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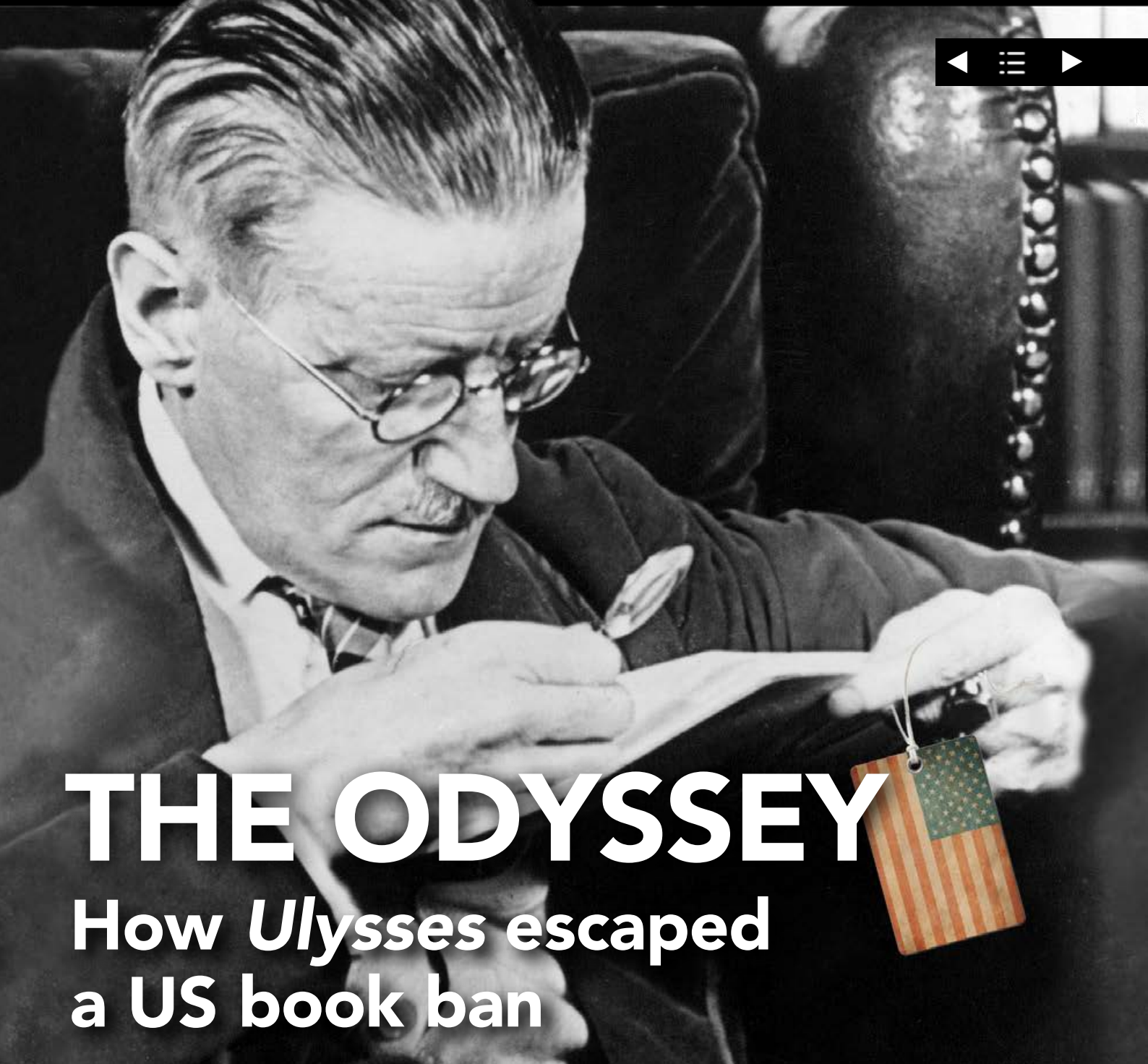
LAW SOCIETY OF IRELAND



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THE CUCKOO'S NEST

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What is the course of likely reform under the new *Defamation (Amendment) Bill*?

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gazette
LAW SOCIETY

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Opportunity or challenge?

'Change': a word that expresses hope, excitement, anticipation – or anxiety and concern. Change brings opportunities but also challenges. Change has positives. The Law Society has entered a new phase of change in its strategy and vision for the next five years. It has embarked on continuing to expand communications and dialogue with all members of the profession. The overwhelming response from the profession in a recent survey is the need for the Society to be an influential voice, a leader in the area of practice and reform for the benefit of society, which also benefits the profession.

Law firms have also encountered change. For many practices, there are opportunities in new areas of technology, but also significant challenges. Difficulties have been encountered by all practices in retaining and employing staff due to the movement of young people abroad and new firms from outside Ireland establishing here.

Increased regulation has added to those challenges, leading to the need to employ additional staff, and to the managing partner and other solicitors' time being diverted from legal work in order to ensure regulatory compliance.

Criminal legal-aid fees

The enforced downward trend in personal-injuries litigation, together with the stagnant criminal legal-aid fee structure (with criminal practitioners earning 25% less than in 2009) are added significant challenges.

The Law Society, the bar associations, and individual solicitors have campaigned tirelessly for the restoration of criminal legal-aid fees, and also for the development of a proper legal-aid system to provide access to justice for those who cannot afford representation, and are often in jeopardy in relation to their rights.

In addition, family and civil legal aid are under-resourced, under-funded and, in their present form, restrict access to justice.

Change also has further consequences. 'Legal deserts' are becoming a real problem in areas outside Dublin and within the criminal legal-aid system. Action is needed to address this situation by those in authority. Proper funding and a proper system of legal aid is a basic requirement for our society – the Law Society will continue to campaign tirelessly in this regard, particularly through lobbying Government and local political representatives.

'David and Goliath'

In addition, the courts and judiciary need to be cognisant of this problem. In previous messages, I have highlighted the need for a level playing pitch, a recognition of the 'David and Goliath' struggle and 'equality of arms'. This is particularly prevalent within the litigation system, where the courts and judiciary have encountered pressures to achieve efficiency and expediency, sometimes at the cost of effectiveness.

These challenges are not unique to Ireland. In Australia, for example, the government has a grant scheme available for legal practices in rural areas to ensure access to justice for everyone. This scheme may be necessary in the future for Ireland, should the ongoing problems continue.

The Law Society has attempted to address this issue by developing and promoting its hybrid professional course, which has had success in attracting many new trainees, often in their 30s, who had previously pursued other careers. While many of these trainees come from rural areas, the problem of legal deserts persists.

Yet, there is always hope – hope that our Government will recognise and take action. There is hope that our judiciary will continue to ensure a level playing pitch and equality of arms – and that they will recognise the pressures from large corporations and balance them against the rights of the individual to access justice.

There is also the unique hope and confidence that resides in all human beings that we can survive, adapt and, ultimately, prosper in changing times. g

LAW SOCIETY OF IRELAND

> THE LAW SOCIETY HAS CAMPAIGNED TIRELESSLY FOR THE RESTORATION OF CRIMINAL LEGAL-AID FEES

Maura Derivan

MAURA DERIVAN,
PRESIDENT

THE BIG PICTURE

STARRY, STARRY NIGHT…

Sligo's skies staged a spectacular celestial display of the Aurora Borealis (or Northern Lights) during the second week of September. Significant numbers of spectators made their way to Rosses Point at the entrance to Sligo Harbour to catch a glimpse of the heavens, leading to traffic snarl-ups

PIC: MICHAL CZUBALA

‘Pull like a dog’ rower inspires Kerry cluster

ALL PICS: DOMINICK WALSH PHOTOGRAPHY

The Kerry cluster ‘essential solicitor update’ conference took place at Ballygarry House Hotel and Spa on 14 September 2023. The conference was attended by 165 practitioners, with special guest ‘Pull like a dog!’ champion Irish rower Gary O’Donovan. The event was organised by Law Society Skillnet in association with Kerry Law Society. Pictured are Mike O’Reilly (O’Reilly Business Services), Michelle Nolan (head, Law Society Member Services), Helen Coughlan (member, Law Society Family and Child Law Committee), Robert Baker (chair, Guidance and Ethics Committee), Gary O’Donovan, Katherine Kane (acting head, Law Society Professional Training), and Richard Hammond SC (chair, Education Committee)

Delegates at the Kerry event

Gary O’Donovan (World Championship gold medallist 2018, Olympic silver medallist 2016, and European Rowing Champion 2016)

Robert Baker (chair, Law Society Guidance and Ethics Committee) and Gary O’Donovan

Law Society welcomes family-law judges

PIC: CIAN REDMOND

The Law Society welcomed family-law judges from England and Wales, and from Ireland, at a dinner on 13 July 2023: *(front, l to r)* Mark Garrett (director general, the Law Society), Mrs Justice Lucy Theis (Family Division, England and Wales), Sir Andrew McFarlane (president, Family Division, England and Wales), Maura Derivan (president, Law Society), Mr Justice David Barniville (president, High Court), Lord Justice Peter Jackson (Court of Appeal, England and Wales), and Caoilfhoinn Gallagher KC (Ireland's special rapporteur on child protection); *(back, l to r)* Michele O'Boyle SC (past-president, Law Society), Andrew Firrill, Gary Hudson, Judge Rachel Hudson (Circuit Court, England and Wales), Geraldine Keehan (partner, Caldwell & Robinson), Sara Phelan SC (chair, Bar of Ireland), Peter Doyle (chair, Family and Child Law Committee), and Inge Clissmann SC

DSBA gathering at Blackhall Place

PIC: CIAN REDMOND

Members of the Dublin Solicitors' Bar Association were welcomed to Blackhall Place on 20 July 2023: *(front, l to r)* Joan Doran (secretary, DSBA), Mark Garrett (director general, Law Society), Maura Derivan (president, Law Society), Susan Martin (president, DSBA) and Barry MacCarthy (senior vice-president, Law Society); *(back, l to r)* Stefan O'Connor, Avril Mangan, Matthew Kenny (vice-president, DSBA), Jessica Hickey, Niall Cawley (treasurer, DSBA), Áine Gleeson (chair, DSBA) and Patrick Longworth

Law Society wellbeing festival

ALL PICS: CIAN REDMOND

The Law Society Psychological Services festival ran from 6-8 September. It showcased the array of services on offer to the profession from the team at Blackhall Place. Crowds gathered in a tented village during the three-day festival, which included talks for practitioners and trainees on legal workplace culture, understanding psychosocial risks, ingredients for organisational success, and adapting to the evolving needs of the profession. Speakers included Jeanne Kelly (Browne Jacobson), Law Society past-presidents Michael Quinlan and Michelle Ní Longáin, George Artley (Bar Issues Commission project lawyer, IBA UK), and Jessica Lee (organisational psychologist with Seven Psychology at Work)

Scholar-in-Residence joins LRC

Prof Paul Daly has joined the Law Reform Commission on secondment from the University of Ottawa, as Scholar-in-Residence.

Prof Daly will assist in the LRC's work on reform of non-court adjudicative bodies. He will also be preparing a new edition of the leading textbook, *Administrative Law in Ireland*.

Prof Daly said: "I am delighted to have the opportunity to put my academic work as a researcher in administrative law to practical use at the commission, where I will be able to draw on my knowledge of other jurisdictions, such as Australia and Canada."

Notice – SBA AGM

Notice is hereby given that the 159th annual general meeting of the Solicitors' Benevolent Association will be held at the Law Society, Blackhall Place, Dublin 7, on Wednesday 8 November 2023 at 12.30pm.

The AGM will consider the directors' report and financial statements for the year ending 30 November 2022, elect directors, and deal with other matters appropriate to a general meeting. A copy of the report and statements is at solicitorsbenevolentassociation.com.

It's never too early

The Law Society Retirement Trust Scheme, which has been specifically designed for Law Society members, has been helping solicitors save for their retirement in a flexible and tax-efficient way since 1975.

Scheme charges are transparent and low compared with most individual pension arrangements. The earlier you join and start making contributions, the greater the benefits you can build up towards your retirement – plus you will pay less income tax!

If you are a Law Society member under 75, self-employed, in partnership, or in non-pensionable employment, you are eligible to make a pension contribution to the scheme.

Administered by Mercer, the scheme offers:

- The flexibility of a personal policy,
- Enhanced features, including a simple and transparent charging structure,
- Online access to your retirement account where you can view your pension-fund value, the performance of your investment funds, and make changes to your investment choices,
- Best-in-class investment management,
- A 'lifestyle investment strategy' that gradually reduces the level of investment risk in your retirement fund the closer you get to your chosen retirement age,
- Income-tax relief on your pension contributions (subject to Revenue limits), and
- Tax-free investment growth.

As a scheme member, you can make regular or once-off payments, and can choose to start, stop, or resume saving at any time. Contributions can be paid by electronic-fund transfer or cheque. There is a professional corporate trustee in place with the responsibility to ensure that the scheme is administered in accordance with the trust deed and rules, and to protect and act in the members' best interests always. The scheme is also overseen by a committee of Law Society members.

Your pension contributions to the scheme are eligible for tax relief and can reduce your tax liability. Making a pension contribution offers an excellent opportunity to take full advantage of the tax reliefs on offer and maximise the amount of money saved in your pension at the minimum cost to you. Investment returns are also tax exempt. The deadline for making a pension contribution and claiming tax relief in respect of the 2022 tax year is 31 October 2023 (16 November 2023 if you submit your return online). Payments should reach your pension administrator before these dates.

Tax relief is available at your marginal rate of tax, subject to an earnings limit of €115,000 and maximum total contribution rates, dependent upon your age *(see table)*.

There are also tax advantages at retirement, in that you can take up to 25% of your fund as a lump sum, with up to €200,000 available tax free (subject to conditions).

For more information about the Law Society Retirement Trust Scheme, contact the scheme administrator at Mercer at JustASK@mercer.com or call 01 411 8505. See also the Member Services area of the Law Society website at lawsociety.ie/retirement.

Age	% of net relevant earnings
Up to age 30	15%
From 30 to 39	20%
From 40 to 49	25%
From 50 to 54	30%
From 55 to 59	35%
Age 60 and over	40%

Council warns against 'two-tier' criminal justice system

● The Law Society Council has expressed "great concern" over the failure of successive governments to adequately invest in the criminal justice system.

In a statement on 25 September, the Council urged the Government, "in advance of the publication of Budget 2024, to take action and to make provisions for adequate investment in the criminal legal-aid system", saying that "continued inaction will directly contribute to the creation of an inequitable legal system made up of those who have ready access to legal representation, and those who do not – whether that is due to affordability, or geography".

The Council continued: "Access to justice, and consequently access to legal representation, is a fundamental human right and, therefore, every effort must be made to avoid a two-tier system. We must ensure that we have a sustainable criminal-defence profession to protect the constitutional rights of citizens to legal advice in criminal cases, including the right to legal representation where a person cannot afford to pay for it."

The Law Society says that demand for solicitors providing services to the State's criminal legal-aid system is increasing. Despite this, many practitioners are choosing to leave the profession to work in other areas of law or to work for the State, "because the remuneration provided in this area is not commensurate with the demands of the role".

More than a decade ago, fees for criminal legal-aid work were cut several times during the financial emergency. Despite the increasing complexity of criminal legal work during that period, the rates have remained unchanged and still have not been reviewed – the only part of the public sector not to have had pay cuts reinstated, the Law Society's Council states.

PIC: CIAN REDMOND

It adds that criminal legal-aid fees are almost 30% less in real terms than they were before the cuts were imposed. This is despite reforms and changes to work practices in the profession, including increased workload, both in the quantity and seriousness of cases, and rising overheads.

"The lack of investment by Government is creating an unviable criminal legal-aid system with clear consequences for access to justice," it continued. "Legal-aid deserts are already emerging in some parts of country where there may only be one solicitor available to take legal aid cases – or in some cases, none at all. In this context, the case for restoration of criminal legal-aid fees is irrefutable."

The Law Society prepared a report in 2016 on the lack of viability of the system and submitted it to the Department of Justice. Two years later, another submission was sent to the department, outlining how the legal-aid scheme could be restructured. Since then, the Society says, "there have been meetings with various Ministers for Justice, with broad support expressed, but no action".

Legal-service price inflation slows

● Prices for services in the legal, accountancy, PR, and consultancy sectors in the second quarter of this year were 1.5% higher than in the same period last year, according to the Central Statistics Office (CSO).

Overall, the figures show that prices charged by service providers across the economy rose at an annual rate of 1.7% in the three-month period from April to June. The annual increase was the lowest for two years, however. Service inflation has been on a downward trend since hitting 4.1% in the first quarter of 2022.

EC assesses legal training

● The European Commission is currently assessing legal training needs in the EU. The objective is to develop comprehensive training e-capsules focused on three areas of EU law – fundamental rights, civil matters, and criminal matters.

The European Judicial Network (in civil and commercial matters) facilitates the networking of judicial authorities in EU countries in order to improve judicial cooperation.

A judge or other authority dealing with judicial cooperation in civil and commercial matters who may need help in a cross-border case can avail of its resources.

More information is available at https://e-justice.europa.eu.

Ukrainian legal outreach wins award

A legal-industry collaboration has won the Chambers Ireland Sustainable Business Volunteer Award 2023. The Ukraine Ireland Legal Alliance partnered with the Irish Red Cross last year to provide legal outreach clinics and frontline support to 840 displaced Ukrainians, who received refuge on Maynooth University campus, over a six-week period in July and August 2022.

The collaboration was led by Matheson and A&L Goodbody and involved six other law firms: Arthur Cox, William Fry, Walkers (Ireland), Philip Lee, Dechert, and Comyn Kelleher Tobin.

A team of 124 volunteer lawyers, law-firm professionals, and interpreters provided a range of assistance, including:

- Providing information clinics on employment, social welfare, education, setting up a business in Ireland, and housing,
- Distributing €40,000 worth of welfare vouchers,
- Providing critical-information gathering and data-entry support, and
- Liaising with host families on suitable accommodation.

Receiving the Sustainable Business Volunteer Award 2023 on behalf of the Ukraine Ireland Legal Alliance were Meghan D'Arcy (Matheson), Fiona McNulty (Mason Hayes & Curran), Shannon Colmey (Matheson LLP), Carolann Minnock (Arthur Cox), Eithne Lynch (A&L Goodbody), Frank Kelly, Rosemarie Hayden (both Irish Red Cross), Niamh Counihan (Matheson LLP), Kateryna Andarak (Arthur Cox), and Amy Martin (A&L Goodbody LLP)

Rosemarie Hayden (Irish Red Cross) said that it had been a wonderful experience to collaborate with the firms involved in the support programme.

Charity tribunal allows name change

The Charity Appeals Tribunal has made a determination following a substantive hearing on a charity's desire for a change of name.

The Charity Regulator had refused permission for the change on the grounds that the desired name was too similar to that of another charity. The Charity Appeals Tribunal overturned the original decision and allowed the charity to change its name.

The National Parents Council – Primary (a charity incorporated since 1996) sought to change its name to the 'National Parents Council' in March 2023. At the time, there was another registered charitable body called the 'National Parents Council – Post Primary'.

Patrick O'Connor

The *Charities Act* provides that, where the public is unlikely to distinguish between charities with a similar name, the authority is obliged to refuse an application for such a change.

The tribunal found that, while the two names were similar, they were also substantially different so as not to cause any public confusion or lead the public to be unable to distinguish between them. In those circumstances, the tribunal allowed the appeal.

