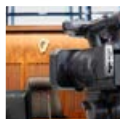




I'll be there for you
Barrister Ian Hanger was the first 'McKenzie Friend' in the landmark 1970 English case



Remote control
The Courts Service has established remote court hearings during the current coronavirus crisis



Hand in glove
The Government's initiatives to support businesses and employers explained

gazette

LAW SOCIETY

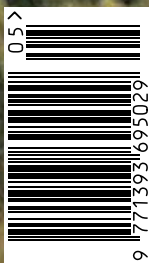
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HOLD YOUR HORSES

Wartime neutrality and Spanish trade



navigating your interactive

gazette
LAW SOCIETY



CONTENTS
PAGE



PREVIOUS
PAGE



NEXT
PAGE



NEXT SECTION/
FEATURE

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PRESIDENT'S MESSAGE

STAYING
CONNECTED

Sadly, although not unexpectedly, COVID-19 has taken colleagues from us and from their grieving families. We collectively share their anguish and loss.

In solidarity with those colleagues and their families, we must as a profession continue to lead by example and, at all times, place the health and safety of our families, staff, colleagues and community at the centre of every decision that we make. The way in which we conduct our business has dramatically changed over the last number of weeks. However, what has not changed is my unwavering commitment to you and to the profession.

Imminent challenges

From the outset of this crisis, I set about establishing guidelines on insulating our practices by identifying imminent challenges to practice. It is impossible to completely insulate against the unknown. It is, however, possible to anticipate future challenges and to prepare for these.

An essential tool in my armoury is the welcome communication I receive from the profession identifying particular practice challenges as they emerge. I have tried to keep the profession involved and updated in relation to all workarounds, and I continue to lobby where necessary. Active, meaningful communication is key.

I would encourage all of you to review the *eBulletins* that have issued since the start of the coronavirus emergency, as these contain essential advice on running your business during this unprecedented period, practical guidance on the myriad of practice areas, and support about how you and your family can remain mentally healthy during this stressful period.

I wish to record my thanks to the many Law Society expert committees and staff who have provided invaluable assistance to me in producing the *eBulletins*.

Included in the information available in the *eBulletins* is practical advice and guidance on remote technology (23 March *eBulletin*), as well as support for managing remote teams (28 March).

The updated position on the temporary

COVID-19 Wage Subsidy Scheme and the Pandemic Unemployment Payment and the Business Continuity Voucher has proved vital for practitioners. See the 27 March *eBulletin*, the 17 April update, and p52 of this issue.

One area that continues to receive a lot of positive press is the comprehensive practical guidance on making wills (see *eBulletin*, 22 March).


Legal services

Many of us provide legal services to large or small companies. Managing company compliance requirements during the current public-health restrictions presents a challenge. In that context, I issued guidance to assist solicitors advising companies on required meetings and electronic transactions in my *eBulletin* on 31 March.

In addition, the Business Law Committee has prepared a guidance note detailing some of the precautionary measures that companies can take in the lead-up to their AGMs and when convening directors' meetings (see the 31 March *eBulletin*).

WE CAN AND WILL WORK
THROUGH THIS PANDEMIC.
WE ARE UNITED IN OUR
RESOLVE TO DO SO

We can and will work through this pandemic. We are united in our resolve to do so. It is increasingly important for lawyers to support each other. By doing so, we can better serve the legal profession and the public to whom we owe a duty. It is also increasingly important to remain connected to your local colleagues and to the Law Society. I would encourage our bar associations to remain in active contact with their colleagues, whether by social media or remote meetings.

For my part, my regular *eBulletins* will ensure that I remain connected to you in a real and practical way. As always, I can be contacted at president@lawsociety.ie. 



MICHELE O'BOYLE,
PRESIDENT



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Editor: Mark McDermott FIIC
Deputy editor: Dr Garrett O'Boyle
Art director: Nuala Redmond
Editorial secretary: Catherine Kearney
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Editorial board: Michael Kealey (chairman), Mark McDermott (secretary), Aoife Byrne, Ken Casey, Mairéad Cashman, Caroline Dee-Brown, Hilary Forde, Richard Hammond, Teri Kelly, Patrick J McGonagle, Aisling Meehan, Heather Murphy, Ken Murphy, Andrew Sheridan

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A MAGAZINE FOR A HEALTHIER PLANET

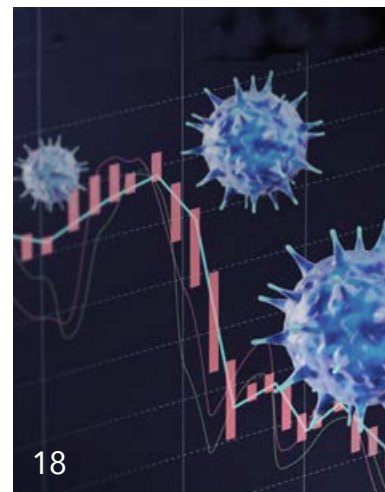


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FEATURES

22 **War horse**

During the final years of World War 2, an intriguing legal case involving the sale of 'war horses' came before the Irish High Court and, subsequently, the Supreme Court. Barry Whelan mounts up

28 **With a little help from my friends**

The original 'McKenzie Friend', Ian Hanger, speaks to David Mulligan about the groundbreaking case that led to the establishment of the McKenzie Friend principle

34 **Reviewing the situation**

Online customer reviews can make or break a business – but can also break the law. However, they are a pivotal means by which businesses attract custom. Michael O'Doherty vents his spleen

40 **A tax on both fronts**

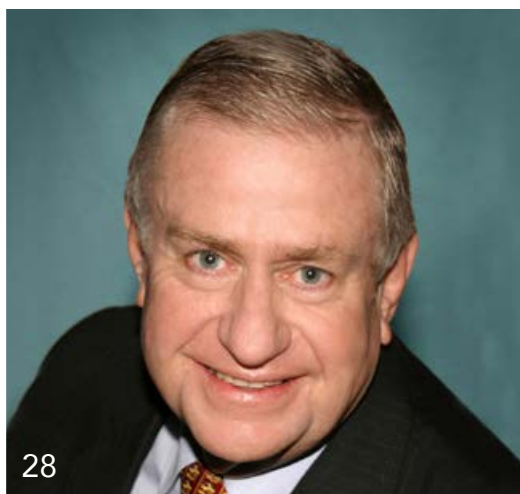
Recent Tax Appeal Commission decisions bear thinking about when settling an employment dispute concerning a termination payment on retirement or removal from office, writes Jeananne McGovern

46 **Where is my mind?**

The practice of mindfulness gives us a chance to pause. We can only feel the solid ground under our feet when we stop rushing to the next moment, explains Barry Lee



46



28



50

REGULARS

4 **The big picture**

Standout photo of the month

7 **People**12 **News**18 **Comment**

Viewpoint: Is Ireland failing small businesses during the shutdown?

50 **Analysis**

50 News in depth: Virtual courts are with us, but not every matter can be dealt with remotely

52 News in depth: Pandemic supports for self-employed solicitors

55 **Briefing**

55 Council report

56 Practice note

56 Guidance note

58 SBA report and accounts

59 Regulation

60 **Professional notices**64 **Final verdict**

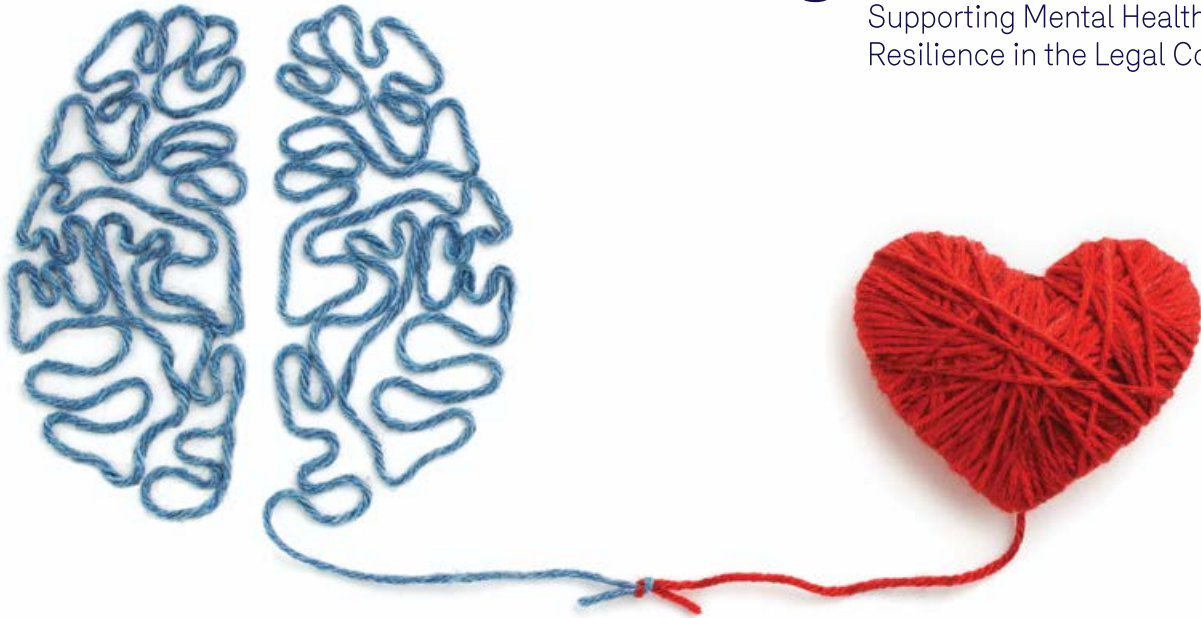


THE BIG PICTURE

WHERE THE STREETS HAVE NO NAME

A Dublin pedestrian sporting a face mask takes a stroll on a deserted O'Connell Street during the current COVID-19 pandemic. As we go to press on Thursday 30 April, 1,232 people have died, while there are now 20,612 confirmed cases of the coronavirus in Ireland

PIC: LEAH FARRELL/ROLLINGNEWS/IE



LegalMind

Supporting Mental Health and Resilience in the Legal Community

LegalMind is a confidential, independent, low-cost mental health support for solicitors and their dependants.

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

Solicitors can call LegalMind at any time of the day or night, from all over Ireland, and talk to a mental health professional about any issues they or their family may be facing.

After this initial conversation, solicitors may then avail of further low-cost supports – counselling, psychotherapy or psychological supports within a 30 kilometre radius of their home.

For more information visit: www.lawsociety.ie/legalmind

Access the service directly and talk to a counsellor now on freephone:

1800 81 41 77

LAWYERS IN LOVE TIE KNOT IN LOUTH



Maeve with her new husband Ciaran



Maeve with her dad Sean O'Rourke

Human rights lawyer Dr Maeve O'Rourke married solicitor Ciaran Ahern at St Oliver Plunkett's Church in Blackrock, Co Louth, on 4 January. The bride was given away by her father, RTÉ broadcaster Sean O'Rourke, and the 260-strong wedding party celebrated at Darver Castle, in Louth. The newly-weds met while studying law at UCD. Dr O'Rourke is currently lecturing at NUI Galway and is also a barrister at Bedford Row Chambers in London. Ciaran, meanwhile, is an employment law specialist with A&L Goodbody in Dublin and also tutors Law Society PPC students on the topic

HIS MASTER'S VOICE



Congratulations to Gabriel A Toolan (Walter P Toolan & Sons, Ballinamore, Co Leitrim) who – pre-coronavirus lockdown – received a master's degree (with distinction) in Environmental Law from Prof Patrick G O'Shea (president, University College Cork)

PAWS BUTTON



Working from home can have both challenges and benefits, as one of the Gazette's production team can testify

DELIGHTFUL DSBA ANNUAL GALA



ALL PICS: CIAN REDMOND

The annual DSBA Gala took place at the Westin Hotel in Dublin on 28 February. The guest speaker on the night was Garda Commissioner Drew Harris



Carol Plunkett hosted the Law Society Finuas Skillnet table



Garda Commissioner Drew Harris



DSBA President Tony O'Sullivan and past-president Greg Ryan



DSBA President Tony O'Sullivan makes a presentation of *Bunreacht na hÉireann* to Garda Commissioner Drew Harris



Tony O'Sullivan and Richard Stowe



Keith Walsh, Stuart Gilhooly and James McDermott



Tony O'Sullivan



Mr Justice Peter Charleton (Supreme Court)



Sarah Wilson, Tony O'Sullivan and Suzanne Rice



In the frame – the legal team from Ronan Daly Jermyn



Paul English (Peter Fitzpatrick Legal Cost Accountants) shares a quip with Andrew Fitzpatrick and colleagues



Deirdre Walsh and Tony O'Sullivan





Brendan J Twomey, Patricia Twomey, Carol Plunkett and Randall Plunkett



Sarah Wilson, Fiona McCaughan and Suzanne Rice



Michelle Nolan and other Law Society guests enjoying the gala event



Miriam Doyle



Mary Cawley



Top table guests share a joke, including Seán Ó hUallacháin SC (Bar Council) and his wife Mary



Professor John Wylie (right) makes a point



Ken Byrne and Liz O'Donnell (RSA chairperson)



Kathleen Leader SC (right) at the DSBA gala event



Gary Skinner and his wife Susan Martin

DSBA LAW BOOK AWARDS 2020



ALL PICS: CIAN REDMOND

The Westin in Dublin was the venue for the annual Dublin Solicitors' Bar Association's (DSBA) Book Awards on 28 February. The late Paul Anthony McDermott SC received a posthumous award for 'Outstanding Contribution to Legal Scholarship', sponsored by Law Society Finuas Skillnet: Garda Commissioner Drew Harris, Annick Hedderman (widow of Paul Anthony McDermott), James McDermott BL, Carol Plunkett (representing sponsors Law Society Finuas Skillnet), Keith Walsh (chair, judging panel) and Tony O'Sullivan (president, DSBA)



Ciaran Joyce, Emma Jane Prendergast, Dr Tom Hickey, Garda Commissioner Drew Harris, Paul English (representing sponsors Peter Fitzpatrick & Company), Keith Walsh, Tony O'Sullivan and Mark Tottenham BL



Prof John Wylie, Garda Commissioner Drew Harris, Diego Gallagher (representing sponsors Byrne Wallace), Keith Walsh and Tony O'Sullivan



Annick McDermott, James McDermott BL and Carol Plunkett



Ciaran Joyce, Garda Commissioner Drew Harris and Mark Tottenham BL



Dr Tom Hickey and Peter Malone (compliance and ethics counsel, Accenture)

LITIGATION PRIVILEGE RECLAIMED

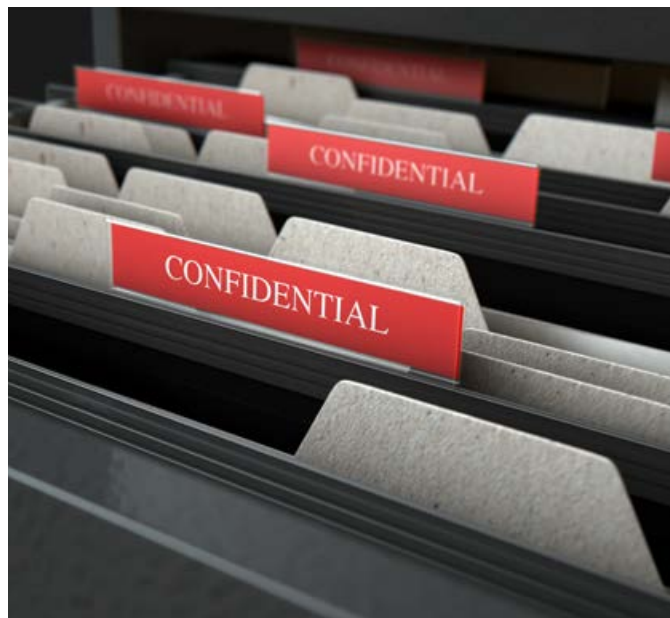
■ Britain and Ireland's positions are very similar in relation to litigation privilege, but the finding by the British High Court in 2017 in *Director of the SFO v Eurasian Natural Resources Corporation Ltd* ([2017] EWHC 1017) caused considerable uncertainty around the parameters of when privilege could be claimed, writes *Michelle Lynch* (policy development executive).

The decision explored the limits of legal professional privilege, restricting how privilege applies in an internal investigation within a criminal context in Britain (see 'Check your privilege', December 2017 *Gazette*, p52). The appeal ([2018] EWCA Civ 2006) raised important issues as to the proper scope of legal professional privilege in that particular context.

The 2017 case

In *SFO v ENRC*, following claims by a whistleblower, Eurasian Natural Resources Corporation Ltd (ENRC) had undertaken its own internal investigations. The Serious Fraud Office (SFO) had then proceeded with its investigations with a view to possibly pursuing a prosecution. It started a criminal investigation and sought to compel ENRC to provide a number of documents, claiming that the documents were not privileged and should be disclosed. ENRC argued that the documents were the subject of legal advice privilege and/or litigation privilege.

The English High Court found that ENRC failed to establish that it was aware that litigation between itself and the SFO was a "real likelihood" rather than a "mere possibility". It also held that the investigation by the SFO could not be deemed adversarial, as it was simply a preliminary step to be completed before any decision would be made to



PICT: SHUTTERSTOCK

prosecute. Further, ENRC failed to establish that criminal proceedings had been reasonably contemplated by it at any relevant time.

On appeal

The Court of Appeal found that the High Court had failed to give sufficient regard to specific facts and evidence that had discussed the possibility of litigation following the investigation. The court did not consider whether the High Court had incorrectly applied the law on litigation privilege or the correct test to be used. Instead, the court found that the judge had disre-

garded evidence and documents that clearly pointed towards the contemplation of a prosecution if self-reporting did not successfully avert it.

It also found that, in both the criminal and civil context, legal advice given to avert, avoid or even settle reasonably contemplated legal proceedings remains protected by litigation privilege, as much as advice on defending or contesting such proceedings would be.

Further, the court held that it was in the public interest that companies should be prepared to investigate allegations, prior to going to a prosecutor such as the

SFO, "without losing the benefit of legal professional privilege for the work product and consequences of their investigation".

In reaching its conclusions, the appeal court made some interesting *obiter dicta* remarks, while acknowledging a submission made by the Law Society of England and Wales that the law was out of step with international common law. It recognised that there was no need to examine legal advice privilege, since it had already decided the matter on the basis of litigation privilege, and it was also unable to depart from the test set down in *Three Rivers (No 5)* ([2003] EWCA Civ 474). However, it did note that "legal professional privilege is a classic example of an area where one might expect to see commonality between the laws of common law countries".

Future endeavours

Since the Court of Appeal decision, the SFO confirmed that it would not be appealing. While Ireland does not have the same level of case law around this issue, on the basis of the approach taken in Britain, it is indicative that litigation privilege could be successfully asserted in analogous circumstances here, such as an investigation by a regulator of a regulated entity.

ARE YOU BEING PROPERLY SERVED?

■ As practising members are aware, your *Gazette* is normally sent to your business address. However, we are offering all members the option to easily change their address preference for receiving the magazine while working remotely.

If you are happy to continue receiving the *Gazette* at your business address, you don't need to do anything. However, if you would prefer the Law Society



to send the magazine directly to your home, please log onto the website and update your *Gazette* address preferences at www.lawsociety.ie/dashboard/dashboard/address-preferences.

You can also review and update your home address at the same time, if necessary.

For login assistance, contact webmaster@lawsociety.ie. For other queries about the *Gazette*, email gazette@lawsociety.ie.

CALCUTTA RUN POSTPONED

■ Due to the coronavirus situation, the [Calcutta Run](#)'s organisers have decided to postpone this year's event.

"We have taken this tough decision in consultation with our charity partners, the [Peter McVerry Trust](#) and [The Hope Foundation](#)," the organisers say. "The good news is that we have secured a new date for Saturday 24 October. We extend our thanks to the OPW and the gardaí for helping us find an alternative date."

The organisers of the Calcutta Run event in Cork will confirm an alternative date in due course.

"We are conscious that our charities and the children they help have come to depend on our support each year," the run organisers say. "This year, they will need us more than ever, so we hope that, circumstances allowing, and with the help of all our firms and supporters, we will be able to get the



run back on its feet and raise those much-needed funds."

