No place like home
The *Gazette* talks to Ruth McCarthy about her top job in the 'family business'

Not in Kansas anymore
It'll be a long road back to the office – but what challenges must employers and staff meet?

The great and terrible
The *Civil Liability (Amendment) Act* has been judged – and found wanting

gazette
LAW SOCIETY

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PRESIDENT'S MESSAGE

LEADING BY EXAMPLE

As we slowly work through the current pandemic, we know that we must make fundamental shifts. Shifts that address biological, physical, emotional and financial challenges. We must and we are changing our fundamental behaviours in how we undertake our work. It requires thought and creative planning. Our responses require evaluation for both 'business as usual' – delivered differently – and future pandemic planning.

As lawyers, we traditionally work in office environments. Many of us will be required to make fundamental design changes to accommodate for social distancing. At a tactical level, it also means having stockpiles of required PPE and other sanitation essentials. Most of all, it requires us to make informed decisions, both on personal and business levels.

Phase 2 of the *Roadmap for Reopening Society and Business* is upon us. Subject to the effectiveness of containment of the coronavirus, Phase 3 will follow three weeks thereafter.

The unwinding of the restrictions is on a risk-based approach, considering risk from the perspective of protecting those vulnerable to infection, as well as protecting against causes, situations, circumstances and behaviours that may lead to risk of spread of the disease.

Overriding principles

The roadmap is guided by a number of overriding principles that focus on an approach that is safe, rational, evidence-informed, fair, open and transparent for the whole of society.

In order to limit the number and duration of social and business contacts, we will, for the foreseeable future, be part of micro-communities that will allow work to be conducted and social interaction to continue in order to promote wellbeing – but always with an eye to limiting the spread of the infection.

On 8 June, we must continue to maintain remote working for all workers and businesses that can do so. The roadmap does, however, permit the phased return of certain workers on 8 June who, due to the nature of their work, can maintain a two-metre distance. The reduction of measures will be robustly and continuously monitored in terms of adherence and effect.

It is hoped that Phase 3 will be activated on 29 June. This phase also requires the continuance of remote working for all workers and businesses that can do so; however, it does allow a return to work for organisations where employees have low levels of daily interaction with people, and where social distancing can be maintained.

Being prepared

COVID-19 has taught us the value of being prepared for pandemics. This means having policies and practices ready to go when needed. It means robust IT systems to effectively manage work from home. It has also taught us the value of communication. I have been struck by the very positive communication I have received from colleagues throughout the country and, particularly, from the very constructive and proactive suggestions to keep business moving within the HSE guidelines.

> AS A PROFESSION, LET US CONTINUE TO LEAD BY EXAMPLE WHEN MAKING THE NECESSARY FUNDAMENTAL SHIFTS

As we collectively and collaboratively move through the *Roadmap*, let us as a profession continue to lead by example when making the necessary fundamental shifts. Let us dictate the future of our profession and let us proactively, and mindfully, stay connected to our colleagues and our clients. The strength of the profession is each individual solicitor. The strength of each individual solicitor is the profession. gg

MICHELE O'BOYLE,
PRESIDENT

PIC: SHUTTERSTOCK

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FEATURES

REGULARS

THE BIG PICTURE

RECLAIM THE STREETS!

Giant cats stalk the byways of old London Town, as humans cower behind wood and steel in... Oh, wait. That's just Larry, the No 10 cat, out for a prowl on 21 May during the pandemic lockdown, keeping an eye on Cummings and goings

PIC: SHUTTERSTOCK

THE DAY THAT WOULD HAVE BEEN

Runners around the country marked the day that would have been the Calcutta Run on 23 May. The event has been postponed until 24 October due to COVID-19 restrictions (*see p13, May issue*), but many wore old Calcutta Run or their firms' T-shirts and ran alone or with family to mark the day. Pictured above is Calcutta Run committee member Ciarán Ahern from A&L Goodbody outside the closed Law Society. He said he couldn't help but run the route on the day

Máire O'Neill from William Fry and her son Darragh said they missed the samba drummers

Sinéad Maher, solicitor

Staff members of Eugene F Collins

Rachael Hession, Law Society

Louise Lawless, trainee solicitor, McKenna & Co, Solicitors

Mairéad Blennerhassett and her husband Tom (IT manager, Law Society)

Kevin Galligan, director, DX Ireland

Derek Mahon, The Panel

Philomena Whyte, Law Society

Calcutta Run committee member Mick Barr of A&L Goodbody and his son Gordon

Calcutta Run committee member Cillian MacDomhnaill (director of finance, Law Society), his daughter Clodagh, and his wife Cathy. His daughter Orlaith also participated and took the photo

Ciarán Lyng, A&L Goodbody

Rebecca Raftery, Law Society

Anne Kelly and team from Leixlip firm Paul Kelly Solicitors

Calcutta Run Committee member Jack Kennedy (A&L Goodbody) with his fiancée Orla

John Cruise, Brown Bag Films

President of the Law Society Michele O'Boyle 'kangood' in Sligo

ALL PICS: JOE BOLAND/NORTHWEST NEWSPIX

DANCES WITH WOLVES

'Liens' and tigers and bears! Donegal solicitor Killian McLaughlin speaks to **Andrew Fanning** about his love of animals and why he set up the Wild Ireland Sanctuary

ANDREW FANNING IS A FREELANCE JOURNALIST

Earlier this month, a news story about the birth of six wild boarlets at the Wild Ireland Sanctuary in Burnfoot, near Muff, Co Donegal, brought some welcome relief from the relentless battle against the COVID-19 pandemic.

The striped sextet, thought to be the first of the species born here in more than 800 years, were an unexpected 'gift' from a female boar called Tory, after the island.

What you may not know, however, is that the man behind the sanctuary, Killian McLaughlin, is a solicitor from a family steeped in the legal profession.

His father Ciaran, who runs the long-established firm of CS Kelly & Co in Buncrana (where Killian also works), was state solicitor for Donegal from 1983 to 2005. Appearing at the Omagh Bomb Inquest, he established the right of lawyers from the Republic to represent clients at inquests in the North.

Killian's wife Katie is also a solicitor at CS Kelly – they met at Blackhall Place, from where they both qualified in 2014. As well as a solicitor specialising in litigation and family law, Killian has a degree in zoology. So which came first, the law or the lynxes?

"Animals came first! I was fascinated with nature as a child. The law came along later. Dad was a solicitor, and I followed in his footsteps."

His legal skills came in very handy when he developed Wild Ireland, a dream funded out of his own pocket. "Mad ideas often come from solicitors – they're used to hearing the word 'no'," he jokes.

Killian has a one-word answer to the question of how he manages to combine his passion for animals with his job as a solicitor – technology. "I can access pretty much my whole office through my phone. Yesterday, I was stamping deeds on the go, which is pretty incredible." He believes the pandemic has given us a glimpse of what is possible in the world of work in the future.

Lynxed in

Wild Ireland, which focuses on animals once native to Ireland, such as bears, wolves and lynxes, opened in October last year.

"The legal background definitely assisted me. I had to be a solicitor to get through the amount of red tape. Ireland has very high standards – there's a lot of legislation to get through,"

Solicitor Killian McLaughlin with his wolves (*from left*) Finn, Fergus and Oisín

Killian says, explaining that he had to deal with two main State organisations when setting up the sanctuary. The National Parks and Wildlife Service is responsible for licensing and inspection, as well as a number of other licences and permits related to the importing of wild animals; while the Department of Agriculture has a significant role in regulating animal health and movements.

The sanctuary has attracted huge interest since it opened, and it was "flying" in the early part of the year, says Killian, employing 12 full- and part-time workers. There were plans for more, including an education officer for the anticipated school tours. Then came the pandemic and the inevitable closure. Now, there's just Killian and one keeper, and he says he can't be certain about future employment levels until the sanctuary gets up and running again. While the site is now closed to the public, the work of caring for the animals goes on, as do preparations for reopening. "I would hope I could open up in the coming weeks. Social distancing is quite easy inside Wild Ireland. The problems will be the entrance – getting people in and out."

Bear with us

In the meantime, the centre is hoping the public will continue to support it by buying tickets online at its website at wildireland.org (€10 for adults and €8 for kids). These can be redeemed any time until the end of 2021.

Killian sees three different objectives for the Wild Ireland project: rescuing animals, educating visitors, and inspiring a new generation of conservationists. He believes that the effect of seeing animals like bears in a TV documentary can never be the same as seeing them in the flesh. Those at Wild Ireland were rescued from what was literally a prison cell in Lithuania.

"The bears were terrified when we set them free onto grass – they had only known concrete. They don't even know how to swim."

There has been a growing movement to 'rewild' areas of Europe, bringing back formerly native species that had become extinct. The reintroduction of beavers in areas of Britain has been particularly successful.

Beavers are referred to as a keystone species – they can alter the environment in a positive way, such as by building dams, which can prevent flooding. Wild boars are also a keystone species – their foraging is seen as important in forestry regeneration – but Killian is less optimistic about their return to the wild in Ireland.

"There have been haphazard attempts at releasing wild boars, but they can be very destructive and can carry diseases. They can also breed rapidly, as they have no natural predator. At the moment, we don't have the wilderness in Ireland – nor the enthusiasm for them."

His dream is to have around 7,000 acres set aside as a reserve for the animals, but in the medium-term, of course, expansion plans have been delayed by the pandemic.

"My ultimate dream is to make everything bigger, but a lot of things and new species, such as golden eagles, have been put on hold."

While the animals consume much of his time, Killian isn't planning on giving up the law any time soon. And there's another new life to look forward to, as his wife Katie is expecting a baby in June.

DPC STEPS UP 'BIG-TECH' ENFORCEMENT

The Data Protection Commission (DPC) has stepped up enforcement levels and sent draft decisions to both Twitter and WhatsApp, *writes Mary Hallissey*.

The Twitter draft decision, under article 60 of the *General Data Protection Regulation* (GDPR), was sent to all other concerned EU supervisory authorities. The other data protection regulators now have four weeks to comment on the decision.

If no objections emanate from other agencies, the DPC will issue its final decision.

The completed inquiry relates to Twitter as a data controller based in Ireland, following receipt of a data-breach notification. The draft decision turns on whether Twitter International has complied with articles 33(1) and 33(5) of the GDPR.

Advocate General Saugmandsgaard Øe

Given the gargantuan figures in previous EU GDPR fines against large tech companies, and the consistency mechanism under article 63, Twitter is likely to be slapped with a large administrative fine if the DPC decides against it.

This draft decision is one of a number of significant developments in DPC inquiries into tech companies recently. The ramping up of enforcement levels follows a December 2019 opinion from Advocate General Saugmandsgaard Øe that the DPC should be proactive in enforcing the GDPR.

Data transfers

Exercise of the powers to suspend and prohibit data transfers under GDPR is "no longer merely an option left to the supervisory authorities' discretion", the opinion says, adding that proper application of the regulation is a requirement of the supervisory authorities.

The opinion of the advocate general is a preliminary stage in CJEU proceedings. The full court may depart from the decision and its logic, but is unlikely to do so. If it follows the reasoning of the advocate general, then the DPC is likely to become much more proactive in the future.

DPC deputy commissioner Graham Doyle has confirmed that a preliminary draft decision has also been sent to WhatsApp Ireland Limited for their final submissions.

Any response from Twitter will be taken into account by the DPC before its draft decision under article 60 is published.

The inquiry into WhatsApp Ireland examines its compliance with articles 12 to 14 of the GDPR, in terms of transparency around what information is shared with Facebook. When finalised, that draft decision will, likewise, be sent to other EU data protection agencies.

The DPC has also completed the investigation phase of a complaint-based inquiry that focuses on Facebook Ireland's obligations to establish a lawful basis for personal data processing. This inquiry is now at the decision-making phase at the DPC.

The CJEU has said that it will deliver its judgment in Case C-311/18 (the *Schrems* case concerning the High Court's judgment on the regulation of international data transfers under EU data protection law) on 16 July. The DPC says this eagerly anticipated judgment will bring much-needed clarity to aspects of the law and will represent a milestone in the law on data privacy.

YOUNG OFFENDERS COVID COMPLIANT

Researchers at the University of Limerick have found that a majority of young people participating in Garda Youth Diversion Projects are complying with COVID-19 restrictions.

The research also shows that antisocial or offending behaviour has decreased during the pandemic. A small number of young people, however, were involved in more serious breaches during lockdown. These tended to be associated with alcohol or drug misuse.

Surveys were conducted with youth justice workers. Most reported compliance with 'keeping within the 2km distance', but less so in 'maintaining social distance' and 'not gathering in groups'.

Some projects also reported that non-compliance by certain adult family members and communities had a negative influence on some young people's compliance.

There are 105 Youth Diversion Projects in Ireland, which seek to divert those aged between 12 and 17 from becoming involved, or further involved, in antisocial or criminal behaviour, while encouraging them to improve their behaviour.

2,500 SIGN UP FOR FREE COURSES

The Diploma Centre has welcomed more than 2,500 solicitors to date onto two new courses – the Certificate in Technology Law, and the Introduction to Arts, Entertainment and Media Law.

The courses are being offered for free to Law Society members as part of the Diploma Centre's COVID-19 support initiatives, and can be accessed until 31 July 2020. Each course provides participants with an insight into two distinct areas of law. The Certificate in Technology Law provides an overview of areas such as social media and the law, e-commerce, data protection, fintech, biometrics, cybersecurity and cybercrime.

The Introduction to Arts, Entertainment and Media Law offers an insight into broadcasting, publishing, the evolution of media in a digital age, copyright protection for artists, and litigation in the entertainment industry.

PIC: CIAN REDMOND

The courses run over five weeks and feature expert contributors, including Minister Josepha Madigan, Paula Mullooly (director of legal affairs at RTÉ), Andrea Martin (Media Lawyer Solicitors), Dr TJ McIntyre (UCD), and Yvonne Nolan (World Rugby).

In line with the Diploma Centre's innovative use of technology, both courses are designed to be completed entirely online. They feature recorded and streamed presentations, live interactive panel sessions, and discussion forums that allow participants to engage directly with the presenters.

All sessions can be played back on demand or downloaded as podcasts, providing maximum ease of access and flexible learning options. Participants are awarded certificates of completion once online assessments are submitted.

A total of 21 free CPD hours are available for completing both courses: 14 for the Certificate in Technology Law and seven for the Introduction to Arts, Entertainment and Media Law. This is an ideal opportunity to upskill in these topical areas during these challenging times.

Solicitors can sign up now to complete the courses at any time until 31 July 2020. To register, visit www.lawsociety.ie/diplomas.

KEANE NEW CHAIR OF NATIONAL GALLERY

The Law Society's deputy director general, Mary Keane, has been appointed chair of the National Gallery of Ireland. She succeeds Michael Cush SC, who served as chair for the past six years.

Born in Swinford, Co Mayo, Keane has served on the gallery's board of governors and guardians since 2014. Educated at UCD and the King's Inns, she is both the Society's deputy director general and its director of policy and public affairs. She is also director of Irish Rule of Law International, a registered charity that promotes the rule of law in developing countries.

"The National Gallery of Ireland is a wonderfully dynamic and modern institution, and I am honoured to be entrusted to serve as chair of its board," Keane told the *Gazette*. "The gallery is committed to providing a focal point for collective reflection as we emerge from the coronavirus pandemic.

"We have all had time to reflect on what is core to our experience as human beings, and we understand now, more than ever, the value of those things that endure and inspire and make us more – whether individually or collectively.

"As chair, I'm looking forward to enabling people to renew their instinctive connection with the arts and to engage with us in supporting the future of their national gallery," she concluded.

The board comprises 17 members, ten of whom are appointed by Government, five are *ex officio* holders of office, and two are appointed by the Royal Hibernian Academy.

Members appointed by the minister serve terms of five years. *Ex officio* members serve terms of varying duration, depending on the constitution of their organisation. The current members of the board are Mary Keane, Maurice Buckley, Mary Canning, Lynda Carroll, Diana Copperwhite, Michael Cush, John Dardis, Dan Flinter, Jacqueline Hall, Gary Jermyn, Prof Owen Lewis, Abigail O'Brien, John O'Doherty, Ann Prendergast, Una Sealy, Lesley Tully and Barney Whelan.

The National Gallery is currently closed, but there are many ways to engage with the national collection online during this time. See www.nationalgallery.ie/national-gallery-ireland-at-home.

MR JUSTICE PETER KELLY TO RETIRE IN JUNE

The President of the High Court, Mr Justice Peter Kelly, is to retire on Thursday 18 June – his last day of service will be on 17 June.

Appointed to the High Court in 1996, Mr Justice Kelly became the presiding judge over a newly established Commercial Court in 2004, hearing cases that were complex or involved claims in excess of €1 million.

As a result, he heard a number of high-profile cases following the economic crash, including those involving Anglo Irish Bank, Seán Quinn, Mick Wallace, and ACC Bank.

At the time of Judge Kelly's appointment as President of the High Court in 2015, Law Society director general Ken Murphy described him as a "fearlessly independent judge with a ferocious work ethic, a first-class legal mind, and an utter commitment to the highest of standards from himself and others".

On 29 November 2011, Mr Justice Kelly was elected as the first president of the Association of Judges of Ireland.

He was educated at O'Connell's Schools, UCD, and the King's Inns. He was called to the Bar in 1973 and spent two years working in the European Division of the Department of Justice. He began practice at the Bar in 1975 and was called to the Inner Bar in 1986, practising mainly in the areas of chancery and commercial law.

Judge Kelly is a member of the Bars of England and Northern Ireland and an *ad hoc* judge of the European Court of Human Rights. He is chairman of the Commercial Law Centre at UCD and an adjunct professor of law at Maynooth University.

He is a former president of the Medico-Legal Society of Ireland and is a member of the Council of the Royal College of Surgeons in Ireland.

IAA FOUND FAR MORE COURT BUILDINGS THAN EXPECTED

The Irish Architectural Archive has said it found many more Irish courthouses than it expected when it set out to compile a gazetteer of the buildings last year.

The list, published in 2019 in *Ireland's Court Houses* (edited by Paul Burns, Ciaran O'Connor and Colum O'Riordan) contained 763 entries.

In a post on the body's website in mid May, Colum O'Riordan and Eve McAulay wrote that an initial analysis of previous lists had suggested a number between 250 and 300.

"The most common court type in Ireland by the end of the 18th century was the petty sessions, and it was the provision of accommodation for sittings of the petty sessions that laid the foundations for the courthouse network across the country," they write.

Above the petty sessions was a hierarchical court structure, rising through quarter sessions and county assizes to the supreme courts, each of which required accommodation.

In the mid-19th century, there were over 560 petty-sessions areas across Ireland. An individual courthouse has not been identified for fewer than 50 of the known petty-sessions locations, and the authors hope these might still be identified over time.

