

**Legal Services Regulatory Authority Public Consultation on the Admission  
Policies of the Legal Professions**

**Submission on behalf of the Honorable Society of King's Inns**

**10 February 2020**

## **Introduction**

The Honorable Society of King's Inns ("King's Inns") makes this submission in response to a request for information and submissions from the Legal Services Regulatory Authority ("LSRA") in connection with the preparation of an annual report on the admissions policies of the legal professions. Specifically, the LSRA has requested information relating to the number of persons admitted to the profession of barrister in 2019 and has also sought the views of King's Inns on whether or not, having regard to the demand for services and the need to ensure an adequate standard of education and training, that number is consistent with the public interest in ensuring the availability of barristers' services at a reasonable cost.

Part one of this submission contains the specific information sought by the LSRA regarding admissions to the profession as well as, to provide further context, additional relevant information and explanatory comments. Part two outlines the views of King's Inns on the overall question of admissions policies.

## I. Admission Numbers

### A. Specific LSRA Queries

a. *The number of students who commenced and who completed the Barrister-at-Law degree course in 2019*

118 students commenced the Barrister-at-Law degree course in 2019, of whom:<sup>1</sup>

- 57 commenced the full-time degree course (scheduled call to the Bar, July 2020);
- 61 commenced the modular degree course (scheduled call to the Bar, July 2021).

109 students completed the Barrister-at-Law degree course in 2019.

b. *The number of persons called to the Bar in 2019*

190 persons were called to the Bar in 2019. (See **Table B** for a breakdown of this number by reference to the various routes of admission.)

c. *The number of students currently enrolled on the 2019-2020 Barrister-at-Law course (full-time and modular courses) and the expected number of students that are estimated to complete these courses in 2020*

119 students are enrolled on the 2019-2020 Barrister-at-Law course (62 students who commenced the modular degree course in 2018 and 57 students who commenced the full-time degree course in 2019) and are expected to sit the annual examination for the degree of Barrister-at-Law in 2020.<sup>2</sup>

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<sup>1</sup> This figure compares with an annual average of 136 in the years 2010-2019, and an annual average of 195 in the years 2005-2009.

<sup>2</sup> Some students may defer attending the course or sitting the annual examination during the conduct of courses and other students that commenced the course in earlier years and were not successful in examinations may repeat the annual examination in 2020.

The number of students admitted to the degree of Barrister-at-Law in 2020 will depend on the number successfully completing the course and examinations.

- d. *The number of admissions to practise at the Honorable Society of King's Inns in 2019 under the following regulations:*<sup>3</sup>

*European Communities (Lawyers' Establishment) Regulations 2003 (S.I. No 732)*

The Bar Council is the competent authority for the purposes of the 2003 Regulations.

*European Communities (Freedom to Provide Services) (Lawyers) Regulations 1979 (S.I. No 58)*

Visiting lawyers exercising the right to pursue professional activities in this jurisdiction pursuant to the 1979 Regulations are not required to be “*admitted to practise*” by the King's Inns or any other authority in order to exercise that right.

*European Union (Recognition of Professional Qualifications) Regulations 2017 (S.I. No 8)*

24 barristers were admitted to practise in 2019 pursuant to the 2017 Regulations; the King's Inns being the competent authority in respect of the profession of barrister. As can be seen in **Table B**, a further 52 barristers from Northern Ireland were admitted to practise in 2019 pursuant to the applicable mutual recognition regime (they could equally have sought admission under the 2017 Regulations).<sup>4</sup>

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<sup>3</sup> For the avoidance of doubt, the Benchers of King's Inns admit persons to the degree of Barrister-at-Law, which is a pre-requisite for being called to the Bar by the Chief Justice.

<sup>4</sup> A member of the Bar of Northern Ireland who has been in practice for at least three years immediately preceding their application may be admitted to the degree of Barrister-at-Law and called to the Bar without taking any test or examination.

