On Raglan Road
The story of poet Patrick Kavanagh's libel action against *The Leader* in 1954

Men at work
Reduced awards for pain and suffering and economic-loss evidence

Trust in me
GDPR implications for pension fund trustees and scheme providers

gazette
LAW SOCIETY
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GOT THE BENDS?

Lis pendens and defaulting borrowers

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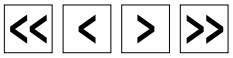

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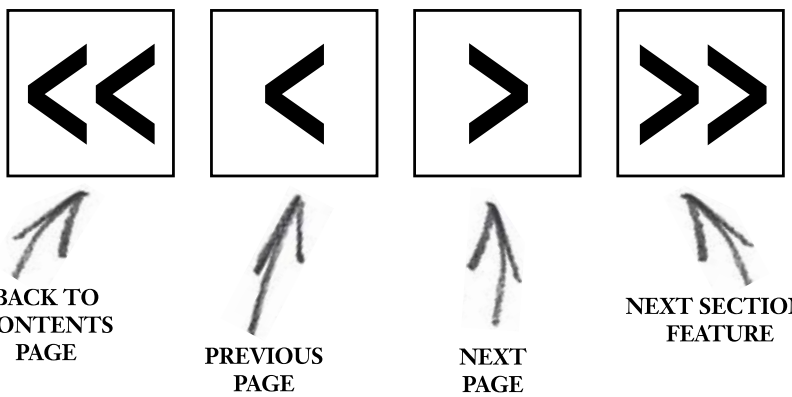

... enjoy

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INTRODUCING OUR MULTI-DISCIPLINARY TRANSACTION ADVISORY SERVICES

RSM are the 8th largest firm in Ireland specialising in providing audit, tax, consulting services and transaction advice.

Our multi-disciplinary transaction advisory services unit brings together our existing expertise in the areas of M&A, due diligence, valuations, fundraising, as well as our expertise in restructuring and formal insolvency.

Our team has an established track record of working with solicitors to add value and provide solutions to their clients in successful transactions.

Our strength lies in our ability to draw on a group of experts both within transaction advisory and across the wider firm including taxation, IT, HR and consulting to form multi-disciplinary teams to provide best in class solutions.

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Contact any member of our team

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THE POWER OF BEING UNDERSTOOD
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POSITIVE STEPS

It's hard to believe that just one month has passed since my last message in the *Gazette*. I have now started, with the director general, our visits to the bar associations throughout the country, and it is my earnest wish to visit most, if not all, during my term in office. This is a part of my role as president that I really enjoy.

Since my last message, members of the Council of the Law Society have received the report of Professor Paul Maharg and Professor Jane Ching. This is an independent review of solicitor education in Ireland by internationally renowned experts. They commenced it last year, at the request of the Society. In addition, the Council has now appointed a review group, chaired by Mr Justice Michael Peart, which will examine the study in depth and report with recommendations to the Council. All this must be completed in advance of the June Council meeting.

One of the obligations of the Legal Services Regulatory Authority (LSRA), under section 34 (1) of the *Legal Services Regulation Act*, is to submit to Government a review of solicitors' education within two years of the commencement of the act. The LSRA is bedevilled with delays in recruiting staff – no doubt equally frustrating for the authority as it is for the Law Society – but I completely accept the authority's view that it must be set up correctly, properly staffed and resourced, before its key powers and obligations are commenced.

Good news on *Setanta*

While the *Setanta* decision in the Supreme Court in May 2017 was, unfortunately, not in favour of the Law Society's challenge, the Government has now stepped into the breach. This intervention is very welcome in the public interest. It was for the public interest that the Society, invited to do so by the President of the High Court, challenged as a matter of law the stance taken by the Motor Insurance Bureau of Ireland.

Great credit for this welcome Government intervention must be given to immediate past-president Stuart Gilhooly for his relentless pursuit of this matter. A considerable number of plaintiffs will now benefit, while their solicitors will be properly paid for services already rendered to their clients. The Government has not yet published the full details of the scheme. We look forward to these being revealed as a matter of urgency.

New courts

The Courts Service and the Office of Public Works have now completed their redevelopment of Wexford and Letterkenny courthouses as part of a €140-million public/private partnership that is delivering seven courthouses across the country. This investment in our court buildings has to be recognised as a positive step, and we congratulate the Courts Service on these necessary improvements. Like all State bodies, the Courts Service suffered from severe cuts to its finances during the recession. Slowly, however, and in ingenious ways, it is improving our court buildings for the public and the practitioners of today and tomorrow. (See page 13 of this *Gazette* for an update on the family courts complex in Dublin.)

The first parchment ceremonies of 2018 have already been held. I'm delighted to say that the number of new entrants is increasing. I wish every one of our new solicitor colleagues many long and happy years in the profession. g

> THE GOVERNMENT HAS NOT YET PUBLISHED THE FULL DETAILS OF THE SCHEME. WE LOOK FORWARD TO THESE BEING REVEALED AS A MATTER OF URGENCY

MICHAEL QUINLAN,
PRESIDENT

gazette
LAW SOCIETY

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

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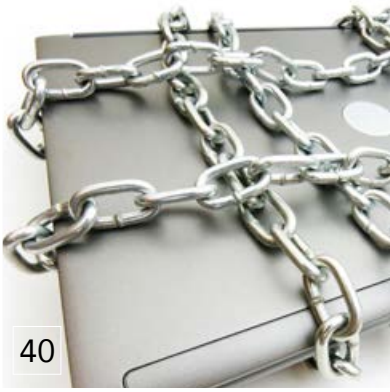
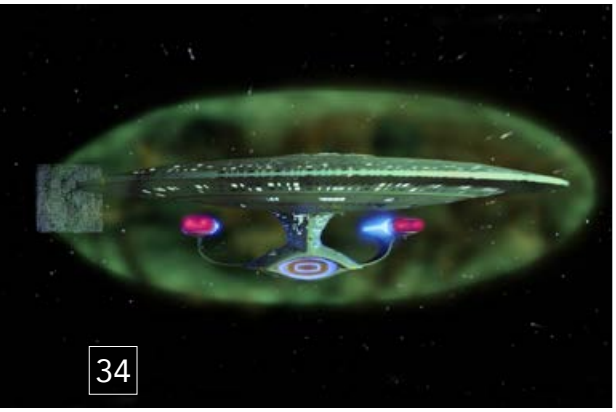




FEATURES

REGULARS

THE BIG PICTURE

PIC: EPA-EFE/MOHAMMED BADRA

ROAD TO DAMASCUS

A body of a child, identified as Mohmoud al-Hanash, lies in a Syrian morgue on 1 February 2018 after he, his sister and another child were killed during shelling on rebel-held civilian areas in Douma, eastern Ghouta. On 19 and 20 February, heavy bombing by forces loyal to the Syrian government killed 250 civilians in the same area

FOUR JURISDICTIONS GALA DINNER

At the Four Jurisdictions Family Law Conference gala dinner in Dublin on 27 January 2018 were Ken Murphy (director general, Law Society), Clare Feddis (chair, Family Lawyers' Association) and Chief Justice Frank Clarke

Barristers Deirdre Kennedy, Angela Collins, Ferga McGloughlin and Frank Shields

Rachel Baldwin BL (Family Lawyers' Association), Keith Walsh (speaker) and Paula Duffy (solicitor)

Ruth Croman, Lady Wise, Ruth Innes, Kirsty Malcolm and Jennifer Gallagher

Damien McMahon, Ann McMahon, Lady Hale and Julian Farrand

Sheriff Alasdair McFadyen, Lesley Anderson, Patricia McCartney and Sheriff Tom McCartney

BUILDING POWERFUL COMMITTEES

At the Striking Out – Building Powerful Committees seminar on 6 February were: Cormac Ó Culáin, Antoinette Moriarty, Sean Rainbird and Mary Keane

Christopher Callan, Brendan Twomey, John Elliot and Eugene O'Sullivan

Colm Costello, Gerry Carroll, Michelle Ní Longáin and Seán Rainbird

ALL PICS: CIAN REDMOND

Peter Byrne and Phillip Matthews

Louise Carpendale, Geraldine Kelly and Carol Ann Casey

Catherine Lyons and Aoife Byrne

Joan O'Mahony, Martina Ward-Clancy and Michael Quinlan

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*

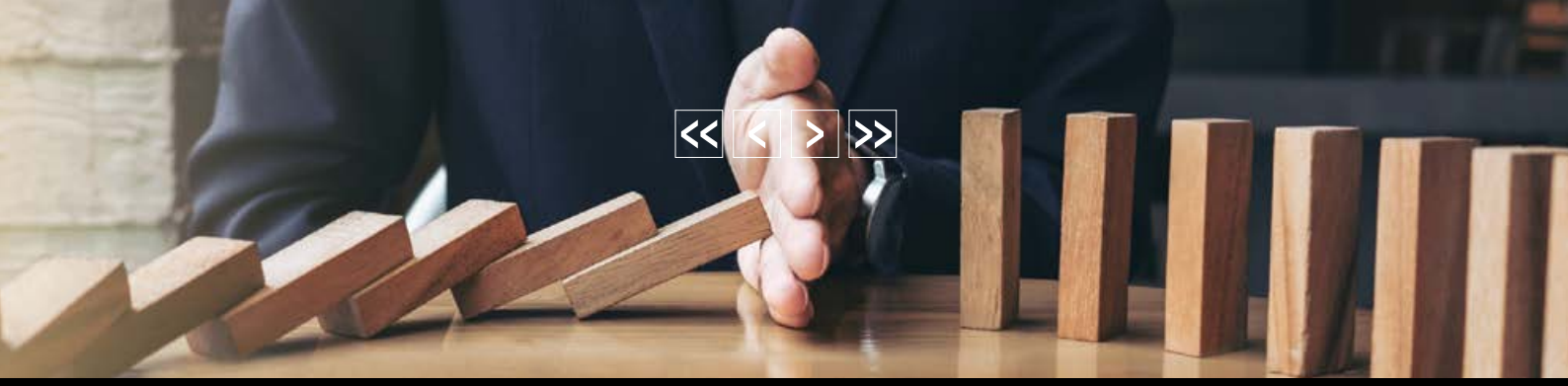
LLM ADVANCED LEGAL PRACTICE

The first conferees from the LLM Advanced Legal Practice masters programme attended a reception at Blackhall Place on 1 February 2018, including: *(front, l to r)*: Orlaith Traynor, Karen Sutton, Jan Cookson (programme leaders, Northumbria University), Lucy Winskell OBE DL (pro vice-chancellor, Northumbria University), Ailish Moran, Ann Fox, Orla Cleary and David Christie; *(back, l to r)*: Gemma Davies (director of international development, Northumbria University), Dr Freda Grealy (head, Diploma Centre), Michael Quinlan (president, Law Society), Judge Keenan Johnson, Colm Roberts, Brendan Twomey (chair, Education Committee), Mr Justice Peter Kelly (High Court), Geraldine Hynes (legal consultant), Rory O'Boyle (programme coordinator, Ireland), TP Kennedy (director of education, Law Society) and Dr Geoffrey Shannon (Law Society)

SOLICITORS OF THE FUTURE

PIC: CIAN REDMOND

Forty transition year students from across the country took part in the 'Solicitors of the Future' programme, run by Law Society staff, expert practitioners and trainee solicitors at Blackhall Place from 5-9 February. The work-experience programme is designed to build awareness of legal processes, constitutional principles and the values that underpin the rule of law in Ireland. The secondary school pupils learned about the daily working life of a solicitor, and visited the Criminal Courts of Justice, took a tour of a large commercial law firm, engaged in a careers seminar – and, the highlight for many, had a mock trial



Leman
DISPUTE RESOLUTION

The **Mediation Act 2017** came into operation on the 1st of January 2018. Under the new Act **all solicitors must advise their clients in a dispute of the advantages of mediation and how to access a mediator** prior to issuing proceedings. This applies to all Court jurisdictions.

For **commercial disputes with a value less than €75,000**, mediation may be considered uneconomical and cumbersome. However, that depends on: the mediators fees, the cost of venue hire and the speed of appointment.

Leman Dispute Resolution offers your client the following mediation solution:

- **CEDR QUALIFIED & EXPERIENCED MEDIATORS**
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- **NO APPOINTING BODY OR APPOINTMENT FEES**
- **NO VENUE HIRE COST**
- **MEDIATORS FEE FROM €500 + VAT PER PARTY***
- **TELEPHONE & E-MEDIATION**

*Exclusive to disputing parties agreeing in writing to appoint a Leman Dispute Resolution CEDR accredited mediator, on a half day (4 hour) mediation basis taking place at Leman Dispute Resolution venue. Commercial disputes only.

PLEASE CONTACT LEMAN DISPUTE RESOLUTION - TEL: 01 669 7079

EU LAW APPLIES TO ADEQUACY OF DAMAGES IN HOGAN RULING

A Court of Appeal judgment on a case taken by Word Perfect Translation Services has found that public procurement policy in Ireland falls under EU law in respect of damages.

Word Perfect supplies specialist translation services to a range of State bodies and had challenged the award of the contract to another company, Translation.ie, by the Minister for Public Expenditure, on the grounds that it was unlawful and *ultra vires*.

The appeal arose out of a High Court application to lift the automatic suspension of the contract award, pending the outcome of the challenge. In January, the High Court granted the minister the order he sought. This led to the case being brought to the Court of Appeal.


Mr Justice Hogan

Mr Justice Hogan has now overturned the High Court ruling that damages would be an adequate remedy. The firm at the centre of the case can now proceed with its case, with the suspension still in place, and the interpretation contract cannot be awarded elsewhere.

NEVER GAMBLE CLIENT FUNDS, HIGH COURT PRESIDENT WARNS

The temptation to embezzle client funds is never more than the click of a mouse away, President of the High Court Peter Kelly told newly qualified solicitors at their parchment ceremony at Blackhall Place on 21 February. "Gambling addiction is a real problem that I see on a regular basis," he said.

"For a solicitor who has control of clients' money, the temptation is ever present," he warned. Trust was the cornerstone of the solicitors' profession, and that trust should never be besmirched, he stated.

As President of the High Court, he not only had the duty of admitting solicitors to the Roll, but also at times, to suspend or strike them off – a duty that extended to medical, nursing, veterinary, pharmacy and teaching professionals, as well as social workers and radiographers.

"It is the most unpleasant task that I have to carry out on the bench," he said. "Recently, I had to strike off a pharmacist who had effectively embezzled hundreds of thousands of euros of his employer's money."

NOTICE OF SBA AGM

The 154th annual general meeting of the Solicitors' Benevolent Association will take place at the Law Society, Blackhall Place, Dublin 7, on Monday 9 April 2018 at 12.30pm, to consider the annual report and accounts for the year ended 30 November 2017, elect directors, and deal with other matters appropriate to a general meeting.

WOODCOCK CENTENARY

Woodcock Solicitors celebrates its centenary this year. Established in 1918 by Albert Woodcock, the firm then operated from Molesworth Street, Dublin 2. Albert was followed into the business by his son Henry in 1928, whose younger brother Thomas was called to the Bar in 1936. Henry's son Brian joined the business in 1968.

Throughout this period, the firm specialised in property law and probate, with some litigation, and practised as Woodcock and Sons.

Brian Woodcock, who still works at the firm, was joined by his sons Peter and John at Molesworth Street, in 1996 and 2007 respectively. In their hands, the practice has taken on a more commercial focus, with an emphasis on corporat

e transactions, while continuing to service clients' property, probate and litigation needs.

The firm is now based at Clanwilliam Terrace, Grand Canal Quay, Dublin 2.

SIDE ENTRANCE IN USE FOR COURT

Sittings at Tullamore Courthouse will be disrupted as the roof gets repaired this spring. Practitioners have been notified that the works will run until Friday 13 April (nothing to worry about, then). A temporary side corridor will accommodate access to the building for the duration, and some noise is expected.

THE POWER IS IN YOUR HANDS

Philip Matthews, who was part of the legendary Triple Crown-winning side of 1985, delivered a training session on strategic leadership to Law Society committee members on 6 February.

Matthews, who captained the Irish rugby team on 17 occasions, is now president of the National College of Ireland. The back-row powerhouse offered some compelling insights to Law Society committee members at a Blackhall Place seminar titled, 'Striking out – building powerful committees'.

The upskilling session was part of free training offered to Law Society committee members in how to maximise their effectiveness in carrying out their roles.

The seminar heard that the legal profession tended to produce strong personalities who brought a competitive win-or-lose mentality to meetings. This was essential when lawyers were being paid for their advice, since success involved having clear opinions and speaking with confidence and authority.

However, in a committee environment, dialogue was more important, and Matthews elaborated on scenarios where meetings could be overly dominated by strong voices.

"Great leaders don't take 'yes' for an answer," he said, pointing out that it was important to always hear alternative views. Avoiding groupthink was critically important, he said, and warned against the destructive short-circuiting of meetings by over-bearing participants. High-performance teams tended to encourage full interaction between every member. An effective chair should be able to bring any frustrations to the surface in order to ensure that they were dealt with effectively. It was also the chair's responsibility to ensure that discussions stuck closely to the agenda.

ALL PICS: CIAN REDMOND

Ex-Ireland rugby captain Philip Matthews spoke on the topic of strategic leadership

Director of the National Gallery of Ireland Seán Rainbird with Mary Keane

Law Society deputy director general Mary Keane, who is also vice-chair of the board of the National Gallery, interviewed Seán Rainbird, director of the National Gallery, on the topic of the €30 million master development plan for the gallery, how it was implemented, dealing with deadlines and maximising the use of resources, managing public frustration and disappointment during stages of the project, as well as successful project delivery in public-facing organisations.

Psychotherapist and head of the Law School's counselling service Antoinette Moriarty talked about how to thrive in the legal profession, while maintaining healthy boundaries. She spoke about how, in order to thrive, we must grow, create and connect with others. It was crucial to "find your tribe" in this world, she said, because to flourish as humans, we needed to attach to others and live a real, authentic life. She described full involvement and enjoyment in activities as essential to wellbeing.

Seán Rainbird (director of the National Gallery), Law Society deputy director general Mary Keane, Law Society President Michael Quinlan, Antoinette Moriarty (head of the Society's counselling service), Philip Matthews (president, National College of Ireland), Rachael Hession (Law Society Professional Training) and Cormac Ó Culáin (public affairs manager)

FAMILY LAW COMPLEX ON TRACK, SAYS RYAN

Courts Service chief executive Brendan Ryan has scotched rumours that the planned family law courts complex at Hammond Lane in Dublin has been put on ice.

The eagerly awaited development on a brownfield site in the heart of the legal quarter is still on track, the Courts Service head told the *Gazette*: "The Courts Service has prepared a business case for the project, which we have sent to the Department of Justice for approval to proceed to tendering stage. We are awaiting a response from the department on the matter."

The *Gazette* understands that four separate building projects must all be costed out of an agreed €150 million departmental budget.

These include the new family law courts complex, as well as three new greenfield garda stations at Macroom in Cork, Clonmel in Tipperary, and Sligo town – all of which will be built under public-private partnership.

Brendan Ryan: 'The Courts Service is awaiting approval from the Department of Justice to proceed to tendering stage'

Family law practitioners, meanwhile, have expressed their deep frustration and unease with current facilities at the Bridewell, where family and child law courts have been sitting since 2016.

Though given an overhaul, these facilities remain decrepit, cold, draughty and, crucially, suffer from "appalling audio", say practitioners. The elevated position of the judge is unsuited to the nature of family law court sittings, they believe.

"The courtrooms are old-fashioned and do not lend themselves to the proper empathetic management of our exceptionally difficult and complex proceedings," said one family lawyer.

Consultation facilities are inadequate, despite the genuine need for privacy and a degree of comfort to allow vulnerable respondent parents to instruct their legal teams, family lawyers say.

The lack of privacy in fraught situations has led to the gardaí being called on occasion.

Practitioners say the inadequate audio is a matter of "gravest concern", because it leaves wide open the possibility of judicial review by a respondent parent, who could say afterwards that they could not hear the evidence, and didn't, therefore, get a chance to properly test it.

PUPILS EYE A CAREER IN LAW

Transition year students from all across the country enjoyed the opportunities offered by the 'Solicitors of the Future' programme that took place from 5-9 February at Blackhall Place.

This innovative work experience programme encourages secondary school pupils to consider a career in the law by giving them an insight into the daily working life of a solicitor.

The 40 highly sought-after places offer participants a range of experiences, including a visit to the Criminal Courts of Justice, a tour of a large commercial firm, a careers seminar, and a mock trial.

PIC: CIAN REDMOND

Darragh Byrne (St Vincent's Castleknock College, Dublin), Saoirse Conroy (Mount Sackville Secondary School, Dublin), Ellen McCormack (Maynooth Post-primary School Kildare), Eimhin O'Neill (Belvedere College, Dublin), Philip Kane (Confey College, Kildare) and Jack McGeown (Patrician High School, Monaghan)

The programme, run by Law Society staff, expert practitioners, and trainee solicitors, generated enthusiastic feedback from participants, who learned about how the law is relevant to their daily lives. The programme is designed to build awareness of legal processes, constitutional principles and the values that underpin the rule of law in Ireland.

Entry to the programme is through a school lottery system, with the application procedure opening in autumn each year.

THE FUTURE OF PENSIONS IN IRELAND

The Diploma Centre is offering a new Certificate in Pensions and Applied Trusteeship, which begins on 13 March. Applications are now being accepted.

The course has been developed with the guidance of the Law Society's Pensions Subcommittee and will equip trustees to handle challenging issues such as underfunding, scheme wind-ups, pensions adjustment orders, taxation, mergers and acquisitions, and scheme restructuring.

Lectures will be made available online, live, and on demand. For further details, visit www.lawsociety.ie/diplomacentre.

At the launch of the new Certificate in Pensions Law and Applied Trusteeship were members of the Law Society's Pensions Subcommittee: Susan Webster, Fergal Mawe (Law Society), Jane McKeever, Tommy Nielsen, Fiona Thornton, Liam Connellan and Stephen Gillick

RESTRUCTURING LEADS TO LAUNCH OF NEW LAW FIRM IN WEST CORK

Hallissey & Partners is the large new law firm to emerge from the restructuring of the well-respected West Cork firm of PJ O'Driscoll in Bandon.

With a team of more than 25, Hallissey & Partners will continue to operate from the offices of the former O'Driscoll's at 41 South Main Street, Bandon. Led by managing partner Ted Hallissey, the new firm retains four partners of the previous firm: Geraldine Crean, Paul Westcott, Susan Lee and Eileen Hayes, together with all the associate solicitors.

Speaking at the launch of the new firm, Hallissey said: "We are delighted to start 2018 with our new structure, which reflects the progress and ambition of our firm. We will continue to deliver excellent results for our clients in a prompt and practical manner, through a combination of experience, expertise and attention to detail."

PIC: DIANE CUSACK

Ted Hallissey (managing partner) pictured with the firm's partners and solicitors at the launch of Hallissey & Partners law firm as a result of restructuring at PJ O'Driscoll Solicitors in Bandon, Cork

NEW-BUILD COURTHOUSES GO HIGH-TECH

Two brand-new courthouses have opened in recent weeks, in Letterkenny (*above*) and Wexford.