Apart from the six counties of Northern Ireland, in 1923 petty-sessions courts became District Courts, and as a result there was a substantial continuity of courthouse use into the mid-20th century.

But many courthouses then fell out of use as the number of District Court locations was steadily reduced.

"From a high of over 600 buildings in active regular use as courthouses in the 1880s, there are now fewer than 120 across the island," the architects write.

SIGN THE SOCIETY'S *GEDI CHARTER*

The Law Society is inviting solicitors and practices to sign their names to the Society's *Gender Equality, Diversity and Inclusion Charter*.

The charter commits signatories to treating all individuals, and groups of individuals, fairly and equally regarding their gender, civil status, family status, sexual orientation, religion, age, race, class, disability or membership of the Traveller Community.

Signatories must also commit to ensuring equal access to opportunities for those they employ, ensuring that their policies, procedures and processes promote:

- Gender equality,
- Diversity and inclusion,
- A commitment to carry out work without bias,
- To do so in a respectful and non-discriminatory manner, and
- To uphold these principles in the solicitors' profession.

For more information or to commit your workplace to the charter, visit www.lawsociety.ie/GEDI or email GEDICharter@lawsociety.ie.

ENDANGERED LAWYERS

DIEUDONNÉ BASHIRAHISHIZE, BURUNDI

Dieudonné Bashirahishize (qualified 1978) has lived in Belgium since 2018 with his wife and three children. He was forced to flee his native Burundi because of his work in defence of human rights and the rule of law.

Burundi is a poor, small, densely populated country of nearly 12 million people, just south of Rwanda and between Congo to the west and Tanzania to the east. It has a history of instability involving ethnic cleansing, civil war, and genocide during the 1970s and again in the '90s. There was widespread political strife in 2015, when the president ran for a third term in office, a coup attempt failed, and the parliamentary and presidential elections had no credibility. Around 215,000 people fled the country. Judges were forced to leave or submit to political pressure, and the work of an independent press was made impossible. The *World Happiness Report 2018* ranked Burundi among the world's least happy nations, in 145th place.

Bashirahishize is a former vice-president of the East Africa Law Society and, as such, worked to promote human rights and the principles of democracy in the region. He defended many political cases and victims of human rights abuses. Receiving repeated death threats, he went into hiding and eventually fled. His driver was murdered.

"By early 2015, it was no longer safe for me in Burundi," says Bashirahishize. After the highly controversial re-election of President Nkurunziza that year, a widespread campaign of attacks on political opponents started. Many crimes against humanity were allegedly committed against civilians.

"The judiciary body, which is not independent, was used as an instrument of repression," he says. In 2017, Bashirahishize and three fellow lawyers were suspended from the Burundi Bar Association at the request of the Ministry of Justice, then disbarred. Accused of "participating in a revolutionary movement", the real reason behind the ministry's request was widely considered to be the lawyers' participation in writing and presenting a report about human rights violations in Burundi. That report was discussed in 2016 by the UN Committee Against Torture in Geneva, in the presence of the Minister of Justice and three in-volved lawyers, including Bashirahishize.

In exile, he remains committed to human rights and has helped create a coalition of lawyers that defends victims in Burundi by submitting cases of human-rights violations to regional and international bodies.

Alma Clissmann is a member of the Human Rights Committee.

MEDIA CAMPAIGN REFLECTS IMPACT OF PANDEMIC

Eagle eyes will have noticed the Law Society's new advertising campaign online and in the national and local media, which launched at the end of May. In collaboration with the Public Relations Committee, this year's campaign has been carefully designed to sensitively reflect the reality of Irish life and business as we negotiate the impact of COVID-19.

The campaign's key messages let clients know that their solicitor is open for business, provides an essential service, and is 'in their corner'. Radio advertisements will be broadcast on RTÉ Radio 1, 2FM, Lyric FM and Today FM, as well as a selection of local stations across the country.

Social media has taken on a whole new level of importance during the pandemic. As a result, the campaign includes a new video-on-demand element, which will target a wide audience. Digital advertisements will also feature on a range of websites – in previous years, this element of the campaign has been extremely successful in reaching the target audiences.

Launching the campaign, the first print advertisement appeared in *The Irish Times* on Monday 25 May, targeting a key demographic. It will also appear in a selection of local papers, nationwide, over the course of the seven-week-long campaign.

NOTARIES' FELLOWSHIP CONFERRED ON DR EAMONN G HALL

Dr Eamonn G Hall, solicitor and notary public, director of education of the Faculty of Notaries Public in Ireland and director of the Institute of Notarial Studies, has been awarded the highest honour the faculty can bestow.

At a recent 'virtual' ceremony, the dean of the faculty, Mary Casey, stated that the admission of Dr Hall to the fellowship of the faculty, his presentation with the faculty's medallion, and the testimonial acknowledged his immense contribution to its endeavours in the education and training of notaries and candidate notaries.

The dean said: "Due to the times we are living in, and the restrictions that have been imposed by the Government with regard to travel and social distancing, the faculty was unable to have, as planned, a formal ceremony in the presence of Chief Justice Frank Clarke, who has recognised the contribution of Dr Hall to the literature of the law of Ireland, which is referenced in the testimonial."

The testimonial states: "Be it known by this instrument that, in recognition of his invaluable contribution to the objects of the Faculty of Notaries Public in Ireland over several decades and, in particular, his work in the development of a postgraduate programme for practising notaries public and trainee notaries in the field of education and training and ancillary good works, the governing council of the Faculty has resolved that Dr Eamonn G Hall, Notary Public, be admitted a Fellow of the Faculty *honoris causa et de facto*."

The conferring of this honour on Dr Hall has been warmly approved by Chief Justice Frank Clarke, who wished to have placed on record "the significant contribution of Dr Hall to the literature of the law of Ireland through his erudite and intellectual writings over many years".

The *Gazette* extends its sincere congratulations to Dr Hall, who was chairman of the *Gazette's* Editorial Board for many years.

CRIME COMPENSATION BODY CHAIR NAMED

Justice Minister Charlie Flanagan has appointed solicitor William Aylmer as chair of the Criminal Injuries Compensation Tribunal (CICT) until the end of this year.

The previous chair, Helen Boyle, was appointed as a judge of the Circuit Court earlier this year.

The tribunal is made up of seven qualified solicitors and barristers, and is limited to a chair and six ordinary members, who act on a part-time basis. There are currently five ordinary members of the tribunal – solicitors Martin Lawlor and Niamh Tuite, and barristers Mema Byrne, Cian Kelly and Grace Mulherin. The Department of Justice says the one remaining vacancy on the body will be filled as soon as is practical.

William Aylmer – CICT chair

Tribunal members decide whether an application is admissible and whether compensation is payable.

NOTICE: SBA AGM

Notice is hereby given that the 156th AGM of the Solicitors' Benevolent Association will be held remotely by video-conference on Monday 6 July 2020 at 12pm.

It will consider the annual report and accounts for the year ending 30 November 2019, elect directors, and deal with other matters appropriate to a general meeting.

Any member intending to join the meeting should send their email address to the secretary, Geraldine Pearse, at contact@solicitorsbenevolentassociation.com. An email will be sent to the individual, complete with the relevant link, to join the meeting.

MH&C BECOMES LLP

Mason Hayes & Curran moved to limited liability partnership (LLP) status on 25 May. It is the largest law firm in Ireland to become an LLP under LSRA regulations, that became operational in October. The Dublin 4 firm has 38 partners and reported revenue of €85 million in 2019.

The LSRA began accepting applications for authorisation as an LLP last November, following the commencement of chapter 3, part 8 of the *Legal Services Regulation Act 2015*.

Law Society director general Ken Murphy said last year that he hoped "all partners and firms would avail of this significant advantage, long fought for".

REMOTE HEARINGS: BEWARE INTRUDERS

From: Hilary Lennox BL, 5 St Andrew's Hill Chambers, London

In Britain, from Monday 30 March 2020 during COVID-19, all courts have been categorised as 'open' (or prioritised), 'staffed', or 'suspended'. Staffed courts are still attended by staff and judges, but not open to the public. Judges at staffed courts can only conduct remote hearings. Suspended courts have no staff or judges. Members of the legal profession are key workers.

HM's Courts and Tribunals Service (HMCTS) rolled out their new software in April 2020. The software they are using at present is the BT *Meet Me* system for telephone conferencing, and *Skype for Business* and *Lifesize* in the High Court.

My virtual experience has involved a High Court hearing using *Skype for Business*. This was an emergency hearing, and it worked very well. There were five different parties/screens used. All the parties made the necessary submissions. The hearing was recorded by the judge. The judge's clerk accompanied the judge in the High Court. Rather amusingly, when the clerk issued the 'all rise' instruction at the end of the hearing, all the parties amusingly stood up on screen – the new guidance states that this is not a requirement for virtual hearings.

My second hearing was a private financial dispute resolution appointment. This was originally listed for a Wednesday in court. The solicitors and counsel came together and arranged the appointment for that Friday. This lasted all day and was very successful in terms of connection. All parties used their laptops, and all parties were visible on screen.

The software we used was *Lifesize*, which produced a virtual courtroom.

My client and solicitor were based on the west coast of Ireland. This was a very successful outcome, since Ireland was on lockdown before Britain, with no prospect of my client attending court in London. The judge recorded it from his end. This case didn't settle; however, the case may now move to final hearing without any long delay due to COVID-19. There was just one hiccup, when my French bulldog Willow entered the screen, leading the judge to comment: "Oh! We have an intruder."

I also attended for an issues resolution hearing by way of telephone conference call. The parties communicated by email and phone in the morning, and the judge's clerk checked in by email to see how discussions were coming along. The clerk commenced the hearing when we were all deemed ready, with five parties in total taking part. The software we used was BT conferencing, which worked very well.

Many barristers in Britain have already gone paperless and use e-bundles in court. Our clerks send us our briefs by way of email. I use my iPad in court to access the trial bundle, taking notes on my laptop. Our clerks or instructing solicitors scan in the documents. I generally email my position statement or skeleton argument to the judge directly or to the judge's clerk prior to the hearing. The process is the same to approve the court orders after the hearing.

It is remarkable how the legal profession in Britain has come together so quickly and got up to speed with the software. It demonstrates that relatively straightforward case-management hearings, adjournments, or 'progress hearings' can take place virtually to ensure the justice system does not grind to a halt. Some final hearings are taking place.

INVEST NOW IN COURTS SERVICE IT INFRASTRUCTURE FOR BREXIT BENEFITS

From: Geraldine Keehan, partner, Caldwell & Robinson, The Capel Building, Dublin 7

COVID-19 presents an unprecedented challenge to ensuring access to justice in family law cases. The Courts Service is currently attempting to increase its capacity to hear cases remotely. According to Chief Justice Frank Clarke, "the pilot use of technology to allow for remote hearings is going to be concentrated in the High Court, Court of Appeal, and the Supreme Court".

The trial of the platform designed to facilitate remote hearings was successfully completed, with remote hearings being rolled out during the third week of April 2020. For some time now, the chief justice has been calling for significant funding for IT upgrades essential to the courts' modernisation.

He has stressed the importance of such funding in Ireland's bid to position itself as a centre of legal excellence, post-Brexit. Such significant funding has not been forthcoming. With the unique challenges posed by COVID-19, now is the ideal time to invest in the Courts Service IT infrastructure to enable remote hearings to take place in all courts.

The judiciary, together with the Courts Service, the Law Society, the Bar Council, and the Society's Family and Child Law Committee, have been working collaboratively since lockdown on how remote hearings should operate in the family law courts.

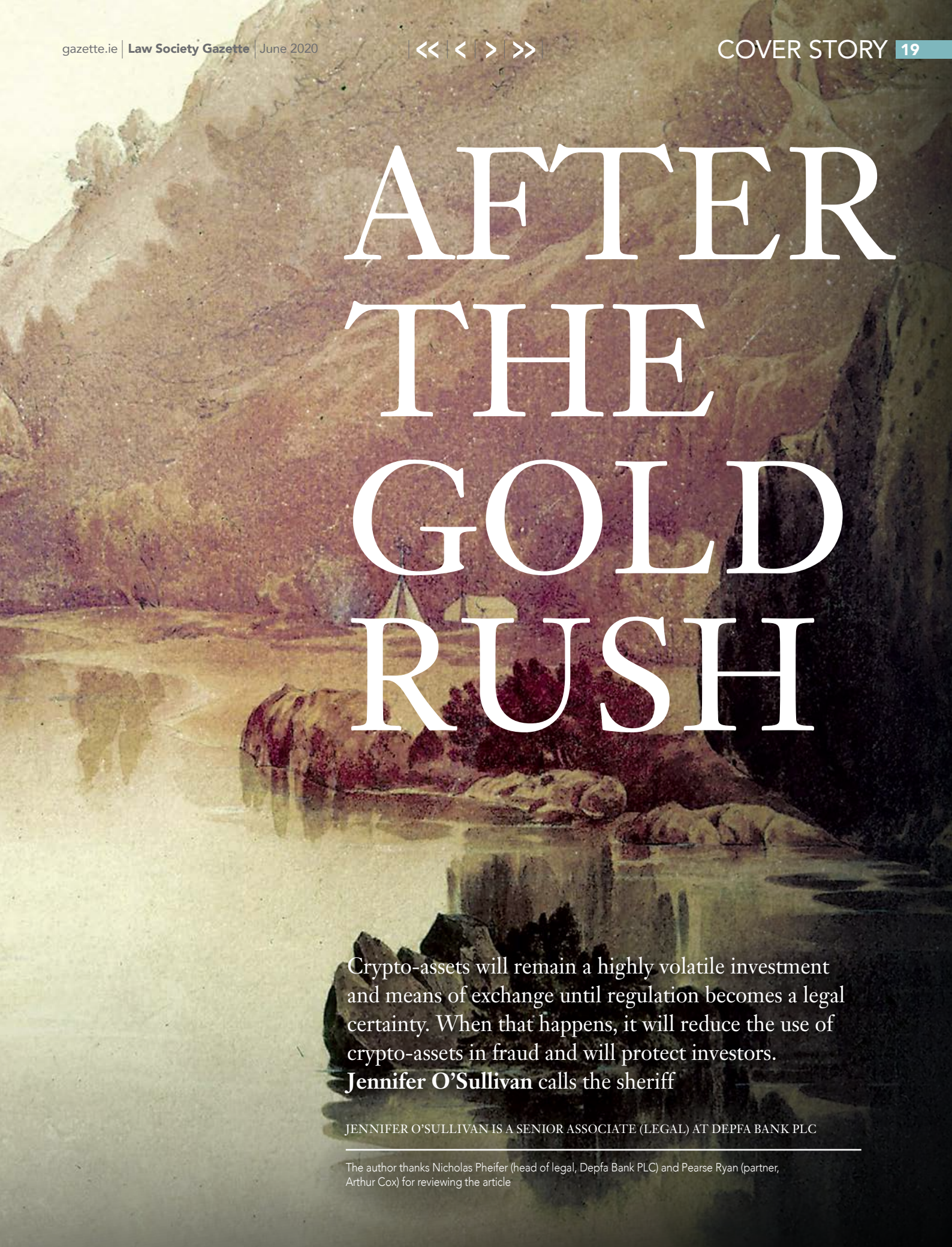
In my view, there are a number of ways in which remote hearings could operate in practice in the family-law context. The following would assist greatly:

- Definition of what is urgent and essential,
- Court-approved video-conferencing software,
- Protocols for remote hearings in family courts,
- Protocols for conducting safe, live court hearings,
- Protocols concerning e-bundles, as they are an essential part of remote hearings,
- Regular reviews and updates regarding the experience of the judiciary, the court services, and all participating parties, and
- Planning for judicial resources to deal with the inevitable backlog.

In the present unprecedented circumstances, the fundamental principles of substantive law and procedural fairness have not changed. The above would, in my view, assist in ensuring those principles are adhered to in remote hearings.

Geraldine Keehan is a member of the Law Society's Family and Child Law Committee.

PIC: SHUTTERSTOCK



AFTER THE GOLD RUSH

Crypto-assets will remain a highly volatile investment and means of exchange until regulation becomes a legal certainty. When that happens, it will reduce the use of crypto-assets in fraud and will protect investors. **Jennifer O'Sullivan** calls the sheriff

JENNIFER O'SULLIVAN IS A SENIOR ASSOCIATE (LEGAL) AT DEPFA BANK PLC

The author thanks Nicholas Pheifer (head of legal, Depfa Bank PLC) and Pearse Ryan (partner, Arthur Cox) for reviewing the article

AT A GLANCE

- The EU has recognised the policy interests in promoting crypto-assets using blockchain technologies
- Crypto-assets give increased access to financial markets for consumers
- Global regulators agree on the need to protect investors, but not stifle innovation
- There is a lack of harmony, however, among EU member states about how crypto-assets should be regulated, both inside and outside the EU

lmost two years after the European Commission adopted its *Fintech Action Plan*, at the end of 2019 it launched a public consultation on a future EU framework for markets in crypto-assets. The EU has recognised the inherent policy interests in promoting crypto-assets as one of the major applications of blockchain technologies. The universal benefits of crypto-assets include ease and integration of payments for users, as well as increased access to financial markets for consumers. It is, therefore, agreed by regulators globally that the general impetus of any regulatory framework should be a fair and level playing field for users and operators, balancing the need to protect investors and not stifle innovation. That being said, the commission recognises

PIC: SHUTTERSTOCK

the lack of harmonisation among EU member states in crypto-asset regulation – and the large portion of crypto-assets that fall outside EU regulation.

Shadow play

There is no single global definition of 'crypto-asset' – labels are as diverse as 'digital', 'virtual', 'electronic', 'cyber', 'payment', 'utility', and 'investment', with the asset being described as a 'currency', 'coin' or 'token'. Crypto-assets are broadly defined as private digital assets that use cryptography and are designed to work as a medium of exchange.

The most well-known crypto-asset, 'cryptocurrencies', are used as a medium of exchange on exchanges and trading platforms, and were created as an alternative to fiat money. They include names like Ethereum, Ripple, Litecoin and Bitcoin.

On the other hand, crypto 'tokens' generally have a narrower utilisation purpose (for example, payment, strict use, or investment). Most recently, all eyes are on 'stablecoin', a type of cryptocurrency that is normally used to pay for purchases of other crypto-assets on exchanges or trading platforms that do not accept fiat money.

Examples of stablecoin include the JP Morgan Coin, Barclays, NASDAQ and UBS' Utility Settlement Coin (USC), and Facebook's Libra. The stablecoin is of interest, given that it seeks to bring certainty to crypto-asset markets (by pegging 'stable' fiat currencies), which, until now, have experienced instability and hyperinflation.

