

# POLICY AND LAW REFORM AGENDA

A PUBLIC INTEREST AGENDA FOR IRELAND

March 2019 | Issue 4 | [www.lawsociety.ie/policyandlawreform](http://www.lawsociety.ie/policyandlawreform)



## PATRICK DORGAN: A CORKMAN AT THE HELM

Patrick Dorgan, partner at Ronan Daly Jermyn, has been appointed President of the Law Society of Ireland for 2018/2019. Each year, the President of the Law Society announces key priorities for their year in office. Diversity and inclusion across the profession is Mr. Dorgan's main focus for the next 12 months.

"We are proud of the strides made in terms of equality and diversity within the Irish solicitors' profession over many years. We are looking ahead to build on the strong culture of diversity and inclusion that is already at the core of the profession's values."

Mr. Dorgan, together with the Law Society Council, look forward to engaging with you on these priorities and other issues in the year ahead.

## COURT RESOURCING

The recent hearing by the Oireachtas Justice Committee on the Heads of the European Convention on Human Rights (Compensation for Delays in Court Proceedings) Bill is, in principle, a welcome consideration of the State's international obligations (right to effective remedy). The debate also emphasised that the vital role of the Courts needs to be given further attention.

Delays in delivering justice can be best cured by investment in the justice system; in particular the courts system. The Society calls for increased investment in ICT, changes to court rules and resourcing of additional personnel to deliver for citizens and businesses accessing justice. Courts Service efficiencies and justice reforms, like any public service, benefit from continued political attention.

## LEGAL ALLIES

A new network of LGBT+ professionals and allies across the legal sector was launched on 23 January. OUTLaw aims to generate discussion and debate through various social and educational events to promote and foster the inclusion of LGBT+ professionals and allies across the legal sector in Ireland.



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

## FEATURED ARTICLES



Page 2:  
Remaining complexity



Page 3:  
Child Law resourcing



Page 4:  
Strategic Objectives 2019-2023



Page 5:  
IFS strategy



Page 6:  
Recent submissions

## SMALL AMENDMENTS – BIG IMPACT!

The debate surrounding legal costs sometimes fails to accommodate an analysis or understanding of the extent to which the processes and structure of legislative compliance play a key part.

Put simply, the more (unnecessarily) complex the system - be it transferring property, interacting with the Revenue

Commissioners or other State agencies, reliance on the receipt of information from financial institutions – the greater time and legal costs accrue for clients.

A key goal for policymakers and the profession should be to advocate for a system of public and financial services that retain their effectiveness,

while doing away with redundant or unnecessary procedures. In the area of conveyancing, this is particularly apparent.

Below are some examples of ‘blockages’ in the system, arising from legislation; and proposed solutions.

