

CATCHING UP WITH HF IRELAND

2024

HF Ireland

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PEOPLE. NOT JUST LAWYERS



Originally established in 1969 HF has grown to become one of the leading law firms in each of its chosen sectors.

HF is a recognised market leader in general insurance claims handling and legal services, and its expanding portfolio is designed to match the needs of a rapidly evolving marketplace.

Complementing this we provide a broad range of specialist services to businesses acting on behalf of SMEs, PLCs and everything in between. Our role as a trusted adviser is valued by our clients, who comment that our tailored approach is second to none.

INTRODUCTION

HF has enjoyed an incredible 2024, and the outlook for 2025 is even better!

At HF Ireland, we've really kicked on from where we finished in 2023, and there are certainly many reasons for us to be excited going forward. A big thank you to our clients and colleagues – we hope you all enjoy a wonderful festive season, and we look forward to working with you again next year and further strengthening our already excellent relationships.

Join us as we take a brief look at a selection of 2024's key milestones, both for HF and the industry.



MARTIN BROWNE
Partner



INSURANCE INSTITUTE OF DUBLIN DINNER

HF's Dublin office was delighted to host a table at the Insurance Institute of Dublin's Annual Dinner 2024 held on 1 March. It was a fantastic night which was thoroughly enjoyed by all.

The event, which was very well attended as always, was hosted by Alan Ryan, President of the Institute of Dublin (who did a stellar job as MC) and sponsored by Dillon Eustace. Entertainment was provided by the brilliant Irish mentalist & hypnotist, Keith Barry.

In addition to presenting an opportunity to acknowledge the achievements and challenges faced by the Irish insurance industry and, more particularly, the Dublin market, over the past year, the night emphasised the benefit to meeting colleagues, friends and associates face to face as opposed to 'virtually' through a screen, as has been the case in recent times.

A big thank you to all our guests. We look forward to catching up again soon!

ST. PATRICK'S DAY EVENT

HF hosted its inaugural St. Patrick's Day Event on 14 March 2024 at New Moon, Leadenhall, London. Guests were treated to a set of traditional music from the 'Jacket Spuds', informative (and tasty) whiskey and gin sampling, delivered by Amathus Drinks PLC, and fantastic food - the pork belly cubes proving a big hit!

There was a great turnout from the London Market and beyond, with new connections made and existing ones no doubt strengthened.

DYE & DURHAM IRISH LAW AWARDS 2024

HF Ireland's Martin Browne and Linda Brennan attended the Dye & Durham Irish Law Awards 2024, hosted by broadcaster, Ivan Yates, in the Convention Centre on 14 June, held to "celebrate the outstanding achievements of the entrants throughout the country [...] recognise and reward the high standards of excellence and level of service that is being delivered in our industry." We were nominated in the category for 'Excellence in Communication'.

Whilst we unfortunately didn't win, (Kieran Mulcahy Solicitors took that particular prize), we were delighted to have been nominated, and thoroughly enjoyed the evening. It was a wonderful occasion for the Irish Legal industry, and we hope to have the pleasure of being nominated again next year!





DELANEY

The long-awaited decision of the Supreme Court in [Delaney -v- The Personal Injuries Assessment Board & Ors. \[2022\] IEHC85](#) was delivered on 09 April 2024.

BACKGROUND

Ms Delaney sustained a fracture to her right ankle following a fall on a footpath in Waterford on 12 April 2019. She instigated a claim alleging inter alia negligence against Waterford City and County Council, submitting her PIAB application in June 2019. PIAB delivered its Assessment in May 2021, some 23 months later, valuing her injury at €3,000 based on the figures recommend in the Guidelines. Ms Delaney argued, however, that her injury should attract damages of between €18,000 to €34,000, as per the Book of Quantum, which she claimed was the appropriate reference text to which PIAB should have had regard when making its assessment. She also contended that PIAB had purposely delayed in making its assessment in order to allow for the adoption of the Guidelines and asked it to reassess her claim. PIAB refused.