In practice, stablecoin arrangements use fiat money, commodities or other cryptocurrencies as collateral to maintain stability (as such, an 'asset-backed' coin). Nevertheless, as stablecoins are tied to one or more asset classes, there is an element of

FOCAL POINT

TUMBLING DICE

The European Commission consultation alludes to the lack of a common definition of crypto-asset, and characterises a 'crypto-asset' as a "digital asset that may depend on cryptography and exists on a distributed ledger".

The commission firstly notes that crypto-assets may characterise and qualify as a 'financial instrument' under the *Markets in Financial Instruments Directive II* (MiFID II) or as 'e-money' under the *E-Money Directive II* (EMD2). For the purpose of the consultation, these are referred to as 'security tokens' and 'e-money tokens', respectively.

Based on how market participants respond, the characterisation of crypto-asset responses will colour the requirement for the commission to assess whether other regulatory changes are necessitated among other relevant EU financial regulations.

Changes may be required to (among others):

- The *Prospectus Regulation* (for issuance of crypto-assets),
- The *Central Depositories Regulation* (for custody services),
- The *European Market Infrastructure Regulation* and the *Settlement Finality Directive* (both for post-trade activities relating to security tokens),
- The *Deposit Guarantee Scheme Directive* (if crypto-assets are characterised as 'deposits'),
- The *Market Abuse Regulation* (market abuse around insider dealing, unlawful disclosures of inside information, and market manipulation),
- The *Short Selling Regulation* (selling securities),
- The *Financial Collateral Directive* (for the reduction of credit exposure), and
- The *Alternative Investment Fund Managers Directive* and the *Undertakings for Collective Investment in Transferable Securities* (for those crypto-assets that do not qualify as financial instruments, but fall under 'other assets').

There is no definition of 'security token' in EU regulation. Crypto-assets may qualify as 'transferable securities' or other types of 'financial instruments' under MiFID II. 'Transferable securities' are those classes of securities that are negotiable on the capital markets, with the exception of payment instruments. This definition usually covers bonds, shares, depository receipts, and securities giving the right to acquire or sell securities (like warrants).

MiFID II also includes concepts such as 'investment firms', 'investment services and activities' and 'trading venues', which may all become applicable to security tokens that fall under MiFID II.

Stablecoins may also qualify as a 'financial instrument' under MiFID II. Consequently, firms providing services concerning security tokens should ensure they have the relevant MiFID authorisations, and that they follow the relevant rules and requirements.

There is also no definition of an 'e-money token', but the applicable meaning would naturally be supplanted by the EMD2. 'E-money' under EMD2 is considered the digital alternative to cash, which enables users to store funds on a device (card or phone) or through the internet and to make payment transactions. This would require the issuer having an e-money licence.

E-money holders also have the right to redeem the monetary value of their e-money at any time and at par value. This represents a claim on the e-money issuer.

The European Banking Authority has advised the commission that there has only been a handful of cases where payment tokens qualified as e-money. Stablecoins may also qualify as 'e-money' under EMD2 and may, therefore, also fall under the *Payment Services Directive 2* (PSD2).

It is, however, noted in the commission's consultation that crypto-assets are not banknotes, coins or scriptural money and, therefore, do not fall within the definition of 'funds' under PSD2 unless they are defined as 'e-money'.

Where stablecoin uses traditional payment services channels, using cash deposits and withdrawals from current accounts, this would be considered a payment transaction under the PSD2. As a consequence, if a firm proposes a payment service related to a crypto-asset (that does not qualify as e-money), it would fall outside the scope of PSD2.

> REGULATORY RISK IN CRYPTO-ASSETS IS LARGE, GIVEN THEIR BORDERLESS NATURE, ANONYMITY, AND THEIR PAYMENT FLOWS THROUGH DECENTRALISED PLATFORMS, MAKING THEM VULNERABLE TO ABUSE AND, THEREBY, A BLACK HOLE FOR CONSUMER PROTECTION

PIC: SHUTTERSTOCK

'Marty! We have to do something about the Bitcoin!'

> ONE OF THE BASIC MISSIONS OF FINANCE IS TO SET UP ARRANGEMENTS WHERE INDIVIDUALS CAN TAKE ON RISK WITHOUT THEMSELVES BEING DESTROYED BY RISK

relativity in the value of the stablecoin and, thus, they are not absolutely 'stable'.

Bad penny

The share of crypto-assets held globally compared with the aggregate level of global payment transactions is relatively small (estimated market capitalisation at €7 billion). That being said, the regulatory risk in crypto-assets is large, given their borderless nature, anonymity and their payment flows through decentralised platforms, making them vulnerable to abuse and, thereby, a black hole for consumer protection.

Given their anonymous nature, crypto-assets are commonly used for money-laundering and terrorist financing. Other risks include a lack of investor protection, operational risk around the use of crypto-asset exchanges and trading platforms, as well as tax evasion. There are several examples where crypto-assets have been used for ransom (such as the WannaCry ransomware attack) or where crypto-asset exchanges have unexpectedly closed and funds have been liquidated by their operators, or where privacy keys to digital wallets have been lost (for example, Quadriga Exchange).

It is notable that recent case law around freezing orders shows an ability to track or trace ransom payments to a wallet and have it frozen – although it is not clear until the substantial trial of the action as to how this will work in practice.

Closer to home, in February 2020, an Irish drug dealer reportedly lost €54 million worth of Bitcoin raised from the sale of cannabis. That case involved the loss of private keys to digital wallets, which were written on a sheet of paper and ended up in a landfill in Galway.

Shake your money-maker

Currently, the only EU regulation where providers of crypto-asset services are regulated is in the EU anti-money-

> FIRMS PROVIDING SERVICES CONCERNING SECURITY TOKENS SHOULD ENSURE THEY HAVE THE RELEVANT MiFID AUTHORISATIONS, AND THAT THEY FOLLOW THE RELEVANT RULES AND REQUIREMENTS

laundering (AML) and countering the financing of terrorism (CFT) space. AMLD5 describes a virtual currency (VC) as "a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency, and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange, and which can be transferred, stored and traded electronically".

In contrast, the *FATF Recommendations* define a virtual asset (VA) as "a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. VAs do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the *FATF Recommendations*."

It is clear that a broad definition is required to facilitate the rapid shifts in technology and to cover a broad spectrum of virtual assets. There is no glaring divergence in practice between these definitions to somehow cause regulatory arbitrage as between the EU and other countries globally.

There is, however, a divergence in EU regulation when it comes to crypto-asset service providers. Crypto-asset service providers include issuers or sponsors, trading platforms and exchanges (both fiat-to-fiat and fiat-to-crypto), and wallet providers. AMLD5 describes virtual currency service providers (VCSPs) as entities "engaged in exchange services between virtual currencies and fiat currencies", which implicitly disregards crypto-to-crypto exchanges.

The *FATF Recommendations* include an expansive definition for virtual asset service providers (VASPs) as "a natural or legal person who, as a business, conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

1) Exchange between VAs and fiat currencies,
2) Exchange between one or more forms of VA,
3) Transfer of VAs,
4) Safekeeping and/or administration of VAs or instruments enabling control over VAs, and
5) Participation in and provision of financial services related to an issuer's offer and/or sale of a VA."

This definition recognises that crypto-to-fiat transactions, as well as crypto-to-crypto transactions, present AML and CFT risks. Previously, AMLD4 defined a 'custodian wallet provider' (CWP) as "an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer VCs".

This definition appears to match limb 4 of the VASPs definition, with the broad

FOCAL POINT

WHAT DO YOU DO FOR MONEY?

- AMLD4 – the EU *Anti-Money-Laundering Directive No 4*.
- AMLD5 – the EU *Anti-Money-Laundering Directive No 5*.
- *Blockchain* – a form of distributed ledger in which details of transactions are held in the ledger in the form of blocks of information.
- Cryptography – the conversion of data into private code using encryption algorithms, typically for transmission over a public network.
- Custodian wallet provider – a firm that offers storage services to users of crypto-assets.
- Digital wallets – wallets used to store public and private keys and to interact with DLT (see below) to allow users to send and receive crypto-assets and monitor their balances.
- Distributed ledger technology (DLT) – saving information through a distributed ledger; that is, a repeated digital copy of data available at multiple locations. DLT is built upon public-key cryptography – a cryptographic system that uses pairs of keys: public keys, which are publicly known and essential for identification; and private keys, which are kept secret and are used for authentication and encryption.
- *FATF Recommendations* – the Financial Action Task Force is the global regulatory body tasked with providing guidance around AML/CFT regulation through its recommendations.

PIC: SHUTTERSTOCK

definition of VCSPs covering the other applicable activities. Under AMLD5 (and as a continuance of the *FATF Recommendations* in June 2018), both CWPs and VCSPs are considered 'obliged entities' under the same AML obligations as other financial institutions, including registering with local authorities, reporting suspicious transactions, and recording information around crypto users, which may be inspected by local authorities and must be held for five years.

No expectations

One of the basic missions of finance is to set up arrangements where individuals can take on risk without themselves being destroyed by risk. Crypto-assets should become an acceptable means of payment globally rather than teetering on the edge between legality and illegality, and to make their inherent risks more palatable to a broader audience.

Until regulation becomes a legal certainty, crypto-assets will remain a highly volatile investment and means of exchange. A clear, balanced response to the regulation of crypto-assets will result in a reduction of the use of this novel and fragile asset class for fraud and, above all else, will protect investors who are vulnerable to its volatility and security breaches.

The European Commission has presented a thorough choice to the market through its consultation. It is clear that the commission seeks to make a robust, clear, comprehensive EU regulatory framework in order to instil a sense of legitimacy to the activities of crypto-asset service providers.

Once the consultation closes, it is anticipated that, in line with the *FATF Recommendations*, full-scale regulation of crypto-asset service providers, as well as a certain taxonomy around labelling crypto-assets to ensure that the majority of activity is regulated in the EU, will ensue.

After that, who knows? We may all be wondering what we ever did without our virtual assets, once regulatory uncertainty is abolished. g

LOOK IT UP

LEGISLATION:

- *Alternative Investment Fund Managers Directive* (AIFMD) [2011/61/EU]
- *Anti-Money-Laundering Directive 4* (AMLD4)
- *Anti-Money-Laundering Directive 5* (AMLD5)
- *Central Depositories Regulation* (custody services)
- *Deposit Guarantee Scheme Directive* (whether crypto-assets are characterised as 'deposits')
- *European Market Infrastructure Regulation* (post-trade activities relating to security tokens)
- *Financial Collateral Directive* (reduction of credit exposure)
- *Market Abuse Regulation* [596/2014] (market abuse around insider dealing, unlawful disclosures of inside information, and market manipulation)
- *Payment Service Directive 2* (PSD2)
- *Prospectus Regulation* (issuance of crypto-assets)
- *Settlement Finality Directive* (post-trade activities relating to security tokens)
- *Short Selling Regulation* (selling securities)
- *Undertakings for Collective Investment in Transferable Securities* (UCITS) [2009/65/EC] (crypto-assets that do not qualify as financial instruments, but fall under 'other assets')

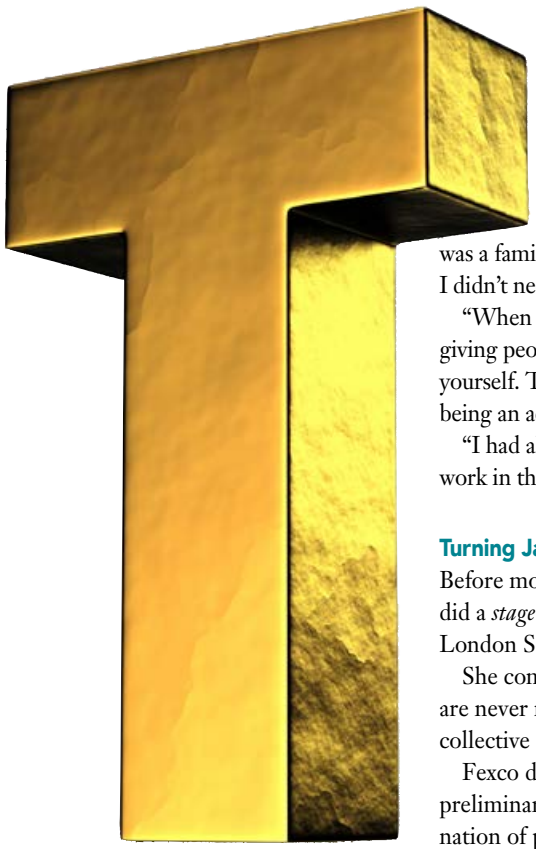
LITERATURE:

- *Consultation Document on an EU Framework for Markets in Crypto-assets*
- *FATF Recommendations*
- *Fintech Action Plan* (2019)

KERRY ALL-STAR

Taking up a top commercial position was scary but exciting, says Ruth McCarthy about her role with the global financial services company, Fexco. The solicitor tells **Mary Hallissey** about her transition from 'coach' to 'star player'

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



Training with Arthur Cox, Ruth qualified as a solicitor in 2010 and worked for a year in corporate law – before the family business called her home when the CEO position in Fexco Corporate Payments arose.

"It was a huge transition moving home. It was quite a wrench to leave the very interesting work I was doing with Arthur Cox in the financial regulation team," she says. "But, at the same time, I was interested in moving home – and the fact that it was a family business made it even more attractive. I always saw myself training as a lawyer, but I didn't necessarily see myself working in a commercial role. That was a big change.

"When you go from being a lawyer to working in a commercial role, you are no longer giving people the tools and information to make decisions – you are making the decisions yourself. That can be very exciting and very scary – that transition from being an advisor to being an actor.

"I had always been interested in market regulation and compliance, so the opportunity to work in that area more – and in a commercial setting – was too good to pass up."

Turning Japanese

Before moving back to Kerry, Ruth spent a year in Japan, worked in funds administration, did a *stage* with the European Commission in Brussels, and completed a Master's at the London School of Economics, all before qualifying as a solicitor.

She compares the culture and business approach in Japan with that of Germany. Decisions are never made off the cuff, and there's a significant amount of careful planning and collective decision-making before any move is executed.

Fexco does a lot of business in Japan, and Ruth notes the same pattern in a lot of preliminary work, but matters proceed quickly once a project gets under way. "They are a nation of planners," she remarks.

ALL PICS: KONRAD PAPROCKI PHOTOGRAPHY

> GOOD LAWYERS ARE VERY PRAGMATIC AND VERY COMMERCIAL IN THEIR APPROACH. ALL OF THAT WORKS PERFECTLY WHEN YOU GO INTO A BUSINESS ROLE. IT'S A CHANGE IN MINDSET, BUT WE ARE WELL-POSITIONED TO MAKE IT

Ruth now heads up Fexco Corporate Payments, which is a licensed payments institution regulated by the Central Bank, with several thousand clients. She delivers the corporate payments business out to the market in Ireland and Britain. Her role covers the financials, customer service, and business-development aspects.

"I think my legal training has prepared me very well for this role. As a solicitor, you learn to work under time pressure and to deliver to a high standard. The same principles apply in business," she says.

All over the world

The Fexco Group serves the global market, with staff on the ground in 16 countries, and provides services to most countries in the world.

The company has formal governance structures. A small Kerry-based management team drives the business, with Ruth reporting to the head of the payments and foreign-exchange division who, in turn, reports to the chief executive Denis McCarthy – Ruth's brother.

Her father Denis retains the chairmanship role. Another brother, John, operates a local tax compliance start-up, while one sister is a teacher, and another works for a start-up hub that serves the tech community in Dublin.

Finding challenging, professional work with opportunities for advancement is always trickier in rural locations, Ruth agrees, but Fexco has been the beneficiary of the abundance of local talent in the area. The company has been blessed with high-calibre people who desire to work in Kerry, she says.

"The negative of being from the countryside is that you may feel that the employment opportunities in your area are limited. The positive, from an employer's perspective, is that you have such a wealth of talent available and people who are really committed to the area."

Fexco has 2,300 staff located all over the world, including Ireland, the Middle East, Asia, North America, Latin America and Australia. Approximately 1,000 staff are based in Kerry. Killorglin has three Fexco offices, and the business is now expanding with a purpose-built facility on the Killarney Road.

The town has the highest net in-work figures for any urban centre in Ireland as a proportion of employable people in the population. Fexco is just one of several big employers in the town, with others including medical and pharma companies Promed, Temmler Ireland, and Astellas Ireland. Just 40km down the road, Cahersiveen is the base for another Fexco office.

As Ruth says: "If you back the region, the region will deliver."

Technologic

The trend towards remote working and the growth in services means that 'working clever' has allowed many staff to base themselves closer to home, and away from large urban locations. This is probably truer with the COVID-19 pandemic.

Fexco has many employees working in foreign locations, with several highly

SLICE OF LIFE

■ *Biggest influence on your life?*
My parents. The biggest event in my life was the financial crash: it taught me that nothing in life or in business is guaranteed.

■ *What are you reading at present?*
You Look Like a Thing and I Love You, by Janelle Shane. It's a very funny book about artificial intelligence, or the lack thereof.

■ *Favourite book?*
David Copperfield. I listen to it on a loop on Audible.

■ *Favourite podcast?*
Honestly, we mostly just watch YouTube videos about cars in our house.

■ *Currently watching on Netflix or Amazon Prime?*
I watched *The Innocence Files* documentary series on Netflix recently and I will never be able to look at CSI the same way again.

■ *Favourite tipple?*
Pint of Guinness

■ *Cats or dogs – do you have either, and what are their names?*
Two retired greyhounds called 'Socks' and 'Drizzle'.

■ *Plastic card or digital wallet?*
Both, and I always carry cash, just in case.

■ *Country and Western, or House?*
I think Avicii might have eliminated the distinction between Country and Western and House? In any event, my favourite performer is Paul Simon.

> MY LEGAL TRAINING HAS PREPARED ME FOR THIS ROLE VERY WELL. AS A SOLICITOR YOU LEARN TO WORK UNDER TIME PRESSURE AND TO DELIVER TO A HIGH STANDARD. THE SAME PRINCIPLES APPLY IN BUSINESS

skilled developers working full-time for the company.

"You can never get enough IT skills – I think everybody in business would say that. It's a huge trend, and people with such skills are always in demand," Ruth says.

"It's no longer the case that you can divide people into technical and non-technical people. When you look at your staff, everybody needs to have a certain level of competence in technology to fulfil their role," she says.

Ruth's main message is that it's possible to deliver very complex, high-quality services from the regions: "There are many regional businesses like ours, including Pramerica in Letterkenny, delivering complex, highly technical services to the market. We are based out in the regions, but the services we are delivering are of a global standard," she says.

Just over 30% of financial services jobs are now located in rural locations around Ireland. "Dublin was predominant for a period, but things are really balancing out now," Ruth comments.

Heavy connection

The issue of rural broadband, though, is a real challenge. Large businesses like Fexco have sorted out the problem, with fibre long since laid to the door. "We've already got the fibre laid and are talking about the next generation of telephony, rather than worrying about our current connection," she said.