To keep supporters up to date with their training over the coming months, the Calcutta Run will

be providing fitness and wellbeing tips by email and through social media.

"We're asking you to 'keep the faith', to work and train towards

our new date to the extent you can, and to continue to donate to our charity partners during these most difficult of times," the organisers say.

RESPECTED SOLICITOR SEAN GALLAGHER PASSES AWAY

■ Solicitor Sean Gallagher has passed away as a result of COVID-19-related issues.

Sean had been hospitalised in the ICU in Dublin's Mater Hospital in recent weeks. He qualified in 1975 and had only stepped back from active practice last year.

Sean established the Dublin firm Sean Gallagher & Company Solicitors (Merchants Quay, Dublin 8) in 1994.

He was a highly respected member of the [Panel](#) to Assist Solicitors in Difficulty with the Law Society.

Described as a generous man with a big heart, Sean is deeply mourned by his beloved wife Noelle, children Niamh, John, Hugh and Aifric, brother Colm, grandchildren Pearse and Nora, brothers-in-law, sisters-in-law,



son-in-law Stephen, extended family, relatives and friends.

A private family funeral was held due to Government advice regarding public gatherings on Friday 24 April. The funeral

Mass was streamed on the website of St Francis Xavier Church, Gardiner Street, Dublin.

Those who would like to send a message of condolence may do so online at [RIP.ie](#).

LIBRARY SUPPORTS

■ The Law Society Library is waiving charges on certain documents for the months of April and May. The decision covers e-book extracts, journal articles, and other commentary delivered by email.

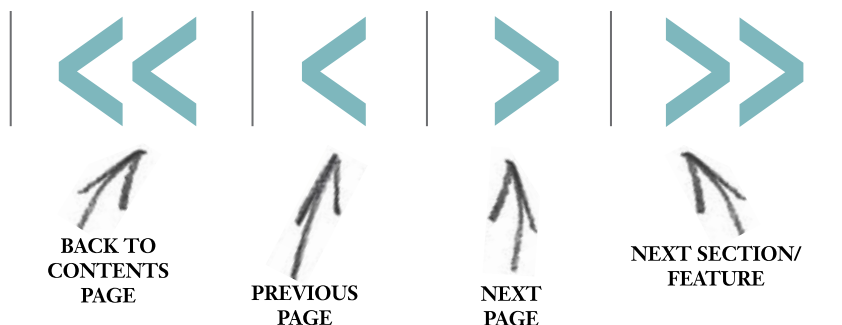
Charges for supplying precedents in *Word* format will also be reduced by 50%, to €25 (plus VAT) per precedent. The library points out that the supply of documents is governed by copyright legislation and fair-dealing principles. The waiver and reduction in charges will be reviewed for subsequent months.

The library is continuing to operate online services to help answer members' legal research enquiries. Members can contact the library at tel: 01 672 4843 or email: libraryenquire@lawsociety.ie.

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LEGALMIND OFFERS MENTAL-HEALTH SUPPORT TO MEMBERS

■ It is human to feel a whole range of emotions – from fear and worry, to loneliness and sadness – during this trying time of unprecedented change and uncertainty, writes *Dr Emelina Ellis (Spectrum.Life)*.

Remote working, social distancing, self-isolation, and an overarching uncertainty about the future are affecting all of us in different ways.

Legal practitioners, with their particular professional pressures and community standing, are likely to be experiencing both good and bad days – moments of clarity and moments when it all feels too much.

In moments of clarity, one might notice the beauty of the mundane or be reminded of how deeply we appreciate both our loved ones and our support network.

In moments when it all feels too much, there may be a need to talk to someone apart from colleagues, family or friends. LegalMind can provide you with this support.

Launched on 9 April, LegalMind is an independent, confidential, low-cost, mental-health support that is accessible to Law Society members and their dependants across Ireland, at any time of the day or night.

Support structure

LegalMind is a permanent support structure, based in Ireland, and available to you for any personal or professional challenges. Maintaining good mental health at this time can help you stay physically well.

The service offers ‘in the moment’ support, 24/7, over the phone, with a qualified, experienced and accredited counsellor or psychotherapist.

This mental-health profes-



PICT: SHUTTERSTOCK/GETTY IMAGES

sional will talk through any issues you or your family may be facing and, on completion of the consultation, will collaboratively explore the most appropriate next steps to consider and the supports available to you.

These further supports may include a series of face-to-face, online video, or over-the-phone counselling sessions.

Initial call

Following the initial phone call, which offers in-the-moment support with a counsellor and assessment of the issue, you will be offered an appointment to speak with a mental-health professional (psychologist, counsellor or psychotherapist) within 48 hours.

This appointment will be within a 30-kilometre geographical radius, and will take place inside five working days.

Currently, therapy sessions are taking place via online video and/or telephone.

Face-to-face counselling sessions will resume once the present health emergency has passed.

What are the benefits?

- LegalMind is an independent mental-health service provided by high-quality mental-health service provider Spectrum.Life, in partnership with Spectrum Mental Health. Absolute confidentiality is therefore guaranteed.
- LegalMind offers affordable mental-health supports to the profession. The first appointment will be free and, after that, Law Society members will pay a reduced fee of €30 per session.
- LegalMind employs best-prac-

tice standards and robust clinical and risk-governance policies and procedures.

- LegalMind offers three levels of supports:
 - Preventative, such as talk therapy,
 - Early intervention, for members facing more complex issues, and
 - Treatment and response for members experiencing a mental-health crisis.

Access LegalMind directly by calling the freephone number (1800 81 41 77) to speak with a mental-health professional and to work out a plan that feels right for you.

You can also register on the LegalMind online portal (see legalmind.spectrum.life) for access to information and content about physical wellness, wellbeing, mental health, and wellbeing events, using the code ‘well2020’.

Further details on this service are available on the Law Society’s Professional Wellbeing Hub at www.lawsociety.ie/legalmind.

Today – right now, at this very moment – LegalMind is here to help you.

We hope that knowing this support is here for you will give you some solace, on both the good and bad days that may lie ahead. Stay well.

ARE YOU RECEIVING THE PRESIDENT’S eBULLETINS?

■ Law Society President Michele O’Boyle continues to send out regular *eBulletins* to provide support and updates to the profession at this critical time. While this service was restricted to members, the Society is now sending these newsletters to all solicitors for

whom it has a valid email address.

If you are not receiving these updates, and wish to be added to the solicitors’ subscriber list for the *eBulletins* and *Legal eZine*, please email your contact details and solicitor number to ezine@lawsociety.ie.

ENDANGERED LAWYERS

ESTEBAN EMANUEL CELADA FLORES,
GUATEMALA



Esteban Emanuel Celada Flores is a human rights lawyer and member of the Group of Litigators against Torture in Latin America. He has collaborated with a number of human rights organisations in Guatemala, including *Mujeres Transformando el Mundo*. He has also provided legal representation in many sensitive cases across the country, concerning crimes against humanity, organised crime, sexual violence and femicide. Guatemala reportedly has one of the highest levels of violence against women in the world.

On the morning of 5 February 2020, unidentified men tried to break into his house through the main door. Earlier, unknown persons asked his neighbours about his whereabouts. The next day, Esteban Celada filed a complaint at the office of the Prosecutor for Human Rights. The complaint concerned the attempted break-in, as well as the numerous security incidents he had experienced throughout 2019. Up to late March, no action had been taken by the authorities.

Esteban Celada has been repeatedly targeted in the past. Between 8 May 2019 and 5 February 2020, he faced at least 27 security incidents, including persistent surveillance. On 8 February 2018, his brother David Raymundo Celada Flores was shot dead by unidentified persons as

he was leaving Esteban's house. Two witnesses were also killed during the incident. On the night of 21 December 2019, unknown individuals broke into his house while he was away. The intruders did not steal anything, but searched through his belongings, in particular documents related to his legal work.

Esteban Celada has a pending request for precautionary measures before the Inter-American Commission on Human Rights, which, according to information he received, has not been processed due to the failure of the Ministry of the Interior to submit a risk analysis.

Human rights defenders in Guatemala are subjected to death threats, physical attacks, acts of harassment, surveillance, stigmatisation, judicial harassment, spurious criminal charges, arbitrary detention, forced disappearance and killings. Many of the violations are carried out by clandestine security structures and illegal groups. The exceptionally high level of impunity enjoyed by the perpetrators increases the risk exponentially for human rights defenders. Few attacks are investigated, and even fewer result in convictions.

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

VIRTUAL MOOTERS TAKE BRONZE



Peter Carvill, Karolina Rozhnova and Fiachra MacElhatton

■ Representing Ireland, the Law Society's PPC1 trainees have come third in the 24th Annual Stetson International Environmental Moot Court Competition.

In light of the COVID-19 pandemic, the in-person oral arguments for the international finals in Florida were cancelled, and virtual rounds were held instead.

Peter Carvill and Karolina Rozhnova (William Fry) and Fiachra MacElhatton (Maples and Calder) competed in the

virtual final round, which was themed around the reintroduction of bears.

Coached by TP Kennedy (director of education), the trainees demonstrated their advocacy skills and knowledge of international environmental law.

The winning team was from the National University of Advanced Legal Studies in Kochi, India, while second place went to the National Law Institute University in Bhopal, India.

GLORIOUS GAZETTE GOING GREAT GUNS

■ Last month, for the first time in its 113-year history, the *Law Society Gazette* was produced entirely remotely using laptops, portable scanners, Cloud file-sharing sites, and Zoom for editorial meetings. (Photos of the editorial crew hard at work in Kildare, Dublin, and Sligo were included on p8 of the April issue.)

Your dedicated team was able to replicate a virtual newsroom production environment away from Blackhall Place thanks to this technology – and a little bit of *Gazette* magic.

Sadly, our printers for many decades, Turner's Printing, went

into liquidation on Friday 13 March after over 180 years in existence, resulting in 50 job losses. The magazine is now being printed by Boylan Print Group in Drogheda, Co Louth.

Production on the May issue has also taken place remotely, and this will continue for as long as is necessary.

We hope that you will continue to enjoy the high standards of content and production you expect from your *Gazette*. You can have the magazine temporarily redirected to your home address during the current lockdown – see p12 of this issue.

LAW SCHOOL LAUNCHES ONLINE PPC2

Monday 6 April was a historic day in the continuing development and modernisation of solicitor training in Ireland, as the Law Society welcomed 450 trainee solicitors from around the country to the **inaugural online** Professional Practice Course 2.

Director of Education TP Kennedy explains: “Arising from the current crisis, PPC2 will be delivered through optimised teaching and learning online. These are uncertain times, and we are fully committed to providing excellent professional training to our future solicitors and now, more than ever, to protecting their personal health and wellbeing.”

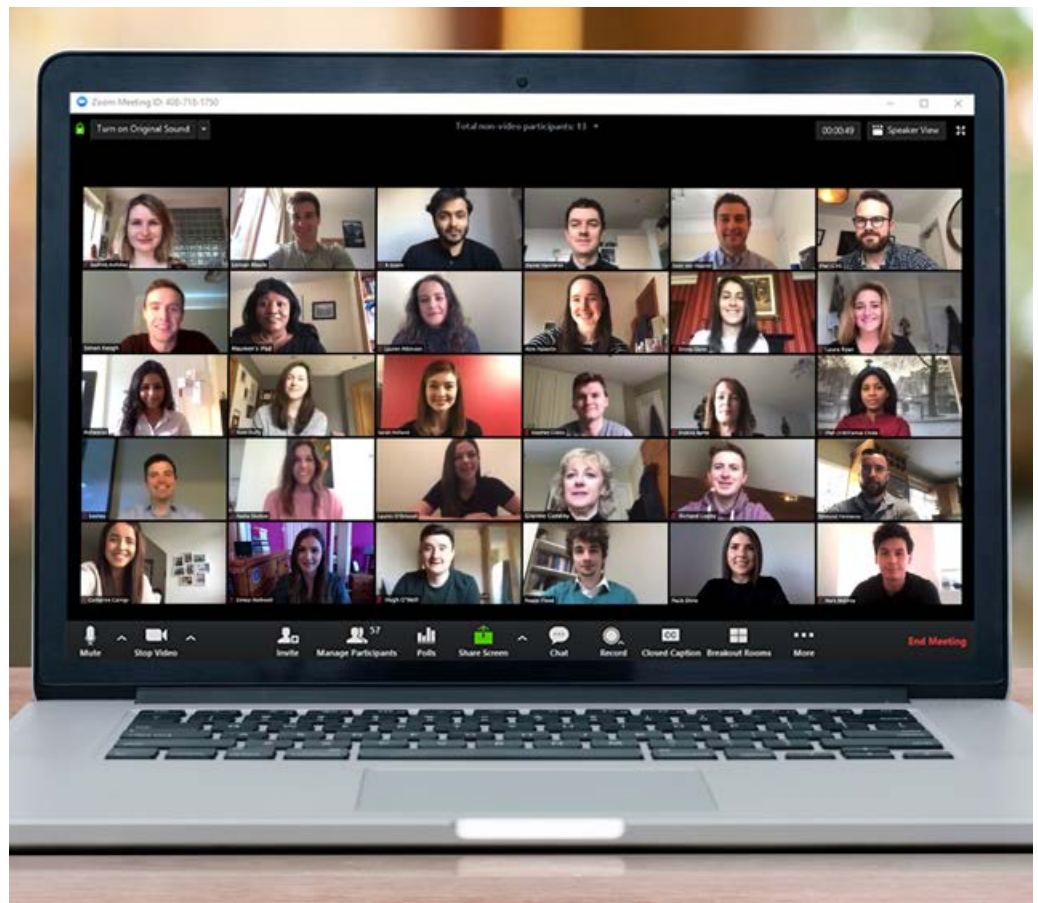
Active viewing

“Our use of technology does more than simply mimic standard lecture delivery,” says Kennedy. “We have developed a programme that promotes engagement by enabling PPC2 trainees to have an active rather than a passive viewing experience. We are particularly focused on how to minimise the risks identified in taking an online course, which include isolation, unfamiliarity with technology, and disengagement due to ineffective e-resources and instruction.”

The online PPC2 emphasises usability, mobile friendliness, and peer-to-peer engagement. Trainees will see additional educational elements, including pre-recorded e-lectures, which are available to watch online and on demand for the duration of the course, allowing trainees to consume lecture content at their own time and pace.

E-lectures incorporate a series of embedded interactive features, including:

- Personalised viewing options, allowing the participants to see both the lecturer and their presentation slides simultaneously,
- A function to allow searches for



Members of the PPC2 course attending a Zoom lecture

any word spoken or shown on screen,

- Navigational controls to move directly to specific sections of the video,
- A podcast download feature to allow offline review of audio content,
- A note-taking facility to add synchronised comments, and
- Visual bookmarks within the lecture window.

“The PPC2 is a full-time course, but we have designed the programme to empower trainees and to provide access to lectures and course materials remotely, at a time and in a place that best suits their own study needs. Our e-lectures are captured using Panopto, which enables our staff and associate faculty to record and share flipped classroom videos from anywhere, using any laptop,

tablet, or smartphone,” says Kennedy, adding: “We are particularly mindful of the potentially isolating impact of this period of closure and separation.”

Isolating impact

During the online PPC2, e-lectures will be supported by Zoom live tutorials, providing all the benefits of traditional face-to-face tuition and a sense of connected learning within the Zoom classroom. These tutorials allow for interaction between course tutors and smaller groups of trainees, providing a ‘hands-on’ approach to reinforce their learning.

Free time-concentrated therapy sessions, which support trainees in achieving positive mental wellbeing, are also available for the duration of the course. The dedicated Psychological Services

team will provide counselling through confidential Zoom sessions, while ‘Shrink Me Online’ provides a safe and positive platform for trainees to unlock their wellbeing through shared thoughts, ideas and engagement with the Law School community.

The Law School has always been innovative in the use of technology for educational programmes. Last year, it was awarded the accreditation of ‘Apple Distinguished School 2019-2021’, which is given to outstanding schools and programmes worldwide that are regarded as centres of innovation, leadership and educational excellence.

Trainees can receive regular Law School updates through:

- twitter.com/lawsocedu,
- www.facebook.com/lawsocedu,
- or www.linkedin.com/groups/8103163.

IRELAND IS FAILING SMALL BUSINESSES

Ireland must do significantly more to help businesses remain solvent during the shutdown, argue **Greg T Rinckey** and **Mathew Tully**

GREG T RINCKEY AND MATHEW B TULLY ARE PARTNERS IN TULLY RINCKEY LLP, IRELAND, AND FOUNDING PARTNERS OF TULLY RINCKEY PLLC IN THE UNITED STATES



WE ARE HONESTLY SHOCKED AT THE LOW LEVEL OF ASSISTANCE THE IRISH GOVERNMENT HAS OFFERED TO SMALL BUSINESSES AFTER TAKING THE DRACONIAN STEP OF CLOSING DOWN ALL BUSINESS

The Government-ordered shutdown of all non-essential business has devastated the economies of the United States and Ireland. Yet we must look towards brighter days when the economy will restart and life will return to normal.

As business owners of a law firm in both the US and Ireland, we were shocked at how disparate the Irish and American Government actions were

in regard to economic aid to the small business community.

The US Government passed legislation on 27 March 2020 under the *Coronavirus Aid, Relief and Economic Security (CARES) Act*, which is the largest relief bill in US history and will allocate US\$2.2 trillion in support to individuals and businesses affected by the COVID-19 pandemic and economic downturn.

The primary highlight of the

act dedicated to revitalising the economy is the *Paycheck Protection Program (PPP)*. The PPP allocates US\$350 billion to small businesses in order to prevent layoffs and business closures while workers have to stay home during the outbreak.

Companies with 500 employees or fewer that maintain their payroll during the coronavirus pandemic can receive up to eight weeks of cash-flow assistance. The loan proceeds can be used to cover payroll costs, mortgage interest, and rent and utility costs over the eight-week period that the loan is made. This aims to ensure that American small businesses can keep employees on the payroll and compensation levels are maintained throughout the crisis.

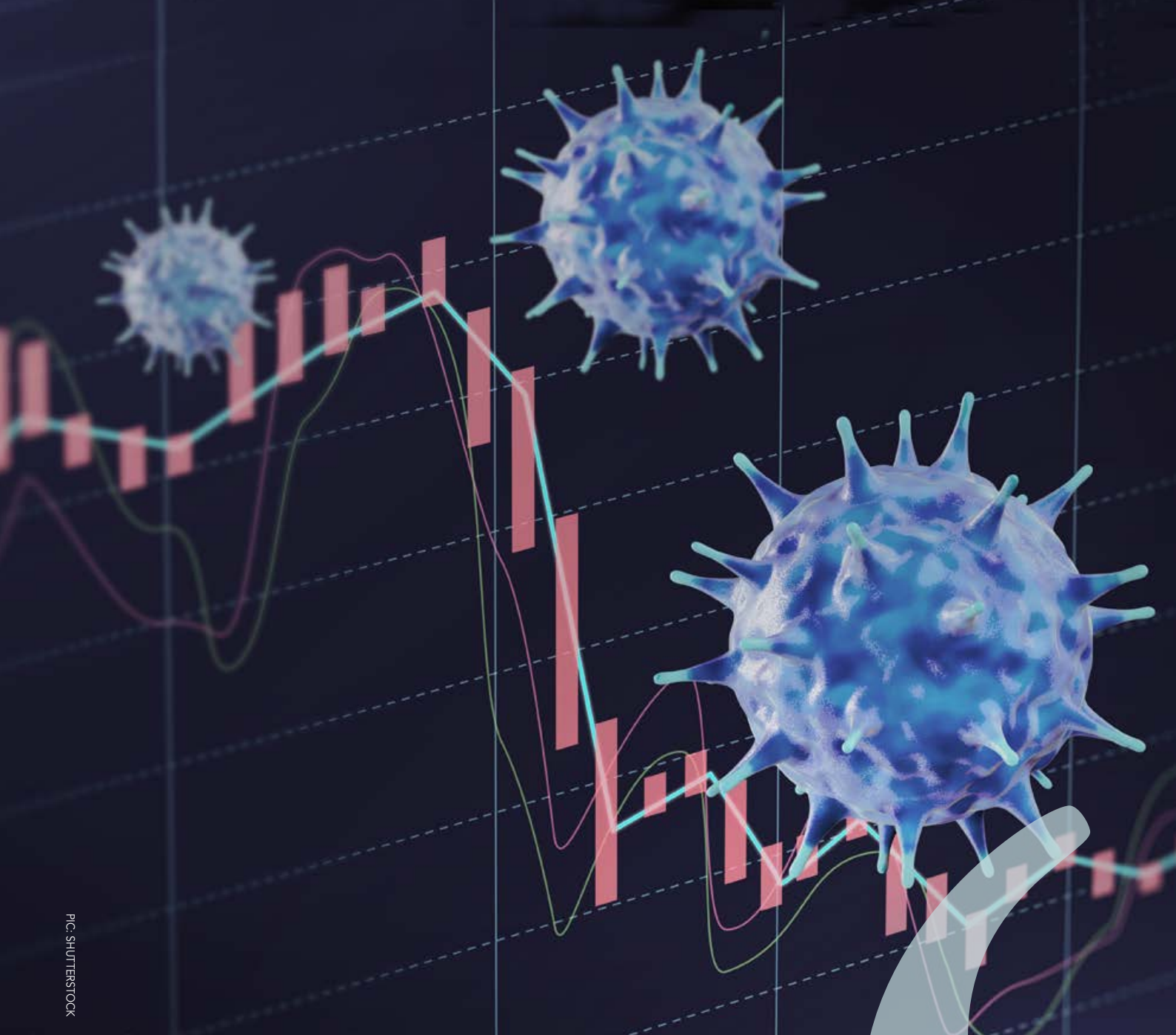
If employers maintain payroll, the portion of the loans used for covered payroll costs, interest on mortgage obligations, rent, and utilities are forgiven. While payroll is capped at US\$100,000 for each employee, this is a fair and reasonable amount to ensure mid-level employees and mid-level businesses survive.

