

Date | 11 February 2020

Our ref | NCG0000046

Your ref |

By Email publicconsultations@lsra.ie

Section 33 Consultation
Legal Services Regulatory Authority
PO Box 12906
Dublin 2

Invitation by the Legal Service Regulatory Authority (the Authority) for submissions on Admission to the Legal Profession

Dear Sirs

A&L Goodbody welcomes the opportunity to make submissions to the Authority's consultation in respect of Admission Policies for the Legal Profession. We do so on our own behalf and also in our collective clients' interests and in the public interest as we perceive it.

Introduction

A&L Goodbody is one of Ireland's largest and longest established law firms, with more than 100 partners and more than 300 solicitors. In any given year we employ approximately 115 trainees, with this figure set to rise to 135 in the next year. We annually recruit significant numbers of trainee solicitors, with 46 new trainees due to join us in April 2020, making us one of Ireland's largest legal employers and one of the largest legal recruiters in Ireland.

We are a full service business law firm with a predominantly corporate client base, including many leading Irish companies and many multi-nationals. Our clients are based all over the world. Our work with clients in Ireland and around the world gives us a clear perspective of the changing needs and expectations of the Irish and international business community and of how the Irish legal profession (and those bodies responsible for its training and education) need to do more to adapt to meet such evolving needs and expectations.

The Authority's consultation is directed to considering whether the numbers admitted to practise as barristers and solicitors are consistent with the public interest in ensuring the availability of high quality but cost effective legal services in Ireland. We do not consider that sufficient numbers are being admitted as solicitors to meet such public interest concerns. In our view, Ireland needs significantly greater numbers of solicitors, and the need for legal expertise will only increase in an era of increasing regulation and in the light of developments such as BREXIT.

Policies which prevent sufficient numbers of solicitors entering the legal profession

In our view, the unnecessarily expensive, onerous and time consuming admission and training requirements imposed on high quality third level graduates are excessive and unhelpful. In our experience:

- such requirements serve to discourage many graduates from qualifying as Irish solicitors, making it more attractive to pursue alternative careers or to qualify overseas where the professions are less restrictive;

- Our current system runs the risk of becoming even less competitive in comparison to England and Wales once the Solicitors Qualifying Exam (the SQE) is introduced in that jurisdiction. The SQE will offer an even cheaper and faster route to qualification in England and Wales, providing a further incentive for graduates to elect to qualify there, and further depriving Ireland of diverse and talented graduates in the legal profession.
- for those who persevere to qualify in Ireland, entry to the Irish profession is delayed and made more expensive by the Law Society's current requirements and restrictions
- the process is further complicated and delayed by the limitations on the way mandatory training is offered and made available by the Law Society, being the monopoly provider.
- Mandatory training and examinations are scheduled and furnished at the convenience of the Society and its staff rather than in response to the needs of students and their prospective employers (due to the lack of competition and the conflicted role of the Society). This failure to respond to the needs of aspiring solicitors unnecessarily creates a time lag as they wait to undertake the FE1 and to undertake subsequent training and development requirements.

We do of course recognise the need to maintain appropriate professional standards, and the public interest in doing so, but we remain concerned that:

- Current admission and training requirements cannot be justified on that ground both because they go beyond what is reasonably required and also because they do not, in any event, sufficiently or adequately advance those legitimate objectives in the light of changing Irish and international client requirements;
- To the contrary, the current requirements work against the public interest in practice because they make it unnecessarily expensive, difficult and time consuming to enter the solicitors' profession in Ireland.

Such barriers to entry inevitably impact on the availability and cost of legal services in Ireland. In our experience as a firm constantly recruiting talented lawyers, there is already a significant shortage of individuals qualified for admission as solicitors in Ireland, a situation which necessarily impacts on the availability and cost of such services to the general public and other consumers of such services.

Earlier Submissions

We would reiterate the concerns expressed in our submissions made to the Authority last year and would ask the Authority to have regard to those submissions in the context of the current consultation (copies enclosed for ease of reference). In our view, the current admission and training requirements for solicitors constitute potential barriers to entry. We are not convinced that all such requirements can be justified as promoting the public interest.

In our experience, students with strong academic accreditation from leading third level institutions are prevented, delayed or impeded in their efforts to begin their career by unnecessarily burdensome FE1 and subsequent training requirements imposed by the Law Society. Such requirements mean that, regardless of legal training and credentials, it takes far too long and costs far too much for solicitors to start their career and begin providing services to the public.

