

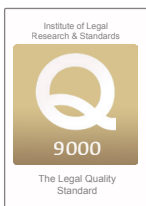


It has been an exciting year since our second edition of the Holmes newsletter, and we have continued to enjoy providing legal services to you under our new brand.

I am delighted to welcome Shane Costelloe to the partnership. As a partner, Shane leads the firm's employment team, specialising in employment law and works with our corporate/commercial and public sector clients. Caroline Connolly, Of Counsel, joined our Corporate Team adding a wide spectrum of international experience. Strategic external hires are a key element of our strategy, and the appointment of our new HR Manager, Rachel Doyle, reflects our continued commitment to growth and client services.

I would like to congratulate our newly qualified solicitors, Ciara Downes, Melissa Regan and Mikhaela O'Shaughnessy who have trained with the firm. They now move into the role of lawyers, Ciara into our Commercial Team, Melissa into our Financial Lines Team and Mikhaela into our Private Client Team. At every stage of their training and development within the firm, they were encouraged to push boundaries and to get involved in work of the highest calibre in an environment designed to support their professional growth and development.

We were proud to continue our sponsorship of the Limerick Chamber Business Awards 2022. It was a wonderful event showcasing an evening of progressive business representation and development organisation in Limerick. Congratulations to all of the finalists as these awards recognise and reward business excellence, innovation, best practices, and outstanding business performance. I would also like to acknowledge the enormous contribution of JP McManus to Limerick and his lifetime achievement award was well earned.



Quality is one of our core values at Holmes and is at the heart of all we do. The score of 100%, a Gold Grade, in our recent Q9000 Legal Quality Standard audit is a great achievement



SHANE COSTELLOE & MELISSA REGAN, HOLMES
JAMES RING, INGENIUM

and I would like to thank Anna Owens, Partner, and all involved for their efforts. This is an award recognised by the Law Society of Ireland and awarded by the Institute of Legal Research and Standards. It reflects our dedication to demonstrate exceptional levels of strategic innovation and quality management across all aspects of our business.

I am delighted to bring you the third issue of our Holmes Newsletter. This edition features the topical areas of Environmental, Social and Governance, an article on sustainable investments and sustainable returns and an article on the Courts' attitude towards delays and how this reflects on litigants and defendants. Employers will be interested in the article authored by Grace Lee which explains the obligations for certain employers to have a whistleblowing procedure under the new Protected Disclosures (Amendment) Act, 2022 which came into effect in its entirety from 1st January 2023.

Please also take a look at our Corporate Social Responsibility segment which features photographs of our team partaking in charity runs which may inspire you. Now, more than ever, wellness and a healthy work life balance is critical to our Team.

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I wish you all a very happy and safe New Year. Thank you for placing your trust in Holmes. We are grateful for your continued business, and we look forward to partnering with you again this year.

Kind Regards,

Harry Fehily
Managing Partner

January 2023

ESG, CORPORATE GOVERNANCE AND ADVISORY

ESG – an option or an obligation?

IN BRIEF

Shane Costelloe advises why there is an increasing need for an effective and structured ESG Policy in companies.



Shane Costelloe
Partner

INTRODUCTION TO ESG

It is becoming more and more evident that the developments which are happening in the Environmental, Social and Governance (ESG) sphere are having a significant impact on companies and businesses and the way in which they are run. A company's ESG policy is now recognised as crucial regarding a company's long-term strategy, culture and vision, rather than just financial position.

Having an effective and structured ESG policy in place, which deals with environmental procedures, social diversity and responsibility, and ensures effective corporate governance, is one of the steps that can be taken to improve business reputation, increase customer and employee loyalty and attract investors.

The increasing need for an ESG policy within a business was just one of many topics discussed at the 2nd Annual Legal ESG Summit which Holmes attended in October.

CORPORATE GOVERNANCE – THE 'G' IN ESG

While the environmental and social elements of ESG are somewhat newer concepts, the importance of effective corporate governance is long acknowledged as a cornerstone of good business practice.

Scandals involving Irish charities in recent years have reinforced the significance of effective corporate governance and highlighted the irreversible consequences, reputational, financial and otherwise, which arise due to poor governance. Holmes recognise that prevention is always better than cure and our corporate governance and compliance team offers clear and practical advice on corporate governance – including designing and implementing policies and formal procedures in accordance with applicable corporate governance rules.

Effective governance must be implemented from the top down. The board of directors of any corporate or public entity has a very significant role in this regard.

In accordance with company law, directors have statutory and fiduciary duties which are owed to the company, its' shareholders and employees. Such duties include a duty to act in good faith, and a duty to exercise care, skill and diligence in company matters, a duty to act honestly and responsibly and in the best interests of the company, breaches of which can result in personal liability for the directors.

