

POLICY AND LAW REFORM AGENDA

A PUBLIC INTEREST AGENDA FOR IRELAND

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PRESIDENT'S ADDRESS

Since the Society's last Newsletter, we have continued our work to restore the services which are vital to the successful operation of the legal system in the State.

In this regard, we have participated on a number of ad hoc working groups which are working to reopen the courts, to resume legal actions and, crucially, to ensure that courts have the requisite technology in place to continue to provide access to justice.

We appreciated the opportunity to address the Special Oireachtas Committee on Covid-19 Response in September where we emphasised that, while the move to remote court hearings can offer improved services nationwide for some types of cases, that potential will only be realised if appropriate investment is made in the necessary infrastructure.

In that context, Budget 2021 announcements in respect of justice sector funding are welcome – totalling €3 billion with €158.8 million earmarked for the courts system and €8 million specifically directed towards a long awaited Courts Modernisation Programme.

This funding will safeguard access to justice and enable investment in the technological platforms which are vital to the efficient management and operation of remote hearings. Further investments of €3.7 million in Criminal Legal Aid and €2 million in the Legal Aid Board are also welcome.

Our Director General, Ken Murphy, has notified the Council of his intention to retire in March of next year. Ken has served the Law Society for 40 years in total, 26 as Director General. He has represented our profession with integrity, wisdom and tremendous skill as he guided the Law Society through a period of substantial growth, which is evidenced by the increase from c.5,000 solicitors on the Roll when he took office in 1995 to more than 22,000



now. Everyone at the Society, and right across the legal profession, wishes Ken and his family every happiness for the future.

As this is my last Newsletter as President of the Law Society, I want to thank the elected representatives and other decision makers who have engaged with me throughout my Presidency. I wish you the very best as you continue your vital work.

Michele O'Boyle, President of the Law Society of Ireland

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PROGRAMME FOR GOVERNMENT

In June, the Society welcomed the ratification of the Programme for Government and produced a synopsis of the document to highlight key items of interest across the spectrum of crime, justice and law reform.

KEY ITEMS



1. FAMILY LAW

The introduction of a Family Court Bill, a new Family Law Court building in Dublin and ensuring facilities nationwide are suitable for family law hearings.

2. INSURANCE REFORM

The prioritisation of reform of the insurance industry, with specific actions to increase transparency, foster competition and tackle costs, was welcomed across all sectors of Irish society and business.

Given the impact Covid-19 will have on insurers' investment returns, claims and loss of business, the Society is anticipating a corresponding increase in the cost of members' Professional Indemnity Insurance (PII) which will have a detrimental impact on many practices.

The Council of the Law Society is working, in conjunction with its PII Committee, to mitigate the unpredictability of insurance costs and the Society is in ongoing discussions with prospective insurers who may wish to join the Irish PII market.

3. HATE CRIME

The Society has strongly advocated for the Incitement to Hatred Act to be substantially updated. As such, the commitment to introduce hate crime legislation, with a hard deadline, is welcomed.

4. VICTIMS OF CRIME

The prosecution of sexual offences, and the subsequent conviction of offenders, is vital to any society which is concerned with protecting the rights of all victims of sexual and gender-based violence.

As such, commitments in the PfG to fully implement the Victims' Charter and the EU Victims of Crime Directive are very much welcomed.

5. ONLINE SAFETY

Having examined the area of online harassment, harmful communications and related offences, the Society appreciates commitments to enact the Online Safety and Media Regulation Bill and to establish an Online Safety Commissioner.

SPECIAL OIREACTHAS COMMITTEE ON COVID-19 RESPONSE

The Law Society President, Michele O'Boyle, and Director General, Ken Murphy, provided written and oral evidence to the Committee last month. A general theme of that evidence was that, while no State's legislative framework could have been fully prepared for the challenge presented by the pandemic, lessons can be taken from the experience.

