Freedom song
We speak to Gary Lee, head of the Ballymun Community Law Centre

Are you ready?
Feeling safe when speaking up – psychological safety for staff and firms

Dancing in the moonlight
Courts face a balancing act when dealing with redacted documents in discovery

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LAW SOCIETY

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PRESIDENT'S MESSAGE

FIGHT OR FLIGHT

As a society, we are working through an extraordinary time, which is requiring all of us to think and act differently in every aspect of our lives. The Covid-19 medical and social emergency brings into sharp focus our primal instinct of 'fight or flight'.

On 17 March, the Taoiseach confirmed what – deep down – we all knew but, perhaps, did not want to confront when he said that "the surge will come".

Most of us know someone who has contracted Covid-19, or someone who is in self-isolation, or someone who has recovered. If not, you will – sooner, rather than later. It is inescapable.

In truth, it is the healthcare and emergency workers who are selflessly placing themselves in the eye of the storm, risking health and life in this Herculean battle to stem the tide of this virus. Words are inadequate to express our thanks to them. We can, however, show solidarity.

Like all of you, I am a practitioner providing legal services to the community in which I live and serve. I face the same challenges and uncertainty as you do. In our practice, like many other practices throughout this island, we have chosen to fight, not flee. We have put in place and activated a business continuity plan. We have adjusted and adapted the running of our practice, operating strictly within official HSE and World Health Organisation safety guidelines so that we can actively contribute to stemming carnage in the business world while the medical emergency is unfolding and evolving.

We have a responsibility to those frontline staff to navigate the storm and to contribute to keeping the economy moving.

Keeping the lights on

As a profession, we must show leadership. As a profession, we must keep the lights on. I recognise that many practices have been forced to make difficult decisions around valued and loyal staff. However, if we continue to find and activate creative ways to provide necessary legal services, we will, step-by-step, facilitate the continuation of practice and, where required, rebuild our practices.

As you will be aware from my *President's eBulletins*, I am constantly seeking input from the Society's expert committees, along with State agencies and stakeholders, to provide practical guidance and best-practice support to you in the continuity of your practice.

I have received many emails from concerned colleagues, and I have tried to respond to each one in as timely a manner as other pressures allow.

Many of your queries do not have an easy answer; however, I can assure you that the Society, its committees, and its staff are working assiduously to identify and establish practical and innovative solutions. We are monitoring developments in all the key areas of the legal world, as well as those at national and international level.

At its meeting on 6 March, the Council approved the provision of mental-health supports to sustain members, in the form of a new helpline and counselling programme with Spectrum Health. Because of Covid-19, we have accelerated the implementation of this programme.

> AS A PROFESSION, WE MUST SHOW LEADERSHIP. AS A PROFESSION, WE MUST KEEP THE LIGHTS ON

Further *eBulletins* on specific practice issues will be finalised and issued as information becomes available, and I can assure you that your concerns are my concerns and are central in our efforts to keep practices going.

Finally, social distancing does not mean social isolation. I remain contactable at all times at president@lawsociety.ie. g

MICHELE O'BOYLE,
PRESIDENT

PIC: SHUTTERSTOCK

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

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Editor: Mark McDermott FIIC
Deputy editor: Dr Garrett O'Boyle
Art director: Nuala Redmond
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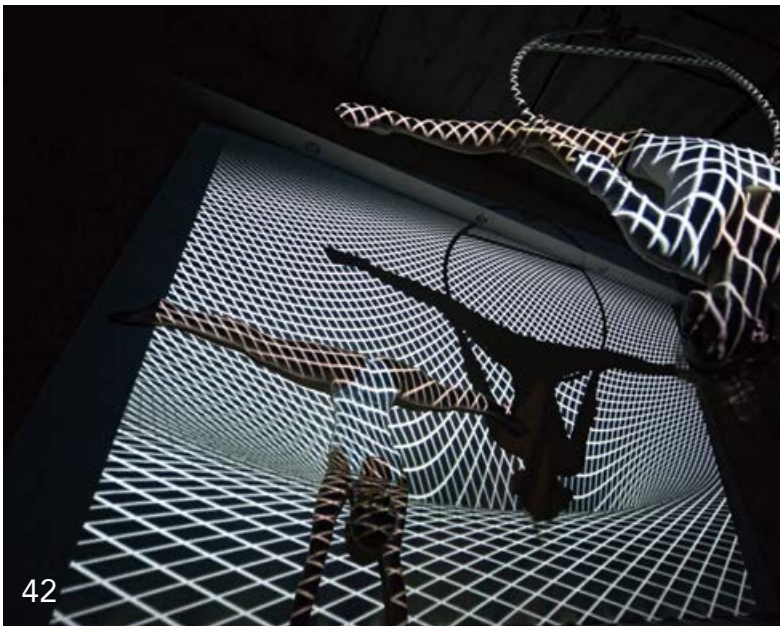

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REGULARS

THE BIG PICTURE

PARISIENNE WALKWAYS

A man covered with a plastic bag for protection reads a book in front of the Eiffel Tower in Paris on 22 March 2020. Like Ireland, France is under lockdown in an attempt to stop the spread of the coronavirus Covid-19 pandemic

PIC: EPA-EFE/JULIEN DE ROSA

LAW SOCIETY MOOT COURT WINNERS

PIC: LENSMAN

The winners of the Law Society of Ireland's Moot Court Competition 2020 are PPC1 trainee solicitors Eamonn Butler (Arthur Cox) and Darragh Bollard (Philip Lee). They were coached by Dr Geoffrey Shannon. Darragh was also awarded 'best individual advocate' in the final

STRICTLY BLACKHALL STRIKES CHARITY GOLD

PPC trainee solicitors hand over a cheque for €51,274 to the Alzheimer Society of Ireland – the result of their incredibly successful recent fundraiser, Strictly Blackhall. *(From l to r)*: Louise Murray, Jordan Lynch, Pat McLoughlin (Alzheimer Society of Ireland), Aisling Doyle and Nicole Jones

INADR MEDIATION TOURNAMENT WINNERS

PIC: JOHN LUNNEY

The winners of the INADR International Law School Mediation Tournament 2020 are PPC2 trainee solicitors Paula O'Halloran (CDS Law & Tax), David Murphy (Michael Houlihan & Partners) and Grainne Hussey (Eversheds Sutherland). They were coached by the Law School's John Lunney

SLA ANNUAL DINNER 2020

ALL PICS: TONY O'CONNELL

A total of 280 practitioners gathered for the Southern Law Association (SLA) annual dinner at Maryborough House Hotel, Cork, on 28 February, including special guests Judge Brian O'Callaghan (Circuit Court), Judge Con O'Leary (District Court), Judge Patricia Harney (District Court), Robert Baker (president, SLA), Judge Mary Dorgan (District Court), Judge James Donoghue (Circuit Court) and Judge Colm Roberts (District Court)

Carol Jermyn with her husband Robert Baker and his father Norman Baker

Joan Byrne, Patrick Dorgan (past-president, Law Society), Robert Baker (president, SLA) and Michele O'Boyle (president, Law Society)

Juli Rea (vice-president, SLA) and Robert Baker (president, SLA)

Sean Durcan (treasurer, SLA) and Catherine O'Callaghan (secretary, SLA)

Dr Louise Crowley (UCC School of Law), Robert Baker (president, SLA), Brian O'Callaghan (William Fry) and Peter Groarke (Ronan Daly Jermyn)

STREET LAW PROGRAMME 2019/20 CONFERRALS

ALL PICS: CIAN REDMOND

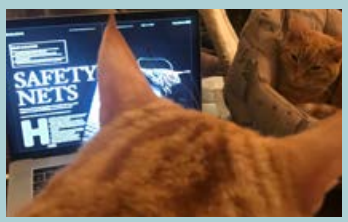
Over 42 PPC1 trainees took part in the Street Law 2019/20 programme. Trainees delivered lessons to transition-year students in DEIS schools and worked with prisoners in Mountjoy and Wheatfield prisons to raise their awareness and understanding of the law. At the recent conferral ceremony were *(front, l to r)*: Brian O'Malley (A&L Goodbody), Darragh Bollard, Mark O'Reilly, Sam McMahon, Sadhbh Ni Bhaoil (Pathway Programme, Mountjoy), Eoin Lynagh (Solas Programme, Wheatfield), Sean McTague (Solas Programme, Wheatfield), Andrew Crawford and Aaron Kelly; *(middle, l to r)*: Hannah Higgins, Blanaid Corrigan, Patricia Harvey (Diploma Centre), Claire O'Mahony (acting head of Diploma Centre), John Lunney (Street Law course manager), Mr Justice Max Barrett, Carol Plunkett (chair, Education Committee), Robert Glascott, Aoife Martin, Sarah Bambrick and Diarmuid O'Carroll; *(back, l to r)*: Aileen Fitzmaurice, Esther Kelliher, Roisin O'Brien, Aoife Reidy, Eoghan O'Keeffe (Facebook), Sinead Byrne, Sarah Rogers, Georgina Forde, Marie McQuail, Órlaith Ní Mhadagáin, Ryan Hunt, Lorraine Sheridan, Cormac O'Donoghue, Ebisinbofa Charles Titus, Laura Casey, Naomi Clarke, Eithne Caulfield, Geilis Garrett, Niamh Hanbidge, Gillian O'Rourke, Emma McLoughlin and Eithne Lynch (A&L Goodbody)

Mr Justice Max Barrett congratulates trainee solicitors Georgina Forde and Lorraine Sheridan, who were mini mock-trial prize-winner hosts

At the recent conferring ceremony was Mr Justice Max Barrett, pictured with trainee solicitors Mark O'Reilly and Laura Casey, who were prize-winners for their lesson plan on the topic of freedom of expression/hate speech

MAKE IT SNAPPY!

Given the likely lack of event pics for our people pages in the coming months, the *Gazette* is asking colleagues, in a lighthearted way, to send in pics and selfies of their lockdown workspaces, whether it be your empty office, your desk at home, your kitchen table or your garden shed. In these unprecedented times, we're all in it together. Yes, Gavin, we're talking about your shed. Bonus points for pics that include pets.



'ORDER, ORDER!' – A GUIDE TO ORDER 59

A new book by Keith Walsh called, *Divorce and Judicial Separation Proceedings in the Circuit Court – A Guide to Order 59*, published by Bloomsbury Professional, was launched by Minister Josepha Madigan and Dublin County Registrar Rita Considine on 23 January. At the event, held at Blackhall Place, Dublin, were *(l to r)*: Dublin County Registrar Rita Considine, Minister Josepha Madigan (Culture, Heritage and the Gaeltacht), author Keith Walsh and Law Society President Michele O'Boyle. Also present were Mr Justice Michael White, Ken Murphy (director general), and a large gathering of solicitors, barristers, judges, colleagues, family members and friends

Author, Keith Walsh

Maura Derivan and Dublin County Registrar Rita Considine

Michelle Ní Longáin, Michele O'Boyle and Brendan Dillon

Minister Josepha Madigan, Keith Walsh and DSBA President Tony O'Sullivan (Beauchamps)

Gerard O'Neill BL, Elizabeth Maguire BL, Olive Doyle, Michelle Ní Longáin, Sinead Kearney and Des Quinn BL

EMERGENCY POWERS BASED ON 'GRAVE RISKS TO HUMAN LIFE AND PUBLIC HEALTH'

Emergency COVID-19 legislation was debated in the Dáil on 19 March. It has since completed the fifth stage through Seanad Éireann.

The *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020* makes exceptional provisions "in the public interest and having regard to the manifest and grave risk to human life and public health posed by the spread of the disease known as Covid-19".

The legislation amends the *Health Act 1947*, conferring power on the Minister for Health to prohibit or restrict events and/or access to certain premises, and also provides for enforcement measures. The powers include a ministerial order requiring people to stay in their homes. It also gives medical officers detention and isolation powers against those suspected of spreading infection.

The Minister for Health can also designate as 'affected areas' those districts where there is "known or thought to be sustained human transmission of Covid-19, or from which there is a high risk of importation of infection or contamination with Covid-19 by travel from that area".

Mr Justice Peter Kelly: no new cases or trials for remainder of term

Taoiseach: cost of these extraordinary measures will be 'enormous'

The bill also addresses immediate social-welfare payments for both Jobseeker's Benefit and Jobseeker's Allowance, without a waiting period, and enhanced income supports for those either diagnosed with, or required to self-isolate, due to Covid-19.

Sunset clause

A number of amendments were tabled in the Dáil – the main one being a commitment to review the new law through a 'sunset clause' on 9 November this year, with an option to review or let it lapse.

Taoiseach Leo Varadkar, in his St Patrick's Day speech, said the cost of these extraordinary measures would be "enormous".

Covid-19 was also added, by a ministerial order (SI 53 of 2020) to the *Infectious Diseases Regulations 1981* (SI 390 of 1981).

A Government statement said that it hoped it would not have to use the new powers, given those already in place under the *Health Act 1947*, but that the legislation was being introduced in exceptional circumstances.

The bill amends section 40 of the *Social Welfare Consolidation Act 2005* (on the entitlement to disability benefit) to include those certified as diagnosed with Covid-19.

COURT BUSINESS

On 13 March, the President of the High Court directed that, for the remainder of this term, no new cases or trials will begin, even if they do not involve oral testimony from witnesses.

Judges will be available throughout the remainder of the term to hear urgent applications.

In the Circuit Court, ongoing jury trials will continue to conclusion, but no new jury trials will commence for the remainder of this term.

Custody sentencing cases will be dealt with as usual, or by video-link, depending on the application. Non-custody cases will be mentioned as usual and remanded to appear after 10 June. Defendants' solicitors should inform their clients that they need not attend if on bail.

District Court appeals will be remanded or adjourned until after 10 June. Parties with non-urgent District Court cases are no longer required to attend court. All District Court civil matters are considered to be non-urgent.

A non-urgent matter may be treated as urgent, if a good case can be made, by emailing the relevant court office, setting out the reasons. This should be done on notice to the other side, which must be given a chance to set out their position.

Family law lists will be adjourned until after 20 April.

These measures will be reviewed at the end of the legal term on 12 April.

'BE EXTREMELY CAREFUL', SAYS SOLICITOR SURVIVOR OF COVID-19

Arklow solicitor Donal O'Sullivan has recovered from a bout of coronavirus and has strong words of warning for colleagues.

"Be extremely careful," he says, pointing out that the virus can live for 72 hours on surfaces, such as door handles. "Social distancing in offices is absolutely critical."

He urges practitioners to follow HSE advice, adding: "It's very important *not* to have people working in the same office. There should be home working, if possible."

O'Sullivan normally works alongside a consultant solicitor and three staff members in the firm, O'Sullivan Hogan. Most are now working from home. Donal has treated common surfaces in his office and keeps all doors propped open to avoid unnecessary touching of handles.

The firm's consultant solicitor, Áine Hogan, works entirely from home, but comes in during out-of-office hours if she needs to access a file or do printing.

Donal O'Sullivan: 'It's very important not to have people working in the same office'

Welcome Society advice

Donal welcomes the Law Society's advice on drawing up wills in a time of social isolation and would welcome some additional guidance on the swearing of documents without social contact – perhaps done behind glass.

"Getting in my commissioner for oaths to swear a document with a third-party is just something I can't do. It's simply too risky," he says. He suggests that accepted criteria, such as the use of secure PDFs, should be hammered out as agreed methods of document service between firms.

He also questions whether some cases will become statute-barred due to the crisis and reckons that the limitations period should be increased. "If Government increased it by one year – for one year – that would alleviate a lot of concerns within the profession," he says.

"I'm putting staff at risk sending out registered letters at the moment, and I'd prefer not to have to do that."

His firm is sending documentation electronically, and he thinks that firms are heading in that direction anyway. "This is going to be the death of postal letters," he predicts. "People are not going to go back to that way of working."

Skiing trip

Donal caught the virus while on a skiing trip in north-east Italy during the last week of February. He and six others from a group of 18 were infected, probably from being in confined ski-lifts. He recovered after being "extremely well looked after" in the Mater Hospital. He had few symptoms, apart from a hoarse voice and the loss of his sense of smell.

Donal is convinced that the current measures need to be in place for 12 months, or longer, for the entire profession. "Three months isn't long enough," he says, pointing out that when Hong Kong relaxed protective measures, the virus came back with a vengeance.

SOCIETY NOMINATIONS TO LSRA

The Law Society continues to work closely and cooperatively with the Legal Services Regulatory Authority (LSRA).

Under section 69 of the *Legal Services Regulation Act 2015*, ('Establishment and Membership of the Complaints Committee'), it is provided that the Society shall nominate persons, each of whom has practised as a solicitor for more than ten years, for appointment by the authority to the Complaints Committee.

A 'divisional committee' of the Complaints Committee shall consist of an uneven number of members and shall have a majority of lay members. Where the divisional committee is dealing with a complaint about a solicitor, one of the members of the divisional committee shall be a solicitor.

At its meeting on 6 December, the Law Society Council nominated eight solicitors, all of whom it believes are well qualified to serve as members of the committee – to which they have since been appointed: Andrew Cody (Reidy Stafford), Kevin Hickey (Hickey Henderson & Co), Catherine Lyons (Kennedys), Catriona Murray (O'Brien Murray Solicitor), Emma Neville (Ahern Roberts O'Rourke Williams & Partners), Hugh O'Neill (Marcus Lynch), Adrian Shanley (Shanley Solicitors), and Catherine Tarrant (State Claims Agency).

Leaders of the LSRA recently visited Blackhall Place *(l to r)*: Brian Doherty (CEO, LSRA), Michele O'Boyle (president, Law Society), Don Thornhill (Chair, LSRA), and Ken Murphy (director general, Law Society)

SOCIETY COMMITS TO ENQUIRIES-HANDLING DEADLINES

The Law Society has committed to replying promptly to queries from solicitors and members of the public.

"We receive over 160,000 enquiries every year from solicitors and other parties," said Teri Kelly (director of representation and member services). "Those enquiries demand helpful and timely responses. As a member organisation with duties to the public as well, we take that responsibility very seriously."

The Society has set targets for staff to reply promptly to queries, including an initial acknowledgement and (where necessary) a substantive response to more complex enquiries. All queries – whether by email, phone call, letter or other means – are expected to receive a substantive response within 30 days.

