



**PROFESSIONAL NEGLIGENCE AND  
LIABILITY UPDATE**

**DUBLIN CONFERENCE**

**Thursday, 18th June 2026**

**PROFESSIONAL NEGLIGENCE LAWYERS ASSOCIATION**

DUBLIN CONFERENCE

Thursday, 18<sup>th</sup> June 2026

0815–0845 Registration and Refreshments

0845–0900 *‘Introduction’*

**Harry Fehily – Managing Partner – Holmes Solicitors - PNLA Ireland Representative**

0900–0935 *‘The Impact of AI on the Concept of Legal Professional Privilege’*

&

*‘The recent decision of the Commercial Court of England & Wales, Novitas Loans Ltd. v. AmTrust Speciality Ltd. [2026] EWHC 592 (Comm), and why it matters for insurance coverage, solicitor professional indemnity, and litigation funding.’*

**Martin Hayden SC**

0935–1010

*‘The Risk of Defamation for Professionals:  
Defences, Latest Developments and Potential Difficulties’*

**Jennifer Goode BL**

1010–1045

*‘The Professional’s Scope of Duty  
in light of the UK Manchester Building Society v. Grant Thornton Decision’*

**Professor David McIlroy BL - Barrister, England & Wales, Barrister-at-Law, Ireland  
Head of Chambers, Forum Chambers**

1045–1100 Refreshments

1100–1135 *‘Ensuring Effective Access to Justice: Why Does Ireland Have the Lowest Case Clearance Rate in the EU?’*

**Suzanne Scott BL - Head of Research - Law Society of Ireland**

1135–1210

*‘Jurisdiction clauses, ADR provisions in the context of policy coverage’*

**David Curran – Holmes Solicitors**

1210–1245

*‘Managing Boardroom Disputes Effectively and Efficiently:  
Less Courtroom Drama, More Cohesive Collaboration’*

**Brendan Lenihan - Chairman of Bord na Mona / Managing Director, Navigo Consulting Limited**

1245–1330 Lunch

1330–1400 *‘Introduction’*

**Mr. Justice Bernard Barton**

1400–1435

*‘The Evolving Role of the Insurance Broker for the Professional Sector:  
From Transactional Risk Transfer Agent to Trusted, Strategic Risk Advisor’*

**Julie Galbraith - Chief Business Officer & Martin Flanagan ACII - Corporate Account Director  
Arachas Corporate Brokers**

1435–1510 *‘Navigating Environmental, Social and Governmental Responsibility in the Digital Age:  
Integration of AI and Digital Technologies in the Insurance Sector’*

**Fiona Sage - Zurich Insurance plc**

1510–1525 Refreshments

*Continued -*

- 1525–1600                    *Panel Discussion: -‘Understanding Professional Risks in the Insolvency Sector:  
Staying on the Right Side of Liquidations, Receiverships & Examinations’*  
**Kieran Wallace - Interpath Advisory**
- 1600–1635            *‘Current Trends in Construction Negligence Claims: BC(A)R, Building Disputes and  
Breakdowns in Relationships’*  
**Niall Meagher Dipl.Arch., B.Arch.Sci., Dip.Proj.Mgmt., Dipl.Arb., FRIAI, FCI Arb  
Project Manager / Architect, IPM**
- 1635–1720            *‘Assessing the Ongoing Impact of Artificial Intelligence for the Professional Sectors:  
Mitigating Risks, Maximising Opportunities and Reaping Rewards’*  
**Ger Perdisatt - Acuity AI Advisory**
- 1720–1730                    *Questions and discussion – Chairman’s closing remarks*

**7hrs 45 mins – Lawyers CPD Available**

**PROFESSIONAL NEGLIGENCE AND LIABILITY  
DUBLIN CONFERENCE  
Stephens Green Club, 9 St Stephen's Green, Dublin  
18<sup>th</sup> June 2026  
ATTENDEES (1 of 4)**

**Mr. Justice Bernard Barton**

<b>Edward Aczel</b>	<b>PNLA</b>
<b>Peter Barr</b>	<b>Gateley Legal NI</b>
<b>John Barry</b>	<b>McGill</b>
<b>Fiona Beirne</b>	<b>Davies</b>
<b>Peter Bredin</b>	<b>Dillon Eustace</b>
<b>Grainne Bryan</b>	<b>FTI Consulting</b>
<b>Conor Cannon</b>	<b>Berkshire Hathaway Specialty Insurance</b>
<b>Martin Canny BL</b>	
<b>Gavan Carty</b>	<b>Kent Carty Solicitors</b>
<b>Niamh Casey</b>	<b>Berkshire Hathaway Specialty Insurance</b>
<b>Jennifer Clarke</b>	<b>Byrne Wallace Shields</b>
<b>Victor Clarke</b>	<b>Clarke Jeffers LLP</b>
<b>Mary-Claire Coakley</b>	<b>Allianz</b>
<b>Richard Coakley</b>	<b>AXA XL</b>
<b>Domhnall Coffey</b>	<b>Holmes</b>
<b>Martina Connolly</b>	<b>Leeson Group</b>
<b>Damien Conroy</b>	<b>Augustus Cullen Law</b>
<b>Dearbhla Considine</b>	<b>Holmes</b>
<b>Michael Corrigan</b>	<b>Corrigan &amp; Corrigan Solicitors</b>
<b>Deirdre Courtney</b>	<b>Augustus Cullen Law</b>
<b>Helen Crudden</b>	<b>Accelerant</b>
<b>David Curran</b>	<b>Holmes</b>
<b>Harry Fehily</b>	<b>Holmes</b>
<b>Martin Flanagan</b>	<b>Arachas</b>

<b>Catherine Fleming</b>	<b>TJ Hegarty</b>
<b>Ray Fox</b>	<b>McGill</b>
<b>Julie Galbraith</b>	<b>Arachas</b>
<b>Derek Gately</b>	<b>Leeson Group</b>
<b>Jennifer Goode BL</b>	
<b>Sarah Grace</b>	<b>Aviva</b>
<b>Rachel Halligan</b>	<b>Dillon Eustace</b>
<b>Michael Hayden SC</b>	
<b>Mark Healy</b>	<b>Holmes</b>
<b>Dr Bill Holohan SC</b>	<b>Holohan Lane</b>
<b>Colm Humphreys</b>	<b>Allianz</b>
<b>Ed Kelly</b>	<b>Holmes</b>
<b>Lisa Kelly</b>	<b>Fidelis</b>
<b>Paul Kerr</b>	<b>Gateley Legal NI</b>
<b>Peter Kiely</b>	<b>TJ Hegarty</b>
<b>Ciaran Leavy</b>	<b>Lavelle Partners</b>
<b>James Lee</b>	<b>Zurich</b>
<b>Brendan Lenihan</b>	<b>Bord na Mona/Navigo Consulting</b>
<b>April Lynch</b>	<b>Leeson Group</b>
<b>Katy Manley</b>	<b>PNLA/BPE Solicitors</b>
<b>Sinead McBreen</b>	<b>Zurich</b>
<b>Catherine McConville</b>	<b>AIG</b>
<b>Jacki McDonagh</b>	<b>Berkshire Hathaway Specialty Insurance</b>
<b>Carol McDonald</b>	<b>QBE</b>
<b>Dermot McEvoy</b>	<b>Fieldfisher Ireland</b>
<b>Kathy McGillie</b>	<b>Tughans</b>
<b>Kieran McHugh</b>	<b>Insurance Broker / Expert Witness</b>

<b>Professor David McIlroy BL</b>	<b>Forum Chambers</b>
<b>Heather McIlveen</b>	<b>McLaren</b>
<b>Brian McMullin</b>	<b>Brian J McMullin Solicitors</b>
<b>Cormac McNamara</b>	<b>Munich Re Ergo</b>
<b>Niall Meagher</b>	<b>IPM</b>
<b>Ciara Murphy</b>	<b>Beauchamps</b>
<b>Michael Murphy</b>	<b>Holmes</b>
<b>Lorna McAuliffe</b>	<b>Whitney Moore</b>
<b>Dearbhla NiGhríofa</b>	<b>AIG</b>
<b>David Niven</b>	<b>Penningtons Manches Cooper</b>
<b>Janka O'Higgins</b>	<b>Holmes</b>
<b>Peter O'Brien BL</b>	
<b>Killian O'Reilly</b>	<b>Fieldfisher Ireland</b>
<b>Louise O'Reilly</b>	<b>DAC Beachcroft Ireland</b>
<b>Daragh O'Sullivan</b>	<b>Lowe's</b>
<b>Ger Perdissatt</b>	<b>Acuity AI</b>
<b>Mary Purtill</b>	<b>RDJ</b>
<b>Nichola Rafferty</b>	<b>DWF</b>
<b>Simon Rattigan</b>	<b>RSM Ireland</b>
<b>Ciaran Reddin</b>	<b>Berkshire Hathaway Specialty Insurance</b>
<b>Sinead Ryan</b>	<b>Corrigan &amp; Corrigan Solicitors</b>
<b>Fiona Sage</b>	<b>Zurich Insurance</b>
<b>Suzanne Scott BL</b>	<b>Law Society of Ireland</b>
<b>Marguerite Seymour</b>	<b>Holmes</b>

**Aoife Skehan**

**Leeson Group**

**Mark Smith**

**AIG**

**Donal Twomey**

**RDJ LLP**

**Pauline Walker**

**Tughans**

**Kieran Wallace**

**Interpath Advisory**

**David Walsh**

**AXA XL**

**Dave Woolard**

**Munich Re Ergo**



**In association with**



**HOLMES**



**Harry Fehily**  
**Managing Partner – Holmes Solicitors**  
**PNLA Ireland Representative**

***“Introduction”***



# HOLMES

## HARRY FEHILY

### Managing Partner

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Harry Fehily is the Managing Partner of Holmes. He has a broad range of experience having worked supporting clients across multiple practice areas. He is an experienced Commercial Litigation Solicitor and a CEDR (Centre for Effective Dispute Resolution) Accredited Mediator.

Having extensive experience of advising clients across a range of contentious and non-contentious matters, Harry practices with an emphasis on commercial litigation and financial lines claims, including professional negligence litigation, cyber claims and claims against directors and officers. He also has extensive experience of resolving property related disputes and shareholders' disputes. He practices extensively in the Commercial Court (a commercial division of the High Court) and is vastly experienced in dealing with cases in this venue.

His work involves dealing with high profile contentious disputes concerning public and private bodies. Harry advises on public administrative law as it relates to State bodies, disputes and investigations concerning public bodies, judicial review, employment law disputes (particularly as they impact on the board and chief executives of companies), contentious issues as they impact on environmental law, procurement, planning law and health and safety law.

He has developed considerable experience in the area of construction law.

With extensive experience in insolvency and corporate recovery, Harry represents liquidators, receivers and examiners. He has been involved in high profile examinerships. Having developed a particular expertise in assisting both the company itself entering into the examinership process, he also provides advice to creditors of the company entering into examinership.

Harry practises in the area of dispute resolution and has been involved in many mediations. He is an accredited mediator through CEDR (Centre for Effective Dispute Resolution) in London.

### ***Professional Activities***

- Chairman of University of Limerick Foundation
- Member of Professional Negligence Lawyers Association (PNLA)
- Member of Forum of Insurance Lawyers (FOIL)
- Member of the Law Society of Ireland's Guidance and Ethics Committee's Panel to assist solicitors in difficulty with the Law Society
- Member of International Lawyer's Network
- Past President of Limerick Chamber of Commerce
- Special advisor to Mid-Western Hospitals Trust
- Member of International Board of Kemmy Business School
- Former chairman of University of Limerick Concert Hall
- Founding Member of Irish Society of Insolvency Practitioners
- Member of the Law Society of Ireland.



**Notes: -**

A series of horizontal dashed lines provided for taking notes.



**Martin Hayden SC**

***“The Impact of AI on the Concept of Legal Professional Privilege”***

***&***

***‘The recent decision of the Commercial Court of England & Wales, Novitas Loans Ltd. v. AmTrust Speciality Ltd. [2026] EWHC 592 (Comm), and why it matters for insurance coverage, solicitor professional indemnity, and litigation funding.’***



## MARTIN HAYDEN SC

MHayden@martinjhayden.ie

Martin Hayden SC is a highly experienced and versatile barrister with a distinguished practice spanning commercial litigation, aviation law, banking and finance, tax, public procurement, competition law, and judicial review. Called to the Irish Bar in 1987 and taking Silk in 2001, he is also a member of the Honourable Society of the Middle Temple since 2014.

