

Further Submission
to the Legal Services Regulatory Authority
as part of the further public consultation under Section 34 of the Legal Services
Regulation Act 2015 on the Education and Training of Legal Practitioners

1. Introduction

- 1.1 McCann FitzGerald makes this submission in response to the Consultation Notice dated 12 July 2019 and circulated by the Legal Services Regulatory Authority ("LSRA"). We are grateful for the opportunity to make this submission.
- 1.2 We refer to our previous submission to the LSRA dated 26 November, 2018 (a copy of which is attached for ease of reference). In our earlier submission we set out our concerns as to the deficiencies that we perceive in the current education and training of trainee solicitors provided by the Law Society and our reservations as to the *de facto* monopoly enjoyed by the Law Society in the training of trainee solicitors. Whilst we do not propose to repeat these concerns in this submission, the broad thrust of our concerns related to the focus of the current professional practice courses, being geared to a large extent towards the training needs of solicitors who will not practise in the corporate arena, and concerns as to the professionalism of the delivery of courses. These views inform our comments below.
- 1.3 We would note at this juncture that we have had some positive dialogue in recent times with the Law Society in relation to the changes currently proposed by the Society in relation to the training of solicitors (and the draft Regulations in that respect), and we welcome the proposed introduction of a unitary professional practice course. It is important that this engagement is maintained and deepened with the Law Society and, in due course, with the LPET Committee (as defined below).
- 1.4 In this submission we intend to confine our comments to the 14 proposals for reform set out in the Hook Tangaza *Review of Legal Practitioner Education and Training* ("HT Review"), as submitted by the LSRA to the Minister for Justice and Equality on 28 September 2018.
- 1.5 Broadly, we welcome and support the proposals made. Of necessity, at this juncture, the proposals are general in nature. The real impact of change flowing from these proposals will be in the curriculum developed and the quality of training provided, both in terms of presenters/tutors and in the teaching methods that are applied.

2. Core Proposals

- 2.1 **Proposal 1:** A clear definition of the competence and standards required to practice should be developed for legal practitioners

We agree with the proposed adoption of an appropriate competency and standards definition and acknowledge the stated benefits of such an approach as set out in the HT Review. It is, however, critical that any competence and standards definition that is developed is underpinned by a curriculum that suits the needs of the various branches of the legal profession. Given the profile of our clients (both domestic and international corporates) and the areas in which we practise, the curriculum for a firm such as McCann FitzGerald needs to be business-focused. It is likely that other firms that advise business clients will have similar concerns.

It is implicit in the Core Proposals that the effective monopoly of the Law Society in the education and training of solicitors should be removed. We welcome this proposal. We believe that the introduction of other providers, and so the introduction of some level of competition, will be a positive development for the legal profession. It should also facilitate the provision of training duly tailored to the needs of the various areas of practice in the profession (for instance general practice, in-house, public sector, corporate and otherwise).

The HT Review expresses the view¹ that a competency and standard-based approach:

".....also has the potential better to maintain consistent standards within the changing architecture of modern legal practice, with both general and specialised practitioners. That is, common professional skills and attitudinal competencies and standards can define, albeit that they may be developed, assessed and ultimately practised in different areas of law."

We welcome the clear acknowledgement of the necessity for education and training to be developed to suit the needs of the different categories of solicitor-practitioner.

We believe the issue of whether a solicitor should be permitted to set up in practice immediately on qualification, as is currently possible, should be examined and we agree with the suggestion in the HT Review² that the competence statements could effectively address this issue.

The HT Review also suggests³ that the proposed competence statement for solicitors and barristers:

"...would initially only cover what was needed, from a regulatory point of view for admission. However, they would provide a basis for further elaboration in future and could be built on by other agencies, such as the Legal Aid Board, who may wish to specify what additional competencies or attributes they would require of practitioners on top of the defined entry level competence."

There is clearly a minimum competence and standard which will be required of all solicitors and barristers, with additional competencies required for the different areas of practice (as mentioned above). For example, particular competencies would be required of in-house solicitors, which would not necessarily be required of solicitors practising in other arenas.

