



THE BAR <u>of ireland</u> <u>SAFEG</u>UARDING **JUSTICE**

December 2020



Welcome to the third edition of Safeguarding Justice.

This biannual newsletter highlights the range of advocacy work undertaken by the Council and its committees in recent months. There are significant challenges on the horizon for the justice field, not least the fallout from Covid-19. Maintaining access to justice for the public throughout this emergency has been to the forefront of our stakeholder engagement.

The Council continues to contribute its of the Council of The Bar of Ireland, views and observations across a range of other areas through various public

of which is highlighted within. I am immensely grateful to the many members who volunteer their time, knowledge and expertise in respect of this work.

I hope you find this newsletter useful and informative. We welcome and invite continued engagement with all interested parties on the issues raised within.

Maura McNally SC

Maura McNally SC was elected Chair the representative body's second-ever female head, and will Chair the Council and targeted consultations - a summary from August 1, 2020, to July 31, 2021.

Preserving Justice during Covid-19

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Justice Sector in Numbers

BUDGET ALLOCATED TO

Ireland's low justice budget highlighted in latest CEPEJ Report



[A MEASURE OF HOW WELL A SYSTEM PROCESSES THE VOLUME OF CASES IT WORKS WITH]





A 15% INCREASE ON THE 1,754 PEOPLE WAITING AT THE START OF THE YEAR



[LEGAL AID BOARD ANNUAL REPORT 2019]



BETWEEN MARCH & AUGUST 2020, EMPLOYMENT LAW QUERIES TO FLAC INCREASED BY

58.7%

THE LEGAL AID BOARD DOES NOT Provide services for

EMPLOYMENT & SOCIAL WELFARE DISPUTES





[LEGAL AID BOARD ANNUAL REPORT 2019]



[FLAC SUBMISSION TO OIREACHTAS]





Preserving justice during COVID-19

Maintaining access to justice during high level restrictions

The Bar of Ireland continues to work closely with the Judiciary and the Courts Service in maintaining access to justice for the duration of high level restrictions. Practitioners, together with the Judiciary and the Courts Service have adopted new ways of working to ensure the continuation of court business deemed critical and essential throughout this period. A range of supports were rolled out by the Bar to members in responding to changed practices, including training in online advocacy, IT upskilling and uninterrupted continuing professional development via online platforms.

Thanks to the cooperation and the joint efforts of the Courts Service, the judiciary and the legal professions, we have seen, through a combination of remote and physical hearings, an increase in case throughput since the initial lockdown in March. As the State has moved between various levels and restrictions, the profession is committed to ensure that access to justice is maintained throughout.

Investment needed in the Courts

However, with restriction levels expected to fluctuate for the foreseeable future, our courts system needs to be in a position to respond more effectively and to minimise delays and disruption, insofar as possible, across all civil and criminal law matters going forward. The need to prioritise investment for the Courts, was raised directly with members of the Oireachtas during The Bar of Ireland's appearance before the Special Committee on COVID-19 response, and was furthermore stressed by Maura McNally SC, Chair of the Council of The Bar of Ireland, in a meeting with Minister for Justice, Helen McEntee TD, in late September. The use of remote hearings has, to a degree, been useful and important. But they are suitable for a narrow range of cases only.

A clear, well-resourced and pragmatic plan is critical to ensure the continuing administration of justice for the remainder of 2020 and into the coming months, and possibly years. Without a clear and resourced plan, the likely outcome will be that the State will be effectively 'storing up' delays which would, in due course, be likely to undermine public confidence in the legal system. It is vital that citizens can continue to be confident that the regulation and resolution of their affairs continue to be properly conducted notwithstanding the pandemic.

Special Committee on COVID-19 response

Maura McNally SC, Chair of the Council of The Bar of Ireland, and Joseph O'Sullivan BL, Chair of the Human Rights Committee, appeared before the Oireachtas Special Committee on Covid-19 Response to contribute to discussion and provide perspectives on the legal and constitutional issues arising during this fast moving period of legislative response to control the spread of the virus.



