSED THE PROCEEDINGS ONCE ISSUED

follow the event'. In other words, the winning party in litigation is entitled to an order that it be paid its litigation costs by the losing party.

The plaintiffs submitted that, in obtaining an order for specific performance of the building agreement, they succeeded in the 'event' in the proceedings, and that they were entitled to an order for the legal costs incurred by them in obtaining the order, in accordance with the general principle that costs follow the event.

The defendants submitted that it was necessary for the court to analyse the 'event' and to take into account the various opportunities afforded to the plaintiffs,

IMRO

LAW SOCIETY OF IRELAND

IMRO Professorship in Intellectual Property with the Law Society of Ireland

The Law Society's Law School offers pre-qualification training for those wishing to train as solicitors as well as a range of accredited post qualification courses and ongoing training for solicitors.

The Law Society of Ireland now wishes to recruit an adjunct IMRO Professor in Intellectual Property. This is a part time position which will be held for a period of two years. Duties will include:

1. The delivery of an annual IMRO lecture.
2. Involvement in course design for the Law Society's professional and post qualification courses.
3. Assisting with the development of new programmes in intellectual property.
4. Lecturing on relevant professional training courses, seminars conferences and diplomas/certificates.

This new position is open to either practising or academic lawyers who are specialists in the law of intellectual property (with specific emphasis on copyright).

IMRO is a national organisation that administers the performing right in copyright music in Ireland on behalf of its members (songwriters, composers and music publishers) and on behalf of members of the international overseas societies that are affiliated to it. IMRO is keenly aware of the inadequacies in copyright legislation, not only in Ireland but in other countries too. Most recently it has worked closely with Government, the European Commission, MEPs and policy makers with regard to shaping forthcoming EU copyright regulations to ensure they are fit for purpose in the 21st century in an increasingly important digital environment.

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland. The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

Applications for this position should be received by Monday 3 December and should be addressed to:

T P Kennedy
Director of Education
Law Society of Ireland,
Blackhall Place,
Dublin 7.

> THE DEFENDANTS CONTENDED THAT THE ONLY MATTER THAT WOULD THEN HAVE HAD TO PROCEED TO TRIAL WOULD HAVE BEEN THE CLAIM FOR THE COST OF RENTING ALTERNATIVE ACCOMMODATION, WHICH, IT WAS SUBMITTED, WOULD HAVE INVOLVED A SHORTER HEARING

by the defendants, to resolve the dispute pre-hearing. The defendants, in open correspondence, had made a number of offers to resolve the dispute, all of which were rejected by the plaintiffs.

The tempest

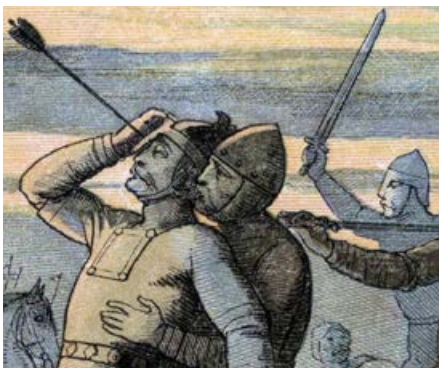
Some nine months before the matter came to trial, the defendants, in an open letter dated 18 February 2016, had set out a comprehensive mechanism for the identification of defects in the dwellinghouse, as well as the measures that would be required to rectify those defects. In particular, the offer included the involvement of the plaintiffs' engineer and provided for the intervention of an independent expert to resolve any dispute between the parties.

The plaintiffs had rejected the offer. Mr Justice Binchy considered the offer that had been made and then held that "the defendants cannot be criticised for the manner in which they addressed the plaintiffs' complaints before the issue of proceedings, or for the manner in which they addressed the proceedings once issued. On the contrary, the open offers made by the defendants to the plaintiffs with a view to resolving these proceedings were exemplary."

The defendants sought to rely on order 99, rule 1a(1)(c) of the *Rules of the Superior Courts*, which provides that the High Court in considering costs may, where it considers it just, have regard to the terms of any offer in writing sent by any party to another party offering to satisfy the whole or part of that other party's claim.

The defendants argued that the order for specific performance, which the plaintiffs obtained, was no more than they would have achieved had they accepted the offers that had been made.

PIC: SHUTTERSTOCK



"Ow! That bloke Norman's done got me in me eye!"

The defendants further contended that the only matter that would then have had to proceed to trial would have been the claim for the cost of renting alternative accommodation, which would, it was submitted, have involved a shorter hearing.

Measure for measure

The trial lasted for 11 days in total. In his January 2018 judgment, Mr Justice Binchy held that "the offer made in February 2016 should have been accepted and, by their failure to do so, the O'Reillys caused almost all of the costs that followed, with the sole exception of those costs that were exclusively related to the recovery of rent paid by them for alternative accommodation".

The defendants were awarded all costs incurred by them from the date of the final offer, except for those costs incurred in connection with the plaintiffs' claim for the cost of alternative accommodation.

Mr Justice Binchy awarded the plaintiffs just one day of costs out of the 11-day hearing.

The decision predated the commencement of the *Mediation Act 2017*, which contains radical provisions that will now allow a judge to deny a party their costs – even if successful – on the basis that, if they had explored the possibility for settlement or mediation, they might have achieved settlement on the same terms as the ultimate award, without all the expenses of trial.

In exceptional cases, a successful party may even be ordered to pay the legal costs of the unsuccessful party. Consequently, a well-pitched offer of settlement is now strategically very important, regardless of whether you are a plaintiff or a defendant, and a court is entitled to have regard to (and take into account) pre-trial correspondence, including without prejudice correspondence, when considering the question of costs.

A carefully crafted and drafted settlement offer, open or without prejudice, may result in settlement of the proceedings on terms that are acceptable to all sides – or, if the offer is not accepted, the offer can nonetheless be a very useful measure in contesting an application for an award of costs. g

LOOK IT UP

CASES:

- *O'Reilly v Neville & ors* [2017] IEHC 554, 31 July 2017
- *O'Reilly & anor v Neville & ors* [2018] IEHC 228, 18 January 2018

LEGISLATION:

- Order 99 of the *Rules of the Superior Courts*
- *Mediation Act 2017*

By the sword divided

The revolutionary period after the First World War was a time of tremendous upheaval for Ireland and the solicitors' profession. **John Garahy** dusts off the archives

JOHN GARAHY IS A RETIRED SOLICITOR WHO HAS COMPLETED AN MPHIL IN MODERN IRISH HISTORY

Those invited to attend the Law Society buildings in the Four Courts on 8 July 1921 for the unveiling of the Great War memorial were united in their wish to commemorate the 20 solicitors and 18 apprentices killed fighting for the British Empire; 155 solicitors and 83 apprentices served in the war.

Designed by Oliver Shepperd, the memorial was paid for by individual contributions from members of the Law Society, at a cost of £680.13s.2d. The president of the Society, Charles G Gamble, made a speech of acceptance that was touching in its simplicity in acknowledging the debt to the dead, together with the aspiration for peace in Ireland for the living. This aspiration was to be answered three days later, when the Truce announcing the conclusion of the Anglo-Irish war was announced.

Four green fields?

In the latter half of 1921, the Law Society faced three difficulties: the question of allegiance to which State; the near certain partition of Ireland, with the loss of the Northern solicitors; and the Dáil courts.

The *Third Home Rule Bill* had been enacted as the *Government of Ireland Act* in August 1914, ominously providing for the separation of four, six, or nine Ulster counties from any new State.

AT A GLANCE

- The *Government of Ireland Act 1920* created the political and geographic Ireland that exists to present times
- In 1921, the Law Society faced three difficulties: the near certain partition of Ireland, with the loss of the Northern solicitors; the question of allegiance to which State; and the Dáil courts
- Solicitors' income was reduced by war and conflict, and the Law Society permitted solicitors to appear before the Republican-established 'Dáil courts'

The historian Fearghall McGarry has proposed that the 1920 *Government of Ireland Act* was intended "to secure the Northern State" prior to negotiating with Republicans. The British king opened the new Northern parliament on 22 June 1921 with an impassioned plea for peace in Ireland, thus enabling the British Government to begin peace negotiations.

The 1920 act was stillborn, however. Its proposal for Home Rule was not acceptable to the revolutionary legatees of 1916, who had proclaimed a republic endorsed by the First Dáil in January 1919, and which was the object of the Anglo-Irish war.

The Law Society vigorously opposed partition, establishing a committee in 1916 to examine the consequences, while continuing implacable opposition. It refused to comment on the Northern Ireland solicitors bill or charter, though invited to do so.

Legally, the 1920 act had a fundamental and permanent effect on the court and legal systems. It commenced on 1 October 1921, partitioning the unified judicature system and fracturing the cohesion of the all-island legal professions, solicitors and the Bar, for the first time. The Society accepted partition as a fact, but proposed that it retain jurisdiction over Northern solicitors by devolving its powers to a Northern

THE COUNCIL RESOLVED TO WRITE TO THE MINISTER

PIC: REX FEATURES

> THE 1920 ACT HAD A FUNDAMENTAL AND PERMANENT EFFECT ON THE COURT AND LEGAL SYSTEMS, PARTITIONING THE UNIFIED JUDICATURE SYSTEM AND FRACTURING THE COHESION OF THE ALL-ISLAND LEGAL PROFESSIONS

law society for Ulster, which was rejected by the Northern Irish State. The Law Society forged close relations with the Law Society of Northern Ireland upon its establishment in 1922, with five members of the 'northern law association' serving on its council to the present day. It's a truism to say that the *Government of Ireland Act 1920* created the political and geographic Ireland that exists to present times.

After the deluge

A halcyon period followed the Truce. There was widespread relief that war had ended. The Dáil courts had been established by the First Dáil in 1919 as part of the alternative State created in opposition to British rule. The existing courts continued to function but were severely constricted and curtailed, only effective in areas of practice (such as probate and workmens' compensation) not dealt with by the Dáil courts. Solicitors' incomes were reduced by war and conflict, and the Law Society permitted solicitors to appear before Dáil courts. The *Irish Law Times and Solicitors Journal* said: "If solicitors had not been allowed to appear, they would have been reduced to breaking stones."

Negotiations to create a new State, free from British rule, began between five Irish plenipotentiaries and the British Government in October. One of the five was a solicitor, EJ Duggan. The *Articles of Agreement for a Treaty between Great Britain and Ireland* were signed in London on 6 December 1921, causing immediate dissension in Sinn Féin. The Dáil cabinet approved the articles on a split vote of four to three. The Law Society Council meeting on 7 December 1921 received a motion from Sir John O'Connell praising the agreement. The Council decided to defer discussion to a special meeting on 2 January 1922. Prior to the meeting, the Second Dáil met at the Senate chamber of UCD, Earlsfort Terrace, and debated the ratification of the Treaty, with increasing acrimony and bitterness.

The issues were the signing of the *Articles of Agreement* without President de Valera's prior approval, the creation of 'dominion' status, the oath of allegiance to the king and, crucially, the failure to secure a republic.

