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QUARTER 1 2021

OUR PATH BACK TO NORMALITY

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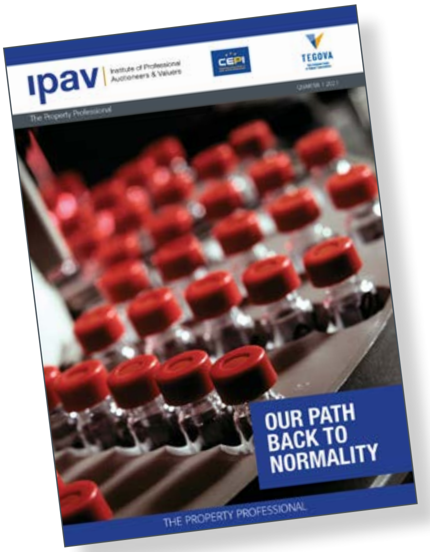

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QUARTER 1 2021

MESSAGE FROM THE CEO

Welcome to the Quarter 1 2021 edition of *the Property Professional* magazine.

We are already well into another new year, but it is a very different year from any other we have experienced in the past. Indeed, it is startling to realise that in early March it will be already one year from the first Covid-19 lockdown in 2020. The pandemic has caused major problems for the whole world, not least the huge numbers of people who have died from its effects. In whatever walk of life people are involved, it has changed their lives dramatically.

Professionals like estate agents have suffered too, but despite the many challenges -and IPAV always puts the health of people and members first - most members came through 2020 reasonably well. However, the re-introduction of Level 5 in late December and further restrictions on the 13th January to be reviewed on the 28th January meant a very challenging start to 2021 as property viewings are very restricted. A further extension on the 29th January to a review on the 5th March means that hopefully, by early, or mid-March, we can look forward to the opening up of society to some extent at least. Although the general feeling is not to open up more than is necessary until the vaccine has been rolled out to the extent that we will have permanent herd immunity, understood to be when approximately 70 per cent of the population is vaccinated, which, it is hoped, will be sometime in August or September.

Despite all the challenges, IPAV has been as flexible and responsive to the needs of members and the public as possible. Some events such as the YPN Novice Rostrum Competition have had to be postponed but our regular student classes and other events are continuing, albeit online.

On Tuesday, 26 January Minister of State Martin Haydon launched IPAV's annual Farming Report which was once again prepared by Philip Farrell. I was delighted by the large number of members who joined in and I wish to thank our President Tom Crosse and all those who made the event such a success. A summary of the report is contained in this issue and Cork member Mike Brady has a very interesting article on the upcoming CAP reforms and how they might affect our farming community.

IPAV members continue to be frustrated by the very slow and archaic conveyancing system still operating in Ireland and later this year, with the help of barrister Lorraine Higgins, we hope to draft a Bill on a Seller's Legal pack and present it to the Dáil. There are details on page 6.

Also, in this issue Nick French, a presenter at our valuation conference, has an interesting article on valuations for members involved in this area while solicitor Gráinne Varian of William Fry Solicitors writes about how courts view the non-payment of rent by commercial tenants during the pandemic.

This time in our members' section, we profile Council member Joanne Lavelle of Lavelle Auctioneers & Valuers in Dundalk and Ronan Crinion of MoveHome.ie who has recently opened a second office at No 1 Capel Street. Our regular contributors Donal Buckley, Tommy Barker and Frank Quinn also have articles of interest for members.

Sadly, in this issue we pay tribute to two stallworths who have passed away, former IPAV President Paul Reynolds from Letterkenny and TEGoVA's Roger Messenger. May they both rest in peace.

Finally, I again ask all members to follow the Property Services Providers Guidance to implementing the Plan for Living with Covid-19 as well as all HSE guidelines and to stay safe.

Best wishes

Patrick Davitt
CEO

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PRESIDENT'S MESSAGE

"...The single biggest dynamic has been working from home which will now become the norm for many thousands of workers rather than the exception. ."

Dear Member

A belated Happy New Year to all and the very best for 2021. Firstly, I would like to offer my sympathies on behalf of IPAV to all members who have lost family members, relatives or friends from the pandemic. The reports coming from front line staff in all the hospitals across the country make for very sober reading and it behoves all of us to continue to do our utmost to try to limit the spread of this disease to the best of our ability.

IPAV now operates a strict protocol in all property services and I wish to thank all members for their co-operation in this regard. While there are inevitable delays and hiccups along the way, the word from most agents is they are coping and business is up and running relatively smoothly. However, let's all hope the restrictions are lifted in the not-too-distant future. All the latest reports on property prices, including the central Statistics Office, show that residential property prices have risen despite the pandemic and the outlook for 2021 is very positive indeed. However, the long-term effect on the office and commercial sectors is far more uncertain.

There is no doubt that Covid-19 has changed the face of the property industry forever. The single biggest dynamic has been working from home which will now become the norm for many thousands of workers rather than the exception. I know members in commuter towns around the country have been inundated with queries regarding buying homes and moving from the cities. This is a good development and over time should ensure a more even spread of housing supply and a balancing of prices.

Government policy has a key role to play at this critical time and in the pages of this edition, you will see that IPAV has some serious concerns about the current direction. For example, IPAV has serious reservation that the new Shared Equity scheme will provide a meaningful solution to the housing shortage and could, as some have predicted, drive house prices even higher. It is hoped that the proposed Housing Commission will get off the ground sooner rather than later and that it will be fully representative of all the stakeholders across the industry and not just a select few.

The Covid-19 restrictions has imposed limitations on IPAV's normal calendar of activities but essential services including all our education and CPD courses are continuing uninterrupted online. The advent of social platforms such as Zoom, Skype, Teams and others have transformed the way we do our business and IPAV will be embracing these as part of its permanent toolkit in future. The notion that members can do an hour's work in the office in the morning, then partake in a CPD course for a few hours and be back at their desk again in the afternoon is a very attractive prospect for busy estate agents and is one IPAV will continue to explore.

This year is, of course, a special year for IPAV as we celebrate our 50th anniversary. The exact date is the 14th of April 1971 when 10 farsighted individuals met in Dublin's Barry's Hotel and started an organisation that over time evolved into the 130-strong institute of today. We strongly salute those individuals and hope to get an opportunity towards the end of the year to formally mark the year with a significant social event. For the moment details of other planned events remain on hold but the major vaccination programme now underway gives great hopes for the latter half of the year.

Finally, I wish to pay tribute to two individuals who made a major contribution to IPAV in recent years and who passed away towards the end of 2020. Paul Reynolds from Letterkenny was a long-time member of National Council and served as IPAV President in 2010/11. Paul was an exceptionally talented businessman and a very shrewd contributor at Council meetings. He will be sorely missed.

The second person to leave us was the UK's Roger Messenger. For many IPAV members, Roger was synonymous with TEGoVA, the Association of European Valuers where he served in a number of roles, including chairman. Since 2016 he was a yearly contributor at IPAV's Annual Valuation Conference and it is hard to imagine a conference without his presence. A giant of a man in every sense, his advice and expertise in an often very complex area will be sorely missed.

Unfortunately, Covid restrictions mean that for the present I cannot get out and about to meet members across the country as I had planned. For now, our communication is confined to social platforms and IPAV's regular publications. However, like our staff in Head Office and members of National Council, I too, am available to hear the ideas and concerns of members by email or a chat on the phone.

With every good wish.

Tom Crosse
President

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CHANGING CENTRAL BANK GUIDELINES MORE IMPORTANT THAN NEW SHARED EQUITY SCHEME

Despite the Covid-19 lockdowns and restrictions, residential property prices have remained remarkably resilient. Part of the reason is, of course, a real shortage of supply with many IPAV members appealing to people who are thinking of selling to come to the market now as it is vibrant.

Previous and ongoing Covid-19 related stoppages in construction could mean that house prices may well rise further in 2021 and beyond. Due to Covid-19 restrictions home completions for 2020 will be significantly below the expected 22,000 when the final figures emerge. Even if the Government's 25,000 home-completion target for 2021 is met - and that seems unlikely even at this early stage - it is 10,000 less than what the National Development Plan requires.

It is against this background of reduced supply that the Government has introduced a new affordable scheme. Officially titled, the Affordable Purchase Shared Equity scheme, it will see the State take an equity share of up to 30 per cent in the purchase of a new home in the under €400,000 category. The Cabinet gave its approval to the draft Bill before Christmas and it is understood the final details of the scheme are currently being finalised and it is planned to launch the scheme later this year. It is apparently based on a UK scheme introduced in 2013, which has been criticised for inflating house prices, assisting those that are not in need of assistance and putting both the home-buyer and taxpayer at great risk.

The aim of the scheme is principally to close the affordability gap for those who may earn too much to be eligible for social housing but not enough to pay the full market price themselves. Recent commentators expect that as many as 8,000 families a year might buy homes on the scheme in the first two years.

The Property Ladder

The obvious advantage for homebuyers is that they will be able to get on the property ladder even though they may own only 70per cent of the property at the start of the mortgage process. In essence, the scheme means that potential homebuyers will buy a property with two other stakeholders, firstly their lender, who will own a majority share in the property, until the loan is repaid over a specified time frame, and the State, which will own a stake of up to 30 per cent. In the event of default, the mortgage lender will retain the right to first recovery. While the State's stake will be interest-free for the first five years, a fee will kick by year six, thereby increasing the mortgage repayment. An interest rate of about 1.5 per cent has been mentioned but, in the UK, for example, it is 1.75 per cent. It appears the Government equity stake would increase if the property goes up in value and down if it goes down in value, a very unstable position for the buyer. Take a house bought for €350,000 with say a 10 per cent stake by the State on day one, that is €35,000, if by year five the property has increased in value from €350,000 to €400,000, the Government stake would now be worth €40,000 and visa verso if the value goes down the Taxpayer will pay the difference.

Central Bank

However, some have already warned that yet another intervention by the State may make an already heated market even hotter.

The reason the Government is going down this road is likely because of difficulties with directly subventing homebuyers due to EU state aid rules.

However, IPAV has long advocated a different route to helping first-time house-buyers get on the property ladder and own their own property from day one, an easing of the Central Bank rules on borrowing.

In my view, the Affordable Purchase Shared Equity Scheme, is a grandiose scheme to get around the problem created by the severity of the Central Bank of Ireland (CBI) Macro Prudential mortgage rules. It is difficult to see how 8,000 families will take advantage of the scheme yearly. I am not suggesting the scheme is not required, it should only be necessary in isolated cases rather than becoming the norm in the market. The scheme needs to be examined very carefully. Being a model used in the UK, where questions have been raised about its effectiveness, does not bode well for it being a solution to the Irish problem.

Lower paid employees

The current CBI rules do not work for lower paid employees who could well afford to purchase a family home and repay a mortgage, at less than the cost of rental in most circumstances. The macroprudential mortgage rules may be satisfying regulators but are far too severe on the lower paid. IPAV has proposed that the loan-to-income threshold for mortgages should be increased to 4.5 times income, at the very least for those on incomes of up to €50,000 a year. While the CBI is independent, the Government should impress upon them the need for greater flexibility in the rules.

Outside of the main urban areas and commuter belts, properties are still cheap. In addition, interest rates are at an all-time low and fixed mortgages, albeit higher than the euro area average, are now available for up to 10 years. According to the recent Daft.ie rental report rents in areas like Carlow, Galway county, Roscommon, Donegal and many more areas are almost double the cost of servicing a mortgage for the same properties. Even allowing for a 2pc increase in mortgage rates, which is not at all on the horizon, it is still substantially cheaper to service a mortgage.