The application process is made very simple, by allowing businesses to apply through any federally insured depository



Finance Minister Paschal Donohoe announces an update to the Temporary Wage Subsidy Scheme on 15 April

PIC: LEON FARRELL/PHOTOCALL IRELAND



PIC: SHUTTERSTOCK

institution. All small businesses under 500 employees can apply, and the PPP loan money will be dispersed within 48 hours, ensuring small businesses can maintain liquidity during the crisis.

Cash is king

What small businesses need most in this crisis is cash flow. Cash is king in any crisis and ensures that expenses can be paid and, most importantly, that employees can be paid. The most critical part is

that the PPP loans are deferred for six months, interest is 1% fixed rate, and the loans may be forgiven if, by 30 June 2020, the business restores full-time employment and salary levels to any changes made between the periods 15 February 2020 and 26 April 2020.

No collateral is required for the PPP loan, and no personal guarantee is required by the small business owner. The PPP loans will ensure that American

businesses are poised to make a comeback when the pandemic ends and businesses are reopened. The US economy is clearly in recession territory, but the *CARES Act* is likely to ensure that a brief recession does not turn into a depression.

Threat of arrest

Juxtaposed with this response, the Irish situation is clearly more concerning, due to the lack of strong Government aid or assistance to

WHILE THE US IS POISED FOR A RAPID COMEBACK, WE FEAR THAT MANY IRISH MID-LEVEL BUSINESSES – INCLUDING LAW FIRMS – WILL NOT MAKE IT

COVID19 CPD SUPPORT FOR SOLICITORS

To support solicitors during the challenging months ahead Law Society Finuas Skillnet have launched **LegalED Talks** funded by Skillnet Ireland who are funded by the Department of Education and Skills. This is a **Free CPD** series of weekly talks from expert speakers that will cover the following four areas:

- 1 | COVID-19 LEGAL PRACTICE UPDATES** - Focused on new emergency legislation and initiatives that have been implemented by the Government, Court Services and public sector bodies to address the current crisis. It will include the wage subsidisation legislation, business support initiatives, tax and revenue practice changes, civil litigation and PIAB, family and child law, probate, conveyancing, GDPR, Cyber security, digital signatures and many other topics.
- 2 | REGULATORY TOPICS** such as section 150 costs and AML.
- 3 | IT KNOW-HOW SERIES** - This will comprise of talks and tutorials to assist you in the use of software tools to work remotely at home.
- 4 | SHRINK ME ONLINE PROGRAMME** - This twelve week programme has been designed by the Psychological Services Section of the Law Society Education Department. It will comprise of two distinct elements. Unlocking Wellness Together (which will be delivered by psychologists, professional leadership and coaching experts and counsellors) and the Legal Lives Series (which will share interesting insights and perspectives from many well-known individuals within the legal profession).

All LegalED Talks are short sessions comprising various formats of delivery that can be accessed from your LegalED Talks Learning Management Hub. Sessions will be disability accessible with closed caption/sub-titles and will include knowledge checks. New sessions will be uploaded weekly so keep checking to make sure you don't miss out on this great new learning support. Over 26 free CPD hours will be available from 15 April 2020. **To register to join the LegalED Talks Learning Management Hub click www.lawsociety.ie/LegalEdTalks or email finuasskillnet@lawsociety.ie**

DIPLOMA CENTRE



The Diploma Centre at the Law Society has launched two new courses to support the profession at this challenging time and has introduced a suite of measures that will furnish **21 free CPD hours** to solicitors.

- 1 | DIPLOMA CENTRE – CERTIFICATE IN TECHNOLOGY LAW.** This five-week course will provide an overview of key areas such as social media and the law, data protection, e-commerce, cybersecurity, cybercrime, Fintech and blockchain. **14 CPD hours.**
- 2 | DIPLOMA CENTRE – INTRODUCTION TO ARTS, ENTERTAINMENT AND MEDIA LAW.** Also spanning five weeks, expert speakers on this course will offer an insight into broadcasting, publishing, contractual obligations and litigation in the entertainment industry, copyright and image rights. **7 CPD hours.**
- 3 | All lectures are online with live interactive workshops** with lectures released weekly. Lectures and workshops are available to view on demand to provide maximum flexibility. Certificates will be awarded once short continuous assessments are completed.

Lectures are released weekly and both courses include live interactive workshops. Both courses begin on 16 April 2020. However, it is possible to join these courses at any time before 31 July 2020.

To register please visit www.lawsociety.ie/diplomas or email techlaw@lawsociety.ie or medialaw@lawsociety.ie

small businesses during the Government-ordered shutdown.

We are honestly shocked at the low level of assistance the Irish Government has offered to small businesses after taking the draconian step of closing down all business, under threat of arrest. Under the [Temporary COVID-19 Wage Subsidy Scheme](#), up until 16 April 2020, the Revenue will refund up to 70% of the employee's weekly net pay, but only to a maximum of €410 per employee for workers earning under €38,000. The scheme will only contribute up to €350 for employees earning between €38,000 and €76,000, while employees earning over €76,000 are not eligible at all! The Wage Subsidy Scheme was amended on 15 April 2020 to provide assistance to those employees whose average net weekly pay exceeded €960 and did not qualify under the previous scheme rules. This amendment to the scheme is a move in the right direction but is still too little and too late.

Moreover, businesses must be able to show that they have lost at least 25% of their turnover due to the COVID-19 pandemic and otherwise unable to pay normal wages and outgoings. Unlike the US recovery plan, business owners are not included unless they cease trading. Basically, the business must admit to being insolvent to get the aid and, moreover, Revenue will publicly post a list of every company availing of the scheme, which stands to hurt the long-term reputation and future dealings of businesses.

Devastating impact

At the time of writing, 40,000 Irish businesses had availed themselves of the aid. While this wage scheme may be helpful to lower-wage employers, it will be devastating to mid to higher-level wage employers.

While the US is poised for a rapid comeback, we fear that many Irish mid-level businesses



PIG: SHUTTERSTOCK

– including law firms – will not make it through the crisis, and will lay off thousands of employees or (worse yet) become insolvent and close their doors for good. There is a major risk that Ireland is slipping into a long-lasting recession again.

What Ireland needs is similar to what the United States has passed under the *CARES Act*. Irish small business owners need cash liquidity to pay business expenses, such as payroll, rent and utilities. Many Irish businesses have seen a drop-off of more than 70% of turnover. Some businesses in the travel, hospitality and entertainment industries are even worse off, as their revenue has virtually dried up.

Another Great Recession?

Ireland was booming before the COVID-19 pandemic hit. It is critical that the Government provides more financial aid to the small businesses that have been decimated by the shutdown. If the Government fails to act, the Irish economy is headed towards another recession/depression

that will be worse than the 2008 'Great Recession'.

This does not have to happen. What Irish small businesses need – and need now – is additional loans made by the Government that can be forgiven if certain criteria are met, such as rehiring or keeping employees on the payroll. This will ensure that businesses are able to remain solvent during the shutdown and are poised to roar back to life once the economy reopens.

This type of lending will also instil confidence in the small business community that they will survive this crisis, and encourage them to keep spending and paying expenses. This is critical to the Irish economy as a whole, because the more apprehensive people are about an uncertain economic future, the less likely they are to spend – and that has a continual spillover effect on the entire economy.

The decisions that the Government makes now will have long-ranging effects for the prosperity of small businesses, and for Ireland. [g](#)

THE US ECONOMY IS CLEARLY IN RECESSION TERRITORY, BUT THE CARES ACT IS LIKELY TO ENSURE THAT A BRIEF RECESSION DOES NOT TURN INTO A DEPRESSION



WAR HORSE

During the final years of World War 2, an intriguing legal case involving the sale of 'war horses' came before the High Court and, subsequently, the Supreme Court. The case rotated on wartime neutrality, British intelligence and wartime navicerts. **Barry Whelan** mounts up

DR BARRY WHELAN IS DIPLOMA EXAMS ADMINISTRATOR AT THE LAW SOCIETY AND AUTHOR OF *IRELAND'S REVOLUTIONARY DIPLOMAT: A BIOGRAPHY OF LEOPOLD KERNEY* (NOTRE DAME UNIVERSITY PRESS)



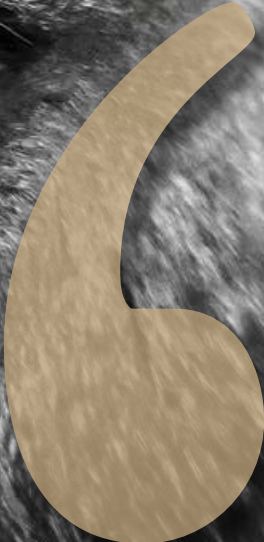
≡ AT A GLANCE

- The Saorstát and Continental Steamship Company issued court proceedings for breach of contract against Spanish Colonel de las Morenas, who had travelled to Ireland to purchase horses for show-jumping competitions
- The contract placed responsibility on Morenas for 'dead freight' if the horses were not shipped
- The ship sailed without the horses on 24 March 1944 – the shipping company sued for £2,600 in damages
- Morenas requested the High Court in Dublin to set aside the proceedings, but the court dismissed Morenas's defence that "a foreign sovereign state may claim immunity from the jurisdiction of these courts", and awarded costs to the company

PIC: SHUTTERSTOCK

On 17 April 1944, an Irish shipping company, Saorstát and Continental Steamship Company, issued court proceedings against a Spanish military officer Colonel de las Morenas for breach of contract. The Spanish officer was part of an army commission that had travelled to Ireland to purchase horses for show-jumping competitions.

The company stated that, on 9 March, Morenas had agreed to reserve space on its ship, the *SS Assaroe*, for "52 horses at the rate of £50 each to be carried by the plaintiff's vessel". The company had specially designed ships that had been carrying livestock to Europe since 1936 and had continued to operate throughout the war flying under the Irish flag, often in perilous circumstances. The *SS Assaroe* had previously been damaged off the coast of Howth. Another ship, the *City of Waterford*, had been damaged by



THE MAJORITY OF AXIS LOGISTICAL SUPPLY DURING THE WAR WAS NON-MECHANISED AND WAS CARRIED BY HORSES. BRITISH INTELLIGENCE BELIEVED THAT THESE HORSES WERE BEING USED FOR SUPPLYING AND EQUIPPING THE AXIS ARMIES IN THE FIELD

German aircraft in the Bristol Channel, while yet another ship, the *City of Bremen*, had been lost due to German aerial attack in the Bay of Biscay.

The freight was due to sail on 24 March 1944 for Lisbon, and a stipulation of the contract placed responsibility on Morenas to ensure that, if the horses were not ready to be shipped on time, then he “would be responsible for dead freight”. When the ship did sail on 24 March without the horses, the company sued for £2,600 in damages (equivalent to €109,369 today). Morenas requested the High Court in Dublin to set aside the proceedings on the grounds that the matter was “outside and without the jurisdiction of the court as they implead the Government of Spain, a Sovereign State”.

During the trial, Morenas stated that the reason he had failed to deliver the horses to the ship was due to a delay in obtaining a navicert. In the months leading up to the Allied cross-Channel invasion of France on 6 June 1944, the Royal Navy had instigated a navicert system, which required all neutral ships to register their contents to prevent any contraband reaching an opposing belligerent.

Monitoring activities

For some time, British intelligence had been monitoring the activities of the Comisión Militar Española (Spanish Military Commission). In one instance, they noted that the commission had purchased horses from neutral Portugal and then, subsequently, sold them to Italy, a wartime enemy of Britain. British

intelligence, through the ambassador in Madrid, wrote to the Spanish Minister for Foreign Affairs General Jordana to highlight the links between these officers and the Axis powers, adding that they did not accept the notion that these horses were being purchased for show-jumping competitions.

The majority of Axis logistical supply during the war was non-mechanised and was carried by horses. British intelligence believed that these horses were being used for supplying and equipping the Axis armies in the field. Given the Spanish Military Commission’s existing history with the Axis powers, and the multitude of other pro-Axis activities that General Franco’s regime engaged in – from secretly provisioning submarines to using their diplomatic service to gather



German Army horses towing an infantry gun, Poland, September 1939 (German Federal Archive, Bild 183-S54817)

intelligence for Berlin and Rome – it was no coincidence that the British had refused issuing a navicert to the commission in Ireland. The Allies wanted complete control over the sea lanes of Europe and to shut down any clandestine assistance to the Axis, especially in the lead-up to the largest amphibious invasion in history.

Press sensation

On 16 August 1944, Mr Justice Haugh made his ruling in the High Court. He dismissed Morenas's defence that "a foreign sovereign state may claim immunity from the jurisdiction of these courts" and awarded costs to the company. The judgment caused a sensation in the press and further afield. When news of the court's judgment reached Spain, the country's Army High Command informed the Ministry of Foreign Affairs

in Spain that it would dispatch naval boats to Dublin to recover the horses, unless the court reversed its decision.

The new Spanish Minister for Foreign Affairs, José Félix de Lequerica, wrote to the British Ambassador for assistance in the matter, but was informed that, due to the ongoing invasion of Western Europe, "no neutral ships are permitted to travel on the route between Spain and Éire" and, if any Spanish naval vessels attempted to sail to Dublin, they would be intercepted by Allied warships.

Madrid then instructed its diplomatic representative in Dublin, Juan Garcia Ontiveros, to pressure the Department of External Affairs to intervene in the case. In the past, External Affairs had assisted Ontiveros in several matters, including

keeping him informed about political opponents of Franco's regime based in Ireland, as well as pressuring newspapers to avoid publishing anti-Franco material in the leading broadsheets. The department's secretary, Joseph Walshe, had been eager to foster benign relations with Franco's dictatorship. When war came, Walshe saw the shared policy of neutrality as another binding indicator of cordial Irish/Spanish relations. On this occasion, however, the department refused to provide any support to Ontiveros, citing the "independence of the Irish judicial system".

Clear line of separation

The Spanish diplomat could not understand this decision, which highlighted the complete disparity between the Irish and Spanish legal systems at the time. While the former had a clear line of separation between the executive and the judicial arms, in the case of the latter, the justice system served the political interests of the regime at all times. Its courts carried out brutal and repressive measures against Franco's opponents without any fair trials or hearings taking place, and its courts existed to serve the dictator and not the public interest.

Ontiveros pushed for an appeal to the Supreme Court, hiring two leading barristers and future Taoisigh, John A Costello SC and Liam Cosgrave (junior counsel) to represent Morenas. Costello had a distinguished legal career long before this case and was noted for his debating style in court. He was also a former attorney general, had introduced emergency legislation to tackle the IRA after the Irish Civil War, and had helped pressure Britain to pass the *Statute of Westminster*

WHEN NEWS OF THE COURT'S JUDGMENT REACHED SPAIN, THE COUNTRY'S ARMY HIGH COMMAND INFORMED THE MINISTRY OF FOREIGN AFFAIRS IN SPAIN THAT IT WOULD DISPATCH NAVAL BOATS TO DUBLIN TO RECOVER THE HORSES, UNLESS THE COURT REVERSED ITS DECISION

in 1931, which recognised the legislative independence of the dominions in the Commonwealth.

Cosgrave, by contrast, had been called to the Irish bar the year before, was relatively inexperienced, but came from a famous and well-connected political family. His father, William T Cosgrave, had been the first president of the Executive Council of the Irish Free State. The Spanish diplomat was confident that, with this legal team, the judgment of the High Court would be overturned by the Supreme Court.

Unanimous decision

The Supreme Court recognised that Ireland, like most countries, accepted the principle of international law, the immunity of sovereign states and its rulers, and that municipal law accepted and recognised this principle. Furthermore, Mr Justice O'Byrne cited article 26, section 3 of *Bunreacht na hÉireann*, which states: "Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other states."

However, the Supreme Court, in a unanimous decision on 18 December 1944, upheld the judgment of the High Court by finding no grounds that the Government of Spain had been impleaded, either directly or indirectly, and therefore there was no basis for setting aside the decision.

Mr Justice O'Byrne contended that Colonel de las Morenas had been sued in his personal capacity by the shipping company, and any judgment could not be enforced against any property, save that of the appellant. The judge continued that, in his view, only if a sovereign state had been named as a defendant in the proceedings could it be directly impleaded – but this had not been done in this case.

He further argued that a state could be indirectly impleaded to indemnify Morenas by virtue of his appointment as an agent of the Spanish Government, but "this was far short of saying that the government was being impleaded". Mr Justice O'Byrne also noted that counsel for Morenas had been unable to show one example when a government had been held to be impleaded merely because its agent had been sued.

The ruling was a landmark decision. The general acceptance of sovereign immunity by countries under international law could no longer be viewed now as an absolute.



THE SPANISH DIPLOMAT COULD NOT UNDERSTAND THE HIGH COURT DECISION, WHICH HIGHLIGHTED THE COMPLETE DISPARITY BETWEEN THE IRISH AND SPANISH LEGAL SYSTEMS AT THE TIME

Although the case highlighted that Irish domestic law accepted the doctrine of sovereign immunity, the judgment recognised a distinction between direct and indirect state immunity and, thus, a more restrictive view of sovereign immunity emerged from the case. It has been cited by many subsequent cases since, showing that, if one invokes international law, there is no guarantee of success, since state immunity is now viewed (in light of this case) in a more constricted manner.

Sour taste

Outside of the legal ramifications of the case, its impact left a sour taste in Irish/Spanish relations. Owing to the war and the unfortunate circumstance that only a specialised vessel could carry such livestock, Morenas and his team were to remain in Ireland for most of 1945. The whole controversy convinced the Spanish authorities to alter their entire trading relationship with Ireland. In future, all goods would be placed and transported on Spanish ships.


The case also undermined Ontiveros's relationship with External Affairs. His anger at what he perceived to be their indifference to the case from a Spanish viewpoint led him to become increasingly impudent in his dealings with Dublin, which further eroded the once-cordial relationship.

When the Second World War ended, Franco moved quickly to replace his representative with a more tactful diplomat. Ontiveros's successor, Count Artaza, enjoyed excellent relations with External Affairs and concluded several important trade deals between the countries.

Despite losing the case, John A Costello continued his successful legal profession in a part-time capacity, along with his political duties, and became Taoiseach of the first interparty government in 1948, thus ending 16 years of Fianna Fáil dominance in political power. He chose Liam Cosgrave, his junior counsel in the *Morenas* case, as his parliamentary secretary and Government chief whip.

