

Legal Services Regulatory Authority

Public Consultation in relation to the education and training arrangements in the State for Legal Practitioners

Submission from the Competition and Consumer Protection Commission

Overview

The Competition and Consumer Protection Commission (the “CCPC”) welcomes the opportunity to respond to the Legal Services Regulatory Authority (“the LSRA”) consultation on the education and training of legal practitioners.

At a high level, the CCPC reiterates its views that:

- regulatory action in the area of the education and training of legal practitioners, is required to enhance the opportunities for consumer choice and competition between legal practitioners.
- the LSRA should seek to ensure, on an ongoing basis, that education and training supports practitioners in a changing marketplace for legal services.
- the existing monopolies on the provision of legal education and training held by the Honorable Society of King’s Inns and the Law Society of Ireland should be brought to an end and a system of regulated standards, overseen by the LSRA, be put in place.
- there is still scope to reduce the barriers to entry to the legal professions, including unnecessary costs and duplication encountered both by new entrants, and those switching between the professions.

Any new regulations in this area should be guided by the general principles of ‘Better Regulation’. The experience of the Legal Services Board in England and Wales in respect of the maintenance and delivery of standards of education and training may be instructive in this regard.

The monopoly delivery of education and training

The education and training of barristers and solicitors in the State is the exclusive responsibility of, respectively, the Honorable Society of King’s Inns and the Law Society of Ireland. The monopoly delivery of barrister education and training is undertaken by the Honorable Society of King’s Inns, having modelled its delivery on the Inns of Court in London, whereas the delivery of solicitor education and training is statutorily mandated to be delivered by the Law Society.

The monopoly provision of legal training has the potential to significantly reduce the numbers qualifying as lawyers, increase the cost of legal training and diminish the possibility of innovation in teaching methods. In 2006 one of our predecessor agencies, the Competition Authority (“TCA”), recommended that the education of solicitors and barristers should be regulated independently of the professions, with transparent standards set to be met by all providers of legal education. TCA recommended that the Minister for Justice and Equality (“the Minister”) remove the standard setting role from the Law Society and, in addition, that a proposed Legal Services Commission¹ remove the standard setting role from the Honorable Society of King’s Inns.²

The purpose of these recommendations was to encourage greater entry into the professions, stimulate competition for students and thereby lower costs and encourage more innovative means of delivering education and training. The CCPC recognises that while both educational bodies have to an extent evolved and modernised their activities since the TCA report in regard to how they deliver their courses, and in respect of the content provided, there nevertheless still remain monopolies of education and opening up these markets would drive quality and improve the standard of legal services being provided while encouraging the emergence of competing providers, who could be open to delivering relevant training.

Under the Legal Services Regulation Act (“the Act”) it is envisaged that both educational bodies will continue in their standard setting capacities. This will be regrettable if the LSRA in turn does not adopt a strong role in this area. The CCPC recommends that the LSRA look at this afresh for a number of reasons:

The first is that monopoly provision does not provide a solid basis for guaranteeing quality; it merely prevents the emergence of alternative means by which to gauge quality in the market. The LSRA should instead be the standard setter for the professions in collaboration with the professional education bodies. Furthermore, it is clear that both professional education bodies have limited capacity in the delivery of their educational courses. While it is not possible to predict the future demand for legal training in Ireland, the possibility cannot be excluded that technological and economic change could drive a higher level of demand for qualified professionals which could in turn be constrained by the limited capacity of the existing training bodies to educate and train legal practitioners.

Capacity constraints in the delivery of training and education, should they emerge, may provide a greater impetus for the case to diversify the sources of legal training.

¹ The Legal Services Commission was envisaged by TCA as a new regulatory body to oversee the professions. The LSRA fulfils such a mandate.

² It was further proposed that both professions would be regulated by an independent Legal Services Commission.

It is incumbent on the LSRA to ensure that the Law Society and Honorable Society of King's Inns engage with it to agree a detailed set of criteria for courses and examinations which can provide the basis for education and training standards to be delivered by future competing providers. Indeed section 34 of the Act provides that the LSRA shall make recommendations to the Minister in respect of, among other things, standards required for the award of legal professional qualifications pursuant to courses of legal professional education and training. This should include the possible licensing of alternative providers of education and training or complementary provision to be delivered in addition to the existing providers. Furthermore, it will be essential that any new system of standard setting is designed to ensure that consumers are able to continue to avail of a high degree of professional expertise from their lawyers.

