

# THE WRIT

THE LAW SOCIETY  
OF NORTHERN IRELAND



THE EZINE OF THE LAW SOCIETY  
OF NORTHERN IRELAND

ISSUE 237 Summer 2021

**THIS ISSUE**  
New ways  
of working

**Sightlink**  
Perspectives from Practice and  
the Bench

**New Law Society  
Meeting Space**  
Now available to Members

**A View from the  
UK Law Societies'  
Joint Brussels Office**



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As we enjoy the relative respite of the Long Vacation, it provides us with an opportunity to reflect on how the Solicitor profession has emerged from the disruption caused by the Covid-19 Pandemic. The Society surveyed member firms on two occasions last year – in May and again in November. The results told us that solicitor firms have recovered well from the disruption experienced at the start of the pandemic and have demonstrated remarkable resilience in doing so. Where necessary, firms have adjusted their cost base and are now leaner and fitter as a result. It is to be hoped that this situation can be sustained into the second half of the year notwithstanding the ending of the Stamp Duty holiday and the tapering off of the Furlough Scheme.

Although business activity in most legal sectors has recovered well, court-based work has taken longer to recover. The Crown Court in particular seems to be suffering from its own version of 'long covid' and is likely to take several years to return to pre-pandemic levels. The response of the authorities to this challenge appears to be to increase capacity i.e. more prosecutors, more courtrooms etc. In many ways this would be a missed opportunity as the performance of the Crown Court prior to the pandemic was unacceptably slow. Better to take the opportunity we now have to try to modernise the system and adopt new ways of working. The recommendations of the Leveson Report on modernising criminal justice ('*Review of Efficiency in Criminal Proceedings*') and the Gillen Review ('*Report into the Law and Procedures in Serious Sexual Offences*') would be a good place to start.

David A Lavery CB  
Chief Executive

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The theme of this edition of The Writ is "New Ways of Working." I hope that in it you will find much that is both interesting and useful as we all get used to new or different ways of doing things. Let me briefly mention some of the highlights:

- Brian Carson explains the practicalities – and limitations – of the new online Probate Portal.
- Elizabeth Dowling unravels the mysteries of the KnowAll Legal Portal - a new source of legal information for the Northern Ireland practitioner
- Sightlink has become such an indispensable tool for everyone involved in court business of any kind that we have no less than three articles, including a judicial perspective from Judge Patrick Kinney.

## Going digital

It is worth pausing briefly to reflect on some of the other changes which the Society has introduced over the course of the pandemic. Most involve the use of technology. "The Writ" itself is a good example as it now appears only in digital format, as does the Society's Annual Report.

Video conferencing was introduced early in the pandemic for all of the Society's Council and Committee meetings. Although it has worked remarkably well, Members do miss the opportunity to see each other in person, so a mixture of personal and remote attendance is likely to become the norm as soon as circumstances permit.

Within just a few short weeks from the start of the pandemic, the Society pivoted, with remarkable agility, from delivering its CPD programme in person to an entirely digital offering. The online delivery of CPD will undoubtedly be a permanent feature - but not to the entire exclusion of in-person events. David Lavery and I have had a series of recent meetings with local association representatives and one theme that has emerged is the desire for a judicious mix of online and in-person CPD.

The annual task of applying for a Practising Certificate has also gone online, as has the recording of CPD compliance. These sound like simple and obvious steps but, as is ever the case, the devil was in the detail and both exercises required a lot of painstaking work from the Society's staff. The success of these changes can be gauged by the fact that there have been virtually no complaints about the new systems. In a

profession which is not usually slow to voice its opinions, and which may still harbour one or two members who hanker after the analogue age, that must be viewed as quite an achievement.

As many of you will know by now, the Society has introduced new ways of working into its regulatory responsibilities, including a new inspection model involving desk-based accounts reviews. This reflects the Society's increased emphasis on a risk-based approach to regulation.

These advances on the technology front would probably all have happened in the not too distant future anyway but they do show just how much can be accomplished in a short period when the requisite degree of focus and energy is applied. Necessity can indeed be the mother of invention and digital delivery channels are already an essential part of the "new normal" for us all.

## New faces

Two recent additions to the Senior Management Team will each play key roles in shaping new ways of working within the Society, and I welcome them on behalf of the profession. Alison Grundle is the new Head of Member Services, bringing a wealth of business transformation and commercial experience to the post. This issue carries a piece from Alison outlining her vision.

Jamie Warnock has also been appointed as Head of Policy and Engagement and his recent experience in senior roles with the Northern Ireland Civil Service will be invaluable. We shall be carrying a piece from Jamie in the next edition of the Writ.

## The Meeting Space at Law Society House

Let me close by reminding you that, in addition to new ways of working, we also have a new place in which to work, namely the suite of meeting rooms on the second floor of Law Society House. These excellent facilities are now fully functional and available to Members free of charge during the "soft launch" period over the summer months, with a very reasonable charging structure in place from September. Everyone who has already used, or indeed seen, these new facilities has been hugely impressed and I urge you to make full use of them.

And finally....

Our thanks are due, as ever, to Heather Semple and her editorial team for producing another excellent edition of The Writ. I hope you enjoy reading it - perhaps while enjoying a well-earned vacation/staycation.

Rowan White  
President

## Introducing Alison Grundle



“I am delighted to join the Law Society as it approaches its centenary year. This has been a time of great upheaval and uncertainty for everyone and I want to members to feel that the Society not only understands the challenges but is working tirelessly on your behalf.”

Alison Grundle joins the Law Society this month as Head of Member Services. This is one of a number of new senior roles that reflect our commitment as a members’ organisation to focus on delivering the best services to our membership. Together these roles combine to offer a new approach to how we will serve our members going forward. We aim to build a symbiotic relationship, with the Society taking a more active role in understanding and anticipating members’ needs then building the services to deliver these. There will be much more on this new strategy in future issues of The Writ.

Alison comes from a corporate background specialising in strategy and business transformation for large multi-national corporations. She has worked in both Northern Ireland and London across a number of sectors, but primarily in finance and telecommunications. Her career focus has been on developing new business and services and adapting organisations to meet the challenges of delivering in new ways. Whilst new to the legal sector she gained valuable insight when working as Special Advisor to the former Justice Minister, Claire Sugden MLA.

Alison joins us at time when both the profession and in turn the Society are undergoing significant change. We are slowly beginning to emerge from what has been for many, the most testing period of our professional lives. Covid-19 remains a continuing threat to our health and livelihoods that has had significant impact on legal practices, as evidenced by the 2 surveys conducted by the Society in May and November 2020.

As the pandemic struck, the Law Society Chief Executive David Lavery was in the process of developing an ambitious strategy centred on a vision for the Society to play an indispensable role for every member through providing services and support to add real value to members’ work.

Whilst the pandemic has had an inevitable impact on delivery of the strategy it has also provided opportunities to do things better. The Council, committee members and Law Society staff have worked together engaging with members on key issues around the operation of courts, the Land Registry, and the legal aid system as well

as providing regular communication and information on various business support initiatives the Government introduced. A genuine sense of all being ‘in it together’ actively working for the good of each other developed during this time and is an ethos the Society is keen to maintain and build upon.

Our collective experiences throughout the pandemic have provided unique learning opportunities and deep insights. One early and encouraging lesson that we have learned about ourselves and our profession is that we are resilient, capable and highly adaptable in the face of extreme challenge: a fact that has been recognised by Government and Judiciary alike. This positions us well to also take advantage of the inevitable opportunities that will present themselves in the future.

We are now focused on incorporating what we have learned during the pandemic to accelerate our strategy towards delivering these new added value services. This will be the focus of Alison’s work going forward. A key characteristic of the new approach is collaboration. We will work more closely with our members to understand how we can better meet your needs.

This will commence with a new engagement programme starting in September. Alison will be meeting with members across the sector to understand first-hand the issues and challenges you face but also to take your ideas and suggestions of where the Society can serve you better.

The new Meeting Space at Law Society House is already proving popular with members needing a place to hold meetings, consultations or mediations in Belfast. The very high standard of accommodation, excellent range of tailored facilities and convenient location in Belfast’s Legal Quarter are illustrative of the type of service we want to provide going forward.

As we move into the ‘new normal’ many aspects of life will not return to what they were. We’ve fast tracked new ways of working and technologies that will continue to bring benefits once we are fully back working in the office. Innovation in our methods together with more targeted use of IT will form part of our new approach.

## SOCIETY MEETING WITH JUSTICE MINISTER

### The Presidential Team, supported by the Chief Executive and Deputy Chief Executive, met the Justice Minister, Naomi Long MLA on Thursday 27 May to discuss matters impacting the Justice sector.

The clear impression was that the Minister’s immediate priority will be the delivery of her Department’s legislative programme ahead of the Assembly election scheduled for May 2022.

The Society’s key messages at this meeting covered the following issues –

#### (i) Court Business Recovery –

The Society impressed upon the Minister that the recovery of court business remains patchy following the disruption caused by the Covid-19 pandemic. We suggested that new and more innovative ways of progressing court cases should be adopted in order to tackle the delays that characterise the Justice System in Northern Ireland.

#### (ii) Legal Aid –

The Society welcomed the additional £7.8m the Minister had secured to bring the legal aid budget up to £82m, and stressed the importance of not allowing the budget to fall below this level in future years. We asked the Minister to initiate a review of the financial eligibility limits for legal aid, some of which have not been

increased for many years. In response the Minister undertook to consider the qualifying requirements for same.

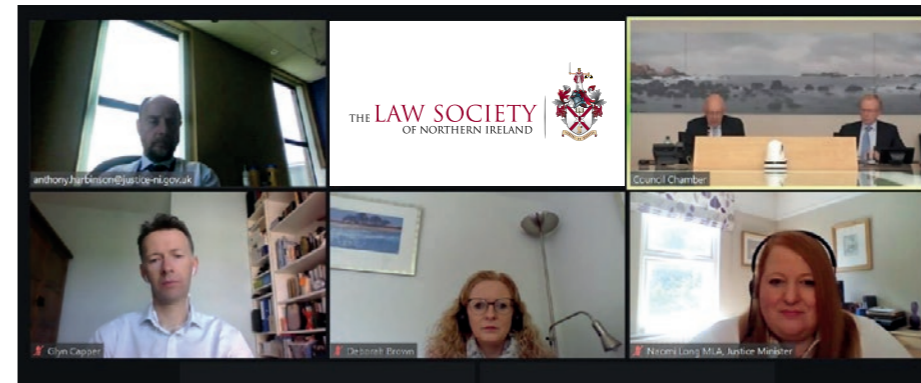
#### (iii) Mediation –

The Society welcomed the Minister’s recent Statement to the Northern Ireland Assembly on modernising Civil and Family Justice and the emphasis placed on the benefits of mediation. The Minister complimented the Society’s work in this area and said that she is looking forward to officially opening The Meeting Space at Law Society House later in 2021.

At the conclusion of the meeting, the Minister praised the solicitors’ profession for the important part it played in maintaining services throughout the Covid-19 pandemic. Describing the profession as “key workers”, the Minister acknowledged the way in which solicitors supported access to justice.

Our next engagement with the Minister will be when she visits Law Society House in September 2021.

**DAVID A LAVERY CB**  
Chief Executive



AML / CTF Firms’ Annual Return 2020-21 Anti-Money Laundering / Counter-Terrorist Financing		The AML/CTF Annual Return must be submitted by 31 October 2021.
<p><b>Dear colleague</b></p> <p>The online Anti-Money Laundering / Counter-Terrorist Financing (AML/CTF) Annual Return 2020-21 must be completed by all solicitor firms and submitted to the Law Society, as the statutory Regulator and appointed AML/CTF supervisory authority of the solicitors’ branch of the legal profession in Northern Ireland under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended) (‘the Money Laundering Regulations 2017 (as amended)’).</p>	<p>The AML/CTF Annual Return 2020-21 is an online questionnaire designed to collect relevant data from all firms carrying out work in the regulated sector including firms providing services within scope of the Money Laundering Regulations 2017 (as amended).</p> <p>It has been designed in such manner as to facilitate ease of completion by your firm’s <b>Money Laundering Reporting Officer (MLRO)</b>.</p> <p>The AML/CTF Annual Return is an important part of the Law Society’s range of supervisory tools in the exercise of its functions as statutory Regulator and AML/CTF supervisory authority.</p>	<p>The Relevant Period (the period of business which the Law Society requires information on) is the preceding <b>6 April 2020 to 5 April 2021</b>.</p> <p><b>Completion of the AML/CTF Annual Return is a requirement on all solicitor firms.</b></p> <p>Please note that your firm’s <b>Money Laundering Reporting Officer (MLRO)</b> must complete and submit the AML/CTF Annual Return online <b>no later than 31 October 2021</b>.</p>



## Experiences of eLearning within the Society



**Anne Devlin,**  
Head of Professional  
Development

eLearning, or electronic learning, encompasses any type of learning, training, or education that occurs on a digital platform including the internet, YouTube Zoom, GoToWebinar or MOOCs (Massive Open Online Courses are free online courses available for anyone to enrol.)

Covid-19 has catapulted everyone into finding new ways to connect with others, new ways for work and leisure. While a variety of online courses have been available for several years via MOOCs the restrictions of the pandemic

accelerated progress in the use of eLearning and online delivery. We learned how to use Microsoft Teams or Zoom by watching mini tutorials online. Zwift (indoor cycling app linking cyclists across the globe) and Peloton indoor bike & treadmills with streaming classes) entered our vocabulary. Online classes – yoga, fitness, and even dry land swimming training for triathletes who couldn't use the swimming pool in the most recent lockdown are examples of how eLearning has expanded into unexpected territory and become part of everyday life.

Forensic psychology, song writing, antiquities trafficking, an Introduction to Recreational Maths, podcasting are other current eLearning courses available free online for anyone with time on their hands.

### Advantages and disadvantages of eLearning

#### Accessibility

Online delivery allows more people to access training. One online delivery session on Home Charter CPD can reach what would have taken 8 physical events in different locations. It saves on travel and time for both attendees and speakers.

However, accessibility depends on having access to an appropriate device and good internet connection. Watching on a phone, although functional, is not technically or ergonomically ideal.

One can choose one's own learning environment. Individuals can learn from home.

Again, there it depends on resources, the size of available space and the number of people you share it with. Online presentations cannot always be viewed without interruption such as deliveries, caring responsibilities, and other pressing work commitments.

#### Flexibility & Convenience

Online delivery is often not restricted by timetables. Recordings are often available to be watched at a convenient time. Such freedom requires a certain discipline, whether for work or leisure.

With recordings you can miss the opportunity to take part in discussions and ask questions as part of a "live" event. eLearning has been described as a "solo" method of learning. It can be isolating when the collegiality of peers and colleagues and networking opportunities are no longer available. eLearning does, however, promote active and independent learning.

The requirement to attend a physical event generally demands that you are present at the event will and will take in/ absorb at least some of the content which arguably leads to a better quality of learning. However, the attention of the participant at a physical event cannot be guaranteed – who has not daydreamed or ruminated over a difficult problem while appearing to listen to the speaker?

Jonathan Goldsmith in the Law Society Gazette (26 April 2021) writes positively on attending an online alternative to what would have been a day and a half in-person training session on EU law. Instead it was delivered over a series of one-hour slots over a period of two weeks

in the late afternoon. While there was less socialising than there would usually have been over lunch, he reported very positively on use of chat box for discussions on legal topics and how as the result of the regularity of the contact over multiple days people actively engaged in training and post-session discussions via chat box.

