Running with the pack
What in-house legal teams should look for when engaging external providers

Cat out of the bag
Recent judgment on the scope of the authority of independent experts

Who let the dogs out?
The *Gazette* speaks to top property solicitor Michael Walsh

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CONTENTS PAGE

PREVIOUS PAGE

NEXT PAGE

NEXT SECTION/ FEATURE

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CASE STUDIES

With SureSkills, you'll find an IT service partner who has the vision and resources to respect and deliver your business goals, every step of the way.

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Leading legal firm Philip Lee secures its future with managed IT infrastructure as a service, delivered by SureSkills

PHILIPLEE

The challenge

For a firm running its IT systems the traditional way, in-house, sooner or later it reaches the physical limits of what its hardware can do. The business then faces the choice of being constrained by the limits of those IT systems or finding the budget for an expensive and potentially disruptive upgrade.

In the case of law firm Philip Lee, its existing IT systems were coming to end of life, at a time when the business was planning a merger, while also managing new working arrangements during the COVID-19 pandemic. It added up to a strain on the infrastructure.

Since being founded in 1993, Philip Lee has grown from a specialist practice into a full-service firm that serves global clients in sectors including energy, finance, food, media and pharmaceuticals. The 2019 'Law Firm of the Year' merged with McEvoy Corporate Law in Spring 2020, creating a combined operation with 35 partners and more than 60 lawyers, operating from the Dublin headquarters and offices in London, Brussels and San Francisco.

The goal

"My goal for the firm is to ensure IT is an asset as opposed to a financial burden," says Jason McGovern, the firm's IT Manager. Delivering on this goal meant reimagining how the firm bought and managed its IT systems.

In early 2020, Philip Lee had been running a large number of virtual servers on hypervisor hosts, together with a storage array, from its headquarters in Dublin. Its backup and disaster recovery systems needed manual intervention and couldn't be managed remotely. Shortly after, the COVID-19 pandemic forced offices to close, which limited access to those servers. At the same time, the merger was being completed. This involved the transfer of substantial volumes of data.

> *In my mind, SureSkills were the clear winner for this project because they provided a compete all round package – not just servers but the support, and the disaster recovery capability. From working with them previously, and knowing the levels of support they provide, that gave me peace of mind. As well as that, the biggest benefit for me is that when I pick up the phone, they're all technical guys and we can get straight into conversation without waiting to escalate an issue.*
>
> Jason McGovern, IT Manager

The migration

Philip Lee had already worked with SureSkills on a previous project to migrate its emails to the cloud and it knew the company's expertise in serving the legal sector would be a benefit again when the time came to upgrade the servers.

After reviewing different options and what would be a good fit for the firm, SureSkills proposed a service that included fully hosted and managed IT infrastructure, cloud-based disaster recovery and backup, and desktop as a service. Instead of the firm needing to procure new hardware, manage it on site, and watch as its capacity became constrained over time again, SureSkills manages the infrastructure on the firm's behalf. This way, Philip Lee can commission new capacity or processing power quickly and easily, as the business needs dictate.

SureSkills provided a complete project plan for managing the migration to the new infrastructure. It handled the upgrade and testing outside regular office hours to minimise any downtime for the firm. During the project, it kept Philip Lee's IT team up to date with any developments. "Things moved over seamlessly, and our end users didn't even notice except that things worked faster," says Jason. The entire project took just six weeks to complete.

The benefits

Philip Lee now has a flexible IT infrastructure that can respond to its needs now and into the future, befitting its status as a leading law firm. Jason McGovern says the project has delivered many benefits, such as having a reliable partner that acts as an extension of its own IT team. "By going with SureSkills, what I'm buying is the people, their experience in the legal sector, and their expertise. It delivers peace of mind and that's what's proved to be the biggest benefit for us," he says.

The fully managed and monitored IT infrastructure will make it much easier to manage change in the future. "If we go to upgrade one of our major software tools, we can scale up our hardware easily. That removes an obstacle that was always there in progressing our IT system. We can move our systems to our DR infrastructure, and then we can upgrade our chosen applications easily as opposed to powering everything off," McGovern says.

The firm is also considering a possible office move in the future. With its new IT infrastructure, it will be able to manage this process painlessly, since any relocation won't involve shutting down the hardware that the firm depends on.

As part of the managed services agreement, SureSkills monitors the infrastructure 24/7, ensuring constant availability and uptime which is critical for a legal firm. "Their level of monitoring is quite impressive. I often get a call to say "did you know your server will soon be running low on capacity before I've even noticed. Knowing I'm always informed is another big benefit of the service," adds McGovern.

The fully managed infrastructure also comes with additional benefits for security and data protection adding to our existing layers, which is especially critical for a law firm handling commercially sensitive information. "With the managed service, we get a level of security that small to medium sized firms would struggle to get with in-house IT. We have the additional security assurance that everything is patched on time, and we don't need to take in-house IT time and resources to research and test those patches," says McGovern.

The firm is planning to become certified to the ISO 27001 Information Security Standard and this infrastructure will help with achieving that goal. Most critically, McGovern believes this additional level of security will be vital in helping the firm to win business. "Our clients are very important to us, and their data is very important, so it's key that as a firm we take the security of their data very seriously. We make sure that it's safe not just for regulatory reasons but going that extra mile, that it's a service we provide. I very much believe IT is becoming part of the service that legal firms provide."

PRESIDENT'S MESSAGE

PULLING TOGETHER

On being elected as your president for the year, I announced that the theme for the year would be 'Friendship throughout the profession'. I believe that the bar associations are critical to furthering that aspiration. An information and action pack on negative interest charges was sent to the president of each bar association in early February. There followed an excellent attendance by the bar associations at a media skills briefing on 10 February. Hosted by the Law Society's Representation and Member Services Department, it was chaired by Maura Derivan of the Banking Charges on Deposits Task Force.

The campaign gives us an opportunity to demonstrate our collegiality – pulling together in order to overcome this latest challenge. There has been very significant media coverage of this issue, and I would ask every solicitor and bar association to continue that effort, as it is important that the public – our clients – understand what negative interest can mean for them when involved in legal transactions.

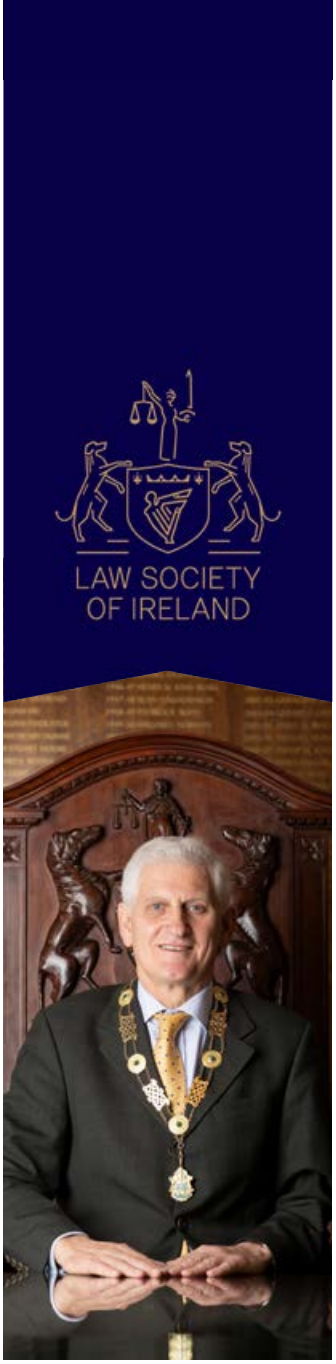
Huge pressures

While solicitors are under huge pressures, the overwhelming majority of us are, luckily, working. This is due to diligent lobbying in March 2020 to ensure that legal practice was classified as an 'essential service' at the outbreak of the pandemic. Arising out of the pandemic, 2021 is the first year that the Society required all practising certificates to be renewed online, and for all payments to be made electronically. The matching of payments received to solicitors' applications was sometimes difficult. On Saturday 30 January, automated reminder letters were sent to many solicitors who had already made their payments where there were outstanding process issues. As a practising solicitor myself I can understand that this would cause increased anxiety for many solicitors. I regret that additional anxiety. All reconciliations were completed during the first week of February.

On 19 February, I wrote as Law Society President to the chair of the National Immunisation Advisory Committee (NIAC), requesting that consideration be given to the early vaccination of solicitors attending court in child-care and criminal law matters, where physical distancing is, so often, not actually possible. We hope that the position of those solicitors will be considered sympathetically by NIAC.

A large-firm practitioner noted to me recently that sole practitioners make an enormous number of decisions 'on the hoof' constantly, not only in respect of clients, but in all areas of the management of their offices and business affairs. As a result, they tend to have a far greater breadth to cover compared with individual solicitors working within larger firms. It is fully accepted that larger firms employ larger numbers of staff, are more profitable, and that solicitors in larger practices are better positioned to consult more widely with others in their firms in relation to the business decisions they take.

Sole practitioners, by comparison, tend to work in the 'lower tier' of the market. They make decisions and quickly move on. When called on to account for those decisions, they tend to be measured against more structured and exacting decision-making standards. Sole practitioners, therefore, have elevated levels of risk, resulting in more complaints against them. This, in turn, often leaves them feeling hard done by. I believe we need to avoid being too harsh with, and too quick to judge, each other. Be kind!



> IT IS IMPORTANT THAT OUR CLIENTS UNDERSTAND WHAT NEGATIVE INTEREST CAN MEAN FOR THEM

Finally, I wish to commend the remarkable judicial courage shown by Judge Susan Ryan who, in December 2018, opposed a man who threatened her family law court in Smithfield. Sentence was handed down recently to the perpetrator. We are rightly proud when one of our solicitor judges shows this level of selflessness and courage. (See page 10 of this *Gazette*.)

JAMES CAHILL,
PRESIDENT

PIC: SHUTTERSTOCK/

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HAVE YOU MOVED? Members of the profession should send change-of-address details to: IT Section, Blackhall Place, Dublin 7, or to: customerservice@lawsociety.ie

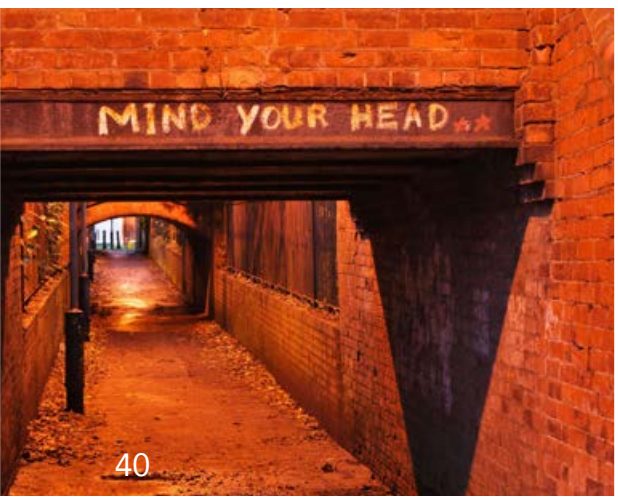

36

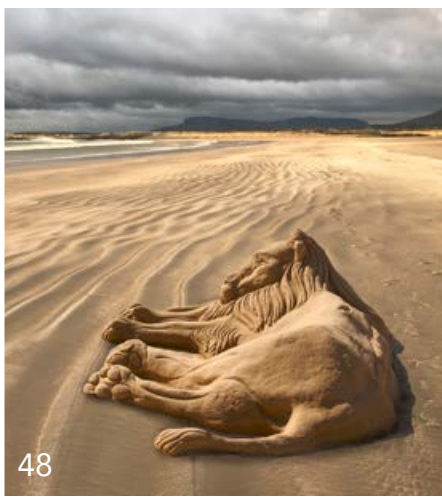

26


32


20

FEATURES





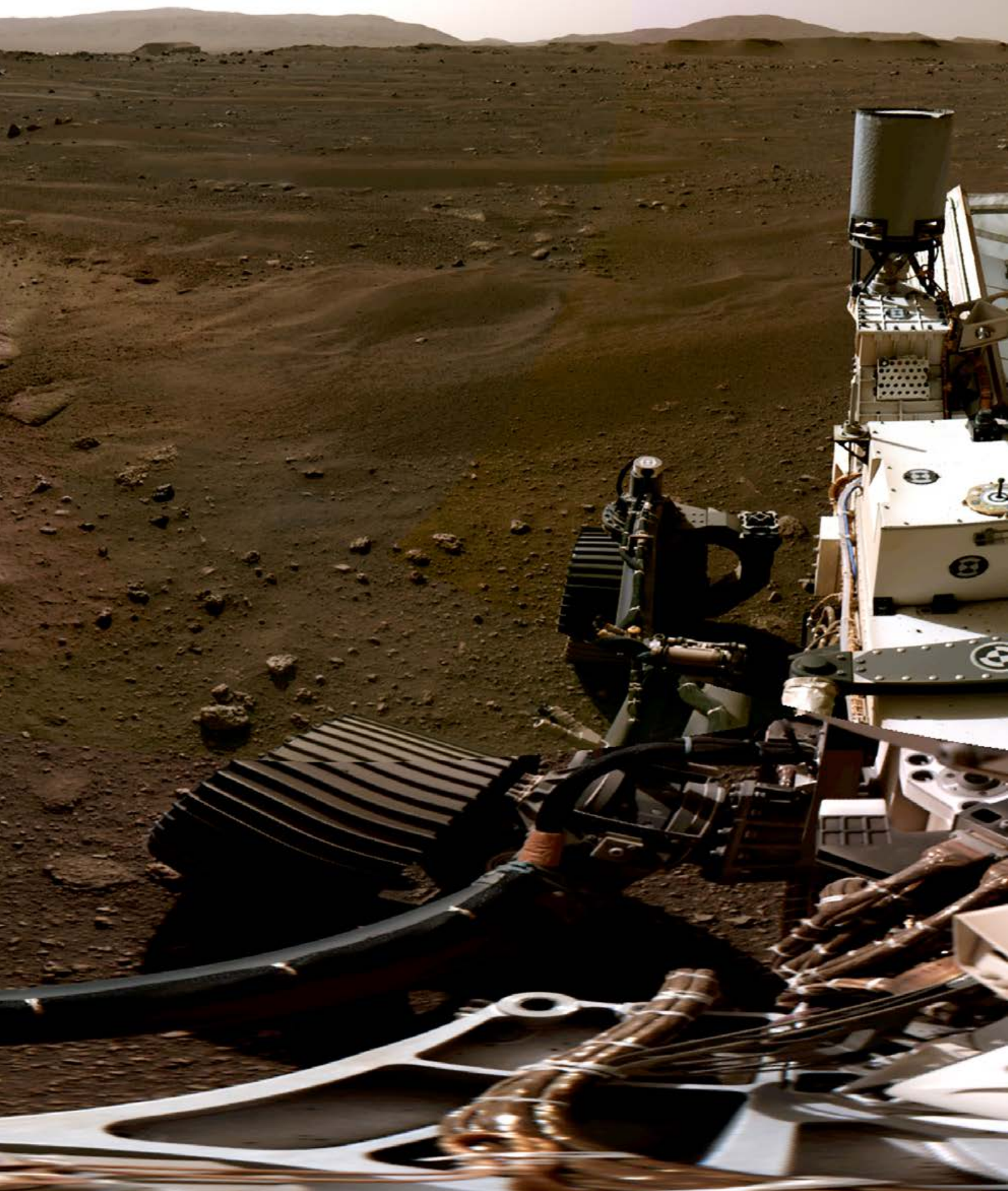
REGULARS

THE BIG PICTURE

AD ASTRA

This panorama of the Mar's Jezero Crater was taken by the navigation cameras on board NASA's *Perseverance* Mars Rover on 20 February 2021. The rover landed on 18 February 2021 in the crater, which is thought to be a dried-out lake featuring a former fan delta, rich in clay deposits. The rover is equipped with an array of scientific equipment, as well as a small helicopter. It will search for signs of ancient microbial life by examining the planet's geology. The aim is to pave the way for future human exploration of the Red Planet. The *Perseverance* mission will be Earth's first to collect samples of Martian rock, soil and regolith, which will be taken back to Earth by subsequent space missions. For updates, see mars.nasa.gov/mars2020

PIC: NASA/JPL-CALTECH



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HOWDY, PARTNERS: NEW APPOINTMENTS

Alan Connell has been appointed as managing partner of Eversheds Sutherland's Irish office

Deirdre Courtney (partner, Augustus Cullen Law)

Louise Carley (partner, ByrneWallace)

Cathal Hester (partner, LK Shields)

FIRST WOMAN CHAIR AND NEW PARTNERS

Law Society Council member Tara Doyle has become the first woman to be appointed chair of Matheson. Eight new partners were also appointed at the firm: Caroline Austin, Angela Brennan, Paul Carroll, Catriona Cole, Louise Dobbyn, Stephen Gardiner, Sandra Lord and Cillian O'Boyle

PC RENEWAL – PAYMENT REMINDER EMAIL

A reminder email was sent on 30 January to solicitors where the Law Society was having difficulty locating bank payments for practising certificate fees. The purpose of the email was:

- To remind solicitors who had not yet paid to do so before the deadline, and
- To ask those solicitors who had already paid, and the Society could not locate the payment, to provide documentation to assist with identifying the payment.

The reminder was sent due to the seriousness of the consequences for solicitors if they fail to pay for their practising certificate on time. The Society has no power to extend the deadline of 1 February, and so solicitors and firms can find themselves in the difficult position of being required to apply to the High Court to backdate their practising certificates for late payment, at significant extra cost.

Even when a firm has made a payment, there can be a number of reasons why the payment cannot be located:

- The bank has altered or added text to the reference number,
- The Society has not received the necessary electronic fund transfer (EFT) payment form with EFT PC receipts from the firm,
- The firm has paid into the wrong bank account,
- An issue has arisen with the transfer, and it has not gone through or has been returned by the bank,
- The firm has made a transposition error on the reference.

The Society had a full team of staff working almost around the clock that weekend to assist any solicitors having difficulty with the payment process, so as to avoid solicitors and firms having to apply to the High Court, and to locate payments already made to avoid undue delay in processing applications.

The reminder email served the purpose of, thankfully, assisting a number of solicitors to avoid having to backdate their practising certificate, and allowed the Society to resolve 'problem' payments more rapidly than in previous years.

The reason why the emails were sent to individual solicitors is because solicitors themselves have the statutory responsibility to apply and arrange payment for their practising certificate, not the firms. There have been very unfortunate situations in previous years where the solicitor has assumed that the firm has paid, but the payment has not been received by the deadline, resulting in the solicitors having to apply to backdate their practising certificates.

WHO DO YOU THINK YOU ARE?

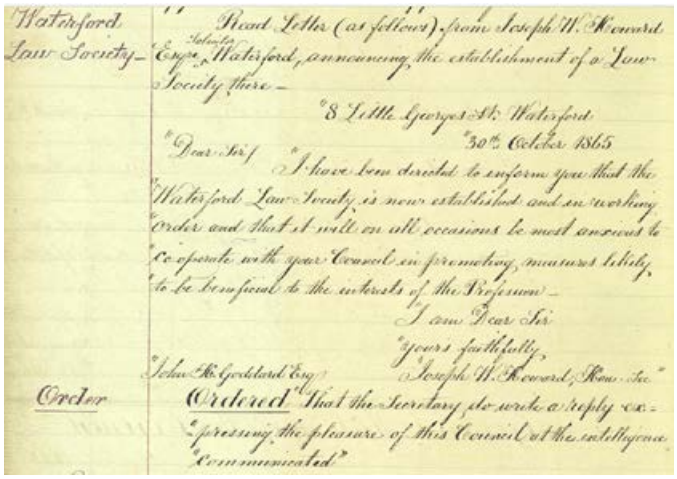
Professional associations have a long and distinguished history. Among the earliest in Ireland were the Dublin Society (founded in 1749 for improving husbandry and other useful arts) and the Royal Irish Academy (founded in 1786 for the advancement of science, politics, literature and antiquities).

The first known association of solicitors was the Society of Attorneys (1774), followed by the Law Club of Ireland, founded in 1791 with premises at 13 Dame Street until 1869, then at 25 Nassau Street until 1885, and thereafter at 23 Suffolk Street until 1899, when it was dissolved. The club was instituted "for the better regulation of practising solicitors".

An 1835 list shows 134 members, including Josias Dunn, who was the first president of the Law Society of Ireland (1830) and the Society of Attorneys and Solicitors (1841).

By 1886, the Law Club had a membership of 214 solicitors. "It is not unreasonable to suppose that the idea of forming the Law Society of Ireland was born in the Law Club at No 13 Dame St – members of the Law Club at their daily gatherings no doubt discussed the affairs of the profession, and lamented the fact that the attorneys and solicitors, as a body, had no professional organisation" (Plunkett, *Attorneys and Solicitors in Ireland*, 1953).

Other early known associations were the Northern Law Club, formed in Belfast in 1843 and later renamed as the Northern Law Society in 1876, and incorporated by royal charter as the Incorporated Law Society of Northern Ireland in 1922.


Waterford Law Society – Read Letter (as follows) from Joseph W. Howard Solicitor Esqr. Waterford, announcing the establishment of a Law Society there –

8 Little Georges St. Waterford
30th October 1865

Dear Sir, I have been directed to inform you that the Waterford Law Society is now established and in working order and that it will on all occasions be most anxious to co-operate with your Council in promoting measures likely to be beneficial to the interests of the Profession –

I am Dear Sir
Yours faithfully
Joseph W. Howard, Hon. Sec.

John K. Goddard Esq

Order – Ordered That the Secretary do write a reply expressing the pleasure of this Council at the intelligence communicated

Council minutes from 1865 show the receipt of a letter announcing the founding of the Waterford Law Society

Earliest bar associations

One of the oldest local bar associations is the Waterford Law Society, founded in 1865. The Law Society's Council minutes for 1865 show an entry for receipt of a letter dated 30 October from Joseph W Howard, solicitor, of 8 Little Georges Street, Waterford: "I have been directed to inform you that the Waterford Law Society is now established and in working order and that it will on all occasions be most anxious to cooperate with your Council in promoting measures likely to be beneficial to the interests of the profession".

