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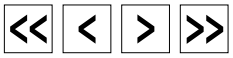

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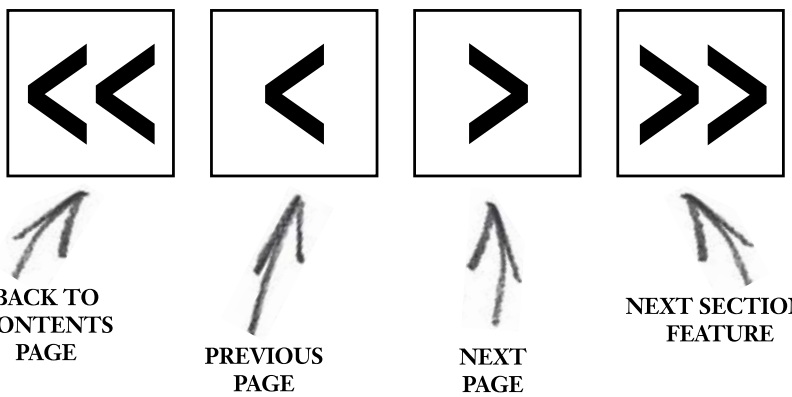

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Does your client have a claim eligible for ASR Hip ADR?

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

How it works

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

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

Eligible claims

Claimants may avail of the ADR Process if:

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

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

GET OUT AND VOTE!

It's election time again. As the nation readies itself for the presidential hustings for the forthcoming election in October, members of the Law Society are also digesting the election material of those candidates who have put themselves forward to represent them on Council.

I am encouraging a large voter turnout from members this year and would suggest that, rather than filing away the voting papers for safe-keeping when you get them, you instead complete them and immediately return them to the Law Society in the envelopes provided.

Your Law Society works hard for you and Council members give up their time freely, as do committee members – not for their own good, but for the benefit of the profession. As a result, they deserve your support and the respect of a vote when they go to the effort of running for election.

Bugbear

A bugbear of all colleagues is the treatment of them and their clients by the banks. It starts with your bank asking you for all the details of your accounts and telling you that your calls are being monitored. But when you ask them to provide you with information and they refuse, they claim it's for data protection purposes. They, however, already have all the information on you.

The impersonal treatment of clients and solicitors by the banks is regrettable, but it is not new. Solicitors who carry out conveyancing contracts for residential properties are not paid adequately, as they are doing the banks' securities work for nothing. The layers of difficulty created by the banks for their customers in residential conveyancing transactions has gone from one extreme to another.

After the irrational lending by the banks in the 'Celtic Tiger' days, we have now moved to a situation where obtaining loan funds is akin to climbing Everest without a Sherpa. Some banks would prefer not to have customers, so they close their doors and you can only deal with a computer. It's time that the banks realised that, without their customers, there wouldn't be banks and there wouldn't be employees in those banks.

It is regrettable that every time I go to a cluster or CPD event, or meet bar associations, the difficulties we have with banks are the first complaints I get. I know that you will get experience, courtesy, kindness and attention from a solicitor. I can't say you will receive the same from a bank. It is time this changed.

Shine a light

In partnership with Focus Ireland, the seventh annual 'Shine a Light' business leaders' fund-raiser will take place at the Law Society's headquarters at Blackhall Place, Dublin, and on Cork's Spike Island on 12 October. It's an opportunity for managing partners, chief executives, and other senior business leaders to experience one night sleeping rough as they raise funds for homeless people. I would encourage all of you to join and support Focus Ireland in the 'Shine a Light' campaign by participating in the 'business leaders' or 'at work' events.

As the seasons change, it's coming towards the end of my presidency, and I am intending to visit more bar associations with the director general in the coming weeks. We look forward to meeting with our colleagues and hope that you will enjoy our engagement with you.

LAW SOCIETY OF IRELAND

> I AM ENCOURAGING A LARGE VOTER TURNOUT FROM MEMBERS THIS YEAR

MICHAEL QUINLAN,
PRESIDENT

gazette
LAW SOCIETY

COVER PIC: SHUTTERSTOCK

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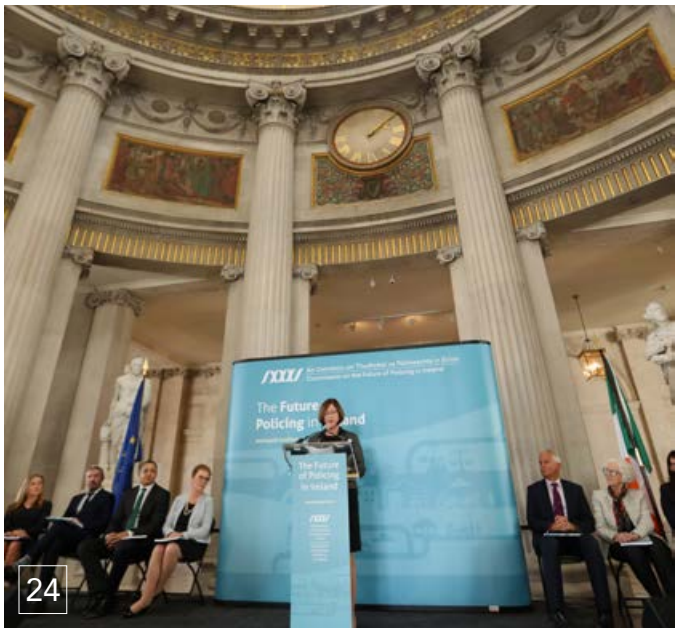
HAVE YOU MOVED? Members of the profession should send change-of-address details to: IT Section, Blackhall Place, Dublin 7, or to: customerservice@lawsociety.ie



FEATURES

REGULARS

THE BIG PICTURE

SMOKE AND DAGGERS

Ultra-right-wing candidate and front-runner in Brazil's October presidential election, Jair Bolsonaro, reacts after being stabbed during a rally in Juiz de Fora on 6 September 2018. He was being carried shoulder-high through a throng of supporters when a man with a large knife hidden in a plastic bag stabbed him in the abdomen. The single wound perforated Mr Bolsonaro's intestines in three places and caused internal haemorrhaging. He is recovering from surgery. The former army captain has been criticised for his racist and sexist views, but has gained strong support for his tough stance on drug traffickers and crime

PIC: EPA-EFE/RAYSA LEITE

KERRY KICKS OFF AUTUMN CLUSTER IN STYLE

Almost 130 solicitors attended the autumn cluster event for practitioners, organised by Law Society Finuas Skillnet in Tralee on 6 September in the Ballygarry Hotel. The event was supported by the Kerry Law Society. Solicitors received updates on GDPR, probate, family law, technology, and regulatory matters. The tour of the regions will continue in the coming months, with trips to Monaghan (12 October), Mayo (17 and 18 October), Dublin (9 November), Cork (16 November) and Kilkenny (23 November). For details of cluster events in your area, visit www.lawsociety.ie/skillnetcluster

Marcella Hargadon (PRAI), John O'Shea (PRAI), Katherine Kane (Law Society Finuas Skillnet), Michael Quinlan (president, Law Society), Attracta O'Regan (head, Law Society Finuas Skillnet), Sorcha Hayes (Law Society), Ann Henry (partner, Pinsent Masons, Dublin), and Neil Butler (Neil J Butler & Co, Tipperary)

THOSE LAZY, HAZY, CRAZY DAYS OF SUMMER

ALL PICS: JOHN KELLY PHOTOGRAPHY

Sunglasses were the order of the day during the summer meeting of the Clare Law Association, which attracted a large gathering at the Old Ground Hotel, Ennis. Pictured are *(l to r)*: Róisín Moloney-Weekes, Greg Leddin, Miriam Rowe, Claire Barry and Sinéad Glynn

Billy Loughnane and Angela Byrne

Catherine Brennan, Pauline Kearns and Aisling Meehan

Leona McMahon and Sinéad Garry BL

Billy Loughnane and Helen Rackard

SERVICE WITH A SMILE!

The Law Society's Diploma Centre team recently received the AIB Irish Law Award 2018 for 'Service Provider to the Legal Profession'; *(front, l to r)*: Joanne Martin, Siobhán Phelan, Dr Freda Grealy (head, Diploma Centre), Rebecca Raftery, Hazel Bradley and Aedín Twamley; *(back, l to r)*: Keith Kierans, Steve Collender, TP Kennedy (director of education), Rory O'Boyle, John Lunney, Cian Monahan and Ruth Tracey

CKT MERGES WITH DUBLIN LITIGATION PRACTICE

Pictured at the Dublin office of law firm Comyn Kelleher Tobin (CKT) are Daniel McLoughlin, Nicola Kiely, Claire Cregan, David Hickey and Debbie Moore. The firm has announced its acquisition of well-known litigation practice, Jim Eustace and Co. The merger is part of CKT's growth strategy in Dublin, which includes relocation to new office space in the city centre

NEW PARTNERS FOR AC FORDE & CO

Dublin law firm AC Forde & Company, Solicitors, is pleased to announce the appointment of two new partners, Peter Kelly (litigation) and Joanne Bailey (property and private client); pictured *(l to r)*: partners Rita Garvey, Peter Kelly, Cyril Forde (managing partner), Joanne Bailey and Katharine Forde

JUSTICE HEDIGAN RETIRES FROM COURT OF APPEAL

Warm tributes were paid to Mr Justice John Hedigan on his retirement from the Court of Appeal this month.

Appointed in September 2016, he previously served on the High Court and the European Court of Human Rights. He was called to the Bar in 1976 and became a senior counsel in 1990. He also served as chair of the Civil Service Disciplinary Appeals Tribunal from 1992-1994.

CPD EVENT HIGHLIGHTS BREAST CANCER

One in nine women develops breast cancer. The dangers of delay in diagnosing this cancer, and the resulting litigation, will be discussed at a special CPD event in the Distillery Building, Church Street, Dublin 7, from 1.30-5.30pm on Thursday 1 November.

Organised by Doireann O'Mahony BL, the speakers will include Robert Mansel (emeritus professor of surgery at Cardiff University School of Medicine and president of the European Society of Breast Cancer Specialists). The cost is €150, with all proceeds going to the Marie Keating Foundation.

Robert Mansel

To book or for further information, contact Doireann at doireannomahony@gmail.com.

FRY UP FOR CHARITY GONG

A William Fry charity tie-up with the Jack and Jill Foundation has won the 'Best creative staff engagement' at this year's Allianz Business to Arts Awards, held on 4 September. The recipients received their award from Minister Josepha Madigan.

Business to Arts is a charity that brokers partnerships between businesses and the creative sector. William Fry's collaboration raised over €95,000 for the charity. The winning entry, 'Incognito', was Ireland's largest ever single-gallery public art exhibition. Over 2,000 original and anonymous postcard-size artworks were sold at the event for €50 each, with the twist that the artists, many of them well-known, remained anonymous until after the purchase.

The Jack and Jill Foundation provides home-nursing care to severely ill young children.

SOLICITORS BACK IN THE SADDLE

Staff at the Dublin office of Pinsent Masons saddled up for a week-long charity event where participants pedalled more than 40,000km – the equivalent of a round-the-world cycle – but from the comfort of their offices.

The 'WE Cycle the World' challenge was the firm's first globally coordinated charity event. Dublin staff spun up the miles on static office bikes from 23 to 28 September. On the final day, the rubber hit the road for a 38km cycle from their city-centre offices to Malahide and back.

The proceeds will go to WE water projects in India and Kenya, and to the WE Schools programme in Britain.

MCCANN FITZGERALD ADDS TO TRAINEESHIP

McCann FitzGerald has added a new element to its traineeship programme. From this September, trainee solicitors with the firm will have the opportunity to spend part of their training period in the firm's New York office.

The programme operates a rotational system – every trainee spends time in one of its core practice groups and shares an office and works alongside a partner on a one-to-one basis.

Barry Devereux (managing partner) says: "No other Irish law firm currently offers a trainee placement in New York. It is this advantage, as well as a carefully structured programme that offers trainees exposure to high-quality work in all areas of the firm's practice, that sets our graduate traineeship programme apart."

McCann FitzGerald's first New York trainee, Darren Hyland, said: "In New York, it really feels like we are on the frontline. Here, I see for myself the value that we bring to US clients who are considering using Ireland as a base from which to access the European market, which is of particular importance as Brexit gets closer."

YOUNG AT HEART

PIC: LENSMEN)

At the recent dinner at Blackhall Place for members of the Younger Members Committee (YMC) and the Society of Young Solicitors (SYS) were *(front, l to r)*: Alex Kennedy (vice-chair, SYS), Emer O'Connor (chair, YMC), Michael Quinlan (president, Law Society), Eimear Bell (chair, SYS) and Jennifer Dorgan (vice-chair, YMC); *(back, l to r)*: Ann Kirwan (SYS) Patrick Dorgan (senior vice-president, Law Society), Ken Murphy (director general), Chris Murnane (communications officer, SYS) Michelle Ní Longáin (junior vice-president), Mary Keane (deputy director general), Michael P Quinlan (YMC), Caroline Crowley (YMC), Sarah Delaney (SYS), and Fiona McNulty (YMC)

Law Society President Michael Quinlan hosted a unique dinner at Blackhall Place on 19 September, at which the average age of those attending was considerably lower than usual. The Society's guests were the senior committee members of two different groups of young solicitors, namely the Society of Young Solicitors (SYS) and the Younger Members Committee (YMC) of the Law Society.

The guests of honour were the current chairs of the two bodies. By coincidence, both have the same first name, albeit with different spellings. Eimear Bell (A&L Goodbody) is chair of the SYS, while Emer O'Connor (Beauchamps) is chair of the YMS.

The SYS has been a thriving provider of conference and networking opportunities for young solicitors since the mid-1960s. A great many of its former chairs went on to play leadership roles in the Law Society, including current president Michael Quinlan, director general Ken Murphy, and recent past-president James McCourt, who has just been appointed a judge of the Circuit Court.

Conveyor belt

There was time when the SYS provided a conveyor belt of able and enthusiastic members of Law Society committees and the Council. Indeed, many went on to become president. However, it has not been so prolific a seedbed for the Society in more recent times. This is a conveyor belt the Society would like very much to restore.

The Society's Younger Members Committee was first established in the early 1980s, and it also has produced presidents – immediate past-president Stuart Gilhooly being but one.

Yet the leaders of the SYS and YMC had never formally met each other until this event. Former SYS chairs Quinlan and Murphy were assisted in the hosting of the dinner by others from the current leadership of the Law Society, including senior vice-president Patrick Dorgan, junior vice-president Michelle Ní Longáin, and deputy director general Mary Keane.

Annual conference

Patrick Dorgan, who will by then be president, will chair the SYS annual conference in November 2018, just as Ken Murphy did in November 2017.

The conference will take place from 9-11 November 2018 at the Sheraton Hotel, Athlone, Co Westmeath. The theme of this year's weekend conference is 'The future of law'. A black-tie gala ball will be held on the Saturday night – tickets are open to all junior solicitors.

Tickets cost €210 per person, which includes two nights B&B, entry to the conference (which carries three CPD points), and a ticket to the ball. Tickets are sold on a per-room basis (double, twin or triple rooms are available). Further details are available at www.sys.ie and on the organisation's social media sites.

LRC SEEKS EXPERT INPUT ON EXTERNAL TREATIES

The Law Reform Commission (LRC) wants to enable and resource a discussion on the relevance of international law in the domestic sphere.

LRC commissioner Donncha O'Connell, speaking at the 18 July launch of the draft inventory of international agreements entered into by the State, appealed for input from all relevant parties.

The LRC is seeking to aid public debate with its compilation of 400 entries on international agreements in the draft inventory. In particular, the LRC is seeking assistance on whether any of the entries need to be adjusted in any way, and whether the corresponding domestic legislation relating to an international agreement is correct.

"We freely acknowledge that there are gaps that need to be filled – and that's where our legal colleagues can play a part," said Ms Justice Carmel Stewart (High Court) at the launch.

Commissioner Donncha O'Connell: 'The LRC is seeking input from all relevant parties'

James Kingston, legal advisor at the Department of Foreign Affairs and Trade, said that a huge amount of research work has gone into the draft inventory, known as 'Project 10', as part of the LRC's fourth programme of law reform.

His department includes a treaty office that gathers information on international agreements that Ireland has signed. The office then disseminates these through publishing the Irish Treaty Series on its website.

"Our key task is to lay international agreements to which the State is party before Dáil Éireann, as mandated by article 29.5 of the Constitution," he said.

The draft inventory publishes information on treaties signed but not yet ratified by the State, and treaties ratified but not yet in force. It also presents the information under subject headings, linked to the headings in the LRC's classified list of in-force legislation.

Kingston said a particularly interesting and important feature of the draft inventory is the information provided on legislation linked to international agreements.

The draft inventory is a new departure for the LRC, in that it is descriptive rather than prescriptive, and seeks to open the topics for discussion and analysis without itself taking a position on whether Ireland should ratify particular treaties or not.

'Project 10' aims to be exhaustive and to cover all forms of expression of consent to be bound by an international agreement, whether signed or ratified. It seeks to provide information on relevant international instruments to the public, businesses, lawyers, policymakers and judges. It is also a signpost to the future in showing what the landscape may be like in the years to come, Prof O'Connell said.

The draft inventory also includes agreements not entered into force globally, because they don't have the requisite ratifications, and announced agreements.

The LRC is seeking submissions and comments on the working draft, which should be emailed to p4p10@lawreform.ie.

PRE-CONTRACT TITLE INVESTIGATION – YOUR VIEWS SOUGHT

The Conveyancing Committee's work continues apace, with its preparation for the move to pre-contract title investigation – a move requested by the profession following consultation last year.

The most fundamental change envisaged is that title will be investigated in full by the purchaser before entering into a contract.

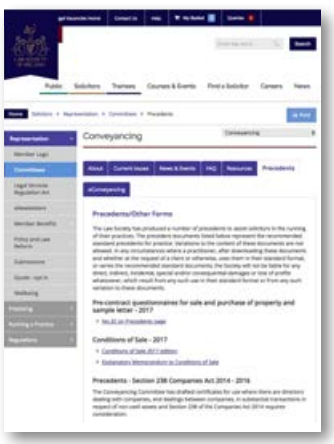
Having analysed the effect that the move to pre-contract title investigation will have on conveyancing practice and procedure, the committee carried out an extensive review of its standard conveyancing precedent documentation and has drafted the required revisions to those precedents.

By far the greatest number of changes to precedents will be seen in the standard *Conditions of Sale*, and the committee's preparation for the roll-out of the new system (which will take effect on 1 January 2019) includes obtaining the profession's views on the new 2019 contract.

As also sought in the Society's *eZines* in August and September, the committee wishes to receive your comments on the new contract by email to precontracttitleinvestigation@lawsociety.ie at the earliest opportunity.

The relevant documents are:

- The 2009 *Conditions of Sale*,
- The comparison version with the 2017 edition,
- The explanatory memorandum.



These can be accessed on the committee's website at www.lawsociety.ie.

The proposed new regime will be the subject of a dedicated three-hour CPD event at Blackhall Place on 18 October, which will be chaired by Prof JC Wylie, with contributions from members of the committee.

Additionally, the new 2019 contract will be one of the topics covered in the annual Property Law Conference, also on 18 October 2018, at which the convener of the Pre-Contract Title Investigation Task Force will present. Details for both these events can also be found at www.lawsociety.ie.

The committee looks forward to hearing your views and expresses its thanks for practitioners' continuing input to its work.

LLPS FOR CHRISTMAS?

If your firm's managing partner is singing 'All I want for Christmas is an LLP', then they may well get their wish, according to the Law Society's director general, Ken Murphy. The Society has been offering every assistance and encouragement to ensure this.

On 24 August 2018, the Law Society made a detailed submission, accompanied by a comprehensive set of draft regulations, to the Legal Services Regulatory Authority on limited liability partnerships (LLPs). The purpose was to assist the authority in its preparation of draft regulations. These regulations will enable firms of solicitors to practise with limitation of liability, as envisaged by sections 122 to 132 of the *Legal Services Regulation Act 2015*.