We note from proposal 2 (addressed below) that it is proposed that the Legal, Practitioner, Education and Training ("LPET") Committee (under the auspices of the LSRA) would be tasked with determining the competence statement. Clearly on-going dialogue in this respect with all relevant stakeholders would be very important for this purpose. The LPET Committee would need to be sufficiently independent of any particular stakeholder so as to properly fulfil its proposed role.

2.2 **Proposal 2:** Governance and establishment of the LPET Committee

We agree that, in order to be able to fulfil its statutory responsibilities under the 2015 Act, the LSRA should have a clear and independent oversight role in the legal education and training system.

We welcome the suggestion for the establishment of the LPET Committee and for it to be responsible for setting and assuring standards of legal practitioner education and training.

¹ HT Review, paragraph 8.2.5.

² HT Review, paragraph 8.2.9.

³ HT Review, paragraph 8.2.10.

As mentioned above, the independence of this body is crucial. We agree with paragraph 8.2.20 of the HT Review that this Committee should reflect the interests of all stakeholders in legal services, education and training.

We welcome the suggestion that the LPET Committee should include members with expertise in the design, delivery and quality assurance of legal education and training.

2.3 Proposal 3: The LPET Committee should develop an accreditation and validation framework for legal education and training providers

We agree with this proposal relating to the accreditation of legal education and training providers and the validation of programmes of legal education and training.

Clearly the quality of training to be provided is an essential pre-requisite to a legal education and training regime that is fit for the purposes of all stakeholders, with the ability to develop, on an on-going basis, the curriculum and teaching methods in order to keep pace with the changes in the market for the provision of legal services.

As regards the development and on-going revision of curriculum and pedagogies, the proposed LPET Committee would clearly need to have sufficient and appropriate expertise in this respect.

2.4 Proposals 4, 5 and 6

We agree with these proposals.

With respect to proposal 5 (assessment methodologies should ensure adherence to standards), the HT Review states⁴:

"If new providers or routes to qualification are introduced, it will be important to ensure that their assessments are bench marked to ensure that equivalent standards are reached".

We assume that the same would apply with respect to the current sole provider of solicitor training. One possible solution to ensure consistency in assessments, in the event that there are multiple providers of legal training, is to have one single assessor (akin to the retention of Kaplan by the UK Solicitors Regulatory Authority in the context of the new Solicitors Qualifying Exams).

2.5 Proposals 7 and 8

In our earlier submission to the LSRA, we expressed our view that the current requirement of the Law Society that law graduates be required to sit the Final Examination – First Part ("FE-1") should be abolished and set out our reasons for this view (attached). Therefore we agree with the suggestion in proposals 7 and 8 to the effect that a separate set of examinations for entry into professional legal training would be removed, on the basis that providers of legal education could and would demonstrate the ability of their programmes to develop and assess students to the standards required for entry into professional training as either a solicitor or a barrister. It remains to be seen whether third level institutions offering law or combined law degrees/courses will accept this proposal.

⁴ HT Review, paragraph 8.3.11.

2.6 Proposal 9 (Non-Law Graduates)

We agree that the examinations for entry to the existing professional programmes for non-law graduates (for solicitors and barristers) should remain.

2.7 Proposal 10 (Diversity)

We support the proposal that the LSRA should ensure that a modern system of education and training for legal practitioners in Ireland is designed with considerations of equality and diversity at its heart.

2.8 Proposal 11 (Admission)

We agree with this proposal.

2.9 Proposal 14 (CPD)

We do not have any difficulty with the current system requiring a minimum number of hours of professional development to be undertaken each year and indeed find that our solicitors have generally well exceeded the minimum hours required in each particular CPD cycle.

We note that the HT Review does not recommend that the LSRA should seek to accredit CPD providers and we agree with this. CPD can be provided in a variety of ways and we believe that a formal accreditation process would not be beneficial and could put unnecessary constraints on what would otherwise be valuable training.