Currently, approximately 60pc of purchasers can buy without mortgage finance. Home ownership is rapidly becoming the preserve of the better off in Irish society. It may not be a problem unique to Ireland but that does not mean we are not capable of a policy response that addresses it.

The Housing Commission promised in the Programme for Government needs to bring all elements of housing policy together. Isolated interventions that have not been fully thought through have been the bane of the property market in recent years and have brought about severe unintended consequences and the Affordable Purchase Shared Equity scheme may well be no different.

THE LATE ROGER MESSENGER

When news came through to me on the morning of the 16th of November last of the very untimely death after a tragic accident at home of Roger Messenger, I was shocked and dumbfounded and simply could not believe as to why Roger would go at such an early age. We were in contact only a few days before and he was in great form.

The Big Man, as he was affectionally known by another friend of mine, but to most members he was simply known as Roger, the simple speaker who told it as it was, a gentleman, so helpful and generous with his time and such a great friend of IPAV where he was an Honorary member for the past three years.

I would email Roger on many valuation queries. Saturday and Sunday were normally the best days. We would often entice other members of the TEGoVA board to also take part depending on how interesting the subject was. The discussion could go on for hours with anything up to 50/60 emails exchanged. One thing was for sure, Roger had the answer and whatever he emailed was thoroughly studied by all.

He was a wise council and an absolute expert. I was very privileged to know him. I am quite sure he often said: 'Oh No, not Pat again', but he still answered Monday to Sunday and his computer, or his phone, was always accessible.

I would meet him before a TEGoVA meeting outside the office in Brussels about 9am. Regularly he would have driven from London but would have some joke or wise crack in his own inimitable style. He would spend all day at the meeting and drive back to London about 5pm often calling me on the way home to further discuss a topic, but all in the day's work as Roger would say himself.

Roger's enthusiasm, his simple inspirational influence, his leadership, professionalism, expertise, negotiating skills and sheer hard work was such a big part of him over many years and gained him the respect he deserved from valuers throughout the TEGoVA association, in Europe, England, America, Canada and Ireland.

It will be no surprise that in his profession Roger was a huge influence. A Senior Partner of a London firm of surveyors with origins back in the 1840's, twice President of the IRRV (Institute of Revenues Rating and Valuation) and chairman of TEGoVA, the European Group of Valuers' Associations. It was no wonder Roger was amongst the top few in his field and was regularly called upon either to act as expert witness, or to arbitrate in high profile legal cases.

On the home front he was the beloved husband of Lynne, he was a trustee of the Lloyd Hall Charity, Chair of the Outwood Village Show Committee, fundraising auctioneer par excellence, classic car enthusiast, musician and band leader plus commander in chief of three beautiful charismatic golden retrievers. One would say Roger was an all-rounder and a connoisseur of the finer things in life. He even found the time to learn and speak fluent Russian.

The last time I spoke to Roger he completed a presentation for IPAV at our Valuation Conference on the 28th of October 2020 where he was a yearly contributor since 2016. Members loved to hear him speak in his non-complicated no-fuss simple manner. No matter what the subject was, he had the ability to communicate to everybody present. His untimely death leaves me with a huge problem to follow him at future conferences.

Roger will be remembered by me for his great kindness, wise advice, sense of humour and friendship. I pass on my sincere sympathy and that of all members of IPAV that knew Roger in some way to his dear wife Lynne and his family on their huge loss. A legend that will be sorely missed. Go ndéana Tiarna trocaire ar a anam.

Pat Davitt

IPAV TO DRAFT HEADS OF BILL ON A SELLER'S LEGAL PACK (SLP)

Lorraine Higgins

IPAV is to press ahead with drafting legislation for a proposed Sellers Legal Pack (SLP) to lead to more efficient conveyancing. The SLP is a collection of documents that IPAV proposes should be provided to aspiring purchasers when a property is placed on the market, therefore front-loading the process. The motivation to change the current situation is rooted in the findings of an IPAV conveyancing survey which revealed that 79% of estate agents experience conveyancing delays between the point at which the sale of the property is deemed to have been agreed and when the sale is actually concluded.

The average time taken, between the point of agreement of sale and the signing of contracts, was shown to be 10 weeks. The time taken from the signing of contracts to the conclusion of sale is normally six weeks.

Among the benefits of an SLP Bill are:

- Reducing the number of property sales which fall through due to gazumping or gazundering
- Streamlining the process to align with public and online property auctions
- Allowing for the filtering of properties prior to sale to confirm saleability
- Reducing the potential liability for the seller/ vendor

There are also a number of additional non-monetary benefits which have not been quantified and these can include but not exclusively:

- Increased transparency
- Greater certainty
- Reduced transaction times and
- Reduced stress in the purchase of a property

IPAV CEO Pat Davitt said these benefits will deliver an improved home buying and selling process. "The Seller's Legal Pack represents an important investment, given significant non-refundable costs such as surveys, legal bills and mortgage valuation should the deal fall through due to lack of important information up front."

Barrister and former senator Lorraine Higgins has been retained by IPAV to progress the project.

To date the following lobbying has occurred:

On Wednesday, 18 November 2020 IPAV briefed a number of TDs and Senators on the advantages of an SLP.

IPAV has reached out to a number of ministers including the Minister for Justice, Helen McEntee TD; the Minister for Housing, Darragh O'Brien TD; the Tánaiste and Minister for Enterprise, Trade & Employment, Leo Varadkar TD; the Minister of State at the Department of Justice, James Browne TD and the Minister of State at the Department of Enterprise, Trade & Employment, Robert Troy TD.

Senator Aidan Davitt, speaking in the Seanad, raised the need for the SLP to be introduced in order to eradicate the delays being experienced by the industry in the conveyancing of property. Senator Davitt outlined the overwhelming benefits for consumers and called on the Minister for Justice to act on the proposal.

Senator Aidan Davitt

Senator Davitt continued: "I understand that the ultimate ambition of the IPAV is to streamline the conveyancing process and to make it more efficient. This is a move that I am sure all Members of the House would support. I am assured that the SLP will substantially reduce the delay incurred in the current sales process, which is unaligned and rife with uncertainty, presenting legal risks to both vendors and purchasers. It will help to limit the terrible practices of gazumping and gazundering, and will create greater certainty around the process for consumers and buyers. I firmly believe that we must reach the point between all relevant stakeholders and those directly involved in the property transaction to develop a substantial property market where people can buy, sell or rent properties in a cost-effective manner. Perhaps we can have a debate on this particular issue. It was raised in the previous term of the Seanad."

In the Dáil IPAV raised a number of parliamentary questions relating to the need for the SLP to be introduced. In one written parliamentary reply, for example, to Independent Deputy Noel Grealish on 4 November 2020, Justice Minister Helen McEntee said while she had no immediate plans to introduce or amend legislation in this area, as with other policy and legislative reforms, interested parties were welcome to make submissions on the matter.

IPAV has written to the Chair of the Oireachtas Committee on Justice, James Lawless TD to request a debate and discussion on the SLP at the earliest possible convenience. IPAV is awaiting confirmation of this meeting.

IPAV has written a chapter on the Seller's Legal Pack for a recent publication, *Guide to Selling Your House,* authored by solicitor Brian Morgan. Contained within the said article is a full account of the details pertaining to the SLP and its benefits.

Next Steps

It is now proposed to move to drafting Heads of a Bill which will contain a number of provisions relating to the proposed SLP. This legislation prescribes the documents to be included in an SLP, the circumstances and method by which such documents are compiled, as part of the general advertisement of the property. The Bill also provides for exceptions and enforcement.

The proposed legislation, as outlined in the Bill, is a clear acknowledgement that the conveyancing process is not working efficiently and that delays have led to frustration for all parties concerned in seeking to close property transactions in a timely, efficient and cost-effective manner.

Indeed, conveyancing delays have been identified by auctioneers as far back as 2005 as set out in the Auctioneering/Estate Agency Review Group, a report that was delivered to the Minister for Justice, Equality and Law Reform. In particular, the Group report noted: "The Group also believes that the Regulatory Authority should make it a priority, in its consumer awareness role, to ensure that buyers and sellers are better informed about the conveyancing process so that they can, if they wish, become more proactively involved in their own transaction."

IPAV members are now invited to bring forward their own proposals in this regard which will be considered for inclusion in the new Bill.

Once the content is finalised, East Galway Deputy Sean Canney will bring forward the Bill in the Dáil so that the SLP can begin a legislative journey which could ultimately culminate in the introduction of a SLP within the current Government's tenure.

FURTHER CHANGES TO THE RESIDENTIAL TENANCIES ACTS

BY TIM RYAN

RTB
Bord Um Thionóntachtaí Cónaithe
Residential Tenancies Board

There have been yet further changes to the Residential Tenancies Acts recently.

The emergency period under the Residential Tenancies and Valuation Act 2020 (RTVA 2020), which applied to situations where a tenant was in rent arrears due to Covid-19 and was at risk of losing their tenancy expired on 10 January 2021. The new Planning and Development, and Residential Tenancies Act 2020 (PDRTA) essentially replaced the RTVA from 11th January 2021.

On 19 December 2020 Part 3 (Residential Tenancies) of the Planning and Development, and Residential Tenancies, Act 2020 (PDRTA) was enacted to provide for temporary modifications to the operation of the Residential Tenancies Act 2004. During the period from 11 January last up to and including 12 April 2021 and subject to certain conditions, a 90-day (rather than the usual 28 days) termination notice period applies, where a tenant is in rent arrears due to Covid-19 and is at risk of losing their tenancy. The earliest termination date allowed in such circumstances is 13 April 2021.

Rent increases are prohibited for relevant tenancies up to and including 12 April 2021, with no back-dating allowed. The PDRTA also introduces landlord protections if they meet certain criteria, including if they are in undue financial hardship, or qualify as a relevant person amongst others. The aim is to further assist tenants financially impacted by Covid-19, while recognising and balancing the rights of landlords who, equally, may be in financial difficulty during this unprecedented period.

The RTB website has been updated to reflect this new legislation. It has also created a new Guidance Document, FAQs, Tenant Self-Declaration form and Landlord Self-Declaration form, which are attached and can be found on the RTB website as well.

RTA 2020

As members probably already know, the emergency period under the Residential Tenancies Act 2020 was reintroduced on 31st December 2020 and is due to expire on 5th March 2021. This legislation was automatically reintroduced as a result of the return of 5km restrictions on people's movements. Please note any time there is a 5km restriction imposed on people's movements, in line with public health restrictions, the moratorium on evictions with certain exceptions, will automatically kick-in.

The RTA 2020 also includes a 10-day grace period for ending tenancies, which means the earliest anyone can be made to leave their accommodation under this current emergency period is 15th March 2021. The RTB website has also been updated to reflect this and includes the Guidance Document and FAQs on the RTA 2020 for further information.

HOW COVID-19 HAS CHANGED THE FUNDAMENTALS OF THE COMMERCIAL PROPERTY MARKET

BY DONAL BUCKLEY

For centuries a key fundamental of the commercial property market has been the faith in the prime pitch or Central Business District, or the core, or the prime core. However, Covid-19 has shaken the faith in this fundamental. At its heart was the combination of high street retail together with Grade A offices for the financial services sectors. In Dublin this Central Business District had, up until the late 20th century, been concentrated in Dublin 2 and especially between College Green, Harcourt Street and Mount Street.

