Hell no, we won't go!
The plan to introduce conscription in Ireland in WW1 – and its failure

Private investigations
Fundamental changes in conveyancing practice are coming down the track

Magic roundabout
The test in Irish law for granting mandatory interlocutory injunctions

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STAIRWAY TO HEAVEN

The process of getting a case to the Supreme Court

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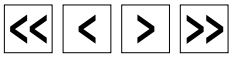

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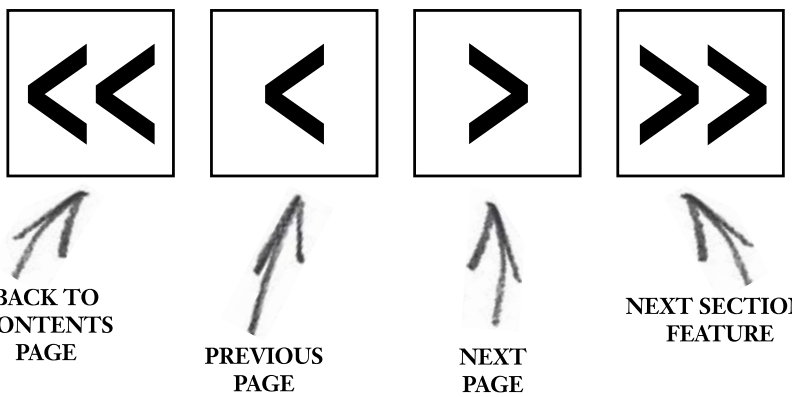

... enjoy

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IMPORTANT NOTE ON PAGE VIEW

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

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

How it works

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

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

Eligible claims

Claimants may avail of the ADR Process if:

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

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

BRINGING DOWN THE CURTAIN

This time 12 months ago, my predecessor Stuart Gilhooly handed the Law Society's chain of office to me. It's a day I remember clearly and, as you read this, the same chain of office is being handed over to my successor, Patrick Dorgan from Cork. I have had the great privilege of being your president during this past year, which has passed extremely quickly and been so enjoyable.

I travelled throughout the country, meeting as many colleagues and with as many bar associations as possible in the given time frame. I also attended cluster meetings and chaired them. These have proved to be a fascinating and excellent learning forum. The 12-month term passes extremely quickly, so I hope that my messages at meetings and in the *Gazette*, as well as the themes I pursued throughout the year, have been of some benefit to my colleagues.

Personal well-being

I have consistently highlighted the importance of personal well-being, a message that has garnered many positive responses from our members. I would urge you, both as employers and employees, to continue to look after yourselves. A healthy, clear mind makes one a better solicitor and, as a result, a better professional advisor to your clients.

I followed the tradition of visiting as many of the large law firms in Dublin as I could. I found them to be inspirational, and highly engaged in the Society and the educational facilities we provide. The Education Centre works tirelessly to ensure that our solicitors are among the most knowledgeable and best informed practitioners in the country.

Further afield, I represented the Society at the Law Society of Northern Ireland annual dinner, and have built a strong rapport with its president, Eileen Ewing. Traditionally, the Law Society of Ireland visits our counterparts in Scotland, and England and Wales, and we continue to meet twice a year to discuss matters of mutual interest.

Highlights

A number of highlights during my year included the Council Dinner during the summer, which gave me an opportunity to highlight some themes of my presidency. That was a particularly gratifying time for several colleagues, with the appointment of the Society's past-president James McCourt to the Circuit Court, Michael Quinn to the High Court, and Eirinn McKiernan to the District Court. Appointments of solicitors of such calibre to the bench are to be applauded.

I also represented the Society at meetings with the Bar – a good relationship with the Bar of Ireland and our barrister colleagues in the Law Library is fundamental to good practice. In that regard, I would like to thank Paul McGarry and Micheál P O'Higgins for their kind assistance during the year.

Closer to home

Your Council members have provided great support to me and the Society during my presidential term. They are all extremely active, as are the committee members, and I thank them for their collaboration.

Incoming president Patrick Dorgan, senior vice-president Michele O'Boyle, and junior vice-president Dan O'Connor face numerous challenges during their term, and I ask you to lend them your wholehearted support.

Finally, I extend my gratitude to all of you who have played a vital role during my tenure as president, specifically my friend of over 30 years, director general Ken Murphy, and deputy director general Mary Keane – now friends for life; my secretary in the Law Society Jessica Fay; and my secretary in my practice, Marion, who saw me only sporadically throughout the year. I thank her and my son Michael for keeping the ship afloat. g

> THE IMPORTANCE OF PERSONAL WELL-BEING GARNERED POSITIVE RESPONSES FROM OUR MEMBERS

MICHAEL QUINLAN,
PRESIDENT

gazette
LAW SOCIETY

COVER PIC: NUALA REDMOND/SHUTTERSTOCK

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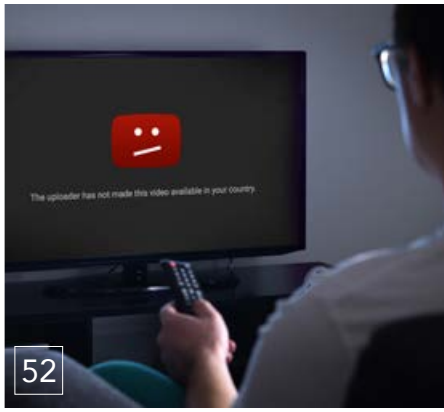
HAVE YOU MOVED? Members of the profession should send change-of-address details to: IT Section, Blackhall Place, Dublin 7, or to: customerservice@lawsociety.ie



FEATURES

REGULARS

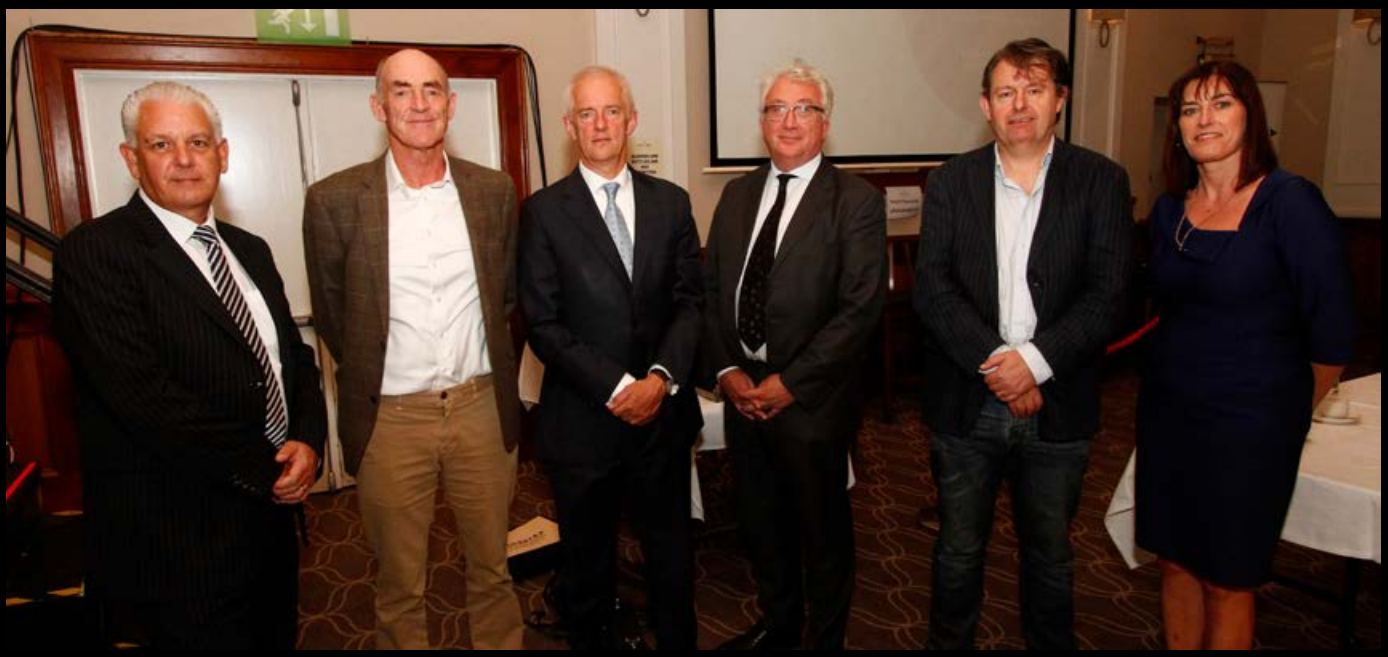
THE BIG PICTURE

PIC: EPA-EFE/JEAN MARC HERVE ABELARD

HAITIAN FIGHT SONG

A member of the National Palace's music band shelters under a truck as a riot breaks out during the commemoration of the 212th anniversary of the murder of Jean Jacques Dessalins, in Port-au-Prince, Haiti, on 17 October. Several individuals threw stones during the commemoration event at the Dessalins monument for the founding father of Haiti, to which presidential security responded by opening fire

MONAGHAN CLUSTER EVENT



At the Finuas Skillnet Cluster in Monaghan on 12 October were *(l to r)*: Kevin Hickey (Barry Hickey & Henderson Solicitors, Co Monaghan), Michael Staines (Michael Staines and Co Solicitors, Dublin), Philip Lee (Philip Lee Solicitors, Dublin), Michael Lanigan (Poe Kiely Hogan Lanigan, Kilkenny), Pearse Duffy (Patrick J Cusack & Co, Co Cavan) and Mary McAveety (McAveety McKenna Solicitors, Co Cavan)

Speakers and organisers at the Finuas Skillnet Cluster event in Monaghan were *(front, l to r)*: Lynda Smyth, Conor MacGuill, Justine Carty, Michael Lanigan, Mary McAveety and Michael Staines; *(back, l to r)*: Kevin Hickey, Katherine Kane, Pearse Duffy, Attracta O'Regan, John O'Shea, Catherine MacGinley and Philip Lee

Eimear Hall, John Heeney and Paula Tiernan

Sinead Clarke, Grainne Dolan and Rory O'Neill

Seamus Mallon, Noelle Cantrell, Pierce O'Sullivan and Kevin Hickey

Michael Lanigan (Poe Kiely Hogan Lanigan, Kilkenny)

ALL PICS: GLENN MURPHY PHOTOGRAPHY

Christopher Quinn, Linda Smith, Edel Treanor, Claire Gormley, Roisin Doherty and Donna Crampsie

Michelle Flanagan, Kathleen Gibbons, Eimer Houlihan, Helena Gray, Oliver Costello, Pauline Barry, Paul Boyce and Ann Skinnedar

THEN GOD SAID TO NOA

The *Law Society Gazette* has made a major leap forward with the launch of its new narrated journalism service. Time-sensitive consumers can now stay informed on their favourite legal topics by listening on their mobile devices or desktop computers.

Law Society members and *Gazette* subscribers can listen to the magazine's main features being read to them by professional voice artists. The service is provided in collaboration with News Over Audio (NOA) – the global leader in narrated journalism. Simply download the 'NOA: Journalism narrated' app, or visit newsoveraudio.com.

The *Gazette* joins other illustrious publications such as *The Economist*, *The New York Times*, *Financial Times*, *Bloomberg News* and *The Irish Times* in rolling out this service to readers.

STOP EXTRADITION-BLOCKING – CJEU

Ireland should stop obstructing British extradition requests on Brexit grounds, according to the Court of Justice of the EU.

The court recently ruled that that refusing to execute a European arrest warrant can only be justified in exceptional and strictly interpreted circumstances.

The CJEU says that notification of British intention to withdraw from the union is not an 'exceptional circumstance' that merits a refusal to execute an EAW.

Refusing to execute an EAW would "constitute a unilateral suspension of the provisions of the *EAW Framework Decision*". Britain remains a party to the *European Convention on Human Rights* – and its participation is not linked to EU membership.

SAY IT, DON'T VOCALISE IT

Declan Black (Mason Hayes & Curran), Conor Pope (*The Irish Times*) and Inez Bailey (NALA)

Mason Hayes & Curran has joined with the National Adult Literacy Agency to launch the second Irish Plain English Awards, which reward organisations that communicate clearly.

The principles of plain English include avoiding jargon and overly technical language, knowing who your audience is (including potential clients), keeping your tone personal and direct, keeping your language simple, and using shorter sentences.

Building on the success of the first awards in 2016, this year's awards programme has five new categories, including one for the public called 'Best letter or email rewritten in plain English'.

SCOTTISH LAWYERS THREATENED AT WORK

A third of criminal defence lawyers in Scotland have experienced threatening behaviour in the course of their work, research has found. Another quarter has had threatening communications, according to the Law Society of Scotland.

Most incidents happened either at the solicitor's office or at court. Clients or former clients were in the frame for over 60% of the incidents.

Family lawyers were also exposed to bad behaviour, with one-quarter having been attacked, while half had experienced threatening conduct.

DUBLIN HOUSE BECOMES 'FIRST PROPERTY IN THE WORLD' SOLD THROUGH AI

Four bidders entered an auction room on Friday 5 October to buy a detached house on Sweeney's Terrace in Dublin. The auctioneer ran the process as usual, greeting the bidders, interacting with them, and encouraging offers by lowering the bid increments. Around 20 minutes later, the auctioneer closed the sale to the winning bidder for €345,000 – well above the €250,000 guide price. This wouldn't normally be news, except only the bidders and the house were real. The room was virtual, and the auctioneer was computer code.

An artificial intelligence (AI) tool controlled the entire auction process, which took place in real time – unlike other existing auction sites like eBay, for example.

"As far as I'm aware, we're the first in the world to use AI technology for a property auction," says Gary Jacobs, director of property firm Allen & Jacobs, which handled the sale.

One location

The online auction platform, called 'clicktopurchase', had a section containing all of the legal documents relating to the property. This meant there was one location where bidders' solicitors could check the deeds, removing the need to send physical copies by post or courier. If a bidder wanted to offer, they asked their solicitor to verify their identity and, once that happened, they were allowed into the auction room.

Neil Singer (clicktopurchase CEO): 'Lawyers will still have an invaluable role'

There was no initial deposit required at the auction stage, but the transaction became legally binding once the offer was accepted. Following the sale, there was a 48-hour period for the winning bidder to pay 10% to the vendor's solicitors. All of the parties involved in the sale digitally signed the contract to make it legally binding. According to Jacobs, all of the other paperwork, such as transfer of title deeds, still happens in the traditional way.

Tamper proof

"Because the transaction is done electronically, it is completely beyond manipulation of any sort," says Neil Singer (CEO of clicktopurchase), which developed the AI tool. "There is absolute proof of the transaction taking place at €345,000. For the bidder, buyer and seller, it is completely transparent. Everyone can see the process."

Clicktopurchase recorded the transaction on a private blockchain, which is a tamper-proof digital database.

Jacobs says there were two main benefits to handling the auction online with AI. "Online can be used anywhere, and the bidder can be anywhere in the world. There's no big paper trail where you have people requesting documents from solicitors. Everything is online to be dissected by the other party, and at that point they decide to bid or not," he says.

Jacobs says he would definitely use the technology again. "It gives transparency and also speeds up the conveyancing process. The feedback we got was that people liked the convenience of it, and the fact they didn't have to take two hours out of their Friday afternoon to come to an auction room in the city centre."

Looking to the future

Singer believes that AI can work to solicitors' benefit. "The role of solicitors in checking ownership will be removed going forward, thanks to blockchain, but it will not mitigate their requirements to interpret the legalities around the property. Blockchain is all about absolute proof and trust – as soon as the title registers are tokenised [a digital code represents each title], ownership of title will be recorded in one's digital wallet. It will be like opening your physical wallet and showing someone your €20 note inside. This will show absolute proof of ownership – and this is where the solicitor's role in checking that someone owns a property they wish to sell will be removed.

"The solicitor will still need to interpret the title in advising a buyer, but their role will be easier, faster and more efficient. Lawyers will still have an invaluable role. Digital signatures and blockchain will simply make it far easier to transact."

The technology could also open up new avenues of business for solicitors beyond just conveyancing – for example, they could make an AI tool and online auction room available to clients.

NEW DIPLOMA CENTRE COURSES OFFERED FOR AUTUMN

A new Diploma in Advocacy Skills starts on 15 November, in a collaboration between the Law Society's Diploma Centre and the National Institute for Trial Advocacy (NITA). NITA is the leading provider of legal advocacy skills training in the US. Its advocacy trainers, alongside Irish subject-matter experts, will use dynamic interactive teaching methods to lead participants through this five-day course. The closing date for applications is Thursday 8 November.

A new Certificate in Agribusiness and Food Law has also begun, from 20 October. Participants will gain an insight into the legislative and regulatory structures that apply to the sector, together with an analysis of recent case law. Late applications are accepted, but confirmation of course registration may take a number of days, as the deadline has passed.

To find out more and book your place, visit www.lawsociety.ie/diplomacentre.

THE CHANGING CORPORATION TAX LANDSCAPE

The Department of Finance published its *Budget 2019 Tax Strategy Group (TSG) Papers* on 31 July, *write Anne Harvey and Sonya Manzor (William Fry)*. Although the TSG has no decision-making powers, its *Corporation Tax* (TSG 18-01) paper provides useful insights into the issues under consideration as part of the 2019 budgetary process.

The paper discusses the forthcoming corporate tax changes required by the EU *Anti-Tax Avoidance Directive* (ATAD). While the topics covered are not new, they are a reminder of the significant legislative amendments that Ireland will implement in the coming years, and which will certainly increase complexity for companies.

The process of implementing ATAD starts with the release of *Finance Bill 2018*, as some measures are required to become effective on 1 January 2019. The following is a summary of some of the key changes.

CFC legislation

Ireland is required to introduce controlled foreign company (CFC) legislation for the first time, with effect from 1 January 2019. CFC rules tax the profits of overseas subsidiaries before they are repatriated, representing a significant development for multinational companies.

The ATAD provides member states with options in relation to the implementation of the CFC rules. Ireland has signalled its intention to elect for the option that broadly seeks to tax undistributed income arising from non-genuine arrangements. Most multinationals will welcome this approach, and it is also the OECD-endorsed option. Helpfully, Ireland may also adopt relieving provisions, such as introducing a small profits and low-profit margin exemption.

Also, 1 January is the implementation date for the ATAD'S fixed-ratio interest limitation rule (which essentially will limit a taxpayer's interest deduction to 30% of their earnings before interest, tax, depreciation and amortisation). However, member states can defer implementation to 1 January 2024, at the latest, where their existing rules are "equally effective" to the ATAD interest limitation provisions.

Ireland has notified the EU Commission of its intention to defer the implementation of the measures, arguing that our interest deductibility rules are "equally effective". However, the paper suggests a strict interpretation of "equally effective" by the commission, such that only a ratio-based approach is acceptable, and states that it is "unclear as yet if agreement will be secured in relation to the derogation".

As the timing of the OECD's work on interest deductibility may be accelerated, a consultation on the interest limitation ratio rule and the 'linked' issue of hybrids will be undertaken by the Department of Finance in Q3 of 2018 (anti-hybrid rules are designed to deal with the differences in tax treatment of an entity or instrument in two or more countries that results in no tax in both countries).

Irish tax legislation currently provides for an exit tax on companies transferring their tax residence out of Ireland, subject to an exemption.

However, the ATAD requires a much broader regime that will impose a tax charge on all unrealised gains of migrating companies and assets transferred abroad – including transfers between a head office and its branch – with an effective date no later than 1 January 2020. The ATAD does not contain an exemption.

The broadening of the exit tax rules, combined with our high rate of capital gains tax (33%), is unwelcome. Helpfully, the paper notes that respondents to the Coffey consultation recommend that Ireland should reduce the rate of tax applicable to gains on the disposal of trading assets to 12.5%.

Losses

Another issue of particular interest to both indigenous and multinational companies will be the discussion on Ireland's loss relief rules. Although the primary focus is on banks, it does reference a wider proposal that could limit the benefit of losses for all companies.

Other measures

The paper signals Ireland's intent to complete the ratification process of the multilateral instrument before the end of the year. The EU Commission's ongoing work on the common consolidated corporate tax base and digital tax is also referenced, noting Ireland's commitment to engage in the commission's work, despite its disagreement with the proposals.

NEW PARTNERS FOR SLIGO-BASED FIRM

Callan Tansey Solicitors has appointed two new partners. Joint managing partner Roger Murray said: "It is with great pleasure that we announce the appointment of Caroline McLaughlin and David O'Malley. Both Caroline and David trained in our Sligo office and have a combined 25 years of experience. In Caroline and David, we have two of the very best to help us drive the firm forward over the coming years." Pictured are: Roger Murray and John Kelly (joint managing partners), Brian Gill, Niamh Ni Mhurchu, Christopher Callan and John Duggan (partners), with *(front)*: Caroline McLaughlin and David O'Malley

ENDANGERED LAWYERS

NASRIN SOTOUDEH, IRAN

Nasrin Sotoudeh (55) has been on hunger strike in prison in Iran since late August. She is a well-known human rights lawyer who was imprisoned, not for the first time, in June 2018. In 2010, she was jailed for 11 years on security-related charges (propaganda against the regime, acting against national security). This was reduced to six years, and she was released in 2013, ahead of President Hassan Rouhani's visit to the UN, shortly after he was elected with promises of liberalisation.