Horse power

Ironically, in a case that centred on horses, the Spanish would continue to buy Irish horse breeds because of their excellent quality and, in post-war sporting competitions at which they both competed, horses helped continue the historic relationship. Both countries faced isolation in the post-war era – Ireland for its neutral policy, and Spain for its overtly non-neutral policy.

Just as British intelligence kept its eyes on Morenas and his team in the lead-up to D-Day, so it maintained surveillance in the post-war era. The shadow of British intelligence stayed ever-present in Irish/Spanish relations during the years that followed. 

Q LOOK IT UP

CASES

- *Saorstát and Continental Steamship Co v de las Morenas* [1945] IR 291

LEGISLATION:

- *Bunreacht na hÉireann*, article 26, section 3

WITH A LITTLE HELP FROM MY FRIENDS

The original ‘McKenzie Friend’ Ian Hanger speaks to **David Mulligan** about the groundbreaking case that led to the establishment of the landmark principle

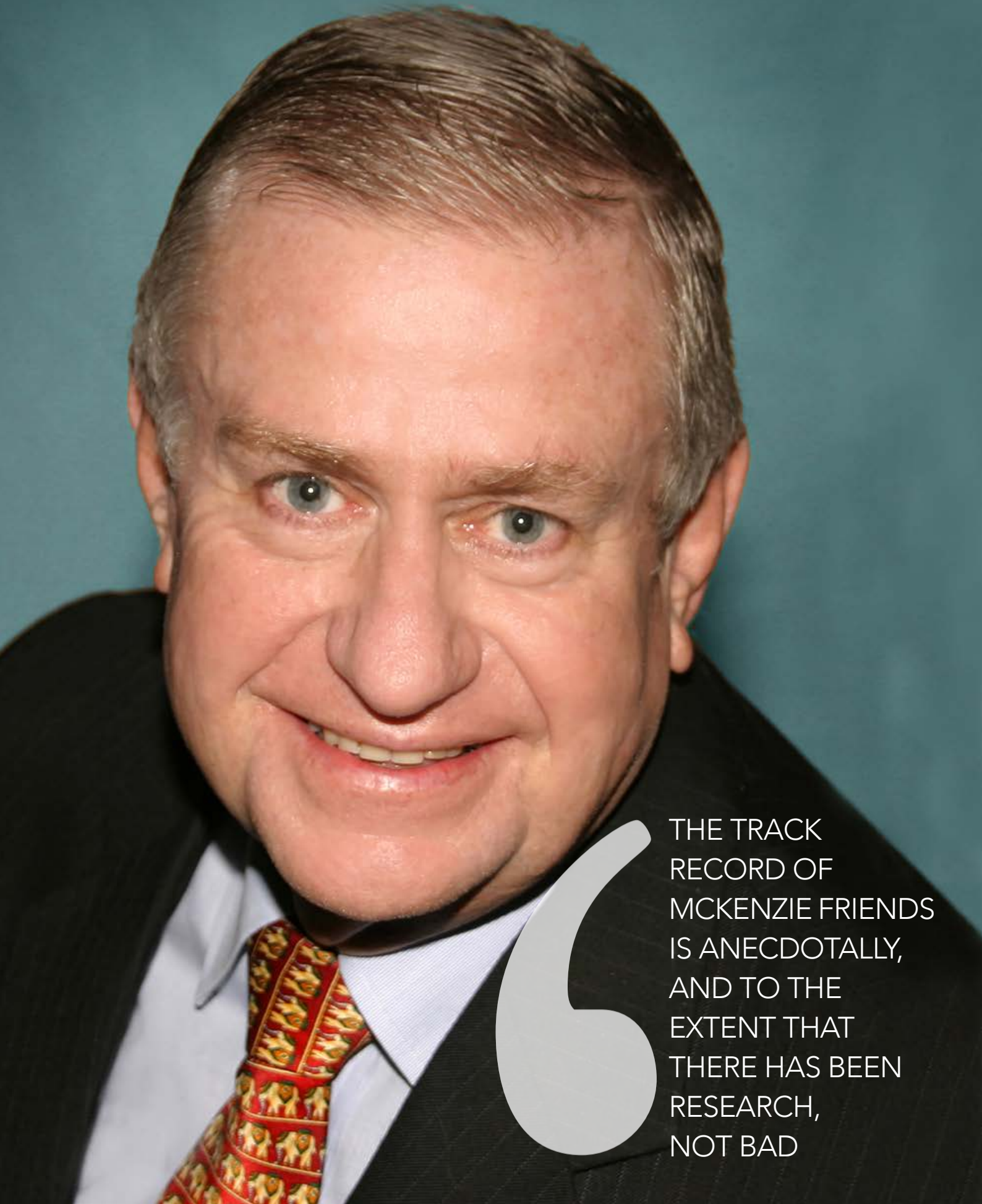
DAVID MULLIGAN IS A SOLICITOR WITH MELLOTT O’CARROLL SOLICITORS AND IS ADMITTED BOTH IN IRELAND AND AUSTRALIA. WHILE WORKING IN AUSTRALIA, HE WORKED ALONGSIDE MR HANGER

an Hanger is the original ‘McKenzie Friend’. Levine McKenzie was a client of the small London law firm for which Hanger worked. McKenzie had been legally aided by the firm during a divorce case but, due to a false statement about his domicile, he lost his legal-aid funding. As a result, the law firm ceased representing him. On the day before the trial, however, the firm agreed to assist McKenzie on a *pro bono* basis.

Ian Hanger was the lawyer tasked with assisting McKenzie – though Hanger had not been admitted as a barrister in England. When the case was called, Hanger sat beside McKenzie at the Bar table, though he did not announce himself. He simply sat there and quietly prompted McKenzie when necessary – and this ultimately led to the birth of the concept of the ‘McKenzie Friend’.

So, how did a young Australian barrister find himself in London in the late 1960s? Ian Hanger had graduated in 1968 and had been immediately called to the Bar in Australia, but decided to spend some time overseas before embarking on his legal career proper.

“While I spent a short period after my arrival in England serving with the Royal Green Jackets, I then found a job at a small suburban London law firm, where I remained working throughout my time in England.



THE TRACK
RECORD OF
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AND TO THE
EXTENT THAT
THERE HAS BEEN
RESEARCH,
NOT BAD

IN AUSTRALIA, THE RESPECTIVE LEGAL PROFESSION ACTS PROHIBIT A PERSON FROM ENGAGING IN LEGAL PRACTICE UNLESS THE PERSON IS A QUALIFIED LEGAL PRACTITIONER. I ASSUME THERE ARE SIMILAR PROHIBITIONS IN IRELAND

“While I was not admitted as a barrister in England, I attended to whatever legal work my employer asked of me.”

Be my friend

“One of our clients, Mr Levine McKenzie, a Westminster dustman, was of Jamaican origin. He had some linguistic difficulties and had been legally aided by our firm in his defended divorce.

“He lost his legal-aid funding because he had made a false statement about his domicile, which was not the United Kingdom but the West Indies. I had had no contact with him.

“We had ceased to act for him, but on the day before his trial, he made contact with our firm and my employer asked me if I would go to court the following day to help Mr McKenzie, *pro bono*.

“When the case was called, I went into court and took up a position beside

Mr McKenzie at the Bar table. I did not announce an appearance. I simply sat there and quietly prompted him.

“I confess that it did not occur to me or my employer that the judge would object to such a process. After querying my presence, the judge remarked: ‘Well, you have no right to sit at the Bar table. You can sit at the back of the court and help him during adjournments’.”

That’s what friends are for

“Mr McKenzie’s trial took some ten days, but was unsuccessful,” says Hanger. “I read the judgment, looking for an error of law, and formed the opinion that there was none.

“From memory, I think I wrote on the note from my employer asking me to look at the judgment, something that was meant to be facetious, such as: ‘The only appeal is that he didn’t have me’, or ‘would have done better with me’, or something equally trite

– and not intended to inspire an appeal. But it did! I presume that a proper advice was obtained from counsel, but I don’t actually know.”

Mr McKenzie was ultimately successful before the English Court of Appeal, which concluded that the trial judge had erred in disallowing Hanger from giving advice and assistance to McKenzie from the Bar table. By default, Ian Hanger became the legal world’s first ‘McKenzie Friend’.

In certain jurisdictions, including England, McKenzie Friends have become a thorny issue, as they have started charging for their services. In 2014, in Britain, the Legal Services Consumer Panel, under the *Legal Services Act*, published a short report entitled *Fee-charging McKenzie Friends*.

By this time, a number of individuals (or, indeed, groups of individuals) were charging fees for acting as McKenzie Friends. The panel interviewed a number of such Friends and reported that some were conducting between 50 and 100 matters per year, while some were earning more than Stg£100,000 per annum. Most had no insurance. Interviews with these fee-charging Friends showed that they were doing a lot more than what the traditional McKenzie Friend had been permitted to do – and were doing a lot more than had been suggested in the practice guidance document.

My friend of misery

As a result of the most recent Irish recession, our courts have seen a deluge of home repossessions. With a limited civil legal-aid scheme, many lay litigants are seeking assistance from self-styled McKenzie

Q SLICE OF LIFE

Ian Hanger was called to the Bar in 1968 and took silk in 1984. He practised extensively in commercial law and then became a leader in the field of mediation from 1990.

Since that time, he has mediated more than 2,000 disputes – commercial, construction, estates, trust, negligence, professional negligence, contracts, defamation, insolvency, equity, family provision, and personal injuries arising from abuse.

He is a mediator for the Court of Arbitration for Sport, a mediator nominated by the Australian Government to the International

Centre for the Settlement of Investment Disputes, an arbitrator of the Chinese International Economic and Trade Arbitration Commission, a member of the Hong Kong Mediation Panel, and a mediator of the Singapore Mediation Centre.

He has been named in the Australian Financial Review list of ‘best lawyers in Australia in the field of ADR’ every year since 2008.

He is a life professor at Bond University and was made a member in the Order of Australia in 2007 for services to law in the field of ADR, and for his services to music.



P.C. SHUTTERSTOCK

TO PERMIT FEE-PAID MCKENZIE FRIENDS WOULD IMPLICITLY ACKNOWLEDGE THE CREATION OF A NEW BRANCH OF THE LEGAL PROFESSION

Friends when attending court. There are concerns in the legal profession that some of these individuals are providing these services for payment. What are Hanger's views on the threat posed by fee-charging McKenzie Friends, who might be regarded as usurping the traditional role of solicitors and barristers?

"Legal fees are expensive, and there are many people who have a proper dispute that needs to be adjudicated by a court and cannot afford representation. Legal aid is limited, and litigants in person are common and will probably increase. The track record of McKenzie Friends is anecdotally, and to the extent that there has been research, not bad. [See: *A Study of Fee-charging McKenzie Friends and their Work in Private Family Law Cases*.]

They do, at least, provide some assistance, and there is an unmet need in the community.

"However, to permit fee-paid McKenzie Friends would implicitly acknowledge

the creation of a new branch of the legal profession. In Australia, the respective *Legal Profession Acts* prohibit a person from engaging in legal practice unless the person is a qualified legal practitioner. I assume there are similar prohibitions in Ireland. I completely condemn the practice of McKenzie Friends charging for their services."

Waiting on a friend

Some universities in Britain have introduced schemes where students act as McKenzie Friends on a *pro bono* basis. If McKenzie Friends are to stand the test of time, is this the kind of role Mr Hanger sees for them – and does he recommend the introduction of such schemes in Ireland?

"Yes, I understand that schemes like this are in place in England, and I would recommend them. What I would like to see is active engagement by university

law schools encouraging the students to become McKenzie Friends (or whatever they end up being called), running workshops to train them in what they can and can't do, and encouraging *pro bono* work in their final university year.

"There is a win/win in this. The students gain the courtroom experience and the litigants gain an enormous benefit by having somebody, who is close to being legally qualified, helping them in the courtroom."

In Australian legal circles, Ian Hanger is well-known as a mediator. Mediation has been a central dispute resolution tool in Australia since the 1990s. In Ireland, we are playing catch-up to a certain extent, with mediation only being seriously considered in recent years. Does he have any words of wisdom for Irish practitioners on the benefits of mediation?

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“The initial reluctance to embrace mediation is completely understandable, but within five or six years of mediation being introduced in Australia, contrary to expectations, it became more and more popular.

“To suggest mediation to your opposite number was no longer regarded – and is not now – a sign of weakness. Lawyers have developed a new set of skills in the field of negotiation – skills that were not taught at law school until recent times. We have reached the stage where many lawyers earn a significant income as mediators, and a great many more earn significant income representing their clients in mediations.

“In my state of Queensland in the early '90s, there was a three-year delay in the court list. That has since been massively reduced. Some judges have said by way of *dictum* that they consider that a solicitor would be negligent in failing to advise his client of the availability and benefits of mediation.

“For commercial practitioners, the lawyer's role begins before a disagreement arises. In the commercial context, you should consider the option of inserting a mediation clause into a contract with a view to resolving disputes amicably, rather than resorting to litigation.


“In the early '90s, various Australian states introduced the concept of ‘settlement weeks’, whereby trained mediators offered their services at a reduced fee for a part-



Ian Hanger QC – the original ‘McKenzie Friend’

icular week to focus efforts on reducing long court lists. This involved the court writing to litigants and their solicitors, advising of the availability of this service, and encouraging their participation. It required some administration, either by the court or by the local law society and bar association. Local media gave the

concept some publicity.

“The result was that many cases were settled, the public learned about the mediation process, and those lawyers – many of whom had little or no experience in conducting mediations – were able to put their newly acquired skills into practice for more modest fees.” 

Q FOCAL POINT

WHAT IS A MCKENZIE FRIEND?

A ‘McKenzie Friend’ denotes a person who attends court for the purposes of taking notes, making quiet suggestions or assisting a lay litigant during the course of a hearing, but who is not qualified as a solicitor or barrister and who does not act as an advocate at the hearing.

In the ordinary course of events, a McKenzie Friend may attend and assist a lay litigant, but may not act as an advocate. A McKenzie Friend is present in the capacity as a member of the public and, accordingly, will normally not be permitted in proceedings required to be held “otherwise than in public” – for example, in matrimonial matters. To permit a McKenzie Friend in

such circumstances, the court would require overwhelming evidence that a fair hearing could not be secured in the absence of a McKenzie friend (*Murdoch and Hunt's Dictionary of Irish Law*).

The principle of the McKenzie Friend is accepted in courts of law in Ireland (north and south), England and Wales, New Zealand, and Australia. A similar, modified principle exists in Singapore.

A McKenzie Friend may be liable for any misleading advice given to the litigant in person, but is not covered by professional indemnity insurance. The role is distinct from that of a ‘next friend’ or of an *amicus curiae*.

Q LOOK IT UP

CASES:

- *McKenzie v McKenzie* [1970] 3 All ER 1034

LEGISLATION:

- *Legal Profession Acts 2004-2008* (Australia)
- *Legal Services Act 2007* (UK)

LITERATURE:

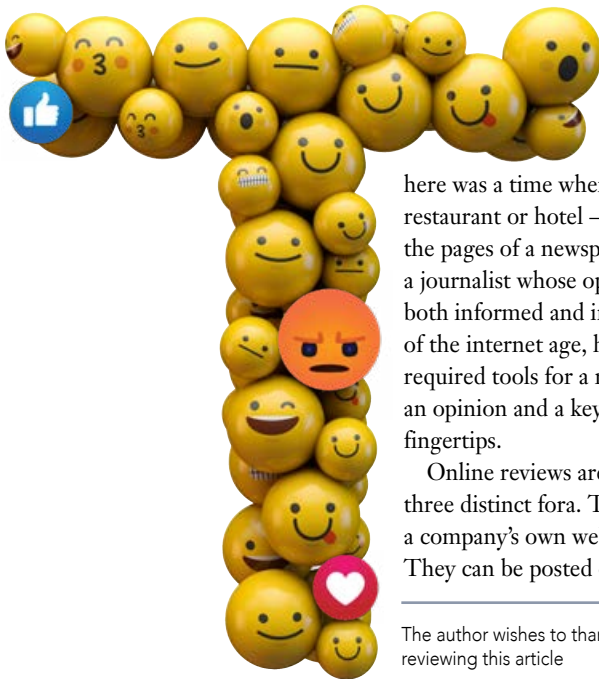
- *Fee-charging McKenzie Friends* (Legal Services Consumer Panel, April 2014)
- Leanne Smith, Emma Hemmings and Mark Sefton, *A Study of Fee-charging McKenzie Friends and their Work in Private Family Law Cases* (Cardiff University and the University of Bristol, June 2017)

≡ AT A GLANCE

- Online reviews have provoked a growing volume of litigation
- Fake reviews can be positive in order to fraudulently benefit a party – or negative to damage it
- Courts that have considered proceedings with an online element have held that the nature of the medium should be factored into any assessment

Online customer reviews can make or break a business and, when contentious, can break the laws of fraud, defamation and intentional infliction of emotional suffering. But they are also a pivotal means by which businesses attract custom. **Michael O'Doherty** vents his spleen

MICHAEL O'DOHERTY IS A PRACTISING BARRISTER AND THE AUTHOR OF *INTERNET LAW* (BLOOMSBURY PROFESSIONAL)



here was a time when reviews – of a movie, restaurant or hotel – were confined to the pages of a newspaper and penned by a journalist whose opinion was viewed as both informed and impartial. The advent of the internet age, however, has placed the required tools for a review – an engagement, an opinion and a keyboard – at everyone's fingertips.

Online reviews are primarily hosted on three distinct fora. They can be posted on a company's own website or Google listing. They can be posted on third-party websites

The author wishes to thank John Maher BL for reviewing this article



REVIEWING THE SITUATION



PIG SHUTTERSTOCK

COURTS THAT HAVE CONSIDERED PROCEEDINGS WITH AN ONLINE ELEMENT HAVE HELD THAT THE NATURE OF THE MEDIUM SHOULD BE FACTORED INTO ANY ASSESSMENT OF WHETHER A STATEMENT CAN BE CONSIDERED DEFAMATORY

IN CONSIDERING AN APPLICATION TO HAVE PROCEEDINGS STRUCK OUT AGAINST AMAZON AS A CO-DEFENDANT, THE COURT NOTED THE 'CATCH-22' SITUATION THAT WEBSITE HOSTS OFTEN FIND THEMSELVES IN WHEN IT COMES TO COMMENTS OR REVIEWS POSTED BY USERS

that market the goods or services, such as amazon.co.uk. Alternatively, they can appear on third-party websites that specialise in providing reviews of goods and services, such as tripadvisor.com. Such commentary is unfiltered, often anonymous and, because it can be viewed by all internet users, its impact is far-reaching.

This has resulted in online reviews provoking a growing volume of litigation, with an increasing issue being that of 'fake' reviews – that is, reviews that are posted by authors who claim to have purchased goods or experienced services that they have not. These can take the form of either positive reviews to fraudulently benefit a particular party, or negative ones so as to damage it.

The nature of proceedings

Various proceedings involving the posting of customer reviews on the internet have engaged with the laws of fraud, defamation, and intentional infliction of emotional suffering, with proceedings often involving all three.

One of the first cases of online defamation in this jurisdiction, *Maguire v Gill*, concerned postings made to an early incarnation of customer review sites. Rateyoursolicitor.com was a website that purported to allow users to rate legal professionals, but was little more than a vehicle for a small number of people to air their personal grievances. In 2006, the High Court granted an injunction to the plaintiff barrister to prevent the further publication of highly defamatory remarks. Six years later, the issue was again considered by the High Court against the same defendant in *Tansey*

v Gill, with Peart J pointedly remarking about the damage that could be inflicted by anonymous, unverified comments on the internet.

Why do people post fake reviews? In many cases, the intention is to damage the particular person or business, perhaps out of spite, through the posting of a negative review. In a recent Canadian case, *Zoutman v Graham*, the plaintiff doctor had testified as an expert witness in support of a physician, the latter having attended to a patient who subsequently died. The defendant was the brother of the deceased, who posted an extremely critical review of the plaintiff on a medical-rating website, warning potential customers against using his services. Crucially, the reviewer falsely purported himself to have been a patient of the plaintiff. The court rejected the defence of fair comment, noting that the defendant was motivated by malice, and awarded the plaintiff \$50,000 in damages.