With over three decades of courtroom experience, Martin has built a formidable reputation for handling complex and high-profile matters before the Superior Courts of Ireland and the European Court of Justice. His extensive advocacy experience includes appearances before major public inquiries and tribunals, and his strategic legal insight continues to influence significant developments in regulatory and commercial law.

Senior Counsel: 2001



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**Jennifer Goode BL**

***“The Risk of Defamation for Professionals:  
Defences, Latest Developments and Potential  
Difficulties”***



**JENNIFER GOODE BL**  
jennifer@jennifergoode.ie

- Junior Counsel - 2005
- Qualifications - LLB (Lingfranc) Trinity College Dublin, LLM (European Community Litigation) Strasbourg & Luxembourg Universities

# The Risk of Defamation for Professionals

Defences, Latest Developments and Potential Difficulties

Jennifer Goode BL

PhLA Ireland Conference - 18 June 2026 - Dublin

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## Overview

- I Introduction
- II Elements of the tort of defamation
- III "Defamatory meaning" in professional contexts
- IV Defences (ex. S. 6)
- V Focus on Qualified Privilege
- VI Defamation (Amendment) Act 2026 - some relevant reforms

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## I. Introduction

- Law
  - Defamation Act 2009, as amended
  - Defamation (Amendment) Act 2026 (incorporating EU law on SLAAP)
  - Common law
- Defamation law is a bit different
  - Not really comparable with law of negligence
  - Impugned publication presumed to be false — burden on defendant to prove truth
  - Reputations are presumed to be pristine
  - No need for individuals to prove loss (contrast with companies under s. 12)
  - We now have guidance on "value" (*Higgins v. IAA* [2022] IESC 13 per MacMenamin J.):
    - €50,000 ("very moderate defamation");
    - €50,000 to €125,000 ("medium range");
    - €125,000 to €199,000 ("seriously defamatory material");
    - €200,000+ "but where the courts have very seldom awarded more than €200,000"
- Defamation in professional context is not that different to other contexts

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## II. Elements of the tort of defamation

s.6(2) Defamation Act 2009: "The tort of defamation consists of the publication, by any means, of a defamatory statement concerning a person to one or more than one person (other than the first-mentioned person)..."

Publication	Identification	Defamatory Meaning
s.6(2) The statement must be communicated "by any means" to at least one person other than the plaintiff.	ss 6(2) and 6(3) The plaintiff must be identified or be reasonably identifiable from the statement.	s.2 Statement tends to injure a person's reputation in the eyes of reasonable members of society.

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## III. Defamatory meaning in professional contexts

- S. 2 of the Defamation Act 2009: "defamatory statement" means a statement that tends to injure a person's reputation in the eyes of reasonable members of society, and "defamatory" shall be construed accordingly;
- Professionals vs. non-professionals – injury vs. reflection on character or how business done – allegations of incompetence

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## III. Defamatory meaning in professional contexts

The following have been found to bear a defamatory meaning:

- Imputations of unfitness for a profession or calling owing to:
  - want of ability<sup>3</sup> or education/necessary qualification<sup>3</sup>
  - want of commitment<sup>4</sup>
  - want of mental stability<sup>5</sup>
  - misconduct; including dishonest or disreputable conduct<sup>6</sup>
  - inefficiency<sup>7</sup>
- Statements RE a legal representative to the effect that they:
  - know no law<sup>8</sup>
  - are guilty of "sharp practice"<sup>9</sup>
  - have no regard to interests of their clients<sup>10</sup>
  - have been "struck off the roll"<sup>11</sup>
- Statements RE a medical professional to the effect that they:
  - have forged a medical report<sup>12</sup>
  - are "an abortionist", even through abortions may be performed lawfully<sup>13</sup>
  - have administered "useless and dangerous" treatments<sup>14</sup>

### Defamatory Meaning

s.2

Tends to injure a person's reputation in the eyes of reasonable members of society.

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### III. Defamatory meaning in professional contexts

#### Dismissal of the action

##### Ss 14 & 34

Permit the court to dismiss an action on a finding that the impugned statement is **not reasonably capable of bearing a defamatory meaning**

The following have been found to lack defamatory meaning:

- dismissals *per se*, even if in fact wrongful, without special surrounding circumstances: *Ogierakhi v Minister for Justice* [2017] IESC 52, at para.109
- imputations of a mere breach of professional etiquette, without more
- misstatements as to the date on which a solicitor was admitted to the roll
- statements to the effect that a legal representative has provided services to a notorious client associated with terrorism
- solicitor letter to client to the effect that proceedings cannot be maintained without a supportive expert report: *O'Connor v Legal Aid Board* [2025] IECA 39
  - No imputation that the client in maintaining proceedings was guilty of an "abuse of process"
  - Action dismissed

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### IV. Defences (ex. S. 6 Defamation Act 2009)

<p><b>Truth</b> s.16 Complete defence where the statement is proved true in all material respects. Burden on the defendant. Only pleaded on its own in 5% of cases<sup>15</sup></p>	<p><b>Absolute Privilege</b> s.17 Complete defence irrespective of malice. Applies to statements made in the course of judicial proceedings, Oireachtas proceedings and certain regulatory bodies. Highly relevant to expert witnesses.</p>
<p><b>Qualified Privilege</b> s.18 Requires a reciprocal duty/interest between publisher and recipient. Defeated by malice — defined as dominant improper motive: <i>Gordon v IRTA</i> [2022] IECA 303.</p>	<p><b>Honest Opinion</b> s.20 Must be an opinion on a matter of public interest, based on a factual substratum specified in the statement, and honestly held.</p>
<p><b>Fair Publication in the Public Interest</b> s.26 Reformed by the 2026 Act. Three-part test: (i) matter of public interest; (ii) reasonable belief that publication was in the public interest; (iii) good faith publication. Reynolds privilege abolished (s.26A, 2026 Act).</p>	<p><b>Offer of Amends</b> ss 22–23 Mitigation mechanism. Strengthened by the 2026 Act: correction must be published with equivalent prominence to the original statement.</p>

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### V. Focus on Qualified Privilege

s.18(1): It shall, subject to s.19, be a defence to a defamation action for the defendant to prove that (a) the statement was published to a person or persons who (i) had a duty to receive, or interest in receiving, the information contained in the statement, and (b) the defendant had a corresponding duty to communicate, or interest in communicating, the information to that person or those persons.

#### Established Occasions of Privilege

- Employment references
- Regulatory and disciplinary reports
- Internal corporate communications
- Solicitor-to-solicitor / clinician-to-clinician

#### Occasions defeated by Malice — s.19

*Gordon v IRTA* [2022] IECA 303, citing *Cox and McCullough*: "Malice exists where the publisher's dominant motive for publishing the relevant statement involves an abuse of the occasion of qualified privilege"

##### Dominant improper purpose

The motive need not be the sole purpose but must be dominant: s.19(1). Even honest belief in truth does not preclude malice where the occasion is abused.

##### Recklessness as to truth

Absence of honest belief at the time of publication is conclusive evidence of malice: *Kelly v Boyleports* [2004] IECC 5.

##### Excessive publication / scope

Publication beyond the class with a legitimate interest goes beyond the privilege and may itself evidence malice.

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## V. Focus on Qualified Privilege

### Employment references

The duty/interest reciprocity is clear: the former employer has a duty to provide accurate information; the prospective employer has a legitimate interest in receiving it: *Thour v The Royal Free Hampstead NHS Trust* [2012] EWHC 1473 (QB) where the defence of qualified privilege succeeded.

### Internal corporate communications/ protection of business interests

*Corcoran v W & R Jacob & Company* [1945] IR 446: An employee had a duty to communicate to his employer his suspicions of theft on the part of a fellow employee. The employer had an interest in receiving this type of communication. See also; *Sommerville v Hawkins* [1851] 10 CB 583.

Communications between a creditor and a debtor, concerning a sum due or disputed, are seen as occasions of qualified privilege: *Hennessy v K-Tel* [1998] WJSC-SC 8033.

*Kelly v Boylesports* [2024] IECC 5 concerned internal communications about alleged misconduct of the plaintiff, who was a repeat customer of the defendant. The defendant's reliance on qualified privilege failed as no evidence was adduced as to the basis for the imputation RE the misconduct → thus malice was implied.

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## V. Focus on Qualified Privilege

### Regulatory disclosures/ complaints

Complaints made to the Gardaí or statutory regulators (the Law Society, the Medical Council etc) attract qualified privilege where the complainant has a duty or interest in making the report and the recipient has a corresponding duty or interest in receiving it.

The Nurses and Midwives Act 2011, s.102 provides an express statutory absolute privilege for certain communications within the fitness-to-practise processes.

### Solicitor-to-Solicitor / Clinician-to-clinician

In *Nordeen v Hill* [2010] EWHC 1561 (QB), communications between clinicians expressing concern about whether a particular medical treatment resulted in poor outcomes was protected by qualified privilege.

However, where communications do not arise in the course of contractual obligations, the defence fails. In *McKeogh v O'Brien Moran* [1927] IR 348, the court held that a statement made by a solicitor outside of the terms of his or her contractual obligations would not be privileged, because it was not made pursuant to a legal duty.

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## V. Focus on Qualified Privilege

### Qualified privilege and summary disposal of the action

**34.— (1)** The court in a defamation action may, upon the application of the plaintiff, grant F28[a correction order or an order prohibiting further publication of the statement to which the defamation action relates, or both] to the plaintiff if it is satisfied that—

(a) the statement in respect of which the action was brought is defamatory, and

(b) the defendant has no defence to the action that is reasonably likely to succeed.

— (2) The court in a defamation action may, upon the application of the defendant, dismiss the action if it is satisfied that the statement in respect of which the action was brought is not reasonably capable of being found

See also:-

- Section 14 (Court power to dismiss action insofar as imputation not capable of bearing meaning contended for by Plaintiff or a defamatory meaning);

- O. 19 rr. 27, 28 RSC (Court power to dismiss whole or part of actions as, *inter alia*, bound to fail, abuse of process)

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## VI. Defamation (Amendment) Act 2026 — some relevant reforms

s.1	<b>Abolition of Jury Trial in the High Court</b> All defamation actions commenced on or after 1 March 2026 are tried by judge alone. An attempt to address the unpredictability of jury awards.	s.12	<b>Serious Harm Test — Bodies Corporate</b> Statement not defamatory of a body corporate unless causes or is likely to cause serious harm → body corporate may not maintain a defamation action unless it establishes that the publication has caused or is likely to cause serious harm to its reputation; and, in the case of a profit-making body, serious financial loss. (s.1, Defamation Act 2013)
s.26A	<b>Abolition of Reynolds Defence</b> The 2026 Act abolishes the common law defence known as the Reynolds defence ( <i>Reynolds v Times Newspapers</i> [2001] 2 AC 127). The statutory defence of fair publication in the public interest under s.26 (as reformed) now provides the exclusive basis for protection for public interest journalism and professional disclosure.	ss. 22–23	<b>ADR Obligations and Offer of Amends</b> Solicitors are under a statutory duty to advise clients of ADR options before issuing proceedings. Corrections must be published with equivalent prominence to the original statement. Strengthens the offer-of-amends mechanism.
s.33A	<b>Circuit Court Identification Orders</b> Jurisdiction now conferred on the Circuit Court to make orders requiring the identification of anonymous publishers of defamatory material on social media platforms → Norwich Pharmacal-type procedure for the Circuit Court. Key for professionals targeted by anonymous online defamation.	Part 7	<b>Anti-SLAPP Provisions (Not Yet Commenced)</b> Inserts Part 4A into the 2009 Act. Provides a mechanism to apply to strike out proceedings which are manifestly unfounded and constitute an abuse of process (a SLAPP). Not yet commenced → to be aligned with the standalone SLAPPs Bill (General Scheme published 11 February 2026).

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## VI. Defamation (Amendment) Act 2026 — some relevant reforms (journalists, media professionals)

Publication in the public interest: the Statutory Test under s.26 (as amended by the 2026 Act)

1	Matter of Public Interest	2	Reasonable Belief	3	Good Faith
	The statement must relate to a matter of genuine public concern. The court applies an objective standard — the question is not whether the public was in fact interested but whether the subject matter was of legitimate public concern: s.26(1)(a)(i).		The defendant must have reasonably believed that publication was in the public interest.		Publication must have been made in good faith — not for an improper purpose. Where the publication is an accurate and impartial account of a dispute, the court must disregard any failure to verify the imputation: s.26(3).