While this part of the act is not yet in force, Minister for Justice Charlie Flanagan has made clear to the Society that he will make the commencement order as soon as the authority has drafted the necessary LLP regulations. The authority has committed to doing this before the end of 2018.

Minister Flanagan: will make the commencement order when the necessary LLP regulations are drafted

Ken Murphy: 'The Law Society has been lobbying for this modernising measure since 2001'

Thereafter, partnerships of solicitors will be able to register as LLPs. A partner in an LLP will not be personally liable, directly or indirectly, for liabilities of the partnership, in accordance with the provisions specified in section 123 of the act.

The Law Society has been lobbying for this modernising measure, available to partnerships of lawyers in many other jurisdictions, since it originally made a submission to Government on the topic as long ago as 2001.

The Society's 11-page submission to the authority, and a proposed draft text of regulations, was invited by the authority for the assistance it might offer in the preparations of its own draft regulations.

"A working group comprising both Council members and Society staff, with expertise in partnership and regulatory law and in associated policy, spent many months preparing the submission," according to Murphy.

The director general has been pressing this issue relentlessly ever since the Society's submission to Government in 2001 – which he helped to draft – and believes that the end is in sight at last. The LLP, like Christmas, is coming.

INTERNATIONAL MEDIA INTEREST IN IRELAND'S BREXIT TRANSFER STORY

Up to a couple of years ago, neither director general Ken Murphy nor any other Law Society spokesperson had been much troubled by requests for interviews with such blue-chip international media organisations as the *Wall Street Journal*, *The Economist*, *The Guardian*, *Le Monde*, the far-from-failing *New York Times* and suchlike. That changed shortly after 23 June 2016.

Soon afterwards, the media's insatiable appetite for all things 'Brexit' began to focus on a tiny footnote to this 'story that keeps on giving'. A small but persistent story related to the phenomenon whereby relatively large numbers of qualified solicitors from England and Wales were transferring their names (for additional qualification purposes) on to the Roll of Solicitors in the other major common law jurisdiction in the EU – namely Ireland. This they were perfectly entitled to do.

The most recent international story was carried in the *Financial Times* on 10 August, in which there was a substantial article analysing what had occurred. It pointed to the fact that more than 1,600 England and Wales solicitors had transferred their names to the Roll in Ireland since the Brexit referendum result. This constitutes more than 9% of all solicitors on the Roll here – and the number continues to grow.

Speaking to the *Financial Times*, the director general said: "It has been quite a phenomenon. I think the lawyers are being cautions and practical, looking around corners, and preparing the ground to keep their options open."

He added, however, that only a handful of law firms had opened new offices in Ireland since the Brexit vote, even though two dozen London-based law firms have registered ten or more solicitors from England and Wales in Ireland.

ENDANGERED LAWYERS

SELÇUK KOZAĞAÇLI, TURKEY

Selçuk Kozağaçlı

There are serious conflicts in Syria, Yemen and Iraq, while ISIS has caused havoc in the region and is still a force. The rulers of Israel, Iran, the Gulf States and Saudi Arabia fear instability and keep very tight control on anything threatening the status quo.

Turkey (population 80 million) is a buffer zone between Europe and this turbulence, and it is understandable that the situation there is tense. What was a relatively democratic state has slid towards a dictatorship under Recep Tayyip Erdogan, elected president in 2014. Wide-ranging emergency powers mean that the rule of law is much weakened.

Lawyers and journalists have been among those bearing the brunt of the resulting oppression. One of these is Selçuk Kozağaçlı, member of the People's Law Office and chairman of the Association of Progressive Lawyers. This was established in 1974 and was a member of the European Association of Lawyers for Democracy and Human Rights. It was closed on 22 November 2016 by government decree, issued under the ongoing state of emergency in Turkey.

Selçuk Kozağaçlı is a well-known and respected human rights defender, recognised, among other things, for working on the Soma Mine disaster – the worst mining disaster in Turkey's history, in which 301 miners were killed. In 2013/14, he and 15 other lawyers were prosecuted for membership of an armed terrorist organisation and were acquitted.

Selçuk was arrested again in November 2017 on the same charge, which is widely believed to be without foundation. He was held in Metris and then Silivri Prison, in a special unit dedicated to 'terrorists' and in solitary confinement, where he has been for the past ten months. He and other lawyers represent a threat to the administration's freedom to act without legal challenge.

On 14 September, his case came to trial and, at the first hearing, he and 16 other lawyers were ordered to be released from pre-trial detention, though banned from international travel. The prosecution objected, however, and 12 of those released were immediately rearrested, including Selçuk. The trial is now adjourned to February 2019.

SHRINK ME

Leading the way – deputy director general Mary Keane and director of the National Gallery Sean Rainbird spoke on work/life balance

A total of 448 new trainees began their professional training on 6 September. This is the largest group the Law School has welcomed since before the recession. It is the fourth group to have the benefit of a series of psychology lectures and workshops entitled 'Shrink me'.

The series shines a helpful light on the often unconscious drivers at play within lawyers themselves, the dynamics of professional and personal relationships, and the psychological complexities of life within a law firm.

Guest speakers included deputy director general Mary Keane, who teamed up with National Gallery director Sean Rainbird to address the importance of achieving a balance in personal and professional life.

Other highlights were the presentations by group analyst Yvonne Nolan and solicitor Barry Creed. Senior psychologist Paul Hitchings humorously guided trainees towards healthy affairs of the heart, with his psychology of relationships lecture.

CRONIN HEADS UP ANGLO-IRISH BODY

John Cronin (McCann FitzGerald Brexit expert and partner) has been elected as president of the British Irish Chamber of Commerce. The first solicitor in the role, John succeeds outgoing president Eoin O'Neill.

Cronin is a former chairman and managing partner at McCann FitzGerald and is currently the head of the firm's Brexit group, ideally positioning him for a key oversight role in the €1.2 billion-a-week trade relationship between Britain and Ireland.

"We wish to play a role in shaping a successful future for such trade, irrespective of Brexit and its possible outcomes," John says.

BLACKHALL SLEEP-OUT TO BENEFIT HOMELESS

Focus Ireland's annual 'Shine a Light' night in Dublin will be held at the Law Society's premises at Blackhall Place on Friday 12 October 2018.

This will be the seventh annual 'Shine a Light' business leaders' fund-raiser, where business chiefs and their teams will sleep out for one night to raise money in support of Focus Ireland's work in challenging homelessness and changing lives.

The charity helped over 14,500 people who were either homeless or at risk last year. It relies on key fund-raising events such as 'Shine a Light' to keep all of its services working.

The latest figures show there are a record total of 9,891 children, women and men homeless across Ireland. Nearly 4,000 of this total are children who are homeless within families.

Focus Ireland is asking staff in companies nationwide to get teams together, fund-raise collectively, and have a sleep-out or sleep-in at their workplace on the same night.

Law Society President Michael Quinlan says that it is an honour to support the charity by hosting the fund-raiser: "The solicitors' profession has supported the fight against homelessness in Ireland and in Calcutta for more than 20 years through the Calcutta Run," he says.

"So it was an easy decision to also lend the Law Society's support to Focus Ireland and this unique event. Homelessness in Ireland is more prevalent than ever, and we all must play our part to help alleviate the problem.

"'Shine a Light Night' is an opportunity for managing partners, chief executives, and other senior business leaders to experience one night sleeping rough as they raise funds for homeless people.

"I commend Focus Ireland for their dedication to helping homeless people, as well as the business leaders around the country who are taking part in 'Shine a Light'."

Pat Dennigan (Focus Ireland) adds: "We work tirelessly with people experiencing homelessness to help them secure their home or to ensure they exit homelessness permanently. We also work extensively across the area of prevention to make sure many other families and individuals never become homeless in the first place.

"We rely on the support of organisations like the Law Society, which are of great benefit to us when it comes to fund-raising events like 'Shine a Light Night'.

"We'd like to take this opportunity to thank them for their generous support."

WORKPLACE WELL-BEING

RUNNING AND RACING

Some weeks ago, I took part in the Grant Thornton 5k Challenge in Dublin City centre. There is something to be said for the interest in running these days, and if we overlay it with the mindset of the working professional, we surely – at the very least – have material for a column.

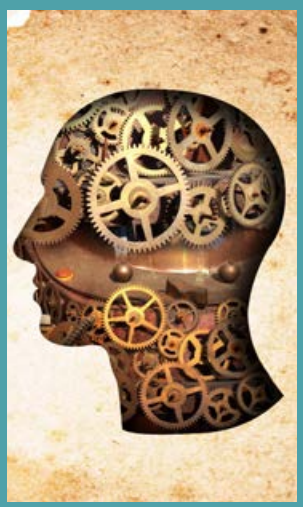
We are at the starting line, packed quayside, being let loose in waves. Tightly bunched for the first kilometre, the path opens up as varying degrees of ability find their mojo. I pick a runner a few metres ahead of me – I like her style, she's ferret-like in spotting openings, and she's got zest.

The last kilometre, and I'm crucified. My legeens don't know what hit them. Up ahead, some stumpy young buck catches my eye – all muscle and grit. He's got fuel in the tank, and I'll be damned if I'll come in far behind him.

The race finishes. We shake hands and exchange words of congratulations in the queue for bananas.

As I ran, my mind wandered to a lecture to PPC1 students I was to give the following week. The following came to mind:

- **It's good to have a pacesetter – someone you admire, up close or from afar; a mentor even. Someone whose energy, ambition, or integrity you'd like to aim for and set as a personal benchmark.**
- **Sometimes that pacesetter will be you – you might know it, and you mightn't.**



It might be a colleague or a niece. Either way, it's a humbling and responsible position, and one you will fall in and out of.

- **The context always changes – it rained at the beginning, and then conditions improved. Work, family, education: all these spheres can evolve and change. How you handle yourself within them is what you have greatest control over. Know thyself.**
- **The race is with yourself – while there were a few acquaintances there at the beginning, where were they at the end? Precisely: getting on with their own business. The race is with yourself – if your preparation and execution are done to your satisfaction and best standard, and you're happy with that, then you've done a good run.**

Cormac Ó Culáin is policy development executive at the Law Society.

FINUAS SKILLNET – TEN YEARS AFTER

Celebrating ten years of Finuas Skillnet are *(front, l to r)* Attracta O'Regan (head, Law Society Finuas Skillnet), Michael Quinlan (president, Law Society), Carol Plunkett (co-chair, Law Society Finuas Skillnet) and Tracey Donnery (Skillnet Ireland); *(back, l to r)*: Michelle Nolan (Law Society Finuas Skillnet), Ken Murphy (director general, Law Society), Brendan Twomey (co-chair, Law Society Finuas Skillnet), Paul Healy (CEO, Skillnet Ireland), Dave Flynn (Skillnet Ireland), Katherine Kane (Law Society Finuas Skillnet), and Dr Geoffrey Shannon (deputy director of education, Law Society)

Law Society Finuas Skillnet marked ten years in existence at a graduation ceremony on 28 June at Blackhall Place. The body was established in 2008 to address the lifelong learning requirements of the legal profession. It has also provided a means for solicitors to reskill, upskill, extend their range of services, or diversify into completely new areas of law.

Since its inception, Skillnet has designed a range of innovative programmes, including the national 'cluster' programmes that deliver CPD training to members, in collaboration with local bar associations.

In addition, it has designed a suite of 15 specialised legal programmes in District Court and advocacy, personal injuries litigation, construction law, employment law, and probate, estates and tax.

Skillnet also funded the design and delivery of the hugely successful executive leadership programme and the certificate in professional education. Recipients from both of these programmes received their certificates on the evening of the anniversary celebrations.

For details on upcoming CPD events, visit www.lawsociety.ie/CPD, or contact a member of the team at finuasskillnet@lawsociety.ie.

PPC1 PREP IS 'TOP OF THE POPS'

Over 100 members of the Law School's associate faculty joined the PPC course management team on 3 September for an afternoon of learning and development (ahead of the induction session for 448 new PPC1 trainees).

The event was chaired by Dr Gabriel Brennan and Antoinette Moriarty. The Education Committee's Brendan Twomey and Carol Plunkett shared the findings of the *Future of Solicitor Education Review Group Report* in a presentation entitled 'Looking to the future: a time of innovation and change in professional legal education'. Numerous questions followed about the reforms and how they might best be implemented.

Antoinette Moriarty, Brendan Twomey, Carol Plunkett and Dr Gabriel Brennan

Colette Reid addressed the topic of skills training, which was followed by a variety of workshops on developing professionalism (Dr Rachael Hession), leadership in legal education (Antoinette Moriarty), effective lectures (Colette Reid), upskilling and innovating as a professional educator (Dr Gabriel Brennan), and winning business and adding value with social media (Derek Owens).

The event – validated by evaluation feedback – was an overwhelming success.

COMPILED BY KEITH WALSH, PRINCIPAL OF KEITH WALSH SOLICITORS

MEATH

MEATH RUN IN MEMORY OF AUDREY O'REILLY

PIC: MARTIN COSTELLO, TRIM COURT OFFICE

Timothy Smyth (PRO, Meath Solicitors' Bar Association) tells 'Nationwide' that a very successful 5km run/walk was held on 27 July in memory of colleague Audrey O'Reilly, who sadly passed away earlier this year.

Over 100 solicitors, barristers, and legal staff from Meath and neighbouring counties took part in the event at the Porchfields, Trim, Co Meath, in the spectacular surroundings of Trim Castle.

Audrey's husband Michael Keaveny launched the run. The participants adjourned to Marcie Regan's in Trim for a barbecue, which continued late into the night. A total of €5,000 was raised for Friends of Saint Luke's.

The MSBA wishes to thank Brian Leonard (Trim Court Services manager) for making Trim Courthouse available for registration prior to the event, and Martin Costello for the photography.

The MSBA anticipates that the memorial run will become an annual event.

DUBLIN

ANYONE FOR TENNIS, EUGENE?

This year, it was Ireland's turn to host the European Lawyers' Tennis Championships, *writes John Mark Downey*. The event is held every two years in a different European city. In recent years, it has been held in Rome, Valencia, and Budapest.

The event was staged during a spell of glorious weather in late June on the immaculate grass courts of Elm Park Tennis Club. Teams representing Hungary, England, Italy and Ireland took part. Sponsorship was provided by Aviva Insurance.

For the first time, there was an official women's event. Kellie O'Flynn (William Fry) ensured an impressive turnout of female players from the host country. Some of them were a little surprised to find that they had been 'loaned' to other countries for the inaugural mixed-doubles event, but voiced no complaints.

PIC: SHUTTERSTOCK

England fielded a strong team in the men's event and emerged as winners. That said, in their encounter with Ireland, their very able number one, Mike Llewellyn, was beaten by Ireland's Patrick O'Shea (Wallace & Co), while their number two only narrowly defeated Irish counterpart Michael Coyle (Arthur Cox). Michael subsequently played at number one against Hungary, defeating the formidable Hungarian number one Tamas Porsze.

In the Ireland v England women's match, Ireland's Michelle Dunne (Law Library) played with flair and determination against the excellent English number one Emma Kudzin, but came up short. Alexandra Drummy (William Fry) scored an impressive win against the English number two, Sophie Walker (Slaughter & May). Overall, England won this event also, while Ireland took the inaugural mixed-doubles event.

Kevin Branigan (NAMA legal department) took on the role of chief organiser, with assistance from John Mark Downey (Aviva Legal Services) and Eoin Pentony (O'Brien Lynam).

The next event is scheduled to be held in Palermo, Sicily, in 2020.

ANYTHING YOU CAN DO, AI CAN DO BETTER

A recent seminar at Blackhall Place explored the possibilities of artificial intelligence for the legal profession. **Gordon Smith** reports

GORDON SMITH IS A FREELANCE TECHNOLOGY JOURNALIST

> APPLYING AI IN A LEGAL PRACTICE WOULD MEAN THAT A COMPANY COULD UNDERSTAND, FROM COMPREHENDING PRECEDENTS AND CASE LAW, WHETHER ITS ACTIONS WOULD EXPOSE IT TO LITIGATION

We now create information so quickly that no human being could possibly hope to keep up with absorbing it all. This creates a fresh set of challenges for sectors like law, which rely heavily on subject area knowledge, expertise, and constant learning to stay current with developments. But if technology has caused this problem, it also presents a possible solution: artificial intelligence (AI).

AI can apply machine learning and cognitive computing techniques to understand the unique context of law and the relationships that a firm has with its clients. Huge advances in mathematics, algorithms, and raw computing power have changed the game. Until recently, it was impossible for computers to analyse unstructured data at scale or with speed.

Paradigm shift

Now, the implications for the legal profession are profound. "The technology can connect dots and analyse a scenario more holistically than ever to see patterns and trends that no one has seen before," says Brian Kuhn, co-founder of IBM Watson Legal.

Kuhn was speaking at a briefing in the Law Society in September. The technology company SureSkills held the event with guest speakers from its partners IBM and Filament AI to share knowledge about AI and explore practical uses for legal professionals.

A regular speaker at conferences worldwide, Kuhn is well placed to comment on legal and technology trends. He invented the AI application, IBM's Outside Counsel Insights, specifically for legal professionals, and he has held more than 140 workshops to explore how AI can add value to a client's practice.

"The number one use case in the legal domain is knowledge management – leveraging what a lawyer has done for clients in the past, in the context of the issue at hand," he told the audience in Dublin.

Unstructured data

The legal sector, like many others, may soon find AI is a necessary – not just nice to have. Industry estimates say the amount of data is doubling every 12 hours. Kuhn says that AI differs from traditional technology because it can analyse unstructured data that, until recently, has been invisible to machines. He estimates that around 80% of information is in the form of unstructured data.

Computers have traditionally needed information that's organised and can be put into a database. 'Unstructured' data, such as written text, is much harder to understand. But think of the possibilities of technology that can 'read' and comprehend text in legislation or in contracts.

Applying AI in a legal practice would mean that a company could understand, from comprehending precedents and case law, whether its actions would expose it to litigation. "With more data come more patterns; signals emerge from the noise," he says.

However, using artificial intelligence isn't as simple as flicking a switch. It won't work straight out of the box: "The way you purchase AI will be different to how you purchase software, where it is one size fits all," says Kuhn. "Now, vendors want to understand your needs. The benefit is that AI is now capable of taking those needs and creating relevant AI models. That makes it much more likely to succeed."

And therein lies the rub: although it's a boom time for technology in the legal sector, with thousands of potential products to use, there's a snag: "Most AI solutions are not great because they don't incorporate legal knowhow. Most of them are not trained by lawyers."

He points out that human language can be ambiguous; its meaning is highly dependent on the context of a culture or an organisation. "A machine doesn't understand if you say: 'I'm feeling blue because it's raining cats and dogs outside'," he points out.

Recognising patterns

For this reason, the second part of the seminar was dedicated to looking at how to 'train' AI to

AI IS NOT INTELLIGENCE: IT HAS THE SAME RELATIONSHIP TO INTELLIGENCE AS ARTIFICIAL FLOWERS HAVE TO REAL FLOWERS. THE MACHINE CAN FIND THE PATTERNS IN DATA THAT WE WOULDN'T OTHERWISE BE ABLE TO

PIC: SHUTTERSTOCK

understand and recognise patterns in data. Andy Feltham, a former master inventor at IBM and now leader of specialist consultancy Filament AI, says the key to building useful AI is not to think about it exclusively as a technology problem to solve. "It's about understanding your business, not just data science. You can't just read a book and do AI. There are good and bad ways to do it," he cautions.

"Unless you apply context to the theory, you get the wrong result. You need to apply your expertise and understanding to make this system work. AI is not intelligence: it has the same relationship to intelligence as artificial flowers have to real flowers. The machine can find the patterns in data that we wouldn't otherwise be able to," Feltham says.

