Legal Ease

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Note from your Editors

Turning the corner

As we move from Winter to Springtime and turn the corner from dark and chilly days I hope *Legal Ease* is also turning a corner and becoming a publication which you look forward to and which is helpful in providing you with updated knowledge and opinion. We have received constructive feedback from the Internal Communications Work Group and would welcome even more feedback from our readers. Let us know what items you want covered or how we can improve. As always thanks to our contributors. This edition was oversubscribed which is a great indication of interest and participation. We would welcome your sharing of your experience with the implementation of new legislation, particularly the enforcement provisions of the Children and Family Relationship Act 2015. *Is trom an t-ualach and t-aineolas.* Lack of knowledge is indeed a heavy burden. Together we will grow our expertise and harness our information and leave the corners of ignorance behind!

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Spring is well upon us now and we hope you are all enjoying the brighter weather and longer days. Since the last issue of *Legal Ease* there have been a number of legislative and judicial developments impacting on the work of the Board, and we have included updates on some of the most significant of these. On page 2 Mary Fagan outlines the main changes resulting from the part commencement of the Children and Family Relationships Act, and regular contributor Ronan Deegan gives an overview of the Assisted Decision Making (Capacity) Act on page 18. We have a couple of guest contributions too, from Citizens Information Board Chief Executive Angela Black who writes about MABS' new dedicated mortgage arrears service, and former Legal Aid Board staff member Keith Walsh who summaries the landmark *D.C. v D.R.* judgment relating to inheritance rights for cohabitants. With law making on hold until after the election, it's now time to head to the polls and help play a part in the future of our country!

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Update on The Children and Family Relationships Act 2015

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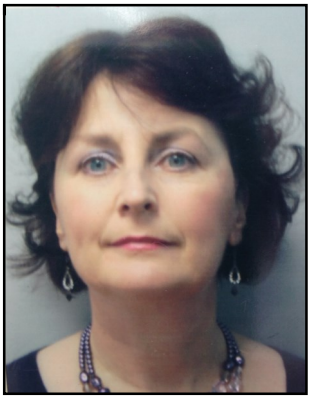

Part 1 of the Children & Family Relationships Act 2015 which deals with preliminary and general matters sets out *inter alia* the provisions relating to commencement of the Act. In addition to the Minister for Justice and Equality, a number of other Ministers are responsible for the commencement of specified parts of the Act.

S.1(6) provides that parts 2 and 3 of the Act relating to donor assisted reproduction are to be commenced by the Minister for Health. In accordance with Subsection 8, responsibility for the commencement of Part 10 of the Act dealing with amendments to the Passports Act 2008 lies with the Minister for Foreign Affairs and Trade. Subsection 9 provides that Part 11 dealing with amendments to the Adoption Act 2010 shall come into operation on the day or days that the Minister for Children and Youth Affairs may appoint by order. The Minister for Justice and Equality is solely responsible for the commencement of all the other parts of the Act apart from Part 9 dealing with amendments to the Civil Registration Act 2004 which comes into operation on the day or days that the Minister for Justice and Equality after consulting with the Minister for Social Protection, appoints by order. To date two commencement orders have been made.

The Minister for Foreign Affairs and Trade signed the Children and Family Relationships Act 2015 (Part 10) (Commencement) Order 2015 - S.I. No. 263 of 2015 on the 1st of July 2015 and appointed that date as the date on which Part 10 of the 2015 Act came into operation.

Part 10 amends S.14 of the Passports Act 2008 by providing *inter alia* that the Minister for Foreign Affairs and Trade shall, before issuing a passport to a child, be satisfied on reasonable grounds that where a child has two guardians each guardian of the child consents to the issue of a passport to the child, and where the child has more than two guardians, not fewer than two of those guardians consent to the issue of a passport.

A new S.5A empowers the Minister for Foreign Affairs and Trade on the application of a guardian to issue a passport to a child ordinarily resident outside Ireland, without the consent of the other guardian/s where a court or competent judicial or administrative authority of the State in which the child

is ordinarily resident has ordered that the passport can be issued without the other guardian/s consent or where by operation of the law of that State the requirements relating to the consent of other guardians have been fulfilled.

The Minister for Justice and Equality signed the Children and Family Relationships Act 2015 (Commencement of Certain Provisions) Order 2016 – S.I. No.12 of 2016 on 12 January 2016. This Order appointed 18 January 2016 as the day on which Parts 1 and 8 and Parts 4, 5, 6, 7, 12 and 13 with the exception of certain specified sections became operative. For the most part this Commencement Order is concerned with the guardianship, custody, access and maintenance provisions of the 2015 Act.

The following are the key changes that commenced on 18 January 2016 :

- Automatic guardianship of a child is extended to a non-marital father where he has cohabited with the child's mother for at least 12 consecutive months. The 12 months must include a period of three consecutive months anytime following the birth of the child during which both parents have lived with the child. This provision is not retrospective. Only cohabitation after 18 January 2016 counts towards the qualifying cohabitation period. Thus a non-marital father currently cohabiting with the mother of his child will not be eligible for automatic guardianship until 12 months from 18 January 2016 have elapsed. S.43 (a) (iv) of the 2015 Act makes it clear that cohabitant will be construed in accordance with S.172(1) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

Automatic guardianship of a child is extended to a non-marital father where he has cohabited with the child's mother for at least 12 consecutive months, 3 of which must be after the birth of the child.

- A Court may appoint a person other than a parent as a guardian where a guardianship application is made by a person who is over 18 and who on the date of the application is married to or in a civil partnership with or has been for at least three years a cohabitant of the child's parent provided that the applicant has shared responsibility for the child's day-to-day care for more than two years.

- On an application for guardianship, provided there is no parent or guardian who is willing to assume the responsibilities of guardianship the Court may appoint as guardian an applicant who is not a parent of the child if the applicant is over 18 and has been responsible for the child's day-to-day care for at least a year.

- When deciding whether or not to appoint a person other than a parent as guardian, the court must ascertain the child's views to the extent possible given the child's age and maturity and have regard to those views. The court must also have regard to the number of persons already guardians of the child and the degree to which they are involved in the child's upbringing. Where one or

both of the child's parents are still living, the powers of the non–parent guardian will usually be limited to decisions on day to day matters. The rights and responsibilities reserved to the parental guardian/s include *inter alia* decisions on the child's place of residence, religious, spiritual cultural and linguistic upbringing, consent to the issue of a passport for the child, consent to medical treatment and placement for and consent to adoption. The Court may however expressly order that all or any of the reserved powers and responsibilities be exercised by the non–parent guardian. In deciding whether or not to make such an order the Court must have regard to the best interests of the child and also to the relationship between the child concerned and the person appointed as guardian.

A qualifying guardian … may nominate a temporary guardian in the event that he/she becomes incapable through serious illness or injury of exercising the rights and responsibilities of guardianship.

- A person who has rights and responsibilities equivalent to guardianship arising from a judgment in accordance with the Brussels II bis Regulation or the Hague Convention or from a measure under the Hague Convention or has been given rights and responsibilities equivalent to guardianship by operation of the law of another state will be recognised as a guardian under Irish law.
- A qualifying guardian being a guardian who either is the parent of the child and has custody or not being the parent of the child, has custody to the exclusion of any living parent may nominate a temporary guardian to act as a guardian in the event that he/she becomes incapable through serious illness or injury of exercising the rights and responsibilities of guardianship. The nomination must be made in writing. The qualifying guardian can specify limitations on the rights and responsibilities of guardianship to be exercised by the nominated person. The appointment itself can only be triggered by a court application on notice to specified parties one of whom is Tusla. Where the qualifying guardian who has made the nomination or the nominated person is of the opinion that the qualifying guardian is incapable through serious illness or injury of exercising the rights and responsibilities of guardianship, either of them may apply to the Court for an order appointing the nominated person as temporary guardian. Before making an order, the court must be satisfied that the qualifying guardian is incapable of exercising guardianship, that the nominated person is a fit and proper person to be a guardian and that it is in the best interests of the child that the nominated person be appointed a temporary guardian. The court may impose limitations on the temporary guardian's exercise of the rights and responsibilities of guardianship as well as conditions relating to the periodic review by the court of the appointment as the court

considers necessary in the best interests of the child. If imposing conditions or limitations the court is obliged to have regard to the limitations specified by the qualifying guardian. On appointment, the temporary guardian may exercise the rights and responsibilities of guardianship and must take custody of the child concerned and act jointly with any other guardian of the child. The court can review the situation if the qualifying guardian recovers. The temporary guardian who is of the opinion that the qualifying guardian is once again capable of exercising guardianship must make an application to the court. The qualifying guardian who believes that he/she is capable once more may make an application to the court. The application must be on notice to specified parties. The court may vary or rescind the order of appointment on the making of the application. The court in considering an application to appoint or revoke the appointment of a temporary guardian must ensure that the child (taking account of the child's age and maturity) is given the opportunity to express his/her views and account must be taken of those views.

The court in considering an application to appoint or revoke the appointment of a temporary guardian must ensure that the child is given the opportunity to express his/her views and account must be taken of those views.

- S.50 of the Children and Family Relationships Act 2015 substitutes a new S.7 for the existing S.7 of the Guardianship of Infants Act 1964 allowing for the appointment of a testamentary guardian. A guardian who is the parent of a child or a guardian who is not the parent but has custody of the child to the exclusion of any living parent may by deed or will appoint a testamentary guardian. The appointment by deed of a testamentary guardian may be revoked by a subsequent deed or will. On the death of the guardian making the appointment the testamentary guardian acts jointly with the surviving guardian. The surviving guardian who objects to the testamentary guardian acting jointly with him/her or the testamentary guardian who considers the surviving guardian is unfit to have custody can apply to the court for an order. The court may make an order revoking the appointment of the testamentary guardian or requiring the testamentary guardian to act jointly with the surviving guardian or requiring the testamentary guardian to act as sole guardian. The court can also make certain orders in respect of custody, access and maintenance.

