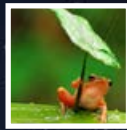




**Hope springs eternal**  
Reporting from the Law Society's inaugural Spring Gala in Dublin



**Hippity hoppity debt and property**  
High Court's landmark decision *AIB v Coughlan*



**You cannot refuse?**  
The 'offer of amends' procedure in the *Defamation Act 2009*

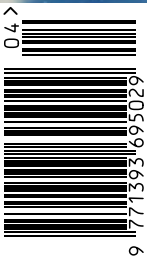
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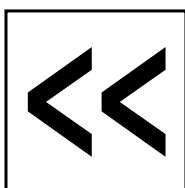
**Exclusionary clauses in banks' contract documentation**



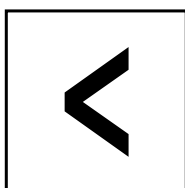
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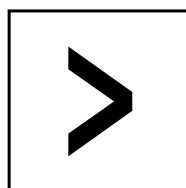
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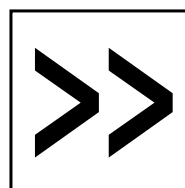
  
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Our client, a boutique law firm in Dublin 2 are looking for an ambitious Associate to join their team. The successful candidate will be advising on high profile domestic and international clients on both contentious and advisory employment law. Candidates will have a minimum of 5 years experience within a commercial firm.

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# FIELD OF DREAMS

**T**he lights were blinding, but I could see all I needed. A full house. More like a royal flush and a three-card trick rolled into one. This is what we can achieve when we set the dial to absolute belief. Build it and they will come.

The Intercontinental Hotel, on 24 March, hosted 390 people at our Spring Gala, the vast majority of whom were members of this profession. They came from the largest firms, the smallest firms, from Dublin and the country. They ranged from partners to associates to members of our in-house and public sectors. It was the most diverse and representative grouping the Law Society has ever housed in one place.

As I looked out into the audience, squinting my eyes to take in our own field of dreams, you will not have seen a wider smile.

Many thanks to all involved in the organisation of the Spring Gala and Symposium, most particularly to Teri Kelly (director of representation and member services) and Attracta O'Regan (head of professional training) who, with their respective teams, turned a fledgling idea into a reality (see pages 14 and 28).

## JAC submission

On the night, we were joined by Tánaiste and Minister for Justice Frances Fitzgerald, to whom I had just written with the Society's submission on the proposed Judicial Appointments Commission.

We waited a long time for the granting of our right to be appointed to the highest judicial offices. When Michael Peart eventually smashed through that particular glass ceiling, we assumed that many more would follow. Maybe, even, that we would have as many as the Bar.

If that was ever the assumption, it has been long since laid to rest. Just 8% of all superior court appointments since 2002 have been solicitors.

## Modern selection process

The Society's submission seeks to encourage a modern selection process for the judiciary. To this point, we have been very well served by the

appointments to all of our courts, and although there have not been as many solicitors as we would have liked, the quality of judges has, by and large, been of the highest standard.


However, that is not to say that we cannot improve the system, or that a more diverse, more representative judicial body cannot be achieved. Much media attention has focused on whether or not the Chief Justice should chair the new commission. We have suggested that she (or indeed he) should not – simply for logistical reasons. It is perfectly clear that the judiciary should be well represented, but the Chief Justice has a far more important role in the administration of justice than the more functional and time-consuming role that the new selection process envisages.

The bill as proposed – and our submission concurs with this – envisions an interview process and a more modern recruitment process than



**WE ARE GOOD ENOUGH FOR THE HIGHER COURTS, BUT WE NEED TO APPLY**

currently exists. Assuming that this is what transpires in legislation, already overworked judges, particularly the Chief Justice, will surely need a more refined role. Of course, the Chief Justice must have a key role in all selections, particularly for the Supreme Court, and the presidents of each court must be centrally involved in appointments to their own courts. To suggest otherwise would be to throw the baby out with the bathwater.

Finally, though, if we want more solicitors as judges, we need to believe in ourselves. We are good enough for the higher courts, but we need to apply. No one is going to tap you on the shoulder. A fair system gives everyone a chance. Grab it now or nothing will change. 

  
STUART GILHOOLY,  
PRESIDENT



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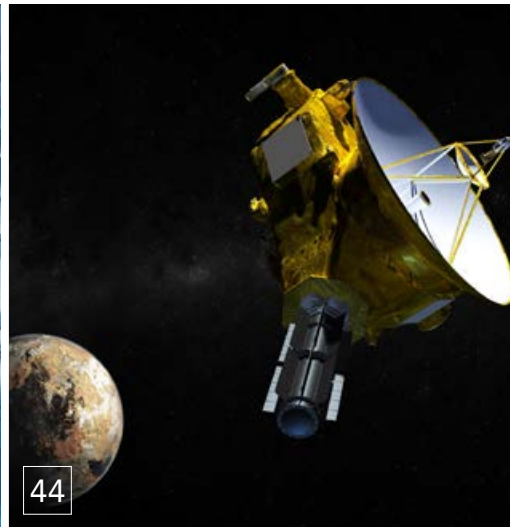
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# THE BIG PICTURE





PICTURE: ERAYYES HERMAN/POOL



### THE LOOK ON HIS FACE...

British Ambassador to the EU Tim Barrow (left) delivers the official notice under article 50 of the *Lisbon Treaty* to European Council President Donald Tusk in Brussels on 29 March 2017. The letter officially sets in train the formal proceedings for Britain to leave the EU. Britain's Prime Minister earlier that day signed the notice, following the June 2016 referendum result, which decided that Britain should leave the union





COMPILED BY KEITH WALSH, PRINCIPAL OF KEITH WALSH SOLICITORS

## GALWAY

## EASTER SOCIAL AND CPD

The Galway Solicitors' Bar Association held its annual dinner on 3 March at the Meyrick Hotel in Eyre Square, Galway. The guest of honour was Judge Fiona Lydon, who was recently appointed to the District Court bench, having practised as a solicitor in Galway city for many years. President Brendan O'Connor welcomed members of the judiciary, colleagues and members of the Bar and made a presentation to Judge Lydon to mark the occasion.

Holy Thursday (13 April) will be a busy day for Galway solicitors, with a four-hour CPD event on a family law theme, which will begin at 2pm in the courthouse. On the same evening, the GSBA will welcome Law Society President Stuart Gilhooly and director general Ken Murphy to Galway. The Easter Social will follow in O'Connell's Bar, Eyre Square, at 7pm. All Galway solicitors are welcome and trainees may attend,

provided they are accompanied by their training solicitors.

As the GSBA plans to provide over 30 hours of free CPD to all members during 2017, the president would be obliged if all

colleagues could forward the annual subscription of €50 to GSBA treasurer Cairbre O'Donnell, John C O'Donnell & Son, 5 Mary Street, Galway (DX 4502) as soon as possible.

## AS THE SUN GOES DOWN ON GALWAY BAY



At the Galway Solicitors' Bar Association annual dinner were Elaine McCormack, Una O'Donnell and Ruth McDonagh

PICT: MARTINA REGAN PHOTOGRAPHY

## CORK

## SLA DINNER SUCCESS

Robert Baker of the Southern Law Association tells us that the annual dinner on 17 February at the Maryborough House Hotel was a major success. Special guests included High Court Judge Pat McCarthy, several Circuit and District Court judges, as well as Stuart Gilhooly (Law Society president), Michael Quinlan (senior vice-president), Ken Murphy (director general) and Mary Keane (deputy director general).

Juli Rea (CPD coordinator) has had a busy start to the year with numerous excellent events in the first quarter of 2017.

## DUBLIN

## PILGRIMS' PROGRESS

The DSBA's 2017 annual conference will be held in the old town of Santiago de Compostela, in the Galicia region of north-west Spain – a UNESCO World Heritage site since 1985. DSBA 'pilgrims' will arrive on Thursday 21 September and depart on Sunday 24 September. Accommodation is in the Parador Hotel, with optional guided walks available of the historic walled town, golf in the Real Aero Club de Santiago, and a tour of the cathedral.

The business session will take place on Friday morning, followed by gala dinner that evening. The highlight of Saturday's events will be the optional group dinner at the San Francisco convent.

Booking is brisk, with over 50% of places already taken. Contact [colette@marketinginitiatives.ie](mailto:colette@marketinginitiatives.ie) or [www.dsba.ie](http://www.dsba.ie) to book.

## LEITRIM

## FAMILY LAWYERS INVADE LOVELY LEITRIM ON 15 MAY

Leitrim solicitors have been telling 'Nationwide' they're delighted that their county has been chosen by the Family Lawyers' Association (FLA) for their annual one-day conference on Monday 15 May 2017 at Lough Rynn Castle, Mohill, which takes place from 9am to 4.30pm.

The top-class line-up includes:

- Inge Clissmann SC on how to protect family businesses and farms in marital disputes,
- Nuala Jackson SC on provision from the estate of deceased persons – specifically looking at sections 117, 15A, 18 and 194,
- Ann Kelly BL on defences in *Hague Convention* proceedings,
- Catherine White BL on case progressions,
- Muriel Walls (solicitor) on the *Children and Family Relationship Act 2015* and the rights of extended family and third parties,
- Jim Connolly (Goodbody Stockbrokers) on pension adjustment orders,
- Justin McKenna (Partners at Law) on the *Legal Services Regulation Act 2015*, and
- Síne Creamer BL on discovery applications in family law cases.

Conference rates are €160 (practitioners qualified over five years) and €60 (members of the FLA and practitioners qualified less than five years). Bookings and payment should be sent to Clare Feddis, vice-chair, Family Lawyers' Association, 27 Lower Bridge Street, City Gate, Dublin 8 (DX 1106 Four Courts).



# A&L GOODBODY NAMED LAW FIRM OF THE YEAR

A&L Goodbody has been named Irish Law Firm of the Year for the third time in four years by the magazine *The Lawyer*. The annual European law firm awards ceremony took place on 16 March 2017 at the Grange St Paul's Hotel, in London's financial district.

The judges said that the award was in recognition of the firm's "strategic vision, innovation



in legal solutions, and excellence in client service". The firm also won in the 'European Corporate Deal of the Year' category for its work in advising US company Verizon on its €2 billion acquisition of Fleetmatics Group, which was a groundbreaking transaction for Irish-listed PLCs.

The firm was placed second for the prestigious 'European Law Firm of the Year Award'.

## FIRST IRISH FELLOW

**McCann FitzGerald's Jane Marshall has been elected a fellow of the American College of Bankruptcy, becoming the first Irish person to have been elected to the college. The college is an honorary professional and educational association of bankruptcy and insolvency professionals.**

Those who are invited to join as fellows must meet strict criteria for selection, including the highest standard of professionalism, ethics, character, integrity, professional expertise and leadership, contributing to the enhancement of bankruptcy and insolvency law and practice.



**Marshall is a consultant in McCann FitzGerald's restructuring and insolvency group, which is headed by partner Michael Murphy.**

## COX MOVES HQ

After almost 20 years at Earlsfort Centre, Arthur Cox has moved up the street to new offices at 10 Earlsfort Terrace, Dublin 2. The firm employs over 660 people in its new building.

Managing partner Brian O'Gorman said that, despite the move, the firm would be remaining close to its spiritual home on St Stephen's Green, where the firm was founded in 1920.

The new building is 26% more energy efficient than required under current building regulations. It has the highest achievable environmental rating for the building (inside and out),



uses rainwater harvesting to provide up to 40% of the water used, has a highly efficient combined heat-and-power system, and generates its hot water from rooftop solar panels.

## COURT OF APPEAL HEARS AMICUS APPLICATION

The Irish Human Rights and Equality Commission has appeared before the Court of Appeal (10 March) in proceedings concerning the relationship between claims of discrimination and claims of personal injuries arising in the workplace.

The commission was granted liberty to appear as *amicus curiae* in *Culkin v Sligo County Council* in January 2016.

In these proceedings, the plaintiff (a former local authority employee) is seeking dam-

ages for personal injuries arising from alleged bullying in the workplace.

The local authority has sought to have these personal injuries proceeding struck out on the grounds that the plaintiff's complaint of discrimination as against his former employer has already been investigated by the Equality Tribunal (now subsumed into the Workplace Relations Commission).

In its submissions, the

commission has sought to assist the Court of Appeal in interpreting the relevant provi-

sions of the *Employment Equality Acts*. The Court of Appeal has reserved judgment.

## BLM EXPANDS AGAIN

**Insurance and risk law specialist BLM is to double its Dublin office space next August by signing a lease for a 5,000 sq ft office in the city centre at St Stephen's Green House, Dublin 2. BLM established its Dublin office in 2012 and expanded following a merger with**

**long-standing firm Campbell Fitzpatrick in 2014. The Dublin office, led by partner Gavin Campbell, currently has 32 staff including four partners. The firm will vacate its current Dublin 4 premises in August to facilitate a move when the courts are in recess.**



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**Pictured (l-r):**

*David Montgomery (Head of Risk & Regulatory Advisory), Tom Brennan, Jennifer Kelly and Alastair MacDonald (Managing Partner)*

**EisnerAmper Ireland is delighted to announce the appointment of Jennifer Kelly and Tom Brennan as Partners.**

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## JUDICIAL SELECTION REFORM MUST INCREASE DIVERSITY

The process by which we select judges is important because of the impact that their decisions have on people's lives, *writes Ken Murphy*.

In 2014, a committee chaired by Chief Justice Susan Denham was sharply critical of the “demonstrably deficient” appointment system. “It is increasingly clear that the relative success of the administration of justice in Ireland has been achieved in spite of, rather than because of the appointment system”, the judges argued.

The Law Society views the Government's proposals to reform the judicial appointments process as a chance for a fresh start.

It is an opportunity to take the best of the Judicial Appointments Advisory Board and to develop it into a new, contemporary, properly resourced and professionally managed system.

### Society submission

In March, the Society made a 25-page [submission](#) to the Government on the proposals contained in the [scheme](#) of the *Judicial Appointments Commission Bill 2016*. This was the result of detailed research, conducted with the benefit of outside expertise on the issue, and following a full debate at the Council of the Law Society.

In its submission, the Society broadly supports the Government's proposed bill as a forward-looking, inclusive and contemporary approach to reforming the judicial selection system. However, the Society believes that some changes to the proposed bill would improve it further.

One of the key objectives of the new appointments regime should be to increase the diversity of the judiciary. Diversity must include the appointment of more women,



Murphy: ‘The failure to appoint more solicitors to the superior courts simply cannot be defended’

more solicitors and, in general, more candidates from wider social and, indeed, geographical origins. Such candidates will enrich the judiciary with additional talents, skills and insights. This increase in the diversity of the judiciary is desirable as a matter of logic, as a matter of good public policy, and as a matter of fairness.

### Commission membership

The Society supports the proposed new Judicial Appointments Commission (JAC) with a majority non-legal membership. A majority of lay members will ensure that there is a much greater measure of diverse public interest represented in the judicial selection process. It is also consistent with the State's policy approach, supported by the Law Society, whereby there is now a lay majority on the Legal Services Regulatory Authority, which was inaugurated last year as the regulator for legal services in this jurisdiction.

Greater public involvement in the selection of judges is central to the public interest. The Society has long called for a reduction in the discretion of the Government in judicial selection because of persistent fears that judicial selection has been too tightly linked to

political-party patronage, or perceptions of political-party patronage. A reduction to three, per judicial appointment, in the number of names of recommended candidates being sent to Government will help greatly in this regard.

### Candidates of merit

The Government has also proposed that the new JAC be chaired by a layperson – someone who is neither a judge nor a lawyer. The Society welcomes this proposal also.

In the Society's view, the selection of the chairperson should be performed through open competition. This open competition should seek a candidate with a skill-set derived from senior professional recruitment experience, board management and governance experience, and experience of identifying and engaging highly skilled professionals.

The Society has long emphasised the importance of selecting judicial candidates based solely on merit. But what is ‘merit’ in this context? Of course, knowledge of the law and a capacity for legal reasoning are essential. In our 2014 submission, we detailed the range of personal qualities that should also contribute to ‘merit’, including common sense, independence, balance, even-temper, humanity, humility, courtesy, compassion and social awareness. A list of such qualities could be drawn up by the new commission and candidates professionally tested against them.

### Greater diversity

A judiciary that is reflective of society is essential for the enduring legitimacy of the judicial branch of government.

There is broad diversity of legal experience in this State, includ-

ing solicitors and barristers in private practice, legal academics, and a range of in-house lawyers both in the service of the State and in private entities. There is exceptional talent and experience among this very broad pool of practitioners, who offer a wide range of legal, personal and professional experience.

Solicitors have been eligible for appointment to the superior courts since 2002. In the years since, there have been 90 appointments to the High Court, Court of Appeal and Supreme Court. Of those, only eight have been solicitors. Accordingly, between 2002 and 2016, the branch of the legal profession with approximately 80% of the legal practitioners in the State has produced just 8% of the superior court judicial appointments. This cannot be reconciled with the public interest, the intent of the *Courts and Courts Officers Act 2002*, or the desirability for a broadly experienced judiciary reflective of the community it serves.

The failure to appoint more solicitors to the superior courts simply cannot be defended. Solicitors have broad experience of life and of law, gained not only as legal practitioners and advisers, but also as employers, as managers of large and small businesses – and as the branch of the profession that deals with the public directly, often at the most difficult times in their lives.

Let the success of the administration of justice in Ireland in future be achieved through, rather than in spite of, the judicial appointments system.

This article was previously published in *The Irish Times* on 28 March.





## FOG LIFTS AS MARKET VALUE NOW DETERMINES COURT JURISDICTION

The jurisdiction of the Circuit Court in relation to possession proceedings concerning domestic property has been a matter of considerable confusion (and litigation) in recent years.

The decision of the Court of Appeal in *Permanent TSB PLC v Langan* ([2016] IECA 229) has, however, triggered legislative change that has brought about some long-overdue clarity.

From a practitioner's perspective, the most significant development is the replacement of 'rateable valuation' with 'market value' as the determining test for court jurisdiction. Where the market value of a domestic property is less than €3 million, the Circuit Court will have jurisdiction.

The decision of the Court of Appeal in *Langan* followed two conflicting High Court decisions on the jurisdiction of the Circuit Court to hear cases involving non-rateable property (*Bank of Ireland Mortgage v Finnegan and Ward* [2015] IEHC 30 and *Bank of Ireland v Hanley and Griblin* [2015] IEHC 738).

In a unanimous judgment, the Court of Appeal found that, where property is not rateable under the



*Valuation Act 2001*, and does not fall within the exceptions created by the *Land and Conveyancing Law Reform Act 2009* or the *Land and Conveyancing Law Reform Act 2013*, the Circuit Court has no jurisdiction in relation to such a property.

This decision is currently under appeal to the Supreme Court.

### Legislative response

In order to deal with the consequences of the Court of Appeal ruling, which it feared had the potential to seriously disrupt the operation of the courts, the Oireachtas passed the *Courts Act 2016*. The main purpose of the new act is to give jurisdiction to

the Circuit Court to deal with proceedings in relation to property that is non-rateable under the *Valuation Act 2001*.

In order to comprehensively address the issue, the Minister for Justice also made a commencement order (SI 2/2017) in relation to provisions of the *Civil Liability and Courts Act 2004* that determine the Circuit Court's jurisdiction on the basis of a property's market value rather than its rateable valuation.

From a practitioner's perspective, special attention should be paid to the following sections of the *Courts Act 2016*:

- Section 1 creates a rebuttable

presumption of market value such that, where the plaintiff alleges that the market value of the land concerned does not exceed €3 million, the onus of proof will lie with the defendant to show that the market value of the subject property exceeds that amount,

- Section 3 states that production of a section 67(4) certificate (from the Valuation Office) purporting to state the value of a property will now be sufficient evidence of the valuation until the contrary is proved.

The jurisdictional issue is now largely resolved, and the Circuit Court's jurisdiction to hear any new proceedings will be determined by market value. However, any proceedings involving unrateable domestic premises that do not fall under the 2009 act or 2013 act exceptions, and which began in the Circuit Court before the passing of the *Courts Act 2016*, could still fall foul of the Court of Appeal decision in *Langan*. So, until the anticipated Supreme Court decision, practitioners should consider an application to transfer those proceedings to the High Court.

## DCU'S MASTER OF LAWS HOLDS OUT INTERESTING PROSPECTS

The School of Law and Government at Dublin City University is offering a Masters of Law (LLM) with many interesting options. The LLM has three strands:

- A human rights/ethics focus with a 'law and society' approach,
- An EU and international/transnational law strand, which is particularly important in the

pre- and post-Brexit labour market, and

- A public law emphasis, addressing institutions, public policy and political theory.

Some of its optional LLM modules offer, for example, international human rights law and public law and political philosophy, with students from other

MA programmes joining in. As a result, lawyers get the opportunity to work with policy students or those focusing on international relations. In other modules – criminology or medical law and bioethics, for example – lawyers work solely with fellow lawyers.

Director of the LLM programme Dr Tom Hickey says: "Our various programmes offer

exciting possibilities for solicitors who may want to upskill or venture beyond their current areas of work. Our programmes are designed very much with the contemporary labour market in mind, and based on contemporary insights on how fourth-level education should work."

For details, contact [tom.hickey@dcu.ie](mailto:tom.hickey@dcu.ie) or tel 01 700 7858.



## SEVEN NEW COURTHOUSES TO OPEN THIS YEAR

The Courts Service is on target to deliver seven new and refurbished courthouses during 2017, writes Cillian Smith (project manager at the Courts Service). The first of these courthouses, a landmark building adjacent to the River Boyne, will open in Drogheda in a few weeks. The remainder – at Cork, Limerick, Waterford, Wexford, Letterkenny and Mullingar – will be completed in the final quarter of this year.

Limerick, Letterkenny and Drogheda are all new landmark buildings. The Cork, Waterford and Mullingar projects include the restoration of historic courthouses, all of which are being significantly extended to provide additional courtrooms and facilities.



Cork (seen here) and Limerick's new dedicated Criminal Courts of Justice will open by year-end

The new and refurbished courthouses are being delivered as a single project by means of public private partnership, similar to the way the Criminal Courts of

Justice building was delivered.

In terms of scale, the project is the largest capital building project ever undertaken by the Courts Service, delivering a total

of 31 courtrooms and 36,000m<sup>2</sup> of accommodation.

All seven courthouses are being built to a very high standard, with enhanced facilities for all court users, improved custody facilities, new courtrooms, court offices, separate circulation and full accessibility. Modern legal practitioners' suites and improved consultation facilities are included, and all locations will have secure consultation rooms for meeting with clients in custody.

The improved facilities will allow a greater range of sittings to be held at the various locations, including custody cases that previously could not be held at some venues due to inadequate facilities or security concerns.

## LONDON FOCUS ON IRISH INSURANCE SCENE

Underwriters, brokers, claims-handlers and a wide range of London and Irish-based insurance professionals attended a seminar at the historic Old Library at Lloyds on 7 March 2017. They learned about recent developments in the Irish legal system, personal injuries damages levels, fraud, reform and the establishment of the Court of Appeal.

The seminar was arranged by OBL Solicitors in Dublin and MDM Solicitors in Cork and was chaired by David Powell (Lloyds Market Association).

Jack O'Brien (partner, OBL Solicitors) provided a background of recent reforms to the Irish legal system from the 1990s to date on matters such as the establishment of PIAB, the books of quantum, and the basis for measuring general damages in personal injuries actions.

David Nolan SC provided a comprehensive background to the establishment of the Court of



Speakers at the Irish insurance seminar in London were (from l to r): former Chairman of the Bar Council David Nolan SC, Jack O'Brien (partner, OBL Solicitors), Mr Justice Nicholas Kearns (former President of the High Court and current chairman of the Personal Injuries Commission), Carrie McDermott (partner, MDM Solicitors) and David Powell (Lloyd's Market Association)

Appeal in 2014, and outlined a number of the recent notable lead cases that resulted in reductions to awards of general damages by the lower courts.

Carrie McDermott spoke about fraud cases and the requirements of the Irish courts, particularly in respect of section 26 of the

*Civil Liability and Courts Act 2004*. She also covered topics such as plaintiff profiling, claims-handling and innovations used by insurers and defence firms in combating fraud.

The chairman of the recently established Personal Injuries Commission, Mr Justice Kearns,

drew comparisons with data protection legislation in Ireland and Britain. He dealt with such matters as the difficulties in establishing a data repository of uninsured drivers and the possible reforms that could be brought to bear to the sector. He covered insurance fraud and exaggerated claims, which he viewed as equally reprehensible, and outlined his belief that insurers should pursue fraudsters with absolute vigour for the common good.

Justice Kearns also noted that motor fraud is being countered in other jurisdictions by innovations such as telematics, which operates as a type of black box in a motor vehicle, and gives an instant picture of the number of occupants, seatbelt usage, speed and driver behaviour.

The seminar concluded with a lively questions-and-answers session, where all five members of the panel dealt with various topics or concerns from the floor.





## A 'WHEELY' DIFFERENT CALCUTTA RUN!

Partners from 20 of the largest law firms gathered at the launch of the Calcutta Run – the Legal Fund-raiser 2017 on 8 March.

The core message of the event emphasised the need to build on the stability provided to the beneficiary charities by funds raised from the run over recent years. The aim this year is to raise a minimum of €200,000 for the Peter McVerry Trust and the Calcutta charity partner.

In a break from the structure of previous years' launches, the 2017 event took the form of a panel discussion chaired by Gavin Duffy of RTÉ's *Dragons' Den*. Joining him were Law Society President Stuart Gilhooly, Pat Doyle (CEO of the Peter McVerry Trust) and Cillian MacDomhnaill (director of finance and administration, Law Society).