Such an outcome might be justifiable if such restrictions were proportionate and were the minimum necessary to advance and protect the legitimate public interest, ensure the proper and effective administration of justice or to promote an independent, strong and effective legal profession. However, the Society's admission requirements go beyond what is necessary to advance the regulatory objectives identified in Section 13 of the Act, and run counter to the public interest because their inevitable effect is to reduce competition and consumer choice.

As outlined in our earlier submissions, the Law Society's current admission and training requirements are unsuited to the needs of those now practising law in Ireland in a changing economy and to the changing needs of their clients. Unnecessarily burdensome restrictions limit the number of solicitors practising in Ireland, with a corresponding impact on consumer choice and price.

Current Admission Policies serve to reduce Diversity Within the Solicitors' Profession

It would be difficult to contend that the profession's current profile reflects the socio-economic diversity of Irish society. Ireland is scarcely alone in that regard and there may be a number of reasons, however, the current barriers to admission as a solicitor certainly discourages and hinders the development of greater socio-economic diversity within the profession.

There is a clear public interest in the development of a more diverse legal profession which is more reflective of modern Irish society and A&L Goodbody is actively seeking to ensure that we continue to encourage and develop a more diverse workplace, for the benefit of our firm and our people and our clients and also for the benefit of Irish Society as a whole. There are many issues which need to be tackled to advance that objective. However, in our view, one of those issues is the reality that the Law Society's current admission requirements tend to discourage diversity in practice because the cost, time commitment and other practical difficulties involved in undertaking FE1s, a subsequent training contract and then the PPC courses can deter talented "would be" lawyers from pursuing a career as a solicitor even when they have very strong credentials to do so.

A candidate from a legal family or a similar professional background is far more likely to have greater economic backing, support and encouragement and to be willing to invest the time and money required by the Law Society's burdensome admission requirements. Accordingly, students from more privileged backgrounds remain, in 2020, significantly more likely to qualify as a solicitor than other students who may have equally (or more) impressive credentials following third level education.

Accordingly, the Law Society's current restrictions go against the public interest in ensuring diversity within the solicitors' profession in other ways. Equally talented university graduates from less affluent backgrounds who lack financial support and family backing are more likely to be deterred from becoming a solicitor because of the time, cost and uncertainty involved. The removal or reduction of all barriers which unnecessarily impede and obstruct qualification as a solicitor would disproportionately benefit individuals from less affluent backgrounds and from groups not already over represented in the legal profession.

The current restrictions are also unhelpful from the perspective of gender diversity. Although gender diversity has significantly improved within the legal profession in numerical terms (and Ireland can be proud of the fact that more than half of Irish solicitors are female) there is a continuing concern about diversity at more senior levels of the solicitor profession. As our firm, we are focussing on this issue as part of our own efforts to encourage greater diversity and to attract talented lawyers from all sectors of society. Once again, while many issues need to be addressed in terms of gender diversity within the legal profession, it must be noted that the Law Society's current restrictions do not help to encourage gender diversity.

A less onerous admission procedure (as in England & Wales) would help to encourage greater gender diversity at more senior levels within the profession. Offering young women a faster route to qualification as solicitors would significantly advance them in their career path and streamlining and simplifying the qualification route would be particularly beneficial for the many female solicitors who may ultimately wish to avail of maternity leave. While generous maternity leave is offered by larger lawfirms (often above and beyond statutory requirements) so as to attract, support and retain talented staff, young women have expressed the concern that being out of the office for an extended period and subsequently balancing work and family commitments will make it harder for them to develop the experience and market recognition which they need to build a practice and progress their career to its maximum potential. Streamlined admission requirements could enable such candidates to enter the profession sooner, allowing them to develop their experience and practise from a younger age. This would benefit all young

solicitors but particularly female solicitors who may feel more secure in embarking on maternity leave having had more time to develop their experience, expertise, reputation and client contacts as a result of a less protracted admission procedure.

A faster route to qualification would empower female solicitors in particular by helping them to build up more experience, putting them in a stronger position and giving them more options if or when they need to balance family commitments and career ambitions. Such flexibility might help to reduce the level of "mid-level" attrition within the solicitors' profession after 3-4 years of practice, attrition which disproportionately affects young women. Clearly, other issues also need to be addressed (and we, as a firm, have committed to a range of initiatives to this end). However, it is important to note that the simplification and shortening of admission procedures, minimising the "lag" between graduating from university would particularly benefit female solicitors who subsequently wish to avail of maternity leave by giving them more time to establish themselves before doing so.

The requirements to undertake FE1s in Dublin and the requirement to undertake mandatory training in Blackhall Place also tends to discourage diversity, making it harder and more expensive for graduates from outside Dublin to qualify as solicitors.

