



THE BAR  
OF IRELAND

*The Law Library*

**SUBMISSION TO THE  
LEGAL SERVICES REGULATORY AUTHORITY  
ON THE ADMISSION POLICIES OF THE LEGAL  
PROFESSIONS AS REQUIRED BY SECTION 33 OF THE  
LEGAL SERVICES REGULATION ACT 2015**

February 2022

## 1. INTRODUCTION

The Council of The Bar of Ireland is the accredited representative body of the independent referral Bar in Ireland, which consists of members of the Law Library and has a current membership of approximately 2,170 practising barristers. The Bar of Ireland is long established, and its members have acquired a reputation amongst solicitors, clients and members of the public at large as providing representation and advices of the highest professional standards. The principles that barristers are independent, owe an overriding duty to the proper administration of justice and that the interests of their clients are defended fearlessly in accordance with ethical duties are at the heart of the independent referral bar.

The Council has prepared these submissions at the request of the Legal Services Regulatory Authority who are in the process of preparing a **third** annual report for the Minister on the admission policies of the legal professions in accordance with section 33(1) of the Legal Services Regulation Act 2015.

The submission follows the format of the information sought by the Legal Services Regulatory Authority as set out in their correspondence of 9<sup>th</sup> December 2021:

- Specific data requested by the LSRA;
- Demand for barrister services;
- Costs of legal services in 2021 and whether these were available at a reasonable cost to consumers;
- The standard of education and training for persons admitted to practice;
- The extent to which the admissions policies of the legal professions are consistent with the public interest in ensuring the availability of legal services at a reasonable cost, taking into account the demand for services and the need to ensure adequate education and training standards for persons admitted to practice;
- The ongoing impact of Brexit and the Covid-19 pandemic on the above matters.

## 2. SPECIFIC DATA REQUESTED BY THE LSRA

### 2.1 The number of barristers who joined the Law Library and the number of barristers who commenced “devilling” in 2021.

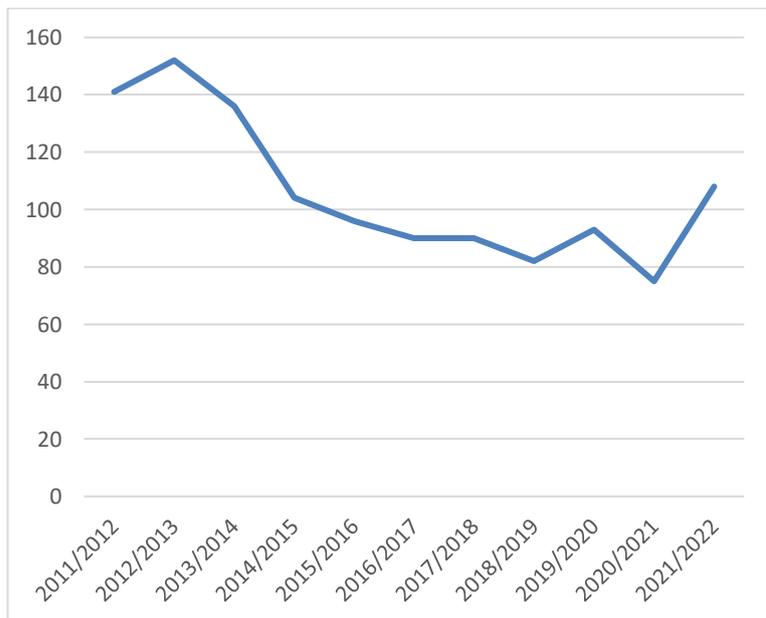
A total of **109** new members joined the Law Library in October 2021. Of that 109, 102 commenced their 12-month period of ‘devilling’ and 7 were applicants from another jurisdiction who were not required to undergo a period of ‘devilling’.

During the legal year 2020/2021 (October 2020 – September 2021), there were 12 barristers who re-entered membership of the Law Library.

For the purpose of context, the tables below set out the number of new members who joined the Law Library during the period 2011/2012 – 2021/2022 and the number of re-entrants to membership of the Law Library during the period 2011/2012 – 2020/2021 demonstrating a general downward trend in the number of new members and re-entries year on year.