The Society emphasised the need for clear communication on the detail of restrictions being imposed, the rationale for those restrictions, whether or not they are intended to have legal effect, and any sanctions for breaches. Recommendations were made under the following headings for the Committee's consideration:

1. Mitigating the Constitutional and legal risks arising from swiftly enacted emergency legislation;
2. Enhancing clarity in regulations and communications;
3. Investment in fit-for-purpose technology platforms, particularly in support of remote court hearings;
4. Investment in the Courts Service infrastructure, staff and other resources; and
5. Consistent application of robust safety measures for both persons in custody and solicitors in Garda stations.

RECENT SUBMISSIONS



1) SCREENING OF FOREIGN DIRECT INVESTMENTS INTO THE EU



The Society provided the views of its Business Law Committee to the Department of Business, Enterprise and Innovation's consultation on the proposal to introduce a national level investment screening mechanism for foreign direct investment in Ireland and the appropriate role of the Minister in the event of the introduction of such a mechanism.

The submission emphasised that the substantive test to be applied by the

Minister in reviewing foreign investments and acquisitions would be critical. It should strike a balance between bright-line clarity (ensuring that the screening process does not make Ireland a less attractive destination for investment and cross-border deal making) while affording the Minister the necessary scope to prohibit deals within specified sectors which raise substantive concerns.

2) DISCOUNT RATE IN PERSONAL INJURIES



In August, the Society welcomed the Department of Justice and Equality's consultation on the setting of the discount rate in personal injury lump sum awards. Members of the Society's Litigation Committee, who have substantial expertise in personal injury cases involving significant compensation awards, welcomed the fact that the consultation focused on obtaining views around whether the current system of settling the discount rate needed to be updated and not on changing the fundamental principle that claimants should be fully compensated.

The Society considers that the approach which is most likely to withstand constitutional scrutiny is to empower the Judicial Council to set the discount rate with the assistance of appropriate expertise. The recommendation is made on the basis that different rates for different classes of claims could be considered, with rates being reviewed on a regular basis and where the courts would retain the power to impose a different rate in circumstances where an injustice might otherwise arise.

3) FINANCE BILL 2020



The Society provided a number of recommendations for the consideration of the Minister for Finance in advance of preparations for the Finance Bill. Views were drawn from several of the Society's Committees and, despite the challenge presented by this budget, members considered that measures which had the potential to make real improvements to the financial well-being of citizens, could be adopted.

RECOMMENDATIONS

1. Help to Buy Scheme and Stamp Duty Relief

That the scheme be extended to include a relief (either in full or in part) for second-hand homes in order to create balance in the market and provide a broader range of properties for new purchasers.

That stamp duty relief would be reinstated for first-time buyers to offer some benefit to those who cannot benefit from the Help to Buy Scheme.

2. Residential Development Stamp Duty Refund Scheme

That the refund be increased to 6.5% to bring the effective rate into line with the current 1% rate on residential property.

3. Land Registry Fees

That consideration be given to reducing Property Registration Authority transfer fees for average price homes and/or a reduction in fees for new entrants to the market.

4. Nursing Home Support Scheme

That, where a house which qualifies as a principal private residence is sold, the proceeds of sale should be assessed on the same basis (under the financial assessment) as if the house had not been sold.

Also, that the 80% take from rental income of the principal private residence should be exempted from the means calculation for the first three years (while the capital value of the asset is assessed) and thereafter, substantially reduced to allow residents to retain some benefit.

5. Right of Appeal for a Person who Suffers the Cost of VAT

That VATCA be amended to allow a person who bears a VAT charge to appeal against that charge.

6. Article 4 of the EU Anti-Tax Avoidance Directive

That the implementation date for these measures should not be before 1 January 2022 to allow adequate time to ensure that these complex measures are correctly transposed into domestic law.

7. Reduction in VAT Rate for Legal Services

That consideration be given to the introduction of a reduced rate of VAT on the provision of legal services which would mirror reductions which have applied to such services in the past.

8. Technical Amendment to the Scope of the Capital Gains Tax Group Relief

That Section 617(1) be amended to apply to corporation tax and CGT on chargeable gains.

