

A&L Goodbody

Submission to the Legal Services Regulatory Authority

Ref: Public Consultation under Section 31(1)(a) of the Legal Services Regulation Act, 2015

1 RESPONDENT

- 1.1 We make this submission in response to the invitation by the Legal Services Regulatory Authority (the **LSRA**) for submissions on the education and training arrangements in the State for legal practitioners.
- 1.2 A&L Goodbody (**ALG**) is one of Ireland's largest law firms and employer of law graduates. We advise domestic and international clients across the full range of legal services for the corporate sector.
- 1.3 Our largest office is in Dublin. We also have offices in Belfast, London, New York, San Francisco and Palo Alto. We employ approximately 700 in our Dublin office - 80 partners, 220 solicitors, 100 trainees and 300 business services professionals.
- 1.4 We make this submission as a firm of legal practitioners and also as an employer responsible for employing approximately 10% of new trainee solicitors each year in Ireland. At any one time we have approximately 100 trainees under training contracts in the office with us and 50-60 contracted to take up future training positions. We offer employment to the vast majority of those trainees (typically over 90%) when they complete their training.

2 SUMMARY

- 2.1 The market for legal services in Ireland and internationally is evolving rapidly. Drivers of change include:
 - significant and ongoing developments in the global and Irish economies,
 - the opportunity for Irish lawyers to support a greater range of complex commercial transactions,
 - greater competition in Ireland and from other jurisdictions, and
 - the need/opportunity for lawyers to change business models/structures and to use technology to maintain/increase service quality and cost effectiveness.
- 2.2 The pace of change will continue to accelerate. Irish lawyers will need new and different skills to meet client demands and to compete (and help Ireland compete) in domestic and international markets. Ireland's training of young lawyers needs to respond to these emerging challenges and opportunities. This submission reflects our firm's needs and the rapidly changing expectations of a sophisticated domestic and international client base.
- 2.3 The traditional training model has not kept pace with the changing role of lawyers or the different roles they will undertake depending on whether they intend to become a general practitioner, in-house counsel in a corporation, a lawyer working for the State, or a specialist in a large corporate law firm.
- 2.4 In particular, the Law Society's "*one size fits all*" approach to training does not meet the needs of the larger law firms (who employ the majority of trainees in the State) or those of practitioners seeking to pursue a career in-house as a General Counsel or in the employment of the State. Indeed, a more focussed training course would arguably also be of greater assistance for lawyers aiming to pursue a career as a general practitioner.

2.5 The inherent tension between the Law Society's traditional monopoly in the education of trainees and its role in determining the applicable education requirements means that it has struggled to respond to changes in the market or to encourage innovation in legal training.

2.6 Accordingly, we request that the LSRA recommends the following reforms to the Minister for Justice and Equality:

2.6.1 Responsibility for regulating and overseeing legal education/qualification of solicitors and for the determination of appropriate requirements and curricula should be given to an independent body, presumably the LSRA. This body would set the standards for and grant authorisation to all institutions who met such standards to provide training and examinations. The removal of the monopoly would encourage greater competition and innovation and the entry of more education providers, leading to greater flexibility and a greater range of educational models becoming available. This would reduce barriers to entry in the legal profession and ultimately benefit future clients, by ensuring that law graduates obtain more relevant qualification and training.

2.6.2 The removal of the requirement for graduates from accredited third level institutions to complete the FE-1 Examination (**FE1s**) before commencing a training contract if they have completed core subjects currently tested by the FE1s.

We would welcome the opportunity to meet and engage further with the LSRA to provide any assistance or clarification which may be required.

3 BACKGROUND

3.1 Globally the legal services sector is in a rapid state of change. Ireland is no exception. This is driving, and will continue to drive, fundamental changes in the traditional operating model of Irish law firms and the skills and abilities which lawyers will need if they are to meet the needs of Irish and international clients. In addition, the growth in number of in-house counsel and the increasingly diverse scope of their roles also means the traditional skills of a private practice solicitor are changing greatly. We believe that the current training model does not meet these challenges.