However, in parallel with this, it is now more important than ever that the board also take measures to ensure that the affairs of the company are conducted in a transparent and fair way and that consideration is always given to the environment, the broader public sphere, not forgetting customers, clients, and shareholders when making decisions. The new era of corporate governance requires the board and their executive management teams to conduct the affairs of the business with integrity and fairness.

HOLMES CAN HELP!

We recognise that corporate governance is about much more than implementing policies and procedures in the business. We at Holmes have developed a program which includes a root and branch review of corporate governance within your organisation and facilitates remedial actions from both a legal and a cultural perspective. In partnership with Ingenium, a trusted strategic and learning provider, we offer a client specific governance training program to accelerate insights and awareness on internal governance policies, processes and interventions. Designed through a focused, accessible, affordable board and executive training program to collectively enhance and sustain governance excellence, this supplementary addition to our offering can help new learning and sustain change.

The impact and obligations of ESG in the corporate sphere are continuously evolving with the implementation of various legislative requirements at a national and EU level focusing on environmental, climate change and social influence. Holmes can assist clients in addressing their ESG shortfalls and identifying opportunities for value creation regardless of stage of life cycle.

For guidance on implementing an ESG Policy, please contact Shane Costelloe.

Rachel Jones, Holmes Trainee Solicitor, wins six awards at the International Mediation and Negotiation Competition

We are delighted to announce that Holmes trainee, Rachel Jones, and her teammates while representing the Law Society of Ireland took home six awards from the INADR International Mediation and Negotiation Competition which took place in Poznan, Poland.

The team of three as selected from an internal negotiation and mediation competition run by the Law Society of Ireland during their time at Blackhall Place.

The tournament sees participants compete through three preliminary rounds in which each team member must serve as a mediator, advocate and client. Mediators are paired with a co-mediator from different law schools, in recognition of the collaborative nature of mediation. Each team was assessed on a range of skills sets including how they controlled the mediation, built rapport, represented their client's interest and analysed and assessed their specific needs.

Rachel and her team competed in three individual rounds and made it to the final against teams from all over the world including Poland, Denmark and India. They brought home the distinguished award for best overall client/advocate team and best client/advocate team in the individual rounds. The team also placed third in both the individual rounds and in the final as well as taking home a further two awards for their skills.

The aim of this annual competition is, through education, worldwide recognition of the power of dispute resolution processes to peacefully resolve conflicts and promote conciliation and healing. The goal is for participants to identify that mediation is about working together to reach a solution, rather than competing at every turn.

Rachel has been an excellent ambassador for Holmes during her time at Blackhall Place and we look forward to Rachel putting these skills into practice now that she has returned to the Dublin office to continue her traineeship.



RACHEL JONES, TRAINEE SOLICITOR

EXCEPTIONAL RESULT OF GOLD GRADE IN Q9000 STANDARD AUDIT

Congratulations and thank you to all our team as we have been awarded an exceptional score of 100%, a Gold Grade, in our most recent Q9000 Legal Quality Standard audit.

Anna Owens, Risk Management Partner who leads our audit team, commented:

"Quality is one of our firm's core values and to have achieved 100% in the Q9000 audit demonstrates our commitment to quality across all aspects of our business. This is a fantastic achievement for the firm and recognises all the hard work that our staff put in to complying with the Q9000 standard throughout the year."

Recognised by the Law Society of Ireland, the Q9000 is awarded by the Legal Quality Standard of Ireland. It is the most advanced strategic, risk and quality management standard for law firms demonstrating exceptional levels of strategic, innovation and quality management.

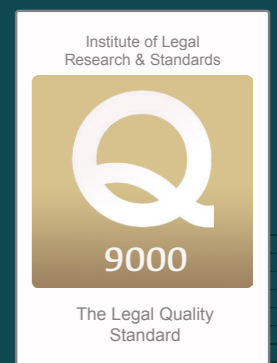
Our gold grade score of 100% was awarded after a comprehensive audit of the following areas:-

- Client Management
- File Management
- Claims and Regulatory Management
- Practice and Systems Management
- Human Resources Management
- Financial Management
- Strategic Planning and Marketing Management
- IT, Information and Knowledge Management

Since our first ISO accreditation in 2004, we have constantly improved and developed our processes, systems and procedures. In 2010 we obtained Legal Quality Certification – going on to achieve higher standards of certification, with the Q6000 Legal Quality Standard in 2012 and the Q9000 in 2015, the highest standard available.

"We were very impressed with the firm's approach to the management of risk. We are satisfied that this firm has implemented the risk management procedures it adopted in its first year of accreditation to a risk management standard. It has very few further matters to review or systems to implement. We are satisfied that the firm is in full compliance with the requirements of Q9000 and it has achieved a gold grade with an overall score of 100%..."

