

Solicitor Education in Ireland

A Comparative Analysis

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Note

This document has been created as a comparative analysis of the literature on the subject of solicitor education in Ireland, from information available online, in books, reports and articles. This necessarily produces a risk that in some areas of the LSI's activities, where there is no need to make information available publicly, it appears less rigorous than it does in discussion of other topics.

We are indebted to the LSI for providing us with some information that was difficult to locate and this is acknowledged in the document. The comparative analysis is designed as a precursor to our investigations in Phase 2 and our Report in Phase 3 of this review.

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1. History of the process and development of solicitor education in Ireland

1.1 Introduction

This section charts the historical development of the requirements for the education of those who aspire to become solicitors. The continuing education of practising solicitors is addressed separately in section 3. This section does not cover provisions for foreign lawyers, or for barristers in anything but outline, to transfer into the profession. It does, however examine, in parallel, some of the significant developments in higher education insofar as they affect the law faculties.

1.2 Terminology

“Ireland” and “Irish” in this document are used to refer to the Republic of Ireland and its nationals, unless the context makes it clear that Northern Ireland is included.

ABS	Alternative Business Structure
BCL	Undergraduate law degree (typically 4 years)
Blocks	The compulsory areas that must be covered during a training contract
clinic	An opportunity for students to provide legal advice/legal services in a supervised environment hosted by their law school. Supervisors are often practitioners employed by the university.
CAO	Central Applications Office. A designated CAO points score is required for entry to universities and institutes of technology.
CDU	Curriculum Development Unit
CPD	Continuing Professional Development
DCU	Dublin City University
FE-1	The entrance examination for the PPC
FE-2	Legislative description of the assessment at the PPC I stage
FE-3	Legislative description of the assessment at the PPC II stage
FinTech	Technology used in the delivery of financial services
GDL/CPE	Graduate Diploma in Law (one year conversion course for graduates of non-law disciplines: England and Wales). Otherwise, Common Professional Examination (CPE).
King’s Inns	The Honourable Society of King’s Inns
LLB	Undergraduate law degree (typically 4 years)
LLM	Postgraduate law degree (typically 1 year)
LPC	Legal Practice Course (England and Wales), equivalent to the PPC
LRSA	Legal Services Regulation Act 2015

LRS Authority	Legal Services Regulation Authority, a creature of the LRSA
LSI	Law Society of Ireland
LSNI	Law Society of Northern Ireland
MDP	Multi-disciplinary practice
NFQ	National Framework of Qualifications
NUI Galway	National University of Ireland, Galway
NUI Maynooth	National University of Ireland, Maynooth
Paralegal	A person working in legal practice with no other title or designation
PPC I	Professional Practice Course, part I. A mandatory vocational course for intending solicitors offered by the LSI between September and March
PPC II	Professional Practice Course, part II. A mandatory vocational course for intending solicitors offered by the LSI between April and June
PPCM	Professional Practice, Conduct and Management. A component of PPC II.
Preliminary Examination	An examination for non-graduates wishing to become solicitors.
QLTS	Qualified Lawyers Transfer Scheme (England and Wales)
QLTT	Qualified Lawyer Transfer Test
QQI	Quality and Qualifications Ireland
QUB	Queen's University Belfast
RPL	Recognition of prior learning
SRA	Solicitors Regulation Authority (England and Wales)
TCD	Trinity College Dublin
Training contract/ training	in-office The period of supervised practice (now normally of 24 months) required to qualify as a solicitor
UCC	University College Cork
UCD	University College Dublin
UL	University of Limerick
UU	Ulster University

1.3 Early history

The 2002 history of the Law Society of Ireland (LSI) (Hall & Hogan, 2002b) and Hosier's review of legal services regulation provide detailed descriptions of the early legal history of Ireland (Hosier, 2014, chapter 1). To summarise points of relevance for this study, it is notable that there is evidence of monasteries as centres of legal education in the ninth century AD as well as texts that pre-date them that may be judicial guidance (ibid, p 13) or records of oral legal training exercises (Stacey, 2011). There were also families with a history of legal practice (ibid, p 14) in the Brehon tradition of Irish law.

The latter operated to some extent in parallel with the English common law system until the reign of King John, when a common system of law was adopted for England and imposed on Ireland (ibid, p 15). Nevertheless, the original Irish law schools remained in operation until the early seventeenth century (ibid, p 15). Irish students were seeking to attend the English Inns of Court from the thirteenth century (Brand, 2000, p 161), further demonstrated by early discriminatory provisions preventing Irish students being admitted to an Inn without the consent of a bencher (Hosier, 2014, p 15).

Solicitors (initially “attorneys”) were recognised from the thirteenth century in both jurisdictions, with some rights of audience in county courts conferred by Henry III’s Statute of Merton in 1285 and legislative recognition in 1605 (ibid, p 16; Hogan, 2002 a, p 22).

Separation of the solicitors and barristers’ professions was complete in England by the early eighteenth century (Hosier, 2014, p 17). In Ireland, however, both professions and entry to them were regulated by the King’s Inns, established in 1541 and claiming to be the oldest law school in Ireland (The Honorable Society of King’s Inns, No date). The creation of the King’s Inns was, at least in part, as a result of hostility to Irish students in the English equivalents (Delany, 1959, p 387). The King’s Inns, by contrast with the Inns of Court in London, struggled to provide meaningful education for prospective lawyers (O’Brien, 1914, p 592; Delany, 1959, p 387). Even in 1607, when the King’s Inns was reconstituted, it

... did not assume any teaching functions either in regard to students for the bar of Ireland or apprentices to the attorneys and solicitors, the former having to resort to London and the latter being left to the attentions of their individual masters.

This situation appears to have continued throughout the seventeenth and eighteenth centuries, and no educational facilities whatsoever were provided by the Society.

(Delany, 1959, p 398)

By 1629, attorneys were exclusively admitted through the King’s Inns and “Every attorney was required to keep one week’s commons at the King’s Inns in each law term” (Hall & Hogan, 2002 a). In 1733, the Act For The Amendment Of The Law In Relation To Papist Solicitors; And For Remedying Other Mischiefs In Relation To The Practitioners In The Several Courts Of Law And Equity required aspiring attorneys to undertake a five year indentured apprenticeship with a practising attorney before applying to the court for practice rights (Hosier, 2014, p 18; Hogan, 2002 a, p 24). This act also appears to have made some attempt to define, by reference to a list of tasks, the competences demanded of a solicitor (Hosier, 2014, p 18; Hogan, 2002 a, p 24). By 1773, legislation added an assessment by way of interview to establish character and fitness to the admission process (Hosier, 2014, p 18, Hogan, 2002 a, p 25). This act also provided that solicitors’ articles had to be served in Ireland (Hogan, 2002 a, p 27).

There was a long history of barring, allowing, and re-barring Catholics, and husbands of Catholics, (Seward, 1803, p 286) from the profession until the late eighteenth century (Power, 1990, Hosier, p 18; Hogan, 2002 a, pp 22-23).

1.4 Nineteenth Century

Although groups representing attorneys/solicitors were formed in the late eighteenth century (Hogan, 2002 a, p 28), and what has been known since 1994 as the Law Society of Ireland (Solicitors (Amendment) Act, 1994, s 4) in 1830 (Hall & Hogan, 2002 a; Hogan, 2002 a, p 31); regulation through

the King's Inns continued until the late nineteenth century when legislation distinct to the solicitors' profession began to emerge (Solicitors (Ireland) Act 1849; Attorneys' and Solicitors' Act 1870; Legal Practitioners (Ireland) Act, 1876; Solicitors (Ireland) Act 1898). This identity as a distinct profession was to some extent confirmed by the acquisition of a partial¹ monopoly over conveyancing activity (Hogan, 2002, p 29). Recognition of law as an academic discipline studied in the universities appeared in 1821, when graduates were permitted a three- rather than five-year apprenticeship (Hogan, 2002 a, p 30).

An attempt to systematise professional education by creation of a Dublin Law Institute, approved by the King's Inns, was made in 1839 (O'Shaughnessy, 1872, p 125; Hogan, 2002 a, p 45) but this failed because of limited financial support from the profession (Delany, 1954, p 217; Delany, 1959, p 402).

Concerns had been expressed about the quality of education for the bar, with proposals for a bar examination, and for a central institution for legal education (Wyse, 1846; Hogan, 2002 a, p 45) with the result that a select committee was formed in 1846 to investigate. Its remit was extended to cover both Ireland and England. Its report was highly critical, particularly by comparison with the university-based and multi-disciplinary approaches used in civil law countries (Anon, 1847, pp 32-33) and in still familiar worries about the educational utility of a time-served model of articles:

The solicitor comes ill entitled, through want of the qualities which sound and careful education can best give, to that confidence and reliance which the very delicate and complicated nature of his duties demand. ...

No better provision [than for the bar] has been made by the public for the instruction of the solicitor. Substitutes and remedies for these defects have been sought ... by the future solicitor in being articulated to the solicitor and by being required to answer an examination prior to admission ... as usually conducted, though useful in training to the mechanical drudgery of the Profession, is not sufficient for the higher and more important duties of the solicitor, defects much enhanced by his previous indifferent education, and the absence of sufficient educational or examination tests.

(ibid, pp 32, 35)

At this stage, the university sector in Ireland was represented by Trinity College (the sole component of what later became the University of Dublin), founded in the sixteenth century (Trinity College Dublin, 2014) and the various colleges comprising the Queen's University of Ireland (subsequently the federal National University of Ireland) (National University of Ireland, No date). The latter's charter was granted in 1850 and it had law faculties at each college from the outset (Osborough, 2014, p 5). Queen's University Belfast was founded in 1845 as one of these colleges and became a university in its own right in 1908 (Queen's University Belfast, 2017).

The University of Dublin had possibly been teaching law in some way since its foundation (Delany, 1959, p 399). By 1850, in a response to the criticisms made by the select committee, it had joined forces with the King's Inns to deliver legal instruction (Osborough, 2014, p 4), although the course was not examined until much later (Delany, 1959, p 404).

Women were effectively excluded from higher education as well as from the practice of law, although women's colleges (often denominational) were active (Harford, 2007). Women were permitted to enter the Queen's University from the later nineteenth century and to proceed to degrees at Trinity College in 1904 (Harford, 2008, p 45).

¹ Notaries were also permitted to carry out conveyancing under a statute of 1816 (Hogan, 2002, p 61).

The 1846 select committee recommended, inter alia, reinforcing the quality of the law degrees, with “[a] rigorous examination, preceded by certificates of attendance on lectures and by minor periodical examinations at the close of each course” and establishing a “college of law” as a “legal university” for those who wished to practise (Anon, 1847, p 37). This might be through the King’s Inns for those intending to go to the Bar, with a rigorous educational programme involving “questioning and examination daily” and a substantial terminal examination (ibid, p 38). Intending solicitors were apparently assumed not to be graduates (although, ibid, p 40, exemption might be given for university study against the professional requirements). So, for them:

a stringent examination should be required in proof of a sound general education having been gone through previous to admission to apprenticeship. ... [T]his examination should embrace, in addition to the ordinary requirements of a so-called commercial education, a competent knowledge of at least Latin, geography, history, the elements of mathematics and ethics, and of one or more modern languages. ...[I]t would be highly advisable he should also have, even whilst an articled clerk, opportunities for attendance on certain classes in the Inns of Court and also on others, of a nature more special to his own profession, in the law society of which he might happen to be a member. ... [T]he examination of the several courses which the future solicitor should be required to attend, should be marked equally by a certificate and examination, and that the final examination, as a condition for admitting to the profession, should be conducted more in reference to general principles than technicalities (as appears now to be the case), by enlarging and improving the examination papers and calling in some of the examiners of the Inns of Court.

(ibid, pp 39-40)

The Law Society (LSI)² gained its first royal charter in 1852 as, inter alia, ‘an institution for facilitating the acquisition of legal knowledge’ (Hall & Hogan, 2002a; Hogan, 2002a, p 47). Following the report of the 1846 select committee, the LSI, through a petition to Parliament in 1858, succeeded in getting the King’s Inns to deliver lectures for articled clerks and examinations for solicitors (Hosier, p 20). These included “Latin, history, arithmetic, book-keeping, geography and English composition for prospective apprentices and a final examination before admission to the profession” (Hall & Hogan, 2002a; Hogan 2002a, p 47). Proposals for amalgamation of the two professions in 1866 failed (Lawson, 1892, p 162) and the LSI successfully separated itself from the King’s Inns that year. It then began to offer mandatory courses for articled clerks (Hosier, p 20). Finally, the 1898 Act transferred complete responsibility for regulation and education of apprentices to the LSI, even though its membership was at the time only a third of the practising profession (Hosier, p 20). Section 8 of this Act set out a diet of examinations required for admission.

1.5 Twentieth Century

By 1908, legal education was well embedded in the universities, with University College Dublin, for example, offering an LLB, LLD and a BA in Legal and Political Science. Their BA and LLB were recognised by the King’s Inns (Osborough, 2014, p 25). The new configuration of Irish universities created by the Irish Universities Act 1908, was, by s 12, absorbed into the solicitors’ qualification process for graduates. The 1908 legislation confirmed the title and role of what was now the National University of Ireland, envisaged as a non-denominational institution, by contrast to the perceptions of Trinity College as strongly Protestant (Walsh, 2014, p 7).

² Although the modern title was not applied until later, we use the acronym throughout this document for simplicity.

By virtue of Courts and Court Officers Act 1995 and Courts and Court Officers Act 2002 solicitors achieved rights to join the judiciary of the higher courts.

The qualification system set out in the 1898 Act survived into the twentieth century and beyond the establishment of Northern Ireland in 1921, the creation of the Irish Free State, the second constitution in 1937 and the final emancipation of the Republic by the Republic of Ireland Act 1948. There was an increase in the numbers of the profession following independence (Hogan, 2002b, p 83). Further, a Solicitors (Qualification of Women) Bill 1914 was passed in the House of Lords but failed in the House of Commons (Redmond, 2002, p 104). The first woman solicitor was admitted in 1923 (Spark 21, 2015) following the Sex Disqualification (Removal) Act 1919 (Redmond, 2002, p 77).

In 1929 the Legal Practitioners (Qualification) Act, 1929, s 4, added mandatory requirements for examinations in the Irish language, despite substantial opposition from the LSI (Hall & Hogan, 2002a; Hogan, 2002b, p 77). This opposition is understood to be behind the substantial differentials in what was required of solicitors and the apparently lighter requirements on barristers (Murdoch, 2006). These requirements persisted for domestic entrants until 2007 (see section 8.2.6 below).

Much of the nineteenth century and early twentieth century legislation (Solicitors Act, 1943, Solicitors (Amendment) Act, 1947) was repealed by the consolidating Solicitors Act 1954³ which also secured the powers of the LSI. Section 10 of the Act conferred on the LSI the power to admit as a solicitor anyone who had satisfied the requirements of Part IV of the act as to age, service by indentures of apprenticeship (schedule 2) with a solicitor of at least seven years PQE, and success in both the pre-apprenticeship preliminary examination and the final examination (s 40(4)). The examinations in Irish were retained (s 40(3)). The period of apprenticeship was five years; three years for graduates in any discipline or four years for anyone who had obtained a degree from the University of Dublin, or National University of Ireland *between* starting the apprenticeship and seeking admission. The act also provided for transfer into the profession by barristers and Northern Irish lawyers (ss 43 and 44) and provided for the continued issue of practising certificates (Part V). Part VI of the act protected the title of solicitor and set out in s 58 a range of activity generally reserved to solicitors.

1.5.1 The 1955 model

The qualification process of intermediate and final examinations was then redefined by the Solicitors Act 1954 (Apprenticeship and Education) Regulations, 1955 (Buckley, 2002, p 177) so as to consist of:

- The two examinations in the Irish language (one taken before the apprenticeship).
- The preliminary (before the apprenticeship) examination in English, Latin, History, Geography, Arithmetic, Euclid or Geometry, and one of Irish, Algebra, Greek, a modern language, or Logic. Some exemptions were permitted from this examination, including in particular successful completion of the entrance examination or matriculation requirements of an Irish university if these covered English, Latin, Arithmetic and either Euclid or Geometry.
- The first law examination (real and personal property, contract and tort) taken after two years of the apprenticeship and on certification of having attended a year's course of lectures in

³ Subsequently amended by Solicitors (Amendment) Act 1960; Solicitors (Amendment) Act, 1994

these topics at Dublin University or the National University of Ireland and passing the relevant university examinations.

- The final examination in three parts:
 - bookkeeping (taken after three years of the apprenticeship).
 - the second law examination, taken at least 12 months after the first law examination (practice and procedure of the Supreme Court and High Court (except probate), company law, the law and practice of conveyancing, land law (including landlord and tenant, the Rent Restrictions Acts, registration of titles and deeds, and the Land Acts, but excluding land purchases) and equity). As with the first examination, candidates were required to certify a year's study of these subjects at Dublin University or the National University of Ireland.
 - the third law examination, taken in the last six months of the apprenticeship or after its completion (wills, probate and administration of estates (contentious and non-contentious); taxation (including death duties); criminal law and practice; the law of evidence and commercial law (the Bills of Exchange Acts, Sale of Goods Acts, Hire Purchase Acts, and insurance excluding marine insurance) and the practice of Circuit and District Courts)

Students were supported by mandatory lectures and examinations organised by the LSI in:

- (a) conveyancing law and practice and land law ;
- (b) the procedure and practice of the Courts.
- (c) company law and administration of estates.
- (d) taxation including death duties.
- (e) book-keeping.
- (f) the rights duties and responsibilities of solicitors.

The remainder of the twentieth century then demonstrates a process of frequent adjustment and refinement to this basic model until substantial change was made in the 1970s. Slight technical adjustments to the certification process were made to this structure by Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1956; Solicitors Act 1954 (Apprenticeship and Education) (Amendment) Regulations, 1968. Company law, wills and probate and executorship law and practice were added to the list of the LSI's lectures by The Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1960.

1.5.2 The preliminary examination and evolution towards a graduate norm

A preliminary examination had been introduced in the later nineteenth century (Hogan, 2002, p 47). In 1966 the content of the preliminary examination was altered to English, Latin and Mathematics, and any two of History, Geography, Greek, a modern language other than Irish and Logic (Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1966). Commerce was later added as an additional option (Solicitors Act, 1954 (Apprenticeship & Education) (Amendment) Regulations, 1969). In 1972 the content was revised again to add different options to the core of English, Latin and Mathematics:

any three subjects from History, Geography, Greek, a modern language (other than Irish) approved by the Court of Examiners, Physics, Chemistry, Biology, Commerce (which is comprised of four sections namely economics, business organisation, accountancy and economic history of which the candidate will take two sections only)

(Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1972).

The following year a statutory instrument apparently issued in error restated this position (Solicitors Act 1954 (Apprenticeship and Education) (Amendment) Regulations, 1973) with the result that a later set of regulations in the same year changed the syllabus again to English and Mathematics; Latin, French or German and two of

“History, Geography, Greek, Latin, French or German (if not taken as a compulsory subject under (b) above), a modern language (other than Irish) approved by the Court of Examiners, Physics, Chemistry, Biology, Commerce (which is composed of four Sections namely Economics, Business Organisation, Accountancy and Economic History of which the candidate will take one Section only)”

(Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) No. 2 Regulations, 1973).

As Buckley points out, however, the percentage of new apprentices who held degrees had risen, by 1961-1962 to at least half (Buckley, 2002, p 178). It was only in 1974, however, that it became explicit that “the taking of a University Degree [would be] the normal pre-requisite for entry upon Apprenticeship” (Solicitors Act, 1954 (Apprenticeship and Education) (Amendment No. 1) Regulations 1974, explanatory note). By 1975, however, the sequencing of the list of precursors to entering into an apprenticeship suggests that graduates, rather than preliminary examination candidates, were the majority (Solicitors’ Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1975). Curran (1979) confirms that graduate entry was the norm by this point. Perhaps as a result, the syllabus for the preliminary examination was now changed radically to:

- (a) an essay in the English Language;
- (b) a paper on English literature;
- (c) a paper on General Knowledge;
- (d) such other subject or subjects as the Committee may from time to time prescribe;
- (e) an interview to assess the suitability of the candidate for registration as an apprentice.

An expansion in university provision at this point was marked by the change in constitution of the National Institute for Higher Education (founded in 1980) to Dublin City University through the Dublin City University Act 1989. At the same time, the National Institute for Higher Education, Limerick became Limerick University by virtue of the University of Limerick Act 1989.

By 1991, English literature had been replaced with “a paper on the use of English” and an additional “paper on government and politics” was added. The interview was extended, as described below, to all applicants and sometimes to their masters as well (Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1991). In 1997, the provision for other subjects to be added was deleted (Solicitors (Professional Practice, Conduct and Discipline) Regulations 1997).

Other graduates were exempted in 1981 (Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1981) and barristers in 1987 (Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1987). By 1991, it was definitively assumed that the majority of applicants for apprenticeship would be graduates (Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1991). By 1994, all UK and Irish graduates, Irish barristers and graduates whose degrees had been “conferred or recognised by the National Council for Educational Awards”(NCEA) were

exempt and provision had been made for other “equivalent” qualifications to lead to exemption (Solicitors (Amendment) Act, 1994, s 50), a provision restated in 1997 (Solicitors (Professional Practice, Conduct and Discipline) Regulations 1997).

1.5.3 Developments in the first law examination

The Solicitors Acts 1954 (Apprenticeship and Education) Amendment) Regulations, 1965 recast the content of the first law examination as

the law of real property, the law of personal property (restricted to bailments and liens, the rights, duties and liabilities of common carriers, innkeepers and hotel proprietors, the Sale of Goods Acts, gifts, mortgages and pledges of goods and bills of sale) the law of contract and the law of tort

Five years later the content was revised back to the core of tort, contract and real property (Solicitors’ Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1970). It was suggested in 1968, however, that law graduates should be exempt from this examination – the precursor of the FE-1 – (Bourke, 1968, p 2). The history of the vexed question of exemption is discussed below at 5.6.1.

1.5.4 Developments in the second law examination

In 1970, the content of the second law examination was revised to equity; company law and the law of partnership; conveyancing and registration of title, the practice and procedure of the superior courts (including bankruptcy); criminal law and the law of evidence (Solicitors’ Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1970).

1.5.5 Developments in the third law examination

The Solicitors Acts 1954 (Apprenticeship and Education) Amendment) Regulations, 1965 recast the content of the third law examination as

law of wills, probate and administration of estates (contentious and non-contentious), tax law, criminal law and practice, the law of evidence, commercial law, (the Bills of Exchange Acts, Sales of Goods Acts, Hire Purchase Acts and insurance, excluding marine insurance, the law of patents, trade marks and copyright) and the practice of the Circuit and District Courts.

Five years later, this was revised to tax law; commercial law; the practice and procedure of the inferior courts; the law and practice in connection with wills and the administration of estates and land law (Solicitors’ Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1970).

1.5.6 Developments in the apprenticeship

As far as the apprenticeship was concerned, revisions were made to the certification process in 1971 (although the questions to be asked of the apprentice related only to the circumstances and length of

employment, not to anything that might have been learned during the period) (Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1971.

1.6 The 1978 model and into the Twenty-first Century

The year 1978 is a key watershed in the history of professional legal education, as it marks the opening of the modern LSI law school in which the vocational course was split into a professional course (now PPC I) and an advanced course (now PPC II) and a tripartite system of examinations: FE-1, FE-2 and FE-3 (Educational Policy Review Group, 1998, p 4). The changes were facilitated by the Solicitors' Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1975. FE-2 and FE-3 are now, in effect, absorbed into the PPC as the terminal assessments for each stage.

Substantial revision to the system seems to have been instigated in the late 1960s (Buckley, 2002, p 178). A student-led congress in 1968 (Bourke, 1968) discussed, *inter alia*, joint training for barristers and solicitors (see further 9.5.8 below) and assurance of the quality of the law degrees by having the professional bodies appoint external examiners to the universities.

The new course in the 1970s was consciously designed on an experiential, learning by doing model, drawing on the professional legal training courses that were then in operation in Australia (Buckley, p 179). The split between the two components was designed in from the outset (having been suggested from the 1960s)⁴ as was an objective that it should equip students for immediate entry into independent practice (*ibid*). It was also deliberate policy that active practitioners should be involved in design, creation of teaching materials and in teaching (*ibid*). This prompted goodwill and a positive reception in the profession as a whole:

Partly because the Society was seen to be enlisting the assistance of many well-known members of the profession in designing and operating the courses, but also because it was abundantly clear that the previous system had virtually broken down, the proposed new system was widely welcomed.

(*ibid*)

Reception by students was, however, rather different, with protests about the costs and the limited number of places on the new vocational course (Hall, 2002, p 127; Buckley, 2002, p 180).⁵

Further details of the 1978 model appear below, but it is convenient to complete the discussion of review of the 1978 model before descending into detail.

In 1998, a report of the Education Policy Review Group drew on discussions of the Education Committee in 1995 and 1997. These had discussed, for example, common training with the bar (see 9.5.8 below); mandatory CPD and Diplomas (see section 3); the effect of the removal of exemptions from the FE-1 on the approach to be taken in teaching the vocational course; numbers and the backlog of those seeking places on the vocational course, given the limited places available:

⁴ The challenge in the 1960s was that apprentices were attempting to carry out university study and their work duties at the same time (Buckley, 2002, p178).

⁵ The backlog was not entirely cleared until new premises were opened in 2000 (Buckley, 2002, p 187)

If the Society is to retain sovereignty over the education and training of Apprentices (and the Group believes that it should) it behoves the Society to ensure that its education and training system is satisfactory and capable of withstanding scrutiny by independent assessors. So long as solicitors are entitled to set up in practice on their own account as soon as they are admitted to practice, it is incumbent on the Society as the direct and exclusive provider of Professional Education, to ensure that such persons have gone through as good an educational and training programme as is possible to enable them, in the public interest, to operate in a competent manner.

Education Policy Review Group, 1998, p 30

The 1998 report restated the LSI's position that it "should continue as the direct and exclusive provider of the Professional Course and the Advanced Course and should retain its direct jurisdiction over examinations for Apprentices "although it might contract with others to provide some elements of the course (Ibid, pp ii, 6-7). The 1998 report (see also Buckley, 2002, p 186ff) made further detailed recommendations for the structure (retaining the split between the two elements of the course) and staffing of the vocational course. The objectives of the course were seen to be to prepare solicitors for private practice and to ensure that newly qualified solicitors understood the law "underlying the more common areas of practice" and the "needs of clients in the more common areas of practice" (ibid, p 8; Buckley, 2002, p 179). Possibly its most obvious effect, however, was, by a majority, to endorse substantial expenditure on new premises for the law school (Buckley, 2002, p 187), which was opened in 2000.

The final review (prior to this project) was in 2007 (Law Society of Ireland, 2007). This made a number of detailed recommendations including those for quality assurance of the PPC including opportunities for teaching staff to refresh their contacts with practice, undertake staff development and to share good practice. However, in the context of this project the 2007 report is of interest in:

- Endorsing the role of PPC I as consciously generalist and reflecting the generality of the solicitor's licensure upon qualification.
- Rejecting suggestions that PPC I and PPC II should be merged.
- Cautiously endorsing the then collaboration with UCC to deliver a PPC in Cork, provided that the LSIs' interests were maintained.
- Rejecting the idea that all trainees should spend time in their office before beginning PPC I (as is the case in Northern Ireland) on the basis that this might reduce the number of training contracts available.
- Suggesting support for in-office training including online communications, a guidance code and CPD points to be available for courses for training solicitors and for practitioners teaching on the PPC.
- Suggesting that the mandatory "blocks" to be provided during the training contract should be reviewed (see 1.6.4 below).
- Suggesting the appointment of a person connected with another vocational legal education provider to help benchmark the LSI assessments.

1.6.1 The preliminary examination and the Irish language examinations

We have discussed the Preliminary Examination as originally instituted in detail at 1.5.2. It is now something of an exception administered to non-graduates. We have been informed by the LSI that approximately eight candidates take it each year.

