



No place like home

Does article 41.2 of the Constitution need a clean sweep?



Sweet child of mine

The legal representation of children is fraught with professional conundrums



Whip-crack-away

The method of comparing Irish whiplash claims with Britain overstates the costs

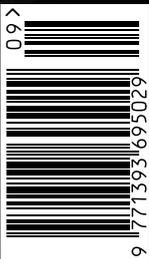
gazette

LAW SOCIETY

€4.00 AUG/SEPT 2019



IMA
MAGAZINE OF
THE YEAR



HIV AND ME

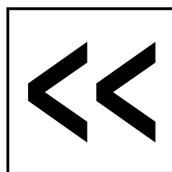
A solicitor's story



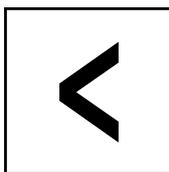
navigating your interactive

gazette

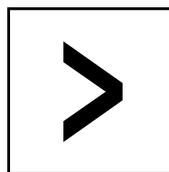
LAW SOCIETY



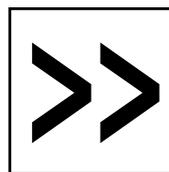
BACK TO
CONTENTS
PAGE



PREVIOUS
PAGE



NEXT
PAGE



NEXT SECTION/
FEATURE

... enjoy

IMPORTANT NOTICE FOR ONLINE READERS

In order to enhance your enjoyment of the online, interactive version of the *Gazette*, readers are strongly advised to download the magazine first to their computer or device.

Prior to downloading the *Gazette*, make sure that you are using the most up-to-date versions of your favourite browser, for example, [Internet Explorer](#), Safari, [Firefox](#) or [Chrome](#).

IMPORTANT NOTE ON PAGE VIEW

If you are reading the downloaded PDF in two-page view, ensure that you uncheck the 'Show cover in two page view' option. This can be found in the 'Page display' option under the 'View' tab. You should be seeing this page right beside the cover in the correct two-page view.



Opening doors for **business**

KBC **Business Banking**
for Professionals.

When you choose KBC you are assigned a **dedicated Business Partner**. A specialist who understands the Legal Sector, available online and in person, so you can spend your time where it matters most.

You focus on **your business**.
We'll focus on you.

 **1800 804 414**
 **kbc.ie/business**

**THE BANK
OF YOU
+ YOUR
BUSINESS**



DEFENDING THE RULE OF LAW

Time flies by so quickly. It seems like only yesterday when I was wishing you all a pleasant holiday, but now the leaves are falling, and the children are back to school. This is the time of year when a number of international legal conferences take place, some of which are attended by myself and the director general. I won't for a moment pretend that these aren't pleasant and interesting excursions, but they do have a serious purpose, which is keeping the profile of Ireland as high as possible, particularly at a time when the risk of our isolation as a country increases. Small countries need big friends, and our participation in these conferences is always greatly appreciated.

Human rights award

It was gratifying to see that the 2019 American Bar Association International Human Rights Award was presented to Waleed Abu Al-Khair, who is a well-known Saudi lawyer and human rights activist. Unfortunately, he wasn't present to accept the award, as he is languishing in a Saudi jail, having been sentenced to 15 years in prison for his activism under an 'anti-terrorism' law that was put in place halfway through his trial. Among his high-profile advocacy clients was Samar Badawi – a woman who was jailed following accusations that she had disobeyed her father. Shortly afterwards, ironically, her brother was arrested on a charge of apostasy.

On much the same topic, one of the themes that I explore with our new colleagues at our parchment ceremonies is the need for us not just to be solicitors, but lawyers who are active in the defence of the rule of law.

The price of liberty

The falling of the leaves reminds us that 31 October – and what looks increasingly like a hard Brexit – will be upon us shortly. It is depressing to note in the political statements and commentary from politicians and sections of the

media in our neighbouring jurisdiction that those at the top are openly talking about dispensing with parliament, upending the much vaunted British constitution, hundreds of years of political and legal principles, and generally doing whatever it takes to effect Brexit.

The proroguing of parliament to effect Brexit by executive fiat – an action correctly described by the Speaker of the Parliament as “a constitutional outrage” – must be of huge concern to any lawyer, as indeed is the near vilification of anyone who stands in opposition, including the judges – infamously described as “enemies of the people” for attempting to restore power to parliament after an earlier attempt to sideline it.

All of these actions are echoes of much darker times, which we all thought were well behind us. The words ‘the price of liberty is eternal vigilance’ are as true today as they were 230 years ago.

On a lighter note, the Law Society's annual gala will be held in the Shelbourne Hotel on 12 October 2019. This promises to be



“THE PRICE OF LIBERTY IS ETERNAL VIGILANCE”

another great night, and tables are selling quickly. Book yours at gala.lawsociety.ie. As always, the surplus proceeds will go to the Solicitors' Benevolent Association, which tells us that, notwithstanding perhaps more benign times, claims on the association are, unhappily, ever increasing.

As usual, if you have any queries, comments or issues, I can be contacted at president@lawsociety.ie. 

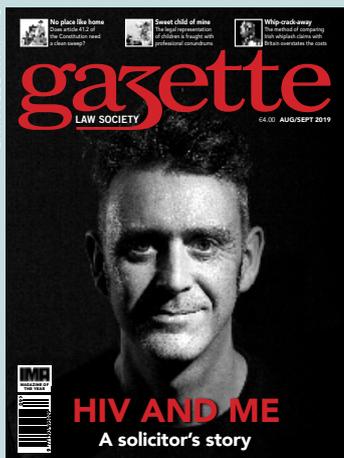
PATRICK DORGAN,
PRESIDENT



gazette

LAW SOCIETY

PICT: CIAN REDMOND



Volume 113, number 7

Subscriptions: €65 (€95 overseas)

Blackhall Place, Dublin 7
tel: 01 672 4828
fax: 01 672 4801
email: gazette@lawsociety.ie

PROFESSIONAL NOTICES: see the 'Rates' panel in the professional notices section of this *Gazette*

COMMERCIAL ADVERTISING: contact Seán Ó hOisín, 10 Arran Road, Dublin 9; mobile: 086 811 7116, tel: 01 834 6891, email: sean@lawsociety.ie. See the *Gazette* rate card online at www.lawsociety.ie/gazette-rates

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

Editor: Mark McDermott FIIC
Deputy editor: Dr Garrett O'Boyle
Art director: Nuala Redmond
Editorial secretary: Catherine Kearney
Printing: Turner's Printing Company Ltd, Longford

Editorial board: Michael Kealey (chairman), Mark McDermott (secretary), Aoife Byrne, Ken Casey, Mairéad Cashman, Tracy Cruikshank, Caroline Dee-Brown, Hilary Forde, Richard Hammond, Teri Kelly, Patrick J McGonagle, Aisling Meehan, Heather Murphy, Ken Murphy, Andrew Sheridan

No material from the *Gazette* may be published or used without the permission of the copyright holder. The Law Society of Ireland can accept no responsibility for the accuracy of contributed articles or statements appearing in this magazine, and any views or opinions expressed are not necessarily those of the Law Society's Council, save where otherwise indicated. No responsibility for loss or distress occasioned to any person acting, or refraining from acting, as a result of the material in this publication can be accepted by the authors, contributors, editor or publishers. The editor reserves the right to make publishing decisions on any advertisement or article submitted to this magazine, and to refuse publication or to edit any editorial material as seems appropriate to him. Professional legal advice should always be sought in relation to any specific matter.



FSC independently certified wood and paper products used by the *Law Society Gazette* are sourced from sustainable, ecologically managed forests. Visit www.fsc.org

This publication supports the work of the Press Council of Ireland and the Office of the Press Ombudsman, and our staff operate within the Code of Practice. You can obtain a copy of the Code, or contact the Council, at www.presscouncil.ie, tel: 01 648 9130, lo-call 1890 208 080, or email: info@presscouncil.ie





22



50



54

FEATURES

34 In from the cold

Lawyer Rory O'Boyle shares the story of his traumatic HIV diagnosis, and how he came in from the cold

40 Crash test dummies

Irish personal injury awards are around 1.55 times (not the PIC claimed 4.4 times) British awards. This is almost entirely due to the higher injury severity of Irish accidents compared with Britain. Martin Kenneally rolls the dice

46 A woman's place

The debate about the Constitutional provision referencing women's 'life within the home' is ongoing. Anne Conlon throws the kitchen sink at it

50 The great and the good

In an era of increased regulation and guidance for charities, Emma Lawrence and Alice Murphy consider what distinguishes those charities that have 'good' governance from those that have truly 'great' governance

54 It's not child's play

Providing legal advice and representation to children reveals huge gaps in our legal system as currently constituted, and the area is fraught with ethical and professional conundrums. Ruth Barry explains

REGULARS

4 The big picture

Standout photo of the month

6 People

13 News

20 Social news



Profile: Bord Gáis Energy's head of legal Joanne Ross on the pros and cons of life as an in-house counsel

22 Analysis

- 22 **News in depth:** The new complaints and disciplinary system under part 6 of the *Legal Services Regulation Act*
 26 **News in depth:** New obligations on solicitors regarding legal costs with the *Legal Services Regulation Act*

28 **News in depth:** Education Centre pushes the boundaries for students with disabilities

30 Comment

30 **Viewpoint:** Have we learned nothing about the use of anonymous eggs/sperm in creating children?

58 Briefing

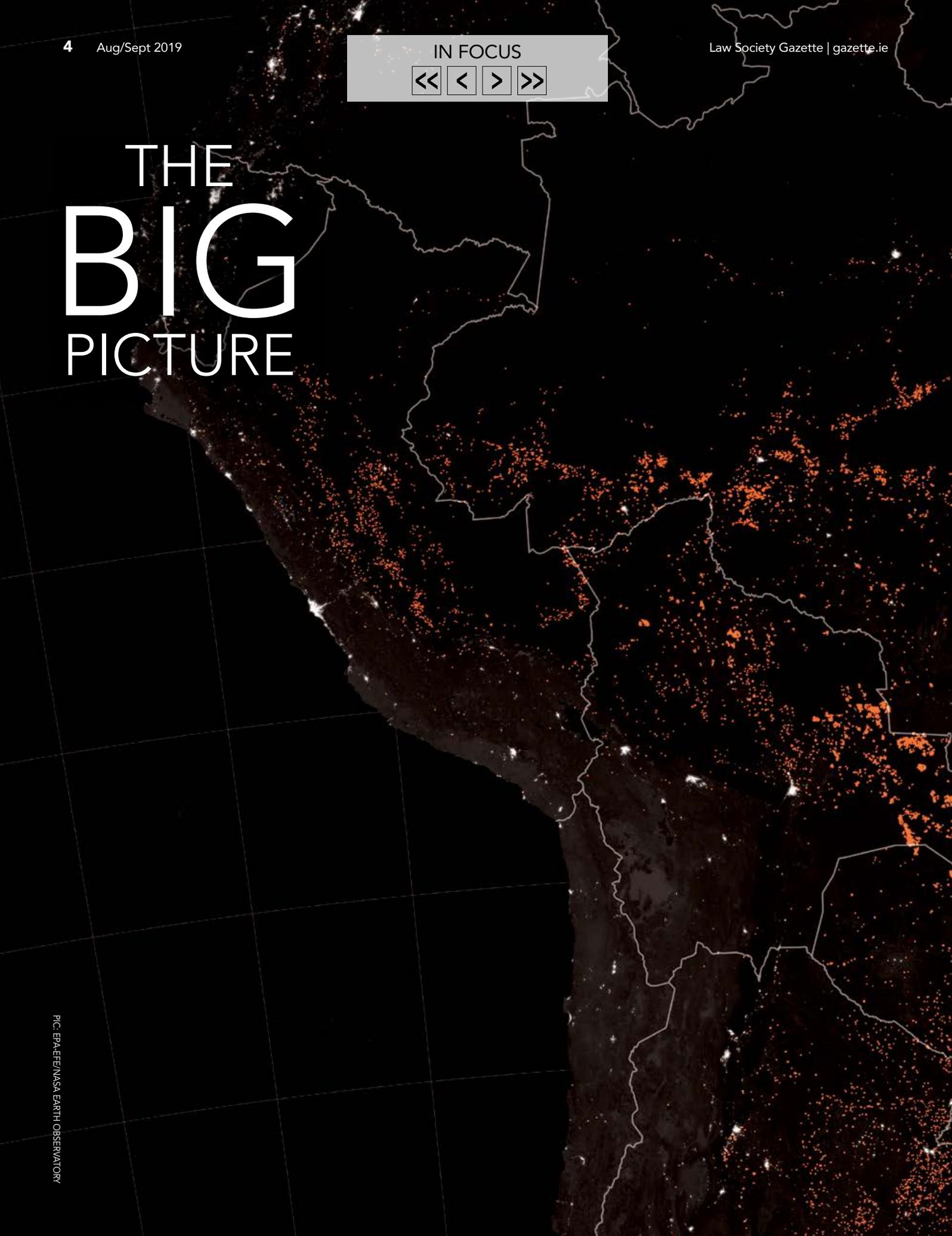
- 58 **Eurlegal:** The *Public Documents Regulation* came into full effect on 16 February 2019
 60 **Council reports**
 61 **Practice notes**
 64 **Regulation**

66 Professional notices

72 Final verdict



THE BIG PICTURE





FIRESTARTER

This NASA Earth Observatory image, using satellite data captured from 15 to 19 August 2019, confirms an increase in the number and intensity of fires in the Brazilian Amazon (seen here in orange). By the end of August, more than 27,400 fires had been detected, making 2019 the most active year since 2010. The escalation has been caused by severe drought, high temperatures and increased deforestation in the Brazilian Amazon, with many global leaders pointing the finger at the Brazilian Government's lack of action



VISIT TO YEATS COUNTY



PIC: DONAL HACKETT PHOTOGRAPHY

Members of the Sligo Bar Association (SBA) welcomed the Law Society president and director general to its meeting at The Glasshouse, Sligo, on 8 July 2019. Pictured are (*front, l to r*): Eamonn Creed, Fiona Gallagher (secretary, SBA), Michele O'Boyle (senior vice-president, Law Society), Patrick Dorgan (president, Law Society), Michael Monahan (president, SBA), Ken Murphy (director general), and Dervilla O'Boyle; (*back, l to r*): Peter Martin, John Creed, Tom Martyn, Caroline McLaughlin, Damien Martyn, Ciaran Tansey, Sinead Keogh and Hugh Sheridan

THE HILLS OF DONEGAL

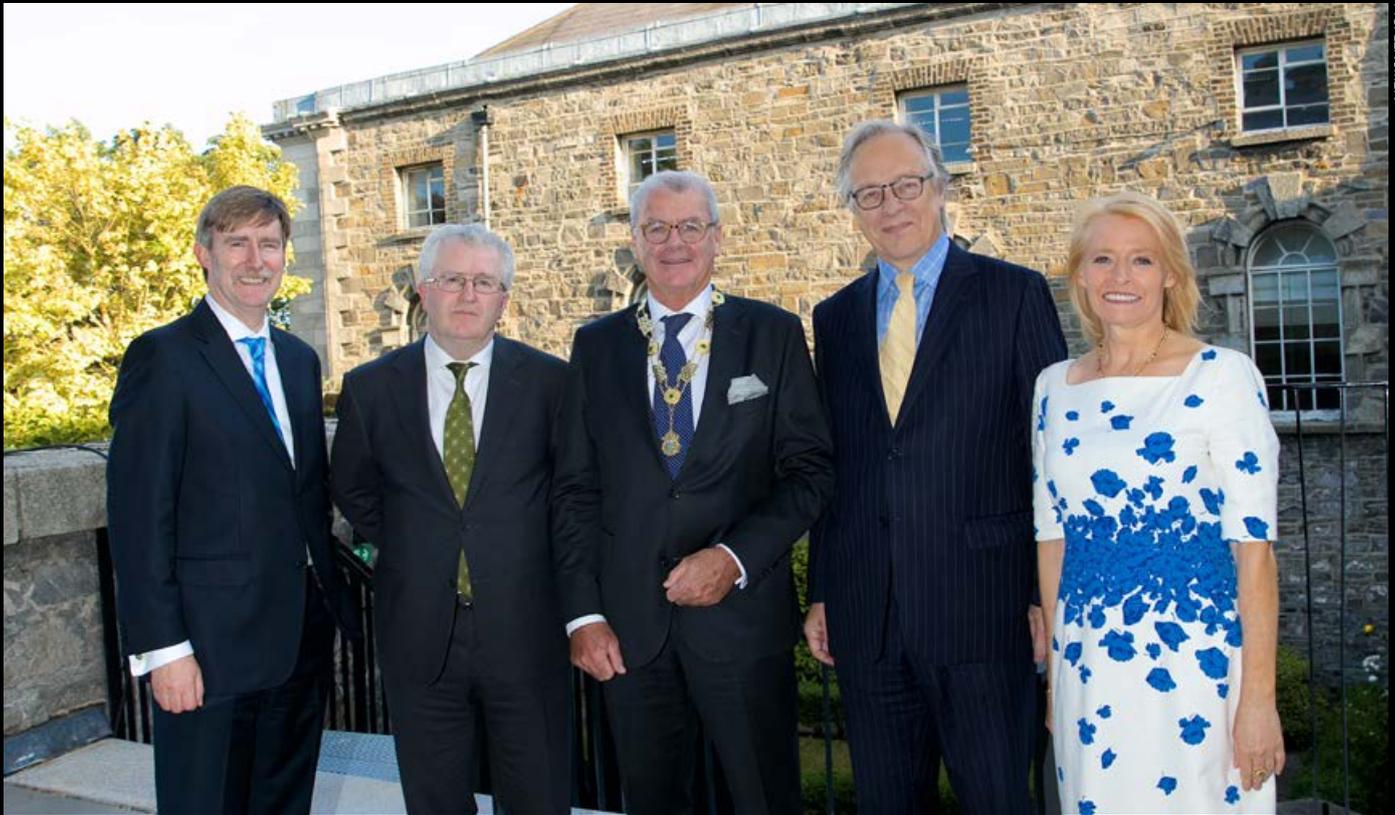


PIC: BRIAN MCDONALD/CRISTEPH STUDIO

The Law Society's president and director general visited the Donegal Bar Association on 9 July 2019. At the meeting, which was held at Castlegrove House in Letterkenny, were (*front, l to r*): Niall Mc Walters, Patrick Dorgan (president of the Law Society), Margaret Mulrine (president, Donegal Bar Association) and Ken Murphy (director general); (*back, l to r*): Kevin Mc Elhinney, Brian McMullin, Donna Crampsie, Liza Finegan, Garry Clarke and Brendan Twomey (Law Society Council member)



SUMMER IN DUBLIN



PIC: LENS MEN

Attorney General Séamus Woulfe and Mr Justice Michael Peart (Court of Appeal) were guest speakers at the Law Society's parchment ceremony on 18 July, after which a dinner was held in their honour. Pictured are Ken Murphy (director general), Séamus Woulfe, Patrick Dorgan (president, Law Society), Mr Justice Michael Peart and Mary Keane (deputy director general)

LOVELY LEITRIM WELCOME



PIC: GERRY FAUGHNAN PHOTOGRAPHY

The Leitrim Solicitors' Bar Association (LSBA) welcomed President of the Law Society Patrick Dorgan and director general Ken Murphy to Carrick-on-Shannon on 9 July 2019. The meeting at the Bush Hotel featured a discussion on updates to the *Legal Services Regulation Act 2015*. At the meeting were (front, l to r): Elaine O'Toole, Kieran Ryan (president, LSBA), Aoife Kelly, Patrick Dorgan (Law Society president), Aoife McDermott, Ken Murphy (director general) and Claire Moran; (back, l to r): Martin Burke, Peter Collins, Colm Conway, Matthew Brown, Michael Keane, John Paul Feeley, Carol Ní Chormaic and Donal Scanlon



CLARE LAW ASSOCIATION SUMMER MEETING



The Clare Law Association held its summer meeting at the Old Ground Hotel, Ennis, to mark the sitting of the High Court in Ennis. At the reception were (front, l to r): Pamela Clancy (treasurer, CLA), Miriam Rowe (secretary, CLA), Judge Michael Twomey, Gwen Bowen (president, CLA), Judge John Barniville, Michael MacSweeney and Sinead Glynn; (middle, l to r): Isobel O'Dea, Marie Darcy, Mary Nolan, Yvonne Quinn, James Shanahan, Marina Keane, John Halpin, Sheila Finn, Roisin Moloney, Sarah Jane Whyte, David Murphy and Stephen Healy; (back, l to r): John Callinan, Niall McDonagh, Paul Tuohy, John Shaw, Michael Gleeson, Gerry Flynn, William Cahir, Conor Bunbury, John Casey and Pat Whyms



William Cahir, Yvonne Quinn and John Shaw



Marie Darcy, Sinead Keogh and Conor Bunbury



Sinead Glynn, Sarah Jane Whyte and Miriam Rowe



Michael MacSweeney, John Callinan, Pat Whyms and Paul Tuohy



IRISH CHAIR OF IBA DIVERSITY SEMINAR



The Law Society of Ireland's Ken Murphy is a Senior Officer in the Bar Issues Commission of the International Bar Association. In that capacity he organised and chaired a seminar at the IBA Bar Leaders' Conference in Budapest on 24 May 2019 on the topical question 'Diversity and inclusion – what should bars and law societies be doing?' Among those taking part were (front, l to r): guest speaker Christina Blacklaws (president, Law Society of England and Wales), Ken Murphy and guest speaker Tshepo Shabangu (Law Society of South Africa); (middle, l to r): Jonathan Herman (Federation of Law Societies of Canada), Lorna Jack (Law Society of Scotland), Minna Melender (Finnish Bar Association) and Raffi van den Berg (Nederlandse orde van Advocaten); (back, l to r): Christian Wisskirchen (Bar Council of England and Wales), Ulrikke Weinreich Krogbeck (Association of Danish Law Firms), Eva Schriever (Deutscher Anwaltverein), Edward Mapara (Law Society of Zimbabwe), Jonathan Smithers (Law Council of Australia) and Johan Sangborn (Swedish Bar Association)

SOCIETY SUPPORTS SOLICITORS IN PRIDE PARADE



PIC: MARC O'SULLIVAN

Law Society President Patrick Dorgan and director general Ken Murphy were proud to be guests of the OUTLaw Network and to help carry the banner during their inaugural participation in the Pride Parade in Dublin on 29 June 2019. The OUTLaw Network was launched last January to promote and foster the inclusion of LGBT+ individuals and allies across the Irish legal sector



MAYO FAREWELL TO JUDGE MARY DEVINS



Attending the Mayo Solicitors' Bar Association (MSBA) dinner held in Newport House to mark the retirement of Judge Mary Devins as Judge of District No 3 were (front, l to r): Catriona Browne, Cathy McDarby, Samantha Geraghty, Sandra Murphy, Joan O'Brien, Judge Mary Devins, Dr Jimmy Devins, Aoife O'Malley, Catherine Bourke, Nicola Daly and Elaine Silke; (second row, l to r): Mark Loftus, John Morahan, Judge Seamus Hughes, Judge Eoin Garavan and Judge Patrick Durcan; (third row, l to r): Myles Staunton, Vincent Deane, Peter Loftus, Pat Moran, Michael Browne, Evan O'Dwyer and Gary Mulchrone; (back row, l to r): Mark Fitzgerald, Brendan Donnelly, Ward McEllin, Dermot Morahan (president, MSBA), Charlie Gilmartin, James Ward, Thomas Walsh and James Hanley



Judge Eoin Garavan, Dermot Morahan (president, MSBA), Dr Jimmy Devins, Judge Mary Devins, Judge Patrick Durcan and Judge Seamus Hughes



Dr Jimmy Devins and Judge Mary Devins



SLIGO GOLFERS PIP MAYO



The annual golf competition between Mayo/Sligo lawyers took place at Enniscrone Golf Club on 24 May. Now in its 32nd year, Sligo's solicitors were this year's champions, taking home the James P Gilvarry Trophy. The individual winner of the Patrick A Curran Trophy was Stanley Harte. (Front, l to r): Mel Bourke, Damien Higgins (BL), Stanley Harte, Elaine Coghill and David Gilvarry (BL); (back, l to r): Declan Gallagher, Dermot McDermott, Brendan Johnson, Dennis Molloy, Bill Cashel, Peter Loftus, Ann Cawley, Eamonn Gallagher, Rory O'Connor, Eamonn Creed, Dermot Neilan and Sean McTiernan

GRACED WITH BISHOP'S PRESENCE



PIC: LENS MEN

Archbishop of Dublin Diarmuid Martin was the special guest and speaker at the Law Society's parchment ceremony on 10 July. (Front, l to r): Mr Justice Bobby Eagar (also a guest speaker, representing the President of the High Court), Mr Justice Raymond Groarke (President of the Circuit Court), Archbishop Diarmuid Martin, Law Society President Patrick Dorgan, and Judge Rosemary Horgan (President of The District Court); (back, l to r): director general Ken Murphy, Michelle Ní Longáin (Council member), Daniel O'Connor (junior vice-president, Law Society) and Carol Plunkett (chair, Education Committee)

out•source
ANNUAL CONFERENCE 2019

Managing Your Business in Changing Times

- The changing landscape of the legal market for 2019-2020 – a market update
- How to develop an agile practice
- The changing cost structure in law firms and how to manage this
- Practice funding – when and where to source funds
- Planning for changes in the ownership structure – successful succession planning
- Staffing – when and how to compete for resources and become an employer of choice.
- What “Business Process Improvement” is and why it is crucial for law firms
- The changing Professional Indemnity Insurance landscape – how to best navigate it
- Cyber Security and Fraud – update on current trends and the challenges of remote working
- Growth areas for Irish Law Firms
- The Solicitor / Secretary axis – what should the ratio be?
- How well run law firms are getting the most from this axis
- Current developments in mergers, buying or selling a practice

Price

One delegate €130, 2 delegates from the same firm €230,
3 delegates from the same firm €310,
4 delegates from the same firm €380

The above pricing includes 1 free hour on Solicitors Accounts Regulation.

Kilkenny:	Hotel Kilkenny – Wednesday 9th Oct 2019	9.00am to 1.00pm
Dublin:	The Davenport Hotel – Thursday 10th Oct	9.00am to 1.00pm
Galway:	The Courthouse – Friday 11th Oct 2019	2.00pm to 6.00pm
Cork:	The Imperial Hotel – Wednesday 16th Oct	9:00am to 1:00pm
Limerick:	The Savoy Hotel – Thursday 17th Oct	9.00am to 1.00pm
Carrick on Shannon:	The Landmark Hotel – Tues 22nd Oct	2.00pm to 6.00pm
Dublin:	The Davenport Hotel – Wed 23rd Oct 2019	9.00am to 1.00pm

To book please

email: reception@outsource-finance.com
or telephone 01 6788490



Dublin Dispute Resolution Centre

Ireland's Premier Dispute Resolution Venue

- Arbitrations
- Mediations
- Conciliations
- Consultations
- Seminars
- Training

Dublin Dispute Resolution Centre

CONTACT US
Distillery Building, 145-151 Church Street, Dublin 7, Ireland
Tel: +353 (1) 817 5277 Email: info@dublinarbitration.com

DIGITAL AGENCY FOR THE IRISH LEGAL SECTOR

FREE DIGITAL, SEO & WEBSITE AUDIT
FREE WEBSITE SUPPORT PLAN TRIAL

AGENT™ DIGITAL
www.agentdigital.com



BREXIT STIRRING UP 'NEW AND TROUBLING FORCES', SAYS DUBLIN'S ARCHBISHOP

Brexit is a legitimate political reality, whether we like it or not, the Archbishop of Dublin Diarmuid Martin said at a Law Society parchment ceremony on 10 July. "It's also a cultural reality that brings starkly to our horizons new and troubling forces, which move away from a broad contemporary vision of unity and cooperation. Unity of purpose is challenged in many ways in our world," Archbishop Martin commented.