Kate Ashmore, Auditor from LSQI (The Legal Quality Standard of Ireland)



MAKING POSITIVE IMPACTS

CORPORATE RESPONSIBILITY

Moore Morning River Run in aid of Limerick Suicide Watch and World Suicide Prevention Day

On 9th September 2022, our Holmes team took part in the 5K Moore Morning River Run in aid of *Limerick Suicide Watch* and *World Suicide Prevention Day*. The event was to raise money and awareness for those contemplating suicide. Limerick Suicide Watch is a volunteer group who patrol between the bridges on the River Shannon in Limerick City and who rely on public donations to help fund training and safety equipment. Holmes were delighted to be a part of an event which promoted physical and mental wellbeing.



Run in the Dark 2022

On 9th November, our teams from around the country completed either a 5K or 10K run in the dark to raise funds for the Mark Pollock Trust. Each year, Holmes takes part in the charity event along with people in over 50 cities worldwide as darkness sweeps the globe to Run in the Dark with all proceeds going to help cure paralysis in our lifetime.

Well done everyone who took part!

The Gloss Gala Funds Night Out

A wonderful evening was had by some of the Holmes team and guests at The Gloss Gala Funds Night Out 2022 in the RDS on 8th November. It is Ireland's most exciting high-profile and glamorous event for professional women.

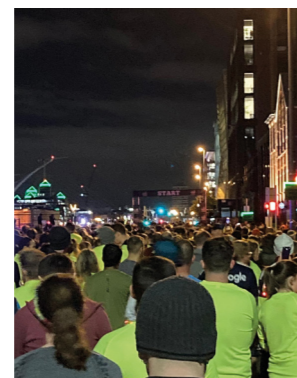
The theme of the event, "Financial Feminism and Investing for Impact", derived from the runaway success of THE GLOSS x Goodbody Investment Club, a female-focused community created during the pandemic to promote financial literacy and candid conversations about money.



St. Gabriel's Foundation Christmas Lunch

St. Gabriel's Foundation is a not-for-profit organisation that provides valuable services to children with disabilities and their families. The annual St. Gabriel's Foundation Christmas Luncheon returned to the Savoy Hotel, Limerick on 25th November 2022. All funds raised at the event will go towards the development of a sensory garden at the Children's Respite House in Mungret, Co. Limerick.

Holmes are delighted to once again support this very worthy cause.



Donal Creaton appointed chair of Limerick Civic Trust

Congratulations and Best Wishes to Donal Creaton who was recently appointed chair of Limerick Civic Trust. Limerick Civic Trust is an independent, non-profit making voluntary society which undertakes projects in Limerick that make places more attractive, enjoyable and distinctive.

It is mainly supported by donations from industry, business, charitable trusts and individuals. Its' mission is to protect and enhance Limerick's heritage and environment through Conservation & Preservation, Improving Civic Amenities and Education & Research.

Of his new role, Donal said, "There are hugely exciting and ambitious plans for Limerick at the moment and I believe Limerick Civic Trust has a key role to play in delivering these. Already, the projects we undertake serve to enhance the image of our city amongst our citizens and to boost tourism, such as our street cleaning campaigns, canal bank pathways, erection of historical plaques, walking tours and so forth. The Trust has the ambition and potential to breathe new life into many more areas of our city and county."

"My focus as chair will be on attracting more members and patrons to financially support the restoration and heritage improvement projects earmarked for completion. I will oversee the development of stronger working and mutually beneficial relationships with partners and public bodies as we demonstrate our competency in delivering civil community projects."

"As a voluntary organisation we are hugely indebted to the support and resources we have received from organisations like Holmes O'Malley Sexton LLP, the JP McManus Foundation, T.U.S, U.L. & Mary Immaculate College along with private organisations such as Careline, Litho-circuits, Mincon and Roches Feeds. However, we need to encourage more support from Limerick's business community and beyond if we are to continue to deliver on our commitment to protect and enhance Limerick's unique character and fabric," he concluded.

Novas Christmas Gift Appeal

Let's spread a little Christmas cheer!

The Novas Christmas Toy Appeal helps to ensure that children who are disadvantaged, homeless or at risk of being homeless wake up to a present on Christmas morning. The Toy Appeal operates flexible gifting options including, buying and dropping off physical gifts, donating online or buying and giving a retail voucher.

Holmes is delighted to support this appeal again this year and a big thanks goes to Emma Brewer, who organises our support each year.



DONAL CREATON, PARTNER

Holmes Transition Year Programme 2022

Holmes were delighted to welcome twelve students to our office to take part in our award-winning Transition Year Programme. The programme was run over the course of one week and gave students the opportunity to gain a real insight into life inside a law firm, through a series of workshops, presentations, challenges and to also attend on a solicitor and barrister while the High Court was sitting.

Through the interactive programme, the students enjoyed various workshops and events, such as the Introduction to the Irish Legal System, preparing a case for trial, digital communication and protecting yourself online, a talk on Street Law and preparing a Mock Trial before a judge.

A special thank you to Catherine McLoone, Barrister, who ran a session with the students.

Well done to all who completed the programme, their futures are bright!



