



Submission to the Legal Services Regulatory Authority

FLAC, August 2018

Submission to Legal Services Regulatory Authority on the Legal Practitioners Education and Training Review

August 2018

FLAC (Free Legal Advice Centres) is a voluntary independent human rights organisation which exists to promote equal access to justice. Our vision is of a society where everyone can access fair and accountable mechanisms to assert and vindicate their rights. We work particularly in the areas of the protection of economic, social and cultural rights. We identify and make policy proposals on laws that impact on marginalised and disadvantaged people, with a particular focus on social welfare law, personal debt & credit law and civil legal aid.

FLAC produces policy papers on relevant issues to ensure that Government, decision-makers and other NGOs are aware of developments that may affect the lives of people in Ireland. These developments may be legislative, Government policy-related or purely practice-oriented. FLAC may make recommendations to a variety of bodies including international human rights bodies, drawing on its legal expertise and providing a social inclusion perspective.

You can download/read FLAC's policy papers at:

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For more information, contact us at:

FLAC,

13 Lower Dorset Street,

Dublin 1

01-8873600 | info@flac.ie | www.flac.ie | fb.me/flacireland | [@flac.ie](https://twitter.com/flac_ie)

1. Recommendations

- The LSRA should seek to ensure a diverse and inclusive legal profession which should mirror the society it seeks to serve
- The training and education of the legal profession should be sufficient to equip a diverse and inclusive legal profession to meet the legal needs of marginalised and disadvantaged groups and individuals
- The LSRA should regard access to justice as a central concern to the education and training of the legal profession and it should be a core focus of the review
- The Public Sector duty should be a core consideration in the review
- The review of education and training should have regard to the development of pro bona legal services and the training and educational needs of those involved in the provision of pro bona.
- The training and educational needs of lawyers who work in independent law centres needs to be factored into the review.
- Legal education should be concerned with the inability of so many people to vindicate their right due to the inadequacies of the provision of legal aid
- Section 12 of the Employment Equality Act, 1998 should be a core consideration in this Review
- The LSRA should ensure that the terms and conditions of and access to professional legal education be equality proofed
- Potential students need to be supported at every level of education, and integrated access programmes need to be developed from second and third level institutions through to the Law Society and Kings Inns and during pupillage at the Bar.
- The LSRA should commission research into international best practice, for the inclusion of disadvantaged and underrepresented students.
- The LSRA should
 - Encourage legal education providers to expand or increase the number of bursaries and scholarships available to lower income students
 - Encourage legal education providers to publicly list the amount of bursaries that are available.
 - Encourage legal education providers to support students in accessing affordable student accommodation for the duration of their qualification period

- Where trainee solicitors are employed by firms during their qualification period, ensure that legislation governing terms and conditions of work is adhered to, including rates of payment
- The LSRA should also be recommending that a SUSI maintenance grant is available for those entering the King's Inns for the Barrister at Law degree and those completing the Law Society PPC I & II.
- The LSRA should consider the feasibility of the provision of professional legal education on a regional basis
- The LSRA should examine the issue of greater transparency in the provision of training contracts and pupillage and carry out research as to how barristers in their early years at the bar can be better supported to ensure that a career at the bar is a meaningful option for people from disadvantaged and less privileged backgrounds.
- Clinical legal education modules which advance the public interest and facilitate access to justice should be incorporated into the curriculum of professional legal education.
- Such modules should prioritise the incremental development of 'live clinic' models of clinical legal education.
- Consideration be given to the provision of funding for traineeships within Independent Law Centres, covering both fees and salary.
- The LSRA should examine how best to ensure that access to justice is a central tenet of professional qualification. In addition it should consider the optimum provision of modules on legal aid and areas of law that most impact on disadvantaged individuals and communities for example, social welfare law, debt and credit and housing, equality legislation and human rights law.
- In relation to applications for training contracts, pro bono experience gained in clinics and workplaces such as the Independent Law Centres should be taken into account.
- Solicitors who take on pro bono work be allowed to claim a specified number of CPD hours.
- The LSRA should carry out research into whether pro bono targets should be aspirational or mandatory for practicing lawyers.