3.2 The factors driving this evolution include the:

- Globalisation of trade and the need for co-ordinated multi-jurisdictional legal advice;
- Growth of international law firms and increased range of countries in which they operate;
- Increase in competition from alternative legal service providers, including other professional advisory firms;
- Increase in the size, scale and specialism of in house counsel and of lawyers employed by the State;
- Increasing number of specialist law firms offering boutique services in niche areas;
- Redefinition of how legal services are sought by and delivered to clients, including radical changes to process and technology; and
- Merging of traditional legal advisory services with others areas such as information technology, data protection, corporate services, consultancy etc.

We can anticipate a fundamentally different landscape within 5 to 10 years.

3.3 There is now a clear dichotomy between the different types of law firm in Ireland:

- The larger law firms (and some smaller boutique firms) who provide specialised corporate legal services, mostly to domestic Irish and international corporates and government agencies. The top ten firms in Ireland employ approximately 1940 solicitors, representing 19% of the profession. Such firms are actively competing both in Ireland and internationally (with each other and with international law firms and service providers). These firms are wholly aligned to Ireland's corporate landscape, supporting Irish companies in their endeavours, supporting Ireland's FDI strategy and supporting multinationals investing in or through Ireland. Firms in this category (such as ALG) hire the majority of trainee solicitors every year – we estimate that the six largest firms hire approximately 150 to 200 new trainees each year.
- There is significant competition (including from overseas law firms) for talent. Many promising Irish graduates elect to pursue a career in a jurisdiction (such as England & Wales) where more relevant and flexible training is available. Many may not return to practice.
- Many smaller law firms in Ireland, including sole practitioners, are best classified as general practitioners and concentrate on conveyancing, litigation, criminal, employment, family and on Irish citizens' individual rights and obligations. While these are very important areas and there are equally challenges and opportunities for these firms over the next decade, the reality is that the challenges facing such firms, and the training needs of their lawyers, are very different to those of the larger corporate law firms and their lawyers. The current training model ignores this.

3.4 Likewise, the learning and development needs of in-house counsel and lawyers employed by the State, are quite different to general practitioners. We understand that there are approximately 1800 lawyers working in-house, representing 17% of the profession (and this does not include in-house lawyers working for the State as they are not required to have a practising certificate).

3.5 Like other large law firms, we have collaborated with universities to ensure that undergraduate courses evolve to meet changing market needs and a number of them have responded positively. They can combine their expertise in teaching law with expertise from other disciplines within those universities. For example, we partner with a number of universities on "clinical placements" where university subjects are supplemented with in office placements as part of the degree.

3.6 We have struggled, however, to identify a corresponding Law Society commitment to the change required to allow trainees to qualify more quickly and to be better equipped with the skills and experience needed in a global economy. We feel that the Law Society cannot, on its own, offer lecturers with the skills, expertise or experience which is required in order to deliver the content and quality required.

3.7 ALG, like the other corporate firms, have had to respond quickly to the changing landscape and, in particular, to invest extremely heavily in learning and development programmes, to ensure that our current legal staff/lawyers continuously develop their skills and expertise to meet changing client requirements. The fact that such significant cost and investment is required of the larger firms itself demonstrates the limitations of the training currently provided during the trainee qualification process.

3.8 Accordingly, there is an urgent need for change, including greater competition, diversity and flexibility in the ways Ireland's lawyers are educated and trained. This is needed by the large firms but also by the lawyers themselves and will also reinforce Ireland's ability to meet client needs, both Irish and international, and to attract FDI and to play its part in a sophisticated global economy.

4 TRAINEE EDUCATION

4.1 The Oireachtas has long recognised that an institution other than the Law Society could provide education and training for aspiring solicitors. Under the Solicitors Acts 1954 – 2015 the Law Society is responsible for *"the provision of courses and the holding of examinations for the education or training of persons seeking to be admitted as solicitors"*. It can authorise other bodies to provide or procure the provision of such courses. It has never done so. As far as we are aware the Law Society has never even published the

criteria that would apply to any such applications for authorisation. As a result, the Law Society's monopoly on the professional training and education of solicitors has been preserved.

