

A&L Goodbody

August 2019 Submission to the Legal Services Regulatory Authority

Ref: Further Public Consultation on the Education and Training of Legal Practitioners

1 RESPONDENT

- 1.1 We thank the Legal Services Regulatory Authority (the **Authority**) for the opportunity to make this submission in respect of education and training arrangements for legal practitioners in Ireland as part of the independent statutory review mandated by the Oireachtas in the Legal Services Reform Act 2015.
- 1.2 The review is timely, and we welcome the detailed, independent and evidence-based analysis undertaken by the Authority's independent experts, Hook Tangaza, and their 14 proposals for reform (the **Proposals**). Such changes are needed to ensure that training and education arrangements evolve to meet the changing needs of the modern Irish economy, equipping Irish lawyers to continue to support Irish consumers and Irish and international companies doing business in Ireland.
- 1.3 We also agree that reforms such as those recommended by Hook Tangaza are needed to ensure greater independence, innovation, accountability transparency **and competition** in legal education. Such reforms would also be in the interests of consumer protection and the development of the Irish economy.

2 SUMMARY

We support the proposals for reform as recommended by Hook Tangaza.

We agree with their conclusion that the current monopolistic system is not fit for purpose and does not serve the best interests of consumers, law firms or graduates.

We support

- the removal of FE1s as a barrier to entry to the profession;
- the abolition of the Law Society of Ireland (**LSI**) monopoly so as to ensure proper competition, better and more appropriate content, increased product quality and value for money;
- the creation of a new and independent body charged with the admission of graduates to and oversight of the quality and content of legal education in Ireland.

We are greatly concerned that the LSI, as current sole provider of legal education, is failing to represent our concerns or views (or the views of other concerned stakeholders) in their submission to the LSRA. Furthermore we are also concerned that the LSI is trying to hastily pre-empt the current statutory review by seeking to rush through changes to their current offering without appropriate consultation or governance.

Background

- 2.1 A&L Goodbody (**ALG**) is one of Ireland's largest lawfirms and also one of the largest employers of law graduates in Ireland. Since our 2018 submission to the Authority in (the **ALG 2018 Submission**) we have further increased the numbers of lawyers we employ. We have also committed to increasing the number of trainees we recruit to 45 per annum.
- 2.2 The training and development of our lawyers to meet and exceed the expectations of both Irish and international clients is a crucial part of our business strategy, which makes our firm a key stakeholder in the

debate as to legal education reform in Ireland. As we fund more than 6% of solicitor trainee education fees in Ireland, our firm has a vital interest in the provision of high quality, cost effective, trainee education.

- 2.3 A number of years ago we undertook a review of the skills required to develop the lawyers of the future and went on to design a ground breaking and award winning training and development programme for all our lawyers including trainees. We established (in conjunction with University College Dublin School of Law and Smurfit Business School) the ALG School of Business and Law.
- 2.4 Having spent a number of years designing and delivering content and programmes with education experts, clients and our own partners, it is clear to us that there is a significant gap between the quality and content of the current legal education system and that which we believe is necessary and appropriate for current and future client and business demands. We therefore have to spend material amounts of time and money upskilling our trainees to develop knowledge and skills that are not covered sufficiently by the current legal education system. Ultimately this duplication of costs is either passed on to consumers or is not available for other investment in our business. The LSI's current proposals will not, in our view, be sufficient to bridge that gap.
- 2.5 Our views as to the need for reform reflect not only our own perspective as one of the largest employers of trainees, but also the views of our many leading Irish and international corporate clients as to their expectations of the lawyers who represent them. We believe that our view is shared by several other leading firms.

3 SUMMARY OF ALG VIEW ON PROPOSALS AND RELATED LSI MATTERS

- 3.1 We agree with the Hook Tangaza conclusions as to the need for change. In our view, for the reasons summarised in the report, the current solicitor training and education arrangements are not fit for purpose. We agree that the monopolistic structure militates against innovation, diversity and the development of the new skill sets required to enable Irish lawyers and law firms to compete both in Ireland and internationally. Greater competition and flexibility in the provision of legal education and independent regulation would be in the public interest because:
 - 3.1.1 It would ensure that lawyers can obtain training which is more directly relevant to their chosen field of expertise (as opposed to traditional, more generalist, training), whether they intend to work, for example, in a corporate law firm, as an in-house counsel, in a government department or in a smaller law firm.
 - 3.1.2 It would make it easier, faster and cheaper to qualify as solicitors in Ireland, reducing the incentive for talented Irish lawyers to move to other jurisdictions on graduation which is depriving Ireland of significant numbers of talented graduates.
 - 3.1.3 It would make it cheaper and easier for law firms (including smaller law firms) to employ trainees and to bring them through to qualification.
 - 3.1.4 It would increase competition for legal services in Ireland by increasing the number of qualified solicitors.
- 3.2 The Hook Tangaza Proposals are broad and we support their underlying aims. In addition, as outlined in our Initial Submission, we believe that the control and regulation of solicitor education and training should be independent of vested interests. We believe that the de facto monopoly enjoyed by the LSI conflicts with its current regulatory role and powers. In order to encourage progress and innovation it would be desirable to end this monopolistic and conflicted role in respect of legal education.
- 3.3 The LSI submission to the LSRA is not representative of our firm's views, despite our having made our views and concerns clear to them in advance of their submission. We consider it regrettable that the Society's submissions did not fairly acknowledge the diversity of views within the profession.