Stuart Gilhooly introduced a major innovation to this year's fundraising efforts – a 'Cycle Sportive', which aims to attract 200 participants. Given the rate of growth of cycling in Ireland in recent years and its popularity within the legal profession, he expressed confidence in its success and surmised that it would become synonymous in time with the Calcutta Run.

Pat Doyle explained the material benefits that have accrued



Pat Doyle (CEO, Peter McVerry Trust), Valerie Sexton (Matheson), Gavin Duffy (Gavin Duffy & Associates), Hilda Wrixon (Matheson) and Stuart Gilhooly (president, Law Society of Ireland)

to the Peter McVerry Trust as a direct result of the proceeds from the run, including significant im-

provement and expansion of the services provided by it as it continues to combat homelessness in

Dublin, Kildare, Laois and Limerick.

Cillian MacDomhnaill revealed the numbers of participants and fundraising records from the previous 18 runs – clearly illustrating the historic peaks and troughs, as well as consistent stability in recent years.

For further information on how to take part in the Calcutta Run in Dublin on Saturday 20 May 2017, the Supporter Firm Initiative, DX Firm Team Challenge, the Cycle Sportive, or simply to contribute, visit [www.calcuttarun.com](http://www.calcuttarun.com) or email [hilary@calcuttarun.com](mailto:hilary@calcuttarun.com).

## LAWYERS TAKING THE LEAD

**Law Society Finuas Network has teamed up with an elite training team led by Antoinette Moriarty (psychotherapist and Law Society counselling service manager) to offer you a bespoke leadership programme designed exclusively for lawyers.**

**The programme offers individual coaching and group training in leadership skills and practice. Being the best and being able to take a team with you requires a highly developed capacity for leadership.**

**Senior executives in the legal**

**profession are undoubtedly masters of their technical fields – but become much more valuable to their firms and businesses when equipped with leadership and management skills.**

**Participants of last year's course were particularly appreciative of the executive coaching sessions with individual members of the programme development team. These pivotal one-on-one sessions offer confidential professional support with leadership challenges.**

**The programme has four**

**modules and is designed to work around solicitors' professional schedule. It takes place over three weekends at Blackhall Place and begins on Friday 28 April. The fee is €3,400 with (free) membership of Law Society Finuas Network. Details from [Finuas@lawsociety.ie](mailto:Finuas@lawsociety.ie) or €4,080 for non-Law Society Finuas Network members.**

**For full programme details, visit [www.lawsociety.ie/leadership](http://www.lawsociety.ie/leadership) or if you have further queries, contact Antoinette Moriarty at [finuas@lawsociety.ie](mailto:finuas@lawsociety.ie).**

### FOCUS ON MEMBER SERVICES

## ASSISTING OUR SOLE PRACTITIONERS

**Practitioner Support, which provides guidance and information on practice management and business development, is one of a number of resources the Law Society offers to sole practitioners. While the service is available to all members, it has a particular focus on the self-employed. The service offers guidance primarily on set-**

**ting up in practice, managing a practice, and leaving practice.**

**Practitioner Support resources include one-to-one consultation, booklets, and audio CDs on topics such as organising office facilities, devising marketing and business development strategies, and writing a business plan.**

**Solicitors can also receive**

**guidance on buying, selling, and merging a practice. For those who are planning to retire in the short or medium term, information is available on how to organise a practice so that it can achieve maximum value when it is time to pass it on. One-to-one guidance and support can be accessed through consultations,**

**Skype, telephone, and email.**

**You can learn more about Practitioner Support and access its guides at [www.lawsociety.ie/practitioner-support](http://www.lawsociety.ie/practitioner-support).**

**To organise a one-to-one consultation or to receive tailored guidance, contact Keith O'Malley at [k.omalley@lawsociety.ie](mailto:k.omalley@lawsociety.ie) or tel: 01 881 5770.**



## IN-HOUSE AND PUBLIC SECTOR COMMITTEE PANEL DISCUSSION

The In-House and Public Sector Committee, in partnership with Law Society Professional Training, is hosting its annual panel discussion on setting up and managing an in-house legal function.

The select panel of both public and private sector in-house solicitors will provide some 'top tips' on the practical aspects to be considered when setting up and managing an in-house function. Discussion groups will pro-

vide an opportunity to learn and explore further the issues raised by the panel with in-house peers.

The event runs on Thursday 4 May from 2pm-5pm. The attendance fee is €30 and gets you 1.5 hours' management and professional development skills, plus one hour regulatory matters (by group study).

Speakers include Úna Butler (director of legal services, Competition and Consumer Protection Commission), Mar-



Úna Butler, Competition and Consumer Protection Commission

lene Connolly (group counsel, ForcePoint), Ronan Davy (international counsel, Etsy), and Richard O'Sullivan (general counsel, Global Shares plc).

To book or for further information, visit 'courses and events' at [www.lawsociety.ie](http://www.lawsociety.ie). To register your place by post, download a booking form and follow the instructions. Need assistance? Email Law Society Professional Training at [lspt@lawsociety.ie](mailto:lspt@lawsociety.ie) or tel: 01 881 5727.

## NEW EXPEDITED PROCEDURE FOR COST-EFFECTIVE ICC

A new expedited procedure contained in the International Chamber of Commerce *Arbitration Rules 2017* came into force on 1 March, writes *Ide O'Neill (LK Shields)*. It aims to provide a swift, efficient and cost-effective manner of resolving disputes and allows for a sole arbitrator acting without terms of reference.

Under article 30 of the 2017 rules, by agreeing to arbitration under the rules, the parties agree that article 30 and the expedited procedure rules in appendix VI (collectively known as the 'expedited procedure provisions') will take precedence over any contrary terms of the arbitration agreement.

The expedited procedure rules automatically apply if:

- The arbitration agreement was concluded after 1 March 2017, and
- The amount in dispute does not exceed US\$2 million, and
- The parties have not opted out of the expedited procedure rules.

For cases involving higher amounts, or where the agreement was con-



cluded before 1 March 2017, the provisions will apply if the parties have agreed to opt in.

The International Court of Arbitration may, upon the request of a party or on its own motion, determine that it is inappropriate in the circumstances to apply provisions.

The expedited procedure provisions contain a number of provisions aimed at increasing efficiency and reducing costs, including:

- The court may, and normally will, appoint a sole arbitrator, notwithstanding any contrary provision of the arbitration agreement.
- There will be no terms of reference.

- The arbitral tribunal may, after consulting the parties, decide the case on a documents-only basis, with no hearing and no examination of witnesses or experts.
- The arbitral tribunal has discretion to adopt such procedural measures as it considers appropriate. It may, after consultation with the parties, decide not to allow requests for document production or to limit the number, length and scope of written submissions and written witness evidence.
- A case management conference must take place no later than 15 days after the date on which the file was transmitted to the arbitral tribunal.

- After the arbitral tribunal has been constituted, no party can make new claims, unless it has been authorised to do so by the arbitral tribunal. The arbitral tribunal will consider the nature of such new claims, the stage of the arbitration, any cost implications and any other relevant circumstances.

- When a hearing is to be held, the arbitral tribunal may conduct the hearing by videoconference, telephone, or similar means of communication.
- The final award must be made by the arbitral tribunal within six months of the case management conference. The court may extend this time limit in certain circumstances.
- Significantly reduced scales of fees apply under the expedited procedure provisions.

Care should be taken when inserting arbitration clauses into commercial agreements to ensure that the most appropriate clause for the particular set of circumstances is used.





# SOCIETY SPARKLES AT SPRING GALA

ALL PICS: ANGELA HALPIN



Paul Jacobs, Teri Kelly, Ken Murphy, Alastair Campbell, Miriam O'Callaghan, Stuart Gilhooly, Attracta O'Regan and Mike Harris



Michael Campion, Alastair Campbell, Tánaiste Frances Fitzgerald and Ken Murphy



Ken Murphy, Matti Storie and Robert Bournes



Michael Neary, Tommy Maycock, Sheila Duignan and Mike Harris



Sinead Kearney and Josepha Madigan TD





Eimear O'Hanrahan, Liam Quirke and Brid Munnelly



Natasha McKenna, Paul Egan and Elaine Given



Vanya Matthews and Graham Matthews



Ghandi Mallak and Grigita Mallak



Susan Graber and Bill June



James MacGuill, Angie O'Brien and Stuart Gilhooly



Steve Bignall and Judy Khan



Catherine O'Meara and Alison O'Sullivan





# SOUTHERN LAW ASSOCIATION ANNUAL DINNER



Council members of the Southern Law Association and guests, including (*front, l to r*): Don McCarthy BL (father of the Cork Bar), Aine Hynes (president, DSBA), Judge Angela Ni Chondúin, Juli Rea, Catherine O'Callaghan (secretary, SLA), Joan Byrne (vice-president, SLA), Terence O'Sullivan (president, SLA), Emma Meagher Neville, Edel Morrissey (president, Waterford Law Association), Sue Aggett (vice-president, Devon and Somerset Law Society), Prof Ursula Kilkelly (dean, UCC Law School) and Fiona Twomey. (*Back, l to r*): Michael Mooring (chairman, Southern Region of the Society of Chartered Surveyors Ireland), Ken Murphy (director general, Law Society), Judge James O'Donoghue, Patrick Dorgan, Stuart Gilhooly (president, Law Society), Eamonn Kiely (Courts Service), Justin Condon, Ian Huddleston (president, Law Society of Northern Ireland), Gerald O'Flynn, Brendan Cunningham, Robert Baker (PRO, SLA), Barrie O'Connell (president, Cork Chamber of Commerce), Dermot Kelly, Fergus Long, Jonathan Lynam, John Fuller, Richard Hammond, Don Murphy, Jerry Cronin, Sean Durcan (treasurer) and Peter Groarke



Sue Aggett, Terence O'Sullivan and Emma Meagher Neville



Brendan Cunningham, Jonathan Lynam and Jerry Cronin



Edel Morrissey, Terence O'Sullivan and Fiona Twomey



Joan Byrne and Maura Lawton





Sarah Morrissey, Caroline Garland, Hugh Mansfield and Carol Jermyn



Colleen Sparling O'Riordan, Joyce Good Hammond and Anna Fox



Judge James McNulty with his daughters Sarah and Fiona



Rachel Flynn, Simon Murphy and Emer O'Callaghan



Cian Fenton, Eoin Tobin and Donal Tobin



Patricia Harney, Sinead Behan and Peter Wyse



# LAW SOCIETY PROFESSIONAL TRAINING



LAW SOCIETY  
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Professional Education and Training

To view our full programme visit [www.lawsociety.ie/Lspt](http://www.lawsociety.ie/Lspt)

DATE	EVENT	DISCOUNTED FEE*	FULL FEE	CPD HOURS
28 April	S150 COSTS – A NEW ERA OVERVIEW AND WORKSHOP - Presented by the Legal Services Regulation Act Task Force & Law Society Professional Training	€150	€176	3.5 Regulatory Matters (by Group Study)
28/29 April & 26/27 May & 16/17 June	LAW SOCIETY FINUAS NETWORK -EXECUTIVE LEADERSHIP PROGRAMME Module 1: Leadership in Perspective Module 2: Leading Self Module 3: Leading People Module 4: Leading Business  <i>Places are strictly limited Contact <a href="mailto:Finuas@lawsociety.ie">Finuas@lawsociety.ie</a> to register your interest</i>	€3,400	€4,080	Full General and M & PD Skills requirement for 2017 (by Group Study) (subject to attendance at relevant sessions)
4 May	IN-HOUSE AND PUBLIC SECTOR COMMITTEE PANEL DISCUSSION: The In-house Solicitor - Setting up and managing an in-house legal function	€30		3 M & PD Skills (by Group Study)
5 May	SKILLNET CLUSTER - MIDLANDS GENERAL PRACTICE UPDATE - in partnership with LaoisSolicitors' Association and Carlow, Midlands and Kildare Bar Associations Heritage Hotel, Portlaoise Heritage Hotel, Portlaoise, Co Laois	€115 (Hot lunch and networking drinks included in price)		4.5 General plus 1 M & PD and .5 Regulatory Matters (by Group Study)
11 May	SKILLNET CLUSTER - ESSENTIAL SOLICITOR UPDATE 2017 PART I - in partnership with Leitrim, Longford, Roscommon and Sligo Bar Associations Landmark Hotel, Carrick-on-Shannon, Co Leitrim	€80 (Parts I and II €170)		2 M & PD plus 2 Regulatory (by Group Study)
12 May	SKILLNET CLUSTER - ESSENTIAL SOLICITOR UPDATE 2017 PART II - in partnership with Leitrim, Longford, Roscommon and Sligo Bar Associations Landmark Hotel, Carrick-on-Shannon, Co Leitrim	€115 (Parts I and II €170)		5 General plus 1 M & PD (by Group Study)
12 & 13 May	LAW SOCIETY SKILLNET – Planning & Environmental Law Masterclass for Residential and Commercial conveyancers	€350	€425	8 General plus 2 M & PD Skills (by Group Study)
18 May	PROFESSIONAL WELLBEING FOR A SUCCESSFUL PRACTICE	€150	€176	5 M & PD Skills (by Group Study)
22 May	PROFESSIONALISM ACROSS THE PROFESSIONS – in partnership with the RCSI, DCU and Maynooth University (3U partnership)	€95		2 Regulatory Matters plus 1 General (by Group Study)
26/27 May & 9/10 June	LAW SOCIETY FINUAS NETWORK - WILLS, PROBATE, ESTATES & TAX MASTER CLASS		€700	€850 20 General (by Group Study)
8 June	GDPR DATA COMPLIANCE – in partnership with the Intellectual Property & Data Protection Law Committee	€95		2 General (by Group Study)
8 June	A PRACTITIONERS GUIDE TO IMMIGRATION AND INWARD INVESTMENT- keeping Ireland open for Business - in partnership with the EU & International Affairs Committee	€95		2 General (by Group Study)
16 June	SKILLNET CLUSTER - ESSENTIAL SOLICITOR UPDATE 2017 - in partnership with Clare and Limerick Bar Associations Strand Hotel, Limerick	€115 (Hot lunch and networking drinks included in price)		6 (by Group Study)
23/24 June	LAW SOCIETY SKILLNET - PERSONAL INJURIES LITIGATION MASTER CLASS	€350	€425	10 CPD hours including 1 Regulatory Matters (by Group Study)
29 June	SKILLNET CLUSTER - NORTH WEST GENERAL PRACTICE UPDATE 2017 PART I – in partnership with Donegal and Inishowen Bar Associations Solis Lough Eske Castle Hotel, Donegal	€80 (Parts I and II €170)		2 M & PD plus 2 Regulatory (including 1 Anti-money Laundering & Financial Compliance) (by Group Study)
30 June	SKILLNET CLUSTER - NORTH WEST GENERAL PRACTICE UPDATE 2017 PART II – in partnership with Donegal and Inishowen Bar Associations Solis Lough Eske Castle Hotel, Donegal	€115 (Parts I and II €170) (Hot lunch and networking drinks included in price)		4 general plus 1 M & PD and 1 Regulatory (by Group Study)
7 Sept	SKILLNET CLUSTER - ESSENTIAL GENERAL PRACTICE UPDATE 2017 – Ballygarry House Hotel, Tralee	€115 (Parts I and II €170)		6 (by Group Study)
21 Sept	THE IN-HOUSE SOLICITOR – SETTING UP A LEGAL FUNCTION AND KEY RESPONSIBILITIES - Kingsley Hotel, Cork	€150	€176	5 M & PD Skills plus 1 General (by Group Study)

For full details on all of these events plus online courses, visit [www.lawsociety.ie/Lspt](http://www.lawsociety.ie/Lspt) or contact a member of the Law Society Professional Training team on

P: 01 881 5727 E: [Lspt@lawsociety.ie](mailto:Lspt@lawsociety.ie) F: 01 672 4890

\*Applicable to Law Society Skillnet members



# GALWAY CELEBRATES ANNUAL DINNER IN STYLE

ALL PICS: MARTINA REGAN PHOTOGRAPHY



At the Galway Solicitors' Bar Association annual dinner at the Meyrick Hotel, Eyre Square, on 3 March 2017 were: Brendan O'Connor (president, GSBA), Judge Fiona Lydon (guest of honour), Judge Mary Fahy and Peter Keane (solicitor)



Judge Geoffrey Browne, Nollaig Browne and Judge James Faughnan



Ruth McDonagh, James Seymour and Elaine McCormack



Michelle Henry and Breege McCaffrey



Edel Murphy and Emer Mulry

# MOOT COURT WINNERS

PIC: LENS MEN



Winners of the 2016/17 PPC1 Moot Court Competition final, which took place at Blackhall Place on 2 March, were Shane O'Callaghan and Emma Libneri (also best overall advocate). The panel of adjudicators were (back, l to r): David Vos (previous winner), TP Kennedy (director of education), Mr Justice Michael Peart (Court of Appeal), Mr Justice Michael Twomey (High Court) and Brendan Twomey (chairman, Education Committee). The runners-up were Ronan Bergin and Anthony Kennelly

# UNCONSCIOUS BIAS



Pictured at the recent Diploma Centre spotlight seminar on 'The Unconscious Bias' were speakers JoNel Newman and Melissa Swain (both Miami University Law School) with Dr Freda Grealy (head, Diploma Centre), Gavin Davidson (Dublin Institute of Technology), Patrick Rooney BL and Aoife Raftery (Revenue Commissioners)





# CITIZEN KANE

Solicitor Sinead Kane is a Guinness World Record holder for being the first visually impaired athlete to complete the World Marathon Challenge – seven marathons on seven continents in seven days. **Lorcan Roche** gets stretching

LORCAN ROCHE IS AN AWARD-WINNING FREELANCE JOURNALIST

**S**inead Kane (34) – ultra-runner, explorer, adventurer (oh yes, and solicitor) – is leaning forward, gently pulling down her lower-right eyelid, inviting me to examine the eye. “It’s okay”, she says. “Go ahead, have a good look.”

The eye is deep brown and restless. Iris and pupil are missing. The medical terms are *aniridia*, *nystagmus*, *coloboma*, *glaucoma*. Kane is not, however, one for medical or any other kind of jargon. “Parts of my eyes are missing. My vision shakes. My eyes let in too much light, like a camera lens left wide open. All I can see of you is a blur, but I think you’re wearing a black jumper.”

Kane maintains about 5% of her vision. I sense, however, that she can see more than most, though it’s too early in the interview to moot such a suggestion! Certainly this Youghal-born UCC graduate can push herself further than most – she recently completed seven marathons on seven continents in seven days and, rather than rest on her laurels, promptly entered for a gruelling 24-hour endurance race in Finland (she finished as ninth female and 22<sup>nd</sup> overall in Finland, upsetting some of the more macho males). Considering she only came to running (of any kind) in 2012 after being asked to do the Women’s Mini-Marathon as a fundraiser for Child Vision, these achievements move from the realm of impressive to, well, that of heroic.

When one further considers that Kane was effectively ostracised from sport throughout her schooling and was, by her own admission, “a very inactive child”, one begins to get a glimpse of her determination.

## The Roy Keane spirit

But there’s more in the mix: there’s a touch of the ‘Roy Keane’ about her – she’s a born fighter. She also has a real ability to bounce back from



adversity and, indeed, injury. And she is mule stubborn. If someone tells her she can’t do something, she will “go off and do it”.

She met her coach and running guide (and distinguished ultra-runner) John O’Regan in September 2014. She was nursing a knee injury and had already been forced to take a three-week layoff. Kane is not good at layoffs. O’Regan (47) – a cool customer from Ballybough in Dublin – suggested she take a rain-check on the upcoming Dublin Marathon. She might seriously damage her knee. Kane informed him: “You obviously don’t know me, and you obviously haven’t researched me. You can help me by giving me the advice I need, or I can go elsewhere. Effectively, I told him he hadn’t a clue what he was dealing with.”

So, what was he dealing with? She smiles. Then attempts to explain how her mind and spirit work. She gets “upset” if she comes across someone who “does not genuinely believe” in her ability or her dreams. She needs to be surrounded by people who ‘believe’. She stresses that word the way only someone from Cork can. She needs to engage with people who are not afraid to dream big, and who are not afraid to pursue those dreams mercilessly. Yes, she

understands that sometimes people who love her are trying to protect her. But she is equally convinced that sometimes it is because people, whether they love her or not, don’t have their own dreams. They don’t want her doing things they can’t do.

She admits that some of her energy and positivity derive from “giving back”. She has campaigned and fundraised for Able Vision, Childline, NCBI and CASA (the caring and sharing association): “It was instilled into me when I was younger that none of us does life by ourselves and that we all need a bit of help.”

Where else does she derive this determination, this positivity. Does she, for instance, have a belief in God or in some higher authority?

“I believe there is a higher power, yes. I don’t claim to understand how that power works. Nor do I claim to understand why, for instance, we have to suffer, and I am not talking specifically about my own suffering, okay? I am talking about an eight-year-old girl who gets cancer. My belief is this – we will never know the true meaning of life. We will never fully comprehend much of it, but that does not mean we can give up or become resigned.”

So, is there some reward, some blessing, in continuing, especially against overwhelming odds?

“Yes. I believe so. I think we always need to fight on.

“I like to think in terms of ‘mind sight’ rather than ‘eye sight’. I try to dream big, yes. But I also make sure to nourish my psychological capital by surrounding myself with positive people who believe, and by avoiding energy vampires ... passion killers. I listen to a lot of TED talks. I also try to practise gratitude. I also try to practise what I call my ‘calm skills’ and of course, self-acceptance. I am not saying I am



PICS: MARK CONLON



CONSIDERING SHE ONLY CAME TO RUNNING (OF ANY KIND) IN 2012, THESE ACHIEVEMENTS MOVE FROM THE REALM OF IMPRESSIVE TO, WELL, THAT OF HEROIC

able to do this all the time, but I am saying I try. It is important to learn to love oneself.”

**Sensitive nature**

Kane has a highly sensitive nature. She can be easily hurt, might perhaps even look for the hurt – she recently found herself focusing on an isolated, negative online comment (“What’s the big deal about a blind woman running seven marathons?”) rather than embracing the warmth and support offered nationally and internationally.

She can find it hard to celebrate achievements. She is addicted, she says, to goal-setting, to the next race: “I found the come-down after the seven marathons very difficult. There was, for me, a real sense of loss. There was real


sadness. If there had been an eighth race, I’d have been first at the start line.”

She was, she says, “badly bullied” in school. In primary, the bullying was physical, she was often “left black and blue”. In secondary, it was more of an emotional variety. Both, she says, were “damaging” and required that she dig deep to find requisite resources.

Typically, Kane uses the experience to try to help others. Her PhD thesis – which she hopes to submit by September 2017 – will address the legal duty of care of teachers inside and out of the school. “I use Massachusetts law as an example of where the duty of care does extend outside. I examine what and who contributes to the hostile environment.”

Sinead Kane is brimming with life. Dis-

armingly, she’s not afraid to show sadness. Her desire to give back is genuine. Her friendship with her guide runner is a joy to witness, and though they are polar opposites, they’re a real team. O’Regan has been there in the dark, destructive moments where Kane wanted to quit. He has had the wisdom to allow her make her own choices, the wherewithal to ‘guide’ her in the truest sense.

She has suffered in her personal life, and in the blistering heat of Morocco, and in Antarctica (where she became incensed she could not see any of its beauty). But Kane seems able, as much as is humanly possible, to find the place inside where there is no anger, no regret, no recrimination. Just the breath. And the rhythmic sound of her feet striking. 





# IF I COULD TURN BACK TIME...

On 18 January, the Supreme Court clearly ruled that suspects are not entitled to legal representation during interviews. But, **Dara Robinson** asks, can the State really turn back the clock now?

DARA ROBINSON IS A PARTNER IN THE DUBLIN LAW FIRM SHEEHAN & PARTNERS

**F**or the last three years, suspects detained by the gardaí for questioning about an offence have enjoyed the entitlement, or so it seemed, to have their solicitor present at all times during their interrogation. This stemmed from the seemingly inexorable tide of European and British cases, in particular those of *Salduz* (a decision of the European Court of Human Rights against Turkey) and *Cadder* (a Scottish case in the British Supreme Court), leading to an apparent concession by the Irish State that the presence of a lawyer during questioning was an international best practice norm – even if, as a matter of Irish law, the opposite was the position.

To recap briefly, the Supreme Court in *Lavery* in 1999 announced clearly and firmly, for the first time, that suspects were not entitled to have their lawyers present while they were being interviewed, although they had a

constitutional right to consult from time to time during detention. The judgment was ill-thought out and poorly – albeit bluntly – articulated, in addition to arguably being *obiter dicta*.

There the matter rested, until the combined cases of *Gormley and White* were reviewed in the Supreme Court in 2014. *Salduz* and *Cadder* had been decided in the interim, and the Department of Justice had established a working group to address what it clearly saw as the inevitable trend. This included discussion about payment at an hourly rate for lawyers working in the Legal Aid system. *Gormley and White*, not even directly on point, produced judgments from Judges Clarke and (the now sadly deceased) Hardiman, who, also *obiter*, made it clear that *Lavery* would not survive a challenge at Supreme Court level.

Matters then moved quickly: at the prompting of the DPP, the department in-

formed the gardaí to the effect that suspects were now entitled to have their lawyers present. The gardaí and the Law Society negotiated, drafted and published protocols for their respective members on how business should be conducted. The system got up and running fairly smoothly, and still does so.