- Pursuant to the amended S.8 of the 1964 Act, only a court can remove a testamentary guardian, a court appointed guardian and certain parent guardians. Neither the child's birth mother nor marital father can be removed. The court can remove a guardian specified in S.8(6) of the 1964 Act, only if another guardian is in place or about to be appointed, to

do so would be in the best interests of the child and the court considers it necessary or desirable to do so. There is also a requirement that the guardian consents to the removal or is unwilling or unable to exercise guardianship or has failed in his/her duty to the child such that the child's safety or welfare is likely to be prejudicially affected if guardianship is not terminated.

- Pursuant to the new S.11E of the 1964 Act as inserted by S.57 of the 2015 Act,(1) a child's relative, or (2) a person with whom the child resides

A parent or guardian of a child who has been granted custody or access on foot of a court order may apply to the court for an 'enforcement order' if he or she has been unreasonably denied such custody or access by another guardian or parent.

who has for more than two years shared with the child's parent responsibility for the child's day to day care and who is or was the spouse or civil partner or has been the cohabitant for over three years of the child's parent or (3) an adult who has for a continuous period of more than 12 months provided for the child's day to day care where there is no parent or guardian willing to exercise the rights and responsibilities of guardianship can apply for custody. The court cannot make an order without the consent of all the guardians unless the court makes an order dispensing with the guardian's consent. The court may also grant custody jointly to the child's parent and a person who falls within (2) or (3). If such a joint order is granted, the court must specify the residential arrangements for the child where they are not agreed and where the applicable residential arrangements provide that for any period the child will not reside with one of the parents, the court must specify the contact if any which is to take place between the child and parent during that period.

- The requirement whereby relatives or others acting in loco parentis had to seek the leave of the court when applying under S.11B of the Guardianship of Infants Act 1964 for access has been removed. In addition to the existing three factors that must be taken into account in deciding whether to make an access order pursuant to S.11B, the court must now also have regard to the views of the child and to whether it is necessary to make an order to facilitate the access of the person to the child.
- A new S.12 A of the 1964 Act as inserted by S.58 of the 2015 Act empowers the court to make additional orders where applications under the 1964 Act are made. These include the power to impose such conditions as the court considers necessary in a child's best interests.
- S.18A of the 1964 Act (inserted by S.60 of the 2015 Act) provides that a parent or guardian of a child who has been granted custody or access on foot of a court order may apply to the court for an 'enforcement order' if he or she has been unreasonably denied

such custody or access by another guardian or parent. The enforcement order may provide for one or more of the following:

⇒ that additional access be granted to the child in order to re-build the relationship

⇒ that a parent and/or guardian be reimbursed for any necessary expense actually incurred in attempting to exercise his/her right of access or custody

⇒ that either or both parties in order to ensure future compliance by them with the order do one or more of the following: attend either individually or together a parenting programme, avail either individually or together of family counselling, receive information on the possibility of their availing of mediation.

- S.18D of the 1964 Act (inserted by S.60 of the 2015 Act) provides that where a custody or access order has been made in favour of a guardian or parent who fails without reasonable notice to another parent or guardian to exercise the right concerned, the latter may apply to court for the reimbursement of any necessary expenses actually incurred as a result of the failure of the guardian or parent to exercise the court ordered right of custody or access. Necessary expenses include travel expenses, lost remuneration and any other expenses the court may allow.

- S.45 of the 2015 Act substitutes the existing S.3 of the Guardianship of Infants Act 1964. It provides that in any proceedings relating to custody, access, upbringing, guardianship or the administration of any property belonging to or held in trust for a child, the court shall regard the best interests of the child as the paramount consideration. Note the 2015 Act refers to "best interests" the term used in Article 42A.4.1 of the Constitution and not to "welfare" as in the original 1964 Act. "Best interests" are described as the "paramount" consideration for the court, not as the "first and paramount" consideration as in the original 1964 Act.

- The new S.3(2) in the 1964 Act provides that "the court shall determine the best interests of the child concerned in accordance with Part V". S.63 of the 2015 Act inserts Part V consisting of two sections (S.31 and S.32) into the 1964 Act. The new S.31 of the 1964 Act provides guidance for the court in its assessment of the child's best interests. S.31 provides that in determining the best interests of the child "the court shall have regard to all of the factors or circumstances that it regards as relevant to the child concerned and his or her family" and in subsection (2) lists 11 factors for a court to consider in this assessment. The wording of S.31(2) makes it clear that the list of factors/ circumstances is not an exhaustive

In determining the best interests of the child "the court shall have regard to all of the factors or circumstances that it regards as relevant to the child concerned and his or her family".

one. S.31(3) specifically mandates the court to have regard to household violence that has occurred or is likely to occur in the child's household or in one in which the child has been or is likely to be present. S.31 (4) provides that a parent's conduct may only be considered to the extent that it is relevant to the child's welfare and best interests. S.31(5) provides that the court should have regard to the fact that unreasonable delay in proceedings may be contrary to the child's best interests. One of the factors that a court shall have regard to in its assessment of the child's best interests is the ascertainable views of the child. S.31 (6) provides that the court in obtaining such views "shall facilitate the free expression by the child of those views" and endeavour to ensure that the views expressed are not as a result of undue influence.

A cohabitant of a person who is a parent of or in loco parentis to a child may be liable to maintain that child.

- S. 32(1)(b) of the 1964 Act gives the court a discretionary power to appoint an expert to determine and convey the child's views. S.32(3) provides that the court in deciding whether to appoint such an expert shall have regard in particular to certain factors: the age and maturity of the child; the nature of the issues in dispute in the proceedings; any previous reports obtained on a question affecting the welfare of the child; the best interests of the child; whether the making of the order will assist the expression by the child of his or her views in the proceedings; and the views expressed by any party to the proceedings or any other person to whom they relate. S.32(9) makes it mandatory for the fees of the expert to be paid by the parties to the proceedings in such proportions or by such party to the proceedings as the court may determine. Provision has been made for the Minister in consultation with the Minister for Children and Youth Affairs to make regulations on the qualifications and experience of the expert and the fees and allowable expenses that he/she may charge.
- S.23 of the 1964 Act which provides that communications between any of the parties and a third party made during mediation on custody, access or questions affecting the welfare of the child are inadmissible in subsequent court proceedings has been amended by S.61 of the 2015 Act. As a result of the amendment ,an admission by a party that indicates that a child has been abused or is at risk of abuse or a disclosure by a child which indicates that the child has been abused or is at risk of abuse will now be admissible in later court proceedings.
- S.73 of the 2015 Act inserts a S.5B into the Family Law (Maintenance of Spouses and Children) Act 1976. A cohabitant of a person who is a parent of or *in loco parentis* to a child may be liable to maintain that child, if that cohabitant is a guardian of but not the parent of that child. In deciding whether or not to make a maintenance order and if determining

the amount of any payment to be made, the court must have regard to all the circumstances of the case and in particular in so far as practicable the matters set out in S.5B (3)(a) and S.5B (3)(b). If a maintenance order is made, it will remain in place until the child reaches 18 years.

- S.73 of the 2015 Act also inserts a S.5 C into the Family Law (Maintenance of Spouses and Children) Act 1976. This allows a person who is not the child's parent to apply for a maintenance order against the parent's cohabitant who is a guardian of the child but not its parent. The court will not make an order under section 5C if an order has been made under Section 5B, unless the cohabitant is not complying with that order and the court having regard to all the circumstances thinks it proper to do so. If a maintenance order is made, it will remain in place until the child reaches 18 years.

- S.35 of the Status of Children Act 1987 dealing with Declarations of Parentage has been amended by S.80 of the 2015 Act. A person other than the child can now seek a declaration of parentage. A person whose parentage is in question, a person seeking a declaration that he/she is the father or mother of the person concerned or a person seeking a declaration that he/she is not the father or mother of the person concerned may apply for a declaration. The court no longer has discretion to refuse to hear an application. The court can make a declaration that a person is/is not the parent of the child. The declaration is made on the balance of probabilities.

- References to "blood sample" and "blood tests" in S.38 to S.43 of the 1987 Act are deleted and replaced by" bodily sample" and "DNA tests". A court can now give a direction for the use of DNA tests for the purpose of assisting in the determination of parentage and for the taking of bodily samples (swab from the mouth, a sample of saliva or hair or a blood sample).

- S.46 of the 1987 Act has been amended by S.88 of the 2015 Act. A husband of a woman is no longer presumed to be the father of her child if the child is born more than 10 months after the date of separation being the date on which a decree of divorce *a mensa et thoro* was granted, the date on which a decree of judicial separation was granted, the date on which a deed of separation was executed, the date on which a separation agreement was entered into by them, or such other date as may be established by the woman.

A court can now give a direction for the use of DNA tests for the purpose of assisting in the determination of parentage and for the taking of bodily samples.

- S.41 and S.42 of the Family Law Act 1995 have been amended by S.90 and S.91 of the 2015 Act to enable the court to make a secured maintenance order or a lump sum maintenance order against a cohabitant who is liable to pay

maintenance in respect of the child of his/her cohabitant.

