

Submission of the Criminal Law Committee of the Law Society of Ireland

This Submission reflects the views of the Society's Criminal Law Committee in response to the LSRA's Section 34 Further Public Consultation on the Education and Training of Legal Practitioners.

The Committee notes the statutory provision of the Legal Services Regulation Authority (the 'LSRA') relative to education under Section 13 of the Legal Services Regulation Act, 2015, to its functions include:

- protecting and promoting the public interest,
- supporting the proper and effective administration of justice,
- protecting and promoting the interests of consumers relating to the provision of legal services,
- promoting competition in the provision of legal services in the State,
- encouraging an independent, strong and effective legal profession, and
- promoting and maintaining adherence to professional principles specified in the Act.

The Committee believes that inherent in the LSRA's statutory functions is an alignment with the principles of due process, the protection of the Constitutional rights conferred by Articles 38 to 44 and the European Convention of Human Rights' Article 6 Fair Trial rights.

The Committee contends that for the above to have effect legal practitioners must be educated and trained to know in practice the basic concepts of due course of law and be equipped with the skills to vindicate the personal rights of the citizen. In order to be able to do this, a legal trainee must have an understanding of the practice of criminal law, whether or not it is their intention to practice same.

From a comparative perspective, the Solicitors Regulation Authority of England and Wales has identified various core areas including Business Law and Practice, Property Law and Practice and Litigation. Litigation comprises both civil and criminal law and practice combined into a single set of outcomes. Therefore, every LPC is required to provide students with a foundational knowledge of law and practice in civil and criminal law. A similar position has been adopted by the Law Society of Northern Ireland in the Institute of Professional Legal Studies.

The Hook Tangaza Report proposed six core design principles for a legal practitioner's education and training system to be "fit for purpose". The model requires that legal practitioner education and training meet society's needs for legal practitioners. The Report identifies society's needs as likely being derived from a combination of the State's statutory framework, public interest considerations and the requirements of stakeholders. The Criminal Law Committee believe the requirement for public interest considerations necessitate the effective running of the criminal justice system which is reliant upon qualified practitioners who have had practical training in criminal law.

The Report also recommends the development of a definition of the "competencies required of a legal practitioner and the standards to which these should be demonstrated, paying particular attention to the knowledge and skills needed for the effective exercise of reserved activities and the expectations of society of an individual holding a reserved title, such as 'solicitor' or 'barrister'." Any competency definition must include an ability to deliver public interest including criminal law practice capabilities.

Proposal 10 of the Report recommends “attention is given to encouraging greater diversity in the profession through the creation of new routes to qualification.” This includes diversity in the profession in the context of “practice area (i.e. to ensure that there is an adequate supply of criminal, consumer and in-house lawyers as well as those with a commercial focus.)” The Committee believes this is a clear indication of the need for all practitioners to have competencies to practice criminal law. Education and training programmes must introduce trainees to criminal law as a mandatory subject as part of their training.

Professional Education of Practitioners

The Committee’s experience is that the concept of criminal law practice is constantly expanding (for example, the ever-changing landscape of white collar/corporate crime, regulatory prosecutions etc.). Indeed criminal law practice has, in recent years, moved well beyond traditional areas of criminal law into the fields of health and safety offences, revenue offences, data protection offences, environmental offences, money laundering and many more new areas of criminal law practice.

- Protection of the Rule of Law and Administration of Justice

Lawyers have been given the obligation and privilege of ensuring the protection and operation of the rule of law. The importance of this concept in protecting the rights and freedoms should not be underestimated. It is a fragile structure and continuously under attack. Solicitors in general and, in particular, those who practice criminal law, have been at the forefront of defending the rule of law. Knowledge of the complex and intricate aspects of criminal law and procedure is essential to enable this. All practitioners must have a basic understanding of the fundamental principles as they arise in practice, so even where a practitioner does not practice criminal law they can identify instructions which require specialist referral where appropriate and, in particular, where matters of inculcation, conflict, liability and professional ethics arise. The education of trainees in criminal law provides a fundamental base for qualified solicitors, who do not work directly in criminal law but require such an understanding for cross over work where regulatory, company law and investigative cases arise.

- The Solicitor Advocate

Criminal law allows solicitors to continue to use and enhance their advocacy skills and experience throughout their careers. Foundational training in this area is also essential to allow solicitors to practice in criminal law.

- Forced career path/choice

Obliging a young trainee to choose at the very outset of their professional legal career the avenue they wish to take will act as a deterrent at a later stage to pursuing other areas including criminal law. Many trainees enter Blackhall having only studied for their FE1 exams and may never even have stepped in a courtroom. Making such decisions before they receive any professional training can force career paths on trainees that they may otherwise not have chosen.

- Demand

While a large number of trainees are training in the bigger corporate commercial firms, the solicitors profession should nevertheless provide a foundational legal training to all and should not serve just to deliver to the prospective employers at the expense of a rounded education. The Committee’s experience is that the majority of general practice solicitors throughout the country practice criminal law to varying degrees. Their criminal law practice and experience provides key access to justice and delivers society’s public interest need in

local District and Circuit Courts across Ireland. Solicitors in general practice are a cornerstone within the community to ensure access to justice and representation without fear or favour. To ensure the availability of these key services across the country it is essential that legal practitioner training incorporates an understanding of a broad spectrum of legal areas including the fundamental area of criminal law. Professional training of practitioners in criminal law ensures that all members of the community have access to justice, in the court of each district and circuit.

While knowledge of criminal law is required as part of the Final Examination to the Law Society, the proper and effective administration of justice requires that all practitioners have a core understanding in all aspects of civil and criminal law as they operate in practice. We also support the submission of the Director of Public Prosecutions to the LSRA in relation to the education and training of legal practitioners in Ireland and in particular the proposition that “criminal law practice is an essential core subject which all trainees should study.” The Committee also notes from the submission of the DSBA that recently qualified trainees have sought further assistance in respect of advocacy and knowledge about the court system and would submit that the teaching of same should be mandatory. Further to this the Committee takes into account the points raised by the Rape Crisis Centres, where no legal practitioner should deal with a traumatised person without that specialist knowledge and training as it can actually re-traumatise a victim of crime. The Committee also points to the Victims Directive, Directive 2012/29/EU, which provides for the rights of victims of criminal offences. Article 25 of the Directive places a positive obligation that practitioners are given general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner. In order to do this knowledge of how investigations and the court process work is required, together with the rights of a victim.

In conclusion, the Criminal Law Committee believes it is essential that criminal law training include advocacy and remain a core subject taught to trainees, as part of their practical education, prior to the admission onto the Roll of Solicitors.