## Potential bombshell

However on 18 January 2017, a potential bombshell landed. In *DPP v Barry Doyle* (an appeal against conviction for murder), the Supreme Court – in the person of Judge Charleton, with support from Chief Justice Denham – ruled clearly that suspects were not entitled to representation during interviews.

Judge Charleton relied, in the main, on the passage of time since the *Miranda* decision in the USA in 1966 – the generally agreed origin of the right – and on the safeguards, in particular electronic recording of interviews, now provided by the State to the suspect. His judgment is clear and unambiguous and has been met with a stony silence from the authorities. So far, there has been no recorded instance of a suspect being refused the presence of his solicitor, despite this clear expression of the law.

The *Doyle* appeal was a singularly unattractive case on its own merits. It concerned a brutal murder, a gangland ‘hit’ on the wrong man, mistaken for the intended victim. More pertinently, Doyle was interviewed by the gardaí in

AS MORE AND MORE TRIALS IMPORT ‘INFERENCES’ ISSUES, THERE IS A STATUTORY OBLIGATION ON THE GARDAÍ TO FACILITATE ACCESS FOR SOLICITORS TO THEIR CLIENTS



THE CHARLETON JUDGMENT IS THE NEAREST THING TO A DEFINITIVE STATEMENT OF THE LAW, AND YET THE DAILY EXPERIENCE OF PRACTITIONERS CONTINUES TO BE ACCESS AT ALL TIMES, INCLUDING INTERVIEWS

February 2009, years before *Gormley and White* was decided, and he had been given ready access to his solicitor throughout his detention, without ever requesting that his solicitor be allowed to remain during interviews.

So, at trial, he was seeking to rely on a constitutional right that he had not asserted during his detention, which did not exist at the time of trial, and which, even at the time of his appeal was, at best *obiter dicta*.

#### No response

It is interesting that there has been no response from the authorities. One reason for this may lie in other judgments of the court. Chief among them is a trenchant dissent from Judge McKechnie, a formidable jurist with, ironically, relatively little criminal law experience as a practitioner.

He reviewed the Irish, English and Scot-

tish law, and more significantly, the European position, including convention case law, the *Directive on the Right of Access to a Lawyer* – from which Ireland had derogated – and the *Charter of Fundamental Rights of the EU*. Summing up, he noted “the directional focus” and “the prevailing trend amongst fellow members” of the EU.

Judge McKechnie focused on “the inequality which now exists in the interview room”, and “the centrality that questioning has assumed in the evidence-gathering process”. Seen from both a pragmatic and a purely constitutional viewpoint, he concluded “the admissibility of these central pieces of evidence [that is, admissions during interview] will be much more readily established where the highest protection has been afforded to the rights of the suspect during the interview process”.

He noted that two of the main players in

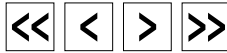
the garda station process – the gardaí themselves and the solicitors’ profession – had developed standards for the interrogation procedure and concluded that “reality, as it now stands, must be faced up to”.

He might have added that, in almost every serious criminal investigation these days, statutory ‘inferences’ provisions are raised by the gardaí – threatening adverse consequences at trial for suspects who decline to answer certain questions and requiring the gardaí to make legal advice available for detainees. Inferences law, and the surrounding issues, are notoriously difficult to master, even for the most experienced gardaí and solicitors.

#### Rare seven-judge court

Although outnumbered two-to-one on the point in question, Judge McKechnie was not necessarily alone. This was a rare seven-judge





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court. Of the remaining four, Judge Laffoy did not deliver any judgment at all, while noting that she concurred with the majority.

Judge O'Malley, other than Judge Charleton the most experienced criminal lawyer on the bench, felt that, for other reasons, this case did not warrant a review of *Lavery*, but she noted the *Gormley and White* decisions and the international trend.

Judge O'Donnell agreed with the O'Malley view, reflecting on the complexity of legal issues, such as inference provisions, that now arose daily in the garda station.

The last of the seven, Judge McMenamin, disagreed with the defence contention as to the existence of the right in this case, but noted the trend and, in particular, "the reality". He hinted strongly that *Lavery* was destined for the dustbin in some future case.

It should also be noted that Judge Clarke, author of the leading judgment in *Gormley and White*, did not participate in this appeal, but may of course do so in any future case.

**The way forward?**

The way forward for Ireland is unclear. The Charleton judgment is the nearest thing to a definitive statement of the law, and yet the



**IN *DPP V BARRY DOYLE*, THE SUPREME COURT RULED CLEARLY THAT SUSPECTS WERE NOT ENTITLED TO REPRESENTATION DURING INTERVIEWS**

daily experience of practitioners continues to be access at all times, including interviews. Having said that, the McKechnie pragmatism, especially noting the complexity of contemporary criminal law and procedure, is potentially telling. The gardaí are well served by iron-clad admissible confession statements. As more and more trials import 'inferences' issues, there is a statutory obligation on the gardaí to facilitate access for solicitors to their clients.

But can the State really turn back the clock? Apparently flying beneath everybody's radar in the Supreme Court was an assurance given by the Government to the Council of Europe's [Committee for the Prevention of Torture \(CPT\)](#), whose last-but-one report on Ireland,

in 2011, was referred to by Judge McKechnie in his ruling.

However, in the [official response](#) by Ireland to the most recent report of the CPT – that of 2014 – the State stated: "It is the Government's intention to place the issue of access to legal advice during interview on a statutory footing by way of regulation, that is, statutory instrument" (see page 8, section II.A.3). It is difficult, notwithstanding the majority ruling in *Doyle*, to see how Ireland could renege on that assurance.

Coupled with the warning signs from the court, the majority aside, that "the reality" is here to stay, this commitment would seem to copperfasten the right of access during interviews. We can only wait and see. [E](#)

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# PARIS, JE T'AIME

**Deirdre Farrell** took part in the *Stage International* in Paris last year. Here, she reflects on her experience

DEIRDRE FARRELL IS A SOLICITOR WITH AMORYS

**T**hanks to the Law Society and my employer, Amorys Solicitors, I was given the opportunity to participate in the *Stage International* organised by the Paris Bar last October and November.

The programme consisted of one month of classes on the French legal system in the equivalent of the Law Society in Paris (or L'Ecole de Formation Professionnelle des Barreaux de la Cour d'Appel de Paris) and another month as an intern in a Parisian law firm or *cabinet*.

The first part of the programme was essentially a whistle-stop tour of each subject required to pass the Paris Bar as an already qualified lawyer, together with visits

to many of the courts, tribunals and law-making institutions in Paris (including the Palais de Justice, the Commercial Tribunal, la Cour de Cassation, le Conseil d'Etat, etc).

There was also a one-day excursion to the Brussels Bar in Belgium and a tour of the European Commission and the Council of the European Union on the same day. Not having studied French law in any detail, I found the course and visits to be extremely informative.

In total, there were 18 lawyers from 14 different countries participating in the programme, most of whom were practising in a civil law rather than a common law jurisdiction, and for whom French was their maternal language. There were participants

from Lebanon, Mali, Burkina Faso, Benin, Madagascar, Haiti, Niger, Armenia, Brazil, New Zealand, Estonia and Poland, to name a few.

## Rusty French

When I arrived in Paris, my French was rusty, but improved quickly, as French was spoken the whole time – a 'needs must' situation... Only one other lawyer spoke English fluently – French was the common language to all.

We had lectures on the French law-making process, administrative law, the French code of ethics and management (the major part of the course), and criminal law, among other topics.

During the classes, the lecturers invited



Stage participants with Mme Helen Farge (president of the L'Ordre des Avocats au Conseil d'Etat et a la Cour de Cassation) in their offices near the Palais de Justice



PIC: GETTY IMAGES

## I ALSO ACQUIRED AN ENCYCLOPAEDIC KNOWLEDGE OF GALLERIES, CONCERT VENUES, BAKERIES AND CHEESE MERCHANTS

participants to point out the differences between the relevant area of French law and that of their home country, and the reasoning behind it, which I enjoyed.

A lot was happening on the political scene in France in 2016, and it added another dimension to what we were learning on the course.

Having expressed an interest in being placed in a large international law firm, I found myself in the Parisian branch of the American law firm McDermott Will and Emery. McDermott is a large firm by French standards, with 60 lawyers, many of whom are qualified in more than one jurisdiction – such as France, Spain, Italy, New York or Belgium.

This part of the programme gave me an insight into what it's like to work for an international law firm. Translating documents into different languages is evidently a hazard for the business of that firm. In many cases, documents or emails need to be translated

almost immediately, which can be extremely time-consuming, even for the fluent English and French-speaking lawyer.

### Mission accomplished

Accommodation is relatively easy to find if you are happy to stay in a studio and book early. The bursary of €2,000 would generally cover the cost of good accommodation in a decent area.

The *stagiaires* were all practising lawyers in their countries and were generally participating in the course with a view to either eventually passing the Paris Bar or developing their contacts in France, like myself.

I had a contact in an organisation for young entrepreneurs and professionals called Junior Chamber International (JCI) Paris, which opened a network of contacts for me.

In summary, I would recommend the *Stage International* programme to anyone who is lucky enough to be able to take a two-month sabbatical from work. There are so many things to do and see in Paris, whatever one's interests.

While living in Paris is expensive, I benefitted hugely from the experience on professional, social and linguistic levels. I now have contacts and friends in France, Mali, Burkina Faso and Brazil, among many other countries, and can speak French without getting a vacant quizzical look from a French person, which confirms 'mission accomplished'! I also acquired an encyclopaedic knowledge of galleries, concert venues, bakeries and cheese merchants in many arrondissements in Paris.

For details on the 2017 *Stage*, check the Law Society website, [www.lawsociety.ie](http://www.lawsociety.ie).





# 'ON THE EDGE, WITH KNOBS ON'

Alastair Campbell was the keynote speaker at the Law Society's Spring Gala on 24 March. **Mark McDermott** spoke with him about Brexit and its impact on Ireland – both North and South

MARK MCDERMOTT IS EDITOR OF THE *LAW SOCIETY GAZETTE*

**A**lastair Campbell is not a man to shy away from a question. The keynote speaker at the Law Society's Spring Gala had been invited to speak on Brexit. So the obvious question had to be asked: 'What would an Englishman know about Brexit from an Irish perspective, anyway?'

The response was terse and unsettling: "Ah, well, first of all I'm not English."

But he's from Yorkshire..?

"I was born there, but I consider myself to be British, then Scottish because of my blood, and then English comes quite a way down. And, right now, right this minute, I feel that European comes ahead of English for me.

"So what do I know about the Irish perspective on Brexit? A lot, and I'll tell you why: I came here several times during the referendum campaign and one of the things I was trying to do was to persuade the Irish business com-

munity to get more involved, because I don't think people in Britain have any idea as to the significance of Brexit for the people of Ireland – North and South – and I think that's dangerous. I think these are really dangerous times. I'm going to talk tonight about why I'm still so opposed to it, why I still think it can be stopped. And why I think Ireland has a role to play in that."

What was his reaction to the results of the Brexit referendum – mildly or hugely surprised?

"I wasn't hugely surprised. I was involved in the campaign. And David Cameron! The referendum was a tactic without a strategy.

"He did it as a tactic to appease the Tory right and keep UKIP quiet, but there was no strategy behind the messaging to keep Britain in Europe – to persuade people. So you're going from a party that's had four decades of scepticism and Cameron being so fond of his

own self, his sense of self, and his confidence and all that old Etonian stuff. He was convinced that he could turn it around in a few weeks. You can't turn around four decades of negativity in a few weeks.

"And so, as I was going around the country, the polls were saying one thing and the London political media bubble was saying the same thing. But I go out of London a lot – most weeks for football, home and away with Burnley FC. I go to Scotland a lot. And I just kept meeting too many people who were unpersuadable, who were telling me: 'I don't care what you say, I don't care what the facts are. I'm voting out, I've had enough'."

## Rapid decline

Does he think Ireland and the other countries remaining within the EU are going to be proved wrong about the British decision?

"Look, none of us knows, but I think it's an act of political and economic suicide. I think it's dreadful. And it's true, by the way, that the [British] economy has not fallen off a cliff. However, that decline of the pound by 15 to 20 per cent, that's an indication of where the world thinks the economy is going to go.

"And I think once article 50 is triggered, we're into fairly rapid decline. I think the other countries have a vested interest now in making sure that Britain doesn't do well out of this. Now, I don't think they have a vested interest in being silly about it. It's a legitimate thing for the European Union to want to hold together; it's a legitimate thing to want to do. I don't think you will be proved wrong.





PICS: ANGELA HALPIN



I THINK ONCE ARTICLE 50 IS TRIGGERED, WE'RE INTO FAIRLY RAPID DECLINE. I THINK THE OTHER COUNTRIES HAVE A VESTED INTEREST NOW IN MAKING SURE THAT BRITAIN DOESN'T DO WELL OUT OF THIS

What are the chief challenges and opportunities that Brexit will present for the island of Ireland?

"I think there'll be much more focus on Ireland, not least because of the border issue. You know, there's a big threat in that as well."

Much more focus by whom?

"The world. The rest of Europe. I think Ireland will matter more in a funny sort of way. I was talking to Bertie Ahern earlier. He said there are quite a few companies based in London who are thinking of moving to Ireland.

"But I think the potential downside is huge because of the importance of your trading relations, because of the cultural connections, and also because, geographically and physically, it means it's going to look a bit weird. Ireland and

Britain have always been on the edge, and now you're kind of 'on the edge, with knobs on', because you've got this big gap. And I think these things matter; they matter culturally."

#### Break for the border

And the major problems he sees from the Irish perspective?

"The major problems are economic, as in, so much of your GDP is dependent on effective free trade with the UK – so there's bound to be an effect. Coming out of the customs union, which again during the referendum they said wasn't even on the agenda, and now it's happening. Coming out of the single market – a disaster for us and for you. And I think the whole issue of the border. Nobody has yet given

me any sort of explanation. I talked to Martin McGuinness about this a few weeks ago, and he was saying: 'I don't understand how they can keep saying that we've got an invisible border now and we'll have a soft border. What does that mean?'

"How do you come out of the customs union and not have some sort of [border]? Or are you going to have to deal with all the stuff down at the airports and ports here? I just don't know how that's going to work. And I have no sense that they have a plan for it, none at all."

The fact that he was so centrally involved with Tony Blair's government in the peace process in Northern Ireland, does he think the peace will hold after Brexit?





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## I DON'T THINK PEOPLE IN BRITAIN HAVE ANY IDEA AS TO THE SIGNIFICANCE OF BREXIT FOR THE PEOPLE OF IRELAND – NORTH AND SOUTH – AND I THINK THAT'S DANGEROUS

“I hope so, I hope so. It was really interesting the other day: I was in a school – this was the day after Martin McGuinness’s death – I was doing a talk up in Derbyshire about politics as a force for good and the peace process, and the example of that. I started talking about Martin McGuinness and, as I was talking, I realised these kids, most of them didn’t know what I was talking about. They didn’t have a clue. That generation has no sense of what happened before. And I think our generation has taken it for granted that it’s going to be there forever.

“So do I worry? Yes I do. I do. I genuinely do worry because I think the border issue is just so profound and significant, and it’s been such a symbol of the progress made. Look, I don’t think we should overstate it, but the tensions are there already.”

Did Martin McGuinness have anything to say about that?

“He was really worried, yes. We had a lot of conversations about it. He met Teresa May just after the vote, and I think he felt there wasn’t a plan.

“I think he felt as well that Arlene Foster never thought Cameron was going to lose, and so her position was as much about politics within the DUP as European politics, but you know, same as Boris Johnson. I don’t think he expected to win. He expected to make himself a bigger figure and topple David Cameron ‘one day soon’. And now we’re having to pick up the consequences of all these games that were played.”

### Badly beaten up?

Is Britain going to get badly beaten up by the EU as a result of Brexit? How can this possibly be an amicable divorce?

“Yes, I guess it’s a divorce, but we have chosen unilaterally to leave when the other partner would like us to stay, so it’s not a divorce in the way that most people think of it. It’s an exit. It’s a one-sided separation, which has an impact and has implications for the other side – who this side are expecting to be reasonable. Now,

I think they’ll be reasonably reasonable, but I don’t think they’ll be totally reasonable, in that I think they’ll drive a very hard bargain.

“And you know, we have moved in very

short order from ‘we’re definitely going to get a deal’ to ‘it doesn’t matter if we don’t get a deal’. Well, it does, and that’s why business is bricking it.”

## Q FOCAL POINT



Speakers and organisers (back, l to r): Ken Murphy (director general), Ghandi Mallak (Irish citizen and former Syrian refugee), Judge Susan Pia Graber (United States Court of Appeals), Stuart Gilhooly (Law Society President), Teri Kelly (director of representation and member services), Steven T Wax (award-winning US attorney and author), and Tracey Donnery (executive director programme development, Skillnets). (Front, l to r): Michelle Nolan (manager, Professional Training), Judy Khan (award-winning QC), Attracta O’Regan (head, Law Society Professional Training), and Matti Neustadt Storie (Microsoft)

The speakers at this year’s inaugural Symposium and Spring Gala addressed the theme of miscarriages of justice:

- Judge Susan Pia Graber (US Court of Appeals) spoke on ‘A judicial perspective on miscarriages of justice – 75 years after Japanese American internment’,
- Award-winning US attorney and author Steven T Wax addressed ‘Fighting for justice from Portland to Peshawar – a public defender’s inside account’,
- Judy Khan QC discussed ‘Miscarriages of justice – the UK perspective: the

Hillsborough tragedy and others’,

- Ghandi Mallak (Irish citizen and former Syrian refugee) spoke passionately about ‘Miscarriages of justice – an Irish Syrian’s perspective’, and
- Matti Neustadt Storie (Microsoft – corporate, external and legal affairs) addressed the topic of ‘Technology response when the law fails – the future legal landscape for the protection of electronic data for EU citizens and business’.

The Gazette will present a more detailed account of the symposium in future issues.





# MEETING THE NEEDS OF IN-HOUSE MEMBERS

The Law Society has devised a plan to ensure the needs of in-house and public sector members are being met, including improved communication methods and increased support. **Sinéad Travers** reports

SINÉAD TRAVERS IS MEMBER SERVICES EXECUTIVE AT THE LAW SOCIETY

**W**ith 15% of the profession employed in-house and 3% employed in the public sector, this segment of the solicitors' profession is important and growing. The Law Society recognises that some of the needs of this group differ from other segments of the profession. It is important, therefore, that we do all we can to serve their unique needs.

One such initiative has been to help in-house solicitors find content most relevant to them. For example, in-house content is now highlighted on the contents page of each *Gazette*. The *Gazette* is committed to publishing in-house related content in each issue. Similarly, the *eZine* highlights in-house content on its side-bar each month. On the news section of [lawsociety.ie](http://lawsociety.ie), you will find an in-house update containing relevant in-house articles, training events, and resources.

## Staying connected

Being the sole solicitor in an organisation can be an isolating experience. The recently created Law Society LinkedIn members-only group for in-house solicitors is an excellent way to keep in touch with colleagues, initiate discussions, and share information: see [lawsociety.ie/inhouselinkedin](http://lawsociety.ie/inhouselinkedin).

The In-house and Public Sector Committee helps the Law Society to support the sector. Initiatives include its two annual CPD events and the *Guide for Solicitors Employed in the Corporate and Public Sector*. You can learn more

about the committee and its work and access the guide at [lawsociety.ie/committees](http://lawsociety.ie/committees).

## Law Society membership

Unlike a practising certificate, membership is not required by law, but it does allow solicitors access to additional services and benefits. You can buy membership online for €85 a year, with discounted rates available for those less than three years qualified. You can learn about the range of member benefits at [lawsociety.ie/memberbenefits](http://lawsociety.ie/memberbenefits). Benefits exclusive to members include the right to vote in Council elections and the AGM, subscription to the *Gazette*, Career Support, a copy of the *Law Directory*, subsidised B&B at the Law Society, and access to the library.

The library offers members an excellent alternative to purchasing expensive legal research materials. It holds a large range of textbooks, conference papers, precedents and electronic databases. The In-house and Public Sector Committee section of the website contains a list of the library's materials that are relevant to the in-house solicitor and can be accessed under 'resources' at [lawsociety.ie/committees](http://lawsociety.ie/committees). Members also receive the free weekly email alert of recent judgments. You can contact the library at [libraryenquire@lawsociety.ie](mailto:libraryenquire@lawsociety.ie).

All practising certificate holders under the age of 70, with a few exceptions, are members of the Group Life Assurance Scheme, which provides cover of €47,500. The premium of €50 is included in the practising certificate fee.

Solicitors who are concerned about their own position on any matter of conduct can contact the helpline operated by the Guidance and Ethics Committee (tel: 01 672 4800 and see [lawsociety.ie/guidance-ethics-committee](http://lawsociety.ie/guidance-ethics-committee)).


## Added value

In-house solicitors bring value to their organisation in many ways, not least their legal expertise. In-house solicitors have only one client, their employer organisation. As an employee of the organisation, the solicitor owes a duty of loyalty to the employer. While sharing the same common objectives of the organisation, in-house solicitors maintain an objective and professional stance. Their value is in their ability to offer an objective contribution to the making of informed and legally correct decisions by the organisation.



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THEIR VALUE IS IN THEIR ABILITY TO OFFER AN OBJECTIVE CONTRIBUTION TO THE MAKING OF INFORMED AND LEGALLY CORRECT DECISIONS BY THE ORGANISATION

## Q FOCAL POINT

### LEGAL PROFESSIONAL PRIVILEGE AND THE EXCEPTIONS

Privilege is a legal right of clients that ensures communications they have with their solicitor are protected from disclosure to any party. Legal professional privilege is distinct from the professional duty to keep client affairs confidential. Legal privilege applies to any legal advice, not only to communications made prior to and during the course of legal proceedings.

There are exceptions to privilege, and it is essential that in-house solicitors are familiar with the up-to-date position in relation to the law of privilege in the various jurisdictions where the company or organisation operates. The European Court of Justice held in the case of *Akzo Nobel Chemicals Ltd v European Commission* (Case C-550/07F) that legal professional privilege does not extend to communications of the in-house lawyer in relation to the enforcement of EU competition law. The Irish courts do not draw any distinction in respect of the general application of legal professional privilege to legal advice received from in-house counsel. The professional duty of

confidentiality is wider than legal privilege and applies to all communications passing between a solicitor and their client.

In-house solicitors are required to hold a practising certificate regardless of the areas of law in which they practise. You can learn more about this requirement in the practice note 'In-house solicitors – requirement to hold a practising certificate', published in the Gazette in July 2014 (p53).

It is professional misconduct and a criminal offence for a solicitor (other than a solicitor in the full-time service of the State or a solicitor solely engaging in conveyancing services for a non-solicitor employer) to practise without a practising certificate. A solicitor shall be deemed to practise as a solicitor if he or she engages in the provision of legal services of any kind, either restricted or non-restricted. Some legal services may only be provided by solicitors – such as probate, conveyancing and some litigation – and these are referred to as 'restricted'. Other areas may be carried out by non-solicitors, and these are referred to as

'unrestricted'. 'Legal services' are services of a legal or financial nature provided by a solicitor arising from that solicitor's practice as a solicitor.

It is not permissible for an employer to classify their employed solicitor as a 'legal executive' or 'paralegal', with a view to avoiding the requirement to hold a practising certificate, if the solicitor is engaged in the provision of legal services. For more information, see the practice note 'Prohibition on practising as a solicitor without a practising certificate', published in the Gazette in July 2009 and again in February 2012 (p47).

The actions that can be taken against a solicitor found to be practising without a practising certificate include a referral to the Solicitors Disciplinary Tribunal, an application to the High Court, and a report to the gardaí.

Any queries relating to practising certificate requirement should be addressed to the Practice Regulation Section at [pc@lawsociety.ie](mailto:pc@lawsociety.ie). 





PI: WIKIMEDIA COMMONS/NUALA REDMOND

# Power lifting

Recent judgments and legislation provide potential scope for customers seeking to surmount the hurdles set by duty-defining and exclusionary clauses in their banks' contract documentation.

**Elizabeth Corcoran** lightens the load

ELIZABETH CORCORAN IS A BARRISTER PRACTISING IN GENERAL CIVIL LAW AND IS THE CO-AUTHOR OF THE FORTHCOMING *BANKING LAW* (4<sup>TH</sup> EDITION) WITH JOHN BRESLIN SC









anking documentation is replete with duty-defining and exclusionary clauses and customer confirmations, which can debar otherwise deserving customers of a remedy or defence in

court proceedings. In a misselling context, for example, a customer may be denied a remedy where he confirmed, by his signature on the contract, that the investment was suitable for his risk appetite and investment goals. In other cases, promises made in the sales process can be trumped by entire agreement clauses or a customer's signed confirmation that she did not rely on any prior representations.

These types of clauses, coupled with contract law canons designed to uphold agreements and bind individuals to their commitments, can make it difficult for customers to succeed in actions against, or to successfully defend proceedings taken by, financial services providers. Some recent developments, however, reveal potential scope for surmounting the hurdles set by *pro forma* contractual provisions.

### Negligent misstatement

In *Spencer v IRBC*, a solicitor successfully sued the former Anglo Irish Bank for negligent misrepresentation arising from an investment

## AT A GLANCE

- Pre-contractual misrepresentations by financial institutions must be expressly corrected or disavowed, even if subsequent representations do not repeat the content of the earlier statements
- Banks cannot automatically presume to rely on duty-defining or basis clauses, agreements to exclude liability, or other waivers or confirmations signed by customers, particularly consumers
- Until Ireland's superior courts make an authoritative ruling, financial institutions would be prudent to draw the explicit attention of a consumer to duty-defining clauses or confirmations

in a fund linked to a long leasehold interest in a property in London. The plaintiff received two loose-leaf brochures that contained a number of negligent misrepresentations centring on estimated returns, proposed development opportunities, the availability of the land for development, and the likelihood of required consent to and investment in its development by its owners.