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**Professor David McIlroy BL**  
**Barrister, England & Wales, Barrister-at-Law, Ireland**  
**Head of Chambers, Forum Chambers**

***“The Professional's Scope of Duty in light of the UK  
Manchester Building Society  
v. Grant Thornton Decision”***

# DAVID McILROY

HEAD OF CHAMBERS | CALL 1995  
BARRISTER, ENGLAND & WALES  
BARRISTER-AT-LAW, IRELAND  
CALLED TO THE BAR OF GIBRALTAR PRO HAC VICE 2017

*"David is a formidable trial advocate and a master of the facts."*



Banking & Finance



Crypto & Blockchain Assets



Professional Negligence



Banking & Finance



Professional Negligence



✉ [dmcilroy@forumchambers.com](mailto:dmcilroy@forumchambers.com) ☎ 020 3735 8070

David is Head of Chambers at Forum Chambers. He is called to the Bar of England & Wales and to the Bar of Ireland. He has also been called to the Bar of Gibraltar. He specialises in banking and financial services law, cryptocurrencies and professional negligence as well as commercial litigation and civil fraud, particularly on cases involving cross-border elements, class actions or innovative arguments.

David is ranked by the legal directories *Chambers & Partners* and *Legal 500* for Banking and Finance and for Professional Negligence. He is also ranked in Tier 1 by *Legal 500* for Cryptocurrency. David is co-editor of Butterworth's *Encyclopaedia of Banking Law*.

Alongside his busy practice, David is Global Distinguished Professor of Banking Law at the University of Notre Dame (USA) in England and Visiting Professor at the Centre for Commercial Law Studies, Queen Mary University of London.

## AREAS OF EXPERTISE

### Banking (EU and International)

David is a fluent French speaker and holds a Master's Degree in EU law and International law from a French University. He has acted for a number of foreign banks which are affected by UK financial services regulation after Brexit, including successfully obtaining authorisation for a UK branch of a bank based in the EEA.

David is regularly instructed on cases which involve conflicts of laws and analysis of foreign laws, and he has acted as an expert for the EU on the laws in Albania governing banking and money laundering and has been a trainer in Cyprus on the new civil procedure rules.

### *Notable Banking (EU and International) Cases*

- Acting for EEA bank seeking authorisation to open a branch in the UK
- Advising foreign private banks which wish to enter into mortgages secured on land in the UK as to the UK's regulatory frontier and the conduct of business rules which have to be complied with in the event that their activities fall within the UK's regulatory frontier.
- Advising foreign banks on commercial financing agreements and hedging agreements which are subject to English law.
- Acting for high net worth depositors in Lebanese banks seeking to transfer their money out of the country
- Acting for a high net worth investor given advice in Cyprus by an Appointed Representative of a UK firm.
- Acting for Irish investors into failed UK property development schemes.
- Advising on the introduction of Unexplained Wealth Orders into the law in Kosovo.
- Advising on cross-border issues relating to the Electronic Money Regulations 2011 and the Payment Services Regulations 2017.
- Acting in a claim by an Indian bank against a guarantor involving questions of Belgian law and Indian law.
- Advising Egyptian borrowers and guarantors as to their liabilities under commercial financing agreements and hedging agreements which are subject to English law.
- Advising foreign banks on consumer protection legislation in England and Gibraltar.

### **Banking and Financial Services (UK)**

David acts and advises across the full range of financial services disputes and banking transactions, but with a particular focus on the business sector and on financial regulation. He is also a leading expert on cases involving payment services providers and electronic money issuers. David has dealt with hundreds of claims of financial mis-selling. David has particular expertise in misrepresentation claims, in claims about negligent financial advice, and in claims relating to complex financial products. He acted for *Which?* in the Supreme Court and the Court of Appeal in the leading case on authorised push payment (APP) fraud and is frequently instructed by clients who have been victims of fraud.

### *Notable Recent Banking (UK) Cases*

- *H2O* - Acting for French and UK investors relating to a £1bn fraud and judicial review of the FCA Final Notice issued against H2O Asset Managers.
- *Privilege Wealth v GCEN* [2024]. Acting for liquidators (Grant Thornton) of investment companies in £8 million claim against payment services provider for failing to prevent APP fraud.
- *Philipp v Barclays Bank UK Plc* [2023] UKSC 25, [2024] AC 346; [2022] EWCA Civ 318; [2022] QB 578: Acting for intervener in leading case on APP fraud committed against individuals.
- Acting for elderly victim of APP fraud involving multi-million pounds being transferred to the Middle East.

- Advising victims of the fraud at HBOS Reading in their submissions to the Foskett Panel.
- *Davis v Lloyds Bank Plc* [2021] EWCA Civ 557: claim against bank for breach of the complaints handling rules in the FCA Handbook.
- *Scarborough Group v BOS*: multi-million pound claim against BOS for manipulation of LIBOR (2020).
- *Standish v RBS* [2019] EWHC 3116 (Ch), [2020] 1 BCLC 826: Claim by shareholders that RBS GRG and West Register had conspired to expropriate their shares.
- *Financial Conduct Authority v Allied Wallet Ltd* [2019] EWHC 2808 (Ch), [2020] BCC 147: application by FCA for the appointment of a Provisional Liquidator over a fintech company.
- Claims against secondary lender for disguising loans as lease finance transactions, undue influence and other malpractice.
- *BOS v Noel Edmonds*: counterclaim by celebrity in respect of loss of business as a result of fraud by dishonest banker.
- Acting on behalf of businessman who claimed that bank had reneged on promises of lending: *Hodell v Clydesdale Bank* [2018] EWHC 1009 (QB).

## Cryptocurrency and E-Money

David acts and advises on a wide range of claims relating to cryptoassets and electronic money, particularly on claims which involve allegations of fraud and/or breaches of the regulatory rules.

- Advising on the regulatory rules applicable to stablecoins
- Acting for crypto-currency investors in multi-million claim for losses caused by the sale of their cryptoassets by Nexo
- Leading Clyde Darrell in a claim relating to a fraudulent crypto-token
- Acting for victims of an international cryptocurrency investment scheme fraud
- *Payward Ltd v Chechetkin*: Acting for investor whose cryptocurrency trading was funded by unregulated consumer credit and infringed the FCA's rules relating to investments
- Appearing as Co-Counsel in an arbitration in Singapore in a dispute between a cryptocurrency operator and its IT security provider.
- *FCA v Allied Wallet Ltd* [2019] EWHC 2808 (Ch): Acting for e-money and payment services provider in FCA's application to wind up the company.
- Acting in *AA v Bitfinex*, the first case where a worldwide freezing injunction was granted by an English court over Bitcoin.

## Professional Negligence

David's professional negligence practice relates to claims which have a banking or an investment element. David is particularly adept at addressing complex questions of causation and loss. David frequently works with others at Forum to devise strategies for handling group or representative actions

on claims for professional negligence relating to banking and finance. David has worked on class action cases relating to mortgage mis-selling, negligent conveyancing, failed property developments and other unregulated collective investment schemes (UCIS).

#### *Notable Professional Negligence Cases*

- *Office Properties (PL) Ltd*: Acting on behalf of a liquidator in a £7 million claim against a solicitor for negligent advice which led to a company paying unlawful dividends.
- *Yee Shi Yin v 174 Law Solicitors Ltd* [2023] EWCA Civ 13, [2023] PNLR 15 Acting for claimants in class action alleging breach of contract against solicitors acting as stakeholders.
- *Angelgate Claimants v Key Manchester Ltd* [2020] EWHC 3643 (Ch), [2021] PNLR 15: Acting for claimants who have entered into unregulated collective investment schemes (UCIS) in relation to property in the UK and abroad. Multi-million pound losses.
- Acting on behalf of an individual given negligent financial advice in Cyprus by the Appointed Representative of a UK firm.
- Claims on behalf of high net worth individual against private bank for negligent and unauthorised investments.
- Acting for a high net worth individual in a claim against accountants for negligent tax advice.
- Acting against a solicitor for professional negligence in failing to address the tax consequences of a corporate takeover.
- Acting in a claim against a quantity surveyor for professional negligence in project monitoring.

## **Commercial Litigation**

David deals with commercial disputes and transactions, including those which have a cross-border element. He is experienced in appearing as Counsel in international arbitrations. He also deals with complex shareholder disputes, particularly where there have been breaches of fiduciary duties or of financial services or money laundering laws. David brings a common sense approach to commercial litigation. He is able to devise strategies which reflect the client's attitude to risk and maximise the outcomes in their case.

#### *Notable Commercial Litigation Cases*

- Acting on behalf of the Claimants in a claim against a solicitor for breach of a stakeholder contract: *NPPM Claimants v 174 Law Solicitors Ltd* [2022] EWHC 4 (Ch).
- Appearing as Co-Counsel in an arbitration in Singapore in a dispute between a cryptocurrency operator and its IT security provider.
- Acting in *AA v Bitfinex*, the first case where a worldwide freezing injunction was granted by an English court over Bitcoin.
- Acting for accountants in claim against a former partner for diverting a commission payment.
- Acting for corporate borrower resisting claim for repayment of loan on the grounds of misrepresentation by the lender.

- Acting for entrepreneurs in shareholder dispute with major PLC.
- *ETL v Munn*: Acting for purchaser in claim for breach of warranties in a Share Purchase Agreement.
- Acting for minority shareholder in unfair prejudice petition.
- Acting for foreign bank in claim to recover foreign exchange from Travelex.
- Appearing in the Gibraltar Supreme Court in *Magner v Royal Bank of Scotland* on an application for inspection witness statements and exhibits under CPR 32.13.
- *Khan v Khan*: Acting for the investor in a high value family dispute involving allegations of breaches of company law
- Acting for accountants in claim against a former partner for diverting a commission payment.
- Acting for corporate borrower resisting claim for repayment of loan on the grounds of misrepresentation by the lender.
- Acting for entrepreneurs in shareholder dispute with major PLC.

## Insolvency

David is skilled at handling the interaction between financial services regulation and insolvency, particularly in cases involving applications to wind up a company on the just and equitable ground and in cases concerning the ring-fencing of customer assets. In the context of claims for financial mis-selling and other professional negligence, he focuses on the ability to recover damages as well as establishing liability.

### *Notable Insolvency Cases*

- *Dormco SICA Ltd (in liquidation) [2021] EWHC 3209 (Ch), [2022] BCC 360*: acting for Defendant in Part 20 claim against director who had devised a transaction at an undervalue causing multi-million losses to the taxpayer.
- Advising a victim of an accident on obtaining an assignment from the liquidators of Thomas Cook.
- *Financial Conduct Authority v Allied Wallet Ltd [2019] EWHC 2808 (Ch), [2020] BCC 147*: acting for fintech company resisting application by FCA for the appointment of a Provisional Liquidator.

## Qualifications

- Diploma in French Gonville & Caius College, Cambridge.
- MA Law Gonville & Caius College, Cambridge.
- Maîtrise en Droit (International and European Law) Université de Toulouse I.
- PhD University of Wales.

## Scholarships and Awards

- Major Scholarship Inner Temple.
- Concours Annuel Université de Toulouse 1ère Mention – European Competition Law.
- Tapp Studentship Gonville & Caius College, Cambridge.
- George Long Prize for Roman Law Cambridge University.
- Squire Scholarship Cambridge University.
- Senior Scholarship Gonville & Caius College, Cambridge.
- McNair Law Prize Gonville & Caius College, Cambridge.
- Exhibition Gonville & Caius College, Cambridge.

## Professional Bodies

- Chancery Bar Association.
- Chartered Institute of Arbitrators.
- Financial Services Bar Association (Ireland).
- Financial Services Lawyers Association.
- Franco-British Lawyers Society.
- Professional Negligence Lawyers Association.

## Professional Development

David regularly chairs conferences for the Professional Negligence Lawyers Association and delivers seminars on a variety of topics including banking and cryptocurrency regulation, class actions, and misrepresentation.

## Teaching , Research and Publications

David's teaching at the University of Notre Dame (USA) in England. which critically examines financial services regulation and banking practices and asks: do the laws governing banking really benefit customers and serve the common good? David's teaching at QMUL covers emerging topics in banking law such as open banking, confidentiality and data protection, fintech and crypto-currencies. David is the author of 'Digital Contract and Sales of Goods Law' and (together with Michael Phillis) of 'Data Protection Law and FinTech' in George Walker (ed.) *Financial Technology and Digital Commercial Law* (Oxford University Press, 2024). David is currently researching for a book on the History of Banking Regulation in the USA, the UK and Ireland 1750-2020.