The Council's submission; and contributions to the debate related to the importance of proportionality, access to justice and the important role of the courts and the rule of law during these challenging times.

Key Observations:

- A fundamental requirement to comply with the Constitution acted as an important and necessary limitation on the Oireachtas as to the scope of the emergency measures which it could introduce.
- Whilst the regulations do impose significant restrictions on the exercise of at least one important personal right, namely the right to move about freely - they do not interfere with the exercise of other important rights, for example the right to freedom of expression, which ensures the continuing ability to all to analyse and (lawfully) freely comment upon any restrictions enacted.
- In times of emergency, it is essential that there is meaningful and timely access to the courts so that citizens have, and are aware that they have, access to seek effective redress in the event that they believe that their rights have been unlawfully infringed.

Click **here** to read The Bar of Ireland's submission in full.

Pro Bono at the Bar

PILA Pro Bono Pledge Ireland

On Thursday 26th November, the Minister for Justice Helen McEntee launched Pro Bono Pledge Ireland – an initiative of FLAC's Public Interest Law Alliance (PILA). This is the first collaborative effort in Ireland which articulates the shared responsibility of solicitors, barristers, law firms and in-house legal teams to commit to promoting access to justice by providing pro bono legal assistance to those in need. It includes a shared



definition of pro bono legal work and a commitment to an aspirational target of 20 hours per lawyer per year.

The Pledge is being supported by The Bar of Ireland, The Law Society of Ireland and Dublin Solicitors Bar Association.

Law Library members have a long tradition of providing assistance and advice, both to individuals and organisations, on a pro bono basis. The opportunity now to have this important work recognised by Pro Bono Pledge Ireland is a welcome step, and will greatly assist in the understanding of how the profession contributes to the wider wellbeing of the community. Our association with FLAC, PILA, and other similar free legal advice centres and indeed our own Voluntary Assistance Scheme, all represent examples of the Bar, working together to share its skills with those most in need.

VAS - Speaking for Ourselves

In the face of ongoing Covid-19 disruptions, NGOs and advocacy organisations must learn to circumvent new challenges as they seek to engage with stakeholders and policymakers in what is almost an exclusively digital world. This year, The Bar of Ireland's annual Voluntary Assistance Scheme (VAS) Conference focused on building capacity to enhance digital advocacy and engagement.

Sharing their insights was an esteemed panel of speakers including: Minister Anne Rabbitte TD; Senator Barry Ward; Deputy Secretary General in the Department of Justice and Equality, Oonagh Buckley; Ms Justice Úna Ní Raifeartaigh; Nuala Butler SC; and, VAS Coordinator Lewis Mooney BL.



Charities, NGOs and civic society groups who are working hard to provide a dynamic response to the needs of vulnerable groups during Covid-19, are reminded of the voluntary legal services of The Bar of Ireland's Voluntary Assistance Scheme (VAS). VAS can provide assistance in most areas of law including debt, housing, landlord and tenant, social welfare, employment and equality law. Legal services can be provided to the charity, NGO or civic society group directly, or to the organisation's clients where the organisation acts as the intermediary. Full details of the scheme and how to avail of its services can be found **here**.

Members of The Bar of Ireland also continue to provide pro bono voluntary legal assistance through a number of free legal advice clinics that operate outside of the Bar such as those operated by FLAC and Community Law and Mediation (CLM).



01 847 7804 or 061 536 100





1890 350250 or 01 8745690

VAS@lawlibrary.ie



Promoting Diversity at the Bar



The Denham Fellowship

Shortlisting of applications for **The Denham Fellowship 2021** is underway. The Denham Fellowship, which provides financial and professional support to aspiring barristers from socioeconomically disadvantaged backgrounds, is now in its fourth year.

The Fellowship endeavours to encourage more diversity in the legal profession.

In a five-year programme, Denham Fellows are provided with financial, educational and professional support from point of entry to the Barrister-at-Law degree programme at the King's Inns all the way through their first four years of practice at the Law Library, and ultimately in what is sure to be a successful and rewarding career at the Bar. Hear what our current Fellows have to say:



Barriers to Law Survey

The Bar of Ireland was delighted to support the **Barriers to Law** Survey, launched by Senator Lynn Ruane in October, which aims to assist in identifying barriers faced by students and graduates of Law in accessing the legal professions. We look forward to the findings. Understanding the barriers to a career in law equips us to tackle them.