The plaintiff accepted that the loose-leaf brochures were not legally binding documents, but it was common case that he had committed himself to the investment in principle after receipt of the second loose-leaf brochure. There was a dispute as to whether a formal 'black book' brochure had been available to the plaintiff before he made his investment. The trial judge found that it had and that the plaintiff could not, therefore, rely on previous information in the loose-leaf brochures.

These findings were overturned by the Court of Appeal, which emphasised that pre-contractual representations could form the basis of an action for negligent misstatement, even where the parties understood that the representations themselves could not form the basis of a contract, and that more formal documentation would be forthcoming. The representations in the loose-leaf brochures went beyond mere 'sales talk' and made clear and specific statements designed to induce the plaintiff to invest in the project.

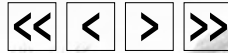
Although the 'black book' was more guarded, the Court of Appeal found that it, too, contained negligent misrepresentations and failed to correct or disavow the misrepresentations contained in the loose-leaf brochures. The court was unimpressed with the argument that the plaintiff had the opportunity to consult legal or tax advisers, as those advisers would doubtless have assumed that the representations were true and had been fairly made. The judgment is a salutary reminder to financial institutions that pre-contractual misrepresentations must be expressly corrected or disavowed, even if subsequent representations do not repeat the content of the earlier statements.

### Duty-defining and exclusionary clauses

A developing line of jurisprudence suggests that banks cannot automatically presume to rely on duty-defining or basis clauses, agreements to exclude liability, or other waivers or confirmations signed by customers, particularly consumers.

In *McCaughy v IBRC*, Hardiman J indicated that a commitment agreement signed by the plaintiff, which excluded Anglo from liability for anything other than fraud, was at total variance with the relationship of trust, acknowledged by the bank in evidence, that is fostered between a private bank and its





The battering ram approach to repossession

## IN *START MORTGAGES LTD V HANLEY*, THE COURT CONCLUDED THAT THE BORROWER HAD ESTABLISHED AN ARGUABLE DEFENCE TO THE SUMMARY PROCEEDINGS ON A NUMBER OF BASES, INCLUDING THE UNFAIR CONTRACTUAL TERM ARGUMENT

customers. The judge suggested, *obiter*:

“It may be, having regard to the scope of the clauses, and to their variance with the nature of the previous relationship between the parties, that such a person’s attention should be drawn in absolutely express terms to their enormous scope and to the total exclusion of liability which they attempt.”

In *AGM Londis plc v Gorman’s Supermarket Ltd*, Barrett J indicated that, in certain circumstances, a “less than rigorous application of the ‘signature rule’ may be merited”. It was held that where the stronger bargaining party has contributed to uncertainty in dealings with a weaker party, the latter’s signature to a document cannot necessarily be treated *ipso facto* as binding on that party.

This theme was developed further by Baker J in *Law & Anor v Financial Services Ombudsman*, a case in which an elderly couple invested their savings in an investment product that performed badly. The applicants’ signed documents, produced by the financial service provider, confirmed that the product had been explained to them and that they understood the associated risks. Baker J held that, in the context of the rigorous regulatory obligations imposed on financial services providers, “the signature of a customer must be taken as one of a number of indices, but is not always determinative of the question of whether the product sold was suitable and fully explained or understood”. Notwithstanding

the execution of documentation containing confirmations, therefore, the entirety of a transaction must be open to the scrutiny of the courts.

While duty-defining clauses and customer confirmations will generally be enforceable as against sophisticated commercial parties, greater care should be taken by financial service providers and their advisors in the context of consumer contracts. At least until the Court of Appeal or Supreme Court makes an authoritative ruling, financial institutions would be prudent to draw the explicit attention of a consumer to a duty-defining clause or confirmation to ensure that it will be upheld. It should be noted that the use of





## THE UNFAIR TERMS IN CONSUMER CONTRACT DIRECTIVE 1993 HAS BEEN UNDERUTILISED IN THIS JURISDICTION, BUT THERE ARE RECENT INDICATIONS THAT THE POSITION IS ABOUT TO CHANGE

exclusionary clauses in consumer contracts is expressly prohibited under provision 3.8 of the *Consumer Protection Code 2012* (see p10).

### Unfair terms

The *Unfair Terms in Consumer Contract Directive 1993* has been underutilised in this jurisdiction, but there are recent indications that the position is about to change. The directive applies to contractual terms that have not been individually negotiated, other than a term relating to the main subject matter, or price or remuneration paid. It regards a term as unfair “if, contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer”. Article 6(1) provides that an unfair term shall not be binding on the consumer.

The directive was applied in the context of a mortgage agreement in *Start Mortgages Ltd v Hanley*. Clause 12 of the loan documentation provided that the lender could demand repayment of the loan on the occurrence of a listed event of default, but clause 4 provided that “notwithstanding anything contained herein or in the mortgage, it shall be lawful for the lender at any time or times hereafter to sue for and compel payment of all simple contract debts ... on which the borrower shall be liable”.

Start argued that the ‘notwithstanding’ dimension of the clause had the effect that it could commence legal proceedings when it wanted to, regardless of whether or not there was compliance with clause 12.

Barrett J noted the preformulated nature of the clause and the fact that it constituted an effective ‘strike-out’ of clause 12 under the interpretation argued for by Start. If clause 4 was an unfair contract term, this would have the effect of rendering the clause non-binding against the borrower, who would be entitled to a notice of demand under clause 12.



PG:GETTYIMAGES

The court concluded that the borrower had established an arguable defence to the summary proceedings on a number of bases, including the unfair contractual term argument.

Leave to challenge a repossession order on the basis of the 1993 directive and the *European Charter of Fundamental Rights* was granted to a couple, the Grants, in October 2016 by Heneghan J. They will argue that the county registrar for Laois failed to consider whether their mortgage contract with Pepper Finance Corporation was fair when granting a possession order last year. They will further argue that the county registrar should have considered the proportionality of the remedy in light of their circumstances before the order was granted.

The legal challenge comes on foot of several decisions of the Court of Justice of the European Union (CJEU) in the context of the 1993 directive and mortgage possessions. In *Aziz*, the CJEU held that a national court is required, of its own motion, to assess whether a contractual term falling within the scope of the directive is unfair.

In *Kušionová*, the CJEU stated that the right to accommodation guaranteed under article 7 of the charter must be taken into consideration in implementing the 1993

directive. The court further cited ECHR jurisprudence suggesting that anyone at risk of the loss of a home should be able to have the proportionality of the measure reviewed.

These rulings may be of significant import to the current Circuit Court possession procedures, especially in undefended cases. They may also affect summary judgment applications. Recently in *AIB v Counihan & Anor*, it was held that courts must consider whether any term of a consumer loan contract is unfair before entering judgment – whether or not the directive is raised in argument (see p40-43), this *Gazette*).

### Right of action

Finally, the introduction of a new right of action for damages will have an important impact on future bank-customer litigation. Section 44 of the *Central Bank (Supervision and Enforcement) Act 2013* provides that: “A failure by a regulated financial service provider to comply with any obligation under financial services legislation is actionable by any customer of the regulated financial service provider who suffers loss or damage as a result of such failure.”

The right of action is not confined to consumers and extends to corporate customers who avail of financial services in the course of business. Section 44 applies to breaches from 25 July 2013. Causation must be demonstrated, linking the breach with the loss or damage suffered.


The right of action will exist alongside – and can be pleaded in the alternative to – common law causes of action such as negligent misstatement. The relevant list of financial services legislation is contained in *schedule 2* to the *Central Bank Act 1942* (as amended) and currently runs to 45 acts and 66 statutory instruments, encompassing virtually every aspect of financial regulation.

Of particular note for consumers is



the inclusion of the *EC (Consumer Credit Agreements) Regulations 2010* and *EU (Consumer Mortgage Credit Agreements) Regulations 2016*, as these introduce affordability assessments and responsible lending mandates in the provision of consumer credit.

Where a consumer falls into arrears in repayments, she may be able to show that the provider failed to properly assess her credit-worthiness or ability to repay, in contravention of the relevant regulations, and may be awarded damages as a result. From an investment perspective, the inclusion of the *Markets in Financial Instruments Directive, Undertakings for Collective Investment in Transferable Securities Regulations* and the *Alternative Investment Fund Managers Directive* regimes will be a fertile source of future liability.

Successful claims or defences against financial services providers may well continue to be the exception rather than the rule, but the recent developments discussed above open up possibilities for aggrieved customers – and potential weaknesses for providers – which should be borne in mind by the advisers to each. 

## LOOK IT UP

### CASES:

- *AIB v Coughlan & Anor* [2016] IEHC 752
- *AGM Londis plc v Gorman's Supermarket Ltd* [2014] IEHC 95
- *Kušionová v SMART Capital* (C-34/13; 2014)
- *Law & Anor v Financial Services Ombudsman* [2015] IEHC 29
- *McCaughy v IBRC* [2013] IESC 17
- *Mohammad Aziz v Caixa d'Estalvis de Catalunya* (C-415/11; 2013)
- *Spencer v IBRC (In Special Liquidation)* [2016] IECA 346
- *Start Mortgages Ltd v Hanley* [2016] IEHC 320
- Central Bank of Ireland (2015)
- *European Charter of Fundamental Rights*
- *Markets in Financial Instruments Directive* (2014/65/EU amending directives 2002/92/EC and 2011/61/EU)
- *SI 27/1995 – European Communities (Unfair Terms in Consumer Contracts) Regulations 1995*
- *SI 371/2003 – Central Bank Act 1942 (Schedule 2) (Amendment) Order 2003*
- *SI 281/2010 – European Communities (Consumer Credit Agreements) Regulations 2010*
- *SI 142/2016 – European Union (Consumer Mortgage Credit Agreements) Regulations 2016*

### LEGISLATION:

- *Alternative Investment Fund Managers Directive* (2011/61/EU) and amending Directives 2003/41/EC and 2009/65/EC and Regulations EC no 1060/2009 and EU no 1095/2010
- *Consumer Protection Code 2012*,
- *Undertakings for Collective Investment in Transferable Securities Regulations* (including *SI 352/2011*, *SI 420/2015*, and *SI 30/2016*)
- *Unfair Terms in Consumer Contract Directive 1993* (93/13/EEC)

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*Dr. Basil Elnazir, Consultant Respiratory Paediatrician & Medical Advisor to Make-A-Wish*

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*Wish Mother*

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# Protecting the little guy

The obligation on a court dealing with a dispute covered by the *Directive on Unfair Contract Terms* to carry out an own-motion assessment is well settled at EU level and is now re-enforced by a judgment of the High Court, writes **Gary Fitzgerald**

GARY FITZGERALD BL HAS A CIVIL PRACTICE FOCUSING ON CONSUMER AND INFORMATION LAW. HE IS DIRECTOR OF THE [IRISH CENTRE FOR EUROPEAN LAW](#)

In December 2016, the High Court delivered a landmark judgment in *AIB v Coughlan & Anor*. This should have led to a fundamental change in the way that home repossessions are carried out by Circuit

Court judges and county registrars. But – despite the fact that it has been widely reported in the media, been the subject of public comment by the master of the High

Court, and debated in the Dáil – it appears to have been ignored by the Irish courts.

In *Coughlan*, Barrett J affirmed the long-standing principle of EU law that a judge must carry out an assessment of the terms of a contract of his own motion if the facts of the case fall within the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995* (SI 27/1995). The regulations implement *Directive 93/13* on unfair terms in consumer contracts.

For the regulations to be triggered, the contract needs to be

one between a consumer and a business, and it must contain non-individually negotiated terms. Any such term that is not a core term is subject to a fairness test.

Regulation 3(2) sets out the test: “A contractual term shall

be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations under the contract to the detriment of the consumer, taking into account the nature of the goods or services for which the contract was concluded and all circumstances attending the conclusion of the contract and all other terms of the contract or of another contract on which it is dependent.”

A core term is one that defines the subject matter of the contract or that relates to the adequacy of price or remuneration, as long as those terms are in plain and intelligible language. If the core term is not clearly written, then it is subject to the fairness test. Any term that is deemed unfair is void, and the contract continues to exist

## AT A GLANCE

- *AIB v Coughlan* affirmed the long-standing principle of EU law that a judge must carry out an assessment of the terms of a contract of his own motion if the facts of the case fall within the terms of *Directive 93/13*
- Failure to carry out an own-motion assessment is very likely to render any repossession order illegal. Any such order should be judicially reviewed
- If a home is repossessed without this assessment being carried out, the dispossessed homeowner has a potential claim for damages against the Irish State under the doctrine of member state liability



It's not easy being... oh, wait...

## IN HOME REPOSSESSION CASES WHERE THERE IS NO FORMAL DEFENCE, COUNTY REGISTRARS ARE UNDER A LEGAL OBLIGATION TO DO THIS. FAILURE TO DO SO IS VERY LIKELY TO RENDER ANY REPOSSESSION ORDER ILLEGAL

in a modified form, if possible. It is not open to the court to amend or alter a term in any way.

### Obligatory

The ability of courts to carry out an assessment of the fairness of contractual terms on their own motion was first set out by the European Court of Justice in 2000 in *C-240/98 Oceano Grupo Editorial*. The ECJ stated that the system of consumer protection in the directive was based on the idea that the consumer is in a weak position as against the business, and therefore agreed to terms drawn up in advance by the business without being able to influence them (at paragraph 25). In that case, the own-motion assessment

was not phrased as an obligation on the national court, but was something that the national court had to have the jurisdiction to do in order to protect the rights of the consumer.

In subsequent cases, this own-motion assessment has been made obligatory on national courts. For example, in *Aziz* (quoted with approval in *Counihan*), the ECJ stated at paragraph 46: "The court has already stated on several occasions that the national court is required to assess of its own motion whether a contractual term falling within the scope of the directive is unfair, compensating in its own way for the imbalance which exists between the consumer and the seller or supplier, where it has available to it the legal

and factual elements necessary for that task."

Barret J was clear that this obligation applies equally to the Irish adversarial system of justice and that it was a duty that did not just apply to the specific facts of *Aziz*. Therefore, it is a clear obligation under EU law, fully incorporated into Irish law, that if the directive applies to a set of facts, the judge must assess the terms of the contract for fairness prior to adjudication on the dispute between the parties. If the judge or county registrar considers a term to be unfair, it is eliminated from the contract, and the relationship between the parties adjusted accordingly.

In home repossession cases where there is no formal defence, county registrars





## LAWYERS ACTING FOR LENDERS IN REPOSSESSION PROCEEDINGS MUST INFORM THE COURT OF ITS OBLIGATION TO CARRY OUT AN OWN-MOTION ASSESSMENT. LAWYERS ACTING FOR BANKS WILL LIKELY HAVE TO GO A STEP FURTHER

are under a legal obligation to do this. Failure to do so is very likely to render any repossession order illegal and any such order should be judicially reviewed. Alternatively, if the time limit for judicial review has passed, any attempt to enforce the order should be challenged in the High Court.

### Lawyers' duty to the court

The own-motion assessment is a legal obligation on the decision-maker in a consumer dispute. All solicitors and barristers owe a duty to the court in addition to the duty owed to their client. According to *A Guide to Good Professional Conduct for Solicitors* (3<sup>rd</sup> edition), the solicitor advocate "has a duty to assist the court in reaching a just decision and, in furtherance of that aim, he must advise the court of all relevant cases and statutory provisions".

A similar obligation exists on barristers

in their *Code of Conduct*: "Barristers have an overriding duty to the court to ensure in the public interest that the proper and efficient administration of justice is achieved and they must assist the court in the administration of justice and must not deceive or knowingly mislead the court" and "while engaged in any matter before a court or other body, barristers shall not mislead nor knowingly permit the court or other body to mislead itself in relation to the law applicable to that matter".

Thus, lawyers acting for lenders in repossession proceedings must inform the court of its obligation to carry out an own-motion assessment. Failure to do so is potentially contrary to the relevant code of conduct, with consequences as set out in each code. Indeed, lawyers for banks will likely have to go a step further, and inform the court that any repossession ordered without this assessment being carried out is potentially unlawful.

What happens if a home is repossessed without this assessment of fairness being carried out? The dispossessed homeowner has a potential claim for damages against the Irish State under the doctrine of member state liability. The plaintiff would need to prove that they had a right under EU law, and that there was a sufficiently serious breach of that right, resulting in loss.

This comes from the *Francovich* line of authority from the ECJ. A full examination of this issue is beyond the scope of this article.

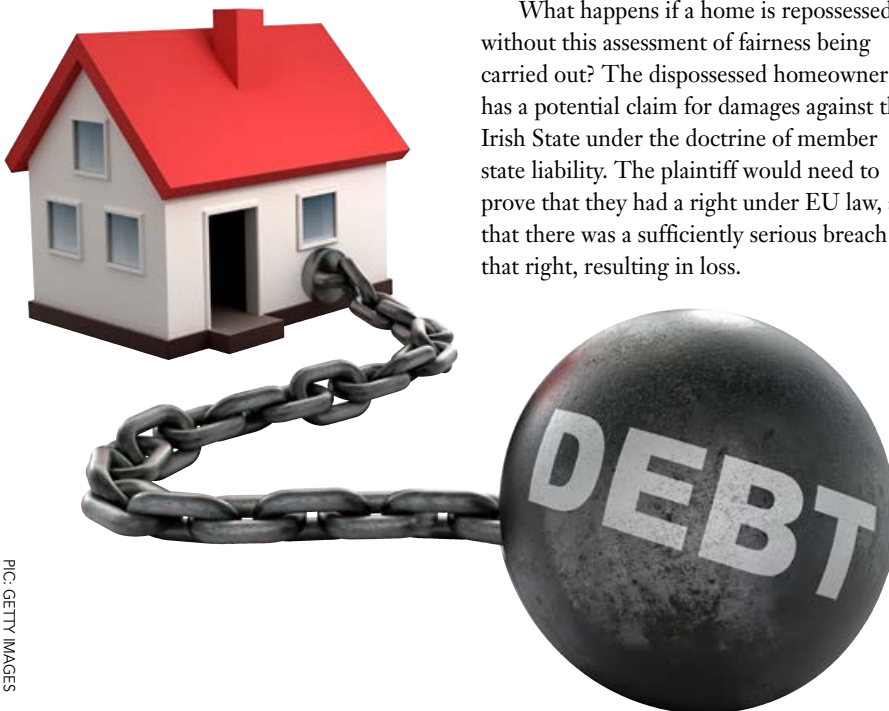
### Proportionality assessment

The own-motion assessment is just one of two EU law principles that do not seem to be applied by Irish courts in repossession cases. The second is the proportionality principle. In *Kušionová v SMART Capital as*, the ECJ was asked a number of questions from the Slovakian courts arising from an attempt by the defendant to sell the plaintiff's family home on the basis of a €10,000 loan that had not been repaid. The ECJ referred to the case law of the European Court of Human Rights (ECtHR) and stated: "The European Court of Human Rights has held, first, that the loss of a home is one of the most serious breaches of the right to respect for the home and, secondly, that any person who risks being the victim of such a breach should be able to have the proportionality of such a measure reviewed."

The case law from the ECtHR is normally about attempts by states to evict tenants from social housing or squatters from unlawful occupation. Even in those circumstances, the ECtHR has held that evictions are not simply a matter of proving unlawful occupation. The state has to assess the impact on the fundamental right to a home before taking action to infringe that right.

In *Yardonova*, a case about evicting Roma from an unauthorised encampment, the court examined the operation of a proportionality test. Among other things, it concluded that "where relevant arguments concerning the proportionality of the interference have been raised by the applicant in domestic judicial proceedings, the domestic courts should examine them in detail and provide adequate reasons".

Given that the right to a home is a





fundamental one, it is submitted that providing adequate reasons must mean a written decision explaining why a repossession order is the way to balance the rights of the occupier and the lender.

### Clear obligations

The obligation on a court dealing with a dispute covered by the directive to carry out an own-motion assessment is well settled at EU level and is now re-enforced by a judgment of the High Court.

Lower courts cannot just ignore this obligation, especially when doing so may lead to an infringement of the fundamental rights of consumers and potentially a large liability on the Irish taxpayer. The legal requirement for a judge or county registrar to carry out a proportionality assessment is not as settled at EU level, and *Kušionová* has yet to be analysed by the Irish courts.

There are many cases from the ECtHR on the right to a home, but only the

*Kušionová* case brings these principles into private disputes based on contract law and debt proceedings. That being said, Irish courts cannot simply ignore *Kušionová*. The case must be examined in each repossession and, if necessary, the court or county registrar

can refer a question to the ECJ for clarity.

Finally, given the importance of the issues involved for the lender and the homeowner, it is submitted that both EU law and the ECHR require written, reasoned decisions to be made by the judge or county registrar.

## LOOK IT UP

### CASES:

- *AIB v Coughlan & Anor* [2016] IEHC 752
- *Océano Grupo Editorial SA v Rocio Murciano Quintero* (C-240/98)
- *Mohammad Aziz v Caixa d'Estalvis de Catalunya* (C-415/11; 2013)
- *Kušionová v SMART Capital* (C-34/13; 2014)
- *Yordanova and Others v Bulgaria* (application no 25446/06)

### LEGISLATION:

- *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995* (SI 27/1995)
- *Unfair Terms in Consumer Contracts Directive 1993* (Directive 93/13/EEC)

### LITERATURE:

- *A Guide to Good Professional Conduct for Solicitors* (3<sup>rd</sup> edition)
- *Code of Conduct for the Bar of Ireland*



# Annual Conference 2017

Friday 19th May 2017

Gibson Hotel, Point Village, Dublin 1

### SPEAKERS

#### Teresa Pilkington SC

Update on Probate Practice

#### Lisa Cantillon, KTA

Tax for the private client

#### Sasha Kerrins, Grant Thornton

Business Structures & Succession for Private/Family Business

#### Patrick Harney, Foresters

Navigating the Anglo-Irish minefield! UK-Irish tax and estate planning after Brexit

#### Jenny Afia, Schillings

Reputation in the Digital Age

#### Joe McLoughlin, Smith & Williamson

World Gone Mad: Current Economic and Investment Considerations



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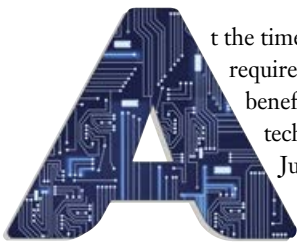




# Discovery program

Ireland has been at the vanguard of approving technology assisted review as an appropriate way to make discovery, so lawyers need to understand this technology and its relevance to practice. **Karyn Harty** turns it off and on again

KARYN HARTY IS A PARTNER IN THE DISPUTE RESOLUTION AND LITIGATION GROUP OF [MCCANN FITZGERALD](#) AND IS THE PARTNER RESPONSIBLE FOR THE FIRM'S DATA INVESTIGATIONS GROUP



At the time of writing, 27 US states have a requirement that lawyers keep abreast of the benefits and risks associated with relevant technology.

Judges no longer accept counsel pleading

ignorance of technology in those states. This is a challenge, given the rapid pace at which technology develops.

In Ireland, the Commercial Court first approved technology assisted review (TAR) for discovery in March 2015, in an application by the Irish Bank Resolution Corporation, which had to review more than 700,000 electronic documents (otherwise referred to as 'electronically stored information' or ESI). Fullam J was satisfied that "in discovery of large data sets, technology assisted review using predictive coding is at least as accurate as, and, probably more

accurate than, the manual or linear method in identifying relevant documents", and he found that that TAR is "more efficient than manual review in terms of saving costs and saving time".

The Court of Appeal upheld the ruling in February 2016, confirming that the protocol that had been approved by the High Court was fair, proportionate, and took account of the increasing need for the courts to ensure that discovery is complied with in a cost-effective manner.

The court also noted that use of TAR did not in any way derogate from the obligation to make discovery in accordance with [order 31, rule 12](#) of the *Rules of the Superior Courts*. A number of other applications relating to the use of TAR are making their way through the courts.

Ireland was the first jurisdiction after the US to endorse TAR, followed by Britain and Australia, which has recently issued an enlightened [practice note](#) encouraging the use of technology to promote the efficient and swift conduct of litigation.

