



ASSOCIATION OF  
JUDGES OF IRELAND

25 September 2019

Section 34, Further Consultation,  
Legal Services Regulatory Authority,  
P.O. Box 12906,  
Dublin 2.

**Re: S.6 Consultation – submission by the Assoc of Judges of Ireland.**

Dear Sir/Madam,

Please find attached a submission on behalf of the Association of Judges of Ireland in response to the LSRA's recent s.34, further consultation notice. You will recall that you very kindly extended the deadline for making this submission to 30 September 2019 at our request.

Yours sincerely,

(Mr Justice) John Edwards  
President, AJI



# **Legal Services Regulatory Authority**

## **Section 34 Further Consultation**

### **Education and Training of Legal Practitioners**

#### **Submission of the Association of Judges of Ireland**

##### *Introduction*

1. The AJI has read with interest the Hook Tangaza report and proposals. The AJI shares the view of the LSRA that these proposals if implemented have the capacity to significantly affect the education and training of legal practitioners and the wider legal services sector.
2. The AJI in its submissions in response to the Authority's invitation of 9<sup>th</sup> May, 2018 emphasised that the professional training of lawyers - both solicitors and barristers – is a matter of immediate and direct importance to the work of the courts in the administration of justice. The importance of the role of legal professionals in supporting and protecting the effective administration of justice cannot be overemphasised.
3. The current role of the Authority in relation to the admission requirements of the Law Society and King's Inns and the availability and quality of education and training for the solicitors' and barristers' professions is to keep these matters under review and to make recommendations to the Minister.
4. The submission of the AJI is that the effect of the implementation of the proposals goes far beyond legal education and training and would effectively constitute the Authority as the admitting authority for both branches of the profession.
5. The report ( at 8.3.29) appears on the one hand to contemplate that the Law Society and King's Inns should retain – for the time being - their role as admitting authorities but

would be obliged to admit to the professions candidates who might have satisfied standards and competency requirements set by the LPET Committee.

6. The submission of the AJI is that this would be wrong in principle. In the view of the AJI the role and responsibility for setting the requirements and determining whether candidates for admission to the professions have satisfied the necessary requirements and meet the required standards must be that of the admitting authorities, or authority.
7. The effect of the proposals is that the Authority should have the entire responsibility for defining standards and competencies and, by a scheme of accreditation, that commercial service providers could determine whether those standards and competencies have been met.
8. The AJI has significant concerns about such a scheme.

#### *First core proposal*

9. The AJI recognises the value of developing a clear definition of the competencies and standards required to practice as a solicitor or barrister and submits that this is something that should be undertaken before consideration is given to how legal education and training might be reformed.

#### *Second core proposal*

10. The AJI sees two separate elements in what has been identified by the Authority as the second core proposal.
11. The first element is a proposal that the roles and responsibilities of stakeholders in the education and training system be reformed by the establishment of a Legal Practitioner Education and Training Committee of the Authority, which would be responsible for

setting the statement of competence and defining standards which legal practitioners would achieve on qualification.

12. The view of the AJI is that oversight by the LSRA of the standard of education and training would be valuable and appropriate but submits that there is a tension between the proposal that the LPET Committee should have responsibility for setting the statement of competencies and standards and the admitting responsibilities of the professional bodies which has not been fully explored.
13. The second element to the second proposal (which appears again in the fourth and eleventh proposals) appears to be an assumption that professional training for solicitors and barristers will, or at least might, be provided by bodies other than the Law Society and King's Inns. Figure 1 on page 23 of the report shows the accreditation of "*Others*" as a possibility, but the language of proposal 2 appears to assume that in principle the standards, when they are set, can be met by bodies other than the existing providers of professional legal education. This assumption is a cause of concern for the AJI.
14. In its initial submissions to the Authority, the AJI identified a number of potential dangers in licensing colleges other than the Law Society and King's Inns to provide professional legal education. While it is acknowledged that on one view the proposal is simply to allow potential new providers the opportunity to demonstrate how they would seek to meet the defined standards, it is not evident that consideration has been given to risk that a proliferation of service providers might undermine the ability of the existing providers to maintain their standards.

15. Nor is it evident that due consideration has been given to the proposal that the Law Society and King's Inns might be compelled to enrol or call a candidate on the basis of an award of a commercial legal education provider.