The new Letterkenny Courthouse is a magnificent achievement that will keep the administration of justice right at the heart of the busy Donegal town, Chief Justice Frank Clarke said at its opening on 12 February.

The old courthouse was a fine building, he said, which had served the town since 1831, but after 187 years, the needs of a modern courts system became more than it could manage.

The new courthouse is part of a €140-million public-private partnership, which is delivering seven courthouses across the country. The first of these, in Drogheda, opened last July. Wexford, Limerick, Waterford, Cork and Mullingar courthouses are all on target to open this year.

"These seven projects represent a significant investment by the State in the sort of modern facilities that are needed for the administration of justice into the future," the Chief Justice said. "This building reflects the way I hope the administration of justice will evolve in the relatively near future."

The completed courthouse has four double-height courtrooms, ancillary accommodation for judges and staff, rooms for practitioners to consult with clients and vulnerable witnesses, spacious public lobby and waiting areas, spaces for the media, and facilities for those in custody.

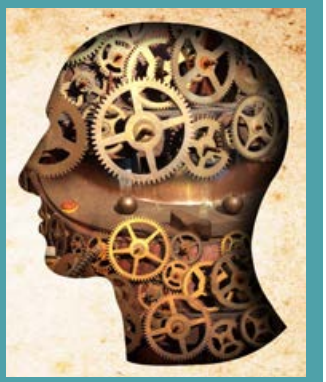
The courthouse will routinely accommodate hearings of the Circuit and District Courts, and may also be used by the High Court and Central Criminal court when needed.

Internally, the floor plans are organised around the central courtrooms, allowing the public, judges, jury, and persons in custody to enter the courtrooms from different directions. Courtroom technology includes digital audio recording, evidence display and video-conferencing, so that people can be facilitated in appearing in cases from distant locations. There is also universal access for those with mobility difficulties, user-friendly signage, and induction loops for the hard of hearing.

The old courthouse is to be kept in public ownership, with Donegal County Council overseeing its future use.

WORKPLACE WELL-BEING

SCREEN TIME OR REAL TIME?



A young Joan Didion, before she grew into her position as one of the most influential journalists and writers of our time, and following a disappointment at college, wrote "innocence ends when one is stripped of the delusion that one likes oneself".

It is a statement perhaps more easily made at the outset of adult life, capturing as it does the pain we can all experience of passing from a childlike state of easy acceptance of ourselves to the discomfort or 'dis-ease' that emerging adult self-awareness can bring. As our small country catches up with our American neighbours in our appetite for psychological answers to life's big questions (50% of trainee solicitors now attend the Law School's counselling service), our emotional relationship with our work has never been more closely observed.

Perhaps this recent curiosity is unavoidable. After all, to become a solicitor requires a level of drive, self-generation, and maybe even a certain detachment from the perceived confusion of emotion. It calls for competitiveness, alongside a desire for collegiality.

As training is left behind, the pursuit of success involves long hours, days, weeks and even years apart from the people and passions we all need to light us up. So, alongside growing expertise, legal professionals can carry undercurrents of self-doubt, or even self-criticism, that no amount of billable hours can resolve.

The good news is that, as long as we are breathing, our brains are evolving; personal change and growth are possible right throughout our lives. Yes, we evolve through our experiences, our achievements, our roles and our work. The real change agent, however, lies in our relationships – with ourselves and with other people.

The challenge offered to you this month is to swap some screen time for real time – with yourself and with loved ones. It's a sound investment – your well-being levels will rise, vaccinating you against the inevitable stress of professional life and equipping you with a self-belief that is earned and so sustainable.

Of course, the beautiful irony is that, if you make that plan to care for yourself, you will also be optimally equipping yourself to care for your clients – personal well-being for professional success.

If you would like to learn more about self-care, places are available at our Law Society Professional Well-being for Success conference on 17 May at the Connacht Hotel, Galway. Email: finuas@lawsociety.ie for details.

Antoinette Moriarty is a psychotherapist and heads up the Law School's counselling service.

MEMBER SERVICES

ASSISTING YOU WITH ADVERTISING

Recent media coverage has highlighted the importance of solicitors' obligations under the *Solicitors (Advertising) Regulations 2002*. To assist solicitors in meeting their obligations, the Law Society has published guidelines to the regulations. It also offers an advertisement-vetting service.

Eamonn Maguire (advertising regulations executive at the Law Society) explains: "If a solicitor wants to advertise, they can submit a draft advertisement to the Law Society for approval in advance of publishing. We will review it and respond in a timely manner to the solicitor – outlining in detail any problems that may exist so that the advertisement may be revised in order to comply with the regulations."

Many solicitors have availed of the service and find it invaluable. One such solicitor said: "It's a competitive environment out there for law firms online these days – and, digitally, there is a lot to keep updated on for any marketing team. Adding regulatory compliance to the mix means that there is an added layer for law firms to manage. The Law Society's content-vetting service provides very welcome peace of mind. With this level of confidence, we can continue marketing to our client base, safe in our knowledge that our content is Law Society approved."

To avail of this timely and efficient service, send your draft advertisement to: advertisingregulations@lawsociety.ie or call 01 879 8700 with any questions relating to solicitor advertising.

Further information, including practice notes and links to the regulations, are available on the Law Society's website (www.lawsociety.ie/solicitor-advertising).

AR MHAITH LEAT A BHEITH AR CHLÁR NA GAEILGE?

The PPC2 elective Advanced Legal Practice Irish/*Ardchúrsa Cleachtadh Dlí as Gaeilge (CDG Ardchúrsa)* is open to practising solicitors who wish to be registered on the Irish Language Register (Law Society)/*Clár na Gaeilge (An Dlí-Chumann)*.

In order to be entered onto the Irish Language Register, a solicitor must take this PPC2 elective course and pass all course assessment and attendance requirements. The course will run from 12 April until 14 June 2018. The course contact hours (lectures and workshops) will be delivered on Thursday evenings from 6-8pm at Blackhall Place. Lectures in weeks one and two will be made available online.

This is a 'blended learning' course. In addition to physical attendance on the specific Thursday evenings, participants will be required to complete individual and group coursework online, in between each session. Due to the group work required, attendance at all of the Thursday evening workshops is essential. Assessment will combine continuous assessment and an end-of-course oral presentation.

A Leaving Certificate Higher Level standard of Irish is a minimum standard. This course will fulfil the full practitioner CPD requirement for 2018.

The fee for 2018 is €625. The closing date for applications is Friday 16 March at 5pm.

Further information is available on the Law Society website at www.lawsociety.ie/alpi.aspx. Queries relating to the Advanced Legal Practice Irish course can be addressed to Maura Butler at m.butler@lawsociety.ie or tel: 01 672 4802.

'PARADIGM SHIFT' IN DELIVERY OF LEGAL ADVICE TO PUBLIC SECTOR

Junior Minister Pat Breen: 'It's vital that SMEs understood the opportunities opened up by bidding for public procurement contracts.'

Legal services to the public sector worth a massive €85 million are up for grabs under a newly streamlined delivery framework.

The Office of Government Procurement (OGP) described as a "paradigm shift" its new tendering procedures, which followed 18 months of intensive design and development work.

OGP procurement strategy now breaks large contracts into smaller lots or 'frameworks', more manageable for small and medium-sized legal firms, and also recognising different legal services needs across the public sector.

These range from "routine transactional services, such as low-value conveyancing, to high-end strategic advice on complex legal matters that are of national importance or unusual legal complexity", according to the OGP.

The roll-out of the framework model is expected to see savings of 11% on an anticipated annual spend of over €85 million.

Two of the frameworks – encompassing all-of-government (excluding central government) and local authority legal spends – can be used by 320 public sector bodies and all local authorities. The annual spend on such legal costs is expected to be in the order of €54 million, with expected savings of €6 million a year.

Both tender competitions are broken into lots by legal practice area to ensure that law firms can compete on the basis of their expertise. Significantly, the OGP has removed the requirement for minimum turnover, opting instead for a simple declaration of solvency.

A total of 109 law firms have already tendered under these frameworks – half of them competing for the first time – with 71 firms appointed. Of these, 33 are firms with five solicitors or less, and 44 are firms with 20 solicitors or less. Minimum professional indemnity insurance has been set at €1.5 million, in line with regulatory requirements.

MARKETING YOUR FIRM

HOW CLIENTS CHOOSE SOLICITORS

In my last article, I looked at how newsletters can be a very simple but powerful tool in developing and maintaining your relationship with your list of past, current and prospective clients. In future articles, I will return to the specifics of how to do that.

But first, I would like to draw your attention to the results of a recent survey that underlines the importance of why you should consider doing this in the first place. In January 2018, the Solicitors Regulatory Authority in Britain published the results of its *Price Transparency in the Legal Services Market* survey. It involved a very detailed survey of 1,000 participants on the market for conveyancing services in Britain.

When I started this series, I looked in some detail at the last survey done in this area here, which was carried out by the Law Society in 2015 (see my article in the October 2017 issue). The results of the more recent British survey add some very interesting insights to this analysis.

The survey looked at two factors in particular: how buyers find solicitors, and how they choose from what they find:

- **80% found their solicitor based either on the recommendation of a family member, a friend or intermediary, or from previous personal experience,**
- **Similarly, when it came to selecting from their options, 80% also chose based either on a recommendation or prior experience,**
- **Only 6% chose the cheapest option available to them.**

There is much more to these figures, but they bear out a very simple fact that emphasises the importance of everything we're looking at in this series: marketing your practice is not about fancy logos or smart ads. It's about how you relate to your past, current and prospective clients.

People do business with those whom they know, like and trust. Therefore, your first and most important task in marketing you and your practice is to have simple and effective systems in place for developing your relationship with those who know you and who come to like and trust you because of that relationship. They are the people most likely to recommend you to others and to return to do business with you again.

And that is how 80% of people find and choose their solicitors.

Flor McCarthy is the author of the Solicitor's Guide to Marketing and Growing a Business, available at www.thesolicitorsguide.com.

MINISTER NAMES TEAM CHARGED WITH CRITICAL REFORM OF JUSTICE DEPARTMENT

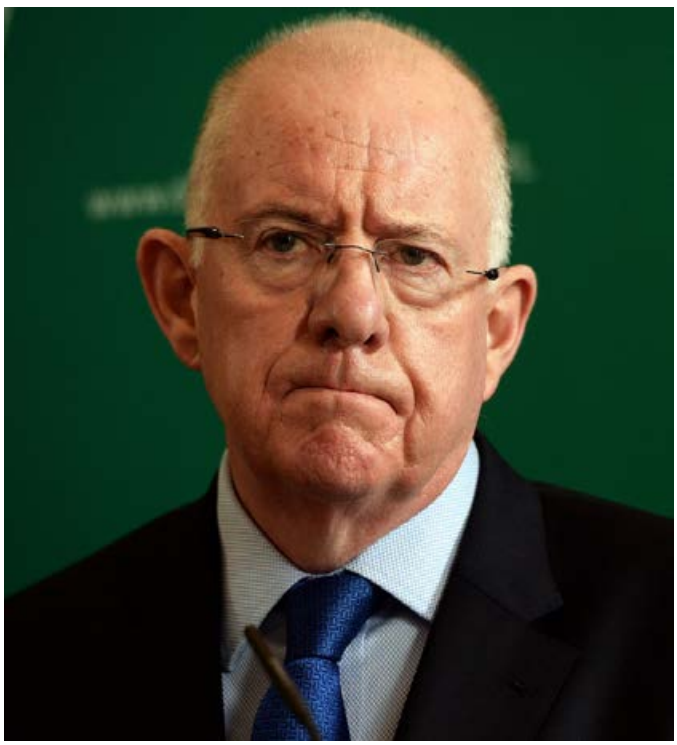
Two senior executives with online betting behemoth Paddy Power Betfair are part of a team charged with implementing "transformational change" inside the Department of Justice and Equality, *writes Mary Hallissey*.

Justice Minister Charlie Flanagan has hand-picked four experts to deliver critical reforms inside a department that has been dogged by controversy in recent years.

The remit of the four-person Change Implementation Group is to ensure that any outstanding elements of the *Toland Report*, which scrutinised the relationship between the department and the gardaí are fully implemented.

The group will also scrutinise departmental culture, decision-making and management and, in particular, the flow of information to and from the minister's office.

"Identifying the right model and protocols that will facilitate appropriate oversight and accountability is a challenge all democracies grapple with, and I believe the input of the Change Implementation Group will be valuable," the minister said on 31 January.



Justice minister: 'The group will scrutinise departmental culture, decision-making and management'

Safe bet

Pádraig Ó Ríordáin will chair the group. He is a senior corporate partner at Arthur Cox and a former managing partner with the firm, as well as being a non-executive director of Paddy Power Betfair. His recognised expertise is in complex commercial transactions and, in particular, in governance.

Ó Ríordáin also served as chairman of DAA, the State airports company, and worked as the lead legal advisor to the Department of Finance during the economic crash, both in setting up NAMA and in liquidating Anglo-Irish Bank, as well as managing the financial aid from the 'Troika'.

Ó Ríordáin is joined by Paddy Power stablemate Andrew Algeo who spent a decade as managing director at the betting firm where he was responsible for corporate development, risk and consumer insights.

The duo is joined by Theresa Daly, who led IKEA's establishment in Ireland and was also a senior manager with Microsoft. Daly specialises in strategy and leading organisational transformation.

The final member of the team is Kieran Coughlan, former secretary general of the Oireachtas or 'Dáil clerk', where he was regarded as a modernising influence for 23 years.

The CIG will report initially by June, with quarterly updates thereafter, with its focus on practical implementation of necessary reforms and modernisation.

Red flag

In February, an internal departmental report on the implementation of the *Toland Report* noted that a corporate secretariat office had beefed up communication procedures to ensure that high-priority correspondence was immediately 'red-flagged'.

A 'cultures and values' charter was published in 2016 with the objective of fostering a more outward-looking, listening organisational culture.

However, the report notes that progress in overall departmental structure has been slower than anticipated, because the department's remit has continued to grow since the *Toland Report*.

Three additional agencies were created under the department's remit – the Charities Regulatory Authority in 2014, and the Policing Authority and the Legal Services Regulatory Authority in 2016, though charity regulation has now been moved to the Department of Rural and Community Development. These additional bodies and policy areas brought the number of departmental agencies to 29, and further complicated an already complex sector, the report notes.

A separate management consultancy report has recommended that the department be broken up into two separate deputy secretary areas – Justice and Equality, and Home Affairs, with a dedicated assistant secretary responsible for governance.

No timeframe has yet been set for the OPW to vacate 52 St Stephen's Green so that departmental staff, currently spread across eight separate buildings, can re-locate to 51 and 52 on the Green.

Last year, in-house training was attended by 1,800 department staff across 165 days. A professional head of strategic human resources was appointed in 2016 and HR specialists were recruited at assistant principal level.

A department head of communications, who is also a member of the management board, was appointed in January 2015 at principal officer level. A web editor was also appointed, and the department's Twitter feed is now embedded on its website, as are all replies to parliamentary questions.

COMPILED BY KEITH WALSH, PRINCIPAL OF KEITH WALSH SOLICITORS

LOCAL AUTHORITIES

LASBA WALKS THE WALLS

The Local Authority Solicitors Bar Association (LASBA) held its first annual winter conference outside Dublin on 1 December in Derry. Principal office holders and overseas guests representing local authority legal departments were joined by solicitors from Cork, Derry, Galway, Dublin, Dun Laoghaire, Kerry and Wicklow, including *(l to r)*: Robert Meehan, Mairead Cashman, Rosemary Cronin, Aoife Hogan, Berni Fleming, Stephen McDevitt, Rachel Gaffney, Noel O'Reilly, Philip Kingston (Derry City Council, host), Peter Hessett (president, Society of Local Authority Lawyers and Administrators in Scotland), Ian Munnelly, Maoliosa McHugh (Mayor of Derry City), Terence O'Keeffe (president, LASBA), Patrick Healy (honorary secretary, LASBA), Dorothy Kennedy, Orla Deasy (vice-president, LASBA), Lesley Graham (Scotland), Audrey O'Hara, Kevin O'Leary, Claire Hickey, Suki Binjal (Lawyers in Local Government – England), Patricia Murphy, Vlad Valiente (Scotland), Anne McCormack and Paul Mahon McCarthy

GALWAY

CITY OF THE TRIBES CELEBRATES RISING STARS

Galwegians and their country cousins will be out in force at this year's Galway Solicitors' Bar Association annual dinner at the Meyrick Hotel on 2 March at 7.30pm.

Local sources say: "It is a testament to the generosity of spirit of the Galway solicitors that they would honour Mayo and Tipperary men, Eoin Garavan, formerly one of the leading practitioners on the Western Circuit and now judge of the Circuit Court, and James Seymour, late of Berwick solicitors and now Tipperary county registrar."

James was renowned, according to those who knew him best, "as a top-class litigator and, more importantly, a man who never saw a colleague in distress but assisted" and who, we might add, but for this appointment, would have remained GSBA president for life.

Eoin's appointment, following in the footsteps but going one step further than his late father, Judge John Garavan of the District Court, will be appreciated by all who appear in his court. Eyre Square chat has it: "If he's half the judge his father was, he'll do fine."

WEXFORD

NEW COURTHOUSE

Siobhan Dunne (Wexford Solicitors' Association) tells *The Gazette* that the opening of the new courthouse at Belvedere Road, Wexford Town, marked a big change. The first sitting took place there on 23 January. The new building, housed in the old Wexford Corporation offices, boasts fours new courtrooms that replace the previous courts sitting at Hill Street and Ardcavan. The spirit of collegiality, long a hallmark of practice in Wexford, can only be enhanced by the magnificent views from the legal practitioners' room in the new building.

DUBLIN

LADIES' GOLF OUTING

The annual spring golf outing of the Lady Solicitors' Golfing Society will take place at Killiney Golf Club on Friday 6 April 2018 (tee times from 2-4pm). Lady captain Mary Casey is encouraging a big turnout of players and visitors. Competition entries and dinner bookings should be notified immediately to deirdrelsgs2017@gmail.com. Golfers will be vying for the Pat O'Connor Perpetual Trophy and many other prizes. The day will conclude with dinner at the golf club at 8pm.

LAW SOCIETIES' SUMMIT IN LONDON DISCUSSES POTENTIAL IMPACT OF BREXIT

At the meeting of the leaders of the law societies of England and Wales, Ireland, Scotland and Northern Ireland were *(from, l to r)*: Michael Quinlan (president, Law Society of Ireland), Eileen Ewing (president, Law Society of Northern Ireland), Joe Egan (president, Law Society of England and Wales), and Graham Matthews (president, Law Society of Scotland); *(back, l to r)*: Ken Murphy (director general, Law Society of Ireland), Suzanne Rice (vice-president, Law Society of Northern Ireland), Paul Tennant (CEO, Law Society of England and Wales), Lorna Jack (CEO, Law Society of Scotland), Patrick Dorgan (vice-president, Law Society of Ireland), Alison Atack (vice-president, Law Society of Scotland), and Alan Hunter (CEO, Law Society of Northern Ireland)

Collectively, there are close to 200,000 solicitors on the Rolls of England and Wales, Ireland, Northern Ireland and Scotland, and the leaders of these four law societies meet formally twice a year to discuss matters of mutual interest.

The official home of the president of the Law Society of England and Wales is in an early Georgian townhouse at 60 Carey Street, just around the corner from the Society's headquarters on Chancery Lane. The current occupant and president, Joe Egan (who practises in Bolton), as his name suggests has strong Irish roots – in counties Mayo and Galway in particular. He was pleased to welcome his friends from neighbouring jurisdictions to Carey Street for a Four Law Societies' 'Summit' on 31 January 2018.

Despite the elegance and antiquity of the surroundings, however, it was a very pressing modern topic that dominated the agenda, namely Brexit.

Director general Ken Murphy, in his role as a Bar Issues Officer of the International Bar Association, is organising and chairing a business session on Brexit at the IBA bar leaders' annual meeting in Oslo on 24 May 2018.

He briefed the London meeting on the themes that bar leaders worldwide – but Europe in particular – will be seeking to address in Oslo, such as what kind of Brexit agreement will be reached – hard, soft or none? What would be the likely consequences of each for lawyers and legal practice?

If Britain, including its legal profession, will not be allowed 'have its cake and eat it', what possibly painful trade-offs are likely to be required by the EU, now that the Brexit trade talks have commenced? And what impact will all of this have on London's pre-eminence as a legal centre?

No answers to any of these questions are, as yet, available.

TAKE THE CALCUTTA RUN CHINA CHALLENGE!

The Calcutta Run celebrates its 20th (or 'china') anniversary this year, *writes Mark McDermott*. At the end of those 20 years, the event is fast closing in on achieving a whopping €4 million in the amount of funds raised. To meet that target, the event's organisers have set €300,000 as their fund-raising objective this May.

During the past 20 years, the run has helped countless homeless young people at home and in India through donations to the Peter McVerry Trust, The Hope Foundation and, previously, GOAL.

Preparation is everything, as any athlete knows, so the organisers are jumping out of the starting blocks early this year to encourage an even greater effort by individual participants and firms.

The Calcutta Run has its origins back in 1999. The brainchild of Eoin MacNeill and Joe Kelly of A&L Goodbody, the duo approached the Law Society in January 1999 to explore how the legal profession might come together to create an annual fund-raising event to support homeless children in Ireland and Kolkata.

Director general Ken Murphy introduced Eoin and Joe to the Society's director of finance Cillian MacDomhnaill, who is an avid runner. And so, the idea of the Calcutta Run was born. Twenty years later, Eoin, Joe and Cillian continue to be centrally involved in organising 'Ireland's legal fundraiser'.

Spurred on by the success of the inaugural run, the event has grown to encompass a variety of sporting disciplines, including running, walking, cycling, soccer and tennis. While traditionally centred in Dublin, this year's event could see New York added as an international venue. The vision is for the Calcutta Run to eventually become an international affair, driven by Irish lawyers around the world. Not to be outdone by New York, the Southern Law Association will be organising a Calcutta Run by the Lee. Watch out for more details in the coming weeks.

Last year, over 1,200 people took part and raised €230,000. "We'd love to achieve a new 'personal best' of €300,000 in 2018," says Cillian. "With some extra effort from all the firms and individuals involved, we believe it's an achievable target. €4 million raised over 20 years would be an incredible accomplishment!"

Participants in this year's Calcutta Run will have a number of tantalising options on Saturday 26 May: runners can take on the 5k or 10k challenge, cyclists have the option of a 50k or 100k route, while teams can take part in the DX firm challenge.

Those who complete the event are welcome to enjoy the Finish Line Festival with family and friends in the sports field behind Blackhall Place. The festival features a barbecue, bar, vintage stands, DJ and children's activities.

You can play a central role in the Calcutta Run's china celebrations by signing up today at www.calcuttarun.com. If any of our readers have taken part in all 20 runs (or close to it), or wish to suggest novel fund-raising ideas for your firms, you are invited to contact Hilary Kavanagh at h.kavanagh@lawsociety.ie.