We would not have any difficulty with CPD providers linking their courses to the proposed competency framework, with due flexibility for the training needs of the particular areas of practice.

3. Conclusion

We look forward to further liaising with the Authority on these important issues and to participating in the public symposium on 19 September, 2019.

McCann FitzGerald

29 August 2019

**Submission to the Legal Services Regulatory Authority,
as part of the public consultation under Section 34 of the Legal Services Regulation Act 2015,
in relation to the education and training in the State of Legal Practitioners**

1. Introduction

- 1.1 McCann FitzGerald welcomes this opportunity to make a submission to the Authority. We are of the view that this consultation under the Legal Services Regulation Act 2015 (the 2015 Act) is timely. The views expressed in this submission relate to the education and training of trainee solicitors only.
- 1.2 In our submission we will share some of our concerns in relation to the current regime, both with regard to the FE-1 examinations and in relation to the Professional Practice Courses, and suggest proposals for change/improvement.

2. The Final Examination – First Part (FE-1)

- 2.1 We are of the view that the current requirement of the Law Society of Ireland, that law graduates sit this entrance exam, should be abolished. Alternatively, exemptions from sitting particular subjects should be granted as appropriate for students who have studied and passed at degree level some but not all of the subjects encompassed in the FE-1 exam.
- (a) The FE-1's entail a re-examination of subjects that have, for the most part, been examined at third level.
 - (b) The third level institutions that offer law (or law combined with another subject) as a degree course are subject to the statutory requirements of the Qualifications and Quality Assurance (Education and Training) Act 2002 and meet the requirements for a degree level course.
 - (c) We do not view the removal of the FE-1's (or an exemption for students who have passed the relevant subjects) as exposing the profession to a risk of diminution in standards/quality of the profession as a whole. We recruit trainees typically after the third or fourth year of their degree course and do not rely on FE1 outcomes to make our recruitment choices.
 - (d) The requirement for law graduates to sit the FE-1's imposes a significant burden on the firm in terms of resource planning and cost.
 - (e) We believe that we are losing potential trainees to English law firms by virtue of the Law Society FE-1 requirement, both due to the inherent delay imposed on a trainee commencing their training contract, and the upfront cost and overall burden of the examinations. The requirement to sit the FE-1 exams unnecessarily delays the start of the training contract, in some circumstances by up to eighteen months. We have had a number of instances of having recruited trainees who have subsequently had a change of heart and have decided that a training contract in England is a more attractive proposition since it enables them to avoid sitting the exams and results in speedier qualification.
 - (f) The entrance examination also imposes a significant burden on law graduates. It delays them unnecessarily in starting their chosen career when they have already committed typically 4 years to a degree course and will be required to complete a 3 year traineeship before qualification as a solicitor. In circumstances where law graduates are being re-examined on subjects previously studied and examined on in

college, we do not see the merit in the imposition of such a burden on them. The absence of local exam centres was also mentioned by associates as a further negative.

- (g) We do appreciate the need for the retention of the FE-1 exams for non-law graduates.
- (h) Pursuant to section 34(3)(c)(iv) of the 2015 Act, the Authority is required to include recommendations in its report in relation to arrangements that would facilitate the minimisation of duplication, and consequent expense incurred, in the taking of exams in legal subjects by someone who has obtained a third level law degree that includes one or more of the subjects that form part of that course. It is our view that the requirement that law graduates sit the FE1's is an unnecessary duplication and does not add value in terms of the legal knowledge/skills of our trainee body.