Graduates in any discipline from UK or Irish universities or with degrees conferred by the Higher Education and Training Awards Council (HETAC) as successor to the NCEA from 2000, are exempt from the examination (Law Society of Ireland, No Date i). HETAC was dissolved in 2012 and its functions transferred to another body (Quality and Qualifications Ireland, 2017). By 2010:

All the seven universities, namely the Dublin City University (DCU), National University of Ireland Galway (NUI Galway), National University of Ireland Maynooth (NUI Maynooth), Trinity College Dublin (TCD), University College Cork (UCC), University College Dublin (UCD) and University of Limerick (UL), offer law degrees in a school, faculty or department of law. Some institutes of technology (IoTs) also provide for legal education, such as the School of Social Sciences and Law of the Dublin Institute of Technology (DIT), as well as a few mostly Dublin-based private colleges.
(Paris & Donnelly, 2010, p 1071)

Law clerks and legal executives with at least five years' and a Diploma in Legal Studies or without the diploma but with ten years' experience are also exempt. Some colleges also offer pre-university law courses (e.g. Blackrock Further Ed Inst, no date; Cavan Institute, 2016; Dunboyne College, 2015).

The current syllabus for the preliminary examination is English, Irish Government and Politics and general knowledge, all of which have to be passed with a 50% pass mark at the same sitting (Law Society of Ireland, 2017 a). Candidates are allowed three attempts in total.

The Competition Authority report on the legal professions in 2006 recommended changes to the approach to the Irish language requirements (Competition Authority, 2006, p 51). In 2008 the Irish language examinations were replaced by a non-examined course as part of the Professional Practice Course with an optional advanced course for those who wish to pursue it (Legal Practitioners (Irish Language) Act 2008, see further 8.2.6). There is said to be a paradox in the country in that there is a generally positive attitude to the language, despite low levels of usage (Atkinson & Kelly-Holmes, 2016).

1.6.2 FE -1

The FE-1 has, in principle, been retained from the 1955 model although it is not without controversy (see 5.6.1 below). In 1975 constitutional law, company law and "one other legal subject taught in a recognised university in Ireland" were added to the core of an examination that could now be taken after one year of the apprenticeship (Solicitors' Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1975) and from which law graduates could claim exemption, but only until 1976. Curran suggests that part of the purpose of the examination was to control numbers in the face of increasing numbers of law graduates and that the LSI expressed regret at the duplication of assessment involved for students (1979, pp74-75).

In 1989, the optional additional subject was replaced by criminal law (Solicitors Acts 1954 and 1960 (Apprenticeship and Education) Regulations, 1989) and the graduate exemption limited to graduates of Dublin University, the National University of Ireland and the University of Limerick (Solicitors Acts 1954 and 1960 (Apprenticeship and Education) Regulations, 1989). Dublin City University was added to the list in 1991 (Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1991) and University College Galway in 1993 (Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) (Amendment) Regulations, 1993). As discussed in section 5.6.1, this exemption from the first examination was controversial.

Transferring barristers became exempt from the first examination in 1981 (The Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1981). The 2006 Competition Authority report recommended that the LSI make further changes to ease the transfer between professions (Competition Authority, 2006, p 51).

In 1992, the examination was divided into two parts, with contract, tort, property and equity in the first part and constitutional law, EU law, company law and criminal law in the second part (Solicitors' Acts 1954 and 1960 (Apprenticeship and Education) (Amendment No. 2) Regulations, 1992). In 1997 the syllabus was given as company law, constitutional law, contract, criminal law, equity, EU law, property and tort (Solicitors (Professional Practice, Conduct and Discipline) Regulations 1997). At this point it seems that it was envisaged that the FE-1 provided an assured content and level of prior knowledge: "... any 'new' Professional Course would be structured to take into account the fact that all participants would have passed (as opposed to being exempted from) the FE-1. A corollary of this might be that such a Professional Course would not be suited to Apprentices who had been exempted from the FE-1" (Education Policy Review Group, 1998, p 31). The curriculum of the vocational course was not to duplicate the FE-1 subjects, although the vocational course could cover "the relevant substantive law (not part of the FE-1) underpinning the more practice subjects" (ibid, p 14). That is, the scope of the FE-1 was not assumed to cover every area of law that is required for a newly qualified solicitor.

FE-1 must now be taken before the vocational course by all domestic applicants, whether or not they have taken, and passed, the same subjects as part of a previous law degree. There are a number of commercial and other providers of FE-1 preparation courses and individual coaching (Law Society of Ireland, 2016 c). These are not regulated by the LSI (although, if they are educational institutions, may be regulated as such) and may be expensive. See further section 4.7.

Some higher education institutions offer award-bearing courses for non-graduates or graduates of other disciplines (e.g. Dublin Institute of Technology, 2015⁶) designed to articulate with the FE-1.

FE-1, offered twice a year, now consists of eight papers (Law Society of Ireland, No date e) in:

- Company Law
- Constitutional Law
- Law of Contract
- Criminal Law
- European Union Law
- Equity
- Real Property
- Law of Tort

In 2016, it was reported that 1,037 candidates had registered for the next sitting of FE-1 (Law Society of Ireland, 2016 a). The separation of the examination and its preparation courses from the undergraduate law degrees may result in a particular approach to the question whether or not the law degree should include clinical or simulated practice elements. There is, nevertheless, a debate on the subject (Daly & Higgins, 2010; Donnelly, 2009; Paris & Donnelly, 2010).

The Competition Authority saw the existence of FE-1 as a preliminary filter, as an aspect of the LSI's monopoly as a gatekeeper to entry:

⁶ Which gained degree awarding powers in 1992 through the Dublin Institute of Technology Act 1992

The Law Society requires graduates who hold recognised law degrees to pass its Entrance Examinations before being permitted to commence training as a solicitor despite their having already been examined in the subjects covered as part of their law degree. This requirement is a direct result of the monopoly enjoyed by the Law Society in professional training for solicitors. If it were to be abolished, then theoretically all those holding recognised law degrees would be entitled to pursue training as a solicitor, in addition to those who do not hold law degrees but who qualify through the Entrance Examination. With most Irish universities offering law degrees, clearly the Law Society could not cope with the potential demand due to the limits on its capacity. As a consequence, they would be forced to find some other means of selecting potential students.
(Competition Authority, 2006, p 53)

Further discussion of the report and the most recent legislation appears in section 8.

1.6.3 Professional Practice Course

In 1978, when the new LSI law school was established, its new course was still officially described as being in preparation for the “second part” and “third part” of the final examination (Solicitors’ Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1975). The initial law school syllabus was given as:

A.

PRACTICE AND PROCEDURE:

1. Civil Litigation in all Courts.
2. Criminal Litigation in all Courts
3. Administrative Tribunals.
4. Practical Instructions in the drawing of pleadings, preparation of cases for advice and opinions.
5. Advocacy in both civil criminal proceedings.
6. Legal Aid.
7. Family Law.

B.

BUSINESS LAW COURSE:

1. Accountancy.
2. Commercial Law.
3. Applied Company Law and Partnership Law.
4. Bankruptcy, Liquidation and Receiverships.

C.

CONVEYANCING:

1. Practical Conveyancing including the drafting of documents.
2. Land Registry Practice.
3. Applied Landlord and Tenant Law.
4. Land Commission Practice.

D.

TAXATION AND ESTATE PLANNING:

1. Taxation.
2. Probate and Administration of Estates.
3. Wills and Settlements including the drafting thereof.

NOTE: References to EEC Law will be included where applicable.⁷

Although we understand from the LSI that the first course had been called the Professional Course and the second the Advanced Course from the start, this change in terminology was not recognised in legislation until 1991 (Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1991). Nevertheless, the professional course could not be commenced until the apprentice had completed at least three months of the apprenticeship (this requirement has, as discussed above, subsequently been abolished). A list of topics was provided in the regulations from which both the second and third parts of the examination were to be selected:

Accountancy
Advocacy
Commercial Law
Company Law
Conveyancing
Employment Law
European Community Law
Evidence
Family Law
Human Rights
Insolvency Law
Investment/Finance Management
Landlord and Tenant Law
Lawyers' Skills including Interviewing and Negotiation
Litigation
Office Administration
Partnership Law
Planning Law
Professional Conduct
Revenue Law and Taxation
Social Welfare Law
Wills, Probate and Administration of Estates

Criminal Law and Procedure, presumably an omission, was added in 1992 (Solicitors' Acts 1954 and 1960 (Apprenticeship and Education) (Amendment) Regulations, 1992). In 1997, European Community Law was renamed; research and drafting were added to Lawyers' Skills and intellectual property law, trusts, management, pensions law, planning and environmental law and planning conduct were added to the list (Solicitors (Professional Practice, Conduct and Discipline) Regulations 1997).

The vocational course administered by the LSI at its premises in Blackhall Place is now known as the Professional Practice Course (PPC) and is divided into Part I and Part II. It is necessary, as it is in Northern Ireland, to obtain a two-year training contract prior to entry onto the course.

Part I of the course is offered on a full time basis between September and March each year and covers:

- Foundation Course
- Applied Land Law
- Probate & Tax
- Business Law
- Litigation (Civil & Criminal)

⁷ The Republic of Ireland joined the EU in 1973 and adopted the euro in 1999.

- Legal Practice Irish (LPI)
- Skills - Civil & Criminal Advocacy, Interviewing & Advising, Legal Research, Legal Presentation Skills, Legal Writing & Drafting, Negotiation & Professional Development.

(Law Society of Ireland, No date).

Enrolments in PPC I have flattened out from a high of 671 in 2007 to 404 in 2016 (Law Society of Ireland, 2018). At the end of PPC I, students take assessments that in principle constitute the Final Examination (FE-2), although that terminology is, we understand, no longer used.

The eleven week full-time PPC II is offered in April⁸ as preparation in principle for the third part of the Final Examination (FE-3), although again that terminology is no longer used. It contains four compulsory modules (PPCM; Employment Law; Advanced Family & Child Law and English Property Law). The coverage of English property law is, presumably, to facilitate later cross-qualification into England and Wales without having to take the English QLTS (Solicitors Regulation Authority, 2017).

The remainder is, in accordance with the recommendations of the 1998 report (Education Policy Review Group, 1998, pp iii and 12) composed of a number of electives. The 2007 report asked the LSI to review the number and rationale of the electives, with students at that stage being required to select two modules from each of three umbrella areas (Business, Practice and Procedure and Private Client) and which might last for anything from three to six weeks (Law Society of Ireland, 2007, p 22). Students now take three electives, and can in consequence specialise more closely (in in dispute resolution and litigation or in commercial and corporate work):

- Advanced Civil Litigation
- Advanced Legal Practice Irish
- Banking Law
- Commercial & Complex Property Transactions
- Commercial Contracts
- Corporate Transactions
- Insolvency
- Medical Law & Litigation
- Non-Adversarial Dispute Resolution
- Technology & Intellectual Property Law

(Law Society of Ireland, No date).

We have been told by the LSI that approximately 384 candidates took the final PPC assessments in 2017.

Transferring Irish barristers are required to take the non-examined Essentials of Legal Practice course (ELPC) in Professional Conduct, Solicitors' Accounts, Probate and Taxation and Conveyancing (Law Society of Ireland, No date).

A number of reports into competition in professional services have been undertaken in recent years (Indecon International Economic Consultants, & London Economics, 2003). The Competition Authority report in 2006⁹ - which has informed the Legal Services Regulation Act 2015 (LRSA) - strongly criticised the absence of part-time options for study and the monopolies over this stage of professional

⁸ It was originally 14 weeks (Law Society of Ireland, 2007, p 22).

⁹ There were other reports with similar concerns, including for example, Restrictive Practices Commission. (1982 and 1990); OECD (2001); Haran, 2005. See further, Lyons (2007).

training held by the LSI for intending solicitors and the King's Inns for intending barristers. It recommended an increase in the number of providers, competition in fees, and authorisation and standard-setting to be undertaken by a Legal Services Commission (Competition Authority, 2006, pp 52-53).

Under the 1975 revisions to the system, once an apprentice had passed the second part of the examination, he or she was required to return to the LSI's law school for a further four months of "vocational" study of

- (a) Office administration including staff assessment, management and training.
- (b) Cost drawing, including time costing, computer application to office practice.
- (c) Ethics and Professional conduct.

At least *two* of the following:

1. CONVEYANCING
2. COURT PRACTICE AND PROCEDURE
3. CONSUMER AND WELFARE LAW
4. LABOUR LAW
5. TAX PLANNING
6. COMPANY LAW
7. EEC LAW

In 1991, this second course was renamed the Advanced Course (Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1991). It was to be taken at least 18 months after completion of the Professional Course. From 1997, the Advanced Course could be taken on a full time release basis after 18 months of the apprenticeship had elapsed (Solicitors (Professional Practice, Conduct and Discipline) Regulations 1997).

1.6.4 In-office training/training contract

A preliminary interview of the applicant and, possibly, the proposed master, was introduced in 1991 (Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1991). Adjustments to the configuration of law school and workplace in 1991 included a shift in terminology to "in-office training". By 1994 the term of the apprenticeship had been reduced to two years (Solicitors (Amendment) Act, 1994, s 40) and the period of PQE demanded of the master reduced to five years (s 44). Further clarification of detail took place the following year (Solicitors Acts, 1954 To 1994 (Apprenticeship and Education) (Amendment) Regulations, 1995) and in 1997 (Solicitors (Professional Practice, Conduct and Discipline) Regulations 1997).

The workplace experience requirement continues to be split into two phases around the PPC:

In-office training post-PPC I	11 months
Attendance on PPC II	3 months
In-office training post-PPC II	10 months
Total	24 months

(Law Society of Ireland, No date).

The trainee is specifically required to be given (Law Society of Ireland, No date f):

- “the opportunity to practise the skills associated with the practice of law and the practice and profession of a solicitor (drafting, letter writing, interviewing and advising, legal research, negotiation, advocacy¹⁰ and oral presentation)”
- Experience in both contentious and non-contentious work
- Experience in:

Following completion, the candidate is entitled to apply for entry to the Roll and, once admitted, to practise independently. In 2014, the number of women solicitors in Ireland exceeded that of men (Law Society of Ireland, 2015) (see further section 5.2.1 below). In 2016, the practising profession exceeded 10,000 (Law Society of Ireland, 2017 c). See further discussion of training contracts in section 6.

1.6.5 Foreign and EU lawyers

The Solicitors (Amendment) Act 1947 repealed a provision in the Solicitors (Ireland) Act 1898, Amendment Act, 1923 allowing English, Welsh and Scottish solicitors to requalify in Ireland without taking any course or assessment, at a time when there were no reciprocal arrangements in the UK and a degree of interest had become apparent since 1943 (Hogan, 1996, p 269; Hogan, 2002b, pp 84-85). The arrangements for English and Welsh solicitors to requalify in the Republic of Ireland have returned, as a result of EU legislation on the mutual recognition of diplomas¹¹ to a position of generosity (Law Society of Ireland, No date d). This has facilitated the “tsunami” of transferees hoping to preserve EU practice rights, although only a small proportion of these have taken out practising certificates (Hyde, 2017).

In 2003, EU lawyers became entitled to practise as EU registered lawyers in Ireland, and, after three years practising Irish law, to seek admission in Ireland by virtue of Directive 98/5/EC (the Establishment Directive;¹² see also The European Communities (Lawyers’ Establishment) Regulations 2003 (Qualifying Certificate) Regulations 2016. They are, however, required to register either with the LSI or with the Bar Council (Law Society of Ireland, No date c). The effect of the directive is that most EU lawyers are not entitled to conduct the reserved activities of probate or conveyancing work in Ireland, because non-lawyers are entitled to carry out such work in their home states (Law Society of Ireland, No date).

Alternatively, as with lawyers from some other countries (including Scotland) they can obtain admission if they pass the Qualified Lawyer Transfer Test (QLTT) (Law Society of Ireland, 2017b) (see further 4.8.4 below as to special arrangements for lawyers from some other common law countries). Its syllabus is (Law Society of Ireland, 2017b, p 1):

An oral examination in Professional Conduct and a written examination in:

- | | |
|---------|--|
| Paper 1 | Constitutional Law and Criminal Law or Constitutional Law and Company Law (at the option of the candidate) |
| Paper 2 | The Law of Contract and the Law of Tort |
| Paper 3 | Land Law and Conveyancing |
| Paper 4 | Probate and Taxation |

¹⁰ Although trainees have no rights of audience.

¹¹ Directive 89/48/EEC, enacted in European Communities (General System For The Recognition of Higher Education Diplomas) Regulations, 1991. See also European Union (Recognition of Professional Qualifications) Regulations 2017, reg 22(3).

¹² See also the earlier Directives 77/29/EEC and 98/5/EC which applied specifically to lawyers.

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Paper 6 European Union Law

Lawyers from other foreign countries must go through the same process as domestic entrants (subject to the special arrangements for lawyers from some jurisdictions described in section 4.8.4 and 8.2.8).

Lawyers qualified in England and Wales¹³ are exempted from the QLTT and obtain admission through the certificate of admission process (Law Society of Ireland, No date). The comparative ease of this process has led to an influx of lawyers seeking dual qualification in an attempt to to preserve their rights to practise in the EU (Bury, 2016) and rights of audience before the European Court of Justice (Cross, 2016) post-Brexit. In some larger City firms, entire departments have obtained dual qualification (Cross, 2016). The number of transferees at present exceeds the number of domestic qualifiers (Kinder, 2016) although it seems unlikely that this cohort intends to practise Irish law in Ireland. Whether this will change as substantial corporate clients relocate (O'Carroll, 2017) remains to be seen.

¹³ Provided they have completed training in that jurisdiction and not themselves transferred in from elsewhere.

1.7 References

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2. Analysis of the role of solicitor education and its relationship to maintaining professional standards in the sector, including the role of educational standards for entry to the regulated profession

2.1 Introduction

To a large extent this section discusses a deficit in our knowledge. Designers of professional legal education systems may work bottom up, developing curricula and assessments as part of specific elements of the system, leaving the profession to deal with the results and to address anything that has not been covered, or not sufficiently contextualised, by the early components in the training contract and the early career. Sometimes a new area of practice might become so significant – historically EU law, more recently ADR and possibly next, cybercrime – that pressure from students, employers and academics may lead to its becoming part of the required curriculum. The extent to which the required curriculum, its level and that of its assessments contributes positively or negative to the operating standards of the profession in daily practice has, however, virtually no coverage in the research literature. Contributors to this lacuna are likely to include the limited exposure of lawyers to empirical forms of research and difficulties in using some research methods on lawyers in practice without prejudicing legal professional privilege.

Alternatively, designers may work top down, starting by identifying the key skills, knowledge and attitude, or competences required at “day one” and then create a qualification framework designed to equip students with those competences:

Once we understand what a legal practitioner needs to be able to do in order to practise effectively, it would then also be possible to derive the threshold level of competence required of entry-level lawyers; and to propose appropriate means to ensure that all those seeking admission have that threshold competence.

(Law Admissions Consultative Committee, no date)

As the initial framework for a broad-based profession such as that of solicitors or their equivalents, the content of the pre-qualification curriculum is deliberately designed to represent a generic form of legal practice (Law Society of Ireland, 2007, para 4.5.1). It allows some opportunity for introductory level specialisation at a later stage through the PPC II or CPD. Appropriate standards of practice in specialised fields will, therefore, be achieved by experiential learning in the workplace; CPD courses and reading; specialist affinity groups and networks; additional professional accreditation (e.g. as a mediator) or specialist Diplomas and LLMs. There is likely to be informal knowledge amongst the profession about which courses, group activities, qualifications and texts are regarded as the most useful in supporting adequate professional standards in these specialist areas.

Although there are challenges in evaluating clients’ feedback as a useful measure of professional standards in some areas, as a result of the information asymmetry, client feedback is particularly useful in measuring standards in, for example, client relationship skills (Moorhead, Sherr, & Paterson, 2003).

It may also be useful to consider the different roles of the components of pre-qualification legal education and their relationship to practice in terms of Miller's pyramid, developed in the context of medical education (see Figure 1 below).

2.2 A reverse effect on professional standards

The regulator is entitled to assume that a solicitor retains at least an awareness of the topics covered in prequalification education. Clearly there are questions about whether the solicitor retains an active memory of some of these topics, particularly if they are outside the solicitor's current specialisation. What it does mean, however, is that, in a disciplinary context, it will not answer for a solicitor to claim that, for example, he or she was not aware of provisions of the code of conduct covered in the PPC.

2.3 Sequential v parallel routes: practice validity and contextualisation.

Although sequential routes for pre-qualification professional education appear in many professions, with a progression from academic through vocational to pre-qualification work experience, there are challenges in this approach:

[Initial Professional Education] syllabi are notoriously overcrowded because they attempt to include all the knowledge required for a lifetime in the profession... There is little sign as yet of IPE being conceived in a context of lifelong professional learning, in spite of increasing evidence that the frontloading of theory is extremely inefficient. Many IPE courses exacerbate this situation by frontloading theory within the IPE stage itself, thus maximising the separation between theory and practice.
Eraut, (1994, pp 11-12)

Such approaches may also mean that learning in the early stages is less well contextualised, as students have yet to see how their knowledge and skills play out in the workplace, with real clients (Ching & Henderson, 2016a, para 8.1.2).

If they are not involved in the earlier stages of education, employers may not know what has been covered before trainees reach them, and might have unrealistic expectations of the level of autonomy or expertise that can be delivered by a vocational course (Fancourt, 2004, Boon and Whyte, 2002, 2007). The alignment between vocational courses and the needs of subsequent practice can also slip inadvertently. So, for example, a study of three cohorts of vocational graduates in Sydney found that although there was a considerable degree of alignment between the course content and subsequent practice, further attention was needed to drafting, critical thinking, technological literacy, time management and negotiation (Evers, Olliffe, & Pettit, 2011).

The extent of the "practice validity" of courses and assessments delivered at a vocational stage may also vary, at least in the perceptions of subsequent employers, which can create

... a burden of unlearning and re-learning once in the practice environment, and reduces the value of the training in the eyes of the profession, and quite possibly the student ...but it is also not clear to what extent differences are permissible variations in style, an inevitable consequence of the fragmentation or simplification of a practice task for teaching purposes, or genuinely poor simulation of effective practice.
(Webb, Ching, Maharg, & Sherr, 2013, para 4.125)

Indeed, such dissonance might also demonstrate that, sometimes, the vocational institution's approach represents best practice rather than a more compromised approach obtaining in some workplaces. Where the student is simultaneously working and studying, or, as in Ireland, often works prior to PPC I, and also works between PPC I and PPC II, opportunities for contextualisation are clearer; the contribution of the PPC I to improved performance in the workplace is demonstrable to employers (Law Society of Ireland, 2007, para 4.2.6) and opportunities to interrogate what takes place in the classroom and what takes place in practice may be easier to find in the classroom. It is also important to consider that the PPC is the final portion of an educational process that began in the schools. Some deficits, as for example ability to write good English or Irish, may have roots much earlier than in the legal education system than the PPC at whose doors complaints about such deficits may be directed (see Fancourt 2004).

The question remains, therefore, of defining the standards required for practice, and comparing them with the standards employers expect the PPC in particular to deliver, and the standards such a course can realistically deliver.

2.4 Defining “standards”

2.4.1 Quality of performance

A “standard” in this context, relates initially to the *quality* of legal services provided by a solicitor: whether that provision is excellent, competent or negligent. Saying this is to use a particular sense of “competent” as a minimum level of performance that is acceptable and not negligent. This is the sense in which those professional regulators who have attempted to set terminal “day one” competence statements (Bar Standards Board, 2016; Conseil des barreaux européens – Council of Bars and Law Societies of Europe, 2007; Federation of Law Societies of Canada, 2012b; Law Admissions Consultative Committee, 2015; Law Society of Scotland, no date; Solicitors Regulation Authority, 2015b) usually use it.¹⁴ This is essentially because it is their remit to prevent negligent, incompetent, service.

Although attempts to articulate what it is that a lawyer needs to know, to be able to do, and to be have frequently been made (see e.g. MacCrate, Martin, Winograd, & Norwood, 1992, Part II), the movement towards (assessable) competence statements, criticised by others as mechanistic and reductionist (Hyland, 2006), has been prevalent in common law countries and not only in law. For example, in medicine, it has been said that “Specifications of competence are essential for setting standards for assessment” (Eraut & du Boulay, 2001, para 2.2) and the International Accounting Education Standards Board sets competences at a global level for accountants (International Accounting Education Standards Board, 2017). See also on medical and accountancy approaches, Webb, Ching, Maharg, & Sherr, (2013 para 4.9ff).

Nevertheless, initiatives at EU level have resulted in the concept of competences being translated into other European countries (Lester & Religa, 2017). In Germany, *Kompetenz* or *Befähigungen* and *Verwicklichungschancen* (Faas, Bauer, & Treptow, 2013, p 10) may be closer to capability, with its connotations of ability to improve and to change or a holistic statement of all that it means to operate in a particular profession (Lester & Religa, 2017, p 203). In France:

¹⁴ Another sense, sometimes seen in the educational literature where the trajectory of progression is emphasised, is that “competence” is a level of performance midway between novice and expert (Benner, 2000, Dreyfus, 1988). The tidiness of such a development trajectory has however been criticised (Dall’Alba & Sandberg, 2006).

In France, competence is conceptualised from a more intellectualist standpoint as *savoir*, *savoir-faire* and *savoir-être* (roughly knowledge, know-how and personal competence); of the [British, German and French] versions it is the most educationally-oriented in origin, although operationally it is also supported by measures that enable demonstration of competence to be detached from educational programmes. (ibid)

It may not be obvious how a level of professional competence translates into an NFQ level that could, for example, be applied to a competence statement. Where, as in some non-Irish jurisdictions, the period of pre-qualification workplace takes place after the vocational course, an attempt to set expectations for performance at the end of the period by reference to such a level could, for example, help the profession understand whether trainees are supposed to improve their performance above the level of their vocational course, or simply to contextualise at the same level. Setting a threshold level of performance for solicitors is an exercise that is not without difficulty:

... as at day one the solicitor appears to stride two levels – he or she has the graduate level (and on occasion master's level) of knowledge and understanding, but his or her skills are not yet high enough to warrant the label of 'manager' for which the [UK equivalent of level 9] is primarily designed. (Bone & Johnson, 2004, p 4)

In England and Wales, however, the Solicitors Regulation Authority, having set a threshold level of performance (Solicitors Regulation Authority, 2015a), has determined that the associated assessment will be at level 6 of the European Qualifying Framework (i.e. final year undergraduate level) in stage 1 of its proposed assessment, and level 7 (i.e. masters' level) in stage 2 (Maughan, 2017).

It is comparatively rare to see layered competence statements (outside the internal HR processes of larger law firms, for some synthesis of examples, see Webb, Ching, Maharg, & Sherr, 2012), that extend post qualification (but see Queen's Counsel Appointments, 2017, p 30). It is also uncommon to see statements which allow performance at one level to be compared with expected performance at another (but see Bar Standards Board, Solicitors Regulation Authority, ILEX Professional Standards, 2013, pp 47-51). It is often easier to determine level by reference to another, known, level, than to attempt to set a threshold in isolation.

If one assumes that the profession has genuinely worked backwards from what it determines to be necessary on the first day of practice, this can produce some issues in creating valid, reliable, fair and feasible assessments of competences. Assessment in the workplace, with the wide variety of practice context and expectations, is possible, but resource intensive both in assessment but also in moderation and calibration to ensure reliability and fairness (BMG Research, 2012). This is almost certainly why few legal professions attempt any kind of objective or centralised assessment of what is learned during the training contract or its equivalent. We explore this further in section 6. There are challenges in assessment of competence (Hager, Gonczi, & Athanasou, 1994). For example, some necessary attributes can be difficult to assess in an objective way (eg competences that demand proof of a negative), or which need to be demonstrated over a period of time (eg ability to progress a matter, maintain a client relationship and so on). Others are susceptible of assessment, through simulation and OSCE, a model used for qualified lawyers in the Qualified Lawyers Transfer Scheme in England and Wales and which informs the model proposed for the new Solicitors Qualifying Examination for the point of qualification (Fry, Crewe, & Wakeford, 2012; Fry & Wakeford, 2017).