Principles in the guide

The principles set out in an internal enquiries guide provided to staff include:

Teri Kelly

- Tone of voice – staff are expected to respond to queries with courtesy and respect, awareness of the Society's role in serving members of the profession and public, and clarity,
- Responsibility – the recipient of a query is responsible for ensuring that it is answered,
- Respect for the remit – while the Society will aim to provide a response to queries, it will not stray outside of its remit as the professional body for solicitors,
- Guidance, not advice – the Law Society can provide guidance, but will never provide legal advice,
- Responding to all queries – staff are expected to reply to queries from members of the public, as well as the profession,
- Prompt responses – enquiries should be answered promptly, in line with the specified targets,
- Courtesy and respect – staff are entitled to be treated with courtesy and respect, and have clear processes for dealing with unacceptable behaviour.

DEADLINES FOR PROMPT REPLIES

"The deadlines are contained in a detailed internal enquiries guide provided to staff," Teri Kelly says. "Together with training on-site, this document makes it clear that we expect our staff to treat everyone with courtesy and respect.

"As the educational, representative, and regulatory body of the solicitors' profession in Ireland, we provide a service to our members and other stakeholders. How we respond to members of the profession and public must reflect that."

Method of enquiry	Normal target to acknowledge enquiry	Maximum target for a substantive response
Phone call	Four working hours	30 days
Social media (approved social-media users only)	Four working hours	30 days
Email	One working day	30 days
Fax	Five working days	30 days
Letter by post or as an attachment by email	Five working days	30 days

ALL COURT JUDGMENTS TO BE DELIVERED ELECTRONICALLY FOR FORESEEABLE FUTURE

All court judgments will be delivered electronically for the foreseeable future. The Chief Justice and presidents of each court jurisdiction have agreed that, in light of the COVID-19 pandemic and the need to minimise the exposure of persons using the courts to unnecessary risk, this will remain the default position until further notice.

All written judgments of the courts will be delivered electronically to the parties, and a copy, subject to any redactions that might ordinarily apply, will be posted as soon as possible on the Courts Service website. The date and time of delivery to the parties will be notified in the Legal Diary.

PIC: SHUTTERSTOCK

The parties will be invited to communicate electronically with the court on any issues that may arise from the judgment, such as the precise form of order that must be made or questions concerning costs.

In the event of such issues, and should the parties not agree, concise written submissions should be filed electronically with the office of the court within 14 days of delivery, subject to any other direction given in the judgment.

Unless the interests of justice require an oral hearing to resolve such matters, any issues subsequently arising will be dealt with remotely. Any ruling made by the court at this juncture will be published on the website, and will include a synopsis of the relevant submissions made, where appropriate.

LEGALMIND – OFFERING YOU A SAFE SPACE AND 'IN-THE-MOMENT' SUPPORT

COVID-19 is an unprecedented event in world history, and it's having knock-on effects in all aspects of our lives. One significant factor is the importance of looking after our mental health. During this challenging time, it is human to feel a whole range of emotions – from fear and worry, to loneliness and sadness.

More than likely, you will be concerned for your health and the health of your loved ones and colleagues. Will they fall ill, how serious will it be, and how long will it last? Financial security, job security, and childcare/eldercare responsibilities might also be on your mind.

As we go to press, an independent, low-cost, mental-health support service for Law Society members and their dependants is being developed. Called 'LegalMind', this permanent support will be accessible across Ireland at any time of the day or night. Details on how members and their dependants can access this support will be shared on the Law Society's Professional Wellbeing Hub (www.lawsociety.ie/wellbeinghub).

PIC: SHUTTERSTOCK

'In-the-moment' support

The service will offer 'in-the-moment' support over the phone, with a qualified counsellor or psychotherapist who will talk through any issues you or your family may be facing and decide, with you, if you should avail of further supports.

Such supports include onward referral to a mental-health professional, such as a psychologist, counsellor or psychotherapist for a series of face-to-face online video or over-the-phone therapeutic sessions. This may be because you are facing a complex issue that will take some time to address or because you are facing something less complex, but nevertheless difficult, which you know will affect your life for some time. It may also be for a short-term issue that you can overcome quite quickly.

With this new support, you will be offered a date to speak with a mental-health professional within 48 hours of calling the support line. You may then be referred to a professional within a 30-mile (48km) radius of your home within five working days.

Benefits of the service

- The service is completely independent and confidential, and has been developed by Spectrum.Life and Spectrum Mental Health exclusively for Law Society members. Both organisations guarantee confidentiality, best practice, and robust clinical and risk-governance standards.
- The 'in-the-moment' phone support and your first session with a mental-health professional will be free. After this, members of the Law Society will pay a significantly reduced rate of €30 for each of the remaining therapeutic sessions.
- Law Society members will have access to an online portal and app that combines information and content on physical wellness, wellbeing, mental health, events, and contact details. This platform is full of content, podcasts, videos, and articles on how to improve and maintain physical and mental health.
- The service will enhance mental-health supports already available through firms' employee-assistance programmes, which target short-term and non-complex issues. It will provide additional and more in-depth supports for longer-term and more complex issues.

How do I access it?

At the time of going to press, Spectrum.Life and Spectrum Mental Health are finalising preparation of this service. Details on how to access this support will be made available on the Law Society Professional Wellbeing Hub (www.lawsociety.ie/wellbeinghub).

ENDANGERED LAWYERS

HANI HUSSAIN, KUWAIT

On 19 February 2020, Kuwaiti security forces arrested human-rights lawyer Hani Hussain. He has been imprisoned in the central prison for 21 days on the orders of the public prosecution service, while they investigate two allegations against him. The first relates to broadcasting news about the 'neutral zone' between Kuwait and Saudi Arabia; the second relates to alleged violations of the law of national unity.

Hussain uses Twitter to communicate his views in defence of civil and human rights. He did considerable work in defence of Bedoon rights. The Bedoon are a group of around 100,000 natives of Kuwait who are barred from employment; denied citizenship, education, and free movement; and live in constant threat of abritrary arrest and deportation. They are a stateless people. The modern history of the Bedoons goes back to 1961, the year Kuwait gained independence from Britain. At the time, a number of people living in the region — particularly Bedoons — did not deem it necessary to apply for citizenship. According to Kuwaiti law, they have "undefined citizenship status." A special Kuwaiti state department deals with regulatory issues and renews their security cards, but these do not count as proper proof of identity. In July 2019, the Kuwaiti National Assembly announced they were looking at solutions and would present proposals in the new legislative term. This does not sound as though they will be offered full citizenship.

In 2017, Hussain was arrested and held for 21 days, allegedly for posting false news related to a Bangladeshi doctor. The report in the Kuwaiti Arab Times online states that the prosecution was being conducted in total secrecy for the benefit of the public. In April 2018, there was another report in the Arab Times that he was released without bail in connection with a case filed against him by an MP for allegedly offending him by messages posted on Twitter. The case was adjourned to September 2018.

There is a widespread belief that Hussain's arrest on this occasion is also connected to his Twitter account. He posted tweets criticising the rejection of proposals for a comprehensive amnesty law by the National Assembly on 18 February 2020, and the way the matter was discussed in the assembly, which involved a melee.

His detention and the charges that he is facing appear to be connected to his legitimate activities as a human rights lawyer.

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

SMALL RURAL PRACTICE GRANT FOR TRAINEE HIRE

Arising from the recent Crowe Report on sole practitioners and smaller legal practices, the Law Society has launched a new financial grant scheme to assist such firms and practices with the cost of employing a trainee.

Education Committee chair Carol Plunkett explains: "Small law firms and sole practitioners are in almost every town and village across Ireland, and are absolutely vital to the sustainability and success of their communities. Recruitment of trainees is an issue for rural practices. The Small Practice Traineeship Grant will assist sole practitioners and smaller practices to grow their businesses, ensure continuity of service to the public, and achieve greater success for themselves, their staff, and their local communities by encouraging and supporting them to employ a trainee."

In 2020, five such grants will be made available. Each grant will provide €18,000 to the training firm over the course of the two-year training contract to assist with the cost of hiring a trainee solicitor. It will also provide funding of €7,000 to the trainee solicitor by way of a discount on the PPC1 fee.

"The introduction of the Small Practice Traineeship Grant not only facilitates smaller firms in taking on a trainee, it also provides, to an intending trainee solicitor, the potential of remaining in their community without having to relocate to Dublin," says Plunkett, "especially if the trainee enrols on the PPC Hybrid course."

In December 2019, the Society launched the PPC Hybrid, a new version of its professional practice course. It is aimed specifically at delivering a flexible route to solicitor qualification.

The proposed training contract firm should:

- Be located outside of the city and county of Dublin, and the urban districts of Cork, Limerick and Galway,
- Be a small firm, that is, consisting of five or fewer solicitors (including principal, partners, consultants and assistant solicitors), and
- Agree to pay the trainee at least the living wage (currently €12.30 per hour).

The closing date for entries to the Small Practice Traineeship Grant is 3 July 2020. Further information, terms and conditions, and application forms are available at www.lawsociety.ie/traineeshipgrant.

CPD ONLINE OFFER

Due to Government advice, Law Society Professional Training and Finuas Skillnet have decided that, in the interest of delegates' health and wellbeing, CPD courses due to take place in April will now be conducted online, where possible. During this time, practitioners are encouraged to take precautions and to follow the guidelines set out by the HSE.

With this in mind, for the month of April, all online CPD courses will be reduced to €95 or less in order to allow members to maintain their CPD schedule and minimise the effect of the current lockdown.

To book an online CPD course, please visit www.lawsociety.ie/onlinecourses.

HYMAN TARLO (1921 – 2011)

I recently arranged to prepare copies of notes made 67 years ago on the law of equity, principally for the entertainment and interest of two grandchildren commencing legal education. This caused me to reflect on my student days and, more particularly, on my relationship with the equity lecturer – the late Hyman Tarlo.

Mr Tarlo was a gifted and committed gentleman who spared no effort in providing his students with a first-class knowledge of the law of equity. Examinations were set by him at the end of the year, and one cannot imagine the surprise I felt when he called me to his desk towards the end of the student year and suggested that I should continue studies in his subject, with a view to updating the late T O'Neill Kiely's work.

I had neither the time nor the confidence in my ability to give Mr Tarlo's suggestion any serious consideration. At this stage, Mr Tarlo was practising in the law firm known as Nutley & Tarlo, and taught part-time.

He approached me again some time later and indicated that he was making other professional arrangements, and would no longer require his *Acts of the Oireachtas*, and asked me whether I would be interested. I found Mr Tarlo's offer one I could not refuse.

All of the above took place in or about the year 1953 and, in the intervening years, I have often wondered what had become of this very talented lecturer. Recent searches revealed that Mr Tarlo decided to quit the legal scene in Dublin and, with his family, emigrated to Australia, where he had a hugely successful career in law.

He was born on 17 September 1921 in Lancashire, England, and died on 14 April 2011 in Sydney, Australia. His obituary noted that he was the type of man who was not afraid to speak his mind when he saw something wrong in the world, regardless of the consequences to himself.

He was professor of law at the University of Queensland from 1966 until he retired in 1986.

He was regarded as a pioneer in teaching environmental law, as well as specialising in land law, equity and family law.

Prof Tarlo was educated at Wesley College and, later, Trinity College in Dublin. He was a brilliant student and was made a Scholar of Trinity – the highest honour the university could bestow on an undergraduate.

In 1947, he married Ruth Sampson – also a Trinity graduate – who is still with us and continues to be actively engaged with Trinity College.

He wrote many articles on his specialities for legal journals and became president of the Australian Law Teachers' Association and a committee member of the Commonwealth Law Association.

Prof Tarlo had a lifelong interest in politics, music, and the State of Israel, which he visited many times. He was a founder of the first progressive Jewish congregation in Queensland and president of the Union for Progressive Judaism in Australia.

It is clear that he maintained a keen interest in continuing legal education in Ireland. Following his death, his wife established the Hyman Tarlo Scholarship, to be availed of in the TCD School of Law by Australian law students. Applications for this scholarship are assessed competitively, with the sole criterion being the proven academic merit of the candidate.

Prof Tarlo is survived by his wife Ruth and three children, Beryl, Wendy and Keith, grandchildren and great-grandchild.

Quite clearly, Hyman Tarlo's move from Dublin to Australia was a serious loss to our legal establishment, and a very considerable gain for our friends 'Down Under'. It is fitting that his major contribution to Irish legal education should be acknowledged.

PFT

THEY THINK IT'S ALL OVER

The British Premier League could lose out on acquiring Europe's top youth talent, thanks to Brexit and FIFA regulation 19. But the transfer ban on under-18 players could prove to be a Brexit bonus for Ireland, says **Stuart Gilhooly**

STUART GILHOOLY IS A PARTNER AT HJ WARD & CO AND A SOLICITOR FOR THE PROFESSIONAL FOOTBALLERS' ASSOCIATION OF IRELAND

> THERE REMAINS THE POSSIBILITY THAT FIFA COULD CHANGE ITS RULE TO PROVIDE AN EXEMPTION FOR BRITISH CLUBS, AND WE SHOULD NEVER UNDERESTIMATE THE POWER OF THE PREMIER LEAGUE, BUT ALL THE SIGNALS ARE THAT FIFA WON'T BUDGE

Remember when Brexit was all the rage? You couldn't open a newspaper or turn on the radio without mention of backstops or no deals. And then Boris Johnson won the election and everyone just stopped talking about it. It's now so 'last decade'. During the new 'Roaring 20s', the rise of Sinn Féin and rapidly spreading viruses dominate the national discussion.

There is one constant though – football. The Premier League continues to fascinate, with apparently over one million adults in this country supporting either Liverpool or Manchester United. The FAI fiasco is the story that just won't go away. Where dysfunction met scandal, and where once a nation held its breath, now it can't avert its gaze.

But Brexit also hasn't gone away, you know. Expect the latter to make an explosive comeback as the year progresses and the end of the transition period edges closer.

Which is where our obsession with football and the effect of Brexit align. Considering the many potentially seismic economic effects of Britain's solo run, it's not surprising that the freedom of movement of young footballers has not been on the radar to the same degree.

Offside trap

However, bearing in mind the size of the Premier League, which is now a massive global business turning over billions of pounds per year, it would seem as if those in charge of the league and its largest clubs may have taken their eye off the ball, so to speak: from the end of this year, it is likely that no international players under 18 will be able to sign for a British club.

The issue stems from FIFA regulation 19, which is designed to protect minors. Put quite simply, it bans international transfers of players under 18. This means that, although in England, players can sign scholarship forms at 16, and professional contracts at 17, those living outside the country cannot do so. There are some exceptions to this rule, set out in sub-rule 2 of article 19 – the most important of which is an exemption where the transfer takes place within the territory of the EU and European Economic Area, and the player is aged between 16 and 18.

This is clearly in place to recognise the EU's rules on freedom of movement, and has seen many European players benefit from it, such as Cesc Fabregas and Gerard Piqué, while Jadon Sancho has profited from the rule by moving from England to Germany. All of the major Premier League clubs scour Europe for young talent that they can sign for relatively small sums. Current European champions Liverpool have used the rule to transfer Dutch prodigies Ki-Jana Hoever and Sepp Van Den Berg, who have played in their cup competitions this year.

Parking the bus

The cost of elite players in the current market is so exorbitant that, with clubs of this stature all chasing that player who could be next Virgil Van Dijk or Kevin De Bruyne, they are prepared to play a percentage game by stockpiling as many young players as they can get their hands on, in the hope that one, or maybe two, will be the 'next big thing'.

They've done the maths and know that, even if only one or two percent are good enough, they can sell enough of those that don't make the elite grade

ALL PICS: SHUTTERSTOCK

Pogo player – Jadon Sancho bounced from Watford to Manchester City to Borussia Dortmund for Stg£8 million – but could earn Borussia Dortmund a cool Stg£100 million if transferred next summer

to a club on the next level for a fee that will more than justify the initial outlay.

One look at the Jadon Sancho situation illustrates the point. Although Manchester City initially signed him from Watford at the age of 15, two years later he was able to move to Borussia Dortmund under the provisions of article 19(2) for a fee believed to be just Stg £8 million. Now regarded as one of the best young talents in the world, he will cost over Stg £100 million when, if as expected, he leaves Dortmund this summer.

Boys in green

It becomes particularly interesting when we examine the effect on Irish football. For decades, young Irish footballers have made the teenage move to Britain in the hope of glory on England's conveyor belt of footballing talent.

Where once the likes of Niall Quinn and Kevin Moran could be plucked from the GAA grounds of Dublin and thrust into the top flight, recent years have seen a major sea change in the experience of young potential superstars. The academies of Ireland's junior clubs churn out hundreds of players every year who dream of being the next Robbie Keane or Shane Long. The reality is much more prosaic. A tiny pro-

> FROM THE END OF THIS YEAR, IT IS LIKELY THAT NO INTERNATIONAL PLAYERS UNDER 18 WILL BE ABLE TO SIGN FOR A BRITISH CLUB

Cesc Fabregas – transferred from Barca U17 to Arsenal for Stg£2.88 million in 2003

Gerard Piqué – transferred from Barca U19 to Manchester Utd for Stg£4.73 million in 2004

Ki-Jana Hoever transferred from Ajax U17 to Liverpool U18 in 2018 for Stg£90k

Sepp Van Den Berg transferred from PEC Zwolle to Liverpool in 2019 for Stg£1.71 million

portion of those who travel to England make a career in that country. On the flip side, 99% come home, many disillusioned, homesick and determined never to play the sport again. Most of these had benefitted from the article 19(2) exemption. For every Troy Parrott and Aaron Connolly, there are 198 lads who need picking-up off the floor.

The lucky ones are those with the wherewithal to drag themselves up again and make a career in the League of Ireland. Many will simply return home with no prospects, having left at 16 without completing their education. Many suffer from mental-health issues; others, mired in disappointment, either struggle to obtain menial employment or fall in with the wrong crowd.

It is those stories that are never told. So many young players chase an impossible dream and leave education, family and friends behind to return to nothing. But it is tempting – everyone thinks they might be that 1%.

Back of the net

The unexpected consequence of Brexit will take away the choice and this is, ultimately, a good thing. No player should be leaving home before 18 anyway. They should stay, do their Leaving Cert and, if they are good enough, a top League of Ireland club will be knocking down their door. If they are exceptional, they will play in our Premier Division before they reach their majority, earning valuable playing time in competitive men's football, which they would never get if they were in the academy of a Premier League club.

