You got a friend
If you go down to the courts today, remember: only share if you don't care

Home on the range
With Brexodus ongoing, we look at the history of mutual solicitor recognition in these islands

Free bird
Reports of the demise of the *Freedom of Information Act* are greatly exaggerated

gazette
LAW SOCIETY

€4.00 **JUNE 2019**

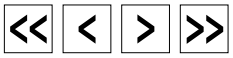
<< < > >>

IMA
MAGAZINE OF THE YEAR

06
9 771393 695029

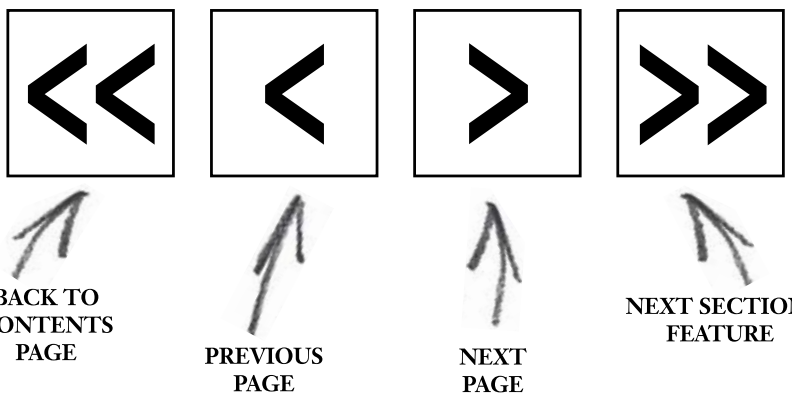
Highway to Hell

From AC to DC: the legalities of electronic scooters



navigating your interactive gazette

LAW SOCIETY



... 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.

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

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

How it works

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

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

Eligible claims

Claimants may avail of the ADR Process if:

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

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

THE BEST OF OURSELVES

It continues to be a busy time. The Calcutta Run took place on Saturday 18 May in Dublin. As I write this, my scars from the 100k cycle are healing. For the 1,500 who walked, crawled, cycled or took part in the soccer or tennis tournaments on this, the 21st year of the event, my sincere and heartfelt thanks. It was a most enjoyable day (see p10).

The Cork Run took place on 19 May, with increased numbers over last year's inaugural event. The lovely weather made for a most enjoyable family day out in St Michael's GAA Club.

Well done to Hilary Kavanagh and her team, and to the many dozens of volunteers, who are essential to the running of the Dublin and Cork events, and the Brooklyn half-marathon in New York. We look forward to hearing how much was raised for the various charities, which will be added to the €4 million raised during the first 20 years of the Calcutta Run.

IronLaw challenge

My predecessor Stuart Gilhooly took a day off from tackling the insurance companies to participate in the inaugural IronLaw challenge. Three solicitors from the South vied against three colleagues from the North, with Ivan Feran (South) and Peter Jack (North) swimming 3.86km. They handed the baton to Stuart Gilhooly (South) and Darren Toombs (North) for a 180km cycle. The final leg was a marathon run (42.2km) from Maynooth to Blackhall Place, with Brian McMullin (South) pitted against Adam Wood (North).

You can support their chosen charity – the Solicitors' Benevolent Association – by making a donation at the JustGiving page of the association, or contact Stuart at stuart.gilhooly@hjward.ie, Brian at bmcmullin@brianjmcmullin.com, or Ivan at ivanferan@feran.ie. Congratulations to those who took part, and thanks to the sponsors of the event.

Social networking

The major social and networking event in the Law Society is the annual dinner. This year, we were honoured with the presence of Taoiseach Leo Varadkar as our guest of honour. Perhaps, on this account, we had one of the largest attendances ever. The Taoiseach referred to the current cost of the insurance controversy, and I questioned why the focus of attention was on the level of personal injury awards in Ireland, compared with England and Wales, when the true focus of attention should be on the levels of premiums in the two jurisdictions.

We took the opportunity of the presence of a number of senior political figures in the room to reiterate that it is of vital importance that, if there is to be a reduction in awards, the Government must also insist on a cast-iron guarantee that premiums will reduce.

On a more positive note, the result of the referendum in relation to divorce, specifically reducing the period of living separately from four years to two, has just been passed overwhelmingly. The Society was very pleased to have thrown its weight behind the 'Yes' vote, the Council having recently adopted the report *Divorce in Ireland: The Case for Reform*, written by Geoffrey Shannon of the Family and Child Law Committee (see p26).

The season for our educational 'cluster' events has kicked off, with great turnouts to date in Carrick-on-Shannon and Portlaoise.

> THE GOVERNMENT MUST INSIST ON A CAST-IRON GUARANTEE THAT INSURANCE PREMIUMS WILL REDUCE

These highly popular CPD events enable colleagues to get together for high-quality presentations, allied with a very pleasant social overlay (see p18 for details of forthcoming clusters near you).

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

PATRICK DORGAN,
PRESIDENT

gazette
LAW SOCIETY

PIC: SHUTTERSTOCK

Volume 113, number 5

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

FEATURES

REGULARS

THE BIG PICTURE

PIC: EPA-EFE/MUHAMMAD SADIQ

THE FACELESS FEW

Afghan security officials parade a group of suspected militants after their arrest in Kandahar, Afghanistan, on 11 May 2019. The 21 suspected militants are accused of planning attacks on government and security forces. They were arrested when Afghan security forces carried out a number of operations targeting militants and criminals in different parts of the country

TAOISEACH ATTENDS ANNUAL DINNER

Taoiseach Leo Varadkar was the special guest of the Law Society at its annual dinner at Blackhall Place on 10 May. Mr Varadkar was joined by other ministers, politicians, and luminaries of the legal world; *(from l to r)*: Michael D'Arcy (Minister of State at the Department of Finance), Mr Justice George Birmingham (president of the Court of Appeal), Seamus Woulfe SC (attorney general), Patrick Dorgan (president, Law Society), Taoiseach Leo Varadkar, Josepha Madigan (Minister for Culture, Heritage and the Gaeltacht), Mr Justice Frank Clarke (Chief Justice), Charlie Flanagan (Minister for Justice and Equality), Michele O'Boyle (senior vice-president of the Law Society), Ken Murphy (director general of the Law Society), Frances Fitzgerald, Senator Catherine Noone and Dan O'Connor (junior vice-president of the Law Society)

An Taoiseach is warmly welcomed on his arrival

National Gallery director Sean Rainbird and National Gallery deputy chair Mary Keane

Ken Murphy, Leo Varadkar and Patrick Dorgan

Members of the Society's senior management team: Mary Keane (deputy director general), Teri Kelly (director of representation and member services) and Barbara Carroll (director of human resources)

President Patrick Dorgan addresses the guests

ALL PICS: LENSMEN; CIAN REDMOND

Josepha Madigan (Minister for Culture, Heritage and the Gaeltacht), Charlie Flanagan (Minister for Justice and Equality) and Frances Fitzgerald TD

Johanna Gill (president, Society of Chartered Surveyors), Patrick Dorgan (president) and Michele O'Boyle (senior vice-president)

Solicitors and legal partners, Dervilla O'Boyle and Michele O'Boyle (senior vice-president) with their mother, Nano *(centre)*

The Taoiseach and President arrive in the Presidents' Hall

Mary Keane (deputy director general) and Michele O'Boyle (senior vice-president)

Ms Justice Máire Whelan (Court of Appeal), John Elliot (director of regulation) and Carol Ann Casey (independent adjudicator)

President Patrick Dorgan welcomes the senior officers of the Law Society of Northern Ireland: Rowan White (junior vice-president), Suzanne Rice (President) and Eileen Ewing (senior vice-president)

Discussions over dinner

Niall Farrell (chairman, Solicitors Disciplinary Tribunal)

Jim O'Callaghan (Fianna Fáil spokesperson on justice and equality), Michele O'Boyle and Patrick Dorgan

The Society's senior officers who hosted the dinner were Michele O'Boyle (senior vice-president), Patrick Dorgan (president) and Dan O'Connor (junior vice-president)

Jennifer Dorgan (chair, Younger Members' Committee), Maria Dorgan and Patrick Dorgan (president)

Brendan Ryan (CEO, Courts Service), Michele O'Boyle and Dan O'Connor

IT'S READY, STEADY, GO FOR CALCUTTA RUN 21!

Over 1,300 athletes got pumped up during the warm-up for the 21st anniversary Calcutta Run on 18 May. The €275,000 proceeds will go to the Peter McVerry Trust, The HOPE Foundation, and SHARE (Cork). The amount brings to €4.3 million the total that has been raised since the run's inception

The *Gazette's* advertising manager Seán O hÓisín as he powers to a 38-minute 5k – his second 5K of the day

Cork-based legal practitioners, their family members and friends pounded the streets on Sunday 19 May. Over 150 athletes played their part in a 5k fun run for local charity SHARE

Taking the Calcutta Run 'global' were ten runners at the Brooklyn Half Marathon in New York including David Hamilton, Kristina Montgomery, Oisín Lambe, Robert Dunn and Eriko Dunn

ALL PICS: JASON CLARKE PHOTOGRAPHY; DAN BUTLER

The first man and woman to cross the line in the 50k Cycle Sportive event were John McCurdy and Teri Kelly (Law Society)

CARRICK CLUSTER'S SHANNONSIDE CHARM

ALL PICS: IVAN KEANEY

Carrick-on-Shannon was the starting point for this year's national cluster programme. Over 160 practitioners attended the two-day event on 9 and 10 May, which was organised by Law Society Finuas Skillnet with significant input from the bar associations of Leitrim, Roscommon and Sligo; *(from l to r)*: Michael Monahan (president, Sligo Bar Association), Mary Rose McNally (Roscommon Bar Association), Michelle Nolan (Law Society Finuas Skillnet), Padraic Courtney (Law Society), Katherine Kane (Law Society Finuas Skillnet), Kieran Ryan (president, Leitrim Bar Association), Brendan Noone (Longford Bar Association), Fiona Gallagher (Sligo Bar Association), David Soden (David Soden, Solicitors), Judith Tedders, Sorcha Hayes and Fergal Mawe (all Law Society)

Colm Conway, Aoife Mc Dermott and Claire Moran

Claire Gilligan, Aisling Lupton and Lynda Lenehan

Ornagh Burke, Conor Maguire and Matthew Brown

Joan Devine, Fiona Gallagher and Michael Butler

Fiona Gallagher, Chara Schultz and Lisa Doyle

Cathal Deacy, John Gordon and Liam Sheridan

Eamon Creed, Eamon McGowan, Aine Kilfeather, Gerry McCanny and Joe Keyes

DSBA YOUNGER MEMBERS UPSKILL

The DSBA Younger Members' Committee held a litigation seminar on 11 April at the offices of Arthur Cox. Hugh McDowell BL updated attendees on the law of contract, focusing on the enforceability of penalty clauses in commercial contracts. Anthony Thuillier BL addressed the topic of Brexit and the service of documents in Britain

Gregory Benson, Mairead McShea (both McCann FitzGerald), Georgina Lanigan (Baily, Homan, Smyth, McVeigh) and Deirdre Farrell (Amorys)

Maeve Delargy (Arthur Cox), Jean Lennon, Emma Falloon (both Fieldfisher Ireland) and Vitalia Sava (Arthur Cox)

Some of the organisers and speakers: Aideen Shanley (Baily, Homan, Smyth, McVeigh), Maeve Delargy (Arthur Cox), Anthony Thuillier BL and Hugh McDowell BL (speakers), Deirdre Nally (Hayes Solicitors) and Joanne Cooney (Fieldfisher Ireland)

Deirdre Farrell (Amorys), Mairead McShea, Gregory Benson (both McCann FitzGerald), Peter Woods (Arthur Cox), Richard Hannify (Slack) and Shahinaz Keating (Dillon Eustace)

UPSKILLING AT LAOIS SYMPOSIUM

PIC: LEAVY PHOTOGRAPHY

Following the success of the Carrick-on-Shannon CPD cluster event on 9-10 May, Midlands-based practitioners were next to benefit at a symposium in Portlaoise on 17 May. The Law Society Finuas Skillnet event was in collaboration with the Laois Solicitors' Association, Kildare Bar Association, Midland Bar Association and Carlow Bar Association. At the event were *(l to r)*: Katherine Kane, Attracta O'Regan (both Law Society Finuas Skillnet), John Elliot (director of regulation, Law Society), Sorcha Hayes (head of practice regulation, Law Society), Paul Keane (Reddy Charlton Solicitors), Susan Bourke (digital marketing strategist), James McElwee (Laois Solicitors' Association), Helen Coughlan (Kildare Bar Association), and Josephine Fitzpatrick (Laois Solicitors' Association)

JUSTICE AND ADDICTION

The Annual Human Rights Lecture will take place at 6pm on Wednesday 12 June at Blackhall Place. The lecture will be given by Judge Craig D Hannah, who is presiding over the first Opioid Intervention Court in the USA and is a chief judge of the Buffalo City Court, New York.

Titled 'Justice and addiction', it will explore an innovative approach (pioneered in the US) to tackle drug addiction. It will examine the intersection of drug policy and the protection of human rights in the criminal justice system.

The lecture will be chaired by Judge Ann Ryan (District Court). Organised by the Human Rights and Equality Committee, in partnership with Law Society Professional Training, the event qualifies for one CPD hour. While free, booking is essential on the Law Society website. It will be followed by a drinks reception in the Blue Room.

PRACTICE DIRECTION ON SUMMONS RENEWAL

Mr Justice Peter Kelly has reminded practitioners about the recently enacted rules on the renewal of summons.

The direction points practitioners to SI 482, *Rules of the Superior Courts (Renewal of Summons) 2018*, which came into operation in January.

The SI makes a number of significant changes to order 8 of the *Rules of the Superior Courts*:

- No original summons shall be in force for more than 12 months from the date issued but, if any defendant hasn't been served, the plaintiff may apply for leave to renew the summons,
- If the master is satisfied that reasonable efforts have been made to serve such defendant, then the summons may be renewed for three months,
- When the 12-month period is up, an application to renew shall be made to the court,
- The court may order a renewal of the original or concurrent summons for three months where it is satisfied that there are special circumstances that justify an extension, if such circumstances are stated in the order,
- If renewed, the summons will be date-stamped and kept in the Central Office.

DIPLOMA CENTRE'S AUTUMN 2019 SCHEDULE

A copy of the Diploma Centre's prospectus for this academic year is included with this issue of the *Gazette*. For additional copies, email diplomateam@lawsociety.ie.

The full autumn programme is now available to view and book online at www.lawsociety.ie/diplomacentre. Early bookings are encouraged, as many courses are in high demand.

NEW PRINCIPAL FOR TIPPERARY FIRM

Marcella Sheehy has taken over the firm Manton Solicitors in Fethard. The firm is now known as Sheehy Manton Solicitors. With Marcella Sheehy as principal and Susanna Manton as associate solicitor, Sheehy Manton will continue to deliver with skill and expertise the high quality legal services that its solicitors are known for.

BULLYING AND SEXUAL HARASSMENT 'RIFE IN LEGAL PROFESSION'

Last year, the International Bar Association (IBA), together with market research company Acritas, conducted the largest-ever global survey on bullying and sexual harassment in the legal profession. Nearly 7,000 individuals from 135 countries responded.

The results provide empirical evidence that bullying and sexual harassment are rife in the legal profession. Approximately one in two female respondents, and one in three male respondents, had been bullied in connection with their employment. One in three female respondents had been sexually harassed in a workplace context, as had one in 14 male respondents.

The report, *Us Too? Bullying and Sexual Harassment in the Legal Profession*, was launched in London on 15 May by IBA president Horacia Bernardes Neto. "We must confront these insidious issues," he declared.

In his capacity as a senior officer of the IBA's Bar Issues Commission, director general Ken Murphy was a member of the working group that produced the report.

Smiling faces, but a very serious topic: speakers at the IBA conference session on 23 May in Budapest on Bullying and Sexual Harassment in the Legal Profession *(front, l to r)*: Kate Davenport QC (president, New Zealand Bar Association), Ken Murphy (Law Society of Ireland), Hilarie Bass (immediate past-president, American Bar Association) and Kieran Pender (IBA researcher and author of the report); *(back, l to r)*: Elizabeth Maria Espinosa (president, Law Society of New South Wales), Alison Atack (president, Law Society of Scotland) and Minna Melender (CEO, Finnish Bar Association)

Shocking but not surprising

Murphy described the report's findings as "shocking, but not surprising". He pointed to the fact that, since the #MeToo movement had erupted globally, some of the world's biggest law firms had been rocked by the departures of senior partners following sexual harassment allegations.

In New Zealand, law students took to the streets to protest against rampant sexual harassment following an incident in one prominent firm. The report details allegations of bullying and sexual harassment in the legal profession on every continent and in every culture.

Pointing to the report's analysis, Murphy said: "In some ways, it is not surprising that bullying and sexual harassment are widespread in the profession. Researchers have identified characteristics that increase the likelihood of such negative workplace behaviours – these include 'where leadership is male-dominated … where the power structure is hierarchical, where lower-level employees are largely dependent on superiors for advancement, and where power is highly concentrated in a single person'. These factors describe many, if not most, legal workplaces," Murphy said.

Sexual harassment is typically defined as involving unwanted sex-related behaviour. As the report states: "While it takes many forms, sexual harassment is predominantly a question of power and not sex."

Not solely 'women's issues'

Murphy points to another key conclusion of the report, namely that, while women are disproportionately affected by both bullying and sexual harassment, these are not solely 'women's issues'. One in three male respondents to the survey indicated that they had experienced bullying, and one in 14 male respondents had been sexually harassed.

On 23 May, just a week after the publication of the report, the annual IBA Bar Leaders' Conference was held in Budapest, Hungary. Murphy organised and chaired the main business session at the conference, which involved a presentation on the report by its author Kieran Pender and an interactive discussion of its contents, led by a panel of presidents of bars and law societies from a variety of continents.

The Law Society's Coordination Committee is planning to lead a major discussion, in the solicitors' profession here, on the report and to implement an action plan to address its findings.

The 126-page report can be accessed on the IBA website at www.ibanet.org/bullying-and-sexual-harassment.aspx.

ENDANGERED LAWYERS

SALAH DABOUZ, ALGERIA

Salah Dabouz is a well-respected lawyer and former president of the Algerian League for the Defence of Human Rights (LADDH). He recently criticised the prosecution of members of Algeria's Mozabite ethnic minority in Facebook posts. He now appears to be the subject of 'judicial harassment' in relation to this exercise of free speech.

He was arrested on 7 April and brought 600km south of his hometown, Algiers, to Ghardaia, and charged. He was released subject to signing in twice, then three times a week, at the court in Ghardaia. This effectively requires him to remain *in situ* and seriously disrupts his life and work.

According to Human Rights Watch (HRW), the case files include a Facebook post in which Dabouz says he will inform the UN's Special Rapporteur on Contemporary Forms of Racism of what he called the "politicised prosecutorial policy of the judiciary in Ghardaia", and its discriminatory prosecutions against Mozabites. The case files include another Facebook post, dated 13 September 2018, in which Dabouz attacks bogus charges against Mozabites and comments that the "judiciary in Ghardaia produces wonders and strange decisions that result in innocent people filling the prisons".

The HRW report states that the charges against Dabouz include incitement to an armed gathering, contempt of court, offence to the president of the republic, defamation of state institutions, attempting to pressure judges on pending cases, forming a criminal gang to commit crimes, incitement to hatred or discrimination, compromising the integrity of the national territory, distributing material harmful to the national interest, defamation of individuals, and communicating secrets to an outside party.

He already had a case from 2016 pending against him. He was charged shortly after denouncing the prison conditions of members of LADDH who were on trial for their alleged roles in ethnic clashes that erupted in Ghardaia from 2013 to 2015.

Dabouz was convicted *in absentia* and sentenced to a year in prison. He applied for a retrial, which was due to start on 21 May.

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

RECOGNISING 'RAINBOW' FAMILIES

'Recognising Rainbow families' is the theme of a forthcoming LGBT+ event that will explore the current legal challenges facing LGBT+ families in Ireland.

The event is arranged by OUTLaw in collaboration with LGBT Ireland and the Lesbian Lawyers' Network, and is being hosted by OneALG (the A&L Goodbody LGBT+ allies network).

It will take place at A&L Goodbody, IFSC, North Wall Quay, Dublin 1, on Tuesday 18 June. The event attracts one CPD hour of management and professional development.

Björn Sieverding (vice-president, Network of European LGBTIQ Families Associations) will offer an overview of the current European landscape. This will be followed by a Q&A panel discussion on the current and future legal situation in Ireland, and will feature Deirdre Duffy (chair of the board of LGBT Ireland), Dr Lydia Bracken (assistant dean, Equality, Diversity and Inclusion, University of Limerick), Fiona Duffy (solicitor) and Declan Harmon (barrister).

Registration will take place at 6.30pm, followed by the panel discussion at 7pm. The event will conclude with drinks and canapés at 8pm. There is no charge to attend but, as spaces are limited, pre-registration is essential. Visit eventbrite.ie (search for 'Recognising Rainbow families'), or contact events@outlawnetwork.ie.

SPRING CLUSTER PROGRAMME KICKS OFF

Carrick-on-Shannon was the venue for the first in a series of Law Society Finuas Skillnet cluster events, which are taking place nationally over the coming months (see p12).

Cluster events represent great value, incorporating education and training, resource materials, and, of course, the all-important CPD hours.

Forthcoming

- 13-14 June: Solis Lough Eske Castle Hotel, Donegal,
- 28 June: the Inn at Dromoland, Ennis, Co Clare,
- 5 September: Ballygarry House, Tralee, Co Kerry,
- 11 October: Glencarn Hotel, Castleblayney, Co Monaghan,
- 7-8 November: Breaffy House Hotel, Castlebar, Co Mayo,
- 15 November: Kingsley Hotel, Cork,
- 22 November: Hotel Kilkenny, Kilkenny,
- 6 December: Shelbourne Hotel, Dublin.

For further details on cluster events, email finuasskillnet@lawsociety.ie or visit www.lawsociety.ie/skillnetcluster.

DIPLOMA IN LAW OPENS TO APPLICANTS

The Diploma in Law offered by the Society's Diploma Centre is specifically aimed at non-legal graduates or professionals who would like to learn more about the law. Now in its fifth year, this well-established course offers great flexibility (one and two-year study options are available) and innovative use of technology to facilitate the attendance of those working full time.

Participants have commented on the opportunities opened up by the course, giving them a greater understanding of their current role or kick-starting an alternative legal career.

Noel Shannon (graduate in 2018) says: "My day-to-day role involves regular interaction with legal practitioners. I started the Diploma in Law to assist in my understanding of the principles of law. The course has surpassed my expectations, and I apply elements of it across all aspects of my role. I would highly recommend the course on the basis that it is practical, the materials are easily accessible, and it provides a solid understanding of the interpretation and application of the law."

