



Submission to the LSRA on Barriers for Early Career Solicitors and Barristers and Increasing Diversity

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Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
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Commission



Introduction

The Competition and Consumer Protection Commission (CCPC) welcomes the opportunity to provide a submission to the Legal Services Regulatory Authority (LSRA) consultation on economic and other barriers for early career solicitors and barristers and increasing diversity. National and international research shows that young barristers and solicitors face many barriers when beginning their careers, particularly legal practitioners from certain socio-economic or demographic groups. These market frictions, in turn, impact on inclusivity and diversity in the sector. The CCPC therefore supports the recommendations made by the LSRA in its recent report¹ to the Minister for Justice ('the Minister') for reform of legal education and training and considers that these reforms, along with other recommendations made by the Hook Tangaza report to the LSRA in 2018², will help to remove barriers to entry into the legal professions and improve competition in the legal sector.

The submission will outline key barriers to entry to the professions of solicitor and barrister, highlight specific issues related to the apprenticeship, training and remuneration arrangements for newly qualified legal professionals, examine specific issues related to arrangements in place and provision for maternity/adoptive leave for legal professionals, and finally review some of the key economic and other barriers facing legal professionals in their early careers.

The CCPC makes a number of recommendations to the LSRA which aim to address the relevant issues and barriers outlined in this submission and highlight the need for greater research and evidence.

- Recommendation 1: A key objective of the Legal Practitioner Education and Training (LPET) Committee should be to facilitate entry of additional legal education and training providers into the market to foster competition. This will in turn support increased access and encourage diversity in the legal profession.
- Recommendation 2: The LPET committee should consider facilitating the creation of new routes to legal qualification, including for non-law graduates, which could

¹ <https://www.lsr.ie/wp-content/uploads/2020/12/Section-33-PublicConsultationNotice-AR2000.pdf>

² <https://www.lsr.ie/wp-content/uploads/2019/09/Review-of-Legal-Practitioner-Education-and-Training-Final-version.pdf>

increase competition by fostering diversity both in demographic characteristics and in practice area.

- Recommendation 3: The findings from the surveys and interviews carried out by the LSRA for this consultation should be made publicly available in order to contribute to the wider body of evidence around these issues. In general, the LSRA and LPET Committee should facilitate the gathering of evidence and research around the potential issues which might affect entry to the legal professions in Ireland. This evidence can be used to identify relevant solutions and to stimulate diversity and inclusion into the sector
- Recommendation 4: the CCPC notes the LSRA recommendation to the Minister for Justice that the LPET Committee be empowered to encourage access to legal education and training opportunities. The CCPC recommends that the LSRA or LPET Committee should also carry out research on factors that limit access to traineeships and internships.
- Recommendation 5: The CCPC recommends that legislation should be enacted to allow for the formation of legal partnerships by barristers and solicitors to provide a route for early career practitioners to develop their legal practice.
- Recommendation 6: A key aspect of the work of the LPET Committee should be to ensure that training for solicitors reflects the skills needed and takes into account market demand in the sector.
- Recommendation 7: The CCPC recommends that the LSRA facilitate research on barriers to career progression in the legal market.

Key barriers to entry to the professions of solicitor and barrister and proposals for reform

Barriers to entry to the legal professions have been highlighted in previous reports regarding the education and training arrangements for solicitors and barristers. This includes the Hook Tangaza report³, submitted to the LSRA, which provided an initial review

³ <https://www.lsr.ie/wp-content/uploads/2019/09/Review-of-Legal-Practitioner-Education-and-Training-Final-version.pdf>

of the existing arrangements and provided proposals for reforms. Based on this report and further consultations, the LSRA provided a report to the Minister for Justice and made 12 recommendations for reform.⁴ Many of these proposals and recommendations were aligned with views articulated in previous reports and submissions by the CCPC and its predecessor organisation the Competition Authority. The purpose of many of those recommendations are to encourage greater entry into the professions, stimulating competition for students and thereby lowering costs and encouraging more innovative means of delivering education and training.