Sometimes, however, the motive is financial gain in return for a positive review. An analysis of 'fake-review factories' – where contractors are paid to post fake reviews, often on an industrial scale, in return for free goods or payment – is beyond the scope of this article. By way of example, however, in September 2018, Lecce Regional Court in Southern Italy sentenced the owner of a review company, Promo Salento, to nine months in prison for writing fake TripAdvisor reviews of hotels and restaurants in return for a fee. In the English case *The Bussey Law Firm PC & Anor v Page*, the defendant was accused of defaming the plaintiff law firm and its principal with a review on the firm's Google Maps profile,

which claimed that it "pays for false reviews, loses 80% of his cases". Noting that the defendant had advertised on his Twitter account that he was willing to post reviews in return for payment, the court found for the plaintiff.

Defamation and online reviews

For critical but *bona fide* reviews, the traditional defences of truth and honest opinion will offer a degree of protection against any claim for defamation, so long as the reviewer does not make factually untrue statements.

Furthermore, courts that have considered proceedings with an online element have held that the nature of the medium should be factored into any assessment of whether a statement can be considered defamatory. Britain's Supreme Court recently stated in *Stocker v Stocker* that internet users who read material online may approach it differently to content that they read in more traditional media. It should be stressed that this specific issue has not yet received juridical consideration in this jurisdiction, and such decisions therefore are merely of persuasive authority.

In the Canadian case of *Acumen Law Corporation v Nguyen*, the defendant expressed his dissatisfaction with legal representation he had received, via comments on the plaintiff's Google Plus profile page: "I spent nearly \$2,000 for [lawyer] to lose a case for me ... Anywhere else would be moore [sic] helpful. worstest [sic] lawyer." The court held that a reasonable reader would understand that not all reviews were going to be positive,



PIC: SHUTTERSTOCK

and their opinion of the plaintiff would not be damaged by the comments, awarding the lawyer a token \$1 in damages. The court placed emphasis on the fact that the author was a disgruntled client, had posted the review in the heat of the moment and, interestingly, that the poor grammar of the post was a sign that its defamatory potential would be reduced – a novel concept that has not received any consideration in this jurisdiction.

A different decision was recently arrived at, however, by the Supreme Court of New South Wales in *Tavakoli v Imisides*. A plastic surgeon issued proceedings in respect of a Google review in which the defendant had claimed that the surgeon was incompetent, that he had charged for procedures he had not performed, and that he had threatened

the defendant with litigation should she complain about him. Evidence was adduced of a near 25% fall in the number of enquiries to the plaintiff's practice post-publication, and the court awarded the plaintiff Aus\$530,000 (€330,000 approximately).

In February 2020, an Australian lawyer brought proceedings for a scathing review of his firm, which was posted by a Ms Isobel Lok in October 2018. The lawyer claimed that Ms Lok had never been a client of his and, when requested to take it down, Ms Lok simply reposted the review under different names. The request for removal was also made to Google, but it took the platform over a month to delete it. The court awarded the plaintiff Aus\$750,000,

primarily to reflect the loss of business that Mr Cheng claimed had been caused by the negative review.

Liability of intermediaries

When an application is made against an internet intermediary, such as Google, Twitter or Facebook, it often takes the form of a request for them to reveal the identity of an anonymous online review that they are hosting. The liability of such intermediaries for user-generated content that they host has, however, been the subject of increasing consideration. In broad terms, article 14 of the *eCommerce Directive* provides that such organisations will not be held responsible for any unlawful material they host unless they have been notified of its existence, and then fail to act “expeditiously” to remove it.

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THE COURT PLACED EMPHASIS ON THE FACT THAT THE POOR GRAMMAR OF THE POST WAS A SIGN THAT ITS DEFAMATORY POTENTIAL WOULD BE REDUCED

The potential liability of the website operator for reviews posted on its website has also been considered. In *Zoutman*, the plaintiff also brought proceedings against the websites that hosted the comments, but these were settled before trial. In *McGrath v Dawkins*, the English High Court considered a claim for defamation relating to comments made in the review section for a book that was on sale on amazon.co.uk. In considering an application to have proceedings struck out against Amazon as a co-defendant, the court noted the ‘catch-22’ situation that website hosts often find themselves in when it comes to comments or reviews posted by users, namely that by engaging in any form of monitoring of such content, it may leave itself open to liability for any unlawful material that ‘slips through the net’. However, this case pre-dates guidelines published by the EU in 2017, which suggest that intermediaries that monitor such content will not necessarily lose the protection of the *eCommerce Directive*.

Use of reviews as advertising

Online reviews are more than simply a platform for customers to air their opinions. They are also a pivotal means by which businesses attract custom. It is arguable, therefore, that when a company uses positive reviews to promote its business, it should be considered to be a form of advertising, and therefore subject to the relevant consumer laws.

In a case currently being litigated in Australia, a doctor is seeking to make Google liable for negative reviews that were posted on his Google Business online listing. The doctor claims that he was defamed by


Google, which had refused to take down reviews that claimed he had “butchered” patients, was “a fraud” and “an illicit drug user”. According to documents filed by Google, one aspect of their defence is that the doctor had used his Google Business platform to attract business, often using “puffery and hyperbole” to describe his practice. He had consequently invited robust public criticism, including reviews of his work, and it is reasonable he should be the subject of such criticism.

There is no specific legislation governing the use of online reviews in this jurisdiction. It is unclear whether reviews that traders publish on their websites would be considered to be ‘representation by the trader’ for the purposes of bringing it under sections 42-46 of the *Consumer Protection Act 2007*, which cover the use of misleading commercial practices.

The recently-adopted EU *Enforcement and Modernisation Directive 2019* is significant, as it recognises the increasing importance that consumers place on reviews when they make purchasing decisions. The directive provides for increased transparency when traders utilise consumer reviews to promote their goods or services, with article 3(4) including the requirement to publish details as to how the trader ensures that such reviews are authenticated, that they come from users who have genuinely availed of their services, and to reveal whether there was any commercial relationship with the person(s) providing the review.

It will be interesting to observe the degree to which forthcoming domestic legislation, in the form of the proposed new *Consumer*

Rights Act, attempts to tackle the increasingly contentious issue of online reviews, and particularly the potential liability of the platform hosting the review.

As the use of such reviews increases, so their importance grows – whether as a means to promote a business through positive reviews, or as a means to damage them through negative ones. And, given the widespread use of anonymity and the resultant difficulty in identifying the authors, the intermediaries that host the comments are likely to come under increased focus. 

LOOK IT UP

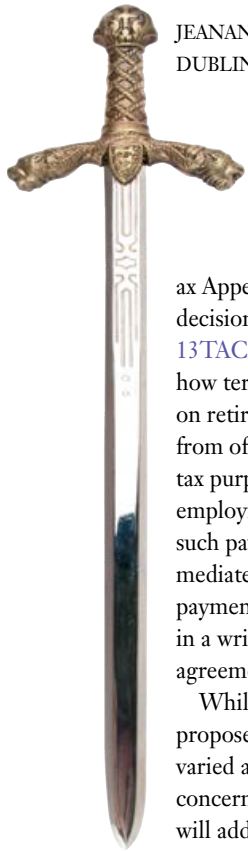
CASES:

- *Acumen Law Corporation v Nguyen* [2018] BCSC 961
- *Maguire v Gill* (unreported, High Court, 12 September 2006)
- *McGrath v Dawkins* [2012] EWHC B3 (QB)
- *Stocker v Stocker* [2019] UKSC 17
- *Tansey v Gill* [2012] IEHC 42; 1 IR 380
- *Tavakoli v Imisides (No 4)* [2019] NSWSC 717
- *The Bussey Law Firm PC v Page* [2015] EWHC 563 (QB)
- *Zoutman v Graham* [2019] ONSC 2834

LEGISLATION:

- *Consumer Protection Act 2007*
- *Directive on Electronic Commerce* (2000/31/EC)
- *Enforcement and Modernisation Directive* (2019/2161/EU)

Recent Tax Appeal Commission decisions bear thinking about when settling an employment dispute concerning a termination payment on retirement or removal from office, writes **Jeananne McGovern**



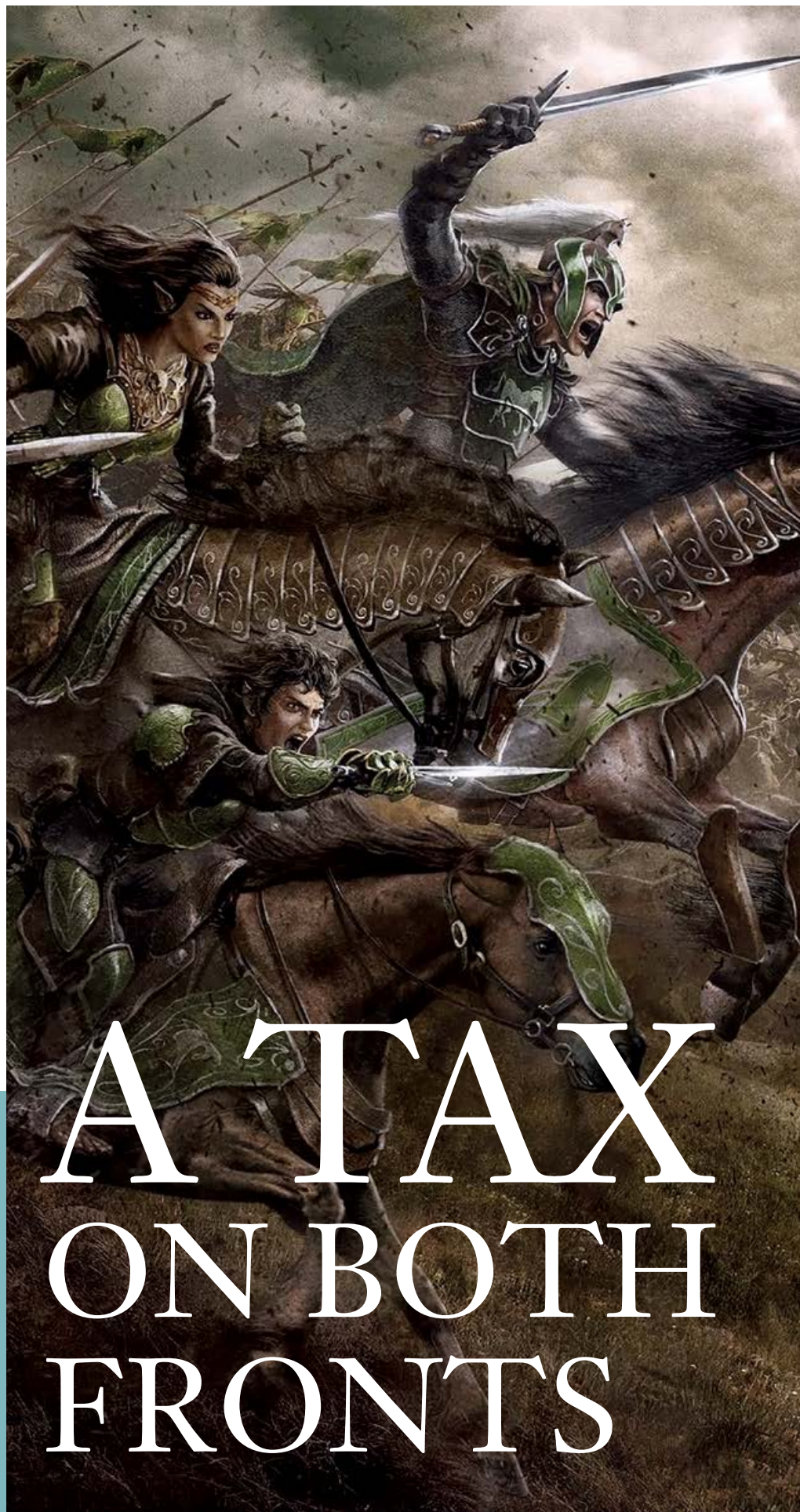
JEANANNE MCGOVERN IS A DUBLIN-BASED BARRISTER

ax Appeal Commission decisions [12TACD2020](#) and [13TACD2020](#) considered how termination payments on retirement or removal from office are treated for tax purposes and how, if an employment dispute concerning such payments is settled or mediated successfully, such payments are to be considered in a written settlement agreement.

While this article does not propose dealing with all of the varied and complex legislation concerning taxable income, I will address certain relevant

≡ AT A GLANCE

- Recent Tax Appeal Commission cases provide clarity on two points in employment disputes concerning the termination of employment: the description of any payment made and the mediation process
- Taxing statutes are construed strictly and, therefore, the wording of the section must be examined carefully
- It is only the wording of the section that can be examined and interpreted by an appeal commissioner



ATAX ON BOTH FRONTS



THE APPEAL COMMISSIONER WAS SATISFIED THAT SO MUCH OF THE PAYMENT DESCRIBED AS 'SPECIAL DAMAGES' AND CALCULATED AS LOSS OF EARNINGS WAS A PAYMENT IN RESPECT OF REMUNERATION AND, THEREFORE, TAXABLE ACCORDINGLY

provisions arising from both of these cases. Unless otherwise specified, all references to legislation relate to the *Taxes Consolidation Act 1997*.

Section 123 provides for the general tax treatment of payments made on retirement or removal from office. Payments received on the termination of an employment are taxable; however, section 192A(6) provides that payments to which that section applies shall be exempt from income tax.

Exemptions

Section 192A exempts certain payments made under a ‘relevant act’ to an employee or former employee by their employer, made in accordance with a recommendation, decision or determination by a ‘relevant authority’. A ‘relevant act’ is defined as meaning “an enactment which contains provisions of the protection of employees’ rights and entitlements for the obligations of employers towards their employees”. Examples of such acts include the *Redundancy Payments Acts 1967-2014* and the *Unfair Dismissals Acts 1977-2015*. A ‘relevant authority’ includes the Workplace Relations Commission, the Labour Court and/or the High Court.

Section 192A(3) applies to a payment made in accordance with a settlement arrived at under a mediation process provided for in a relevant act.

Section 192A(4) provides an exemption for a payment made in settlement of a claim provided certain conditions are met:

- The agreement must be evidenced in writing,
- The agreement must not be between

connected parties (for example, an employer and a relative, an employer and a director),

- Had the claim been made to a relevant authority, it would have been a *bona fide* claim under a relevant act (for example, a stateable claim, in the correct forum, made within time),
- Had the claim not settled by agreement, it must have been one that was likely to have been the subject of a recommendation, decision or determination under that act by a relevant authority that a payment be made to the person making the claim,
- The amount of the payment must not exceed the maximum payment allowed by the relevant act, had the claim not been settled by agreement.

The section also provides that copies of the agreement and the statements of claim shall be made available to the Revenue Commissioners on request.

Section 192A(5) provides that the exemptions will not apply in relation to payments in respect of remuneration, however described, including arrears of remuneration or to any payments falling within section 123.

Amended assessment

Case 13TACD2020 concerned an appeal to a Notice of Amended Assessment to Income Tax for the year 2012, which the taxpayer appealed. The appellant taxpayer was an employee who had issued High Court proceedings against the employer in 2012.

A settlement agreement was subsequently entered into between the taxpayer, the

employer, and a third company in 2014, prior to the hearing of the High Court proceedings. The agreement recited the terms upon which the parties agreed to settle matters arising from the proceedings, the taxpayer’s employment and the termination of the employment. Of particular note was the clause concerning ‘payments and arrangements’, which provided for, among other things, a payment of €95,000 for ‘special damages’, which was broken down between loss of earnings, medical expenses, miscellaneous expenses, and future losses. It was the charge to tax of this payment that was appealed.

It was submitted, on behalf of the taxpayer, that the payment described as ‘special damages of €95,000’ was not payment in respect of remuneration, but represented a payment coming within section 192A(4) and, consequently, the exemption in section 192A(6) applied. The taxpayer submitted that the payment was an out-of-court compensation payment quantified by reference to salary, rather than a payment in respect of remuneration.

It was contended that the payment was not a substitute for employment income due and payable; rather, it represented the impact on the taxpayer of not being able to work full-time as a result of the personal injuries sustained (arising from workplace induced stress, bullying and harassment), and the figure was made up of medical costs and future net loss of earnings.

It was Revenue’s position that the payment described as ‘special damages of €95,000’ was a payment in respect of remuneration and, consequently, section 192A(5) applied to exclude the payment from exemption under section 192A(6) and, therefore, it was taxable under section 123 as a payment made on retirement or removal from office.

The appeal commissioner analysed the agreement and, in particular, the schedule of special damages. She stated at paragraph 14: “In considering if a payment made under an agreement has tax consequences, and as the terms agreed by the parties are embodied in the agreement, the agreement is considered as a whole with due regard for the words expressed in the agreement, which are words chosen by the parties.”

She observed the difference between general damages and special damages – the former broadly viewed as damages for pain and suffering (non-pecuniary loss) and the latter as pecuniary loss. The settlement

FOR THE PROVISIONS OF SECTION 192A(3) TO APPLY, THE SETTLEMENT SHOULD BE ARRIVED AT UNDER A MEDIATION PROCESS PROVIDED FOR IN A RELEVANT ACT



PIC: SHUTTERSTOCK

Classic flanking manoeuvre

agreement provides for these separate categories and, in her view, the schedule of special damages sought to quantify the pecuniary loss due to the taxpayer arising from her High Court proceedings. The inclusion of medical expenses and miscellaneous expenses supported this view.

The appeal commissioner stated at paragraph 19: “The documentary evidence does not support the submission by the appellant that the payment of €95,000 was a compensation payment quantified by reference to salary only. The settlement agreement describes the payment as ‘special damages’ and the schedule of special damages refers to ‘loss of earnings’ for past and future losses. It is noteworthy that the schedule of special damages takes a deduction for the income earned by the appellant for her part-time employment in the quantification of loss of earnings. In my opinion, the schedule of special damages was a calculation to place the appellant as close as was practicable to that which the appellant would have enjoyed had the appellant had the earning capacity of full-time employment.”

The appeal commissioner went on to state that the statutory language in section 192A(5)(a) was broadly drawn. The payment was described by the parties as special damages and identified separately from the ‘damages for personal injury’. The payment was further identified as ‘loss of earnings’

and was calculated with reference to the income the taxpayer would have earned if in full-time employment. If the taxpayer had been able to earn that income in the course of employment, that income would have been taxable. For these reasons, the appeal commissioner was satisfied that so much of the payment described as ‘special damages’ and calculated as loss of earnings was a payment in respect of remuneration and, therefore, taxable accordingly. The exemption in section 192A did not apply.

Severance agreement

Decision 12TACD2020 concerned sections 123 and 192A(3). The agreement in this case was entitled ‘severance agreement’, which made provision for, among other things, a payment of €65,000 to the appellant taxpayer. Of significance in this case was that the severance agreement arose on foot of a mediation held between the taxpayer and his former employer prior to the issue of any legal proceedings.

During the course of his employment, the taxpayer made a formal complaint of bullying, which was investigated by an external investigator who did not uphold the complaint. The taxpayer was dissatisfied with the investigation and sought to appeal the findings. By way of letter from his solicitor, clarity was sought as to the correct forum for that appeal. The solicitor sought confirmation that all internal appeal

mechanisms were exhausted and whether all issues should be referred to the Labour Relations Commission for a hearing before a rights commissioner. The taxpayer’s solicitor also raised the possibility of mediation, which subsequently took place, resulting in the aforementioned severance agreement.

It was Revenue’s position that the payment did not come within section 192A(3) and, consequently, was not exempt from income tax under section 192A(6). More specifically, the payment was not made under a mediation process provided for in a relevant act. Revenue also submitted, among other things, that the payment did not attract the exemption as an out-of-court settlement as, for the payment to be an out-of-court settlement, the matter must be advanced to the point where there was a real prospect that the matter would be presented to a court for a decision.

The appeal commissioner determined that the payment made to the taxpayer did not qualify for exemption under section 192A(3). The terms of the severance agreement were clear and stated that the payment was made on the termination of the employment of the taxpayer. While a successful mediation had taken place, there was no reference in the agreement to the payment being made by the employer for breach of employment rights of the taxpayer arising from his complaint of bullying.

