

Public consultation of the Legal Services Regulatory Authority on the education and training arrangements in the State for legal practitioners

Submission of the Department of Justice and Equality

Policy Background

In making this submission, the purpose of which is to assist the deliberation on this matter by referring to some of the policy background, the Department of Justice and Equality very much welcomes the work of the Legal Services Regulatory Authority in conducting public consultations under the terms of section 34 of the Legal Services Regulation Act as it relates to the area of legal professional education. This is all the more appreciated in the context of the Authority's ongoing roll-out of its functions and working resources and on foot of its completion during 2017 of public consultations and reports on a whole range of policy issues that had been required within specific timelines under the 2015 Act.

The review to be undertaken on the education and training arrangements in the State for legal practitioners owes its origins in policy to the Report of the Competition Authority on "Solicitors and Barristers" published in December 2006 as part of a review of competition in professional services. The implementation of that Report went on to form the basis of the structural reform programme for the legal services sector that was undertaken by the Government as part of the EU/IMF/ECB Troika *Memorandum of Understanding on Specific Economic Policy Conditionality 2010* and of the similar undertakings contained in the *Programme of the Government for National Recovery 2011-2016*. The ongoing delivery of these reforms from the Troika programme continues to be monitored by the European Commission under the EU Semester Process.

In its 2006 Executive Summary under the title of "Training Solicitors and Barristers" the Competition Authority considered at that time that "Entry into the legal professions in Ireland is controlled by those already in the profession" and that a situation had "resulted in those bodies having a monopoly in the markets for training solicitors and barristers respectively". The Authority sought "the removal of the existing roles of the

Law Society and the King's Inns in setting standards for the provision of legal education" on the basis that it instead be conferred on what it envisaged would be a new Legal Services Commission. The Competition Authority took this position on the basis that "Competition between solicitor and barrister training schools will drive efficiency in the market and push course fees to competitive levels. This reform will ensure that an appropriate number of training places are available to match demand for legal services and that competition in legal services is not restrained".

The two specific recommendations made by the Competition Authority in its 2006 Report and which form some of the background to the provisions in the 2015 Act tasking the new LSRA to do a public consultation and report on this area were -

Recommendation 2.

Have an independent body to set standards for solicitor training and approve institutions that wish to provide such training.

The Minister for Justice, Equality & Law Reform should remove the Law Society's role of setting standards for the provision of legal education. This role should instead be given to an independent body such as the Legal Services Commission.

The Law Society and any other institution that wishes to provide training for solicitors should be required to apply to the Legal Services Commission for approval to do so.

Recommendation 3.

An independent body should set standards for barrister training and approve institutions that wish to provide such training.

The Minister for Justice, Equality & Law Reform should give an independent body, such as the Legal Services Commission, the task of setting standards for the provision of legal education.

The Honorable Society of King's Inns and any other institution that wishes to provide training for barristers should be required to apply to the Legal Services Commission for approval to do so.

An earlier policy response in this area was made under the Legal Services Ombudsman Act of 2009. It was to be a function of the Ombudsman to assess the adequacy of the admission policies of the Law Society and the Bar Council and to report each year on the number of persons so admitted. This also included an assessment as to whether, 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 practice, 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 2009 Act is, of course, repealed in the 2015 Legal Services Regulation Act in favour of the independent regulatory regime being introduced under that Act which makes more extensive provision in relation to the review and reporting frameworks for legal professional education. However, section 33 of the 2015 Act does carry through the earlier Ombudsman elements.

Among those observations and considerations that arose during the promulgation and debate of the relevant provisions of the 2015 Act were –

- A recognition in policy terms that the allocation of a full suite of standard-setting and certification functions to the new Legal Services Regulatory Authority would require major additional staffing resources and expertise that could be prohibitive in terms of regulatory burden and cost and increase the size of the Authority in multiple terms.