The report prepared by Hook Tangaza for the LSRA in 2018 ('the Hook Tangaza report') highlighted that attention must be given to encouraging greater diversity and increased access to the legal profession through the creation of new routes to qualification. The CCPC agrees that this is necessary. The CCPC therefore welcomed the LSRA's proposal to establish a Legal Practitioner Education and Training (LPET) committee which would be tasked with the regulation of the legal education and training market. This recommendation aligns with the proposals of the Competition Authority's market study on solicitors and barristers in 2006. The CCPC recommends that a key objective of the LPET Committee should be to facilitate entry of additional legal education and training providers into the market to foster competition. Greater competition will aid the development of innovative ways of providing education and training which are more cost-effective and which might attract more diverse entry to the legal profession. The experience of other common law jurisdictions in particular will be of note in that regard.

The CCPC also supports the Hook Tangaza's proposal that new routes to qualification should be opened. The LPET committee should consider facilitating the creation of new routes to legal qualification which specifically foster diversity both in demographic characteristics and in practice area.⁵ Furthermore, the CCPC also supports the Hook Tangaza proposal that new routes to qualification should be opened for non-law graduates. The development of a competence framework by the LPET committee should assist the establishment of alternative means to enter the professions. As the Hook Tangaza report stated: *'by defining the competences expected of a newly qualified solicitor*

⁴ <https://www.lsra.ie/wp-content/uploads/2020/11/Section-34-ET-Final-Report-to-Minister.pdf>

⁵ <https://www.lsra.ie/wp-content/uploads/2019/09/Review-of-Legal-Practitioner-Education-and-Training-Final-version.pdf>

or barrister, professional training course providers will be able, for example, to accept law conversion courses and map these against their requirements for entry and offer exemptions from examinations, where applicable'.⁶

In Ireland, there is a lack of evidence and research regarding the issues affecting various social and demographic groups in entering the legal profession in Ireland. The CCPC is aware that international research on these issues, such as that carried out by the Legal Service Board in the United Kingdom (UK)⁷, suggests that barriers to entry and progression tend to be encountered at multiple stages and that a person's education and socio-economic background are relevant factors.⁸ Each step of an individual's progress to becoming a lawyer acts as a necessary building block towards a successful career. At each stage, the research demonstrates that individuals of certain social backgrounds or with other demographic attributes may face certain barriers which affect their entry into the legal profession and progress in their careers. These barriers can culminate in a lack of diversity and inclusivity in the legal sector, which means that certain groups may be restricted from competing in the market. When entry of potentially more efficient competitors from these groups is restricted the gaps may be filled by less efficient competitors.⁹

In a survey carried out for the purposes of the Hook Tangaza Report, 88% of respondents stated that they expected to face barriers to qualifying as a legal practitioner. The most common barriers cited included the costs of qualification (including the unpaid time involved either in gaining entry to solicitor training whilst studying for the FE-1 or in undertaking pupillage), the time involved in qualifying, and lack of contacts in the profession.¹⁰

In respect of solicitors, the CCPC notes the LSRA's 2019 annual report found that students often have to take test preparation courses to prepare for the Law Society's entrance

⁶ <https://www.lsr.ie/wp-content/uploads/2019/09/Review-of-Legal-Practitioner-Education-and-Training-Final-version.pdf>

⁷ <https://legalservicesboard.org.uk/wp-content/media/2010-Diversity-literature-review.pdf>

⁸ <https://legalservicesboard.org.uk/wp-content/media/2010-Diversity-literature-review.pdf>

⁹ E. Santaceur & C. Pike (2018) 'Competition Policy and Gender' – OECD Global Forum on Competition [https://one.oecd.org/document/DAF/COMP/GF\(2018\)4/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2018)4/en/pdf)

¹⁰ http://opac.oireachtas.ie/AWData/Library3/JUQdoclaid191118_105520.pdf

examinations and may potentially spend up to €4,000 on fees alone to get through the FE-1 stage of qualification.¹¹

