

# POLICY AND LAW REFORM AGENDA

A PUBLIC INTEREST AGENDA FOR IRELAND

December 2021 | Issue 10 | [www.lawsociety.ie/policyandlawreform](http://www.lawsociety.ie/policyandlawreform)



## PRESIDENT'S ADDRESS

It is an honour to assume the office of 151st President of the Law Society of Ireland.

My term as President coincides with a period of substantial change for the Law Society. Like other sectors, the pandemic has accelerated the adoption of new ways of working across the solicitors' profession and I look forward to continued progress in that regard.

Other priorities for the year ahead include:

- 1. Gender equality, diversity and inclusion (GEDI)** – having chaired the Society's GEDI Task Force, I am keenly interested in the Society's already substantial work in the area and look forward to the continued advancement of diversity in the leadership of the profession.
- 2. Dignity Matters** – the findings and impact of the Society's recent Dignity Matters Report on bullying, harassment and sexual harassment in the profession will form a significant focus of my presidency.
- 3. Health and wellbeing** – the job of a solicitor was taxing and demanding long before the onset of the pandemic and the Law Society will continue to support the profession in protecting our members' health, mental health and wellbeing.
- 4. Climate justice** – the need to incorporate climate considerations into our operations, both at the Law Society and across the wider profession, will be a primary consideration.
- 5. Recovery** – we will support members in their work towards business recovery as we continue to face ongoing pandemic-related challenges across the legal system.



I want to wish you well for the year ahead and look forward to continued engagement and cooperation on these and other issues.

Ní neart go cur le chéile,

Michelle Ní Longáin  
President  
Law Society of Ireland

## RESTRICTIVE EASEMENTS

In May of this year, the Society's Conveyancing Committee made a submission to the Department of Justice on the urgent need to review a November 2021 deadline for registration of restrictive easements.

During subsequent engagements with the Department, the Society

emphasised the need to allow sufficient time for a comprehensive review of easements, the registration of same and further contemplation of matters including mental capacity and distinctions between how foreshore and State lands are dealt with.

The new *Land and Conveyancing Law Reform Act 2021* came into effect on 30 November. It amends the law relating to the acquisition of easements and profits à prendre by prescription, repeals certain provisions of the *Land and Conveyancing Law Reform Act 2009* and amends the *Registration of Title Act 1964*.

## DIGNITY MATTERS

The International Bar Association's 2019 survey *'Us Too? Bullying and Sexual Harassment in the Legal Profession'* indicated bullying, harassment and sexual harassment behaviours in legal professions globally.

This prompted the Law Society to undertake our own research to assess the prevalence of these behaviours in the profession in Ireland.

Key findings of the research include:

- One in three women and one in two men experienced bullying;
- One in two women and one in nine men experienced harassment;
- One in two women and one in eight men experienced sexual harassment; and
- A consistent majority did not report their experience of bullying (73%), harassment (71%) or sexual harassment (91%).

The Law Society views these stark findings as a collective call to tackle behaviours which have no place in our profession. Solicitors are entitled to a safe working environment and the Law Society will work to eliminate behaviour that does not align with the values of integrity, trust and respect, which are the foundation of our profession.

## JUDICIAL APPOINTMENTS COMMISSION

In October, the Society noted publication of the Joint Committee on Justice's [Report on Pre-Legislative Scrutiny of the General Scheme of the Judicial Appointments Commission Bill 2020](#).

The Committee's recommendation that consideration be given to including representatives of both branches of the legal profession on the Commission is welcome and the Society continues to engage on a number of other recommendations.

## IRISH TRAVELLER MOVEMENT INDEPENDENT LAW CENTRE

On 10 December, which marked the UN's International Human Rights Day, the Law Society reiterated its call on the State to reinstate the Irish Traveller Movement Independent Law Centre. The initiative, which worked to reduce inequality and advance human rights for the Traveller community in Ireland, ceased in 2014.

The Society has made this call on a number of occasions, most recently in a submission on Ireland's Third National

## CALCUTTA RUN

The President, Michelle Ní Longáin, met with representatives of the Calcutta Run's charity partners, Peter McVerry Trust and The Hope Foundation, at the annual cheque handover ceremony in November.