There is also a difficulty in defining a generic level of performance in legal practice because of the wide variety of practice contexts. Newly qualified solicitors in smaller firms often have to become autonomous very early; while in larger firms, the development of client relationship skills might not be necessary for some years. It should also be noted that there is evidence from medicine (Boshuizen, 2004) that the movement from a comparatively sheltered classroom environment to the more challenging and more stressful workplace, can cause regression in performance. Boshuizen (op cit, pp 85ff) found that fifth year medical students, in the early stages of an internship, dipped in diagnostic performance in relation to number of knowledge propositions generated, number of biomedical concepts used and number of auxiliary lines of reasoning used.

A number of methods are used to represent trajectories of improved performance, hierarchies of cognitive activity and progression from novice to expert. A simple but effective example for the purposes of this report is the framework for (medical) clinical assessment proposed by Miller (1990):

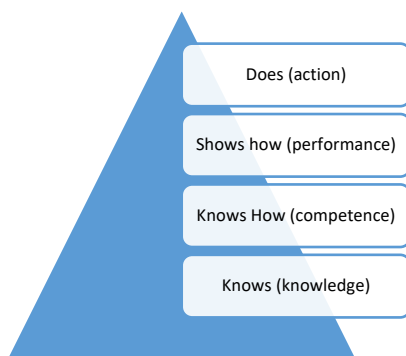


Figure 1 Miller's Pyramid

Miller suggests that knowledge is the raw information base; "know how" involves the collection of information, its analysis and translation into diagnosis or treatment. It is, therefore, a different use of the word "competence" than in the models taking qualification as their benchmark. "Showing how" could then be achieved by performing such a process of collection, analysis and solution in answer to a problem scenario in a professional assessment. "Does", however, represents how the individual actually performs in the real life practice context and could, therefore, of itself have a number of levels, as one can "do" negligently as well as competently or with expertise. The contribution of the PPC in particular to professional practice is, therefore at the level of "shows how", with assessment of "does" undertaken by the employer during in-office training and the early years of practice. There are also other things that are learned in the workplace simply because it is a workplace. A rare longitudinal study of newly admitted Australian lawyers through their first year of practice (Holmes, Foley, Tang, & Rowe, 2011) found, for example, that critical elements of transition to practice from the vocational course involved:

- Finding the best balance between autonomous/independent work and close mentoring and supervision;

- Realising that legal practice is not simply a rational and rule-based activity,¹⁵ but one that will involve ongoing uncertainty [which included emotional labour]; and
- Finding a comfortable accommodation between the new lawyer's own values and those modelled by colleagues.

2.4.2 Scope of performance

Competence, has, however, also been defined as “the ability to perform the tasks and roles required to the expected standard” (McKee & Eraut, 2013, p 3), that is, not only in terms of the quality of “shows how” or “does”, but also in terms of *scope*. It could, unless an element of “capability” (an ability to be flexible and to change) is included, be rather static, as if the level of competence achieved at qualification is retained, and everything that is needed, for the remainder of a career.

Lester points out that most UK professional competence statements for the point of qualification (Lester, 2013, see also Lum, 2013) take an external, activity-based approach, focussing on tasks, which may limit their ability to reflect the complexities of ethical or problem-solving attributes or, indeed the uncertainty identified by Holmes, Foley, Tang, & Rowe. This is in contrast to the more internal French and German approaches. The SRA Statement of Solicitor Competence is an attempt to use a broader and less activity-based model and one to which Lester has contributed.

It is not always clear how competence statements are arrived at in terms of their scope. They may be drafted by a consultant, or arrived at through Delphi groups within the profession or some combination of both. To the extent that they represent a minimum, the scope of the tasks or other elements has to represent something that can be demanded of every single member of the profession and demanded at the point of qualification. Sometimes, however, more empirical study is carried out. In the USA, a technical job analysis evaluation exercise was carried out for the purposes of mapping against the bar examinations (Nettles & Hellrung, 2012). The Canadian competency statement for lawyers was informed by a preliminary qualitative study (Federation of Law Societies of Canada, 2012a), asking lawyers not only how often each element of the draft statement was performed, but to evaluate the consequences if a lawyer was not competent in that respect. It took, therefore a risk approach, and at least one low-frequency competences was deliberately retained on the basis of the significance of its risk.

2.5 Evaluating alternative routes

There seem to be two ways in which one might obtain a more empirical understanding of the contribution of educational interventions to standards of actual practice. The first would be to compare the quality of performance of those who have qualified by different routes (eg the quality of advocacy performed by solicitors by contrast with the performance of barristers: ORC International, 2012). This risks, however, comparing like with unlike; specialists with generalists and the results may depend on the professional allegiances of those carrying out the comparison. It can, however, produce some surprising results, as when a study carried out in England and Wales into will-writing (not a reserved activity), found that non-lawyer specialists may be more effective than regulated lawyers (IFF Research, No date, para 1.34).

¹⁵ This attribute of the novice is consistent with the work of the Dreyfus brothers and Benner cited earlier. It has also been explained in the legal practice context by Blasi, see above at 2.8.

It is, of course, extraordinarily difficult to obtain a control group, and to isolate other factors that might impinge on performance. Aside from the possible effect of changes in parts of society or the educational system over which the LSI has no control (such as the schools or universities); an individual's actual quality of performance can also be influenced by external factors such as personal economic problems (Illinois State Bar Association, 2013), senior colleagues and by clients (Whelan & Ziv, 2011). These are factors which are difficult to predict and can be considerable (Granfield & Koenig, 2002).

Clearly, on a qualitative basis, employers of lawyers who have qualified in different countries will have some insight into the effectiveness of different models, even if of a small sample. However, this often seems to manifest itself as a comparison between jurisdictions such as the USA where, other than in Delaware, no formal training contract is required, and those where a training contract is required (Law Society of England and Wales, 2015). Where foreign lawyers, as in Ireland, take a separate entry assessment, it may be possible, but extremely tentatively, to infer something about the relative strengths of their underlying qualification structures. A study of the initial cohorts on the Qualified Lawyer Transfer Scheme in England and Wales, albeit on the basis of a very small sample, showed that both Australian and US lawyers performing extremely well on the OSCE element (100% and 93% respectively) but less well in legal research, legal writing and legal drafting (67% and 63%) (Fry, Crewe, & Wakeford, 2012, p 142).

There are, however, a very few projects which, with those substantial caveats, might help to illuminate the effect of alternative educational routes on later performance. The fact that such data might also be skewed by employers' preferences for one route over another, or the relative costs of different routes may, however contribute to apparent discrepancies in performance in ways that are more subtle than the raw results lead one to conclude. So, for example, there is a long-standing preference in larger law firms in England and Wales for graduates of the postgraduate conversion courses who, by definition, have secured the funds to pursue two degrees as well as the vocational course. Comparison of the (lower) bar exam pass rates of those who pursued "law office" or "law reader" routes to qualification available in some US states with those who took a JD (National Conference of Bar Examiners, 2016, pp18-19) is complicated by the far smaller number of (part-time) law firm candidates and questions about whether they might come from a more deprived demographic in the first place. The contribution of personal mentoring, which might be assumed to be helpful in the law office reader routes, seems to have a more positive effect when combined with simulated practice-based activities more familiar from vocational courses elsewhere in the common law world. A key example is the US Daniel Webster Scholar Program (University of New Hampshire, 2015) whose participants are exempted from parts of the New Hampshire bar examination. When tested on a self-standing interviewing exercise alongside graduates of more traditional JDs they were found to have "accelerated competence" (Gerkman & Harman, 2015).

In Victoria, where a vocational course with an embedded clinic or placement is an alternative to a training contract, firms and students prefer the vocational course, with 1086 graduates of the course and 152 of the training contract in 2015, compared to 262 and 597 in 2005 (Victorian Legal Admissions Board, 2015).

The opposite appears to be true in Ontario, where the preference is for a period of articles against the more recently introduced vocational course (Law Society of Upper Canada, 2012; Law Society of Upper Canada, No date, p 84). There is concern that the vocational course might become a route for those from disadvantaged groups who had been unable to obtain articles (Law Society of Upper Canada, 2017, p 74ff; Mojtehdzadeh, 2015). The Law Society of Upper Canada has begun, however, to carry out a detailed comparative review of the two routes (whose graduates both proceed to the same

terminal examinations) (Law Society of Upper Canada, 2017). With some significant reservations, at the end of the first two years of the vocational course, it was tentatively concluded that “data would suggest the Articling Program is more effective than the LPP in producing competent lawyers for entry-level practice” (ibid, p 194). It was, however, questioned whether that would remain the case over time, presumably as the course bedded in and more graduates of it became recruiting employers.

2.6 Longitudinal study and predictive value

In contrast with studies about predicting grades, research on predicting attorney effectiveness is limited, particularly with respect to the ways in which success as a lawyer can be defined and measured. (Shultz & Zedeck, 2011, p 623)

The very few longitudinal studies that have been carried out on young lawyers (eg Boon & Whyte, 2002; Boon & Whyte, 2007; Evers, Olliffe, & Pettit, 2011, Fancourt, 2004) have focused on the alignment between a vocational course and the early years of practice. In a sequential system such as that for solicitors in England and Wales, this might have been completed before the trainee enters the workplace. This means the studies have been retrospective and tending to explore possible gaps in the curriculum of the vocational course or immediate transitional factors that appear only in the workplace. This is rather different from trying to assess the extent to which the academic or the vocational course and its assessment translate into practice: that “shows how” is a predictor of “does” in Miller’s terms; and a predictor of “does” over the remainder of the solicitor’s career.

There is some literature comparing the effectiveness of different teaching approaches (eg, on PBL, Kaufman & Mann, 1999) and of school-level measures as a predictor of aptitude for practice. See, for example, school grades have been found to correlate better with a successful career in medicine than an aptitude test (McManus, Smithers, Partridge, Keeling, & Fleming, 2003; McManus, Woolf, Dacre, Paice, & Dewberry, 2013). There is evidence that there are substantial difficulties in using aptitude tests at an early stage in legal education (Dewberry, 2011).¹⁶

The more systematic literature can be found in medicine, evaluating different assessment models that are intended to test for competence, rather than “intelligence” (McClelland, 1973). There is some evidence that tests of general mental ability and of specific cognitive attributes (eg mathematical) have some general predictive value in workplaces on a generic basis (Bertua, Anderson, & Salgado, 2005) although this may not translate into a specific professional context.

The more helpful studies, therefore, consider the predictive value of assessments for professionals (although if the assessments are effectively aligned with the preceding courses, they cast a shadow back into the initial syllabus and teaching method). To some extent, however, they have to be read cautiously as the connection may be one of correlation rather than causation. If there is a positive correlation between performance in test A and later practice in practice context B, this may simply demonstrate that a person who is conscientious about their approach to test A will also tend to be conscientious about practice context B. It does not necessarily demonstrate that strong performance in test A *caused* strong performance in practice context B. Correlations, sometimes of the same assessment, have been found in medicine to be both positive and negative (Maan, Maan, Darzi, & Aggarwal, 2012). Whether a test is a useful predictor may also depend on the granularity of the

¹⁶ See also Gray, Deem, & Stratja, 2002 (dentistry); Donnon, Paolucci, & Violato, 2007 (medicine).

assessment method used (Gonnella, Erdmann, & Hojat, 2004). Although there are challenges in comparing methodologies (Hamdy et al., 2006); some medical professional assessments have been found to have predictive value for quality of care (Wenghofer et al., 2009) particularly – and unsurprisingly – if the assessment has a degree of similarity with the practice context (Hamdy et al., 2006).

2.7 Evaluating misconduct statistics

It has been suggested in the medical literature that unprofessional activity in the classroom (eg cheating in assessments or, in the professional context, failing assessments in professional conduct) can be used to predict lack of professional probity in later practice (Papadakis, Arnold, Blank, Holmboe, & Lipner, 2008; Papadakis, Hodgson, Teherani, & Kohatsu, 2004; Papadakis, Loeser, & Healy, 2001). It has also been suggested, however, that the correlation is too weak to be of value (Colliver, Markwell, Verhulst, & Robbs, 2007). Clearly there would be scope for retrospectively mapping failing solicitors against their educational background and to, for example different models over time of PPC ethics teaching and approaches taken to ethics in CPD activity. However, as indicated above, it may be impossible to isolate the contribution of education from other factors that may influence the risk of compromised conduct. For example:

- being a conveyancer (Hosier, 2014, p 265);
- economic pressures (Illinois State Bar Association, 2013), which might include pressure to enter an attractive new market without sufficient skills to perform adequately (Neary and O’Toole, 2011, cited in Hosier, op cit, p 265);
- age and other demographics (Bar Standards Board, 2013);
- the interaction of multiple factors such as a higher proportion of BME solicitors in more risky sole practice (Ousley, 2013),
- or, as Hosier points out (op. cit, p 266) whether or not the SDT decides to take action in a particular case.

2.8 The role of continuing education

... one difference between business lawyers with four years’ experience and business lawyers with more than fifteen years’ experience is not only that the more expert lawyers conform to the model ... rapidly perceiving patterns in problem situations and retrieving appropriate approaches to solutions. The more experienced lawyers also have a fundamentally different perception of the problem itself, a perception much more sensitive to the relationships between lawyer and client.
(Blasi, 1995, p 395)

What Blasi is discussing here is the development of expertise, as an ability to recognise patterns in a problem, to evaluate a wider range of factors and to apply a wider repertoire of potential solutions than is available to the more rule-based novice. It is an aspect of the ongoing and increasing quality of performance. This is developed tacitly by extensive practice, but also represents an increasing specialisation that could be limiting if the area of expertise disappears or becomes economically unviable. Indeed, Bereiter and Scardamalia see a deliberate commitment to working at “the growing edge of expertise” (1993, p xi) as a defining characteristic of expertise. It is clearly also related to “capability” rather than a static definition of “competence”: “[w]hen working at the edge of their competence, the

more expert people go about things in ways that result in their learning still more" (*ibid*). A specialist on the other hand might simply be interested in making his or her life easier:

[t]he career of the expert is one of progressively advancing on the problems constituting a field of work, whereas the career of the nonexpert is one of gradually constricting the field of work so that it more closely conforms to the routines the nonexpert is prepared to execute.

(*ibid*, p 11)

The corollary of increasing quality of performance can be a decrease in the scope of activity if the solicitor comes to specialise. Specialisation may therefore be a subset of the set of competences designed for the point of qualification: something that might otherwise be assumed to be a reduction in competence. It may be formally supported by, for example, a specialist LLM, mentoring or participation in an affinity group. Competence statements benchmarked at the point of qualification may not, however, include competencies related to person or business management which might only be needed some time after qualification. If CPD activity is, understandably, largely focussed on being up to date in the law, there may be a disconnect between formal education processes and standards of performance in these new expectations which may be supported more by informal and experiential learning in the workplace than by formal educational structures.

Quantitatively the impact of continuing education, whether informal or formal, on standards of performance should be greater than that of pre-qualification education. It is, therefore, discussed further in section 3.

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3 Requirements for continuing education and quality

3.1 Introduction

One of the key roles of professional bodies is communication and engagement . The existence of CPD requirements speaks to various audiences about the ambition and place of the occupation. It offers reassurance to stakeholders, including the public, that the profession takes quality assurance seriously. It also sends an important message to members, providing confirmation that the professional body retains professional aspirations, guidance and programmes capable of realising and sustaining them. (Boon & Fazeli, 2014, p 15)

This section can be supplemented by the investigation of legal and other CPD systems in the LETR Literature Review, (Webb, Ching, Maharg, & Sherr, 2013, Chapter 5). Definitions of CPD are not consistent, but tend to emphasise learning after formal qualification by reference to at least maintaining a level of minimal competence (Henderson, Wallace, Jarman, & Hodgson, 2012, para 47) which is the desired marker of quality. Occasionally, definitions mention progressing beyond mere competence (Hunt, 2009, p 88) which might include moving into new areas of practice.

The Council of Bars and Law Societies of Europe has an ongoing strategy of encouraging its members to develop continuing education schemes, although its recommendations are “not intended to impose a solution or obligation, but to encourage the adoption of continuing training regimes and to confirm a culture of quality and training for lawyers, in the public interest” (Council of Bars and Law Societies of Europe, 2003, p 2).

The advantage of a mandatory CPD scheme has the advantage that it demands that members of the profession engage, at least ostensibly, in some form of educational activity.

The argument is that in every profession there is a residuum – preferably a small one – of members whose practice fails to come up to standard. It is largely for their sake that defensive measures have to be taken. Thus ‘formal courses don’t really meet the needs of lively members of the profession, but they help to ensure minimum standards’.

(Becher, 1996 p.53)

It can also have an element of marketization. CPD credit may be given, for example, as an inducement for “good citizenship” such as chairing meetings, setting or marking professional examinations or contributing to the professional journal. Unless all CPD activity is delivered by the firm or professional body, there can be a vigorous external market in course provision, both face to face and (where permitted) online. This can lead to questions of competition law where the professional body is perceived as having an unfair advantage (*Socrates Training Ltd v Law Society of England and Wales*, 2017). Market demand indicates that in England and Wales (Henderson, Wallace, Jarman, & Hodgson, 2012, p 24, Charts 2-3) that the majority of CPD sold to lawyers continues to be the legal updating course:

[t]he primary method for delivering continuing legal education is still the “talking head”. ... Nevertheless, lawyers attend these courses in large numbers, give them good evaluations ... and are

satisfied with one or two practical insights that can be applied on the job. But the course format may be what lawyers are used to, not necessarily what they want or need.

(Cruickshank, 1996, p 227)

There is some evidence that lawyers think that participation in CPD is an indicator of continued competence (Webb, Ching, Maharg, & Sherr, 2013, table 2.12). The Irish perspective can be seen, at least historically, in a 2001 survey of 150 solicitors' firms (McGuire, Garavan, O'Donnell, & Murphy, 2001). Their empirical findings suggest issues of time and expense were a barrier to more effective CPD activity in smaller firms; but that there was a strong "traditional" approach in use of courses and reading, as opposed to coaching and mentoring and, at the time of their research, online delivery. The results do seem to suggest, however, that the attitude to the legal updating course might be different in Ireland.

CPD is conceptualised in terms of core management and personal skills rather than specific legal knowledge and/or skills. Management skills were prioritised as the most important CPD area, with only one specific legal expertise area¹⁷ ranked in the top five priorities.

(McGuire, Garavan, O'Donnell, & Murphy, 2001, p. 38).

This study took place prior to the introduction of mandatory CPD to the Irish profession, although it makes it clear, as does Buckley's discussion of activity (Buckley, 2002, p184ff) that a considerable amount of CPD activity was going on before that date. The Irish model for mandatory CPD, an inputs system, is contained in the Solicitors (Continuing Professional Development) Regulations 2003, following recommendations made by the Education Committee in 1995 (Education Policy Review Group, 1998, p 42). The details are set out in Table 1.

The place of online delivery in Irish legal CPD, and using it to facilitate participation and learning has clearly now moved on (O'Boyle, 2012; Greal, Kennedy, & O'Boyle, 2013; O'Boyle, 2013).

3.2 Formal and informal learning in the workplace

There is a tendency, in discussing CPD, to focus on face-to-face courses delivered externally, despite these also being seen as of limited effectiveness (Henderson, Wallace, Jarman, & Hodgson, 2012, p 6-7). Cost and location are, of course significant barriers to this kind of activity, particularly where a sole practitioner loses a day's work in addition to having to pay for the course (Webb, Ching, Maharg, & Sherr, 2013, para 2.153). Unless the scheme demands it, there is no requirement that the employer allows employees to attend in work time, or to pay for courses. Cost is, however, not the only incentive towards provision of formal CPD in-house, within the firm (where this is allowed): "There has been a growth of in-house staff development in large law firms [in England and Wales] for example, accompanied by much greater awareness of the economic advantages of in-house training and the opportunity presented to imbue the firm's cultural awareness" (Boon & Fazeli, 2014, p 5).

Prescription of activities that are, or are not covered by CPD schemes – particularly if they exclude client work – can lead to odd results: "Appearing in a leading case in one of the higher courts cannot count. Attending a seminar on that case, after it has been decided, can" (Bar Standards Board, 2011, p 22). Conventional CPD activities may not even be the most important form of learning in the

¹⁷ Legal research.

workplace. For example, in a study of newly qualified Australian lawyers (Nelson, 1993), “ask someone else” and “look it up for yourself” were seen as the most valuable forms of workplace learning, with “non-participatory lectures” in fourth place. There are a number of different forms of learning being used in the workplace (Cheetham & Chivers, 2001) that often do not “count” for CPD, including observation, shadowing, feedback, file review, individual or group reflection (Boud, Cressey, & Docherty, 2005) and so on. This might include the “hot” learning in practice contexts identified in law firms by Gold, Thorpe, Woodall, & Sadler-Smith, (2007, p 243). A study of English solicitors (IFF Research & Sherr, 2014, figure 5.2) showed considerable reliance on conventional CPD activities such as external and online courses, but also showed strong responses for case discussions and reflective learning. It should also be noted that it is repeated exposure to routine activity (practice, in the sense of practising the piano) that leads to the collapsing of knowledge, pattern recognition and increased efficiency in diagnosis that is a characteristic of expertise.

We will return to this issue in section 6 on the training contract, but its contribution, often unmeasured, to the quality of performance of the profession should not be overlooked (Webb, Ching, Maharg, & Sherr, 2013, table 2.11).

3.3 CPD systems

From the point of view of a regulator, CPD may be a matter of regulatory compliance (“the sanctions model”: (Madden & Mitchell, 1993) or a question of personal development (“the benefits model”, *ibid*). The profession may, or may not, share the regulator’s position:

Professionals mostly believed in self-assessment as part of professional self-reflection. If CPD is to be assessed by others, it should be through formative assessment, i.e. it should aim to help professionals improve. ... However the majority from professional bodies as well as employers view assessment as summative, that is, as a way of evaluating professionals and of accounting for CPD activities. Those representing professional bodies mostly viewed assessment as an important way of demonstrating the maintenance of competence. Employers valued assessment for judging if CPD activities met organisational needs.

(Friedman, 2005, p.8)

A different typology, used in health professions, is to distinguish between CPE (the structured, formal and possibly didactic approaches) and CPD (self-directed learning) (Brekelmans, Poell, & Wijk, 2013, p 1). This dichotomy may be a useful concept in legal CPD, where the emphasis on updating and currency, given the inherent fluidity of the professional knowledge base (particularly in common law countries) can skew the emphasis in CPD activity and in the CPD market. It may also both define and limit conceptions of what CPD is:

Providing CPE that offers an update in knowledge to comply with regulations with little regard for the systems where practice occurs lacks innovation or acknowledgement about the dynamics of professional practice. It is probably more accurate to view it as “professional education” not “continuing professional education.”

(Bierema, 2016, p 36)

3.3.1 Inputs v outputs

A sanctions approach tends to lead to an inputs approach to CPD, in which a minimum number of hours or points are set, reported, and where there may be disciplinary penalties for failure to achieve the minimum:

A focus on the need to prove that members undertook CPD drove professions to adopt a restrictive interpretation of what counted. Providers of CPD, often with an accredited status and able to corroborate attendance, were given a captive market. Professionals, often tired after a long day, were forced to attend well-intended but dry lectures on possibly irrelevant areas of practice, while paying through the nose for the privilege. CPD understandably gained a bad reputation with the very people it aimed to inspire, presenting theoretical and practical problems.

(Boon & Fazeli, 2014, p 3)

It may, however, represent a concept of CPD as individualised, the responsibility of the individual, rather than the employer (Boon & Fazeli, 2014, p 14) although in practice this is likely to be compromised by employer control over what time is made available to attend what kind of CPD activity and what the employer is, or is not, prepared to pay for.

The LSI CPD system, as described in Table 1, involves 20 hours of activity a year. The 2001 recommendation of the Federation des Barreaux d'Europe (2001) is a minimum of 10 hours a year. The CCBE model scheme, although it allows for a considerable amount of flexibility in activities that can be undertaken, is also an inputs-based model (Council of Bars and Law Societies of Europe, 2006, p 4). The CCBE has more recently recommended that CPD should be transferable between jurisdictions (Council of Bars and Law Societies of Europe, 2013). This has now been implemented in a model (Council of Bars and Law Societies of Europe, 2016, p 2) which assumes that European legal CPD schemes are inputs-based. This is supported by the material set out in Table 1 below. The benefit of an inputs system is, of course, that inputs can be easily measured, counted and therefore monitored. It is, therefore, susceptible to the criticism that it is simply about "ticking the box" (Henderson, Wallace, Jarman, & Hodgson, 2012; para 133; Webb, Ching, Maharg, & Sherr, 2013, para 2.152). This can extend to suspicion of practitioners who attend courses outside their specialisation, which could be either legitimate preparation for a new area of practice, or blatant box ticking (Webb, Ching, Maharg, & Sherr, 2013, para 2.164).

An inputs system can also be abused by, for example, practitioners sitting at the back of the class reading emails, doing client work or reading the newspaper (Henderson, Wallace, Jarman, & Hodgson, 2012, para 55) or, indeed, signing in and then leaving, or sending a colleague to collect 'the points' for them. Employers may collude by refusing to allow employees to attend relevant courses, in favour of irrelevant, already paid for, or free activity (Henderson, Wallace, Jarman, & Hodgson, 2012, para 140). This, of course, entirely defeats any educational objective in mandating the activity. In a legal context, Gold, Thorpe, Woodall, & Sadler-Smith point to a lack of evidence that inputs approaches make positive impacts on legal practice, and conclude that "input-driven approaches to CPD frequently fail to consider the attributes of professionals as learners and the impact of contextual feature such as support from others and the opportunity for the application of new knowledge and skills" (2007, pp 237-238)

By contrast, outputs or outcomes focused schemes ostensibly emphasise the learning that emerges. As the obvious objection is that this allows practitioners to invent or embellish their reporting, it is more obviously a high trust model than the typical low trust inputs model. In the legal context in particular and depending on what material is to be collected it may also raise complex issues of confidentiality and legal privilege in such material. There is clearly a significant challenge "in relation to how the complexity of professional life should be conceptualized in order that the outcomes can be attributed to the performance of particular professionals and activities" (Gold, Thorpe, Woodall, & Sadler-Smith, 2007, p 238).

Outputs models may be benefits-models, with a genuine and personal development objective and enabling personal capability.¹⁸ Lindsay, in the case of accountants, suggests that a model that encompasses both competence and capability may go some way to address the sanctions/benefits dichotomy (Lindsay, 2016, p 10). An outputs/benefits model can represent improvements in both scope and quality of work or, as Eraut puts it, a “learning trajectory” (See his typology in Eraut, 2007, p 15). Alternatively, as Boon and Fazeli suggest (op cit, p 13), this kind of model may become linked too closely to a rigid and possibly static notion of competence which is under the control of the employer rather than the individual. What is needed in “building, sustaining, and changing professions is a more dynamic process than minimum standards dictate, particularly when CPE occurs within organizational context [sic]” (Bierema, 2016, p 54). Nevertheless, in the context of English accountants, Lindsay found that the

output-based CPD scheme appears to have succeeded in giving individual accountants responsibility for their learning. The need to comply with the scheme does not seem to be overshadowing accountants’ choice of learning activities and there is no restriction on what can be considered as being legitimate CPD ...Despite being a compulsory scheme, ...this output -based scheme would seem to be viewed by accountants as more of a benefit than an onerous sanction.

(Lindsay, 2012, p 628)

As we have seen, however, an inputs scheme is also susceptible to de facto control by the employer through time and budget. The quotation from Friedman, above, indicates that even within the same system, professionals, regulators and employers may all have very different conceptions of what CPD is or should achieve.