- A desire to build upon and not to cut across or to duplicate the existing provisions and architecture of the *Universities Act 1997* and the new standards regime introduced under the *Qualifications and Quality Assurance (Education And Training) Act 2012*.
- The need to take into account whether the current legal professional educational structures may be impacting on access to the professions in both demographic and socio-economic terms.
- The possible impacts of a professional training regime on access to justice for citizens more generally in terms of competitiveness and cost.
- Complaints by graduates about the duplication of courses, modules and requirements between the academic and professional frameworks and of the substantial costs thereby incurred.
- The fact that there is now a wider range of certified third-level and other education providers available (i.e. not the traditional university schools of law alone) with the facilities, capacities and recognised standards which may have the potential to deliver legal professional education to the highest standards.
- The fact that new business technologies are not only changing fundamentally the provision of professional services at both national and international levels and reshaping how clients behave, but also reconfiguring the type of technical and business management skills that lawyers operating in this much more competitive environment will need to acquire.
- The introduction of new legal business models in this and other jurisdictions and the need to sustain our national competitiveness will require a more adaptive skill set for practitioners.

The Department understands that the separate views of those relevant bodies under its remit have been invited to make submissions under this consultation by the Regulatory Authority and will do so in their own right.

In the context of the Department's responsibilities for matters including victims of crime, elements of youth justice and criminal law reform, please also find set out in the Appendix some specific matters which could be taken into account by the Authority in formulating its recommendations on the education and training arrangements in the State for legal practitioners.

Appendix

Promoting awareness and application of recent relevant legislation

A range of new legislation which has a particular focus on victims of crime has been recently enacted in the State. This victim focused legislation includes, in particular, the introduction of the Criminal Justice (Victims of Crime) Act, 2017 and the Domestic Violence Act, 2018. The range of new provisions being introduced under this legislation is relevant to the work of the legal profession in supporting victims of crime both in criminal and civil proceedings.

Given this it is recommended that the programme of the curriculum of legal professional education and training incorporate awareness raising of this legislation and promote the application, as appropriate, of these new victim oriented measures.

Criminal Justice (Victims of Crime) Act, 2017

The Criminal Justice (Victims of Crime) Act, 2017 which is transposing the European Union's Victims Directive (2012/29/EU) into national law, is providing for new statutory rights for all victims of crime in Ireland. This legislation, which was enacted in November 2017, includes new rights particularly in areas such as the right to information and the provision of certain supports and protection. A copy of the Act is available at <http://www.irishstatutebook.ie/eli/2017/act/28/enacted/en/html>

Under this Act, victims will receive comprehensive information on the criminal justice system and their role within it and on the range of services and entitlements they may access from their first contact with An Garda Síochána or Garda Síochána Ombudsman

Commission. On request, victims will be provided with information concerning the progress of the investigation and any court proceedings.

Also in line with the EU Directive, provisions in the Act will facilitate better supports for vulnerable victims and witnesses within the criminal justice system.

Examples of this, include the Act providing for the assessment of victims in order that any special measures necessary to protect them from secondary and repeat victimisation, intimidation or retaliation can be put in place during the investigation and court process.

In tandem with this, the Act extends the scope for the potential use of special measures for victims and witnesses to be utilised in the presentation of evidence. This includes, for example, evidence given via the use of live television link, screens or via intermediaries. The potential use of video recorded statements is also being extended under this legislation. In addition, the right to provide a victim impact statement is also being extended to all victims.

Training and awareness raising of this legislation will enable the legal profession being confident in its work in supporting victims in the application of these new measures as appropriate¹

Domestic Violence Act, 2018

The Domestic Violence Act, 2018 which was enacted on 8 May 2018 is also landmark legislation which has been recently introduced in strengthening the supports available to victims of crime, in this case to victims of domestic abuse.

¹ The Bar of Ireland in partnership with the Law Society and the Irish Council for Civil Liberties is currently involved in a European Commission funded project supporting training across the legal profession on the operation of the EU Victims Directive. This has included the provision of a free online training course and also accompanying public events.