This 'teaching' process involves giving examples to the AI tool, such as going through a process of annotating data. This effectively means classifying information so the system understands what it means and can learn to identify patterns.

"AI is different to developing an application. It's about iterations, sharing, publishing and monitoring performance. Then you observe when it goes wrong and add that knowledge back in. This is about building models to encapsulate what you've done in a repeatable, scalable way," says Feltham.

That's why it's important to feed the AI tool with data that is relevant to the profession: that might be information about prior cases that a firm already has. Feltham made an analogy with the music service Spotify. It knows characteristics about all the music in its library and uses them to suggest other bands based on patterns in someone's listening habits. Those recommendations are unique to each listener.

In a legal context, that knowledge would result in a digital assistant that understands natural language queries and would search through a firm's knowledge base of previous cases. "In a legal space, that might be typing 'show me the documents that date from this time'. Being able to describe the report you want could save hours of time with Excel," says Feltham.

Fearmongering

The difficulty with discussing AI is that it tends to have hype or fearmongering for company. Both speakers at the seminar played down the direct risk to lawyers' jobs. Instead, they said it provides opportunities to do more for their clients.

Feltham claims that saving time on research will liberate lawyers to meet their clients more often. Or, it will give them a closer understanding of a client's problem because the AI can 'read' and analyse more material than a human researcher can by themselves.

Kuhn thinks that AI could help legal practices expand, not contract as some fear. "Law firms that are considered as innovative are 66% more likely to get extra work from clients. Law firms will be able to offer clients far superior legal services. With cost-effective delivery and repeatable legal services, you would be able to differentiate against many different firms," he says.

AI is already delivering real value and saving considerable money in other sectors. "This flux is coming to this industry," Kuhn adds. "More people think it's positive. It forces delivery of excellence; it forces the client and provider to have conversations about how the technology will affect your relationship and how you can be part of that."

AI COULD HELP LEGAL PRACTICES EXPAND, NOT CONTRACT AS SOME FEAR. LAW FIRMS THAT ARE CONSIDERED AS INNOVATIVE ARE 66 PER CENT MORE LIKELY TO GET EXTRA WORK FROM CLIENTS

CPD YOUR WAY – FOR IN-HOUSE PRACTITIONERS

With in-house work being very diverse, there is no 'one size fits all' when it comes to CPD. **Rosemarie Hayden** looks at the options

ROSEMARIE HAYDEN, SOLICITOR, IS CPD SCHEME EXECUTIVE AT THE LAW SOCIETY

WHILE SOME IN-HOUSE COUNSEL WORK IN LARGE LEGAL DEPARTMENTS, FOR THOSE WHO ARE THE ONLY LONELY LAWYER IN THE COMPANY, CPD TRAINING IS A GREAT CHANCE TO MEET YOUR LEGAL COLLEAGUES EVERY ONCE IN A WHILE

Work as an in-house practitioner can provide an opportunity for specialisation or general work and an opportunity to use your legal and other business skills in a creative way. The variety of types of work on offer are especially interesting, considering the changing profile of the profession, with more solicitors joining the Roll having already had a previous career and bringing that experience to their work.

With that comes a common concern for in-house practitioners – that their work is specialised, and the general nature of the CPD that is often on offer does not suit their needs. Even within in-house practice, the requirements of a practitioner in a technology company will be very different to those of the practitioner working in the legal department of a bank or a county council office.

This is not an issue unique to the in-house sector. Practitioners in private practice, particularly in specialist practices, will also face issues of finding relevant CPD to meet their needs.

For this reason, the customisable nature of the CPD scheme is particularly useful for in-house practitioners. Larger companies often have a requirement for their in-house counsel to provide training to employees on areas of law ranging from human resource management to health and safety law, as well as the subject matter of the company's work – be it technology, food law etc. The provision of this training counts towards the solicitor's CPD requirement, as does preparation time up to four hours.

Practitioners in a multinational company could find language enhancement studies of great use for their career, particularly when travelling or dealing with colleagues or in contract negotiations. While contracts tend to be negotiated in English, an understanding of local language can always be useful.

Transferable skills

The category of 'management and professional development skills' lends itself very readily to assist the in-house practitioner, with its focus on negotiation, drafting, presentation skills, and legal research skills. Training in honing one's skills in these very transferable areas can be a strong asset both in business and in life.

A concern that in-house practitioners often have is that the category of 'regulatory matters' can seem not have a relevance to their area of practice, as they do not handle client funds. However, the regulation of the solicitors' profession is a very wide-ranging topic, and ensuring the professionalism and proper regulation of our profession is an issue that is of relevance to every member.

Regarding accounting and anti-money-laundering compliance, in-house solicitors may view this as a matter for solicitors in private practice who have private clients and who hold client funds. Of course, the issue of anti-money-laundering has a much wider application. For the in-house practitioner working in the 'fintech' sector, the issues of anti-money-laundering and 'know your customer' are well known. But what about other in-house practitioners? Well, for a general counsel advising their employer, such as a multinational entity, there is a clear need to ensure they provide the relevant, up-to-date provisions on anti-money-laundering, particularly the application of the EU's *Fourth Anti-Money-Laundering Directive*, which brought very significant updates to this area in 2015. Counsel advising a US multinational corporation with a European base in Ireland would be well advised themselves to seek out relevant training to ensure they can fully advise their client on its obligations.

Client or employer?

Having one client who is also your employer is in direct contrast to the position of the solicitor in private practice. The relationship between the solicitor in private practice and their client is between client and trusted advisor. In-house, the relationship

PIC: SHUTTERSTOCK

> TO ASSIST IN IDENTIFYING AND DEALING WITH THESE TYPES OF ISSUES, A NUMBER OF TYPES OF TRAINING TOPICS MAY BE OF ASSISTANCE

between the solicitor and their one client has the added layer of the employee/employer relationship. In addition, some in-house counsel further act as a member of the board of directors, as company secretary or, more recently, as data protection officer. All of these roles have competing interests, and it is not entirely unusual for there to be a conflict between the solicitor's professional ethics and the commercial expediency of 'getting the deal done'. Solicitors can come under significant pressure to approve matters that, were it coming from one client among many, would be easy to say 'no' to. When your sole client is also your employer, the pressure can be intensified.

To assist in identifying and dealing with these types of issues, a number of types of training topics may be of assistance. Professional ethics and the maintenance of standards of best practice in complying with regulatory obligations is one topic that comes under 'regulatory matters' that can be of great assistance in bolstering in-house counsel's position in underlining the importance of identifying and complying with regulatory requirements.

In-house practitioners may find training on the prevention of corruption, data protection, conflicts of interest, and professional duty of confidentiality useful, particularly in a context where they may be relied upon as the sole legal advisor in a medium-sized enterprise.

Managing risk

Risk-management training – which includes cyber-security – is a topic of great benefit to in-house practitioners and to the company as a whole. The management of risk to the business is a matter of interest to all employees, and so this is an ideal topic for the in-house practitioner to attend training personally and then, on further review, arrange to present to the company at large. CPD can then be credited both for receiving and delivering the training, as well as the preparation time to arrange the presentation.

Of course, we can't forget the acronym of the moment, GDPR, which reaches into every organisation. All training that the solicitor attends on GDPR and that the solicitor then implements in a company-wide training programme can be credited towards their CPD requirement for both receiving and delivering training and preparation time, in the same way as the risk-management training above.

Finally, while some in-house counsel work in large legal departments, for those who are the only lonely lawyer in the company, CPD training is a great chance to meet your legal colleagues every once in a while.

Continuing professional development is a feature of every profession, and continuing to update our development is the mark of a professional. The CPD scheme is there to support and encourage practitioners in all areas of practice to identify #YourCPD YourWay. g

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Further information on the CPD scheme can be found in the *CPD Booklet* on in the CPD section of the Law Sociey website. Contact the CPD Scheme Unit on cpdscheme@lawsociety.ie or 01 672 4802.

A BLUEPRINT FOR POLICE REFORM

The long-awaited report on the future of policing suggests that criminal prosecution decisions be handed over to State solicitors. **Mary Hallissey** reports

MARY HALLISSEY IS A JOURNALIST AT GAZETTE.IE

In a radical shake-up, the decision to prosecute crimes could be taken away from gardaí and given to an expanded State solicitor team or a national prosecution service. The Commission on the Future of Policing in Ireland report, published on 18 September, insists on a binary approach to police investigation and criminal prosecution, which it believes are two separate jobs, as is the case in comparable jurisdictions.

The report calls for the immediate cessation of police prosecutions in court because gardaí "are not trained to the level of the opposing defence lawyer".

It says current practice is "enormously wasteful" of policing resources and takes gardaí away from their core duties. Switching out time-intensive prosecution duties will massively free up policing resources, the report says.

It also suggests that the criminal justice system should have more distance between the police and the courts.

The Law Society has broadly welcomed the report, after contributing extensively to the consultation process. The Society's submission urged greater clarity and simplification around policing oversight, pointing out that there were currently four bodies charged with this work. "Understanding the parameters of the role of each of these bodies in policing oversight is not a simple process," the submission pointed out.

On governance, the Policing Authority and the Garda Inspectorate would merge into a new Policing and Community Safety Oversight Commission.

> THE REPORT CALLS FOR THE IMMEDIATE CESSATION OF POLICE PROSECUTIONS IN COURT BECAUSE GARDAÍ 'ARE NOT TRAINED TO THE LEVEL OF THE OPPOSING DEFENCE LAWYER'

System not working

Chairman of the Law Society's Criminal Law Committee Robert Purcell says that the current system is not working. Garda oversight has been the subject of debate and legislation for 15 years, he says, but it is difficult to know whether the proposed structural reform and amalgamation will be an improvement. "These proposals require further elaboration," he pointed out.

The report suggests that the Department of Justice should focus on policy direction, rather than day-to-day management, and there should be more structured engagement with the Oireachtas joint committee.

The Garda Síochána Ombudsman Commission could get a new name and a new remit to copper-fasten its independence and deliver an advanced police complaints system. It should carry out all serious investigations independently, the report says, so that police will no longer investigate themselves.

A major theme of the report is that policing should be seen as a profession with rigorous training and development standards – a point that has its origins in the Law Society's submission.

Improved garda training would be run in partnership with higher education institutions, but graduate entrants would spend less time at the training college in Templemore. All serving members would be encouraged to reach FETAC level eight, equivalent to an honours bachelor's degree or higher diploma.

Society recommendations

The Law Society has welcomed the adoption of some of its key recommendations, including:

- Mandatory continuous professional development,
- Codification of policing powers, vis-à-vis detention and arrest; however, the Society is disappointed that the role of solicitors in this important area is not expressly provided for in the report,
- Community policing and the value of restorative justice initiatives – both championed by the Law Society,
- A broader definition of restorative justice, beyond a youth justice strategy, is urged,
- A digital policing innovation centre and speedier adoption of technology,
- A human-rights-based approach that will give legal practitioners and citizens a higher degree of confidence in the transparency and accountability of such an integral public service.

Human rights training will be the starting point for every recruit, the report promises

PIC: ROLLING NEWS

Commission chair Kathleen O'Toole, a former head of the Garda Inspectorate, has promised an "ethical police force", and Robert Purcell welcomes the report's mainstreaming of human rights. Human rights training will be the starting point for every recruit, the report promises.

Purcell also welcomes the move to take away prosecution decisions from An Garda Síochána: "This will assist in ensuring independence in that process," he said. He added that the recommendation that powers of arrest, search and detention be codified by legislation, with codes of practice embedded, should also include access to a lawyer.

The Law Society's submission pointed to an "alarmingly low" rate of 7-8% of police interviews being attended by solicitors. It attributes the exceptionally low threshold for legal-aid eligibility as one of the underlying factors.

The report also suggests that gardaí should no longer attend at inquests because they are untrained for the task – this move towards general reform of inquests has also been welcomed by the Law Society's Criminal Law Committee.

And, in future, deaths in garda custody would be subject to a mandatory inquest.

Scope of policing

The commission wants to broaden the definition of policing, while narrowing the job scope of practising members of the force.

It wants immediate action to strip out garda involvement in

A MAJOR THEME OF THE REPORT IS THAT POLICING SHOULD BE SEEN AS A PROFESSION, WITH RIGOROUS TRAINING AND DEVELOPMENT STANDARDS

LSRA

An tÚdarás Rialála Seirbhísí Dlí

Legal Services Regulatory Authority

INVITATION BY THE LEGAL SERVICES REGULATORY AUTHORITY FOR SUBMISSIONS

The Legal Services Regulatory Authority (LSRA) invites submissions as part of a consultation as provided for in s. 22(3) of the Legal Services Regulation Act 2015 prior to the issuance of a Code of Practice for Practising Barristers.

The LSRA proposes to issue a Code of Practice for Practising Barristers under s. 22 of the Legal Services Regulation Act 2015, the purpose of which is to provide a statement of the accepted principles of good conduct and practice for all practising barristers.

In addition to the professional bodies as defined in the Act, the LSRA is inviting submissions from such other interested parties, including legal practitioners who are not members of such bodies who will be subject to the proposed code of practice. Any person who wishes to make a written submission should review the Consultation Notice on the LSRA website (www.lsra.ie).

Legal Services Regulatory Authority
27 September 2018

PIC: ROLLING NEWS

court security, remand prisoner transport, summons serving, attendance at minor traffic accidents, processing of passport applications, and the safeguarding of exam papers.

As an alternative, the Courts Service and Prison Service would take up the slack in their relevant areas, while garda immigration duties would also be moved to the Naturalisation and Immigration Service at the Department of Justice and Equality.

Difficult negotiations

The commission's report anticipates protracted and difficult negotiations with unions and representative associations to implement these changes.

The Garda Commissioner's role would expand to include the control and oversight of all budgetary resources, and the commission envisages a quasi chief executive-style position. The commissioner would personally select "a strong, appropriately qualified leadership team", comprising both sworn and non-sworn personnel.

Governance, oversight and accountability in the force would all be teased out into separate strands.

"The structure of An Garda Síochána will be flatter, with scope for local decision-making, new ideas and innovation," the report says.

It wants an early roll-out of mobile technology, and a targeted severance package to cull those resistant to reform.

And a higher degree of visibility for gardaí in the community is front and centre of the new report, with a priority on public service. Policing will widen to encompass 'harm prevention' for vulnerable members of society, such as the homeless, elderly, and those with mental-health problems.

The report calls for new legislation to enable this widening-of-policing scope, so that other State agencies can contribute to general safety in the community. It sees a partnership role in policing for businesses, schools and voluntary organisations.

Integrated information sharing between responsible agencies is described as key, in particular for the small number of families and individuals who take up a disproportionate amount of State resources.

The report specifies out-of-hours communication and cooperation between State agencies as vital.

Finally, the report calls for a new framework for national security, headed by a National Security Coordinator, to pool intelligence and weigh up threats.

The report is available online at www.policereform.ie. g

> GARDA OVERSIGHT HAS BEEN THE SUBJECT OF DEBATE AND LEGISLATION FOR 15 YEARS, BUT IT IS DIFFICULT TO KNOW WHETHER THE PROPOSED STRUCTURAL REFORM AND AMALGAMATION WILL BE AN IMPROVEMENT

GIVE ME YOUR TIRED, POOR, HUDDLED MASSES

The granting of citizenship by naturalisation is the end of what is often a long, occasionally dangerous and, almost always, highly bureaucratic journey. **Catherine Cosgrave** reflects on Ireland's procedures

CATHERINE COSGRAVE IS LEGAL SERVICES MANAGER AND SENIOR SOLICITOR AT THE IMMIGRANT COUNCIL OF IRELAND'S INDEPENDENT LAW CENTRE IN DUBLIN

AN INDEPENDENT APPEALS TRIBUNAL, ACCOMPANIED BY COMPREHENSIVE RIGHTS OF APPEAL FROM IMMIGRATION DECISIONS, IS A NECESSARY AND IMPORTANT ELEMENT OF A FAIR AND TRANSPARENT IMMIGRATION SYSTEM

In May 2018, more than 3,500 people became Irish citizens when the first citizenship ceremony of the year took place in Killarney. Since citizenship ceremonies were first introduced in 2011, more than 119,000 people from 181 countries have become Irish citizens.

The citizenship ceremony took place against the backdrop of international political and media discourse focused on the current European migration 'crisis', Brexit anti-immigrant sentiments and, more recently, the widespread criticism regarding the controversial 'Muslim ban' and border policies of the Trump administration. It provides a timely opportunity to reflect on Ireland's own domestic migration related procedures.

The Irish system

To be eligible to apply for Irish citizenship, applicants must fulfil statutory eligibility criteria set out in the *Irish Nationality and Citizenship Act 1956* (as amended). Fulfilment of eligibility criteria does not entitle an applicant to a positive decision; applications for citizenship are granted at the absolute discretion of the Minister for Justice. There is no appeal process if an application is refused, even if an error is made assessing compliance with the eligibility criteria.

For the vast majority of applicants, a five-year reckonable residence period must be completed prior to applying. On the face of it, this may appear to be a relatively short period of time and is a reasonable requirement. However, for non-EEA citizen applicants, this entails navigating a complex immigration system and ensuring that lawful residence permission is maintained at all times.

This can prove challenging, given the reality of requirements imposed on foreign nationals to seek periodic renewals of residence, sometimes as frequently as every six months. There is no obligation imposed on the Minister for Justice to issue a decision on the renewal application prior to the expiry of the existing residence permission or to provide a temporary residence status pending any decision. Maintaining lawful residence permission may also prove difficult where, as observed by the Supreme Court earlier this year in the cases of *Luximon and Balchand* ([2018] IESC 24), an individual's legal status in Ireland is not altered as a result of some unlawful act on their part, but rather by an alteration in Government policy.

Despite the relatively large body of legislation related to immigration and residence found in the *Immigration Acts 1999-2004*, most immigration and citizenship decisions are granted on a discretionary basis and, while there are some exceptions – for example, visa or employment permit applications – there is generally no statutory right of appeal. There is also no established internal administrative review procedure, even where the decision may result in an adverse finding against the applicant's character, the separation of families, forced removal from the country or, indeed, the deprivation of liberty.

While judicial review is available, statutory restrictions are imposed and often proceedings must be issued within a relatively short 28-day period. This is especially onerous for applicants, as well as their legal representatives, particularly having regard to the recently published HC78 practice direction related to the asylum, immigration and citizenship list, including requirements regarding written submissions accompanying *ex parte* applications, the obligation to exhibit a full copy of every file related to each and every prior immigration or protection decision related to the applicant, even


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if they do not relate in any way to the impugned decision, and adverse cost implications.

Immigration reform

Since 2001, successive Irish governments have conceded that the existing legislative basis for the Irish immigration system is in need of comprehensive replacement. The International Organisation for Migration was commissioned to conduct an international comparative study of law and practice. The objective of the process was to ensure that our immigration system is developed to the highest international standards. In the programme for government *Blueprint for Ireland's Future 2007-2012*, the Government noted the imperative of a fair and strategic immigration policy to the sustaining of a strong economy and, as a step towards this, undertook to ensure legislative reform, including the introduction of a visibly independent appeals process.

There has recently been reform of the international protection system, resulting in the introduction of the single protection procedure and the establishment of the International Protection Appeals Tribunal (IPAT) under the *International Protection Act 2015*. However, within the wider immigration system, similar progress has yet to be made. Recent changes have been piecemeal, and largely reactionary responses to deal with specific issues arising in the Irish or European courts, or to address particular issues such as human trafficking. Several draft bills aimed at comprehensively reforming the current system published by various governments – most recently the *Immigration, Residence and Protection Bill 2010* – have failed to be enacted.

