

**Submission to the Legal Services Regulatory Authority,  
as part of the public consultation under Section 34 of the Legal Services Regulation Act 2015,  
in relation to the education and training in the State of Legal Practitioners**

**1. Introduction**

1.1 McCann FitzGerald welcomes this opportunity to make a submission to the Authority. We are of the view that this consultation under the Legal Services Regulation Act 2015 (the 2015 Act) is timely. The views expressed in this submission relate to the education and training of trainee solicitors only.

1.2 In our submission we will share some of our concerns in relation to the current regime, both with regard to the FE-1 examinations and in relation to the Professional Practice Courses, and suggest proposals for change/improvement.

**2. The Final Examination – First Part (FE-1)**

2.1 We are of the view that the current requirement of the Law Society of Ireland, that law graduates sit this entrance exam, should be abolished. Alternatively, exemptions from sitting particular subjects should be granted as appropriate for students who have studied and passed at degree level some but not all of the subjects encompassed in the FE-1 exam.

(a) The FE-1's entail a re-examination of subjects that have, for the most part, been examined at third level.

(b) The third level institutions that offer law (or law combined with another subject) as a degree course are subject to the statutory requirements of the Qualifications and Quality Assurance (Education and Training) Act 2002 and meet the requirements for a degree level course.

(c) We do not view the removal of the FE-1's (or an exemption for students who have passed the relevant subjects) as exposing the profession to a risk of diminution in standards/quality of the profession as a whole. We recruit trainees typically after the third or fourth year of their degree course and do not rely on FE1 outcomes to make our recruitment choices.

(d) The requirement for law graduates to sit the FE-1's imposes a significant burden on the firm in terms of resource planning and cost.

(e) We believe that we are losing potential trainees to English law firms by virtue of the Law Society FE-1 requirement, both due to the inherent delay imposed on a trainee commencing their training contract, and the upfront cost and overall burden of the examinations. The requirement to sit the FE-1 exams unnecessarily delays the start of the training contract, in some circumstances by up to eighteen months. We have had a number of instances of having recruited trainees who have subsequently had a change of heart and have decided that a training contract in England is a more attractive proposition since it enables them to avoid sitting the exams and results in speedier qualification.

(f) The entrance examination also imposes a significant burden on law graduates. It delays them unnecessarily in starting their chosen career when they have already committed typically 4 years to a degree course and will be required to complete a 3 year traineeship before qualification as a solicitor. In circumstances where law graduates are being re-examined on subjects previously studied and examined on in

college, we do not see the merit in the imposition of such a burden on them. The absence of local exam centres was also mentioned by associates as a further negative.

- (g) We do appreciate the need for the retention of the FE-1 exams for non-law graduates.
- (h) Pursuant to section 34(3)(c)(iv) of the 2015 Act, the Authority is required to include recommendations in its report in relation to arrangements that would facilitate the minimisation of duplication, and consequent expense incurred, in the taking of exams in legal subjects by someone who has obtained a third level law degree that includes one or more of the subjects that form part of that course. It is our view that the requirement that law graduates sit the FE1's is an unnecessary duplication and does not add value in terms of the legal knowledge/skills of our trainee body.