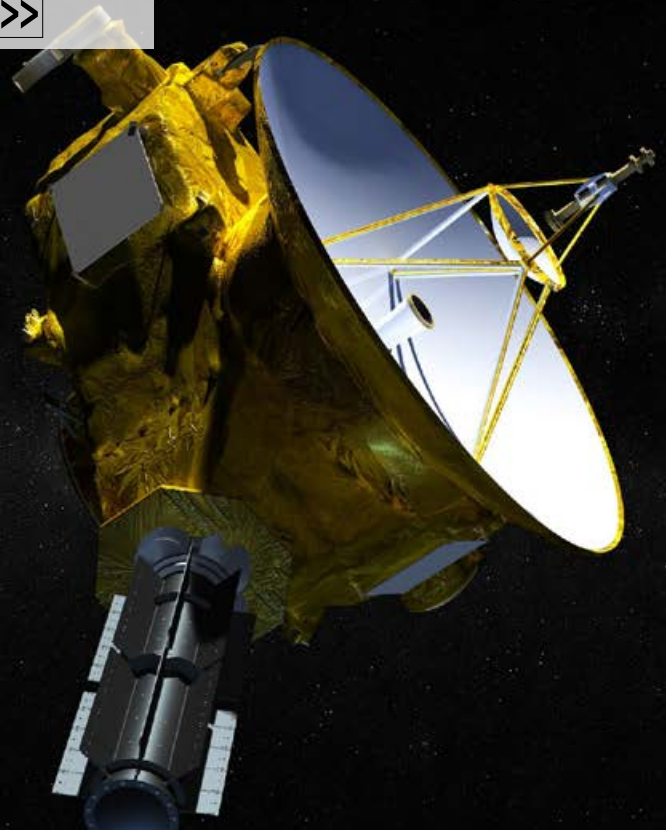
## AT A GLANCE

- New generation document management platforms use machine-learning algorithms to analyse data, identify patterns and predict relevance
- These systems can filter and analyse themes and nuanced language, and some can also cope with multilanguage datasets
- TAR involves using predictive coding and analytical tools in conjunction with a solicitor's expertise. A discovery exercise conducted without one of these key components is not TAR and will not comply with the requirements set down by the courts

## DISCOVERY



PICS: NASA



REMEMBER THAT SOME PLATFORMS HAVE GREAT FUNCTIONALITY BUT ARE NOT SO GOOD FOR REVIEW; SOME ARE GREAT FOR REVIEW, BUT HAVE LESS SOPHISTICATED ANALYTICS

Given the potential cost savings involved when TAR is used properly, it will become mainstream as data volumes increase.

#### TAR and whether?

Many solicitors will be familiar with document management platforms, to which documents are uploaded and manually coded, enabling documents to be indexed, reviewed, and produced efficiently. These systems capture the metadata behind emails and other ESI. The new generation of discovery platforms uses machine-learning algorithms to analyse data, identify patterns, and predict relevance, enabling speedier and less costly production of ESI. Rather than relying solely on key words, these systems can filter and analyse themes and nuanced language, and some can also cope with multilanguage datasets.

TAR involves using predictive coding and analytical tools ('analytics') in conjunction with the solicitor's expertise. A discovery exercise conducted without one of these

key components is not TAR and will not comply with the requirements set down by the courts. There are two different models of TAR common in the market at present, and it is important to understand the differences between them.

TAR 1.0 was the first version of TAR in circulation and is still going strong. A number of discovery platforms available on the Irish market use a TAR 1.0 algorithm-based, machine-learning system, which needs to be trained by subject-matter experts to understand what is and is not relevant to a particular case through various iterations of training sets.

Once the system's performance plateaus because it has learned all it is going to learn, it grades the entire dataset with a likely relevance percentage, at which point a threshold can be applied above which everything is manually reviewed, and below which only sampling is carried out.

TAR 1.0 requires senior subject-matter

experts to train the system. As it is premised on only manually reviewing a portion of the documents, it requires expert input and negotiation of a protocol as to how the system will be trained and how disputes about training of the system will be managed.

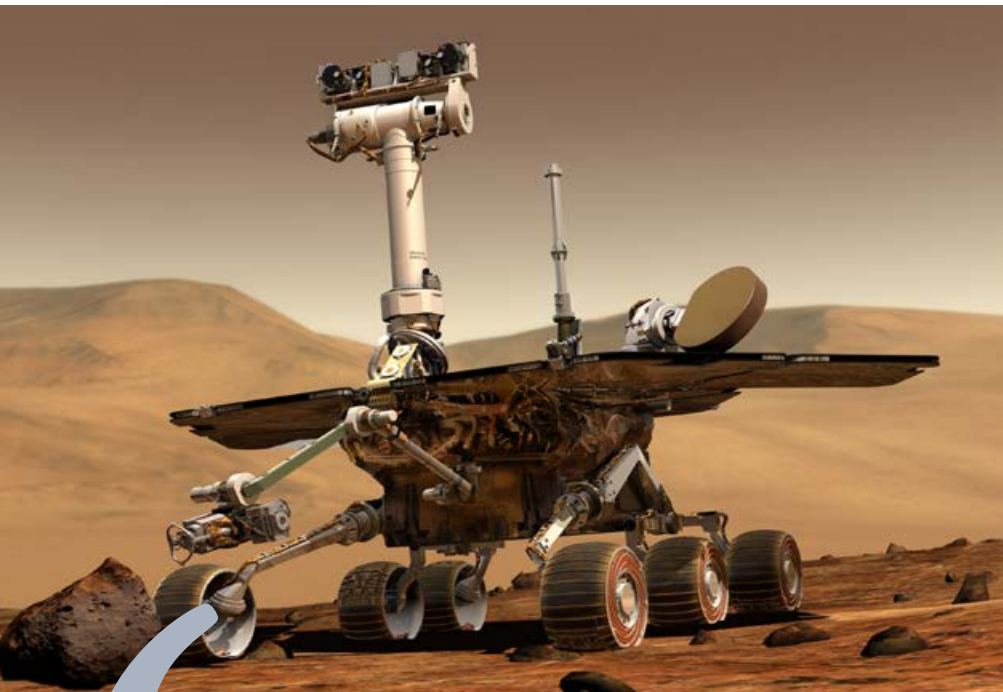
It is essential for the solicitor on record to be involved in the training and to work closely with the technical expert to ensure that proper 'quality control' searches are conducted. Done correctly, TAR 1.0 can reduce the time and cost of making discovery significantly.

You may see TAR 1.0 systems described as passive learning or stabilisation models.

#### TAR baby

TAR 2.0 systems work differently. Again using algorithm-based machine learning, these systems prioritise documents that appear relevant based on a tailored seed set, or on decisions made as the review progresses, or both. TAR 2.0 assumes





## GIVEN THE POTENTIAL COST SAVINGS INVOLVED WHEN TAR IS USED PROPERLY, IT WILL BECOME MAINSTREAM AS DATA VOLUMES INCREASE

that all documents will be reviewed and is closer to traditional review methods. This technology can significantly speed up a review, as it front-loads relevant documents and is likely to achieve some cost savings.

The terms 'computer-assisted learning' and 'continuous active learning' are used to describe these platforms.

Analytics are a key feature of all of these discovery platforms, and making sure you have access to the right analytics is crucial to a successful review project. 'Early case assessment' (ECA) is how we describe the use of analytics to weed out wholly irrelevant data to avoid reviewers having to review large swathes of irrelevant documents.

This may be done prior to the data being uploaded to the review platform or post-processing within the review platform. Good ECA will save significant costs if done

correctly. As it involves excluding data, ECA should be done under the oversight of the solicitor on record who is responsible for the discovery.

### Target aquisition

Understanding which model of TAR and which analytics a service provider is offering is crucial to achieving a successful review. There is plenty of literature available from service providers and, indeed, academic researchers in the field.

An excellent starting point for anyone wishing to understand how TAR works is Maura Grossman and Gordon Cormack's iconic [study](#) from 2011, which conclusively showed the greater accuracy of TAR compared with manual or 'linear' review.

The requirement to make discovery of categories is peculiarly Irish and does

not always work seamlessly with TAR methodologies.

Shop around. It is a crowded market, with many international service providers targeting the Irish market. Every provider will tell you that their product is the best, so be discerning, as a product may be impressive but not right for your client.

Don't assume that TAR will work for your discovery exercise. Request a costs proposal and understand that data volumes, processing requirements and the amount of hard-copy documents will all affect how you should proceed.

Don't assume that the service provider understands Irish practice and procedure. Ask lots of questions, such as:

- Can the system 'batch-print'?
- Does the provider understand the Irish requirements for relevance and for listing privileged documents individually?
- Is local technical support available during working hours, or will you have to wait for US time to get problems fixed?
- Are there hefty project management fees, or hosting fees, that will significantly increase costs once the project is up and running?

Remember that some platforms have great functionality but are not so good for review; some are great for review, but have less sophisticated analytics. Some of the best tools are add-ons for which your client will have to pay extra. Also, some providers can only host data outside Ireland.

If you decide to outsource a discovery review, you must make sure, as the solicitor on record, that you oversee the process fully. A client should not undertake discovery itself, although its IT and other personnel may be able to provide support for sourcing and collecting potentially relevant data for review and in briefing the reviewers.

Some very large companies that have e-discovery capability in-house may be able to provide technical support for the review, but any redactions and relevance and privilege decisions should be made by the solicitors on record.

The Commercial Litigation Association of Ireland's *Good Practice Discovery Guide V2.0* contains really helpful guidance for anyone embarking on a complex discovery,



# IN DISCOVERY OF LARGE DATA SETS, TECHNOLOGY ASSISTED REVIEW USING PREDICTIVE CODING IS AT LEAST AS ACCURATE AS, AND, PROBABLY MORE ACCURATE THAN, THE MANUAL OR LINEAR METHOD IN IDENTIFYING RELEVANT DOCUMENTS

including information on TAR and how to prepare a discovery plan.

If you decide to use TAR, make sure you understand how the technology works before you start the review. Formulate a discovery plan. Make sure that your reviewers understand the case, inside out, before they begin to train the system – and the most senior solicitors on the case should be closely involved. Keep an audit trail. And remember to conduct appropriate searches for relevant documents, so if there is a particular person in the case whose emails are likely to be relevant during a given period, you must take extra steps to identify and review that material, just as you would in an ordinary discovery review. [g](#)

## LOOK IT UP

**CASES:**

- *Brown v BCA Trading Ltd* [2016] EWHC 1464
- *Da Silva Moore v Publicis Groupe et al* [2012] 11 Civ 1279
- *IBRC v Quinn* [2015] IEHC 175
- *Pyrrho Investments Ltd v MWB Property Ltd* [2016] EWHC 256 (Ch)

**LITERATURE:**

- Commercial Litigation Association of Ireland (2015), *Good Practice*
- *Discovery Guide V2.0*
- Grossman, M and G Cormack (2011), 'Technology assisted review in e-discovery can be more effective and more efficient than exhaustive manual review', *Richmond Journal of Law and Technology*, vol XVII, issue 3
- Supreme Court of Victoria (2017), 'Practice Note SC Gen 5: Guidelines for the Use of Technology'
- The Sedona Conference (2007), *The Sedona Principles* (second edition)



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# Make me an offer

A number of court decisions in the past year have clarified the jurisprudence on the offer of amends laid out in section 22 of the *Defamation Act 2009*.

**Brian Hallissey** looks at what's on the table

BRIAN HALLISSEY IS A CORK-BASED BARRISTER. HE WISHES TO THANK DARRYL BRODERICK (PARTNER, RONAN DALY JERMYN) FOR REVIEWING THE ARTICLE

**The** *Defamation Act 2009* introduced the offer-of-amends procedure into Irish law. It provided a new defence (in place of the previous 'unintentional defamation'

defence) and can often be an effective means of compromising clear cases of defamation at a very early stage. The purpose of the procedure has been described as 'vindication without litigation'. In the past 12 months, the Irish courts have finally had a chance to consider some of the specific points that can arise under the procedure.

In brief, an 'offer of amends' under the 2009 act means an offer to make a suitable correction and a sufficient apology to the person to whom the impugned statement refers or is alleged to refer, to publish that correction and apology, and to pay compensation of damages (if any) as may be agreed by them, or as may be determined to be payable.

If the offer of amends is accepted, but the parties are unable to agree on the terms of any such settlement –

and, specifically, the amount of damages payable – the plaintiff can bring a motion for directions seeking to have the court determine the issue of damages in accordance with section 23(1)(c) of the 2009 act.

Where an offer is made but is not accepted, it can be used as a

defence to the plaintiff's claim; but where it is pleaded, no other defence can be pleaded with it, as it is essentially an admission of liability. It would be contrary to its 'spirit' to allow a defendant to plead an alternative defence, such as justification.

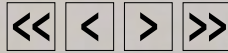
When the court is called upon to determine the appropriate level of compensation, it must take into account the fact that the acceptance of the apology and correction, and its publication, should have reduced some of the damage that would have otherwise been done if the matter had gone to a full trial. In practice, the court first identifies the full value of the damages that would otherwise have been awarded to the plaintiff, and then allows for a mitigation or 'discount' of this figure, based on the defendant's offer of amends.

## The 'discount'

In *Christie v TV3*, O'Malley J considered the 'discount' that should be given in such a case for the first time. The plaintiff was a

## AT A GLANCE

- The *Defamation Act 2009* introduced the offer-of-amends procedure into Irish law
- When determining the appropriate level of compensation, the court can allow for a 'discount' to the defendant, based on the plaintiff's acceptance of the apology, correction and its publication
- Plaintiffs should carefully consider any offer of amends made. Failure to accept an appropriate offer may lead to an adverse costs award at the end of a full hearing
- Defendants should consider delivering a defence in order to clarify their position



THE COURT HELD THAT THE OFFER OF AMENDS THAT HAD BEEN MADE BEFORE THE HIGH COURT HEARING HAD BEEN SUFFICIENT AND THE LITIGATION FOLLOWING SUCH AN OFFER WAS INAPPROPRIATE AND UNNECESSARY

solicitor who represented a former solicitor, Thomas Byrne. Byrne was, by then, a struck-off solicitor who was charged with a large number of offences of theft, forgery and fraud. In the course of its news broadcast on the story, the defendant referred to Byrne and the allegations made against him, but showed video footage of the plaintiff, on his own, making his way into the CCJ.

Before proceedings issued, the defendant offered to make an apology and to pay a sum of money to charity. It also maintained the position that it was an entirely innocent mistake that had been the subject of prompt and constructive efforts on their part. Through correspondence, it suggested that there was no way anyone who knew the plaintiff would have confused him with

Mr Byrne. This offer was refused by the plaintiff, a plenary summons issued and, thereafter, the defendant made a formal offer of amends pursuant to section 22. This was accepted by the plaintiff and the matter came before the High Court by way of the plaintiff's motion, as the parties were unable to agree the appropriate level of compensation.

Ms Justice O'Malley set out the criteria that the court should take account of when evaluating the level of compensation in an offer-of-amends assessment. She held that the factors a jury was required to consider in assessing damages at a contested hearing, which are enumerated by section 31(4), also applied in the case of any assessment of damages under section 23(1)(c). These factors included:

- The nature and gravity of the publication,
- The extent of the publication,
- The extent on the reputation of the plaintiff, and
- The making of any offer of amends.

She adopted the approach of the English courts and stated: "It is simply not possible for a judge to replicate the collective decision-making process of 12 members of the public" and assessed damages at €200,000. She allowed a discount of 33%, thereby awarding a final sum of €140,000.

In reaching this figure, O'Malley J held that the offer of amends made by the defendant was not quite as comprehensive as it might have been, and that this was a factor that tended to reduce the level of discount





## WHERE AN UNQUALIFIED OFFER IS MADE, A DEFENDANT IS ENTITLED TO A ‘SUBSTANTIAL’ MITIGATION OF DAMAGES

that might otherwise have applied to the benefit of the defendant.

Perhaps because it was the first occasion that an Irish court had to consider this procedure, O'Malley J made a number of interesting comments. She noted that the process would have benefited from clarification of, in particular, the position of the defendant by way of points of defence, as it was unclear whether or not the defendant maintained the position, which it held in correspondence, that the impugned broadcast was not defamatory.

### Unqualified offer

O'Malley J suggested that, where the defendant makes an unqualified offer of amends, the court will follow the approach of Eady J in *Nail v Jones* and that, in general, the defendant will be bound by the meanings pleaded by the plaintiff. O'Malley J also held that, where an unqualified offer is made,

a defendant is entitled to a “substantial” mitigation of damages.

The impact that an insincere and dilatory apology can have on the discount was also considered recently in *Ward & anor v Donegal Times Limited & anor*. Here, the defendants had published defamatory articles in September and October 2013, alleging the plaintiffs had participated in financial malpractice and mismanagement. In January 2014, the defendants offered to publish a clarification, but denied that the impugned articles were defamatory and did not offer an apology.

Ultimately, after further correspondence, with no offer of apology, the plaintiffs issued proceedings and an offer of amends was made. The plaintiffs indicated a willingness to accept the offer and requested details of same. The offer of amends comprised an apology for the “misleading” article and payment of €25,000 to each of the plaintiffs.

The terms were rejected by the plaintiffs, and the matter was brought before the court by way of motion.

Of interest is the discussion of how various issues might inform the court's assessment of damages and aggravated damages. The court rejected the plaintiffs' submission that the court, when assessing damages, should have regard to the offer of compensation made by the defendants. The plaintiffs had submitted that the offer of €25,000 was a derisory offer, but McDermott J, instead, followed the English courts' approach, stating that it was more appropriate that an offer would not be disclosed to the court. Furthermore, even if it were disclosed, the offer was not a factor that should inform the level of damages, or any mitigation to which the defendant might be entitled. The plaintiffs also sought aggravated damages based on the dilatory and equivocal nature of the apology, but McDermott J again held that these were matters to be considered under section 22, rather than under the heading of aggravated damages.

### Further publication

Curiously, the defendants' decided to publish two further articles after the offer of amends had been made. The first was published before the plaintiffs had rejected the offer and the second was published after. The first article referred to threats by the plaintiffs to bring the defendant to court. The plaintiffs sought to have those articles considered in the context of aggravated damages, but the court refused, since, if they were defamatory, they should have been pleaded, and the defendants would have been entitled to plead whatever defences were open to them.

However, the court did take the articles into consideration when considering the apologies that had been offered. The court concluded that the articles had been “contrary to the spirit and intention of the section 22 process invoked in this case and undermine the purported basis upon which they were advanced”. Furthermore, they assisted the court in understanding the defendants' attitude to the plaintiffs' claim and were a factor to be considered under section 22.

Ultimately, the court assessed damages in the sum of €120,000 for each plaintiff. In terms of the mitigation ‘discount’ that the defendants were entitled to on the basis of

## FOCAL POINT

### OFFER OF AMENDS AND COSTS

An ancillary point, but one of huge importance, is the issue of costs that can arise following an offer of amends. This is best illustrated by the English case of *KC v MGN Ltd*, where the plaintiff successfully sued for libel and was awarded Stg£150,000 damages. The defendant was entitled to a 50% discount for an early apology and offer of amends, resulting in a final award of £75,000 to the plaintiff.

The case was appealed by the defendant, who successfully argued that the full value of the claim was set too high by the High Court. The Court of Appeal determined the full value of the claim to be £100,000, but affirmed the discount

of 50%, thereby ultimately awarding the plaintiff £50,000.

In the months leading up to the High Court hearing, the defendants had made a formal offer (under the English legislation) of a published apology and £50,000 damages plus costs. This was rejected by the plaintiff. As the defendant succeeded in the appeal, it successfully applied for the costs of both the trial and the appeal (which amounted to approximately £90,000). The court held that the offer of amends that had been made before the High Court hearing had been sufficient and the litigation following such an offer was inappropriate and unnecessary.



PIC: GETTY IMAGES

their offer of amends, the court held that the apologies were not offered early, and that the contents of the actual apologies were “rightly criticised”. In particular, there was no reference to the central allegation and core element of the defamatory allegations. Furthermore, the defamatory allegations were “rehashed” by the subsequent publications, and the defendants were only entitled to a 20% discount.

### Jury determination

The Court of Appeal in *Higgins v Irish Aviation Authority* recently considered, for the first time since the introduction of the act, the interesting question of whether section 23(1)(c) embraces a jury determination of the amount of damages payable following an offer of amends.

The relevant section reads: “If the parties do not agree as to the damages or costs that should be paid by the person who made the offer, those matters shall be determined by the High Court...”

Hogan J, in the Court of Appeal, admitted that the question was a “difficult and troubling one, with no completely satisfactory or clear-cut answer”, but ultimately affirmed Moriarty J in the High Court and found that a plaintiff was entitled to have a jury determine the appropriate level of compensation. Hogan J, having first noted that there was no general definition of the word ‘court’ under the act, acknowledged that section 22 introduced a

new and novel procedure.

However, as noted by O’Malley J in *Christie*, with the exception of the ‘discount’ that is applied in an offer-of-amends assessment, the factors that the court should have regard to are the same as those to be considered by a judge and jury in a conventional defamation trial. Hogan J concluded that this led to the suggestion that, although the offer of amends is novel, it does not alter the fundamental task of assessing damages under section 23. He further noted, in passing, that the jury can also be given directions in respect of the discount.

A number of conclusions may be drawn from the recent decisions of the Irish High Court and British Court of Appeal:

- Where an offer of amends is made, the apology and/or correction should be full, sincere and timely to ensure the greatest ‘discount’ will be awarded. The apology should, where appropriate, address the central allegation and core elements of the defamatory statements.
- Where it is made, a defendant can expect a discount anywhere up to 50%. The circumstances of the offer will determine what level of discount will be allowed. The court or jury will first determine the full value of the claim in the usual way, under the same factors outlined in section 34, and will thereafter consider what the appropriate discount should be.
- Defendants can still find themselves facing

a jury determination even after an offer of amends has been accepted, although it is likely that the court can direct the jury in respect of the compensation and the discount.

- Plaintiffs must carefully consider any offer of amends made, as a failure to accept an appropriate offer of compensation may lead to an adverse costs award at the end of a full hearing.
- In appropriate cases, defendants should consider delivering a defence in order to clarify their position. [G](#)

## LOOK IT UP

### CASES:

- *Christie v TV3* [2015] IEHC 694
- *Higgins v Irish Aviation Authority* [2016] IECA 322
- *KC v MGN Ltd (Court of Appeal)* [2012] EWCA Civ 1382
- *KC v MGN Ltd (Costs)* [2013] EWCA Civ 3
- *McNamara v Sunday Newspapers Limited & Anor* [2016] IECA 140
- *Nail v Jones* [2004] EWCA Civ 1708
- *Ward & anor v Donegal Times Limited & anor* [2016] IEHC 711

### LEGISLATION:

- *Defamation Act 2009*





# A matter of interpretation

There is a lack of training and testing of legal interpreters in Ireland. So could incompetent interpreting be used as grounds for appeal?

Mary Phelan gets lost in translation

MARY PHELAN IS CHAIR OF THE IRISH TRANSLATORS' AND INTERPRETERS' ASSOCIATION (ITIA) AND LECTURES IN TRANSLATION AND INTERPRETING AT DUBLIN CITY UNIVERSITY



o begin with, some terminology. 'Interpreters' hear a person speak one language and repeat what has been said in another language. They

may also be asked to do sight translation, where they read information in one language and provide a translation aloud – not an easy task without preparation time.

In contrast, 'translators' read information in one language and produce a written translation in a second language.

Legal interpreters should have a high level of proficiency in English and another language. However, the ability to speak two languages is not enough: they also need to master legal terminology in both languages and to

be familiar with regional variations in terms of vocabulary and idioms. In addition, they require excellent short-term memory, along with **consecutive** and **whispered** simultaneous interpreting skills. Furthermore, they must be able to preserve the register (for example, formal or informal) used by a speaker. If a speaker makes a false start or pauses, the false start or pause should be preserved in the interpretation. Interpreters also need to understand ethical principles applicable to legal interpreting.

## ≡ AT A GLANCE

- Legal interpreters should have a high level of proficiency in English and another language
- There is no accredited training for legal interpreters in Ireland, and they are not tested to establish if they can provide competent interpreting
- In jurisdictions where interpreters are tested, the failure rate is high: in Britain, the pass rate is only 20-30%

### Right to interpretation

The right to the free assistance of an interpreter in criminal proceedings is clearly laid down in the *European Convention on Human Rights Act 2003*. This legislation has been further





PIC: ROB GONSALVES

IN OTHER JURISDICTIONS WHERE INTERPRETERS ARE TESTED, THE FAILURE RATE IS HIGH. FOR EXAMPLE, IN BRITAIN, THE PASS RATE ON THE DIPLOMA IN PUBLIC SERVICE INTERPRETING IS BETWEEN 20-30%

reinforced by [Directive 2010/64/EU](#) on the right to interpretation and translation in criminal proceedings, transposed into Irish law by [SI 564/2013](#) for the gardaí and [SI 565/2013](#) for the courts.

At the time of writing, [Directive 2012/29/EU](#), giving victims the right to interpretation and translation during police interviews and at court hearings, had not yet been transposed

into Irish law. The [Refugee Act 1996](#) allows for an interpreter “where necessary and possible”.

[Directive 2010/64/EU](#) is useful, because it mentions quality, stating in article 2(8): “Interpretation provided under this article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and

are able to exercise their right of defence.”

Furthermore, article 5(1) provides: “Member states shall take concrete measures to ensure that the interpretation and translation provided meets the quality required under article 2(8) and article 3(9).”

It seems obvious that quality interpreting is needed in order to ensure that defendants are ‘effectively present’ in court (that is, they





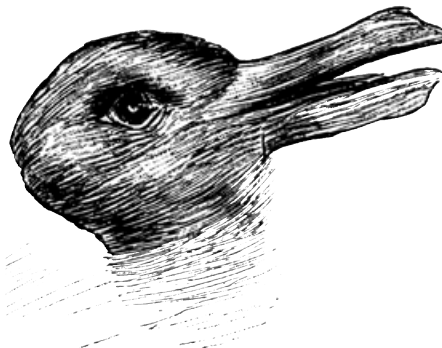
understand the case against them and can make their lawyers aware of inconsistencies or errors in evidence). Similarly, it is important that witnesses' testimony in a foreign language is interpreted correctly. However, there has been no indication of any concrete measures being taken in Ireland to ensure the quality of interpreting.

### A question of competence

In general, interpreters are provided at garda stations, in the courts, and in child protection and family law cases, although not in civil cases. The problems lie in the area of interpreter competence and lack of awareness of ethical issues. There is no accredited training for legal interpreters in Ireland, and they are not tested to establish if they can provide competent interpreting.