Donna Phelan (2016 graduate and current trainee solicitor) says: "The course provided me with all the tools and information required to successfully pass through the FE1 examination process, and continue on to become a trainee solicitor in the PPC. I would highly recommend the diploma to anyone considering a change in career, or with a real interest in Irish law."

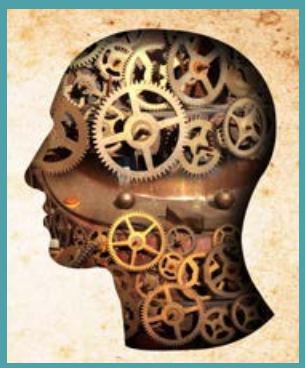
Applications are now being accepted for the next course, which begins on 6 September.

Dr Freda Grealy (head of the Diploma Centre) says: "All our lectures have been available for years as 'lecture-casts', which means students can watch live from their homes or offices, and access the recordings on playback at any time."

For further information, visit www.lawsociety.ie/diplomalaw or email diplomalaw@lawsociety.ie.

WORKPLACE WELL-BEING

INDIVIDUAL WELL-BEING IS GLOBAL WELL-BEING



I would like to dedicate this column to the memory of Scottish barrister Polly Higgins, who advocated that 'ecocide' should be recognised by the UN as an international crime. Polly was an iconic, inspirational figure to many within the ecology movement. Her recent death adds a note of poignancy to the reflections offered here.

An idea gaining traction in some psychological circles is that human health and well-being are not separate to, nor distinct from, the health and well-being of the rest of life on our beautiful planet. It is no longer (if it ever was) a choice between caring for ourselves or caring for the planet. Caring for ourselves necessitates caring for our environment. This global perspective on individual health challenges the dualisms inherent in how workplace well-being is often approached. It recognises that there is no distinction between 'internal' and 'external' processes.

While most people understand the everyday meaning of the phrase 'work/life balance', when we unpack the term, we see another example of a dualism. Work and life are not mutually exclusive. We do not stop living when we enter our office, although it might feel like we do!

When we talk about work/life balance, we are talking about sustainability, or lack of. An individual work/life balance that is unsustainable results in individual burnout and the psychological processes at play parallel the processes underpinning global ecological burnout. They can be seen as individual psychological microcosms of the collective psychological macrocosm.

Viewed through this lens, workplace well-being is not just about the benefits to individual lawyers, law firms, or the legal profession. Workplace well-being is well-being – full stop. Individual well-being is global well-being, and vice versa. Maybe the big idea in tackling global sustainability is to start very small, by focusing on our own personal professional sustainability?

Perhaps a good lawyer is someone who recognises that cultivating individual workplace well-being is also cultivating global well-being and that failing to care for ourselves is also failing to care for the earth. Because, adopting Polly's simple and beautiful sentiment, 'the earth is in need of a good lawyer'.

Matthew Henson is a member of the Law School Psychological Services Team and is in private practice in Kinsale (www.matthewhenson.ie).

LEGAL AID BOARD SOLICITOR FIGURES ARE UP 17% ON 2013

The number of solicitors working at the Legal Aid Board's 30 offices countrywide stood at 150 in 2018, up 17% on 2013, when there were 128 legal officers.

In answer to a Dáil question from Clare Daly TD, Minister for Justice Charlie Flanagan gave the figures for solicitors working in Legal Aid Board centres in each of the past five years. Most numbers are static or show a small increase or decrease.

The number of solicitors employed was static in 2013/14 at 128, rose to 138 in 2015, and grew to 143 in 2016. By 2017, the figure was 146, which increased to 150 in 2018.

The board says that it will carry out recruitment activity at solicitor grade over the next three years.

Philip O'Leary, chairman of the Legal Aid Board

CHANGE TO COMMERCIAL COURT'S SOLICITORS' UNDERTAKING

Solicitors issuing Commercial Court proceedings should note the change to the requirements for the undertaking to be provided by the solicitor for the applicant for admission to the Commercial List, *writes Liam Kennedy (chair of the Law Society's Litigation Committee)*.

As a result of a recent practice direction (HC85 – Commercial List), solicitors must now undertake that, when the proceedings are resolved, they will complete a return of information for the Commercial Court (by means of an *Excel* spreadsheet). The return must be completed within 14 days of the conclusion of the proceedings.

These requirements are in addition to the existing requirements regarding the terms of the solicitor's undertaking.

The object is to capture key information about dates, etc, in order to build a database showing how such cases progress and are ultimately resolved. It is anticipated that the database will provide greater visibility as to how the court is operating, and to identify any blockages or scope for further improvement. The full terms of the practice direction may be found at www.courts.ie in the 'practice directions' section for the High Court.

The Law Society has welcomed the initiative as a means to make the Commercial Courts even more responsive to the needs of commercial litigants, and has suggested possible ways to make the process more user friendly for practitioners.

VOICES OF INNOCENT VICTIMS OF NEGLIGENCE MUST BE HEARD, PRESIDENT INSISTS

The Law Society's annual dinner heard a strong defence of the rights of genuine victims of negligence, who have no organised voice, *writes Mary Hallissey*. Speaking at the annual dinner on 10 May, President Patrick Dorgan clearly spelt out the Law Society position on exaggerated personal injury litigation.

"Fraudulent claimants should go to jail," he said. "Our position on this is unambiguous. We believe the same should apply to any solicitor knowingly involved in bringing a fraudulent claim.

"The question remains, however, what is the true incidence of fraudulent claims, in reality? We believe it is far lower than insurance and other defence-vested interests constantly claim in the media. People make judgments about this based on publicity being given to a very small number of claims being thrown out by judges," he said.

Genuine cases of negligence causing injury – statistically, the overwhelming majority of cases – are rarely if ever reported, giving a false impression of genuine versus fraudulent claims, he added.

The solicitors' profession was fully signed up to the recommendations of the Personal Injury Commission report, he said, which were published in November 2018. This includes the recommendation that the new Judicial Council should review the awards for various injuries in part, and whiplash-type injuries in particular, ultimately leading to judicial guidelines on quantum for such injuries.

Varadkar: thanked the Law Society 'for championing a new legal costs transparency regime'

Dorgan: 'It is perfectly legitimate to urge that the perspective of accident victims should be heard'

Excessive profits

"Care should be taken by the Government in such a process, however, to ensure that there should be no undermining of the separation of powers provided for in the Constitution," Dorgan said, "bearing in mind that the State is very frequently a defendant in personal injury cases."

If there were to be a reduction in awards to personal accident victims, it was vitally important that the Government insist on a cast-iron and, if necessary, statutory guarantee that insurance premiums would reduce.

Otherwise, excessive insurance profits would simply increase, with reduced awards to victims and no benefit whatever to insurance payers.

The president thanked Minister of State Michael D'Arcy, who was present at the dinner, for leading the Government campaign to reduce the cost of insurance for businesses and motorists. The minister had recently met with members of the Law Society who had shared insights and information with him – "information he might not have heard from other quarters".

The Society questioned why the focus was on the level of awards in Ireland, compared with England and Wales. "The true focus should be on the level of premiums in the two jurisdictions," he said. "We produced for Minister D'Arcy research that demonstrates that, when like is compared with like, insurance premiums are actually higher in the UK than they are in Ireland." As a result, the assumed direct link between lower awards and the cost of insurance was highly questionable.

"We insist that it is perfectly legitimate to urge that the perspective of accident victims should be heard. The innocent victims of the negligence of others have no organised voice, unlike other interests, and their perspective should not be constantly ignored," he said.

Legal landscape changes

President Dorgan congratulated the Government and opposition for pushing for regulations enabling legal partnerships to practise with limited liability. These have been adopted by the Legal Service Regulatory Authority and are currently with the Minister for Justice for signing.

"The Law Society has, of course, been looking for these regulations for many years. There is no reason why legal firms, almost uniquely among other businesses and professions, should have their homes and private assets exposed to the vagaries of business," he said.

"We are very glad to hear that the regulations are now awaiting the ministerial pen," he said – jokingly proffering a pen to the minister in question.

Diverse profession

Guest of honour Leo Varadkar told guests that he felt a close attachment to Blackhall Place, as a past pupil of Kings' Hospital school, which was located in the building up until the late 1960s.

One could tell a lot about society by looking at its professionals – lawyers, accountants, doctors and judges, he said. "One of the strengths of the legal profession here in Ireland is its diversity. People from all backgrounds, from all parts of the country, become members of this profession."

Ireland had achieved gender parity in the legal profession in 2015, he said, and its solicitors were modern and embraced change and new technology, and reflected Ireland as it should be.

The Taoiseach praised the Law Society for "championing the introduction of a new legal costs transparency regime". Turning his focus to the family law courts, he said: "We need to make absolute change immediately and provide a much more appropriate and better family court with better buildings," he said.

The Taoiseach added that upgraded IT and better case management must also be embraced, and he thanked the Law Society and the wider legal community for playing their part in the recent period of transition and reform in Ireland.

JUDGE SLAMS 'LUDICROUS' PAY RATES FOR CRIMINAL DEFENCE SOLICITORS

Mr Justice Bobby Eagar of the High Court has called for pay-rate-per-case restoration for criminal defence solicitors.

Speaking at the Law Society's parchment ceremony for new solicitors at Blackhall Place on 8 May, the judge expressed his anger at the derisory rates of legal-aid payments to criminal defence solicitors, which have remained pegged at 'great recession' levels, despite the upswing in the economy.

Mr Justice Eagar pointed to the recent Quirke murder trial and described the amount of money that solicitors were being paid as "ludicrous".

"It doesn't represent the work they do as solicitors, and it's about time the minister took responsibility for that," he said.

He told the new solicitors that they must always look after their clients, who come to them for advice and representation. "The privilege that is so important to the practice of solicitors is that of the client," he said.

Law Society President Patrick Dorgan told the new solicitors that their word was their bond, and that their colleagues should always be able to rely on it: "You have a duty to be as vigorous as you can in the interests of your client, but that never means taking shortcuts with the truth, being devious in any way, misleading colleagues or misleading the court."

ALL PICS: JASON CLARKE PHOTOGRAPHY

Director general Ken Murphy, Miriam O'Callaghan, Mr Justice Eagar and Law Society President Patrick Dorgan

Mr Justice Eagar: derisory rates of legal-aid payments to solicitors is 'ludicrous'

Implacable courtesy

'Implacable courtesy' is solicitor and broadcaster Miriam O'Callaghan's rule of life. "If you treat everybody you meet with implacable courtesy, by and large, it defuses most situations. You feel better about yourself – and they feel totally disarmed by the way in which you treat them."

She advised the newly minted solicitors that following this golden rule would pay them back a hundredfold as they proceeded through their careers.

"I love the Law Society and I love Blackhall Place. I qualified as a solicitor here," she said. "My poor father never got over the fact that I gave it up," she added, explaining that her dad came from a small farm in Co Kerry and did not have the resources to become a lawyer himself, though he would have loved the profession. "When I became a solicitor, he was absolutely thrilled," she said, adding that her parchment ceremony was one of the happiest days of his life.

"Every day of my life, even last night on RTÉ, I still am a lawyer," she said. "What you are taught are incredible powers of reasoning, of being rational, of interrogating argument, of questioning, of constantly trying to see what's right and what's fair.

"It's a privilege to be a lawyer in our society," she continued, "and it's important to give back to the less fortunate members of society.

"Not everyone is lucky enough to become a lawyer. Responsibility comes with being a lawyer, because people normally come to see a lawyer when they are in trouble."

She advised the new solicitors to work hard and always to treat people with kindness and care. "It comes back in boundless oodles of wealth to you," she said.

"Be good to yourselves. Love yourselves, love your friends, love your families, because life is quite short and it's about what you give to it," she concluded. "It's important to live a good life that one can be proud of."

CALCUTTA RUN COMES OF AGE

PIC: JASON CLARKE PHOTOGRAPHY

The Calcutta Run came of age this year, celebrating its 21st anniversary by boosting its chosen charities' coffers with an anticipated €275,000. The amount would bring to €4.3 million the total that has been raised over the past 21 years.

Three charities will benefit – the Peter McVerry Trust, the HOPE Foundation, and SHARE in Cork – to ensure that more homeless people will be taken off the streets and out of temporary accommodation by providing them with homes and their own door keys.

Participants in the Dublin leg of the Calcutta Run on 18 May were pumped up by the thumping music and energetic instructions of the 'Gavin Duffy/1Escape Health Club warm-up', which ensured that everyone was physically and mentally fired up for the Herculean tasks ahead.

President Patrick Dorgan, Charles Coase (Ulster Bank), Teri Kelly (Law Society) and a coterie of 110 cyclists pushed off for their respective 100k and the 50k cycles. Hot on their heels were the 1,100 runners and walkers who took up fancied positions at the starting line for the main event of the day. Among them were the representatives of 177 law firms and various other organisations.

Festive feel

The festive feel dissipated momentarily for the frontrunners, who, like hounds to the hunt, were anxious to hear the starting horn. They set off at a furious gallop, settling down into steady individual rhythms after the first kilometre. Among them were the 13 teams that took part in the DX Firm Team Challenge, with Arthur Cox and Eugene F Collins eventually taking the laurels.

The leisurely runners, joggers and walkers were only too happy to let them at it while they soaked up the heady atmosphere that pervaded Blackhall Place as they set off in high spirits. Many travelled alongside colleagues, family members and friends. Some pushed buggies, while others accompanied eager children.

Their exertions after completing their respective 5k and 10k courses were visible on their faces, with many only too relieved to be breaking through the finishing line as the paucity of training took its toll.

Out the back

After that, it was 'round the back' of Blackhall Place to attend the Finish Line Festival, where athletes and their 'support teams' were treated to the exploits of 110 soccer players from 12 law firms vying for the five-a-side Calcutta Cup. Children, like seagulls, screamed their excitement as they bust guts to win novelty races or sprang onto bouncy castles courtesy of Cuckoo Events, all the while licking their way through pail-loads of Teddy's ice-cream.

Their contented mammies, daddies, aunts and uncles quaffed cold and creamy pints as they soaked up the Indian vibes of Shamrock Bangra or wallowed in the New Orleans' sound of the Guinness Jazz Band. And then there was DJ Lee who spliced and diced the sounds of the musical hit parade, with the Pearl Group providing the pulsating power.

Adding to the atmosphere was celebrated coffee-and-cake supplier CocoBrew and the Keep it Green Eco Shop; Fitzers, who seared and served the tasty burgers and wraps; and Alan Greene and his team from the Law Society who manned the busy bar pumps.

Going global

The following day, Cork did it all over again, with 150 sport enthusiasts playing their part in a 5k fun run for local charity SHARE.

Taking the Calcutta Run 'global' were ten runners in New York who proudly donned their Calcutta Run vests to take part in the Brooklyn half-marathon. A big shout-out to David Hamilton (Zeichner Ellman & Krause LLP), Kristina Montgomery (Shift Central), Oisín Lambe (Szendel PLLC and the Irish American Bar Association of New York), Robert Dunn (Success Academy Charter Schools) and Eriko Dunn.

Member of the Calcutta Run organising committee Cillian MacDomhnaill is very enthusiastic about this year's event: "It's very reassuring for the organising committee to witness a significant increase in the numbers of those taking part – and in the average sponsorship raised by those participants.

"While this reflects a more buoyant economy, it is allied with a growing concern for vulnerable homeless people in Dublin, Cork and Calcutta. I want to say a sincere thanks to everyone who played their part, however big or small, in this year's run.

"I also wish to thank our sponsors: DX, PricewaterhouseCoopers, Pearl Group, The Panel, KL Discovery, Kefron, Behan & Associates, Gwen Malone Stenography, Iconic Health Clubs, and Nature Valley, as well as our many other supporters who are all listed at calcuttarun.com."

To soak up the atmosphere all over again, view the photo gallery at www.calcuttarun.com/gallery.

LLPS AND LPS ARE ON THE WAY

Legal partnership law can be likened to waiting for a bus. You wait 100 years and then two come along at once – 'limited liability partnerships' (changing the rule that partners are jointly and severally liable for all partnership debts); and 'legal partnerships' (permitting barristers to go into partnership with other barristers or solicitors), *writes Liam Kennedy (chair of the Law Society's Litigation Committee)*.

Limited liability partnerships (LLPs) will soon be available in Ireland, offering partners in Irish law firms an opportunity to significantly reduce their personal exposure for debts, obligations, and liabilities incurred by the firm.

Partners will no longer be automatically personally liable for the firm's debts purely because they are a partner (save for fraud and dishonesty). The 'joint-and-several' liability principle of partnership law is thus amended in the case of an LLP.

Vigorous campaign

The Law Society has vigorously campaigned for this reform for many years, aiming to put Irish lawyers on a level playing field with our counterparts in other jurisdictions. Recent justice ministers have recognised the need for reform.

The *Legal Services Regulation Act 2015* duly provided for LLPs. The relevant provisions (and associated regulations) are expected to be commenced in the coming weeks.

Separate provisions for legal partnerships (LPs) – partnerships between solicitors and barristers, or between barristers themselves – will be commenced simultaneously. An LP will also be eligible to apply to become an LLP.

The *Gazette* will feature a detailed article once the final regulations have been published. However, in summary, it appears that the requirements for becoming an LLP are unlikely to be onerous. In order to become an LLP, existing firms will not need to reconstitute themselves. However, they will need to complete an application form and pay the application fee (yet to be determined). They may be required to furnish copies of practising certificates and proof of professional indemnity insurance (PII) cover, for example. The firm's name would remain the same, but with the addition of 'LLP'.

Once registered as an LLP, the firm will be required to notify creditors and clients, alerting them to the change and advising what this means. The regulations will prescribe the information that must be disclosed – principally, the fact of the change to an LLP and its significance. Clients should be reassured that they will still be protected by virtue of mandatory PII and, in the case of an LLP that is a solicitor firm, rights to make a claim on the Law Society Compensation Fund.

LP regulations

The LP regulations will set out the requirements for firms wishing to admit barristers as partners. They must complete an application and pay a fee (yet to be determined).

The LP will be required to implement appropriate standards to ensure that all legal practitioners in the LP conduct themselves professionally and ethically.

The fundamental distinctions between solicitors and barristers will be the statutory prohibition preventing barristers (including barristers in an LLP) from handling client moneys, and the restriction on barristers receiving instructions from a person who is not a solicitor. The act and the regulations will specifically require LPs to ensure that their barristers have no access to client moneys.

The LP must provide information in writing as to what types of services may be provided, and by whom. The required information will be set out in the regulations. In particular, the LP must inform the client that they are entitled to request the services of a barrister from outside the LP – there is no requirement to use a barrister from within the LP.

There will be requirements as to professional standards and obligations to clients, to be observed by LPs, their partners, and employees. While LPs need to be familiar with and to observe these requirements, most, if not all, would appear to mirror the two professions' existing legal and professional requirements.

SOCIETY INTRODUCES NEW ADVERTISING REGULATIONS

Arising from a reasoned opinion of the European Commission, the Law Society has introduced new advertising regulations.

The *Solicitors Advertising Regulations 2019* (SI 229 of 2019) repeal and replace the *Solicitors (Advertising) Regulations 2002* (SI 518 of 2002) and commenced on 1 June 2019. Solicitors are assured that any advertisement that was fully compliant with the *Solicitors (Advertising) Regulations 2002* will also be compliant with the *Solicitors Advertising Regulations 2019*, with no further action necessary.

The new regulations continue to prohibit advertisements that are likely to bring the profession into disrepute or are in bad taste. The regulations also retain restrictions specific to the advertising of legal services in respect of personal injury claims.

The updated regulations will remain in force until they are replaced by regulations to be made by the Legal Services Regulatory Authority pursuant to section 218 of the *Legal Services Regulation Act 2015*. The authority has indicated that it will assume responsibility for the regulation of solicitors' advertising in the first quarter of 2020.

Guidelines to accompany the *Solicitors Advertising Regulations 2019* are available on the Law Society website: www.lawsociety.ie.

Eamonn Maguire is the Law Society's advertising regulations executive and is available to answer any queries in respect of the *Solicitors Advertising Regulations 2019*. Please direct all queries to e.maguire@lawsociety.ie or contact 01 872 4800.

DIVORCE IN IRELAND: THE CASE FOR REFORM

A major new report by the Law Society on divorce law reform was published on 2 May. **Mary Hallissey** reports

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

CLEAR AND PRACTICAL GUIDANCE WITH REGARD TO THE APPLICATION OF THE STATUTORY CRITERIA FOR FAIR DISTRIBUTION, AND THE MAKING OF SUCCESSIVE APPLICATIONS FOR PROVISION, WOULD CERTAINLY BENEFIT BOTH PRACTITIONERS AND CLIENTS ALIKE

Divorce in Ireland: The Case for Reform is a unique piece of empirical research on divorce in Ireland, 23 years on. The report was launched at the Law Society's headquarters at Blackhall Place on 2 May 2019, and was attended by Minister Josepha Madigan, who delivered the keynote address.

At the launch, the Society announced its support for the proposal to remove from the Constitution, in the referendum on 24 May (since passed), the minimum living-apart period for spouses seeking a divorce, with a provision to allow the Oireachtas to amend section 5(1)(a) of the *Family Law (Divorce) Act 1996* to reduce the minimum period to two years. The Society makes 11 recommendations in the report, principally authored by solicitor Dr Geoffrey Shannon of the Law Society's Family and Child Law Committee.

Radical change

Dr Shannon said: "Divorce has now been in operation in Ireland for over two decades. During that time, Ireland has witnessed radical change that has resulted in a more secular, more modern and less traditional society.

"While each case is unique, the current requirement to live apart for a period of four years prior to the institution of divorce proceedings may now be considered too long. It may result in a duplication of legal expenses and protracted proceedings, where parties are involved in both judicial separation and divorce proceedings over time."

According to the Central Statistics Office, the number of divorced people in the State has increased from 35,100 in 2002 to 103,895 in 2016.

Shannon continued: "Undoubtedly, the rise in the number of divorced persons also reflects an increasing acceptance of divorce within Irish society as a remedy

Law Society President Patrick Dorgan, Mary Keane (deputy director general, Law Society), Dr Geoffrey Shannon (author), and Minister Josepha Madigan at the launch of the *Divorce in Ireland* report at Blackhall Place


PIC: SHUTTERSTOCK

to an irretrievably broken-down marriage. The questions facing Ireland now relate to what type of legal framework and practice should underpin its law in this arena. What type of divorce law and practice do we want?"

Difficult questions

"The Law Society has conducted this research in order to answer these difficult questions by looking at the evidence," Shannon continued.

As well as supporting the proposal to amend article 41.3.2 of the Constitution, the Law Society also recommends that:

- A specialised family court structure should be established,
- A definition or definitions of 'living apart' should be developed,
- A set of principles for the determination of ancillary reliefs should be developed, to include all maintenance orders, lump-sum payments, settlements, property adjustment orders, and pension adjustment orders,
- Provision for 'clean-break' divorces should be put in place, in appropriate cases,
- The law should be reviewed to allow for the development of pre-nuptial agreements that are valid and enforceable,
- A review of the issue of maintenance should be prioritised,
- The *Succession Act 1965* should be reviewed, with particular regard to the consideration of 'clean-break' scenarios,
- A coherent legislative system for the recognition of foreign divorces should be drafted,
- Alternative means of dispute resolution should be actively promoted and facilitated, wherever possible, and
- Court reporting and research rules should be amended so that any *bona fide* researcher with a connection to the legal profession can carry out research on family law cases.