AREA	PROBLEM	SOLUTION
<p><b>NPPR Charge</b></p> <p>Section 7 and 8A(4) <i>Local Government (Charges Act) 2009</i></p> <p>Unpaid NPPR is a statutory charge on property and therefore must be investigated as part of title to ensure a buyer gets clear title and a lender gets a first charge (mortgage) on the property.</p>	<ul style="list-style-type: none"> <li>• Every purchaser until 2025 will have to establish that there is no unpaid NPPR due by previous owners for any year 2009 - 2013 inclusive.</li> <li>• For those liable for the charge between 2009 and 2011, there was no statutory provision for certificates of exemption.</li> <li>• For 2009 – 2013, a certificate of exemption is increasingly difficult to obtain as proof of occupancy records are generally kept for only 7 years by utilities.</li> <li>• Clearing title for buyer and lender is frustrated.</li> <li>• Different criteria applied by different local authorities – inequality of treatment of taxpayers.</li> </ul>	<ul style="list-style-type: none"> <li>• Remove as a charge on property which takes it out of the conveyancing system – resulting in savings of costs and time.</li> <li>• The local authority can pursue it as a debt against the liable party.</li> <li>• Solicitor and Local Authority time and cost is unnecessarily incurred, which is disproportionate to any likely tax recovered.</li> </ul>
<p><b>Planning Amnesty required</b></p> <p>At the moment, pre 1964 development benefits from a presumption of compliance</p> <p>Post 1964 development has no presumption of compliance. Compliance must be proved.</p>	<ul style="list-style-type: none"> <li>• Every time a property is sold, the purchaser has to investigate planning going the whole way back to 1 October 1964.</li> <li>• Repetitive, costly legal work.</li> <li>• Local authorities cannot take enforcement action in relation to a breach of planning after between 7 to 12 years. Yet, the relevant development does not become compliant – it remains as an unauthorised development.</li> <li>• In addition, can give rise to architectural and engineering costs for clients in order to obtain a certificate of compliance with planning.</li> </ul>	<ul style="list-style-type: none"> <li>• An amnesty after a certain period – say 15 years from time of construction - to deem a development compliant.</li> <li>• Would speed up title investigation, thereby reducing costs to clients.</li> <li>• A building bye-law approval amnesty in 1990 was very successful.</li> </ul>
<p><b>LPT Charge</b></p> <p>Unpaid LPT is a statutory charge on property and therefore must be investigated as part of title</p> <p>S.123 of <i>Local Property Tax Act 2012</i>.</p>	<ul style="list-style-type: none"> <li>• No limit in time on the charge on property – therefore no limit on look-back.</li> <li>• Likely to become more burdensome as time passes due to new valuation cycles. Clearance rules applicable in each cycle will have to be assessed separately by the purchaser at every subsequent purchase.</li> <li>• Because of the increase in time spent on investigating this tax, there is an increase in the legal cost of conveyancing.</li> </ul>	<ul style="list-style-type: none"> <li>• Remove the charge on property. LPT should not form part of the conveyancing process.</li> <li>• LPT should be a charge against the individual and dealt with through self-assessment and through existing Revenue collection and enforcement options.</li> </ul>
<p><b>Help to Buy Scheme</b></p> <p>Deposit monies paid by Revenue to a builder under the Scheme that are not repaid to Revenue following a cancelled sale are a statutory charge on the site.</p> <p>Section 477C <i>Taxes Consolidation Act 1997</i> (as amended)</p>	<ul style="list-style-type: none"> <li>• Where there is a cancelled sale, and the builder has not returned the deposit to Revenue, Revenue has a clawback by way of a statutory charge on the site. A subsequent purchaser of the same site or their lender have no protection as there is no way they can discover from title searches that there is a statutory charge on the site in favour of Revenue.</li> <li>• This applies retrospectively, even after the site is resold to a subsequent purchaser.</li> <li>• It adversely impacts on title to the property and on a buyer getting clear title or a lender getting a first legal charge (mortgage) on the property.</li> </ul>	<ul style="list-style-type: none"> <li>• Remove the statutory charge.</li> <li>• Revenue could pursue the builder as a debtor.</li> <li>• Alternatively, the Oireachtas could provide that the statutory charge would apply only when Revenue has obtained a judgment against the builder and registered it against the title. It is then easily discoverable by a buyer or lender doing the usual title search.</li> </ul>
<p><b>Unpaid Fines charged against domestic property</b></p> <p>Unpaid fines under this Act are a statutory charge on property owned by the person fined.</p> <p><i>Fines (Payment and Recovery) Act 2014</i></p>	<ul style="list-style-type: none"> <li>• Buyers are required to carry out an additional search to ensure that title is clean.</li> <li>• Cost of search payable to sheriff/receiver of fines plus law searcher fee for additional search add to total cost for buyer.</li> </ul>	<ul style="list-style-type: none"> <li>• Remove the charge on property.</li> <li>• Pursue the matter as a debt due.</li> <li>• The Sheriff could register an unpaid fine as a lis pendens against the property. This would be discoverable on an existing standard title search without the need for an additional search in sheriff's office.</li> </ul>

CHILD LAW – RESOURCES REQUIRED TO COMPLY WITH STATE OBLIGATIONS

“Special Care” applications are one of the most difficult and complex cases dealt with by the High Court, dealing with extremely vulnerable and high risk children. Under a recently commenced amendment to the Child Care Act 1991, the High Court, on application by the Child and Family Agency, has the power to confirm the civil detention of minors for a period of 3 to 9 months.

Arising from the provisions of the recent amendment, the agency could now potentially find itself in a position where it

has reached the necessary determination that a young person requires special care. In those circumstances, the agency is obliged to apply for a special care order, but the reality may be that there are no beds available in any of the special care units.

This is due to difficulty in recruitment and retention of specialist staff, as well as other resource constraints. As a result, specialist adapted centres are running at below capacity while minors and their families have a real health need for the service.

