

15 June 2018

**SUBMISSION TO THE LEGAL SERVICES REGULATORY AUTHORITY IN RESPONSE TO CONSULTATION  
PURSUANT TO SECTION 34 OF THE LEGAL SERVICES REGULATION ACT 2015**

**PURPOSE OF SUBMISSION**

1. The process by which aspiring solicitors secure admission to traineeship and subsequent admission to the Roll of Solicitors in Ireland should be modernised and reformed for the reasons set out in our submission.
2. We believe that the Legal Services Regulatory Authority (the Authority) should recommend to the Minister for Justice and Equality:
  - 2.1 the abolition of the Law Society of Ireland's (the Society) existing monopoly on professional legal education in Ireland. This will allow the entry of alternative providers to compete with the Society, provide a wider range of innovative educational choices which in turn will better serve the requirements of the Irish economy; and
  - 2.2 the removal of the current Society requirement for law graduates to sit and pass the Final Examination - Part 1 (known as the FE1s).

**STRUCTURE OF SUBMISSION**

3. This submission has the following sections:
  - 3.1 Calls for reform of legal education
  - 3.2 Detailed account of the Society's restrictive measures and impact relating to:
    - (a) FE1s
    - (b) the Professional Practice Course
  - 3.3 Concluding remarks
  - 3.4 Impact of our proposals
  - 3.5 Appendices

**CALLS FOR REFORM OF LEGAL EDUCATION**

4. There has been a long history of criticism of the admission and education regimes that the Society operates. We set out a short chronology of reports:
  - 4.1 1990 – Fair Trade Commission recommends changes to the design and operation of legal education<sup>1</sup>

---

<sup>1</sup> Fair Trade Commission, *"Report of Study into Restrictive Practices in the Legal Profession"* (March 1990)

- 4.2 2001 – OECD calls for changes in the operation of legal education<sup>2</sup>
  - 4.3 2006 – The Irish Competition Authority recommends the removal of the Society’s role of setting standards for the provision of legal education and authorisation of education providers to be given to a new body, the Legal Services Commission<sup>3</sup>
  - 4.4 2010 - Memorandum of Understanding between the European Commission and Ireland outlining structural reforms of the legal profession, including outstanding Competition Authority’s recommendations to reduce legal costs<sup>4</sup>
  - 4.5 2013 - European Commission Staff Working Document, which calls for urgent completion of the setting up and operation of the Legal Services Regulatory Authority<sup>5</sup>
  - 4.6 2017 – European Council recommendation which calls for full implementation of the LSRA 2015<sup>6</sup>
- 5. All of these independent third party investigations and reviews have one overwhelmingly-consistent theme: the Society’s restrictive practices increase the cost of legal education and reduce quality and innovation in the provision of education.
  - 6. The Competition Authority's conclusion which *“strongly recommends that the responsibility for regulating legal education be given to an independent body”* is worth reviewing in more detail. The Competition Authority describes the nature of the competitive restraint; analyses the effects of the restraint; and proposes measures to remove the effects of the restraint:

*“Professional training and education for trainee solicitors can, by law, only be provided by the Law Society and bodies licensed by the Law Society. The training for solicitors in Ireland is, therefore, controlled by the profession itself. The Law Society has neither licensed any providers other than its own school nor published any information in relation to the criteria it might apply in considering applications for licences....”<sup>7</sup>*

*Consequently, potential solicitor trainees have little choice as to where in Ireland they can train, or in what format they can pursue their training (full-time/part-time/weekends). The monopoly enjoyed by the Law Society school means that it has weak incentives to minimise its costs (and hence its course fees) and bring innovations to the way in which it trains solicitors. As the capacity of the Law Society’s course is a key determinant of the number of solicitors who qualify in Ireland each year, this monopoly has the potential to restrict the numbers entering the legal profession and prevent the supply of solicitors from meeting the levels of demand...<sup>8</sup>*

---

<sup>2</sup> “Regulatory Reform in Ireland”, OECD (2001)

<sup>3</sup> The Competition Authority, *Competition in Professional Services – Solicitors and Barristers* (December 2006)

<sup>4</sup> The Memorandum sets out the actions taken by the Irish Government in return for financial support from the European Financial Stability Mechanism/European Financial Stability Facility and financial assistance from the IMF in December 2010