Senator Lynn Ruane



Informing and Reforming

Over the past number of months, The Bar of Ireland, through its Council and committees, has submitted independent expert opinion across a range of issues concerning the rule of law and the administration of justice. Full submissions are available on the website **www.lawlibrary.ie**.

May 2020

Unification of the solicitors' profession and the barristers' profession

LSRA

Submission to the LSRA

The Legal Services Regulatory Authority (LSRA) invited views on existing business structures for the delivery of legal services, as well as any opportunities or challenges that might arise from the unification of both branches of the legal profession.

It is the view of the Council that a proposal to unify the legal professions, where the objective for such a change is unstated and unclear, would result in adverse outcomes that are inimical to the interests of clients and inimical to the interests of justice.

The flexibility inherent in the defining features of the independent referral bar translates into some very real and tangible benefits to clients and to wider society, most notably:

- increased competition between barristers leading to lower costs
- greater access to specialist legal services for a greater number of people
- independence in the administration of justice

Read the full submission here.

Targeted stakeholder consultation on the 2020 Rule of Law Report



Submission to the European Commission

On June 5, The Bar of Ireland participated in a virtual consultation with the European Commission's Directorate-General on Justice, alongside representatives from the Law Society and the Legal Services Regulatory Authority. The purpose of the consultation was to provide input to the Commission's first annual report on the Rule of Law – one of the major initiatives of the Commission's Work Programme for 2020, which will see a deepening of its monitoring of member states' compliance with the rule of law through a 'rule of law review cycle'.

The Commission invited submissions from The Bar of Ireland in respect of four distinct areas:

- (i) legal fees
- (ii) legal aid
- (iii) the challenges faced by the Irish justice system as regards length of proceedings and judicial independence; and
- (iv) the newly established Personal Injuries Guidelines Committee under the Judicial Council Act 2019.

Read the full submission **here**. The country chapter on Ireland has since been published and is available to view **here**.

July 2020

Transposition of EU Whistleblowing Directive

An Roinn Caiteachais Phoiblí agus Athchóirithe Department of Public Expenditure and Reform

Submission to the Department of Public Expenditure and Reform

Prepared by the Employment Bar Association on behalf of the Council of The Bar of Ireland, in response to the Department's public consultation on the transposition of Directive (EU) 2019/1937 of the European Parliament and the Council on the protection of persons who report information about threats or harm to the public interest, which they have obtained in the context of their work-related activities.

This Directive, which must be transposed by member states by the 17th December 2021, will significantly expand the scope of Ireland's Protected Disclosures Act 2014, to include a mandatory requirement for private sector companies with 50 or more employees to establish a whistleblowing policy with internal reporting channels and an obligation to provide protection for certain whistleblowers.

There is a degree of flexibility afforded to member states however in the implementation of certain aspects of the Directive, on which the Department was consulting. Read the full submission **here**.





An Roinn Dlí agus Cirt Department of Justice

Submission to the Department of Justice

Prepared in response to the Department's public consultation on a draft Youth Justice Strategy which will form an important element of the National Policy Framework for Children and Young Adults overseen by the Department of Children and Youth Affairs. The draft Strategy is a wide-ranging document encompassing a full range of issues connected to children and young people who may come into contact with the criminal justice system, from prevention, early intervention, and diversion from crime, through to court processes and facilities, supervision of offenders, detention, reintegration and support post-release.

Key Observations:

- Provisions to improve the speed of cases involving child defendants in the criminal justice system must be a priority. Where a child defendant reaches the age of majority before the criminal process is completed, they are denied the benefits of the Children Act 2001 resulting in the loss of anonymity and the loss of certain sentencing orders.
- Extensive modification for the questioning of children by An Garda Siochana and specialised personnel such as intermediaries are not available for child defendants in this jurisdiction. It is necessary that the expertise required both in the use of intermediaries and specialist interviewing of child defendants is developed within this jurisdiction to ensure that it is available immediately when required rather than a reactive and ad hoc system.
- The national provision of courts and custody areas require appraisal as to how child defendants interact with their physical surroundings from initial contact with An Garda Siochána to interaction with the judiciary. It is vital that there is a consistency of experience for all children across the country.