It has also been reported that the road to becoming a barrister can be “prohibitively expensive”, with the barrister-at-law degree (BL) currently costing €12,560 for 1 year full-time.¹²¹³ For would-be barristers without an undergraduate law qualification, a diploma in legal studies, required before undertaking the BL, also costs €9,950 for 2 years.¹⁴ Barristers also face other costs during their mandatory work experience ‘devilling’ with an experienced barrister for at least a year during which they are unpaid. In their first year of devilling, barristers must pay both their yearly Law Library fees and a one-time entrance fee, which amounts to €3,400.¹⁵

As noted in the Legal Board research report, individuals from certain socio-economic backgrounds encounter greater difficulty in meeting such costs of education and training, and they may also lack the social connections necessary to facilitate their entry to legal professions. The surveys and interviews carried-out by the LSRA to support this consultation might provide a similar level of insight regarding the position of students wishing to enter the legal professions in Ireland. Findings from these surveys and interviews should be made available publicly in order to contribute to the wider body of evidence around these issues.

An example of effort undertaken by organisations to increase diversity in the professions includes the Law Society of Ireland’s Access Programme which supports access to legal education and careers for students from socio-economically disadvantaged backgrounds and has supported over 200 trainee solicitors¹⁶. The CCPC suggests that the LSRA and LPET committee research the impact of such programmes, including on the diversity of entrants to the legal profession and to support them where appropriate. Additional evidence on the potential issues which might affect entry to the legal professions in Ireland is necessary

¹¹ <https://www.lsr.ie/wp-content/uploads/2020/06/Pathways-To-Professions-LSRA-Annual-Report-s33-2019.pdf>

¹² <https://www.irishtimes.com/news/crime-and-law/the-long-winding-and-very-expensive-road-to-practising-at-the-bar-1.1983743>

¹³ <https://www.kingsinns.ie/education/course-fees>

¹⁴ <https://www.kingsinns.ie/education/course-fees>

¹⁵ <https://www.irishtimes.com/news/crime-and-law/the-long-winding-and-very-expensive-road-to-practising-at-the-bar-1.1983743>

¹⁶ <https://www.lawsociety.ie/Solicitors/Running-a-Practice/diversity-and-inclusion/>

to identify solutions which stimulate competition by encouraging greater diversity among those entering the sector.

Apprenticeship, Training and Remuneration

There are certain issues specifically related to the apprenticeship and training of legal professionals which may act as barriers to entry to the legal professions. As previously stated, a lack of social connections and contacts within the legal sector are a disadvantage in accessing the legal professions but particularly in accessing the training opportunities required to become a solicitor or barrister. This issue can also often affect an individual's ability to access internship opportunities in the legal sector, which are now often a way to obtain trainee positions in Ireland. Individuals wishing to train as barristers may also lack the information necessary to access the appropriate apprenticeship. Remuneration during training could also be an important barrier for trainee barristers and some solicitors. In order to address these issues, the LSRA or LPET Committee should establish an evidence base to consider and identify improvements to better enable access to training opportunities for a diverse range of candidates. This includes the remuneration arrangements for trainees, particularly barristers. The LSRA or LPET Committee should carry out or commission research to identify the degree to which limited access to traineeships and internships represents a barrier to entry to the legal profession.

The CCPC notes the results of the Hook Tangaza survey with students in which the process of accessing professional training was one of the issues which generated the most comments to the review.¹⁷ It was highlighted that access to a trainee solicitor position is often still obtained through social connections and contacts, which may prevent some graduates that are not in a position to draw on connections from obtaining a training contract.

The CCPC notes several suggestions for improving the pupillage system for barristers from how individuals select a pupil-master through to monitoring the skills training delivered during the training period. Some of the responses indicated that further information should be provided on the availability of 'Masters' and their relevant experience. Pupillage, which takes place for at least one year, is unpaid, although a Master may pay

¹⁷ <https://www.lsr.ie/wp-content/uploads/2019/09/Review-of-Legal-Practitioner-Education-and-Training-Final-version.pdf>

for a barrister's expenses if they wish to do so.¹⁸ Requiring barristers to spend at least a year outside of the job market without getting paid, after two expensive years qualifying, can consist of a heavy financial burden for many. For many, including certain socio-economic groups, this constitutes a very real barrier to entry, also identified by the Hook Tangaza report.