4) GUIDANCE FOR REMOTE WORKING



The Society's Employment and Equality Law Committee provided observations to the Department of Business, Enterprise and Innovation's consultation on the need to develop clear guidance on remote working for both employers and employees.

The Society recommended that legislative change, which specifically addresses the 'home workplace' and 'homeworkers', should be introduced to ensure that employers and employees have a clear understanding of how to discharge their respective duties and to exercise their rights under the Safety, Health and Welfare at Work Act, 2005 (as amended).

5) SECTION 16 (10) OF THE CONSUMER INSURANCE CONTRACTS ACT 2019



Prior to its commencement last month, the Society highlighted concerns in respect of the section¹ which imposes a duty to disclose information which either supports or prejudices the validity of an insurance claim.

Believing that this includes information that would otherwise be subject to privilege and given the importance of that doctrine in the proper administration of justice, the Society cautioned against enacting the provision without clarifying that it was well-founded, clear and congruent with rights under both the Constitution and the ECHR.

¹ *If, after a claim has been made under a contract of insurance, the consumer or the insurer becomes aware of information (including information that would otherwise be subject to privilege) that would either support or, as the case may be, would prejudice the validity of the claim made by the consumer, the consumer or, as the case may be, the insurer shall be under a duty to disclose such information to the other party.*



PATENTS OF PRECEDENCE

In accordance with the Legal Services Regulation Act 2015, the Advisory Committee on the Grant of Patents of Precedence established criteria to be met by practitioners who wished to be recommended for patents of precedence.

This meant that, for the first time in Ireland, solicitors could apply to become senior counsel and 17 solicitors received their patents of precedence in a virtual ceremony earlier this month. A Ceremony of Welcome will be held when it is safe to do so.

Solicitors who received patents of precedence are Eamonn Conlon, Paul Egan, Patrick Groarke, Richard Hammond, Bill Holohan, Áine Hynes, Liam Kennedy, Rory Kirrane, Cormac Little, James MacGuill, Roger Murray, Helen Noble, Bernard O'Connor, Dr Vincent Power, Dara Robinson, Michael Staines and Damien MP Tansey.

COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE (CCBE)



The CCBE is recognised as the voice of the European legal profession. It represents the Bars and Law Societies of 45 countries and, through them, more than one million European lawyers. It acts as a consultative and intermediary body between its members

and the institutions of the European Union on cross-border matters of mutual interest.

The Irish delegation to the CCBE comprises representatives of both the Law Society and the Bar of Ireland. Recently, the delegation engaged on the following initiatives:

1. Reform of the EU Court of Justice

The Reform process commenced in 2015 following agreement at the European Parliament and the Council to double the number of judges at the General Court.

The Court of Justice is currently preparing a report on the functioning of the General Court which is expected to be submitted to the European Parliament, the Council and the Commission before the end of the year.

In its contribution to the process, the CCBE emphasised the importance of ensuring that all

EU litigants enjoy effective access to justice in all proceedings. [🔗](#)

2. Turkish Lawyers

Lawyers Ebru Timtik and Aytaç Ünsal, who were sentenced to 13 years, 6 months and 11 years, 6 months respectively in prison in Turkey, commenced a hunger strike in opposition to the conduct of trials in Turkey contrary to Article 6 of the ECHR.

The members of the CCBE were deeply saddened by the death of Ebru Timtik on 27 August after 238 days on hunger strike.

Emphasising that Turkish lawyers must be able to carry out their professional duties to preserve the independence and integrity of the administration of justice and the Rule of Law, the CCBE called on the EU and the Turkish authorities to do everything necessary to ensure that Aytaç Ünsal did not suffer the same fate.