Then as demand from financial services and technology companies for office space coincided with the rehabilitation of Docklands, the footprint of the pitch expanded to include the South and North Quays to the east of Butt Bridge but for the most part Dublin 2 attracted the seekers of prime pitches. Now that same technology trend which had driven this demand looks set to turn it on its head.

Consumers are using technology to purchase their goods on line and this has seriously affected footfall, rents, investor demand and values for bricks and mortar retail properties. Meanwhile, use of technology for remote working has raised concerns about future demand for offices and the sustainability of commuting.

Switching focus

It has also redirected demand for logistical property accommodation, so consequently investors and developers are switching their focus to logistics properties which are located closer to the M50. Such increased take-up and demand for logistics properties has seen the vacancy rate for modern facilities in Dublin fall to 2pc and prime industrial rents have increased by 4pc to €10.50 per sq. ft.

In contrast the two prime shopping streets in Dublin's Central Business District suffered some of the sharpest falls in property values as a result of the Covid pandemic. According to the MSCI Property index, in the six months immediately after the first lockdown values of retail properties on Grafton Street fell 18pc while those on Henry Street dropped 19pc. That's some setback for two streets which boasted some of Europe's most expensive real estate during the Celtic Tiger. But it may be even worse as at least one major institutional landlord, IPUT, marked down the value of some Grafton street properties by even more.

In contrast retailers in suburban villages and shopping centres fared better and even more interesting was the level of shopping activity seen in 'parades' or groups of small shops. That augurs well for local investors who may own individual shops with an office or apartment overhead in those parades. If that activity is sustained as more suburban residents work from home, then rents and hence property values may hold up better for such properties than for those former trophy retail assets in city centre locations.

Aerial view of Dublin city centre commercial quarter

Indeed, with little or negative interest available on bank deposits, it may well be that such small and medium sized investors may well focus more of their attention on such properties and enable their values to improve.

Growth of coffee kiosks

Yet another feature of suburban retail markets has been the growth in coffee kiosks. Since May three of them opened in the Stillorgan / Goatstown area of south Dublin catering for consumers who include those working from home and miss the coffee fix that they used to enjoy when working in the City Centre Business District.

A feature of the three coffee outlets is that they have almost literally popped up in car parks beside gastro pubs which closed, or suffered reduced business due to Covid restrictions. Some coffee drinkers also enjoy their Covid-restricted social interaction by meeting friends while they stand nearby sipping their coffee.

From a property investor's perspective, one concern is that instead of renting an existing property, the baristas operate from former logistics containers converted into kiosks thus reducing much of the overheads and the risk associated with property leases.

Further evidence of the scale of remote working was seen with a recent CSO labour force survey which recorded how the numbers reporting their home as the primary place of work had risen from less than 5pc before the pandemic to almost 28pc by November.

In response to the trend, Tánaiste and Enterprise Minister Leo Varadkar has said up to 10,000 co-working and incubation spaces are planned for regional locations around the country over the next three years in a move to help start-ups and employees engage in smart work measures. So, after the pandemic passes, remote working may well benefit several small towns around the country.


The former Central Bank building on Dublin's Dame Street.

Garden Offices

Further evidence that more employees expect to engage in remote working is reflected in demand for garden offices and log cabins. A recent report in the Irish Independent said that some suppliers of these facilities were booked up for months.

Stewart Doyle, director of Home Hub Living, one of the newest entrants into the market, was quoted in the report as saying that as well as demand for home-working hubs, there is also big demand for purpose-built home gyms, yoga studios, playrooms and bars.

"Orders largely reflect the huge transformation our society has undergone since the pandemic hit, but they also indicate a significant shift in lifestyle changes," Mr Doyle said. "More and more people are utilising their home and properties to incorporate new spaces in which to work, to work out and to socialise."

If that trend were to gather momentum, it would mean a serious swing away from commercial property. However, the even greater likelihood is that after the vaccinations get underway more people will wish to socialise away from their homes. They are also likely to wish to meet work colleagues in their work places and enjoy the creativity that comes from sharing ideas and gossip on a face-to-face basis rather than over their phone apps.

Furthermore, most home-owners do not have either the space or the funds to make such changes to their residences. In addition, home ownership is curtailed by a combination of affordability, mortgage restrictions, lack of new housing supply as well as the diversion of much of that supply into the rental market. Consequently, demand for rental accommodation looks set to remain high and most of these tenants are also likely to wish to socialise outside the apartments, especially if they have been remote working in them.

On the other hand, an increasing feature of the larger new apartment developments has been the addition of gyms, games rooms, mini cinemas, co-working spaces and community rooms where residents can host family parties. They are more common in build-to-rent complexes and shared living or co-living rental accommodation which is fair in terms of ensuring that such residents have adequate social facilities.

However, it leads to the question as to whether such facilities may also contribute to reduced demand for the social and experiential aspects of city centre business districts.

PROPERTY VALUATION – ARE WE CERTAIN THAT WE ARE UNCERTAIN?

BY NICK FRENCH, REAL ESTATE VALUATION THEURGY, PROPERTY EDUCATION, UK

Introduction

In late October 2020, I was presenting a paper on an international zoom conference and suggesting that even in the depths of a second wave of coronavirus across Europe that property markets, and thus valuers, had adapted and that the reliance by valuers on the "Material Uncertainty" disclosure is no longer appropriate. For suggesting this, a viewpoint shared by the Royal Institution of Chartered Surveyors, I was adamantly told by the moderator that I was "living in cloud cuckoo land". His argument being that people are really struggling with government-imposed lockdowns impacting so negatively on their lives and thus a valuer cannot objectively value any underlying property assets. Whilst this misunderstanding could be the result of my own poor exposition, I think that it was more about the fear of valuers operating in markets that are different to the pre-Covid environment.

Let me explain. When Covid was declared in March 2020, many professional valuation bodies around the world recognised that the complete stagnation of all property markets meant that uncertainty in valuations would be greater than normal. This is called MATERIAL or ABNORMAL UNCERTAINTY and relates to the degree of uncertainty that the valuation figure provided would match the hypothetical sale figure in the market at that point of time. And, in the stagnation of that period of time, I fully concurred that it was appropriate to make such a declaration.

But, as with "any shock to the system", markets quickly adapt and whilst the personal loss and business failures of Covid was, and still is, traumatic, the valuer has an obligation to their client to provide a professional valuation. When I started as a valuer, I remember speaking with some of my colleagues who had worked through the Second World War when valuations were still needed and provided with no market data at all. Whilst they were very supportive of a young surveyor, they were also quite dismissive when I suggested that I didn't have enough evidence on which to base my valuation commenting that "I didn't know that I was alive". So, a valuer cannot abdicate their professional responsibility.

The question becomes "at what point do we stop using material uncertainty?" And the question has two answers. (1) at the point where there is sufficient market activity in the form of transactions and offers that the valuer has sufficient data to determine market value without material uncertainty. And (2) at the point where the valuer has adapted to a paucity of transaction data and uses all other forms of market sentiment to determine market value. Obviously, the two are not mutually exclusive.

Transaction evidence

In fairness, most valuers in transparent markets such as the UK or Ireland (markets where there is relatively easy access to market data) have had the luxury of reliable transaction evidence to use and analyse for decades and it has only been in the deep property crashes of the Eighties and Noughties that they have needed to rely more heavily upon other forms of market sentiment to determine value. At the same time, colleagues in more opaque countries (markets where, due to cultural restrictions and/or indigenous business practices, there is a lack of transactional evidence) have always used other forms of market data more readily to provide market value. This might be data that valuers from transparent markets would have, historically, considered to be less useful. But the impact of Covid is that all markets stopped and all transactional comparable evidence and all market sentiment disappeared in all countries overnight; the playing field became even. Material uncertainty was a sensible requirement at that point in time.

But that was in March 2020. By June 2020 many markets were adjusting and, in some cases, experiencing booms. Residential sales in the UK and many other countries around Europe were experiencing unprecedented demand as property owners in the big cities realised that the need to be close to work was less (now that home-working has been proved to be a viable option) and a more provincial or rural home with more space inside and out was a possibility. That change in consumer behaviour, together with some governments giving property transfer tax holidays to kick start the market, led to substantial market activity. So

much so that valuers should no longer rely upon any material uncertainty caveat.

Likewise, in the industrial and logistic markets both of which have experienced upturns with more retailing being completed online. Even offices and high street retail, which have suffered so badly with fewer occupants and less footfall, have started to experience transactions again albeit at much lower prices. In other words, in those markets, there is sufficient evidence in all forms to allow the valuer to value without any material uncertainty clause. The world is adapting.

Market Sentiment

In other markets which are not fairing so well in terms of sales activity there has been an increase in market sentiment and other pricing signposts such that valuers have sufficient information to interpret the market appropriately and provide valuations on a normal basis. It is only properties where value is so interlinked to trading profit (restaurants/leisure/tourism) that professional bodies are still suggesting, quite rightly, that a material uncertainty clause should be used.

So, my residence in the clouds is much overstated. Valuers need to understand that the material uncertainty clause is not a "get out of jail" card. A valuer has a duty to provide their client with their professional opinion of market value. An active market is still an active market even if it is functioning against the backdrop of a horrible pandemic. The valuer, at a professional level, must disengage from the emotive struggle caused by lockdowns and provide an objective expert opinion of value. And even in markets that do have a paucity of information the valuer has to adapt their valuation heuristics to match the state of the market at that juncture. The confusion of the start of the pandemic has passed and we are no longer experiencing the same uncertainty that trigged the use of material uncertainty clauses.

> Not all markets are the same and the skill of the valuer is not just to determine which properties need the use of a material uncertainty clause, it is also important that they understand when such a clause is not needed.

*Editor's Note: *This article was originally published in The Property Chronicle Quarterly (Winter 2020) and is reprinted with permission. www.propertychronicle.com. Readers can access the full Winter 2020 edition of The Property Chronicle Quarterly by following this link https://www.propertychronicle.com/download-the-latest-property-chronicle-magazine/*

EU COMMON AGRICULTURAL POLICY REFORM - RELEVANCE TO AGENTS

BY MICHAEL BRADY

For agents who are involved in the sale and leasing of land, or practice some hobby farming at the weekends the upcoming EU Common Agricultural Policy (CAP) reform will be of interest.

Background

The CAP is the agricultural policy of the European Union. It implements a system of agricultural subsidies and other programmes. It was first introduced in 1962 and has undergone several changes since then. Ireland joined the then European Economic Union (EEC) in 1973. The CAP has undergone many changes since the early days, the main one being the reduction in cost to the EU, down from 73% of the budget in 1985 to 37% of the budget in 2017.

It aims are as follows:

- support farmers and improve agricultural productivity, ensuring a stable supply of affordable food;
- safeguard European Union farmers to make a reasonable living;
- help tackle climate change and the sustainable management of natural resources;
- maintain rural areas and landscapes across the EU;
- keep the rural economy alive by promoting jobs in farming, agri-foods industries and associated sectors.

The CAP is a common policy for all EU countries. It is managed and funded at European level from the resources of the EU's budget.

EU CAP Reform 2023 - 2027

The last CAP regime ran from 2015-2019 but it has been extended under transitional arrangements to run to the 31st of December 2022. This was primarily caused by Brexit and the uncertain position of the United Kingdom throughout the last regime.

Therefore, the new CAP will commence on the 1st of January 2023 and run until December 2027. The Irish Government must submit its Strategic CAP plan before February 2022 for approval by the EU Commission. This will determine the method of allocation of payments to farmers in the next CAP regime. Stakeholders across the country are presently busy preparing submissions for government to try and influence our Strategic CAP plan.