# The Irish Professional's Scope of Duty in the Light of *Manchester Building Society v Grant Thornton* [2021] UKSC 20

**David McIlroy**  
Barrister, Law Library

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## *Manchester Building Society v Grant Thornton* [2021] UKSC 20

- *Manchester Building Society v Grant Thornton* was the latest attempt by the English courts to address a problem that had been troubling its judges for more than 25 years: how to find a principled balance between the plaintiff who says: “But for the professional’s wrong, I would never have entered into this disastrous transaction” and the insurer who says: “Much of the disaster was the result of factors beyond the risks we reasonably foresaw and thought we were insuring”.



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## *SAAMCO* [1997] AC 191

- Lord Hoffmann gave a famous illustration of a plaintiff who asked his doctor if his knee was fit enough for it to be safe for him to go skiing
- Doctor says yes
- Doctor is negligently wrong
- Plaintiff relies on doctor’s advice and goes skiing
- Whilst skiing, plaintiff suffers an accident which the plaintiff would have suffered even if his knee had been fit, i.e. even if the doctor had been correct



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## Interpreting SAAMCO

What emerged in the aftermath of SAAMCO were a series of arguments in the English courts about whether the professional had:

- Assumed responsibility to provide **information**, in which case the professional was **only liable for the consequences of the information being wrong** (good news for insurers of valuers)
- Assumed responsibility to provide **advice**, in which case the professional was **liable for the consequences of the advice being wrong** (bad news for insurers of financial advisers)

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## Hughes-Holland v BPE Solicitors [2017] UKSC 21

UKSC held that:

- Information and advice are not distinct nor mutually exclusive categories
- Assumption of responsibility is on a sliding scale between the valuer at one end and the investment adviser at the other end



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## Rosbeg Partners v LK Shields [2018] IESC 23

- 1994 Commercial property bought for £765,000
- 2006 Offer for €6.5m turned down
- 2007 Offer for €10m accepted. Sale cannot proceed because title defect discovered.
- 2008 Offer of €6m rejected.
- 2013 Property worth €1.5m. Trial judge awards €8.5m (€10m-€1.5m) plus interest plus tax
- 2018 SC awards €4m (€10m-€6m) plus interest plus tax
- O'Donnell J gives a nod to *Hughes-Holland v BPE* "not for the purposes of relying upon it" but as an illustration of "the same general approach" as the IESC was adopting

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**Rosbeg Partners v L K Shields**

- Much cited for the *dictum* that appropriate scepticism should be applied to litigants' claims (see *V Media Doo v Techads Media Ltd* [2025] IEHC 43)
- Distinction between "no transaction" and "completed transaction" still alive and well to limit claims for damages related to falls in property valuations (*O'Brien v O'Donnell* [2025] IEHC 455)
- Untested in respect of other professional negligence claims

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**Why does Manchester Building Society v Grant Thornton matter to Irish lawyers?**

- *Manchester Building Society v Grant Thornton* re-shaped the law of professional negligence (and arguably the law of negligence as a whole) in England
- *Manchester Building Society* has been cited with approval, but *obiter*, by the Irish Court of Appeal in *Ulster Bank Ireland v McDonagh* [2022] IECA 87

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**Ulster Bank Ireland v McDonagh**

- The Bank lent €21.5m against land in reliance on a valuation by CBRE that the land was worth €57m
- Loan not repaid, Bank appoints receivers
- Bank sues CBRE for negligence (land actually worth €29.2m), settles claim for €5.35m
- Twomey J discusses *SAAMCO*, notes that some aspects of *SAAMCO* were revisited in *Manchester Building Society* but concludes "the scope of the valuer's duty is limited by reference to the consequences of the valuation provided being incorrect, with recoverable damages being limited to the loss flowing from that fact." (§101)

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## The UK Supreme Court in *Manchester Building Society v Grant Thornton*

- Lords Hodge and Sales
  - Joint judgment, reshaping the law of professional negligence
- Lord Reed, Lady Black, Lord Kitchin
  - Agree with the joint judgment
- Lord Burrows
  - Scope of duty is the key question to resolve cases
- Lord Leggatt
  - Legal causation is the key question to resolve cases

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## *Manchester Building Society v Grant Thornton*

- All 7 judges agreed on the outcome
- Clarity that scope of duty questions apply to clinical negligence as well as all other types of professional negligence
- The artificial and often counter-intuitive distinction between “information” and “advice” has been definitively abandoned
- The counter-factual is no longer determinative of the causation question
- 5 out of 7 judges endorsed a clear set of questions to analyse the elements of a professional negligence claim

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## *Manchester Building Society v Grant Thornton: the facts*

- GT advised MBS that it could use “hedge accounting”, enabling MBS to use long-term (50 year) interest rate swaps to hedge the lifetime mortgages it offered
- That advice was wrong
- The result of GT’s incorrect advice was that MBS was not carrying enough regulatory capital
- MBS therefore closed out the interest rate swaps early at a cost of £32m to solve the regulatory capital deficiency
- Close out held to be **in scope of duty**: GT had been asked if MBS used hedge accounting would that meet

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## ***Khan v Meadows*: the facts**

- M asks GP if she is carrying the haemophilia gene
- GP says no, incorrectly
- M gives birth to son who suffers from both haemophilia and autism
- M would have terminated the pregnancy if she had known baby had haemophilia
- GP held liable for additional costs of raising a child with haemophilia (**in scope**) but not for costs of raising child with autism (**out of scope**)
- *K v M* is an advice case. Under *SAAMCO*, would foreseeability have been enough for GP to avoid liability for the costs of raising a child with autism?
- *K v M* is a "no transaction" case. Under *Rosberg* and *O'Brien v O'Donnell* would she have recovered the costs of raising a child with autism?

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## **The New Shape of English Law of Professional Negligence (1)**

- (1) Is the harm which is the subject matter of the claim actionable in negligence? (**the actionability question**);
- (2) What are the risks of harm to the claimant against which the law imposes on the defendant a duty to take care? (**the scope of duty question**);
- (3) Did the defendant breach his or her duty by his or her act or omission? (**the breach question**);
- (4) Is the loss for which the claimant seeks damages the consequence of the defendant's act or omission? (**the factual causation question**);
- (5) Is there a sufficient nexus between a particular element of the harm for which the claimant seeks damages and the subject matter of the defendant's duty of care as analysed at stage 2 above? (**the duty nexus question**); and

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## **The New Shape of the Law of Professional Negligence (2)**

- (6) Is a particular element of the harm for which the claimant seeks damages irrecoverable:
    - (i) because it is too remote, or
    - (ii) because there is a different effective cause (including *novus actus interveniens*),
    - (iii) or because the claimant has mitigated his or her loss
    - (iv) or because the claimant has failed to avoid loss which he or she could reasonably have been expected to avoid? (including *volenti non fit injuria* and contributory negligence)
- (**the legal responsibility question**)

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## Where does the SAAMCO principle fit in to the new analysis?

- (2) What are the risks of harm to the claimant against which the law imposes on the defendant a duty to take care? (the **scope of duty question**)
- (5) Is there a sufficient nexus between a particular element of the harm for which the claimant seeks damages and the subject matter of the defendant's duty of care as analysed at stage 2 above? (the **duty nexus question**);  
and possibly
- (6)(ii) Is a particular element of the harm for which the claimant seeks damages irrecoverable because there is a different effective cause (including novus actus interveniens)?

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## What's the risk?

- Don't worry about whether the professional was giving advice or information, focus on the question: "what was the risk which the advice or information was intended and was reasonably understood to address?"
- GT was asked to advise whether MBS could use hedge accounting for the purposes of regulatory reporting, so it was liable for the losses resulting for its incorrect advice on that risk *even though* the scope of its duty did not extend to evaluating the commercial risks of MBS's proposed strategy
- Dr Khan was not asked to advise on the risk of M having a child with autism, so Dr Khan was not liable for the losses resulting from that being the case

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## The scope of duty question and the duty nexus question

- The scope of duty question looks at the purpose for which the advice or information was given
- The duty nexus question is designed to separate out from the losses incurred as a result of entering into the transaction, the element of those losses attributable to the defendant's negligent performance of the service which he undertook
- In some cases (e.g. *Khan*), answering the scope of duty question will also answer the duty nexus question
- In other cases, the duty nexus question should be addressed separately and after the court has determined there has been a breach of duty and factual causation has been established

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## The counterfactual

- The counterfactual question (what would the claimant's loss have been if the information or advice which the defendant gave had been correct?) is a helpful analytical tool in some but not all cases
- The Court warned against "the dangers of manipulation ... of the parameters of the counterfactual world"
- "The more limited the advice or information being provided ... the more appropriate the counterfactual test is likely to be" (Lord Burrows, concurring)
- The counterfactual question is no longer determinative, but is likely to be used by advocates and judges as a crosscheck

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## *MBS v GT: The minority reports*

- Same conclusion, but different routes
- No need for a new structure to professional negligence claims; it is sufficient to focus on the purpose for which the information or advice was given (Lord Burrows, former Law Commissioner)
- The key question is: at the legal causation stage, was there and a causal connection between the advice and the loss, and if so, is it fair and reasonable to impose on the professional adviser liability for the loss? (Lord Leggatt)

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## **What would be the impact of adopting *MBS v GT* in Ireland?**

- No difference in outcome in valuation cases
- Potentially significant in other professional negligence claims, e.g. banks, financial advisors, accountants, auditors, solicitors

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**Charles B Lawrence & Associates v  
Intercommercial Bank Ltd [2021] UKPC 30**

- Bank's loss caused by both a negligent valuation and its own solicitors' negligent investigation of title.
- Valuer said land worth \$15m when only worth \$2.3m. Bank loaned \$3m to the borrower.
- Solicitor failed to spot the fact the borrower didn't own the land at all! Bank settled for \$2.4m against the solicitors. Held to be irrelevant to claim against valuer.
- Loss due to defective title **not within scope** of valuer's duty (Valuers entitled to assume the borrower had good title). Damages recoverable against valuer = value of loan – true value of the land – 20% deduction for contributory negligence + interest from date of loss
- **Counterfactual crosscheck held to be unhelpful** on the facts of the case

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**McClellan v Thornhill [2022] EWHC 457 (Ch)**

- A barrister who had provided advice to the promoters of a tax avoidance scheme did not owe a duty of care to investors to whom his advice had been made available by the promoters.
- Even if a duty was owed, it did not extend to the risks of advising the Ps on the risks of them acting on the advice (**scope of duty**).
- Even if D had owed a duty of care which included a duty to warn Ps of the risk of the scheme being challenged by HMRC, the court rejected the possibility that any P would have acted differently if there had been qualifications or risk warnings from D (**counterfactual**).

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**Knights v Townsend Harrison Ltd  
[2021] EWHC 2563 (QB)**

- D, a firm of accountants, introduced Cs to 3 tax schemes and an investment opportunity
- The tax schemes failed to achieve the designed tax savings. The investment was a Ponzi scheme.
- D held to have been a mere introducer (because of its disclaimers) and not to have assumed any responsibility to give Ps' advice (**scope of duty**)
- D held not to have owed any duty to carry out due diligence (**scope of duty**)
- Cs held to have failed to establish causation because would probably have still invested in any event (**counterfactual**)
- If Cs had succeeded in establishing that D was subject to a duty of care, the losses would have fallen within the scope of that duty

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***Aurium Real Estate London Ultra Prime Ltd v  
Mishcon de Reya LLP [2022] EWHC 1253 (Ch)***

- Solicitors retained to provide advice to a landlord (which wished to redevelop properties) against the risk that some aspect of the tenants’ rights or obligations were overlooked (§106). Ensuring that any build around scheme that was developed took proper account of the tenants’ legal rights was the purpose of the advice.
- Only high level and preliminary advice sought (§106) not a general retainer to provide all legal advice necessary to successfully conclude the project (*scope of duty*).
- Loss suffered by secondary lender when primary lender enforced its security against the landlord irrecoverable because outside of scope of solicitors’ duty even if the solicitors had owed a duty to the secondary lender (which was the parent company of the landlord (§107).