WHERE ARE YOU FROM?

For the first time, the *Gazette* looks at the county distribution and gender breakdown of practising solicitors in the State. **Ken Murphy** reports

KEN MURPHY IS DIRECTOR GENERAL OF THE LAW SOCIETY

> THE NUMBER OF PCs IN AN INDIVIDUAL COUNTY IS AN INDICATOR OF THE DEMAND FOR LEGAL SERVICES, TOGETHER WITH THE LEVEL OF ECONOMIC ACTIVITY, IN THAT COUNTY

County of birth, or at least county of residence, is an immensely powerful personal identifier for Irish people. Being from one side of a county boundary rather than another – and accordingly having your spirits elevated by the sight of one set of county colours rather than another – really matters in Ireland.

It may be a little surprising, therefore, that the *Gazette* has never previously published a table setting out the number of practising certificates on a county-by-county basis. But here it is.

The numbers are of practising certificates (PCs) issued to solicitors, by practice address in each of the 26 individual counties in the State, on the last day of the most recent practising year, namely 31 December 2017. The many solicitors with practice addresses outside the State are excluded for the purposes of this exercise.

The number of PCs in an individual county is an indicator of the demand for legal services, together with the level of economic activity, in that county.

There were 9,665 solicitors with PCs issued in the State on 31 December 2017. No less than 6,066 of them were issued to solicitors in Dublin, inclusive of Dublin City and County. Accordingly, a massive 63% of all the practising solicitors in the State are based in Dublin.

The populous counties surrounding Dublin, perhaps not surprisingly, also have among the larger concentrations of PCs namely, Kildare (179), Wicklow (135) and Meath (120).

Outside the Pale

The largest county by far in Ireland in geographical size, with the State's second largest city, is Cork where the 855 solicitors comprise 9% of the State's total. For this exercise, all percentages are rounded to the nearest whole number.

Co Galway is third in size, with 351 PCs. When Galway

26-COUNTY BREAKDOWN OF ALL PRACTISING SOLICITORS, BY GENDER

County	Male	Female	Male and female total
Carlow	22	24	46
Cavan	30	22	52
Clare	48	71	119
Cork	411	444	855
Donegal	61	68	129
Dublin	2831	3235	6066
Galway	160	191	351
Kerry	88	73	161
Kildare	86	93	179
Kilkenny	38	32	70
Laois	22	12	34
Leitrim	20	13	33
Limerick	155	153	308
Longford	19	23	42
Louth	83	64	147
Mayo	67	54	121
Meath	70	50	120
Monaghan	19	25	44
Offaly	32	30	62
Roscommon	25	23	48
Sligo	50	37	87
Tipperary	103	60	163
Waterford	56	49	105
Westmeath	50	45	95
Wexford	49	44	93
Wicklow	69	66	135
TOTAL	**4664**	**5001**	**9665**

These figures represent the total number of solicitors with a practising certificate in the 26 counties, as advised to the Law Society, up to and including 31/12/2017

WITHIN THE STATE AS A WHOLE, WE HAVE 5,001 PRACTISING SOLICITORS WHO ARE WOMEN (52%) AND 4,664 WHO ARE MEN (48%)

and all the other four counties of Connaught have their PC numbers added together, the resultant 640 tally, an entire province, comprises just 7% of the State's total.

The six counties of Munster have between them 1,711 PC holders, which represents 18% of the total.

The province on the east coast, by contrast (inclusive of Dublin among all the 12 counties of Leinster), has 7,089 practising solicitors, which is 73% of the total.

The county with the smallest numbers of PCs is Leitrim (33) – with Laois (34) just one ahead, followed by Longford (42), Monaghan (44) and Carlow (46).

Feminisation trend

Perhaps the most powerful source of human identity, even more powerful than county identity in Ireland, is gender.

The feminisation of the legal profession has been a global trend for decades. But the pace of the trend now has massive momentum. As the Law Society proudly proclaimed in 2014, the first legal profession in the world where the majority of practising members is female was the solicitors' profession in this jurisdiction.

The table published here shows, for the first time, the gender breakdown on a county-by-county basis. Within the State as a whole, we have 5,001 practising solicitors who are women (52%) and 4,664 who are men (48%). In Dublin, the percentage of PCs issued to women is slightly higher at 53%.

In no less than 15 of the 26 counties, however, it is still the case that there are more male PC holders than female.

Only in Carlow, Clare, Cork, Donegal, Dublin, Galway, Kildare, Longford and Monaghan do female practitioners now constitute the majority.

The tradional male hegemony, in numerical terms, within the profession continues to prevail in the great majority of individual counties.

The most striking county in this regard is Tipperary – the 103 male PC holders (63%) overwhelmingly exceeds the 60 (37%) held by their female colleagues. g

WE ARE FAMILY

Legal recognition for family life is what's important, whether in marriage or civil partnership, says Lady Brenda Hale. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE

Chief Justice Frank Clarke opened the Four Jurisdictions Family Law Conference by quipping that he had worked on some big-money cases in the family law sector, but found the term 'ample resources' far more suitable.

The upcoming GDPR had "scary implications" for family lawyers, he said, and forensic accounting would remain at the heart of difficult family law cases.

"The proposals in Irish legislation to transpose the GDPR into Irish law include the creation of a specialist internal judicial data protection commissioner.

"We will have to create our own stand-alone data protection commissioner within the judiciary, and also our own stand-alone body to define the parameters of what may or may not have to be disclosed," he stated.

He added that the significant interconnection between the four jurisdictions represented at the conference – at Dublin's Conrad Hotel on 27 January – would continue fully, post-Brexit, because it was driven by the interrelatedness of people. Of Britain's entire population, at least six million were entitled to Irish citizenship, he noted.

"That interconnection is going to continue – whatever the legal architecture within which disputes that have some element of cross-border difficulty attached to them may be," he said.

Forum shopping

On the issue of 'forum shopping', the chief justice said: "There is a perception, rightly or not, that the regime in respect of children of troubled parents who are taken into care may be somewhat more benign in this jurisdiction than in the UK. There is a feeling that the likelihood of children being formally adopted out of that kind of situation is greater in the UK than in Ireland."

On that topic, leading British judge Peter Jackson questioned whether the ancient institution of adoption could survive in the internet age. Dublin-born Jackson was appointed to the British Court of Appeal in 2017.

Speaking to the *Gazette*, he said: "That model of adoption has undoubtedly been affected by the internet. Whatever one's beliefs about non-consensual adoption, one has to take account of that reality. There is no denying that the model of a child passing completely beyond knowledge [of the

> WHEN CONCEPTION CAN TAKE PLACE OUTSIDE THE BODY INVOLVING A SEEMINGLY ENDLESS RANGE OF VARIABLES, FROM MITOCHONDRIAL DONATION, TO IVF, TO SURROGACY, WHO ARE THE PARENTS?

Addressing the topic of 'Parenthood and identity rights for children' were Mr Justice Peter Jackson (chair, Court of Appeal, UK), Dr Claire Fenton-Glynn (keynote speaker, University of Cambridge), and panellists Dervla Browne SC, Frances Heaton QC and Suzanne Rice (solicitor, Northern Ireland)

ALL PICS: PAUL SHERWOOD


Lady Brenda Hale

parents] is increasingly understood as not fully practicable in the internet age."

"Identity is the fundamental constituent of family law," Jackson declared. "Historically, our law of persons has depended upon fixed conceptions of identity based upon conformity in matters of clan, family, gender, race, class, sexual behaviour. In our lifetimes, many of these certainties have dissolved.

'Social structures that were once moulded by religious faith are now being moulded by the possibilities of science and technology. Every aspect of our identity is being called into question. Our very genetic make-up can now be altered by editing the human genome, affecting not only ourselves, but generations to come," he said.

In the context of all this momentous change, Jackson wondered whether we had the correct bal-

FOCAL POINT

ON LEGAL RECOGNITION FOR FAMILY LIFE

On the question of legal recognition for family life, Lady Hale said that what was important was the social and psychological commitment to those responsibilities.

She said that she found ideological objections to the institution of marriage "very puzzling", since its patriarchal features had disappeared under the law.

"It's a perfectly serviceable method of giving legal status, rights and responsibilities to couples who want to be together. Why are so many same-sex couples so keen to marry, when they had a perfectly serviceable method … in civil partnership?

"It shows very strongly, that in both directions, marriage still has social and psychological significance, which has nothing to do with the legal consequences."

Lady Hale said it was more important that couples 'do something' to regularise their unions, whether that be marriage or civil partnership. Why should we mind [which they choose], as long as they do something?

"In my view, we ought to be happier that they want to make a legal commitment, whichever one it is."

> FLIMSY 'BEHAVIOUR' DIVORCE PETITIONS ADD NEEDLESSLY TO THE ANGER, PAIN AND GRIEF THAT ACCOMPANY THE END OF A MARRIAGE, DO NOTHING TO HELP SAVE A MARRIAGE, AND CAN MAKE THINGS WORSE FOR CHILDREN WHO SUFFER MOST FROM CONFLICT

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ance of rights between parent and child. "When conception can take place outside the body involving a seemingly endless range of variables, from mitochondrial donation, to IVF, to surrogacy, who are the parents?

"What are the downstream consequences of individuals having the right to identify their own gender, or of the extension of marriage – with all its special legal consequences – to same sex couples? Or of the fact that there is no global consensus about many of these things. Is our old legal grammar adequate to describe our own identities, let alone the identities of generations yet to come?" he asked.

Chief Justice Frank Clarke

> WE WILL HAVE TO CREATE OUR OWN STAND-ALONE DATA PROTECTION COMMISSIONER WITHIN THE JUDICIARY

'Quickie divorce' consequences

The keynote speaker was Lady Brenda Hale (President of the Supreme Court of the UK), who started her legal career in family law. Commenting on certain differences between the jurisdictions of Ireland, and England and Wales, she said that Ireland was fortunate in having 'no-fault' divorce, since there was less incentive to use adultery or 'unreasonable behaviour' to get a quick decree, as was the case in her jurisdiction.

"In 2015, 60% of the divorces in England and Wales were based on adultery or [unreasonable] behaviour, but only 6% in Scotland. "It may seem paradoxical that 'no-fault' divorce is aimed at strengthening family responsibilities, but in my view, it is."

On the question of reforming the English law to remove acrimony, while also bolstering marriage and family responsibilities, Lady Hale cited a 1990 Law Commission report that said flimsy 'behaviour' divorce petitions promote unnecessary hostility and bitterness.

They add needlessly to the anger, pain and grief that accompany the end of a marriage, do nothing to help save a marriage, and can make things worse for children who suffer most from conflict.

"Under present [English] law you can get a very quick divorce and then spend years arguing about the consequences. What one wants to do is have as many as possible of the consequences sorted out before you are free to go and marry someone else," Lady Hale said.

Meal ticket for life

Lady Hale took umbrage with the term 'meal ticket for life', saying that marriage involved responsibility to meet each other's needs, and a creation of interdependence. "Please, can we stop talking about a 'meal ticket for life' as if some people, at least, haven't earned it, because some of them have."

"I agree that it should not be assumed that the highest aspiration for a woman is to become dependent on a man, but I do believe, along with the Family Justice Council, that marriage is a partnership in which spouses, whatever their sex, often play different roles, often varying over time, for their mutual benefit and for the benefit of their children, and I would add, often for the benefit of their elderly parents and relatives."

Those roles should be entitled to equal respect and recompense, she pointed out.

"It is generally right and fair that relationship-generated needs should be met by the other party, if resources permit," she said, quoting 2016 guidance on financial needs from the Family Justice Council in Britain.

"The alternative view is that marriage is a partnership, rather like a commercial partnership, which should be dissolved with an equal sharing of present assets, with no provision for future needs, unless there would otherwise be grave hardship," said Lady Hale, pointing out that this was the situation in Scotland.

Dublin solicitor Keith Walsh (chair of the Law Society's Family and Child Law Committee) commented that Britain was in denial about the impact of Brexit on family law. "The folly of Brexit will be visited on divorcing couples where there is a dispute of jurisdiction involving the UK and Ireland, post Brexit," he said.

"A 'no-deal' scenario would result in the worst possible result for the UK and Ireland, and the impact would be greatest, not on the lawyers, but on their clients."

He called on all family lawyers in Ireland and Britain to join forces to lobby their governments and the EU to make sure that family law would be included on the Brexit agenda. g

THE INBETWEENERS

The new *Mediation Act* was commenced on 1 January. **Keith Walsh** looks at the practical implications of the act for family lawyers

KEITH WALSH IS CHAIR OF THE LAW SOCIETY'S FAMILY AND CHILD LAW COMMITTEE

WHILE THE ACT ONLY CONTAINS 26 SECTIONS, IT INCLUDES A NUMBER OF CHANGES THAT CAME INTO EFFECT FROM 22 JANUARY AND ARE IMMEDIATELY RELEVANT TO FAMILY LAW PRACTICE AND PROCEDURE

The newly commenced *Mediation Act 2017* is to be welcomed by family lawyers, as it will encourage all those involved in the resolution of legal separation, divorce, and private child law disputes to seriously consider mediation as an alternative to court. While the act only contains 26 sections, it includes a number of changes that came into effect from 22 January and are immediately relevant to family law practice and procedure – especially in the circuit family court.

Mediation and mediator

Mediation is defined in section 2 as "a confidential, facilitative and voluntary process in which parties to a dispute, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve the dispute".

A mediator is described as "a person appointed under an agreement to mediate to assist the parties to the agreement to reach a mutually acceptable agreement to resolve the dispute the subject of the agreement".

The *Mediation Act* is intended to:

- Facilitate the settlement of disputes by mediation,
- Specify the principles applicable to mediation,
- Specify arrangements for mediation as an alternative to the institution of civil proceedings or to the continuation of civil proceedings that have been instituted,
- Provide for codes of practice to which mediators may subscribe,
- Provide for the establishment of a body, to be known as the Mediation Council of Ireland, and to require that council to make reports to the Minister for Justice regarding mediation in the State,
- Provide an opportunity for parties to family law proceedings or proceedings under section 67A(3) or 117 of the *Succession Act 1965* to attend mediation information sessions,
- Amend the *Guardianship of Infants Act 1964*, the *Judicial Separation and Family Law Reform Act 1989*, and the *Family Law (Divorce) Act 1996*, and to provide for related matters.

The act contains principles in relation to the mediation process, agreements to mediate, and the role of the mediator. Codes of practice for the conduct of mediations, including the conduct of mediators, must be published by the minister "as soon as practicable" and following submissions by interested parties.

Although not specified as one of the objectives of the act in the long title, one of the most practical effects is to increase the obligation on solicitors to inform clients about mediation prior to the issue of civil proceedings.

Family law

The *Mediation Act* and the new rules of court increase safeguards to ensure that those intending to issue proceedings pursuant to the *Judicial Separation and Family Law Reform Act 1989*, the *Family Law (Divorce) Act 1996* and the *Guardianship of Infants Act 1964* are aware of alternatives to going to court.

Solicitors in family law cases must now give more information about mediation to clients before starting the above cases. In addition, greater proof of compliance with these duties is required by the courts following the introduction of the new rules of court in relation to mediation, which came into effect in the District, Circuit and High Court as and from 22 January 2018.

The additional information that must be supplied by solicitors relates to the confidentiality of mediation agreements and their enforceability pursuant to section 10 and 11 of the *Mediation Act*.

The level of proof of compliance by solicitors is increased from the solicitor having to provide a certificate of compliance with sections 5 and 6 of the *Family Law Reform Act*, or sections 6 and 7 of the *Family Law (Divorce) Act* and section 20 and 21 of the *Guardianship of Infants Act*, with the obligation of now having to make a statutory declaration to this effect. It is likely that both these measures will increase the numbers of people using mediation as an alternative to court, and is to be welcomed.

The new Circuit and High Court rules contain new family law statutory declaration forms. These statutory declarations have replaced the old section 5/6/7 certificates for judicial separation and divorce for pro-

ONE OF THE MOST PRACTICAL EFFECTS IS TO INCREASE THE OBLIGATION ON SOLICITORS TO INFORM CLIENTS ABOUT MEDIATION PRIOR TO THE ISSUE OF CIVIL PROCEEDINGS

ceedings issued as and from 22 January 2018. Family lawyers will need to replace their section 5/6/7 certificates with the new statutory declarations as set out in the rules of court. Information sessions on mediation for family law and succession act matters may be introduced by the minister pursuant to section 23 of the *Mediation Act* as part of a scheme following public consultation. Prior to the enactment of this legislation, there was some discussion about requiring mandatory attendance at information sessions on mediation by intending litigants prior to issue of court proceedings in family law matters, but this was not included in the act as passed by the Oireachtas.

Other provisions

Other elements of the *Mediation Act* that will impact on family lawyers, but that are not exclusive to the area of family law include:

- A greater role for the courts in directing mediation either on application of one of the parties or on its own initiative, with any such applications by one of the parties to be made by notice of motion not more than 14 days before the hearing date – section 16(4).
- Where the court directs mediation, it may order a mediator to produce a report for the court that would state if mediation did not take place, why it did not take place, details of any mediation agreement reached, and, if some agreement reached, the terms of that agreement. Any report must be given to the parties at least seven days before it is lodged in the court by the mediator.
- Section 20 states, in relation to mediation fees, that unless otherwise ordered by the court or otherwise agreed, the costs of mediation will be paid equally by the parties and "the fees and costs of a mediation shall be reasonable and proportionate to the importance and complexity of the issues at stake and to the amount of work carried out by the mediator".
- In awarding costs in relation to proceedings where an application was made to direct mediation, a court may, where it considers it just, have regard to any unreasonable refusal or failure by a party to the proceedings to consider using mediation and any unreasonable refusal or failure by a party to attend mediation following an invitation to do so, pursuant to section 16(1).

While the act has been a long time coming, it was hoped that there would be a more formal system of regulation of mediators. However, the new act is a good start to encouraging mediation of disputes, and it is to be hoped that it will result in earlier and more cost-effective resolution of judicial separation, divorce, and private child law cases in the coming years. g

'GENIE OUT OF THE BOTTLE' ON DATA, SAYS CHIEF JUSTICE

Ireland may become a GDPR battleground, since so much personal data lives in corporations that operate out of this country. This was just one of the topics raised at a seminar held at Blackhall Place recently. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST WITH GAZETTE.IE

A new GDPR-compliant system set up for individual barristers by the Bar of Ireland will cost a whopping €500,000, the Chief Justice has said, adding that he is concerned about the significant resources the looming legislation will require.

The GDPR makes specific reference to data that is under the control of judges in the context of carrying out their judicial function, he pointed out. But while judges are exempt in their judging role from GDPR requirements, there would have to be a 'judge data controller' responsible for material within the judicial system, as well as a process within the judiciary for defining materials that are subject to, or exempt from, the regulation.

"We have to accept that the genie is out of the bottle. We aren't going back to an age when there aren't vast amounts of information out there, electronically stored," Frank Clarke declared at the 'Litigation in the data age' seminar at Blackhall Place on 25 January.

The Chief Justice added that, while data and IT might assist in conducting litigation, they might also cause difficulties. He pointed out that putting a dysfunctional system online would not make it good, referring to the vast amounts of paper currently produced for many court hearings.

Courts are the repository for a great deal of personal data, and the risks of holding data online will become more acute in a court context. Courts may have to become more creative in their data requests, since there will be pressure on foot of the GDPR

> WHILE, LEGALLY, THE PROTECTION OF DATA IS A FUNDAMENTAL RIGHT, NOT EVERY BREACH OF DATA IS A FUNDAMENTAL BREACH

FOCAL POINT

ACCOUNTABILITY

The data protection commissioner, Helen Dixon, told the seminar that the controllers and regulators still struggled to understand what was covered by the concept and scope of personal data. But, she said, the new GDPR would deliver better outcomes as a more fit-for-purpose, harmonised data protection law for Europe that placed accountability back on the shoulders of organisations.

"It doesn't aim to stymie innovation and growth in the digital economy, and its objective isn't to hold back the multiple benefits that technological developments, and the use of personal data on a large scale, can bring to society as a whole," she said.

Data protection as a regulatory area was prone to seepage, she said, and competition concerns were infiltrating areas where data protection was without sufficient tools to deal with such concerns. As an example, she mentioned the acquisition by Facebook of WhatsApp, where a change of privacy policy meant that WhatsApp users had to consent to data sharing with the social-media giant.

The real value for Facebook in acquiring WhatsApp was in its data and, had competition authorities had the foresight to recognise the potential data monopoly at stake, this could easily have been prohibited as a condition of merger approval. Facebook was subsequently fined €110 million for providing misleading information to the EU Commission.

Chief Justice Frank Clarke

to limit the scope of discovery orders to what is absolutely necessary, he said.

The nature of litigation is that a lot of the information filed in our courts is personal data – sometimes extremely personal data – extending to third parties, he said.

"There have been a number of decisions in the High Court over the last six or seven years, where the court has declined or postponed discovery orders because compliance would require revealing private information, not just of the party … but frequently about third parties.

"Up to now, it has always been regarded as a legal fact that a court order requiring compliance with a disclosure obligation absolves you from any other adverse consequences."

Privacy versus disclosure

The Chief Justice continued: "Maybe the corollary of that is that courts need to become more careful to ensure that they only require disclosure of documentation … that is necessary and that greater use be made of redaction. Courts are going to have to become more creative about the way in which they craft disclosure obligations," so that confidential information that is not essential to the court process remains private.

On the question of privacy versus disclosure, Clarke said that a corporation amenable to US law might well be obliged to makes disclosures that were in breach of data protection legislation in Europe.

He flagged the fact that a lot of data lives in corporations that are registered in Ireland; therefore, this country could become a particular battleground for these issues. An Irish court could have little choice but to enforce European legislation.

He noted that, in the US, there were companies that provided 'big data' predictors for the outcome of court cases. "The best of these systems are … better than skilled

> COURTS ARE GOING TO HAVE TO BECOME MORE CREATIVE ABOUT THE WAY IN WHICH THEY CRAFT DISCLOSURE OBLIGATIONS 'SO THAT CONFIDENTIAL INFORMATION THAT IS NOT ESSENTIAL TO THE COURT PROCESS REMAINS PRIVATE'

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Friday 27 April 2018

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and former solicitor

SPECIAL GUEST:
Oliver Callan
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top impressionist and satirist

The Law Society Spring Gala returns in 2018 with a new venue – the historic Shelbourne Hotel in the heart of Dublin. This black-tie dinner is the peak event for members of the profession that raises funds for the Solicitors' Benevolent Association.

Table dinner package for 12 guests: €2,400. Individual dinner seats: €200 per person.

To book your place, visit **www.springgala.ie**

Gala profits will be donated to the Solicitors' Benevolent Association – a voluntary charitable organisation assisting members or former members of the solicitors' profession in Ireland and their wives, husbands, widows, widowers, families and immediate dependants who are in need.