B. Further Information

**Table A**

<b>Year</b>	<b>Number sitting entrance examination</b>	<b>Number commencing degree course</b>	<b>Number commencing degree course (full-time)</b>	<b>Number commencing degree course (modular)</b>
2013	168	141	87	54
2014	157	140	80	60
2015	120	96	58	38
2016	133	119	79	40
2017	131	112	51	61
2018	143	120	58	62
2019	150	118	57	61

**Table B**

<b>Number of persons admitted to Barrister-at-Law degree and called to the Bar</b>				
<u>Year</u>	<u>Route of admission</u>		<u>No. per route</u>	<u>Total</u>
2016	a) Completion of degree course		116	
	b) <i>Morgenbesser</i> eligibility <sup>5</sup>		2	
	c) Irish solicitor transfers <sup>6</sup>		1	
	d) Lawyers from other jurisdictions: <sup>7</sup>			
	- Northern Ireland	6		
	- England and Wales	4		
	- Other	0	10	
				<b>129</b>
2017	a) Completion of degree course		109	
	b) <i>Morgenbesser</i> eligibility		0	
	c) Irish solicitor transfers		3	

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<sup>5</sup> This category comprises applicants who hold legal qualifications of an academic or professional nature (or both) from another EU Member State and who are, as a result, partly qualified in that Member State. The applicant's qualifications are assessed and to the extent that there is any shortfall in knowledge or skills the applicant will be required to complete a number of assessments. See C-313/01 *Christine Morgenbesser v. Consiglio dell'Ordine degli avvocati di Genova*.

<sup>6</sup> A solicitor who has been in continuous practice in the State for three years or more immediately preceding the application to transfer and who has held a practising certificate from the Law Society of Ireland for the entirety of that period (or is exempted from the requirement to hold such certificate) may be admitted to the degree of Barrister-at-Law and called to the Bar. Prior to being so admitted and called, the solicitor must attend the Solicitor Transfer Course at King's Inns, which takes place over four weeks in June each year.

<sup>7</sup> Pursuant to the European Union (Recognition of Professional Qualifications) Regulations 2017 (S.I. No. 8), King's Inns is the competent authority in respect of the profession of barrister for the purposes of Directive 2005/36/EC on the recognition of professional qualifications.

	d) Lawyers from other jurisdictions:			
	- Northern Ireland	8		
	- England and Wales	14		
	- Other	0	22	
				<b>134</b>
2018	a) Completion of degree course		91	
	b) <i>Morgenbesser</i> eligibility		0	
	c) Irish solicitor transfers		6	
	d) Lawyers from other jurisdictions:		59	
	- Northern Ireland	19		
	- England and Wales	39		
	- Other	1		
				<b>156</b>
2019	a) Completion of degree course		109	
	b) <i>Morgenbesser</i> eligibility		2	
	c) Irish solicitor transfers		3	
	d) Lawyers from other jurisdictions:		76	
	- Northern Ireland	52		
	- England and Wales	24		
	- Other	0		
				<b>190</b>

## **II. Assessment under section 33(1)(c) of the Legal Services Regulation Act 2015**

### **A. Issue for Assessment**

The LSRA is required to make an assessment as to whether or not, having regard to the demand for the services of practising barristers and the need to ensure an adequate standard of education and training for persons admitted to practise, the number of persons admitted to practise as barristers in a given year is consistent with the public interest in ensuring the availability of such services at a reasonable cost.

The LSRA has requested the view of King's Inns on whether or not, having regard to the demand for the services of practising barristers and the need to ensure an adequate standard of education and training, the number of persons admitted to practise as barristers in 2019 is consistent with the public interest in ensuring the availability of legal services at a reasonable cost.