#### Self-paced

Online learning can be taken at the student's own pace. You can watch, rewind, repeat. You can download a lecture and review it multiple times taking notes verbatim.

Conversely, a physical lecture is delivered in a finite amount of time. The individual attends, takes notes and it's over, done. The key points have been captured apart from perhaps checking with a colleague if anything was missed.

Anecdotally some students are reporting that online learning takes up more time.

It is arguable that there is a loss of skill in active listening, distilling information and ability to note key points.

### Use of eLearning in the Society

#### Trainees

For Trainees, the Professional Development Department and Communications Department worked closely with the Course Director Brian H Speers, (CCD solicitors) to redesign the compulsory and examinable Solicitors Accounts Course and Professional Conduct course for online delivery. Different methods of delivery were used for each course.

Pre-Covid-19, the Solicitors Accounts Course for trainees would have been delivered in two sessions as a physical event. The online version is now delivered in four shorter, separate online sessions. An additional fifth revision session was added. The recorded sessions and materials were hosted on the Society's website using Vimeo. The online recordings have the advantage that they can be accessed at any time and watched as often as needed. Although it was an online programme it was tailored to trainees' needs. To compensate for the lack of face-to-face teaching, trainees were asked to complete a ledger card exercise on their own, after watching two of the recordings. Their answers were then reviewed and any problems, common themes or areas showing a lack of understanding were identified and addressed

in a subsequent specifically tailored recorded session. In addition, a live revision session took place via Zoom to cover key points. As a live session it enabled trainees to ask questions.

The Professional Conduct Course for trainees was delivered in real time, as a live event via Zoom. Trainees' cameras remained on for the sessions giving it more of the sense of a live lecture.

#### Other Online Training Support

Carson McDowell solicitors, in conjunction with the Society, delivered a series of webinars for trainees via Microsoft Teams covering a range of topics including introductions to Health and Safety (Criminal and Regulatory aspects), Healthcare, Media, Banking, Corporate, Commercial, Litigation, Commercial Litigation and Judicial Review. Some of the sessions have subsequently been delivered in our CPD programme.

#### CPD

In June 2020 the Society's first CPD webinars were delivered online using GoToWebinar as the delivery platform. From 14 January 2020 to 13 March 2020, 21 in person CPD events had taken place. The Covid-19 situation and Government guidelines meant that all events after 13 March were postponed or cancelled. CPD materials were made available on the Society's website. Online CPD events commenced in June 2020 and 40 online sessions took place over the period June to December 2020.

The total number of events (in person/pre-lockdown and online/post lockdown) delivered in 2020 was 61. 47 topics were covered and 3709 members attended webinars and 1593 viewed recordings. The number of topics delivered in 2020 matched those delivered in 2019 and attendee numbers (including recordings) held up well despite the relaxation of the requirement to complete CPD and competing priorities of the pandemic.

In 2021 online booking via Eventbrite was introduced. CPD training continues to be delivered via GoToWebinar and Zoom. Updated and enhanced CPD Online Records are now available to allow Members to record details of their CPD on an ongoing basis.

A number of Members have used the evaluation forms sent after each online session to highlight their positive experiences of online learning. The main benefits include more efficient use of time which does not now have to be spent travelling to and from events.

From a staff perspective there is a considerable amount of unseen work involved in the delivery of online events with additional considerations which would not have been applicable to physical events. Staff carry out tests of the software and compatibility of equipment and devices with each individual presenter(s). There is a greater need for a rehearsal meeting of the content ensuring high standards and a professional polished finish, particularly given that the live events will also be made available as a recorded resource. Content must be adapted to suit an online learning environment and the insertion of interactive elements may be required such as polls which have to be prepared in advance. Post-event evaluation reports are easier to prepare with the assistance of system-generated reports on statistics and attendee feedback. After the event, recordings must be converted and uploaded to be made available for purchase together with the accompanying documents and a de-brief with all speakers post-event must now be undertaken virtually and may require a follow-up meeting.

Further details on CPD events can be found here: <https://www.lawsoc-ni.org/cpd-training>

#### Conclusion

Borrowing a quote from an article on online learning: "... technology is neither plague nor panacea".<sup>1</sup> There are advantages and disadvantages to it. Learning how to use it to best effect is key and has become an accepted method of learning.

For the Society e-Learning has been exceptionally positive. We have moved to using a variety of technology and platforms: Vimeo, Microsoft Teams, Zoom and GoToWebinar to deliver training It has benefited both trainees and qualified solicitors. When the first lockdown happened in March 2020 it allowed courses to be delivered to trainees to enable them to complete their traineeship and qualify within the usual timeframe. eLearning was essential in ensuring CPD was available to Members throughout the pandemic. We are pleased to report that feedback from both groups has been very positive.

<sup>1</sup> Irish Times 27 May 2021  
<https://www.irishtimes.com/news/education/online-learning-should-make-education-open-to-all-so-why-hasn-t-it-happened-1.4577088>

## New Ways of Working – New Online Probate Portal Pilot Launched



**Brian Carson**  
Committee Secretary

The COVID pandemic, resultant lockdowns and working from home arrangements have seen many of us having to adapt to new ways of working and an increasing move to online provision of services.

It has proved timely therefore that a new [online Probate Portal](#) has been launched by the Northern Ireland Courts and Tribunal Service (NICTS) from 14 June 2021. The Probate Portal can be accessed by members [here](#).

The Probate Portal enables straightforward Grant of Probate/Grant of Letters of Administration applications to be made online by solicitors and also by members of the public.

To access the Portal, the applying solicitor will need:

- Their **firm's** unique ICOS account number and PIN;
- Their **own** verified NIDirect (NIDA) account.

Members with an existing verified NIDA account, for example to access the Legal Services Agency's LAMS system, will also be able to use that account for the Portal.

For those Members without a verified NIDA account, further information on how to create one is available from the NIDirect website [here](#). The application for a verified NIDA Account can also be completed online, with a new digital verification process also recently implemented.

The Portal aims to simplify the Grant application process, through completion of an online application form, including payment of fees and upload of supporting documents.

It has been developed by the Department of Finance's Enterprise Digital Development team working closely with the NICTS Modernisation Team, in conjunction with Probate Office staff and in consultation with solicitors and citizens.

Following an approach to the Society by the NICTS Modernisation Team earlier this year, the Secretary and members of the Society's Non-Contentious Business Committee with representatives of their firms, tested the initial portal prototype and provided detailed feedback. This constructive engagement was welcomed by all parties and a number of the matters that were fed back from the testing, were subsequently incorporated into the Portal.

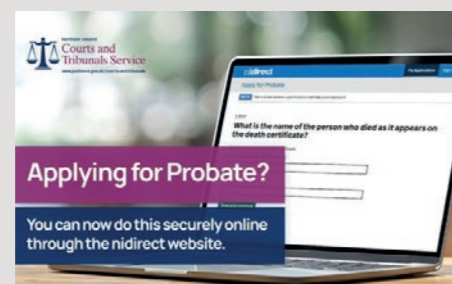
As part of the Society's CPD programme, the NICTS Modernisation Team completed a CPD training event at the end of April, demonstrating the Portal. A selection of firms also took part in a private beta release of the portal, submitting live applications in a short period prior to the go live date of 14 June 2021.

The online application form is completed by answering a series of questions relating to the deceased, their estate and the executors/administrators. Built-in validation and step by step sections assist with accurate completion of applications. A Statement of Truth is generated automatically, populated using the answers that have been provided.

Copies of accompanying documents applicable Will, Codicil(s) and relevant IHT forms are also uploaded to the Probate Portal by the applying solicitor.

Once the Statement of Truth is generated, the personal representative(s) are then notified electronically that it is available for checking by them online and to provide their digital confirmation that it is in order. The solicitor is also notified electronically once the personal representative(s) have attended to this.

Email and mobile phone details (for two factor identification purposes) will therefore need to



be provided for the personal representative(s), to enable their access to the Probate Portal.

The Portal calculates the fee due and payment is made through the Portal by credit card.

Once the online application has been submitted and paid for through the Portal, it remains the case that the original Will needs to be lodged with the Probate Office. Thereafter, once the application has been processed, the Grant of Probate/Letters of Administration will be issued by the Probate Office as previously.

At present the Portal is only available for straightforward Grant of Probate or Grant of Letters of Administration applications (to the extent of siblings' entitlement). More complex applications, Grants of Letters of Administration with Will annexed or applications with corporate/trustee company executors are not possible through the Portal.

The launch of the Probate Portal is a significant development, moving online what has to date been solely a paper-based application process.

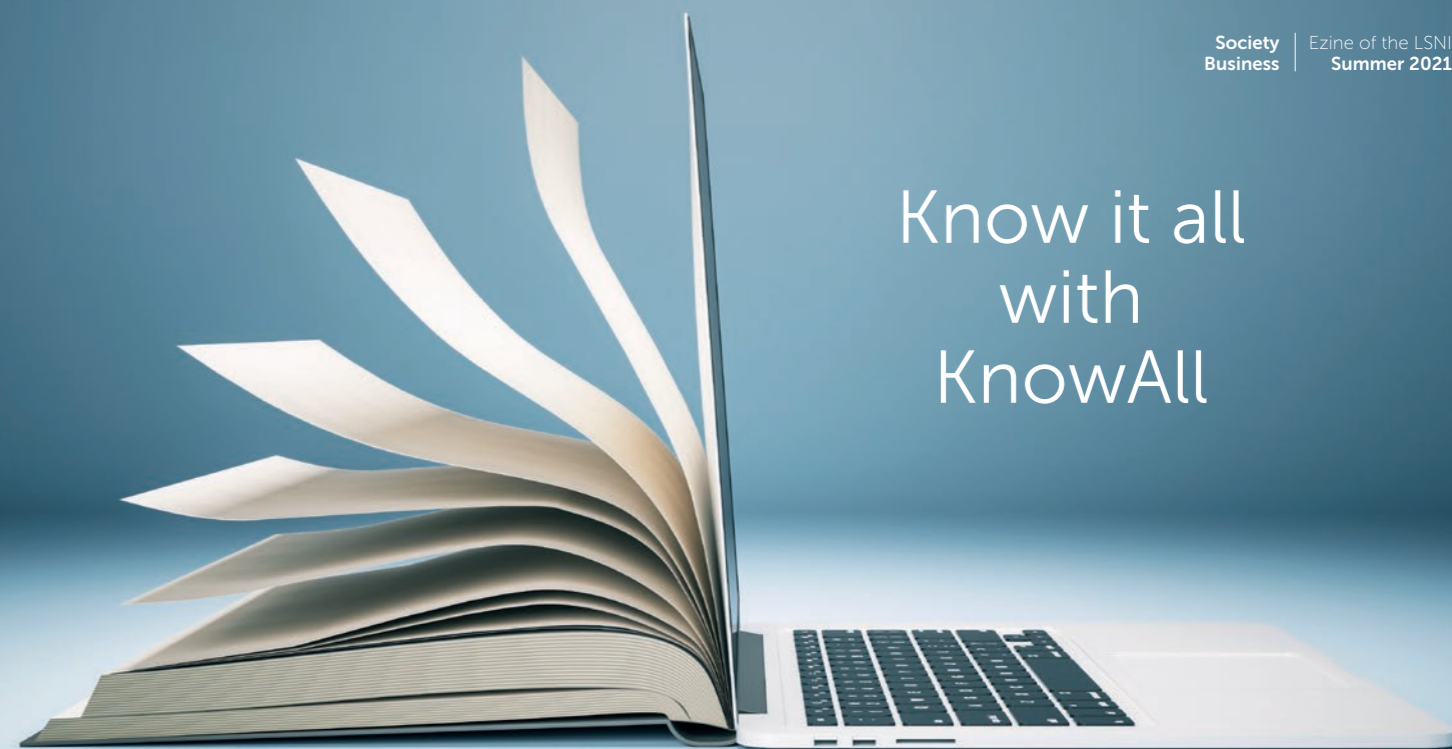
Hard copy paper applications can still be made. However, when doing so the new standardised printable forms that have also been produced by NICTS, should be used. These forms are also available from the NIDirect website [here](#).

Use of the Probate Portal should reduce the likelihood of applications that need to be returned under query. The Portal can be accessed online at any time from any device, enabling all users to use it at a time and a location convenient to them. Users will also be able to track the progress of their application online with regular status updates.

The Probate Portal is a pilot project for NICTS's Modernisation Team. Use of the Portal will be reviewed and inform future courts and tribunals service innovations as set out in its recently published [Modernisation Vision Statement](#).

It is in this context that feedback on the Probate Portal from members would be appreciated to inform both development of the Portal and development of other online services by NICTS in the future. Feedback can be provided via the Portal by emailing the NICTS Modernisation Team at [modernisation@courtsni.gov.uk](mailto:modernisation@courtsni.gov.uk).

Members are also very welcome to contact Brian Carson at the Society at [brian.carson@lawsoc-ni.org](mailto:brian.carson@lawsoc-ni.org), if they have any questions, comments or feedback concerning the Probate Portal.



Know it all  
with  
KnowAll



**Elizabeth Dowling,**  
Assistant Librarian

**KnowAll** is the name of the Law Society Library's new management system, replacing the old LIBERO database which Members may have been familiar with. It was decided that the time had come to upgrade to this new system as it offers enhanced functionality, a clean, modern interface for the end user, and compatibility with the move to Cloud-based computing recently introduced by the wider Law Society. The system has been heavily customised to suit the needs of the Library and the profession. KnowAll therefore provides a sophisticated, professional, user-friendly portal for Members to access Northern Irish judgments and legislation, practice directions, browse our collection of textbooks, and even send in research requests to staff via the 'Ask the Library' function.

Access to KnowAll can be gained via the Law Society's website. While the system will work across different browsers, it is most compatible

with Microsoft Edge. Simply login to the Members' Area of the website, then navigate to the Library and Information Services tab. From there, click on the KnowAll tab and you will be directed to the home screen of the system. From there, you can use the search or browse features to access material. Searching is a more focused approach to finding materials, as you may already know the title of what it is you are looking for and therefore a search for a specific title will bring you to that result. If you prefer to see what the Library has on a particular area, you can browse by author, subject, collection (practice direction, textbook, judgment, etc.).

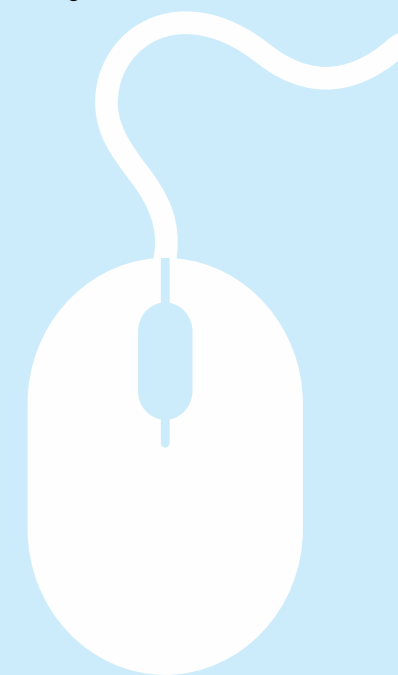
All material previously available via LIBERO has been migrated to the new system. KnowAll therefore contains a huge volume of Northern Irish and UK materials, including:

- NI judgments from the High Court, Court of Appeal and Supreme Court,
- NI Acts,
- NI Statutory Rules,
- UK Public Acts insofar as they extend to Northern Ireland,
- Practice directions,
- Tribunal decisions,
- Liquor Licensing decisions.