The end of the Cold War and communism saw the hope that liberal democracy and free-market capitalism would eventually contribute to greater unity and equality among people, he said. "That hope was short-lived. Ideologies don't die so quickly, and they have the curious ability to re-emerge in new forms and to re-shape history in new ways."

Brexit wasn't the only challenge to the vision that originally inspired the European project of unity on our continent. The antagonistic culture of the Cold War had been replaced by an equally damaging neo-populism. The bi-polarism of the Cold War era had been substituted for a system of multi-polarism, without a unifying system at its root, with the result that the world today was not much safer than it had been then, he said.

Post-Cold War, there was a need to re-examine the whole landscape of armament agreements, which were beginning to disintegrate, as a nuclear arms race became a real possibility, he said. He pointed to Saudi Arabia's 192% increase in arms imports in the last ten years, becoming the largest arms importer in the world.



Archbishop Martin told the Law Society parchment ceremony: 'The law's mission is to foster a culture of unity'

Despite extraordinary progress in communications, the world could seem less united than ever.

The role of law

The archbishop asked whether moral arguments and moral persuasion could ever be used to influence hard, pragmatic political interests: "What role can law play in such a process? The law in the broadest sense of that term is about fostering unity. The law is equal for all, and it's called to ensure that its application fosters equality.

"However, this fostering of equality is not simply a question of techniques. Unity is not a mathematical project," he said. "The law is more than a rule-book, or even more than the terms of the Constitution. The law always exists within a culture, and its mission is to foster a culture of unity."

Young people, depending on their circumstances, could start out in life behind the starting line, he said, and never realise their potential. Judges and lawyers who were called to adminis-

ter a system of justice very often encountered, face-to-face, the hidden hardships of exclusion.

"In a society marked by a serious lack of unity, we must look more closely at the meaning in law of social and economic rights," Archbishop Martin concluded.

The role of bail

Addressing the new graduates, Mr Justice Bobby Eagar of the High Court commented that

the legal profession, and in particular solicitors, had a duty to protect the individual from more powerful interests, including the State and the banks.

He also noted that one in four bail orders now concerns forms of domestic violence. The legislature had recently changed the *Domestic Violence Act*, he commented, but had never considered the role of bail where the offence was likely to be committed again.

"Women's groups and advocates of protection of persons in those situations did not ever consider the role of the *Bail Act*," he stated. A judge could refuse bail if an offence were likely to be committed again. "Individuals who are at the wrong end of domestic violence are left in a situation where very little can be done."

And Mr Justice Eagar had words of praise for the *Gazette*, urging the new solicitors to read it: "It's a very professionally produced magazine, for information and for ongoing professional developments, which are very important, and which I urge you to follow."

IS YOUR FIRM BREXIT READY?

The Law Society's [Brexit](#) portal contains useful links and resources that will assist firms and their clients in preparing as best as they can in these uncertain times.

The Law Society's Policy and Public Affairs department has included details of the implications for qualifications and the provision of legal services, in the form of an [FAQ and guidance note](#).

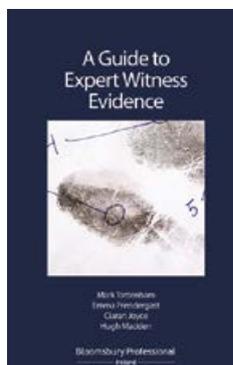
In addition, it sets out some 'no-deal' resources and direct links to a range of Government agencies dealing with certification, regulatory advices and customs, which will be of interest to clients.

A list of State financial aid and tools are also included, and will be added to as the situation develops.

See www.lawsociety.ie/brexit for details.



COMING SOON



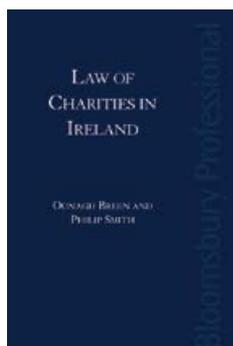
A Guide to Expert Witness Evidence

By Mark Tottenham and Emma Prendergast with Ciaran Joyce and Hugh Madden

A uniquely comprehensive exploration of expert witness evidence in Ireland, this title looks at the practicalities surrounding the role of expert witnesses with a key section on the pre-trial context.

Price: €175

Available: Sept 2019 ISBN: 9781847667175



Law of Charities in Ireland

By Oonagh Breen and Philip Smith

This timely handbook details how all charities in Ireland can ensure that they are legally compliant with all aspects of charities law. This complex area is clearly and concisely explained by two leading experts in the charity law field.

Price: €175

Available: Oct 2019 ISBN: 9781847663252

Order your copies today

Visit us at
bloomsburyprofessionalireland.com

€5.50 P&P

Bloomsbury Professional
Ireland 

LAW SOCIETY RETIREMENT TRUST SCHEME

The deadline for final tax payment for the 2018 tax year under the self-assessment system is fast approaching. One way to reduce your tax liability is to make a contribution to an approved pension arrangement, such as the Law Society Retirement Trust Scheme, before the deadline.

If you can afford to put some money into a pension fund, you will be able to claim income tax back of up to 40%, depending on your tax bracket. You can still create a tax refund for 2018 by putting money into a pension scheme and submitting a claim to Revenue before 31 October 2019 (14 November 2019 if you submit your return online).

The Retirement Trust Scheme is an ideal vehicle for making such a contribution. The scheme offers all the flexibility of a personal policy and, in addition, offers a number of enhanced features, including a simple and transparent charging structure and best-in-class investment management. There is also a flexible lifestyle strategy in place that gradually reduces the level of equity risk in your retirement fund the closer you get to your chosen retirement age.

There are currently five fund offerings available to members of the Law Society of Ireland under the scheme, which the investment committee is confident represent high-quality retirement and tax-saving solutions to members.

Membership of the scheme is open to all



HOW MUCH CAN I CONTRIBUTE?*

Up to age 30	15%
From 30 to 39	20%
From 40 to 49	25%
From 50 to 54	30%
From 55 to 59	35%
Age 60 and over	40%

*Contributions are subject to a maximum earnings limit of €115,000.

members of the Law Society who are self-employed, in partnership, or in non-pensionable employment. More information can be obtained from the scheme administrator at JustASK@mercer.com or by phoning 1890 275 275. A copy of the explanatory *booklet* can also be found on the Law Society's website.

GROSS FUND PERFORMANCE PER ANNUM TO 30 JUNE 2019

Fund	One year %	Three years % pa	Five years % pa	Annual management charge p/a
Managed fund	3.6%	6.7%	6.5%	0.86%
Diversified equity fund	5.3%	10.2%	9.3%	0.95%
Absolute return fixed income	1.9%	2.3%	-	0.54%
Long bond fund	13.8%	2.8%	7.5%	0.30%
Cash fund	-0.4%	-0.4%	-0.3%	0.12%

Performance shown gross of fees. Annual management charges are applied as a percentage of the assets of the fund. Past performance does not guarantee future results.



NOMINATIONS NOW OPEN FOR LAW SOCIETY COUNCIL

All members of the Law Society of Ireland have an opportunity to run for the Council – nomination forms are currently being distributed by post. The Council governs the Law Society and comprises 31 elected members, four provincial delegates, and 13 nominated members.

Under the byelaws, at least six Council meetings are held annually, which discuss a variety of matters important to the profession, including reports from committees, working groups and task forces, and selecting Society rep-



resentatives to serve on Government or other bodies.

The closing date for candidates' nominations for the 2019 election is Monday 16 September at 5pm. Candidates must be nominated by two members, and one member cannot nominate more than two candidates. For nomination forms, visit the Council elections page at www.lawsociety.ie.

The poll closes on 31 October at 5pm, and the election count will take place on 1 November. Successfully elected candidates serve for a two-year period.

LAW SCHOOL TRAINING LAUNCHED FOR THOSE WORKING WITH CHILDREN

Research on children's experiences of the justice system conducted by the EU Fundamental Rights Agency found that children who engage with the justice system respond better to professionals who have received targeted training on working with children.

The Law Society's Education Centre is launching an innovative course, titled 'Trauma informed skills – children and young people', which provides hands-on practical skills training in how to take instructions from children. It will equip participants with effective active listening and interviewing skills. In addition, participants will gain an understanding of child development, how to avoid secondary traumatisation of children, and methods of self-care.

This training is aimed at solicitors and barristers who work with children, young people and their families.

The Education Centre programme begins in September and runs over six sessions until February 2020. The fee is €850 (or €700

for Finuas Skillnet members).

Modules include taking instructions, working with trauma, understanding child development and child protection, self-care, and jurisprudence.

The programme team comprises Julie Ahern (manager of Access to Justice, Children's Rights Alliance), Emma Byrne-McNamee (course facilitator

and consultant, Carlow and Kilkenny County Childcare Committees), Dr Sharon Lambert (lecturer, University College Cork), Antoinette Moriarty (psychotherapist and manager of Law School Psychological Services), Caroline O'Sullivan (director of services, ISPCC), Andy Sirel (senior associate, Just Right, Scotland), and Dr Geof-

frey Shannon (solicitor, chair of the Adoption Authority of Ireland, and child law expert).

CPD points will include 22 hours of management and professional development skills (by group study). To book your place, contact a member of the Finuas Skillnet team at tel 01 882 5727, email: finuasskillnet@lawsociety.ie, or visit www.lawsociety.ie.

LITIGATION SEMINAR TO FOCUS ON PERIODIC PAYMENTS

The Law Society's annual litigation conference on 3 October (from 2pm to 5.30pm) will feature a keynote speech from Chief Justice Frank Clarke, who will chair the event.

Designed in collaboration with members of the Law Society's Litigation Committee, the seminar will deal with topical issues, including a PI and discovery update. Topics will include:

- Periodic payment orders legislation/comparison with

- lump sums,
- Updates in PI,
- Discovery – recent developments and the current recast position.

The confirmed speakers are:

- Michael Boylan (partner, Michael Boylan, Dublin) – a specialist in medical negligence,
- Stuart Gilhooly (partner, HJ Ward & Co Solicitors, Dublin), who has practised in the

area of personal injuries claims since 1995, acting exclusively for claimants, and

- Joe O'Malley (partner, Hayes Solicitors, Dublin) who handles a wide variety of commercial litigation matters for the State, financial institutions and corporate clients, and who advises on media law issues.

Booking details are available at www.lawsociety.ie.



DSBA YOUNGER MEMBERS BUILD FOR THE FUTURE

The Dublin Solicitors' Bar Association (DSBA) Younger Members Committee hosted a lively property law event on 18 July at the offices of McCann FitzGerald. Three speakers made presentations at the 'Update on planning and development and property law' seminar.

Seán O'Sullivan BL discussed the planning process relating to strategic development zones (SDZ), and the much-publicised issue regarding the interplay between the *Urban Development and Building Heights Guidelines* and existing planning schemes in SDZs.

This issue formed the subject of the decision of Mr Justice Garrett Simons in *Spencer Place Development Company Limited v Dublin City Council* ([2019] IEHC 384). SDZs are key to the delivery of thousands of new homes at Poolbeg and Cherrywood.

Advising attendees on the relevant procedure to appeal a planning decision made in respect of an SDZ, O'Sullivan stated: "The planning system for SDZs is protected from both appeal and interference and, consequently, the scope for challenge is extremely restricted. In such a tight space, knowing where the line is, is where the advantage lies."

Katie Creelman (Grant Thornton) raised practical tax considerations for solicitors in commercial property transactions, with a view to identifying potential issues at an early stage, and how to deliver value to clients in cases involving tight deadlines.

She recommended including a detailed cover letter to Revenue with unusual CG50 applications in order to avoid delays. She also outlined the qualification criteria



Brendan Slattery, Katie Creelman and Sean O'Sullivan

for the Stamp Duty Residential Refund Scheme and stressed the importance of getting the refund application correct, since refunds from that scheme may form a significant source of funding for the relevant construction project. Katie also emphasised the importance of advising clients to observe timelines for construction set out by Revenue to avoid potential costly clawbacks.

Brendan Slattery (head of

environment and planning at McCann FitzGerald) outlined some of the regulatory tools used by Government to deliver the Rebuilding Ireland programme – the €6 billion action-plan to increase the overall supply of new homes to 25,000 a year by 2020. He explained the three recent challenges to the operation of the fast-track Strategic Housing Development Scheme, the use of the system for new

models of shared living, and the continued rise in the number of applications received by An Bord Pleanála since the relevant legislation came into effect in July 2017.

He also alerted those present to their personal exposure to criminal liability when enjoying short-term lettings, as Government clamped down on Airbnb-like uses of property since July 2019.

Closing proceedings, Deirdre Farrell (Amorys Solicitors) invited younger members to visit the committee's [website](#) and [LinkedIn](#) page to find out about future events and to suggest ideas for educational and social outings. It aims to host events at least once every quarter and, next year, plans to focus on developing new ties with junior members of other professional bodies.

A short reception followed where members had the opportunity to discuss the recent judicial review decision relating to development at [North Lotts Quay](#), visible from the function room. The committee wishes to thank McCann FitzGerald for supporting the event.

FIRST CONVICTION SECURED UNDER LOBBYING LEGISLATION

The first conviction in Ireland under the *Regulation of Lobbying Act 2015* has been recorded. Enacted in March 2015, the act aims to make lobbying more transparent by introducing a web-based register under the administration of the [Standards in Public Office Commission](#).

A Dublin-based company, Bissett Industrial, registered to lobby on 25 January 2017.

The company was fined €1,250 in June by District Court judge Anthony Halpin for failing to make submissions to the Standards Commission on time, as required under section 18(b) of the act. Those contravening the act can be subject to a class C fine of up to €2,500.

The act covers communications with a designated public official that concern the initiation,

development or modification of any public policy, the preparation of legislation, or the award of any grant, loan contract, or licence involving public funds.

The law applies to the lobbying of ministers, TDs, senators, MEPs, local councillors, special advisers, and designated public officials. Part 4, in respect of enforcement provisions, commenced on 1 January 2017.



SOCIETY WINS APPEAL AGAINST VACANT SITE LEVY

The Law Society has succeeded in its appeal against a vacant site levy on a part of its Blackhall Place campus, though the appeal was opposed by Dublin City Council, *writes Mary Hallissey*.

The Society received the 2018 levy demand for €260,000 in relation to an adjoining site at Benburb Street. This site is held in the name of a wholly owned Law Society subsidiary – Benburb Street Property Company Limited.

Dublin City Council placed the (just over) one-acre parcel of land on its vacant site register, with the attendant large levy. However, the Law Society appealed the levy demand to An Bord Pleanála.

On the basis of significant work done by the Law Society, including the installation of sports facilities, landscaping, and major improvements to the streetscape, the planning authority determined that the site “no longer has adverse effects



Some of the exercise machines available for use by local community groups at Benburb Street



on the character of the area”.

It therefore directed that the Law Society be deleted from the vacant site register.

Given that the levy was due to increase from 3% to 7% in 2019, and combined with an increased financial valuation on the site, this decision is likely to save the Law Society approximately €2.5 million over three years.

Very relieved

Director of finance Cillian Mac-Donhnaill said: “This is our third appeal to An Bord Pleanála on this issue and we are very relieved about this significant victory.

We look forward to working productively with Dublin City Council on the future development of the site.”

The sports facilities, including five-a-side soccer pitch, basketball arena, and exercise machines, are available to local community groups. They can be booked at tel 01 672 4997.

THOMSON REUTERS
ROUND HALL™



Hardback
ISBN: 9780414071834
December 2019
€445.00

ORDER NOW

Your trusted Administrative Law source.

Administrative Law in Ireland, 5th edition

Gerard Hogan, David Gwynn Morgan and Paul Daly

This new edition of **Administrative Law in Ireland** provides practitioners, public servants and students with a comprehensive and definitive analysis of the creation, structure and legal regulation of the contemporary Irish administrative state.

This title is also available on Westlaw IE

PLACE YOUR ORDER TODAY

roundhall.ie

pauline.ward@thomsonreuters.com

+44 (0)345 600 9355



ENDANGERED LAWYERS AMIRSALAR DAVOUDI



Amirsalar Davoudi (37) is well known for representing human rights activists and other individuals detained for their social and political activities in Iran.

He was arrested last November 2018, his home and office were searched, and his belongings confiscated. He was detained in Evin Prison, with extremely limited access to his family or lawyer Vahid Farahani since his arrest. For several months, he was held in solitary confinement. He was interrogated in detention without a lawyer present and was convicted and sentenced in his absence.

He was convicted of insulting officials and insulting the supreme leader; spreading propaganda against the state and collaborating with an enemy state (this because of an interview given on Voice of America Persian-language TV); and forming a group with the purpose of disrupting national security (this because he ran a Telegram messaging channel called 'Without Retouch'). On it, he raised concerns about the authorities' treatment of lawyers and, more generally, the human rights situation in Iran.

On 28 May, he heard he had been convicted in his absence

by the Revolutionary Court in Tehran and sentenced to 30 years' imprisonment, 111 lashes, a court fine of around €1,260, and deprivation of social rights for two years.

He refused to appeal his sentence, which was confirmed by an Islamic Revolutionary Court in Tehran on 30 July. He has to serve the lengthiest single sentence imposed for the most serious charge, which, in his case, is 15 years for the charge of "forming a group with the purpose of disrupting national security". He is planning to submit a request for a judicial review of his case to the Supreme Court.

In June, exiled Iranian lawyers had signed an open letter denouncing Davoudi's harsh sentence. The letter called him "one of the most honourable lawyers across Iran". The letter also stated: "He has been convicted merely for defending victims of the judiciary and security agents, political prisoners and the oppressed, as well as audaciously criticising the corrupt, cruel and inefficient political and judicial system in Iran."

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

ROLL OF SOLICITORS SURGES PAST 20,000

The number of names on the Roll of Solicitors in Ireland surged through the 20,000 barrier this summer, to a record high of 20,531 as of 31 August, writes Ken Murphy.

The biggest factor in the remarkable rate of increase in recent years has been the tsunami of Brexit-related transfers. In 2019 alone, that number has broken all previous annual records, with 1,560 British solicitors taking out an additional qualification in this jurisdiction in the year to date. That 1,560 figure comprises 1,521 solicitors from England and Wales, 35 from Northern Ireland, and four from Scotland.

However, it is important to understand that these solicitors are enrolling, but not arriving, in Ireland. Only a handful of them – probably less than ten – have actually moved to this jurisdic-

tion to practice and be regulated here. The others remain at their desks in London, Brussels or other international legal centres.

Of the 20,531 solicitors on the Roll on 31 August 2019, no less than 3,706 have entered from the neighbouring jurisdictions since 1 January 2016, including 3,564 from England and Wales, 134 from Northern Ireland, and eight from Scotland.

These 'Brexit refugee' solicitors are seeking to preserve, to the maximum extent they can, their status as practitioners of EU law post-Brexit. Most, if not all major international law firms have large numbers of solicitors who have undertaken this process. As of 31 August 2019, the two firms with the largest numbers in this regard are Allen & Overy LLP with 287 solicitors; and Linklaters LLP with 250.

50-YEAR REUNION FOR THE CLASS OF 1970

Did you receive your parchment in 1970? If so, you are invited to join your classmates for a celebratory reunion lunch at the Law Society on Thursday 26 March 2020.

To express your interest, please email Elma Lynch at elma@d lcm.ie. Alternatively, you may contact her at Daly Lynch Crowe & Morris Solicitors, The Corn Exchange, Burgh Quay, Dublin 2, or tel: 01 671 5618.

Participants will be kept informed by email of developments as they evolve over the coming months.

The organising team promises a fun-filled event and looks forward to hearing from you.



'All kinds of everything' at the 1970 reunion

After 50 years in practice, there'll be 'all kinds of everything' and no shortage of news to catch up on!



'ANTI-PASS-BACK' SYSTEM IN PLACE AT FOUR COURTS



PICT: ROLLINGNEWS/IE

The Courts Service has advised users of the Four Courts to comply with access requirements. In particular, users are asked to refrain from the practice of 'swiping-in' non-access card users. An anti-pass-back system has been introduced, as some card holders were swiping non card-holders (including clients) into the complex, who were avoiding security screening as a result. This is deemed a serious breach of security and a serious risk to all court users.

The Courts Service reports that some practitioners are avoiding the anti-pass-back

system by coming through the gates, two at a time, or bringing clients in with them as they pass through the gates. In other instances, clients who are passed through result in practitioners not getting through.

The anti-pass-back system was agreed and approved by the Courts Service Building Committee, which is chaired by Justice Patrick McCarthy and has representatives from the Law Society and the Bar Council. Practitioners are reminded to observe the agreed protocol in order to ensure that their access rights are preserved.

MY OWN LOVELY LEE



The Council of the Law Society held its July meeting at Cork University Business School, on Lapp's Quay, on Friday 12 July. The initiative was proposed by the current president, Patrick Dorgan, who hails from the city. While the Council was in the 'southern capital', President Dorgan was a guest at City Hall, where he was greeted by Cllr Colm Kelleher, and was invited to sign the visitors' book

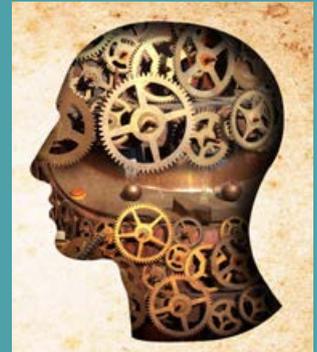
WORKPLACE WELL-BEING QUALITY CONVERSATIONS IN THE WORKPLACE

Well-being is a skill. It's about how we feel about ourselves, our lives, and how we cope with setbacks. Employers might wonder why they should care about the well-being of employees – is that not the employees' responsibility? While it is true that we are all ultimately responsible for taking care of our well-being, it is also true that workplace environmental factors play a key role, and these are the factors that employers can pay attention to, to support employees in maintaining their well-being.

The fact that workplace well-being programmes are now a billion-dollar industry worldwide shows that many employers recognise the link between employee well-being and the well-being of their businesses.

One of my observations from working as an executive coach is that the avoidance of 'quality conversations' in organisations is a key contributor to unhealthy work cultures. This avoidance stems from the assumption that such conversations will lead to conflict. However, this is only true if people do not have the skills to hold these conversations effectively. What is also true is that the need for difficult conversations will be reduced if better quality conversations are happening in the first place.

A quality conversation is one in which all parties feel heard, there is a shared understanding of areas of agreement and areas of disagreement (it's not necessarily about reaching consensus), and there is a



shared understanding of what needs to be done, when and how, who is responsible, and the risks to the business of not meeting quality standards. These conversation principles apply to all workplace activities, whether it's about how the phone is answered, how client records are maintained, or how client cases are managed.

The core skills of quality conversations are coaching skills. Developing a culture of quality conversations teaches people to actively listen to each other. Imagine a work environment where people have conversations that are focused on listening rather than speaking, where conversations are about building shared understanding so that employees can learn and grow, problems are solved collaboratively, quality standards are achieved, and a mindset of continuous learning and improvement are the norm.

Want to learn more? Consider the 'Coaching skills for solicitors and practice managers' programme, starting in March 2020.

Isolde Norris is an accredited executive and team coach (see www.koiconsulting.ie).



LIFE'S A GAS

Bord Gáis Energy's head of legal Joanne Ross speaks with **Mary Hallissey** about the pros and cons of life as an in-house counsel with the gas and electricity supplier

MARY HALLISSEY IS A JOURNALIST AT THE *LAW SOCIETY GAZETTE*



A BIG PART OF THE IN-HOUSE COUNSEL ROLE IS ABOUT MAKING SURE THAT THE LEGAL TEAM UNDERSTANDS WHAT THE BUSINESS IS TRYING TO ACHIEVE AND THE CHALLENGES IT FACES

Joanne Ross's late father John, who had a thriving solicitor's practice in Dublin 4, was her inspiration to pursue a career in law. Originally from Co Wicklow, but schooled in Dublin and UCD, Joanne has headed the legal and regulatory function at Bord Gáis Energy since 2011.

It was her father's passion for his work, she says, that made a lasting impression. "I've three brothers and a sister, and I'm the only one who ended up in the law," she explains. "My father wasn't pushy that way at all."

She began as a trainee at McCann FitzGerald in 1999, straight after her UCD law degree, doing a lot of mergers and acquisitions and private equity investments in the corporate department, during the exciting years of the tech boom.

After five years, Joanne moved in-house and has since had three varied and senior roles in different companies. Lagan Technologies, at which she secured her first in-house role, sold customer relationship management software and expanded rapidly in different jurisdictions.

"We had rapid growth and the sales guys were very ambitious. I learned so much about how to come up with solutions and not blockers, if at all possible," she says, all the while understanding the risk appetite and avoiding unreasonable risks for the business.

On that job, Joanne learnt that a big part of the in-house counsel

role is about making sure that the legal team understands what the business is trying to achieve and the challenges it faces, which can change on a weekly basis. "General counsel must be enablers in any business," she says.

The real thing

Joanne left that role to become general counsel with Coca Cola Hellenic, which is the bottling – as opposed to brand management – side of the business in Ireland. That was a north/south, all-Ireland role in a Greek-owned firm with a very international dynamic.

She feels strongly that in-house lawyers can get a lot closer to their business, have a leadership role in developing strategy, and engage more deeply in proactively identifying and managing key risks.

She observes that working in private practice on deals, one can be involved at an early stage in advising a client on a really interesting transaction or topic, but in the knowledge that one may not have any further involvement or have the opportunity to follow the deal through to its conclusion.

As the mother of a ten- and an 11-year-old, she says that working in-house can be a lot more family-friendly.

Joanne leads a team of 15 at Bord Gáis Energy, and is keen to highlight the work/life balance the organisation encourages, stating that it is rarely the kind of place to find oneself working at 9 o'clock at night.

There have been pinch points, such as the company's restructuring and ultimate sale to Centrica PLC, which concluded in 2014. Joanne has found that the energy sector allows her to perform at a very senior level – she is a board member – without feeling like she is sacrificing too much in terms of family life.

"I think the big law firms need to do a lot more in terms of helping lawyers to achieve a healthy work/life balance. They are losing a lot of very good people. I've never had problems building really strong teams here at Bord Gáis Energy. They either stay or they go on to other in-house roles," she observes.

The challenge for an in-house lawyer in a smaller in-house team, despite its interesting, diverse work and better work/life balance, is that there may not be the same opportunities for career growth and promotion as with a big law firm.

That said, the 2014 buyout by English-based Centrica has provided international career opportunities for all Bord Gáis Energy employees. "They have over 200 people in their legal team," says Ross. "Job traffic and department interaction is encouraged, back and forth, across the Irish Sea."

A matter of trust

The regulatory function is very important in the energy sector, as is data governance, given the 750,000-strong Bord Gáis Energy customer base.



PIC: LENS MEN



Joanne's legal department has five lawyers in the legal function, five in regulation (influencing policy and regulatory change), three in data governance, and two in compliance.

The sale to Centrica has also brought benefits to the customer, she believes. The parent company has invested heavily in smart home devices, which help customers manage their energy usage remotely on their mobile phones or tablets.

"We can provide more customer benefits by having more data, but our customers need to trust that we will safeguard and look after their data, and that we take this duty incredibly seriously."

On the Government's *Climate Action Plan*, issued in June, and aiming for zero carbon emissions by 2050, Joanne wonders

whether the public truly understands what's involved with this ambitious goal. The aim is to reduce emissions by 2% every year between now and 2030, and by 7% annually up until 2050.