### 3. Professional Practice Courses

- 3.1 We do not view the professional practice courses (“PPCs”), as administered by the Law Society, as suitable for our purposes. We strive to produce associate solicitors who are best in class in the context of the business environment (both domestic and international) in which our clients operate. As set out below, we have serious reservations as to the content of the courses, in particular the PPC I course, regarded as the “foundation” course. The PPC I course is geared towards the training needs of solicitors who will not practise in the corporate arena. We also have concerns as to the professionalism of the current delivery of the courses. Whilst in this submission we wish to focus on our principal concerns regarding the PPCs (being their inadequacy for the purpose of training solicitors to advise business clients and their structure), a few of our other concerns regarding quality merit mention and are addressed below.
- 3.2 Our firm, and other commercial law firms in the market, serve the needs of domestic and international corporate clients. An analysis of the solicitors’ practising certificates issued as of 31 December, 2017 shows that 43% of practising solicitors are working either in the 20 largest firms or in-house, serving the needs, of a significant portion of the corporate sector, both domestic and international.<sup>1</sup> As regards the top five firms (in size terms, including our firm), there were over 1,500 practising certificates issued to solicitors in those firms as of December 2017. These firms are clearly significant providers of legal services in the corporate arena and require a training course which meets their needs and in turn the needs of their clients.
- 3.3 The importance to the Irish economy of law firms’ ability to service the legal needs of both domestic and international businesses, in terms of professional, efficient and tailored advice and assistance, must be borne in mind in the context of the future training of solicitors. It is well established that the legal profession has a direct role in facilitating economic growth. It is also well established that the capability of firms in providing a top quality legal service in an international business context is a critical component in attracting foreign direct investment in Ireland. We do not believe that the PPCs currently being provided by the Law Society meet these important training needs of the profession.
- 3.4 A number of the broad areas of legal practice (e.g. litigation, conveyancing, tax law and business law) addressed by PPC I are, on their face, relevant to the work of solicitors generally. However, with the exception of the business law module, PPC I training in these areas is focused on the work of a general practitioner and not a practitioner serving the needs of a corporate client base. Specific instances of this would include the following:
  - (a) the litigation module on PPC I which has a limited emphasis on High Court and Commercial Court practice (although this comprises everyday work of litigation

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<sup>1</sup> Source: Law Society Gazette Jan/Feb 2018 and April 2018

departments in commercial firms) and a significant emphasis on personal injuries practice and debt collection;

- (b) the criminal law module which has a heavy emphasis on road traffic offences module, as distinct from white collar crime and regulatory offences which would be relevant to a commercial law firm;
- (c) the landlord and tenant module which has a large focus on residential tenancies.

The business law module is relevant to our firm but limited in nature and duration. PPC I also includes a lengthy module on wills and probate although work in this area is not typically undertaken by large commercial law firms.

- 3.5 As regards PPC II, the professional practice conduct and management module is based to a great extent on the running of a small practice, for instance in the task set concerning the preparation of a business plan which by its nature is more relevant to a solicitor setting up as a sole practitioner or working in a smaller practice. There are certain electives on PPC II that are currently compulsory (for instance family and child law) which are not relevant to the practice of commercial firms – using time that could be usefully spent on other more relevant topics. The overall approach to the teaching of ethics appears somewhat ad hoc and has been identified as a gap in the PPC content by our associates.
- 3.6 Whilst the course content has developed over the years to include a greater emphasis on professional legal skills, there remains a need for a lot more. We see an urgent need for the course content to be developed in order to keep pace with on-going technological developments so that trainees are properly equipped for the work of a solicitor today and into the future. Technology is already having a significant impact on the way in which commercial law firms deliver their services to clients. This trend is increasing. Trainee solicitors need to be properly trained by appropriate experts in this area to meet these needs and to be “future proofed”.
- 3.7 The practical consequence of these inadequacies in the PPCs is that this firm (and other commercial firms) must provide their own training geared toward a commercial law practices. We do not expect that professional training would cover in detail every specialist area of law. It is, however, entirely appropriate, given the scale of commercial firms, the different focus of their work and the needs of their clients, to expect training which has the same corporate focus and is not focused primarily on general practice. From our firm’s perspective, a course is required which encompasses the legal content and skills required for trainees working in a corporate law firm serving the needs of corporate clients.
- 3.8 The structuring of professional training also requires review and change. There is a consistent view expressed by associates in the firm that PPC I is too long, with the sense being that very little is done in the first month – by contrast the view expressed in relation to PPC II is that there is a huge amount of material encompassed in a relatively short course with a limited number of lectures and tutorials.
- 3.9 Furthermore the structuring of PPC I and II, comprising two separate courses, adds significantly to the administrative burden of running our trainee programme, including with respect to seat and work allocation. We believe it would be more effective and efficient to structure professional training as a single course running for one academic year.
- 3.10 In terms of quality issues, concerns have been raised by our associates as to the quality of certain lecturers and tutors involved in the delivery of the PPC I and II courses, and issues arising as to consistency in the delivery of the course content in this respect. Furthermore, time is often lost in the effective repetition by lecturers of content already covered by other lecturers.