Appeals

The IPAT replaced the former Refugee Appeals Tribunal and is described as a statutorily independent body exercising

quasi-judicial functions. At the time of its establishment, some concerns were expressed by the Irish Refugee Council regarding a possible lack of independence and impartiality arising from the role that the Minister for Justice plays in the appointment of tribunal members. However, in practice, the greater challenge has been to ensure that the IPAT is adequately resourced to address the backlog of applications in a fair and efficient manner, an issue highlighted by the chairperson of the IPAT on publication of the annual reports in 2016 and 2017.

It is empowered to determine the appeals of those persons whose application for international protection status has not been recommended by the International Protection Office and decisions made under the *Dublin System Regulations*.

The jurisdiction of the IPAT is, however, limited. For international protection applicants, there is no possibility to appeal a decision to refuse permission to remain when human rights concerns arise but fall outside the scope of refugee status and subsidiary protection. For persons granted protection status, there is also no right to appeal a decision of the minister to refuse family reunification. Various civil society organisations have recommended that the jurisdiction of the IPAT should be broadened in this regard.

For non-protection related applications, the vast array of immigration decisions remain subject, almost entirely, to ministerial discretion only. The Immigrant Council of Ireland was critical of this reality in submissions to the Human Rights Council at the 25th session of the Universal Periodic Review, noting the Migration Integration Policy Index findings that Ireland has one of the most discretionary immigration systems in the developed world.

> APPLICATIONS FOR CITIZENSHIP ARE GRANTED AT THE ABSOLUTE DISCRETION OF THE MINISTER FOR JUSTICE. THERE IS NO APPEAL PROCESS IF AN APPLICATION IS REFUSED, EVEN IF AN ERROR IS MADE ASSESSING COMPLIANCE WITH THE ELIGIBILITY CRITERIA

Independent appeals

Currently, in the absence of an independent – or indeed any – appeals mechanism, the only bulwark against the excesses of relying on discretion comes in the form of High Court judicial review. This is unquestionably a necessary and crucial route for those seeking to achieve administrative justice. Yet, when deployed as a port of first call in reviewing immigration decisions, a number of deficiencies become apparent.

The High Court is not capable of reviewing the merits of the case or dealing with questions of fact. When compared to an appeals tribunal that is capable of altering the initial administrative decision, this is a significant failing. Prof Robert Thomas of Manchester University has observed that "judicial review is an inappropriate means of challenging such decisions [regarding immigration rules], because the issues are largely factual, requiring the presentation and assessment of evidence. Judicial review almost always excludes such an exercise, whereas it is the meat and drink of tribunal appeals."

Additionally, for both applicants and the State, judicial review may be an extremely lengthy and expensive process, arguably not the effective remedy envisioned by article 13 of the ECHR, especially where detention or the separation of families is at stake, and where the passage of time has significant negative implications for applicants.

Comparative perspective

The absence of appeals mechanisms in the Irish immigration system contrasts significantly with other jurisdictions, notably our common law neighbours in Britain. There, the existing immigration appeals mechanism found its inception in the *Immigration and Asylum Act 1999* in the form of the Immigration Services Tribunal. The functions and administration of this tribunal were subsequently transferred to the Courts and Tribunal Service in 2010 and became the First-Tier Tribunal (Immigration and Asylum Chamber). In contrast to the limited jurisdiction of the IPAT in Ireland, the British tribunal has the power to hear appeals against the decision of the Home Office to refuse international protection claims, as well as decisions to refuse human rights claims, entry clearance, residence, and deportation and immigration bail.

This is not to suggest that Britain is an example of a perfect immigration system. Indeed, the right of appeal to the First Tier Tribunal has been greatly eroded since the passing of the *Immigration Act 2014*, which abolished rights of appeal against many decisions. The net result of this legislative change was that, of the 3.5 million immigration decisions taken per year, a mere 12% have a right of appeal to an independent tribunal. This move to restrict appeals, motivated by a stated desire to identify wrong decisions quickly and thereby reduce the volume of appeals, was met with vehement criticism, with the view proffered that it undermined the fairness of the process. Notably, in cases falling outside of those categories, internal administrative review still remains available. This contrasts favourably with our domestic system.

The retrograde legislative change in Britain does, nonetheless, provide an interesting comparison between the success rates

of an appeal before an independent tribunal and those decisions altered through an administrative review. Since the changes, the Independent Chief Inspector of Borders and Immigration has published two reports on the Home Office's administrative review process, which have been analysed by the Administrative Justice Institute. This reveals that 49% of appeals through the tribunal system were successful, of which 60%, the Home Office concluded, arose out of case-working errors. This is a remarkably high percentage and, in itself, makes a strong case for the necessity of an independent appeals mechanism. This assertion is only strengthened when it is considered that the success rates of those applicants who requested an in-country administrative review by the Home Office were recorded at 8%. The Administrative Justice Institute, in documenting various failures in the administrative review process, concluded that "there is substantial and unexplained difference in outcomes between reviews and appeals".

Excessive reliance

The Irish immigration system is characterised by an excessive reliance on ministerial discretion and an absence of independent appeal or administrative review procedures. The establishment of the IPAT is a positive development, and while that tribunal is experiencing its own resource issues, this is an insufficient excuse for denying a right of appeal in the majority of immigration decisions.

From a comparative perspective, the British example shows the positive impact an independent appeals tribunal can provide. An independent appeals tribunal, accompanied by comprehensive rights of appeal from immigration decisions, is a necessary and important element of a fair and transparent immigration system.

Failure to enact legislative reform and to introduce appeals mechanisms is only likely to result in ongoing reliance on our courts to address rights violations. Arguably, this is not cost-effective for any of the parties, and fails to ensure timely redress for applicants who require a proper assessment of the facts and merits of their cases.

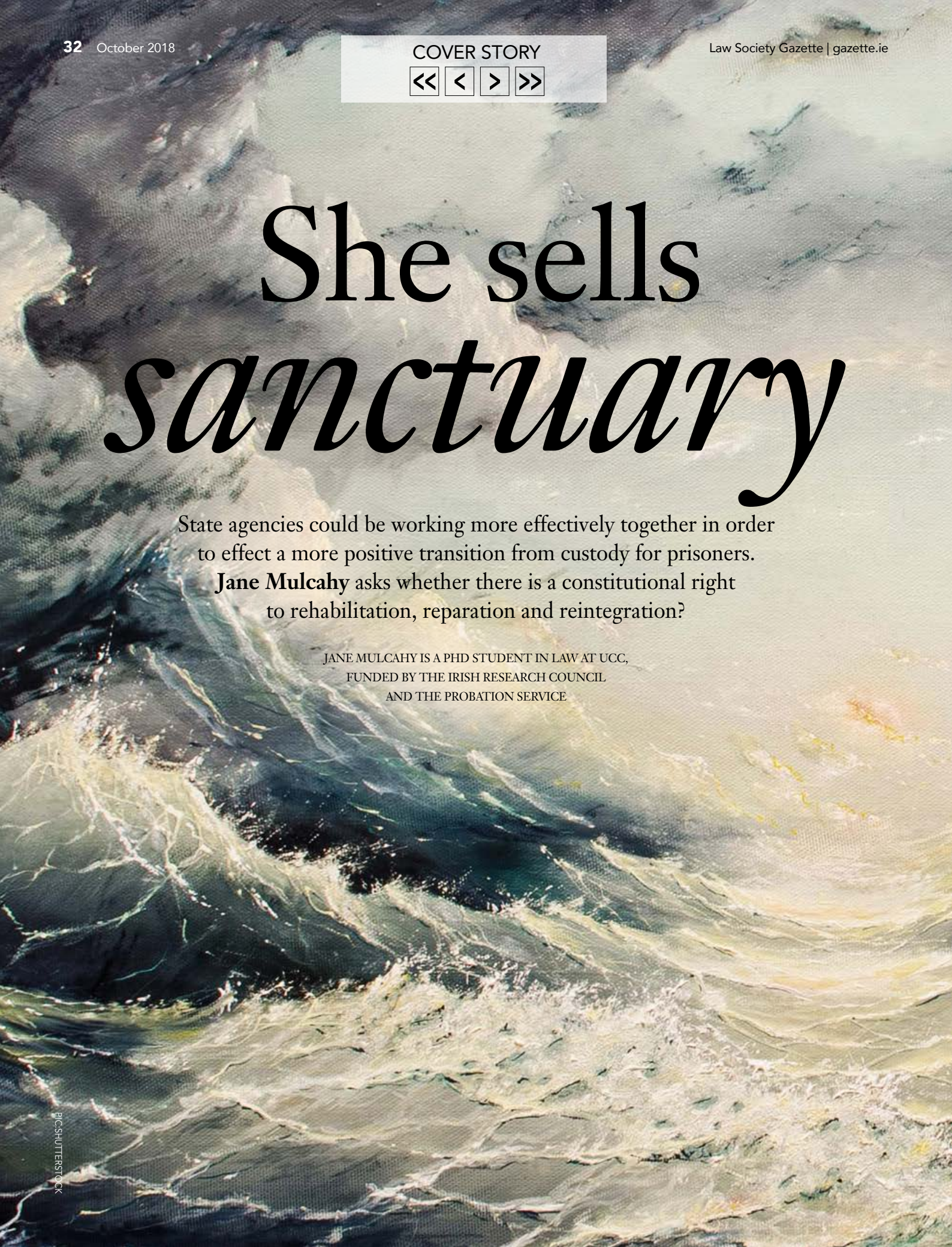
The commitment by government to comprehensively replace the current immigration system has not yet been met. Policy-makers need to take a step back from the politics of the moment to take the time to deliberate and develop a comprehensive, coherent national policy in respect of immigration and integration issues. g

JUDICIAL REVIEW MAY BE AN EXTREMELY LENGTHY AND EXPENSIVE PROCESS, ARGUABLY NOT THE EFFECTIVE REMEDY ENVISIONED BY ARTICLE 13 OF THE ECHR

She sells *sanctuary*

State agencies could be working more effectively together in order to effect a more positive transition from custody for prisoners. **Jane Mulcahy** asks whether there is a constitutional right to rehabilitation, reparation and reintegration?

JANE MULCAHY IS A PHD STUDENT IN LAW AT UCC, FUNDED BY THE IRISH RESEARCH COUNCIL AND THE PROBATION SERVICE



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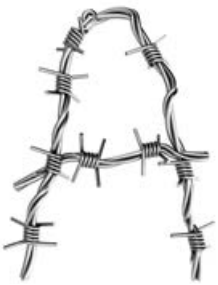

According to the Scottish Prisons Commission, "prison may sometimes do good, but it always does harm". The essence of this statement is undoubtedly true. However, if prison administrations were committed to providing meaningful strengths-based sentence planning that is responsive to childhood trauma and its devastating impacts, the capacity of prison to 'do good' in the lives of the people in its care might be enhanced.

The focus of strengths-based sentence planning should be on identifying and building on the strengths or protective factors in a prisoner's life and:

- Start immediately upon committal,
- Be developed in collaboration with the prisoner,
- Be cross-disciplinary and trauma-responsive,
- Be subject to periodic review,
- Support the person in maintaining positive relationships with family and significant others,
- Ensure that basic needs are met when transitioning from custody to freedom, and
- Take steps to arrange that the person is linked in with services and supports in the community, so that safety, structure, and a sense of belonging can be fostered and sustained over time.

The goal of all criminal justice agencies, including prison, should be to maximise what Maruna and Toch (2005) refer to as 'desistance-enhancing' opportunities for the benefit of offenders and the community at large (p140). 'Desistance' is a technical term to describe a process of positive change; a long, slow, complex process by which offenders reduce/deescalate and ultimately stop offending, and then endeavour to maintain a law-abiding lifestyle.

AT A GLANCE

- Historically, there has been little focus on rehabilitation or sentence planning, and temporary release was primarily used as a safety valve to reduce overcrowding
- 'Integrated sentence management' remained essentially a paper exercise until at least 2012
- The agencies responsible for managing the safe transition of prisoners back to the community must stop shirking their duties in respect of those whose problematic behaviour entangles them in the criminal justice system

Sweet salvation

The boom years of the 'Celtic Tiger' was an era characterised by penal expansion and poor physical conditions, including the degrading practice of 'slopping out' – which was compounded by overcrowding and high levels of inter-prisoner violence. There was little focus on rehabilitation or sentence planning, and temporary release was primarily used as a safety valve to reduce overcrowding, rather than as a tool to promote rehabilitation, desistance or facilitate resettlement.

'Integrated sentence management' (ISM) remained essentially a paper exercise until at least 2012. It was a class of criminal justice fantasy belonging to Carlen's 'penal imaginaries' (a term that includes the problematic and malleable concept of rehabilitation itself), in the sense that it was routinely discussed by the Irish Prison Service (IPS) as if it meant a lot more than it actually did.

ISM has never meant more in practice than in does today, yet there are still problems with its effective operation. Persistent staff shortages result in frequent redeployment of ISM officers from their core sentence-planning duties to attend to security functions. Moreover, issues relating to feuding, rivalry, and gang violence in the community are imported into prison, with a knock-on effect on regimes. For example, in Mountjoy prison, roughly 40% of prisoners are on protection, and colour-coded to reflect which groups can mix with each other (according to the census of restricted regime prisoners, April 2018). ISM in this context is impossible.

Anyone with a sentence of over one year should have a sentence plan developed upon committal or as soon as possible thereafter. The sentence plan should be developed collaboratively with the individual prisoner, in which they may undertake to work on certain issues (such as addiction or anger management) closely associated with their offending. As well as identifying the person's criminogenic risks and needs using an actuarial risk assessment tool, the plan should highlight their particular strengths (such as positive family relationships, motivation, and education/training goals) and interests (for example, woodwork, drama, boxing, creative writing, animal welfare).

Lil' devil

Criminal justice agencies need to become informed about trauma and be responsive to it as a matter of urgency. If the IPS is serious about the fact that rehabilitation is one of its core goals, then all staff need to receive training on the impact of childhood trauma, and prison-based interventions should be trauma-responsive. Since 1998, epidemiological studies by Felitti, Anda and colleagues, and neuroscience evidence from the Centre on the Developing Child at Harvard University, have established that adverse childhood experiences (ACEs) damage the structures of a child's developing brain, leading to long-term impairment of the brain's structure and function. This brain injury – acquired in infancy or adolescence – has individual and societal

> ANYONE WITH A SENTENCE OF OVER ONE YEAR SHOULD HAVE A SENTENCE PLAN DEVELOPED UPON COMMITTAL OR AS SOON AS POSSIBLE THEREAFTER

> CRIMINAL JUSTICE AGENCIES NEED TO BECOME INFORMED ABOUT TRAUMA AND BE RESPONSIVE TO IT AS A MATTER OF URGENCY

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costs in terms of damage to the person's health over the life course, in addition to a variety of behavioural and social problems, including involvement in drug-taking and criminality.

According to Van der Kolk (2014), trauma is "arguably the greatest threat" to our well-being and the "greatest public health issue of our time" (p350). He states that the ACE study has shown that "child abuse and neglect is the single most preventable cause of mental illness, the single most common cause of drug and alcohol abuse, and a significant contributor to leading causes of death such as diabetes, heart disease, cancer, stroke and suicide" (p353). Nonetheless, mainstream society is completely blinkered to the huge costs of ACEs and "too embarrassed or discouraged to mount a massive effort to help children and adults to deal with the fear, rage, and collapse, the predictable consequences of having been traumatised".

Becoming trauma-informed means learning about ACEs and their devastating impact on human lives. It means, instead of asking a distressed person 'what's wrong with you?' we instead dare to ask 'what happened to you?' The 'fight/flight/freeze' response that is triggered in stressful situations, if understood properly by police officers, lawyers, judges, probation officers and multidisciplinary prison teams, should lead to superior strategies for interacting with "unrecovered trauma survivors" (Whitfield, p362), some of whom are extremely hard to reach and demonstrate oppositional or aggressive behaviours when fearful.

In terms of managing the safe transition of prisoners back to the community, the organs of State responsible for the delivery

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> THE ORGANS OF STATE RESPONSIBLE FOR THE DELIVERY OF CORE SOCIAL SERVICES MUST STOP SHIRKING THEIR DUTIES IN RESPECT OF THOSE WHOSE PROBLEMATIC BEHAVIOUR ENTANGLES THEM IN THE CRIMINAL JUSTICE SYSTEM

of core social services must stop shirking their duties in respect of those whose problematic behaviour entangles them in the criminal justice system. Having lost their liberty following conviction, a person's basic human needs must be met by the prison service during their incarceration. For many prisoners, however, their basic needs will once again require the prompt and efficient engagement of non-criminal justice, so that their immediate health, housing, and financial needs are met.

Love removal machine

When a man is released to a homeless shelter after several years in prison and has only a three-day supply of his anti-psychotic medications, it is a virtual certainty that he will reoffend before long. The social conditions to which he returns set him up to fail. Feeling an overwhelming, visceral sense of being unsafe, he will do what it takes to survive. Committing offences is often a means to this existential end.

In 2012, at the ACJRD conference on resettlement, the director general of the IPS Michael Donnellan stated that "through focusing on the ways in which we can improve cooperation within the criminal justice system and between State agencies, we can certainly create the conditions which are needed to bring about better outcomes for offenders. In so doing, we can also go some way towards achieving our collective objective of improving public safety".

The staff of criminal justice agencies must act in concert with other government agencies to ensure that the basic needs of returning prisoners are met, especially regarding their immediate health, housing, and finance requirements. Recent developments in Ireland have meant that the IPS, the Probation Service, members of the Penal Policy Review Group, and officials from the Department of Justice have held meetings with relevant departments (such as Health, Housing and Social Protection) to discuss the desirability and logistics of a 'whole of government' approach to prisoner resettlement.

In a system that takes the return of prisoners back to society seriously and wishes to enhance their post-release reintegration prospects, non-criminal-justice actors must accept their role in the process and be involved in release planning and transition management so as to improve outcomes for the prisoners and society as a whole.

Be free

According to article 40.3.2 of the Irish Constitution: "The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen." An applicant with experience of childhood trauma and imprisonment could, I suggest, invoke Sean Lemass' vision of a "more progressive Ireland" to successfully claim that there is a constitutional right to rehabilitation/reparation and reintegration in Ireland, by drawing on the unenumerated rights doctrine in constitutional jurisprudence since the seminal case of *Ryan v Attorney General*.

A recognition by the courts in Ireland that people with offending behaviour enjoy a positive constitutional right to rehabilitation/reparation and reintegration as an unenumerated right would go a long way to creating the legal backdrop for a shift in the focus and operation of punishment and would provide the legal basis for demanding a multi-agency response to re-entry and reintegration. The safe transition of prisoners back to the community is a matter requiring the attention and concerted efforts of local authorities, the Departments of Health, Housing, Social Protection, Education and Employment, as much as Justice. g

Jane Mulcahy won the Justice Media Award 2018 in the broadcast journalism (radio/podcast – local) category for her UCC 98.3FM podcast 'Humanising human rights'.

LOOK IT UP

CASES:

- *Ryan v Attorney General* [1965] IR 294

LITERATURE:

- Carlen, P (2012), 'Against rehabilitation: for reparative justice', Eve Saville lecture
- Donnellan, M (2012), 'Prisoner resettlement – broadening the responsibility', 15th Annual ACJRD Conference on Exit from Custody – Throughcare, Resettlement and Related Issues
- Maruna, S, and H Toch (2005), 'The impact of imprisonment on the desistance process' in J Travis and C Visher (eds) *Prison Re-entry and Crime in America* (New York: Cambridge University Press)
- Van der Kolk, B (2014), *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* (New York: Penguin)
- VJ Felitti *et al* (1998), 'The relationship of adult health status to childhood abuse and household dysfunction', *American Journal of Preventive Medicine* (1998) 14, 245-258
- Whitfield, C (1998), 'Adverse Childhood Experiences and Trauma', *American Journal of Preventive Medicine* (14) (4) (pp361-364)

Breaking up is hard to do

In the early days of a couple's break-up, a 'children's charter' can ensure that adults do the best for their children. **Declan Foley** takes us through the steps involved – where clear and effective communication is key

DECLAN FOLEY IS A MEDIATOR WITH MEDIATABLE AND A RETIRED SOLICITOR

solicitor is one of the first people to be contacted when a couple separates. When that phone call is received, he/she knows that two adults are ending their relationship, and any children they have are going to be innocent parties caught up in the family break-up.