3. Professional Practice Courses

- 3.1 We do not view the professional practice courses ("PPCs"), as administered by the Law Society, as suitable for our purposes. We strive to produce associate solicitors who are best in class in the context of the business environment (both domestic and international) in which our clients operate. As set out below, we have serious reservations as to the content of the courses, in particular the PPC I course, regarded as the "foundation" course. The PPC I course is geared towards the training needs of solicitors who will not practise in the corporate arena. We also have concerns as to the professionalism of the current delivery of the courses. Whilst in this submission we wish to focus on our principal concerns regarding the PPCs (being their inadequacy for the purpose of training solicitors to advise business clients and their structure), a few of our other concerns regarding quality merit mention and are addressed below.
- 3.2 Our firm, and other commercial law firms in the market, serve the needs of domestic and international corporate clients. An analysis of the solicitors' practising certificates issued as of 31 December, 2017 shows that 43% of practising solicitors are working either in the 20 largest firms or in-house, serving the needs, of a significant portion of the corporate sector, both domestic and international.¹ As regards the top five firms (in size terms, including our firm), there were over 1,500 practising certificates issued to solicitors in those firms as of December 2017. These firms are clearly significant providers of legal services in the corporate arena and require a training course which meets their needs and in turn the needs of their clients.
- 3.3 The importance to the Irish economy of law firms' ability to service the legal needs of both domestic and international businesses, in terms of professional, efficient and tailored advice and assistance, must be borne in mind in the context of the future training of solicitors. It is well established that the legal profession has a direct role in facilitating economic growth. It is also well established that the capability of firms in providing a top quality legal service in an international business context is a critical component in attracting foreign direct investment in Ireland. We do not believe that the PPCs currently being provided by the Law Society meet these important training needs of the profession.
- 3.4 A number of the broad areas of legal practice (e.g. litigation, conveyancing, tax law and business law) addressed by PPC I are, on their face, relevant to the work of solicitors generally. However, with the exception of the business law module, PPC I training in these areas is focused on the work of a general practitioner and not a practitioner serving the needs of a corporate client base. Specific instances of this would include the following:
 - (a) the litigation module on PPC I which has a limited emphasis on High Court and Commercial Court practice (although this comprises everyday work of litigation

¹ Source: Law Society Gazette Jan/Feb 2018 and April 2018

departments in commercial firms) and a significant emphasis on personal injuries practice and debt collection;

- (b) the criminal law module which has a heavy emphasis on road traffic offences module, as distinct from white collar crime and regulatory offences which would be relevant to a commercial law firm;
- (c) the landlord and tenant module which has a large focus on residential tenancies.

The business law module is relevant to our firm but limited in nature and duration. PPC I also includes a lengthy module on wills and probate although work in this area is not typically undertaken by large commercial law firms.

- 3.5 As regards PPC II, the professional practice conduct and management module is based to a great extent on the running of a small practice, for instance in the task set concerning the preparation of a business plan which by its nature is more relevant to a solicitor setting up as a sole practitioner or working in a smaller practice. There are certain electives on PPC II that are currently compulsory (for instance family and child law) which are not relevant to the practice of commercial firms – using time that could be usefully spent on other more relevant topics. The overall approach to the teaching of ethics appears somewhat ad hoc and has been identified as a gap in the PPC content by our associates.
- 3.6 Whilst the course content has developed over the years to include a greater emphasis on professional legal skills, there remains a need for a lot more. We see an urgent need for the course content to be developed in order to keep pace with on-going technological developments so that trainees are properly equipped for the work of a solicitor today and into the future. Technology is already having a significant impact on the way in which commercial law firms deliver their services to clients. This trend is increasing. Trainee solicitors need to be properly trained by appropriate experts in this area to meet these needs and to be “future proofed”.
- 3.7 The practical consequence of these inadequacies in the PPCs is that this firm (and other commercial firms) must provide their own training geared toward a commercial law practices. We do not expect that professional training would cover in detail every specialist area of law. It is, however, entirely appropriate, given the scale of commercial firms, the different focus of their work and the needs of their clients, to expect training which has the same corporate focus and is not focused primarily on general practice. From our firm’s perspective, a course is required which encompasses the legal content and skills required for trainees working in a corporate law firm serving the needs of corporate clients.
- 3.8 The structuring of professional training also requires review and change. There is a consistent view expressed by associates in the firm that PPC I is too long, with the sense being that very little is done in the first month – by contrast the view expressed in relation to PPC II is that there is a huge amount of material encompassed in a relatively short course with a limited number of lectures and tutorials.
- 3.9 Furthermore the structuring of PPC I and II, comprising two separate courses, adds significantly to the administrative burden of running our trainee programme, including with respect to seat and work allocation. We believe it would be more effective and efficient to structure professional training as a single course running for one academic year.
- 3.10 In terms of quality issues, concerns have been raised by our associates as to the quality of certain lecturers and tutors involved in the delivery of the PPC I and II courses, and issues arising as to consistency in the delivery of the course content in this respect. Furthermore, time is often lost in the effective repetition by lecturers of content already covered by other