PIC: REX FEATURES

At the special Council meeting, Sir John's motion was criticised as 'too political', and was withdrawn. The Council members were aware of the Dáil debate and passed a motion "recognising the injury done to the material well-being of the community by public uncertainty and consequent disquietude, [the members] do hereby express an earnest hope that the deliberations may result in a decision bringing peace to our country".

The resolution was sent to the politicians and the press. The Society recognised the 'consequent disquietude' as inimical to the prosperity of the country and the solicitors' profession. There was not enough work – as evidenced by solicitors canvassing prisoners in the Bridewell for instructions. A functioning government of some description was required to preserve solicitors' livelihoods.

Uncivil war

The Treaty was ratified by a vote of 64 to 57 by the Second Dáil on 7 January 1922, with the Provisional Government formed on 16 January 1922. Michael Collins was appointed chairman. Two solicitors, EJ Duggan and Patrick Hogan, and one solicitor's apprentice, Kevin O'Higgins, were members of the government. O'Higgins was never admitted to the Roll as a solicitor; he was called to the Bar in January 1925.

Both pro and anti-Treaty forces attempted to avoid an outright shooting war, though there were many violent incidents.

TA Colfer, solicitor, New Ross, wrote to the Council in February 1922, stating that he had been 'kidnapped' by armed men and required to give a promise not to act for landlords in the recovery of rent. The meeting of 21 June noted the 'death by murder' of Francis Fitzmaurice, solicitor, Dunmanway, on 27 April 1922, one of three Protestants killed that evening – "the perpetrators were not identified".

The anti-Treaty forces fractured, with

FOCAL POINT

LAST COHORT OF APPRENTICES ELIGIBLE TO PRACTISE IN BOTH JURISDICTIONS

LEINSTER		MUNSTER		CONNACHT		ULSTER	
Dublin	34	Cork	6	Galway	7	Antrim	6
Wexford	5	Tipperary	6	Sligo	2	Monaghan	6
Offaly	2	Limerick	3	Roscommon	1	Cavan	3
Wicklow	2	Kerry	3			Derry	3
Kilkenny	1	Waterford	1			Tyrone	3
Kildare	1					Armagh	1
Meath	1					Down	1
Westmeath	1						
Louth	1						
TOTAL	48	TOTAL	19	TOTAL	10	TOTAL	23

direct and immediate consequences for the Society. Major General Rory O'Connor and his forces occupied the Four Courts' complex on 14 April 1922, including the solicitors' buildings. The secretary of the society, WG Wakely, went three times to O'Connor to recover the books of the Society. The Society moved to 33 Molesworth Street and continued administration and lectures for apprentices, with examinations being held at the Royal College of Surgeons.

The 'pact' election of 16 June 1922 contributed to the decline of relations between pro and anti-Treatyites, with contests increasing in number and intensity. Additionally, the British retained a force of 6,000 troops in Ireland, with artillery and air support, and pressed the Provisional Government to act against the anti-Treaty forces, threatening unilateral action. Matters reached a head on 28 June 1922, when the Four Courts' garrison refused an ultimatum to surrender and the Provisional Government forces began a bombardment – the Civil War had begun.

On 30 June, the Four Courts and Public Records Office were destroyed, including the solicitors' buildings, with the loss of hundreds of years of historic records. The responsibility for the explosions and fires in the Public Records Office is much contested in the historiography. The Roll books and registers of the Society survived the destruction, housed as they were in the strongroom built in 1899 when the Society acquired responsibility for admission to the Roll. The war memorial was recovered from the ruins and re-erected in the (new) solicitors' buildings.

The Law Society held the intermediate examinations in July at the Royal College of Surgeons. At the Council meeting on 12 July 1922, "the secretary reported the intermediate examinations held on the 4 July during the military operations: 25 out of 42 attended; 17 who did not attend could re-enter without fee. All passed."

Attendance was both difficult and dangerous. James Lockhart Russell, an apprentice from Ballymena, travelled by ferry to Wales and thence to Dublin! Between July 1922 and May 1923, 100 apprentices passed the Society's examinations, comprising the last cohort to be eligible to practise in both jurisdictions. This cohort included the first three women to be admitted to the Roll: Mary D Heron from Belfast, Helena M Early from Swords, and Dorothea M O'Reilly (née Browne) from Skibbereen. Their admission was made possible by the *Sex Disqualification (Removal) Act 1919*.

The Society's difficulties were resolved, albeit with regret, by partition and the loss of the Northern solicitors.

Obvious duties

The Dáil courts were abolished on 25 July 1922. Mary Kotsonouris, lawyer and historian, described their demise as "an obvious duty". The Irish Free State was born on 6 December 1922, and the Law Society

pledged its allegiance to a law-bound State, participating in the administration of the courts.

Patrick J Brady, president of the Society, said "solicitors' work was intimately associated with the general administration of the country. In fact, in a sense, it could be described as semi-official". Brady was the Irish Parliamentary Party MP for the St Stephen's Green ward (1908-18) in the House of Commons, nominated to the senates of the Parliament of Southern Ireland and the Irish Free State, and elected to the Senate in 1928.

A fellow member of the Society had a different experience. The Council meeting of 6 December 1922 noted a letter from Sean Ó hUadhaigh, solicitor, saying that "he was unable to interview clients in military custody". The council referred the letter to the Minister for Defence, seeking a meeting. The minister's reply – "send statement in writing" and enclosing regulations for interviewing prisoners – was noted at the Council meeting on 13 December 1922. Mrs Ó hUadhaigh wrote to the Council on 2 March 1923 stating: "Mr Ó hUadhaigh now in jail with no charge", and requesting assistance in seeking his release. The Council resolved to write to the minister. Mr JA Long, assistant solicitor to Mr Ó hUadhaigh, wrote a letter considered by the Council meeting on 25 April 1923 "asking the Council again to take steps to have Mr Ó hUadhaigh be brought to trial". The Council resolved to write to the minister.

Matters improved for Mr Ó hUadhaigh – he was the first chairman of Aer Lingus and Law Society president for 1947/8. g

Transfer window

Where transfer-of-business relief applies to a property sale, the VAT implications of the transaction for both the purchaser and the vendor must be carefully considered. **Katie Barbour** explains

KATIE BARBOUR IS A SOLICITOR AND IS INDIRECT TAX MANAGER AT EY

TOB or not TOB? That is the question that has exercised the minds of VAT practitioners in recent years, particularly in the context of the large volume of property sales transacted by receivers and liquidators.

While the much-anticipated Revenue guidance issued in July 2014 and updated in November 2015 detailed the application of transfer of business relief, new guidance published on 31 July 2018 provides welcome clarification on a number of issues.

Where ownership of all or part of the assets of a business are transferred to an accountable person, that transfer is deemed not to be a supply of goods for VAT purposes, provided the assets transferred constitute an undertaking or part of an undertaking capable of being operated on an independent basis.

The relief applies even if the business or part of the business transferred has ceased trading. Goodwill or other intangible assets of a business transferred with that business are deemed not to be a supply of services. These deeming provisions are known as 'transfer of business (TOB) relief'. Where the relief applies, VAT does not physically have to be charged or collected on a sale.

The classic transfer of a business as a going concern includes premises, employees, plant and machinery, stock, goodwill, intellectual property and debtors. The CJEU has ruled in *Zita Modes* that the relief "does not cover the simple transfer of assets"; it only applies where the assets transferred "constitute an undertaking or a part of an undertaking capable of carrying on an independent economic activity".

Revenue takes the view that property sales can come within the scope of the relief. In this regard, it is fair to say that Revenue takes a broad view in relation to the application of the relief.

Where the relief applies, VAT is not chargeable on the sale, and the sale does not give rise to a VAT liability in the form of a capital goods scheme adjustment for the vendor.

However, this does not mean that the sale is without VAT implications for the purchaser. At a high level, those implications depend on whether the property is commercial or residential.

AT A GLANCE

- Transfer-of-business relief may be applied where a purchaser has applied for, but has not yet received, a VAT registration number
- An 'accountable person' is defined as a person who makes taxable (that is, VATable) supplies of goods or services in the State
- It is important to note that the term 'accountable person' does not include a person registered for VAT only for the purposes of accounting for intra-community acquisitions or received services

Specific property issues

Broadly speaking, where the relief applies to a commercial property sale, the purchaser is treated as if the purchaser acquired it when the vendor did. For VAT purposes, the purchaser

PIC: SHUTTERSTOCK

> REVENUE HAS ALTERED ITS THINKING IN RELATION TO THE TRANSFER OF A PROPERTY FROM A LANDLORD TO A TENANT. IN PREVIOUS GUIDANCE, THIS CAME WITHIN THE SCOPE OF TOB RELIEF. HOWEVER, THIS IS NO LONGER THE CASE

effectively 'steps into the shoes' of the vendor for the purposes of the capital goods scheme.

The VAT capital goods scheme is a mechanism for determining VAT recovery in respect of a property over its VAT life. Where VAT is originally recovered on a property, but it is subsequently put to a VAT-exempt use, there is a clawback of a portion of the VAT originally recovered, which is essentially time apportioned.

A property remains within its VAT life for a period of 20 years from the date of

first completion, or ten years in the case of development works carried out on a previously completed property. Where a property remains within its VAT life, the purchaser must continue to use it for VATable purposes – for example, by charging VAT on rents – to avoid triggering a clawback of VAT recovered on its acquisition or development.

The VAT clause included in the sales contract should oblige the vendor to provide a VAT record known as a 'capital goods record' to the purchaser. This record shows the VAT incurred on acquisition and/or development of the property, the VAT recovered, and the use of the property on an annual basis.

This requirement poses particular difficulties in the context of distressed sales. The borrower is obliged to provide a record, but rarely does so.

In such circumstances, reasonable endeavours should be made to obtain whatever information is available, and the VAT clause will usually specify that the record is being provided based on the information currently available, or words to that effect. Furthermore, where properties were purchased from receivers and are now being sold under TOB, vendors caveat the VAT clauses and specify that the information is based on what is available.

Where the relief applies to a residential property sale, it is not possible for the purchaser to 'step into the shoes' of the vendor for the purposes of the capital goods scheme. This is largely because it is not possible to put a residential property to a VATable use by opting to tax lettings post 1 July 2008.

This means that a residential sale triggers repayment of VAT recovered by the vendor or payment of VAT chargeable on a sale absent TOB relief. VAT legislation contains a special provision that shifts responsibility for remitting the VAT due to Revenue to the purchaser.

This distinction in the application of the relief has created particular difficulties in negotiating residential property sales. As the purchaser may have to account for the VAT, the purchaser needs to factor this into the price to be offered. In addition, there has been much debate as to the extent of the application of the relief to let property.

Distressed sales have proven particularly problematic, largely because the majority of these sales are to non-accountable persons, typically at auction. In such circumstances, the receiver or mortgagee in possession must discharge the VAT liability.

New Revenue guidance

Revenue has provided welcome clarification on the application of the relief to the sale of let property. Previous guidance stated that the relief could apply to the sale of vacant property that was let or partially let in the past on a continuing basis.

However, no guidance was provided on the length of letting that would satisfy the requirement. In addition, applying the relief to such sales appeared to run contrary to the spirit of the legislation, as it was difficult to see how the transfer of a single vacant (but previously let) property could constitute the transfer of a business rather than an asset sale.