Emotions such as anger, disappointment, resentment, denial, and other negative feelings will be running high and hindering a sensible approach to the immediate issues. There could be unhelpful action arising from these emotions, such as rows, blame, and bad-mouthing the other, either in front of the other party or behind their back.

All of this leads to unhealthy tension, and the solicitor knows it will be weeks before full instructions are given, and months before there will be an opportunity to deal with the issues. Even when a court does hear the case, issues can arise after the hearing, and if there is a shortage of goodwill, in practice this could be damaging for the children.

A mediator could also be one of the first to receive that call, and might be able to see the couple quickly before relations deteriorate. Hence, as a practising mediator and retired solicitor, I have drawn up guidelines to present to the couple immediately, and I suggest that they refer to them regularly, during the mediation and beyond. Any ignoring of the guidelines will be dealt with in the mediation itself. Alarm bells ring when behaviour that is all about their own interests is described as being 'done for the kids'.

AT A GLANCE

- Emotions are running high at the time of relationship breakdown
- A mediator will be able to see the couples quickly before relations deteriorate
- A 'children's charter' can help effective co-parenting
- The mediator can facilitate effective communication
- Clarity of communication is key

Rock-a-bye baby

At this difficult time, it is important to be aware that the hardship has already started, including the impact on the children, and these 'children's charter' guidelines are for the adults to do the best for their children. The sequence for the parents is:

- Talking to each other, perhaps with the use of mediation,
- Telling the children that they are separating and dealing with the issues that they raise with them,
- Preparing a joint statement to them (see below in greater detail), and explaining that their needs will be foremost in the parents' minds, and
- Returning to mediation if needed.

Something to talk about

Co-parenting – the most important part of separating is co-parenting the children. This will involve discussing arrangements and issues, and deciding when and how to tell the children. It is best to do this when a plan is in place for living separately, including a timetable providing for where the

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> REMEMBER: CUSTODY OF CHILDREN IS NOT A PROPERTY-OWNING EXERCISE. ALSO BEAR IN MIND THAT BOUNDARIES ARE ESSENTIAL IN THE CONTEXT OF HANDOVERS AND RESPECTING THE OTHER'S NEW LIVING ARRANGEMENTS

children will spend their time, and see both of their parents.

Communication – while parents need to meet at the outset, they simply may be unable to do so. A shuttle mediation can be used, whereby they see the mediator separately, either on different days or at different times at the same session, with the mediator shuttling between two rooms. That may involve emails being sent to the mediator and for him or her to negotiate between the parents.

Once agreement is reached, further ongoing communication is needed:

- Emails, if lengthy; texting, if shorter and more immediate, unless the parents can handle phone calls calmly and constructively,
- Avoiding communication in front of the children unless very light; instead, making time to see each other elsewhere to discuss co-parenting, and
- If talking face-to-face doesn't work, and neither do phone calls, beware of the texts or emails turning nasty. In mediation, I suggest that both agree that either party may copy the mediator if they deem the contact to be toxic. This usually results in the toning down of such behaviour.

Movin' on

Once an arrangement is in place to live separately, including the unique temporary arrangement of doing so in the same house, a timetable should be drawn up to see the children, and parents should pay attention to:

- Having a clear understanding of hand-overs, collection and transport arrangements,
- Agreeing that each child shall sleep alone in their own bed – if anyone else other than the parent is to be in that house, even temporarily, this needs to be discussed,
- Agreeing that if any child wants to contact one parent while with the other, that is in order,
- It may be agreed that the children spend most of their time with one parent, and if that becomes or remains their home, it could help if that parent would allow the other to spend time there, with them vacating during those times (this is called 'the cuckoo's nest', but will not suit every couple),
- Each of the parties should try and give equal time to each child, including alone time with each, and
- Sometimes it happens that a second home is very close to the family home, such as a house in the grounds of the other,

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> EMOTIONS SUCH AS ANGER, DISAPPOINTMENT, RESENTMENT, DENIAL, AND OTHER NEGATIVE FEELINGS WILL BE RUNNING HIGH AND HINDERING A SENSIBLE APPROACH TO THE IMMEDIATE ISSUES

which might be necessitated by finance. Depending on the age of the children, it might not be suitable for them seeing their parent passing by, and not coming to see them. In such a situation, they should stick to the timetable even more so, and don't allow the children to run out and choose one parent over the other on a whim.

Remember: custody of children is not a property-owning exercise. Also bear in mind that boundaries are essential in the context of handovers, and respecting the other's new living arrangements.

Human touch

Family time – there will be special occasions, such as birthdays and so on, where it would be beneficial to spend an amount of time together, but not if the tension would have an adverse effect on the children. There is a way of dealing with Christmas Day, splitting it to spend time in both places. The more time parents can spend together amicably, the better for the children, including at handovers, but the reverse applies. If the early days are fraught, it should be kept to a minimum, and parents should aspire to share a meal at some handovers, being civil to each other and showing that they don't demonise the other. Any rows, bad-mouthing or criticism of the other, either in front of the children or to them when alone, are to be avoided as a priority.

Extended families – it is important to normalise the break-up as much as possible, and that would include making access to extended families continue as much as possible.

New relationships – sometimes a third party can be at the centre of a break-up, or enter one or other's lives afterwards. Depending on the age of the children, there should be honest disclosure on a joint basis and any questions answered after that. Agreement should be reached to tell each other about a new person before telling the children, and a time limit should be agreed upon as to when and how to tell them. Cohabiting with another person needs dialogue between parents, and generally there is nothing to be gained by introducing a new person until absolutely necessary.

Therapy – each parent could be considering one-to-one therapy, and/or a good therapist could see both as a separating couple needing help to handle co-parenting. Also, a child and family therapist could be used who could also deal directly with the children.

Tell the truth

After all the necessary discussions to effect the break-up, including making financial arrangements, it is time to arrange telling the children (bearing in mind what has been stated here already). There are books and articles to be consulted. After due discussions, a united statement could be made to them by both parents. This should be close to the time of moving out, but not too close – maybe between two and four weeks beforehand.

Parents should arrange how to do so, and whether the children need to be told individually or together. What they can actually tell them will depend on their age. Parents should explain what has happened, briefly, and make it all about the children's future. Children should be told that the parents' love for them is as it has always been, and they will be well looked after; that there is not any financial difficulty arising from two homes and so on, and that they will respect family time and the issues referred to above.

If any questions arise, parents should answer as best they can. They should try to sit with each child, for a one-to-one for each parent with each child, to see whether things come up and, if they don't, parents should gently ask if there is anything they are worried about. This should be done soon after the announcement, and parents should:

- Be available regularly after that to repeat that process in case something comes up after they have had time for reflection,
- Encourage them to tell you how they feel,
- Not tell them that they, as children, are not equipped to deal with their feelings,
- Give a verbal commitment that they will always try and protect them from any hostility, that there will be no bad-mouthing or criticism of the other parent and, if there is, that they should tell the other person, whereupon it will be dealt with away from them, and
- Not ask children to carry communication from one parent to the other.

Come together

Each parent should make a list of what they want said to the children, compare the lists, and consider all recommendations above before arriving at an agreed statement. It need not be delivered as a written statement, but could be written for their own use and then synopsised for them.

Taking the above points in the order they appear, possible matters to include are: a timetable, communication, living arrangements, family time, extended families, new relationships (can be deferred until one exists), availability of therapy, the parents' love for them, their commitment to their well-being indefinitely, and that finances are dealt with.

Questions are encouraged, and time with each parent for each child is guaranteed. Expression of their feelings is welcomed, and they are not to be concerned about their parents' feelings. Most of all, explain that both parents aspire to harmony and not bad-mouthing or criticising each other. g

Note: the above is for guidance only, and is not intended to provide legal advice.

Burning bridges

No solicitor wants to find himself on the end of a professional negligence claim arising out of personal injury claims. **David Mulligan** looks at the potential pitfalls and shares practical advice on how to avoid getting into difficulties

DAVID MULLIGAN IS A SOLICITOR ADMITTED IN AUSTRALIA AND IRELAND. HE SPECIALISES IN PERSONAL INJURY AND MEDICAL NEGLIGENCE LITIGATION

Every practitioner's worst nightmare is to be the subject of a professional negligence claim. Sleepless nights, a loss of insurance excess, increased premiums, an aggrieved client, and a damaged reputation – the consequences can have a lasting effect.

Considering the nature of a personal injury claim, where it is the overriding duty of the plaintiff to issue, prosecute and prove their claim, negligence claims are much more likely to be taken against a solicitor for a plaintiff rather than a solicitor for a defendant.

There are certain areas where personal injury practitioners need to exercise particular care:

- Missing a time limit,
- Inordinate and inexcusable delay in prosecuting a claim,
- Failing to properly prepare for and conduct a trial, and
- Under-settlement of a claim.

Biding my time

Protecting a limitation date is probably the most fundamental obligation of any personal injury practitioner. Mistakes of this kind fall into two categories: failing to issue proceedings in time, and failing to have a summons renewed in time.

AT A GLANCE

- Professional negligence claims can result in increased insurance premiums, an aggrieved client, and a damaged reputation
- Case law reveals some key steps that practitioners should build into their office procedures
- The law does not require perfection: create a work culture where it is acceptable to admit mistakes

With regard to failing to issue proceedings in time, in 2017 in the High Court, in the matter of *Teresa McFadden v Andrea Neuhold*, the plaintiff alleged injuries arising out of a motor vehicle accident, and had commenced negotiations directly with the relevant insurer. Prior to the limitation date, the plaintiff engaged a solicitor to assume conduct of her claim. Regrettably, the plaintiff's solicitor did not make an application to the Injuries Board within the relevant time period. In a decision that is worthwhile reading for practitioners in this field, Barton J had no difficulty in dismissing the plaintiff's claim on grounds that it was statute-barred.

Of relevance to the court's decision was the concession by the plaintiff's solicitor that he "fairly accepted that he was unfamiliar with the procedure for processing a claim with the board". The court further observed that "a perusal of the client file shows that no note was made of the rapidly approaching limitation expiry date".

In terms of failing to have a summons renewed in time, in the 2017 High Court matter of *Whelan v Health Service Executive and Elizabeth Dunn*, the plaintiff alleged injuries


PIC: SHUTTERSTOCK

> NEGLIGENCE CLAIMS ARE MUCH MORE LIKELY TO BE TAKEN AGAINST A SOLICITOR FOR A PLAINTIFF RATHER THAN A SOLICITOR FOR A DEFENDANT

arising out of medical negligence. The personal injury summons, which issued in October 2013, had not been served on the defendants and had not been renewed within 12 months of the issue date. While the plaintiff was initially successful in having the summons renewed at an *ex parte* application, the defendants brought a later application to have that renewal set aside.

While the plaintiff's solicitor alleged that the plaintiff would suffer "irreparable prejudice" if her claim was statute-barred, the court disagreed and implied, in clear terms, that the plaintiff had a potential professional negligence claim against her own solicitor: "I believe that to be unlikely, since on the facts as known to me she may very well have a remedy, albeit not one against the existing defendants."

Another brick in the wall

Applications by defendants to dismiss a plaintiff's claim on such grounds are frequent. There are many reasons why a claim may be slow to progress: an uncooperative client, a shortage of funding for outlays, and/or difficulty obtaining expert evidence.

In the 2017 High Court matter of *Gallagher v Letterkenny General Hospital & Ors*, the plaintiff alleged profound injuries arising out of negligence at birth. A personal injury summons issued in March 2007. The matter had not materially progressed over the next decade. The period of delay by the plaintiff was considered to be some eight years.

Among the reasons for delay, the court noted the following: "The solicitor for the plaintiff has frankly admitted that his small one-man practice cannot carry the cost of further medical reports, which he estimates at €15,000 at a minimum."

The court was unambiguous in finding that a solicitor for a plaintiff has a duty to


Careful with that axe, Eugene

> NO SOLICITOR IS FLAWLESS. THE LAW DOES NOT REQUIRE PERFECTION

advise his/her client how an inability to fund expert reports may damage his/her claim.

"It is true that the plaintiff is entitled to his own choice of legal representation, but if his solicitor cannot represent him, the plaintiff is entitled to know the extent to which the inability of the solicitor for the plaintiff to act is likely to damage his claim."

These decisions sound as a warning bell to any personal injury practitioners with stale claims gathering dust in their office. Move the matter along with great haste or face the risk of strike-out and the consequences that follow.

Us and them

The 2016 Court of Appeal matter of *Vesey v Kent Carty & Anor* is a particularly alarming example of a plaintiff turning against his own solicitors. It should be remarked that the plaintiff's solicitors were not found to have breached any professional standard in its representation of the plaintiff.

Notwithstanding, the Court of Appeal provided some useful commentary upon the standard of care expected of a plaintiff's solicitor: "That standard required the respondent to ensure, in as far as possible, that the appellant's claim (both relating to the extent of his injuries and his consequential loss of earnings) be advocated in court, that the appropriate witnesses be called to give evidence, that witnesses called on behalf of Bus Éireann be cross-examined and/or challenged in order to ensure that the appellant's claim is vindicated as far as possible, and, in general terms, that the appellant's instructions be complied with."

Money

Another scenario where a practitioner may find himself/herself exposed is the settlement of a claim below reasonable value. As claims of this kind are uncommon in Irish courts, some guidance is available from our counterparts in England.

In *Hickman v Lapthorn* (2005), the plaintiff successfully brought a professional negligence action against his solicitor and barrister on grounds that his prior personal injury settlement did not take into account the full extent of his injuries. The court set out the duty of a solicitor to speak up when it was clear that the settlement on offer was not grounded in the reality of the plaintiff's circumstances. While the court acknowledged that the solicitor was very much "second in the legal team" as compared with counsel, "it was her duty to intervene if she saw something going wrong".

Welcome to the machine

Case law reveals some key steps that practitioners should build into their office procedures in order to avoid getting into difficulty in the first place:

- Diarise all key dates (*Neuhold*, *Sports Travel International*). This step cannot be overemphasised. Such dates include Injuries Board authorisation dates, limitation dates, and summons renewal dates. When a task is complete, proceed to set a new date with the next required task on the file.
- Mark limitation dates on the front of each file (*Neuhold*). An obvious but often forgotten step.
- During any change of office, premises or partnership restructures, take particular care with regard to file movement and responsibility (*Neuhold*, *Carroll v Kerrigan & Anor*).
- Don't try your hand in areas of law with which you are unfamiliar (*Neuhold*).
- Ensure your client agreement deals comprehensively with outlays; how much they might be and who is responsible for them (*Carr v O'Gorman* and *Gallagher v Letterkenny General Hospital*).
- When declining to act for a potential client or ceasing to act for a client, ensure he/she is provided with written notification of any key limitation dates and the consequences for failing to meet such dates. If it is your opinion that a potential client does not have a stateable case, emphasise that another solicitor may have a contrary opinion (*Kennedy v Health Service Executive & Ors*).
- Investigate all possible injuries and all heads of damage, particularly future loss of income (*McLaughlin v McDaid &*

> PROTECTING A LIMITATION DATE IS PROBABLY THE MOST FUNDAMENTAL OBLIGATION OF ANY PERSONAL INJURY PRACTITIONER

ors). If a claim is not being pursued for a certain head of damage, ensure your client understands the reasoning.

- Choose your clients carefully: beware of clients with vexatious characteristics (*Vesey*).
- Don't be afraid to disagree with counsel – solicitors have a duty to speak up if counsel is getting it obviously wrong (*Lapthorn*).
- Ensure clients receive written advice as to liability and quantum prior to any consideration of compromise.
- Wherever possible, recommendations of compromise and client instructions should be in written form. Where matters settle at the steps of the courtroom, written instructions are almost impossible. In such circumstances, when advising a client verbally, ensure counsel, a trainee, or a colleague is present to witness the advice given and instructions received.
- In claims for minors, where the injury has caused symptoms that may interfere with work capacity, give serious consideration to delaying the prosecution of the claim until the claimant reaches the age of majority. It is much easier to advise upon future economic loss when a claimant reaches 18 and has chosen a career path.
- Record all client interactions. If your handwriting is illegible, have your diary notes typed. Contemporaneous note taking may be crucial if a client alleges that you failed to heed his/her instructions.
- Ensure that a file review system forms part of your standard office procedures. If supervising the work of junior solicitors, ensure time is set aside on a regular basis to review their work. If acting as a sole practitioner, don't be afraid to ask questions of colleagues. A fresh set of eyes can often quickly spot a problem and solution.

Comfortably numb

No solicitor is flawless. The law does not require perfection. The law acknowledges that we work "in an environment where decisions and exercises of judgement have to be made in often difficult and time-constrained circumstances" (*Arthur JS Hall v Simons*).

The focus of solicitors' practices should be to create an environment where mistakes are as few as reasonably possible.

Creating that kind of environment requires a work culture where it is acceptable to admit mistakes. The sooner a mistake is identified, the easier it is to remedy. Consider regular meetings of professional staff to discuss 'near misses'. Don't just learn from your own mistakes or 'near misses' – learn from those of your colleagues too.

The case law shows that much of the damage can be done when a mistake is ignored, rather than acknowledged and dealt with at the earliest opportunity. g

LOOK IT UP

CASES:

- *Arthur JS Hall & Co v Simons* [2000] 3 All ER 673
- *Carr v O'Gorman* [2017] IEHC 302, 28 April 2017
- *Carroll v Seamus Kerrigan Ltd & Anor* [2017] IECA 66, 3 March 2017
- *Ennis v Sports Travel International Ltd & Anor* [2017] IEHC 189, 24 March 2017
- *Gallagher v Letterkenny General Hospital & Ors* [2017] IEHC 212, 30 March 2017
- *Hickman v Lapthorn & Anor* [2005] EWHC 2714 (QB), 16 December 2005
- *Kennedy v Health Service Executive & ors* [2016] IEHC 696, 2 December 2016
- *McFadden v Neuhold* [2017] IEHC 240, 7 April 2017
- *McLaughlin v McDaid & ors* [2015] IEHC 810, 10 December 2015
- *Vesey v Kent Carty & Anor* [2016] IECA 302, 26 October 2016
- *Whelan v Health Service Executive & Anor* [2017] IEHC 349, 31 May 2017

Balancing act

A recent judgment stated that *Courts Act* interest does not follow as of right, and that a decision to apply it can be a delicate balancing act, given its potentially punitive nature. **Patrick Keane** brings balance to the Force

PATRICK KEANE IS A SENIOR COUNSEL

Under the *Courts Act 1981*, section 20.2, the Minister for Justice may change the rate of interest under section 26 of the *Debtors (Ireland) Act 1840*. But a very significant change brought about by the 1981 act was that, for the first time, where there was no contractual right to interest, the court had a statutory discretion to order payment of interest on any pecuniary loss, from the period when the amount thereof became due until the date of judgment.

Under section 22.1 of the 1981 act, the court may order payment of interest (at the rate specified for the time being in section 26 of the 1840 act) on the whole or any part of the sum in respect of the whole or any part of the period between the date when the cause of action accrued, and the date of judgment. But no interest may be awarded on interest, and no interest is awarded under section 22, if there is a right otherwise to interest.

No interest is awarded on damages for personal injuries or on a person's death (save for pecuniary loss). No such interest applies to awards not exceeding £150 (€190.46) or associated costs (1981 act, section 23). Although a PIAB order to pay is equivalent to a judgment, section 22 interest does not apply to it (*Personal Injuries Assessment Board Act 2003*, section 40.1 and 40.2).

The interest rate decreased from 8% per annum to 2% per annum (SI 624/2016) with effect from 1 January 2017.

