



THE BAR
OF IRELAND

The Law Library

**SUBMISSION TO THE
LEGAL SERVICES REGULATORY AUTHORITY
ON THE ADMISSION POLICIES OF THE LEGAL
PROFESSIONS AS REQUIRED BY SECTION 33 OF THE
LEGAL SERVICES REGULATION ACT 2015**

February 2023

1. INTRODUCTION

The Council of The Bar of Ireland is the accredited representative body of the independent referral Bar in Ireland, which consists of members of the Law Library and has a current membership of approximately 2,150 practising barristers. The Bar of Ireland is long established, and its members have acquired a reputation amongst solicitors, clients and members of the public at large as providing representation and advices of the highest professional standards. The principles that barristers are independent, owe an overriding duty to the proper administration of justice and that the interests of their clients are defended fearlessly in accordance with ethical duties are at the heart of the independent referral bar.

The Council has prepared these submissions at the request of the Legal Services Regulatory Authority who are in the process of preparing a **fourth** annual report for the Minister on the admission policies of the legal professions in accordance with section 33(1) of the Legal Services Regulation Act 2015.

The submission follows the format of the information sought by the Legal Services Regulatory Authority as set out in their correspondence of 7th December 2022:

- Specific data requested by the LSRA;
- Demand for barrister services in 2022;
- Costs of legal services in 2022 and whether these were available at a reasonable cost to consumers;
- The standard of education and training for persons admitted to practice;
- The extent to which the admissions policies of the legal professions are consistent with the public interest in ensuring the availability of legal services at a reasonable cost, taking into account the demand for services and the need to ensure adequate education and training standards for persons admitted to practice;
- Any ongoing impact of Brexit and the Covid-19 pandemic on the above matters.

2. SPECIFIC DATA REQUESTED BY THE LSRA

2.1 The number of barristers who joined the Law Library in October 2022 and a breakdown by gender and age.

A total of **92** new members joined the Law Library in October 2022.

TABLE 1: MEMBERS WHO JOINED IN 2022 BY AGE AND GENDER

AGE RANGE	20 - 30	31 – 40	41 – 50	51+
	46	24	6	16
GENDER	MALE		FEMALE	
	53		39	

2.2 The number of barristers who re-joined the Law Library during the legal year 2021 - 2022.

During the legal year 2021/2022 (October 2021 – September 2022), there were **14** barristers who re-entered membership of the Law Library.

TABLE 2: RE-ENTRANTS IN 2021/2022 BY AGE AND GENDER

AGE RANGE	20 - 30	31 – 40	41 – 50	51+
	1	4	1	8
GENDER	MALE		FEMALE	
	11		3	

2.3 The number of barristers who commenced ‘devilling’ in 2022 and a breakdown by year called to the Bar, gender, age and home location.

Of the 92 who joined membership of the Law Library, **90** commenced their 12-month period of ‘devilling’. Two were applicants from another jurisdiction who were not required to undergo a period of ‘devilling’.

TABLE 3: NEW DEVILS - YEAR CALLED TO THE BAR

YEAR OF CALL TO THE BAR	2010	2012	2017	2018	2019	2020	2021	2022
NUMBER	2	1	1	1	3	4	11	67

TABLE 4: NEW DEVILS – AGE, GENDER & HOME LOCATION

AGE RANGE	20 - 30	31 – 40	41 – 50	51+
	46	24	5	15
GENDER	MALE		FEMALE	
	51		39	

LOCATION	All pupils must be available to pupil/devil in Dublin. Based on the information sought at application stage, 70% provided a home address indicating that they resided in Dublin with the remainder providing a home address outside of Dublin ¹ .
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2.4 The number of Masters who were available to take on devils in October 2022.

There were **157** Masters listed on the Law Library Master list in 2022.

2.5 The total number of Law Library members at 31 December 2022

The total number of members of the Law Library at 31 December 2022 was **2,144**.