### **B. Number of Persons Admitted to Practise**

As set out in Part II above, 190 persons were admitted to practise as barristers in Ireland in 2019, 76 of whom were admitted having obtained their professional qualifications in England and Wales or Northern Ireland. This represents a significant increase in the numbers historically obtaining admission to the profession *via* this route. In the period 2004-2016 there was an annual average of 3 admissions in respect of barristers qualified in England and Wales and 6 admissions in respect of Northern Ireland qualified barristers. This increase may reasonably be attributed to Brexit. The extent to which these barristers will actively provide legal services in the State remains to be seen.

114 persons were admitted to practise as barristers in 2019 *via* the other routes of admission to the profession. King's Inns believes that this number (in addition to any barristers from Northern Ireland or England and Wales who are providing or who will provide legal services in the State) is consistent with the public interest in ensuring the availability of legal services at a reasonable cost.



C. Is the number of persons admitted to practice consistent with the demand for services and with the public interest in ensuring the availability of legal services at a reasonable cost?

As there is no cap or quota setting the number of places available each year on the Barrister-at-Law degree course or otherwise limiting the number of barristers admitted to the profession,<sup>8</sup> that number fluctuates from year to year.<sup>9</sup> In the absence of any such cap or quota, and in circumstances where the cost of the degree course has not increased since 2009,<sup>10</sup> it is reasonable to conclude that the number admitted to the profession each year fluctuates in response to the demand for the services of practising barristers. If that demand were to increase appreciably, or indeed if those services were not available at a reasonable cost, King's Inns would expect to see a commensurate increase in the number of applications to the Barrister-at-Law degree course. In such circumstances, it would also be reasonable to expect a commensurate increase in the number of persons seeking admission to the profession *via* other routes, including by way of transfer from the solicitors' profession. In fact, that is not the case, as the number of barristers transferring to become solicitors is far greater than the number of solicitors transferring to be barristers.<sup>11</sup> Having regard to the respective sizes of the professions (there being many more solicitors than barristers in the State), this difference is even more stark.

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<sup>8</sup> By way of comparison, in Northern Ireland the Institute of Professional Legal Studies offers only 20 places for those wishing to qualify as barristers.

<sup>9</sup> See Table B.

<sup>10</sup> The fee payable for the degree course is €12,560. It may also be noted that King's Inns is a registered charity and does not make a profit from the provision of the degree course.

<sup>11</sup> The number of barristers voluntarily disbarred each year may reasonably be equated with the number of barristers transferring to become solicitors:

	<b>Solicitors becoming barristers</b>	<b>Barristers becoming solicitors</b>
2016	1	39
2017	3	24
2018	6	21
2019	3	40

The relatively short timeframe within which a solicitor may become a barrister and the ease with which barristers from other jurisdictions may practise in Ireland is an important factor to consider. Therefore, it is submitted that, from year to year, the number of barristers admitted to practise is reflective of and responsive to the demand for their services. King's Inns has the capacity to facilitate, and places no numerical restriction on, the admission of greater numbers of barristers to the profession.

The number of barristers leaving the profession is also indicative of the public demand for their services. Although an imperfect guide as a barrister may leave the Law Library for a variety of reasons (including to provide services from outside the Law Library or to take up employment as a practising barrister), the number of barristers who have left the Law Library may be viewed as a proxy for the number of barristers leaving the profession. The 2,165 members of the Law Library in 2019 is a decline of 32 on 2018 membership and represents the seventh successive year of decline. The peak number of 2,329 members of the Law Library in 2012 is 164 higher than the 2019 total. As 686 new members joined the Law Library in the period 2013-2019, 850 members left the Law Library during that period (whether to practise as a barrister under another arrangement, or to cease practice).

