

Mr Brian Doherty,
Chief Executive Officer,
Legal Services Regulatory Authority,
(Section 33 Consultation),
PO Box 12906,
Dublin 2.

03rd February 2020

Re: Submission on Admission Policies of the Legal Professions

Dear Mr Doherty,

Thank you for providing the Higher Education Authority (HEA) the opportunity to make a submission as part of our contribution to the consultation on the admission and educational standards of legal professionals. Echoing the purpose of the consultation, we would re-iterate that the provision of quality legal services, accessible to all is the hallmark of a civilised, democratic society and a thriving economy. Routes to professional qualification and practice in law that reflects the elements of quality and open access are, in our view, essential to the provision of effective legal services. The HEA welcomes and supports the overall approach taken in this consultation, and we will focus on these in our observations.

You should be aware that the HEA has the following statutory functions with form the background to our observations on the consultation process:

- Furthering the development of higher education;
- Assisting in the co-ordination of State investment in higher education and preparing proposals for such investment;
- Promoting an appreciation of the value of higher education and research;
- Promoting the attainment of equality of opportunity in higher education;
- Promoting the democratisation of the structure of higher education;
- Conducting reviews of the strategic plans and equality policies in higher education institutions and to publish reports of such reviews;
- Promoting attainment and maintenance of excellence in learning, teaching and research in higher education;
- Allocating the monies provided by the Oireachtas to publicly funded institutions;
- Ensuring proper oversight of the governance of the higher education sector;
- Regulatory Overview of the higher education system.

In addition, the HEA advises the Minister for Education and Skills on policy issues relating to higher education and research.

As further background, you should note that all current projections of the third-level student population predict steady increases in the numbers of enrolled students. There is every reason to believe that the number of law students in third-level education will increase in pace with the overall rise in enrolments.

Given the HEA's role and our projection of an increasing student body at third level, we offer observations as part of this consultation process under three broad headings relating to the parties that stand to benefit from a reformed system of legal education:

- candidates seeking certification as legal professionals;
- the legal services profession itself, and;
- institutions offering certification courses (focusing on the Irish higher education institutions in this instance).

In addition, we also comment on the existing situation regarding barriers to entry for trainee solicitors and barristers.

Benefits to candidates attending legal certification courses

We concur with the approach taken here in assessing the standard of education and training for persons admitted to practise. We also believe there are further benefits to be gained - benefits which are desirable for the broader provision and improved quality of legal education in Ireland:

Improved Access

In December 2015 the National Plan for Equity of Access to Higher Education 2015-2019 ('National Access Plan') was published.

Equity of access to higher education is a fundamental principle of Irish education policy and one that has been endorsed by successive governments in policy statements and commitments over the past thirty years.

The vision of the National Access Plan is to ensure that the student body entering, participating in, and completing higher education at all levels reflects the diversity and social mix of Ireland's population.

The plan identifies six main target groups (but also notes that there are many sub-groups within the target groups):

1. entrants from socio-economic groups that have low participation in higher education;
2. first-time mature students;
3. students with disabilities;
4. part-time/flexible learners;
5. further education and training award holders; and
6. Irish Travellers.

Goal 4.4 in the National Access Plan is:

“to increase access to the professions, high-points courses and postgraduate courses by students from target groups.”

The HEA would like to see increased access from the National Access Plan target groups to the legal professions. The LSRA has a specific statutory remit concerning admissions policies for the legal profession; we would like to see additional measures being put in place that would broaden or diversify access to the legal professions.

We note the findings made in the LSRA’s September 2018 review on the education and training of legal practitioners, including:

- The recognition that the system of legal practitioner education and training “be open and accessible to new entrants” (p. 10) and that the “makeup of the profession reflects the full diversity of society (p. 11);
- How financial costs can act as a barrier to diversity in the legal profession (p. 15).

We also note and welcome the proposals made in the report:

- The development of a competency framework as a mechanism for authorising new providers and new routes to education (Proposal 4);
- New routes to qualification for non-law graduates using, e.g. law conversion courses or new providers offering courses which do not require prior legal knowledge, but which would combine the academic and vocational states of training (Proposal 9);
- Encouraging greater diversity in the legal profession through the creation of new entry routes to qualification (proposal 10).

The LSRA’s findings and proposals align with the objectives in the HEA’s National Access Plan.

