

Barriers for Early Career Solicitors and Barristers and Increasing Diversity

Submission to the Legal Services Regulatory Authority Consultation

The Chief State Solicitor's Office welcomes the examination by the LSRA of the above topics on foot of the request from the Minister for Justice for the LSRA 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 with a view to increasing diversity across the justice sector.

The CSSO is particularly interested in this topic as we have committed in our Statement of Strategy 2021-2023 to promote a culture of respect, dignity, equality and diversity in the workplace. To that end, the Office has established a cross-Office Team for Equality, Diversity and Inclusion in the CSSO chaired by an Assistant Chief State Solicitor. One of the areas of focus for this team is barriers to access to the legal profession including on socio-economic grounds and what this Office might do to address such barriers.

The Office view is that in order for us to ensure diversity in our workplace, it is critical that there is diversity in the numbers of solicitors who are qualifying each year and seeking to advance their careers in the solicitor (and indeed barrister) profession. Addressing barriers to entry involves considering how to critically examine the entry criteria that currently exist from an equality perspective in addition to how to address historic disadvantage to certain groups on the ground of the particular community they come from.

In answering the consultation queries, we have focused on the barriers to early careers in the solicitor profession and the need to increase diversity in that profession, rather than the barrister profession where the challenges may be similar but distinct.

It seems important to note, as a general point, that barriers to entry to the solicitors' profession probably begin at quite an early stage. It seems to us to still be the case that the majority of early career solicitors will have begun their legal career through studying for a legal degree at undergraduate level. Accordingly, it is relevant to consider barriers to entry to these courses at university. In this submission we consider barriers which arise prior to university, during university, but mostly once someone has completed their studies and is at the 'early career' stage, i.e. is a trainee or recently qualified solicitor. We also draw attention to barriers to entry to university "gateway" courses and to the FE-1 examination system.

We would also note that many of the questions below are probably best analysed by individuals/entities with social science/ sociology/ equality and socio-economic research expertise. It may be useful for the LSRA to also consider commissioning research, surveys and focus groups in addition to pursuing a consultation with stakeholders in the legal profession. In addition, consultation with UK and other European regulators could provide useful guidance on how they have sought to diversify access to the legal profession.

We have given our views in good faith from our experience in working with early career solicitors and in trying to increase diversity in our own office but we do not hold ourselves out as offering particular expertise on barriers to entry.

1. The key economic and other barriers to entry to the professions of solicitor and barrister, and their impact in terms of equity of access and entry into the legal professions and the objective of achieving greater diversity within the professions.

In our view, the key diversity challenges in the solicitors' profession are: (i) the lack of diversity in socio-economic background; and (ii) the lack of diversity in ethnicity. Although the Minister's request to the LSRA is to report on barriers to entry post-qualification from the King's Inns and Law Society respectively, the LSRA consultation correctly in our view invites submissions on pre-qualification barriers. This is important as the current cohorts qualifying as solicitors and barristers may not represent Irish society in all its diversity and we need to understand why that is so. Socio-economic barriers to entry commence with access to education and access to university "gateway" paths to law.

In our view, one of the most significant economic barriers to entry to the solicitors' profession is the length of time before a prospective solicitor can expect to qualify and to begin earning a reasonable salary. In contrast to other careers where a graduate can begin work directly from college, in the case of the solicitors' profession, a significant further period is typically necessary. After attaining a third level undergraduate degree, during which time the student's earning capacity will presumably have been limited to casual/part-time jobs, prospective solicitors then also need to study for their FE-1 entrance exams. It can take a number of sittings to pass all exams, during which time again their earning capacity will be limited. This structure necessarily impacts on diversity as a prospective solicitor will need to have some form of financial support, whether from family or otherwise, in order to get to the point of eligibility for a solicitor traineeship. It is more difficult for students from disadvantaged backgrounds or who have their own financial commitments or family dependents to reach that point. Furthermore, once they have passed their exams and obtained a traineeship, they then have another approx. 2/2.5 years as a trainee before they will be qualified and remunerated accordingly. A question to be posed is how a student from a lower socio-economic background can continue to self-fund during this period of time. In reality they will need to concurrently work significant hours. If in addition they have family support responsibilities such as children or other dependents, the reality of their ability to continue to pursue their law career must be in doubt.

In discussing the topic with early career solicitors, a recurring theme in relation to the economic barriers is the relatively high cost of accommodation in Dublin. This could be a significant barrier for trainees from outside Dublin in attending Blackhall Place or in accepting a traineeship with a Dublin firm. Indeed we are conscious that many Dublin firms now offer college internships which is often the start of a pathway into a legal career but again it relies on the student being able to support themselves in Dublin for a few months.