In such a scenario, the agency would not be in a position to comply with its statutory duty; and there is added potential exposure to litigation against the State arising from this section.

It is clear that a commitment to child welfare by the State must entail adequate resourcing for the most vulnerable, and their families.



See the full article in the January/February Gazette edition at [www.gazette.ie](http://www.gazette.ie)

INVITING YOU TO GAZETTE.IE

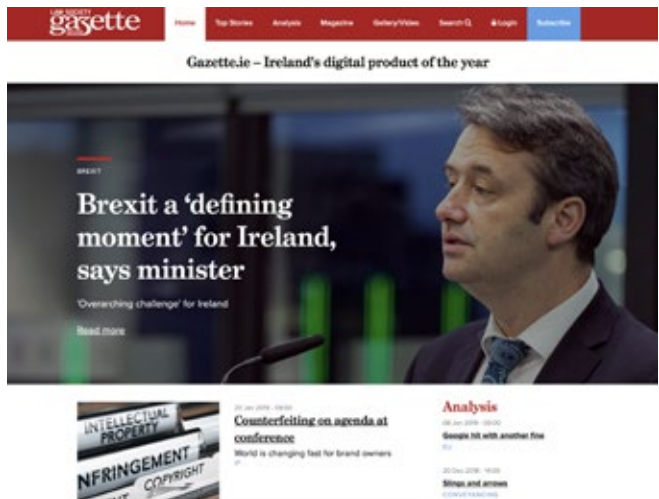
The Law Society has unveiled a new daily legal news service.

Gazette.ie will deliver the most important legal and public policy stories via morning news updates, a breaking news service throughout the day and, for subscribers, long-read articles.



Our award-winning journalism team is interested to feature interviews with legislators and legal experts on issues including law reform, justice and public administration.

If you'd like to be interviewed in respect of your policy and legislative priorities – get in touch – [c.oculain@lawsociety.ie](mailto:c.oculain@lawsociety.ie)



POLICY & LAW REFORM IN THE GAZETTE

- **Faster, better, cheaper?** – Recent changes have streamlined the enforcement of determination orders issued by the Residential Tenancies Board in the private residential rent-

al sector, making the process quicker and cheaper. (Aug/Sept)

- **Who will bell the cat?** – Recent commentary and case law relating to unfair mortgage contracts may seek to limit the impact of the Unfair Contract Terms Directive in Ireland. (Aug/Sept)
- **Data: Set phasers to stun** – Is the GDPR likely to lead to a deluge of complaints and litigation by claimants who allege their data protection rights have been infringed? (Aug/Sept)
- **Trend Setter** – The EU’s fifth AML/CFT directive addresses new trends and technologies. (Aug/Sept)
- **A blueprint for police reform** – The long-awaited report on the future of policing suggests that criminal prosecution decisions be handed over to State solicitors. (Oct)

- **She sells sanctuary** – State agencies could be working more effectively together in order to effect a more positive transition from custody for prisoners. Is there a constitutional right to rehabilitation, reparation and reintegration? (Oct)
- **Breaking up is hard to do** – In the early days of a couple’s break-up, a ‘children’s charter’ can ensure that adults do the best for their children. (Oct)
- **Behind the curtain** – An awareness of what happens at a sexual assault treatment unit assists solicitors in the provision of best possible legal advice. (Oct)
- **Capacity Act is a ‘good step in the right direction’** – The Assisted Decision-Making (Capacity) Act recognizes inalienable rights that cannot be lost due to diminished decision-making capacity (Dec)

## LOOKING TO THE FUTURE: STRATEGIC OBJECTIVES 2019-2023

1. We will use our voice, our experience and our relationships to represent the solicitors' profession and to champion their contribution to the Irish economy, the vindication of citizens' rights and the rule of law.
2. We will provide a strong voice in policy debate in order to inform decision-making on matters pertaining to the justice system and law reform.
3. We will enable our members to achieve their potential as respected and trusted advisors and successful businesses.
4. We will fulfil our statutory regulation functions to ensure fair and effective regulation of solicitors in the interests of the profession and the public.
5. We will fulfil our statutory education functions in delivering a premier qualification and high quality ongoing education and training.
6. We will be a valued resource for our members as a high performance professional body.
7. We will continue our tradition of engaged citizenship and civic responsibility by promoting legal awareness, encouraging social diversity within the profession, supporting local community initiatives and providing accessibility to our resources at Blackhall Place, in line with our Corporate Social Responsibility Statement.