2. Introduction

FLAC welcomes the opportunity to make a submission to this Review. We note that there are a number of stages to the review including consultation and a benchmarking phase – “*which will address how the system and arrangements for training legal practitioners in Ireland compares to standards and norms in global legal education*” We welcome the benchmarking phase, and look forward to its publication, given the dearth of research into the education and training of legal professionals in Ireland. This submission has been prepared without sight of the results of the benchmarking process.

FLAC 's primary concerns in this submission concern access to justice. The first concern relates to the training and education of a diverse and inclusive legal profession, which reflects the society it seeks to serve. It is unarguable that the legal profession is not reflective of our society as a whole and does not mirror the society it seeks to serve. Diversifying the legal profession goes to the core of the administration of justice. Ensuring diversity in the profession would increase meaningful equality within the legal system and support the credibility of the system itself. Where the legal system does not reflect the community it should represent, it will not achieve equal access to justice.

A second and related concern is to ensure that the training and education is sufficient to equip a diverse and inclusive legal profession to meet the legal needs of marginalised and disadvantaged groups and individuals.

A third concern is the promotion of a pro bona culture within the legal profession.

3. About FLAC

FLAC operates a telephone legal information and referral line and runs a network of legal advice clinics where volunteer lawyers provide basic free legal advice. More than 25,000 people received free legal information or advice from FLAC in 2017 from the telephone information line and the network of legal advice clinics at 66 locations around the country. These advice clinics are facilitated by the Citizens Information Board and are located in CICs.

FLAC also provides specialist legal advice to advisers in MABS and Citizens Information Services. FLAC has recently worked to improve access to justice in particular for Roma and Traveller women as part of the JUSTROM (Joint Programme on Access of Roma and Traveller

Women to Justice) programme, a Council of Europe initiative. Within JUSTROM, FLAC supported the running of specialised legal clinics for Travellers and Roma.

4. Pro bona

FLAC also operates PILA, the Public Interest Law Alliance which operates a Pro Bono Referral Scheme which facilitates NGOs, community groups and independent law centres in getting legal assistance pro bona from members of the legal profession. PILA works to inspire and engage lawyers in pro bono work by supporting a culture of legal practice that actively delivers free legal assistance to those who are unable to pay for or access legal help. 25 law firms, 350 barristers and 5 in house legal teams are part of this alliance and provide their services free of charge. 110 community and voluntary groups received pro bona legal assistance thorough PILA in 2017. Due to the work of FLAC's PILA project commercial law firms are increasing their commitment to pro bono legal work not only as a form of Corporate Social Responsibility, but also as a practice area. In particular, law firms such as A&L Goodbody, McCann Fitzgerald and Mason Hayes & Curran are developing ongoing projects with PILA and a community partner that address an identified unmet legal need.¹ For instance, A&L Goodbody collaborates with the Irish Refugee Council (IRC) and Mercy Law Centre to provide representation to asylum seekers with their applications and appeals, as well as people who are homeless in addressing their housing needs. McCann Fitzgerald collaborates with Women's Aid in setting up a legal clinic for victims of domestic violence who are representing themselves in family law proceedings.

A number of major law firms have expressed an interest in being more significantly involved in the provision of legal representation in areas of unmet legal need. It is significant that one firm has recently hired a lawyer with the specific task of managing and delivering the pro bona work of the firm. It is important that the review of education and training would have regard to the development of pro bona legal services and the training and educational needs of those involved in the provision of pro bona.

FLAC is also an independent law centre and takes number of legal cases each year as a means of enforcing rights, challenging unjust laws, increasing public awareness of legal need

¹ In 2016, A&L Goodbody delivered over 2,800 pro bono hours to various charity partners and not for profit organisations, including; Social Entrepreneurs Ireland, Oxfam Ireland, Ashoka Ireland, Suas, Debra Ireland, the Coeliac Society of Ireland, Inner City Enterprises and the Irish Refugee Council

and bringing about effective change in law and practice. These cases may have the potential to benefit a wider group of people as well as being important for the individual client.