Coal and peat plants will be shut down, and onshore and offshore wind energy will see huge investment. Demanding targets have been set for electricity generation from renewable sources, which it's hoped will generate 70% of electricity by 2030, despite rocketing demand for power as the economy grows.

Power hungry

The wave of data centres now at the planning stage are power-hungry – Joanne believes these users should be incentivised to invest in self-generation to meet their energy needs.

The climate plan is highly aspi-

ration, she feels, but a hugely positive step by the Government in demonstrating commitment to tackling climate change. In welcoming it, she highlights that it will be crucial to ensure transparency regarding the costs involved and the individual behavioural changes that will be needed to achieve the stated targets.

The goal of retrofitting half a million homes with heat pumps will be costly. Joanne suggests that the Government will need to take action to ensure the requisite skilled labour is on hand to carry out this work, during a construction boom and an ongoing housing crisis.

Replacing oil and gas boilers is another long journey. "If we are really shooting for this, we need to make sure the financial-support package is there," she points out. 

IN-HOUSE LAWYERS CAN GET A LOT CLOSER TO THEIR BUSINESS, HAVE A LEADERSHIP ROLE IN DEVELOPING STRATEGY, AND ENGAGE MORE DEEPLY IN PROACTIVELY IDENTIFYING AND MANAGING KEY RISKS



I WISH TO MAKE A COMPLAINT

The new complaints and disciplinary system under part 6 of the *Legal Services Regulation Act 2015* is expected to come into operation on 7 October.

John Elliot provides an overview of the new system

JOHN ELLIOT IS DIRECTOR OF REGULATION AT THE LAW SOCIETY OF IRELAND



THE AUTHORITY IS REQUIRED TO FACILITATE INFORMAL RESOLUTION OF COMPLAINTS RELATING TO INADEQUATE SERVICE OR EXCESSIVE COSTS, WHERE THE CLIENT AND THE LEGAL PRACTITIONER AGREE

Part 6 of the *Legal Services Regulation Act 2015* creates a new complaints and disciplinary system for solicitors and barristers. Part 6 is expected to come into operation on the first day of the new legal year – 7 October 2019. This article provides an introductory overview of the new system as it applies to solicitors.

There will be an expanded definition of misconduct. The Legal Services Regulatory Authority will deal with complaints and will have limited powers of sanction. Informal resolution of complaints about inadequate services and excessive costs will be encouraged. The authority will have a Complaints Committee, which will have the power to make referrals to the new Legal Practitioners Disciplinary Tribunal. The tribunal will refer serious cases to the High Court for decision on sanction.

Being members of a regulated profession, solicitors are exposed to the occupational hazard of complaints being made against them, no matter how well their practice is run. For this reason, the new complaints and disciplinary system should be of interest to all solicitors.

Misconduct

The act introduces a new and extensive definition of misconduct, but does not significantly add to the effective scope of the current definition, except that the following may be considered

to be misconduct:

- An act or omission connected with provision of legal services that were, to a substantial degree, of an inadequate standard,
- An act or omission occurring otherwise than in connection with the provision of legal services justifying a finding that the legal practitioner is not a fit and proper person to engage in the provision of legal services.

New complaints system

The new complaints and disciplinary system is quite similar to the existing system. The most significant differences are the new institutions, with complaints about solicitors being made to the Legal Services Regulatory Authority rather than the Law Society, and with disciplinary cases being heard by the Legal Practitioners Disciplinary Tribunal rather than the Solicitors Disciplinary Tribunal. The existing three-tier structure of a complaints committee, a disciplinary tribunal, with the High Court at the apex of the system, in essence remains the same. An administrative filtering and resolution process is also provided for.

A client may make a complaint to the authority about legal services of inadequate standard or excessive costs. There is a three-year time limit for making such complaints, which compares with the existing five-year time limit. Any person may make a com-

plaint to the authority about misconduct. There is no time limit for conduct complaints.

Complaints may be made only to the authority, and the Law Society must refer any complaints it receives to the authority. Where the Law Society, in the exercise of its statutory functions, forms the opinion that an act or omission of a solicitor constitutes misconduct, it must notify the authority, unless the matter constitutes a breach of the *Solicitors Accounts Regulations* or should be investigated in connection with such a breach. The authority may request the Law Society to investigate a complaint. The authority must notify the Law Society of complaints about solicitors and send relevant documentation to the Law Society.

The authority can investigate a legal practitioner where no complaint has been received and may continue to investigate a complaint, even where it has been withdrawn by the complainant.

Informal procedures

Complaints procedures are to be as informal as is consistent with the principles of fair procedures, and so that undue expense is not incurred.

The authority must conduct a preliminary review of a complaint to determine whether or not it is admissible. It must first notify the legal practitioner of the complaint and request his or her observations. The act allows the rejection of complaints that are frivolous



PIC: WIKIMEDIA COMMONS

He's ah... pining for the fjords

or vexatious, without substance or foundation, out of time, or relate to a matter already decided under the act, the *Solicitors Acts*, or in civil or criminal proceedings. One effect of this is that complaints that have already been dealt with by the Law Society cannot be reopened.

The authority is required to facilitate informal resolution of complaints relating to inadequate service or excessive costs, where the client and the legal practitioner agree. Where the parties do not accept the authority's invitation of informal resolution or the attempt to resolve is unsuccessful, a written procedure is commenced. In appropriate cases, the authority may issue directions. The range of directions available at this stage is similar to those available to the Law Society's Complaints and Client Relations Committee.

Both the client and the legal practitioner may seek a review by a review committee of the authority's decision. There is a right of appeal against the committee's decision to the High Court.

Statements made in the course of attempting to resolve a complaint by the complainant or the legal practitioner may not be used in disciplinary proceedings. Costs arising from the attempt to resolve a complaint are to be borne equally by the parties, unless the parties agree otherwise.

Complaints and Divisional Committees

The authority will establish a Complaints Committee. This committee will have a lay majority, and a minimum of eight of its up to 27 members will be nominated by the Law Society. The committee will operate in divi-

sions – referred to as Divisional Committees – with a lay majority and a lay chair. A Divisional Committee is to investigate complaints referred to the Complaints Committee by the authority.

The Divisional Committee will operate by written procedure. It may require the complainant to provide information and verify information by affidavit. The Divisional Committee may require the complainant and the legal practitioner to appear before the committee.

The complainant and legal practitioner may be represented by a person of their choice for the purposes of their appearance before the Divisional Committee, and the costs of such representation, if any, shall be borne by the person who requested such representation.

Where the Divisional Com-

THE NEW SYSTEM APPEARS TO ENVISAGE A HIGHER THRESHOLD OF SERIOUSNESS HAVING TO BE REACHED BEFORE A MATTER IS REFERRED FOR DISCIPLINARY PROCEEDINGS

BOOK NOW



LAW SOCIETY GALA 2019

SUPPORTING THE SOLICITORS' BENEVOLENT ASSOCIATION

Friday 11 October 2019

SHELBOURNE HOTEL, DUBLIN.



SPECIAL GUEST:
Oliver Callan
Star of 'Callan's
Kicks', Ireland's
top impressionist
and satirist



This October, the Law Society Gala 2019 will take place in the historic Shelbourne Hotel in the heart of Dublin. This black-tie dinner raises funds for the Solicitors' Benevolent Association (SBA) and is a social highlight for the solicitors' profession.

Guest speaker Oliver Callan is back by popular demand to entertain guests for the evening.

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

To book your place, visit www.lawsociety.ie/gala

Law Society Gala profits will be donated to the Solicitors' Benevolent Association, which provides assistance to members or former members of the solicitors' profession in Ireland and their wives, husbands, widows, widowers, families and immediate dependants who are in need.



mittee considers that a complaint is not one to be referred to the Legal Practitioners Disciplinary Tribunal, but that it warrants the imposition of a sanction, the committee may itself impose a sanction. At this stage, the range of sanctions available to the Divisional Committee is much wider than are currently available to the Law Society's Complaints and Client Relations Committee. Effectively, this signals a significant shift in the dividing point between what is dealt with by a complaints committee and what is dealt with by a disciplinary tribunal.

Higher threshold

The new system appears to envisage a higher threshold of seriousness having to be reached before a matter is referred for disciplinary proceedings. The range of sanctions available to the Divisional Committee includes powers to make directions in relation to completing services, participating in professional competence schemes, waiving and refunding fees, complying with undertakings, withdrawing or amending advertisements, imposing monetary sanctions and, on consent, imposing conditions on the practising certificate.

In issuing directions with financial implications, the Divisional Committee is under statutory obligation to have regard to the means of the legal practitioner.

The legal practitioner (but not the complainant) has a right of appeal to the High Court. In addition, interestingly, the authority may appeal a decision of its own Divisional Committee to the High Court.

Where the Divisional Committee considers that the act or omission is of a kind that is more appropriate for consideration by the Legal Practitioners Disciplinary Tribunal, it may make an

application for the holding of an inquiry.

The authority is to publish six-monthly reports on the performance of its functions under part 6. Where the Complaints Committee has decided that the complaint merits the imposition of a sanction, and where the authority considers it appropriate, the name of the legal practitioner may be included in the report.

Disciplinary tribunal

The Legal Practitioners Disciplinary Tribunal will have a lay majority, and a minimum of six of its up to 33 members will be nominated by the Law Society. The chairperson of the tribunal is appointed by the President of the High Court and may be either a layperson or a legal practitioner. The tribunal will act in divisions, chaired by a layperson. Applications to the tribunal may be made by the Complaints Committee or by the Law Society. This means that the current right of members of the public to make direct disciplinary applications will cease.

The tribunal has a statutory objective that its regulations be as informal as is consistent with the principles of fair procedures, and that undue expense is not likely to be incurred by any party who has an interest in the application. The tribunal may deal with cases on the basis of affidavits where the parties consent. It may require submission of a written outline of the evidence expected to be given by witnesses, and there are provisions to discourage irrelevant evidence. Inquiries will generally be in public. There is provision for the tribunal to obtain expert advice or assistance.

The Legal Practitioners Disciplinary Tribunal has available to it a wider range of sanctions as compared with the Solicitors Disciplinary Tribunal. The range of

sanctions includes powers relating to professional competence schemes, waiving or refunding costs, completing services, transferring documents, imposing conditions on a practising certificate, as well as a range of monetary sanctions.

In relation to financial sanctions, the aggregate amount of money that the legal practitioner can be ordered to pay may not exceed €15,000, and the tribunal is to have regard to the means of the legal practitioner.

There are provisions for appeal to the High Court and further appeal to the Court of Appeal.

Where the tribunal decides that the issue of sanction should be dealt with by the High Court, the tribunal is to make a recommendation to the High Court on sanction. The sanction powers of the High Court will be broadly similar to the High Court's existing powers of sanction, and will include strike-off and suspension.

The act provides for determinations of the tribunal and orders of the High Court to be furnished to the Registrar of Solicitors and to be published.

Transitional arrangements

It is expressly provided that complaints about inadequate services and excessive fees received by the Law Society before the commencement of the new system will continue to be dealt with to conclusion under the existing system.

With conduct complaints, if the act or omission giving rise to the complaint occurred before the commencement of the new system, but the complaint is received after commencement, while it will be the authority that deals with the complaint, it will do so under the current definition of misconduct (rather than the new expanded definition contained in the act). 

THE RANGE OF SANCTIONS AVAILABLE TO THE DIVISIONAL COMMITTEE IS MUCH WIDER THAN ARE CURRENTLY AVAILABLE TO THE LAW SOCIETY'S COMPLAINTS AND CLIENT RELATIONS COMMITTEE



NEW LEGAL COSTS REGIME UNDER THE LSRA

There will be new obligations on solicitors regarding legal costs when certain sections of the *Legal Services Regulation Act* are commenced.

John Elliot counts down to the new system

JOHN ELLIOT IS DIRECTOR OF REGULATION AT THE LAW SOCIETY OF IRELAND



ON RECEIVING INSTRUCTIONS, SOLICITORS WILL HAVE TO PROVIDE A SECTION 150 NOTICE DETAILING THE LEGAL COSTS THAT WILL BE INCURRED, INSTEAD OF A SECTION 68 LETTER

Much of the profession will already be aware that there will be new obligations on solicitors regarding legal costs when sections 149 to 161 of the *Legal Services Regulation Act 2015* are commenced. While the Law Society has not received notification of when these provisions will commence, it is anticipated that this will occur soon, possibly on 7 October 2019 – the beginning of the new legal year. Consequently, solicitors should familiarise themselves with the new provisions and review them in conjunction with the Society's guidance and precedents produced by its Legal Costs Working Group (available on the Society's website).

Notices

One of the most significant forthcoming changes is the replacement of the requirements under section 68 of the *Solicitors (Amendment) Act 1994* with those of section 150 of the 2015 act. On receiving instructions, solicitors will have to provide a section 150 notice detailing the legal costs that will be incurred, instead of a section 68 letter. However, in instances where it is not reasonably practicable to set out the costs that will be incurred, the solicitor can set out the basis upon which the costs are to be calculated. Conversely, this requirement does not circumvent

the solicitor's duty to provide the client with the details of the legal costs to be incurred, and the solicitor has to send another notice detailing those costs when it becomes practicable for them to do so.

There are specific elements required for a valid section 150 notice. It must specify:

- 1) The costs incurred to date,
- 2) The fixed and certain costs to be incurred,
- 3) The costs likely to be incurred,
- 4) VAT,
- 5) The basis of the calculation of the costs, with reference to such matters as time spent, complexity, urgency (and other items detailed in paragraph 2 of schedule 1 to the act).

Notices must also contain:

- 6) A statement of the solicitor's duty to issue new notices that make the client aware of factors that would likely lead to a significant increase in legal costs incurred over those previously disclosed,
- 7) A statement detailing the solicitor's duty to inform the client of the likely costs of engaging a barrister or expert witness, if the need arises, and to be satisfied about the client's approval for doing so,
- 8) Finally, a notice must also state an initial period of time during which legal services will not be provided effectively (a

'cooling-off period') that cannot be longer than ten working days. The act does not provide for a minimum period of time, and it is therefore up to each solicitor to use discretion to determine what a reasonable period of time is in each case. Exceptions exist to this obligation where (a) in the opinion of the solicitor, not to provide immediate legal services would constitute a contravention of a statutory requirement, the rules of court, or prejudice the rights of the client in a manner that could not later be remedied, (b) a court orders it, or (c) in litigation, a notice of trial has been served or a hearing date fixed.

Where the matter involves litigation, a solicitor has an additional responsibility to provide an outline of the work to be done in respect of each stage of the litigation process and detail the costs, likely costs, or basis of costs to be charged for each of those stages. They must also inform the client as to the likely legal and financial consequences of their discontinuance of the litigation and the circumstances in which they would be likely to be required to pay the costs of one or more other parties.

Solicitors may (under section 151) of the act, instead of issuing a section 150 notice, enter into a written agreement with the client prior to the provision of legal ser-



vices concerning the amount and manner of payment. Any such agreement must contain all the particulars required in a section 150 notice.

Bills of costs

Solicitors should also be aware that their bills of costs will be regulated under section 152 of the act, and they will be required to sign their bills of costs and issue them in such form as may be specified in rules of court.

The act requires each bill to provide:

- 1) A summary of the legal services,
- 2) An itemised statement of the amounts charged,
- 3) Details of time spent, where time is a factor in determining the legal costs,
- 4) VAT,
- 5) The amount of any moneys recovered by, or payable to, the client,
- 6) The amount of legal costs recovered by, or payable to, the solicitor, and

- 7) Information on the dispute resolution procedures for the client to use if they object to any part of the bill.

Where a client disputes any aspect of a bill of costs, solicitors are required to resolve the dispute through the procedures accompanying the bill of costs. The first stage of these procedures places an obligation on both parties to attempt to resolve the matter informally and, where that fails, the client or solicitor may apply to the new Office of the Legal Costs Adjudicator (which replaces the Taxing Master) to have the bill of costs adjudicated.

A client may refer the matter to the Office of the Legal Costs Adjudicator either before the expiry of six months from the date on which the bill of costs was provided or three months from the date of payment. The solicitor, on the other hand, can apply between 30 days and 12 months from the date on which the bill of costs was provided.

Solicitors should be aware that, where a bill of costs is reduced by 15% or more by the Legal Costs Adjudicator, they will be liable for the costs of the adjudication. However, where a bill of costs is not disputed and the client simply refuses to discharge the costs, it will still be open to a solicitor to pursue the client through civil proceedings.

It is also worth bearing in mind that the act continues the prohibition on percentage charging in contentious business (other than debt collection), as well as the setting of junior counsel costs as a specified proportion of senior counsel costs.

Finally, a solicitor shall not, without the prior written agreement of the client, deduct any moneys for legal costs from any damages payable to the client.

For more details on section 150 notices and bills of costs, please see the Society's guidance and precedents that were produced by its Legal Costs Working Group on the Society's website. [E](#)

IT IS ALSO WORTH BEARING IN MIND THAT THE ACT CONTINUES THE PROHIBITION ON PERCENTAGE CHARGING IN CONTENTIOUS BUSINESS (OTHER THAN DEBT COLLECTION)



LAW SCHOOL RAMPS UP ON SPECIAL SERVICES

As the Law Society gets set to welcome record numbers of trainees in September, **Rosemarie Hayden** reveals how the Education Centre is pushing the boundaries for students with disabilities

ROSEMARIE HAYDEN IS STUDENT DEVELOPMENT ADVISOR IN STUDENT DEVELOPMENT SERVICES AT THE LAW SOCIETY OF IRELAND

IN THE PAST TWO YEARS, THE NUMBERS REGISTERING WITH THE STUDENT DEVELOPMENT SERVICE HAVE INCREASED SUBSTANTIALLY, WHILE THE NUMBERS APPLYING FOR ADAPTED EXAM REQUIREMENTS HAVE DOUBLED

This autumn, the Law School in Blackhall Place will welcome a record-breaking 460 students for the regular Professional Practice Course (PPC). In January 2020, they will be joined by the first intake of students for the newly launched PPC hybrid course.

This course will combine online lectures with face-to-face tuition, providing a more flexible route into practice, without the requirement to be physically present in the Law School for substantial periods.

The hybrid course is expected to attract an increasingly diverse range of students to the Law School. To address this challenge,

the Law Society has expanded the supports available to all students, including significant upgrades to the Law School, which now allow for easier access and use of the facilities for all, regardless of age, size, ability or disability.

Open doors

In recent years, the new 'academic street' provided easier access for wheelchair users, while upgrades to the Green Hall and Vanilla Café entrances added easy-open, wider doors and accessible toilet facilities.

Now, the Law School's main lecture theatre is undergoing a complete renovation. The current seating has been replaced

by wider, ergonomic seating – seat width has been increased to 90mm, while leg clearance goes from 80mm to 130mm.

A mix of side foldaway writing tables (52 in total) and drop-down writing tables (198) are being installed to facilitate easy use by both left and right-handed users. In addition, it will now be possible to remove the front row of seating to easily convert it into a wheelchair accessible area, whenever required. The hearing loop assistance unit is also being modernised for those with hearing difficulties.

Students who require adapted chairs and tables will benefit from standing desk adaptors and adjustable seating.

Customised services

The Law School's Student Development Service (SDS) supports the educational, social, and emotional development of trainee solicitors. As part of its remit, it provides disability support services.

The needs of the student population are varied, and the supports are tailored to each student. No one size fits all, and a variety of suites of services are available, based on student requests. In the past two years, the numbers registering with SDS have increased substantially, while the num-



Rosemarie Hayden (student development advisor) updates Minister of State Finian McGrath on the Law Society's new supports for people with disabilities



The LiveScribe smartpen

bers applying for adapted exam requirements have doubled.

The Law School's support for students with visual impairments includes access to course manuals in readable PDF format. The Society has developed course materials that allow students to use adaptive technology, such as 'Job Access With Speech' software. This provides speech and Braille output for the most popular computer applications on PCs, while apps for tablets can

narrate written material.

Law School staff have worked hard to find solutions to the limitations posed by technology, for example, the reading of old handwritten deeds of title. In exams, students with visual impairments are supplied with the exam paper in electronic format, in their own room, and are given additional time, if required. With these supports, a small but growing number of students with visual impairments

have completed their education with the Law Society and joined the Roll of Solicitors.

Get smart

In the past year, students who have found it difficult to take notes due to dysgraphia, dyspraxia, or dyslexia have been able to take advantage of the LiveScribe smartpen. This allows them to combine written notes with snippets of audio in an integrated note-taking system. The device is supplied free of charge to qualifying students, thanks to funding by the Law Society and HEA disability grant supports. Use of the device is subject to data protection provisions, but it has been well received by students.

Trainees who have conditions that affect their reading can also benefit from a Law Society link-up with the National Council of the Blind (NCBI). Under this scheme, the student gains access to the NCBI's vast library of online and audio books free of charge (the Law Society covers the fee), which are emailed directly to their device. The student applies via the SDS, which

certifies that the student qualifies for the service.

By the time students arrive at Blackhall Place, they have already travelled the long academic path through second and third-level education, possibly already having had access to assistive technology.

Where a student has already used a particular type of assisted technology, for example, *Read and Write Gold* or *Dragon* software, the SDS works in collaboration with IT to ensure continuity of service for the student.

Exams are a necessary part of the assessment process. Trainees with disabilities are supplied with the resources they need to allow them to properly showcase their knowledge and skills, and to ensure that their disability does not have an impact on exam performance. Such resources include readers, scribes, extra time, and a quiet room. All adaptations are applied for through the SDS adapted exam arrangements application process.

SDS works with the student and the Law School exams office to ensure that the student has what he or she needs. [g](#)

Q FOCAL POINT

PLANNING FOR THE FUTURE

The Law Society motto 'Proud of tradition, prepared for the future' has been firmly embraced by the SDS section. This year, it was represented at the Ability Programme launch in Kildare. The programme provides funding to local, regional, and national projects that help to bring young people with disabilities between the ages of 15 and 29 into the labour market.

Minister Finian McGrath (who has special responsibility for people with disabilities) was updated on the upgrades that have been taking place at the Law Society – and the plans for the future.

In a changing world that is seeking to meet the evolving needs of the general public, the Law Society is pushing the boundaries of solicitor training, so that future members of the profession are as diverse as the public they serve.



THE CONSEQUENCES OF 'TRANSFERRING PARENTAGE'

The use of anonymous eggs/sperm in creating children is banned in most European countries, but Ireland has not yet followed suit, says **Emma O'Friel**. So have we learned nothing?

EMMA O'FRIEL IS AN ASSISTANT PSYCHOLOGIST AND RESEARCHER, WITH A PARTICULAR INTEREST IN DONOR PARENT REPRODUCTION



ALTHOUGH IRELAND LEGISLATED TO BAN ANONYMOUS PARENTAGE AS LATE AS APRIL 2015 – VOWING TO PROTECT CHILDREN AND PUT THEIR BEST INTERESTS FIRST – THIS BAN HAS NOT YET BEEN COMMENCED

Last December, Dr Joanna Rose, who is donor-conceived, and I attended a meeting of the Oireachtas Joint Committee on Health to discuss the *Assisted Human Reproduction Bill 2017 (AHR Bill)*. She, like thousands of Irish citizens, is forbidden from ever knowing her father (for many it is their mother) and half of her entire family.

I am allowed to know all of my siblings, my grandparents, cousins, relations, to grow up with them, to choose who I will keep up with in adulthood, to know my family tree, should I so wish, because I am not donor-conceived.

As an atheist and liberal, I share few of the views of newspaper columnist Breda O'Brien. However, she was correct (*Irish Times*, 20 July 2019) in describing the tone with which Dr Rose (the only donor-conceived person invited to address the Joint Committee on Health) and I were addressed that day.

Deputy Kate O'Connell dismissed Dr Rose's professional integrity and, shockingly, her lived experience, as mere "opinion".

It seemed somewhat perverse to completely disregard a vulnerable group being discriminated against in order to uphold an ideology of love and equality.

The *AHR Bill* proposes to allow 'left-over' embryos to have their 'parentage transferred'. This embryo will become a child with brothers and sisters who live with their shared parents, while they cannot do the same. The psychological impact is devastating.

If every word of this bill, every word coming from the fertility industry, is interpreted through the lens of a commercial business, so much of it makes sense. When viewed through the eyes of a human, it is perhaps one of the most inhumane, cruel practices that exists in western civilisation.

Personal relations

Dr Rose and I pointed out that the UN *Convention on the Rights of the Child* says that state parties must ensure that all children, without discrimination, are allowed to know and be raised by their parents (including biological parents), where possible.

State parties "must ensure recognition of the principle that both parents have common responsibilities for the development and upbringing of the child" and that any child separated from a parent has the right to "maintain on a regular basis personal relations and direct contact with both parents".

The Joint Committee on Health said that children in Ire-

land would be allowed to know their biological family on turning 18 – if the ban on anonymity were commenced. We pointed out that this was a right of the child, not just the adult.

The use of anonymous egg/sperm in creating children is banned in most European countries – including in Britain since 2005 and in Sweden since 1984. The harm is well recognised. In Germany, it has always been against the law to create children from anonymous sperm, from another woman's eggs, or to transfer an embryo. These are crimes that incur a fine and/or prison sentence of up to three years.

Although Ireland legislated to ban anonymous parentage as late as April 2015 – vowing to protect children and put their best interests first – this ban has not yet been commenced. Representatives of the fertility industry are still fighting hard to prevent it from commencing. One reason given was "job losses in the sector".

Tragic circumstances

Donor-conceived babies, unlike adoptees, are not separated from kin because of tragic or unpreventable circumstances. Tragic circumstances are created for them. This is not IVF. These children are created only if clin-



PIC: SHUTTERSTOCK

TRANSFERRING PARENTAGE FOR THE 'BETTERMENT' OF THE ADULT WORLD HAS PROFOUND, LIFELONG CONSEQUENCES FOR THESE CHILDREN

ics have first ensured that their biological mother/father do not wish to have the child.

A Dublin fertility clinic claims that “there are no adverse cases to date”. They fail to elaborate that around 95% of donor-con-

ceived people in Ireland do not know they are not related to the person(s) raising them, nor that the majority of donor-conceived people in Ireland are still minors and that it will be years, even decades, before they find out, or

before they are capable of fully processing the impact. It takes emotional fortitude. It also takes a personal and financial toll.