Take Ireland's best young talent. Just turned 18, would he be playing for a League of Ireland club for the last two years if rule 19(2) hadn't applied to him? The answer most likely is 'yes'. You can't blame him for moving, but he is – not surprisingly – finding it hard to play any matches at any elite Premier League club, despite his obvious ability.

And, of course, the league will benefit from retaining the best players we can produce for a few more years. If the player is good enough, the English clubs will come knocking when they are 18 anyway. If they don't, then they shouldn't be going in the first place.

Of course, European clubs can still benefit from the rule, and maybe the German, Dutch, French or Italian clubs will chase the Troy Parrotts of the future, though transfers to non-English speaking countries will be a lot less attractive.

Off the woodwork

There remains the possibility that FIFA could change its rule to provide an exemption for British clubs, and we should never underestimate the power of the Premier League, but all the signals are that FIFA won't budge. An additional issue is that the Football Association (of England), a separate entity, may welcome the opportunities that will now inevitably fall to young English prospects.

Do not expect the Premier League to take this lying down. If a solution cannot be found with FIFA, they are unlikely to sit patiently and wait for Europe's (including Ireland's) top talents to reach 18. Ingenuity will be required, but they will look to bend every rule and chase very loophole. However, for Ireland's next stars, and an already resurgent League of Ireland, this is one Brexit bonus. g

> THE UNEXPECTED CONSEQUENCE OF BREXIT WILL TAKE AWAY THE CHOICE AND THIS IS, ULTIMATELY, A GOOD THING. NO PLAYER SHOULD BE LEAVING HOME BEFORE 18 ANYWAY

PIC: SHUTTERSTOCK

RETURN OF THE CYBERMEN

Initiating proceedings and securing interim and interlocutory orders against cyberattackers has value, sending a signal to the hackers that their demands will be resisted and their websites deleted. **Anthony Thuillier** boots up

ANTHONY THUILLIER IS A PRACTISING BARRISTER SPECIALISING IN COMMERCIAL LITIGATION

AT A GLANCE

- There has been a significant rise in ransomware attacks on large companies and public institutions
- Cyberattack cases are likely to become a regular feature in the Irish courts, and practitioners will turn to British case law for guidance
- However, the boundaries of the area have yet to be stress-tested in an Irish context, and it may be that, across jurisdictions, hacking scenarios require more IT than legal firepower

Last year saw a significant rise in ransomware attacks on large companies and public institutions, particularly in the US. 'Ransomware' is a term applied to digital hacking, which sees anonymous hackers infiltrate computer systems, extract data and encrypt it. The hackers then communicate via various media, seeking payment of a ransom in cryptocurrency.

In Ireland, the Commission for Communications Regulation, the body responsible for communications security, has recently issued warnings about the threats to both Government agencies and the private sector from these kinds of attack. This is especially so with the ongoing roll-out of 5G technology.

One only has to Google 'ransomware attacks 2019' to see the scale of the problem in the US. The first injunction to address the problem of cyberattacks was heard in Ireland on New Year's Eve 2019, before Gearty J, but it was an application for interim relief, and there is no written decision. It is only a matter of time before cyberattack cases become a regular feature in the Irish courts and, when they do, practitioners will turn to British case law for guidance, because such cases have become common before the courts there in the last three years.

In *AA v Persons Unknown* (2019), a hacker infiltrated and bypassed

PIC: SHUTTERSTOCK

> A PLAINTIFF MIGHT SEEK ORDERS THAT ITS IDENTITY BE PROTECTED, ON THE GROUNDS THAT, IF ITS INJUNCTION WERE REPORTED, MUCH OF THE DAMAGE THE HACKERS SOUGHT TO DO TO ITS BUSINESS WOULD BE DONE BY THE PUBLICITY SURROUNDING THE COURT ACTION

the firewall of an insurance company and installed malware that encrypted all of the company's systems, demanding a ransom in Bitcoin for the encrypted files.

The same scenario – hacking, 'exfiltration' of data, Bitcoin demand, threat of online publication if the ransom was not met – gave rise to *PML v Person(s) Unknown* (2018). In *PML*, the plaintiff company made a formal complaint to the police, and then an *ex parte* application to the Media and Communications Court in London for an interim non-disclosure order to restrain the threatened breach of confidence and for delivery-up and/or destruction of the stolen data.

Potential reliefs

What type of reliefs should be sought? How can the unknown defendants be described? How can the interim injunction be served? Should the judge sit *in camera* if so requested? Should the judge anonymise the plaintiff if requested todo so? What happens if the defendants fail to engage with the legal process?

In cases where the hackers have demanded money, some version of the following reliefs may be appropriate at interlocutory stage:

- An order directing the defendants to remove all data relating to the plaintiff and its customers from the website with the relevant domain name,
- An order compelling the defendants to deliver up or delete all data exfiltrated by the defendants from the plaintiff,
- An order providing for restrictions on the reporting of these proceedings by media and/or an order that the plaintiff be anonymised in reports of the proceedings,
- An order that the person(s) unknown identify him/her/themselves and provide an address for service.

In terms of the plenary summons, it may be appropriate to seek damages for conspiracy, deceit, fraud and breach of confidence, as well as for unlawful interference with business relations and economic interests, and causing loss by unlawful means.

Persons unknown

It is not enough to simply issue proceedings against 'persons unknown'. It is necessary for the unknown persons to be described as narrowly as possible, so that there is certainty as to who is included in the description, and who is not. In the context of cyberattacks, the descriptors may be "persons unknown responsible for demanding money from the plaintiff on [date]" or "persons unknown who demanded Bitcoin on [dates]". The need for a descriptor has been settled since *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* (2003).

Issuing proceedings against 'persons unknown' should be seen as a temporary expedient, a way of getting a case up and running. There is an obligation on the plaintiff to try and identify unknown persons as quickly as it can. The other side of that coin is that a party cannot take proceedings purely against persons unknown where it knows the identities of some individuals – known individuals must be named.

The courts will grant interim and interlocutory injunctions against persons unknown, but final orders where the identities of parties have remained unknown are less common. It can be done, however – it was done in *Novartis Pharmaceuticals UK Ltd v Stop Huntingdon Animal Cruelty* (2014) and *Clarkson plc v Person or Persons Unknown* (2018) – but the value of a final order (for example, by way of judgment in default of appearance) against persons unknown will, in most cases, be low.

Order for service

The courts have become very familiar with alternative digital methods of service over the course of the past ten years. The court may make an order for service by mail to a 'front' or 'info@' email address, where there are reasonable grounds for believing that this will "serve as a conduit for bringing matters to the defendants' attention" (*LJY v Persons Unknown* [2017]).

The same is true of service via Facebook, Twitter, or WhatsApp, for example. If communication has been taking place via a phone, it may be practicable for the court to direct that service be effected via a series of texts, as long as the texts contain enough detail for the defendants to know the key features of the order.

In one case, it was ruled that, if the defendants (who had been texted the terms of the injunction order) did not provide an address for service, the plaintiff could serve the pleadings by filing them in court, with the order providing that, in the absence of a response by a certain date, an application for default judgement would be heard. This method was considered a 'deemed service'. In cases against persons unknown, it is good practice to ask the judge to include in the order liberty to apply for the defendants.

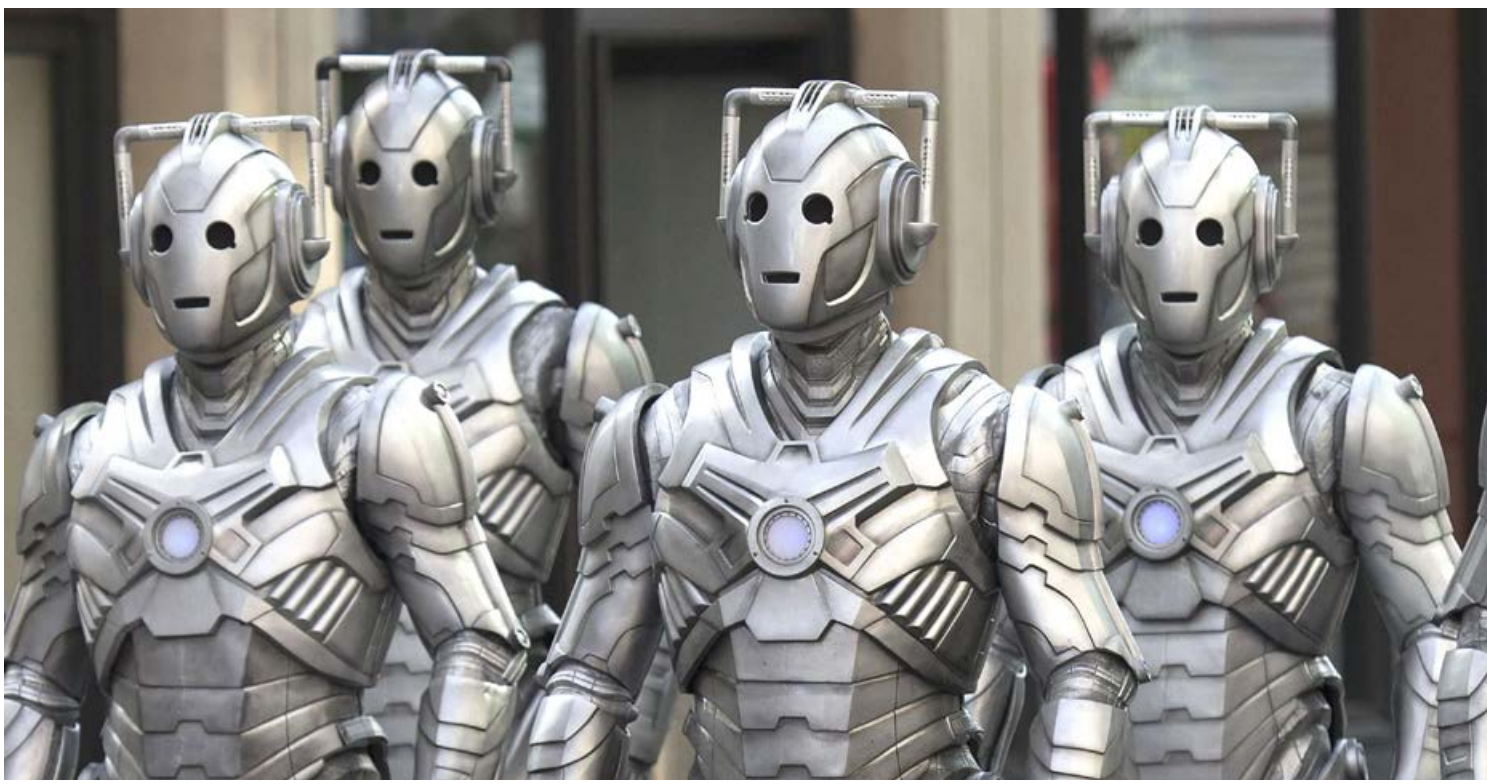
Who knows where the persons unknown are? They may be within the jurisdiction and they may not. In *CMOC v Persons Unknown* (2017), the court took the view that, because the damage of the wrongdoing was sustained within the jurisdiction of the court, the 'tort gateway' was fulfilled. This seems a reasonable approach. What if the only link to this jurisdiction is the IP address that the hackers appear to be using? That ought to be enough to ground the proceedings, on the basis that the tort is being (or is about to be be) committed in this jurisdiction – but that rationale will lose force if the hackers cease to operate from that IP address and switch to one generated elsewhere.

Anonymising plaintiffs

In some cases, a plaintiff might seek orders that its identity be protected, on the grounds that, if its injunction were reported, much of the damage the hackers sought to do to its business would be done by the publicity surrounding the court action.

The English courts have permitted anonymisation and have sat *in camera* in blackmail cases (*LJY v Persons Unknown* and *ZAM v CFM and TFW* [2013]). The rationale is that the protection of blackmail victims is an important legal policy and, at the earliest stages of a case, no competing considerations will prevail over that policy. In cyberhacking cases, it is more correct to speak of extortion rather than blackmail, but the point applies in both cases.

The force of the logic in the foregoing statements is clear. The power to anonymise in England and Wales is found in that jurisdiction's *Civil Practice Rules*. There is no analogous rule in the Irish rules of court. There is, however, a common law power



PIC: SHUTTERSTOCK

> IN TERMS OF THE PLENARY SUMMONS, IT MAY BE APPROPRIATE TO SEEK DAMAGES FOR CONSPIRACY, DECEIT, FRAUD AND BREACH OF CONFIDENCE, AS WELL AS FOR UNLAWFUL INTERFERENCE WITH BUSINESS RELATIONS AND ECONOMIC INTERESTS AND CAUSING LOSS BY UNLAWFUL MEANS

to direct a hearing otherwise than in public (*Medical Council v Anonymous* [2019], which followed *Gilchrist v Sunday Newspapers* [2017]), and such a course of action is – in the words of the Irish Supreme Court – "particularly justified when constitutional values are engaged".

A court would have to consider the necessity of an *in camera* hearing, and its proportionality. It may take the view that the proper administration of justice can be achieved by the lesser measure of anonymising the parties and making an order restricting media reporting, and that this may be done pursuant to the court's inherent jurisdiction.

Usefulness

In *PML*, a targeted company had recourse to the legal system, and appropriate orders were made in two jurisdictions. Notice of the orders was given to internet service providers. The hackers, though persistent, were frustrated, and eventually appear to have moved on, presumably to a less combative target. There is, of course, no guarantee that this pattern will always play out.

In *CMOC*, the benefit of legal action was a set of orders that could be served on third-party banks. In *CMOC*, persons unknown infiltrated the email account of one of the plaintiff's senior management team and sent payment instructions to the administration of the company, the result of which was that a number of very large payments (in the region of Stg£6.3 million) were sent out of the plaintiff's bank account to various other banks around the world.

The resulting proceedings sought and obtained worldwide freezing injunctions against persons unknown. Such orders – which have extraterritorial effect – are granted only in exceptional circumstances. International fraud is one such qualifying circumstance.

The usefulness of the orders lies in notifying the banks of the freezing injunction and obtaining disclosure orders against them, rather than targeting the persons unknown in any meaningful way. An effect of such orders may be that the banks in question can assist in identifying the persons unknown, or at least in providing a piece of the puzzle.

The boundaries of this area have yet to be stress-tested in an Irish context, and it may be that, across jurisdictions, cyberhacking scenarios require more IT than legal firepower. For the time being, however, it does appear that initiating proceedings and securing interim and interlocutory orders have value in sending a signal to the hackers that their demands will be resisted and their websites deleted – and in securing orders that are essential to ensuring action by important third-parties. g

LOOK IT UP

CASES

- *AA v Persons Unknown* [2019] EWHC 3556 (Comm)
- *Bloomsbury Publishing Group plc v News Group Newspapers Ltd* [2003] 3 All ER 736
- *Clarkson plc v Person or Persons Unknown* [2018] EWHC 417 (QB)
- *CMOC v Persons Unknown* [2017] EWHC 3599 (Comm)
- *Gilchrist v Sunday Newspapers* [2017] IR 284
- *LJY v Persons Unknown* [2017] EWHC 3230 (QB)
- *Medical Council v Anonymous* [2019] IEHC 109
- *Novartis Pharmaceuticals UK Ltd v Stop Huntingdon Animal Cruelty* [2014] EWHC 3429 (QB)
- *PML v Person(s) Unknown* [2018] EWHC 838 (QB)
- *ZAM v CFM and TFW* [2013] EWHC 662

...AND JUSTICE FOR ALL

Solicitor Gary Lee took a significant pay cut to work in a community law centre. **Mary Hallissey** reports

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

It's very upsetting to have to refuse a legal service to somebody who you know is in dire need. That's the heartfelt position of Gary Lee, managing solicitor at the Ballymun Community Law Centre (BCLC) in Dublin, and one of the Law Society's newest Council members.

In 2018, the BCLC gave legal advice or representation to 456 people.

Gary is sending out a plea to law firms – large and small – to lend their expertise to the work of the centre, where a full 70% of a highly vulnerable clientele have a mental or physical disability.

"I think a lot of people get into the law for altruistic reasons," he says, "and the fight for social justice is a calling that a lot of solicitors have."

When he looks for help for the cash-strapped non-profit centre, he finds he is pushing an open door, most of the time. Both big and small law firms are willing to help.

Gary has seen an escalation in crime and social problems in Ballymun as redevelopment funds have dried up.

"A lot of people that come through our door are under severe stress and pressure, through poverty. There are multiple social issues, such as drugs and gang turf wars. There has to be some sort of correlation between reducing the redevelopment funding and

ALL PICS: CIAN REDMOND

> IN A LOT OF CASES, PEOPLE JUST HAVE NOBODY TO LISTEN TO THEM, AND THE CIRCUMSTANCES THAT THEY FIND THEMSELVES IN ARE ABSOLUTELY DIRE. THERE IS INJUSTICE ALL AROUND HERE AND, MORE OFTEN THAN NOT, IT IS THE STATE THAT'S PERPETRATING THAT INJUSTICE

the rise in difficulties. Where supports are withdrawn from communities, it can create a vacuum," he says.

All Law Society members already can financially assist the Ballymun centre's work by ticking the box on the form when renewing their practising certs. "We are operating on a shoestring, but we also get very good practical support from the Law Library as well," Gary says.

Bono vox

He questions why lawyers have a money-grabbing reputation, since *pro bono* work is almost built into the legal profession's DNA.

The attitude to *pro bo*no work is also changing with growing globalisation, he believes.

The philanthropic reflex of US-based businesses, and thereby their multinational branches, has changed the charitable culture in Ireland. Any law firm doing business with a US multinational may now have to produce their corporate social responsibility programme for inspection, Gary says.

Multinationals will have definite ideas about which type of company they want to do business with, and they will be looking for a 'values-match' before signing contracts.

Another key factor is that *pro bono* hours now count as 'billable' in some leading firms, such as Arthur Cox and A&L Goodbody. Gary describes this as 'revolutionary', because it stabilises fee-earner pressure to reach income targets.

With these changes, there is a shift away from seeing charitable work as 'shaking a bucket', to helping people practically by offering experience and expertise.

The very obvious way for law firms to help the disadvantaged is to provide their expertise, for instance, in the area of housing or social welfare.