- A child co-parented by civil partners will have the same protections as are enjoyed by a child of a family based on marriage.
- With the exception of the amendment of the Maternity Protection Act 1994 and the amendment of S.2 of the Adoptive Leave Act 1995, Part 13 which deals with consequential and miscellaneous amendments to other Acts has been commenced. These include an amendment to S.20 of the Child Care Act 1991. In court proceedings involving civil partners, where it appears to the court that it may be appropriate for a care order or a supervision order to be made with respect to the child concerned in the proceedings, the court may, of its own motion or on the application of any person, adjourn the proceedings and direct the Child and Family Agency to undertake an investigation of the child's circumstances.

Changes to the Rules of the Superior Courts, the Circuit Court Rules and the District Court Rules were introduced on 18th January 2016.

As a result of the novel applications and orders that can be made under the 2015 Act, new rules of court were needed. Changes to the Rules of the Superior Courts, the Circuit Court Rules and the District Court Rules were introduced on 18th January 2016.

S.I. No. 16 of 2016 Rules of the Superior Courts (Children & Family Relationships Act 2015) 2016 amends RSC Order 70B which deals with Civil Partnership and Cohabitation to facilitate the operation of the 2015 Act. An Affidavit of Welfare for use in proceedings under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 is set out in the Schedule. It has been added to Appendix II to the Rules of the Superior Courts as Form No. 5.

S.I. No. 18 of 2016 - Circuit Court Rules (Children and Family Relationships Act 2015) 2016 amends Order 59 Rule 1 which deals with the appointment of a guardian. In addition to a number of amendments to Order 59A (Civil Partnership And Certain Rights And Obligations Of Cohabitants Act 2010), it deletes Form 37 E (Application by a father to be appointed guardian with written consent of mother – S.6A) and Form 37 F (Statutory declaration of mother – S.6A (3)(a)) from the Schedule of Forms.

S.I. No. 17 of 2016 - District Court (Children and Family Relationships Act 2015) Rules 2016 substitutes Orders 54 (Maintenance of Spouses and Children), 54A (Civil Partnership And Certain Rights And Obligations Of Cohabitants Act 2010), 57 (Proceedings under S.8 of the Enforcement of Court Orders Act 1940, S.9A of the Family Law (Maintenance of Spouses and Children) Act 1976, S.52A of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010), 58 (Custody and Guardianship of Children) and Rule 1 of Order 98. There are forms in Schedule 5 that replace the forms bearing like numbers in Schedule C to the District Court Rules. These forms include *inter alia* Guardianship of Infants Act 1964, section 6A - Notice of

application by a person to be appointed a guardian, and Guardianship of Infants Act 1964 - Notice of application under section 11 for the court's direction. Forms 58.5, 58.15 and 58.16 are deleted from Schedule C. There are newly created forms in Schedule 6 which have been added to Schedule C.

S. 23 of the Marriage Act 2015 amended the Children and Family Relationships Act 2015 by the substitution of "spouse" for "husband" … to provide for the situation of the spouse of a woman having a child through donor assisted human reproduction being female.

These new forms include:

- Family Law (Maintenance of Spouses and Children) Act 1976 Section 5B (inserted by section 73 of the Children and Family Relationships Act 2015) - Maintenance Summons
- Family Law (Maintenance of Spouses and Children) Act 1976 Section 5C (inserted by section 73 of the Children and Family Relationships Act 2015) - Maintenance Summons
- Guardianship of Infants Act 1964, section 6C (inserted by section 49 of the Children and Family Relationships Act 2015) - Notice of application by an eligible person to be appointed a guardian
- Guardianship of Infants Act 1964, section 6E(3) (inserted by section 49 of the Children and Family Relationships Act 2015) - Notice of application for appointment of nominated person as temporary guardian
- Guardianship of Infants Act 1964, section 6E(9) (inserted by section 49 of the Children and Family Relationships Act 2015)- Notice of application for order under section 6E(11)
- Guardianship of Infants Act 1964 - Notice of application under section 11E for custody
- Guardianship of Infants Act 1964, section 18A(1) - Notice of application for enforcement order
- Guardianship of Infants Act 1964, section 18D(1) - Notice of application for order requiring reimbursement of necessary expenses
- Guardianship of Infants Act 1964 - Statement of Arrangements for child.

Finally, S.23 of the Marriage Act 2015 amended the Children and Family Relationships Act 2015 by the substitution of "spouse" for "husband" in each place where it occurs in S.5(1)(b), S.5(8) (a), S.5(8) (b), S.9(3)(d), S.11 (1), S.11(3)(a), 25(3)(b)(ii) and S.27(5) (e). The purpose of the amendment is to provide for the situation of the spouse of a woman having a child through donor assisted human reproduction being female.

Two of our Cork-based solicitors, Aoife Byrne and Betty Dinneen, had articles on the Children and Family Relationships Act 2015 published recently in the *Law Society Gazette*. Aoife's piece entitled "Modern Family" appeared in the November issue and Betty's article "21st Century Child" was published in December. The *Gazette* is available in full text on the Law Society website.

Qualifying as a Cohabitant

Keith Walsh,
Keith Walsh Solicitors

Guidance from the High Court on cohabitants, qualified cohabitants, proper provision under section 194 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

The recent decision of Baker J. in the High Court case of *D.C. and D.R.* [2015] IEHC 309 delivered on the 5th May 2015 is useful to both family law and probate law practitioners. It concerns the application of section 194(1) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (the 2010 Act) which came into force on the 1st January 2011.

Unlike marriage or civil partnership there is no registration for cohabitants - the law applies to cohabitants or qualified cohabitants automatically although there is a necessity to apply to the courts for redress.

Section 194(1) permits a qualified cohabitant to apply for financial provision from the estate of the deceased cohabitant. In this case the relationship lasted until the death of the cohabitant but it is also possible, in more limited circumstances as set out in section 194 (2) to seek provision from the estate of the other where the relationship had ended prior to one of the cohabitants' deaths.

The Facts

The Plaintiff DR (the surviving cohabitant) claimed to be in an intimate cohabiting relationship with JC (the deceased) who died intestate on the 7th August 2014. He had been in a previous marriage which was annulled and he had no children. The deceased never married and had no children.

He sought provision from her estate. The Defendant DC (the personal representative) was one of JC's three brothers and her personal representative having extracted Letters of Administration on the 3rd December 2014. She had no sisters.

The surviving cohabitant is 64, a farmer and horse trainer. The deceased was 69 when she died and worked as a school secretary. They met in 1994 and the surviving cohabitant's case was that they became intimate in 1995, entered into a committed relationship after 1996 when the deceased's mother passed away. The deceased inherited land from her mother which was sold in 2005 and she received €3.1 million after tax.

From 1996-2004 he lived with the deceased for two or three nights a week

at her home at K House. On the day his mother died in 2004 he moved in with the deceased and lived there until the deceased passed away. They shared an interest in horses and the surviving cohabitant was an acknowledged expert.

The deceased was diagnosed with cancer in 2009 and recovered but the disease returned in 2013. The surviving cohabitant looked after her during her illness and it was acknowledged that he had done his best for her.

The Legislative Framework: What Constitutes Cohabitation?

Baker J. considered whether the surviving cohabitant had established that he was a cohabitant within the meaning of s. 172 of the Act. In this case he must prove that he lived together with the deceased in *"an intimate and committed relationship"* (section 172(1).

Section 172 (2) sets out:

"In determining whether or not 2 adults are cohabitants, the court shall take into account all the circumstances of the relationship and in particular shall have regard to the following:

(a) the duration of the relationship;

(b) the basis on which the couple live together;

(c) the degree of financial dependence of either adult on the other and any agreements in respect of their finances;

(d) the degree and nature of any financial arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property;

(e) whether there are one or more dependent children;

(f) whether one of the adults cares for and supports the children of the other; and

(g) the degree to which the adults present themselves to others as a couple."

The court must take into account all the circumstances and (a)-(g) above is not an exhaustive list.

Section 172(5) defines qualified cohabitant as:

(5) For the purposes of this Part, a qualified cohabitant means an adult who was in a relationship of cohabitation with another adult and who, immediately before the time that that relationship ended, whether through death or otherwise, was living with the other adult as a couple for a period—

(a) of 2 years or more, in the case where they are the parents of one or more dependent children, and

b) of 5 years or more, in any other case.

Facts in Dispute

The facts in dispute in this case related to whether the cohabitants in this case enjoyed an 'intimate friendship' or merely a friendship and there was also disagreement between witnesses as to whether the couple lived together.

Baker J. applied the facts of this case to the law as follows:

Were the parties living together for 5 years or more?

Baker J. accepted the evidence of the surviving cohabitant that he took up full

time permanent residence in the home of the deceased on the day his mother died in 2004.

Was the relationship committed and intimate?

Section 172(3) states that for the avoidance of doubt a relationship does not cease to be an intimate relationship for the purpose of this section merely because it is no longer sexual in nature. This indicates that in order to be an intimate relationship it must, at some point, have been sexual in nature. Baker J. accepted the surviving cohabitant's evidence that he and the deceased started an intimate sexual relationship in 1995 and this continued until shortly before the deceased's death.

The perspective and state of mind of the deceased

Baker J. took into account evidence from other witnesses confirming the surviving cohabitant was in the deceased's bedroom when they visited the house and the honourable Judge took this to mean that is was unlikely he would have been in the bedroom of the deceased had they not been in an intimate and committed relationship given the deceased's private nature.

The age and upbringing of the deceased may also have indicated that she would not publicise the nature of the relationship to the neighbourhood or to her family.