JUDICIAL REVIEW PROCEEDINGS

She subsequently issued judicial review proceedings against PIAB, the Judicial Council, Ireland and the Attorney General, claiming inter alia:

1. That the adoption of the Guidelines on 06 March 2021 was in breach of the Constitution and an individual's right of Access to the Courts;
2. That PIAB had erred in not assessing her case by reference to the Book of Quantum and, in doing so, breached her right to fair procedures;
3. That the Judicial Council acted ultra vires in adopting the Guidelines; and
4. That the adoption of the Guidelines was contrary to the constitutional provision of the independence of the judiciary.

She also brought an interlocutory application seeking an Order recusing the judge presiding over the case in the High Court (Mr Justice Meehan) on the basis that he was a member of the Judicial Council and, therefore, had a role in deciding whether to adopt the Guidelines. This was refused and Meehan J. ultimately dismissed the plaintiff's judicial review claim.

SUPREME COURT RULING

His ruling was appealed to the Supreme Court who, on the 09 April 2024, upheld the original ruling and determined by majority decision 5:2 that the Guidelines are legally binding. Whilst the Supreme Court found the Guidelines themselves to be constitutional, they held by a majority 4:3, that Section [7\(2\)\(g\) of the 2019 Act](#), which gave power to the Judicial Council to adopt the draft Guidelines proposed by the Personal Injuries Guidelines Committee (a committee consisting of 7 members of the judiciary), to be contrary to the independence of the judiciary and unconstitutional. This means that, whilst the legislation passed in the form of [Family Leave and Miscellaneous Provisions Act, 2021](#) ("the 2021 Act") was deemed to give legal effect to the Guidelines, in order for the Guidelines to be amended in the future, legislative intervention by the Oireachtas will be required.

Ms Delaney's High Court claim was ultimately dismissed by the Supreme Court, save for the declaration that Section 7(2)(g) of the 2019 Act is unconstitutional.

OPINION

The importance of the decision cannot be overstated:- had the Guidelines be found to be unconstitutional, the knock-on effect for the area of personal injuries in Ireland, and not least those claims decided with reference to the Guidelines in the period between their commencement and the Supreme Court's judgment, would have been extensive. There would likely have been numerous appeals / calls for substituted hearings of those cases already determined, exponentially increasing the cost of litigation to all parties, and furthering the strain on a court system arguably in pressing need of modernisation. Furthermore, uncertainty would no doubt have replaced the returning confidence seen lately vis-à-vis the reliability and accuracy of PIAB valuations, deterring claimants from accepting assessments and, in turn, driving litigation and only further increasing costs, likely in the form of higher insurance premiums and excesses.

AIRMIC

ISLAND OF IRELAND CONFERENCE

On 6 November Airmic (Association for Insurance Risk) hosted its third annual conference for risk and insurance professionals at the Intercontinental Hotel in Ballsbridge.

Under the umbrella of “new risks, new challenges, new solutions” experts from across the industry provided insights into the current and emerging risks facing the sector and innovative solutions to address same.

Topics ranged from cyber insurance and the role of the insurance profession in helping the market move towards net zero, to the effect of the disruptions to global supply chains inflicted by the conflicts in Ukraine and the Middle East.

HF not only sponsored the event, but our very own Martin Browne, Head of HF Ireland, hosted two breakout sessions on the recent amendments to the Occupiers’ Liability Act 1995, and the anticipated impact of those changes on the attitudes of business owners, their insurers, and claimants towards dealing with the same.

Details of all sessions and the speakers can be found at [Island of Ireland Forum 2024](#).

Martin also recently presented a webinar for Airmic – ‘Minor Claimants: A Major Headache ... ??’. We would invite anyone interested in setting up a webinar or in-person presentation on either this topic or the amendments to the Occupiers’ Liability Act to reach out to Martin directly at Martin.Browne@h-f.ie.