25

***Arena Television Ltd v Bank of Scotland  
Plc [2025] EWHC 3036 (Comm)***

- Ps allege that banks negligently processed payment instructions given by directors who were defrauding the company. One set of Ps claimed c.£300m; other set of Ps claimed c.£1bn.
- J held, on a summary judgment application, banks’ scope of duty limited to protecting against unauthorised payments. Consequential losses from the continued operation of the fraud and transactions with third parties *outside of scope*.

26

***URS Corporation Ltd v BDW Trading  
Ltd [2025] UKSC 21***

- Developer entitled to bring claims for cost of remedial works resulting from structural defects against the structural designer, even though the building was no longer in its ownership and no third party claims had been brought against it
- Scope of designer’s duty to exercise reasonable care and skill extended to the risk of economic loss arising from the construction of a building using a negligent design (*inside scope of duty*)
- Designer’s duty did not extend to any reputational loss the developer might suffer (*outside scope of duty*)
- No reason in principle why the Developer’s decision to carry out remedial works to make two high-rise developments fire-safe, when claims against it were possible but had not yet been advanced, was too remote

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## Conclusion

- *MBS v GT* does not deliver pre-prepared answers to all the scenarios in which scope of duty questions arise
- It does, however, provide greater precision for dealing with quantification of loss in professional negligence claims that are not against valuers
- The advice/ information distinction has diminished in importance in English law (though it remains central to financial services regulatory claims)

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**Suzanne Scott BL**  
**Head of Research**  
**Law Society of Ireland**

***“Ensuring Effective Access to Justice: Why Does Ireland  
Have the Lowest Case Clearance Rate in the EU?”***



**SUZANNE SCOTT BL  
HEAD OF RESEARCH  
LAW SOCIETY OF IRELAND**

**S.Scott@LawSociety.ie**

Suzanne Scott is the Head of Research at the Law Society of Ireland, leading the work of its newly established Centre for Justice and Law Reform. In that role, she leads evidence-based research on the Irish justice system. As of early 2026, she is driving initiatives like the Justice Indicators project, organising the Centre's annual summer school, and managing research fellowships aimed at strengthening legal reform.

Prior to joining the Law Society, Suzanne was a legal advisor for the Commission for the Regulation of Utilities, advising on complex issues, including on the development of regulatory frameworks for offshore energy generation and district heating. She was previously Senior Legal Researcher at the Law Reform Commission, where she led research on projects such as the Reform of Non-Court Adjudicative Bodies and Appeals to Courts.

Suzanne Scott *Head of Research*  
Law Society of Ireland

## Ensuring Effective Access to Justice

Why Does Ireland Have the Lowest Case Clearance Rate in the EU?



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## Centre for Justice and Law Reform

- The Centre for Justice and Law Reform is a research centre established by the Law Society of Ireland.
- The purpose of the Centre for Justice and Law reform is to improve the justice system and shape law reform to better serve the public interest.
- The Centre conducts evidence-based research, provides a forum for open discourse, engages with policymakers, and advocates for appropriate reforms. This work is guided by an Advisory Board of leading experts in their respective fields.
- The importance of the Law Society being actively engaged on issues affecting the justice system and law reform is strongly reflected in the Law Society's Statement of Strategy 2024-2028.

Suzanne Scott *19 June 2025*



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CENTRE for JUSTICE and LAW REFORM  
at the Law Society of Ireland



## Justice Indicators



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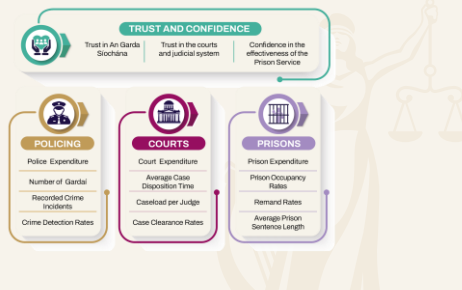
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## What indicators did we assess?



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## Traffic Light Assessment

- Red traffic light:** Ireland deviates by more than 10% from the European Union or Council of Europe average.
- Amber traffic light:** Ireland deviates by between 3% and 10% from the European Union or Council of Europe average.
- Green traffic light:** Ireland is on a par with, or deviates by up to 3% from, the European Union or Council of Europe average.
- White traffic light:** Available data are insufficient to make an informed assessment.

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**Courts**

Law Society of Ireland

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## Case Clearance Rates

The average case clearance rate is the number of outgoing (resolved) cases expressed as a percentage of the number of incoming (new) cases in a given year.



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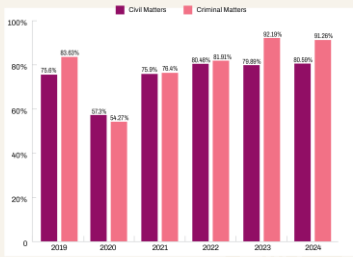
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Figure 25: Annual case clearance rates 2019 to 2024



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Figure 26: Annual case clearance rates of civil matters by court level from 2019 to 2024

	2019	2020	2021	2022	2023	2024
District Court	77.18%	72.33%	75.50%	79.04%	80.93%	81.57%
Circuit Court	70.17%	44.43%	77.98%	88.29%	72.94%	73.91%
High Court	76.61%	42.88%	72.43%	78.10%	82.87%	81.23%
Court of Appeal	71.68%	64.94%	135.96%	116.40%	113.23%	123.54%
Supreme Court	107.69%	122.53%	113.85%	111.52%	84.00%	103.46%

Source: Annual Reports of the Courts Service<sup>39</sup>

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## Why is Ireland's case clearance rate comparatively low?

- Comparing civil law jurisdictions with a common law jurisdiction
- Comparatively low number of judges
- Comparatively low spend on courts
- May not actually be the lowest (key data gaps and limitations)



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## Important Data Gaps and Limitations

- No data regarding settlement numbers for civil matters
- CEPEJ methodology: civil and administrative matters not disaggregated for Ireland
- No data regarding the case backlog (extent or age)
- No breakdown of judges per court each year
- Estimated sitting day data



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### The Courts Service of Ireland on resolved civil matters:

“The majority of civil cases initiated in Ireland do not proceed to trial. Typically, they are either settled between the parties (with or without a court approving a settlement), are formally discontinued (involving notification to the defendant and the court), or are not pursued further by the plaintiff (without the plaintiff notifying the court).”

Courts Service of Ireland  
Annual Report 2021, page 64

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The Council of Europe noted that for Ireland:

“the number of resolved cases is expected to be underreported due to the methodology.”

Council of Europe's European Commission for the Efficiency of Justice  
The 2023 EU Justice Scoreboard, page 11

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Justice Indicators: Case Clearance Rates

### Recommendations

5. The Courts Service should report the number of civil cases settled each year to enable a more accurate assessment of case clearance rates.
6. The Courts Service should disaggregate administrative cases from civil cases in its reporting to CEPEJ.
7. The Courts Service should record and publish the extent of the case backlog at each court level on an annual basis.
8. The Courts Service should record and publish the 'age' of the backlogged case load in the Irish courts each year.
9. The Courts Service should include a breakdown of the number of judges in each court in its annual reports.

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Figure 3: Percentage of people who rated their level of trust in the courts and judicial system between 6 and 10, on a scale of 0-10



Sources: Central Statistics Office Trust Survey<sup>11</sup> OECD Survey of Trust in Public Institutions<sup>12</sup>

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## Centre for Justice and Law Reform

Full research paper available at  
[www.lawsociety.ie/justiceindicators](http://www.lawsociety.ie/justiceindicators)

Please contact us at [CJLR@Lawsociety.ie](mailto:CJLR@Lawsociety.ie)

Suzanne Scott

19 June 2016



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**David Curran**  
**Holmes Solicitors**

***“Jurisdiction clauses, ADR provisions in the  
context of policy coverage”***



# HOLMES

## DAVID CURRAN

**Partner**

**E: [david.curran@holmeslaw.ie](mailto:david.curran@holmeslaw.ie)**

David Curran is a dual-qualified and highly experienced commercial and Insurance litigation lawyer and in particular, has extensive experience in professional negligence litigation.

He is the co-author of the only dedicated Irish legal text on Irish professional indemnity law and he is currently co-writing a new book on Insurance Claims in Ireland which is due to be published in 2027. He is also qualified as a sports arbitrator for the GAA and is former independent chair of the Disciplinary Committee of the Irish Football Association and currently sits on the Appeals Panel for Cycling Ireland.

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Guiding you with experience and integrity for over fifty years.

HOLMES

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David Curran

Irish Law Awards Litigation Lawyer of the Year 2021.

Partner at Holmes LLP specialising in commercial litigation and insurance, admitted in Northern Ireland, the Republic of Ireland, and entitled to practice in England and Wales.

Former Head of Financial Lines Claims at AIG with extensive experience in high-value professional negligence, D&O, financial institutions and complex coverage disputes.

Co-author of "Lawyers Professional Negligence and Insurance" (Thomson Reuters Roundhall) and recognised by Who's Who Legal as a leading practitioner in professional negligence.

Regular speaker on insurance law, risk management and professional negligence, guest lecturer for NUJ Maynooth and former member of Law Society of Ireland PI Committee.

HOLMES



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- What jurisdiction governs a contract and which laws apply?
- How is the jurisdiction in a tort determined?
- Can an imprecise governing law and jurisdiction clause or a failure to interrogate an existing clause for its proper application lead to professional negligence?

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**HOLMES**

- In a contract, jurisdiction clauses and choice of law provisions are usually defined. Issues arise with conflicting terms in parallel or intermingled contracts.
- An insurance tower, with multiple insurance contracts can give rise to ambiguity and application.
  - ~Does council regulation EC 593/2008 (Rome 1) apply? If so, which article?
  - ~Article 7 distinguishes between large risks and other types of insurance contracts.
- Large risks include, ships, aircraft, railways and rolling stock.
- Where is the insurer habitually resident or which jurisdiction is the contract more closely related to?

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**HOLMES**

***AIG Europe SA (Formerly AIG Europe Ltd) v John Wood Group PLC EWHC 2567 - Facts***

- AIG were participants in an excess liability policy tower of insurance. Defendants were an engineering firm carrying engineering and construction works for a Canadian energy company, Nexen Energy.
- 5000sqm of bitumen was leaked into the environment.
- Global umbrella policy with three further excess layers.
- In 2021 Nexen Energy issued proceedings in Alberta, Canada alleging negligence by the Defendants.

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## HOLMES

### *AIG Europe SA (Formerly AIG Europe Ltd) v John Wood Group PLC* *EWHC 2567 - Facts*

- The Defendants put their insurers on notice of a potential claim under the tower policy.
- As a consequence, the Defendants issued protective proceedings in Canada in relation to cover.
- Various insurers sought anti suit injunction proceedings in England and Wales.
- To maintain the anti suit proceedings, insurers had to show that there was a high degree of certainty that England and Wales was the jurisdiction.

Holmes v Chubbey Services LLP 7

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## HOLMES

### *AIG Europe SA (Formerly AIG Europe Ltd) v John Wood Group PLC* *EWHC 2567 - Facts*

- Some policies contained jurisdiction clauses and others ADR clauses.
- Primary policy jurisdiction clause in the risk details of the policy stated that it was understood and agreed by both insurers and insured that it was subject to the same law and same jurisdiction of the primary policy.
- Global umbrella policy choice of law stated that the policy shall be governed by and construed in accordance with the laws of England and Wales and .... The Commercial Court of the Queen's Bench division of the High Court, London.

Holmes v Chubbey Services LLP 8

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## HOLMES

### *AIG Europe SA (Formerly AIG Europe Ltd) v John Wood Group PLC* *EWHC 2567 – Arguments and Decision*

- It was argued that this was not an exclusive jurisdiction term but an option on a non-exclusive jurisdiction.
- Court held that despite different wording in different layers of the tower, the defined choice of law and choice of jurisdiction was a powerful tool to determine whether jurisdiction is exclusive.

Holmes v Chubbey Services LLP 9

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HOLMES

**AIG Europe SA (Formerly AIG Europe Ltd) v John Wood Group PLC  
EWHC 2567 – Arguments and Decision**

- Defendants further advanced the proposition that without an exclusive jurisdiction clause that a permissive approach was being taken to jurisdiction.
- Court rejected this as it would lead to no single law and jurisdiction governing the contract and give rise to considerable uncertainty.
- Court also stated a "floating proper law" was not permissible.
- This decision was upheld on appeal – 2022 EWCA civ781.