#### D. Education and Training in King's Inns<sup>12</sup>

The mission of King's Inns is to excel in the provision of both professional and academic legal education and training and to develop and nurture lifelong relationships with its entire membership. The fact that admission to the degree of Barrister-at-Law leads to the entitlement to be called to the Bar and to practise immediately before the courts in the State makes it vitally important that all persons admitted have achieved the appropriate standards in terms of legal knowledge and skills. Furthermore, admission to practise as a barrister entails significant ethical responsibilities. As a result, it is critical that the public can have confidence in the probity and competence

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<sup>12</sup> In June 2018, in the course of a previous consultation with respect to the education and training of barristers, King's Inns made detailed submissions. It adopts those submissions in the context of the current consultation.

of anyone so admitted. The course of education and training provided by King's Inns is designed to attain these objectives and is subjected to continuous review. The generation of profits is not a factor in the design or implementation of the course.

There are certain features of the education and training of barristers in Ireland which merit specific consideration by the LSRA in the context of the current consultation. One such feature is the availability of places on the Barrister-at-Law degree course. As already stated, there is no cap or quota on, nor indeed are there any real capacity issues restricting, the number of places available on this course each year. Provided that candidates meet the minimum eligibility requirements, including having an approved qualification<sup>13</sup> and pass the entrance examination, they will be offered a place on the course. There is therefore no unmet demand in the market for professional training for prospective barristers. In circumstances where there is no cap on the numbers admitted to the degree course and where the cost of the course has not increased since 2009, it is reasonable to conclude that the decrease in the number of students undertaking the course since then reflects a decrease in the demand to enter the profession, itself reflective of the public demand for barristers' services.

#### E. Accessibility of Admission to the Profession

King's Inns strives to ensure that access to professional education and training for prospective barristers is open to people from all sections of Irish society in a real and meaningful way. In this regard it is significant that one may gain admission to the profession by pursuing the Diploma in Legal Studies offered by King's Inns, which is open both to those holding a third level qualification in a discipline other than law and to applicants with no previous third level qualification, and then the modular degree course. This allows a prospective barrister to pursue the entire course of study on a part-time basis, which facilitates access to legal education and training by a wider section of the community.

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<sup>13</sup> There are currently 74 approved qualifications from a range of institutions across Ireland.

Many modular students travel from outside Dublin, or even from outside Ireland, to attend classes on their designated weekends. The purpose of the Diploma in Legal Studies from its inception has been to provide an alternative route to completing the academic phase of legal education and, thereafter, proceeding to the professional phase.

In assessing admissions policies to the legal professions, the LSRA should also consider the bursaries and fellowships available to prospective barristers. The three bursaries and fellowships available in King's Inns have at their core the aim of ensuring fuller and more open access to legal education and training for prospective barristers. In addition to the Gaffney Scholarship (open to students on the Diploma in Legal Studies) and the McCarthy Bursary (for the degree course), the Denham Fellowship is offered in association with the Bar Council. Denham Fellows benefit from mentoring, remission of fees for the Barrister-at-Law degree course, waiver of Law Library fees for the first four years of practice, and an annual stipend of €6,000 for 5 years. It is a specific aim of the Denham Fellowship to encourage diversity within the profession.

Finally, it should be noted that everyone who successfully completes the degree course and is called to the Bar of Ireland may exercise a full right of audience before all courts in Ireland.

There is no restriction or limitation on obtaining pupillage (devilling). Unlike in other jurisdictions, everyone who wishes to obtain a master and undertake pupillage is able to do so. In England and Wales, for example, where rights of audience are limited, many students, having gone to both the effort and financial expense of completing the academic and professional phases to qualify as a barrister, find themselves unable to obtain the pupillage that is required to enable them to complete the process to fully enter practice.

## F. Conclusion

For the reasons outlined above, King's Inns is of the view that the number of persons admitted to practise as barristers in 2019 is consistent with the public interest in ensuring the availability of legal services at a reasonable cost. Moreover, King's Inns

is of the view that the admissions policies of the profession are appropriately rigorous without being unduly restrictive and are well-designed to meet the objectives contained in section 13(4) of the 2015 Act. King's Inns is happy to provide any further information or submissions that may be required by the LSRA in connection with its ongoing work.