Boon and Fazeli contrast the then inputs systems of the English and Welsh solicitors and barristers’ professions with an outputs system in place for teachers in further education. The latter measured hours, but only those that led to change in practice:

Although government regulations specified that the hours of professional development should be monitored, [the professional body] required focus on hours that had impact rather than the hours spent on an activity. This was a more notional and subjective measure, but it emphasised individual responsibility to identify what they had learned leading to a tangible impact on practice. Evidence collected by [the professional body] suggests that these requirements sparked greater discussion between teachers, and with managers, about professional development and assisted negotiation of development time.

(Boon & Fazeli, 2014, p 9)

According to PARN (Professional Associations Research Network, 2015), there is a trend towards measuring CPD in terms of outputs in some way (70% of professions surveyed in 2013, from 66% in 2009). Nevertheless, “to identify what the member has learnt from the activity they have undertaken, look at the outcomes of the activity and evaluate how this has impacted on their practice. ... can be difficult to quantify ...” (ILEX Professional Standards, 2012, paras 15-16).

The compromise, which reinforces the educational objective to a greater extent than a pure inputs model does, is a cyclical approach, which might retain some element of minimum prescribed activity.

¹⁸ Which may be to develop skills and knowledge that the employer does not want, or, indeed, to position oneself to leave a particular organisation.

At the very least it requires some kind of formal planning process which can be documented and, therefore, monitored. The FE teaching scheme described above, is in fact, cyclical (Kelly, 2013, p 11). Movements in accountancy in both Ireland and in England and Wales are also towards an outputs model, fuelled by an international standard permitting accountancy professions to use an inputs model, an outputs model or a combination of the two (Lindsay, 2016, p 1). Consultation is currently taking place on proposals to reinforce the outputs models and to widen measurement for inputs models beyond prescriptive hours requirement (International Accounting Education Standards Board, 2017).

3.3.2 Cyclical systems

Eighty-nine per cent of the professional organisations in the PARN study required evidence of planning and reflection in some way, with a third requiring changes in working practice and a quarter “evidence of client outcomes” (Professional Associations Research Network, 2015).

A cyclical system assumes a broadly experiential learning model. It might also be described as a form of action research by the individual practitioner (Webb, 1995). The professional is asked to reflect on their practice or their competence; identify learning needs; take action to address those learning needs and, in some case, to record the impact of the action. Such a system may rest on the assumption that professionally accredited practitioners are able to plan and review what they need to learn and have sufficient (self-)awareness of practice issues to avoid unethical and incompetent practice” (Lester, 1999, p 119). Novice practitioners, in particular, can be adept at retrospective evaluative reflection on experience, and can identify goals (I need to get better at X), but struggle to identify the steps to take to achieve those goals without help.

Eraut, drawing on research into a number of professions, has seen limitations in the way in which some cyclical models are articulated, in particular in “three problem areas, which are rarely given sufficient attention: the identification of learning needs, prioritization of those needs, and matching prioritized needs to learning opportunities and activities” (Eraut, 2001, p 9). He also suggests that greater focus should be placed on what happens after the CPD event in the workplace, the “does” in Miller’s terms: “.. physicians have to learn on the job precisely when and how to use a new practice ... it is on this further learning that patient outcomes depend” (ibid, p 11).

Some firms, and some practitioners, may already carry out such activity spontaneously or within firm-specific appraisal systems (Henderson, Wallace, Jarman, & Hodgson, 2012, para 161ff). There is a recent trend, amongst legal professions in common law countries, to begin to move towards such a system. See, in Table 1, entries for solicitors, barristers and legal executives in England and Wales; solicitors in New Zealand and Scotland, and lawyers in Alberta.

3.3.3 Mandatory content

Some legal professions have sought to address areas in which the profession falls down, or in which disciplinary complaints are focussed (by contrast with lack of legal knowledge) by including mandatory components. Sometimes there are requirements in management or supervision for senior practitioners, but the most common mandatory component is professional conduct or ethics (which may include reference to specific issues such as money-laundering) and it might be desirable that this include wider consideration of the rule of law (Boon & Fazeli, 2014, p 18)

A number of professions require newly qualified practitioners to undertake specific courses or “trainee CPD”, during the training contract or its equivalent, or in the first three years after qualification (whether or not they are allowed to practise independently during that period). See, for example, the requirements for barristers in England and Wales in their first three years set out in Table 1.

Table 1: CPD models

Country	Profession	Reference	Model	Description	Certification
IRELAND					
Republic of Ireland	Accountants	(Chartered Accountants Ireland, 2016) ¹⁹	Inputs, outputs or a combination of both	Individual choice of: <ul style="list-style-type: none"> • inputs (70 hours, of which 20 must be structured and 10 must be on mandatory topics), • outputs (with evidence provided), or • a combination of inputs and outputs 	Annual declaration of compliance
Republic of Ireland	Barristers	(Bar of Ireland, No date)	Inputs	10 points including 1 point delivered by the Bar CPD Unit on ethics. Teaching, setting exam papers, acting as an external examiner, chairing can be included.	Self-certified although evidence may be demanded.
Republic of Ireland	Doctors ²⁰	(Medical Council, 2017)	Inputs	50 hours across a number of categories: internal (maintenance of knowledge and skills), external (practice evaluation and development), personal learning and research/teaching. Plus one clinical audit each year.	Self-certified
Republic of Ireland	Legal Executives	(Irish Institute of Legal Executives, 2016)	Not mandatory	Non mandatory although courses are offered	
Republic of Ireland	Solicitors	(Law Society of Ireland, 2016, 2017)	Inputs	Under the current (2015) regulations, 20 hours, to include a minimum of 3 hours management and professional development skills and a minimum of 2 hours regulatory matters (additional requirements for sole practitioners/compliance partners): Group study, e-learning (up to 50%) or writing (up to 50%)	Self-certified subject to sample audit by the LSI
Republic of Ireland	Surveyors	(Society of Chartered Surveyors Ireland, No date)	Combination inputs and cyclical	"Members shall plan, undertake, record and evaluate 60 hours' appropriate continuing professional development in every consecutive period of three years and, on request, provide SCSi with evidence that they have done so". Recorded online.	Every member's record is checked for compliance
UK					
Northern Ireland	Barristers	(Bar Council of Northern Ireland, 2004; Bar of Northern Ireland, 2017)	Inputs	Current information is not publicly available on the Bar Council website. The 2004 regulations indicate a	

¹⁹ See also Murphy, 2016, reporting empirical work carried out in 2010 into accountants' perceptions of this scheme.

²⁰ A review of mandatory and voluntary CPD for doctors across the EU appears in European Commission, 2013, p 32 and for other countries in Tran, Tofade, Thakkar, & Rouse, 2014. A recent study of Irish medical general practitioners' attitudes to CPD found that "GPs identified doctor-patient communication as the most important and best-performed GP skill. Discrepancies between perceived importance (high) and current performance (low) emerged for time/workload management, practice finance and business skills. GPs identified clinically-relevant primary care topics and non-clinical topics (stress management, business skills, practice management) as preferences for future CPD. Flexible methods for CPD delivery were important. Gender and practice location (urban or rural) significantly influenced CPD participation and future course preference" (access was to abstract only) (Maher et al., 2017).

Country	Profession	Reference	Model	Description	Certification
				minimum of 12 hours, and public information confirms the model is inputs based	
Northern Ireland	Solicitors	(Law Society of Northern Ireland, 2004)	Probably inputs	Current information is not publicly available on the Law Society website. Information available to the LETR review suggests that in 2011, the requirement was “15 hours in each year, of which, for those practising in Northern Ireland, a minimum of 10 hours must be in group study (of which 3 hours must be on client care and practice management). Up to 5 hours can be private study” (Webb, Ching, Maharg, & Sherr, 2013, Chapter 5, para 52)	
Scotland	Advocates	(Faculty of Advocates, 2008)	Probably inputs	Must comply with the faculty’s programme of continuing professional development	
Scotland	Solicitors	(Law Society of Scotland, 2017)	Combination inputs and cyclical	20 hours of which at least 15 must be “verifiable” and of which no more than 5 can be self-study. A plan is required and may be logged with the Law Society: “Solicitors will be required to demonstrate that they have (i) identified their learning needs (ii) planned CPD activity to address those needs (iii) undertaken relevant CPD (iv) evaluated and justified the CPD activity, what was learnt, and how the lessons of the CPD activity can be put into practice.” The requirement for mandatory coverage of management topics has been dropped.	Self-certified plus random checking by the Law Society
England and Wales	Chartered Accountants	(Institute of Chartered Accountants of England and Wales, 2005)	Cyclical	<p>“Except as may be provided in regulations a member shall</p> <ul style="list-style-type: none"> • keep under review his needs for training and development having regard to the professional and other work he undertakes; • where such a review identifies a specific need for training or development act promptly to meet such need; and • certify annually to the Institute compliance with these provisions and, if requested by the Institute, provide such evidence of compliance as may be required” 	Self-certified
England and Wales	Barristers	(Bar Standards Board, 2016a, 2016b)	Inputs for newly qualified Cyclical for more senior	Within the first three years 45 hours of which 9 must be on advocacy and 3 on ethics Cyclical process for established practitioners	Self-certified
England and Wales	Doctors	(General Medical Council, 2013, 2017)	Cyclical	Cyclical process with impact on practice to be recorded	Feeds into annual revalidation appraisal.

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Country	Profession	Reference	Model	Description	Certification
England and Wales	Legal Executives	(CILEx Regulation, No date)	Inputs for associate members Combination cyclical/ Outputs for others	Associate members: 8 hours CPD and 1 professionalism outcome (ethics, business awareness, client care, equality and diversity etc). At least half must be in the declared specialism, may include independent research, work shadowing etc Other members – 9 outcomes a year of which 1 must be on professionalism and at least 5 must be planned activity. Possible activities include coursers, reading, work shadowing, coaching, critical incident analysis or reflecting on something that went wrong. Specialist advocates must include 2 outcomes on advocacy	Self-certified online
England and Wales	Solicitors	(Solicitors Regulation Authority, 2016)	Cyclical	Reflective cycle linked to a competence statement.	Self-certified
England and Wales	Surveyors	(Royal Institution of Chartered Surveyors, 2017)	Inputs	20 hours a year of which at least 10 must be formal. In addition “All members must maintain a relevant and current understanding of our professional and ethical standards during a rolling three-year period”.	Self-certified online
NON-EU LEGAL EXAMPLES					
Alberta, Canada	Lawyer	(Brower & Woodman, 201, Law Society of Alberta, 2017)	Cyclical	Create a plan and “declare” it to the Law Society, reflect on plan throughout the year (all online). Competence statements in support	Self-certification at the beginning of the year
New Zealand	solicitor	(New Zealand Law Society, 2017)	Combination inputs and cyclical	Cyclical record required but at least 10 hours.	Declaration of compliance and possibility of audit. Organisations can apply to be self-auditing (New Zealand Law Society, 2017)
EU LEGAL EXAMPLES					
Austria	Rechtsanwalt	(Österreichische Rechtsanwaltskammer, 2014)	Outputs?	The lawyer is required to keep up their education, in particular by reference to the topics in the university degree and the law examination (Rechtsanwaltsordnung (RAO), s 10(6))	
Belgium	Dutch speaking lawyers	(Orde van Vlaamse Bailes, 2014, 2017)	Inputs	16 points	Courses must be authorised in advance (they can be in-house). Advocates can lodge their points electronically.
Belgium	French/German speaking lawyers	(Ordre des Barreaux Francophones et Germanophones, 2014, 2017)		20 points	
Bulgaria	адвокат	(Supreme Bar Council, 2014)	Probably inputs	“Attorneys-at-law shall be obligated to maintain and develop their qualifications. ... In order to maintain and develop the qualifications of attorneys-at-law the Supreme Bar Council shall set up an Attorney-at-law Training Centre” (Bulgarian Bar Act, part 1, 2004, arts 27-28)	Training Centre issues certificates of attendance. Some attendance is compulsory

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Country	Profession	Reference	Model	Description	Certification
Croatia	Odvjetnik	(Hrvatska odvjetnička komora, 2014)	No mandatory scheme although there is a requirement in the code of ethics that lawyers should update and expand their learning		
Cyprus	Advocate	(Cyprus Bar Association, 2014)	No mandatory system although in 2014 the Bar Association was seeking to create one.		
Czech Republic	Právnik	(Česká advokátní komora, 2014)	No mandatory scheme		
Denmark	Advokat	(Advokatsamfundet, 2008, 2014)	Inputs	54 lessons each of at least 45 minutes in a 3 year period. Face to face and e-learning included, as is teaching (to a maximum of 27 lessons) and writing (to a maximum of 18 lessons)	Self certification of lawyer and assistant lawyers working under him/her. Annual audit of 10%
Estonia	Advocaat	(Eesti Advokatur, 2014; 2016 a, b)	Inputs and 5 year revalidation	“An advocate is required to undergo periodic legal in-service training. The Board may release an advocate from the obligation to undergo in-service training during the assessment period in which he or she has defended a Doctoral or Master’s level degree in a specialty relating to the professional activities of an advocate.”(Bar Association Act, s 34)	Advocates are required to submit evidence to the professional suitability committee of their in service training periodically (within 5 years of passing the examination). If this is not submitted or the “volume” of CPD undertaken is insufficient they are required to pass an oral examination in front of the committee (Eesti Advokatur, 2016a, s 72)
Finland	Lakimies	(Suomen Asianajajalitto, no date, 2014, 2015)	Inputs	18 hours which “may consist of studies in law, professional ethics and other topics relating to the practice of law, language studies relating to the profession, or research, teaching or publishing in the field of law. The preparation of legal opinions and of statements relating to the drafting of law may also be deemed continuing professional education”.	Self-certified and monitored by the Bar Association
France	Avocat	(Conseil National des Barreaux, 2014, 2017)	Inputs	20 hours (or 40 in a 2 year period) (Conseil National des Barreaux, 2011, p 11) No more than half of the requirement can be fulfilled by distance/online learning. Specialist lawyers must devote half of their CPD to their specialist field.	Self-certification with copies of attendance certificates (training providers also certify).
France	Notaire	(Institut Notarial de Formation, 2017; Village des Notaires, No date)	Inputs	30 hours (or 60 in a 2 year period) including teaching and publishing	Self-certified by the notarial chamber.
Germany	Rechtsanwalt	(Bundesrechtsanwaltskammer & Deutscher Anwaltverein, 2014; Bundesrechtsanwaltskammer, 2017a, b)	Inputs	“A Rechtsanwalt has a duty to engage in continuing professional development” (Bundesrechtsanwaltsordnung, 2011, s 43(a) 6) A quality mark for “advanced training” is available to lawyers who obtain 360 points over a three year period	

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Country	Profession	Reference	Model	Description	Certification
				in a programme covering law, practice, costs, and management issues. Specialist lawyers (Fachanwalt) must do 10 hours a year to maintain the specialist title	Specialist lawyer compliance is overseen by the regional bar
Greece	δικηγόρος	(Athens and Piraeus Bar Associations, 2014)	No mandatory scheme		
Hungary	Jogász	(Magyar Ügyvédi Kamara, 2014)	No mandatory scheme		
Italy	Avvocato	(Scuola Superiore dell'Avvocata, 2014)	Inputs	60 credits in a 3 years period of which 9 must be evidence, ethics etc. Otherwise the lawyer can choose topics and allowable activity Includes formal courses, self-study, languages, simulation, accredited e-learning etc (Regolamento per la formazione continua, 2014)	
Latvia	Advokāts	(Latvijas Zvērinātu advokātu padome, 2014)	Inputs	16 (academic hours (each of 45 minutes)	
Lithuania	Teisininkas	(Lietuvos advokatūra, 2014)	Mandatory	As determined by state law and the Bar Association	
Luxembourg	Avocat	(Ordre des avocats du Barreau de Luxembourg, 2014) Règlement Intérieur de l'Ordre des Avocats du Barreau de Luxembourg tel que adopté par le Conseil de l'Ordre lors de sa réunion du 9 janvier 2013., 2013)	Inputs.	Further details may be in the members only section (Ordre des avocats du Barreau de Luxembourg, 2017)	
Malta	Avukat	(Chamber of Advocates, 2014)	No mandatory scheme		
Netherlands	Advocaat	(Nederlandse orde van advocaten, no date, article 4.4)	Inputs	20 training points which can be collated from hours of academic qualifications, tested online activity, half hours of teaching etc. Some activities may be specifically excluded.	Submission of evidence
Poland	Prawnik	(Krajowa Izba Radców Prawnych, 2014)	Mandatory system – unable to locate details		
Portugal	Advogado	(Comissão Nacional de Estágio e Formação da Ordem dos Advogados, 2014; Estatuto da Ordem dos Advogados, 2015)	Mandatory system – unable to locate details	CPD as regulated by the General Council (art 197-198) Specialist accreditation available in designated specialist fields (art 70).	
Romania	Avocat	(Uniunea Națională a Barourilor din România, 2014)	Mandatory system, unable to find useful details on the model although by implication it is an inputs system.		

Country	Profession	Reference	Model	Description	Certification
Slovakia	Právnik	(Slovenská advokátska komora, 2014)	Optional (although the association puts on seminars: (Slovenská advokátska komora, 2017)		
Slovenia	Odvetnik	(Odevetniška zbornica Slovenije, 2014)	Optional (courses arranged through the Bar Association or regional groups) though it is planned to make it compulsory in the future (Humar, 2013)		
Spain	Abogado	(Consejo General de la Abogacía Española, 2014, 2017)	No mandatory scheme (other than for legal aid lawyers)		
Sweden	Advokat	(Sveriges Advokatsamfund, 2008)	Inputs	18 hours of structured training. May include eg economics, languages.	Self-certified.

NB: as CPD systems are often subject to regular and possibly annual change, and in some cases data in the table is contingent on translation, it is important to note the date at which information has been retrieved.

3.3.4 Specialist accreditation

Legal professions across Europe vary whether specialisation training or accreditation exists. Specialist qualifications are more likely to represent claimed expertise than they are to be a specialist licensure (limiting practice in that field to those with the qualification. Claimed expertise may be specifically envisaged as a marketing advantage: “[s]cheme membership ensures your practice has greater visibility to potential clients” (Law Society of England and Wales, 2017a). How and what they test may be limited. For example, evaluation of applications for the Planning Law accreditation in England and Wales are on the basis of extent of experience (Law Society of England and Wales, 2017c). The Conveyancing Quality Scheme focuses on how the practice is managed and whether certain protocols are followed (Law Society of England and Wales, 2017b).

Very distinctive specialist licensures sometimes appear in relation to advocacy (see, for example, the special requirements for legal executive advocacy in England and Wales, CILEx Regulation, No date). They may be provided by organisations other than the professional regulator (e.g. Association of Personal Injury Lawyers, No date). Perhaps one of the most strongly developed specialist accreditations in law is that of the German *Fachanwalt*, an enhanced status available in a number of fields and one that can be removed if the claim to expertise is no longer merited (Bundesrechtsanwaltskammer, 2017b).

In the Republic of Ireland, although specialist Diplomas are a well-respected way of developing specialisation, regulations about solicitor advertising (Hall, 2002, p 149ff) prevent solicitors from advertising claims to specialist expertise.

3.4 Revalidation/reaccreditation

The question of periodic revalidation arose with some vigour during the period of the LETR research phase, as the concept had just been introduced in the British health professions. The idea that professionals should periodically be accountable for demonstrating continued fitness to practice was, as a result, was, therefore, current (Webb, Ching, Maharg, & Sherr, 2013, para 5.107ff) and the report therefore devoted a considerable amount of discussion to the medical and dental re-accreditation models. Understanding of what re-accreditation might mean (*ibid*, paras 5.114-5) amongst lawyers varied significantly, with a number perceiving the process to involve re-testing day one competence levels.²¹ There was limited support for reaccreditation although there was some evidence from medicine that it could lead to improved outcomes for patients (*ibid*, para 5.117, table 5.3). Consequently (*ibid*, 5.119) it was not at that stage recommended. The fact that self-certification of CPD compliance may be a condition of renewing a practising certificate, and that spot checks may be made, both of which are common in the legal sector, does not amount to a re-accreditation process. The closest we have been able to locate in the examples selected for Table 1 was the provision in Estonia that those who fail to comply with their CPD obligations can be called in for a formal examination, which they might fail.

We have been informed by the LSI that the question of accreditation was considered by the Council and the decision was made not to proceed at this time.

²¹ Nevertheless, the SRA’s new CPD scheme does require solicitors in England and Wales to assess themselves by reference to a competence statement designed to represent only day one competence.

3.5 Responsibility for the workforce/CPD accreditation at firm level

In the majority of the legal professions described in table 1, certification is by the individual lawyer, often subject to random spot checking by the professional regulator. The certification may be linked to the annual application for a practising certificate, where this device is used. Occasionally certification is by the employer or the training organisation. Some CPD schemes (eg ACCA Global, No date) delegate at least some responsibility for CPD to employers, operating both individual and employer-led schemes in parallel. This has been suggested for solicitors Henderson, Wallace, Jarman, & Hodgson, 2012, p 10).

3.6 Monitoring by the professional regulator

The first problem for any regulator becoming involved in CPD is being clear about what it is trying to regulate and why ... Just as there is no single, right way of doing CPD, so there is no single right way of regulating it.

(CPD Review Working Group, 2011, pp. 5 and 12)

Not all the schemes listed in Table 1 are monitored or supervised by the professional regulator, although many are. Some exercise control by either providing all the recognised CPD activity themselves, or accrediting and quality-assuring providers. Inputs models, as described above, lend themselves to comparatively straight forward monitoring. Few regulators will be in a position to emulate the Society of Chartered Surveyors Ireland in checking every member's submission. The approach to monitoring and to the model of CPD adopted may also be linked to the overall model of regulation. The Legal Services Board in England and Wales has, empowered by Legal Services Act 2007, required the professional regulators to adopt an outcomes-focused model of regulation. This is inconsistent with retaining an inputs models for CPD (Henderson, Wallace, Jarman, & Hodgson, 2012, p 10). Boon and Fazeli seem to argue that an outcomes model, when the outcome desired is competence as defined by the regulator, is limiting:

Professions are more subject to state manipulation and to mechanisms of state control. This will, we suspect, increase pressure for CPD to demonstrate impact, leading to a stronger focus on the workplace and an ongoing risk of co-option of CPD as a tool of management. ...The new system of Outcomes Focused Regulation in the legal profession is an example of such a system. Internal mechanisms like appraisal and external mechanisms like audit have the potential to change the complexion of CPD in law firms, emphasising narrow notions of workplace competence at the expense of broader development.

(Boon & Fazeli, 2014, p 12)

Whether this is in fact the case depends, it is suggested, on how the apparent freedom of employers and individuals to define their own learning in an outputs or cyclical scheme is implemented. It seems perhaps unlikely that this different model is more instrumental, and more limited in terms of learning and personal aspiration than inputs models.

3.6 References

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4 The requirements placed on the providers of legal education

4.1 Introduction

This section sets out the validation, accreditation and quality assurance mechanisms applicable to the providers of different elements of professional legal education (for solicitors) in the Republic of Ireland. It should, however, be noted that this material has been compiled from publicly available information only. Postgraduate taught courses have been covered only insofar as they might operate as CPD for some solicitors or as FE-1 conversion courses for non-law graduates. Research degrees have not been included. Given the breadth of the sector, this section also provides an outline of the offerings and numbers of students at the different institutions, so far as can be determined from publicly available sources.

Reference will be made in this section to the National Framework of Qualifications (NFQ) (Quality and Qualifications Ireland, 2003). This places an ordinary degree at level 7 and an honours degree at level 8 (Quality and Qualifications Ireland, no date, p 18). These have been mapped against the equivalent European framework (Department of Education and Science, National Qualification Authority of Ireland, & European Qualifications Framework, 2009) and against their UK equivalents (QAA, SCQF, CCEA, OfQual, CQFW, QQI, 2014). The framework is also consistent with the Bologna process for higher education (Steering Committee for National Consultation, 2006). The NARIC Ireland is responsible for assessing equivalence of foreign qualifications (Quality and Qualifications Ireland, 2017c).

At 1st March 2016, the total of 1,172 new undergraduate entrants in the ISCED “Law” category in publicly funded institutions could be subdivided between the two categories of degree provider as follows (Higher Education Authority, 2016b):

Table 2 New undergraduates in 2016 in the universities and institutes of technology

	Universities			Institutes of Technology		
	Male	Female	Total	Male	Female	Total
Law	377	520	897	101	174	275

It should also be noted that some Irish institutions offer LLBs in Irish law validated by UK universities which, by virtue of Qualifications and Quality Assurance (Education and Training) Act 2012, s 48 are likely to be exempt from the oversight of the QQI. See for example, Independent Colleges Dublin, (2015 a) and as a provider of the University of London external LLB Holy Trinity College - Cork Law School, (No date). In addition, Queen’s University Belfast offers courses that may enable graduates to proceed into either the Irish system or those of England, Wales and Northern Ireland. The list provided by the King’s Inns is indicative of the courses and institutions, including those offering law degrees validated by UK institutions, that are available (Honorable Society of King’s Inns, 2014).

4.2 Funding

The Higher Education Authority in Ireland is currently undertaking a review of the funding awarded to universities, institutes of technology and colleges (Higher Education Authority, 2017). The majority of domestic students enrolled in their first HE course, on a full time basis have the fees paid by the HEA, subject to a student contribution charge of a maximum of €3,000 in the 2016/2017 academic year (Higher Education Authority, No date). Grants are also available to full time students in Ireland and other EU states (currently including the UK) (Student Support Act 2011; SUSI, 2017 c; Student Grant Scheme 2017).

Students on courses that are postgraduate in level or in time may be able to claim advantageous EU fee rates for their second courses (Higher Education Authority, No date). Students on postgraduate courses may be eligible for a grant if increasing their NQF level (SUSI, 2017 b) and attending, full time, an institution on a list (SUSI, 2017 a). Non-law graduate students enrolled on the DIT level 9 Postgraduate Diploma in Law for non-law graduates designed as preparation for the FE-1 examinations (Dublin Institute of Technology, 2017) would be eligible for such a grant in principle. The Society indicates that the PPC is an approved course for grant purposes (Law Society of Ireland, no date).

Some law firms advertise that they pay both a salary and fees for PPC students (e.g. Mason Hayes Curran, 2017). Whether firms also fund the FE-1 and any preparation courses seems less likely, even when the firm recruits after completion of the FE-1, (e.g. A&L Goodbody Solicitors, No date) although some firms do offer to reimburse them (e.g. William Fry, no date). The Law Society offers some bursaries and schemes for students in relation to both the FE-1 and the PPC (Law Society of Ireland, No date g).

4.3 Quality and Qualifications Ireland and the Higher Education Authority

The ultimate validating authority is Quality and Qualifications Ireland (Quality and Qualifications Ireland, 2017 b) (QQI), a body created by s 8 and authorised to validate programmes by virtue of s 44 (1) of the Qualifications and Quality Assurance (Education and Training) Act 2012. This body sets generic HE standards (Quality and Qualifications Ireland, 2017a). It reports to the Department of Education and Skills and has a memorandum of understanding with the Higher Education Authority (HEA) and the National Forum for the Enhancement of Teaching and Learning in Higher Education (The National Forum for the Enhancement of Teaching and Learning in Higher Education, 2015). Part of its remit has been to harmonise what was previously a plethora of different mechanisms operating in the different FE and HE sectors.

The QQI's initial validation policy requires institutions to have (Quality and Qualifications Ireland, 2016a, pp 8-9):

established procedures for quality assurance ...
established procedures for access, transfer and progression ...
complied with [requirements] in respect of arrangements for the protection of enrolled learners (Quality and Qualifications Ireland, 2013); and
consulted with the [joint providers], if [relevant] ...