The new guidance provides that the transfer of property of itself, without additional assets such as a letting agreement, no longer qualifies for the relief – regardless of past use.

Let property only qualifies for the relief if it is transferred with the benefit of an existing letting agreement, agreement to lease, or licence that, together with the property, are capable of constituting an independent business or undertaking. This is a welcome clarification on the operation of the relief.

Revenue has altered its thinking in relation to the transfer of a property from a landlord to a tenant. In previous guidance, this came within the scope of TOB relief. However, this is no longer the case.

It also reaffirms that the transfer of property that is part let, part vacant, and part undeveloped by a single vendor in one transaction to a single purchaser qualifies for relief. However, the vendor must be in a position to demonstrate that the property was developed with the intention of using it for the purpose of a letting business.

The guidance provides that the transfer by a co-owner of his/her interest in let property to another co-owner or a third party qualifies for relief. The relief also applies to the sale of an option to acquire property where the relief applies to the underlying sale.

Overall, the guidance emphasises the need for substance where the parties to a property transfer seek to apply the relief. A transfer of property of itself (whether or not previously used for the purpose of a business) without additional assets that, together with the property, constitute an independent business or undertaking, will not qualify for the relief.

The guidance applies to assets transferred on or after 31 July 2018. Previous guidance applies to assets subject to binding contractual arrangements put in place prior to that date but transferred on or after that date.

Not out of the woods yet

As is always the case with VAT, there are additional issues to be addressed.

Previous guidance confirmed that the relief applied to vacant property used for the purposes of a business in the past, having the necessary quality and attributes to be used for a similar business again immediately after transfer. The example cited was a factory vacant at the time of transfer, with all the necessary fixtures and fittings to be operated as a factory again following transfer. This example is not included in the new guidance.

As the relief can apply to the transfer of a business that has ceased trading, it is submitted that it could still apply to this scenario, where the parties are in a position to prove that there is substance to the transaction. This would need to be considered on a case-by-case basis, having explored the possibility of making a Revenue submission.

> NEW REVENUE GUIDANCE PUBLISHED ON 31 JULY 2018 PROVIDES WELCOME CLARIFICATION ON A NUMBER OF ISSUES

> BROADLY SPEAKING, WHERE THE RELIEF APPLIES TO A COMMERCIAL PROPERTY SALE, THE PURCHASER IS TREATED AS IF THE PURCHASER ACQUIRED IT WHEN THE VENDOR DID

Although the clarifications – particularly in relation to let property – are welcome, the difficulties outlined above continue to arise in respect of residential property sales.

It is submitted that the best way to deal with these issues may be to exclude residential property from the application of the relief.

Future VAT recovery

On first principles, the vendor is entitled to a deduction of input VAT in respect of services directly related to the transfer of business assets where the transfer would have been taxable absent TOB relief. In the property context, entitlement to a deduction will only arise where this is the case without the parties exercising the joint option for taxation.

However, Revenue has indicated acceptance of the application of the CJEU decision in the *Abbey National* case to the calculation of recoverable VAT on costs incurred in connection with a sale subject to TOB relief.

The court held that, where the assets being transferred give rise to transactions that are subject to VAT – for example, rents subject to VAT – all of the VAT on sale-related costs is recoverable. An apportionment is required where there is a mix of rental income.

Where the relief applies to a sale, the VAT implications of the transaction for both the purchaser and the vendor must be carefully considered. Where the value of the property and/or any development works carried out on it is high, mistakes are likely to be costly. g

LOOK IT UP

CASES:

- *Abbey National plc v C&E Commissioners* (Case C-408/98)
- *Zita Modes Sarl v Administration de l'enregistrement et des domains* (Case C-497/01)

LEGISLATION:

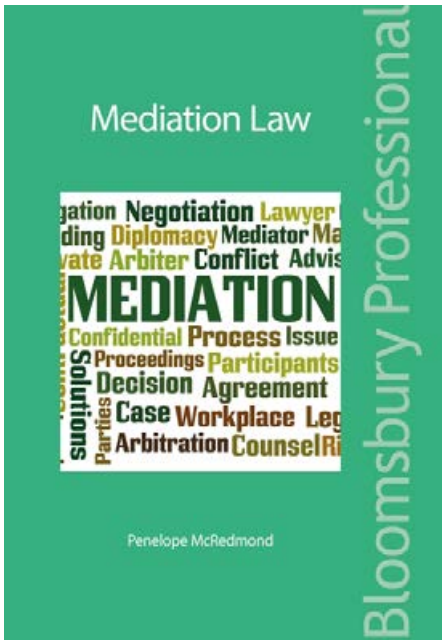
- *VAT Consolidation Act 2010*, section 20(2)(c) and section 26

LITERATURE:

- Revenue Commissioners (July 2018) tax and duty manual, *Transfer of Business*

MEDIATION LAW

Penelope McRedmond. Bloomsbury Professional (2018), www.bloomsburyprofessional.com. Price: €155.



They say that the purpose of any book should be to entertain, inform, or educate – or ideally, all three at the same time. With legal textbooks or publications, it is not usually expected that one would find the book entertaining, but it says something (perhaps of me) that I found this book to be entertaining, informative and educational.

The first chapter, on mediation basics, is one of the best-written and most informative summaries of the development of mediation in Ireland that I have ever read. The reader is introduced to the concept of mediation and the difficulties involved in defining exactly what it is. The author also provides a short history of mediation worldwide and discusses the development of mediation in Ireland. Developments in the US, Ireland, England and the EU are clearly and succinctly outlined. The various models of mediation are explained in simple and understandable terms. The role of the mediator is then outlined, as are their duties and obligations, including contractual and statutory, issues of confidentiality and liability, and (very importantly) conflicts and ethics.

The background to the development of the *Mediation Act* is discussed, prior to a section-by-section analysis of its various provisions.

Other topics include the voluntary nature of mediation, impartiality and neutrality, determination, the thorny issue of confidentiality, mediation agreements (of particular interest to solicitors), ADR clauses, court rules and costs, and family law mediation.

The EU dimension is also covered, while mediation under non-*Mediation Act* legislation and schemes is dealt with comprehensively.

There is a helpful reference in the analysis of each section to the history of submissions made during the course of the formulation of the legislation, and in relation to the nature of proposed amendments to the draft bill, which helps the reader to frame an understanding of the ultimate legislation and will assist in its interpretation. Right up to date, the author deals not only with the act itself, but with the rules of the District, Circuit and Superior Courts.

I would have liked to have seen some more consideration of recent case law. While the case law referred to includes the *Atlantic Shellfish* and *Grant* cases, for example, no reference is made to a number of important decisions, including the decision in *O'Reilly & anor v Neville & ors* ([2018] IEHC 228), which is very relevant in the consideration of failure to consider settlement and settlement offers in particular, and the English decision in *Car Giant Ltd & Anor v London Borough of Hammersmith* ([2017] EWHC 464).

Similarly, I would have liked to have seen reference to cases such as *Duffy v Liffey Meats (Cavan)* ([2017] IEHC 103), *Thakkar & Another v Patel & Another* ([2017] EWCA Civ 117), or *Gore v Naheed and Ahmed* ([2017] EWCA Civ 369), as the costs implications of failing to consider mediation and engage in settlement of one kind or another is a rock on which many solicitors are likely to perish.

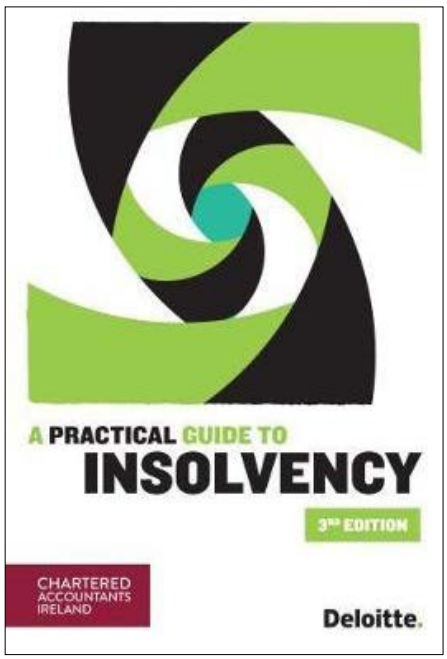
The obligations of practising solicitors and barristers under sections 14 and 15 in terms of advising clients to consider mediation as a dispute resolution mechanism are dealt with in a very comprehensive way. This will prove a great asset to those practitioners who wish to familiarise themselves with this aspect of their obligations.

Solicitors should consider purchasing this book – as it would be a lot cheaper than paying the policy excess on a negligence action.

Bill Holohan is a solicitor and mediator.

A PRACTICAL GUIDE TO INSOLVENCY (3RD EDITION)

Chartered Accountants Ireland (2017), www.charteredaccountants.ie. Price: €45.



Produced by Chartered Accountants Ireland and Deloitte, *A Practical Guide to Insolvency* is in the mould of a 'how-to' guide rather than a legal tome. It is not a book that will ever be quoted by a High Court judge in a seminal judgment. It is, however, a book that will help you get your matter before the High Court – or keep you away from the High Court, if that is not where you are meant to be.

Each of the primary corporate and personal insolvency mechanisms has its own chapter, with creditors' voluntary liquidations, court liquidations, examinership, receivership, bankruptcy, and vehicles under the *Personal Insolvency Act 2012* all receiving treatment.

While written primarily, it would appear, as an aid to accountants who might be carrying out insolvency work, it is nonetheless very helpful for solicitors. Whether acting for the insolvency practitioner, the debtor, or the creditor, having such a clear and practical summary of what is expected in the process is highly advantageous.

The chapters follow the same general pattern, with an overview of the mechanism, a summary of the relevant legislation, guidance about the circumstances when the mechanism is applicable, a step-by-step description of the process, and frequently asked questions. Then, depending on the chapter, there are other interesting elements, such as precedents for organising a creditors' voluntary liquidation and a template for conducting investigations into the conduct of directors.

Several instructive case studies are interspersed across the chapters, and the book concludes with appendices containing file review checklists for a number of the mechanisms, which – while again focused on the work of the accountant – are nonetheless instructive for the solicitor.

For a firm regularly undertaking core insolvency work, this book will still be useful, covering as it does the full panoply of areas within the field. To a firm occasionally instructed to act in insolvencies, this book is an absolutely beneficial tool in the solicitor's armoury.

Richard Hammond is a partner in Mallow law firm Hammond Good.

HIT ME BABY ONE MORE FINE

The European Commission has levied a penalty of more than €4.3 billion on Google for abusing its dominant position. **Cormac Little** clears his history

CORMAC LITTLE IS HEAD OF THE COMPETITION AND REGULATION DEPARTMENT IN WILLIAM FRY AND VICE-CHAIR OF THE LAW SOCIETY'S EU AND INTERNATIONAL AFFAIRS COMMITTEE

WHILE GAINING A DOMINANT POSITION IS NOT ILLEGAL, THE CLEAR LESSON FROM THE ANDROID CASE IS THAT A DOMINANT UNDERTAKING NEEDS TO BE VERY CAREFUL IN HOW IT TRIES TO MAINTAIN OR BOLSTER ITS MARKET SHARE

News from the EU and International Affairs Committee. Edited by TP Kennedy, director of education, Law Society of Ireland

Last July, the European Commission found that Google LLC had abused its dominant position within the meaning of article 102 of the *Treaty on the Functioning of the European Union*. The abusive conduct entailed Google imposing restrictions on smartphone/tablet manufacturers and mobile network operators who supply devices using the Android operating system. The commission found that Google's conduct gave an illegal advantage to its internet search engine/app, Google Search.

