

ICCL Submission to the Legal Services Regulatory Authority on Admission Policies of the Legal Professions

February 2024

Introduction

1. The Irish Council for Civil Liberties (ICCL) welcomes the opportunity to contribute to the Legal Services Regulatory Authority (LSRA) consultation process prior to the Authority's 2023 Annual Report to the Minister for Justice on the Admission Policies of the Legal Professions.
2. By means of this submission, ICCL wishes to draw attention to the importance of diversity, equity and inclusion within the legal professions, as well as the continued need to address barriers to accessing legal aid in Ireland.
3. Over the years ICCL has called on the Irish judiciary to strive to cater for multiculturalism and diversity on the bench¹. We believe that any judicial diversity cannot be achieved without addressing diversity, equity and inclusion in the legal professions.
4. Any conversation revolving around access to the legal professions should consider and address two factors: fostering a legal system that is reflective of the diverse Ireland we live in today and removing existing barriers in accessing the legal profession.

Diversity, equity and inclusion within the legal professions

5. Preliminary results from the Bar of Ireland's latest Diversity, Inclusion and Working Lives Survey show that 96% of the respondents' culture and ethnic identity was indicated as Irish, with the remaining responses indicating "other" and "prefer to not disclose"². We note with favour that enhancing access to the profession is one of the core objectives of the Bar of Ireland plan to deliver diversity, equality and inclusion within barristers³. The Law Society of Ireland has adopted a Gender Equality, Diversity and Inclusion Policy⁴. We note that the Society states that "solicitors can adopt this policy, or segments of it, to help improve gender equality, diversity and inclusion within their organisations and the wider profession"⁵.
6. ICCL recommends adopting a comprehensive and structural approach to diversity, equity and inclusion, for which opt-out procedures would not be advisable. Measures aimed at delivering diversity, equity and inclusion in the legal professions should be actionable, monitored, periodically evaluated and properly budgeted, and should address structural barriers and inequities in the access and exercise of the legal professions.

¹ See e.g. ICCL, *Diverse Judiciary is a "Cornerstone" of Democracy*, says the ICCL, 17 September 2008, <https://www.iccl.ie/archive/diverse-judiciary-is-a-cornerstone-of-democracy-says-the-iccl/>; ICCL, *Submission on Review of Procedures for Appointment as a Judge*, February 2014, <https://www.iccl.ie/wp-content/uploads/2017/11/ICCL-Review-of-Procedures-for-Appointment-as-Judge-2014.pdf>; Irish Research Council, *Irish Council for Civil Liberties, Towards Best Practice: A report on the new Judicial Council in Ireland*, 2022, <https://www.iccl.ie/wp-content/uploads/2022/02/Towards-Best-Practice-Judicial-Council.pdf>.

² Molly Eastman, *A Profession in Progress*, in *The Bar Review*, Volume 28 Issue 4, October 2023, <https://www.lawlibrary.ie/bar-reviews/the-bar-review-october-2023-2/>, p. 124

³ The Bar of Ireland Equality Action Plan - Enhancing Equality, Diversity and Inclusion at the Bar, June 2022, <https://www.lawlibrary.ie/app/uploads/securepdfs/2022/05/Bar-of-Ireland-Equality-Web.pdf>.

⁴ Law Society of Ireland, *Gender Equality, Diversity and Inclusion Policy*, 2021, <https://www.lawsociety.ie/globalassets/documents/gedi/gedi-precedents-final-2021-06-10.pdf>.

⁵ Law Society of Ireland, *Gender Equality, Diversity and Inclusion*, <https://www.lawsociety.ie/member-services/practice-support/diversity-and-inclusion>, accessed 8 February 2024.

7. It is key that efforts to enhance access to the profession address the existing barriers, including socio-economic. The high costs of becoming a barrister have been condemned as problematic for years⁶.
8. Equitable access to the profession, diversity and inclusion have a wider positive impact on society as a whole. The Bar of Ireland recognised that “members with diverse educational, social and ethnic backgrounds are crucial to the profession, as they ensure just and accurate representation of the Irish general public, ultimately safeguarding the integrity and trust in the legal system, and the relevance of the Bar to the society it serves”⁷. Educational outreach and addressing financial barriers are key to this end.

The linked issue of diversity in the judiciary

9. In 2008 the question “Will tomorrow’s judges reflect the diversity of Ireland today?” was raised at an ICCL event titled ‘Judicial Diversity: Strategies for Change’⁸. 16 years later, the call for diversity of the judiciary and wider legal professions is still as relevant as ever.
10. ICCL considers that a diverse judiciary is a cornerstone of a modern democracy, as is set out by the UK’s Advisory Panel on Judicial Diversity:

*“Not only should there be equality of opportunity for those eligible to apply, but in a democratic society the judiciary should reflect the diversity of society and the legal profession as a whole. Judges drawn from a wide range of backgrounds and life experiences will bring varying perspectives to bear on critical legal issues.”*⁹
11. Review of the appointments process is a real opportunity to enhance the spectrum from which Irish judges may be drawn and increase representation of groups that are underrepresented. However, as previously signalled by ICCL this is unlikely to happen unless proactive steps are taken to render our current system – including the education of legal professionals and the ongoing professional development of judges – more inclusive¹⁰.
12. ICCL has also previously noted that a judiciary which is visibly more reflective of society will enhance public confidence¹¹. Similarly, and in a connected way, diversity in the legal professions is key to building trust with marginalised communities in Ireland and to encouraging access to legal support. We note that in 2022 the President of the Law Society

⁶ Erin McGuire, The long, winding - and very expensive - road to practising at the Bar, The Irish Times, 3 November 2014, <https://www.irishtimes.com/news/crime-and-law/the-long-winding-and-very-expensive-road-to-practising-at-the-bar-1.1983743>.