Myriad of consequences

Dr Shannon states in the report that "divorce severs a marriage and brings with it a myriad of legal, taxation and personal consequences.

"While difficulties have arisen in some areas of divorce-law practice and procedure, it is also the case that our system of divorce is expressly designed to arrive at the fairest possible outcome for both spouses and the children, following a review of the particular facts and circumstances of each case.

"While criticisms are often levelled at the entirely subjective nature of this exercise, which leaves considerable scope for a variety of outcomes and diverging judicial discretion, it is also the case that such a system is arguably the best approach in the unique circumstances of divorce.

"Within the current framework, however, clear and practical guidance with regard to the application of the statutory criteria for fair distribution, and the making of successive applications for provision, would certainly benefit both practitioners and clients alike.

"The Law Society also believes that practical considerations are at the core of this matter. These are key to the proper functioning of divorce in practice and lie with the provision of adequate resources and facilities to both ensure that cases do not take several years to reach a conclusion and that they do so in settings that befit the private nature of family law proceedings.

"The role to be played by alternative dispute resolution is also important in this context," he concludes. g

DOING DISCOVERY IN THE DIGITAL AGE

Technology specialists Inés Rubio Alcalá-Galiano and Clare Longworth share their tips on how to implement a successful e-discovery system in a legal practice – and the potential benefits of doing so. **Gordon Smith** reports

GORDON SMITH IS A FREELANCE TECHNOLOGY JOURNALIST

HAVING SOLID ORGANISATIONAL GOVERNANCE AROUND INFORMATION IS CRITICAL TO GETTING THE BEST OUT OF E-DISCOVERY TOOLS. IT ENSURES A COMPANY OR FIRM HAS A CENTRAL PLACE TO GATHER ALL OF THE DATA IT HOLDS

For legal professionals, hard-copy files may once have been dominant – but now solicitors' firms are facing the challenge of ever-increasing volumes of digital information from an expanding variety of sources. And this directly affects the speed and effectiveness of the discovery process.

That process still involves email and electronic documents, and a typical project will usually involve hard-copy documents. But more and more types of data are emerging all the time, from voice and 'video-on' applications like Skype and Slack, or even the relatively old technology of text messages. Added to this, the 'internet of things' has come to the fore in the past few years – the term refers to connected sensors in everything from smart devices like Google Home or Amazon's Alexa. They all generate and communicate information that might prove vital in a legal matter.

According to cloud-hosting firm Domo's *Data Never Sleeps 6.0* annual report 2018, there are more than 2.5 quintillion bytes of data created every day (see graphic, p31). The cloud software company estimates that, by 2020, there will be 1.7 megabytes of data created per second for every person on earth. To put this into context, one megabyte is roughly equivalent to 500 typed pages. Against that backdrop, searching for a vital piece of information in a document might quickly feel like hunting for a needle while the haystack keeps getting bigger.

E-discovery software lets law firms and businesses easily organise data, review documents, and carry out digital investigations quickly and in a forensically correct manner. Inés Rubio Alcalá-Galiano (head of information management and incident response at BSI) likens e-discovery and digital forensics tools to the speed of searching for a keyword on a smartphone. "You can centralise everything and search once across a set of data. This allows you to focus on the search and on the quality of the search," she says.

That's particularly important at the stage of early case assessment, because it allows legal teams to assess the main facts and work out a case strategy on that basis.

"It lets you review documents quickly and efficiently by using analytics and advanced searching," adds Clare Longworth (solutions specialist at Relativity, a digital forensics software provider). "Some of the biggest benefits of using software to assist the discovery process is that it improves security, along with the fact that you are no longer printing out reams of paper that can get lost."

Where firms take on e-discovery work with the help of in-house counsel or other experts, it helps to plan in advance for whenever an investigation or regulatory matter might arise.

First organise your data

Having solid organisational governance around information is critical to getting the best out of e-discovery tools. It ensures a company or firm has a central place to gather all of the data it holds, since data scattered across multiple stores is the enemy of an efficient e-discovery process.

Good data governance starts with asking questions like how users are saving information. Are they saving it on their desktop or on a server? Is this information backed up to secure storage? It's important to use a technology that will help you keep this information organised.

"With some cases, you may need to consider back-up tapes. It depends on how the organisation manages its data at the moment," says Alcalá-Galiano.

Out with the old

Data accumulates, so it's essential to put in place a retention period for information that's no longer needed, along with a policy for

PIC: SHUTTERSTOCK

deleting information securely.

Some regulations designate specific periods of time for retaining data, so this should also factored into policymaking. One way could be to take a granular approach that varies the retention period based on the type of data. Digital forensics and e-discovery tools are often available as either on-site versions (to be installed on a server located in the firm's office), or in the cloud. According to Alcalá-Galiano, using the cloud enables greater accessibility to the data and makes it easier to manage.

"The cloud allows you to scale and also to delete. If you have all your data centralised, it's also easier to secure. By having it in one place, it's also easier to have a dashboard view of your information."

Longworth adds that, for smaller firms in particular, it makes more sense to host the software in the cloud, so it doesn't need to allocate its own resources to managing the tool and protecting the data.

"No one small organisation can be an expert when it comes to information security," she says. For that reason, there is a really good argument for using cloud software, because if the information is in Microsoft Azure, for example, "that has a more robust security infrastructure than any single company could afford by itself".

Using the cloud means companies or their IT specialists don't have to budget for hardware or software upgrades – the cloud service provider ensures that all customers access the latest version without needing to do anything.

One of the main benefits of using e-discovery software is the greater speed of analysing results: "If you have a discovery case, or if your information is spread over multiple systems, it takes time to map where the data source was when it was collected. It takes time and money, even before lawyers have started looking at the documents," says Longworth.

Security certification

Alcalá-Galiano points out that growing numbers of legal practices are becoming certified to the ISO27001 information security standard. As part of the process of gaining – and then retaining – certification, companies must undergo regular independent audits to ensure they are managing and protecting data correctly.

In a blog published earlier this year, Longworth pointed out that the e-discovery industry is still evolving. Lawyers can

> TECHNOLOGY WON'T REPLACE LAWYERS. LAWYERS THAT KNOW HOW TO USE TECHNOLOGY WILL REPLACE LAWYERS WHO DON'T

BOOK NOW

LAW SOCIETY OF IRELAND

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.

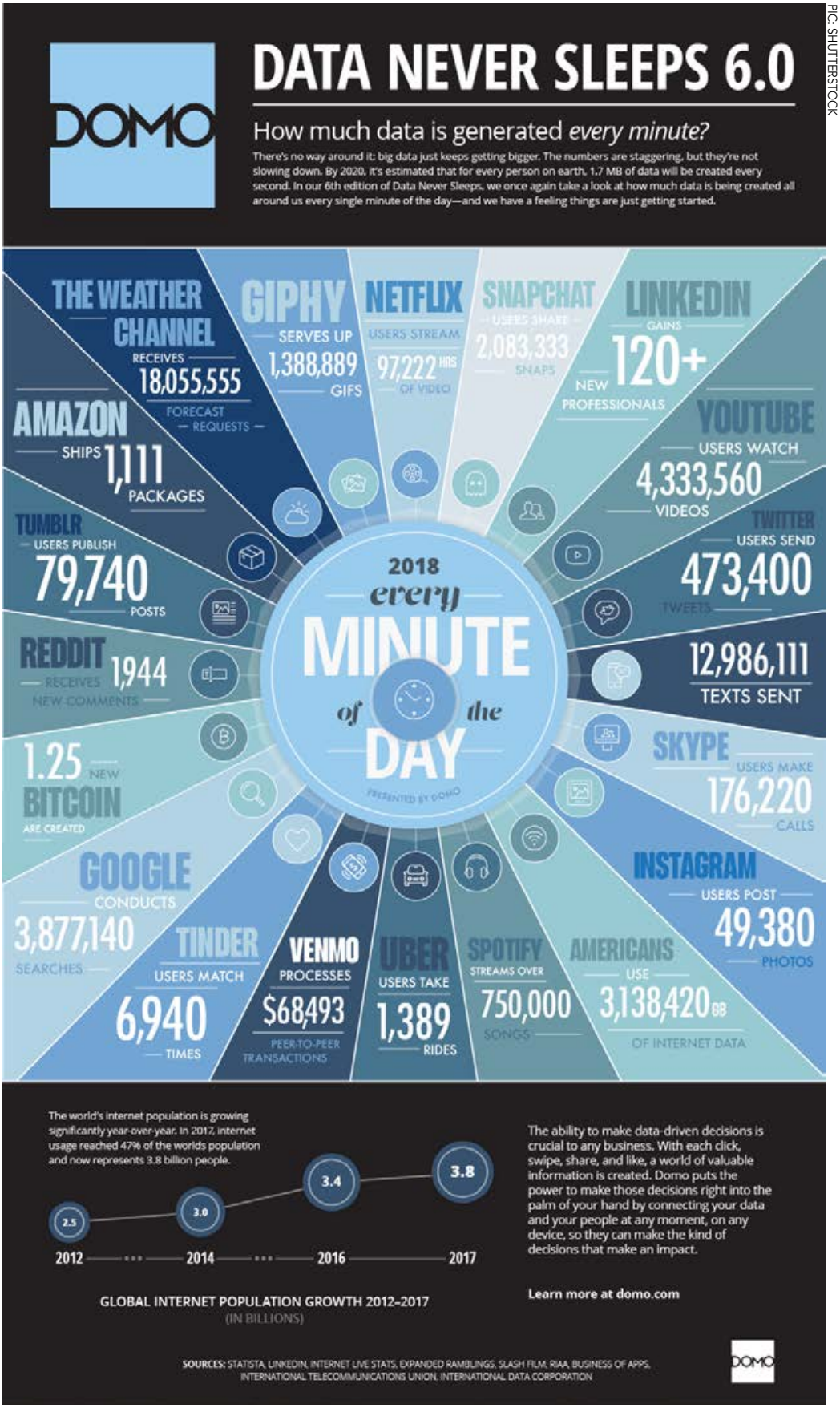
find themselves having to learn quickly while working on a case, but they need different training compared with a litigation support role, or being a project manager on an e-discovery case.

She says that lawyers don't need to know the detail of how to use every e-discovery tool out there, but they should understand the following six points:

- The limitations of the technologies,
- What data types are available and, therefore, what could have a bearing on their case,
- What effect these data types may have on the turnaround time,
- Practical ideas and solutions for some of the many challenges faced by the e-discovery industry, and
- The effect of adaptive and emerging technologies, and
- The mistakes made in past cases and how to avoid them.

Inevitably, some law firms feel reluctant to embrace technology too closely, for fear it could ultimately harm their business model. Longworth tells the *Gazette* she believes that fear is unfounded: "For those firms worried about whether they will start to miss targets about the number of billable hours, that is the wrong way to look at it. You get to the answer faster, and clients see you as an efficient organisation that is using technology wisely and efficiently to reach a successful conclusion."

Alcalá-Galiano believes that an efficient e-discovery system can be a point of competitive advantage for a law firm. She adapts a quote from consultants McKinsey to make her point: "Technology won't replace lawyers. Lawyers that know how to use technology will replace lawyers [who don't]."



PIC: SHUTTERSTOCK

BREXIT: AN OPPORTUNITY FOR IRISH INNOVATION?

Brexit could mean that Ireland will become the home of the European Divisional Patent Court, and the potential economic benefits of hosting this court are enormous, argue **Gerald Padian** and **Adam Mullooly**

GERALD PADIAN IS A DIRECTOR AND ADAM MULLOOLY IS A MARKET ANALYST AT SOLAS OLED

BRITISH CONSULTANTS HAVE ESTIMATED THAT THE COST OF LONDON NOT HOSTING THE ENTIRE CENTRAL DIVISION WOULD BE BETWEEN STG £600 MILLION AND STG £3 BILLION ANNUALLY. THAT'S ECONOMIC GROWTH THAT COULD COME INTO IRELAND INSTEAD

What do flavoured crisps, hypodermic syringes, and the modern tractor all have in common? They were all invented by Irish people.

Ireland has long been an epicentre of innovation, from pharmaceuticals to technology, agriculture to beverages. In fact, we're the 14th most innovative country in the world, according to Bloomberg's Innovation Index. And while it may not seem obvious to most, current Brexit negotiations offer a huge opportunity for Ireland to put a stake in the ground and declare itself a powerhouse of innovation throughout Europe and beyond.

It's now been three years since Britain decided that it was time to leave the EU and, with its exit fast approaching, its exit terms are still ambiguous at best.

Caught up in this ambiguity is the fact that the European patent system was already undergoing a make-over, with a new proposed structure that would put one patent court system in place to serve 25 European countries. This proposal originally identified Paris, Munich and London as the homes to three larger divisional courts but, with Brexit, it's anticipated that Britain won't be in a position to house a court, barring an international agreement.

This creates quite the opportunity for Ireland to fill this gap, as Brexit may well mean that the London court will need a new home.

Patents are one of the most valuable assets a company may own and are essential to supporting a company's technological and economic advancement. Should someone try to steal the intellectual property of a company or business owner, patent courts can help them maintain ownership of their competitive edge.

Should Brexit occur and London become ineligible, moving this divisional patent court to Dublin makes sense for three reasons. First, the proposed London court was intended to handle European patent disputes in the chemical, pharmaceutical and life-science sectors. Ireland has a wealth of local and multinational companies in these sectors – not to mention a significant number of patents filed in these areas. Secondly, there are strong economic benefits projected for the country that houses this court. Third, it would build Ireland's global name recognition as an innovative country.

Global leader

In all, 87% of Irish people employed in the pharmaceutical industry are working on patented medicines. With so many of the world's top biotech and pharmaceutical companies, such as Pfizer, Johnson & Johnson, Novartis and Amgen, operating in Ireland – in addition to home-grown companies like Nuritas and ICON – they should be able to defend the validity of their patents in Ireland. Ireland's innovation-friendly tax policies are well-positioned to attract and retain these types of companies.

The potential economic benefits of Ireland hosting this court are enormous. British consultants have estimated that the cost of London not hosting the entire Central Division would be between Stg£600 million and Stg£3 billion annually. That's economic growth that could come into Ireland instead.

Last year, the number of patents filed by Irish individuals and companies grew by 21% – the highest growth rate in a decade – while the number of Irish patent applicants reached a new all-time record, according to the European Patent Office (EPO) in its annual report. This momentum is a testament to Ireland's strength in innovation, research and development, the EPO said. If the divisional court relocates to Ireland, it would put Ireland on the world-stage for its ingenuity.

Two things have to happen before this court could move to Dublin – Ireland must ratify the EU's treaty for the Unified Patent Court, and also officially

PIC: SHUTTERSTOCK

'I've got a brand-new combine... no, wait...'

apply to offer Dublin as a home to this new court.

The Council of the Bar Association of Milan has already asked the Italian Government to appeal to the EU to make Milan the third seat of the patent court should Britain leave. Yet Ireland's pharmaceutical exports are one-third larger than Italy's, and our pharmaceutical production is the same as Britain – making us far more qualified to house this court. In fact, 10% of all patents filed by Irish businesses and individuals last year were in the pharmaceutical sector, according to the EPO.

Originally, these three divisional courts were to be allocated to the three countries with the greatest number of patents filed within their borders: France, Germany and Britain. However, Luxembourg – a country with a small number of patents filed each year in comparison – was selected to house this court's centralised court of appeals. Given this, there can be little reservation about Ireland's capacity to host one of the court's three central divisions.

Innovation is the lifeblood of any economy and the best way to protect that is through the patent system. If nothing else, Ireland's role in Brexit negotiations has taught us all that, despite Ireland's size, it has a big role to play in the EU.

Britain's looming EU exit gives us a chance to fight for this divisional patent court to come to Ireland. By doing so, we'll pay tribute to the rich history of Irish inventiveness, and support hundreds of Irish businesses that have developed their own intellectual property. This will only encourage further innovation, both home-grown and multinational.

With Brexit, Ireland has the opportunity to become an epicentre for European intellectual property and innovation. Now the question looms: is it an opportunity we'll take? g

---

Solas OLED Ltd is based in Dublin. It helps protect and grow intellectual property, specifically within the OLED industry, which produces the screens of smartphones, tablets, laptops, wearable devices and TVs.

CURRENT BREXIT NEGOTIATIONS OFFER A HUGE OPPORTUNITY FOR IRELAND TO PUT A STAKE IN THE GROUND AND DECLARE ITSELF A POWERHOUSE OF INNOVATION THROUGHOUT EUROPE AND BEYOND

For those about to SCOOT

'To scoot or not to scoot – that is the question!' They're great for zipping to work and avoiding the traffic snarl-ups, but how legal are e-scooters? **Bill Holohan** pushes off

BILL HOLOHAN IS PRINCIPAL AT HOLOHAN LAW, WHICH HAS OFFICES IN DUBLIN AND CORK

PIC: SHUTTERSTOCK

With apologies from one William to another: *"To scoot or not to scoot – that is the question! Whether 'tis legal on the road to use two-wheeled things that do not cost a fortune, or to take two wheels against a sea of vehicles, and breach the law to use them?"*

Any commuter cannot but have observed people using electric scooters and bikes, commonly referred to as e-scooters and e-bikes, zipping along, often at speed, in the bike lane, on the road, or on the footpath.

They can weigh between 10kg and 20kg and are easily stored when folded – ideal for commuters. Instead of sweating away on a bike or walking long distances, commuters can swoosh to their destinations, fold up their transport, and put it under their desk or workspace for the day. After charging for a few hours, these e-scooters and e-bikes can travel at up to 30km per hour for a range of up to 20km. No kid's toy, then.

The problem is, though, that mixing speedy e-powered vehicles with pedestrians, conventional bikes, motorcycles, buses, lorries and cars on Irish roads can be dangerous. To put this into context, accident rates reported by the Road Safety Authority (RSA) for 2018 show that a total of 42 pedestrians, 15 motorcyclists and nine pedal cyclists died on Irish roads. How long before users of e-powered vehicles start featuring in these statistics?

Depending on whether you view e-vehicles as a blessing or a plague, the thought may have crossed your mind as to whether or not these are, in law, any different to a moped or motorbike and, consequently, whether the users require a licence, tax and insurance? To make matters worse, if you have been using one without tax, insurance, etc, it may have crossed your mind that it is illegal to ride a mechanically powered vehicle in bike lanes – a heartbreak for the devotee of the e-scooter/e-bike.

There are commuters using electric scooters daily who are probably not conscious of the fact that they may be required to register the scooter, wear a helmet, and have a licence (see section 22 of the *Road Traffic Act 1961*), tax (electrical vehicles are taxed at a flat rate of €35 per annum) and insurance (see section 56 of the *Road Traffic Act 1961*).

AT A GLANCE

- Commuters using electric scooters are probably not conscious of the fact that they may be required to register the scooter, wear a helmet, and have a licence
- Vehicles classified as mechanically propelled open up a host of obligations under the *Road Traffic Acts*
- The definition of 'MPV' can depend very much on whether you scoot or pedal, and on whether the vehicle can be totally propelled by its engine, without physical intervention
- The Minister for Transport has asked the RSA to look at how such vehicles are regulated in other EU states – and their road-safety implications when used on public roads

PIC: SHUTTERSTOCK

On 24 May 2017, *KildareNow.com* reported a hearing in the Naas District Court. A cyclist who had a tiny 48cc petrol engine attached to his bicycle believed that it was not a mechanically propelled vehicle (MPV). Consequently, he understood that he was exempt from the requirements to have a driving licence, tax, and insurance – but nonetheless appeared before the court for having used it. (He may have felt that he was safe to do so, given that the then Minister for the Environment Noel Dempsey, in 2002, had declared that electric bicycles were not subject to the requirements for tax and insurance.)

The facts of the case were that, in June 2015, gardaí had found the cyclist unconscious on the ground, several feet away from his bicycle, with a concentration of 203mg of alcohol per 100ml of breath. The gentleman had previous convictions for drink-driving and was serving a ten-year ban on driving. His solicitor explained that he had purchased the powered bicycle online, with the advertisement for sale, specifying that it was not an actual MPV. Nonetheless, Judge Desmond Zaidan convicted and fined him on the basis that it *was* an MPV.

Flick of the switch

The *Road Traffic Acts* define an MPV as including a vehicle with electrical propulsion. And as soon as something is classed as mechanically propelled, it opens up a host of obligations, as drivers must meet statutory requirements laid out in the *Road Traffic Acts*.

The MPV will need to have brakes, steering, audible warning devices (such as a horn or a bell), headlamps, rear lighting and reflectors. These are usually found as standard equipment on electric scooters, bikes, cars and other modes of transport.

In fact, and in law, whether or not something of that nature is an MPV all comes down to whether you are prepared to 'scoot' or pedal. Depending on your answer, as the individual referred to above found out, you could end up committing a criminal offence. The facts are that the law applies differently, depending on whether you need to scoot or pedal – or more specifically, on the technical specifications of particular models.

If they do not need to 'push off' – scoot or pedal as the case may be – in order to get the scooter or the bike in motion, and instead relies entirely on the motor to do that, then, according to Irish law, it is regarded as an MPV. If an electric scooter requires pedalling or an initial manual scoot to take off, and the motor only kicks in once already in motion, or to maintain it, it is not considered an MPV.

Kicked in the teeth

As the Garda Press Office puts it: "This office understands [the distinction] is whether they are powered solely by an

> THERE ARE COMMUTERS USING ELECTRIC SCOOTERS DAILY WHO ARE PROBABLY NOT CONSCIOUS OF THE FACT THAT THEY MAY BE REQUIRED TO REGISTER THE SCOOTER, WEAR A HELMET, AND HAVE A LICENCE, TAX (ELECTRICAL VEHICLES ARE TAXED AT A FLAT RATE OF €35 PER ANNUM) AND INSURANCE

electric or mechanical means or assisted, that is, using human power to initiate movement."

Sgt Alan Frawley of the Garda Press Office said in 2017 that the key issue was whether bicycles continued to move without pedalling. Most electric bicycles on sale in Ireland are classed as 'electrically assisted bicycles' because they need the user to keep pedalling for the bike to keep moving – the electric motor only acts as a boost to pedalling, and the bicycle will slow down and stop after pedalling stops.

Sgt Frawley said: "The key to whether or not a vehicle is a mechanically propelled vehicle for the purposes of the *Road Traffic Act 1961* lies with its means of propulsion. Each vehicle has to be looked at on its own merits. Thus, if a vehicle is or can be propelled other than manually, it is a mechanically propelled vehicle for the purposes of the 1961 act.