There seems to be an absence of benchmark standards. In the context however of what we understand are approximately 1,200 practitioners involved in the provision of the course content, the implementation of any such benchmark standards/training of the trainers could be a challenge. Course materials circulated to the students (via soft copy or otherwise) are not always up to date. Whilst this is presumably something that could be remedied, it does raise a concern as to the professionalism of the approach of the Law Society to the delivery of the PPC course content.

- 3.11 Notionally the Law Society, if so minded, could ultimately respond to some of these quality concerns, but we have some doubt as to its capability to so do, particularly in any kind of timely manner.
- 3.12 We note the effective monopoly enjoyed by the Law Society in the training of trainee solicitors. Whilst the Society does have power under the Solicitors Acts <sup>2</sup> to authorise any other body or institution to provide courses for the training of persons seeking to be admitted as solicitors, we are not aware of any party having ever sought such authorisation. Whilst recognising the need for consistency in standards, there appears to us to be an inherent conflict of interest in the Society being the current sole provider of such training, also being the party with the power to authorise (or otherwise) another aspiring provider of training.
- 3.13 We are aware of at least one third level institution that has expressed serious interest in providing training to trainee solicitors and believe it has the requisite capacity to do so, whether as a sole provider or perhaps (if it saw fit) on some form of joint venture basis with the Law Society.
- 3.14 We are of the view that the monopoly of the Law Society has been and remains detrimental to the provision of training adequate to meet the needs of solicitors (both in practice and in-house) serving the varied and complex needs of corporate clients.
- 3.15 We acknowledge over the years the Law Society has made some limited effort to address the concerns of commercial firms, for instance by offering some more commercially focussed specialist modules in PPC II. However the response remains wholly insufficient in terms of meeting the broader needs of a commercial law firm and the training requirements, both general and specialist, of trainees working in the corporate sphere.

#### 4. **Proposals for reform of the Professional Practice Courses**

- 4.1 We believe that there should be one period only of out of office training which should run for the period of an academic year (nine months). Ideally this would be commenced by trainees after a period of not less than 4-6 months of in-office training.
- 4.2 There is a need for a significant overhaul and update of the training system to deal with the concerns raised above so as to meet the needs of commercial law firms operating in today's corporate world, and to meet the needs of both domestic and international business clients. In the design of the PPCs there are clearly foundation subjects that all trainees need to cover, however the focus of the content needs to be business orientated so as to adequately meet the training needs of today's commercial law firm trainees.
- 4.3 The removal of the de facto monopoly enjoyed by the Law Society in the training of trainee solicitors would assist in this respect. In light of our experience over the years of the Law Society, we have concerns that the Society is quite simply not in a position to react and meet

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<sup>2</sup> Section 40 of the Solicitors Act 1954 as amended.

the need to deliver a course suitable for trainee solicitors working in the corporate arena and serving the needs of business clients, domestic and international.

- 4.4 The introduction of competition will be a good thing for the profession. It should prove to be an incentive to the Law Society to continue to develop and expand its training – both as to content, focus and delivery.
- 4.5 Any new provider will need to be duly accredited by an independent body to protect standards, which is an issue to be examined by the Authority pursuant to section 34 of the 2015 Act.

We would welcome the opportunity to meet with the Authority if this is possible.

**McCann FitzGerald**

**Date: 26 November, 2018**