The purpose of the Domestic Violence Act, 2018 is to consolidate and reform the law on domestic violence to provide better protection for victims. The main improvements to the law contained in the Act are as follows:

- There will be an extensive list of factors that a court must consider when dealing with an application for a domestic violence order. The list is not exhaustive and will not limit a court's discretion to make an order.
- The requirement for a relationship to be "committed" to enable a person to apply for a domestic violence order has been removed.
- Where a court is satisfied that the threshold for making an order has been reached, it must make an order.
- Domestic violence orders will remain in force in respect of dependants after they reach the age of 18, until the orders expire.
- Safety orders will be available to persons who are in intimate relationships but who are not cohabiting.
- Victims of domestic violence who are cohabiting with, or are parents of, the perpetrator will be able to apply for an emergency barring order lasting for 8 working days, where there is an immediate risk of significant harm. Emergency barring orders may be granted even if the victim has no legal or beneficial interest in the property or an interest which is less than the perpetrator's.
- When making a safety order or barring order, courts will be able to prohibit a perpetrator of domestic violence from communicating with the victim electronically.

- The Act will provide protection against cross-examination conducted in person.
- Courts will be required to give reasons for decisions relating to applications for orders under the Act.
- Courts will be able to direct personal service by An Garda Síochána of orders on respondents in cases where there are reasonable grounds to believe that the respondent will try to evade service.
- Special out-of-hours sittings of the District Court may be requested by An Garda Síochána where necessary to deal with urgent applications for orders.
- Victims will be able to give evidence by live television link to avoid the risk of intimidation.
- Victims will be able to bring a friend, family member or support worker into court to support them during proceedings.
- Children will be able to make their views known to the court where an order is sought on behalf of, or will partly relate to, a child. The court will have the option of appointing an expert to assist the court to ascertain the views of the child.
- The Courts Service will have an obligation to offer information on support services for victims of domestic violence.
- The courts will be able to recommend that a perpetrator engages with services such as programmes aimed at perpetrators of domestic violence, addiction or counselling services.

- Restrictions will be put in place on media reporting and attendance by the general public at criminal court proceedings for breaches of civil domestic violence orders.
- The Act provides for a new criminal offence of forced marriage.
- The Act provides for a new criminal offence of coercive control. This is psychological abuse in an intimate relationship that causes fear of violence, or serious alarm or distress that has a substantial adverse impact on a person's day-to-day activities.
- Where a person is convicted of a violent or sexual offence against his or her spouse, civil partner or person with whom they are in an intimate relationship, that fact shall be an aggravating factor for the purposes of sentencing.
- Part 3 of the Criminal Evidence Act 1992, which relates to special protective measures for giving of evidence by victims and witnesses in criminal proceedings for violent or sexual offences, will apply to the offences of breaching a domestic violence order, coercive control and forced marriage.
- The legislative provisions that enable persons under the age of 18 to marry will be repealed.

Training requirements in EU instruments

A number of recent EU Directives contain requirements in relation to the training of legal professionals. Such provisions, in acknowledgement of the independence of the legal profession, have been framed as an obligation on the State to recommend or promote the provision of appropriate training (relevant to the Directive at issue) by those responsible for the training of legal professionals. It would be of assistance if some formal channel were in place for a Minister to recommend/promote the provision

of training in such circumstances. Such a mechanism would both facilitate information on relevant EU rules being brought to the attention of training providers and assist in the clear transposition of a Directive containing such a requirement.

Examples of Directives with provisions on the training of legal professionals

DIRECTIVE (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (*Article 20.3*)

With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of specific training as referred to in paragraph 2 to lawyers who deal with criminal proceedings involving children.

DIRECTIVE 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (*Article 25.3*)

With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of victims.

General Observations in relation to Youth Justice Cases

- Training of legal practitioners should emphasise the overriding principle of acting in the best interest of the child.
- It is desirable that all legal practitioners have a clear understanding that cases involving children and young people (under 18) in the criminal justice system may require specialist knowledge to engage effectively with a client's needs and circumstances.
- Some specialist training in juvenile justice has already been developed (e.g. Law Society Diploma) and it is desirable that the promotion, availability and development of such programmes continues.