## ARTS, ENTERTAINMENT AND MEDIA LAW MOOC

The Law Society Diploma Centre's 2019 Massive Open Online Course (MOOC) will cover Arts, Entertainment and Media Law. This course, now in its 6th year, is free and open to everyone. The annual MOOCs have introduced over 10,000 participants from over 70 countries to diverse areas of law and to information, insight and opinion from leading practitioners and industry experts.

Whether your passion is painting, photography, producing, performing, writing, reporting, or if you act for or help someone with that passion, join this year's MOOC in May/June 2019.



For further information coming soon to the Law Society's MOOC website:  
[www.lawsociety.ie/mooc](http://www.lawsociety.ie/mooc).

## CAPACITY IN IRELAND: CHALLENGES IN BALANCING RIGHTS AND PRACTICAL REALITIES

The 16th Annual Human Rights Conference took place on 20 October 2018.

It explored the challenges presented by the Assisted Decision-Making (Capacity) Act 2015 including the rights and responsibilities for all parties involved.

The Conference provided a vital opportunity for family carers, people with disabilities, policymakers and other interested stakeholders to come together to assess and discuss the various challenges involved in navigating this area.



Papers can be accessed at:  
[www.lawsociety.ie/news](http://www.lawsociety.ie/news)

## FINTECH CONFERENCE

The Law Society Finuas Skillnet Fintech Symposium will take place on 7 March 2019 in Blackhall Place. The programme is essential for all policy-makers, international financial services (IFS) professionals and in-house IFS Counsel who are looking to develop and enhance their FinTech knowledge and skills. The conference will cover topics such as anti-money laundering and corruption, FinTech, PSD2, consumer protection, and GDPR.



To reserve your place contact:  
[finuasskillnet@lawsociety.ie](mailto:finuasskillnet@lawsociety.ie)

For more information on Law Society conferences and events, see: [www.lawsociety.ie/cpdcourses](http://www.lawsociety.ie/cpdcourses)

## IMRO AND LAW SOCIETY PARTNER ON NEW PROFESSORSHIP



The Law Society of Ireland has partnered with the Irish Music Rights Organisation (IMRO) to create a first-of-its-kind professorship in intellectual property law and copyright and contribute to the national debate on related issues, including music rights.

IMRO Associate Professor of Intellectual Property Law and Copyright will train future solicitors in the protection of music rights, with plans for an annual public lecture.



## A NEW STRATEGY FOR IRELAND'S INTERNATIONAL FINANCIAL SERVICES SECTOR

The Law Society's most recent submission to the Department of Finance outlined key recommendations to the review of the IFS 2020 strategy along the following lines:

**Brexit:** The proposition of Ireland as a centre for international dispute resolution and choice of law must be integrated into the State's enterprise development strategy and marketing efforts, with the objective of retaining and attracting foreign direct investment.

**Courts reform:** The Department and its IFS Division has a leadership role in communicating with other relevant departments and agencies (Department of Justice, Courts Service etc.) the need for increased resourcing and appropriate IFS reforms.

**Developing IFS Talent:** As part of any future IFS Strategy, the Society recommends that the Department deepen its collaboration and linkage with education providers such as the Society, to ensure that the needs of the market continue to be met, and the necessary market signals are responded to.

The Society is a member of Skillnet Finuas network, providing continuing education to the FS sector.



See more at [www.lawsociety.ie/cpd](http://www.lawsociety.ie/cpd)

## BREXIT



Monitoring the impact of Brexit on policy and law reform, and the legal profession generally, is a priority for the Law Society.

Our response and commentary is being coordinated across the range of Policy Committees for the benefit of the profession, the public and Government.



Check in regularly for timely Brexit articles, reports and other resources at [lawsociety.ie/Brexit](http://lawsociety.ie/Brexit)

## PRIVILEGE FOR REPORTING OF COURT PROCEEDINGS.

The Law Society's Litigation Committee produced a submission on the Law Reform Commission's Issues Paper on Privilege for Reports of Court Proceedings under the Defamation Act 2009.

The Society considered four key issues in the submission, including:

- Considering if the current principles used to interpret what constitutes a 'fair and accurate' report of proceedings under section 17 of the Defamation Act 2009, are sufficiently clear and well understood.
- Who should be eligible to claim absolute privilege on a 'fair and accurate' report?
- Should there be a new qualified privilege for certain reports of court proceedings?
- Should there be a leave requirement for any proposed new qualified privilege?