lecturers. There seems to be an absence of benchmark standards. In the context however of what we understand are approximately 1,200 practitioners involved in the provision of the course content, the implementation of any such benchmark standards/training of the trainers could be a challenge. Course materials circulated to the students (via soft copy or otherwise) are not always up to date. Whilst this is presumably something that could be remedied, it does raise a concern as to the professionalism of the approach of the Law Society to the delivery of the PPC course content.

- 3.11 Notionally the Law Society, if so minded, could ultimately respond to some of these quality concerns, but we have some doubt as to its capability to so do, particularly in any kind of timely manner.
- 3.12 We note the effective monopoly enjoyed by the Law Society in the training of trainee solicitors. Whilst the Society does have power under the Solicitors Acts ² to authorise any other body or institution to provide courses for the training of persons seeking to be admitted as solicitors, we are not aware of any party having ever sought such authorisation. Whilst recognising the need for consistency in standards, there appears to us to be an inherent conflict of interest in the Society being the current sole provider of such training, also being the party with the power to authorise (or otherwise) another aspiring provider of training.
- 3.13 We are aware of at least one third level institution that has expressed serious interest in providing training to trainee solicitors and believe it has the requisite capacity to do so, whether as a sole provider or perhaps (if it saw fit) on some form of joint venture basis with the Law Society.
- 3.14 We are of the view that the monopoly of the Law Society has been and remains detrimental to the provision of training adequate to meet the needs of solicitors (both in practice and in-house) serving the varied and complex needs of corporate clients.
- 3.15 We acknowledge over the years the Law Society has made some limited effort to address the concerns of commercial firms, for instance by offering some more commercially focussed specialist modules in PPC II. However the response remains wholly insufficient in terms of meeting the broader needs of a commercial law firm and the training requirements, both general and specialist, of trainees working in the corporate sphere.

4. **Proposals for reform of the Professional Practice Courses**

- 4.1 We believe that there should be one period only of out of office training which should run for the period of an academic year (nine months). Ideally this would be commenced by trainees after a period of not less than 4-6 months of in-office training.
- 4.2 There is a need for a significant overhaul and update of the training system to deal with the concerns raised above so as to meet the needs of commercial law firms operating in today's corporate world, and to meet the needs of both domestic and international business clients. In the design of the PPCs there are clearly foundation subjects that all trainees need to cover, however the focus of the content needs to be business orientated so as to adequately meet the training needs of today's commercial law firm trainees.
- 4.3 The removal of the de facto monopoly enjoyed by the Law Society in the training of trainee solicitors would assist in this respect. In light of our experience over the years of the Law Society, we have concerns that the Society is quite simply not in a position to react and meet the need to deliver a course suitable for trainee solicitors working in the corporate arena and serving the needs of business clients, domestic and international.

² Section 40 of the Solicitors Act 1954 as amended.

- 4.4 The introduction of competition will be a good thing for the profession. It should prove to be an incentive to the Law Society to continue to develop and expand its training – both as to content, focus and delivery.
- 4.5 Any new provider will need to be duly accredited by an independent body to protect standards, which is an issue to be examined by the Authority pursuant to section 34 of the 2015 Act.

We would welcome the opportunity to meet with the Authority if this is possible.

McCann FitzGerald

Date: 26 November, 2018