Minimising cost and duplication

Section 34(3)(c)(iv) of the Act obliges the LSRA to report to the Minister on,

'arrangements that would facilitate the minimisation of duplication, and consequent expense incurred, in the taking of examinations in legal subjects on the part of a person:

(I) who wishes to undertake a course of legal professional education and who has obtained a third level law degree that includes one or more of the subjects that form part of that course,

(II) who, being a solicitor, wishes to become a barrister, or who, being a barrister, wishes to be admitted as a solicitor.'

The CCPC is of the view that in regard to the first category of persons, where they have passed a module that is substantially equivalent to the subject matter of a paper of the Final Examination - First Part (FE-1) for solicitors, or the Entrance Examination for barristers, that they should be exempted upon presenting proof of a satisfactory result in that equivalent third level module(s). The current process of duplicating content in the entrance examinations merely adds unnecessary cost and inconvenience for such applicants and has the potential to dissuade potential entrants to the relevant professions.

With regard to the second category of persons above, the CCPC is of the view that the process for switching between the professions, albeit an easier and less time consuming process than it once was, remains a source of friction in the operation of the legal services market. There are continued costs and delays which do not appear to be justified - albeit it is recognised that there is justification in providing for a process of adjustment to the distinct focus and practice of each profession.

Future demands on the legal system

A system of licenced, competing legal education and training providers is more likely to be innovative in both the content provided and the delivery methodologies employed than the current monopoly-led system. Such competition between providers would in turn drive the overall legal system to be more responsive to changes in the market. To that end the planned departure of the United Kingdom from the European Union may have a number of effects on the legal services market in Ireland. None of those can be forecast with any degree of certainty, however, the marked increase in solicitors currently practising in England and Wales being admitted to the roll of solicitors in Ireland has been interpreted as to indicate that competition and trade related actions in particular may be increasingly litigated in the Irish courts³. If this materialises it may have the effect of increasing the need for more specialists in distinct areas of competition and commercial law based in Ireland.

Currently the core training modules of the Law Society and the Honorable Society of King's Inns professional degrees do not provide for competition law as a distinct subject, although aspects of competition law feature in a number of other modules. This may reflect the relatively small numbers of competition cases that are litigated in the Irish Courts. It is suggested, however, that the LSRA remain aware of developments in this area of specialisation and, if necessary, work with the licensed providers to ensure that there is a sufficient provision and standard of competition law education and training provided to meet future demand among practitioners.

For example, the potential impact of the EU Antitrust Damages Directive⁴ is yet to be felt in Ireland but the departure of the UK from the EU could make this jurisdiction a more popular destination for actions arising under that legislation.

In respect of consumer law, the most significant future development is likely to be in the field of 'collective redress'. While such representative actions are subject to current legislative developments at EU level⁵ it is recognised that the Irish legal system does not facilitate the types of actions envisaged. It will be important that education and training is available to assist in the facilitation of any such initiatives should they arise from EU legislation. Such training might be included in existing modules or be offered on a stand-alone basis.

³ <https://blogs.thomsonreuters.com/answerson/brexit-ireland-gears-up-to-welcome-eu-clients/>

⁴ Directive 2014/104/EU

⁵ Draft EU Directive on Representative Actions for the Protection of the Collective Interests of Consumers (COM (2018) 184 Final) - https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-184_en

The CCPC is aware that the LSRA is currently prioritising in its work programme with regard to the introduction of legal partnerships and limited liability partnerships (LLPs), alongside the commencement of its complaints handling function.

In that context the providers of legal education and training should be mandated by the LSRA to ensure that pre- and post-qualification, legal practitioners are enabled to avail of relevant training for practice in legal partnerships and LLPs⁶. This might include training on the regulation of handling client money by barristers within legal partnerships or multi-disciplinary practices if a decision is taken to permit such activity, alongside topics such as anti-money laundering compliance.

A final area of future consideration may arise in respect of the potential introduction of the profession of 'conveyancer'. The CCPC understands that, under section 34 of the Act, the LSRA will provide for a public consultation on this topic in future. It is suggested that prospective education and training arrangements might form an aspect of that consultation process.

⁶ Currently trainee solicitors must attend a compulsory course on 'Professional Practice Conduct and Management' which provides an overview of how solicitors should conduct themselves with colleagues and in relation to clients.