The tribunal is chaired by Mayo solicitor Patrick O'Connor, while the ordinary members are Nuala E Dockry, Carol Fawsitt, Bill Holohan SC, and Karen Horgan.

Revenue to contact vacant property owners

Revenue is writing to the owners of approximately 25,000 properties in relation to the Vacant Homes Tax.

Those who own a vacant residential property that does not fall within one of the exclusions are required to confirm if their property is liable to the tax as soon as possible, and by 7 November at the latest.

See the Revenue's in-depth guidance at revenue.ie.

Keane elected to ELI Council

Solicitor Paul Keane has been elected to the governing council of the European Law Institute (ELI), an independent organisation that aims to improve the quality of European law.

Supported by the EU and the University of Vienna, its members comprise academics, judges, and legal practitioners allied with experts and decision-makers with concrete proposals for the reform and development of law.

PIC: ELI

Paul Keane in the ELI Council chamber in Vienna

The 2024 ELI annual conference will be held in Dublin from 9-11 October, and topics will include model rules of algorithmic contracts, third-party funding of litigation, workers' rights to disconnect, and access to digital rights.

The 28 new members of the ELI Council, elected by ELI fellows, were announced on 7 September. Paul Keane is a senior consultant at Reddy Charlton LLP and the Honorary Consul General of Sweden in Ireland.

Earning well and helping clients 'not incompatible', trainees hear

Incoming trainees were introduced to 'The Complete Lawyer' Psychological Services module at Blackhall Place during their first day on campus on 6 September, *writes Mary Hallissey*.

The students' inaugural day coincided with the first ever Law Society Psychological Services Festival, which ran from 6-8 September. The festival was to highlight the development of 'high-impact professionals'.

Antoinette Moriarty (head of Psychological Services) told the new trainees that earning money and helping people were not incompatible goals.

She said that 'time-concentrated therapy', which is on offer to all Blackhall Place students, would help them to answer the 'big questions' of what they desired out of life and their future legal careers. Such therapy normally costs up to €600 in the 'outside world', and would help them grapple with 'imposter syndrome', which is extremely common in highly demanding careers, she added.

PIC: CIAN REDMOND

She also reminded them of the director general Mark Garrett's remark that a mere one-fifth of people lived in high rule-of-law states, globally. She encouraged them to use the privilege of their training courageously and wisely.

The Complete Lawyer toolkit for professional wellbeing, developed specifically for trainees, helps to build the 'psychological muscle' needed for legal practice.

Lawyers grapple daily with other peoples' "stress and mess", Moriarty said, and must at all costs maintain their own personal relationships in the face of such situations. She urged the trainees to maintain strong social connections, to be physically active, and be creatively and intellectually stimulated by their work.

This group of trainees is the youngest at the Law School for several years. Of the 466 trainees this year, 80% are under the age of 30.

New laws flagged

A total of 51 priority bills are due for progression in the autumn legislative programme, which has been published by Government Chief Whip, Minister Hildegarde Naughton. The minister has confirmed that 27 bills will now be prioritised for publication and 24 bills for drafting.

Up to September, a total of 32 bills had been enacted, with a further 26 bills published and progressing through the Houses of the Oireachtas.

The bills include safeguarding the financial wellbeing of the ageing population through publication of the *Automatic Enrolment Retirement Savings System Bill*.

The *Residential Tenancies (Right to Purchase) Bill 2023* will give renters the first right of refusal to purchase a property when it is put on the market for sale.

The *Planning and Development Bill* will clarify the current planning code, while the *Land Value Sharing Bill* will facilitate the provision of infrastructure.

ENDANGERED LAWYERS

CLAUDIA GONZÁLEZ ORELLANA, GUATEMALA

PIC: SHIRLIE RODRIGUEZ

Claudia Gonzalez Orellana is a lawyer with over 20 years of practice experience. On 5 September, 29 organisations released a joint statement condemning her detention and calling for her immediate release. "On the morning of 28 August 2023, lawyer Claudia González was arrested, charged with the crime of abuse of authority. The arrest took place following a search of her home ordered by the Public Prosecutor's Office, as part of the alleged investigation proceedings against her."

Holder of the 'Lawyers for Lawyers' 2023 prize, awarded last May, Gonzalez is a former representative of the UN-backed International Commission against Impunity in Guatemala (CICIG), which prosecuted government wrongdoing and organised crime. The work done by the CICIG is credited with leading investigations that resulted in more than 400 convictions, including one against former President Otto Perez Molina. It threatened the vested interests of a corrupt network, the so-called 'Pacto de Corruptos', a group of economic, military and political elites. It was ultimately disbanded in 2019 by former President Jimmy Morales, who himself was under investigation.

Her arrest is the most recent legal action taken against members of the commission. She was acting as legal advisor to nine of her former commission colleagues who are being harassed by legal proceedings. Claudia's arrest leaves her clients unrepresented for now.

Prior to her arrest, Claudia was the subject of online harassment, verbal threats and acts of intimidation, including outside her home. She chose to stand her ground and remain in Guatemala.

According to reports, lawyers, judges, and legal experts associated with anti-corruption efforts in Guatemala have found themselves facing legal action in recent years, with 30-40 legal professionals being forced to flee the country.

Alma Clissmann was a member of the Law Society's Human Rights and Equality Committee until 2022.

Essay competition opens for TY students

The Law Society is inviting transition-year students from across the country to enter this year's Gráinne O'Neill Memorial Legal Essay Competition. Students are asked to submit a 1,500-word essay examining the role the law can play in addressing the climate crisis.

The competition honours the life and legacy of the late Judge Gráinne O'Neill, who became the youngest judge in Ireland when she was appointed to the District Court in 2014. She died in 2018 after a period of illness but, before and during her years as a judge, worked diligently to apply the law in a fair, rigorous, and compassionate manner.

The overall winner will be presented with the Gráinne O'Neill Perpetual Memorial Trophy (to be held for one year by their school) at a ceremony hosted by the Law Society. Memorial medals, certificates, and cash prizes will also be awarded to the top contestants. This year's winner, Saorla McDonagh Sharkey of St Vincent's Secondary School, Dundalk, said that the competition had opened her eyes further to the world of law and the balance of legal rights. To enter, visit lawsociety.ie.

2023 winner, Saorla McDonagh Sharkey

LSRA issues half-yearly report

The Legal Services Regulatory Authority (LSRA) will publish the first report from the Legal Practitioners Disciplinary Tribunal in the coming months.

LSRA chief executive Dr Brian Doherty said that the tribunal is a milestone for the independent complaints-handling regime, which the LSRA has been operating since 2019. "This is an important transparency measure for legal practitioners and consumers alike," Dr Doherty said in the LSRA half-yearly report.

The second complaints report for 2023 shows that the LSRA received 655 complaints about legal practitioners (solicitors and barristers) in a six-month period, with 671 complaints closed (27 September). More legal practitioners and complainants are engaging with the LSRA's trained mediators and attempting to resolve complaints informally, which can avoid protracted and costly investigations, paid for through the annual levy, the chief executive said.

Overall, legal practitioners were directed to pay a total of €31,862 in compensation to complainants during the reporting period.

The main areas of legal services that attracted complaints in the reporting period of 4 March to 1 September were: litigation, conveyancing, family law, and wills and probate.

ISBA charity ball

London's Irish Solicitors' Bar Association (ISBA) in to host its Autumn Charity Ball on Friday 10 November.

The gala evening at Claridge's, Mayfair, is in aid of Solving Kids' Cancer, which supports families of children with neuroblastoma, while also funding research.

The evening will consist of a pre-dinner reception, dinner, dancing to the music of Frankly Sinatra, and a charity auction. Tickets cost Stg£300 each, and advertising is available for sale in the souvenir programme.

Clíona Ó Tuama (ISBA president), assisted by her late husband Michael Howell, hosted 25 charity balls from 1989, culminating in the silver jubilee ball in 2014. The events to date have raised almost £575,000 for charities that assist children and young people.

For all queries about the ball, email rhiannon.lanning@mishcon.com or tel 020 3331 6957.

Solicitor to lead British Irish Chamber of Commerce

Solicitor Jeanne Kelly, founding partner at Browne Jacobson Ireland, has been elected president of the British Irish Chamber of Commerce at its AGM on 26 September.

Browne previously served as the chamber's vice-president from 2022/23 and is the outgoing chair of the chamber's ICT committee.

Speaking at the AGM, the new president said: "In a post-Brexit and *Windsor Framework* era, this is now the moment to grasp the vast opportunities presented for collaboration and trade across these islands.

"It is a volume of trade now exceeding €100 billion per annum, primed with further opportunities in areas such as technology, energy, sustainability, research, and financial services." That trade also directly supports over 600,000 jobs.

Jeanne Kelly added: "I want to build on my predecessor Maree Gallagher's legacy to ensure the chamber puts the nuts and bolts of trade at the forefront of its agenda."

IRLI IN AFRICA

SOMALIA'S FIRST TRANSITIONAL JUSTICE PROJECT

In Somalia, Irish Rule of International Law (IRLI) is working with Victim Advocates International (VAI) to provide legal and advocacy support to victims of serious international crimes.

VAI identified the victim groups in 2022. The exercise sought to determine whether there were victims of crimes who wished to explore their options for demanding justice or conducting advocacy, but did not have the necessary technical skills, language ability, or resources. Both VAI and IRLI have extensive experience working with victims' groups to provide them with legal options, advocacy, and negotiation advice, as well as access to platforms to have their voices heard.

IRLI is assisting a larger group of victims of multiple crimes committed during different phases of Somalia's recent history. These groups are calling for a national conversation about the violence they, their families, and the country have suffered – and for those violations to be acknowledged and addressed. In providing assistance to Somali victims' groups, IRLI is harnessing the skills and expertise of transitional justice experts on the island of Ireland, sharing lessons learned from our experiences of conflict with those advocating around themes of truth and reconciliation in Somalia.

The project began in June 2023, when Dr Cheryl Lawther (Queen's University Belfast) gave the first presentation online to ten participants who had been affected by the Somali conflict and are seeking accountability and advocating for transitional-justice mechanisms. Providing an overview of transitional-justice concepts, the presentation was adapted by local consultants, who ensured the presentation provided more engaging material for the participants.

After the presentation, VAI led a focus group and obtained feedback. Through this, they established the need for skills-based workshops on truth-telling and community-led initiatives, advocacy skills training, and the impact of transitional justice on long-term justice reform. In September, Dr Lawther delivered another workshop in the series. Looking to the future, we are also engaging with Northern Irish and Irish transitional-justice experts to deliver further skills-based workshops.

Michelle Drury is pro bono *manager, Irish Rule of Law International.*

Barry Doyle, 1939 – 2023

Barry Doyle was a giant in his field. His persuasive force, mischievous charm, and imposing presence were easy to love and impossible to ignore.

A proud Wexford man, he studied law in the 1950s at University College Dublin, and was auditor of the college's Law Society. It was there he met his future wife, Áilín.

But for funding constraints, his elite rowing ability would have taken him to the Rome Olympics. After years of success on the water, including as mentor and coach, he is fondly remembered as a legend of Old Collegians Boat Club.

He joined the Roll of Solicitors in 1960 – known to the registrar and, in time, the Faculty of Notaries Public as 'John BM Doyle'.

Trusted advisor

For more than 50 years, he was a trusted advisor to many. He was the first lawyer instructed by the planning appeals board, An Bord Pleanála, and remained their champion until his retirement. The same is true for the Environmental Protection Agency. He forged the State's first practice in planning and environmental law, at TTL Overend McCarron and Gibbons, before establishing a boutique firm dedicated to that practice with his eldest son, Alan, at Barry Doyle and Co.

His successes with those public authorities are too many to enumerate, but include establishing fundamental principles of administrative law that remain central to the analysis of public-authority action to this day. His robust and frank guidance sheltered those authorities from criticism or complaint for decades. It is a mark of his impact that they remained such loyal clients during all of his professional life.

Environmental champion

It was prosecuting for breaches of environmental law that he probably enjoyed most. He took pride in drafting criminal summonses and, as solicitor-advocate, relished the opportunity to persuade a court of his concern for the environment and the requirement for appropriate protection.

He was fierce and unyielding in his protection of clients, friends, and family. His ability to protect you from yourself and support your best interests was wonderful to behold. That, and the way he could find a twist of humour in difficult moments. There are still echoes of his humorous mischief in the letters' archive of *The Irish Times*, including correspondence exchanged with his wife, Áilín.

Golfing hubris

He wore his accomplishments and successes lightly. Perhaps his only hubris was on the golf course, when he reduced his handicap to seven strokes, or celebrated that fifth hole-in-one! His love for golf included a persistent commitment to support the sound governance of the golfing organisations at Howth and Portmarnock (he was honorary secretary at Portmarnock). He helped guide the club during complex legal complaints about equality, privilege, and its membership. The club won the appeal before the Supreme Court.

If he allowed himself pride, it was for his five children – LizAnn, Alan, Aoife, Marisa and Oran – each one as charming and bright as the next, and boasting among his daughters an architect, ophthalmologist, and a consultant (who, among other things, protected many of us from a Y2K bug disaster). In the case of his sons, Barry's affinity for the law passed to them both – one a solicitor turned barrister; the other, a barrister turned professor and author.

He touched the lives of many who are proud to have known and worked with him. He will be missed by us all.

BS

100 YEARS OF WOMEN IN THE PROFESSION

The *Gazette* continues its series marking the centenary of the first women in Ireland to qualify as solicitors. For more information about related events during the year, see www.lawsociety.ie/centenary. Moya Quinlan became the first female Council member of the Law Society in 1969, and its first female president in 1980.

Moya Quinlan – first female president

Moya Quinlan (née Dixon) was born on 28 June 1920. She was educated at Sion Hill College in Blackrock, Dublin. She was admitted to the Roll of Solicitors on 9 July 1946, having served her apprenticeship with her father, Joseph H Dixon, in Dublin.

Moya became the first female Council member of the Law Society of Ireland in 1969 and was re-elected for the next 45 years. She played a key role in the acquisition of the Law Society's premises at Blackhall Place and became the Society's first female president in 1980/81. Her son, Michael, became president in 2017/18.

Moya was a key figure in the Dublin Solicitors' Bar Association and served as its president in 1979.

She was appointed to the Employment Appeals Tribunal and chaired many of its divisions, serving for over 35 years. She was also appointed as a member of the inaugural Legal Aid Board in 1979.

She served as chairwoman of the Primary School Curriculum Review and was appointed to the first board of the Irish Hospice Foundation. She was awarded a Lifetime Achievement Award in 2012 at the Irish Law Awards.

Speaking to Fiona Gartland of *The Irish Times* (28 May 2012), she commented: "In all my years of practice, I have never felt I was either special or that I was in any way unique: I was just a solicitor who happened to be a woman – that's basically it."

Moya passed away on 12 February 2019 aged 98. g

> IN ALL MY YEARS OF PRACTICE, I HAVE NEVER FELT I WAS EITHER SPECIAL OR THAT I WAS IN ANY WAY UNIQUE: I WAS JUST A SOLICITOR WHO HAPPENED TO BE A WOMAN – THAT'S BASICALLY IT

PIC: PAUL SHERWOOD

Moya Quinlan served as the first female president of the Law Society of Ireland, 1980/81

Source: Celebrating a Century of Equal-opportunities Legislation – The First 100 Women Solicitors, *published by the Law Society of Ireland.*

PROFESSIONAL LIVES

Sharing personal and professional stories has long been a powerful way to create a sense of connection and belonging. It creates a space for vulnerability that can provide the listener with inspiration and hope, or newfound insight to a challenge or difficulty they too might be facing. We welcome you to get in touch with ps@lawsociety.ie to share a story for this 'Professional Lives' column.

Changing minds

"Effecting cultural change to support mental health and wellbeing is the driving force behind Law Society Psychological Services – the latest service for members," says Teri Kelly (director of representation and member services at the Law Society).

Speaking at the launch of the Psychological Services Festival at Blackhall Place, from 6-8 September, Kelly said that Law Society Psychological Services had been several years in the making. "The Law Society is making a major investment in this sector because we believe our solicitor members need it," she said.

Research findings from the Law Society's Psychology at Work study in late 2018, and the findings of the International Bar Association's global wellbeing survey, were a catalyst for change, the director continued. "The results were so stark that we had to do something," she said.

Changing the existing stigma about mental health is challenging, Kelly said, but progress is being made, as witnessed by the large turnout for the festival. "We all have a really important role to play in making this cultural change happen. It's about changing minds, and it doesn't happen all at once," she added.

She then introduced a conversation between pharmacist-turned-author Anne O'Neill and activist Rory O'Neill, who discussed stigma and barriers in Irish society.

Rory O'Neill said that before the decriminalisation of homosexuality in Ireland in 1993, gay culture had been hidden – no rainbow flags were on display.

Describing himself as "book smart", O'Neill said that his mother had wished him to become a lawyer. "At that time, you could not be both a queer person and get a good job," he told the audience. That experience radicalised his peers, who became politically engaged and prepared to question everything as a result.

O'Neill decided that he would live his life as he wanted to, turning to colour and fun in reaction to the "repressive country that was around me at the time".

Almost everyone can identify with the feeling of being on the outside in some way, O'Neill said, and that can give a different and valuable perspective on how the world works.

His diagnosis as HIV positive in 1996 had built resilience, he said. He learned that life still went on, despite illness, praising the effective drug management of the condition that is now available.

However, AIDS stigma persists, he stated. "My life expectancy is improved because I am forced to go to the hospital every six months for a check-up," he said.

Former A&L Goodbody partner and recently appointed High Court judge Liam Kennedy congratulated the Law Society on its investment in psychological support for members and students, and noted the value of its surveys within the profession and among trainees.

He was particularly struck (and saddened) by some of the findings relating to trainees, which had shown that some gay people were open about their sexuality in their student years, but tended to 'go back in the closet' in their subsequent professional lives. This clearly implied that they were not confident that their being gay would be respected at work.

"To me, as a heterosexual man, I think it's terrible that there's still a difficulty with gay people being able to express themselves freely. Even more frightening is that, having had the freedom to come out in college, they then feel that they must suppress that."

Despite growing support for gay people in the workplace, a problem of perception remained, the audience heard.

"That's a huge issue, which just shows that we haven't changed as much as we think we have, and we all need to do more to establish a climate of support, respect and tolerance in every workplace," Kennedy concluded. g

Mary Hallissey is a journalist at the Law Society Gazette.

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Family matters

Toni Louise Monaghan argues that, although the practice of family law in Ireland is unfit for purpose, lawyers can 'boss' the process by making it less adversarial and more client-friendly

BY MAKING SOME SMALL ADJUSTMENT TO OUR DIALOGUE WITH EACH OTHER AND THE COURTS, AND BY BECOMING MORE SOLUTIONS-FOCUSED THAN FINGER POINTING, WE COULD CREATE A BETTER ENVIRONMENT FOR OUR CLIENTS

Practitioners in the family-law arena are like guests in the chat-show green room before going on set, waiting to show off our family-friendly, child-focused, alternative-dispute-resolution skills.

Currently, there are a number of technical issues as we await the outcome of the Civil Legal Aid Review, the finalisation of the new *Family Courts Bill 2022*, and the delays in the commencement of construction at Hammond Lane. We are impatient to get going, to give a fresh start to families in crisis, and to provide prompt service delivery without the trauma and costs associated with highly contentious cases.