And then they will be asking, as people like [Anne Crossey](#) from Cork are beginning to, how we

in Ireland, of all places, stood by and learned nothing from our dark history – that transferring parentage for the ‘betterment’ of the adult world has profound, lifelong consequences for these children. [g](#)



LAW SOCIETY PROFESSIONAL TRAINING

Centre of Excellence for
Professional Education and Lifelong Learning



To view our full programme visit www.lawsociety.ie/CPD

DATE	EVENT	CPD HOURS	DISCOUNTED FEE*	FULL FEE
Starting 11 Sept	Trauma Informed Skills Training for Lawyers Working with Children and Young People 11 September, 26 October, 27 November, 14 December, 15 January 2020, 15 February 2020	2019 – 14 Hours M & PD Skills 2020 – 8 hours M 7 PD Skills (By Group Study) - Total 22	€700	€850
12 Sept	Training of Lawyers on the Protection of Rights of Unaccompanied Migrant Minors	5.5 General (by Group Study)	Complimentary	
12 Sept	Probate Practice & Procedure Essentials Seminar Radisson Blu, Limerick	3.5 General (by Group Study)	€160	€186
20 Sept	Probate Masterclass: New Forms and Procedures - Dublin	6 General (by Group Study)	€255	€210
26 Sept	Annual Employment Law Update	3 General (by Group Study)	€160	€186
13/14 & 27/28 Sept	Fundamentals of Commercial Contracts	20 including 3 M & PD Skills (by Group Study) <i>Course fee includes an iPad & interactive eBook on Commercial Contracts</i>	€1,100	€1,200
27 & 28 Sept	Fundamentals of Clinical Negligence Course	10 hours including 1 Hour Regulatory Matters (by Group Study)	€350	€425
3 Oct	Annual Litigation Conference	3.5 General (by Group Study)	€160	€186
10 Oct	Younger Members Conference – The Mindful Lawyer	3 M & PD Skills (by Group Study)	€135	
11 Oct	Annual In-house and Public Sector Conference: Technology – the influence on in-house counsel	2 General, 3 M & PD Skills (by Group Study) Total 5 Hours (by Group Study)	€160	€186
11 Oct	North East CPD Day Glencarn Hotel, Castleblaney, Co Monaghan	7 Hours (by Group Study) *	€135**	
12 Oct	Annual Human Rights Conference 2019	TBC	Complimentary	
17 Oct	Annual Property Law Conference	3.5 General by Group Study)	€160	€186
24 Oct	Probate Update Conference	3 General (by Group Study)	€160	€186
7/8 Nov	Connaught Solicitors' Symposium 2019 Part I & II Breaffy House Resort, Castlebar, Co Mayo	7 November - 4 Hours & 8 November - 6 Hours Total 10 Hours (by Group Study)*	7 November - €100 8 November - €135 7 & 8 November - €190**	
15 Nov	Practitioner Update Kingsley Hotel Cork	6 Hours (by Group Study) *	€135**	
22 Nov	Annual Family and Child Law Conference	4.5 General (by Group Study)	€160	€186
22 Nov	General Practice Update Hotel Kilkenny, Kilkenny	6 Hours (by Group Study) *	€135**	
28 Nov	Annual Criminal Law Conference	3 General (by Group Study)	€160	€186
29/30 Nov	Property Transactions Masterclass Module 1 – Fundamentals of Property Transactions	8 General and 2 M & PD Skills (by Group Study) * <i>iPad included in fee</i>	€570*	€595*
2 Dec & 9 Dec	Negotiation Skills	3.5 M & PD Skills (by Group Study)	€160	€186
4 Dec	The In-house and Public Sector Panel 2019 - Meyrick Hotel Galway	3 M & PD Skills (by Group Study)	€65	
4 Dec & 11 Dec	Time Management for Lawyers	3 M & PD Skills (by Group Study)	€160	€186

*Please note our Finuas Skillnet Cluster Events are a combination of General, Management & Professional Development Skills and Regulatory Matters CPD Hours (by Group Study).

**Hot lunch and networking drinks included in price

For a complete listing of upcoming events including online GDPR and Social Media Courses, visit www.lawsociety.ie/CPD or contact a member of the Law Society Professional Training team on



SURVEY TO CHECK FOR INVASIVE/ NON-NATIVE SPECIES

From: *Conveyancing Committee,
Law Society of Ireland*

It was suggested in an article published in the *May 2019* issue of the *Gazette* that it would be prudent for the Conveyancing Committee to consider the insertion of appropriate clauses in the contract for sale and requisitions on title documents to establish for the purchaser's benefit whether there are any invasive species present on the subject property.

The committee confirms that it has previously considered this matter and concluded that it is not appropriate to include these issues in either the contract or



requisitions on title. The committee decided at the time that, not being a title matter, the appropriate place to have this issue addressed is in the request the client makes for a survey of the property prior to contract. This recommendation was included in the precedent client memo on surveys, setting out for clients what matters they should ask their surveyor to check when requesting that a property survey be carried out.

This memo is available in the precedents page on the Society's website at www.lawsociety.ie/clientmemorandumonsurveysjan2018.pdf.

RECALIBRATING THE INSURANCE IMBALANCE

From: *Conor O' Toole,
Dawson O' Toole, Solicitors,
Newbridge, Co Kildare*

I refer to the debate that is raging about our personal injuries system and the commentary on both sides.

I practice in the area of personal injuries and, while I act for a number of plaintiffs, most of my PI work is for the defence. A number of issues have been overlooked in the debate. Firstly, in my experience, I have come across a tiny percentage of plaintiffs whom I felt were trying to bring fraudulent claims and for whom I refused to act. I have, on the defence side, encountered many plaintiffs who sought to exaggerate their injuries, remained out of work while fit to return, and put in an enormous claim for a loss of earnings and, sometimes, a future loss of earnings claim.

Perhaps it is because of my

defence experience, but I have always encouraged the plaintiff clients who are out of work to rehabilitate themselves and return to work as soon as they are fit to do so.

Sitting at home drawing social welfare in anticipation of a big pay-day in my view is not good for plaintiffs, for the Department of Social Protection's coffers, nor the defendants and their insurers.

While the level of our awards can be argued either way, the recent Courts Service annual report has shown that High Court awards have dropped. There are, however, already adequate protective measures to deal with fraudulent plaintiffs. [Section 14](#) of the *Civil Liability and Courts Act 2004*, as we know, leaves a plaintiff open to criminal prosecution for swearing an affidavit of verification that is false or misleading. The pleading of fraudulent assertions or

exaggerated injuries and loss of earnings is, in my view, covered by that section, and where a plaintiff has found to be in breach of section 14, the case should be referred to the DPP.

While our perjury laws are based on the common law, and the introduction of a statutory penalty might serve to dissuade some plaintiffs from making false or exaggerated claims, it is the responsibility of the judiciary and the criminal justice system to implement enforcement when such plaintiffs are found out.

On the defence side, while insurers have to take into account the weight of their own side's costs, it is sometimes too easy for them to settle cases 'all in' or on a back-to-back basis and then pass that expense on to the insured through increased premiums, when the case should be fought and a costs order pursued.

I also, unfortunately, note the unsavoury practice of some insurance-claims handlers who contact the injured party directly and soon after their accident with a view to trying to settle a potential claim for buttons. Although many of these so-called settlements could be overturned by a legal challenge, I wonder how many injured parties actually attempt to do so after they have received their insurance cheque?

I don't think there can be any doubt that the cost of insurance is a serious burden for Irish businesses, and our personal injury system needs to be thoroughly re-examined. The introduction of fairer practices by both sides and the enforcement and, perhaps, enhancement of the penalty measures for offending plaintiffs should serve to recalibrate the imbalance and lighten that burden. [g](#)





In from the cold

Lawyer **Rory O'Boyle** shares the story of his traumatic HIV diagnosis, and how he came in from the cold

RORY O'BOYLE IS A SOLICITOR AND COURSE MANAGER AT
THE LAW SOCIETY OF IRELAND

COVER STORY



work in the education sector and recently attended a Law Society PPC lecture on the 'Shrink Me' module, where I listened to three inspiring, newly qualified solicitors talk to a group of trainees about their experiences of being gay and fitting in. They were so eloquent about their struggles and successes in finding their place in the world. The

profession is stronger for having them – not as 'shadows', but as fully formed individuals.

I struggled as I listened. Sitting with a colleague, I had to turn away as memories of my own time as a trainee resurfaced. I went back to my office and dug out a letter I had written many years previously. The background to that letter is that, at 26, I tested HIV positive (HIV+). I was beginning my career and starting out as a trainee solicitor. That was in 2001. But I still remember everything about the day – from the clothes I was wearing, to my arrival at the clinic in St James' Hospital that morning. The doctor initially went through a list of minor ailments, all of which were negative. She then paused before saying that she was very sorry but that my HIV test had come back positive. In response to my suggestion about sending my bloods to another lab for further review, she replied that the test had been perfected and errors no longer occurred.

Eventually, I was directed down the corridor to a social worker. He took out a bright yellow hospital appointment card and wrote my name, hospital number, 'HIV +'. That moment remains even more vivid than the initial diagnosis. My immediate concern was what to tell people. I wasn't even properly 'out' as gay in any meaningful sense. The social worker assured me that revealing my status wasn't necessary – not yet anyway. Also, the diagnosis was no longer the death sentence it had once been, as the anti-retroviral drugs were proving very effective and were prolonging life. I was given a number of additional tests, including for pneumonia and tuberculosis.

That diagnosis in 2001 came two months before I was due to start my training contract with one of Dublin's corporate law firms. I asked my medical consultant whether I should proceed with the training – she unreservedly advised that I should.

Starting in spring 2001, I did four months

≡ AT A GLANCE

- Living in the shadows in 2001
- HIV+ diagnosis – the start of the 'cold war'
- Life on hold
- Setting out conditions
- From shadow into light



of in-office training prior to my PPC1.

I remember sitting in the firm's reception area with the other new trainees on my first day in the office thinking that, for them, their careers were beginning, but for me it was coming to an end. I would wake during the night suffering from night sweats – an early-stage aspect of the untreated virus.

I started in the Law School in September 2001. While there, the spare time gave me time to think about what had occurred. I slept for hours, only getting up in the afternoon, a mixture of viral fatigue and depression. I started to miss large swathes of college. When I did feel reasonably well, I would then drink with friends to ease my mind.

In February 2001, I contacted the Law School to say that I would not be sitting the PPC1 exams in March. Next, I had to inform my firm. In order to return to the office, the expectation was that I would have sat and passed those exams. As the explanation for not sitting them, I advised the firm that I was unwell. I was informed that the nature of the

illness would have to be disclosed. In haste, I revealed my diagnosis. I was now in limbo, out of the Law School, and out of work until I passed the PPC1.

However, during that spring and summer of 2002, I started to inch towards something better. The initial viral fatigue was passing. I moved into shared accommodation with a friend and we would go jogging together. I swam in the sea in both Dublin and at home. I also got together with four other HIV+ men and established a therapy group facilitated by a practitioner in the [Group Analytic Practice](#). I got the opportunity to reflect on my own experience and had the privilege of hearing the stories of other men in similar circumstances. While I left many years ago, I am aware that the group is still running, with new participants joining and leaving over the years.

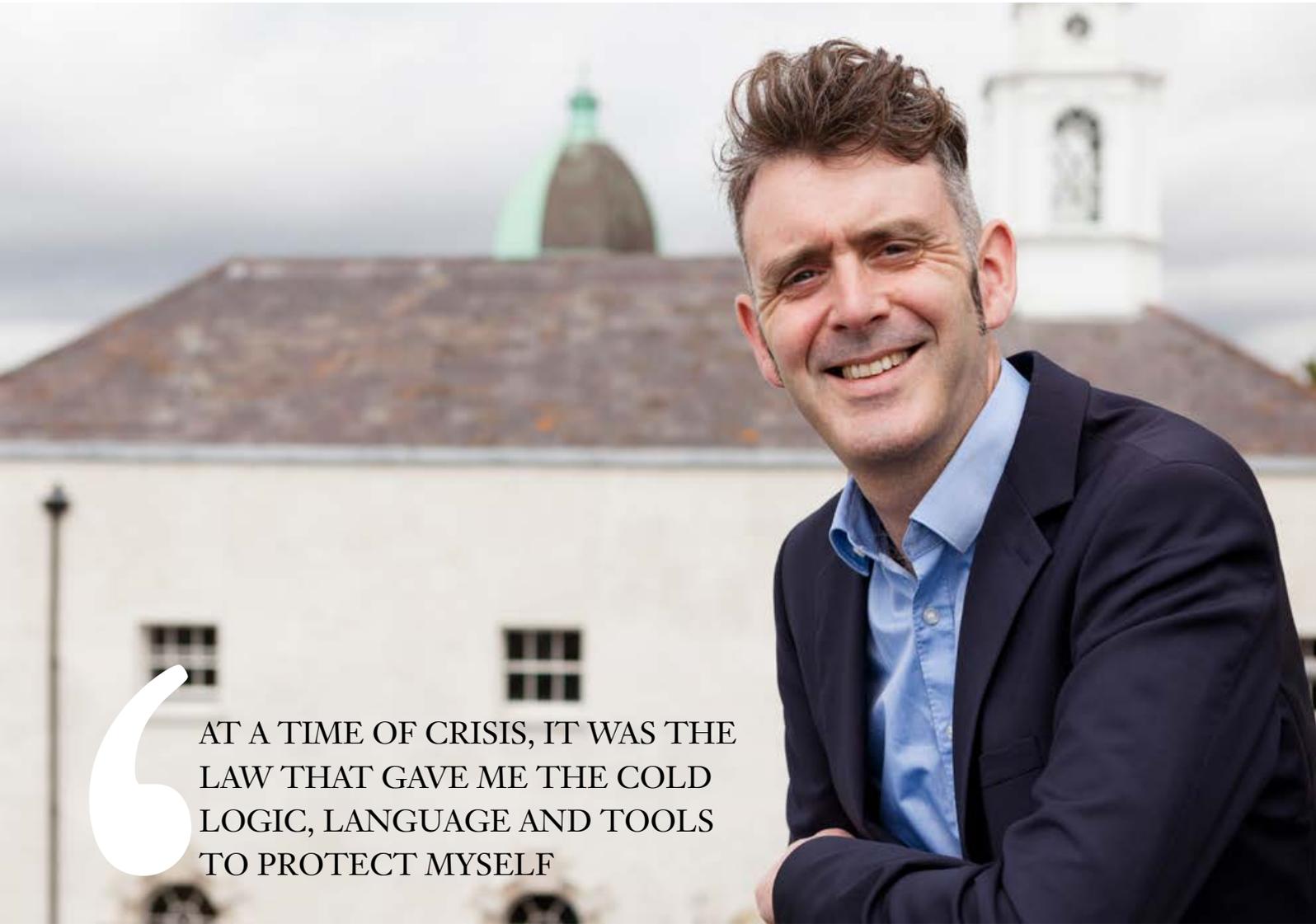
Certain conditions

Later that year, 2002, I sat the autumn sitting of the PPC1 examinations. I think that I performed better in those examinations than any previous law assessments I had undertaken. I was now able to return to the office. Because of my previously disclosed status, the firm sought to impose certain conditions.

I had been advised that the managing partner would have to be informed of my situation, and a meeting was scheduled for June 2002. The managing partner advised further that, because of the risk of infection, the firm's executive committee would have to be consulted in advance of my return to the office. I was also told that the list of people my status would potentially be disclosed to would include any trainee that I shared an office with, the head of any department for whom I worked, and all staff with first-aid responsibilities. It seemed that my return to the office was contingent on my diagnosis being revealed to a large and growing number of people.

I prepared a letter to the firm in December 2002, focusing on the conditions governing my return to the office. My first task was to establish exactly who my diagnosis would be disclosed to. To clarify matters, I wrote: "It is still unclear to me what specific conditions the firm seeks to impose on my return to the office. In this regards, I respectfully request that you clarify the following in writing:

- What was the decision of the executive committee? Was my return to the office



“ AT A TIME OF CRISIS, IT WAS THE LAW THAT GAVE ME THE COLD LOGIC, LANGUAGE AND TOOLS TO PROTECT MYSELF

approved, subject to the provision that my HIV+ status be revealed to first-aid personnel?

- Is it proposed to tell the head(s) of unit(s) for whom I shall work and, if so, what are the firm's reasons for doing so?
- Is it proposed to tell trainees with whom I share an office that I am HIV+, or is this condition no longer felt necessary?"

Dealing with the diagnosis

Like many HIV+ people at that time (and previously), as well as dealing with the diagnosis, I also had to provide some basic guidance and education about HIV to those in positions of authority. In relation to the first-aid issue, I informed them: "Best medical practice requires that the firm insists that

first-aid personnel be trained in such manner that they adopt 'universal precautions'. This means that first-aid personnel must presume that each person they treat is HIV+ and, hence, act accordingly. By placing first-aid personnel in a position of prior knowledge in relation to a single member of staff, you are implying a presumption that other members of staff are not HIV+ and, hence, ultimately, exposing your first-aid personnel to a greater risk of infection."

I had been previously advised that the firm would seek independent medical opinion when reaching its decisions. I separately had my consultant write to the firm, setting out basic medical information. She also argued strongly that there were no reasonable grounds for disclosure, and discussed requirements under

the *Employment Equality Acts*.

Emphasising the points made by my doctor, I stated: "Dr M is one of the leading medical experts in this area and her advice is very much consistent with expert medical opinion in her field of expertise. Her letter is clear and unambiguous. However, if you are in receipt of expert medical opinion contradicting Dr M's advice, I request that you disclose such advice to me so that I may take it into consideration when deciding if my desire for medical confidentiality is unreasonable or ungrounded."

Sane guy in the room

I felt my life was in chaos but, in an odd way, the firm was offering me an opportunity to be the 'sane guy in the room'. After all, these



gazette

LAW SOCIETY

Giving you the power of three

1. The monthly magazine
2. The daily news site
3. The weekly digest



Feel the pages. Smell the ink.
You can't beat this!

Your multi-award-winning magazine of record, the *Law Society Gazette*, delivers the legal news to 13,600 subscribers a month – that's a total of 40,800 readers.

Don't forget, the interactive *Gazette* is available online, with lots of cool features like links to music, videos, legislation and case law.

You can also access the *Gazette* archive and indices right back to 1997.



2. The latest online legal news

Ireland's Digital Product of the Year* – brings daily legal news to your desktop and smart device. It will soon be the portal for our narrated journalism service, provided by NewsOverAudio.com.

*(IRISH MAGAZINE AWARDS 2018)



3. Condensed into a digest

Gazette.ie now delivers a weekly briefing of the top legal news stories, as published on *Gazette.ie*, to Law Society members and subscribers via email.



IT WAS A PAINFUL TIME AND ONE THAT, IN WAYS, I DON'T THINK I WILL EVER FULLY ESCAPE FROM. HOWEVER, IN THE INTERVENING YEARS, SCIENCE AND MEDICINE HAVE ANSWERED MY DARKER CONCERNS WITH REGARDS TO HIV

events were taking place in 2002 – not 1982, or even 1992.

Although I didn't feel it at the time, I purposely finished the letter on a positive note saying: "I am delighted to report that my overall well-being has greatly improved since last winter. It is over two months since I completed the PPC1 exams, and I am very anxious to resume my apprenticeship with the firm at the earliest possible date. I wish to act in a reasonable and thoughtful manner, addressing any concerns the firm may have. Ideally, I seek to return to work at the start of the new year. Ultimately, I do not believe that

my medical diagnosis shall adversely affect my ability to pursue a successful career in the legal profession."

If I didn't recognise myself in the letter from so many years ago, through the passage of time, other voices emerge. My father's voice is there in the need to keep going, do your day's work, and be part of the world. The tone I adopted from my mother was to be polite, while remaining stubbornly logical, even if (or perhaps especially if) the topic was emotive.

There was also a total absence of shame. And that is the aspect of the letter that I

celebrated most when I reread it. Not that shame is unknown to me, but rather its absence in the letter reflected something about the law that perhaps first attracted me to study it in the first place. At a time of crisis, it was the law that gave me the cold logic, language, and tools to protect myself.

Ultimately the firm did not seek to impose any conditions. I returned to the office and finished my traineeship. With the initial trauma over, I started to establish friendships with other trainees and solicitors in the firm. I worked for a terrific partner and, on qualification, received a number of offers from different departments and ended up staying with the firm for a period.

Q FOCAL POINT

MAN IN THE MIRROR

For any young person diagnosed today, the meaning of that diagnosis is thankfully altered beyond recognition – the experiences I describe hopefully now belong to history. If you are treated and your viral load is suppressed beyond detection for six months, then the virus is not transmittable. Furthermore, your expected lifespan is normal.

In the intervening years, I have witnessed a dramatic revolution in society's attitude to the LGBT community. On the evening of Friday 28 June, leaving the office, I was moved to see the Pride flag flying above the Law Society – a symbol of inclusion. The next day, I marched in the Dublin Pride parade with OUTLaw, a new network formed with the aim of fostering the inclusion of LGBT+ individuals and allies across the Irish legal sector. On that march, we were joined by President of the Law Society Patrick Dorgan and the director general Ken Murphy. I understood, for the second time



President of the Law Society Patrick Dorgan, Rory O'Boyle, and director general Ken Murphy at Pride 2019

that weekend, how important symbols of inclusion are.

As we walked down O'Connell Street and past the GPO, we were met on the viewing stand by An Taoiseach Leo Varadkar. He was reviewing a parade that marked the 50th anniversary of the [Stonewall Riots](#), seen as a pivotal moment in LGBT+ liberation. It is wonderful to acknowledge that things that seemed unimaginable until very recently can now almost be taken for granted.

Internal struggle

After a traumatic start, we all had found some balance. A self-perceived 'outsider', the gay teenager and the HIV+ young man was starting a long and complicated walk in from the cold. Recently, I bumped into the now managing partner and a number of heads of department from the firm. I don't know if they were specifically aware of my backstory. However, on meeting them again, I was struck by the genuine friendliness and warmth of their greeting, which was equally there in my response to them.

Looking back, it was a painful time and one that, in ways, I don't think I will ever fully escape from. However, in the intervening years, science and medicine have answered my darker concerns with regards to HIV.

While accepting the loss that it entailed, I can now also appreciate that HIV opened me up to myself and to others in ways that, otherwise, probably would not have happened, and helped provide a type of resilience that I might not otherwise have developed.

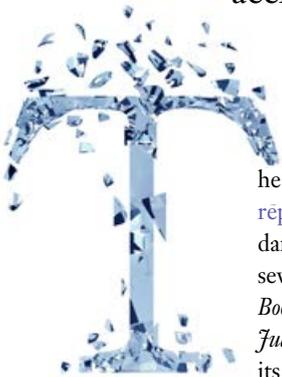
Without oversimplifying the story, in the end, the most vital struggle had not really been with 'the law', or, bizarrely, even with HIV. My biggest battle was internal.



Crash test dummies

Irish personal injury awards are around 1.55 (not the PIC claimed 4.4) times British awards. This is almost entirely due to the higher injury severity of Irish accidents compared with Britain. **Martin Kenneally** rolls the dice

MARTIN KENNEALLY IS AN ECONOMIST AND THE DIRECTOR OF THE [CENTRE FOR POLICY STUDIES](#) AT UNIVERSITY COLLEGE CORK



The Personal Injuries Commission's [first report](#) (PIC1) in 2017 compared general damage guidelines for minor, moderate, and severe neck and back injuries in the Irish *Book of Quantum 2016* to those in Britain's *Judicial College Guidelines*. Table 1 reproduces its results. PIC1

concluded: "At a cursory level, this indicates that less severe injuries in Ireland tend to attract higher levels of damages, but that is less pronounced as the severity of injury increases."

It is safer, however, to conclude that minor injuries tend to attract higher upper guideline damages in Ireland, but tend to attract lower upper guideline damages as the level of severity increases.

The reasons for this qualification are:

- *The PIC overstates some Quantum guideline values.* For example, PIC1 gives €76,000 to €139,000 as the guideline range for both 'severe' neck and 'severe' back injuries, whereas the *Book of Quantum* gives €44,600 to €77,900 as the guideline range for 'severe' neck injuries.
- *The Quantum upper guideline value*

for 'severe' neck injury in Ireland of €77,900 is just 65% of the British upper guideline of €119,638. Consequently, the Irish upper guideline is 35% lower (not 16% higher) than the British upper guideline.

- *The PIC classifies 'moderately severe' injuries as 'moderate' instead of as 'severe' injuries.* For example, the *Quantum* 'moderately

severe' neck injury range is €34,400 to €52,000. If you combine it with the 'severe' neck injury range (€44,600 to €77,900), it has no impact on the 'severe' €77,900 upper guideline value. However, if you combine it with the 'moderate' guideline range, the 'moderate' *Quantum* upper guideline jumps from €30,200 to €52,000. The actual *Quantum* moderate neck injury upper guideline for Ireland is €30,200 and is 86% of the British upper guideline of €35,176. The Irish upper guideline is 14% lower (not 48% higher) than the British upper guideline.

- *The PIC combines different injury categories in ways that may hinder comparison.* For example, PIC1 gives €139,000 as the upper guideline value for 'severe' back injury,

AT A GLANCE

- The Personal Injuries Commission's method of comparing Irish whiplash claim awards with British whiplash injury awards overstates – by around 100% – the true cost of whiplash injury awards in Ireland compared with Britain
- Ireland has proportionately fewer reported road casualties than in Britain, but has a greater preponderance of serious accidents and fatalities
- The key policy implication arising from this analysis is that insurance costs and motor premiums are best reduced by reducing accident frequency, especially the frequency of serious and severe road accidents on Irish roads



IT IS SAFER TO CONCLUDE THAT MINOR INJURIES TEND TO ATTRACT HIGHER UPPER GUIDELINE DAMAGES IN IRELAND, BUT TEND TO ATTRACT LOWER UPPER GUIDELINE DAMAGES AS THE LEVEL OF SEVERITY INCREASES

PIC SHUTTER STOCK

whereas *Quantum* (p21) gives €92,000 as the upper guideline value. Examination of *Quantum* (p33) shows that the higher €139,000 PIC1 value, in fact, refers to (severe and multiple) vertebral fractures, whereas the lower *Quantum* €92,000 (p31) refers to back injuries. PIC1 does not state that it has amalgamated these injury categories, or why it has done so.

The 14th edition of the *Judicial College Guidelines* (with 10% uplift) distinguishes three categories of 'severe' back injuries, with upper guideline values of £141,150 (most severe), £77,540 (second most severe),

and £61,140 for 'severe'. These translate to €194,462, €106,826 and €84,232 at the 2015 period-average exchange rates (£0.72585 = €1) or to €159,499, €87,620 and €69,088 at the exchange rate of £1 = €1.13 that PIC1 used.

The Irish *Quantum* upper guideline value of €92,000 for severe back injury is 86% of the British upper guideline if we take €106,826 as the upper British guideline value for severe back injury.

Complexity

All of the foregoing confirms that comparing awards is complex and benefits from judicial experience and discretion that has due regard

to official guidance, medical and technical expertise, and advocacy on behalf of plaintiffs and defendants. Of course, the system can be improved – for example, by higher frequency and more detailed updates of *Quantum*.

However, in complex cases, the appropriate awards are not formulaic and cannot be read from a table or a book, however useful they may otherwise be.

Ultimately, what matters are not guideline awards but actual awards. The [second and final report](#) of the Personal Injuries Commission (PIC2) in July 2018 compared general damages for whiplash injuries in Ireland and Britain. Its key finding (p15) is



TABLE 1

Severity level	Personal Injuries Commission (First Report, Nov 2017)	Book of Quantum (Ireland, 2016)	Judicial College Guidelines (UK)	Upper value ratios	Upper value ratios
	1	2	3	4 = 1/3	5 = 2/3
Neck injuries					
Minor	(up to) €19,400	(up to) €19,400	(up to) €7,200	2.69	2.69
Moderate	€20,400 - €52,200	€20,400 - €30,200	€7,209 - €35,176	1.48	0.86
Mod/severe	–	€34,400 - €52,000	–	–	–
Severe	€76,000 - €139,000	€44,600 - €77,900	€59,974 - €119,638	1.16	0.65
Back injuries					
Minor	(up to) €18,400	(up to) €18,400	(up to) €11,435	1.61	1.61
Moderate	€21,400 - €55,700	€21,400 - €34,400	€11,435 - €35,425	1.57	0.97
Mod/severe	–	€32,100 - €55,700	–	–	–
Severe	€76,000 - €139,000	€52,300 - €92,000	€35,425 - €63,703 (PIC1)	2.18	1.44
Severe	€76,000 - €139,000	€52,300 - €92,000	Upper = €106,826 (JC)	1.3	0.86

that “[Irish] soft tissue injury claim costs are approximately 4.4 times that of the UK cost”.

It follows that, if whiplash awards account for 29.4% or more of total motor insurance costs, then, other costs being equal, the total Irish motor insurance cost per whiplash claim are over two times the British cost.