- 3.4 In particular, we would take issue with the assertion in the LSI submission to the effect that there has never been criticism of the current legal education system. This was plainly incorrect. We note that the LSI has now acknowledged that the claim was incorrect and should not have been made in the LSI submission to the LRSA.
- 3.5 The Hook Tangaza report demonstrates the depth of concern within the profession. In our view, the failure by the LSI to even acknowledge the concerns regarding the current offering, and its incorrect representation that there had been no criticism in that regard, itself demonstrated the issues which arise from the current Law Society's conflicting roles in relation to legal education.
- 3.6 It is notable that, at the same time as the Authority has taken steps to produce the statutory review mandated by the Act, the LSI has belatedly taken steps to change its current legal education offering. While we welcome the LSI's recognition of the need for reform in respect of current arrangements, we do not consider that the proposed changes meet the wide ranging stakeholder concerns, comprehensively summarised in the Hook Tangaza report on behalf of the Authority. In our view, the LSI's proposed changes do not go far enough.
- 3.7 Furthermore, we do not consider that there was sufficient planning or consultation around the proposed changes and we disagree in principle with any attempt to belatedly change the current offering, in order to pre-empt the current review by the Authority, without engaging fully with the underlying issues.
- 3.8 In particular, the LSI has recently approved changes to the Apprenticeship and Education Regulations (the **Regulations**). While we strongly advocate the need for reform, such changes need to be implemented in a considered manner, with timely and meaningful consultation with all stakeholders. We do not believe that there was adequate engagement or consultation in this regard before the LSI sought to adopt the Regulations.
- 3.9 The LSI's rushed adoption of such Regulations could be judged as an attempt to pre-empt the Authority's own review.
- 3.10 Our concern about the Regulations being approved without adequate consultation or transparency on fundamental issues was shared by three other leading firms which, like us, employ large numbers of trainees each year. The four leading firms suggested that the LSI pause the introduction of the Regulations until the broader implications could be discussed more fully at the Authority's symposium in September. The LSI, however, declined to accede to this request and has still not provided clarity on key issues which we have raised.
- 3.11 Accordingly, the profession is now faced with the prospect of the Regulations being signed into law at the instigation of the LSI without any details on how the implementation of the Regulations will impact aspiring trainees and the firms which will employ them. The LSI's hasty approach to this issue, on the eve of the Authority's symposium, is not consistent with principles of good regulation or governance and we welcome the Hook Tangaza focus on the need for improved governance in this regard.
- 3.12 Furthermore if the changes as envisaged by the LSI are adopted we will have to materially adapt our business accordingly. If, subsequently, the LSRA implements material changes to the system of legal education there will be further unnecessary and costly disruption to our business and law firms throughout the country.

4 DETAILED ALG VIEW ON THE PROPOSALS

As there is considerable overlap on how the Proposals may impact our firm and trainee education generally, we have prepared our responses on a thematic basis.

4.1 *Development of competencies and standards to qualify and practise as a solicitor including the development of assessment methodologies and ongoing quality assurance for providers of legal education and training*