- 4.2 The Law Society's role in determining and regulating what training and education should be provided to aspiring lawyers is inconsistent with its role as the incumbent provider of such services. This inherent conflict must surely be a deterrent for institutions, particularly since the Law Society has failed to indicate the basis upon which it would assess any such application. It is anomalous that such a monopoly should be preserved, ensuring that the only professional training course available in Ireland is provided by the Law Society itself.
- 4.3 The Competition Authority's December 2006 Report (the **Competition Report**) noted the anomalies:
 - 4.3.1 Irish trainee solicitors have no choice as to where to train, or in what format to pursue that training (full-time, part-time, weekends, on-line etc.);
 - 4.3.2 The Law Society effectively controls the number of lawyers who qualify each year, by reference to its own capacity;
 - 4.3.3 There is no incentive for the Law Society to minimise costs; and
 - 4.3.4 There is no incentive to innovate or introduce more diversity and flexibility in training models and content.
- 4.4 The Competition Report strongly recommended that the regulation of professional legal education should be determined by an independent body and that the Law Society should be required to meet the same standards as any other provider in order to secure its own position as an education provider.
- 4.5 The Report was unequivocal in its determination that the justifications put forward by the Law Society for maintaining its monopoly were not supported by any evidence.
- 4.6 Our firm's concerns regarding the Law Society's professional practice courses (PPCs) have been raised with the Law Society but have not been satisfactorily addressed. We have been frustrated that the first interactive engagement from the Law Society on this was in the context of the request for submissions from the LSRA.
- 4.7 We conduct in-depth feedback sessions with our trainees after each PPC (both PPC1 and PPC2) and there are a number of common themes to our own feedback as a business and that of the trainees who attend these courses:
 - 4.7.1 **The training calendar does not meet the needs of law firms employing material numbers of trainees.** A two part course like the PPC is extremely difficult to work in practice. Given the large number of trainees we recruit each year (approximately 40), the two part course structure unnecessarily disrupts business. Ideally, we would envisage a single full-time course (of whatever duration, be it 9 or 12 months) with the remainder of the training dedicated to in-office training, allowing us to rotate trainees through various legal practice groups, broadening their experience.
 - 4.7.2 **The Law Society curriculum is a "one size fits all" approach which does not meet the training needs of modern stakeholders.** For example, PPC content needs to be tailored to the requirements of modern legal practice in a corporate law firm. The first PPC (which is entirely mandatory) largely covers topics and practice areas with little, if any, practical application in a large corporate firm, and this is confirmed by trainees who have gone through the course. The substantial time commitment and expense invested in the PPC does not result in a commensurate development of the law graduates' skills or equip them to face the challenges of practice in a large corporate law firm. ALG has traditionally specialised in:

- Corporate/Mergers & Acquisitions
- Commercial Property
- Finance/Commercial Banking
- Commercial Dispute Resolution.

Numerous key specialist practice groups supplement these core departments. These include:

- Pensions
- Insurance
- Commercial & Technology
- Asset Management & Investment Funds
- Financial Services Regulation
- Aviation and Aircraft Leasing.

ALG **does not** engage in traditional/residential conveyancing, family law, probate or plaintiff personal injury litigation and aspects of the PPC relevant to such matters would generally be irrelevant to our trainees.

It appears to us that the "*one size fits all*" approach also leaves other stakeholders dissatisfied. We understand that many general practitioners also criticise the curriculum. From their perspective the topics are too business centric for trainees who are likely to focus on different areas of legal practice. Likewise, the growth in demand for in-house lawyers means that different courses and skills are required to meet their needs. In our view the current uniform approach to legal education does not meet the diverse needs of aspiring lawyers (or those of their employers or prospective clients).