The solicitors' profession has raised an impressive €500,000 since the start of the pandemic bringing the total amount raised over the last 23 years, to combat homelessness in Dublin and Calcutta, to €4.8 million.

As part of these activities, the second Virtual Calcutta Run took place in September and an abseiling event in October saw our Director General, Mary Keane, joining the Managing Partners of six of Ireland's largest law firms to abseil down Skyview Tower in Smithfield.



Back row: Charlotte Kavanagh, The Hope Foundation, President of the Law Society, Michelle Ní Longáin, Pat Doyle, CEO Peter McVerry Trust. Front row: Fiachra MacElhatton and Ciara Ryan, Maples Group



Director General of the Law Society, Mary Keane

Report to the UN Universal Periodic Review where our Human Rights & Equality Committee emphasised the unmet legal need within the Traveller community around the provision of legal advice and representation.

The Society is concerned that the ongoing failure to resource and fund the initiative creates a very real impediment to access to justice.

## RECENT SUBMISSIONS



### FINANCE BILL 2021



The Society's Taxation Committee provided its views to the Departments of Finance, Public Expenditure and Reform, Social Protection and Enterprise, Trade and Employment on the following issues:

1. The sub-optimal means by which legislation has been introduced in recent years;
2. Wide ranging recommendations to deal with inequalities and hardship;
3. Housing initiatives;
4. Keeping Ireland competitive through simple and pragmatic legislative amendments; and
5. Other technical issues impacting on enterprise and the cross-border economy.

### DATA PROTECTION COMMISSION (DPC) CONSULTATION ON REGULATORY STRATEGY FOR 2021-2026



The Society's Intellectual Property & Data Protection Committee recommended the following areas for consideration by the DPC in devising its strategy for the relevant period:

1. Publishing more wide-ranging and comprehensive guidance and compliance supports in key areas;
2. Adapting the amicable resolution procedure;
3. Managing systemic and non-systemic complaints;
4. The proposed "collective approach" to investigating systemic issues;
5. The procedure for statutory inquiries; and
6. Participation at the European Data Protection Board and further afield.

### GENERAL SCHEME OF THE CONSUMER RIGHTS BILL 2021



Our Business Law Committee provided views to the Department of Enterprise, Trade and Employment on the General Scheme which aims to consolidate provisions which are currently spread across a number of pieces of primary and secondary legislation. It also seeks to address significant gaps in

current legislation, most notably in respect of the remedies available to consumers.

The Committee appreciated that, if implemented, many of the concepts articulated in the General Scheme will significantly enhance coherence, clarity and the position of consumers.

### IRELAND FOR FINANCE ACTION PLAN



In communicating observations on the Action Plan to the Department of Finance, the Society agreed with the view, articulated in the Ireland for Finance Strategy, that a reliable and efficient legal system is essential for any jurisdiction's development of a thriving,

internationally competitive, financial services industry.

Recommendations in respect of court reform, alternative dispute resolution and the Society's Finuas Skillnet Programme were provided for consideration.

### SECTION 6 REVIEW OF THE LSRA ACT 2015 AND SOLICITORS ACTS 1954 TO 2015



The submission articulated the Society's position on suggested amendments to the above Acts.

In doing so, it offered views on matters which are considered necessary for the effective operation

of the legislation and made recommendations for enhanced alignment between the Authority and the Society on issues such as data sharing, practising certificates and the respective role of each entity.

### GENERAL SCHEME OF THE PROTECTED DISCLOSURES (AMENDMENT) BILL 2021



The Employment & Equality Law Committee provided views to the Joint Committee on Finance, Public Expenditure and Reform on the:

- policy rationale for the Bill;
- technical, legal and drafting aspects; and
- areas where the Bill might be improved.

To see all the latest submissions from the Law Society, visit: [www.lawsociety.ie/submissions](http://www.lawsociety.ie/submissions)

## BUSINESS RECOVERY SURVEY

The Society undertook a survey to better understand the impact of the pandemic on practices and the supports which will be necessary to assist the profession over the coming 12-18 months.