I don't doubt that anyone working in the area of family law in Ireland would dispute that the system is unfit for purpose and that family law is the poor relation when it comes to areas of law, generally.

Take heart

But we should take heart – even though we are frustrated by the delay in the new legislation and the progress of new builds. There is much that we, as legal practitioners in the area of family law, can do now to improve the service we deliver to our clients.

Let's take a look at the *Language Matters* report from Britain and the guiding principles in the new *Family Courts Bill*. This is sensible guidance for lawyers and clients alike. There is no reason why we cannot establish an etiquette of communication and a practical mindset in family-law cases to reduce the stresses on all the parties involved.

We are masters of negotiating settlements on the doorsteps of court. There is no reason we cannot bring those skills forward earlier in the process of a client's case to help tailor personalised family resolutions that will, in turn, reduce hours of litigation that currently clog up the courts system – the ultimate effect of which only increases clients' costs and delays them from finding resolution.

Language of cooperation

The president of the Family Division in Britain commissioned the report *Language Matters – A Review of Language for Separating Families*. It proposes a "language of wellbeing and cooperation, instead of law and justice" based on the 'five Ps':

- Plain English (legal jargon can be intimidating),
- Personal (using parties' names rather than their legal description),
- Proportionate (drop the pejorative terms in letters),
- Problem-solving (work with clients and colleagues on finding solutions to problems), and
- Positive futures (we cannot change the past, but we may be able to shape the future).

The report also gives a glossary of words that we use in our everyday legal parlance and suggested alternatives – for example:

- 'Reschedule' instead of 'adjourn',
- 'Send' instead of 'lodge',
- 'And' instead of 'versus', and
- 'John and Mary' instead of 'my client/your client'.

It also guides colleagues away from using emotive or aggressive language in correspondence and from the expression of personal opinions or language that berates or criticises the other's client.

Staying out of court

'Part 2 – Guiding Principles' in the new *Family Courts Bill* sets out that those of us representing parties in court adhere to the best interest of the child and encourage and facilitate the parties achieving consensus without recourse to court. It asks us to conduct proceedings in a user-friendly manner, as expeditiously as possible, and to minimise conflict to the parties and minimise costs.

By making some small adjustment to our dialogue with each other and the


PIC: ALAMY

courts, and by becoming more solutions-focused than finger pointing, we could create a better environment for our clients. We will better assist our clients in navigating the end of a troubling period in their lives while, at the same time, creating enduring settlements that will see them and their children positively into the future.

State-of-the-art facilities and reform of the family-law workings of the court or the civil legal-aid system will, of course, be welcomed as and when they are ready, but we don't need to wait for these to set in motion a change of mindset.

Let's take up our new scripts and start adapting more conciliatory vocabulary, and hone in on our problem-solving skills. When the new infrastructure is ready for us, we will have already improved our clients' experiences and be fully able to embrace the new practices and facilities. g

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Toni Louise Monaghan is a practising solicitor working in family law legal aid for 22 years. She qualified in Britain in 2001 and in Ireland in 2004.

PIC: ALAMY

Tales of brave Ulysses

A new play – *The United States v Ulysses* – focuses on a 90-year-old courtroom drama but, with books once again being wrenched from libraries and protested on the streets, it could hardly be more relevant, argues its playwright Colin Murphy

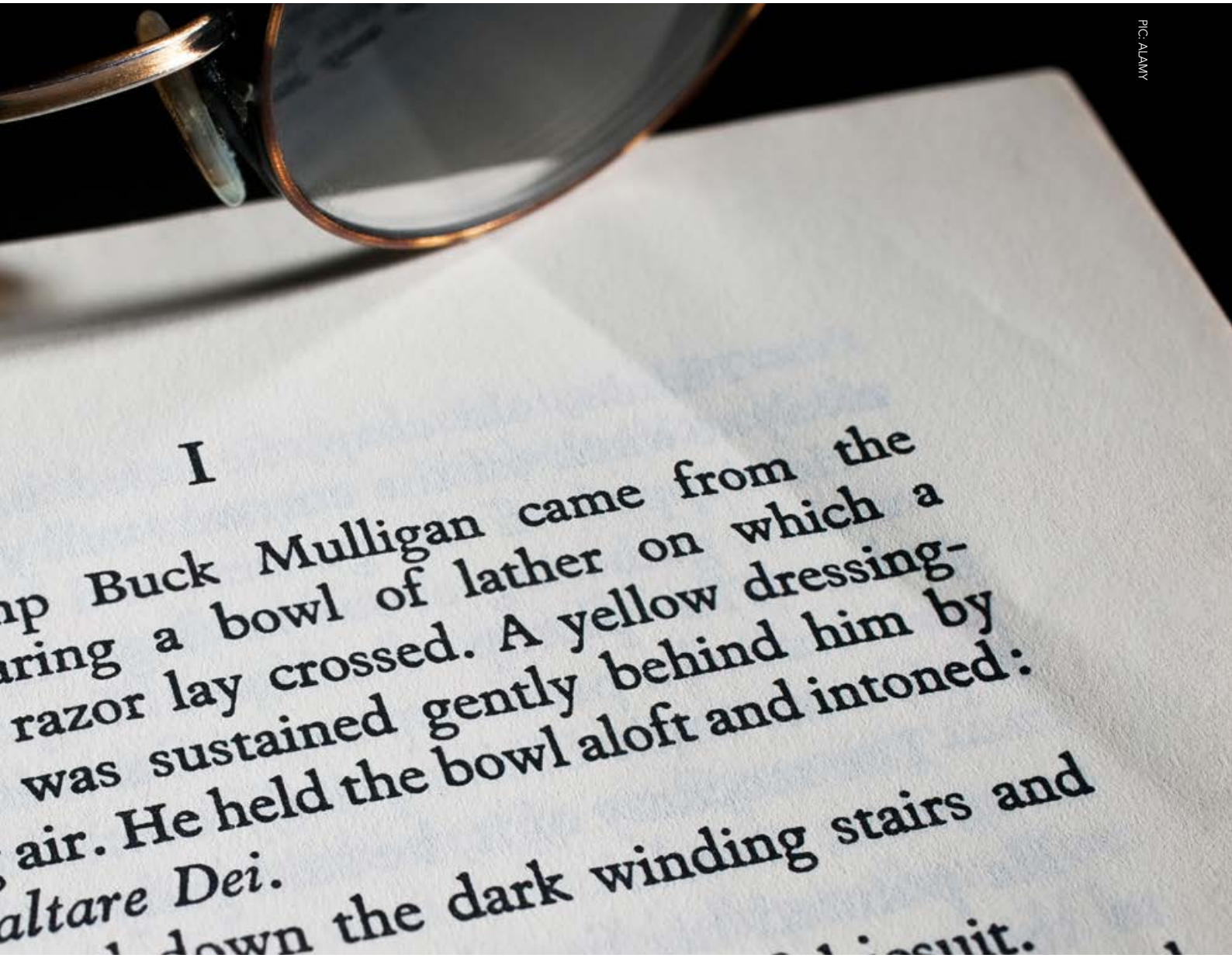
his time 90 years ago, three New York lawyers were wrestling with James Joyce's *Ulysses*. They were trying to work out what it meant, was it any good and – most importantly – whether it was 'obscene'.

They had none of the benefit of expert guides or degrees in literature. They weren't 'Joyceans' or part of the 'Joyce industry' – though their work would make that industry possible. They might sound like unlikely heroes for a play about *Ulysses* – but, in fact, they are the perfect heroes.

Sam Coleman was an earnest young prosecutor in the United States Attorney's office in Manhattan. He had been tasked with prosecuting *Ulysses* for obscenity.

Defending *Ulysses* was Morris Ernst – a leading free-speech lawyer who had made his name as a founding partner in the firm Greenbaum, Wolff & Ernst – set up because young Jewish lawyers in 1930s New York couldn't get employment in the established firms.

Hearing the case was John Munro Woolsey, a cultured and erudite judge of 'WASP' heritage.



PIC: ALAMY

All three had sweated through *Ulysses* that summer – Woolsey had even deferred the case so he could finish the novel. November 25th will mark the 90th anniversary of the hearing.

Born under a bad sign

The case had its origins more than a decade before. As Joyce was writing *Ulysses*, he sent it to an American literary magazine, *The Little Review*, which published it, chapter by chapter. This was perilous activity for a small publisher: some editions of the magazine were seized by the Post Office as obscene, and burned.

Then *The Little Review* published the chapter (Joyceans prefer to call them 'episodes') called 'Nausicaa' – named, like the other episodes, after a character in Homer's *Odyssey*,

> THE PUBLISHER HAD THE PRINTERS INSERT EXTRA PAGES AT THE FRONT OF THE BOOK TO INCLUDE WOOLSEY'S JUDGMENT – AND THEREBY WARN OFF ANY OVER-ZEALOUS CUSTOMS OFFICIALS OR OTHER WOULD-BE CENSORS WHO MIGHT BE MINDED TO SEIZE THE BOOK IN THE FUTURE

a princess with whom the hero has a flirtation.

In this episode, Joyce's hero, Leopold Bloom, relaxing on Sandymount Strand, is distracted by a young woman and, well, his distraction becomes rather ... pointed. Public culture in New York at the time was policed by an organisation known as the New York Society for the Prevention of Vice. When they came across this episode in the magazine, they took a case against the publishers, Margaret Anderson and Jane Heap, who were duly convicted of obscenity and fined $50. The more serious consequence, though, was that no reputable American publisher would thereafter risk publishing *Ulysses*.

Fast forward a decade. A young publisher named Bennett Cerf (also, like lawyer Morris Ernst, Jewish) has set up a new publishing house, which is so far publishing an eclectic – or random – list of books: Random House. Seeking to put his company on the map, Cerf sails to Paris, meets with Joyce, secures the rights to *Ulysses*, and hires Morris Ernst. But Ernst is too expensive for the young publisher, so, instead of a full fee, he agrees to take a royalty on prospective sales of *Ulysses* in America.

Spoonful

Ernst has another money-saving idea. Instead of publishing *Ulysses* and waiting for the inevitable obscenity prosecution – thereby running the risk of having an entire print-run of the book destroyed, ensuring significant losses, the publisher should import a *single copy* of the book from Europe. Ernst duly tips-off New York Customs about this contraband, customs seizes the book, and Ernst takes a judicial-review case contesting this seizure.

Convention dictated that, in an obscenity trial, expert opinion was not deemed relevant – what mattered was whether the jury, or judge, found the material obscene. But Ernst knew that the great weight of critical opinion in support of *Ulysses* was likely to influence a man of high culture like Judge Woolsey. So he instructed that, before sending the copy of *Ulysses* from Paris to New York, Joyce should collect cuttings of reviews of his book and physically paste them inside it. This, Ernst would later argue in court, would make that expert opinion part of the item being prosecuted, and therefore admissible.

Sunshine of your love

Curiously, the First Amendment, which protects free speech, barely featured. There was little argument at the time that obscenity should be regulated. Instead of arguing for Joyce's right to be obscene, Ernst argued that *Ulysses* was *not* obscene.

To focus on any one passage (such as the Sandymount Strand episode or, most famously, the Molly Bloom soliloquy, in which she frankly recalls her afternoon's adulterous affair) would make that argument a hard sell, certainly by the near-Victorian morals of the day. But Ernst argued that *Ulysses* had to be appreciated in the round, in its enormity and its complexity, and in its integrity as a representation of everyday life and ordinary people.

Spoiler alert: he won. Woolsey's decision is a gem: a short, accessible, sensitive piece of writing that provides a brilliantly pithy introduction to *Ulysses* and makes a passionate argument for its importance. Publisher Bennet Cerf spotted an opportunity and, with the presses ready to roll, he had the printers insert extra pages at the front of the book to include Woolsey's judgment – and thereby warn off any over-zealous customs officials or other would-be censors who might be minded to seize the book in the future.

Strange brew

One of the leading authorities on the case is Irish-American lawyer Joseph Hassett, author of the award-winning *The Ulysses Trials: Beauty and Truth Meet the Law*. In what Hassett calls "the war between law and literature", there is a "never-ending" struggle by writers to escape government control.

The *Ulysses* trials in New York provide "fertile sources of insight into how battles in the long war for freedom of expression are won or lost". That war, he warns, "is never over". This is a 90-year-old story but, as books are once again being wrenched from libraries and protested on the streets, it could hardly be more relevant.

There is a well-established tradition of *Ulysses* attracting legal minds. The late Supreme Court judge Adrian Hardiman wrote a superb account of the case in his *Joyce in Court: James Joyce and the Law*, published posthumously. The late senior counsel Frank Callanan was also an expert on Joyce.

Joe Durkan, a consultant solicitor with Keith Walsh Solicitors in Dublin, describes himself as a "Joycean with a small j". "*Ulysses* is riddled with legal references," he observes. "The legal profession is very well represented in it – both branches, such as the barrister, JJ O'Molloy, and any number of solicitors, including John Henry Menton."

JJ O'Molloy, in fact, features in the play. As things heat up in our courtroom – a court that is haunted by the ghosts of *Ulysses* – we suddenly find ourselves falling down a rabbit-hole into the delirious courtroom of the 'Nighttown' episode in *Ulysses*, where the hero Leopold Bloom finds himself the subject of a nightmarish trial, and JJ O'Molloy steps up to defend him.

White room

Ulysses can be hard work, and is often seen as intimidatingly rarefied. This make a courtroom drama a great way to approach it. The great advantage of courtroom dramas, as Aaron Sorkin (writer of *The West Wing* and *A Few Good Men*) says, is that lawyers

> BENNETT CERF SAILS TO PARIS, MEETS WITH JOYCE, SECURES THE RIGHTS TO *ULYSSES*, AND HIRES LAWYER MORRIS ERNST. BUT ERNST IS TOO EXPENSIVE FOR THE YOUNG PUBLISHER, SO, INSTEAD OF A FULL FEE, HE AGREES TO TAKE A ROYALTY ON PROSPECTIVE SALES OF *ULYSSES* IN AMERICA

THIS TIME 90 YEARS AGO, THREE NEW YORK LAWYERS WERE WRESTLING WITH JAMES JOYCE'S *ULYSSES*. THEY WERE TRYING TO WORK OUT WHAT IT MEANT, WAS IT ANY GOOD AND – MOST IMPORTANTLY – WHETHER IT WAS 'OBSCENE'

have to explain things to the court, so a courtroom drama is the perfect vehicle for making a complicated story accessible. Good lawyers are often witty, and Joyce was supremely so, so it is appropriate that this legal drama is also a comedy (and often a bawdy one).

I asked Joe Durkan what, as a lawyer, he got out of *Ulysses* (other than simply enjoyment). "Legal training imposes a sort of a structure in how you approach something," he says, "but something like *Ulysses* forces you to open up to different ways of perception and absorption of information and experience."

The play culminates with the verdict, which, by remarkable coincidence, was delivered the day after the ending of Prohibition in America. That decision was the making of *Ulysses*, and the rescuing of Joyce from penury.

Sitting on top of the world

But what happened next to the protagonists? State prosecutor Sam Coleman went on to become a judge on the New York State Supreme Court. He admitted he had been ambivalent about the case, had admired *Ulysses*, and thought Woolsey's decision a masterpiece. He died in 1982.

Judge Woolsey authored other significant free-speech decisions, but his most famous was that on *Ulysses*. It became one of the most-read legal decisions in history, as Random House continued to include it in their printings of *Ulysses* until the 1980s. He died in 1945.

Morris Ernst's story is stranger. He continued to build his reputation as American's leading free-speech lawyer, cultivating friendships with leading politicians and policymakers. But among those was J Edgar Hoover, the founding director of the FBI, and Ernst became an anti-communist activist and an informant of Hoover's. Fêted when he died in 1976, Ernst's reputation was sullied when information was subsequently revealed about the extent of his political machinations. That, though, is another story.

The United States v Ulysses will be performed for four nights in Dún Laoghaire (8-11 November) and one night in Galway (21 November). The New York courtroom in which *The Little Review* case took place was in the Jefferson Market Courthouse in Greenwich Village. Today, that is the Jefferson Market Library, and they have invited us to give a special presentation of the play there. We hope to bring it to New York for a proper run at a later date.

The final word belongs to the judge. Though *Ulysses* was a "rather strong draught" to ask sensitive people to take, he found, it "did not tend to excite sexual impulses or lustful thoughts" and its net effect "was only that of a somewhat tragic and very powerful commentary on the inner lives of men and women".

A tragic and very powerful commentary – and a great blurb for a play!

To acknowledge the 90th anniversary of the case, the Pavilion Theatre in Dún Laoghaire and the Town Hall Theatre in Galway are staging The United States v Ulysses. *Tickets can be purchased at www.pavilliontheatre.ie and www.tht.ie. See websites for details of post-show discussions on the play.*

Colin Murphy is a playwright and screenwriter. He writes a weekly column for the Sunday Independent *and has been a contributor to the* Law Society Gazette. *He tweets occasionally @colinmurphyinfo.*

LOOK IT UP

CASES:

- *United States v One Book called 'Ulysses'* (5 F Supp 182 [SDNY 1933])

LITERATURE:

- *Joyce in Court*, by Adrian Hardiman (Bloomsbury, 2018)
- *Set at Random – The Book That Wouldn't Lie Down*, by Declan Dunne (CreateSpace Independent Publishing Platform, 2018)
- *The United States of America v One Book Entitled Ulysses by James Joyce – Documents and Commentary: A 50-year Retrospective*, edited by Michael Moscato and Leslie Leblanc (University Publications of America, 1984)
- *The United States v Ulysses* (radio play by Colin Murphy, directed by Conall Morrison, with original music by Si Schroeder, *RTÉ Drama on One*, 26 Jan 2022)

All for one

The commencement of the unitary patent system marks a significant step forward for patent protection and enforcement in Europe. John Whelan, Sarah Douglas, and Sean Dwyer examine what it means for Ireland

The unitary patent system entered into force on 1 June 2023. It builds on the *European Patent Convention* (EPC) by forming a centralised path to grant, protect, and enforce European patents. There are two pillars to the new system: 'unitary patents', which are a new single patent that provide uniform protection across participating member states, and the Unified Patent Court, which provides a centralised forum for the litigation of those unitary patents.

Member states must ratify the *UPC Agreement* before they can participate in the new system. Ireland is a signatory, representing a non-binding intention to comply, but has yet to ratify, so is yet to become a participating member state.

New application process

Previously, the European Patent Office (EPO) accommodated the central application and grant of patents but, legally, a patent granted by the EPO remained a bundle of national patent rights. There has never been one 'European patent' as such, covering multiple EU countries, despite there having been efforts to create one since the establishment of the EPO in 1973. The new application process,

PIC: ALAMY

Unified Patent Court structure

still administered by the EPO, will now grant a single 'unitary patent' that has uniform transnational protection and equal effect in the participating member states.

Unified Patent Court

Disputes in relation to a unitary patent will be handled by the newly established Unified Patent Court (UPC). It comprises a Court of First Instance, made up of individual 'local divisions' and three 'central divisions'. Each central division has specific jurisdiction over certain types of patents, according to the international patent classification. Two or more member states can form a 'regional division' – for example, the Nordic Baltic Regional Division was formed by Sweden, Estonia, Latvia, and Lithuania. A Court of Appeal will hear appeals, and the CJEU will hear requests for preliminary rulings on questions of EU law.

Participating member states

There are 17 member states currently participating in the unified patent system, having ratified the *UPC Agreement*. Ireland and six other member states have signed, but have not yet ratified. Three member states will not be participating.