Nasrin has represented prominent opposition activists, publicised the execution of minors, protested acid attacks on women and other violations of human rights, and more recently has defended women arrested for refusing to cover their hair in public. She and her husband Reza Khandan, also a lawyer, have two teenage children. While she was first imprisoned, her husband and 12-year-old daughter (her son was only four) were subjected to harassment by officials, brought to court, and forbidden from leaving the country. Visits by her children were often thwarted, and both her parents died while she was in prison. She eventually went on a 50-day hunger strike at being deprived of her rights, including access to her lawyer and family visits.

More recently, Nasrin has been an outspoken critic of the hard-line Iranian judiciary. She protested against 20 hand-picked lawyers being panelled to defend security-related cases, out of 60,000 licensed lawyers in Iran. After widespread objections, the judges said they would expand the list, though still retain it.

In June 2018, she was taken from her home in Tehran and told that she had been convicted *in absentia* and would be serving five years. It appears the charges were 'propaganda against the state', 'assembly against national security', and 'espionage'. Three new charges were filed: 'urging a referendum', 'assisting in the formation of house churches', and 'organising protest rallies'.

Her husband was arrested in early September on similar charges. Unless she has since come off her hunger strike, she must be in a very weakened and imperilled condition.

Anyone wishing to show support for Nasrin can write to her at Evin Prison, Tehran Province, Tehran, District 2, Iran. Her husband, Reza Khanda, is also held there, and could also benefit from moral support.

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

GIANT LEAP FOR DUBLIN

LEAP's Peter Baverstock *(right)* and John Donigan announce the opening of their Dublin office

LEAP, the leading global cloud software provider for small to mid-sized law firms, has expanded into Dublin. Having operated in Northern Ireland for the past 18 months, the company now has an office in Pembroke Street Upper. The unit is headed by LEAP sales manager for Ireland, John Donigan.

The company says its main aims are to help Irish law firms to streamline their processes and increase their profits. LEAP's tailored product includes a library of over 1,000 highly automated Irish legal forms and precedents across the most common areas of law, with up-to-date legal rates and charges applied.

They also offer a mobile app, meaning that lawyers can manage their matters accurately, time-record, dictate, draft, and edit documents on the move.

Security is paramount to the company – its servers are based in Dublin and data is protected to the AES-256 military-grade encryption standard. This ensures data integrity for law firms in Ireland, with no client data leaving the country.

Peter Baverstock (LEAP CEO, Britain and Ireland) says: "Across Britain and Ireland, we have recently reached the milestone of 10,000 users. We put our success down to our continued investment in developing the product, and our commitment to working with new markets, such as Ireland. The positive reaction that our team in Dublin has already received on demonstrating the software is incredibly exciting and testament to all the hard work that our staff have put in to the launch."

Mark Hession (Hession Solicitors, Limerick), comments: "LEAP gives me instant 24/7 access to all my files, so whether I'm in the office, in court, at home, or on holiday, it allows me to work when my clients need me. There's always constant pressure to bring fees down; however, I find the cost and time-recording function in LEAP has helped me to produce very detailed recordings of my work. I find that helps to ease the negotiation of fees."

78% OF LIBRARY ENQUIRIES ARE FROM SMALL FIRMS

Recent analysis of Law Society Library services has shown a pattern of strong use by sole practitioners and by small firms in the two-to-five solicitor categories. The analysis covered the January-September 2018 period and included a wide range of enquiries where book loans, precedents, journal articles and other documents were supplied to members.

The results show 1,581 enquiries from 1,438 members (645 firms). A further 1,895 enquiries were dealt with during the period. These enquiries came from members or other contacts within law firms and did not incur charges. They were answered over the phone or by email and are not included in the statistical analysis.

January to September 2018

Size of firm	% Enquiries
1	25%
2-5	53%
6-10	11%
11-30	6%
31-60	3%
61-100	<1%
101+	>1%

The Law Society Library is your library, and we encourage you to use it as a resource support for your research.

A large volume of materials is provided via the online catalogue. The service aims to have a quick turnaround time for document delivery by email, while legal textbooks travel to firms all around the country via the DX-tracked courier service.

Contact the library at email libraryenquire@lawsociety.ie, tel: 01 672 4843/4.

JUDGE CRITICISES 'LITIGATION FATIGUE'

Court of Appeal judge Marie Baker has criticised the debate around the recent Personal Injuries Commission report on damages as negative, because it presents a so-called 'litigation culture' as if it were a bad thing. She said some of the discourse seems to suggest a certain 'litigation fatigue'.

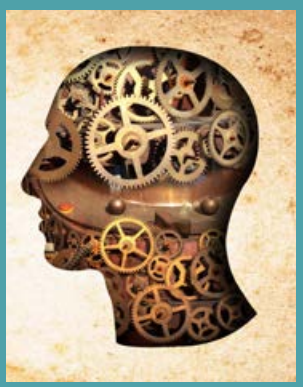
However, the law of negligence and the rule that one is entitled to compensation is "as old as time", Mrs Justice Baker declared. "If you live in a society and a member of society injures you, it is part of being a citizen that you are restored, insofar as you can be, to the position you were in," she told the Pathways to Progress Medico-Legal conference at Markree Castle in Sligo on 20 September.

She also said that the lack of a dedicated list in the High Court to deal with complex medical negligence issues was "highly undesirable".

The conference, organised by Callan Tansey solicitors, heard several calls for a dedicated High Court route for complex medical negligence cases. The firm's managing partner, Roger Murray, criticised the casual use of the term 'compo culture' in debate and said recent medical injury events suggested more a culture of silence and indifference.

WORKPLACE WELL-BEING

HOW TO BE HAPPY



About a year ago, I invested in a series of beautifully crafted and pleasingly small books. They arrived in a bundle and in a range of attractive colours: French navy, fizzy orange, baby pink, mushroom taupe. Ready to be assimilated into the lives of busy professionals. The series is published by The School of Life (TSOL) – a particularly clever concept established in London by philosopher Alain de Botton. Now a global organisation, TSOL is dedicated to developing emotional intelligence in businesses and in individuals by integrating psychology, philosophy and culture. The series deals with the particularly common dilemma of 'how to' lead a contented life. So we have *How to Find Fulfilling Work, How to Stay Sane, How to Be Alone* (yes – apparently, our fast-paced society does not approve of solitude) and, for the ambitious among us, *How to Change the World.*

The gap between purchase and action, however, seems to be widening, and the books now sit slightly less colourfully, somewhat accusingly, and entirely unread on my shelf. This inaction captures the heart of the matter. We often hope that happiness can be delivered to us, that it lies in the bright and shiny things. We imagine that mastery is learned through the wisdom of others, that change is driven by external forces. That we can soak up a capacity for happiness – from something, from someplace or, perhaps most fatally, from someone. Yet if we are truly honest with ourselves, we do know better.

Becoming happy is a deeply personal and lifelong process, the complexities of which are largely played out internally, invisibly, existentially. And yes – reading good books will for many of us nudge us along the path. As will the stimulating thoughts and ideas of others. Our relationships will also sustain us and, if we are fortunate, comfort, embolden and enliven us. But nothing offers contentment as reliably as coming into an accepting relationship with our inner selves. When we stop seeking to improve ourselves and begin instead to accept ourselves, the rewarding paradox is that we release the possibility of change. So remember: you are enough.

As the Sufi poet Rumi writes:
'You wander room to room
Hunting for the diamond necklace
That is already round your neck.'

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

HIGH COURT CHILD CARE CASES GO UNREPORTED

The Child Care Law Reporting Project (CCLRP) has applied to be readmitted to the High Court to hear youth detention cases.

The High Court has heard cases relating to two vulnerable children with complex needs, while the District Court has heard a further three, according to the project's latest report. The courts continue to remain preoccupied with finding suitable placements for such children, who often present with both mental and physical ailments, the report says.

However, the CCLRP is prevented from attending secure care cases of children requiring detention in the High Court. The *Child Care (Amendment) Act 2011* earlier this year put on a statutory basis the regime for dealing with children requiring secure care, which previously had been dealt with by the High Court under its own inherent jurisdiction. The CCLRP has made an application to the court to be permitted to attend under the High Court's own jurisdiction, and is awaiting a judgment on this application.

No suitable placement

The latest report details 30 individual files where drug and alcohol abuse, mental illness, and learning disabilities continue to feature in the lives of children.

In the two High Court cases, the youngsters concerned had been in specialist centres in Britain, but were due to return to Ireland as they turned 18, and no suitable placement could be found for them here.

In one case of a mother with a learning disability, the High Court was asked to answer questions from the District Court judge as to the extent of his jurisdiction to direct the Child and Family Agency to carry out an assessment of what supports the mother would require to allow her to care for her child. The High Court declined to answer the questions posed, because there was no finding of fact on which to base the legal guidance being sought.

CCLRP director Dr Carol Coulter said that it was very concerning that there was no solution in sight for the placement of very disturbed young people. "The ad hoc way in which this is currently dealt with is both wasteful and highly stressful for these vulnerable young people and those who care for them," she said.

Carol Coulter: 'Very concerning that there is no solution in sight'

Good outcomes

She acknowledged good outcomes for many youngsters who had less complex problems and who had come into the care of the State.

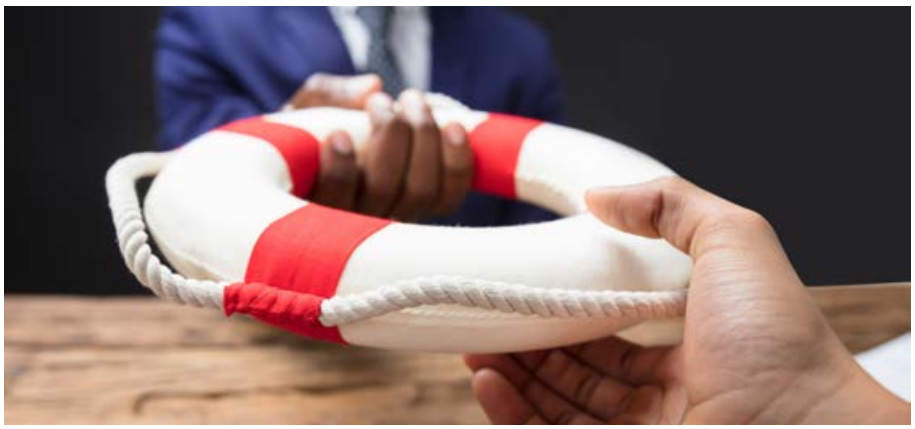
One such boy is preparing to enter third-level education after three years in foster care with a relative, the report said.

Child sexual abuse continues to feature in a minority of cases, which are usually very prolonged in duration. One such case began in January 2016 and has further hearings scheduled for November 2018.

Another also began in 2016 and concluded three months ago, but no judgment has been delivered as yet. A report on these lengthy and complex cases was published by the CCLRP in June and is available on its website, www.childlawproject.ie.

Two cases concerned families from other EU countries, where they had faced child protection proceedings, including one where the parents fled to Ireland with a young baby when care proceedings were mooted in Britain. In both cases, the issue of which country had jurisdiction to consider the matter was being considered by both the District and the High Court simultaneously.

THE SBA – A WORTHY CAUSE



In the past year, the Solicitors' Benevolent Association (SBA) has paid out €717,000 in grants to 84 people, *writes Geraldine Pearse* (secretary, SBA). Beneficiaries ranged in age from 20 to 98 years. In addition to those directly in receipt of grants, 28 of those had children less than 18 years of age or in full-time education. The total number of children indirectly assisted was 51.

There are currently 19 directors of the SBA from all over Ireland (north and south) – it's a 32-county organisation and the directors provide their services on a voluntary basis. They regularly review all cases and often meet those in receipt of grants in person. Their advice at meetings is invaluable, as they can provide local information. A review may result in a decision to continue, discontinue, increase or decrease a grant.

Applicants are asked for a statement of their monthly income and expenditure, together with a statement of their assets and liabilities. Entitlement to State payments will be taken into account when deciding on applications.

The level of grant is decided on individual circumstances. Grants may be in the form of a regular monthly payment or a single payment. Since 2000, the SBA has paid grants on a loan basis where there are assets that may be realised at a later date. Since 2002, the SBA has been repaid a total of €222,000 in such circumstances.

Beneficiaries often state when making an application that they never envisaged having to apply for assistance. Under the rules of the association, assistance may be given to those in need who are members of the SBA or former members of the solicitors' profession in Ireland and their immediate dependants. Members are defined as those who pay the subscription.

Accordingly, solicitors, whether practising or retired, are encouraged to pay the annual voluntary subscription in the knowledge that they are helping their colleagues and their dependants who have fallen on hard times for whatever reason – and in the unforeseen event that they may need to call on the SBA in the future, on their own or their families' behalf.

Who does the SBA assist?

- Brian had his own practice and had sufficient income until the recession hit. His practice was no longer viable and he had to close. He was unable to support his family.
- Maria was widowed at the age of 45 when her husband, who was a solicitor, died suddenly. She was unable to support her children, who were in college and required financial assistance until they were in employment.
- Joan was working for a large firm until she was diagnosed with a serious illness and had to resign from her employment. She returned to live with her parents, who were not in a position to support her.
- Vincent was a partner in a practice and was forced to retire when he was diagnosed with a long-term illness.
- Anne was in treatment for an illness that made her unable to work and sought assistance until her treatment was finished and she could return to work.

Note: names have been changed to protect the identity of individuals.

FOCUS ON MEMBER SERVICES

PLANNING YOUR JOURNEY TO RETIREMENT

The Law Society Retirement Trust Scheme is designed with the needs of Law Society members in mind. You choose how much and how often you contribute to the scheme. You choose how to invest your contributions. When it comes to retiring, you decide how and when you would like to receive your benefit.

Changes have recently been made to the investment options available, which are designed to make investment decisions easier for scheme members. A new 'lifestyle strategy' enables members to automate the investment of their retirement account, such that growth is automatically targeted when they are younger, and a more conservative approach is adopted in the years leading up to retirement.

If you use the lifestyle strategy, your retirement account will, when retirement is distant, be invested in the Law Society Managed Fund – a medium-high risk investment that aims to deliver long-run investment growth. As you approach your chosen retirement age, the investment mix of your retirement account will gradually and automatically change.

Ultimately, the investment profile at retirement is intended to be suitable for someone planning to take a portion of their retirement account as a retirement lump sum, while keeping the balance of their benefits invested after retirement through an approved retirement fund.

When can I retire?

The scheme provides you with the flexibility to choose a retirement age between age 60 and 75. The lifestyle strategy allows you to indicate a non-binding target retirement age in advance between these dates: this means that the timing for risk reduction within the lifestyle strategy can be tailored to suit you.

The Retirement Trust Scheme is an ideal vehicle for making such a contribution. The scheme offers all the flexibility of a personal policy and, in addition, offers a number of enhanced features, including a simple and transparent charging structure and best-in-class investment management. There are currently four fund offerings available to Law Society members under the scheme (in addition to the lifestyle strategy), which the investment committee is confident represents a high-quality retirement and tax-saving solution to members.

If you are already a member of the Retirement Trust Scheme, information regarding the plan is available on Mercer Oneview at www.merceroneview.ie. If you are not currently a member and want to find out more about the plan's benefits, visit www.lawsociety.ie/memberbenefits. You can also contact the JustASK helpline at 1890 275 275 or email LawSocietyRTS@mercer.com for further information.

The scheme is governed by an independent trustee, with assistance from the Society. The scheme has a transparent charging structure involving an annual management charge applicable to each investment option: there are no initial charges deducted from contributions paid, or applied to any transfer in or out of the scheme.

As a member, you will have online access to your retirement account, which allows you to view your contribution history, access your retirement plan, view and make changes to your investment choices, monitor fund performance, and update your contact details.

Tax deadline

The deadline for final tax payment for the 2017 tax year under the self-assessment system is fast approaching. One way to reduce your tax liability is to make a contribution to an approved pension arrangement, such as that offered by the Law Society, before the deadline.

If you can afford to put some money into a pension fund, you will be able to claim income tax back of up to 40%, depending on your tax bracket. You can still create a tax refund for 2017 by putting money into a pension scheme and submitting a claim to Revenue before 31 October 2018 (extended to 14 November 2018 if you submit your return online).

THE HONORARY CONSUL

Solicitor Gerald Kean has been appointed Honorary Moldovan Consul to Ireland. The appointment was formalised and confirmed recently by the governments of both countries. Kean was previously the Honorary Chilean Consul to Ireland, up until Chile opened its Dublin embassy.

The Dublin solicitor recently arranged a donation of €2.4 million with his friend Alvaro Blasco, solicitor, to Barretstown, which offers free, specially designed camps and programmes for children and their families living with a serious illness. The children are supported behind the scenes by 24-hour on-site medical and nursing care.

In recent years, he has raised €0.25 million for various charities through concerts, supported by artists like Aslan, The Hot House Flowers, Sinead O'Connor, The Stunning, Mundy and Ryan Sheridan.

COMPILED BY KEITH WALSH, PRINCIPAL OF KEITH WALSH SOLICITORS

DUBLIN

VENICE BAR ASSOCIATION HONOURS DSBA PRESIDENT

This year's DSBA annual conference, hosted by president Robert Ryan, took place in the 'Floating City'. When not engaged in legal topics on practice management, negligence, and mental capacity issues, delegates were free to explore Venice and appreciate why the city is titled 'Queen of the Adriatic'. Conference speakers included Michael Mulcahy SC, Niall Cawley and Joan Doran.

DSBA president Robert Ryan makes a presentation to Tommaso Bortoluzzi (vice-president, Venice Bar Association) during the DSBA conference in Venice

Over 120 solicitors attended the CPD element of the conference, which took place in the offices of the Venice Bar Association. At the annual conference dinner on 22 September, Tommaso Bortoluzzi (vice-president of the Venice Bar Association) presented the DSBA president with a silver medal coin known as an 'osella', a replica of the rare medal awarded by the Doge of Venice to honoured citizens of the city.

At its AGM on 24 October, the DSBA elected Greg Ryan as president. Greg is a well-respected and popular practitioner who has been a council member of the association for many years. Tony O'Sullivan (Beauchamps) was elected vice-president.

MONAGHAN PROVES MAGNETIC FOR CPD DAY

One of the most recent Finuas Skillnet Clusters took place in Monaghan's Glencarn Hotel on 12 October. The event was presented in partnership with the bar associations of Monaghan, Cavan, Drogheda, and Louth.

Participants received updates on a wide variety of topics, including a PRAI update from John O'Shea, which also included practical tips on first registration. Sean Sexton spoke on professional negligence, complaints, and Revenue audits.

Accounting compliance was covered by Jim Kelly and Alan Wilkie, while Michael Staines and Philip Lee discussed growing a firm in a competitive market, and gave an overview of general and criminal litigation law and practice.

Declan Brannigan, Sinead Creighan, Catherine Allison, Barry O'Hagan and Adrian Ledwidge

Keith Walsh focused on the practice and case law regarding judicial separation and divorce, cohabitants and pre-nuptial agreements. Michael Lanigan and Alan Seery rounded off the day with a presentation on planning for the future.

The Finuas Skillnet team is holding other cluster events in Mayo, Dublin, Cork and Kilkenny. Details, including topics, CPD hours and speakers, can be found at www.lawsociety.ie/skillnetcluster.

FIANNA FÁIL FRONT BENCH VISITS BLACKHALL PLACE

ALL PICS: LENSMEN

(Front, l to r): Senator Lorraine Clifford Lee, Micheál Martin TD, President Michael Quinlan, Dara Calleary TD, and Senator Catherine Ardagh; *(back, l to r)*: James Cahill, Michele O'Boyle (both Coordination Committee), Ken Murphy (director general), Jack Chambers TD, Stuart Gilhooly (immediate past-president), Mary Keane (deputy director general), Thomas Byrne TD, Frank O'Rourke TD, and Patrick Dorgan (senior vice-president)

The Fianna Fáil leader Micheál Martin was the guest of honour at a dinner in the President's Suite in Blackhall Place on 3 October. He was accompanied by his deputy leader Dara Calleary and five other members of his front bench.

The dinner was hosted by Law Society President Michael Quinlan and the other members of the Society's Coordination Committee. It provided an opportunity for the leaders of the Society to discuss, in an informal and enjoyable setting, a wide range of matters of mutual interest with the main opposition party.

The fact that the confidence-and-supply agreement, whereby Fianna Fáil keeps the current government in power while influencing its policies, is currently up for reconsideration made the timing of this get-together all the more interesting.

When visiting the Council chamber, the Fianna Fáil leader, with a Cork man's eye, perused the board on which the names of former presidents are listed and identified some who had also originated from his native city. Michael Quinlan and director general Ken Murphy directed his attention to 'the Cork corner' where, by tradition, the Council members from Cork traditionally sit.

But the Blackhall Place building has other very significant Cork connections. When originally opened in 1783 as the King's Hospital School, the now Law Society headquarters had a distinguished Cork-born architect leading the building project, namely Thomas Ivory.

More recently, when the building was being formally opened as the Society's headquarters on 14 June 1978, one of Micheál Martin's predecessors as Fianna Fáil leader, the then Taoiseach Jack Lynch, performed the opening. Micheál Martin spoke with great admiration and warmth about his distinguished predecessor.