The *Waterford News and Star* of 12 January 1866 stated that: "The Waterford Law Society at a meeting held on 9 January 1866 recorded that it was unanimously agreed that, from 3 February 1866, the solicitors' offices in the City of Waterford be closed on Saturdays at the hour of one o'clock, and that no business be transacted after that hour on such days, except during the sittings of the assizes and quarter sessions."

The Cork Law Society was founded in 1859, and was later followed by the Southern Law Society in 1878 and the West Cork Bar Association in the early 1900s. Mayo's bar association followed in 1906, while the Co Tipperary and Offaly (Birr Division) Sessional Bar Association (now the Tipperary Solicitors' Bar Association) was founded in 1908 – though the first extant minute book is for 1926. It was founded by Henry Shannon, solicitor, of Nenagh and Clonmel. Shannon's central role in the formation and nurturing of this bar association was heralded at a special dinner held in his honour after his appointment as Clerk of the Crown and Peace for the County on 23 December 1919, where the members addressed Shannon: "We recall that it is little better than 11 years since you came to practise among us and that your first act, a most courageous one in the circumstances, was to organise and place on a solid foundation, a County Sessional Bar Association – with very gratifying results, both to the professional status and social intercourse of the members."

We would like to learn more from members of bar associations around the country about their histories, and would invite members to dip into any archives/minute books in their possession and to contribute any available details about the history of their establishment, key personnel involved, and early issues debated.

Contributions may be sent to Mary Gaynor, head of library and information services, at m.gaynor@lawsociety.ie.

AI'S ETHICAL CRUX

The Irish Music Rights Organisation (IMRO) and Law Society Annual Copyright Lecture 2021 has heard that artificial intelligence (AI) tools are essential to humankind's ability to process data. The free public lecture heard that a clear dichotomy is emerging between anthropocentric approaches, as in EU legislation, and certain common-law jurisdictional attitudes to computer-generated works.

Barry Scannell (IMRO's director of legal affairs and regulatory compliance) said that originality is central to copyright and the concept of intelligent computers. AI is just a tool, despite its sophistication, he commented, and originality and creativity cannot be replicated, because they are uniquely human. When data is fed into AI tools, a human selects the data-training sets. This creates an ethical responsibility to ensure bias is not introduced.

IMRO adjunct professor of intellectual property law at the Law Society, Dr Mark Hyland, said the interface between copyright and AI blends key themes of technology and law, with a strong political dimension as AI becomes ever more ubiquitous.

Prof Jonathan Griffiths, Queen Mary University, London, said that the extent to which the products of AI can be protected in IP law presents interesting legal challenges.

ENDANGERED LAWYERS

JOSÉ VARGAS SOBRINHO JUNIOR, BRAZIL

On 1 January 2021, Brazilian police arrested José Vargas while he was at home with his wife and two daughters, seizing his mobile phone and computer. His detention is linked to a police investigation into the disappearance of Cicero José Rodrigues de Souza, president of the Association of Epileptics of Redencão and former candidate in the 2020 municipal elections. De Souza has been missing since October 2020.

On 4 January, the Brazilian Bar Association made a *habeas corpus* application, claiming that Vargas' arrest was unfairly based on "hypothetical premises, without proof in the records" and on a "fanciful thesis raised by the police authorities". A request for his provisional release was denied at that time, despite the fact that Brazilian law provides for provisional release in his circumstances. Since the detention, audio files and pictures unrelated to the case have been disseminated on local networks and WhatsApp groups, tending to undermine his credibility and destroy his public image.

On 25 January, he was transferred to home detention after a court decided on the *habeas corpus* application.

Vargas is a human-rights defender, university lecturer, and lawyer. He has dedicated his life's work to the defence of landless rural workers, indigenous people, and traditional communities in the state of Pará – the most dangerous region in Brazil for the defence of land rights.

He is well known for his work on emblematic collective cases that go against the interests of landowners and other economic groups in the region. In recognition of his human-rights work, particularly on land rights, José Vargas received the 2017 João Canuto Award, granted by the Human Rights Movement, and the 2018 Paulo Frota Medal, awarded by the Legislative Assembly of Pará.

Vargas has a record of being targeted as a human-rights defender, and has been included in the Programme for the Protection of Human Rights Defenders since 2017 due to the increased threats faced by him. In the past, Vargas has been forced to leave the city with his family as a protective measure.

Alma Clissmann is a member of the Law Society's Human Rights Committee. (With thanks to Frontline Human Rights Defenders.)

JUDGE PRAISED FOR 'REMARKABLE COURAGE'

PIC: WWW.COLLINSPHOTOS.COM

A man who threatened a family law court with a fake pistol and bomb has been jailed for six years. Edmund Dunican, Ballycoolin, Dublin, held up a judge, a barrister, and his estranged wife during a family law hearing in Smithfield on 20 December 2018.

Dunican pleaded guilty to one count of carrying an imitation firearm with criminal intent. He had also been wearing a device around his neck that looked like a pipe bomb. He had threatened opposing barrister Lisa Daly and had told Judge Susan Ryan, a judicial assistant, and the registrar that they could leave the court. Judge Ryan refused to do so, however, instead asking the man to lay down his firearm.

The 17-minute siege ended after an armed garda negotiator persuaded Dunican to surrender his weapon. A specialist unit was called in to examine the suspect device.

In a letter of apology on 26 January 2021, Dunican said that he had never intended to hurt anyone. Judge Patricia Ryan reduced a sentence of 11 years to eight years because of mitigating factors, including Dunican's remorse and his state of mind at the time. She also backdated the sentence to the day of the offence, when Dunican went into custody. Dunican has no previous convictions.

'Bravery'

Commenting on the outcome, Law Society President James Cahill noted the "remarkable judicial courage" shown by Judge Ryan: "Such bravery in the ordinary course of a judge's work is unprecedented. I wish to pay tribute to her bravery and to say how proud we are when one of our solicitor judges shows this level of selflessness and courage.

"Judge Ryan's conduct has been the subject of much positive discussion among family lawyers. She not only acted to protect those in her courtroom, but prevented those attempting to assist from putting themselves in danger."

ARDCHÚRSA CLEACHTADH DLÍ AS GAEILGE

The PPC2 elective Advanced Legal Practice Irish/*Ardchúrsa Cleachtadh Dlí as Gaeilge* is open to practising solicitors, who will be registered on the Irish Language Register (Law Society)/*Clár na Gaeilge (An Dlí-Chumann)* on meeting all its attendance, coursework and assessment criteria. A Leaving Certificate, Higher Level standard of Irish, is the minimum entry standard.

The course will run from 14 April until 10 June 2021. The contact hours are delivered on Thursday evenings from 6pm to 8pm via Zoom. The first three weeks of lectures are made available for tracked online engagement by practitioner participants, with virtual attendance commencing 29 April 2021. There are two coursework weeks built into the timetable, to facilitate collaborative group work.

This course is a 'blended-learning' one, that is, a mixture of online and face-to-face attendance in small group workshops, building on prior completion of individual and group coursework. Further online lectures will be made available later in the course. Assessment will combine continuous assessment, group drafting, and an individual oral presentation. It is recommended that course participants have a good level of IT skills.

The course will fulfil the full practitioner CPD requirement for 2021. The fee for 2021 is €625. Further information, including a brochure and an application form, is available at www.lawsociety.ie/alpi.aspx. Contact John Lunney, tel: 01 672 4802, j.lunney@lawsociety.ie. Information on the register can be found at www.lawsociety.ie/Find-a-Solicitor/Clar-na-Gaeilge.

CHIEF JUSTICE NAMES PAROLE BOARD CHAIR

Chief Justice Frank Clarke has nominated High Court judge Mr Justice Michael White as the inaugural chair of the Parole Board. The establishment of the statutory body had been identified as a priority in the Justice Plan 2021, published on 22 February by Minister for Justice Helen McEntee. The board, comprising between 12 and 15 members, is expected to start operating by July.

IRLI IN IRELAND

IRLI EXPANDING AT HOME AND ABROAD

The backing of Irish legal trainees signals a new dawn for the rule of law in Africa

While the work of IRLI continues apace in Tanzania and Malawi, and we plan for future work in South Africa and Zambia, we also have been very active across Ireland.

Over the last number of months, we have given virtual lectures on our work to students at the Law Society's Law School at Blackhall Place, the University of Ulster, Queen's University Belfast, and the Irish Centre for Human Rights at the National University of Ireland, Galway.

Following on from the lectures at Blackhall Place, the students set up a committee of IRLI trainees. The committee has been hugely helpful to IRLI on researching legal matters, both in Ireland and across common-law jurisdictions in Africa. It has also been assisting us with research on compliance and technology, as well as Malawi's human-rights obligations before UN treaty and charter mechanisms.

With the help of the trainees, IRLI is planning more engagement in this area. Already this year, the team in Malawi has taken a lead in filing a joint submission before the UN Human Rights Committee. The PPC1 hybrid programme students have now taken on the mantle, and are assisting us with further research.

We have also given a number of lunchtime seminars to solicitors' firms around the island, and members of our team have spoken on RTÉ Radio 1, RTÉ Raidió na Gaeltachta, Newstalk, and featured on Maynooth University and *Echo Chamber* podcasts.

While the vagaries of the pandemic have restricted our ability to have in-person events, we do hope to be able to visit bar associations and third-level institutions around Ireland later in the year. We are also hopeful that we will be able to run additional events and, of course, our annual criminal law and commercial law seminars.

IRLI has also launched a revamped website, and is in the process of hiring a Matheson-sponsored media and communications consultant to assist us in improving our online presence and output. We would encourage you to follow us on LinkedIn, Facebook, Instagram or Twitter to find out more about our work.

Aonghus Kelly is executive director of Irish Rule of Law International.

Introducing our new 'Ask an expert' section on wellbeing issues that matter to you.

THIS LOCKDOWN IS WEARING ME DOWN

Q I'm a solicitor in a mid-sized firm. I'm generally happy in my job and I'm the sort of person that tends to be 'glass-half-full', but at the moment I'm feeling weary. I hadn't realised until this lockdown how much I missed being in the office, and how much having people around motivated me. The problem is, I don't want to tell anyone at work how I really feel, and don't want to burden my colleagues and friends. Plus, I'm worried about what others might think of me if I say that I'm struggling, and how it might affect my career.

A This lockdown is tough on everyone, and you're not alone in what you've described. Feelings of isolation and lower mood are showing up more frequently. These are understandable responses, and they can seem overwhelming at times, but there are some things we can do that might ease these feelings and change the mood.

Firstly, it is important to recognise what we can and cannot control. At the moment, we are all living with restrictions, most of which we are unable to change.

If we spend our time thinking about what is beyond our influence, this may feel disempowering and can lead to frustration. However, focusing on those elements of our lives that we *can* shape gives us back a sense of purpose, and can provide a different perspective on our situation.

I understand that you don't want to tell anyone at work how you feel, but perhaps there is someone that you're happy chatting with. You don't need to go into detail about how you are, but sometimes that experience of connecting and simply talking (about anything) can make us feel less isolated. We are all missing social interactions and, while we can't yet replicate what we used to do, we can be deliberate about how we interact in order to stay connected.

Some teams have a five or ten-minute 'free discussion' at the beginning or end of scheduled video meetings, so that people can do what they would naturally do in the office – chat and be social with each other. This is different to having a full 'check-in' session, where people might feel under pressure to be upbeat; it's more a short time for the small talk that just isn't happening at the moment. You don't mention whether you have team meetings, but I wonder whether something like this could be implemented.

Another suggestion that might help is to pay attention to your mood and to note those times throughout the day when you have more energy or feel less weary. If you recognise what is going on around you at these times, you can then intentionally build more of this into your day to try to increase these 'moments of vitality', until we get back to doing all the things we are missing.

To submit an issue that you'd like to see addressed in this column, please email professionalwellbeing@lawsociety.ie. Confidentiality guaranteed.

This question and answer is hypothetical and was written by Katie Da Gama (lawyer, executive coach and leadership development consultant in Dublin). Any response or advice provided is not intended to replace or substitute for any professional, psychological, financial, medical, legal, or other professional advice.

LegalMind is an independent and confidential mental-health support available to Law Society members and their dependants, 24 hours a day, and can be contacted at 1800 81 41 77.

WORKPLACE BULLYING AND THE CULTURE OF FEAR

From: Name and address withheld

Thank you for the recent article by Dr Angela Mazzone and Prof James O'Higgins Norman on 'Bullying in the workplace' (*Gazette*, Jan/Feb 2021, p48). Recently, I heard a young woman talking on the radio about her experience of anorexia and bulimia. I sat in my car, crying, transported back to the days of my apprenticeship in the 1990s and my experience of developing the same eating disorders when I was bullied.

I remember the dread of going into the office every morning to work for someone who cultivated an atmosphere of fear, intimidation and negativity. The only apprentice, I worked really hard and was keen to learn, but my boss didn't take the time to teach or explain. He never once praised or commended me in the time I spent there. He just demanded results. I depended on the support staff and my own wit to educate me in his fields of practice, operating in constant dread of getting something wrong. Every morning, we asked each other, "What sort of a mood is he in today?" We covered for each other if we spotted an error or omission, so that his anger wouldn't be triggered.

Even though the other partner always treated me with respect, and I learned so much from him, I couldn't tell him about the bullying because of their close relationship as friends and business partners. I don't know if he was aware of how badly his colleague behaved, if he was what the article called a 'bystander'. I felt powerless, as I knew that it would be a major exercise to change apprenticeships and I wouldn't be able to disclose the reason why I stuck it out – but I did so at a huge personal cost.

The importance of collegiality has always been emphasised by the Law Society. Its president James Cahill spoke of the importance of promoting friendship in the December 2020 edition of the *Gazette*. Yet, in January 2020, Gazette.ie reported that two-thirds of those who contacted LawCare about mental-health issues said they were being bullied by a manager or superior. Two-thirds of the callers were women, and over half were trainees/pupils or had qualified in the last five years. Little appears to have changed in 25 years since my experience.

Why do so many solicitors still think that it is okay to bully interns, trainees or employees? Why do colleagues who observe it, tolerate it? I cannot put my name to this letter as it would identify the bully, but I welcome the upcoming survey by the Law Society. It is an opportunity to challenge and change these behaviours, a time to stop excusing, and start responding.

WEB OF PROTECTION

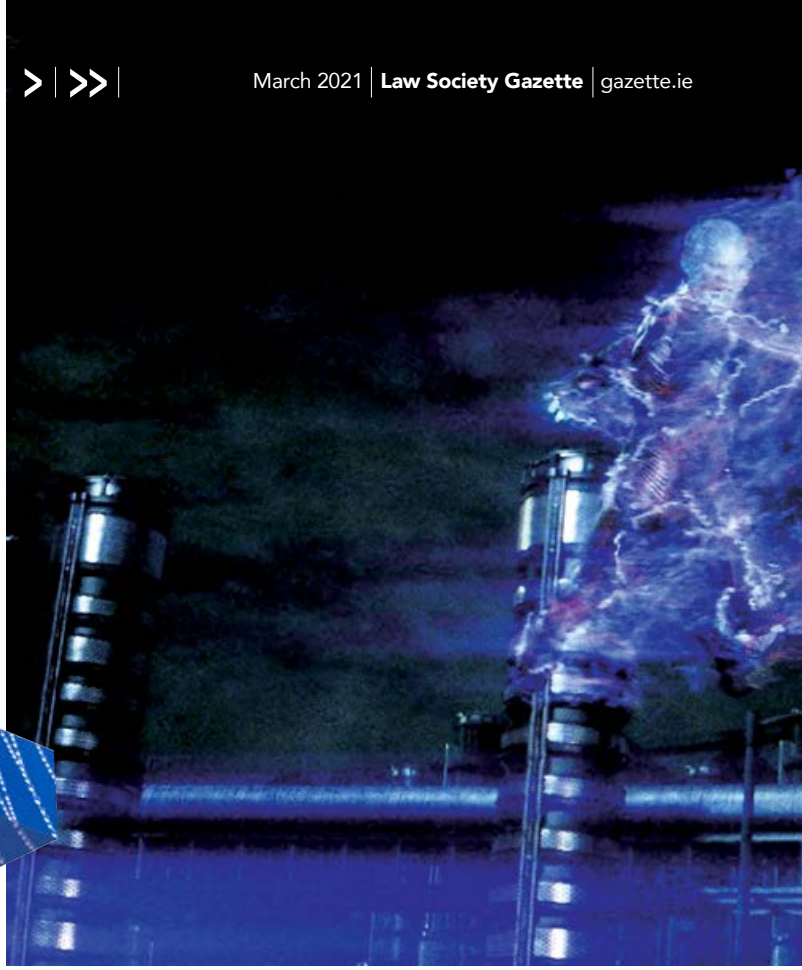
Assessing and addressing risk and compliance in your law firm is increasingly important – but where to start? **Rebecca Atkinson** swings into action

REBECCA ATKINSON IS DIRECTOR OF RISK AND COMPLIANCE FOR HOWARD KENNEDY LLP, LONDON

PIC: SHUTTERSTOCK/

AT A GLANCE

- **In order to understand where your firm's gaps in risk and compliance might be, you need to understand what risks there are**
- **A good place to start is to conduct a gap analysis in your firm. This will help inform your plan for the future**
- **Do not underestimate the power of a good plan. It not only gets things done, but is a tangible document that insurers like to see**



f you have the pleasurable task of assessing and addressing risk in your law firm, you might be wondering where to begin. You might be a member of your firm's risk-and-compliance team, or you may be a practitioner in a totally unrelated area and have been asked (or told!) that risk in the firm is now yours – all yours – to own.

So, what do you need to do? Where do you start? Let's demystify it all. A very good place to start is to conduct a gap analysis in your firm. This will help inform your plan for the future. There are many areas of risk and compliance to be considered in law firms, and the trick is to spot those that are deemed to be missing, or need work, and to draw up a good plan of action. (More on that plan below.)

The Dragon's Challenge

To help you conduct your gap analysis, here are some ideas for you:

1) Review what you have by way of processes, policies and guidance. What is missing or lacking? You may want to focus on just three or four areas of compliance, as this might be a large task.
2) Speak to colleagues and ask pertinent questions. If your policy says 'fee earners must do X', do they? Do they know they need to? Do they feel they understand the regulatory requirements of them?
3) How does your firm put policies and processes into practice? How are they communicated? How is compliance checked?
4) What is the firm's compliance training like? Is it up to date? Is it fit for purpose? Are staff really learning from it? Are staff members completing it or ignoring it?
5) Speak to brokers and insurers – what do they consider your firm's weaknesses to be? Trust me – they will be pleased to be asked. Do they offer a gap analysis service? Do they offer risk-management input? If so, take it up.
6) Has the firm had any regulatory feedback? What was that feedback – and does anything need to change because of it?

PIC: SHUTTERSTOCK/

> IF YOUR FIRM DOES NOT HAVE A RISK-AND-COMPLIANCE TEAM, CONDUCTING CERTAIN STEPS MAY LEAD YOU TO CONCLUDING THAT ADDITIONAL OR DEDICATED PERSONNEL ARE NEEDED TO TACKLE RISK AND COMPLIANCE IN YOUR FIRM

7) Does the firm have any committees in the risk-and-compliance space? Are they working, made up of the right people, and do they meet at appropriate times?
8) What do the complaints and claims against the firm tell you, if anything?

Into the Spider-Verse

In order to understand where your firm's gaps in risk and compliance might be, the reviewer and the firm need to understand what risks there might be. This can feel a little daunting but, by breaking it down into core areas of risk and compliance, the task can be tackled with relative ease. Below are some key areas to consider.

Complaints and insurance – does the firm have a good independent complaints procedure that is working? Are notifications to insurers up to date and being notified correctly? Does the firm have a healthy notification culture? Do people in the firm know who to report complaints or claims to? Are claims being handled correctly? Does the firm limit its liability, and is it at the right level? Is there a process for increasing that limitation?

Data protection and cyber security – does the firm have a data-protection policy that people understand? Does the firm have a data-protection officer, and do people know who that is? Do people know what to do if they accidentally send an email to the incorrect recipient? Does the firm have a process for handling data-erasure requests or data-subject-access requests, and is it fit for purpose? Does everyone in the firm understand cyber-risk and how to avoid falling victim? Does the firm have a mechanism for reporting cyber-attacks? Does the firm have a person with responsibility over cyber and information security?

Anti-money-laundering – does the firm have all relevant procedures, controls and policies in place that are needed to adequately tackle money-laundering? Are people trained regularly, and is that training working? Does the firm conduct all aspects of client due diligence that it should (ID, verification of ID, client and matter risk assessments, PEP/ sanction/ adverse media checks and ongoing monitoring)? Does the firm have a high-

risk register? Are the appropriate people appointed to important roles in the firm to report suspicions to the relevant authority and ensure compliance?

Statutory compliance – does the firm comply with all statutory requirements? These could be in the areas of anti-bribery and corruption, modern slavery, whistleblowing, and so on. You might also wish to consider health-and-safety and employment legislation.

Regulatory compliance – does the firm and its people comply with the relevant codes of conduct? Are people adequately trained to understand and handle ethical scenarios? Is the firm's letterhead/advertising compliant with regulatory requirements? Does appropriate training happen, and is it up to date?

Risk management – does the firm have appropriate risk registers? Does the firm have a procurement process that covers off any regulatory obligations? Does the firm have a process where contracts it enters into are reviewed to ensure they do not interfere with the firm's regulatory obligations? Does the firm have a destruction policy, and is it adhered to? Are new joiners inducted properly and understand the firm's risk and compliance policies and culture? Is the disclaimer at the end of your emails sufficient and compliant? Does the firm have an appropriate business continuity plan (which will have undoubtedly changed since COVID-19), and is it up to date? Does the firm have a policy around how and when to provide client bank-account details? Does the firm have appropriate engagement letter templates, and are they being used?

Other matters to consider – there are some aspects of firm life that often come under the risk-and-compliance umbrella because they don't seem to fit anywhere else. You need to consider these, too. These might be accreditation schemes, responding to audit letters from a client's accountant (as it may be risky to confirm too much information and create an expectation of reliance on the letter content), membership to lender panels, and so on.

PIC: SHUTTERSTOCK

Don't wait for things to go wrong...

The extent of the possible risks, as outlined above, might feel like overkill (but are not, in fact, all that there could be), particularly if your firm is a small one. That is okay. What is important is *not* to tick off as many areas as you can in a tick-box exercise, but rather to pick key areas to tackle, and concentrate on them methodically.