FLAC is a member of the Independent Law Centres Network. There are currently eight operational Independent Law Centres² in Ireland which can be described as non-profit organisations that provide accessible, free legal advice and representation to the public, and often to those who cannot afford it. Independent Law Centres are unique within the Irish legal landscape, offering expert legal services in particularly disadvantaged geographic areas or communities. The training and educational needs of lawyers who work in these law centres also needs to be factored into the review.

5. Objectives guiding the review

It is worth noting that, unlike the equivalent legislation in the UK [Part 1, Section 1(1) of the Legal Service Act 2007], the Legal Services Regulation Act 2015 does not expressly include the protection or promotion of the fundamental human right of access to justice or support for the rule of law as stated objectives. However the protection or promotion of the fundamental human right of access to justice and support for the rule of law are clearly central to the statutory objectives for the LRSA.

6. The Public Sector Duty

In addition the requirements of the Public Sector Duty which has been introduced pursuant to section 42 of the Irish Human Rights and Equality Act 2014 should also assist and guide the Authority's recommendations. The Public Sector Duty is an important national mechanisms for mainstreaming equality and human rights. It imposes a positive obligation on a broad range of statutory and public bodies including the LSRA to have regard to, in the performance of their functions, the need to eliminate discrimination, promote equality of opportunity and protect the human rights of its members, staff and persons to whom it provides services. This review of is a key instance to which the Public Sector Duty applies. The implementation of the public sector duty by the LSRA requires the LSRA to have regard to in particular the protection

² These are Ballymun Community Law Centre, Community Law & Mediation Limerick, Community Law & Mediation Northside, FLAC, Immigration Council of Ireland, Irish Refugee Council, Mercy Law Resource Centre and Transparency Legal Advice Centre.

or promotion of the fundamental human right of access to justice and support for the rule of law in the performance of its functions, in this instance the current review.

7. Access to Justice

Access to justice is of central concern to the education and training of the legal profession. Access to justice enables individuals to protect themselves against infringements of their rights, to remedy civil wrongs and to hold executive power accountable. Access to justice is both a process and a goal, and is crucial for individuals seeking to benefit from other procedural and substantive rights. It is an essential prerequisite for the rule of law and the laws legitimacy.³ Access to justice is also an aspect of legal ethics which should be a core element of professional education and training.

At a very minimum legal education should be concerned with the inability of so many people to vindicate their right due to the inadequacies in the provision of legal aid. It is important for lawyers to understand that many people are excluded from obtaining legal services, that barriers exist to the administration of justice and that lawyers have a social and professional responsibility to address these obstacles.

The current system of civil legal aid provided by the Legal Aid Board under the provisions of the Civil Legal Aid Act 1995 is limited. The applicant's disposable income must be below €18,000 and the disposable capital threshold is €100,000. Applicants must also pay a financial contribution which in some instances may be quite significant. There are lengthy waiting times in many law centres. The 1995 Act excludes a number of areas of core areas of law, including defamation and housing, from the civil legal aid scheme. The operation of the merits and means test means that many people facing family home repossessions are not entitled to legal representation. In addition, legal aid is not available for a range of quasi-judicial tribunals that

³ The right of access to justice is enshrined in Articles 6 and 13 of the European Convention on Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights, which guarantee the rights to a fair trial, to an effective remedy and to legal aid to those who lack sufficient resources so far as this is necessary to ensure effective access to justice. Access to justice is also reflected in our constitutional system of justice, where access to the courts is guaranteed. While it has no single precise definition, core elements of access to justice include effective access to information advice, legal aid, access to the courts and access to effective remedies.

make legally binding decisions outside of the court, including the Workplace Relations Commission, the Labour Court and the Social Welfare Appeals Office.

In recent years, demand for statutory civil legal aid has risen dramatically while resources have been reduced and the workload of the Board widened. This has led to increased pressure on the service and longer waiting times for people who need legal help.

The current court system is planned and administered on the basis that a litigant will be represented by a lawyer. FLAC's information line regularly receives calls from lay litigants who are representing themselves in complex court cases and who are desperately in need of assistance, advice and representation which FLAC does not have the resources to provide.