August 2020 Setting the Discount Rate in Personal Injury Cases

An Roinn Dlí agus Cirt Department of Justice

Submission to the Department of Justice

Prepared in response to a public consultation in relation to the issue of the personal injury discount rate, also known as the real rate of return, and how it should be set. This rate is used by the courts in cases involving catastrophic personal injuries to determine the size of an award necessary to compensate a person for damages for future loss.

Guiding the Council's response was the fundamental principle recently restated by the Court of Appeal:

"Public policy has no part to play in the assessment of damages of this nature. If large awards in respect of claims of this nature have an adverse effect on insurance premiums or place pressure on the pockets of State defendants, that is not something that the court can take into account and, as a result, in some way moderate or reduce its award. The damages so awarded are, after all, destined to do no more than restore a plaintiff in financial terms to as close a position as they would have enjoyed in terms of wealth and independence had they not been the unwitting victim of the defendant's wrongdoing".

Read the full submission here.

September 2020

Review of the Child Care Act 1991

An Mí De Dis

An Roinn Leanaí, Comhionannais, Míchumais, Lánpháirtíochta agus Óig Department of Children, Equality, Disability, Integration and Youth

Submission to the Department of Children, Equality, Disability, Integration and Youth

As part of its ongoing review of the Child Care Act 1991 - the primary piece of legislation regulating child care and child protection policy in Ireland – the Department of Children, Equality, Disability, Integration and Youth invited comment on a series of initial proposals to

amend the legislation as part of an online consultation.

The review aims to address a number of issues, including what is working well within the legislation; and to address any perceived gaps, operational improvements and new areas for development.

Key Observations:

- A strong caution that legislation does not undermine constitutional rights of parents
- Concern that Care Orders (and other applications) could be granted on an ex-parte basis
- Access to legal advice & representation prior to entering into, or renewal of, a written Voluntary Care agreement should be provided for in the Act to ensure rights are protected and that consent is given on an informed basis
- Assessment of child sexual abuse or neglect allegations should be provided for in the legislation.

Read the full submission here.

September 2020

Implementation of the recommendations of O'Malley Report on the Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences



An Roinn Dlí agus Cirt Department of Justice

Submission to the Department of Justice and Equality

The Bar of Ireland welcomes the publication of the *O'Malley Review*. Along with its recommendations, it is a vital and important analysis of the current criminal justice system's approach to sexual offences and vulnerable witnesses, and it will be foundational in ensuring that the justice system's approach to such cases is effective, humane and respects the fundamental tenets of fairness before the law

At the invitation of the Department, a written submission setting out how the Bar will play its part in the implementation of recommendations relevant to the profession, has been made and can be read **here**.

While the Council broadly welcomes the recommendations set out in the Report, the Council would also caution that the provision of adequate resources and funding for the recommendations will be critical to the successful reform of the current system.





Draft Legal Services Regulation Act 2015 (Advertising) Regulations 2020



An tÚdarás Rialála Seirbhísí Dlí Legal Services Regulatory Authorit

Submission to the Legal Services Regulatory Authority

The Council was invited by the Legal Services Regulatory Authority to make a submission in respect of the draft Legal Services Regulation Act 2015 (Advertising) Regulations, 2020. The Council last year made a submission to the Authority in the first phase of consultation that led to the drafting of regulations.

In that **earlier submission** the Council said that it is supportive of members of the Law Library and other practising barristers advertising in a manner that protects the public interest; maintains proper professional standards; protects the independence, dignity and integrity of the legal profession; and protects the proper administration of justice. The Council also pointed to its submission made to the former Competition Authority where it said that advertising may permit greater transparency, assist barristers to establish their practices and promote price competition.