KnowAll also contains a wide range of textbook titles with accompanying bibliographic information (year, author, edition, etc.). Judgments are accompanied by summary headnotes and key information such as citation, names of parties, judges, and legislation cited, to offer a useful "at a glance"

summary of the judgment. All of these fields are searchable. Judgments and tribunal decisions are also available to freely download from the database. Similarly, all legislation is accompanied by useful overview information such as statutory reference, commencement date and explanatory note, and is linked to the Statute book at [legislation.gov.uk](http://legislation.gov.uk). All cases are linked as they proceed through the Courts system, and Primary and Secondary legislation are also linked.

We hope that Members will benefit from what KnowAll has to offer. In due course we hope to be able to offer in-person training on the system to solicitors and trainees, but in the meantime if you have any questions, suggestions or comments please let us know at [library@lawsoc-ni.org](mailto:library@lawsoc-ni.org)



# Call for Masters



## Trainee Registration with the Society 2021

Closing Date for Registration: Thursday 30 September 2021 at 5.00pm

Traineeship Start Date: Monday 18 October 2021

As we move from the uncertainties of the onset of the pandemic in 2021 towards hopefully a more settled time, the Society recognises that there are still difficulties for prospective trainees finding Masters given the ongoing difficult and fluid circumstances facing legal practices arising out of Covid. The Admissions Test took place later than usual due to Covid. The Society has therefore decided to extend the closing date for registration of papers in 2021. The closing date for lodging registration papers with the Society will be **Thursday 30 September 2021 at 5.00pm**. This will allow solicitors more time to complete their recruitment process and will give trainees more time to find a Master. (For 2022 - It is expected that the closing date for registration will revert to Monday 22 August 2022. This will be kept under review.)

The start date for the traineeship this year will be **Monday 18 October 2021**. Unlike 2020, there will not be a flexible start date. The traineeship is a fixed term two-year contract.

### Could you, your firm or organisation support the next generation of solicitors?

We continue to live in challenging times in which many aspects of life are still affected by the Covid-19 pandemic. Delivery of legal services and training have adapted to the new environment, the future is still uncertain for those setting forth to train as solicitors in Northern Ireland. The real impact of the pandemic and economic downturn will not be lost on them as they struggle to obtain a Master and build a career.

### Can you help?

Potential trainees need your support and help.

### Can you provide support?

In simple terms, trainees need Masters not only to provide them with training but to inspire and define them as the next generation of the solicitor profession.

### Could you become a Master?

The history of the Law Society is marked by those members, firms and organisations who have shown great commitment in supporting the successive generations as solicitors often through the most difficult economic, social and political times. Their legacy is realised in the countless solicitors and members of the judiciary who have benefited from the insight, teaching and direction of their former Masters.

#### If you -

1. have practised as a solicitor for at least 7 years, and been a principal for at least 3 years, and
2. can provide a suitable training environment for an apprentice
3. are willing to act as a Master for the 2-year term commencing 18 October 2021

or

if you are interested, but have less than the requisite experience

**please email [anne.devlin@lawsoc-ni.org](mailto:anne.devlin@lawsoc-ni.org)**

# Masters 2021/22



I confirm that I am interested in acting as a Master as and from 18 October 2021 and am willing for my name to be added to a list of potential Masters and circulated to students seeking apprenticeships.

Name of intending Master

Name of firm/ organisation

Contact name and details of the person to whom application should be made (if different from Master)

Is there a closing date for your recruitment process? (If so, please specify)

How would you prefer to receive applications from prospective applicants :

CV by Email

CV by Post

Firm/Organisation's own recruitment procedure (please detail)

Date

Please return the completed form to:

**Admissions, Law Society of Northern Ireland,  
Law Society House,  
96 Victoria Street, Belfast BT1 3GN  
or email to  
[admissions@lawsoc-ni.org](mailto:admissions@lawsoc-ni.org)**





## The Meeting Space at Law Society House opens for bookings



The Meeting Space at Law Society House has now been completed and will shortly be formally opened at the start of the legal year in September 2021.

Located in the heart of the Belfast's legal quarter, The Meeting Space at Law Society House provides:

- state of the art facilities for mediations, meetings, negotiations, and other professional gatherings.
- spacious plenary and meeting rooms with breakout areas and coffee docks.
- high specification audio-visual facilities for hybrid or virtual events in each room.
- fast, reliable internet access along with access to widescreen video conferencing equipment.

In the interim the Society is offering use of all of the rooms without charge for Members during July and August 2021.

Fees will apply to other organisations seeking to use the facilities in each room and these are detailed in the booking form which can be accessed [here](#).

Please feel free to call in to view the facilities at The Meeting Space at Law Society House.



# Mediation in Business and Property Disputes

This is the first in a series of articles by Law Society Mediation Service (LSMS) Board members aimed at informing solicitors how mediation may assist your practice.

The introduction and section on 'Business Disputes' is by Gareth Jones mediator, and the second section on 'Property Disputes' is by Kevin Neary Solicitor



**Gareth Jones,**  
Mediator

## Introduction

Now that The Meeting Space at The Law Society House is open for business it is timely to set out some information and observations on the benefits of solicitors promoting mediation with clients engaged in, or about to embark on, litigation of contentious matters and disputes.

First, we should consider what particular factors should encourage us to consider recommending the mediation of our clients' disputes and contentious matters such as:

- The longer disputes last the more costly they tend to be.
- The vast majority of disputes do resolve without a judicial hearing and decision.
- Clients (and indeed solicitors) have a reluctance to make any concession or to compromise their position on a disputed matter until an exploration and testing of the factual matrix and issues has occurred.

- the sooner a dispute can be resolved the sooner clients can move forward with business/relationships/employment, and end the inevitable disruption, distraction and stress a contentious matter can inflict.

A separate but important consideration is that a solicitor who fails to consider mediation and advising a client about mediation (or other ADR) is potentially exposed to a complaint, or worse, by a client who concludes a contentious matter unsatisfactorily in terms of outcome/cost/Court experience.

Secondly, we should think about how to create the dynamic for engagement in mediation:

- With the knowledge (and possibly previous experience) of the potential benefits of mediation and what it involves, have a conversation with your client. Even if a client opts not to attempt a mediated resolution they ought to appreciate that their solicitor has raised and talked them through that option.
- When client's instructions have been secured then there needs to be engagement with the solicitor for the other party, and if an initial approach is not productive then potential costs protection (and additional leverage to encourage engagement) may be achieved by sending correspondence proposing mediation (and referring to any relevant Pre-Action Protocol or Practice Direction).

## Business Disputes

The broad range of business disputes are perhaps those most frequently considered suitable candidates for mediation. Business and commercial clients generally see the potential benefits that a mediated settlement can offer: they want to achieve an economically sensible settlement at the earliest appropriate stage and to move on with normal business activities not distracted by a time consuming, costly, and often unpredictable Court outcome. In such disputes there are often issues at play beyond establishing the facts, interpreting contract terms, calculating losses and applying legal principles (in other words the types of issues that we tend to focus upon as lawyers);

business clients will see that a mediation has the potential to deliver a structured resolution that can address continuing contractual/trading relations, renegotiate contractual terms, or restructure businesses for example. The mediation also allows underlying factors which may be driving a dispute or preventing its resolution to be addressed in a way not available in the Court room; often there are personality clashes, bad blood, family relationships, distrust and pride which can be vented in the protected and confidential context of a mediation. Business people also value the fact that a solution to the dispute lies within their control and influence rather than handing the risk of an imposed outcome over to a third-party decision maker/Judge. A mediation provides a safe and private environment for your business clients to fully explore the issues, ascertain what options for resolution might be possible, and to weigh up the risks and economic factors in an unpressurised forum. Mediation offers a logical and interests-based opportunity for business clients to attempt to resolve their disputes.



**Kevin Neary,**  
Solicitor, DND Law

## Property disputes

As we all know property law focuses on disputes over the creation, ownership, transfer and protection of property interests, as well as the impact of relationship breakdowns, death and dissolution of partnerships. It involves rights of way, possessory title claims, landlord and tenant, commercial, agricultural, residential, local authority, and development property and covers buildings, green space and everything in between.

The cases are witness and fact intensive and there is no typical property dispute. They require us to advise a client about a dispute, drafting letters before action and encouraging settlement out of court. If a settlement is not forthcoming then you will move on to draft or respond to court proceedings, encourage mediation, attend court for interim hearings and finally attend court for a trial. Clients are often landowners, tenants and businesses, and cases tend to be tried in County Courts, the High Court and Property Tribunals. These cases are time consuming and almost always fractious. The parties in many cases are reluctant to face the weaknesses of their cases and will focus on long held grievances and personal animosities

Mediation is often used in property disputes. It is an ideal way for parties to take control of their dispute and reach a decision which is beneficial to both parties. Taking control back from the Court and thinking of options outside of the usual orders that a Court can make is a very attractive option to those involved in property disputes. Mediation is so popular in property disputes because it allows the parties to take control and reach agreements that a Judge cannot mandate on the use and enjoyment of shared rights and interests as opposed to a crude determination of a winner and loser

We see this in examples such as rights of way where there may be no clear factual picture on the history of the use of the laneway and where there is a multitude of witnesses making different assertions. A skilled Mediator can get the parties to reflect on their evidence and the likelihood that a court will accept it. It should be remembered that complex settlements of disputed rights and obligations can be achieved which a Court could not achieve.



Law Society  
Mediation Service

# Sightlink – a Judicial Perspective

**His Honour Judge Patrick Kinney**

If you want a surefire conversational gambit amongst lawyers, then ask for their views on Sightlink. It rarely fails to provoke a response, often animated, about the dawn of this new remote hearing culture.

March 2020 brought with it the most amazing and rapid changes to society in living memory. In a matter of days Courts closed and emergency coronavirus legislation opened the door to the use of audio and video links in the place of in-person hearings. Physical in-Court hearings became impossible and jury trials were suspended. The familiar legal landscape changed almost overnight.

It required the adoption of video technology in a manner which was immediate and dramatic. That technology already existed but up until the pandemic was used largely to support and supplement a physical hearing, not to effectively replace it. There was a massive ramping up of resources and to its credit the NICTS delivered. It transformed a small handful of licences for what was a largely unknown platform into the relative abundance of available links today. The term Sightlink entered the legal lexicon.

The future of remote hearings is a broad topic exercising jurisprudential minds. However the purpose of this short article is to reflect on personal experience over the last 15 months of unprecedented upheaval.

The essential benefit of the remote hearing was to facilitate the legal process and to allow Court hearings to continue. Without it, the system would have ground to a halt. There was an already heavy caseload before the Courts at all levels. There was a need to adapt and transition at speed. In the context of a prevailing optimism that things would get back to normal by the autumn there was also an enthusiasm amongst support staff, Judiciary and practitioners to try to find a way to keep things moving, to look after clients and to ensure that cases received the attention they required. It was in effect a huge but unscheduled pilot and a most unexpected experiment.





My own experience of Sightlink has been mainly positive. That is due in no small part to the manner in which it has been accepted and even embraced by legal practitioners. Working closely with the Judiciary and Northern Ireland Courts and Tribunal Service, ways have been found to ensure that cases can proceed in a manner which is fair and appropriate. But that is not to say that there have not been problems.

It is important that lawyers are aware that Judges understand not just the frustrations of remote hearings but also the extra work that is required to make them successful. We understand the increased difficulties created in consulting with clients. We understand in particular the difficulties in consulting and obtaining instructions for matters that arise during hearings. The normal liaison between lawyers that happens in the background is made more arduous in not being able to meet together outside the Court room. Many of the parties and witnesses will link in from solicitors' offices. This creates additional burdens on solicitors in providing the physical setting to keep everyone safe and the additional burden on the office having to accommodate individuals for lengthy periods of time.

Other parties may also link in from remote locations which makes it more difficult for solicitors to provide the level of support, advice and assistance to clients during stressful Court proceedings which, frankly, we used to take for granted. In family cases the supportive role of the solicitor for many very vulnerable people is invisible but hugely important. That is either lost or made much more difficult if that vulnerable person is in a location remote from all support.

Whilst technology has made incredible strides it is far from perfect. Poor connections continue to be the bane of all our lives along with the constant beseeching to make sure participants are on mute unless addressing the Court.

We are all aware that conducting business remotely is much more tiring than physical attendance at Court. There are added problems such as the handling of documents or the use of interpreters which can impact adversely and the perennial worry and concern about ensuring privacy and security to participants online.

Remote hearings have proved an invaluable vehicle for case management although there are still concerns about the conduct of contentious hearings. Issues about assessing credibility of witnesses' evidence remain to be resolved. The solemnity of Court proceedings also needs to be maintained and this is not always achieved by the rather relaxed posture, clothing, lighting and background that some participants have employed. Backgrounds in particular can be distracting. Parties have linked in from all sorts of locations including in my own experience sofas, beds, sheds, caravans and moving vehicles. Background interruptions can be as simple as a dog barking or some multitasking housecleaning but can also mean all of us participating in what is undoubtedly meant to be a private telephone call. Last but not least are the automatic software updates which seem to occur at the worst possible times.

Interactions between the Judge and the advocate are more difficult. The acoustic and visual experience is infinitely variable and affects the quality of participation. Spontaneous reactions and discussions between the bench and advocates is often affected by time delays and parties speaking over each other.

Hybrid hearings carry their own problems. Parties linking in often cannot clearly hear what is being said in Court. They also have a very limited and constricted view of what is happening in the courtroom.

I am also mindful of the impact of the extensive use of remote hearings on younger practitioners. They have missed out on several levels. Work and experience which would otherwise have fallen to them because colleagues were unable to attend physically at more than one Court venue have been curtailed. There is also a loss in not observing and learning from others when together in the physical courtroom and the ubiquitous collegiality and camaraderie amongst lawyers which can be a valuable learning experience.

Glitches in any new system are to be expected, particularly one which was introduced at such speed and in reaction to such an overwhelming societal emergency. Wider questions remain about the way forward. Satisfaction levels in my view are higher than might have been anticipated before remote hearings were used so predominantly. The question we face is whether we view remote hearings in the future as an improvement to traditional thinking or rather that they fall short of the benefits provided by the full in-Court hearing.

However that debate may unfold in the future, one thing is clear. During this pandemic lawyers have shown their industry, commitment, impartiality and probity. But I think that they have also shown their flexibility, imagination, patience and good humour. We have all suffered much over the last 15 months but there is also very much to be proud of in the legal profession of Northern Ireland.