In many instances members of the public have no option but to attempt to represent themselves or allow judgment to be entered in default of a response to a claim. In many other cases, members of the public with good claims will be left with no option but to abandon their rights and leave problems unresolved and potentially worsening. Navigating the court process without representation can be difficult, complicated and emotionally draining on an individual. It can also add significant delay to court hearings. The result is no access to justice for some and compromised access to justice for others.

FLAC recommends that the LSRA regard to access to justice as a central concern to the education and training of the legal profession and should be a core focus of the review

FLAC recommends that the Public Sector duty be a core consideration in the review

8. The Employment Equality Act

The LSRA as part of the review should have regard to Section 12 of the Employment Equality Act which contains provisions on vocational training which are applicable in relation to legal professional training.⁴This would assist in the implementation of the public sector duty to promote equality in the performance of its functions.

In summary section 12 prohibits discrimination (direct and indirect), sexual harassment and harassment in relation to access to and the terms and conditions of legal professional training,

⁴ The provisions of the Employment Equality Act have to be interpreted in the light of the EU Race Directive, the EU Framework Employment Directive and the Recast Gender Directive, all of which contain provisions prohibiting discrimination and harassment in relation to access to all types and all levels of vocational guidance, vocational training and retraining, including practical work experience Article 3 of Council Directive 2000/43/EC Council Directive 2000/78/EC and Article 14 of the Gender Recast Directive

on the nine grounds of discrimination, which are gender, family status, civil status, sexual orientation, religion, race and the Traveller community ground. It also requires legal professional training bodies to provide reasonable accommodation for people with disabilities. It also allows for broad positive action measures.

FLAC recommends that the relevant provisions of the Employment Equality Act, having regard to the provisions of the Race Directive, the Framework Employment Directive and the Gender Recast Directive be core considerations in this Review.

FLAC also recommends that the LSRA takes steps to ensure that the terms and conditions of and access to professional legal education be equality proofed.

9. Access to justice and access to the professions

There are a number of barriers to a diverse and inclusive legal profession:

10. Education

Who qualifies as a solicitor or barrister is largely determined at secondary school/ third level. There is little data readily available regarding the socio-economic background of entrants to the King's Inns and Law Society courses, though there is some information available indicating the background of those entering third level (A student would generally have to have gone through third level degree education in order to attempt to qualify as a solicitor or barrister). The available statistics suggests that since 2009, one quarter of students in non-fee paying schools were not placed in third level after sitting the Leaving Cert, compared with 7% of students who came from a fee-paying school. 63% of students from fee-paying schools went on to university compared to 35% from non-fee paying schools.⁵ Where students from lower income backgrounds access third level places, research from the Higher Education Authority suggests that almost one in five students from disadvantaged schools did not progress beyond first year. Students from fee-paying schools account for 20-25% of undergraduates at Trinity and UCD.⁶

⁵ Fee-paying schools still send more students to third level [New School League Tables], Wayne O'Connor, Feb 16 2018, Sunday Independent

⁶ Higher Education Authority, 2018.

There is also research which noted that the upper socio-economic groups obtained a disproportionate number of the more “valuable” educational qualifications (including law)⁷ leading to a situation where the Irish education and access to the fee-paying model ensures that those who enter from advantaged positions are positioned to increase (or maintain) their advantage at every level within the system.

To increase diversity in the profession, potential students need to be supported at every level of education, and there need to be specific links between second level and third level and thereafter the professional training bodies to achieve this. A number of universities have excellent access programmes but these need to be linked to and integrated with equivalent access programmes within the Law Society and Kings Inns.