The Society considers the current principles are sufficiently clear and no changes should be made to those who are eligible to claim absolute privilege on a 'fair and accurate' report. While we do have some concerns about treating journalists working for accredited publishers in the same way as any other person who writes and publishes a court report, we consider that restricting the availability of the absolute privilege defence to "bona fide members of the press", howsoever defined, might give rise to constitutional issues.

Further to this, the Society recommends not developing a new qualified privilege for certain reports of court proceedings. A leave requirement for any proposed new qualified privilege is also considered unnecessary.



[www.lawsociety.ie/globalassets/documents/committees/other/lrc-submission-privilege-2018.pdf](http://www.lawsociety.ie/globalassets/documents/committees/other/lrc-submission-privilege-2018.pdf)

## INTERNATIONAL AFFAIRS TALK



An annual event organised by the EU & International Affairs Committee of the Law Society, this year's event will bring together experts in the field of sports law to address a number of international issues and the implications for the legal practitioner and their clients.

Previous talks include: the Role of the Oireachtas under the Lisbon Treaty; External Relations, Security and Defence in the EU; The Ukraine Crisis: legal and political issues; The Refugee crises: A challenge for Europe; Cyberattacks – the legal response.



Register your interest at [lspt@lawsociety.ie](mailto:lspt@lawsociety.ie)

## LEGAL RESOURCES

The Law Society has developed a number of accessible legal guides on a range of legal areas including Business law, Consumer rights, Employment law, Property, Dispute resolution and more. These may be of interest to your constituents and colleagues.

The free guides are intended as a guide only and are not a substitute for legal advice.



They are available to the public at: [www.lawsociety.ie/Public/Legal-guides](http://www.lawsociety.ie/Public/Legal-guides)

## RECENT LAW SOCIETY SUBMISSIONS

### January 2019

- Response to the Irish Human Rights and Equality Commission Draft Code of Practice on Sexual Harassment and Harassment at Work

### December 2018

- Response to the CCPC Public Consultation on a Simplified Merger Procedure for the Review of Certain Mergers & Acquisitions
- Submission on Draft Limited Liability Partnership Regulations
- Submission on Draft Professional Indemnity Insurance Regulations
- Submission on Draft Regulations for Legal Partnerships

### November 2018

- Issues paper on privilege for reports of court proceedings
- Response to the Department of Finance Review of the IFS 2020 Strategy

### October 2018

- Submission on the Draft Code of Practice for Practising Barristers
- Response to Consultation on Supplementary Pensions Reform

### August 2018

- Submission on Limited Liability Partnerships (LLPs)

### OUR POLICY COMMITTEES

Expert opinion informing policy and law reform.

We invite early engagement with representatives and officials as a means of identifying key legal policy and public interest concerns.

The Society's dedicated policy committees comprise volunteer solicitors who help to shape the Society's law reform agenda by providing submissions to Government relating to the following areas:

- Alternative Dispute Resolution
- Business Law
- Conveyancing
- Criminal Law

- Employment & Equality Law
- EU & International Affairs
- Family & Child Law
- Human Rights
- Intellectual Property & Data Protection Law
- Litigation
- Probate, Administration & Trusts
- Taxation

## LOBBYING RETURN



The Society seeks, on an ongoing basis, to articulate to decision makers how the legal and justice system can be reformed and improved to serve citizens and businesses better. We take our statutory obligations arising under the Regulation of Lobbying Act most seriously, as well as promoting its existence to our members.



See our latest return for September – December 2018, and all returns at: [www.lobbying.ie](http://www.lobbying.ie)

## CONTACT US

The Law Society welcomes the opportunity to meet with public representatives and their staff to discuss options for law reform, and provide views on the operation and implementation of existing initiatives.

Our main contacts for Policy and Public Affairs initiatives are:

- KEN MURPHY, Director General, [k.murphy@lawsociety.ie](mailto:k.murphy@lawsociety.ie)
- MARY KEANE, Director of Policy and Public Affairs, [m.keane@lawsociety.ie](mailto:m.keane@lawsociety.ie)
- CORMAC Ó CULÁIN, Public Affairs Manager, [c.oculain@lawsociety.ie](mailto:c.oculain@lawsociety.ie), (01) 672 4917

