

Submission from Letterkenny Institute of Technology in relation to the Section 34 Public Consultation regarding education and training of the Legal Services Regulatory Authority

Introduction

There has been little change in the format of legal education in Ireland since 1898 when the education of solicitors was transferred from the Honorable Society of the King's Inns to The Incorporated Law Society of Ireland (Herron 2006) both of whom have retained their respective responsibilities for the vocational education of lawyers. In 1846 the Select Committee on Legal Education first identified the progressive phases of legal education, namely academic education followed by the professional training culminating in examinations (Gee and Jackson 1977), a model still followed by both professions in Ireland. Only two contentious issues have arisen in relation to legal education and both concerned the professional practice courses¹, which are at postgraduate level. Thus, there has been minimal review however the necessity for review was recognised in the Legal Services Regulation Act 2015, the relevant provisions of which were commenced in 2016².

Pursuant to the Legal Services Regulation Act 2015, the Legal Services Regulatory Authority was established on the first of October 2016³ with a clear function to review and recommend potentially significant changes in the regulation of our legal services and providers. One of the objectives of the authority in performing its functions is to encourage "an independent, strong and effective legal profession"⁴. This submission is focusing firstly on those attributes, and secondly primarily in the context of undergraduate legal education which reflects our area of expertise.

'Independence'

The Higher Education Authority has the authority to sanction the delivery of undergraduate legal education programmes but they do not currently have an express policy on legal education. Control of the content and quality is the responsibility of Quality and Qualifications Ireland (the 'QQI' and formerly the National Qualifications Authority of Ireland). Prior to 2012, there were no explicit directions in relation to legal education apart from the requirements of the Hunt Report, which apply to higher education generally. However in 2012 the Higher Education and Training Awards Council established two new named award stems for qualifications in law, namely the Honours Bachelor of Laws bracket (LLB) and the Master of laws (LLM).

¹ Bloomer v Law Society of Ireland [2001] 9 I.C.L.M.D. 77; Abrahamson & others v Law Society of Ireland and the Attorney General [1996] 2 I.R.L.M. 481.

² Sections 13 and 34 contain provisions in relation to the education and training of legal practitioners and were commenced on the 19th of July 2016.

³ By the Minister for Justice and Equality, Frances Fitzgerald, TD, on the 1st of October 2016 by virtue of S.I. 507 of 2016.

⁴ Section 13(4)(e).

Ordinarily Quality Qualifications Ireland would then establish standards for the newly introduced awards prior to their introduction however in a context anticipating reform of the regulation of legal education arising from the then pending Legal Services Bill, Quality Qualifications Ireland determined it was not opportune to develop standards for law qualifications . As a result, implicit standards were determined pending the development of explicit award standards and/or subject guidelines. In proceeding to set out the standard for the Honours Bachelor of Laws degree QQI determined that candidates for this award should

1. Demonstrate attainment of all the learning outcomes contained in the National Framework of Qualifications award type descriptor for the Honours Bachelor Degree which are:

“Knowledge - breadth: an understanding of the theory, concepts and methods pertaining to a field (or fields) of learning.

Knowledge - kind: detailed knowledge and understanding in one or more specialised areas, some of it at the current boundaries of the field(s).

Know-how and skill - range: demonstrate mastery of a complex and specialised area of skills and tools; use and modify advanced skills and tools to conduct closely guided research, professional or advanced technical activity.

Know-how and skill – selectivity: exercise appropriate judgement in a number of complex planning, design, technical and/or management functions related to products, services, operations or processes including resourcing.

competence - context: use advanced skills to conduct research or advanced technical or professional activity, accepting accountability for all related decision-making; transfer and apply diagnostic and creative skills in a range of contexts.

Competence - role: act effectively under guidance in a peer relationship with qualified practitioners; lead multiple, complex and heterogeneous groups

Competence - learning to learn: learn to act in variable and unfamiliar learning contexts; learn to manage learning tasks independently, professionally and ethically.”

(Quality and Qualifications Ireland 2014:5)

And

2. Successfully complete a programme of education and training
 - whose minimum intended learning outcomes are demonstrably comparable to those typically necessary to qualify for an undergraduate LLB degree from an Irish University
 - that has been professionally accredited by a body recognised by QQI for this purpose(the only body so recognised to date is the Honourable Society of King’s Inns)
 - that has been validated by QQI or a provider to whom, under section 53 of the Qualifications and Quality Assurance (Education and Training) Act 2012,

authority to make an award has been delegated against the award standard implied by the three preceding requirements (Quality and Qualifications Ireland 2015:2).