The basis on which the couple live together S.172(b)

Baker J. clarified her view of the statutory test of the "basis" on which a couple live together. She states this is a broad test and encompasses much more than financial or property arrangements which are specifically dealt with in subs. (c) and (d) of s. 172 (2),
The basis of a relationship involves a number of interconnected elements such as:

the degree of shared activities that persons enjoy, such as shared meals, especially evening meals and breakfast, shared activities, shared division of household chores and shared holidays.

In this case she found that the couple did live together in a committed relationship which was illustrated by the degree of contact that they had with one another on day-to-day basis which was very frequent. The couple phoned and exchanged text messages with one another very frequently during the normal working day. Baker J. held that they shared a joint interest which they both enjoyed and both spent time on the other's farmland for all to see.

172(1) (g) Presenting as a couple

Baker J. when examining this factor stated 'while expressions of physical affection in public might in some cases be a mode by which a couple show their intimate and committed relationship to the world, this is not always the chosen means by which a couple present themselves.

172(2)(c) and (d) Financial dependence and interdependence ['relationship cost']

When examining this factor Baker J. held as a matter of fact that this couple were not financially dependent for the basics of life, but that a degree of financial dependence had come to evolve between them with regard to certain elements of their personal and social spending. The

degree of this was such as to suggest a relationship of shared commitment.

Other circumstances of the relationship- the funeral arrangements or 'rituals of death' as indicative of the role
The funeral arrangements were made by the surviving cohabitant and he was prominent at the funeral.

General comments on inherited property and property acquired before a relationship commenced
Baker J. stated that inherited property, and property acquired before the relationship commenced and independently of any direct or indirect contribution of the other must be treated differently to property acquired in the course of the relationship whether in joint or sole names. This does not mean inherited property is automatically excluded from the 'pot' but it does mean it is not immediately included and this is more so when there are enough other assets to make provision.

Conclusion on cohabitation- the test to be applied
Baker J. in applying the 2010 Act viewed the seven identified factors in s. 172(2) not as conclusive as to the nature of the relationship but as indicative of that relationship and how it is to be properly characterised. She set out as the test for cohabitation to be adopted by the Court is:

'to determine whether a reasonable person who knew the couple would have regarded them as living together in a committed and intimate relationship, and that the individual and many factors in how they are perceived must be taken into account '

She held that the surviving cohabitant was a qualified cohabitant and had lived with the deceased in an intimate and committed relationship since his mother's death in 2004.

Provision from the Estate

Section 194(7) of the Act states that the total provision from the estate of a deceased cohabitant cannot exceed the share to which the person would have been entitled if they had been married or in a civil partnership.

On intestacy in this case a surviving spouse would have been entitled to 100% of the estate and if there had been a will then the legal right share of a spouse would have been 50% of the estate.

Reward for Good Behaviour

Baker J. considered that she must take account of the attention paid by the surviving cohabitant to the deceased in her last illness and this good behaviour 'positively supports the application of the plaintiff'.

Conclusion on Provision—Weighing up the Factors

Degree of Financial Dependence not Essential for Provision

Baker J. held that while s. 172(2)(e) required the court to look to the degree of financial dependence for the purpose of ascertaining whether a couple are cohabiting, such financial dependence is not essential in the case of a claim for provision from an estate. She held this to mean that in a case where relatively little financial dependence or interdependence

can be shown, the court may still make provision for a surviving partner provided the court is satisfied that the lack of financial interdependence or dependence did not signify a lack of commitment, and in the light of the provisions of section 173(3).

Baker J. held that while it is the case that provision may be made under section 194 even when financial dependence is not shown, the degree of financial needs must inform

1. The extent of provision that the court will make, if any.

2. The extent to which the court will displace an interest of a beneficiary

Baker J. took account of the following individual factors:,

The duration of the relationship
The deceased and the plaintiff were in a committed and intimate relationship for 20 years or thereabouts, they were cohabiting or de facto cohabiting for almost the entire of that period, since the mother of the deceased died.

The basis on which the couple lived together
The deceased and the surviving cohabitant each made substantial and important contributions to the welfare of the other during the currency of their relationship.

The degree of financial dependence
A degree of financial dependence arose by virtue of the significant discrepancy between the surviving cohabitant's income and financial resources and those of the deceased.

The degree of companionship and commitment
Baker J. considered that the degree of companionship and commitment that the surviving cohabitant and the deceased had to one another lead to their enjoyment of a very full social life, and she held that to deprive the surviving cohabitant not merely of the company of his long term cohabitant, but also of some of those activities which gave him pleasure, such as membership of a sports club, membership of a golf club, meals out and holidays, while they might not be as enjoyable for him without her company, are still activities from which he can be expected to continue to derive pleasure, and which it would now in the view of Baker J. be unreasonable to expect him to have to forego merely for absence of resources.

Baker J. held that the income of the plaintiff was not sufficient for his needs.

There were no other persons in respect of whom the deceased had any obligation to provide financially. Baker J. held that the interests of the beneficiaries who will succeed on her death intestate may best be achieved by making provision for the surviving cohabitant of less than the entire estate, leaving the balance to her brothers.

Baker J. held that the surviving cohabitant:

'was or became dependent upon the deceased for his accommodation needs' and that 'provision can be made for the plaintiff out of the estate of the deceased other than by awarding him the entire of her assets, partly because of the value of the estate and because the estate

comprises in the main of real property, some of which is income producing. I consider that I may properly respect the interests of the brothers of the deceased by awarding them the balance of the estate and this also takes account of the fact that the assets of the deceased could broadly be speaking be said to be inherited.'

The surviving cohabitant's financial situation

He owned an inherited farm, which produced a small income. Baker J. noted his age and the impossibility of him now taking up another form of employment or of turning his own farm to provide more income. She considered that he has long since foregone the possibility of making investments for himself or of being in a position to purchase a house in which he might live, and that this difficulty has arisen because he was persuaded by the deceased to live with her and not to build or buy a home for himself.

It would be unreasonable to suggest that he might now sell his farm. The farm was valued at €1.446 million to include outhouses and yard but there was no dwelling house.

Intention of the deceased to provide for the surviving cohabitant

Baker J. held that the deceased 'undoubtedly intended to make provision for the plaintiff'.

The Result

The surviving cohabitant was granted provision of approximately 45% of the estate. This 45% was to be achieved by vesting in him the two investment properties and their contents. The family home of the deceased cohabitant remained with her brothers. On the reason for this percentage Baker J. stated

'The percentage arose more from the value of the separate assets and because I consider it to be possible and proper to make provision by a distribution of real property in specie. A greater or less percentage might be appropriate in another case, and I do not regard that the legislation mandates or permits of a rule or even a rule of thumb that directs a particular percentage, or range.'

The most important factors underlying the provision allocated were provision of accommodation and income to meet the surviving cohabitant's needs. Baker J. also took into account that the surviving cohabitant did not have a pension which was a future need, and it was now too late for him to make his own pension provision.

Conclusion

This judgment should encourage cohabitants to enforce their rights under the 2010 Act. The award could be considered generous for a cohabitant case but is difficult to fault the application of the law to the facts of this particular case and so it will set a reasonably high benchmark for provision in cohabitant cases to come.

Keith Walsh is Principal of Keith Walsh Solicitors in Crumlin. He worked for the Legal Aid Board from June 1998 to February 1999 as a temporary Law Clerk in Newbridge Law Centre, and he qualified as a solicitor in 2001. Keith is former President and current Council member of the Dublin Solicitors Bar Association, and is currently Vice Chairman of the Law Society Family and Child Law Committee.

Assisted Decision Making (Capacity) Act 2015: The Consequences for Civil Legal Aid

Ronan Deegan,
Civil Operations Section

On 30th December the President signed the Assisted Decision Making (Capacity) Act 2015 into law. The Act is a radical piece of legislation which effectively abolishes the existing system of wardship in respect of adults and puts in place a system of assisted decision making for persons whose capacity to take decisions is or may shortly be in question.

At 132 pages the Act is a major piece of legislation. This paper does not attempt to address all the provisions of the Act, rather it focuses primarily on the new causes of action available under Part 5 of the Act and on the legal aid implications. The Act will make a range of amendments to the Civil Legal Aid Act 1995. The changes primarily deal with applications under Part 5 of the 2015 Act, but also provide the mechanism whereby legal aid at mental health tribunals, which is presently provided by the Mental Health Commission, will become the responsibility of the Board.

"Relevant Persons"

Section 2 of the Act provides the key definition of "relevant person" (RP) which is:

"Relevant person" means:

(a) a person whose capacity is in question or may shortly be in question in respect of one or more than one matter,

(b) a person who lacks capacity in respect of one or more than one matter, or

(c) a person who falls within paragraphs (a) and (b) at the same time but in respect of different matters,

as the case requires;

Applications Under Part 5 of the Act

Section 36 of the Act provides that an RP or any person who has attained the age of eighteen years may who has a bone fide interest in the welfare of an RP can make an application to the Court.

Section 36(2) provides that an application must be made on notice to the RP as well as their spouse, decision-making assistant, co-decision maker, decision making representative, attorney, designated healthcare representative, and a person specified for that purpose in an existing order of the court under Part 5 where the application relates to that order.

Section 36(4) prescribes a list of persons

(including the RP themselves) who can make an application without leave of the Court. Other persons must seek the leave of the Court which can be done *ex-parte*.

Section 4 provides that the Circuit Court will have exclusive jurisdiction under the Act, save for applications regarding the donation of organs from a living donor or the withdrawal of life-sustaining treatment, which will be reserved to the High Court.

There are a number of types of orders that can be sought. Under section 37, the Court can make the following declarations as to capacity:

- That a person lacks capacity unless a co-decision maker is available to them
- That a person lacks capacity even if a co-decision maker is available to them

The Court can also declare whether an intervention is lawful or not.