But delivering fibre to every single rural home is extremely challenging. Bringing it to towns is a lot more feasible. "It's a very tricky problem, and I don't think anyone has a great solution that doesn't cost a lot of money."

"Accessibility is not only a practical concern, it's a concern in the minds of our partners. If you want to sell your services and to build relationships, if you're viewed as being in a remote location or a very isolated place, that makes the sell a little bit harder.

"Having good connectivity doesn't just help us do business, it helps people have confidence in us."

On the benefits of rural living, Ruth is drawn to the quality of life in her native Kerry, which, she says, makes a huge difference in terms of lifestyle: "You can get so much more done if you're not under pressure. You can get more involved in your

> WHEN YOU GO FROM BEING A LAWYER TO WORKING IN A COMMERCIAL ROLE, YOU ARE NO LONGER GIVING PEOPLE THE TOOLS AND INFORMATION TO MAKE DECISIONS – YOU ARE MAKING THE DECISIONS YOURSELF. THAT CAN BE VERY EXCITING AND VERY SCARY – THAT TRANSITION FROM BEING AN ADVISOR TO BEING AN ACTOR

home and community when you have that free time not spent sitting in traffic."

That said, the downside of doing business in a remote location is that it comes with a lot of business travel. Prior to the coronavirus pandemic, Ruth typically travelled to Dublin approximately every second week, often using flights from Kerry Airport, which, she says, were always packed. Meetings are being carried out remotely now, which has its advantages, but she misses the face-to-face contact.

Has the pandemic affected demand for Fexco services?

"Fexco staff have really risen to the challenge by moving to remote working and by adjusting our offices to make them safe," says Ruth. "From a business perspective, the pandemic has stopped most international travel, which is a driver for a lot of our foreign-exchange business. We are really keen to see a return to normality, but we know we cannot have 'business as usual' while lives are at risk from the virus."

Look before you leap

How have her legal skills benefited her in fulfilling her commercial role at the company?

"The skills you develop as a solicitor are so valuable in business," she says. Sometimes, when we are training and developing as lawyers, we fail to see the other applications of the knowledge we're developing. But it's such a helpful background to have in business. Lawyers' understanding of risk is so valuable because, nowadays in business, we all have to put in a lot more planning before we take action.

"Everyone has to look before they leap now, so having good analytical skills, good planning skills and a background in law – it just applies in everything we do, because everything we do now is regulated."

Ruth concludes that most good lawyers are already in the habit of coming up with solutions rather than focusing solely on the problems – even if they're not the ones necessarily implementing the solutions.

"Good lawyers are very pragmatic and very commercial in their approach. All of that works perfectly when you go into a business role. It's a change in mindset, but we are well-positioned to make it.

"As a lawyer, you interpret the law – and that's finite and correct. You don't have the benefit of being right in business, however. It's much more nuanced.

"Success and failure are both part of doing business. But you need to make sure your successes are bigger than your failures."

AT A GLANCE

- The costs of future care and medical treatment in catastrophic injuries claims are hard to quantify
- Lump-sum awards have proved to be a crude instrument
- Where uncertainty exists, the courts have approved interim awards
- Indexation of periodic payments linked to the HICP could result in significant under-compensation of care costs

In *Hegarty v HSE*, Murphy J recently analysed the long-awaited *Civil Liability (Amendment) Act 2017* and found it ineffectual in providing solutions in catastrophic injuries cases. **Kate Ahern** grasps the thorn

KATE AHERN IS A PRACTISING BARRISTER AND FORMER SOLICITOR

THORNY QUESTION

Catastrophic injury is defined as a personal injury that results in a permanent disability, requiring the person to receive lifelong care and assistance in all activities of daily living or a substantial part thereof. Such claims predominantly comprise catastrophic birth injuries, which involve particularly vulnerable members of society, whom the courts seek to protect.

The courts have traditionally faced difficulties in implementing a fair and reasonable scheme whereby the plaintiff is adequately compensated in catastrophic injuries claims. The balance to be struck lies between the cost of care for the duration of the plaintiff's lifetime, and placing the defendant in a position where they can accurately budget for their care costs.

The difficulty for courts in catastrophic injuries claims is that the costs of future care and medical treatment are hard to quantify. Where such uncertainty exists, the courts have approved interim awards. This approach requires court applications at each interim stage, involving submissions regarding the plaintiff's progress and costs of treatment, which

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THE COURT WENT ON TO STATE THAT, 'IN ITS CURRENT FORM, THEREFORE, THE LEGISLATION IS REGRETTABLY, A DEAD LETTER. IT IS NOT IN THE BEST INTERESTS OF A CATASTROPHICALLY INJURED PLAINTIFF TO APPLY FOR A PPO UNDER THE CURRENT LEGISLATIVE SCHEME'

> THE VARIOUS EXPERTS INSISTED THAT, FOR THE PURPOSES OF CALCULATION OF CARE COSTS WITH ANY ACCURACY, THE ANNUAL AMOUNTS MUST BE LINKED TO A WAGE-BASED INDEX TO ENSURE FULL COMPENSATION FOR FUTURE CARE NEEDS

proves unsatisfactory for plaintiffs and defendants alike.

The court's inherent jurisdiction to approve interim payment orders was confirmed by Barr J in *Miley (a minor) v Birthistle*, in which it was held that a lump-sum award could result in a grave injustice to the defendant. Accordingly, the future care-costs element of the claim was adjourned to allow time for the plaintiff's treatment to take effect, at which stage it was hoped that a clearer picture as to future care costs could be presented.

Urgent requirement

In another catastrophic injuries claim, *Russell (a minor) v HSE*, Irvine J expressed the urgent requirement for the legislature to act in respect of prescribing how awards of this nature should be dealt with. The court referred to the fact that lump-sum awards in respect of catastrophic injuries are "a crude instrument which can give rise to injustice to either party where the greater the inaccuracy of the agreed predicted life expectancy, the greater the potential injustice".

When the costs of medical treatment and care are so high, it is clear that any miscalculation could result in either overpayment by the defendant or under-compensation of the plaintiff.

The court described the making of lump-sum awards to compensate for past and future losses, to include future pecuniary loss, in catastrophic injury cases as "fallible, unjust and grossly outdated", and recommended that such an approach be abandoned. The court called for legislative reform by pointing to the *Report of the Working Group on Medical Negligence and Periodic Payments*, which concluded that the English system of compensation by periodic payment orders (PPOs) represented the most modern and effective model for the payment of ongoing care and associated costs in such actions.

In Britain, section 2(1) of the *Damages Act 1996* provides that a court awarding damages for future pecuniary loss in respect of personal injury may order that the damages are wholly or partly to take the form of periodical payments.

Lord Lloyd in *Wells v Wells* held that PPOs benefit those whose prognosis may be uncertain at the date of trial. It is this very scenario that it was hoped would be encapsulated by the legislation in this jurisdiction.

The *Civil Liability (Amendment) Act 2017* (enacted on 1 October 2018) amends the *Civil Liability Act 1961* and makes provision for PPOs to be made in respect of the whole or part of the damages awarded, which relate to:

- The future medical treatment of the plaintiff,
- The future care of the plaintiff,
- The provision of assistive technology or other aids and appliances associated with the medical treatment and care of the plaintiff, and
- Damages in respect of future loss of earnings.

The court is required to have regard to the best interests of the plaintiff and the circumstances of the case, including the nature of the injuries suffered by the plaintiff and the form of award that would best meet their needs.

Notable distinction

A notable distinction is that the British legislation provides that PPOs be linked to the annual survey of home-carer earnings (*Earnings and Hours Worked, Care Workers: ASHE Table 26*). No such index exists in Ireland. Notwithstanding the recommendations of the working group in respect of the establishment of the necessary care-costs index, the act was passed, requiring referral only to the Harmonised Index of Consumer Prices (HICP), with no discretion or deviation permitted by the court.

Under the act, provision was made that the Minister for Justice undertake a review after five years to determine the suitability of the HICP for the purposes of the annual adjustment of the amount of payments provided for under PPOs.

The 2019 decision in *Hegarty v HSE* highlighted that a review of the act would be more appropriate, holding that the indexation provided for under the legislation was not in the best interests of the plaintiff, rendering the act unworkable.

The plaintiff in *Hegarty* suffered a hypoxic brain injury at birth, for which the defendants admitted liability. The matter was compromised, and the terms of settlement were ruled in October 2016, where an interim order was made for payment of a sum in respect of general damages.

The balance of the plaintiff's claim, being the future accommodation costings and loss

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of earnings, was adjourned for a period of three years, where it was envisaged that further damages would be assessed by either a lump sum, further interim settlement (the option preferred by the plaintiff), or PPO (the preferred option of the defendant).

On the adjourned date in October 2019, the plaintiff sought a further interim payment; however, the defendant believed that, since the legislation was now in place, a PPO would be more appropriate. Numerous other similar matters were adjourned on the same basis, awaiting the implementation of the act.

Questions for the High Court

In December 2016, the plaintiff was made a ward of court, and the matter came before the President of the High Court in his capacity as protector of the ward. Kelly P directed trial before a judge of the High Court on the following issues:

- Whether the legislation ousts the inherent jurisdiction of the court to assess damages for the ward's needs, whether by reference to the best interests of the ward or otherwise?
- If jurisdiction is not ousted, a determination as to what are the best interests of the plaintiff herein?
- Whether the court is precluded by the act from fixing an increase other than the amount specified in the HICP, as published by the Central Statistics Office?
- Whether, and to what extent, a court retains jurisdiction to identify a means by which indexation of the recurring payment can be achieved that would avoid the risks of the recurring compensation falling behind, having regard to wage and medical inflation?

In November 2019 in the High Court, Murphy J dealt with the above queries as follows:

1) The inherent jurisdiction of the court is not ousted by the act. In *McEnery v Sheahan* (2019), the Supreme Court confirmed that legislative changes should not be presumed to alter existing jurisdiction in the absence of clear evidence.
2) The court referred to the working group's report, which was the genesis of the legislation, in particular, the recommendation that an earnings-

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EVIDENCE WAS SUBMITTED THAT CALCULATED THE PROBABILITY OF A SHORTFALL OF UP TO 52% OF THE PLAINTIFF'S ANNUAL CARE COSTS AT THE AGE OF 50, SHOULD A PPO LINKED TO THE HICP BE APPLIED

related index be established to assist in quantifying changes over time in levels of care costs.

The court analysed the indexation options outlined in the act, noting with some frustration that the court was not permitted to apply any indexation other than the HICP. It is only the minister who may specify an alternative index (section 51).

The court described as "overwhelming" the evidence presented that indexation of periodic payments by reference to the HICP will result in under-compensation of a plaintiff. The various experts insisted that, for the purposes of calculation of care costs with any accuracy, the annual amounts must be linked to a wage-based index to ensure full compensation for future care needs, and that payment linked to the HICP will not provide the plaintiff with 100% compensation in respect of his future care and medical-treatment needs. Evidence was submitted that calculated the probability of a shortfall of up to 52% of the plaintiff's annual care costs at the age of 50, should a PPO linked to the HICP be applied.

The court concluded that, in circumstances where "the expert evidence is unanimous that the indexation chosen (HICP) will not meet the future care needs of catastrophically injured plaintiffs, then no judge charged with protecting the best interests of a plaintiff, which is the first requirement of the exercise of a court's discretion under the legislative scheme, could approve such a PPO".

The court went on to state that, "in its current form, therefore, the legislation is regrettably, a dead letter. It is not in the best interests of a catastrophically injured plaintiff to apply for a PPO under the current legislative scheme".

The act confers no power on the courts to alter, amend or adjust the HICP index. The court has no inherent jurisdiction in relation to PPOs, and its power in relation to same is as provided for in the statutory scheme.

The court indicates that a "chink of light" exists pursuant to section 51I(3), which permits parties to agree on the terms of a PPO, which may then be ruled by a court.

Regrettable

It is regrettable that the legislature did not follow the recommendations of the working group and that the long-anticipated act did not prove to be the solution to the concerns raised by the courts and the parties to claims involving catastrophic injuries.

The crucial component of PPOs of this nature is the provision of care costs with accuracy to provide certainty for all parties. Though the courts are hamstrung by their lack of discretion as to the indexation to apply, parties are not so restrained and may agree an index of their choice, which PPO may then be ruled on by a court.

In the meantime, Murphy J suggests the use of payments on account against the ultimate award as a more efficient and less costly alternative, in order to ensure that the plaintiff's ongoing needs are appropriately met.

In *Hegarty*, the defendant submitted that the new legislative scheme added another string to the bow of the High Court. However, as Murphy J put it: "Unfortunately … it is a string which may not be played as frequently as might have been hoped." g

LOOK IT UP

CASES:

- *Hegarty v HSE* [2019] IEHC 788
- *McEnery v Sheahan* [2019] IESC 64
- *Miley (a minor) v Birthistle* [2016] IEHC 196
- *Russell (a minor) v HSE* [2015] IECA 236; [2016] 3 IR 427
- *Wells v Wells* [1999] 1 AC 345

LEGISLATION:

- *Civil Liability Act 1961*
- *Civil Liability (Amendment) Act 2017*
- *Damages Act 1996* (Britain)

LITERATURE:

- *Earnings and Hours Worked, Care Workers: ASHE Table 26*
- *Rules of the Superior Courts (Personal Injuries: Periodic Payment Orders) 2018* – SI 430 of 2018
- *Report of the Working Group on Legislation on Periodic Payment Orders* (22 April 2015)
- *Report of the Working Group on Medical Negligence and Periodic Payments* (module 1, October 2010)

SHIRLEY NOT?

It's a misconception to say that mere 'change of use' makes a party eligible to acquire the fee simple under the ground-rents legislation. **Gavin Ralston** shuts that door

GAVIN RALSTON SC WAS A MEMBER OF THE GROUP THAT ADVISED THE MINISTER FOR JUSTICE IN RELATION TO THE 2019 ACT

The author wishes to thank Prof John Wylie for reviewing this article

AT A GLANCE

- The *Landlord and Tenant (Ground Rents) (Amendment) Act 2019* remedies certain consequences of the *O'Gorman v Shirley* judgment
- It seeks to reinstate the commonly held view prior to the *Shirley* litigation
- Guidance is given on what comprises 'permanent building', alteration or reconstruction, change in use, extent of the alteration, change in the character, and other matters

The *Landlord and Tenant (Ground Rents) (Amendment) Act 2019* came into force by ministerial order on 17 January. The act was introduced as a private member's bill and was adopted by the Government in order to remedy certain consequences following the decision of Peart J in the case of *O'Gorman v Shirley*.

This was a Circuit appeal by the landlord flowing from a ground-rents application before the Monaghan county registrar. Those proceedings were tied to a parallel constitutional challenge to the ground-rents legislation by the Shirley estate. The constitutional challenge and the ground-rents appeal were heard in tandem. It was, however, accepted by Peart J that a precondition to permitting a constitutional challenge was the establishment of *locus standi* by the plaintiff. This necessitated that the final outcome of the Circuit appeal be determined before the constitutional challenge could proceed. Having upheld the entitlement to purchase the freehold, in the Circuit appeal, Peart J went on to hold that the legislation was not unconstitutional.

On an appeal to the Supreme Court by the landlord, the Supreme Court expressed the view that the trial judge had been wrong in his conclusions in the Circuit appeal and, hence, the plaintiff did not have *locus standi* to challenge the constitutionality of that legislation. Of course, as the Supreme Court pointed out, the decision in the Circuit appeal was final,

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with no further avenue for appeal – the result being that the substance of the constitutional challenge was never tested at Supreme Court level.

Play your cards right

It should be noted that that position of the Supreme Court has recently been reversed, in the case of *Pepper Finance Corporation (Ireland) DAC v Cannon* (February 2020), in which the Supreme Court held that, under the 33rd amendment to the Constitution, the Supreme Court may, in appropriate circumstances, hear an appeal from a decision of the High Court in a Circuit appeal. That provision was not, however, in force when *Shirley* was heard.

In the Circuit appeal, Peart J pointed out that, in relation to section 9(1)(b) of the 1978 act, one of the requirements at (b) is "that the buildings are not an improvement".

'Improvement' was defined in section 9(2): "In subsection (1)(b) 'improvement' in relation to buildings means any addition to or alteration of the buildings and includes any structure which is ancillary or subsidiary to those buildings, but does not include any alteration or reconstruction of the buildings so that they lose their original identity."

Peart J pointed out that the saver in the latter part of the definition, that excludes alteration or reconstruction, did not refer to any 'addition' to the buildings, as the first part of the definition had. In other words, what was to be considered was limited to alteration or reconstruction of the original buildings, and not an addition.

Having held that, by reason of additions, the building had lost its original identity, he went on to consider whether condition 1 of section 10 was satisfied. That condition required that the permanent buildings were erected by the person who, at the time of the erection, was entitled to the lessee's interest. He said: "I do not take the view that it can be satisfied in the present case by establishing, or at least satisfying the court, that the works carried out to Carrick House by the tenant are of such a nature as to have caused Carrick House to have lost its original identity, and that, in that sense, the present Carrick House structure has been erected by the lessee. That seems to me to be straining the meaning of section 10(1) of the act. Therefore, I hold that condition 1 is not satisfied in this case."

Generation game

Earlier in his judgment, he had concluded that the buildings had lost their original identity: "The question in my mind seems to be reduced to whether, in the light of the works carried out within the original house, and the change of use on the ground floor and the creation of rented flats on the two floors above, as well as the loss of the garden and outhouse, this property is no longer identifiable as the house that it was before 1972. The answer to that question, as far as I am concerned, is quite obviously that it has lost that original identity. By no stretch of anybody's imagination could it be said that this is still the same premises as the rather attractive private residence with garden and outhouses which one can see in the photograph taken in the 1930s. It is, like it or not, now a commercial premises – a change to which the landlord, in effect, consented to by the removal of the restriction as to user as a private dwelling in exchange for an increased rent. The character of the building is so completely altered from what it was that one would be forced to conclude that its original identity has been lost, and in saying that I am closing my mind to the additional buildings, for the reason that I am of the view that they are not caught by the savour in the section."

He further noted evidence that the area of the buildings was increased almost fivefold. Peart J went on to hold that the tenant was entitled to acquire the fee simple under the provisions of condition 2 of section 10, being the condition applicable where the rent is less than the rateable valuation. That condition also has the provision that it must be established that the buildings were not erected by the lessor or his predecessor in title.

Peart J was severely criticised by the Supreme Court on the issue of whether it was established that the buildings were erected by the lessor or a predecessor in title of the lessor, because he had not considered the true interpretation of 'predecessor' in title.