EMPLOYMENT

HOW EMPLOYERS SHOULD PREPARE FOR THE PROTECTED DISCLOSURES (AMENDMENT) ACT, 2022.



Grace Lee
Solicitor

On 12 October 2022, the then Minister for Public Expenditure and Reform, Michael McGrath, signed the Commencement Order for the Protected Disclosures (Amendment) Act (the '2022 Act') which took effect from 1 January 2023. This 2022 Act transposes the EU Whistleblowing Directive and amends the existing Irish framework for the protection of whistleblowers under the Protected Disclosures Act 2014 (the "2014 Act").

(A) CATEGORIES OF AFFECTED EMPLOYERS:

The 2022 Act introduces a new obligation for certain employers to have a whistleblowing procedure, together with significant detail on the content of such procedures. The 2022 Act applies to:

- (i) All public sector employers;
- (ii) Any employer with 250 or more employees (from the date of commencement of the Act);
- (iii) Any employer with 50 or more employees (only from 17 December 2023); and
- (iv) All employers who fall within the scope of certain EU law provisions referred to in the Directive (from the date of commencement of the Act), which includes employers in the areas of financial services, products and markets, product safety and compliance, transport safety and protection of the environment, food safety, animal safety and welfare and public health.

(B) REPORTING CHANNELS:

Employers will be required to establish and operate anonymous internal reporting channels. Employers will be required to designate an impartial person to follow up on reports. The designated person will be tasked with maintaining communication with the reporting person.

(C) DEFINITION OF 'WORKER':

The 2022 Act extends the scope of persons who are protected under the 2014 Act, by extending the definition of 'worker'. 'Worker' now includes shareholders, volunteers, trainees, members of the administrative, management or supervisory body of an undertaking (e.g., board members) and those who acquire information during a recruitment or other pre-contractual process (e.g., job applications).

(D) THE BURDEN OF PROOF:

Currently, under the 2014 Act, the burden of proof rests with the worker alleging penalisation for making a protected disclosure. The 2022 Act provides that the employer will have to discharge the burden of proof in respect of penalisation. In other words, penalisation under the 2022 Act, will be deemed to have occurred as a result of making the protected disclosure unless the employer can prove the act or omission complained of was justified.

(E) CRIMINAL OFFENCE:

The 2022 Act provides for very substantial fines (ranging between €75,000 and €250,000 for conviction on indictment) and the possibility of a term of imprisonment not exceeding two years for employers who are found to have committed a criminal offence.

If designating one or more staff member as responsible for receiving protected disclosure, specific training on the handling of protected disclosures will be required

KEY STEPS FOR EMPLOYERS IN ADVANCE OF / FROM 1 JANUARY 2023:

- (a) Ensure appropriate whistleblowing procedures are in place in accordance with the 2022 Act. The procedure must ensure employees have an internal reporting channel. A well drafted procedure may well assist in reducing risk of successful legal claims for victimisation.
- (b) Confirm if you are an employer to whom the additional obligations concerning procedures contained in the 2022 Act applies. In the private sector, this will largely depend on the analysis of the type of work and / or number of employees.
- (c) If designating one or more staff member as responsible for receiving protected disclosures, specific training on the handling of protected disclosures will be required. Employers will need to carefully consider the most suitable individuals. For instance, individuals in management positions or certain reporting lines could be conflicted.
- (d) In the public sector, whistleblowing procedures must be amended to comply with the 2022 Act.

For guidance on implementation of Protected Disclosures (Amendment) Act 2022, please contact Grace Lee.

FINANCIAL SERVICES

Green and sustainability linked loans - the future of Irish lending?



Nicola Hackett
Solicitor

IN BRIEF

The Irish loan market is exposed to ECB interest rate hikes. Green Loans and Sustainability Linked Loans are offering an alternative to general corporate borrowing on the Irish Loan Market, while also assisting borrowers in achieving their ESG objectives.

Ireland has seen high levels of lending activity across all industries over the last twelve months, despite several challenges which continually apply pressure upon the Irish economy. These challenges include the crisis in Ukraine, Brexit, and global supply chain shortages. A worrying trend emerged in the latter half of 2022 however, threatening the buoyancy of the Irish loan market. European Central Bank directed interest rates hikes aimed at regulating spiralling inflation are trending upwards with no sign of slowing in the near future, which is likely to deter businesses from general corporate lending. Green Loans and Sustainability Linked Loans ("GLSLLs") can offer an attractive solution to businesses seeking to raise finance at lower interest rates than traditional corporate financing.

GREEN LOANS AND SUSTAINABILITY LINKED LOANS

The Loan Market Association (the "LMA"), the authoritative voice of the syndicated loan market in Europe, Middle East and Africa ("EMEA"), published "Green Loan Principles" and "Sustainability-Linked Loan Principles" which outline the characteristics of these socially conscious lending options.