**TABLE 1: NUMBER OF NEW ENTRANTS TO MEMBERSHIP OF THE LAW LIBRARY**

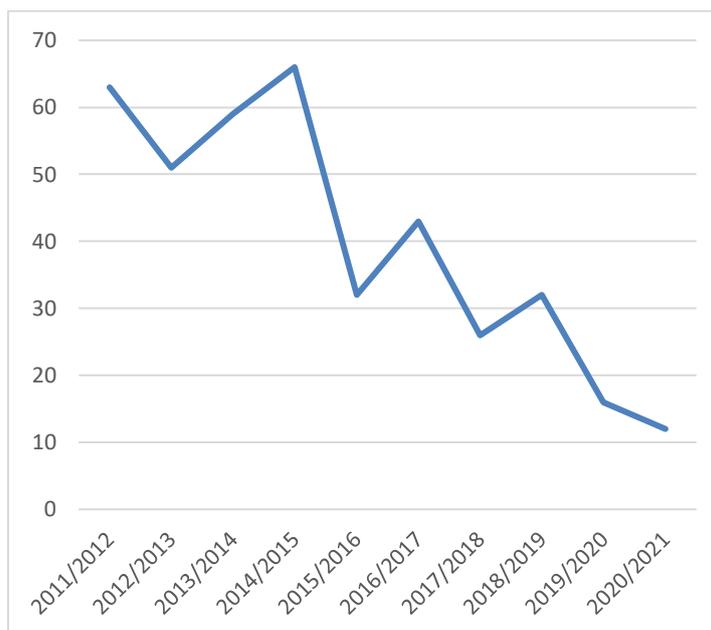
YEAR	NUMBER OF NEW ENTRANTS
2011/2012	141
2012/2013	152
2013/2014	136
2014/2015	104
2015/2016	96
2016/2017	90
2017/2018	90
2018/2019	82
2019/2020	93
2020/2021	75
2021/2022	109



There was a significant upwards spike in the number of new members entering membership of the Law Library in October 2021. It is highly likely that this spike arose from the impact of the Covid-19 pandemic where decisions may have been taken in October 2020 to defer devilling as the restrictions imposed on the Courts severely curtailed the activity levels of many practitioners.

**TABLE 2: NUMBER OF RE-ENTRANTS TO MEMBERSHIP OF THE LAW LIBRARY**

YEAR	NUMBER OF RE-ENTRANTS
2011/2012	63
2012/2013	51
2013/2014	59
2014/2015	66
2015/2016	32
2016/2017	43
2017/2018	26
2018/2019	32
2019/2020	16
2020/2021	12



**2.2 Of those barristers who commenced devilling in 2021, the number who were also called to the Bar in 2021.**

According to the King’s Inns, the total number of barristers called to the Irish Bar in 2021 was 182. Of the 102 new members who commenced a period of ‘devilling’ in October 2021, 84 (82%) were called to the Irish Bar in 2021.

**2.3 A statistical breakdown based on demographic and diversity criteria of the barristers who both joined the Law Library and commenced devilling in 2021 (e.g. age, gender, location).**

**TABLE 3: STATISTICAL BREAKDOWN – DEMOGRAPHIC & DIVERSITY CRITERIA – DEVILLING**

AGE RANGE OF 102 WHO COMMENCED DEVILLING IN 2021	20 - 30	31 – 40	41 – 50	51+
	60	21	11	10
GENDER OF 102 WHO COMMENCED DEVILLING IN 2021	MALE		FEMALE	
	56		46	
LOCATION OF 102 WHO COMMENCED DEVILLING IN 2021	All pupils must be available to pupil/devil in Dublin. Based on the information sought at application stage, 48% provided a			

	home address indicating that they resided in Dublin with the remainder providing a home address outside of Dublin <sup>1</sup> .
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**TABLE 4: STATISTICAL BREAKDOWN – DEMOGRAPHIC & DIVERSTIY CRITERIA – ANOTHER JURISDICTION**