The staggered timing of member states joining will create some complexity, by resulting in different 'generations' of unitary patents, as unitary protection is only provided for the territories of member states in the system at the time of grant. A unitary patent granted today will have unitary effect in the current 17 participating member states, but protection will not later be extended to territories of member states that join at a later time. However, unitary patents granted at that later time will benefit from protection in the extended territory. This will create interesting challenges for cases involving infringement of multiple patents of different generations.

> AS THINGS STAND, AND UNTIL WE JOIN, UNITARY PATENT OWNERS STILL MUST APPLY SEPARATELY FOR AN IRISH PATENT, AND THEIR UNITARY PATENTS ARE NOT ENFORCEABLE IN AN IRISH COURT

Opting out

European patents already granted prior to 1 June 2023 (referred to as 'classic' European patents) will automatically enter the UPC system, *unless* the patent is 'opted-out' from the jurisdiction of the UPC – a classic patent can be opted-out at any time within the first seven years (known as the 'transitional period'). Opt-out status remains for the life of the patent; it can be withdrawn once – but once withdrawn, the patent cannot opt-out again.

There has been significant interest in the opt-out opportunity, with over 600,000 classic European patents having been opted-out so far. Many companies are opting-out their patents until the UPC has been tried and tested. This is to avoid, for example, exposing a valuable patent to the prospect of one invalidity hit, on a pan-European basis, by the UPC. That may be just too high a risk in the early days, even if it means the need to take separate infringement actions in different member states when it comes to enforcing the patent, and forgoing the possibility of one pan-European injunction against infringement.

UPC in operation

Jurisdiction

An infringement action must be started in the local division or regional division where an alleged infringement is occurring or where the defendant is resident or has its place of business. On the basis that most large-scale patent litigation involves pan-European actual or threatened infringement, this will allow for forum shopping.

The exclusive jurisdiction rules of the UPC are relatively straightforward, subject to one exception, and can be summarised, as follows. The UPC has exclusive jurisdiction over unitary patents and non-opted-out classic European patents. It has no

> THE NEW APPLICATION PROCESS, STILL ADMINISTERED BY THE EPO, WILL NOW GRANT A SINGLE 'UNITARY PATENT' THAT HAS UNIFORM TRANSNATIONAL PROTECTION AND EQUAL EFFECT IN THE PARTICIPATING MEMBER STATES

jurisdiction over opted-out classic European patents. The one exception is that, during the seven-year transitional period, actions for infringement or revocation of non-opted-out classic European patents may be brought in the UPC *or* the national courts – the party bringing the action has a choice. Interestingly, once an action of this nature is initiated in the UPC, the patent is 'locked into' the UPC system, and national courts of the participating member states must, in future, decline jurisdiction over it. Similarly, if the action is initiated in a national court, the patent is locked out of the UPC, and all further actions must be before the national courts.

Procedure

As mentioned, infringement actions are brought before a local division or regional division. Invalidity/declarations of non-infringement actions are brought before the relevant central division. Where an invalidity action is brought by way of counterclaim in an infringement action, the local division has discretion to either hear it or it may 'bifurcate' the matter by referring the invalidity aspect to the central division.

Bifurcation in patent litigation is where claims of infringement and validity of a patent are decided independently of each other in separate court proceedings at different courts. It arises due to the different competencies of courts in civil-law jurisdictions. Germany is probably the best-known example, where infringement proceedings can be brought before various regional courts, but invalidity is determined by the Federal Court in Munich. Common-law systems (such as Ireland) typically do not bifurcate. It will be interesting to see how the bifurcation concept develops in the new system. On timing, the UPC has confirmed that it expects to proceed to hearing within 12 months of an action being commenced.

The law

Article 20 of the *UPC Agreement* provides for the primacy of EU law. Article 24(1) lists the sources of law upon which the UPC must base its decisions. The prevailing view is that this is a hierarchical list.

National law features (albeit well down the list), which may mean that different panels of judges at the various divisions may have, and would be entitled to have, certain predispositions to their own national law. The *UPC Agreement* itself contains a set of procedural rules that represent both civil-law and common-law principles, earning itself the description of a mixed civil/common-law system.

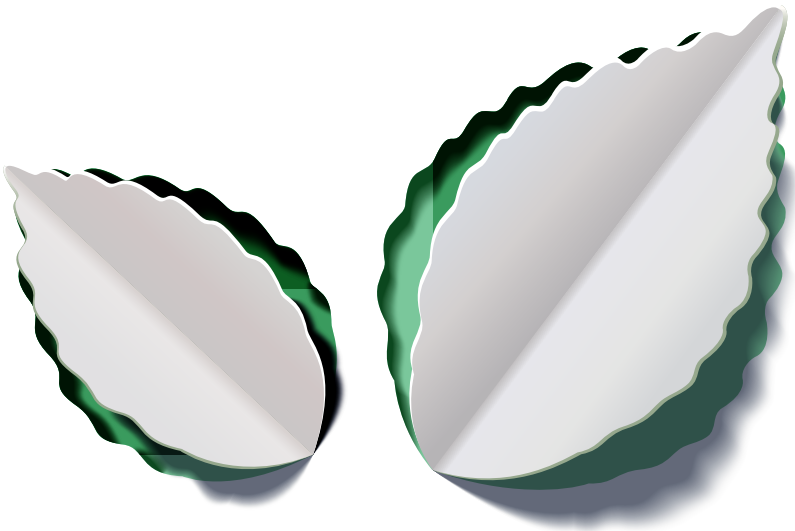
The judiciary

There are three legally qualified judges on each local division, with a minimum of one and a maximum of two judges from the host member state. A technical judge with proven expertise in the relevant field of technology may be added as a fourth judge.

Due to a weighting system connected to the number of patent cases in any jurisdiction prior to joining the UPC system, an Irish local division would likely comprise a panel of one Irish judge, and two chosen from the international pool by the president of the Court of First Instance. Two national judges appear to be the average number appointed in the majority of local divisions established so far. Judges are appointed for a term of six years, but are not precluded during their tenure from the exercise of other judicial functions at national level.

Patent litigation in Ireland

Ireland has its fair share of patent litigation, and often features as one of the key jurisdictions in international patent-litigation campaigns. A typical pan-European battle will involve the UK, Germany, and France (being homes to the large markets), often the Netherlands



PAPER LOVES TREES

European forests, which provide wood for making paper,
paper-based packaging and many other products,
have been growing by 1,500 football pitches every day!

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(for its unique approach to extra-territorial patent jurisdiction), and Ireland – often because core commercial operations are located here.

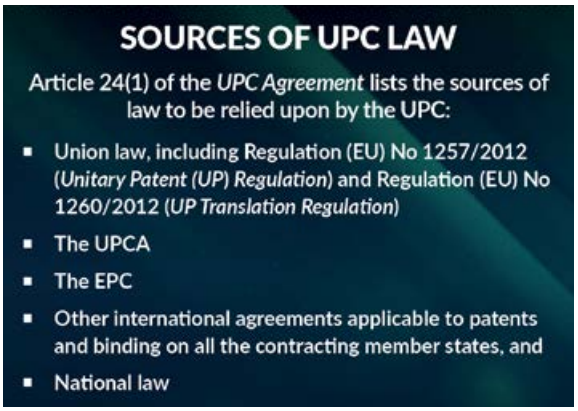
Ireland's industrial policy for the past 30 years, focusing on foreign direct investment, has meant that a disproportionate amount of research, development, and manufacturing operations take place in Ireland. As a result, if a multinational believes a competitor's sales in Europe should be enjoined, where better place to go than the source of production?

The Irish courts have a strong international reputation in patent litigation and produce some of the best judgments internationally. We have a dedicated Intellectual Property and Technology List in the Commercial Court, a high calibre of judges, and offer litigants the only English-speaking, common-law system available to them in the EU. We have much to offer when it comes to strategic pan-European litigation. That will remain the case while we sit outside the UPC system, but it is still in our interests to ratify the *UPC Agreement*. As things stand, and until we join, unitary patent owners still must apply separately for an Irish patent, and their unitary patents are not enforceable in an Irish court.

The UPC is at a crucial stage of development, and Ireland should play its part in shaping it. Upon joining, we will be the only participating member state with practical experience of common-law principles and procedures, many of which have been carried into the rules of the new system, but with which our civil-law colleagues may not be so familiar – for example, aspects such as the duty of full disclosure, common-law interlocutory tests, 'Arrow' declarations, cross-examination of experts, experiments, security for costs, discovery, etc. We shouldn't underestimate the part we can play, nor the opportunity. When US multinationals are looking where to commence their UPC actions, they may find the only local division with a common-law background and influence a very attractive proposition.

The UK will remain outside the system due to Brexit. The English courts will still remain busy with large-scale patent cases, alongside the UPC. As a result, there is a view that Europe will, in time, become bi-jurisdictional for pan-European patent litigation – with parties issuing parallel proceedings before the English courts and the UPC. That could put Irish practitioners in some unchartered territory when advising clients if parallel proceedings are also issued here.

English judgments have persuasive authority in Ireland, but it is predicted that UPC jurisprudence, influenced by civil-law judges, may, in time, begin to diverge from English law on particular areas of law and procedure. That said, the best way to address the concern is clearly to join the system, get involved and positively bring Ireland's common-law influence to bear on the new system.



Next steps

Ireland signed the *UPC Agreement* in 2013, and heads of the *Amendment of the Constitution Unified Patent Court) Bill* were approved by the Irish Government on 23 July 2014. We need to hold a referendum before we can ratify the *UPC Agreement*, as it entails a transfer of jurisdiction in patent litigation to the UPC, and an amendment to article 29 of the Constitution will be required adding the *UPC Agreement* as an international agreement.

Once ratified, Ireland intends to set up a local division of the UPC. Latest indications from the Government is that a referendum on the UPC could be held in early June 2024 to coincide with local and European elections. We will have to wait and see. g

John Whelan is a partner and Sarah Douglas and Sean Dwyer are solicitors in the commercial and technology group at A&L Goodbody.

LOOK IT UP

LEGISLATION:

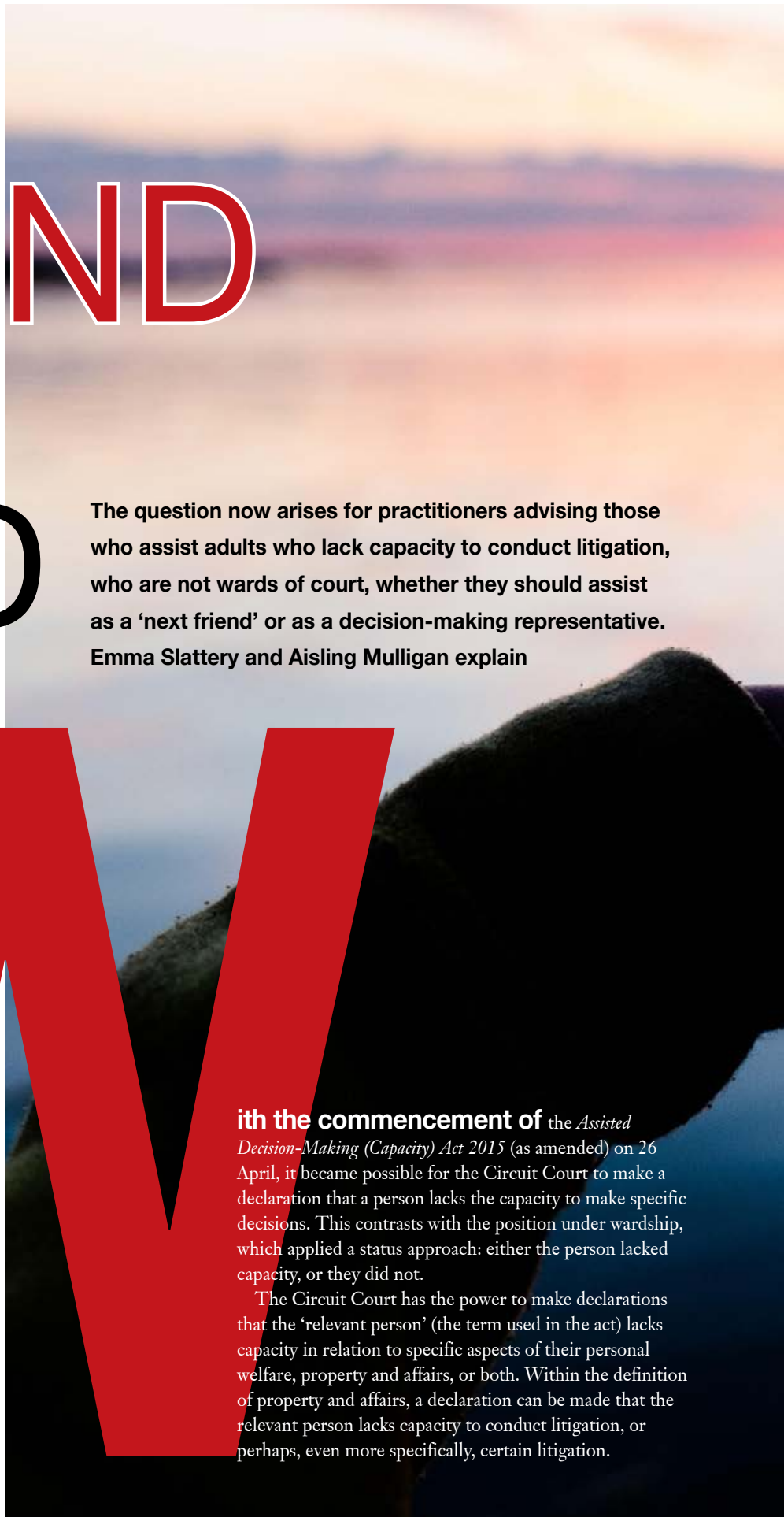
- *Agreement on a Unified Patent Court* (2013/C 175/01)
- *European Patent Convention* (17th edition, November 2020)
- *Rules of Procedure of the Unified Patent Court* (1 September 2022)
- *Rules Relating to Unitary Patent Protection* (OJ EPO 2022, A41)
- *Translation Regulation* (Regulation 1260/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements)
- *Unitary Patent Regulation* (Regulation 1257/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection)

LITERATURE AND WEBSITES:

- European Patent Office
- *Report on the Unified Patent Court* (Joint Committee on Enterprise, Trade and Employment, December 2022)
- Unified Patent Court
- The unitary patent system (European Commission)

FRIEND in DEED

The question now arises for practitioners advising those who assist adults who lack capacity to conduct litigation, who are not wards of court, whether they should assist as a 'next friend' or as a decision-making representative. Emma Slattery and Aisling Mulligan explain



With the commencement of the *Assisted Decision-Making (Capacity) Act 2015* (as amended) on 26 April, it became possible for the Circuit Court to make a declaration that a person lacks the capacity to make specific decisions. This contrasts with the position under wardship, which applied a status approach: either the person lacked capacity, or they did not.

The Circuit Court has the power to make declarations that the 'relevant person' (the term used in the act) lacks capacity in relation to specific aspects of their personal welfare, property and affairs, or both. Within the definition of property and affairs, a declaration can be made that the relevant person lacks capacity to conduct litigation, or perhaps, even more specifically, certain litigation.

PIC: ALAMY

> A NEXT FRIEND IS LIABLE FOR THE COSTS OF AN UNSUCCESSFUL ACTION, BUT MAY BE ENTITLED TO AN INDEMNITY FROM THE PLAINTIFF. OF COURSE, AN INDEMNITY IS OF LIMITED USE TO THE NEXT FRIEND IF THE PLAINTIFF DOESN'T HAVE THE MEANS TO MEET THE COSTS ORDER

The question will now arise for practitioners advising those who assist adults who lack capacity to conduct litigation, who are not wards of court, whether they should assist as a 'next friend' or as a decision-making representative.

Decisions, decisions

Prior to the commencement of the act, the position was clear: if the person was a ward of court, you could proceed as the committee of the ward with the permission of the President of the High Court – or, as was the common case, you could proceed without the need to have the plaintiff admitted to wardship by proceeding as the plaintiff's next friend. This was confirmed by Ms Justice Egan in *CD v BB* (2022).

Part of the rationale for requiring the nomination of a next friend was elucidated in 2022 by Mr Justice Simons in *EM v R&A Leisure Ltd*. Simons J outlined that this practice "is to ensure that there is an identified person with legal capacity against whom a costs order may be enforced".

With the introduction and commencement of the 2015 act, if the individual in question is not already a ward of the court, two options are now available: either initiate proceedings with a next friend, or appoint a decision-making representative with the authority to conduct litigation on behalf of the plaintiff.

The key question for those considering assisting a relevant person in conducting litigation will be: 'What is my exposure?'

Costs and benefits

A next friend is liable for the costs of an unsuccessful action, but may be entitled to an indemnity from the plaintiff. Of course, an indemnity is of limited use to the next friend if the plaintiff doesn't have the means to meet the costs order. While *CD v BB* concerned an application for a pre-emptive protective costs order in favour of a next friend, the court considered the exposure of a next friend in general terms.

The court considered the 1966 case of *McHugh v Phoenix Laundry Ltd*, in which Lavery J concluded: "An infant plaintiff, suing by his next friend, as he must do, is not liable to the defendant for costs. If costs are given, they must be given against the next friend. The next friend may be given an indemnity out of the estate of the infant and is, indeed, *prima facie* entitled to such indemnity, but this is not a matter *inter partes*."

Ms Justice Egan notes that the decision in *Steeden v Walden* (1910) was approved by Lavery J in *McHugh*. In *Steeden*, the infant plaintiff's claim was dismissed, and costs were ordered against the next friend. The next friend sued the infant plaintiff for an indemnity. The infant's counsel argued that the proceedings should not have been initiated in the first place.

Eve J set out the next friend's *prima facie* entitlement to an indemnity, subject to conditions: "These and other decisions, whereby property of an infant under the control of the court has been made available to recoup the next friend, proceed upon the footing that the infant is *prima facie* liable to indemnify the next friend against costs properly incurred on his behalf, and they show that such liability ought to, and will, be enforced in all cases where the court is satisfied that the litigation has been prompted by motives of benevolence towards the infant, and has been conducted in his interest and with diligence and propriety."

Therefore, there are two key risks in proceeding as a next friend.

First, if the case is lost, the next friend will personally be liable for the costs. Secondly, while the next friend is *prima facie* entitled to an indemnity, he or she may have to issue proceedings against the plaintiff to recover the costs and satisfy the court that the action was brought with a genuine desire to help the plaintiff, and has been conducted in his or her best interest, with care and diligence. The foregoing assumes that the plaintiff has the means to discharge the costs. It may simply be that there are no assets to satisfy the indemnity, while the next friend remains liable to the successful defendant.

However, if the assistant were to be appointed as a decision-making representative pursuant to part 5 of the 2015 act, section 41(2) of that act provides that "a decision-making representative shall make a relevant decision on behalf of the relevant person and shall act as the agent of the relevant person in relation to a relevant decision". This is, in our view, on all fours with the committee in wardship, and it is the plaintiff (as opposed to the decision-making representative) who would be liable for the costs.

Mitigating risks

The Circuit Court may anticipate this situation and opt to utilise section 43(6) of the act, which provides that "a decision-making representation order may provide for the giving of such security by the decision-making representative to the court as the court considers appropriate in relation to the proper performance of the functions of such decision-making representative".