<sup>5</sup> SWD (2013) 212 final – 11.6.2013. *Commission Staff Working Document, “Economic Adjustment Programme for Ireland Spring 2014 Review”*

<sup>6</sup> Council Recommendation (2017/C261/07) dated 11 July 2017

<sup>7</sup> The Competition Authority, *Competition in Professional Services – Solicitors and Barristers* (December 2006), paragraph 4.9

<sup>8</sup> Paragraph 4.10

*The Competition Authority strongly recommends that the responsibility for regulating legal education be given to an independent body, specifically to the Legal Services Commission proposed in Chapter 3. This would involve setting standards that all providers of legal education would be required to meet, with publicly available criteria for institutions which might wish to offer legal education in the future. Having independent regulation of legal professional training would encourage other education providers to enter the market for the training of solicitors, ensuring that the number of training places available is likely to meet demand, and would allow innovations such as part-time/weekend/courses of course in specific areas of law. This recommendation is in line with the earlier OECD recommendation that control of legal education in Ireland should be removed from the self-governing bodies."*<sup>9</sup>

7. In the same report, the Competition Authority rejected the Law Society's position:

*"The justifications put forward by the Law Society for its monopoly are not supported by any evidence".*<sup>10</sup>

8. This submission focuses on the impact of the Society's exercise of its powers on the Irish economy, individuals, law firms and the inter-connected markets for professional legal education and legal services. We do not propose to cite full sections of the legislation which underpins access to the profession and professional legal education.<sup>11</sup> We are happy to provide this on request by the Authority. We will refer to key provisions throughout this submission.
9. The Solicitors Acts 1954 to 2015, as amended, confer monopoly status on the Society in the setting of standards in professional legal education in Ireland, including admission to the Society as a trainee. Only the Society is permitted to provide professional training and education to trainee solicitors.<sup>12</sup> We are confident that if the Society's monopoly is removed, new entrants would be interested in delivering professional legal education in the Irish market and would promote the development and delivery of innovative professional legal education in developing areas of law that are currently not well served by the Society.
10. We outline in this submission how the Society exercises its monopoly position to impose restrictions regarding the education of trainee solicitors which do not, in our view, serve the needs of a modern, well-functioning legal system and do not serve the following stakeholders:
- 10.1 the Irish economy
  - 10.2 aspiring lawyers
  - 10.3 buyers of legal services, ranging from members of the public to domestic and global organisations

---

<sup>9</sup> Paragraph 4.11

<sup>10</sup> Paragraph 4.28

<sup>11</sup> Legislation governing admission to, and education requirements of, the Law Society and the regulations made pursuant to the primary legislation have undergone significant amendment since the first legislation was introduced in 1954.

<sup>12</sup> Section 40 (b) of the Solicitors Acts 1954 to 2015 (as inserted by section 49 of the Solicitors (Amendment) Act 1994) permits the Society to delegate aspects of training to third parties.



- 10.4 suppliers of legal services, which are small, medium-sized and large law firms
- 10.5 buyers of professional legal education, both individuals and law firms and companies who employ trainee solicitors.

#### **DETAILED ACCOUNT OF THE SOCIETY'S RESTRICTIVE MEASURES AND IMPACT - FE1s**

- 11. The pathway to qualification as a solicitor in Ireland is summarised in Appendix 1. This section focuses on the impact of the FE1s.
- 12. The Society has publicly stated that having one entry system, through the FE1s, and the operation of one curriculum, promotes quality and consistency.<sup>13</sup> This in turn, it asserts, protects the public from poor quality legal advice and practice.
- 13. Prior to starting a traineeship, a trainee candidate must pass the Society's FE1s. The FE1s are examinations in the knowledge of eight core legal areas:
  - 13.1 Company law
  - 13.2 Constitutional law
  - 13.3 Contract law
  - 13.4 Criminal
  - 13.5 Equity
  - 13.6 European Union law
  - 13.7 Real property
  - 13.8 Tort law
- 14. Under the current system, individuals who have studied and passed these subjects at university law graduate level are re-examined by the Society before they can start their training contract. The Society's exams do not test any new legal knowledge or skill. Exam questions are typically set and marked by lecturers of the same third-level institutions that have produced the law graduates sitting the FE1s. This strongly suggests that knowledge taught, acquired and developed at graduate level is simply being re-examined.
- 15. There is no benefit in the re-examination of legal subjects that have already been examined at recognised third-level institutions.
- 16. **The Quality Impact:**
  - 16.1 The Society has publicly stated that the maintenance of the FE1s is essential for quality reasons. It has expressed concerns over different standards that appear to operate in the third-level sector. It is not possible for the Society, it asserts, to compare the quality of law degrees that are awarded by different universities. It asserts that the only manner in which it can ensure that each individual entering the profession has