The debt is due

A debt due as a result of an ordinary trading or commercial transaction should attract interest under section 22 of the *Courts Act 1981* (per Finlay P in *Mellowhide Products Limited v Barry Agencies Limited*). That 1982 case established that only a judge may award interest under the *Courts Act 1981*. Thus, it is not competent for a registrar or the Master of the High Court to do so.

In relation to the discretion of a judge to award *Courts Act* interest, Finlay P stated: "Where a debt is due as the result of an ordinary trading or commercial transaction, it would appear to me that the debtor delaying the due payment of his liabilities is clearly and in a sense intentionally depriving his creditor of the use and value of the money concerned. I am also influenced by the fact, as a matter of common knowledge, that the amount money can earn by way of interest rates at present is higher than the figure of 11%, which is now provided in the *Debtors (Ireland) Act 1840*. For these reasons, I am satisfied that the plaintiff is entitled to an order for interest and I so decree."

In that case, *Courts Act* interest was ordered from the date on which the debt became due. The judgment also indicated that it was not necessary to claim *Courts Act* interest in the pleadings, though "such a claim may well be a wise precaution".

The Hepatitis C Compensation Tribunal had discretion to award interest under the *Courts Act 1981* (so held by the Supreme Court in *O'C v Minister for Health*; see the last page of the judgment of Denham J).

An interesting and important Supreme Court case in relation to *Courts Act* interest is *Reaney and Others v Interlink Ireland Limited* (2018), in which O'Donnell J gave judgment whereby the court, to a limited extent, allowed the defendants appeal by substituting €26,001.26 for the award of interest of €57,325 made by the Court of Appeal, and reversed the conclusion of the Court of Appeal that

AT A GLANCE

- The rate of interest on judgment debts was 4% per annum, as determined by the *Debtors (Ireland) Act 1840*
- The rate of interest on judgments was changed to 11% per annum by the *Courts Act 1981*
- The rate of interest changed from 11% to 8% per annum, with effect from 23 January 1989
- The interest rate has decreased from 8% per annum to 2% per annum with effect from 1 January 2017

NO INTEREST IS AWARDED ON DAMAGES FOR PERSONAL INJURIES OR ON A PERSON'S DEATH (SAVE FOR PECUNIARY LOSS)

PIC: REX FEATURES

interest should be included in a lodgment. The defendants' appeal was otherwise dismissed.

Economics 101

At paragraph 11 of the judgment, O'Donnell J stated: "It is rudimentary economic theory that money has a time value. The person who has a sum of money over a period can obtain a benefit either in interest on that sum if invested (or other return on investment), or interest avoided because that sum does not have to be borrowed. By the same token, a person who has not received money incurs a cost, in particular if they have had to borrow. By 1981, a decade of inflation had shown that, in many cases, an award of damages, particularly in commercial or contractual situations, could fall well short of a full remedy for a wronged party because the real value of the award at the conclusion of the proceedings could be substantially less than that monetary amount had been worth in real terms at the time of the breach of contract or the failure to pay."

O'Donnell, J continued (at paragraph 17): "As already set out, I would be slow to review the exercise of a trial judge's discretion. A judge may have a very good sense of the manner in which the case has proceeded, how diligently it has been prosecuted, and indeed the extent to which the case can be said to be one which is clear-cut. To the extent that any claim can be said to approximate to a claim for a price paid or a debt due, then interest might relatively routinely be awarded. In such cases, however, it may still be appropriate to take account of how diligently the proceedings have been prosecuted.

"In this case, for example, the Court of Appeal directed that interest should only accrue from the date of the commencement of the second set of proceedings, and I would respectfully agree. In general, therefore, to the extent to which it can be said that at the conclusion of a case a trial judge can conclude that the defendant ought to have paid the money earlier, then interest could properly be awarded. Thus, if the defendant has refused to pay a contractual price, and in particular in those cases in which it has raised a counter claim for unliquidated damages, which has been dismissed, it would be appropriate to award interest unless other features are apparent.

"On the other hand, where there is a genuine dispute which requires to be resolved, and perhaps some merits on either side, it may be much more difficult to say that the sum awarded ought to have been paid at a much earlier date, and therefore that interest should accrue. I consider that this approach is broadly consistent with what is said in *Mellowhide* and with what was done in *Concorde Engineering*."

This was a reference to *Concorde Engineering Company Limited v Dublin Bus*, where McCracken J, having heard a road traffic case, gave judgment for the plaintiff. Interest had been claimed by the plaintiff, but not sought at the trial. McCracken J refused to allow the question of *Courts Act* interest to be argued almost nine months after perfection of the original order.

Punitive measure

An award of *Courts Act* interest was one of the issues dealt with by the Supreme Court in *First Active Plc v Brian Cunningham*, in which McKechnie J (at paragraph 36), stated: "*Courts Act* interest does not follow as of right, and the decision on whether or not to apply it is a delicate balancing act, given that it can amount to a punitive measure. Although the court cannot alter the rate at which interest accrues, it does have discretion as to the portion of the sum on which interest is awarded and the period for which it is awarded."

McKechnie J (paragraphs 40-41) further referred to the fact that the central purpose of section 22 of the 1981 act is to enable the court to make provision for the delay experienced in securing judgment.

It could be said that the judgment of O'Donnell J in *Reaney* has introduced an uncertainty about the way in which a court may decide whether to award *Courts Act* interest or not. There is a lot to be said for having greater certainty in this regard, and perhaps it might be better, unless there were cogent circumstances leading to a contrary view, to hold that, where a party proves a debt owed by another party, the claimant should be entitled to *Courts Act* interest. If a defendant owes a debt, he can hardly complain about delay on the part of the plaintiff in seeking to enforce it, given that the debtor has the opportunity (though perhaps not the means) to pay the debt prior to the issuing of proceedings.

Preferable situation?

Under section 30 of the *Courts and Court Officers Act 2002*, interest on costs at 2% per annum was allowed from the date of the order until the amount was agreed, or until the date of the certificate of taxation. From the appropriate date until the amount is paid, interest was due at the rate (which was then 8% per annum) specified in section 26 of the *Debtors (Ireland) Act 1840*. But section 30 of the 2002 act was repealed by section 41 of the *Civil Liability and Courts Act 2004*, with the effect that no interest is allowed on costs until those costs are agreed or taxed. It is suggested that the situation under section 30 of the 2002 act was preferable to that introduced by section 41 of the 2004 act in that, in relation to liability, interest should run from the date that liability is incurred,

> ALTHOUGH THE CURRENT 2% RATE OF *COURTS ACT* INTEREST IS ONLY 25% OF WHAT IT WAS BEFORE 1 JANUARY 2017, IN THE CURRENT ECONOMIC CLIMATE, IT IS STILL A SUBSTANTIAL RATE HAVING REGARD TO AVAILABLE DEPOSIT RATES

> ALTHOUGH THE COURT CANNOT ALTER THE RATE AT WHICH INTEREST ACCRUES, IT DOES HAVE DISCRETION AS TO THE PORTION OF THE SUM ON WHICH INTEREST IS AWARDED AND THE PERIOD FOR WHICH IT IS AWARDED

rather than from the date on which the extent of that liability is ascertained.

Although the current 2% rate of *Courts Act* interest is only 25% of what it was before 1 January 2017, in the current economic climate, it is still a substantial rate having regard to available deposit rates. Thus, for example, it is a multiple of over 13 times the current State savings deposit account rate, which is only 0.15% p.a.

Judges may find it easier to award interest under the *Courts Act 1981*, where the amount of that interest has already been calculated, rather than to give an award related to a principal amount for a specified period, where the resulting amount of interest is unknown. Thus, where, for example, an actuary is calculating a past loss of earnings, if such interest is to be sought, it is prudent to request the actuary to include this in his calculations. In cases where no actuary is involved, it would be helpful to a judge who is being asked to award *Courts Act* interest to inform the court of the amount of the interest being sought.

LOOK IT UP

CASES:

- *Mellowhide Products Limited v Barry Agencies Limited* [1982] WJSC-HC 1242
- *O'C v Minister for Health* [2001] IESC 72
- *Reaney and Others v Interlink Ireland Limited* [2018] IESC 13
- *Concorde Engineering Company Limited v Dublin Bus* [1995] 3 IR 212
- *First Active Plc v Brian Cunningham* [2018] IESC 11

LEGISLATION:

- *Courts Act 1981*
- *Debtors (Ireland) Act 1840*
- *Personal Injuries Assessment Board Act 2003*
- *Courts and Court Officers Act 2002*
- *Civil Liability and Courts Act 2004*
- *Courts Act 1981 (Interest on Judgment Debts) Order 2016* (SI 624/2016)

Behind the curtain

An awareness of what happens at a sexual assault treatment unit assists solicitors in the provision of best possible legal advice. **Kieran Kennedy** outlines the process

DR KIERAN KENNEDY IS A FORENSIC PHYSICIAN WITH THE SAOLTA UNIVERSITY HEALTH CARE GROUP (GALWAY SEXUAL ASSAULT TREATMENT UNIT), A GP, AND A LECTURER AT NUIG

Irish solicitors become involved in criminal and/or civil proceedings relating to sexual violence, acting either for the complainant/plaintiff or the defendant, so awareness of what happens at a sexual assault treatment unit (SATU) assists solicitors in the provision of the best possible legal advice. In Ireland, there is very significant divergence between adult and child services and procedures for responding to reports of sexual violence. This article outlines the health service response to adult patients.

While the majority of patients who attend Irish SATUs are referred by the gardaí, other sources of referral include hospitals (such as emergency departments or sexually transmitted infection clinics), GPs, and Rape Crisis Centres (RCCs). Patients may also directly self-refer to a SATU. SATUs are located in Dublin, Galway, Cork, Letterkenny, Waterford and Mullingar. Most have a clinician available on-call, at all times.

Choice of assessment type

Upon referral to a SATU, patients are provided with a choice of three options:

- Forensic clinical examination at the SATU along with reporting to the gardaí, (this includes the collection of forensic samples and their immediate provision to An Garda Síochána, in keeping with chain of custody requirements; this is the most popular option),
- Health check at the SATU (the focus is upon ensuring that essential medical treatment is provided; no forensic samples are obtained and the gardaí are usually not involved),
- Forensic clinical examination at the SATU without immediate reporting to the gardaí, but including collection and safe storage of forensic samples for potential use at a later date (this option is only available to patients of 18 years of age or older, as mandatory reporting procedures apply to younger patients).

AT A GLANCE

- Ireland's six sexual assault treatment units assess in the region of 700 adult (that is, aged over 14 years) patients per annum
- The majority are female, attend for assessment within seven days of the reported incident, and report a single assailant
- Upon referral to a SATU, patients are provided with a choice of three options
- Special care is taken to ensure that patients are fully informed of the available options, and that they are empowered to select that which is most appropriate

Special care is taken to ensure that patients are fully informed of the available options and that they are empowered to select that which is most appropriate. Patients who present (for example, to a garda station) within seven days of an alleged incident, and who choose to have forensic samples taken, will normally be provided with an appointment to attend a SATU within three hours of reporting, so as to minimise time-related degradation of biological trace evidence.

Typical assessment

Upon arrival, a patient will be greeted by the examining clinician (doctor or nurse/midwife specialist), an assisting nurse, and a psychological support worker from a local RCC. The patient is first offered the opportunity to talk privately with the psychological support worker. When the patient is ready, informed consent is obtained by the clinician. Care must be taken to ensure that the patient has the capacity to consent, with due consideration given to emotional distress, alcohol/drug use, and fatigue. Each part of the forensic

PIC: SHUTTERSTOCK

clinical examination is explained to the patient in a step-by-step fashion, so as to help the patient to understand what is involved and to afford them the opportunity to decline any aspect of the examination that they do not wish to undergo. A patient-centred approach, where the patient is the central decision-maker, is recommended – and patients are especially advised that they can stop the assessment at any time.

The forensic clinical examination begins with the clinician taking a complete past medical history. This will include details of current and past health problems, medication use, allergies, previous surgeries, mental health problems, and physical/intellectual disabilities. For female patients, a gynaecological history is relevant. A sexual

> IRELAND DOES NOT HAVE A NATIONAL GUIDELINE FOR THE EXAMINATION OF SUSPECTS IN CASES OF SEXUAL CRIME. THE FAILURE TO COMPETENTLY EXAMINE A SUSPECT, IN LINE WITH INTERNATIONAL BEST PRACTICE, HAS BEEN KNOWN TO COLLAPSE CRIMINAL CASES

history (for example, last sexual activity, use of contraception, etc) is important for all patients. The patient's lifestyle is explored (such as alcohol and drug use, smoking status, safety in the home environment, etc). Comprehensive history taking is essential to the provision of quality medical care. In the context of an alleged crime, the background history can also be highly relevant to the accurate interpretation of clinical examination findings.

The clinician then obtains a brief account of the reported incident from the patient. It is sometimes noted in subsequent court proceedings that the patient's account of events, as documented by the SATU clinician, is at variance with the statement provided by the patient to An Garda Síochána. To a clinician, this is not at all surprising. The nature of the history taking performed by the SATU clinician is very different to the recording of a garda statement. The clinician seeks to establish what injuries might be present, what conditions might arise in the coming hours or days (for example, did the patient sustain a head injury during the assault that might merit an urgent brain scan?), what medications might be appropriate, and what blood tests might be required. After the SATU assessment is complete, a garda may take a much more detailed statement, with emphasis upon recording every relevant detail that might contribute to establishing what happened, and who might have been involved. The variations in roles and objectives of the clinician and the garda may explain why inconsistencies arise.

Physical examination

Next, the patient, examining clinician, and assisting nurse move to a forensically clean examination room (a room that has been rigorously cleaned to minimise the presence of background DNA contamination). A head-to-toe physical examination is carried out so as to identify and record injuries to the body surface. While very many patients will have no injury whatsoever, others could have, for example, injuries consistent with forced restraint (such as finger-tip bruising on the upper arms), attempted strangulation (for example, tiny pinpoint red bruises around the eyes and bright red bleeding within the white of the eye), bite marks, ligature marks, and/or bruising and abrasions consistent with being pressed against a hard surface.

A systems examination (checking blood pressure and pulse rate, feeling the abdomen, assessing level of consciousness, etc) is essential to the detection of less readily discernible injury present beneath the body surface (such as damage to the spleen after a blow to the abdomen). The overriding emphasis is always on the health of the patient and the identification of injuries that require treatment. Where a serious health need arises, the provision of appropriate medical care supersedes the collection of evidence.

If the patient has chosen to have forensic samples collected, the clinician takes skin swabs, mouth swabs, hair samples, nail clippings, etc, as deemed appropriate. The types of samples obtained vary from case to case, depending largely on the history of events provided by the patient. Samples are signed by the clinician and, if the gardaí are involved, they are immediately countersigned by a garda who must be present in the examination room at all times in order to observe appropriate chain-of-evidence procedures. After the assessment, the garda transports the forensic samples to the national forensic science laboratory for analysis, and results are returned directly to the gardaí. Where patients have chosen to have forensic samples collected, but not to report to An Garda Síochána (option 3 above), the samples are stored securely by the SATU staff in a tamper-proof bag to ensure chain of evidence, and kept available for release to the gardaí should the patient decide to report at a later date. If a patient has decided against forensic sampling and only wishes to have a 'health check' (option 2 above), then no forensic samples are obtained, and the entire focus of care is on identifying and addressing health needs.

An intimate examination of the genital and anal areas is also carried out. That is performed in an especially sensitive manner, employing a patient-centred approach. Any anogenital injury is carefully documented. In Ireland, the anogenital examination takes place without use of specialised magnification and video-recording equipment, which are used routinely in some other countries. Forensic swabs and specimens of hair are taken from the anogenital area if the patient has chosen to have forensic samples collected. Very much has been written about the significance, and indeed the insignificance, of anogenital injuries. They must be interpreted with caution and their relevance explained carefully to the patient, An Garda Síochána, the DPP, legal professionals, a jury, the judge, etc – always taking into consideration evidence-based knowledge and the unique circumstances of the individual case. Anogenital injury can arise from consensual sexual intercourse. Absence of anogenital injury does not necessarily mean that a particular sexual encounter did not occur, or that it was consensual.

Other health needs

Ensuring all health needs are appropriately managed represents the final stage of the assessment at SATU. This varies considerably from one patient to another, depending on individual requirements. Examples of the care that is typically provided include emergency contraception (usually in the form of a tablet), treatment to prevent sexually transmitted infection (usually in the form of antibiotic tablets, but on some occasions also requiring antiviral tablets to prevent HIV infection and/or an intravenous drip to prevent Hepatitis B

> THE IRISH HEALTHCARE AND FORENSIC RESPONSE TO ADULT PATIENTS WHO REPORT SEXUAL VIOLENCE COMPARES WELL WITH INTERNATIONAL PRACTICE

> THE OVERRIDING EMPHASIS IS ALWAYS ON THE HEALTH OF THE PATIENT AND THE IDENTIFICATION OF INJURIES THAT REQUIRE TREATMENT

infection), and vaccination against sexually transmitted infection (for example, an injected vaccine against Hepatitis B). Some patients with soiled wounds may need a tetanus vaccination.

Other important aftercare issues include an assessment of suicide risk, onward referral for any unmet health needs identified during the assessment, follow-up psychological support, and mental health service referral where necessary. Most patients will also require follow-up sexually transmitted infection screening tests (such as swabs from the mouth and anogenital areas, blood tests, and urine samples) over the course of the weeks and months after the initial incident and assessment. Patients are provided with the option of returning to the SATU for follow-up testing, but some choose not to attend or to attend elsewhere, such as at their own GP or at a hospital clinic.

Medico-legal report

The clinician prepares a medico-legal report, either immediately after the assessment or at a later date based upon contemporaneous records. Clinicians vary in their approach to report writing, but many follow a suggested template provided in the national guideline document (see 'Look it up'). If the patient has chosen to involve An Garda Síochána, the report is routinely issued directly to the investigating garda. The Department of Justice pays an agreed fee for the report. The report details the entire assessment, provides a list of forensic samples obtained and to whom they have been provided, and includes physical-examination findings and an interpretation of their significance in the context of the reported allegation.

Where the patient has decided not to involve the gardaí, no medico-legal report is issued; however, it can be issued at any time should the patient so choose. Occasionally, SATUs receive requests for medico-legal reports in relation to civil proceedings. These are provided only after the patient provides informed consent. When obtaining consent, it is important to ensure that the patient understands the sensitive nature of the contents, and extent to which they may be shared with other parties (such as the defendant's legal team, the defendant's medical expert, the defendant, the judge, the open court, etc). SATU clinicians attend court to present evidence and to be challenged upon that evidence. In addition to cross-examination, clinicians may encounter opposing opinion evidence from expert medical witnesses occasionally instructed by defence teams.

Clinical examination of suspects

The Irish healthcare and forensic response to adult patients who report sexual violence compares well with international practice. However, there is a very significant deficit, compared with international practice, in the forensic clinical examination of sexual crime suspects.

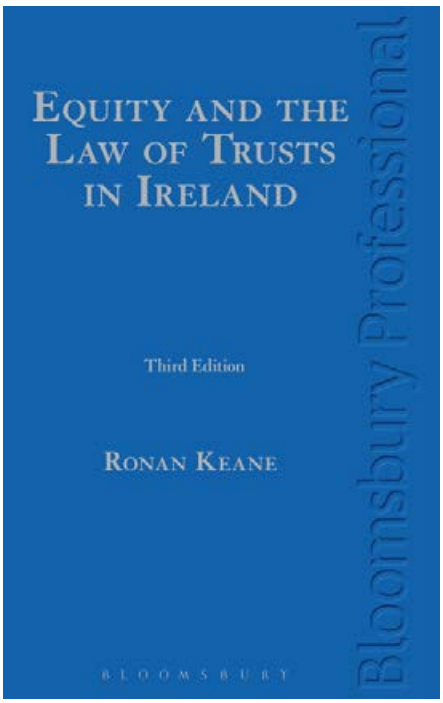
Ireland does not have a national guideline for the examination of suspects in cases of sexual crime. There is also no standardised training requirement for healthcare professionals who undertake such work with suspects. The failure to competently examine a suspect, in line with international best practice, has been known to collapse criminal cases. g

LOOK IT UP

- National SATU Guidelines Development Group (2014), *Recent Rape/Sexual Assault: National Guidelines on Referral and Forensic Clinical Examination*

EQUITY AND THE LAW OF TRUSTS IN IRELAND (3RD ED)

Ronan Keane. Bloomsbury Professional (2017). www.bloomsburyprofessional.com. Price: €205 (incl VAT).