Christina Beresford (legal executive), Gary Lee (managing solicitor) and Sonya Keniry (project officer)

> THERE HAS TO BE SOME SORT OF CORRELATION BETWEEN REDUCING THE REDEVELOPMENT FUNDING AND THE RISE IN DIFFICULTIES. WHERE SUPPORTS ARE WITHDRAWN FROM COMMUNITIES, IT CAN CREATE A VACUUM

He believes that many socially engaged students of the 1970s and 1980s are now in positions of power in Irish society and also in law firms, and this is having a ripple effect.

Give me the child

Gary himself says he always had a strong sense of fairness and of what is right and wrong.

Partly schooled by the Jesuits, Gary Lee says he deeply admires their ethos and their collective contribution to Irish society generally.

He was willing to take a considerable cut in income by leaving private practice to work full-time in community law for the past two years.

Was that a difficult decision?

"No," he answers definitively. "This is where I need to be, and this is what I want to be doing."

The financial rewards may be less but, on a daily basis, Ballymun clients express a profound sense of gratitude for the help they get.

"In a lot of cases, people just have nobody to listen to them, and the circumstances that they find themselves in are absolutely dire. There is injustice all around here and, more often than not, it is the State that's perpetrating that injustice," he says. "This law centre, and the other eight independent law centres, can make a difference – but it's just a drop in the ocean compared to the services that people need."

Lee is also active in the disability sector and chairs the Disability Federation of Ireland (DFI). He is also a member of the Law Society's Human Rights Committee.

As a UCD law student, he witnessed a wheelchair-using friend refused entry to a city-centre bar one evening, despite no practical access difficulty.

And Gary was told: "She can't come in," while the bouncer refused to address the wheelchair user directly.

"I felt a deep sense of injustice on her

> IT'S SOCIETY THAT CREATES BARRIERS THAT PREVENT PEOPLE FROM BEING FULLY PART OF IT. IN THE PAST, WE WAREHOUSED PEOPLE – BUT SOCIETY IS BEGINNING TO LOOK AT DISABILITY IN A DIFFERENT WAY

behalf," he says, "but now, I think that there are plenty of green shoots there and an engagement with, for instance, the *UN Convention on the Rights of Persons with Disabilities*."

He is deeply critical of the withdrawal of personal support once education is completed by a person with disability. "My friends with disability say they are the best-educated and best-trained sector in society, but the State won't facilitate them in actually getting to work."

There should be a legal right to personal assistance, Gary believes, though assisted technology has already massively improved personal autonomy. "It has certainly made it far easier now to accommodate people with disability to get into the workplace," he says.

It's a matter of educating employers and society as a whole, he says, citing the 24-hour notice that must be given by a wheelchair-user to get on Dublin's Dart system.

Making them listen

In taking activist equality cases around disability, Gary Lee says that success may ultimately lie in bringing decision-makers into the room and making them listen.

DFI is also conducting research with DCU about the inappropriate placement of younger people in nursing homes. This happens because the finance for nursing-home care is on a statutory footing, while personal assistance packages (to remain at home) are not.

If a young person with disability is surrounded by sick and dying fellow-patients and is unable to form lasting friendships, their mental health suffers.

"We are looking at legal angles in relation to this," Gary says, and this work is being done in tandem with one of the bigger law firms. "There is a huge opportunity there to team up with law firms that want to contribute."

Irish people want to correct injustices and, in the disability sector, there is a slow realisation that difficulties are not intrinsic to the person. "It's society that creates barriers that prevent people from being fully part of it. In the past, we warehoused people – but society is beginning to look at disability in a different way."

As a chairman of Mental Health Commission tribunals, he sees positive changes. "When officials give reasons that affect people's lives, you see reasons for those decisions far more frequently now than in the past. I see a shift, over the last five years or so, of thoughtful reasons being given for decisions. There is more of a realisation that decisions affect real-life people, and there is more awareness of looking at things from a human-rights perspective." he says. g

FOCAL POINT

SAMPLE BALLYMUN COMMUNITY LAW CENTRE CASES

- Internet provider selling broadband package to elderly client who doesn't use internet, then has debt collectors pursue him,
- Client with a disability has disability benefit reduced for alleged social-welfare overpayment,
- Landlord illegally evicts tenant,
- Local authority evicts family without affording fair procedures,
- Client with a disability inappropriately placed in nursing home,
- Error by local authority removes applicant from local authority housing list,
- Client with a disability inappropriately accommodated by local authority,
- Client not given access to appropriate healthcare facilities,
- Client summarily dismissed from long-time permanent position following employer's loss of contract, where a rival company took over the contract providing the same service,
- Local authority refusal to remove estranged adult child from rent book where that adult child resided elsewhere,
- Failure to provide assessment of needs pursuant to the *Disability Act*,
- Representation for client at social welfare appeal.

2018 STATISTICS ON BALLYMUN COMMUNITY LAW CENTRE

- Legal advice and representation provided to 456 people,
- 120 people availed of the mediation service,
- Six staff, including three solicitors,
- 14 counsel volunteers on a panel of barristers,
- 12 mediator volunteers on a panel of mediators.

AT A GLANCE

- The burden lies on the party seeking inspection of unredacted documentation
- The party resisting inspection of unredacted documentation should not rely upon blanket assertions
- Relevance to the pleaded case is essential
- There is no automatic right to inspect the whole documentation unredacted
- Undertakings are often attached to the use of the information, who can inspect it, and the way in which it can be used

PIC: SHUTTERSTOCK

DON'T BELIEVE A WORD

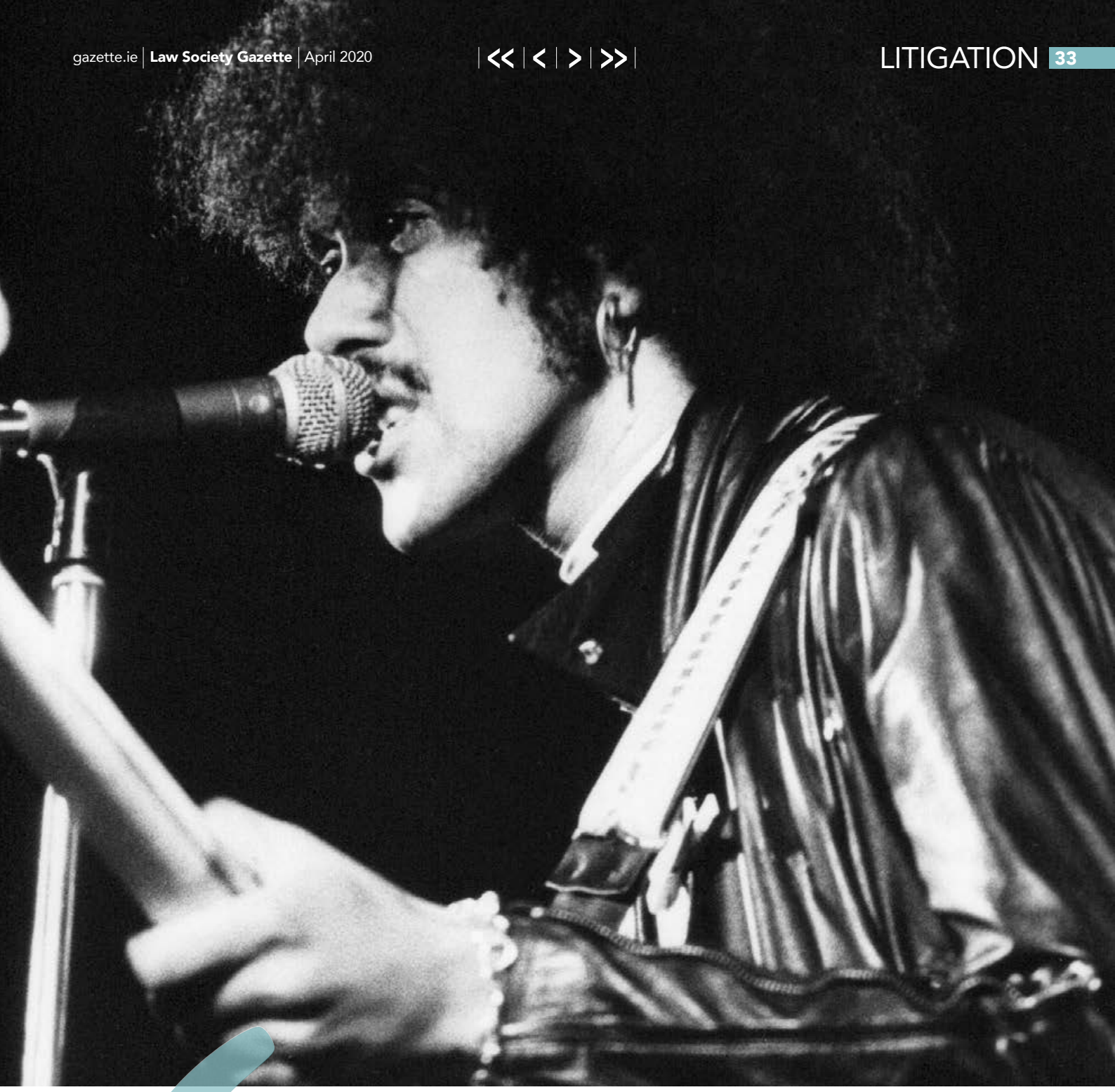
When documents disclosed in discovery have been redacted, the courts face a balancing act between the public interest in the confidentiality of documentation and the public interest in securing justice. **Laura Donnelly** takes out her big black marker

LAURA DONNELLY IS A DUBLIN-BASED BARRISTER ALSO PRACTISING ON THE EASTERN CIRCUIT

In recent times, it has become common – particularly where the provision of loan sale agreements and deeds of transfers are concerned – that the documents provided are so heavily redacted that it is often difficult to understand them.

The most commonly cited reasons for the use of redaction in such instances are commercial sensitivity, bank and/or client confidentiality, and/or irrelevance. It is well established that parties to proceedings are entitled to redact documents, often to protect third parties or commercially sensitive information, and there is no automatic right to see the whole document unredacted.

The party seeking inspection of an unredacted document must be able to identify particular reasons as to why the document should be made available. It is not enough to simply wish to see the unredacted document, as per Hedigan J in *IBRC v Halpin*. In that case, the defendant did not know what was behind the redactions, but nonetheless wished to view the documents in their entirety, so as to consider whether they were relevant or helpful to his defence.



THE TIME HAS COME FOR THE COURT TO ORDER AND GUIDE THE PARTIES IN THIS AND FUTURE APPLICATIONS FOR UNCOVERING SUBSTANTIAL REDACTIONS OF DISCOVERED DOCUMENTS

> THE COURTS HAVE BECOME INCREASINGLY WARY OF BALD ASSERTIONS SEEKING TO JUSTIFY EXTENSIVE REDACTIONS ... WHAT WOULD NOW APPEAR TO BE REQUIRED IS A CLEAR EXPLANATION FROM THE REDACTING PARTY

It is important to note that the burden rests on the party seeking inspection to prove the necessity of full disclosure for the fair disposal of the action. When reasons for redaction are presented to the court, the court can then inspect the documents to decide whether the redaction is, in fact, justified or not.

In appropriate cases, the court will balance the interests of parties by subjecting inspection to an implied undertaking that the unredacted material, once disclosed, will not be used by the other party for any collateral purpose, other than the current proceedings.

In *Maye v ByrneWallace*, a settlement agreement was sought to be inspected by the defendants. The plaintiff acknowledged that the defendant was entitled to inspect the settlement agreement, but asserted her entitlement to redact parts of it, on the basis that this material was unnecessary for the fair disposal of the proceedings and for the saving of costs. The plaintiff further contended that the information was confidential and would provide the defendants with an unfair tactical advantage in conducting the proceedings.

Ms Justice Kennedy held that the court must engage in a balancing exercise to reconcile the interests of each party and, in certain instances, take steps to mitigate loss of confidentiality. In ordering inspection of the redacted information, Kennedy J attached a condition that the names of the co-obligors were not to be mentioned in pleadings or open court. The disclosure of the information in this case was confined for use in the proper conduct of the proceedings, and not for any collateral purpose.

Got to give it up

In *Courtney v OCM Emru Debtco DAC & David O'Connor*, the defendants objected to full disclosure on the grounds of commercial sensitivity, confidentiality, and lack of relevance. Haughton J considered that the general thrust of article 34.1 of the Constitution should be borne in mind by the court when considering whether to permit redactions, and to what extent. It was highlighted in the judgment of the court that the right to redact was being regularly abused, and that the court would be vigilant in avoiding such abuse. The judge was satisfied that "understanding the loan sale deeds as a whole [was] relevant to the plaintiff's pleaded claims, and this [was] unfairly impeded by the redactions".

The court was also critical of the redactions in this case on the basis that they appeared to have been led by the client, rather than by the lawyers, which should not be the case. The court ordered inspection of the documents to be limited to the plaintiff, her solicitor and counsel, on her undertaking on oath that she would not use any of the documents or information otherwise than for the purpose of the action, and, further, that the plaintiff would not use or mention commercially sensitive information outside of the proceedings. The fact that the plaintiff was not a competitor was also a factor in the court's decision.

Waiting for an alibi

Recently, in the case of *Little v IBRC*, the plaintiffs sought orders directing the second-named defendant to allow inspection in unredacted form of (a) the loan sale agreement between the first and second-named defendant, and (b) the deed of transfer between the first and second-named defendant. These documents were listed in an affidavit of discovery sworn on behalf of the second-named defendant. The plaintiff served a notice to produce, pursuant to order 31, rule 16 of the *Rules of the Superior Courts*.

FOCAL POINT

ORDER IN THE COURT

- Order 31, rule 15 of the *Rules of the Superior Courts* provides for the inspection of documentation that is referred to in pleadings or affidavits of a party to proceedings,
- Order 31, rule 16 sets out the contents of the notice to produce,
- Rule 18 stipulates that a party can be motioned to enable another party to inspect the documents referred to in pleadings or affidavits where there has been a failure to produce same,
- Rule 18(2) states that such an order shall only be made where the court is of the opinion that it is necessary to do so, in order to dispose fairly of the cause or matter, or for the saving of costs.


PIC: SHUTTERSTOCK

The plaintiffs alleged that Irish Nationwide Building Society had its loans transferred to IBRC (the first-named defendant) in 2011. It was the plaintiffs' case that the transfer of their loan to the first-named defendant breached a written commitment to replace a bridging loan with a long-term loan. After the commencement of these proceedings, the plaintiffs' loans were transferred to Launceston, the second-named defendant.

The plaintiffs contended that inspection was necessary to appreciate the terms and conditions of the transfer of their loans to the second-named defendant. Further, they argued that it was necessary for the plaintiffs to know whether their loans were transferred by the second-named defendant with actual or potential knowledge that it breached a written commitment. The explanation given for redactions in the affidavit of discovery was that the documents contained information that was commercially sensitive and confidential, relating to loans that were not the subject matter of the proceedings.

O'Connor J expressed difficulties in interpreting the documents without any explanation or detail as to why the information had been redacted. The court held that: "It is about time that the party who redacts extensively carries out the duty to categorise and explain, without burdening the court or other parties in the proceedings."

Bad reputation

The court was of the view that extensive redactions, rather than minimal redactions, had become a regular occurrence. Noting that the burden lay with the party seeking inspection to show the necessity of full disclosure, Mr Justice O'Connor directed the defendants to categorise the redactions on affidavit, and to provide explanations for each redaction.

He further directed that the defendants' averments should not simply involve bald assertions of irrelevance, confidentiality, and commercial sensitivity. The averments would, instead, involve a description as to why each substantial redacted portion was irrelevant and/or confidential.

Of note is paragraph 46 of the judgment, wherein it was held: "This order may appear to deviate from the practice adopted by IBRC and others who have relied upon *GE Capital*. However, the time has come for the court to order and guide the parties in this and future applications for uncovering substantial redactions of discovered documents."

As apparent from the case law, the courts have become increasingly wary of bald assertions seeking to justify extensive redactions. While undoubtedly the burden remains on the party seeking inspection to satisfy the court of the necessity to lift the redactions, *Little v IBRC* highlights what appears to be a shift in tolerance away from bald or blanket assertions. What would now appear to be required is a clear explanation from the redacting party. g

LOOK IT UP

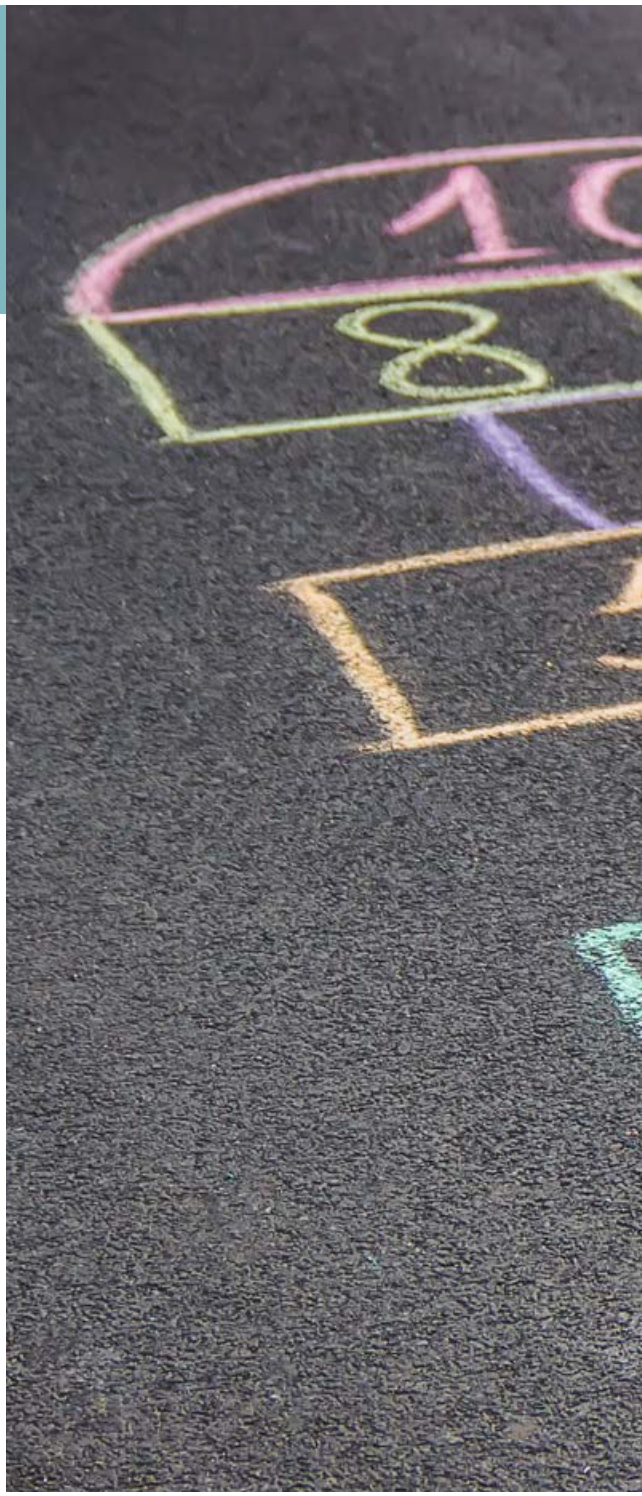
- *Courtney v OCM Emru Debtco DAC & David O'Connor* [2019] IEHC 160; [2019] 2 ILRM 166l
- *GE Capital Corporate Finance Group Ltd v Bankers Trust* [1994] EWCA Civ J0729-10; [1995] 2 All ER 993
- *IBRC v Halpin* (High Court, unreported, 3 November 2015)
- *Little v IBRC* [2019] IEHC 656
- *Maye v ByrneWallace* [2015] IEHC 530GE

LEGISLATION:

- *Rules of the Superior Courts*, order 31

AT A GLANCE

- There are onerous obligations on parties when assessing and preparing voice-of-the-child reports
- The extent of information or documentation given by either party to an assessor often gives rise to controversy
- The guidelines are predicated on a transparent process being conducted by the assessor



HOPSCOTCH HOTCHPOTCH

Guidelines on the assessment and preparation of 'voice-of-the-child' reports place significant obligations on parties and their legal representatives. In the second part of a two-part article, **Donagh McGowan** hopscotches through the obstacles

DONAGH MCGOWAN IS A MEMBER OF THE LAW SOCIETY'S FAMILY AND CHILD LAW COMMITTEE

In my previous article, I outlined the very significant changes in family law brought about by the *Children and Family Relationships Act 2015*, which stemmed from the children's rights referendum in 2012. The 2015 act gave the courts the power to make orders for the procurement of two types of reports: one relating to an expert determining and conveying a child's views on family law matters; the other where a court orders an expert to procure a report on any question affecting the welfare of a child.