AGE RANGE OF 7 APPLICANTS FROM ANOTHER JURISDICTION IN 2021	20 - 30	31 – 40	41 – 50	51+
	0	4	1	2
GENDER OF 7 APPLICANTS FROM ANOTHER JURISDICTION IN 2021	MALE		FEMALE	
	5		2	
LOCATION OF 7 APPLICANTS FROM ANOTHER JURISDICTION IN 2021	London, United Kingdom			

**TABLE 5: STATISTICAL BREAKDOWN – DEMOGRAPHIC & DIVERSTIY CRITERIA – RE-ENTRANTS**

AGE RANGE OF 12 RE-ENTRANTS IN 2020/2021	20 - 30	31 – 40	41 – 50	51+
	0	2	7	3
GENDER OF 12 RE-ENTRANTS IN 2020/2021	MALE		FEMALE	
	6		6	
LOCATION OF 12 RE-ENTRANTS IN 2020/2021	Based on the information provided in the re-entry forms, 50% reside in Dublin and the other 50% reside at an address outside of Dublin.			

#### 2.4 The number of barristers in their second and third year who had informal Masters in 2021.

Members who opt to undergo a further period of ‘devilling’ after their first year in membership of the Law Library do so under an informal arrangement. Therefore, data is not collected from members in this regard as the relationship does not fall under the rules of membership of the Law Library.

#### 2.6 The number of barristers who registered with the Bar of Ireland and were issued with a qualifying certificate for 2021 under the European Communities (Lawyers' Establishment) Regulations 2003 and the European Communities (Lawyers' Establishment) (Amendment) Regulation 2004.

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<sup>1</sup> It should be noted that this information is based on the provision of a home address for the purpose of an application form for membership of the Law Library and a caution is urged in relying on this information for any other purposes.

2.7 The number of barristers who ceased membership of the Law Library in 2021 and any available breakdown of the grounds provided for leaving.

During the legal year 2020/2021 (October 2020 – September 2021) **81** members ceased membership of the Law Library. A breakdown of the reasons for leaving is set out in the following table:

**TABLE 6: BREAKDOWN OF REASONS FOR CESSATION OF MEMBERSHIP 2020/2021**

REASON FOR LEAVING	NUMBER
Deceased	3
Excluded Arrears	2
Excluded PII	3
Judge	5
Retired	13
Personal	13
Work Elsewhere	23
No reason given	18
Ceased after a period of Leave	1
<b>TOTAL</b>	<b>81</b>

For the purpose of context, the table below sets out the number of members who left the Law Library during the period 2011/2012 – 2020/2021 demonstrating a slow down in the rate of departures in recent years. It is likely that the significant drop in the numbers leaving in 2020/2021 in comparison to previous years relates to the impact of the Covid-19 pandemic.

**TABLE 7: NUMBER OF MEMBERS LEAVING LAW LIBRARY 2011/12 - 2020/2021**

YEAR	NUMBER LEAVING
2011/2012	135
2012/2013	152
2013/2014	150
2014/2015	141
2015/2016	105
2016/2017	166
2017/2018	128
2018/2019	109
2019/2020	122
2020/2021	81