We would note that barriers to diversity are not a problem confined to the legal profession, they are also a problem being experienced in the public service. The Civil Service Renewal 2030 Strategy 'Building on our Strengths' commits to building "an inclusive workforce in order to better reflect the diversity of modern Irish society [and will] include[s] targe or increased diversity in the public service by 2030". The

¹ See Theme 3: Workforce, Workplace and Organisation of the Future, https://assets.gov.ie/135476/ab29dc92-f33f-47eb-bae8-2dec60454a1f.pdf at 22-25.

LSRA may wish to consider setting similar targets which law firms could commit to. In the CSSO, we rely on candidates for State Solicitor competitions possessing a solicitor qualification or an international qualification which is recognised in the State. We do not encounter a throughput of candidates from migrant or Traveller backgrounds. The CSSO would be pleased to work with the LSRA and Law Society in addressing this deficit.

One of the reasons why increased ethnic diversity is so important in the law is so that citizens from ethnic minority or Traveller backgrounds see that the law supports and binds all citizens and that the guarantees set out in Article 40.1 of the Constitution are given effect by the State. This is what is meant by increasing diversity in the justice sector. The law supports society and to do so effectively must be reflective of the composition of that society.

In relation to increasing diversity, another barrier is likely the perception that one needs to be connected or to 'know someone' in a solicitors' firm in order to obtain a traineeship. Students who are recent immigrants into Ireland or who come from an Irish ethnic background which historically has not been well represented in the legal profession (including Travellers) are less likely to be familiar with the landscape of solicitors firms and how to apply for and attain a traineeship.

2. Proposals on how key economic and other barriers to entry to the professions of solicitor and barristers may be addressed in order to improve equity of access and entry into the legal professions and achieve greater diversity within the professions, and by whom.

The lack of diversity in the profession and in those entering and leaving Blackhall Place further suggests that very specific targeted interventions may be required if the profession is to represent and be seen to represent all Irish society. We have set out some high level proposals below.

2.1 Collate Data

As a broad initial proposal, we would note that it will be important to collate data in order to gain insights into the existing demographics of both the solicitor and barrister profession in Ireland. It is difficult to deal with diversity and barriers for entry if the baseline within the profession are not understood and diversity levels not tracked. The LSRA may wish to consider commissioning a comprehensive survey of the profession to establish socio-economic backgrounds, similar to what has been undertaken by the Law Societies of Scotland and of England and Wales. Alternatively the LSRA may wish to delegate the collection of such data to the Law Society (and indeed the Bar Council) noting the approach of the Law Society of Scotland in its annual renewal process.² That Law Society was able to compare the Scottish census

background, including the type of school they attended and their parent's occupation "1 July 2021,

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² The Law Society of Scotland collected data for the first time as part of the annual Practising Certificate renewal process for 2020/2021 in order to better understand the composition of the Scottish legal profession and in turn to "support and advance the Law Society's equality and diversity work". Solicitors were asked for information on their ethnicity, disability, religion, sexual orientation and social

2011 as against the solicitor population 2020/21 to compare the composition of the solicitor profession.³ The benefits of this data are clear in the report produced. It allows targeted efforts to be made where there is visible under-representation in the profession under all the equality grounds including the percentage of solicitors at the associate and partner level in firms.

Included in the report is reference to the difference between lower socio-economic status and access to the profession.⁴ Similarly, research conducted by the Law Society of England and Wales on the diversity profile of the solicitor's profession in 2019 found an under-representation of women and black, Asian and minority ethnic lawyers at senior level.⁵

We further note that, according to the Workplace Relations Commission 2019 Annual Report, discrimination on grounds of race under the Equal Status Acts 2000-2018 is still the most frequent complaint submitted of the nine discrimination grounds. There is very little data on how access to traineeships for persons from minority backgrounds occurs. A discrete study on this issue could be considered to include ethnic minority communities and the Traveller Community.

2.2 Access to Education - Second to Third level

The LSRA may consider championing some of the following reform suggestions at this early stage of the pathway towards being an early-career solicitor:

- Additional levels of targeted supports which allows third level to be a realistic option for all second level students regardless of socio-economic class;
- Identifying targets whereby students from lower socio-economic backgrounds are encouraged to study law in university;
- Matching those targets with supports to achieve the targets;

 $\underline{www.lawscot.org.uk/news-and-events/law-society-news/diversity-data-offers-most-complete-picture-of-profession-yet}$

www.lawsociety.org.uk/en/topics/research/diversity-profile-of-the-solicitors-profession-2019

³ See https://www.lawscot.org.uk/media/371240/diversity-data-pc-renewal-2020-21.pdf at 2.