*Separation of admission responsibilities of professional bodies*

16. The eleventh proposal is that the admission responsibilities of the professional bodies should be separated from the delivery of education programmes. This is said to be based on good regulatory practice, and to be an important step which will allow other providers to enter the market.
17. The AJI sees two important issues with this proposal. In the first place, it fails to recognise that the King's Inns and Law Society schools are run on a not for profit basis. No less importantly, the AJI is very uneasy that the provision of professional legal training might be seen as an opportunity for profit.
18. Secondly, it is not clear how the authors of the report envisage that responsibility for admission might be separated from the delivery of education programmes. Solicitors are enrolled, and barristers admitted to the degree of barrister -at-law on the basis that the admitting bodies have been satisfied that the graduands have met the prescribed standards. The submission of the AJI is that it would be fundamentally inconsistent with the admitting authority of the Law Society and the King's Inns that they might be required to admit candidates who may have met the requirements of a commercial service provider (albeit a provider accredited by the Authority) but whose competency and suitability have not been assessed by the admitting authority.

19. The AJI submits that careful consideration as to whether bodies other than the Law Society and King's Inns should be licensed to provide professional legal training should be deferred until the competencies and standards are defined and set.

*A common set of competencies and standards*

20. The AJI submits that the proposal that the LPET Committee might develop a common set of competencies and standards for admission to the current Professional Practice Course and barrister-at-law degree programmes has not been justified in the report.
21. In its initial submissions, the AJI cautioned that the Authority should not assume that all third level laws degrees are of the same standard, or that such standard was sufficient for entry into professional training courses.
22. It is worth recalling that for a number of years before 1978 the admissions policy of the Law Society was largely based on exemptions, which were allowed by reference to law degrees awarded by the National University of Ireland and the University of Dublin. At a time when the number of places on the professional courses were limited, candidates were ranked, and offered places on the professional training courses, according to the grade of their degrees. There was at that time considerable controversy as to the comparability of the grades of the degrees awarded by each of the universities and by the constituent colleges of the National University of Ireland which was solved by the Law Society introducing the final admission examination.
23. The King's Inns, while maintaining a limited regime of exemptions, dealt with the same controversy (and a separate controversy as to the comparability of its diploma with the

university law degrees) by introducing the current common examination for admission to the barrister-at-law degree programme.

24. The quotas which gave rise to the common examinations have long gone, but whatever about their genesis, the common examinations provide an objective transparent assessment of the competence of candidates for admission to the professional training programmes.
25. In the view of the AJI, the proposal that the LPET might separately assess the myriad awards now available to establish whether they meet specified core competencies at defined standards is enormously ambitious and calculated to give rise to significant differences of opinion as to whether, or the extent to which, individual awards might qualify.
26. The substance of the proposal appears to be that the LPET Committee should take over the role of setting the standards for admission to the professional training courses and should licence the role of assessing whether those standards have been met.
27. The proposal that the Authority or the LPET Committee should determine whether the achievement of the required competencies might be demonstrated by the award of one degree or another would impact on the role of the professional bodies as admitting authorities. For as long as the Law Society and King's Inns accepted law degrees as sufficient evidence of the competency of candidates for admission to the professional training courses, the basis of that acceptance was the independent assessment of those bodies of the quality of the degrees. It is submitted that the determination by the LPET of the competencies and standards required for admission to professional training would undermine the authority and independence of the admitting authorities.

28. The eighth proposal is that the LPET Committee should develop a common set of competencies for admission to the current professional educational programmes. The underlying assumption is that the required competencies are, or should be, the same. This, it is submitted, is inconsistent with the conclusion of the report that as matters stand, the competencies and standards required to practice as a solicitor or a barrister are not sufficiently clearly defined, and with the first core proposal that that such a definition should be developed.
29. The first proposal - for the development of a clear definition of competencies and standards - is understood to be a proposal to develop a clear definition for each of the professions, rather than both. If it is not, it is submitted that it should be. The outcome of that process may very well be that there should be a common set of competencies and standards for both branches of the profession but in the view of the AJI the eighth proposal that there should be a common set of competencies pre-empts the outcome of the primary assessment of what the competencies and standards should be for each branch of the profession.

#### ***Duplication in legal education***

30. The proposal in the report (part of the seventh and eighth proposals) that admission to professional programmes should be based on higher education level programmes benchmarked against competency framework is based on a perceived duplication in legal education. That perception appears to be based on feedback from surveys rather than objective assessment.



31. The AJI accepts that preparation for the FE-1s and the King's Inns entrance examination can be challenging and expensive but suggests that the need for the additional work and study goes to show that there is no duplication. If, by their university studies alone, candidates are equipped to demonstrate the competencies examined by the FE-1s and the King's Inns entrance examinations, they can simply sit the exams.

### *Conclusion*

32. The AJI supports the proposal that a clear definition of competencies and standards required to practice as either a solicitor or a barrister should be developed for both solicitors and barristers and submits that further consideration of the other Hook Tangaza proposals should be deferred until that has been done.

September, 2019