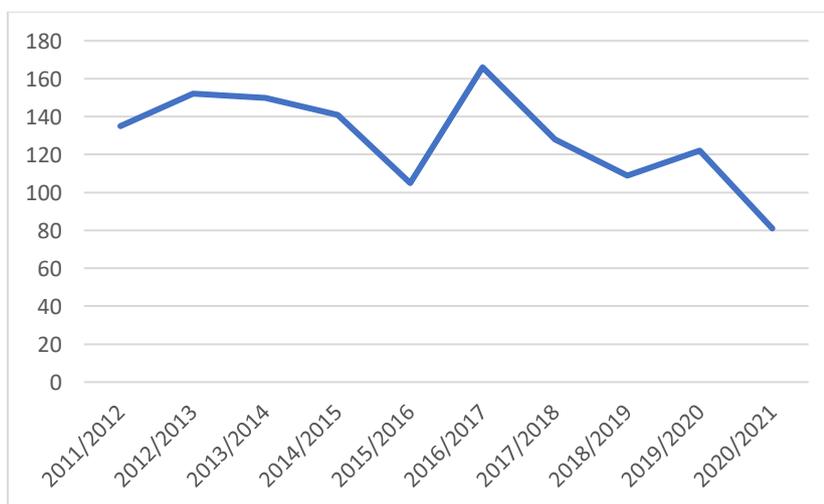
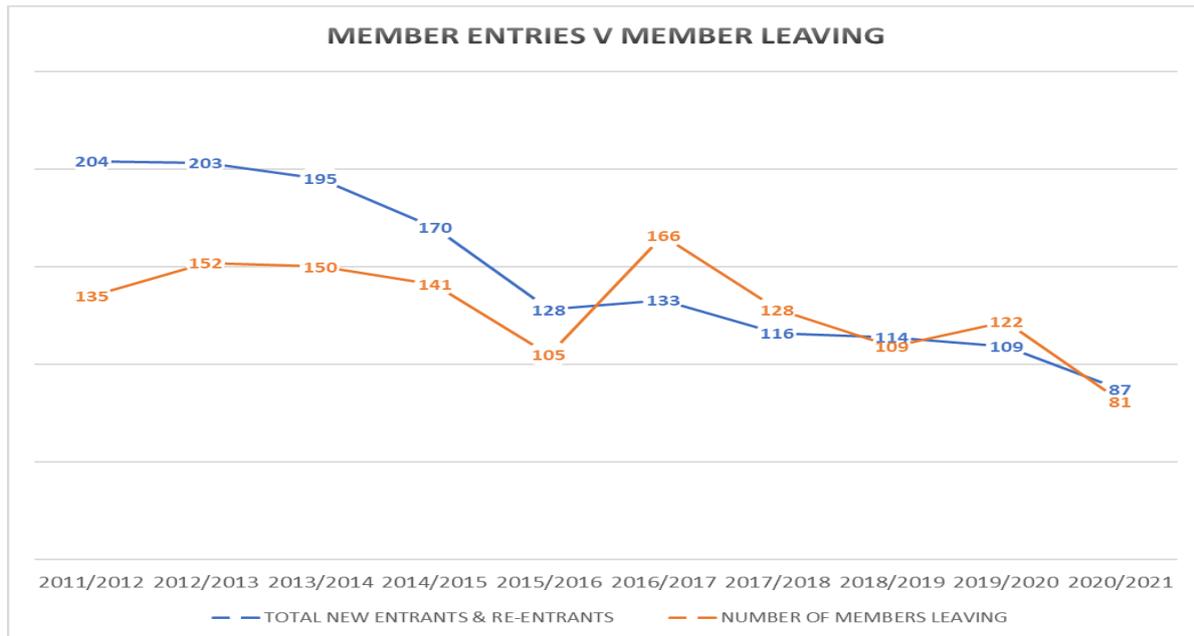


TABLE 8: NUMBER OF ENTRANTS V NUMBER OF MEMBERS LEAVING 2011/12 – 2020/21



## 2.8 The number of barristers whose Law Library membership fees were reduced in 2021 and the recorded reasons for these reductions (e.g. maternity leave, illness)

Throughout the legal year October 2020 – September 2021, further restrictions and lockdowns were imposed arising from the Covid-19 pandemic that caused a reduction in the level of Court business. In January 2021, the Council took a decision to apply a further credit to the annual membership subscriptions of all members accounts for the legal year 2020/2021 (see Table 9 below). A credit equating to a **16.5%** subscriptions reduction was applied in recognition of the negative impact the curtailment of the courts had upon members’ financial wellbeing. A total of 2,077 members had their membership subscription fees reduced.

In addition, the Council took a decision to pay the 2020 LSRA levy on behalf of all members who otherwise would have been billed for an additional sum of approximately €161 per member.