Holmes v Chubbey Services LLP 10

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HOLMES

**Zephyrus Capital Aviation Partners 1d limited & ors v Fidelis  
Underwriting & Ors. - Facts**

- This case involved hundreds of aircraft leased to the various Russian Airline operators under leases governed by English law and in some cases laws of other jurisdictions including Ireland (*separate proceedings were commenced in Ireland*).
- International reinsurers sought to rely upon Russian exclusive jurisdiction clauses they had with the Russian Airlines.
- Airlines were required to take out All Risk Hull and War Risk Hull insurance.
- Russian operators allowed their lessors to have a cut through clause provision to sue reinsurers directly if a claim arose.
- Reinsurers were sued under the cut through clauses in England and Wales.

Holmes v Chubbey Services LLP 11

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HOLMES

**Zephyrus Capital Aviation Partners 1d limited & ors v Fidelis  
Underwriting & Ors. - Decision**

- Court considered whether reinsurers were entitled to a stay in the proceedings as under the exclusive jurisdiction clause, all disputes were to be heard in the Russian Courts.
- The leases did not provide for such exclusive jurisdiction but insurance contracts did.
- Henshaw J applied the "strong reason" test to determine whether or not to grant a stay.

Holmes v Chubbey Services LLP 12

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## HOLMES

### **Zephyrus Capital Aviation Partners 1d limited & ors v Fidelis Underwriting & Ors. - Decision**

- Determined that unlikely to get a fair trial in Russia. Russian state exposure and influence on court would detract from objectiveness. Claimants would be from "unfriendly" states.
- There are circumstances where exclusive jurisdictional clauses will be departed from.
- See also *Aspen Insurance Underwriting Ltd v Credit Europe Bank NV 2020 UKSC*.

HOLMES (HOLMES PART 1) 13

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## HOLMES

### **Failure to consider and/ or challenge jurisdiction when circumstances prevail if asked to advise on same can lead to a professional negligence action.**

- Consider distinct purposes of Governing Law and Jurisdiction clauses.
- Is the jurisdiction clause suitable for the dispute?
- How enforceable would a decision be from the jurisdiction defined in the Jurisdiction Clause?
- Sovereign interests or public policy. Geopolitical considerations.
- Consider international treaties. Hague Convention/Lugano Convention.
- Are the clauses clear, accurate and congruent?

HOLMES (HOLMES PART 1) 14

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## HOLMES

### **Alternative Dispute Resolution clauses are of significant importance in the context of insurance contracts and issues on coverage.**

- Is the clause clear? Does it align with the choice of law and jurisdiction clause?
- How is the process commenced? Who selects/appoints the arbitrator. How many Arbitrators?
- What rules apply? CIArb or Cedr or simple application of the Model Law?
- Absence of such provisions, agreement to arbitrate?

HOLMES (HOLMES PART 1) 15

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HOLMES

- Arbitration clause is treated as an agreement independent of the contract. If contract void ab initio, ADR provisions to challenge the determination of underwriter still survive.
- This can prevent court hearings on cover challenges.
- Arbitration Act 2010 - High Court appointed Arbitration Judge.
- Security for Costs and Discovery can be ordered in Arbitration. Any default, matter referred to the High Court. No appeal from this determination.

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Mediation Act 2017

- Section 14 Declaration: Implications of non-compliance. This is where a solicitor who is initiating proceedings must provide appropriate advice, guidance and information to client prior to commencing proceedings.
- Section 14(2): Requires a solicitor certificate to be issued. If no certificate, matters shall be adjourned. It is a "shall" provision.
- Section 21: Provides expressly that an unreasonable refusal to go to mediation or failure to fully consider same following an invitation to do so is a situation where the courts will consider with respect to costs.
- Section 169(1)(G) of the Legal Services Act 2015 has a similar effect. There will be adverse costs consequences.

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HOLMES

*Byrne v Arnold* 2024 IEHC 308: Kennedy J - reduction in costs for failing to mediate.

*Colm Leahy v Pepper Finance Corporation (Ireland)* 2025 IEHC 577: Stack J - interim order on costs by Kennedy J up to the point of adjournment of the proceedings for failing to comply with section 14(2) of the Mediation Act 2017 were awarded against the Plaintiff.

*J Burke & Associates Limited v Patrick O'Connell* 2026 IEHC 314: Twomey J determined that whilst the process of mediation is voluntary, the High Court possesses an inherent jurisdiction to compel unwilling parties to engage in mediation. Failure to participate in mediation will have significant adverse cost consequences.

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## HOLMES

### High Court practice direction HC141

- President Barneville issued this direction on 27<sup>th</sup> May 2026.
- In force from 3<sup>rd</sup> June 2026.
- Seeks to underscore the importance of mediation and other forms of ADR and outlines the potential consequences of non compliance.
- Section 14 obligations are reemphasized.
- Any refusal to mediate when invited to do so will have adverse consequences.

Holmes v. Holmes, 2026, 15

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## HOLMES

### Conclusion

In essence mediation and ADR are now case management tools for the High Court in terms of:

- case progression and resolution;
- and legal costs issues

The recent case law and practice direction can be summed up by saying:

“failure to comply at your peril”

THIS WOULD BE NEGLIGENCE!

Holmes v. Holmes, 2026, 16

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# HOLMES

[www.holmeslaw.ie](http://www.holmeslaw.ie)

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**Brendan Lenihan**  
**Chairman of Bord na Mona**  
**Managing Director, Navigo Consulting Limited**

***“Managing Boardroom Disputes Effectively and  
Efficiently:  
Less Courtroom Drama, More Cohesive  
Collaboration”***



Navigo 

**Bord na Móna**

**BRENDAN LENIHAN**

CHAIRMAN OF BORD NA MONA

MANAGING DIRECTOR, NAVIGO CONSULTING LIMITED

[brendan.lenihan@navigo.ie](mailto:brendan.lenihan@navigo.ie)

Brendan Lenihan is Managing Director of Navigo Consulting and is a management consultant, Chartered Accountant, professional non-executive director and accredited mediator. Through his consultancy, Navigo Consulting, he provides strategic, financial and governance advice to clients in Ireland and the UK.

He has a First Class Honours graduate of UCC (B. Comm 1990) and UCD (Diploma in Professional Accounting 1991). He qualified as a Chartered Accountant in 1993. Acquired many consultancy skills, including expert level group facilitation during a 30 year career.

He was Awarded the Professional Diploma in Corporate Governance from UCD Smurfit Business School 2017 and went on to graduate from the Honourable Society of the Kings Inns with an Advanced Diploma in Mediation and is an accredited member of the Mediators Institute of Ireland.

- Previously he was a Partner with Arthur Andersen, with whom he worked in New York and Dublin. Served as President of the Institute of Chartered Accountants in Ireland in 2013-14 and for 8 years was the Group Finance Director of a multinational real estate company where he was responsible for hundreds of companies in 9 different legal jurisdictions.
- Trusted and experienced adviser to a large variety of clients from sizeable corporates to family businesses as well as individuals, charities and public bodies.
- Board Director of HSE (Health Service Executive, 2019 – 2023), and Bus Eireann, (State Owned Bus Transport operator in Ireland), chairing the Board Audit & Risk Committees on both Boards. Previously External member of CIE Group Board Audit & Risk Committee. CIE Group is a state transportation holding company whose group members provide rail and bus services in Ireland;
- Chair of the Board of Directors of Irish & International Trading Corporation PLC and Chair of Advisory Board of Regan Wall (leading law firm specialising in M&A);
- Member of the Investment Committee of Enterprise Ireland, a state agency tasked with developing indigenous businesses, especially in the manufacturing and traded international services area.
- External member of Audit & Risk Committee of the Dental Council of Ireland, the state regulator of Ireland's dental profession.
- Previously Trustee and Chair of Audit & Risk Committee Pieta House, a charity providing prevention, intervention and bereavement services to those affected by suicide and self-harm.
- Chair of Board of Trustees of Good Shepherd Cork, a charity helping the homeless and vulnerable in Cork.
- Previously Group Finance Director of one of Ireland's largest nursing home groups.
- Previously Non-Executive Director of international body coordinating the accounting profession in Britain and Ireland (CCAB Ltd).
- Awarded a number of academic, civic and professional honours including Graduate of the Year (UCC), and Winner, Irish Times Debating Competition.

**'Managing Boardroom Disputes Effectively and Efficiently:  
Less Courtroom Drama, More Cohesive Collaboration'**



**HOLMES**

**Brendan Lenihan**  
Managing Director Navigo Consulting  
Thursday 18th June 2026 - Stephen's Green Club, Dublin

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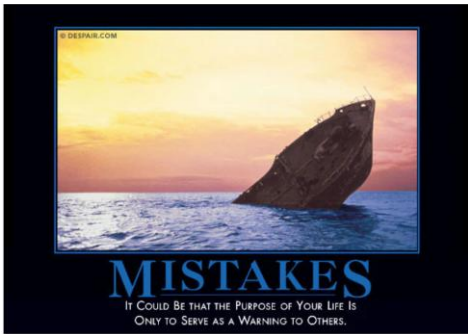
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*"It's sad. So sad.  
It's a sad, sad situation"*

Elton John (1976)

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### What is "governance"?

Navigo\*

"to govern" (verb)  
has its roots in the  
Latin "gubernare"

which means  
"to steer" or  
"to guide"



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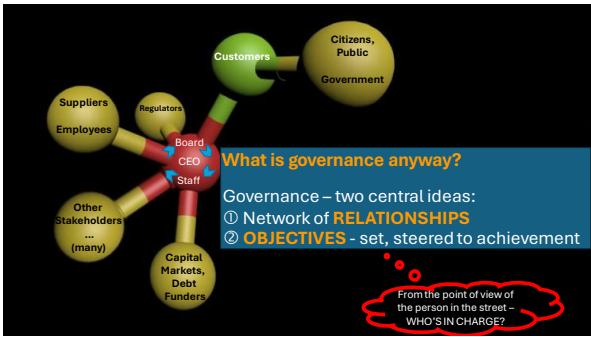
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**Boardrooms are decision factories, with two significant drawbacks.....** Navigo\*

1. Strategies
2. Risk appetite
3. Budgets - resource allocation
4. Intervening in org culture
5. People decisions - hire, fire
6. Remuneration
7. Succession & progression
8. Fitness & probity
9. Cyber security
10. AI policy
11. Data Protection
12. H&S - keeping people safe
13. Commercial decisions
14. Consumer Protections
15. Mergers & Acquisitions
16. Raising finance
17. Internal Controls
18. Audit & assurance
19. Financial Reporting
20. Environmental risks
21. ESG Reporting
22. Security - physical
23. Government relations
24. Shareholder relations
25. Dividends, Buy backs
26. Etc, etc.....

(1) *Incredibly limited opening hours*

(2) *Little Quality Control or Learning*

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*If I had six hours to chop down a tree, I'd spend the first four hours sharpening the axe.*

~ Abraham Lincoln

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Navigo\*



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**What does 'NOSES IN, FINGERS OUT' actually look like in practice?**

Navigo\*



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**Why do Boards with good people sometimes make very poor decisions?**



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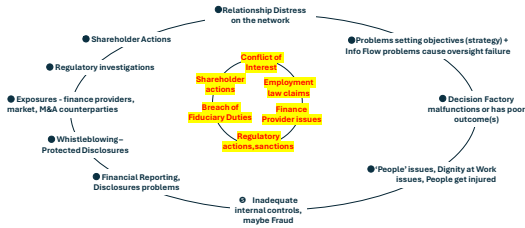
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## Potential Anatomy/DNA of a D&O claim ... Navigo\*



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## Some Immediate de-escalation approaches Navigo\*

<p><b>Create TIME + the ability to REFLECT, LEARN</b> Boards are time poor with diminished capacity to improve quality. Bringing issues OFFLINE can help.</p>	<p><b>Facilitated Board Conversation</b> Structured, externally chaired session before conflict becomes formal.</p>
<p><b>Conflict of Interest Audit</b> Early, transparent mapping of interests among all board members.</p>	<p><b>Governance Review</b> External reviewer reframes the dispute as systemic, not personal.</p>
<p><b>Board Mediation / "Soft Contracting"</b> Confidential, relationship-focused, non-binding — distinct from commercial mediation.</p>	<p><b>Director Exit Protocols</b> Pre-agreed, dignified departure mechanisms that avoid formal proceedings.</p>

*These tools expand the lawyer's role — they do not displace legal advice.*

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## What can I do? Navigo\*

<p><b>Engage earlier</b> Professional negligence lawyers are typically engaged after the trigger event — but client relationships often predate it.</p>	<p><b>Support meaningful Board Effectiveness Reviews</b> Many periodic reviews are dysfunctional (client and provider). Advise Board Chairs to be open to improving governance performance.</p>
<p><b>Ask different questions</b> At board advisory engagements, enquire about dynamics, not just structures. Surface tension before it becomes a 'position'.</p>	<p><b>Know that ROLE CLARITY and BOARD TRAINING are key</b> Lack of role clarity is, for Navigo, the single biggest cause of conflict in the Boardroom; invest in Board education and training.</p>
<p><b>Reframe the conversation</b> A governance concern is easier to address than a personal grievance. A mediator's lens helps depersonalise early conflict.</p>	<p><b>Press for doing the 'People &amp; Culture' piece well</b> This helps the Board in its (relatively) new role in this area of culture and can be preventative of conflict and injury.</p>
<p><b>Know when to refer</b> Recognising the moment when another professional rather than legal counsel is the right intervention is a skill in itself.</p>	<p><b>Press for professionalization of Dirs &amp; Officers</b> This is (as yet) an underdeveloped area of professionalism. Do your bit to encourage professional infrastructure to emerge.</p>

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## Contact Details

Navigo<sup>+</sup>



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Details to be announced presently  
Mobile + 353 87 852 7654

**Strategy and Business Planning**

Supporting and Improving **Governance**

Navigating Significant **Change**

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**Mr. Justice Bernard Barton**

***“Introduction”***



## MR. JUSTICE BERNARD BARTON

Bernard Barton is a retired Irish judge who served as a Judge of the High Court from 2014 until his retirement in March 2021.