It is our view, however, that such security would likely be subject to the condition that the decision-making representative complies with the guiding principles set out in section 8 of the act, and would only be triggered if it were found that the litigation were conducted contrary to these principles.

Medical records

In the context of conducting litigation on behalf of an adult who lacks capacity, the issue of taking up the plaintiff's medical records comes to the fore, as many such cases relate to injuries suffered by the plaintiff. This is particularly so for solicitors acting on the instructions of a next friend where the plaintiff is an adult who lacks capacity to conduct the litigation.

The importance of the confidentiality between doctor and patient cannot be overstated. The Medical Council states in

> THERE ARE TWO KEY RISKS IN PROCEEDING AS A NEXT FRIEND. FIRST, IF THE CASE IS LOST, THE NEXT FRIEND WILL PERSONALLY BE LIABLE FOR THE COSTS. SECONDLY, WHILE THE NEXT FRIEND IS *PRIMA FACIE* ENTITLED TO AN INDEMNITY, HE OR SHE MAY HAVE TO ISSUE PROCEEDINGS TO RECOVER THE COSTS

its *Guide to Professional Conduct and Ethics for Registered Medical Practitioners* that confidentiality "is essential to maintaining patients' trust and enabling patients to speak honestly and fully about their lives and symptoms". This stands to reason: if patients perceive that doctors might readily disclose their private and sensitive medical information to third parties, they are less likely to reveal their medical issues and symptoms to their medical advisors. In addition, a duty likely stems from the Constitutional and *European Convention on Human Rights* right to privacy, along with potentially an implied, if not express, right to privacy in the contract between doctor and patient. More recently, the GDPR and the *Data Protection Act 2018* have fortified patients' rights to the protection of their sensitive personal data.

A matter of ethics

The Medical Council publication provides guidance to doctors in the following terms: "You must be clear about the purpose of the disclosure and that you have the patient's consent or other legal basis for disclosing information."

If the patient lacks capacity, what other legal basis is there for the disclosure of the patient's medical records to the solicitor acting on the instructions of the next friend? The guide goes on to say that, "if the patient lacks capacity to give consent and is unlikely to regain capacity, you should consider making a disclosure if it is in the patient's best interests (see paragraph 31.2)".

However, paragraph 31.2 does not mention 'best interests'. Paragraph 31.2 provides that doctors must disclose information where this is required by law. The following examples are provided: firstly, if a judge in a court of law, a tribunal, or a body established by an act of the Oireachtas issues an order, the doctor must disclose the information. Secondly, disclosure is mandatory when infectious-disease regulations necessitate it. Lastly, if the doctor possesses knowledge or reasonable grounds to believe that a crime involving sexual assault or other violence has been perpetrated against a child or another vulnerable person, the doctor is obliged to disclose the information. In general, in a rudimentary application by a next friend for the plaintiff's medical records, the foregoing bases for disclosure will not arise.

Disclosure

In addition to the bases outlined by the Medical Council, there is a further basis for disclosure concerning adults who lack capacity. This provision is applicable to parents and guardians under the *Freedom of Information Act 2014*, but it only applies to public bodies. The lack of a clear authoritative decision permitting disclosure in the best interests of the patient presents a difficulty for many. Therefore, if the plaintiff's medical records are required in order to successfully prosecute the claim, an appropriate avenue available to litigants is to obtain an order under the 2015 act authorising the assistant to take up the relevant person's medical records in order to conduct the litigation.

While I'm here

In a scenario where a next friend needs to seek a declaration of capacity and an authorisation to access the plaintiff's medical records from the Circuit Court, it may be best, in our view, to use that opportunity to concurrently apply for an order appointing him or her as a decision-making representative to conduct the litigation. This may provide greater protection against the costs and the quagmire identified above of seeking to enforce the indemnity.

A next friend will remain the chosen method for minors in circumstances where the 2015 act applies only to those over 18.

Essential bases

While neither the issue of costs against a next friend nor the taking up of medical records of an incapacitated adult has presented practitioners with a significant issue to date, it is well accepted that there has been a fundamental shift in the data-protection landscape, the rights of the vulnerable, and the conduct of the defence of personal-injuries cases. Therefore, it is essential that those assisting parties who lack the capacity to conduct litigation and consent to take up their medical records have the appropriate legal bases in place for doing so, and protect themselves to the greatest extent possible by utilising the provisions of the *Assisted Decision-Making (Capacity) Act*, where appropriate. g

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Emma Slattery is a practising barrister and a member of the Human Rights Committee of the Bar of Ireland. She is the author of the forthcoming Assisted Decision-Making Handbook, *due for publication by Bloomsbury Professional in 2024. Aisling Mulligan is a barrister specialising in public law, child law, capacity law, and vulnerable adults law, and is a member of the International Protection Appeals Tribunal.*

LOOK IT UP

CASES:

- *CD v BB* [2022] IEHC 381
- *EM (A Minor suing through his Father and Next Friend) v R&A Leisure Ltd* [2022] IEHC 66
- *McHugh v Phoenix Laundry Ltd* [1966] IR 60
- *Steeden v Walden* [1910] 2 Ch 393

LEGISLATION:

- *Assisted Decision-Making (Capacity) Act 2015* (as amended)

LITERATURE:

- Medical Council (2019), *Guide to Professional Conduct and Ethics for Registered Medical Practitioners* (amended 8th edition)

Broadcast news

While full publication of the *Defamation (Amendment) Bill* is awaited, James Roche argues that the general trajectory of certain reforms can be identified

t has been axiomatic for quite some time that the *Defamation Act 2009* is in need of reform. The 2009 act came into operation on 1 January 2010, and it is almost trite to say that the changes in the media landscape since then, and the proliferation of social media in particular, have been nothing short of remarkable.

The 2009 act itself provided that the Minister for Justice shall, "not later than five years after the passing of this act, commence a review of its operation" (section 5 of the 2009 act). This comprehensive review, which generated a significant a number of submissions, resulted in a detailed report that was published on 1 March 2022. Recommendations from this report recently culminated in the publication by the Government of the draft general scheme of the *Defamation (Amendment) Bill*.

While publication of the full bill is awaited, already the general direction of travel of certain reforms can be identified. In that regard, Mr Justice Bernard Barton, in the May 2023 *Gazette*, comprehensively critiqued the proposal in the draft general scheme to abolish the right to a trial by jury in High Court defamation proceedings.

This article seeks to consider two other aspects, as set out in the draft general scheme. Firstly, the proposal to provide the Circuit Court with a power to grant Norwich Pharmacal Orders and, secondly, the creation of a statutory notice procedure to govern takedown requests in relation to online content.

Online content liability

Social-media platforms' liability for content on their websites continues to generate much discussion and debate. Such platforms generally adopt the position that they facilitate online publication by others and, consequently, they themselves are not publishers and, therefore, are not liable for defamatory content posted on their platforms. This has given rise to practical difficulties for potential litigants, who claim to have been defamed anonymously online.

In order to commence defamation proceedings following an anonymous post, the individual or organisation defamed is

PIC: ALAMY

SOCIAL-MEDIA PLATFORMS' LIABILITY FOR CONTENT ON THEIR WEBSITES CONTINUES TO GENERATE MUCH DISCUSSION AND DEBATE

required to seek disclosure from the social-media platform of the identity of the person who is the registered user of the page, or account, on which they claim to have been defamed.

In many instances, social-media platforms do not oppose an order being made by a court for the disclosure of the identity or information that the platform has in relation to the user in question, and will disclose that identity upon receipt of a valid court order. Such disclosure will then assist a litigant in issuing defamation proceedings against the poster in question.

These court orders against social-media platforms have become known as 'Norwich Pharmacal Orders'. The *Report of the Review of the Defamation Act 2009* notes that it is "a common-law court order issued to an internet service provider who hosts a platform for user-generated content, directing them to identify an anonymous poster/account holder who has posted defamatory material so that he/she can be served with proceedings or court orders". It is an inherently versatile remedy.

Norwich Pharmacal Orders

The name of the order stems from a decision of the House of Lords in 1973, in the case of *Norwich Pharmacal Co v Customs and Excise Commissioners*. The first-named plaintiff was a US patent owner of a chemical compound used in poultry food. It sought to discover the identity of 'pirate' imports of the compound, in order to issue patent-infringement proceedings. Proceedings were therefore issued against the customs authorities, who had in their possession the names of the importers. The House of Lords permitted the disclosure order.

The legal principles governing the granting of such an order in this jurisdiction were succinctly set out by Allen J in *Parcel Connect Limited v Twitter International Company*: "The jurisdiction of the court to make an order of the type sought is well established. It was recognised by the Supreme Court in *Megaleasing UK Ltd v Barrett*. Finlay CJ, in a judgment in which all of the members of the court concurred, noted that Viscount Dilhorne in *Norwich Pharmacal* had traced the jurisdiction back to *Orr v Diaper*. McCarthy J traced the jurisdiction in Ireland back to the *Supreme Court of Judicature Act (Ireland) 1877*. The court was unanimous that the power to make such an order was one that should be exercised sparingly.

"The judgments in *Megaleasing UK Ltd* spoke of a threshold test, that the plaintiff was required to establish a very clear and unambiguous case of wrongdoing, but as Humphreys J recently explained in *Blythe v Commissioner of An Garda Síochána*, certainty or a high degree of certainty is not required. Rather it is sufficient, as Kelly J put it in *EMI Records Ireland Ltd v Eircom Ltd* that the plaintiff should make out a *prima facie* case of wrongful activity, or as Ryan P put it in *O'Brien v Red Flag Consulting Limited*, a strong *prima facie* case."

It should also be noted that, in *Grace v Hendrick*, the High Court was prepared, in the particular circumstances of that case, to make a disclosure order pursuant to the inherent jurisdiction of the court in circumstances where no clear evidence of wrongdoing had been established.

Up to now, such proceedings against social-media platforms must be commenced in the High Court. However the draft general scheme proposes to create a new statutory power to extend this jurisdiction and to enable the Circuit Court to grant such orders.

Interestingly, it is proposed that the court may, at its discretion, grant such an order "subject to such terms, if any, as it considers appropriate, if the applicant has established to the court on the balance of probabilities that there is a *prima facie* case that the statement published by the anonymous publisher by means of the service concerned, is defamatory".

The rationale for this change is set out in the draft general scheme as follows: "Making a Norwich Pharmacal Order available in the Circuit Court should also reduce the costs involved for all parties (and particularly for

PIC: ALAMY

Reforms could help douse defamation fires before they get started

the plaintiff, who often has to pay the online services provider's legal costs, as well as their own) and ensure that such orders are more accessible in practice."

The Law Reform Commission had recommended granting the Circuit Court this power in 2016.

Statutory-notice procedure

A fascinating aspect of the draft general scheme is the creation of a new statutory-notice procedure, with the rationale being to make it easier, quicker, and cheaper to notify a digital publisher of online defamatory content, and request takedown.

If enacted, this will provide that a person who believes that a defamatory statement about them has been published by a hosting service (including an online platform, online search engine, or social-media app) may submit a notice to the service provider on which the statement was published. This notice must then be forwarded by the service provider to the author of the statement within five working days of receipt of the notice.

The author must be requested to provide a response within five working days, and advised that failure to respond within that time limit will result in access to the statement being restricted.

The author will also be advised that restricting access to the statement, or removing any such restriction, does not suggest/imply that the statement is or is not defamatory.

Any response from the author is shared with the complainant, subject to maintaining anonymity of an anonymous author, where applicable. Where the service provider is unable to forward the notice to the author, it shall, within five working days of receipt of the notice, also restrict access to the statement.

Further statutory instrument

It is envisaged that a further statutory instrument will follow, specifying (among other things) the form of document required for the purposes of a notice.

This proposed new provision will aim to incentivise the parties (the author and complainant) to make contact at an early stage and to promote the possibility of swift resolution of defamation disputes without recourse to litigation.

It is also intended that the new procedure will set out in greater detail the mechanism provided for in article 16 of the new *Digital Services Regulation*, which provides that, from 17 February 2024: "Providers of hosting services shall put mechanisms in place to allow any individual or entity to notify them of the presence on their service of specific items of information that the individual or entity considers to be illegal content. Those mechanisms shall be easy to access and user-friendly, and shall allow for the submission of notices exclusively by electronic means."

Growth in defamation actions?

Once the Circuit Court's jurisdiction to grant Norwich Pharmacal Orders is confirmed, and in theory it becomes easier for litigants to obtain such relief, it will be interesting to observe if this will lead to a growth in the number of defamation actions in this jurisdiction. In England and Wales, for example, the number of defamation actions handled by the Queen's Bench division (as it was then known) rose almost threefold between 2016 and 2019, with much of the rise thought to be attributable to social-media-content proliferation.

The proposed notice procedure provides a welcome recalibration of the role of social media and other online platforms in relation to allegedly defamatory material. It is to be hoped that early engagement between complainants and authors will lead to a reduction in online defamatory statements, therefore avoiding the need for defamation proceedings.

Publication of the bill is awaited with interest. g

James Roche is a senior associate at Fieldfisher LLP.

LOOK IT UP

CASES:

- *Blythe v Commissioner of An Garda Síochána* [2019] IEHC 854
- *Board of Management of Salesian Secondary College (Limerick) v Facebook Ireland Ltd* [2021] IEHC 287
- *EMI Records (Ireland) Ltd & Others v Eircom Ltd and Others* [2005] 4 IR 148
- *Grace v Hendrick* [2021] IEHC 320
- *Megaleasing UK Ltd v Barrett* [1993] ILRM 497
- *Moore and Morris v Harris and Twitter International Company* [2022] IEHC 677 (judgment of Sanfey J, 5 December 2022)
- *Norwich Pharmacal Co & Others v Customs and Excise Commissioners* [1974] AC 133
- *O'Brien v Red Flag Consulting Ltd & Others* [2017] IECA 258
- *Orr v Diaper* [1876] 4 Ch D 92
- *Parcel Connect Ltd v Twitter International Company* [2020] IEHC 279

LEGISLATION:

- *Defamation Act 2009*
- Draft general scheme of the *Defamation (Amendment) Bill*
- Regulation (EU) 2022/2065 (*Digital Services Act*)
- *Supreme Court of Judicature Act (Ireland) 1877*

LITERATURE:

- Mr Justice Bernard Barton, 'Runaway jury' (*Law Society Gazette*, May 2023)
- David Culleton (2021), 'The law relating to Norwich Pharmacal Orders', *Irish Judicial Studies Journal*, vol 1(5))
- *Harmful Communications and Digital Safety* (Law Reform Commission Report, 2016 [LRC 116-2016])
- *Report of the Internet Content Governance Advisory Group* (Department of Communications, Energy and Natural Resources, Brian O'Neill, Technological University Dublin, May 2014)
- *Report of the Review of the Defamation Act 2009* (Department of Justice, 1 March 2022)

Staking your claim

In the first of a two-part article, Duncan Grehan asks whether it is in the general public interest that Irish law permits private claims to ownership rights to be upheld by the courts, if more than 12 years of adverse possession is evidenced

Ireland is the only member state of the European Union whose law permits the acquisition of land ownership entitlement and other property rights by adverse possession. Its registration system secures *prima facie* property ownership title. It is not conclusive if proven to be erroneous or fraudulent.

Irish law accepts that our Land Register is not 100% conclusive, as typographical and clerical errors, misapplications, and fraud can undermine its reliability. Ireland's land-registry system is a unique one, set apart by its history, the conclusiveness concept, and its protection rights under Ireland's statutory law, its Constitution, and certain international law.

Since 2014, I have participated in a project organised by the Berlin-based Verband Deutscher Pfandbriefbanken – an umbrella body of some 35 member German banks. We, lawyers from 37 countries, meet in Berlin twice yearly – and also twice yearly, each of us presents updated written reports on our countries' bank security laws. We have now published on the internet (see www.vdpmortgage.com) all our answers to 334 questions on this subject (to which I have added so far 281 detailed commentary footnotes on Irish law to those 334 answered questions).


PIC: ALAMY

Through this project's researched work, I am satisfied that Ireland is the sole EU member state whose law permits adverse possessory title claims to succeed. Norway, Scotland, and England and Wales also permit them. Such claims made in those countries (and in Ireland) have not been found to be in breach of the *European Convention on Human Rights*, protocol 1, article 1.

Registered ownership

Ireland (uniquely in the EU) still has two systems of land ownership. As long ago as 1891, land registration was first introduced (*Local Registration of Title (Ireland) Act 1891*). Two registers, the Land Registry and the Registry of Deeds, now operate, although the latter is nearly redundant.

With the *Registration of Title Act 1964* (operative since 1 January 1967), the current system of registration opened. Its operator was the Land Registry, which changed management by 2006 legislation to the Property Registration Authority (PRA) – which, since 1 March 2023, per the *Tailte Éireann Act 2022*, is dissolved and has been replaced by Tailte Éireann as operator. For simplicity's sake, I will refer hereafter merely to the 'Land Registry' and 'Land Register'.

Ireland's unregistered land ownership system, the Registry of Deeds, continues to unwind. Registration is now mandatory across the nation. The extension of compulsory registration to all land in the State started with the 1964 act and, slowly, was completed by statutory instruments in the years 1969, 2005, 2008, 2009, and 2010 (when our two largest property counties, Dublin and Cork, were finally included).

Conclusiveness of title

The new Tailte Éireann website (as of 6 July 2023) states: "The title shown on the

> ARTICLE 43.2.2 OF THE CONSTITUTION CLEARLY GIVES THE STATE AUTHORITY TO 'DELIMIT' THE 'EXERCISE' OF PROPERTY 'RIGHTS'. THIS IS WHAT SECTION 31(1) OF THE 1964 ACT DOES BY ENABLING REGISTER RECTIFICATION

folio is guaranteed by the State, which is bound to indemnify any person who suffers loss through a mistake made by the Land Registry. A purchaser, therefore, can accept the folio as evidence of title without having to read the relevant deeds."

Entries about ownership filed in the Land Register folios are *prima facie* conclusive, binding, and State guaranteed. The 63-year-old law provided in section 31(1) of the 1964 act recognises this basic principle, which is there to demystify ownership issues and to comply with private-property-ownership fundamental rights recognised by our Constitution of 1937 and by international law, including the ECHR, transposed into Ireland's law by its *ECHR Act 2003*.

FOCAL POINT

THE LAND REGISTRY

The Land Registry was established in 1892 to provide a comprehensive and secure system of land registration. When title or ownership is registered in the Land Registry, the deeds are filed in the registry and all relevant particulars concerning the property and its ownership are entered on folios, which form the registers maintained in the Land Registry. In conjunction with folios, the Land Registry also maintains Land Registry maps. Both folios and maps are maintained in electronic form.

The core business of the registry involves examining legal documents and related maps submitted as applications for registration, interpreting the legal effect of such documents, and recording their legal impact on the registers and maps. Since the Irish land register is a public record, any person may inspect the folios and maps, on payment of the prescribed fees.

The title shown on the folio is guaranteed by the State, which is bound to indemnify any person who suffers loss through a mistake made by the Land Registry. A purchaser, therefore, can accept the folio as evidence of title without having to read the relevant deeds.

Section 31 also accepts, and provides exceptions to, the reliability of registered land-ownership rights. It does not permit the courts to undermine registered security rights on any application, per order 42, rule 24 of the *Rules of the Superior Courts*, as those entries are conclusive.