The commission fined Google €4.34 billion. This penalty represents the largest-ever fine (both nominally and adjusted for inflation) imposed by the commission on an individual firm for competition law infringements, surpassing Google's own, presumably unwanted, record: a €2.42 billion fine contained in the commission's June 2017 decision for abusive behaviour regarding the online shopping comparison service, Google Shopping.

Article 102

Article 102 prevents the abuse of a dominant position in the EU (or in a substantial part of it) that affects trade between member states. Accordingly, before finding that an undertaking has infringed article 102, the commission must first establish that this entity has a dominant position. A dominant position is defined as a position of economic strength that allows an undertaking to hinder effective competition being maintained in the relevant market by allowing it to behave, to an appreciable extent, independently of its competitors, customers and, ultimately, consumers. Dominance *per se* is not illegal, but dominant entities are under a special responsibility not to hinder effective competition in the marketplace. Article 102 contains a non-exhaustive list of various types of abusive conduct. These include limiting production, markets or technical development to the ultimate prejudice of consumers. A dominant company may argue that its behaviour is objectively justified and thus does not infringe article 102.

Scope of investigation

Following a series of complaints, the commission's DG Comp launched its formal investigation of Google in April 2015. A year later, the commission issued a statement of objections (SO) to Google and its parent company, Alphabet Inc, alleging breaches of article 102. The proposed findings focused on contractual restrictions placed by Google on both mobile device manufacturers and mobile network operators that sought to ensure that traffic was directed through Google Search. The SO detailed the commission's concerns regarding three types of conduct: illegal tying of Google's search and browser apps; making payments conditional on the pre-installation of Google Search; and obstructing the development and distribution of competing Android operating systems.

Google's strategy

Google's search engine/app is the internet search giant's main source of revenue. Mindful of the shift from desktop to mobile internet browsing, Google acquired the entity that invented the Android mobile operating system. Currently, approximately 80% of mobile devices in the EU operate on Android, with Google posting the source code behind each new version of this operating system online. In principle, therefore, third parties may download the software before modifying it for use on their own or third-party devices. These alternative versions of the operating system are commonly referred to as 'Android forks'. However, the published version of Android does not contain Google's proprietary apps, such as Google Search and its internet browser, Google Chrome.

Market dominance

The commission found that Google is dominant in each national market for internet


PIC:SHUTTERSTOCK/NUALA REDMOND

search throughout the 31 countries that currently comprise the European Economic Area or EEA (that is, the EU's 28 member states plus Norway, Lichtenstein and Iceland). The commission noted that, since 2008, Google has consistently held a high market share – above 90% in most cases – in internet search in each country and has thus been dominant. Another factor indicating dominance is the high barriers to entry in the internet search market, largely down to network effects – the more customers use a search engine, the more attractive the latter becomes to advertisers. This results in the generation of profits that are used to improve Google's search offering, while also gathering data regarding customers, allowing Google to strengthen on both fronts.

Third-party manufacturers may license Android for use on their devices. Through its control of Android, Google (with a market share of over 95%) is globally dominant (excluding China) in the licensable smart mobile operating systems market. Network effects are also relevant here. The more users of Android, the more developers invent apps for use by those consumers. The commission distinguished Android from integrated operating systems like Apple iOS or Blackberry, since these are not available for use by third-party smartphone/tablet manufacturers. That said, the commission also examined whether the potential downstream competition posed by Apple in the sale of mobile devices could constrain Google in the upstream market for the licensing of Android. However, DG Comp found that this threat was limited, since Apple's iPhone or iPad are typically more expensive than devices running on Android. Moreover, Google Search is typi-

GIVEN THAT GOOGLE'S PARENT COMPANY, ALPHABET, GENERATES REVENUES OF APPROXIMATELY USD $300 MILLION PER DAY, THIS FINE COULD BE VERY SIGNIFICANT

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cally the default search engine on Apple devices, so even if a user switched from Android to iOS, he/she would be likely to use the same search app.

Google's app store, Google Play, represents the channel through which more than 90% of apps are downloaded on Android devices. Similarly, Google Play does not face a competitive threat from Apple's App Store, since the latter is only available on Apple-manufactured devices. Google is thus dominant in the market for app stores for the Android mobile operating system.

Illegal tying

Google offers a bundle that includes Google Search and Google Chrome in addition to Google Play. However, a manufacturer cannot pick and choose between these services. Since consumers expect to have Google Play pre-installed on their devices, not least because this facility cannot be independently downloaded, this means that Google Search and Google Chrome are almost always available on Android devices. The commission found that pre-installation clearly favours the incumbent. In other words, Google's search app is used much more frequently on Android devices (where it is, of course, pre-installed) than on devices using Windows Mobile, where consumers must download Google Search themselves. Google counter-argued that the tying of both its search and browser apps was necessary to gain a fair return on its investment in the Android operating system. The commission rejected this, stating that Google would still have earned significant revenue from search advertising without the relevant restrictions. In sum, the commission found that the tying of the search and browsers apps to the app store was an abuse of Google's dominant position.

Google gave significant financial incentives to device manufacturers and mobile network operators, on the condition the sole search engine they installed across their relevant devices using the Android operating system was Google Search. The commission's investigation showed that this conduct stifled competition, because the provider of a rival search engine would not have been able to compensate a device manufacturer or network operator for the loss of the revenue from Google across all smartphones/tablets. Dismissing the arguments that the relevant conduct was necessary to persuade manufacturers and network operators to supply Android devices, the commission found that Google's exclusivity payments were an infringement of article 102.

Illegal obstruction

In order to pre-install Google's proprietary search and other apps, manufacturers had to commit to Google not to supply even a single device based on an Android fork. This conduct closed an important route to market for competing apps. The commission noted that this provision restricted innovation to the detriment of consumers who were denied access to alternative Android systems. The commission rejected Google's argument that these restrictions were necessary to prevent a fragmentation of the Android system, since no robust evidence was presented that Android forks would be adversely affected by technical glitches. Again, the commission found that this conduct was an abuse of Google's dominant position.

Overall impact

The commission found that these three categories of abuse were a key part of Google's strategy to reinforce the dominance of its internet search engine. The tying practices ensured the pre-installation of Google Search and Google Chrome on nearly every Android device, whereas the exclusivity payments to manufacturers/network operators strongly reduced any incentive to install competing search engines. Reducing market access of the latter apps prevented them from gathering data, which made their respective products less attractive to advertisers.

The fine

The commission's fine reflects the duration and gravity of the infringement and is based on the value of Google's revenue from search advertising services on Android devices in the EEA. In its decision, the commission ordered Google to stop the three categories of abusive behaviour within 90 days and to refrain from any other conduct that has the same aim or impact. That said, Google is entitled to adopt a fair, reasonable and objective approach to ensure the proper functioning of Android devices using Google's suite of apps. On the other hand, manufacturers must be free to supply devices using Android forks.

Google's other challenges

Google's EU competition woes are not limited to the Android case. In addition to the Google Shopping decision, which is currently under appeal to the General Court, the commission is also investigating AdSense (a Google product that allows third parties to place banner ads on its websites). In its July 2016 SO, the commission outlined its concerns that Google may be abusing its dominant position by preventing these third-party websites from sourcing search ads from the search giant's competitors. Moreover, there is the possibility of Google being forced to deal with various proceedings in the national courts from third parties who seek to rely on the commission's findings.

Next steps

This decision signifies the end of but one chapter in the ongoing dispute between the commission and Google.

In October, Google confirmed that it has appealed the commission's Android decision to the General Court. Around the same time, press reports suggested that Google had changed its licensing model. Google apparently plans to charge manufacturers a royalty per device, depending on size of the smartphone/tablet and country of sale, for using apps such as Google Play and Google Maps. However, companies can reduce the size of the fee by agreeing to bundle Google Search and Google Chrome. In addition, the manufacturer would benefit from a slice of Google's advertising revenue. It remains to be seen whether these proposals resolve the commission's competition concerns. If not, Google may face daily fines of up to 5% of its parent's average daily turnover. Given that Alphabet generates revenues of approximately USD $300 million per day, this fine could – depending on the duration of any non-compliance with the July 2018 decision – be very significant.

The key issue of the commission's decision to fine Google is the extent of the responsibility a dominant undertaking has not to hinder competition when it develops new products and services. While gaining a dominant position is not illegal, the clear lesson from the Android case is that a dominant undertaking needs to be very careful in how it tries to maintain or bolster its market share. g

CONVEYANCING COMMITTEE

PLANNING SEARCHES

There are no current guidelines setting out what a planning search should cover. There can also be confusion as to what a planning search should include. The extent of the search can vary based on the law searcher used and/or the local authority involved. As such, the results can differ. A routine planning search is relatively simple and limited in the results returned. It is no replacement for proper due diligence, to be completed by suitably qualified advisors.

A variety of practical difficulties arise in relation to planning searches. While planning authorities are obliged to maintain certain registers, the manner in which these registers are maintained by the different local authorities varies widely. It can be very difficult to extract information from registers that are handwritten.

Notwithstanding that section 7(4) of the *Planning and Development Act 2000* provides for the register to incorporate a map to assist in tracing any entry, it is not always possible to search by map. Quite often the maps can be vague and make searching in this way unreliable. Properly bonded searches are the safest way to have a planning search completed.

It is now commonplace for most local authorities to upload new application details to their websites to encourage online searches. Not all authorities have historic information, and only some are uploading historic information to their website. It is the view of the committee that such online searches are currently questionable for the purpose of reliance, particularly given that there is currently no statutory basis for online planning registers.

Although the circumstances of each transaction may require a different approach from time to time, the committee has set out below some guidance as to what should be requested as part of a planning search and when a search is necessary.

Purchasers' solicitors should bear in mind that their clients are deemed to be on notice of matters appearing on the planning register (general condition 35(b) of the *Conditions of Sale 2017* edition and general condition 31(b) of the *Conditions of Sale 2019* edition).

A planning search is not intended to provide the sort of detailed information that some people may require before buying a property for investment purposes. It is most certainly not a substitute for the detailed checks that a property developer should undertake before buying land for a development or redevelopment. Persons buying land for development/redevelopment should have their appropriate technical advisors carry out more intensive investigations and should not rely on a routine planning search. In such circumstances, the solicitor acting for a developer purchasing a property should advise the client (in writing) that a routine planning search will not suffice and that the appropriate due diligence pre-contract should be carried out by the relevant technical advisors and a proper report procured.

This practice note is not intended to cover all types of commercial properties, but the committee considers it appropriate to mention, in passing, that solicitors acting for persons buying a farm or tracts of land should advise their client to check whether the property is in an area affected by any specific designation in force at that time, including but not limited to special protection areas, special areas of conservation, and natural heritage areas, or has any national monuments or protected structures located on it.