4.1.1 We welcome the introduction of a competence based approach to education and training.

- 4.1.2 At ALG we have long recognised the benefits of a competence-based approach not only for our trainees but at every stage in the development of our people. At each stage of an individual's development at ALG, their performance is evaluated against a clearly defined set of competencies and individuals are equipped with the tools and support to achieve the outcomes expected of them. A competency based approach provides clarity as to the types of work an individual is expected to undertake in a given practice area and enables individuals to track the acquisition of knowledge and skills.
- 4.1.3 We also broadly support the Proposal that assessment methodologies have a greater focus on modern professional practice requirements. In implementing this Proposal, the Authority will need to ensure that these methodologies are tailored to reflect different legal practice models e.g. general practitioners, corporate firms, in-house roles and public sector advisors. As noted in the ALG Initial Submission, the current, "one size fits all", approach is outdated and serves no one.
- 4.1.4 In short, the legal education system needs to prepare the "lawyers of the future". As noted in the ALG Initial Submission, knowledge of the law remains essential but new skills are also required, including technological, business, financial, project management, leadership and collaboration skills. Accordingly, when developing the Proposals, the Authority needs to look beyond the established status quo in the provision of legal services and plan for the future needs of the profession and its clients so as to identify the evolving competencies that will be required of our lawyers if Ireland is to remain a competitive jurisdiction for legal services. We do not believe that the LSI proposals address this.
- 4.1.5 In developing any competency framework and resulting quality assurance programmes, new providers must also be independently assessed on their ability to innovate and proactively develop education programmes for the evolving profession. Ireland is unlikely to achieve such a dynamic and progressive outcome with the status quo structures – the LSI's role as monopoly supplier of trainee legal education conflicts with its role as regulator and gives it no incentive to respond to evolving demands from trainees or their future employees.
- 4.1.6 In the light of current and future trends of specialisation and segmentation within the legal market and in line with international trends, there is a clear need, as part of the solution, for more blended and personalised courses to fit individuals' and individual law firms' requirements and likely areas of specialisation. In implementing the Proposals, alternative providers will need to be tested, and monitored on an ongoing basis, on their ability to deliver dynamic solutions which equip new solicitors for the opportunities to develop and specialise in growth areas where the demand for their expertise will be greatest.
- 4.2 *Reform of roles and responsibilities of stakeholders in the legal education and training system and admission responsibilities of professional bodies to be separated from the delivery of education programmes.*
- 4.2.1 We have already highlighted our concerns as to the fundamental conflict between the LSI's role as the monopoly provider of trainee education and its role as regulator. As our Initial Submission noted, the inherent tension between the LSI'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. The tension created by this dual role goes a long way to explain the widespread stakeholder dissatisfaction recorded in the Hook Tangaza report, and also explains why the LSI's recent initiatives were only forthcoming on the eve of the Authority's investigation. The way those changes were progressed, without sufficient transparency as to ultimate course content, cost, logistics etc., demonstrates the inadequacy of the current governance standards in this area and we would welcome all reforms which would improve the current situation. Those responsible for the provision of legal education need to be subject to independent review, accountability and transparency.

- 4.2.2 We note that the proposals envisage an LPET Committee (the LPET) which would effectively replace the statutory role played by the current Law Society Education Committee. In the light of the serious and widespread stakeholder concerns about the current access and education programme reflected in the Hook Tangaza Report, it is imperative that the membership of the LPET reflects a body of individuals who understand the changes required and a broad range of stakeholder interests.
- 4.2.3 We welcome the proposal that the LPET Committee will accredit education providers under the necessary competency and standards requirements. Such providers will need to be able to demonstrate their ability to develop and test legal competency based skills such as client interviews, advocacy, case and matter analysis, legal research and negotiation. In addition, such alternative providers should be required to demonstrate how they can incorporate the adoption of technology and process/project management to streamline legal delivery into legal education training programmes. We don't believe that the proposals as set out in the Regulations address these issues sufficiently.
- 4.3 *Development of an accreditation and validation framework for legal education and training to be evaluated against a competency framework*
- 4.3.1 Again we welcome this proposal which should ensure that both providers and programmes of legal education and training meet defined quality standards. The development of such a framework will open up opportunities for other providers to enter the market for legal education and training, thereby ending the current monopoly position of the LSI.
- 4.3.2 In the development of any such framework, cognisance must be taken of the fact that a very small number of firms (including A&L Goodbody) fund a very significant proportion of the trainee education in Ireland today and any consultation/engagement by the LPET should reflect the input and costs which are carried by such firms in Ireland, the firms primarily responsible for hiring trainees and for paying for their professional training. In addition, given that almost 20% of lawyers in Ireland now occupy an in-house position, it is essential that the future framework should address the needs of this significant (and growing) stakeholder group, an objective which the current model has insufficiently addressed.
- 4.3.3 Our view is that it would be wrong to defend the status quo and the existing monopolistic structure on the basis of a perceived and unsubstantiated concern that new entrants to the market would be likely to lower the standards of legal training. There are a number of respected institutions which would be capable of providing high standards of professional legal training and greater competition would be likely to lead to greater innovation, quality and cost effectiveness. A competency based framework would ensure that the quality of legal training was not diluted.
- 4.3.4 The implementation of a competency based framework would be a welcome reform required to ensure that the education provided was aligned with changing client and market needs. This would include enabling transition to other evolving arms of the legal profession, for example legal technologists and hybrid lawyers (e.g. lawyers with an accountancy or tax qualification).
- 4.3.5 Enabling new providers to enter the market (appropriately accredited against a competency framework) should result in new avenues into the legal profession - more client-based, cost efficient, and inclusive.
- 4.4 *Removing barriers to access including alternative means to entering the profession, reducing duplication of learning costs and time required to qualify*
- 4.4.1 We support the proposal that the Admissions to the Roll of Solicitors procedure should be separated from the Law School on the basis that candidates will be admitted to the profession in the future based on an independent competency evaluation.