The HEA supports measures that would enable new providers in the higher education sector to offer programmes for the education and training of legal practitioners. This would have the potential of opening the legal professions to a wider cohort of students, including in different locations throughout the country. Encouraging and allowing students to study on a flexible or part-time basis is also an approach that we would welcome. This would provide opportunities for learners who may not be in a position to pursue full-time programmes to access the legal professions. A more diverse landscape of providers and modes of study would be a first step to achieving equity of access for the National Access Plan target groups to the legal professions.

We see the legal profession education providers have provided multiple modes of study (full-time and part-time) within their institutions. This is good practice internationally and necessary to reach a broader constituency of learners for whom traditional modes of study pose particular problems. From examining the course offerings and design of courses, we note this approach provides enhanced access opportunities for mature students and those from lower socio-economic backgrounds in particular.

In increasing geographical access for potential candidates, we would suggest two options to consider;

- Blended learning and course delivery online have become popular with many higher education institutions. In some professions (Insurance & Financial Services), they have developed online delivery platforms, offering NFQ Level 8 degree courses that are incorporated in a workplace apprenticeship programme. This has involved a higher education institution, professional educational bodies and industry in developing the offering to candidates. We would encourage legal professional educators to look at this concept.
- Alongside blended learning and online course delivery, offering recognised qualification courses in a range of higher education institutions would reduce the need for candidates to travel to Dublin to study.

We believe both options have the potential to greatly enhance participation in the courses from a wide range of geographical locations and social backgrounds. It is assumed that the professional bodies see such wide participation as desirable as it ensures the professional encapsulate the experience and perspectives of society as a whole, the better to serve all of society.

The provision of legal profession education by a range of higher education institutions also could enhance the education provided in a way that is not possible in an institution dedicated solely to legal education. Cross consultation and multi-disciplinarity are increasingly seen as very desirable objectives in all higher education programmes and are usually implemented through modularisation and semesterisation. Such an approach offers the prospect to students of a deeper and more diverse learning experience, with the result that they graduate with a wider range of skills, knowledge and competencies. We note that the legal profession educators have embraced this in many ways, including partnering with related and similar professional bodies, and with foreign higher education providers. However, we would encourage more of this activity to develop course offerings and delivery methods.

Quality assurance in higher education

Higher education institutions are currently subject to both internal and external rigorous quality assurance (QA) reviews under statute. In the first instance (and in many cases), the higher education institutions themselves are responsible for the quality of their education provision (including curriculum, assessment, course delivery, learning facilities and plagiarism). This is overseen by Quality and Qualifications Ireland (QQI), who have processes in place for programme validation, revalidation and the awarding of National Framework for Qualification (NFQ) levels to courses. Programme validation and revalidation are QA process, intended to ensure that a programme can enable a learner to acquire and demonstrate the necessary knowledge, skill or competence to justify the award(s) being offered in respect of that programme courses underpinned by such effective QA procedures with validation from the QQI are the best guarantee of effective teaching and learning. We note that some professional bodies have adopted the validating procedures and NFQ for their course offerings. It is noteworthy that current providers of legal professional education are not subject to the same QA regime as in universities, institutes of technology, technological universities and other institutions offering degree and postgraduate studies. We would encourage legal profession educators to adopt such processes. The collateral outcomes of the

validation process include the identification of good practice and opportunities for improvement and will bring the legal profession educators in line with best practice of the higher education sector. We note a similar approach was suggested in Proposal 3 of the LSRA's September 2018 review.

Improved course provision

The HEA notes that there has been some significant work done by the legal profession educators in this area. While referenced earlier, more can be done in light of technological improvements and partnering with other institutions. By improving the range of institutions providing legal profession education, one increases the choice of students have of the institution where they will undertake their professional training, exposing them to a range of different approaches (all fitting within the criteria determined by the professional bodies). This will help the profession to be more flexible and prepared in meeting demands for specific requirements that will emerge as Ireland's society, and economy develops and changes, without compromising the core knowledge every law practitioner is required to have. A real and exciting opportunity exists for a fundamental change in the breadth and depth of course provision, done in an educational environment underpinned by robust and effective QA mechanisms.

Benefits to the legal profession from strengthening relationships with higher education institutions

Almost all professions are subject to change. This has particularly been the case in recent years as a result of the impact of increased governance, globalisation and information and communications technology. While observing and welcoming the approaches made by the legal profession educators, the HEA believes the legal profession could benefit from more adaption and growth, brought about by synergistic relationships with higher education institutions. However, the relationship between the professions and the higher education institutions is weakened by the absence of the certification of education providers other than the Law Society and King's Inns and a failure of the professional bodies to set down criteria for such certification. This acts as a direct barrier to the development of the legal profession itself both in candidate numbers, research and academic practice within the law genre. Establishing relationships with higher education institutions in our belief would place legal profession providers on the same footing as with other HEI's.