2.6 The number of barristers who ceased membership of the Law Library during the legal year 2021-2022

During the legal year 2021/2022 (October 2021 – September 2022) **140** members ceased membership of the Law Library.

TABLE 5: BREAKDOWN OF REASONS FOR CESSATION OF MEMBERSHIP 2021/2022

REASON FOR LEAVING	NUMBER
Deceased	7
Excluded Arrears	9
Excluded PII	2
Judge	11
Retired	16
Personal	20
Work Elsewhere	44
No reason given	31
Ceased after a period of Leave	0
TOTAL	140

2.7 Have there been any changes to the admission policies of the Bar of Ireland during 2022?

There have been no changes to the admission policies to enter membership of the Law Library in 2022.

¹ It should be noted that this information is based on the provision of a home address for the purpose of an application form for membership of the Law Library and a caution is urged in relying on this information for any other purposes.

2.8 Any other issues that you believe are pertinent to the preparation of the Authority's report under section 33(1)(c).

Section 33(1)(c) of the Legal Services Regulation Act 2015 provides as follows:

'(1) Not later than 4 months after the end of each financial year, the Authority shall prepare and submit to the Minister a report—

...

(c) containing an assessment as to whether or not, having regard to the demand for the services of practising barristers and solicitors and the need to ensure an adequate standard of education and training for persons admitted to practise, the number of persons admitted to practise as barristers and solicitors in that year is consistent with the public interest in ensuring the availability of such services at a reasonable cost.'

The Bar of Ireland commissioned EY in 2021 to undertake a review of the profession in Ireland. One of the findings of the EY review was:

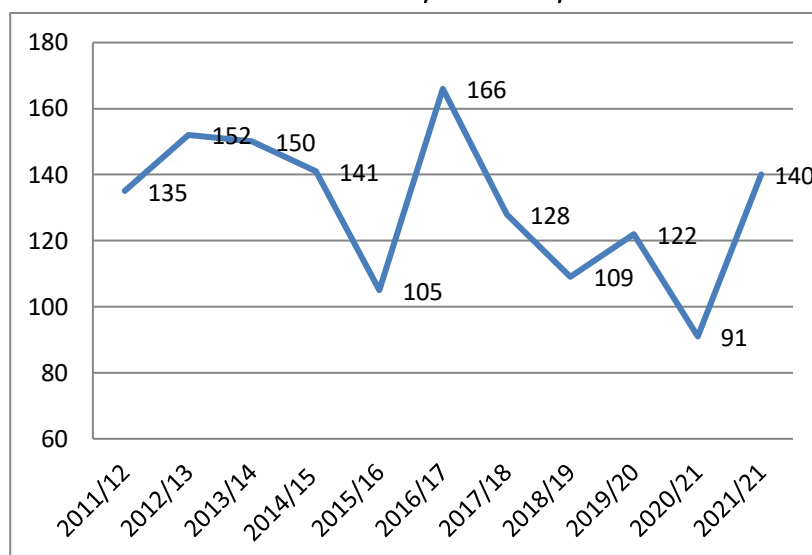
'The current number of barristers in Ireland, with 45 per 100,000 of population, is at the higher end of EY's international benchmarking. When EY examine the number of barristers per 100,000 population in each of the other jurisdictions, the median figure is 25.5. While the other jurisdictions have differences that limit comparability, this would indicate that an appropriate size for the Irish market of barristers is 1,260 assuming the population remains relatively stable. When EY account for Eurostat's population projection that the population of Ireland is to increase by 1 million people by 2040, an appropriate size for the Law Library is 1,515. This suggests that the Law Library is over-populated with barristers, and the numbers leaving the profession due to an inability to ascertain enough of work further confirms the suggestion².'