---

<sup>13</sup> The Competition Authority, *Competition in Professional Services – Solicitors and Barristers (December 2006)*

satisfied a minimum standard is for each individual to have passed the same exams – the FE1s. We disagree with this assertion.

- 16.2 First, Irish law degrees have long been recognised by the Solicitors Regulatory Authority (SRA) in England and Wales as satisfying its joint academic stage requirements. This provides Irish law graduates with an exemption from the Common Professional Examination, which the SRA requires UK non-law graduates to pass prior to starting the professional practice course. This reduces the overall qualification time by one year and puts Irish law firms at a competitive disadvantage to English law firms when recruiting law graduates from Irish Universities. If an Irish law degree meets the standards the SRA applies to law degrees awarded by England and Wales institutions, it is not credible for the Society to suggest that the same Irish law degree does not allow automatic entry into the Irish professional practice course.
  - 16.3 Second, the Society's position is undermined by its own treatment of Irish university law graduates, who train and qualify in the UK. When those graduates return to Ireland as qualified solicitors, the Society does not require them to sit the FE1s, or any equivalent, prior to admission to the Irish Roll of Solicitors. Qualification in England and Wales and Northern Ireland, essentially gives individuals automatic right to requalify as a solicitor in Ireland, without the need to sit or pass any further exams. If the Society is seriously and genuinely concerned about the quality of Irish law graduates, it would require (for consistency reasons) the examination on these subjects, if an Irish law graduate qualified outside the jurisdiction.
  - 16.4 Finally, there is a very comprehensive legislative framework in place to ensure that the courses that third-level institutions offer meet certain minimum standards. This framework is set out in the Qualifications and Quality Assurance (Education and Training) Act 2002. If the Society has genuine concerns about the output from any third-level institution in Ireland, it should raise this with Quality and Qualifications Ireland (QQI). This State agency, amongst its functions, is responsible for reviewing the effectiveness of quality assurance in further and higher education in Ireland, including universities. If a student has been awarded a law degree from any third-level institution in Ireland, which is subject to a statutory regulatory quality assurance framework, it should be assumed to be valid. It is not the Society's role or responsibility to re-examine students on subjects which have contributed to the award of such a law degree.
17. **The Cost Impact:**
- 17.1 Maintenance of FE1s for law graduates impose unjustifiable costs and delays in the legal system.
  - 17.2 The cost of sitting eight FE1 exams is about €840. This does not include resits. This is a significant cost to the individual.
  - 17.3 The costs associated with sitting the FE1s are not limited to the costs of the exams. Many students will spend money on private tutoring or FE1 preparation courses. Indeed the Society advertises these courses.<sup>14</sup> Some of these courses can cost up to €3,000, which is a significant financial burden for students.

---

<sup>14</sup> <https://www.lawsociety.ie/Documents/education/FE-1/FE-1GrindsList.pdf>