As expected, this provides an excellent up-to-date statement of the law of equity as at September 2017.

Justice Keane's distinctive storytelling writing style lifts this predominately academic volume from the denseness of the material.

The book follows the traditional formula of tracing the development of the law of equity through its historical origins, the development of the law of trusts, and equitable remedies.

The layout is both user-friendly and easy to navigate. The footnotes are not over populated, which assists with reading. While it is suspected that the target audience for this volume will remain within academic circles, mainly law students, there is much to be gained by the practitioner from the material covered.

The wills and probate practitioner will find essential updates concerning constructive trusts and their new applications, including commentary on *Cawley & Anor v Lillis* ([2011] IEHC 515), dealing with the circumstance where a person acquires the legal title to property through survivorship after the unlawful killing of the deceased joint tenant. Here a constructive trust arose, with the legal title being held on trust for the deceased joint tenant's estate.

Practitioners should also note the briefing on proprietary estoppel claims that would assist with the assessment of any new query in this area. Three recent High Court decisions – *Naylor v Maher* ([2012] IEHC 408), *Coyle v Finnegan* ([2013] IEHC 463), and *Finnegan v Hand* ([2016] IEHC 255) – dealing with informal assurances by farmers to neighbours or family members, make clear that where there is reasonably clear evidence of the assurance and of the detriment suffered in reliance on the assurance, relief will be available through a proprietary claim.

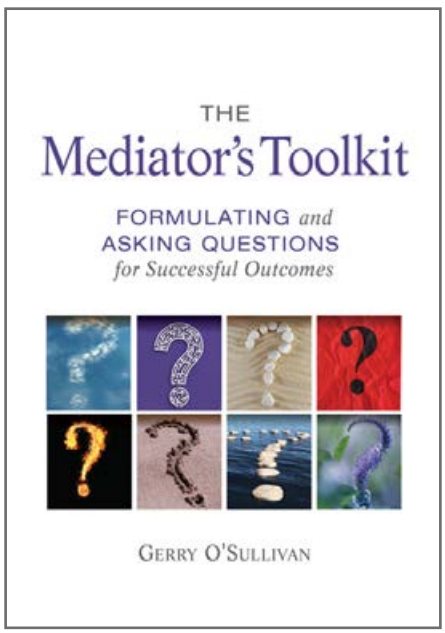
A concise update concerning injunctions is also provided, which will be of interest to both academics and practitioners, particularly due to the multiple areas of law involved, such as asylum, commercial and industrial relations.

Overall, this is an excellent update, and a review of this book really does remind the practitioner of the importance of equity in our everyday work.

Maria Lakes (Tracey Solicitors) is a member of the Society of Trust and Estate Practitioners and an associate member of Solicitors for the Elderly Ireland.

THE MEDIATOR'S TOOLKIT: FORMULATING AND ASKING QUESTIONS FOR SUCCESSFUL OUTCOMES

Gerry O'Sullivan. New Society Publishing, Canada (available from 4 October 2018). www.newsociety.com. Price: Stg19.99 (incl VAT).



To every plumber, their toolbox. To every mediator, this book…

We spend so much of our working lives asking questions. They are our basic tools for understanding our clients' needs, and yet we rarely – if ever – reflect on whether these essential tools are fit for purpose.

Gerry O'Sullivan has dedicated her working life to uncovering the sources of conflict in disputing parties and enabling them, through her interventions as a mediator, to craft robust solutions from seemingly impossible depths of entrenchment.

In this book, O'Sullivan draws on this experience and marries it with an emerging body of neuroscientific research. The result is a masterpiece from a seasoned practitioner in the art of unblocking communication channels (rather than unblocking pipes – you see where I am going with this…). It is a practical guide that identifies links between the positions that parties in conflict adopt, and the interventions that can unlock the multitude of barriers along the path to resolution.

Although the book was written with a mediator readership in mind, legal practitioners will find it valuable also. It provides useful insights into the psychology of the human mind in conflict, and casts light on the utility that appropriate use of questioning can bring to a client who is experiencing conflict.

A mediator's role is to provide a process that is thoughtfully steered and calculated to achieve what a party in conflict needs – that is, paradigm shift in thinking that can move their mind into a positive, solutions-focused mindset. This is achieved by using appropriate questions. This book provides mediators with a clear, solid structure to master these essential skills of the mediation process.

Despite hundreds of hours of mediation experience, I found myself experiencing many 'aha!' moments while immersed in these pages. It provides a solid foundation in the types of questions that can be used in mediation, how to build these questions, and when, how and why to use them.

To persist with my awkward plumbing analogy, I am satisfied that an investment in this book will allow the magic of mediation to flow. g

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Paul Pierse is a non-practising solicitor and a law lecturer and is an advanced mediator certified by the Mediators Institute of Ireland.

ARE YOU A DATA CONTROLLER?

A recent ruling demonstrates that any organisation that has an influence over how personal data is processed could be considered a data controller. **Jeanne Kelly** presses 'delete'

JEANNE KELLY IS A PARTNER AT LK SHIELDS SOLICITORS SPECIALISING IN IT AND IP LAW

THE FACT THAT AN ADMINISTRATOR OF A FAN PAGE USES THE PLATFORM PROVIDED BY FACEBOOK IN ORDER TO BENEFIT FROM THE ASSOCIATED SERVICES CANNOT EXEMPT IT FROM COMPLIANCE WITH ITS OBLIGATIONS CONCERNING THE PROTECTION OF PERSONAL DATA

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

A recent ruling in Germany concluded that the administrators of a Facebook 'fan page' were data controllers and therefore subject to data privacy law. The ruling demonstrates that any company or organisation that has an influence over how personal data is processed could be considered a data controller.

Businesses that run social media accounts and websites via third parties must ensure that they have the correct policies and procedures in place so as not to fall foul of GDPR regulations. In addition, they must check that the service provider has issued fair processing notices and obtained any necessary consents.

Cookie Monster

Wirtschaftsakademie Schleswig-Holstein is a German company that offers educational services by means of a fan page hosted on Facebook. The administrators can obtain anonymous data on visitors to the fan page by means of cookies. The user code is then collected and processed to compile viewing statistics and enable Facebook to target advertisements at each visitor.

In a decision issued on 3 November 2011, the data protection authority Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein sought the deactivation of the fan page on the basis that visitors to the page were not warned that cookies were being used to collect and processes their personal data.

Wirtschaftsakademie brought an action against that decision before the German administrative courts, arguing that it was not responsible for the data processing and concluded that the Unabhängiges Landeszentrum should have acted directly against Facebook. It is in that context that Germany's federal administrative court, the Bundesverwaltungsgerichtasks, asked the Court of Justice to interpret Directive 95/46 on data protection.

The preliminary questions arising were:

- Who is the controller for the purposes of the data protection regime?
- Which is the applicable national law?
- What is the scope of the national supervisory authority's regulatory compliance?

Bert and Ernie

The CJEU found that an administrator such as Wirtschaftsakademie must be regarded as a controller jointly responsible with Facebook Ireland for the processing of that data.

In defining the website's parameters – in particular, its target audience and its objectives – the administrator determines the purposes and means of processing the personal data of the visitors to the fan page. In particular, the court noted that the administrator of the fan page can ask for demographic data and geographical data in an anonymised form.

The CJEU stated that the fact that an administrator of a fan page uses the platform provided by Facebook in order to benefit from the associated services cannot exempt it from compliance with its obligations concerning the protection of personal data. It also stated that the recognition of joint responsibility of the operator of the social network and the administrator of a fan page hosted on that network in relation to the processing of the personal data of visitors to that fan page contributes to ensuring more complete protection of the rights of persons visiting a fan page, in accordance with the requirements of Directive 95/46.

The court found that the Unabhängiges Landeszentrum is competent, for the purpose of ensuring compliance in German territory with data protection law, to exercise its powers under Directive 95/46 with respect not only to Wirtschaftsakademie but also to Facebook Ireland.

Where an undertaking established outside the EU has several establishments in different member states, the supervisory authority of a member state is entitled to exercise the powers conferred on it by Directive 95/463 with respect to an establishment of that undertaking in the territory of that member state. This is the case even if that establishment (Facebook Germany) is responsible solely for the sale of advertising space and other marketing activities

Me want cookies!

PIC: REX FEATURES

in the territory of the member state concerned, and the exclusive responsibility for collecting and processing personal data for the entire EU territory belongs to an establishment situated in another member state (Facebook Ireland).

Count von Count

The CJEU stated that, where the supervisory authority of a member state intends to exercise, with respect to an entity established in the territory of that member state, the powers of intervention provided under Directive 95/46 on the ground of infringements of the rules on the protection of personal data committed by a third party responsible for the processing of that data whose seat is in another member state (Facebook Ireland), that supervisory authority is competent to assess, independently of the supervisory authority of the other member state (Ireland), the lawfulness of such data processing and may exercise its powers of intervention with respect to the entity established in its territory without first calling on the supervisory authority of the other member state to intervene.

As a result of this ruling, more organisations will be considered to be 'data controllers' and be subject to data protection law. Any organisation that has an influence over how personal data is processed could be considered a data controller.

Oscar the Grouch

In practice, this means that such organisations should ensure their joint data controller has issued the appropriate fair processing notices and obtained any necessary consents. They should be ready to handle subject access requests and requests to delete data, though this may be a matter of passing such requests to the joint controller.

Additionally, this means that the business model of social media companies may change. The business model used by social media companies depends on the participation of those providing content. A consistency of enforcement applications against such users could have an effect on the underlying platform's business model.

It is important to note that the GDPR introduces a 'one-stop shop' in relation to regulation. The GDPR proposes that the regulator in respect of the controller's main EU establishment should have lead responsibility for regulation, with regulators in respect of other member states being 'concerned authorities'. The precise implications are unclear, but it seems that the one-stop shop as regards Facebook would not stop data protection authorities taking enforcement actions against users such as Wirtschaftsakademie. g

BUSINESSES THAT RUN SOCIAL MEDIA ACCOUNTS AND WEBSITES VIA THIRD PARTIES MUST ENSURE THAT THEY HAVE THE CORRECT POLICIES AND PROCEDURES IN PLACE SO AS NOT TO FALL FOUL OF GDPR REGULATIONS

CONVEYANCING COMMITTEE

SALES BY RECEIVERS AND MORTGAGEES – E-DISCHARGES

Some years ago, facilities were granted to lending institutions by the Property Registration Authority (PRA) to register discharges of charges online – e-discharges. Under this system, the lender registers the discharge directly with the PRA. This is in contrast to the original system, which can still be used, where the lender furnishes a discharge in paper form and ultimately a solicitor (for example, for a purchaser) lodges it in the Land Registry.

When e-discharge should not be used

Difficulties have arisen in some sales by receivers (who transfer under a power of attorney contained in the relevant mortgage) and in sales by mortgagees (banks) on foot of their statutory power of sale where e-discharges have been registered in the Land Registry before the transfers to the purchasers have been lodged in the Land Registry for registration.

On the registration of the e-discharge, the charge is removed from the folio, and the Land Registry is of the view that the power of the receiver or of the bank to deal with the property is also removed. Accordingly, when the transfer from the receiver or the bank to the purchaser is subsequently lodged for registration, the Land Registry will decline to register the transfer. It may require an application to the Circuit Court or to the High Court to have the charge reinstated so that the transfer can be registered.

In an effort to ensure that this does not continue to occur, the Land Registry has now inserted into the e-discharge application a statement by which the applicant (the bank) confirms "that the registered charges are not the subject of a power of sale by the bank". It is intended that this will remind lenders not to submit an application for an e-discharge where it is inappropriate to do so.

The committee recommends in cases where a contract for sale envisages that a property will be either transferred by a receiver as agent/attorney of the owner or by a mortgagee exercising its statutory power of sale that, in order to ensure that an e-discharge is not inadvertently lodged, the purchaser and vendor should ensure that the contract addresses the issue. A suggested wording would be:

"*Where the Subject Property is to be transferred by a receiver acting as agent/attorney on foot of powers contained in a deed of charge then, to ensure that the power of the receiver remains in force until the purchase deed is lodged in the Property Registration Authority, the charge on the Subject Property will be discharged by means of a deed of discharge only and not by eDischarge.*

If the mortgagee exercises its statutory power of sale and transfers as mortgagee, then the mortgagee will not lodge an eDischarge or furnish a deed of discharge as the charge will be discharged on registration of the transfer with the PRA pursuant to the provisions of section 62(10) of the Registration of Title Act 1964."

When a discharge is not required

While a deed of discharge is required in the case of a sale by a receiver acting on foot of powers contained in a mortgage deed (in order to have the charge removed from the folio), no discharge of any type (either a paper discharge or an e-discharge) is required where a bank/mortgagee transfers pursuant to a statutory power of sale as mortgagee (by means of Form 24). This arises from the provisions of section 62(10) of the 1964 act, which is referred to in the second part of the draft special condition above.

CONVEYANCING COMMITTEE

HOUSEHOLD CHARGE AND LPT HISTORY SCREEN

The profession will be aware that any arrears of Household Charge (for the year 2012) are collected by Revenue through its LPT system and will be shown as outstanding on the LPT Property History Screen. Purchasers will insist on any arrears being discharged by a vendor prior to closing.

The Conveyancing Committee has become aware that Revenue, in the course of auditing payment of the Household Charge, may come across cases where owners (including previous owners on title) had not declared a relevant property for the purposes of the Household Charge. In these cases, Revenue amends the Property History Screen to reflect unpaid arrears. Where it is the current owner of the property who did not declare it, the matter is dealt with in the usual way by discharging the arrears due prior to any sale of the property.

However, a difficulty arises where the person who owned the property as of 1 January 2012 (the liability date for the 2012 charge) did not declare the property for Household Charge purposes and Revenue did not discover the failure to declare until after that previous owner had sold it. The current owner would have purchased the property in good faith, having relied on there being no outstanding arrears of Household Charge appearing on the Property History Screen at the time of purchase.

If Revenue subsequently places a note of unpaid arrears on the Property History Screen after such a purchase in good faith has taken place, it puts the current owner in the invidious positon of being unable to close a sale of the property to a current purchaser without addressing the question of unpaid arrears that are properly the liability of another taxpayer, that is, the owner as of 1 January 2012. Because any unpaid arrears are a charge on property for a period of 12 years after they fell due, this is a matter of title on which the current vendor must satisfy a purchaser before closing.

The committee's view is that:

1) A current owner in the case outlined above should not be required to discharge another taxpayer's liability where the LPT Property History Screen

showed no outstanding arrears of Household Charge at the time s/he purchased the property,

2) It is the responsibility of Revenue to pursue the owner as of 1 January 2012 for any outstanding liability to Household Charge for 2012 and for any failure to declare the property for Household Charge at that time, and

3) Revenue should provide the purchaser with a letter confirming that there is no charge on the property in respect of the sum due by the owner as of 1 January 2012.

The committee has taken the matter up with Revenue, but no clarification has been received to date from Revenue. The committee will advise the profession in due course of any progress on that front. In the meantime, the committee advises solicitors acting for current owners seeking to sell or mortgage their property to apply to Revenue for a letter in the terms outlined at paragraph 3 above.

CONVEYANCING COMMITTEE

MORTGAGEE SELLING BY POWER OF SALE: CERTIFICATION THAT CHARGE IS NOT A HOUSING LOAN

The committee directs practitioners' attention to the PRA practice direction 'Transfers of registered land', which was recently amended.

Section 100(2) of the *Land and Conveyancing Law Reform Act 2009* (the 2009 act) provides that a mortgagee's power of sale shall not become exercisable without a court order granted under *subsection (3)*, unless the mortgagor consents in writing to such exercise not more than seven days prior to such exercise.

Section 100(3) of the 2009 act provides that after expiration of the 28-day notice period required by *subsection (1)*, a mortgagee may apply to the court for an order authorising exercise of the power of sale and, on such application, the court may, if it thinks fit, grant such authorisation to the applicant on such terms and conditions, if any, as it thinks fit.

Section 96(3) of the 2009 act states that the provisions relating to the powers and rights conferred by chapter 3 of the act – including section 100(2) and (3) – apply to any housing loan mortgage, notwithstanding any stipulation to the contrary and notwithstanding any powers and rights expressly conferred under such a mortgage.

The PRA requires evidence of a court order or relevant consent in relation to powers of sale exercised under charges dated on or after 1 December 2009.

The following amendment to the PRA's previous practice direction was made on 18 August 2018:

"*A court order or relevant consent under section 100(3) is not required if evidence is lodged that the charge is not a housing loan mortgage and that the provisions of section 100(2) and (3) have been contracted out of in the deed of charge. The evidence that the charge is not a housing loan mortgage can be either; the chargor/mortgagor is not a natural person or, if the chargor/mortgagor is a natural person, the PRA will require a solicitor's certificate that the charge/mortgage is not a 'housing loan mortgage' within the meaning of section 3 of the* Land and Conveyancing Law Reform Act 2009 *and section 2(1) of the* Consumer Credit Act 1995 *and the chargor/mortgagor is not a 'consumer' within the meaning of section 2(1) of the* Consumer Credit Act 1995 *for the purposes of the relevant charge/mortgage.*"

The committee confirms that a purchaser's solicitor, acting on behalf of an applicant for registration lodging a transfer from a mortgagee selling under a power of sale, is not the appropriate party to provide the required solicitor's certificate, and that only the bank's solicitor, if familiar with the circumstances in which the relevant loan was originally granted, can so certify. The same applies in relation to the provision of evidence that section 100(2) and (3) were contracted out of by the original borrower in the deed of charge. Such certificate and evidence of contracting out should be furnished by the vendor's solicitor to the purchaser's solicitor on closing.

The bank's solicitors should be wary about giving such certificates and should ensure they are satisfied that, *at the time the loan was advanced*, the loan was not a housing loan and the provisions of section 100(2) and (3) were contracted out of in the deed of charge.

In the event of any doubt, or where the bank's solicitor is not in a position to give the certificate, a court order or the mortgagor's consent to the sale should be obtained.

CONVEYANCING COMMITTEE/ADR COMMITTEE

CHANGE TO ARBITRATION CLAUSE IN BUILDING AGREEMENT

Given the increase in new house building, it is timely to remind the profession of the *ex tempore* judgment of Mr Justice Peter Kelly on 15 June 2009 in the case of *Derek Healy and Geraldine Healy v Whitepark Developments Limited and Paul Feeney*.

In this case, the plaintiffs had entered into a contract with a building contractor (the first defendant) to build their house. The contract incorporated the arbitration clause contained in the standard *Building Agreement* issued jointly by the Law Society and the Construction Industry Federation.

A dispute arose between the parties and the plaintiffs issued court proceedings against the first-named defendant. The first-named defendant sought to have the proceedings stayed on the basis that the arbitration clause contained in the contract provided that any dispute between the parties be referred to arbitration, and further provided that if the parties could not agree on an arbitrator that the arbitrator "be appointed on the application of either party by either the president of the Law Society or the president of the Construction Industry Federation, such arbitrator to be appointed *from a list of arbitrators approved jointly by the president of the Law Society of Ireland and the president of the Construction Industry Federation*" (emphasis added).