CALLING ALL HEROES

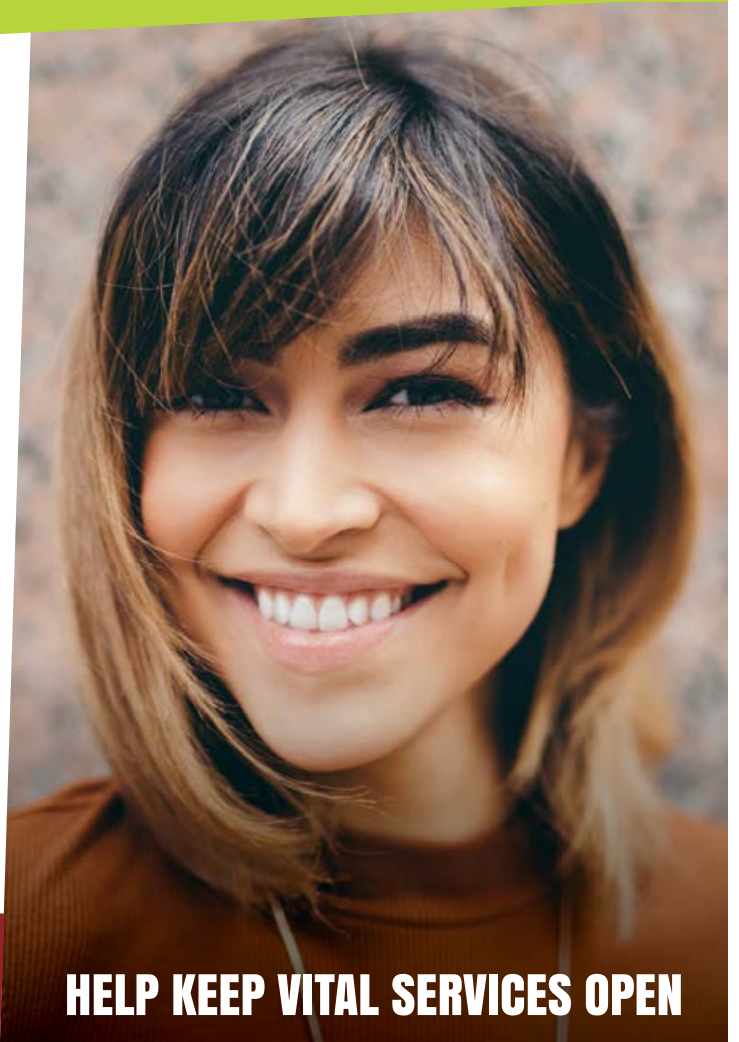
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HELP KEEP VITAL SERVICES OPEN

CARE MUST BE TAKEN WHEN DESCRIBING A PAYMENT IN A SETTLEMENT AGREEMENT. REVENUE WILL LOOK AT THE AGREEMENT AS A WHOLE AND WILL LOOK TO THE TRUE NATURE OF THE PAYMENT AND NOT SIMPLY THE DESCRIPTION THEREOF

The appeal commissioner stated: “Section 192A(3) provides that a payment may be exempt from tax if it is made with a settlement agreement arrived at under a mediation process provided for in a relevant act. There is no evidence that a claim was made by the appellant to a relevant authority. *The mediation process between the appellant and the employer is not identified as a mediation process which has its origins in a relevant act.* The evidence presented is the parties themselves agreeing to mediation. For the provisions of section 192A(3) to apply, the settlement should be arrived at under a mediation process provided for in a relevant act” (emphasis added).

Words with friends

It is worth bearing in mind that taxing statutes are construed strictly. Therefore, the wording of the section must be


examined carefully. While there is often Revenue guidance on the interpretation of sections, it is only the wording of the section that can be examined and interpreted by an appeal commissioner.

A feature of both these cases is a reference to ‘out-of-court’ settlements. This point was recognised by the appeal commissioner in 12TACD2020, where she notes that the wording in the tax and duty manual published by the Revenue Commissioners refers to ‘out-of-court’ settlements; however, section 192A(4) makes no reference to such language. In order to avail of the exemption, the section in this case requires that the payment is made “in accordance with a settlement arrived at under a mediation process provided for in a relevant act”. Unless a taxpayer can rely on a specific provision in the employment legislation

establishing the mediation was concluded under a provision of a relevant act, or produce a claim form to the appropriate forum, then it appears that the section will not apply.

These cases provide helpful guidance and clarity on two points in employment disputes concerning the termination of employment, namely, the description of any payment made and the mediation process.

It is clear that care must be taken when describing a payment in a settlement agreement. Revenue will look at the agreement as a whole and will look to the true nature of the payment and not simply the description thereof.

Secondly, care must also be taken when entering into the mediation process, and thought should be given as to when this is appropriate in terms of any termination payment that may ensue and whether section 192A(3) is complied with. 

LEGAL EZINE FOR MEMBERS

The Law Society’s *Legal eZine* for solicitors is now produced monthly and comprises practice-related topics such as legislation changes, practice management and committee updates.

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≡ AT A GLANCE

- Mindfulness trains us to be present and helps us to respond creatively to what happens, instead of being stuck in habitual and automatic patterns of behaviour
- Some proven benefits of practising mindfulness include improved memory and increased ability to concentrate and focus

WHERE IS MY MIND?

PG: SHUTTERSTOCK

The practice of mindfulness gives us a chance to pause. We can only feel the solid ground under our feet when we stop rushing to the next moment. **Barry Lee** gets some headspace

BARRY LEE IS FOUNDER OF [MINDFULNESS FOR LAW](#) AND WORKED AS A CORPORATE AND COMMERCIAL LAWYER FOR OVER TEN YEARS

At this moment in time, there is probably more interest in mindfulness than ever before, and it's easy to understand why. There is a lot of anxiety in the world right now. Many of us are stretched thin: balancing demanding workloads with home-schooling, looking after elders, and worrying about what will happen in the weeks and months ahead. The machine has ground to a halt and, for many of us, this brings the added stress of financial uncertainty.

In spite of cocooning and self-isolating, we are still being bombarded with information. The fragile boundaries between 'work' and 'home' have dissolved.

Relationships come under pressure when we are living in such close proximity with only a few people all of the time. Our clients are feeling all of this too. Right now, for many of us, it's hard.

In the midst of all this, it's easy to lose ourselves in busyness and distraction.





MINDFULNESS IS BEST UNDERSTOOD AS AN EXPERIENCE. YOU CAN'T READ A BOOK AND REALLY KNOW WHAT IT IS, IN THE SAME WAY THAT YOU CAN'T READ A RECIPE AND KNOW WHAT THE MEAL TASTES LIKE

Distraction is a known coping strategy and, occasionally, it can be helpful. However, often compulsive busyness and distraction only make us feel worse, especially if we are staring at our screens all day, mindlessly consuming information.

Sometimes, the wisest action – the most compassionate thing we can do for ourselves – is to pause. The practice of mindfulness gives us this chance to pause. We can only feel the solid ground under our feet when we stop rushing to the next moment.

Dazed and confused

The first time I went to a meditation class in 2007, I had a mild panic attack in the reception area. My face felt hot. My breathing was shallow and rapid. I couldn't get enough air. I was dizzy, and I felt like I was going to faint. I managed to conceal how I was feeling, and I think I managed to engage in some polite small talk with a few of the other people in the room.

In the six months prior to that day, I had become accustomed to having panic attacks. I knew that they could come on at any moment. I had been in meetings with clients when they struck. When it happens, it feels like you are observing the scene in front of you from behind a pane of glass. The sounds around you echo, and everything seems strange. You sit there trying to look calm, while your heart beats furiously and your mind races out of control. Eventually it passes and you move on, exhausted and embarrassed. After six months, I had become an expert at concealing my anxiety.

When I first had a panic attack, I was 25 and had just qualified as a solicitor. I

thought I was having a heart attack and went straight to hospital. The doctors kept me in for a short while for observation and sent me home, telling me that I was physically fine. I didn't feel fine and took a week off work. I knew that something serious had happened to me, and I was convinced that the doctors had made a mistake. I went for a cardiac ultrasound scan, and another doctor told me that he could find no physical abnormalities. He said that I might be suffering from stress and that the symptoms I experienced were consistent with acute anxiety. Knowing that I was okay physically helped a bit at the start but, after a while, the initial relief wore off.

I tried to manage my anxiety in lots of different ways. I exercised. I was careful about the food I ate. I cut out coffee. I tried to get more sleep, which is very difficult when you are anxious. I soon discovered that alcohol was a temporary balm. If I had a few drinks with my friends, I relaxed, but the next day tended to be much worse. It's easy for me to understand why many people turn to self-medicating with alcohol.

I had some good days, but the fear of another attack always hung over me. I was less inclined to go to social functions, which could trigger anxiety. I had trouble sleeping. I'm sure that the quality of my work suffered.

I didn't tell anyone in work what I was going through. I didn't tell my girlfriend. I was embarrassed, and I didn't want my colleagues and the people close to me to look at me differently, as if I was more fragile than everyone else and unable to cope with the normal stresses of life.

Luckily, I did confide in a few close friends. One of them told me about a colleague who used Buddhist meditation as a way of coping with anxiety. In hindsight, I'm very lucky that I had that particular conversation. Another friend could just as easily have suggested Valium (there is obviously a time and a place for medication, but it's probably not the best way to deal with anxiety in the long run).

So there I was in my first meditation class. I had come straight from work, and was relieved when I wasn't the only person wearing a suit. I remember praying that no one I knew would see me entering or leaving the building.

Thirteen years ago, meditation wasn't nearly as popular as it is now. There wasn't the same abundance of articles in the newspapers. 'Mindfulness' and 'resilience' weren't the buzzwords they are today. There was no talk of neuroscience or neuroplasticity. There were no mindfulness apps. Workplaces didn't have a 'wellness week'. There was definitely a stigma around mental health.

I was sceptical. Under normal circumstances, I would never have been drawn to this sort of thing. If someone had suggested a meditation class to me a year before, I might have rolled my eyes – but when you are suffering, you tend to be a bit more receptive. The teacher was kind and softly spoken. He explained a little bit about the concept, and we spent most of the evening practising some of the techniques. It takes a lifetime to master meditation, but something in the class resonated with me. I had the sense

UNDER NORMAL CIRCUMSTANCES, I WOULD NEVER HAVE BEEN DRAWN TO THIS SORT OF THING. IF SOMEONE HAD SUGGESTED A MEDITATION CLASS TO ME A YEAR BEFORE, I MIGHT HAVE ROLLED MY EYES – BUT WHEN YOU ARE SUFFERING, YOU TEND TO BE A BIT MORE RECEPTIVE



DISTRACTION IS A KNOWN COPING STRATEGY AND, OCCASIONALLY, IT CAN BE HELPFUL. HOWEVER, OFTEN COMPULSIVE BUSYNESS AND DISTRACTION ONLY MAKE US FEEL WORSE

that this was something that could really help me. I left feeling a little bit lighter.

The teacher told us that, in order for us to benefit, we needed to practice regularly, and so I did. Every morning, I woke an hour earlier than usual and listened to the guided practices on a CD. Sitting quietly, gently resting my attention on the sensations of breathing, the mind naturally started to settle. There was a feeling of space. Tension in the body could release.

I found myself enjoying my walk to work. I was better able to concentrate during the day. I wasn't consumed with thoughts about the future and the past in the same way I had been. I wasn't lying awake in bed at 3am ruminating about potential mistakes I might have made during the day or what my 'to do' list was for tomorrow. That course lasted six weeks and, by the end of it, I felt like a different person.

In the 13 years that followed, I came to see my morning meditation practice as a normal part of my daily routine, just the same as brushing my teeth. It was something I did every day in order to be calm and happy. It helped me perform better in work, and it also helped me immensely in my personal life.

Are you experienced?

Mindfulness is best understood as an experience. You can't read a book and really know what it is, in the same way that you can't read a recipe and know what the meal tastes like.

In very simple terms, the practice of mindfulness involves paying attention to exactly what is happening in the present moment, in a gentle and non-judgemental way.

As anyone who has practised for any

length of time will tell you, although this sounds simple, it is far from easy. The mind is conditioned to be restless and is very easily distracted. We would much rather relive moments from the past or anticipate what may happen in the future, instead of bringing our full attention to the present moment. For many of us, this natural tendency means a lot of time spent ruminating, worrying, and planning – which can be a source of unhappiness and can exacerbate stress and anxiety. Mindfulness trains us to be present. It allows us to respond creatively to what happens, instead of being stuck in habitual and automatic patterns of behaviour that may not serve us.

Over the last 30 years, a significant amount of scientific research has been carried out in relation to the benefits of mindfulness-based interventions. As with anything, the quality of research varies. Some studies are well designed and stand up to rigorous scrutiny. Others are more questionable. One thing that is certain is that we have only begun to scratch the surface in terms of our scientific understanding of how mindfulness and other forms of meditation affect the body and mind.

That said, there is a significant body of scientific evidence that has been gathered over the last 30 years by some of the most well-respected academic institutions confirming the many benefits of mindfulness, such as:

- Reduced stress and anxiety,
- Improved ability to concentrate and focus,
- Increased creativity,

- Enhanced communication and interpersonal skills,
- Increased resilience, and
- Improved memory.

This year, a meta-analysis of 78 randomised controlled trials conducted between 1989 and 2019, with almost 6,000 participants, showed mindfulness-based interventions significantly improved attention, memory and processing speed.

Start me up

I would recommend finding an experienced and qualified teacher. It's very different to learning about mindfulness from a book or an app. In Ireland, there is now a professional body for mindfulness teachers (the [Mindfulness Teachers' Association of Ireland](#)), so you can easily find a teacher who has been properly trained and who receives ongoing regular supervision.

Two courses stand out in terms of having a very extensive and well-documented evidence base:

- Mindfulness-based Stress Reduction (MBSR), an eight-week course developed by Jon Kabat Zinn in the [University of Massachusetts Medical School](#), and
- Mindfulness-based Cognitive Therapy (MBCT), an eight-week course developed by professors Williams, Segal and Teasdale at Oxford University.

For some, a shorter course might serve as an easier introduction. I have found that six-week courses (an hour a week) work well in law firms and, at the moment, online mindfulness courses are a good replacement for face-to-face ones. [E](#)

LIFE IN TECHNICOLOR

COVID-19 has wrestled the legal world into embracing the technological advantages of the 21st century, but not every matter can be dealt with remotely, say judges.

Mary Hallissey reports

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



REMOTE HEARINGS WILL NOT BE SUITABLE FOR ALL CASES, AND THE CAPACITY TO DEAL WITH LARGE NUMBERS OF REMOTE HEARINGS SIMULTANEOUSLY WILL BE CONSTRAINED BY THE COURTS SERVICE'S INFRASTRUCTURE

A key group of commercial litigation lawyers has been voluntarily helping the Courts Service to establish remote court hearings during the current COVID-19 pandemic.

The Commercial Litigation Association of Ireland (CLAI) has pooled its collective experience and knowledge to assist in developing how remote hearings will work in this jurisdiction. In this work, the CLAI is following the lead of Chief Justice Frank Clarke and court presidents, who jointly issued a press statement before Easter, stating that they would do what they could to get remote hearings up and running for the new legal term.

The voluntary team is hopeful that the establishment of the principles of remote hearings will have global application across all the courts in due course.

The Courts Service's stated goal was to have remote hearings up and running by the start of the new legal term on 20 April. Testing, piloting and mock hearings were undertaken for two weeks before the new term started.

And, for the first time ever, certain courts in Ireland sat on 20 April, with all parties being present via remote video technology. The Supreme Court was the first



Chief Justice Frank Clarke

out of the blocks, piloting remote technology with a short case-management hearing. The court displayed the sitting on screens for court reporters. The Court of Appeal also held remote hearings the same morning.

Remote observers

Other courts will roll out the technology in suitable cases over the coming weeks, a Courts Service spokesman confirmed. A protocol is being finalised to allow for *bone fide* members of the press to remotely link into such hearings as observers – acting as the eyes and ears of the public.

The in-court hardware is the same as that usually used for

video-link to prisons and videoconferences with remote witnesses.

Courts Service chief executive Angela Denning said that existing technology had been repurposed to enable judges, registrars, and parties to cases to join virtual courtrooms.

A virtual meeting room will be set up for each court sitting, using a service powered by the PEXIP video-streaming app. Participants can join a PEXIP session from other video-streaming services – including Skype, Zoom, Cisco Webex and Teams – without the requirement that all parties use either the same app or a managed integration tool to connect.

Justice Minister Charlie Flanagan warmly welcomed the Supreme Court's first use of video technology to hear cases remotely. Commenting on 20 April, he said: "I believe that today's innovative pilot sitting is a landmark day for the courts, and one that will further contribute to the efficient administration of justice in our State at this difficult time."

"As demonstrated across the globe, the COVID-19 crisis is changing day-to-day life in unprecedented ways," he added. "It is important to note that the courts continue to sit in-person for urgent business. I know this is an

PICT: CIAN REDMOND



anxious time for all concerned for many reasons, and I welcome the special arrangements and social distancing measures introduced by the Courts Service in response to the COVID-19 pandemic.”

Law Society President Michele O’Boyle has pointed out that the Courts Service is developing and providing this new facility without the luxury of detailed engagement and testing, and the service is asking practitioners who take part to appreciate these constraints and provide feedback to ensure that it can provide a viable virtual court experience.

Remote hearings, however, will not be suitable for all cases, and the capacity to deal with large numbers of remote hearings simultaneously will be constrained by the

Courts Service’s infrastructure. For that reason, the president of each court will issue guidance or practice directions regarding how remote hearings will operate in their court. Parties, practitioners and interested members of the public should follow those details for greater information about how cases in which they have an interest will progress.

British position

Across all England and Wales jurisdictions, around 40% of hearings have continued, either in traditional fashion or remotely. These cases have largely been shorter hearings, without difficult evidence or high emotion, and the judges have said they recognise that not every matter can be dealt

with remotely. Jury trials have been suspended since 23 March.

The Lord Chief Justice has said that the default position now in all jurisdictions must be that hearings should be conducted with one or all participants attending remotely. “All other hearings in the Crown Court that can lawfully take place remotely should do so,” he said.

In a letter to the legal profession on 9 April, the Lord Chief Justice, the Master of the Roll, and the president of the Family Division said: “National guidance is a blunt instrument and cannot take any account of the strengths or weaknesses of local resources (judicial, staff and technological) and other important factors which vary from court to court

and from case to case.”

They state that the first and best option is for the judge to work in one of the courts that remain open or staffed, and to conduct a hearing with some or all of the participants attending by phone, video or an internet platform.

Dealing with anything not intrinsically simple by phone is less satisfactory than by video. And there may be real difficulties in taking hotly contested evidence by telephone or laptop, the leading judges have said.

Judges are not expected to hear the same volume of cases remotely as they would in person. The overarching criterion is that whatever mechanism is used to conduct a hearing must be in the interests of justice. [g](#)

PANDEMIC SUPPORTS STILL EVOLVING

Limited State support is in place for self-employed people during the COVID-19 pandemic, but a range of initiatives to support businesses and employers have been established. **Justin Purcell** takes a look

JUSTIN PURCELL IS SMALL PRACTICE BUSINESS EXECUTIVE WITH THE LAW SOCIETY



THE BEST ADVICE IS TO NEVER PRESUME THAT YOU WILL NOT QUALIFY FOR A SUPPORT. IF YOU NEED FINANCIAL SUPPORT, IDENTIFY THE INITIATIVE THAT SEEMS MOST RELEVANT TO YOUR CIRCUMSTANCES AND MAKE AN APPLICATION

The rules on State supports for those who find themselves in financial difficulties as a result of the COVID-19 pandemic are still evolving. The best advice is to never presume that you will not qualify for a support. If you need financial support, identify the initiative that seems most relevant to your circumstances and make an application. Rules may not be so strictly applied when individual applications are considered.

Please also seek assistance from the Law Society. The Crisis Practice Support initiative was recently set up to provide sole practitioners and other small practice proprietors with personalised supports, information, and guidance on COVID-19 challenges. Support is available via the [Law Society website](#) (see below).