The number of claims per vehicle year in Ireland is 80.61% of the British claims rate and – if PIC2 is correct – the average total insurance cost per claim in Ireland is over twice (that is >2) the British cost. The product of the relative claims rate (80.61%) and relative total cost per claim (>2) gives the average total cost per vehicle policy year in Ireland vis-à-vis Britain (that is, >1.61).

This implies that, if Irish whiplash awards are 4.4 times British awards, then we should expect that the total Irish insurance cost per policy year will be at least 60% higher than the British cost, and this should also be reflected in Irish motor insurance premiums compared with Britain.

Table 2 compares Irish and British motor insurance premiums between 2010 and 2015. For example, in 2015, the House of Commons/AA-sourced comprehensive British motor premium was Stg £457.78, which translates to €630.68, at the period average exchange rate (£0.72585 = €1). Dividing the 2015 Irish comprehensive premium of €500 by €630.68 gives 0.79, which means that the

average Irish comprehensive premium was 21% lower than the average British premium in 2015.

Table 2 shows that, between 2010 and 2015, comprehensive motor premiums in Ireland averaged 24% less than British premiums: Irish third-party fire and theft (TPFT) premiums averaged 34% less than in Britain.

If Irish insurers’ total cost per policy year was at least 60% higher than in Britain, how could Irish insurers offer Irish motorists premiums that were a quarter to one-third less than British premiums between 2010 and 2015?

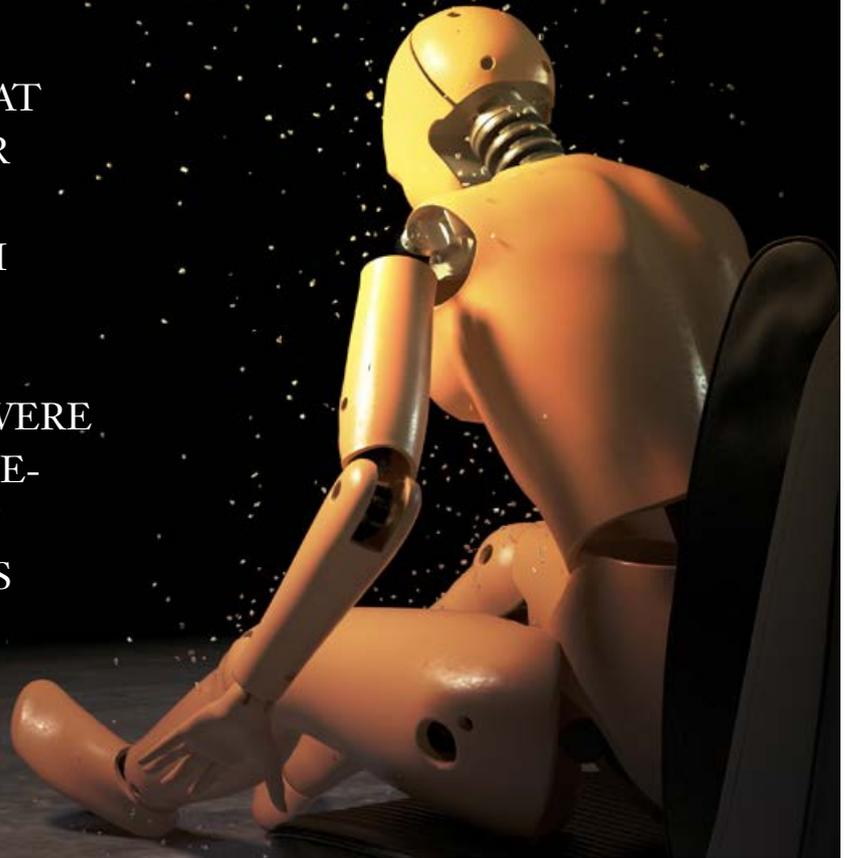
The Table 2 premium estimates are inexact, but I know of no credible adjustments to

TABLE 2

Year	Britain £		Ireland €		FX rate Period average £/€	Britain €		Irish/British	
	House of Commons/AA*		Central Bank			House of Commons/AA*		Motor premium ratio	
	Comp	TPFT	Comp	TPFT		Comp €	TPFT	Comp	TPFT
2010	432.12	526.45	515.98	616.98	0.85784	503.73	613.69	1.02	1.005
2011	612.19	859.01	505.76	587.95	0.86788	705.39	989.77	0.72	0.594
2012	627.56	899.88	471	539	0.81087	773.93	1,109.77	0.61	0.4856
2013	586.03	876.40	458.03	525	0.84926	690.05	1,031.95	0.66	0.5087
2014	490.81	718.79	459	557	0.80612	608.85	891.666	0.75	0.62467
2015	457.78	672.96	500	663	0.72585	630.68	927.134	0.79	0.7151
2016	552.45	770.32	na	na	0.81948	674.15	940.01	na	na
2017	640.82	941.26	na	na	0.87667	730.97	1,073.67	na	na
Average 2010 – 2015						0.758	0.6555		



“ IF IRISH INSURERS’ TOTAL COST PER POLICY YEAR WAS AT LEAST 60% HIGHER THAN IN BRITAIN, HOW COULD IRISH INSURERS OFFER IRISH MOTORISTS PREMIUMS THAT WERE A QUARTER TO ONE-THIRD LESS THAN BRITISH PREMIUMS BETWEEN 2010 AND 2015?”



PIC: SHUTTERSTOCK

them that can reconcile the yawning cost-premium gap set out above. It is more fruitful to re-examine more closely the PIC2 claim that Irish whiplash awards are 4.4 times British awards.

Claims versus injuries

PIC2 (p21) notes: “For each company, an injury code is allocated to claims based on the most dominant or severe injury and is generally set when the claim is first reported.” Hence, a whiplash claim is a claim where the most dominant or severe injury is a whiplash injury.

However, a whiplash claim is not the same as a whiplash injury. As [Mark Strang](#) (ISO/Verisk) observes: “On average, there are 2.1 separate injuries per soft-tissue claim.”

Table 3 gives the British guidelines and actual payouts for a whiplash injury of a given duration in 2015. It is clear that each British award set out in Table 3 refers to a single whiplash injury.

PIC2 estimates the cost of a whiplash claim for Ireland, but it acknowledges (p21) that: “Where a claimant has multiple injuries, the data includes the payment made for all injuries rather than just the soft-tissue injury element. This may result in average costs of soft-tissue injury being overstated.”

In short, PIC2 compares the award for a whiplash injury in Britain with the award for a whiplash claim (circa 3.1 injuries) in Ireland. It is reasonable to expect that the Irish award for all (3.1) injuries in a single Irish whiplash claim will average around twice the award made for just a single whiplash British injury on its own.

The PIC2 methodological *faux pas* of comparing an Irish whiplash claim award with a British whiplash injury award overstates – by around 100% – the true cost of whiplash injury awards in Ireland compared to Britain. By itself, this means that Irish whiplash awards are not 4.4 times British awards – they are more like 2.2 times British awards.

We could reduce the 2.2 multiplier further

by incorporating other factors *seriatim*, but it is more meaningful to compare personal injury (PI) awards in Ireland and Britain than to compare ‘whiplash’ awards (a) because PI awards are similarly defined and understood in Ireland and Britain, and (b) because, as PIC2 (p21) acknowledges, “the definition of soft tissue injury (‘whiplash’) losses is constantly developing and is not consistent between Irish companies, between Ireland and the UK jurisdiction, and between successive UK soft-tissue analyses.”

Comparative PI awards

In 2015, Irish motor insurers paid PI claimants on average €22,719; British insurers paid PI claimants on average Stg £10,614, which converts to €14,622 at the 2015 period-average exchange rate. The average Irish PI award in 2015 was, therefore, 1.55 (not 4.4) times the average British award.

Awards levels depend, among other things, on injury severity. Between 2008 and 2013,



LAW SOCIETY
OF IRELAND



SUPPORTING
YOUR
CPD NEEDS

DIPLOMA CENTRE

Leaders in legal education with professional focus and practical insight

Introducing our flexible on-site and online CPD recognised courses

COURSE NAME	DATE	FEE
LLM Advanced Legal Practice	28 September 2019	€3,400
Diploma in Family Law	01 October 2019	€2,500
Diploma in Finance Law	08 October 2019	€2,500
Diploma in Criminal Law and Practice (new)	11 October 2019	€2,500
Diploma in Construction Law	12 October 2019	€2,500
Diploma in Judicial Skills and Decision-Making	16 October 2019	€2,800
Diploma in Technology and Intellectual Property Law	16 October 2019	€2,800
Diploma in Arts, Entertainment and Media Law (new)	17 October 2019	€2,500
Diploma in Education Law	01 November 2019	€2,500
Diploma in Mediator Training	01 November 2019	€3,250
Diploma in Advocacy Skills	14 November 2019	€2,500
Certificate in Aviation Leasing and Finance	26 September 2019	€1,550
Certificate in Data Protection Practice	03 October 2019	€1,550
Certificate in Juvenile Justice, Litigation and Advocacy	05 October 2019	€1,550
Certificate in Property Law and Conveyancing for Legal Executives (new)	05 October 2019	€1,550
Certificate in Conveyancing	15 October 2019	€1,550
Certificate in Agribusiness and Food Law	19 October 2019	€1,550
Certificate in Immigration Law and Practice	07 November 2019	€1,550
Certificate in Strategic Leadership for the In-House Lawyer	17 January 2020	€1,550
LLM in Experiential Learning and Teaching	13 January 2020	€5,400
LLM Employment Law in Practice	25 January 2020	€3,400
Diploma in Aviation Leasing and Finance	30 January 2020	€2,800
Certificate in Company Secretarial Law and Practice	04 February 2020	€1,550

CONTACT DETAILS

E: diplomateam@lawsociety.ie

T: 01 672 4802

W: www.lawsociety.ie/diplomacentre

All lectures are webcast, allowing participants to catch up on course work at a time suitable to their own needs. Please note that the Law Society of Ireland's Diploma Centre reserves the right to change the courses that may be offered and course prices may be subject to change.

ACTUAL MOTOR INSURANCE PREMIUMS GIVE FAR GREATER SUPPORT TO THE CLAIM THAT IRISH PI AWARDS ARE 1.55 TIMES THE BRITISH PI AWARD THAN TO THE PIC2 CLAIM

Ireland’s road fatality rate (per registered vehicle) was 47% higher than in Britain. Ireland’s serious injury rate was two to three times the British rate (as measured by clinical assessment of hospital admissions using the MAIS3+ international injury scale). I estimate that Ireland’s higher injury severity compared with Britain, by itself, increased Ireland’s cost per PI claim to around 1.67 times the British cost.

To summarise, Irish PI awards are around 1.55 (not 4.4) times British awards, and this is almost entirely due to the higher injury severity of Irish accidents compared with Britain.

PI awards make up circa 70% of insurance expenditure, so if non-award PI costs (for example, service delivery, commission, MIBI, etc) are the same in Ireland and Britain, then the total Irish cost per claim is 1.39 times the total British cost.

The *Cost of Insurance Working Group* reports that the Irish claims rate per

vehicle year is 80.61% of the British rate (8,494/10,537). This implies that the total cost per vehicle year in Ireland is 1.12 (that is, 1.33 x 0.8061) times the British cost.

The garda-reported overall casualty rate per licensed vehicle in Ireland is around 57% of the British rate, and implies that the total cost per licensed vehicle in Ireland is 79% (that is, 1.39 x 0.57) of the British rate. Some licensed vehicles are uninsured but, nonetheless, contribute to Irish motor insurer costs via insurers MIBI (Motor Insurance Bureau of Ireland) contributions.

The actual motor insurance premiums set out in Table 2 give far greater support to the claim that Irish PI awards are 1.55 times the British PI award than to the PIC2 claim that Irish whiplash awards are 4.4 times the British whiplash award.

Also, *insurers’ costs* show that big (non-whiplash) claims settling above €100,000 increased its share of total Irish claims costs from 11% to 17% between 2010 and 2015,

and its share of total claims from 0.2% to 0.4%. These awards are underpinned by higher serious and severe road accidents in Ireland, and they require targeted policy measures to address them.

The key policy implication arising from this analysis is that insurance costs and motor premiums are best reduced by reducing accident frequency, especially the frequency of serious and severe road accidents on Irish roads. Ireland has proportionately fewer reported road casualties than Britain, but has a greater preponderance of serious accidents and fatalities.

Preventing a road accident prevents the full cost it would otherwise entail – and that cost is considerable for serious and severe accidents.

Capping awards shifts some of the cost burden from the insurer to the insured, but does nothing directly to prevent the accident or to mitigate its cost.

Of course, other factors contribute to Irish insurance costs – uninsured driving, late settlement, higher Irish VAT/VRT rates (50%/60% compared with 20%/30% in Britain) – but it is important to get the policy priorities right. Some Irish costs are deliberately set higher than in Britain – for example, bereavement grants are €13,686 in Britain but have a maximum of €35,000 in Ireland. [g](#)

TABLE 3

General (PSLA*) damages paid in Britain in 2015 and JCG Guideline values

Injury duration	2015 Average Payment for PSLA – uplifted to take account of JCG uplift (industry data)	Judicial College Guideline (JCG) amounts (13 th edition; September 2015)	New tariff amounts
0-3 months	£1,750	A few hundred pounds to £2,050	£225
4-6 months	£2,150	£2,050 -£3,630	£450
7-9 months	£2,600	£2,050 -£3,630	£765
10-12 months	£3,100	£2,050 -£3,630	£1,190
13 –15 months	£3,500	£3,630 to £6,600	£1,820
16-18 months	£3,950	£3,630 to £6,600	£2,660
19-24 months	£4,500	£3,630 to £6,600	£3,725

Source: Part 1 of the Government Response to Reforming the Soft Tissue Injury ('whiplash') Claims Process. (*PSLA is pain, suffering and loss of amenity, the British equivalent of 'general damages' in Ireland)

LOOK IT UP

IRELAND:

- Central Bank of Ireland, [private motor insurance statistics](#)
- Cost of Insurance Working Group, *First Motor Insurance Key Information Report* (July 2017)
- Personal Injuries Board, *Book of Quantum* (2016).
- Personal Injuries Commission, *First Report* (November 2017) and *Second Report* (July 2018)

BRITAIN:

- House of Commons, *Briefing Paper 06061 on Motor Car Insurance*
- Part 1 of the Government Response to Reforming the Soft Tissue Injury ('whiplash') Claims Process



A woman's place?

The debate about the Constitutional provision referencing women's 'life within the home' is ongoing. **Anne Conlon** throws the kitchen sink at it

ANNE CONLON IS A DUBLIN-BASED BARRISTER WHO HOLDS A MASTERS IN LAW IN GENDER, SEXUALITY AND HUMAN RIGHTS FROM THE UNIVERSITY OF KEELE



Earlier this year, the Irish Women Lawyers' Association commissioned research on article 41.2 of the Constitution, to understand its origins, its importance (if any), and to examine the options currently being considered. From a lawyer's point of view, the essential questions that might be asked of any law are whether it is fair and just, and whether women have been able to rely on it to establish or protect a right or rights.

The article has been described by historians as one of the more controversial articles in the 1937 Constitution. Hanna Sheehy Skeffington said of the new Constitution that it was based on a "fascist model in which women would be relegated to permanent inferiority".

Legal perspectives

Article 41.2 has been little used by litigants over the decades, and no substantive rights have been held to exist as a result of it. Dr Liam Thornton of the School of Law at UCD has listed only 25 cases in its 82-year history in which article 41.2 has been mentioned before the courts (as at July 2018).

The author wishes to thank Maeve Delargy (chairperson, Irish Women Lawyers' Association) and committee member Cathy Smith BL for reviewing the article

Further, he notes that, in many of these cases, article 41.2 was somewhat incidental.

The article has been cited in four cases involving discrimination on the grounds of gender. In two cases involving deserted fathers, the article was used to justify gender discrimination in favour of women. In two other cases, unsuccessful attempts were made to rely on article 41.2 to justify gender discrimination against women.

In one of these cases, *De Burca and Anderson v Attorney General* (1976), the plaintiffs argued that certain provisions

of the *Juries Act 1927* were unconstitutional – including the provision that exempted virtually all women from serving on juries. The plaintiffs ultimately prevailed. However, O'Higgins CJ (dissenting) attempted to use article 41.2 in justifying the near-exclusion of women from juries: "When one considers the special recognition of women and mothers in article 41 of our Constitution, it does not appear inappropriate that the State in its laws should give some preference to woman."

Undoubtedly, the seminal case was that of *BL v ML* (1992). Prof Gerry Whyte has described the case as a "somewhat ambitious attempt to use article 41.2 in order to create an

AT A GLANCE

- Article 41.2 has been described by historians as one of the more controversial articles in the 1937 Constitution, and Constitutional change has been proposed
- Article 41.2 has been little used by litigants over the decades, and no substantive rights have been held to exist as a result of it
- The Oireachtas Joint Committee on Justice and Equality has stated that "article 41.2 of the Constitution as currently drafted is sexist and paternalistic and has no place in the Ireland of the 21st century"





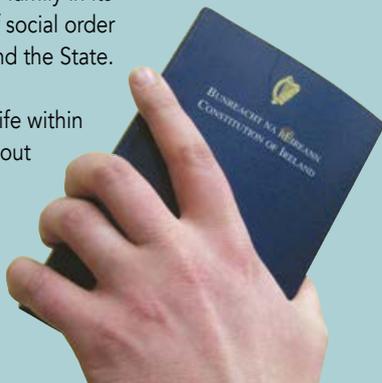
Q FOCAL POINT

ARTICLE 41.2 OF BUNREACTH NA HÉIREANN

2 2° The State, therefore, guarantees to protect the family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the nation and the State.

2 1° In particular, the State recognises that, by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

2 2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.



entitlement on the part of wives to have a share in the value of the matrimonial home.” In the case, among the reliefs sought, the plaintiff was seeking a declaration that she had a beneficial interest in the matrimonial property in circumstances where she had not made a contribution in money or money’s worth to the purchase price of the property. The marriage had broken down, and the couple were separating. The plaintiff was a housewife who looked after the home and children and provided occasional assistance to her husband.

In the High Court, Barr J held that article 41.2 conferred a property right on a woman “through the assessment of her work in the home”, though this right only extended to the family dwelling and its contents – and not to any other property of her husband. The defendant appealed the judgment to the Supreme Court, and a five-judge Supreme Court unanimously overturned the decision of the High Court.

Dr Laura Cahillane of the University of Limerick says that *BL v ML* could “truly have been a legal landmark for women”. Referring to a 2017 interview with former Supreme Court Justice Mrs Catherine McGuinness, who represented the plaintiff, Cahillane relates that “at the time, there had been some talk about the potential use of the provision and whether any use could be made of it. Thus, when she and junior counsel, now High Court Judge Carmel Stewart, encountered their ‘brave’ client they decided to ‘have a go’”.

Given the outcome of the case, there is no reason to believe that a litigant could rely on the article in the future.

Constitutional amendment?

In 2016, in the *Programme for a Partnership Government*, the Government proposed to hold a referendum on article 41.2.1. This was the culmination of eight separate reports, including two UN reports on

the article, between 1993 (*Report of the Second Commission on the Status of Women*) and 2013 (*Report of the Task Force on the Implementation of the Second report of the Convention on the Constitution*). Against this background of reports and case law, the Government arrived at its position that a referendum should be held on the article. Throughout the many reports, there had been discussion of replacing the wording of the article with gender-neutral wording and replacing ‘woman’ with ‘carer’ or ‘carers’. So, we might ask, why has there been no referendum and where are we now regarding amendment to the article?

In the latter half of 2018, the Oireachtas Joint Committee on Justice and Equality carried out the *Report on Pre-Legislative Scrutiny of the General Scheme of the 38th Amendment of the Constitution (Role of Women) Bill*. The committee invited submissions, and nine organisations or individuals made submissions.

These can be grouped into three main proposals:

- The first, supported by the Minister for Justice, Mrs Justice Catherine McGuinness, and Dr Laura Cahillane, advocated repeal *simpliciter*. McGuinness submitted that “deleting it *simpliciter* would be the legally cleanest way of proceeding”.
- The second proposal involved some amendment of the article, such that the importance of gender-neutral language and the work of carers would be recognised. This ranged from symbolic recognition to concrete socio-economic rights. This viewpoint was supported by the Irish Human Rights and Equality Commission, the National Women’s Council of Ireland, and the Irish Countrywomen’s Association among others. The IHREC wanted recognition of the wide range of family relationships. The NWCI submitted that there should be “a deliberative process and national conversation prior to a referendum”, in particular to consider the recognition of carers.
- The third proposal involved deleting article 41.2 and adding a new provision in article 45 (the non-justiciable directive principles of social policy). The Minister for Justice discussed the possibility of deleting article 41.2 and putting in a new provision on caring in article 45. Extensive

“THROUGHOUT THE MANY REPORTS, THERE HAD BEEN DISCUSSION OF REPLACING THE WORDING OF THE ARTICLE WITH GENDER-NEUTRAL WORDING AND REPLACING ‘WOMAN’ WITH ‘CARER’ OR ‘CARERS’



O’HIGGINS CJ (DISSENTING)
ATTEMPTED TO UTILISE
ARTICLE 41.2 IN JUSTIFYING
THE NEAR-EXCLUSION OF
WOMEN FROM JURIES

PICTURE: SHUTTERSTOCK

legal advice had been obtained on this option, and it had shown that the benefit of any such new provision would be negligible.

Ultimately, the committee stated that “there was universal consensus among both witnesses and members of the committee that article 41.2 of the Constitution as currently drafted is sexist and paternalistic and has no place in the Ireland of the 21st century’.

The committee concluded by recommending two options:

- a) Replacing the existing article 41.2 with the following: “The State recognises that home and family life gives to society a support without which the common good cannot be achieved. The State shall endeavour to support persons caring for others within the home as may be determined by law.”
- b) That a referendum on article 41.2 offers an opportunity for a broader discussion on the role of care work and the rights and needs of carers. Therefore, a call was made for the Government, before proceeding with a referendum in 2019, to establish and engage in a public consultation process – an obvious possible model being

how the Citizens’ Assembly addressed the issues around the eighth amendment.

What next?

The debate is not over. The challenge will be to articulate a clear position when the waters will undoubtedly be muddied by conflicting points of view. There are those who advocate for repeal – possibly the lawyers’ point of view regarding the article – based on its lack of efficacy. Then there are those who advocate for an amended article with gender neutral language to reflect the value society has for carers and the recognition of a wider range of families.

A possible solution to accommodate all points of view may be to ensure that not one, but two debates take place.

The first should be to debate repeal *simpliciter* only. Is article 41.2 fit for purpose – and what is that purpose? If it is not fit for purpose, it should be repealed.

Then a separate and different debate is:

- a) If and in what manner do people want the State to recognise the modern family, and
- b) If and in what way do people want the State to recognise carers in society?

Whatever the outcome, debate on article 41.2 presents an opportunity for positive change. 

LOOK IT UP

CASES:

- *BL v ML* [1992] 2 IR 77
- *De Burca and Anderson v Attorney General* [1976] 1 IR 38

LITERATURE:

- Laura Cahillane, ‘Revisiting Article 41.2’ (2018) 40(2) DULJ 107.
- Gerry Whyte, [presentation](#) to the Convention on the Constitution on Amending the Clause on the Role of Women in the Home, 16 February 2013.
- *Report of the Second Commission on the Status of Women* (1993)
- *Report of the Task Force on the Implementation of the Second Report of the Convention on the Constitution* (2013)
- Houses of the Oireachtas Joint Committee on Justice and Equality, [Report on pre-legislative scrutiny of the General Scheme of the 38th Amendment of the Constitution \(Role of Women\) Bill \(Oireachtas, December 2018\)](#)



The great and the GOOD

In an era of increased regulation and guidance for charities, **Emma Lawrence** and **Alice Murphy** consider what distinguishes those charities that have ‘good’ governance from those that have truly ‘great’ governance

ALICE MURPHY IS A PARTNER AND EMMA LAWRENCE IS AN ASSOCIATE IN
MASON HAYES & CURRAN'S CORPORATE CHARITIES TEAM



he charity sector in Ireland provides essential services, resources, and support to a wide range of beneficiaries, including those who are most in need in society. The purpose of the *Charities Act 2009* was to provide for the better regulation of charities. Since its introduction, much has changed in the sphere of charity regulation.

The act established the [Charities Regulatory Authority](#) (CRA) and the public register of charities, both of which have brought greater transparency to the sector. Guidance documents published by the CRA have assisted charities to determine what they ‘must’ do and what they ‘should’ do to achieve regulatory compliance and good governance.

Registration and reporting

The *Charities Act* was commenced in October 2014. As of June 2019, more than 10,000 charities are registered with the CRA and listed on the register. The ‘carrot’ aspect of the register is that charities can demonstrate their ongoing compliance and commitment to transparency by their presence on

the register and by submitting annual reports to the CRA. The ‘stick’ is that carrying out charitable activities without being registered as a charity in Ireland (even if registered as a charity in another jurisdiction) is an offence.

The statutory functions of the CRA include increasing public trust and confidence in the management and administration of charities, as well as ensuring and monitoring compliance with the *Charities Act*.

Responsibility within charities for ensuring compliance with the *Charities Act* lies with the charity trustees, who are the directors/officers or other persons performing those functions within the charity, regardless of their title.

In terms of annual reporting obligations, compliant (or ‘good’) charities submit their annual reports to the CRA on time (ten months after their financial year-end). Leading (or ‘great’) charities take the extra step of voluntarily submitting their financial statements to the CRA and using the annual report as an opportunity to tell the charity’s story over the previous year and demonstrate transparency and good governance.

In addition to annual reporting obligations, every charity must ensure

AT A GLANCE

- Since the introduction of the *Charities Act 2009*, much has changed in the sphere of charity regulation
- Some of these changes derive from legislation, whereas many were introduced by the CRA as guidelines
- The distinction between a ‘good’ and a ‘great’ charity will involve a careful balance of commitment to governance and dedication to the delivery of the charity’s mission
- Charities should have an awareness of additional regulation that might be introduced from time to time



PIC SHUTTERSTOCK

RESPONSIBILITY WITHIN CHARITIES FOR ENSURING COMPLIANCE WITH THE *CHARITIES ACT* LIES WITH THE CHARITY TRUSTEES, WHO ARE THE DIRECTORS/OFFICERS OR OTHER PERSONS PERFORMING THOSE FUNCTIONS WITHIN THE CHARITY, REGARDLESS OF THEIR TITLE

that its information on the register is kept up-to-date. Maintaining the charity's details on the register is an important ongoing task (as well as being a legal obligation), as the register is often the first port of call for members of the public seeking to find out more about a charity.

The *Charities Act* introduced important

whistleblowing obligations that require certain persons, who have formed the opinion that there are reasonable grounds for believing that an offence under the *Criminal Justice (Theft and Fraud Offences) Act 2001* involving a charity has been or is being committed, to notify the CRA. All charities should be aware of the whistleblowing

requirements and should have procedures in place to ensure that notifications are made to the CRA where necessary.

CRA guidance

Since its establishment, the CRA has published a suite of [guidance documents](#) to assist charity trustees in carrying out their



THE CRA HAS DESIGNATED 2019 AS THE YEAR FOR CHARITIES TO GET TO GRIPS WITH THE CODE. ALL CHARITIES WILL BE EXPECTED TO IMPLEMENT THE STANDARDS IN 2020 AND REPORT ON COMPLIANCE IN 2021

duties. These guidance documents breathe life into the charity legislation and provide practical tips and tools to charity trustees in relation to compliance. The CRA has published guidance on topics including fundraising from the public, internal financial controls, promoting political causes, and conflicts of interest.