Educated at Glenstal Abbey School, Mr. Justice Barton read law and history at UCD before going on to read for the Bar at the Kings Inns, Dublin. He was called to the outer Bar in 1977 and the Inner Bar in 1997.

As a barrister, he specialised in Common Law civil liability litigation, principally in the areas of professional negligence, employers and occupiers liability and product liability. He acted as counsel for the Transfusion Positive group of Hepatitis C victims at the 1997 public enquiry into the Blood Transfusion Service Board and the contamination of blood and blood products in the State with Hepatitis C. He subsequently represented numerous victims of infection at the Hepatitis C and HIV Compensation Tribunal.

After a successful career at the Bar, he was nominated by the Government in 2014 for appointment by the President of Ireland to be a judge of the High Court. In that role he was assigned to be the Garda Síochána Compensation claims list Judge and was appointed as the appeal judge for hearing appeals from the Hepatitis C and HIV Compensation Tribunal.

He was otherwise variously assigned to hear non-jury, judicial review, professional negligence and personal injury proceedings while in office and in 2017 was appointed to be the head of the Civil Juries Division of the High Court until his retirement in March 2021. While responsible for the list he presided over some of the most important and significant public interest Defamation cases in recent times.



**Notes: -**

A series of horizontal dashed lines provided for taking notes.



**Julie Galbraith**  
**- Chief Business Officer**  
**&**  
**Martin Flanagan ACII**  
**- Corporate Account Director**  
**Arachas Corporate Brokers**

***“The Evolving Role of the Insurance Broker for  
the Professional Sector:  
From Transactional Risk Transfer Agent to  
Trusted, Strategic Risk Advisor”***



## **JULIE GALBRAITH**

**CHIEF BUSINESS OFFICER AND GENERAL COUNSEL  
ARACHAS CORPORATE BROKERS**

[juliegalbraith@arachas.ie](mailto:juliegalbraith@arachas.ie)

With over a decade of legal expertise and business acumen, Julie Galbraith is the Chief Business Officer and General Counsel at Arachas, Ireland's largest insurance broker. Her role encompasses leading the HR and marketing teams while supporting business operations and commercial insurance buyers across Ireland.

As a qualified solicitor in Ireland, England, and Wales, She brings a deep understanding of employment law and corporate governance to her work. She is passionate about driving organizational success by fostering collaboration and delivering strategic support to achieve business objectives.

## **MARTIN FLANAGAN ACII**

**CORPORATE ACCOUNT DIRECTOR  
ARACHAS CORPORATE BROKERS**

[martinflanagan@arachas.ie](mailto:martinflanagan@arachas.ie)



Martin Flanagan is based in County Galway, Ireland, he is a highly experienced Chartered Insurance Broker who specializes in complex corporate risk advisory and corporate insurance solutions.

ARACHAS

The Evolving Role of the Insurance Broker for the Professional Sector: From Transactional Risk Transfer Agent to Trusted, Strategic Risk Advisor

Julie Galbraith & Martin Flanagan



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What is the role of a Broker?



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The Complexity of Doing Business

Professional Liability    Regulatory Exposure    Reputational Damage

Cyber Risks    Contractual Liability



ARACHAS

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Our Unique Value



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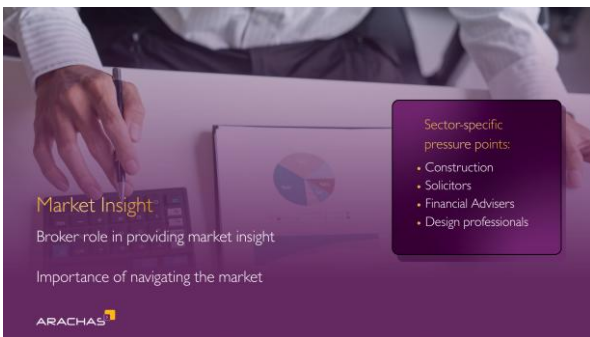
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## New Claims Trends

Emergence on new claims trends

Examples of exposures:

- Ransomware
- Business email compromise/phishing
- Data breach claims

Cross class claims

Importance of understanding policy interaction and potential coverage gaps

Emergence of AI and issues around claims

Claims cases



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ARACHAS

# Thank you

[www.arachas.ie](http://www.arachas.ie) / in f X @

Arachas Corporate Brokers Limited (a broker) is regulated by the Central Bank of Ireland. Company registration number: 390227

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**Fiona Sage**  
**Zurich Insurance plc**

***‘Navigating Environmental, Social and  
Governmental Responsibility in the Digital Age:  
Integration of AI and Digital Technologies in the  
Insurance Sector’***



## FIONA SAGE

GLOBAL HEAD OF CLAIMS OPERATIONS  
ZURICH INSURANCE PLC

[Fiona.Sage@zurich.com](mailto:Fiona.Sage@zurich.com)



Fiona Sage is Interim Chief Claims Officer for Zurich Insurance Europe AG in Ireland, with responsibility for the governance, oversight and performance of the Irish claims function across general insurance lines.

She brings over 27 years' experience in senior claims, legal and operational leadership roles across domestic and international insurance markets and has deep expertise in corporate governance, regulatory compliance, risk management and internal control frameworks.

Fiona has led and overseen complex transformation programmes, audit and assurance activity, and claims operations subject to heightened regulatory scrutiny. A qualified barrister, she is recognised for her strong commitment to customer outcomes, robust controls and effective corporate oversight.

**ZURICH**

# ESG in the Digital Age

Integration of AI and Digital Technologies in the Insurance Sector

Florian Sager, and Interim CEO  
Zurich Insurance Europe AG  
18 June 2026

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## ESG in the Digital Age



### Trust

Customers need decisions they can understand and challenge.



### Fairness

Models must avoid unfair outcomes, bias and hidden exclusions.



### Resilience

Digital operations must withstand disruption and dependency risk.

**AI will not replace the responsibility of insurers; it will test it.**

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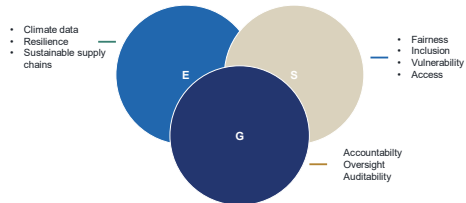
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## Digital Responsibility is ESG Responsibility



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## AI adoption is accelerating



### The market has moved from pilots to operational use cases

What now needs to keep pace

- Operational use** Productivity + decision support
- Accuracy risk** Outputs must be explainable and checked
- Control risks** Cyber, data and third-party dependency
- Governance** Legal review and risk controls at scale



Acceleration is welcome — unmanaged acceleration is the risk.

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## AI use cases: value creation across the insurance chain



EIOIPA notes increasing AI use in pricing, underwriting, claims management and fraud detection.



Is the AI informing, recommending or deciding — and who owns the customer outcome?

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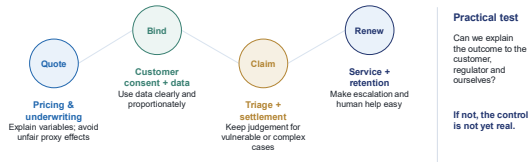
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## Practical insurance moments: where AI meets customers



Responsible AI becomes real in underwriting, claims and service — where outcomes affect people.



Real-world relevance comes from the moment a digital decision affects a customer.

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## Zurich lens: Responsible innovation grounded in claims



Claims shows why digital tools must strengthen human judgement, not obscure it.

**8,500**

claims professionals globally

**2M+**

claims handled each year

**Multi-line environment**

motor, property, casualty, financial lines, life, gadget, and international programmes

Claims is where promises are delivered in real moments of need.

Faster and smarter must also mean fairer, explainable and empathetic



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## Customer impact lens



### Five issues to watch as AI scales

- **Unfair outcomes** Similar customers may be treated differently
- **Poor explainability** Customers need to understand and challenge decisions
- **Digital exclusion** Digital-only journeys can leave vulnerable customers behind
- **Service disruption** Dependency or cyber incidents can affect claims and support
- **Unproven ESG claims** Sustainability claims need evidence and operational follow-through



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## Regulation: guardrails for practical delivery



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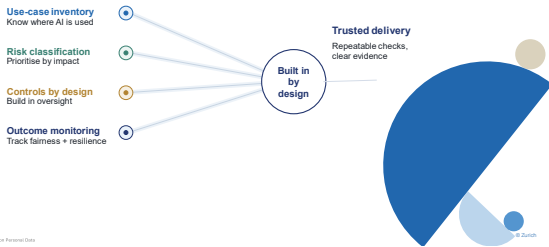
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## Responsible AI integration

Embed responsible AI into delivery, governance and evidence — not after the fact.



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## Conclusion

AI is not something to fear. Scaled responsibly, it strengthens the insurance promise.



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Questions?

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Thank you

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**Kieran Wallace**  
**Interpath Advisory**

***“Panel Discussion: -‘Understanding Professional Risks in the Insolvency Sector: Staying on the Right Side of Liquidations, Receiverships & Examinations”***

# interpath

**KIERAN WALLACE**

INTERPATH ADVISORY

[kieran.wallace@interpathadvisory.com](mailto:kieran.wallace@interpathadvisory.com)



Kieran Wallace has more than 25 years' experience in restructuring and insolvency, including acting as a liquidator, receiver and examiner to various companies, including acting as one of the Joint Special Liquidators to IBRC (formally Anglo Irish Bank), a long-running liquidation on behalf of the Irish State which commenced in 2013.

Kieran also has acted in a number of high-profile forensic expert witness and fraud investigation cases.



**Notes: -**

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**Niall Meagher** Dipl.Arch., B.Arch.Sci., Dip.Proj.Mgmt., Dipl.Arb., FRIAI, FCI Arb  
**Project Manager / Architect, IPM**

***"Current Trends in Construction Negligence  
Claims: BC(A)R, Building Disputes and  
Breakdowns in Relationships"***



**NIALL MEAGHER** DIPL.ARCH., B.ARCH.SCI., DIP.PROJ.MGMT., DIPL.ARB., FRIAI, FCIARB  
**MANAGING DIRECTOR**  
**INTERACTIVE PROJECT MANAGERS**

[nm@ipml.ie](mailto:nm@ipml.ie)

Niall Meagher FRIAI is a Registered Architect and the Managing Director of Interactive Project Managers Ltd. He is a Fellow of the Chartered Institute of Arbitrators, a diploma holder in Project Management from Trinity College Dublin and in Arbitration from University College Dublin. Niall is a Ciarb accredited Mediator and Adjudicator.

Niall has specialised in project management since 1995. Niall has specific expertise in the management of complex, mixed-use city centre projects, conservation and restoration projects. Notable recent projects include the Restoration of St. Mel's Cathedral, Longford (rebuilt following a fire in 2009), Dublin Landings Mixed Use Development North Wall Quay, Saint Patricks Cathedral Dublin and currently the RDS (Leinster Rugby) Anglesea Stand.