Ken Murphy, Micheál Martin and Michael Quinlan discussing the Society's Cork connections

Cork v Dublin – Micheál Martin and Michael Quinlan engage in some friendly banter

DATA – NOT ANECDOTE – WILL INFORM PUBLIC POLICY

A recent conference looked at impending changes to the Department of Justice, the impact of real-time data exchange, and how justice can operate more effectively. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST AT GAZETTE.IE

We need good data, analysis, and evaluation to drive public policy, the new secretary general at the Department of Justice told the Association for Criminal Justice Research and Development annual conference in Dublin on 5 October.

Aidan O'Driscoll said that too much public discourse in Ireland was based on anecdote, and he affirmed his personal commitment to a focus on real evidence in guiding both policy and practice: "I don't think we can really overturn that anecdotal culture totally, but data should inform the key decisions."

Decision-makers need objective and informed evidence, and that is at the core of the civil service mission, he said. Senior civil servants need "both data and courage to draw evidence-based conclusions and speak truth to power".

Moving into his new role from a background in economics and policy analysis, O'Driscoll said that, since the civil service commanded public resources, it was essential that it had the ability to measure how well the criminal justice system was performing. "Thankfully, the technology now available for capturing, sharing, and analysing such data is becoming ever more powerful," he pointed out.

He added that the new Department of Justice central data-hosting hub would allow crime-fighting agencies to exchange key data in real time. "In time, it will also be a rich store for management decision-making," O'Driscoll said.

He pointed to the increasing sophistication of offender management, the Joint Agency Response to Crime (JARC) initiative, and Operation Thor as examples of evidence-driven interventions. JARC had reduced both the frequency and severity of offending, and this has "created quite a bit of excitement".

This approach, involving early intervention, aligns with the vision in the recent O'Toole report on the *Future of Policing in Ireland*, he said.

> WE SHOULD BE LESS ON 'TRANSMIT' AND MORE ON 'RECEIVE', FIGURING OUT WHAT THE PROBLEM IS BEFORE PROVIDING ANSWERS, PARTICULARLY IN COMPLEX AREAS OF YOUTH-JUSTICE POLICY

Aidan O'Driscoll (secretary general, Department of Justice and Equality), Gurchand Singh, Claire Loftus (DPP), Professor Marcelo Aebi and Maura Butler

PIC: SHUTTERSTOCK

This summer, the department launched an ambitious new data and research strategy that aims to develop a thriving culture of research, analysis, and evaluation in the department and the wider justice sector, O'Driscoll said. He also referred to the restructuring of the department into separate Home Affairs, and Justice and Equality branches.

This "radical and unprecedented restructuring" will move the department from its traditional, subject-based set-up to a functional model of five key areas consisting of policy, governance, legislation, transparency and operations.

"This is the biggest-ever restructuring of a department in the Irish civil service," O'Driscoll said, "and, if we get it right, it may well be the model for the future of the whole service." The new structure will give the department the space to become more effective in what it does. "But we will ultimately be judged on how well we use the space available to us, and having the best possible data and analysis to support our work will be absolutely crucial to our effectiveness," he concluded.

Advanced data collection

Meanwhile, the chief information officer at the Justice Department elaborated on future plans for crime fighting using advanced data collection. Integrated, trusted and open information is essential for the good use of data, Gurchand Singh told the conference.

Within the criminal justice system, data sets have been developed by agencies to support service provision, the attendees heard. While this is critical, one of the risks is that data becomes siloed in agencies, and the overall understanding of crime problems becomes partial and segmented, Singh pointed out.

Data must also be trusted and open. Trust means that data is accurate – it reflects the reality of the phenomena that it seeks to describe, Singh said. However, trust is also about people having confidence in the processes by which data is captured, and how it is classified. To this end, he emphasised the need to be more open and transparent as to how this is done.

Open data

Open data is recognised as important by the State – the additional social and economic benefits that can be derived from sharing information are recognised by the Government's Open Data Strategy. While it is important that data be made available, this needs to be balanced by the rights of individuals to privacy and the protection of their information. Data protection is paramount, therefore, in this context, Singh said.

On a similar theme, there are deep problems related to international comparisons of crime, according to Prof Marcelo Aebi of the University of Lausanne. He described to the conference a confusing mish-mash of data collection techniques.

He told the conference that statistics are influenced by the moment of their collection. In general, countries recording crime data when it is reported to the police (input statistics) usually have higher rates of crime than those recording it when the police finish the investigation (output statistics).

Aebi also pointed out that online offences are almost absent from police statistics. He recommended flagging the cases that have a cyber-component to allow estimates of the percentage of offences that are tech related.

Unique and valuable roles

Meanwhile, the head of the Irish Probation Service, Vivian Geiran, spoke boldly in defence of 'silos' at the conference. He told the attendees that the much-maligned silo can perform a valuable function when it is usefully taking care of a particular issue in a particular organisation.

The whole emphasis in recent years has been on cross-departmental thinking and action, and rightly so, the Probation Service boss pointed out. "But an organisation that devotes a lot of energy [to a particular issue] and works on it, on our behalf, and

then feeds that back to us, performs a valuable role," he said. "In the wider criminal justice system, there are a lot of agencies with unique and valuable roles. We shouldn't be so caught up in the fact that they perform unique roles, and describe them as silos.

"The big challenge is how to coordinate our work and join up the dots without diluting or lessening what those individual organisations do, whether police, probation or prisons," he said.

In terms of research and evaluation, Geiran said that many different skills needed to be brought to bear on the criminal justice system. The different but valuable contributions of economists, statisticians, and criminologists were required in criminal justice, he continued.

On the scientific contribution to justice policy, there were problems in relying too much on 'half-baked' science, which has been used in the past to determine youth justice policy, programmes and practice, according to Dr Seán Redmond of the University of Limerick.

He said that the advancement in our knowledge is much more creeping and less assured than is accepted, and we should acknowledge this openly. We need to develop methods to deal with this, and enable front-line staff to feel equipped and supported to make complex judgments.

We also should be more humble about the contribution we can make in helping young people to deal with adversity rather than claiming overall impact, he said. Often, learning to cope with things we can't always control and making small but significant changes is the most important contribution youth professionals can make.

Developing 'soft skills' with troubled young people to help them deal with risks and adversities in their lives, rather than changing their external environment, is a more realistic approach, he said.

Inflexible solutions

Redmond added that the scientific community can be too quick to develop inflexible solutions, tying up capital, technological and human resources based on 'assured' evidence, which experience has shown is subsequently refuted and debunked.

"We should be less on 'transmit' and more on 'receive', figuring out what the problem is before providing answers, particularly in complex areas of youth justice policy.

In a panel session, criminal defence solicitor Rory Staines declared that the courts are struggling to keep pace with technical change. A presumption in favour of business records' admissibility as evidence would be quite a straightforward amendment to the *Criminal Evidence Act 1992*, he said.

Video-link evidence is not possible in every county, he pointed out, and cases were frequently transferred to Dublin, where there was already a strain on lists.

Even a fairly modern facility such as the Criminal Courts of Justice in Dublin was built without the technology in every court to facilitate video evidence, he said.

Moreover, lawyers trying to assess digital evidence must engage experts to understand that evidence, particularly in relation to mobile phones, said Staines.

Admissibility

Challenging technical evidence is usually about its admissibility but, in order to be admissible, evidence must be shown to be relevant. In the recent Anglo Irish Bank trial, admissibility concerns arose as to whether business emails were real evidence or hearsay and, if the latter, whether they fitted into other category exceptions.

Courts like to hear evidence from witnesses in a witness box. That's what juries like as well, Staines pointed out. Dealing with thousands of documents in evidence in complex cases, and getting witnesses into the witness box in relation to those documents, can take a long time, he said.

This needed to be looked at, perhaps in terms of pre-trial hearings, which was also suggested by others at the conference.

Questions of admissibility of evidence were dealt with while the jury was sitting, which was wasteful of both time and resources, the conference heard.

Social-media tracking

On the question of social media, active users can be tracked in terms of where they are and who they're with, Mr Staines pointed out, and this can be used against them. "People make comments online that they would never make in person, and these comments cannot be deleted or removed properly," he said.

Facebook could be very useful in a criminal trial for both prosecution and defence, he added, but its admissibility could cause significant problems. For example, who in Facebook could you call to prove the validity of evidence, since the social media giant is based in the US, but has offices in Dublin? Which jurisdiction is applicable?

Mobile-phone evidence is the most frequently litigated area, and both the Meehan and O'Reilly convictions were substantially based on mobile-phone records that tracked their movements. Recent arrests had also involved suspects with heavily encrypted mobiles, Rory Staines concluded, showing that this area of criminal practice is never straightforward. g

> THE NEW DEPARTMENT OF JUSTICE CENTRAL DATA-HOSTING HUB WILL ALLOW CRIME-FIGHTING AGENCIES TO EXCHANGE KEY DATA IN REAL TIME. IN TIME IT WILL ALSO BE A RICH STORE FOR MANAGEMENT DECISION-MAKING

COSTS DENIED IN THREE IMMIGRATION CHALLENGES

The High Court has refused to order costs in three recent immigration cases, which may deter other cases from being taken, writes **Mary Hallissey**

MARY HALLISSEY IS A JOURNALIST AT GAZETTE.IE

MR JUSTICE KEANE CONCLUDED THAT, GIVEN HOW EASILY THE SITUATION COULD HAVE BEEN RESOLVED WITHOUT RECOURSE TO LITIGATION, HE WOULD MAKE NO ORDER AS TO COSTS

Mr Justice David Keane has issued a warning to lawyers in three immigration cases. The High Court judge said that it was not reasonable for the particular cases to have been taken. He refused legal costs in all three cases, which expert observers believe may deter other such immigration cases from being taken.

Mr Justice Keane's judgments have now been published. The first concerns an Afghan woman, Gulsanga Delsoz, who challenged her detention by the National Immigration Bureau after she returned to the State, after leaving the country for some months, on 11 December 2017.

The woman had not complied with her visa requirements prior to taking the legal challenge and failed to respond to repeated correspondence on the matter, Mr Justice Keane commented.

In his judgment, he was critical of the failure to keep authorities informed of the family's movements, and said the case could have been resolved without recourse to litigation.

He stated: "By fax and email sent at 5.32pm on 12 December 2017 (that is to say, just after close of business on that date), a solicitor on behalf of the Delsoz family wrote to the Garda National Immigration Bureau, asserting that Mrs Delsoz and the couple's two daughters were entitled to avail of free movement and residence rights under EU law as family members of Mr Delsoz.

Mr Justice David Keane

"As happens peculiarly often in cases of this kind, the letter set out at considerable length the text of various provisions of the 2015 regulations, the *Citizens' Rights Directive* and, indeed, the *Treaty on the Functioning of the European Union*, although it can hardly have been imagined that the INIS [Irish Naturalisation and Immigration Service] and the minister were unfamiliar with the relevant law."

The judgment continued: "As also happens surprisingly frequently in such cases, the letter was much less forthcoming about the factual basis upon which Mr Delsoz and his family members claimed a continuing entitlement to the benefit of the relevant rights under EU law. The letter asserted that Mr Delsoz continued to exercise those rights in the State, but provided only very limited information in support of that assertion."

Mr Justice Keane said that the solicitor's letter demonstrates "two fundamental misunderstandings" – that EU free movement and residence rights are "somehow unconditional", and that the removal of their permission to remain in the State was as a result of the relevant minister's "unwarranted interference", rather than the family's failure to comply with conditions.

The judgment stated that any acknowledgement of the onus on the family to provide the relevant authorities with the limited information necessary was "starkly absent" from the legal submissions.

The judge said that, when problems inevitably arose at Dublin Airport on 11 December 2017, "instead of urgently addressing the limited evidential requirements necessary to establish their continuing entitlement to exercise EU law entry and residence rights, the family, through their legal representatives, first chose to write to the minister on 12 December 2017, addressing him at length on the nature and scope of such rights in principle; next sought an inquiry into the lawfulness of the detention of Mrs Delsoz on 13 December 2017; and only finally sought to provide the necessary evidence to establish an entitlement to those rights in practice by email on the

THE JUDGE SAID THAT IT WAS NOT REASONABLE FOR THE PARTICULAR CASES TO HAVE BEEN TAKEN

morning of 14 December 2017, the day of the proposed inquiry".

Mr Justice Keane concluded that, given how easily the situation could have been resolved without recourse to litigation, he would make no order as to costs.

Moot point

In the second case, Mr Justice Keane refused an application for costs from Kingsley Okolie, a Nigerian man who was refused permission to remain in Ireland. Mr Justice Keane said that a judicial review case taken by Okolie became moot when, in December 2016, the minister refused him permission to remain in the country.

This decision was taken in chronological order, and not in response to judicial proceedings, "therefore, it would be inappropriate to describe the proceedings as having become moot due to the unilateral actions of the minister".

For these reasons, the judge made no order as to costs.

In the third case, a woman from Malawi named Maria Lufeyo sought the costs for a legal challenge against the Department of Justice in 2016, on her application for residency as the mother of an Irish-born child. Mr Justice Keane said it was "peculiar" that the case was taken, despite a previous indication from the department that it was considering her application.

Lufeyo entered the State in October 2013 on a student visa. In June 2016, she was granted permission to remain until June 2019, to join her Irish citizen minor child. She then sought costs for the proceedings against the minister.

Mr Justice Keane, in his judgment, said that Lufeyo's legal representatives adopted the position that it was for the minister to conduct an enquiry from scratch, within a limited timeframe, as to whether her child was dependent upon her.

Secondly, he stated that the provision by her of evidence for that inquiry seemed to be "entirely reactive rather than proactive in the smallest degree".

Implicit assumption

He remarked that there is an "implicit assumption" that it is for the minister to advise Lufeyo from the outset concerning the evidence she should present in support of her claim.

Despite a May 2016 letter from the National Immigration Service stating that there would be "no delay" in finalising the case, which would be dealt with in chronological order, Maria Lufeyo's solicitors wrote three days later "threatening judicial review proceedings to compel a decision if one was not made within 14 days", on the basis that there had been a breach of her fundamental rights.

Mr Justice Keane said that these judicial review proceedings became moot on 22 June 2016, when the INIS wrote to Maria Lufeyo, informing her that the minister had granted her permission to reside and work in the State.

He said that it was the application arriving at the top of the queue, and not the threat of proceedings, that gave rise to the minister's decision. "It would be inappropriate, therefore, to characterise the proceedings as having become moot by the unilateral action of the minister."

For those reasons, he made no order on the costs of the proceedings. g

MORE THAN THIS

Rojava in Syria is an oasis of gender equality, secularism and democracy – the future of the region's experiment remains to be seen, writes **Katherine Finn**, but it deserves to succeed

KATHERINE FINN IS A DUBLIN-BASED BARRISTER

I've been lost in my Kindle for the past half hour or so. I suddenly look up at the road ahead, and it hits me afresh: I'm speeding east across the Democratic Federation of Northern Syria, aka Rojava, being driven in a minibus by a calm, patient YPG soldier, from Kobani to Qamishli, with six other women from various countries, including Irish solicitor Wendy Lyon. It's definitely one of those "how on earth did I get here?" moments.

I travelled in May 2018 with this delegation with plans to explore the region and its institutions. It is unique in the Middle-Eastern context, in that it is firmly committed to gender equality, secularism and democracy – concepts that are enshrined in its written social contract. These are the people who held off ISIS single-handedly at Kobanî, until the American-led coalition arrived to carry out airstrikes; such tenacity, I felt, was worthy of a visit in itself. I was also very interested to explore its legal system, given that the region as an autonomous entity was only established in 2013 when it was abandoned by the Syrian regime during the civil war – in a nutshell, it's almost as different a system from ours as it's possible to be.

> THE SYSTEM IS BASED ON CONSENSUAL RESTORATIVE LAW AND MEDIATION; EMPHASIS IS FIRMLY ON REHABILITATION RATHER THAN RETRIBUTION

End of the line

Rojava is bordered on the north by Turkey, the east by Iraqi Kurdistan, and the south and west by the Syrian state (the regime). 'Rojava' simply means 'west in' Kurdish: it is the westernmost Kurdish population in the Middle East. There are Kurds in Turkey, Iraq, Iran and Syria. (Iraq, however, is the only country to have within its borders a legally autonomous Kurdish region, that of Iraqi Kurdistan.) The population is about 4.5 million and is made up mainly of Kurds and Arabs, with some other ethnicities, which share the region peaceably. We flew into Erbil in Iraqi Kurdistan and travelled by car to the border crossing on a tributary of the Tigris, into ancient Mesopotamia and Rojava itself.

Our escorts from the Iraqi border to Qamishli – YPJ soldiers

Julie Ward (UK MEP), Sarah Glynn (activist), Wendy Lyon (solicitor), Bayram (group driver), Victoria Bridges (filmmaker), Maryam Ashrafi (filmmaker) and Dilar Dirik (group facilitator and interpreter)

Positive signs of regeneration – children give the 'thumbs-up' in the city of Kobanî in northern Syria

ALL PICS: KATHERINE FINN

ITS INHABITANTS ARE SOME OF THE MOST COURAGEOUS BUT BELEAGUERED PEOPLE ON EARTH

Children play in the rubble of war, in Kobanî

During our stay, we visited numerous institutions, especially those promoting the participation of women in the democratic process. Our hosts were Kongreya Star, an umbrella organisation for all the women's civic, political and economic organisations in the region. Rojava is not a state, nor does it have a separatist agenda; rather it wants a federalised Syria. However, the regime and neighbouring actors in the region have other ideas.

Encouragingly, they have secured the buy-in of all of the different ethnicities and religions in the region as regards the new political and legal systems. Many Kurds have been familiar with the social theories underpinning direct democracy from at least the 1980s onwards, based on the writing and activism of Abdullah Ocalan, currently serving a sentence for treason and sedition in Turkey. Ocalan was one of the founding members of the PKK, which is listed as a terrorist organisation in several countries, as well as by the EU and the UN, but the YPG and YPJ (male and female forces, respectively, in Rojava) and the PYD (their political wing) say that they are entirely different organisations and have no crossover

The group looks north over Kobanî from Mishantour (a hill to the south-east of the city), towards the Turkish border, which is about 5km away. ISIS were held back from taking this position by a YPJ (female militia) unit, single-handedly, for about a week, before being assisted by US airstrikes

'ROJAVA' SIMPLY MEANS 'WEST IN' KURDISH: IT IS THE WESTERNMOST KURDISH POPULATION IN THE MIDDLE EAST

with the PKK whatsoever. The YPG/J also assert that they are defensive forces only and do not engage in offensive action. Turkey appears to think differently.

Street life

The legal system mirrors the political structure, which is to say that there are fora for resolution of legal problems from street level upwards. The system is based on consensual restorative law and mediation; emphasis is firmly on rehabilitation rather than retribution; and it lacks the adversarial basis of legal practice in the common law world. It's difficult to get one's head around it when one has trained and practised only in an adversarial common law context. Practitioners in the common law world are, of course, more than familiar with mediation, but a consensus-based approach to legal matters is not quite baked into the system in that world to the same extent as it is in Rojava.

At literally street level, mediation is facilitated by local people, none of whom need be legally qualified, and all of whom are elected to peace committees. There are five to nine members on a peace committee with a gender quota of at least 40% women. The rules and principles are constantly evolving, but the system has also borrowed principles from other legal systems, so did not start with a completely blank slate.

In family law matters, or criminal matters concerning domestic violence, or any other matter in which a woman is concerned, there is a parallel system designed to create a less intimidating environment. A level of trust has already been established, such that participants are now comfortable with the new system, as distinct from the regime system that pertained prior to 2011. The latter was considered bureaucratic, time-consuming and rife with delays.

In contrast, the restorative law system appears to be able to resolve disputes within much shorter time frames and, due to this informality and efficiency of outcome, the system has gained the trust of its users. This approach of neighbour 'judging' neighbour does not sit easily with those of us used to arm's-length common law jurisdictions but, in one sense, the jury system here is just a formalised way of doing the same thing, albeit with the usual safeguards as to conflict of interest built in.

A parallel court system for matters relating to women did not sit easily with me either – it's at odds with treating all adults equally before the law but, on the other hand, given the deeply patriarchal outlook of the Middle East, it may be that the pendulum must first swing towards special legal treatment of women in order to gain their confidence, before it switches to one system for all, if that is the ultimate intention.

Remake/remodel

Peace committees also handle forced marriage, polygamy, and child marriage cases, all of which are illegal. Sentences for domestic or honour-based violence run from six months to three years. Murder carries a life sentence, which is currently measured at around 20 years. There is no death penalty. It bears repeating how remarkable a change this represents in the Middle Eastern context. There is a genuine commitment to gender equality: for example, when a man is elected as mayor, a woman is elected alongside him to share power.

Next to street-level courts are village courts, also run by elected peace committees. Then come district courts, with seven elected judges. Both the street-level and

village courts have a period of one month in which to make a decision.

There are four appeals courts spread across the three Rojavan cantons: Kobani, Afrin and Cizire. All appeal court judges are professional jurists. There is a cantonal court, equivalent to a constitutional court, although there is no constitution as such, since Rojava is not a state. It does have a written social contract though, and the cantonal court's role is to ensure the judgments of lower courts are consistent with this.

Where a local peace committee is unable to resolve a case, a 'justice platform' of up to 300 can be convened to examine the issue and put forward solutions. These potentially unwieldy numbers do not appear to have dissuaded users of the legal system, nor does it appear to have hampered the overall operation of the system itself.