Call my bluff

This was an unhappy case from many perspectives in understanding the operation of the *Ground Rents Acts*. Prior to this case, it had been generally accepted that works that had the effect of causing a building to lose its original identity were regarded as

> THE SORRY CONSEQUENCES OF THE *SHIRLEY* LITIGATION AND THE CONSTITUTIONAL CHALLENGE ARE ENTIRELY UNSATISFACTORY AND, ALTHOUGH THE GROUND-RENTS LEGISLATION SURVIVES, MUCH CONFUSION HAS ENSUED

> TO STATE THAT A REQUIREMENT FOR PERMANENT BUILDINGS TO BE ON THE LAND, AND THAT SUCH 'PERMANENT BUILDINGS ARE NOT AN IMPROVEMENT', BEGS THE QUESTION 'AN IMPROVEMENT TO WHAT?'

having been erected by the tenant. The term 'permanent building' did not appear to have been considered by the superior courts in the context of section 9.

Unfortunately, the difficulty was then compounded by the decision of Peart J, on which he was supported by the Supreme Court, that the reference to 'permanent buildings' means "all the permanent buildings". Fennelly J's rationale at paragraph 58 was that, otherwise, a tenant could easily come within the provisions of the act: "If the term 'permanent buildings' means that it is sufficient if the lessee has erected merely part of the buildings, however small, the right compulsorily to acquire the fee simple would be conferred."

That decision is hard to reconcile with the effect of section 9(1)(b) and the definition in section 9(2) of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, which refers to the buildings losing their original identity: "In subsection (1)(b) 'improvement' in relation to buildings means any addition to or alteration of the buildings and includes any structure which is ancillary or subsidiary to those buildings, but does not include any alteration or reconstruction of the buildings so that they lose their original identity."

It surely must be the case that any alteration or reconstruction that changes the original identity of a building could not be small works, as Fennelly J suggested.

It must be conceded that the wording of section 9(1)(b) is not a model of clarity. To state that a requirement for permanent buildings to be on the land, and that such "permanent buildings are not an improvement", begs the question 'an improvement to what?' Nevertheless, the sorry consequences of the *Shirley* litigation and the constitutional challenge are entirely unsatisfactory and, although the ground-rents legislation survives, much confusion has ensued.

Give us a clue

The 2019 act sets out to remedy some of the difficulties and inconsistencies raised by the *Shirley* judgments. It seeks to reinstate what was the commonly held view prior to that litigation. The new section 9(1)(b) provides that the permanent building comprises, in whole or in part, an alteration or reconstruction, and that the alteration or reconstruction caused the buildings to lose their original identity. The effect of that new provision is that the entitlement now clearly applies in the case where there were existing buildings, but which have been so altered as to change their original identity.

Further guidance is given in section 9(6), which sets out a number of matters that may be taken into account in considering whether the permanent buildings have lost their original identity. These include a change in use, extent of the alteration, change in the character, and such other matters as the arbitrator may consider. It is further provided in 9(6)(b) that the fact that parts of the original building are still identifiable is not a reason to say the buildings have not lost their original identity.

It is important to recollect that the provisions of section 9(6), setting out criteria that may be considered, relate back to section 9(1)(b), which is that the permanent buildings, in whole or in part, comprise "an alteration or reconstruction". Therefore, while 'the use' of the property is now identified as a factor, it cannot, on its own, without the alteration and reconstruction of the existing buildings, be a determining factor.

Those changes are then incorporated into condition 1 of section 10: that permanent buildings, which have caused the buildings to lose their original identity, may come within the provision that they were erected by the lessee.

Condition 2 has been modified to make clear that the term 'predecessor in title' does not refer to a previous lessee and, further, that the rateable valuation now refers back to the old valuation lists, meaning a rateable valuation other than the latest valuation lists.

It will be seen from the foregoing that the 2019 act does not extend or enlarge the entitlements of tenants, but rather clarifies what had been a considerable judicial tangle. g

LOOK IT UP

CASES:

- *A O'Gorman & Co Ltd v JES Holdings Ltd* [2005] IEHC 168
- *Pepper Finance Corporation (Ireland) DAC v Cannon* [2020] IESC 2
- *Shirley v O'Gorman & Co* [2012] IESC 5

LEGISLATION:

- *Landlord and Tenant (Ground Rents) (No 2) Act 1978*
- *Landlord and Tenant (Ground Rents) (Amendment) Act 2019*

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I WANT TO BREAK FREE

Practitioners in mental-health law should read the recent decision in *IF v Mental Health Tribunal* closely, as it brings welcome clarity to the appeals process under the 2001 *Mental Health Act*. **Harriet Burgess** explains

HARRIET BURGESS IS A DUBLIN-BASED BARRISTER

AT A GLANCE

- Central to safeguarding the right to liberty is ensuring that there is a right to appeal against the detention, that the procedures leading to the detention were carried out in accordance with law, and that the continued detention is subject to scrutiny
- A recent decision clarifies the practicalities of appeals against decisions of Mental Health Tribunals
- An appeal against an admission order becomes moot where a renewal order has been brought; renewal orders merely extend the life of admission orders

The recent Supreme Court decision in *IF v Mental Health Tribunal & Ors* can be read as a recognition of the importance of safeguards in relation to the deprivation of liberty, in all circumstances.

Central to the safeguarding of the right to liberty is ensuring that there is:

- A right of appeal for detained persons against decisions governing their detention,
- Confirmation that the procedures leading to their detention have been carried out in accordance with law, and that
- Their continued detention is subject to scrutiny.

The author wishes to thank Niall Nolan BL for reviewing this article

In *IF*, Dunne J recognised the importance of a patient's right to appeal where they have been involuntarily detained by reason of their mental illness. At paragraph 35, she states: "It has always been a hallmark of a constitutional democracy such as ours that the deprivation of the liberty of an individual is not to be lightly undertaken. This is so whether one is concerned with the situation of a person convicted of a criminal offence, or a situation such as this where a person may be the subject of an involuntary detention by reason of the state of their mental health."

This is in line with previous case law on the *Mental Health Act 2001*, which has emphasised the necessity of safeguards where patients are detained involuntarily. This position is set out in *HSE v AM* (29 January 2019): "Involuntary detention for psychiatric reasons has a long and sometimes disturbing history in many jurisdictions. This judgment now considers the scope of the 2001 act and the safeguards contained there. What is dealt with generally in this act is a deprivation of the fundamental constitutional right to liberty. Awareness of this fact is necessary to understand the protections the act contains."


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The *Mental Health Act 2001* contains a right of appeal for patients against decisions of the Mental Health Tribunal. The role of the Mental Health Tribunal under the 2001 act is to affirm or revoke admission orders or renewal orders made by consultant psychiatrists responsible for the care of the patient at approved centres of detention. The decision of the tribunal to revoke or affirm the admission or renewal order, in reviewing the detention of the patient, is based on whether or not the tribunal is satisfied that the patient is suffering from a mental disorder, and whether or not certain procedures under the 2001 act have been complied with.

That decision, to revoke or affirm the admission or renewal order of the psychiatrist, can be appealed by the patient under the 2001 act to the Circuit Court. However, exercising that right to appeal, as is demonstrated by the facts of *IF*, is far from straightforward.

Now I'm here

On 6 October 2015, an application was made by a member of An Garda Síochána, pursuant to section 12 of the 2001 act, to take Ms F into custody, as it had been reported that Ms F had threatened her neighbours with a butcher's knife. A recommendation was made by a general practitioner for her involuntary admission under section 10 of the 2001 act, and Ms F was subsequently brought to an approved centre. Ms F was subject to an admission order the following day, on 7 October 2015, pursuant to section 14 of the 2001 act. She had a long history of mental illness at the time of the making of her admission order. The admission order was due to expire on 28 October 2015.

On 27 October 2015, the admission order was affirmed by the Mental Health Tribunal, pursuant to section 18(1)(a) of the 2001 act. An appeal to the Circuit Court was lodged on behalf of Ms F the following day under section 19 of the 2001 act. The appeal date was set for 10 November 2015.

In the meantime, prior to the appeal coming on for hearing, a renewal order had been made on 27 October 2015, pursuant to section 15(2) of the 2001 act, extending the period of involuntary detention of Ms F until 27 December 2015.

> PRACTITIONERS SHOULD NOTE THAT IT HAS NOW DEFINITIVELY BEEN STATED THAT A PATIENT MAY APPEAL AN ORIGINAL ADMISSION ORDER, REGARDLESS OF WHETHER OR NOT A RENEWAL ORDER HAS OR HAS NOT BEEN BROUGHT

> IT IS MANIFESTLY CLEAR THAT THE FOCUS OF THE PROVISIONS IS ON THE PRESENT SITUATION OF THE PATIENT CONCERNED AND IS NOT INTENDED AS, AND DOES NOT OPERATE AS, A HISTORICAL REVIEW OF THE SITUATION THAT PERTAINED AT THE TIME OF THE ADMISSION

When the appeal was heard by President Groarke on 10 November 2015, he declined to hear the appeal against the admission order, ruling: "I am not going to make any order in respect of an order which is spent … Were I to hear this appeal, I would be hearing or carrying out an assessment of the mental health of the appellant today, but whatever I determine in that regard is moot."

Matters then proceeded. Paragraph 11 of the judgment states: "The renewal order was considered by a second Mental Health Tribunal (on 16 November 2015). That order was the subject of an appeal to the Circuit Court and, on 15 December 2015, the Circuit Court heard the appeal against the decision of the Mental Health Tribunal of 16 November 2015, affirming the renewal order, and the Circuit Court in its turn affirmed the first renewal order made on 27 October 2015."

Ms F commenced judicial-review proceedings, seeking, among other things, an order of *certiorari* quashing the order of Groarke P on 10 November 2015, and further sought a number of other reliefs, including: "If, which is denied, the Circuit Court was entitled to have regard to the fact that the admission order had been extended by a renewal order and to hold that the applicant's appeal was moot, a declaration that section 19 of the *Mental Health Act 2001* is invalid having regard to the provisions of the *Constitution of Ireland 1937*."

In the High Court, Barrett J declined to grant the reliefs sought by Ms F. However, the Court of Appeal allowed the appeal of Ms F, in judgments delivered by Hogan J and Peart J. The Mental Health Commissions then appealed to the Supreme Court.

Barrett J, in the High Court, held that Ms F's appeal against her admission order had become moot, as that order had been *supplanted* by the renewal order. The Circuit Court could not affirm the admission order and, as the Mental Health Tribunal had not yet affirmed or revoked the renewal order, the Circuit Court would have been premature to make a finding concerning the renewal order. He rejected the contention that section 19 of the 2001 act was unconstitutional, stating that, even if the act did not provide an appeal mechanism in respect of decisions of the Mental Health Tribunal concerning admission orders, this would not render the section invalid.

Save me

Hogan J, in his judgment allowing the appeal of Ms F, considered at length the decision of Charleton J in the High Court in *Han v President of the Circuit Court*. *Han* concerned a patient who had been discharged. It was held that a discharged patient can seek to have their detention reviewed by the Mental Health Tribunal under section 28 of the 2001 act. Charleton J found that this was distinct to section 19, which was limited by its express words to the current condition of the patient.

The relevant section 19(1) of the 2001 act sets out the following: "A patient may appeal to the Circuit Court against a decision of a tribunal to affirm an order made in respect of him or her on the grounds that he or she is not suffering from a mental disorder."

Charleton J found that the use of the present tense in section 19 – "he or she is suffering from a mental disorder" – meant that the purpose of this section was to allow for patients who were still detained following from a decision of the tribunal to have their condition reviewed before the Circuit Court; however, the court "is not to engage in a historical analysis". Charleton J found that the right of appeal under section 19 applied only in circumstances where the person 'is' suffering from a mental disorder.

Hogan J found that Charleton J's literal interpretation of section 19(1) in *Han* was incorrect, as it rendered another section of the 2001 act, section 28(5), practically unworkable. He held that the *lex specialis* contained in section 28(5) must be held to prevail over the general provisions of section 19(1). Section 28(5) of the 2001 act applies where a patient has been discharged, and seeks to appeal an admission or a renewal order that *had* detained them. Hogan J held that section 19(1) ought be read as if it read 'is or was' suffering from a mental disorder.

The effect of this interpretation, Hogan J held, was that the Circuit Court, under section 10, may determine whether or not the patient is suffering from a mental illness *at the time of the hearing of the appeal* or if they were suffering from a mental illness *at the time of the tribunal decision, subject to appeal under section 19* (emphasis added). This meant that, for Ms F's case, the Circuit Court had jurisdiction to hear whether or not the tribunal had been correct to affirm the *original* admission order, even though the original admission order had been replaced by a renewal order. In effect, the Circuit Court could review the original admission order, as the court had the power to review whether or not the patient had, in the past (at the time of

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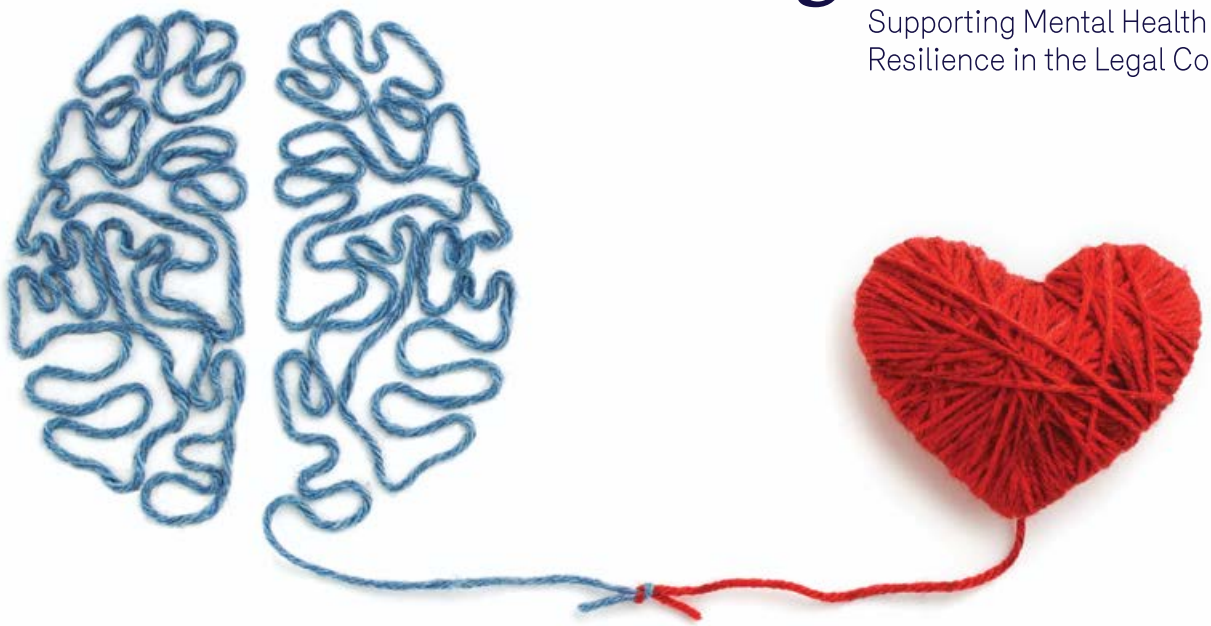

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Supporting Mental Health and Resilience in the Legal Community

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The support is a permanent support, based in Ireland, and will be there for solicitors through any personal or professional challenges.

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the tribunal decision), suffered from a mental illness.

Peart J concurred with Hogan J, but added that he would have decided the case on the basis that the renewal order simply extends the life of the admission order. The basis for the detention of a patient, where a renewal order has been made, *remains* the original admission order, albeit extended.

Don't stop me now

Dunne J in her judgment addressed the practical issues of the timeframes involved in relation to admission orders.

She stated that "it is extremely unlikely that, even with the most expeditious conduct of all of the steps required under the 2001 act, an appeal could be heard by the Circuit Court within the 21-day period during which an admission order is in force."

On that basis, she stated that, although the 2001 act provided for a right of appeal to the Circuit Court from a decision of the Mental Health Tribunal affirming an order for the involuntary detention of a patient, if the approach of Groarke P was correct, that "right of appeal in the circumstances of the initial admission order is practically incapable of being exercised".

She stated that Hogan J's approach – in determining that section 19(1) of the 2001 act must be read as if the patient 'is or was' suffering from a mental disorder – was not surprising, given the tight timeframe in which patients could appeal under the 2001 act. Dunne J noted that, in their submissions, the Mental Health Commission stated that such an interpretation was simply incorrect, and that counsel on behalf of Ms F stated that it had not been argued on behalf of Ms F that it was *necessary* to read into the section the words 'is or was'.

Dunne J held that she could not accept Hogan J's analysis to the effect that section 19(1) must be read as 'is or was' suffering from a mental disorder. She did not agree that section 28(5) prevailed over section 19(1). She adopted the approach of Charleton J in *Han*, stating that the focus of the tribunal at the time of its review is to consider if the patient is or is not suffering from a mental disorder. If the patient is suffering from a mental disorder, the tribunal affirms the admission order. If not, the tribunal revokes the admission order.

Dunne J stated that, on appeal, the focus of the Circuit Court is the same: "In other words, it is manifestly clear that the focus of the provisions under the 2001 act is on the present situation of the patient concerned and is not intended as, and does not operate as, a historical review of the situation that pertained at the time of the admission."

Hang on in there

She held that section 28(5), which applies where a patient has been discharged, clearly provides for a historical review – as the patient has been discharged, there is no question of the admission order being revoked or affirmed. The purpose of the section is to review the detention of the discharged patient.

Dunne J addressed the issues raised by Ms F's case by looking at the underlying purpose of the 2001 act – to provide for the independent review of the involuntary admission of patients to mental hospitals. The means by which this was done, in the 2001 act, was to create a Mental Health Commission and to appoint Mental Health Tribunals. The decisions of the tribunal were subject to appeal to the Circuit Court. The focus of the review is on the current condition of the patient, at tribunal stage and on appeal.

Recognising that the purpose of the 2001 act was to create a significant protection for patients subject to involuntary detention, the decision contemplates the tight time-frame involved: when an individual has been admitted into care, should they never have a 'meaningful appeal' of the original admission order to the Circuit Court?

Having regard to the particular facts of the case, Dunne J noted the time within which a renewal order is made, post-admission order. In an analysis that carefully considers the practical implications of holding that any appeal from the initial admission order is moot, if a renewal order has since been made, Dunne J held that "to interpret a renewal order as being a separate and distinct order" would be at variance with the underlying policy of the 2001 act.

Dunne J endorsed the approach of Peart J in the Court of Appeal, holding that the original admission order is *extended* by a renewal order. Accordingly, she found that when the matter came before the Circuit Court, the matter was not moot, and the validity of the admission order could have been considered by the court.

Hammer to fall

This decision brings clarity to the practicalities of advancing appeals of decisions of Mental Health Tribunals to affirm or renew admission orders.