Key Observations:

- Advertising by barristers has been permitted by The Bar of Ireland's Code of Conduct since 2007 and is currently subject to guidelines published by the Council in 2008. Those guidelines are broadly similar to the guiding principles contained in the relevant sections of the Legal Services Regulation Act, 2015
- The Council notes that the draft regulations are generally permissive in nature subject to certain specific exceptions. In this regard, the scheme of the draft regulations appear to reflect to a broad degree the provisions of section 218 of the 2015 Act.
- The Council repeats its earlier submission that the Authority should include in the regulations a prohibition on statements about a legal practitioner's success rate. The Council's concern is that if legal practitioners were permitted to advertise on the basis of their success rates, the inevitable risk would be that legal practitioners would start to select clients principally on the ostensible likelihood of the success of their cases. This could lead to potential clients with difficult or unattractive cases struggling to find adequate and effective representation. In the area of criminal defence practice, for example, it could lead to the representation only of clients with a strong possibility of acquittal, thereby undermining an accused's constitutional entitlement to a trial in course of law.

THE BAR REVIEW

The Bar Review, The Bar of Ireland's journal, is published six times per year. It contains articles from leading barristers on key developments and topical issues of practical and legal importance, as well as a comprehensive Legal Update detailing pertinent publications, judgments and legislation.

Latest from The Bar Review

- The Business of Evidence: New legislation has significant implications regarding the admission of business records as evidence in civil litigation – Nathan Reilly BL
- Civil Defence: Calls to remove juries from civil actions fail to recognise the importance of civil juries in vindicating the rights of litigants – Mark Harty SC
- Freedom to Travel: Examines the legal basis for the adoption of draconian measures on the free movement of EU citizens in the context of the Covid-19 pandemic – Anthony Lowry BL and Zachary Murtagh BL



Available online now!

Force Majeure Clauses in the time of Covid-19: Examines the factors to consider for those attempting to invoke a force majeure clause in a contract during the Covid-19 pandemic – Alan O'Connor BL

Recent interviews:

- Phillippe Sands QC on International Law, Environment and Literature
- Matthieu Reeb, Secretary General of the Court of Arbitration for Sport on the Court's history and development
- Sinéad McSweeney, MD of Twitter Dublin, about the company's work to address offensive content and the challenges facing interactive platforms, including issues of privacy and accountability.

The Bar Review is freely available online. Click **here** to access the latest edition. You can also access our extensive archive of past editions **here**.

The Bar of Ireland's LinkedIn COVID Series



The Bar of Ireland has introduced a new series of LinkedIn guest posts, bringing perspectives from our members and our partners across various areas of legal practice and policy, with a particular focus on the impact of the Covid-19 pandemic.



Mema Byrne BL

Insurance & Contract Law – Developments in business interruption cases due to Covid-19



Colm Scott-Byrne BL

Mandatory Vaccination – Constitutionally permissible?



John Temple BL

Leaving Certificate 2020 – Studying the legal considerations



Ruadhán Ó Ciaráin BL

Does the current ban on evictions under Covid-19 emergency legislation apply to commercial tenants?



Tomás Keys BL

Electoral Law: Update on reform proposals & key cases

New Catherine McGuinness Fellow announced!

Noeleen Healy, BL has been appointed the new Catherine McGuinness Fellow. Noeleen is a practising barrister working in the areas of immigration, asylum, family law and general civil law.



The Catherine McGuinness Fellowship is a prestigious one year fellowship Noeleen Healy BL with the Children's Rights Alliance, supported by The Bar of Ireland and the Family Lawyers Association of Ireland.

Sincerest thanks and well wishes to outgoing fellow, Tríona Jacob BL. Tríona has supported some of the Alliance's core legal and policy work throughout the year including the Report Card 2020, the Online Safety Campaign, the Know Your Rights Training Roadshow and the recently published Know Your Rights Guide to digital rights.

For more information on the Fellowship visit the Children's Rights Alliance website here.







THE BAR OF IRELAND The Law Library

Human Rights Award

The Bar of Ireland presented its 2020 Human Rights Award to Dr Mike Ryan, Executive Director at the World Health Organisation.