By ss 13-14 of the Qualifications and Quality Assurance (Education and Training) Act 2012, a "professional recognition body" is required to co-operate with, consult with and provide information to the QQI. We understand from the LSI that it has engaged with the QQI and its predecessor on the

question of alignment of LSI courses. Further, the understanding of the LSI is that the QQI decided that it did not have the scope to align courses provided by professional bodies with its frameworks and it is for that reason that no alignment has taken place to date. The Qualifications and Quality Assurance (Amendment) Bill, is intended to amend the 2012 act, *inter alia*, so as to (Anon, 2017):

- Establish the Institutes of Technology as Designated Awarding Bodies in line with the Universities.
- Give QQI the power to 'list' awarding bodies and to include their qualifications in the National Framework of Qualifications to allow awards made by private, professional and non-national awarding bodies, where appropriate, in the Framework.
- To involve education and training providers more centrally in the application process for recognition of prior learning (RPL).

The Higher Education Authority is the key funding authority for the sector and leads its strategic development, currently articulated in the National Strategy to 2030 (the "Hunt Report", Department of Education and Skills, 2011). This document (*ibid*, p 60) also notes that:

The European Standards and Guidelines for Quality Assurance offer a very clear direction in [regard to the qualifications of HE teaching staff] and should form the standard for Irish policy in this regard

The strategy also makes recommendations for, among other things,

- Higher education students of the future should have an excellent teaching and learning experience, informed by up-to-date research and facilitated by a high-quality learning environment, with state-of-the-art learning resources, such as libraries, laboratories, and e-learning facilities.
- Higher education institutions should put in place systems to capture feedback from students, and use this feedback to inform institutional and programme management, as well as national policy [a national student survey is recommended]
- Every student should learn in an environment that is informed by research, scholarship and up-to-date practice and knowledge.
- The Irish higher education system must continue to develop clear routes of progression and transfer, as well as non-traditional entry routes.
- Higher education institutions should prepare first-year students better for their learning experience, so that they can engage with it more successfully.
- Both undergraduate and taught postgraduate programmes should develop the generic skills needed for effective engagement in society and in the workplace
- In light of the scale of transformation in teaching and learning that is under way in Irish higher education, the quality assurance framework must be reviewed and further developed [including the development of subject specific guidelines aligned with the NQF]
- All higher education institutions must ensure that all teaching staff are both qualified and competent in teaching and learning, and should support ongoing development and improvement of their skills.

(*Ibid*, pp 61-62)

It also has a role in monitoring performance (Higher Education Academy, 2016 a).

4.4 Universities

The universities offer courses from level 7 through to doctoral level (level 10) (Quality and Qualifications Ireland, No date, p 20). Curriculum, delivery, staffing and assessment are initially

governed by the constitutions, regulations and processes of the individual universities, under the Universities Act 1997. Section 35 of the Act requires the universities to have quality assurance procedures including 10 year reviews. The QQI also prescribes quality assurance guidelines for the university sector (Quality and Qualifications Ireland, 2016b). As we have noted above, it was suggested in the 1960s that the professional bodies might quality assure the multiple providers of law degrees by appointing external examiners (Bourke, 1968, p 5).

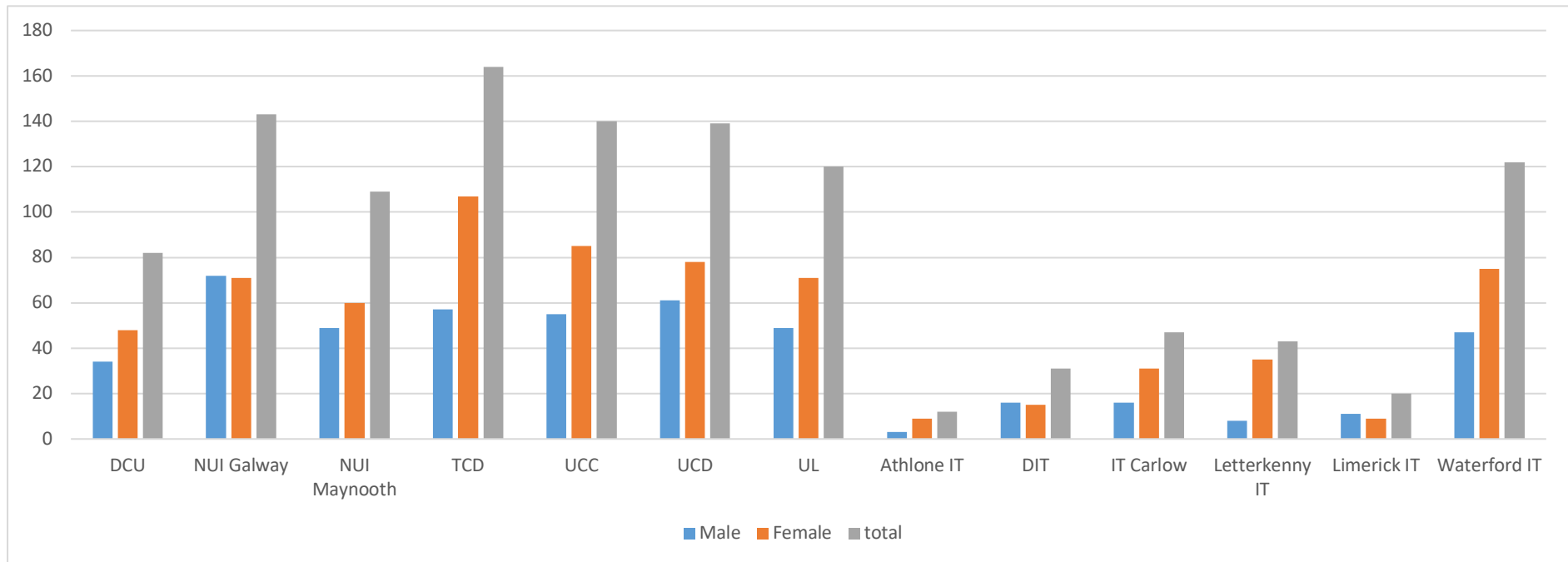
The undergraduate sector is significant, although, on aggregate figures (Higher Education Authority, 2015, p 3), of the 43,460 new undergraduates in 2015/2016, 55% were in the university sector and the remainder in Institutes of Technology. Of these, the majority were enrolled into Honours degrees at level 8; the remainder into ordinary degrees (level 7) or diplomas (level 7) or certificates (level 6).

The profile below indicates a wide range of undergraduate courses with, as might perhaps be expected, a more “academic” approach taken by the universities and a more practical/pragmatic approach taken by the Institutes of Technology. The Higher Education Authority statistics do not allow us to differentiate non-law graduates on conversion courses (which, like the GDL in England and Wales, are more clearly designed for those who have made a decision to enter the professions). Whether there is a de facto move towards law becoming a postgraduate study, as it is in the USA and Canada and increasingly is in Australia, is not possible to determine. In the civil law states of the EU27, historically the study of law has been strongly rooted in the university sector and the adoption of the Bologna model has resulted in some harmonisation in the structure of undergraduate and masters’ degrees.

Non-graduate routes do not have prominence, although the LSI can admit mature entrants on a discretionary basis. Interest in non-graduate routes is of increasing interest in the USA and the UK, where, for example, the government has mandated that there should be an apprenticeship route terminating at masters’ level. It is more limited in the EU 27 where, for example in France a *voie professionnelle* to qualification as a notary is available, but differs from the *voie universitaire* only in the structure of the post masters 1 stage of training (Centre National d’Enseignement Professionnel Notarial (CNEPN), 2017). Some comparatives for legal professional qualification in a number of countries in the EU and outside appear in Wilson (2010, p 61) although they may now be slightly out of date.

At 1 March 2016, the distribution of new law undergraduates between the universities and those Institutes of Technology with a law offering was (Higher Education Authority, 2016):

Figure 2 New law undergraduates in 2016



	DCU			NUI Galway			NUI Maynooth			TCD			UCC			UCD			UL			Total
	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	
Law	34	48	82	72	71	143	49	60	109	57	107	164	55	85	140	61	78	139	49	71	120	897

	Athlone IT			DIT			IT Carlow			Letterkenny IT			Limerick IT			Waterford IT			Total
	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	
Law	3	9	12	16	15	31	16	31	47	8	35	43	11	9	20	47	75	122	275

4.4.1 Dublin City University (DCU),

DCU, established in 1980, offers an undergraduate BCL in Law and Society and a BA in Economics, Politics and Law, both of which enable graduates to go on to become solicitors or barristers (Dublin City University, No date). It also has an LLM programme.

4.4.2 National University of Ireland Galway (NUI Galway),

NUI Galway was originally founded in 1845 and has taught law since 1849. Under ss 40-41 of the Qualifications and Quality Assurance (Education and Training) Act 2012, the QQI is specifically empowered to review its quality assurance procedures. Its core undergraduate degree is the three-year BCL Civil Law (NUI Galway, 2017b), although it also offers a four-year B Corp Law (NUI Galway, 2017c) and Law in Arts and Law in Commerce programmes whose students can transfer into the LLB so as to complete the required diet of subjects for professional qualification. It also offers a number of masters' programmes and a full or part time LLB for non-law graduates designed to align with the FE-1 (NUI Galway, 2017a).

4.4.3 National University of Ireland Maynooth (NUI Maynooth),

St Patrick's College, Maynooth became part of the NUI by virtue of Universities Act 1997, s 43. It offers a four-year LLB (Maynooth University, no date); a number of three-year BCL joint honours courses and LLMs.

4.4.4 Trinity College Dublin (TCD),

Trinity College offers five four-year LLB programmes, one in pure law and the others in law with other subjects (Trinity College Dublin, 2017b). It also offers a suite of LLM programmes (Trinity College Dublin, 2017a).

4.4.5 University College Cork (UCC),

University College offers a number of four year BCL programmes in law and law with other subjects (University College Cork, 2017 a and b). Of particular interest in the professional context is the BCL (Hons) (Clinical) which has a strong placement element (University College Cork, 2016). It also offers a range of LLMs, a full and part-time LLB for non-law graduates and a one year Graduate LLB for law graduates.

4.4.6 University College Dublin (UCD)

UCD has offered an undergraduate law degree since 1909 and BCLs from the 1950s (Osborough, 2014, p 229). The BCL was introduced partly at the request of the Society so as to enhance the education of solicitors' apprentices (ibid, p 127-8). What is, from 2013, the Sutherland School of Law currently offers a four year BCL and a range of "Law with" programmes, including an Irish/French *double maîtrise* (UCD Sutherland School of Law, No date b and c). It offers a range of LLMs and an MCL Common Law at level 9, designed as a conversion course for non-law graduates (UCD Sutherland School of Law, No date a).

4.4.7 University of Limerick (UL),

University of Limerick won the “Law School of the Year” in 2017 (University of Limerick, No date b). In May 2017, however, the Higher Education Authority announced a review of its “governance, HR and financial practices and procedures” (Byrne, 2017), although this seems to relate to issues about personnel, rather than students (Mazars, 2016). It offers a number of four year BAs in law-related topics and LLBs, including a part-time version by evening attendance (University of Limerick, No date b). It also has a suite of LLMs (University of Limerick, No date a) and a two year graduate entry LLB for non-law graduates (Graduate School, University of Limerick, 2013).

4.4.8 Queen’s University, Belfast (QUB)

Queen’s University Belfast, a member of the British Russell Group of elite universities, is unusual in offering an undergraduate law degree designed to equip graduates to proceed to qualify in Northern Ireland, England and Wales, or in the Republic of Ireland. It offers five LLB courses including a two year senior status degree for non-law graduates (Queen’s University Belfast, No date). It also offers the only JD course in the UK, a professional doctorate combining a qualifying law degree with a research programme (Queen’s University Belfast, 2017).

As a UK institution, its quality assurance is governed by the Quality Assurance Agency and the curriculum requirements, at undergraduate level, of the Benchmark Statement for law (Quality Assurance Agency, 2015). Insofar as its provision represents a qualifying law degree for England and Wales it is governed (for the present) by the Joint Statement of the Bar Council and Law Society of England and Wales (Solicitors Regulation Authority, 2001). Insofar as its provision represents a qualifying law degree for Northern Ireland, the Law Society of Northern Ireland treats it as an “acceptable law degree”²² (Law Society of Northern Ireland, 1988) and it is acceptable to the Bar Council (Bar of Northern Ireland, No date). The King’s Inns will recognise it only if the student has covered Irish land law (including the law of succession), (Honorable Society of King’s Inns, 2014).

4.4.9 Ulster University (UU)

Ulster University offers a number of full-time and part-time LLBs, including joint honours with a number of other subjects, including Accounting, Criminology, Irish, Marketing and Politics. It also offers a number of LLMs and short courses. This includes the LLM in Access to Justice (previously the LLM in Clinical Legal Education) which accredits, at masters’ level, substantial clinical activity.

UU advertises its law degrees as permitting access to professional legal training in England and in Northern Ireland (Ulster University, 2017). They do not appear on the King’s Inns list of approved law degrees that allow progression into the bar in the Republic of Ireland (Honorable Society of King’s Inns, 2014).

²² Candidates must have taken Evidence and Company law either as part of their degree or as separate courses.

4.5 Institutes of Technology

Institutes of Technology, which developed from Regional Technical Colleges, are currently governed by the Institutes of Technology Act 2006. They are more widely distributed than the universities, so may attract less portable students.

They offer courses from level 6 through to doctoral level (level 10). (Quality and Qualifications Ireland, No date, p 19). Some of them offer undergraduate law degrees, currently accredited by the QQI as successor to HETAC and the NCEA. They are required, by the Qualifications and Quality Assurance (Education and Training) Act 2012, s44(9)(a) to have their programmes validated by the QQI, although it is possible, under s53, for them to acquire delegated authority to make their own awards (Quality and Qualifications Ireland, 2014). All but DIT are required to comply with the QQI's quality assurance framework designed for Institutes of Technology (Quality and Qualifications Ireland, 2016d). As indicated above, the new bill proposes to confirm them in having their own degree-awarding powers.

4.5.1 Athlone Institute of Technology (Athlone IT)

Although it was listed in 2015/2016 as accepting a very small number of pure law students, it is currently advertising only two courses in the area. One is, from 2017, a four year honours degree in accounting and law which contains all the FE-1 subjects (Athlone Institute of Technology, 2016). The other is a four year honours degree in Business and Law, not advertised as including all the FE-1 subjects (although it does) (Athlone Institute of Technology, 2016).

4.5.2 Dublin Institute of Technology (DIT)

Dublin Institute of Technology was established in 1992 from a group of existing colleges (Dublin Institute of Technology Act 1992) It has a special status amongst the Institutes of Technology, making its own awards and therefore governed by the same quality assurance requirements as the universities (Quality and Qualifications Ireland, 2016d). It is currently part of a consortium (TU4Dublin) seeking redesignation as a technological university (Higher Education Authority, no date).

DIT offers a full time three year level eight LLB ((Dublin Institute of Technology, 2017) sited within its College of Business. It also offers part-time LLBs aligned with the King's Inn requirements (Dublin Institute of Technology, 2017) a number of LLMs and a FE-1 preparation course (see below).

4.5.3 Institute of Technology Carlow (IT Carlow)

IT Carlow offers a four year Bachelor of Business in Business with Law (Institute of Technology Carlow, No date a) which appears to be principally angled towards intending legal executives (there is a related Higher Certificate course). It also has a three year LLB (Institute of Technology Carlow, No date b).

4.5.4 Letterkenny Institute of Technology (Letterkenny IT)

Letterkenny offers a number of three and four year BAs in Law and law-related topics designed to enable graduates to progress into the legal professions in both the Republic and in Northern Ireland (Letterkenny Institute of Technology, No date).

4.5.5 Limerick Institute of Technology (Limerick IT)

Limerick IT offers a combined BBs in Law and Taxation which covers all the FE-1 subjects and also exempts graduates from the first stage of the examinations of the Irish Taxation Institute (Limerick Institute of Technology, No date).

4.5.6 Waterford Institute of Technology (Waterford IT)

The size of Waterford's law intake is similar to that of the universities, unlike the other institutes of technology which have much smaller intakes. It offers a three year LLB (Waterford Institute of Technology, 2017 b) and a group of one year BAs in Legal Studies at level 7 (Waterford Institute of Technology, 2017 a).

4.6 Private Colleges

Independent and private colleges may voluntarily align themselves with QQI processes (Quality and Qualifications Ireland, 2016 c). Some are specialists in, for example, music or teacher education but the two largest private colleges are said to be Dublin Business School and Griffith College (McGuire, 2015). They may have smaller intakes and smaller class sizes than the public institutions. They may also offer degrees accredited by UK institutions (e.g. the relationship between Dublin Business School and Liverpool John Moores University and between Griffith College and Nottingham Trent University).

4.6.1 Dublin Business School

Dublin Business School was founded in 1975 and, from 1989, offered undergraduate degrees under franchise with Liverpool John Moores University in the UK. From 2013 these are now awarded through the QQI (Dublin Business School, 2016a). The business school, owned by Kaplan Inc, absorbed Portobello College in 2007, which had a long established law school (Muldowney, 2008). It now offers a number of undergraduate degrees including a full and part-time LLB. It also offers level 6 higher certificates designed to allow progression into a law degree or legal executive qualifications (Dublin Business School, 2016b).

4.6.2 Griffith College

Griffith College was established in 1974 and had NCEA accreditation from 1979. It is operated by Bellerophon Ltd (Deegan, 2016). It has had a law school since 1995 (Griffith College, 2017 c) and currently offers a three year full time, part time and blended LLB as well as courses designed for intending legal executives (Griffith College, 2017 c).

4.7 FE-1 preparation provision

An entrance examination for vocational stages of education is not uncommon, and can be contrasted with "bar examinations" which govern entry to the profession and tests such as the LNAT or LSAC for entry into university legal education. These can be divided into forward-looking assessments, which attempt, as does the BCAT in England and Wales, to assess aptitude for the vocational course or for practice and to dissuade those unlikely to succeed (Bar Standards Board, No date). The recently introduced entrance examination for entry to the French EDA Conseil national des barreaux, 2017),

for the advocates' schools in France includes practical exercises, a test in a foreign language and oral examinations (Ministère de la Justice, 2016) which, although it is stated as providing equality in entrants, may also go some way to determine aptitude.

Other examinations, such as the FE-1 and the Northern Irish admissions test (Queen's University Belfast Institute of Professional Legal Studies, 2017) appear to retest students on topics they have covered at university. They may in fact test at final year level, topics actually covered by students at first or second year level. Whether universities design their curricula to "teach to the test" is less clear, although questions of relative status of institutions have arisen in other jurisdictions so that closer alignment with entrance or bar examinations is seen in the lower-status institutions. Nevertheless, it would be a brave institution that offered a law degree that did not allow students the option of proceeding into the profession, so that the requirements of the King's Inn and the Society create a de facto minimum curriculum.

A somewhat different approach is seen in Germany, where the question of status of institutions seems to be much more muted (Mountford-Zimdars & Flood, 2016). In Germany, however, the length of the undergraduate degree is sometimes lengthened in order to allow students to prepare for the *Erste juristische Prüfung*. The elective parts of that examination are integrated with and tested by the law faculties, the remainder by the state in a separate assessment (Korioth, 2006). Nevertheless, a market in "cram schools" for both the first examination and the terminal second examination that permits entry into the profession is highly developed (Wolff, 2006, p 120).

The purpose of such "re-testing" examinations, is usually given as creating a benchmark for the subsequent period of study. The professional body may not be concerned whether the candidate prepared for the examination at university, through private study or through a "grind" or "Bar prep" course, provided the minimum requirements are met. If the examination is at level 8 or higher, it will also assure that candidates for the next stage have current knowledge, and seek to iron out discrepancies caused by different subjects having been tested in different years of the degree. The scope of its curriculum may also act as a leveller (eg, if not all university land law courses cover, for example, mortgages). Nevertheless, it places the burden, and the cost on the individual applicant, rather than on the professional body either relying on the quality assurance processes of the university or QQI-equivalent; taking on the burden of assessing the transcripts of individual graduates, the curricula of individual courses, or prescribing parts of the curriculum in a "qualifying law degree" model.

Where there is, or could be, a gap between university law study and the entrance examination, a market in such preparatory courses will emerge. The Society makes it very clear that "has no control over and makes no input into any [FE-1 preparation] courses and gives no warranty in respect of them. The Society does not authorise any of these courses and has not asked any of the course providers to establish them" (Law Society of Ireland, 2016a, p. 1). There is, nevertheless, a vigorous informal debate about which provider or lecturer is best, and indeed whether law graduates need to attend a course (as opposed to use manuals) at all (Boards.ie, 2013; LinQ, 2013). The extent to which this involves additional study may depend on the NQF level (if any) at which the FE examinations are set. If a student has covered an FE-1 subject in the first year of their degree, and the FE-1 exams are set at NQF level 9, there may be a considerable amount of deepening of understanding to be done. It is not currently obvious what level the FE-1 exams is set at: the fact that DIT offers a preparation course at level 9 may be as much to do with securing fee discounts and grants for students as specific alignment with the level at which the FE-1 is set.

This group of providers can be divided into a number of categories:

4.7.1 Individuals and organisations offering personal or small group tuition or coaching.

The Society's list includes a large number of individuals, usually solicitors and barristers, prepared to offer tuition, as well as a small number of organisations also offering specialised tuition (eg O'Mahoney, no date). These are necessarily governed only by contract and by consumer law, and, in terms of the market, by their reputation for facilitating success in the FE-1 examination.

4.7.2 Universities and Institutes of Technology

Some institutions, e.g., DIT, NUI Galway, UCC, and UL offer LLBs or PG Diplomas for non-law graduates. UCD offers an MCL. These are, therefore, assessed awards in their own right and subject to the quality assurance regimes of the host institutions, although they also operate as FE-1 preparation. The LSI's own Diploma in Law may also operate as FE-1 preparation (Law Society of Ireland, 2017a).

4.7.3 Private Colleges

Such organisations may have QQI accreditation for degree or certificate courses, or, if they confine themselves to professional courses, voluntarily align themselves with QQI quality assurance requirements (Quality and Qualifications Ireland, 2016c). The course assessments are, of course, administered by the LSI rather than the colleges. They may offer other professional courses for, e.g., barristers, accountants or legal executives.

The model for these courses seems to be in general a course of around 3 ½ months in length, with face-to-face, online or blended delivery of lectures, provision of manuals and past papers and other support (City Colleges, No date c; Griffith College, 2017 b; Independent College Dublin, 2015a; LawSchool.ie, 2017). As the market is highly competitive, and future business contingent on success rates, these, as well as details of prizewinning candidates and testimonials for individual lecturers, form a key aspect of marketing for these organisations. There are, however, no publicly available statistics on their numbers or pass rates.

Table 3 Fees for private colleges' FE-1 preparation courses

	€
City Colleges	325 per subject or 2,100 for eight.
Independent College Dublin	395 per subject.
Griffith College	395 per subject for face-to-face option, 350 if online. Discounts are four subjects for the price of three and eight subjects for the price of six.
LawSchool.ie	395 per subject for face-to-face option, 345 if online. Discounts: 10% for more than one subject, 20% for more than four subjects.

4.8 LSI course provision and training requirements

The LSI is a course and assessment provider in a number of respects, as well as regulating the in-office training (training contract) for trainee solicitors. It is empowered to offer its own courses by Solicitors (Amendment) Act, 1994, s 49.

4.8.1 PPC

The PPC, whose historical development is described at 1.6.3 above, is entirely operated by the LSI, through its Education Committee (The Solicitors Acts, 1954 To 1994 (Apprenticeship and Education) Regulations, 2001, reg 4) in respect of design, delivery and assessment (both continuous and summative). In 1995, it was the policy of the LSI not to describe the PPC as a diploma (Education Policy Review Group, 1998, p 40) and it is not formally aligned to the NFQ although this may change once the new bill becomes law (see 4.3 above). It has won external accolades for its use of technology (Law Society of Ireland, 2016b, p 1). The course is run from dedicated premises in Dublin and is currently available in full time mode only. Students clearly participate in a range of extracurricular work and competitions. We do not at present have details of its staffing (although we have seen reference to 1,000 associate faculty recruited from the practising profession), regulations or quality assurance procedures. As sole provider, the LSI is not currently obliged to advertise its courses, publicly available information is comparatively limited, as is academic publication (although there is some: Kennedy & Shannon, 2011; Bainbridge et al., 2013). Consequently, further information about the PPC was sought in phase 2 of the project.

4.8.2 Training contract

More detailed discussion on the training contract appears in section 6. The requirements for the training contract are made, by virtue of the relevant legislation, by the LSI. The mandatory content is set out in section 1. Other requirements on the firm and training solicitor are set out in the indenture deed, whose terms are prescribed by the LSI and breach of which can be a disciplinary matter. By virtue of the Solicitors Act 1954, as amended by Solicitors (Amendment) Act, 1994, training solicitors must be:

- “practising”, that is, a sole practitioner, partner, in-house lawyer or solicitor in full time state service;
- With at least five years continuous practice; and
- In a position to provide the experience required (or to arrange secondment to address any gaps).

Prospective training solicitors may be interviewed before they are allowed to take on a trainee (The Solicitors Acts, 1954 To 1994 (Apprenticeship and Education) Regulations, 2001, reg 6c). The Society, under Solicitors Act 1954, s 31 also retains the right to ban individual solicitors from taking on a trainee. Training solicitors must commit to providing guidance and appraisals and also to:

- provide [the trainee] with office facilities to enable you to work and gain the necessary instruction and experience.
- instruct [the trainee] and provide [him or her] with the opportunity to obtain experience in the practice of law and the practice and profession of a solicitor.
- provide [the trainee] with the opportunity to practise the skills associated with the practice of law and the practice and profession of a solicitor (drafting, letter writing, interviewing and advising, legal research, negotiation, advocacy and oral presentation).
- [provide] the opportunity to gain experience in both contentious and non-contentious work.
- provide [the trainee] with instruction and experience in the key areas of legal practice....
- Where [the] training solicitor cannot provide [the trainee] with instruction and experience in any one or more of the key areas of legal practice they should make suitable arrangements for [the trainee]

to be seconded to the office of another practising solicitor in order that [he or she] can be given the opportunity to gain instruction and experience in that particular area. ...

(Law Society of Ireland, No date f)

The trainee salary is the national minimum wage and there is no obligation on the training solicitor to pay course fees (although, as noted above, some firms make a point of doing so) (Law Society of Ireland, No date f).

Some firms offer rotations into other countries, including offices in the UK (particularly including Northern Ireland) and may align their Irish trainees' programmes, within the constraints of the Society's frameworks, with those of their other trainees elsewhere.

Some firms clearly exceed the minimum requirements, for example:

As you grow and develop as a trainee lawyer with Matheson, your training and development grows with you.

We provide:

- Dedicated legal education programmes to assist you with your continuous professional development
- A highly successful mentoring programme designed to develop your legal skills and expertise
- Personal development training to help you to develop your drafting and presentation skills
- Focused client care training in order to provide you with the information, knowledge and skills required to have a successful career with Matheson.

(Matheson, No date)

At the end of the period, the training solicitor is required to make a statutory declaration, that the trainee is "a fit and proper person to become a solicitor" (Law Society of Ireland, no date b). The text of the declaration (form 6, the trainee completes a corresponding form 7) is set out in The Solicitors Acts, 1954 To 1994 (Apprenticeship and Education) Regulations, 2001, as amended by the 2009 and 2014 regulations. Although references are to "training solicitors", a firm with two or more partners may designate a training officer, essentially to take on the administrative functions, but with authority to make the statutory declaration (Solicitors Acts 1954 to 2008 (Apprenticeship and Education) (Training Officer) Regulations 2011).

4.8.3 CPD and Diplomas

More detailed discussion of the input-based CPD scheme (Law Society of Ireland, No date a) took place in section 3.

The LSI is itself a substantial provider of CPD in both face to face and online models (Law Society of Ireland, No date c) as well as a well-respected portfolio of Certificates and Diplomas (Law Society of Ireland, No date e) at postgraduate level. These have received national recognition (Prat, 2017; Law Society of Ireland, 2016c, p 1). The LSI also supports two LLM awards, validated by Northumbria University in the UK (Law Society of Ireland, no date c) and facilitates the Skillsnet and Finuas training networks for solicitors (Law Society of Ireland, No date h and i). Use of technology and educational devices such as standardised clients have been developed in the LSI CPD and Diploma provision (O'Boyle, 2012; Grealy, Kennedy, & O'Boyle, 2013; Grealy, 2015).