When the new CAP regime rolls out in 2023 we will be just two years away from a general election. The big question is: Will the good ideas submitted in the stakeholder submissions be taken into account, or will there be a reluctance on the part of government to tackle the thorny issues around distribution of CAP funds for short term political gain? The European Commission has stated nine high level objectives of the next CAP which are broadly focused on climate change, environment, animal welfare and antimicrobial resistance issues.

What we already know is the Basic Payment Scheme (BPS) will be replaced by Basic Income Support for Sustainability Scheme (BISS), Eco Schemes will replace the greening element of the existing CAP. These new Eco-Scheme measures will account for somewhere between 20-30% of a farmer's direct payment. The Eco-Schemes will be optional so that farmers can choose to opt out and take a reduced payment. Potential agricultural practices that farmers could be paid to carry out under Eco-Schemes in the new reform are as follows:

Organic Farming:

This commission has targeted 25% of all agricultural land being organic by 2023. By comparison in Ireland we presently have 2% of agricultural area classified as organic. In my opinion this is because many of our farmers are already organic, but just not classified as so. Small changes on these farms and an objective look at the definition of organic will help achieve this target in Ireland.

Integrated pest management practices:

This Commission has targeted 50% reduction in pesticides by 2030. This measure will involve reducing inputs, implementing field and river margins and using mechanical means to control weeds.

Farming Carbon:

Rewetting bogs, maintaining minimum water tables, extensive grazing practices, increasing permanent grassland and ploughing in of straw. As beef and dairy are the big enterprises in Ireland there will be a big emphasis on methane emissions from ruminant livestock.

Precision Farming & Nutrient Management:

Improving soils with better nutrient management planning, reducing fertiliser and pesticide use.

High Nature Value Farming:

This measure is particularly suitable to Ireland as we have a lot of marginal land and extensive farms in all parts of the country but in particular the uplands, hills and mountains. Farmers could be paid to increase biodiversity for example provide wild bird cover and wildflower meadows.

Practices related to greenhouse gas emissions:

Using feed additives such as sea weed for livestock and better manure management etc. to reduce the level of GHG's produced from agriculture.

Agro-ecology:

There are a number of measures suggested for Agro Ecology i.e. crop rotation, winter soil cover. Tillage farmers will be encouraged to sow nitrogen fixing crops and livestock farmers will be encouraged to use multi-species swards for grassland.

Husbandry & animal welfare plans:

Farmers will be encouraged to draw up feeding and health plans that augment the welfare of animals.

Agro-forestry:

High biodiversity agro-forestry systems. This measure is new to Ireland and will involve planting trees in grassland while sill farming in between the trees.

Protecting water and & soil resources:

Irrigation management and soil erosion prevention, not really relevant to this country.

Land market affect

The proposed new reforms will certainly have an effect on the land market. I will look at these as follows:

Land Leasing:

There certainly will be an increased demand from intensive livestock farmers to lease additional land. The reason for this is because it is anticipated there will be a reduction required in livestock stocking rates and also a reduction in the use of fertilisers. If farmers want to keep the same level of livestock, they will have to take on more land. Dairy farmers will lead this demand as they are the most heavily stocked livestock farmers. Speculation about the method of calculation for the new farm payments always leads to an increase in the demand for leased land. It is probably correct to assume that the more land you farm, the more payments you will receive.

Land Sales:

EU payments in my experience do not influence the sale price for quality agricultural land. Farm payments may affect the price of marginal land particularly large tracts of mountain and hill. There may be increased competition for this category of land as it appears there will be payments for rewetting of bogs, it is a very good method of sequestering carbon, effectively cleaning up and storing greenhouse gasses.

Entitlement Trading:

It is important to remember that farm payments are not tied to the land, this is often an incorrect assumption made by farmers and agents. The entitlements are tied to the farmer via his or her herd number and can be sold or leased separately. The Department of Agriculture Food and Marine (DAFM) permits the trading of entitlements (farm payments) as it ensures all the Irish funds are drawn down from the EU on an annual basis. It has not yet been decided if there will be trading of entitlements in the new regime but based on previous experience, I cannot see why not.

In summary, the EU CAP reform will commence in 2023, it will bring an estimated €1.2bn per annum into the Irish rural economy for the 5 years between 2023 and 2027. This inevitably will have a positive effect on the price of leased land, land for sale and the price paid for entitlements. This is positive for both farmers and agents.

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IPAV LAUNCHES FARMING REPORT 2020 – A TORRID YEAR WITH A SILVER LINING FOR LAND VALUES

Despite the challenges of Covid-19 and Brexit, land prices in 2020 have remained remarkably resilient throughout the country, according to the IPAV Farming Report launched recently by Martin Heydon TD, Minister of State at the Department of Agriculture, Food and the Marine.

The Minister launched the report at IPAV's Agri Seminar which took place on Tuesday, 26 January attend by over 350 members. The virtual event was chaired by IPAV President Tom Crosse.

Other speakers included Philip Farrell who compiled IPAV's Farm Report 2020; Eamonn Morris from the Property Services Regulatory Authority who made a presentation on prescriptive easements and new amendments to the law.

The Farm Report showed that while volumes may be down arising from the pandemic, with some vendors holding off on selling, demand is particularly strong with notable interest from cash rich non-farmers chasing a better return than they would get elsewhere.

Pat Davitt, IPAV CEO said there are a number of factors driving demand. "Some of these factors have been with us for some time, such as smaller farmers wishing to increase their holdings where neighbouring, usually small plots, come on the market; larger farms consuming smaller ones and continuing interest in land leasing, particularly by younger farmers who are not in a position to buy their own holdings.

"However, the newer factors include investors chasing a better return on their money, returning exiles and the normalisation in working from home. These latter factors in particular augur well for the future of rural residential holdings and land values. If they are sustained they will improve viability on smaller holdings with greater opportunities for off-farm income and will breathe new life into rural Ireland," he said.

Mr Davitt said while the Covid-19 pandemic persists into 2021 it is likely to again impact the volume of land coming onto the market, at least in the first six months of the year. And he said the impact of Brexit remains to be seen but it will create new opportunities for many while other sectors will be adversely affected.

The age profile of Irish farmers is on the high side with about one-third over age 66. Leasing land long-term has become the only viable option in recent years for many young farmers hoping to run their own farms, he said.

"Last year's increase in Stamp Duty to 7.5pc is an additional impediment for young, ambitious and educated farmers in attempting to buy holdings. We're going to need such farmers to lead and drive new opportunities in the Green Economy."

In terms of Brexit, while finalisation of the EU-UK Trade and Cooperation Agreement came as a welcome achievement in the dying days of 2020, it does mean very detailed new regulatory

and customs requirements for those trading with or through the UK.

Brexit also impacts Common Agricultural Policy funding, which sustains the Irish and European family farming system. While it will be several months hence before the final details emerge, the new CAP does place much greater emphasis on climate change measures and the reduction in carbon emissions.

"Farmers are the custodians of our environment and must be centrally involved in decision-making around such initiatives," he said.

Some of the highlights from the IPAV Farming Report:

Munster

Limerick region: Prices averaged €11,000 an acre for larger sized holdings with smaller holdings securing in the region of €17,000.

Cork region: Quality mid-sized grassland holdings securing €16,000 an acre with tillage land at around €13,000, and dairying driving much demand.

Tipperary region: Mid-sized quality grassland and tillage holdings securing €15,000 to €16,000 an acre with dairying being strong, as well as young farmers purchasing. Most lands coming for sale are either as a result of the death of the landowner or the land is being sold by a financial institution.

Leinster

Kildare region: Good quality grass and tillage achieved up to €15,000 an acre, the smaller the acreage the higher the price. Limited supply. Executor sales prominent part of the market. Influence of commercial farmers and the bloodstock industry strong in buying larger holdings.

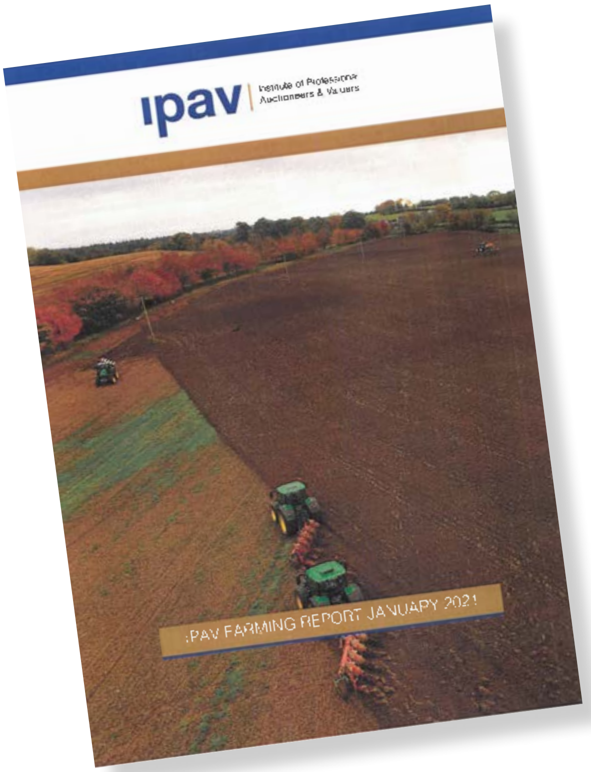
Westmeath region: Supply was better in the latter part of 2020. Good demand with limited supply for both forestry and tillage land. Increasing growth in poultry meat production. Average price per acre about €9,000.

Meath region: Prices range from €10,000 to €20,000 an acre with key determinants being location, land quality and size of holding. Good quality non-residential holdings achieved €12,000 per acre with average holdings being in the range of €8,000 to €9,500. Investors looking for a safe investment and some tax-free income have been very active in the market, purchasing farms and entering long leases.

Cavan region: Price per acre was in the €6,500 to €8,000 range. Forestry is securing up to €5,000 per acre

Connaught

Galway region: Average land prices came in around €7,000 per acre with exceptional lots achieving €10,000. There was a floor of €4,500 per acre for forestry. Securing finance for purchase is a real challenge, with lenders looking for an additional income stream. Long-term letting of land continues to be attractive to young farmers



Roscommon region: Demand strong, particularly for smaller lots of 10 to 50 acres. Local interest was the main driver here. Strong demand also for large quality farms in the 200 to 300 acre range, especially from the dairying sector. Land leasing is of strong interest with good quality ground at €200 to €250 per acre, and lesser quality land at €150 to €180 per acre. Tax breaks on leasing are helping this trend.

Mayo region: The price per acre for good quality land was between €6,000 and €8,000. Generally, lots of between ten to 15 acres attract local interest while anything above that tends to attract interest mainly beyond the local. An uplift in forestry sales saw prices for holdings in excess of 30 acres increase to between €4,500 to €5,000 an acre. Land lettings achieved from €110 to €135 per acre.

Ulster

Donegal region: A minimal supply saw quality land achieve up to €20,000 an acre for some small plots. Average prices for unbroken land were between €10,000 and €12,000 per acre with lesser quality land going for around €8,000 an acre and rural poor grazing land at about €3,000 an acre. Demand is good for farms up to 30 acres and up to values of €300,00, this is very attractive to local farmers. Demand is poor for land which is not suitable for forestry.