⁷ Molly Eastman, A Profession in Progress, in The Bar Review, Volume 28 Issue 4, October 2023, <https://www.lawlibrary.ie/bar-reviews/the-bar-review-october-2023-2/>, p. 124.

⁸ ICCL, Diverse Judiciary is a “Cornerstone” of Democracy, says the ICCL, 17 September 2008, <https://www.iccl.ie/archive/diverse-judiciary-is-a-cornerstone-of-democracy-says-the-iccl/>.

⁹ Advisory Panel on Judicial Diversity, The Report of the Advisory Panel on Judicial Diversity 2010, <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Reports/advisory-panel-judicial-diversity-2010.pdf>, p. 4, para. 1.

¹⁰ ICCL, Submission on Review of Procedures for Appointment as a Judge, February 2014, https://www.iccl.ie/wp-content/uploads/2017/11/ICCL-Review-of-Procedures-for-Appointment-as-Judge_2014.pdf, p. 11.

¹¹ ICCL, Submission on Review of Procedures for Appointment as a Judge, February 2014, https://www.iccl.ie/wp-content/uploads/2017/11/ICCL-Review-of-Procedures-for-Appointment-as-Judge_2014.pdf, p. 11.

of Ireland recognised the need to amplify and listen to the voices of those who are marginalised, saying:

“How much more real would access to justice in Irish society be when the person who is about to pave the trajectory of your life understands your background, your personal circumstances and what has led you to be in the situation you now face? Let’s encourage and educate students from disadvantaged backgrounds, from primary school all the way through to third level and show them that the legal profession is achievable for them too.”¹²

13. In the context of the right to fair trial, ICCL has previously highlighted that human rights law imposes a positive obligation on the judiciary to treat people equally before the law and to combat discrimination, including in the way they exercise their personal judgment¹³. Legal scholars have referred to the notion of corporate bias, whereby, because of their background, judges may be influenced by a particular outlook on life and a similar value system¹⁴. ICCL has previously recommended that the Judicial Council ensure that training programmes include material on broader social context and bias and diversity for judges¹⁵, a recommendation we extend to the wider legal professions. We note that by investing in diversity, equity and inclusion in the legal professions, legal professionals would be exposed de facto to diversity, lived expertise and different social contexts.

Costs of legal services

14. In relation to the consultation question on costs of legal services in 2023 and whether these were available at a reasonable cost to consumers, we take the opportunity to note that the Civil Legal Aid scheme has been repeatedly criticised for its overly strict two-tier test: financial eligibility criteria and the merits of the case. Apart from the decision to remove Housing Assistance Payments, the remit of the scheme has not been otherwise expanded and many people are still excluded from accessing the courts for this reason. ICCL restates its call for meaningful reform of the Civil Legal Aid scheme with a view to making it less restrictive and for further resources to be allocated to the Legal Aid Board.
15. We take the opportunity to also restate that ICCL supported the withdrawal of services by criminal barristers on 3 October 2023. That fees have not been restored is a shocking undervaluation of the crucial work of barristers in Ireland's criminal justice system. It is very concerning that about two-thirds of barristers in criminal practice in Ireland leave after six years. The legal aid system must be properly resourced to protect the rights of people who come before the courts and the rule of law.

¹² Mary Carolan, Law Society president calls for more diversity in profession, 7 March 2022, <https://www.irishtimes.com/news/crime-and-law/law-society-president-calls-for-more-diversity-in-profession-1.4820664>.

¹³ Irish Research Council, Irish Council for Civil Liberties, Towards Best Practice: A report on the new Judicial Council in Ireland, 2022, <https://www.iccl.ie/wp-content/uploads/2022/02/Towards-Best-Practice-Judicial-Council.pdf>.

¹⁴ See e.g. JAG Griffith, *The Politics of the Judiciary* (Fontana Press 2001). See further Tanya Ward, *Justice Matters* (ICCL 2007).

¹⁵ Irish Research Council, Irish Council for Civil Liberties, Towards Best Practice: A report on the new Judicial Council in Ireland, 2022, <https://www.iccl.ie/wp-content/uploads/2022/02/Towards-Best-Practice-Judicial-Council.pdf>.

About ICCL

The **Irish Council for Civil Liberties** (ICCL) is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped decriminalise homosexuality, divorce and contraception. We drove police reform, defending suspects' rights during dark times. In recent years, we led successful campaigns for marriage equality, data protection and reproductive rights.