Recent and proposed Law Society changes fail to address serious diversity concerns. For example, the Society is now allowing students to undertake certain FE1s examinations as they undertake the corresponding subject in the degree course. This is an unsatisfactory response for several reasons:

- It implicitly acknowledges that the FE1s are a barrier to diversity without offering an adequate solution to that issue
- It still requires students to undertake redundant exams, replicating subjects they have studied as part of their third level degree
- Offering students the chance to take extra examinations at crucial stages of their undergraduate course is unattractive because, because
 - it would require students to undertake additional examinations which will not count to their degree
 - as a result of the substantial examination fees imposed by the Law Society students would incur a substantial cost if they were to undertake the examinations while still doing their university degree
 - the option is impractical for students outside the Republic of Ireland
 - the Law Society's timing of the examinations is inflexible – they can be undertaken only in March or October, which is not convenient for students starting or returning to college in October or preparing for examinations in March
 - The FE1s can only be undertaken in Dublin which increases the difficulty and expense for students from outside Dublin
 - the time and cost commitment during a degree course would be unjustifiable unless they were definitely committed to a career as a solicitor
 - students from less privileged backgrounds are more likely to be working part time, meaning that they are less likely to have the time and money required to undertake FE1s at the same time as they put themselves through university

- for students to accelerate their path to qualification, the added burden during their degree course could have the opposite effect if it impacts on their ability to perform well in their undergraduate studies which should be their main focus at that point

In practice, this means that, once again, the Society's admission procedures would have the effect of benefiting students from a legal or similarly privileged background who are committed to a degree in law while deterring candidates from less privileged backgrounds.

Students with the financial wherewithal can avail of the change to the FE1 rule and secure a slightly shorter route to qualification. Students from less advantageous backgrounds will be less likely to be able to do so. Accordingly the effect of the recent Law Society changes may be to reduce the opportunity for diversity within the legal profession even further.

Conclusion

Reforming training, education and admission barriers to entry to the solicitor's profession would make Ireland more competitive as against neighbouring jurisdictions. We have already noted the trend for highly qualified and able Irish law graduates to choose to qualify in England and Wales because of the much faster route to qualification. We do not believe that there is any suggestion that the procedures adopted in our neighbouring jurisdictions fail to advance the public interest, effective administration of justice or to promote the interest of consumers etc. Such jurisdictions meet those entirely appropriate public interest objectives but do so without imposing training or education requirements which have the effect of delaying an individual's commencement of his or her career as a solicitor and without making it more difficult and expensive for them to do so.

The Authority's public interest objectives are set out section 13 of the Act and recognise the need to:

- a) increase competition in the provision of legal services
- b) promote the interests of consumers relating to the provision of legal services
- c) encourage an independent, strong and effective profession
- d) protect and promote the public interest in supporting the proper and effective administration of justice
- e) continue to maintain professional standards of independence and integrity

In our view, a fundamentally important step to advance those statutory public interest objectives would be to take action on foot of the recent education consultant consultation to ensure:

- reform of admission, training and development procedures
- independent regulation of such policies and procedures
- the elimination of the conflict of interests inherent in having the same body determining what training might be required for solicitors and controlling and being responsible for the provision of such training
- the elimination of the current de facto monopoly in the provision of mandatory training and development courses which all trainees must undertake in order to qualify for admission as solicitors
- the introduction of competition to allow providers other than the Law Society to offer any mandatory training with a view to offering students and employers more flexibility

- the introduction of measures designed to shorten the time lag between graduating from university and qualification as a solicitor

The Authority cannot ignore the Law Society's deeply conflicted role, given that it is the major provider of legal services in Ireland which it makes mandatory for all solicitors seeking to practise in Ireland. The Society also determines the admission criteria and the extent to which those courses are obligatory.

Given its vested interest and conflicted position, it is hardly surprising that the Law Society has essentially defended the preservation of the status quo. However, in our view, the effect of the status quo is to prevent many individuals who would make admirable lawyers from qualifying into the profession or to delay or impede their doing so. Many individuals reluctantly choose not to seek admission as solicitors because they have to earn a living without family support and they are unwilling or unable to make the additional investment of time and money required to achieve that goal, over and above their university degree. Talented graduates are lost to private practice in Ireland – some use their skills elsewhere and their services are not available to consumers in Ireland. Some give up law entirely or emigrate to comparable jurisdictions which recognise their ability and credentials and allow them to start their career much more quickly than is the case in Ireland. In our view, such unnecessary and disproportionate admission requirements (including training and development requirements) are not in the public interest and should be reformed, as should the responsibility for determining such requirements. This would be the best way to advance the public interest objectives set out by the Oireachtas in Section 13 of the Act.

Yours sincerely



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