"If a vehicle has a source of power that only aids a vehicle's manual propulsion and cannot propel the vehicle on its own, then the vehicle is not an MPV for the purposes of the 1961 act. Into this category would fall an electrically assisted bicycle. This is because the vehicle stops when the pedalling stops."

He added: "In relation to the electric units, electrically assisted pedal cycles are commonly referred to as 'pedelecs' to describe bicycles with electric motors or batteries too small to drive them without pedalling. Their speed is limited to 25km per hour and the motor cuts out if pedalling ceases. In contrast, mopeds can move without assistance of pedals. For guidance, if an electric bike can be operated without pedalling, it is a moped, that is, a low-powered motorcycle, and is subject to motor tax."

PIC: SHUTTERSTOCK

Assuming that the gardaí have the correct interpretation, then electric bicycles would not need to be taxed and insured, and one could ride them in bikes lanes and would not need a licence to ride them.

High voltage

However, Conor Pope, writing in *The Irish Times* in March 2019, reported that a Department of Transport spokesman had told him that a legal requirement to tax and insure e-scooters, e-bikes and e-skateboards could not be complied with, as it was not possible to insure such MPVs.

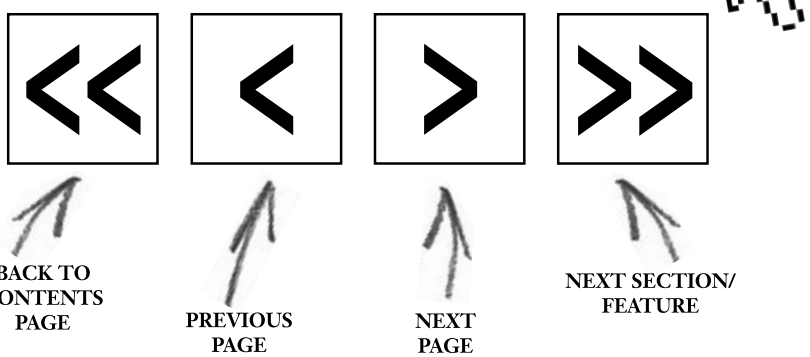
The report quoted the department spokesman as saying: "They are not considered suitable for use in a public place." He also said that Minister for Transport Shane Ross had asked the RSA to research how such vehicles are regulated in other countries, particularly other EU member states, as he was "keen to understand the road-safety implications of the use of such vehicles on public roads, especially when interacting with other vehicles".

The spokesman said that once the research was completed, a decision would be taken on whether to amend existing legislation, the department needing "to be satisfied that permitting such vehicles on our roads will not give rise to safety concerns, both for the users themselves and for all other road users, including

Have you played with us yet?

Because we have **issues** – and clickable things

gazette
LAW SOCIETY



In our digital issue, you can instantly access links to referenced cases and legislation, as well as pictures, video and audio. For best results, we recommend that you download the issue to your computer or device – it only takes seconds.

Go on – push our buttons. It's fun

You can find it at **gazette.ie** along with our daily news site and other stuff

FOCAL POINT

RIDE ON

For an e-bike/battery scooter to be registered, it will need an electronic certificate of conformity (e-CoC) from the manufacturer. If the manufacturer cannot supply an e-CoC, this means your e-bike/scooter can only be used on private property or purpose-built tracks. For more information in relation to registration, see www.revenue.ie and search for 'VRT'.

Electrically assisted bicycles are currently restricted to 25km/h to prevent the user from going faster. A parliamentary question asked by Clare Daly in July 2015 was responded to by stating that the Minister for Transport had no current plan to increase the speed allowed. The 25km/h (15mph) speed limit and the engine size limit of 250 watts were set in 1978.

Section 3 of the *Road Traffic Act 1961*, defines 'mechanically propelled vehicle', subject to subsection (2) of this section, as "a vehicle intended or adapted for propulsion by mechanical means, including

a) A bicycle or tricycle with an attachment for propelling it by mechanical power, whether or not the attachment is being used,
b) A vehicle, the means of propulsion of which is electrical or partly electrical and partly mechanical, but not including a tramcar or other vehicle running on permanent rails."

Under section 11 of the 1961 act, the minister can make regulations regarding specifications of MPVs.

In fact, and in law, with the exception of motorised wheelchairs, MPVs are not permitted in bike lanes or on footpaths, and must be used on the road.

It is illegal for persons under the age of 16 to ride an MPV in a public place. If the bike is not an MPV, there is no law against children riding it in a public place.

There is no law against engine/converter kits on push bikes/scooters. However, the addition of an engine may result in the bike being treated as an MPV, which means it'll have to be registered, taxed, insured, etc.

Electrical vehicles are taxed at a flat rate of €35 per annum. Motor tax is an annual duty payable on motor vehicles (subject to exemptions) in Ireland for use in public places. A new system for MPVs was introduced on 1 July 2008, with tax rates based on the carbon dioxide emissions of the MPV while in operation. Prior to this, tax rates were assessed on engine displacement.

Motorcycles are all taxed the same, regardless of engine displacement, with a special rate for electrically powered cycles. Rates can be found at www.dttas.ie (search for 'motor tax rates 2016').

cyclists, pedestrians and motorists".

In the same article, AA spokesman Barry Aldworth called for "greater legislative clarity", as such motor transport would have the "potential to act as an additional mode of transport, particularly in urban areas".

The RSA, in fact, provides a page on its website of 'FAQs on e-bikes, pedelecs or battery scooters'. This clarifies that an electric bicycle, also known as an e-bike or booster bike, is a bicycle with an electric motor, with there being many types of e-bikes – from e-bikes that have only a small motor to assist the rider's pedal-power (pedelecs) to more powerful e-bikes that don't need to be pedalled at all (power on demand), unless the rider wishes.

It also states that an electric/battery-powered scooter is a small platform with two or more wheels, which is propelled by an electric motor, and that, besides the motor, the rider can also propel the electric scooter forward by pushing off the ground.

The RSA statement says that, regardless of the type of bike, the rule is as follows: "If it can be powered by mechanical or electrical power alone (that is, it can go without you pedalling or scooting it), then it is considered to be a mechanically propelled vehicle … Therefore, it must be roadworthy, registered, taxed and insured. The driver of the vehicle must hold the appropriate driving licence and is obliged to wear a crash helmet." g

A '15 seconds to curtain' Scooter

LOOK IT UP

LEGISLATION:

- *Road Traffic Act 1961*

LITERATURE:

- 'Electric cycles not liable for tax, declares Dempsey' (*The Irish Times*, 4 March 2002)
- 'FAQs on e-bikes, pedelecs or battery scooters' (www.rsa.ie)
- Louise McCarthy, 'Naas Court today sees man banned for being drunk while cycling' (KildareNow.com, 24 May 2017)
- *Motor Taxation Rates of Duty on Motor Vehicles (effective 1 January 2016)*, Department of the Environment, Community and Local Government (December 2015)
- Conor Pope, 'Law means electric scooters are a non-starter on Irish roads' (*The Irish Times*, 9 March 2019)

In your face

Social-media evidence is now being regularly used in personal injuries cases. All participants to prospective cases need to follow the dictum 'only share if you don't care'. **Matthew Holmes** sets his privacy to 'stun'

MATTHEW HOLMES IS A DUBLIN-BASED BARRISTER AND AUTHOR OF *EVIDENCE* (ROUNDHALL, 2019)

Have you been seriously injured in an accident that wasn't your fault? Yes? Well then, you probably shouldn't publish photographs of you taking part in a triathlon on your Facebook page if you're going to take a claim.

Social media has gotten a lot of 'likes' in Ireland. In June 2018, it was reported by *Irish Tech News* that 71% of Irish people use Facebook and Instagram. As a result, evidence taken from social media is increasingly being shared – in the courts. Social-media evidence is now being relied upon in everything from murder cases to routine personal injuries cases. Practitioners, take note.

Insurers now hire investigators who search through plaintiff's social media for evidence that might show their injuries are fraudulent or exaggerated. Claims for emotional damage or a reduced social life may be defeated if someone's Facebook page shows them enjoying life, taking part in social activities, or generally having a good time.

AT A GLANCE

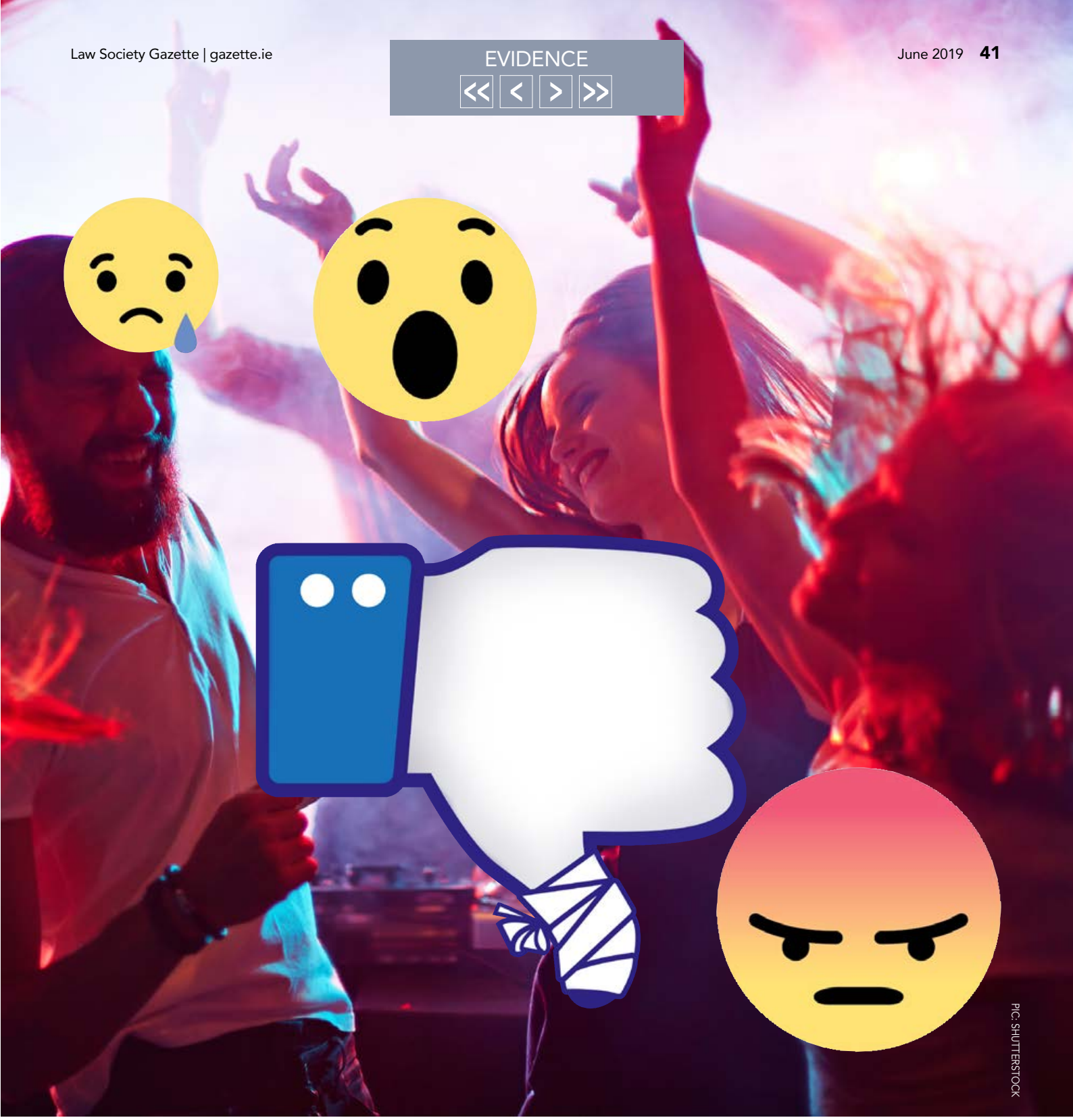
- Insurers now hire investigators who search through plaintiff's social media for evidence
- However, there is little jurisprudence on proving social-media evidence in civil cases
- Social-media evidence is unlikely to be excluded on the basis of privacy settings

Damages can be reduced or claims dismissed entirely where a supposedly chronically injured plaintiff's Facebook page shows them taking part in sport or some other types of strenuous physical activity. The days of investigators needing to get a warrant to show that someone who claimed to be disabled had been wrestling alligators in their spare time are over, now that people are prepared to broadcast it to the world themselves.

In one high-profile Circuit Court personal injuries case, evidence was put to a plaintiff that he had taken part in the Gaelforce West Triathlon five weeks after he supposedly suffered incapacitating injuries. Gaelforce West is a one-day adventure race that involves kayaking, a 58km cycle and a 15km run up Croagh Patrick. His response was: "Oh, I see you've been looking at my Facebook." His claim was dismissed because of this evidence.

Virtual reality

In *Prior v Dunnes Stores* – a slip-and-fall case – a YouTube video of the plaintiff performing an energetic dance routine was admitted, as were pictures from her Facebook page of



PIC: SHUTTERSTOCK

> THE DAYS OF INVESTIGATORS NEEDING TO GET A WARRANT TO SHOW THAT SOMEONE WHO CLAIMED TO BE DISABLED HAD BEEN WRESTLING ALLIGATORS IN THEIR SPARE TIME ARE OVER, NOW THAT PEOPLE ARE PREPARED TO BROADCAST IT TO THE WORLD THEMSELVES

FOCAL POINT

MAREVA INJUNCTION

A *Mareva* injunction is an injunction that the court may grant to restrain a defendant, who is not within the jurisdiction but who has assets within the jurisdiction, from removing these assets from the jurisdiction pending trial of an action for a debt due. So called after *Mareva Compania Naviera v International Bulk Carriers*.

her holding bowling balls in each hand and punching a virtual-reality boxing machine. As a result, the court was of the view that she did not have serious ongoing problems, and her damages were reduced.

It was reported in December 2015 that a woman had her personal injuries claim dismissed as a result of pictures taken from her Facebook page. She had claimed she was never a member of a gym, and had to give up work due to the pain of her injuries. Photos from her Facebook page showed her after having climbed to the top of Bray Head, exercising in a gym, and even posing in a bikini at international body-sculpture competitions.

However, in *Cahill v Glenpatrick Spring Water Company Ltd*, the defendants tried to rely on photographs taken from Facebook of the plaintiff at a theme park, where patrons are advised not to ride with a back or neck injury, or ailment or pre-existing condition. The court here found that the plaintiff had *not* exaggerated his injuries.

Facebook can also be used by the defence to prove relationships between plaintiffs. In 2015, David Ward and Lyndsey Ivory were both sentenced to two years imprisonment, with one suspended, after they took personal injuries actions against FBD insurance, where they denied knowing each other. An investigation on their Facebook pages revealed they were, in fact, married.

PIC: SHUTTERSTOCK

In other unrelated cases in July of 2018, six joined cases were thrown out by Judge Patrick Quinn when it was revealed that the parties involved were friends on Facebook and had been involved in similar road-traffic claims previously.

Proving social-media evidence

As yet, there is little jurisprudence on proving social-media evidence in civil cases. In criminal cases, the authorities can rely on the provisions of the *Criminal Justice (Mutual Assistance) Act 2008* in order to obtain Facebook data from America. This was done in *DPP v Moran*, where the defendant made admissions to murder in a private Facebook conversation. Unless a civil action is joined to a criminal case, then this act cannot be relied upon in civil cases.

Proving Facebook evidence in civil cases may be something that the courts will send a direct message about in the future. Anyone can set up a Facebook page under a false name, which may make such evidence difficult to authenticate. This issue is less likely to arise in cases where photographs and videos are taken from Facebook. If a photo clearly shows a supposedly injured plaintiff wrestling bears or climbing Mt Everest on his holidays, then its source is not likely to be an issue.

In cases where the defence wants to rely on something that is written, such as a status, message or comment, then this may be harder to prove. In *Danagher v Glantine Inns*, the plaintiff claimed he had developed post-traumatic stress disorder (PTSD) after he was spear-tackled by security staff at a nightclub and then dragged out by the neck. He claimed that, as a result, he could not go out or take part in sports.

His Facebook page listed his favourite activities as playing hurling, rugby and Gaelic football, and his favourite music as "anything that will get me dancing and hitting the roof". The judgment also quotes the following excerpt from his Facebook page: "Ya I tink we mit be going out alrite, ul probably come across me drunk on a dance floor somewhere during d night anyways." He had even taken part in a parachute jump after the injury. His claim was dismissed as a result.

There are a number of ways in which such Facebook evidence can be proven. The most obvious way is having the witness accept in cross-examination that it is theirs. In *Busher v Altona Taverns Limited t/a The Old Forge*, a slip-and-fall case, the High Court noted that photos taken from Facebook were not proven, but that the plaintiff accepted that she was shown ice-skating twice.

In cases where a witness does not accept that the evidence is theirs, the situation is more complicated. There is some American jurisprudence on this. Circumstantial evidence could be relied upon to prove this on the balance of probabilities, including whether the evidence has the witness's personal details, such as name, date of birth,

> HIS FACEBOOK PAGE LISTED HIS FAVOURITE ACTIVITIES AS PLAYING HURLING, RUGBY AND GAELIC FOOTBALL, AND HIS FAVOURITE MUSIC AS 'ANYTHING THAT WILL GET ME DANCING AND HITTING THE ROOF'

PIC: SHUTTERSTOCK

address, photograph, location, links to other social media, or any other characteristics that could tie it to the witness in question.

Private investigations

Social-media evidence is unlikely to be excluded on the basis of privacy settings. In *Gervin v Motor Insurers Bureau of Ireland*, it was found that the plaintiff's suggestion that the evidence had been obtained in breach of her privacy settings was not credible, since, at the relevant time, she did not have a privacy restriction on her Facebook account.

In the Northern Irish case of *Martin and ors Gabriele v Giambrone P/A Giambrone & Law*, it was found that privacy settings on a Facebook post did not matter in relation to admissibility. Here, the claimants were suing their former solicitors. After a hearing, the defendant posted the following on his Facebook page: "They thought they knocked me down, now they will see the full scale of my reaction. F*** them, just f*** them. They will be left with nothing."

The claimants then sought a *Mareva* injunction to prevent him from 'leaving them with nothing'. The defendant sought a court order that this Facebook post would be inadmissible in both the *Mareva* injunction and the main proceedings relating to the failed investments. His argument that they were confidential because of the privacy settings was dismissed.

Social-media evidence is now being regularly used in personal injuries cases. Plaintiff clients should now be warned, as a matter of routine, that they may find themselves with followers they don't want, and about the effect this could have on their case. Otherwise, a budding influencer may find that the only things liked and shared are shared with the courts. Nobody wants to influence their case into an order for costs against them. g

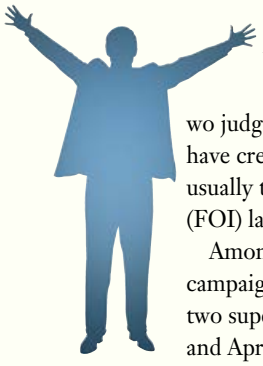
LOOK IT UP

CASES:

- *Busher v Altona Taverns Limited t/a The Old Forge* [2018] IEHC 327
- *Cahill v Glenpatrick Spring Water Company Ltd* [2018] IEHC 420
- *Criminal Assets Bureau v Sweeney* [2001 HC] 2 ILRM 81
- *Danagher v Glantine Inns* [2010] IEHC 214
- *DPP v Moran* [2018] IECA 176
- *Gervin v Motor Insurers Bureau of Ireland* [2017] IEHC 286
- *Mareva Compania Naviera v International Bulk Carriers* [1980] 1 All ER 213
- *Martin and ors Gabriele v Giambrone P/A Giambrone & Law* [2013] NIQB
- *Prior v Dunne Stores* [2016] IEHC 392

Cry freedom

Recent judgments appear to have created something of an earthquake in the usually tranquil field of freedom of information law. However, reports of the demise of the *FOI Act* are greatly exaggerated. **Conor Quinn** explains



CONOR QUINN IS A DUBLIN-BASED BARRISTER. HE WAS PREVIOUSLY SPECIAL ADVISER AND MEDIA ADVISER TO THE MINISTER FOR ENTERPRISE, AND THE MINISTER FOR EDUCATION

Two judgments delivered in recent weeks appear to have created something of an earthquake in the usually tranquil field of freedom of information (FOI) law.

Among the comments from information campaigners, journalists, and their union on the two superior court judgments delivered in March and April 2019 were:

- "The act is now – and I use this word carefully – dead."
- "This is a catastrophically bad decision."
- "Runs a coach and horses through the entire *Freedom of Information Act*."
- "An extremely worrying judgment … has the potential to turn the clock back on FOI."

The judgments also caught the attention of frontbench politicians, with Sinn Féin's Pearse Doherty commenting that the judgments were contrary to the purpose of FOI laws, and that his party would introduce amending legislation if necessary.

So why might this be of interest to practitioners?

Information law is a field that is becoming increasingly relevant in different areas of practice, not just for those who specialise in the area. Many practitioners advising public bodies and media organisations, on a wide range of issues, find themselves asked to provide advice on raising and responding to FOI requests, and on dealing with appeals to the Office of the Information Commissioner (OIC), as well as onward appeals to the High Court on a point of law.

In parallel, FOI is increasingly used as a sword in disputes involving public bodies, as parties to litigation seek to use every possible method of obtaining information from opponents.

This is becoming particularly relevant since the restrictions on the discovery process imposed by the 2018 judgment in *Tobin v Minister for Defence*. The range of public bodies subject to FOI law – referred to as 'FOI bodies' – was of course substantially expanded by the *Freedom of Information Act 2014*, which has contributed to this trend.

Against that backdrop, what are the practical consequences of these recent judgments for practitioners?

Presumption

The issue that has been exercising journalists and campaigners is the presumption in favour of releasing information, which is provided by the legislation, and its apparent dilution by these judgments.

The basic framework of FOI legislation is to provide a right of access to information held by FOI bodies, subject to a number of exemptions (for example, commercially sensitive information, information disclosed in confidence, and personal information).

A cornerstone of this framework has been the presumption in favour of disclosure, which provides that, in an appeal to the OIC, a decision to refuse will be presumed not to be justified, unless the FOI body shows to the satisfaction of the OIC that the refusal is justified.

Effectively this places the onus on the FOI body to show that the refusal was justified, otherwise the refusal will be overturned.

(The presumption is provided by section 22(12)(b) of the 2014 act; a similar provision previously existed in section 34(12)(b) of the *Freedom of Information Act 1997*.)

This presumption has been of

AT A GLANCE

- Information law is becoming increasingly relevant in different areas of practice
- Many practitioners advising public bodies and media organisations find themselves asked to provide advice on raising and responding to FOI requests
- FOI is increasingly being used as a tool in disputes involving public bodies, as parties to litigation seek to use every possible method of obtaining information from opponents

PIC: SHUTTERSTOCK

> A CORNERSTONE OF THIS FRAMEWORK HAS BEEN THE PRESUMPTION IN FAVOUR OF DISCLOSURE, WHICH PROVIDES THAT, IN AN APPEAL TO THE OIC, A DECISION TO REFUSE WILL BE PRESUMED NOT TO BE JUSTIFIED, UNLESS THE FOI BODY SHOWS TO THE SATISFACTION OF THE OIC THAT THE REFUSAL IS JUSTIFIED

central importance to the way in which the OIC has decided appeals of refusal decisions and, in particular, to the way in which the OIC has decided whether one of the statutory exemptions validly applies in a particular case to permit the refusal.