Practitioners should note that it has now definitively been stated that a patient may appeal an original admission order, regardless of whether or not a renewal order has or has not been brought. It is clear from the judgment that Dunne J recognised the practical implications of deciding that an appeal against an admission order becomes moot where a renewal order has been brought.

The right of patients to appeal against admission orders has been carefully clarified, and the position in relation to renewal orders has been clearly stated: renewal orders merely extend the life of admission orders.

It is to be welcomed that the right of appeal of patients of the initial orders governing their detention has been given real and practical effect. g

Note: *all references in the* IF *Supreme Court judgment are to the 2001 act, as it was issued before the amendments made by the 2018 act. The amendments were of no material consequence to the issues raised in the judgment, as noted by Dunne J, at paragraph 3.*

LOOK IT UP

CASES:

- *Han v President of the Circuit Court* [2008] IEHC 160; [2011] 1 IR 504
- *IF v The Mental Health Tribunal* [2018] IECA 101; [2018] 2 ILRM 225
- *IF v Mental Health Tribunal & Ors* [2019] IESC 44
- *HSE v AM* [2019] IESC 3 (unreported, 29 January 2019)

LEGISLATION:

- *Mental Health Act 2001*
- *Mental Health (Renewal Orders) Act 2018*

UNDER PRESSURE

A positive aspect of the pandemic is that it has given us the opportunity to talk more freely about our mental wellbeing than ever before. **Renee Branson** discusses the importance of resilience and wellbeing during COVID-19 – and beyond

RENEE BRANSON IS THE FOUNDER OF RB CONSULTING

It is hard to name one industry, community, or individual unaffected by COVID-19. The pandemic has created vulnerabilities in our physical and mental – as well as financial – health.

However, vulnerabilities can often shine a light on what has long needed to be changed. For solicitors, this can be a silver lining in a very dark cloud – the opportunity to become more resilient in the face of crisis and challenge.

It is important to understand how we define the concepts of disruption, resilience, and wellbeing. 'Disruption' has two meanings: 'to interrupt by causing a disturbance or problem' or 'to drastically destroy the structure of something'. The pandemic is an interruption at best, and destruction at worst. How we adapt to it and learn from it has the ability to increase our wellbeing and resilience.

The author can be contacted at: rb@reneebranson.blog

AT A GLANCE

- Analysing the disruption and trauma of COVID-19
- Adapting and learning from it will increase our wellbeing and resilience
- How to cultivate the six domains of resilience

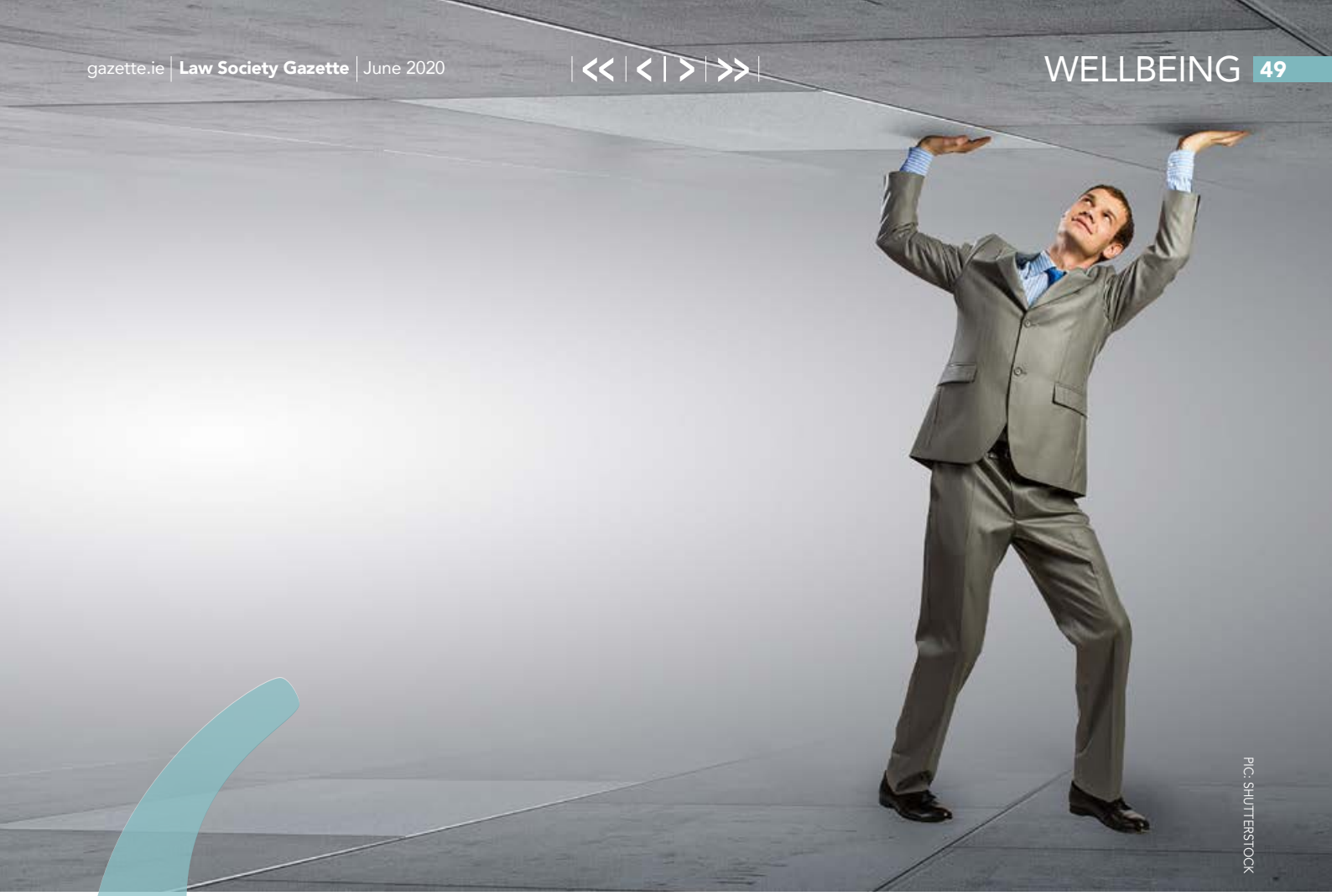
Wellbeing consists in autonomy (being in control of your own life), self-efficacy (being competent and capable to succeed and thrive), and relatedness (being in close personal relationships).

Resilience is a set of skills and traits that work together to increase our wellbeing. If wellbeing is what we are trying to achieve, resilience is the 'how'.

Stress testing

When stress affects the brain, cognition, motivation, collaboration and creativity can be stunted. Evolution has trained the brain to focus on surviving – not thriving – when it believes it is under attack. This less resilient mind will take the stimulus created by the disruption and allow the so-called 'lizard brain' to take over – fight, flight, or freeze. A resilient mind will form new synapses and pathways to address the new information. It allows the mind to be self-nurturing, adaptable and innovative.

How do we cultivate this skill? First, understand what makes up our resilience. There are six different domains that make up human resilience: connection, calm, health, reasoning, optimism, and integrity.



PIC: SHUTTERSTOCK

> RESILIENCE IS A SET OF SKILLS AND TRAITS THAT WORK TOGETHER TO INCREASE OUR WELLBEING. IF WELLBEING IS WHAT WE ARE TRYING TO ACHIEVE, RESILIENCE IS THE 'HOW'

Generally speaking, legal professionals tend to be stronger in some of these areas, and need growth in others. These different domains can be thought of as books in a library. Some are well used and committed to memory, while others require us to take them off the shelf to sharpen our knowledge.

Connection

Our need for connection is hardwired in each of us from the time of birth. We need it in both our personal and professional lives. It is in professional life that this can sometimes be a challenge. Speaking in general terms, the legal profession can be a lonely one. Solicitors and barristers work in silos, where collaboration is often undervalued. Combined with naturally solitary work, the culture of perfectionism, fear of failure, and stigma around looking 'weak' disconnects us from our colleagues. It requires people to be less authentic and, therefore, less 'seen'.

How does this affect wellbeing? Legal professionals (everyone from solicitors, barristers, judges, to marketers and business development professionals) describe the work-pace as exhausting. Studies show us that when we feel alone in the face of crisis, challenge or change, we experience mental and physical fatigue much more acutely.

Connection skill builder – take a sticky note and make a list of those in your personal and professional life with whom you can be fully authentic – those you can go to when you feel overwhelmed or frustrated, whose opinions and help you trust. It only takes meaningful connection with a few people to have a dramatic impact on your wellbeing.

Keeping calm

The ability to calm ourselves and self-soothe is one of our earliest skills. In babies and young children, this looks like sucking on a soother and cuddling with a special blanket. As we age, however, those calming techniques are not socially acceptable. We learn to calm and self-soothe in other ways. Some of those ways are healthy, while others are maladaptive. It can be easy for people to mistake *numbing* discomfort for *calming* discomfort. This is a primary cause of substance abuse or other addictive behaviour, like shopping, sex, gambling or internet use.

The problem is that we cannot selectively numb mental and emotional discomfort. When we numb stress, sadness, or loneliness with a bottle of wine or hours on the

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Certificate in Advanced Negotiation	11 September 2020	€1,650
Diploma in Law	4 September 2020	€4,600
Diploma in Trust and Estate Planning	12 September 2020	€3,200
Certificate in Aviation Leasing and Finance	24 September 2020	€1,650
LLM Advanced Legal Practice	26 September 2020	€3,400
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Diploma in Finance Law	6 October 2020	€2,600
Diploma in Corporate Law and Governance	6 October 2020	€2,600
Diploma in Insolvency Law & Corporate Restructuring	7 October 2020	€2,600
Diploma in Healthcare Law	8 October 2020	€2,600
Diploma in Regulation Law and Practice	8 October 2020	€2,600
Diploma in Criminal Law and Practice	9 October 2020	€2,600
Diploma in Construction Law	10 October 2020	€2,600
Certificate in Conveyancing	13 October 2020	€1,650
Diploma in Judicial Skills and Decision-Making	14 October 2020	€3,000
Diploma in Technology & IP Law	15 October 2020	€3,000
Certificate in Agribusiness and Food Law	17 October 2020	€1,650
Diploma in Sports Law	21 October 2020	€2,600
Diploma in Education Law	30 October 2020	€2,600
Diploma in Mediator Training	30 October 2020	€3,300
Certificate in Immigration Law and Practice	5 November 2020	€1,650
Certificate in Trademark Law	10 November 2020	€1,650
Certificate for the Personal Insolvency Practitioner	November 2020	€1,650

CONTACT DETAILS

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

internet, we are also numbing joy, peace and true connection. The ability to calm rather than numb requires us to feel the emotion we are experiencing, while not allowing it to knock us off our feet. This can be done through mindfulness, meditation, and simple breathing techniques.

Calm skill builder – try 'triangle' breathing, which is completely invisible to anyone else:

- Inhale for a count of four,
- Hold for a count of four,
- Exhale for a count of eight.

Optimism

Lawyers have a tendency toward scepticism, cynicism and pessimism, because the legal profession rewards such traits. It is what makes solicitors good at their jobs. They are able to see the flaw in the contract that could cost a client millions. They can discern when a witness is not being forthcoming. These are useful tools.

But these tools, when applied in the wrong context or incorrectly, can lead to poor wellbeing. When our larger world view is seen only through the lens of scepticism, much remains out of focus. Still, it can be difficult to feel optimistic when we are overburdened and dealing with grim realities. It should be remembered that optimism is not cheerfulness, rose-tinted glass or unchecked naiveté: grounded optimism takes reality into account, while believing that challenges can be met with grit, gratitude and grace.

Optimism skill builder – remember, optimism is the belief that the current crisis, challenge or change is not permanent, pervasive, or personal.

Reasoning

Reasoning is often the strongest resilience skill for lawyers. Reasoning is the ability to anticipate and plan, be adaptable, and to recognise opportunity. When our reasoning ability is honed, we are able to use stress as an opportunity to grow and reach goals that were previously unattainable. In order to do this, we need to be able to maintain our cognitive functioning and think through the stress. This requires us to regain composure, ask for help, expand our knowledge, and be willing to take risks.

Reason skill builder – what kind of thinker are you? Knowing what kind of thinker you are will help you identify your reasoning strengths during crisis, challenge, or change:

- Intuitive thinkers leap from one idea to the next. They are good at quick problem solving.
- Systematic thinkers plan each move, step by step. They are very thorough in problem solving and are forward thinking.

> STUDIES SHOW THAT WHEN WE FEEL ALONE IN THE FACE OF CRISIS, CHALLENGE OR CHANGE, WE EXPERIENCE MENTAL AND PHYSICAL FATIGUE MUCH MORE ACUTELY

Integrity

Our values and integrity are put to the test when we are experiencing crisis, challenge, or change. This is true for both individual integrity and organisational integrity. In how it relates to resilience, integrity is defined as congruence between our stated intrinsic values and our external behaviours.

When we live outside of our own integrity, it has a caustic impact on our wellbeing. It creates added stress and strain to an already demanding situation. Unfortunately, during times of disruption and crisis, there is a strong temptation to do what is quick or easy instead of courageously choosing what is right.

Integrity skill builder – in moments of crisis, challenge and change, ask:

- What value is most important to uphold right now?
- Do my behaviours, decisions, and actions reflect the values I am professing?
- If not, what needs to change or be put in order for those to be congruent?

Health

Our bodies are our 'truth tellers'. How we support our physical health affects our mental health, and vice versa. Listen to your body for warnings of emotional distress. Depression and anxiety can manifest as chronic headaches, insomnia, gastrointestinal problems, high blood pressure, and more. Even mild stress can be felt through a tightening of the muscles, sweating palms, rapid heart rate, and shallow breathing.

These are signs of the need to return to calming and self-soothing techniques. Conversely, how we treat our bodies can proactively combat stress and strain. Proper rest not only helps us manage stress, but also increases our cognitive functioning, so we are better at finding solutions and being adaptive. Moderate exercise (just 20 minutes, four times a week) has been shown to ease symptoms of anxiety and depression.

Health skill builder – when you are feeling particularly stressed, overwhelmed, or burned out, take notice of the following things:

- How much sleep and rest did you get the day before?
- Did you eat breakfast?
- When was the last time you took a walk, exercised – or simply spent time outside?

We live in a time of unprecedented disruption in a profession that is notoriously full of stress and strain. When we proactively increase our resilience as a means of improving our mental wellbeing, not only do we bounce forward from crisis, challenge and change, but we are better prepared for a healthier, happier life in the future. g

'TWO-HOUR SITTINGS' CONFUSION ENDED

Confusion reigned for two days while the judiciary clarified new health advice given to the Oireachtas. **Mark McDermott** reports

MARK MCDERMOTT IS EDITOR OF THE *LAW SOCIETY GAZETTE*

IT WAS BORDERING ON BIZARRE THAT WE WERE BEING GIVEN THIS ADVICE FOR THE FIRST TIME MORE THAN TWO MONTHS INTO THE COVID-19 CRISIS, WHERE THE PUBLIC-HEALTH ADVICE UP UNTIL NOW HAD BEEN ADMIRABLY CLEAR

On the morning of 20 May, the presidents of the five courts said in a statement that they had become aware of health advice given the previous evening to the Houses of the Oireachtas, to the effect that no two people should spend a cumulative period of more than two hours in the same room in any 24-hour period. The Courts Service was seeking additional advice in relation to this.

"Pending receipt of such additional advices, the court presidents have determined that all court sittings will last for no more than two hours in each day," the statement said.

The Director General of the Law Society, Ken Murphy, was very quickly contacted by the media for his reaction to this development. He expressed himself "very surprised and taken aback" by this news. He believed there would be shock in legal circles that the already extremely limited sittings of the courts, since the COVID-19 emergency had struck, would be further dramatically reduced as a result.

'Bizarre'

Later that afternoon, in various national media outlets, Murphy described the development as "bizarre and very frustrating".

"The question has to be asked if there has been some miscommunication and overreaction here. The Dáil has frequently sat for periods of well in excess of two hours during the crisis. Furthermore, businesses and workplaces providing essential services have been operating for periods well in excess of two hours for the duration of the restrictions."

Speaking on RTÉ radio's *Today with Sarah McInerney* on 21 May, he said that the new guidance represented a "strange piece of novel and dramatic advice".

"When we got this news out of the blue, there was dismay, because valiant efforts are being made by the Courts Service to reopen the courts, consistent with the public-health guidelines.

"It was bordering on bizarre that we were being given this advice for the first time more than two months into the COVID-19 crisis, where the public-health advice up until now had been admirably clear."

Questioned by McInerney on the impact that two-hour-a-day sittings woiuld have, Murphy said that efforts to use technology and hold remote hearings were to be applauded, but were not a substitute for court sittings. "We need to get the courts open in the inter-


Murphy: 'bizarre and very frustrating development'


McInerney: questioned the impact of 'two-hour-a-day sittings'


O'Higgins: two-hour rule would be 'major setback'


PIC: ROLLINGNEWS.IE

ests of citizens, businesses and the economy, and the country generally," he said.

On the same programme, Micheál P O'Higgins (Chairman of the Council of the Bar of Ireland) said that a two-hour rule would represent a "major setback" to the reopening of the courts.

Detailed advice

By Thursday evening, the Courts Service had received "detailed advice" on the length of sittings, to allow hearings, free of any two-hour limitation period, to resume from Friday onwards. Angela Denning, Courts Service CEO, confirmed that Prof Martin Cormican (Health Protection Surveillance Centre) had clarified that the public-health advice remained unchanged and that there was no rule that people should spend less than two hours in the same room as others.

Therefore, from an infection-control perspective, there was no need to limit court sessions to two hours. However, the consequence of sessions lasting for longer than two hours would be that, if someone tested positive, all persons present with them in the courtroom would be considered a potential contact.

Denning said that the Courts Service was assessing how 'safe hearings' could be held and would keep a record of every individual present in court for more than two hours, in the event that this information would be needed for contact tracing.

Judicial letters

In their letters published on Thursday, the chief justice and court presidents said that they regretted any inconvenience caused by the confusion over the health advice.

The letters contained information about additional safety measures for judges, staff, and court users. The Law Society and Bar Council were advised of any changes that could affect their members.

The judges explained the context for the new arrangements, saying that the courts were unlike many enclosed workplaces, in that the public had access to courtrooms without ordinarily being identified, and frequently spent a significant portion of a sitting day at hearings.

Normally, there would be no record of who was in attendance and for how long. From now on, however, there would be a procedure for recording the identity and contact details of all those who attended court, they said.

The Courts Service said it was taking advice to ensure that any such details would be treated in accordance with privacy rules – and those details would be destroyed immediately upon the expiry of any relevant period.