Thus, the impact of higher education on legal education is either generic through its connection with an Honours Bachelor Degree or determined by the status quo of Irish universities or the professions (specifically the professional training of barristers to date). On this basis, it might appear that Irish universities have full academic freedom, however the qualifications offered would not be attractive to potential students were graduates ineligible for entry to the professions. Attainment of the prerequisites are determined differently for each of the professions albeit with clear overlap and inclusion of their requirements has become a core part of all undergraduate law degrees. As a result, the professional bodies indirectly prescribe a significant portion of the content of undergraduate legal education. The entry requirements of the professional bodies are determined exclusively by the professional bodies themselves with no direct input from external agencies, such as the Higher Education Authority or academia, which raises the issue of independence.

Section 13(2)(a)(ii) of the 2015 Act now requires the authority to keep under review and make recommendations to the Minister on the availability and quality of the education and training of both professions. Prior to enactment, concerns were raised by third level institutions regarding the possibility that the authority would then duplicate existing academic standards or infringe both the academic freedom and quality assurance as enshrined in the Universities Act 1997. However the Minister responded indicating that this provision instead allows the authority to review in a very general sense the availability and quality of legal education (Shatter 2013). We therefore submit that determination of the content of undergraduate legal education and consequently the entry requirements to the professions should be a matter for all relevant parties, including in particular those members of academia responsible for the provision of undergraduate legal education.

A further barrier to this inclusive approach is the composition of the board of the Legal Services Regulatory Authority, and in particular, the potential lack of representation from academia. Section 8 deals with membership of the Legal Services Regulatory Authority and provides that it will consist of 11 members of which five are lawyers where one each shall be nominated by the Bar Council, the Honorable Society of King's Inns, the Legal Aid Board with two being appointed by the Law Society. The balance are lay persons nominated from various other organisations however regrettably in the context of education there is no provision for direct academic representation, and we can see from the first iteration of the board that while academia is represented they are not present in that capacity⁵. We would

⁵ In the first iteration of the Legal Services Regulatory Authority appointed in late 2016 however, there are two academic members albeit not appointed in that capacity where the chair Mr Don Thornhill is from the Higher

therefore submit that this should be redressed, and the board should include academic representation.

‘Strong and effective’

As mentioned, there has been minimal change to legal education in Ireland since 1898, and even then, legal educators were grappling with the dilemmas presented by the interaction of theory and practice. Section 34(3)(c) of the Act specifically references the necessity for the authority to review and make recommendations regarding the teaching methodology of legal education. We submit that undergraduate legal education has been dominated by traditional pedagogic methods for too long and to maximise the learning for students, and provide the student centred experience required of higher education by the Hunt Report, experiential learning must become an integral part of all undergraduate legal programmes.

Clinical legal education is the perfect opportunity for delivery of this experiential learning. The importance of clinical legal education was acknowledged in the Act where Section 13(2)(a)(ii) specifically requires the authority to consider “curriculum arrangements for the provision of clinical legal education and the teaching of legal ethics, negotiation skills, alternative dispute resolution and advocacy”⁶, when reviewing and making recommendations to the Minister on the availability and quality of education and training of both professions. Letterkenny Institute of Technology has been to the forefront in this regard. As part of its programmatic review in 2012, there was a specific emphasis on the facilitation of the acquisition of transferable skills by our students in line with the requirements of the Hunt Report. A comprehensive review and revision of the programmes then available was undertaken with a view to redesigning our programmes in a manner that would facilitate continued compliance with the requirements of the QQI and the professional bodies whilst simultaneously fostering the development of the required transferable skills in our students. In response, the revised programmes provided several opportunities for applied learning and enhanced civic engagement of our students through several new clinical legal education modules, such as:

- Alternative dispute resolution: this culminates in an assessed simulated role-play of a mediation using actors.
- Law in Action: this is a module focused on client interviewing skills where the final assessment involves a trained client assessing the student; and
- Work placement.

The benefits to the students in terms of the application of their legal knowledge and transferable skill development has been immense and has led to the introduction of a further clinical legal education module namely Street Law (where our students deliver public

Education Authority and the representative of the Irish Human Rights and Equality Commission, Gerry Whyte, is a law lecturer in Trinity College Dublin.

⁶ Section 13(2)(a)(ii)(l).

legal education using an interactive teaching methodology) and to the initiation by our students of a FLAC clinic.

We therefore submit that if we are to produce strong and effective graduates the mandatory inclusion of clinical legal education at undergraduate level is an imperative.

Conclusion

In summary therefore, we submit that while no specific standards have been set for the awards in undergraduate legal education, standards must be set which includes both academic representation in their determination and clinical legal education as an essential component if we are to ensure independent, strong and effective graduates.

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