- 4.4.2 In our view, clinical placement is an invaluable tool for both the student, the employer and the ultimate receiver of services in developing essential technical and client skills early on in a candidate's professional career to the ultimate benefit of the consumer. Given that there can be considerable differences in the types of pre-qualification placements available, in implementing any pre-qualification recognition, the Authority will need to ensure that candidates are also subject to a similar competency and standards framework to ensure that there can be a consistent evaluation across varying types of placements.
- 4.4.3 Opening up the route to qualification to alternative providers of legal education should also impact on the diversity of the profession. By avoiding duplication in learning costs and providing a quicker route to qualification, diversity in the profession should increase. We fully support any reform which can encourage candidates from different socio-economic and demographic groups to enter the profession.
- 4.4.4 As noted in our Initial Submission, the current system means that four 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, particularly when coupled with the substantial costs imposed by the LSI's current model, costs which appear likely to significantly increase as a result of the changes which the LSI is currently seeking to implement).
- 4.4.5 In order to encourage greater diversity and to broaden access to the profession, the Authority needs to ensure that in implementing the Proposals, it prioritises steps designed to reduce the time required to qualify and the cost of that procedure.
- 4.4.6 As you will be aware from the ALG Initial Submission one of our major criticisms of the current route to qualification is the requirement to sit the FE1's. The LSI's recent response to the continued stakeholder dissatisfaction in respect of the FE1's is to propose that they should be retained, while allowing students the ability to complete them during an undergraduate degree. However, the changes do not address the concern.
- 4.4.7 Aspiring solicitors are still required to undertake examinations which duplicate subjects they have already studied and been examined on in top level academic institutions, and significant fees are levied for the cost of this duplication. This is a redundant and unnecessary barrier to entry into the profession.
- 4.4.8 The LSI's proposal would still require students to take all FE1's but with flexibility to take some of them at the same time as their undergraduate degree. This is an inadequate solution because: (i) students concentrating on their undergraduate degree will be reluctant to undertake additional examination commitments when they are concentrating on their primary academic studies; (ii) many students will not have decided whether they wish to become solicitors until they are closer to graduation and will be reluctant to undertake a major additional examination commitment until they have done so; (iii) last, but certainly not least, unless students are supported by wealthy families or have already been offered employment, most students would be reluctant to incur the not insignificant cost of the FE1's at a stage at which they were working their way through their primary degree and could not be confident of recouping that investment through ultimate employment as a solicitor.
- 4.4.9 Accordingly, the LSI's current proposals do nothing to encourage greater diversity in the profession and continue to force new entrants to the profession to undertake examinations which are often redundant and irrelevant, in the light of the third level studies already pursued by many of them.
- 4.4.10 Accordingly, the option to complete FE1s during undergraduate studies, with the cost implications and restrictions imposed under the Regulations, will not be a realistic or practical option for most students and we regard the change as largely cosmetic, leaving the position largely unchanged in terms of accelerated access to the profession.

4.4.11 We remain of the view that the requirement for law graduates to complete the FE1s should be removed completely. Where graduates complete non-law degrees with law modules, they should likewise be exempt from the corresponding law exams. Again, implementing the Proposals, the Authority needs to ensure that no further unjustified barriers are introduced which unnecessarily duplicate subjects already sufficiently examined at third level.

4.5 Costs

4.5.1 The Authority have asked for our views on the cost implications of the Proposals. In the absence of more details on how the Proposals will be implemented including a detailed project plan outlining timelines for implementation, it is impossible for us to assess the financial and resourcing impact and to provide a view on what these reforms might cost. However, we do not regard the current model as cost effective or appropriate – by definition a monopoly provider has no incentive to control costs and the recent introduction of changes to the education model in the absence of a detailed analysis of the ultimate cost implications demonstrates the need for reform in that regard.

4.5.2 As with any reform, there will be costs involved, but we see the Authority's Proposals as a welcome – indeed an essential - reform which is required for the overall improvement of legal training. In our view, the benefits to practitioners and consumers, including greater competition and greater access to the profession, alike far outweigh the cost burden.

4.5.3 As a small open economy in the wake of Brexit and other developments in the global and Irish economies, we need to establish a framework which will allow the Irish legal market to withstand competition from other jurisdictions and allow our lawyers be best placed to adapt to the needs of clients requirements to deliver alternative legal services and maintain/increase service quality and cost effectiveness.

5 **NEXT STEPS**

5.1 We welcome the opportunity to attend the forthcoming symposium on legal education and training and to discuss these issues further. We are also available to meet separately in advance if you wish to discuss anything specifically with us.