"Those who are unwilling to give such details cannot be admitted to the courtroom," the judges warned. "However, this will not absolve any person who has a legal obligation to be present from fulfilling that obligation, unless released by the court." g

> SUCH A LIMITATION IS A DISAPPOINTING SETBACK TO THE VALIANT EFFORTS BEING MADE BY THE COURTS SERVICE TO REOPEN THE COURTS

HI HO, HI HO ... AT SOME POINT

It turns out that working from home was the easy part! **Keith O'Malley** looks at the challenges to be faced when back to the office we go

KEITH O'MALLEY IS THE LAW SOCIETY'S HEAD OF SUPPORT SERVICES

IF THE RATE OF COVID-19 INFECTION FLARES UP AGAIN WITHIN THE COMMUNITY, MORE LOCKDOWN MEASURES WILL BE PUT IN PLACE. SO THIS ROADMAP REALLY AMOUNTS TO THE BEST POSSIBLE SCENARIO

When we first closed our offices and decamped to the dining room table, lots of challenges – like bad broadband connections – were encountered. But we generally got on with work and made the best of a difficult situation.

We have worked hard over the last months but, for many solicitors, it was not work in any kind of traditional sense. New clients and new work enquiries slowed to a trickle, and they will not return in force until we are back *in* (rather than *at*) work and society has started to normalise.

Now, it turns out, returning to work is not going to be simple or easy. Even determining a return date is fraught, and employers are also being instructed to phase people returning to work over several months and to continue as much remote working as possible until the middle of August.

On the one road

The Government has produced a *Roadmap for Reopening Society and Business*. This document revolves around five phases. Businesses have been instructed to plan their return to on-site working according to these phases:

- Phase 1 (from 18 May) involves outdoor workers returning to their workplaces on a phased basis,
- Phase 2 (from 8 June) will see solitary workers and others, who due to the nature of their work can maintain a two-metre distance constantly, return to work on a phased basis,
- Phase 3 (from 29 June) will be relevant to organisations where employees have low levels of daily interaction with people and where social distancing can be maintained,
- Phase 4 (from 20 July) is when all forms of on-site work can start and will involve those employees who are selected to be the first people to return to on-site working on a generalised basis,
- Phase 5 begins on 10 August, and it will progress to full on-site working arrangements that are likely to happen on a phased basis.

There is always the possibility that progress could end up being slower than this. If the rate of COVID-19 infection flares up again within the community, more lockdown measures will be put in place. So this roadmap really amounts to the best possible scenario.

The Government's roadmap advises businesses to develop plans for a return to on-site work that takes COVID-19 risks into consideration.

Pressure to prepare for and to accommodate workplaces in order to minimise risk is likely to come from several directions over the next short while. For example, expect insurance companies to make searching enquiries about risk-minimising strategies and to require you to take even more measures on matters that they consider to be critical.

Walk this way

The Law Society's Support Services have produced guidelines on how to return to on-site work. A 12-step approach is proposed that law firms can follow to organise return to the office effectively. Let us quickly walk through the 12 steps:

1) *Risk assessment:* firms should carry out an appropriate COVID-19 risk assessment, and this should be done in consultation with staff. Firms should share the results of the risk assessment with their staff, and the risk assessment should be regularly reviewed and updated thereafter.

2) *Internal communications:* the firm will need to provide clear, consisten and regular communication to improve understanding of new ways of working. Employers should engage with staff to understand unforeseen impacts of changes to the working environment.

PIC: SHUTTERSTOCK

3) *Working arrangements:* for the time being, staff should work remotely if possible. Consider who is required on-site and plan the minimum number of people required on-site to operate safely and effectively. Keep in touch with off-site workers on their working arrangements, including their welfare, mental and physical health, and personal security. Provide facilities for people to work at home effectively – for example, remote access to work systems.

4) *Vulnerable staff:* staff members who are vulnerable to COVID-19 threats should be advised not to work outside the home. Employers should enable workers to work from home while self-isolating, if appropriate. Make adjustments to avoid workers with disabilities being put at a disadvantage and assess the health-and-safety risks for new or expectant mothers.

5) *Risk management:* where remote working from home is not possible, firms need to make every reasonable effort to comply with Government social-distancing guidelines. Where the guidelines cannot be followed in full in relation to an activity, firms need to consider whether that activity needs to continue for the business to operate.

6) *Social distancing:* firms should stagger arrival and departure times at work to reduce crowding into and out of the workplace. Handwashing facilities, or hand sanitiser where not possible, need to be provided at entry and exit points. Do not use touch-based security devices such as keypads. Introduce more one-way flow through buildings. Reduce maximum occupancy for lifts, provide hand sanitiser in lifts, and encourage the use of stairs.

7) *Workstations:* review layouts and processes to allow people to work further apart from each other. Use floor tape or paint to mark areas to help workers keep to a two-metre distance. Where it is not possible to move workstations further apart, use screens and arrange people to work side-by-side or facing away from each other.

8) *Meetings:* use remote working tools to avoid in-person meetings. Only necessary participants should attend meetings and should maintain two-metre separation throughout.

9) *Common areas:* work collaboratively with landlords and other tenants in multi-tenant sites/buildings to ensure proper social distancing across common areas. Install screens to protect staff. Reconfigure seating and tables to maintain spacing and reduce face-to-face interactions.

10) *Visitors:* encourage visits via remote connection/working where this is an option. Where site visits are required, site guidance on social distancing and hygiene should be explained to visitors on or before arrival. Limit the number of visitors at any one time.

11) *Teamwork:* consider how teamwork is organised and whether existing arrangements compromise social distancing in the workplace.

12) *Work-related travel:* minimise non-essential travel and encourage remote options. Minimise the number of people travelling together in one vehicle. Clean shared vehicles between shifts or on handover. g

CALLING ALL HEROES

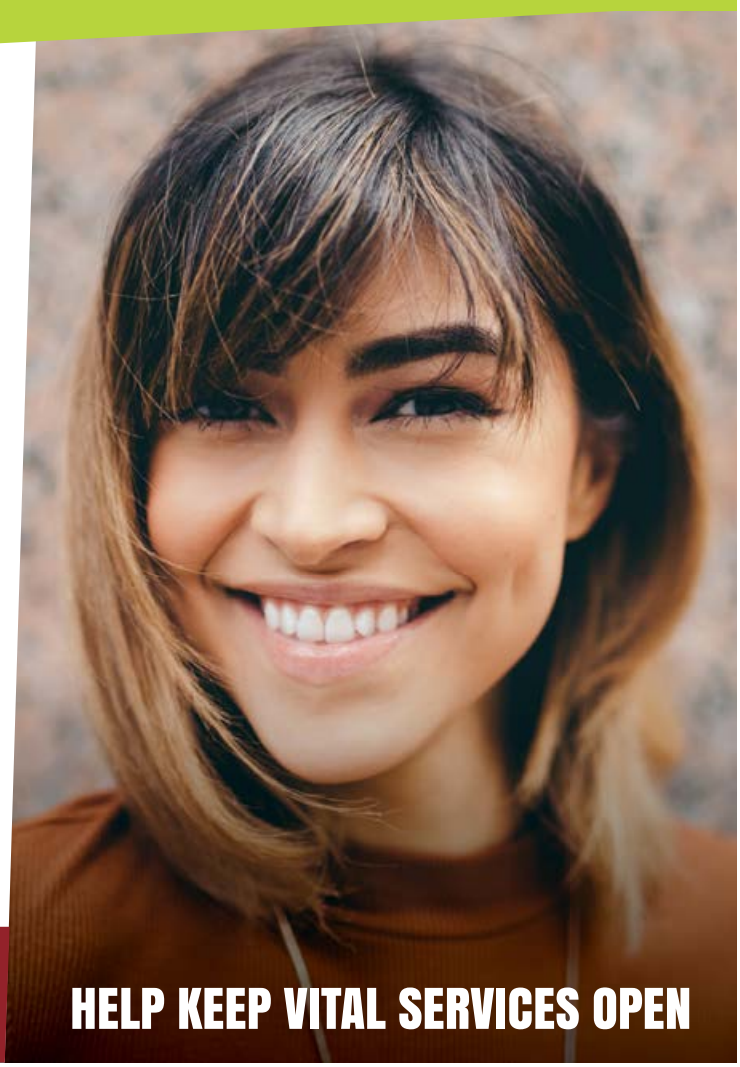
Homeless and care services across Ireland and Northern Ireland are experiencing staff shortages. **Crisiscover.ie** connects people with experience to services that need them.

You can sign up to a paid crisis relief panel for homeless and disability services if you:

- **A Qualification in social care, social work, health care, psychology or related fields or,**
- **Work experience with vulnerable groups such as: homeless people, disability, the eldery, refugees or children in care or,**
- **Experience and interest in working as a cleaner or cook**

CRISIS COVER INITIATIVE

www.crisiscover.ie
crisiscover@qualitymatters.ie



RECENT DEVELOPMENTS IN EUROPEAN LAW

EUROPEAN ELECTRONIC COMMUNICATIONS CODE DIRECTIVE (EU 2018/1972)

Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 contains an electronic communications code and overhauls the regulatory framework in place to date in relation to telecoms and other electronic communications. It replaces the *Access*, *Authorisation*, *Framework* and *Universal Service Directives*, which date back to 2002. It does not amend the *Net Neutrality Regulation*, the *e-Privacy Directive*, or the *Roaming Regulation*, which continue in force separately. The date for transposition for the code is 21 December 2020, although it remains to be seen if this is delayed in light of the challenges of implementation against the backdrop of COVID-19. In Ireland, it will likely be transposed by way of a statutory instrument by the Minister for Communications. Separately, there will be further harmonisation measures provided through guidelines on a range of topics from BEREC (Body of European Regulators for Electronic Communications).

OTT providers

The code brings the 'over the top' (OTT) providers, such as social media companies, within the tent of regulation, albeit to a more limited extent than traditional telcos. The definition of services captured by the code is extended to include certain OTT interpersonal communications. There is, however, a distinction between number-based interpersonal communications and number-independent interpersonal communications services.

Wholesale obligations

Maximum EU-wide termination rates will be set by the European Commission on a cost-orientated basis. Spectrum licences are to be a minimum of 15 years, plus a five-year extension, with the conditions for renewal clearly set out at the outset. New numbering rules allow for permanent extra-territorial numbers for machine-to-machine (M2M) communications, which facilitates the growth of the internet of things (IOT).

Universal service obligation

The universal service obligation (USO) – which is the basic electronic communications service that everyone is entitled to at an affordable price – now includes broadband. There is a pre-contract summary template adopted by the European Commission by way of an implementing regulation on 17 December 2019. There are increased transparency obligations about the quality of service. There will be notifications to alert customers to consumption spends. Best tariff advice is to be provided. There are additional rules on switching. Where bundles are offered to consumers or SMEs, microenterprises, or not-for-profits, the maximum protection of the code applies to all elements of the bundle. This brings services (that, to date, would not be covered) within the umbrella of regulation.

Digital developments

There are a number of other related developments in the digital space. On 19 February, the commission published its white paper on artificial intelligence (AI), which included a proposal for the regulation of AI applications. The public consultation closes on 14 June. The new *Audiovisual Media Services Directive* is to be transposed by 19 September 2020, unless it is subject to COVID-19-related delays. As well as dealing with major events, it will also now regulate video-sharing platform services and on-demand services, as well as harmful content online. There is also consideration of a new *e-Privacy Regulation* to replace the existing *e-Privacy Directive*, which deals with unsolicited marketing communications, cookie consents, and data breaches.

Niamh Hodnett, head of regulatory affairs with Three Ireland and member of the EU and International Affairs Committee of the Law Society

EUROPEAN UNION (COOPERATION BETWEEN NATIONAL AUTHORITIES RESPONSIBLE FOR THE ENFORCEMENT OF CONSUMER PROTECTION LAWS) REGULATIONS 2020 (SI 14 OF 2020)

The Minister for Business, Enterprise and Innovation, as per section 3 of the *European Communities Act 1972* and to give effect to Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws, made these regulations on 14 January 2020. They implement the EU council regulation by which competent authorities designated by member states as responsible for the enforcement of the many EU laws listed in the annex of that regulation cooperate and coordinate with each other and with the EU Commission to enforce compliance with those laws.

In Ireland now, the Competition and Consumer Protection Commission is designated as the single liaison office for the purposes of coordinating the application of the council regulation between authorities in Ireland and other EU states. It has investigative and enforcement powers as required. It is entitled to publish any final decision. The European Consumer Centre Ireland is the designated authority for the purposes of issuing alerts/warnings. Failure to comply with the commission's decision, order, interim measure, 'trader's commitment', or other measure shall be an offence liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months. The national measures affected include the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995*, the *Competition and Consumer Protection Act 2014*, and the *Central Bank (Supervision and Enforcement) Act 2013*, and it extends to EU measures as implemented into Irish law in dealing with, among others, unfair terms in consumer contracts, the indication of prices of products offered to consumers, the sale of consumer goods and associated guarantees, electronic commerce, medicinal products, the processing of personal data and the protection of privacy in electronic communications, distance marketing of consumer financial services, compensation for delays in flights, unfair business-to-consumer commercial practices, the rights of disabled persons, misleading and comparative advertising, rail passengers' rights, credit agreements for consumers, consumer holiday rights, passengers travelling by sea and inland waterways and buses, alternative dispute resolution of consumer disputes (whether online or not), credit agreements for consumers in relation to residential immovable property, and unjustified geoblocking and other forms of discrimination based on customers' nationality, place of residence, or of establishment. g

Duncan Grehan, Duncan Grehan & Partners, Solicitors

CONVEYANCING COMMITTEE

FORM 24: CLEARING OFF EASEMENTS ON SALE

Practitioners will be aware that when Form 24 is used by a bank selling on foot of its power of sale in a mortgage, it clears off all subsequent burdens on a folio in accordance with section 62(10) of the *Registration of Title Act 1964*. Some of these burdens could be of benefit to the lands in the folio (such as puisne lease burdens or the usual easements in a building estate), and others (such as rights of way) that, if registered as a burden, benefit adjoining folios.

It is clearly desirable that these types of burdens are not automatically cleared off the folio following a transfer using Form 24. The Conveyancing Committee is of the view that the exercise of the bank's power of sale should not have unintended consequences, and is of the view that amending legislation is required. While an application can be made subsequently to have these burdens restored (if removed following registration of the Form 24), it would be better if this could be avoided.

Following representations made by the committee, the PRA has confirmed that practitioners can rely on the contents of its Legal Office Notice 1 of 2019, which provides that the PRA will serve a query/notice on a solicitor for an applicant before they remove these burdens. Solicitors receiving such a query or notice should ensure that they respond within the time stipulated to the PRA to indicate that they do not want such leases or other easements removed.

As an additional measure, the committee suggests that practitioners wishing to avoid removal of such leases, easements, wayleaves, etc, could try to ensure that any such burdens ranking after the bank's charge are protected. This can be done in a number of ways:

1) In the case of a lease registered as a burden on the parent folio after the date of registration of a charge – by registering a priority note on the parent folio indicating that the lease burden ranks in priority to the charge – the consent of the owner of the registered charge will be required. Otherwise, on a sale of the lands in the parent folio, the lease burden will be discharged and the leasehold folio closed.
2) By drafting the transfer deed to the new purchaser in such a way that it transfers all interests – "…FREED AND DISCHARGED from the said Charge and from all other burdens entered in the said folio of the register over which the said Charge ranks in priority SAVE AND EXCEPT … [the burdens registered at the relevant burden number on the folio that are to be retained]…"

   or

   by drafting the transfer deed to reflect that the transferee is taking subject to the lease or other burdens.

VACANT SITE LEVY

The Conveyancing Committee has published a briefing note on the legislation underpinning the vacant site levy (the *Urban Regeneration and Housing Act 2015*) and its impact on conveyancing.

This briefing note can be found by logging into the members' area of the Society's website and clicking on 'Committees', 'Conveyancing Committee', 'Resources', and scrolling to the 'Guidelines' section on that page. See www.lawsociety.ie/conveyancing-committee.

CONNECTED PARTIES IN CONVEYANCING AND FINANCE TRANSACTIONS

The Conveyancing Committee has published guidelines on the company law issues to be aware of when dealing with companies in real estate transactions, including section 239 of the *Companies Act 2014*.

These guidelines can be found by logging in to the members' area of the Society's website and clicking in turn on 'Committees', 'Conveyancing Committee', the 'Resources' tab, and scrolling to the 'Guidelines' section. See www.lawsociety.ie/conveyancing-committee.

CYBERSECURITY AND SCAM PREVENTION

Solicitor firms are at greater risk of cyber-attack due to remote working. With solicitor practices now providing legal services remotely, members are reminded that cybercriminals are targeting firms to intercept money transfers and other sensitive client information.

Fraudulent bank account

A recent attack involved a firm that was acting for a property purchaser. When the sale collapsed, the solicitor received an email request for the return of moneys. However, the bank account details provided were for a fraudulent account and the solicitor transferred the moneys without verifying the details. The bank contacted the solicitor, as a flag had been raised by the receiving bank and, following the swift action of the gardaí, the banks and the solicitor, the account was frozen.

Sensitive information

The most secure method of transmitting bank details is directly by hard copy.

To further reduce the risk of fraud, it is safer to exchange bank-account details via telephone, if the practitioner is absolutely certain that the person they are speaking to is the actual person with whom they wish to exchange bank details. If uncertain, practitioners should consider a video call where the individual can be visually identified.

When the sending of bank account details via email is unavoidable, it is recommended that the transfer should occur by attaching a password/passphrase-protected document containing the account details to an email. The password/passphrase that unlocks the document should be provided to the other person through an alternative secure communication method. This method of transferring data applies equally to the sharing of all other sensitive and confidential information.

This information is an abridged version of a detailed guide on reducing the risk of cyber-attack when working remotely, available on the Law Society website at: www.lawsociety.ie/solicitors/running-a-practice/cybersecurity.

John Elliot, Registrar of Solicitors and Director of Regulation

CYBERSECURITY AND YOUR PRACTICE

As a result of the COVID-19 pandemic, the vast majority of legal services are now being provided remotely. With this shift to remote working comes the increased risk of cyber-attack.

The legal sector is particularly vulnerable to the reality of cybercrime, which is becoming increasingly sophisticated and exposes sensitive data and client moneys to great risk. There are a number of steps (outlined below) that can be taken to guard against cyber-attack.

VPN

- Use a VPN (virtual private network) to securely access your office database,
- If working without a VPN, back up data in a secure offline manner,
- Take inventory of which employees require full access to your entire office network and ensure that full access is not through personal devices,
- Consider restricting access through personal devices to email and cloud services only,
- Two-multifactor authentication is highly recommended before allowing a personal device to connect to your network, and
- Carry out regular scans for malware and spyware.