11. Fees:

The Kings Inns offers two mechanisms in which to complete the Barrister-At-Law degree course. This course may be completed in one year with fees of €12,560 (not including fees payable to sit the entrance exams to the course. Alternatively the course may be completed on a part time basis over two years in which a person pays fees over the two year period. ⁸

Law graduates wishing to qualify as a solicitor may pay almost €13,000 in fees between the FE-1 Exams, the Professional Practice Courses I & II and other exam fees. The Law Society operates an Access Scholarship Programme which aims to assist students from socio-economically disadvantaged backgrounds to gain access to professional legal education.⁹ The

⁷ The smokescreen of meritocracy": elite education in Ireland and the reproduction of class privilege
Kennedy, Margaret; Power, Martin J. (2010) Journal for Critical Education Policy Studies;8 (2), pp. 223-248

⁸ There are a small number of bursaries available. The Denham Fellowship provides remission of fees for a King's Inns student and an annual stipend of €6,000 for a minimum of five years. The Marice Gaffney Scholarship allows the Education Committee of King's Inns to remit course fees payable by students who face exceptional hardship and wish to attend the course leading to the Diploma in Legal Studies. The Niall and Barbara McCarthy Bursary supports a student who might not otherwise be able to take the degree course and provides full remission of fees and a maintenance grant dependant on individual need. There are also awards that provide grants to students who achieve the highest marks in the entrance exams including the John Brooke Scholarship and the Honorable Society of the King's Inns Exhibition Prize. There are further scholarships for those who receive the highest marks in subjects in the Diploma in Legal Studies course.

⁹ Depending on applicants' individual circumstances, the Scholarship can assist with:
- Reduced/waived FE-1 exam fees - up to a maximum of four full sittings
- Access to core texts related to FE1 exams, through the Law Society of Ireland's library

Dublin Solicitors Bar Association (DSBA) also operate a bursary programme for those who wish to qualify and practise as solicitors in the Dublin area.¹⁰

It is important to note that some firms will make contributions towards the fees of their trainees who are completing the PPC part of their qualifications.

The Professional Practice Course I (PPC I) was an approved course for SUSI grant purposes however PPC I applicants were not entitled to any maintenance payment under the Student Grant Scheme 2016 onwards. Those who qualified for the special rate of grant could have their fees paid up to a maximum fee limit (€6,270). A further limited number of students who would previously have qualified under the standard grant thresholds qualify to have a €2,000 contribution made towards the costs of their fees.¹¹

12. Regionalisation of professional legal education

The education of solicitors and barristers is centralised and therefore inaccessible to many in terms of location and cost. The LSRA should consider the feasibility of the provision of professional legal education on a regional basis having regard to the fact that ITs can now offer a law degree. The regionalization of the provision of professional education may make

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- Reduced/waived Professional Practice Course fees
 - Maintenance funding.

¹⁰ The bursary aims to assist with the fees and living expenses involved in completing the Final Examination - First Part (FE1) and the traineeship. The size of the award may vary depending on individual circumstances.

¹¹ There is a means test applicable for grant assistance for the PPC I & II where applicants have to be on a very low income and have been in receipt of one of the welfare payments listed within the grant scheme. The PPC students do not receive a maintenance grant (they receive a grant for their fees only). If a person was residing with their parents from 1 January within the year they have first entered a course, they are considered dependant on their parents income, and the combined income of the person and their parents are assessed unless they can demonstrate that they have been living independently. Students have run into great difficulty with grant authorities in proving independence.

If the combined income is below €22,703 then the higher rate of grant may be payable (€6270). Where the income is more than €22,703 but less than €31,500 (increasing to a maximum of €37,580 based on number of dependents) a person may be eligible to get a flat rate Fee Contribution of €2000, with monies paid directly to the Law Society.

the linking with second level schools easier and encourage more under represented and disadvantaged students to consider a legal career.

13. Lack of transparency

Clear and transparent standards are necessary for access to the legal profession. Access to the practical professional stage is often the most difficult challenge for students particularly those from less privileged and non- traditional backgrounds for example access to training contracts and access to pupillage. In the current structure formal high performance standards in the academic stage may not necessarily lead to the practical training stage due to a lack of transparency in the provision of training contracts and pupillage.

In addition existing practices often militate against those from less privileged backgrounds for example, no payment /stipend for pupillage and very little by way of other support for example during the early years at the bar.

14. Recommendations:

There needs to be integrated access programmes from second level education third level institutions the law society and Kings Inns and during pupillage at the bar

- The LSRA should commission research into international best practice, for the inclusion of disadvantaged and underrepresented students. This research could also look at what financial/ other supports exist for potential students/ trainees coming from a disadvantaged background, and develop policy from this as to how the profession can be opened up to disadvantaged and under represented students.