The Family Law Courts Development Committee issued guidelines in relation to the conduct of assessment and preparation of reports under section 47 of the *Family Law Act 1995* and/or section 32(1)(a) of the *Guardianship of Infants Act 1964*. These are quite

PIC: SHUTTERSTOCK

THE EXTENT OF INFORMATION OR DOCUMENTATION THAT MAY BE GIVEN BY EITHER PARTY TO AN ASSESSOR CAN VERY OFTEN GIVE RISE TO CONTROVERSY

onerous in terms of the obligations they place on the parties and/or their legal representatives to undertake detailed steps when engaging with any potential assessor before making an application for appointment to the court.

The extent of the information or documentation that may be given by either party to an assessor can very often give rise to controversy. While the guidelines make it clear that it is not a matter for an assessor to adjudicate on the facts in dispute between the parties, it is nonetheless usual for parties to be concerned about what information has been provided to the assessor by the other party – and/or the extent of the information they believe should be provided to the assessor on their behalf.

As a consequence, it is not uncommon for parties to provide the assessor with substantial information by way of background to the case, including information and documentation that is critical of the other party. The guidelines are predicated on a transparent process being conducted by the assessor. To that end, there is an obligation on the parties to "acknowledge that no documentation (other than documentation requested by the assessor) shall be furnished by either of them and/or their legal representatives without the prior agreement of the other party".

There is then a mandatory obligation on the assessor to "acknowledge that any documentation requested by, and provided to, the assessor by each of them, shall be furnished simultaneously to the other party and/or their legal representatives".

In addition, the guidelines also provide that the parties will apply to the court to lift the *in camera* rule in respect of any such *in camera* documentation that may be required by the assessor in the conduct of the assessment, or which either party may wish to provide to the assessor as part of the assessment process.

Obligations of the assessor

The first obligation imposed on an assessor is to provide their CV, stating their relevant qualifications and experience. This should include details of their membership of any relevant professional body and provide information in relation to the complaints procedure of that professional body. This is a process that many assessors undertake as a matter of course but is, nonetheless, a vitally important obligation that should be complied with in all cases.

The guidelines then go on to require the assessor to provide the parties and/or their legal representatives with:

- Details of the assessment, including particulars in relation to the likely meetings,
- Who the assessor wishes to meet,
- Whether the meetings are with parents and child/children) and/or the child/children) alone, and
- How the assessor intends to communicate with the parties, and related matters.

In addition, the assessor must set out the information and documentation that the parties should provide, including from third parties or institutions (such as school or medical reports).

> THE PRACTICE OF THE COURTS HAS INVARIABLY BEEN NOT TO PROVIDE COPY REPORTS TO THE PARTIES DIRECTLY, BUT TO MAKE ARRANGEMENTS FOR THE CONTENTS OF THE REPORT TO BE MADE KNOWN TO THE PARTIES

Disclosure of all of these details is an important factor in ensuring transparency in the process, and also in providing the parties with some understanding of what the assessment process will entail. This is crucial in circumstances where participation in the assessment can be very stressful for the parties and the children involved.

Voice of the child

In light of the requirement to hear the voice of the child in certain cases, the assessor is obliged, where appropriate, to indicate in their report how the voice of the child has been heard.

This can be an important issue as, in effect, assessors preparing reports under section 47 of the 1995 act and/or section 32(1)(a) of the 1964 act are very often effectively fulfilling two functions – namely, making recommendations as to the welfare of the child, but also determining and conveying the child's views. If there is any issue as to whether or not it is appropriate for the assessor to undertake this dual function, then this is something that should be determined by the parties at the outset and, if necessary, adjudicated upon by the court in the context of the appointment of the assessor.

Assessor's fees

The issue of the apportionment of the assessor's fees between the parties is ultimately a matter to be determined by the court. The guidelines place an obligation upon the assessor to provide an estimate of costs for the assessment and the preparation of the report, details of the required timing of the payment for the report, and also the costs of court attendance. There is also a provision for the assessor to notify the parties in the event of any revised cost estimate.

In addition, it is recommended that the parties put funding in place for the payment of the fees at the outset of the process. While it can be relatively easy for the parties to agree to the apportionment of the fees at the outset, the actual payment of fees can be another matter. Further, significant delays can arise in both the assessment process and finalising the report if fees are not paid promptly.

Most, if not all, assessors operate on the basis that the report will only be provided to the court once all fees in relation to the

assessment and the preparation of the report have been discharged. The willingness of a party to discharge their share of those fees can sometimes be coloured by how the party believes the assessment went. In those circumstances, the guidelines suggest that the funding of the fees should, where possible, be put in place at the outset of the process.

Management of the assessment

The guidelines provide that, subject to the overarching supervision of the court, the assessor has general responsibility for (and authority over) the management of the assessment process. This is essential to allow the assessor to be able to carry out the assessment in any way he or she feels is necessary.

It is, of course, open to either party to go back to court seeking further directions in relation to the conduct of the assessment. However, this will inevitably give rise to further, and potentially significant, legal costs. Therefore, it is envisaged that the parties will comply with the general requirements of the assessor in the conduct of the assessment, subject to an obligation in the guidelines for the assessor to endeavour to accommodate all reasonable requirements of the parties.

Normal requirements of the assessor would include necessary information being provided to him or her, and the consent of the parties to allow the assessor to obtain reports from third-parties or professionals (for example, doctors, schools, etc). It is also important, however, for the assessor to bear in mind that the guidelines operate on the basis of transparency. Therefore, if the assessor is relying upon documentation or information from third-parties, then this information should, in the ordinary course, be shared with both parties by the assessor.

Release of the report

Both section 47 and section 32 provide that reports prepared under the relevant sections shall be provided to the parties. Section 47(3) provides: "A copy of a report under subsection (1) *shall* [emphasis added] be given to the parties to the proceedings concerned."

Although there has been considerable controversy over that subsection, section 32(4) provides: "A copy of a report under section (1)(a) may be provided in evidence to the proceeds and *shall* [emphasis added] be given to (a) the parties to the proceedings concerned and (b) subject to subsection (5), if he or she is not a party to the proceedings, to the child concerned."

PIC: SHUTTERSTOCK

Both sections would, therefore, appear to make it mandatory that a copy of the report shall be provided to the parties to the proceedings. In reality, the practice of the courts has invariably been not to provide copy reports to the parties directly, but to make arrangements for the contents of the report to be made known to the parties.

The practice varies significantly in different circuits, including permitting the parties to read the report personally in the presence of a solicitor or in the Circuit Court office; requiring that the report be read to the party, but the party not being able to read the report by themselves; or, in some instances, only allowing the parties to be made aware of the recommendations in the report.

These restrictions appear to have developed on an *ad hoc* basis in different circuits. In the High Court, the usual practice is to allow the parties to read the report in full and, in certain cases, to be provided with a copy of the recommendations.

The guidelines seek to mirror the practice and procedure that appears to have been adopted in most courts, whereby the release of the report to the parties is a matter to be determined by the court. While it is arguable that this is not in compliance with the strict terms of the legislation, it is considered reasonable to adopt an approach that complies with current practice.

In addition, the guidelines also allow for the assessor, subject to the relevant statutory provisions and the ultimate authority of the court, to express a view to the court as to whether all or part of the report may or may not be suitable for release to the parties directly, and make recommendations accordingly.

In that regard, the guidelines also make it entirely clear that the report prepared by the assessor is a report to the court, and should be provided by the assessor only to the relevant court office. The guidelines confirm that the release of the report to the parties is then solely a matter for the relevant court.

Monitoring of the assessment

One issue that gave rise to considerable debate within the Family Law Development Committee was the issue of the extent to which the court should exercise oversight over the completion of the assessment and report, once a section 47/section 32(1)(a) order has been made. In light of the increasing burden on the family law courts, many judges are slow to exercise any such oversight, as it may simply add to already overburdened lists. However, such reports are generally only ordered in relatively contentious cases. Furthermore, the assessor is often asked to make recommendations in relation to matters that can be quite urgent, and are child-related cases that would ordinarily be given priority by the family law courts. It is also to be noted that these are reports to the court, not the

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> MOST, IF NOT ALL, ASSESSORS OPERATE ON THE BASIS THAT THE REPORT WILL ONLY BE PROVIDED TO THE COURT ONCE ALL FEES IN RELATION TO THE ASSESSMENT AND THE PREPARATION OF THE REPORT HAVE BEEN DISCHARGED

parties, and therefore it is a matter for the court if there is undue delay in a report being provided. Finally, the court should have cognisance of section 31(5) of the 1964 act, which provides: "In any proceedings to which section 3(1)(a) applies, the court shall have regard to the general principle that unreasonable delay in determining the proceedings may be contrary to the best interests of the child."

In all those circumstances, it is arguable that the court should exercise ongoing oversight once an order is made, if only to ensure that the assessment and report are concluded within a reasonable timeframe. It may also be the case that, by keeping the matter before the court, a sense of urgency is maintained with the assessor and the parties in completing the assessment and finalising the report. Therefore, the guidelines include the recommendation that the relevant application be kept in the court list for mention to review, if the report is concluded and, if there is any delay in concluding the assessment, the steps that need to be taken to ensure the report can be completed within a timeframe appropriate to the circumstances of the case. Ultimately, however, that is a matter for the judge dealing with the application.

Other matters for consideration

The guidelines also suggest orders/directions that the court may consider making to assist the conduct of the assessment, in addition to the usual order made as to the costs of the assessment. These include:

- A direction that the parties shall comply with all reasonable requirements of the assessor, to enable the efficient conduct of the assessment,
- Lifting the *in camera* rule in respect of specified documents to be provided to the assessor,
- Where appropriate, identify in the order specific issues that the court would wish the assessor to address, and
- If appropriate, confirm that all relevant matters are governed by the *in camera* rule.

The guidelines are intended to assist the parties to the proceedings and the court-appointed assessor in approaching such assessments and reports in a fair, transparent, and efficient manner. At this time, it is unclear as to the extent to which these guidelines are being availed of by practitioners and/or the courts.

Ultimately, much is dependent on the view of the judge dealing with an application under the relevant sections. Practitioners are, however, advised to consider how the guidelines may assist the parties to such proceedings, not least in circumstances where it is not uncommon for disputes to arise in relation to the conduct of such assessments.

If the parties, the assessor, and the court are all working to the guidelines, then it is anticipated that the potential for disputes to arise in relation to the assessment itself, with consequent additional costs and anxiety to the parties, would be mitigated. g

LOOK IT UP

LEGISLATION:

- *Children and Family Relationships Act 2015*
- *Family Law Act 1995*
- *Guardianship of Infants Act 1964*

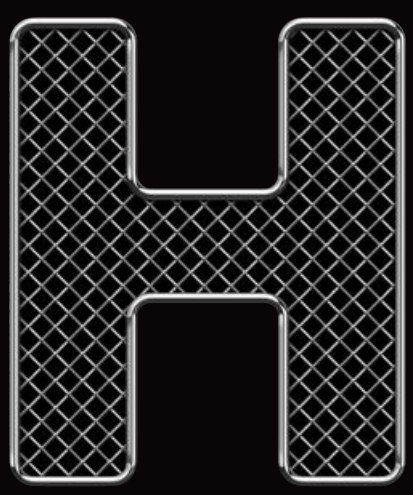
AT A GLANCE

- Feeling confident to take interpersonal risks without fear of negative repercussions is the basis of psychological safety
- If you don't feel 'safe' because you worry there may be negative consequences to speaking up, then the organisation you work for will be haemorrhaging talent
- If people do not feel safe speaking up, they will either keep quiet or lie, both of which can have far-reaching negative implications for an organisation

SAFETY NETS

What is psychological safety? Does the legal profession need it? And how can it get it? **Nick Bloy** ventures into the cellar

NICK BLOY IS A WELLBEING COACH AND THE FOUNDER OF WELLBEING REPUBLIC



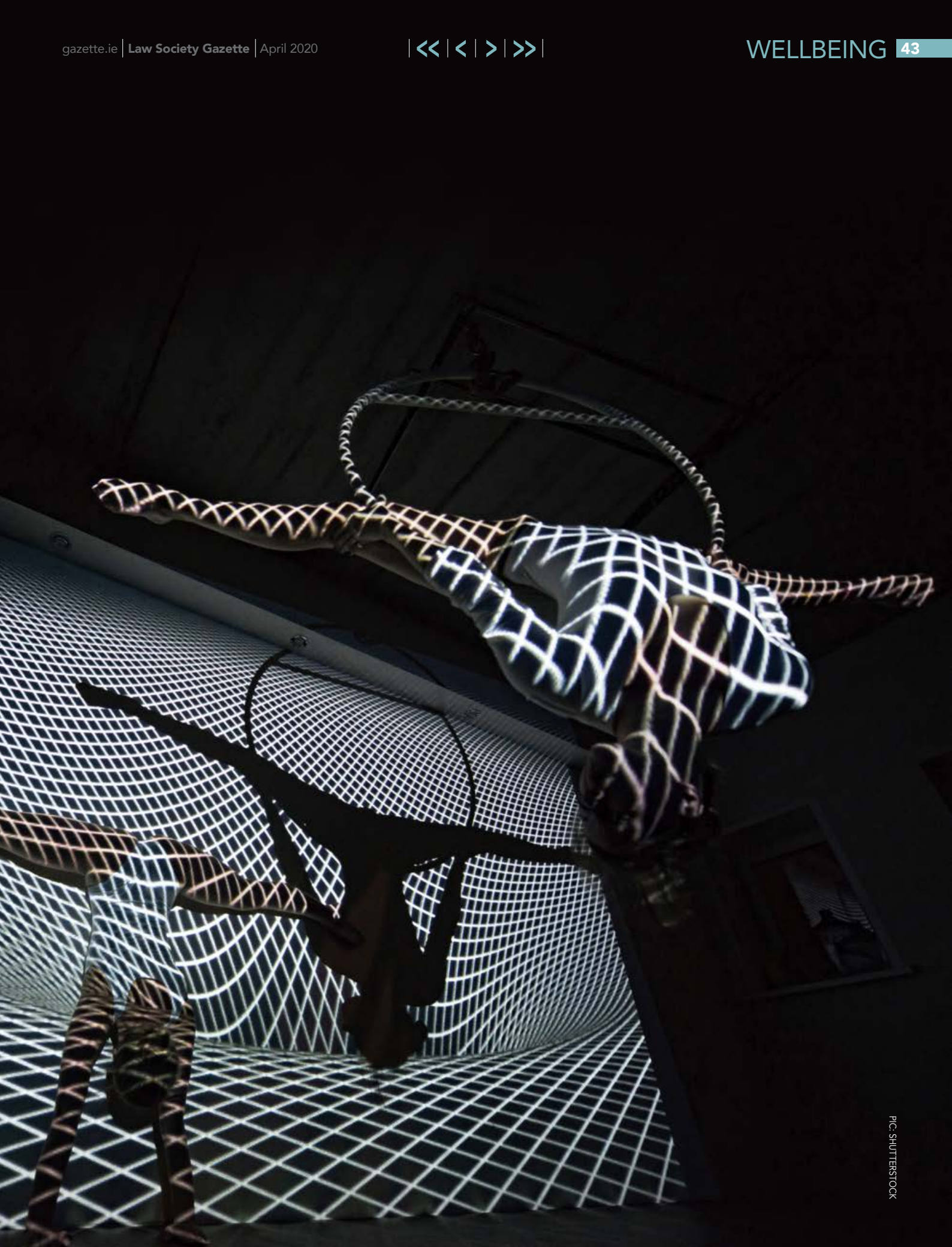
ow confident would you be to speak up in a work meeting and share an idea, where it may be interpreted by others as being ignorant, incompetent, negative, or disruptive?

What about raising concerns over a course of action that you fundamentally disagree with, but where speaking up risks alienating yourself or negatively affecting your career prospects?

Or owning up to a serious mistake, when your boss isn't the forgiving type?

Or perhaps just being your authentic self with colleagues – letting someone know that you are feeling overwhelmed or are struggling with your mental health?