SUPREME COURT STEERS CHANGE

URBAN AND RURAL RECYCLING LIMITED & ANOR -V- ZURICH INSURANCE PLC [2024] IESC 43

In October, the Supreme Court delivered a landmark decision in relation to the issue of compulsory motor insurance in Ireland.

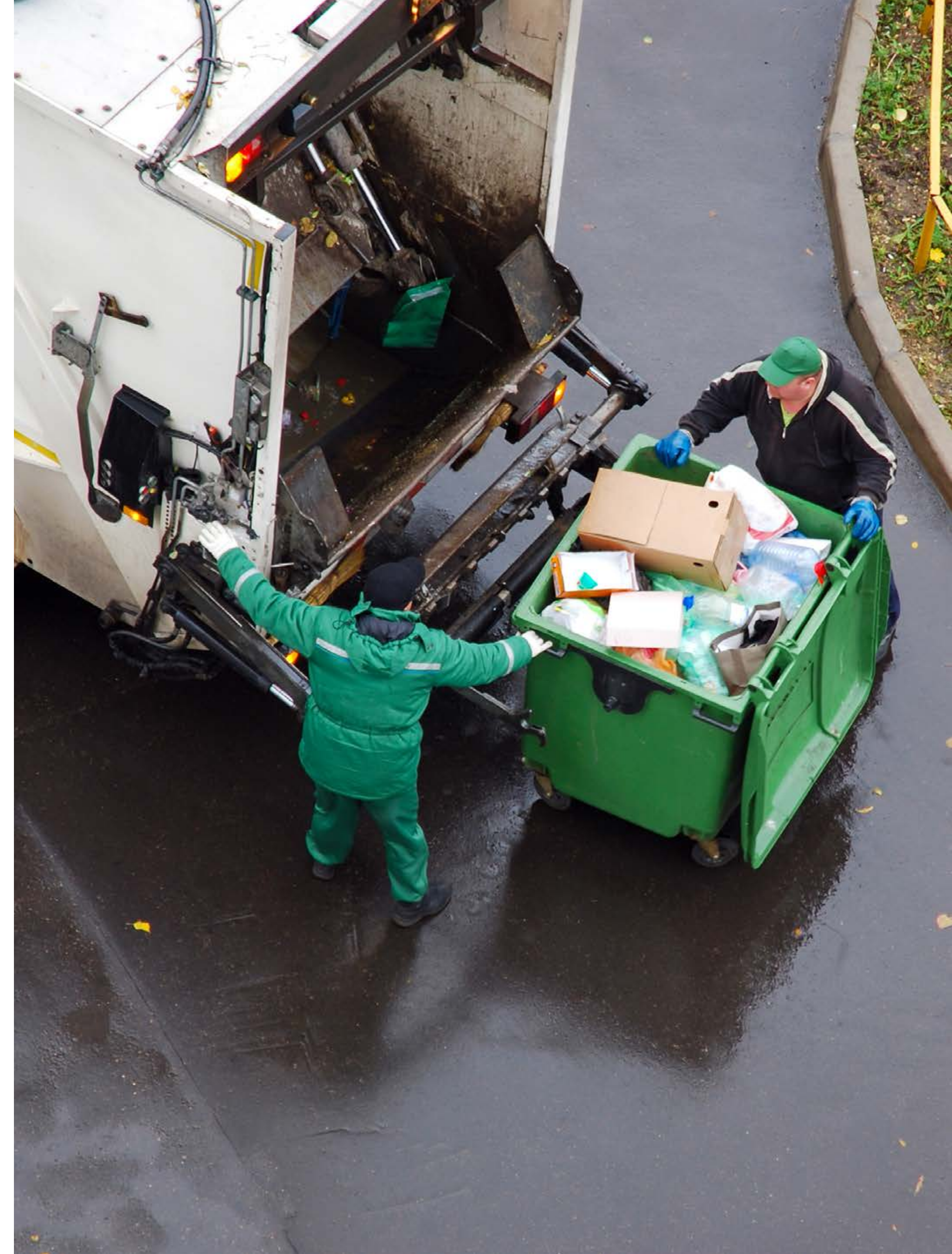
The Urban and Rural case relates to personal injuries suffered by a Mr Moore, an employee of Urban and Rural Recycling Limited (“Urban & Rural”), whilst he was using the lifting hoist mechanism at the rear of a refuse collection truck to lift a wheelie bin containing glass. Urban and Rural had two policies of insurance: an Employers’ Liability policy with RSA and a motor fleet policy with Zurich. The RSA policy did not cover for injury relating to a liability which was required to be insured under the Road Traffic Acts (“RTAs”). It also excluded indemnity where the loss suffered was covered by another insurance policy. The Zurich policy, whilst providing cover in relation to injury arising from the use of a mechanically propelled vehicle (per the requirements under the RTAs), did not cover for injury suffered by the driver of the vehicle or anyone in charge of the vehicle for the purpose of driving.