The LSRA should

- Encourage legal education providers to expand or increase the number of bursaries and scholarships available to lower income students
- Encourage legal education providers to publicly list the amount of bursaries that are available.
- Encourage legal education providers to support students in accessing affordable student accommodation for the duration of their qualification period
- Where trainee solicitors are employed by firms during their qualification period, ensure that legislation governing terms and conditions of work is adhered to, including rates of payment

The LSRA should also be recommending that a SUSI maintenance grant is available for those entering the King's Inns for the Barrister at Law degree and those completing the Law Society PPC I & II.

The LSRA should consider the feasibility of the provision of professional legal education on a regional basis

FLAC recommends that the LSRA examine the issue of greater transparency in the provision of training contracts and pupillage and carry out research in to how barristers in their early years at the bar can be better supported to ensure that a career at the bar is a meaningful option for people from disadvantaged and less privileged backgrounds.

15. Access to justice and the curriculum

While professional qualification education in Ireland does address some aspects of public interest law and access to justice,¹² these issues take a peripheral place on the curriculum. Within the Law Society's Professional Practice Course, the electives are very much focused on the corporate nature of professional practice with a dominance of commercial options such as banking law, commercial contracts, corporate transactions, insolvency etc. This is reflective of the substantial number of trainees passing through The Law Society who train with corporate law firms.

As a whole, current content tends to highlight law that reflects the interests of those who can access the courts and effectively vindicate their interests, rather than those who cannot litigate or litigate effectively.

Access to justice and areas of law most relevant to vulnerable and disadvantaged individuals and groups can be incorporated into the curriculum in a variety of ways. It may be conceived as an independent module, or indeed a range of modules. It could form part of the legal ethics and professional responsibility module, or be weaved into existing modules, for instance, by highlighting under employment law the difficulties in not being able to access legal aid.

¹² For instance, the foundation in Human Rights module and aspects of the Civil Litigation module as part of the Professional Practice Course with The Law Society, and the Immigration and Asylum module as part of the Barrister-at-Law Degree with the Kings Inns.

FLAC recommends that the LSRA examine how best to ensure that access to justice is a central tenet of professional qualification. In addition it should consider the optimum provision of modules on legal aid and areas of law that most impact on disadvantaged individuals and communities for example, social welfare law, debt and credit and housing and the equality legislation and human rights .

16. Pro bona work and the curriculum

Due to the work of FLAC's PILA project, large commercial law firms are increasing their commitment to pro bono legal work. In particular, law firms such as A&L Goodbody, McCann Fitzgerald and Mason Hayes & Curran are developing ongoing projects with PILA and a community partner that address an identified unmet legal need. These projects usually require secondary specialisation, meaning their focus is outside the expertise of the firm and requires dedicated training

This growth in pro bono is following the path of other jurisdictions such as the United States, England and Australia where the practice is more developed. The Legal Practice Course (LPC) in England is similar to our qualification route here in Ireland. Unlike Ireland, however, the LPC can be offered by a range of institutions, including universities, and trainees from the same firm will often complete the LPC at the same institution. Large law firms ordinarily require their trainees to select certain electives, and can therefore influence what electives are on offer within the institution. In the UK some large commercial law firms now expect trainees to take electives that will prepare them to undertake pro bono work within areas of secondary specialisation, such as housing law, charity law or immigration.

Irish law firms have expressed interest in exploring such a possibility here in Ireland so that trainees not only receive a more well-rounded professional education, but are also equipped to engage in pro bono legal work from the very early stages of their traineeship.

FLAC recommends that The Law Society introduces electives that would equip trainees to engage in pro bono legal projects within their firms.

17. Clinical legal education

While a basic understanding of access to justice issues should be seen as a necessary and inherent component of all professional legal education, FLAC believes that an effective means of giving lawyers a sense of their own responsibility for increasing access to justice is through early exposure to those most in need of legal services. To this end, PILA has played a significant role in the development of clinical legal education – which seeks to complement the theoretical training law students receive in the classroom with practical, hands-on experience that is academically assessed.