GREEN LOANS

A Green Loan is any type of loan instrument made available exclusively to finance or refinance a new or existing "green project", with a focus on the use of proceeds of the funds. LMA suggests such use of proceeds may include energy efficiency, clean transportation, and renewable energy.

SUSTAINABILITY LINKED LOANS

A sustainability linked loan is a facility which incentivises a business's achievement of predetermined sustainability objectives. The use of the loan proceeds does not need to be for a green project and is more often used for general corporate purposes. Instead of determining a specific loan purpose, sustainability linked loans seek to improve the sustainability of the borrower's business overall by aligning loan terms (to include pricing) to the borrower's performance against predetermined sustainability goals.

Green Loans and Sustainability Linked Loans can offer corporate borrowers an attractive alternative to high interest rates on traditional lending.

THE IRISH MARKET AND GLSLLS

In recent years, banks operating in Ireland have been engaging in green and sustainable finance across their lending books and investing in the growth of this category of finance, e.g. Allied Irish Banks p.l.c., has set a goal to convert 70 per cent of all new lending to be "green" or to assist in the transition to a net zero carbon economy by 2030, which in 2021 accounted for €2 billion of its lending. In 2022, there was a greater volume of green finance and sustainability-linked loans as banks continue to deliver on their core values and sustainability commitments.

Initially, GLSLLs were available only to large corporates, but they have steadily seen further expansion into the mid-size corporate and SME market. The evolution and increased importance of GLSLLs has coincided with the corporate shift towards Environmental, Social and Governance ("ESG") performance across businesses of all sizes, offering them the chance to leverage good ESG strategy into financing opportunities to grow their businesses.

CONCLUSION

Ireland is set to be a key player on the sustainable finance world stage with Sustainable Finance Ireland having published its National Sustainable Finance Roadmap in late 2021, which sets out its plan to make Ireland a leading sustainable finance centre by 2025 through the acceleration and expansion of GLSLLs. These loans will not only allow banks to assist their customers to achieve their ESG goals, but will also help banks to achieve theirs, while keeping the effects of current inflationary pressures at bay.

For guidance on Green Loans and Sustainability Linked Loans, please contact Nicola Hackett.

MERGERS, ACQUISITIONS AND INVESTMENTS

M&A activity held its own in 2022

IN BRIEF

2022 saw a cooling in Mergers and Acquisitions activity in Ireland, which was no real surprise after the surge in M&A activity in the previous 12 months.

M&A activity has returned to pre-pandemic activity levels with a total of 122 deals worth €6.4bn announced in the first six months of 2022, a decline of 14% from the same period in 2021. Private equity firms remained active players in the Irish market, securing seven of the top 20 deals by the end of this period. Activity remained strong in the mid-market segment (€5m - €250m), the mainstay of the Irish M&A market, with 84% of deals in Q1 & Q2.

Our M&A practice has experienced a very successful 2022 and some of these are highlighted below -

We began the year by advising **H&MV Engineering Limited**, our long-standing client through an investment by **Exponent Private Equity LLP** in the company. Exponent became a majority stakeholder in H&MV with re-investment from PJ Flanagan, CEO, John Stokes, COO and the management team. This investment saw private shareholders led by **MacX3 Services Limited** successfully exit the company after supporting a secondary MBO of H&MV in 2018.

The trend of large brokers acquiring independent insurance brokers continued throughout 2022. We advised the sellers of Limerick headquartered general insurance brokers, **Sullivans Insurances** in the sale of the business to the international insurance firm **PIB Group**, the groups sixth retail investment in Ireland.

Austrian headquartered private cheese company, **Rupp AG** acquired **Ingredient Solutions** and we advised the Ingredient Solutions team throughout the deal. **Ingredient Solutions** is an Irish cheese ingredient company with operations in both Ireland and the UK.

We advised the shareholders of **South Coast Diesels** in the sale of their company to **Deutz AG**. South Coast Diesels specialise in the engine after sales support industry. The company covers all applications including rail, power generation, construction and underground mining. Deutz AG, is one of the world's leading manufacturers of drive systems for off-highway applications.

Over the summer, we advised **ComfortDelGro Irish Citylink Limited** through their acquisition of **Evobus and Coach Limited** which operates the GoBus coach service. Citylink is one of the largest coach operators in Ireland and the UK. It has operated in Ireland since 1991 and currently has a fleet of 33 buses nationwide. GoBus is an inter-city coach service with a fleet of 31 buses. This acquisition

makes Citylink Ireland's third largest inter-city coach operator.

The final quarter of the year has been busy with a number of deals lined up to close. We advised **Foxes Bow Whiskey** on their successful fundraising round with **Crowdcube** and private investors, which raised more than €640,000.

We acted for **Calx Instrumentation Services Limited** in the company's acquisition by **Ellab A/S**. Calx is an Irish field calibration company based in County Dublin. This is Ellab's 4th acquisition in Ireland, who provide world-leading validation, monitoring and calibration solutions and services, as well as GMP consulting, to life science and food manufacturing companies across the globe.