## A Practical Guide for Solicitors and clients participating in Sightlink or other Remote Hearings and Reviews

1. In advance of the scheduled hearing it will be important to speak to all opposition members and representatives to clarify, define and narrow issues in the case. This is an invaluable exercise and will result in the scheduled hearing time being used to maximum benefit for all.
2. Parties should liaise in advance of any Court listings to identify whether their case can proceed by way of remote hearing/review or in person hearing and lodge the appropriate Court forms as soon as possible. All current forms are accessible on the judiciary.ni web page (<https://judiciaryni.uk/coronavirus-covid-19>)
3. Consider setting up a WhatsApp group or Zoom meeting to run in tandem with the remote hearing/review so that real time instructions can be taken and communications exchanged with your legal team. However, be very aware of the possibility of being overheard on Sightlink – take appropriate precautions.
4. Plan to log on 10 minutes in advance.
5. Sightlink login details may be accessed on the Society's web site, Members' Section via this link - <https://www.lawsoc-ni.org/directory-of-sightlink-addresses> ; or alternatively on the NICTS web site - <https://onlineservices.courtsni.gov.uk/publiccourtlis/>
6. It is inevitable that conducting business remotely will result in teething troubles for participants and hosts/organisers. Do therefore be sympathetic to the technological and other difficulties experienced by others.
7. For those participating in their first remote hearing/review it is advisable to read the Guidance beforehand. JudiciaryNI Guidance on Remote Hearings can be viewed in this link: - [https://judiciaryni.uk/sites/judiciary/files/decisions/Practice%20Direction%202001.20%20-%20Remote%20Hearings\\_0.pdf](https://judiciaryni.uk/sites/judiciary/files/decisions/Practice%20Direction%202001.20%20-%20Remote%20Hearings_0.pdf) Also consider speaking to colleagues who have participated in remote hearings/reviews previously.
8. If feasible, have a second device on standby in case you experience issues with your main device.
9. Ensure that all devices are fully charged and that you have a charging cable and plug to hand, as virtual hearings/meeting can exhaust battery life on any device.
10. In advance, check that the audio and video/camera facility on the device you choose to use is switched on and functioning.
11. Solicitors might consider exchanging mobile numbers/email addresses with each other to have an additional strand of connectivity during the hearing. It will be important to communicate with colleagues during a remote hearing/review – away from Sightlink.
12. Ensure in advance that all papers and bundles have been agreed and lodged with the Court Office and copies shared with the opposition. Electronic bundles should be indexed and paginated. They should contain only documents and authorities essential for the hearing/review as large files can be slow to transmit and unwieldy to use and navigate.
13. Consider if witnesses will require access to reports, photographs, statements etc. and ensure that appropriate arrangements are in place so that they can view a virtual copy if necessary.
14. Clients and witnesses need to be contacted in advance to ascertain if they are content to affirm before giving evidence. If that is not their preference, ensure that they are aware that they will have to have a copy of their preferred religious book to hand to swear upon.
15. Consider if it would be of benefit to lodge a booklet of agreed correspondences with the Court Office and other representative(s) and if so, paginate and share in ample time before the hearing/review date.
16. Remote hearings/reviews will proceed as a Court of law. It is imperative that solicitors conduct themselves accordingly in terms of behaviour, courtesy and dress code from the outset of the session. Solicitors are reminded to limit conversations between colleagues on Sightlink in the absence of the Judge sitting as it is an open link and only closed at the direction of the Judge.
17. Similarly, it will be incumbent on Solicitors to prepare their clients and witnesses in advance and remind them of the etiquette of appearing in Court, whether they are participating in the Solicitor's office or at an alternative location. Any party attending a court hearing by video conference or teleconference call is expected to maintain equivalent standards of behaviour as if they were attending the Court physically.
18. It is a contempt of Court to make any recording of a hearing, whether of the audio or, for example, by taking a screenshot during a video hearing, without the Court's permission. Ensure clients and witnesses are made aware!
19. Make use of the 'mute button' when not addressing the Court and remind your client and witnesses to do likewise.
20. For remote hearings/reviews to operate effectively it is of utmost importance that all participants strictly adhere to the commencement and ending times allocated to their case.
21. When the hearing/review ends you must log out and remind your clients and witnesses to do likewise.
22. Ensure that you have arrangements in place to consult with your client and/or counsel after the hearing/review by phone or a virtual platform, as you would after a face to face hearing.



## Sightlink – a practitioner’s perspective



**Shane Donnelly,**  
Ferris and Company  
Solicitors

Like many, prior to the public health pandemic, I had little or no experience of Zoom or any other type of video conferencing. I had perhaps got used to participating in various meetings by teleconference so the concept of participating in Court by way of Sightlink was a completely new experience. It has now become the norm for many practitioners. However, there were a number of teething problems some of which are still experienced by practitioners to the present day.

When Sightlink was first thrust upon us there was a dizzying variety of numbers to link into, which also seemed to keep changing constantly, making it difficult to keep abreast of the system. Courts using a particular Sightlink number changed sometimes on a weekly basis. This change caused considerable frustration to both practitioners and indeed Northern Ireland Courts and Tribunal Service who also found it hard to keep track. No doubt we all recall practitioners linking into a particular Court asking if they were in the right Court only to be told in that they were not. The ensuing look of bewilderment from the practitioner is readily identifiable. Family Courts soon moved on to “locking the room” moving proceedings to in camera to remove these interruptions.

We have all heard some of the more memorable incidents especially early on in the development of Sightlink. We all got to see an aspect of fellow colleagues’ homelife to which we would not ordinarily be privy. Colleagues were regularly appearing by Sightlink from their bedrooms, kitchens, living rooms and studies. It was a veritable “Through the Keyhole” in reverse.

There were also some perils along the way and infamous occasions to include toilet flushing being heard in open Court, as well as choice language occasionally being used. We have seen participants in-Court proceedings appearing through their smart phones from their car whilst at work waving to other people mid-proceedings. All of this requires both patience and guidance from the Court to participants. Solicitors ought to prepare their clients for a Court appearance by telling them what is expected of them – this is arguably more important in remote hearings.

We have all learned that the mute button is your friend and knowing how and when to use it is very important. I can remember during a criminal case making a point to the Judge which I considered to be very relevant, and which assisted my client’s case greatly. However, I soon realised that the silence from the Judge, with which I was met, was not as a result of deep consideration of and reflection on the point being made but simply arose from the fact that he hadn’t heard me at all.

This can be disconcerting, and you can lose momentum having to repeat yourself but again it is all part of the learning process. Toilet flushing aside use of the mute button is important and again we have all heard some language that perhaps should not be heard. When other practitioners do not mute their sound, it can interfere with the quality of the audio. We have all learnt to assist one another in this regard.

Some clients have made use of the Sightlink procedure while others simply do not have the technology available nor ability to use it and attend with their solicitor to participate in Court Proceedings from their solicitors’ office. This has led to occasions when a client/defendant in criminal matters can actually be handed a custodial sentence from the Court whilst sitting in his solicitors’ office. We have all witnessed someone being handed a custodial sentence immediately being taken into custody; however, being told to report to the Courthouse the next day or on the following Monday is again a new way of conducting Court business in a pandemic. Voluntarily submitting yourself for incarceration is a new departure for convicted criminals.

In ordinary times a considerable amount of business was conducted on the day of Court and certainly in Family Courts this was the case

with the parties present, and colleagues were negotiating back and forth. This is obviously very difficult in the Sightlink world. There is no doubt the Court environment, and being at the “door of the Court”, has facilitated and driven settlements in the past. This has been somewhat lost in the Sightlink world.

Cross-examining parties on Sightlink can cause difficulties when screens freeze or other technical issues arise. A large degree of patience is required in such circumstances and indeed the Judiciary have shown remarkable patience and understanding in my experience.

Hybrid Courts, where some parties are physically in the Court and other parties are on Sightlink, are becoming more prevalent. This is reliant on technology running smoothly and unhindered. Issues can arise, for example, if the connection drops which can really upset the running of the hearing and indeed result in an adjournment. This is not an ideal scenario for all parties and can lead to frustration.

There are most definitely advantages to Sightlink and it most certainly will have a role to play in the conduct of Court business in the future. Practitioners outside Belfast having to travel for simple reviews in the High Court or other Courts may become unnecessary. This will cut down dramatically wasted time spent in long queues of traffic and finding parking for busy practitioners.

“Court hopping” whilst seated at your desk may be the new norm. I have been able to participate in four different Courts in one day which ordinarily would simply be impossible. I know many other practitioners who regularly attend different Courts throughout the day.

I still think there is no substitution for in-person hearings and for physically being at Court. I also am thinking of new Members of the profession who have not had the experience of being in Court and running a case or entering a plea with their client the dock. The experience of cross examining someone physically in front of you and all the experience you gain hopefully is not altogether lost. Then again this younger generation are more and more living in a virtual world.

Sightlink is here and I would hazard an educated guess that it is here to stay. Benefits.... yes! Burdens....yes! A new way of practising.....yes!

THE LAW SOCIETY  
OF NORTHERN IRELAND



## Are you attending a remote Court hearing and not sure what it will involve?

If so the guidance below may answer your questions

This guidance has been prepared by the Society for solicitors to pass on to their clients. It aims to answer questions for clients as they prepare for a remote or hybrid hearing.

As a result of coronavirus, the court system has had to adapt arrangements to comply with public health guidance.

Many courts will operate on a remote basis whereby you will participate in your case from a venue outside of the court building using a smartphone, laptop or other device. Some cases will take place with some participants attending in the courtroom and others joining by a link to a video screen.

### 1. What is a remote hearing?

A remote hearing is one which is held without the people involved coming to court. Rather they join the hearing by telephone or by a video link using a phone, laptop or other device. The Judge may join the hearing from a court building, although not necessarily. Although all those involved in a case may be joining from different locations, apart from the fact that people are not in the same building, a remote hearing is exactly the same as a hearing where the parties come to court in person and the process is broadly the same. The court has all the same powers and will expect people to treat it just as seriously as a ‘normal’ hearing.

### 2. What is a hybrid hearing?

A hybrid hearing is a mixture of a remote hearing and a normal face to face hearing. This means that some of the people involved attend the court in person, and some of them join the hearing remotely by video link or phone. A hybrid hearing might happen if one person can’t physically get to court or if the courtroom isn’t big enough for everybody to fit in whilst being socially distanced.

### 3. What will happen if I am participating remotely in a hearing?

When court hearings take place in person in a court building, they do not always start on time because Judges often allow parties and their lawyers some time to discuss things before coming into the courtroom. *Remote hearings almost always start on time.* It’s really important that any discussions you or your lawyer want to have with the others involved in the case take place before the start time for the hearing, and that you are ready and waiting at the time the hearing is listed.

It will take a few minutes for everyone to join the hearing. *It is a criminal offence and a contempt of court for you to record the hearing without permission.* The judge might explain that the fact that the hearing is being carried out remotely does not change the serious nature or the importance of the hearing. If the hearing is heard in private, meaning that members of the public cannot

attend (this is the case for most family court hearings) the judge might check with everybody to make sure that they are on their own and somewhere private.

If you are to give evidence and wish to take an oath, you should ensure you have to hand a Bible/religious book. You may otherwise choose to ‘affirm’. Discuss this with your solicitor in advance. The usual restrictions in a courtroom still apply - you should not eat, drink, smoke / vape, use a mobile telephone etc.

It can be easy to talk over other people accidentally in a remote hearing, and that can mean that people can get a bit lost. The Judge will probably be quite strict in making sure people take turns in speaking, and will ask for no interruptions. It is a good idea to put yourself on ‘mute’ (turning off the microphone on your device) except when you are actually talking, so that background noise does not stop people hearing what is being said. It will help to look for the mute function on your device before the hearing, or at the start, so you know how to switch yourself on to mute and back again when you need to speak.

Judges can and do hear evidence from witnesses at remote hearings, and can make final court orders. It will be up to the Judge in your case to decide whether it is fair and suitable for a particular hearing to be dealt with remotely and, if not, what the alternative arrangements are. You should tell the court about any difficulties that affect you which they might not otherwise know about.



**4. How do I join a remote hearing?**

You will be sent joining instructions before the hearing, either by the court or by the lawyer who is organising the connection. Ensure you have downloaded any software needed to connect to the court. If the hearing is a telephone hearing, this will usually be arranged by the court and they will call you so that you can take part. It is important that you make sure the court has your up-to-date phone number and that you are ready to answer the call when it comes. The court might call from a withheld number ('No Caller ID'). If you have your phone set to 'Withhold reject', make sure that this is turned off so you do not miss the call.

Make sure your phone or device is fully charged or connected to power so that it does not run out of battery during the hearing – video calls can use up the battery quickly. If the court is unable to reconnect to you during the hearing, it might carry on without you.

If the Hearing continues for any length of time ensure you can connect to a power source if the battery begins to drain.

**5. Will it cost me anything to join?**

It will not usually cost you anything to join a remote hearing. You will need to have a good phone connection for a phone hearing, and a good WiFi internet connection for a video hearing. If you live somewhere with poor phone signal but have WiFi, check if you can switch your phone to 'WiFi calling' so you can connect by phone through your WiFi. If you are relying on 3G or 4G data to take part in a video hearing, it might use up your data very quickly, which can be expensive and doesn't always provide a good enough connection. If your hearing is a telephone hearing, the court will call you, which means it doesn't use up your phone credit.

**6. What devices, apps or software do I need?**

The basic requirement is a functioning phone with a reliable WiFi connection. Even if your hearing is a video hearing, you can still join by phone, but you will find it much easier to follow if you are able to connect by video. Ideally, you would have one or more internet-enabled devices, so that you can join a hearing by video/internet connection on one, and you can view your documents on another, but some people manage with one device.

Make sure that the device you intend to use is fully charged before the hearing starts. You should use earphones or headphones with a microphone if you have them to keep the remote hearing confidential and also improve the sound quality.

If you only have one device, or difficulty accessing the documents yourself, you could ask whether the documents can be shared on screen by someone else as they are being discussed. This may or may not be possible, depending on the platform your hearing is happening on.

**7. What if I am worried I won't be able to work the technology?**

You will be sent instructions before the hearing. Although lots of people are unfamiliar with the technology, it is pretty easy once you get the hang of it, and the judge and lawyers will be used to helping people sort any glitches out. In advance you should find the camera function on your device and on the system being used for the hearing (eg Sightlink / Webex) so you know how to switch this on to ensure you are visible to the court; or ensure this is turned off where it has been agreed in advance that you are not required to be visible.

**8. Can I have someone with me during the remote hearing?**

If your hearing is public (most civil cases) there is no restriction on who can be present with you. However, most family cases are not heard in public. They are heard in private.

If your hearing is private you should be on your own unless the judge gives you permission for someone else to be with you. *Discuss this option with your solicitor in advance so that the court can be notified.* Anyone who does attend a hearing to support you should remain silent throughout.

**9. What if I need to speak privately with my lawyer or supporter during the hearing?**

If you have a lawyer or supporter, you could discuss with them the best way of communicating during a remote hearing. Normally you could whisper to your lawyer in the courtroom, but in a remote hearing you could use WhatsApp, or email, or a separate video link or phone call to communicate privately as things happen. This arrangement should be set up by your solicitor before the hearing starts.

**10. What if I want a face to face hearing?**

If you think your case needs to be held face to face for any reason you should raise this with your solicitor as soon as possible. Your solicitor will raise this with the judge so that a decision can be made on whether it would be appropriate or not.

If you have a disability that makes a remote hearing impractical or unsuitable, or if you need an adjustment to be made so that you can participate, your solicitor should contact the court, explaining the difficulty and what might help to make things work better for you.

**11. What if something goes wrong?**

It is important that you understand what is happening during the hearing, so if you are struggling to see, hear or follow, you should let the judge know at the time. You can do this by speaking, putting your hand up or (on some platforms) pressing a button to raise a 'virtual' hand. Remember that, on some platforms, the judge might not be able to see everyone's face at the same time so if your hand does not attract their attention you may need to interrupt. You could say 'I'm sorry to interrupt but I can't hear'. If there is background noise, the judge may ask everyone who is not speaking to mute their microphones.