Some solicitors may use other institutions and awards as a basis for their CPD. Some examples are provided below.

The College of Law at City Colleges offers a number of diplomas in specialist legal subjects awarded by The Institute of Commercial Management in England (City Colleges, No date b; Institute of Commercial Management, 2017). Such courses are likely, by virtue of Qualifications and Quality Assurance (Education and Training) Act 2012, s 48, to be exempt from QQI validation.

Dublin Business School offers a number of evening and online courses (no level given) in specialist areas of law, although these are not necessarily aimed at legal practitioners (Dublin Business School, 2016)

The King's Inns offer a number of advanced diplomas open both to lawyers and non-lawyers (Honorable Society of King's Inns, No date).

Griffith College offers a level 8 certificate in Mediation (Griffith College, 2017 a) accredited by the Mediators' Institute of Ireland University College Cork offers a suite of postgraduate certificates, explicitly envisaged as CPD for practitioners, and which can lead to an LLM (University College Cork, 2017)

UCD offers a range of postgraduate certificates, diplomas and LLMs designed as professional development (UCD Sutherland School of Law, No date.)

Although some solicitors may go on to research degrees, the professional doctorate sector in Ireland – at least outside medicine and education - is comparatively small and, as has been argued, has a restricted perspective on what is possible (Loxley & Seery, 2012). Lawyers may, of course, choose a DBA rather than a professional doctorate in law.

4.8.4 QLTT

As described above at 1.6.5, the means by which foreign lawyers without other exemptions as, for example, EU lawyers, and including lawyers from California, Pennsylvania, New York, New South Wales and New Zealand under reciprocal arrangements,²³ transfer into the profession is the Qualified Lawyer Transfer Test (QLTT). This is administered by the LSI and is described above at 1.6.5. Further discussion of the principles of inter- and intra- jurisdictional transfer appear below at 8.4. The QLTT is included here by way of overview for completeness in discussing the LSI's portfolio.

City Colleges offer a QLTT preparation course under the rubric "Ireland will soon be the only English speaking country within the European Union. Many EU qualified lawyers now wish to become Irish qualified in order to fill the gap created by the UK's departure from the EU" (City Colleges, No date a).

²³ (Solicitors (Amendment) Act, 1994, s 52; Solicitors Acts 1954 (Section 44) Regulations 2009).

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5 Analysis of existing equality and diversity issues

5.1 Introduction

Over the last thirty year period there has ... been a significant increase in the number of those providing legal education and a welcome broadening of the base from which law students are typically drawn ... new quotas and entry routes have been created for mature students, students from disadvantaged areas (via access programmes) and students with disabilities. Moreover the establishment of evening law degree programmes, on a part time basis, has also facilitated second chance education and lifelong learning for many.

(Crowley & White, 2011, p 373)

This section addresses equality and diversity issues both as they appear in Ireland and by comparison, where possible, with other legal professions.

The legislative framework in Ireland is provided by the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2015. These are binding on the LSI and protect a number of characteristics:

- Gender
- Civil status (e.g., single, married, in a civil partnership, divorced, widowed)
- Family status (i.e., pregnant; parent or guardian of a child; parent or resident carer of a disabled adult)
- Sexual orientation
- Religion
- Age (applicable only to those over 16)
- Disability
- Race
- Membership of the Traveller Community (see Holland, 2017a)

Although the significance of the difference is not clear, it is perhaps worth noting that under the Legal Services Regulation Act 2015, s 13 (4)(e), one of the objectives of the new regulator is given as “encouraging an independent, strong and effective legal profession”. In England and Wales, the equivalent wording in Legal Service Act 2007, s 1(1) reads “encouraging an independent, strong, *diverse* and effective legal profession” [our italics].

In this section we have grouped some of the characteristics together for the purposes of streamlining and added further discussion of socio-economic factors that may, for example, have an impact on choice of university, choice in relation to preparing for the FE-1 examinations, and prospects of recruitment for a training contract. We have also included discussion of wellbeing and mental health factors although we recognise that they may not formally be included in the category of “disability”.

It should also be noted that the LSI has articulated its position on diversity and inclusion, including

- Ensuring equal access to opportunities for staff, members, trainee solicitors and all those who use our services.
- Recognising the individual needs of those we employ, represent and educate and supporting them to develop to their full potential.
- Carrying out our representative, educational and regulatory functions without bias, in a respectful and non-discriminatory manner.

- Making reasonable adjustments to ensure that our procedures do not put any person at a disadvantage.
 - Ensuring our policies, procedures and processes promote equality, inclusion and diversity.
- (Law Society of Ireland, No date b)

5.2 Gender and sexual orientation

5.2.1 Gender

According to the European Gender Equality Index 2012, Ireland ranked eighth highest out of the EU 28 with a score of 56.5 where 100 indicates gender equality. The overall index combined scores for work, money, knowledge, time, power, and health. Ireland scored well in relation to gendered health equality (95.2) and very poorly in relation to power (31.4). The highest scoring country was Sweden with 74.2.

(Barry & Feeley, 2016, p 46)

Data from the 2016 Irish census show that the ratio of men to women is 97.8: 100, although the gap is falling (Central Statistics Office, Ireland, 2017, p 24). Data on gender in employment of men and women in Ireland indicated that, in 2012, compared with other EU countries:

- Women's employment rate in the labour market was 55.1%, below the EU average of 58.6% and the Irish male employment rate of 62.7%;
- Women's part-time employment rate of 34.9% was above the EU average of 32.1%;
- Women's tertiary education attainment rate was 38.0%, above the EU average of 25.8% and the equivalent for Irish men of 31.3%
- Horizontal gender segregation into sectors and jobs was more pronounced in Ireland than the EU average
- Women were less well represented on boards and in supervisory roles than the EU average (vertical segregation)

The gender pay gap had decreased in the period 2006 to 2010 but this was as a result of the effect of the economic crisis on male employment (Anon, 2013, p 4). By 2017, the gender pay gap remained at 14% and there were concerns about zero-hours contracts, pregnancy-related discrimination and lower participation in the labour force by women with disabilities and Traveller women (The Irish Human Rights and Equality Commission, 2017, p 89; see also Barry & Feeley, 2016, p 46, table 5). On

In 2017, the Irish Human Rights and Equality Commission reported, among other things, recommendations for work at school level to reduce gender stereotyping (Irish Human Rights and Equality Commission, 2017, p 83); positive steps being taken to address gender imbalance in the academic community (ibid, p 87; Higher Education Authority, 2016)²⁴ and recommendations to remove preferential access to schools on the basis of religion or previous connection with the school (believed to impact adversely on migrant, Traveller and Roma children and the children of those with disabilities (Irish Human Rights and Equality Commission, 2017, p 86).

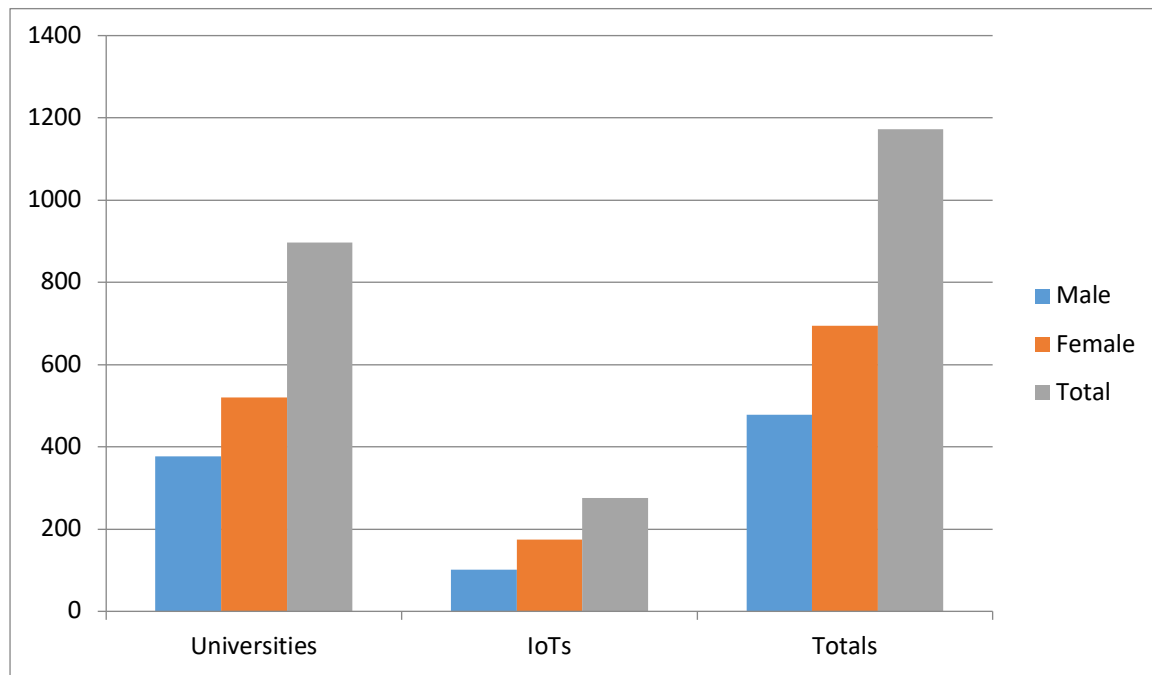
Women were first admitted to the institution that became NUI from the 1880s, and to degrees at TCD in 1904 (Harford, 2008, p 45). The first woman solicitor was admitted in 1923, two years after the first female barrister (anywhere in the world) (Spark 21, 2015). There have now been a substantial number

²⁴ By July 2017 only minimal progress had been made (Higher Education Authority, 2017).

of female senior law officers and politicians. Although only around 45% of students on the King’s Inn Course are female (Higgins, 2011, p 421), it has been suggested that female barristers will outnumber male barristers in the near future (McDonald, 2012). The Irish accounting profession also scores highly in its proportion of female members (Financial Reporting Council, 2017, p 9, figure 5).

Women form the majority of law undergraduates, particularly in the university sector:

Figure 3 New undergraduates in 2016 in the universities and institutes of technology by gender



	Male	Female	Total
Universities	377	520	897
IoTs	101	174	275
Totals	478	694	1172

The country is justifiably proud that it has tipped the balance in the solicitors’ profession towards the female (Kelly, 2014, 2015). Michaelson has noted a global trend towards feminisation in legal professions, with women constituting “at least 50 percent of all lawyers in Bulgaria, Latvia, Poland, and Romania by the mid- to late-2000s” (Michaelson, 2013, p 1083). Significant thresholds in feminisation seem to be the 30% mark (which Ireland met in 1989: *ibid*) as is a ratio of 1: 2000 in lawyers per head of the population (*ibid*, p 1084) which, he argues, is a necessary condition of a female lawyer population of 30% or better (although there are outliers, such as the USA, *ibid*, p 1085). It is the less urbanised and developed countries that have failed to meet either threshold.²⁵ However, even if the quantity of female lawyers is increasing, “we have no way of assessing the changing quality of women’s legal careers. Lawyer feminization on a massive scale does not preclude the possibility of truncated female careers and enduring female ghettoization in lower-status segments of the bar” (*ibid*, p 1103). Other evidence seems to support this conclusion:

²⁵ In countries such as India where the proportion of women may be lower, once they have achieved qualification, they may not be treated differently (Ballakrishnen, 2013).

Women solicitors are more likely to be in subordinate salaried positions, to work part-time, to practise in less prestigious and remunerative firms and legal specialisms and, more generally, to attract lesser terms and conditions. There is a clear pattern of vertical stratification whereby a growing cohort of predominantly female subordinates are confined to ‘a (frequently transient) proletarian role’ (Sommerlad, 2002: 217) and deployed to support the earnings and privileges of a relatively prosperous and autonomous elite of predominately male partners.

... In addition, women are more likely to practise in a series of overwhelmingly female specialisms. ... female specialisms offer lesser opportunities for career progression. Thus, a marked segmentation is occurring between largely female, individually orientated and relatively underpaid specialisms on one side and male-dominated, corporate orientated and remunerative practice areas on the other. As might be expected, these patterns of vertical stratification and horizontal segmentation create financial repercussion

(Bolton & Muzio, 2008, p 286)

What the quantitative data do not tell us whether there is a substantial drop out during the career or promotion practices within Irish firms that militate, as they do in for example, France, against women becoming partners (Harris, 2012; Anon, 2014; Fagelson, 2015). So, for example, almost three quarters of law firm partners in England and Wales are men (Fouzder, 2017b), and some firms have adopted targets for promotion of women to the partnership (Walters, 2017a). A survey of listed partners in a randomly selected group of Irish law firms (Chambers and Partners, 2017) indicates that the gender balance has not always yet reached the senior ranks of the profession:²⁶

Table 4 Female and male partners in prominent Irish law firms

Firm	Women	Men
A & L Goodbody	31	60
Eugene F Collins	13	10
Holmes O’Malley Sexton	1	7
McCann Fitzgerald	19	48
Philip Lee	6	11
Ronan Daly Jermyn	15	23
WhitneyMoore	5	12

Some strategies adopted by larger law firms globally have included returners’ schemes to encourage women back into the workplace (Fouzder, 2015); allocation of work to associates by a non-lawyer manager to facilitate fairer distribution (Fouzder, 2017c) and work at home options (Cassens Weiss, 2017). Where career progression is inhibited, some women will vote with their feet (Fouzder, 2017b). To summarise, an empirical study of obstacles and barriers faced by English women solicitors was summarised as:

- Flexible working practices
- Organisational culture
- Infrastructure
- Measurements of professional achievement; and
- Perceptions of women

²⁶ Information is taken from firm websites as of 30 July 2017.

(Law Society of England and Wales, 2010a)

Women solicitors may be seen as “other”, patronised (Stowe, 2013), or obliged to socialise into an inherently masculine norm and outside social structures in which their male colleagues interact with each other and with clients (Sommerlad, Webley, Duff, Muzio, & Tomlinson, 2012; Sommerlad, 2008; Sommerlad & Sanderson, 1998). Something similar has been found in a study of women accountants in Ireland (Flynn, Earlie, & Cross, 2015). A different argument is that women’s approaches to lawyering could transform legal practice (Menkel-Meadow, 1989).

It has also been noted that although women are strongly represented in the PPC, foreign transferees are more likely to be male (Kennedy & Shannon, 2011, p 405). Even if they do not hold practising certificates, the remarkable influx of British lawyers seeking to protect their post-Brexit practice rights has no doubt affected the overall figures.

It is Irish government policy (which may impact on the LSI) that:

All public bodies will assess and identify the human rights of women and girls and the gender equality issues that are relevant to their functions and address these in their strategic planning, policies and practices, and annual reports, in line with the public sector duty under section 42 of the Irish Human Rights and Equality Commission Act 2014.

(Department of Justice and Equality, 2017a, p 70)

It should not be forgotten, however, that distinct issues may affect male students and solicitors. Boys receive less positive feedback in their last year of school (ESRI & Trinity College Dublin, 2016, p 6, figure 5). Men have historically been more likely to remain in rural areas (Laoire, 2001) and there is an increasing interest in and literature on the pressures on, and wellbeing of, male lawyers (Collier, 2013, 2015). A survey of members of the Florida Bar, where the proportion of women attorneys is 38%, found that 1 in 25 male attorneys had experienced harassment and discrimination (Higer, 2016, p 2), particularly in female-majority firms. This, clearly is something that, in time, could impact on the Irish profession.

5.2.2 LGBT issues

A 2014 Gallup survey placed Ireland as ninth, globally, in a survey of “good places to live” for gay and lesbian people (McCarthy, 2017). The new Taoiseach has expressed a commitment to LGBT rights:

"I pledge as Taoiseach to use my office, for as long as I hold it, to advance the cause of LGBT rights, to press for marriage equality across Ireland, to speak up for LGBT rights around the world where they are under attack, and to push for the implementation of the sexual health strategy here at home at a time when it is more important than ever."

(Anon, 2017)

Activism began in the mid-1970s towards decriminalisation in 1993 (Lynch, no date). In the twenty-first century there has been a rapid trajectory of activity. Civil partnerships became available in 2010 (Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010) and adoption by same-sex couples in 2015 (Children and Family Relationships Act 2015). Following a referendum, same-sex

marriage is now available in Ireland (Marriage Act 2015) as is the opportunity for transgender people to obtain gender recognition certificates (Gender Recognition Act 2015). Nevertheless, discrimination against transgender people may still be common in the workplace (The Irish Human Rights and Equality Commission, 2017, p 89) and they are less likely than others to be in well-paid employment (Barry & Feeley, 2016, p 48).

A 2009 survey of LGB solicitors in England and Wales (InterLaw Diversity Forum, 2009) noted that 95% of law firms had a team or person responsible for LGB equality (*ibid*, p 23). Nevertheless there was a gap between the adoption of rules and policies and practice on the ground and further work was required to “foster positive working environments” and tackle prejudice. It appears that some firms at least have made considerable progress on this front (Walters, 2017b). The importance of creating and maintaining networks has also been emphasised (Suresh, 2015). It has not been possible in the time available to find data about the Irish solicitors’ profession.

5.3 Mature students, parents and carers

Ireland has the second highest childcare costs in the OECD for couples ... and they are the highest in the OECD for lone parents ... and are not offset, as in some other countries, by benefits in the form of subsidies and direct payments.
(Hearne & McMahon, 2016, p 39)

Part-time workers are more likely to be women than men with “Ireland ranked 19th [in the EU] in measures of gender gap in part-time employment (Barry & Feeley, 2016, p 47). Lone parents with caring responsibilities may also be excluded from benefits that require them to be available for work (Barry & Feeley, 2016, p 50) although universal early childcare support has shown some positive benefits (*ibid*, p 51). Caring for family members is deeply rooted in Irish culture, particularly for women: “Of 27 countries in an OECD study on unpaid family and household work Irish households spent the highest amount of daily time (29%) on care for household members” (*ibid*, p 50).

In 2006, Irish universities were criticised by the OECD as being unusually concentrated in the 18-23 age group (Fleming, Loxley, & Finnegan, 2017, p 178). The proportion of mature students (that is, those over 23) has, however, increased from “less than 5 per cent in 1998 to 13.6 per cent of fulltime undergraduates in 2010” (*ibid*, p 28) although it may still be below the proportion in other Westernised countries in the EU and elsewhere (*ibid*, p 179). It appears that some institutions may operate quotas for mature entrants (*ibid*, p 183).

Part time law degrees are available, with UCC’s apparently the longest-established (University College Cork, 2017). There is no part-time PPC and mature students attending the course may be obliged to maintain family homes outside Dublin whilst doing so. The vast majority of PPC students are under 30 although there is a proportion of older career-changers (Kennedy & Shannon, 2011, p 401).

Part-time and mature students face challenges in addressing the demands of work, study and family commitment, with Irish part-time undergraduates described as carrying out a “balancing act” to combine commitments and to fit into structures designed for younger, full-time students (Darmody & Fleming, 2009). Nevertheless, a study of medical graduate entrants in Australia showed that the older students took a less superficial approach to their learning (Sandover, Jonas-Dwyer, & Marr, 2015). It should also not be overlooked that Irish full time students may also have substantial work

commitments (Darmody & Smyth, 2008). Nevertheless, if the part-time award is envisaged as a poor relation of its full time equivalent, then

[part-time students'] experience of the law school [in the UK] is frequently as a marginalised outsider and the stakes in studying part-time are high. Their aspirations of social mobility through a career change are continually undermined by doubt, both within themselves and from the institutions through which they must move. In such a context, the smallest slight or unthinking policy designed around the needs of the paradigmatic full-time undergraduate student can take on a disproportionate significance.

(Francis & McDonald, 2009, p 42)

A study of students on distance learning (online) courses at DCU also found them to be more heterogenous and often of lower socio-economic background than their full time equivalents (Delaney, 2015).

It should also be noted that some of these challenges may persist into the employment sector. Mothers, for example, may become sidelined:

Nadia had joined a top London city law firm after graduating in law from Cambridge. She was on the fast track but was derailed. The need to hide facets of her life ultimately made a significant contribution to her decision to leave her law firm: she did not hold the correct views on how women with children should act. She did not want to uphold the ideology that work and home are 'separate spheres', and she articulated this as being a practice of the men in power at the law firm, and a standard that others adhered to ...

(Cahusac & Kanji, 2014, p 61)

5.4 Disability, mental health and wellbeing

5.4.1 Disability

It has been estimated from census data that "between 8.7 and 8.9 per cent of the [Irish] population" have a disability (Watson & Nolan, 2011, p 4). Further, "Only 10 per cent of people with disabilities have a third level degree. This compares to 19 per cent of all adults" (*ibid*, p 20). Nevertheless, it is suggested that, at TCD at least, disabled students "tend to be in departments where traditionally there have been many disabled students, e.g. arts, law,..." (Phillips & Clarke, 2010, p 42) Universities may have their own disability support arrangements (*ibid*, pp 12-13)²⁷

The percentage of students with disabilities in the undergraduate student body has surged from 0.65 per cent in 1993 to 3.2 per cent in 2006 (HEA 2008b) and this group comprised 6 per cent of all new entrants in 2010 (AHEAD 2016). Recent figures published by the Association for Higher Education Access and Disability (AHEAD 2016, p. 11) found that for the first time the number of students with a disability rose to 10,770 or 5.1 per cent of all students. However, the number on part-time courses was a much lower – 1.3 per cent (AHEAD 2016, p. 14).

(Fleming, Loxley, & Finnegan, 2017, p 28)

²⁷ Case study 4 in this report is of a visually impaired law student: (Phillips & Clarke, 2010, p 24).

The DARE access scheme does not extend to all the third level institutions providing law undergraduate courses, but participating institutions allow some disabled students whose disability has had a negative impact on their school education, admission on the basis of a lower points score than the normal tariff (Disability Access Route to Education, 2017). The LSI's law school has a hearing aid loop (Kennedy & Shannon, 2011, p 394) and the LSI makes specific arrangements (including alternative examination arrangements) for PPC students (Law Society of Ireland, No date a).

A study in Northern Ireland recommended moving away from individual reasonable adjustments to a more inclusive approach for all students (Redpath et al., 2013).

However, there is evidence that disabled lawyers can face discrimination in the workplace, particularly in terms of assumptions about their stamina, and some suspicion that their recruitment, when it occurs, is tokenism (Aldridge, 2011).

5.4.2 Mental Health and wellbeing

Mental health issues may, of course, fall under the category of disability. There is, however, substantial literature on stress and wellbeing issues for both law students and lawyers in private practice (Chan, 2014; Collier, 2016; Kelk, Luscombe, Medlow, & Hickie, 2009) and in-house (Gilbert, 2016). In Australia, concern has resulted in remedial work at university (Vines, 2011; Watson & Field, 2011) including introduction to ADR and less adversarial forms of justice as a counterbalance (Field & Duffy, 2012). Steps have also been taken to promote wellbeing in the Australian legal workplace (Tristan Jepson Memorial Foundation, No date) and in the vocational courses (College of Law, 2017), such that it is mandatory for both vocational courses and trainee supervisors to have support mechanisms in place (Law Admissions Consultative Committee, 2015, para 4.6).

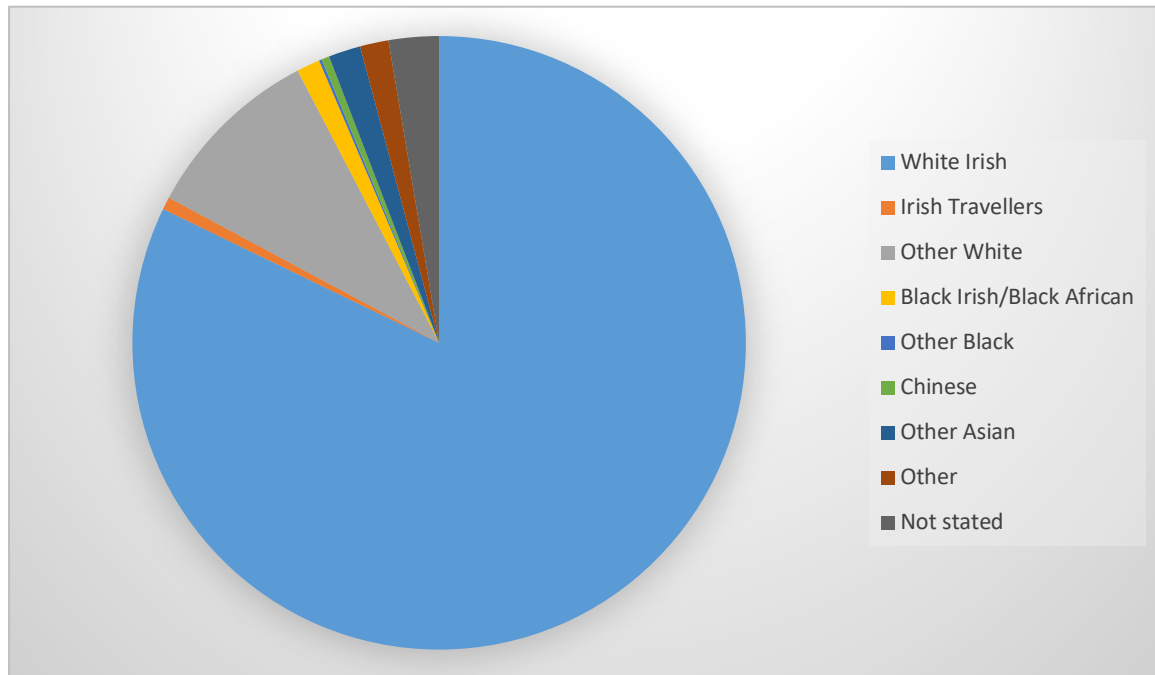
A survey of 214 LPC students and junior solicitors in England and Wales found that 93% of the sample were suffering from stress and the proportion suffering extreme stress was 26% (Junior Lawyers Division, 2017, p 4; higher than the 19% for the profession as a whole: Law Society of England and Wales, 2015). In the month preceding the questionnaire, just over half had "Nearly made a mistake that would not have happened otherwise" and just over a third had actually made such a mistake (*ibid*, p 7). Three quarters of those who were actually suffering mental health issues had not reported this to their employers (*ibid*, p 9). As PPC students are in work whilst completing their PPC, stress issues such as these may, therefore influence them in classroom activity. The fact that the LSI has had to issue formal attendance policy requirements for some aspects of the PPC suggests that attendance is an issue but it is not clear what lies behind it: stress, pressure from the employer; disengagement with the course or other matters (Law Society of Ireland, no date d; 2016.). However, the LSI has in place a number of schemes and interventions relating to wellbeing, both for trainees and solicitors, including a mentoring system for those setting up in independent practice (Law Society of Ireland, No date e).

5.5 Race, religion and Travellers

5.5.1 Ethnicity and religion

Data from the 2016 Irish census (Central Statistics Office, Ireland, 2017, p 60) indicates that of those who answered the relevant question, the ethnic make-up of the country is currently:

Figure 4: Ethnicity of the Irish population



	Ethnicity
White Irish	3,854,226
Irish Travellers	30,987
Other White	446,727
Black Irish/Black African	57,850
Other Black	6,789
Chinese	19,447
Other Asian	79,273
Other	70,603
Not stated	124,019

However, the proportion of ethnicities other than “White Irish” is over 20% in the 25-44 age group. Clearly the proportions and experiences of members of minority ethnic groups vary from jurisdiction to jurisdiction. In England and Wales, where the overall regulator is committed by statute to an interest in the diversity of the professions both under equality legislation and under the Legal Services Act 2007, it was found that priorities in achieving its objectives needed to be:

- the lack of data on the diversity make-up of the legal workforce;
- the inadequate systematic evaluation of diversity initiatives;
- the limited progression and retention of senior level practitioners from diverse background; and
- why corporate consumers have not sought more information from legal service providers on their performance in relation to equality and diversity.