IPAV President Tom Crosse

Minister for State for Agriculture, Food and the Marine, Martin Heydon TD

IPAV WELCOMES MINISTER'S RPZ COMMENTS BUT WARNS WIDER CONSULTATION NEEDED

IPAV has welcomed the stated intention of Minister for Housing, Darragh O'Brien TD, to consider dispensing with the current Rent Pressure Zone (RPZ) legislation and replacing it with something better. However, the organisation warned that the Minister should, on this occasion, consult more widely with all stakeholders rather than merely taking views from within the civil service or the "big players" in the market.

"It is worrying to see mention of the German rental model," Pat Davitt, IPAV Chief Executive said. "When Rebuilding Ireland was launched in July 2016 we found ourselves writing to then Minister Simon Coveney warning of unintended consequences particularly for those in their 20s and 30s. Rebuilding Ireland appeared to us to set out a policy agenda of encouraging rental over buying because it set out two countries as good practice models, Germany and Switzerland. It took a couple of years after that for the Government to decide it was actually in favour of home ownership."

Mr. Davitt said the RPZ legislation is openly acknowledged to have been badly drafted from the start and there have been so many amending bills it is now becoming impossible to implement.

COVID-19 HASTENED THE INTRODUCTION OF IT SAYS DUNDALK AGENT

BY TIM RYAN

One of the positive outcomes from Covid-19 so far has been that it hastened greater use of property technology by estate agents across the country. Indeed, for both agents and clients, it has transformed forever the way they will transact business in the future. Dundalk estate agent and IPAV National Council member Joanne Lavelle, MD of Michael Lavelle Estate Agents, made full use of it and is using technology, integrated with social media channels, more than ever, and it is a major part of her tool kit in marketing, selling and renting properties. Her main equipment is a DJI 4 Pro camera which she uses in conjunction with the DJI app, connected to her smart phone.

Coping with the first Covid-19 lockdown in March 2020 presented real challenges. "At the start, we felt we would have to close the doors and shut down for three months but we didn't," says Joanne. "We moved very quickly to get the staff set up at home with laptops and video conferencing and it worked very well. The Acquaint CRM programme from 4Property was brilliant as it kept us all together. That was a key partner that has helped us to survive Covid so far. We manage 150 – 200 properties at any one time and we needed to keep these serviced. And of course banks still needed support for mortgage valuations, so we just had to learn to do things differently."

For Joanne and her team at Michael Lavelle Estate Agents, Covid-19 has been a complete game-changer. For example, they very quickly developed a hands-free transaction process for lettings from start to finish. The only physical contact came at the end with the physical handing over of the keys. Everything else was done virtually.

From now on, Joanne believes they will use a "hybrid" version with some physical viewings but many online interactions. For example, first viewings for all sales are now done virtually, with physical viewings only happening for seriously interested customers. Going forward, the virtual viewings are absolutely critical and a key part of the sales process. This process helps the buyer to decide, based on an online viewing, whether they have a real interest in a property, before they seek an actual viewing. And as Covid lockdown levels fluctuate, the level of engagement online can be adjusted.

However, she believes that nothing can ever replace the connection people make when they walk into a property. "Any agent will tell you a person makes a connection with a property, or dismisses it as unsuitable, once they've had a chance to get inside and have a good look around. So although technology is really helpful to perspective buyers, it will never replace a real time viewing – or agent, for that matter!"

A long tradition

Michael Lavelle Estate Agents have been operating on Dundalk's Bridge Street for many years and is a well-known firm in the north-east. The current premises were purchased over 40 years ago by Michael Lavelle from Blackthorn Shoes. At the time,

Michael ran a retail business and kept that going for a time when he moved his estate agency there from a smaller premises nearby. While the business is now run by Joanne and a team of six, Michael is still very much hands-on, working with clients and viewings and appraising property.

Joanne joined her father in the business some 20 years ago, having worked for a time in urban regeneration in London and in PR in Dublin. "I was always involved in the family business to some extent – from sitting beside Dad at auctions or tagging along to viewings. I even used to sell houses to my teachers in school! However, the young Joanne wanted to gain experience and learn about marketing and business outside of the family business, which she did. And while working in Dublin, she undertook the IPAV Diploma course in IT Tallaght (now TU Dublin).

She joined the family business full-time when it was already very successful with a steady stream of sales, lettings and valuations which are all equally important to the business today. As the firm carries out a large number of valuations, they have a close-up view on what is happening in the market.

"I think lettings is an important part of the business because you get to really understand property and it gives you an insight into customer care and the issues that can occur with property" says Joanne. "We focus a lot on the customer experience – it runs

Joanne Lavelle with her DJ1 4 Pro camera through everything that we do and you can never lose sight of that. Our duty of care might be to the vendor or landlord, but we still have a customer service responsibility to the person buying or renting or repairing a property." As the firm carries out a large number of valuations, they also have a close-up view on what is happening in the market.

Being an independent agency is very important to Joanne. "They (the franchise brands) all came knocking and we always politely declined. It's our name over the door and we are answerable to our clients and the people with whom we do business. We are in charge of our own destiny and it allows us to evolve in the way that we see as important. Every sale is treated individually. There's no one template that fits all with us."

Membership of IPAV is very important for an independent agency like Lavelles, says Joanne, who followed her father into membership of IPAV. "We need to be able to reach out for advice sometimes and to learn best practice from the CPD course and so on. We would see IPAV as a real partner for us."

Membership of IPAV has been particularly important for Lavelles during the Covid-19 restrictions. It has helped to guide them through the regulations. "Being independent, you are navigating things on your own, so it's great to have an organisation like IPAV there. In addition, you get to talk to your peers and to find out how they are getting through problems."

A positive effect

As regards property prices, Covid-19 has actually had a positive effect in Dundalk. Property prices increased by an average of 6% compared to 2019, which is slightly above what might be expected in a normal year. "We are actually seeing bigger increases than that in some cases where there are special properties in particular locations. They have outperformed what they would have done in a normal year. The biggest growth has been in the two-bed, or three-bed town houses or apartments. Prices for a two-bed apartment now range from €120,000 to €140,000. A typical modern three-bed semi in a housing estate is fetching €200,000 to €250,000. An older style three-bed/one bathroom is fetching c. €175,000. That's good value and very affordable."

The lettings market is currently very strong in Dundalk town. There is a combination of people who are working, working part-time, or unemployed with HAP support. Many commute to Dublin which is a 50-minute drive and also has excellent bus and rail connections with the capital. PayPal is a major employer in the town and a new Chinese biologics plant, WuXi (woo-zee), is being built which is set to be another major employer. The long-established Dundalk Institute of Technology is well equipped to provide a skilled workforce for these sectors. Consequently, there is always a strong demand for lettings from all sides.

Luckily, Lavelles did not suffer any losses in rental income during lockdown. Dundalk is currently in a Rent Pressure Zone which has calmed the market. Joanne is in support of the RPZ's as she says there is a need to make homes affordable for young people and families and to control rents from skyrocketing when there is a shortage. A three-bed house currently commands a rent of €1200 to €1400 and a two-bed apartment €1100 to €1200. As you get close to the train station or some other attraction, there will be a premium on the rent.

Joanne Lavelle, Michael Lavelle and the late Eve Ann Kelly

Death of much loved staff member

The staff of Michael Lavelle Estate Agents were devastated to lose their colleague and friend Eve Ann Kelly MIPAV (48) in December, after a very brief illness. Eve Ann worked in property for many years, and was experienced in both sales and lettings. She had a wonderful way with clients, and always gave advice that was accurate and well considered. A great team member, Eve Ann was a fantastic property professional, and she is sadly missed by her colleagues, clients and work associates.

The Future

Looking to 2021 and beyond, Joanne Lavelle believes mortgage restructuring will be a major factor in property valuations, with switching providers, or getting a better rate from their current provider becoming very common. She points to Ulster Bank, PTSB and Avant Money who are currently very active in this market. Lockdown, she says, is often an opportunity for people to look at their bank statements in an uninterrupted way and see where they can save money. Also, as the Covid-19 vaccine is rolled out nationwide, she sees people gaining increased confidence and putting their houses on the market again, leading to an increase in supply.

Outside of work, Joanne Lavelle leads a very busy and active life. She is married with two teenage children, Ava (14) and Dillon (16). They live in the countryside, 10 minutes from Dundalk and enjoy the wonderful walks and scenery that County Louth has to offer. She is a keen tennis player, having played regularly on the IPAV team over the years and also swims in the sea. Dundalk, she says, escapes the worst of Irish winter weather, as it is protected by the mountains and the sea, so people can get outdoors year-round.

To help people who wish to move to live in Dundalk, Joanne has recently set up a new website www.liveinthenortheast.ie, which is a free resource of information about the area. For Joanne and her team, 2021 is already a very busy year.

LARGE ATTENDANCE AT VIRTUAL LETTINGS CONFERENCE

A total of 330 IPAV members participated in the Annual Lettings Conference which was held virtually on Saturday, 14 November.

IPAV President Tom Crosse delivered the opening address and there were presentations by Janette Fogarty, Head of Legal Affairs and Enforcement at the Residential Tenancies Board; Deirdre Mason, Department of Housing; Jean O'Grady and Lorraine Brogan from the HAP shared Services Centre; Fionnuala Murphy, Orpen Franks Solicitors; Shay O'Brien, Tax Consultant and David Rouse from the Housing Agency.

IPAV CEO Pat Davitt welcomed the participants and the conference was moderated by Tim Ryan. IPAV staff members Genevieve McGuirk, Val Mogerley and Anthony Fox operated the Zoom technology which ran very smoothly.

All sessions had a Question and Answer session via the Zoom chat facility.

NOVICE ROSTRUM AUCTIONEER COMPETITION POSTPONED

To ensure the safety, comfort and wellbeing of all involved, YPN wishes to advise 2021's Novice Rostrum Auctioneer Competition is temporarily postponed until such time restrictions have eased. As a result YPN extended the application date. This is an exciting competition and IPAV encourages all members and agents who meet the below criteria to consider submitting an application in the future. If it's not for you, it may well be for an employee or colleague who may need a little encouragement

Entry Criteria:

You must hold a valid PSP licence (category A licence is not required)

Rostrum experience is not required

If you do have rostrum experience, you must not have been on the rostrum for more than 5 auctions in total up to 4th February 2021

You do not need to be a member of IPAV to participate

Age is not a factor, entry is open to any person who meets the criteria

NIAMH GIFFNEY, YPN'S CHAIRPERSON IS AVAILABLE TO ANSWER ANY QUERIES AT YPN@IPAV.IE

THE LATE PAUL REYNOLDS

IPAV was saddened to learn of the death of former President and National Council member Paul Reynolds who died on 15 December last. Born in Mohill, County Leitrim, Francis Paul Reynolds grew up on the family farm with his parents and five siblings. He worked for an insurance company and was posted to Letterkenny where he set up his own insurance brokering business in 1975 and where he lived for the rest of his life.

In 1980 he extended the business to auctioneering and estate agency which today is known as Property Partners Paul Reynolds. Paul nurtured an interest in property development and undertook a number of projects over the years. One of these was the Courtyard Shopping Centre in Letterkenny which was developed in partnership with Aquis Estates Ltd (a subsidiary of Guardian Royal Exchange) and opened in 1993. In addition to the Courtyard, he also established several other successful enterprises including a supermarket, bar and nightclub, newsagents, gift shop and tool hire.

He served as President of Letterkenny Chamber of Commerce and was Businessman of the Year in 1993. In 2018 he received the Hall of Fame Award at the Letterkenny Chamber Business Awards. "I must say that Donegal and Letterkenny have been very good to me. This is my adopted home but I have been welcomed with open arms ever since I first came here and I'm so thankful to have enjoyed the support of both the local community and my family," he said in an interview in the Donegal News after winning the Hall of Fame Award.