Sometimes people get cut off from a hearing part way through. Usually the people left behind will get a notification telling them you have gone, so they will either try and re-join you or wait for you to dial back in. It is a good idea to keep your joining instructions to hand throughout the hearing so that you know where to find them if this happens.

**12. What happens after the hearing?**

The court will produce an order which records the outcome of the hearing, and will send everyone involved a copy of the order. Your lawyer will send you the order once it has been approved. The order might not reach you straight away, so it's a good idea to make a note of things the court has asked you to do, the date you have to do them by and the date of the next hearing. When the hearing ends it is important that you disconnect from the link into the court. You should only reconnect if instructed to do so by your solicitor.



**Elizabeth Rimmer**  
CEO, LawCare

As we start to ease out of lockdown, many of us will be looking forward to getting back to 'normal' – with shops opening, a social life once again a possibility and some of us looking to go back to the office. Despite restrictions lifting the reality is that we simply will not bounce back to our normal pre COVID-19 selves right away after spending the best part of a year at home. We may have largely forgotten the social norms, behaviours and routines that were once familiar to us whilst remembering to adhere to the latest COVID guidelines. We will no doubt face many challenges on a practical and emotional level.

**Feel the feelings**

After a year of being in survival mode with a differing levels of stress in the background all the time we have a lot of feelings to process as things get back to normal. Whilst some of these feelings will be positive such

as excitement and relief, we are also likely to be fearful, nervous, and anxious of the changes coming and how we will deal with them. We may have residual feelings of grief, sadness and anger for everything and everyone we lost during lockdown. Focus on what you ARE feeling rather than what you SHOULD be feeling – suppressing your feelings and emotions won't help.

**Expect to feel tired**

As with most situations, it's better not to get carried away with making plans as we just aren't used to seeing lots of people and travelling far from our home. Don't pack your calendar as soon as restrictions lift as you will need to time to rest and reflect. On the plus side, our brain thrives on physical activity and novelty, so after a few weeks hopefully we will feel energised as the fog of the last 12 months begins to lift.

**Be prepared for setbacks**

It's likely that there will be some bumps on the road back to normality. Recognise that best laid plans often have setbacks, so keep an eye on how you are feeling, how you are coping and be kind to yourself.

**Don't rush into any decisions about work**

Don't make any decisions about committing to a return to the office straight away if you can help it. You need to really think about what's best for you and your situation,

everyone is different. Be confident to share your feelings about returning with your line manager or HR. You may not want to work the same hours as before. Make the new normal work for you rather than defaulting to what used to be.

**Look after yourself**

Many of us have got into good habits in lockdown and are managing to sleep better, eating right and getting exercise. Try not to let these healthy habits slide once you're back in your usual routine, as they help to keep us mentally and physically well.

**Share how you are feeling**

Just talking to someone about your worries, a colleague, a friend, LawCare, can help you process your emotions and feel calmer and less stressed. We can all take comfort from feeling similar things as those around us in the coming weeks and months.

LawCare provides emotional support to all legal professionals, support staff and their concerned family members. You can call our confidential helpline on 0800 279 6888, email us at [support@lawcare.org.uk](mailto:support@lawcare.org.uk) or access online chat and other resources at [www.lawcare.org.uk](http://www.lawcare.org.uk)

## The work of the Solicitors' Benevolent Fund



**John Guerin, BLM,**  
Director, Solicitors' Benevolent Association

The Solicitors' Benevolent Association is an all-Ireland voluntary charitable body consisting of members of the Law Society of Northern Ireland as well as the Law Society of Ireland. Assistance is provided on a confidential basis and importantly the Association is independent of both Societies.

In the past year the Association has paid out £777,585 in grants to 86 people. Beneficiaries ranged in age from 23 years of age to 100 years of age and in addition to those directly in receipt of grants 29 of them had children under 18 years of age or in full time education and in the past year the total number of children indirectly assisted was 65.

Applicants are asked for a statement of their monthly income and expenditure together with a statement of their assets and liabilities and entitlement to state benefits will be taken into account when deciding on applications. The level of grant is clearly dependent on individual circumstances and grants may be in the form of a regular periodic payment or a single payment.

Since 2000 the Association has also paid out grants on a loan basis where there are assets which may be realised at a later date, and since 2002 the Association has recouped almost £200,000 in such circumstances. Beneficiaries have often remarked that when they were making the application they had never envisaged that they would be in that situation and having to apply for assistance. Under the Rules of the Association assistance may be given to those in need who are members of the Association or former members of the solicitors' profession in Ireland and their immediate dependents. Members are defined as those who have paid a subscription to the Association.

Solicitors, whether practising or retired, are encouraged to pay the annual voluntary subscription in the knowledge that they are helping their colleagues and their dependents who have fallen on hard times for whatever reason.

There are currently 25 Directors of the Association from all over Ireland and in Northern Ireland I am one of 3 directors together with Caroline Boston and Colin Haddick. All Directors provide services on a voluntary basis and we regularly review the cases and we often have personal contact with those in receipt of the grants. The Directors' advice at meetings is invaluable as we can provide local and first-hand information. This is clearly important bearing in mind that a review of the assistance offered by the SBA may result in a decision to continue, discontinue, increase or decrease the grant.

Below are examples of some of the situations in which we have assisted over the years. Please note that names have been changed to protect the identity of individuals.

- Maria was widowed at the age of 45 when her husband who was a solicitor suddenly died and she was unable to support her children who were at college. The SBA was able to provide financial assistance to Maria and her children until the children were in gainful employment.
- Vincent was a partner in a practice but was forced to take early retirement when he was diagnosed with a long-term illness. His wife did not work at that point in time and they had 3 children to support and the Association was able to provide assistance.
- Brian was a sole practitioner and in recent years the practice had become unviable and Brian was no longer earning enough money to enable him to support his family. The Association was able to assist Brian until he was able to obtain alternative employment.

One can see that there is a wide range of circumstances that our colleagues can find themselves in when they require the assistance of the Association. Importantly many of our colleagues find themselves in unforeseen circumstances and the assistance provided by the SBA has proved invaluable to them.

This could, of course, be any one of us. It is arguable that the importance of the SBA has never been greater in the uncertain times brought about by the current pandemic. We are pleased to note that contributions have remained constant during 2020 and 2021. If you have not already done so I would encourage you to make a contribution using the links provided in the accompanying advert.

## A CALL FOR HELP

When the pressures of professional and personal life become too much the Solicitors' Benevolent Association (SBA) are there to help.

The SBA is dedicated to supporting local solicitors and their families through difficult times.

Research shows that 1 in 15 solicitors may find themselves in financial hardship through illness, divorce, addiction or other issues.

In 2021 the SBA responded to requests for help by providing support grants to 93 solicitors and their families with over 30% of these paid to support families with children under 16 year of age.

**As requests for help and support have grown so are the demands on the SBA's funds and therefore we really need your donations.**

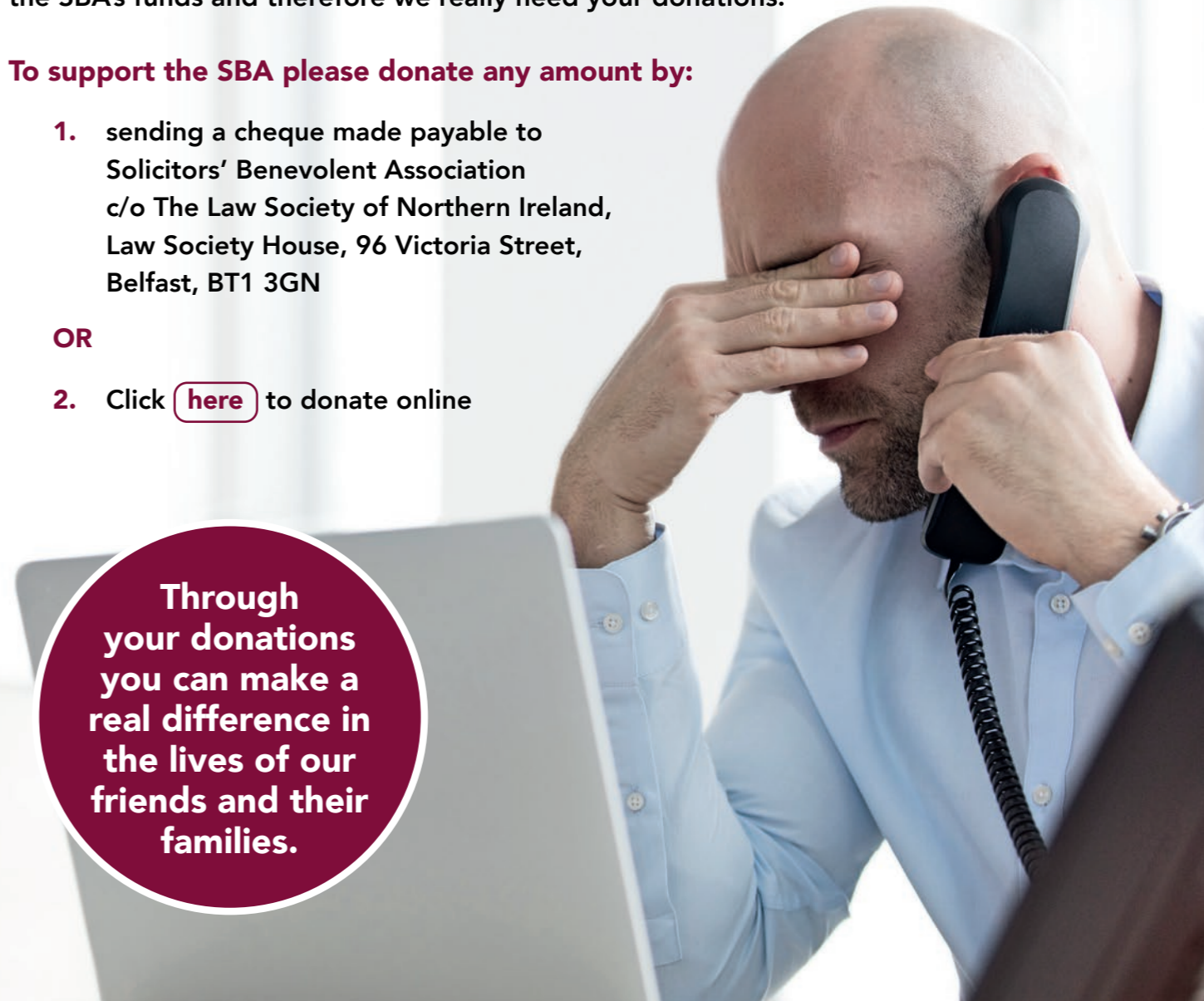
**To support the SBA please donate any amount by:**

1. sending a cheque made payable to **Solicitors' Benevolent Association**  
c/o The Law Society of Northern Ireland,  
Law Society House, 96 Victoria Street,  
Belfast, BT1 3GN

**OR**

2. Click [here](#) to donate online

**Through your donations you can make a real difference in the lives of our friends and their families.**





**Wellbeing is much more than eating healthily, exercising and looking after your physical health. It is also about developing a positive mindset, adopting methods to manage stress and understanding when to seek help.**

## New Wellbeing Toolkit

Wellbeing and mental health issues can often be overlooked or ignored. Therefore it is vital that individuals recognise the early warning signs of stress and other mental health issues so that steps can be taken to prevent a snowballing effect or deterioration of wellbeing. At this present time, the focus on wellbeing amongst the legal profession, and wider society in general, is more important than ever.

It is important to recognise that whilst the role of a solicitor may be hugely rewarding, it is also fused with pressure to perform and deliver for clients. Solicitors are often the first point of contact for individuals at times of crisis and frequently act as an anchor for clients through many stressful circumstances, such as buying a new home, making a will, dealing with the future of children in a relationship breakdown, or advising a client

through a business insolvency. As solicitors guide clients through many of their key life experiences, they may become closely involved in the many twists and turns of the client's experiences, and consequently, solicitors can often acquire secondary trauma. This adds to the already demanding role and responsibilities of being a solicitor, and other sources of professional stress, such as handling large caseloads, managing client expectations and attracting business to firms. The drive to deliver an excellent service for clients and firms can sometimes take priority over individual wellbeing, therefore it is necessary for individuals to be aware of the practical and positive steps they can take to manage these pressures more effectively. Moreover, the Covid-19 pandemic has undoubtedly changed the world we live in quite dramatically. The impacts of the Covid-19 pandemic cannot be understated given the associated uncertainties, worries and pressures of numerous lockdowns and the ongoing restrictions. There is no doubt that the loss of social contact and interaction within offices,

the corridors of our courts and social spaces during periods of restrictions will have had an impact on many within the solicitor profession. It is likely that the emotional, economic, social and psychological impact of the pandemic will leave many individuals more vulnerable to mental health issues. Therefore, as we emerge from the pandemic and adjust to new ways of working, with the increased use of technology in our daily lives and blended working patterns, it is important to reflect on individual wellbeing and practices within firms to support each other during these uncertain times.

One of the objectives of the surveys which were carried out by the Society in 2020 in response to Covid-19 was to gain a clearer understanding of what is happening within the profession on the ground in relation to staff and working practices. The majority of firms who responded to the survey said that they would welcome guidance from the Society in relation to wellbeing. The Society recognises the pressures and difficulties which have arisen from the Covid-19 pandemic, and is committed to promoting positive wellbeing amongst the solicitor profession in Northern Ireland.

The Wellbeing Toolkit, which was launched by the Society in April 2021, is part of an initiative to both respond to the issues presented to the profession by the pandemic, and to promote the importance of good mental health within the solicitor profession. The Toolkit is designed in a manner which provides accessible links to relevant support materials and organisations to provide practical and valuable information. It covers a range of areas, including individual wellbeing, ways of helping, supporting others, concerns about clients, and firm policies. It also includes signposting to relevant organisations who can provide professional help and support. It is hoped that the Toolkit will be of practical benefit to individuals and firms, and will contribute to shifting the conversation towards encouraging a supportive culture and reducing the stigma around mental health issues within the legal profession.

The Toolkit can be accessed [here](#).



## Supporting employees post lockdown

As restrictions start to lift, we are all transitioning once again to a new way of living and working. Some people will be desperate to get back to an office setting and others will be anxious about what the future holds. It is important for employers to recognise this to support their employees back into the workplace in whatever form that might take and to bear in mind that there is still a great deal of uncertainty, which can be unsettling. The reality is we're not quite at the finish line yet, and we don't know what the next few months has in store.



### Show leadership

Now is a great time for senior leaders to step up, to talk about some of their concerns and acknowledge the difficult time people have had over the past year. This will reassure employees that some of their fears and worries about returning to an office or work are not isolated and that their wellbeing matters to the organisation.

### One size doesn't fit all

It's important to recognise that everyone is different, has different needs and will have different feelings about restrictions lifting. Some will want to come into an office setting, some will want to stay working at home, and the majority will probably want to do a bit of both. Be alive to common concerns and tailor arrangements to the individual to enable you to get the best out of them at work. The greatest asset a legal practice has is the people that work there, so understanding their needs is vital.