We acted for **Stride** on their investment round demonstrating the great growth potential for this exciting company. Stride is a new syndicate technology platform offering shares in elite-level racehorses.

We advised **Complete Laboratory Solutions**, when **Phenna Group** became a significant shareholder in the business. Established in 1994 in Galway, CLS is the largest privately owned contract laboratory in Ireland, providing microbiological and chemical testing services. The company also provides trained industry-ready laboratory analysts to clients on a contract basis.

If you would like to find out more about these deals and our M&A practice, please contact us.



Stephen Walker
Of Counsel

LITIGATION AND DISPUTES

TIME IS UP FOR LITIGANTS WHO DELAY

The Courts' current attitude to litigants who delay will be welcome news for defendants.



Aoife Skehan
Senior Associate

Current attitude of the Courts sounds the death knell for litigants who delay unreasonably in their pursuit of justice.

Holmes successfully act in recent High Court action striking out proceedings for inordinate and inexcusable delay and successfully defend appeal to the Court of Appeal.

Citizens have a constitutionally protected right of access to justice, however, this is not an absolute right and cannot be abused by those who delay. The High Court retains an inherent jurisdiction to strike out proceedings where there has been inordinate and inexcusable delay. In recent years the High Court and the Court of Appeal have affirmed the approach to be taken by the Courts when assessing such applications. Holmes successfully acted in an application where an Order of the High Court striking out the proceedings against our client's insured on grounds of delay was also successfully defended in the Court of Appeal (*Darcy v AIB Plc and William Murray*).

WHAT ARE THE FACTORS CONSIDERED BY THE COURTS

In that case, which concerned a professional defendant, the High Court re-affirmed the principles to be considered by the Courts as those set out in the case *Primor plc v Stokes Kennedy Crowley*.

There is no universal benchmark period of time that constitutes an inordinate delay and it will depend on the particular facts of each case.

Essentially, the Court must address three issues. The first is whether having regard to all the circumstances, the delay complained of is inordinate. If the Court is satisfied that it is, then it must decide whether that delay can be excused. Where the Court finds the delay both inordinate and inexcusable it must also satisfy itself as to whether the balance of justice favours the striking out of the proceedings.

INORDINATE & INEXCUSABLE DELAY

There is no universal benchmark period of time that constitutes an inordinate delay and it will depend on the particular facts of each case. Delay by a Plaintiff in issuing proceedings is a factor considered by the Courts. The High Court has held that where such pre-commencement delay exists, there is a duty on a Plaintiff to progress proceedings with reasonable expedition. In the case mentioned above, there had been a delay of approximately 3.5 years since any step had been taken in the proceedings by the Plaintiff.

Whether or not a delay is inexcusable will also depend on the particular circumstances of each case. In this particular case, the fact that the Plaintiff was taken up with prosecuting other litigation was not accepted by the Court as justification for the delay and neither were the personal circumstances in which the Plaintiff found himself.

THE BALANCE OF JUSTICE

Turning then to the question of the balance of justice, the factors which a Court may consider in assessing this include any action on the part of a defendant constituting acquiescence in the delay, the likelihood that there cannot be a fair trial, and any prejudice caused to the defendant. The absence of witnesses, documents, or the loss of evidence would usually feature strongly in a defendant demonstrating a substantial risk of there not being a fair trial. General prejudice can include damage to a defendant's reputation, to include professional reputation. In the case referred to, the Court considered the key issues in assessing the balance of justice related to the general prejudice arising from the serious nature of the allegations hanging over the defendant, which related to the risk of an unfair trial given the events complained of dated back to 2009 where oral evidence would be required. The High Court held that the balance of justice favoured the dismissal of the proceeding.

This is only one of a number of recent decisions of the High Court striking out proceedings on grounds of delay and which should act as a warning for litigants who delay unreasonably in their pursuit of justice.

For guidance in this area or advice, please contact Aoife Skehan.

INTERVIEW

Insider Knowledge Coillte's role in achieving a low carbon future

IN BRIEF

Gillian Butler interviews Richard Lowe who is the Commercial Director of Land Solutions in Coillte CGA on the importance of forestry for a low carbon economy in Ireland. It is estimated that Coillte CGA owns 7% of the land in Ireland.



Gillian Butler
Senior Solicitor

Coillte's four strategic pillars are: forests for climate, forests for wood, forests for nature and forests for people – can you explain how these strategic pillars are adopted to create a sustainable future for all?

CLIMATE – Through our support of the renewable energy sector with our land bank, focusing on reducing carbon impact, managing our whole estate to increase carbon store by lengthening forest rotations, active management of broadleaved forests, addressing the emissions from peatland areas.

WOOD – The use of wood-based material as a substitute for concrete and steel, particularly in housing.

NATURE – Enhance the bio-diversity within our forests and increase the amount of land focused on bio-diversity.