In May 1985 he became a member of IPAV and later was elected to National Council serving as President from May 2010 to May 2011. On 7 and 8 May 2010, as incoming IPAV President, Paul hosted the Institute's Annual Conference in the magnificent Solis Lough Eske Castle where the then Tánaiste and Minister for Education & Skills, Mary Coughlan TD was the Guest of Honour for the Conference Dinner.

IPAV CEO Pat Davitt offered his sympathy on behalf of the Institute to Paul's wife Mari, sons Austin and David, daughters Karen, Kristine and Lauren, sisters Ann Kavanagh and Breda McWeeney, brothers Sean, Pascal and Joe. His internment took place in Conwal Cemetery after 11am Mass in the Church of the Irish Martyrs, Ballyraine, Letterkenny on Thursday, December 17. In a tribute to Paul, Pat said: "He was that type of astute person that had a very valuable insight and view that was never far wrong on all matters and was not afraid to express it. Many times, I sought and appreciated his wise council on business and IPAV matters and I know many other members did as well. His high achieving family a credit to himself and Mari have inherited their late father's business acumen that will bode well for them in the future". Ar dheis Dé go raibh a anam.

At IPAV's 2010 Annual Conference in Donegal
The Former Tánaiste Mary Coughlan with
IPAV President Paul Reynolds and his wife Mari.

IPAV President Tom Crosse said there was deep shock among members of IPAV following the sad and untimely passing of former President Paul Reynolds who paid tribute to the former long standing council member. "Paul was an exceptional individual demonstrating a fantastic ability to read and anticipate challenges within the auctioneering profession," he said. "He worked tirelessly for the greater good of all agents and was a very shrewd contributor at meetings in Dublin. He will be sadly missed by all at IPAV and the business generally. Our thoughts and prayers are now with his wife Mari and family. May this giant of the industry now rest in peace".

In a tribute to Paul, fellow Donegal IPAV member Keith Anderson said: "I could tell many good stories about Paul, but after attending numerous meetings and conferences with him over the years I have to say he was terrific company, always had a smile for others and a very knowledgeable and smart person. When Paul spoke those around listened, if you agreed or didn't agree, he was still highly respected. As a colleague from Donegal, I will miss asking him for advice when needed, or just for a chat. Property Partners Reynolds is in good hands with his brother Joe and Paul's son Austin who are running the business with Shane, Sheila and Orla. My deepest sympathies to Mari and to all the Reynolds family.

BREXIT CHANGES TO ESTATE AGENCY LICENCES

The Brexit deal is the New Year present to Ireland, good or bad. For Irish agents, this deal will have a bigger effect than many realise. From 1st January 2021, UK agents will no longer be able to use the EU rules to provide property agency services temporarily in Ireland. IPAV have already communicated with the PSRA about this matter and asked that our licensing rules be strictly adhered to from January 1st onwards.

However, we can all help, and IPAV asks all members who know of an agent, Northern Irish or UK, who are trading in the Republic without a licence, to please report the agent to the PSRA, alternatively, advise IPAV, and IPAV will report the matter to the PSRA. It is hoped there will be an advertising campaign about this, but we all need to be vigilant, members are only protecting their own businesses.

The Brexit agreement can be accessed at this link:

https://ec.europa.eu/transparency/regdoc/rep/1/2020/EN/COM-2020-857-F1-EN-ANNEX-1-PART-1.PDF

COVID-19 AND COMMERCIAL TENANCIES - THE COURT'S VIEW ON NON-PAYMENT OF RENT

BY GRÁINNE VARIAN

A recent decision of the High Court brings into sharp focus the difficulties experienced by both Landlords and Tenants of commercial properties during the current pandemic and the approach adopted by the Courts in such circumstances.

In Oyster Shuckers Limited t/a Klaw v Architecture Manufacture Support (EU) Limited [2020] IEHC 527A the plaintiff tenant (Tenant), operating a restaurant at the premises, had stopped paying rent since March 2020, the commencement of the COVID-19 pandemic in Ireland. This prompted the defendant landlord (Landlord) to write saying it would take possession of the premises and demanding that the Tenant deliver up vacant possession.

The Tenant applied to the High Court (Court) for an injunction to prevent the Landlord from taking possession of the premises. The Landlord's position was that the only valid lease between the parties had expired and the Tenant was overholding. The Tenant argued that it had the benefit of an alleged lease which had been agreed in November 2018 (Disputed Lease).

The core legal issue in these proceedings centred around the validity of a lease of the premises and an ability to pay rent.

Ultimately, while the Court was sympathetic to the Tenant's plight, the applicable legal test lay against granting the injunction. Discussed further below, the Court regarded the Tenant's application as, in effect, asking the Landlord to subsidise or underwrite the future trading prospects of the Tenant, during which time the Landlord would be deprived of the use of its premises.

Injunctive relief and breach of covenant (non-payment of rent)

In June 2020, the Tenant secured an interim injunction preventing the Landlord from taking immediate possession, largely on foot of the inadvertent moratorium created by the Emergency Measures in the Public Interest (Covid-19) Act 2020 "on all proposed evictions in all tenancies in the State" during the operation of that Act, which William Fry previously reported on.

The hearing of the interlocutory injunction application came before the Court in October 2020. Significantly in this case, the Tenant had made no rent payments since March 2020 allegedly due to the impact of COVID-19 on its business. Even if it secured the injunctive relief sought, the evidence suggested that the restaurant would not re-open until Spring 2021.

Interestingly, the Landlord submitted that rather than seek an injunction preventing the Landlord from recovering possession; where the Tenant maintained that a valid lease existed between the parties, the appropriate remedy was to seek relief against forfeiture. (Relief against forfeiture is where the Court makes orders that enable a tenant to remain in occupation of a premises that has, or will be re-entered by a landlord.) The Landlord claimed that the Tenant "studiously avoided" seeking this relief because a party seeking this relief would be required to pay the arrears in full before applying to the Court.

The Court noted the importance of the issue raised by the Landlord, as to whether it is possible to grant injunctive relief where the Tenant is in breach of its fundamental obligation to pay rent. However, the Court held there was no authority for the proposition that a tenant in default of rent can never, in any circumstances, get an injunction restraining a landlord from exercising its contractual rights to regain possession.

Justification for non-payment of rent

The Tenant sought to rely on the rent suspension provisions of the Disputed Lease, which essentially applies where part of the premises is unfit for occupation or use. Alternatively, it was argued that the doctrine of frustration applied, which temporarily excuses or pauses performance of a particular contractual obligation in certain circumstances, without frustrating or discharging the contract as a whole.

The Court found that the rent suspension argument was not applicable to a situation where the plaintiff had ceased to trade because of a pandemic. Likewise, it was not accepted that the rental obligation, but not the lease itself, could be regarded as "frustrated".

Undertaking as to Damages

In any injunction application, the applicant party must provide an undertaking as to damages meaning if that party ultimately loses at trial, it may be forced to pay the damages incurred by the other party as a result of the injunction. In this case, the Landlord queried the value of the Tenant's undertaking as to damages. It was asserted that the only means by which the Tenant could meet its undertaking was by generating income from its restaurant business. The evidence to the Court of a Spring 2021 re-opening suggested that the plaintiff's financial prospects were "bleak".

In determining whether to grant the injunction the Court applied the framework proposed in the recent Supreme Court judgment in Merck Sharp & Dohme v Clonmel Healthcare [2019] IESC 65 (Merck). The Merck principles require an examination of the balance of convenience, under which the adequacy of damages falls for consideration.

Applying those principles, the High Court was satisfied that:

- There was a fair question to be tried as to whether the Disputed Lease was valid, binding and effective
- Rent arrears did not automatically preclude a plaintiff from obtaining the type of injunction sought
- Failure to discharge rent in the past and an admitted inability to discharge rent in the future were matters which weighed heavily when assessing the balance of convenience
- The Tenant had not persuaded the court that it would suffer irreparable harm if an injunction was refused, or that an award of damages would not fully compensate it
- There was no substance to the undertaking as to damages offered by the Tenant who could not currently pay the full rent, was unlikely to resume trading until 2021 and had not produced any other evidence of assets or financial means to satisfy the undertaking.

In considering all of the above, the Court refused to grant the reliefs sought by the Tenant and the Landlord was entitled to take back possession of the premises.

Conclusion

During this pandemic, the courts have highlighted the value of communication and negotiations between Landlords and Tenants. Injunctive relief is available, but parties should be mindful that the court will take into account the entire circumstances in determining where the balance of convenience lies. While the Court sympathised with the tenant, the legal test lay against granting the injunction.

•Gráinne Varian is a Senior Associate in William Fry's Litigation & Dispute Resolution department and co-leads William Fry's Cork office.

WELL-KNOWN NORTHSIDE AGENT OPENS LANDMARK OFFICE CLOSE TO THE LIFFEY

Many IPAV members may not know Dublin estate agent Ronan Crinion but they certainly are familiar with his office. The owner of property portal MoveHome.ie, has his office on Drumcondra Road on the way to Dublin Airport is famous nationally for its window displays and has won several awards in recent years.

Now Ronan is on the move himself, recently opening a second office at 1 Capel Street, right on the corner of Dublin's North Quay and just a short distance from O'Connell Street. Once again Ronan has immersed himself in making the office different and ensuring it will become another landmark shopfront for the thousands of commuters passing by daily.

Ronan grew up in Drumcondra, the son of parents who were involved in retailing. Although he does not live there now, he considers Drumcondra his "real" home and is involved in activities in the area as well as sponsoring a number of local community sports and other events.

Ronan Crinion spent his early years in retail building up a chain of newsagents which he sold off in the early noughties. He always liked the idea of auctioneering and estate agency and so went to work for Jordans Country Estates in Newbridge, Co. Kildare. "I just loved it and decided then to open my own business in Dublin which I did in 2005," he says. He started out in a very small unit in the Omni Shopping Centre in Santry where he weathered the 2007 – 2012 recession. "I remember I was selling a beautiful period house off the Navan Road area and I was getting an offer of €980,000 at the height of the boom in early 2007. I strongly advised the owner to take it but he wanted to get over a million. The owner did not sell, the recession hit and Ronan sold the house later for €285,000. What I remember most about it was I bumped into a man when I was showing it and he was an established agent who had just retired. His advice to me was to stick at it, the market was going to crash and many would go to the wall but the best would survive. And that's what I did."

At the end of 2013 Ronan moved to his current office in Drumcondra where the market in sales and lettings was staring to grow again. Initially, he had concentrated only on sales but some properties were difficult to sell in the recession, so the clients asked him to let them for a time. Today the firm lets and manages over 250 properties right across Dublin. To cope with the busy office, he now employs five full-time and three part-time staff. "Residential sales are the majority of my business and that's where I like to concentrate," he says.

Covid-19 lockdowns

Ronan and team planned in advance for the recent Covid-19 lockdowns. "We used to have a meeting every day at 10am when we turned off the phones and talked. We began to plan ahead and in February 2020 we closed the office for half a day and all worked from home as an experiment. We then reviewed how it went and planned a better way to do it and the following week we did a full day's work from home. We learned how to do it and then two weeks later we were into a full lockdown." Ronan and one other team member did, however, work from the office

Ronan Crinion outside his new Capel Street Office

behind closed doors as it was necessary to provide emergency cover to some properties. Every day they had an online team meeting at 10am and another at 4pm. Some deals fell through but nothing on the scale that had been feared.