### Supervision and peer support is key

Good line management can help manage and prevent stress, and feeling engaged, and engaged with, is crucial to being happy at work. Over the past year at LawCare one of the most cited concerns to our emotional support service has been a lack of supervision. Managers should make themselves available for regular work-related conversations with staff whether or not they are in the office as this is vital to keeping an eye on how someone is feeling and coping. There should be adequate time built in for managers to do this. You or your organisation may also need additional support or training in order to provide adequate supervision, or may need to

engage the services of a third party such as a counsellor for staff working in emotionally difficult areas of law.

Peer support or mentoring schemes can allow colleagues to support one another outside the line-management structure and reverse mentoring - pairing a junior member of staff with a senior leader in the organisation - can be very effective.

### Keep an eye on working hours

Flexible working can support healthier and more productive ways of working for all staff and lead to increased morale, commitment, productivity and reduced sickness absence. However during the pandemic flexible working has enabled many time-stretched lawyers to squeeze even more hours into their working day. Recent research has shown that UK employees who work from home are spending longer at their desks and have bigger workloads, are expected to do more and have increased their working week by almost 25%. It's important to encourage those working at home to keep healthy boundaries between work and home, discourage sending emails or contacting colleagues outside of core working hours for example.

### Limit video calls

Whilst video technology has been great for helping us keep in touch during the pandemic, many of us have spent the best part of a year sitting on Zoom or Teams calls. Going forward it's important to consider how we use this technology and to recognise that video calls can be draining, and can contribute to that feeling of always being 'on'. Switching some calls back to the old fashioned phone means employees can cut

down their screen time and means they can get up from their desk for a stretch, or go for a walk at the same time.

### Encourage time off and healthy behaviours

Having the time to pursue the things we enjoy and spend time with friends and family is vital to wellbeing, and is even more important at the moment as our social contact was so curtailed during lockdowns. Encourage everyone to work sensible hours, avoid working weekends, take lunch breaks and annual leave entitlement - staff will take cues from how leaders behave. People need rest and recuperation after particularly busy or stressful periods and teams need to be well resourced in order to make this happen. This will protect employees from burn-out, enabling them to be resilient to future challenges and ensure they can do their best work.

### Promote kindness at work

Encourage colleagues to treat each other with respect, say hello, say thank you, not raise their voice or threaten each other. Research shows that kindness in the workplace can create a positive ripple effect that can benefit the whole workplace culture, and have a huge impact on feeling of positivity towards work as well as general wellbeing. After the year we have all had, showing each other some kindness, and being kind to ourselves, will make any transition much easier and calmer.

**Elizabeth Rimmer**  
CEO, LawCare

## A View from the UK Law Societies' Joint Brussels Office



**Mark McTeggart,**  
Comerton and Hill and  
UK Law Societies' Joint  
Brussels Office

The past sixteen months have brought about significant changes to the relationships and procedures adopted by law firms and their clients. The challenges created by the COVID-19 pandemic has saw certain legal departments experience a downturn and a reluctance by some practitioners to learn new technologies which have become integral to running a law firm in the unfamiliar social and business climate we now find ourselves in. Whilst the pandemic and the move towards technology and remote working has been considered an issue of concern for some in the legal sector, a broad assessment highlights that law firms have reacted positively to recent developments with many legal departments reporting growth or being largely unaffected by the pandemic .

Indeed, for the legal sector, the main challenge facing law firms and their clients continues to be the follow-on from Brexit and the substantial changes which are now beginning to emerge following the application of the EU-UK Withdrawal Agreement on 1st February 2020 and the EU-UK Trade and Cooperation Agreement on 1st January 2021. Whilst the Northern Ireland Protocol remains the most controversial and debated measure within this, many other issues are beginning to arise which will have substantial influence on how law firms operate and advise their clients in the future.

The UK application to accede to the 2007 Lugano Convention, for one, is an issue of

extreme importance for the resolution of jurisdictional issues and recognition of UK civil and family judgments across EU/EFTA states. Failure by the Council of the European Union to allow UK accession to Lugano has been considered as a potential damaging blow to corporate accountability and could lead to substantial costs and delays for law firms and clients enforcing UK judgments across EU/EFTA states .

It was with this backdrop that I started a secondment with the UK Law Societies' Joint Brussels Office in May 2021. The Joint Brussels Office was set up in 1993 as part of a venture between the Law Societies of England & Wales, Northern Ireland and Scotland to promote better quality legislation and better functioning of the justice and legal system from the heart of the European Union. The Office promotes and represents the solicitor profession in relation to legislation and policies which impact practicing rights, substantive and procedural laws on which solicitors advise their clients, and wider issues such as better regulation or proper administration of justice. The Brussels team also seek to support the profession by providing information and raising awareness of EU legislation and policies that are relevant to the profession through attendance at committee and board meetings, the preparation of regular policy updates, communication with policy advisers of the three Law Societies, and through the Brussels Agenda newsletter, which provides an in-depth look into various legal themes on a monthly basis.

The Joint Brussels Office is staffed by specialist policy advisors, who are supported by solicitors and trainee solicitors on four-to-six-month secondments. Unfortunately, due to the COVID-19 pandemic, I have been unable to work in Brussels, but this has not hampered my ability to take part in activities, meetings and events of the office remotely. Indeed, I have been involved in a range of important projects which have both diversified and expanded the knowledge and skills which I have gained throughout my apprenticeship.

The role of the office is heavily policy-based and the work I do reflects this. Having been

assigned to deal with private international law and the UK's accession to the Lugano Convention as one of my dossiers, I have been provided with the opportunity to present and speak at high-level Law Society EU policy committee meetings on regular occasions, whilst also providing an insight into current issues from a Northern Ireland legal perspective. Such direct involvement with the EU committee and policy advisers has also allowed me to write several articles on the issue and collaborate with Northern Irish colleagues to help plan future arrangements for domestic law firms and clients to thoroughly prepare for the challenges that a move from EU Law may bring.

I am also in the process of editing the next version of the Brussels Agenda, which will be circulated to approximately two thousand colleagues across the EU and UK. As editor-in-chief, I am responsible for leading our weekly meetings and liaising with external contributors with the view of providing articles for the newsletter. With a summer dominated by Euro 2020, the Olympics and many other international sporting events, our next edition will centre on sports law.

Overall, the experience has been extremely fulfilling and I am indebted to my law firm, Comerton & Hill Solicitors Limited, who have allowed me to avail of this opportunity. Whilst I have not managed to swap life from Belfast/Fermanagh to the 'Capital of Europe' just yet, I have gained exposure to a diverse range of legal areas and issues which have increasingly dominated EU-UK discourse within the past seven months. The challenges and fallout from the UK withdrawal from the EU is something which will continue to affect individuals and businesses across the Island of Ireland for the foreseeable future and I hope my experience with the UK Law Societies' Joint Brussels Office can therefore prove beneficial to my firm and legal colleagues in helping to deal with the new procedures and subsequent challenges that life post-Brexit may bring.

*Mark McTeggart is a second-year trainee solicitor at Comerton & Hill Solicitors Limited, on secondment to the UK Law Societies' Joint Brussels Office.*

## Buying, selling or merging practices?

Considering selling or retiring from practice? Or looking to grow your practice through entry, acquisition or merger? Now may be an opportune time to consider your options and ensure you have the right plans in place to achieve the best possible outcome.

GM<sup>c</sup>G Chartered Accountants can assist with all aspects of this process, from planning through to completion. As one of NI's leading purveyors of litigation support services we have the contacts, skills and experience you can trust.

### *Selling or retiring*

Practice owners need to be aware of the type of preparation required to achieve the best outcome regarding the sale or other arrangement related to the continuation of the business. We offer a highly confidential service with the expertise and experience that can help negotiate your exit. Key considerations:

- ⇒ Capital accounts
- ⇒ Valuation of work in progress
- ⇒ Detailed profile of work type
- ⇒ Employees, premises, assets
- ⇒ Partnership structures and agreements
- ⇒ Management of client relationships
- ⇒ Views on goodwill

### *Entry, acquisition or merger*

GM<sup>c</sup>G Chartered Accountants has experience in assisting clients with all aspects of due diligence related to these types of transactions. Through our resources and expertise we can offer a range of confidential services including:

- ⇒ Identifying suitable practices - critically assessing synergies, strengths, weaknesses and commercial potential as aligned with your strategic objectives
- ⇒ Corporate Finance - expertise examining the best options related to funding requirements
- ⇒ Business structuring - advice on a range of buy in and buy out structures
- ⇒ Putting in place confidentiality agreements and, as needed, data rooms to provide you with confidence that key business and financial information remain protected at all times

With a particularly active market in the months prior to indemnity insurance renewal, now is an opportune time to ensure you have plans in place to examine the key considerations and options related to your business growth objectives.



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## The investment dilemma of trying to do the right thing



### John Baxter, Chief Executive, Law Society (NI) Financial Advice Limited

So far in 2021 one of the areas that we have seen most growth in enquiries for is what we call internally 'conscience' investing. As an investment profession we are great at devising jargon that serves to mostly confuse clients and this area is no different. When talking about this area some people will refer to it as 'ethical' investing. This has evolved to ESG which broadens the spectrum to the factors of Environmental, Social and Governance. There are trends to look at the 'Impacts' of our investments and the 'Sustainability' of our investments.

No matter what your views on this subject matter are, it is certainly here to stay and we have committed significant resource to making sure we have an appropriate set of portfolios that are available for solicitors, their families and their clients should they wish to have this factored into their portfolio. At a recent Investment Committee meeting one of our investment partners – Albion Strategic Consulting – started explaining the dilemma of trying to do the right thing. They later penned an article for us to use with clients that I've reproduced below that really strikes at the heart of the competing or even conflicting issues that can come into play.

Students have always been at the centre of activism around the important issues of the time, from the 'Mai 68' student riots in Paris, via the pressure put on Barclays and

others to divest from apartheid-riven South Africa in the 1980s, to today's Black Lives Matter movement and the existential threat of climate change. Their enthusiasm and conviction can often act as a powerful catalyst for change. Sometimes, however, a certain naivety accompanies their solutions. Complex problems rarely have simple, binary choices.

You can take down the statue of the 'imperialist' Cecil Rhodes, at Oriel College, Oxford, but what do you do about his financial legacy that funds the Rhodes Scholarship<sup>1</sup> enabling outstandingly talented young people from around the world to undertake two years of postgraduate study at Oxford University? That is a dilemma.

Likewise, you can divest your portfolio from owning polluting fossil fuel companies, but who are you selling to, what impact will your decision have and is this the best way to make a positive impact? In 2020, Oxford University – under pressure from its student body – voted to divest its endowment entirely of exposure to fossil fuel producers. Around the same time, students at St John's College demanded that the bursar make a similar move with the College's endowment with immediate effect, by selling its shares in BP and Shell. His response was perhaps not the one they were expecting, as reported in The Times<sup>2</sup>:

*'I am not able to arrange any divestment at short notice...but I can arrange for the gas central heating in college to be switched off with immediate effect. Please let me know if you support this proposal.'*

The students objected, claiming that he was being flippant and provocative and even dangerous, given that it was January in a 15th century college! His response was:

*'You are right that I am being provocative, but I am provoking some clear thinking, I hope. It is all too easy to request others to do things that have no personal cost to yourself. The question is whether you and others are prepared to make personal sacrifices to achieve the goals of environmental improvement (which I support as a goal).'*

The point was well made. Should fossil fuel producers really carry all the burden of carbon emissions guilt? After all it is our own, consumer-driven demands for petrol and diesel cars, international air travel, cheap goods produced in high-pollution economies and shipped by sea, a love of palm-oil filled

Nutella, and a western, meat-eating diet encouraging 'advanced' agriculture with high mileage produce, that are really to blame.

Yet making seemingly positive personal lifestyle changes, such as buying a Tesla or drinking almond milk, can have hidden environmental impacts. The environmental and social costs of nickel and cobalt mining (often mined in less-developed countries) for electric vehicle batteries and increased demand for electricity generated, in the main by fossil fuels globally, make the argument less clear cut.

Each litre of almond milk requires 1,600 liters of water<sup>3</sup>. Much of the world's almond crop (80%) is grown in California, on vast monoculture farms, reducing biodiversity and drawing from and depleting deep wells. California has suffered severe droughts over the past decade, and one wonders whether this scarce resource is being sustainably managed. Tricky decisions.

So where does this all leave investors who want to try to make some form of sustainability impact through investments that they hold or avoid? Should they divest from companies like BP and Shell?

Let us look at the divestment case first. Most investors own shares that were originally bought in the secondary market i.e. from someone else who owned them before, rather than shares issued when a company needs to raise additional capital for its further development. Likewise, when an investor sells their stake – in this case as a positive act of divestment from fossil fuel producers – they will sell these shares to someone else. Almost by definition, that person or institution will care less than the seller about

the environmental impact of these companies. If a large number of investors divest, it may well be that the buyers end up with higher expected returns on account of the lower prices that they pay. What impact will this divestment have? Perhaps it sends a message to these firms that they need to change. Yet, it is a one-off protest that can seem a little like washing one's hands of the problem.

Perhaps a better course of action is to stay invested and become a thorough nuisance, as a shareholder, at the company's AGM! The reality is that a single individual has little power. However, the major fund management houses are powerful owners of most major companies and are 'forever' investors, particularly in passively managed, index tracking products. For example, Vanguard, SSga and BlackRock own almost 20% of Exxon<sup>4</sup>, the US' largest oil company. That is a very powerful voting bloc that can engage actively with, and apply pressure to, the firm's management. Each of these fund management firms are signatories to the *Principles for Responsible Investment*, which is a United Nations-supported network that encourages engagement with corporations on environmental, social and governance (ESG) issues. Is it better to engage with firms like Exxon, BP and Shell and encourage and cajole them into transitioning to a better place than to simply sell and walk away? BP, as a result of pressure from many quarters has recently set out its ambition to become a net zero company by 2050 or sooner<sup>5</sup>. That would be real change and progress and should be encouraged.

The reality is that most of us want to take steps in the right direction, particularly around climate change in all aspects of our lives and struggle with the trade-offs we face. It is

better to try rather than to take no action at all. Well, most of the time.

The one action not to take is to buy a Tesla with Bitcoin, something that the company previously allowed but has recently suspended. Bitcoin 'mining' uses up as much electricity as the whole of Sweden does in a year. Buying a Tesla with one Bitcoin has the equivalent carbon footprint of sixty petrol or diesel cars<sup>6</sup>. That is one dilemma you need not face!

#### Please note

This article is distributed for educational purposes and should not be considered investment advice or an offer of any security for sale. This article contains the opinions of the author but not necessarily the Firm and does not represent a recommendation of any particular security, strategy, or investment product. Information contained herein has been obtained from sources believed to be reliable but is not guaranteed.

Past performance is not indicative of future results and no representation is made that the stated results will be replicated.