There are public prosecutors in each of the cantons. Minor matters come through the street – district – regional system, but serious crime goes straight to the regional court. Policing functions are carried out by the Asayish, who see their function as protecting the people themselves rather than any official institution. They will also join with the YPG and YPJ to defend the region when needed. Rojava is one of the safest places in Syria thanks to the Asayish (with the exception of the Afrin region, currently facing aggression from Turkey). The Asayish have powers of arrest, but cannot detain anyone for longer than 24 hours without a court order.

The legal academy in Qamishli supports judges in their work and assists with the reconciliation of Syrian law with the social contract. Where there is a conflict, the social contract takes precedence. The Justice Assembly decides when a region requires a new court and requests resources from the justice ministry.

There are plans for a children's court, child detention centres, committees specialising in land law, and a Committee for Democratic Justice, part of whose mandate is to carry out prison inspections.

Let's stick together

Rojava is an oasis of gender equality, secularism, and democracy – surrounded on all sides by intractable or downright hostile actors (Turkey to the north; Turkey to the west as well, since it invaded Afrin In January 2018; Iraqi Kurdistan to the east – which is supportive of Erdogan's administration; and the Syrian regime to the south, which has no intention of endorsing Rojava's plan for a federalist Syria). Rojava is also subject to trade sanctions, greatly hampering its infrastructural plans. The Turkish aggression, which continued in violation of UN Security Council Resolution 2401 demanding a humanitarian truce for 30 days from 24 February 2018, has caused numerous civilian casualties and displaced thousands. Afrin has lately gone from the safest region in Rojava (and which, in fact, hosted numerous refugees from other regions within Rojava during the attacks from ISIS) to one of the most war-torn in the whole of Syria.

These setbacks aside, Rojava is a laudable experiment in direct democracy and gender equality, the more remarkable because of the region in which it is situated. Its inhabitants are some of the most courageous but beleaguered people on earth – once the Syrian civil war was over and the region established itself as autonomous, ISIS arrived to terrorise it. No sooner had ISIS been neutralised, than the Turkish invaded Afrin.

The fate of the Rojavan experiment in gender equality, democracy and secularism remains to be seen, but deserves to succeed. g

THE RESTORATIVE LAW SYSTEM APPEARS TO BE ABLE TO RESOLVE DISPUTES WITHIN MUCH SHORTER TIME FRAMES

A cemetery in Derik, near the Iraqi border – the final resting place for YPG and YPJ fighters, all under the age of 25

PIC: SHUTTERSTOCK/NUALAREDMOND

Stairway to heaven

There's a sign on the wall, but you want to be sure. **Matthew Holmes** reviews a number of recent decisions that can help you find the road to the Supreme Court

MATTHEW HOLMES IS A DUBLIN-BASED BARRISTER

The old joke goes: "How do you get to Carnegie Hall? Practise!" Someday, your practice might take you all the way to the Supreme Court. How do you get there? The glib answer might be: "Walk through the Round Hall", but this is something the Supreme Court itself has addressed in a number of recent decisions.

The procedure by which you get to the Supreme Court was fundamentally changed in 2013 by the introduction of the Court of Appeal by the 33rd amendment of the Constitution. Under this amendment, the Supreme Court has appellate jurisdiction from the Court of Appeal where the decision involves a matter of general public importance or, in the interests of justice, it is necessary that there be an appeal to the Supreme Court.

It also introduced appeals from the High Court to the Supreme Court, discussed below. The exact test as to when an appeal will be accepted by the Supreme Court has been discussed in a number of decisions.

Physical graffiti

The principles behind the acceptance of an appeal by the Supreme Court were recently examined in *Jordan v Ireland*. This was a challenge to the recent repeal of the Eighth Amendment. The Supreme Court found that the principles behind the grant or refusal of an appeal to that court were fully addressed in *BS v Director of Public Prosecutions* and the judgment of O'Donnell J in *PricewaterhouseCoopers v Quinn Insurance Ltd*.

In *Jordan*, the Supreme Court found that it was not satisfied that there were stateable grounds of appeal that involved issues of principle, and consequently refused leave to appeal, ending the last challenge to the repeal of the Eighth Amendment.

AT A GLANCE

- Appeals from the Court of Appeal must involve a matter of general public importance, or it must be necessary in the interests of justice
- Appeals from the High Court must meet the same test but, in addition, have exceptional circumstances justifying going straight to the Supreme Court

In *BS*, the DPP sought to appeal an order of the Court of Appeal prohibiting a historical rape case from proceeding. The DPP submitted that the Court of Appeal had departed from the established jurisprudence on delay. The Supreme Court here refused leave to appeal.

The Supreme Court began its decision by pointing out that, while decisions on leave to appeal were final and conclusive, they are not findings on the facts or to be relied upon as precedent, except in very rare circumstances.

The Supreme Court then pointed out that appeals will be limited to matters of general public importance or otherwise in the interest of justice to be heard by it. It expressly said: "It will rarely be necessary in the interest of justice to permit an appeal to this court simply because it is said that the lower court was in error."

It then went on to hold: "It can rarely be the case that the application of well-established principles to the particular facts of the relevant proceedings can give rise to an issue of general public importance."

The court discussed how the levels of generality behind the principles at stake in a case can affect a decision to grant leave, before finding that: "Unless it can be said that the case has the potential to influence true matters of principle rather than the application of those matters of principle to the specific facts of the case in question, then the constitutional threshold will not be met."

PricewaterhouseCoopers, by contrast, was a case where the Supreme Court granted leave to appeal. This application was decided six days after *BS*.

Here, O'Donnell J noted that the parties had agreed that it is significant that an appeal was not limited to a point of law, and the appeal needed to be a matter of general public importance rather than exceptional public importance. The parties differed on the meaning of 'in the interests of justice'. O'Donnell J disagreed with the submission that it was a broad phrase of indeterminate meaning, such as 'fairness', 'reasonableness', 'non arbitrariness', and 'clean hands', etc.

He found that the default position should be that cases do not go beyond the Court of Appeal except in exceptional cases. He then went on to hold that "the fact that a court might make a decision which a further court might consider to be an error, does not itself establish injustice".

He specifically did not outline all of the categories where an appeal would be granted in the interests of justice, but viewed it as a residual category that will apply if a decision does not involve a matter of general public importance.

Categories he did mention include:

- Where one party is successful in an application to the Supreme Court, then a cross appeal will be allowed,
- Where a case is not of general public importance, but it is necessary to permit the appellant to argue, "since otherwise determination of the issue of general public importance may not resolve the case", and
- Where something new arose in the Court of Appeal.

He then went on to say, in deciding whether the appeal involves a matter of general public importance, that the point must first be stateable and, secondly, be able to be applied to other cases. He found that interlocutory applications could be heard by the Supreme Court, but that it would be more difficult to meet the entrance criteria.

> THE EXACT TEST AS TO WHEN AN APPEAL WILL BE ACCEPTED BY THE SUPREME COURT HAS BEEN DISCUSSED IN A NUMBER OF DECISIONS

> IT WILL RARELY BE NECESSARY IN THE INTEREST OF JUSTICE TO PERMIT AN APPEAL TO THIS COURT SIMPLY BECAUSE IT IS SAID THAT THE LOWER COURT WAS IN ERROR

PIC: SHUTTERSTOCK/NUALA REDMOND

He referred to *BS*, pointing out that: "Where an appeal seeks to challenge the application of the High Court or Court of Appeal of well-established principles of law which are not themselves the subject of challenge, as this appeal does, it will also be rare that this court could be persuaded to grant leave to appeal."

In granting leave to appeal, he noted that the High Court and Court of Appeal had come to diametrically opposed results on this issue, that the proper application of the principles relating to the ordering of further particulars is a matter of general public importance, and that the outcome of this case may clarify the distinction between evidence and further required particularisation of proceedings.

In through the out door

A leapfrog appeal is an appeal from the High Court directly to the Supreme Court. Under article 34.5.4, the same requirements for leave to appeal from the Court of Appeal apply to an application for leave from the High Court. The decision must involve a matter of general public importance or, in the interests of justice, it must be necessary that there be an appeal to the Supreme Court. There is also an additional requirement that the Supreme Court must be satisfied that there are exceptional circumstances warranting a direct appeal to it.

The Supreme Court in *Jordan* noted that the principles in leapfrog appeals are addressed by the decision in *Wansboro v Director of Public Prosecutions*. There, the Supreme Court granted leave to appeal directly from the High Court, in a decision that was given a little under a month before *BS*.

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> O'DONNELL J FOUND THAT THE DEFAULT POSITION SHOULD BE THAT CASES DO NOT GO BEYOND THE COURT OF APPEAL EXCEPT IN EXCEPTIONAL CASES

Some of the more general parts of the decision in *Wansboro* are word-for-word identical with the same parts in *BS*. They both began with the same warning on the precedential value of leave determinations. In *Wansboro*, it was also found that "it will rarely be necessary in the interest of justice to permit an appeal to this court simply because it is said that the lower court was in error" – although this finding was then followed up with a finding that the appropriate remedy for an error in the High Court was an appeal to the Court of Appeal.

In *Wansboro*, the appellant had a suspended sentence reactivated by the Circuit Court. Subsequently, the legislative provisions that governed the activation of suspended sentences were found to be unconstitutional. The appellant took a case to the High Court, claiming that the reactivation of the suspended sentence by the Circuit Court was invalid. This was rejected by the High Court. The case was appealed directly to the Supreme Court.

The Supreme Court was satisfied that the general test for leave to appeal was met. This was because "the precise circumstances in which orders made under impugned legislation can continue to have effect is both a matter of considerable importance and one whose application to the particular circumstances of a category of case may, in some instances, be debatable".

Here, the issue was whether it was appropriate to grant leapfrog leave in all the circumstances of this case. In examining 'exceptional circumstances', the court began by looking at the advantages of the Court of Appeal dealing with a case rather than the Supreme Court, even if it was a case that might ultimately end up before the Supreme Court.

Presence

The court found that the recent changes to the constitution mean that the Supreme Court is to focus on important issues. If there is an appeal to the Court of Appeal first, this should filter out the less important issues from the case, leaving the Supreme Court to focus only on the important issues. The Supreme Court noted that these will vary in range, from cases with a large number of issues, to cases with only a few, very important issues that will not be changed by an intermediate appeal to the Court of Appeal.

The Supreme Court then went on to list factors that can be considered when deciding to accept a leapfrog appeal. These factors are:

- *Costs* – the court noted that, where the perceived advantages of an intermediate appeal to the Court of Appeal are not particularly strong, then costs may carry some weight,
- *Speed* – if a case is particularly urgent, then this will strengthen the application for a leapfrog appeal,
- *Effect on other cases* – if there is a need to resolve an issue quickly, which is affecting other cases, then this will be taken into account,
- *Will the issue still be alive?* – sometimes the legal issues in a case might go away, depending on how the factual or other issues are decided. In those cases, the court will favour refusing a leapfrog appeal.

The court also noted that, in some cases – such as deportation cases – the High Court has to issue a certificate permitting an appeal. The court expressly did not address whether a leapfrog appeal would be allowed where no such certificate was granted.

The court held: "That is an issue which the court proposes to address in detail in a subsequent determination, if and when the issue clearly arises. The court has already indicated, in the application for leave in *Grace* … that the impossibility of pursuing an appeal to the Court of Appeal in a case where this court was satisfied that the general constitutional threshold had been met may, at least in some cases, provide the appropriate exceptional circumstances justifying a leapfrog appeal."

In the circumstance of Mr Wansboro's particular case, the Supreme Court granted leave to appeal. An intermediate appeal was unlikely to be useful, as the Court of Appeal was unlikely to depart from its own jurisprudence. The Supreme Court felt that this issue needed to be addressed and granted leave.

Coda

From the Court of Appeal: the case must involve a matter of general public importance, or it must be necessary in the interests of justice. This means that the case must affect principles of law or be a matter of general public importance. It must be a stateable case that can affect other cases.

From the High Court: it must meet the same test as above, but must also have exceptional circumstances justifying going straight to the Supreme Court. This includes urgent cases, or ones that affect many other cases, or cases that have important issues that will not be filtered out by the Court of Appeal. g

LOOK IT UP

CASES:

- *Jordan v Ireland* [2018] IESCDET 124
- *BS v Director of Public Prosecutions* [2017] IESCDET 134
- *PricewaterhouseCoopers (a firm) v Quinn Insurance Ltd (under administration)* [2017] IESC 73
- *Wansboro v Director of Public Prosecutions* [2017] IESCDET 115
- *Grace & anor v An Bord Pleanála & ors* [2016] IESCDET 29

Office space

Employers need to be aware of their obligations to provide 'reasonable accommodation' in the workplace to an employee suffering from a disability. **Wendy Doyle** explains

WENDY DOYLE IS A PARTNER IN DUBLIN LAW FIRM TULLY RINCKEY

The recent case of *A Solicitor v A Legal Service*, a decision of the Workplace Relations Commission of 9 September 2018, should serve as a stark warning to employers on the obligations placed upon them to provide 'reasonable accommodation' in the workplace to an employee suffering from a disability.

This case is also a timely reminder to employers of the very broad definition of 'disability' under the *Employment Equality Act 1998* (as amended), which includes conditions such as alcoholism, depression and anorexia, to name a few.

In this case, the complainant had been employed as a solicitor by the respondent since 2001 and suffered from epilepsy, of which her employer was aware. She sought to work from home on a number of occasions in 2015, 2016 and finally in 2017.

In her submissions, the complainant relied on the case of *Marie Daly v Nano Nagle School*, whereby it was stated: "The point is a simple one: the statutory obligation is objectively concerned with whether the employer complied with the obligation to make reasonable accommodation…"

AT A GLANCE

- The *Employment Equality Act 1998* imposes a statutory obligation on employers to provide 'reasonable accommodation' in the workplace to an employee suffering from a disability
- The definition of 'disability' under the act is a broad one that includes such conditions as alcoholism, depression and anorexia
- An employer must make a *bona fide* and informed decision regarding a disabled employee's capabilities before concluding that he or she is unable to perform the duties of their employment

The Court of Appeal also confirmed the decision in *Humphries v Westwood Fitness Club*, noting: "The general principles set out in *Humphries v Westwood Fitness Club* require an employer to make a *bona fide* and informed decision regarding a disabled employee's capabilities before concluding that he or she is unable to perform the duties of their employment … At a minimum, it requires the employer to fully and properly assess all of the available medical evidence and, where necessary, to obtain further medical advice where the available evidence is not conclusive."

Home and away

The complainant, in essence, argued that the respondent had failed to engage in any meaningful way with her as to how the proposed arrangement of working from home might work. This was notwithstanding that the complainant had agreed to attend at whatever location the essentials of her role required her to attend on her 'working-from-home' day.

The respondent had initially written to the complainant in December 2016, refusing to facilitate her request on the basis that a medical report they had received noted that working from home

PIC: SHUTTERSTOCK

> AT A MINIMUM, IT REQUIRES THE EMPLOYER TO FULLY AND PROPERLY ASSESS ALL OF THE AVAILABLE MEDICAL EVIDENCE AND, WHERE NECESSARY, TO OBTAIN FURTHER MEDICAL ADVICE WHERE THE AVAILABLE EVIDENCE IS NOT CONCLUSIVE

would only make a "minimal reduction" to her stress, and having regard to the nature of her front-line duties as a solicitor. It noted that the complainant's role involved face-to-face meetings, attending court, and that her role was not compatible with working from home.

The independent medical practitioner engaged noted that working from home was a way for the complainant to reduce her stress levels, which she considered to be a trigger for epilepsy.

It was the respondent's case that it met the

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> THE POINT IS A SIMPLE ONE: THE STATUTORY OBLIGATION IS OBJECTIVELY CONCERNED WITH WHETHER THE EMPLOYER COMPLIED WITH THE OBLIGATION TO MAKE REASONABLE ACCOMMODATION

test set out in *A Health and Fitness Club v A Worker* and, in particular, "if it is apparent that the employee is not fully capable, section 16(3) of the act requires the employer to consider what, if any, special treatment or facilities may be available by which the employee can become fully capable".

It was noted that the respondent obtained independent medical advice to the effect that the reasonable accommodation would only "minimise" the complainant's stress and its decision to refuse the request was based on this.

In his decision, the adjudicator referred to section 16(3) of the *Employment Equality Acts 1998* (as amended) and noted the circumstances in which an employer must provide reasonable accommodation to an employee. These are to enable a person with a disability to:

- Have access to employment,
- Participate or advance in employment, or
- Undergo training.

He noted that the complainant's neurologist (who did not give evidence, but whose views were quoted in the respondent's submission) had stated that if the complainant's stress and fatigue could be reduced within the limits allowed by her work, then they should be. The independent medical practitioner had, however, noted that any reduction would be "minimal."

The adjudicator remarked that there were two strands to the respondent's position: the first outlined above, and the second relating to whether the complainant was able to discharge her duties working from home. The respondent had previously stated in an email on 1 January 2017 that the complainant working from home would be "incompatible with her role and functions"; however, the complainant had previously stated that she had "huge autonomy" in her role and the delivery of tasks.

The complainant had also previously stated that she was willing to be entirely flexible and respond to business needs as required and that, as a lot of her work was preparatory in nature, she felt she could easily perform these at home. The respondent was unable to furnish any particular evidence refuting this.

A country practice

The adjudicator noted that the issue of the disability was not in dispute and "the only issue arising from the medical opinion is whether the accommodation sought would have an impact on reducing stress on the complainant and thereby reducing the risk of another attack with possible life-threatening consequences".

He further stated that "reasonable accommodation is a positive, facilitative provision to enable a task to be more easily accomplished". It was also noted that failure to engage with the complainant was especially significant, given that the issue was initially decided long before medical opinion came into play. He stated that there had been no attempt to assess, with the complainant, the precise outworking of the 'work-from-home' option, and this unduly influenced the decision, even after the independent assessment.

The adjudicator commented that the objection to work-from-home seemed to be a "matter of policy on the part of the respondent" and a "fairly entrenched one".

He referred to three pieces of medical evidence and stated: "The question is whether a 'minimal' contribution might make the difference in avoiding the sort of potentially catastrophic outcome which the complainant had previously experienced, and it would appear that the respondent either did not consider this or does not regard this as a significant factor."

He concluded by stating that, "in the very specific circumstances of this case, I consider any, even a minimal, contribution to avoiding the risk represented by a *grand mal* seizure as a valid accommodation of the complainant's requirements to fulfil the entire gamut of her role.

"The failure of the respondent initially to properly consider the application and then, following the expression of the views of the independent medical practitioner, to rigorously evaluate the possible impact on the complainant, is a failure to provide her with reasonable accommodation.

"In my view, making a minimal impact on the possibility of avoiding a life-threatening event is, to put it very mildly, a reasonable accommodation. There should be a zero-risk approach in such a situation."

The complainant was awarded €30,000 for breach of her rights under the *Employment Equality Act 1998* (as amended). g

Employers seeking assistance complying with reasonable accommodation requests from employees with disabilities should contact an employment law solicitor.

LOOK IT UP

CASES:

- *A Health and Fitness Club v A Worker* (EED037)
- *A Solicitor v A Legal Service* (ADJ-00011821)
- *Humphries v Westwood Fitness Club* (EED037)
- *Marie Daly v Nano Nagle School* ([2018] IECA 11, Court of Appeal, 31 January 2018)

LEGISLATION:

- *Employment Equality Act 1998* (as amended), section 16(3)

Bought and sold

Next year will bring with it one of the most fundamental changes in conveyancing practice – full investigation of title before entering into a contract. **Michael Walsh** dons his deerstalker

MICHAEL WALSH IS PARTNER AND HEAD OF PROPERTY AT BYRNEWALLACE, DUBLIN, AND IS A MEMBER OF THE LAW SOCIETY'S CONVEYANCING COMMITTEE

The move on 1 January 2019 to full investigation of title before entering into contract will be one of the most fundamental changes in conveyancing practice and procedure in a long time. The origins of this aspect of conveyancing practice can be found in the historical challenges of creating and transmitting copy documents. In the period up to the mid to late 1900s, it is understandable that – given the effort involved – documents would not be shared until a contract was exchanged. A purchaser was protected by permitting him to raise an objection on title, and validly exit the contract, if the title was later not established as being good and marketable. Obviously, document production and data sharing has moved on very considerably, and so, too, practice has moved on.

Follow me

In the period leading to 2016, the Law Society's Conveyancing Committee noticed the increasing practice in the profession of vendors requiring title matters to be addressed pre-contract. This has been the long-established practice for conveyancing in the new homes market. However, it could be seen that more transactions were being structured in this way, especially in receiver-led disposals and in higher value or more complex cases. The ultimate aim of the vendors in taking this approach is to achieve a more secure contractual position on contract exchange by ventilating title issues ahead of contract exchange. The attraction for purchasers in this approach is that any title issues are flushed out before the purchaser is bound in.

The committee considered whether it was time for the profession to catch up with developments in document production and technology – and indeed practice itself. So, in 2016, the Law Society sought submissions from the profession with regard to a proposed move to pre-contract title investigation.