In *Tanager v Kane* (2018), Baker J ruled that a court hearing a creditor's application for possession of registered land, having adduced evidence of it being the registered chargee, may not undermine the correctness or conclusiveness of the register. Its exceptions include simple-entry clerical errors, mistakes, inaccurate delineations and mapping of property boundaries, fraud, and adverse possession causing acquisition of legal title – when proven to the court's satisfaction. The inconclusiveness or exceptions to conclusiveness, if there is "actual fraud or mistake", is emphasised in *Allied Irish Banks Plc v Property Registration Authority* (4 April 2022).

Neither this law, which permits unregistered ownership-title claims to land acquired by adverse possession, nor indeed the comparable laws in Norway, Scotland, England and Wales, has been held to be unconstitutional nor in breach of the ECHR, protocol 1, article 1.

Fundamental right

The latter provides the fundamental right that "no one shall be deprived of his possessions", but places limits on that right, recognising that the national law shall prevail on the application of the ECHR principles of subsidiarity and the margin of appreciation, respectful of the State's sovereignty (judicial and parliamentary), which it will not impair, and the State laws that, in the common and general interest, may deem it necessary to control the use of property.

Ireland's 1937 Constitution – the oldest written constitution of all the member states in the EU – provides, at article 43.1.1, that "the State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods".

In the interests of "social justice", article 43.2.2 accepts that "the State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good".

Our Constitution's acknowledgement of the private ownership right is not, however, expressly recognised for corporations. What it is designed to cover is far from precise and certain, and is limited to "man, in virtue of his rational being". Corporations or legal persons are not expressly included. It acknowledges the right to private ownership as a "natural right, antecedent to positive law", which implies a legal architecture pre-dating and higher ranking than man-made law.

Unclear is whether this constitutional right is acknowledged as simply 'natural' or has been created by nature (rather than by man), nor if it covers (whether by its legal registration or by possession) only moveable 'external goods' (but not expressly immoveables, such as land).

A matter of interpretation

Much of what all this may mean in the present day, some 86 years after it was written, awaits interpretation by our courts and a retrofit modernisation amendment by referendum. Nevertheless, article 43.2.2 of the Constitution clearly gives the State authority to "delimit" the "exercise" of property "rights". This is what section 31(1) of the 1964 act does by enabling register rectification.

> MUCH OF WHAT ALL THIS MAY MEAN IN THE PRESENT DAY, SOME 86 YEARS AFTER IT WAS WRITTEN, AWAITS INTERPRETATION BY OUR COURTS AND A RETROFIT MODERNISATION AMENDMENT BY REFERENDUM

In comparison with our Constitution's article 43.1.1, the ECHR protocol 1, article 1 – 70 years old – is broader, and more in line with modern economic expectations that private property rights are safeguarded for "every natural or legal person". While it accepts that "no one may be deprived of his possessions" (not merely "external goods"), this right too may be delimited "in the public interest" by national and international law.

Reflective of the ECHR margin of appreciation and subsidiarity doctrines, article 17 of the *Charter of Fundamental Rights of the EU*, headed 'Right to property', provides that no one may be deprived of his or her "lawfully acquired" possessions … except in the public interest" and "subject to fair compensation being paid in good time for their loss".

Is it in the general public interest (and so not in breach of article 17) that Irish law permits private claims to ownership rights to be upheld by the courts, and then the rectification of the register, if more than 12 years of uninterrupted exclusive possession of the claimed land is evidenced?

Part 2 of this article will deal with registry rectification due to fraud or mistake, unregistered ownership claims by adverse possession, land-ownership issues for lenders and acquirers in good faith, compensation rights, time limitations, and comparative private and public international laws on property protection. g

Duncan Grehan is a member of the Law Society's EU and International Affairs Committee.

LOOK IT UP

CASES:

- *Allied Irish Banks Plc v Property Registration Authority, Tully and Conroy* [2022] IEHC 232
- *Tanager v Kane* [2018] IECA 352, [2019] 1 IR 385, paragraph 67

LEGISLATION:

- *Charter of Fundamental Rights of the EU*, article 17
- *European Convention on Human Rights*, protocol 1, article 1
- *Registration of Title Act 1964*
- *Rules of the Superior Courts*, order 42, rule 24
- *Tailte Éireann Act 2022*

Head in the sand?

How do you identify a cybersecurity breach, how does it differ from a personal data breach, how should you manage one, and how do you notify them? Jeanne Kelly offers her insights to Tanya Moeller and Deborah Leonard

THE AWARENESS OF THE FACT THAT BREACHES CAN OCCUR WILL HELP IN IDENTIFYING BREACHES AND THEREBY MITIGATING DAMAGE QUICKLY – FOLLOWING THE LOGIC THAT IF THEY ARE NOT IDENTIFIED QUICKLY, THEY CAN ESCALATE IN THE DARK

It's important to understand that security breaches are not something to be ashamed about. Security breaches happen. In fact, no technical or organisational security measure in the world can guarantee 100% protection against breaches. Practically, a recommended approach is to carry out a cybersecurity risk assessment (which we discussed in article three of this series, in the Aug/Sept issue), implement prevention measures on this basis, and adopt a pragmatic attitude towards constant vigilance.

The awareness of the fact that breaches can occur will help in identifying breaches and thereby mitigating damage quickly – following the logic that if they are not identified quickly, they can escalate in the dark.

Cybersecurity breaches

According to the National Cyber Security Centre of Ireland, a cybersecurity incident is considered to be "any adverse event that threatens the confidentiality, integrity, authenticity, or availability of a network or information system". This is a broad definition.

In the context of a law firm, it can be helpful to distinguish between a *suspected* breach and an *actual* breach. Suspected breaches could be an unsuccessful phishing attempt, and numerous suspected breaches could occur every year. (It may be useful to track these to understand rising or falling threat levels.) By contrast, a successful phishing attempt, which results in malware obtaining sensitive log-in information to the law firm's bank accounts, would be an example of an actual breach.

Personal-data breaches

In the unfortunate event you or your company has been the target of a cybersecurity attack, it is important to first be clear what a personal data breach is, so that you can determine whether such a breach involves personal data. The broad definition of a personal-data breach is a security compromise that has affected the confidentiality, integrity, or availability of personal data.

In ascertaining whether such an outcome has occurred, it is important to do a thorough audit of your IT systems to ensure that personal data has not been accessed, copied, or that you have been locked out of accessing the data. If you are unsure about what you are looking for, hire a professional to carry out such a check.

Is there a difference between a cybersecurity and a personal-data breach? In short, yes. A cybersecurity breach may not always involve personal data, and a personal-data breach may not be a cybersecurity breach. For example, losing a hard-copy file pertaining to a client may constitute a personal-data breach, but as this involves paper, and not electronic systems, this would not constitute a cybersecurity breach. In turn, a cybersecurity breach may involve ransomware, which blocks access to information unless a ransom is paid, where this information does not include personal data.

A personal-data breach is one that involves personal data as defined by applicable data-protection legislation. 'Personal data' is defined as any information relating to an identified or identifiable data subject (that is, a 'natural person', not a 'legal person'). In the context of a law firm, this could include, without limitation, a client's name, personal contact details, identification documents, anti-money-laundering/'know-your-customer' (AML/KYC) information, and client-solicitor instructions, if the person's identity can be clearly ascertained from such instructions. Strictly speaking, a client's bank-account details are not personal data, as an account number could belong to a business or personal bank account. However, financial information is sensitive and should, of course, be kept safe and secure.

When a data breach occurs, there is a specific procedure that should be followed – for instance, it may need to be reported to the DPC if in

PIC: ALAMY

Ireland, to the Information Commissioner's Office, and even the National Cyber Security Centre if in the UK. The data subjects may need to be alerted to this issue as well. Distinguishing between 'a cybersecurity incident' and 'a cybersecurity incident that involves a data breach' means that an organisation can follow their specific statutory obligations and do not fall short of them.

It is important to distinguish between these types of breaches in order to understand the risks posed and how to manage them. In the above examples, the loss of a single paper file would constitute an entirely different risk level to all client details being compromised, and that in turn would be different to bank accounts being accessed.

Breaches and technical steps

A cybersecurity breach may mean that malicious access to your systems is ongoing or you may be held to ransom. In these circumstances, it is recommended to adopt the following approach:

- Disconnect any infected machines from your network,
- Contact your IT support team or engage an expert professional for support immediately,
- Refrain from accessing your system backup until all infected computers or the system have been cleaned.

Once the immediate breach is controlled and managed, it is advisable to carry out a review of causes and impact as part of a new or revised cybersecurity risk assessment (see article three in this series). Preventative measures may also be necessary to ensure no repeat incident occurs.

Engaging a pro

What to do when advising clients when to consider engaging a cybersecurity IT professional to assist with detecting, mitigating, or remediating breaches?

Don't ignore the potential

impact a data breach can have. Taking data protection seriously and working with a cybersecurity IT professional can save a company money in the long run, particularly if you have done research beforehand so that you are knowledgeable about the benefits these professionals can provide to companies. Knowing your budget and some basic cybersecurity benefits before engaging a cybersecurity professional will also assist with smoothing the process.

One of the most important things an organisation can do to mitigate the risk of a data breach is to conduct an assessment so that an organisation is aware of any potential current issues with their data – and to work on remediation solutions to minimise those risks with a cybersecurity professional. These can include encrypting all data and instituting access control, both physical and electronic.

In addition, discuss with the cybersecurity professional suitable cybersecurity training for members of the organisation, because this is a great way to mitigate breaches, but also to detect breaches, as cybersecurity breaches often inadvertently occur due to employees falling for phishing and other such scams.

Who ya gonna call?

You should ideally have identified, before an attack, the persons you would need to contact in the event of an attack. Depending on the nature of the attack, you may have to contact a number of individuals and institutions.

If the personal data of employees or clients is affected, you are obliged to contact them. Respective data-protection legislation requires you to do this "without delay".

Where information relating to bank accounts or log-in details are compromised, or a fraudulent transaction has taken place, you should also contact your financial institution immediately.

Depending on the nature of the breach, you may also have to contact your insurance company to ascertain what level of cover the firm has in place.

Further external notifications could include notifying a breach of personal data to the Data Protection Commission. Note that, in this regard, the applicable statutory deadline is 72 hours "after having become aware" of a personal-data breach, as well as the possibility of initially providing an incomplete notification, which is followed by further additional information (see Data Protection Commission, 'Breach Notifications'.) Consideration should also be given to contacting An Garda Síochána.

Finally, you should consider your reporting requirements to the Law Society in case client-account monies are involved in the cybersecurity breach.

In all cases, it may be advisable to seek your own legal advice in relation to your reporting requirements.

Dealing with claims

What about the practical side of breaches, such as dealing with claims from data subjects, insurance claims, etc?

It's of key importance to understand the wider issues, including insurance, who notifies insurers, etc. Not all information in a data breach is available right away – it can be an iterative and non-linear process. So good communication in the relevant team is key. You need to be organised and empathetic. Often, if it's a first incident, the stress levels can be high, so you need to be both steely and calm. You may also need to help your client argue in their own company for resources to address the issue, so you really need to be a good listener for them if this as issue.

Do I pay a ransom?

Where a ransom request is raised, it is recommended that you tread very carefully and obtain both technical and legal advice and, where applicable, discuss this matter with the respective authorities. Factors to consider include, but are not limited to, the core values of the profession and your obligations as an officer of the court, applicable international sanctions, aiding and abetting a criminal act, or the applicability of section 19 of the *Criminal Justice Act 2011*.

According to this provision, a person shall be guilty of an offence if he or she has information that he or she knows or believes might be of material assistance in preventing the commission by any other person of a relevant offence, securing the apprehension, prosecution or conviction of any other person for a relevant offence, and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the gardaí. In the recent hack of the HSE, no ransom was paid (see Health Service Executive, 'Cyber-attack and HSE response'.)

Sharing is caring

Even if no client-account monies are involved, sharing knowledge and awareness helps to defend against cybercrime and mitigate its effects. The Law Society urges everyone in the profession to report both successful and unsuccessful attacks, as this can highlight the latest trends and help to protect everyone. If you report an unsuccessful attack that helps your colleague tomorrow, then the next day she or he may report one that may save you.

Members also have the option to report an issue *anonymously* to the Law Society. Where a new threat is revealed by a report, the Law Society will share this vital information with the profession and, depending on the case, may issue relevant information on prevention measures. Reports are possible in the strictest confidence, and you can choose to withhold your name and contact details if you so wish.

Supplier breaches

Always carry out appropriate due diligence on data processors that you use. Data controllers have specific obligations that are put in place to protect data subjects, and breaches of these protections are taken very seriously, as these breaches can result in damage to data subjects. These can result in a loss to clients. Therefore, when engaging with suppliers, it is essential to carry out your due diligence on them – and only engage in business when you are confident that they can uphold their privacy obligations to you and to your customers. Of course, you also need to contractually address this appropriately under article 28 of the GDPR.

Where suppliers are involved, you should check your contract and all applicable terms that govern your engagement of your supplier. Ideally, these should outline what obligations the supplier has towards you when a breach is caused, including how the supplier will work with you in relation to the breach, as well as respective liabilities.

Where personal data is involved, the contract with your supplier must contain certain key elements, as per

article 28, such as assisting the controller in relation to the controller's obligations concerning breaches and breach notifications. In addition, article 33 of the GDPR requires a processor to notify the controller of any personal data breach "without undue delay" after becoming aware of the breach. (For further information on how to engage suppliers, see the second article in this series, July 2023.)

Employee breaches?

What's the best approach to take towards law-firm employees who may inadvertently commit a breach?

Always ensure appropriate data-protection training is in place for each role. This will range from basic training for every role, to in-depth training for dedicated data-protection roles, scaled as appropriate for those roles in between. After ensuring all members of an organisation are informed about how data breaches occur and how to minimise them, encourage a culture of reporting data breaches – regardless of how small they may seem – to the appropriate internal authority. Staff must also be trained about *why* they need to report breaches to the dedicated officer, and *how* to report it.

Breaches caused by employees are regrettable. The individual member of staff may feel guilty, embarrassed, or ashamed if a breach has been committed, for example, by absent-mindedly clicking on a phishing link in an email.

However, it is essential for workplaces to build a culture of transparency, acceptance, and trust, so that both suspected as well as actual cybersecurity breaches are reported. This ultimately benefits everyone.

Regardless of how small a breach seems, staff should report it. Reluctance based on fear of retaliation and punishment will only ultimately harm the law firm if it means that a culture of secrecy will not bring future suspected or real breaches to light, so it is important to remind staff that individual human error can and, indeed, does happen.

Internal communications and further training will help to explain to the workforce how suspected or actual breaches can occur, and what damage these may cause if not appropriately identified, prevented, internally reported, or mitigated.

Of course, the situation may need to be handled differently if human error strays into a repetitive pattern of carelessness, or if an aspect of deliberateness – whether benign of malicious – was a contributing factor.

Five years on...

2023 marked five years since the inauguration of the GDPR. One of the clearest ways that data breaches have evolved in that time can be seen in the number of data breaches that have occurred, year on year. The volume of data-breach attempts is also set to continue to grow over the next five years as methods of breaches get more sophisticated and organisations continue to go paperless. Using the tools currently available and investing in new ways to continue to mitigate the risk of data breaches will allow organisations to try to get ahead of any further evolutions in data breaches over the next five years.

Cybersecurity breaches are not identical to personal-data breaches, although these frequently overlap in practice. Both types of breach require staff training and awareness to identify and prevent them, as well as a transparent work culture to allow for honest internal reporting if an actual breach does occur. Once security is breached, the situation requires immediate action to prevent further escalation and ensure any damage is contained. You will have to consider your obligations to affected individuals and respective authorities and check your insurance cover. Finally, please do not forget the possibility of anonymously reporting both successful as well as unsuccessful breaches to the Law Society – for the benefit of your colleagues and the profession as a whole.

If you wish to contact the Law Society regarding a potential cybersecurity issue, email cybersecurity@lawsociety.ie and a member of staff will be more than happy to assist in any way they can.

In our next article, we will examine how your office and client accounts are threatened, how to keep them safe and secure, and how to deal with a situation where they are compromised. g

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Jeanne Kelly is a founding partner in the Dublin office of Browne Jacobson. Tanya Moeller is in-house counsel with ServiceNow and vice-chair of the Law Society's Technology Committee. Deborah Leonard is secretary to the Conveyancing Committee.

> IT IS ESSENTIAL FOR WORKPLACES TO BUILD A CULTURE OF TRANSPARENCY, ACCEPTANCE, AND TRUST, SO THAT BOTH SUSPECTED AS WELL AS ACTUAL CYBERSECURITY BREACHES ARE REPORTED

LOOK IT UP

LEGISLATION:

- *Criminal Justice Act 2011*
- *General Data Protection Regulation* (GDPR)

SITES AND LITERATURE:

- Data Protection Commission, 'Breach notifications' (dataprotection.ie/en/organisations/know-your-obligations/breach-notification)
- Health Service Executive, 'Cyber-attack and HSE response' (hse.ie/services/cyber-attack/what-happened)
- Law Society of Ireland Cybersecurity Hub
- National Cyber Security Centre, 'Incident reporting' (ncsc.gov.ie/incidentreporting)

Sudden impact

Modern workplaces should be striving to assist their employees to work productively through the normal stresses of life, a recent webinar heard. Mary Hallissey reports

GOOD MENTAL HEALTH IS DEFINED AS THE ABILITY TO WORK PRODUCTIVELY THROUGH THE NORMAL STRESSES OF LIFE – WORKPLACES SHOULD BE STRIVING TO ACHIEVE THIS FOR THEIR EMPLOYEES

Junior lawyers will quickly spot any conflict between espoused workplace values and the reality on the ground, the second webinar in the 'High-Impact Professional Series' has heard.

Delivered on 8 September by Law Society Psychological Services, in partnership with Law Society Professional Training, the webinar heard from a range of speakers, among them Jeanne Kelly (partner at Browne Jacobson), who said that, in the "war for talent", which was very real, offering a psychologically safe workplace was key.

George Artley (International Bar Association, Britain) said that good mental health was defined as "the ability to work productively through the normal stresses of life". Workplaces, he said, should be striving to achieve this for their employees. He commented that the IBA's mental wellbeing project has had a mixed reaction from some large firms.

Burnt offerings

Workers who are demotivated, tired and stressed will not perform well, the webinar heard.

"In the past, some organisations required people to burn their lives on the altar of whatever workplace they were in," Jeanne Kelly commented. "Young lawyers now expected a more well-rounded life."

Organisational psychologist Jessica Lee said that a high-impact workplace was one where people could bring their "whole selves" to work and feel fulfilled and respected. The link between individuals feeling that their purpose in life was aligned with their organisation's purpose was central, she added.

Leading by example

Michelle Ní Longáin (ByrneWallace LLP and a past-president of the Law Society) said that, while there were easier careers than law, the profession had an important role to play: "It's a core part of our society and we need to remember this in how we conduct ourselves," she said.

Values and integrity were being scrutinised at leadership level by employees, she continued, who measured their personal values against those expressed and lived by their bosses. This search for 'fit' was central to retaining staff, Ní Longáin said, and would often be the spur for staff moving on.

Given the relatively small size of Irish society, stories about workplaces would always 'do the rounds', especially if declared values were at odds with the daily experiences of workers. And employers must address the real risks in the type of work that lawyers do, due to the many external and internal demands on staff.

Ní Longáin said that the Law Society's *Dignity Matters* report had painted a stark picture of a profession under serious pressure, with many lawyers commenting that they had experienced bullying and harassment in the workplace.