- 17.4 Finally, and most importantly, the opportunity costs of starting a training contract one or two years later than necessary are very significant both for the individual and the economy as a whole. Living costs must also be added.
18. **The Delay Impact:**
- 18.1 The current system adds significant time to the qualification process.
- 18.2 In practice, it typically takes between one and two years to prepare for and sit the FE1s following graduation from an undergraduate course. Law firms typically recruit trainees in their penultimate year of university. As the FE1s can add up to one to two years to the process, we are forecasting our needs for qualified solicitors potentially five to six years ahead of our actual needs.<sup>15</sup> This makes work-force planning extremely (and unnecessarily) challenging for law firms.
- 18.3 As a result of the FE1 system, many Irish law graduates will opt to qualify in England and Wales where it is typically quicker, and consequently less costly, to qualify. The pathway to qualification as a solicitor in England and Wales, for both law and non-law graduates, is set out in Appendix 2.<sup>16</sup> Irish law firms are competing with each other and, in recent years, with the City of London law firms for our graduate talent. Law firms based in the City of London are in a strong position to attract Irish law graduates as, in addition to good quality work and development opportunities, they are able to promote a quicker route to qualification. We seek to compete on equal grounds with UK based law firms. The maintenance of the FE1s, without an exemption for law graduates, put our firms at a distinct competitive disadvantage to our UK based competitors.
19. The Society currently exercises its regulatory powers to require law graduates to sit unnecessary exams. This was not always the case. Prior to 1995, it operated a system where law graduates from Irish universities were exempt from sitting the FE1s. Following litigation, the regulation was struck down on the basis that it was discriminatory and offended EU law.<sup>17</sup> Following the litigation, the Society could have but chose not to introduce a non-discriminatory exemption-based system.
20. Maintenance of the FE1s for law graduates is not the most effective way to promote standards. Furthermore, it is not the least restrictive means of achieving its objective.
21. We support the introduction of an exemption-based system for law graduates.

---

<sup>15</sup> This time frame can be longer if a candidate chooses to undertake a Master's degree.

<sup>16</sup> It is possible to qualify as a solicitor in UK without being a graduate. We can provide more information on this if the Authority requests.

<sup>17</sup> Prior to 1995, the Society offered exemptions from the FE1s to students who had a law degree from one of the Irish universities. Following proceedings brought by then students in Queen's University of Belfast who challenged the system arguing that it operated against Queen's law graduates, the exemption was discontinued and never re-introduced. *Bloomer and Others v The Incorporated Law Society of Ireland, Ireland and the Attorney General* [1995] E.L.R. 200



## **DETAILED ACCOUNT OF THE SOCIETY'S RESTRICTIVE MEASURES AND IMPACT - PROFESSIONAL PRACTICE COURSE**

22. Appendix 3 sets out the current PPC1 and PPC2 course content offered by the Society.
23. We have three significant issues with PPC1 and PPC2:
  - 23.1 the monopoly enjoyed by the Society prevents much needed competition, innovation and choice;
  - 23.2 the quality of the training provided is too uneven, with some lecturers and course materials below the standard of training to which the profession should aspire; and
  - 23.3 PPC1 and PPC2 being split over two academic years is unnecessary and very disruptive.
24. **The Choice and Innovation Issue:**
  - 24.1 It goes without saying that we agree that all aspiring solicitors need an adequate level of training in all core areas of practice. That is common ground.
  - 24.2 That said, there is a deficit of imagination and flexibility in the structure and teaching of PPC1 and PPC2.
  - 24.3 For those working in firms that focus on commercial law or in-house roles with large or medium-sized companies, there is an unnecessarily heavy weighting of teaching in the areas of road traffic law, conveyancing, probate and family law. There is also a lack of innovation and urgency in tackling emerging and increasingly important areas of law (e.g. data privacy, financial regulation, private equity).
  - 24.4 We have advocated an approach where all trainees would receive an appropriate (but not excessive) level of training in all core areas, thus freeing up significant time and resources to focus on areas of relevance to that trainee and at the same time providing a greater element of choice. In commercial law firms, that would include areas such as, for example, the law and practice of M&A (mergers and acquisitions), law of taxation, data privacy, financial regulation, funds, private equity and structured finance, amongst others.
  - 24.5 While we accept that we need to commit significant resources to learning and development (we have one partner and a team of approximately 15 professionals fully engaged on all aspects of learning and development, including the provision of training to trainees, associates and partners), nonetheless PPC1 and PPC2 represent a lost opportunity to provide a more flexible and relevant model of training which would better serve the needs of the legal profession and the economy as a whole.
25. **The Quality Issue:**
  - 25.1 The firm regularly seeks feedback from trainees on their PPC1 and PPC2 experience.
  - 25.2 More recently, we set up two focus groups comprising 15 people who were either part-way through their traineeship or had qualified as a solicitor within the last 18 months. These specific focus groups took place in April and May 2018.
  - 25.3 We sought feedback from the focus groups on:

- Relevancy of modules
- Quality of lecturers
- Quality of tutors
- Course materials

25.4 A number of themes emerged from the focus groups. These themes are consistent with feedback from previous years:

(a) **Insufficient time devoted to commercially-focused modules**

Our focus groups expressed strong views that more time should be devoted to topics that are relevant to business and the economy, for example, corporate law, financial services law, and criminal law as it relates to white collar crime. This would allow more in-depth knowledge and skills to be acquired in these areas. Conversely, they described some courses as "less relevant", and that too much time was devoted to these topics.