This finding supports our view previously expressed that the Irish legal market is over-populated with barristers. As noted above, 140 barristers left membership of the Law Library in the legal year 2021/2022. The numbers leaving in 2021/2022 have increased on recent years as evidenced in the table below:

² Page 51 of EY Report 'Preparing for the Future: Pushing Boundaries – Strategic Review of the Future Landscape for The Bar of Ireland', July 2021

TABLE 6: NUMBER OF MEMBERS LEAVING LAW LIBRARY 2011/12 - 2021/2022

YEAR	NUMBER LEAVING
2011/2012	135
2012/2013	152
2013/2014	150
2014/2015	141
2015/2016	105
2016/2017	166
2017/2018	128
2018/2019	109
2019/2020	122
2020/2021	91
2021/2022	140



Given the number of members leaving, it can be deduced that the primary challenge that confronts a member's ability to maintain their practice at the independent referral bar is generating income. This challenge, and the resulting consequences, are evidenced in the severe cuts that were applied to barristers' professional fees for work undertaken in the public sector during the economic downturn. Since 2008, cuts to professional fee levels have ranged in the order of 28.5% to 69%. For many practitioners, these cuts have made it unviable to continue to participate in State-funded schemes such as the Civil and Criminal Legal Aid Schemes, and many new entrants to the Law Library are voting with their feet and choosing not to practice in legally aided areas such as crime and family law. These areas of law involve long hours of work which is either poorly paid or for which there is no payment whatsoever and new entrants to the profession are often not able to sustain a career working on complex cases where professional fee levels remain at such low levels.

Despite numerous submissions and engagements with the Government since 2016 to address the cuts applied to professional fees of barristers who provide services under State-funded schemes, there has been no meaningful engagement from the Department of Public Expenditure & Reform on this issue. The profession is increasingly concerned that the Government is not sincerely committed to improving the criminal justice system and the experience of victims of crime, witnesses and other stakeholders.

3. DEMAND FOR BARRISTER SERVICES IN 2022

As indicated in our previous submissions, The Bar of Ireland does not hold or collect information on the level or demand for barristers' services in the **private sector**. Our 2020 submission provided detail in relation to the services procured by various **state agencies** that gave some level of indication of the demand for barristers' services in the **public sector** – see section 4 of the February 2020 submission. No substantive changes to the terms and conditions under which the services of barristers are procured through the State have taken place since our previous submissions.

Throughout the course of the pandemic, significant back-logs built across most Court divisions that is generating a demand for barrister services. However, there remains an issue in that there aren't a sufficient number of Judges available in order to address the back-log and consequently the lack of judicial resources continues to impact on the progression of various lists in a timely fashion.

The Courts Service Annual Report for 2021 provides updated data on the average length of proceedings across the various courts. District Court criminal proceedings, from issue to disposal, averaged at 371 days, and 732 days in the Circuit Court. At the time of going to print (July 2022) the information for the average length of civil proceedings from the Circuit and District Courts weren't available. In the High Court the average length of civil proceedings, from issue to disposal, increased from 660 days in 2020 to 797 days in 2021. Personal Injury cases accounted for the lengthiest of proceedings at 1,188 days. Average length of proceedings in the Central Criminal Court, from receipt of return for trial to final order, was 668 days, and 423 days from receipt of charge sheet to final order. Civil proceedings in the Court of Appeal averaged at 529 days, from issue to disposal, and 420 days from issue of notice of appeal to final order in criminal proceedings. Once again, the greatest delays are recorded in the Supreme Court at an average of 3946 days (c. 10 years) across all cases, from issue to disposal.

According to the latest data (2020) by the European Commission for the Efficiency of Justice (CEPEJ), Ireland has the lowest clearance rate in Europe at 60% (European average is 96%) which is a measure of how well a system processes the volume of cases it works with.