A significant amount of feedback was received and, ultimately, a clear majority of those who responded

AT A GLANCE

- The proposed 2019 *Contract and Explanatory Memorandum* was published in August 2018 for review
- In October 2018, the Conveyancing Committee also published a list of FAQs as a guide to the profession, which are frequently refreshed on the Law Society website
- The committee has been working on a revised set of Requisitions on Title. Under the new regime, the full set of Requisitions on Title, rejoinders and replies will need to be settled pre-contract

PIC: REX FEATURES

THE KEY CHANGE FOR 2019 IS THAT THE PURCHASER MUST INVESTIGATE TITLE PRE-CONTRACT

> THE COMMITTEE CONSIDERED WHETHER IT WAS TIME FOR THE PROFESSION TO CATCH UP WITH DEVELOPMENTS IN DOCUMENT PRODUCTION AND TECHNOLOGY

FOCAL POINT

WHAT'S GOING ON?

Why has the numbering of the contract changed?
Unfortunately, this was unavoidable; see the quick reference guide published.

Where did the non-title information sheet go?
It will be absorbed into the 2019 requisitions.

Will the 2019 requisitions include an 'objections' section?
No, because if the purchaser has any objections on title, these will have been raised and resolved pre-contract.

Will pre-contract queries be a thing of the past?
The purchaser's solicitor will receive the replies to the standard Requisitions on Title pre-contract, and should raise such rejoinders as are appropriate, and such additional pre contract enquiries as required for any matter not addressed in the standard requisitions.

Acting for a vendor, do I need to do a full set of searches pre-contract?
This would be preferable, but it is not required.

Acting for a purchaser, what searches should I procure pre-contract?
A planning search.

Is there anything stopping a purchaser from carrying out a full set of searches pre-contract?
No. The purchaser will be deemed to be on notice of the acts appearing, so adequate explanations of any acts appearing should be sought from the vendor pre-contract.

Will post-contract requisitions be common?
No – they are expected to be rare.

What form will they take? Will there be a precedent?
No – it is likely they will be raised by written communication between solicitors.

Once a purchaser becomes aware of an issue post-contract, how long does he have to raise this as an issue?
Five working days, and time is of the essence.

Why so fast?
This period is five working days from the date the purchaser becomes aware of the title issue, and not from the date of sale. This period could run right up to the closing date depending on the circumstances. Also, once aware of it, a purchaser should want to raise the issue fairly immediately. Also, it is expected that the average period between contract and closing will shorten, so the period can't be too long.

Why is time of the essence? That seems harsh on purchasers – why this approach?
One of the key objectives is to achieve contract certainty, so if the purchaser does not raise the issue in time, the right to do so withers.

Why does the vendor not have a fixed period to answer the post-contract requisition? That seems 'one sided'.
Depending on the nature of the requisition, it may take time to get to the bottom of the issue, so it is considered 'contract friendly' that the vendor be given adequate period to answer or find a solution.

Can a purchaser withdraw a requisition raised under General Condition 7?
Yes. There is no contractual limitation on a purchaser in this regard.

Who will raise the requisitions?
It is anticipated that the vendor will issue requisitions with replies when issuing the draft contract and title pack.

Who will list the completion items in the requisitions?
The approach is a matter for the parties to agree.

Is it envisaged that, after the 'backwards and forwards' on the requisitions and replies, an up-to-date set of requisitions will be issued by the vendor?
No, the parties should be able to rely on interparty correspondence to settle on the final requisitions and replies, but the approach is a matter for the parties to agree.

Does this new system leave purchasers exposed, doing a lot of work pre-contract, without certainty that the vendor will contract?
The vendor is usually very serious about contracting if he instructs his solicitor to prepare a contract and title pack. It is considered better that a purchaser would remove himself from a proposed purchase in the pre-contract phase rather than to have to do so post-contract.

Will that leave purchasers' solicitors commercially exposed?
It should not, so long as the client engagement letter makes it clear what the fee and anticipated expenses are for the services provided in pre-contract phase.

declared support of the change. Much of the feedback received formed the basis of the detailed review that followed.

The committee then established a task force to examine this area. Following on from that work, having regard to the report of the task force and the view of the profession, the committee formally approved the proposed change earlier this year, and a further consultation process began.

PIC: SHUTTERSTOCK

Do you read me?

In August, the terms of the proposed 2019 *Contract and Explanatory Memorandum* was published for review and comment by the profession. While the consultation period was ultimately extended to a date in October, any comments received by 23 November to precontracttitleinvestigation@lawsociety.ie will be considered.

In October, the committee also published a list of frequently asked questions as a guide to the profession. The FAQs will be refreshed from time to time, so keep an eye out for it on the Society's website.

The committee has also been working on a revised set of Requisitions on Title, which will be launched in time for commencement of the new system.

Both the 2019 Requisitions and Contract, and especially the former, contain a number of additional changes which are not consequent upon the change to pre-contract title investigation. All these changes will be outlined in explanatory memoranda, which will accompany the new documents on publication.

As part of the consultation and information process, members of the task force delivered a dedicated CPD seminar on the topic on 18 October 2018 at Blackhall Place, chaired by Prof JCW Wylie. This event will be available as an online interactive course from mid-November onwards, which can be booked through the Society's Professional Training section. In addition, the convener of the task force addressed the Annual Property Law Conference, also held on 18 October.

Keychange

The key change for 2019 is that the purchaser must investigate title pre-contract. Consequently, the vendor must therefore produce adequate documentation to enable the title to be investigated ahead of the parties entering into the contract.

General Condition 6 now states that the purchaser accepts the title offered as described in the contract. It is acknowledged in that condition that the purchaser has had the opportunity to raise any requisitions and rejoinders in the pre-contract period and, in effect, that no further requisitions can be raised. This means that the full set of Requisitions on Title, rejoinders and replies will need to be settled pre-contract.

Many practitioners have noted the duplication currently involved in raising or responding to pre-contract queries, only to have to address many of the same queries in post-contract requisitions. From this January, this duplication will be removed, leading to a more streamlined and efficient process.

A requisition on title can be raised on any matter of title, post-contract, but it is very important to note that, as described in General Condition 7, it cannot be raised if the query was apparent to the purchaser prior to the date of sale.

The purchaser is fixed with notice of everything disclosed or revealed by the contract or the documents and information provided to the purchaser, pre-contract. The purchaser is also fixed with notice of anything appearing from an inspection of the property, an inspection of the planning register, or the searches (if any) furnished to the purchaser by the vendor before the date of sale.

If the issue was otherwise known to the purchaser prior to that date, the purchaser cannot raise the requisition either so, if the issue was revealed, for example, by the purchaser's own searches, pre-contract, then a requisition cannot be raised, post-contract, in that regard. g

> MANY PRACTITIONERS HAVE NOTED THE DUPLICATION CURRENTLY INVOLVED IN RAISING OR RESPONDING TO PRE-CONTRACT QUERIES, ONLY TO HAVE TO ADDRESS MANY OF THE SAME QUERIES IN POST-CONTRACT REQUISITIONS

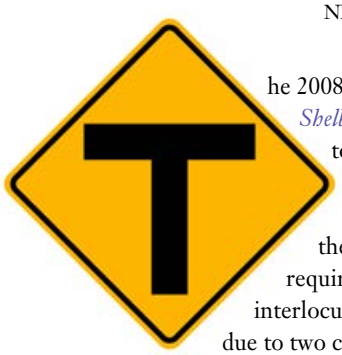
LOOK IT UP

- *Draft Conditions of Sale 2019*
- *Compare version with 2017 edition*
- *Explanatory Memorandum*
- *FAQs*

Injunction junctions

When deciding the test for granting a mandatory interlocutory injunction, there is now significantly more emphasis on reaching a decision that ensures the lower risk of injustice prevails. **Neil Murphy** puts the case to rest

NEIL MURPHY IS A BARRISTER CANDIDATE AT THE KING'S INNS. HE WISHES TO THANK ROSS AYLWARD BL FOR HIS HELPFUL ADVICE WHEN PREPARING THIS ARTICLE



The 2008 judgment of Kelly J (as he then was) in *Shelbourne Hotel Holdings v Torriam* brought to a head the issues that had surrounded the granting of mandatory interlocutory relief. For over a decade, there has been debate around what is required from a party seeking a mandatory interlocutory injunction. This confusion was due to two competing lines of case law from the superior courts in Ireland. Although the Supreme Court had opined on the issue, there was some scope for judges in lower courts to distinguish cases. This led to an unavoidable divergence in the case law on the correct test to be applied.

Kelly J's judgment in *Shelbourne* is a third line of case law on the issue. Kelly J, while awaiting a definitive ruling from the Supreme Court, approved another test, which was set out by Lord Hoffman in *National Commercial Bank Jamaica Ltd v Olint Corporation Ltd*.

Passing on the inside

The Supreme Court in *Campus Oil Ltd v Minister for Industry and Energy (No 2)* held that, in order to obtain an injunction, you must show that there is a fair and *bona fide* question to be tried, that damages are not an adequate remedy, and that the balance of convenience favours the granting of an injunction. A point not often picked up on from *Campus Oil* is that O'Higgins CJ held that this test should apply to all applications for interlocutory relief – however, such relief will only issue in mandatory form in 'exceptional' circumstances.

The test in *Campus Oil* found favour with many judges of the High Court. In *Bula Ltd v Tara Mines Ltd (No 2)* (1987), Murphy J accepted the view espoused by Megarry J in *Shepherd Homes Ltd v Sandham* (1971) that, if the injunction is likely to cause irremediable prejudice to the defendant, a court should be reluctant to grant it. Murphy J held further that all that needed to be satisfied when granting a mandatory interlocutory injunction were the *Campus Oil* principles.

These two findings are difficult to reconcile, as the decision in *Sandham* aligns much more with the second line of case law that has developed on this issue.

A more recent decision from the High Court on the use of the *Campus Oil* principles when granting a mandatory interlocutory injunction is *Cronin v Minister for Education and Science*. Laffoy J grounded her decision on the *Campus Oil* test. The Supreme Court case of *Westman*

AT A GLANCE

- For over a decade, there has been debate around what is required from a party seeking a mandatory interlocutory injunction.
- This confusion was due to two competing lines of case law from the superior courts in Ireland.
- Kelly J's judgment in *Shelbourne* is a third line of case law on the issue
- The *Campus Oil* decision still applies today; however, there is more emphasis on ensuring the lower risk of injustice prevails

PIC: SHUTTERSTOCK

THE TEST IN IRISH LAW FOR THE GRANTING OF MANDATORY INTERLOCUTORY INJUNCTIONS SHOULD NOT BE IN ISSUE. ANY CONFUSION HAS BEEN CREATED BY THE MISINTERPRETATION OF THE LAW

Holdings Ltd v McCormick was cited by Laffoy J in *Cronin*. In *Westman Holdings*, Finlay CJ reiterated the view that, once a fair and reasonable question to be tried has been established, the court should take no view as to the strength of the opposing submissions. Finlay CJ then went on to say that the strength of the parties' case could be scrutinised if the damages aspect didn't resolve the balance of convenience issue.

Laffoy J clearly felt she was bound by this decision of the Supreme Court and applied the *Campus Oil* test. Laffoy J noted that damages were not an adequate remedy and the balance of convenience lay in favour of granting the injunction. This decision from Laffoy J is interesting, as it overlooked authorities that would have supported the view that there was a higher bar to reach than the 'fair and reasonable question' standard. This is where we begin to see the divergence in the case law.

Outside track

The 1992 decision of Denham J (as she then was) in *Boyhan v Tribunal of Inquiry into the Beef Industry* was the first decision that altered the interpretation of *Campus Oil*. This was necessary on a practical level, as the *Campus Oil* test is a relatively low bar to meet. Denham J held that a mandatory injunction is a "powerful instrument" and in seeking "this exceptional form of relief ... it is up to the plaintiffs to establish a strong and clear case".

The *ratio* of Denham J above was further added to in *Boyle v An Post*, where Lardner J granted a mandatory interlocutory injunction, stating that it was an "exceptional case where one can say with assurance that, at the hearing of the substantive action, the plaintiffs are bound to succeed". These two cases demonstrate that some judges of the High Court interpreted the decision in *Campus Oil* much differently to others. I do not mean to suggest that the judges in *Bula* and *Cronin* were entirely errant in how they applied the law; however, the judgment in *Campus Oil* is not as straightforward as a three-stage test. While it is not elucidated in the test itself, it is submitted that judges were entitled to use the *rationes* of O'Higgins CJ in maintaining the view that a higher standard than the "fair and bona fide question to be tried" is required to be successful in obtaining a mandatory interlocutory injunction. O'Higgins CJ in *Campus Oil* noted that "once a fair question has been raised, in the manner … indicated, the court should consider the other matters which are appropriate to the exercise of its discretion".

In the Supreme Court decision of *Maha Lingham v Health Service Executive*, Fennelly J in the Supreme Court held that "the ordinary test of a fair case to be tried is not sufficient to meet the first leg of the test for the grant of interlocutory injunction where the injunction sought is in effect mandatory… it is necessary for the applicant to show at least that he has a strong case that he is likely to succeed at the hearing of the action".

The effect of this was to clarify the law as to when a mandatory interlocutory injunction should be granted. The issue was that the decision in *Campus Oil* set down a three-prong test to be satisfied, yet it also allowed judges to use their discretion in the granting of mandatory interlocutory injunctions. It can be argued that the law was settled before *Maha Lingham*, the decision placing the law on much clearer footing, while not providing absolute clarity.

There was still some ambiguity in the area due to *Maha Lingham* not setting aside *Campus Oil*, nor did *Maha Lingham* say that there was a special test to be applied in applications for mandatory interlocutory injunctions. This may be a reason for Kelly J in *Shelbourne Hotel* holding that there were still conflicting approaches that needed to be decided upon by the Supreme Court.

Take the third exit

The divergence in the High Court led Kelly J in *Shelbourne Hotel Holdings* to devise, in effect, a third line of case law on this issue. Kelly J was more concerned about which decision would carry the lower risk of injustice, as opposed to which of the two tests discussed above should be applied.

Kelly J grounded this decision on the judgment of Hoffmann J in *Films Rover Ltd v Cannon Suite Sales*. The decision in *Shelbourne Hotel Holdings* does not set out which test found favour with Kelly J, as he determined that the applicants in the case satisfied both tests and so were able to obtain mandatory interlocutory relief. Yet the decision in *Shelbourne Hotel Holdings* is not a complete endorsement of either of the two lines of case law either.

While bound by *Campus Oil* and *Maha Lingham*, but with competing judgments of the High Court to deal with, Kelly J looked to the purpose of the decision in *Campus Oil*. The decision in *Campus Oil* is designed to ensure that a mandatory interlocutory injunction can only be obtained exceptionally, due to the effect of a mandatory interlocutory injunction being both severe and extensive.

Check your oil

The result must ensure that the risk of injustice is kept to a minimum. Effectively, the learned judge is stating that, where there is not a clear decision from the Supreme Court (although this can be disputed), the best course of action is to ensure

> *CAMPUS OIL* SETS OUT THE TEST TO BE APPLIED TO INTERLOCUTORY APPLICATIONS; HOWEVER, IT ALSO VERY CLEARLY SETS OUT THAT MANDATORY INTERLOCUTORY RELIEF DOES NOT USUALLY ISSUE PRIOR TO THE TRIAL OF AN ACTION

> CLARKE J SEEMS TO HAVE DOUBLE-PROOFED THE TEST. BOTH THE 'STRONG CASE' TEST AND THE 'LOWER RISK OF INJUSTICE' TEST GO TOGETHER WHEN IT COMES TO CONSIDERING THE MERITS OF AN APPLICATION. THE TEST IN IRELAND FOR THE GRANT OF A MANDATORY INTERLOCUTORY INJUNCTION TODAY IS THE 'STRONG CASE' TEST

that injustice is not created in granting a mandatory injunction.

The test in Irish law for the granting of mandatory interlocutory injunctions should not be in issue. Any confusion has been created by the misinterpretation of the law. *Campus Oil* sets out the test to be applied to interlocutory applications – however, it also very clearly sets out that mandatory interlocutory relief "does not usually issue prior to the trial of an action".

Had Murphy J in *Bula*, or Laffoy J in *Cronin*, held that the grant of the mandatory interlocutory injunction was due to an exceptional factor, the decisions could be read in line with *Campus Oil*.

The key finding in *Campus Oil* is the *ratio* of O'Higgins CJ, holding that mandatory interlocutory injunctions are only to be granted in exceptional circumstances. This finding automatically pushes the test out of the 'fair and reasonable question' bracket into 'strong case' territory. The 'fair and reasonable question to be tried' standard is arguably the lowest bar possible.

Outside of *Campus Oil* and *Maha Lingham*, there is yet another decision of the Supreme Court where it is has been held that the test to be applied is the 'strong case' test. In *Okunade v Minister for Justice, Equality and Law Reform*, Clarke J (as he then was) in the Supreme Court held that the test to be applied when an order for mandatory interlocutory relief is sought is the higher standard, as set out in the Supreme Court in *Maha Lingham*.

It should be noted that the decision in *Okunade* came in 2012, two years after *Shelbourne Hotel Holdings*, wherein Kelly J was awaiting "a final determination by the Supreme Court" on the issue. Although it was decided in a judicial review context, *Okunade* may be the decision Kelly J was holding out for, as it confirms the approach to be taken when dealing with an application for mandatory interlocutory relief is the 'strong case' test. In *Okunade*, Clarke J also alluded to the need to take whatever course would carry the lower risk of injustice.

Clarke J seems to have double-proofed the test. Both the 'strong case' test and the 'lower risk of injustice' test go together when it comes to considering the merits of an application. The test in Ireland for the grant of a mandatory interlocutory injunction today is the 'strong case' test, coupled with the course that would carry the lower risk of injustice. This test has been applied in the High Court in *Tola Capital Management LLC v Joseph Linders* by Cregan J.

Overtaking lane?

This article has sought to dispel the issues surrounding the granting of mandatory interlocutory injunctions in Ireland. There is no doubt that the better test for the granting of mandatory interlocutory injunctions is the 'strong case' test, coupled with the 'lower risk of injustice' principle. The importance of the lower risk of injustice principle is highlighted by Clarke J in *AIB v Diamond*, where the judge noted that the lower risk of injustice approach "can be a useful measure when deciding whether a somewhat different approach to normal is needed in particular types of cases".

The *Campus Oil* decision still applies as much today as it did 30 years ago. However, there is now much more emphasis on deciding cases with a view to reaching the decision that ensures the lower risk of injustice prevails. g

LOOK IT UP

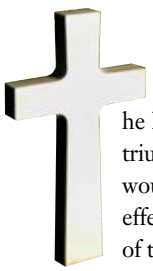
CASES:

- *AIB v Diamond* [2011] IEHC 505
- *Albion Properties Ltd v Moonblast Ltd* [2011] 3 IR 563
- *Boyhan v Tribunal of Inquiry into the Beef Industry* [1992] ILRM 545
- *Boyle v An Post* [1992] 2 IR 437
- *Bula Ltd v Tara Mines Ltd (No 2)* [1987] IR 95
- *Campus Oil Ltd v Minister for Industry and Energy (No 2)* [1983] IESC 2 (17 May 1983)
- *Cronin v Minister for Education and Science* [2004] IEHC 255 [2004] 3 IR 205
- *Films Rover Ltd v Cannon Suite Sales* [1987] 1 WLR 670
- *Maha Lingham v Health Service Executive* [2006] ELR 137
- *National Commercial Bank Jamaica Ltd v Olint Corporation Ltd* [2009] UKPC 16 (28 April 2009)
- *Okunade v Minister for Justice, Equality and Law Reform* [2012] IESC 49
- *Shelbourne Hotel Holdings Ltd v Torriam Hotel Operating Company Ltd* [2008] IEHC 376; [2010] 2 IR 52
- *Shepherd Homes Ltd v Sandham* [1971] Ch 340
- *Tola Capital Management LLC v Joseph Linders* [2014] IEHC 316
- *Westman Holdings Ltd v McCormick* [1992] 1IR 151

IT'S A LONG WAY TO *Tipperary*

November 2018 sees the 100th anniversary of the end of WW1 – and the start, and end, of an act that introduced the possibility of conscription into Ireland. **Ben Mannering** dodges the draft

BEN MANNERING IS A SOLICITOR AT THE STATE CLAIMS AGENCY



The First World War, having being declared in 1914 to triumphant propaganda that the war against 'the Bosch' would be over before Christmas, had the unfortunate effect of suspending the operation of the *Third Home Rule Bill* in 1914. This bill had been seen as inevitably passing after the war, and Ireland was actively encouraged to participate in that war.

John Redmond, whose own sons enlisted, spoke at Woodenbridge and declared "the interests of Ireland – of the whole of Ireland – are at stake in this war". Many Irish soldiers happily joined the war in 1914, seeing it as an opportunity to 'serve King and Country', see the continent, and be gainfully employed at a time when much of the country was struggling for basic necessities.

By 1916, Britain was obliged to legislate for conscription with the *Military Service Act 1916*. This act was introduced to offset the fall in recruitment under the Derby Scheme of voluntary registration. In Britain, the army had suffered appalling casualties and was experiencing a decline in voluntary recruits. Between 1916 and 1918, some 2,277,623 men were conscripted into the British Army. By 1918, a German offensive appeared to be in a position to counter the British forces, and the numbers required to counter the attack were not being met by conscription in its current format.

Thus parliament passed a bill essentially extending conscription to Ireland without any formal promise linked to the *Home Rule Act*, which had been suggested as a carrot by the Labour Party. The prevailing view was that it would "require three Army Corps to get one out of Ireland".