Homecoming

Once you have considered the risks that there might be and conducted a gap analysis, it is time to draw up a plan of action.

Do not underestimate the power of a good plan. It not only gets things done, but is a tangible document that insurers like to see and, rather than it highlighting the firm's issues to your detriment, it shows how serious you are about this subject.

Your action plan should set out the following:

1) What the compliance requirement or risk-mitigation area is,
2) Where the firm is currently, in terms of compliance or risk mitigation,
3) What needs to be done to bring the firm up to the level of compliance, or to mitigate the risk?
4) Who will undertake that work?
5) Who the liaison person should be in relation to the task (that is, business-service areas, or partners, and so on),
6) What the target date is for completion, and
7) Details of when completed.

You could also put your training schedule in this plan. Your plan could cover tasks to be undertaken over the next year or years. However, I would recommend carving tasks up, one year at a time, and being realistic about what can be achieved in that time. For example, AML compliance could be the main task for a whole year, with a few ancillary tasks (such as training) through the year, and some cyber-awareness notices/guidance and articles. Some areas are naturally much larger than others and, once you have brought

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FOCAL POINT

WITH GREAT POWER, COMES GREAT RESPONSIBILITY

Once you have considered the risk-and-compliance areas in the firm, conducted a gap analysis, drawn up a plan, worked out whether you need additional personnel, the next task is to convince the firm to invest money into risk and compliance. Hopefully, you are pushing on an open door but, if not, here are some ideas you might use to bring people along:

- *Complaints* – complaints lead to time spent and money lost, either in lost revenue by fee earners handling complaints, and/or writing-off time and bills. How much has been lost from a financial perspective due to complaints? How much time has been spent over the last year or two years that could have been spent fee earning? How much in terms of fees has been written off, or is unlikely to be paid, because of complaints? Use these numbers to see whether your firm would benefit from employing a person who could handle complaints, train fee earners on how to avoid complaints (that is, good costs information, good service, good communications), and advise fee earners how to correctly handle the situation where a client is looking like they might complain. Remember: that person is very likely to have lots of time to tackle other areas of compliance, too.
- *Claims* – the same analysis can be done here as above. If you were to employ a risk-and-compliance person, would they be able to assist in avoiding claims from happening? Would they be able to handle the claim in-house, saving fee-earning time or defence costs (this, of course, depends on your insurance arrangements)?
- *PII premium* – your premium is likely to go down if insurers can see good risk management in place. Is your premium currently high or too high? Would there be a benefit in employing a risk-and-compliance person to get your house in order? Speak to brokers to gauge whether they think it will have an effect.
- *Regulatory compliance* – of course, what should be done in terms of regulatory compliance should just be done – and there should be no need for any convincing. However, if you feel that some convincing is needed, seek out some disciplinary cases with hefty fines for non-compliance, and explain those to senior management.
- *Risks* – each risk to the firm will have a scary story that you can attach to it. Cyber and data protection, for example, are areas that need to be heavily invested in, unless the firm wants to be a sitting duck for fraudsters. There are plenty of hacking stories to illustrate this.

the firm up to the right level of compliance or risk awareness, you are then in a state of maintenance, audit/checking/reviewing compliance, awareness and training.

Save for those risk-registers/risk-analysis documents that may be required under regulations, the firm may decide to have a firm-wide risk assessment. This is not compulsory, but it can be a good way of analysing the risks faced at the firm, and how they will be mitigated. However, try not to make the risk assessment so large that it will be a serious task just to keep it up to date. The document needs to be useful rather than 'simply pretty' and never used after being created.

Endgame

If your firm does not have a risk-and-compliance team, conducting the steps outlined above may lead you to concluding that additional or dedicated personnel are needed to tackle risk and compliance in your firm. It is true to say that law firms are more regulated now than they have ever been, and there is often a need for a dedicated team – just as there is for HR, IT, or business development/marketing.

If your firm is considering creating or expanding the risk-and-compliance team, it can help to understand what other law firms' risk-and-compliance teams look like. To that end, personnel tasked with risk-and-compliance activities in their firm would do very well to liaise and network with risk people in other firms. g

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Rebecca Atkinson is the author of Assessing and Addressing Risk and Compliance in Your Law Firm *(2020,* bookshop.lawsociety.org.uk*)*

PAWS FOR THOUGHT

Cork-born Michael Walsh of ByrneWallace talks with Mary Hallissey about property, COVID's business impact, diversity, and the drive to modernise Ireland

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

Good airport connectivity is a weighty factor in any multinational decision to locate in Dublin, Michael Walsh says. The head of property at ByrneWallace believes passionately in mobility, and points to London's pre-eminence as a world city because of its deep investment in hypermobility for its huge population.

"We should have a developed underground and overground light-rail network in Dublin, for starters, and we just haven't grasped that," he says. Dublin must become truly safe to cycle, with pedestrian priority at key junctions, he adds, and decision-makers need to get to grips with clear gaps in the city's transport infrastructure.

"Not having Dublin Airport linked by light rail to the city centre would be one of the things considered by multinationals," he says. "Can my international workforce get home easily for the weekend to see their family?" they ask.

"If getting to the airport is a stressful, traffic-dependent event, that is not acceptable, in comparison to other capital cities."

As a society, we are often not so good at making difficult decisions, he believes. "We need greater housing density in city

ALL PICS: CIAN REDMOND

> IF THERE IS ANYTHING WE CAN SAY ABOUT THE IRISH MARKET, IT IS THAT IT IS EXTREMELY AGILE. WE WILL SEEK NEW MARKETS AND WORKAROUNDS, SUCH AS FREIGHT TRANSITING DIRECTLY FROM THE SOUTH OF IRELAND TO FRANCE

centres and close to transport hubs, but we give undue weight to objections or concerns, even in suitable locations," he says.

Beds, sheds and meds

Michael Walsh joined ByrneWallace in 1999 and, for the past decade, he has been head of property. He is also a member of the firm's management committee. A UCC BCL and LLB graduate, he trained at the former Noel Smyth & Partners before moving to Beauchamps.

"A lot of my work in the 'Celtic Tiger' era was in retail-related development. I was involved in a number of retail and town-centre developments, including Dundrum Town Centre and Athlone Town Centre.

"The focus today is on 'beds, sheds and meds'. A recent development we concluded was for Twinlite at Clongriffin, Dublin, which involved the construction of a 400-unit residential scheme that was forward-purchased by Tristan Capital."

Michael also acted for Jaguar Land Rover in the expansion of its R&D facilities in Ireland, and for online retailer Zalando on its European HQ Dublin let.

But he has also seen some unwelcome changes: "We are doing a lot more work and taking on more responsibility, for lower fees. This is especially so since the post-Tiger recession, where huge market forces brought about the commoditisation of much of the work we do."

Holding our own

"Conveyancing is no longer the 'bread-and-butter' work that it once was, which can be seen by the number of firms no longer proving private-client conveyancing services."

When Michael qualified, the Irish market was largely domestic. Now it is a hugely international affair: "I believe the quality of legal service provided in Ireland is exceptionally high by international standards. We often face firms in other jurisdictions, and we 'hold our own' very well," he says.

He observes a high degree of respect for property-owners in the Irish legal system. This legal certainty is what underlies the influx of foreign capital to the Irish property market. "There is a reason why international investors are interested in making very, very, considerable investments in Ireland – because we have a long-established history of clear laws that are judiciously and fairly applied,

SLICE OF LIFE

■ *What have you learnt along the way?*
Turning up 'suited and booted', as prepared as you can be, is the best start to any day or endeavour.

■ *Have your career expectations been met?*
Probably exceeded. For the past 20 years I have been as much a business owner as I am a lawyer. However, I probably could have benefited from more formal education and training in these areas.

■ *Advice to your younger self?*
Always double-check because, if it can go wrong, it will. Reason things through and ask more questions. The knocks and curve-balls will come, regardless of how good you are at your job. With resilience and a good handle on reality and reason, you can and will soldier through and come out the better for it.

■ *Cats or dogs?*
We have two miniature dachshunds, Duke and Dora, who get quite the attention on walks around the neighbourhood.

■ *Biggest influence on your life?*
Meeting my husband, Des Crowley, 23 years ago. He is a doctor (and now also an adjunct professor in the School of Medicine at UCD). I am lucky to have met my match so early in life.

■ *What are you reading?*
I have just started *Hamnet by Maggie O'Farrell*. Having read *The Heart's Invisible Furies*, I became a John Boyne fan. I am also reading *A Traveller at the Gates of Wisdom.*

■ *Favourite tipple?*
I am not much of drinker but, during Lockdown 2.0, we explored a cocktail to match dinner once a week. The winner was Pina Colada to match a Sri Lankan curry.

■ *Favourite flick*
Brokeback Mountain, by Ang Lee, one of the most beautiful and tragic love stories ever told on screen. Willie Nelson's *A Love that will Never Grow Old* was sung at our wedding celebration.

by a sophisticated and capable judiciary. My take is that, in general, the law will be biased towards the land-owner and the landlord," he says.

The international investor is absolutely vital to the health and continued development of the Irish property market and economy generally, Michael believes. International investors deliver the financial capacity to allow for the development of the residential units needed as the population grows. The downside is the potential for over-dependence on that global capital.

"It's a market that arrived very quickly and could equally evaporate," Michael warns. "Governments have been quite aware of that, and it's very important that there are no unannounced changes in tax status or in how regulated entities are treated, since such stability is one of the core reasons for investing in Ireland."

The key challenge, politically, is to maintain the structures and tax regime substantially as it is, so as not to scare off investors, Michael says. Multinational clients are only interested in Ireland's stable predictability, and would quickly reassess their investment decisions in light of any shocks.

Build-to-let schemes

Michael is currently working on what will be one of the first dedicated build-to-let schemes, in Santry in north Dublin, where he acted on the development and forward sale to an institutional entity. Such developments have the potential to bring in a new population base on a medium-term basis, he says.

"These developments have a particular planning use, which states that the individual units cannot be sold separately to each other and, therefore, the entire asset must be effectively held as one," he says.

Because blocks are owned and managed by an institutional entity, the rented environment is maintained to a high international standard, and this is good for the living experience of the occupants. "That suggests to me that one can consider renting long-term in a development that has been designed exactly for that, knowing that the level of services is not going to wax and wane," he says, pointing to mobile tech workers who plan to stay here for a number of years, without ever buying property.

"Our property market has been too focused on the traditional concept of the three-bed semi-detached house," he says. "Arguably, we need different types of places to live – a more dynamic property market with more choice and fewer constraints.

"In European countries, it's much more sophisticated, with many different types of places in which one can live – more suitable to the stage one is at in life," he says.

Through supply and demand, the plethora of new student housing now on the market as a result of investor activity will moderate prices, he believes. However, with the virus, everything is up for grabs, and sensible business will respond in a flexible way to fill up the student beds that have been emptied out during lockdown, he says. And, with the tourism short-let market in flux, a significant number of properties will come back to private rental, with a knock-on price-moderation effect.

Post-virus impact

Dublin will need to rethink its overall strategy for the 'new normal', he adds. There will be change, post-virus, he believes: "Offices are not dead, but they will get smaller, because we will use them for meetings and in-person collaboration, and to do work that requires physical presence," he says. "The future of city centres is the subject of a lot of high thinking, but businesses will have to be flexible around the wish to work from home," he believes.

While the COVID shadow has been long and dark, it has also saved Ireland from an overly negative focus on Brexit, he believes: "We could easily have talked ourselves into perceiving things as worse than they actually are," he muses.

While some sectors have seen significant Brexit impact, others, such as Irish mushroom growers, have already self-

corrected and found new markets. "If there is anything we can say about the Irish market, it is that it is extremely agile. We will seek new markets and workarounds, such as freight transiting directly from the south of Ireland to France," Michael says.

"The upside of a relatively small market is that we can pivot quite quickly and, so far, we've done a good job in restructuring to minimise the Brexit effects," he says.

We compare much better than we give ourselves credit for, despite the inequalities that need to be addressed. "From my perspective, Ireland is the best country in which to live … if you consider the relative safety and security we have."

Diversity of thought

Michael believes that diversity of thought is essential to the strength and resilience of any organisation – and in remaining resistant to groupthink and other limiting behaviours.

"We listen to our clients in ByrneWallace. We don't lecture our clients. That type of partnership has a lot of resonance in the market. We work hard to try to avoid the trap of adopting the first view that's expressed.

"Rigour demands that you look at a problem form an number of different perspectives, for example, by bringing in a contentious lawyer into a non-contentious matter. We always find that the additional layer creates such texture and colour in terms of the advice that we give," says Michael.

Diversity and inclusivity benefits everyone, and visible role models are important for younger lawyers, he says. As a gay man, he believes that the profession has

made huge progress on sex discrimination, LGBT, and other equality issues. "This is not just a numbers game, but also we see diversity at the level of market leaders – our former managing partner Catherine Guy was one of a number of leading female solicitors who made it to the top."

Michael points to subtle, yet powerful changes, such as the recent Law Society initiative to change the salutation in letters from the traditional 'Dear Sirs' to move away from the third-person masculine default.

The second city

Cork is a very different place now to the city he left 30 years ago "without any job offer", Michael muses. Ireland's second city has huge potential to become a credible alternative to Dublin, with the proper macro-level investment, he believes.

He makes the point that we should apply the same tolerance for national debt in the context of how much money was made available for COVID supports, in order to make the types of investments that would transform the regions and address so many of the inequalities that still remain.

Working from home in rural areas, with high-speed broadband, offers a once-in-a-generation opportunity to rethink our relationship with the physical place, as we become more electronic and digital in our dealings.

"I wouldn't rule out returning to Cork – it's a very vibrant, vital city. Cork people have huge pride in their city and country. But when I moved to Dublin, I realised the landscape was broader and wider.

"Dublin had an incredible energy in the early 1990s. It felt to me like a pluralist, open-minded place, where culture had meaning, and commerce was starting to look overseas for clients and business. The energy was infectious, and that was even reflected in its clubbing culture. It had an amazing night-time culture as well as a daytime economy, and it provided a good place for me to develop as a person.

"Competition between two cities can only be good, and Cork just needs a leg-up to position itself to compete with Dublin. If I've learned anything from business, it's that competition brings out the best in both."

Modernising the profession

In his sixth year on the Law Society's Conveyancing Committee, Michael has just been appointed vice-chair and will take the chair role in due course.

As part of his duties, he was the convenor of the Pre-Contract Investigation of Title Task Force that brought about the 2019 *Conditions of Sale*, a major Law Society initiative with a quick turnaround. He also has ongoing work on a number of the Conveyancing Committee's other task forces, dealing with commercial certificates of title, landlord and tenant, and the building agreements for the new homes market.

"My work for the Law Society is symbiotic with my work as a lawyer," he says. "Usually I will get involved in areas of special interest to me or where I have particular experience. I tend to shy away from areas where I feel there are better experts than me, and that seems to work for everyone.

"There is a strong sense of camaraderie on the committee and task forces. It is an excellent forum for the sharing of knowledge and ideas, and bringing about change," he says. g

> AS A GAY MAN, HE BELIEVES THAT THE PROFESSION HAS MADE HUGE PROGRESS ON SEX DISCRIMINATION, LGBT, AND OTHER EQUALITY ISSUES

AT A GLANCE

- International evidence indicates that the rehabilitation and reintegration of offenders into society benefits both victims and wider society
- However, experience suggests that the current Irish legislation does not sufficiently protect those who have worked to rehabilitate themselves
- The Department of Justice has embarked on an exercise to update and improve our 'spent convictions' regime

Ireland has lagged shamefully behind its European counterparts when it comes to spent convictions, argue **Dara Robinson SC** and **Aoife McNicholl**. The recent Oireachtas committee report now needs to be implemented

DARA ROBINSON SC IS A PARTNER AND AOIFE MCNICHOLL IS A SOLICITOR AT SHEEHAN AND PARTNERS, DUBLIN

LET THERE BE LIGHT

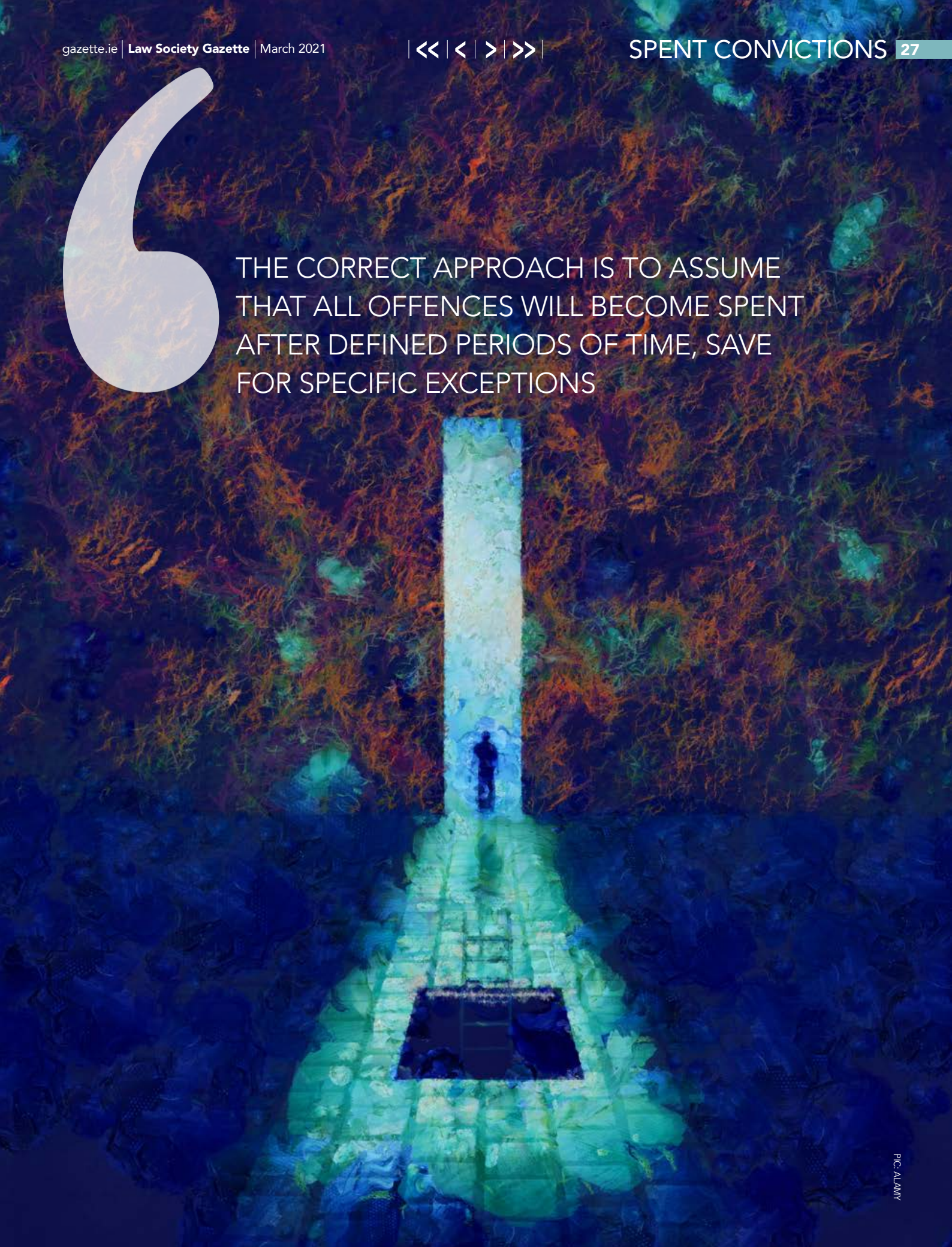
A commitment to the rehabilitation and reintegration of offenders must be a core principle of any effective criminal justice system. All international evidence indicates that the rehabilitation and reintegration of offenders into society benefits both victims and wider society by reducing levels of recidivism, and it allows people who have previously committed crime to make a positive contribution to society.

Without such rehabilitation, cycles of criminal behaviour are perpetuated, bringing about new victims of crime, blighting the lives of offenders, and devastating families.

Legislation providing for the expunging of convictions so that they might become 'spent' after a period of time recognises two objectives: firstly, that a person who has committed crimes can be rehabilitated; secondly, that in order for that person to become fully rehabilitated and reintegrated into society, they must be allowed to move on from past behaviours to education and gainful employment. In short, a criminal record is a clear barrier to progression.

The human condition

Ireland has lagged shamefully behind our European counterparts when it comes to spent convictions, and while the *Criminal Justice (Spent Convictions) Act 2016* was a welcome step toward addressing this failure, it did, by general consensus, not go far enough. Compared with countries like Germany and Spain – and the common-law jurisdictions of Northern Ireland, Scotland, England and Wales – the Irish



THE CORRECT APPROACH IS TO ASSUME THAT ALL OFFENCES WILL BECOME SPENT AFTER DEFINED PERIODS OF TIME, SAVE FOR SPECIFIC EXCEPTIONS

PIC: ALAMY

legislation on spent convictions is narrow, disproportionate and ineffective. In recognition of this, the Department of Justice has embarked on an exercise, by way of public consultation, to update and improve our 'spent convictions' regime.

All criminal defence lawyers have to advise people who are disproportionately affected by the existence of convictions in relation to work, travel, employment and education. Experience suggests that the current legislation does not sufficiently protect those who have, in many instances, worked very hard to rehabilitate themselves. We tend, unfortunately, to have to rely on experience, because (as the Oireachtas Joint Committee rather drily noted in its recent report) statistical evidence maintained by the department is deficient.

Blot their maps

While the 2018 private member's bill is an improvement on the 2016 act, we suggest that it still does not go far enough to bring Ireland up to best international practice.

At present, the types of convictions that can become spent are limited to those that resulted in a custodial sentence of less than 12 months, or a non-custodial (that is, suspended) sentence of less than 24 months. The 2018 bill proposes to increase this to custodial sentences of 24 months and non-custodial sentences of 48 months. While this increase is welcome, we believe it to be inadequate. We submit that the correct approach is to assume that all offences will become spent after defined periods of time, save for specific exceptions – for example, sexual offences or convictions

PIC: SHUTTERSTOCK

imposed by the Central Criminal Court.