For large scale investments, it may be appropriate to have a full technical survey completed.

When acting for the purchaser of a commercial property or of a house that the purchaser intends to extend or redevelop, solicitors should advise their client (in writing) that the safest course is to instruct an architect or engineer with experience in property development to carry out a survey and searches when preparing a report for the purchaser, taking into account the future intended development.

A routine planning search is only really appropriate for residential sales/purchases. It should be made clear to purchasers that a planning search is not intended to be an assessment of the local area. It will not necessarily tell if there are proposed developments in the vicinity that the purchaser might consider undesirable. A decision to buy a property and to check out an area is a matter for the purchaser to make based on their own enquiries, and this is not something that is, or should become part of, the role of a purchaser's solicitor.

When acting for a purchaser of a dwellinghouse and in other cases where the solicitor deems it appropriate, a solicitor should have a planning search carried out by a competent person that deals with the following items:

- Details of all planning applications and permissions granted and/or refused in relation to the property,
- Details of all enforcement proceedings taken or other notices served under the planning acts in relation to the property,
- The zoning of the area in which the property is located according to the development plan or local area plan (if any),
- Any road schemes that do or might affect the property,
- Any compulsory purchase orders that affect the property,
- Whether the property is a protected structure and/or declared to be an area of specific designation under the planning acts,
- Any compensation payments relating to the property and/or agreements restricting or regulating the development of the property,
- Details of any tree preservation orders and/or public rights of way.

The purchaser should carry out a planning search pre-contract.

It is also the view of the committee that planning searches need not be updated for completion, as a matter of course, unless there is good reason for doing so. Examples of circumstances that may merit updated searches include, but are in no way limited to, occasions where there is concern as to potential enforcement, delays or passage of time between signing and completion, complex transactions, and/or actual notice of matters that justify an updated search. It is incumbent upon each practitioner to satisfy themselves in each case as to the correct approach to be taken.

It is also the view of the committee that, where a property being purchased is a single resi-

dential dwelling on the first sale by the developer on completion of the dwelling, where the opinions on compliance and the certification documentation being furnished on closing are based on an inspection of the dwelling within the six-month period prior to completion, there is usually no need for the purchaser's solicitor to make specific planning searches, unless on notice of a particular concern.

If in doubt as to what your law searchers (or other competent person carrying out the search) address in their enquiries, you should seek verification from them and ensure that the items listed above are included.

CONVEYANCING COMMITTEE

PRA REQUIREMENT FOR FOLIO NUMBER IN STAMPING CERTIFICATE

The attention of practitioners is drawn to PRA Legal Office Notice no 1 of 2018, 'Query management/review and rejection of dealings'. Paragraph 6 of the appendix to that notice provides that an application should be rejected if, among other things, no stamp certificate or other evidence of Revenue stamping is lodged. It also refers to a previous stamp duty Legal Office Notice no 4 of 2014, 'Examination of documents, which also lists a number of other grounds for rejection, including that the relevant folio number is not inserted on the stamp certificate.

The PRA has recently advised the committee that, while it did not previously enforce these provisions, it is now doing so, as set out in Legal Office Notice no 1 of 2018 as above. The committee does not agree that this requirement should be enforced by the PRA, and it has written to the PRA with a view to persuading it to change its practice and reverse its decision to enforce this requirement.

It is the committee's view that enforcing this requirement will add hugely to the administrative burden of the profession and, indeed, of the Land Registry itself. The committee notes that the provision of the folio number is optional in the Revenue stamping system, and it is not understood by the committee why the PRA would make it a compulsory requirement for registration purposes. Nevertheless, the current PRA procedure is as set out in its legal office notice, and practitioners should be aware of the position. The committee will notify the profession of any progress made with the PRA on the matter in due course.

CONVEYANCING COMMITTEE

IRISH WATER UPDATE

As of 1 January 2014, Irish Water assumed responsibility for water and waste-water infrastructure, which was previously vested in local authorities. Irish Water is not responsible for surface water pipes or water attenuation systems, which remain with the local authority.

Irish Water has confirmed to the Conveyancing Committee that solicitors acting for purchasers of second-hand dwellings may continue to rely on a letter previously issued by a local authority, confirming that roads and services are in charge, as evidence that the applicable water infrastructure is now vested in Irish Water.

In addition, Irish Water has confirmed that, where a local authority issues a letter confirming that the roads immediately abutting the property are in charge, Irish Water accepts responsibility for the water infrastructure servicing the property, even where the letter states that the local authority is no longer responsible for the water infrastructure.

This confirmation is applicable only for property that:

- Is not part of a privately managed estate,
- Is not serviced by a private well or a group water scheme,
- Is not serviced by a septic tank, group waste-water scheme, and/or private waste-water treatment facility.

In relation to a privately managed estate, the letter from the local authority can only confirm that roads and/or services are in charge up to the boundary of the estate in which the property is situate. Such a letter will be accepted by Irish Water as confirmation that the water infrastructure serving the estate is the responsibility of Irish Water.

Irish Water does not accept that registration with Irish Water, or a demand or receipt for payment of water charges, can be relied upon as evidence that Irish Water has assumed responsibility for water infrastructure, on the basis that there are a large number of properties that connect to private water infrastructure located in third-party private land.

Irish Water is putting in place the administrative procedures to enable it to issue letters confirming whether water infrastructure is in charge of Irish Water in cases that do not fall within the terms of this practice note. A further practice note will issue in relation to those procedures as soon as they are in place.

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2019				
Starts 11 Jan	**Post-Graduate Diploma in International Financial Services Law** – Law Society Finuas Skillnet In partnership with Sutherland School of Law UCD	Subject to attendance	€3,200	€3,800
11/12 Jan & 8/9 Feb	**Property Transactions Masterclass** Module 2 – 11 & 12 Module 3 – 8 & 9	8 General plus 2 M & PD Skills (by Group Study) Per module	€570 *(iPad included in fee)* €270 *(iPad not included in fee)*	€595 *(iPad included in fee)* €295 *(iPad not included in fee)*
Starts 1 March	**Construction Adjudication Masterclass**	Full General and M&PD Skills requirements for 2019 subject to attendance	€1,105	€1,300
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Starts 20 March	**Certificate in Professional Education** (20 March, 23 March, 10 April, 13 April, 8 May, 11 May, 22 May)	Full M & PD and General (by Group Study) for 2019	€1,450 *(iPad included in fee)*	€1,550 *(iPad included in fee)*
21 March	**International Issues in Sports Law** – in partnership with the EU & International Affairs Committee	2 General (by Group Study)	Complimentary	
21/22 March	**Certificate in English and Welsh Property Law** Online Assessment – 4 April	9 General (by Group Study)	€411	€588
Starts 1 March	**Coaching Skills for Managers** Workshop 1 – 1 & 2 March Workshop 2 – 22 March Workshop 3 – 24 May	Full General and Full M & PD Skills requirement for 2019 (by Group Study) subject to attendance	€1,200	€1,440
28 March	**Mediation in the Civil Justice System –** in partnership with the ADR committee and CEDR	2.5 General (by Group Study)	€150	€176

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BUSINESS LAW COMMITTEE

ESCROW ACCOUNTS AND ESCROW AGENTS

An escrow account is a facility frequently used in transactions to provide comfort that funds are available to satisfy any moneys that become payable after completion of the transaction. Escrow accounts are most commonly used in the context of share purchases, but can also arise in asset purchases. They are often used where sums may become payable to a purchaser by a vendor arising out of warranty or indemnity claims or where post-completion adjustments to the purchase price may apply. Moneys are deposited into a deposit account and held for a specified period, with an approach agreed between the parties as to what circumstances moneys may be released and to whom.

Why use an escrow account?

Common drivers for an escrow account are:

- A purchaser has concerns in relation to the financial ability of the vendor to satisfy any claims arising (for example, warranty claims),
- The nature of the parties means that an escrow account simplifies the discharge of post-completion obligations – an example of this is a transaction with multiple vendors where recovering sums from each vendor may be difficult, and so an escrow account with an agreed approach for apportionment of the liability among the vendors is preferable,
- A vendor is not based in Ireland, so recovering money from them may be made more difficult.

Acting as an escrow agent

An escrow account is frequently a joint account opened in the names of the vendor's solicitor and the purchaser's solicitor. An escrow agreement is often put in place between the vendor and purchaser and their respective solicitors governing how the account will be operated.

Acting as escrow agent can be an administrative burden for a solicitor, particularly in circumstances where moneys are to be released from the escrow account in several tranches. A solicitor should consider carefully the level of work anticipated in acting as escrow agent, the fees that they may charge for doing so, and any risks involved in so acting before agreeing to act as escrow agent.

If acting as escrow agent, a solicitor should ensure that an escrow agreement is signed by all of the parties and includes the following elements, among others:

- *Circumstances in which moneys are to be released* – the agreement should be very clear as to what instructions the vendor and purchaser will give to trigger a release and the form of instruction the escrow agents are to give to the bank. No discretion should be left to the escrow agents as to how or when to distribute the escrow moneys.
- *Cap on liability of the escrow agents* – the escrow agreement should include a waiver from the vendor and purchaser to the escrow agents in relation to any claim arising out of the performance by the escrow agents of their duties (though the vendor and purchaser will want to carve out circumstances such as fraud on the part of the escrow agent). The escrow agents can also seek an indemnity from the vendor and purchaser in respect of any liabilities arising out of the escrow agents performing their obligations under the escrow agreement (including any legal costs in the event of a dispute arising in connection with the operation of the escrow account).
- *Fees payable to the escrow agents* – frequently, the vendor's solicitor's fees are paid by the vendor and the purchaser's solicitor's fees are paid by the purchaser.

Due to the administrative burden and conflicts of interest that may arise, a solicitor may not want to act as escrow agent and, in many cases, may be reluctant to do so, especially for larger and more complex transactions. In such circumstances, or where the parties to the transaction would prefer to use a third party, a third-party escrow agent may be engaged. Foreign international banks frequently provide this service, and Irish banks may also be prepared to do so in certain circumstances. When it is intended that a bank will act as escrow agent, it is important that this is factored into the timing of the transaction. The bank will want AML documents from the vendor and purchaser. The bank will also normally want to use its own standard form escrow terms. The parties will need time to review and, where necessary, negotiate any changes to these standard form terms to ensure that the parties are comfortable with the terms and that the terms work with the transaction documents.

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 Helen Lucey, a solicitor practising as principal of Marshall & MacAulay Solicitors, The Square, Listowel, Co Kerry, and in the matter of the *Solicitors Acts 1954-2015* [3012/DT106/12; 3012/DT20/14; High Court record 2015 no 68 SA and 2015 no 180 SA]
Law Society of Ireland (applicant)
Helen Lucey (respondent solicitor)

On 20 May 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in matters bearing record numbers 3012/DT106/12 and 3012/DT20/14.

The tribunal ordered that the Law Society bring its findings and reports before the High Court.

The respondent solicitor appealed against the findings of the tribunal.