The *Military Service Act 1918* repealed section 3(3) of the 1916 act (which provided for exemptions

AT A GLANCE

- The First World War was declared in 1914. By 1916, Britain was obliged to legislate for conscription
- Between 1916 and 1918, a total of 2,277,623 men were conscripted into the British Army
- Parliament passed a bill essentially extending conscription to Ireland without any formal promise linked to the *Home Rule Act*
- There was vociferous opposition to conscription, especially as the threat of conscription was not linked in any way to the promise of Home Rule
- The entry of America into the war led Britain to abandon its plan for conscription in Ireland

The views expressed in this article are personal and should not be taken as the views of The National Treasury Management Agency.

PIC: GETTY IMAGES

> THE CONSCRIPTION CRISIS GARNERED SUPPORT AMONG A MOST DIVERSE GROUP OF ACTIVISTS. THE ENGLISH SOLUTION HAD, IN FACT, UNITED A FRACTURED IRISH SOCIETY

for, among other things, "men ordinarily resident in His Majesty's Dominions abroad"), and further cancelled certificates of exemptions from military service granted on occupational grounds, such as doctors. It was hoped that, by extending conscription to the dominion countries, the war would end sooner and the last push would be more Napoleon than Blackadder.

The green fields of France

Ireland in 1918 was a country undergoing a social metamorphosis. Even before the intended introduction of conscription, there was objection to it. Conscription raised concerns of a potential change in Irish society itself. If introduced, there were concerns of female erosion of traditionally male roles in society, with such posters as 'Conscription! No woman must take a man's job'. Such changes had followed the introduction of conscription in Britain.

Furthermore, heavy losses of Irish soldiers in Gallipoli and the Somme, along with many prisoners of war who had become disenchanted with the slaughter on the continent, all contributed to the Irish reluctance for conscription. My grandfather Richard, a private in the Royal Irish Rifles, joined the fight against the Kaiser in 1914 and was one of many who ended up a long way from Tipperary in German POW camps such as Giessen for a period of the war, to return to an Ireland that had changed, changed utterly.

Finally, while the country had been initially torn due to the 1916 Rising, the reaction to the British treatment of the Rising volunteers also turned the tide against voluntary participation in a war that was increasingly being seen as 'not one of our own'.

Like many English solutions to Irish problems, the end result differed from the intended result. When introduced in the British parliament, the debates show that there was vociferous opposition to

Notice of Applications to the Court

STANDARD LIFE ASSURANCE LIMITED

and

STANDARD LIFE INTERNATIONAL DESIGNATED ACTIVITY COMPANY

Notice is hereby given that on 25 September 2018:

(i) A Petition was presented to the Court of Session in Scotland (the "**Court**") by Standard Life Assurance Limited, registered in Scotland under number SC286833 and with its registered office at Standard Life House, 30 Lothian Road, Edinburgh EH1 2DH ("**SLAL**") and Standard Life International Designated Activity Company, registered in Ireland under number 408507 and with its registered office at 90 St Stephen's Green, Dublin 2 ("**SL Intl**"), in which **SLAL** and **SL Intl** seek, inter alia, an order of the Court, under Part VII of, and Schedule 12 to the Financial Services and Markets Act 2000 (the "**Act**"), sanctioning an insurance business transfer scheme (the "**Present Scheme**"), under which the Euro-denominated long-term business carried out by **SLAL** in Austria, Germany and the Republic of Ireland is, subject to certain exemptions, to be transferred to **SL Intl**.

Copies of the Petition, a report of the independent expert on the Present Scheme prepared under Section 109 of the Act (the "**Independent Expert Report**") and a statement setting out the terms of the Present Scheme and containing a summary of the Independent Expert Report may be obtained by any person, free of charge, on SLAL's website at **standardlife.eu** Free copies of any of these documents can also be obtained, on request, by calling any of the telephone numbers listed at the end of this notice on any weekday between 9am and 5pm, or by writing to any of the addresses listed at the end of this notice until the date on which the Court sanctions the Present Scheme. That date is expected to be in February 2019.

In accordance with the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001, **SLAL** and **SL Intl** will publish a series of notices in relation to this application. Those notices are expected to be published in **The Belfast Gazette**, **The Edinburgh Gazette**, **The London Gazette**, the **Iris Oifigiúil** and at least two national newspapers in the UK, Austria, Germany, Ireland and certain other EEA states. Any person who believes that they would be adversely affected by the carrying out of the Present Scheme has the right to lodge written Answers (formal written objections) to the Petition with the Court at Parliament House, Parliament Square, Edinburgh EH1 1RQ within 42 days of the publication of the last of these notices, which is expected to occur by 1 October 2018. Any such person may wish to seek independent legal advice.

In accordance with its present practice, the Court is also likely to consider any other objections to the Present Scheme which are made to it in writing, or in person, at the Court hearing at which the Court's sanction of the Present Scheme is to be sought (the "**Sanction Hearing**"). That Sanction Hearing is expected to take place at the Court, at the above address, on the date which will be available on SLAL's website at **standardlife.eu** when it is known. It would be helpful, if any person wishing to object in person would give not less than five working days written notice in advance of the Sanction Hearing of the reasons for any objection to Burness Paull LLP at the address, and quoting the reference, mentioned below.

This notice of the Petition is given pursuant to Regulation 3(2) of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 and has been approved by the Prudential Regulation Authority.

and

(ii) An application was presented to the Court by **SLAL**, under section 112(1)(d) of the Act, seeking an order giving the consent of the Court to proposed variations (the "**Proposed 2006 Scheme Variations**") of the insurance business transfer scheme (the "**2006 Scheme**"), which was under Part VII of, and Schedule 12 to, the Act, was sanctioned by order of the Court on 9 June 2006 and became effective on 10 July 2006. Under the 2006 Scheme substantially all of the long term business of The Standard Life Assurance Company, a mutual insurance company incorporated by private Act of Parliament, was transferred to **SLAL**.

and

(iii) An application was presented to the Court by **SLAL** under section 112(1)(d) of the Act seeking an order giving the consent of the Court to proposed variations (the "**Proposed 2011 Scheme Variations**") of the insurance business transfer scheme (the "**2011 Scheme**") which was also under Part VII of, and Schedule 12 to, the Act, which was sanctioned by order of the Court on 20 December 2011 and which became effective on 31 December 2011. Under the 2011 Scheme all of the long term business of Standard Life Investment Funds Limited was transferred to **SLAL**.

The Proposed 2006 Scheme Variations and the Proposed 2011 Scheme Variations (together the "**Proposed Variations**") are to address the implications of the Present Scheme for the 2006 Scheme and the 2011 Scheme. Copies of both of those applications, the Independent Expert Report, which includes his conclusions on the Proposed Variations, and a statement explaining the Proposed Variations and containing a summary of the Independent Expert Report, may be obtained by any person free of charge on SLAL's website at **standardlife.eu** Free copies of any of these documents can also be obtained by calling any of the telephone numbers listed at the end of this notice on any weekday between 9am and 5pm or by writing to any of the addresses listed at the end of this notice until the date on which the Court approves the Proposed Variations. That date is expected to be in February 2019.

In accordance with an order of the Court dated 25 September 2018, **SLAL** will publish a series of notices in relation to those applications. They are expected to be published in **The Belfast Gazette**, **The Edinburgh Gazette**, **The London Gazette**, the **Iris Oifigiúil** and at least two newspapers in the UK, Austria, Germany, Ireland and certain other EEA states. Any person who believes that they would be adversely affected by either, or both, of the Proposed Variations has the right to lodge written Answers (formal written objections) to either of the applications with the Court at the above address within 42 days of the publication of the last of these notices, which is expected to occur by 1 October 2018. Any such person may wish to seek independent legal advice.

In accordance with its present practice, the Court is also likely to consider any other objections to either, or both of, the Proposed Variations, which are made to it in writing, or in person at the hearing to approve the Proposed Variations. That hearing is expected to be the Sanction Hearing. It would be helpful if any person wishing to object in person to either, or both, of the Proposed Variations would give not less than five working days written notice of the reasons for any objection to Burness Paull LLP at the address, and quoting the reference, mentioned below.

Burness Paull LLP
50 Lothian Road
Festival Square
EDINBURGH
EH3 9WJ

(Reference: PM/STA/2027/00469)

If you're calling from within the below countries please use the Freephone numbers shown. Please note calls from other countries will be charged:

Germany: 0800 071 3522
Austria: 0800 909 455
Ireland: 1800 719 841
UK: 0345 850 8861

If you're calling from outside of these countries please use the following numbers. Please note calls to these numbers will be charged:

Germany: 0044 131 246 8381
Austria: 0044 131 246 8381
Ireland: 0044 131 246 8380
UK: 0044 131 246 8380

Ireland:
Standard Life - Brexit
90 St Stephen's Green
Dublin 2
Republic of Ireland

Germany:
Standard Life - Brexit
Lyoner Str 15
60528 Frankfurt am Main
Germany

UK:
Standard Life - Brexit
Standard Life House
30 Lothian Road
Edinburgh EH1 2DH

Austria:
Standard Life - Brexit
Arche Noah 9
8020 Graz
Austria

> WHEN INTRODUCED IN THE BRITISH PARLIAMENT, THE DEBATES SHOW THAT THERE WAS VOCIFEROUS OPPOSITION TO CONSCRIPTION, ESPECIALLY AS THE THREAT OF CONSCRIPTION WAS NOT LINKED IN ANY WAY TO THE PROMISE OF HOME RULE

PIC: WIKIMEDIA COMMONS

The Irish Guards at Elverdinghe, Belgium

conscription, especially as the threat of conscription was not linked in any way to the promise of Home Rule. Thus, a crisis was inevitable.

The conscription crisis, as it became known, garnered support among a most diverse group of activists, including the trade union movement, the Catholic hierarchy, and the nationalist community. The English solution had, in fact, united a fractured Irish society.

Act of war

A protest meeting was convened in the Mansion House after the bill was passed in April 1918. There, even Parnellite and anti-Parnellite supporters agreed on the need to present a united front. The Catholic hierarchy pronounced "that conscription forced in this way upon Ireland is an oppressive and inhuman law which the Irish people have a right to resist by every means consonant with the law of God".

Conscription was seen by nationalists as an act of war, and anyone who cooperated with it was an enemy of the people and should be shot (Ernest Blythe). The Sinn Féin national pledge in 1918 was: "Denying the right of the British Government to enforce compulsory service in this country, we pledge ourselves solemnly one to another to resist conscription by the most effective means at our disposal."

The protest took the form of a general strike, supported even by employers, which is remarkable when one considers the employers' reaction to the 1913 Lockout. The strike occurred on 23 April. It was one of the first ever general strikes in Europe, with only banks, law courts, and Government offices remaining open. The Catholic hierarchy closed Maynooth for the day and, for the unfortunate students, this free day was blighted by the closure of the majority of pubs also!

The strike was highly successful, despite the heavy press censorship. Numerous rallies took place countrywide in protest at the conscription plans.

Anti-government and anti-conscription activists were arrested under the premise of being part of a German plot. A plan was also introduced by Captain Stuart Hay (the Hay plan) to coerce the Catholic hierarchy to be persuaded by their continental colleagues to encourage conscription in order to save continental Catholics. This plan foundered due to intercontinental diplomatic complications.

The United States's entry to the war (assisted by its *Selective Service Act 1917*, allowing for the conscription of all US men between 21 and 31) and the changing tide of the German offensive all led the British to not only abandon its plans for conscription, but ultimately led to increased support for Sinn Féin.

Ireland suffered greatly as a result of World War 1, without the necessity for conscription. It is estimated that some 200,000 soldiers of Irish origin served in the Great War, of whom 155 were solicitors and 83 apprentice solicitors. It is believed that up to 49,000 men from the island of Ireland died, of whom an estimated 20 were solicitors, 18 apprentice solicitors and 25 barristers.

They shall grow not old, as we that are left grow old:
Age shall not weary them, nor the year condemn.
At the going down of the sun and in the morning
We will remember them.
(Laurence Binyon, *For the Fallen*). g

STUMBLING BLOCK – IS THIS THE BEGINNING OF THE END FOR GEO-BLOCKING?

The film and TV industry is not yet out of the woods when it comes to online geo-blocking – and a ban on geo-blocking may well be revisited in the not-so-distant future. **Aideen Burke** turns on and tunes out

AIDEEN BURKE IS AN ASSOCIATE AT LK SHIELDS, WHERE SHE SPECIALISES IN MEDIA LAW, FOCUSING ON FILM, TV AND MUSIC

FROM A CONSUMER PERSPECTIVE, A GEO-BLOCKING BAN COULD LEAD TO GREATER CHOICE, BOTH OF AUDIOVISUAL CONTENT AND OF SERVICE PROVIDERS

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

On 2 March 2018, the *Geo-blocking Regulation* (Regulation 2018/302 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment) was published in the *Official Journal*. The regulation will prohibit the practice of geo-blocking consumers' online access to goods and services. Audiovisual services are currently exempt from the regulation, which means that online audiovisual service providers can, after the regulation comes into force on 3 December 2018, continue to restrict access to online content on a territory-by-territory basis within the EU.

In the lead-up to the *Geo-blocking Regulation*, there was much debate as to whether the geo-blocking ban should extend to audiovisual services. After strong lobbying from the film and TV industries, it was agreed that audiovisual services would be exempt from the regulation – for now, at least. However, by 23 March 2020 and every five years after that, the commission will have to evaluate and report on the operation of the *Geo-blocking Regulation*, which leaves open the possibility that a ban on geo-blocking of online audiovisual services may well be revisited in the not-so-distant future.

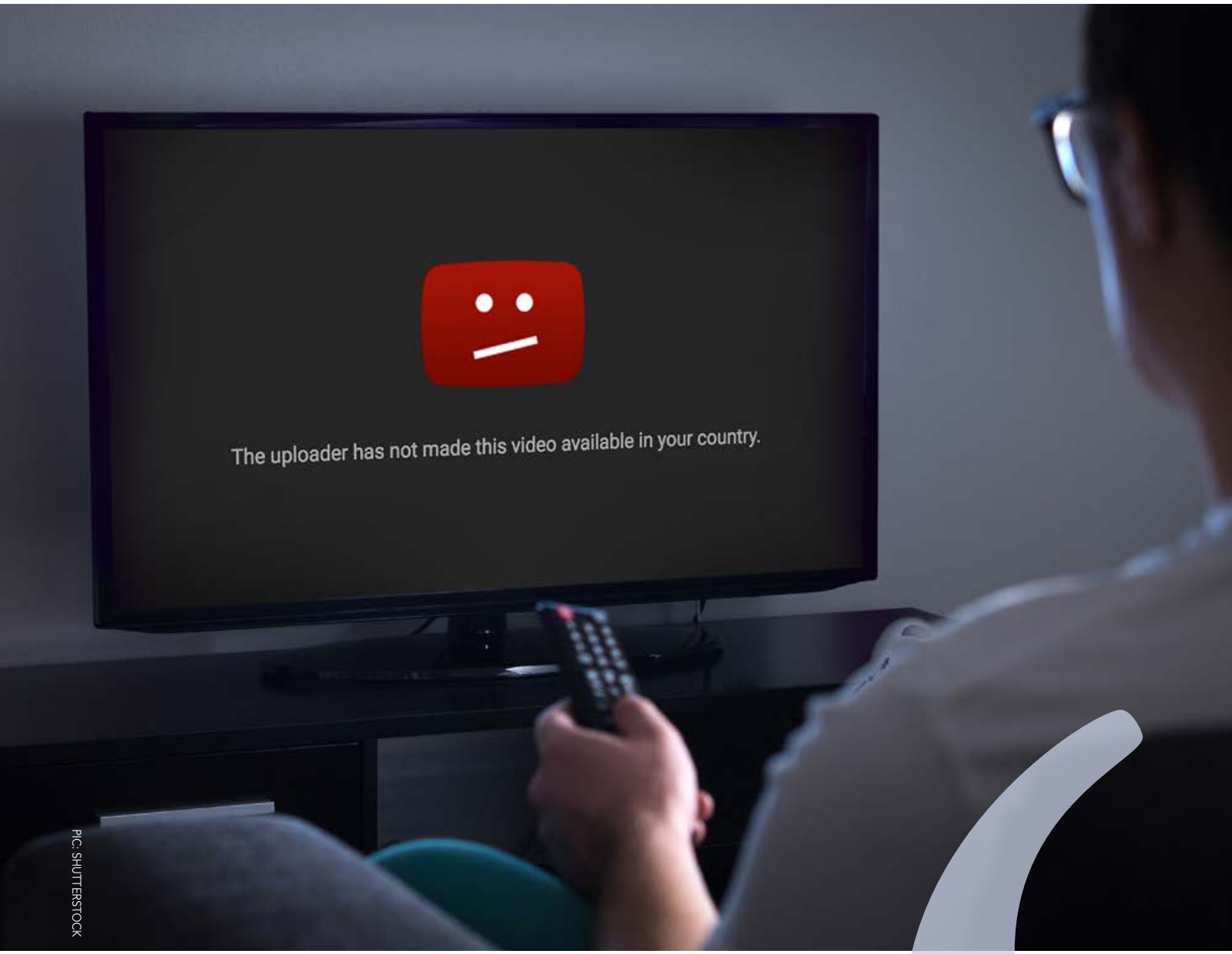
The bridge

In the context of film and TV content, geo-blocking is used to restrict access to online audiovisual services (such as video on demand or VOD) to a particular country in the EU, so that consumers outside of that country cannot access those services. This approach facilitates the current distribution model for film and TV content, where distribution rights are typically carved up on a territory-by-territory basis within the EU. For example, a French distributor will distribute in France (and, usually, in other French-speaking countries), an Italian distributor will distribute in Italy, etc. This approach means that producers have an increased number of potential revenue streams for their content and, in addition, distribution tends to be more streamlined, as local distributors can focus on their individual markets. Indeed, most distribution agreements will include an obligation on distributors to take steps to prevent the distribution of content to other territories outside the territory in respect of which they are granted distribution rights, which will often include applying geo-blocking to the online distribution of that content.

The good place

From a consumer perspective, a geo-blocking ban could lead to greater choice, both of audiovisual content and of service providers, thereby stimulating competition and reducing the price payable for access to that content or service.

However, such a measure could also have serious adverse effects on the film and TV industries. A ban on geo-blocking would significantly affect the current financing model for film production. If a French distributor is no longer guaranteed territorial exclusivity in respect of online sales of a film in France, then this may result in that distributor attaching less commercial value to a film. As a result, that distributor could seek to either reduce the amount of any minimum guarantee payable and/or increase their percentage share of receipts from the film, to make up for a perceived risk of reduced sales. Potential co-producers or financiers may have less of a commercial incentive to invest in films and TV projects



PIC: SHUTTERSTOCK

at development stage, if pre-sales cannot be guaranteed or are likely to be reduced. Many critics also suggest that cross-border distribution of audiovisual works will benefit large players who can afford to buy works on a pan-European basis.

The haunting of Hill House

By 23 March 2020 and every five years after that, the commission will have to evaluate and report on the operation of the *Geo-blocking Regulation*. It is very possible that the commission may once again raise the issue of banning geo-blocking of online audiovisual services at that time. However, it is unlikely that a geo-blocking ban would be applied to VOD services such as *RTÉ Player* and *BBC iPlayer* – the EU Commission has noted that funding in some audiovisual sectors (such as television) relied on territorial exclusivity and, accordingly, geo-blocking in such instances may be justified.

The separate *Online Portability Regulation* (which applies from 1 April 2018 and enables consumers to access their portable online content services when they travel in the EU in the same way they access them at home) may be indicative of the shape of things to come. Indeed, the current vice-president for the digital single market, Andrus Ansip, has voiced his dislike of geo-blocking on a number of occasions. As such, the film and TV industry is by no means out of the woods when it comes to online geo-blocking.

IT IS UNLIKELY THAT A GEO-BLOCKING BAN WOULD BE APPLIED TO VOD SERVICES SUCH AS *RTÉ PLAYER* AND *BBC iPLAYER*

RECENT DEVELOPMENTS IN EUROPEAN LAW

FREE MOVEMENT OF PERSONS

Joined Cases C-331/16, *K v Staatssecretaris van Veiligheid en Justitie* (20 December 2017) and C-336/16, *HF v Belgische Staat*

K has Bosnian and Croatian nationality. He arrived in the Netherlands in 2001 with his wife and son. Three applications for asylum were rejected. The final rejection in 2013 was accompanied by a ban on entering the Netherlands. After Croatia joined the EU, K applied to have the ban withdrawn. In 2015, the Netherlands granted that application. However, K was declared to be an undesirable immigrant on the grounds that he was guilty of war crimes and crimes against humanity committed by special units of the Bosnian army. The protection of public policy and public security required that all steps be taken to prevent citizens of the Netherlands coming into contact with individuals who, in their country of origin, had been guilty of war crimes. In particular, the authorities wished to avoid victims of these war crimes encountering K in the Netherlands. The District Court of The Hague asked the CJEU to interpret Directive 2004/38 on the right of movement and residence of EU citizens.

HF is an Afghan national who arrived in the Netherlands in 2000. He applied for asylum and was unsuccessful. In 2011, he moved to Belgium with his daughter. He applied for residence in Belgium unsuccessfully. As his daughter was a Dutch national, he made a fresh application as the family member of an EU citizen. Belgium refused the application based on information contained in the file relating to his application for asylum in the Netherlands. It appeared from the file that that he participated in war crimes or crimes against humanity or gave orders for the commission of such crimes. The Belgian council for asylum and immigration proceedings decided to make a reference to the Court of Justice.