The difficulty with limiting the type of convictions that can become spent by reference to the sentence received is most apparent when convictions imposed for offences under section 15A of the *Misuse of Drugs Act* are considered. Terms of imprisonment imposed for these types of offences are frequently lengthy, regardless of the personal circumstances of the individual or the number of previous convictions – often none – they already have, as they involve statutory minimum mandatory sentences.

Most persons convicted of offences under this legislation receive sentences that would not be eligible to become spent, even under the 2018 bill, even though, post-release, they have not come to adverse garda attention for very many years and have been entirely rehabilitated. Notwithstanding this, under current legislation and the 2018 bill, these convictions will follow them for the rest of their lives.

Future painted with a fog

If the starting point is that all convictions will become spent save for certain exceptions, the Oireachtas can legislate to appropriately exclude convictions for serious offences, while giving those persons who have been genuinely rehabilitated the benefit of spent convictions.

Section 5(3) of the 2016 act provides that, save for minor convictions under road traffic or public order legislation, only one conviction can become spent, regardless of how much time may have passed since a person last offended. This is entirely at odds with the accepted principle that a person can be rehabilitated, and ignores the reality that, in the vast majority of cases (in particular where people have been convicted of minor theft or drug offences), the offending is a symptom of personal circumstances – poverty, addiction, homelessness or mental-health difficulties – and a number of convictions may be accrued in a period of time.

Many people are successful in addressing the reasons for their offending behaviour, and move away from petty crime. However, on the basis of the current legislation, their convictions can never become spent, meaning that the person who received two convictions for shoplifting when they were homeless and living in poverty 20 years ago will still have those convictions on their record, and will have to disclose them when requested by employers, educators or when traveling.

> THE PRINCIPLE OF PROPORTIONALITY THAT IS INTRODUCED BY THE 2018 BILL IS TO BE WELCOMED. THIS PRINCIPLE CAN BE APPLIED ALONGSIDE THE SUGGESTION THAT ALL, BAR SPECIFIC SENTENCES, WILL BECOME SPENT AFTER A DEFINED PERIOD OF TIME

> WHILE THE 2018 PRIVATE MEMBER'S BILL IS AN IMPROVEMENT ON THE 2016 ACT, IT DOES NOT GO FAR ENOUGH TO BRING IRELAND UP TO BEST INTERNATIONAL PRACTICE

The 2018 bill proposes to increase the number of convictions that can become spent from one to two convictions for offences committed as adults (being 24-plus years of age), and from one to three convictions for offences committed as young adults (18-24 years of age). A distinction in how convictions for offences committed as adults and young adults are treated is welcome, but it is submitted that the increase in the number of offences that can become spent in the 2018 bill does not go far enough.

Ultima ratio regum

As good Europeans, should we not adopt the approach taken in Germany, where there is no limit on the number of eligible convictions that can become spent after a period of time? Surely this is the only approach that supports the principle of rehabilitation. We note that, in other common-law jurisdictions, for example, New Zealand, there is no such numerical limit. A similar situation applies in many European countries, and the Joint Committee on Justice and Equality references this in their *Report on Spent Convictions*, suggesting that, on the continent, the emphasis is on privacy perspectives rather than public safety. Individuals can apply for a 'certificate of good conduct', which elides many past convictions, although the most serious crimes are not automatically excluded.

The principle of proportionality that is introduced by the 2018 bill is to be welcomed. This principle can be applied alongside the suggestion above, that all, bar specific sentences, will become spent after a defined period of time. Plain fairness suggests that the period of rehabilitation should be associated with the length of the sentence, thereby reflecting the seriousness of the offence and the need to protect the public, while also balancing the interests of fairness to the accused who has been rehabilitated.

It is suggested that a model similar to that in England and Wales could be introduced, with additional provisions that apply to sentences over 48 months, allowing for them to become spent after a longer period of time. Any time periods should be calculated with regard to empirical evidence obtained by criminologists and professionals working in rehabilitation and restorative justice. Those convictions that are too serious to become spent can be specifically provided for, and we submit that such convictions should not be determined by the length of the sentence imposed.

The image shattered

Spent convictions legislation also should prohibit any person (other than a judge in very specific circumstances where it is necessary for justice to be done) from being made aware of a conviction that has become spent or any ancillary information relating to it. While the current legislation allows a person to declare they have no criminal convictions if any such conviction is spent, it does not require the deletion of any reporting relating to this conviction.

This is particularly problematic when news stories relating to convictions that have become spent are reported online. While the legislation may protect a person from being required to divulge information about spent convictions, there is little to prevent any person (for example, a prospective employer) googling their name and reading all about them.

What is colloquially known as 'the right to be forgotten', provided for in article 17 of the *General Data Protection Regulation*, gives a person the right to apply to organisations, for example, search engines, to delete personal information held by them. However, search engines can refuse this application on a number of grounds, including on the basis that the publication of the information is in exercise of the right to freedom of expression and information, or on the basis that it serves the public interest or historical research.

Mirrored multiplicity

To allow the continued publication of such information entirely contradicts the sentiment of the spent-convictions legislation and can render it effectively useless. We cannot be alone in feeling extremely frustrated in their dealings with the major search engines over this issue.

The shortcomings of the 2016 act are well illustrated by section 10 and schedule 2, allowing the Garda National Vetting Bureau to disclose previous convictions when a person applies for, seeks, or is offered any employment, activity or service specified in schedule 2, being many posts within the public sector. This appears unfair and disproportionate, in particular since any spent convictions being disclosed are, by definition, minor.

Clearly, in certain circumstances, it may be appropriate for more serious spent convictions to be disclosed to prospective employers, but these circumstances should

> IF THE STARTING POINT IS THAT ALL CONVICTIONS WILL BECOME SPENT SAVE FOR CERTAIN EXCEPTIONS, THE OIREACHTAS CAN LEGISLATE TO APPROPRIATELY EXCLUDE CONVICTIONS FOR SERIOUS OFFENCES, WHILE GIVING THOSE PERSONS WHO HAVE BEEN GENUINELY REHABILITATED THE BENEFIT OF SPENT CONVICTIONS

be limited and specified. For the legislation to be meaningful, the starting point should be that spent convictions are automatically removed from a person's vetting record. The relationship between the *National Vetting Bureau (Children and Vulnerable Persons) Act 2012* and the spent convictions legislation needs to be reviewed as part of the current exercise.

It would appear that this position is supported by the decision of the European Court of Human Rights in *MM v United Kingdom*, where the court held that the blanket disclosure of 'spent' police cautions in Northern Ireland interfered with the right to privacy under article 8 of the *European Convention on Human Rights*. The ratio of the *MM* case was followed in 2014 by the British Supreme Court in *T & Anor v Secretary of State for the Home Department*, which examined the legality of blanket and indiscriminate disclosure of previous convictions.

For the spent-convictions legislation to have maximum effect, it should provide that any recording or publication of any information relating to a person's spent convictions or information ancillary thereto may constitute an offence.

History is theirs

Notably, section 14 of the New Zealand *Criminal Record (Clean Slate) Act 2004* makes it an offence to make or ask a person to reveal 'clean-slate' convictions, other than in specific circumstances, which are provided for in the legislation. Anyone who requires disclosure of clean-slate convictions can be fined up to $10,000. Perhaps similar sanctions should be included in Irish legislation – such sanctions also to apply to any person or organisation that publishes information relating to a person's spent convictions.

Fair procedures require a right of appeal or review. While there is a mechanism to appeal a decision of the National Vetting Bureau to disclose information, there is no such appeal or review mechanism available in other situations, or where a person simply wishes to have their criminal record expunged.

In Germany and the Netherlands, a person can apply for a certificate of good conduct to remove all convictions, including life sentences. In the US, a person can apply for certificate of employability, relief or rehabilitation. It may also be time for a similar procedure to be introduced here that would allow a person who has a previous conviction of the kind that would not normally become spent to apply to the District Court – or higher – to have their record expunged. This would be an additional measure of proportionality and fairness that could be utilised by persons convicted of serious offences in the past, but who have not come to the attention of the gardaí for a long time and who can display that they are genuinely rehabilitated.

Noting the belated, and rather grudging, first attempt in 2016 at spent convictions legislation, in order truly to give credence to a commitment to rehabilitation, reintegration and reduction in recidivism this time around, the presumption must be that most, if not all, convictions will become spent automatically – and that means expunged entirely, with any necessary caveats for certain types of offences and time periods inserted thereafter. The Oireachtas Committee report is a helpful starting point, and one hopes that the Department of Justice will pay attention to long overdue reform. g

LOOK IT UP

CASES:

- *MM v United Kingdom* (European Court of Human Rights (2012), application 24029/2007)
- *T & Anor v Secretary of State for the Home Department* [2014] UKSC 35

LEGISLATION:

- *Criminal Justice (Rehabilitative Periods) Bill 2018*
- *Criminal Justice (Spent Convictions Act) 2016*
- *Criminal Record (Clean Slate) Act 2004, section 14* (New Zealand)
- *European Convention on Human Rights*, article 8
- *General Data Protection Regulation*, article 17
- *Misuse of Drugs Act 1977*, section 15A
- *National Vetting Bureau (Children and Vulnerable Persons) Act 2012*

LITERATURE:

- Joint Committee on Justice and Equality (2019), *Report on Spent Convictions*

ASK THE EXPERT

The issue of the scope of the authority of an independent expert was addressed for the first time in the Irish courts in the case of *Dunnes Stores v McCann*. **James Kinch** gives his expert opinion

DR JAMES KINCH IS A SOLICITOR IN THE CHIEF STATE SOLICITOR'S OFFICE AND A MEMBER OF THE LAW SOCIETY'S ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

AT A GLANCE

- Supreme Court judgment in *Dunnes v McCann*
- To what extent can an independent expert, appointed for the resolution of a dispute, decide questions of law?
- Can a court be asked, in advance, to determine questions of law that may arise in the course of the resolution of a dispute?

On 22 January 2020, the Supreme Court issued an important judgment in *Dunnes Stores v McCann and Ors* ([2020] IESC 1) in the context of alternative dispute resolution (ADR). It concerned the scope of authority of an independent expert appointed for the resolution of a dispute. It was the first time for such a matter to come before the Irish courts.

The dispute essentially revolved around the validity of a certificate of completion in a construction contract. The judgment focused on the extent to which an expert can decide questions of law, or whether a court can be asked in advance to determine questions of law that may arise in the course of the resolution of a dispute.

The parties had entered into a contract for the development of 'Point Village' on North Wall Quay. The development did not proceed as planned and, as a result, a dispute arose between Dunnes and Point Village. An independent expert was appointed to resolve the dispute.

Central to the dispute was clause 7.7.2 of the development agreement, which provided that: "The design and specification for Point Square shall be to a first-class standard appropriate to a prestigious shopping centre, commensurate with the newly redeveloped Eyre Square in Galway and Grand Canal Square, Dublin, and the Civic Plaza, Dundrum Town Centre."

The dispute revolved around whether or not the completed Point Square met the requirement that its design and specification was "to a first-class standard appropriate to a prestigious shopping centre".

PIC: SHUTTERSTOCK

'Factual matrix'

Dunnes issued a plenary summons, in which it sought (among other matters) a court declaration that the area known as Point Square did not comply with the defendants' obligations under clause 7.7.2 of the development agreement; and a declaration that clause 7.7.2 of the development agreement, and the design and specification and requirements therein, were to be "interpreted, applied and implemented in accordance with the factual matrix as of the date of execution of the development agreement".

Dunnes maintained that this should include all representations made by action, by conduct and orally, and by reference to various plans appended to the development agreement and terms, sections, elevational drawings, perspective images and marketing material, as well as comparators set out in clause 7.7.2 that illustrated the overall design, specification, quality and completion of the Point Square and the manner in which it was to, ultimately, present.

The defendant applied for a stay, preventing Dunnes from taking any further step in the proceedings pending the determination by the independent architect of the dispute between the parties. The scope of authority of the independent expert was, accordingly, central to the dispute.

Substance

In essence, the argument made by Dunnes was that, while British authorities tended to be to the effect that courts should not intervene in relation to an issue of interpretation or construction of a clause to be considered or applied by an expert (in advance of the expert commencing and completing his determination), more recent authority from that jurisdiction was no longer so fixed in that view.

Dunnes made the point that the dispute between the parties as to the interpretation and construction of clause 7.7.2 of the development agreement needed to be resolved in the first instance, before the independent architect could make his determination in accordance with the correct interpretation of that clause. Dunnes contended that the independent architect was not authorised under the agreement between the parties to carry out an interpretation of clause 7.7.2.

The court observed that it was evident that Dunnes had a fear that the expert would not consider all of the material sought to be relied on by Dunnes in the course of the consideration of the dispute between the parties.

It was the view of Point Village that there was no dispute of law or contractual interpretation between the parties. Rather, there was an issue of professional judgement or fact about the weight that ought to be attached to certain factors and documents in determining the dispute between the parties as to whether or not Point Square had been completed to a "first-class standard appropriate to a prestigious shopping centre", commensurate with the three named comparators.

Expert's mandate

Point Village maintained, among other things, that where a dispute is referred to an expert, the expert is required to determine the meaning of any contractual term necessary for the determination of the dispute.

The court approved of the following summary of the principles established by English case law:

1) Where the parties have chosen to resolve an issue by the determination of an expert rather than by litigation or arbitration, the expert's determination is final and binding, unless it can be shown that he acted outside his remit.
2) A distinction must be drawn between an expert who has misunderstood or misapplied his mandate, with the consequence that he has not embarked on the exercise that the parties agreed he should undertake, and an expert who has embarked on the right exercise but has made errors in concluding that exercise, and has come up with what is arguably the wrong answer.
3) A failure of the first kind means that the determination is not binding, because it is not a determination of the kind that the parties have contractually agreed should be binding.
4) A failure of the second kind does not invalidate the determination, but may leave the expert exposed to a claim in negligence.
5) In deciding whether an expert determination can be challenged, the first step is to construe his mandate. This is, ultimately, a matter for the court.
6) The second step is to ascertain whether the expert adhered to his mandate and embarked on the exercise he was engaged to conduct by asking himself the right question(s) and applying the correct principles.
7) Once it is shown that the expert departed from his instructions in a material respect, the court is not concerned with the effect of that departure on the result. The determination is not binding.
8) Where the expert has made an error on a point of law that is not delegated to him, the error means that the determination will be set aside. (It has yet to be decided whether an error by the expert on any point of law arising in the course of implementing his instructions will also justify setting aside the determination – the court referenced Lord Neuberger MR in *Barclays Bank v Nylon Capital* [2011] EWCA Civ 826.)
9) Where a procedure has been laid down (for example, to produce a draft memorandum), the expert must follow it. However, what the procedure requires the expert to do is an aspect of the mandate, and ultimately a matter for the court.

> THE JUDGMENT SERVES ALSO AS AUTHORITY THAT, WHERE AN INDEPENDENT EXPERT STRAYS OUTSIDE THE TERMS OF THEIR MANDATE, THEIR DECISION WILL BE INVALID

> THERE IS A PUBLIC-POLICY INTEREST IN ENCOURAGING THE USE OF ADR TO PROVIDE POTENTIAL LITIGANTS WITH A MEANS OF RESOLVING THEIR DISPUTE IN A WAY THAT IS CHEAPER AND MORE EFFICIENT THAN LITIGATION THROUGH THE COURTS

However, the court qualified its endorsement of the above principles by observing that they should not be elevated into a rigid set of principles to be slavishly applied in every case.

It would be important to emphasise that, in every case, it will be necessary to construe the precise terms of the contract to see what the parties actually agreed between them as to the role of the expert: one needs to consider precisely what disputes were intended to be referred to the expert; whether the dispute that has arisen is one that is intended to be resolved by expert determination; and whether there is any other relevant term in the contract as to how the expert is to reach his determination. It is important to bear in mind that, if the expert goes outside the terms of his mandate, his decision will be invalid.

Decision

The court noted the parties' terms of appointment of the independent expert as provided in the contract, which stated that the appointee (by the appropriate body, in due course) "shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the parties hereto" (clause 15.1 of the relevant agreement).

That agreement went on to state that: "The expert shall allow both parties to make representations in writing, and shall consider such, but shall not be limited or fettered by them in any way, and shall be entitled to rely on his own judgement and opinion" (clause 15.2).

In light of those specific terms of appointment, the court observed that: "It would not have made sense for the agreement to provide that a dispute should be referred to an independent architect for resolution whilst, at the same time, leaving open the need to go to court to interpret the terms under which he was to resolve the dispute" (paragraph 66).

The court noted that the parties agreed that this particular area of dispute should be referred to an independent architect. They agreed that, while he could receive representations from the parties, he was not to be limited or fettered by them, and he was free to rely on his own judgement and opinion. Finally, it was agreed that his decision was to be final and binding on them. Therefore, the court found that there was no basis for interfering with the resolution of the dispute between the parties by the independent expert, and that the proper course was to permit the independent expert to carry out the function the parties had given him.

The court also endorsed a public-policy consideration: namely, that there is a public-policy interest in encouraging the use of ADR to provide potential litigants with a means of resolving their dispute in a way that is cheaper and more efficient than litigation through the courts; and that such policy considerations would be undermined if the process provided for by parties in an agreement could be halted by initiating court proceedings in order to seek a judicial determination of a legal dispute in the course of the expert-determination process.

Accordingly, the court found that, in circumstances where the independent architect has been appointed and (in accordance with the terms of the agreement) submissions have been furnished to him, he should be allowed to proceed with his function. The fact that he may be obliged in the course of carrying out his function to interpret the terms of clause 7.7.2 does not preclude him from exercising his function. His function necessarily involves the resolution of mixed questions of law and facts.

The court observed that, as a matter of practicality, it would be difficult to see how he could actually decide whether or not the Point Village Square had been completed in an appropriate fashion without interpreting what was meant by clause 7.7.2. The court found that this clearly had to have been within the contemplation of the parties when they entered into the agreement.

Precise terms

The combination of the precise terms of the appointment of the independent expert – namely that (a) his decision was to be final and binding on the parties, and (b) while the expert shall allow both parties to make representations in writing and shall consider such, he shall not be limited or fettered by them in any way and shall be entitled to rely on his own judgement and opinion – appears to have been key to the court's finding in this case.

That finding was supported by the public-interest objective of the promotion of ADR, where the parties have chosen to avail of it as the mechanism to resolve their dispute. The judgment serves also as authority that, where an independent expert strays outside the terms of their mandate, their decision will be invalid. g

A century after the *Gazette's* obituary for Philip J O'Sullivan, shot by the IRA during the War of Independence, **Eamonn Carney** and **George Brady** reflect on his death

EAMONN CARNEY IS SOLE PRINCIPAL OF CARNEY MCCARTHY; GEORGE BRADY IS A PARTNER AT MATHESON. BOTH ARE GREAT-GRANDSONS OF JOHN O'SULLIVAN, THE UNCLE OF PHILIP O'SULLIVAN

AT A GLANCE

- Solicitor Philip O'Sullivan joined the RIC during the War of Independence in 1920, rising to the rank of district inspector
- Within six months, he was killed in Dublin by Michael Collins' Squad
- Various lawyers were involved in the subsequent reportage of Philip's death, which became propagandised and personal

END OF THE BEGINNING

The January 1921 *Gazette* carried the following obituary: "Mr Philip J O'Sullivan, solicitor, was killed, being the victim of a murderous assault in Henry Street, Dublin, on 17 December 1920. Mr O'Sullivan was apprenticed to his father, Mr Florence O'Sullivan, Kinsale, was admitted in Michaelmas Sittings 1919, and practised in Kinsale. He subsequently joined the Royal Irish Constabulary. During the War, Mr O'Sullivan served in the Royal Navy Volunteer Reserve [RNVR] and was awarded the Military Cross."

Philip John O'Sullivan was born on 6 August 1899. He was the only son of Florence O'Sullivan and Margaret Barry. Flor O'Sullivan was a native of Skibbereen, a Kinsale solicitor (1893), author of *The History of Kinsale* (published 1916), co-founder of *The Southern Star* newspaper in 1889 (with his brother John) and its co-editor. Margaret Barry was a daughter of District Inspector Dominick Barry, RIC, Wicklow. The Barry family had strong connections with the RIC – notably, Dominick's uncles, James and Robert, had been chief constable of Carbery East, Cork, and Tipperary coroner/Munster constabulary inspector, respectively.

Philip had a sister, Kitty, and (save attending boarding school in Blackrock College, Dublin, from 1911-1913) was educated in Kinsale.

Red roses for me

On 8 June 1918, aged 18, Philip joined the RNVR. He served in the Mediterranean and Adriatic on Motor Launches 386 and 530. In recognition of his bravery during the Second Battle of Durazzo on 2-3 October 1918, Philip was awarded the Military Cross, a distinction rarely conferred on Royal Navy members. Philip

PIC: ALAMY

> PERHAPS PHILIP'S FAMILY BACKGROUND AND SENSE OF CIVIC DUTY AND SERVICE COMPELLED HIM TO TAKE ACTION – WHICH WOULD LEAD TO HIS DEATH. ON 24 JULY 1920, THE THEN 22-YEAR-OLD PHILIP JOINED THE RIC

received commendation from the King of Italy and Admiral of the Italian Fleet. In July 2019, Lieutenant Philip O'Sullivan was demobilised. He came home to work in his father's solicitor's practice in Kinsale and, in October 1919, was recorded as the 11th of 15 candidates who passed their final Law Society examinations. On 7 November 1919, he was enrolled as a solicitor. Being a West Cork solicitor, Philip knew its people, townlands, highways and by-ways, and the local customs and practices.

The *Law Society Gazette*, in February 1920, reported Philip's admission as a solicitor; the same issue also reported that the *Sex Disqualification (Removal) Act* had received royal assent, opening the legal profession to women (and two women had lodged application for apprenticeship).

Within the gates

In the War of Independence, the British Government recruited and mobilised the RIC Auxiliaries and 'Black and Tans', whose experiences in the trenches of Northern France made them unsuitable for police duties. This policy created a military force with a reputation for unnecessary and excessive violence, drunkenness, and poor discipline.

In a notably short period of time, the Royal Irish Constabulary (RIC) ceased to be perceived by many as 'community guardians'. RIC members became targets of the Irish Republican Army.