<sup>1</sup> <https://www.rhodeshouse.ox.ac.uk/scholarships/the-rhodes-scholarship/>

<sup>2</sup> <https://www.thetimes.co.uk/article/professor-at-st-johns-college-oxford-turns-oil-row-into-a-heated-debate-0zr2wpm5>

<sup>3</sup> <https://www.theguardian.com/food/2018/sep/05/ditch-the-almond-milk-why-everything-you-know-about-sustainable-eating-is-probably-wrong>

<sup>4</sup> <https://money.cnn.com/quote/shareholders/shareholders.html?symb=XOM&subView=institutional>

<sup>5</sup> <https://www.bp.com/en/global/corporate/news-and-insights/press-releases/bernard-looney-announces-new-ambition-for-bp.html>

<sup>6</sup> <https://uk.finance.yahoo.com/news/tesla-bitcoin-emissions-carbon-footprint-co2-bank-of-america-153636398.html>



## The Right to Life: Death Penalty and Malawi



**Lindiwe Sibande,**  
Malawi Programme  
Officer, Irish Rule of Law  
International

Less than a year after winning the prestigious Chatham House award in recognition of “courage and independence in the defence of democracy” for the historic decision to overturn Malawi’s controversial 2019 tripartite elections, the Malawi Judiciary made international headlines, once again, by declaring the death penalty unconstitutional. In the landmark case of *Charles Khoviwa versus the Republic* (MSCA Miscellaneous Criminal Appeal Number 12 of 2017), the Supreme Court of Appeal held that the right to life was “the mother of all rights.”

Although the *Khoviwa* case is the first to declare the death penalty unconstitutional, it is the latest, and most crucial, in a line of landmark cases that establish legal precedent on the death penalty in Malawi. In the 2007 case of *Francis Kafantayeni and others versus the Attorney General* (Constitutional Case No. 12 of 2005), the constitutionality of the mandatory death penalty for capital offences was brought into question. In declaring the mandatory death penalty unconstitutional, the

Court ordered the rehearing of cases involving those who had been given the death penalty. An initiative called the “Resentencing Project” took these cases. It comprised a coalition of criminal justice stakeholders, as well as local and international human rights organisations, and led to the immediate release of 112 inmates. Many more are still being released after serving their custodial sentences, according to recent reports by the Malawi Human Rights Commission.<sup>1</sup>

The *Kafantayeni* case ushered in the introduction of a de-facto moratorium on the death penalty. In fact, however, the death penalty was not carried out in the 15 years preceding the ruling, nor the 14 years after. According to Amnesty International, the last known execution was carried out in 1992. After the establishment of multi-party democracy in Malawi in 1994, all executions came to a halt, arguably as a result of changes in the political and judicial landscapes. The new constitution did retain the death penalty as a viable sentencing option for particular crimes. Yet, since 1994, no president has signed a death warrant, despite its continued use in sentencing. Malawian death sentences could more accurately be described as sentences to indefinite detention.

However, in or around 2014, there was intense international and national media attention on the murder of persons with albinism happening in Malawi. There was huge political and international pressure to prosecute and sentence harshly those convicted of these crimes, and unfortunately this culminated in the renewed use of the death penalty to appease the public. In May 2019, the High Court imposed the death penalty in the case

of *R v Mikaele* (Sentence) (Homicide Case No. 238 of 2018) [2019] MWHC 50 (03 May 2019), a 28-year-old man convicted of murdering a person with albinism. Later in the same year, three people convicted of killing a person with albinism were also handed the death penalty by the same court. Malawi is not the only country that has utilised the death penalty in this way. In 2015, four people were sentenced to death in Tanzania after being found guilty of murdering a woman with albinism.<sup>2</sup> Although there is no official data on public attitudes towards the death penalty, calls for stricter sentencing for certain crimes from the public may be an indication that public attitudes tip more in favour of retaining the death penalty than abolishing it. For example, in a recent statement, the Human Rights Commission commended “stiffer punishments [for persons convicted] of sexual offences.”

The *Khoviwa* judgment was, in fact, a great shock to the many stakeholders involved in prosecuting the case; as, not only did it occur in the context of a judicial environment experiencing the renewed use of the death penalty, but also as the question of constitutionality was not actually put directly to the justices of the Supreme Court. It was therefore a truly remarkable win for human rights in the country and yet another demonstration of the Judiciary of Malawi’s firm commitment to justice and democratic values.



IRISH RULE OF LAW  
INTERNATIONAL

<sup>1</sup> MHRC statement on abolition of death penalty Final.pdf (mhrcmw.org)  
<sup>2</sup> Tanzania albino killers sentenced to death - BBC News

## President’s valedictory remarks upon the retirement of Sir Declan Morgan as Lord Chief Justice of Northern Ireland Nisi Prius Court - 30 June 2021

It is a privilege to be able to join in this tribute to Sir Declan, on behalf of the Law Society of Northern Ireland and its Members, to mark his retirement as Lord Chief Justice of Northern Ireland.

One of Sir Declan’s most noteworthy initiatives has been his willingness to engage with Northern Ireland’s elected representatives in order to help demystify the work of the Courts and the Judiciary. This willingness to embrace greater openness and transparency in his role as Head of the Judiciary has been both timely and effective. The Chief Justice’s recent appearance before the Justice Committee of the Northern Ireland Assembly is a striking example of this, and engagements such as this have helped promote much greater understanding of the administration of justice in Northern Ireland.

The old aloofness that once characterised these relationships has, under Sir Declan’s leadership, been consigned to history. Indeed, his decision, in one of the first media interviews he gave following his appointment, to describe himself as a “civil servant” captured perfectly this new vision of the Judge as servant of the wider community in Northern Ireland.

A particular aspect of Sir Declan’s leadership, which has been ground-breaking, has been his determination to bring a measure of closure to victims of the Troubles in Northern Ireland, through the work of the Coroners’ Courts in their conduct of Legacy Inquests. While finding a satisfactory way to address the legacy of our troubled past has proved almost impossible for our elected politicians, Sir Declan’s commitment to provide effective and independent judicial investigations of legacy cases has demonstrated the value of an impartial and independent judicial process as a means of accounting for the tragedies of the past.

As well as giving his attention to the challenges of our past, Sir Declan has also been a consistent and persuasive advocate of the advantages of introducing a new model of court administration. At his appearance before the Justice Committee, Sir Declan once again set out the case for repositioning the Court Service under a Judicial Leadership Board, as has already happened in Ireland and in Scotland. I am reminded that it took the Scottish Government almost 10 years to recognise the need for introducing greater



independence into the oversight of the Courts in Scotland and, as we arrive at a similar milestone in Northern Ireland, it is earnestly to be hoped that the Lord Chief Justice’s advocacy of the introduction of similar arrangements here will finally secure this most desirable outcome.

The role of the Lord Chief Justice today is by no means confined to the courts of law. One of the Chief Justice’s most important extracurricular roles is leadership of the Northern Ireland Judicial Appointments Commission. The statutory duty fulfilled by the Commission is to secure a Judiciary reflective of the community in Northern Ireland. No-one could reasonably dispute that under Sir Declan’s leadership the Judiciary is today more fully reflective of the legal community than at any time in the past. The appointment of the first female High Court Judges and Chief Justice, along with the increasing recognition of the suitability of solicitor candidates for judicial office, are developments greatly to be welcomed and which were achieved under Sir Declan’s leadership.

On behalf of the solicitors’ profession in Northern Ireland, the Society thanks you for your immense contribution to the legal system in Northern Ireland and for all that you have done to uphold and promote the rule of law in this jurisdiction. I wish you a long, happy and very fulfilling retirement.

**Rowan White**  
President



## JUDICIAL APPOINTMENTS

Her Majesty the Queen has appointed 4 new County Court Judges.

Presiding District Judge Fiona Bagnall and Coroner Patrick McGurgan were sworn into office on 21 June 2021.

Richard Joseph Greene QC was sworn into office on 28 June 2021.

Peter Irvine QC was sworn into office on 5 July 2021.

### Presiding District Judge (MC) Bagnall

Presiding District Judge (MC) Bagnall graduated from Queen's University of Belfast in 1984 and qualified as a solicitor in 1986 before working in private practice between 1986 and 2003 as an employed solicitor and latterly as a partner in her own practice. In private practice she specialised in Children Law, Administrative Law and Employer's Liability. Her clients included many Health and Personal Social Services Trusts and other public sector organisations related to the Health Service.

In 2003 Judge Bagnall was appointed to the Magistrates' Court bench. In April 2006 she was selected by the then Lord Chief Justice, the late Lord Kerr as the inaugural Presiding District Judge (MC) of Northern Ireland. As such she was responsible to the Lord Chief Justice for the effective and efficient running of the Magistrates' Courts in Northern Ireland. Until her appointment as a County Court Judge she was the longest serving Presiding Judge in any judicial tier in Northern Ireland.

In addition to her administrative and judicial responsibilities as a District Judge (MC), Judge Bagnall has been responsible with Dr O'Hare from Probation Service Northern Ireland for leading the establishment and development of the Substance Misuse Court, aimed at the rehabilitation of offenders suffering from long term addiction problems. Judge Bagnall also sat as a judicial member on the Board of the Northern Ireland Courts and Tribunal Service.

### Coroner Patrick McGurgan

Coroner Patrick McGurgan obtained his Bachelor's degree of Law from Queen's University Belfast in 1992 and was admitted to the Roll of Solicitors in 1994.

In 2016 Coroner McGurgan was sworn into the office of Coroner for Northern Ireland where his duties included deciding on the cause of death, directing post mortems and conducting Inquests. He conducted extensive outreach programmes with numerous stakeholders including the PSNI, NIAS, GPs and all of the Health Trusts. He was also the appointed Mass Fatality Coroner for Northern Ireland. Prior to taking up his post as Coroner he was engaged as a solicitor/ Director in private practice in Gus Campbell Solicitors.



Ursula O'Hare, Director of the Law Centre NI

Law Centre NI's work across Northern Ireland in ensuring access to justice for all has been recognised with an award at the prestigious UK-wide Legal Aid Lawyer of the Year Awards (LALYs).

The Law Centre won the Regional Legal Aid Firm/Not-for-Profit Agency category. It was nominated alongside the Family Law Company in Exeter and Watkins and Gunn in Cardiff. This is the second year in a row, a NI organisation has won this category (last year, KRW Law won in this category).

Now in their 19th year, the LALYs are organised by the Legal Aid Practitioners Group (LAPG) and celebrate the remarkable work of legal aid lawyers across the UK. Normally the awards take place in London but for the second year, the ceremony was hosted on-line due to the pandemic.

Honouring the contribution of the Law Centre at the award ceremony, the LALY team highlighted "the scale of its ambition and the calibre of its lawyers". The Law Centre's social security work came in for special mention, including its current case under preliminary reference at the Court of Justice of the EU on the exclusion of EU nationals with pre-settled status from entitlement to benefits and its successful challenge in the High Court last year on the rules on benefits for people with terminal illness.

Director of the Law Centre NI, Ursula O'Hare, said:

"The team at Law Centre NI are absolutely thrilled with this award. It is a wonderful acknowledgement of the arc of the Law Centre's work over forty years and the tireless work of an amazing team. The award recognises the vital role of law centres across the UK in ensuring access to justice for everyone. We are delighted that the difference that the Law Centre has made to people across Northern Ireland has been recognised by the LALYs".

Professor of Law and Social Justice at Ulster University, Grainne McKeever, who nominated the Law Centre for the award, added:

"I am so proud of Law Centre NI's achievement. They stand out with their commitment to using law to achieve social justice. The impact of this small law centre in achieving real change is now in the spotlight and I am absolutely delighted to see their amazing work recognised in this way".

## Commonwealth Games Federation launches new Ethics Commission

In keeping with the Commonwealth Games Federation ("CGF") strategic priorities to ensure transparency, integrity and good governance at every level, the Federation has announced the formation of its new Ethics Commission with the first three members appointed.

Following on from the adoption of a comprehensive Code of Ethics and Conduct, the CGF Ethics Commission is a completely independent body tasked with maintaining the highest standards of probity throughout the Commonwealth Sport Movement.

The Commission will be chaired by Brian Speers, who is the Treasurer and former President of the Law Society of Northern Ireland, and is managing partner of CMG Cunningham Dickey Solicitors.



regularly on a range of rule of law and human rights issues, legal profession independence, anti-corruption measures, disputes resolution, governance and access to justice.

Brian Speers is also Chair of the Law Society Mediation Service administered by the Law Society of Northern Ireland and is one of the most experienced legal mediators in Northern Ireland. A former Chair of the Education



Committee of the Law Society of Northern Ireland he teaches Professional Conduct and Accounts to solicitors in training.

CGF Ethics Commission Chair Brian Speers said: "I am honoured to be appointed to lead the independent CGF Ethics Commission.

The Ethics Commission will play a hugely important role – acting independently the Commission will develop, review and enforce the framework of ethical principles outlined in the CGF Code of Ethics and Conduct. It is a privilege to serve as the inaugural Chair.

Alongside my colleagues on the Commission, we look forward to supporting the CGF to strengthen the Commonwealth Sport Movement's governance and integrity framework."

Mr Speers has been elected to serve a four-year term.





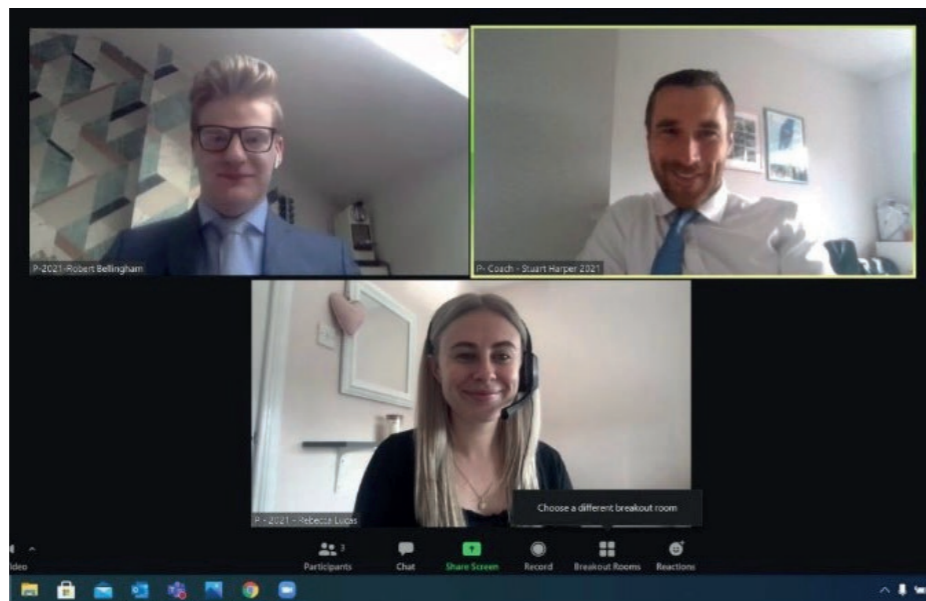
This year the international finals of the Brown Mosten International Client Consultation Competition were hosted by Swansea University School of Law. The Institute of Professional Legal Studies team of Rebecca Lucas and Robert Bellingham, having won the National Law Society of Northern Ireland final, represented Northern Ireland at the beginning of April. What differentiated this year's competition was that instead of jetting off to an exotic location, competitors attended from the comfort of their own homes. Despite time zone differences and strained Wifi connections, the organisers ensured a smooth-running competition.

Each year the International Competition Committee chooses a topic for the competition, with each country applying the law in their jurisdiction to each scenario. This year's topic was Human Rights and how they affect women and children, with a special emphasis on human trafficking. 18 teams from across four continents competed over five days with a different scenario each day.