Globally, clinical programmes provide a wide range of otherwise unavailable legal services through live clinics and placements, along with various law reform activities. Most universities in the United Kingdom¹³ now offer clinical options at under-graduate and LPC level, as well as for the Bar Professional Training Course. The most successful of these programmes offer a range of options to suit different levels of commitment and experience, the key being to enhance learning experience and employability. Leading universities run programmes for law students to take on real cases under the supervision of practising solicitors. These clinics are hugely popular, being habitually over-subscribed¹⁴ and considered a major selling point for law schools. They also offer crucial work experience that may not in practice be available to students from more deprived socio-economic backgrounds where working for free as an intern is not an option.

In Ireland, clinical programmes are still in their infancy and universities have primarily embraced the placement model, which is resource light. Live clinics have been slow to evolve due to funding and resource constraints, insurance and institutional buy-in. Various innovative programmes have, however, developed, for instance the Law Society has led a ‘Street Law’ initiative through Dr. Freda Greal, the Head of the Diploma Centre, where trainees – and now also qualified solicitors – provide legal education and information to school children and disadvantaged groups on their rights and responsibilities. The Law Society sees this as meaningful experiential learning that instils in trainees a commitment to increasing access to legal education and the legal profession, develops awareness around the importance of pro

¹³ As of 2014, 70% of all UK law schools provided free legal services to individuals, groups, and organisations. See the Public Law Project’s report on ‘Public Law and Clinical Legal Environments’, April 2018, page 8, available at: <http://www.publiclawproject.org.uk/data/resources/278/Public-Law-and-Legal-Advice-Clinics-Final.pdf>.

¹⁴ *Ibid.* page 16

bono legal services, and fosters an ethos of public service within the legal profession. The ‘Street Law’ programme has seen a steady increase in participants, but currently involvement is on a voluntary basis and does not attract academic credit as required by clinical programmes.

In a 2015 report commissioned by PILA, ‘*Clinical Legal Education in Ireland: Progress and Potential*,¹⁵ Dr Grealy noted that a programme of apprenticeship is still “the best way” of teaching students about the realities of law practice, but much is dependent upon “the structure of the apprenticeship.”

FLAC recommends that clinical legal education modules which advance the public interest and facilitate access to justice are incorporated into the curriculum of professional legal education.

FLAC recommends that such modules should prioritise the incremental development of ‘live clinic’ models of clinical legal education.

18. Traineeships and Funding for Independent Law Centres

There are currently eight operational Independent Law Centres¹⁶ in Ireland which can be described as non-profit organisations that provide accessible, free legal advice and representation to the public, and often to those who cannot afford it. Independent Law Centres are unique within the Irish legal landscape, offering expert legal services in particularly disadvantaged geographic areas or communities.

These Law Centres are generally run by 2-5 solicitors, however only one Law Centre currently employing a trainee solicitor. With limited staff, most Law Centres operate with significant assistance from volunteers, such as interns and practising lawyers. As funding within the charity and community sector becomes increasingly challenging, the resources of these Law Centres are being eroded. Law Centres would greatly benefit from the invaluable support that

¹⁵ *Clinical Legal Education in Ireland: Progress and Potential* by Larry Donnelly, 2015. Available at: https://app.pelorous.com/media_manager/public/138/Clinical-Legal-Education-Report.pdf.

¹⁶ These are Ballymun Community Law Centre, Community Law & Mediation Limerick, Community Law & Mediation Northside, FLAC, Immigration Council of Ireland, Irish Refugee Council, Mercy Law Resource Centre and Transparency Legal Advice Centre.

a trainee can provide, along with the capacity boost within the legal profession in areas of law that impact access to justice.

FLAC recommends that consideration be given to the provision of funding for traineeships within Independent Law Centres, covering both fees and salary.