On 12 June 2018, the High Court found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

3012/DT106/12

1) Caused a substantial deficit in the amount of circa €257,960 to arise on a client account on or around 31 July 2011, which deficit was due or partly due to the withdrawal of client moneys from one or more client accounts, in breach of regulation 7(1) of the *Solicitors Accounts Regulations 2001-2006* (SI 421 of 2001 as amended),
2) Withdrew moneys in the amount of in or around €259,000 from a client account, in breach of regulation 8(4) of the *Solicitors Accounts Regulations* (as amended),
3) Failed to distribute moneys in the amount of €21,128 to nominated charities on the probate file of a named former client in a timely manner,
4) Failed to pay charitable bequests of a named client totalling €389,000 in a timely manner,
5) Failed to send the following deeds to be stamped in a timely manner: deed of a named client in the amount of €4,800 dating from 2007; deed of a named client in the amount of €6,030 dating from 2006; deed of a named client in the amount of €11,145 dating from 2006; deed of a named client in the amount of €5,430 dating from 2005,
6) Failed to pay over moneys in the amount of €20,546 retained on an account in respect of a named former client, deceased, even though the file was transferred to another solicitor in December 2007.

3012/DT20/14

1) In withdrawing moneys in the amount of in or around €259,000 from a named client account on or around 30 March 2007, acted improperly and/or in a manner tending to bring the solicitors' profession into disregard, having regard to:
   a) The conflict of interest that arose,
   b) The duty owed to a named person in view of both her position as client (pursuant to section 2 of the *Solicitors Amendment Act 1994*) and in view of her age,
   c) The fact that the respondent solicitor failed to liaise directly with the solicitors on record for the named person in the context of the settlement of a purported counterclaim,
   d) The fact that the respondent solicitor acted without any express instructions from the named person,
2) Withdrew the amount of in or around €259,000 from the named client account, in breach of regulation 7(1) of the *Solicitors Accounts Regulations 2001-2006* (SI 241 of 2001 as amended).

On 5 July 2018, the High Court ordered that:

1) The respondent solicitor not be permitted to practise as a sole practitioner or in partnership, but only as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing – said order to be stayed until 1 December 2018 to facilitate a sale of the respondent solicitor's practice,
2) The respondent solicitor pay €15,000 to the compensation fund and pay half the costs of the Law Society before the Solicitors Disciplinary Tribunal, to be taxed in default of agreement,
3) The respondent solicitor pay to the Law Society the costs of the High Court, less one day, to be taxed in default of agreement.

In the matter of Michelle Cronin, a solicitor practising as Michelle Cronin Solicitors, Kennedy Buildings, 24 Main Street, Tallaght Village, Dublin 24, and in the matter of the *Solicitors Acts 1954-2015* [15089/DT89/16]
Law Society of Ireland (applicant)
Michelle Cronin (respondent solicitor)

On 25 September 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she:

1) Failed to deal with her client's instructions and, in particular, to deal with the pension adjustment order part of his case in a timely manner or at all,
2) Failed to communicate with her client and respond to his enquiries,
3) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting on 1 March 2016 that she complete the work required on behalf of the client and notify the client within 28 days that the work was completed,
4) Failed to respond substantively to the Society's correspondence in a timely manner, within the time provided, or at all and, in particular, the Society's letters of 14 August 2015, 10 September 2015, 14 October 2015, 21 December 2015, 25 January 2016, 4 March 2016, 18 April 2016, and 10 May 2016,
5) Failed to attend the meetings of the Complaints and Client Relations Committee on 15 December 2015 and 28 June 2016, despite being required to do so.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay the sum of €1,512 towards the whole of the costs of the Law Society.

In the matter of Michelle Cronin, a solicitor practising as Michelle Cronin Solicitors, Kennedy Buildings, 24 Main Street, Tallaght Village, Dublin 24, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT33]
Law Society of Ireland (applicant)
Michelle Cronin (respondent solicitor)
On 25 September 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she:
1) Failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 May 2016 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014),
2) Through her conduct, showed disregard for her statutory obligation to comply with the *Solicitors Accounts Regulations* and showed disregard for the Society's statutory obligation to monitor compliance with the regulations for the protection of clients and the public.

The tribunal ordered that the respondent solicitor:
1) Stand censured,
2) Pay a sum of €15,000 to the compensation fund,
3) Pay the sum of €1,812 towards the whole of the costs of the Law Society.

In the matter of Michael O'Sullivan, a solicitor formerly practising at 41 Lower Baggot Street, Dublin 2, and in the matter of the *Solicitors Acts 1954-2015* [4415/DT64/07; High Court record 2015 no 88 SA; Court of Appeal record no 2016/374]
Law Society of Ireland (applicant)
Michael O'Sullivan (respondent solicitor)
On 31 March 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
1) Unreasonably requested payment of a solicitor/client fee of €15,000 plus VAT at the time of settlement negotiations of the complainant's personal injury action on 19 February 2004, and in subsequent correspondence, without having advised the complainant on what basis the proposed fee was measured, and without advising the complainant what costs might be recoverable from the defendant to that action on a party-and-party basis, and without having furnished the complainant with a bill of costs in accordance with section 68(6) of the act of 1994,
2) Demanded payment of an excessive solicitor/client fee of €15,000 plus VAT from the complainant,
3) Unreasonably refused and or failed to respond to the complainant's request contained in his letter to the respondent of 14 March 2004, and subsequent correspondence, for an explanation of the amount of the respondent's solicitor/client fee of €15,000 and, in particular, failed to clarify the basis upon which the proposed fee was measured,
4) Failed to respond in an appropriate and timely manner or at all to the complainant's request in his letter to the respondent of 14 March 2004, and subsequent correspondence, for a breakdown of the outlay in respect of the said personal injury action for which he was entitled to be reimbursed,
5) Failed to respond in an appropriate and timely manner to the complainant's request contained in his letter to the respondent of 14 March 2004, and subsequent correspondence, for a copy of the updated schedule of special damages that had been in court on the day of the hearing of the complainant's said personal injury action,
6) Deducted and or appropriated moneys in respect of his charges from moneys payable to the complainant without the written agreement of the complainant and without providing the complainant with an estimate of what he reasonably believed might be recoverable on a party-and-party basis in respect of his charges, in breach of section 68(3) and (5) of the act of 1994.

The tribunal ordered that the matter go forward to the High Court and, on 22 April 2016, the High Court made the following orders:
1) That the respondent solicitor be not permitted to practise as a sole practitioner or in partnership and 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 at least ten years' standing, to be approved in advance by the Society,
2) That the respondent solicitor pay the sum of €10,000 to the compensation fund,
3) That the respondent solicitor pay a sum of €6,774.51 as restitution to the complainant,
4) That the respondent solicitor pay the whole of the costs to the Society of the Solicitors Disciplinary Tribunal, to include counsel's fees and witness expenses, to be taxed in default of agreement,
5) That the respondent solicitor pay to the Society the costs of the High Court application, to be taxed in default of agreement.

The respondent solicitor appealed this decision to the Court of Appeal and, on 4 October 2018, the appeal was dismissed and the costs awarded against the respondent solicitor.

In the matter of David Herlihy, a solicitor previously practising as David Herlihy Solicitors, Lord Edward Street, Kilmallock, Co Limerick, and in the matter of the *Solicitors Acts 1954-2015* [9286/DT31/16; 9286/DT32/16; 9286/DT33/16; High Court record 2018 no 75 SA]
Law Society of Ireland (applicant)
David Herlihy (respondent solicitor)

9286/DT31/16
On 15 May 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:
1) Failed to comply with an undertaking furnished on 13 October 2005 to the named complainants in respect of his named clients and property in Co Cork in a timely manner or at all,
2) Failed to comply with an undertaking dated 26 August 2005 furnished to the named complainant in respect of another named client and property in Co Limerick in a timely manner or at all.

9286/DT32/16
On 15 May 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:
1) Failed to comply with an undertaking furnished on 23 April 2008 to the named complainants in respect of his named client and property at Kilmallock, Co Limerick, in a timely manner or at all,
2) Failed to comply with an

undertaking dated 13 December 2007 furnished to named complainants in respect of his named clients and property in Co Limerick in a timely manner or at all,
3) Failed to comply with an undertaking dated 26 September 2005 furnished to named complainants in respect of his named clients and property in Co Kerry in a timely manner or at all.

9286/DT33/16

On 15 May 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to comply with an undertaking furnished to a named bank on 2 September 2004 in respect of his named clients and the borrowers and property in Co Limerick in a timely manner or at all.

The tribunal sent the three matters forward to the High Court and, on 8 October 2018, in proceedings 2018 no 75 SA, the High Court made an order declaring that the respondent solicitor is not a fit a proper person to be on the Roll of Solicitors.

It further ordered that, in the event of an appeal by David Herlihy of the High Court order dated 10 March 2017 (in proceedings 2017 no 5 SA) being successful, then, with immediate effect, the name of the respondent solicitor should be struck off the Roll of Solicitors in lieu of the aforementioned declaration.

The court further ordered that the respondent pay the Law Society the costs of the proceedings.

The solicitor had already been struck off the Roll of Solicitors on 10 March 2017.

In the matter of Liam M O'Brien, a solicitor formerly practising as Liam O'Brien, 21 Quinsboro Road, Bray, Co Wicklow, and in the matter of the *Solicitors Acts 1954-2015* [3508/DT140/12; 3508/DT01/15; High Court record 2018 no 74 SA]

Law Society of Ireland (applicant)

Liam M O'Brien (respondent solicitor)

On 9 November 2017, in an application bearing record no 3508/DT01/15, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Caused or allowed a deficit on the client account in the sum of €426,080 as at 5 July 2012,
2) Failed to maintain proper books of account and such relevant supporting documents as would enable client moneys handled and dealt with by the solicitor to be duly recorded and the entries relevant thereto in the books of account to be appropriately vouched, in breach of regulation 12(1) of the *Solicitors Accounts Regulations 2001*,
3) Caused or allowed a debit balance to arise on the client side of client ledger account due to unidentified transactions of €234,682 as at 5 July 2012, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations*,
4) Caused or allowed a debit balance to arise on the client side of the client ledger account of Liam M O'Brien in the sum of €151,041 as at 5 July 2012, in breach of regulation 7(2)(a) of regulations,
5) Caused or allowed a debit balance to arise on the client side of the client ledger account of a named client in the sum of €19,302 as at 5 July 2012, in breach of regulation 7(2)(a),
6) Caused or allowed a debit balance to arise on the client side of the client ledger account of a named client in the sum of €12,936 as at 5 July 2012, in breach of regulation 7(2)(a),
7) Through his conduct, obstructed and delayed the Society's investigation into his books of account and the true financial status of his practice, in breach of regulation 12(2) of the regulations.

In a separate application bearing record no 3508/DT140/12, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2010 within six months of that date, in breach of regulation 21(1) of the *Solicitors Accounts Regulations 2001*.

The tribunal ordered that the matters should go forward to the High Court and, on 15 October 2018, the High Court ordered that the name of the respondent solicitor be struck from the Roll of Solicitors.