Section 38 provides for two main types of more substantive order that can be made, following a declaration made by the Court. Section 38(2)(a) provides for the Court to make a specific decision on behalf of the RP (called a "decision making order").

Section 38(2)(b) provides for the Court to make a an order appointing a person as a decision making representative in respect of a specified decision or decisions (called a "decision making representation order").

The court may vary or discharge either of these types of orders, or make an interim order prior to the determination of the application in specific circumstances.

The Act will make a range of amendments to the Civil Legal Aid Act 1995. The changes … provide the mechanism whereby legal aid at mental health tribunals, which is presently provided by the Mental Health Commission, will become the responsibility of the Board.

Legal Aid for Applications Under Part 5 of the Act

Section 52(a) inserts a new definition into section 1 of the 1995 Act to state that a "relevant person" for the purposes of the Act has the same meaning as a relevant person in the Act of 2015.

Section 52(b) inserts a new section 26(3)(c) into the 1995 Act. This provides that a party to an application under Part 5 of the 2015 Act will qualify for legal advice.

Section 52(c) inserts a new section 28 (3A) into the 1995 Act. Section 28(3A) (a) provides that in an application for a legal aid certificate for proceedings under Part 5 of the 2015 Act, the same "reduced" merits test applies as in cases involving the welfare of a child and a sex offenders order.

Section 28(3A)(b) provides that if the applicant is a "relevant person", then the financial eligibility criteria will not apply either.

Section 52(e) inserts a new section 33 (7A) into the 1995 Act. This provides that where a legal aid certificate is granted to a relevant person who is not financially

eligible, the Board may seek to recover some or all of the costs of the legal aid provided to the relevant person. Section 52(f) inserts a new section 37(2)(fc) providing that Regulations may be made to give effect to this recovery of costs mechanism.

Legal Aid at Mental Health Tribunals

As well as dealing with issues as to capacity, the Act also provides the mechanism whereby the responsibility for providing legal aid at mental health tribunals will be transferred to the Board.

Section 52(d) inserts a new section 28(5)(e) into the 1995 Act. This will create a new category of automatic grants, for persons who are patients within the meaning of the Mental Health Act 2001, who seek legal aid in connection with representation before a mental health tribunal.

Section 145 amends the Mental Health Act 2001 to provide that the Mental Health Commission will "arrange for the assignment", rather than "assign", a legal representative to represent the patient before a mental health tribunal. This appears to envisage that these cases will be referred to the Board by the Commission, in a similar process to how rape/sexual assault cases are referred by the DPP to the Board, or foreign maintenance/child abduction applicants are referred from the Central Authority to the Board.

Summary

The Act provides for applications to a court for declarations as to capacity, decision making orders, and decision making representation orders. The Act also provides for interim orders and for the Court to vary and discharge such orders.

The legal aid provisions of the Act effectively provide that the "reduced" merits test applies to all applications for legal aid for Part 5 applications. They also provide that RPs will not be subject to the financial eligibility criteria if applying for legal aid for a Part 5 application, but may– if they are not financially eligible - be subject to a recovery of costs process (the nature of which is not defined in the Act, but will be the subject of Regulations).

The legal aid provisions of the Act effectively provide that the "reduced" merits test applies to all applications for legal aid for Part 5 applications (and) that Relevant Persons will not be subject to the financial eligibility criteria … but may be subject to a recovery of costs process.

The Act also provides that legal aid will be automatically granted for patients who seek legal aid for representation before a mental health tribunal. These cases will be referred by the Mental Health Commission to the Board.

The Act has not yet been commenced. The Government has indicated that it is proposed to commence the Act in the second half of 2016.

MABS, the Gateway to Mortgage Arrears Advice

Angela Black, Chief Executive, Citizens Information Board

The Money Advice and Budgeting Service (MABS), a network of 60 offices around Ireland, is funded and supported by the Citizens Information Board (CIB), under the aegis of the Department of Social Protection. MABS has been guiding people with problem debt for more than 20 years. Late last year, a new dedicated mortgage arrears service (DMA MABS) was established.

The level of mortgage distress experienced by citizens in Ireland in recent years is not news to the legal profession or to anyone else, for that matter. Dating from around 2009, this intractable problem has been a source of great concern for policy makers and their agencies. Dealing with it has become an increasingly significant part of the work of MABS money advisers.

The 'easiest' mortgage arrears cases (of 90 days arrears or less) have been dealt with over the past two to three years to a large extent by lenders and their customers. Some of these customers are MABS clients; similarly, the numbers in arrears over 90 days have begun to ease (since a September 2013 peak of almost 100,000). These have been tackled by borrowers paying down both secured and unsecured debt and by various arrears support machinery put in place by lenders. Many of these citizens are also MABS clients (almost half of MABS clients have a mortgage). By autumn of 2015, over 120,000 restructured loans of one kind or another were in place, reflecting a much needed response to crisis arrears by lenders.

But what happens to these cases when the lenders' arrears support units can do no more for them? Who do you go to when you are in arrears over two years? The latter make up the majority of arrears cases, and the largest proportion (almost 84% in value) of outstanding arrears. Remember of course, that these *cases are real people* who are in debt. What information and advice do people need when their situation becomes very complex? Should they go to an accountant, a Personal Insolvency Practitioner (PIP) or a solicitor? What advice should be given to borrowers whose arrears continue to grow while their case is being dealt with in the Courts? Supposing their loan has been sold on by their bank to a fund or a non-bank entity (these account for one in four of all the two years plus arrears cases)? What happens when couples in arrears separate? What is it like to go to Court for a possession hearing?

Contacting MABS at 0761 07 2000 is the first step to finding the answers to these questions.

Fundamentally, how do people in deep arrears find the means to pay for the advice they need to tackle such matters when they cannot pay the monthly mortgage in the first place?

MABS and the DMA MABS are free, independent services, with a strong emphasis on confidentiality. The unresolved cases – currently there are 37,000 accounts in arrears over two years – progress through the lender's arrears support unit and on to the banks' so-called 'legal cohort', and from there to the repossession courts. These are invariably the most difficult cases. Until recently, there was no comprehensive response to provide targeted, free advice and solutions to this particular group of citizens.

MABS Dedicated Mortgage Arrears Service

Last May, the Government announced a range of supports, including a Dedicated Mortgage Arrears service, to be delivered by an enhanced MABS face to face network and a specialist MABS Helpline to assist distressed mortgage holders. CIB led this initiative and, through MABSndl, the technical support company for MABS, set up this Dedicated Mortgage Arrears service (DMA MABS). As part of the service, a stronger relationship and practical links have been developed with other relevant players such as the Insolvency Service of Ireland (ISI) and the Courts Service.

As a result, a more robust MABS is now stepping in to many roles, intercepting the borrower and the lender on the path to the Courts, unwinding some decisions in between Court adjournments, redirecting cases to the insolvency or bankruptcy service as necessary, and improving the prospects for all concerned:

- for the borrower, helping him or her to keep the family home;
- for the lender, restoring stability and a mutually agreeable resolution, statutory or informal;
- for the Courts, making best use of the time in between adjournments by agreeing payments with borrowers and making commitments about engaging with MABS, and
- for the insolvency and bankruptcy services, agreeing a referral protocol and providing assistance to applicants.

MABS and the DMA MABS are free, independent services, with a strong emphasis on confidentiality.

Many borrowers who are in arrears for more than two years are fearful of losing their homes and are hiding from the prospect and not co-operating in the sense envisaged under the Central Bank's Mortgage Arrears Resolution Process (MARP) or its 2013 Targets (MART). As a result, they are also vulnerable in not being able to avail of the protections of the Code of Conduct on Mortgage Arrears (CCMA); the level of distress is evidenced by the fact that the vast majority do not attend the Court sittings for repossession proceedings; nor do they generally offer a defence when

the matter is moved to the judge's list; at this stage, contacts with their lenders would have ground to a halt, and their dire financial situation means that paying for a solicitor, a PIP or a financial advisor is out of the question.

The DMA MABS Network Operates at Several Levels

A robust assessment process, conducted by CIB and MABSndl last summer, produced a *nationwide network of experienced and expert staff* with a dedicated focus on late-stage mortgage arrears cases. Twenty-five dedicated mortgage advisors were appointed within MABS to cover key urban catchments where arrears and demand for the service were greatest. These expert advisers help clients to assess which of the options on offer from their lender is the best and most sustainable option for them, and where required, will negotiate with the lender or refer clients to a PIP or assist them with the Court process.

Twenty-five dedicated mortgage advisors were appointed within MABS to cover key urban catchments where arrears and demand for the service were greatest. These expert advisers help clients to assess which of the options on offer from their lender is the best and most sustainable option for them.

A number of relief staff were also appointed, as well as additional MABS Helpline staff to deal with fluctuating demands for referrals to DMA MABS, PIP and other services. The MABS Helpline (0761 07 2000) operates from Monday to Friday from 9am to 8pm. It provides assessments in order to channel debtors to the most relevant source of help, based on the nature and urgency of their situation.

A National Court Mentor Scheme was piloted in July, and rolled out in October, with the co-operation of the Courts Service, across all County Registrar districts. This is being run in conjunction with the ISI. The court mentor service, normally located in the lobby of the Court, offers support and advice from MABS and ISI personnel before, during and after Court sittings. The service advises borrowers to engage with their lender, and sets out what can be expected to happen at Court proceedings, as well as direct referral back to MABS where a case is adjourned.

Finally, a Public PIP and Bankruptcy project – both of which are localised pilots, are examining the potential involvement of MABS in the provision of support in these aspects of borrower indebtedness.