(b) **Variance in quality of teaching (lecturers and tutors)**

Our focus groups reports the quality and consistency of teaching (both lecturers and tutors) varies considerably. Some individuals are praised for "being good" and "relatively good" whilst others are described as "poor" and "very poor".

(c) **Variance in quality of supporting materials and resources**

Once again, our focus groups reported considerable differences in the quality and availability of materials to support their studies. Some courses received positive feedback regarding the materials. Other courses received very poor feedback. The focus group also reported that some materials do not appear to have been updated for a number of years.

26. **The Timing Issue:**

PPC1 and PPC2 are currently split over two academic years. This approach adds unnecessary cost and unnecessary disruption to our operations. The disruptive issues are magnified for us through the large number of trainee solicitors we have (over 100 at certain times of the year). A one-year, full-time course would eliminate these costs and operational issues. This is another example of the inflexibility and lack of choice resulting from the Society's monopoly position.

**CONCLUDING REMARKS**

27. We wish to make some observations on the Maharg Report<sup>18</sup> commissioned by the Society in connection with the Authority's review of solicitor education in Ireland:

27.1 On page 89 of Volume 1 of the report, the following statement is made:

---

<sup>18</sup> Report entitled "Solicitor Education in Ireland Review Report" prepared by Jane Ching, Jenny Crewe and Paul Maharg dated January 2018.



*"The two practitioners from large firms that we interviewed on the issue did not want to go down that route...."*

The route in question being referred to is the abolition of the statutory monopoly enjoyed by the Society on solicitor education.

- 27.2 That statement is incorrect. Our firm was interviewed and the points we made were in essence those outlined in this submission. Therefore, the statement made on page 89 is misleading and does not reflect our position. We were surprised by its inclusion.
- 27.3 Our firm typically recruits 35-40 trainees per year, with an intention to increase this to 40-45 per year. By our estimation, the largest six firms in Ireland employ approximately 220 trainee solicitors, in or around one half of the number of trainee solicitors who typically qualify as solicitors in Ireland each year. The large commercial firm's investment in training and developing the legal profession is very significant. For these reasons, we believe it is important that the Authority is aware of our views and we hope that many of the other large firms in Ireland also make submissions in response to the Authority's consultation on the future of solicitor education in Ireland.
- 27.4 Some of the commentary included in the Maharg Report suggests that the issue of solicitor education in Ireland is one in which the large commercial law firms on the one hand and the smaller and medium sized firms on the other hand have very different interests. While this may be a view held by some people and may be a perspective people choose to encourage, we do not believe there is any substance or reality to the narrative. We believe the current system of solicitor education in Ireland could be significantly improved to the benefit of the profession as a whole by introducing competition, choice and affordable alternatives.
- 27.5 There is a good deal of third party commentary in the Maharg Report suggesting that the abolition of the monopoly on solicitor education would somehow inevitably mean a drop in the standards of solicitor education in Ireland. The view is not supported by any evidence and we fundamentally disagree with it. We believe the abolition of the monopoly will drive standards, innovation, flexibility and choice. In our interactions with the Society over many years, we are almost invariably left with a sense that the Society believes that they are the only institution capable of maintaining the standards of training required for the profession. We have come across disbelief in the Society that a third party educational institution (such as a leading university in Ireland) could provide solicitor training. The feedback we receive from our trainee solicitors on a regular basis (which is set out in this submission) would suggest that the Society's confidence is misplaced; there is significant room for improvement in PPC1 and PPC2 in a whole range of different ways as outlined in this submission.
- 27.6 We have been making the points outlined in this submission to the Society for a number of years. We have gained no traction with the Society until only a few months ago. It is impossible for us to avoid the conclusion that the reason that the Society has been deaf to our concerns is the fact that the Society enjoys a monopoly position in the market. The monopoly is holding back progression in the legal services sector and the wider economy.