4.7.3 The disconnect between the PPCs and our business needs is demonstrated by the following:

- The business law course in the first PPC fails to adequately provide any specific modules in relation to key areas that our Corporate department is heavily engaged in, such as:
 - Mergers & Acquisition (M&A) activity;
 - Contested takeovers;
 - Joint Ventures; and
 - Initial Public Offerings (IPOs) etc.
- The business law course unnecessarily duplicates material already tested at FE1 level;
- 20% of the first PPC is devoted to wills and probate – our firm does no work in this area, yet all ALG trainees must cover this rather than an alternative, more relevant, option;
- The conveyancing module in the first PPC (another 20% of the course) largely deals with residential conveyancing – we do not provide residential conveyancing services. Our

Property department is primarily concentrated on large scale commercial transactions and the course is of little relevance to such transactions;

- The litigation modules have a particular focus on personal injury. We do not deal in plaintiff personal injury litigation;
- The advanced litigation elective in the second PPC does not have any modules on large scale case management, e-discovery or data management, all of which are key features of the type of large scale litigation that our firm deals with;
- The first PPC has no dedicated banking or finance module providing any level of "deep dive" training for the work which we do for clients;
- Neither courses of the PPC have dedicated modules on a large number of our growing practice areas which are core specialist practices for our business - Asset Management & Investment Funds, Aviation Finance, Insurance, Financial Regulation. These do not feature at all on the curriculum.

4.7.4 **The quality and content of the materials is not satisfactory.** Having reviewed course materials in advance of this submission we noted with concern:

- examples of course materials which have not been updated year on year
- inaccurate references to current law
- failure to cover new law or legal developments.

4.7.5 **Lack of proactive formal engagement with stakeholders.** Our trainee solicitors represent 10% of all Irish trainees. In 2016 and 2017 we paid the Law Society €869,000 for trainees attending the PPCs. We are a material client of the Law Society legal education offering. Regrettably, we have had extremely limited proactive or formal engagement from the senior members of the Law Society education team. We are concerned that this major investment has not resulted in a commensurate benefit to our trainees in terms of their development. This lack of engagement can only be explained by the Law Society's monopoly position and its determination to adopt a "one size fits all" approach which fails to meet the needs of any participants, rather than a more tailored approach designed to equip young lawyers for their chosen practice area.

4.7.6 **The lawyer of the future.** The legal education system needs to prepare the "lawyers of the future". Knowledge of the law remains essential but new skills are also required, including technological, business, financial, project management, leadership and collaboration skills. Many third level institutions have expertise in these areas (not necessarily in their law schools) and such specialist skills need expert teaching. In light of past experience, we doubt that the Law Society could meet such needs (or that it would be incentivised to do so while it retains its monopoly).

4.7.7 **The administration and attendant costs associated with the Training Contract is excessive and unnecessarily burdensome to individual trainees and law firms.** The numerous steps associated with becoming a solicitor once offered a training contract are set out in the Appendix to this submission. The Law Society operates a manual administration process - forms must be completed and submitted in hard copy. There has been no digitisation or streamlining, even for matters within the Law Society's remit. For example, trainees must submit evidence to the Law Society that candidates have passed the FE1s, even though the Law Society itself issues those results. The bureaucracy required to complete a training contract and apply for admission needs to be reduced and modernised.

- 4.8 At present, despite the substantial time and money invested by ALG in the PPC courses, those courses are scarcely relied on by us. The key training and development for our trainees is carried out in-house or in conjunction with trainers and institutions retained by ALG. This is a significant cost to our business, in addition to the fees paid to the Law Society.
- 4.9 We are not best placed to comment on the training needs of general practitioners or who would be best placed to serve those needs, but it appears to us that a course focussed on the needs of general practitioners would be more relevant and appropriate for them than the present courses.
- 4.10 In our view, if the de facto monopoly was to end, other institutions would emerge to offer a range of alternatives in Ireland to address the training and development needs of Irish trainees, providing a system that is better aligned to their development and the needs of modern businesses. Other courses might be more focussed on individuals going into particular industry sectors, or could specialise in lawyers wishing to become general practitioners.
- 4.11 We urge the LSRA to recommend to the Minister for Justice and Equality that a system be introduced to allow alternative institutions to provide cost effective and relevant legal training. This would incentivise the Law Society to look at its own courses and make structural changes to minimise costs and ensure that relevant and innovative content and training methods are available to respond to their customers' needs, in a timely manner.