Key findings include:

- Solicitors believe that the use of information and communications technology (73%) and changed work practices (65%) will have a positive impact on their businesses over the next 6-12 months;
- 51% reported a moderate impact on practices as a result of the pandemic, citing reduction in business, disruption in the courts system and the ability to see clients as key impacts; and
- The profession is generally optimistic about the future and the sector has proven to be agile and adaptable in the face of a challenging business environment.



## THE FUTURE WAY WE WORK

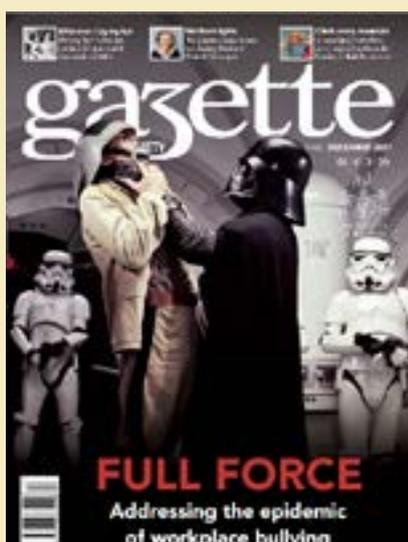


Recent challenges and changes to the way solicitors work prompted our Younger Members Committee to undertake research to better understand members' experiences of working during the pandemic and to gather information on their future work preferences.

Key findings of the research include:

- 91% of solicitors would prefer some form of hybrid working arrangement;
- 47% have worked more hours while working remotely;
- 64% stated that the provision of remote working arrangements would influence whether they will remain with their current employer; and
- 70% cited feelings of isolation from colleagues as a challenge associated with remote working.

Following consideration of the collected data, the Committee believes that an opportunity exists to create mutually beneficial work environments for employers and employees alike.



### Gazette.ie

If you would like to be interviewed on your policy and legislative priorities – get in touch at: [gazette@lawsociety.ie](mailto:gazette@lawsociety.ie)

- **Ain't No Mountain High Enough:** A recent judgment offers stark insight on the consequences of under-funding disability and mental-health services in Ireland (December 2021).
- **Eurovision:** Thomas Byrne TD encourages lawyers to have their say on the future direction of the EU through the upcoming Conference on the Future of Europe (December 2021).
- **Getting the Balance Right:** The European Commission's ambitious package to tackle money-laundering and terrorist financing while welcome, raises concern about its potential to undermine the principle of self-regulation of the legal profession (December 2021).



For the latest articles from The Gazette see: [www.gazette.ie](http://www.gazette.ie)

- **Post-pandemic Predicaments:** The challenges of the post-pandemic office, the hybrid work/life balance, and protecting employees' mental health were central themes at the Society's Business of Wellbeing summit (November 2021).
- **Right of audience:** In April, the Supreme Court held that a visiting German lawyer could be heard by that court, despite the lawyer's non-compliance with strict conditions for trans-EU representation (October 2021).
- **Disappearing Act:** Changes to be brought about by the Assisted Decision-Making (Capacity) Act have been discussed for many years but are now imminent (October 2021).

# COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE (CCBE)



## STANDING COMMITTEE

The CCBE's Standing Committee met in Brussels on 8 October to discuss topics which included the adoption of positions on the Anti-Money Laundering legislative package, the Artificial Intelligence Act, the need for a

European Convention on the profession of lawyer and the Victims' Rights Directive.

The meeting unanimously adopted [a statement](#) expressing concern around the October 2021 ruling of the Polish Constitutional Tribunal that accepting European Law over Polish Law was incompatible with the Polish Constitution.

## ARTIFICIAL INTELLIGENCE ACT

The CCBE's [position paper](#) on the issue was agreed in October.

It calls on the EU institutions to adopt specific provisions around the use of AI in the justice field, emphasises that the entire decision-making process must remain a human-driven activity with judges required to take full responsibility for all decisions.

It also highlights the need to ensure that the Act excludes the use of AI tools which may infringe a person's fundamental rights e.g. predictive policing.