In June/July 1920, assizes failed all across the south and west of Ireland. Trials by jury could not be held, because jurors would not attend. The collapse of the courts system demoralised the RIC, and many resigned or retired. However, perhaps Philip's maternal family background and sense of civic duty and service compelled him to take action – which would lead to his death. On 24 July 1920, the then 22-year-old Philip joined the RIC, becoming a district inspector (DI) in Cork County on 1 October.

The late-1920 escalation of hostilities is well known: Bloody Sunday (21 November) was followed by the Kilmichael Ambush on 28 November; martial law was declared in Cork, Kerry, Tipperary and Limerick on 10 December and, the next day, Cork city centre was burnt by Black and Tans, who shot firefighters attending the fires.

The shadow of a gunman

On Friday 17 December, Philip was in Dublin. Shortly after 6pm, he met his fiancée, Alice Moore. In her evidence at his inquest, Alice recounted that they met outside 'The Fancy Fair' on Henry Street. Philip apologised for being late; Alice took Philip's hand, telling him he was not late, when a man near them pulled a revolver from his coat and fired a shot. Philip fell to the ground, shot in the head. Alice reached down and bent over Philip, to lift him and turn him over; the gunman pointed his

revolver at Philip as he lay on the ground. Alice caught hold of the revolver and wrestled with the gunman. The gunman overpowered Alice, as another gunman fired a second shot into Philip before they made their escape, leaving him mortally wounded in Alice's arms. A crowd gathered; people called for a priest; prayers were recited.

A lorry stopped to take him to hospital. *The Cork County Eagle* reported that, along the way, Philip opened his eyes towards Alice but could not speak. He was anointed by a priest and died within five minutes of his arrival at the hospital.

His funeral took place on Monday 20 December 1920. The Christmas Day edition of the *Cork County Eagle* reported that Alice Moore was in tears throughout, and she collapsed at the graveside as the RIC buglers sounded *The Last Post*. After the burial, Alice and Philip's sister Kathleen knelt and prayed, before being overcome with grief as they left the graveside.

The plough and the stars

Testimony given to the Bureau of Military History in 1957 by Ned Kelliher, Joe Byrne and Joe Leonard indicates that they were members of Michael Collins' 'Squad'.

Leonard's statement (547) indicates that DI O'Sullivan was under observation that week, noting that he met his fiancée each evening. The statement records that DI O'Sullivan was targeted as he was "too good at decoding, so our intelligence officer pointed him out in company with his girl. There were two volunteers present, one of whom was reading the evening paper; the other shot O'Sullivan – when his girl grappled with this man, who shook her off."

Kelliher's statement (477) confirms that it was he who followed O'Sullivan that week, and that "he was keeping an appointment with a lady friend of his in Henry Street. I pointed him out to members of the Squad, and he was executed on the spot."

Byrne's statement (461) records that he was "instructed, with others, to proceed to Henry Street to assist in the shooting of DI O'Sullivan. About four of us comprised the party. A couple of us were detailed not to take part in the actual shooting, but to cover off the men who were to do the job. I saw the DI being shot by a member of the Squad and, when the shooting was over, we returned to Moorelands" [a shop on Abbey Street that the Squad used as its base].

"O'SULLIVAN WAS TARGETED AS HE "WAS TOO GOOD AT DECODING, SO OUR INTELLIGENCE OFFICER POINTED HIM OUT IN COMPANY WITH HIS GIRL. THERE WERE TWO VOLUNTEERS PRESENT, ONE OF WHOM WAS READING THE EVENING PAPER; THE OTHER SHOT O'SULLIVAN – WHEN HIS GIRL GRAPPLED WITH THIS MAN, WHO SHOOK HER OFF"

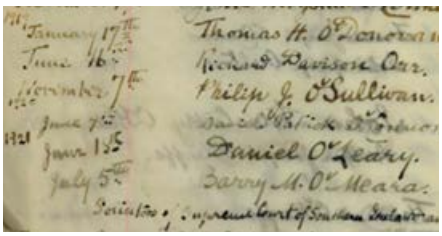
> APPROXIMATELY 100 METRES FROM MICHAEL COLLINS' GRAVE IN GLASNEVIN CEMETERY, PHILIP O'SULLIVAN LIES BURIED IN THE SAME PLOT AS HIS MATERNAL GRANDFATHER, DISTRICT INSPECTOR DOMINICK BARRY

Various lawyers were involved in the subsequent reportage of Philip's death, which became propagandised and personal. Philip's father Flor had established *The Southern Star* as a rival to *The Cork County Eagle*. (*The Eagle*, then known as the *Skibbereen Eagle*, is renowned in journalistic annals for an editorial in November 1898 that declared it was "was keeping its eye on" the Tsar of Russia.)

In 1906, *The Eagle* was inherited by a lawyer, Eldon Potter. By 1908, it had two other principal shareholders, both lawyers – RW Doherty (Bandon) and Jasper Travers Wolfe (Skibbereen). Wolfe was born in Skibbereen, qualified as a solicitor in 1893, served as Crown Solicitor for Cork City, and was a West Cork TD in Dáil Éireann (1927-1933).

Wolfe was a progressive man: in 1924, his law clerk Dorothea Mary Browne, daughter of an RIC sergeant, became one of the first female solicitors in Ireland. After August 1915, the editor of *The Eagle* was solicitor Philip Sheehy. Initially a supporter of John Redmond (Irish Parliamentary Party), Sheehy did not switch his allegiance to Sinn Féin, and his criticism of Republican strategy resulted in various difficult events (including in September 1917, when *The Eagle*'s printing machinery was vandalised, and in May 1920, when a group of armed men broke into Sheehy's home and bound, beat and tarred him).

The Southern Star had nationalist connections. In November 1916, the paper's plant/machinery was seized and publication suppressed by British authorities. In



Philip O'Sullivan's name on the Roll of Solicitors, November 1919

December 1917, Michael Collins and his brother John became shareholders in *The Star* and are credited with putting together the group of investors who acquired the paper. The group included Seán Buckley, Seán Hales (TD, third Dáil) and Seán Hayes (MP for West Cork, December 1918 and 1921). Notable republicans (including Ernest Blythe, Dick Connolly, barrister James Burke, Peader O'hAnnracháin and Seán Hayes) edited *The Southern Star* prior to late 1920. *The Star* was suppressed three times during 1918-1919. In total, it was banned for 56 of the 104 weeks commencing March 1918.

Time to go

Volume 16 (2020) of the *Skibbereen Historical Journal* recounts not only the lives of barrister James Burke (editor of *The Star*) and solicitor Philip Sheehy (editor of *The Eagle* and town councillor), but also reports exchanges at a meeting of Skibbereen Urban District Council on 4 January 1921, when Philip Sheehy proposed a motion of "abhorrence of the foul murder of District Inspector O'Sullivan" (suggesting that the abhorrence was deeper in Skibbereen because of the O'Sullivan family's connection to Skibbereen, noting Philip's grand-uncle had been a town commissioner), and to assure the "respected parents of the late District Inspector O'Sullivan our sincere sympathy in the great loss they have sustained and to assure them that the murder of their son is condemned by every citizen of the town".

Sheehy knew his motion would be deeply embarrassing to James Duggan, the (Sinn Féin) chairman of the council, director of *The Southern Star*, and friend of Michael Collins. Duggan knew both Philip O'Sullivan's father Florence and uncle John very well, and was friendly with many of their family. With reference to the motion of abhorrence, Sheehy then editorialised a criticism of *The Southern Star*, Skibbereen Town Council, and James Duggan in *The Cork County Eagle*.

Approximately 100 metres from Michael Collins' grave in Glasnevin Cemetery, Philip O'Sullivan lies buried in the same plot as his maternal grandfather, District Inspector Dominick Barry.

Our profession acknowledges the contributions of those who currently put their lives at risk in service of the community. Perhaps, in time, neither condoning nor diminishing atrocities and brutality, we will better understand the sacrifices made, the selfless service, and the trauma of loved ones, on both sides of the political divide, 100 years ago. g

With acknowledgement to Philip O'Regan (Skibbereen Historical Society) and James Herlihy (HARP Society), who kindly provided certain source material and photos for publication.

MIND YOUR HEAD

Law firms can signal the value they place on optimal employee mental health by signing up to the Law Society's *Professional Wellbeing Charter*. **Mary Hallissey** reports

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

PEOPLE ARE RELUCTANT TO ADMIT THEY ARE SNOWED UNDER IN WORK, OR NOT MAKING TARGETS, BUT YOU HAVE TO APPRECIATE YOU ARE DEALING WITH HUMAN BEINGS. LARGELY, PEOPLE WILL TRY TO DO THEIR BEST, BUT EVERYBODY NEEDS DOWNTIME, AND TO RECOVER

The Law Society has invited firms across Ireland to show their commitment to workplace wellbeing by signing up to its *Professional Wellbeing Charter*.

Health is now recognised as involving complete physical, mental and social wellbeing, and not simply the absence of disease or infirmity.

Health and wellbeing have also been recognised as key conditions for people to realise their potential, to achieve important life goals, and to contribute to society.

The charter is an initiative of the Society's Professional Wellbeing Project, which is committed to the wellbeing of all members and the creation and maintenance of positive workplace cultures that support both wellbeing and psychological health.

Holistic

The Society's professional wellbeing project coordinator, Julie Breen, points out that a proactive approach to these issues will help in retaining staff. "Emerging law students now have a holistic and well-rounded approach to their careers, and they make it clear to employers that they want to work in a firm where good mental-health scaffolding is in place," she says. "Having the charter in place makes clear to employees that a firm really cares about mental health."

The introduction of psychological services at the Blackhall Place Law School and the launch of the Professional Wellbeing Project in 2019 have had a de-stigmatising effect on the whole area of good mental health, Julie says.

Law School graduates are aware of the pitfalls of unsustainably long hours. They keep up to date on mental-health initiatives, know about the Wellbeing Project and are, generally, better informed.

Openness

Openness about good mental health is becoming more and more embedded in society, particularly as a result of the difficulties thrown up by the pandemic, Breen says. "The charter should help to reduce stigma, but no one firm can do this on its own, since there has to be a collaborative effort across the legal profession.

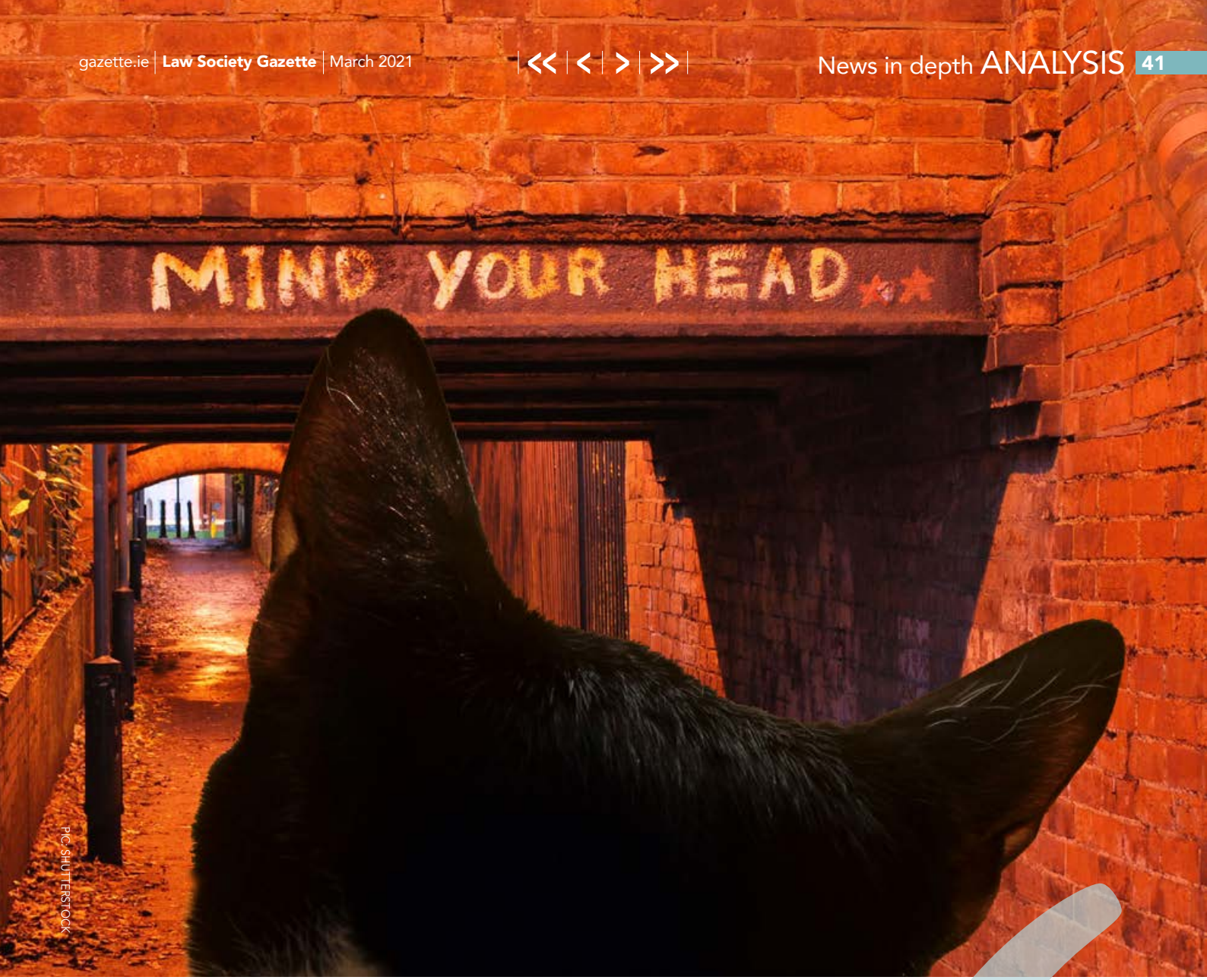
Julie Breen (professional wellbeing project coordinator, Law Society)

Tara Doyle (chair, Matheson)

Catherine O'Connor (O'Connor Mullen)

Nicola McKenna (HR manager, Philip Lee)

Caroline McLaughlin (partner, Callan Tansey)



PIC: SHUTTERSTOCK

"In terms of talent retention, there is absolutely a business gain to this. Productivity levels go up where there is psychological safety and where people feel more aligned to the purpose of the firm. That engenders a deep sense of belonging," Julie points out.

The Law Society charter uses language that spells out the workplace values of trust, respect, honesty, fairness, compassion, and psychological safety.

"These things can't be measured or put in an indicator frame, but it's important to write them down on paper as realistic aspirations," she says. "Signing up to the charter will make these things easier for a law firm to actualise, because employees can look to these values to ground themselves.

"We know when we are in good hands, we know when we are in a place of safety and when it's okay to make a mistake. That scaffolding means more innovation in the workplace, better productivity, and better teamwork," Breen says.

A sense of psychological safety also means that employees are a lot less likely to go looking for another job.

It's important for employees to know that there will be support in the event of psychological difficulties, and introducing mental-health safeguards in a firm will also reduce the risk of legal liability.

"It's important to de-stigmatise the action of going to speak to someone in order to maintain mental-health equilibrium," Breen says.

Philip Lee is a great example of a firm that champions an employee wellbeing programme. Despite the pandemic, the 2019 Law Firm of the Year has put in a sterling performance during the past year, with a surge in growth and full retention of its 140-strong staff.

HR manager Nicola McKenna points out: "The firm's values are strong, in terms of loyalty, integrity, teamwork, respect and pride in our work – and those values nourish our culture."

"It is imperative for us to have a culture at Philip Lee where every employee feels valued," Nicola adds, pointing out that, while the firm has tiers of responsibility, it is

> THE CHARTER COULD NOT BE MORE RELEVANT AS ALL FIRMS CONTINUE TO SEEK TO SUPPORT THEIR EMPLOYEES THROUGHOUT THE PANDEMIC

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not a hierarchical organisation.

A key objective of the Philip Lee employee wellbeing programme is that staff at all levels of the firm have a voice. And the concept of wellness has always been part of the firm's ethos.

"We ultimately want our staff to feel healthy, positive and focused, and this is essential to the firm's retention and growth strategy," McKenna says. "Signing up to the Law Society's wellbeing charter simply reinforced our existing commitment to creating a positive workplace culture. And signing the charter is a visible marker that this is an environment where wellbeing is prioritised. We have fantastic, energetic leadership, and we are very lucky in having that commitment."

No hesitation

For Wexford-based Catherine O'Connor (O'Connor Mullen), there was no hesitation in signing up to the charter.

"The charter values are important and mental wellbeing is important to label. This is part of our health-and-safety policy here at work," O'Connor says.

It's probably easier to be conscious of wellbeing in a small office, she notes – O'Connor Mullen is a two-partner firm with five employees: "There are only so many of us here, and it's good to get on and have everyone fit and well and happy," she says.

The firm opened in August 2017, with a very conscious culture that it would be a place where everyone wanted to be, and where work would fit in with family life. "We are all human, we're not robots, and we have to fit in our work with our families," Catherine says, pointing out that it's easy to be flexible – and possibly easier still in a smaller organisation.

The fear factor

The adversarial nature of the legal profession can lend itself to confrontation, Catherine says. "But not letting one's defences down and not admitting to vulnerability can lead to a culture of fear," she says.

"Fear is a wonderful commercial concept that makes money, and businesses thrive on it," she adds. "But deconstructing fear takes information, learning, language and understanding. People are reluctant to admit they are snowed under in work, or not making targets, but you have to appreciate you are dealing with human beings. Largely, people will try to do their best, but everybody needs downtime, and to recover.

"We have high levels of responsibility in our jobs. Every solicitor would have to admit that they have a fear of making mistakes – whether dealing with other people's business affairs, their marriages, their property, or getting a bad outcome in criminal work. Nobody likes making mistakes, but everybody is human, and we will continue to make mistakes," says Catherine.

"That potentially leads to an environment of being scared every day when you go into work. It's very hard to function well in that environment, and it takes an honest person to step back when a mistake is made," she says.

And in a culture where lawyers are supposed to 'know everything', it's hard to admit that one needs guidance.

Catherine says that the Law Society's charter is useful: "It's short and simple – and that's a good thing."

Key resource

Callan Tansey partner Caroline McLaughlin points out that health and wellbeing have been recognised as a key resource for people to realise their potential, to achieve important life goals, and to contribute to society.

The Sligo-based firm wanted to make a public commitment to the creation and maintenance of a positive workplace culture that supports wellbeing and psychological health.

Caroline says: "We believe that promoting the wellbeing of our staff is critical in the successful operation of a busy legal practice. Our staff are our most valuable asset, and any steps we can take to support and encourage their wellbeing and psychological health is our main priority.

"As Richard Branson once remarked: 'Take care of your employees and they will take care of your business'. It's as simple as that. We would encourage all legal practices in Ireland to join us in becoming a signatory to the *Professional Wellbeing Charter*, in order to show their commitment to their own wellbeing and psychological health and to all the people across all roles within their organisations."

"Our health is our wealth, and now, more than ever, we need to protect it," Caroline concludes.

Mindful business

Michael Jackson, managing partner of Ireland's biggest law firm, Matheson, says that the charter's tenets resonate with the firm's values and commitment to mindful business practice.

"We support its clear vision for leaders in the workplace to champion professional wellbeing, to reduce unnecessary stress, and to promote positive workplace culture. In fact, we believe that it is essential for the behaviours and practices envisaged by the charter to be led from the top," says Jackson.

"We have seen first-hand how committing to the tenets of mindful business and professional wellbeing can support increased openness, effective communication, respect for working hours, and mindful delegation," he says. "The charter could not be more relevant, as all firms continue to seek to support their employees throughout the pandemic.

"I would very much like to commend the Law Society for its leadership in bringing the profession together on this important initiative." g

> IN TERMS OF TALENT RETENTION, THERE IS ABSOLUTELY A BUSINESS GAIN TO THIS. PRODUCTIVITY LEVELS GO UP WHERE THERE IS PSYCHOLOGICAL SAFETY AND WHERE PEOPLE FEEL MORE ALIGNED TO THE PURPOSE OF THE FIRM. THAT ENGENDERS A DEEP SENSE OF BELONGING

STICK OR TWIST?

The landscape for law firms has changed significantly over the past year. **David Rowe** explores the timing for in-house and public-sector legal teams to go to market for external legal services

DAVID ROWE IS A CHARTERED ACCOUNTANT AND DIRECTOR OF OUTSOURCE, WHICH ADVISES IRISH LAW FIRMS AND BUYERS OF LEGAL SERVICES ON STRATEGY AND PROFITABILITY

NEW FIRMS AND NEW TYPES OF SERVICE PROVIDERS HAVE EMERGED. COMBINED WITH PREVIOUSLY DISAPPOINTED TENDERING PARTNERS, RE-TENDERING LOOKS WELL WORTHWHILE IN CURRENT MARKET CONDITIONS

Irish law firms have seen significant change over the past 12 months. Most firms have seen a fee-income reduction in the 10% to 20% range, and a corresponding fall in their cost base. The year-on-year steady and gradual recovery from 2012 to 2019 came to a halt because of COVID-19, with the pendulum having swung from having difficulty in finding the people to service the work to an increased emphasis on getting new work and new clients.

In parallel with this, salaries have softened, with firms seeing the benefit of the employment subsidy schemes and, in some cases, pay reductions. In those conditions, there is an increased anxiety and, therefore, increased competition to add good-quality, repeat and steady work to diminished work levels.

Going to market

Any organisation considering re-tendering for its legal-service requirements needs to consider a number of important issues in advance, including:

- What is the organisation's spend on legal services – split between internal resources and external resources?
- What services are provided to the business currently, and are these going to change over the period of the re-tender, which is typically three to five years?
- Which services can an organisation provide internally, and which does it make sense to outsource?
- What proportion of the work is ad hoc, what proportion requires a high level of expertise, and what is routine?

In considering a re-tender, the in-house or public-sector solicitor needs to assess the potential changes in their organisation. New business activities and changes in the commercial landscape need to be factored in, together with changes in legislation and regulation.

What are you looking for?