Career trends

George Artley commented that trends in career decisions were similar across the globe. Young lawyers all expressed the same concerns – and money alone was not sufficient to get them to commit to a workplace, he warned. The model of "sacrificing everything" to become an equity partner was no longer enough to retain people, he noted.

Lawyers must learn to successfully manage client expectations in this 'always-on' culture, the webinar heard, and keeping long-term clients took both energy and effort: "If you don't have that energy and effort to give, it can start to feel relentless," said Jessica Lee.

Healthy workplaces allowed the opportunity to pause, reflect and recharge, so staff were able to give back to clients, she said: "This involves managing the nervous system and the emotions, and legal workplaces are becoming more interested in that science and psychology."

Legal firms could go to schools and colleges and establish outside perceptions of the profession, and then work within their own organisations

ALL PICS: CIAN REDMOND

The second 'High-Impact Professional Series' webinar was held during the Law Society Psychological Services Festival at Blackhall Place from 6-8 September

to effect culture change: "Generationally, people are becoming more discerning about where they work," she stated.

'Very moving'

Jeanne Kelly commented that she found the recent Law Society Psychological Services Festival (6-8 September) "very moving" and added that, for people of her generation, it would have been "unthinkable", even ten to 15 years ago, that such an event would take place.

"People are aware that there is a problem – and they're aware that they need to do the 'hard yards'," she said. "There is, I think, a real awareness that things need to change."

The assumption that there would be an endless flow of employees coming in the door to take on heavy workloads was also flawed, Kelly said. When lawyers were being evaluated for promotion and firms had "burned through" associates because of certain work practices, that was a cost to the company's bottom line, she said.

"If your firm is having to spend €150,000 a year in recruitment fees to replace the people that they are burning through, then your number is 'x minus 150'," she said. "That is a real economic cost. Someone can't be evaluated as 'successful' if they are burning through five times the number of associates that their peers are," she added.

Retention of staff was as important as attracting recruits, the webinar heard, and a healthy workplace was one where there was a right to switch off and recharge.

Never set in stone

Not putting in boundaries, rules, structures, and policies tended to push people out – but the structures of organisations were never set in stone, Kelly said, and always should be open to improvement.

Permanently exhausted and under-strain lawyers might also jar with important clients, she added.

One webinar attendee asked if there was an unaddressed disconnect between the expectations of newly qualified

> SAYING 'IT WASN'T LIKE THAT IN MY DAY' WAS NOT THE WAY TO LEAD – AND NO ONE SHOULD SEEK TO PERFORM LEGAL SERVICES IN THE SAME WAY AS IN THE 1980s OR '90s

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lawyers asking for too much, and that of more established workplace members.

Michelle Ní Longáin agreed that there could sometimes be mutual incomprehension. The focus shouldn't be only on empowering early-career people, but also on educating the leaders of the profession, who might have started their careers during a very different time and ethos, she said. Some senior lawyers might feel they were 'taking up the slack' for the demands of younger cohorts who expected to be able to leave the office or finish up at their desks at 6pm, the webinar heard.

Female bullying

Globally, there have been serious bullying accusations made against some senior female partners by junior female associates who were pregnant and wanted maternity leave, the webinar heard.

However, saying "it wasn't like that in my day" was not the way to lead, Ní Longáin commented – and no one should seek to perform legal services in the same way as in the 1980s or '90s.

"We are now working to create sustainable environments for the future," she stated. 'Environmental, social and governance' covers these matters from a sustainability and social perspective, Ní Longáin continued, and should be brought to the top table of organisations through the business-risk register and the quality committee.

Young lawyers were much more attuned to wider workplace conditions, often working cheek by jowl with their own age groups in large tech firms, for instance, Jeanne Kelly said.

"I'd like to think that there's an opportunity for the Irish legal profession to be the trailblazer," said Jessica Lee. "There could be amazing positive change."

Such change was the way of the future, George Artley said: "Without it, the legal profession will stagnate."

Kelly added: "Just because we 'came up the hard way' doesn't mean that the workplace needs to stay like that."

Michelle Ní Longáin concluded, saying that complex advisory work could not be delivered to clients, in a close partnership, without psychological safety in the working environment: "Psychological safety must be provided, quite apart from the humanity and the dignity of the person." g

Mary Hallissey is a journalist with the Law Society Gazette.

A level playing field

Yet another condition precedent? The EU has adopted a new regime targeting supports from non-EU governments, which underlines the support among EU member states for establishing a level playing field for trade, says Cormac Little

THE *FOREIGN SUBSIDIES REGULATION* AIMS TO LIMIT TRADE IMBALANCES IN THE EU'S SINGLE MARKET CAUSED BY SUPPORTS GRANTED BY A FOREIGN GOVERNMENT IN A SITUATION WHERE EU-BASED ENTITIES MUST COMPLY WITH EU STATE-AID RULES

News from the EU and International Affairs Committee. Edited by TP Kennedy, Director of Education

A new regime addressing trade distortions in the EU caused by subsidies provided by third countries entered into force this year. These rules are contained in the *Foreign Subsidies Regulation* (Regulation (EU) 2022/2560). More particularly, the regulation (FSR) aims to limit trade imbalances in the EU's single market caused by supports granted by a foreign government in a situation where EU-based entities must comply with EU state-aid rules.

Since the original adoption of EU state-aid rules over 60 years ago, the world economy has become much more integrated. EU-based businesses compete all over the world, just as companies from all around the globe operate in the EU. That said, the latter group of entities sometimes receive significant financial support from their respective national authorities. However, were such undertakings based in the EU, similar interventions by a member state would likely be prohibited/subject to strict conditions under EU state-aid law.

For a long time, this inequality has irked European businesses. This unease has resulted in the EU promoting the establishment of state-aid control frameworks by non-EU countries, in addition to championing the adoption of World Trade Organisation rules to eliminate competitive distortions due to state intervention in the economy. That said, such initiatives require broad international consensus for progress to be made.

Mindful that this is very difficult to achieve in the current fractured geopolitical environment, the European Commission in 2020, based on a Franco-German initiative launched the previous year, issued a policy paper on the establishment of a level playing field for foreign subsidies in the EU. Draft legislation followed in 2021, with the FSR being adopted late last year. The swift passage from policy proposal to law underscores the breadth of support among member states for the establishment of a level playing field in the EU.

Main tools

The FSR grants the commission powers to address distortions caused by subsidies granted by non-EU governments through three main tools: (a) the review of notified transactions, (b) the review of notified public procurement procedures, and (c) own-initiative investigations.

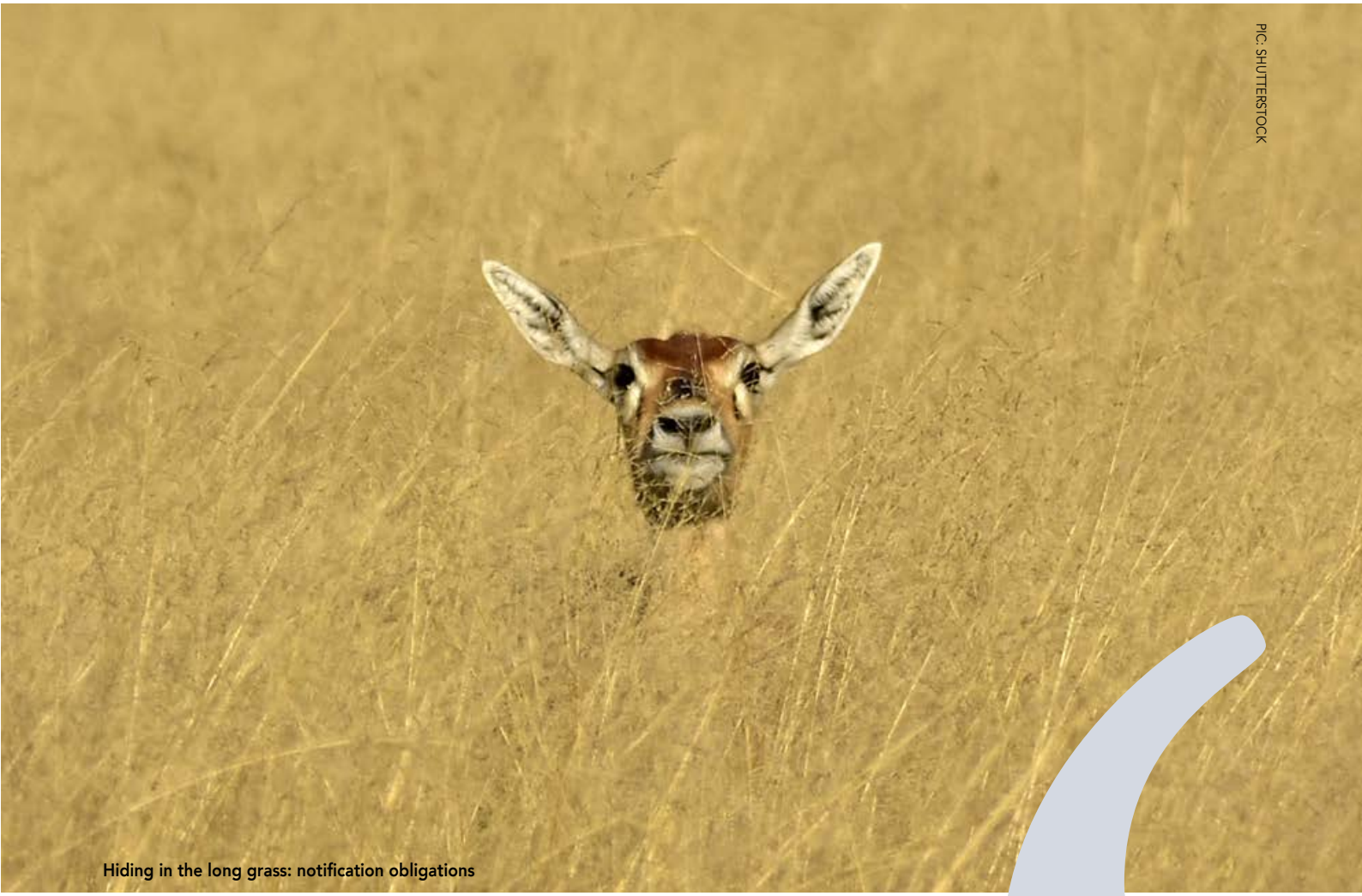
Acquisitions, mergers, or the establishment of full-function joint ventures must be notified to the commission prior to completion where:

- One or more of the undertakings involved (for example, the merging undertakings, the target undertaking, or the joint venture) is established in the EU and generates annual EU-wide turnover in its most recent completed financial year of, at least, €500 million, and
- The undertakings involved have received aggregate foreign (that is, by a third country) financial contributions (FFC) of over €50 million in the three years prior to the relevant transaction being announced or agreed.

Candidates in a public-procurement procedure must notify any relevant FFCs to a contracting authority/entity where:

- The estimated contract value (net of VAT) is €250 million or more (or the value of the relevant lots for which the relevant tenderer applies is, at least, €125 million), and
- The aggregate FFCs granted by a third country to the tenderer (on a group basis) plus, where relevant, its main subcontractors and suppliers involved in the same tender were €4 million or more in the previous three years.

The foreign financial contribution is complemented by Commission Implementing Regulation (EU) 2023/1441 (10 July 2023) on detailed arrangements for the conduct of


PIC: SHUTTERSTOCK

Hiding in the long grass: notification obligations

proceedings by the commission pursuant to the FSR (FSRIR). Specifically, the FSRIR contains detailed procedural rules for notifying both transactions and relevant public-procurement procedures. As stated above, a notification regarding the latter should first be submitted to the relevant contracting authority/entity for forwarding to the commission.

What constitutes an FFC?

What constitutes an FFC is defined broadly. It includes the transfer of funds or liabilities, such as capital injections, grants, loans, loan guarantees, fiscal incentives, debt forgiveness, and other similar arrangements. This concept also includes the forgoing of revenue that is otherwise due to the relevant public purse, such as tax exemptions. Finally, an FFC also includes the purchasing or provision of goods or services. An FFC will be deemed to be granted by a third country where it is provided either by central government or other public authorities, by a foreign public entity whose actions may be attributed to the relevant third country, or by a person whose actions may, similarly, be attributable to that third country.

Under the FSRIR, all FFCs received will be considered for the calculation of the relevant €50 million or €4 million jurisdictional thresholds, regardless of whether the conditions of sale are at an arm's-length basis.

The substantive test

In the case of the notification of both transactions and public-procurement procedures (in addition to its own *ex officio* investigations), the commission's key task under the FSR is to identify whether there is a foreign subsidy, whether it distorts the internal market and, if so, what remedial measures (if any) should be taken.

Firstly, the FSR provides that a foreign subsidy shall be deemed to exist where

> THE FSR GRANTS THE COMMISSION POWERS TO ADDRESS DISTORTIONS CAUSED BY SUBSIDIES GRANTED BY NON-EU GOVERNMENTS THROUGH THREE MAIN TOOLS

FOR EUROPEAN INDUSTRY, ITS DELIGHT AT THE ADOPTION OF THE FSR HAS BEEN SOMEWHAT TEMPERED BY DISAPPOINTMENT AT THE LIKELY ONEROUS NOTIFICATION OBLIGATIONS IN TERMS OF MANAGEMENT TIME AND COSTS, NOT TO MENTION THE REQUIREMENT TO COMPILE LARGE QUANTITIES OF INFORMATION

Fighting cocks: a level playing field ensures fair play

a third country provides, directly or indirectly, a financial contribution (see details regarding FFCs above) that confers a benefit on an undertaking with business activities in the EU, limited to one or more undertakings/industries.

Secondly, the FSR stipulates that a distortion in the EU will be seen to exist where a foreign subsidy is liable to improve the competitive position of a business in the EU and, where so doing, it either undermines (or has the potential to undermine) competition in the internal market.

The commission should consider a number of factors in determining whether such a foreign subsidy causes a distortion. These include the amount and nature of the foreign subsidy, the conditions attached to it, the situation of the beneficiary undertaking, and the level and evolution of economic activity of that undertaking on the internal market. The FSR contains *de minimis* thresholds. For example, where the total amount of a foreign subsidy to an undertaking does not exceed €4 million over any consecutive period of three years, it will be considered unlikely to distort the internal market. The FSR also identifies categories of foreign subsidies most likely to distort the internal market. These comprise supports that (a) aid a failing business, (b) give unlimited guarantees, (c) directly facilitate a transaction, (d) are an export-financing measure not in line with the OECD arrangement on officially supported export credits, and/or (e) enable an entity to submit an unduly advantageous tender.

Thirdly, the commission may conduct a balancing test whereby the negative effects of a foreign subsidy in distorting the internal market are balanced against the positive effects on the development of the relevant subsidised activity in the EU. In this regard, the commission should also consider broader positive effects regarding relevant policy objectives, such as environmental protection and the promotion of high social standards. Finally, as described more fully below, if the negative outweighs the positive, the FSR allows the commission to impose or accept measures aimed at redressing any distortions in the internal market caused by a foreign subsidy.

Notification process

Transactions/relevant public-procurement procedures are notifiable from October 2023. Specifically, any relevant transactions scheduled to close after 12 October 2023 require notification to the commission. The FSRIR includes two annexes with notification forms both for transactions (Form FS-CO) and public procurement processes (Form FS-PP) – each of which provides details regarding the information to be provided in the relevant filing.

The parties are probably best advised to engage in pre-notification discussions

with the commission. At this pre-notification stage, it is also possible to make a waiver request regarding some of the information required by the Form FS-CO or Form FS-PP where this is neither necessary for the examination of the case nor reasonably available to the notifying parties.

Under both notification forms, the commission requires detailed disclosure on FFCs that are most likely to cause distortion to the internal market (see above). For supports falling within this category, information must be provided on all FFCs of an individual amount of, at least, €1 million granted over the past three years.

By contrast, for FFCs that are not likely to be distortive to the internal market, Form FS-CO and Form FS-PP only require a high-level overview of the relevant supports granted to the notifying parties if these are: (a) of an individual amount of at least €1 million, and (b) above a total of €45 million (in the case of the notification of a transaction) or €4 million (where a public-procurement process is being notified) per non-EU country over the previous three years. Both forms also set out some exceptions – where FFCs need not be described.

Relevant procedures

Under the FSR, the commission shall, on preliminary review of a transaction, decide within 25 working days of the receipt of a complete notification whether there are sufficient grounds to indicate that an undertaking has been granted a foreign subsidy that distorts the internal market. If not, the relevant transaction may, under the FSR, proceed.

If there are such grounds, the commission will open an in-depth investigation, which may last for a further 90 working days (extendable by 15 working days where commitments are offered). Similar, but not identical, timelines apply in the case of notified public-procurement processes. There is a standstill obligation whereby the transaction shall not be implemented/contract awarded under public-procurement rules until clearance is granted by the commission.

Potential outcomes

Once it has completed its investigation, the commission has, under the FSR, the power to clear, clear with conditions, or block the relevant transaction/contract award. The commission also has the option to submit requests for information to the relevant undertakings, launch surprise investigations/dawn raids, and (for transactions) to adopt interim measures.

The FSR contains various potential commitments that an undertaking can offer, or conditions that the commission can impose, remedying a distortion actually or potentially caused by a foreign subsidy. These include reducing capacity, the imposition of temporary restrictions on commercial activity, refraining from certain investments, the divestment of certain assets, or the repayment of the foreign subsidy with interest.

Final whistle

For European industry, its delight at the adoption of the FSR has been somewhat tempered by disappointment at the likely onerous notification obligations in terms of management time and costs, not to mention the requirement to compile large quantities of information. For transaction lawyers, the adoption of the FSR represents another potential condition precedent that must be satisfied before the relevant deal may be completed. Indeed, solicitors advising both bidders and contracting authorities/entities on major public-procurement processes (except for those in the defence/security industries) need to be aware of the potential impact on contract awards.

More broadly, the FSR represents another example of the ever-increasing regulatory burden on business. This will only increase, if and when the *Screening of Third Country Transactions Bill 2022* (sometimes referred to as the '*FDI Screening Bill*') is adopted by the Oireachtas. Indeed, depending on the relevant circumstances, a transaction might require clearance, in the not-too-distant future, from the European Commission or the Competition and Consumer Protection Commission under EU or Irish merger-control rules, clearance from the Minister for Enterprise, Trade and Employment under domestic FDI screening legislation, and also clearance from the commission under the FSR. Life for regulatory lawyers will be complex, but it won't be dull! g

Cormac Little SC is head of the competition and regulation unit of William Fry LLP, and is a member of the Law Society's EU and International Affairs Committee.

> SOLICITORS ADVISING BOTH BIDDERS AND CONTRACTING AUTHORITIES/ ENTITIES ON MAJOR PUBLIC-PROCUREMENT PROCESSES NEED TO BE AWARE OF THE POTENTIAL IMPACT ON CONTRACT AWARDS

LOOK IT UP

LEGISLATION:

- Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023 on detailed arrangements for the conduct of proceedings by the commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market
- Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market
- *Screening of Third Country Transactions Bill 2022*

PRACTICE NOTES

PRACTICE NOTES ARE INTENDED AS GUIDES ONLY AND ARE NOT A SUBSTITUTE FOR PROFESSIONAL ADVICE.
NO RESPONSIBILITY IS ACCEPTED FOR ANY ERRORS OR OMISSIONS, HOWSOEVER ARISING

CONVEYANCING COMMITTEE

REMOTE WITNESSING OF DOCUMENTS

● The Conveyancing Committee has been requested to give guidance with regard to the remote witnessing of the execution of legal documents in the conveyancing process.