In the High Court, RSA successfully argued that the liability of Urban and Rural to Mr Moore was a liability which was required to be insured under the Irish RTAs. The Court held that the term “use”, contained in the RTAs, covered the use of the truck’s lifting mechanism as used by Mr Moore. Notwithstanding Mr Moore had been driving the vehicle immediately before the incident occurred, the High Court held that he was not “in charge of the vehicle for the purpose of driving” when he suffered injury.

The decision was overturned on appeal, with the COA concluding that the liability required to be insured under the RTAs is any liability arising to a third party out of the negligent use of a vehicle by the user of that vehicle. As Mr Moore, the injured party, was also the user of the vehicle, the liability did not arise as against a third party. Thus, it was not something which was compulsory insurable under the RTAs. The COA also held Mr Moore to have been the person in charge of the vehicle for the purpose of driving it at the time of the incident. Thus, the liability arising was excluded under the Zurich Motor policy.

However, on 10 October 2024 the Supreme Court unanimously reinstated the decision of the High Court, deeming that the appropriate policy to respond to the claim was in fact the Motor Policy held with Zurich. The Court emphasised the point that Urban and Rural (Mr Moore’s employer), despite being a body corporate, was “not [...] incapable of being a user of such a vehicle”. Rather, it held that an employer could “use” a vehicle through the actions of an employee, when carried out in the course of their employment. As such, the Court rejected the notion that injury to the user of a vehicle was not compulsorily insurable under the RTAs. Importantly, the Court stated that “a complete and coherent legislative overhaul of the compulsory motor insurance obligation, is long overdue.”

This is a significant decision, and one that fundamentally underpins the continued inclusion in EL policies of clauses excluding cover for claims in respect of any liability for which compulsory motor insurance is required.





DEVELOPMENT OF OCCUPIERS' LIABILITY IN IRELAND

HOW IT EFFECTS SPORTING ORGANISATIONS AND THEIR INSURERS

For almost 30 years in Ireland, the [Occupiers' Liability Act 1995](#) ("the 1995 Act") has represented the settled law in relation to an occupier's liability to various categories of persons, from visitors to recreational users, to trespassers. The 1995 Act was amended last year, with the intention of addressing an imbalance between protecting the rights of occupiers whilst at the same time endeavouring to provide a right of recourse for injured parties.

The obligations arising under the 1995 Act are ever present for land and property owners and occupiers active in the Irish sports and leisure industries, from those providing services, like gyms and swimming pools, to sporting venues. These organisations must be constantly alive to the conditions of their premises and take appropriate care to ensure that people present thereon do not suffer injury.

In our recently published [article](#), we explored the impact of the recent law change on sporting organisations, as well as offer comment on how occupiers' liability risks arising in sports contexts can be effectively mitigated to limit liability exposure.