Having identified the capability and capacity of the internal team and the organisation's current and future requirements, the next stage is to look at drawing up either a tender document or a list of potential law firms to approach. The most common mistake is to re-tender among a narrow group of firms, particularly where the requirements range from relatively straightforward to complex transactions. Put simply, there are horses for courses, and pricing follows. Look at it in terms of 'the five Cs':

- *Capacity* – the in-house team does not have the capacity to do the work. If this involves simple routine work, the most cost-effective solution is likely to be an additional hire or a temporary employee.
- *Competence* – for work that the in-house team does not handle regularly, the most risk-aware and competent approach is to send the work out.
- *Cost* – it's simply too expensive to do it in-house; for example, large-scale debt recovery requiring tailored software packages.
- *Certification* – the organisation can do the work internally, but needs an outside expert to sign it off.
- *Complexity* – while the internal team understands the requirement, it also understands that outside specialist knowledge is required to make the correct legal call and give advice on the matter.

Where the most relevant reasons for outsourcing are capacity, competence and cost, these are likely to lead a buyer of legal services to the cheapest competent source – that may be a locum, an additional resource or a specialist firm.

However, if certification or complexity/specialisation is needed, the organisation is buying services that are priced on value rather than volume, and can then expect to pay a higher price to an external provider.

Is the timing right?

The decision to re-tender will not be based solely on the current economics within Irish

PIC: SHUTTERSTOCK

law firms. It will be based on the requirements of the entity, how the current providers are performing, the procurement process and, in the public sector, on the obligations to re-tender.

Looking at it through the eyes of the law firm, the following are the competitive issues that law firms face in early 2021:

- Staff recruitment and retention and an increased emphasis on the work/life balance,
- Falling profit margins (salaries have outgrown increases in fee income),
- Increased cashflow pressure,
- Historic unprofitable pricing arrangements – possibly a response to a previous tender, when costs were lower,
- Uneven flow of work from institutional clients – this is difficult for the law firm to resource,
- Fee income levels are at 80% to 90% of 2019, the biggest fall being in litigation.

Given the rebalancing of the challenge in getting work rather than getting resources to do the work, it is logical that this is a good time to go to the market. However, many entities may have reached pricing arrangements with their legal panel some years ago, when prices were lower and costs (especially salary costs) have risen significantly for law firms in the interim – so the re-tender needs to be considered carefully.

Law firms highly value repeat work from regular clients, but are now more savvy when it comes to the tendering process. Inevitably, there are positives and negatives from their viewpoint.

> THE REAL MONEY TO BE SAVED IS IN BUYING SERVICES AT THE RIGHT LEVEL OF THE MARKET

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Positives:

- Happy to discount for streams of work, but unhappy if asked for further discount at payment stage,
- Regular flow of work and regular payments are attractive,
- Three-year procurement/tender cycles are considered reasonable, as this gives some security,
- Law firms are happy to add some free extras if the overall deal is fair, and
- Allows for better staff and resource planning.

Negatives:

- Winning a tender and getting no work!
- Inflexibility on price by the tendering party, where there are clearly additional elements and extra work,
- Tenders within tenders,
- Over-onerous reporting requirements,
- Incurring administration costs or outlays that are deemed unrecoverable under the tender contract.

Companies tendering-out for services obviously need to achieve value in the current environment:

- Service levels and relationships are key,
- It is 'horses for courses' – buy routine services from smaller and middle-market firms, and complex services from larger 'corporate-type' firms,
- Understand the legal market and the pricing within it – market intelligence will save you thousands of euro,
- It is important not to end up with either too many or too few service providers,
- Volume discounts are a win/win,
- Monthly payments are a win/win,
- Long-term relationships are, generally, a win/win.

How best to work with law firms:

- Usually, it's best to retain core/repeat services internally and to outsource specialist areas, depending on resources and capabilities,
- Law firms enjoy working with in-house and public sector lawyers – they get better briefs and a better understanding of the issues, for example, and this can be reflected in lower costs,
- Doubling up by having internal and external resources working on a task is seldom a good idea,
- Beware layering-up in law firms – too many people on the clock,
- The law firm has to be interested in you as a client.

New forms of competition

Compared with previous tendering opportunities, there will always be new forms of competition in the market, including for the incumbents. This will include not only law firms that have been disappointed by having failed to be appointed in previous tenders, but other firms that will have developed expertise or scale that now makes them credible competitors.

In addition, overseas firms may have entered the market, while virtual firms and alliances of smaller practices are all potential contenders. More choice is likely to lead to more competition – and more competitive tendering outcomes.

Re-tendering for legal services begins with an analysis of current spend, capability and future requirements. Changes in the market over the past 12 months have improved the environment for buying; however, the real money to be saved is in buying services at the right level of the market.

New firms and new types of service provider have emerged. Combined with previously disappointed tendering partners, re-tendering looks well worthwhile in current market conditions.

RE-TENDERING FOR LEGAL SERVICES BEGINS WITH AN ANALYSIS OF CURRENT SPEND, CAPABILITY AND FUTURE REQUIREMENTS. CHANGES IN THE MARKET OVER THE PAST 12 MONTHS HAVE IMPROVED THE ENVIRONMENT FOR BUYING

LINES IN THE SAND

With 'Brexit done', the *Withdrawal Agreement* and the *Trade and Cooperation Agreement* now govern the 'divorce settlement' between the EU and the UK. **Cormac Little** assesses the lines in the sand

CORMAC LITTLE SC IS HEAD OF THE COMPETITION AND REGULATION UNIT OF WILLIAM FRY AND CHAIR OF THE LAW SOCIETY'S EU AND INTERNATIONAL AFFAIRS COMMITTEE

MINDFUL OF THE NEED TO ENSURE THAT THE UK DOES NOT ENJOY THE SAME BENEFITS OUTSIDE THE EU AS IT DID WHEN IT WAS A MEMBER STATE, THE TCA DOES CREATE NEW TRADE BARRIERS AND OBSTACLES TO FREE MOVEMENT

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

Brexit has finally happened. The UK left both the EU and the European Atomic Energy Community ('Euratom') on 31 January 2020. The terms of this departure are governed by the *Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the EU and Euratom*.

After the *Withdrawal Agreement* was ratified, the parties entered a transition period where, although the UK was no longer represented in the workings of the EU institutions/agencies, EU law continued to apply in full. In the run-up to the 31 December 2020 deadline, the EU task force and the UK negotiating team engaged regarding the scope of the future relationship between both jurisdictions, bearing in mind the UK's decision to leave the EU's single market/customs union.

The decision to leave the former means that EU principles of free movement no longer apply in the UK. After various real and imagined crises, the parties eventually agreed a *Trade and Cooperation Agreement* (TCA) on 24 December 2020. Together, the *Withdrawal Agreement* and the TCA now govern the economic and other aspects of the relationship between the EU and the UK.

WA and TCA

The primary purpose of the *Withdrawal Agreement* is to offer legal certainty, given that EU law no longer applies in the UK. The agreement seeks to protect the rights of residence and other rights of both the over three million EU citizens residing in the UK, and the more than one million UK citizens living in the EU, while ensuring that both the EU and the UK abide by any financial commitments made while the latter was a member state. The agreement also contains various implementation measures and dispute-settlement mechanisms. An example of the former is the establishment of a joint committee comprising representatives of both sides. Cognisant of the significant risks of the potential impact of Brexit for the political and economic situation on this island, the *Withdrawal Agreement* also contains a protocol on Ireland/Northern Ireland (NI Protocol). Including its various other protocols and annexes, the *Withdrawal Agreement* runs to 177 pages.

The TCA creates a free-trade area with no tariffs or quotas on the importation/exportation of goods between the EU and the UK. That said, mindful of the need to ensure that the UK does not enjoy the same benefits outside the EU as it did when it was a member state, the TCA does create new trade barriers and obstacles to free movement. To mitigate these risks, the TCA establishes various cooperation mechanisms, while ensuring a level playing field for fair competition. The TCA does not apply to any trade in goods between the EU and Northern Ireland. This activity is governed by the NI Protocol. In addition to the import/export of goods, the TCA covers other sectors, such as services, transport, fisheries and public procurement. Like the *Withdrawal Agreement*, the TCA contains dispute-resolution provisions. Including its various protocols and annexes, the TCA is a mammoth document, coming in at nearly 1,500 pages.

Direct effect of the WA

Given the importance of legal certainty, most notably for its citizens residing in the UK, the EU was keen to ensure the justiciability of the *Withdrawal Agreement*. Accordingly, article 4(1) of the agreement stipulates that its provisions, meeting the conditions for direct effect, may be relied upon in proceedings before the UK courts, as well as in the national courts of each EU member state. Indeed, article 4(2) requires the UK courts to set aside any domestic measure (including primary legislation) that infringes the agreement. In other words, the *Withdrawal Agreement* has a similar status to EU law and, thus, the doctrine of supremacy applies.

In addition, article 4(3) obliges the parties to interpret the *Withdrawal Agreement* in accordance

PIC: NUALA REDMOND/ALAMY

with the general principles of EU law. For example, the agreement must be interpreted in a manner consistent with the *Charter of Fundamental Rights of the EU*. In such litigation, the UK must, under articles 4(4-5), follow the case law of the EU courts up to 31 December 2020, while paying due regard to such precedent after that date.

Taken together, the UK must be careful to avoid any risk of infringing the agreement; otherwise, the relevant domestic legislation (or other national measure) may be challenged. Indeed, one can certainly envisage a situation where an EU citizen (or his/her family), whose rights to live, work or study in the UK might have been undermined, would seek redress before the UK courts. Finally, in the event of a dispute between the EU and the UK regarding the *Withdrawal Agreement*, articles 167 to 181 contain the relevant settlement provisions. If the dispute is not resolved by the Joint Committee, it may be referred to binding arbitration. Any issues of EU law must be referred to the EU's Court of Justice.

NI Protocol

The main aim of the NI Protocol, which entered into force on 1 January 2021, is to protect the 1998 *Good Friday (Belfast) Agreement*, while safeguarding the integrity of the EU's single market. In order to avoid a hard border on this island, Northern Ireland remains aligned to certain EU single-market provisions regarding goods, so-called sanitary and phytosanitary requirements for the protection of human/animal and plant health, and state aid. In terms of people, article 3 of the protocol provides for the continuation of the Ireland/UK Common Travel Area, whereas, in terms of goods, article 4 provides that Northern Ireland is part of the UK customs territory. Indeed, article 4 also stipulates that Northern Ireland may benefit from any further trade agreements the UK may conclude with third countries, provided that such treaties do not prejudice the application of the NI Protocol.

PIC: NUALA REDMOND

Under article 5(1), EU customs duties will apply to any goods imported into Northern Ireland if such products are at risk of subsequently being exported to the EU. However, no EU customs duties will apply to goods entering Northern Ireland from Great Britain that are not at risk of entering the EU's single market. Under article 5(2), a good will not be deemed to be such a risk where it is not subject to commercial processing in Northern Ireland, while fulfilling the criteria set down by the Joint Committee. In this regard, the Joint Committee considers various factors, such as final destination, nature, value, and use of the relevant good.

Article 10 provides that EU state-aid law will continue to apply to any measure that affects trade between the EU and Northern Ireland. Article 12 provides that any checks and controls on goods coming into Northern Ireland will be carried out by UK customs officials (under the supervision of EU representatives). Border posts will ensure that the necessary sanitary and phytosanitary tests are done. Article 16 allows both the EU and the UK to implement unilateral safeguarding measures in instances of trade diversions or material economic, societal or environmental difficulties. Any such action should be limited to what is strictly necessary in both scope and duration. Finally, both parties may respond by adopting appropriate rebalancing measures.

The TCA

Part Two, Title I of the TCA provides for no tariffs or quotas on the trade of goods between the EU and Great Britain. In order for goods to qualify for the terms of the TCA, three key criteria must be met, specifically: (1) rules of origin are applicable; (2) the customs regime of the importing party will apply (however, the TCA does limit the amount that may be charged for customs services provided); and (3) all imports into the EU must meet EU standards. The TCA also allows for the adoption of trade-defence mechanisms, including specific measures to protect farmers against major deviations in the price of produce.

Part Two, Title II of the TCA provides for a significant level of open trading in services and investments going beyond the provisions of the World Trade Organisation's *General Agreement on Trade in Services* (GATS). The TCA, like the GATS, applies to a broad range of sectors, such as professional, IT and financial services, as well as investment in sectors other than services including agriculture, manufacturing and fisheries. There are several exceptions to this trade liberalisation, including public services, services of general interest, certain transport services, and audio-visual services.

Since 1 January 2021, UK service providers no longer benefit from the 'passporting' concept

SINCE 1 JANUARY 2021, UK SERVICE PROVIDERS NO LONGER BENEFIT FROM THE 'PASSPORTING' CONCEPT THAT ALLOWS CERTAIN SERVICE PROVIDERS TO USE AN AUTHORISATION OBTAINED IN ONE EU MEMBER STATE TO SELL ITS PRODUCTS ACROSS THE EU WITHOUT HAVING TO OBTAIN A PERMIT/APPROVAL IN EACH MEMBER STATE IN WHICH THE FIRM SEEKS TO OPERATE

that allows certain service providers to use an authorisation obtained in one EU member state to sell its products across the EU without having to obtain a permit/approval in each member state in which the firm seeks to operate. Accordingly, UK service providers wishing to trade in the EU may need to establish themselves in an EU member state. The TCA also contains non-discrimination provisions that entitle service suppliers or investors from the EU to be treated no less favourably than UK operators within the UK, and vice versa.

Level playing field

Given the geographical proximity and economic interdependence of the EU and the UK, Part Two, Title XI of the TCA contains various commitments to ensure that there is a level playing field for open and fair competition, while contributing to sustainable development. In other words, the TCA seeks to prevent trade distortions caused by the lowering of standards in the following general sectors: employment, subsidy control, unfair tax practices, social protection, and environment/climate change.

In addition, specific measures will be applied in key sectors, such as aviation, energy and financial services. The TCA provides that potential infringements may be challenged in the UK courts or in the national courts of an EU member state. If the alleged breach of the level playing field is upheld, the courts are empowered to order the beneficiaries to pay back the illegal subsidy. In addition, disputes between the EU and the UK regarding the level playing field may be submitted to arbitration. Finally, both the UK and the EU may take unilateral remedial measures (for example, the reintroduction of tariffs or quotas) where the other party grants a subsidy that materially undermines trade or investment.

Dispute resolution

Part Six of the TCA contains provisions designed to resolve disputes that may arise between the EU and the UK on the interpretation or implementation of their commitments under the TCA. This is a wide-ranging mechanism that covers disputes arising in trade, the level playing field, plus social security, energy, transport and fisheries. Law enforcement and judicial cooperation have separate dispute-resolution mechanisms. Initially, in the instance of a dispute, there is a good-faith obligation to attempt to resolve it. If this is unsuccessful, an independent arbitration tribunal is established, at the request of the complaining party. The EU and the UK jointly choose the three arbitrators, who must deliver a binding ruling within a set timeframe.

Overall assessment

The TCA represents probably the first free-trade agreement to create rather than reduce or eliminate trade barriers. However, this was unavoidable due to the UK Government's approach to negotiations with the EU, based on its interpretation of the result of the June 2016 referendum. As we have already seen, certain provisions of the TCA/*Withdrawal Agreement*, including the NI Protocol, have given rise to major controversy. There is no doubt that this trend will continue, with the minutiae of both agreements likely to be criticised by politicians, renegotiated by public servants, and interpreted by judges for years to come. g

THE TCA REPRESENTS PROBABLY THE FIRST FREE-TRADE AGREEMENT TO CREATE RATHER THAN REDUCE OR ELIMINATE TRADE BARRIERS

REPORT OF LAW SOCIETY COUNCIL MEETING

29 JANUARY 2021

Regulation of practice

The chair of the Regulation of Practice Committee, Imelda Reynolds, reported on the work of the committee during 2020/2021 under the following headings:

1) Compensation Fund claims,
2) Inspections,
3) Accountants' reports,
4) Investments,
5) Bank charges on deposits,
6) *Solicitors Accounts Regulations*,
7) *Solicitors Advertising Regulations*, and
8) Practising certificates and related matters.

Further issues, including AML compliance, cybersecurity, claims-harvesting websites, and training for committee members/relevant executives were also addressed as part of the report.

Dying with Dignity Bill 2020

The Council approved a submission that had been drafted by the Human Rights and Equality Committee following consultation with the Mental Health Capacity Task Force. The bill provides for medically assisted suicide in certain circumstances and, while it was considered inappropriate for the Society to involve itself in the subject matter of the bill, various human-rights considerations had been identified in areas such as the definition of 'qualifying person'; procedural safeguards, particularly in the area of assessment of capacity; and the need to ensure that the proposed Assisted Dying Review Committee (which would assess matters *post mortem*) would be granted sufficient powers and functions.

Bank charges on deposits

The chair of the Banking Charges on Deposits Task Force, Maura Derivan, reported to the Council on recent correspondence and meetings with a number of the pillar banks and the Central Bank. The task force was also considering various relevant regulations and, in accordance with its terms of reference, engaging in a publicity campaign to inform the public of the Society's opposition to the initiative and to involve the wider profession in that opposition.

PII renewal

The chair of the PII Committee, Barry MacCarthy, provided a comprehensive report on the renewal process and the substantial work that had been undertaken by the Society to assist in securing cover for firms.

Professional wellbeing

Michael Quinlan reported that the Professional Wellbeing Project had been in a phase of discovery and implementation since its launch in October 2019. He updated the Council on a number of project highlights, which included the Business of Wellbeing Summit in September 2020, the ongoing progress of the Professional Wellbeing Hub, the launch of LegalMind within two weeks of implementation of the first COVID-19 restrictions, the celebration of Mental Health Awareness Week, the 'Shrink Me' online wellbeing webinars, and the launch of the *Professional Wellbeing Charter* in September 2020.

Education

The chair of the Education Committee, Martin Lawlor, updated the meeting on a number of important items, which included 2020 admissions, recognition of UK qualifications, and the Competency Framework.

Finance

The chair of the Finance Committee, Chris Callan, reported on matters that included the PC renewal process, the upcoming COVID-19 recovery survey, the finance programme for 2021, and briefings for new Council members on the Society's finances.

Ireland for Law

The director general reported that he, the president, and Liam Kennedy would attend a meeting of the group later that day in order to review progress on the initiative.

Practice support

Sonia McEntee reported that the Practice Support Task Force had contributed to the COVID-19 recovery survey, which would soon issue to the profession. The task force was interested in the potential provision of education and training for legal support staff. The initiative had been launched by the Society's Professional Training section, and some 20 courses were now available online, ranging from financial training to tips for working from home.

REGISTRAR OF SOLICITORS

INTEREST CHARGES ON CLIENT ACCOUNTS

The Society is aware that some banks in the State have or intend to introduce interest charges/negative interest rates (hereinafter referred to as 'interest charge(s)') on certain classes of accounts, including client accounts. The Regulation of Practice Committee, which is responsible for the monitoring of compliance with the *Solicitors Accounts Regulations 2014*, has approved the issuing of this practice note in order to assist solicitors in respect of the introduction of interest charges.

The *Solicitors Acts 1954-2015* and the 2014 regulations permit clients' moneys to be held in a non-interest bearing account, and permit an interest charge applied in respect of client moneys to be passed on to the client, on the basis that certain steps are taken by the solicitor, as outlined below.

What steps should a solicitor take?

In circumstances where a bank informs a solicitor that it intends to impose or imposes an interest charge on a client account, and unless the solicitor has a specific arrangement in writing with the client regarding interest charges, the following steps should be taken:

1) The solicitor should contact the bank and instruct that such charges should not be debited on the client account (or should be reversed if already applied), but should be debited on the solicitor's office account, with the solicitor to disburse same from the office account.
2) Where the interest charge is applied to the moneys in the client account, regardless of any step taken above, the solicitor shall, as soon as possible, arrange for moneys to be transferred to the client account in the amount deducted by the bank so that no deficit occurs in respect of the moneys in the client account.

Can interest charges be treated as outlay?

Any moneys paid by the solicitor in satisfaction of any interest charge may be recovered as outlay from the client in question. Solicitors should be aware of their obligations under section 150 of the *Legal Services Regulation Act 2015* in that regard. In particular, where solicitors propose to recover any payment of interest as outlay, solicitors should provide prior notice under section 150 to their clients of any such interest charge in the same manner as would apply in respect of any other outlay. For existing matters, solicitors should serve a notice of the interest charge under section 150(5) of the 2015 act.

Further, under the 2014 regulations, solicitors should note that, where a solicitor discharges any interest charge themselves as outlay from the office account, the solicitor is entitled to withdraw moneys from the client account that are required towards payment of outlays already paid by the solicitor (including interest charges).

Is there an obligation to move account?

Solicitors are not under an obligation to move their client account to a different account or to another bank where a bank imposes an interest charge, unless an interest bearing solicitors' client account is available at the bank to the practice of the solicitor (or if more than one bank, the principal bank to the practice).

Can I reach an arrangement with the client regarding interest charges?

A solicitor is permitted to enter into an arrangement with a client regarding interest charges on client moneys held in client accounts, by virtue of section 73(3)(a) of the *Solicitors (Amendment) Act 1994* and regulation 8(6) of the 2014 regulations. Such an arrangement should be set out in writing. By way of example, a solicitor may enter into an arrangement with a client directly in respect of a dedicated client account that interest charges be deducted directly from that dedicated client account, but this must be arranged directly with the client. Where the client's money is held in a general client account, any such arrangement can only apply in respect of that specific client's moneys in that account.

General obligations in respect of clients' moneys

Solicitors should be aware of their obligations in respect of clients' moneys, as provided for under the *Solicitors Acts 1954-2015* and the 2014 regulations. In particular, solicitors should note:

1) Their general obligations to ensure that client moneys are not reduced, save as provided for in the 2014 regulations,
2) The obligation on solicitors who receive, hold, or control client moneys to pay such moneys, without delay, into a client account, and
3) A client account can only be opened and maintained in a bank (or branch thereof) that is situate in the State by virtue of section 75 of the *Solicitors (Amendment) Act 1994*.

Solicitors must ensure that client moneys are not reduced as a result of any interest charges that may be imposed by banks, unless in accordance with the 2014 regulations and this practice note. Any deficit arising in client moneys held by a practice is the personal responsibility of the partners/principal of the practice, whether caused by a solicitor or staff member or by a bank. It is the responsibility of the partners/principal to reimburse the client account the amount deducted, rectifying any deficit, whether from the office account and/or from personal funds.