In contrast, in other jurisdictions where interpreters are tested, the failure rate is high. For example, in Britain, the pass rate on the Diploma in Public Service Interpreting is between 20-30%. In the US, on average only 20% of candidates pass the Federal Court Interpreter Certification Examination.

Such statistics would imply that 70-80% of legal interpreters currently working in Ireland may not pass similar tests to assess



"There are certain things which fall equally under the concept 'picture-rabbit' and under the concept 'picture-duck,'" Ludwig said. He really should have got out more...

their knowledge of legal terminology in two languages and their ability at simultaneous and consecutive interpreting and sight translation.

The assumption in Ireland, where interpreters for the gardaí and the courts are outsourced, is that anyone who speaks English and another language can be an interpreter. For example, in the last garda 'request for tender', the minimum standards required of interpreters are FETAC level 5 and a minimum of 70 hours of interpreting experience. FETAC level 5 is the equivalent of the Leaving Certificate and is obviously far too

low a level for interpreting. The stipulation regarding experience assumes that experience will lead to competent interpreting, but there is evidence in the US and Canada of very experienced but incompetent interpreters.

In addition, the tender documents stipulate that interpreters must be trained in interpreting techniques and procedures and must "provide genuine and accurate interpretations". It is difficult to imagine how people who have been neither trained nor tested can possibly provide "genuine and accurate interpretations".

The three levels in the Courts Service 'request for tender' for interpreters raise similar concerns:

- Level 1 – the person can be shown to be competent in both English and the language concerned,
- Level 2 – the person is a native speaker of the language concerned and can be shown to be competent in English, or is a native speaker of English and can be shown to be competent in the language concerned,
- Level 3 – the person is a native speaker of English with a third-level qualification in the language concerned, or a native speaker of the language concerned with a third-level qualification in English.

This 'request for tender' does not include a definition of what is meant by 'competent in English' and 'competent in the language concerned'. There is no mention of a qualification in interpreting – surely a necessity for court interpreters.

### Good practice

Good practice when working with interpreters includes introducing the interpreter to the client and explaining that he or she will interpret everything that is said and will respect confidentiality. In addition, solicitors should speak directly to the non-English speaker rather than to the interpreter. That means looking at the client rather than at the interpreter, and using the second person, for example: "tell me what happened" rather than "ask him what happened."

Interpreters should use the first person 'I' when interpreting rather than saying "he says that..." If the interpreter needs to refer to him or herself, the recommendation is to speak in the third person, as in: "the interpreter would like to clarify..."

## FOCAL POINT

### DON'T BE AFRAID TO ASK

Given the lack of standards in interpreter provision, it is suggested that solicitors and judges could (and should) ask all interpreters the following questions:

- What qualifications do you have?
- What interpreter training do you have? How long did the training last? Who provided the training?
- Can you tell me about the interpreter code of ethics?
- How did you learn English?

The purpose of such questions is really to establish whether the interpreter can communicate well in English and if they have any qualifications relevant to interpreting.

Another issue for solicitors is the decision as to whether or not to request an

interpreter. If there is any doubt about a client understanding English or their ability to express themselves in English, it is, in theory, preferable to call an interpreter. The client could be an asylum-seeker, a refugee, a suspect, or a defendant or client seeking legal advice on conveyancing, separation or divorce, child custody, company law, personal injury, employment law, probate, litigation, or making a will.

When deciding whether or not to call an interpreter, solicitors should ask open questions to establish if the person understands and can speak English. For example, possible questions are:

- How did you get here today?
- Tell me about your background,
- What do you work at?
- Why are you here today?



## FETAC LEVEL 5 IS THE EQUIVALENT OF LEAVING CERTIFICATE AND IS OBVIOUSLY FAR TOO LOW A LEVEL FOR INTERPRETING

It is helpful to phrase questions carefully so that they can be interpreted easily, and to pause to allow the interpreter to interpret. Interpreters should not be expected to interpret for lengthy periods. The more professional an interpreter is, the higher the chance that they will take notes, use dictionaries, and use the first person. Information on the case, including books of evidence, should be shared with interpreters beforehand so that they can prepare.

The issue of what interpreters can or cannot do is obviously an important one. The Irish courts and the Garda Síochána do not have any code of ethics for legal interpreters. Instead, interpreters are expected to abide by the code of ethics of the company that employs them. However, it is not enough to provide interpreters with a code of ethics and assume that they will follow it; interpreters need the opportunity to reflect on ethical principles and discuss their relevance and impact.

Confidentiality is a core principle in all codes and is crucially important for interpreters who are expected to be impartial – their aim should be to provide accurate interpreting to ensure that meaningful communication can take place. They should interpret everything that is said without



"There can be no peace until they renounce their Rabbit God and accept our Duck God!"

omitting or adding information. They should not engage in lengthy exchanges with clients. If the interpreter appears to be taking over the interview, they are overstepping their role and must be stopped immediately. The ITIA has a *code of ethics* specifically for legal interpreters.

Where interviews are recorded in a garda station or cases are recorded in court, and a solicitor has doubts about the interpreting provided, it is advisable to have the digital recordings checked by a qualified independent assessor to ascertain what exactly was said and how accurate the interpreting was. Such

checks involve transcribing what was said in English and the foreign language, and providing translations of what was said in the foreign language.

Given the lack of training and testing of legal interpreters in Ireland, incompetent interpreting could be used as grounds for appeal, but I am not aware of any such instances to date. [g](#)

## LOOK IT UP

### LEGISLATION:

- *European Convention on Human Rights Act 2003*
- *Refugee Act 1996*
- *Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings*
- *European Communities Act 1972 (Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations 2013 (SI 564 of 2013)*
- *European Communities Act 1972 (Interpretation and Translation in Criminal Proceedings) Regulations 2013 (SI 565/2013)*
- *Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime*

### LITERATURE:

- *ITIA Code of Ethics for Community Interpreters*

## LEGAL EZINE FOR MEMBERS

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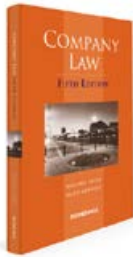
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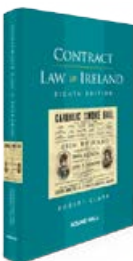
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# MURDOCH AND HUNT'S DICTIONARY OF IRISH LAW (6<sup>TH</sup> EDITION)

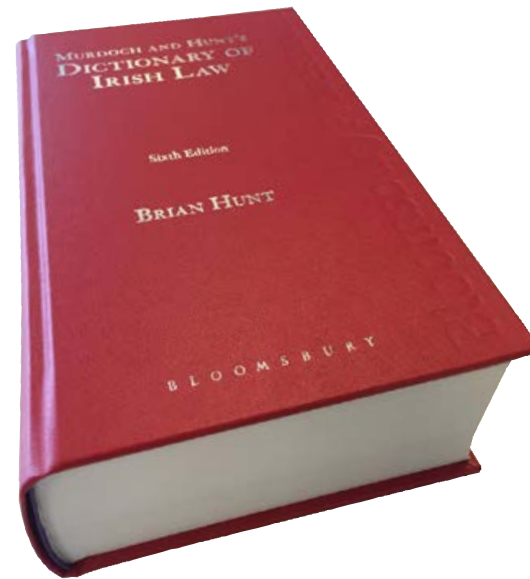
**Brian Hunt.** Bloomsbury Professional (2016),  
[www.bloomsburyprofessional.com](http://www.bloomsburyprofessional.com).  
ISBN: 978-1-7804-389-55. Price: €165 (incl VAT).

The word 'dictionary' does little justice to this work. While, yes, it captures the definition of terms (over 10,300 in total) that have been cited in legislation or those that have been the subject of analysis by the courts, its real usefulness lies in how it pulls so much related information together under subject-matter headings.

A reference is usually given to the statutory basis for each entry, along with the section of the relevant act or statutory instrument identified and, where a major topic of law is dealt with, the relevant textbook is referred to.

Where appropriate, reference is also made to more significant or interesting case law that could be usefully consulted, or to other sources – such as the *Rules of the Superior Courts*, Law Reform Commission reports, and *Gazette* or *Bar Review* articles. Much thought has been given to making it as easy as possible to access this information, with physical tabulation alphabetically and entry titles in bold font – ensuring a simple and speedy search.

At 1,850 pages, the work is larger than most law books. Indeed, the sixth edition is itself 533 pages longer than the fifth edition, incorporating 308 acts and 6,335 SIs that were enacted in the eight years since the previous edition. The author is to be commended for his ambition, skill, and energy in undertaking the task, particularly when consideration is given to the many significant pieces of



legislation enacted during this period, such as the range of new measures introduced as a direct consequence of the economic crisis, and the wide range of amendments to existing terms introduced by the *Companies Act 2014*.

The value of *Murdoch and Hunt's Dictionary* can be evidenced from the entry 'dictionary, use of', which lists 23 instances when this particular work has been cited by the superior courts in recent years. This entry underscores the practical usefulness of the dictionary to the legal profession – and its importance as a reference tool is only likely to increase as a result of its expanded scope.

This sixth edition is an essential addition to any legal library.

*Patrick Ambrose is chief legal officer at DLL Group.*

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# FORGOTTEN PATRIOT: DOUGLAS HYDE AND THE FOUNDATION OF THE IRISH PRESIDENCY

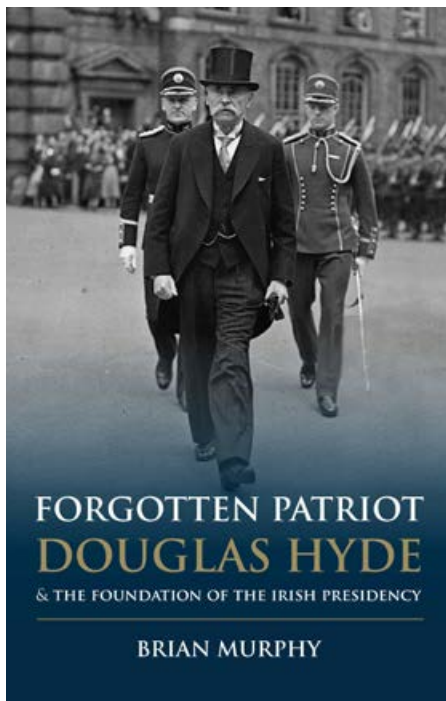
**Brian Murphy.** The Collins Press (2016), [www.collinspress.ie](http://www.collinspress.ie). ISBN: 978-1-8488-929-03. Price €19.99 (paperback, incl VAT; also available as an e-book).

Douglas Hyde – academic, linguist, Irish-language enthusiast, first professor of Irish at UCD and first president of the Gaelic League – became the first President of Ireland in 1938. Hyde was the agreed presidential candidate of Fianna Fáil and Fine Gael. Although he suffered a stroke after two years into his presidency and was partly confined to a wheelchair, Hyde soldiered on in office until the end of his seven-year term in 1945.

This book has its roots in a PhD thesis that critically examined the impact of the presidency in Irish politics and public life during the term of the first three presidents (1938-1973). The author submits that Douglas Hyde is a “forgotten patriot and a neglected personality at the forefront of Ireland’s early nationhood”. There is a temptation to say many of our ‘heroes’ are somewhat neglected and forgotten, but it is easy to be overlooked as a hero in Ireland. Ireland has so many ‘heroes’ – many not as worthy as Douglas Hyde.

Dr Murphy argues very persuasively that Ireland’s process of commemoration seems to have developed a hierarchy, with more attention being given to those who took up arms in the cause of Irish freedom than to those who provided the intellectual basis for a separate state.

There are fascinating stories about Hyde included in this work. One relates to the GAA. Hyde had a long and close relationship with that organisation. Long before his presidency, Hyde had been made a patron of the GAA in recognition of his work with the Gaelic League. But President Hyde’s attendance, accompanied by Taoiseach de Valera on 13 November 1938 at the Ireland v Poland soccer match in Dalymount Park, was deemed by the GAA to be in direct violation of the ban on ‘foreign games’. Accordingly, the GAA expelled the President



of Ireland. Taoiseach De Valera was furious and subsequently informed the GAA that the treatment of President Hyde was unwarranted and would not be tolerated in the future.

The full ‘story’ is also told of the two references made by President Hyde of legislation to the Supreme Court (the *Offences Against the State Amendment Bill 1940* and the *School Attendance Bill 1942*) pursuant to article 26 of the Constitution.

Dr Murphy was a speechwriter for two former taoisigh. Combining important new research with the fascinating insight of the scholar, he has written an absorbing portrait in lucid prose of a significant statesman and patriot of modern Ireland.

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



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# JOHN F BUCKLEY

## 1931 – 2017

**J**ohn F Buckley, who died on 9 February, was a solicitor – but that is only part of his story. He was a man of very considerable intellect, but also truly a man of many parts. His remarkable career spanned 61 years: 55 years as a solicitor and six as a judge.

He first worked in two small offices in Dublin and one in Athy before joining Hickey & O'Reilly in 1961. That firm merged into Hickey Beauchamp Kirwan & O'Reilly, which in time became Beauchamps. He became the leading commercial conveyancing solicitor in Ireland over the course of that long career. Not, of course, that he confined his work to conveyancing.

John's career as a solicitor was only one aspect of his multifaceted life. He was the first solicitor to be appointed a Circuit Court judge and served there with distinction from 1996 to 2001. His colleagues on the bench were happy to let him take on difficult landlord and tenant cases, which were all too easy for someone of his experience and expertise.

Professionals often talk of giving something back, and it is hard to imagine that John's contribution in that regard will ever be matched. He gave tirelessly to the Society of Young Solicitors, the Dublin Solicitors' Bar Association, numerous Law Society committees (education, publications, CPD, conveyancing and the *Gazette*), the International Bar Association, and the Law Reform Commission. And when John got involved, he didn't do half measures. John Wylie recalls that John encouraged him to write *Irish Land Law*.

His son Niall recounted at his funeral that John made it clear that he didn't want a eulogy, but he did want some people to be thanked, and he felt a few words of remembrance might be appropriate, provided that it was not too long. That was typical of John's no-nonsense approach. He was not a man who wanted flattery and, when he could properly do so, he avoided the limelight. Deciding to opt out of being president of the Law Society was one example of this. He got involved to improve the law, its practice, and the way solicitors do their work.

Niall also mentioned that John was wont to sign even



birthday and anniversary cards John F Buckley. This reflected a shyness and reserve that resulted in a certain formality in his manner. While – to people who did not know him – he seemed very serious, he had a very keen sense of humour. And while he seemed formal, he was always approachable if you had a problem. But it can be said fairly that he didn't suffer fools gladly. While John tried hard to restrain himself when asked

something he thought was foolish, he did not always succeed in doing so. Occasionally, he realised later that he had been too sharp and made contact to smooth ruffled feathers.

One wonders how he could possibly find time for all his pursuits in the legal field, but that overlooks that he was very interested in sport. Cricket probably was closest to his heart, having played it himself, but he was also very interested in racing (particularly national hunt), rugby and indeed most other sports, with the possible exception of American football. He read *The Irish Field* every week for his adult life until two weeks before his death. And busy and all as he was with his career and his family, he continued to assist Leinster Cricket Club as an administrator. He was just a true sports fan.

For most of us, there could be no time for anything else, but John was also very interested in music, particularly classical jazz. And he knew a lot about opera. One could go on and on. Indeed, one would struggle to find a topic about which he had not thought a lot and had views to express. And his views were never strident. He never tried to dominate a conversation. John was just good company and could talk about anything and everything.

John was a firm family man. He married at the age of 40 and would have been married to Claire for 44 years a few days after his death. He treasured his family and, in recent years, his seven grandchildren.

Claire, Orla, Niall and Aidan treasured John and, sensing his wish to die at home, they rallied around to make that possible. He is sadly missed. [g](#)

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RO'D



## REPORT OF THE LAW SOCIETY COUNCIL MEETING ON 3 MARCH 2017

**Legal Services Regulation Act**

The Council noted correspondence from the Legal Services Regulation Authority inviting a submission on legal partnerships by 24 March 2017. It was agreed that the Society would respond to the request and would focus, in particular, on the regulatory issues arising and the need to protect the compensation fund from any defalcation by non-solicitors.

**Judicial appointments**

The Council had a lengthy discussion on the contents of the draft *scheme* of the Government's *Judicial Appointments Commission Bill 2016* and a draft submission that had been prepared by an *ad hoc* working group established by the Council at its previous meeting. The principal substantive issues in the submission related to the questions arising from the draft scheme, that is, a lay or legal majority, a lay or legal chair, the eligibility of legal academics for appointment to the bench, and judicial promotions.

The Council considered the policy positions taken by the Society in its major submission on the issue in 2014. It was agreed that the proposed bill was a forward-

looking, inclusive and contemporary approach to reforming the judicial selection system. Nevertheless, there was a desire for substantial process improvement and greater diversity. Diversity should include the appointment of more women, more solicitors, and more candidates from wider social and geographical origins.

If, as envisaged under the scheme, the Government's discretion in the appointment of judges was being reduced, then the system required a broader representation of the public interest, which would be achieved by a lay majority on the commission. This would reflect the policy of a lay majority contained in the *Legal Services Regulation Act*. In terms of the involvement of the judiciary in the selection of their own successors, it was noted that judicial selection was not a core part of the judicial function.

The proposed new process would require a complete new set of skills, particularly in the area of interviewing and selection, and would be a qualitatively different exercise to that pertaining at present. The Council concluded that the commission should be chaired by a layperson, selected

through open competition, and with a skill-set derived from senior professional recruitment experience, board management and governance experience, and proficiency in identifying and engaging highly-skilled professionals. The involvement of the attorney general at both commission and at cabinet level was also regarded as unnecessary.

In terms of selection, it was agreed that candidates should be selected on merit, which should include knowledge of the law and a capacity for legal reasoning, but also personal qualities, including common sense, balance, even-temper, humanity, humility, compassion, courtesy and social awareness.

**Brexit**

The Council approved an action plan for the Society's operational departments and committees in order to keep abreast of developments on Brexit. It was noted that the Bar had produced its own Brexit paper and had sought a meeting to discuss a coordinated approach to Government.

Professional indemnity insurance


Richard Hammond briefed the Council on the 2016 renewal

season, noting that all firms had been covered, and there were no firms in the Assigned Risks Pool. There had been significant movements in market share by firm, and market share by premium. The early indications were that the overall premium rose by a little under 3%.

**LawCare**

Valerie Peart reported on LawCare and its activities during 2016, noting that there had been an increase of 32% in calls to the helpline, with 33 calls from Ireland and in excess of 500 from England. LawCare had appointed a new communications specialist, and an Irish-dedicated website had been launched. LawCare was increasing its involvement in health-and-wellbeing training.

**Solicitor member logo**

The Council noted that the new solicitor member logo had been launched, with front-page advertisements in the national newspapers. This was an excellent initiative that had been well-received by members. The Council expressed its appreciation to the director of representation and member services, Teri Kelly, and her team. 

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# SOLICITORS' BENEVOLENT ASSOCIATION

## 153<sup>RD</sup> REPORT, 1 DECEMBER 2015 TO 30 NOVEMBER 2016

This is the 153<sup>rd</sup> 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, family, 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 €656,774, which was collected from members' subscriptions, donations, legacies, and investment income. Currently, there are 84 beneficiaries in receipt of regular grants, and approximately half of these are themselves supporting spouses and children.

There are 18 directors, three of whom reside in Northern Ireland, and they meet monthly in Blackhall Place. They meet at the Law Society of Northern Ireland, 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 of 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 Simon Murphy (past-president of the Law Society of Ireland), John Guerin (past-president of the Law Society of Northern Ireland), Ken Murphy (director general), Alan Hunter (chief executive), and the personnel of both societies.

I wish to express particular appreciation to all those who contributed to the association when applying for their practising cer-

RECEIPTS AND PAYMENTS A/C FOR YEAR ENDED 30/11/2016		
	2016	2015
	€	€
<b>RECEIPTS</b>		
Subscriptions	441,841	400,394
Donations	106,252	183,692
Legacies	15,000	–
Investment income	62,506	64,907
Bank interest	180	958
Currency gain	5,007	1,733
Repayment of grants	45,137	–
	<b>675,923</b>	<b>651,684</b>
<b>PAYMENTS</b>		
Grants	656,774	611,119
Bank interest and fees	1,139	3,072
Administration expenses	49,153	48,536
	<b>707,066</b>	<b>662,727</b>
<b>OPERATING DEFICIT FOR THE YEAR</b>	<b>(31,143)</b>	<b>(11,043)</b>
Profit on disposal of investments	47,791	104,859
Provision for decrease in the value of quoted investments	(12,142)	(4,514)
<b>SURPLUS FOR THE YEAR</b>	<b>4,506</b>	<b>89,302</b>

### DIRECTORS AND OTHER INFORMATION

- **Directors:** Thomas A Menton (chairman), Brendan Walsh (deputy chairman), Caroline Boston (Belfast), Liam Coghlan (Killarney), Thomas W Enright (Birr), Felicity M Foley (Cork), William B Glynn (Galway), John Gordon (Belfast), Colin Haddick (Newtownards), Dermot Lavery (Dundalk), Anne Murrin (Waterford), John M O'Connor (Dublin), John TD O'Dwyer (Ballyhaunis), Colm Price (Dublin), James I Sexton (Limerick), John Sexton (Dublin), Andrew F Smyth (Dublin) and Brendan J Twomey (Donegal)
- **Trustees (ex officio directors):** John Gordon, John M O'Connor, Andrew F Smyth and Brendan Walsh
- **Secretary:** Geraldine Pearse
- **Auditors:** Deloitte, Chartered Accountants and Statutory Audit Firm, Deloitte & Touche House, Earlsfort Terrace, Dublin 2
- **Financial consultants:** Tilman Brewin Dolphin Limited, 3 Richview Office Park, Clonskeagh, Dublin 14
- **Bankers:** Allied Irish Banks plc, 37 Upper O'Connell Street, Dublin 1; First Trust Bank, 31/35 High Street, Belfast BT1 2AL
- **Offices:** 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

tificates, to those who made individual contributions, and to the following: Law Society of Ireland, Law Society of Northern Ireland, Ashfield Media Group Ltd, Belfast

Solicitors' Association, Dublin Solicitors' Bar Association, Employment Lawyers Group (NI), Faculty of Notaries Public in Ireland, Limavady Solicitors' Association,

Medico-Legal Society of Ireland, Midland Solicitors' Bar Association, Monaghan Bar Association, Sheriffs' Association, Southern Law Association, Tipperary Bar Association, Waterford Law Society, and West Cork Bar Association.

I note with deep regret the death in August last of our colleague Dermot (Doc) Lavery, who was a director of the association for many years and, during that time, gave up his time and energy in furthering the aims of the association. His kindness and courtesy will be long remembered by those with whom he came in contact, both as a colleague and as an able representative of the 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. Subscriptions and donations will be received by any of the directors or by the secretary, from whom all information may be obtained, at 73 Park Avenue, Dublin 4. In certain cases, the association can claim tax relief for donations of €250 or more. Information can also be obtained from the association's website at [www.solicitorsbenevolentassociation.com](http://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 2016*.

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 Kieran Quill, a solicitor formerly practising as principal of J Hodnett & Son, Solicitors, Nelson House, Emmet Place, Youghal, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [4514/DT102/15]**

*Law Society of Ireland (applicant)*  
*Kieran Quill (respondent solicitor)*

On 14 January 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Failed to comply, in a timely manner or at all, with an undertaking to a named complainant bank dated 21 November 2000,
- 2) Failed to respond adequately or at all to one or more letters from the complainant bank, including letters dated 1 December 2000, and/or 16 May 2001, and/or 3 September 2001, and/or 1 March 2010, and/or 15 June 2010, and/or 22 November 2010, and/or 24 February 2011, and/or 18 May 2011, and/or 1 June 2011, and/or 13 July 2011, and/or 3 August 2011, and/or 15 August 2011, and/or 23 August 2011, and/or 7 September 2011, and/or 11 October 2011,
- 3) Failed to respond adequately or at all to one or more letters from the applicant, including letters dated 7 December 2011, and/or 7 February 2012, and/or 2 March 2012, and/or 26 October 2012, and/or 20 November 2012, and/or 4 January 2013,
- 4) Failed to comply with the directions of the applicant's Complaints and Client Relations Committee dated 15 May 2012 and/or 26 June 2012

in an adequate manner or at all,  
5) Failed to attend before the committee at its meeting held on 19 February 2013, when required to so attend.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a sum of €1,000 to the applicant's compensation fund,
- 3) Pay a sum of €1,000 plus VAT as a contribution towards the whole of the costs of the applicant.