Data Protection Commissioner Helen Dixon

Ann Henry, Chief Justice Frank Clarke, Helen Dixon and Cian Ferriter

THE NEW GDPR WILL DELIVER BETTER OUTCOMES AS A MORE FIT-FOR-PURPOSE, HARMONISED DATA PROTECTION LAW FOR EUROPE THAT PLACES ACCOUNTABILITY BACK ON THE SHOULDERS OF ORGANISATIONS

lawyers!" he said, adding that the sheer volume of US cases meant that algorithms could give reasonably good predictions.

Solicitor Ann Henry pointed out that, in Ireland, we have a disproportionate number of global tech companies that are of systemic importance in the area of data.

This, combined with the fact that, in 2019, Ireland will become the only English-speaking common law jurisdiction in Europe, means that there is a renewed interest in how we undertake litigation here.

Senior counsel Cian Ferriter pointed out that while, legally, the protection of data is a fundamental right, not every breach of data is a fundamental breach. This will become a theme in the practical roll-out over the next five to ten years of the various protections provided for in the GDPR, he suggested, particularly in terms of damages. Tensions would flow from vindicating the privacy right, while also striking an appropriate balance in the protection of competing interests, he said. Ultimately, he believed that common sense would prevail. If breaches were technical or minor, no damages should ensue. Under GDPR, penalties for breaches could run to up to 4% of global turnover.

"Interesting questions will arise in this jurisdiction, particularly if it is the sole remaining common law jurisdiction [in the EU], where we socially, culturally and legally, have quite a different approach to giving people damages for a breach of their rights than, perhaps, obtains in certain civil law jurisdictions."

He gave the example of a fictional data breach of a supermarket loyalty scheme, which could give rise to a snowball of claims that could result in an alarming level of damages to the business were each claimant able to show that they had suffered non-material damage, and was therefore entitled, as a matter of law, to compensation.

He questioned whether Ireland ran the risk of potential 'de-harmonisation' with other EU member states if we became an outlier in giving more generous damages compared with our EU counterparts. g

IS THE *FAMILY HOME PROTECTION ACT* FIT FOR PURPOSE?

The *Family Home Protection Act 1976* gave married women a prior right of prohibition on the sale or mortgage of the 'family home'. **John Garaghy** assesses whether the legislation has lived up to its objectives

JOHN GARAGHY IS A RETIRED SOLICITOR STUDYING FOR A MASTER'S IN MODERN IRISH HISTORY AT TCD

THE ACT HAS BEEN EFFECTIVE IN PROTECTING SPOUSES AND CHILDREN FROM RASH OR VINDICTIVE SPOUSES, AND HAS BEEN PROACTIVE IN ENABLING JOINT OWNERSHIP

The *Family Home Protection Act 1976* comprises one element of the social legislation, beginning in the 1960s and extending to the 1970s, that transformed the position of women by vesting legal rights of succession, maintenance, guardianship and barring orders. As a result of the act, married women were granted a prior right of prohibition on the sale or mortgage of the 'family home'.

The common law dictum that the husband and wife are one person in law was unacceptable to cohorts of women in the 1950s. The Irish Housewives' Association, founded in 1942, advocated for significant amelioration for women from such restrictions, with four candidates in the 1957 general election.

There were other effective women's groups formed in the 1960s, including Action Information Motivation, founded by Nuala Fennell, later minister for state for women's affairs and family law (1982-87); the Women's Liberation Movement in 1968, emanating from the 50th anniversary of women acquiring the vote; and others, who critically coalesced to lobby for the legal advancement of women.

Terms and conditions

The most significant effect was the 1970 formation of the Commission on the Status of Women by the then finance minister Charles Haughey, with the brief "to examine and report on the status of women in Irish society, to make recommendations on the steps necessary to ensure the participation of women on equal terms and conditions with men".

The chairman was Dr Thelka Beere, first woman secretary general of a government department. The commission made recommendations, including equal pay, and in particular recommendation 36(ii), namely: "neither spouse should have the power to dispose of the matrimonial home without prior consultation with the other spouse".

Ireland was an applicant for membership of the then European Economic Community (EEC), which was an imperative to effect change in the legal position of women. The equal pay issue was accelerated at the request of the government once the application to the EEC for a derogation was refused. The referendum authorising accession was passed on 10 May 1972, with membership commencing on 1 January 1973.

The 1973 general election saw Fianna Fáil, which had been in government since 1954, being replaced by a Fine Gael/Labour coalition. This government was characterised as being more liberal than the outgoing one. Its record of social legislation was good, and was balanced by Taoiseach Liam Cosgrave voting against his own government's bill to legalise contraception.

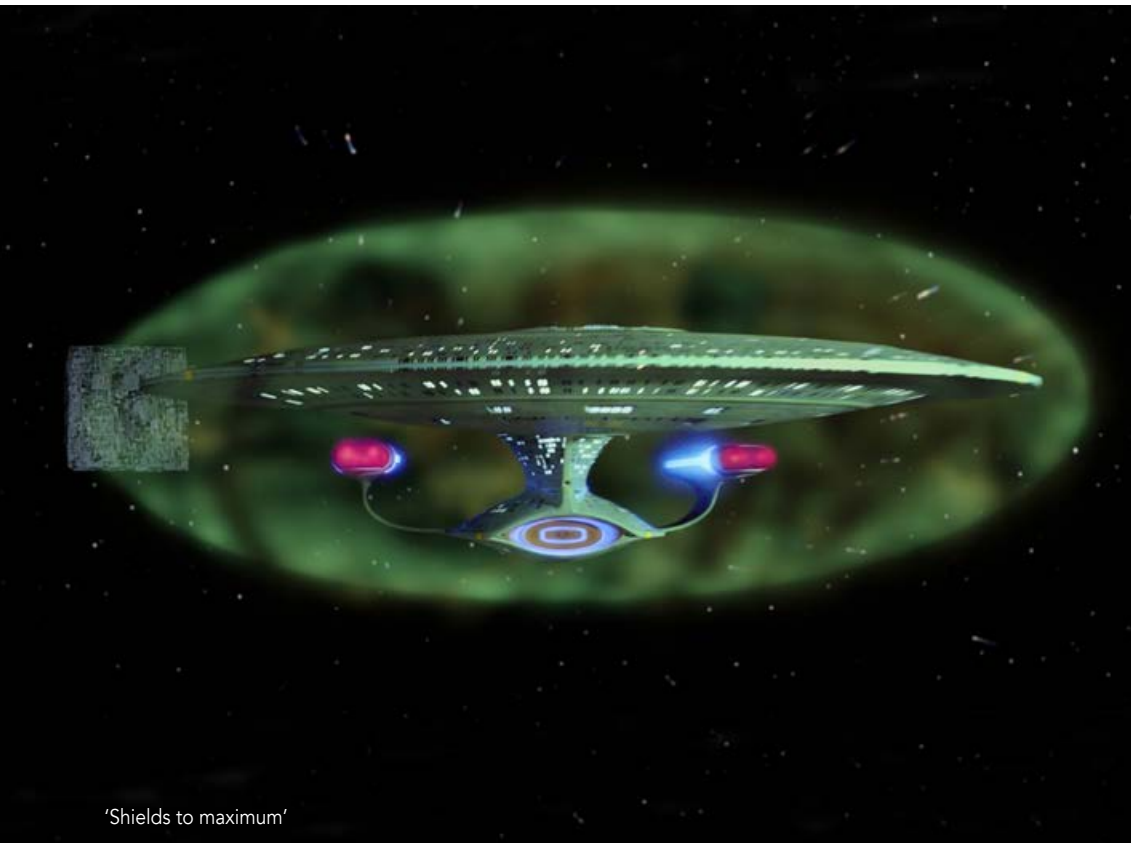
Married women became entitled to receive children's allowance in their own right in 1973. The lobby groups continued to articulate, and judicial review was utilised to advance women's rights, leading to the *McGee* decision on contraception and the *De Burca* decision on women jurors.

Legal flabbiness

Against this backdrop, and in compliance with their election manifesto, the government introduced the *Family Law (Maintenance of Spouses and Children) Bill* to enable spouses to seek reliefs from each other. There was a difficulty with the concept of barring orders, which resulted in a delay of almost two years, prior to enactment.

The 1976 act became the beneficiary – it passed in two weeks, with support from all parties. The bill was proposed by then justice minister Paddy Cooney, who referred to the beneficiaries as "wives and children" – not the gender neutral 'spouse' used in the act. He was joined by all speakers in the same characterisation. The primary purpose, he stated, "was to prevent a vindictive spouse from selling the family home without reference to the wife".

The other speakers, David



'Shields to maximum'

THE ACT CONTINUES TO BE AN ACTIVE AGENCY FOR MARRIED COUPLES, PROVIDING A COST-EFFECTIVE REMEDY TO ACHIEVE PARITY OF ESTEEM

Andrews (FF), John Esmonde (FG), and Eileen Desmond (Labour), adopted similar language in their support. David Andrews was prescient in contending that the bill suffered from "legal flabbiness", which is confirmed by the volume of litigation that ensued.

The act became operative on 12 July 1976 and became an integral part of conveyancing practice, with hazard for solicitors because of the absolutist requirement to obtain the prior consent of the non-owning spouse, which has caused mischief, leading to suggestions that there should be a facility for retrospective consent under a 'slip rule'.

Continuing relevance

Section 14 of the act provided an incentive to spouses to vest the family home in joint names by exempting the transaction from stamp duty and registration fees. To ascertain if the act retains currency, I requested the Property Registration Authority to provide the numbers of family home transfers. These figures are the first such compilation, as the body did not previously isolate such transfers from their general intake. They do not include Registry of Deeds applications, and are from 2002, the date of computerisation of the records.

The figures for the years 2002-16 (*right*), demonstrate the decline in transfers, probably due to the age cohort, referencing a cultural change in the 1970s in respect of joint ownership of family homes. The act continues to be an active procedure for married couples, providing a cost-effective remedy to achieve parity of esteem.

Ireland remains unique in common law jurisdictions in vesting a prior consent power, where the power is conferred by the relationship between the parties – not based on tenure or contract.

While the act has been criticised by feminist scholars in conferring a 'beneficiary' rather than a 'statutory' right, it has been effective in protecting spouses and children from rash or vindictive spouses and has been proactive in enabling joint ownership.

YEAR	NUMBER
2002	3,512
2003	4,043
2004	4,644
2005	4,979
2006	4,594
2007	4,411
2008	4,977
2009	4,747
2010	4,401
2011	3,922
2012	2,795
2013	2,118
2014	1,601
2015	1,612
2016	1,632
TOTAL	53,988

The act benefited from judicial interpretation in 2016, by Hogan J in *Muinter Skibbereen Credit Union v Crowley* and *Muinter Skibbereen Credit Union v Hamilton* ([2016] IECA 213). In these two cases, a credit union sought the sale of two family homes to recover commercial debts incurred by husbands, without the consent of both spouses.

The objective of the 1976 act would have been seriously compromised if the family home that a couple co-owned could, effectively, have been sold by court order over the heads of the wives in the cases referred to above, given that they had no involvement in the business affairs of their respective husbands and, critically, where they had never been given a prior opportunity to consent to such loan transactions. g

A case of the bends

The registration of a *lis pendens* is increasingly being used by lay litigants/ defaulting borrowers to bend the law and frustrate the sale of charged property. **Pamela Fitzpatrick** comes up for air

PAMELA FITZPATRICK IS A SOLICITOR IN THE INSOLVENCY AND COMMERCIAL LITIGATION DEPARTMENT OF MCDOWELL PURCELL SOLICITORS

'*Lis pendens*' is the Latin term for 'litigation pending'. It is a burden that can be registered against land in circumstances where there is ongoing litigation in relation to an interest or estate in the land in question. A *lis pendens* can be registered in respect of litigation in both the Circuit Court and the High Court.

The registration of a *lis pendens* will seriously restrict the manner in which the land in question can be dealt with. The purpose of the registration is to put any third party on notice that there is ongoing litigation in relation to the property, and that this litigation may have an effect on the value of the property.

There is a growing concern from both solicitors and insolvency practitioners in relation to the *lis pendens* process – and its abuse, particularly by lay litigants.

Section 121 of the *Land and Conveyancing Law Reform Act 2009* provides, among other things, for the registration of a *lis pendens*. The section further provides that the Central Office of the High Court shall keep a register of *lis pendens* affecting land.

Order 72A of the *Rules of the Superior Courts* sets out the procedure for the registration of a *lis pendens*. It also sets out the requirements to have a *lis pendens* vacated.

Section 1 of the information booklet on registering a *lis pendens* in the High Court provides that the following documentation must be lodged in the Judgments Section of the Central Office in order to register a *lis pendens*:

- Form 31 in Appendix C of SI 149/2010 (€25 stamp duty is required on this document),
- A duplicate copy of the above form (no stamp duty required),
- A copy of the originating document (that is, summons or civil bill),
- A Form 64 of the Property Registration Authority rules is lodged if notification on the folio in the Property Registration Authority is required (pursuant to rule 128 of the Property Registration Authority rules),
- If the property is Registry of Deeds, a Form 16 must be lodged in the Property Registration Authority.

AT A GLANCE

- A *lis pendens* puts potential purchasers and third parties on notice that there is ongoing litigation over a property that could ultimately reduce its value or affect the interest of the registered owner
- Potential purchasers will be reluctant to proceed with a sale when they discover that a *lis pendens* is registered.
- A *lis pendens* almost always has the effect of preventing the person holding the property from selling in the normal way

The registration of a *lis pendens* can be easily done, and there is no necessity to obtain leave from the court. An application is lodged in the High Court Central Office. There are minimal costs involved, and the effect of such a registration can be far reaching for the parties involved.

Effect of registration

A *lis pendens* puts potential purchasers and third parties on notice that there is ongoing litigation over a property that could ultimately reduce its value or affect the interest of the registered owner.

Liz, pending

Potential purchasers will be reluctant to proceed with a sale when they discover that a *lis pendens* is registered. Certainly a prudent solicitor is unlikely to allow a client to purchase property so effected.

A *lis pendens* almost always has the effect of preventing the person holding the property from selling in the normal way.

Abuse of process

The registration of a *lis pendens* is increasingly being used by lay litigants/defaulting borrowers to frustrate the sale of charged property.

The registration of a *lis pendens* may be completed with no input from solicitors or counsel and no requirement to obtain leave of court. Applications are increasingly lodged in the High Court Central Office relying on a summons or civil bill containing a very limited and badly drafted indorsement of claim. The proceedings themselves are often not pursued at all, and the summons is evidently only prepared to effect the registration of the *lis pendens*.

Steps required to vacate

In contrast to the straightforward application to register a *lis pendens*, the procedure to vacate is relatively onerous (unless on consent). An application on notice must be brought before the court. In such an application, one of the issues that the court will consider is whether the criteria stipulated for the registration of the *lis pendens* under the *Land and Conveyancing Law Reform Act 2009* were complied with. It must be noted that these criteria are not considered at the actual time of registration.

Because of this imbalance between registering and vacating a *lis pendens*, it is often the case that the process is abused by an aggrieved borrower for the purpose of frustrating the sale of a property by a receiver.

As a consequence, receivers often find themselves in the invidious position of having to seek injunctive relief from the court pursuant to section 123 of the 2009 act.

Such a motion must be filed, return date obtained, and the various notice parties served. This, of course, includes the party

> BECAUSE OF THIS IMBALANCE BETWEEN REGISTERING AND VACATING A *LIS PENDENS*, IT IS OFTEN THE CASE THAT THE PROCESS IS ABUSED BY AN AGGRIEVED BORROWER FOR THE PURPOSE OF FRUSTRATING THE SALE OF A PROPERTY BY A RECEIVER

who registered the *lis pendens* in the first place. Notice parties will immediately file replying affidavits, causing the initial return date to be adjourned a number of times before a hearing date is ultimately obtained. The time and expense incurred needlessly is considerable.

Even where a receiver successfully applies to court to release the *lis pendens*, another is often registered immediately thereafter, without any requirement for court approval.

Recent case law

There has been recent case law (*Kelly & O'Kelly v IBRC* and *O'Connor v Cotter*) where the courts have held that, where a party that registered a *lis pendens* is unable to definitively establish a proprietary interest in the property, this amounts to an absence of *bona fides* and, accordingly, the *lis pendens* should be lifted.

In *Kelly*, the Supreme Court – in upholding the judgment of the High Court – commented that it is important that, in the interests of justice, a party is entitled to register a *lis pendens* where appropriate and justified, and that it is not discreditable to do so.

The *O'Connor* decision arose on foot of various sets of proceedings involving the plaintiff, Mr O'Connor. In 2012, Bank of Scotland obtained a judgment against O'Connor in excess of €7.5 million relating to a property loan. O'Connor, at the same time, instituted proceedings against the bank and registered a *lis pendens* on the property that was the subject of the bank's proceedings. The *lis pendens* was subsequently removed by order of the High Court.

Shortly thereafter, O'Connor instituted fresh proceedings challenging the appointment of a receiver by the bank. He did not serve the proceedings, but registered a *lis pendens* on the property in an attempt to frustrate the receiver's ability to sell it. As soon as the receiver became aware of the proceedings, he immediately issued a motion in the High Court and was successful in having the proceedings dismissed, as they were deemed to be an "abuse of process". This decision was upheld by the Court of Appeal.

When a *lis pendens* is registered based on unsustainable grounds, the affected party has an entitlement to apply to set it aside, but considerably more time, effort and cost is involved in the court application to set a *lis pendens* aside.

In *Tola Capital Management LLC v Joseph Linders and Patrick Linders (No 2)*, the High Court stated that, in order to come within the statutory definition, a party seeking to register a *lis pendens* has to establish that:

- The plaintiff is claiming a proprietary interest in land,
- The defendant has an estate or interest in the land in which the plaintiff is claiming an estate or interest, and
- The proceedings themselves make a claim to a proprietary estate or interest in the said lands.

Therefore, if the proceedings pursuant to which a *lis pendens* has been registered are not being prosecuted *bona fide*, then, in such circumstances, a court should grant an order to have the *lis pendens* vacated.

Middle ground

It is becoming apparent that there is a requirement for the registration process of a *lis pendens* to be reviewed.

It is clear from the case law that the court will not permit a *lis pendens* to be used as an attempt to frustrate a sale on unsustainable grounds. Equally, the legitimate interests of parties with an interest in land must be protected.

The problem is that a *lis pendens* can be obtained with almost no scrutiny of the application at all, and the time and expense to vacate it is grossly disproportionate.

An obvious middle ground would be that any application to register a *lis pendens* should include a motion for directions, which must be served upon the relevant notice parties before the return date. The *lis pendens* could be effective from the date of filing, protecting the genuine interests of an applicant, but only confirmed by court order, protecting the interests of the notice parties.

All parties' interests are thus acknowledged and protected. g

LOOK IT UP

CASES:

- *Kelly & Anor v Irish Bank Resolution Corporation Limited* [2012] IEHC 401
- *O'Connor v Cotter & Anor* [2017] IECA 25
- *Tola Capital Management LLC v Joseph Linders and Patrick Linders (No 2)* [2014] IEHC 324

LEGISLATION:

- *Land and Conveyancing Law Reform Act 2009*
- *Rules of the Superior Courts*

LITERATURE:

- *Registering a lis pendens in the High Court*

Trust issues

The GDPR has significant implications for those who handle personal data, including employers, trustees and pension scheme service providers. **Jane McKeever** and **Deirdre Kilroy** focus on the increased obligations of pension scheme trustees

JANE MCKEEVER IS A SENIOR ASSOCIATE IN MATHESON'S EMPLOYMENT, PENSIONS AND BENEFITS GROUP AND IS A MEMBER OF THE LAW SOCIETY'S PENSIONS SUBCOMMITTEE. DEIRDRE KILROY IS A PARTNER IN MATHESON'S TECHNOLOGY AND INNOVATION GROUP

The *General Data Protection Regulation* (GDPR) will largely replace existing data protection legislation in Ireland. It will come into effect in each member state of the EU on 25 May 2018. Although it is intended to harmonise the approach taken to data protection across the EU, the GDPR allows scope for supplemental member state legislation to be enacted at the national level, and the *Data Protection Bill 2018* has now been published.

Data protection legislation exists to protect the privacy rights of individuals in relation to their personal data. In Ireland, data protection legislation is currently principally contained in the *Data Protection Acts 1988 and 2003*, as amended (the DPA).

Occupational pension schemes in Ireland are established under trust. The way in which pension schemes are operated requires the trustees of those schemes to collect and store high volumes of personal data, making them data controllers for the purposes of the DPA. Although the processing of members' personal data is often carried out by third parties – such as professional administrators, advisors and consultants – scheme trustees remain primarily responsible for compliance with the DPA.

As data controllers, trustees are required to comply with the fundamental principles of data protection, including (but not limited to) obtaining and processing personal data fairly, keeping it safe and secure, and ensuring that it is adequate, relevant and not excessive.

What's changing?

The GDPR builds on many of the existing data protection principles. In terms of what's new, it introduces the concept of data privacy "by design and by default". The GDPR will require trustees, as data controllers, to consider data protection when data systems relating to the scheme are used to process data. Trustees will also be expected to implement systems that are designed, by default, to ensure that data can only be processed in accordance with the GDPR data principles.

There is also an increased emphasis on transparency and accountability, which are each fundamental GDPR concepts. This forms part of the increased effort being made to ensure that both data controllers and processors are accountable for, and can demonstrate compliance with, their obligations under the GDPR.

For pension schemes (and other organisations), the GDPR introduces significant changes and enhancements to current data protection rights for data subjects, as well as additional requirements for trustees, administrators and other service

AT A GLANCE

- As data controllers, pension trustees are required to comply with the fundamental principles of data protection, including obtaining and processing personal data fairly, keeping it safe and secure, and ensuring that it is adequate, relevant and not excessive
- The GDPR will require trustees to consider data protection when data systems relating to the scheme are used to process data
- Trustees will also be expected to implement systems that are designed to ensure that data can only be processed in accordance with the GDPR principles

providers to pension schemes. In particular, trustees should be aware of the issues highlighted below.

Strengthening rights

The GDPR provides for some new rights for individuals, including the right 'to be forgotten' (that is, to have their data deleted) in certain circumstances. Individuals will also gain a limited right to data portability, which is a right to have certain personal data relating to them transmitted to another party in a commonly used format.

The GDPR also makes it easier for individuals to make a claim against a data controller where their right to data privacy is infringed and, significantly, provides for a right for data subjects who suffer non-financial loss as a result of an infringement to sue for compensation. There is also a new 'class action' type of legal action given to the data subject. These new rights represent significant changes to the current position under Irish law.

Currently, when personal data is being collected, the DPA requires data controllers to provide certain information to the data subjects.

Additional obligations arise under the GDPR in relation to the information to be provided to the data subjects (usually the members, but they may be other scheme beneficiaries), including obligations to provide:

- Details of the legal basis under which data is being processed,

> FOR PENSION SCHEMES (AND OTHER ORGANISATIONS), THE GDPR INTRODUCES SIGNIFICANT CHANGES AND ENHANCEMENTS TO CURRENT DATA PROTECTION RIGHTS FOR DATA SUBJECTS, AS WELL AS ADDITIONAL REQUIREMENTS

- Details in relation to how long data will be retained, and
- Details in relation to international transfers.