## VICTIMS' RIGHTS DIRECTIVE

In October, the CCBE made a [submission](#) to the European Commission's consultation on 'Supporting crime victims – evaluation of the Victims' Rights Directive'.

Although the Directive is seen as a positive step towards enhancing victims' rights, the submission made a number of suggestions around potential

improvements in areas such as the right to interpretation and translation, the right to receive case-related information and the right to legal aid.

## EUROPEAN LAWYERS' DAY (ELD)

Celebrated each 25 October, ELD provides an opportunity to highlight the common values of lawyers and their role in the defence and promotion of the rule of law.

This year's theme was 'No justice without independent lawyers' which emphasised the need to protect the independence of both lawyers and bars so that legal professionals can properly defend citizens, preserve the rule of law and prevent abuses of powers.

## EUROPEAN CONVENTION ON THE PROFESSION OF LAWYER

In October, the CCBE adopted a [position](#) in favour of a binding legal instrument in the area.

On foot of the Council of Europe's [feasibility study](#) on the issue, the CCBE hosted a roundtable discussion between representatives of the Council of Europe, lawyers and representatives of lawyers' organisations on 'A binding legal instrument on the legal profession: A necessity for the proper administration of justice and the respect of the rule of law'.

In his keynote speech to the meeting, the Director of the Council of Europe Human Rights Directorate, Christophe Poirel, noted that:

“The freedom of exercise of the profession of lawyer is indispensable for the full implementation of the fundamental right to a fair trial as guaranteed by Article 6 of the European Convention on Human Rights. It is undeniable that the adoption of a future legal instrument in this field, allowing for the better protection of lawyers in the exercise of their profession, would contribute to the strengthening of democracy, the rule of law and human rights which are the very essence of the Council of Europe.”

## LAW SOCIETY SUPPORTS AFGHAN LAWYERS

The position of judges and lawyers across Afghanistan, particularly female judges and lawyers, is increasingly precarious.

The Irish Justice Community's Response to the Afghan Crisis - a coalition of the Law Society of Ireland, the Bar of Ireland, the Association of Judges in Ireland, the International Association of Women Judges and Irish Rule of Law International - was established to express solidarity

with, and support for, Afghan judges who have faced enormous challenges in recent months. This initiative is supported by the Government of Ireland and other agencies which include the Red Cross and the Irish Refugee Protection Programme.

Ireland has now secured safe passage and protection for 11 female Afghan judges and their families arising from the danger they would face if they were to remain in Afghan-

istan. Several of the judges and their families have already arrived in Ireland with other arrivals now imminent.

Donations to the Justice Community Fund will assist with the cost of food, accommodation and health care. The Law Society is appealing to all members of the profession to do whatever they can to support this initiative and contributions of all sizes will be welcome [here](#).

## IN THE FIGURES

637



Volunteer  
Committee, Task  
Force and Working  
Group Members

22,500+



On the Irish  
Roll of Solicitors

33



Law Society  
Diploma Centre  
Courses

300+



Recipients of  
the Law Society's  
Access Programme  
over 20 years

30



Submissions  
made to  
Government and  
other bodies in  
2021



## PRO BONO WEEK

The Society supports the work of FLAC and the Pro Bono Pledge.

Speaking at the launch of Pro Bono Week in November, the President of the Law Society, Michelle Ní Longáin, stated that "the undertaking of legal work for people on a pro bono basis is ingrained in the culture and tradition of the solicitors' profession in Ireland, but while essential, this work should not replace a properly funded legal aid system".

## OUR POLICY COMMITTEES – AT A GLANCE

The Society operates more than 30 Committees, Task Forces and Working Groups at any given time. These groups are comprised of solicitors who volunteer their time and expertise to help shape our law reform agenda by providing detailed submissions in 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 on any of the matters raised in this Newsletter and invite you to contact the following members of the Law Society's Executive in that regard:

MARY KEANE  
Director General  
m.keane@lawsociety.ie

FIONA CULLEN  
Public and Government Affairs Manager  
f.cullen@lawsociety.ie