In the matter of Lyndsey Clarke, solicitor, practising as Keith Flynn & Company, 414 The Capel Building, Mary's Street, Dublin 7, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT46 and High Court record 2018 no 99 SA]

Law Society of Ireland (applicant)

Lyndsey Clarke (respondent solicitor)

On 12 July 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

1) Improperly and/or dishonestly caused or allowed a minimum deficit of in or around €40,302.70 on the client account as at 16 November 2016,
2) Ceased practice on or around 21 November 2016 with a deficit on the client account in respect of a client matter of up to €80,000,
3) Failed to notify the client the subject of the deficit at (2) above of the deficit in a timely manner or at all and, further, that they were ceasing practice without rectifying a deficit in his funds,
4) Failed over an ongoing period of time, in 2015 and 2016, to maintain proper books of account, in breach of regulation 13 and, in particular, failed to maintain books of account that showed the true financial position in relation to transactions with clients' moneys and with other moneys transacted through the client account, in breach of regulation 13(2)(a),
5) On or around 17 October 2016, improperly and/or dishonestly caused or allowed two transfers of clients' moneys in the amounts of €10,085 and €16,370 respectively to reduce a deficit on the client account, which moneys were not properly available to reduce the deficit, in breach of regulation 10,
6) Improperly and/or dishonestly caused or allowed the transfer of €29,000 of clients' funds to the office account, by way of transfers of €25,000 and €4,000 on 26 October 2016 and 15 November 2016 respectively, in breach of regulation 7,
7) Failed to complete stamping in a purchase matter in a timely manner or at all,
8) Caused or allowed fees of €1,150 to be transferred to the office account on 23 August 2016 before receipt of funds on 29 August 2016, creating a debit balance of €1,150, in breach of regulation 7(2)(a),
9) Ceased practice on or around 21 November 2016 without having made all appropriate

arrangements for the wind-up of the practice, thereby showing disregard for the clients of the practice,
10) Failed to have any or any adequate regard for the safekeeping of client funds.

The tribunal ordered that the matter should go forward to the High Court and, on 22 October 2018, the High Court ordered that:
1) The name of the respondent solicitor be struck from the Roll of Solicitors,
2) The respondent solicitor pay the applicant's measured costs.

In the matter of Neil Corbett, a solicitor formerly practising as principal of Neil Corbett Solicitors, Davis Building, Lower Main Street, Mallow, Co Cork, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal, and in the matter of the *Solicitors Acts 1954-2015* [3429/DT62/15; 3429/DT63/15; High Court record 2018/105 SA]
Law Society of Ireland (applicant)
Neil Corbett (respondent solicitor)
On 31 August 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

3429/DT62/15

Up to the date of expiry of the stay of referral of this matter to the tribunal, the respondent solicitor had:
1) Failed to comply with part or all of the undertaking dated 15 April 2005 to the complainant in a timely manner or at all, and/or
2) Failed to comply with the directions of the committee dated 11 December 2012 when required to do so, and/or
3) Failed to attend at a meeting of the committee on 11 December 2012 when required to do so, and/or
4) Failed to attend at a meeting of the committee on 19 February 2013 when required to do so, and/or
5) Failed to attend at a meeting of the committee on 16 July 2013 when required to do so, and/or
6) Failed to respond adequately or at all to letters dated 24 February 2012, 12 March 2012, 10 April 2012 and 30 May 2012 sent to him by the complainant, and/or
7) Failed to respond adequately or at all to letters dated 24 July 2012, 29 August 2012 and 10 May 2013 sent to him by the Society.

3429/DT63/15

Up to the date of expiry of the stay of referral of this matter to the tribunal, the respondent solicitor had
1) Failed to comply with one or more of the following undertakings in a timely manner or at all:
   a) Undertakings dated 27 October 2005 and 24 April 2006 in respect of his named clients in respect of a named property, and/or
   b) Undertaking dated 26 January 2004 in respect of his named clients in respect of a named property, and/or
   c) Undertaking dated 26 September 2007 in respect of his named clients in respect of a named property, and/or
   d) Undertaking dated 26 January 2004 in respect of his named clients in respect of a named property, and/or
   e) Undertakings dated 10 December 2008 and 5 January 2009 in respect his named clients in respect of named properties, and/or
   f) Undertaking dated 20 January 2004 in respect of his named clients in respect of a named property, and/or
   g) Undertaking dated 16 November 2006 in respect of his named clients in respect of named properties,
2) Failed to respond adequately or at all to some or all of the correspondence sent to him by the complainant:
   a) In respect of the first undertaking, particularly letters dated 22 November 2006, 27 April 2007, 23 May 2007, 26 October 2007, 21 November 2007, 12 December 2007, 25 April 2008, 16 May 2008, 4 January 2010, 26 April 2010, 2 July 2010, 29 November 2010, and 8 March 2011, and/or
   b) In respect of the second undertaking, particularly letters dated 11 February 2005, 12 August 2005, 10 February 2006, 3 March 2006, and 5 February 2009, and/or
   c) In respect of the third undertaking, particularly letters dated 8 March 2011, 30 March 2011, and 1 June 2011, and/or
   d) In respect of the fourth undertaking, particularly letters dated 11 February 2005, 12 August 2005, 10 February 2006, 3 March 2006, and 28 January 2009, and/or
   e) In respect of the sixth undertaking, particularly letters dated 11 February 2005, 12 August 2005, 10 February 2006, and 3 March 2006,
3) Failed to respond adequately or at all to some or all of the correspondence sent to him by the Society:
   a) In respect of the first undertaking, particularly letters dated 5 August 2011, 6 September 2011, 27 September 2011, 22 November 2011, and 9 January 2012, and/or
   b) In respect of the second undertaking, particularly letters dated 8 December 2011 and 10 January 2012, and/or
   c) In respect of the third undertaking, particularly letters dated 25 October 2011 and

9 January 2012, and/or
d) In respect of the fifth undertaking, particularly letters dated 19 October 2011, 4 November 2011, and 10 January 2012, and/or
e) In respect of the sixth undertaking, particularly a letter dated 28 September 2011, and/or
f) In respect of the seventh undertaking, particularly letters dated 19 October 2011 and 9 January 2012, and/or
g) In respect of all undertakings, particularly letters dated 9 May 2012, 22 June 2012, 17 July 2012, 9 November 2012, and 1 March 2013,
4) Failed to attend at meetings of the Committee on 4 September 2012, 11 December 2012, 14 May 2013 and 16 July 2013 when required to do so.

The tribunal ordered that the Law Society of Ireland bring its findings and reports in both matters before the High Court. On 22 October 2018, the High Court, in proceedings entitled 2018 no105 SA, ordered that:
1) The respondent solicitor not be permitted to practise as a sole practitioner or in partnership, and 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 at least ten years' standing, to be approved in advance by the Law Society of Ireland,
2) The respondent solicitor pay a sum of €5,000 to the compensation fund of the Law Society of Ireland,
3) The respondent solicitor pay the Law Society €22,734.43 costs (including VAT and outlay) of the proceedings before the Solicitors Disciplinary Tribunal,
4) The respondent solicitor pay the Law Society €2,075 costs (including VAT and outlay) of the High Court proceedings.

In the matter of Keith Flynn, practising as Keith Flynn & Company, 414 The Capel Building, Mary's Street, Dublin 7, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT46 and High Court record 2018 no 99 SA]
Law Society of Ireland (applicant)
Keith Flynn (respondent solicitor)
On 12 July 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:
1) Improperly and/or dishonestly caused or allowed a minimum deficit of in or around €40,302.70 on the client account as at 16 November 2016,
2) Ceased practice on or around 21 November 2016 with a deficit on the client account in respect of a client matter of up to €80,000,
3) Failed to notify the client the subject of the deficit at (2) above of the deficit in a timely manner or at all and, further, that they were ceasing practice without rectifying a deficit in his funds,
4) Failed over an ongoing period of time, in 2015 and 2016, to maintain proper books of account, in breach of regulation 13 and, in particular, failed to maintain books of account that showed the true financial position in relation to transactions with clients' moneys and with other moneys transacted through the client account, in breach of regulation 13(2)(a),
5) On or around 17 October 2016, improperly and/or dishonestly caused or allowed two transfers of clients' moneys in the amounts of €10,085 and €16,370 respectively to reduce a deficit on the client account, which moneys were not properly available to reduce the deficit, in breach of regulation 10,
6) Improperly and/or dishonestly caused or allowed the transfer of €29,000 of clients' funds to the office account, by way of transfers of €25,000 and €4,000 on 26 October 2016 and 15 November 2016 respectively, in breach of regulation 7,
7) Failed to complete stamping in a purchase matter in a timely manner or at all,
8) Caused or allowed fees of €1,150 to be transferred to the office account on 23 August 2016 before receipt of funds on 29 August 2016, creating a debit balance of €1,150, in breach of regulation 7(2)(a),
9) Ceased practice on or around 21 November 2016 without having made all appropriate arrangements for the wind-up of the practice, thereby showing disregard for the clients of the practice,
10) Failed to have any or any adequate regard for the safekeeping of client funds.

The tribunal ordered that the matter should go forward to the High Court and, on 22 October 2018, the High Court ordered that:
1) The name of the respondent solicitor be struck from the Roll of Solicitors,
2) The respondent solicitor pay the applicant's measured costs.

WILLS

Campion, William (otherwise Billy) (deceased), late of 42 Weirview Drive, Stillorgan, Co Dublin, who died on 23 October 2017. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Sherlock Law, Solicitors, 5F Nutgrove Office Park, Rathfarnham, Dublin 14; tel: 01 690 9545, email: info@sherlocklaw.ie

Leneghan, Michael (deceased), late of Cloonmurray, Strokestown, Co Roscommon, who died on 21 August 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Joan H Devine & Co, Solicitors, Bridge Street, Strokestown, Co Roscommon; tel: 071 963 4608, fax: 071 963 4691, email: info@jhdsolr.com

McCaffrey, Catherine (Kate) (deceased), late of Lissalway, Castlerea, Co Roscommon, who died on 24 June 2017. Would any person having knowledge of any will made by the above-named deceased please contact Padraig Kelly, Solicitors, Strokestown, Co Roscommon, quoting ref McC19/17; tel: 071 963 3666, email: info@pksolrs.ie

McInerney, Attracta (otherwise Trixie) (deceased), late of Claretuam, Tuam, Co Galway, who died on 28 March 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact O'Brien Solicitors, Deerpark Business Centre, Claregalway Road, Oranmore, Co Galway; tel: 091 795 941, email: law@obriensolicitors.ie

Phelan, Frank (deceased), late of 50 Woodlawn Park, Ballysimon, Co Limerick, who died on 21 June 2008. Would any person having knowledge of the whereabouts of the original will executed by the above-named deceased, Francis Phelan, on 20 September 2002, please contact Keating Connolly Sellors Solicitors, 6/7 Glentworth Street, Limerick; DX 3005 Limerick; email: nsheehy@sellors.ie

Traynor, Paul (deceased), late of 1 Bothár Eanna, Carrickmacross, Co Monaghan, who died on 16 April 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact O'Sullivan Murtagh, Solicitors, O'Neill Street, Carrickmacross, Co Monaghan; tel: 042 969 0850, email: carrick@osullivanmurtagh.ie

TITLE DEEDS

In the matter of the *Landlord and Tenants Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the rear of 408 Clonard Road, Kimmage, Dublin 12: an application by John Dunning and Declan Dunning

Take notice that any person having any interest in the freehold estate of the following property: rear of 408 Clonard Road, Kimmage, Dublin 12.