In a number of cases, where the OIC has found that the decision to refuse has not been justified by the decision-maker in its submissions, the OIC has deemed that finding alone to be enough to justify overturning the decision (that is, without itself considering the merits of whether the exemption applies).

Decision-makers in FOI bodies, in turn, have in many cases been trained to apply the presumption to their decision-making and to treat releasing the information as the default position.

In policy terms, information campaigners and media organisations argue that the existence of the presumption is vital: if there is no presumption, the argument goes, the OIC's role will be reduced to that of rubber-stamping the decision of the FOI body, as the requester simply will not have access to the relevant documents or information to enable it to satisfy the OIC that whichever exemption is being claimed does not apply.

However, the way in which the presumption has been applied has sometimes been the source of frustration to FOI bodies, particularly in areas where they are in competition with private organisations not subject to FOI law.

The judgments

The presumption was central to the two recent judgments mentioned. The cases in question are *Minister for Communications, Energy and Natural Resources v Information Commissioner* (6 March 2019; referred to as '*ENet*'); and *UCC v Information Commissioner*, delivered on 3 April 2019 ('*UCC*').

The facts of the two cases are relatively similar.

- The FOI body in each case (the Department of Communications and

UCC) had refused access to certain information after an FOI request from a journalist,
- The decision-maker in the FOI body refused access to information in question on the basis that it was commercially sensitive – the exemptions applied were section 35 (information obtained in confidence) and section 36 (commercially sensitive information),
- The requester appealed to the OIC, who overturned the decision of the FOI body and granted access to the information in question.

The information in question in each case was:
- *ENet* – contracts between the Department of Communications and ENet relating to the provision of broadband services by ENet via the Metropolitan Area Networks,
- *UCC* – certain financial information, including that contained in a loan agreement between UCC and the European Investment Bank.

In both judgments, the court overturned the OIC's decision in terms that appeared to cast significant doubt on the continuing application of the presumption in favour of disclosure. In so doing, both judgments relied heavily on the 2011 judgment of Macken J in *Rotunda Hospital v Information Commissioner*.

So what impact do these judgments have for future FOI decisions and appeals?

Scope

Firstly, on the strict terms of the judgments, the changes will only apply (directly in any event) in the case of an exemption to which section 11(7) of the 2014 act applies, which means in one of two circumstances:
- Where the exemption is mandatory, or
- Where the exemption is discretionary and involves a public-interest test, and the application of the public-interest test results in a refusal.

Determining whether the exemption in question comes within section 11(7) in an individual case will involve an analysis of the terms of the statutory exemption and the way in which it was applied in the particular case. A brief analysis suggests that a significant number of cases will be captured by section 11(7).

Secondly, on the question of whether, in a case to which section 11(7) applies, the presumption has been removed or diluted and to what extent, there is no definitive answer to this question at this time. The OIC has published a note on its website saying that it plans to petition the Supreme Court for leave to appeal in the *ENet* case, and that, in the interim, "the correct legal basis for applying section 22(12)(b) is not clear … users of this guidance should treat all references to the presumption as set out in section 22(12)(b) with caution until the matter is clarified".

An analysis of both judgments shows that there are two possible states of play post-*ENet* and *UCC*:

a) The presumption is removed entirely, or
b) The presumption is clarified: the onus that is on the FOI body is simply to satisfy the OIC that the exemption in question applies – there is no onus on the FOI body to provide an additional justification over and above the fact that the exemption applies, for refusing to release the information in question.

While, pending any further clarity provided by the Supreme Court, it is not possible to be definitive from the terms of the judgments, on balance the better view is (b), for the following reasons.

Firstly, the ratio contained in the seminal passage from the judgment of Macken J in the *Rotunda* case (at paragraphs 258-9), which is now post-*ENet* confirmed to represent the judgment of the Supreme Court and not to be *obiter*, provides clear support for view (b): "In the present case, I am satisfied that that legal requirement was complied with by the submissions made on the part of the hospital responding to the criteria mentioned in the section itself, and from the terms of its original refusal."

Secondly, *UCC*, the most recent judgment, which was explicitly decided on the basis of *ENet* as well as *Rotunda*, provides clear support for view (b). Relevant passages include (emphasis added): "The essence of the *Rotunda Hospital* case, now confirmed by the Court of Appeal in *ENet*, is that, where a record comes within the terms of one of the statutory exemptions, then no additional justification for non-disclosure is required to be demonstrated."

Thirdly, the balance of the authority from the *ENet* judgment and, in particular, the discussion of the *Rotunda* judgment, and the reliance on the fact that it was not in dispute that the records were commercially sensitive, also supports view (b), and the single line from the conclusion of the judgment in *ENet* (paragraph 44), which is the strongest support for view (a), can, in fact, be interpreted as also providing support for view (b).

However, the above must be treated with caution until these matters are further clarified.

What next?

Two key decisions are awaited to see how these judgments impact on the treatment of FOI requests.

Firstly, we await decisions of the Supreme Court in the *ENet* case. At the time of writing, it is not clear whether the *UCC* case will be the subject of any appeal.

Secondly, we also await the first post-*ENet*

> IN BOTH JUDGMENTS, THE COURT OVERTURNED THE OIC'S DECISION IN TERMS THAT APPEARED TO CAST SIGNIFICANT DOUBT ON THE CONTINUING APPLICATION OF THE PRESUMPTION IN FAVOUR OF DISCLOSURE

> ALTHOUGH THERE HAS BEEN A DEFINITE SHIFT IN FAVOUR OF REFUSING INFORMATION, THE CONSEQUENCES OF THESE JUDGMENTS DO NOT APPEAR TO BE AS DRAMATIC AS SOME COMMENTATORS HAVE SUGGESTED

treatment of the presumption in a decision of the OIC. This will provide helpful precedent to practitioners on how the OIC intends to treat the presumption pending any Supreme Court judgment.

From a practical perspective, practitioners acting on behalf of FOI bodies who have recently had decisions overturned by the OIC on the basis of the section 22(12)(b) presumption may wish to consider their appeal options, bearing in mind, however, that the time limit for bringing such an appeal is four weeks from notice of the OIC decision (extendable to eight weeks in certain circumstances). A brief analysis of recently published OIC decisions in which the presumption has been applied reveals a number of decisions that could potentially be challenged on the basis of *ENet* and *UCC*, subject to time limits.

Although there has been a definite shift in favour of refusing information, the consequences of these judgments do not appear to be as dramatic as some commentators have suggested.

The best provisional interim guidance for practitioners, whether in advising an FOI body or dealing with an appeal, is:

- Check whether section 11(7) applies to the exemption in question – if it does not, the presumption in favour of disclosure should be applied as before,
- If section 11(7) does apply to the exemption, then the requirement is simply for the FOI body to be able to show to the satisfaction of the OIC that the particular exemption applies: the FOI body is not required to provide any additional justification on top of this.

FOI bodies and their legal advisers may be encouraged by the fact that, in a case to which section 11(7) applies, the burden that is on their clients in an appeal is now simply to show that the exemption in question applies.

However, reports of the FOI act's death appear to have been greatly exaggerated.

LOOK IT UP

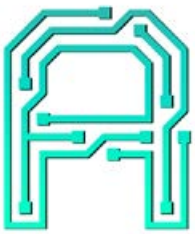
CASES:

- *Governors and Guardians of the Hospital for the Relief of Poor Lying-In Women, Dublin v Information Commissioner* ('*Rotunda*'), [2011] IESC 26
- *Minister for Communications, Energy and Natural Resources v Information Commissioner* [2019] IECA 68 ('*ENet*')
- *University College Cork v Information Commissioner* [2019] IEHC 185

Chain gang

Users and potential users of blockchain see an opportunity for Ireland to become a global blockchain hub. But can blockchain overcome the regulatory hurdles to bring it mainstream? **David Cowan** unchains his heart

DR DAVID COWAN IS AN AUTHOR, JOURNALIST AND TRAINER



Arguably, Kevin O'Brien of the Central Bank of Ireland hit the nail on the head for blockchain when he said: "If we cannot understand it, we cannot supervise it, and if we cannot supervise it, we cannot authorise it."

Kevin is head of division of Consumer Protection – Policy and Authorisations at the Central Bank. He was speaking at the Law Society of Ireland FinTech Symposium, and his blunt statement will echo through the corridors of blockchain.

Blockchain is a technology that has only been around for the past five years, and it is befuddled by terminological difficulties. It has been used in maintaining asset registers for smart contracts, shares, property and other titles to ownership and documentation, all making such fraud more difficult. However, it should not be forgotten that technology is equally an enabler of fraud, and thus in need of close regulatory attention.

Regulators indeed sat up and took notice when initial coin offerings (ICOs) led to a feeding frenzy after their introduction. What boomed inevitably busted, with some seven out of ten ICOs now operating at a loss from their initial offering.

There has also been a proliferation of 'pump-and-dump' schemes, and over a third of tokens released in 2017 have not traded on any exchange. Such stories perpetuate the impression that cryptocurrencies are unfettered – and blockchain is tarred with the same brush.

Andrew Tzialli, a partner at commercial law firm Philip Lee (specialising in corporate and technology matters), heads up the firm's cryptocurrency and blockchain group, and jests: "I've been in this space since 2013, which, after five years, makes me a veteran!"

He comments that, in cryptocurrency, there was a very rapid boom and bust, with many firms dabbling in the space, of which he is critical. Clients were "paying a fortune for advice on the back of doing very little, with advisors not doing a lot, caveating their advice, and many not having an understanding of it, and then turning to other lawyers because they were out of their depth.

"Compared to traditional businesses, blockchain is still a 'Wild West' but, compared with 12 months ago, we are a million miles away from that," he says. As for lawyers operating in this space, "It's still a learning curve for us."

Claire Fitzpatrick (strategic operations director at ConsenSys, a global blockchain technology company) says: "Legal firms have a great appetite to understand the technology, and are crying out for regulation and guidance on regulation as a starting point."

Acceptance issues

The problem is not so much the technology itself, as it is the acceptance of that technology, with much of blockchain still at the R&D stage or in nascent product. Tzialli says: "Terminology is hindering development, making regulation more challenging. However, we are still very, very early in this journey."

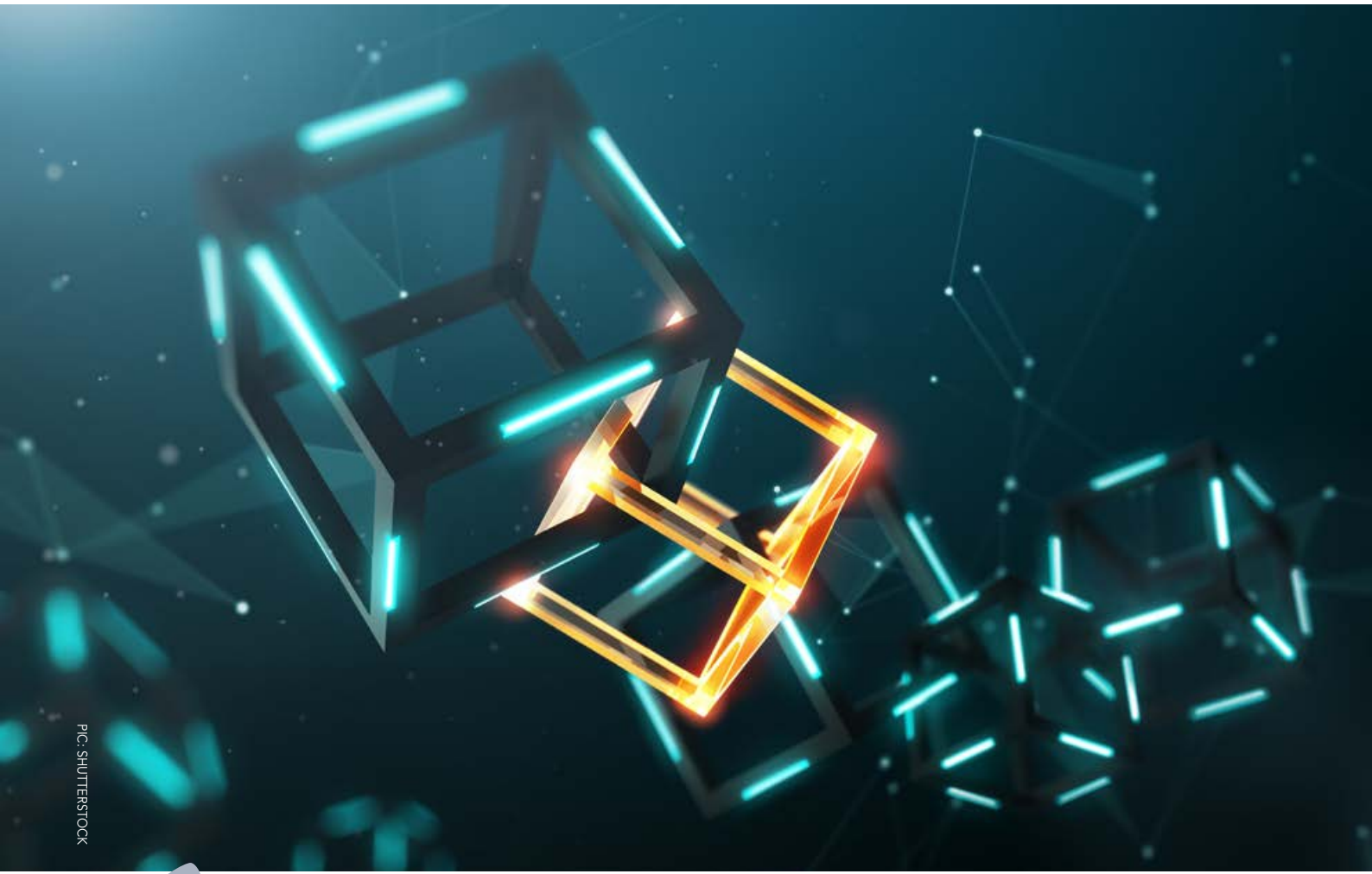
Dr Noel McGrath (lecturer and assistant professor at UCD Sutherland School of Law) explains: "This is a very new development – new to the point where there is no common agreement on what blockchain is."

Ireland has a number of blockchain businesses, and has long been involved, globally, in payment and innovative financial services businesses. Blockchain and cryptocurrency would seem a natural development.

Mai Santamaria (Department of Finance) says: "The Irish Government

AT A GLANCE

- Blockchain has been used to maintain asset registers for smart contracts, shares, property and other titles to ownership and documentation
- Technology, however, has been an enabler of fraud, making blockchain deserving of close regulatory scrutiny
- The biggest blocker for adoption is the lack of regulatory certainty



PIC: SHUTTERSTOCK

> THE BIGGEST BLOCKER FOR ADOPTION IS THE LACK OF REGULATORY CERTAINTY. REGULATION IS ALWAYS CATCHING UP WITH TECHNOLOGY. WHAT WE SAW WITH TELCO AND THE INTERNET IS THE SAME HERE

has taken several steps to encourage innovation in this sector. Namely, the creation of a €500 million Disruptive Technologies Innovation Fund; recently hosting a blockchain 'hackathon' to identify public-services business problems that can be solved using blockchain technology; and the creation of Blockchain Ireland, a combined effort of Government and Irish-based companies, led by the IDA's Blockchain Expert Group, to help promote and share information on blockchain in Ireland."

The month of May saw a major initiative styled 'Blockchain Ireland Week' (24-31 May) – a celebration of the blockchain community around Ireland, which is on a mission to bring together and grow the blockchain ecosystem on the island.

Claire Fitzpatrick says that Blockchain Ireland Week adds to the momentum and education, but it always comes back to "more awareness", she says. "Much of what we do is educational – 80% of my time is spent on educating people."

Among law firms in Ireland, Fitzpatrick says there are a number of people proficient enough in technology to have the discussion. "I wouldn't go as far to say there is a lot of expertise." However, she adds: "For the legal fraternity, blockchain is a game-changer for their business model."

Clients are seeking to be educated about the technology, and lawyers need to understand both the positives and negatives to advise their clients. Says Fitzpatrick: "Even in smart contracts, blockchain doesn't

take into account 'good faith', for instance, so there is always an element of the human legal piece on top of the smart contract."

Fitzpatrick adds: "The biggest blocker for adoption is the lack of regulatory certainty. Regulation is always catching up with technology. What we saw with telco and the internet is the same here."

She says that the blockchain community "would welcome speed and a quickening by regulatory bodies to tackle the ambiguity".

Tzialli counters, however, saying that "we are nowhere near a uniform way of dealing with blockchain. We are light-years away".

Regulation leaders

For Ireland, there is an opportunity to become a leader in blockchain regulation, rather than simply looking to follow the lead of the EU and elsewhere – but there still needs to be caution, as 'first-mover advantage' is not necessarily the best move.

McGrath says: "With a technology that is moving as quickly as blockchain, there are difficulties. It is hard to regulate effectively, and what is drafted into a regulation can be out of date by the time it is being signed into law."

He suggests that "regulators are taking a 'softly, softly' and very cautious approach, partly because of the usual problem for technology and regulation of defining what it is; and partly because they don't want to strangle innovation at birth and put in place stuff that stops it from becoming a pot of gold".

"Everybody is in learning mode at the moment," he says. There are a lot of prior questions: exactly what is it we are trying to regulate? Who are we trying to regulate? How can we best regulate? Things are still up in the air."

Last year, a significant step was taken when Finance Minister Paschal Donohoe published a discussion paper prepared by his department on virtual currencies and blockchain technology. He announced the subsequent creation of an internal working group to monitor further developments in this area.

The discussion paper remains useful as an overview of virtual currencies and the blockchain technology supporting them, with detail on responses by selected countries around the world and an overview of the key risks and opportunities these technologies present.

Mai Santamaria says: "The Department of Finance supports the foundation of a predictable and safe blockchain ecosystem in Ireland. This is in line with the Government's IFS2020 vision of building on the nation's innate ability to innovate and adapt to emerging trends across finance and technology."

However, she explains, "No isolated policy measure or State agency can singlehandedly address all the risks and opportunities in the area of blockchain."

The Government's intradepartmental working group, Santamaria explains, constitutes key representatives of relevant divisions across the department. For example, Emily King (senior legal advisor from the Shareholding and Financial Advisory Division) is a member of the working group.

Blockchain ecosystem

Over the last 12 months, the financial advisory team, acting as lead outreach for the working group, has collectively met over 400 people related to blockchain in Ireland and abroad. Santamaria says: "It has been essential to connect with private sector companies, technologists, and regulators in order to be able to assess the relevance of developments in the technology, and the type of policy responses adapted in other jurisdictions.

"Active collaboration and support of initiatives, such as Blockchain Ireland and

FOCAL POINT

AGRIBUSINESS

Blockchain technology has penetrated several sectors, like banking, finance, agriculture and virtual gaming. Last year, there was a notable jump in the number of blockchain-related patents filed.

A lot could be done in specific-use cases, such as the agribusiness sector, where Ireland could unite its technological expertise with its most important industry.

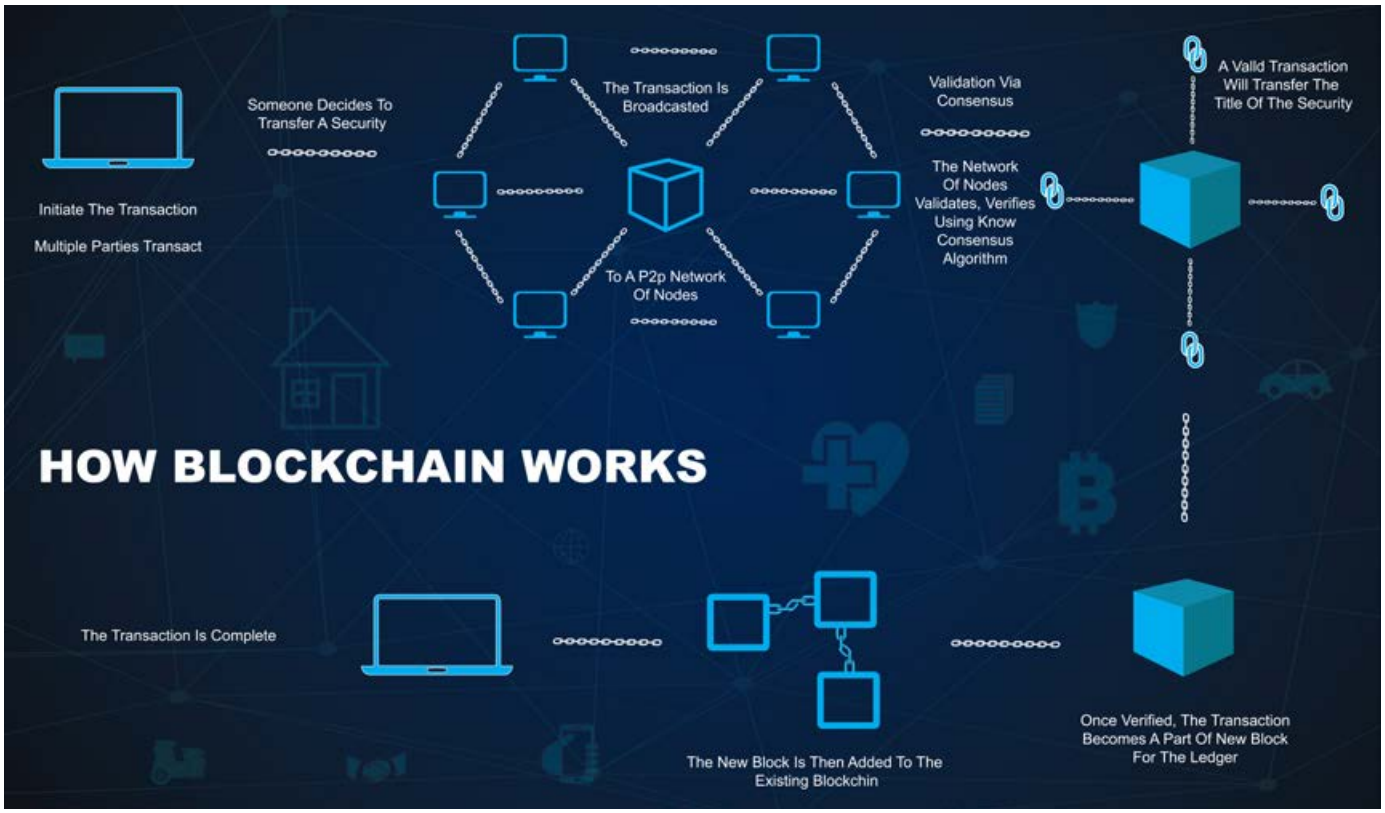
Blockchain lends itself very naturally to the food business, offering a perfect solution to the increasing demand for traceability throughout the supply chain. Claire Fitzpatrick says: "Blockchain can take traceability from farm to fork, and could really be a good-use case in Ireland."