⁴ The report observed that a solicitor's socio-economic background does not appear to affect their career progression, once they are in the profession. For example, those whose parents did routine/manual work are just as likely to be partners (though it was not clear how long this took). However, it found it appears to be harder for those from lower socio economic backgrounds to enter the profession to begin with: "there is a suggestion that those whose parents are from the grouping that comprises 'Higher managerial, administrative and professional occupations' are significantly more likely to commence to become lawyers in the first place"; ibid at 15. The report also concluded that people from an ethnic minority background "appear to be less likely to be partners than their white peers"; at 5.

⁵ Similarly to the findings of the Law Society of Scotland, they found that the majority (63%) of Solicitors' parents were in occupations classified as professionals rather than intermediate or working class compared to 34% of the general population. Solicitors were considerably more likely to have attended independent/fee paying schools than society in general (23% compared to 7% respectively), although the proportion is lower amongst solicitors admitted more recently 'Diversity Profile of the Solicitor's profession 2019' dated 25th November, 2020

- Supports from education providers, such as:
 - Education providers to work with such schools to address access to school lunches, breakfast, guidance navigating choices and forms involved with third level education in particular if the student is the first in the family to pursue third level education;
 - Reaching out to Deis schools to run workshops and information sessions so that students may consider the legal profession. Barriers need to be broken down in order for the profession to see a significant rise in more diverse applicants;
 - Considering how to equalise economic and cultural advantages entrenched in students from higher socio-economic backgrounds to ensure a level playing field for students;
 - Addressing formal and informal structures which deter entry to university;
 - Addressing cultural constraints; ensure students from less privileged backgrounds do not self-select out of the profession; dispel myths that students do not fit into the culture of the legal profession;
 - Education providers and practitioners to work with schools in deprived areas, identifying students with potential and supporting their development through mentoring and internships with the aim that these students would be strongly considered for a training contract when applying. This should be seen as feeding ground for talent recruitment for more diverse applicants;
 - > Seek to dispel possible beliefs that one needs family members within the legal profession or connections to obtain traineeships or pupillage.

2.3 Law Society Entrance Examinations

A key focus in addressing the socio-economic barriers should be to find a means of curtailing the length of time from leaving school to qualifying as a solicitor. In our view, the most problematic period within this timeframe is that needed to study for, sit and pass the eight FE-1s. It is difficult to advocate for shortening the solicitor traineeship period as this is time very well spent and allows for a trainee to get a rounded training in a number of practice areas. However the FE-1 period can be disproportionally long and off-putting to anyone who is trying to work and earn a living at the same time as studying for the exams.

The transition from university to FE-1 examinations to traineeship to earning capability represents a significant barrier to students in this group. The LSRA may wish to identify and recommend relevant structural changes to the current roadmap to qualification and earning potential for such students. Identifying targets which can be measured year on year would allow the LSRA report against the dismantling of such barriers to entry.

That said, we are conscious of the reforms to the FE-1 process introduced from 1 January 2020 under the Solicitors Acts 1954 to 2011 (Apprenticeship and Education) (Amendment) Regulations 2019 (SI No. 503/2019), in particular that:

- The timeframe in which all eight FE-1s must be passed has been extended from five to seven years;
- Candidates no longer have to pass a minimum of three subjects on their first sitting;
- Candidates no longer have to wait until they receive their degree to sit the exams. Students who have completed the first year of a level 7 course are eligible to sit the FE-1s. Therefore, theoretically, you could have passed all eight FE-1s before finishing college.

We would support these reforms. Hopefully as they become embedded, it may be the case that students either sit the FE-1s in tandem with their college degree thereby shortening the timeframe as a full-time student or sit the exams over a longer period while also working part-time. Either of these approaches would reduce the economic burden.

We are also aware of the recently introduced 'hybrid' professional practice course which enables trainees to work while on the PPC1. Again, if this becomes more common practice, it would reduce the economic burden.

The reforms referenced above may assist and it is probably too early to assess their impact, particularly as they were introduced just prior to the pandemic. An alternative approach would be to dispense with the FE-1s entirely and to perhaps give credit for college degrees or operate a form of consolidated aptitude test which might be an equally effective and less time-consuming way of ensuring that only suitable candidates are admitted for entry to the Law Society.