INJURIES RESOLUTION BOARD: PERSONAL INJURIES AWARD VALUES 2023

- Between July and December 2023, the average value of an award made by the Injuries Board was 19% less than the average award value in 2020 (pre-Personal Injuries Guidelines) but, importantly, represented an increase of 25% from 2022. According to the Injuries Board, this increase has been driven by a fundamental shift in the profile of cases being assessed.
- There is evidence that a higher number of severe injury type claims and high-value cases are now being assessed by the Injuries Board - this is testament to the impact of the Personal Injuries Guidelines, which, comprising greater detail than the Book of Quantum and whilst providing for additional injury type and severity categorisation, is allowing claims which would previously have been 'released' to litigation at an early stage to be assessed accurately and efficiently by PIRB, resulting in a significant saving on costs and time for both claimants and respondents.
- One example of the effect of the Guidelines can be found in the statistic relating to awards for psychiatric damage, a category of injury seldom assessed by the Injuries Board under the Book of Quantum regime. In that regard, the Award Values Report states that the proportion of awards related to psychiatric damage injuries has increased from 5% of awards between April-December 2021 to 12% of awards in the first half of 2023.
- In 2023, 71% of respondents agreed to a claim being assessed by the Injuries Board. According to the Award Values Report, this represents the highest rate since the establishment of the [Injuries] Board in 2004.

The full report can be found [here](#).



IN THE SPOTLIGHT



MARC HICKEY
PARTNER

How would you describe your role in one sentence?

I deal with commercial disputes of almost any nature and act in an advisory capacity to clients on a day to day basis in seeking to avoid those disputes (which very regularly proves to be impossible!).

Before working at HF, what was the most unusual job you've ever had?

I've worked the full range of jobs when I was in school and college but nothing particularly unusual. I did move to Barcelona for the summer while awaiting my FE1 results and expected to find a job in an Irish bar easily enough – I flew home a month later genuinely surprised that my non-existent Spanish had acted as such a bar on my employment prospects..

What is your proudest moment at HF?

I'm pretty proud of my move here in general (less than three months ago) and the Leadership Conference in Manchester really struck a chord with me in terms of who we are as a firm, and who we aspire to be in the coming years. Culturally it is very different to what I am used to professionally but I am a fully paid-up subscriber now.

If Hollywood made a movie about your life, who would you like to see cast as you and why?

Is there anyone more compelling than Tom Hanks? Although if they were taking a different approach, Will Arnett might be the man for the job. I'll go with him for the sake of being different.

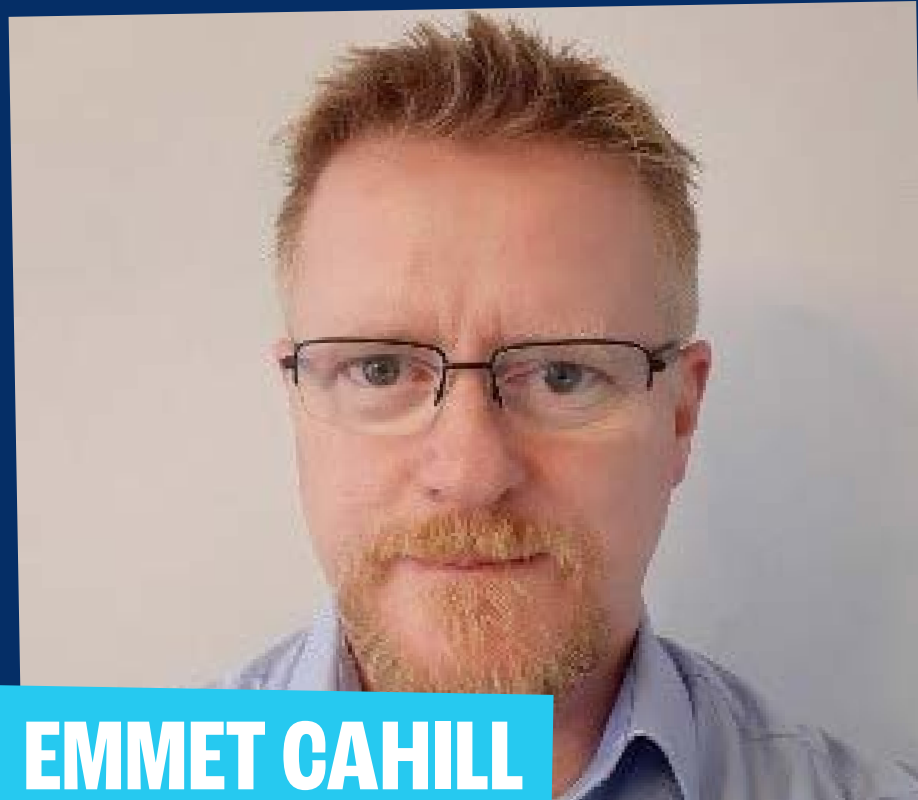
If you could change or add a law, what would you do and why?