19. Flexible qualifying work experience

Last year, the Solicitors Regulation Authority (SRA) in England and Wales announced its decision to reform the route to qualification for solicitors in a bid to harmonise the system and maintain high standards. During the consultation process, the importance of practical experience prior to qualification was highlighted however the difficulty in obtaining a training contract was flagged as a barrier to becoming a solicitor. As such, the SRA is introducing a more liberal approach to training contracts by requiring a minimum of two years' qualifying work experience which can be split between up to four different legal employers – and to include appropriate pro bono experience. Therefore solicitors will be able to use volunteer or clinic hours as part of their qualifying work experience.

This new approach recognises a greater variety of experience, obtained across a number of different workplaces. While it is expected that many law firms will wish to continue to offer formal training contracts, it will give candidates more flexibility in terms of workplace experience. It will also give more flexibility to firms and organisations who offer a training experience which is not recognised under the current system, while placing greater emphasis on clinical programmes within law schools.

FLAC recommends in relation to applications for training contracts that pro bono experience gained in clinics and workplaces such as the Independent Law Centres should be taken into account.

20. Continuing Professional Development

Under continuing professional development (CPD) rules set by the respective governing bodies, solicitors must complete 20 hours CPD per year while barristers must complete 12 hours. Barristers are entitled to claim CPD for pro bono work, including volunteering their legal skills in FLAC clinics. Solicitors, however, are explicitly prohibited from claiming CPD for pro bono legal work. Solicitors may claim CPD for delivery of training sessions, which may implicitly include legal education sessions on access to justice or public interest law matters.

In recognition of the contribution that pro bono legal work makes to a lawyer's professional development, while also encouraging greater participation in pro bono work at all levels, a number of other jurisdictions have favoured the inclusion of pro bono work in CPD requirements.

In England and Wales, for instance, solicitors are expected to review their learning needs and address them through CPD activities. They are then asked to reflect on the learning on an annual basis and look at ways they can incorporate this into their practice. As such, if a solicitor identifies the provision of pro bono services as a learning need, any pro bono work then undertaken can be included in the solicitor's annual declaration.

In Scotland, solicitors are required to undertake a minimum of 20 hours CPD in each practice year. Pro bono work can be considered as CPD provided it is included as part of the solicitor's learning and development plan and it is verifiable. The Law Society of Scotland states that in order to be verifiable, any pro bono work should:

- 1) have clear aims and outcomes relevant to the solicitor's professional development;
- 2) provide interaction and/or the opportunity for feedback;
- 3) be able to be evidenced; and
- 4) not be part of the solicitor's daily work.

FLAC recommends that solicitors who take on pro bono work be allowed to claim a specified number of CPD hours.

21. Mandatory/aspirational pro bono requirements:-

In order to lessen the justice gap and ensure practical experience for young lawyers, some jurisdictions have imposed mandatory pro bono requirements on new entrants to the profession. For instance, since 2012, applicants for admission to the New York State Bar are required to perform 50 hours of pro bono services.¹⁷ Similarly, in South Africa practising barristers and solicitors must provide 20-24 hours of pro bono services per year,¹⁸ while Singapore is moving towards a mandatory pro bono requirement of 16 hours.¹⁹ However

¹⁷ Rule § 520.16. Available at: <http://www.nycourts.gov/ctapps/520rules10.htm#B16>.

¹⁸ See <http://www.lssa.org.za/public/getting-legal-assistance/pro-bono>.

¹⁹ A committee set up to study community legal services in Singapore in 2012 recommended that mandatory pro bono be introduced in two stages, initially through introduction of an aspirational target. There has been mandatory reporting in place since 2015. See <https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-singapore.pdf>.

Australia has an aspirational National Pro Bono Target of 35 hours pro bono legal work per lawyer per year.²⁰

Pro bono has a valuable and important role to play in delivering legal services to those in need, should undoubtedly be encouraged within the legal profession. However FLAC believes it is not a substitute for adequately funded system of civil legal aid. The State should not be able to use mandatory pro bono to avoid its responsibility to provide equal access to justice.

FLAC recommends that the LSRA carry out research into whether pro bono targets should be aspirational or mandatory for practicing lawyers.

²⁰ See <https://www.probonocentre.org.au/provide-pro-bono/target/>.