2.4 Solicitor Traineeships

The LSRA may wish to consider supporting some of the following measures:

- Access to traineeships: law firms are the main actors in the legal services
 market and in the roadmap to becoming a solicitor and as such have a
 significant role to play in ensuring fair access to traineeships. The LSRA may
 wish to consider specific ways in which targets and milestones could be set
 and reached.
- The Law Society Small Practice Traineeship Grant 2021 for smaller practices (less than 5 solicitors) outside of the main urban districts of Dublin, Cork, Limerick and Galway is to award five grants of €25,000 each.⁶ This support could be extended to more firms and to medium size firms.

⁶ This includes funding of €18,000 to the training firm over the course of a two year training contract, and funding of €7,000 to the trainee Solicitor by way of a discount on the PPC1 course fee. Currently,

- The Law Society now permits Solicitors' practices to pool together to take on a trainee with two or three firms giving them a few days' work each week. As this has the potential to increase the number of trainee contracts offered and allow some trainees to remain in their regional towns at a reduced cost of living in an urban city/ town and to increase diversity of training, this scheme could be expanded and made accessible to more trainees.
- Law Society initiatives in blended learning whereby trainees may not have to
 be based rigidly in Dublin to attend PPC 1 and 2 could allow for more regional
 based and online learning. This could be made available to more students to
 facilitate more mature students, those with familial responsibilities and those
 who may struggle with the cost of living in Dublin. Completely reconfiguring
 how to become a trainee to deal with economic and family constraints is the
 best way to ensure a more diverse profession.
- The Law Society's Gender equality, diversity and Inclusion task force which commenced in March 2019 to promote equality, diversity and inclusion in the Society and the Solicitor's profession, is to make recommendations to encourage more female Solicitors and Solicitors from diverse backgrounds to seek leadership roles in the Law Society's Council and committees. It would be useful to gauge the extent of the work of this task force and what measures have been introduced by the Law Society on foot of its work.
- A study should be conducted on available tuition and accommodation grants and bursaries available – first to identify whether they are sufficient to allow one pursue one's career and second whether the monies capable of being disbursed would cover greater numbers of eligible candidates, were more students from lower socio-economic backgrounds to start applying for same.
- The Law Society regulates Law Firms and is a significant actor in incentivising firms to behave in certain ways including under its Guidance documentation. Changes to selection and recruitment processes by firms where transparency in the selection process is available similar to that operated by the Public Appointments Service including its commitment to equality of access could open up additional access on socio-economic and ethnicity grounds (see below). Further, firms could be encouraged to set aside certain places for such students who after all have met all the relevant criteria for entry to traineeship.
- To encourage students from less privileged backgrounds to apply to join the
 profession, they may need to be afforded assurances in relation to the culture
 of the legal profession and how welcoming it is to those from diverse
 backgrounds. The LSRA should encourage "champions" from diverse
 backgrounds in similar fashion to the PAS initiative under its Equality,
 Diversity and Inclusion Strategy 2021. If students see a more diverse

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this applies to a small firm consisting of 5 or fewer Solicitors and they must agree to pay the trainee at least the living wage (€12.30 per hour).

profession and see people from similar backgrounds to them in the profession, it would encourage them to pursue the career.

2.5 Ethnicity

The barriers identified above on socio-economic grounds by reference to second level, third level, FE-1s and traineeships may apply with more force to students from first or second generation migrant families, particularly those from a Non-English Speaking Background and regrettably, to students from the Traveller community. Accordingly the recommendations made in relation to identifying and addressing barriers to entry on socio-economic grounds are also relevant to students in this group.

Furthermore, a particular focus in addressing the ethnic barrier above should be to directly engage with under-represented ethnic communities in Ireland and to make the traineeship process more transparent and centralised (see 4. below).

3. The other costs associated with joining each profession.

See comments above.

4. The quality of apprenticeship selection processes – including the information available to prospective barristers on available Masters for their pupillage year, and to prospective trainee solicitors on training firms – and any impact this may have on the objective of increased diversity.

As an Office which is beginning this year to offer an external traineeship programme, we would welcome a greater role for the Law Society of Ireland in providing centralised information on prospective trainee solicitors. If the Law Society were to maintain a register with an opt-in GDPR option for prospective trainees for their details to be shared with prospective employers, this may be of significant assistance to a more diverse cohort of trainees who would not necessarily have the knowledge or resources to know how to target and apply themselves to a range of relevant solicitors' firms. It would also allow small and medium size firms to consider cohorts of prospective trainees other than the usual contact they may receive.