Mr Justice Kelly refused to stay the proceedings on the basis that it did not appear to the court fair that a plaintiff be forced to arbitrate under an arbitrator who must be approved by a body to which the first-named defendant belonged. Mr Justice Kelly expressed the view that this offended the notion of natural and constitutional justice, and further that it fell foul of the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995*. Mr Justice Kelly did go on to say *obiter* that if the said list of arbitrators was to be approved by the Law Society only, the court would consider the clause to be valid.

The Law Society, through the Conveyancing Committee and the ADR Committee, has agreed with the CIF an amended wording of General Condition 11 of the *Building Agreement* (the arbitration clause) as follows:

"*Any dispute between the parties hereto shall be referred to arbitration by an arbitrator who shall in default of agreement between the parties be appointed on the application of either party by the president for the time being of the Law Society of Ireland (or if the said president is unable or unwilling to act, by the next senior officer of the Society), such arbitrator to be appointed from a list of arbitrators approved by the president of the Law Society of Ireland.*"

A similar change would also be needed in General Condition 12(d) of the *Building Agreement*, which deals with a ruling by an 'expert', on minor defects, which would now read:

"*In the event of a dispute between the parties as to the existence of such defects or as to whether they are of a minor nature, any such dispute shall be referred to an expert for determination who shall in default of agreement between the parties be appointed on the application of either party by the president for the time being of the Law Society of Ireland (or if the said president is unable or unwilling to act, by the next senior officer of the Society), such an expert to be appointed from a list of experts approved by the president of the Law Society of Ireland. The decision of the expert shall be final and binding on both parties, and he or she shall have power to award costs of the determination against either party.*"

The 2001 edition of the *Building Agreement* as issued jointly with the CIF is under review. The above amendments should be incorporated by special condition pending the issue of the next edition.

The committees gratefully acknowledge the assistance provided by the CIF.

CONVEYANCING COMMITTEE

BANKRUPTCY AND INSOLVENCY SEARCHES

The Conveyancing Committee has been asked to provide guidance on what solicitors should do when an act turns up on an insolvency search. The whole area of insolvency resulting from the financial crash of 2008 has changed as a result of the *Personal Insolvency Act 2012* and the reform of the law regarding bankruptcy. The committee has prepared detailed guidelines on the different situations, and this is available on the Society's website in the Conveyancing Committee's page under the 'Resources tab' – scroll to 'Conveyancing guidelines'.

The committee believes that the best practice for solicitors is to carry out searches in the following registers:

- Register of Bankruptcy,
- Register of Debt Relief Notices,
- Register of Protective Certificates,
- Register of Debt Settlement Arrangements,
- Register of Personal Insolvency Arrangements,
- Register of EU Personal Insolvencies.

The committee is indebted to Bill Holohan, solicitor, and to Judith Cryan, solicitor, in Matheson for their valuable assistance in preparing these guidelines.

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 John Mark McFeely, a solicitor previously practising as Hegarty & McFeely Solicitors at 10 Queen Street, Derry BT48 7EX, Northern Ireland, and at 27 Clarendon Street, Derry BT48 7EX, Northern Ireland, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT89; 2017/DT99; and High Court record 2018 58 SA]

Law Society of Ireland (applicant)

John Mark McFeely (respondent solicitor)

2017/DT89

On 17 April 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

1) Failed to comply with an undertaking given on behalf of his named client to a solicitor's firm over property at Newtowncunningham, Co Donegal, by letter dated 31 May 2007, whereby he undertook to discharge all charges affecting the premises and to furnish evidence of discharge as soon as possible after closing expeditiously, within a reasonable time, or at all,
2) Failed to respond adequately or at all to the Society's correspondence, in particular, letters dated 11 August 2015, 1 September 2015, 12 November 2015, 14 December 2015, 12 July 2016, 10 August 2016, 15 September 2016, 27 October 2016, 16 November 2016, 1 December 2016, 22 December 2016, 10 March 2017, 29 March 2017, 2 May 2017, and 11 May 2017 respectively,
3) Failed to discharge the sum of €300 as a contribution towards the Society's costs or failed to respond to the Society's correspondence, as levied by the Complaints and Client Relations Committee at its meeting on 15 December 2016,
4) Failed to comply with the direction of the Complaints and Client Relations Committee made on 7 March 2017, whereby he was to pay the levy-of-costs contribution of €300 immediately,
5) Failed to comply with the direction of the Complaints and Client Relations Committee of its meeting on 7 March 2017, whereby he was directed to file a full report to the Society not later than two weeks before the next committee meeting,
6) Failed to comply with the directions of the Complaints and Client Relations Committee meeting on 7 March 2017, whereby he was directed to attend the committee's next meeting on 9 May 2017.

2017/DT99

On 17 April 2018, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

1) Failed to comply with an undertaking furnished to the complainant on 21 March 2007 in respect of his clients and named borrowers and property at Newtowncunningham, Co Donegal, in a timely manner or at all,
2) Failed to respond to 13 letters sent to him in connection with the outstanding undertaking from the complainant between 31 March 2011 and 15 March 2017,
3) Failed to respond to the Society's correspondence in relation to the investigation of the complaint and, in particular, the Society's letters to him of 6 June 2017, 11 July 2017, 1 August 2017 and 14 September 2017 in a timely manner, within the time provided, or at all,
4) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting of 12 September 2017 that he pay a sum of €350 towards the costs of the Society in investigating the matter, and reply forthwith, and attend the committee meeting of 3 October 2017 unless the matter was resolved,
5) Failed to attend the meeting of 3 October 2017, despite being required to do so by letters dated 14 September 2017 and 25 September 2017.

The tribunal sent both matters forward to the High Court and, on 23 July 2018, in proceedings entitled 2018 no 58 SA, the High Court made an order that:

1) The respondent solicitor is not a fit and proper person to be a member of the solicitors' profession, his name having already been struck off the Roll of Solicitors on 5 February 2018,
2) The respondent solicitor pay to the Society the sum of €1,953.80 as a contribution towards the costs of the disciplinary tribunal, together with the sum of €1,004, being the Society's costs of the High Court application.

In the matter of Aisling Maloney, a solicitor practising as AM Maloney & Company, Solicitors, Harbour Street, Tullamore, Co Offaly, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT05]

Law Society of Ireland (applicant)

Aisling Maloney (respondent solicitor)

On 31 July 2018, the tribunal found the respondent solicitor guilty of professional misconduct in that she:

1) Failed to comply with an undertaking given on behalf of her named client to KBC Homeloans (now KBC Bank Ireland plc) over property in Co Laois, by undertaking dated 11 March 2009, expeditiously, within a reasonable time, or at all,
2) Failed to reply adequately or at all to correspondence from the complainant (KBC Homeloans) and, in particular, letters dated 8 June 2015, 20 July 2015, and 2 September 2015 respectively,
3) Failed to reply adequately or at all to correspondence from the Law Society of Ireland and, in particular, letters dated 20 April 2016, 13 May 2016, 21 December 2016, 17 January 2017, and 3 February 2017, respectively.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay the sum of €12,500 to the compensation fund,
3) Pay a contribution of €2,000 towards the whole of the costs of the Law Society of Ireland. g

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%)

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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 November 2018 *Gazette*: 12 October 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*.

WILLS

Beirne, Elizabeth (deceased), late of Derrinkeher, McDonal, Ballinamore, Co Leitrim, and formerly of 109 Dora Road, Small Heath, Birmingham, in the county of West Midlands, who died on 7 July 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased on or around 26 September 1989, or any other will made by her, please contact Walter P Toolan & Sons, The Law Office, High Street, Ballinamore, Co Leitrim; tel: 071 964 4004, fax: 071 964 4788, email: law@wptoolan.com

Cleary, Josephine (otherwise Hanna) (deceased), late of Ailesbury Nursing Home, 58 Park Avenue, Dublin 4, who died on 6 September 2015. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Elizabeth Howard & Co, Solicitors, Ballyowen Shopping Centre, Ballyowen, Lucan, Co Dublin; tel: 01 610 5185, email: info@elizabethhoward.ie

Fayne, Breeda (otherwise Breeda Lynch) (deceased), late of 2 Claremont Lawn, Glasnevin, Dublin 11, who died on 26 February 2014. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Ronan Flaherty of Ronan Flaherty Solicitors, 47 Harrington Street, Dublin 8; tel/fax: 01 607 8939, email: rflaherty@rfsolicitors.com

Gallagher, Michael (deceased), late of Mardan House, Fintra Road, Killybegs, Donegal, and formerly of The Manse, 7 Kingston Road, Galway, who died on 24 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 Phelim Gallagher; tel: 087 675 7000, email: phelimgallagher@gmail.com

Gittons, Kathy (née Catherine McMahon) (deceased), late of Upper Coolbawn, Castlecomer, Kilkenny, who died on 14 May 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Geraldine Gittons; tel: 00 33 6804 88474, email: ggittons5@gmail.com

Jackson, Bridget (deceased), late of 44 St Patrick's Avenue, Tipperary, in the county of Tipperary, who died on 21 October 1991. Would any solicitor holding or having knowledge of a will made by the above-named deceased please contact John G O'Donnell, Solicitors, 6 St Michael Street, Tipperary; tel: 062 51096, email: jodonnelllegal@eircom.net

Lawlor, Sheila (née Kavanagh) (deceased), late of Newbridge, Camolin, Enniscorthy, Co Wexford. Would any person having knowledge of a will made by the above-named deceased, who died on 6 June 2011, please contact Liam F Coghlan & Company, Solicitors, 'Woodhaven', Ballycasheen Upper, Killarney, Co Kerry; tel: 064 66 35913, email: lawlc@liamfcoghlan.com

Leopold, Dorothy (deceased), late of 5 Delgany Park, Delgany, Co Wicklow, who died on 24 February 2013. Would any person having knowledge of the whereabouts of any testamentary documents (or any will) made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Ballagh Solicitors, 28 Lower Baggot Street, Dublin 2; tel: 01 531 4850, email: law@ballaghsolicitors.ie

McEvilly, Kay (Kathleen) (née Emerson) (deceased), late of Cashel House Hotel, Cashel, Connemara, Co Galway, who died on 25 June 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact DM O'Connor & Co, Solicitors, Cross Street, Galway; H91 W27D; tel: 091 569170, email: info@dmoconnor.com

Quinn, Thomas (deceased), late of Kilcreevin, Ballymote, Co Sligo, who died on 21 August 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact William G Henry & Co, Solicitors, Emmett Street, Ballymote, Co Sligo; tel: 071 918 9962, fax: 071 918 9970, email: wghreception@gmail.com

MISCELLANOUS

For sale – ordinary seven-day pub licence, available immediately. Reply to Thomas Quigley & Co, Solicitors, 302 Ballyfermot Road, Dublin 10; tel: 01 626 8080

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*

Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in the following property: all that and those no 4 Marino Mart and the ground floor of no 5 Marino Mart, Fairview, Dublin 3, held under a lease

dated 20 January 1926 between JF Keatinge & Sons Limited of the one part and Johnston Mooney and O'Brien Limited of the other part for a term of 149 years and six months from 25 March 1925 at a yearly rent of £30, the leasehold interest under which is now vested in Thomas G Baldwin.

Take notice that Thomas G Baldwin, as tenant of the above property under the lease, intends to submit an application to the county registrar for the city of Dublin for acquisition of the freehold reversion and any intermediate interest in the above property, and any party asserting that they hold a superior interest in the above property (or any of them) is called upon to furnish evidence of their title to same within 21 days from the date of this notice.

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

Date: 5 October 2018

Signed: Early & Baldwin (solicitors for the applicant), 27/28 Marino Mart, Fairview, Dublin 3

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 76 Upper Dorset Street, Dublin 1: an application by Marie Meehan

Take notice that any person having any interest in the freehold estate of the following property: no 76 Upper Dorset Street, Dublin 1. Take notice that Marie Meehan (the applicant) intends to submit an application to the county registrar for the county/city of Dublin for acquisition of the freehold interest in the aforesaid properties, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 5 October 2018

Signed: Patrick Delaney (solicitor for the applicant), Parkside House, Main Street, Castleknock, Dublin 15

In the matter of the *Landlord and Tenants Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Talbot Hotel Limited (the applicant)

Regarding: all that and those the premises situate at Trinity Street, Wexford (the property), held under long lease dated 4 October 1907 and made between (1) the Wexford Gas Consumers Company Limited and (2) James J Stafford, for the term of 99 years from 30 June 1907, subject to a yearly rent of £40 as extended by extension of lease dated 4 June 1965 between (1) named above and the Talbot Hotel Ltd, for an extension of the term for another 58 years, subject to a yearly rent of £60 per annum.

Take notice any person having any interest in the freehold estate of the property that the applicant, Talbot Hotel Limited, which is seeking to purchase the freehold interest in the said property, intends to submit an application to the county registrar for the county of Wexford for acquisition of the freehold 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 the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar on 3 December 2018 and will apply to the county registrar for the county of Wexford for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in each of the aforesaid premises are unknown or unascertained.

Date: 5 October 2018

Signed: MJ O'Connor Solicitors (solicitors for the applicant), Drinagh, Wexford

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* – notice of intention to acquire fee simple (section 4): an application by Gerry Gannon

Notice to any person having any interest in the freehold state or any superior interest (whether by way of freehold estate or otherwise) in the following property: 43 Mardyke Street, Athlone, in the county of Westmeath, being a portion of the premises the subject of an indenture of lease dated 20 December 1955 between Eileen Paul (the lessor) and Muriel Lyster (the lessee) for a term of 99 years from 1 November 1955 at a yearly rent of £25, and therein described with another premises as "all that and those the houses, yards and premises in Mardyke Street and known as 41 and 43 Mardyke Street, situate, lying and being in the town of Athlone in the urban district of Athlone, barony of Brawney, and county of Westmeath".

Take notice that Gerry Gannon (the applicant), being the person currently entitled to the lessee's interest under the last mentioned lease, intends to submit an application to the county registrar for the county of Westmeath for acquisition of the freehold interest in the aforesaid property at 43 Mardyke Street, Athlone, in the county of Westmeath, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Gerry Gannon intends to proceed with the application before the Westmeath 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 or unascertained.

Date: 5 October 2018

Signed: Hugh Campbell & Co, Solicitors (solicitors for the applicant), Shannon House, Custume Place, Athlone, Co Westmeath

NE ULTRA CREPIDAM JUDICARET

LAST OF THE EIFFEL TOWERS THERE…

French police have seized 20 tonnes of miniature Eiffel Towers as part of a crackdown on the importation and supply of souvenirs to illegal vendors. Raids were carried out on Chinese wholesalers and nine people were arrested, the BBC reports.

Reminiscent of the deals that can be got from traders on Dublin's Henry Street, the replicas are sold for as little as 'five for a euro' outside the Eiffel Tower and the Louvre museum.

Police discovered more than 1,000 boxes of illegally imported souvenirs at two depots and three shops in the Paris region on 17 and 18 September.

Authorities have been fighting an uphill battle against undocumented migrant traders who take to their heels at the first sight of a gendarme.

ANYONE FOR A 'FULL SAUDI ARABIAN'?

Saudi Arabia has detained a hotel worker who filmed himself eating breakfast with a female colleague, the *Independent* reports. The footage, shared widely on social media, shows a woman dressed in a burqa eating breakfast with a man and, at one point, feeding him some food.

Inspectors visited the unidentified hotel in the western city of Mecca and detained an Egyptian for violations that included working in a profession restricted to Saudis. The hotel owner was also summonsed "for failing to adhere to spatial controls for employing women", the ministry said.

HATERS GONNA HATE

New research by a British online recruitment agency claims that 83% of legal professionals work alongside people they 'dislike' or find 'frustrating', while 50% feel that their colleagues aren't pulling their weight at work, reports *Legal Cheek*.

Significantly, 90% of respondents told researchers that their 'work-shy colleagues' have a big impact on how they feel about their jobs. The research was undertaken by online recruitment site CV-Library and published in mid September.

Despite two-thirds (67%) of legal professionals claiming that they always support their colleagues, one-third admitted they are jealous when co-workers receive a promotion.

Half of the 160 or so respondents said they discuss salaries with their colleagues – one-third admitted to salary envy if they aren't earning the same or more.

'ALL I WANT IS A SHOWER', PLEADS ENNIS JUDGE

"I am getting tired of coming in here, and when I finish in this court, all I want is a shower because of the vitriol and bitterness that is thrown out here."

Those were the comments of Judge Patrick Durcan at a hearing of the family law court in Ennis recently, *The Irish Times* reports.

Judge Durcan urged one particular couple to consider mediation rather than "do battle" in open court for the sake of their children. "It is important that they are not going to be damaged, or damaged as little as possible," he advised. "No matter how much you hate one another, or don't hate one another, you are always going to be bound together by your two young children."

The judge advised the couple to reach agreement through a Courts Service mediator: "Otherwise, you will become ugly, nasty, gnarled, bitter, embittered people.

"There is business you will have to do until you are buried," he continued, "and that is dealing with your children. You have to regulate your future."

He adjourned the case to 4 October after the couple agreed to mediation.

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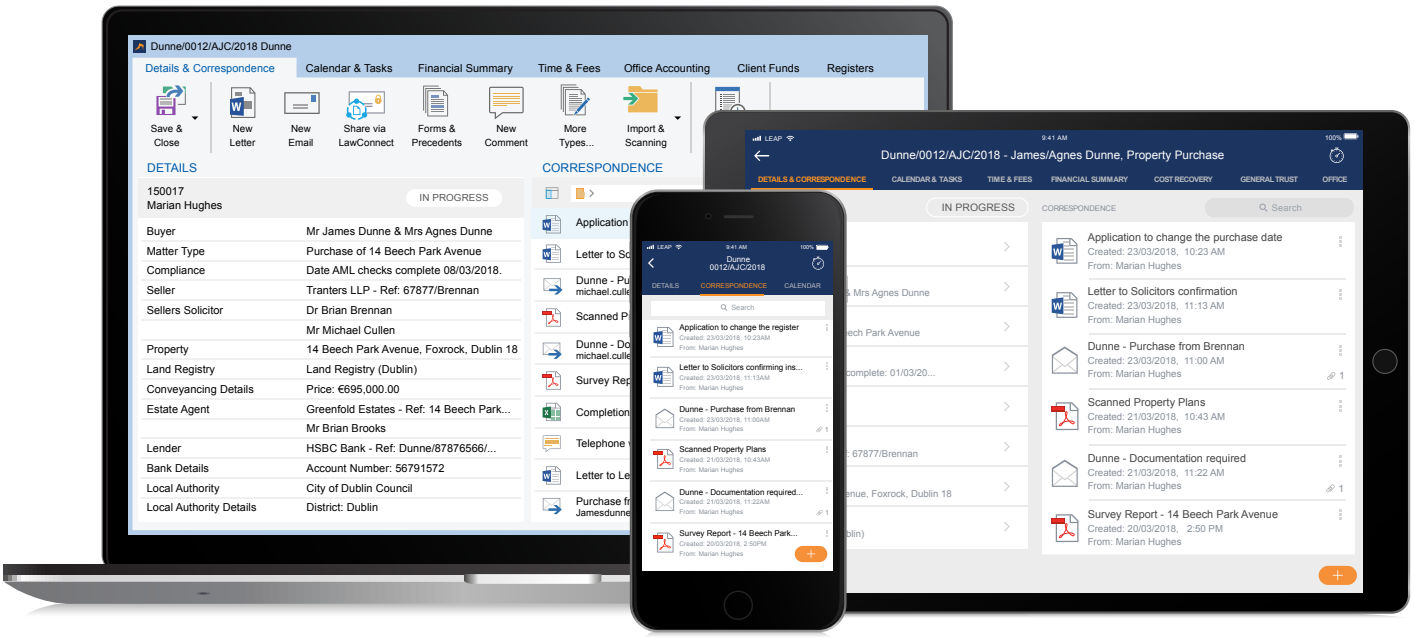

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