Multifactor authentication and Bitlocker

- Consider logging into your office IT system using multifactor authentication (MFA). This can include a biometric reader, a unique login code sent by text, or the use of a USB stick as an access key.
- Consider enabling Bitlocker (if the computer uses *Windows*) so that, if a device is stolen, the data therein cannot be accessed.

Wi-Fi connection

Only connect via a secure private Wi-Fi connection.

Virtual meetings

Set all virtual meetings to private, with password-only access.

Encrypt data

Finally, ensure that laptops are encrypted and systems installed to track and delete data from tablets and phones if they are lost or stolen. Firms should also keep anti-virus software, computer programmes, and operating systems up to date, and caution must be exercised when opening attachments from unknown or unsolicited emails.

This information is an abridged version of a detailed guide on reducing the risk of cyber-attack when working remotely, available on the Law Society website at www.lawsociety.ie/solicitors/running-a-practice/cybersecurity.

John Elliot, Registrar of Solicitors and Director of Regulation

WILLS

Acres, Sarah (otherwise Saran) (deceased), late of Island, Craanford, Gorey, Co Wexford, and formerly of 21 Woodlands Green, Lamberton, Arklow, Co Wicklow. Would any person having knowledge of a will executed by the above-named deceased, who died on 13 February 2020, please contact Kevin O'Doherty, O'Doherty Warren & Associates, Solicitors, Charlotte Row, Gorey, Co Wexford; DX 48004 Gorey; tel: 053 942 1587, fax 053 942 1313, email: info@odohwar.ie

Alken, Sarah (deceased), late of 18 Sandycove Road, Sandycove, Co Dublin, who died on 11 December 2011. Would any person having knowledge of the whereabouts of a will made by the above-named deceased, on or about 4 July 2011, please contact Samantha Holton, Beauchamps Solicitors, Riverside Two, Sir John Rogerson's Quay, Dublin 2; DX 63; tel: 01 418 0678, email: s.holton@beauchamps.ie

Bourke, Anthony (Tony) (deceased), late of The Lodge (beside St Mary's Church), Clonsilla, Dublin 15. Take notice that any person(s) having a claim against the estate please contact Mark Collins, solicitor, Tom Collins & Company Solicitors, 132 Terenure Road North, Terenure, Dublin 6W; tel: 01 490 0121, email: mark@tomcollins.ie

Byrne, Michael (deceased), late of 12 Dunancory Demesne, Virginia, Co Cavan, who died on 19 April 2020. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Martina Sheridan & Co Solicitors, 20A Railway Street, Navan, Co Meath; tel: 046 907 3344, email: info@martinasheridansolicitor.ie

Cullen, Dermot (deceased), late of 46 Barnamore Park, Finglas, Dublin 11, and formerly of 203 Glasnevin Avenue, Dublin 11. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact McInerney Solicitors, Cleggan House, 46 Eyre Square, Galway; tel: 091 5665 21/29, email: jenny@mcinenerysolicitors.com

Dowd, Clement (deceased), late of The Mill Road, Dangan, Summerhill, Co Meath, who died on 14 May 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 Cora Higgins, Regan McEntee and Partners, Solicitors, High Street, Trim, Co Meath; DX92 002 Trim; tel: 046 943 1202, email: chiggins@reganmcentee.ie

Flanagan, Jean (deceased), late of Apartment 21, Seapark Apartments, Mount Prospect Avenue, Clontarf, Dublin 3, who died on 7 January 2020. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Doyle Legal Solicitors, 57 Clontarf Road, Dublin 3; tel 01 853 7310, email: hazel@doylelegal.ie

Greene, Patrick (deceased), late of 38 Leyland Avenue, Bawnogue, Clondalkin, Dublin 22, who died in or around September/October 2011. Would any person having knowledge of the whereabouts of a will made by the above-named deceased, or know of any potential beneficiaries, please contact O'Connor & Bergin, Solicitors, Suites 234-236, The Capel Building, Mary's Abbey, Dublin 7; email: info@oconnorbergin.ie

Joyce, James (deceased), a farmer, late of Knockaunbawn, Maam, Co Galway, who died on 21 March 2020. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Mannion Aird & Co, Solicitors, Clifden, Co Galway, H71 DH48; DX 181002 Clifden; tel: 095 21411/21044 or email: mannionaird@eircom.net

Malin, Patricia (deceased), late of 102 Whitebarn Road, Churchtown, Dublin 14, who died on 28 February 2020. Would any person having knowledge of a will made by the above-named deceased please contact Donal O'Kelly & Co, Solicitors, 1 Grand Canal Wharf, South Dock Road, Dublin 4; tel: 01 665 8540, fax 01 669 9000, email: info@donalokellyandco.ie

Murtagh, Oliver J (deceased), late of 22 Cherry Court, Terenure, Mount Tallant Avenue, Dublin 6W, who died on 3 February 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 Holmes O'Malley Sexton, Solicitors, Bishopsgate, Henry Street, Limerick; DX 3007 Limerick; tel: 061 313 222, email: info@homs.ie

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%)

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie and **PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT).** The Law Society's EFT details will be supplied following receipt of your email. **Deadline for July 2020 *Gazette*: 15 June 2020.**

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*.

Nowalk, Maureen Mary (deceased), late of 173 Saint Attracta Road, Cabra, Dublin 7, and Navan Road Community Unit, Dublin 7. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, who died on 23 March 2020, please contact Justin Hughes Solicitors, 89 Phibsborough Road, Phibsborough, Dublin 7; DX149005 Phibsborough; tel: 01 882 8628, 01 882 8583, email: info@justinhughes.ie

Swan, Joseph Patrick (deceased), late of 65 Millbrook Lawns, Tallaght, Co Dublin, and 89 The Crescent, Millbrook Lawns, Tallaght, Dublin 24, who died on 27 July 2004. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please reply by email to alisonswan2011@gmail.com

Trappe, Michael Patrick Jude (deceased), late of Laurel Lodge Nursing Home, Templemichael, Longford, and formerly of 61 Beneavin Road, Glasnevin, Dublin 11, and Main Street, Longford, and 8 Park Vista, Greenwich, London SE10 9LZ, and 171a Main Street, Sutton-at-Hone, Dartford, Kent, England, who died on 26 July 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Patrick Groarke, Groarke & Partners, Solicitors, 32/33 Main Street, Longford, email: patrick@groarkeandpartners.ie

Walsh, Walter (deceased), late of Stoneen, Kilfane, Thomastown, Co Kilkenny, who died on 30 July 2012. Would any person having knowledge of a will made by the above-named deceased please contact Fiona Walsh & Company, Solicitors, 10 Patrick Street, Kilkenny, R95 WVH0; tel: 056 780 0100, email: info@fionawalshsolicitor.ie

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 property at 12 St Anthony's Road, Dublin 8 – Sausalito Limited (applicant)

Take notice that any party having interest in the freehold estate of the following property: all that and those the property known as 12 Saint Anthony's Road, Dublin 8, the subject of an indenture of lease dated 30 March 1904, made between Joseph Parsons of the one part and David Plummer of the other part (hereinafter 'the lease') for the term of 185 years, subject to the yearly rent of £4 thereby reserved and to the covenants by the lessee and conditions therein contained.

Take notice that Sausalito Limited ('the applicant') intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property and that any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of the title to the aforesaid premises to the under-mentioned solicitors within 21 days from the date of this notice.

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

Date: 5 June 2020

Signed: Maxwell Mooney & Co (solicitors for the applicant), Claremont House, Kelly's Lane, Maynooth, Co Kildare

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 Colin Lynam of 9 The Old Mill, Naul, Co Dublin, and in the matter of the property known as 66 Main Street, Swords, Co Dublin

Take notice any person having a freehold interest or any intermediate interest in all that and those the property known as 66 Main Street, Swords, Co. Dublin (hereinafter called 'the property'), held by the applicant under a lease dated 25 March 1938 and made between Christopher McGonagle of the one part and Catherine J Lawless of the other part for the term of 95 years from 29 September 1937 at a rent of £5 per annum.

Take notice that Colin Lynam intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest in the aforesaid property, and that any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of such title to the aforementioned property to the under-mentioned solicitors within 21 days from the date of this notice.

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

Date: 5 June 2020

Signed: Ó Scanaill & Co (solicitors for the appli-

cant), Columba House, Airside, Swords, Co Dublin

In the matter of the *Landlord and Tenant (Grounds Rents) Acts 1967-2005* and in the matter of *Landlord and Tenant (Ground Rents) (No 2) Act, 1978* and in the matter of in the matter of the *Landlord and Tenant (Ground Rents) Amendment Act 2019* and in the matter of an application by Frances Marcella Gibbons (née Devaney) in respect of premises at Lahardane, Ballina, Co Mayo

Take notice any person having an interest in the freehold estate or any lesser or intermediate interest in the lands and premises described as all that and those the dwellinghouse and licensed premises attached thereto, except the building known and used as the post office, situate in the townland of Lahardane, barony of Tyrawley and county of Mayo, held under indenture of lease between Frances Lavelle and the Coyne estate as a yearly tenancy and subject to a yearly rent, which said property was further assigned to the applicant herein, being Frances Marcella Gibbons, née Devaney, in deed of assignment dated 10 June 1941 between Frances Lavelle of the one part and Francis Devaney of the other part, and whereas no rent has been demanded or paid under the provision of the lease for as far back as the records go, and whereas the applicant and her solicitor have failed to trace the whereabouts of any person appearing to be entitled to receive the said rent.

Take notice that Frances Marcella Gibbons, née Devaney, being the person entitled to the lessee's interest in the said lease, intends to submit an application to the county registrar for the county of Mayo for acquisition of the freehold interest and all intermediate interest in the aforesaid property, and any party asserting that they hold any interest in the aforesaid property are called upon to furnish evidence of their title to same to the below-named solicitors within 28 days of this notice.

In default of any such notice being received, the said Frances Marcella Gibbons, née Devaney, intends to proceed with an application to the county registrar for the county of Mayo at the end of the 28 days from the date of this notice and will apply for such direction as may be appropriate on the basis that the persons beneficially entitled to superior interests including the freehold reversion of the aforesaid premises are unknown and unascertained.

Date: 5 June 2020

Signed: Adrian P Bourke and Company (solicitors for the applicant), Killala Road Business Park, Ballina, Co Mayo

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2019* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the lands and store situated at Dun Laoghaire, Sallynoggin East, Co Dublin, formerly known as houses 1-8 inclusive, Mount Belton, Dun Laoghaire, Co Dublin, and in the matter of an application by Lidl Ireland GmbH

Any person having any interest in the freehold estate or intermediate interests of the following property: the lands and store forming part of the lands in the townland of Thomastown, barony of Rathdown, electoral division of Dun Laoghaire, Sallynoggin east and county of Dublin, described in Folio 198663F of the register, county Dublin, being all of the property demised by an indenture of head lease dated 3 May 1951 made between Richard Belton of the first part, Richard Belton and others of the second part, and Our Lady's Public Utility Society Limited of the third part, and being all of the property demised by eight subleases, the title to which subleases is registered in Folio 143609L of the register county Dublin, and which lands and store were formerly known as houses 1-8 inclusive Mount Belton, Dun Laoghaire, Co Dublin.

Take notice that Lidl Ireland GmbH (external company number 904141), having its registered office at Main Road, Tallaght, Dublin 24, intends to submit an application to the country registrar for the city of Dublin for acquisition of the freehold interest and intermediate interests in the aforesaid premises, and any party asserting that they hold a superior interest in the aforesaid premises (or any of them) are called upon to furnish evidence of the title to the aforementioned premises to the below named within 21 days from the date of this notice.

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

Date: 5 June 2020

Signed: ByrneWallace (solicitors for the applicant), 88 Harcourt Street, Dublin 2, DO2 DK18

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2015* and in the matter of the property at 1 Trimleston Avenue, Booterstown, Blackrock, Co Dublin – Shane Mitchell (applicant) and Michael Patrick Kennedy, Joseph Evans and Alexander Moore Doran (respondents)

Take notice that any party having an interest in the freehold estate of the following property: all that and those the hereditaments and premises comprised in and demised by the lease and therein described as all that the plot or parcel of ground situate at Trimleston, Booterstown, delineated and having the boundaries and measurements shown on the map endorsed on these presents and thereon outlined in red, and situate in the parish of Taney, half barony of Rathdown and county of Dublin, with the shop and dwellinghouse thereon, known as or intended to be known as 1 Trimleston Avenue, Booterstown, with the appurtenances, which was the subject matter of an indenture of lease made on 3 December 1936 between Michael Patrick Kennedy of Granite Hall, Dun Laoghaire, in the county of Dublin of the one part and Thomas Augustus Tutty of 211 Clonliffe Road in the city of Dublin of the other part, for the term of 90 years from 25 September 1935, subject to the yearly rent of IR£25, and whereas that said lease excepted and reserved out of the demise unto Joseph Evans and Alexander Moore Doran (the superior landlords who were executors of the estate of Mrs Elizabeth Peckenham, otherwise Hayes), with the consent of Henry John Hayes (the son of Mrs Elizabeth Peckenham), reserved in the superior lease of the premises with other premises made 29 January 1886 between Joseph Evans of 50 Kenilworth Square, Rathgar, in the county of Dublin, and Alexander Moore Doran of Tullykeel, Ardee, in the county of Louth of the first part and Henry John Hayes of 4 Church Lane in the city of Dublin of the second part, and Adam Scott of 44 Upper Sackville Street in the city of Dublin of the third part for a term of 100 years from 1 January 1926 at the yearly rent of £265 sterling, and the lands demised by the said superior lease are therein described as all that and those the

house lands and premises known as Trimleston, comprising the dwellinghouse and out-offices, yard, garden front and back, lawn gate entrance, and lodge and haggard, also a field containing five acres Irish Plantation Measure and another field containing three-and-a-half acres like measure, be the said several admeasurements more or less all which said premises, and bounded on the east by the Blackrock Road, on the west by lands formerly in the possession of Mrs Dunne and now called Nutley, on the north by lands belonging to the lessors now in the possession of Mrs Anne Burrowes and known by the name Dornden, and on the south by the lands of St Helens, now in the possession of Lord Viscount Gaugh, as described in the map annexed hereto, and are situate in the parish of Taney, half barony of Rathdown and county of Dublin, together with the houses and buildings standings thereon. Whereas that said lease appears to originate from an indenture of lease dated 6 June 1856 made between Solomon Augustus Richards of Ardmine House in the county of Wexford of the one part and William Hayes of Trimleston House, old Merrion, in the county of Dublin on the other part, whereby all that and those the farm and lands formerly called Farrell's farm, now known as Trimleston, were demised to the said William Hayes for the term of 150 years from 25 March 1887, subject to the yearly rent of £233.18s.10d by reserve. The lands demised by the said lease of 6 June 1856 are therein described as all that and those the farm and lands formerly called Farrell's farm and now known as Trimleston, situate at Old Merrion in the county of Dublin, bounded on the east by the sea and Rock Road, on the west by lands formerly in possession of Mrs Dunne, now called Nutley, on the north by the lands of Merrion Castle, and on the south by the lands of Saint Helen, now in the possession of Lord Viscount Gough, said lands of Trimleston being situate in the half barony of Rathdown, parish of Taney, and county of Dublin, containing in the whole 19 acres, no roods, and 37 perches, being equivalent to 31 acres, no roods, and 24 perches English Stature Measure or thereabouts, together with the houses and building standing thereon.

Take notice that Shane Mitchell (the applicant) has made an application to the county registrar for the city of Dublin for the acquisition of the freehold interest (and any intermediate interests) in the aforementioned property, and that any party asserting that they hold a superior interest in the aforesaid property are called upon to furnish evidence of title to the aforesaid property to the undermentioned solicitors within 21 days from the date of this notice.

In default of such notice being received, the applicant intends to proceed with the application before the county registrar on 30 June 2020 and will apply to the county registrar for the city of Dublin for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interests including the freehold premises are unknown and unascertained.

Date: 5 June 2020

Signed: Collins Crowley (solicitors for the applicant), 28 Bridge Street Lower, Citygate, Dublin 8; DX 1039

PRO BONOBO

ROCK-PAPER-SCISSORS MORTGAGE SHOCK

The Quebec Court of Appeal has ruled that a Can$517,000 bet that was lost in a game of rock-paper-scissors is null and void, *Sky News reports*. Edmund Hooper had been forced to remortgage his home to pay the debt, which he acquired in 2011 – though the Superior Court subsequently cancelled the remortgage in 2017. Hooper's opponent appealed to get his winnings. In the 2017 decision, the judge relied on a Quebec law saying that a contract for a bet must depend on actions "requiring only skill or bodily exertion on the part of the parties" – not just chance. She declared the contract void, saying that the wagered amount was excessive. The Court of Appeal agreed on both counts.

TWIN'S PEAK

An aspiring lawyer has successfully sued her twin sister after the latter sneezed and lost control of their car, *The Sydney Morning Herald reports*.

Law student Caitlin Douglas was awarded AU$183,816 (roughly €109,410) after she was injured in the 2016 accident.

The 21-year-old was in the front passenger seat when the driver, her twin sister, suffered a sneezing fit and lost control. Caitlin experienced "whiplash-like injuries" and was later forced to see several doctors and chiropractors due to lower back pain.

The judge found the 21-year-old's future earning capacity had been reduced because she was unable to lift more than 10kg and would be hindered in her ability to work long hours.

"If illustration of the lifting and carrying component of legal work was required, it would be sufficient to recognise that the weighty folders that were provided to the court weighed several kilograms," he continued. "It is well-recognised from observing litigation over a long period that trolleys laden with such materials are most commonly pulled and pushed by the most junior members of a legal practice."

The award will be paid by the insurance company.

POLITICAL PANTS-DOWN PANDEMIC PROBE

A former New Zealand cabinet minister and current city councillor has been caught with his pants down during a Zoomed council meeting, *The Guardian reports*.

David Benson-Pope caused a stir during the meeting when he walked into his study with bare legs, carrying a feather duster.

He said he "hadn't realised" he'd left his camera on during the first adjournment of the meeting and that he hoped the spectacle had provided a moment of light relief for his isolated colleagues and any constituents watching. "There's been no other excitement," he remarked.

MELONHEADS POSED FOR PICS

Police in Virginia, USA, have nabbed two thieves who wore watermelons as disguises while robbing a convenience store early in May, *Fox News reports*.

The pair apparently had difficulty sourcing facemasks, so they resorted to a homemade solution instead. The police department shared surveillance photos of the thieves wearing the hollowed-out fruit, complete with holes for eyes.

A member of the public came forward, saying he had posed for a picture with the pair after seeing them at another store on the day of the theft.

And one of the shop's customers commented: "The amount of work that you have to do to actually hollow-out a watermelon to stick it on your head, I think, is kind of crazy. It's so stupid." g

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