It may also be useful for the LSRA to conduct qualitative research of trainees from ethnic minority or lower socio-economic background to understand from them what barriers were presented to them in seeking a career in law.

5. The availability and quality of "on-the-job" mandatory apprentice training for solicitors and the "devilling" programme for barristers. This includes "terms and conditions," remuneration, arrangements for supervision and oversight, support and evaluation, and any impact the existing availability and quality of this training/experience may have on access and diversity.

While we do not have particular visibility over the quality of apprentice training for solicitors in other offices, our sense is that the quality is generally high and that this is unlikely to be a significant barrier to access and diversity. The difficulty is more likely to be the financial costs and the competition for limited training places.

See also our comments under para 9 below.

6. The extent to which existing arrangements for the remuneration of trainee barristers during the pupillage year poses a barrier in terms of equity of access to and diversity within the barrister profession.

No comment.

7. The extent to which existing arrangements for the remuneration of trainee solicitors during their in-office training poses a barrier in terms of equity of access to and diversity within the solicitor profession.

We do not have a comment on the remuneration during in-office training, however, the ability for firms to avoid remunerating trainees during their PPC1 and PPC2 courses is likely an economic challenge for some prospective solicitors. We understand that the Law Society now offers a 'hybrid' arrangement whereby the academic and practical parts of the traineeship can be combined. This may improve equity of access as it would ensure that trainees were continued to be paid and also that firms could afford to do as they would be getting value for their remuneration.

8. The arrangements in place and provision for maternity/adoptive leave for solicitors and barristers and the extent to which availing of such leave may have implications for career progression.

In our view, the solicitor's profession is not unique in the impact of taking maternity leave on career progression. This is likely a larger question for consideration more generally rather than specifically in the legal context. Taking a full maternity leave of approximately 11 months is time out of the office which naturally can impact on career progression for the individual solicitor as her colleagues can continue to develop and advance during that period. It is difficult to see how that can be rectified until perhaps such time as maternity leave becomes a shared parental leave which men are equally entitled to take. This would of course be a matter for policy at governmental level.

The benefits of current parental legislation should apply to all trainees and there should be strong penalties against firms who transgress. Small or medium size firms should accept that they like all other employers must ensure employees – trainees and full time staff - enjoy all the protections under the Employment Equality Acts. In addition, the LSRA may wish to consider suggesting the equality interview practices of the Commission of the Public Service Appointments' *Code of Practice Appointment to Positions in the Civil Service and Public Service*" being extended to all employers who provide legal services. Principle 4 of the Code provides that selection processes for positions in the civil and public service "must be undertaken with full commitment to equality of opportunity". What this means in practice is that internal or external competitions cannot take into account whether a candidate has been or may be taking maternity/ parental leave when considering their candidature for a position.

⁷ See https://www.cpsa.ie/codes-of-practice/what-are-the-codes/Code-of-Practice-CS-PS.pdf

More generally, there should be some mechanism whereby monitoring of terms and conditions of work of trainees can occur. Legislation governing terms and conditions of work should be adhered to including pay and annual leave. Firms who sign indentures for training contracts should pay the trainees the pay set out by the Law Society and trainees should be paid while attending PPC 1 and PPC 2. We understand this is not always the case and trainees should be permitted to anonymously report errant behaviour by employers in a way that does not jeopardise their training contract.

9. The key economic and other challenges for early career solicitors and barristers (up to seven years post-qualification experience) in maintaining and building their careers in the professions, and their impact in terms of the objective of achieving greater diversity within the professions.

In the period post-qualification (0-7 years PQE), the most significant challenge for solicitors is likely the time-consuming and demanding nature of their role. This may impact on diversity as anyone with significant commitments outside the office may find it difficult to combine the two.

There is in addition the barrier to career progression for solicitors who take maternity leave as set out at para 8 above. The LSRA may wish to give some consideration as to how this might be addressed.

10. Proposals on how these key economic and other challenges for early career solicitors and barristers may be addressed, and by whom, in order to achieve greater diversity within the professions.

We would hope that the impact of the EU Working Time Directive and in particular the recently clarified obligation on employers to record the time of employees to ensure compliance with that Directive, together with recently issued Code of Practice on the Right to Disconnect and the Government's plans to codify the right to work from home will all help to make the working environment for junior solicitors a more manageable one.

As stated, we would welcome guidance from the Law Society and the LSRA. The LSRA, in addition to extracting good data as recommended in this submission, may wish to consider setting targets for increased diversity in the profession.