In order to maximise the potential of MABS as a gateway service, many other processes need to be more effective, such as the mortgage to rent scheme; factors hindering progress also include high private sector rental costs.

Government Adds Legal and Financial Advice Package

The success of MABS and its enhanced DMA service has, in my view, been limited in the past by two factors. Firstly, while MABS still needed to make regular referrals to a fee based service, such as a PIP, accountant or solicitor, such a service was generally beyond the reach

of MABS' cash-strapped clients. On 22nd January 2016, the Department of Justice and Equality, in conjunction with the Department of Social Protection, launched a package of measures as part of the Government's wider strategy to engage debtors in late-stage mortgage arrears. This is a welcome development, being developed as a voucher system, for free financial and legal advice, to be co-ordinated and administered by MABS, the ISI and the Legal Aid Board.

Secondly, the number of clients turning up for Court possession hearings continues to be pitifully low, at between 10 and 20% of those who have been issued a Civil Bill. This problem is always likely to limit MABS' access to potential clients who can be given assistance. A co-ordinated Communications Campaign is an important element of the Government's support which must be deployed as a matter of urgency to encourage greater attendance at Court. It is also a factor in the success of the other measures.

Through the combination of these measures, MABS would hope to deal with an additional estimated total cohort of up to 17,400 intractable, but potentially sustainable, mortgage arrears cases relating to the PDH by mid-2018.

- Each year an additional 4,000 mortgage arrears cases could be dealt with via the mainstream MABS service;
- Each year an additional 1,800 complex arrears cases could be referred to DMA MABS

The promotion of MABS and the Dedicated Mortgage Arrears service to citizens in mortgage distress is a critical success factor in achieving these objectives. I believe MABS has a track record as the credible network of trusted advisers, with the capacity to deliver for citizens in mortgage and other financial difficulty.

Phone the MABS Helpline: 0761 07 2000

On 22nd January 2016, the Department of Justice and Equality, in conjunction with the Department of Social Protection, launched a package of measures as part of the Government's wider strategy to engage debtors in late-stage mortgage arrears.

The following sites have comprehensive information on State services for those in mortgage distress:

www.citizensinformationboard.ie

www.keepingyourhome.ie

www.mabs.ie

Angela Black is the Chief Executive of the Citizens Information Board, which is the national agency responsible for supporting the provision of information, advice and advocacy on social services, and for the provision of the Money Advice and Budgeting Service.

Delay: Putting Justice to the Hazard

Catherine Martin, Solicitor, Personal Injuries Unit

A recent decision by the Court of Appeal in the case of *McNamee v Boyce* overturned the decision of the High Court made in December 2014 in which the Plaintiff was awarded the sum of €493,037.47 damages. The PI Unit was acting on behalf of the Defendant.

Background

The Plaintiff issued proceedings in the High Court claiming damages as a result of personal injuries suffered by her arising from alleged sexual assault. The Plaintiff was born in 1975 and she alleges that the assaults took place between 1979 and 1992.

On 20th June, 2001 the Plenary Summons was issued but not served. On 8th July 2002 the Plenary Summons was renewed for six months following an ex parte application. The summons was served on 16th December 2002. No action was taken until the 5th July 2011 when the Plaintiff served a Notice of Intention to proceed. In November 2011 on foot of a Notice of Motion in default the Defendant entered an Appearance. On 13th March 2012 over ten years after the proceedings were issued the Plaintiff served an amended Statement of Claim making new and further serious allegations against the Defendant. On 9th July 2012 an application was made by the Defendant to dismiss the Plaintiff's proceedings but O'Neill J refused. The case was heard before O'Malley J and a jury on 4th, 5th, 6th, 7th, 12th, 13th and 14th November 2014. At the commencement of the hearing the Defendant renewed his application to have the Plaintiff's claim dismissed on the grounds of inexcusable and inordinate delay and further that part of the Plaintiff's claim was statute barred. The Court refused the application to dismiss the claim but ruled that insofar as the Plaintiff's complaints of sexual assault post-dated 1985, these were statute barred. After the Plaintiff had completed her evidence the Defendant made a further application to have the claim dismissed but again the application was refused.

In 1999 the Defendant was tried in the Circuit Court for six counts of sexual assault. He was convicted on one count and sentenced to 3 years imprisonment. The Plaintiff's wife gave evidence on his behalf. Unfortunately she died in 2005.

The Jury awarded the sum of €493,037.47 plus costs to the Plaintiff.

The Defendant's legal team Mr Coleman Fitzgerald S.C. and Mr Donal Keane B.L. advised that the decision should be appealed and the Defendant accepted this advice and instructed that it was his

intention to do so.

Hearing of the Appeal

The Appeal was heard on the 16th December, 2015 before Finlay Geoghegan J, Peart J, and Irvine J.

Judgment was delivered by Ms Justice Irvine on 4th February, 2016.

The Defendant contended that the trial judge erred in law in refusing two applications made on his behalf to have the proceedings dismissed on the grounds of the Plaintiff's inordinate and inexcusable delay in the matter in which she pursued her claim.

Having heard the submissions made by both sides the Judge outlines in her judgment the "principles to be considered" in dealing with an application to have a claim dismissed for delay. She refers to various cases and in particular to the tests set down in the *Primor* case by Hamilton C.J, at pp 475 (*Primor plc v Stokes Kennedy Crowley* [1996] 2 I.R. 459 and also the *O'Domhnaill* case *O'Donhnaill v Merrick* [1984] I.R. 151.

The Primor test involves a consideration by the Court of three elements as follows:-

- Whether there has been inordinate delay on the part of the plaintiff and in particular it must be shown that the Plaintiff is culpable in the delay.
- If there has been such inordinate delay, is it excusable
- If there has been both inordinate and inexcusable delay, whether the balance of justice lies in favour or against the dismissal of the proceedings.

Under the *O'Domhnaill* case the Supreme Court established that proceedings may be dismissed even where there is no culpable delay on the part of the Plaintiff. The question for the Court is whether, by reason of the passage of time there is a substantial risk of an unfair trial or an unjust result.

She also referred to her own Judgment in the *Cassidy* case (*Cassidy v The Provincialate* - delivered on 16th April, 2015) where she states "why I considered it appropriate that the burden on a defendant who seeks to have the claim against them dismissed in the absence of any inordinate or inexcusable delay on the part of the Plaintiff, should rightly have to establish nothing short of a real risk of an unfair trial or unjust result."

She referred to another principle which has emerged from many recent judgments of the Superior Courts dealing with the issue of delay. In considering whether or not the post commencement delay has been inordinate the court may have regard to any significant delay prior to the issue of proceedings. She refers to a number of decisions that support the proposition that where a Plaintiff waits until relatively close to the end of the limitation period prior to issuing proceedings that they are then, under a special obligation to proceed with expedition once the proceedings have commenced.

O'Malley J. in the High Court decided that while the Plaintiff had been guilty of inordinate and inexcusable delay that the balance of justice favoured permitting the action to proceed.

In considering this finding Irvine J. was of that opinion that the Court must, for a second time, look at the entire period of delay so as to consider the relative culpability of the parties and must also consider the nature and extent of any resultant potential or actual prejudice. She goes on to state that "the trial judge appears to have overlooked the onus that rests on the litigant to prosecute their action in a manner consistent with the proper administration of justice. Of significant importance in terms of the Plaintiff's culpability for the delay between the date of the issue of the Plenary Summons in June 2001 and her Motion for Judgment in September 2011 is the fact that this is a case in which there was significant pre commencement delay. As already stated, there is a substantial body of legal authority which advances the proposition that where a plaintiff issues their writ at the outer end of the period provided for by the Statute of Limitation, they are then under an even greater onus to proceed with diligence once the proceedings are commenced. The justification for such an approach is an acceptance of the fact that the greater the delay between the events complained of and the hearing of the action, the greater the risk of an unfair trial." She further states "In my view, the Plaintiff's delay when viewed against the backdrop of the pre commencement delay, made her conduct all the more indefensible, a matter which should have weighed heavily against her when it came to a consideration of whether the balance of justice favoured the dismissal of the action."

The greater the delay between the events complained of and the hearing of the action, the greater the risk of an unfair trial.

The Court gave considerable weight to the fact that Mrs Boyce who gave evidence on behalf of her husband in the criminal court was no longer available to do so. She states, "having considered all the relevant circumstances I am satisfied that were it not for the Plaintiff's delay in pursuing her action following the issue of her Plenary Summons, a delay which was all the more inexcusable in the light of the pre commencement delay, her action might well have been disposed of before the death of Mrs Boyce in 2005." She stated that "in her opinion that the loss of Mrs Boyce's potential evidence to the defendant was sufficient to justify the trial judge deciding that the balance of justice favoured the dismissal of the action because of the likely degree of prejudice which would be visited upon him by reason of her being unavailable to give *viva voce* evidence."

In allowing the Defendants' appeal and dismissing the Plaintiff's claim she states "there are clear principles which must be applied so as to ensure the effective administration of justice and basic fairness of procedures. These require that proceedings be conducted within a timeframe such that a Defendant will not be unduly prejudiced by inordinate or inexcusable delay. The Court must endeavour to ensure that the proceedings are conducted in a manner which will reduce the risk of an unjust result or an unfair trail. Delay must not allow justice be put to the hazard."

Pension Adjustment Orders and the Tax Man

Phil O'Laoide,
Regional Manager

We all approach the making of a pension adjustment order with some trepidation. Trustees have to be properly notified and the order itself properly drafted. We now have to add a further concern to our check list and in particular ensure we advise our client of the Revenue fallout there may be arising out of the making of a Pension Adjustment Order.