**In the matter of Daniel Murphy, a solicitor practising as principal of Daniel Murphy & Company, Solicitors, Macroom, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [3917/DT88/14]**  
*Law Society of Ireland (applicant)*  
*Daniel Murphy (respondent solicitor)*

On 17 February 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that, prior to 30 April 2012, he had:

- 1) Transferred or caused to be transferred amounts totalling circa €6,203 from the client account to the office account in circumstances where:
  - a) He identified some or all of these transfers on the client ledger account of a named deceased client as being professional fees due when he knew or ought to have known that this description was a misrepresentation,
  - b) Some or all of the transfers were in breach of regulation 7(1) of the *Solicitors Accounts Regulations*,
  - c) Some or all of the transfers were in breach of regulation

11(3) of the *Solicitors Accounts Regulations*,

- d) Some or all of the transfers amounted to a dishonest misappropriation of clients' moneys,
- 2) Transferred or caused to be transferred amounts totalling circa €7,245 from the client account to the office account in circumstances where:
  - a) He identified some or all of these transfers on the client's ledger account of a named client as being professional fees due when he knew or ought to have known that this was a misrepresentation,
  - b) Some or all of the transfers were in breach of regulation 7(1) of the *Solicitors Accounts Regulations*,
  - c) Some or all of the transfers were in breach of regulation 11(3) of the *Solicitors Accounts Regulations*,
  - d) Some or all of the transfers amounted to a dishonest misappropriation of clients' moneys,
  - e) The transfers caused a debit balance on the client's ledger account of a named client, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations*,
  - 3) Transferred or caused to be transferred amounts totalling circa €4,303 from the client account to the office account in circumstances where:
    - a) He identified some or all of these transfers on the various clients' ledger accounts as being professional fees due when he knew or ought to have known that such fees had already been discharged,
    - b) Some or all of the transfers or payments were in breach of regulation 7(1) of the *Solicitors Accounts Regulations*,

c) Some or all of the transfers were in breach of regulation 11(3) of the *Solicitors Accounts Regulations*,

- d) Some or all of the transfers amounted to a dishonest misappropriation of clients' moneys,
- e) The transfers caused a debit balance on the various clients' ledger accounts, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations*,
- 4) Failed to record a debit, on the office side of 94 clients' ledger accounts, professional fees totalling circa €33,130 from the various clients' ledger accounts in a timely manner or at all, in breach of regulation 10(5) of the *Solicitors Accounts Regulations*,
- 5) Failed to maintain, as part of his accounting records, proper books of account showing the true financial position in relation to the solicitor's transactions with clients' moneys, in breach of regulation 12(2)(a) of the *Solicitors Accounts Regulations*.

The tribunal ordered that the respondent solicitor:

- 1) Do stand censured,
- 2) Pay a sum of €4,000 towards the applicant's costs.

**In the matter of Daniel Murphy, a solicitor practising as principal of Daniel Murphy & Company, Solicitors, Macroom, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [3917/DT55/14]**  
*Law Society of Ireland (applicant)*  
*Daniel Murphy (respondent solicitor)*

On 22 March 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of miscon-





duct in his practice as a solicitor in that, up to the date of the referral of the matter to the tribunal, he had:

- 1) Failed to respond adequately to some of the correspondence sent to him by the Society,
- 2) Failed to attend at meetings of the applicant's Complaints and Client Relations Committee on 16 October 2012 and 16 July 2013,
- 3) Failed to comply with directions of the committee dated 16 October 2012.

The tribunal ordered that the respondent solicitor:

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

**In the matter of Kieran Quill, a solicitor formerly practising as principal of J Hodnett & Son, Solicitors, Nelson House, Emmet Place, Youghal, Co Cork, and in the matter of the Solicitors Acts 1954-2011 [4513/DT112/14, 4513/DT68/15, 4513/DT93/15 and High Court record no 2016/71 SA]**  
*Law Society of Ireland (applicant)*  
*Kieran Quill (respondent solicitor)*

#### 4513/DT112/14

On 22 October 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that, at the date of the referral of the matter to the tribunal, he had:

- 1) Failed to comply in a timely manner or at all with one or more of the following undertakings: (a) undertaking in respect of a named client dated 6 December 2004, (b) undertaking in respect of named clients dated 1 June 2006, (c) undertaking in respect of a named client dated 2 October 2006, (d) undertaking in respect of named clients dated 18 April

2008, (e) undertaking in respect of a named client dated 23 June 2009, (f) undertaking in respect of named clients dated 6 June 2007, (g) undertaking in respect of a named client dated 9 July 2007, (h) undertaking in respect of named clients dated 5 August 2008, (i) undertaking in respect of named clients dated 6 June 1996, (j) undertaking in respect of named clients dated 28 December 2006, (k) undertaking in respect of named clients dated 27 March 2009, (l) undertaking in respect of named clients dated 23 March 2007, (m) undertaking in respect of named clients in respect of a named property, (n) undertaking in respect of named clients dated 16 March 2004, (o) undertaking in respect of named clients dated 12 May 2003, (p) undertaking in respect of named clients dated 1 August 2003, (q) undertaking in respect of named clients dated 1 November 2005, (r) undertaking in respect of a named client dated 3 December 2007, (s) undertaking in respect of named clients dated 18 April 2008, (t) undertaking in respect of a named client dated 11 November 2004, (u) undertaking in respect of named clients dated 6 January 2005, (v) undertaking in respect of named clients dated 4 May 2003, (w) undertaking in respect of named clients dated 14 May 2004, (x) undertaking in respect of named clients dated 29 June 2009,

- 2) Failed to respond adequately or at all to correspondence from the complainant bank in respect of one or more of the aforementioned undertakings.

#### 4513/DT68/15

On 14 January 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct

in his practice as a solicitor in that he:

- 1) Failed to comply with a direction of the applicant's Complaints and Client Relations Committee to refund excessive fees in the amount of €6,000 (plus VAT) to a client complainant,
- 2) Failed to administer and/or make suitable arrangements to facilitate the administration of the estate of a named client in a timely manner,
- 3) Failed to take adequate steps to ensure that the title deeds relating to the client complainant's farm were located and/or furnished to the client in the course of the administration of his late mother's estate,
- 4) Failed to respond adequately or at all to some or all of the correspondence sent to him by the applicant, including correspondence dated 2 October 2012, and/or 31 January 2013, and/or 26 February 2013,
- 5) Breached regulation 7(1)(a)(iii), and/or 7(2)(a), and/or 7(2)(b), and/or 8(4) of the *Solicitors Accounts Regulations 2001* by taking client fees before they were due and owing.

#### 4513/DT93/15

On 14 January 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Prior to 31 January 2013, transferred or caused to be transferred amounts totalling circa €13,334 out of the client account to the office account and/or in satisfaction of outlay, in circumstances where:
  - a) Some or all of the transfers or payments were in breach of regulation 7(1) of the *Solicitors Accounts Regulations*,
  - b) Some or all of the transfers or payments caused a debit balance to arise on various cli-

ent ledger accounts in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations*,

- c) Some or all of the transfers were in breach of regulation 11(3) of the *Solicitors Accounts Regulations*,
- d) Some or all of the transfers amounted to a dishonest misappropriation of moneys belonging to one or more clients,

- 2) Prior to 31 January 2013, in respect of 36 clients' ledger accounts:

- a) Permitted credit balance totalling circa €12,281 to arise on the office side of the various clients' ledger accounts, in breach of regulation 10(5) of the *Solicitors Accounts Regulations*,
- b) Failed without delay to correct the position in relation to credit balances totalling circa €12,281 on the office side of the various clients' ledger accounts, in breach of regulation 10(5) of the *Solicitors Accounts Regulations*,
- 3) In the course of acting for a named client, transferred or caused to be transferred in 2012 circa €5,500 from the client account of the named client to the office account, in circumstances where:

- a) The transfers were in breach of regulation 7(1) of the *Solicitors Accounts Regulations*,
- b) The transfers caused a debit balance to arise on the client ledger account, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations*,
- c) The transfers amounted to a dishonest misappropriation of moneys belonging to one or more other clients,
- d) He concealed the existence of a debit balance by falsely including an amount of €5,500 as an outstanding lodgement when no such lodgement was in existence,
- 4) In the course of acting for named clients in respect of



- the purchase of a property at a named place in or around October 2010:
- a) Failed to account to the named clients or the Revenue Commissioners in respect of some of the moneys paid to him by his clients to meet a stamp duty liability,
  - b) Dishonestly transferred, or arranged to be transferred, a payment in the amount of €3,630 in June 2011, purporting to be professional fees plus VAT, when these moneys were properly payable to either the named clients or the Revenue Commissioners,
  - c) The aforementioned transfer was in breach of regulation 11(3) of the *Solicitors Accounts Regulations*,
- 5) In respect of the estate of a named client:
    - a) Dishonestly transferred, or arranged to be transferred in or around August/September 2011, payments totalling in or around €16,607, purporting to be professional fees plus VAT, when these moneys were not properly payable to him,
    - b) Transferred amounts totalling in or around €16,607 in circumstances where the transfer was in breach of regulation 11(3) of the *Solicitors Accounts Regulations*,
  - 6) In respect of the estate of a named client, transferred or arranged to be transferred amounts totalling circa €17,000, in late 2011, as professional fees and VAT, when these fees were excessive,
  - 7) In respect of a named client:
    - a) Dishonestly transferred or arranged to be transferred amounts totalling circa €8,046, in 2011/2012, as professional fees and VAT, when some or all of this sum was not properly payable to him,
    - b) The aforementioned transfer was in breach of regulation 11(3) of the *Solicitors Accounts Regulations*,
  - 8) In respect of a named client:
    - a) Dishonestly transferred or arranged to be transferred amounts totalling circa €27,037, throughout the course of 2010 to 2013, as professional fees and VAT, when some or all of this sum was not properly payable to him,
    - b) The aforementioned transfer was in breach of regulation 11(3) of the *Solicitors Accounts Regulations*,
    - c) Made, or arranged to be made, two false postings on 16 January and 25 February 2013 in the amounts of €2,460 and €6,150 on the client ledger account,
    - d) The aforementioned false postings represented a breach of regulation 12(2)(a) of the *Solicitors Accounts Regulations*,
    - e) Failed to comply with regulation 12(3)(a) of the *Solicitors Accounts Regulations* in respect of the matters described in the professional fee account dated 21 December 2011,
  - 9) In respect of named clients:
    - a) Dishonestly transferred or arranged to be transferred amounts totalling circa €4,960, in 2012, as professional fees and VAT, when this sum was not properly payable to him,
    - b) The aforementioned transfer was in breach of regulation 11(3) of the *Solicitors Accounts Regulations*,
    - c) Caused a debit balance to arise on the client ledger account in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations*,
  - 10) In respect of the estate of a named client:
    - a) Dishonestly transferred, or arranged to be transferred, amounts totalling circa €6,000, from 2011 to 2013, as professional fees and VAT and outlay, when this sum was not properly payable to him,
    - b) The aforementioned transfer was in breach of regulation 11(3) of the *Solicitors Accounts Regulations*,
    - c) Caused a debit balance to arise on the client ledger account, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations*,
  - 11) In respect of the estate of a named client:
    - a) Dishonestly transferred, or arranged to be transferred, amounts totalling circa €5,146, in 2011, as professional fees and VAT when this sum was not properly payable to him,
    - b) The aforementioned transfer was in breach of regulation 11(3) of the *Solicitors Accounts Regulations*,
    - c) Caused a debit balance to arise on the client ledger account, in breach of regulation 7(2)(a) of the *Solicitors Accounts Regulations*,
  - 12) In respect of the estate of a named client:
    - a) Dishonestly transferred or arranged to be transferred amounts totalling circa €9,355, in 2012 and 2013, as professional fees and VAT, when some or all of this sum was not properly payable to him,
    - b) The aforementioned transfer was in breach of regulation 11(3) of the *Solicitors Accounts Regulations*,
  - 13) Failed to maintain, as part of his accounting records, proper books of account showing the true financial position in relation to the solicitor's transactions with clients' moneys, in breach of regulation 12(2)(a) of the *Solicitors Accounts Regulations*.
- The tribunal referred the three aforementioned matters to the High Court and, on 11 July 2016, it was ordered by the High Court that:
- 1) The name of the respondent solicitor be struck off the Roll of Solicitors,
  - 2) The respondent solicitor pay the sum of €7,500 to the applicant's compensation fund,
  - 3) The respondent solicitor pay the sum of €12,420 as a contribution towards the whole of the costs of the applicant.
- In the matter of Daniel Murphy, a solicitor practising as principal of Daniel Murphy & Company, Solicitors, Macroom, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [3917/DT56/14 and High Court record no 2016/77 SA]**
- Law Society of Ireland (applicant) Daniel Murphy (respondent solicitor)*
- On 22 March 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that, up to the date of the referral of the matter to the tribunal, he had:
- 1) Failed to comply with part or all of 37 specified undertakings,
  - 2) Failed to respond adequately or at all to some or all of the correspondence sent to him by the applicant,
  - 3) Failed to attend at a meeting of the applicant's Complaints and Client Relations Committee on 3 September 2013,
  - 4) Failed to comply with directions of the committee dated 11 December 2012 and 19 February 2013.
- The tribunal referred the matter to the High Court and, on 18 July 2016, the High Court ordered that:
- 1) The name of the respondent solicitor be struck from the Roll of Solicitors,
  - 2) Costs in the amount of €2,500 be paid by the respondent solicitor to the applicant.
- In the matter of James (Seamus) G Doody, practising as**





a partner in Doody Solicitors, 21 South Mall, Cork, and in the matter of the *Solicitors Acts 1954-2011* [6285/DT105/14, 6285/DT105/13, 6285/DT187/13 and High Court record no 2016/79 SA]

*Law Society of Ireland (applicant)*  
*James (Seamus) G Doody (respondent solicitor)*

#### 6285/DT105/14

On 1 December 2015, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that, at the date of the referral of the matter to the tribunal, he had:

- 1) Failed to comply in a timely manner or at all with one or more of the following undertakings: undertaking in respect of a named client dated 12 March 2001, undertaking in respect to a named client dated 13 July 1999, undertaking in respect of named clients dated 18 June 2009,
- 2) Failed to comply with a direction of the applicant's Complaints and Client Relations Committee on 25 April 2013 to provide a progress report to the applicant in respect of the first and/or second of the aforementioned undertakings,
- 3) Failed to respond adequately or at all to correspondence from the complainant bank in respect of one or more of the aforementioned undertakings,
- 4) Failed to respond adequately or at all to correspondence from the applicant in respect of one or more of the aforementioned undertakings.

#### 6285/DT05/13

On 25 February 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that, up to the date of referral of the matter to the tribunal, he had:

- 1) Failed to comply with his un-

dertaking dated 30 August 2006 to the named complainant lending institution in a timely manner or at all,

- 2) Failed to reply to some of the correspondence sent to him by the applicant either in a timely manner or at all.

#### 6285/DT187/13

On 25 February 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he had:

- 1) Failed to comply with a solicitor's undertaking dated 16 December 2005 up to the date of the swearing of the applicant's grounding affidavit,
- 2) Failed to reply to multiple correspondence from the applicant,
- 3) Failed to comply with a direction of the applicant's Complaints and Client Relations Committee on 26 July 2012 that he furnish a full update in respect of all developments,
- 4) Seriously prejudiced a client of the complainant solicitor, in that his failure to comply with his undertaking contributed to that client losing the sale of the property concerned,
- 5) Failed to attend a meeting of the aforementioned committee on 7 February 2013, despite being required to do so.

The tribunal referred the aforementioned matters to the High Court and, on 25 July 2016, it was ordered by the High Court that:

- 1) The respondent solicitor not be permitted to practise as a sole practitioner or in partnership; that he be permitted only to practise as an assistant solicitor, in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved in

advance by the applicant (a stay was placed on this aspect of the order until 9 September 2016 or such earlier date as may be agreed between the applicant and the respondent solicitor),

- 2) The respondent solicitor pay a contribution of €3,750 to the applicant's costs, including witness expenses before the tribunal in respect of the second and third of the aforementioned proceedings,
- 3) The respondent solicitor pay a contribution of €3,750 to the applicant's costs before the tribunal in respect of the first of the aforementioned proceedings,
- 4) The respondent solicitor pay a contribution of €1,500 to the applicant's costs before the High Court.

**In the matter of Aidan D Desmond, a solicitor practising as Desmond & Co, Solicitors, 35 Rockgrove, Youghal Road, Middleton, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [8859/DT122/15] *Law Society of Ireland (applicant)* *Aidan D Desmond (respondent solicitor)***

On 10 January 2017, the Solicitors Disciplinary Tribunal made the following findings of professional misconduct against the respondent solicitor:

- 1) Failed to comply with an undertaking furnished to IIB Homeloans (now KBC Bank Ireland plc) on 2 August 2007 in respect of his client and the property at Co Cork in a timely manner or at all,
- 2) Failed to respond to the Society's correspondence and, in particular, letters of 10 January 2014, 31 January 2014, 7 March 2014, 14 April 2014, 26 June 2014, 11 September 2014, 1 October 2014, 14 October 2014, 21 January 2015, and 28 January 2015,

- 3) Failed to comply with the direction of the Complaints and Client Relations Committee made at its meeting of 20 January 2015.

The tribunal ordered that the respondent solicitor:

- 1) Stand censured,
- 2) Pay a sum of €1,500 to the compensation fund,
- 3) Pay a sum of €400 towards the whole costs of the Law Society of Ireland within 12 months from the date of this order, which was made on 23 January 2017.

**In the matter of Aidan D Desmond, a solicitor practising as Desmond & Co, Solicitors, 35 Rockgrove, Youghal Road, Middleton, Co Cork, and in the matter of the *Solicitors Acts 1954-2011* [8859/DT123/15] *Law Society of Ireland (applicant)* *Aidan D Desmond (respondent solicitor)***

On 10 January 2017, the Solicitors Disciplinary Tribunal made the following findings of professional misconduct against the respondent solicitor:

- 1) Failed to comply expeditiously with an undertaking given by him on behalf of his clients, over property at Co Cork, to Bank of Ireland Mortgage Bank, dated 10 September 2007,
- 2) Failed to reply adequately or at all to the correspondence of the complainant, in particular, letters dated 12 February 2010, 29 October 2010, 3 November 2010, and 27 October 2011 respectively,
- 3) Failed to reply adequately or at all to the correspondence of the Society, in particular, letters dated 30 January 2012, 13 March 2012, 27 June 2012, 11 September 2012, 18 December 2012, 5 February 2013, 20 February 2013, 8 May 2013, 28 May 2013, 1 October 2013,



7 November 2013, 30 September 2014, 15 October 2014, and 9 December 2014.

The tribunal made an order on the following terms:

- 1) Censure of the respondent solicitor,
- 2) Directing him to pay the sum of €1,500 to the compensation fund,
- 3) Directing the respondent solicitor to pay a contribution of €400 towards the costs of the Law Society of Ireland within 12 months from the date of this order.

**In the matter of Michael Hanrahan, solicitor, formerly practising as Michael Hanrahan at 43 Lower Main Street, Dungarvan, Co Waterford, and in the matter of the *Solicitors Acts 1954-2011* [2930/DT153/13 and High Court record no 2016/220 SA] *Law Society of Ireland (applicant) Michael Hanrahan (respondent solicitor)***

On 11 November 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor in that he:

- 1) Caused a minimum deficit in the client account of €181,856 as at 31 August 2012,
- 2) Wrongfully withdrew a sum of €93,407 from the estate of the named deceased person where he was executor and where he had also witnessed the will and there was no charging clause in the will,
- 3) Transferred €84,674 from the executor's account in the above estate to his office account,
- 4) Withdrew a further €8,733 from a deposit of €30,000 received at the auction on a land sale in the same estate,
- 5) In another named estate, transferred €22,803 of moneys to the office account, whereas his section 68 letter showed that

his fees would have amounted to €7,502,

- 6) In another named estate, transferred a total of €30,421 to the office account, whereas his section 68 letter showed that his fees would have amounted to €10,012,
- 7) Took the foregoing amounts without raising fee notes,
- 8) In another named estate, calculated his fees at €7,619 but transferred a total of €13,892,
- 9) Transferred this amount without furnishing a section 68 letter,
- 10) Paid himself €6,195 plus VAT before the grant of administration in relation to the estate had issued,
- 11) Paid himself these moneys without raising any fee note or notification to the clients of these withdrawals,
- 12) In a named estate, calculated his fees at €8,150 plus VAT but transferred a total of €31,992 from the client to the office account,
- 13) By engaging in the above transfers, left the distribution of €44,589 short by €3,189 per person, which roughly equates with the excess transfers from the client account of €31,992, less €9,075,
- 14) Did not inform the beneficiary of the transfer of funds to the office account on 12 different occasions between April 2010 and December 2011.

The tribunal ordered that the matter should go forward to the High Court and, on 23 January 2017, by consent, the High Court ordered that:

- 1) The name of the respondent solicitor shall be struck from the Roll of Solicitors,
- 2) The respondent solicitor pay to the applicant the costs of the proceedings before the Solicitors Disciplinary Tribunal, including witness

expenses, to be taxed in default of agreement – execution and registration of these on foot of said costs order be stayed for a period of 12 months from the date of the order,

- 3) The respondent solicitor pay the applicant the costs of the High Court proceedings, to be taxed in default of agreement – execution and registration of these costs on foot of this costs order be stayed for a period of 12 months from the date of the order.

**In the matter of Michael Quinn, a solicitor previously practising as Michael Quinn & Company, Solicitors, at Gray Office Park, Galway Retail Park, Headford Road, Galway, and in the matter of the *Solicitors Acts 1954-2011* [10574/DT35/16 and High Court record no 2017/4 SA] *Law Society of Ireland (applicant) Michael Quinn (respondent solicitor)***


On 10 November 2016, the Solicitors Disciplinary Tribunal found the respondent solicitor guilty of misconduct in his practice as a solicitor, in that he:

- 1) Allowed a deficit of €92,157 on the client account as of 26 August 2015,
- 2) Transferred client moneys of €4,269 between September 2014 and August 2015 from the client to the office account, and these sums were not attributed to any client and not billed,
- 3) Transferred part of moneys received for stamp duty of €544.65 and did not stamp a deed in the case of a named client,
- 4) Practised as a solicitor after being suspended from practice on 26 August 2015,
- 5) In the estate of a named deceased:
  - a) Deducted costs of €42,337 without advising the two administratrices of the estate of

the bill of costs or providing an estate account,

- b) Drew an additional amount of €1,836.95 from the client account to the office account over and above the total of the bill of costs without informing the two administratrices or providing an estate account,
- c) Left an unexplained balance of €22,305.17 on the client ledger account of the estate as of 26 August 2015,
- 6) Failed to stamp and register property purchased by a named client, despite being put in funds in December 2013 of €1,270 in respect of stamp duty and registration fees,
- 7) Allowed debit balances totalling €2,332.16 in the client account as of 26 August 2015, in breach of the *Solicitors Accounts Regulations*,
- 8) Failed to keep proper books of account, and the client books of account were written up in arrears.

The tribunal ordered that the matter should go forward to the High Court and, on 23 January 2017, the High Court ordered that:

- 1) The respondent solicitor not be permitted to practise as a sole practitioner or in partnership; that he be permitted only to practise as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years' standing, to be approved by the Law Society of Ireland,
- 2) The respondent solicitor pay a sum of €2,000 to the compensation fund within six months from the date of the High Court order,
- 3) The respondent solicitor pay a sum of €3,000 as a contribution towards the whole of the costs of the Law Society of Ireland within six months of the date of the High Court order. 





NEWS FROM THE EU AND INTERNATIONAL AFFAIRS COMMITTEE  
 EDITED BY TP KENNEDY, DIRECTOR OF EDUCATION, LAW SOCIETY OF IRELAND

# PROPOSED NEW RENEWABLES DIRECTIVE

On 30 November 2016, the European Commission published a [proposal for a directive](#) on the promotion of the use of energy from renewable sources (proposed recast). This follows from the European Council's October 2014 agreed 2030 framework for climate and energy, reaffirming the EU's long-term commitment to what is regarded as an ambitious strategy in renewable energies. The current 2020 framework set an EU 20% target for energy consumption that relies on legally binding national targets until 2020. In comparison, the 2030 framework sets out an EU target of at least 27% for the share of renewable energy consumed in the EU in 2030. The 27% target, a commitment made in the 2015 *Paris Agreement*, is to be fulfilled through individual member states' contributions, guided by the need to deliver collectively for the EU. In addition, the framework permits member states to set their own more ambitious national targets.

EU projections have indicated that, if no new policies are put in place, the current member state and EU policies would lead to about 24.3% of renewable energy consumption in 2030 – well short of the 27% target. With this is the risk of undermining the EU's ambition for world leadership in renewable energy, as well as foregoing the benefits of security arising from increased energy supply from indigenous sources and a reduction in consumers' participation in the energy system. To fill the shortfall, it has been estimated that a significant investment effort in the

EU is required (for example, €254 billion for renewable energy only in electricity generation), calling for early, clear and stable policy signals. Therefore, strengthening investors' certainty is crucial and a specific objective.

## Final countdown

The proposed recast aims to lay down principles that allow member states to collectively and continuously ensure that the share of renewable energy in the EU final energy consumption reaches at least 27% by 2030 in a cost-effective manner across electricity (RES-E), heating and cooling (RES-H&C), and transport (RES-T). The main provisions of the proposed recast substantially change or add new aspects to the *Renewable Energy Directive* (2009/28/EC). For instance, the scope of the proposed recast mentions new elements for the period after 2020, such as the overall EU binding target, renewable self-consumption, improved biofuels, bioliquids and biomass fuels sustainability, and greenhouse gas (GHG) emissions saving criteria. In light of the amendments to the *Renewable Energy Directive*, new definitions (for example, 'ambient heat', 'waste heat or cold', 'repowering') have been introduced.

More specifically, the 2030 target is set out in the proposed recast, with the 2020 national targets as a baseline (that is, member states cannot go below the 2020 national targets from 2021 onwards). A mechanism is included to ensure that the baseline is main-

tained and that the emergence of a gap in target achievement is avoided. The 10% REST-T target after 2020 is deleted. Included are general principles that member states may apply when designing cost-effective support schemes; these are subject to state aid rules. The establishment of a gradual and partial opening of support schemes to cross-border participation in the electricity sector is required. Moreover, the level of, and the conditions attached to, the support granted to renewable energy projects, when member states opt to do so, are not to be revised in a way that negatively affects supported projects. Calculation of the share of energy from renewable sources is also regulated: this includes a decreasing maximum share of biofuels and bioliquids produced from food or feed crops starting from 2021. Member states are given the possibility to set a lower limit and to distinguish between different types of biofuels and bioliquids produced from food and feed crops – for example, by setting a lower limit for contribution from biofuels produced from oil crops, taking into account indirect land use change.