If your answer to some or all of those questions is that you would most likely keep quiet for fear of negative repercussions, then you will be familiar with what millions of workers experience on a daily



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A PSYCHOLOGICALLY SAFE ENVIRONMENT READILY CUTS THROUGH ANY OF THE HIERARCHICAL STRUCTURES THAT MAY BE IN PLACE. IT IS A CULTURE THAT ENABLES EMPLOYEES, REGARDLESS OF THEIR RANK OR BACKGROUND, TO RAISE CONCERNS AND SHARE THEIR VULNERABILITIES

basis. Whether or not you are prepared to speak up in those situations boils down to one key thing: how 'safe' you feel to take interpersonal risks.

If you don't feel 'safe' because you worry there may be negative consequences to speaking up, then the organisation you work for will be haemorrhaging talent – talent such as lost creativity, innovation, productivity and diversity of thought. It is also very likely to be significantly increasing the risk of unethical conduct and the covering-up of mistakes.

Safety last

Some of the biggest corporate scandals in recent history have resulted from a lack of psychological safety. Scandals such as the Volkswagen emissions scandal in 2015 and the Wells Fargo fake accounts scandal, which saw the creation of two million fake accounts by retail bankers who were under relentless pressure from management to hit unrealistic sales targets. No one spoke up because they feared the negative repercussions of doing so, preferring to commit fraud than to face such repercussions.

There are examples of this in the legal profession too. In England and Wales, for example, the SRA successfully appealed for Ms Sovani James to be struck off the Roll after she was found to have forged documents pertaining to matters she was dealing with. James had felt compelled to do so because of the immense pressure she felt under to meet the unrealistic billable-hours target the management team had set.

According to reports, league tables were published each month, showing the performance of every fee-earner, and staff were expected to sign in and out at the start and end of each working day. One of James' former colleagues told the tribunal that lawyers were constantly told they would lose their jobs and that failure was their fault.

So we know that good people make terrible mistakes when they do not feel psychologically safe – even if it risks costing them their career. For those of you who remember the Tenerife aircraft disaster of 1977, you will know that not feeling safe to speak up can also cost people their lives.

Psychologically safe?

Feeling confident to take interpersonal risks without fear of negative repercussions is the basis of psychological safety. If someone is made to feel inferior (or their career prospects compromised) when they make a mistake or if they don't know something, this creates an atmosphere that undermines psychological safety. If people do not feel safe speaking up, they will either keep quiet or lie, both of which can have far-reaching negative implications for an organisation.

Some of the key facets of a psychologically safe culture include it being open, transparent, humble and respectful. A psychologically safe environment readily cuts through any of the hierarchical structures that may be in place. It is a culture that enables employees, regardless of their rank or background, to raise concerns and share their vulnerabilities. It is also a culture of candour, enabling challenging conversations to take place.

As an individual, you will likely know how confident you feel to speak up about what is on your mind – or whether, if you make a mistake, it will be held against you. You will also know if you feel compelled to keep your cards close to your chest in order to get ahead and make a good impression. The latter two examples would suggest a low degree of psychological safety in your firm.

If you are in a leadership position, however, it may be harder to appreciate the shadow that you cast and the impact that your shadow may be having on the wider team. I have met a number of senior leaders, with ferocious reputations, who, deep down, are dealing with their own insecurities. It is often these insecurities that drive their brashness, leaving an undercurrent of fear in their wake. It is imperative that leaders appreciate how people perceive them, and one of the best ways to do that is to ask for feedback from more junior members of the team in a way that empowers them to be candid.

As a leader, you might feel comfortable surrounded by people who agree with you, and sideline those who don't. But tacit agreement is rarely a sign of psychological safety. In your role, it is crucial to have the most robust information upon which to make informed decisions, and that will likely include hearing opinions that differ from your own.

Benefits of psychological safety

There are many benefits to creating a psychologically safe culture. From a risk perspective, you are more likely to learn about costly mistakes when they happen, as employees feel supported in revealing them, which means you are better able to

PIC: SHUTTERSTOCK

PIC: SHUTTERSTOCK

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mitigate any losses. It also enables teams to analyse and proactively ensure that similar mistakes can be avoided in future.

When people feel safe to make suggestions, research shows that it leads to greater innovation, collaboration, discretionary effort and productivity. In fact, all of the evidence points towards the fact that teams with a high degree of psychological safety significantly outperform those teams who do not have it, irrespective of the combined IQ, EQ, seniority and technical skills of the people on the team.

Google undertook a multi-year project, called Project Aristotle, which pitted psychological safety against more than 100 other metrics, and none of the data made sense without psychological safety. Essentially, psychological safety was the defining factor that led to optimum team performance. You might have the brightest, smartest people on a team, but if they aren't made to feel safe, you will be wasting their talent and vast sums of money.

Unique challenges

Historically, law firms turned a blind eye to the toxic behaviours of certain fee-earners who were classed as 'rainmakers'. What

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22 April	**The Business of Wellbeing Summit** Law Society of Ireland, Blackhall Place	6 Management & Professional Development Skills (by Group Study)	Complimentary	
07/08 May	**Essential Solicitor Update Part I & II** Landmark Hotel, Carrick on Shannon, Co Leitrim	7 May - 4 Hours & 8 May - 6 Hours Total 10 Hours (by Group Study)*	7 May - €100 8 May - €135 7 & 8 May - €190 *Hot lunch and networking drinks included in price*	
08/09 May & 05/06 June	**Wills, Probate, Estates & Tax Masterclass –** Module 1 & 2 Attend module 1 or module 2 or both	10 CPD hours (by Group Study) per module	€700	€850
22/23 May	**Fundamentals of Clinical Negligence** Radisson Blu, Golden Lane Dublin 8	10 CPD hours including 1 Hour Regulatory Matters (by Group Study)	€350	€425
28 May	**Inhouse Panel Discussion** in partnership with the In-house Complimentary and Public Sector	3 M & PD Skills (by Group Study)	€65	
28 May	**Midlands General Practice Update** Midlands Park Hotel, Portlaoise, Co Laois	Total 6 CPD Hours	€135 *Hot lunch and networking drinks included in price*	
17/18 June	**North West General Practice Update 2020 Parts I & II -** Lough Eske Castle Hotel, Donegal, Co Donegal	10 Hours including 4 General 3 Management & Professional Development Skills, 3 Regulatory Matters (including 1 Accounting and AML compliance)	17 June - €100 18 June – €135 17 & 18 June - €190 Hot lunch and networking drinks included in price	
26 June	**Essential Solicitor Update Limerick 2020 -** **Limerick Strand Hotel, Ennis Road, Limerick City**	7 total including 3 General 2 Management & Professional Development Skills, 2 Regulatory Matters (Accounting and AML) (by Group Study)	€135 *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). Unless otherwise stated, events will run in the Law Society at Blackhall Place, Dublin 7

For a complete listing of upcoming events including online GDPR, Fintech, Regulatory Matters 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*

> THERE ARE MANY BENEFITS TO CREATING A PSYCHOLOGICALLY SAFE CULTURE. FROM A RISK PERSPECTIVE, YOU ARE MORE LIKELY TO LEARN ABOUT COSTLY MISTAKES WHEN THEY HAPPEN

these organisations failed to realise was the true extent of the damage that these toxic behaviours caused. Any perceived financial benefits will almost certainly be outweighed by the immeasurable costs resulting from such behaviours.

The inherent structure of most law firms means that they are poorly set up to foster a culture of psychologically safety. That isn't to say that it can't be done, or that there aren't law firms who have managed to create it. However, the hierarchical nature of law firms, the highly competitive internal environment, the focus on financial performance, and the lock-step approach to partner compensation, means that it doesn't naturally lend itself to psychological safety.

I have spoken to many senior leaders in law firms who have experienced mental ill-health but have been reticent to speak up for fear that other partners might swoop in and steal their most prized clients in their moment of perceived 'weakness'. I have also heard of abhorrent behaviour at the junior end, where trainees and junior associates have been involved in less than ethical behaviour towards colleagues in an attempt to promote their own position. This type of behaviour is driven by fear, and is rampant in cultures with low psychological safety, where people are pitted against one another in a zero-sum game.

The 2019 International Bar Association's *Us Too?* report looked at the scale of bullying and harassment in the legal profession. The results were appalling, with one in two people saying they had been bullied and almost a third sexually harassed. Yet 57% of those bullied and 75%

PIC: SHUTTERSTOCK

of those sexually harassed did not report due to the status of the perpetrator, fear of repercussions, or such incidents being endemic in the workplace. This chronic under-reporting of incidents conveys how 'psychologically unsafe' legal professionals really feel. It also highlights the important role senior leaders have to play in ensuring that people are held accountable for inappropriate behaviour and that, when people do speak up, their voices are heard and acted upon.

The role of leaders

As a managing partner or leader, it is crucial to learn, to listen more, and speak last. When you are keen to hear ideas from others, allow them to speak first and thank them for their contribution before speaking yourself. It takes enormous courage to be a great leader – primarily because you need to learn to put your ego to one side and appreciate that many of the behaviours that may have got you to a leadership position are less likely to be the ones that will help you excel in the role.

A leader's ability to embrace vulnerability can help those within their team feel safe. We are all human, and with that realisation comes the acknowledgement that we are imperfect, that we make mistakes, that we cannot possibly have all the answers and that, on occasion, we do struggle. To pretend or believe otherwise lacks authenticity or self-awareness. If, as a leader, you are unable to be vulnerable, it is unfair and unrealistic to expect more junior employees to be.

Be visible, and engage with people across all levels of your organisation on a regular basis, treat them like equals, and never become complacent. It is a lot easier to instil fear in others than it is to remove it once it has embedded itself within a culture. Every single action (or inaction) will influence the degree to which people feel psychologically safe. Encourage your staff to raise concerns and engage in dialogue. Disagreements can be a healthy sign of psychological safety, as long as those disagreements are constructive. If you are only finding out about major issues via the press, your whistleblowing hotline or a staff engagement survey, you likely have a lot more work to do.

What can you do?

Everyone, not just the managing partner, has a role in creating a psychologically safe culture. Being open to other people's opinions without judgement, being encouraging of different viewpoints, and being prepared to be brave and admit when you don't know something or when you have made a mistake, is crucial to creating a culture of psychological safety. Possibly one of the most challenging aspects of being a champion of positive change is learning to develop sufficient courage to be able to lean into your fears. g

LIMITED LIABILITY PARTNERSHIPS INSIGHT

The authorisation of a partnership of solicitors to operate with limited liability does not create a new business entity; rather, it authorises existing partnerships of solicitors to limit their personal liability, says **Brian J Doherty**

BRIAN J DOHERTY IS CHIEF EXECUTIVE OFFICER OF THE LEGAL SERVICES REGULATORY AUTHORITY

THE FRAMEWORK TO ALLOW FOR THE FORMATION OF LEGAL PARTNERSHIPS WILL BE INTRODUCED LATER THIS YEAR SO, CURRENTLY, ONLY EXISTING SOLICITOR PARTNERSHIPS CAN APPLY TO BECOME LLPs

Since November 2019, when the Legal Services Regulatory Authority (LSRA) began receiving applications from solicitor partnerships to be authorised as limited liability partnerships (LLPs), there has been a healthy level of interest among legal practitioners.

The LSRA introduced the framework to allow existing partnerships of solicitors to apply for authorisation to operate with limited liability on 1 November 2019. This follows the commencement on 7 October 2019 of chapter 3 of the *Legal Services Regulation Act 2015*.

LLPs may be new to Ireland, but they have existed elsewhere in different formats since the 1990s. Authorisation of a partnership of solicitors to operate with limited liability under the act does not create a new business entity. Instead, it authorises existing partnerships of solicitors to limit their personal liability.

The effect of authorisation means that each partner in an LLP will not be personally liable for the debts, obligations or liabilities of the LLP, of himself or herself in their capacity as a partner in the LLP, or of another partner in the LLP, or any employee, agent or representative of the LLP.

Brian J Doherty

Relevant business

The act allows a 'relevant business' to apply to the LSRA for authorisation to operate with limited liability. A relevant business is defined as a partnership of solicitors or a legal partnership. The framework to allow for the formation of legal partnerships will be introduced later this year, so currently only existing solicitor partnerships can apply to become LLPs.

Single solicitor practices cannot seek limited liability status – only firms with two or more partners can be authorised.

The LSRA issued the *Legal Services Regulation Act 2015 (Limited Liability Partnerships) (Section 130) Regulations 2019*, in October 2019. The regulations prescribe the form to be used in the application process, and the application fee of €175.

Under the act, once authorised, the LLP has a number of obligations, including providing information to its clients and creditors, and carrying on business using a name that ends with either 'limited liability partnership' or LLP.

As of 3 March 2020, a total of 230 partnerships of solicitors have requested, and been provided with, an application form from the LSRA. A total of 133 firms have submitted a valid form with the prescribed fee, and 112 firms have been authorised to operate as an LLP.

The LSRA maintains and regularly updates the Register of Limited Liability Partnerships, which can be found on the LSRA website at www.lsra.ie.

Common queries

Since the introduction of the application process in November 2019, the LSRA has received

PIC: SHUTTERSTOCK

queries from partnerships of solicitors on a number of issues. Here are some of the most common questions that have arisen to date.

Are newly authorised LLPs required to register with the Companies Registration Office?

The authorisation of an existing solicitor partnership to operate with limited liability under the act does not create a new legal entity. Instead, it authorises an existing relevant business to operate with limited liability.

There is no obligation on a newly authorised LLP to register the LLP with the Companies Registration Office under the *Limited Partnerships Act 1907*.

The 1907 act facilitates the creation of a special type of limited partnership, which is a completely separate legal regime from the new form of LLPs introduced in the act. In effect, partnerships of solicitors are governed by the *Partnership Act 1890* and, following LLP authorisation, the provisions of the 1890 act continue to apply, apart from a few minor modifications introduced by the act.

Do we have to send the notification to all our clients and creditors, as we have a large number who are not active clients?

Section 125(7) of the *Legal Services Regulation Act 2015* sets out the requirement to notify clients and creditors of a new LLP status. It reads: "A limited liability partnership shall, as soon as practicable after receipt of the authorisation under subsection (4), notify its clients and creditors of the fact that it is operating as a limited liability partnership and setting out the information prescribed in regulations made under section 130(2)(c)."

A few solicitors have stated that it is not clear from the legislation whether the obligation extends beyond existing clients – that is, whether there is a requirement to inform clients who they may have provided services to a number of years ago, but have not engaged the firm since.

The LSRA is of the view that it is up to individual firms to determine whether it is necessary or appropriate to notify a client who has not engaged their firm for legal services for a considerable period of time.

It should be noted that the 2019 regulations also set out the information required in this notification.

Does the LLP designation have to be included the firm's logo and branding?

Section 125(8)(b) of the act sets out where the name under which the LLP has been authorised is to be used. It states that the name is to be used on "all contracts, invoices, negotiable instruments, orders for goods and services, advertisements, invitations to treat, websites or any other publication published in any format by or on behalf of the limited liability partnership".

The intention of this section is obviously to protect customers and make them aware of a partnership's LLP status.

The LSRA has received a number of queries from partnerships of solicitors regarding whether they will need to update their logo and their signage. One interpretation of section 125(8)(a) of the act could indicate that either the words 'limited liability partnership' or the 'LLP' abbreviation must be at end of every reference to a partnership's name or logo.

The LSRA can see how this requirement may prove impractical for some firms, especially in the context of fixed outdoor signage, such as plaques or frontage.

The LSRA is of the view that such physical signage does not need to be updated, provided that the LLP abbreviation is routinely used at the end of a firm's name in all other situations – for example, contracts, invoices, negotiable instruments, orders for goods and services, advertisements, invitations to treat, and other publications.

For example, all letterheads/stationery should refer to the fact that a firm is an LLP. However, if a firm wishes to retain just its main logo at the top of its letterhead – provided that it specifies that it is an LLP prominently elsewhere on the letterhead (for example, beneath the logo or alongside the list of partners) – this will be sufficient to comply with the act.

The main aim of using the LLP abbreviation prominently in a partnership's name and on its website is that all the partnership's clients are informed of its change in status and that they are aware of what the consequences of this are, with the result that all the partnership's clients and the wider public are fully informed and protected.

If an LLP can clearly show that its clients have been updated in this regard, the LLP will be in compliance with the act. With this in mind, the LSRA suggests that, alongside the other requirements of the act, within a week of an LLP's authorisation date, they include an update on their website informing their clients of the change of status to LLP and a short explanation of what this means, in accordance with regulation 5 of the 2019 regulations.

Partnerships of solicitors interested in gaining authorisation to operate as an LLP should familiarise themselves with all requirements of the act and the regulations in advance of submitting an application, as well as their obligations once LLP status has been authorised.

Do we need to change our bank account as an LLP?

A recently authorised LLP solicitors' partnership brought it to the LSRA's attention that their bank considered that they may need to close their existing office and client accounts and open new ones.

The authorisation of an existing solicitor partnership to operate with limited liability under the act does not create a new legal entity, but instead authorises an existing relevant business to operate with limited liability. On that basis, the LSRA does not see that there would be a requirement to close pre-existing accounts and open new accounts.

The LSRA is liaising with business banking departments in some of the main banks on this issue. Should any newly authorised LLPs have any issues of this nature, they are encouraged to bring it to the attention of the LSRA.

Are there any tax implications for new LLPs?

The authorisation of an existing partnership of solicitors to operate as an LLP has the effect of giving the partners in the firm a degree of limited liability. No increased tax obligations for LLPs are included in the act.

Under section 123(4) of the act, limited liability does not apply where the debt or obligation relates to any tax as defined in the *Taxes Consolidation Act 1997*. The LSRA has been engaging with the Revenue Commissioners to ensure that there is clarity as regards the impact of the commencement of the LLP provisions.

The introduction of any new legislation can result in questions and queries being raised that may not have been specifically addressed by the legislators. While the LSRA cannot advise legal practitioners on whether or not to apply for authorisation as an LLP, we are happy to do what we can to assist in explaining the new LLP provisions and their impact.

Any partnership of solicitors seeking to apply for authorisation should contact the LSRA at lsra-limited-partnerships@lsra.ie and request an application form. The application form that is provided is given a unique reference number, which is used to track both the submitted form and the payment of the fee required under the act.