Blockchain is of interest because "first, the public is asking for more traceability in food sources, so it is customer-led. Second, if you want to have a premium product, then you want it to be recognised as such, so you get the premium product label for which you can charge a higher price."

However, she says, "the use of blockchain is in its infancy" and requires coordination of a range of Government agencies and industry bodies. On an optimistic note, she adds: "Ireland is starting that journey."

> TAXATION MAY BE THE FIRST AREA WHERE WE WILL START TO SEE MORE PRESSURE TO REGULATE, AS COMPANIES USING BLOCKCHAIN START TO ASK FOR CLARIFICATION ON THE TAX POSITION OF A BLOCKCHAIN THAT IS, BY ITS VERY NATURE, HARD TO PIN DOWN

PIC: SHUTTERSTOCK



Blockchain Women Ireland, have been fundamental to the building and support of the Irish blockchain ecosystem. The working group has also met its initial objective of increasing clarity to business, consumers and investors. However, much work has yet to be completed, particularly in relation to the impact of continuous technological developments and the potential policy responses to crypto-assets that fall outside the current regulatory perimeter," says Santamaria.

A major regulatory perimeter is jurisdiction, with problems in defining jurisdiction in blockchain potentially leading to a new revolution. Physical shares may be traded on a specific exchange, a government can issue currency, and companies can have a geographically registered office and premises, but Fitzpatrick explains that the technology is decentralised in nature, with no fixed jurisdiction or overall regulation for participants, which makes blockchain "very difficult to understand".

McGrath adds: "There are aspects inherent in the technology that make it very difficult to regulate." Blockchain can coalesce around a universe of participants who have the ability to produce a consensus without the involvement of law or regulation, and the legal certainty that comes from this, creating what McGrath calls "a kind of bureaucratic truth".

He complains: "One of my bugbears with blockchain is that it is very often trying to displace the State's role as a certifier of truth." He explains that there are a lot of legal systems in place in society, with stamps, recording systems, documents and the like, "from which legal consequences flow".

Milestones

Looking forward, when asked about the timeframe and milestones we can expect, McGrath says: "That's the hardest question." He suspects that taxation may be the first area where we will start to see more pressure to regulate, as companies using blockchain start to ask for clarification on the tax position of a blockchain that is, by its very nature, hard to pin down. He draws comparisons with past emerging technologies that have seen the tax authorities being the first to act.

Claire Fitzpatrick believes that "Ireland will look to the European Commission," though when asked if Ireland could go further and be more of a leader, she agreed: "The ingredients are here. Blockchain Ireland and industry participants see the opportunity to become the blockchain hub in the same way that Tel Aviv is the cybersecurity hub. Why not be known for that?

"We have a lot of home-grown talent, a smaller economy that can experiment small. With more leadership and regulatory guidance, it would be great." But to achieve this, she says: "There needs to be the will at the Government level."

When asked whether she thinks there is a danger that this could become a missed opportunity, Fitzpatrick responded: "Yes, I do."

Santamaria concludes: "Blockchain technologies have the potential to create great economic, social, and technological value and, where possible and through smart collaboration, Ireland aims to capitalise on this potential."

It seems the Irish Government is getting the message. Perhaps with a little more of a push, Ireland may indeed forge a leadership role in blockchain's development. g

Don't fence me in

The Law Society's Roll has begun to swell with an influx of 'Brexit refugees'. But, in the early 20th century, the Society faced an uphill battle to have its members reciprocally recognised in its neighbouring jurisdictions, writes **John Garahy**

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

Brexit appears to be an update of Partition, with the elapse of (almost) a century. *The Irish Times*, on 8 April 2019, quoted the Society's director general Ken Murphy stating that 'Brexit refugees' – comprising solicitors from England and Wales – now number 2,770 on the Roll in Ireland, representing 14% of the entire number of solicitors. Their hope in doing so is to preserve their entitlement to practise law in the EU following Britain's exit. Murphy continued: "But, of course, they are not here – less than 250 UK solicitors have practising certificates."

The Law Society has experience and knowledge arising from partition, and of reciprocity in the admission of solicitors to the Roll.

The Incorporated Law Society of Ireland, as it was then, was implacably opposed to the Partition of Ireland in 1921, with the consequent fracturing of the unity of the legal professions on the island, which dated from 1607. The Council meeting of the Law Society on 5 October 1921 recorded the creation of the new jurisdictions, with effect from 1 October 1921, by virtue of the *Government of Ireland Act 1920*. In addition, the Council received the proposed charter for the 'Northern Law Society' and was requested to comment. Following consideration at three further Council meetings, and a chiding letter from the under-secretary for Ireland, the Council replied on 30 November 1921: "This Council do not desire to offer any specific comments in reference to the charter read."

The Council meeting on 7 December 1921 noted the letter from the secretary dated 5 December to the honorary secretary of the Northern Law Society – "the Northern members to come to Dublin, to confer on future governance of profession, or Dublin would go to Belfast". A recurring theme that emerged at this meeting was "the reciprocity of admission to [the] profession between England and Ireland".

North of the Great Divide

The Council also considered a motion congratulating the plenipotentiaries of the Irish Republic, who had signed the articles of agreement for a treaty between Britain and Ireland the previous evening in London. The Council received a reply from the Northern Law Society on 14 December 1921: "Owing to what occurred since the invitation had been written, they thought such a meeting might be postponed for the present."

Ireland was on edge in December 1921. The truce, which commenced on 11 July 1921, remained in the balance – Sinn Féin divided by pro and anti-Treaty groups, the new state of 'Northern Ireland' *de jure* and *de facto* in existence.

The *Irish Law Times and Solicitors Journal* on 21 January 1922 reported that "the principal event of the week was the passing of what has been so long known in Ireland as 'Castle Government', and the Provisional Government took over Dublin Castle".

The Council meeting on 5 April 1922 discussed reciprocity of admission between the solicitors' professions in England and Ireland. The Council continued close contact

AT A GLANCE

- There are parallels to be drawn between Brexit and Partition
- The battle for reciprocity in the admission of solicitors to the Roll
- The failure of the Law Society Council to convince the Free State Government to take up its cause
- The backstop of the *Finance Act 1929*
- Mutual recognition finally achieved in 1973 – thanks to accession to the EEC

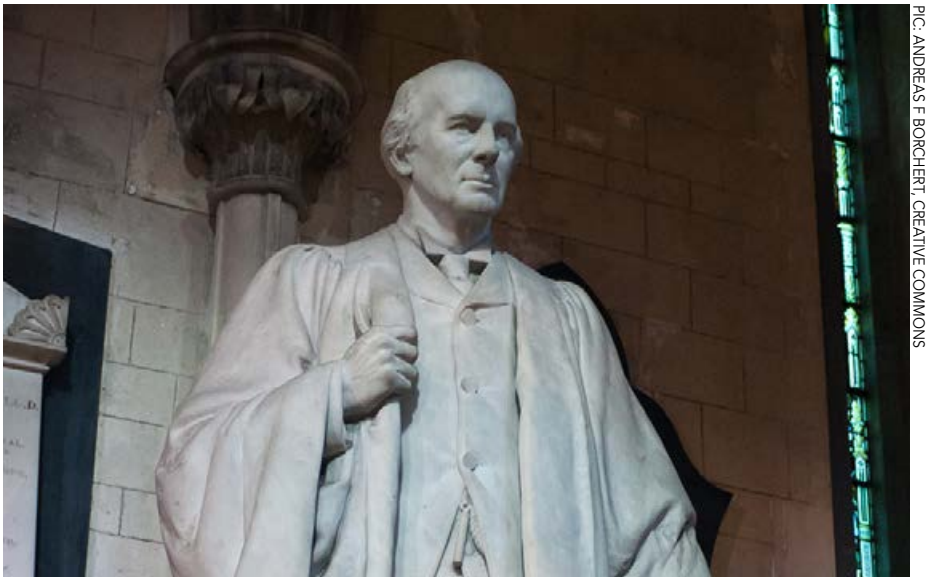
'Home, home on the fa-range'

PIC: SHUTTERSTOCK

> I SUPPOSE THE MORE SOLICITORS WE CAN HAVE, THE BETTER. AT ALL EVENTS, WE ARE NOW GOING TO HAVE SOLICITORS FROM ALL PARTS OF THE LATE UNITED KINGDOM, AND I HAVE NO DOUBT IT WILL ADD TO THE EFFICIENCY OF OUR LEGAL PRACTICE AND ALSO TO THE AMUSEMENT OF SOME OF OUR COURTS

with the Incorporated Law Society of Northern Ireland, receiving their charter for comment (which was declined). The charter issued on 10 July 1922.

On 4 October 1922, the Council noted "the Incorporated Law Society of Northern Ireland to hold examinations, which Dublin currently holds, and the draft bill which the Northern Parliament will introduce". The Provisional Government drafted the Constitution of the Irish Free State in accordance with the terms of the Treaty, against the backdrop of civil war and the abstentionist policy of the anti-Treaty Sinn Féin, led by Eamonn De Valera. The new state came into being on 6 December 1922.



PIC: ANDREAS F BORCHERT, CREATIVE COMMONS

Gerald Fitzgibbon TD, KC, proposed the merits of the *Solicitors (Ireland) Act 1898 Amendment Bill 1923* in the Dáil

Sons of the Pioneers

One consequence concerned the Law Society: on 17 January 1923, the "question of advisability to have the *Colonial Solicitors Act 1900* applied to the Free State of Ireland referred to the privileges committee". On 14 February 1923, the Council recommended steps to be taken to apply the *Colonial Solicitors Act* to Ireland. The Council enlisted Gerald Fitzgibbon TD, KC (later judge of the Supreme Court) to introduce the *Solicitors (Ireland) Act 1898 Amendment Bill 1923*, as a private member's bill in the Dáil. Its purpose was to provide for the admission of English solicitors and Scottish law agents without examination or service. Mr Fitzgibbon was brief in proposing its merits: "It has been explained to the Dáil twice within a week, and I do not wish to inflict any more oratory on you."

Thomas Esmonde, in the Senate, said: "The operative clause is in section (b) that appears to introduce reciprocity between the English and Scotch solicitors. I suppose the more solicitors we can have, the better. At all events, we are now going to have solicitors from all parts of the late United Kingdom, and I have no doubt it will add to the efficiency of our legal practice and also to the amusement of some of our courts."

On 11 April 1923, the secretary reported to the Council meeting that the *Solicitors Ireland Act 1898 Amendment Act 1923* on 29 March 1923 had received the English king's assent. The influence and reach of the Law Society is shown by the enactment of this act. It is number 10 of 1923, and number 11 in the canon of the acts of the Oireachtas (only the *Constitution of the Irish Free State (Saorstát Eireann) Act* was passed in 1922). It was enacted to secure solicitors' economic opportunities.

Not "all parts of the late United Kingdom" were included: there was no reciprocity for solicitors from Northern Ireland, despite the close relations. It may have been considered unnecessary, as solicitors admitted prior to 1 October 1921 were entitled to practise in both jurisdictions. There does not appear to have been consideration as to the position with the elapse of time. On 29 March 1923, the Rules Committee was directed to prepare for the application of the *Colonial Solicitors Act* to the Free State.

Heldorado

During the same month of March 1923, the civil war still continued: 32 anti-Treaty and five pro-Treaty men were killed in Kerry; six in Wexford (three from each side); in Donegal, four anti-Treaty and one pro-Treaty – 48 men in total. There were more pressing issues than the recognition of mutual professional qualifications.

The Council meeting on 30 May 1923 received a letter from English Law Society: "If the *Colonial Solicitors Act 1900* be applied as between England and the Irish Free State, that solicitors of the latter seeking admission in England should pass an examination in trust accounts and the Final

> THE MINISTER REPLIED ON 23 FEBRUARY 1928: 'THE MATTER WOULD HAVE THE MINISTER'S ATTENTION.' FATAL WORDS! THE PROVISIONS OF THE 1923 ACT WERE NEVER COMMENCED; THE ACT WAS REPEALED BY SECTION 2 OF THE *SOLICITORS (AMENDMENT) ACT 1947*

> MR KENNEDY LATE AG WROTE THAT A LEGAL QUESTION HAD BEEN RAISED – THAT THE *COLONIAL SOLICITORS ACT* COULD NOT BE MADE APPLICABLE TO THE IRISH FREE STATE UNTIL THE COURTS HAD BEEN IN BEING FOR THREE YEARS

Examination of the English Law Society."

The secretary reported to the Council on 11 July 1923 that he had seen the attorney general in relation to the proposed order in Council applying the *Colonial Solicitors Act* to the Free State. He also reported the lodgement of the application with the Minister for Home Affairs. He wrote a reminder on 28 September 1923 to the minister, as he had not received a reply, nor did he receive one until 25 June 1924, when "Mr Kennedy late AG wrote that a legal question had been raised – that the *Colonial Solicitors Act* could not be made applicable to the Irish Free State until the courts had been in being for three years."

Hope of progress was indicated at the meeting on 9 July 1924, when the secretary reported on his meeting with the attorney general John O'Byrne, who had read the secretary a despatch from the British Colonial Office that the British Government, on the passing of an act of the Oireachtas under section 3 of the 1922 act, would (subject to consultation with the English and Scottish Societies) seek an order in Council applying the *Colonial Solicitors Act*. The hope was unfounded. On 11 February 1925, the Council directed the secretary to write to the attorney seeking a reply to his letter of 5 July 1924.

The far frontier

At the meeting that followed, on 25 February 1925, the attorney general replied: "He would convey to the executive council the request of the Society – and inform the Society when any decision is come to." The meeting on the 15 July 1925 received the reply from the attorney general "that the question of taking steps" to apply the *Colonial Solicitors Act* had been postponed.

It was ordered that the secretary reply, informing the attorney general of the statement in the British House of Commons that legislation was awaited from the Irish Free State. One year later, on 15 July 1926, the president, in response to a query as to whether anything had been done recently, replied: "No steps in that direction had recently been taken."

The Council was persistent. On 2 February 1928, the secretary wrote to the Minister for Justice, seeking the application of the *Colonial Solicitors Acts* to the Irish Free State. The minister replied on 23 February 1928: "The matter would have the minister's attention."

Fatal words! The provisions of the 1923 act were never commenced. The act was repealed by section 2 of the *Solicitors (Amendment) Act 1947*.

The application of the *Colonial Solicitors Act* to the Irish Free State passes from the archive. Daire Hogan, solicitor and historian, continues the narrative. The provision in the 1923 act for reciprocal admission between the jurisdictions was not put by the Free State Government to the British Government, as the former did not agree with the proposal and would not take it up with the British Government. He also states that the English Law Society was opposed, though was not formally consulted, due to non-submission of the proposal.

The *Gazette*, in December 1932, reported on the half-yearly meeting: "Mr Joyce drew attention to the largeness of the number seeking admission to the profession and suggested steps should be taken to lessen the number." The rationale of the Law Society was to provide opportunities to Free State solicitors in territories in the British Empire, which pertained prior to independence.

Hands across the border

There was, however, a 'backstop'. Section 35 of the *Finance Act 1929* provided that Northern solicitors were exempt from stamp duty in both jurisdictions, provided reciprocity was provided to Free State solicitors, which followed. This was extended to admission to the Roll (subject to conditions) by section 23 of the *Solicitors (Amendment) Act 1960* to holders of "corresponding certificates", defined as those issued by the Incorporated Law Society of Northern Ireland – a case of Irish exceptionalism, honouring the historic unity of the profession.

Brexit will effect fundamental change in the legal relationship between Britain and the EU, and between Britain and Ireland. Ireland – a former colony, a dominion member of the empire, and with a common head of state until 1937 – was unable to secure mutual recognition of the professional qualification of solicitor with England and Wales until 1973, upon accession to the EEC – a period of 50 years. Northern Ireland may benefit from the shared legal inheritance. After all, the Solicitors' Benevolent Association has operated on an all-island basis since its foundation in 1863.

'Mainland Britain' starts without those advantages. g

LOOK IT UP

LEGISLATION:

- *Colonial Solicitors Act 1900*
- *Constitution of the Irish Free State (Saorstát Eireann) Act*
- *Finance Act 1929*
- *Government of Ireland Act 1920*
- *Solicitors (Amendment) Act 1947*
- *Solicitor (Amendment) Act 1960*
- *Solicitors Ireland Act 1898 Amendment Act 1923*

WILLIAM MOLYNEUX'S *THE CASE OF IRELAND'S BEING BOUND BY ACTS OF PARLIAMENT IN ENGLAND, STATED*

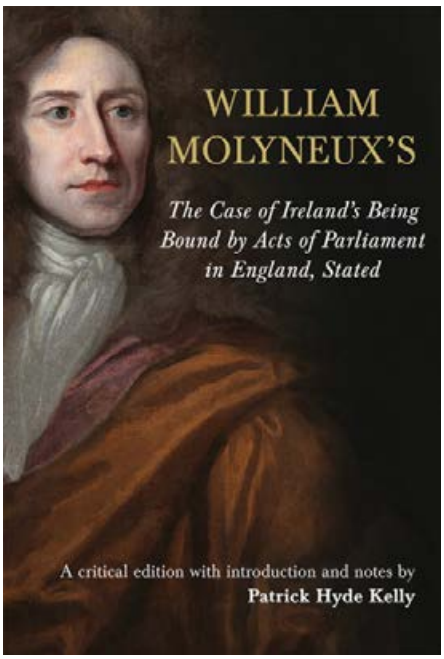
Patrick Hyde Kelly (editor). Four Courts Press (2018), www.fourcourtspress.ie. Price: €49.50

William Molyneux (1656-1698), lawyer, scientist, philosopher, and political writer, was born in Dublin. He was from an affluent Protestant family with influential connections. He graduated from Trinity College Dublin with a BA in 1674 at the age of 17, and was sent by his father to study law at the Middle Temple.

On his return from London, he was called to the Irish Bar. Although he lacked enthusiasm for the law (while amassing an extensive collection of law books), he did practise as a lawyer, but devoted much of his time to scientific, philosophical, and political issues.

Molyneux was one of the Dublin University representatives in the Irish House of Commons and was associated with the founding of the Royal Dublin Society and the Royal Irish Academy. He died of a kidney-stone complication in 1698 at the age of 42 and was buried in St Audeon's Church, Dublin.

One of Molyneux's legacies is a small book, the subject of this brief review, abbreviated to *The Case*, which was published in 1698. *The Case* asserted that Ireland was an independent kingdom, subject to the king, but not



to the English parliament. Molyneux argued strongly for equal rights for Ireland, stating that Ireland's parliament was equal to the parliament in London and that English acts of parliament did not bind Ireland. He argued that English laws attempting to bind Ireland were "against reason and the common rights of mankind". His central tenet was that "consent alone could give laws force, otherwise they offended against rights of liberty and property".

London strongly disagreed, regarding the book as seditious and libellous, but Molyneux survived.

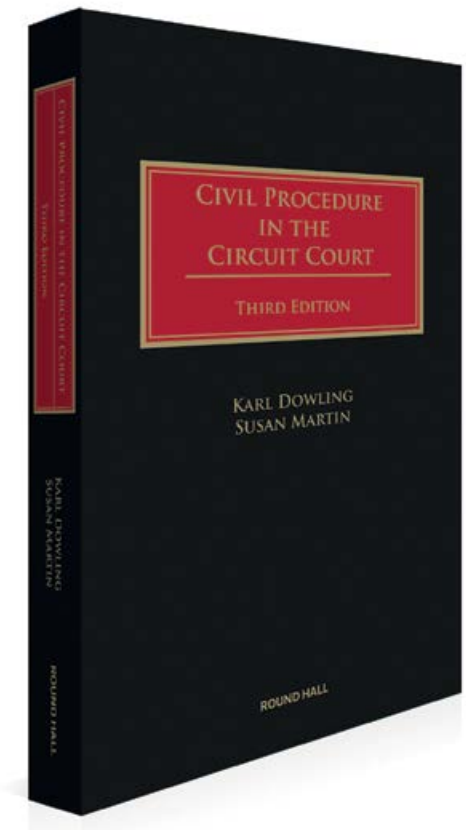
Patrick Hyde Kelly, the editor, is a fellow emeritus of Trinity College Dublin and has written a critical text based on research of manuscripts in Trinity College and a re-examination of the historical background and relevant sources used by Molyneux.

The author presents us with a rich and vivid account of a publication that was influential in Ireland throughout the 18th century and among the colonists prior to the American War of Independence. This is a rewarding read for anyone interested in Irish legal history.

Dr Eamonn G Hall is director of the Institute of Notarial Studies.

CIVIL PROCEDURE IN THE CIRCUIT COURT (THIRD EDITION)

Karl Dowling and Susan Martin. Thomson Reuters (2018), www.roundhall.ie. Price: €289 (incl VAT)



The third edition of *Civil Procedure in the Circuit Court*, written by Karl Dowling and Susan Martin, represents a comprehensive analysis.

Since the publication of the second edition, there have been a number of amendments to the *Circuit Court Rules*, including the areas of family law, personal insolvency, personal injuries matters, the *Fines (Payment and Recovery) Act 2014*, and mediation. Amendments and additions in these areas have all been referred to in this edition.

Family law, in particular, has received a major overhaul since the last edition, and this book now refers to the *Gender Recognition Act 2015* and the *Children and Family Relationships Act 2015*. This edition provides a new chapter on debt collection.

The authors provide a step-by-step guide to each aspect of civil procedure in the Circuit Court, from the commencement of proceedings, through the pleadings, and also deal with discovery applications. An appendix includes the relevant Circuit Court forms. Reference is also made to the increased monetary jurisdiction that applies in the Circuit Court.

The family law chapter sets out the rules for case progression and also differentiates between the practice that applies to the Dublin Circuit only and the circuits outside of Dublin.

There is a noticeable increase in focus on the needs of the practitioner in this edition, reflective of the authors' practical knowledge of the Circuit Court system, wherein the book sets out step-by-step guidance at each stage of the process. Checklists are also provided to assist the practitioner in the running of a file.

The book contains extensive commentary of the *Circuit Court Rules*, referring to both reported and unreported decisions, legislation and practice directions.

The clear and concise manner in which it is written makes the book an excellent reference tool for practitioners. It is an invaluable and necessary guide, and great praise is due to the authors for a practical publication. g

Joyce A Good Hammond is a partner at Hammond Good in Mallow, Co Cork, and is a member of the Law Society's Conveyancing Committee.

IN FOR THE KILL

The developments of the 'digital revolution' have raised challenges for merger control regulators. **Cormac Little** casts his net

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

THIS DOES NOT MEAN THAT THE CCPC WILL NOT HAVE TO GRAPPLE WITH A MERGER IN THE DIGITAL SPACE IN THE VERY NEAR FUTURE

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

We are living through a digital revolution. New ways of both connecting individuals with businesses and of collecting and storing data are becoming increasingly prominent in the global economy. These developments have caused competition regulators to consider whether they possess the necessary tools to meet the various ensuing challenges.