The following table summarises the totality of financial supports provided for members of the Law Library during the Covid-19 pandemic to date.

**TABLE 9: MEMBER FINANCIAL SUPPORTS**

Member support	Amount
25% credit on subscriptions for 2019/20	€2.2m
16.5% credit on subscriptions for 2020/21	€1.7m
Payment of LSRA Levy for 2020	€0.3m
Rent relief on member offices for May and June 2020	€0.5m
<b>Total cost of member support</b>	<b>€4.7m</b>

In the Legal Year October 2020 to September 2021, 46 members availed of 'Parental Leave' and 31 members availed of 'Personal Leave'. The definitions for both types of leave are set out in the *Rules of Membership of the Law Library*<sup>2</sup> and the length of leave taken will vary from one member to another. The subscription rate payable while on leave is €925 for one year (or pro-rata depending on duration of leave up to one year) and in the case of those availing of maternity leave, where they return to work in advance of the end of the one-year period, they can avail of a 50% reduction in their remaining subscription balance for that year. Paternity leave is also captured in the 'Parental Leave' definition.

### **2.9 The number of Masters who were available to take on devils in October 2021.**

There were **177** Masters listed on the Law Library Master list in 2021.

In the lead up to the October 2021 new member intake, reports were being received from applicants of challenges in obtaining a Master. There were a number of circumstances converging that gave rise to this unusual situation, including:

- A high volume in the number of new applicants in October 2021 (109) compared to 75 new applicants in the previous year;
- Some Masters retained their 2020/21 Devil for an additional year given the restrictions imposed on the Courts that severely curtailed the activity levels of many practitioners and consequently the experience of first year members that entered in October 2020;
- In October 2021, a change to the rules of membership of the Law Library was commenced whereby all Masters are now required to pay the membership subscription and entry fees of their Devil.

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<sup>2</sup> <https://www.lawlibrary.ie/about/governance/rules-of-membership/>

The Council is closely monitoring the availability of Masters throughout the course of this year to ensure that the challenges experienced in 2021 do not reoccur.

**2.10 Any other issues that you believe are pertinent to the preparation of the Authority's report under section 33(1)(c), including the ongoing impact of the Covid-19 pandemic on admission policies in 2021.**

Matters relating to the impact of the Covid-19 pandemic on admission policies in 2021 have been addressed in the response to the points addressed in sections 2.1 – 2.9 above.

### 3. DEMAND FOR BARRISTER SERVICES

As indicated in our previous two submissions in 2020 and 2021, The Bar of Ireland does not hold or collect information on the level or demand for barristers' services in the **private sector**. Our 2020 submission provided detail in relation to the services procured by various **state agencies** that gave some level of indication of the demand for barristers' services in the **public sector** – see section 4 of the February 2020 submission. No substantive changes to the terms and conditions under which the services of barristers are procured through the State have taken place since our previous submissions.

#### *State Claims Agency Tender*

The State Claims Agency (SCA) invited barristers to submit tenders in May 2021 to re-populate 17 panels of barristers for the provision of legal services to the SCA across all court circuits nationwide. The size of those panels range from 10 to 33 counsel on each. Applications were invited from both junior and senior counsel to provide legal services in respect of the management of certain personal injury and property damage claims against State authorities, whose claims are delegated to the SCA for management under the General Indemnity Scheme (GIS) and Clinical Indemnity Scheme (CIS).

#### *Impact of Pandemic*

Undoubtedly the primary issue that has impacted on the demand for barrister services for the past two years is the Covid-19 pandemic and the decisions taken by the Judiciary and the Courts Service to curtail court business necessitated by public health considerations and the need to comply with Government policy and HSE advice. The demand for barrister services has ebbed and flowed throughout the course of the pandemic in accordance with:

1. the various levels of restrictions imposed by the Judiciary and the Courts Service;
2. the prioritisation of certain types of cases during the restrictions, i.e. priority was given to maintaining as much as possible criminal and urgent family law matters;
3. the availability and suitability of remote hearing facilities for certain cases.