THE LSRA DOES NOT SEE THAT THERE WOULD BE A REQUIREMENT TO CLOSE PRE-EXISTING ACCOUNTS AND OPEN NEW ACCOUNTS. THE LSRA IS LIAISING WITH BUSINESS BANKING DEPARTMENTS IN SOME OF THE MAIN BANKS ON THIS ISSUE

DOS AND DON'TS

PADRAIG LANGAN IS HEAD OF THE REGISTRATION, LEVY AND FEES UNIT, LSRA

I run the team responsible for processing applications for LLP status and for establishing and maintaining the register of LLPs. In processing the applications for authorisation, the LSRA has encountered similar issues arising with many of the application forms. To ensure that all applications are processed without undue delay, here is a list of key 'dos and don'ts'.

Do ensure that you apply using the correct name of your partnership, as registered with the Law Society.
The LSRA has received several application forms from firms using a name that does not match the partnership of solicitors name registered with the Law Society of Ireland. If a partnership of solicitors wishes to change their name, they must apply to the Law Society for this change prior to applying for LLP status to the authority.

Do ensure that you are using the correct Law Society firm numbers and solicitor numbers.
The authorisation process requires the LSRA to confirm that the relevant business is a partnership of solicitors registered with the Law Society of Ireland and that the partners have valid practising certificates. If the wrong data is supplied on the application form, the LSRA has to contact the Law Society to verify which numbers are correct. This can slow down the authorisation process.

Padraig Langan

Do make sure that the insurance information provided is complete and accurate.
The LLP application form requires firms to supply the name of their insurer. The Law Society has a list of participating insurers on its website.

Some LLP applications include an insurer's name that is similar to, but not exactly the same as, those listed on the Law Society's website, or include the name of the broker, but not the insurer. The insurer's name on the form *must* match the participating insurer exactly.

Do make sure that the data held by the Law Society in relation to partners is up to date and accurate.
During the verification process for several firms, it was found that partners listed on the application form were registered at the Law Society with a different firm. The applicant had to be contacted, asked to clarify the issue, and advised to update the partners' details with the Law Society. The application could not proceed until the issue had been rectified.

Do make sure that the statutory declaration is fully and carefully completed.
The application process requires completion of a statutory declaration by the applicant, duly countersigned. On some forms processed by the LSRA, the countersigners had not added their name after 'declared before me', or had not indicated under what authority they were countersigning the form. Where the LSRA has to contact applicants for clarifications or replacement forms, this unnecessarily slows down the application process.

Do familiarise yourself with your obligations as a newly authorised LLP under the act and the 2019 regulations, and give some thought as to when you want the authorisation to come into effect.
Prior to issuing an authorisation, the LSRA will engage with the applying partner and request a proposed date from which the authorisation will be deemed to be effective. This is to ensure that a newly authorised LLP is ready to fulfil its obligations under the act, as regards using 'LLP' or 'limited liability partnership' in its name and on all contracts, invoices etc, and is also ready to inform its clients and creditors of its new limited liability status and its impact.

Applicant firms should familiarise themselves with the requirements under the act and the regulations in advance of their application, in particular, the requirements around the use of 'LLP' in the applicant firm's name and the need to update stationery, logos and branding, etc. It is also important that you give some thought as to the resources required to ensure that you are in a position to comply with the act from the authorisation date.

Once you have been authorised, do check the Register of LLPs and ensure that the details are correct.
LLPs have an obligation under the act to inform the LSRA should their details change. So, for example, if a partner joins or leaves your LLP, you need to inform the LSRA that this has occurred. A form is available on the website for requests to alter details on the register.

Do let us know if there is any part of the process that is unclear.
While we can't advise law firms as to whether to apply for authorisation to operate as an LLP, we'll do our best to answer any questions about the act, or the process, that we can.

Don't forget to sign all the relevant sections of the application form.
The LLP application form must be submitted in the name of only one partner. The applicant partner must sign all the relevant sections in the form. If this is not done, the LSRA will return the form for completion. g

WOULD CAPPING DAMAGES BE CONSTITUTIONAL?

The Law Reform Commission's issues paper on the capping of damages in PI actions proposed four models. In the Society's submission to the LRC, it argues that Model 4 is the most constitutionally robust, says **Ken Murphy**

KEN MURPHY IS DIRECTOR GENERAL OF THE LAW SOCIETY OF IRELAND

THE LAW SOCIETY SUBMITS THAT MODEL 4 BE PURSUED AND THAT THE NEW GUIDELINES INTRODUCED PURSUANT TO THE 2019 ACT BE GIVEN AN OPPORTUNITY TO OPERATE

The Law Society has made a 110-page submission to the Law Reform Commission (LRC) in response to its December issues paper on capping damages in personal-injury actions.

The Society's response was overseen by a working group comprising the president Michele O'Boyle, director general Ken Murphy, Stuart Gilhooly, Liam Kennedy, Rosemarie Loftus, Ernest Cantillon and Colette Reid.

The expert constitutional law advice to the Society and the submission's drafting were provided by former attorney general Paul Gallagher SC, assisted by Catherine Donnelly BL and Francis Kieran BL.

In publishing its paper, the LRC was following a recommendation of the Personal Injuries Commission, which recommended the examination of "whether it would be constitutionally permissible, or otherwise desirable, to provide for a statutory regime that would place a cap or tariff on some or all categories of damages in personal injuries cases".

In the executive summary of its submission, the Society provided an overview of its considered position: "The Law Society welcomes the opportunity to respond to the LRC's wide-ranging and very useful *Issues Paper: Capping Damages in Personal Injury Actions*, published on 11 December 2019.

"This submission addresses, in detail, the issues raised by that paper. Before addressing the issues raised, the Law Society wishes to draw attention, at the outset, to a number of important matters:

1) The paper accepts for the purpose of its legal analysis two factual premises that have not been established by the Government or any relevant body –
   a) That damage awards are, in fact, too high,
   b) That the capping of general damages will result in a lowering of insurance premiums.
2) The Law Society would have serious concerns, due to profit

LRC'S POSSIBLE CAPPING MODELS

Model 1 – proposes a cap set by primary legislation that would take a similar form to how sentencing occurs in most criminal cases, in which the courts impose sentences using a proportionality test, on a scale from zero (an entirely suspended sentence) to the maximum permissible sentence for the particular offence.

Model 2 – proposes a scheme that combines elements of the New South Wales *Civil Liability Act 2002* and the England and Wales *Civil Liability Act 2018*, under which general damages are capped, and all awards for lesser injuries are indexed to the cap.

Model 3 – proposes that either Models 1 or 2 (or any other method of capping) could be enacted, but in which the act would delegate determining the details of the cap to, for example, a minister or some other regulation-making body.

Model 4 – could be described as involving an approach that is closest to the current position, in that it proposes that the courts should continue to determine the level of awards of general damages through case law, as supplemented by the significant new provisions for *Personal Injuries Guidelines* under the *Judicial Council Act 2019*.

PIC: SHUTTERSTOCK

maximisation incentives on the part of insurance companies, if damages capping were to be introduced without any consequential reduction in insurance premiums. This is important, having regard to the lack of clarity as to the extent to which the cost of insurance premiums are driven by the profits of insurance companies.

3) Having regard to the fact that section 90 of the *Judicial Council Act 2019* makes provisions for new guidelines, it would be wholly inappropriate, and not constitutionally justified, to introduce legislative proposals for capping damages without first waiting to see how effective the guidelines introduced pursuant to the 2019 act will be.

"Regarding the four models proposed by the LRC, the Law Society submits that Model 4 be pursued and that the new guidelines introduced pursuant to the 2019 act be given an opportunity to operate. The Law Society is also of the view that Model 4 is the only model that fully respects the constitutional requirements of separation of powers and the constitutional requirement that the administration of justice should be performed by courts.

"Model 4 also satisfies the constitutional requirements set out by Costello J in *Heaney v Ireland* ([1994] 3 IR 593). As a matter of principle, it would be extraordinary if the legislature, having just introduced Model 4, then decided to ignore it and introduce a different model. As will be explained later in this submission, it is difficult to see how the State could meet the *Heaney v Ireland* requirements in such circumstances."

Model 2 alternative

In the alternative, and subject to the above, the Law Society would submit that Model 2 could, in appropriate circumstances, depending on how the cap is devised and on how percentage caps were applied (and subject to proportionality issues), be capable of meeting constitutional requirements.

In addition to the above factors, Model 2 would require to be amended to ensure a proper correlation between the level of severity of injury and the award. However, even if those issues could be addressed, Model 2 would not, in present circumstances, meet the proportionality requirements of *Heaney*, given the legislative decision to introduce Model 4 and the absence of any evidence that it is inadequate. The Law Society also takes the view that Model 2 would be more likely to withstand legal challenge than Models 1 and 3.

Not constitutional

The Law Society does not regard Model 1 as constitutional. In its view, Model 1 undermines the constitutional requirements of separation of powers, and that the administration of justice must be conducted by courts.

While the Society accepts that the intensity of the scrutiny applied by the courts to interferences with constitutional rights may be variable, the Society also regards Model 1 – and Model 3 insofar as it envisages a mandatory cap – as not satisfying the *Heaney* requirements to justify interference with a constitutional right of rational connection between the objective and the means, minimum impairment of the rights, and an overall balance between the interests pursued and the impact on the rights, in particular, given the current state of the evidence on the relationship between the level of damages awards and insurance premiums, and given that an option that has a lesser impact on the relevant constitutional rights is available (that is, Model 4).

The Law Society is also concerned that Model 3 would infringe the constitutional principle of separation of powers and the constitutional imperative for the administration of justice by the courts and, at least insofar as it envisages a mandatory cap, it has the same infirmities as Model 1.

Model 3 raises additional problems in the context of article 15 of the Constitution, regarding the delegation of legislative power to another actor, and regarding apparent bias – given that the executive itself can be a defendant in many personal-injuries cases.

Overall, therefore, the Law Society submits that Model 4 is the most robust model from a constitutional perspective. Model 2 could, depending on its ultimate formulation, have the potential to satisfy constitutional requirements.

Models 1 and 3 should not be considered further. g

LAW SOCIETY LAUNCHES UPDATED *eCOMPENDIUM*

The Law Society has launched the fully digital *eCompendium to the Solicitors Acts*, which contains all the primary legislation regulating solicitors and empowering the Society, and now includes the *LSRA 2015*

An updated *eCompendium to the Solicitors Acts* has been launched by the Law Society and is publicly available to all interested parties.

Fully digital, the *eCompendium* contains all of the primary legislation regulating solicitors and empowering the Law Society, and now includes the *Legal Services Regulation Act 2015* (LSRA).

Significantly, the latest edition will not be produced in print for environmental reasons and because of the ever-increasing use of technology by solicitors.

This is a unique, innovative resource that will be a key reference document for practising solicitors and firms when they navigate through the legislative environment.

One-stop shop

All legislation governing the solicitors' profession is located in one place, saving time and effort. The *eCompendium* facilitates quick navigation to amending sections in subsequent acts.

It enables users to visualise much more quickly the status of amended legislation, with amended legislation struck through and with cross-references in the left margin hyperlinking to amended or substi-

ALL LEGISLATION GOVERNING THE SOLICITORS' PROFESSION IS LOCATED IN ONE PLACE, SAVING TIME AND EFFORT. THE *eCOMPENDIUM* FACILITATES QUICK NAVIGATION TO AMENDING SECTIONS IN SUB-SEQUENT ACTS

FOCAL POINT

USER SUPPORTS

Taking into consideration that the 2020 edition of the *eCompendium* is available in electronic version only, the Law Society has developed self-help supports for users, including a quick reference guide and an instructional video.

The 'how-to-use' video is especially useful because it demonstrates key features of the *eCompendium*. This is a good introduction for users who are not familiar with earlier editions.

Both tools are available on the *eCompendium's* dedicated web page at www.lawsociety.ie.

PIC: SHUTTERSTOCK/GAZETTE STUDIO

tuted provisions in subsequent legislation.

At the same time, users can view legislation that would have been applicable at different points in time.

The small number of provisions of the LSRA that have not commenced by the time of publication are identified, and users are redirected to the electronic *Irish Statute Book* to check the up-to-date status of non-commenced provisions.

Did you know?

The latest edition of the *eCompendium* contains the full texts of the *Solicitors Acts 1954*, *1960*, *1994* and *2002*, as well as the *Legal Services Regulation Act 2015*.

Relevant sections of the *Civil Law (Miscellaneous Provisions) Act 2008*, the *Legal Practitioners (Irish Language) Act 2008* and the *Courts Act 2019* are also reproduced in the document.

In addition, an addendum refers to provisions of the *Investment Intermediaries Act 1995* and the *Investor Compensation Act 1998*, insofar as they relate to solicitors. g

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

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LAW SOCIETY

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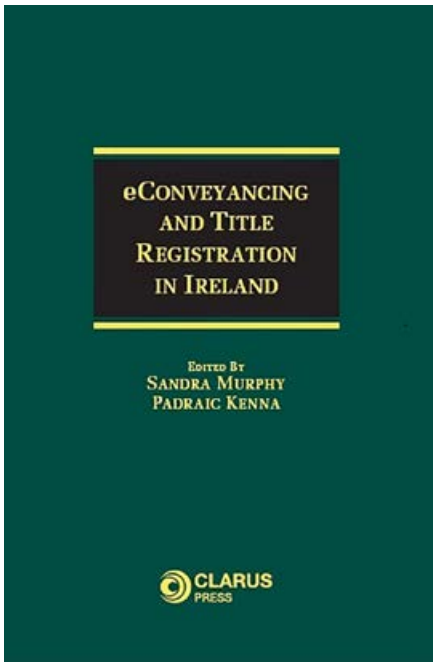
eCONVEYANCING AND TITLE REGISTRATION IN IRELAND

Sandra Murphy and Padraic Kenna (eds). Clarus Press (2019), www.claruspress.ie. Price: €99



Historically, Irish property law was governed by a mixture of pre-1922 legislation and by feudal law. The reform of conveyancing practices gained momentum with the publication of the Law Reform Commission's *Report on Reform and Modernisation of Land Law and Conveyancing Law* in 2005. Many of the recommendations contained in that report were enacted when the *Land and Conveyancing Law Reform Act* was published in 2009. The act abolishes many of the historic land law conventions and contains many provisions to facilitate simpler conveyancing.

This book is a representation of the findings of the experts who presented papers at a conference in Galway in 2017 and gives us an overview of the experiences of e-conveyancing in this and other jurisdictions.

The first few chapters introduce us to the position as it stands in Ireland. John Wylie gives us a historical background to legislative reform. Gabriel Brennan and Eamonn Keenan explore the challenges and opportunities for Ireland and the Law Society's e-registration project that implemented the Society's 2008 report on e-conveyancing, which, in tandem with the LRC's 2006 report, *eConveyancing Modelling of the Irish Conveyancing System*, set out the vision for Ireland. Liz Pope takes us through the development of e-registration services in the Property Registration Authority.

Subsequent chapters give us a glimpse of the experience of e-conveyancing in England and Wales that followed from the *Land Registration Act 2002*. It analyses the obstacles and technical difficulties encountered in attempting to implement electronic conveyancing in that jurisdiction.

A paper by Dr Una Woods explores the implications of adverse possession in a registered title environment. The suitability (or not) of blockchain technology to land registration is explored in two chapters. Another contributor demonstrates how the ownership of digital property rights is now a new field of property law.

The concluding chapters of this book take us through the errors and responsibilities of e-conveyancing, the necessity of maintaining the integrity of the register of ownership, and the interaction between European law and the demands of e-conveyancing.

There is no doubt that huge steps have been taken to reform property law within the last two decades. A conveyancer's life is much simpler when dealing with registered title. However, e-conveyancing is much more than registration of title; it involves the cooperation of many stakeholders and provides challenges and opportunities in pursuit of that goal. This book opened my eyes to the very real obstacles encountered on that path.

Martin Dixon sums up the vision in his paper on the lessons from England and Wales as follow: "With dealings in land, speedier transactions (especially if there are dispositive and indefeasible) are not always beneficial; there is a place for reflection and reconsideration. An e-conveyancing system should be a vehicle, not a journey. The journey is a financial, social, economic and practical one. There are questions to be answered before we step into the vehicle to take us on that journey." g

Mairead Cashman is assistant law agent at Dublin City Council.

PRACTICE NOTE – CONVEYANCING COMMITTEE

SEPARATE REPRESENTATION FOR BOTH SIDES IN A VOLUNTARY TRANSFER

SI 375 of 2012, the regulation that prohibits a solicitor or firm from acting for both sides in a conveyancing transaction, whether a transaction for value or a voluntary transaction, has been in force since 1 January 2013. Since then, each party to a conveyancing transaction requires separate full legal representation, subject to a few limited exceptions set out in the regulation.

The Law Society has received queries about how voluntary transfers are to be conducted in practice by the solicitors representing each side, and the following recommendation applies to voluntary transfer situations.

Where a solicitor is approached by a client about a proposed voluntary transfer of property to another party, that solicitor must explain that s/he cannot also act for the other client, even if one or both parties want her/him to do so. The former practice of acting for both sides in a transaction and referring one party to another solicitor or firm for 'independent legal advice', but continuing to act thereafter for both parties in the execution and completion of the necessary documentation, is not acceptable practice and would be in breach of the above regulation.

Where a solicitor has previously acted in other transactions for the two parties to the current transaction (whether for the two in one transaction, or for one or the other in different transactions – and whether the parties have a family relationship to each other or not), the solicitor, before taking detailed instructions from one of the parties, will have to make a decision about which party s/he will represent in the current transaction. If there is any possibility of a conflict between the interests of the two former clients, the solicitor may not be able to act for either party – for example, if the solicitor is aware of information that was gained in previous transactions acting for one or both of the clients that would impact on the interests of one of the parties to the current transaction, the solicitor might have a duty of confidentiality to one of the parties while also having a conflicting duty of disclosure to the other party.

For example, in cases where:

- A solicitor is asked to act in a transfer of property from the sole name of a parent to the joint names of the parent and a child, the solicitor should be aware that s/he can act for the parent as transferor or for the parent and child as joint transferees, but not for the parent in both capacities,
- Similarly, where asked to act in the transfer of a solely owned property, which is not a family home/shared home, from the sole name of one spouse/civil partner into the joint names of both spouses/civil partners, the solicitor can act for the sole-owning spouse/civil partner as transferor or for the two spouses/civil partners as joint transferees, but not for the sole-owning spouse/civil partner in both capacities.