Several of the CRA guidance documents have been drafted on a 'comply or explain' basis, meaning that charities should comply with the CRA's guidelines or ensure that they can explain why they have decided not to do so. For example, a charity that is governed by a charter or statute may not be in a position to make changes to its governing document as easily as a charity that is a company. In those circumstances, the charity can explain its non-compliance, rather than seek to comply. Similarly, the fundraising guidelines are divided into obligations with which charities must comply and good practice recommendations that charities should follow.

'Great' governance includes reading the CRA guidelines and striving to implement their content to the full extent permitted by the charity's governing structure. It does not require a blanket adoption of all CRA recommendations, but rather a considered analysis as to whether a particular recommendation can be complied with. If a charity is not in compliance with a particular guideline, it must decide whether it should amend its practices to comply with that guideline or whether there is a good reason why the particular guideline is not appropriate that it can explain to the CRA and the public.

Governance code

A major development in charities governance was the publication of the *Charities Governance Code* by the CRA in November 2018. The code specifies

minimum governance principles for charities. For each principle, a core set of standards is prescribed for all charities on a 'comply or explain' basis. The code also provides additional standards that should be met by charities with higher levels of income, complex organisational and funding structures, or significant numbers of employees.

For each standard, charities must determine what actions they take to meet the standard and what evidence they can show the CRA to demonstrate compliance.

The CRA has designated 2019 as the year for charities to get to grips with the code. All charities will be expected to implement the standards in 2020 and report on compliance in 2021.

It is anticipated that charities with good governance will implement the core standards and report on compliance annually, while those with great governance will actively debate, at board level, how to amend governance practices to better meet the standards of, and demonstrate compliance with, the code.

Great expectations

Often, what distinguishes the 'great' from the 'good', in terms of governance, is meaningful engagement by the charity trustees and an in-depth knowledge of the obligations that apply to them and to their charity.

A charity seeking to make the leap to best-in-class governance should consider the following:

- One of the greatest assets that a charity can have is an engaged board of charity trustees that understands its role and how to balance the charity's mission with its compliance obligations. In appointing charity trustees, there is an inevitable tension between reappointing previous charity trustees to ensure the retention

of corporate memory, and refreshing the skills and experience of the board. The introduction of term limits and rotation provisions in a charity's governing instrument can assist with the transition of charity trustees and emphasise the importance of succession planning.

- Charity trustees aspiring to great governance will not only understand, but will also regularly review, the charity's governing document. Regardless of whether a charity's governing document is a company constitution updated for the *Companies Act 2014* or a trust deed from the 1800s, it is the document that governs the charity and regulates the charity's purpose, powers, and meetings, among other matters. Knowing and adhering to a charity's governing document and updating it when it does not accurately reflect day-to-day practices can greatly assist a charity to achieve its mission.
- Inevitably, charity trustees will have other interests, both professional and personal, outside of the charity. The CRA guidance on conflicts of interest assists charity trustees in determining what a conflict of interest is, and how it can arise. Having a clear, concise conflict-of-interest policy in place is essential. Living its application and enforcement distinguishes great governance.
- Charities should have a good working knowledge of the legislation and guidelines that apply to the sector, including guidelines issued by the CRA and the Revenue Commissioners (where a charity holds a charitable tax exemption). The *Charities Act* is not the only legislation governing charities. Although certain sections of the 1961 and 1973 *Charities Acts* were repealed by the 2009 act, many sections of those acts remain in force and govern matters such as *cy-près* applications, applications to appoint new



trustees, and requests to the CRA for its opinion or advice. The usefulness of these acts should not be overlooked, particularly where a charity finds itself constrained by its governing instrument.

Balancing act

In reality, the distinction between a good and a great charity will involve a careful balance of commitment to governance and dedication to the delivery of the charity's mission. Irish-registered charities carry out many important missions across numerous counties and countries, improving the lives of countless people. This work cannot be carried out in a vacuum, but must be executed in accordance with the regulatory regime that has been put in place to both support and regulate the charity sector.

The past few years have seen the

introduction of numerous changes in the governance of charities. While some of these changes derive from legislation, many were introduced by the CRA as guidelines to assist charities in adhering to charity law and complying with best practice governance standards.

Charities should have an awareness of additional regulation that might be introduced from time to time. For example, although not yet introduced, the Minister for Rural and Community Development has the authority, under the *Charities Act*, to make regulations that prescribe the form of accounts to be prepared by charities. It is expected that these regulations will require charities to prepare accounts using the Charities SORP (statement of recommended practice), which is an interpretation of FRS102. It is hoped that the introduction

of these regulations will bring further transparency to the sector.

While charities with good governance meet the minimum standards imposed, charities with great governance use the increased regulation and guidance as an opportunity to enhance transparency and demonstrate that they are best-in-class in terms of governance.

By embracing best-practice governance standards, many great charities anticipate that they will enhance public trust and confidence, as well as their internal operations. It is this attitude, and the commitment to constant improvement, that truly separates the great from the good, in terms of governance, and encourages many of those charities that currently rest within the 'good' category to continue their journey to greatness. [G](#)

THE GOOD MEN CHARITY AUCTION

2pm, Saturday 12th October, 2019
Spencer Hotel, IFSC, Dublin

Tickets €100 per person

INCLUDES:

- Welcome cocktail drink
- Three course lunch, including wine
- Goody bag

Contact:
Sandra 087 6719625
Aisling 085 7578585

in aid of

Make-A-Wish®
 IRELAND

Click ad for more details



It's not child's play

Providing legal advice and representation to children reveals huge gaps in our legal system as currently constituted, and the area is fraught with ethical and professional conundrums. **Ruth Barry** explains

RUTH BARRY WORKS AS A SOLICITOR WITH [COMMUNITY LAW & MEDIATION](#). SHE ADVISES
IN RELATION TO CHILDREN AND YOUNG PEOPLE'S RIGHTS



Ensuring that the child's voice is heard is a difficult and complicated issue, particularly in the absence of guidance for solicitors.

A solicitor must first contend with the question of whether parental or guardian consent is required if a child

or young person wants legal advice. While the answer is a resounding no, it is understandable why the issue of consent might arise as, for example, parental consent is required for medical treatment of a child under the age of 16. A separate question is whether and how a child has legal standing in court. Further, competence of a child or young person to engage a solicitor is a fundamental consideration.

Addressing these questions requires one to conduct a broader analysis of children's right to legal information, advice and representation, the contexts in which these rights arise, and the

ethical and professional conduct considerations that lawyers in Ireland need to address in order to ensure access to justice for children and young people.

Children's rights

The *United Nations Convention on the Rights of the Child* (UNCRC) sets the standard in terms of children's rights. The right to legal

information, advice, and representation is at times explicit and at other times implied.

In terms of the right to freedom of expression, the right shall include freedom to seek, receive, and impart information and ideas of all kinds. A child enjoys the right to privacy and family life much the same as an adult. In terms of any deprivation of liberty, "every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance" (article 37).

Likewise, in domestic law, both the Constitution and statute provide for a child's right to legal information, advice, and representation, at times

AT A GLANCE

- Solicitors must contend with the question whether parental or guardian consent is required if a child or young person wants legal advice
- A separate question is whether and how a child has legal standing in court
- Also, the competence of a child or young person to engage a solicitor is a fundamental consideration
- Guidance and training are a first step in order to ensure professional conduct and best practice



pic: SHUTTERSTOCK

WHAT THEN IS THE RELATIONSHIP BETWEEN THE SOLICITOR AND A CHILD, SHOULD THE CHILD CHALLENGE THEIR GUARDIAN *AD LITEM* OR SEEK TO SATISFY HIM OR HERSELF THAT THEIR WISHES ARE ADEQUATELY CONVEYED AND DUE WEIGHT GIVEN TO THEM IN COURT?



IN DOMESTIC LAW, BOTH THE CONSTITUTION AND STATUTE PROVIDE FOR A CHILD'S RIGHT TO LEGAL INFORMATION, ADVICE AND REPRESENTATION, AT TIMES EXPLICITLY AND AT TIMES IMPLICITLY

explicitly and at times implicitly.

The right to be heard in Ireland should be interpreted in line with the UNCRRC [General Comment no 12](#) on the right of the child to be heard, which states that, after the child has decided to be heard, he or she will have to decide how to be heard, "either directly, or through a representative or appropriate body". The committee recommends that a child be given the opportunity to be directly heard in any proceedings.

Moreover, it states: "The representative can be the parent(s), a lawyer, or another person (*inter alia*, a social worker). However, it must be stressed that in many cases (civil, penal or administrative), there are risks of a conflict of interest between the child and their most obvious representative (parent(s)) ... The method chosen should be determined by the child (or by the appropriate authority as necessary) according to her or his particular situation."

A lawyer is not necessarily required for a child to be heard. Indeed, an advocate can come in many forms. However, front and centre must be a child's right to legal information, advice, and representation if the right to be heard is to be made meaningful.

Since the child enjoys the right that her or his views are given due weight, the decision-maker has to inform the child of the outcome of the process and explain how her or his views were considered. The feedback is a guarantee that the views of the child are not only heard as a formality, but are taken seriously.

The information may prompt the child to insist, agree or make another proposal or, in the case of a judicial or administrative procedure, file an appeal or a complaint (paragraphs 35 and 36 – emphasis added).

Other considerations

There are a range of contexts where children might seek the services of a lawyer in Ireland, if given the opportunity. Private family law

proceedings certainly raise a lot of legal questions for children. A child in care may similarly want to know where he or she stands. They may wish to challenge their placement, their foster carer, social worker or guardian *ad litem*.

The circumstances where a child may wish to engage a solicitor are often complex. Familial relationships are not necessarily straightforward. Children are often in vulnerable situations and, at their most vulnerable, have little or no access to people who will advocate on their behalf. It is all the more unfortunate, therefore, that for lawyers who do become involved, there is a large gap between the challenges and complexities they encounter and the guidance and training available in this jurisdiction.

For a solicitor engaging a child as a client, the only practice guidance available is in the Law Society's *Code of Practice: Family Law in Ireland*. This states: "You should only accept instructions from a child if you have the necessary training and expertise in this field and the child is of an age and understanding to instruct. The solicitor's role is to provide independent representation and advice to the child. You must continually assess the child's competence to give instructions ... You should ensure that the child has sufficient information to make informed decisions. The information should be given to the child in a clear and understandable manner and you should be aware that certain information may be considered harmful to a child" (p18).

It is clear that solicitors should not see the children who are subject of any case in which they are advising, unless they are acting for the child.

However, it is unclear whether it would be appropriate to see the child client with one parent in private family law proceedings. To see a child with one parent presents a variety of risks: undue influence, conflict of interest, accusations of parental alienation, violation

of the *in camera* rule. However, it is extremely difficult, if not nigh on impossible, for a 14 or 15-year-old to access a lawyer generally without their parents. In an ideal world, both parents would accompany a child where that child had expressed a wish to get their own legal advice. However, if the breakdown of a marriage has necessitated judicial assistance, we are often not dealing with an 'ideal world' scenario. And if a child does seek advice on their own, how can that child vindicate their rights?

Practical issues

The lack of professional guidance and training leaves practitioners with a number of practical questions.

In terms of representation of children in care proceedings, timely clarification has been handed down by the High Court in the decision of *AO'D v Judge Constantine G O'Leary & ors* (14 October 2016): a guardian *ad litem* represents the child in child care proceedings. The courts, nevertheless, have failed to vindicate the constitutional right of the child to be heard in proceedings. The Special Rapporteur on Child Protection is unequivocal when he states that "there is a distinct lack of provision in Ireland for hearing children". Appointment of a guardian *ad litem* is the primary manner for a child in care proceedings to be heard. However, according to the Child Care Law Reporting Project, guardians *ad litem* were appointed in 53% of cases observed, with regional variations from 13% to 80% (see the *11th Report of the Special Rapporteur on Child Protection*, p83).

Ms Justice Baker in *AO'D* opines that "the Oireachtas intended the appointment of a guardian to be a means by which a child could engage in the litigation, and the appointment is an alternative to the appointment of a child as a party, or as a person with some of the rights of a party" (paragraph 105). This is a



more nuanced interpretation of the relevant legislation. Section 26 of the *Child Care Act 1991*, as amended by section 13 of the *Child Care (Amendment) Act 2011*, indicates that a guardian *ad litem* shall “promote the best interests of the child concerned and convey the views of that child to the court, in so far as is practicable, having regard to the age and understanding of the child”.

In light of Ms Justice Baker’s decision, however, what is the relationship between a solicitor representing a guardian *ad litem* and the child?

It would appear that the solicitor is indirectly representing the child: Ms Justice Baker opines that a guardian *ad litem* with the possibility of legal representation is a “necessary implication from the scheme of the act if one is to interpret

it in the context of constitutional and natural fair procedures, and if the child who is represented by a guardian *ad litem* is to be treated as having full procedural rights to engage in the proceedings”.

What then is the relationship between the solicitor and a child, should the child wish to challenge their guardian *ad litem* or seek to satisfy him or herself that their wishes are adequately conveyed and due weight given to them in court?

Direct representation is available to a child in some circumstances under section 25 of the *Child Care Act 1991*. Based on the legislation, a child in those circumstances would no longer enjoy an independent assessment of best interests by a guardian *ad litem*, as section 26(4) stipulates that the

appointment of the guardian *ad litem* would cease to have effect. What is the role of the practitioner in those circumstances?

What next?

These questions, when left unanswered, translate into considerable barriers for children and young people accessing justice. It is for the legal profession and judicial system to play their part in dismantling the barriers. Guidance and training are a first step in order to ensure professional conduct and best practice. The Special Rapporteur on Child Protection, Dr Geoffrey Shannon, has highlighted the practice in Belgium where one must undertake a two-year course to train as a ‘youth lawyer’ (*11th Report*, p74.) In England, a Child Law Accreditation Scheme is available to practitioners representing children in child law proceedings. Solicitors in this jurisdiction would, no doubt, welcome similar developments here. 



PICTURE: SHUTTERSTOCK

IT IS EXTREMELY DIFFICULT, IF NOT
 NIGH ON IMPOSSIBLE, FOR A 14 OR
 15-YEAR-OLD TO ACCESS A LAWYER
 GENERALLY WITHOUT THEIR
 PARENTS

LOOK IT UP

CASES:

- *AO'D v Judge Constantine G O'Leary & ors* [2016] IEHC 555 (14 October 2016)

LEGISLATION:

- *Child Care (Amendment) Act 2011*
- *Child Care Act 1991*
- *United Nations Convention on the Rights of the Child*

LITERATURE:

- General Comment No 12 (2009) on the right of the child to be heard, adopted by the Committee on the Rights of the Child. Available at <https://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>
- *Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice*
- Law Society of Ireland, *Code of Practice: Family Law in Ireland*
- *11th Report of the Special Rapporteur on Child Protection*



PUBLIC DOCUMENTS

The *Public Documents Regulation* came into full effect on 16 February 2019.

Ross McMahon checks your papers

ROSS MCMAHON IS A SOLICITOR WITH DAVID F MCMAHON & CO AND A MEMBER OF THE EU AND INTERNATIONAL AFFAIRS COMMITTEE

THE REGULATION APPLIES TO CERTIFICATES OF BIRTH, DEATH, MARRIAGE, CIVIL OR REGISTERED PARTNERSHIP, DIVORCE AND DISSOLUTION, ADOPTION, RESIDENCE/ DOMICILE, NATIONALITY AND CRIMINAL RECORD CHECKS FROM MEMBER STATES

The *Public Documents Regulation* came into full effect on 16 February 2019 (Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012).

The aim of the regulation is to reduce red tape and costs for EU citizens when they present certain types of document to the authorities of an EU member state. The genesis of the proposal lies in the 2008 *Medina Ortega Report*. The scope, as set out in the initial report, was considerably reduced and does not now extend to commercial certificates.

As finalised, it applies to certificates of birth, death, marriage, civil or registered partnership, divorce and dissolution, adoption, residence/domicile, nationality, and criminal record checks from member states. It does not apply to such documents from third countries.

Company and partnership certificates are not included. Member states are not required to issue documents listed that do not form part of their national law. For example, those EU member states that do not have civil or registered partnerships are not required to produce certificates in relation to them. For

relevant documents, legalisation or apostilles can no longer be required.

A translation can also not be required, provided that a multilingual standard form (MSF), as set out in the annexes to the regulation, is also provided. The regulation requires member states to issue such a multilingual form on request.

Under the regulation, while the multilingual forms will not have any individual legal effect, when attached to a civil status document they will act as a translation aid and must generally be accepted by the EU member state public authority without any further translation required.

The EU legislation states that MSF translations are to be made available in all the official languages of the institutions of the EU.

In Ireland, the *General Register Office* (GRO) is responsible for issuing these certificates and MSFs. Under the regulation, when a citizen applies for a document through the relevant civil authority (for which an MSF is available), the option to request an MSF to be attached is to be available.

Authenticity

Article 14 of the regulation provides a safeguard, such that if a member state has reasonable doubt about the authenticity of a civil status document, it can submit a request for informa-

tion through the EU's Internal Market Information System to the relevant authority in another member state.

As and from 16 February 2019, apostilles are no longer required by EU member states on these various certificates.

The regulation states that all fees for obtaining an MSF will be set either at the production cost or at the cost of the document to which it is attached, whichever option has the lower cost. Ireland currently has opted not to levy any additional charge, and currently only charges for the underlying document appended thereto.

The regulation has implications for solicitors here:

- Family law practitioners – the courts should no longer require translations of the various certificates listed under the regulation where they have an MSF applied thereto. There should also be no requirement to have the underlying document legalised (for example, by way of an affixation of an apostille certificate or other consular or diplomatic legalisation where appropriate).
- Immigration practitioners – practitioners will be aware of the previous practice by the Irish National Immigration Service to require certified translations and legalised certificates of certificates that are now issued under the regulation with the benefit of the



MSF. This would have arisen previously specifically in relation to spousal/dependant applications in relation to Directive 2004/38/EC (*Free Movement of Persons Directive*); but also in relation to naturalisation applications where there is a requirement to provide certain certificates.

It is important for practitioners to note that the regulation deals with the authenticity of public documents, but not with the recognition of their legal effects. The recognition of the legal effects of a public document is still governed by the national law of the EU country where the citizen presents the document. However, it is of note that, in applying their national law, member states must respect EU law, including the case law of the Court of Justice on the free movement of citizens within the European Union.

RECENT DEVELOPMENTS IN EUROPEAN LAW

INSURANCE

Case C-100/18, *Linea Directa Aseguradora v SA/ Segurcaixa, Sociedad Anonima de Seguros y Reaseguros*, opinion of Advocate General Bot, 28 February 2019

In August 2013, a parked vehicle caught fire in a garage, and the fire caused damage to the dwelling. The fire originated in the vehicle's electrical system. The house was insured by Segurcaixa, which paid out €44,704.34 to compensate for the damage. The vehicle was insured by Linea Directa.

In March 2014, Segurcaixa brought proceedings against Linea Directa seeking reimbursement of the compensation on the ground that the accident originated from use of a vehicle covered by the vehicle's motor insurance.

The court of first instance held that the accident could not be considered as 'use' and rejected the claim. Segurcaixa appealed to the Provincial Court and its appeal was successful. Linea Directa appealed to the Supreme Court, which made a reference to the CJEU. It asked whether the concept of

'use of vehicles' includes a situation where a parked vehicle catches fire, even though the vehicle has not been used for more than 24 hours before the fire started.

The CJEU held that the concept is an autonomous concept of EU law. The objectives of protecting the victims of accident caused by vehicles has been continuously pursued and reinforced by the EU legislature. The concept of 'use of vehicles' is not limited to road use. It covers any use of a vehicle that is consistent with its normal function – its use as a means of transport.

A vehicle involved in an accident being stationary does not preclude it from falling within the scope of its function as a means of transport. The directive is not limited in scope to the use of such vehicles on certain terrain or on certain roads. Parking and the period for parking are natural and necessary steps that form an integral part of the use of a vehicle as a means of transport. Parking in a private garage is the use of a vehicle consistent with its function as a means of transport. [E](#)



REPORTS OF LAW SOCIETY COUNCIL MEETINGS

14 JUNE AND 12 JULY 2019

President of the District Court

The Council expressed its appreciation for the work done over the previous seven years by Judge Rosemary Horgan as president of the District Court. Judge Horgan had reformed the District Court in terms of its family law functions and had improved the interaction between the District Court bench and solicitors considerably.

The Council expressed the hope that she would continue to serve with distinction as a member of the judiciary at whatever level. The Council also extended its congratulations to former Council member Judge Colin Daly, who had been appointed to succeed Judge Horgan as president.

Motion: PII Regulations 2019

“That this Council approves the Solicitors Professional Indemnity Insurance Regulations 2019.”

Proposed: Richard Hammond

Seconded: Barry McCarthy

Richard Hammond noted that the PII Committee had conducted a ‘gap analysis’ of the existing *PII Regulations* and no substantive changes had been identified as being required. The regulations had been amended to close potential gaps in coverage, to clarify issues, and to make the regulations easier to follow for the mutual benefit of the profession, the public and the participating insurers.

Motion: rules of procedure

“That this Council require each of the following committees:

- 1) *Regulation of Practice Committee,*
- 2) *Professional Indemnity Insurance Committee,*
- 3) *Money Laundering Reporting Committee,*
- 4) *Education Committee,*
- 5) *Complaints and Client Relations Committee,*

to draft rules of procedure (with the benefit of such legal advices each committee shall decide as appropriate), such drafts to have regard to common law principles, case law and precedent as decided by the superior courts and each of the committees, except the Complaints and Client Relations Committee, to report on progress to the December Council meeting and, in the case of the Complaints and Client Relations Committee, to bring back draft rules for adoption at the September Council meeting.”

Proposed: Brendan Twomey

Seconded: Martin Lawlor

Following a lengthy discussion on a number of iterations of the motion, the Council approved the wording set out above. Some Council members expressed the view that, as the Society’s complaints-handling functions were being transferred to the **Legal Services Regulatory Authority (LSRA)** with effect from 7 October 2019, it would not be a sensible application of resources to draft written rules of procedure for the Complaints and Client Relations Committee. Others believed that rules should be drafted, notwithstanding this fact, and that it would be in ease of the LSRA if there were written rules of procedure to which the authority could refer.

Apprenticeship Regulations

At the July meeting, and on behalf of the Education Committee, Carol Plunkett presented a draft statutory instrument to establish a framework for the introduction of the new regime in relation to the legal education of solicitors in Ireland arising from the *Peart Commission Report* recommendations, which the Council had approved at a previous meeting, and which had been submitted to the LSRA.

Some Council members expressed the view that the document should have been brought

to the Council by way of specific motion, that the matter should be adjourned to the September Council meeting, and that further detail in relation to course content and cost was required before a decision could be taken.

Ms Plunkett said there would be many more meetings and consultations as to course content, etc, before the new course began, but the Education Committee hoped that the new regulations would have a commencement date of 1 January 2020, and that the first trainees who would have a two-year training contract would start the new one-academic-year PPC course in September 2020. This start date had been requested by solicitors’ firms – large and small.

Dr Geoffrey Shannon confirmed that, if the regulations were adjourned to September, this commencement date would not be met, and the improvements in the system of education would be delayed by a full year. Those most affected would fall into three categories: (1) those who would hope to avail of the more relaxed approach to the taking of the FE1 examinations, (2) those who would hope to pursue the hybrid course, and (3) those who would hope to attend the first unitary course. The Council approved the draft regulations, as circulated.

Eamon Harrington asked that, as a separate exercise, consideration would be given to the length of time it took to qualify as a solicitor, which was significantly longer than at the time he qualified. He suggested that the time might be shortened by a more imaginative approach to the structure of the FE1 examination, while maintaining its value as a standard-setting measure. A shorter period to qualification would also release much-needed talent to the profession more quickly, would reduce cost, and would ameliorate the negative

impact on women who, under the existing system, were facing the challenge of having to take maternity leave at a critical point in their career, while also seeking to establish their credentials as suitable partners.

High Court practice direction

The Council noted that, on 28 June, a general notice had been published by the High Court inviting submissions to Mr Justice Humphreys by 26 July from any interested parties with views in relation to the operation of **Practice Direction 81** over the previous six months. The Society’s submission on the issue was being updated and would be made before the deadline.

Judicial Council Bill

The Council noted that the *Judicial Council Bill* had passed all stages in the Oireachtas. As a consequence, it was likely that the panel of judges to review damages awards would be established in the coming months. The Council noted also the intervention by Sinn Féin TD Pearse Doherty at an Oireachtas committee hearing with the CEOs of the main insurance companies. Deputy Doherty’s cross-examination of the CEOs had exposed the very weak basis upon which the insurance companies sought to link the level of awards with the levels of premium and the levels of fraudulent claims.

The CEOs had started their contribution to the hearing by claiming that up to 20% of claims were fraudulent, and had concluded by conceding, after very pointed questioning that, even on their own statistics, fraudulent claims amounted only to 1% of claims and that, at least in the case of FBD, their projected profit for the year had been 5% of turnover, and their actual profit for the year was 11.5% of turnover.



CONVEYANCING COMMITTEE

LAND REGISTRY MATTERS – UPDATE AUGUST 2019

The Conveyancing Committee meets regularly with the Property Registration Authority (PRA) to discuss practice issues that affect conveyancing practitioners.

Some particular situations were raised with the PRA and, following submissions made by the committee, the position on them is as set out below.

Errors in registration

There is a quality unit in the PRA that deals with historic cases of Land Registry errors in registration. These cases are in a queue and are dealt with chronologically by relodgement date.

For new cases where the Land Registry has rejected a dealing in error or where an error in registration is the error of the Land Registry, the PRA has agreed that it is reasonable to request that registration be expedited when the dealing is relodged in the Land Registry. The solicitor should write back to the person in the Land Registry who rejected the dealing or who completed the dealing, pointing out the mistake. The covering letter to the Land Registry should be as specific as possible, and it should set out the reason why it should not have been rejected or setting out details of the error in registration, and it should contain a request that the relodged dealing be expedited in the circumstances.

Access to instruments

A receiver appointed under a mortgage to act as the attorney of the registered owner has

access in the same way as the registered owner to all instruments on a folio – under [rule 159\(1\)](#). This is subject to proof of appointment and lodgement of a copy of the mortgage, showing that the receiver has the necessary powers under the mortgage.

A mortgagee in possession (MIP) or the owner of a charge selling on the property that is the subject of the mortgage is in a different position to a receiver. They are entitled to a copy of their mortgage document under [rule 159\(2\)](#) – but that rule would not entitle them to anything else on the folio. However, [rule 159\(9\)](#) may be of assistance, and an application can be made under this rule, making the case as to why the MIP or owner of a charge needs any other documents from the instrument, and setting out what the special circumstances are. The PRA has wide discretion under this rule.

Access to pending dealings

Pending dealings are not subject to [rule 159](#), but are subject to data access requests and freedom of information requests. Practitioners can make such requests as set out in the [PRA Data Protection Policy](#) – details on www.prai.ie – or the [free-dom of information legislation](#) as appropriate.

The PRA has agreed that a registered owner served with a notice of a dealing pending is entitled to know the nature of the dealing and to be provided with sufficient information to allow them to deal with it, and to object to the application

contained in the dealing pending to protect their ownership, if necessary.

The PRA will serve notice of the pending dealing on the registered owner. A copy of the dealing/affidavit will not be included automatically with the notice by the PRA – it must be specifically requested by the registered owner. The registered owner should ensure that any objection is made within the 21-day statutory period.