A Judicial Planning Working Group was convened in 2021 to consider the number and type of judges required to ensure the efficient administration of justice over the next five years. A consultation was carried out calling on interested parties for submissions in relation to the number and type of judges required; the impact of the COVID-19 pandemic, demographic changes, and implications of Brexit in regard to court caseloads; the development of judicial skills; and the extent to which efficiencies in case management and working practices, as well as enhanced digital technology, could help in meeting additional service demands, improving services, and access to justice. The Council of The Bar of Ireland made a submission to the

Group in which it highlighted, among other things, the need for additional recruitment of judges in line with the European average to support the efficient administration of justice. The European Commission for the Efficiency of Justice (CEPEJ) reported in its 2022 Evaluation Report that Ireland had 3.3 judges per 100,000 inhabitants in 2020, well below the European average of 22.

The report of the Judicial Planning Working Group is expected in the first half of 2023 and the Council is hopeful that the Government will support the likely recommendations to increase judicial numbers.

4. COSTS OF LEGAL SERVICES IN 2022

Chapter 9 of the Kelly Report addresses litigation costs³ and notes that the Review Group had examined various options by means of which the mandate given to it to recommend a reduction in levels of litigation costs might be achieved. However, the Group was unable to reach a consensus regarding recommendations on how to reduce litigation costs. A majority of the Group members recommended the drawing up of non-binding guidelines for costs levels, while a minority of Group members recommended a table of maximum costs levels be prescribed by a new Litigation Costs Committee, which could be derogated from in exceptional circumstances.

Notwithstanding the majority recommendation of the Review Group, the Justice Action Plan goes on to state that work will commence *‘to introduce new scales of legal costs which would be independently drawn up, in order to reduce legal costs and to provide greater certainty to the users of legal services in relation to cost.’* The Department will *‘complete a detailed examination of the recommendations contained within the Peter Kelly report on legal costs. As part of this work, we will carry out a detailed economic and legal evaluation, which will include examining making such scales binding, except where both parties agree to opt out’*. Indecon economic consultants were appointed by the Department of Justice in December 2021 to undertake this economic evaluation. The Bar of Ireland in conjunction with the Law Society made a detailed submission in this regard in February 2022 that strongly refutes assertions made by a number of bodies that legal costs in Ireland are high⁴. Our submission undertook a detailed analysis of the various reports published over the past 20 years and demonstrated that the evidential basis for claims that Ireland is a high legal cost jurisdiction is very limited and that there are considerable questions to be raised on the assertion that Ireland is a high legal cost jurisdiction.

The Bar of Ireland and the Law Society also commissioned an independent report to conduct an economic evaluation of options to control litigation costs and this report was also submitted

³ See pages 265 - 325

⁴ <https://www.lawlibrary.ie/app/uploads/securepdfs/2022/02/FINAL-SUBMISSION-TO-INDECON-210222.pdf>

to Indecon and the Department of Justice. This report provided further in-depth analysis of legal costs in Ireland⁵.

In the view of The Bar of Ireland, the most optimal manner to positively impact on legal costs is through a combination of four measures:

1. Increased investment in the justice system, in particular the number of judges and support staff, better case management and adoption of technology.
2. Investment in effective civil legal aid to ensure access to justice for all regardless of means.
3. The introduction of non-binding guidelines in respect of legal costs.
4. A reduction in state-imposed revenue on a Bill of Costs.

5. THE STANDARD OF EDUCATION AND TRAINING FOR PERSONS ADMITTED TO PRACTISE

The primary focus of The Bar of Ireland in the education and training of barristers is in our educational offerings available through the Continuing Professional Development (CPD) programme. Our submission last year summarised the introduction of a new competency based CPD Scheme that commenced from 1st October 2021. The new framework adopts a holistic view of the knowledge, skills and abilities (i.e. competencies) relevant to effective practice as a barrister. Members are required to consider the competencies within each of the four competency framework domains and undertake an activity relevant to a competency for each domain on an annual basis. We are now in the second year of the new Scheme and the response from members has been very positive with very high levels of compliance with the new requirements.