Under Revenue Rules the maximum benefit a member can take from a scheme is exactly the same whether or not the benefit has been split or otherwise dealt with on foot of a PAO. So if a spouse has availed of the maximum benefit under Revenue funding rules in respect of his/her pension scheme and then this pension is adjusted to give portion of the benefit to the other spouse he/she cannot avail of maximum benefit again in making new provisions for example a new family as the Revenue treat the spouse as if he/she was still married.

Also it should be noted that the Excess Fund Tax which allows for taxation at an effective rate of up to 70% on funds that exceed a certain threshold, is disadvantageous to spouses who have contributed to a pension which is the subject of a PAO. Section 787(95)(B) of the Taxes Consolidation Act 1997 (TCA97) states that the PAO cannot be taken into account when calculating the pension benefit. Excess Fund Tax potentially affects people with an annual pension of over €60,000.

But there is good news for the clients benefiting from the PAO. They can make further contributions on top of what was received by way of PAO as again Revenue consider they are still married!

Additional Resources

Articles

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The Powers and Duties of Tusla Under the Child Care Act 1991

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This essay will attempt critically to assess the powers and duties of the Health Service Executive (now the Child and Family Agency) pursuant to the Child Care Act 1991 ("the 1991 Act") as amended. The Child and Family Agency (Tusla) has been given a range of powers and duties pursuant to the 1991 Act and these statutory functions are designed to safeguard and protect children at risk. The focus of the essay is to examine the functions principally exercised by Tusla pursuant to Part IV of 1991 Act. This Part of the 1991 Act obliges Tusla to apply for either a care order/interim care order or a supervision order where a child who is within its functional area is believed to be in danger.

Introduction

The significant feature of the 1991 Act is not just that it modernised the child protection measures available, but that, in the words of Shannon G (2011), "it imposed a positive duty on Tusla to promote the welfare of children in its area who are not receiving adequate care and protection and also set up the mechanisms for the identification of such children". In this regard s.3 of the 1991 Act (as amended) sets out in unequivocal terms the role and responsibility of Tusla, stating as follows:

"1. It shall be the function of (Tusla) to promote the welfare of children in its area who are not receiving adequate care and protection.

2. ....(Tusla)....shall

(a) take such steps as it considers requisite to identify children who are not receiving adequate care and protection and

(b) co ordinate information from all relevant sources relating to children in its area."

Section 3 acknowledges the rights and duties of parents under the Constitution and the fact it is generally in the best interests of children to be brought up in the family. In other words the Act gives effect to the natural and imprescriptible rights of the child as reflected in Article 42.5 of the Constitution. It is also worth noting that the scope of the obligations of Tusla under s.3 of the 1991 Act have been interpreted broadly.[1]

Part IV Care Proceedings – Interim Care Orders/Care Orders/Supervision Orders

Part 1V of the 1991 Act allows for the making of two key type of orders the purpose of which is to protect children at

[1] *Comerford v Minister for Education* [1997] 2 ILRM 139, 144-145, *per* McGuinness J.

risk, namely, the power to make a care order pursuant to s.18 and a supervision order pursuant to s.19.

The Care Order

A care order made pursuant to s.18(2) effectively commits a child at risk to the care of Tusla for so long as he/she remains a child or such shorter period as the court may determine, which period may be extended. Where a care order has been made pursuant to s.18(2), Tusla effectively acts in *loco parentis* vis-à-vis the child as if a parent and must do what is reasonable to safeguard the health development and welfare of the child. Tusla has additionally been given wide ranging powers under s.18(3) to decide the nature of the care to be provided for the child under s.36, such as foster care, residential care, adoption. Tusla has also the power to consent to a wide range of any necessary medical treatment if required and it may further consent to the issue of a passport for travel purposes. Where Tusla intends to apply for a care order it must give the parents or those acting in *loco parentis* seven days notice of the application. The effect of a care order is draconian in that Tusla has the power to remove the child from the family home and to place a child with foster parents, relatives or in residential care where it is satisfied that the conditions in either s.18(1)(a) or (b) or (c) are met.

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The Interim Care Order

Tusla has also the power to seek an interim care order pursuant to s.17. The effect of the interim care order is to place the child in the care of Tusla for a period not exceeding 28 days or where Tusla and the parent having custody of the child or other custodian consent, for a period exceeding 28 days.[2] An extension may be granted for eight days or longer than eight days if the parent having custody of the child or other person acting in loco parentis consents. The prescribed period of notice required of Tusla (reg 11 District Court Child Care Rules) is seven days and Tusla can make the application *ex parte* under s.17(3) if the judge believes it is in the interests of justice or in the interests of the child to so do. An interim care order is often - but not always - the prelude to an application for a full care order. The key difference between it and a full care order is the envisaged shorter shelf life. The power is nonetheless draconian.

The Supervision Order

In contrast to a care order or an interim care order, a supervision order merely authorises Tusla pursuant to s.19(2) to visit the child at risk periodically at home in order to satisfy itself as to the welfare of the child and to give parents or those acting in loco parentis any necessary information regarding the welfare of the child. The significant difference between

[2]1991 Act, s. 17(2)(b), as amended by s. 267(1)(a) of the Children Act 2001.

the care orders and the supervision order is that the latter seeks to enhance the welfare of the child without removing him or her from the family home.

The purpose of the visitation rights seems to be to facilitate the monitoring of the child at risk. Pursuant to s.19(6), the duration of a supervision order is generally twelve months or shorter and expires when the child the subject of the order ceases to be a child. Tusla has the power pursuant to s.19(7) to apply for a further supervision order on or before its expiration. Tusla is also granted extensive powers to facilitate its monitoring of the child. Thus s.19(4) contemplates that parents or custodians can be required on the application of Tusla to comply with any directions the court sees fit, such as attending medical examinations. Parents dissatisfied with the manner Tusla is exercising its authority regarding visiting may apply to court under s.19(3) for directions regarding such visitations and, if the court gives such directions, Tusla is required to comply with them. Breach of the terms of a supervision order under s.19(5) is an offence. The offender is subject to a fine of €630, a term of imprisonment not exceeding six months or both. The spirit of this section is clearly laudatory inasmuch as it endeavours to give errant parents a chance to rectify their ways whilst leaving the child in the family home. The disadvantages are nevertheless manifest. Few parents will probably welcome the intrusion Tusla monitoring their role as parents and the likelihood of a successful outcome is in turn probably dependent on a solid working relationship between Tusla and parents.

In North Western Health Board v H.W. Denham J explained succinctly that the duty of the Health Board is that "it is given a statutory responsibility for the welfare of children and potentially a liability for the failure to ensure the welfare of the child."

It is worth noting in the context of these orders that Tusla is not just empowered to apply for such orders but it is actually required to do so in certain circumstances. Section 16 of the 1991 Act accordingly provides that Tusla has a duty to make an application for a care order or supervision order in the following situations:

- The child is in need of protection
- The child is unlikely to receive such care or protection unless an order is made.

Significantly s.16 appears to thrust a duty of care on Tusla as regards children at long term risk.

Duty of Care

What are the implications for Tusla of being thrust with a duty of responsibility for all children in their area who are not receiving adequate care and protection? In *North Western Health Board v H.W.*[3] Denham J explained succinctly that the duty of the Health Board is that "it is given a statutory responsibility for the welfare of children and potentially a liability for the failure to ensure the welfare of the child." Nonetheless the

[3][2001] 3 IR 635.
[4]*Johansen v Norway* [1996] ECHR 31, (1997) 23 EHRR 33.

view of the courts is that care proceedings should be a measure of last resort.[4] The concept of welfare is not defined in the Act but s.24 acknowledges that:

"in any proceedings before a court under the Act, the court... having regard to the rights and duties of parents whether under the constitution or otherwise … shall regard the welfare of the child as the paramount consideration and insofar as practicable give due consideration, having regard to his age and understanding, to the wishes of the child."

In other words in the constellation of needs the predominant duty of the health board is to the child who is not receiving adequate care and protection.[5] The court must, however, also have regard to the statutory and constitutional rights of the parents[6] whilst exercising a discretion as to how best to give effect to the wishes of the child, e.g., by way of interview[7] or procuring reports under s.27 or appointing a Guardian ad Litem under s.26.

One further implication of this duty of care and protection is that this responsibility is thrust on Tusla as opposed to any third party. What, then, if the health board fails to fulfil its statutory duty to a child, can it be required to do so? In *T.D. v Minister for Education*[8] Kelly J held it could but subsequently the Supreme Court held the High Court order had violated the separation of powers. The current position seems to be that expressed by Hardiman J, namely, such an order can only be made as 'an absolutely final resort' in circumstance of great crisis.

The Threshold of State Intervention

What evidential proof must be advanced by Tusla to justify obtaining any of the orders in part IV of the 1991 Act? Article 42.5 of the Constitution acknowledges that such intervention is justified "in exceptional cases where parents have failed in their moral duty towards their children .... the State shall endeavour to supply the place of parents, but always with due regard to the natural and imprescriptible rights of the child" . Shannon explains (2011) a health board contemplating the removal of a child from his or her home must establish a very clear prospect of harm which justifies the step it proposes. This view is confirmed by Hogan J. in *F.H. v Staunton*[9] where he said that:

"in exceptional cases where parents have failed in their moral duty towards their children .... the State shall endeavour to supply the place of parents, but always with due regard to the natural and imprescriptible rights of the child"

"any removal of a child from its parents can only be in compliance with the requirements of Article 42.5 … a positive failure on the part of parents, measured objectively must always be established and the children cannot be removed from the home environment save for weighty reasons."