5 FE1 EXAMINATIONS

- 5.1 As the LSRA will be aware, eligibility to enter into Indentures of Apprenticeship is dependent on successful completion of the FE1s. There are 8 modules: Tort, Contract, Property, Criminal, Equity, EU, Company and Constitutional. The examinations largely, and unnecessarily, duplicate third level courses. No executive skills or other areas are tested beyond those already assessed at third level. It is our understanding that the exam questions are also set and marked by lecturers and professors from third level institutions (which calls into question the benefit of such duplication).
- 5.2 We fail to see the justification in requiring law (or any other graduates) to sit FE1s to the extent that they are effectively a re-examination of subjects tested and passed at university level. Where graduates complete non-law degrees with law modules, they should likewise be exempt from such law exams.
- 5.3 We see the rationale for an entrance examination for applicants who have not completed a law degree with an appropriately accredited third level institution or who have not completed all modules; but there is no basis for retesting applicants on modules which they have already passed at third level.
- 5.4 We understand the Law Society considers that the FE1s serve as a quality bar. We disagree. A comprehensive and internationally recognised framework already maintains the standards of Ireland's universities. If a student has passed the very subjects tested by the FE1s at a respected Irish third level institution, how does requiring the student to repeat the same exam add to that quality bar?
- 5.5 Notably, where graduates from an Irish University qualify in the UK and return to Ireland the Law Society does not require them to complete the FE1s. This is inconsistent with the professed need for a quality bar. In fact, we have employed many such Irish graduates who, as a result of initially qualifying in England & Wales under their more competitive and tailored legal education system, have not been required to complete PPC1 or PPC2, let alone FE1s. In our experience such individuals have adapted very smoothly to professional practice in Ireland. There has been no evidence that they have suffered as a result of bypassing the Law Society training. To the contrary, the experience and the training obtained in England & Wales from diverse institutions has stood them in good stead in Ireland, equipping them with the skills they need to work seamlessly with Irish clients.
- 5.6 In addition to the duplication and inherent unfairness, there are other adverse consequences of requiring law graduates to complete FE1s:

- 5.6.1 Every year the Irish legal profession (including ALG as an employer of up to 40 new trainee Solicitors each year) loses top quality graduates to the UK. Some of our best graduates go to the UK because it offers a faster qualification route, allowing them to build their career significantly more quickly than in Ireland. The UK route typically reduces qualification time by a year, allowing them to "leapfrog" their peers who remain in Ireland.
- 5.6.2 UK law firms actively recruit in Ireland and emphasise the faster UK route. Each year we lose good candidates to the UK, and the feedback regularly references the more advantageous UK qualification process.
- 5.6.3 The Irish system almost incentivises candidates to look to train in the UK. In addition to the shorter qualification period, the Law Society does not require such Irish solicitors who qualify in the UK to sit the FE1s on their return to Ireland. Accordingly, an Irish law graduate who trains in Ireland must go through the burdensome FE1s, with all of the cost and time entailed. If Irish graduates train in the UK they can then return and be admitted in Ireland after they qualify in the UK without ever doing the FE1s. Even leaving aside the unfairness and arbitrariness of this anomaly, the concern is that many individuals will not return, depriving Ireland of top graduates.
- 5.6.4 The FE1s are expensive. An applicant will pay a total of €840 for all eight exams, together with the cost of resits (€105 per resit). This does not take into account (i) the travel, subsistence and accommodation costs of sitting the exams in Dublin (the only location in Ireland where exams are hosted) and (ii) the living and maintenance costs while studying for the FE1s. The vast majority of candidates sit the exams in two tranches. The inflexible scheduling creates a further, unnecessary barrier to the commencement of the graduate's legal career. This is because the exams only take place twice each year (March and October usually – again at the Law Society's discretion). This unnecessarily delays the commencement of traineeships by at least a year.
- 5.6.5 Our concerns about the FE1s have been exacerbated by serious concerns as to the consistency and transparency of the marking of such examinations. We are aware of a number of occasions on which exam candidates (many with very strong academic credentials) are awarded a fail grade in an FE1 but - on requesting a recheck at a further cost of €115 - are subsequently awarded a pass grade. There is little transparency and feedback available to candidates as to why they were not awarded a pass grade in the first instance and why the result is upgraded to a pass grade on recheck. The frequency of such instances calls into question the consistency and credibility of the marking system for the FE1s and also suggests that the original gradings are not being undertaken with the care which would, for example, typically be seen at third level.
- 5.6.6 Some legal firms now reimburse the costs of the FE1s to their trainees, a significant cost. The vast majority of those receiving reimbursement are law graduates from the main Irish universities. Such investment in graduates could be better spent on further training and development, rather than on retesting university material.
- 5.6.7 We do not consider whether a candidate has yet passed FE1s as part of our recruitment criteria (and we understand that this is also the case with the majority of commercial firms in Dublin). We believe that their academic and other credentials and the other skills tested in our recruitment process are far more reliable indicators of their fitness to practice as an Irish solicitor.
- 5.6.8 We recruit trainees in the last two years of their undergraduate degree. The current system means that 4 years can elapse after leaving university before the individual qualifies as a solicitor (itself a delay which may deter individuals from less advantaged socio-economic groups from entering the profession).
- 5.6.9 While we typically hire 35-40 trainees each year, the requirement to complete the FE1s leads to material uncertainty for our business, in terms of the resource planning and availability of such recruits, as, of necessity, they are generally hired before completing FE1s. The FE1s create uncertainty for us as to when individuals will be available to commence traineeship. If 4 trainees