While the phenomenon is by no means unique to the digital sector, major technology companies have a long-standing practice of acquiring smaller competitors. The European Commission and certain national competition authorities in the EU are concerned, therefore, that such transactions would allow large companies to monopolise the data that their business rivals need to compete. This has caused certain regulators to consider whether their respective merger control regimes require reform.

Big fish

The digital revolution is engendering huge change across swathes of industry through the emergence of innovative ecosystems, including online platforms, the spread of new technologies, and tools such as data analytics. Indeed, the ability to gather, process and analyse vast amounts of information quickly – often referred to as 'big data' – is key to the digital revolution.

Big data allows businesses to tailor their products and advertising in line with known customer preferences. This factor can also improve the monitoring of business performance, while identifying ways to reduce costs. All in all, the digital revolution can drive innovation, while resulting in lower prices for consumers. The rapid expansion of the digital economy has meant that certain companies have grown very quickly, while certain established names have faded.

Little fish

Many tech businesses have exclusively grown on an organic basis. However, others have expanded, not only organically but also by the strategic acquisitions of younger companies. Of course, certain acquisitions that increase a company's access to data can have pro-competitive effects. However, other transactions can involve the purchase by a large digital ecosystem of a smaller potential rival, with the result that its potential opportunity for growth is removed.

Such acquisitions have been compared to the so-called 'killer acquisitions' in the pharmaceutical sector, where an incumbent acquires a rival with a potentially groundbreaking product at an early stage of the drug approval process. The acquirer then mothballs the development of the new pharmaceutical in order to eliminate potential rivalry to its existing product portfolio.

Start-up or early-stage digital/technology companies often focus on product development while seeking to attract a large user base by offering a 'free' service. This allows the company to collect vast amounts of data. However, this strategy usually means that the relevant business generates modest revenues while maintaining a strong monetisation potential.

The sale of such businesses to larger rivals may not, given the low turnover of the relevant targets, require prior clearance under EU or Irish merger control rules. Even if they do, there is an active debate as to whether existing theories of harm capture the potential effects of such transactions accurately because the merger of two (or more) sets of big data can, depending on the context, have both a positive or a negative impact on competition.

Swimming in the water

Both EU and Irish merger control rules apply in Ireland. The former regime operates on the basis of the 'one-stop shop' principle. In other words, if a particular transaction triggers a mandatory notification to the European Commission under EU merger control rules, there is no need to consider whether a merger control filing is necessary in Ireland or, indeed, in any other countries in the European Economic Area (EEA).

However, if a notification to the commission is not required,

PIC: SHUTTERSTOCK

the parties should check whether any national filings in the EEA are necessary, including in Ireland, where merger filings are made to the Competition and Consumer Protection Commission (CCPC). The jurisdictional tests under both EU and Irish merger control both largely operate on the basis of the relevant parties' most recent annual turnovers.

The EU merger control regime contains a complex referral system to ensure that the best-placed agencies are responsible for reviewing a proposed transaction. This allows one or more EU member states to request the commission to review a transaction in their place (for example, where it concerns EU-wide or global markets with potential issues across various EU member states). Furthermore, the undertakings involved in a proposed transaction that does not meet the EU thresholds, but that instead triggers filings in three or more member states, may request the commission to take jurisdiction instead of the relevant domestic authorities. Separately, where a transaction concerns more localised markets, a member state may request the commission to refer the merger to its own competition authority for review under national rules.

Down by the water

The recent commission merger decisions regarding Facebook/WhatsApp, Microsoft/LinkedIn, and Apple/Shazam each illustrate the challenges in reviewing transactions in the digital/technology sector.

Although WhatsApp had over 600 million users worldwide when its proposed sale to Facebook for US$19 billion was announced in 2014, its prior year revenues of US$10.2 million were too low for the deal to meet the EU turnover thresholds. Instead, this transaction was caught, among other things, by the market-share test under Spanish merger control rules before being referred to the commission. In its 2014 decision to clear this acquisition, the commission found that the market for consumer communications apps is dynamic and fast-growing, with no significant barriers to entry.

The commission also focused on the possible impact of network effects. It found that the low barriers to entry, coupled with the prevalence of multi-homing/switching, were important factors in preventing harmful network effects from taking hold post-completion of the proposed transaction. The commission also examined potential theories of harm related to the merged entity's possible use of a broader data collection to strengthen Facebook's position in digital advertising. The commission rejected concerns that the merged entity would enjoy such a form of competitive advantage, on the grounds that numerous alternative providers such as Google, Apple and Amazon would continue to provide strong competition.

The implications of big data for merger control rules played a particularly prominent role in the commission's 2016 decision

Law Society Finuas

Skillnet

LAW SOCIETY PROFESSIONAL TRAINING

Centre of Excellence for
Professional Education and Lifelong Learning

LAW SOCIETY OF IRELAND

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

DATE	EVENT	CPD HOURS	DISCOUNTED FEE*	FULL FEE
13/14 June	**North West General Practice Update Part I & II** Solis Lough Eske Castle Hotel, Donegal	13 June - 4 Hours & 14 June - 6 Hours Total 10 Hours (by Group Study)*	13 June - €100 14 June - €135 13 & 14 June - €190 *Hot lunch and networking drinks included in price*	
20 June	**GDPR & New Business Models for Solicitors** *All proceeds from this event will be donated to Cycle4CrohnsColitis, an initiative by Attracta O'Regan, supported by Beaumont Hospital Foundation and Law Society Finuas Skillnet*	3.5 Regulatory Matters (by Group Study)	€150	
21/22 June	**Personal Injuries Litigation Masterclass**	10 CPD Hours including 1 Regulatory Matters (by Group Study)	€350	€425
27/28 June	**General Litigation Masterclass**	10 CPD Hours including 1 Regulatory Matters (by Group Study)	€350	€425
28 June	**Essential Solicitor Update** Inn at Dromoland, Dromoland Co Clare	Hours (by Group Study) *	€135 *Hot lunch and networking drinks included in price*	
20/21 Sept & 19 Oct	**Advising clients in Garda Custody** Application deadline 25 July 2019	Full General CPD requirement for 2019 (by Group Study)	€350	€425
27/28 Sept	**Fundamentals of Clinical Negligence**	10 CPD Hours including 1 Regulatory Matters (by Group Study)	€350	€425
11 Oct	**Annual In-house and Public Sector Conference** – in collaboration with the In-house and Public Sector Committee	4.5 General plus 1 M& PD Skills. Total 5.5 Hours (by Group Study)	€160	€186
17 Oct	**Annual Property Law Conference** in collaboration with the Conveyancing Committee	3 General plus 1 Regulatory Matters (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 *Hot lunch and networking drinks included in price*	

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

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

P 01 881 5727 **E** Lspt@lawsociety.ie **F** 01 672 4890 **Applicable to Law Society Finuas Skillnet members*

to clear the US$26 billion acquisition of LinkedIn by Microsoft, subject to commitments (this transaction satisfied the relevant EU jurisdictional thresholds). The relevant remedies addressed concerns regarding the integration of LinkedIn features into Microsoft *Office* plus the denial of access to interoperability information.

Separately, the commission considered the horizontal concerns that could arise from the combination of rival databases. The commission indicated that the merger of two large sets of data could increase a merged entity's market power in the supply of the relevant data or could raise barriers to entry for actual/potential competitors. A combination of two datasets could also lead to a direct loss of competition even if there were no intention or possibility to combine same. That said, the commission found that LinkedIn's data could be replicated and, thus, there was unlikely to be any negative impact on competition.

Moreover, the commission considered a theory of vertical harm whereby the merged entity could engage in foreclosure by denying access to an important input, namely access to LinkedIn data to certain competitors (for example, competing providers of customer relationship management or CRM software). The commission carried out a classic vertical-effects analysis and found that LinkedIn's data could not be viewed as a 'must have', particularly since Microsoft faced strong competition for the supply of CRM software from companies such as SAP, Oracle and Salesforce.

Recently, the proposed US$400 million acquisition of Shazam by Apple was referred in 2018 to the commission for review at the request of the Austrian competition authority (with several other member states/EEA countries supporting the request). Shazam's technology allows users to identify music, film, TV and ads based on the playing of a short sample. The commission considered various potential vertical theories of harm, such as whether access to Shazam's data would give Apple's digital music streaming service, Apple Music, a unique advantage. The commission found that the target's data was not unique and could be replicated. The commission also considered that any attempt by Apple to prevent competitors (such as Spotify) accessing the Shazam app would not have a major anti-competitive impact, given the latter's limited importance as a portal to music streaming services.

Under the bridge

In recent years, the commission has considered amendments to the jurisdictional tests under the EU merger control regime, including the introduction of a 'value of transaction' threshold. Clearly, the purpose of such an amendment would be to capture market-changing transactions that do not trigger the relevant turnover thresholds. Indeed, both Germany and Austria have already amended their jurisdictional thresholds to include a 'deal value' element.

However, designing effective transaction-value based thresholds comes with at least three practical difficulties. First, the thresholds must, in the interests of legal certainty, apply in a predictable manner. The complexity of deal structures (sometimes involving publicly quoted stock) can create uncertainty regarding to the obligation to notify – for competition authorities and companies alike. Predictability might be further reduced by the need to assess whether a transaction has a substantial, immediate, and foreseeable effect in the EEA, as deal value alone does not provide this information. Finally, whatever transaction value is chosen, there is the incentive for the parties to consider creative ways of ensuring the relevant threshold is not satisfied. This possibility does not arise in the case of thresholds based on the parties' most recent annual turnover.

Indeed, the April 2019 report of the three special advisers to Competition Commissioner Verstager, entitled *Competition Policy for the Digital Era*, concluded that no legislative changes to the EU merger control regime are currently required. That said, the report recommends that both the referral system and the new Austrian and German thresholds should be closely monitored.

Through this storm

While the debate regarding how merger control rules should meet the challenges of the digital revolution has been raging in Brussels and elsewhere in the EU, things have been much calmer here. Indeed, the new Irish merger control thresholds, introduced in January 2019, continue to be based on the most recent annual turnovers of the undertakings involved. Indeed, it is surprising that the introduction of a 'value of transaction' threshold in the Irish merger control regime was not considered.

That said, this does not mean that the CCPC will not have to grapple with a merger in the digital space in the very near future. If so, it should keep in mind the April 2019 report's recommendation that competition agencies should pay close attention to acquisitions that may shield a major technology company from the nascent competitive threat of a niche player. g

THE RECENT COMMISSION MERGER DECISIONS REGARDING FACEBOOK/WHATSAPP, MICROSOFT/LINKEDIN, AND APPLE/SHAZAM EACH ILLUSTRATE THE CHALLENGES IN REVIEWING TRANSACTIONS IN THE DIGITAL/TECHNOLOGY SECTOR

REPORTS OF THE LAW SOCIETY COUNCIL MEETINGS

22 MARCH AND 10 MAY 2019

Sympathy

On 22 March, the Council observed a minute's silence in memory of past-president Moya Quinlan. On behalf of the Council, the president expressed sympathy to past-president Michael Quinlan, his brother Brendan, and the extended family on their recent very sad loss.

The Council also agreed that a letter of condolence should issue to the president of the New Zealand Law Society, expressing sympathy with the people of New Zealand on the recent shocking attacks on mosques, and expressing support for the level of integrity and support for the rule of law that had been displayed in response to the attacks.

On 10 May, the Council observed a minute's silence in memory of past-president Mr Bruce St John Blake, and the president expressed sympathy to his family and friends.

Motion: *Solicitors Advertising Regulations 2019*

'That this Council approves the Solicitors Advertising Regulations 2019'

Proposed: Martin Lawlor

Seconded: Martin Crotty

At the meeting on 10 May, Martin Lawlor noted that, by email dated 18 February, the Society had been notified by the Department of Justice that the EU Commission had issued a reasoned opinion in respect of the incompatibility of the *Solicitors (Advertising) Regulations 2002* with article 24 of the *Services Directive 2006*.

Article 24 requires member states to remove all total prohibitions on commercial communications by regulated professions. The first clarification on this issue had been sought by the commission in November 2012, which had been reassured that the *Legal Services Regulation Act* was consistent with article 24 and would replace the 2002 regulations. However, the relevant section of that act had not been commenced as of yet and, in October 2014, the commission's reasoned opinion to the Department of Foreign Affairs had concluded that Ireland "fails to fulfil its obligations under article 24".

As section 218 of the act had yet to be given a commencement date, in order to avoid any regulatory gap in the interim, it was proposed by the Department of Justice, to satisfy the commission's concerns, that new regulations should be enacted by the Society, by which the 2002 regulations would be repealed. These draft regulations had been circulated and had been confirmed by the commission as being in compliance with article 24.

The Council approved the draft regulations as circulated. It was agreed that the Society would urge the Legal Services Regulation Authority to ensure that the highest possible standards were required and maintained under the new regime.

Mental well-being

The Council received a presentation on the findings of a survey conducted for the Society by consultant firm Psychology at Work on members' perceptions of the mental-health supports provided by the Society.

Following the presentation, the Council approved a detailed proposal from immediate past-president Michael Quinlan, on behalf of the Society's Steering Group on a Mental Health and Well-being Implementation Plan, which had been circulated. The Psychology at Work report had identified a need among solicitors for support, education and advice across a spectrum of issues. The purpose of the implementation plan was to agree a structured and phased response to the report, designed to deliver supports across all cohorts of the profession, to meet the needs of individuals and firms, and to address mental health, workplace culture and lifestyle issues.

A 'well-being project coordinator' would be recruited to deliver a range of relevant and achievable activities and services over a 12-month period to move the profession steadily along a coherent, sustainable path towards improved personal and professional mental health and well-being.

Deputy director general Mary Keane noted that the implementation plan sought to address the findings and recommendations of the Psychology at Work report under three core pillars: (1) workplace culture, (2) resilience and well-being, and (3) emotional and psychological health. Under each of these pillars, the steering group had recommended that there should be both preventative and interventionist supports, and that the project should continue to be managed by the steering group, assisted by a dedicated project coordinator within the Society, with the involvement of the support services, education and psychological support teams.

The steering group had recommended that the Society should work in close collaboration with the bar associations, other established support groups, and with the involvement of professional advisors. In relation to each of the three pillars, the plan identified a number of specific actions, utilising a communications campaign, an education programme, and informational and other supports in order to deliver a coherent mental-health and well-being service for members.

Benburb Street development

The Council approved the establishment of a task force, under the chairmanship of the president, to progress consideration of the potential for development of the Benburb Street site and to revert to the Council in due course.

Ministerial orders

The Council approved three draft ministerial orders under section 44 of the *Solicitors Act 1954*, which recognised Northern Ireland, Scotland, and England and Wales as jurisdictions having a corresponding profession to an Irish solicitor, and enabled the Law Society to operate reciprocal recognition arrangements with them. The orders were required as the current recognition arrangements were based on the implementation of various EU directives

and would fall when Britain and Northern Ireland left the EU. They would ensure a continued legal basis for mutual recognition arrangements, but would not be required until Brexit actually took place.

Insurance reform

The Council was briefed on the meeting with Minister Michael D'Arcy on 17 April in relation to insurance reform (see May *Gazette*, p11).

Divorce law reform

The Council approved the Family Law Committee's report on *Divorce in Ireland: The Case for Reform* and endorsed the committee's recommendation that the Society should support the forthcoming divorce referendum. At its meeting on 10 May, the Council noted that the report had been launched by Minister Josepha Madigan on 2 May 2019, who had initiated the proposal that a referendum would be brought to the people on the divorce provisions contained in the Constitution.

The Council expressed its appreciation to the committee and, in particular, to Dr Geoffrey Shannon, as author of the report, who had produced a comprehensive body of work on the area, whose mastery of the topic was excellent and who, as Special Rapporteur for Children, was very eloquent on the human impact of divorce.

High Court Practice Direction 81

The Council discussed submissions from the Law Society and the Bar Council to the President of the High Court in relation to Practice Direction 81, which had been circulated. It was agreed that the Society should renew its request for a meeting with the President of the High Court to discuss the Society's concerns about the impact and effect of the practice direction.

REGULATION OF PRACTICE COMMITTEE

SOLICITORS BORROWING FROM CLIENTS

The Regulation of Practice Committee notes that the issue of solicitors borrowing money from their clients continues to arise in the course of Law Society inspections of solicitors' practices. The committee has noted with concern that, in a large number of these cases, the solicitors in question keep very little documentation to support these loan transactions.

The Law Society's *A Guide to Good Professional Conduct for Solicitors* (3rd edition) is very clear in relation to the situation. Page 24 of the guide sets out as follows: **"Borrowing money from a client:** A solicitor should not borrow money from a client unless that client is independently represented by another firm in that transaction or it is part of the business of the client to lend money, as when the client is a bank."

The Regulation of Practice Committee is of the view that a solicitor should not borrow from a client unless the client is in the business of lending money (for example, where the client is a bank). If the client does not come within that category of client, then best practice dictates that the solicitor should arrange for the client to obtain independent legal advice and that full supporting documentation for the loan be recorded on the client's file. Accordingly, details of the agreement for the client to lend money to the solicitor should be evidenced in writing, which should include, among other things, the amount of the loan, the date of the agreement, the terms of repayment, and evidence of the identity of the solicitor providing the independent legal advice.

In order to protect the integrity of the relationship between a solicitor and their client, as well as to avoid any conflict of interest, best practice dictates that loans should not be entered into in the context of the solicitor/client relationship. While the circumstances of each and every loan situation fall to be examined in the individual circumstances and merits of each case, it is entirely foreseeable that a loan arrangement that does not maintain the highest standards of professional probity and ethical behaviour could amount to professional misconduct and leave the solicitor open to disciplinary proceedings and sanction.

It should also be noted that any solicitor who engages in any activity that amounts to carrying on the business of moneylending is subject to the provisions of the *Consumer Credit Act 1995*, as well as other associated legislation, such as the *European Communities (Consumer Credit) Regulations 2010* and other instruments, such as the relevant consumer protection code. In addition to the specific legal obligations and liability that such laws create, a breach of them could, in addition, amount to conduct that is professional misconduct.

Moneylending and the provision of credit to consumers is now a highly regulated area of law, and solicitors should ensure that their conduct does not enable persons engaged in such activity to evade their regulatory obligations by purporting to conduct such business through a solicitor's firm.

It should also be noted that the existence of unexplained and/or unclear loan arrangements in a solicitor's practice may give rise to a suspicion of money-laundering and may trigger reporting obligations for the Law Society in that regard.

REGULATION OF PRACTICE COMMITTEE

LOANS FROM ONE CLIENT TO ANOTHER CLIENT

Situations have occurred where solicitors holding funds on behalf of a client have organised for those funds to be loaned to another client in need of funds. Investigating accountants have seen instances of substantial sums of money being transferred from one client ledger to another unrelated client ledger. On enquiry, solicitors have indicated that the relevant authorisations to the transfer of funds have been agreed by the clients. It is often found that the paperwork or vouching documentation on the files in support of these loans is deficient, and solicitors have been required to obtain supporting documentation and waivers from the clients involved.

The Law Society is now issuing a recommendation that no sum in respect of a private loan from one client to another client should be paid out of client funds held for the client lender, either by means of a client ledger transaction between the clients or to a client borrower directly. Any such loan arrangements between clients should be a matter for the clients involved to be dealt with between the parties.

It should also be noted that any solicitor who engages in any activity that amounts to carrying on the business of moneylending is subject to the provisions of the *Consumer Credit Act 1995* as well as other associated legislation such as the *European Communities (Consumer Credit) Regulations 2010* and other instruments, such as the relevant consumer protection code. In addition to the specific legal obligations and liability that such laws create, a breach of them could, in addition, amount to conduct that is professional misconduct.

Moneylending and the provision of credit to consumers is now a highly regulated area of law, and solicitors should ensure that their conduct does not enable persons engaged in such activity to evade their regulatory obligations by purporting to conduct such business through a solicitor's firm.

It should also be noted that the existence of unexplained and/or unclear loan arrangements in a solicitor's practice may give rise to a suspicion of money-laundering and may trigger reporting obligations for the Law Society in that regard.

REGULATION OF PRACTICE COMMITTEE

LONG-OUTSTANDING CLIENT LEDGER BALANCES IN SITUATIONS OF A PRACTICE TAKEOVER

The Regulation of Practice Committee, which monitors compliance with the *Solicitors Accounts Regulations 2014*, wishes to draw attention to the issue of long-outstanding balances on the client ledger in situations where a firm is acquiring, taking over, or merging with another firm. This is an issue that the Regulation of Practice Committee frequently encounters in the course of fulfilling its statutory duties. In general, long-outstanding client ledger balances may relate to moneys to which the solicitor is beneficially entitled, or to moneys held for or on behalf of clients.

Practices should be aware that, in a situation where a firm acquires, takes over or merges with another practice, it is the responsibility of the new practice to deal with these long-outstanding balances.

Firms should ensure that, when taking over, acquiring or merging with a practice, all client ledger balances are examined prior to takeover, and the assistance of the former firm is obtained to ensure these matters can be appropriately dealt with.

Solicitors' attention is drawn to the practice note entitled 'Long-outstanding client ledger balances', published by the Law Society on 7 September 2018 and available on the Society's website.

CONVEYANCING COMMITTEE

DELETION OF GENERAL CONDITION 25 FROM CONTRACT FOR SALE

The Conveyancing Committee does not agree with the routine deletion of General Condition 25 from the standard contract for sale, and also advises solicitors to look carefully at the execution of completion documentation before agreeing to close.

In the specific case of a receiver sale or a bank selling as mortgagee, any post-closing query regarding execution (including witnessing where necessary) of documents can only be dealt with by referring those queries back to the receiver or the bank in question. For this reason, purchasers should resist the deletion of General Condition 25. g

SOLICITORS DISCIPLINARY TRIBUNAL

REPORTS OF THE OUTCOMES OF SOLICITORS DISCIPLINARY TRIBUNAL INQUIRIES ARE PUBLISHED BY THE LAW SOCIETY OF IRELAND AS PROVIDED FOR IN SECTION 23 (AS AMENDED BY SECTION 17 OF THE *SOLICITORS (AMENDMENT) ACT 2002*) OF THE *SOLICITORS (AMENDMENT) ACT 1994*

In the matter of Ian McSweeney, a solicitor practising as McSweeney Solicitors, 2 Capel Street, Dublin 1, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT67]
Law Society of Ireland (applicant)
Ian McSweeney (respondent solicitor)

On 14 March 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he:

1) Failed to respond to the following letters from the Society in a timely manner, within the time provided, or at all: letters dated 19 May 2017, 6 June 2017, 27 June 2017, 1 August 2017, 22 November 2017, 12 December 2017, and 21 February 2018,
2) Failed to attend the meetings of the Complaints and Client Relations Committee on 17 April 2018, despite being required to do so.