Remuneration and overall costs for the education and training of solicitors may also be quite uneven across the sector, with the largest law firms in Ireland sponsoring trainee solicitors to qualify, paying for their fees while also providing them with a small salary. However for prospective trainee solicitors who do not obtain sponsorship by a law firm, fees can be expensive and can prove to be a barrier to entry.¹⁹

Research in the UK carried out by the Legal Services Board also highlights that gaining work experience such as internships is now an important factor contributing to obtaining trainee positions and impacts on a legal professional's overall career on a long-term basis. In Ireland, it has also been reported that many of the State's top legal firms now recruit through internship channels, taking on students and offering them training contracts after the internship.²⁰

However, as the Legal Services Board report indicates, internship and work experience is another stage which might represent a barrier for certain students of different backgrounds. For example, the research states that social background is significantly related to the success of gaining work experience, with those from privileged backgrounds more likely to achieve this. This may be due to firms receiving requests for work experience from family members of clients or colleagues. Students who come from a background where internships are common are more likely to have the awareness to seek them out²¹.

¹⁸ <https://www.irishtimes.com/news/crime-and-law/the-long-winding-and-very-expensive-road-to-practising-at-the-bar-1.1983743>

¹⁹ <https://www.lawsociety.ie/Trainees/PPC-Courses/Fees--Funding/>

²⁰ <https://www.irishtimes.com/news/crime-and-law/internships-increasingly-used-as-a-route-into-legal-profession-1.1405583>

²¹ <https://legalservicesboard.org.uk/wp-content/media/2010-Diversity-literature-review.pdf>

The arrangements in place and provision for maternity/adoptive leave for solicitors and barristers

In many sectors of the economy lack of maternity or parental benefits or childcare services may act as a barrier to participation in a market for parents. Barristers and solicitors, particularly those who are self-employed, may face certain difficulties accessing these benefits. This may lead to the early exit of well-trained legal professions from the sector and a potential loss of competition in the market.

As highlighted by the 2018 Organisation for Economic Cooperation and Development (OECD) paper on competition policy and gender²², individuals from certain demographic groups can fail to enter a market if they face legal or informal barriers to entry. These barriers can mean that the ‘playing field’ is not a level one for the group, which makes it difficult for them to enter markets or to maintain their position in the market. This has negative consequences for equality, and potentially for market competition.

One of these barriers arises from the ‘opportunity cost’, whereby a parent chooses not to participate in a certain market because of a lack of complementary infrastructure services, such as childcare services, and because not being in that market may provide them with more flexible working conditions.²³

Barristers and solicitors can spend a long time in education and training with little or no remuneration. During periods of self-employment, they might face difficulty in meeting the statutory conditions to obtain maternity or parental benefits²⁴. Reports suggest that self-employed women tend to find it more difficult to take the time out of work than employees²⁵. Availing of maternity leave benefits may represent a significant income drop, and the self-employed may face the risk of losing significant business.

Barristers and self-employed solicitors may therefore face even greater difficulties when starting a family compared to solicitors working for firms that may provide better support

²² E. Santaceur & C. Pike (2018) ‘Competition Policy and Gender’ – OECD Global Forum on Competition [https://one.oecd.org/document/DAF/COMP/GF\(2018\)4/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2018)4/en/pdf)

²³ E. Santaceur & C. Pike (2018) ‘Competition Policy and Gender’ – OECD Global Forum on Competition [https://one.oecd.org/document/DAF/COMP/GF\(2018\)4/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2018)4/en/pdf)

²⁴ [The Parental Leave \(Amendment\) Act 2019 in Ireland introduced the concept of paid parental leave for employees. Subject to PRSI contributions, as of November 2019, each parent may receive up to two weeks of parental benefit within the first 12 months of the birth of the child, or in the case of an adoption, from the date of placement of the child. http://www.irishstatutebook.ie/eli/2019/act/11/enacted/en/html](http://www.irishstatutebook.ie/eli/2019/act/11/enacted/en/html)

²⁵ <https://www.irishtimes.com/life-and-style/health-family/balancing-business-and-babies-1.1345505>

to parents when taking leave. This disproportionately impacts women in the legal sector. The opportunity cost for self-employed women legal professionals may be such that they leave the market for another which provides more flexible working-conditions.