One way of communicating this information to data subjects is by way of a data privacy notice. Communications with data subjects are required to be made in a transparent manner and must be in concise, clear and plain language. Given the amount of information required to be given to data subjects now, keeping notices concise can be a challenge.

Consent requirements

Under the GDPR, data processing may only occur after an appropriate legal basis for such processing has been identified by a controller.

The GDPR clarifies and extends the conditions to be met where consent is relied on as a condition for processing. For example, in order to be valid, consent must be an unambiguous indication of the individual's wishes (passive consent will not be acceptable). As well as this, consent may be withdrawn at any time.

The new requirements with respect to obtaining and maintaining valid consent will not be practical for trustees to comply with. Therefore it would make sense for the trustees of pension schemes to find one or more alternative legal bases for processing. This might be compliance with a statutory obligation or legitimate interests (that is, the processing of personal data is required for the proper operation and administration of the pension scheme).

Notwithstanding these alternative legal bases for processing, explicit consent to processing may still be required where special categories of data are being processed. Trustees will inevitably process 'special categories' of personal data, which is a defined category of data in the GDPR

'Data Protection' Bill: "Not on my watch!"

relating to health, sexual orientation, and racial or ethnic origin, amongst other things. The *Data Protection Bill 2018* provides for a new lawful processing ground that, if enacted, will be of assistance to trustees. Subject to certain restrictions, the bill explicitly permits data concerning health to be processed for pension and insurance purposes (including for a policy of life assurance, an occupational pension scheme, retirement annuity contract, or other pension arrangement) where the processing is necessary and proportionate.

Data breach obligations

With certain limited exceptions, under the GDPR, trustees will be required to notify data breaches to the Data Protection Commission without undue delay and, where possible, within 72 hours of awareness. Failure to notify in accordance with the GDPR carries a separate sanction to the breach itself. If a breach creates a high risk for individuals, then the trustees will be required to notify the relevant individuals without undue delay.

Choosing data processors

Trustees, as data controllers, will be required to enter into arrangements only with data processors that can provide sufficient guarantees to implement appropriate measures and procedures in such a way that the GDPR requirements are met and the rights of data subjects are protected. Trustees will also have a role in ensuring ongoing compliance by those processors.

Linked to this are additional requirements in relation to processing contracts, which will necessitate a review of all processing arrangements currently in place (including, in particular, administration agreements and service level agreements) to ensure that all newly mandated provisions are incorporated. For most pension schemes, it is likely that a significant amount of work will be required to ensure existing processor arrangements are GDPR compliant.

Data processor requirements

Trustees remain responsible for data protection compliance even where processing is outsourced. Under the GDPR, however, data processors have additional direct statutory obligations (including the obligation to maintain records of processing activities) and will also be directly liable to data subjects where they do not comply with their obligations.

Trustees should be aware that mechanisms are provided for within the GDPR for apportionment of liability between data controllers and data processors with respect to claims by data subjects arising out of an infringement of the GDPR. Careful consideration will be required as to how liability apportionment should be dealt with in any contracts between trustees and service providers.

Impact assessments

The GDPR provides for data protection impact assessments (PIAs). A PIA can be described as the process of systematically considering the potential impact that a project or initiative might have on the privacy of individuals, with the aim of identifying potential issues before they arise

> THERE APPEARS TO BE POTENTIAL FOR THE TURNOVER OF THE EMPLOYER TO BE OF RELEVANCE WHEN THE LEVEL OF A FINE APPLICABLE TO PENSION SCHEME TRUSTEES IS BEING DETERMINED

> FOR MOST PENSION SCHEMES, IT IS LIKELY THAT A SIGNIFICANT AMOUNT OF WORK WILL BE REQUIRED TO ENSURE EXISTING PROCESSOR ARRANGEMENTS ARE GDPR COMPLIANT

and addressing them. Such assessments will be mandatory where the processing activities to be carried out result in high risks to the privacy rights of data subjects.

The maximum fine for a breach of certain provisions will be increased to 4% of worldwide turnover or €20 million, whichever is higher (the seriousness of the infringement affects the level of fine levied). Trustees and employers should be aware that the GDPR does not specifically provide for the manner of determining the level of fine that may be levied against pension scheme trustees. As things stand, there appears to be potential for the turnover of the employer (or the employer's group) to be of relevance when the level of a fine applicable to pension scheme trustees is being determined. We are hopeful that this matter will be clarified through appropriate guidance in due course.

Achieving compliance with the GDPR and related national laws will take a significant amount of forward planning and work on the part of pension scheme trustees. While trustees should consult with employers in relation to GDPR planning, they should keep in mind that they are data controllers and have separate responsibilities and liability from the employer. Trustees should take action now to consider what steps they need to take in advance of the GDPR becoming effective.

LOOK IT UP

LEGISLATION:

- *Data Protection Acts 1988 and 2003*
- *Data Protection Bill 2018*
- *General Data Protection Regulation*

Sword of Damocles

Section 99 of the *Criminal Justice Act 2006* put the suspended sentence on a statutory footing for the first time. **Tom Conlon** analyses the relevant legislation and case law, and its development and problems

TOM CONLON IS A SOLICITOR AT THE OFFICE OF THE DPP. THIS ARTICLE REFLECTS HIS OWN VIEWS AND NOT NECESSARILY THOSE OF THE OFFICE OF THE DPP

Damocles' sword, guaranteed Irish" is how Prof Osborough described the common law on suspended sentencing back in 1982. In the nine years since the commencement of section 99 of the *Criminal Justice Act 2006*, it has been described, in comparison, as a worthy criminal litigation 'rival' of the consistently contested drink-driving legislation.

Section 99 put the suspended sentence on a statutory footing for the first time. It also dealt with such issues as the conditions to be attached to the sentence and the circumstances in which it could be revoked.

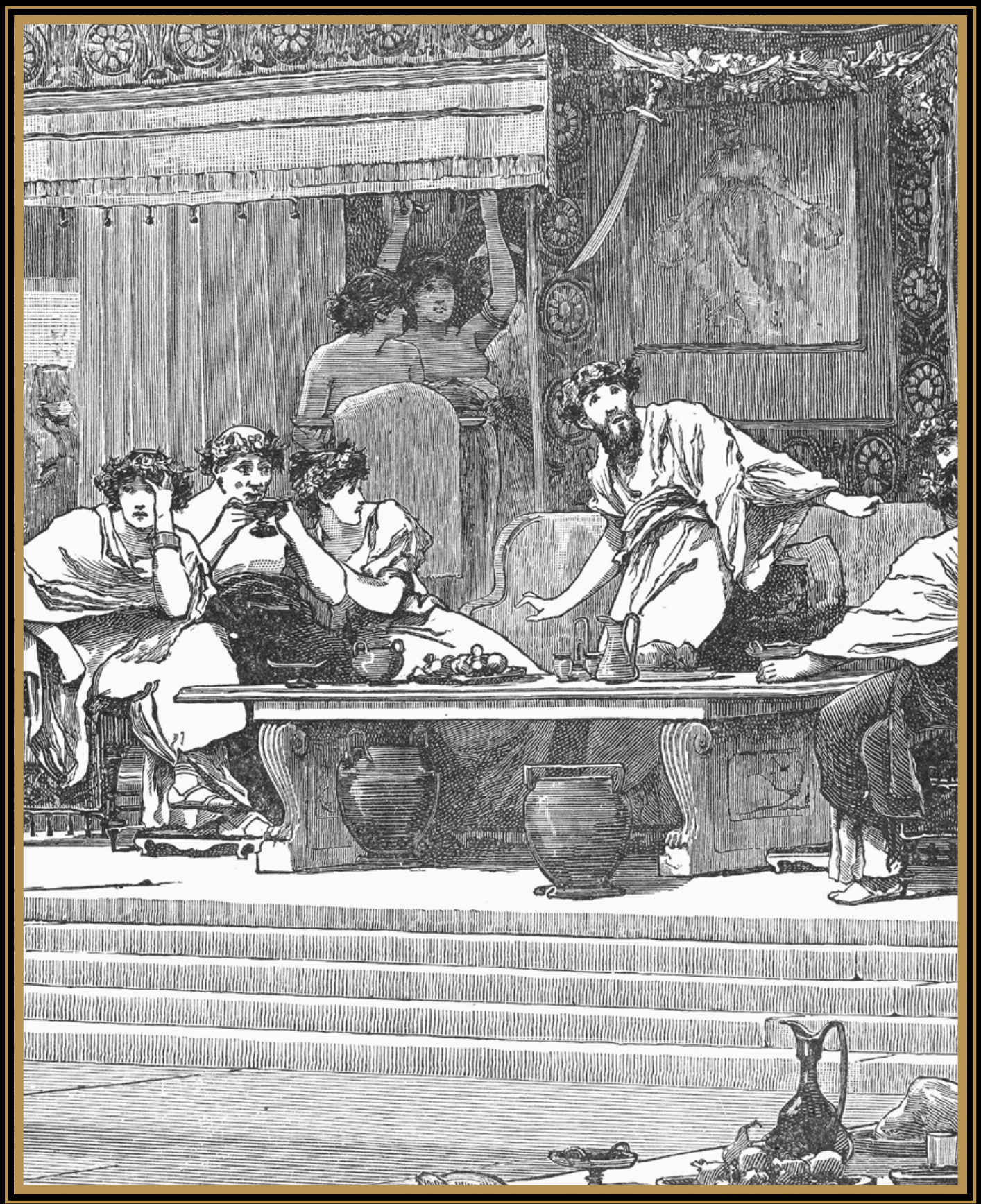
AT A GLANCE

- Suspended sentences and section 99 of the *Criminal Justice Act*
- Relevant case law
- The *Criminal Justice (Suspended Sentences of Imprisonment) Act 2017*

Judge David Riordan's thesis on suspended sentences suggested that the suspended sentence serves one or more of five purposes:

- It is a means of avoiding an immediate custodial sentence,
- It serves as a denunciation of the accused's behaviour,
- It is a controlling and rehabilitative device,
- It has a deterrent effect on the individual offender, and
- It can serve as part of a crime prevention strategy focused on particular types of crime.

Following commencement back in October 2006, some questions were being posed. What was the position with a person, during the period of suspension, being convicted of an



PIC: REX FEATURES

offence committed before the order of suspension? What allowance was to be made as to a period spent in custody for the 'triggering' offence when revocation was being considered? Finally, how was the 'revocation court' to remand a person on bail or in custody to the 'triggering offence' court to secure the individual's attendance before that court, and allow that court to impose sentence for the offence committed subsequent to the suspended sentence?

Within a year of commencement, subsections 9 and 10 were amended and a completely new subsection 10A was inserted. Further amendments were required in 2009 to section 99(9).

Further problems were encountered, and judicial reviews were activated by a number of applicants. Leave was granted by the High Court in turn to the following applicants: Colin Harvey, Maria Muntean, and Anthony Sharlott.

The problem with appeals

In *Sharlott*, the applicant raised two issues – namely, the jurisdiction to remand the matter back to the Circuit Court under section 99(9) from the District Court and, alternatively, if the remand order was lawful, should it have been made subject to a stay pending the outcome of the District Court appeal? Finally, whether the right to fair procedures mandated the High Court to stay the procedure in the Circuit Court under section 99(9) until after the District Court appeal had been finalised.

Hanna J acknowledged the mandatory nature of section 99(9): "The terms of section 99(9) of the act of 2006, in my view, are mandatory on the learned district judge. With or without any application, she was bound to remand the applicant to the next sitting of Dublin Circuit Criminal Court. The learned district judge has convicted but not yet sentenced the applicant."

The problem with remands

O'Donnell J commented, in *DPP v Carter*: "I am not convinced that the sequence the act adopts of making the sentencing court halt its sentence process and remit the matter to the suspended court is the wisest or most logical course. The sentencing for the current offence should arguably be concluded before the business of remittal and reactivation is addressed."

The Supreme Court finally held in *Carter* that the District Court had no jurisdiction to deal with the revocation of the suspended sentence, as the order made by the court under section 99(9) was not valid, on the basis that the defendant has not been remanded to the 'next sitting' of the District Court that had imposed the suspended sentence.

DPP v Murray was a consultative case stated by District Judge Constantine O'Leary, who sought the opinion of the High Court on the following question: did the power of the District Court at common law to suspend sentences of imprisonment survive the enactment of section 99 of the *Criminal Justice Act 2006*, as amended?

O'Malley J concluded that it did not: "In these circumstances, there is no scope for a 'parallel jurisdiction' to be operated outside the statute. I will therefore answer the question posed in the negative."

On 19 April 2016, Judge Moriarty delivered judgment in the case of *Moore*. Moriarty J summarised the point being made by each of the plaintiffs: "In what was to become a constant argument in similar cases, it was submitted on behalf of Mr Moore that he wished to appeal the conviction in the District Court and have an outcome pronounced prior to any hearing in the Dublin Circuit Criminal Court."

The court went on to hold as follows: "I am persuaded that, notwithstanding the presumption of constitutionality that exists in relation to enactments, and the regard and respect that Courts must show to enactments of the Oireachtas, the subsections under review of section 99 fall to be viewed as unconstitutional in the context of the facts reviewed and the arguments made."

Habeas corpus

Soon after subsections 99(9) and (10) of the 2006 act were determined to be unconstitutional, article 40 applications were made by a number of applicants, including *Clarke v Governor of Mountjoy* and *Anthony Foley*. In *Clarke*, Judge Birmingham delivered judgment in the Court of Appeal on 28 July 2016 with Judge Edwards and Sheehan. The application in *Clarke* was an appeal from a decision of the High Court (McDermott J) in refusing the applicant an order directing his release pursuant to article 40 of the Constitution.

In *Foley*, the High Court also noted that the applicant had pleaded guilty to the District Court offences, and the decision in *Clarke* was applied.

Recent developments

In *Collins v DPP*, the applicant objected to the suspension of his sentence for a period longer than the sentence itself. Barret J held that "it is clear from *Vajeuskis* that, when it comes to the act of 2006, the learned Circuit Court judge was not confined to imposing a maximum two year suspension".

In *People (DPP) v AS*, the Court of Appeal held that a suspended sentence cannot be

> IT CAN BE ARGUED THE 2017 ACT HAS GONE BACK TO THE PRE-2007 POSITION TO GET AROUND THE *MOORE* PROBLEM – THAT IS, THE DEFENDANT WILL BE BOTH CONVICTED AND SENTENCED FOR THE TRIGGERING OFFENCE BEFORE THE ACTIVATION OF THE ORIGINAL SUSPENDED OFFENCE OCCURS

> THE COURT OF APPEAL HELD THAT A SUSPENDED SENTENCE CANNOT BE IMPOSED ON A CHILD AT ALL, AS IT ONLY APPLIES TO SENTENCES OF IMPRISONMENT AND NOT DETENTION

imposed on a child at all, as it only applies to sentences of imprisonment and not detention. Edwards J had particular regard to other provisions in the *Children Act*, including section 144(9), which provides for a limited suspension of a detention order.

The *Criminal Justice (Suspended Sentences of Imprisonment) Act 2017* was enacted in response to the decision in *Moore*. The act will be commenced on 9 April 2018.

According to paragraph 8.04 of the Law Reform Commission paper on suspended sentences in relation to the 2017 act: "Where a person subject to a suspended sentence has committed a subsequent offence, the activation process for the original offence will not occur until after the individual has been sentenced for the subsequent offence and, should he or she wish to appeal, after the appeals process for the subsequent offence has been fully exhausted."

Back to the future?

It can be argued the 2017 act has gone back to the pre-2007 position to get around the *Moore* problem – that is, the defendant will be both convicted and sentenced for the triggering offence before the activation of the original suspended offence occurs. Furthermore, rather than the 'next sitting' of the court (to overcome *Carter* problems), it is any sitting scheduled in the next 15 days or the next sitting thereafter. Previously, the offence and conviction both had to occur within the currency of the bond to trigger revocation. Now, revocation applies to a conviction of a person – if proceedings for the offence are instituted during the period of the suspension or within 12 months of the expiry of the bond. The court hearing the revocation hearing can adjourn for such period as the court considers appropriate, to allow the defendant exercise his rights of appeal against the conviction for the triggering offence.

A number of other issues have been addressed by the new act:

- Currently, when an appeal court imposes a suspended sentence, a revocation hearing is conducted by that court. This can cause difficulties in seeking to prosecute a section 99(12) appeal against the revocation order. Under section 99(22), the revocation is brought before the court at first instance. This means the case is sent to the lower court and not the appellate court. Previously section 99(13) could only be sought on the application of a garda or a probation officer. Section 99(13A) provides this can now also be applied for by the DPP.
- The court can send a copy of a section 99 order to the gardaí and prison electronically.
- Under section 99(18A), the court is given a new power to 're-suspend' the part of the original suspended sentence that was not revoked.

The Law Reform Commission paper comments that there has been a decrease in the use of the suspended sentence. Notwithstanding the 2017 act, the commission cites further problems, with persons committed to prison following the activation of a suspended sentence in the Circuit Court having no right to bail pending the determination of the Court of Appeal. The suspended sentence will usually be served by the time the appeal is heard. Furthermore, the operational period of the suspended sentence remains without limit, as per *Vajeuskis* and *Collins*.

For practitioners, the judiciary, and court administrators alike, the difficulty in the implementation of suspended sentences is bringing the relevant court(s), judge(s), prosecutor(s), and defendant(s) together at the appropriate time, sitting, and place, and maintaining jurisdiction for the purposes of proper finalisation of the defendant's criminal litigation.

This shall remain a continuing challenge for the various administrators of justice, notwithstanding the best endeavours of the 2017 act. g

LOOK IT UP

CASES:

- *Clarke v Governor of Mountjoy Prison* [2016] IECA 244
- *Collins v DPP* [2017] IEHC 779
- *DPP v Carter, DPP v Kenny* [2015] IESC 20; unreported Supreme Court
- *DPP v Murray* [2015] IEHC 782
- *DPP v Vajeuskis* [2014] IEHC 265
- *Foley v Governor of Portlaoise Prison* [2016] IECA 411
- *Harvey v Leonard & DPP* [2008] IEHC 209
- *Moore v DPP and others* [2016] IEHC 244
- *Muntean v Hamill & DPP* [2010] IEHC 391
- *People (DPP) v AS* (Court of Appeal)
- *Sharlott v Collins* [2010] IEHC 482; unreported High Court, Hanna J

LEGISLATION:

- *Criminal Justice Act 2006*
- *Criminal Justice (Suspended Sentences of Imprisonment) Act 2017*

LITERATURE:

- Law Reform Commission, *Issues Paper: Suspended Sentences* (LRC IP 12-2017)
- Osborough, WN (1982), 'A Damocles' Sword Guaranteed Irish', *Irish Jurist*, vol 17, no 2
- Riordan, D (2009), *The Role of the Community Service Order and the Suspended Sentence in Ireland: A Judicial Perspective* (PhD thesis, UCC)

Body language

Reduced awards for pain and suffering are inevitable. The only questions are by how much and when. David Mulligan looks at gathering economic-loss evidence

DAVID MULLIGAN IS A SENIOR ASSOCIATE WITH TURNER FREEMAN LAWYERS, BRISBANE, AUSTRALIA. HE WAS FIRST ADMITTED IN IRELAND.

In January 2017, the Department of Finance published its *Report on the Cost of Motor Insurance*. That report resulted in the establishment of the Personal Injuries Commission. That commission recently handed down its first report. Chief among the recommendations within that report was the need for standardised medical reporting on soft-tissue injuries.

The commission's second report is due later in 2018. That report is set to benchmark awards of damages in personal injury claims in Ireland with other similar jurisdictions. These comments from Minister Eoghan Murphy are a flavour of what is to come: "Some level of comparison can be made between levels of damage in Ireland and England/Wales based on the respective versions of the *Book of Quantum*. At a cursory level, this indicates that less severe injuries in Ireland tend to attract higher levels of damages."

AT A GLANCE

- Irish courts are receptive to claims for future economic loss, but some recent cases show that substantial awards of this kind will not be considered without convincing evidence to assist the court in its decision-making process
- The Australian experience shows the benefits to a plaintiff of gathering additional evidence (beyond the usual medical reports) when an award for future economic loss is sought

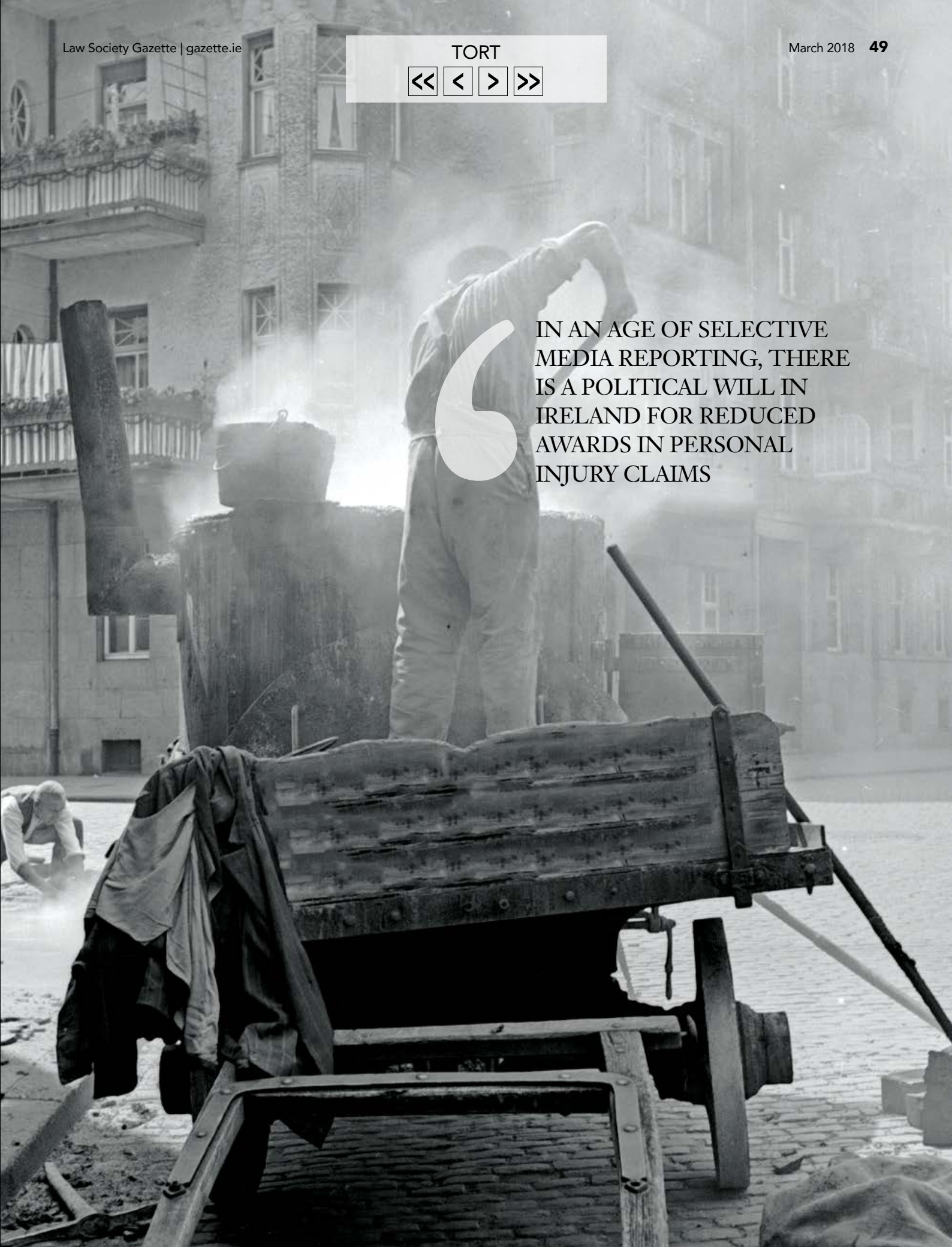
Notwithstanding that the *Book of Quantum* has recently been updated, it will be surprising if the reforms do not result in reduced awards for pain and suffering. In an age of selective media reporting, there is a political will in Ireland for reduced awards in personal injury claims.