PEOPLE – By encouraging people to use our forests for recreation and exercise which is great for mental as well as physical health.

Forests have a unique role to play in combatting climate change. Can you explain the importance of forestry in the fight against climate change?

Forests themselves are a carbon sink in the trees and the soil. The wood produced can lock in carbon for the long term through its use in the construction of timber frame houses and use wood to displace carbon intensive alternatives. In the construction industry, choosing wood first over any other materials can help reduce the carbon footprint.

Coillte forests are managed by professional foresters who implement best in class practices to ensure forests make a positive climate, environmental and social contribution. What type of practices are implemented by Coillte foresters?

All Coillte forests that are felled are replanted. Strict environmental considerations are assessed for each forest operation. All operational staff and contractors are environmentally trained. Coillte have international sustainability certification and we are annually audited in this regard.

Have you any tips on how a business such as a law firm can become more sustainable?

It is important to understand your own company's full carbon footprint and look at what sectors you work in and, importantly, are they sustainable? Employers need to create awareness about how each employee can contribute to its sustainability policy such as walking or cycling to work, turning off lights when an office is not being used and reduce the level of printing. Buildings should have an energy audit carried out and employers need to implement changes based on the findings. Employers can encourage employees by setting targets and rewards for good performance.

Beyond the Trees at Avondale Forest Park, County Wicklow has been named one of the best 35 destinations in the world to visit under the category of "family and community" by the

National Geographic UK. The Park has also been awarded Age Friendly recognition acknowledging it as the first age friendly tourist destination in Ireland. Can you tell us about this Park?

Avondale House is where Irish forestry began and where one of Ireland's greatest statesmen, Charles Stewart Parnell, was born. The Park offers forest park trails, walled gardens, the Coillte Pavilion, the tree top walk with an eight-storey wood tower and slide. Visitors can also learn about the essential role forests play in all our futures.

Coillte manages forests with the aim of handing them over to future generations in as good or better state than they are today. Can you explain the important role we all have in ensuring this aim is achieved?

When visiting the forests, adopt "leave no trace" policy and do not light any fires in the forests. People should inform themselves about forest management and the different stages of a forest life and support afforestation in your local communities.

For more information on where to find your local Coillte forest, visit www.coillte.ie



RICHARD LOWE, COMMERCIAL DIRECTOR,
LAND SOLUTIONS, COILLTE

TUS BUSINESS START UP AWARDS 2022

The TUS Enterprise Ireland New Frontiers Start Up Awards 2022 took place virtually on 29th March in celebration and support of Ireland's entrepreneurs - the talent and employers of tomorrow.

Holmes were proud to once again support the Technological University of the Shannon Midwest New Frontiers Programme as it reflects our long-standing culture of quality and community values, the foundation on which our firm has grown. We congratulate each of the award winners on their exceptional performance and wish them every success in the future.

2022 WINNERS WERE:

START-UP OF THE YEAR

Sparwatch, Patrick Dight

BUSINESS INNOVATION AWARD

Finedeeds, Pauline Kwasiak

ONE TO WATCH AWARD

Lexe, Louise McCormack

Enterprise Ireland New Frontiers National Programme Manager Paula Carroll said, "2022 marks the tenth year of the New Frontiers programme and Enterprise Ireland is proud to offer such a critically important programme which supports the development of sustainable businesses across all counties in Ireland."

Shane Costelloe, Partner, said:

"Entrepreneurship is a key driver of the Irish economy and Holmes is delighted to assist start-up companies, together with established businesses, at each stage of their development life cycle. We are particularly excited to assist the entrepreneurs that we met as a sponsor of this year's Technological University of the Shannon Midwest New Frontiers Programme. The New Frontiers Programme accelerates the development of sustainable new businesses in regional locations around Ireland and the programme delivers on this commitment every year. Congratulations to all the award winners and well done to the TUS New Frontiers team on their exceptional work."



LIMERICK CHAMBER REGIONAL BUSINESS AWARDS & PRESIDENT'S DINNER 2022

The 2022 Limerick Chamber Regional Business Awards and President's Dinner was held at the Limerick Strand Hotel on 18th November. It was great to be back at a full house event and to hear the inspiring stories of all the companies who were shortlisted for the awards.

Congratulations to all the winners, in particular, **Stryker**, the winner of 'Overall Business of the Year' and 'Best Sustainable Business Award' and to **Dansko Foods**, the winner of the new 'Supply Chain Innovation Award', which we were proud to sponsor.

A special mention must be given to businessman and philanthropist **JP McManus** who was recognised for his impact through business and social entrepreneurship on the Mid-West region.