COVID-19 payments

Self-employed people who are in financial difficulty are encouraged to apply for financial support from the Exchequer, primarily through the [COVID-19 Pandemic Unemployment Payment](#). This support involves a new social-welfare payment of €350 per week – to be paid for up to 12 weeks.

To qualify, a person must meet

several criteria, which include two stipulations that may cause difficulty for many self-employed solicitors:

- You must have stopped trading as self-employed due to the pandemic. This requirement seems to rule out solicitors who have closed (or effectively closed) their offices, but who are still doing occasional work to keep matters progressing and to care for clients.
- There is also a rule that you cannot claim the COVID-19 Pandemic Unemployment Payment if you are continuing to receive income from your employment.

There is a lot of uncertainty about how the rules will be applied to self-employed people. For instance, the Department of Employment Affairs and Social Protection provides quite a contrasting perspective on their website when they advise that “you may, if your trading income has collapsed to the extent that you are available to take up other full-time employment if it was offered to you, receive a payment of €350 per week for so long as you are available to take up other work”.

The best advice is to submit an application if you need financial

support – and do not delay in doing this. If Intreo (the public employment service and single point of contact for all employment and income supports) considers some other initiative more appropriate for you, let it make that call. What you should focus on is making a credible application before the financial challenges spiral out of control.

Jobseeker's Benefit

[Jobseeker's Benefit](#) (Self-Employed) is a weekly payment from the Department of Employment Affairs and Social Protection to people who lose their self-employment. If you don't qualify for Jobseeker's Benefit (Self-Employed), you may qualify for [Jobseeker's Allowance](#). However, Jobseeker's Allowance is means tested.

To qualify for Jobseeker's Benefit, you need to have paid the required number of [Class S PRSI](#) contributions. For both supports, you need to be not currently engaged in self-employment. Both supports are not normally paid in a temporary shutdown situation, but this rule seems not to apply in the current COVID-19 crisis.

Self-employed people who have a dependent spouse and/or children may be able to access



PIC: SHUTTERSTOCK

more money on Jobseeker's Benefit than on the Pandemic Unemployment Payment.

Short Time Work Support

Self-employed solicitors can qualify for [Short Time Work Support](#) if they work three days or less a week. This is a form of Jobseeker's Benefit/Allowance and is subject to the same qualifying rules as outlined above (Class S PRSI contributions for a benefit payment, and a means test for the allowance).

This scheme may work for a solicitor who is, for instance,

working just one day a week. If judged eligible, they will qualify for a payment equal to 80% of their Jobseeker's Benefit or Allowance.

Wage-subsidy scheme

The [Temporary COVID-19 Wage Support Scheme](#) provides financial assistance for qualifying businesses that continue to employ staff. However, it is important to note that no support is provided within this initiative for the business owner(s) themselves, regardless of how bad a financial position they

may be in. This initiative just supports employers to keep on staff – it does not assist the employer.

The scheme pays employers 70% of the gross money paid to staff, to a maximum of €410 a week. Employees paid over €38,000 a year by their employer are subsidised on a reducing rate. Someone paid €76,000 and above is not subsidised at all.

Employers have to be experiencing significant economic disruption due to COVID-19 and need to be able to demonstrate

WHAT YOU SHOULD FOCUS ON IS MAKING A CREDIBLE APPLICATION BEFORE THE FINANCIAL CHALLENGES SPIRAL OUT OF CONTROL

SELF-EMPLOYED SOLICITORS CAN QUALIFY FOR SHORT TIME WORK SUPPORT IF THEY WORK THREE DAYS OR LESS A WEEK

that their turnover, or orders coming in, have reduced by a minimum of 25%. There was a requirement that the business had to be unable to fully pay normal wages and normal outgoings. However, this requirement appears to have been abandoned.

Business support grants

This initiative (Business Continuity Voucher) is aimed at businesses that employ up to 50 people across all business sectors. The voucher is worth up to €2,500 and covers third-party consultancy costs. These vouchers can be used by businesses to develop short-term and long-term strategies to respond to the pandemic.

Rates deferral

The Government has agreed support for businesses affected by COVID-19 through commercial rates deferral.

Working capital supports

The Credit Guarantee Scheme supports loans up to €1 million for periods of up to seven years. Applications can be made to AIB, BOI and Ulster Bank. Eligibility criteria apply.

Micro-enterprises can access COVID-19 loans of up to

€50,000 from MicroFinance Ireland. The terms include a six months' interest-free and repayment-free moratorium, with the loan then repaid over the remaining 30 months of the 36-month loan period. Businesses can apply through their Local Enterprise Office. [G](#)

Q FOCAL POINT

LAW SOCIETY CRISIS SUPPORT

We at the Law Society understand that this is a worrying and difficult time for our members. Our Crisis Practice Support service was recently set up to provide sole practitioners and other small practice proprietors with personalised support, information, and guidance on COVID-19 challenges. Support is available at:

- www.lawsociety.ie/Solicitors/

[Practising/covid-19-support](#) and

- www.lawsociety.ie/Solicitors/Practising/covid-19-support/queries-and-feedback.

We hope to be of assistance during this uncertain time to help navigate the range of COVID-19 supports that are available. Please do not hesitate to contact us at the above web address.

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REPORT OF LAW SOCIETY COUNCIL MEETING

6 MARCH 2020

Diversity and inclusion

The chair of the Gender Equality, Diversity and Inclusion Task Force, Michelle Ní Longáin, outlined the content of the task force's report to the Council, including recommendations designed to encourage more female solicitors and solicitors from diverse backgrounds to seek leadership roles in the Law Society's Council and committees, together with useful tools that solicitors could use to help achieve gender equality, diversity and inclusion (GEDI) within their own firms and organisations.

The report also contained a proposed GEDI policy for the Law Society, an amended version of the Council's *Code of Conduct* and a proposed GEDI charter that would be promulgated for adoption by solicitors' firms. Following a detailed discussion,

the Council adopted the report and recommendations of the task force as Law Society policy.

Awareness training

The Council committed to engage in bespoke unconscious bias and bullying/sexual harassment awareness training, which would also be provided to all Society committee members.

Mental-health support

Past-president Michael Quinlan outlined a proposed 24/7 'In the Moment' psychological support service for members, with a referral stream for those in extreme difficulty or crisis.

Under the proposal, an external provider would deliver an independent, low-cost mental-health support service for Law Society members and their dependants. The service would be accessible to members

across Ireland at any time of the day or night.

The support to the profession would be available in three strands: it would provide preventative supports to ensure mental-health concerns did not develop into serious mental-health problems; it would provide an early intervention strategy for individuals with mental-health problems; and it would offer treatment and response strategies to individuals in mental-health crisis.

The Council unanimously approved the proposal.

Rules of procedure

The Council approved written rules of procedure for the Society's Money-Laundering Reporting Committee and the Regulation of Practice Committee, and agreed that all rules of procedure should be published

in the members' area of the Law Society's website.

LRC issues paper

The Council approved the outline content of a submission to the Law Reform Commission in relation to its issues paper on capping damages in personal injuries actions.

PII renewal

The chair of the PII Committee, Barry MacCarthy, gave a detailed report on the state-of-play following the PII renewal period, including information in relation to the Assigned Risks Pool, the Run-Off Fund, market share by premium, average premium per firm, and average premium for all insurers. He reported also on the CBL liquidation and the Elite administration as they pertained to PII for solicitors' firms. [g](#)

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MEDIATION ACT 2017: ENFORCEABILITY OF MEDIATED AGREEMENTS

Practitioners will be aware that section 11(2) of the *Mediation Act 2017* provides that a mediation settlement shall have effect as a contract between the parties to the settlement, except where it is expressly stated to have no legal force until incorporated into a formal legal agreement signed by the parties.

Practitioners will also be aware that section 8(2)(d) of the act

provides that the mediator shall ensure that the parties are aware of their rights to each obtain independent advice (including legal advice) prior to signing any mediation settlement.

And practitioners will be aware that best practice for qualified mediators is that agreements to mediate separating couples' disputes shall expressly provide that any agreement reached at media-

tion is not legally binding until incorporated into a formal legal agreement, and that mediation settlements of separating couples disputes are never intended to be binding and are always expressed to be non-binding.

When advising clients about mediation, as required by the act, practitioners should ensure that their clients who may choose to participate in a mediation process

without legal advice, assistance or representation, are aware of these provisions and best practice and of the risk of entering into a binding agreement in mediation of separating couples' disputes.

Practitioners will be aware that preparing any document relating to real or personal estate or any legal proceedings is restricted by section 58 of the *Solicitors Act 1954*, as amended. [G](#)

GUIDANCE NOTE

REGULATORY MATTERS AND THE COVID-19 CRISIS

With movement restrictions in place and with limited access to office premises, some solicitors may have difficulty accessing their books of account and other financial information. Solicitors are encouraged, where possible, to set up remote access to their books of account and have online banking access. All remote access should be set up in a safe and secure manner.

Accounting records

It is most important that solicitors continue to keep their accounting records up to date, in accordance with the *Solicitors Accounts Regulations*. If books of account are not kept up to date, overpayments to, or on behalf of, clients may occur.

Client account transactions

Payments from client accounts, including cheques and electronic transfers, should only be carried out where the solicitor has access to up-to-date accounting records and, in particular, client ledger accounts, and where the solicitor has knowledge that there are

sufficient cleared funds available regarding the client in respect of whom the transaction is being carried out. Supporting documentation should be obtained to enable the transaction to be recorded in the accounting records and to be appropriately vouched.

Professional fees

Solicitors should continue to transfer professional fees in strict accordance with the *Solicitors Accounts Regulations*. It must be made clear to clients that moneys held by the solicitor are being applied in satisfaction of professional fees. Professional fees and outlay may be transferred to the office account only after a bill of costs is raised and furnished to the client. As with client transactions, the solicitor must have knowledge that there are cleared funds available regarding the specific client in respect of whom the bill has been raised.

Under no circumstances should the client account be used as a source of temporary funding. Solicitors should not make

advance transfers from the client to office account on the understanding that fees are due to be received to the practice. Neither should solicitors make advance transfers from the client to office account, including round sum transfers, on the premise that such moneys will be allocated as professional fees to one or more client ledger account(s) at a future date.

Balancing statements

Solicitors should continue to prepare balancing statements on a regular basis. The more frequently balancing statements are prepared, the quicker errors in client-account transactions can be discovered.

Electronic transfers of funds

Over the last few weeks, there has been an increased use of electronic transfers, particularly by solicitors who have not previously used electronic banking. Bank-account details must always be exchanged in a safe and secure manner. It is very important to check, and double check, that the

client's (or any other party's) bank-account details are correct. One of the more secure methods of sending or receiving bank details is through hard-copy post. It may also be possible to exchange bank-account details securely via telephone. When communicating by phone, you should always be absolutely certain that you are speaking with the actual person with whom you wish to exchange bank details. If uncertain, you may wish to consider a video call with the client or other party.

Further, if exchanging details orally, you must take sufficient steps to avoid error. The conversation should end with both parties absolutely certain that the details have been exchanged correctly. Never act on account details received by email without also verifying the account details by telephone. If forwarding money to third parties, check and double check that the details provided are from a reliable source. Be very suspicious of any unsolicited emails received containing bank details or seeking to change bank details.

If it is your firm's policy to never send bank account details by email, this should be confirmed to clients in writing. Otherwise, any email correspondence with clients that contains bank-account details should be encrypted and attachments should be pass-phrase protected. The pass-phrase should not be communicated by email.

Cybersecurity

Solicitors should ensure that their anti-malware packages and firewalls are on, and up to date, and they should continue to periodically conduct scans for malware and have their system backed up. If solicitors are working remotely, they should not connect online via unsecured free wi-fi, and all other staff should do the same.

Anti-money-laundering

Anti-money-laundering procedures should continue to be followed. In particular, solicitors

should continue to carry out client due-diligence procedures to verify the identity of clients. Client risk assessments should be documented.

Accountants' reports

The Society is determined that protection for client moneys remain in place. We are continuing to diligently pursue reporting accountants' reports; however, allowances are being made. Where solicitors are in genuine difficulty filing reports within the required deadline, they are asked to contact the Law Society with their proposals for the filing of the report. Each extension request will be looked at on a case-by-case basis, with additional time afforded where appropriate. The Law Society is also accepting unsigned reports (financialregulation@lawsociety.ie), provided they are accompanied by an undertaking from the reporting accountant that the signed report will be filed as soon as is practicable.

Law Society inspections

As on-site inspections cannot proceed in the current circumstances, the Law Society is seeking the cooperation of the solicitor to carry out an off-site 'desktop review'. In such a case, the Law Society requires certain information be sent directly to the authorised person, preferably in electronic format (password protected), for review. To date, the profession has been receptive to this approach, and the reviews have been taking place all over the country.

Solicitors in receipt of correspondence relating to ongoing inspections or desktop reviews should continue to correspond with the Society in relation to those matters by email (financialregulation@lawsociety.ie).

Regulation of practice

The Law Society's Regulation of Practice Committee is continuing to meet using various technological solutions.

Practice regulation support

We continue to provide help and assistance through our email helplines regarding practising certificates (pc@lawsociety.ie), professional indemnity insurance (piihelpline@lawsociety.ie), and firm commencement and cessation matters (firms@lawsociety.ie).

Certificates of good standing are still being provided in electronic format (pc@lawsociety.ie). Ordinarily, a fee of €100 applies to any certificate of good standing required within two weeks. This fee has been waived for the remainder of 2020.

Finally, there is normally a fee of €50 for a duplicate practising certificate. This charge has also been waived, and duplicate practising certificates are (at present) being issued in electronic form. [E](#)

John Elliot, Registrar of Solicitors and Director of Regulation

CORPORATE EVENTS, WEDDINGS, INTERIORS, PORTRAITS
GREAT RATES – NO HIDDEN COSTS

CIAN REDMOND
PHOTOGRAPHER

085 8337133
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CLIENTS INCLUDE: LAW SOCIETY GAZETTE, LAW SOCIETY OF IRELAND, INSTITUTION OF OCCUPATIONAL SAFETY AND HEALTH, DUBLIN SOLICITORS BAR ASSOCIATION, ALLTECH CRAFT BREWS AND FOOD

SOLICITORS' BENEVOLENT ASSOCIATION

156TH REPORT, 1 DECEMBER 2018 TO 30 NOVEMBER 2019

This is the 156th report of the Solicitors' Benevolent Association, which was established in 1863. It is a voluntary charitable body, consisting of all members of the profession in Ireland. It assists members or former members of the solicitors' profession in Ireland and their wives, husbands, widows, widowers, families and immediate dependants who are in need, and it is active in giving assistance on a confidential basis throughout the 32 counties.

The amount paid out during the year in grants was €756,168, which was collected from members' subscriptions, donations, legacies and investment income. Currently, there are 83 beneficiaries in receipt of regular grants, and approximately half of these are themselves supporting spouses and children.

There are 21 directors, three of whom reside in Northern Ireland, and they meet monthly in the Law Society's offices, Blackhall Place. They meet at the Law Society, Belfast, every other year. The work of the directors, who provide their services entirely on a voluntary basis, consists in the main of reviewing applications for grants and approving new applications. The directors also make themselves available to those who may need personal or professional advice.

The directors are grateful to both law societies for their support and, in particular, wish to express thanks to Patrick Dorgan (past-president of the Law Society of Ireland), Suzanne Rice (past-president of the Law Society of Northern Ireland), Ken Murphy (director general), David A Lavery (chief executive), and the personnel of both societies. The Law Society again organised the annual gala, which was held in October, for the benefit of our association, and a very sincere thanks to Patrick Dorgan, the

RECEIPTS AND PAYMENTS A/C FOR YEAR ENDED 30/11/2019

	2019	2018
RECEIPTS	€	€
Subscriptions	856,035	448,721
Donations	134,839	133,422
Investment income	65,419	61,419
Legacies	21,806	–
Bank interest	32	18
Currency gain	4,114	–
Repayment of grants	5,665	1,200
	1,087,910	644,780
PAYMENTS		
Grants	756,168	773,058
Administration expenses	51,787	55,447
Bank interest and fees	1,379	1,288
Currency loss	–	463
	809,334	830,256
OPERATING SURPLUS/(DEFICIT)	278,576	(185,476)
Profit on disposal of investments	85,035	50,901
Provision for increase/(decrease) in the value of quoted investments	15,473	(434)
SURPLUS/(DEFICIT) FOR THE YEAR	379,084	(135,009)

DIRECTORS AND OTHER INFORMATION

■ **Directors:** Thomas A Menton (chairperson), Felicity M Foley (deputy chairperson), Caroline Boston (Belfast), Liam Coghlan (Kilmarney), Thomas W Enright (Birr), Ivan Feran (Drogheda), William B Glynn (Galway), John Guerin (Belfast), Colin G Haddick (Newtownards), Siun Hurley (Bantry), Niall Lavery (Dundalk), Seamus Mallon (Castleblayney), Paul Malone (Borrisokane), Anne Murrin (Waterford), John M O'Connor (Dublin), John TD O'Dwyer (Ballyhaunis), Mark Quinn (Gorey), James I Sexton (Limerick), Sean Sexton (Dublin), Andrew F Smyth (Dublin), Brendan J Twomey (Donegal)

■ **Trustees** (ex officio directors): Felicity M Foley, Thomas A Menton, John M O'Connor, Sean Sexton

■ **Secretary:** Geraldine Pearse

■ **Auditors:** Deloitte Ireland LLP, Chartered Accountants and Statutory Audit Firm, Deloitte & Touché House, Earlsfort Terrace, Dublin 2

■ **Financial consultants:** Brewin Dolphin, 3 Richview Office Park, Clonskeagh, Dublin 14

■ **Bankers:** Allied Irish Banks plc, 37 Upper O'Connell Street, Dublin 1; Allied Irish Banks plc, 92 Ann Street, Belfast BT1 3HH

■ **Offices of the association:** Law Society of Ireland, Blackhall Place, Dublin 7; Law Society of Northern Ireland, Law Society House, 96 Victoria Street, Belfast BT1 3GN

■ **Charity number:** CHY892

members of the Council, and to the organisers of the gala.


The directors and the beneficiaries of the association send a very sincere thanks to Brian McMullin for organising the North/South IronLaw Challenge, which consisted of a 3.8k swim, 180k cycle, and a mara-

thon, and to his colleagues from the North, Adam Wood, Darren Toombs, Peter Jack; and from the South, Ivan Feran and Stuart Gilhooly, who took part in the event. They succeeded in raising €31,226 for the association.

I wish to express particular appreciation to all those who

contributed to the association when applying for their practising certificates, to those who made individual contributions, and to the following: Law Society of Ireland, Law Society of Northern Ireland, Dublin Solicitors' Bar Association, Courts Service, Faculty of Notaries Public in Ireland, Limavady Solicitors' Association, Local Authority Solicitors' Bar Association, Mayo Solicitors' Bar Association, Medico-Legal Society of Ireland, Midland Solicitors' Bar Association, Sheriffs' Association, Southern Law Association, and West Cork Bar Association.

The demands on our association are rising due to the present economic difficulties and, to cover the greater demands on the association, additional fundraising events are necessary. Additional subscriptions are more than welcome, as of course are legacies and the proceeds of any fundraising events. In certain cases, the association can claim tax relief for donations of €250 or more. I would encourage bar associations to run functions such as CPD courses to raise funds for the association. Subscriptions and donations can be received by any of the directors or by the secretary, from whom all information may be obtained at 73 Park Avenue, Dublin 4. Information can also be obtained from the association's website (www.solicitorsbenevolentassociation.com). I would urge all members of the association, when making their own wills, to leave a legacy to the association. You will find the appropriate wording of a bequest at p34 of the *Law Directory 2019*.

I would like to thank all the directors and the association's secretary, Geraldine Pearse, for their valued hard work, dedication, and assistance during the year. 