While clients can be assured of the commitment of barristers who are members of the Law Library to ensuring their continued competence, for those barristers who are on the LSRA Roll of Practising Barristers who are not members of the Law Library, the same level of assurance in relation to their competence cannot be provided. As noted in our previous submission, this represents a regulatory risk and one that should be prioritised by the LSRA in the interest of protecting and promoting the interests of consumers relating to the provision of legal services as provided under section 13(4)(c) of the Legal Services Regulation Act 2015.

⁵ <https://www.lawlibrary.ie/eyreport-3/>

6. THE EXTENT TO WHICH ADMISSION POLICIES OF THE LEGAL PROFESSION ARE CONSISTENT WITH THE PUBLIC INTEREST IN ENSURING THE AVAILABILITY OF LEGAL SERVICES AT A REASONABLE COST, TAKING INTO ACCOUNT THE DEMAND FOR SERVICES AND THE NEED TO ENSURE ADEQUATE EDUCATION AND TRAINING STANDARDS FOR PERSONS ADMITTED TO PRACTISE

As noted in our 2021 submission, in June 2021 the Council responded to a public consultation initiated by the Minister for Justice who requested the Authority to *‘consider the economic and other barriers faced by young barristers and solicitors following their qualification from the King’s Inns and Law Society respectively and to submit a report with recommendations for her consideration’*. In making her request to the LSRA at the time, Minister Helen McEntee stated that this research was part of her plan to increase diversity across the justice sector including the legal professions. The LSRA has been asked to pay particular attention to equity of access and entry into the legal professions and the objective of achieving greater diversity within the professions, and to make recommendations for change. The Minister asked the Authority to examine:

- The remuneration of trainee barristers and solicitors;
- The other costs associated with joining each profession;
- The information available to prospective trainee barristers and solicitors on available masters and solicitors firms; the information available on the terms and conditions available, and how they are selected;
- Any other barriers faced by young barristers and solicitors, including the ability to take maternity leave.

In June 2021, the Council put forward a submission containing eleven recommendations⁶ that would address the challenges in building and maintaining a career at the Bar and support the goal of achieving greater diversity within the profession. We await with interest the publication of this report by the LSRA which is long overdue given that the public consultation occurred over 18 months ago.

7. THE ONGOING IMPACT OF BREXIT AND THE COVID-19 PANDEMIC ON THE ABOVE MATTERS

Impact of Brexit

Our previous submissions set out the response of The Bar of Ireland to Brexit and the Ireland for Law initiative that continues to develop and grow. There is no new or additional

⁶ <https://www.lawlibrary.ie/app/uploads/securepdfs/2021/06/Submission-to-the-LSRA-under-Section-34-of-the-2015-Act-June-2021.pdf>

information to add beyond the information already previously provided.

Impact of Covid-19 Pandemic

The Bar of Ireland continues to engage with the Courts Service Modernisation Programme Legal Practitioners Engagement Working Group that includes representatives of the Council for the purpose of acting as a *‘key collaborator with the Courts Service in progressing the Modernisation Programme of Work as part of the delivery of the Courts Service Strategic Vision 2030’*. High on the agenda of the working group is the family reform programme, the civil reform programme and ICT.

The role of the working group is to *‘provide advice and identify subject matter experts/members of the wider legal community to provide feedback and engagement on Modernisation Programme initiatives and change projects from a legal practitioner perspective, to act as a sounding board on proposed improvements and Modernisation Programme activities, to keep colleagues informed and encourage adoption of proposed changes and promote the broader reform activities and benefits with colleagues within the legal profession, the Justice Sector and wider civil society and identify potential shared common areas for reform and act as champions for change and help drive engagement for future reforms within the wider legal professional community’*.

The profession has an important role to play in this process. The Council representatives on this working group work on behalf of members to ensure that the Courts Service modernisation programme has regard to the views of practitioners, from the perspective of those practitioners and their clients.

8. CONCLUSION

The Council of The Bar of Ireland welcomes the opportunity to respond to this consultation on the admission policies of the legal professions in accordance with section 33(1) of the Legal Services Regulation Act 2015 and is available to provide any further insight and clarity as may be required.