fail FE1s in the spring sitting, we lose 10% of that year's resource. It is not possible to recruit replacements at that stage, given the (arbitrary) Law Society requirement to complete the FE1s before even starting a traineeship. As FE1s only take place each spring and autumn, trainees missing an FE1 will not be able to complete their exams in time to start PPC1 that September.

SAMPLE FE1 EXAM PROCESS	
Finish college	May
FE1s (set 1)	September/October
FE1 Results	end November of same year
FE1s (set 2)	March of following year
Start date	April of following year
FE1 results	May of following year

- 5.7 We do not agree that there would be any insurmountable legal difficulty with introducing the reforms we are proposing. We are satisfied that a challenge, based on the Irish constitution, could not be brought against a system that adopted a proportionate, non-discriminatory, evidenced based approach, dispensing with the requirement for graduates from properly accredited third level institutions (in Ireland or elsewhere) to complete the FE1s and replacing it with a universally applied credit or similar system for graduates who have completed the core subjects during their third level studies.
- 5.8 We strongly urge the LSRA to recommend to the Minister for Justice and Equality that the blanket requirement for law graduates to complete FE1s, (without any credit for subjects convened at university level), as a condition of entry into the profession is removed.

APPENDIX

FORM NO.	NAME	COMMENTS
Form 1	Application For Consent To Enter Into Indentures of Apprenticeship Cost €840	Supporting documentation <ul style="list-style-type: none"> • Original Birth Cert or Certified Copy • Evidence of having passed FE1s • University Degree transcripts from University for each year • Certificate of Education Record • Certificate of Employment Record • Two recent character references (originals not copies). One to be from a previous employer. These must be recent, i.e. within six months of date of sending and must be in hard copy with an original signature. An email reference will not suffice. • Recent passport size photo – signed at the back
Form 2	Certificate of Proposed Training Solicitor	This form is submitted with Form 1 when requesting the Law Society's permission for Consent to enter into Indentures.
Form 3	Indentures of Apprenticeship	Training Contract with Law Society
Form 4	(Incorporated into Form 3) Statutory Declaration of intended Training Solicitor as to Execution of Indentures of Apprenticeship	
Form 5	Assignment of Indentures of Apprenticeship Cost €75	To be submitted if a trainee's Training Solicitor leaves the firm during the course of the training contract and a new training solicitor must be appointed.
Form 6	Statutory Declaration of Training Solicitor as to service by trainee Solicitor of already completed period of in-office training	To be submitted prior to PPC2. Also serves as registration for PPC2.
Form	Application for Credit	This form is required to gain credit for in-office experience acquired prior to PPC1
Form	Application for Admission to the Roll of Solicitors Cost €300	
	Secondment Application	Approval of the Law Society's Education Committee must be received for any trainees going on secondment. 4 letters must be submitted to the Law Society: <ul style="list-style-type: none"> • One from trainee • One from Training Solicitor • One from client trainee is being seconded to • A further letter from the client must be submitted post secondment.