Benefits to the higher education institutions of awarding qualifications which lead to professional certification

Irish higher education institutions have operated and continue to operate in a very competitive environment. Previous competitive funding for research has seen the institutions respond with high-quality proposals that, in a short period of time, have transformed third level research in Ireland from being very poorly developed to a level where in many cases it is comparable with other developed countries. Recent proposals for new competitive funding streams for the higher education institutions continue to demonstrate that they can respond and thrive under such a regime.

As Irish higher education institutions mature to a point where they regularly compete for such research and other funding at an international level, increasing the size of their student bodies (all of which are small by EU and International standards) is critical to ensuring that they will be in a position to compete with the best European and US institutions. Institutions large enough to offer a comprehensive range of courses across a wide spectrum of subjects benefit from much higher opportunities for inter-disciplinary studies cited as the most likely area to yield fruitful research in years to come. Higher education institutions that can offer qualifications leading to certification as an element of legal education will benefit from increased law faculty sizes. The resultant increase in law researchers and interdisciplinary studies that incorporate law will allow the field to develop in Ireland in ways not likely under the present certification regime. The inability to offer such qualifications also artificially inhibits Irish higher education institutions' ability to grow their student body at a time when third level enrolments are on the increase in most other developed economies, where such qualifications are commonplace.

Barriers to entry – entrance examinations

The HEA regards entrance examinations for entry to the Law Society and King's Inns courses, for those candidates who have already completed a degree in law, as neither necessary or desirable. An individual's assessment of her/his ability to complete a course, coupled with the financial outlay required to undertake it, act as barriers to entry in their own right. In undergraduate education, where supply cannot meet demand, exams are a method of allocating places to the best-performing applicants (as in the case of the CAO entry system). However, for postgraduate qualifications, the accepted method is to assess a candidate's previous academic performance and any relevant experience. The current system of preliminary and entrance exams is considered by the HEA to be excessively onerous for applicants, with little benefit over the accepted assessment methods. Therefore, the HEA strongly supports the need for candidates to sit entrance exams be reduced even further, so that only those candidates whose ability to complete the course cannot be determined by an assessment of their prior learning be required to sit the exams.

Acknowledging the changes that have taken place in the past few years, especially recognition of prior learning by the King's Inns, when considering which candidates need not complete the Diploma in Legal Studies, is a welcome approach. However, it is our view that the assessment of what courses are acceptable is overly restrictive, and ignores the role of the QQI. We recommend that the King's Inns liaise closely with the QQI on this matter.

The Diploma provided by the King's Inns, in our view has merit as an approach to providing a background course in law. However, applicants not possessing specific law qualifications from specific institutions should not be required to complete the Diploma before applying for the Degree. Removing this restraint will also allow for credible alternative courses providing background knowledge to be provided by other institutions. As cited earlier, we would call on the King's Inns to have this diploma assessed for an NFQ level, and engage with the QQI on the matter.

Separation of roles

The HEA is strongly in favour of a separation of the multiple roles currently exercised by both King's Inns and the Law Society. Best practice indicates that the role of teaching and administering exams should be performed by bodies separate from those performing the role of accreditation and quality assurance. The setting out by the Law Society and the King's Inns of criteria for other institutions seeking to provide professional legal qualifications would go some way to allowing the benefits discussed above to materialise. Such a change would ensure that the quality of professionals taking up practice will be maintained while facilitating increased provision by others. By allowing the higher education institutions to award graduates with qualifications allowing them to be certified as legal professionals, have the potential to enhance legal education greatly.

Conclusion

As a society, we have largely been well served by our legal professionals. But access to those professions should no longer be predicated on structures which have monopolistic elements, discouraging wider participation in legal education and hence in the professions. Higher education is, in general, undergoing a far-reaching change from economic, social and technological standpoints. Commitment to equality of access, to quality education, in strategically managed institutions, serving personal, social and national needs is at the heart of those changes. Legal profession education can benefit from joining the mainstream of higher education. We note that the institutions involved in legal professional education have improved access through a range of initiatives, incorporating technological and other inclusive changes and broaden their course provision specialisms, in the last few years. However, more can be done in terms of employing the latest innovations in the Higher Education Sector into legal professional training in terms of admissions, course delivery and developments.

I trust that our observations will be of assistance in finalising the submission to the Minister for Justice & Equality. Should you have any questions or require any additional information, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tim Conlon', with a stylized flourish at the end.

Tim Conlon

Head of Policy and Strategic Planning