The tribunal ordered that the respondent solicitor:

1) Stand admonished and advised,
2) Pay the sum of €500 to the compensation fund,
3) Pay the sum of €1,537 as a contribution towards the whole of the costs of the Society.

In the matter of Ian McSweeney, a solicitor practising as McSweeney Solicitors, 2 Capel Street, Dublin 1, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT69]
Law Society of Ireland (applicant)
Ian McSweeney (respondent solicitor)

On 14 March 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in that he:

1) Failed to comply with a direction made by the Complaints and Client Relations Committee at its meeting on 12 September 2017 that he provide a full written response to the complaint within seven days,
2) Failed to comply with a direction made by the Complaints and Client Relations Committee at its meeting on 24 October 2017 that he would pay the outstanding costs of €350 to the Society and refund €450 to his former client within 14 days,
3) Failed to comply with a direction made by the Complaints and Client Relations Committee at its meeting on 8 February 2018 that he provide a medical certificate explaining his non-attendance at the meeting,
4) Failed to respond to the following letters from the Society in a timely manner, within the time provided, or at all: letters dated 26 April 2017, 12 May 2017, 26 May 2017, 12 June 2017, 29 June 2017, 12 October 2017, 27 October 2017, and 17 November 2017.

The tribunal ordered that the respondent solicitor:

1) Stand censured,
2) Pay the sum of €2,500 to the compensation fund,
3) Pay the sum of €1,212 as a contribution towards the whole of the costs of the Society.

In the matter of Shane O'Donnell, a solicitor practising as Flynn & O'Donnell Solicitors at Loft 3, The Grainstore, Distillery Lofts, Distillery Road, Drumcondra, Dublin 3, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT63]
Law Society of Ireland (applicant)
Shane O'Donnell (respondent solicitor)

On 14 March 2019, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to ensure that there was furnished to the Society an accountant's report for the year ended 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 solicitor:

1) Stand admonished and advised,
2) Pay the sum of €1,212 as a contribution towards the whole of the costs of the Society.

In the matter of Thomas O'Donoghue, a former solicitor, previously practising as O'Donoghue & Co, Solicitors, 2 Egans Lane, Tuam, Co Galway, 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/DT70 and High Court 2019/28 SA]
Law Society Of Ireland (applicant)
Thomas O'Donoghue (respondent former solicitor)

On 31 January 2019, the Solicitors Disciplinary Tribunal found the respondent former solicitor guilty of misconduct in his practice as a solicitor in that he:

1) Failed to comply with a direction of the Complaints and Client Relations Committee, made at its meeting on 11 February 2014, to refund the sum of €33,880 to a named client estate,
2) Failed to reply to letters from the first complainant dated 29 May 2012, 15 June 2012, 28 June 2012 and 31 July 2012,
3) Failed to attend the committee meeting of 9 April 2013, as required by High Court order made on 11 March 2013,
4) Failed to comply with section 68(1) of the *Solicitors (Amendment) Act 1994*,
5) Issued an excessive bill of costs,
6) Caused the Compensation Fund of the Law Society of Ireland to make a grant to the second complainant in the sum of €33,880 on 10 May 2018.

The tribunal ordered that the matter should go forward to the High Court and, on 25 March 2019, the High Court declared that the respondent former solicitor is not a fit person to be a member of solicitors' profession, as recommended by the disciplinary tribunal, the court having noted that the solicitor was struck off the Roll of Solicitors by order of the High Court on 3 December 2018 in proceedings bearing High Court record no 2018 no 134 SA.

The High Court ordered that:

1) The respondent former solicitor pay the whole of the costs of the Law Society in the

Solicitors Disciplinary Tribunal proceedings,
2) The respondent solicitor pay the costs of the within application.

In the matter of Sean R Sheehan, solicitor, practising as Aaron Kelly & Co, Solicitors, 8 Palace Street, Drogheda, Co Louth, and in the matter of the *Solicitors Acts 1954-2015* [2017/DT75]
Law Society of Ireland (applicant)
Sean Sheehan (respondent solicitor)
On 27 March 2019, the tribunal found the respondent solicitor guilty of misconduct in that he:
1) Failed to comply with an undertaking given by him to Permanent TSB expeditiously, within a reasonable time, or at all in respect of his named clients, over three properties at Drogheda, Co Louth, dated 17 June 2008,
2) Failed to respond to the Society's correspondence and, in particular, letters dated 10 June 2015, 15 July 2015, and 4 August 2015,
3) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting on 15 December 2015 whereby he was directed to furnish an update to the Society no later than 15 February 2016, which should address the direction made at its previous meeting on 13 October 2015.

The tribunal noted the manner in which the respondent solicitor gave his evidence and his ultimate compliance with the undertaking.

The tribunal ordered that the respondent solicitor:
1) Stand advised and admonished,
2) Pay the sum of €1,500 to the compensation fund,
3) Pay a contribution of €6,000 towards the whole of the costs of the Law Society of Ireland.

In the matter of Kevin Brophy, a solicitor formerly practising as Brophy Solicitors, 46a Patrick Street, Dun Laoghaire, Co Dublin, and in the matter of the *Solicitors Acts 1954-2013* [2018/DT45]
Law Society of Ireland (applicant)
Kevin Brophy (respondent solicitor)
On 9 April 2019, the tribunal found the respondent solicitor guilty of misconduct, up to and including the date of this referral, in that he:
1) Failed to comply with a form of authority, dated 22 March 2017, executed by his former named clients in their own capacity and on behalf of a named client, requesting the release and transfer all files and documents held by him in relation to the charge in favour of one of the same named clients over the property and assets of a named client within a reasonable time or at all,
2) Failed to reply adequately or at all to the complainant's correspondence and, in particular, letters dated 28 March 2017, 3 May 2017 and 11 May 2017 respectively,
3) Failed to reply adequately or at all to the Society's correspondence and, in particular, letters dated 24 May 2017 and 12 September 2017 respectively.

The tribunal ordered that the respondent solicitor:
1) Stand admonished and advised,
2) Pay the sum of €1,000 as a contribution towards the whole of the costs of the applicant. g

WILLS

Cleary, Josephine (Hannah) (deceased), late of Aylesbury Nursing Home, 58 Park Avenue, Dublin 4, and 40 Broadford Park, Ballinteer, Dublin 14, who died on 6 September 2015. Would any person having a claim against or an interest in the estate of the above-named deceased send particulars in writing of his or her claim or interest to Elizabeth Howard & Co, Solicitors, Ballyowen Castle, Ballyowen Shopping Centre, Lucan, Co Dublin, before 28 June 2019, after which date the personal representatives will distribute the estate among the persons entitled thereto, having regard only to the claims and interests of which they have had notice and will not, as respects the property so distributed, be liable to any person of whose claim they shall not have had notice

Farmer, Hugh (deceased), late of Cois Ceim, Clonskeagh Hospital, Vergemount, Dublin 6. Would any person having knowledge of a will made by the above-named deceased, who died on 14 March 2019, please contact Denis Keane, solicitor, 51 Kenyon Street, Nenagh, Co Tipperary; tel: 067 33455, email: deniskeane@djkeane.com

Johnston, Mary (deceased), late of 31 The Rise, Drumcondra, Dublin 9, who died on 19 October 2018. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact David R Fowler, Solicitors, Tramway Cottage, 19 Rathfarnham Road, Terenure, Dublin 6W; tel: 01 490 0020, email: info@davidrfowler.com

Kelly, Nellie (otherwise Ellen) (deceased), late of 33 Mayorstone Park, Limerick, who died on 29 December 1984. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased on 25 October 1978 please contact Mortimer Kelleher, solicitor, Foley Turnbull Solicitors, Joyce House, Barrack Square, Ballincollig, Co Cork; tel: 021 487 7170, email: mortkelleher@foleyturnbull.ie

Leavy, Mona Octavia (deceased), late of San Martino, Friarspark, Trim, Co Meath, who made her last will and testament on 29 April 2015 and subsequently died on 2 January 2019. Would any person having knowledge of the whereabouts of the said original will of Mona Octavia Leavy (deceased), dated 29 April 2015, please contact Paul Moore, solicitor, Malone and Martin Solicitors, Market Street, Trim, Co Meath; tel: 046 943 1256, fax: 046 943 6409, email: info@maloneandmartin.com

Mulvey, Anne Jane (orse Annie) (née Moran) (deceased), formerly of 83 Woodbury Street, Tooting Broadway, London, and formerly of 93a Chestnut Drive, Mullingar, Co Westmeath and c/o Drumderrig Nursing Home, Boyle, Co Roscommon, who died on 22 March 2019. Would any person having knowledge of the whereabouts of a will executed by the above-named deceased please contact Callan Tansey Solicitors, Crescent House, Boyle, Co Roscommon; tel 071 966 2019, email: info@callantansey.ie

O'Connell, Anthony Gerard (deceased), late of Roisin's View, Camden Road, Crosshaven, Co Cork, who died on 3 March 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Killian O'Mullane, Murphy English & Co, Solicitors, 'Sunville', Cork Road, Carrigaline, Co Cork; tel: 021 437 2425, email: killian@murphyenglish.ie

Newman, David (deceased), late of Whitehaven, Dranagh, Ferns, Co Wexford (previously Ballally Grove, Dundrum, Dublin 16), who died on 24 March 2019. Would any solicitor holding or having knowledge of a will made by the above-named deceased please contact William Clarke, Clarke Jeffers & Co, Solicitors, 30 Dublin Street, Carlow; tel: 059 913 3656, email: william@cj.ie

Roche, Mary (deceased), late of 17 Ard na Gréine, Waterford, who died on 12 September 2010. 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 Deborah O'Connell, solicitor, 3 Connolly Street, Midleton, Co Cork; DX 57001 Midleton; tel: 021 463 9425, email: deborah@midletonsolicitors.com

Shortt, Kathleen (deceased), late of 24 Ballybough Street, Co Kilkenny, who died on 24 April 2014. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Harte, Solicitors, 39 Parliament Street, Kilkenny; tel: 056 772 1091, email: aislingirish@hartes.ie

Smyth, Mary Alice (deceased), late of Iterera, Scotstown, Co Monaghan, and late of St Mary's Residential Centre, Castleblayney, Co Monaghan, who died on 29 December 2018. Would any person having knowledge of a will made by the above-named deceased please contact Margaret O'Connell, solicitor, Dermot G O'Donovan, Solicitors, 5th Floor, Riverpoint, Lower Mallow Street, Limerick; tel: 061 314 788, email: moconnell@dgod.ie

Tierney, Nigel Thomas (deceased), late of 30 Verbena Avenue, Sutton, Dublin 13, who made his last will and

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND.** Send your small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: gazettestaff@lawsociety.ie. **Deadline for July 2019 *Gazette*: 10 June 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*.

testament on 12 May 1999 at the offices of Early & Baldwin, Solicitors, 27-28 Marino Mart, Fairview, Dublin 3. Would any person having knowledge of the whereabouts of the said original will of 12 May 1999 please contact Gerald Griffin, Solicitors, St Paul's Church, North King Street, Dublin 7; tel: 01 617 4846, fax: 01 677 1558

Whelan, James (deceased), late of Ballyvaskin, Milltown Malbay, Co Clare, who died on 13 October 1994. Would any person having knowledge of the whereabouts of a will bearing the date of 3 February 1993 or of any will executed by the above-named deceased please contact Cahir & Co, Solicitors, 36 Abbey Street, Ennis, Co Clare; tel: 065 682 8383, email: sharoncahir@cahirsolicitors.com

Wignall, Gordon (deceased), late of 120 St John's Wood West, Clondalkin, Dublin 22. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Howell & Co, Solicitors, 2 Tower Road, Clondalkin, Dublin 22; tel: 01 403 0777, email: ann@howellsolicitors.ie

MISCELLANEOUS

Principal based in mid-west region (county town), wishing to retire, seeks interested party to take over long-established private client firm. Absolute confidentiality guaranteed. Reply to **box no 02/03/19**

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* and in the matter of an application in respect of the premises known as 5 Sackville Place, Dublin 1

Any person having an interest in 5 Sackville Place, Dublin 1, the subject of an indenture of lease dated 16 April 1918 between Robert Henry Wright Carroll and Andrew William de la Cour Carroll of the one part, and William J McEvoy of the other part, whereby the premises known as no 5 Sackville Place in the city of Dublin, meared and bounded as described therein, and more particularly coloured blue on the map attached to the lease, was demised to William J McEvoy for a term of 150 years from 25 December 1917 at a rent of £6.

Take notice that Rosie Hackett Limited intends to submit an application to the county registrar for the city of Dublin for the acquisition of the fee simple and any intermediate interest in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises is called upon to furnish evidence of their title to the below named within 21 days from the date of this notice.

In default of any such notice being received, Rosie Hackett Limited 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: 7 June 2019

Signed: Smith Foy & Partners (solicitors for the applicants), 59 Fitzwilliam 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) (No 2) Act 1978* and in the matter of an application by in respect of the premises known as 106 Marlborough Street, Dublin 1

Any person having an interest in 106 Marlborough Street, Dublin 1, the subject of an indenture of lease dated 25 March 1862 between Andrew de La Cour Carroll, Coote Carroll and the Reverend Theophilius Carroll of the one part, and James Leggett of the other part, whereby all that and those 106 Marlborough Street, meared and bounded as set out therein, was demised to the said James Leggett for a term of 299 years from 25 March 1862 at a rent of £18 sterling

Take notice that Rosie Hackett Limited intends to submit an application to the county registrar for the city of Dublin for the acquisition of the fee simple 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 party asserting that they hold a superior interest in the aforesaid 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, Rosie Hackett Limited 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: 7 June 2019

Signed: Smith Foy & Partners (solicitors for the applicants), 59 Fitzwilliam 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) (No 2) Act 1978* and in the matter of an application by Paul O'Brien and Gina O'Brien (executors of Josephine O'Brien, deceased) in respect of the premises known as 4 Castle Street, Carrick-on-Suir, Co Tipperary

Take notice that any person having an interest in the freehold estate in the following property: 4 Castle Street, Carrick-on-Suir (hereinafter called 'the property'), being all of the property demised by a lease dated 17 July 1936 from Kathleen Kiely to Francis Russell.

Take notice that Paul O'Brien and Gina O'Brien (executors of Josephine O'Brien, deceased) (the applicants) intend to submit an application to the county registrar for the county of Tipperary for the acquisition of the freehold interest in the property, and any parties asserting that they hold a superior interest in the property are called upon to furnish evidence of their title to the property 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 Tipperary for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest(s) including the freehold reversion in the property are unknown or unascertained.

Date: 7 June 2019

Signed: James Reilly & Son Solicitors (solicitors for the applicants), 4 Brighton Place, Clonmel, Co 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* and in the matter of an application by Ardeeshal Lodge Limited in respect of Ardeeshal Nursing Home, Glenageary, Co Dublin

Any person having an interest in Ardeeshal Nursing Home, Glenageary, Co Dublin, the subject of an indenture of lease dated 14 December 1951 between Rev James Edmond McGrath of the one part and

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
Diploma in Law	06 September 2019	€4,400
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	€3,000
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 Corporate Social Responsibility Practice (new)	18 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
Diploma in Aviation Leasing and Finance	30 January 2020	€2,800

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.

Michael Towey of the other part, whereby the premises known as 'Knighton', Upper Glenageary Road, was demised to Mr Towey to hold for a term of 133 years from 1 December 1951 at an annual rent of £15.

Take notice that Ardeeshal Lodge Limited intends to submit an application to the county registrar for the city of Dublin for the acquisition of the fee simple and any intermediate interest in the aforesaid premises under condition 7 of section 10 of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, and any party asserting that they hold a superior interest in the aforesaid 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, Ardeeshal Lodge Limited 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: 7 June 2019
Signed: Maguire McErlean (solicitors for the applicant), 78/80 Upper Drumcondra Road, Dublin 9

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 Seskin Investments 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 Seskin Investments 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: 7 June 2019
Signed: William Fry (solicitors for the said 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) (No 2) Act 1978* and in the matter of an application by Sinead Horan: notice of intention to acquire the fee simple pursuant to section 4 of the *Landlord and Tenant (Ground Rents) Act 1967*

Premises: residential shop premises situate at Sarsfield Street (otherwise known as Bridge Street and/or Market Street), Mountmellick, in the county of Laois.

Take notice any person having an interest in the freehold or any estate in the above property that Sinead Horan intends to submit an application to the county registrar of the county of Laois for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any person asserting that they hold a superior interest in the property are called upon to furnish evidence of title to the premises to the below named within 21 days of the date of this notice. In particular, any person having an interest in the lessors' interest in a lease of 24 April 1871 between Thomas Andrew Bailey of the one part and William Goff Pim of the other part in respect of the premises described therein situated at Sarsfield Street (otherwise known as Bridge Street and/or Market Street), Mountmellick, in the county of Laois, townland of Townparks, barony of Tinnahinch, and county of Laois, for a term of 150 years from 24 April 1871, subject to the yearly rent of £9.85, should provide evidence of title to the below named.

In default of any such notice being received within 21 days from the date of this notice, the applicant, Sinead Horan, intends to proceed with an 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 of Laois for directions as may be appropriate on the basis that the person or persons entitled to superior interest, including freehold interest in the said premises are unknown and ascertained.

Date: 7 June 2019
Signed: WX White Solicitors (solicitors for the applicants), Clarmallagh House, Bank Place, Portlaoise, Laois

DE MINIMIS NON CURAT LEX

DOES MY ASP LOOK BIG IN THIS?

A Florida woman pulled a foot-long reptile from her trousers during a traffic stop in Florida, *the Irish Examiner reports*.

A police officer stopped the vehicle after it had driven through a stop sign. The driver told the officer that he and his female passenger were collecting frogs and snakes under an overpass.

Upon searching the truck, the officer found 41 turtles in the woman's backpack. Asked if she had anything else, she proceeded to pull a juvenile alligator from her yoga pants.

BONJOUR TRISTESSE

A 102-year-old French woman could be one of the oldest people to have committed a murder.

The suspect is believed to have killed a 92-year-old woman in a care home in Chézy-sur-Marne, *thelocal.fr reports*.

The victim was found dead in her room on 18 May. Prosecutor Frederic Trinh said that she had died "as a result of asphyxiation caused by strangulation and blows to the head".

The 102-year-old suspect, who lived in the neighbouring room, "appeared in great agitation and told one of the medical staff that she had killed someone".

Trinh says it has not been possible to interview the woman, but she would undergo a psychological examination to determine whether she could be held criminally responsible.

FREDDY KRUEGER RETURNS!

A parrot called Freddy Krueger has found its way back to the zoo from which it was stolen, *The Guardian reports*.

Freddy came to the zoo in 2015, having been severely injured in a shootout between police and his drug criminal owners. In April this year, he was bitten by a snake. Despite profuse bleeding, Freddy survived, only to be stolen days later when raiders burst into the zoo, overpowered its security guard, and made off with two parrots and a cylinder of gas.

Two days later, however, Freddy returned. The second parrot and gas cylinder have not been located.

BIG APPLE'S SUBWAY SUPERVILLAIN

A new supervillain in the Big Apple has it in for the subway system, *reports jalopnik.com*.

The culprit has been hopping on the back of rush-hour trains, pulling the emergency brake, then racing over to repeat the action on a train heading in the opposite direction – halting services in both directions.

Conductors have found the rear doors of the trains unlocked and left open, with the safety cables unattached – leading transport authorities to believe that the suspect has a key usually issued solely to operators and conductors.

NO MORE 'MONKY' BUSINESS

Greece can't stop a monk from practising as a lawyer, *Newstalk reports*.

The felonious monk requested the Athens' Bar Association to enter him on the roll as a lawyer in 2015. His bad habit was rejected on the basis of national provisions relating to the incompatibility between practising as a lawyer and the status of monk. The CJEU's judgment was based on the EU directive that establishes a mechanism for the "mutual recognition of the professional titles of migrant lawyers wishing to practise under the professional title obtained in the home member state, harmonising fully the preconditions for exercise of the right of establishment conferred by the directive".

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.

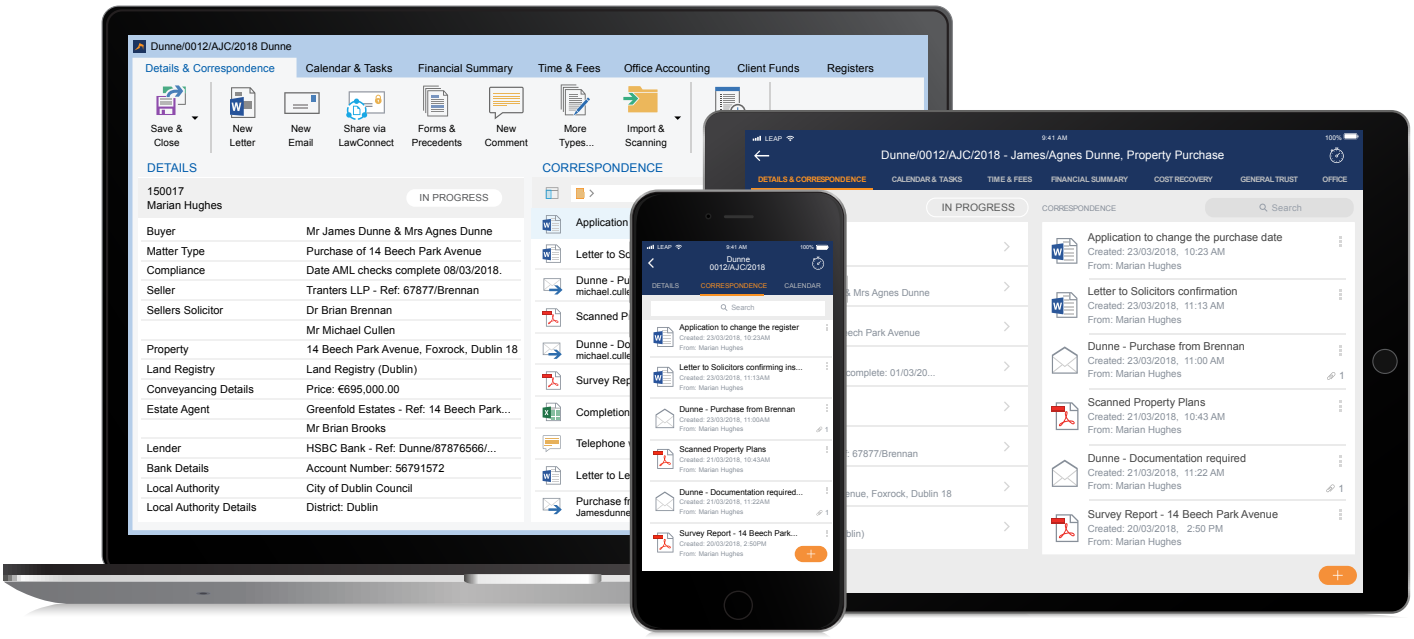
You focus on **your business.** We'll focus on you.

1800 804 414
kbc.ie/business

THE BANK OF YOU + YOUR BUSINESS

LEAP

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

leapsoftware.ie