Better than today

Australian jurisdictions enacted similar style reforms in the early 2000s. While each Australian state enacted these reforms differently, the motives of each legislature were similar:

- Reduce the number of personal injury claims,
- Reduce the value of personal injury claims, and
- Reduce legal costs in personal injury claims.

In the state of Queensland, the most significant reform was the introduction of a new injury



IN AN AGE OF SELECTIVE MEDIA REPORTING, THERE IS A POLITICAL WILL IN IRELAND FOR REDUCED AWARDS IN PERSONAL INJURY CLAIMS

measurement system when calculating awards for pain and suffering. Prior to 2002, an average award for pain and suffering for a 'moderate' whiplash injury was between $20,000 and $50,000.

Post-2002, awards for pain and suffering for a similar scale of injury range between $2,000 and $15,000. With so little discretion left for a judge to decide upon a suitable award for pain and suffering, the industry perception was that judges widened their discretion when it came to other heads of damages (particularly future economic loss).

Australian courts have shown themselves willing to award global sums for future economic loss in matters where it can be reasonably argued that an individual's earning capacity has been compromised as a result of an accident.

Irish courts are of course receptive to claims for future economic loss. However, some recent cases show that substantial awards of this kind will not be considered without convincing evidence to assist the court in its decision-making process.

Men at work

I should be so lucky

The 2016 High Court decision in *Plonka v Norviss* is worthwhile reading for practitioners in this area. In that matter, the plaintiff suffered a soft tissue injury to her neck and back. While the court acknowledged that the plaintiff's symptoms were somewhat out of proportion to the physical findings, the court was satisfied to accept the description of "catastrophisation" as being the most probable explanation for her symptoms.

The plaintiff was a 34-year-old cleaner at the time of the accident. She spoke little or no English. She did not return to work after the accident. The court acknowledged that her claim for future economic loss would be "enormous" if a finding was made that she was suffering from an accident-related psychiatric illness that was likely to persist into the future. The court was somewhat critical of the evidence led by the plaintiff with respect to future economic loss: "I do not believe that the plaintiff's proofs have been up to that standard and, accordingly, I will award a sum of general damages for loss of job opportunity of €15,000."

The 2015 High Court decision in *McLaughlin v McDaid & ors* is also relevant. In that matter, the court found on behalf of the plaintiff in a liability denied workplace accident that left the plaintiff with a club foot. The plaintiff was 17 years of age on the accident date and 30 by the time of the trial. The plaintiff had significant educational shortcomings. As a result of the accident, it was found that he was unable to complete any heavy physical activities in employment. While the court found that the plaintiff's future employability would be significantly affected, the court was unable to make any findings as to future economic loss due to the lack of evidence led on that front: "There is no evidence upon which I can make any finding with regard to future loss of earnings."

However, the court did refer to the plaintiff's disadvantage on the open labour market when awarding €150,000 for pain and suffering into the future. In my opinion, this may have been an attempt by the court to balance the scales of justice back in favour of the plaintiff.

The High Court's 2016 decision in *Kelly v Lackabeg Ltd t/a The Arc* is also apt. In that matter, the plaintiff suffered a soft tissue injury to her neck and a dislocation to her right thumb. The court found that the plaintiff was left with intermittent but frequent neck pain, diminution in sensation in the tip of the thumb, and a reduced pinch grip between her thumb and forefinger.

The court found that the plaintiff was "entitled to be compensated for loss of opportunity on the job market, due to the fact that, post-accident, she has been recommended to confine herself to sedentary type occupations".

Notwithstanding this finding, the court made no specific award for future economic loss. Instead, the court did take the plaintiff's loss of opportunity on the job market into account when awarding $30,000 damages for pain and suffering into the future.

The decision is unclear as to the extent of evidence led by the plaintiff in relation to her suitability for sedentary type occupations and whether this restriction might translate into reduced earning capacity over the remainder of her working life.

> AUSTRALIAN JURISDICTIONS ENACTED SIMILAR STYLE REFORMS IN THE EARLY 2000s. WHILE EACH AUSTRALIAN STATE ENACTED THESE REFORMS DIFFERENTLY, THE MOTIVES OF EACH LEGISLATURE WERE SIMILAR

Spinning around

The Queensland Supreme Court case of *Kirchner v ITT Water and Wastewater Ltd* in 2010 provides a helpful contrast

> WHILE ONE CAN ONLY SPECULATE AS TO THE TIMING OF THE NEXT ROUND OF TORT REFORMS, THERE IS NO REASON WHY PRACTITIONERS IN THIS AREA CANNOT FINESSE THEIR EVIDENCE GATHERING IN THE MEANTIME

with the Irish decisions set out above. In this matter, the plaintiff was successful in proving liability after he fell down a manhole in the course of work duties. He suffered a fractured skull, causing ongoing headaches, dizziness, impaired memory, and concentration.

Similar to some of the Irish examples, the plaintiff was relatively young (30) at the time of trial, had a limited education, and was ill-suited to sedentary office type work. The court had no difficulty making a finding that the plaintiff had suffered a significant disadvantage on the open labour market.

Notwithstanding his post-accident symptomatology, the plaintiff was able to work for 12 months after the accident (earning the same weekly wage as he had earned prior to the accident). The defendant sought to rely on this evidence to assert that there had been no significant diminution in the plaintiff's earning capacity.

While the usual medical experts were called for both parties, the plaintiff also led extensive evidence from those who had worked with him after the accident and who could corroborate his difficulties at work. The plaintiff's partner gave evidence as to his impaired concentration and fatigue. Evidence was even led from the plaintiff's in-laws, for whom he had done some casual work.

When assessing future economic loss, the court made a finding that there was a likelihood that the plaintiff's "comparative disadvantage in the employment market will increase as he gets older". The court found that this would result in an average net weekly loss of $300. The court awarded $240,000 for future economic loss.

In your eyes

The Australian experience shows the benefits to a plaintiff of gathering additional evidence (beyond the usual medical reports) when an award for future economic loss is sought.

Prior to briefing medical experts, appropriate investigations might include:

- Obtaining a comprehensive work history or resume from the plaintiff. Weak or strong, this is vital in assessing residual earning capacity.
- Obtaining position descriptions from the plaintiff's past and present employers. Unusual occupations need particular focus.
- Obtaining copies of any performance appraisals for the plaintiff (pre and post injury). A documented dip in post-accident work performance is of significant evidentiary value.
- Obtaining a copy of the plaintiff's employment contract to understand the key requirements and performance indicators of his/her role.
- Obtaining the plaintiff's academic records (so as to assess his/her academic aptitude for other forms of work).
- Speaking to the plaintiff's employer, supervisor and work colleagues (to understand any perceptions they may have of reduced work performance).
- Obtaining earnings information from comparable workers to the plaintiff.
- Obtaining leave records, including details of sick leave, timesheets (pre and post injury). This will allow analysis of reduced working hours or changed working patterns.
- For a self-employed plaintiff, speaking to his/her clients or key business relationships (pre and post injury). They may be able to comment on areas that an actuary cannot.
- For a younger plaintiff with little work history, speaking to his/her teacher(s) may be of value. They may have an insight that academic records do not reveal.
- For a plaintiff with easily identifiable work output measures, obtaining any documents that measure their productivity (for example, sales figures, packing rates, checkout line data).
- Speaking to the plaintiff's friends and family members (so as to better understand their perception of the plaintiff's limitations and how increased efforts at work might affect their personal lives).

When this information is to hand, proper consideration can be made as to briefing the relevant medical experts so that they can form opinions as to diminution of earning capacity.

While one can only speculate as to the timing of the next round of tort reforms, there is no reason why practitioners in this area cannot finesse their evidence gathering in the meantime. g

LOOK IT UP

CASES:

- *Kirchner v ITT Water & Anor* [2010] QSC 413
- *McLaughlin v McDaid & ors* [2015] IEHC 810 (10 December 2015)
- *Kelly v Lackabeg Ltd t/a The Arc* [2016] IEHC 63 (29 January 2016)
- *Plonka v Norviss* [2016] IEHC 137 (18 March 2016)

LITERATURE:

- Department of Finance (2017), *Report on the Cost of Motor Insurance*
- Person Injuries Assessment Board (2016), *Book of Quantum*
- Personal Injuries Commission (2017), *First Report*

Who framed PATRICK KAVANAGH?

In 1954, poet Patrick Kavanagh took a libel action against a magazine. **Caroline Fanning** tills the stony grey soil

CAROLINE FANNING IS PRINCIPAL OF THE DUBLIN LAW FIRM FANNING SOLICITORS

In late 1939, as German forces marched into Polish territory, a solitary, 35-year-old Irish poet, novelist and critic marched 80 miles from his small farm holding in Mucker, Co Monaghan, to Dublin. In contrast to the German, Polish, Soviet and Slovakian soldiers engaged in the beginnings of WW2, Patrick Kavanagh was armed only with high hopes of participating in an 'Irish Revival' of literary and cultural enlightenment.

Nine years after the unconditional surrender of the Axis powers in 1945, Kavanagh would constructively surrender his high hopes, having spent a total of 15 years struggling to make ends meet and to gain secure employment and acceptance by the established cliques in Dublin. He mused that, while poems were popular, no one cared if the poet ate.

AT A GLANCE

- In October 1952, *The Leader* magazine published an unflattering profile of Patrick Kavanagh
- Kavanagh issued libel proceedings against the magazine and its printer, losing in the High Court
- On appeal to the Supreme Court, the jury verdict was set aside
- An undisclosed out-of-court settlement was made to Kavanagh and his legal team

His bitterness and disillusionment can be gleaned from the short-lived 13-issue publication run of *Kavanagh's Weekly: A Journal of Literature and Politics* between April and July 1952. Financed by £2,000 from his younger brother Peter, the *Weekly* criticised the lack of vitality in Ireland in the 30 years after Independence: "All the mouthpieces of public opinion are controlled by men whose only qualification is their inability to think."

Further criticism was heaped on Radio Éireann, the GAA, the Abbey

HE MUSED THAT, WHILE POEMS WERE POPULAR, NO ONE CARED IF THE POET ATE

Theatre, the Arts Council, and the Cultural Relations Committee (established by Sean McBride in 1949). Kavanagh suggested that Ireland might benefit from reducing its civil service to "one-tenth its size" and the "so-called" revival of Irish should be abandoned. He opined that the presidency should be made an honorary post at a nominal salary, and that the number of Irish embassies abroad should be reduced.

The usual suspects

In October 1952, *The Leader* magazine published an unsigned, one-sided, unflattering profile of Kavanagh. Kavanagh failed to unmask the author(s) of the offensively hostile piece, with Valentin Iremonger (Irish career diplomat and poet, who also produced translations from the Irish language) and Brendan Behan among his (many) suspects.

The profile caricatured Kavanagh "hunkering over a bar stool" in McDaid's, presiding over a coterie of much younger submissive acolytes, sponging drinks, coughing and gambling, while fantasising about London's literary scene. It depicted Kavanagh as a poseur, unsubtle, opinionated, and overbearing. It also contained a (false) suggestion that his poem *The Great Hunger* had been banned in Ireland.

Kavanagh issued libel proceedings against the magazine and its printer, hoping for an out-of-court settlement of some £500. He had already lost a libel action taken against him in 1938 by Oliver St John Gogarty, who was awarded £100 damages plus costs of £300 over a reference in Kavanagh's loosely autobiographical book *The Green Fool*, suggesting Gogarty had a mistress.

On 3 February 1954, the 49-year-old Kavanagh sat in the witness box in the Dublin High Court, waiting for the first of a total of 1,267 questions in what would be a gruelling 13-hour cross-examination by a man 13 years his senior – one of Ireland's most powerful and influential political and legal figures: John A Costello, former taoiseach and leader of the opposition party. Costello had been engaged by *The Leader*. Counsel for the printers, Argus, asked Kavanagh 71 questions.

A turnip for the books

The case was assigned to newly appointed High Court Judge Thomas Teevan (1903-76), sitting with a jury. Teevan had just served as attorney general (1953-54) and had practised as a solicitor before qualifying as a barrister. It would be the first case decided by him.

Contempt

Kavanagh claimed that the profile article as a whole was a libel, together with a number of innuendos contained in the article's wording, and that it "held him up to odium, hatred, ridicule and contempt, and that he had been gravely damaged in his reputation and in his profession".

> KAVANAGH SAT IN THE WITNESS BOX WAITING FOR THE FIRST OF A TOTAL OF 1,267 QUESTIONS IN WHAT WOULD BE A GRUELLING 13-HOUR CROSS-EXAMINATION

The publishers (Leader Limited) and its printers (Argus Limited) defended the action on the grounds of 'fair comment' in both its straightforward form and 'rolled-up' plea (that is, where a statement was of fact, it was true, and where the statement was a comment, it was a fair comment). No defence of justification was pleaded, so only evidence of general reputation was admissible in mitigation of damages. The defendants themselves did not go into evidence.

Costello set about undermining Kavanagh's credibility in order to show that the article was factually true, the comments 'fair', and to mitigate any award of damages. In reply to cross-examination as to the nature of his relationship with Brendan Behan, Kavanagh denied that they were friends – upon which, a copy of his book *Tarry Flynn* was exhibited, with attention drawn to his inside cover inscription: "*For Brendan, poet and painter, on the day he decorated my flat, Sunday 12th, 1950.*"

Costello cross-examined Kavanagh on his views on Dublin and London, the derogatory criticism of Irish institutions in *Kavanagh's Weekly*, the speed with which he had instituted the libel proceedings, and about his own numerous satires, etc. It is a testament to Costello's memory that he could remember the answers to the 1,267 questions.

Twelve angry men

The jury had to answer eight questions. Question 1: whether the article, as a whole, in its ordinary meaning, was defamatory of

> THIS CONFUSION OF THE JURY, COUPLED WITH THEIR FINDING OF NO LIBEL REGARDING AN ARTICLE THAT WAS, IN HIS VIEW, CLEARLY LIBELLOUS, CREATED A PROBABILITY OF A MISCARRIAGE OF JUSTICE TOO GREAT TO ALLOW THE VERDICT TO STAND

Patrick Kavanagh. Questions 2 to 6 related to various specified innuendos. Question 7 related to the defence of fair comment, and question 8 to the assessment of damages.

Judge Teevan directed the jury to apply the test of whether the article was defamatory in the eyes of ordinary people or the general body of the community. Teevan J said that innuendos only arise when words do not primarily mean a particular thing, such as irony or innocent words taken in an offensive way. The judge told them that, if they answered question 1 in the affirmative, they could skip questions 2 to 6, leaving only questions 7 and 8 to be addressed.

The jury found that the article as a whole and in its ordinary meaning was not defamatory.

However, Kavanagh's appeal to the Supreme Court – funded in part by TS Eliot and Jack B Yeats – was successful, with the judgment delivered on 4 March 1955.

The majority of the Supreme Court considered the finding that the article was not defamatory to be unreasonable and perverse. *McInerney v the Clareman Co Ltd* (1903 2 LR 375) and *Broome v Agar* (138 LT P98) were cited as authorities that "the question of libel or no libel being a matter of opinion, and opinions may reasonably vary within wide limits, an appellate court is more slow to take such a course [set aside the verdict of a jury] in a libel action than in other types of action".

The Supreme Court held that Judge Teevan's direction to the jury on innuendos was confusing and misleading, leading to an unsatisfactory trial. Innuendos are a technical area of libel law divided into:

- Innuendos within the special knowledge of the reader, and/or
- Innuendos within the acumen of the reader in discovering the full import of the words used.

The court held that, in particular, Teevan's direction that, where they found no evidence to justify a finding that the words bore any innuendos (as contained in questions 2 to 6), they must answer 'no' to questions 2 to 6, while (seemingly contradictorily) telling them that some of the innuendos might be implicit in question 1 and, as such, be included in the ordinary language.

The majority of the court held that the jury should have been left free to draw inferences (given that the writer of the profile did not use the language of direct statement) in arriving at their answer to question 1, but that Judge Teevan, by directing them to answer 'no' to questions 2 to 6, must have left the jury feeling precluded from considering whether the inferences claimed by Kavanagh would, in fact, be drawn by reasonable men.

One of the Supreme Court judges, Kingsmill Moore, stated that this confusion of the jury, coupled with their finding of no libel regarding an article that was, in his view, clearly libellous, created a probability of a miscarriage of justice too great to allow the verdict to stand.

The jury verdict was set aside, and a new High Court trial was directed to take place. However, due to insufficient finances to fund a second trial, an undisclosed out-of-court settlement was made to Kavanagh and his legal team, led by solicitor Rory O'Connor and Sir John Esmonde SC, signalling the end of two-and-a-half years of legal proceedings. g

THE LIFE AND TIMES OF ARTHUR BROWNE IN IRELAND AND AMERICA, 1756-1805

Joseph C Sweeney. Four Courts Press (2017), www.fourcourtspress.ie. Price: €49.50.

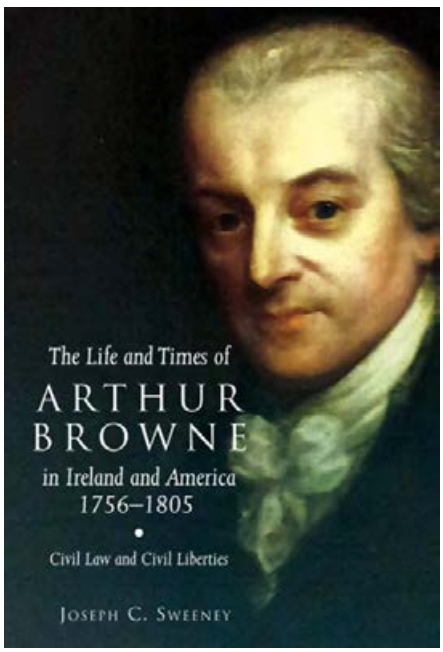
In the early years of their schooling, Irish children are given a transient exposure to Irish history. In subsequent years, some students opt to study history more seriously, and the tumultuous late 18th century period becomes more substantive, with notables like Henry Grattan, John Philpot Curran, Edmund Burke and Charles James Fox to the forefront. However, in the context of the times, Arthur Browne MP has simply been noted as an Irish Whig who initially voted against and then for the *Act of Union* – a mere 'sidebar'.

What we now know in much more detail is that Arthur Browne was above all a highly competent lawyer and a staunch defender of civil liberties, including being one of the early proponents of Catholic Emancipation.

This book considers the whole life of Arthur Browne in an ordered and at the same time modular way: his birth in 1756 in what was colonial America's Rhode Island; his coming to Ireland and his years in Trinity as a student (1772-76); his further legal studies in London, coinciding with the American War of Independence (1776-83); his election to and his initial years in the Irish Parliament (1783-88); his teaching and practising law (1784-1805); and his political career and the stances he took on individual issues, most notably, the French Revolution (1789) and its subsequent 'Reign of Terror' and the 1793 outbreak of the France/England war; and the 1798 rebellion and its bloody retributive aftermath, eventually culminating in his decision to support the *Act of Union* and the consequent dissolution of the separate Kingdom of Ireland with its own parliament.

The enigmatic question that will constantly recur for the reader, particularly looking back over the history of Ireland from 1922 back to 1801, will be whether or not that history would actually have been better had the *Act of Union* not been passed and had people like Arthur Browne successfully opposed the absorption of the Irish Parliament into the Westminster Parliament.

His change from opposition to support



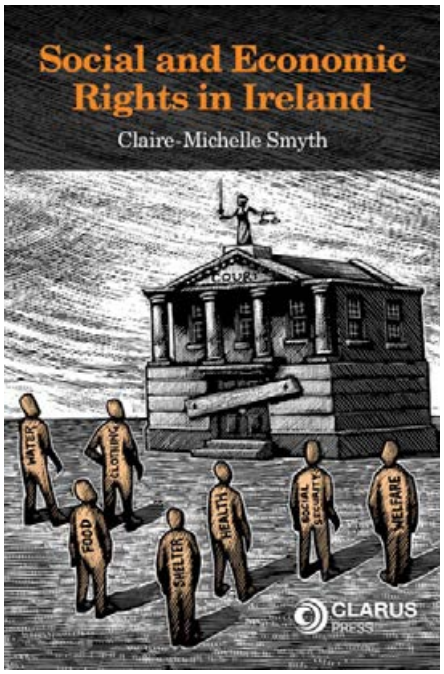
for Union between 1799 and 1800 (as did 11 other members) left him open to accusations of his vote having been purchased by the government – an accusation directly made in the House at the time and equally vehemently denied there by Browne. In this context, the author points out that Browne did receive "two lucrative appointments from Dublin Castle after the Union, for both of which he was well qualified" – a verdict of 'not proven', perhaps, rather than 'guilty' or 'not guilty'?

My guess is that many readers, influenced by the author's admirable overall presentation of Arthur Browne's life in all its facets, would be inclined to conclude that his brilliance as a lawyer and as an even staunch defender of civil liberties should outweigh any outstanding question as to his true motivation for ultimately supporting the *Act of Union*. Whatever rehabilitation of his historical legacy that may be required might at least have begun in 2010 by the King's Inns instituting an annual examination prize in his honour.

Michael V O'Mahony, solicitor and notary public, is a past-president of the Law Society.

SOCIAL AND ECONOMIC RIGHTS IN IRELAND

Claire-Michelle Smyth. Clarus Press (2017), www.claruspress.ie. Price: €75.



It is embarrassing and distressing nowadays to read the majority judgments in the Supreme Court in the 1983 *Norris* case on homosexuality for their blinkered thinking and lack of empathy. In years to come, will another generation look back on the judgments in the *TD* and *Sinnott* cases in 2000-2001 on education and care for persons with intellectual disabilities, or cases on traveller accommodation, in the same way?

In this book Dr Smyth looks at the attitude of the Irish courts to social and economic rights and the idea that the law should provide for basic minimum standards of education, accommodation, and healthcare. There has traditionally been strong resistance to this concept on the grounds that these are essentially political issues that should be left for government to deal with.

Dr Smyth notes that in other countries like South Africa or the post-communist European states, which have adopted new constitutions in recent years, those constitutions provide for minimum standards of housing and healthcare in particular.