Further queries

Please contact financialregulation@lawsociety.ie should any further queries arise.

John Elliot, Registrar of Solicitors and Director of Regulation

TAXATION COMMITTEE

DAC6 (MANDATORY DISCLOSURE REGIME FOR CERTAIN CROSS-BORDER TRANSACTIONS)

Council Directive 2011/16/EU (the DAC) provides for the sharing of taxpayer information between the tax administrations of EU member states. The DAC was amended by Council Directive (EU) 2018/822 (DAC6) to introduce a mandatory disclosure regime for certain cross-border transactions that could potentially be used for aggressive tax planning.

The EU mandatory disclosure regime requires 'intermediaries' and, in certain circumstances, 'relevant taxpayers' to provide information regarding 'reportable cross-border arrangements' to the tax authorities of member states. This includes information in relation to reportable cross-border arrangements, the first step of which was implemented between 25 June 2018 and 30 June 2020 (the 'look-back' reporting period). There is then automatic sharing of information between member states.

In Ireland, the disclosure regime is provided for by the following legislation:

a) Chapter 3A of part 33 of the *Taxes Consolidation Act 1997* (TCA) introduced in the *Finance Act 2019* (and amended by *Finance Act 2020*), and
b) The *European Union (Administrative Cooperation in the Field of Taxation) Regulations 2012*, as amended.

The disclosure regime became effective in all member states on 1 July 2020 with a 'look-back' reporting period for reportable cross-border arrangements, the first step of which was implemented between 25 June 2018 and 30 June 2020. However, due to COVID-19, Ireland, along with many other member states, exercised an option given in Council Directive (EU) 2020/876 to defer the first disclosures of information for six months.

Revenue guidance has been published on the DAC6 regime and this can be found at www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-33/33-03-03.pdf.

This note seeks to summarise points of note regarding the DAC6, and also addresses the immediate reporting requirements in relation to 'reportable cross-border arrangements'. **This note does not purport to be a full examination of the issues and obligations under DAC6.**

Reportable arrangement

A cross-border arrangement is defined in the Irish legislation as an arrangement concerning either more than one member state or a member state and a third country where at least **one** of the following conditions is met:

a) Not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction,
b) One or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction,
c) One or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment (PE) situated in that jurisdiction, and the arrangement forms part or the whole of the business of that PE,
d) One or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a PE situated in that jurisdiction,
e) Such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

The definition is accordingly expansive, but must concern at least one member state. In practice, Revenue guidance provides information on when this condition will be met.

A **reportable** cross-border arrangement is a cross-border arrangement that falls under certain hallmarks. These are listed at Annex IV of the DAC and are grouped into the following five categories:

a) Generic hallmarks linked to the 'main benefit' test,
b) Specific hallmarks linked to the main benefit test,
c) Specific hallmarks related to cross-border transactions (with some linked to the main benefit test),
d) Specific hallmarks concerning automatic exchange of information and beneficial ownership, and
e) Specific hallmarks concerning transfer pricing.

These categories are explored in greater detail in the Revenue guidance referenced above. (See also the useful commentary on the categories also in 'EU mandatory disclosure: crunch time for DAC6 filings' by David Fennell (*Irish Tax Review* [2020] Vol 33/4.)

The main benefit test is satisfied if it can be established that a 'tax advantage' is the main benefit or one of the main benefits, which, having regard to all relevant facts and circumstances, a person may reasonably expect to obtain from the arrangement. It is a test that is objective and seeks to discern the core or main purpose of the particular arrangement. In many cases, where commercial transactions are involved, this test will not be met and, where hallmark categories incorporate this 'main benefit' test, this will require careful review. In particular, intermediaries (which includes solicitors – see below) will, in many cases, be capable of identifying if an arrangement falls under a particular hallmark category, but it will be more difficult to discern if the 'main benefit' of the arrangement was to secure a tax advantage.

It is important to note that some of the hallmark categories – see, for example, the hallmarks in relation to transfer pricing – will not have a main-benefit test, and the existence of an arrangement falling under the category will be sufficient.

Reporting deadlines

Reporting deadlines can be summarised as follows:

a) Where arrangements were made available or ready for implementation, or implemented (or aid or assistance provided) between 1 July 2020 and 31 December 2020, the reporting requirements must be met by **30 January 2021**,
b) For the look-back period between 25 June 2018 and 30 June 2020, where the first step of the arrangement was first implemented, the reporting requirements must be met by **28 February 2021**,
c) For transactions from 1 January 2021, the reporting obligation will arise **within 30 days** from when the arrangements are made available or ready for implementation, or implemented (or aid or assistance provided).

Significant penalties can apply in the absence of reporting obligations being met, although Rev-

enue has confirmed that penalties should not apply where non-reporting has been the result of an objective decision-making process.

The form of reporting is under ROS, but for solicitors, who have reporting obligations, the form of providing reports and content will depend on whether legal professional privilege applies to the transaction. This is discussed further below.

Reporting obligations

In the absence of intermediaries, the reporting obligations under DAC6 and the TCA will fall on the taxpayers participating in the arrangements.

There are two forms of intermediaries under the guidance and, while there are requirements concerning the presence of the intermediaries in the EU, it should be noted that solicitors who are members of the Law Society (and any taxation or accounting body in Ireland) will be intermediaries.

The first form of intermediary is one who actively designs and advises on reportable cross-border arrangements for clients. This would, in some cases, include solicitors or tax advisers.

The second form of intermediary is any person who knows, or could reasonably be expected to know, that it is providing aid, assistance or advice with respect to the design, marketing, organising, making available for implementation of a reportable cross-border arrangement. Under this category, there is no onus on service providers to carry out additional due diligence or inquiries to ascertain the nature of the transaction, other than use information in the carrying out of the services.

The main difference between the two forms or category of intermediary is that the second form is entitled to rely on the fact that it did not know they were involved in a reportable arrangement.

As to which category of intermediary exists will depend on the nature and extent of the involvement in the arrangement.

Where the services make the solicitor an intermediary, the reporting obligation will fall on the partnership of which the solicitor is a partner or employee.

Where there is no intermediary, or there is only an intermediary with no nexus to the EU, the reporting obligations fall on the relevant taxpayer. This will also arise where legal professional privilege (LPP) applies. A relevant taxpayer is generally any person to whom the reportable cross-border arrangement is made available for implementation.

In relation to solicitors who are intermediaries, in relation to the reportable cross-border arrangement, there is also the issue of whether LPP applies. Where the information to be reported in relation to the reportable cross-border arrangement is subject to LPP, then the level of reporting will be reduced, but the solicitor will then be obliged to inform his or her client that reporting obligations will arise for the client. The solicitor is still required to report the name of the client, and this will trigger an inquiry where the client has not separately reported. In many cases, the client may choose to waive LPP, in which case the reporting obligations will fall back on the solicitor.

In relation to assessing the existence of LPP, the following points might be noted:

a) The name of the client may not attract privilege, meaning that even where the transaction attracts LPP, a solicitor may have to disclose the name of the client.
b) LPP will, generally, only exist in the context of the provision of legal advice. Legal assistance – comprising perhaps of implementation steps in a transaction – will not qualify for LPP unless the disclosure of same informs on the legal advice provided.
c) Where LPP applies, and as above, Revenue will expect details of the name of the relevant taxpayer in the arrangements, so clients will have to be made aware of this, and may, as a result, waive LPP. Where this occurs, there is a full reporting requirement on the intermediary, and the reporting deadlines apply with no extension of time.
d) Where the arrangements involve other intermediaries, a solicitor should also inquire as to whether those intermediaries have reported the transaction, as this reporting may remove the need to report separately. This does require the solicitor to obtain a copy of the unique transaction ID number assigned by the revenue authority to the filing made, along with written confirmation that such other intermediary has made a return and (1) provided the specified information to the Revenue Commissioners under section 817RC, or (2) where such other intermediary has made a return to a competent authority of another member state, a copy of the specified information provided to that competent authority.

Practical steps

As the matters requiring analysis under DAC6 are complex and, in relation to new assignments, solicitors will be required to carry out a full analysis on whether any assignment falls to be considered a reportable cross-border arrangement. The risk of non-compliance is significant and is a risk that falls on solicitors who are intermediaries.

This analysis for new assignments should be carried out at the point of engaging with clients on a new transaction. It should not be left to a time when the transaction has progressed, given the reporting deadlines (that generally apply from the date of when the arrangements are made available for implementation, and not the possibly later date of implementation).

In short, solicitors should have DAC6 compliance steps incorporated into their general risk-management steps.

In relation to an assignment, each solicitor will be required to assess:

a) Whether a transaction is reportable before engaging with the client – it is for the solicitor to form their own view based on the information available to them (assuming they fall within category 2) as to whether a hallmark is breached.
b) If there is a reportable cross-border arrangement and under which hallmark it falls – this will require some discussion with the client, who may take a different view on the nature of the transaction, particularly where there is a main-benefit test.
c) If the solicitor is a category 1 or category 2 intermediary and, particularly if category 2, whether the information held is sufficient to form a view on whether the transaction is a reportable cross-border arrangement. The differences in due diligence to be exercised by a solicitor between category 1 and 2 will need to be noted once the category is established.
d) Whether the client accepts that there is a reportable cross-border arrangement. If the client does not consider there is such an arrangement, this does not absolve the solicitor from carrying out an independent assessment.
e) Whether the arrangements involve other intermediaries who may have reported the reportable cross-border arrangement. If so, the obligations of the solicitor to separately report will not exist, provided the unique ID number of the arrangements is provided by the other intermediary and

written confirmation that such other intermediary has made a return and provided the specified information to the Revenue Commissioners under section 817RC or, where such other intermediary has made a return to a competent authority of another member state, a copy of the specified information provided to that competent authority.

f) Whether LPP applies and, if so, whether the client wishes to waive LPP.

For historic assignments that were made available for implementation from 25 June 2018, the Taxation Committee (through some of its representative members) has obtained some guidance on the immediate reporting obligations for 30 January 2021 and 28 February 2021.

These can be summarised, as follows:

a) Solicitors should have reference to the amended guidance in section 4.10 of the Revenue guidance (see www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-33/33-03-03.pdf).

b) For solicitors filing in relation to reportable cross-border arrangements between 1 July 2020 and 31 December 2020 (due by 30 January 2021), and where LPP is considered to apply in relation to the transaction, the filing should be completed through the **excel DAC6** (as there are issues with the ROS system for filing reports where LPP applies) – see www.revenue.ie/en/online-services/support/software-developers/aeoi.aspx.

c) The **excel DAC6** can also be used for filings in relation to reportable cross-border arrangements between 25 June 2018 and 30 June 2020 (due by 28 February 2021).

d) For filings in (b) and (c) above, Revenue has agreed that, where LPP applies, they will accept details of taxpayer and intermediaries, and a full LPP review on other specified information will not be required.

e) For reporting deadlines falling **after** 28 February (the 30-day deadline applies from the date the reportable cross-border arrangements are available for implementation), a full LPP analysis should have occurred.

f) For all reporting above, the client's name will be expected to be provided, even where LPP applies. There may be situations where the client's name will infringe on LPP, but it is expected that this will only be in very limited situations. Solicitors should ensure that clients are aware of these matters.

g) If a client waives LPP, the full reporting obligations will fall back on the intermediary in relation to the reportable cross-border arrangement. The reporting deadline of 30 days from the earliest date will apply, with no extension, so there is a need for a solicitor to query the position with a client early in the process to ensure the reporting deadlines are met.

h) Revenue has agreed, for the January and February filings only, that where LPP applies, they will accept details of taxpayer and intermediaries, and that a full LPP review on other specified information is not required.

CONVEYANCING COMMITTEE

VARYING A LEASE: AVOIDING UNINTENDED CONSEQUENCES

Given the impact of the current pandemic on the commercial property market, it is becoming increasingly common for landlords and tenants to agree to vary the terms of commercial leases. These variations can take many forms, including extending the term, amending the rent, postponing rent reviews, altering the demise, postponing or removing break options, or a combination of some or all the foregoing, to name but a few examples.

Practitioners' attention is drawn, however, to the potential unintended consequences of varying the terms of a lease, such that the arrangement as a matter of law may be construed as a surrender and re-grant, thus bringing the existing lease to an end and creating a new one.

Where the lease predates the introduction of the prohibition on upward-only rent reviews (28 February 2010 by virtue of section 132 of the *Land and Conveyancing Law Reform Act 2009*) and contains upward-only rent review provisions, the variation, if it constitutes a surrender and re-grant, will very probably render all future rent reviews upwards or downwards.

A renunciation of tenant renewal rights on the original lease might not apply to the re-grant. The re-grant may trigger a requirement for third-party consents, such as those of a superior landlord or funder.

Tax, and in particular stamp-duty and VAT consequences, also need to be considered. Where the arrangement amounts to a surrender and re-grant, the deed of variation will be stampable as a new lease. The Revenue's own guidance, published in July 2020, places considerable emphasis on the intention of the parties in determining whether the variation constitutes a surrender and re-grant.

Unfortunately, the law in Ireland is not definitive as to whether the intention of the parties is paramount in determining whether a surrender and re-grant has occurred or not. In English law, the position on whether a surrender and re-grant has occurred is a matter to be determined on the objective interpretation of the facts, and not just on the intention of the parties.

It is not possible to be definitive in providing guidance in this area but, in general terms, where the area being demised is being altered, it is more than likely that the arrangement will be 'objectively interpreted' as a surrender and re-grant, regardless of the intention of the parties. A better approach might be to grant a supplemental lease of the additional area. Likewise, care should be taken in extending the term, which again might be 'objectively interpreted' as a surrender and re-grant. A better approach might be to grant an option to enter a renewal lease or to grant a reversionary lease.

In general terms (but without being definitive), variations that do not alter the demise or extend the term, are likely to be 'objectively interpreted' as simple variations without triggering a surrender and re-grant. The inclusion in the deed of variation of an express provision to the effect that the parties' intention is simply to vary certain terms of the lease and not to create a new lease by surrender and re-grant should assist, although the law in Ireland is not definitive as to whether the intention of the parties is a determining factor.

CONVEYANCING COMMITTEE

REGISTRATION OF PRESCRIPTIVE EASEMENTS UNDER SECTION 49A

Prescriptive easements are registered in the Land Registry under section 49A of the *Land and Conveyancing Law Reform Act 2009* as inserted by section 41 of the *Civil Law (Miscellaneous Provisions) Act 2011*. Such applications are made in Form 68 of the Land Registry Rules. The purpose of this change was to provide people with an easier and cheaper way to register an easement without having to apply to court. Section 49A applications are appropriate only in non-contentious cases. See *Easements and Profits à Prendre Acquired by Prescription under Section 49A* at www.prai.ie.

The procedure under section 49A involves the applicant swearing Form 68. Paragraph 2 of Form 68 reads as follows:

"*(Describe how and when the user period began and set out such facts as are relied upon in support of the applicant's claim to have established his right. The applicant must establish that there was at all material times a capable grantor and grantee, that the right was capable of forming the subject matter of a grant, that the right claimed was acquired by prescription and was not a public right of way, customary right, franchise or licence, nor acquired by express grant or reservation nor is it an easement of necessity, that there has been the requisite period of user, that the exercise of the right has been without force, without secrecy and without permission and that the grant of the right would not have been illegal).*"

These requirements are stated in a manner that is not wholly consistent with the law on prescription. For example, an equitable right that was originally exercised under a licence can evolve into a prescriptive right. A right to claim an easement established by prescription and alternative claims (such as a right of necessity) are not mutually exclusive. One may be able to rely on either or both. However, Form 68 does not cater for such a possibility. An applicant is effectively being required to disclaim possible rights, such as a right of way by necessity, in order to make the application to the PRAI under section 49A. If an applicant to the PRAI claims or confirms that the easement sought is an easement of necessity, the application based on prescription will be rejected by the PRAI.

Applicants who have sworn Form 68 may have precluded themselves from subsequently making any application to court for a declaratory order, which is inconsistent with the averments in the Form 68 lodged if the PRAI application fails. The PRAI has indicated that it could not accept any qualification in the section 49A application seeking to reserve the rights of the applicant in case they needed to go to court to validate any right.

Where there is a possibility that an applicant may wish to rely on an easement of necessity, or any other alternative basis for the use that is required to be disavowed by Form 68, then the prudent course may be to make a court application rather than a section 49A application. The committee recognises that a court application is much more expensive, and there is also a risk of an applicant being ordered to pay the legal costs of the owner of the servient tenement. It may be possible to reduce the exposure to costs where the owner of the servient tenement (and any charge holder where appropriate) consent to the court application. Solicitors need to carefully discuss what is practicable when their client is choosing which route to take to confirm and/or register a prescriptive right.

Where a claimed right is contested, a court order is required to confirm the right. In cases where such an order is made under the 2009 act, it will be necessary to register that order in the Land Registry by reason of section 35(4) of the 2009 act. In other cases, it would not be necessary to register that court order in the Land Registry, but where it is prudent to do so, section 69(1)(h) of the *Registration of Title Act 1964* allows for such registration.

The committee is making representations, seeking to have the PRAI procedure changed to remove this unnecessary clog on section 49A applications. These representations seek the removal of the words "*and was not a public right of way, customary right, franchise or licence, nor acquired by express grant or reservation nor is it an easement of necessity*" from the notes in paragraph 2 of Form 68.

CONVEYANCING COMMITTEE

REGISTRATION OF PRESCRIPTIVE EASEMENTS OVER STATE LAND OR FORESHORE

The Conveyancing Committee published a practice note entitled 'Rights of way and other easements after 2021' in the May 2018 *eZine* and the June 2018 *Gazette*, the purpose of which was to allay concerns regarding the registration of prescriptive easements in the Land Registry prior to 1 December 2021. The practice note confirmed that all that changes after that date is the basis on which an application to register a prescriptive easement may be made to the PRAI or the court. That practice note relates to the new prescriptive period of 12 years, introduced under section 49A of the *Land and Conveyancing Law Reform Act 2009* as inserted by section 41 of the *Civil Law (Miscellaneous Provisions) Act 2011*. The committee published a further practice note entitled 'Implied easements' in the November 2020 *eZine* and the December 2020 *Gazette*.

However, under the *Land and Conveyancing Law Reform Act 2009*, and with effect from 1 December 2009, the period for acquiring a prescriptive right over State land is 30 years, and over foreshore it is 60 years.

One interpretation of the legislation is that, where a person has exercised an easement by prescription over State land or foreshore prior to 1 December 2009, and regardless as to how long they have exercised it for, they will not be able to apply for registration of that easement in the Land Registry until the right has been enjoyed for the full period specified under the 2009 act. In effect, the clock will be reset as of that date, and the entire period prior to 1 December 2009 will be disregarded, even where the right has been enjoyed for decades or centuries.

If that interpretation is correct, then after 1 December 2021, no application to register a prescriptive easement in the Land Registry over State land could be made until 30 years after 1 December 2009 (that is, until 2039). In respect of foreshore, an applicant would need to wait until 2069.

Another interpretation of the legislation is that there is a presumption against retrospective application of a law that would deprive a person of property rights and, accordingly, the act cannot set aside substantive rights already acquired (at least not without a compensation regime).

Under this interpretation, a right that has crystallised prior to 1 December 2009 under the doctrine of lost modern grant is not affected by the abolition of the doctrine.

It will require a court decision, or amending legislation, to determine these issues.

Applications to the PRAI to register prescriptive rights are made in non-contentious situations. Please refer to the separate practice note (p57) issuing at the same time as this one, which deals with such applications.

The Conveyancing Committee suggests that the most prudent guidance for solicitors to give to their clients who consult them in connection with prescriptive rights over State land or foreshore is to proceed to institute all necessary proceedings, or make any necessary application to the PRAI as soon as practicable and, in any event, in advance of 1 December 2021.

CONVEYANCING COMMITTEE

REPLIES TO REQUISITIONS AND CERTIFICATION OF SEARCH RESULTS

The Conveyancing Committee confirms that replies to requisitions on title are given by a vendor's solicitor "for and on behalf of the vendor" – as is set out in the signature block at the end of the standard requisitions, and also in the explanatory memorandum to the 2019 *Requisitions on Title* (available in the 'Precedents' section of the website).

There is, therefore, no necessity for:

- Replies to the effect of 'the vendor says yes', or
- The use of special conditions in contracts for sale stating that replies to requisitions are those of the vendor and no liability shall attach to the vendor's solicitors in relation to replies given.

It is not acceptable conveyancing practice to provide replies to requisitions on title or certification of searches on a 'without prejudice' basis.

CONVEYANCING COMMITTEE

LPT – PROPERTY HISTORY SCREEN

The Conveyancing Committee has been advised by practitioners that Revenue has recently provided a new screen in their LPT online system that provides property owners with a statement of their LPT matters that they can access on ROS.

This statement does not, however, provide details of:

- The valuation band declared for LPT purposes at the last valuation date, or
- The position in relation to the Household Charge.