The CJEU pointed out that member states are free to adopt measures that restrict the freedom of movement and residence of EU citizens and their family members, in particular on the grounds of public policy and public security. Such a restriction based on the commission of a war crime or a crime against humanity may fall within the scope of public policy or public security within the meaning of the directive. A case-by-case assessment is necessary before a measure based on grounds of public policy or public security is adopted. The finding of such a threat must be based on an assessment of the personal conduct of the individual. This can take into consideration the findings of fact in the decision to exclude that person from refugee status. The factors on which that decision was based can be looked at, including the nature and gravity of the crimes that he is alleged to have committed, the degree of his individual responsibility in them, any grounds for excluding liability, and whether he was convicted of these crimes. The assessment must also take account of the elapsed time since the crime and the individual's subsequent conduct. Even if it appears unlikely that such crimes may recur outside their specific historical and social context, if the conduct of the individual concerned shows the persistence of a disposition hostile to the fundamental values of the EU (such as human dignity and human rights), this is capable of being a genuine, present and sufficiently serious threat affecting of the fundamental interests of society within the meaning of the directive. The assessment must balance the threat that the personal conduct of the individual concerned represents to the fundamental interest of the host society on the one hand, and the protection of the rights that EU citizens and their family members derive from the directive on the other. Finally, an expulsion decision must be examined in the context of proportionality. Account must be taken of the nature and gravity of the conduct of the individual, its duration, the legality of his conduct in the host state, the period of time elapsed since the crimes, his behaviour during that period, the extent to which he currently poses a danger to society, and the solidity of social, cultural and family links with the host state.

PROFESSIONAL INDEMNITY INSURANCE COMMITTEE

PII PROCEDURES FOR CLIENT ACCOUNT DEFICITS

The purpose of this practice note is to set out the procedures to be followed by solicitor firms in order to trigger their professional indemnity insurance (PII) cover where client moneys have been misappropriated from the client account, other than by reason of fraud or dishonesty of the solicitor firm as the insured, such as cybercrime.

Principals of solicitor firms have a personal liability for any deficit of client moneys. This is the case even where such deficit arises as a result of a fraud committed against the firm, such as cybercrime. It is therefore the responsibility of such principals to reimburse to the client account the amount of client moneys fraudulently taken in order to rectify the deficit.

The terms of the existing professional indemnity insurance minimum terms and conditions cover losses suffered by a solicitor firm in circumstances, such as fraud and cybercrime, where the client suffers a loss as a result of this event, and subsequently makes a request or demand for, or intimates an intention to seek, compensation or damages from a solicitor firm in respect of such loss.

The minimum terms and conditions also cover rectification of a deficit on the client account of a solicitor firm, where such deficit is caused other than by fraud or dishonesty of the solicitor firm, and where the solicitor firm has received a written notification of a requirement to rectify the deficit from the Law Society following an inspection of the firm by the Law Society.

It is understood that solicitor firms may wish to cover any misappropriation of client moneys from the firm's own funds as soon as possible for reputational reasons, the avoidance of litigation, or otherwise. Solicitor firms should ensure that they do not rectify any deficit caused on the client account due to misappropriation of client moneys lost (other than by reason of fraud or dishonesty of the solicitor firm) in advance of a claim by the client, or receipt of a notification or a requirement to rectify the deficit from the Law Society, as the firm's PII cover will not be triggered and the firm could be left without cover for the loss.

The procedure for triggering a solicitor firm's PII cover in the event of loss of client moneys, other than by reason of fraud or dishonesty of the insured, are as follows:

1) The solicitor firm should notify the Law Society of the deficit on the client account (not due to fraud or dishonesty of the solicitor firm) due to misappropriation of client moneys immediately on becoming aware of same. The Society may also otherwise become aware of the existence of the deficit.
2) The Law Society shall carry out an inspection of the firm and produce an investigation report.
3) The matter shall be put before the Law Society's Regulation of Practice Committee for consideration, with the principals of the firm attending the meeting.
4) The Regulation of Practice Committee may direct that an application be made to the High Court for an order requiring the solicitor firm to rectify the deficit on the client account with a stay of 14 days, or such other stay period as the committee deems appropriate.
5) The solicitor firm shall be notified of their requirement by letter from the Law Society to rectify the deficit within the stay period, or the Law Society will apply to the High Court for an order for rectification. This letter is defined under the PII regulations as the 'notification of a requirement to rectify', which definition also sets out the content of the letter.
6) PII cover for the firm is triggered when the 'notification of a requirement to rectify' is received by the solicitor firm from the Law Society, whether the solicitor firm then chooses to rectify the deficit using their own funds (and recovers from the insurer) or the firm's insurer rectifies the deficit.
7) If the deficit is not rectified by either the firm or the insurer within the stated stay period, the Law Society's application to the High Court for an order for rectification will proceed.

The following should be noted:

1) The PII coverage referred to in this practice note solely refers to deficits on the client account. If non-client moneys are misappropriated from a non-client account, this is not a covered event. Consequential first-party expenses, such as PR and client notification costs, are also not covered. Solicitor firms should obtain separate cybercover should they wish to insure against such events.
2) Deficits on the client account caused by fraud or dishonesty of the solicitor or firm as the insured are not covered.
3) Any misuse of this coverage for the benefit of a solicitor, clients or third parties is likely to be dealt with through ordinary insurance law principles, such as unjust enrichment and subrogation.

PROFESSIONAL INDEMNITY INSURANCE COMMITTEE

PII RENEWAL

The mandatory professional indemnity insurance (PII) renewal date for all firms is 1 December 2018. This date is not negotiable. All cover under the current indemnity period will expire on 30 November 2018.

Confirmation of cover

All firms must ensure that confirmation of their PII cover is provided to the Society within three working days of 1 December 2018, including those firms with variable renewal dates. Therefore, confirmation of cover in the designated form must be provided to the Society on or before close of business on Wednesday 5 December 2018.

Confirmation of cover should be provided by your broker through the Society's online PII confirmation system. Such confirmation must include your policy number, and confirmation of cover cannot be provided until the policy is actually in place. As your firm has a statutory obligation to ensure such confirmation of cover is provided to the Society on or before Wednesday 5 December 2018, you are responsible for ensuring that your broker provides the Society with confirmation of cover by that date. You should also ensure that your broker has familiarised themselves with the online confirmation system and has the necessary information to confirm cover online (such as their login and password) in advance of 5 December 2018.

It is noted that some firms who have confirmed PII cover to the Society during 2018 have a coverage period that extends past 30 November 2018. Such firms are still required to reconfirm cover for 2018/2019 with the Society by 5 December 2018.

Please note that your firm will not be reflected as having PII in place on the Society's 'Find a firm' online search facility until such time as the Society has received the required online confirmation of cover.

Renewal resources

The guide to renewal for the 2018/2019 indemnity period will be published on the Society's website on 2 November 2018 to assist the profession with renewal. The guide includes information such as tips for renewal, important points to note, and a guide to insurers and brokers. This guide will be updated frequently with new information received by the Society, in particular with regard to what insurers will be in the market in the next indemnity period.

Renewal resources for the 2018/2019 indemnity period are available to download from the Society website at www.lawsociety.ie/PII and include the common proposal form, PII regulations and minimum terms and conditions, the *Participating Insurers Agreement*, and relevant PII practice notes. The information available is frequently updated as more documentation becomes available.

Financial strength rating

The Society introduced a new minimum financial strength rating requirement from a recognised rating agency for all participating insurers in 2017/2018, which remains in place for 2018/2019, of BBB (S&P, Fitch) or equivalent. The recognised rating agencies are Standard & Poor's, Fitch, AM Best, and Moody's. The Society also has the power to waive the minimum financial rating requirement for participating insurers, subject to such terms and conditions as the Society deems fit, such as provision of a suitable parental guarantee from a rated parent company.

It should be noted that all participating insurers in the market are permitted to write insurance in this jurisdiction under the supervision of the Central Bank. The Society is not responsible for policing the financial stability of any insurer. The Society does not vet, approve or regulate insurers.

Notification of claims

All claims made against solicitors' firms and circumstances that may give rise to such a claim should be notified to the firm's insurer as soon as possible. In particular, claims made between 1 December 2017 and 30 November 2018 (both dates inclusive) should be notified by the firm to their insurer by 30 November 2018.

It is proper practice for firms to notify insurers of claims or circumstances during the year as they arise, not at the end of the indemnity period. Notifying all claims and circumstances at the end of the indemnity period is referred to as 'laundry listing' by insurers, and is not looked on favourably. Firms should also ensure that their claims and circumstances' notifications meet the notifications requirements set out in the insurance policy terms and conditions.

The minimum terms and conditions for PII were amended in the 2011 PII regulations, and this change is retained in the minimum terms and conditions for 2018/2019, to permit firms to report claims or circumstances of which they are aware prior to expiry of cover to their insurer within three working days immediately following the end of the coverage period. Therefore, a three-working-day grace period from 30 November 2018 is in place with regard to notification of claims and circumstances to your insurer.

Quotes

Insurers are required to leave quotes to firms open for a period of not less than ten working days. This requirement was introduced in the 2012/2013 indemnity period, and remains in place for the 2018/2019 indemnity period.

Amendments to cover

The following amendments have been introduced in the *PII Regulations 2018* (SI 351 of 2018):

1) The definition of 'firm' has been amended, and a new regulation 3 has been proposed, to introduce an explicit requirement for every firm to have a principal, partner, or practice manager as appointed under section 31 of the *Solicitors (Amendment) Act 1994*, with a valid practising certificate in place, in order for the firm to be permitted to practise and provide legal services. If a principal, partner, or practice manager is not in place, or they do not have a valid practising certificate, the firm must immediately cease practising until the position is regularised. It should be noted that, where a principal is on short-term sick leave or on maternity leave, another solicitor can run the firm on their behalf and under their supervision. This will con-

tinue to be the case under the proposed new amendments.

2) The definition of 'firm' has also been amended to include reference to legal partnerships and multidisciplinary practices that have solicitor principals, in order to ensure that these are automatically covered should the relevant provisions of the *Legal Services Regulation Act 2015* be commenced during the indemnity period. It should be noted that, as at the date of publication of this practice note, legal partnerships and multidisciplinary practices are not yet permitted.
3) The definition of 'legal services' has been clarified to include acting as a patent agent, registered trademark agent, or European trademark and design attorney.
4) Amendments have been made to the arbitration clauses in the regulations and minimum terms and conditions to introduce a requirement for both parties in arbitration to provide information on the arbitration to the Society on a confidential basis, and also setting out the detail that should be contained in that notification.
5) Clause 8.1 of the minimum terms and conditions was amended to provide that arbitration between an insurer and the insured solicitor firm can also be initiated with regard to disputes related to the insurer's failure to confirm cover.
6) Clause 8.3 of the minimum terms and conditions was amended to transfer the power to direct an insurer to conduct any claim against an insured solicitor from the Society to the arbitrator in the case of claims disputes. Under the new amendments, the arbitrator will have the power, in appropriate cases and on an interim basis pending hearing or resolution of arbitration, to direct the insurer to conduct claims, advance defence costs, or pay claims.

Run-off Fund

The Run-off Fund provides run-off cover for firms ceasing practice that have renewed their PII for the current indemnity period, and subject to meeting eligibility criteria, including that there is no succeeding practice in respect of the firm.

Any firm intending to cease practice after 30 November 2018 is required to renew cover for the 2018/2019 indemnity period.

Any applications to the Run-off Fund for cover must be made directly to the Special Purpose Fund manager, not the Society. Further information on run-off cover and succeeding practices, including the contact details of the Special Purpose Fund manager, can be found on the Society's website at www.lawsociety.ie/PII.

Run-off compliance status

Amendments were made to the Run-off Fund under the 2016/2017 regulations, which came come into effect on 1 December 2017 and remain in place for the 2018/2019 indemnity period, to increase the level of compliance of firms in the Run-off Fund with the Special Purpose Fund manager with regard to claims and membership of the Run-off Fund.

Under these provisions, three levels of run-off cover exist, depending on the compliance of run-off firms:

1) Compliant run-off firms have cover in the Run-off Fund with the same minimum terms and conditions as those that exist in the market,
2) Non-compliant run-off firms have reduced cover in the Run-off Fund with the same minimum terms and conditions as those that exist in the market, with the exception that there is no cover for claims by financial institutions,
3) ARP run-off firms continue to have cover in the Run-off Fund at the same level that exist in the ARP, with aggregate cover and no cover for claims by financial institutions.

Further information on changes to run-off cover provisions can be found on the Society's website at www.lawsociety.ie/PII.

PII Helpline

The Society continues to operate the PII Helpline to assist firms in dealing with PII queries. The Law Society's PII Helpline is available from Monday to Friday, 10am to 4pm, to assist firms with PII queries – tel: 01 879 8707, email: piihelpline@lawsociety.ie.

REGULATION OF PRACTICE COMMITTEE

MONEY LAUNDERING AND TERRORIST FINANCING REGULATIONS – REMINDER ALERT

The Regulation of Practice Committee, which is the Law Society standing committee that polices compliance with the, *Solicitors Accounts Regulations* and anti-money-laundering legislation, wishes to remind all practitioners of the provisions of the *Solicitors (Money Laundering and Terrorist Financing) Regulations 2016*, which came into force on 1 November 2016. A practice note was published on the regulations in the November 2016 *Gazette* (p55).

Law Society inspections are conducted to ensure compliance with these regulations and the *Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013*, as well as the *Solicitors Acts* and *Solicitors Accounts Regulations 2014*.

As part of the Society's monitoring process, solicitors are required to demonstrate that they have policies and procedures in place for the prevention and detection of money-laundering and terrorist-financing offences.

Solicitors are reminded that failure to comply with the *Solicitors (Money Laundering and Terrorist Financing) Regulations 2016* may result in one or more of the following courses of action:

- Requirement to take remedial action,
- Requirement to attend a meeting of the Regulation of Practice Committee to explain failure to comply,
- Referral to the Solicitors Disciplinary Tribunal.

John Elliot, Registrar of Solicitors and Director of Regulation

MONEY LAUNDERING REPORTING COMMITTEE

MONEY-LAUNDERING REPORTING

The Law Society's Money Laundering Reporting Committee (MLRC) is one of the Law Society's standing committees and carries out the functions generally vested in the money-laundering reporting officer in other organisations with money-laundering reporting obligations. The committee is comprised of solicitors and a lay member (an accountant), and an executive staff member of the Society's Regulation Department acts as committee secretary.

The MLRC has a statutory duty to report any suspicion or knowledge it may have that a solicitor (and/or any other person) has been or is engaged in money laundering or terrorist financing to the relevant authorities (An Garda Síochána and the Revenue Commissioners).

The money-laundering reporting obligations of the Law Society have been delegated to the MLRC with a duty to report to the Council of the Law Society (on a no-names basis) on the performance of these obligations.

In addition, the MLRC's remit also extends to relevant offence reporting pursuant to the *Criminal Justice Act 2011*. In these cases, the MLRC, where it has information that it knows or believes might be of material assistance in preventing the commission of a relevant offence pursuant to the provisions of section 19 of the *Criminal Justice Act 2011* or securing the apprehension, prosecution or conviction of a person for such a relevant offence, is obliged to report that information as soon as is practicable to An Garda Síochána. Typical relevant offences include offences contrary to the *Criminal Justice (Theft and Fraud Offences) Act 2001* (such as theft or forgery), conduct that could be described as a conspiracy to defraud at common law, and money laundering.

The Law Society has an internal procedure whereby suspicion that a money-laundering offence, an offence of financing terrorism, or a relevant offence has been or is being committed by a solicitor or any other person requires the submission of an internal report to the MLRC, which decides in each case whether or not a report should be made to An Garda Síochána and the Revenue Commissioners. In practice, as might be expected, any suspicion is most likely to arise during an accounts inspection or when dealing with a complaint about a solicitor.

Some real-life anonymised examples of money-laundering and relevant offences, which have been reported to the committee and where a decision was made to report the matter under section 63(2) of the *Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013* and under section 19(1) of the *Criminal Justice Act 2011*, include the following:

Client account: undrawn costs

During the course of a *Solicitors Accounts Regulations* investigation carried out by the Law Society, it was discovered that, over an eight-year period, the firm allowed the sum of €450,000 in undrawn costs to build up in the firm's client account. The firm failed to account to the Revenue Commissioners in respect of VAT and income tax liabilities arising on the amount, which should have been transferred, thus raising the suspicion of deliberate tax evasion.

The matter was considered by the MLRC, and a decision was made to report the matter to An Garda Síochána and the Revenue Commissioners under section 63(2) of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*.

Theft of clients' moneys

During the course of a *Solicitors Accounts Regulations* investigation, it was discovered that the solicitor firm had disbursed clients' moneys in the sum of €50,000 from the client account of the firm in respect of personal and office expenditure.

The matter was considered by the MLRC, and a decision was made to report the matter to An Garda Síochána under section 19(1) of the *Criminal Justice Act 2011*. g

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 Imelda Leahy, a solicitor formerly practising as Imelda Leahy and Company, Solicitors, Kilree Street, Bagenalstown, Co Carlow, 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 1954-2011* [8250/DT158/15 and High Court record 2018/66SA]

Law Society of Ireland (applicant)

Imelda Leahy (respondent solicitor)

On 23 June 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

1) Took €173,543 from the estate of a named person in circumstances where she was not entitled to do so,
2) Failed to pay a specific bequest from the estate in a timely manner,
3) Took two payments of €15,000 each on 18 November 2014, together with travel expenses of €1,300.20, which payments were not recorded in the office ledger account for that client,
4) Failed to keep proper books of account and records to show the amounts of settlement received and failed to provide evidence of same when requested in respect of certain cases,
5) Allowed a shortfall of €36,810 in relation to clients' funds due to third parties because of the transfer of excess amounts for costs in respect of certain cases,
6) Failed to provide sufficient documentary evidence to ensure that clients were informed of the correct amount of their settlements,
7) In respect of a specific estate, failed to issue a section 68(1) letter to the client or the residuary legatees setting out the fees payable or the basis to be used to calculate those fees,
8) In relation to a specific estate, took costs of €47,150 before VAT on a piecemeal basis without instructions or authority of the client,
9) In respect of a specific case, failed to furnish a section 68(6) account to the client for costs deducted and failed to furnish a bill of costs to the client for fees taken,
10) Was in breach of the *Solicitors Accounts Regulations* as set out at paragraph 4.11 of the report and, in particular, in breach of:
    a) Regulation 12(1) of the 2001 regulations and 13(1) of the 2014 regulations by failing to keep proper books of account that showed the true financial affairs of the clients,
    b) Regulations 10(2) and 10(5) of the 2001 regulations and 11(2) and 11(5) of the 2014 regulations by failing to lodge all costs received to the client account and reflect these properly in the client ledger account,
    c) Regulation 7(1)(iii), taking moneys across to the office account in respect of fees when it had not been made known to such clients that moneys so held would be used in satisfaction of professional fees due to the respondent solicitor,
    d) Regulation 7(1)(ii) by the creation of debit balances,
    e) Regulation 11(1) of the 2001 regulations and regulation 12(1) of the 2014 regulations by failing to furnish clients with bills of costs dealing with professional fees and outlay,
    f) Regulation 11(3) of the 2001 regulations and 12(3) of the 2014 regulations by taking moneys not properly payable to the respondent solicitor at the time of taking,
    g) Regulation 13 of the 2001 regulations and regulation 14 of the 2014 regulations in instances where the solicitor was a controlling trustee and failed to lodge moneys received without delay to a controlled trust bank account.

The tribunal ordered that the Law Society of Ireland bring its findings and reports before the High Court. On 23 July 2018, the High Court ordered that:

1) The respondent solicitor is not a fit and proper person to be a member of the solicitors' profession,
2) The name of the respondent solicitor be struck off the Roll of Solicitors,
3) The respondent solicitor pay the applicant's costs before the Solicitors Disciplinary Tribunal in proceedings bearing the record no 8250/DT158/15, to be taxed in default of agreement,
4) The respondent solicitor pay the applicant's costs before the court, to be taxed in default of agreement,
5) The applicant furnish the papers lodged with the court, including the transcript of the hearings before the Solicitors Disciplinary Tribunal, to the National Bureau of Fraud Investigation.

In the matter of James Dorney, a solicitor practising as Dorney Solicitors, Phoenix House, Monahan Road, Cork, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT110]

Law Society of Ireland (applicant)

James Dorney (respondent solicitor)

On 24 July 2018, the tribunal found the respondent solicitor guilty of professional misconduct in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 28 February 2017 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014).

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay the sum of €750 to the compensation fund,
3) Pay a contribution of €687 towards the whole of the costs of the Law Society of Ireland.