The book also looks at whether our international obligations may lead to the courts taking a more positive attitude to these rights. It discusses the standards set by the *UN Covenant on Economic, Social and Cultural Rights* and the *European Social Charter*, but points out that they lack any enforcement mechanism.

It then considers the *European Convention on Human Rights* (ECHR) with its partial incorporation into Irish domestic law and the relatively new *EU Charter of Fundamental Rights*.

While the ECHR does not expressly protect economic and social rights, Dr Smyth points to a growing trend for it to read rights to minimum standards of accommodation, healthcare and education into the existing articles of the convention, in particular in cases concerning Roma families and children. She also looks at the developing jurisprudence around the *EU Charter*, which does expressly protect some economic and social rights and which is directly effective as part of EU law.

She argues that the decisions of these two European mechanisms may influence the Irish courts to take a more positive attitude to economic and social rights, but also points to the weakness of the *ECHR Act 2003*, bringing the convention into Irish law, and the fact that the *EU Charter* only applies to the implementing of EU law.

Dr Smyth may be over-cautious about the effect of ECHR and *EU Charter* decisions. The ECHR has already had a significant effect on Irish law from the *Norris* case onwards and is increasingly argued in the courts. And the Court of Justice has taken a very broad view of what constitutes 'implementation' of EU law, allowing the charter to be used in a wide variety of cases.

More vigorous use of the ECHR and the charter by practitioners, together with a judiciary less steeped in rigid deference to the executive, may lead to a wider role for the courts in protecting economic and social rights, and this book provides a very thorough summary of case law from these institutions to encourage that use. g

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Michael Farrell is a solicitor and a member of the Council of Europe Commission against Racism and Intolerance.

REPORT OF THE LAW SOCIETY COUNCIL MEETING

26 JANUARY 2018

Legal Services Regulation Act

Paul Keane outlined the three reports issued by the Legal Services Regulatory Authority in compliance with their statutory obligations – on legal partnerships, MDPs, and barristers' issues – each of which was available on the authority's website. In each instance, the authority had concluded that the issues were very complicated and further consultation was required.

The director general noted that the only new business structure for which there appeared to be an actual demand was LLPs. At a recent Brexit event, both the Minister for Justice and the chief executive of the IDA had indicated that one of the consequences of Brexit was a requirement to enable the legal profession to establish as LLPs.

He confirmed that the Society continued in its efforts to seek an early meeting with the minister, to discuss this and a range of other issues.

Insurance costs

Stuart Gilhooly briefed the Council on the *Report on the Cost of Employer and Public Liability Insurance* by the Cost of Insurance Working Group. A number of the recommendations in the report focused on possible legislative changes, including a proposal to improve the notification process in section 8 of the *Civil Liability and Courts Act 2014*, an examination of the continuing relevance of the six-month period allowed under section 50 of the *Personal Injuries Assessment Act 2003*, and a focus on the provisions contained in the *Civil Liability and Courts Act 2014* relating to fraudulent and exaggerated claims, with particular reference to sections 14, 25 and 26.

The report also referenced a benchmarking exercise on damages to be conducted by the Personal Injuries Commission, and indicated that any examination of this area should take account of the broader societal impact of the existing limits, including the rights of claimants to a full and proper level of compensation where they suffer an injury through the negligence of others.

The report acknowledged the importance, when comparing award levels between different countries, of considering the 'societal choices' made in each jurisdiction, in areas such as the level of social welfare benefit and State provision of healthcare.

The report also considered the question of a cap on damages and concluded that the matter should be referred for consideration by the Law Reform Commission.

Future of solicitor education

The Council approved the establishment of a Future of Solicitor Education Review Group, noting that section 34(1) of the *Legal Services Regulation Act 2015* mandated a review of the education of both solicitors and barristers and the production of a report by 1 October 2018.

The Council noted that a review of solicitor education and training, including a comparative analysis of legal education and training in other jurisdictions, had been conducted for the Society by Prof Paul Maharg and Prof Jane Ching, and their report had just been received.

The review group would further consider the education and training of solicitors of the future, and make recommendations to the Council to ensure that the educational model in Ireland was on a par with best practice internationally.

The group would be chaired by Mr Justice Michael Peart, and its members were representative of the profession as a whole, including large and small firms, urban and rural, as well as in-house solicitors and professional educators.

Administration of civil justice

The Council approved a submission to the Review of the Administration of Civil Justice, in response to an invitation from the President of the High Court for submissions identifying those items that might be placed on the agenda for the review. All relevant Society committees had been consulted.

Regulation of practice

Martin Crotty made a comprehensive presentation to the Council on the financial performance of the compensation fund, claims against the fund, decisions of the committee, investigations of solicitors' practices, practice notes, *Gazette* articles, High Court actions against claims-harvesting websites, and improvements in the processes for reporting to the Council.

PII

Richard Hammond reported that there had been full compliance by solicitors with their professional indemnity insurance renewal obligations. He reported on market share by firm, and would report on market share by premium at a future meeting.

Gala Dinner 2018

The president urged Council members and their firms to support the Gala Dinner 2018, which would be held in the Shelbourne Hotel on 27 April 2018.

CONVEYANCING COMMITTEE

NEW PRECEDENT CERTIFICATES OF COMPLIANCE

The Conveyancing Committee has recently published new precedent certificates of compliance with planning and the 2014 building regulations. These are available in the precedents area of the Society's website (www.lawsociety.ie/precedents) with an explanatory memorandum containing a brief explanation of each of the three new documents.

CONVEYANCING COMMITTEE

BASIC PAYMENT ENTITLEMENTS AND WILLS

Basic payments are annual payments to farmers arising from various EU support schemes, and they are administered by the Department of Agriculture, Food and the Marine. The amount of the payments varies, and one of the factors is the number of basic payment entitlements (BPEs) a farmer has. BPEs are not attached to land, although a farmer must farm land in order to claim them. BPEs can be left by will and should be specifically dealt with in a will.

Because they are not generally attached to lands, problems arise when a farmer has left land to a beneficiary, but the will is silent on who is to receive any BPEs the farmer might have. In these circumstances, the BPEs formed part of residue, which may not have been what was intended and may cause difficulty and hardship for the person receiving the land.

The *European Union (Basic Payment Scheme Inheritance) Regulations 2017* (SI 639 of 2017) deals with this issue, and paragraph 4 of the statutory instrument provides as follows: "Where a deceased person bequeaths land in a will and (a) at the time of his or her death held an allocation of payment entitlements under Regulation 1307/2013, and (b) made no provision for those payment entitlements in his or her will, such payment entitlements (or share thereof) shall transfer with the eligible land unless there is a legal impediment preventing the transfer."

The statutory instrument was signed on 21 November 2017 by the Minister for Agriculture, Food and the Marine.

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 Yvonne Hennessy, a solicitor practising as Hennessy & Company, Solicitors, 5 Hillside Drive West, Mullingar, Co Westmeath, 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* [2017/DT07]

Law Society of Ireland (applicant)

Yvonne Hennessy (respondent solicitor)

On 13 November 2017, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she failed to ensure that that there was furnished to the Society an accountant's report for the year ended 31 December 2015 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516/2014).

The tribunal ordered that the respondent solicitor:

1) Stand advised and admonished,
2) Pay a sum of €300 to the compensation fund,
3) Pay a sum of €300 towards the whole of the costs of the applicant.

In the matter of Robert D Lee, solicitor, practising in the firm of Lees Solicitors, Lord Edward Street, Kilmallock, Co Limerick, and in the matter of the *Solicitors Acts 1954-2015* [2637/DT85/16]

Law Society of Ireland (applicant)

Robert D Lee (respondent solicitor)

On 16 November 2017, the tribunal found the respondent solicitor guilty of misconduct in that he failed to refund the total amount due to the estate of a named client in accordance with the decision of the taxing master dated 7 November 2014.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay the sum of €3,000 to the compensation fund,
3) Pay a sum of €2,000 as a contribution towards the whole of the costs of the applicant.

In the matter of Cormac Lohan, a solicitor practising under the style and title of Lohan & Co, Solicitors, 7 Garden Vale, Athlone, Co Westmeath, and in the matter of the *Solicitors Acts 1954-2015* [8247/DT73/15]

Law Society of Ireland (applicant)

Cormac Lohan (respondent solicitor)

On 29 November 2017, the tribunal found the respondent solicitor guilty of misconduct in that he, surreptitiously and/or without the knowledge or consent of the Regulation of Practice Committee, further recorded and/or caused or allowed and/or intended the continued recording of the meeting of the committee after he left the meeting to enable the committee to deliberate in his absence, in circumstances where he knew or ought to have known that this was not honest and/or proper behaviour for a solicitor appearing before the committee and, in so doing, engaged in conduct bringing and/or tending to bring the profession into disrepute.

The tribunal ordered that the respondent solicitor:

1) Pay the sum of €3,000 to the compensation fund within one month,
2) Pay a contribution of €3,000 towards the whole of the costs of the applicant.

In the matter of Aisling Maloney, a solicitor practising as AM Maloney & Company, Solicitors, Harbour Street, Tullamore, Co Offaly, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT28]

Law Society of Ireland (applicant)

Aisling Maloney (respondent solicitor)

On 5 December 2017, the tribunal found the respondent solicitor guilty of misconduct in that she:

1) Failed to comply with an undertaking given by her on behalf of named clients over property in Co Mayo to IIB Homeloans, now KBC Bank Ireland plc, by undertaking dated 12 July 2007 expeditiously or within a reasonable time,
2) Failed to reply adequately or at all to the complainant's correspondence and, in particular, letters dated 2 January 2014, 8 June 2015, 20 July 2015 and 2 December 2015,
3) Failed to reply adequately or at all or in a timely manner to the Society's correspondence and, in particular, letters dated 26 April 2016, 7 June 2016, 20 July 2016 and 26 September 2016.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay the sum of €2,500 to the compensation fund,
3) Pay a contribution of €1,781.50 towards the costs of the Law Society of Ireland.

RULING ON JOINT VENTURES REVERSES YEARS OF PRACTICE

It is very important to be able to determine whether or not a proposed transaction falls within the merger control regime under the EU *Merger Regulation* or the *Competition Act 2002*. **Marco Hickey** explains

MARCO HICKEY IS HEAD OF THE EU, COMPETITION AND REGULATED MARKETS UNIT AT LK SHIELDS SOLICITORS

THE APPLICATION OF THE ABOVE PRINCIPLES LACKS THE BENEFIT OF LEGAL CERTAINTY INHERENT IN A NOTIFICATION, MERGER REVIEW AND APPROVAL SYSTEM

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

On 7 September 2017, the EU Court of Justice delivered a significant judgment in *Austria Asphalt GmbH & Co OG v Bundeskartellanwalt* (Case C-248/16), on foot of a reference for a preliminary ruling made by the Austrian Supreme Court on a question relating to the definition of transactions caught by Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the *Merger Regulation*).

The regulation contains a system for the compulsory notification to the EU Commission of transactions that meet certain thresholds, and therefore have what is known in EU merger control terminology as an 'EU dimension'. Similarly, the Irish *Competition Act 2002* (as amended) contains a regime for the compulsory notification to the Competition and Consumer Protection Commission (CCPC) of mergers and acquisitions that exceed certain thresholds or that amount to a media merger. Mergers that are compulsorily notifiable under the regulation or the 2002 act are void unless approved. Therefore – jurisdictionally – it is very important to be able to ascertain from the outset whether or not a proposed transaction falls within the merger control regime under the regulation or the act.

The *Merger Regulation* applies to transactions that amount to concentrations defined in article 3 of the regulation:

"1) A concentration shall be deemed to arise where a change of control on a lasting basis results from …

b) The acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings …

4) The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of paragraph1(b)."

Full-function joint ventures

The transactions referred to in paragraph 4 of article 3 are referred to, in EU merger control terminology, as 'full-function joint ventures'. The commission's consolidated jurisdictional notice on the regulation states that "full-function character essentially means that a joint venture must operate on a market, performing the functions normally carried out by undertakings operating on the same market. In order to do so, the joint venture must have a management dedicated to its day-to-day operations and access to sufficient resources including finance, staff, and assets (tangible and intangible) in order to conduct on a lasting basis its business activities within the area provided for in the joint-venture agreement."

In *Austria Asphalt*, the CJEU was called upon to decide the question of whether or not the creation of a joint venture, in circumstances where an existing business is solely controlled by one person and becomes jointly controlled, amounts to a 'concentration' within the meaning of article 3 of the regulation only if the joint venture is a full-function joint venture.

The EU Commission had taken the view, and argued before the CJEU, that the creation of a joint venture in relation to a business that had been solely controlled amounted to a concentration within the meaning of article 3(1)(b) and (4), irrespective of whether or not the joint venture was full function.

The CJEU noted that, according to article 3(1)(b) of the *Merger Regulation*, a concentration is to be deemed to arise, among other things, where a change of control on a lasting basis results from the acquisition, by one or more undertakings, of direct or indirect

Dial M for merger

control of the whole or parts of one or more other undertakings. However, according to article 3(4), the creation of a joint venture is a concentration within the meaning of article 3(1)(b) only where that undertaking performs all of the functions of an autonomous economic entity on a lasting basis.

The court held that, consequently, it cannot be determined from the wording of article 3 alone whether a concentration within the meaning of that regulation is deemed to arise as a result of a transaction by which the sole control of an existing undertaking becomes joint when the joint venture resulting from such a transaction does not perform all the functions of an autonomous economic entity. The court stated that such a transaction, on the one hand, implies a change of control on a lasting basis of the undertaking forming the object of that transaction, thereby satisfying one of the criteria laid down in article 3(1)(b) of the regulation and, on the other, may be regarded as creating a joint venture and thereby falling within the scope of article 3(4), so that a concentration would be deemed to be created only if that undertaking performed on a lasting basis all the functions of an autonomous economic entity.

Purpose and general structure

The CJEU emphasised that when a textual interpretation of a provision of EU law does not permit its precise scope to be assessed, the provision in question must be interpreted by reference to its purpose and general structure. The court cited judgments of *France and Others v Commission* (C-68/94 and C-30/95; 31 March 1998) and of, *Marchon Germany* (C-315/14; 7 April 2016). As regards the objectives pursued by

> THIS CASE IS SIGNIFICANT AS IT CASTS ASIDE THE VIEW HELD BY THE COMMISSION FOR A LONG TIME THAT A TRANSITION FROM SOLE TO JOINT CONTROL OF AN EXISTING BUSINESS WOULD AMOUNT TO A CONCENTRATION, IRRESPECTIVE OF WHETHER OR NOT THE RESULTING JOINT VENTURE WAS FULL FUNCTION

THE COURT HELD THAT THE MERGER REGULATION FORMS PART OF A LEGISLATIVE WHOLE INTENDED TO IMPLEMENT ARTICLES 101 AND 102 AND TO ESTABLISH A SYSTEM OF CONTROL ENSURING THAT COMPETITION IS NOT DISTORTED IN THE INTERNAL MARKET OF THE EU

the *Merger Regulation*, the court stated that it appeared from recitals 5 and 6 that the regulation sought to ensure that the process of reorganisation of undertakings did not result in lasting damage to competition. According to those recitals, EU law must therefore include provisions governing those concentrations that may significantly impede effective competition in the internal market or in a substantial part of it, and permitting effective control of all concentrations in terms of their effect on the structure of competition in the European Union. Accordingly, the regulation should apply to significant structural changes, the impact of which on the market goes beyond the national borders of any one member state. The CJEU held that, therefore, as is apparent from recital 20 of the regulation, the concept of concentration must be defined in such a manner as to cover operations bringing about a lasting change in the control of the undertakings concerned and, therefore, in the structure of the market. Thus, as regards joint ventures, these must be included within the ambit of the regulation if they perform on a lasting basis all the functions of an autonomous economic entity.

The court referred to the fact that the advocate general stated in point 28 of her opinion, that the regulation does not draw any distinction in its recitals between a newly created undertaking resulting from such a transaction and an existing undertaking hitherto subject to sole control by a group, which passes to the joint control of several undertakings. The court stated that the lack of a distinction was entirely justified due to the fact that, although the creation of a joint venture must be assessed by the commission as regards its effects on the structure of the market, the realisation of such effects depends on the actual emergence of a joint venture into the market – that is to say, of an undertaking performing on a lasting basis all the functions of an autonomous economic entity.

Lasting effect

Significantly, the CJEU held that therefore, article 3 of the regulation only concerns joint ventures insofar as their creation provokes a lasting effect on the structure of the market. The court held that such an interpretation was supported by article 3(1)(b) of the regulation, which takes as the constituent element of the concept of concentration not the creation of an undertaking but a change in the control of an undertaking. The court emphasised that to follow the converse interpretation of article 3, such as that espoused, among other things, by the commission, would lead to an unjustified difference in treatment between, on the one hand, undertakings newly created as a result of the transaction in question, which would be covered by the concept of concentration only if they performed on a lasting basis all the functions of autonomous economic entities and, on the other, undertakings existing before such a transaction, which would be covered by that concept regardless of whether, once the transaction is completed, they performed those functions on a lasting basis.

The court held that it followed that, in the light of the objectives pursued by the regulation, article 3(4) had to be interpreted as referring to the creation of a joint venture – that is to say, to a transaction as a result of which an undertaking controlled jointly by at least two other undertakings emerges in the market, regardless of whether that undertaking, now jointly controlled, existed before the transaction in question. The court stated that such an interpretation of article 3 was consonant with the general scheme of the regulation.

The CJEU clarified that, although, according to recital 6 of the regulation, the preventative control of all concentrations established under that regulation concerns concentrations having an effect on the structure of competition in the EU, it did not follow that any action of undertakings not producing such effects escapes the control of the commission or that of the competent national competition authorities. The court then referred to the general competition rules that prohibit restrictive agreements and concerted practices and abuse of a dominant position as per articles 101 and 102 of the *Treaty on the Functioning of the European Union* (TFEU) and to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in articles 81 and 82 of the treaty. The court held that the *Merger Regulation*, like, in particular, Regulation 1/2003, forms part of a legislative whole intended to implement articles 101 and 102 and to establish a system of control ensuring that competition is not distorted in the internal market of the EU. The CJEU highlighted that, as follows from article 21(1) of the *Merger Regulation*, that regulation alone is to apply to concentrations as defined in article 3, to which Regulation 1/2003 is not, in principle, applicable. By contrast, Regulation 1/2003 continues to apply to the actions of undertakings that, without constituting a concentration within the meaning of the *Merger Regulation*, are nevertheless capable of leading to coordination between undertakings in breach of article 101 TFEU and which, for that

A merger of crows

NEITHER THE COMMISSION NOR THE CCPC HAD PROPER JURISDICTION TO ACCEPT THE NOTIFICATION AND CONDUCT THE MERGER REVIEW

reason, are subject to the control of the commission or of the national competition authorities.

Preventative control

The court held that the commission's interpretation of article 3 of the *Merger Regulation*, according to which a change in the control of an undertaking that, previously exclusive, becomes joint, is covered by the concept of concentration even if the undertaking does not perform on a lasting basis all the functions of an autonomous economic entity is not, therefore, consistent with article 21(1) of the *Merger Regulation*. The court stated that such an interpretation would effectively extend the scope of the preventative control laid down in that regulation to transactions that are not capable of having an effect on the structure of the market in question and would, at the same time, limit the scope of Regulation 1/2003, which would then no longer be applicable to such transactions, even though they may lead to coordination between undertakings within the meaning of article 101 TFEU. The court held that, having regard to all of the foregoing considerations, the answer to the question referred is that article 3 of the *Merger Regulation* must be interpreted as meaning that a concentration is deemed to arise upon a change in the form of control of an existing undertaking that, previously exclusive, becomes joint, only if the joint venture created by such a transaction performs on a lasting basis all the functions of an autonomous economic entity.

Cast aside

This case is significant, as it casts aside the view held by the commission for a long time that a transition from sole to joint control of an existing business would amount to a concentration, irrespective of whether or not the resulting joint venture was full function. The above view was also applied by the Irish CCPC in the context of the definition of mergers and acquisitions under part 3 and 3A of the 2002 act. Numerous transactions over the years were notified to the commission under the *Merger Regulation* and to the CCPC under the 2002 act on the basis of the above view.

No doubt the CCPC will be influenced by the judgment of the CJEU when interpreting the 2002 act. It appears that, based on the CJEU's ruling, neither the commission nor the CCPC (assuming of course that the same approach is followed in this jurisdiction) had proper jurisdiction to accept the notification and conduct the merger review. Furthermore, the creation of non-full function joint ventures arising from the transition from sole to joint control will now need to be assessed under article 101 of the TFEU and section 4(1) of the 2002 act, as opposed to the EU and Irish merger control regimes.

An assessment will need to be made as to whether the setting up of the joint venture amounts to a breach of article 101(1) of the TFEU or section 4(1) of the 2002 act and, if so, then whether or not the joint venture satisfies the conditions for an exemption. This analysis must be carried out on a self-assessment basis, and there is no provision for the grant of individual approval.

As a result, the application of the above principles lacks the benefit of legal certainty inherent in a notification, merger review, and approval system. Furthermore, it remains to be seen whether or not the court will, in its interpretation of the definition of concentration in the *Merger Regulation*, extend the above notion of full functionality to require that a joint venture be full-function in situations where there is a change in the identity of a joint controller of an existing joint venture – that is, where there is an existing joint venture and one of the joint controllers is replaced by the entry of a new joint controller. It is submitted that there is no scope in the wording of the regulation for such a view. g

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DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
8 & 15 March	Practical Legal Research for the Practitioner - Skills Workshops **Note:** Attendance on both workshops is required * *(Ipad not included in fee)*	€403 *(Ipad included in fee)* €188*	€538 *(Ipad included in fee)* €250*	2 General plus 4 M & PD Skills (by Group study)
8 March	Solicitors' for the Elderly seminar Ethical Representation for the Older Client	€150	€176	3.5 General
9 March	Employment Law Masterclass: Bringing cases in the Labour Court and Workplace Relations Commission	€210	€255	6.5 General (by Group Study)
23 March	Training of Lawyers on the Law relating to Violence Against Women (TRAVAW)	Complimentary		6 General (by Group Study)
20/21 April	Masterclass in Planning & Environmental Law and Practice for the conveyancer	€350	€425	8 General, 2 M & PD Skills (by Group Study)
10 & 11 May	Essential Solicitor Update Part I & II in partnership with Leitrim, Longford, Roscommon and Sligo Bar Associations Landmark Hotel, Carrick-on-Shannon, Co Leitrim	€80 Part I €115 Part II (Parts I and II €170) *(Hot lunch and networking drinks included in price)*		4 (by Group Study) Part I 6 (by Group Study) Part II
15 May	Annual Human Rights Lecture	Complimentary		1.5 General (by group Study)
17 May	Wellness in the West - Professional Wellbeing for a successful practice - Galway	€150	€176	5 M & PD Skills (by group study)
18 May	Midlands General Practice Update – in partnership with Laois Solicitors' Association and Carlow, Midlands and Kildare Bar Associations Midlands Park Hotel, Town Centre, Portlaoise, Co Laois	€115 (Parts I and II €170) *(Hot lunch and networking*		6 (by Group Study)
18/19 May & 15/16 June	Probate & Tax Masterclass Attend 1, 2 or both modules	€750 €375 *(per module)*	€850 €425 *(per module)*	10 general (by Group Study) *per module*
24 May	Inhouse panel discussion	€55		2.5 M & PD Skills (by group study)
June (TBC)	Brexit –The Times They Are A Changin' - Implications for the Practitioner	€150	€176	2.5 M & PD Skills (by group study) plus 2 General
14 & 15 June	North West General Practice Update Part I & II – in partnership with Donegal and Inishowen Bar Associations Solis Lough Eske Castle Hotel, Donegal	€80 Part I €115 Part II (Parts I and II €170) *(Hot lunch and networking drinks included in price)*		4 (by Group Study) Part I 6 (by Group Study) Part II

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RATES

NEW RATES FROM JANUARY 2018

PROFESSIONAL NOTICE RATES

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

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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, which indicates that such references may be in breach of the *Employment Equality Acts 1998* and *2004*.