This statement is therefore not acceptable for conveyancing purposes in lieu of the printout of the vendor's property history screen from the LPT online system. Practitioners should advise their vendor clients accordingly and request that they produce a printout of the up-to-date property history screen to provide to the purchaser. g

WILLS

Brennan, Anne Brigid (deceased), late of St Eunan's Nursing Home, Ramelton Road, Letterkenny, Co Donegal, and previously of Derryveagh, Halters End, Grayshott, Hindhead, Surrey GU26 6EE, who died on 5 January 2021. Would any person having knowledge of the whereabouts of a will made by the above-named deceased please contact Finders International, Unit 12D Butlers Court, John Rogerson Quay, Dublin 2; ref: 105498W; tel: 01 567 6940, email: info@findersinternational.ie

Brown, Paul (deceased), late of 68 Galtymore Road, Drimnagh, Dublin 12, who died on 27 July 2019. Would any person having knowledge of any will made by the above-named deceased please contact Johnston Solicitors, 179 Crumlin Road, Crumlin, Dublin 12; email: info@johnstonsolicitors.ie

Charlton, Margaret (deceased), late of Kilclough, Kilworth, Co Cork, who died on 22 December 2016. Would any solicitor holding or having knowledge of a will made by the above-named deceased please contact Michael Shinnick, Messrs Michael Shinnick & Co, Solicitors, Kildrum, Mitchelstown, Co Cork; P67 D798; tel: 025 84081, email: info@shinnicksolicitors.ie

Cronin, Mary (deceased), late of *St Teresa's*, Caherslee, Tralee, Co Kerry. Would any person having knowledge of a will made by the above-named deceased, who died on 15 May 2019, please contact Murphy Ramsay Walsh Solicitors, 12 Ashe Street, Tralee, Co Kerry; tel: 066 712 2499, fax: 066 712 2221, email: info@mrwsol.com

Duff, William (deceased), late of 94 Strand Street, Skerries, Co Dublin, who died on 18 June 2019. Would any person having knowledge of the last will made by the above-named deceased or its whereabouts please contact Direct Law Solicitors, 10 Skerries Point Shopping Centre, Skerries, Co Dublin; tel: 01 849 4226, email: sdowling@directlaw.ie

Fahy, Patrick (orse Patsy) (deceased), late of 106 Seacrest, Salthill, Galway. Would any person having any knowledge of a will executed by the above-named deceased, who died on 7 January 2020, please contact F MacCarthy Solicitors LLP, Loughrea, Co Galway; tel: 091 841 529, email: law@fgmaccarthy.com

Fanning, Noel (deceased), late of 13 Galtrim Road, Bray, Co Wicklow, and formerly of Viewmount Park, Waterford, who died on 10 December 2020. Would any person having knowledge of a will made by the above-named please contact Helen Doyle, Doyles Solicitors LLP, 7 Glena Terrace, Spawell Road, Wexford; tel: 053 912 3077, email: info@doylesolicitors.ie

Fitzpatrick, Pauline (deceased), late of Farnamurray, Nenagh, Co Tipperary, and formerly of Lisnagry, Co Limerick, who died on 5 January 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Margaret O'Connell of Dermot G O'Donovan Solicitors, Riverpoint, Lower Mallow Street, Limerick; tel: 061 314 788, email: moconnell@dgod.ie

Halpin, Michael (deceased), late of 9 Cluain Ard, Kilmaley, Co Clare, and formerly of 1 Castlefield, Dunlicky Road, Kilkee, Co Clare, who died on 16 March 2020. Would any person having any knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Doherty Solicitors, Seville House, New Dock Street, Galway; tel: 091 567 083, email: bdoherty@dohertysolicitors.com

Horrigan, Rodger (deceased), late of Villa Marie, Gortlandroe, Nenagh, Co Tipperary, and formerly Islandbawn, Nenagh, Co Tipperary, who died on 29 January 2019. Would any person having knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact John M Spencer, solicitor, Cudville, Nenagh, Co Tipperary; DX 20 007 Nenagh; tel: 067 31622, email: info@jmspencer.ie

Kelly, Sheila (deceased), late of Knockane, Eyeries, Beara, Co Cork, who died on April 2018. Would any person having any knowledge of the whereabouts of any will made or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Michael Coughlan, Hennessy & Co, Solicitors, Wolfe Tone Square, Bantry, Co Cork; tel: 027 50317, email: info@hennessy-co.ie

RATES

PROFESSIONAL NOTICE RATES

RATES IN THE PROFESSIONAL NOTICES SECTION ARE AS FOLLOWS:

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

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

ALL NOTICES MUST BE PAID FOR PRIOR TO PUBLICATION. ALL NOTICES MUST BE EMAILED TO catherine.kearney@lawsociety.ie and PAYMENT MADE BY ELECTRONIC FUNDS TRANSFER (EFT). The Law Society's EFT details will be supplied following receipt of your email. **Deadline for April 2021 *Gazette*: 12 March 2021.**

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*.

Lawless, Martin (deceased), late of Tinnahinch, Rosenallis, Co Laois. Would any person having knowledge of a will made by the above-named deceased, who died on 20 August 2019, please contact Messrs Bolger White Egan & Flanagan Solicitors, 8 Lismard Court, Portlaoise, Co Laois; tel: 057 86 21468, email: denisebweflaw.com

Long, Darragh (otherwise Darragh John Paul Long) (deceased), late of Apartment 12, Clarinda House, Clarinda Park West, Dun Laoghaire, Co Dublin, and 6 St John's Grove, Clondalkin, Dublin 22, who died on 30 October 2020. Would any person having knowledge of the whereabouts of a will made or purported to be made by the above-named deceased please contact Ann Mangan, Howell & Company, 2 Tower Road, Clondalkin, Dublin 22; tel: 01 403 0777, email: ann@howellsolicitors.ie

McCaffrey, Arthur (deceased), late of Oakridge Clinic, 14 Magheraknock Road, Ballynaninch, Northern Ireland, and formerly of Falmore, Maghery, Dungloe, Co Donegal, who died on 21 February 2014. Would any person having knowledge of a will executed by the above-named deceased or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Louise Hayes, Hartnett Hayes Solicitors, Gweedore Road, Dungloe, Co Donegal; DX 156004 Dungloe; tel: 074 952 2208, email: info@hartnetthayes.com

McElligott, Concepta (Cleo) (deceased), late of Byron House, Strand Road, Sutton, Dublin 13, who died on 4 September 2019. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Anne Marie Donnelly, Daly Derham Donnelly Solicitors, 1A Washington Street West, Cork; tel: 021 427 3269, email: anne-marie@dalyderham.ie

MacMahon, Martina (deceased), late of 14 Lakelands Park, Terenure, Dublin, and formerly of the Old School House, Mountshannon, Co Clare. Would any person having knowledge of any will made by the above-named deceased please contact Mark Collins, Tom Collins & Company Solicitors, 132 Terenure Road North, Terenure, Dublin 6W; tel: 01 490 0121, email: mark@tomcollins.ie

Murphy, Tadhg (Teddy) (deceased), late of 10 Fingal Place, Stoneybatter, Dublin 7, who died on 24 January 2021. Would any person having knowledge of any will made by the above-named deceased please contact Michael Purcell and Son LLP, Solicitors, 33 Main Street, Macroom, Co Cork; DX 55 005 Macroom; tel: 026 41614, email: info@purcells.ie

Rodden, Noel (deceased), late of 3 Massinass, Creeslough, Co Donegal, who died on 17 November 2020. Would any person having knowledge of the whereabouts of any will executed by the above-named deceased please contact Cullen Solicitors & Co, 86/88 Tyrconnell Road, Inchicore, Dublin 8; tel: 01 453 6114, email: enquiries@cullencosolicitors.com

Ryan, Kathleen May (deceased), late of Ailsbury House Nursing Home, Sandymount, Dublin 4, and formerly of 20 Stradbrook Grove, Blackrock, Co Dublin, and 'Kathmar', Proby Square, Blackrock, Co Dublin respectively, who died on 16 November 2019. Would any person having knowledge of a will executed by the above-named deceased, or purported to have been made by the above-named deceased, or if any firm is holding same, please contact Tony McGinty, Tony McGinty & Co, Solicitors, Unit 2 Howley Court, Oranmore, Co Galway; tel: 091 788 178, email: mcgintytony2@gmail.com

Ryan, Patrick (deceased), late of 14 Old Court Road, Old Bawn, Tallaght, Dublin 24, who died on 11 January 2017. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Sarah Flynn, Corrigan & Corrigan, 3 St Andrew's Street, Dublin 2; tel: 01 677 6108, fax: 01 679 4392, email: sarah.flynn@corrigan.ie

Scullion, Gerald (otherwise Patrick Gerald) (deceased), late of 21 St Mary's Villas, Drogheda, Co Louth. Would any person having knowledge of a will executed by the above-named deceased, who died on 4 January 2021, please contact Nora Collier, Tallans Solicitors, The Haymarket, Drogheda, Co Louth; DX 23009; tel; 041 983 8708/9, fax: 041 983 9111, email: nora@tallans.ie

Shanks, Robert (deceased), late of Knockatomcoyle, Tinahely, Co Wicklow, and formerly of Greystones, Co Wicklow, who died on 22 January 2021. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Sarah Flynn, Corrigan & Corrigan, 3 St Andrew's Street, Dublin 2; tel: 01 677 6108, fax: 01 679 4392, email: sarah.flynn@corrigan.ie

Walsh, Mary (deceased), late of 46 Assumption Place, Kilkenny City, who died on 21 July 1995. Would any person having knowledge of the whereabouts of any will made by the above-named deceased please contact Martin O'Carroll, Poe Kiely Hogan Lanigan Solicitors, 21 Patrick Street, Kilkenny; tel: 056 772 1063, email: mocarroll@pkhl.ie

TITLE DEEDS

In the matter of the *Landlord and Tenant Acts 1967-2008* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of the lands adjoining 29 Dale View, Ballybrack, Co Dublin: an application by Green Label Property Investments Limited

Any person having a freehold estate or any intermediate interest in all that and those the lands adjoining 29 Dale View, Ballybrack, Co Dublin (the lands), being currently held by Green Label Property Investments Limited (the applicant) under a lease dated 30 December 1911 between George Packenham Stewart, Amy Louise Charlotte Callwell, Gertrude Emma Callwell, Helen Lindsay May Callwell and Ida Eleanor Callwell of the one part, and James Mulligan of the other part, for a term of 150 years from 25 March 1911 at a rent of £23 per annum (the lease), the lands being that part of the lands demised by the lease and subsequently assigned by and more particularly delineated and described in an assignment dated 12 February 1976 between John Donnellan and Mary Donnellan of the one part, and Brendan O'Connor of the other part, which said leasehold interest is registered in Folio 164402L of the register of leaseholders for Co Dublin.

Take notice that the applicant, as lessee under the lease, intends to apply to the county registrar for the city of Dublin for the acquisition of the freehold interest and all intermediate interests in the lands, and any party asserting that they hold a superior interest in the lands is called upon to furnish evidence of title to same to the below-named within 21 days from the date of this notice.

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

Date: 5 March 2021
Signed: Gaffney Halligan & Co (solicitors for the applicant), 413 Howth Road, Raheny, Dublin 5

In the matter of the *Landlord and Tenant Acts 1967-2019* and in the matter of an application of St Flannan's (Killaloe) Diocesan Trust, Killaloe Diocesan Office, Westbourne, Ennis, in the county of Clare, and in the matter of the property known as

the Old School House, Knockbeha, Flagmount, Co Clare

Take notice any person having a freehold interest or any intermediate interest in all that and those the property situated in the townland of Knockbeha, parish of Flagmount, barony of Upper Tulla and the county of Clare, more particularly known as the Old School House, Knockbeha, Flagmount, in the county of Clare (hereinafter called 'the property'), the subject matter of a lease dated 10 November 1923 and made between William Clarendon of the first part, Rev Michael Considine, John Houlihan and Michael McNamara (trustees) of the second part, and the National Education Commissioners of the third part for a term of 99 years from 10 November 1923 at a yearly rent of £0, 0s, 1d pounds thereby reserved, and to the covenants by the lessee and conditions therein contained.

Take notice that St Flannan's (Killaloe) Diocesan Trust intends to submit an application to the county registrar for the county of Clare for the acquisition of the freehold interest in the property, and that any party asserting that they hold a superior interest in the property is called upon to furnish evidence of such title to the property to the undermentioned solicitors within 21 days of this notice.

Take notice that, in default of such notice being received, the applicant, St Flannan's (Killaloe) Diocesan Trust, intends to proceed with the application before the county registrar at the end of 21 days from the date of this notice and will apply to the county registrar for the county of Clare for such directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold reversion in the property are unknown or unascertained.

Date: 5 March 2021

Signed: Kerin, Hickman & O'Donnell (solicitors for the applicant), 2 Bindon Street, Ennis, Co Clare; ref: RJH ST 100-Flagmount/EK

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* and in the matter of an application by Neal Flynn and in the matter of a plot of ground at the rear of premises no 23 Reginald Street, The Coombe, Dublin 8

Take notice any person having any interest in the freehold estate of the following property: a plot of ground at the rear of premises no 23 Reginald Street, The Coombe, Dublin 8. Take notice that Neal Flynn intends to submit an application to the county registrar for the city of Dublin for the acquisition of the freehold interest and all intermediate interests in the aforesaid property, and any party asserting that they hold a superior interest in the aforesaid property (or any of them) is called upon to furnish evidence of the title to the aforementioned property to the below-named solicitors with 21 days from the date of this notice.

The said plot of ground is held under an indenture of lease made on 21 October 1974 (hereinafter called 'the lease') and made between the Dublin Artisans' Dwellings Company Limited of the one part and Kathleen Hodgins of the other part for a term of 150 years from 1 April 1961, subject to the yearly rent of five pence and to the covenants and conditions contained, which said property is part of the lands demised by a superior lease dated 8 October 1881 and made between the Right Honourable Lord Mayor, Aldermen and Burgesses of Dublin of the one part and the Dublin Artisans' Dwellings Company Limited of the other part for a term of 10,000 years from 1 January 1881, subject to the rent of a peppercorn during first two years, if demanded and, during the residue of the term, the yearly sum of 200 pounds and to the covenants and conditions contained.

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

Date: 5 March 2021

Signed: Reidy Associates (solicitors for the applicants), 13 Warrington Place, Dublin 2

In the matter of the *Landlord and Tenant Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2 Act) 1978* and in the matter of the dwellinghouse and premises known as no 86 Leinster Road, situate in the township of Rathmines, parish of St Peter, and county of Dublin, now known in the city of Dublin: an application by Theresa O'Dea and Anthony O'Dea

Take notice that any person having any interest in the freehold estate or any intermediate interest in the following property: the dwellinghouse and premises known as 86 Leinster Road, situate in the township of Rathmines, parish of St Peter, and county of Dublin, now known in the city of Dublin, which was demised by indenture of lease dated 25 January 1927 and made between Peter William Herrion of the one part and Margaret O'Loughlin of the other part for the term of 143 years from 25 March 1854 (save the last day thereof), subject to the yearly rent of £5 thereby reserved and to the covenants on the part of the lessee and the conditions therein contained.

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

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

Date: 5 March 2021

Signed: Theresa and Anthony O'Dea (applicants), 79 Grosvenor Lane Rathmines, Dublin 6; D06 C9P2

In the matter of the *Landlord and Tenants Acts 1967-2005* and in the matter of the *Landlord and Tenant (Ground Rents) (No 2) Act 1978* (as amended) and in the matter of an application by Brain Good of 14 Beech Park, Castle Road, Kilkenny, and in the matter of the property known as Teach Mhuire, Dunmore Road, Waterford

Take notice that any person having an interest in the fee farm grantors interest or any intermediate interest in all that and those

the lands and premises known as 'Teach Mhuire', Dunmore Road, Waterford, in the city of Waterford, held under a fee farm grant dated 10 December 1947 and made between Francis Grogan of the one part and James F Good of the other part in fee simple, subject to the yearly fee farm rent of £7, 10s, and 0d and the covenants and conditions in the said fee farm grant contained.

Take notice that Brian Good intends to submit an application to the county registrar for the city of Waterford for the acquisition of the fee farm grantor's interest in the aforesaid property, and that any party asserting that they hold a superior interest in the aforesaid property is called upon to furnish evidence to the title to the aforesaid property to the undermentioned solicitors within 21 days from the date of this notice.

Take notice that, in default of any such notice being received, the applicant, Brian Good, will apply at the end of 21 days from the date of this notice to the county registrar for the city of Waterford for directions as may be appropriate on the basis that the persons beneficially entitled to the superior interest including the freehold premises are unknown or unascertained.

Date: 5 March 2021
Signed: Hughes Walsh (solicitors for the applicant), 23 James Street, Kilkenny

RECRUITMENT

Coleman Law is recruiting for a legal bookkeeper/accounts person (for a part-time position, with experience of both LEAP legal software and Xero accounts package) and a legal secretary/legal executive for a part-time position with experience in conveyancing and probate. Positions may suit job-share. Please submit CV and hours available to info@colemanlaw.ie

PRO BONOBO

'NOT A CAT' GIFT STILL GIVING

A Florida law firm has published an online profile for its latest hire, *Legal Cheek* reports. According to the company's site, 'IM Nottacat', "is a ~~cat~~ human who does human work and advises human companies and human investors".

The former editor of the *Paw Review* at the University of Nowhere's Kitten College of Law, where he graduated "*summa purr laude*", specialises in "fisheries, aquaculture, and controlled substances (commonly known as catnip)".

The profile is a parody of the viral video in which a US lawyer failed to turn off a cat-face Zoom filter during a virtual hearing, uttering the immortal line, "I'm here live; I'm not a cat."

EVERYBODY CRAZY 'BOUT AN UNDRESSED MAN

In more virtual high-jinks, an English High Court hearing was abandoned after being interrupted by members of the public who blew raspberries, swore at the judge, and shared obscene images.

The *Swindon Advertiser* reports that around 140 spectators tuned into the remote hearing, which concerned a local football club. Early on, the judge urged members of the public against disrupting the call. However, the proceedings are said to have quickly descended into chaos, after one observer shared his computer screen, which displayed pornographic snaps of "well-endowed men".

The judge reportedly told the parties' barristers: "I've got quite a strange screen at the moment. I'm wondering who's interfering with the conduct of the court?" The judge's warning was ignored, however, as moments later a member of the public shouted a profanity.

There is no suggestion the disruption was instigated by any of the parties to the proceedings.

MOMS GO TO ICELAND

A Japanese woman hid her mother's corpse in a freezer for a decade to avoid eviction if the death was discovered, *The Guardian* reports.

Tokyo resident Yumi Yoshino (48) hid the body of her mother, who was named on the lease of the apartment they shared in a municipal housing complex.

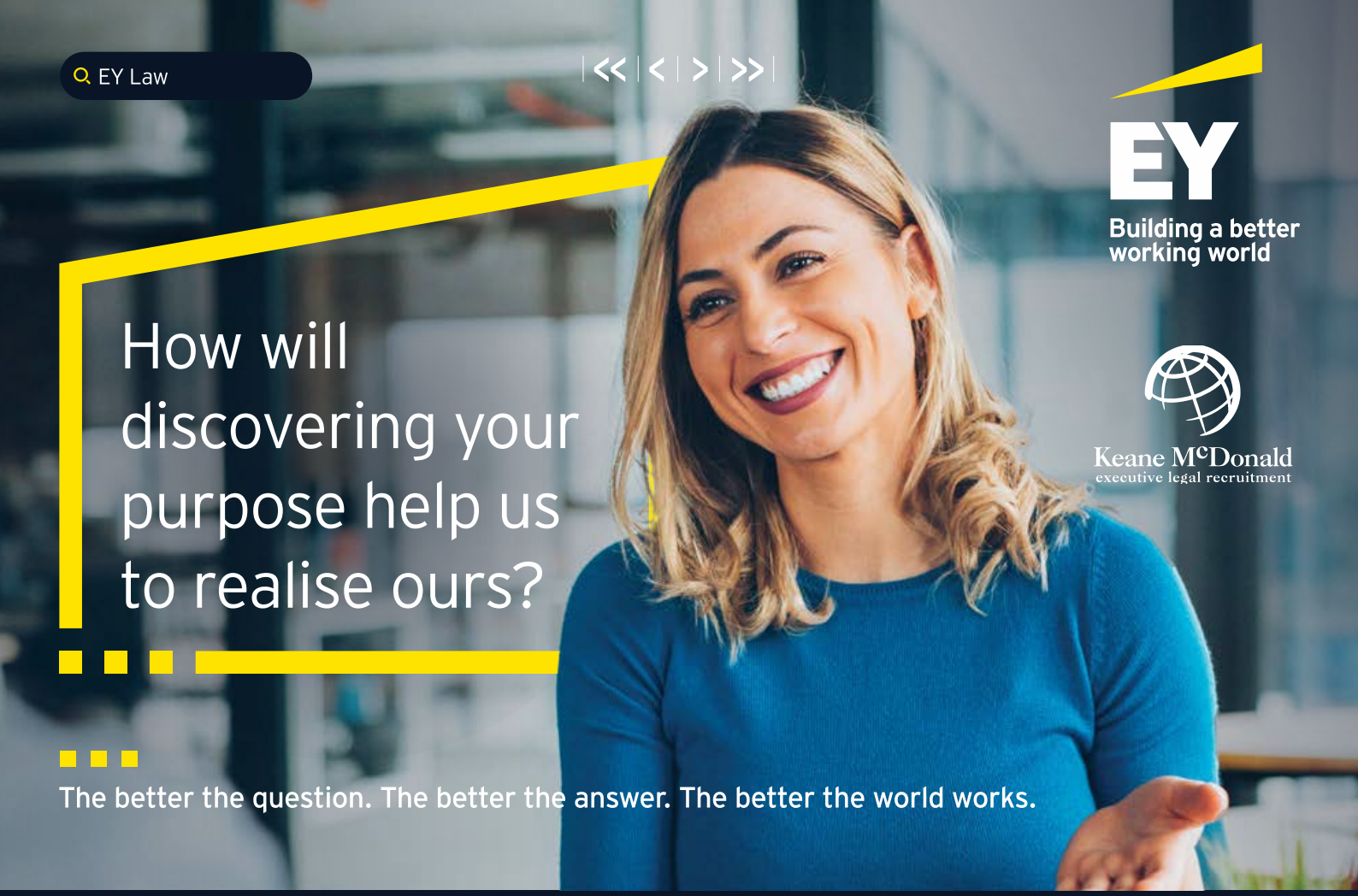
Yoshino was forced to leave the apartment in mid-January after missing rent payments, and a cleaner discovered the body in a freezer hidden in a closet. An autopsy could not determine the time and cause of the woman's death, the reports said.

ZOMBIE CALL-CENTRES A REALITY

You've always suspected it, but Microsoft has been granted a patent for technology that would 'reanimate the dead' to serve as AI chatbots, *Summit News* reveals.

The technology would be able to recreate a deceased person's likeness and a semblance of their personality – based on social-media posts, messages and videos – as a chatbot to "simulate human conversation through voice commands and/or text chats". (Watch this space to experience the anti-vax 5G conspiracy theorists on your 'friends list' field questions for the HSE.)

It has long been theorised that humans might achieve immortality by preserving their consciousness by uploading it to a computer. Don't worry, though: noted futurist Ray Kurzweil makes clear that this tech would only be available to wealthy elites, and that the rest of humanity would likely become a slave class or be wiped out altogether. g



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