Thomas A Menton, chairman

SOLICITORS DISCIPLINARY TRIBUNAL

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

In the matter of Ian McSweeney, a solicitor practising as McSweeney Solicitors, 2 Capel Street, Dublin 1, and in the matter of the *Solicitors Acts 1954-2015* [2019/DT47]

Law Society of Ireland
(applicant)

Ian McSweeney (respondent solicitor)

On 5 March 2020, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of professional misconduct in his practice as a solicitor in that he:

- 1) Failed to respond to letters from the Society – dated 17 October 2018, 20 November 2018, 12 December 2018, 10 January 2019, 17 January 2019 and 7 February 2019 – in a timely manner, within the time

provided, or at all,

- 2) Failed to attend meetings of the Complaints and Client Relations Committee on 5 February 2019 and 14 March 2019, despite being required to do so,
- 3) Failed to comply with the High Court order dated 8 April 2019 to reply to the complaint of his named client within seven days of that date,
- 4) Failed to inform his client of a hearing date, and no legal representation attended the hearing, resulting in costs awarded against his client.

The tribunal ordered that the respondent solicitor:

- 1) Be censured,
- 2) Pay the sum of €3,200 to the

compensation fund,

- 3) Pay the sum of €1,812 as a contribution towards the whole of the costs of the applicant.

And the tribunal required that the respondent solicitor provide the following undertaking to the applicant Law Society and the Solicitors Disciplinary Tribunal in the following terms:

- 1) To reply to any correspondence received from the applicant and/or the Legal Services Regulatory Authority within 14 days of the date of the letter,
- 2) To engage in a meaningful and constructive way with the applicant and/or the Legal Services Regulatory Authority with regard to correspondence

and any requirement to attend meetings of either body,

- 3) To attend a practice management course for a minimum of five hours' duration, within six months of 5 March 2020, and to provide details of the said course to the applicant in advance of same, and evidence of attendance to the applicant within 14 days of completion,
- 4) The said course attendance to be in addition to the respondent solicitor's continuing professional development requirements for 2020.

The tribunal directed that the duration of undertakings (1) and (2) continue for three years from 5 March 2020 [g](#)



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Unfortunately, it is not possible to lend books during this period. We have access to a large range of databases to answer your enquiries. Self-service access to the entire Irish judgments' collection is available via the online catalogue. *LawWatch* will be published weekly as usual.



WILLS

Atkinson, Thomas (Tom) (deceased), late of 4 Joyce House West, Viking Harbour, Usher's Island, Dublin 8, and formerly of Ballyfore, Co Offaly, who died on 24 January 2012. Would any person having knowledge of a will made by the above-named deceased please contact Ferrys LLP Solicitors, Inn Chambers, 15 Upper Ormond Quay, Dublin 7; tel: 01 677 9408; fax: 01 873 2976, email: info@ferrysolicitors.com

Bolger, Patricia (deceased), late of Ferlane Cottage, Mitchelstown, Athboy, Co Meath; and formerly of 19 Knocklyon Court, Knocklyon Woods, Dublin 16; and 19 Firhouse Grove, Templeogue, Dublin. Would any person having knowledge of the whereabouts of a will made by the above-named deceased, who died on 10 May 2019, please contact Barry Lysaght, Malone and Martin, Solicitors, Market Street, Trim, Co Meath; DX 92001 Trim; tel: 046 943 1256 or email: info@maloneandmartin.com

Corroon, Bernard (deceased), late of 19 Kilcarn Court, Navan, Co Meath, who died on 28 October 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Elaine Byrne, Regan McEntee & Partners, Solicitors, High Street, Trim, Co Meath; DX 92002 Trim; tel: 046 943 1202, email: ebyrne@reganmcentee.ie

Doyle, Colette (otherwise Bríd C Doyle, otherwise Bríd Ní Dhubhghaill) (deceased), late of Colman Doyle Shops, South Main Street, Wexford. Would any person having knowledge of a will made by the above-named deceased, who died on 27 January 2020, please contact Ensor O'Connor, Solicitors, 4 Court Street, Enniscorthy, in the county of Wexford; tel: 053 923 5611, email: info@ensoroconnor.ie

Fowler, John Fowler (deceased), late of 312 Swords Road, Santry, Dublin 9. Would any person having knowledge of

will executed by the above-named deceased, who died on 8 January 2020, please contact Rachel Hill, Maurice Leahy Wade, Solicitors, Archway House, Swords, Co Dublin; DX 91013 Swords; tel: 01 840 6505, fax: 01 840 1156, email: rachelhill@leahydwade.ie

Hevey, June (otherwise June Angeline) (deceased), late of Myra View, 9 Upper Cliff Road, East Mountain, Howth, Co Dublin. Would any person having knowledge of a will made by the above-named deceased, who died on 30 January 2020, please contact Messrs Maurice E Veale & Co, Solicitors, 6 Lower Baggot Street, Dublin 2; tel: 01 676 4067, email: socon@vealesolicitors.com

Hurley, Kathleen (deceased), late of 26 Melvin Road, Terenure, Dublin 6W who died on 17 June 2019. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Butler Monk Solicitors, 12 Camden Row, Dublin 8; tel: 01 479 3299, email: emmet@butlermonk.ie

McKenna, Madeline (otherwise Madeline Angela) (deceased), late of 48 Dartmouth Square East, Leeson Park, Ranelagh, Dublin 6, who died on 30 May 2019. Would any person having knowledge of

the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Coghlan Kelly Solicitors, Trinity Chambers, South Street, New Ross, Co Wexford, Y34 VP89; DX 37004 Co Wexford; tel: 051 429 100, email: efurlong@coghlinkelly.com

O'Keeffe, Teresa (deceased), late of 65 Roseville, Naas, Co Kildare, and formerly of Seven Springs, Fishery Lane, Naas, Co Kildare, who died on 27 October 2019. Would any person having knowledge of a will made by the above-named deceased please contact Reidy Associates Solicitors, 13 Warrington Place, Dublin 2; tel: 01 661 8286; DX 109023 Fitzwilliam; email: mhogan@reidyassociates.ie

Ryan, Michael (deceased), late of Andragoole, Castlereagh, Co Roscommon, and Fearn Nursing Home, Castlereagh, Co Roscommon, who died on 25 February 2016. Would any person having knowledge of any will made by the above-named deceased please contact Padraig Kelly, Solicitors, Strokestown, Co Roscommon, quoting ref: R/3/16; tel: 071 963 3666, email: info@pksolrs.ie

Smith (Smyth), Desmond o/w Bernard (deceased), late of Mill House, Bunclody, Enniscorthy, Co Wexford, formerly of 56 Morehampton Road, Donnybrook, Dublin 4, and formerly of Carrickmacross, Co Monaghan. Would any person having knowledge of a will executed by the above-named deceased, who died

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kenney@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 June 2020 Gazette: 20 May 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*.



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on 21 February 2020, please contact Maeve Breen, Solicitor, MT O'Donoghue & Co, 11 Main Street, Gorey, Co Wexford; DX 48 003 Gorey; tel: 053 942 1137, fax: 053 942 1725, email: maeve.breen@mtodonoghue.com

Tierney, John (deceased), late of Callanagh, Kilcogy, Co Cavan, who died on 23 June 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Cliadhna M Sheridan, solicitor, Main Street, Granard, Co Longford, tel: 043 668 7778, email: cliadhna@cmssolicitors.ie

Treacy, Thomas (deceased), late of 11 Aughrim Court, Aughrim Street, Dublin 7, who died on 2 March 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 Jonathan Cosgrove, Aidan T Stapleton & Co Solicitors, Suites 130-132 The Capel Building, Mary's Abbey, Dublin 7; tel: 01 679 7939, email: info@astapleton.com

TITLE DEEDS

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* (as amended) and in the matter of an application by Valleycrest Holdings Limited in respect of the premises known as 33 Ashtown Grove, Navan Road, Dublin 7

Take notice that any person having a freehold interest or any intermediate interest in all that and those the property known as 33 Ashtown Grove, Navan Road, Dublin 7 (hereinafter called 'the property'), being the land demised held by a lease dated 23 March 1962 made between Clare Dunn, Judith Darling, Jessie Mary Doyle, Edward J Doyle, Charles Hart, and Eileen Gray of the one part, and James Quinn of the other part for the term of 123 years from 25 March 1955 at a rent of £30 per annum, should give notice of their interest to the undersigned solicitors.

Take notice that Valleycrest Holdings Limited, of 33 Ashtown Grove, Navan Road, Dublin 7, being the party now entitled to the lessee's interest in the property, intends to submit an application to the county registrar for the county of Dublin for acquisition of the freehold interest in the property, and any party asserting that they hold a superior interest in the property are called upon to furnish evidence of their title to the property to the undersigned solicitors within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the

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

Date: 8 May 2020

Signed: *Spelman Callaghan* (solicitors for the applicant), Corner House, Main Street, Clon-dalkin, Dublin 22

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 Steel Fixing Services Limited and in the matter of the rear of no 30 and/or 31 James's Street, Dublin 8

Take notice that any person having an interest in the freehold estate or any lesser or intermediate interest in the lands and premises being now a warehouse or workshop building known as and situate at the rear of 30 and/or 31 James's Street, in the city of Dublin, as demised by an indenture of lease made on 24 June 1858 between Mathias Joseph O'Kelly and Margaret O'Kelly (otherwise Shannon) of the one part and Benjamin Glorney of the other part for the term of 868 years, commencing 4 January 1858, subject to the yearly rent of £60.1s (subsequently reduced to £55.7s.9d) and the conditions and covenants therein contained, should give notice of their intentions to the undersigned solicitors.

Further take notice that Steel Fixing Services Limited, being the person entitled to the lessee's interest under the said lease, intends to submit an application to the county registrar for the county of Dublin at Aras Uí Dhálaigh, Inns Quay, in the city of Dublin, for the acquisition of the fee simple interest in the said property and all intermediate interests in same, and any party asserting that they hold any interest in the said property superior to that of the said applicant are called upon to furnish evidence of title to the said property to the undersigned solicitors within 21 days of the date of this notice.

In default of any such notice being received, the said applicant intends to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply to the Dublin county registrar for such directions as may be deemed meet on the grounds that the person or persons beneficially entitled to all and any superior interests in the said property, up to and including the fee

COMING SOON

The Law of Evidence in Ireland

By Caroline Fennell



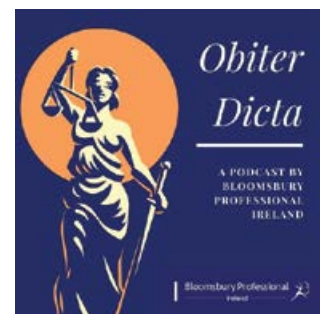
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simple estate if appropriate, are unknown or unascertained.

Date: 8 May 2020

Signed: OBH Partners (solicitors for the said applicant), 17 Pembroke Street Upper, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by James' Street Steel Manufacturing Limited and in the matter of no 33 and 34 James's Street, Dublin 8

Take notice that any person having an interest in the freehold estate or any lesser or intermediate interest in the lands and premises situate at and formerly known as part of no 33 James's Street, and now known as part of no 34 James's Street, in the city of Dublin, as demised by an indenture of lease dated 11 February 1897 and made between James H Kenny of the one part and William Dunne of the other part for a term of 200 years commencing from 1 January 1897, subject to an annual rent of £30 and the conditions and covenants therein contained, should give notice of their intentions to the undersigned solicitors.

Further take notice that James' Street Steel Manufacturing Limited, being the person entitled to the lessee's interest under the said lease, intends to submit an application to the county registrar for the county of Dublin at Aras Uí Dhálaigh, Inns Quay, in the city of Dublin, for the acquisition of the fee simple interest in the said property and all intermediate interests in same, and any party asserting that they hold any interest in the said property superior to that of the said applicant are called upon to furnish evidence of title to the said property to the undersigned solicitors within 21 days of the date of this notice.

In default of any such notice being received, the said applicant intends to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and will apply to the Dublin

county registrar for such directions as may be deemed meet on the grounds that the person or persons beneficially entitled to all and any superior interests in the said property, up to and including the fee simple estate if appropriate, are unknown or unascertained.

Date: 8 May 2020

Signed: OBH Partners (solicitors for the said applicant), 17 Pembroke Street Upper, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by James' Street Steel Manufacturing Limited and in the matter of no 34 and the rear of no 33 James's Street, Dublin 8

Take notice that any person having an interest in the freehold estate or any lesser or intermediate interest in the lands and premises situate at and known as no 34 and the rear of no 33 James's Street, as demised by an indenture of lease dated 30 December 1961 and made between Rose Kenny of the first part, Rose Kenny and James Sheil of the second part, and Patrick Rafter of the third part for a term of 150 years commencing 1 May 1961, subject to the yearly rent of £46 and the conditions and covenants therein contained, should give notice of their intentions to the undersigned solicitors.

Further take notice that James' Street Steel Manufacturing Limited, being the person entitled to the lessee's interest under the said lease, intends to submit an application to the county registrar for the county of Dublin at Aras Uí Dhálaigh, Inns Quay, in the city of Dublin, for the acquisition of the fee simple interest in the said property and all intermediate interests in same, and any party asserting that they hold any interest in the said property superior to that of the said applicant are called upon to furnish evidence of title to the said property to the undersigned solicitors within 21 days of the date of this notice.

In default of any such notice

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

Date: 8 May 2020

Signed: OBH Partners (solicitors for the said applicant), 17 Pembroke Street Upper, Dublin 2

In the matter of the Landlord and Tenant Acts 1967-2005 and in the matter of the Landlord and Tenant (Ground Rents) (No 2) Act 1978 and in the matter of an application by James' Street Steel Manufacturing Limited and in the matter of no 35 James's Street, Dublin 8

Take notice that any person having an interest in the freehold estate or any lesser or intermediate interest in the lands and premises situate at and known as no 35 James's Street, as demised by an indenture of lease dated 30 April 1919 and made between Kate Byrne and Mary Byrne of the one part and the Irish Agricultural Wholesale Society Limited of the other part for a term of 150 years commencing from 24 June 1923, subject to the yearly rent of £52.6s and the conditions and covenants therein contained, should give notice of their intentions to the undersigned solicitors.

Further take notice that James' Street Steel Manufacturing Limited, being the person entitled to the lessee's interest under the said lease, intends to submit an application to the county registrar for the county of Dublin at Aras Uí Dhálaigh, Inns Quay, in the city of Dublin, for the acquisition of the fee simple interest in the said property and all intermediate interests in same, and any party asserting that they hold any interest in the said property superior to that of the said applicant are called upon to furnish evidence

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of title to the said property to the undersigned solicitors within 21 days of the date of this notice.

In default of any such notice being received, the said applicant intends to proceed with the application before the Dublin county registrar at the end of 21 days from the date of this notice and

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will apply to the Dublin county registrar for such directions as may be deemed meet on the grounds that the person or persons beneficially entitled to all and any superior interests in the said property, up to and including the fee simple estate if appropriate, are unknown or unascertained.

Date: 8 May 2020

Signed: OBH Partners (solicitors for the said applicant), 17 Pembroke Street Upper, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Laura Gilmartin and Linda Gilmartin

Take notice that any person having an interest in the freehold estate of the following property, known as no 25 Wolfe Tone Street, Sligo, formerly known as 25 William Street, Sligo, held under an indenture of lease dated 27 March 1895 between Iza Anna Austin of the one part and George Carr of the other part for a term of 132 years from 29 September 1894 and subject to a yearly rent of £2 thereby reserved and the covenants and conditions on the part of the lessee therein contained.

Take notice Linda Gilmartin and Laura Gilmartin, being the legal personal representatives of Michael Gilmartin and Stella Gilmartin, the persons currently entitled to the lessee's interest in the 1895 lease, intend to apply to the county registrar in the county of Sligo 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 is called upon to furnish evidence of their title to same to

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the below named within 21 days of the date of this notice.

In default of any such notice being received, the said Linda Gilmartin and Laura Gilmartin intend to proceed with an application through the county registrar for the county of Sligo at the end of the 21 days from the date of this notice and apply for such direction as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the aforesaid premises unknown and unascertained.

Date: 8 May 2020

Signed: Dermot G McDermott (solicitors for the applicant), 1 Union Street, Sligo

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* (as amended) and in the matter of an application by Henry A Crosbie (in receivership) in respect of a plot of land situate at the Point Village, Dublin 1

Take notice any person having any interest in the freehold estate or any intermediate interests in the following property at the Point Village, Dublin 1: all that and those that plot or piece of ground, part of foot lot no 90, which is more particularly delineated and described in and by a map or ter-

chart thereof in the margin of the lease dated 26 July 1864 between Thomas Crosthwait of the one part and Thomas Walpole, William Henry Webb and John Fredrick Bewley of the other part, and coloured green thereon, and is situate, lying, and being in the parish of Saint Thomas and county of the city of Dublin, held under a lease dated 26 July 1864 between Thomas Crosthwait of the one part and Thomas Walpole, William Henry Webb and John Fredrick Bewley of the other part from 1 May 1864 for the term of 400 years, subject to the yearly rent of £40.

Take notice that Henry A Crosbie, acting by his joint statutory receivers Stephen Tennant and Paul McCann, being the person now holding the said property, intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold simple estate or any intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property (or any of them) are called upon to furnish evidence of the title to the aforementioned property to the below named within 21 days from the date of this notice.

In default of any such notice being received, the applicant intends to proceed with the application before the county registrar

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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 person or persons beneficially entitled to all superior interests up to and including the fee simple in the aforesaid property are unknown or unascertained.

Date: 8 May 2020

Signed: McCann FitzGerald (solicitors for the applicant), Riverside One, Sir John Rogerson's Quay, Dublin 2



PRO BONOBO

OK, ZOOMER – GET OUT OF THE SCRATCHER!

A US judge had some choice comments on the conduct of Zoom videoconference hearings for his local district, [Loweringthebar.net](#) reports.

Judge Dennis Bailey (17th Judicial Circuit Court) said: “The judges would appreciate it if the lawyers and their clients keep in mind that these Zoom hearings are just that: hearings. They are not casual phone conversations. It is remarkable how many attorneys appear inappropriately on camera. We’ve seen many lawyers in casual shirts and blouses, with no concern for grooming ... One male lawyer appeared shirtless, and one female attorney appeared still in bed, still under the covers. And putting on a beach cover-up won’t cover up that you’re poolside in a bathing suit.”



BILLIE JEAN IS NOT MY DRESS CODE

A German law student has won a complaint after she was deducted marks for turning up to an exam wearing jeans and a polka-dot top.

The student at the Berlin School of Economics and Law was reportedly penalised for failing to appear “appropriately groomed”, despite temperatures of 35 degrees on the day of the exam. A court ruled, however, that it was not fair to mark students down for their choice of attire “unless it was relevant to their course”, [The Times](#) reports.

Students were said to have been warned in advance that a dress code applied. However, due to the unusually hot weather, the strict “businesslike dress code” was relaxed, with students being instead told to be “groomed in a manner fitting to the occasion”.

The woman – who chalked-up a dress-code score of 1.7 (one being excellent, five being inadequate) –

was later informed that her denim and polka-dot combo was too mundane and insufficiently “airy”. Reportedly, the lecturer later sent her a text message saying that she

would have done better if she had “resorted to white linen trousers and a black shirt with an ethnic necklace” or a “cute or even severely cut blouson jacket”.

The student brought the complaint in Berlin’s administrative court – the judge ruled in her favour and improved her score to 1.3.

BLINDED BY THE LIGHT

A woman has been told by IPSO (the British press regulator) that her attraction to historic light fittings is not a protected sexual orientation, [The Guardian](#) reports.

Amanda Liberty (33) identifies as an ‘*objectum sexual*’ – an individual who is attracted to objects. She objected to being nominated by [The Sun](#) for the ‘Dagenham Award (Two Stops Past Barking)’. The article mocked her public declaration of love for ‘Lumière’, a 92-year-old German chandelier she bought on eBay. She argued that the article



breached the regulator’s code of conduct, which requires publishers to avoid prejudicial or pejorative references to an individual’s sexuality. She also raised con-

cerns about the accuracy of the article, as it referred to her being married to the chandelier. She pointed out she was in a relationship with the chandelier, but was not yet married to it.

The newspaper argued that sexual orientation in the context of the press regulation code covered people who were attracted to people of the same sex, the opposite sex, or both. Since Liberty was not legally able to marry the chandelier, it would not be legally discriminatory to prevent such a marriage. The regulator agreed with the newspaper. [g](#)

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