Folio number in stamping certificate

The Land Registry acknowledges that there may be some cases where a folio number cannot be entered in the stamping system – for example, ‘conveyance not liable’, where the vendor’s title is not yet registered. However, where there is a folio number available, the Land Registry has said it must be entered by the filer, or the dealing/application for registration will be rejected. The Land

Registry says that, in the case of a transfer of part, the number of the parent folio should be entered.

In the case of the transfer of multiple folios, the stamping system allows for up to five folio numbers to be entered. The Land Registry requires that however many folio numbers are available should be entered, up to the maximum five folio numbers. Revenue has recently suggested that, where there are more than five folio numbers involved, the first four should be entered and the text ‘& Others’ should be entered in the field for the fifth folio number, and the PRA has indicated that it does not have any difficulty with this.

The committee has previously indicated its disagreement with the Land Registry on this issue and is still of the view that, if entry of a folio number is not compulsory in the stamping system, it should not be compulsory in the registration system.

LITIGATION COMMITTEE

PAPERS IN COURT – CONFIDENTIALITY AND GDPR

Practitioners are reminded that it is their responsibility to ensure that they are GDPR compliant and maintain client confidentiality when it comes to papers brought by them into court. Files and documents should not be left unattended. Where a case is at hearing over a period of days, the onus is on the practitioner

to ensure that the documents are secure as there is no practical arrangement with the Courts Service that ensures that papers are safeguarded while left in court over lunchtime or overnight. When cases have been disposed of, the obligation to remove papers from the courtroom is a matter for the practitioner.



CASE MANAGEMENT SYSTEMS – SOME PRACTICAL ADVICE AND POTENTIAL SUPPLIERS

These days, it is pretty much a necessity to have a case management system (CMS) to run a successful law firm. Such systems have many benefits, including having a digital case file at your fingertips containing all the case information in one place, while keeping compliant with Law Society regulations.

The Law Society recently published a Small Practice Bulletin on the main features and benefits of a CMS. This note from the Technology Committee provides advice on issues to be considered when planning and acquiring a CMS and contains a current list of potential suppliers to the legal profession.

Planning for a CMS

Before embarking on a major decision to invest in a CMS, you should consider the following points:

- What are your key requirements of a CMS? What do you need? How do you want your information to be delivered?
- Evaluate the IT expertise within your business.
- Establish the willingness of you and your colleagues to adapt to a changing environment. (This will be particularly relevant in relation to initial training and ongoing support requirements.) It is strongly advised that the process of planning for and acquisition of a CMS should involve all solicitors working in a firm, and that the process is led throughout at a senior management level.

Contract

- Consider issues that might arise in relation to the contract for supply and support, and

- Choice of law – what law is the contract governed by, for example, Irish or British?

Data security and data protection

- Server or cloud? Clarify whether data is stored by server or cloud, and consider whether the method is adequate for the purposes of data security.
- Protection of data subjects – a solicitor as a data controller is obliged to only use “processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of this regulation and ensure the protection of the rights of the data subject” (article 28 GDPR). Solicitors must satisfy themselves of this, and record how they have come to the decision that their supplier processor has met this standard. Specialist technical assistance may be needed.
- Contracts – it is mandatory to use a contract (or other legal act under EU law), which is binding on the processor, and which contains prescribed language set out in the GDPR. Solicitors who have entered into contracts with clients on this matter are reminded to check that such contracts permit processing, and on what terms. Supplier-provided contracts should be carefully reviewed for GDPR compliance, as the practitioners will not be able to pass compliance responsibility to suppliers, as both controllers and processors have their own respective responsibilities under the GDPR.

- Personal data transfers – personal data transfers outside the EEA (including, after Brexit, Britain) must be done in accordance with the GDPR. Solicitors must consider this when selecting suppliers who process personal data (whether client or staff data).
- Brexit – solicitors should keep this under review, as guidance may change in the lead-up to Brexit and in the early months after Brexit. Useful guidance is available from the office of the Data Protection Commission at www.dataprotection.ie (under the ‘Guidance’ tab).

Implementation

- Can the supplier set out a clear strategy, process and cost for getting your data into the system?
- If any data is not to be transferred, then this should be identified, together with a clear explanation of how that data can be accessed and/or imported as needed. The burden of operating dual systems must be avoided, as must the dangerous trap of migrating data to a system before being satisfied with how that system will work. The committee suggests that, save for exceptional circumstances, it is unwise to migrate data to a new system for a trial period if there is any uncertainty as to what is involved in rolling back such a move.

Client requirements

What are the current or anticipated client demands, for example, for reporting on their files, electronic access to their files?

Costs

- Cost of installation per user,
- Charges for ongoing licence,
- Cost of training and number of days as part of the installation package, and
- Cost of ongoing support and training.

Number of installations

- Number of installations in legal offices,
- Recent developments with the proposed system, and plans for future developments,
- List of existing client firms who will vouch for the operation of the system, and
- Backup – the nature and ease of backup and the support available in relation to daily use.

Potential suppliers of CMS

The following list is provided for information purposes only, and does not constitute approval or endorsement by the Law Society of Ireland. This list is not exhaustive. If you are aware of other potential suppliers, please advise the Technology Committee at the Law Society of Ireland.

- Advanced Software – <https://ireland.oneadvanced.com>,
- BCL – <http://bclsoftware.ie>,
- Clio – www.clio.com/eu,
- Cortbase – www.cortsite.com
- Documatics/Practice Evolve – <https://www.practiceevolve.com>,
- Expd8/Thread Legal – <https://expd8.com/case-management-software>,
- Harvest Software – <https://harvestsoftware.ie>,
- Leap – www.leapsoftware.ie,
- LegalIt – www.legalit.ie,
- Keyhouse – www.keyhouse.ie.



BUSINESS LAW COMMITTEE

SECTION 88 OF THE COMPANIES ACT 2014 – VARIATION IN CLASS RIGHTS

In drafting section 88 of the *Companies Act 2014*, each reference to ‘memorandum of association’ and ‘articles of association’ was replaced with a single reference to ‘constitution’, which had unintended consequences in relation to the variation of class rights. (Regulation 3 of part 1 of Table A, which deals with variation of class rights, was not migrated to the *Companies Act 2014*.)

This creates an issue for a company that has shares of different classes, but the constitution of which does not provide for variation of class rights. The effect of section 88(5) is that such rights may only be amended with the approval of all members, including the holders of non-voting shares.

A constitution may be amended by a special resolution to insert provisions dealing with

variation of class rights. However, under section 88(7), the insertion of any such provision would itself be treated as a variation of class rights.

Section 88(4) also has to be considered. The effect of section 88(4) is that, even if a constitution is amended post-incorporation to include provisions dealing with variation in class rights, the default provisions of section 88(5) would still

apply in certain circumstances.

The Company Law Review Group has recommended that the legislation be amended. In the meantime, practitioners should keep the provisions of section 88 in mind in advising on the incorporation of LTDs, the creation of new share class(es) in LTDs, and the level of consent that might be required to a variation in class rights at any time.

CONVEYANCING COMMITTEE

PRE-CONTRACT QUESTIONNAIRES FOR SALE AND PURCHASE (2017 EDITION)

The above two online precedents have been reviewed by the Conveyancing Committee following reports from users that there were some technical glitches in the fillable PDF documents, and the committee is happy to confirm that these technical issues have now been addressed. There has also been a minor layout change in the section ‘Services and utilities’ (no 8 in the ‘Sale’ precedent and no

3 in the ‘Purchase’ precedent) to clarify the combination of options that can be selected when completing the document electronically.

Practitioners should note that any conveyancing precedent available on the precedents’ page of the Society’s website is always the latest version of the relevant document, and it is good practice to download the precedent from the

website on each occasion that you use it. This ensures that you are always using the latest version, which will encapsulate any minor amendments made to the document since you last used it.

While it is unlikely that the above technical issues would have manifested themselves to practitioners or clients who were completing the precedents manually, it would be prudent

for members to also download hard copies of the latest version from the website for use in future sales or purchases.

By way of clarification, the committee confirms that any major amendments or significant revisions to a precedent are dealt with by way of providing a new edition of a document, and this is flagged to the profession at the time of publication of any such new edition. 



**You’re safe
in the hands
of Aviva**

Legal Contingency Insurance

Aviva has many years experience of providing insurance solutions for a wide range of Legal Contingency issues to those in the legal profession.

Our product offerings include:

- Administration Bonds
- Defective Titles
- Lost Title Deeds
- Lost Shares Indemnities
- Missing Beneficiary Insurance
- Restrictive Covenants
- Rights of Way
- Easement of Services Indemnities

To arrange cover or discuss any of the above:
Email: contingencyservices@aviva.com or call:

Niall Sheridan
01 898 7743 or

Karl Dobbyn
01 898 7710.



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 B Baily, Louis O'Connell, and Michael Stack, practising as Baily Solicitors, at Church Place, Church Street, Tralee, Co Kerry, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT65]
Law Society of Ireland (applicant)
John B Baily, Louis O'Connell and Michael Stack (respondent solicitors)

On 2 May 2019, the Solicitors Disciplinary Tribunal found the respondent solicitors guilty of misconduct in that they failed to ensure that there was furnished to the Society an accountant's report for the year ended 31 December 2017 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014* (SI 516 of 2014).

The tribunal ordered that the respondent solicitors:

- 1) Stand admonished and advised,
- 2) Pay the sum of €500 as a contribution towards the whole of the costs of the applicant.

In the matter of John Hickie, a solicitor practising as John Hickie Solicitors, 3a Old Clare Street, Limerick and in the matter of the *Solicitors Acts 1954-2015* [2018/DT104]
Law Society of Ireland (applicant)
John Hickie (respondent solicitor)

On 2 May 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he failed to ensure that that there was furnished to the Society an accountant's report for the year

ended 31 December 2017 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014*.

The tribunal ordered that the respondent solicitor:

- 1) Stand advised and admonished,
- 2) Pay the applicant's costs in the amount of €1,212.

In the matter of Jeremy Doyle, a solicitor formerly practising as Doyle Hanlon Solicitors, 6 Richmond Road, Drumcondra, Dublin 3, and Fostervale, 35 Longlands, Swords, Co Dublin, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT54]
Law Society of Ireland (applicant)
Jeremy J Doyle (respondent solicitor)

On 7 March 2019, as amended by further order on 16 May 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he:

- 1) Failed to comply expeditiously, or within a reasonable time with an undertaking given by him to Bank of Ireland Mortgage Bank on behalf of his named clients over property at Clondalkin, Dublin 22, by undertaking dated 20 July 2007,
- 2) Failed to reply adequately or at all to the complainant's correspondence in respect of the complaint concerning his undertaking in respect of property at Clondalkin, Dublin 22, comprising nine letters in total,
- 3) Failed to reply adequately, in a timely fashion, or at all to

the Society's correspondence in respect of the complaint concerning his undertaking in respect of property at Clondalkin, Dublin 22, comprising 17 letters in total,

- 4) Failed to comply expeditiously, within a reasonable time, or at all with an undertaking given by him to Bank of Ireland Mortgage Bank on behalf of his named clients on another property at Clondalkin, Dublin 22, by undertaking dated 11 September 2007,
- 5) Failed to reply adequately or at all to the complainant's correspondence in respect of his undertaking in respect of another property at Clondalkin, Dublin 22, comprising five letters in total,
- 6) Failed to reply adequately, in a timely fashion, or at all the Society's correspondence in respect of the complaint concerning his undertaking in respect of another property at Clondalkin, Dublin 22, comprising 17 letters in total.

The tribunal ordered that the respondent solicitor:

- 1) Stand advised and admonished,
- 2) Pay a sum of €2,000 as a contribution towards the whole of the costs of the applicant.

In the matter of Áine Kilfeather, a solicitor practising as a partner in Kilfeather Keys Solicitors at 12 Market Street, Sligo, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT84]
Law Society of Ireland (applicant)
Áine Kilfeather (respondent solicitor)

On 16 May 2019, the Solicitors

Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she:

- 1) Failed to comply with an undertaking furnished to KBC Bank on 26 August 2005 in respect of her named client and property in Co Leitrim in a timely manner or at all,
- 2) Failed to respond to the bank's correspondence in connection with the undertaking, dated 17 January 2016, 26 February 2013, 7 August 2013, 2 January 2014, 29 April 2014, 9 February 2016, 21 March 2016, 7 February 2017 and 11 September 2017, in a timely manner or at all,
- 3) Failed to respond to the Society's correspondence of 1 November 2017, 22 November 2017, 12 December 2017 and 22 June 2018 in a timely manner or at all,
- 4) Failed to attend a meeting of the Complaints and Client Relations Committee on 10 July 2018, despite being required to do so,
- 5) Failed to comply with the direction made by the Complaints and Client Relations Committee at its meeting of 27 February 2018 that she furnish to the Society a copy of a certificate of title and a copy of the architects certificate no later than 28 March 2018.

The tribunal ordered that the respondent solicitor:

- 1) Stand advised and admonished,
- 2) Pay a sum of €4,000 to the compensation fund,
- 3) Pay a sum of €2,012 as a contribution towards the whole of the costs of the applicant.



In the matter of Noel P Sheridan, a solicitor practising at 48 Pembroke Road, Dublin 4, and in the matter of the Solicitors Acts 1954-2015 [2018/DT100]

Law Society of Ireland (applicant)

Noel P Sheridan (respondent solicitor)

On 28 May 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he failed to record in his ledger cards the receipt of the sum of €46,500 from his client.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay the sum of €10,000 to the compensation fund,
- 3) Pay the sum of €1,962 towards the whole of the costs of the applicant.

In the matter of Martina Lyons solicitor, practising as Martina Lyons, Solicitors, 10 Gleann Fia, Bawnafinny, Tower, Co Cork, and in the matter of the Solicitors Acts 1954-2015 [2018/DT105]

Law Society of Ireland (applicant)

Martina Lyons (respondent solicitor)

On 18 June 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in her practice as a solicitor in that she failed to ensure that there was furnished to the Society an accountant's report for the financial year ended 31 December 2017 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014*.

The tribunal ordered that the respondent solicitor pay the sum of €1,250 as a contribution towards the whole of the costs of the Law Society.

In the matter of James Dorney, solicitor, practising as Dorney Solicitors, Phoenix House, Monahan Road, Cork, and in the matter of an application by the Law Society of Ireland to the Solicitors Disciplinary Tribunal, and in the matter of the Solicitors Acts 1954-2015 [2018/DT80; 2018/DT106; High Court record 2019/49 SA]

Law Society of Ireland (applicant)

James Dorney (respondent solicitor)

2018/DT80

On 11 April 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 28 February 2018 within six months of that date, in breach of regulation 26(1) of the *Solicitors Accounts Regulations 2014*.

2018/DT106

On 11 April 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to maintain proper records by withdrawing funds from the client account to the office account without supporting documentation, contrary to regulation 7 of the *Solicitors Accounts Regulations 2014*,
- 2) Failed to maintain proper books of account and such relevant supporting documents as would enable clients' moneys handled and dealt with by the solicitor to be duly recorded and the entries relevant thereto in the books of account to be appropriately vouched, contrary to regulation 13(1) of the *Solicitors Accounts Regulations*,

3) Failed to comply with the direction of the Regulation of Practice Committee meeting, made on 25 January 2018, directing that the respondent solicitor be given two alternative dates for inspection of his practice, by not responding to the Society to confirm agreement to inspection on either Thursday 15 February 2018 or Friday 2 March 2018,

4) Failed to comply with the directions of the Regulation of Practice Committee, thus causing the Law Society of Ireland to make an application to the High Court for an order pursuant to section 18 of the *Solicitors (Amendment) Act 2002* prohibiting him from practising as a solicitor until such time as he was fully compliant with the provisions of the *Solicitors Accounts Regulations*,

5) Failed to comply with High Court orders made on 9 April 2018, 9 May 2018, 11 June 2018, 30 July 2018 and 5 November 2018,

6) Failed to submit a closing or final reporting accountant's report following the cessation of his practice, contrary to regulation 33(2) of the *Solicitors Accounts Regulations*.

The tribunal ordered that the matter should go forward to the High Court and, on 1 July 2019, in proceedings 2019/49 SA, the High Court ordered that:

- 1) The respondent solicitor continue to be suspended and prohibited from practising as a solicitor until such time as he has fully complied with the provisions of the *Solicitors Accounts Regulations*, as originally ordered by the High Court on 9 April 2018, and affirmed in subsequent orders of the High Court on 9 May 2018, 11 June 2018 and 5 November 2018,

2) In the event that the respondent solicitor does become compliant with the provisions of the *Solicitors Accounts Regulations* to the satisfaction of the Law Society of Ireland, the respondent solicitor is to apply to the High Court to lift the suspension order if he intends to resume practice and, in that event, that he not be permitted to practise as a sole practitioner or in a partnership, but only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in advance by the Law Society of Ireland,

- 3) The respondent solicitor pay the measured and agreed costs of the within application,
- 4) The respondent solicitor pay the costs of the application in the Solicitors Disciplinary Tribunal proceedings 2018/DT80 in the measured sum advocated by the Law Society,
- 5) The respondent solicitor pay the costs of the applicant in Solicitors Disciplinary Tribunal proceedings 2018/DT106 as measured by the Solicitors Disciplinary Tribunal. [E](#)

REQUIRE ASSISTANCE IN NORTHERN IRELAND FOR THE PURPOSE OF LITIGATION?

Northern Ireland lawyers, Brendan Kearney & Co Solicitors, are interested in dealing with all civil litigation claims for those living outside Northern Ireland. An arrangement of 50/50 is suggested.

PLEASE CONTACT US TODAY TO DISCUSS FURTHER.

Brendan Kearney and Co Solicitors
028 7136 6612; 028 9091 2938;
paul.kearney@brendankearney.com;
brendankearney.com



WILLS

Barry, Fionnuala (deceased), late of 67 Alden Road, Bayside, Dublin 13. Would any person having knowledge of a will made by the above-named deceased please contact Robert O'Reilly, O'Keeffe & Moore Solicitors, 6 Merrion Square, Dublin 2; DX 44; tel: 01 676 6060, email: robert.oreilly@okandm.com

Daly, Desmond (deceased), late of 13 Gibbons Terrace, Balbriggan, Co Dublin, who died on 18 May 2019. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Ruth Higgins, Gerrard L McGowan, Solicitors, The Square, Balbriggan, Co Dublin; DX 96001 Balbriggan; tel: 01 841 2115, email: info@glmcgowan.ie

Darcy, Christopher (deceased), late of 3 New Vale Crescent, who died on 16 February 2018. Would any person having knowledge of any will made by the above-named deceased please contact Amy Fitzpatrick, Brendan Maloney & Company, Solicitors, Kilbride Cottage, Killarney Road, Bray, Co Wicklow; email: amy@brendanmaloney.ie

Doherty, Martin (deceased), late of Ballyhenry, Shrule, Co Mayo (o/w Co Galway), who died on 21 March 2016. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Eric Gleeson & Co, Solicitors, Shop Street, Tuam, Co Galway; tel: 093 52396, email: carla@ericgleeson.ie

Dunne, Elizabeth (deceased), late of 5 The Avenue, Castle-town, Celbridge, Co Kildare, who died on 6 July 2015. Would any person having knowledge of the whereabouts of any will made by the above-named deceased,

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND**. Send your small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: catherine.kearney@lawsociety.ie. **Deadline for October 2019 *Gazette*: 9 September 2019.** For further information, contact the *Gazette* office on tel: 01 672 4828.

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

or if any firm is holding same, please contact Hallissey & Partners, Solicitors, 41 South Main Street, Bandon, Co Cork; tel: 023 886 5700, email: reception@hplaw.ie; ref 75/94/D2755

Dunne, John Gerard (otherwise Seán) (deceased), late of Oakdale Nursing Home, Tullamore Road, Portarlington, Co Laois, and formerly of 'Red House', Nyra, Rosenallis, Co Laois, who died on 11 June 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Bowler Geraghty & Co, Solicitors, 2 Lower Ormond Quay, Dublin 1; tel: 01 872 8233, email: info@bglaw.ie

Eastwood, Mary (deceased), late of 'Lyttleton', Coolock Lane, Santry, Dublin 9, who died on 12 December 2018. Would any solicitor or person having knowledge of the whereabouts of any will made by the above-named deceased please contact Mason Hayes & Curran Solicitors, South Bank House, Barrow Street, Dublin 4; D04 TR29; tel: 01 614 5000, email: mail@MHC.ie

Farrell, Seamus (James) (de-

ceased), late of Place Road, Elphin, Co Roscommon, who died on 24 June 2019. Would any person having knowledge of any will made by the above-named deceased please contact Pdraig Kelly, Solicitors, Strokestown, Co Roscommon, quoting ref F/10/19; tel: 071 963 366, email: info@pksolrs.ie

Finnegan, Terrance Noel (otherwise Noel) (deceased), who died on 22 October 2018, late of 21 Rathbeale Road, Swords, in the county of Dublin. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Byrne and Company, Solicitors, 11 Malahide Road, Swords, Co Dublin; tel: 01 840 4346, email: reception@byrne solicitors.ie

Frankfurter, Teresa (née McMahan) (deceased), late of 25 Lisleitrim Road, Cullyhanna, Newry, in the county of Down, who died on 6 July 2019. Would any person having knowledge of a will made or purported to have been made by the above-named deceased please contact Arleen Elliott of The Elliott-Trainer Partnership; tel: 048 302 68116, email: arleen.elliott@etpsolicitors.com

Kehoe, Daniel (deceased), late of 3 Allen Dale Park, Baltinglass, Co Wicklow, and formerly of Weaver Square, Baltinglass, Co Wicklow, who died on 5 April 2019. Would any solicitor or person having knowledge of a will made by the above-named deceased please contact Doyle Murphy & Co, Solicitors, Weaver Square, Baltinglass, Co Wicklow; email: info@doylemurphysolicitors.ie

Keating, Mary (deceased), late of 139 Celtic Park Avenue, Whitehall, Dublin 9, who died on 1 June 2019. Would any solicitor or person having knowledge and details of a will made by the above-named deceased please contact Kalanne O'Leary, solicitor, The Cross, Skerries, Co Dublin; tel: 01 849 0896, email: info@kalanneoleary.ie

Keegan, Mary (or se Melia) (deceased), late of 71 Mount Albany, Newtownpark Avenue, Blackrock, Co Dublin, who died on 13 May 2019. Would any person having knowledge of a will made by the above-named deceased please contact Regan



Solicitors, 24 Main Street, Blackrock, Co Dublin; tel: 01 214 3370, email: niamh@reganlaw.ie

Keegan, Richard (deceased), late of 328 Nutgrove Avenue, Churchtown, Dublin 14, who died in or about 10 July 2019. Would any person having knowledge of any will made by the above-named deceased please contact Keith Walsh, Solicitors, 8 St Agnes Road, Crumlin, Dublin 12; tel: 01 455 4723, email: moira@kwsols.ie

Keeley, Martin Lawrence (deceased), formerly of Calle San Jose 42, 29120 Alhaurin el Grande, Malaga, Spain; and 11 Hollies Road, London, England, W5 4UU; and 10 Codrington Mews, London, England, W11 2EH; and Flat 14 at 9 Albert Embankment, London, SE1 7HD, England; Nantenan Glebe, Askeaton, Co Limerick, who died on 2 May 2019. Would any solicitor or person having knowledge and details of a will made by the above-named deceased please contact Michelle O'Connell, Michelle O'Connell Solicitors, 2 Thomond Road, Thurles, Co Tipperary; tel: 0504 23900, email: moconnell@mocs.ie or info@mocs.ie

Langan, Patricia (née Foster) (deceased), who died on 11 May 2019, late of Breastagh, Carrowmore Lacken, Ballina, Co Mayo (formerly of Rusheens, Killala, Co Mayo). Would any person having possession of or knowledge of the whereabouts of any will executed by the above-named deceased please contact Denis M Molloy, Denis M Molloy Solicitors, Bridge Street, Ballina, Co Mayo; tel: 096 21061, email: denismolloylaw@gmail.com

McSherry, Brigid (deceased), late of Aranmore Avenue, Phibsborough, Dublin 7, and 6 Cuala Road, Cabra, Dublin 7, who made her last will and testament on 17 August 1994 at the

offices of Herman Good Wine Stokes & Jay, Solicitors, 22/23 Dawson Street, Dublin 2, and subsequently died on 11 March 2019. Would any person having knowledge of the whereabouts of the original will of the above-named deceased please contact Justin Hughes, Justin Hughes, Solicitors, 89 Phibsborough Road, Dublin 7; tel: 01 882 8583, 882 8628; email: info@justinhughes.ie

Mullins, Owen (deceased), late of 'The Nest', Lackeragh, Grange Con, Wicklow, who died on 18 November 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Una Burns, Stephenson Solicitors, Blackrock, Co Dublin; tel: 01 275 6759, email: una@stephenson-solicitors.com

Murphy, Niamh (deceased), late of 18 Orlagh Court, Knocklyon, Dublin 16, and Apt 16, House 1, Linden Square, Grove Avenue, Blackrock, Co Dublin, who died on 25 April 2019. Would any person having knowledge of a will made by the above-named deceased please contact Dillon Eustace Solicitors, 33 Sir John Rogerson's Quay, Dublin 2; tel: 01 673 1814; file ref: BR127/1; email: enquiries@dilloneustace.ie

O'Hanlon, Oliver (deceased), late of 14 Cuchullain Terrace, Carrickmacross, in the county of Monaghan. Would any person having knowledge of a will made by the above-named deceased, who died on 28 January 2019, please contact Messrs G Jones & Co, Solicitors, Main Street, Carrickmacross, Co Monaghan; tel: 042 966 1822, email: info@gjones.ie

O'Neill, Margaret (deceased), late of 11 Abbey Lawn, Rathculiheen, Ferrybank, Waterford, who died on 27 May 2019. Would any person having

knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Purcell & Kennedy, Solicitors, 21 Parnell Street, Waterford; tel: 051 874819, email: info@purcellkennedy.ie

O'Reilly, Maura (deceased), late of 11 Inveragh Road, Whitehall, Dublin 9, a retired home-maker. Would any person having knowledge of a will made by the above-named deceased please contact MP Black & Co, Solicitors, 2 Main Street, Malahide, Co Dublin; tel: 01 845 0538, email: info@mpblack.ie

Redmond, Russell (deceased), late of Middleton, Courtown, Gorey, Co Wexford, who died on 19 May 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Pauline O'Toole, solicitor, Main Street, Carnew, Co Wicklow; tel: 053 942 3596, email: info@otoole-solicitors.com

Shanks, Sheila Julia (deceased), late of 29 Dunmore Park, Ballymount, Dublin 24, who died on 24 May 2019. Would any person having knowledge of any will made by the above-named deceased, or if any firm is holding same, please contact McKenna and Co, Solicitors, Fitzwilliam House, 4 Upper Pembroke Street, Dublin 2; DX 109065 Fitzwilliam; tel: 01 485 4653, email: lisa@mckckennaand-cosolicitors.com

Smith, Henry (aka Harry Smith) (deceased), late of 80 Elm Road, Donnycarney, Dublin 9, who died on 1 May 2019. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased please contact Spelman Callaghan Solicitors at Corner House, Main Street, Clondalkin,

Dublin 22; tel: 01 457 4522, email: clondalkin@scsolicitors.com

Tobin, Joan (deceased), late of Beechtree Nursing Home, Oldtown, Co Dublin, and formerly of 74 Ballymun Road, Glasnevin, Dublin 9, who died on 15 February 2016. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Ruth Higgins, Gerrard L McGowan, Solicitors, The Square, Balbriggan, Co Dublin; DX 96001 Balbriggan; tel: 01 841 2115, email: info@glmmcgowan.ie

MISCELLANEOUS

Interested in selling your practice? Retiring? Merging your practice?