The other worthy winners include:-

AWARD: BEST EMERGING BUSINESS

WINNER: Agri Guardian Ltd

AWARD: BEST SME CONTRIBUTION TO THE REGION

WINNER: Serosep Ltd

AWARD: BEST NOT FOR PROFIT

WINNER: St. Gabriel's Foundation

AWARD: BEST EMPLOYER: EMPLOYEE VALUE PROPOSITION

WINNER: Cook Medical

AWARD: EXCELLENCE IN CUSTOMER EXPERIENCE: RETAIL AND HOSPITALITY

WINNER: Adare Manor

AWARD: SPECIAL RECOGNITION: CREATIVE COLLABORATION AND CONTRIBUTION

WINNER: I Love Limerick

Congratulations to Limerick Chamber, the sponsors and all those involved. It was fantastic to celebrate companies in the Limerick region who strive for success every day.



L-R: SANDRA EGAN, SHANE COSTELLOE, GRACE LEE, NICOLA HACKETT, KEVIN HARTY, CAROLINE CONNOLLY, GILLIAN BUTLER, DONAL CREATON, LISA KILLEEN, PAT MCINERNEY AND MICHAEL MURPHY

LITIGATION & DISPUTES

Drawing a line in the sand: Security for costs update



Michael Murphy
Partner

IN BRIEF

Holmes are acting in the defence of a Commercial Court professional negligence case in which security for costs was ordered against the Plaintiff in circumstances where that Plaintiff would otherwise be able to inflict €3 million in legal costs on the Defendants with no prospect of recovery of those costs if the action was successfully defended.

BACKGROUND

The case concerns the purchase and subsequent sale of the James Street Hotel. The Plaintiff being James Street Hotel Limited, a €1 shelf company, incorporated solely for the purpose of acquiring this site. Prior to the purchase, the planning permission granted for the development was challenged by way of judicial review proceedings by the owner of an adjacent hostel on the basis that it interfered with their alleged right to light. These proceedings were discontinued however, following the purchase of the site for €7.2 million. The hostel owner issued injunctive proceedings preventing the Plaintiff developing the site. The Plaintiff subsequently sold the site at a loss of over €2 million. Holmes are instructed on behalf of one of the eleven defendants sued in these proceedings.

APPLICABLE LAW / JUDGMENT

Justice Twomey applied the two-pronged test, concluding that all eleven defendants had a prima facie defence on the basis that there was evidence to show that the Plaintiff was likely aware of the right to light issue and the associated judicial review proceedings and appear to have purchased the site anyway.

This, coupled with the fact that the Plaintiff, being a €1 company, would not have assets to cover the defendants' costs if so ordered, satisfied the two criteria.

The additional 'special circumstances' limb of the test was then considered. It was noted that the Plaintiff could not, and had not, claimed that its inability to pay the defendants' costs was due to the wrongdoing of the defendants, as it had always been a €1 company. Instead, the Plaintiff sought to rely on the special circumstances claimed in Valebrook - that the Plaintiff is bound to succeed against one defendant. The fact that the Plaintiff appeared to have knowledge of the issue and proceeded regardless was deemed to be a defence available to all defendants and as such, the Court held that there is no guarantee that the Plaintiff will be successful against any of the defendants.

Justice Twomey ordered the Plaintiff to provide security for costs in favour of all eleven defendants in the region of €3 million. The Plaintiff's request for phasing the costs up until discovery stage was rejected. However, the Judge did limit the security to be provided to the costs incurred until the end of mediation, which appears to be an encouragement to settle the matter without the necessity for a court hearing.

CONCLUSION

Twomey equated being sued by a Plaintiff without assets to blackmail, the blackmail not being the merit or liability associated with the claim, but rather the significant legal costs that will never be recoverable. As a result of this, it is not uncommon for defendants to make strategic decisions to "buy off" the risk. Justice Twomey noted that this 'blackmail' is exacerbated in Ireland where the courts system seems to allow, or indeed, require the majority of litigation to be issued in the High Court, as opposed to the Circuit or District Courts which are used more in England and Wales.

Mr. Justice Twomey describes litigation as a "*game of chance*" and noted that while the Plaintiff has a choice as to whether they wish to spend money on this game of chance, the defendants would be forced to incur significant defence costs, regardless of the outcome. The judgment is a welcome effort to level the playing field as the Plaintiff now also has to run the risk of incurring costs in this "*completely unpredictable business*" that is litigation.

For guidance or advice in this area, please contact Michael Murphy.

The information contained in Holmes News is for general information purposes only and does not constitute legal or other professional advice.

HOLMES

www.holmeslaw.ie

DUBLIN

Suite 1, 2 Ely Place,
Dublin 2,
D02 FR58.

T: +353 1 676 8928

info@holmeslaw.ie

LIMERICK

Suite 1, Bishopsgate,
Henry Street,
Limerick, V94 K5R6.

T: +353 61 313 222

CORK

Suite 1,
1A South Mall,
Cork, T12 R7WC.

T: +353 21 427 8620

LONDON

New London House,
6 London Street,
London, EC3R 7AD,
United Kingdom.

T: +44 203 741 9651