## **IMPACT OF OUR PROPOSALS**

28. We believe that the impact of the proposals in this submission will be positive on all stakeholders.

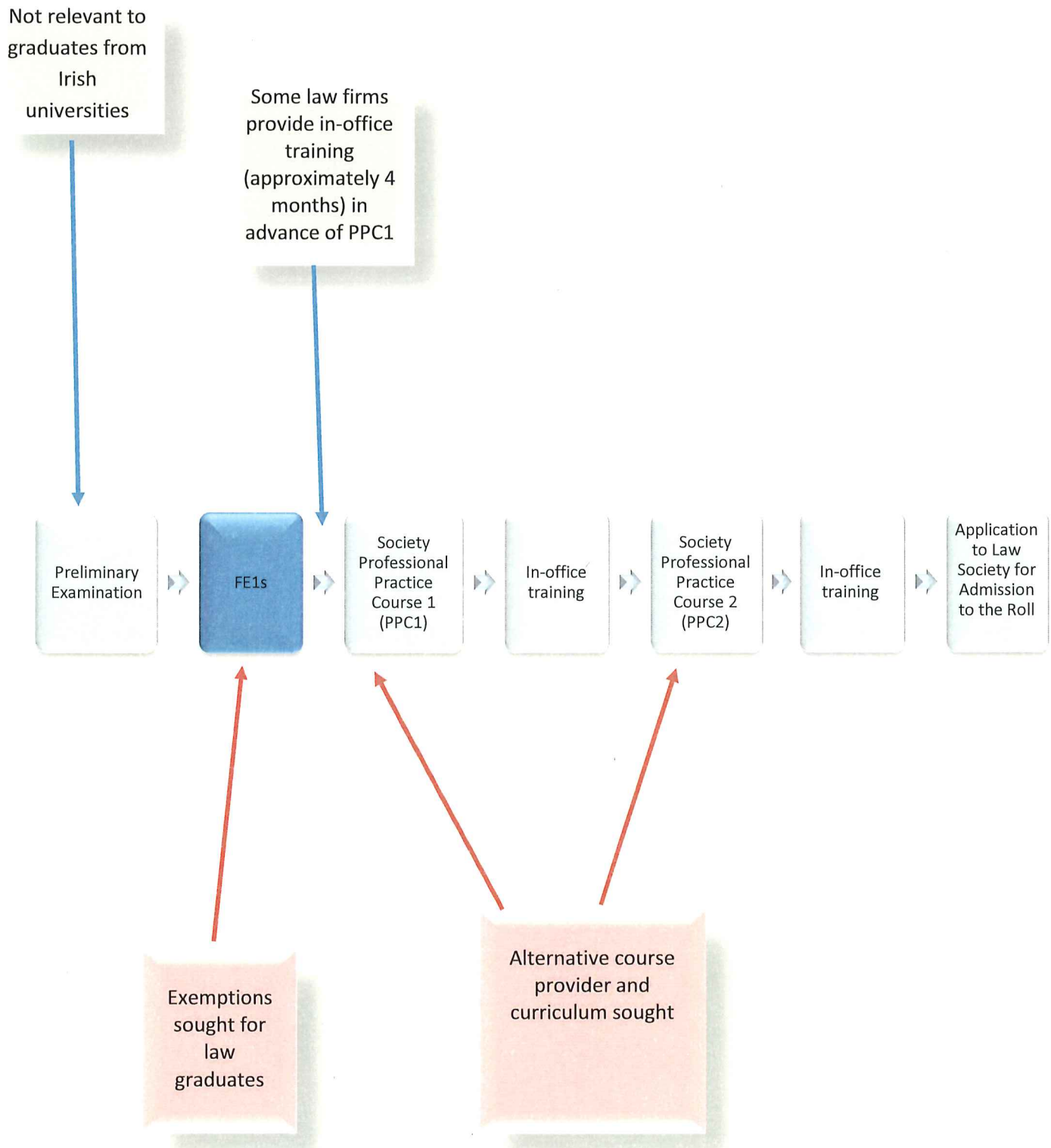
29. An admissions system, which exempts law graduates from being re-examined prior to starting their traineeship, will reduce the cost and time associated with qualification in Ireland.
30. The entry of new providers in the market offering choice will allow trainees to follow a course that is aligned to the needs of the individual and a range of different firms and companies. We believe that the introduction of competition will lead to a better Society course. Competition for these students will drive costs containment and quality around the curriculum.
31. Setting publicly available criteria that a provider needs to meet regarding governance, experience, content and assessment methods will ensure that providers reach a minimum standard. Standards will improve as a result of competition. Differentiation in course content will develop, which is positive for all stakeholders.
32. We are available to meet with the Members at any stage of the consultation process.