The annual award is made in appreciation of outstanding contributions in the field of human rights and Dr Ryan was selected as a most worthy recipient in recognition of his tireless work in safeguarding and promoting public health. Dr Ryan has been at the forefront of managing acute risks to global health for nearly 25 years and as the WHO Executive Director with responsibilities for its Health Emergencies Programme, he is leading the charge on the international containment and treatment of COVID-19.

The award was presented to him by Maura McNally SC, Chair of the Council of The Bar of Ireland, and Joseph O'Sullivan BL, Chair of the Human Rights Committee, in a virtual ceremony on 26th November. Watch the ceremony **here**.

Safeguarding justice and the rule of law in Europe and beyond

The Bar of Ireland Human Rights Committee urges the Belarusian Government and authorities to guarantee the fundamental rights of citizens.

The Human Rights Committee has written to the Government of Belarus and the Belarusian Republic Bar Association amidst reports that lawyers in Belarus have been refused permission to meet with clients detained in respect of protests concerning the recent presidential elections in Belarus. It has been reported that the Belarusian Bar Association has failed to take sufficient steps to defend the right of detainees to legal representation.

The United Nations Basic Principles on the Role of Lawyers declares that access by detainees to legal representation is a fundamental human right, so this is a matter of grave concern. Belarus has made commitments to the international community by ratification of international human rights law treaties such as the International Covenant on Civil and Political Rights 1966, and they must be honoured.

In its letter, the Human Rights Committee respectfully urged the Belarusian Bar Association

to do everything possible to support their members in seeking to gain access to their clients, and furthermore urged the Belarusian Government to guarantee the rights of all arrested persons to a competent and qualified lawyer so that their rights to life, freedom from illtreatment and arbitrary detention can be fully respected.

Justice Week 2021

Following on from the success of our inaugural "Justice Week" in March earlier this year, preparations are now underway for Justice Week 2021.

Justice Week is a joint awareness campaign of the legal professions across the four jurisdictions (Scotland, Northern Ireland, Ireland, England & Wales). Through various events and initiatives, we aim to promote an understanding and awareness



of access to justice and the rule of law. The focus of the 2020 campaign was to engage with younger citizens (under 25s) to help improve their understanding of the importance of the justice system, and to demonstrate the possibilities that the law can provide in protecting their fundamental rights and freedoms. **Click here** for some of the week's highlights!

The focus for next year (2021) will be the impact that COVID-19 has had on citizens' rights and the administration of justice, with particular emphasis on the important role which the Rule of Law and the Justice System play in responding effectively to a public health crisis. The Rule of Law and a robust justice system are vital to ensuring a coordinated and effective society-wide response to a pandemic. One that instils public trust; protects rights; addresses inequities; upholds accountability; and ensures a balanced and proportionate response where citizens' rights and the public interest are concerned.

The Bar of Ireland invites all justice sector stakeholders to participate. If you or your organisation would like to get involved please get in touch **communications@lawlibrary.ie**

Specialist Bar Associations of The Bar of Ireland

The Bar of Ireland is home to a number of Specialist Bar Associations, each a vibrant hub of activity that facilitates the exchange and advance of specialist knowledge and expertise through conferences, seminars, papers and submissions, promoting members of The Bar of Ireland as a specialist provider of advocacy and legal advice services across a range of practice areas.



Find a Barrister

Use the search tool on the Law Library homepage to **find a barrister** by reference to his or her research skills, area of specialisation and location.



Do you need a legal opinion?

Direct Professional Access Scheme

The Direct Professional Access Scheme is a facility for approved bodies and their members to brief barristers directly (i.e. without going through a solicitor) in non-contentious matters. The scheme does not extend to contentious matters (for example, court appearances) but only legal opinion. Approved bodies include the Oireachtas Committees, Houses of the Oireachtas Commission and Service.

Contact Us

Our Policy and Public Affairs Team welcomes the opportunity to speak with you, understand your priorities and clarify any queries you might have. Get in touch!

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