(Legal Services Board, 2009)

It has required regulators and law firms to collect and publish diversity data and proposes to monitor performance on a regular basis (Legal Services Board, 2017).

If legal practice is inherently masculinist, it may also be inherently white masculinist (Sommerlad, 2015). Further, even if proportions are more representative at entry (trainee) level there may be barriers to progression (see Black Solicitors Network, 2017, p 20, figures 1 and 2). Further, variations may be seen in different kinds of legal practice:

there is some evidence to suggest that [in the UK] women and BME lawyers leave the profession in disproportionately high numbers. Research also indicates that white graduates from higher socio-economic groups are over-represented in large City firms and at the Bar, while BME women from lower socio-economic groups are concentrated in small High Street practices

(Sommerlad, Webley, Duff, Muzio, & Tomlinson, 2012, p 6)

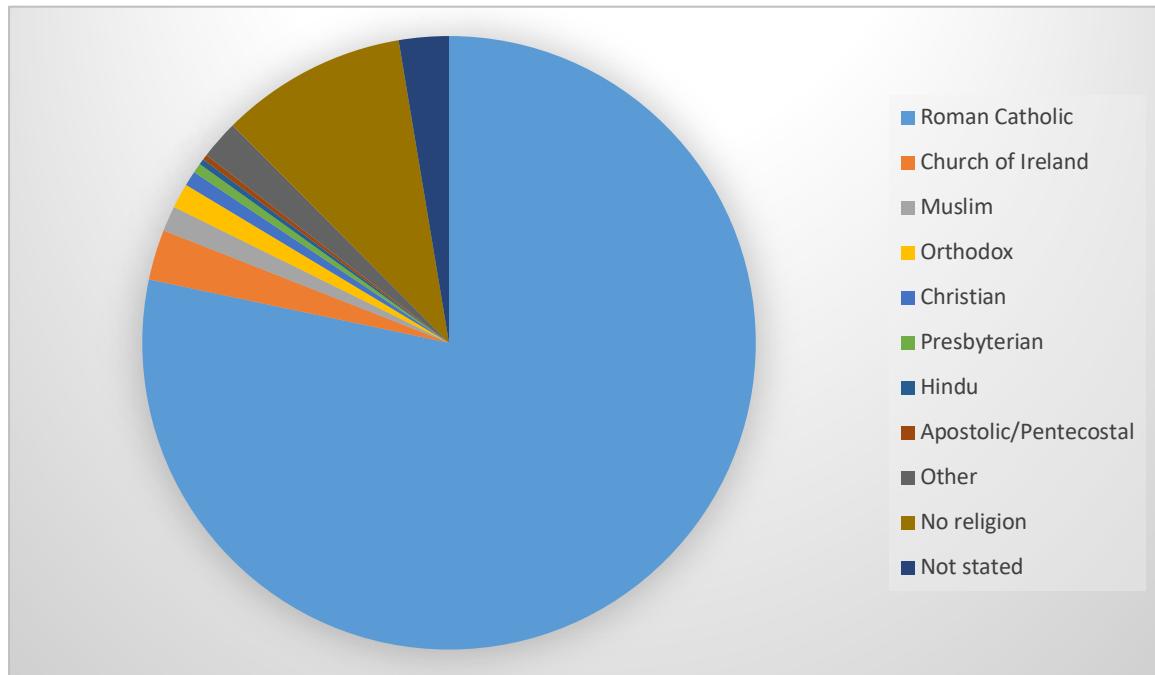
If ethnic minority lawyers respond to discriminatory recruitment practices by setting up in sole practice, this may mean that their work is in more risky areas of law, resulting in an apparent over-representation in disciplinary statistics (Ouseley, 2008) although this may also be an indicator of negative stereotyping by the regulator (Webley, 2013). Those areas are also likely to be less well-paid (Law Society of England and Wales, 2010b, p 5).

Specific diversity initiatives may be promulgated by regulators, educational institutions or specific law firms. This is often articulated as a desire to better represent the population as a whole or a way of attracting new ideas and new approaches. However, Duncanson has argued, in the context of moves to increase diversity in the Australian legal profession, that the idea that a more diverse workforce will itself lead to better legal outcomes for the disadvantaged groups themselves is inherently flawed as it “ignores the larger political structure of legal regulation and social injustice” (Duncanson, 1998, p 23) that surrounds and creates inequality in a society by contrast with more grass roots approaches (ibid, p 24).

Such schemes may have ambivalent success, but may nevertheless at least raise awareness (Ashley, 2010). By way of example, in a Dutch study (Anon, 2015) where in 2007 26 law firms signed up to a diversity policy with a view to improving on the 2% of lawyers of non-Western background (the percentage in the general population of the Netherlands is 12%). On later evaluation, the proportion of non-white lawyers had not increased significantly although there was understanding of the benefits of a more diverse workforce both internally and externally. Prejudicial assumptions that people of Turkish or Moroccan background were weaker but it was found that prejudices against Muslims affected recruitment strategies. Questions of cultural capital, and ability to speak the “class-related language” also inhibited recruitment (Anon, 2015;²⁸ van der Raad, 2015).

²⁸ The passage is an approximate translation from the Dutch summary.

Figure 5: Religion of the Irish population



	Religion (000s)
Roman Catholic	3,729.10
Church of Ireland	126.4
Muslim	63.4
Orthodox	62.2
Christian	37.4
Presbyterian	24.2
Hindu	14.3
Apostolic/Pentecostal	13.4
Other	97.7
No religion	468.4
Not stated	125.3

The Roman Catholic percentage had dropped from 84.2% in 2011 to 78.3 % in 2016. The Muslim population had increased over that period by 28.9% from 49,200 to 63,400; the Orthodox population by 37.5% from 45.200 to 62.200 and the Hindu population by 34.1% from 10.700 to 14.300. The proportion of respondents with no religion had increased by 73.6% (Central Statistics Office, Ireland, 2017, p 72). Historically there has been a sectarian divide in the universities, with TCD Anglican/Protestant and NUI formed from a group of Catholic institutions that subsequently became NUI (Harford, 2008, p 45; (Fleming, Loxley, & Finnegan, 2017, p 25). To some extent fluency and use of the Irish language is associated with being Catholic (Darmody & Daly, 2015, p 13), which may translate into a higher proportion of Catholic students taking the PPC II advanced elective that entitles them to be placed on the Society’s register of Irish speaking solicitors. Nevertheless, there has also been a longstanding Anglican-Irish movement (Robinson, 1992).

There is considerable concern about growing Islamophobia (Carr, 2014; Pollak, 2016; Anon, 2017) and anti-Semitism (Anon, 2017). Ireland is in the minority in the EU in not having hate crime legislation in

place and there are calls for this to be rectified as “a matter of urgency” (Pollak & Edwards, 2017). People of Black African descent are the most likely to be the victims of racist activity, followed by Muslims (Michael, 2016, p 11).

5.5.2 Travellers

According to the 2016 census, the Irish Traveller population had increased by 5% to 30,987 since the previous census in 2011, with increases in Longford, Roscommon and Waterford, and decreases in Kildare, Donegal and Leitrim (Central Statistics Office, Ireland, 2017,, p 61).

The very small proportion (1%, Department of Justice and Equality, 2017b, p 11²⁹) of the Traveller population in third level education has been of concern for some time. In the case of young women, early marriage militates against further education (Higher Education Authority, 2016, p 86-87). More than 80% of Travellers are unemployed, which has an effect on young people’s attitude to, and estimate of their chances of, employment (Department of Justice and Equality, 2017b, p 14). Participation – particularly of women – might be seen as contrary to the Traveller culture. Consequently suggestions have been made that as well as mentoring and supporting individual students (“Most mature students for example, have come through Traveller organisations where they have had on-going support and solidarity”³⁰); a certain amount of outreach to the community and support in first and second level education would be required as well as addressing specific concerns such as the habit of study and (settled) accommodation (Maynooth University, 2017b, pp 15-16).

National strategy, following recognition of Travellers as a distinct ethnic group in 2017, is that

In line with the National Plan for Equity of Access to Higher Education (2015-2019), the Department of Education and Skills will support the development by the higher education sector of a network of peer support and mentoring for Travellers and Roma in third level education (Department of Justice and Equality, 2017b, p 25)

We understand from the LSI that it has used its PPC access programme to assist Travellers to join the profession.

5.6 Socio-economic factors

Enforced deprivation was experienced by 25.5% of the population, down from 29.0% in 2014. This change is statistically significant. The deprivation rate for those at risk of poverty was 51.5% in 2015, up slightly from 51.2% in 2014. This change is not statistically significant. The consistent poverty rate was 8.7%, not a statistically significant change on the 2014 figure of 8.8% (Central Statistics Office, Ireland, 2015, p 2)

Social (and usually upward) mobility has been a feature of the Irish landscape at least since the 1990s when “[o]f men in the labour force ... almost exactly two-thirds of them were in a different class than the one occupied by their father when they were growing up. And of these, half had been upwardly

²⁹ In 2002 this meant there were 28 Travellers in third level education in the country (Pavee Point, 2010, p 4).

³⁰ For a case study of a Traveller woman who, as a mature student, recently received a law degree from NUI Maynooth, see Holland, 2017b.

mobile compared with less than one in six who were downwardly mobile” (Breen, 2010, pp 419-420). Income levels have been slowly rising from 2006 to 2015, and income inequality slowly decreasing (Central Statistics Office, Ireland, 2017, p 3). Nevertheless, it has also been suggested that gross income inequality has risen in Ireland, by comparison with Denmark, with which it shared a level in the 1980s (Hearne & McMahon, 2016, p 20, chart 8). Hearne & McMahon also suggest (*ibid*, p 24) that:

The top 1% has increased its share from 9.11% [in 2015] to 10.95% of gross income [in 2016], while the bottom 90% has seen its share fall from 66.07% to 61.25% of gross income. ...the bottom 50% saw a decline in its share by 15%, falling from 17.81% in [2015] to 15.22% of gross income in [2016]. This demonstrates how gross income inequality has worsened in Ireland during the economic recovery which, if it continues, is a worrying trend’

In 1999, an empirical study comparing social mobility in Northern Ireland and in the Republic of Ireland found that for,

Mobility into the professional and managerial class, we find that, while there is relatively little difference between women North and South, for men such mobility is significantly higher in the North with 21 per cent of Protestants and 18 per cent of Catholics moving up the hierarchy compared to 15 per cent of men in the South. If we restrict our attention to mobility from the working class into the professional and managerial class the contrast between North and South is even more striking. Only 6 per cent of men and women in the South achieve such mobility but in the North the figure rises to 11 per cent for men and 9 per cent for women
(Breen & Whelan, 1999, p 327)

They also found that “the Republic of Ireland is a less open society, and competition for more desirable class positions is more heavily biased by class origins than it is in the North “ (*ibid*, p 332³¹). A further factor for the Republic was that “elective migration had the effect of removing a disproportionate share of better qualified people from less advantaged class origins” (*ibid*, p 337). The tradition of migration may have implications for the legal profession: if qualification is seen as more complex, more risky or more expensive than elsewhere, students may simply decide to go elsewhere for their training. The legal culture and aspirations of members of the diaspora may, therefore, be lost to their home jurisdiction, even if they return:

“...once those people have gone to American and trained as American lawyers they either may stay with American firms or some of them may join us but a lot of them will go home and for the rest of their careers, for another thirty years, their bias will be to the American system, American way of doing things. And so each one of those that happens is a tiny little, you know, loss ...”
(Webb, Ching, Maharg, & Sherr, 2013, para 5.40)

Perceptions of a strong link between the family context and the achievement of offspring continue to be strong. In 2010, the OECD comparative survey of a number of European countries showed that Ireland was second only to Luxembourg in sons of graduate fathers themselves going on to complete higher education. Irish sons with lower-educated fathers showed less likelihood of entering tertiary education (OECD, 2010, p 190). Irish children’s school performance has also been shown to correlate strongly with their mothers’ level of education (ESRI & Trinity College Dublin, 2016, p 9) and there is a

³¹ See also the similar conclusions about the period of economic growth in the 1960s discussed in Hout, 1989.

similar correlation between proceeding to higher education and mother's level of education (ESRI & Trinity College Dublin, 2016, p 9, figure 10).

By contrast with others, British sons of graduate fathers in the OECD study showed a very substantial increase in earnings, a factor which the *Economist* suggests (Anon, 2010) could be a function of social networks or disproportionate pay awards in high status employment. The correlation between "inherited cultural capital" and earnings has also been shown in the US legal profession (Dinovitzer, 2011).

It has been suggested that the strong focus in Ireland on education, and favourable conditions of access to higher education, could facilitate greater social mobility. This is, however, immediately countered by the complaint that "the professions are still stitched up by the well-to-do and their offspring" (O'Brien, 2015). Nevertheless, there is a clear correlation between income and educational activity, with 63% of 17/18 year olds in the highest income bracket undertaking private tuition for their leaving certificate, compared with only 33% in the lowest income bracket (ESRI & Trinity College Dublin, 2016, p 4, figure 3). Young people from less socially advantaged backgrounds were more likely to receive negative feedback on their schoolwork, to be penalised for misbehaving or to have disliked school (*ibid*, p 6; figure 6). This study of Irish 17/18 years olds therefore concluded that "Additional interventions may be needed to reduce the apparent dependency of educational outcomes on family characteristics such as social class and income if a generational improvement in highest level of education at this transition point is to be achieved" (*ibid*, p 11).

A comparative study of access to higher education in Scotland and Ireland (Iannelli, Smyth, & Klein, 2016), found that attainment is more important than choice of subjects (which may be constrained by regulation or by the resources of individual schools) in access to higher education in Ireland. It follows that the contribution of resources and aspiration at school level to entry to university and to the profession cannot be overlooked. Given the very small numbers of law undergraduates at the majority of the institutes of technology, aside from any preference by employers for graduates of more elite institutions, becoming a solicitor is, essentially, a question of getting into a *university*.

However, there is a need to focus on the underlying factors that underpin the fact of increased social mobility or fluidity, as these may be more helpful in determining what is or is not equality of (educational) opportunity (Breen, 2010, pp 427-428). For example, there is some evidence that social fluidity increased during the Celtic Tiger period, in a sellers' market for labour forcing employers to recruit using different criteria:

It appears that that faced with a situation where an increasing number of candidates are found above the minimum educational threshold and, in recent years with an unprecedented tightness in the labour market, employers have shown a tendency to resort to criteria other than education. Such criteria have always played a significant role in determining social fluidity, however, over time it appears that employers have applied them in manner that discriminates less against those from less favoured class origins and promotes increased long-range social fluidity.

(Whelan & Layte, 2006, p 207)

Consequently, "social mobility opportunities were less the consequence of equality-enhancing social policy or investments in social infrastructures to promote equality of opportunity, and rather more a consequence of the volatility of the economic boom itself" (Dellepiane & Hardiman, 2011, p 5).

However, in a more economically-stretched buyer's market, factors of social and cultural capital, particularly in more elite law firms, may contribute to social exclusion (Cook, Faulconbridge, & Muzio,

2012). Although between 1991 and 2010, compared to other European countries, Ireland experienced the most rapid growth in both income and the middle class (Kochhar, 2017), there is at least a perception that, at present and post-economic crisis, the middle-class is being squeezed:

The kind of 'good jobs' that the Irish Mammy traditionally pushed her children into - lawyer, doctor, accountant, bank manager - no longer come with guarantees. They are being outsourced, sometimes to technology, sometimes to the developing world (in 20 years' time, the majority of work currently done by lawyers in Ireland will be done from countries on the other side of the world, cheaper), and are increasingly under-valued.

(Hourican, 2017)

Nevertheless, there are suggestions that the economic forecast is now more positive (Taylor, 2017), if unlikely to return to the days of the Celtic Tiger (European Commission, 2017).

5.6.1 University

It is noteworthy that Ireland has a most comprehensive set of targets related to under-represented groups. In addition to general participation targets, there are specific targets for mature students and for disadvantaged socio-economic groups where entry rates should reach at least 54 per cent by 2020. Moreover in 2006, Ireland also set a specific target to increase the number of students with disabilities. However, only Ireland and the UK have established a system where funding is deliberately used as an incentive to HE institutions to widen participation.

... Economic inequality continues to have an enormous influence on participation rates and students of all ages from disadvantaged and lower socioeconomic backgrounds face considerable obstacles to attending third level education (HEA 2014b). The continuing low level of take up by nonmanual and semi-skilled workers is worrying (HEA 2014b, appendix 2). In fact, according to the HEA (2014a) the number of young people from semi and unskilled families going on to college has fallen since 2004.

(Fleming, Loxley, & Finnegan, 2017, pp 29-30, 31)

Just over half of 30-34 year olds in Ireland have a third level qualification compared with an EU average of 38.7%; the third highest proportion in the EU (Hearne & McMahon, 2016, p 27, p 41). Government policy is to increase this to 72% of the relevant age group by 2020 (Fleming, Loxley, & Finnegan, 2017, p 28). Access to third level education may be prejudiced in the case of undocumented migrants who are excluded from the Free Fees Initiative or Pilot Support Scheme (The Irish Human Rights and Equality Commission, 2017, p 87). Section 5.5.2 above discusses strategies to promote third level education amongst the Traveller community and it should be noted that there are national targets for inclusion of a variety of under-represented groups, not confined to Travellers in current government strategy (Department of Education and Skills, 2015). Individual institutions may also have policies on inclusion and access (e.g., Trinity College Dublin, 2015).

There are challenges for working class and first in family entrants to higher education in identity and in fitting in (this has been identified in medical students, for example, in a number of countries (Brosnan *et al.*, 2016). This may be particularly marked in Ireland, where

... in some working-class communities in Dublin participation rates doubled between 1998 and 2004, and overall there has been a significant rise in people from the skilled working class in HE ... nevertheless, class continues to exert a massive influence on who enters third-level education in Ireland, widening participation targets have not been met and there has even been a decline in the numbers of people from routine non-manual backgrounds
(Finnegan & Merrill, 2017, p 310)

This comparative study of students in England and in Ireland found a more ambivalent attitude to “class pride” in Ireland than in England (*ibid*, p 321).

The question arises whether there is a premium in obtaining a training contract (and therefore a PPC place and therefore entry into the profession) by having attended a more established and more prestigious university. There may also be a premium, as there is in England and Wales, in having studied law as a postgraduate rather than as an undergraduate, with about a third of new solicitors coming through the Graduate Diploma in Law route which necessitates securing funding for an extra undergraduate year as well as for the vocational course. It appears that approximately a third of the 2010 PPC entrants had non-law degrees (Kennedy & Shannon, 2011, p 402) although they need not have prepared for the FE-1 by taking a formal and accredited conversion course through a university.

During the period where graduates of some universities were exempted from the FE-1 exemption there would clearly have been a premium for individuals in securing access to a university that benefitted from the exemption policy. The CAO entry tariff points for different institutions to some extent represent the extent of the premium (whether by status or by employability) as well as the nature of the undergraduate course. Points achieved are, of course, affected by prior schooling, which is also impacted on by other social and economic disadvantages, including the guidance and aspirations given to students in, for example, schools in working class areas (McGinnity, 2012, p 239; McCoy & Byrne, 2011). That this is the case is accepted in the HEAR initiative, which provides reduced point entry and additional support for students from socio-economically disadvantaged backgrounds (Higher Education Access Route, 2017). As with the DARE scheme, however, it is not available for all third level institutions offering law undergraduate courses. Widening access schemes offered by universities may in fact serve to:

reproduce inequalities through limiting [the reach of the scheme] to those who are felt to be deserving of intervention by previous academic achievement, geographical location and ability to afford the hidden costs of participation. The work to enable access is framed by the notion of who would be a potential future recruit shaped by institutional understandings of the ideal type of student for elite universities and thus perpetuates inequality
(Rainford, 2016, p 5)

and may underplay advantages to clients in having a more diverse professional class, and ignore the strengths offered by those from less advantaged backgrounds (Alexander, Fahey Palma, Nicholson, & Cleland, 2017). Law may, as it has done in Scotland, disproportionately attract students from higher socio-economic sectors (Anderson, Murray, & Maharg, 2003).

Nevertheless, the points demanded give a clue towards the elite status of the institution, an elite status which may transfer into preferred status in employability. This need not, however be the case,

and appears not to be the case for German law firms (Mountford-Zimdars & Flood, 2016). Tariffs advertised at present are.³²

Table 5: CAO points tariffs for undergraduate law courses

Institutions	Reference	Course	CAO tariff advertised (often for 2016) ³³
Dublin City University	(Dublin City University, 2016)	BCL (Law and Society)	450
NUI Galway	(NUI Galway, 2017)	Civil Law (BCL)	435
NUI Maynooth	(Maynooth University, 2017a)	Bachelor of Laws (LLB)	450
Trinity College Dublin	(Trinity College Dublin, 2017)	Bachelor in Laws (LLB)	535
University College Cork	(CareersPortal, No date a)	BCL (Pathways)	490
University College Dublin	(University College Dublin, No date)	Law (BCL)	525 - 615
University of Limerick	(University of Limerick, No date)	Bachelor of Laws (LawPlus)	460
Athlone IT	(Athlone Institute of Technology, 2016)	Bachelor of Arts (Honours) in Accounting and Law	300 ³⁴
Dublin IT	(Dublin Institute of Technology, 2017)	LLB Bachelor of Laws	425
IT Carlow	(Institute of Technology Carlow, No date)	Honours Bachelor of Laws (LL.B.)	290
Letterkenny IT	(Letterkenny Institute of Technology, no date; CareersPortal, No datec)	Bachelor of Arts (Hons) in Law	290
Waterford IT	(Waterford Institute of Technology, 2017)	LLB Bachelor of Laws	300 - 480
Dublin Business School	(CareersPortal, No date b; Dublin Business School, 2016)	Bachelor of Laws (Hons) LL. B	180
Griffith College	(Griffith College, 2017b)	LLB (Hons)	255

A study in England and Wales noted the reliance by law firm recruiters on a number of markers in recruiting solicitors including high school grades and university attended. This, as well as questions of guidance and information, had an adverse effect on those from minority ethnic background or lower socio-economic groups:

³² Where more than one degree is offered the tariff given is for the general LLB or BCL.

³³ The scale changes for 2017: CAO, 2017.

³⁴ Estimated: course starts in September 2017.

Young people from ethnic minorities and lower social class groups achieve lower scores at [Leaving Certificate equivalent] because they attend less well resourced schools with lower standards of teaching (see Metcalf, 1997). As a result, they are less likely to gain places at old universities where entrance requirements are higher, and more likely to attend new universities. Young people from these groups are also less likely to have personal contacts in the legal profession ... Young people with contacts in the profession may also benefit through having greater access to information about routes into law, criteria used by firms to select trainees, and more generally in confidence in their approach to their applications.

(Rolfe & Anderson, 2003, pp 330-331)

However, there is increasing evidence of decreasing reliance on the university attended, in accountancy (Sherriff, 2016) and in law, with an emphasis on redacting the name of the university attended from CVs (Garner, 2014; Law Society of England and Wales, 2016b). Nevertheless, Rolfe and Anderson also identified having had previous experience in a law firm (sometimes unpaid) as a factor in recruitment, which itself raises questions of preferential access by the elite (Francis & Sommerlad, 2009; Junior Lawyers Division, 2014).

5.6.1 FE-1 and PPC

In the period 2002-2010 the majority of the law graduates attending the PPC were from TCD, UCD, NUI Galway and UCC (Kennedy & Shannon, 2011, p 402). The situation is complicated, however, by the fact that the institutes of technology other than Waterford IT, take very few students, so that it is inevitable that the larger number of entrants will come from the universities. A number of the newer institutions are recent entrants, so that it is inevitable that their graduates will not yet have reached the higher echelons of the profession.

The FE-1 as an entrance examination that retests students on topics they have already covered at university remains controversial. From 1989, graduates of TCD, UL and NUI could be exempted from the examination if they had passed the relevant subjects during their degree (Solicitors Acts 1954 and 1960 (Apprenticeship and Education) Regulations, 1989).³⁵ DCU was added to the list by the 1992 regulations (Solicitors' Acts 1954 and 1960 (Apprenticeship and Education) (Amendment No. 2) Regulations, 1992, reg 5). In 1995, a group of students at Queen's University Belfast sued the LSI on the basis that their exclusion from the exemption amounted to unlawful discrimination on the basis of nationality (*Bloomer & Ors v The Law Society of Ireland & Ors*). Senator Enright, in debate, expressed concern following the *Bloomer* decision, about the "legitimate expectations" of students who had embarked on law degrees at the exempted universities, relying on their future exemption, arguing that

In justice and equity, the continuation of the existing system must be allowed for all students with law degrees obtained since 1989, and all students currently pursuing a law degree course in any of the aforementioned universities.

(Enright, 1995)

³⁵ Qualified barristers, solicitors from other jurisdictions and suitable academic lawyers could also be exempted under regulation 24.

This was followed by *Abrahamson v The Law Society of Ireland*³⁶ in which existing students in the Republic asserted a legitimate expectation that the exemption would continue to apply to them (see also Law Society of Ireland, 1998, p 31). A similar controversy exists in the Caribbean, where there is an examination policy for entry to the vocational law schools that was probably originally intended to differentiate between students at the University of the West Indies (who had by definition studied Caribbean law) and those with foreign degrees such as the University of London international degree. This policy, however now also requires students from newer Caribbean universities to pass the entrance examination (Hugh Wooding Law School, No date). One solution mooted by some of those other universities has been the creation of additional vocational law schools (Poyser, 2015).

In Ireland, Herron (2006) refers to correspondence between the LSI and the Department of Justice and with QUB in the 1990s and a controversy about whether the exemption policy was intended to filter in respect of places on the professional course or to restrict access to the profession. The LSI's response was to terminate the exemption so that from 1996 students from all universities (and from the institutes of technology) must complete FE-1.

A blanket exemption for students of particular universities whatever their class of degree may create a diversity issue if the favoured universities tend to recruit more students from groups that are already advantaged than do the disfavoured institutions. It also clearly provides a recruitment premium for the favoured institutions, whose graduates do not have to expend additional time and expense in preparing for and taking the entrance examinations.

The Competition Authority's reports were critical of the FE-1 examinations³⁷ on other grounds: it increased the cost of training (para 13.12); and:

The objective of requiring that all those seeking a place on the professional courses are equipped with legal knowledge is a valid one. Requiring all applicants, including the holders of law degrees, to sit the Entrance Examination is disproportionate. The fact that a person holds a degree in law from a recognised university is sufficient proof of the standard that person has achieved in his or her knowledge of the law.

(Competition Authority, 2005, para 13.16)

Consequently (*ibid*, proposal 35) it was recommended that the entrance examination be abolished. In response, the LSI (Law Society of Ireland, 2005, paras 13.5-13.9) asserted that there was no question of quotas (all successful candidates could progress into the vocational course) and that the purpose of FE-1 was to ensure a common standard of academic legal knowledge so that the PPC could focus on other issues. There was no domestic equivalent of the regulations in other jurisdictions defining the topics that must be covered in a "qualifying law degree" (e.g., Solicitors Regulation Authority, 1999; Victorian Legal Admissions Board, 2017), although "the original intention had been to allow law graduates automatic admission to the vocational courses, but pressure on numbers led to the decisions to require all applicants, whether law graduates or not, to sit the equivalent test" (Stannard, 2011, p 351). Nevertheless, even in the absence of a qualifying law degree model, "...anecdotal evidence at least suggests that the pressure to 'teach to the core' is the same south of the border as it is to the north" (*ibid*, p 352).

³⁶ For a more detailed discussion of the case law, see Buckley, 2002, p 184ff.

³⁷ The report was also critical of the preliminary examination and proposal 34 recommended that it be abolished, a proposal that the Society did not oppose (Law Society of Ireland, 2005, para 13.4).

Such prescription is not uncontroversial: the requirements for a qualifying law degree in England and Wales were inconsistent to a significant degree with the then requirements of the quality assurance body for higher education (Webb, Ching, Maharg, & Sherr, 2013, Chapter 4, annex III). The USA is an example of a group of jurisdictions without prescription of topics in the law degree where the professional response is to retest bar applicants on topics they have already been tested in (National Conference of Bar Examiners, 2017).