The CCPC recommends that the LSRA undertake further research to identify the kinds of issues which may prompt the exit of well-trained professionals who are parents from the legal sector.

The key economic and other challenges for early career solicitors and barristers in maintaining/building up their careers and proposals for reform

There is growing diversity and inclusion in the legal sector in Ireland. For example, females now make up about 52% of the Irish solicitor workforce²⁶. In respect of barristers, there may be barriers to entry for women in the profession. Only 38% of barristers in Ireland are women²⁷. In general, low remuneration for barristers in the early years of their careers is a significant barrier to the profession. Overall, it is estimated that half of those who qualify as barristers never practise in the courts and of those who do, more than half drop out within five years.²⁸ Poor work-life balance is often reported for both barristers and solicitors, including those working as employees for companies. It appears that solicitor practices are now seeking to address this, with many reporting that they now offer flexible working benefits for their employees.²⁹ However, long working hours and low remuneration for early career practitioners still remain significant barriers to access to the legal sector for groups of individuals with different needs and responsibilities.

Certain reforms could address these barriers in the legal sector. The CCPC has advocated for the introduction of legal partnerships which could help support and facilitate entry into the legal profession, particularly for early career barristers. Allowing barristers to enter a partnership with established legal practitioners could result in a steadier income in the first few years, compared to the financial risks of operating as a sole trader. Greater financial security could also help to encourage a broader spectrum of talent from diverse

²⁶ <https://www.irishtimes.com/news/crime-and-law/women-lawyers-face-real-obstacles-in-bid-for-equality-1.4056901>

²⁷ https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2019/2019-12-23_Irs-infographic-women-and-the-law-100-years-of-progress-since-the-sex-disqualification-removal-act-1919_en.pdf

²⁸ <https://www.lawlibrary.ie/Membership/Qualifying-as-a-Barrister.aspx>

²⁹ <https://smithandwilliamson.com/media/4615/smith-williamson-annual-survey-of-irish-law-firms-2018-19.pdf>

backgrounds and retain some who might otherwise have been forced out of the profession due to financial necessity. Newly qualified barristers would also gain experience and knowledge from their colleagues in the early stages of their careers. The CCPC therefore welcomes the provision for the introduction of barrister-barrister and barrister-solicitor legal partnerships to be facilitated by the General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021³⁰.

The CCPC strongly supports the LSRA proposal that the LPET Committee should ensure that training for solicitors reflects the skills needed to practice as a solicitor and that education and training standards should reflect the full range of work that a solicitor can be called to undertake.³¹ Ultimately, training for both solicitors and barristers should provide them with the skills and knowledge in demand in the market. Having such skills and knowledge would increase a newly qualified legal professional's chances to gain employment faster or to be contracted for more cases. The CCPC recommends that arrangements be put in place to enable trainees to develop specialisms. In addition, the CCPC advocates for the establishment of the profession of conveyancer as recommended in the 'Solicitors and Barristers' market study and will engage with the forthcoming consultation on that matter.

The CCPC notes that research in respect of barriers for progression of certain socio-economic and demographic groups in the legal market is lacking. The CCPC recommends that the LSRA play a key role in conducting such research.

ENDS

³⁰ <https://www.gov.ie/en/publication/653aa-general-scheme-of-the-courts-and-civil-law-miscellaneous-provisions-bill-2021/>

³¹ <https://www.lsr.ie/wp-content/uploads/2020/11/Section-34-ET-Final-Report-to-Minister.pdf>