It is accepted practice that signatures to most legal documents of significance are witnessed by an independent person. There are statutory and non-statutory provisions setting out particular standards for certain legal documents.

This practice note deals specifically with the witnessing of certain documents in the conveyancing process.

Contracts for Sale

The Conveyancing Committee believes that, as a matter of law, a Contract for Sale does not actually require to be witnessed but, in practice for the most part, the execution of Contracts for Sale by the parties is witnessed by the solicitors acting for the purchaser and the vendor. Occasionally one is witnessed by another independent person. This is good practice.

If a solicitor is not physically present when a client signs a Contract for Sale, the signature of their client, whether the signature is 'wet ink' or digital, may be acknowledged to the solicitor, either in person or remotely, and the solicitor may then witness the signature. Remote acknowledgment can be by phone or over a virtual meeting, such as Teams, FaceTime, Zoom, or similar.

It is perfectly proper for a solicitor to apply their signature as witness to the execution of a Contract for Sale based on the acknowledgment of the signatory, provided that they know their client. The solicitor may themselves apply their signature either in 'wet ink' or by digital means. A witness who is not a solicitor can follow the same procedure.

Deeds

The execution of deeds (conveyance, assignment, transfers and charges) is governed by the *Land and Conveyancing Law Reform Act 2009* and the *Land Registry Rules* (prai.ie/execution-of-deeds-and-documents).

The wording of the 2009 act requires that the execution of a deed is acknowledged "in the presence of a witness". Therefore, while a deed may already have been signed in the absence of a witness, the execution of the deed must be acknowledged in the presence of a witness.

Although it is a matter for statutory interpretation, the committee is of the view that 'presence' here almost certainly means in the physical presence of the witness signatory and, therefore, such acknowledgement should not be effected remotely. Solicitors involved in the execution of these documents should exercise all care reasonably practicable in accordance with (a) their letters of engagement, (b) their duty of care to their client, and (c) the requirements of the Residential Certificate of Title system, where relevant. Particular care is needed when a charge could involve putting a family home at risk.

Guarantees

Particular care should be taken in relation to guarantees. A solicitor has a duty to understand fully the circumstances of the guarantor and then to give appropriate legal advice, which, ideally, should be in writing. If these duties have already been attended to by a solicitor, the committee takes the view that it would be proper for the solicitor to have the signature of a guarantor acknowledged remotely.

It follows that the failure to have those duties attended to before a guarantee is signed or acknowledged has the potential to be inconsistent with a solicitor's duty of care to the guarantor. As in the case of charges, particular care is needed when a guarantee could involve putting a family home at risk.

Names

Purchasers' solicitors should check that closing documentation is properly witnessed. If the signature of any party or witness, or the address and occupation of the witness, is handwritten and illegible, it is advisable to get these details clarified immediately, because they will be required for registration with Tailte Éireann and are more easily checked at the time. The best practice is to write the name of the signatory in block capitals underneath the signature, and to do likewise if the address and occupation are illegible.

Attestation clause

The law relating to the execution of deeds is governed by section 64(2)(B)(i) of the 2009 act, in accordance with which it is perfectly proper for a party to a deed to sign the deed in the presence of the witness or, where the deed is already signed, acknowledge their signature in the presence of the witness. The best practice would be for the attestation part of the execution block in any deed to reflect the factual situation, for example:

- As is most usual, where the party to the deed signs in the presence of the witness: *"Signed by [signatory party name] in the presence of …"*, or
- Where the signatory has already signed and acknowledges their signature: *"Signed by [signatory party name] who acknowledged their signature in the presence of …"*

CONVEYANCING COMMITTEE

UNDERTAKINGS RE LAND REGISTRY QUERIES

● Practitioners are reminded that general condition 25 of the Law Society's *Conditions of Sale* provides that, in cases where the sale of unregistered land triggers an obligation on the purchaser to compulsorily register the title post completion, the vendor shall, if requested within six years after the completion of the sale and at the expense of the purchaser:

1) Supply any additional information the vendor may reasonably be able to supply, and
2) Produce and furnish any documents in the vendor's possession that may be required to effect the first registration.

Unless general condition 25 has been amended to remove this obligation, the committee considers that it is not necessary for the purchaser to require the vendor to provide an undertaking to assist with Land Registry queries, and such undertakings should not be sought.

GUIDANCE NOTE

CONVEYANCING COMMITTEE

REMINDER – CONTRACTS FOR SALE

● One of the objectives of moving to a pre-contract investigation of title system is that the purchaser's solicitor can review the title as part of a single workflow.

The Conveyancing Committee wishes to remind practitioners to refrain from issuing land contracts where the copy title would be furnished to the purchaser's solicitor in a piecemeal fashion, including where the vendor's solicitor awaits a particular document(s).

The committee recognises that, at times, it may make practical sense for copy title to travel in more than one batch; however, that should only arise in rare circumstances, for example, where a roads and services letter remains awaited from a local authority.

If a solicitor is required to issue a draft land contract before all the copy title is readily available, any omitted document should be clearly marked 'to follow' in the cover letter or in the document schedule to the draft contract, and also indicating its status (for example, it has been requested).

LAW SOCIETY PROFESSIONAL TRAINING

Centre of Excellence for Professional Education and Lifelong Learning

LAW SOCIETY OF IRELAND

DATE	EVENT	CPD HOURS		FEE	DISCOUNTED FEE*
IN-PERSON CPD CLUSTERS 2023					
20 October	**North East CPD Day 2023** The Glencarn Hotel, Castleblayney, Co. Monaghan	Total 6 hours (by group study)			€150
26 October	**Connaught Solicitors' Symposium 2023** Breaffy House Resort, Castlebar, Co. Mayo	Total 6 hours (by group study)			€150
16 November	**Practitioner Update Cork 2023** The Kingsley Hotel, Cork	Total 6 hours (by group study)			€150
23 November	**General Practice Kilkenny 2023** Hotel Kilkenny, Kilkenny	Total 6 hours (by group study)			€150
06 December	**Practice and Regulation Symposium 2023** The College Green Hotel, Dublin 2 (formerly The Westin Hotel)	Total 6 hours (by group study)			€150
IN-PERSON AND LIVE ONLINE					
12 October	**AI & ESG Annual In-house and Public Sector Conference,** Law Society of Ireland	2 general, 1.5 management & professional development skills (by group study)	Law Society of Ireland	€198	€175
17 October	**Disability Awareness Training**	3 management & professional development skills (by eLearning)	Zoom webinar	€175	€150
19 October	**Property Law Annual Update**	3 general (by eLearning)	Zoom webinar	€198	€175
20 October TBC	**EU & International Affairs Committee Annual Seminar**	2 general (by group study)	Law Society of Ireland		€135
25 October	**Litigation Annual Update**	3.5 general (by group study)	Law Society of Ireland	€198	€175
26 October	**Training of lawyers on EU law relating to vulnerable groups of migrants (TRALVU)**	5.5 general (by group study)	Law Society of Ireland	Complimentary	
08 November	**Employment & Equality Law Annual Update**	3 general (by eLearning)	Zoom webinar	€198	€175
15 November	**Business Law Annual Update**	3.5 general (by eLearning)	Zoom webinar	€198	€175
17 November	**Human Rights Annual Conference - Digitising Justice**	3.5 general (by group study)	Law Society of Ireland	Complimentary	
1 December	**Family & Child Law Annual Conference 2023**	4 general (by group study)	Law Society of Ireland	€175	€150
ONLINE, ON-DEMAND					
Available now	**Common Law and Civil Law in the EU**	1.5 hours General (by eLearning)		€150	€135
Available now	**Legaltech Talks Hub**	3 general (by eLearning)		Complimentary	
Available now	**Legislative Drafting Masterclass 2023**	3 general (by eLearning)		€280	€230
Available now	**International Arbitration in Ireland Hub**	Up to 7.5 general (by eLearning)		€125	€110
Available now	**LegalED Talks CPD Training Hub 2023**	See website for details		Complimentary	
Available now	**New Solicitors Accounts Regulations**	See LegalED Talks CPD Training Hub		Complimentary	
Available now	**Effective Advocacy for Young People**	See LegalED Talks CPD Training Hub		Complimentary	
Available now	**Plain English for Lawyers**	See LegalED Talks CPD Training Hub		Complimentary	
Available now	**Suite of Social Media & Website Courses**	4 x 1 management & professional development skills (by eLearning)		€176	€150
Available now	**Construction Law Masterclass: The Fundamentals**	10 general (by eLearning)		€125	€110

Law Society Professional Training, in collaboration with EIPA (European Institute of Public Administration), is offering free EU-funded training (with most expenses paid) to Irish-based solicitors on criminal and civil law. Upcoming training to be held in Luxemburg is as follows: EU Procedural Guarantees Instruments: 13 - 14 December 2023 (3 places available). EU Substantive Criminal Law - PIF Crimes: 6 - 7 March 2024 (4 places available)

*This Law Society Skillnet discount is applicable to all practicing solicitors working in the private sector. For a complete listing of upcoming courses visit www.lawsociety.ie/CPDcourses or contact a member of the Law Society Professional Training or Law Society Skillnet team on Tel: 01 881 5727 Email:lspt@lawsociety.ie or www.lawsociety.ie/Skillnet

WILLS

Campbell, Thomas (deceased), late of Chapel Street, Kiltimagh, Co Mayo, and formerly of Wembley, London, England, who died on 16 August 2022. Any person having knowledge of a will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact P O'Connor & Son, Solicitors, Swinford, Co Mayo; tel: 094 925 1333, email: law@poconsol.ie

Casey, Stephen James (deceased), late of 8 Plougastel Court, Westport, in the county of Mayo, who died on 9 March 2022. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Patrick J Durcan and Co, Solicitors, James Street, Westport, Co Mayo; DX 53002 Westport; tel: 098 25100, email: admin@patrickjdurcan.ie

Cremen, Patrick Joseph (deceased), late of 8 Seamus Quirke Park, Ballinlough, Co Cork, who died on 3 January 2006. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact FitzGerald Legal & Advisory LLP, 6 Lapps Quay, Cork; tel: 021 427 9800, email: law@fitzsols.com

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

- **Wills** – €163 (incl VAT at 23%)
- **Title deeds** – €325 per deed (incl VAT at 23%)
- **Employment/miscellaneous** – €163 (incl VAT at 23%)

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for November 2023 *Gazette*: 18 October 2023.**

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

Crotty, William (deceased), late of Kilmacahill, Cloyne, in the county of Cork, who died on 30 May 1971. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if anyone has any information with regard to its whereabouts, please contact Diarmaid Falvey, Solicitors, Church Street, Cloyne, Co Cork; tel: 021 465 2590, fax 021 465 2868, email: info@diarmaidfalvey.ie

Doyle, Ronald (deceased), late of 7 Wadelai Road, Glasnevin, Dublin 11, who died on 23 August 2023. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased please contact Spelman Callaghan Solicitors, 9 Main Street, Finglas, Dublin 11; tel: 01 836 1100, email: finglas@scsolicitors.com

Early, Peter (deceased), late of Caldramoran, Elphin, Co Roscommon, who died on 13 May 2023. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Callan Tansey Solicitors, Crescent House, Boyle, Co Roscommon (ref: MMN/CNN257/1); tel: 071 966 2019, email: info@callantansey.ie

Garvey, Patricia (deceased), late of 31 Kenilworth Road, Rathmines, Dublin 6. Would

any person having knowledge of a will made by the above-named deceased, who died in Germany on 4 January 2022, please contact John O'Neill & Co, Solicitors, Bride Street, Loughrea, Co Galway; tel: 091 871 776, email: info@joneillco.com

Kelly (née Kiely), Mary Veronica (otherwise known as Vera) (deceased), late of Pound Farm, Castletownshend, Skibbereen, Co Cork, formerly of Connolly Street, Bandon, Co Cork, who died on 22 March 2023. Would any firm having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in contact with the deceased regarding her will, please contact HD Keane Solicitors LLP, 22 O'Connell Street, Waterford City; tel: 051 874 856, email: lucy.blake@hdkeane.com

King, Daniel P (deceased), late of The Orchards, Blennerville, Co Kerry, who died on 17 August 1965. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same or was in contact with the deceased regarding his will, please contact Carol Jermyn of Jermyn Baker Solicitors, 50 South Mall, Cork; tel 021 475 7080, email: carol@jblaw.ie

McCabe, Augustin (deceased), late of 13 Summerhill Close, Co Meath, who died on 22 March 2015. Would any person having knowledge of any will made by the above-named deceased please contact Sonia McEntee Solicitors, 13a Main Street, Ongar, Dublin 15; tel: 01 640 2714, email: info@soniamcenteesolicitors.ie

Noonan, Mary Theresa (otherwise known as Peggy Noonan) (deceased), late of 47 Boot Road, Clondalkin, Dublin 22, who died on 21 September 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Tom Collins & Co Solicitors LLP, 132 Terenure Road North, Dublin 6W; tel: 01 490 0121, email: info@tomcollins.ie

O'Brien, Thomas (deceased), late of The Rath, Swords, Co Dublin. Would any person having knowledge of a will made by the above-named deceased, who died on 1 January 2019, please contact Frank Murphy Solicitors of Priory House, 19 Priory Office Park, Stillorgan, Blackrock, Co Dublin; tel: 01 283 5252, email: sbyrne@fmlaw.ie

O'Carroll, Michael Plunkett (deceased), late of 39 Grange Park, Rathfarnham, Dublin 14. Would any person having knowledge of a will made by the above-named deceased please contact Rochford Gibbons, Solicitors, 16/17 Upper Ormond Quay, Dublin 7; DX 1015; tel: 01 872 1499, email: info@johnrochford.ie

O'Meara, Sean (deceased), late of 31 Moyclare Close, Baldoyle, Dublin 13, who died on 15 August 2023. Would any person holding or having the knowledge of a will made by the

above-named deceased please contact Michael J Kennedy and Co, Solicitors, Parochial House, Baldoyle, Dublin 13; tel: 01 832 0230, email: reception@mjksolicitors.com

Tauckoory, Pravin (deceased), late of 15 Bay Meadows Avenue, Hollystown, Dublin 15, who died on 16 August 2023. Would any person having knowledge of the whereabouts of any will made by the above-named deceased, or if any firm is holding same, please contact Williams Solicitors LLP, 3 Dawson Street, Dublin 2; tel: 01 675 3000, email: info@williamssolicitors.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant (Ground Rents) Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of property known as 65 Mardyke Street, Skibbereen, in the parish of Abbeystrewery, barony of east division of West Carbery, county of Cork, and in the matter of an application by Francis and Ann Cahalane: notice of intention to acquire the fee simple

Take notice any person having an interest in any estate in the above property that Francis and Ann Cahalane (the applicants) intend to submit an application to the county registrar of the county of Cork for the acquisition of the fee simple interest and all intermediate interest in the aforesaid property, and any person asserting that they hold a superior interest in the property is called upon to furnish evidence of title to the premises to the below named within 21 days from the date hereof.

Any person having any interest in the property superior to a reversionary lease of 1 September 1965 between Hanora O'Shea, May Hegarty, Muriel Goulding, Ambrose O'Shea and Patrick V McSweeney of the one part and Mary Quirke of the other part, of property at 65 Mardyke Street, in the town of Skibbereen, parish of Abbeystrewery, barony of east division of West Carbery and county of Cork, should provide evidence to the below named.

In default of such information being received by the applicants, the applicants intend to proceed with the application before the county registrar and will apply to the county registrar for the county of Cork for directions as may be appropriate on the basis that the person or persons entitled to the superior interest including the freehold interest in the said premises are unknown and unascertained.

Date: 6 October 2023

Signed: Jerome A McCarthy Solicitors (solicitors for the applicants), 10C South Bank, Crosses Green, Cork

PRO BONOBO

I want my milk and I want it now

● A real-estate agent in British Columbia, Canada, has been caught on home-surveillance footage drinking milk straight from a container taken from a client's fridge. The jug chug has cost him a CA$20,000 fine plus legal expenses.

Mike Rose, who was waiting for potential buyers to show up at his client's house, got thirsty and checked out the fridge. The homeowners later reviewed security camera footage and saw Rose drinking from a milk drum and replacing it, CBC Radio-Canada reports.

Rose was fined approximately CA$20,000 for conduct unbecoming under the *Real Estate Services Act*, plus almost $2,500 to cover the enforcement expenses.

Turkish delight?

● The founder of a failed crypto-currency exchange has been sentenced to serve 11,196 years in a Turkish prison, reports the *Wall Street Journal*. Prosecutors had asked for a sentence of more than 40,000 years.

Ozer fled to Albania after the crypto collapse, leaving more than 2,000 customers out of pocket. He was extradited to face trial for money-laundering and related charges.

"With good behaviour, you'll be out in 9,000 years."

"If I were to establish a criminal organisation, I would not act so amateurishly," Ozer (29) told the court in maintaining his innocence. "I am smart enough to lead any institution on Earth," he added. "That is evident in this company I established at the age of 22."

The emperor's new art

● In 2021, a Danish museum opened two crates to inspect a commission by artist Jens Haaning. The works – titled *Take the Money and Run* – were completely blank canvases, says npr.org.

The museum had provided Haaning with a loan of 532,549 Danish krone (€71,400) to recreate earlier works that comprised actual cash on canvas, showing the disparity between the annual incomes of a Dane and an Austrian.

Haaning was ordered by a court to repay most of the money, as well as legal fees. The judgment deducted €5,350 from the full loan amount to serve as Haaning's artist's and viewing fee, since the museum had actually exhibited the blank canvases, saying "even the missing money in the work has a monetary value when it is called art and thus shows how the value of money is an abstract quantity".

Working on a chain gang

● Four men in Louisiana State Penitentiary filed a class-action lawsuit on 16 September, saying they have been forced to work in the prison's fields for little or no pay, even when temperatures soar past 100 degrees, *The Washington Post* reports.

The men work on the 18,000-acre prison farm known as 'Angola' – the site of a former slave plantation. If they refuse to work or fail to meet quotas, they can be sent to solitary.

"This labour serves no legitimate penological or institutional purpose," the suit said. "It's purely punitive, designed to 'break' incarcerated men and ensure their submission." g

EBA
Employment Bar Association

Employment Law Conference 2023

Friday 10th November | 2pm - 5.30pm

Distillery Building, Dublin 7 & Online | 3 CPD Points

Registration and light lunch from 1.30pm

Panel 1 Chair:
The Hon. Mr. Justice Oisín Quinn

The expansion of employment rights over the years
Mr. Rossa Fanning SC, Attorney General

Employment Law and the EU Charter
Ms. Catherine Donnelly SC

GDPR and Employment litigation
Mr. Declan Harmon BL

New penalisation regime under PDA 2022
Ms. Ruth Mylotte BL

Panel 2 Chair:
Ms. Sara Phelan SC, Chair, Council of The Bar of Ireland

Options on dismissal: the role of the injunction
Mr Peter Ward SC

Followed by Panel Discussion comprised of:
Mr. Marcus Dowling SC
Ms. Cathy Maguire SC
Mr. Tom Mallon BL
Ms. MP Guinness BL

To be followed by a reception held in The Sheds, Distillery Building.

Register at ti.to/eba/ebaconf23
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