WILLS

Cunningham, Thomas, otherwise Thomas Anthony (deceased), who died on 21 June 2017, late of 12A Emmet House, Emmet Court, Inchicore, Dublin 8, and formerly of 337 North Circular Road, Dublin 7, and Tipperary Town. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Melvyn Hanley Solicitors, 16 Patrick Street, Limerick; tel: 061 400 533, email: reception@melvynhanley.com

Flynn, Denis (deceased), late of Rahill, Rathvilly, Co Carlow, and previously of Rathellen, Leighlinbridge, Co Carlow, who died on 16 May 2017. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact A Gibbons, Kearney Roche & McGuinn, Solicitors, 9 The Parade, Kilkenny; DX 27012 Kilkenny; tel: 056 772 2270, email: info@krm.ie

Kelleher, Marjorie (otherwise Margaret) (deceased), late of Mount Alvernia Nursing Home, Mallow, Co Cork, and formerly of Cois Ala, Kanturk, Co Cork, who died on 3 October 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Eugene Murphy, Murphy English & Co, Solicitors, 'Sunville', Cork Road, Carrigaline, Co Cork; tel: 021 437 2425, email: emurphy@murphyenglish.ie

King, Joseph (deceased), late of 3 Botanic Hall, Addison Park, Glasnevin, Dublin 9, formerly of 8 Cremore Drive, Glasnevin, Dublin 11 and 26 Brookdale Walk, Rivervalley, Swords, Co Dublin, who died on 24 September 2017. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Drumgoole Solicitors, 102 Upper Drumcondra Road, Dublin 9; tel: 01 837 4464, email: info@drumgooles.ie

Lennon, Maureen (otherwise Mary) (deceased), late of Benbulben Road, Drimnagh, Dublin 12, and formerly of Jamestown, Ballyforan, Ballinasloe, Co Galway, who died on 28 February 2017. Would any person holding or having knowledge of the whereabouts of any will made by the above-named deceased please contact Donal Quinn Solicitors, Cross Street, Athenry, Co Galway; tel: 091 844 008, email: eibhlin@donalquinnsolicitors.ie

Loughrey, Frank (otherwise Francis) (deceased), late of 41 Malachi Road, Manor Street, Dublin 7, who died on 9 October 2017. Would any person having knowledge of a will made by the above-named deceased please contact Byrne & O'Sullivan, Solicitors, Windsor Lodge, Edenderry, Co Offaly; tel: 046 973 1522, email: info@byrneosullivan.ie

Moore, Thomas (deceased), late of 37 Riverview Court, Chapelizod, Dublin 20, who died on 14 November 2017. Would any person having knowledge of any will made by the deceased please contact Johnston Solicitors, 9 Claddagh Green, Ballyfermot, Dublin 10; tel: 01 685 2967, email: info@johnstonsolicitors.ie

Morris, Fintan, Fr (deceased), late of Parochial House, Kiltealy, Enniscorthy, Co Wexford, formerly of Maynooth, Co Kildare; Carlow, Co Carlow; and Wexford town, Gorey, Caim and Clearistown, all in Co Wexford. Would any person having any knowledge of a will executed by the above-named deceased, who died on 10 July 2017, please contact John A Sinnott & Company, Solicitors, Market Street, Enniscorthy, Co Wexford; tel: 053 923 3111, email: info@johnasinnottsolicitors.ie

Mulcahy, Thomas David (deceased), who died on 3 January 2018, late of 47 Newgrange Road, Cabra, Dublin 7. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Thomas Mulcahy; tel: 087 178 8249, email: villahowth@gmail.com

O'Connor (Green), Helen (deceased), late of College Road, Castleisland, Co Kerry, and formerly of 29 Sinclair Road, West Kensington, London W14, England, who died on 15 May 2015. Would any person having knowledge of a will made by the above-named deceased please contact Kelliher Coghlan Solicitors, Kealgorm House, Limerick Road, Castleisland, Co Kerry; tel: 066

714 1315, email: kellsolr@iol.ie

O'Donovan, Joseph (deceased), late of 3 St Joseph's Terrace, Kinsale, Co Cork, who died on 30 December 2017. Would any person having knowledge of a will made by the above-named deceased please contact O'Donovan & Co, Solicitors, The Old Brewery, The Glen, Kinsale, Co Cork; tel: 021 477 7031, email: info@odonovanandco.ie

O'Neill, Sioda (deceased), late of 4 Glandore Road, Drumcondra, Dublin 9, who died on 22 February 2017. Would any person having knowledge or possession of any will executed by the above-named deceased, please contact Brennan & Co, Solicitors, Denshaw House, 121 Lower Baggot Street, Dublin 2; tel: 01 659 9464, email: bk@brennanandco.ie

Rothwell, Frances Kathleen (deceased), late of 4 Devonshire Cottages, Lismore, Co Waterford, who died on 12 January 2018. Would any person having knowledge of any will made by the above-named deceased please contact Neil Twomey & Co, Solicitors, Fernville, Lismore, Co Waterford; tel: 058 54658, email: info@neiltwomeysolicitors.com

Ryan, Carmel (deceased), late of 55 Westcourt, Ballincollig, Co Cork, who died on 28 November 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Neil Twomey & Co, Solicitors, Fernville, Lismore, Co Waterford; tel: 058 54658, email: info@neiltwomeysolicitors.com

Walsh, John (deceased), late of 10 Rathmore Avenue, Lower Kilmacud Road, Stillorgan, Co Dublin. Would any person having knowledge of a will made by the above-named deceased, who died on 26 October 2011, please contact Joseph T Mooney & Co, Solicitors, 22 Upper Mount Street, Dublin 2; tel: 01 662 4299, email: info@jtmooney.ie

Warren, Thomas (deceased), late of 2 Meadow Avenue, Churchtown, Dublin 16, who died on 26 September 2016. Would any person knowing the whereabouts of the will of the above-named deceased, dated 5 March 2007, please contact McGonagle Solicitors, 1 Main Street, Dundrum, Dublin 14; tel: 01 633 9972, email: info@mcgonagle.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* with regard to property abutting Highfield Road, Rathgar, and numbered 44 and 45, and the holder of the lessor's interest in a lease dated 28 April 1862, made between Gerald Osbrey, Charles Doherty Quinlan, and Elizabeth Osbrey of the one part, and John Conroy of the other part, for a term of 200 years from 1 November 1861, whereby O'Mahony Holding SPRL, being the party now holding the property, entitled to the freehold interest in the property and also to the lessee's interest pursuant under the said lease, intends to submit an application to the county registrar for the county of Dublin for the acquisition of any intermediate interest in the aforesaid property.

Any party asserting that they hold the lessor's interest in the said lease are hereby called upon to furnish evidence of such title to the below named within 21 days from the date of this notice. Take notice that, in default of any such notice being received, O'Mahony Holding SPRL 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 for all directions as maybe appropriate on the basis that the person or persons beneficially entitled to any intermediate interest in the property are unknown or unascertained.

Date: 2 March 2018

Signed: CCK Law Firm (solicitors for O'Mahony Holding SPRL), Newmount House, 22-24 Mount Street Lower, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and any person having any interest in the freehold estate or any intermediate interest in the property immediately to the rear of property at 44-45 Highfield Road, Rathgar, in the city of Dublin, and held under a lease dated 22 December 1892 for a term of 200 years from 1 January 1893, made between Adelaide Susanna Bond, Louisa J Bond, and Emily H Bond of the one part, and John Charles Meyers of the other part, subject to a yearly rent of £6.

Take notice that O'Mahony Holding SPRL, being the party now entitled to the lessee's interest under the said lease, intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest and any intermediate interest in the aforesaid property. Any party asserting that they hold the freehold or any such intermediate interest are called upon to furnish evidence of such title to the below named within 21 days from the date of this notice.

In default of any such notice being received, O'Mahony Holding SPRL 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 for all directions as maybe appropriate on the basis that the person or persons beneficially entitled to any intermediate interest in the property are unknown or unascertained.

Date: 2 March 2018

Signed: CCK Law Firm (solicitors for O'Mahony Holding SPRL), Newmount House, 22-24 Mount Street Lower, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and any person having any interest in the freehold estate or any intermediate interest in the property immediately to the southwest at the rear of property at 44-45 Highfield Road, Rathgar, in the city of Dublin, and held under a lease dated 10 January 1905 between Adelaide S Bond and Emily H Bond of the one part and John Charles Meyers of the other part, for a term of 500 years from 1 January 1905, for a yearly rent of £53, 10 shillings.

Take notice that O'Mahony Holding SPRL, being the party now entitled to the lessee's interest under the said lease, intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party asserting that they hold the freehold or any such intermediate interest are called upon to furnish evidence of such title to the below named within 21 days from the date of this notice.

In default of any such notice being received, O'Mahony Holding SPRL 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 for all directions as maybe appropriate on the basis that the person or persons beneficially entitled to any intermediate interest in the property are unknown or unascertained.
Date: 2 March 2018
Signed: CCK Law Firm (solicitors for O'Mahony Holding SPRL), Newmount House, 22-24 Mount Street Lower, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and any person having any interest in the freehold estate or any intermediate interest in the property previously known as Orwell Cottages, Rathgar, Dublin 6, with the adjacent yard, and now at 13 Orwell Road and held under a lease dated 19 October 1907 between Eda Elizabeth Osbrey Pierson of the one part and William Crighton of the other part, for a term of 500 years from 29 September 1907, at the yearly rent of £59.

Take notice that O'Mahony Holding SPRL, being the party now entitled to the lessee's interest under the said lease, intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party asserting that they hold the freehold or any intermediate interest are called upon to furnish evidence of such title to the below named within 21 days from the date of this notice.

In default of any such notice being received, O'Mahony Holding SPRL intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply for all directions as maybe appropriate on the basis that the person or persons beneficially entitled to any intermediate interest in the property are unknown or unascertained.
Date: 2 March 2018
Signed: CCK Law Firm (solicitors for O'Mahony Holding SPRL), Newmount House, 22-24 Mount Street Lower, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and any person having any interest in the freehold estate or any intermediate interest in the property that was previously part of the yard adjacent to Orwell Cottages, Rathgar, Dublin 6, and held under a lease dated 19 October 1907 between Mary Dorothea Brevoort Lefferts, Eda Elizabeth Osbrey Pierson, and Mary Louise Osbrey of the one part, and William Crighton of the other part, for a term of 227 years from 29 September 1907 at the yearly rent of £1.

Take notice that O'Mahony Holding SPRL, being the party now entitled to the lessee's interest pursuant under the said lease, intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and any party asserting that they hold the freehold or any intermediate interest are called upon to furnish evidence of such title to the below named within 21 days from the date of this notice.

In default of any such notice being received, O'Mahony Holding SPRL 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 for all directions as maybe appropriate on the basis that the person or persons beneficially entitled to any intermediate interest in the property are unknown or unascertained.
Date: 2 March 2018
Signed: CCK Law Firm (solicitors for O'Mahony Holding SPRL), Newmount House, 22-24 Mount Street Lower, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and any person having any interest in the freehold estate or any intermediate interest in the property known as 27-29 Orwell Road, Rathgar, Dublin 6, parts of which are held under a fee farm grant dated 5 February 1862 between Henry Coulson Beauchamps of the one part and Gerald Osbrey of the other part; a lease dated 4 July 1843 between Thomas Osbrey, Gerald Osbrey, George Bonynge Rochfort, Elizabeth Osbrey, Elizabeth L'Estrange, and Charles Doherty Quinlan of the one part, and Henry Littlewood of the other, for a term of 287 years from 24 June 1843 at a yearly rent of £30; and a lease dated 10 September 1844 between Thomas Osbrey, Gerald Osbrey, George Bonynge Rochfort, Elizabeth Osbrey, Elizabeth L'Estrange, and Charles Doherty Quinlan of the one part, and Henry Littlewood of the other, for a term of 240 years from 10 September 1844 at a yearly rent of £1; and part of which is also held under a lease dated 1 October 1930 between William Hogg, William Geoffrey Harvey and William Ronald Crighton for a term of 99 years from 1 October 1930, subject to but indemnified against a yearly rent of £30.

Take notice that O'Mahony Holding SPRL, being the party now entitled to the grantee's interest under the said fee farm grant and to the lessee's interests pursuant to each of the aforementioned leases, intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest and any intermediate interests in the aforesaid property, and any party asserting that they hold the freehold or any intermediate interests are called upon to furnish evidence of such title to the below named within 21 days from the date of this notice.

In default of any such notice being received, O'Mahony Holding SPRL intends to proceed with the application before the county registrar at the end of the 21 days from the date of this notice and will apply for all directions as maybe appropriate on the basis that the person or persons beneficially entitled to any intermediate interest in the property are unknown or unascertained.
Date: 2 March 2018
Signed: CCK Law Firm (solicitors for O'Mahony Holding SPRL), Newmount House, 22-24 Mount Street Lower, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Meave (otherwise Maeve) Spain

Any person having a freehold estate or any intermediate interest in either (i) 5 Blessington Court (otherwise 1A Blessington Court), off Dorset Street, Dublin 1, being the property the subject of an indenture of lease dated 3 April 1948 between Kathleen O'Sullivan (née Sherlock) and Mary Sherlock of the one part, and Joseph Connolly of the other part, for a term of 99 years from 1 March 1948 at an annual rent of £45, and held by Meave (otherwise Maeve) Spain as lessee under the said lease, or (ii) additional property (a stamping and asset room) immediately adjacent to the property at (i) above and not included in the original premises the subject of the said lease, but occupied by the lessee in conjunction with same for many years as if it formed part thereof.

Take notice that Ms Spain intends to apply to the county registrar of the county of Dublin to vest in her the fee simple and any intermediate interests 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, Ms Spain intends to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply to the Dublin county registrar for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interests including the freehold reversion in the aforesaid property are unknown or unascertained.
Date: 2 March 2018

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Signed: Margaret Finlay, Finlay & Company (solicitors for the applicant), Molyneux House, Bride Street, Dublin

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the premises now known as 4 Trafalgar Terrace, Meath Road, Bray, Co Wicklow, and in the matter of an application by Frank Gregory

Take notice that any person having any interest in the freehold estate of the following property: 4 Trafalgar Terrace, Meath Road, Bray, Co Wicklow, being a portion of the premises assured and demised by an indenture of lease dated 9 August 1875 between Peter Warburton Jackson of the first part and Charles Scully of the second part for a term of 900 years from 25 March 1875, subject to a yearly rent of £14 (but fully indemnified against any portion thereof by an indenture of assignment dated 10 January 2018).

Take notice that Frank Gregory, being a person entitled under the above entitled acts, proposes to purchase the fee simple in the lands described in paragraph one hereof and, for that purpose, intends to submit an application to the Registrar of Titles of the Property Registration Authority for acquisition of the freehold interest in the aforesaid property. Any party asserting that they hold a superior interest in the aforesaid premises is 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, Frank Gregory intends to proceed with the application before the Registrar of Titles at the end of 21 days from the date of this notice and will apply for such directions as maybe 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 and unascertained.

Date: 2 March 2018

Signed: Maguire McNeice Solicitors (solicitors for the applicant), Bray House, 2 Main Street, Bray, Co Wicklow

In the matter of the *Landlord and Tenant Acts 1967-1994* and in the matter of the *Landlord and Tenant (Ground Rents) Act 1967* and the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, and in the matter of premises situated at Castle Street, Mullingar, Co Westmeath, being part of the premises known as Wilfs, Sheefin Flowers and Domino's Pizza: an application by Darragh Caffrey

Take notice that any persons having any interest in the freehold estate of or any superior or intermediate interest in the hereditaments and premises situate at Castle Street, in the town of Mullingar, barony of Moyashel and Magheradernon, county of Westmeath, being part of the property now known as Wilfs, Sheefin Flowers and/or Domino's Pizza, Castle Street, Mullingar, and part of the property held under an indenture of lease made 16 March 1870 between James O'Brien and others of the one part and Patrick McCormack of the other part for the term of 200 years from 29 September 1869, should give notice to the undersigned solicitors.

Take notice that the applicant, Darragh Caffrey, intends to apply to the county registrar for the county of Westmeath for acquisition of the freehold interest and all intermediate interests in the above mentioned property, and any party asserting that they hold an interest superior to the applicant in the aforesaid property are called upon to furnish evidence of title to same to the below-named solicitors within 21 days from the date hereof.

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

Date: 2 March 2018

Signed: Moynihan & Co, Solicitors (solicitors for the applicant), Blackhall Court, Mullingar, Co Westmeath

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005 and the Landlord and Tenant (Ground Rents) (No 2) Act 1978* – notice of intention to acquire the fee simple (section 4): an application by Rory Burgess and Rosemary Ryan

Take notice that any person having any interest in the freehold estate or intermediary interest in the following premises situated at and known 'The Hops' (apartments 1-28), Basin View, James Walk, formerly known as 9b to 10 Basin View, Basin Street Upper, in the parish of St James and city of Dublin, being a portion of the property more particularly described in and demised by a lease dated 7 March 1834 made between Augusta Hone of the one part and Julia Maguire of the other part for the term of 500 years from 25 March 1834, subject to the yearly rent of £12 (then currency).

Take notice that Rory Burgess and Rosemary Ryan, being the persons currently entitled to the lessee's interest as lessee under the said lease, intend to apply to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property (or any of them) are called upon to furnish evidence of 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 for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest, including the freehold reversion in the aforementioned premises, are unknown and unascertained.

Date: 16 February 2018

Signed: Rosemary Ryan (solicitor for the applicants), Roseville, Lavarna Grove, Terenure, Dublin 6W

RECRUITMENT

NE ULTRA CREPIDAM JUDICARET

PARTY ON, ALEXA

A man says Amazon's AI assistant threw its own party at his flat in the early hours of the morning, forcing the police to intervene, *The Independent* reports.

Oliver Haberstroh, who lives in Hamburg, says his Alexa-enabled speaker started playing music at full-blast in the early hours of the morning, when nobody was at home to control it.

Police had to break into his sixth-floor flat in order to investigate the disturbance.

The voice-controlled speaker started playing music between 1.50am and 3am. Mr Haberstroh says he was on a night out at the time.

After returning home to find a new lock on his door, he visited the police station and was given the corresponding set of keys and an invoice.

Amazon has offered to cover Mr Haberstroh's bill, but claims Alexa didn't malfunction. Rather, it was remotely activated by the customer's third-party mobile music-streaming app.

GREASED LIGHTNING

A naked man, high on LSD and covered in cooking oil, has been arrested after getting Tasered twice, the New York *Daily News* reports.

According to the court complaint, police arrived after receiving a call about a man inside his family's home who was on drugs and "assaulting everyone in the house".

When authorities approached the residence in Apollo, Pennsylvania, the man reportedly came smashing out of the front door, naked and screaming. After running through the snow, the nude 19-year-old approached the vehicle that his family was hiding in, and the police Tasered him. "Due to the icy conditions, no officers could get to him in time and he just kept rolling on the ground until he pulled the wires off of the Taser," the report states.

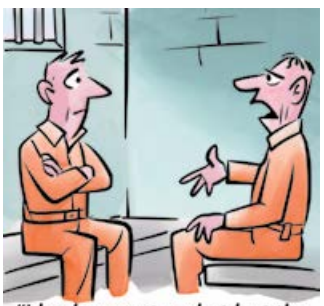
The suspect managed to get back inside the home where officers confronted him. "Due to him being naked and covered in cooking oil, attempts to gain control were difficult," the report states, though they were eventually able to make the arrest.

FLYING BY THE SEAT OF HIS PANTS

Portuguese police have detained a man at Lisbon international airport, accused of carrying a kilo of cocaine inside "a fake arse", *The Journal* reports.

The police described finding the "considerable amount of cocaine" within concealed pouches inside the man's shorts. They also arrested a second individual who was set to be the final recipient of the product at the train station in the city.

Police said: "If it came to illicit distribution channels, the cocaine in question would be sufficient for at least five thousand individual doses."



"I had a great racket but the bottom fell out of it."

GETTING THE HUMP

Twelve camels were disqualified from Saudi Arabia's annual camel beauty contest – yes, you read that right – after receiving Botox injections, *The Guardian* reports.

The event has been mired in scandal after the lure of $31.8m in prize money tempted some owners to cheat.

The key attributes in camel beauty are considered to be delicate ears and fulsome snouts. But there are strict rules against the use of drugs in the lips.

The month-long festival is the biggest in the Gulf and involves up 30,000 camels.

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Should you require further information about any of these roles or have any other legal recruitment requirements, please contact Michael Minogue, Manager of Brightwater Legal on **m.minogue@brightwater.ie** in the strictest confidence.
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With a well-established office in Dublin employing approx. 45 people, the Dublin partners are working on large scale international transactions and are looking for a number of high calibre and highly motivated people in the following roles:

Banking Associate/Senior Associate: 5 years PQE

Our banking partners in Dublin are looking to strengthen the team through hiring an associate/senior associate. Understanding client requirements and providing practical answers to problems whilst ensuring best practice and technical accuracy at all times is crucial in this role. The successful candidate will form a key part of a busy team and will gain experience in all forms of general corporate lending, real estate finance, acquisition finance, project finance and development finance.

Commercial Property Associate/ Senior Associate: 5 years PQE

We are also seeking to recruit a commercial property associate/ senior associate in our property team in Dublin. Candidates will have gained a broad range of real estate experience during their training and post qualification experience - ideally in sales and acquisitions, commercial lettings, landlord and tenant issues, property development and real estate finance. Candidates should be able to demonstrate a drive to succeed, an enthusiasm to engage with clients and an interest in the Irish property market.

Corporate/Projects Associate: 3 years PQE

In this role you will be involved in providing sophisticated legal advice to leading (inter)national companies. We can offer access to high-quality work from corporate and private equity clients operating across a variety of sectors; including general commercial and sector specific areas such as energy & infrastructure. We offer direct client contact and look to our associates to win the trust of these clients by focusing on excellence in client delivery. The ideal candidate will have strong technical expertise and transactional experience and interest in M&A, corporate finance and governance.

To apply please email recruitment.enquiries@dwf.law

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