---

Arthur Cox  
15 June 2018

## APPENDIX 1

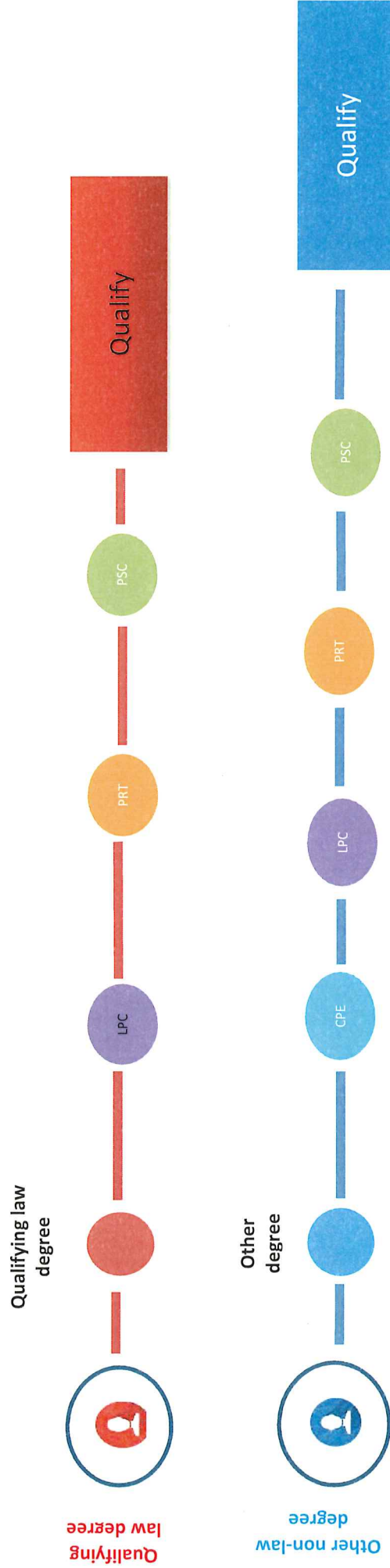
### CURRENT PATHWAY FOR QUALIFICATION IN IRELAND (FOR GRADUATE)





## APPENDIX 2

### CURRENT PATHWAYS FOR QUALIFICATION IN ENGLAND AND WALES (FOR GRADUATE)



#### Glossary

CPE	Common Professional Exam/Graduate Diploma in Law
LPC	Legal Practice Course
PRT	Period of Recognised Training
PSC	Professional Skills Course

## APPENDIX 3

### PPC1 AND PPC2 COURSE CONTENT

#### PPC1 courses \*

- Litigation (20%)
- Conveyancing (20%)
- Business Law (20%)
- Probate and Tax Law (20%)
- Skills (10%), and
- Legal Practice Irish, EU and Human Rights Law (10%)

\*% of time spent on topic in brackets

Skills = negotiation; advocacy; public speaking; and client consultation skills. There is no written examination for 'Skills', however, trainee solicitors are required to present oral arguments to an examiner and are also required to have a near 100% attendance rate.

#### PPC 2 courses

##### Mandatory

- Employment Law
- English and Welsh Property Law and Practice
- Family and Child Law
- Professional Practice Conduct and Management.

'Professional Practise Conduct and Management' covers the administrative elements to being a solicitor, such as solicitor accounts, client management and fees.

##### Electives (trainees choose three topics)

- Advanced Civil Litigation
- Advanced Legal Practice Irish
- Banking Law
- Commercial and Complex Property Transactions
- Commercial Contracts
- Corporate Transactions
- Insolvency

- Medical Law and Litigation
- Non-adversarial Dispute Resolution
- Technology and IP Law

The time allocation for each subject is broadly even.