As a former regular user of Twitter (X), I would improve the mechanism for enforcing EU and Irish laws in relation to misinformation and disinformation. I have absolutely no idea where to even start with it, but I do know that from my point of view, since a certain billionaire took control of Twitter and began flaunting regulations, it is unusable.

What is something you've accomplished as an adult that your younger self would be proud of?

Being a father to my two year old son Miles is something I'd have been proud of at any time in my life. Other than that, I ran a half-marathon two weeks ago as part of the build-up to the Barcelona Marathon in March which I also think I would have given myself kudos for.

IN THE SPOTLIGHT



EMMET CAHILL
SOLICITOR

How would you describe your role in one sentence?

Working tirelessly to give the best advice and get the best results possible for our clients.

Before working at HF, what was the most unusual job you've ever had?

I spent two and a half years teaching English as a foreign language in Hungary, in language schools and a University and a Teacher training College. This was back in the 90's, just after the political changes and I loved every minute of it.

What is your proudest moment at HF?

Being part of the trailblazing team that helped integrate Sharedo (and helped make its integration smoother for other departments).

If Hollywood made a movie about your life, who would you like to see cast as you and why?

Probably Ed Norton – because it's called a change over. The movie goes on, and nobody in the audience has any idea.

If you could change or add a law, what would you do and why?

I would embed accountability into overspending of public monies – ala the Children's Hospital.

What is something you've accomplished as an adult that your younger self would be proud of?

Finishing the Kings Inns part time (including weekends) over four years, while working full time and raising two kids.

GETTING TO KNOW EMMET...

CLIENT FEEDBACK

CASE 1

Claimant agreed to withdraw claim approximately six hours after we wrote to them on receipt of the Letter of Claim.

“Brilliant. Great work!.”; “This is an unbelievable turnaround and result for us!”

CASE 2

Settlement reached with Plaintiff after initial talks fell through and parties seemed too far apart.

“Great turn of events after last week. Many thanks for your efforts here.”

CASE 3

Settlement at very good commercial level (€10,000 claim & €5,000 costs) in circumstances where Insured faced a liability exposure and injury involved a chainsaw laceration to the Plaintiff's foot.

“That's an excellent result, many thanks for the hard one on this one.”

HF ST. PATRICK'S DAY EVENT IN LONDON

“Just to say that it was so lovely to be there on Thursday evening. Thanks for looking after me, I felt so welcome and had a really fun evening.”

HF IRELAND GO-KARTING EVENT

“It was, literally, an unbelievable day. You've got such a nice crew in the office, and the bunch who were karting and at the drinks afterwards were just sound. It was really easy to have a nice time.”

LOOKING AHEAD

As 2024 draws to a close, all of us here at HF Ireland are looking forward to an exciting and productive 2025. A few things to keep your eyes peeled for in the first half of next year include:

- **Catastrophic Injuries & Complex Claims Ireland Conference 2025** – whilst not set in stone, we hope to be able to host an event in Spring '25 focused on the area of catastrophic injury and complex claims.
- **HF's London Market Launch events.**



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