

Submission by Enterprise Ireland to the Legal Services Regulatory Authority in relation to training of solicitors and barristers.

Date: June 2018

Introduction

Our view is that certain aspects of training of legal practitioners are somewhat traditional. We recognise that these aspects are important and enhance the culture of independence and objectivity in the legal profession. However, they can operate to delay the development of the legal practitioner's full understanding of the wider economy unless due emphasis is also placed on a broad range of skill sets and knowledge in the training programme.

In that regard, a number of areas could be given increased importance in the training of solicitors and barristers. We would not view an increase in the significance of such areas of training as jeopardising the independence or integrity of the profession.

Furthermore, we believe that there is a need to ensure that there are rigorous and standardised requirements for monitoring "on-the-job" training for barristers and solicitors.

We set out below eight areas in which we believe that there may be room for improvement.

1. Public law and its application to public sector economic activities

The share of economic activity in the state that is accounted for by the public sector is significant. Furthermore, the number of solicitors and barristers in the employment of the state, whether in public bodies, the chief state solicitor's office, the attorney general's office or in the civil service, is also significant. Accordingly, it is important that those aspects of the law which are of importance to the economic activities of the public sector are not ignored in the training of solicitors and barristers.

We have in mind administrative law, public procurement law and state aid law. We acknowledge that administrative law can be part of a law degree syllabus, however not all barristers and solicitors have studied law at undergraduate level.

We also acknowledge that these subjects are somewhat specialist in nature and that, of necessity, such training in these areas would be somewhat introductory. Nevertheless, mandatory introductory training in such areas could provide part of a more comprehensive foundation for solicitors and barristers who commence work in the public sector.

2. European Union Law

European Union law is an important part of the training of solicitors and barristers, and any increased emphasis in that area is to be welcomed, as a large part of the regulatory environment in which public bodies operate is based directly or indirectly on European Union law.

3. Corporate governance principles

Principles of good corporate governance are an increasingly important consideration for public bodies and private sector companies. It is important that law students and practitioners are familiar with the basic principles and know about the existence of the codes of practice that apply. In that regard, mandatory basic training in these areas would be welcome.

4. Business administration

It is undeniable that many solicitors and barristers have considerable dealings throughout their careers with companies and other businesses, whether as in-house employees or in providing advice from private practice.

We have two suggestions:

- First, the greater their familiarity with the needs, objectives, decision making, analytical methods and language of businesses, and best practice in relevant areas, the better equipped solicitors and barristers would be to advise and work for the corporate sector. This familiarity would be enhanced by the provision of one or more business administration modules in any training scheme for solicitors and barristers.
- Secondly, it would be sensible to consider whether it should be recommended that trainee solicitors and barristers, during their apprenticeship/training, work for at least a short period with in-house counsel in public bodies or private sector companies. Not only would it expose them to a more conventional work environment, but it would enhance their understanding of the legal and business needs of companies.

5. Direct access to Barristers and the arguments for equivalence of rights and/or a partial merging of the professions.

While we acknowledge that there are some consequential risks to the independence of the Bar, on balance we would have no objection, in principle, to the recent development of clients having direct access to barristers. Nor do we have any objection to solicitors conducting litigation and conducting the case as advocates in court.

We acknowledge that these trends can be seen as blurring the distinction between, and roles of, the solicitor and barrister and perhaps as steps towards the merger of the professions.

However, it is not entirely apparent that these trends are fully matched by requisite adjustments in training.

One approach to ensure improved training for solicitors might be to oblige solicitors to attend courses in the King's Inns or elsewhere on court procedures, the rules of evidence and advocacy,

and to restrict them from engaging in certain litigation activities until they had concluded such courses to a satisfactory standard.

6. On-the-job training and supervision of training of Barristers and Solicitors

When training for, or preparing to enter, either profession, it is important that, in relation to the mandatory apprentice solicitor training or in relation to the “devilling” programme, the level of supervision by the relevant training body is as rigorous as may be possible.

While the “devilling” of the barrister comes after qualification, it is, we understand, the first substantive “on-the-job training” that the barrister undertakes before commencing practice.

For that reason, we think it appropriate to consider the first substantive practical experience of newly qualified barristers and of trainee solicitors together.

We acknowledge, of course, that there are detailed and substantive post-graduate courses to be undertaken as part of the training of solicitors and barristers. The focus of this concern is, however, on the “on-the-job” training.

When apprenticed as a trainee solicitor, the apprentice is required during that period to complete a programme of practical on-the-job training in private practice. We understand that the pupillage period for barristers is somewhat shorter. However, neither period is long.

Given the disparity in opportunity for experience, by comparison with their peers, that some apprentices and devils can, on occasion, experience, it is important that that the mandatory on-the-job training, and the supervision thereof by the master, and by the relevant regulatory/training authority, be as rigorous as possible.

7. CPD requirements for both professions working in-house

While solicitors who work “in-house” are obliged to undertake continuous professional development training, there is no such requirement for barristers who work “in-house”. This should be addressed so that barristers working “in-house” do not lose out on essential knowledge and skills.

8. Client confidentiality

Client confidentiality is a central principle of the working culture of employees of state bodies. That is, in-house counsel in state bodies, as much as other members of staff, are prohibited from disclosing details of their work to outside parties. This aspect of the working environment is at least as important, and perhaps even more important, in the public sector when compared with the private sector and private practice. This aspect of client confidentiality, and the reasons for it, might be given greater emphasis in the training and education of solicitors and barristers.

End of submission of Enterprise Ireland