#### *Back-Logs Create Demand*

Throughout the course of the pandemic, a significant back-log has been building across all High Court divisions that will likely cause an increase in the demand for barrister services, such as crime, debt and Revenue cases, asylum and extradition, personal injuries, commercial planning/strategic infrastructure, wardship.

However, the President of the High Court has also highlighted that there aren't a sufficient number of Judges available in order to address the back-log and consequently the lack of judicial resources will suppress the progression of various lists in a timely fashion. For example, there are reported delays of 18 months waiting time for a criminal trial where an accused is in

custody and approximately 3 years where the accused is on bail. In an interview with the Irish Times of 20<sup>th</sup> September 2021, the President of the High Court, Ms Justice Mary Irvine said *'the courts already faced problems before Covid-19, with delays across all divisions for reasons including a rising numbers of criminal indictments and a shortage of judges. The problems have since worsened due to the impact of restrictions on court operations'*.

#### 4. COSTS OF LEGAL SERVICES IN 2021

While the Review of the Administration of Civil Justice Report (also known as the Kelly Report) was published some time ago (December 2020), a plan for implementing the recommendations set out in the Report has not yet been published by the Department of Justice. There are in excess of 90 recommendations in the Kelly Report, many of which have the potential to improve many aspects of the civil justice system that will undoubtedly contribute to creating efficiencies and lowering costs. It is expected that a focus on Judicial Review and Discovery will be prioritised in the implementation plan.

In the meantime, the Department of Justice published its 2021 Action Plan and stated as follows in relation to legal costs:

*'Legal costs in Ireland are prohibitive and act as a barrier to people to exercising their rights before the courts. We know too the effect these high costs and complex systems have on our economy and our competitiveness, whether those are the cost of buying a house, enforcing a contract or purchasing insurance. The introduction of new scales of legal costs will bring down such costs and provide greater certainty on what people can expect to pay for legal services. We will assess if these scales should be binding, except in limited circumstances'.<sup>3</sup>*

Chapter 9 of the Kelly Report addresses litigation costs<sup>4</sup> and notes that the Review Group had examined various options by means of which the mandate given to it to recommend a reduction in levels of litigation costs might be achieved. However, the Group was unable to reach a consensus regarding recommendations on how to reduce litigation costs. A majority of the Group members recommended the drawing up of non-binding guidelines for costs levels, while a minority of Group members recommended a table of maximum costs levels be prescribed by a new Litigation Costs Committee, which could be derogated from in exceptional circumstances.

Notwithstanding the majority recommendation of the Review Group, the Justice Action Plan goes on to state that work will commence *'to introduce new scales of legal costs which would be independently drawn up, in order to reduce legal costs and to provide greater certainty to*

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<sup>3</sup> See page 18 of the Justice Action Plan 2021

<sup>4</sup> See pages 265 - 325

*the users of legal services in relation to cost.'* The Department will *'complete a detailed examination of the recommendations contained within the Peter Kelly report on legal costs. As part of this work, we will carry out a detailed economic and legal evaluation, which will include examining making such scales binding, except where both parties agree to opt out'*. Indecon economic consultants were appointed by the Department of Justice in December 2021 to undertake this economic evaluation. It is our understanding that a range of justice stakeholders, including the LSRA and The Bar of Ireland have been invited to make submissions. Indecon have indicated that they are in the process of examining legal cost data from a range of public sources including the OLCA, LSRA, CSSO, and State Claims Agency.

The legal costs debate in Ireland has been on-going since 2004 and has been examined by a number of different bodies culminating in reforms that were channeled most recently through the Legal Services Regulation Act 2015 and the establishment of the Office of the Legal Costs Adjudicator in 2019. A review of the various reports published by those bodies since 2005 indicates that the evidential basis for Irish legal costs being described as 'high-cost' has been mixed and anecdotal in the majority of cases. It is anticipated that the Indecon economic evaluation will provide evidence-based information on the costs of legal services in Ireland in comparison with other jurisdictions.