Partnership, working part-time: contact in the strictest confidence, Managing Partner, Ferrys Solicitors, 15 Upper Ormond Quay, Dublin 7; tel: 01 677 9408, fax: 01 677 9408, email: info@ferrysolicitors.com

ADVERTISEMENT FOR INCUMBRANCES

An Chuirt Chuarda (Midland Circuit Court, Westmeath), record no 07/2015

Florence Beirne (plaintiff)

Patrick Dolan and Amy Moore (defendant)

Pursuant to an order of the Circuit Court made in the above-mentioned suit, all persons claiming to be incumbrances affecting the interest of the first-named defendant, Patrick Dolan, in all that and those the lands at Muckanagh, Kilkenny West, Athlone, Co Westmeath, comprised in folio 1551 Co Westmeath, are to enter their claims in the Court Office, Courthouse, Mullingar, Co Westmeath, on or before 15 October 2019 or,



in default thereof, they will be peremptorily excluded from the benefit of the said order.

Every such incumbrancer holding any security is required to produce same before the county registrar for the said county at the Circuit Court Office, Court-house, Mullingar, in the county of Westmeath, on 16 October 2019, at 2pm in the afternoon, being the time appointed for adjudicating on the claims.

Bridin Concannon (county registrar), 26 June 2019

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*, sections 9 and 10, and in the matter of nos 28-31 Arran Street East and nos 5 and 6 Moneypenny Yard Dublin 7, and in the matter of an application by Cafico Trust Company Limited

Any person having an interest in the freehold or any superior estate in nos 28-31 Arran Street East and nos 5 and 6 Moneypenny Yard, Dublin 7 ('the premises'), take notice that Cafico Trust Company Limited, as holder of the premises pursuant to a lease dated 21 July 1780 between John Jervis White of the one part and Michael Pentoney and John Pentoney of the other part, intends to submit an application to the county registrar for the county and city of Dublin for acquisition of the freehold interest in the premises, and any party asserting that they hold a superior interest in the premises is called upon to furnish evidence of their title to the premises to the below-named within 21 days hereof.

In default of such evidence being received, the above-named applicant intends to proceed with the application before the county registrar for the county and city of Dublin at the end of 21 days from the date of this notice and will apply to the said county registrar for directions as may be appropriate on the basis that the persons

beneficially entitled to the superior interest including the freehold reversion in the premises are unknown or unascertained.

Date: 6 September 2019

Signed: William Fry (solicitors for the applicant), 2 Grand Canal Square, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No2) Act 1978*

In the matter of lands known as all that and those part of the lands of Spiddal West, with the houses and buildings thereon, situate on the road from Galway to Spiddal, measuring in front of said road 210 feet, and in depth from front to rear on the east side, 145 feet, and on the west side, 220 feet, all which said measurements are more or less and which said premises are delineated on the map endorsed hereon and are surrounded by a red line and are coloured red and blue on said map, all which said premises are situated in the barony of Moyculen and county of Galway.

Take notice that any person having any interest in the freehold estate or any immediate interests in the following property: part of the lands of Spiddal West with the houses and buildings thereon situate on the road from Galway to Spiddal, measuring in front of said road 210 feet, and in depth from front to rear on the east side, 145 feet, and on the west side, 220 feet, all which said measurements are more or less, and which said premises are delineated on the map endorsed hereon and are surrounded by a red line and are coloured red and blue on said map, all which said premises are situated in the barony of Moyculen and county of Galway, held under a lease dated 18 May 1909 between the Right Honourable Lord Killanin of the one part and the Most Reverend Francis Joseph McCormack, the Reverend Mark D Conroy and Sr Mary Skerret of the other part, for 250 years at a yearly rent of 1 shilling.

Take notice that Bishop Brendan Kelly, Fr Sean McHugh, and Sr Breege O'Neill (the applicants), being the parties now holding the lands and now entitled to the lessee's interest under the said lease, intend to submit an application to the county registrar for the county of Galway for the acquisition of the freehold interest and any intermediate interest(s) in the aforesaid lands, and any party asserting that they hold a superior interest in the aforesaid lands (or any of them) care called upon to furnish evidence of the title to the aforesaid lands to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicants intend to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Galway for directions as may be appropriate on the basis that the person or person beneficially entitled to all superior interests including the fee simple and freehold reversion in the aforesaid lands are unknown or unascertained.

Date: 6 September 2019

Signed: William F Semple & Company (solicitors for the applicants), Lough Corrib House, Waterside, Galway

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Brendan Healy in respect of the premises known as Barrack Street, Bansha, in the county of Tipperary

Any person having the freehold estate or any intermediate interest in all that and those the dwellinghouse and premises at Barrack Street, Bansha, in the parish of Bansha and townland of Bansha, and barony of Clanwilliam in the county of Tipperary, the subject of a lease dated 2 August 1869 and made between Margaret

O'Meagher and Daniel Moloney for a period of three lives therein named, and for a further term of 31 years from 1 May 1869.

Take notice that Brendan Healy intends to submit an application to the county registrar for the county of Tipperary at the Circuit Court Office, the Court-house, Clonmel, Co Tipperary, for the acquisition of the fee simple estate and all intermediate interests in the said property, and any party asserting that they hold the fee simple or any intermediate interest in the aforesaid property is called upon to furnish evidence of their title thereto the below-mentioned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the said Brendan Healy intends to proceed with the application before the said county registrar at the end of 21 days from the date of this notice and will apply to said registrar for such directions as may be appropriate on the basis that the persons beneficially entitled to all superior interests up to and including the fee simple in the said property are unknown or unascertained.

Date: 6 September 2019

Signed: Kennedy Frewen O'Sullivan (solicitors for the applicant), St Michael Street, Tipperary

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*

In the matter of premises at Coach Street in the parish of Saint Peter's and county borough of Cork, and in the electoral division of Centre B in the city of Cork, which premises are comprised in folio 10424L of the register of leaseholders in the county of Cork, and which premises were part of the premises demised by a lease dated 4 May 1865 from William Harvey, Joseph Charles Harvey, Caleb Abel and Sarah Abel to John Seymour Murphy for the term of 200 years from 25 March 1865, and in the matter of an application by Cork City Council.



Take notice any person having any superior interest (whether by way of freehold interest or otherwise) in the following property or who owns any encumbrance on the following property: the premises the subject of a lease dated 4 May 1865 and made between William Harvey, Joseph Charles Harvey, Caleb Abel and Sarah Abel, of the one part, and John Seymour Murphy of the other part, for a term of 200 years from 25 March 1865 at the yearly rent of £18 sterling, which premises are at Coach Street in the parish of St Peter's and county borough of Cork, and in the electoral division of Centre B in the city of Cork, and which premises are now comprised in folio 10424L of the register of leaseholders in the county of Cork.

Take notice that Cork City Council, which now hold the lessee's interest in the said property, intends to submit an application to the county registrar for the county of Cork for the acquisition of the freehold interest and any intermediate interest and any superior interest in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) including but not limited to any person claiming to be entitled to the lessor's interest of William Harvey, Joseph Charles Harvey, Caleb Abel and Sarah Abel under the said lease, which lessor's interest later became vested in Elizabeth Joyce Helps of Anner, Down, 33 Fairways, Merrow, Guildford, Surrey, England, and Rosemary Goff Clibborn of 8 Church Close, Church Street, Epsom, England, and George Acheson Overend of 8/10 Suffolk Street, Dublin, and Ralph Justely Chatterton Wilson of Anner Park, Clonmel, in the county of Tipperary, are called upon to furnish evidence of their title to the aforesaid premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Cork City Council intend to proceed with the

application before the county registrar for the county of Cork at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises are unknown or unascertained.

Date: 6 September 2019

Signed: Marguerite Gallagher, law agent, Cork City Council (solicitors for the applicant), Law Agent's Office, City Hall, Cork

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and in the matter of an application by Sylvia Boles of 2 Merton Road, Rathmines, Dublin 6, and in the matter of the property known as 1 Tyrconnell Road, Inchicore, Dublin 8

Take notice that any person having an interest in the freehold estate of the property known as 1 Tyrconnell Road, Inchicore, Dublin 8, held under an indenture of lease dated 21 April 1922 and made between Anne McCann and Teresa McCann of the one part and Margaret Sarah Bryan of the other part, for the term of 160 years from 25 March 1922, subject to the annual rent of £3 (former currency), that the applicant, Sylvia Boles, intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest in the aforesaid property, and that any party asserting a superior interest in the aforesaid property is called upon to furnish evidence of such title to the aforesaid property to the undermentioned solicitors within 21 days from the date of this notice, and take notice that, in default of such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice for such directions as may be appropriate on the basis

IS YOUR CLIENT INTERESTED IN SELLING OR BUYING A 7-DAY LIQUOR LICENCE?

email: info@liquorlicencetransfers.ie

web: www.liquorlicencetransfers.ie

Call: 01 2091935

that the person or persons beneficially entitled to the superior interest or interests, including the freehold reversion, to each of the aforementioned properties is unknown or unascertained.

Date: 6 September 2019

Signed: Rutherford's (solicitors for the said Sylvia Boles), 41 Fitzwilliam Square, Dublin 2

In the matter of the Landlord and Tenant (Ground Rents) Act 1967 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978: the persons commonly and collectively known as the Knox Estate and/or the unascertained owner of the fee simple and premises described herein

Any person having an interest in premises at Cornmarket, Ballinrobe, the subject matter of an indenture of lease dated 31 May 1897 and made between Colonel Charles Howe Knox of the one part and George H Hearn of the other part, for a term of 90 years from 1 May 1897 at the yearly rent of £8 (hereinafter called 'the lease').

Take notice that John O'Hare intends to submit an application to the county registrar for the county of Mayo for the acquisition of the fee simple and any intermediate interest in the premises demised by the lease, and any person asserting that they hold a superior interest in the premises is called upon to furnish evidence of their title to the below named within 21 days from the date of this notice.

In default of any such notice being received, John O'Hare

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

Date: 6 September 2019

Signed: Catherine Murphy & Co, Solicitors, Main Street, Headford, Co Galway

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 Northbank Development, Castleforbes Road and Upper Sheriff Street, Dublin 1 – applicant: Northbank Owners Management Company Limited by guarantee

Take notice any person having any interest in the freehold estate (or any intermediate interest) of any of the properties comprising the Northbank Development, Castleforbes Road, Dublin 1 and, in particular comprising, *inter alia*, the following properties: all that and those the premises comprised in and demised by the lease 14 February 1977, Julius Lipschitz to James Gleeson, and therein described as all that and those the dwellinghouse and premises known as 152 Upper Sheriff Street in the parish of St Thomas in the city of Dublin for the term of 190 years from 1 July 1975, being a portion of the prop-



erty demised under a lease dated 17 July 1869 ('the 17 July 1869 lease') between Richard Martin of the one part and Simon Murray, for a term of 300 years, namely all that and those that piece or plot of ground being part of the, and as more particularly shown on the map or terchart thereof in the margin of these presents, which said pieces or parcel of ground contains in the front thereof to Upper Sheriff Street 40 feet in the rear, and from front to rear 85 feet, bound on the north by Upper Sheriff Street, on the south by ground belonging to said Richard Martin, on the east by Fish Hall and on the west by ground belonging to said Richard Martin, be the said several admeasurements more or less. All that and those the dwellinghouse and premises known as no 153 Upper Sheriff Street in the parish of Saint Thomas and city of Dublin, held under an sub-lease dated 12 May 1969 between Julius Lipschitz and Christopher O'Neill for a term of 200 years from 1 January 1969, being a portion of the property demised under the 17 July 1869 lease. All that and those that part of the lands at North Wall Industrial Estate, situate at Sheriff Street Upper in the parish of St Thomas in the city of Dublin, being the premises known as number 157/158 Upper Sheriff Street in the city of Dublin, comprising portion of the premises held under an indenture of lease dated 1 March 1867 ('the 1 March 1867 lease') from William Harte to Richard Martin for a term of 999 years, namely all that and those the aforesaid six Prackfort Lots marked in the original map of the North Strands made in the year [1718] ... as numbers 93, 94, 95, 96, 97 and 98, all situate lying and being on the North Strand aforesaid in the parish of Saint Thomas and county of the city of Dublin, together with the messuages or tenements and all other erections and buildings which may be now or shall be hereafter erected or built on the same lots pieces or parcels of grounds. All

that and those the hereditaments and premises known as 159/161 Upper Sheriff Street in the city of Dublin, also being portion of the premises held under the 1 March 1867 lease. All that and those the premises known as no 2 Castleforbes Road (formerly known as Fish Street), situate in the parish of St Thomas in the city of Dublin, being portion of the lands held under 17 July 1869 lease.

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

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

Date: 6 September 2019

Signed: Beauchamps Solicitors (solicitors for the applicants), Riverside Two, Sir John Rogerson's Quay, Dublin 2

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by Philip Colgan, and in the matter of the property known as 381 North Circular Road, Dublin 7

Take notice any person having an interest in the freehold estate of the property known as 381 North Circular Road, Dublin 7, held under an indenture of lease dated

2 May 1860 and made between Robert Fowler (acting as trustee for the Earl of Blessington) on the one part and Samuel Farlow on the other part, for the term of 193 years from 29 September 1858, subject to an initial annual rent of £12.18.

Take notice that Philip Colgan intends to submit an application to the county registrar for the county and city of Dublin for the acquisition of the freehold interest in the aforementioned property and that any party asserting a superior interest in the aforementioned property is called upon to furnish evidence of such title to the aforementioned property to the undermentioned solicitors within 21 days from the date of this notice.

Take notice that, in default of such notice being received, the applicant, Philip Colgan, 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 in the county and city of Dublin for such directions as may be appropriate on the basis that the person or persons beneficially entitled to the superior interest or interests including the freehold reversion, to the aforementioned property is unknown or unascertained.

Date: 6 September 2019

Signed: Seamus Maguire & Company (solicitors for the applicant), 10 Main Street Blanchardstown, Dublin 15

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of the Post Office at 336 North Circular Road, Phibsboro, Dublin 7: an application by An Post

Take notice that any person having any interest in the freehold estate of the following property: post office at 336 North Circular Road, Phibsboro, Dublin 7.

Take notice that An Post (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 below named within 21 days from the date of this notice.

In default of any notice being received, the applicant intends to proceed with an 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: 6 September 2019

Signed: Hugh O'Reilly, company solicitor; An Post (solicitors for the applicant), General Post Office, O'Connell Street, Dublin 1

In the matter of the Landlord and Tenant (Ground Rents) Acts 1967-1984 and in the matter of an application by Adrian Brett and Claire Gardiner in respect of premises known as 74 North Circular Road, Dublin 7, together with the mews premises at the rear of 74 North Circular Road, Dublin 7

Take notice that any person having a freehold estate or any intermediate interest in all that and those the property at 74 North Circular Road, Dublin 7, together with the mews premises at the rear of 74 North Circular Road, Dublin 7, currently being held by Adrian Brett and Claire Gardiner, the applicants under indenture of lease dated 24 April 1947 and made between Linda Aylward, Mervyn Reigh, Gertie New, Alice M Burns and Frank Ossian New of the first part, Linda Alyward, Mervyn Reigh, Gertie New of the second part, and Roger Greene and Denis Greene of the third part, as lessees under the lease, intend to apply to the county reg-



istrar in the city of Dublin for the acquisition of the freehold interest and all intermediate interests 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 same to the below named within 21 days from the date of this notice.

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

Date: 6 September 2019

Signed: Cosgrove Gaynard Solicitors (solicitors for the applicants), 39 Waterloo Road, Dublin 4

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the property: no 37 Drumcondra Road Lower, Dublin 9 – applicant: Mary Carmel Caulfield

Take notice that any person having any interest in the freehold estate of the following property: all that and those the property known as no 39 Drumcondra Road Lower, Dublin 9, the subject of an indenture of lease dated 9 October 1882 between Francis Butterly of the one part and James Martin of the other part, for a term of 192 years commencing 29 September 1882, subject to the rent of IR£5 thereby reserved.

Take notice that Mary Carmel Caulfield ('the applicant') intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property's and any intermediate interest in the aforesaid premises under condition 2 of section 10 of

the *Landlord and Tenant (Ground Rents) (No 2 Act) 1978*, and any other party asserting 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 with 21 days from the date of this notice.

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

Date: 6 September 2019

Signed: A McCann & Co (solicitors for the applicants), 56a York Road, Dun Laoghaire, Co Dublin

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the property: no 37 Drumcondra Road Lower, Dublin 9 – applicant: Mary Carmel Caulfield.

Take notice that any person having any interest in the freehold estate of the following property: all that and those the property known as no 37 Drumcondra Road Lower, Dublin 9, the subject of an indenture of lease dated 18 October 1880 between Francis Butterly of the one part and William Anderson of the other part, for a term of 194 years commencing 29 September 1880, subject to the rent of IR£20 thereby reserved, but indemnified IR£15 thereof by the remainder of the premises demised by the lease.

Take notice that Mary Carmel Caulfield ('the applicant') intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property and any intermediate

RECRUITMENT

EXPERIENCED CORPORATE SOLICITOR WANTED

Moran & Ryan are seeking an experienced corporate solicitor.

The appropriate candidate will have at least five years' experience of corporate matters, including advising on M&A transactions and drafting standard corporate documents, including Shareholders Agreements.

The appropriate candidate should possess the following attributes:

- Experience of managing their own matters.
- Clear communication skills with colleagues and clients.
- Commercial awareness to facilitate delivery of client's objectives.

The position offers:

- Attractive salary.
- Flexible working hours.
- Profit sharing arrangement for candidate with existing clients.

Moran & Ryan is a growing boutique commercial law firm which intend to work with the chosen candidate for the medium to long term. Interested parties should email reception@moranryan.com.

interest in the aforesaid premises under condition 2 of section 10 of the *Landlord and Tenant (Ground Rents) (No 2 Act) 1978*, and any other party asserting 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 with 21 days from the date of this notice.

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

Date: 6 September 2019

Signed: A McCann & Co (solicitors for the applicants), 56a York Road, Dun Laoghaire, Co Dublin

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Patrick Alfred Levis in respect of the property known as 5 Castle Street, Cork, being currently

held under a lease dated 1 May 1858, James Hogan to Thomas Galvin, for a term of 200 years from 1 May 1858

Take notice that any person having any interest in the freehold estate of the following property: 5 Castle Street, Cork. Take notice that Patrick Alfred Levis (the applicant) intends to submit an application to the county registrar for the city of Cork for acquisition of the freehold interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

In default of any such notice being received, Patrick Alfred Levis 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 Cork 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: 6 September 2019

Signed: Hegarty & Horgan (solicitors for the applicants), Law Chambers, Kinsale, Co. Cork 



DE MINIMIS NON CURAT LEX

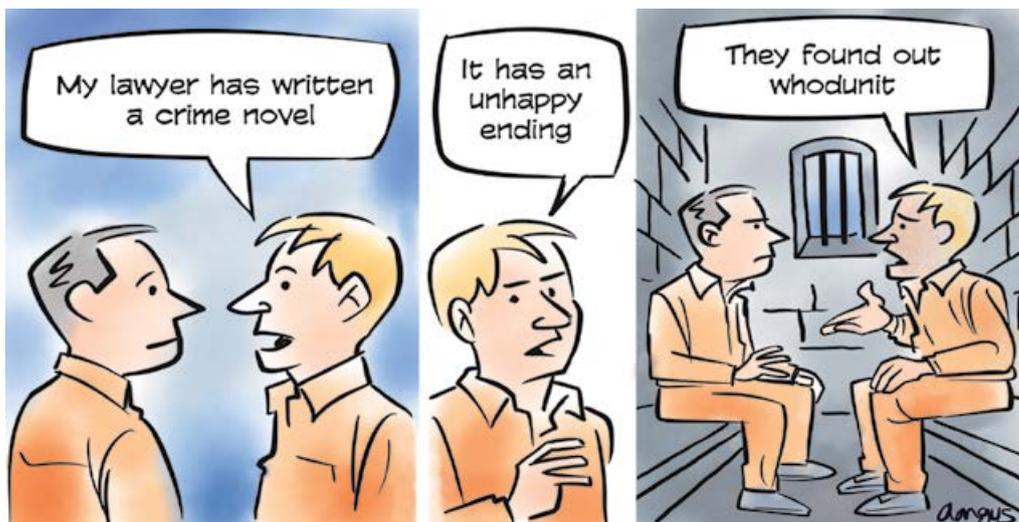
JUDGE HANDS DOWN DECISION ON LAWYER'S CRIME NOVEL

Cork-based solicitor Catherine Kirwan received an unexpected rave review for her first novel at Cork District Court on 8 July, the *Irish Examiner* reports.

Following the successful application for an adjournment of her client's case, Judge Olann Kelleher turned his attention to Catherine's novel: "Congratulations Ms Kirwan. I've just read your crime novel and it is excellent," said the judge.

The judge commented that he appeared to recognise many solicitors in *Darkest Truth*.

Surrounded by numerous legal colleagues, Catherine was quick to clarify that no real-life lawyers were identified by name in the



book. Solicitor Frank Buttimer quipped: "We'd better have the libel lawyers take a look at it."

Before she left the courtroom, Catherine commented that solicitors weren't the only members

of the legal profession to appear in her novel: "Some lovely judges are mentioned too..."

MOTHER CHARGED OVER SON'S 13 SURGERIES AND 323 DOCTOR VISITS

Christopher Bowen (now 10) from Texas underwent 13 major surgeries and 323 hospital and paediatric visits before the age of eight – but there was nothing wrong with him, *The Sun* reports.

His 35-year-old mother, Kaylene Bowen, has been charged with medical child abuse, or Munchausen Syndrome by Proxy. The syndrome is a mental disorder where a person – in this case, the mother and not the child – repeatedly and deliberately acts as if they have a physical or mental illness when they are not really sick.

Among her offences, Ms Bowen convinced doctors that her son Christopher was terminally ill, announced it on Facebook, and was alleged to have had her son fitted with a feeding tube that went directly into his small

intestine, which led to multiple life-threatening blood infections.

At times, he used a wheelchair and oxygen masks while, on other occasions, Bowen claimed he had

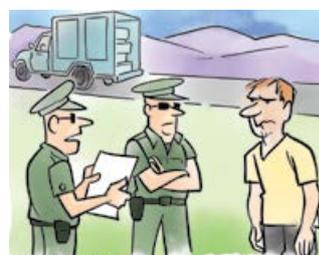
everything from rare genetic disorders, to cancer, to muscular dystrophy. His dad, who is now his sole guardian, had always argued his son was not sick, but said fam-

ily court judges always sided with Ms Bowen. Christopher has no reported medical issues and now requires check-ups only once a year.

PETER PIPER PICKS A PECK OF PICKLED POTTERS

A K-9 unit at a cargo facility in San Diego foiled an attempt to smuggle marijuana mixed in with jalapeño peppers, *NBC* reports. Customs and Border Protection officials said that the 7,560-pound shipment of pot, which was found in a tractor-trailer, had an estimated value of \$2.3 million.

Earlier the same week, at the same facility, customs officers found around 10,600 pounds of marijuana in a shipment of auto



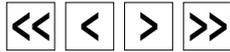
"Peter Piper, you are charged with possessing a peck of illicit pickling substances."

parts. California is now on track to post a record US \$3.1 billion in licensed cannabis sales this

year – up 24% compared with \$2.5 billion of sales in 2018.

Despite being the world's biggest legal pot market, the black market is still thriving in California.

An estimated \$8.7 billion is expected to be spent on illegal cannabis in 2019 – three times the amount of legal sales. High taxes and a refusal by most cities to allow licensed shops make it cheaper for people to buy from street dealers. [E](#)



**MURPHY &
cGONIGLE**



A Professional Corporation



Your Partner in the United States

NATIONAL TIER 1 US LAW FIRM*

LEADING FINTECH AND BLOCKCHAIN PRACTICE

12 partners of Murphy & McGonigle are former officials with the US Securities and Exchange Commission (SEC).

Others have served in important positions at:

- US Department of Justice (DOJ)
- Commodity Futures Trading Commission (CFTC)
- Financial Industry Regulatory Authority (FINRA)
- New York State Department of Financial Services (DFS)

www.mmlawus.com

www.blockchainlawcenter.com

OFFICES IN NEW YORK AND WASHINGTON DC



James A. Murphy
New York Office
jmurphy@mmlawus.com
Tel: +1 212 880 3968



Thomas J. McGonigle
Washington, DC Office
tmgonigle@mmlawus.com
Tel: +1 202 661 7010

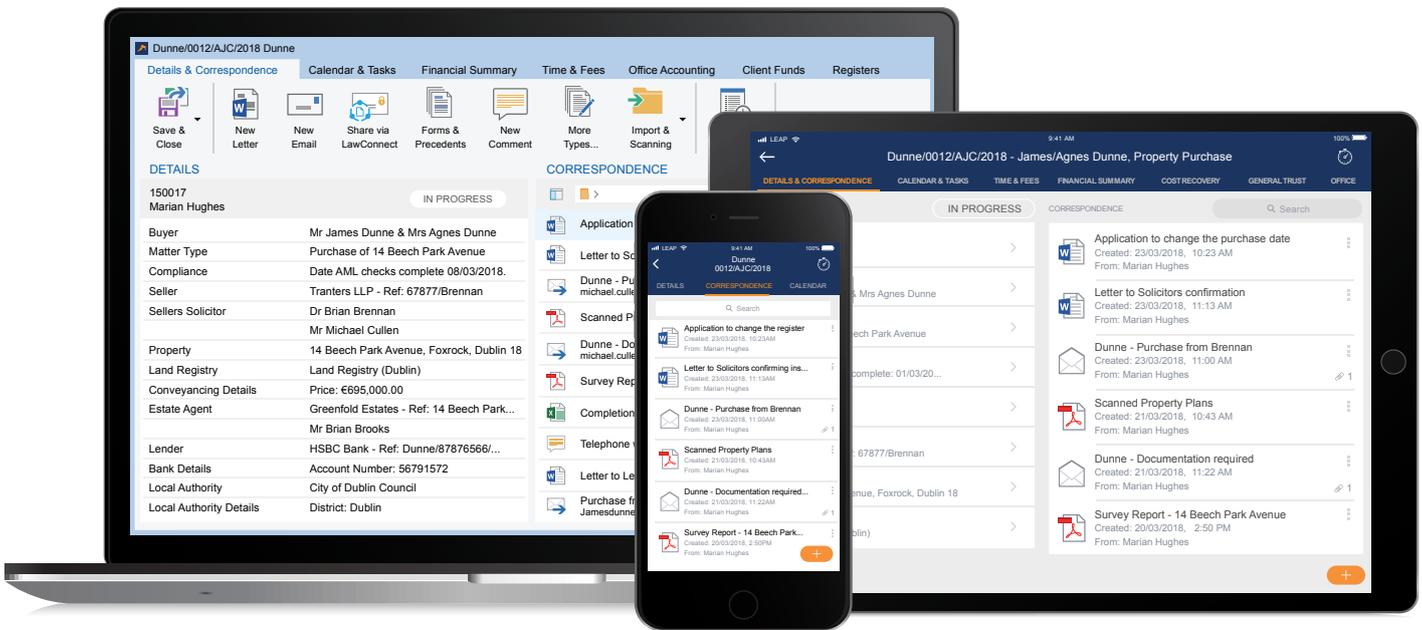
*US News – Best Lawyers





LEAPTM

Everything you need to run a law firm



- ▶ Matter management
- ▶ Legal accounting
- ▶ Time recording
- ▶ Automated legal forms
- ▶ Email management
- ▶ Document sharing
- ▶ Website & SEO
- ▶ Automated billing



Irish Law Awards
2019

leapsoftware.ie