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

In default of any such notice being received, the applicants intend 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 November 2018

Signed: Nelson & Co (solicitors for the applicants), Templeogue Village, Dublin 6W

In the matter of the *Landlord and Tenant Act 1967* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Laura Garland in respect of no 47C Phibsborough Road, Dublin 7

Premises described as "all that building site or yard now known as no 47C Phibsborough Road, in the parish of Grangegorman and city of Dublin", held under indenture of lease dated 2 October 1919 between Elizabeth Lynch of the one part and James J McKean, Thomas J Loughlin and John Forrestal of the other part for the term of 99 years from 1 July 1919 at yearly rent of £17.

Take notice that Laura Garland intends to submit an application to the county registrar for the county and city of Dublin for acquisition of the freehold interest in the aforesaid premises, 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, Laura Garland intends to proceed with the application before the said county registrar at the end of 21

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €150 (incl VAT at 23%)
- **Title deeds** – €300 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €150 (incl VAT at 23%)

HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €30 EXTRA

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND.** Send your small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: gazettestaff@lawsociety.ie. **Deadline for Jan/Feb 2019 *Gazette*: 7 January 2019.** For further information, contact the *Gazette* office on tel: 01 672 4828.

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

days from the date of this notice and will apply to the said county registrar for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Date: 30 November 2018

Signed: Elizabeth Ward & Co (solicitors for the applicant), Ground Floor Apartment, 5 Marine Terrace, Dún Laoghaire, Co Dublin; A96 HK06

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the property known as 11 Bridge Street, Portlaoise, Co Laois, and formerly known as Lower Main Street, Portlaoise, Co Laois: an application by Dympna Walsh, of Chapel Street, Ballyroan, Portlaoise, Co Laois

Take notice that any person having an interest in the freehold estate or any superior interest in the following property: all that and those the premises known as no 11 Bridge Street, Portlaoise, Co Laois, in the town of Portlaoise, parish of Borris, barony of Maryborough East and county of Laois (and formerly known as Lower Main Street, Portlaoise, Co Laois), as more particularly described in an indenture of lease dated 27 July 1963 and made between Enda Phelan of the one part and John Delaney, Eamon Keating and Daniel Cooke of the second part for the term of 35 years from 22 March 1963, subject to a yearly rent of £104, and as more particularly described in the indenture of sublease dated 26 August 1963 for a terms of 35 years and granted by the said John Delaney, Daniel Cooke and Eamon Keating of the first part and Sarah Doody of the second part.

Take notice that Dympna Walsh, being the person currently entitled to the lessee's interest in the premises, intends to apply to the county registrar for the county of Laois for the acquisition of the freehold interest and all intermediate interests in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, Dympna Walsh intends to proceed with this 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 of Laois for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest including the freehold reversion in the aforementioned premises are unknown or unascertained.

Date: 30 November 2018

Signed: Cosgrave Solicitors (solicitors for the applicant), Market House, 15 Market Square, Navan, Co Meath

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) Act 1967*, and in the matter of the purchase of the freehold estate or superior intermediate interests of property situate at High St, Ballinamore, in the county of Leitrim, and in the matter of an application by Mary Wrynn

To any person having a freehold estate or any intermediate inter-

est in the property now known as High Street, Ballinamore, Co Leitrim, the subject of indenture of lease dated 15 February 1908 between James Lowry Cole Acton, Henry Lowry Barnwell Acton and Louisa Joyce Leslie Acton (the lessors) of the one part and James Mulligan of the other part, the premises more particularly described therein as all that and those that part of the premises described as "that plot of ground having a frontage of 45 feet to the public road, situate in the town of Ballinamore, in the townland of Cannaboe, in the barony of Carrigallen and county of Leitrim, with the dwellinghouse and premises therein, being the property more particularly delineated and edged in red and coloured red on map or plan endorsed on the indenture of lease".

Take notice that Mary Wrynn, being the person currently entitled to the lessee's interest under the said lease, intends to apply to the county registrar of the county of Leitrim to obtain the fee simple in the said property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

In default of any such notice being received, Messrs Cathal L Flynn, solicitors for the applicants, intend to proceed with the application before the county registrar for the county of Leitrim for such orders or directions as may be appropriate on the basis that the person or persons beneficially entitled to a superior interest including the freehold reversion in the aforesaid property are unknown and unascertained.

Date: 30 November 2018

Signed: Cathal L Flynn & Co (solicitors for the applicant), St George's Terrace, Carrick-on-Shannon, Co Leitrim

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*

Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in the following property: all that and those two portions of land at Bodendale, Glendoher Road, Rathfarnham, Dublin 16, held under an indenture of lease dated 15 February 1722 between William Hutchinson of the one part and Caleb Smalley of the other part for a term of 400 years from 25 March 1722 at a yearly rent of £18.10s (since adjusted and reduced to £16.18s; in decimal currency, £16.90), the leasehold interest under which was assigned to Bodendale Management Company Limited by Guarantee by indenture of assignment dated 1 December 1989 between Patrick Rafferty and Joan Rafferty of the first part, Dunboden Estates Limited of the second part, and Bodendale Management Company Limited of the third part.

Take notice that Bodendale Management Company Limited by Guarantee, as tenant of the above property under the lease, intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold reversion and any intermediate interest in the above property, and any party asserting that they hold a superior interest in the above property (or any of them) are called upon to furnish evidence of their title to same 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 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 the above property are unknown or unascertained.

Date: 30 November 2018

Signed: Keith Walsh Solicitors (solicitors for the applicant), 8 St Agnes Road, Crumlin Village, Dublin 12

NE ULTRA CREPIDAM JUDICARET

DIM-SUM DRONE-DROP DETENTION DRAMA

A drone was apparently used to deliver a Chinese takeaway to Wheatfield Prison, reports Nova.ie. Staff discovered containers from a local fast-food outlet during the summer. A prison source said: "There's no way a takeaway could get into the prison other than by drone."

Despite measures to stop contraband, drones are said to be frequently used to make drug drops into Wheatfield.

The source commented: "There's a running joke, it's like 'dial-a-drug', as you just get word of what you want – cocaine, spice or whatever – and it's delivered in by a drone. The use of drones has many staff questioning if it's possible to get a no-fly zone around the prison."

POTTER V VOLDEMORT AND ORS

The West Bengal National University has conjured up a Hogwarts-themed law module for the 2018-19 academic year, legallyindia.com reports. The course is to be led by assistant professor Shouvik Guha, who normally specialises in competition, banking and finance, corporate, international trade and intellectual property law.

Entitled 'An interface between fantasy fiction literature and law: special focus on Rowling's Potterverse', the course studies "legal traditions and institutions in the Potterverse, including the role of law and rule of law in a magical society; moral choice and liberty in the Potterverse; and the role of bureaucracy in the Ministry of Magic". Other topics include 'unforgivable curses', 'Wizengamot trials' and the 'innocence of Sirius Black'.

Guha says: "I believe that a teacher should always push the boundaries, instead of growing too comfortable or complacent – as should every student. This course is partly meant to do exactly that."

IT'S PRONOUNCED 'SQUIRRDLE'

An air passenger refused to disembark after bringing a squirrel on board as an "emotional support animal", *The Guardian* reports

The incident led to a two-hour delay to the flight from Orlando to Cleveland. The woman and the squirrel – which the *Gazette* believes is named 'Sparky' – were eventually escorted into the main terminal by police.

The airline said that, while the passenger had noted in her reservation that she was bringing an emotional-support animal on board, she had failed to mention it was a squirrel. The airline bans unusual or exotic animals from its flights, including "rodents, reptiles, insects, hedgehogs, rabbits, sugar gliders, non-household birds or improperly cleaned and/or animals with foul odour".

MONKEY SEE, MONKEY DO

An elderly man in India has died after a gang of monkeys reportedly pelted him with bricks from a tree, the *Independent* reports. Dharampal Singh was struck on the head and chest while he was collecting kindling in Tikri, Uttar Pradesh, and later died in hospital.

His family have lodged a formal complaint with the police, saying: "These rogue monkeys are the real culprits and must pay for it."

However, officers are refusing to proceed with the case, declaring the death to be an accident. "How can we register a case against monkeys?" a spokesman said. "This will make us a laughing stock."

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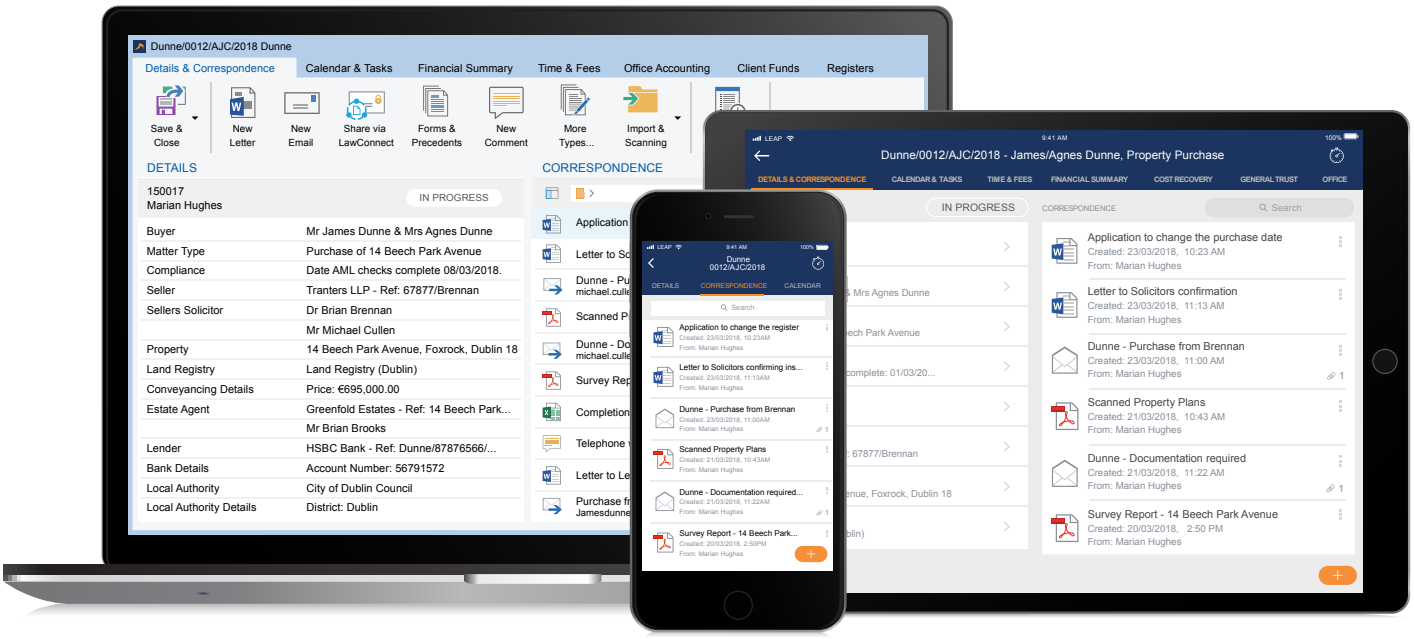

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