Over the first three days, each team had to interview three clients – each with very different personalities with different human rights problem. These varied from a planned protest to human trafficking to a headteacher who came across some disturbing information about some teachers at her school. Actors played the part of the clients and were fully briefed and were asked to behave consistently for all teams. A challenge in the competition

is the time constraint where each team is allocated forty-five minutes to meet the client, interview them, advise on their situation and then review. At the end of the preliminary rounds, nine teams moved forward to the semi-finals. Northern Ireland was successful in moving through to the next stage.

With the preliminary result being released on Friday evening and the semi-final rounds occurring early on Saturday morning there was some late-night preparation. The semi-final round involved a suspicious character who possessed information relating to an armed conflict in Afghanistan. The client was fearful that publishing this information would have serious and potentially life-threatening consequences. The competition aims to develop a rapport with the client and develop trust and confidence with us. At the end of this round, Northern Ireland had beaten off strong competition from New Zealand and India and



progressed into the final against Poland and Ireland.

The final round involved a client named after the Greek Goddess Persephone who wished to form a new religion. This was a difficult and intricate scenario to navigate issues so as not to cause offence to the client and to get to the crux of the issue. Sadly, the teams from Ireland and Poland finished in first and second place, with Northern Ireland finishing third overall.

As readers will be aware, Covid-19 has caused a deviation from the traditional ways of client interviewing, receiving instructions and forging client relationships. What this competition demonstrates, is despite meeting through a screen it is still possible to develop a rapport with clients and receive thorough and detailed instructions.

As ever, a great deal was learnt over the days of the competition. New contacts from all over the world were established. It is truly a tremendous opportunity for students to participate in this competition to cultivate skills that will assist them when entering the profession.

Thanks are due to coaches Stuart Harper and Ruth Craig for their time, dedication and expertise in preparation for the competition. Further appreciation is due to Barbara Jemphrey, the Institute of Professional Legal Studies and the Law Society of Northern Ireland for their support throughout the stages of the competition. Finally, thanks are also due to Rebecca's firm -McQueenie Boyle and to Robert's firm – Tughans for allowing the team time to participate in the competition, and for their general support and encouragement.



The Law Society have launched their new online CPD Record 2021. It has been developed to allow members to record their CPD progress throughout the year and then to submit their completed Record online by 6th January 2022.

#### How to access the new CPD Record

The new CPD Record can be accessed by logging into the Society's members' website at <https://www.lawsoc-ni.org/members/>

Once logged in members can access their individual CPD Record by clicking on: <https://www.lawsoc-ni.org/members/CPDTraining.aspx>

Members can update their CPD Record during the practice year before submitting their completed Record by 6th January 2022.

The screenshot shows the 'New Online CPD Record 2021' form on the Law Society of Northern Ireland website. The form includes a search bar, navigation menu, and a 'Contact Details' section with the following fields:

- Forename(s)
- Surname
- Name of your firm or organisation \* Please provide the full name.
- Address of your firm/organisation \* Please provide the full address.
- Postcode of your firm/organisation.
- Email address \*
- Phone number \*
- Roll number \*

## From the Courts - abstracts of some recent case law

Below please find headnotes and links to the full text of selected judgments from the High Court and Court of Appeal. Please note that these headnotes are for guidance only.



### ACCESS TO JUSTICE

#### IN THE MATTER OF AN APPLICATION BY MERVYN MOON FOR LEAVE TO APPEAL FOR JUDICIAL REVIEW

Applicant was the subject of life imprisonment after pleading guilty to murder. – decisions made by the Legal Services Agency (“LSA”) in relation to the remuneration of his solicitor in respect of a Parole Commissioner’s Decision. – dossier of papers to be considered of 1,207 pages which the LSA allowed 13 hours for the solicitor to read the papers in line with the “settled policy”. – whether the applicant has standing to bring the proceedings as is not the proper applicant. – whether the grant of hours is reasonable in all the circumstances and such a decision requires a fact-based analysis of their application for which funding is sought. - delay. - HELD that leave refused on the grounds that the applicant does not have sufficient standing  
*HIGH COURT*  
8 MARCH 2021  
*COLTON J*

### CRIMINAL LAW

#### R V OWEN CORRIGAN

Application by the prosecution for leave to appeal a decision to stay criminal proceedings on one count of unlawful wounding as an abuse of process on the basis that the defendant could not receive a fair trial by reason of delay and failures in the investigation. – HELD that the trial judge’s decision was wrong in law in that it took in to account the absence of photographs, exhibits, forensic examination and an examination of the scene, none of which were required and it was contrary to

principle. – ruling reversed and fresh trial ordered in the Crown Court  
*COURT OF APPEAL*  
2 NOVEMBER 2020  
*MORGAN LJ, MCBRIDE J, HUDDLESTON J*

#### R v MICHAEL DEVINE

Appeal via the mechanism of a referral by the Criminal Cases Review Commission (“the Commission”) under Part II of the Criminal Appeal Act 1995. - whether the learned trial judge failed to address all relevant matters, misdirected himself as to the issue to be determined by the Court. - failure of the Crown to provide disclosure to the defence in accordance with common law principles. - failure of the police to permit the appellant to have access to legal representation and advice during the interview process. - description of perpetrator. - leave sought to admit fresh evidence. - whether conviction safe. - HELD that there is merit in the Commission’s referral of the appellant’s conviction and appeal allowed  
*COURT OF APPEAL*  
28 JANUARY 2021  
*MORGAN LJ, TREACY LJ, MCCLOSKEY LJ*

#### R V KEVIN McLAUGHLIN

Appeal against conviction for possession of explosive substances in suspicious circumstances, possession of firearm and ammunition. – trial judge rejected the application of No Case to Answer because he considered that on one possible view of the evidence presented, a jury, properly directed, could be satisfied of the Appellant’s guilt to the requisite criminal standard. – HELD that the trial judge erred in law in refusing the application for a direction of no case to answer and appeal allowed  
*COURT OF APPEAL*  
30 NOVEMBER 2020  
*STEPHENS LJ, TREACY LJ, HUDDLESTON J*

### EDUCATION

#### IN THE MATTER OF A DECISION BY JR140 ACTING BY HIS MOTHER AND NEXT FRIEND AND IN THE MATTER OF A DECISION BY THE BOARD OF GOVERNORS OF ST MALACHY’S COLLEGE BELFAST

Applicant is an 11 year-old boy applying for admission to post primary schools. - whether admissions criteria drawn up by the Board of Governors in place of academic assessment are unlawful. - guidance from the Department of Education under the Education (NI) Order 1997 in respect of arrangements for the admission of pupils to grant aided schools setting out recommended and non-recommended criteria for each Board to consider. - whether the school unlawfully departed from the criterion in the prioritisation and inclusion of some criterion. - whether lack of reasoning recorded in the minutes. - whether breach of a.2 ECHR. - HELD that application dismissed  
*HIGH COURT*  
25 FEBRUARY 2021  
*COLTON J*

### FAMILY LAW

#### IN RE: MS A – VALIDITY OF MARRIAGE

Validity of marriage. - whether the petitioner is entitled to a declaration that the form of marriage which she entered into at a hospital with Mr M is sufficient to be recognised in law and is a valid marriage. - marriage plans had to be brought forward since Mr M was dying and his condition suddenly declined. - whether enough had been done to make the marriage recognised

in law. - Registrar General had not received long form birth certificates, passports or medical evidence in order to reduce the period for a marriage schedule to be issued. - short ceremony performed by the hospital Chaplain. - requirements of the Marriage (NI) Order 2003. - extent to which there was a failure to comply with the statutory requirements. - HELD that the marriage is not one which can be declared valid and application for declaration is refused and case dismissed  
*HIGH COURT*  
18 MARCH 2021  
*O’HARA J*

### JUDICIAL REVIEW

#### RE AF’S APPLICATION FOR JUDICIAL REVIEW

Application for leave for judicial review. - application concerning a child with a disability and complex needs. - applicant is the child whose mother who is disputing the rates the proposed respondent (the Trust) pays to her for direct provision of care to her son whilst the special school he attends was closed during the Covid pandemic. - direct payments under a.18C Children (NI) Order 1995. - whether the Trust acted unlawfully in its decision to pay an hourly rate (the recommended regional minimum rate) of £12.91 in respect of the agreed hours of care for the applicant. - whether the Trust was fettering its discretion by following the minimum rate and failing to consider a higher rate. - whether an arguable case in a public law challenge. - HELD that leave refused  
*HIGH COURT*  
15 JANUARY 2021  
*COLTON J*

#### IN THE MATTER OF AN APPLICATION BY HM FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

Application joined the PSNI as a student officer. - applicant was the subject of a disciplinary hearing under the Police Trainee Regulations (NI) 2001 after complaints of harassment from his wife, with whom he was in proceedings with regarding custody of his children, and complaints about his conduct at meetings with fellow police officers and in a telephone

conversation with a fellow call handler. - applicant dismissed from the PSNI without notice. - applicant unsuccessfully appealed the decision. - applicant applies for leave to challenge the decision to dismiss him as a police trainee and unsuccessful appeal. - delay. - application to invoke the discretion of the Court to extend the time limit granted. - whether the decisions under challenge are amenable to judicial review. - proposed respondent is a public body exercising statutory powers. - whether decision to dismiss the applicant procedurally fair. - HELD that leave granted on the grounds of illegality and procedural unfairness given that the pre-hearing investigation was in adequate, the applicant was given inadequate opportunity to present his case and challenge those who made complaints about him  
*HIGH COURT*  
2 MARCH 2021  
*COLTON J*

#### IN THE MATTER OF AN APPLICATION BY JR111 FOR JUDICIAL REVIEW

Requirement of the Gender Recognition Act 2004 that an applicant for a gender recognition certificate provides a diagnosis of gender dysphoria by means of specified medical evidence. - whether this is compatible with the applicant’s a.8 ECHR Rights. - applicant is a transgender woman who wishes to be granted a gender recognition certificate but has experienced difficulties in doing so. - applicant cannot find an expert in Northern Ireland who can provide the medical evidence required for the certificate and cannot pay for the reports. - gender dysphoria. - HELD that the applicant fails in her claim that the general requirement for a diagnosis set out in a specialised medical report is in breach of her a.8 ECHR rights. - applicant succeeds in her claim that the requirement to provide a specific diagnosis which is defined as a disorder fails to strike a fair balance between the interests of the applicant and those of the community generally  
*HIGH COURT*  
13 MAY 2021  
*SCOFFIELD J*

#### IN THE MATTER OF AN APPLICATION BY KC FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE POLICE SERVICE OF NORTHERN IRELAND

Appeal against decision to dismiss the appellant’s challenge to information proposed for inclusion in an Enhanced Criminal Record Certificate (“ECRC”) disclosing that the appellant previously stood trial for sexual offences against a child in respect of which he was unanimously acquitted. - appellant had applied to take up positions as a volunteer in a community organisation and a childcare assistant in a school where an ECRC was required in relation to each post. - whether the Judge erred in finding the proposed disclosure would be proportionate in its interference with the appellant’s rights under a.8 ECHR. - whether the Judge erred in finding that the procedural failings could not, in and of themselves, amount to a violation of a.8 ECHR rights. - whether the Judge erred in the weight he gave to the primary decision-maker. - statutory purpose of the Scheme under the Police Act 1997 Part V. - HELD that appeal dismissed  
*COURT OF APPEAL*  
9 FEBRUARY 2021  
*MORGAN LJ, TREACY LJ, HORNER J*

### REAL PROPERTY

#### LAURENCE MOFFAT V DOROTHY MOFFAT, DAIRE MOFFAT, CONNALL TOLAND AND MEABH TOLAND

Applicant seeks a declaration that the assignment/transfer by the first respondent to her children was a transaction at an undervalue and/or a transaction entered into for the purpose of either putting assets beyond the reach of the applicant or which otherwise prejudiced the interests of the applicant in relation to his claim for recovery for legal costs arising out of earlier litigation between the applicant and the first named respondent. – whether a.367 Insolvency (NI) Order 1989 applies outside the context of an actual or threatened insolvency. – constitution and purpose of a transaction at an undervalue. – remedies available to the Court. – HELD that application dismissed  
*HIGH COURT*  
18 DECEMBER 2020  
*MCBRIDE J*

### SOLICITORS

#### PAUL KEARNEY V LAW SOCIETY OF NORTHERN IRELAND

Applicant seeks leave to challenge a decision of the Council of the Law Society of Northern Ireland (“the Society”) on 21 October 2020 to refer the applicant to the Independent Solicitors Disciplinary Tribunal for numerous breaches of the Solicitors Accounts Regulations 2014, together with a decision of the Professional Conduct Committee on 28 January 2021 which, after reviewing the facts of the case and further submissions, decided the decision to refer the applicant was not changed. - whether the impugned decision is unlawful on procedural and substantive grounds. - rationality and proportionality. - challenge to the discretion of the decision-maker in regulating the solicitors’ profession. - public interest factors. - applicant sought an interim injunction staying the disciplinary proceedings pending the leave hearing and also an interlocutory discovery order requiring the Society to provide discovery as regards comparable cases. - HELD that an order for discovery would be premature, unnecessary and speculative. - HELD that the decision of the Society could not be considered irrational, unreasonable or disproportionate and leave to seek judicial review refused  
*HIGH COURT*  
8 MARCH 2021  
*COLTON J*

### SUCCESSION LAW

#### THERESA MCGARRY V KEVIN MURPHY AS THE PERSONAL REPRESENTATIVE OF BRIGID GILHOOLY (DECEASED)

Plaintiff challenges the validity of the Will of the deceased on the grounds that the testatrix lacked testamentary capacity, that the Will was obtained by the undue influence of the defendant and that the Will is a forgery. – whether the Will was properly executed. - disputed Will is the second Will drawn up by the testatrix, which contained a number of differences from the first Will. – plaintiff seeks a pronouncement from the Court against the validity of the disputed Will; that the Court

sets aside the grant of probate and assent and issues a grant of letters of administration of the estate of the testatrix to the plaintiff. – test for testamentary capacity. – burden and standard of proof. – evidence of capacity. – applicability of the Golden Rule. – undue influence. - Judge noted that the solicitor involved in drawing up the Will did not make any professional assessment of the testatrix’s capacity, nor did he ascertain the changes being made in the second will and the reason for them. – HELD that on the balance of probabilities the testatrix had testamentary capacity at the relevant time based on medical notes and records, that there was no evidence of undue influence and the Court is not satisfied that the Will is a forgery. – application to set aside the Will refused  
*HIGH COURT*  
6 NOVEMBER 2020  
*MCBRIDE J*

### TRUSTS

#### QR V OFFICIAL SOLICITOR FOR NORTHERN IRELAND

Appeal against order of Master Wells whereby she ordered that the appellant’s appointment as an authorised person under a short procedure order be terminated and the appellant pay £26,700 into court for the benefit of her brother and pay the costs of the Trust. - appellant had taken over the affairs of her sister and transferred £26,000 to her mother and father. - appellant appeals the order on the grounds that her gifts were permissible and she was acting reasonably and honestly. - whether the appellant was acting as a trustee. - position of an authorised person. - whether retrospective approval for the gifts should be granted. - whether the patient, if competent, would have made the gifts. - scale of the gifts in relation to the assets of the patient. - whether the court should order recovery from the appellant. - HELD that appeal dismissed and the reasonable costs of the respondent and Trust be paid to the appellant  
*HIGH COURT*  
3 MARCH 2021  
*MCFARLAND J*



The  
Meeting  
Space  
at Law Society  
House