On 3 September, following a ruling in his favour by the 16th Penal Chamber of the Court of Cassation, Aytaç Ünsal was released from prison after 213 days on hunger strike. [🔗](#)



Read more about the work of CCBE at www.ccbe.eu



POLICY & LAW REFORM IN THE GAZETTE

Gazette.ie

If you would like to be interviewed in respect of your policy and legislative priorities – get in touch – gazette@lawsociety.ie

- **Race to the front:** Employment Equality and Equal Status Acts provide protections from racial discrimination to employees and to non-employees who are accessing goods and services, and place obligations on employers and service providers (July 2020).
- **Downpayment Blues:** Addressing the fixed cost of rent will be key for many commercial tenants as they move to trade out of the crisis caused by the Covid-19 pandemic. (July 2020).
- **Sign o' the times:** Covid-19 has prompted lawyers to rapidly familiarise themselves with the legal framework governing virtual closings and remote signings in a remote working environment (August-September 2020).
- **Criminal Damages:** Since 2006, the Criminal Injuries Compensation Tribunal has been designated as the appropriate body in Ireland for

the transmission and receipt of applications for compensation for victims of crime in cross-border cases (August-September 2020).

- **Hear my train a'comin':** Can an employee have a fair disciplinary hearing without a lawyer by their side, and is it constitutional to deny access to legal representation? (October 2020).
- **Summary Execution:** The ever-increasing evidential burden of proof in summary proceedings has serious implications for creditors and banks in their dealings with defaulting borrowers (October 2020).
- **Lethal Weapon:** The High Court has issued judgment in what will surely come to be regarded as a seminal case involving motor vehicle insurance law in Ireland (October 2020).



For the latest articles from *The Gazette* see: www.gazette.ie

IN THE FIGURES

1,500+



School students registered for the Law Society's Legal Ambitions Summer School

4,000+



Solicitors received free CPD during Covid-19 restrictions

409



Trainee solicitors in PPC I (September 2020)

650+



Signed up for Law Society's Business of Wellbeing Summit

"DEAR SIRs" – SOLICITORS ENCOURAGED TO ADOPT NEW FORMAL GREETING

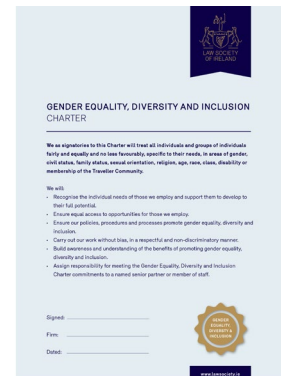
The Law Society has launched a new policy to discontinue the outdated "Dear Sirs" salutation which was traditionally used on all formal letters and business emails.

Women now make up over 51 per cent of the solicitors' profession and the policy aims to make written communications reflect a more equal, diverse and inclusive profession. The Law Society is encouraging solicitors and all legal professionals across the sector to consider retiring this male-centric phrase and to adopt greetings that reflect a more inclusive and modern approach.

GENDER EQUALITY, DIVERSITY AND INCLUSION CHARTER

In May 2020, the Law Society launched its Gender Equality, Diversity and Inclusion Charter. To date, over 80 different firms and workplaces from across the country have signed the Charter.

Signatories commit to treating all individuals and groups of individuals fairly and no less favourably, specific to their needs, in areas of gender, civil status, family status, sexual orientation, religion, age, race, class, disability or membership of the Traveller Community.



To view the Charter in full, visit: www.lawsociety.ie/GEDI

OUR POLICY COMMITTEES - AT A GLANCE

The Law Society operates up to 30 committees, task forces and working groups at any given time which include dedicated policy committees. These committees are comprised of solicitors who volunteer their time and expertise to help shape our policy and law reform agenda. Our committees operate across a wide range of areas which include:



1. Alternative Dispute Resolution
2. Business Law
3. Conveyancing
4. Criminal Law
5. Employment & Equality Law
6. EU & International Affairs
7. Family & Child Law
8. Human Rights & Equality
9. Intellectual Property & Data Protection Law
10. Litigation
11. Probate, Administration & Trusts
12. Taxation



CONTACT US

We will be glad to engage further on any of the issues raised in this Newsletter and invite you to contact the following members of the Law Society's Executive in that regard:

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