While the transferor must be represented separately to the two transferees in the above two examples, it is confirmed that the two joint transferees in both situations (provided there is no conflict of interest between them) may be represented by one solicitor.

Contracts for sale

Do you need a formal contract for sale between the two sides in a voluntary transfer?

It would be unusual to have a formal contract for sale. However, if there is to be a contract, it should comply with the formalities required by the *Land and Conveyancing Law Reform Act 2009*. It is suggested that the words 'natural love and affection' be used in place of the purchase price when relevant.

Otherwise, whether or not there is a contract will depend on various matters.

Firstly, under common law, the vendor under an open contract must give good title to the purchaser. Secondly, the Law Society's standard contract for sale – which is a closed contract – gives certain specific warranties as to title, planning, and other matters that are not given under an open contract. It is therefore a matter for the two parties to agree in advance if they want to make the voluntary transfer subject to all (or some) of the rights and obligations that the standard contract contains.

The transferor may have agreed to the transfer on the basis that the transferee takes the property 'warts and all'. The transferee should be advised as to the limitations this would place on him/her in the event of a future sale or mortgage of the property. The transferee should consider whether, in the event of such a future sale or mortgage, s/he would have sufficient knowledge of the title so as to be able to reply to a standard set of requisitions on title. This may influence the transferee's decision on whether to take the property 'warts and all'.

Solicitors for transferees should be aware that, if the transferee is intending to raise finance on the security of the property, and the residential certificate of title system is being used by the lending institution, the standard solicitor's undertaking and certificate of title both state that 'good marketable title' means that the standard Law Society contract for sale was used (and this implies it was used without significant amendment) and that standard requisitions on title were raised and satisfactory replies were received. Otherwise, a transferee's solicitor cannot give the standard undertaking to a lender prior to drawdown without first agreeing with the lender the qualification to it, and to the subsequent certificate of title.

If the property is not residential and some other format of certificate of title is contemplated, the solicitor should check to see what, if any, requirements there are for the use of a contract for sale or requisitions on title.

If some level of contractual protection is desired by the transferee, it should be considered whether this needs to be in the format of the Law Society's full standard contract for sale, backed up by full requisitions on title with replies, etc, or whether something less (the extent of which to be agreed between the parties) will suffice.

Requisitions on title

Do you need to raise formal requisitions on title?

The question of whether to raise requisitions on title is one that a transferee will have to consider and, if required, the parties will have to negotiate and come to an agreement on whether a full set of requisitions on title will be raised and replied to, or whether a selected range of requisitions will suffice.

Much will depend on the nature of the relationship between the parties and the use to which the transferee wishes to put the property following its acquisition, and whether the transferee is or will

be raising finance on the security of the property.

The parties will need to agree on where responsibility will lie for any burdens or charges on the property. Any existing mortgages will need to be redeemed. In addition, they will need to agree on who is to discharge any unpaid outgoings or charges on the property, including commercial rates, domestic waste charges, water charges, NPPR, household charge and LPT, etc. Under some of this legislation, the statutory obligation is on the transferor to pay these charges/tax – and consideration will need to be given to how this obligation is to be dealt with.

If the agreement between the parties is that a transferor is divesting her/himself of her/his property 'warts and all', it may be that no contract or requisitions will arise in practice, and all that will be furnished is the minimal transfer documentation.

As can be seen above, much will depend on the level of familiarity with the title that the transferee has/does not have and on the basis of the agreement between the parties as to what is envisaged. If the parties have not already discussed these matters, they may need to do so before they give final instructions to their respective solicitors. This may result in a certain level of negotiations with the solicitor acting for the other side – for example, in a situation where the voluntary transfer is subject to conditions of maintenance, or if rights are to be reserved. As with a contract for sale, there should be a mutual understanding as to the terms and conditions on which a property is to be transferred voluntarily from one party to another.

Transfer at undervalue

It is recommended that, in these transactions, there should be a contract and requisitions on title, even though such a transaction might be seen to be part-voluntary.

If acting in a transaction and the client does not want to pay for an investigation of title, whether the transaction is a voluntary transfer or a transfer for undervalue, it is very important that the solicitor writes to the client with advices, in order to have a record of the advices given.

Refusal of representation

If one of the sides refuses to obtain legal representation and you act for the other side, you should advise your client:

- Of the fact that you cannot act for, advise, or assist the other side in the matter, whether by way of advising them on what to do at various stages of the transaction or by the provision of legal documentation,
- That the quality of legal documentation provided by a non-solicitor acting on their own behalf may not meet the standard required by a prudent conveyancing solicitor and of the likelihood that this may result in delays and difficulties in completing the transaction, and
- Of the danger that, if the non-solicitor acting on their own behalf should seek in the future to challenge the validity of the transfer, a court may take into account the fact that s/he did not have legal representation in the matter and that s/he may have believed that the solicitor on the other side was also acting for her/him or was looking out for her/his interests, given that all parties may initially have consulted the same solicitor together.

There is no obligation on a solicitor to act in a transaction where the other party is not represented by a solicitor, and you should proceed with caution if you decide to act.

GUIDANCE NOTE – LITIGATION COMMITTEE

NEW FORM OF VHI UNDERTAKING

The Law Society and Vhi Insurance DAC (Vhi) have agreed a revised form of Vhi Undertaking. There is also an agreed standard form of solicitor's certificate for use in certain circumstances.

The Vhi Undertaking is designed to ensure that Vhi customers can avail of the benefits of their Vhi cover for injuries in respect of which they are pursuing a personal-injury claim. The undertaking provides that eligible hospital and medical expenses paid by Vhi to the policyholder will form part of any such personal-injury claim, on the terms laid down in the letter of undertaking.

The Vhi rules, terms and conditions provide that benefit is specifically excluded where expenses are recoverable from a third party (rule 7). However, certain exceptions are permitted, including where a solicitor's undertaking in the agreed form is provided in the context of a personal-injury claim. In these circumstances, Vhi will rely on the undertaking and make payments to, or on behalf of, the policyholder (rule 11).

Practitioners are reminded that it is good practice to seek to determine from personal-injury clients whether they have private medical insurance cover and, where appropriate, to include such health costs as special damages. For Vhi policyholders, details of this nature can be obtained from Vhi by emailing: recoveries@vhi.ie. It is important to include the client's Vhi policy number.

Before giving any undertaking, practitioners should ensure that they have their client's irrevocable authority to do so, and that they are in a position to comply with the terms of the undertaking.

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 Oisin Murphy, a solicitor practising as Oisin Murphy, Station House, Station Road, Shankill, Dublin 18, and in the matter of the *Solicitors Acts 1954-2015* [2019/DT42]
Law Society of Ireland (applicant)
Oisin Murphy (respondent solicitor)

On 14 January 2020, 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, as required by regulation 26(1) of the *Solicitors Accounts Regulations* (SI 516 of 2014), for the year ended 31 July 2018 within six months of that date.

The tribunal ordered that the respondent solicitor:

1) Stand advised and admonished,
2) Pay the sum of €2,000 to the compensation fund,
3) Pay the sum a €760 as a contribution towards the whole of the costs of the applicant.

In the matter of Oisin Nolan, a solicitor practising as Oisin Nolan, Richmond House, 15A Main Street, Blackrock, Co Dublin, and in the matter of the *Solicitors Acts 1954-2015* [2019/DT26]
Law Society of Ireland (applicant)
Oisin Nolan (respondent solicitor)

On 14 January 2020, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he failed to cooperate with the investigation of his practice by failing to furnish a full response to all the matters raised by the Society's investigating accountant and the report on his practice dated 30 May 2018.

The tribunal ordered that the respondent solicitor:

1) Stand advised and admonished,
2) Pay the sum of €1,512 as a contribution towards the whole of the costs of the applicant.

In the matter of Barry G O'Meara, a solicitor practising as Barry G O'Meara & Co, Solicitors, at Pembroke House, Pembroke Street, Cork, and in the matter of the *Solicitors Acts 1954-2015* [2018/DT27]
Law Society of Ireland (applicant)
Barry G O'Meara (respondent solicitor)

On 30 January 2020, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in that he:

1) Failed to comply expeditiously, within a reasonable time, or at all with three undertakings, each dated 23 September 2010, furnished by him on behalf of his named clients on 23 September 2010 to the named complainant in respect of a named client and in respect of the property,
2) Failed to reply adequately or at all to correspondence from the Society and, in particular, letters dated 24 October 2016, 22 November 2016, 13 January 2017 and 7 March 2017,
3) Failed to comply adequately or at all with the directions of the Complaints and Client Relations Committee made at its meeting on 23 May 2017,
4) Failed to reply adequately or at all to the complainant's correspondence.

The tribunal ordered that the respondent solicitor:

1) Stand advised and admonished,
2) Pay the sum of €500 to the compensation fund,
3) Pay the sum a €2,112 as a contribution towards the whole of the costs of the applicant.

WILLS

Currigan Edward (Ted) George Joseph (deceased), late of 1 Lakeside Care Home, Lakeside Village, La Rue de la Commune, Jersey; and formerly of The Tay Suite, Balmoral Executive Suites, Clarendon Road, St Helier, Jersey; and 4 Foxrock Green, Foxrock, Co Dublin, who died on 16 May 2017. Take notice any person(s) having a claim against the estate, please contact Gavin Smith, solicitor, Charles Russell Speechlys, Compass House, Lypiatt Road, Cheltenham, GL50 2QJ, United Kingdom; tel: 0044 124 224 6396, email: gavin.smith@crsblaw.com; or John Black, solicitor, Black & Company, 28 South Frederick Street, Dublin 2; tel: 01 679 5170, email: office@blackandcompany.ie

Davy, Geraldine (deceased), late of 11 Eglin House, Ballsbridge, Dublin 4. Would any person having knowledge of any will made by the above-named deceased, or any knowledge of the above-named deceased, or if any firm is holding a will or documents, please contact McKenna & Co, Solicitors, Fitzwilliam House, 4 Upper Pembroke Street, Dublin 2; DX 109005 Fitzwilliam; tel: 01 485 4653, email: lisa@mckennaandcosolicitors.com

Finnan, Mary (deceased), late of 6 Borris Road, Portlaoise, Co Laois; and formerly of Fielbrook Drive, Portlaoise, Co Laois; and Ardivallane, Tipperary Town, Co Tipperary, who died on 6 September 2019. Would any person holding or having any knowledge of a will made by the above-named deceased please contact Vincent McCormack & Co, Solicitors, 11 St Michael Street, Tipperary; DX 38 006 Tipperary; tel: 062 52899, email: mailbox@tipplegal.ie

Forde, Patrick (deceased), late of 55 Longstone Park, Portrane, Co Dublin, who died on 17 January 2020. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Rhona O'Kelly, Barry C Galvin & Son, Solicitors, 91 South Mall, Cork; tel: 021 427 1962, email: rokelly@bcgalvin.ie

Heffernan, Maeve (deceased), late of 19 The Brambles, Townparks, Skerries, Co Dublin, and formerly of 17 St Declan's Road, Marino, Dublin 3, who died on 24 January 2020. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Ruth Higgins, Gerrard L McGowan Solicitors, The Square, Balbriggan, Co Dublin; DX 96001 Balbriggan; tel: 01 841 2115, email: info@glmcgowan.ie

Hennessy, Patrick (deceased), late of 84 The Thatch Road, Whitehall, Dublin 9. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact PG Cranny & Company, Solicitors, 230 Swords Road, Santry, Dublin 9; tel: 01 842 2919, email: info@pgcranny.ie

Lyster, Mary (deceased), late of 16 Hazelwood, Shankill, Co Wicklow, who died on 24 September 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Rosemary Gantly Solicitors, 5 Carlton Terrace, Novara Avenue, Bray, Co Wicklow; tel: 01 276 1707, email: info@rosemarygantly.ie

McElroy, Anthony (deceased), also known Andrew McElroy, also known as Andrew Scanlon, also known as Andrew Garvey, late of Knockatunna, Kilmaley, Ennis, Co Clare, who died on 25 January 2014. Would any person having knowledge of a will made by the above-named deceased please contact the Chief State Solicitor's Office, Osmond House, Little Ship Street, Dublin 8; tel: 01 417 6186, email: emily_woods@csso.gov.ie

O'Brien, Maureen (Marian) (deceased), late of Lourdesville, Castledermot, Midleton, Co Cork, who died on 30 July 2019. Would any person having knowledge of a will executed by the above-named deceased please contact Roger Morley, W St Clair Rice & Co, Solicitors, 103 Main Street, Midleton, Co Cork; tel: 021 463 1616, email: rmorley@wscr.ie

O'Sullivan, James (deceased), late of 1 Aspen Park, Carriglea Downs, Killiney, Co Dublin. Would any person having knowledge of a will made by the above-named deceased, who died on 16 November 2019, please contact Smith Foy & Partners, Solicitors, 59 Fitzwilliam Square, Dublin 2; tel: 01 676 0531, fax:

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €155 (incl VAT at 23%)
- **Title deeds** – €310 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €155 (incl VAT at 23%)

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO **LAW SOCIETY OF IRELAND.** Send your small advert details, with payment, to: *Gazette* Office, Blackhall Place, Dublin 7, tel: 01 672 4828, or email: catherine.kearney@lawsociety.ie. **Deadline for May 2020 *Gazette*: 20 April 2020.** 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*.

01 676 7065, email: gillian.lewis@smithfoy.ie

Saul, Anthony (deceased), late of 64 Bangor Road, Crumlin, Dublin 12. Would any person having knowledge of any will made by the above-named deceased, who died on 25 February 2020, please contact AC Forde & Company, Solicitors, 14 Lansdowne Road, Dublin 4; tel: 01 660 8955, email: info@acforde.com

Walsh, Anthony (deceased), late of Carrowmacbrine, Rathlee, Easkey, Co Sligo, who died on 9 October 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Pauline O'Toole, solicitor, Main Street, Carnew, Co Wicklow; tel: 053 942 3596, email: info@otoolesolicitors.com

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 by Helene Duignan

Take notice any person having any interest in the freehold estate of the following property: 22 Upper Kilmacud Road, Stillorgan, Co Dublin, held by the applicant under indenture of lease dated 16 December 1958 and made between Michael Murray & Company Limited of the one part and Patrick J Murray of the other part.

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

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county/city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest, including the free-

hold reversion, in the aforesaid premises are unknown or unascertained.
Date: 3 April 2020
Signed: Michael Sheil & Partners (solicitors for the applicant), Temple Court, Temple Road, Blackrock, Co Dublin

Notice of intention to acquire the fee simple: in the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of property known as 45 O'Mahony Avenue (formerly known as Castle Road), Bandon, Co Cork, in the parish of Ballymodan and county of Cork, and in the matter of an application by Mary O'Leary
Take notice any person having an interest in any estate in the above property that Mary O'Leary (the applicant) intends to submit an application to the county registrar of the county of Cork for the acquisition of the fee simple interest and all intermediate interest in the aforesaid property, and any persons 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 from the date hereof.

Any person having any interest in the property superior to a lease of 20 November 1903 between James Fielding Sweeney of the one part and Richard Keyms of the other part, of property situate at Castle Road in the town of Bandon in the parish of Ballymodan, barony of Kinalmeaky and county of Cork, should provide evidence to the below named.

In default of such information being received, the applicant intends to proceed with the application before the county registrar and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons entitled to the superior interest, including the freehold interest, in the said premises are unknown and unascertained.
Date: 3 April 2020
Signed: R Neville & Co, Solicitors, Old Bank House, South Main Street, Bandon, Co Cork

RECRUITMENT

Hughes & Liddy are seeking to hire a solicitor with experience in commercial, conveyancing, and corporate finance. May suit individuals with an existing clientele. Send CV and application to Hughes & Liddy, 29 Fitzwilliam Place, Dublin 2; email: info@solicitorsireland.com

PRO BONOBO

WHAT A LOAD

Running out of loo roll might be considered an emergency, but Oregon police have urged the public not to call them. "It's hard to believe that we even have to post this," Newport police said on Facebook. "Do not call 911 just because you ran out of toilet paper."

Police advised residents to be resourceful. "Seamen used old rope soaked in salt water. Ancient Romans used a sea sponge, also soaked in salt water. We are a coastal town. We have an abundance of salt water available. Sea shells were also used. Colonial Americans used corn cob cores. Farmers used cobs, but also pages from the *Farmer's Almanac*. The Sears Christmas catalogue could get a family of three from December through to Valentine's Day, or St Patrick's Day if they were frugal."

And, "when all else fails, you have magazine pages".

DEATH IS NOT THE FINAL RELEASE

An inmate serving life in the US has argued in court that he should be released – because he 'died' four years before, *RTÉ reports*.

Benjamin Schreiber, who bludgeoned a man to death in the 1990s, became gravely ill in 2015. After he was rushed unconscious to hospital, doctors had to revive the 'dead' man five times.

In court, Schreiber claimed that, because he had momentarily died, his life sentence had technically been completed. His lawyer argued that Schreiber had been sentenced to life without parole, "but not to life plus one day".


"They extended my life sentence."

However, the Iowa Court of Appeals was unmoved, ruling that the argument – however original – was "unpersuasive".

"Schreiber is either alive, in which case he must remain in prison, or he is dead, in which case this appeal is moot," the court said, adding that the possibility that he is dead seemed unlikely, given that he had himself signed legal documents in the case.

SUITS YOU, SIR

A US man has successfully sued his wife's lover, *RTÉ reports*. A North Carolina judge agreed that 'the other man' was to blame for the failure of Kevin Howard's marriage and awarded him $750,000.

Howard filed the suit under an 'alienation of affection' law dating from the 1800s. The law, which is still in effect in only five other US states, allows one member of a couple to sue another person whom they believe to be the cause of the break-up of their marriage due to "wrongful or malicious acts".

His lawyer, Cindy Mills, tries at least one such case in court every year. In 2010, one of her clients was awarded $5.9m in a similar situation.

ARS GRATIA ARTIS?

Art thieves are definitely not self-isolating at the moment. Three "very high value" paintings, dating from the 1580s to the 1640s, were stolen just before midnight on 14 March from a gallery in Oxford University, *says the BBC*. The most important was Van Dyck's *Soldier on Horseback*. Works by Salvator Rosa and Annibale Carracci were also taken.

In a tough weekend for the college, it was also discovered that cases of fine wine, worth between Stg £1,000 and £2,000, had mysteriously disappeared from its collection.

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