Anecdotally, Ireland is considered to be a 'high-cost jurisdiction' for legal services in comparison with many of our EU counterparts. However, this narrative fails to give appropriate recognition of the differences between a common law jurisdiction (in the case of Ireland) and a civil law jurisdiction (other EU Countries). While other EU countries appear to offer consumers lower exposure to legal costs, it is important to note that in those jurisdictions, a greater number of judges and non-judge court staff are required to manage the passage of litigation, paid for through general taxation. Care must be taken when attempting to rank countries by the direct cost of litigation without considering the indirect costs to the exchequer of funding the legal system in place.

## 5. THE STANDARD OF EDUCATION AND TRAINING FOR PERSONS ADMITTED TO PRACTISE

### *Ensuring Competence of Members of the Law Library*

The primary focus of The Bar of Ireland in the education and training of barristers is in our educational offerings available through the Continuing Professional Development (CPD) programme. Having consulted stakeholders in education and training on this, the Bar continues to determine how we can effectively quality manage and impart our professional standards both before and upon entry to the profession. Ensuring what we teach and how we teach it is fit for purpose to protect the consumer is key.

CPD plays an important role in ensuring continued competence and, from a regulatory perspective, in ensuring that the public and service users continue to have confidence in, and obtain a high level of, legal services provided by members of the Law Library. It also contributes to continued development of the barristers' profession and areas of competence and expertise.

In April 2021, Council approved the introduction of a new competency based CPD Scheme that commenced from 1st October 2021. The new framework adopts a holistic view of the knowledge, skills and abilities (i.e. competencies) relevant to effective practice as a barrister. Members are required to consider the competencies within each of the four competency framework domains and undertake an activity relevant to a competency for each domain on an annual basis.

While clients can be assured of the commitment of barristers who are members of the Law Library to ensuring their continued competence, for those barristers who are on the LSRA Roll of Practising Barristers who are not members of the Law Library, the same level of assurance in relation to their competence cannot be provided. This represents a regulatory risk and one that should be prioritised by the LSRA in the interest of protecting and promoting the interests of consumers relating to the provision of legal services as provided under section 13(4)(c) of the Legal Services Regulation Act 2015.

### *In-Person v Remote – Impact on Training of Barristers*

The traditional, and probably most important means, whereby recently qualified barristers are trained is by appearing in progressively more difficult submissions to the Court; for instance by appearing in interlocutory motions such as discovery applications, and as they gain experience, and are seen by attending solicitors to successfully handle such applications, appearing in successively more difficult matters up to witness actions and full cases.

While the remote running of the common law motion list was an excellent innovation to answer the difficulties posed by COVID, their continued running on a remote platform gravely

compromises the opportunity for young barristers to appreciate and fully participate in a Court application in a way that constitutes proper training for their professional development.

The Bar of Ireland is actively engaging with the President of the High Court and the Courts Service to consider how both substantive hearings and interlocutory applications can best be managed in the interests of justice, absent Covid considerations. In this regard, an important consideration is the imperative need of the judicial system for properly trained and experienced barristers.

## **6. THE EXTENT TO WHICH ADMISSION POLICIES OF THE LEGAL PROFESSION ARE CONSISTENT WITH THE PUBLIC INTEREST IN ENSURING THE AVAILABILITY OF LEGAL SERVICES AT A REASONABLE COST, TAKING INTO ACCOUNT THE DEMAND FOR SERVICES AND THE NEED TO ENSURE ADEQUATE EDUCATION AND TRAINING STANDARDS FOR PERSONS ADMITTED TO PRACTISE**

In May 2021, the LSRA commenced a public consultation under section 34(1)(d) of the Legal Services Regulation Act 2015 as part of its preparation of a report to the Minister for Justice who requested the Authority to *'consider the economic and other barriers faced by young barristers and solicitors following their qualification from the King's Inns and Law Society respectively and to submit a report with recommendations for her consideration'*. In making her request to the LSRA at the time, Minister Helen McEntee stated that this research was part of her plan to increase diversity across the justice sector including the legal professions. The LSRA has been asked to pay particular attention to equity of access and entry into the legal professions and the objective of achieving greater diversity within the professions, and to make recommendations for change. The Minister asked the Authority to examine:

- The remuneration of trainee barristers and solicitors;
- The other costs associated with joining each profession;
- The information available to prospective trainee barristers and solicitors on available masters and solicitors firms; the information available on the terms and conditions available, and how they are selected;
- Any other barriers faced by young barristers and solicitors, including the ability to take maternity leave.