"The most labour-intensive part of the lockdown was people not paying their rent, or losing their jobs, notably those in the service industry and we have many of those," says Ronan. "When the final figures are done, while turnover will be down for 2020, it will not be significant. My opinion is the market is going to resume again in 2021."

In June when the office fully re-opened, residential sales took off. The rush eased a little in September but resumed in October. As an example, Ronan cites a recent sale of a two-bedroomed, beautifully restored and modernised mid-terrace house on Dublin's Church Avenue which went on the market at a price of €525,000 and finally was sold for €595,000.

MoveHome has the highest number of Google reviews (360) which Ronan points to as critical to their success. "People look and search online so you have to keep your nose very clean." Local sponsorship he regards as critical and MoveHome sponsors the Family Week of local GAA club, Na Fianna and St. Kevin's Boys soccer club. In addition, he also sponsors numerous events for the LGBTI community locally including The Front Runners, Gloria Choir and The GCN community news.

Ronan has a particular interest in the look of his front window. He does not approve of filling the entire window with photos of properties. "Not everybody needs 20 property brochures to look at," he says. "You can get away with four or five. I really understand the subject of visual merchandising because I'm from a retail background.

MoveHome.ie's Christmas display window

If you walk down Grafton Street, you do not look at each and every shop window, you only look at the one that catches your attention and you only look at a shop window for two or three seconds and then you look at the name and you remember it.

Your shop window is your business card. I've been unique in the way I use that strategy for my property and always focus on a property theme. For example, I did a window with wooden houses covered in grass and flowers and green felt and branches. The theme was: 'Put Your Roots Down - This Summer!' "

The most popular window that everybody enjoyed was when Ronan collected 400 cups from houses that he sold. He then collected teapots in the shape of houses and put them all in the window with the wording: 'Drop In For A Cuppa!' Ronan now has a schedule for the windows and he rotates the themes over time. "A good window should only be there for six weeks. By then everybody in the area has seen the display and they want a change. The job of visual merchandising is to catch a person's attention and make them look at the window. I do one for Easter, for example, the children run over to see the selection of bunnies and so the parents have to go along too, but they look at the selection of properties on display."

Ronan also has a Christmas-themed window which is featured briefly on the Angelus on RTE. In January, he changed the window by filling it with clock which all read 2021 and the wording: '20:21, A Great TIME To Move!' He dresses all the windows himself and the job has to be done when nobody else is in the office so he can spread things around and plan properly.

1 Capel Street

Ronan's move to open a second office at No 1 Capel Street was well planned. It's on the ground floor of a period listed building that was constructed in 1780. It is featured on the Malton trail of Dublin. James Malton was commissioned to draw 20 different locations in Dublin of various structures and bridges. One of the drawings he did was the corner of No 1 Capel Street which overlooks Essex bridge, renamed Grattan Bridge in 1875. The bridge was built by Sir Humphrey Jervis in the late 17th century when Capel Street was known for its mansions and a royal mint. In the 18th century it became a commercial hub, with two-bay buildings replacing the "Dutch Billy" houses.

One of the window displays of MoveHome.ie

When No 1 was first built it sold linen and cotton. In the 1800s it sold hats and feathers and later it became a stationery and bookshop which survived to the late 1800s. It then became a haberdashery store and after the Civil War became a convenience and dry-cleaning business. It closed in 1994 and did not open again until MoveHome moved in this January. Overhead are three short-term let, luxury suites which Ronan and his team also manage via a custom-designed website. The three suites are aptly named The Malton Suite, The Capel Suite and The Ormond Suite.

The office is fitted out not in traditional office style but in a warm, sitting room style with parquet flooring restored from a local period property, an 1820's clock that was manufactured on Capel Street, a prominent antique chandelier from a local house, modern colours and a marble feature fireplace that sits with pride in the centre of the office.

Meanwhile, as leader of the estate agency team, Ronan is concentrating on Dublin 7, Dublin 8 and the 'Pink Pound' Market. As some businesses may be closing their doors due to the effects of Covid-19, No 1 Capel Street has, phoenix-like, once again opened its doors for business after 25 years.

Ronan Crinion works six days a week and that's not including Sunday which is the day he dresses the office window. For relaxation, he paints on a Monday night with a small group of artists and he is also a professional calligrapher. "That's my real hobby and passion and I master about 12 different calligraphy styles. I have several hundred different types of nibs and pens and you really have to practice for at least a half an hour every day to improve a style." Over the years Ronan has done many pieces, mostly Certificates and invitations of various kinds for people including The Royal family, Brown Thomas, The Government and Goffs.

Facing into the future with the challenge of a new office, Ronan Crinion and his team are very much looking forward to a bright and prosperous 2021.

OWNERS' MANAGEMENT COMPANIES

BY DAVID ROUSE

Owners' management companies ("OMCs") are a feature of apartment developments and high-density housing. During 2020, in collaboration with IPAV and other professional bodies, The Housing Agency hosted a series of webinars dealing with issues affecting OMCs and apartments.

David Rouse of The Housing Agency delivers an update on some of the topics covered in the webinars, and what changes might be coming down the track for OMCs. Challenges posed by COVID-19 and resources available are considered.

Unusual Companies

It is estimated that there are between 7,000 and 9,000 OMCs in Ireland. An OMC can be thought of as a hybrid company. In most cases it is not-for-profit. It is a property asset manager, however it shares characteristics with a residents' association, because the company directors are almost always volunteers, usually residents or owners in the estate.

"Volunteer" company directors trying to keep up to date with changes in laws and regulations rely on guidance from professional advisors. The regulatory framework within which OMCs operate involves company law, land law, fire safety regulations, health and safety rules, insurance and employment law. Independent advice from professionals, including the property management agent, is key to a well-run OMC. This then makes for a successful estate, and a sustainable community. The Housing Agency has recently published "Engaging a Property Management Agent: Guidance for Owners' Management Companies". Prepared for stakeholders including OMC directors, the material consists of questions and points for consideration when selecting an agent.

Company Law

OMC directors are bound by the same duties in law as directors who are paid for their services. Section 228 of Companies Act 2014 sets out a director's fiduciary duties. Directors must avoid conflicts of interest, and must act in the interests of the company and its members. Where OMC directors are connected with the estate developer, or the management agent there is the potential for conflicts of interest. The consequences of a breach of duties, including the potential for personal liability for a company's debts, should be understood by OMC directors.

Company Law Compliance

The Office of the Director of Corporate Enforcement (ODCE) is responsible for encouraging compliance by companies (including OMCs), directors or other officers with the Companies Acts. Breaches of company law in relation to OMCs where the ODCE can assist include:

- Holding of AGMs
- Financial Statements
- Directors' and secretaries' duties
- Company Registers, e.g. Register of Members

New law, the Companies (Miscellaneous Provisions) (COVID-19) Act 2020, facilitates online AGMs and electronic voting irrespective of the rules in a company's constitution. These provisions apply until at least June 2021.

Management Company Finances

The Multi-Unit Developments Act 2011 was 10 years old on 24 January 2021. Despite the obligations imposed by the legislation on developers, owners, and OMCs, research evidence indicates that the sector continues to face financial challenges. A common problem for OMCs is under-funded or non-existent building maintenance or sinking funds. Poor service charge collection rates, inadequate budgets, or a combination of both factors are seen to cause difficulties.

In 2019 The Housing Agency and Clúid Housing published 'Owners' Management Companies, Sustainable apartment living for Ireland'. The independently authored report compared Irish apartment management structures with those of four other countries and made recommendations for reform here. One such recommendation was mandatory training for directors. Measures aimed at improving the financial health of OMCs were put forward. These included cost-effective methods for dispute resolution and debt recovery, under a regulatory authority, moving away from the courts system. Proposals for reform of the wider legal system are contained in Review of the Administration of Civil Justice 2020, a report to the Minister for Justice published in October of last year.

Minimum Standards for Agents

From 30 November 2020 new Minimum Standards apply to property services providers including property management agents in multi-unit developments. Regulations particular to OMCs include that agents, or their employees providing services to an OMC, are prohibited from appointment as a director of that OMC. An exception is where the agent owns a property in the development. There are standards in relation to the collection and transfer of service charges and sinking fund contributions. An agent shall not make the provision of services to an OMC conditional on the OMC being represented by any particular legal advisor.

Defective Properties

An independent Working Group has been announced by the Minister for Housing, Local Government and Heritage, Darragh O'Brien T.D. Mr. Seamus Neely, former Chief Executive of Donegal County Council has been appointed to chair the group.

COVID-19

The current public health situation has presented challenges for OMCs. Operations, facilities management, finances and cash flows have been affected. In collaboration with IPAV and the SCSI, The Housing Agency produced 'Guidance for Multi-Unit Developments and Residential Owners' Management Companies during Coronavirus (COVID-19)'. The document is intended to provide practical guidance for OMCs, directors, management agents, and residents.

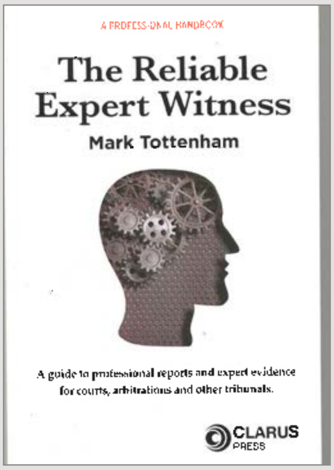
In June 2020 the Office of the Director of Corporate Enforcement ("ODCE") issued a detailed statement 'COVID-19 and the insolvency-related functions of the ODCE'. The statement is considered to contain reassurance that directors acting honestly and responsibly in good faith will not without just cause suffer sanctions for a company's inability to pay debts as they fall due.

While there is now a pathway to recovery from the pandemic, OMC directors, working with their management agent, should continue to engage with financial scenario planning. Cashflow forecasting, prioritisation of spending, and cost contingency reviews are standard approaches.

•David Rouse is an advisor with The Housing Agency. The Housing Agency works with the Department of Housing, Local Government and Heritage, local authorities, approved housing bodies, and stakeholders in the delivery of housing and housing services. Webinar recordings, publications, and resources for OMCs and MUDs are available at www.housingagency.ie. Views expressed are those of the author.

'HOT-TUBBING' AS A VALUER EXPERT WITNESS

BY MARK TOTTENHAM BL



In the 2013 Northern Irish case of Aurora Leasing Ltd v Colliers International, expert evidence was heard from valuers by way of 'concurrent evidence', a process more colourfully called 'hot tubbing'. This means that the two valuers were sworn as witnesses at the same time, and engaged in a discussion of their evidence, instead of the more formal process of examination-in-chief followed by cross-examination.

In his judgment in the case, Mr Justice Weatherup commented: "[T]he expert witness owes a duty to the Court to assist on matters within their expertise and this duty overrides any obligation to the party from whom the expert has received instructions or by whom the expert is to be paid. I draw attention to this duty without implying any criticism of the expert witnesses in this case. However, an awareness of this duty is not always apparent on the part of expert witnesses."

The conduct of expert witnesses has come under greater scrutiny worldwide in light of various miscarriages of justice, and a perception that experts have sometimes attempted to tilt the scales of their evidence in favour of their own clients. It was once the case that experts were considered immune from disciplinary proceedings and from professional negligence suits. This is no longer the case in the UK, where the immunity from professional negligence was swept away in the 2011 case of Jones v. Kaney, and the immunity from disciplinary proceedings was abolished in the 2006 case of Meadow v. General Medical Council. Expert witnesses have also been prosecuted in cases where their reports contained falsehoods. In 2017, seven employees of a company called Autofocus were prosecuted for contempt of court where they assisted insurance companies to achieve lower compensation rates for car hire. All seven were imprisoned.