In the matter of Imelda Leahy, a solicitor formerly practising as Imelda Leahy and Company, Solicitors, Kilree Street, Bagenalstown, Co Carlow, 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 1954-2011* [8250/DT42/16; 8250/DT43/16; 8250/DT46/16; 2017/DT09; 2017/DT70; and High Court record 2018/69SA]
Law Society of Ireland (applicant)
Imelda Leahy (respondent s olicitor)

On 22 June 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in her practice as a solicitor in that she:

8250/DT42/16

1) Acted in a manner unbecoming to a solicitor by sending texts and correspondence to her client that were unprofessional, offensive, and inappropriate, thereby bringing the solicitors' profession into disrepute,
2) Failed to release the balance of funds due to the complainant in a timely manner,
3) Failed to comply with the direction of the Complaints and Client Relations Committee made on 28 July 2015 within the time specified,
4) Failed to notify the complainant in a timely manner or at all of the significant increase in the level of fees,
5) Misled the Society by indicating that the section 68 letter issued on 3 March 2015 was a forgery, notwithstanding the letter of 20 April 2015 to the client that referred to the fees sent out in the section 68 letter,
6) Misled her client by letters dated 20, 22 and 25 May 2015 and text dated 19 May 2015, which stated that she had requested the bank's solicitor to send the surplus funds to the client and that it was the bank's solicitor who had erroneously paid the money into the respondent solicitor's account, when in fact it was the respondent solicitor who instructed that the surplus be sent to her account,
7) Expressly or by implication misled the Society by claiming that a named person drafted the quote for €1,500 and that she did not agree with this sum, notwithstanding her letter to the complainant of 20 April 2015,
8) Made threats to her client by suggesting that she would report him to the Revenue Commissioners.

8250/DT43/16

Acted in a manner unbecoming to a solicitor by sending persistent texts and correspondence to her trainee, to the Society, and to third parties, the content and tenor of which were unprofessional, offensive, intemperate and inappropriate, thereby bringing the solicitors' profession into disrepute.

8250/DT46/16

Acted in a manner unbecoming to a solicitor by sending abusive texts, and corresponded with her clients in an unprofessional, offensive, intemperate and inappropriate manner, thereby bringing the solicitors' profession into disrepute.

2017/DT09

Acted in a manner unbecoming to a solicitor by sending abusive texts, and corresponded with her client in an unprofessional, offensive, intemperate and inappropriate way, thereby bringing the solicitors' profession into disrepute.

2017/DT70

Failed to comply with the direction of the committee made on 1 March 2016 to refund moneys to the complainant in the amount of €16,540 within seven days of the meeting, as specified by the committee, or at all.

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

On 30 July 2018, the High Court declared that the respondent solicitor was not a fit and proper person to be a member of the solicitors' profession, the respondent solicitor having been previously struck from the Roll by order of the court dated 23 July 2018.

In the matter of Christopher Lynch, a solicitor formerly practising as Christopher Lynch & Company, Solicitors, at 99 O'Connell Street, Limerick, and in the matter of the *Solicitors Acts 1954-2015* [8386/DT52/15]
Law Society of Ireland (applicant)
Christopher Lynch (respondent solicitor)

On 30 July 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he:

1) Failed to comply with an undertaking furnished to Bank of Ireland Mortgages on 22 February 2005 in respect of his clients and named borrowers and property at Askeaton, Co Limerick, in a timely manner or at all,
2) Failed to respond to the following letters from the Law Society within the time provided, in a timely manner, or at all: 24 October 2013, 24 February 2014, 28 April 2014, and 27 August 2014.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay a sum of €500 to the compensation fund,
3) Pay a sum of €3,327 as a contribution towards the whole of the costs of the applicant. g

WILLS

Caffrey, Ita (deceased), late of 36 Clune Road, Finglas East, Dublin 11, who died on 6 July 2017. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Thorpe & Taaffe Solicitors, 1 Main Street, Finglas, Dublin 11; tel: 01 834 4959, email: warren@thorpetaaffe.ie

Corcoran, Noel Thomas (deceased), and Mary Catherine (known as Moira) Corcoran (deceased), both late of 32 Old Finglas Road, Glasnevin, Dublin 11. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Angela O'Kane, 189A Garryduff Road, Dunloy, Ballymena, Co Antrim, BT44 9DD; tel: 0044 28 276 57809, mobile: 0044 77 252 37 299, email: angela.okane@yahoo.com

Draper, Florence (Florrie) (deceased), who died on 12 April 2017, late of Brymore Nursing Home, Howth, Co Dublin, and formerly of 33 Bayside Park, Dublin 13. 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 Barror & Co, Solicitors, 45 Lower Baggot Street, Dublin 2; tel: 01 661 0677, email: info@barrorandco.ie

Ferris, Joseph (Joe) (deceased), late of 18 Woodford View, Clondalkin, Dublin 22, who died on 7 August 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding his will, please contact Sherlock & Co, Solicitors; tel: 01 457 0846, email: info@sherlocksolicitors.ie

Hickey, Anne (deceased), late of 10 Gulistan Cottages, Rathmines, Dublin 6, who died on 21 August 2018. Would any person having knowledge of the whereabouts of any will made by or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Brian D Casey & Associates, Solicitors, First Floor, 13 Abbey Street, Ennis, Co Clare; tel: 065 682 0001, email: brian@briandcasey.com

Hurley, Michael Vincent (otherwise Vincent) (deceased), late of Carhue, Riverstick, Co Cork, formerly of Kilronan, Dunmanway, Co Cork, who died on 8 March 2018. Would any person having knowledge of the whereabouts of any will executed by the said deceased please contact Collins Brooks & Associates, Solicitors, 6/7 Rossa Street, Clonakilty, Co Cork; DX 42001; tel: 023 88 3332, fax: 023 88 34204, email: mmurphy@collinsbrooks.ie

Lynch, John Bernard (deceased), late of Old Dispensary Curragh, Carnacross, Kells, Co Meath, formerly of 67 Canterbrook, Trim Road, Navan, Co Meath, who died on 26 May 2016. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Regan McEntee & Partners, Solicitors, High Street, Trim, Co Meath; tel: 046 943 1202, email: law@reganmcentee.ie

Morrow, George Robert Arthur (deceased), late of Munterneese, Mountcharles, Co Donegal, who died on 9 September 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in recent contact with the deceased regarding his will, please contact Eunan Gallagher, Gallagher McCartney, Solicitors, New Row, Donegal Town, Co Donegal; tel: 074 972 1753, email: iduncan@gmcclaw.ie

O'Neill, Jane (deceased), late of Coon East, Bilboa, Carlow, Co Kilkenny; R93 P5X4; date of birth: 11 November 1936, who died on 11 August 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please reply to **box no 01/09/18**

Rafferty, Vera (deceased), late of 14 Verdant House, Castletroy, in the county of Limerick, and formerly of The Crossroads, Drombanna, in the county of Limerick. Would any person having knowledge of a will made by the above-named deceased, who died on 10 August 2017, please contact Wallace Reidy & Company, Solicitors, 24 Glentworth Street, Limerick City; tel: 061 312 922, email: gerard.reidy@wallacereidy.ie

Ryall, Denis (deceased), late of Manor Kilbride, Blessington, Co Wicklow, who died on 17 January 2018 at Manor Kilbride, Blessington, Co Wicklow. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact O'Connor McCormack Solicitors, 16 South Main Street, Naas, Co Kildare; tel: 045 875 333, email: info@oconnormccormack.ie

Wilkes, Richard (orse Alan Wilkes) (orse Richard Alan Wilkes) (deceased), late of 'Cashel', Kilbride, Bray, Co Wicklow, and also 29 Rue Haute Voie, 22100 Dinan, France. Would any person having knowledge of a will made by the above-named deceased,

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND.** Send your small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: gazettestaff@lawsociety.ie. **Deadline for December 2018 *Gazette*: 9 November 2018.** For further information, contact the *Gazette* office on tel: 01 672 4828.

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

who died on 15 February 2018, please contact Niamh Ryan, Gibbons Associates, Solicitors, 11a Claremont Road, Sandymount, Dublin 4; tel: 01 668 3744, email: niamh@gibbonsassociates.ie

TITLE DEEDS

Would any person having knowledge of the whereabouts of title deeds in respect of the late **Noel Thomas Corcoran and Mary Catherine Corcoran (known as Moira)** of 32 Old Finglas Road, Glasnevin, Dublin 11, please contact Angela O'Kane, 189A Garryduff Road, Dunloy, Ballymena, Co Antrim, BT44 9DD; tel: 0044 28 276 57809, mob: 0044 77 252 37 299, email: angela.okane@yahoo.com

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 Mavro Limited of 58 South Mall, Cork

Take notice that any person having an interest in the freehold estate of the following property: 30 Lower John Street, Cork, held under indenture of lease dated 10 March 1911 between Francis Haly Coppinger of the one part and Eustace and Co Limited of the other part, held for a term of 300 years from 1 January 1911 at a yearly rent of IR£25 (now €31.75).

Take notice that Mavro Limited ('the applicant') intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of title to the aforesaid premises to the below named within 21 days from the date of this notice.

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

Date: 2 November 2018

Signed: O'Flynn Exhams (solicitors for the applicant), 58 South Mall, Cork

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of an application by David Alexander of 41 Fitzwilliam Square, Dublin 2, and Patrick Stephenson of 7a Fitzwilliam Place, Dublin 2, and in the matter of the property known as 92 Terenure Road East, Terenure, Dublin 6W

Take notice that any person having an interest in the freehold estate of the property known as 92 Terenure Road East, Terenure, Dublin 6W, held under an indenture of lease dated 25 July 1890 and made between Charles Robert Whitton of the one part and Anne Theresa Cahill of the other part for the term of 200 years from 29 September 1904, subject to the annual rent of £150 (former currency), that the applicants, David Alexander and Patrick Stephenson, intend to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforementioned properties and that any party asserting a superior interest in the aforementioned properties (or either of them) is called upon to furnish evidence of such title to the aforementioned properties to the undermentioned solicitors within 21 days from the date of this notice.

Take notice that, in default of 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 for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest or interests, including the freehold reversion, to each of the aforementioned properties is unknown or unascertained.

Date: 2 November 2018

Signed: Rutherfords (solicitors for the applicants), 41 Fitzwilliam Square, Dublin 2

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* – notice of intention to acquire fee simple (section 4): an application by Green REIT (George's Quay and Court) DAC (the 'applicant')

Notice to any person having any interest in the freehold interest of the following property: "all that and those the plot of ground with the dwellinghouses thereon erected, now known as numbers 8 and 9 Moss Street, situate in the parish of St Mark's in the city of Dublin" (being the lands comprised in Folio DN152420L), held under a lease dated 31 August 1910 between (1) Alice Young, Robert McMaster and James Young William Groves, and (2) Thomas Charles McCormack (the '1910 lease') for a term of 150 years from 1 August 1910, subject to the payment of the yearly rent of £15 thereby reserved and to the covenants and conditions on the part of the lessee therein contained.

Take notice that Green REIT (George's Quay and Court) DAC, being the person currently entitled to the lessee's interest in the 1910 lease, intends to apply to the county registrar of the county of Dublin for the acquisition of the freehold interest and all intermediate interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of their title to same to the below named within 21 days from the date of this notice.

In default of any such notice being received, the said Green REIT (George's Quay and Court) DAC intends to proceed with an application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest, including the freehold reversion in the aforesaid premises, are unknown and unascertained.

Date: 2 November 2018

Signed: Arthur Cox (solicitors for

the applicants), Earlsfort Centre, Earlsfort Terrace, Dublin 2; ref: GR238/024

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* (as amended), and in the matter of an application by Kieran Moloney, and in the matter of the property known as 52 and 52a, Upper Mount Pleasant Avenue, Rathmines, Dublin 6 (the 'property')

Take notice that any person having any intermediate interest in the property, being the property more particularly described in the indenture of sublease dated 5 September 1966 and made between Margaret Mary Rahilly of the one part and Samuel McCormack of the other part and therein described as "all that the shop, dwellinghouse and premises at present in the possession and occupation of the lessor, and known as 52 Upper Mount Pleasant Avenue, Rathmines, situate in the parish of St Peter, barony of Uppercross, and the city of Dublin, being part of the premises comprised in and demised by an indenture of lease dated 26 July 1927 made between the Honourable Reginald Le Normande, Lord Ardee, of the one part, and Michael Geraghty of the other part, and as further more particularly delineated and described on the map annexed to a certain indenture of sublease dated 6 March 1928 made between Michael Geraghty of the one part and John Leigh of the other part and on the said map coloured pink" for a term of 110 years from 1 May 1966 and subject to the yearly rent of £10 therein reserved and the covenants and conditions contained therein, which is now known as 52 and 52a Upper Mount Pleasant Avenue, Rathmines, Dublin 6.

Take notice that the applicant, Kieran Moloney, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the intermediate interest in the property and that any party asserting that they hold an intermediate interest in the property or the sub-lessor's interest under the indenture of sublease dated 5 September 1966 are called upon to furnish evidence of the title to the property to the under-mentioned solicitors within 21 days from the date of this notice.

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

Date: 2 November 2018

Signed: Gartlan Furey Solicitors (solicitors for the applicant), 20 Fitzwilliam Square, Dublin 2

NE ULTRA CREPIDAM JUDICARET

ONCE YOU POP, YOU CAN'T STOP

A South Carolina man shot his cousin after warning him not to eat his crisps, postandcourier.com reports.

Ryan Langdale (19) reported the incident, which took place at his home, as an accidental shooting.

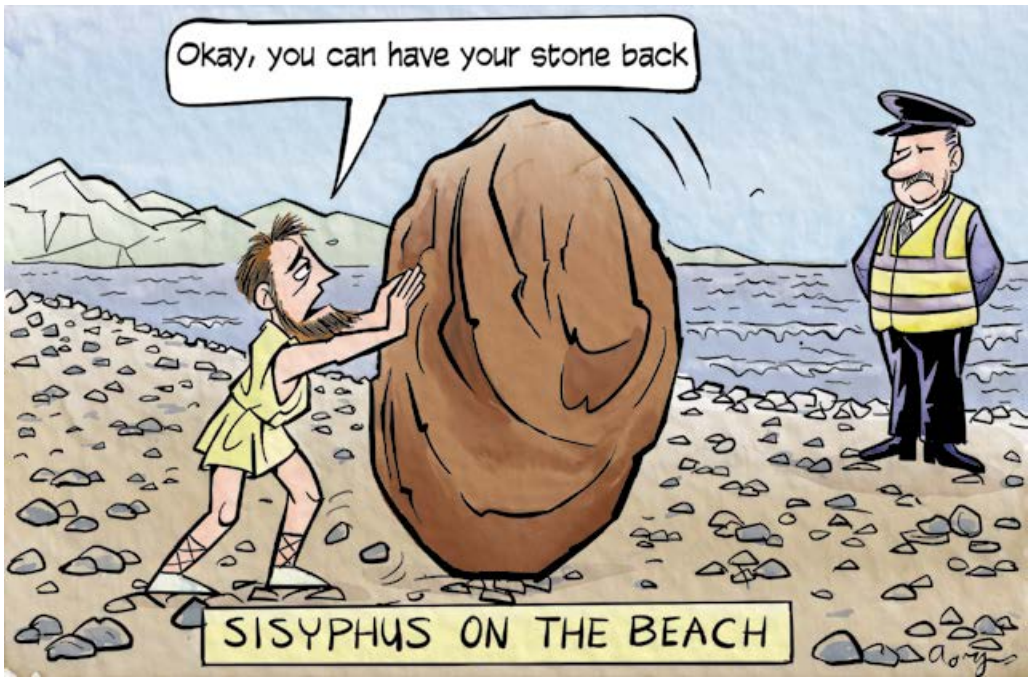
He told police that his cousin (17) had accidentally shot himself while cleaning a hunting rifle.

The wounded cousin confirmed the account to police before being rushed to hospital. However, forensic analysis of the wound cast doubt on the story.

The victim later revealed that the suspect had urged him not to tell police what had actually happened. Apparently Langdale had said: "Don't touch my chips, or I'll shoot you." Langdale then fetched a rifle and pointed it at the victim. "The next thing he knew, the rifle went off."

Langdale was arrested and charged with attempted murder. The victim insists that he never ate the crisps.

WELL, STONE ME!



A man who took pebbles from a Cornish beach was forced to drive hundreds of miles to return them – or face prosecution, *The Independent* reports.

Local councillor Barry Jordan said that the beach needed to be protected from people removing stones, in order to prevent coastal erosion. "We have hundreds of people a year coming to Crackington Haven, and if everybody took ten stones, how many years would it take to clear those stones from the beach?" he said.

The man who took the stones hadn't known he was committing an offence and, after speaking to local authorities, had driven from "somewhere in the Midlands" to return them. Removing stones from public beaches in Britain is illegal under the *Coast Protection Act 1949*.

HAVE A BREAK, STEAL A KIT-KAT

A homeless man stole £40-worth of chocolate so that he would be sent to prison, where he could receive help, *The Independent* reports.

Wayne Dillon begged for a custodial sentence at Wigan and Leigh Magistrates Court, saying he was not receiving the support he needed to cope with his drug addiction outside jail. The court granted his wish, jailing him for seven weeks.

Access to rehabilitation services outside prison have been decimated by austerity cuts. This has led to hundreds of drug users committing minor crimes in order to get access to rehabilitation services inside. g

WELL-ROUNDED LAWYERS

British Supreme Court justice Lord Sumption has recommended studying a non-law discipline over law at undergrad level, *Counsel* magazine reports.

Giving advice to potential students, he said: "Don't read law if you are going to practise it and can afford the slightly longer route to qualification. Get a broad culture if you can. History is a good training for law. It does help to know 'how we got here' – it's usually half-way to how we get out … History teaches you to analyse fact: most arguments about law boil down to factual analysis.

"But other subjects are also valuable. Classics, for example. Or economics. Languages are another extremely valuable training. A command of words helps. Nobody should ever be sure halfway through your sentence how it's going to end."

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Ref: 919904

Should you require further information about these roles or have any other legal recruitment requirements, please contact Michael Minogue on m.minogue@brightwater.ie or Sorcha Corcoran on s.corcoran@brightwater.ie. For executive appointments, contact Jean Heylin in strictest confidence on j.heylin@brightwater.ie

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Courts Service

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The Courts Service is offering an excellent opportunity at a senior management level as Head of Legal Research and Library Services. The purpose of this role is to ensure the provision of high standard legal research and library services to members of the judiciary and Courts Service. This role involves working closely with senior members of the judiciary of all jurisdictions.

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Candidates must, on or before 9th November 2018:

- Be a qualified barrister or solicitor or have an honours (minimum 2.1 or equivalent) primary degree in law and held a legal academic position or headed a legal research unit;
- Have a minimum of four years post-qualification experience in the provision of legal services or in managing legal research projects at a senior level.

The Information Booklet and Application Form for this position can be found on www.courts.ie. Alternatively, you can contact careers@courts.ie or telephone 01-8886055 to request same.

Closing date for applications is Friday 9th November 2018 at 16:00.

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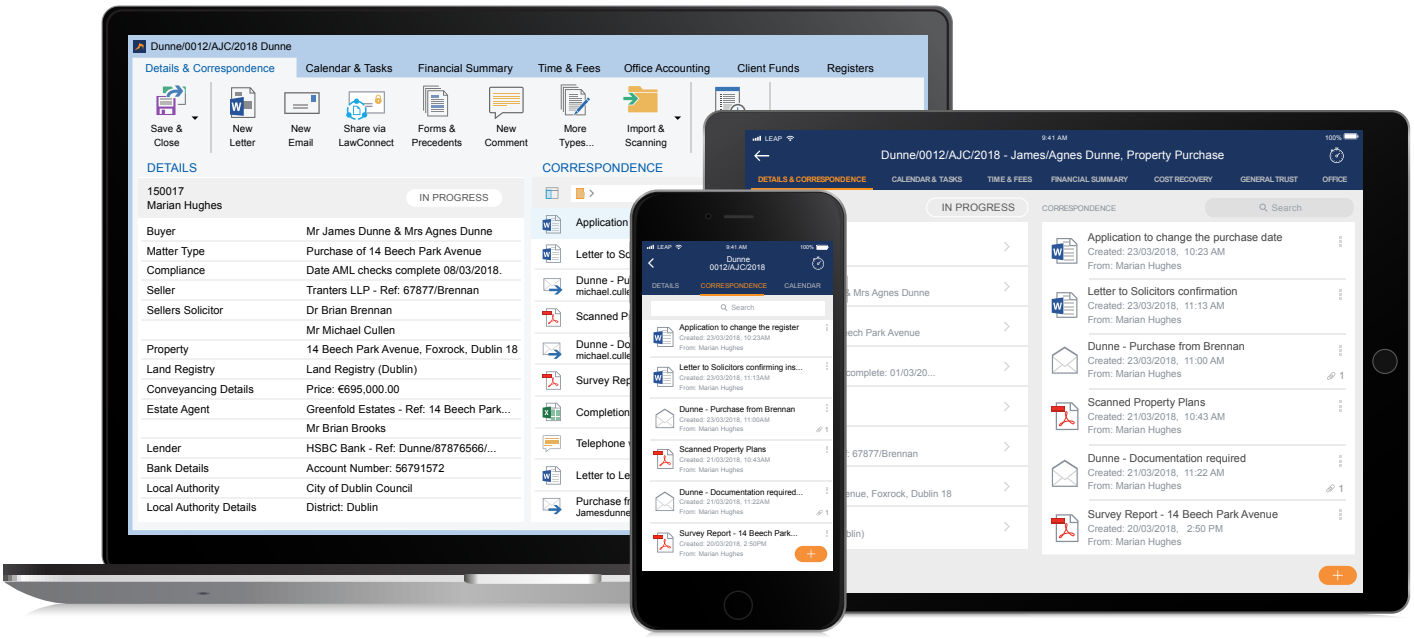

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