In June 2021, the Council made a submission<sup>5</sup> in response to this consultation and the Council put forward eleven recommendations throughout the course of the submission that would address the challenges in building and maintaining a career at the Bar and support the goal of achieving greater diversity within the profession. Engagement with the LSRA on this report is expected in the months ahead.

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<sup>5</sup> <https://www.lawlibrary.ie/app/uploads/securepdfs/2021/06/Submission-to-the-LSRA-under-Section-34-of-the-2015-Act-June-2021.pdf>

## 7. THE ONGOING IMPACT OF BREXIT AND THE COVID-19 PANDEMIC ON THE ABOVE MATTERS

### *Impact of Brexit*

In terms of the impact of Brexit, while there have been a relatively small number of barristers from the UK called to the Irish Bar since 2016, these numbers have remained relatively low. There is no data available on how Brexit may have impacted on the demand for barristers services.

Ireland for Law is the Irish Government's international legal services strategy. The strategy has been created to represent and position Ireland's international legal services industry and seeks to promote Irish Law and Irish Legal Services to the international business community, particularly in areas where Ireland is already a world leader, including aviation finance, funds, insurance, tech, pharma and life sciences.

Ireland is now the leading English-speaking common-law jurisdiction in the EU. Following Brexit, businesses have come to recognise the benefits of being able to combine common law procedures and legal principles with ease of enforcement in all EU Member States. Our Commercial Court has a proven track record in ensuring the efficient, just and expeditious resolution of complex domestic and international business disputes.

Ireland for Law is working with the key stakeholders and with the support of our diplomatic and trade missions around the world to demonstrate to the international business community and others safeguarding their legal interests the advantages of using:

- Irish law for their business contracts;
- Irish law for legal advice and transactions;
- Irish dispute resolution for their business disputes.

The Ireland for Law initiative is a forward-looking opportunity and aims to maximise the present and emerging opportunities for Ireland as an international legal services provider. Information about the initiative and what it will mean for the future of the legal profession in Ireland is available at [www.irelandforlaw.com](http://www.irelandforlaw.com).

### *Impact of Covid-19 Pandemic*

Work undertaken by the Council of The Bar of Ireland over the course of the pandemic took a number of different forms and more recently has focused on the primary objective of maximising access to justice for clients as the levels of public health restrictions ease.

The Court Service recently established a Courts Service Modernisation Programme Legal Practitioners Engagement Working Group that includes representatives of the Council for the

purpose of acting as a *'key collaborator with the Courts Service in progressing the Modernisation Programme of Work as part of the delivery of the Courts Service Strategic Vision 2030'*. High on the agenda of the working group is the family reform programme, the civil reform programme and ICT.

The role of the working group is to *'provide advice and identify subject matter experts/members of the wider legal community to provide feedback and engagement on Modernisation Programme initiatives and change projects from a legal practitioner perspective, to act as a sounding board on proposed improvements and Modernisation Programme activities, to keep colleagues informed and encourage adoption of proposed changes and promote the broader reform activities and benefits with colleagues within the legal profession, the Justice Sector and wider civil society and identify potential shared common areas for reform and act as champions for change and help drive engagement for future reforms within the wider legal professional community'*.

The profession has an important role to play in this process. The Council representatives on this working group will work on behalf of members to ensure that the Courts Service modernisation programme has regard to the views of practitioners, from the perspective of those practitioners and their clients.

## **8. CONCLUSION**

The Council of The Bar of Ireland welcomes the opportunity to respond to this consultation on the admission policies of the legal professions in accordance with section 33(1) of the Legal Services Regulation Act 2015 and is available to provide any further insight and clarity as may be required.