In Ireland, it seems that the immunity from professional negligence for an expert witness has not yet been abolished, but there is precedent for a High Court judge to recommend that an expert witness be reported to his professional body. Furthermore, in 2016 new rules were introduced for expert witnesses, and any valuer should be aware of these prior to agreeing to provide a report for court purposes.

Order 39, rule 57(1) states, in clear terms: 'It is the duty of an expert to assist the Court as to matters within his or her field of expertise. This duty overrides any obligation to any party paying the fee of the expert.'

An expert report should now contain an acknowledgement of this duty, together with a statement concerning actual or perceived conflicts of interest.

The 2016 rules contain requirements concerning exchanges of reports, joint meetings with other experts, and preparing joint reports. They also provide for expert witnesses to engage in a 'hot tubbing' session similar to that used in the Aurora Leasing case described above. So far, it does not appear that experts in this jurisdiction have been required to give evidence in a hot tub, but any valuer accepting instructions for a court report may find that they might have to dip their toes in the water.

- *Mark Tottenham is a barrister and mediator, and author of The Reliable Expert Witness (2021), available from the publisher, Clarus Press for €20.00 plus P&P. (claruspress.ie)*

DO WE REALLY WANT TO KNOW WHAT GOES ON BEHIND CLOSED DOORS?

BY TOMMY BARKER, PROPERTY EDITOR, IRISH EXAMINER

There is a song from the 1970s, made famous by Charlie Rich, called "Nobody knows what goes on behind closed doors." Sometimes, when selling property that can be a mixed blessing.

A link to a famous person, event or a twist of good fortune can - as well we all know - add value to a property. But, equally, a link to something macabre, sinister or merely sad and tragic can bring a taint.

Period homes and grand estates need only go back on their deeds, or even visitors' books of previous decades and centuries, to plunder names from the past, and sometimes it barely matters how brief or tenuous the links to gain a 'halo' effect, especially of merit in the hospitality sector, and, as often as not, when a place comes up for sale. It can carry bragging rights, or merely inspire decorative themes, and oftentimes bigger sales figures at the end.

Roll Call/Role Call

- James Joyce lived here/stayed here/sang here/wrote here.
- Charles Dickens was a guest.
- William Thackeray visited it.
- Brendan Behan drank here
- Red Rum was stabled there.
- Donald Trump tried to buy this.
- Michael Flatley tried to sell it.
- Michael Collins hid out here.
- Francis Brennan dissed it on the telly.
- Dermot Bannon did the extension.

Yup, some claims to fame, as you can see, are rarer than others, but the best boast of all are the ones that can claim 'X lived/died here'. It's as if the magic dust that imbued them and their genius, creativity or talent will of course rub off on the next fortunate inhabitants and owners. Such strong links are often recalled in blue, historical plaques on walls denoting such firm, proven links, but not all are easy (and, often, unearned) boons to owners/vendors.

Case in point might be several recent Dublin properties associated with 1916 and/or Independence Irish figures of historical renown. Often, the clamour is to preserve as a virtual museum, sometimes merited, sometimes not really.

Hotels as long established as Parknasilla in Kerry, or the Eccles in West Cork, can call up a strong link to someone like George Bernard Shaw. Meanwhile, part of the sales' narrative for the January 2021 sale at €3.5m of the Liss Ard Estate in West Cork was the gilded association with the likes of Star Wars' Mark Hamill and others of that movie franchise's cast members as 2016 guests, or before that the likes of Bono, Van Morrison the Gallagher brothers and other musicos who'd stayed there.

Liss Ard had a guest list like Dublin's Clarence Hotel-On-Sea, and rock glitterati the likes of Nick Cave and Pattie Smith even played there in limited gigs in the 2000s. It's reckoned many of the guests over the last ownership's several decades of its operation had personal wealth many, many multiples of those name-checked 'stars'.... That must have granted some halo, clientele-attracting effect for the c. €3.5m purchase by US-based investors: who else can think of a 25-bed hospitality venue making this sort of sum otherwise?

But, fame and notoriety is of course a two-way street, and for every property an estate agent might list with some genuine, or even tenuous, link to some event or person of note, there's likely to be one more, or several, instances where the 'back story' is better left unearthed.

Sing Dumb?

Any Irish agent in business for a few years will have the humdrum, yet often personally tragic, property sale listings where 'the less said, the better.' They include court-ordered family home disposals, often due to marital break-ups and, up until the eruption of Covid-19, was fast becoming a sales virus in its own right, making up a fair percentage of resale listings of 'established' family homes.

This journalist, and no doubt a fair share of IPAV practitioners, has many a time had to retype a property sale description to scale back from the line 'ideal family home?' Not only is it judgmental in any case, it also can be a poisoned dart to the heart of those having to sell up and move on with their lives, against their wishes.

In almost any case the selling agent will be aware of the sensitivities: to others, the only clue may be the listing of two, and not one, solicitors associated with the listed sale. Clues abound, too, in the case of a bank sale and even if it is not signalled as blatantly as dual solicitors, as often the truth behind 'what goes on behind closed doors' is as simple as the lack of enthusiasm to facilitate a sale.

Online auction disposals have, clearly, facilitated, the selling on of distressed or tainted assets. Once there is a whiff of discord, a percentage of would-be buyers will simply walk away. This journalist recently spotted a noted stone lodge in a Munster setting, up for sale as an unfinished project at what would otherwise be seen as a knock-down price, in every other sense of the phrase. Highly prominent on the Wild Atlantic Way, a 'For Sale' was all that was needed to pique interest.

It seems the previous owners, perhaps with 'the bank' on their back, were not entirely enthused about it being sold. Anyone inquiring about in the locality was quickly informed this was not consensual (we have got historical precedent for this sort of signalling, often in the scheme of great evictions, with some cause).

Not unexpectedly, the 'For Sale' sign had a habit of not staying on the property for long before being cast aside by, oh? Whoever. The auctioneer, with decades of experience, shrugged and said "it will be bought by a builder, who'll be well able for it."

What is a real heartache is coming across a property sale where the violence, the threat, or the depravity behind it is unfathomable. It takes a relatively brave soul to buy an immediately identifiable property from, say, the likes of the Criminal Assets Bureau, after the whole nation has seen it on the main evening news night after night for some nefarious reason.

That's as true of a stud farm/equestrian centre, suburban compound or palatial home outshining all in its neighbourhood thanks to its extensions (and security lighting). You might buy a watch, or a re-registered BMW or boat from such disposals, but a home for your family? Children? Hmmm. Worse again is The House of Horrors, where you just.do.not.want.to.think.of.what.went.on.behind.closed.doors.

Trust

Sordid and all as that place reeked of, nothing compared to a sales listing of a private family's home a few years back that any reader of a newspaper, or TV news bulletin, could have immediately linked to the most appalling and senseless, murder of a young woman.

The grief-stricken family lived for a decade or more in their home before readying it for sale: it had been altered since, renamed too, and despite it being associated with the image of a charnel house in the public mind, had persevered or even triumphed to continue to be a home to the bereft and bereaved family.

How to handle when it came for sale? Fraught, obviously… and, quite unexpectedly it did sell, and sell again for over €1.25m, after major overhauls but not, surprisingly, demolition as might have been expected. The sale listing presented a bit of moral quandary: a tabloid paper might drag out the acres of newsprint and pictures from a decade prior to shout "'House of Horrors' for sale". But the private vendors surely had had enough trauma and were more than ready to now move on, with minimum fuss?

I reluctantly made a deal with the selling agent: we would not mention in newsprint the appalling history of what had gone on inside its walls (and it was, in truth, quite a different home by then), but he was not to show it to anyone without first informing them of its past, so no-one was going to fall for it and then find themselves repulsed, or led astray.

Years later, and after it resold once more and with some surprising ease, an editor asked: "How do you know the auctioneer honoured his word?" I replied, with only a slight sense of mischief and disregard in this very particular instance: "If you can't trust an estate agent, who can you trust?"

BENEFITS OF FORCED LEARNING

BY FRANK QUINN, LECTURER IN PROPERTY VALUATION, BLACKROCK FURTHER EDUCATION INSTITUTE

In Finance, there is a term called forced savings which is where people put their money into an investment first and then manage other expenditure from their remaining budget. The classic example is the monthly mortgage payment which comes out of the bank account before we decide what else we can buy. At the end of the life of the mortgage, the owner is left with a valuable asset which will reduce their need for accommodation spending during their retirement. It is why for most owner-occupiers buying a property is the largest investment they will ever make, without ever thinking of themselves as investors.

The concept made me think of the enforced learning that everyone in education has gone through in the last year both in delivery of course work and the assessment of students. Although it has been a very difficult time for everyone in society, there has undoubtedly been an upside for people in learning new skills that otherwise we would not have learned.

Last September as the reality of the different academic year was upon us, I was in Blackrock Further Education Institute being trained how to use Microsoft Teams for lectures. At one point a colleague asked about the potential for recording classes and how these recordings could be put up on Teams for the students to watch. The reply from the IT expert was that "the videos are up in the cloud and have to be streamed to the channel".

There was so much in this description that was very alien to me. Surely clouds are the white fluffy things in the sky, streams are where fishing takes place and aren't channels on television? How could any of these things be relevant to the recording of a property valuation lecture? Yet within a few weeks there I was uploading the recorded classes from the cloud and streaming them to the appropriate Teams channel for the students to watch.

And how did this sudden IT expertise take place so quickly? The answer is because it had to.

I was forced to upgrade my IT skills because they were needed so urgently. I could no longer survive with the traditional face to face delivery of content and facing this scenario I had to practice and learn areas which I previously would have not been within a mile of understanding (or kilometres as they say now!).

So how effective is this forced learning? There is certainly nothing like necessity to focus on new skills. One of the sad results of the pandemic is first year college students have lost the opportunity to live away from home for the first time. How many of us learned to cook, wash clothes and pay bills for the first time when we didn't have the security blanket of our parents. Even if it was surviving on beans and toast, there was a sense of satisfaction of being able to cope for ourselves.

But on the other hand, this year's students have certainly obtained IT skills that previous students would not have. This year's students are experts at using platforms like Teams, Moodle and Zoom to access classes and material. They have learned to upload their Assignments electronically rather than physically which is mirroring the movement in offices away from paper. It would be no surprise to me if in the future employers targeted the graduates of 2020/21 on the basis of these enhanced skills and also their ability to cope with a changed environment.

The forced learning that they have gone through in the last year will give them lifelong skills which they will be able to use in the workplace. It is a small silver lining for students in what has been the most difficult of years. We certainly hope that the second half of this year will bring a return to normality but in the meantime lets make the most of these opportunities to learn new skills.

CONGRATULATIONS TO IPAV GRADUATES!

Congratulations to IPAV TU Dublin students who successfully completed the 2-year Level 6 Higher Certificate in Business in Real Estate, Valuation, Sale & Management. Graduates took part in a virtual graduation ceremony in December and IPAV wishes to congratulate them on their achievement. Part-time study often involves juggling many different responsibilities and commitments. The hard work involved in completing this course is very much recognised. All 2020 graduates are now invited to apply for membership of IPAV and avail of a year's free subscription.

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people in Ireland own their own home and have no mortgage

1.1 Million

people have been living in their present home for over 20 years.

184.9k

people are currently saving for a deposit on a mortgage

960k

people rent their home privately

484.2k

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Source: TGI ROI, 2018