[5] *MQ v. Gleeson* [1998] 4 IR 85, *Eastern Health Board v McDonnell* [1999] 1 IR 197
[6] 1991 Act, s. 24
[7] *MM v MD* [2000] IR 149
[8] [2001] 4 IR 287

In *W v HSE*[10] Peart J. does, however, distinguish between the burden of proof required for an interim care order under s.17 and a care order under s. 18. The net issue here was whether the District Judge in granting the original interim care order had applied the appropriate standard of proof. This was a case where a baby was born at 29 weeks with chronic lung disease to a homeless and disadvantaged couple. Tusla had obtained an interim care order in respect of the child.

The Oireachtas in creating a lower threshold of proof for interim care orders was acknowledging the need on the part of Tusla for swift action ahead of an intended full care order.

Peart J concluded Tusla had met the appropriate standard proof required under s.17. He stated in the case of an interim care order a District Judge must be satisfied that a care order is about to be applied for and "there is reasonable cause to believe" that any of the circumstances listed in s. 18(1) exists or has existed, namely:

the child has been or is being assaulted, ill treated, neglected or sexually abused or

- the child's health, development or welfare has been or is being avoidably impaired or neglected or
- The child's health, development or welfare is likely to be avoidably impaired or neglected.

In contrast he held that when applying for a full care order under s.18 a District Judge must be "satisfied" that any circumstances listed at s.18(1)(a),(b) or (c) exist or has existed. In other words in the case of a s.17 interim order, it is sufficient if Tusla merely demonstrates there is a reasonable cause to believe that there is a real possibility that any of the circumstances listed in s.18(1)(a), (b) or (c) exists or has existed whereas in the case of a care order, Tusla must satisfy the judge such circumstances actually exist.

Why this distinction? Peart J held this distinction in terms of evidential proof "makes complete sense and that the Oireachtas in creating a lower threshold of proof for interim care orders was acknowledging the need on the part of Tusla for swift action ahead of an intended full care order ....in circumstances where time might not permit for the gathering of all witnesses and evidence for the purpose of a full care order".

Peart J.'s decision in *W.* does not expressly deal with the criteria for granting of a supervision order under s.19. It seems reasonable to surmise that the criteria for granting a supervision order is comparable to the threshold for an interim care order, i.e., less stringent than required in a care order. Section 19 uses the formula "where .... there is reasonable grounds for believing" the matters listed in the Act. In other words, it seems Tusla does not have to establish a prima case to obtain a supervision order under s.19 rather it is sufficient to show it seems there is a reasonable cause to believe

[9][2013] IEHC 533.
[10][2014] IEHC 8.

there is a real possibility of any matters pursuant to s.19(1)(a)(b) or (c) exist or existed and that it is desirable the child be visited periodically by or on behalf of Tusla.

Whilst the State has been given far-reaching powers in order to protect the most vulnerable children, it must be acknowledged these powers can only be exercised in exceptional circumstances with due regard always to the paramount welfare of the child.

Finally, in terms of threshold criteria to be met by Tusla, the Act does not contain any definitions of assault, ill treatment, neglect or sexual abuse. Comprehensive definitions of harm/ill treatment, neglect and sexual abuse can, however, be found in Children First 2011 guidelines and the guidelines might assist in elucidating what some of these statutory terms actually mean. Tusla is required to show any one of these types of abuse has taken place or is taking place. In the case of a threat to health, development or welfare this can refer to current, past or apprehended events.

In conclusion, there is little doubt but there are significant powers and duties afforded to Tusla in terms of protecting children at risk, particularly under Part IV of the 1991 Act. Whilst the State has been given these far-reaching powers in order to protect the most vulnerable children, it must be acknowledged these powers can only be exercised in exceptional circumstances with due regard always to the paramount welfare of the child.

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Current Awareness: Case Summaries

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Regional Manager

Child and Family Agency v R.T. [2015] IEDC 5

Proportionality and the making of child care orders

Judgment was given on 14th December 2015 by Judge Marie Quirke granting a care order in respect of a four year old child called B. The child's mother was represented by the Legal Aid Board and the child herself was also represented and a *Guardian ad litem* had been appointed. The child had been placed in care four days after her birth and a care order for a three year period previously been made by President Hogan had expired on 5th April 2015.

The Child and Family Agency sought a care order until the child was 18. The mother argued that this was not proportionate and that the only proportionate order that could be made was an order for one year. This argument was based on the fact that the mother's circumstances had improved and were improving. It was accepted she had been off alcohol since 2012 (with one lapse), was engaging in counselling.

The mother required support at access. Judge Quirke held as a fact that the mother had not always prioritised her attendance at access. She further held that whilst the mother was working at building a bond with Child B this was a work in progress and was not yet established.

Judge Quirke referred to case law and in particular *Kutzner v Germany* in which it was stated that:

"A care order constitutes a serious interference with family life"

And "a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit…"

Judge Quirke went on to set out the threshold criteria in Section 18 of the 1991 act and said that the Agency must evidentially establish the need to intervene and that the standard of proof is on the Balance of probabilities.

The order sought here was specifically under Section 18(1)(c) on the basis that the child heath, welfare and development were likely to be impaired if the child was returned to her mother's care at this time.

The court held that the second requirement of section 18 is to establish that the child requires protection and care which she is unlikely to receive unless a care order is made. It is for the court to decide the proportionate order to be made.

In the case at hand the judge held that the making of an order under 18(1)(c) for the child to remain in care until 18years was proportionate in circumstances where a secure bond had yet to be established between the child and her mother. The Judge however emphasised that approaching each Child in Care Statutory Review family reunification must be considered. A review date was set for two years time but a mention date of 6months prior to the review date was set to allow the mother lodge a section 22 application (i.e. to seek to discharge the care order) and to seek a hearing date for such an application.

In his judgment Mr Justice Mc Kechnie said that if there is an intention to be coercive then the period of detention should be indefinite and subject only to the judge's power of suspension.

Mr B. v Governor of the Midlands Prison and Ms C. [2015] IEHC 781

Detention for non-payment of child maintenance ruled unlawful

"Children are a blessing but they come at a price".

This was the novel opening of Judge Barrett's judgment delivered on 10th December 2015 in a case which came before the High Court by way of an enquiry under Article 40.4.2 of the Constitution. Because the case arose out of attachment and committal proceedings related to family court orders identities were protected.

The facts were that Mr "B" had failed to comply with a Circuit Court Maintenance order. He was jailed for contempt and he came before the High court to challenge the validity of his detention. The detention was by order of the Circuit Court and was for a period of three months or until he had purged his contempt by paying €50,000 as way of part payment of arrears.

An undertaking had, in the course of the proceedings been given by Mr B to hold proceeds of sale of lands pending the determination of the proceedings. It was found that this undertaking was "spent" by the time of the attachment and committal proceedings. It was also found that if the committal Order was for non payment of a Judgment debt then it was committal for non payment of debt and could not be brought.

The court in applying previous case law found that the order "unacceptably blurs the lines between Civil and Criminal Contempt". The precedent relied on, and which Judge Barrett felt bound by, was the Supreme Court decision in Laois Co Co v Hanrahan [2014] IESC 34 where there was detention for contempt in refusing to remove waste as court ordered. In the Hanrahan case a six month committal detention was struck down as being "an impermissible combination of punitive and coercive elements". In his judgment Mr Justice Mc Kechnie said that if there is an intention to be coercive then the period of detention should be indefinite and subject only to the judge's power of suspension.

Mr B was released with the courts strong recommendation to comply with his parental responsibilities.

Current Awareness: Legislation Update

Bankruptcy (Amendment) Act 2015

This Act makes a number of changes to the rules on bankruptcy, including reducing the duration from 3 years to 1 year, reducing the income payment period from 5 years to 3 years, and providing for the return of debtors' family homes. A provision to abolish the requirement for a statutory High Court sitting has not yet come into effect.

Children First Act 2015

This Act obliges certain professionals and other persons working with children to report child protection concerns to the Child and Family Agency, and those providing services to children to undertake an assessment of any potential for risk of harm to a child and to prepare a child safeguarding statement.

Equality (Miscellaneous Provisions) Act 2015

Commenced on 1st January 2016, this Act makes a number of amendments to employment equality legislation and clarifies the position on setting of compulsory retirement ages. Employers can only fix different retirement ages if it is objectively and reasonably justified.

International Protection Act 2015

This provides for a single procedure for all protection applications including refugee status, subsidiary protection and leave to remain, the transfer of applications from the Office of the Refugee Applications Commissioner to the Department of Justice and Equality, and the establishment of an independent International Protection Appeals Tribunal.

Legal Services (Regulation) Act 2015

This Act provides for a new independent authority to regulate the legal profession, a legal costs adjudicator to replace the existing Taxing-Master, an independent Legal Practitioners Disciplinary Tribunal to deal with complaints about professional misconduct, and new structures allowing for future legal partnerships and multidisciplinary practices for barristers and solicitors.

Residential Tenancies (Amendment) Act 2015

The Act was signed on 4th December 2015 and some provisions took immediate effect including a temporary prohibition on conducting rent reviews more than once every two years, increasing the notification period for rent revisions from 28 days to 90 days, and introducing an expanded scale of notice periods for the termination of tenancies where there has been occupation of between four and eight years.

Rules of the Superior Courts (Jurisdiction, Recognition and Enforcement of Judgments) 2016 - SI 9/2016

This SI, which came into operation on 12th January 2016, amends the Superior Court Rules to facilitate the operation of EU Regulation No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.