Niall has significant industry participation especially through the Board and Committee of the RIAI and the Liaise Committee of the Construction Industry. Niall is a member of the Construction Contracts Adjudication Panel established under of the Construction Contracts Act. Niall is an elected member of the RIAI Professional Conduct Committee (Board established under the Building Control Act) and is Chairperson of the RIAI Contracts Drafting Group.



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**Ger Perdisatt**  
**Acuity AI Advisory**

***"Assessing the Ongoing Impact of Artificial Intelligence for the Professional Sectors: Mitigating Risks, Maximising Opportunities and Reaping Rewards"***



## GER PERDISATT

ACUITY AI ADVISORY  
gerp@acuityai.co



Ger Perdisatt founded Acuity AI Advisory after 25 years in senior operational and governance roles across professional services, technology and the public sector. He served as Chief Operating Officer of Microsoft Western Europe — responsible for 14 markets, approximately €10 billion in annual revenue, and a 180-person operational team. That role required governing technology adoption at scale, managing operational risk across diverse regulatory environments, and translating complex strategic objectives into measurable outcomes.

He is a current Non-Executive Director at Dublin Airport Authority and Tailte Éireann. Those roles require exactly what boards across Ireland are now being asked to do with AI: exercise meaningful oversight of complex systems without operational dependency on management for the analysis. That experience is the foundation of Acuity's AI governance consulting practice.

ACUTY AI Advisory

PIILA Conference  
Professional Negligence & Liability  
The Regulator's Career Club, Dublin

# From Information Asymmetry to Knowledge Proficiency

*The ongoing impact of AI on the professional sectors*

Ger Perdisatt  
Member, ACUTY AI Advisory Non-Executive Director, Risk & Talent Division

18 June 2025  
Closing keynote, 16:35

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## What do your clients pay you for today, and what will they pay for tomorrow?

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## What AI is actually taking.

*Mitigating risks*

The deeper moat was judgment, not information. That is the part AI is now reaching for.

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Clients could always read the statute. What they paid for was judgment, and someone to stand behind it.

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The information layer is going, and you can see it already.

▸ Clients self-serve the raw material

Statutes, precedents, templates and a plausible first answer are now a search away.

▸ The tooling is industrialising

The legal-AI software market is forecast to grow from \$3.1bn in 2025 to \$10.8bn by 2030. Nearly 90% of the UK's Top 100 firms now have generative AI in use or on trial, up from 55% in 2023.

▸ Ireland is not waiting

AI.L Goodbody was first onto Harvey in 2024, Arthur Cox, Mason Hayes & Carran and McCann FitzGerald followed, and Harney has opened a Dublin office.

▸ The pricing has already turned

59% of firms now offer flat fees, and 43% expect hourly billing to decline. Clients will not pay by the hour for what is no longer scarce.

▸ The constraint is trust, not access

A growing share of what is instantly retrievable is confident, fluent, and wrong.

Sources: Westlaw/Intertec, 2024; PwC Law Firm Survey, 2023; Chicago Panel Report, 2023; Thomson Reuters Future of Professionals, 2024.

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Now AI imitates the judgment, not just the information.

Even the dedicated legal research tools, grounded on real authorities, hallucinate on one query in six at best, one in three at worst.

More than 1,350 court filings worldwide cite cases an AI invented. The count has nearly tripled since October.

Sources: Quince Dorland, AI Hallucination Cases Database, April 2024; Stanford Hago AI, Journal of Original Legal Studies, 2023.

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AI's reach exceeds its grasp.  
*It can simulate judgment; it cannot own professional responsibility.*

Assumption of responsibility and reasonable reliance: *Hedley Byrne*; the scope-of-duty question in *Manchester Building Society v Grant Thornton*.

All 1,350 filings: the sanction fell on the lawyer, never the model. *Ayinde v Haringey*; the duty to verify rests with the lawyer, AI or no AI.

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It was never  
about data.

Maximising opportunities

Keeping the responsibility only pays if the judgment beneath it keeps compounding. That was never a data problem. It was always a knowledge one.

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Firms are not short of information. They are drowning in it.

**Data** the raw record

**Information** the data you can find

**Knowledge** the reasoning; what it means, and what worked before

**Judgment** knowledge applied: what to do, and standing behind it

117 emails, 153 chat messages, an interruption every two minutes. The aim is less information, and more knowledge.

Source: Microsoft Work Trend Index, 2022.

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## You will be sold a data project. You need a **knowledge** one.

95% of enterprise GenAI pilots deliver no measurable return, and not because the models are weak.

Not consolidate the data; connect the knowledge. *A graph, not a lake.*

Source: MIT Research, The General Electric Group of AI in Business, 2023

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## Capture the substance of every matter.

• Capture the outcome of a matter, not just its documents

What was argued, what worked, and why, while it is still fresh.

• Link advice, clauses and precedents to the reasoning behind them

• Make it searchable, connected and auditable

So it can be found, trusted, and stood over later.

• Keep a record of what the firm knew, and when

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## Then capture how the firm actually works.

It is already there, across systems you already run:

• Microsoft Graph • Case management • Practice management • Document store • Time & billing

Millions of signals, never joined up. Knowledge-management budgets are now rising faster than legal-tech spend overall.

Source: ICL Technology Survey, 2022 (100 firms)

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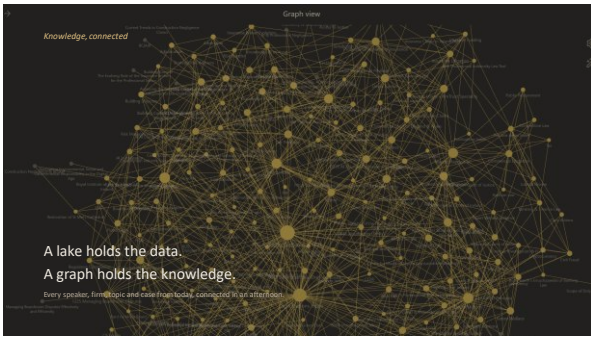
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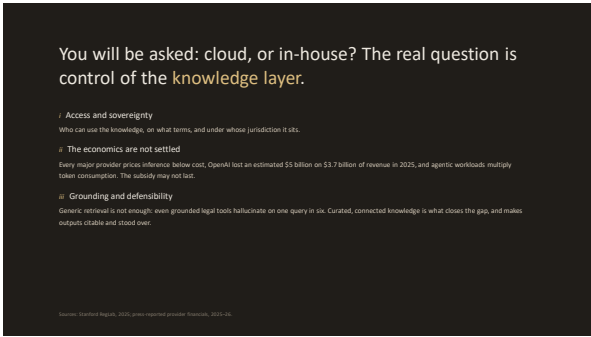
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## What it pays back.

*Reaping rewards*

Two rewards worth the effort, and a way in that fits inside a quarter.

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## Your juniors get to good faster.

Summer programmes have shrunk to a median of six offers, among the lowest on record, lateral hiring rose 25% as firms buy judgment rather than grow it.

So the asset does three jobs: it compounds what the firm knows, renews it through its people, and spares the seniors.

Source: Marsh, 2010; Aon, May 2010

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## On fixed fees, it changes the maths.

efficiency gained > discount given = margin kept

83% of the UK's Top 10 firms expect to keep the gains by doing more work for the same clients. The catch: it assumes you, not the client, keep the saving.

Source: PwC Law Firm Survey, 2010; Thomson Reuters Survey of Professionals, 2010

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## Start in one place, with four moves this year.

- 1. **Capture.** In that one area, record the reasoning and outcome of each matter as you go, not in a retrospective project.
- 2. **Connect.** Structure it so it is searchable and linked. That is the graph.
- 3. **Ground.** Point your AI tools at it, so they answer from your knowledge and cite it.
- 4. **Govern.** One page: which tools, on which data, with what human review, and who owns it.

Then measure one number: *how fast a new joiner gets to good*. Everything else follows it.

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So, what will your clients pay for tomorrow? What they always paid for: **judgment, and the willingness to stand behind it**. AI commoditises the information and imitates the judgment, but the responsibility stays beyond its grasp. The firms that compound their knowledge, and grow their people with it, keep the part that was always *the point*.

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## Thank you.

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Questions, and over to the Chairman.

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*Questions and discussion  
&  
Chairman's closing remarks*



# HOLMES

## MICHAEL MURPHY

### Partner

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Michael Murphy, Partner, joined the firm in 2009 and specialises in professional negligence litigation and dispute resolution. He leads our Healthcare, Pharma and LifeScience group.

Practising in the non-jury area, Michael works with particular emphasis on professional indemnity, having experience in negligence cases involving architects, engineers, solicitors, barristers and insurance brokers, as well as claims against directors and officers. He has considerable experience of assessing liability and quantum issues, including the 'no transaction' principle. He advises insurers on coverage matters, particularly for regulated professions, advising on the solicitors' Minimum Terms and Conditions, surveyors' RICS Minimum Terms and accountants' CARB Minimum Approved Policy Wording. Specialising in delivering efficient services and, where necessary, innovative solutions, Michael applies these skills to challenging financial lines claims.

Michael also deals with personal injuries litigation in relation to both public liability and employers' liability claims. With significant expertise in advising clients on complex liability and quantum issues in such cases, he also frequently resolves cases without the input of counsel where appropriate. In both the non-jury and personal injury spheres he has experience in dealing with litigation against construction companies, private companies and health service providers.

Having significant experience in commercial litigation, Michael handles commercial disputes, personal injury actions in the Circuit and Superior Courts, alternative dispute resolution (including mediation and arbitration) and cases before the Commercial Court. He has dealt with judicial review cases and injunctions and has also dealt with cyber claims, including the misappropriation of significant sums of money from professionals by cyber criminals. Michael achieves excellent results, such as the recovery of a substantial amount which was frozen in the bank of another EU Member State. He also advises on the GDPR, including compliance strategies, risk minimisation and litigation arising from data breaches.

Michael acts for international and domestic insurance companies, loss adjusters, financial institutions, statutory bodies, construction companies, SME's, large corporates and private clients.

## ***Recent Work Highlights***

- Advising upon indemnity and dealing with an arbitration and resolution of a claim involving an architect who was sued cumulatively for €23m arising out of allegedly negligent investment advice provided to two members of one of Ireland's most popular rock bands
- Defending seven sets of related High Court professional negligence proceedings against a firm of accountants arising from a dispute as to whether loans taken out by investors were recourse to property only or full recover. The 'real' exposure for our client was in excess of €2m but a settlement was brokered for a net €200,000 'all in' by agreeing to purchase the residue of the loan with the new charge holder in an innovative solution that saved the insurers over €2m in liability that would otherwise have crystallised
- Acted on behalf of an engineer and his insurers in the resolution of an extremely challenging construction claim. Involving one of Ireland's largest dairy food produce manufacturers, the claims was against the contractor and engineer that provided allegedly negligent construction services. By having the dispute between the defendants submitted for adjudication, following an unsuccessful mediation, we resolved the claim with the contractor agreeing to deal with 50% of the claim – having been unwilling to even discharge their own costs at the mediation several months earlier
- Resolved an extremely complicated claim that involved a medical negligence component insofar as a cannula had been retained in the plaintiff's arm following a surgical procedure which resulted in physical and psychological sequelae arising
- Successfully resolved a cyber claim in which €300,000 was misappropriated by an Eastern European cybercriminal from an Irish firm of solicitors. The potential liability of the bank which facilitated the transaction was explored as well as the scope for holding the external IT contractors responsible for the loss. Through swift intervention, it proved possible to have the funds frozen in the Latvian bank and, with the assistance of a local firm of solicitors, the funds were successfully recovered in full following a court action, leaving the firm at no loss
- Compromised a claim arising from a road traffic accident in which the physical and psychological trauma of the accident caused the plaintiff to experience a severe recurrence of her previously dormant fibromyalgia condition leading to the onset of chronic pain

## ***Professional Activities***

- Member of Forum of Insurance Lawyers (FOIL)
- Member of Professional Negligence Lawyers Association (PNLA)
- Delivers tutorials to PPC1 students on civil litigation, Law Society of Ireland, Blackhall Place
- Leading industry speaker at national and international conferences upon a diverse array of topics including professional negligence, commercial litigation, insurance, data protection and cyber security risks
- Member of the Law Society of Ireland.



With thanks

To complete your feedback form please go to:

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