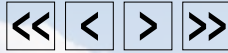
Also included in the proposed recast is a new calculation methodology of minimum levels of energy from renewable sources in new and existing buildings that are subject to renovation. A permit granting process for renewable energy projects with one designated authority ('one-stop-shop') is established, along with a maximum time limit for the permit granting process.

A simple notification to distribution system operators for small scale projects is introduced, with a specific provision on accelerating the permit granting process for repowering existing renewable plants.

## Light and shadows

In addition, the proposed recast contains some modification to the guarantees of origin (GOs) system in order to: (a) extend the system to renewable gas, (b) make the issuance of GOs for heating and cooling mandatory upon a producer's request, (c) make the use of GOs mandatory for RES-E and renewable gas disclosure, (d) enable the issuance of GOs to supported RES-E allocated through auctioning, with revenues raised to be used to offset the costs of renewable support, and (e) improve the administrative procedures through the application of the CEN standard.

Consumers are to be empowered by being enabled to self-consume without undue restrictions, and being remunerated for the electricity they feed into the grid. Energy consumers are also to be empowered by the provision of information of district heating and energy performance – this is to enable them to cease buying heat/cold from a district heating/cooling system at building level if they, or a party on their behalf, can achieve a significantly better energy performance. Moreover, new provisions are introduced with respect to energy communities, empowering them to participate in



PIC: GETTY IMAGES



EU PROJECTIONS HAVE INDICATED THAT, IF NO NEW POLICIES ARE PUT IN PLACE, THE CURRENT MEMBER STATE AND EU POLICIES WOULD LEAD TO ABOUT 24.3% OF RENEWABLE ENERGY CONSUMPTION IN 2030 – WELL SHORT OF THE 27% TARGET

the market. The proposed recast aims to exploit the renewables potential in the heating and cooling sector, ensuring the cost-efficient contribution of the sector to target achievement, and to create a larger market for RES-H&C across the EU. In this regard, member states are expected to endeavour to achieve an annual increase of 1% in the share of renewable energy in the heating and cooling supply.

An EU-level obligation for fuel suppliers is established, requiring them to provide a certain share (6.8% in 2030) of low-emission and renewable fuels (including renewable electricity and advanced biofuels), with a view to stimulating decarbonisation and energy diversification and ensuring a cost-efficient contribution of the sector to the overall target achievement. The proposed recast also contains provisions that demand a decreasing maximum share of biofuels and bioliquids

produced from food or feed crops starting from 2021. The switch to advanced biofuels is promoted by a specific sub-mandate, increasing yearly their contribution to reach at least 3.6% by 2030. Included also is a provision providing for the introduction of national databases that ensure traceability of fuels and mitigate risk of fraud. The existing EU sustainability criteria for bio-energy are reinforced, including by extension of their scope to cover biomass and biogas for heating and cooling and electricity generation. The sustainability criterion applying to agricultural biomass is streamlined to reduce administrative burden. The criterion for peatland protection is stricter, but intended to be easier to verify. In addition, a new risk-based sustainability criterion for forest biomass is introduced. The GHG-saving performance requirement applying to biofuels is increased to 70% for new plants and an 80% saving

requirement is applied to biomass-based heating/cooling and electricity. To avoid excessive administrative burden, the EU sustainability and GHG-saving criteria do not apply to small biomass-based heating/cooling and electricity installations with a fuel capacity below 20 MW.

#### In the future to come

Clarification is provided on the mass balance system, and it is adapted to cover biogas co-digestion and injection of biomethane in the natural gas grid. Included in the amendment is the obligatory recognition of evidence from national schemes of other member states that have been verified by the commission. To streamline the EU sustainability criteria, a number of non-operational provisions have been deleted, including the possibility to establish bilateral agreements with third countries, and the possibility for the com-

mission to recognise areas for the protection of rare, threatened or endangered ecosystems or species recognised by international agreements or included in lists drawn up by intergovernmental organisations or the International Union for the Conservation of Nature. The commission is empowered to specify the auditing approaches to be applied by the voluntary schemes, and member states' involvement is enhanced in the governance of voluntary schemes by allowing checks of certification bodies. The commission is also empowered to update the GHG calculation methodology.

Further information on the proposed recast and the EU's 2030 Energy Strategy may be found on the European Commission's website (<https://ec.europa.eu/energy>).

*Diane Balding is a member of the Law Society's EU and International Affairs Committee.*



## RATES

## PROFESSIONAL NOTICE RATES

## RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €147 (incl VAT at 23%)
- **Title deeds** – €294 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €147 (incl VAT at 23%)

**HIGHLIGHT YOUR NOTICE BY PUTTING A BOX AROUND IT – €33 EXTRA**

**ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. CHEQUES SHOULD BE MADE PAYABLE TO LAW SOCIETY OF IRELAND.** Deadline for May 2017 *Gazette*: 12 April. For further information, contact the *Gazette* office on tel: 01 672 4828.

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

## WILLS

**Bardwell, Leland (deceased)**, late of Pier House, Cloonagh, Ballinfull, Co Sligo. Would any person having knowledge of any will made by the above-named deceased, who died on 28 June 2016, please contact Dermot G McDermott & Co, Solicitors, 1 Union Street, Sligo; tel: 071 916 1886, email: [reception@dmcdsolicitors.com](mailto:reception@dmcdsolicitors.com)

**Clynes, Anne (Nancy) (deceased)**, late of Ashley Lodge Nursing Home, Maynooth, Co Kildare, and 16 Kingsbry, Maynooth, Co Kildare. Would any person having knowledge of any will made by the above-named deceased, who died on 11 June

2016, please contact Patrick J McEllin & Son, Solicitors, Court-house Road, Claremorris, Co Mayo; reference AC/C2249; tel: 094 937 1042, email: [aclancy@mcellin-solicitors.ie](mailto:aclancy@mcellin-solicitors.ie)

**Dardis, Patrick (deceased)**, who died on 25 January 2017, late of 3 O'Growney Terrace, Kells, in the county of Meath. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Nathaniel Lacy & Partners, Solicitors, Kenlis Place, Kells, Co Meath; tel: 046 928 0718, email: [law@nlacy.ie](mailto:law@nlacy.ie)

**Dunne, Joseph (deceased)**, who died in June 2010, and **Dunne,**

**Kathleen (deceased)**, who died on 9 March 2017 in the Elm Hall Nursing Home, Celbridge, Co Kildare, who were both late of 210 Kylesmore Road, Ballyfermot, Dublin 10. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please reply to **box no 01/03/17**

**McDonagh, Francis (otherwise Frank) (deceased)**, late of 24 Irishtown Road, Dublin, made his last will and testament on 2 April 1973 at the offices of George A Williams, solicitor, 69 Merrion Square, Dublin. Would any person having knowledge of the whereabouts of the said original will dated 2 April 1973,

or the whereabouts of the practice files of George A Williams, solicitor (now deceased), please contact Sean Kenny, Giles J Kennedy & Co, Solicitors, 81 Eccles Street, Dublin 7; DX 1028 Dublin; tel: 01 830 5321, fax: 01 830 0524, email: [sean.kenny@gilesjkennedy.com](mailto:sean.kenny@gilesjkennedy.com)

**Murray, Kathleen (deceased)**, late of 8 Peter Street, Wexford, and formerly of 54 Cul Na Greine, Kilrane, Rosslare, who died on 30 June 2016. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Brian Callaghan, Maurice Leahy Wade & Company, Solicitors, Archway House, The Plaza, Swords, Co Dublin; tel: 01 840 6505, fax: 01 840 1156, email: [lexleahy@leahywade.ie](mailto:lexleahy@leahywade.ie)

**O'Connor, Mary (deceased)**, late of 37 Granville Park, St Patrick's Road, Limerick, who died on 6 August 2016. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Margaret O'Connell, Dermot G O'Donovan Solicitors, Riverpoint, Lower Mallow Street, Limerick; tel: 061 314 788, email: [moconnell@dgod.ie](mailto:moconnell@dgod.ie)

**Quinn, Michael (deceased)**, late of 33 Hillview Lawn, Pottery Road, Dun Laoghaire, Co Dublin. Would any person having knowledge of any will made by the

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above-named deceased, who died on 10 March 2017, please contact O'Donoghue Murphy Solicitors, 35 Heidelberg, Roebuck Road, Dublin 14; tel: 01 288 4593, email: [emerodonoghue@gmail.com](mailto:emerodonoghue@gmail.com)

#### TITLE DEEDS

**In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of lands adjacent to Hillgrove Lane Watercourse Road, at City Square, Watercourse Road, Cork – applicant: Michael McAteer**

Take notice that any person having any superior interest (whether by way of freehold estate or otherwise) in part of the property at City Square, Watercourse Road, Cork, adjacent to Hillgrove Lane and Watercourse Road, being a portion of the premises that is the subject of an indenture of lease dated 22 May 1855 between William Daly of the first part and Sarah G Forbes and Betsy Harris of the other part, described therein as “all that and those one piece or plot of ground containing to the Watercourse 36 feet and in depth to the rear 186 feet, be the same more or less situate lying and being in the North Liberties of the city of Cork, nearing and bounding on the north with concerns belonging to and now in the possession of John Delaney, on the south by Hillgrove Lane, on the west by concerns belonging to Mrs Byrns, and on the east by the Watercourse” (“the property”).

Take notice that the applicant, who holds the property under the said lease of 22 May 1855 as receiver appointed by deed of appointment dated 25 February 2010, intends to submit an application to the county registrar for the county and city of Cork for acquisition of the freehold interest and any intermediate interest in the property, and any party asserting that they hold a superior interest in the property aforesaid (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 and take

notice that a map of the property is available for inspection on request from Messrs Gore & Grimes, solicitors for the applicant, Cavendish House, Smithfield, Dublin 7.

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 and city of Cork for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the property are unknown or unascertained.

*Date: 7 April 2017*

*Signed: Gore & Grimes (solicitors for the applicant), Cavendish House, Smithfield, Dublin 7*

**In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978*, and in the matter of the purchase of the premises 7 and 9 Homefarm Road (formerly known as 7 and 9 St Mary's Road, Upper Drumcondra), Drumcondra, Dublin 9: an application by Patrick Fallon and Mary Fallon**

Take notice that any person having an interest in the freehold or any intermediary interest in the properties now known as no 7 and 9 Homefarm Road, Drumcondra, Dublin 9, being part of the property demised by a lease dated 26 February 1903 and made between Francis Patrick Butterly of the one part and Michael Whelan of the other part for the term of 186 years from 25 March 1903, subject to the yearly rent of £40.

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

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

*Date: 7 April 2017*

*Signed: Gaffney Halligan & Co (solicitors for the applicants), 413 Howth Road, Raheny, Dublin 5*

**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 Deirdre Farrelly, legal personal representative of the estate of the late Patrick Ennis, deceased**

Take notice any person having an interest in the freehold estate (or any intermediate interest) of the following properties: all that and those the house and premises situated in Main Street, Clara [Co Offaly], bound on the north by premises in the occupation of Edward Doyle, on the south by the hotel and premises now in the possession of Thomas Flynn, on the east by premises in the possession of James Flynn, and on the west by the Main Street at Clara, all of which said premises are situated in the town of Clara, parish of Kilbride, barony of Kilcoursey and Kings County, held under an indenture of lease dated 19 May 1896 between Mary Elizabeth O'Neill of the one part and Joseph Doyle of the other part (“the 1896 lease”) for a term of 150 years from 1 May 1896, subject to the yearly rent of £10.5s and to the covenants on the part of the lessee and conditions therein contained, and by assignment dated 7 November 1996 made between Aileen Ennis of the one part and Patrick Ennis of the other part, the premises comprised in all that plot or portion of ground situated at Main Street

in the town of Clara, barony of Kilcoursey, county of Offaly, containing 12 perches or thereabouts statute measure, shown edged red on the map or plan annexed to the deed of assignment dated 3 day of December 1969 hereto, part of the hereditaments demised by the lease, which were demised unto the late Patrick Ennis for all the residue then unexpired of the term of the 1896 lease and subject to the rent of £0.5s, part of the said rent of £10.5s reserved by the 1896 lease and to the covenants on the part of the lessee and conditions contained therein.

Take notice that Deirdre Farrelly, as legal personal representative of the estate of the late Patrick Ennis, deceased, intends to apply to the county registrar for the county of Offaly, for the acquisition of the freehold interest and all intermediate interests in the above-mentioned property, and any party asserting that they held an interest superior to the applicant in the aforesaid property are called upon to furnish evidence of title to same to the below-named solicitors within 21 days from the date hereof.

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 Offaly for such directions as may be appropriate on the basis that the person or persons beneficially entitled to all or any of the superior interest in the said property are unknown or unascertained.

*Date: 7 April 2017*

*Signed: Donal Farrelly & Co (solicitors for the applicant), Tullagh House, High Street, Tullamore, Co Offaly*

**In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of an application by Paul Quilligan**

Take notice that any person having an interest in the freehold estate or any intermediate interest in the property known as 3 Camden Market, Grantham



Street, Dublin 8, being portion of the hereditaments and premises comprised in and demised by indenture of lease dated 4 April 1849 and made between James Lundy of the one part and Robert Shannon of the other part and therein described as all that and those that house and premises situate on the west side of Lower Camden Street and known as no 57, bounded in front by Lower Camden Street, in the rear by a stable lane, on the north by a house and premises occupied by Catherine Sweeny, on the south by Grantham Street, together with the yard in the rear of the said hereby demised house and the free use and enjoyment in common with the other tenants of the said James Lundy of the said stable lane, all situate, lying and being in the parish of St Peter and county of the city of Dublin, held for a term of 999 years from 25 March 1849, subject to a yearly rent of £13, but indemnified against payment as recited on title and to the covenants and conditions on the part of the lessee therein contained, should give notice to the undersigned solicitors.

Take notice that Paul Quilligan, being the person entitled to the interest under the 1849 lease in the property intends to submit an application to the county registrar for the county of Dublin for the acquisition of the freehold interest and any intermediate interest in the aforesaid property, and

any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence of title to the aforesaid property to the below named within 21 days of this notice.

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

*Date: 7 April 2017*

*Signed: Aidan M Deasy & Co (solicitors for the applicant), 34 Upper Fitzwilliam Street, Dublin; D02 T207*

#### RECRUITMENT

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# GREAT WILLS OF CHINA

China is facing a wills and probate crisis. Chinese people boast one of the highest savings rates in the world, which has led to burgeoning wealth – yet very few have a will to pass on their estate, *USA Today* reports.

Members of the first generation of people allowed by the communist state to accumulate wealth just 30 years ago are now starting to die. This is creating a spike in inheritance disputes, which are clogging up the courts and dividing families.

It is estimated that only 1% of China's 220 million senior citizens have wills. Cultural reasons are partly to blame – talking about death is taboo.

The government is calling on local authorities around the country to establish free legal advice centres for the over 60s.

The China Will Registration Centre – a charity founded by a young lawyer – is now the largest provider of probate services in the country. The centre has processed 40,000 wills at no charge since 2013.

## I PREDICT A RIOT

British prisoners' rights to smoke inside their cells will be challenged in a Supreme Court appeal case in October, *The Guardian* reports. If successful, there are fears it could lead to serious discipline problems inside prison walls. The appeal has been brought by Paul Black, a

prisoner with heart problems, on the basis of fresh evidence from a Ministry of Justice medical report. The report on air quality behind bars published after the last hearing, warns that: "Even the smallest amount of exposure to second-hand smoke carries a reasonable

probability of injury."

Black lost his claim at the Court of Appeal in March 2016. The judges ruled that state prisons enjoyed immunity from the health regulations. The Supreme Court granted permission for an appeal, however.

## VIRTUAL ATTACK PROVES ARRESTING

A man accused of sending an animated GIF image containing a strobe light to a *Newsweek* writer known to have epilepsy, and which triggered a seizure, has been arrested. On 21 March, a grand jury in Texas decided that the GIF should be considered a deadly weapon.

*The New York Times* reports that John Rayne Rivello sent Kurt Eichenwald the image last December, causing a seizure. Rivello has been charged with criminal cyber-stalking and could face a ten-year sentence.

Investigators found that Rivello had sent messages to other Twitter users about Eichenwald, as well as a plan to carry out the



virtual attack. One of those messages read: "I hope this sends him into a seizure." Another stated: "Spammed this at [victim] let's see if he dies."

Eichenwald was incapacitated for several days, lost feeling in his left hand and had trouble speaking for several weeks.

Reports have speculated that the attack may have been motivated by Eichenwald's frequent criticism of President Trump on Twitter.

## ONLY OUR RIVERS...

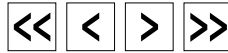
A court in the Indian state of Uttarakhand has granted the same legal rights as humans to the Ganges and Yamuna rivers, *The Guardian* reports. Both rivers are considered sacred by nearly a billion Indians.

On 20 March, the High Court of Uttarakhand ordered that the two rivers be accorded the status of living human entities, "having

the status of a legal person with all corresponding rights, duties and liabilities". This means that harming or polluting either river will be regarded, legally, as equivalent to harming a person.

The judges cited the example of the Whanganui River in New Zealand, which was declared a living entity with full legal rights by the government on 15 March.





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The work is varied, challenging and of the highest quality. Advisory, contentious work and some corporate support work makes up a good proportion of the team's workload. The team represents state and private sector employers (national and multinational), employees and a large trade union. The role involves managing your own mixed caseload as well as working alongside and supporting the firm's Employment Partners with higher value, challenging and complex cases. You will also be encouraged to play an active role in business

development contributing to developing your own profile as an Employment Lawyer and the development of the firm as a whole.

To succeed in this role you will have a number of years Employment Law experience gained from a leading firm. You will possess excellent inter-personal skills and will be looking to make a move to a firm where you can genuinely add value to the team and to your own career in the long term. Excellent character references are required for the successful candidate demonstrating strength and depth of character, career ambition and an excellent aptitude for work.

The firm is well known for their very friendly and supportive working environment and that is certainly true of the employment department.

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in relation to public and private m&a, corporate finance, commercial contracts and general corporate/commercial advice.

To be successful in this role you will need to be driven, a team player with a commercial approach and a passion for business.

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**Procurement Solicitor**

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Ref: 909132

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## Featured Jobs

**DATA PROTECTION SPECIALIST****Competitive / Top 10 / Dublin**

Our client, a Top 10 firm, is seeking a Data Protection Specialist to join its technology & data protection group. With the General Data Protection Regulation coming into force in 2018, making data protection a priority is a key strategic hire for the firm. This is a client facing role both proactive & reactive to the GDPR requirements & will involve assisting clients to develop effective procedures. The ideal candidate will be a Senior Data Protection Specialist with client facing, data breach & cyber response experience.  
Ref: 911700

**EMPLOYMENT ASSOCIATE****€70,000 - €90,000 / Top 10 / Dublin**

This is a new role due to growth in the department. It will involve, advising clients on employment law issues covering recruitment & selection to termination of employment, acting on behalf of clients before the EAT, Rights Commissioner service of the Labour Relations Commission, Labour Court & Equality Tribunal as well as before the Circuit & High Courts, working alongside other departments in the firm. The ideal candidate will have previous employment law experience with a leading Irish or UK firm.  
Ref: 911604

**CONSTRUCTION LITIGATION ASSOCIATE****€80,000 - €90,000 / Top Tier / Dublin**

This role will involve working alongside leading litigation lawyers. It is a new role with a view to expanding the firms' construction disputes team. Working with Irish & international clients, advising on construction dispute management including construction mediation, conciliation, arbitration, adjudications, other ADRs & court proceedings. The role will involve advising clients in relation to construction & engineering disputes. The ideal candidate will be in the construction disputes department of a leading Irish or UK firm.  
Ref: 911795

**COMMERCIAL PROPERTY SOLICITOR****€55,000 - €65,000 / Mid Tier / Dublin**

Our client, a niche commercial firm is seeking to recruit a Junior Solicitor to join its Commercial Property department. The role will involve advising & acting for clients in the sale, purchase & refinancing of commercial properties, leasing, site development & development funding, project finance & secured lending transactions, joint venture developments, planning law & regulation. The ideal candidate will be from a reputable commercial property firm, have excellent academics & possess strong commercial acumen.  
Ref: 911484

## IN-HOUSE

**CORPORATE SOLICITOR & DEPUTY COMPANY SECRETARY / €60,000 - €80,000 / Healthcare Industry**

Our client, a provider of specialist healthcare product services is seeking to recruit a Corporate Solicitor & Deputy Company Secretary to its legal & company secretarial department. The ideal candidate will have experience in corporate & commercial law advising in a broad range of transactions & advisory work, including corporate & company law, M&A, corporate governance, contract & commercial agreement review & shareholder agreements. The role will involve supporting the GC/Company Secretary in leading the corporate secretariat function. The ideal candidate will be a qualified solicitor with in excess of 2 years' PQE, in-house &/or with a leading firm with significant exposure to PLC environment & will have solid experience in drafting, reviewing & negotiating all contracts or any other documentation of the company.  
Ref: 911470

Should you require further information about any of these roles or any other legal recruitment requirements, please contact **Michael Minogue, Assistant Manager (m.minogue@brightwater.ie)** in strictest confidence.

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#### Banking/Aviation Lawyer – 1 yr+ pqe – PP0375

**The Role:** Our Client, a premier corporate law firm, is seeking to recruit a lawyer to join its Banking and Financial Services Department who act for both domestic and international clients. You will be dealing with asset finance transactions but will also be required to assist on general banking matters and capital market transactions.

**The Requirements:** You will be a qualified Solicitor or Barrister with at least 1 years' experience in aviation banking including excellent academics, commercial awareness and a strong work ethic.

#### Banking Solicitor – Associate to Senior Associate – J00480

**The Role:** This Top 6 Dublin law firm requires an experienced solicitor to join its Banking and Finance Group dealing with Irish and international banks and also financial institutions and corporations.

**The Requirements:** The role in question is for an experienced solicitor who can assist with a wide range of issues including: Portfolio sales; Secured facilities: Acquisition and infrastructure finance; Regulation & Compliance; Enforcement.

#### Corporate – Commercial Lawyer – Assistant to Associate – J00307

**The Role:** A leading corporate and commercial law firm are seeking to recruit a Corporate Solicitor to join their long established and expanding Corporate Team.

**The Requirements:** The successful candidate will be an ambitious Solicitor based in Dublin or be a solicitor relocating from another common law jurisdiction with the following experience and attributes; Experience in corporate transactions; First-rate technical skills; Proven ability to work as part of a team.

#### Corporate Solicitor – 5 yrs+ pqe – J00445

**The Role:** Our Client, a fast growing commercial law firm based in Dublin's City Centre, are seeking to hire an experienced Solicitor to join its Corporate Team.

**The Requirements:** The successful Candidate will be a 5-year+ qualified Corporate Solicitor with experience in general commercial contract work including advising Clients on; Joint Ventures; Mergers and Acquisitions; Corporate Finance; Corporate Governance.

#### Privacy/IT Lawyer – Associate to Senior Associate – MB0018

**The Role:** Our Client, a full service business law firm, is seeking to recruit an experienced lawyer to join its Privacy and Data Security Team dealing with all issues pertaining to data protection and privacy law compliance. This is a complex and rapidly evolving area of law advising Clients on a global scale.

**The Requirements:** You will be a qualified solicitor or barrister with expertise in both private and data security law gained either in private practice or as in-house counsel.

#### Competition and Regulated Markets Solicitor – Assistant to Associate – J00469

**The Role:** An opportunity has arisen in a Top 6 Dublin law firm for a Solicitor to join its Competition & Regulated Markets Group dealing with European and Irish law including compliance & regulation. There is a wide variety of work on offer in a broad range of industrial sectors.

**The Requirements:** You will have experience of mid to top tier practice coupled with a strong academic background and excellent technical skills.

#### Commercial Property/Real Estate Solicitor – Associate to Senior Associate – MB0012

**The Role:** Our Client, a progressive Dublin based law firm, are seeking to recruit an experienced Commercial Property/Real Estate Solicitor to join its Commercial Property Department to assist both public and private sector Clients.

**The Requirements:** You will be a qualified Solicitor with commercial property experience dealing with acquisitions, disposals, due diligence, landlord and tenant and asset management.

#### Tax Lawyer/Tax Consultant – 2 yrs+ pqe – J00359

**The Role:** This Top 6 Dublin law firm is seeking to recruit a Tax Lawyer/Consultant to join its expanding Tax Department to assist in managing and advising their tax clients dealing with a range of both domestic and international tax matters. You will have a genuine interest in building a career specialising in tax.

**The Requirements:** You will be a professional with a qualification in law, accountancy or tax looking to work in a top tier firm bringing with you initiative and enthusiasm with an excellent academic record and either hold a tax qualification or be working towards one.

#### EU Competition Solicitor – Assistant to Associate – MB0024

**The Role:** An opportunity has arisen in a Top 6 Dublin law firm for a Solicitor to join its EU Competition and Regulatory Group. There is a wide range of work on offer including EU, litigation and investigations competition and regulation, market dominance, public procurement law and state aid rules.

**The Requirements:** You will have 2+ years pqe coupled with a strong academic background and excellent technical skills.

For more information on these and other vacancies, please visit our website or contact Michael Benson bcl solr. in strict confidence at: Benson & Associates, Suite 113, The Capel Building, St. Mary's Abbey, Dublin 7.

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