The Competition Authority's reliance on the UK jurisdictions as examples of places where the possession of a (qualifying) law degree was taken as read is now somewhat ironic, given the Solicitors Regulation Authority's plans to impose a "Solicitors Qualifying Examination 1" (SQE1). This will draw on matters of academic law as well as topics currently covered in the PPC-equivalent course and be mandatory for all entrants, whether or not they have covered them in their law degree. The difference is, however, that there will be no requirement that entrants have a law degree, so for some, this will be their first test in law subjects. The refusal to exempt law graduates from the SQE 1 is then, it is argued, justified on the basis of assuring common standards (Solicitors Regulation Authority, 2017). Nor will there be any required courses leading to either the academic/vocational SQE 1 or the skills-based SQE2. It is argued that this will result in new forms of preparatory activity being designed, and allow greater diversity of entrants (Bridge Group, 2017). Nevertheless, that recommendation is caveated by the need to ensure buy in by employers and transparency of data, which is not without challenge (Moorhead, 2017).

However, there are aspects of both the FE -1 and the PPC as currently delivered that could cause issues in terms of equality, diversity and social mobility.

- The FE -1 has a cost, as do the preparatory courses, of which the most established are in Dublin (see section 4.7), although online courses have now emerged. We note however that the LSI's access programme covers "overnight accommodation during the week of exams, contributions towards additional childcare costs, support with loss of income while taking exams and travel expenses to and from the exam venue" and also provides access to the library (by post for those outside Dublin) (Law Society of Ireland, No date c).
- Attendance at such courses may be incompatible with full-time employment. This may, however, vary: City Colleges teaches in the mornings and evenings (City Colleges, 2017) but Griffith College timetables its lectures in the evenings (Griffith College, 2017a).
- As candidates take papers in groups, and the examinations are offered only twice a year, there may be gaps of considerable periods that interfere with employment or housing (Law Society of Ireland, No date c).
- The fact that candidates can take the examinations as often as they like (Law Society of Ireland, 2015) could be seen as positive (no artificial limit) or negative (allowing weak candidates to waste time and money).

Concern about the costs of the PPC dates back to its foundation in the 1970s (Buckley, 2002, p180). Public funding is available for the PPC, and some employers will pay or reimburse the shortfall in fees and pay a salary to students while they are attending the course. The LSI's access programme also covers the shortfall in fees and provides a "modest maintenance" stipend during PPC I and PPC II (Law Society of Ireland, No date a). The PPC is, however, delivered in Dublin³⁸ and on a full time only basis, by contrast with the King's Inns which, as a result of comments by the Competition Authority,

³⁸ Parallel delivery at the University of Cork described in Kennedy & Shannon, 2011 has been abandoned.

reinstated a part-time course taught at weekends (Higgins, 2011, p 416; The Honorable Society of King's Inns, no date) running in parallel with its full time provision.

5.6.2 Training contract

Access students are provided with assistance and mentoring in relation to CVs and employment (Law Society of Ireland, No date a).

In England and Wales, although there are improvements, it remains the case that senior lawyers are more likely to have come from private schools and higher status universities (Kirby, 2016) although, as noted elsewhere, that does not appear to be the case in Germany. Lawyers from poorer backgrounds have been found to earn less once qualified (Fouzder, 2017a).

Clearly the fact that Irish students, unlike their peers in countries where the vocational stage and the period of required work experience is sequential, cannot incur the costs of the PPC if they have not secured a training contract. A recent report in England and Wales included reports of people who had, following their LPC, spent several years in paralegal jobs whilst trying to obtain a training contract (Ching & Henderson, 2016, p 14).

There may well, however, be a dark figure of Irish graduates unable to obtain training contracts who are masked from the LSI as, by definition, it is only those who have been successful in recruitment exercises who appear on the PPC. Nevertheless, in its review of legal education, the Law Society of Northern Ireland felt that moving to a sequential system, where law firms could recruit from those who had already completed the vocational stage

might also ...result in those with contacts, connections or otherwise able more easily to find a firm in which to train having an advantage, thereby impacting on the diversity within the solicitors profession or reducing opportunity for those who have no present connection to the Law and would find it more difficult to locate a firm in which to complete their training.
(Education Review Working Group, 2009, para 6.3.4)

Clearly, however, those factors confer an advantage in recruitment even when it takes place prior to the PPC.

There are also concerns about the prevalence of (unpaid) internships acting as a precursor to obtaining a training contract entirely outside the control of the regulator. This phenomenon is increasingly seen in Ireland (Griffin, 2013). Some regulators, however, seem to be attempting to exercise at least persuasive control (Law Society of England and Wales, 2016a; Law Society of Scotland, No date) over the internship market.

5.7 References

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6 Analysis of the training contract: its development in Ireland, England and Scotland, and future directions.

6.1 Introduction

This section draws substantially on a literature review (Ching, 2016) and empirical investigation (Ching & Henderson, 2016a and b) carried out for the Solicitors Regulation Authority in England and Wales.

A period of required work experience, before the professional title is conferred; for a period after the title is conferred, or both, is almost universal in legal professions: IBA, 2014; Wilson, 2010. Nevertheless, as is explored further below, practice differs substantially as to the governance of such a period. It may be organised by the state (e.g. Germany, LTO, no date); absorbed into a vocational course as clinic or placement (e.g. Australia, College of Law, No date); an alternative to a vocational course (e.g. Ontario, Law Society of Upper Canada, no date.), some parts of Australia; (Queensland Law Society, no date.; Victorian Legal Admissions Board, 2017); devolved to the employment market (the UK, Ireland, Hong Kong, France) or to the legal services market entirely outside the regulatory and pre-qualification framework (USA,³⁹ India). Cultural approaches to the period also vary, with a strong attachment in England and Wales (Law Society of England and Wales, 2015) and Canada (Law, 2001); a preference for the vocational course in Australia,⁴⁰ a sense in New Zealand that it is an inappropriate barrier and in the USA that such a requirement would be degrading or demeaning to the professional. Even in the USA, however, a rather more arms-length form of early career mentoring may be required by the local bar (e.g. State Bar of Georgia, 2017), or available by other means (American Bar Association, 2016).⁴¹

A period of required pre-qualification work experience is also very common in other professions. For example, the International Accountancy Education Standards Board standard for workplace experience, revised in July 2015,

recognizes that practical experience is relevant in developing the competence of an aspiring professional accountant. ... promotes greater flexibility in measuring practical experience; permits practical experience supervisors to direct, advise, and assist an aspiring professional accountant's experience; and requires practical experience to be recorded in a verifiable and consistent form.

(International Accounting Education Standards Board, 2015)

A 2014 study of accountancy professions in a range of countries found that all but one required a period of work experience, and those that did varied in length from under a year to five years. Approximately a third demanded that the period take place in an approved organisation and almost half of the professions required a mentor to be in place. Assessment methods ranged from self- or mentor certification to records, reports and portfolios assessed by the professional body (Crawford, Helliari, Monk, & Veneziani, 2014, table 8).

³⁹ Other than in Delaware: (Holland, 2009). See also Clark, 2012, p 351: "... among more economically developed nations, the United States is virtually alone in not requiring a significant apprenticeship period before a person becomes a fully authorized lawyer)". Nevertheless, there is an experiential learning component on the JD and pre-qualification pro-bono requirements are increasingly common.

⁴⁰ See further Ching, 2016, para 9.2.1

⁴¹ See further Ching, 2016, para 9.1

6.1.1 Purpose and structure

Even though there is a consensus that learning in the workplace is significant, there is less consensus as to a single defining purpose of a training contract (Ching, 2016, table 19). The idea that a period of service in a humble capacity might be part of the price of admission to the professional guild is not new. In the common law countries, there is a clear attachment to the workplace as the place where one really learns to be a lawyer, recognised even in the USA which, otherwise, has adopted many of the university-led attributes of the civil law legal education models.

There may, however, be a dichotomy between the educational intentions of the professional body and the need, amongst hard-pressed members of the profession, for personnel who can carry out mundane administrative tasks:

- (a) [the training contract] enables trainees to develop legal judgement which comes from working with and learning from more senior lawyers - it teaches trainees how to "think as lawyers". It is a period of time in the development of lawyers where learning is key and when ethics and professionalism can for the first time be observed and learnt in live situations. It therefore serves a particular regulatory purpose in developing ethical, responsible lawyers. ...
 - (b) The period of practical work - place based training enables lawyers to develop their practical client-facing skills pre-qualification. ...
- (Law Society of England and Wales, 2015, pp 8-9)

In a study of articled clerks in Victoria, 61% had been asked to carry out such tasks (Law Institute of Victoria, 2004). In 2005 Boon found that experience in England and Wales differed widely, from a respondent whose "regional high street firm required him to meet clients from the first day across a wide range of topics" (Boon, 2005, p 242) to another who spent the majority of his time photocopying (this persisted into a later study in 2007: Boon & Whyte, 2007, p 176). That this is still the case can be seen from a more recent study of trainee solicitors in the same jurisdiction (Ching & Henderson, 2016, p 43, figure 6), where 47.7% of the trainees questioned felt that their experience could be improved by having fewer mundane tasks. Another end of the spectrum is an assumption that trainees on arriving in the workplace can progress almost immediately into handling large caseloads: "some employers expect trainees on day one to be consummate solicitors" (Boon & Whyte, 2002, p 32).

A rather more subtle distinction might however be made by examining the framework and supporting structures prescribed for the period. The length of the period is, almost by definition, specified by the regulator. Options to shorten the period as a result of prior experience are more common than rules requiring the period to be lengthened because competence has not yet been achieved. An exploration of the length of the period across a range of legal and other professions (Ching, 2016, pp 64-65, tables 20a, b, c) suggests that longer periods appear where:

- Classroom study is part time or limited, often taking place in parallel with the period of supervised practice;
- There has not or not necessarily been any prior study of the discipline at university level (e.g. ICAEW);
- The practice requirement is, as for some IP attorneys, in fact unsupervised;
- It may be necessary to correlate the length of the period with the length of an alternative route (e.g. US law office programmes);
- A breadth of experiences or areas of practice need to be included (e.g. Germany, England and Wales);
- There is a stepped transition into independent practice (e.g. the Bar first and second six components of pupillage);

- Possibly, where there is a need to assert professional status by reference to the length and difficulty of training by comparison with other professions, or in a highly deregulated market.

And shorter periods where

- There is a substantial role for the market as gatekeeper for competence (e.g. the USA);
- The primary role of the period appears to be socialisation;
- Other strong components, such as a vocational course or bar examination, seem to be primary gatekeepers;
- The focus is on post-qualification limited licensure (Australia, the Bar in England and Wales, notaries in England and Wales).

There seem to be three axes of emphasis over and above specification of the length of the period, which lead to different types of regulatory constraint:

The type of work carried out.

Some of the smaller specialist professions in the UK define the period essentially by the kind of work carried out. So, for example, a patent attorney may qualify having passed the relevant assessments and having “satisfactorily completed not less than four years’ full-time practice in the field of intellectual property, including substantial experience of patent attorney work in the United Kingdom” (Intellectual Property Regulation Board, 2009, reg 4.2(c)). This kind of definition therefore covers the possibility that this kind of lawyer may work in a number of different kinds of organisations, including in in-house practice, rendering work type more relevant as a marker than organisation or supervisor.

The organisation of the relevant work normally falls to the employer, who may have undertaken or contracted to the trainee, the professional body, or both, that suitable work will be provided. It may be necessary for some more specialist organisations to arrange secondments for the purpose. An unusual variation is seen in Germany, where trainees are employed by the state as temporary civil servants, and their rotation around different kinds of practice organisation is, therefore, organised by the relevant local authority.

Attempts to determine further the scope or quality of the work carried out during the period divide into two. The first is, in effect, bottom up, in which with varying degrees of detail, the trainee is required to have had certain opportunities, experiences or exposure. So, for example, at present, trainee solicitors in England and Wales are required to have “practical experience in at least three distinct areas of English and Welsh law and practice” during their two-year period of recognised training (Solicitors Regulation Authority, 2014b).

The experience may, therefore, be direct or simulated, by action or by observation (for example, attendance at hearings (Consiglio dell’Orinde degli Avvocati di Napoli, 2000, art 2(b))). There need not necessarily be any explicit or documented learning from the experience, provided the experience has taken place. For example, the checklist for trainees in British Columbia (Law Society of British Columbia, 2015, para 2), requires trainees to have been given:

- Practical experience and training in practice management, including the following:
- effective client communication, development and relations;
 - appropriate timekeeping, reminder systems and billing practices;

- teamwork and good relations with office staff;
- prioritizing deadlines and workload;
- record keeping and file maintenance; and
- trust and general accounting and financial planning.

The equivalent checklist for trainees in Delaware includes:

Attend a trial or a complete hearing in the Court of Chancery. For a trial, this must include (i) either a complete opening statement or a complete closing argument; and (ii) direct and cross examinations of one witness

(Board of Bar Examiners of the Delaware Supreme Court, 2017, item 14)

The other approach is top down, which a sequence of standards or competencies that the trainees is expected to have acquired by the end of the period (see further, section 2). Again, there is a spectrum of both specification and importance of these frameworks, ranging from those that are merely guidance (Intellectual Property Regulation Board, 2014a and b), through those signed off by supervisors to those assessed by the professional body (Chartered Institute of Legal Executives, no date). As discussed in section 2, such frameworks also prescribe or at least imply a level of performance. Consequently, if all that is assumed is that the trainee will be been exposed to an experience, or participated by observation, the level will be quite light and may only be at the level of Miller's "knows" or "knows how". If the trainee is expected to have performed a task with a degree of competence, the requirement may be quite onerous, at the level of Miller's "shows how" or "does". Compare, for example:

Keeping client informed

- communicated with the client during the course of the matter as frequently as circumstances and good practice require.
- confirmed oral communications in writing when requested by the client or required by good practice.
- dealt with the client's requests for information promptly.
- informed the client fully of all important developments in the matter, in a way which a reasonable client could understand.

(Law Admissions Consultative Committee, 2015, p 28)

Trainees must be given work to enable them to understand the importance of:... regularly and fully reporting back to clients

(Solicitors Regulation Authority, 2014b) [current requirement for trainee solicitors]

C2 Establish and maintain effective and professional relations with clients, including ... Informing clients in a timely way of key facts and issues including risks, progress towards objectives, and costs

(Solicitors Regulation Authority, 2015b)

[The level to be demonstrated indicates that the trainee should be able to do this in straightforward tasks: (Solicitors Regulation Authority, 2015a)]

The kind of organisation in which the period can take place

Specification of the kind of organisation in which the work experience can be served may be another way of specifying the kind of work done, especially if the organisation is comparatively uni-disciplinary.

In-house practice may not always be included. Sometimes the organisation has to obtain prior approval as a training organisation; in others, the organisation is approved on a case-by-case basis, in advance, and sometimes not at all. There may be a cost for an organisation in obtaining such prior approval and this may deter some from taking on trainees. Extending the range of organisations in which the period can be served, especially if different kinds of organisations can demonstrate a need to train lawyers in their field, may have a positive effect on the number of training places available. There was, however, some ambivalence about this conclusion in England and Wales:

Some felt that the practice of employing paralegals with no guarantee of progression was now so common that employers would simply continue to hire paralegals rather than undertake the additional administration of a period of supervised practice. Others felt that the market for solicitors and barristers was unlikely to increase, but that different roles, or more paralegal roles, would become the norm in any event. Some respondents, however, felt that there was an appetite in some sectors (for example, in-house practice) to provide supervised practice where that is currently blocked.

(Webb, Ching, Maharg, & Sherr, 2013, para 2.139)

The kind of person permitted to supervise.

Clearly, specifying that the supervisor or trainer is a member of the same profession is an indicator that the work they do is a legitimate example of the work of the profession. Unless it is coupled with a requirement about the breadth of work, it may also lead to trainees in what is ostensibly a broad-based profession actually having a narrowly focused work experience. It has a clear advantage in professional socialisation and in ensuring that the supervisor and trainee share the same code of ethics. Providing these at a distance is possible but resource intensive. The specification for a supervising solicitor is more often based on length of service than on aptitude for teaching or coaching, although training sessions for supervisors may be available and may be mandatory (see eg Honourable Society of the Inner Temple, No date). A different kind of solution to the need for a combination of both practice skills and teaching skills is provided in British dentistry training, where a trainee has both a clinical supervisor and an educational supervisor (UK Committee of Postgraduate Dental Deans and Directors, 2011).

6.1.2 What is learned (or not)

The problem for the regulator of mandatory period of work-based learning is twofold. On the one hand, there is often a consensus that it is highly valuable, sometimes perceived as the most valuable period of learning to be a lawyer, and something to which some legal professions have a strong cultural attachment (Ching, 2015; Law Society of England and Wales, 2015).

On the other, however, there is a concern that the activities actually carried out by trainees, in some organisations, are mundane administrative tasks unlikely to yield useful learning and simply exploitative of young lawyers as cheap labour. Even with the best will in the world, there is a tension between the learning objectives of the traineeship and the economic objectives of the firm that finances the traineeship. In a medical context, for the purposes of comparison, the issue arises even more starkly:

“... We do try to teach around the patients, but ... you can't stop and say, I'm sorry, I know the child's having a seizure, but we need to talk about what causes seizures”.

(Lingard, Garwood, Schryer, & Spafford, 2003, p 608)

Clients may be unwilling to pay for juniors to learn on the job and for their errors to be corrected:

There are also likely to be competing agendas when tasks are allocated. Novices are more efficient on tasks where they already have enough experience, but also need to be involved in a wider range of tasks in order to extend their experience. Thus managers and/or senior colleagues have to balance the immediate demands of the job against the needs of the trainees as best they can, as well as satisfying the requirements of professional bodies and/or health and safety.

(Eraut et al., 2004, p 4)

In sequential models (see section 2.3) learning from a preceding vocational course may be discredited, and the aspiring lawyer may have little to use as a benchmark to determine whether their new learning represents good or poor practice. For reasons of practice validity, but also of creating a bridge between what is learned in the classroom and what is learned in practice, the integrated model of work and learning to some extent in parallel as applied in Ireland was specifically endorsed in a review of solicitors' education in Northern Ireland:

This combination of the practical application of law and procedure learned from both a vocational provider and an office has a number of advantages. An office cannot cover all the range of legal topics and client problems. For example, many offices do no criminal work at all. Some offices take on no family law cases. Some offices have no County Court practice or have no work involving employment tribunals. The vocational training providers,⁴² of course, cover these areas. This can ensure that at the end of the two year training period all persons admitted as solicitors will have covered the entirety of the vocational training curriculum and, in addition, will have seen in operation actual cases involving actual clients in the firm in which they are apprenticed.

(Education Review Working Group, 2009, para 6.27)

Isolating what is only learned, or learned better, in the workplace experience is challenging. Key factors that appear in the literature (see Ching, 2016, p 20, table 4). Critical points, however, seem to relate to the implications of dealing with real clients and taking on responsibility. In the words of the Carnegie Report:

the pedagogical shift from reliance on the hypothetical questions typical of other phases of legal education (such as "What might you do?") to the more immediately involving and demanding: "What will you do?" or "What did you do? ... Assuming responsibility for outcomes that affect clients with whom, the student has established a relationship enables the learner to go beyond concepts, to actually become a professional in practice. Taught well, it is through this experience of lived responsibility that the student comes to grasp that legal work is meaningful in the ethical, as well as cognitive, sense.

(Sullivan, Colby, Welch Wegner, Bond, & Shulman, 2007, p 121)

Other learning may come from working in (hierarchical) teams, taking active responsibility for their own learning and in seeing matters progress over a period of time. A study of early career accountants described trainees' perception of their own learning in the workplace as including:

⁴² At the time of the review, there were two.

... many different forms of progression:

- size of task: doing a test to doing a whole section
- speed of work: getting things done more quickly
- significance of task: low risk to high risk for validity of audit
- complexity of audit: very simple to very complex
- confidence: pursuing questions more rigorously, interviewing more senior client officers.
- increasing range of clients: the more experience, the easier to understand the business of a new client.
- increasing responsibility: being coached, close supervisions, only outcomes checked unless a problem is signalled, only person on client site.

(Eraut et al., 2003, pp 8-9)

Although clearly statements of what is to be covered during the period, and statements of outcomes to be achieved may create leverage for the trainee and in some cases have contractual status, these do not necessarily and universally have the desired effect. In a recent study conducted for the Solicitors Regulation Authority in England and Wales, for example, data indicated that opportunities to acquire competences in advocacy (Ching & Henderson, 2016, p 21, figure 4; p 23), negotiation (*ibid*, p 23, appendix 2.17⁴³) and sometimes client contact (*ibid*, p 24) were limited. Opportunities to deal with ethical issues were also often limited for trainees (*ibid*, p 22), often because routine ethical issues such as conflict checks were dealt with by administrators and more complex problems were automatically escalated to more senior personnel. Although there was some evidence that some senior paralegals had more responsibility, and responsibility for ongoing matters than did trainees, there was nevertheless some evidence that the label “trainee” carried with it a protective recognition that this was a training role (*ibid*, pp 34-36).

It is also common for trainees to be required attend additional courses or participate in “trainee CPD” during the period, even in systems that are not as consciously integrated as those in Ireland. So, for example, in the Netherlands, the work experience period is comprised of:

(1) work in a law office under the sponsorship or patronage of an admitted lawyer; (2) intensive and mandatory bar-designed classroom courses during the first nine months of the apprenticeship, for which the office at which the trainee works must provide time off; and (3) a selection of continuing education courses during the last two years, subject to the interests of the trainee and his or her specialization.⁴⁴

(Wilson, 2012, p 178)

This additional activity may be deliberately provided by the professional body, because of its significance or the need to determine common best practice standards or to promote collegiality in the profession. Employers may, or may not, be required to pay for such courses, and in some jurisdictions (e.g., the Professional Skills Course in England and Wales) larger firms may be allowed to offer the courses in-house.

⁴³ Advocacy is taught and assessed in the English Legal Practice Course. Negotiation may appear, but is not mandatory nor required to be assessed. It will be assessed, in writing, in the SQE.

⁴⁴ The courses are examined and the exams must be passed before the individual can be admitted.

6.1.3 Monitoring and assessment

There is a distinction between regulatory monitoring and assessment of individual performance. Monitoring is an examination of the organisation, the records and the environment: support for learning but not necessarily of the learning itself. This is resource-heavy for the regulator:

The value of the training contract cannot be underestimated and the Group shares the concern of some of its respondents in relation to the varying quality of that training; however, given the nature of the training contract and the desire not to discourage practices from engaging trainees, there is a limit to the extent to which the Law Society can or indeed should interfere in that training contract. Whilst supervision and support for both trainee and training solicitor is certainly necessary, the Group considers that it is unrealistic to expect the Traineeship Section to carry out extensive office visits to monitor trainee contracts.

(Law Society of Ireland, 2007, para 2.4.1)

Assessment of individual performance, of Miller's "does", is more difficult. First because it is difficult, especially with large samples and in diverse forms of practice, to assess and moderate consistently. An experiment in England and Wales to determine whether LPC-graduates could be facilitated by their employers and by an external academic organisation which provided both formative and summative assessment, was successful, but at considerable cost (BMG Research, 2012; Ching 2010, 2012).

Approaches to the issue vary significantly. So, for example, amongst the different accountancy professions in the UK, ICAS uses competences (Gammie & Joyce, 2009); ICAEW demands six monthly reviews by the supervisor and a log (ICAEW, 2013) and CIPFA requires trainees to maintain an online reflective portfolio which is later assessed by the regulator (CIPFA, no date).

It is rare that what has been learned in the workplace (or what can only be learned in the workplace) is a component of any terminal bar examination (but see the example of Portugal in Table 7). In the built environment professions, however, the trainee may be expected to carry out a project or case study by way of "apprentice piece" as part of the terminal assessment (Royal Institution of Chartered Surveyors, 2017, p 14). In some professions, a terminal interview is carried out, based on submission of logs and material demonstrating competences (Society of Chartered Surveyors Ireland, No date; Institution of Civil Engineers (ICE), 2015). See discussion of such models at 9.5.1 below.

The fact that many bar examinations can be taken before, during or after the period demonstrates that they must be capable of being passed by those who have not yet commenced, or who are only part way through their required period of work experience demonstrates this. In countries with strong reliance on bar examinations, and bar examinations of a particular model that does not assess skills not capable of being demonstrated on paper, the task may simply be too difficult:

If, as certain commentators suggest, it is essential to ensure that new attorneys have had experiential training, then such training should be explored as a separate admission requirement rather than an optional substitute for a portion of the bar exam.

(Advisory Committee on the Uniform Bar Examination, 2015, p 69)

Portfolios are used, and assessed by the regulator, for legal executives in England and Wales (CILEx Regulation, No date) and for qualification as a solicitor through "equivalent means". The Dutch Bar is currently consulting on proposals to use a portfolio (Nederlandse orde van advocaten, 2017).

Problems with portfolios in terms of security, cloud computing, confidentiality, anonymity, copyright and legal professional privilege have not yet been fully explored.

What is probably most common is that the period is self-certified by the trainee, the supervisor or both. What is signed off again perhaps demonstrates assumptions about what the period is for: sometimes what is signed off is merely the completion of the prescribed period of service and any mandatory experiences, whilst in other professions an attempt is made to certify fitness to practice, either generally in the opinion of the supervisor or against competences. There are clearly both advantages and disadvantages of any model (Ching, 2016, table 21 lists some in relation to the current system in England and Wales).

Table 7 sets out details of training contract requirements for solicitors in England and Wales, Ireland and Scotland.

Table 6: Solicitors' training contracts/apprenticeships in England and Wales, Ireland and Scotland

Country	Profession	References	Length of period	Assessment/certification of work experience requirements	Specification for the work	Specification for the organisation	Specification for the supervisor	Mandatory courses during the period	Post-qualification limited licensure
England/Wales	Solicitor (excluding apprenticeship route) and until 2020	(SRA Training Regulations 2014 - Qualification and Provider Regulations, 2014.)	Maximum of two years (full time). Part-time can be overlapped to some extent with the Legal Practice Course	Record of training "which contains details of the work he or she has performed, how the <i>trainee</i> has acquired, applied and developed his or her skills by reference to the <i>Practice Skills Standards</i> and the <i>Principles</i> , and the <i>trainee's</i> reflections on his or her performance and development plans, and is verified by the individual(s) supervising the <i>trainee</i> ." Completion of the period and satisfaction of the standards is certified by the supervisor (SRA Training Regulations 2014, reg 5).	<ul style="list-style-type: none"> (paid) experience in at least three distinct areas of English and Welsh law and practice (recommendation that at least 3 months is spent in each area); ability to achieve the Day one outcomes/Practice Skills Standards and compliance with code of conduct (the Principles) appropriate supervision, including regular review and appraisal. (reg 12.1)	Must be an authorised training provider (Solicitors Regulation Authority, 2016a)	Training principal must have current solicitors' practising certificate or be a practising barrister and must ensure "ensure that any person involved in the training and supervision of a <i>trainee</i> has adequate legal knowledge and experience in the practice area they are supervising and the skills to provide effective supervision"	From 1994, Professional Skills Course (PSC) (unless partial or complete exemption obtained through the "equivalent means" process). Employers of trainees are required to pay for this course. Equivalent means applicants cannot guarantee that their employers will pay for the course. PSC may be delivered in house if the employing firm is validated to do so. Although it is intended to be taken during the period of recognised training, some employers have required trainees to complete it before starting their training contract proper. It includes:	Cannot be a sole practitioner or principal for a further 3 years (SRA Practice Framework Rules 2011, 2011, reg 12). Rights of audience in higher courts contingent on additional qualification.
England/Wales	Solicitor until 2020	(Solicitors Regulation Authority, 2014b).	At least two years	Measured against augmented work-based learning outcomes not Practice Skills Standards. Form setting out each of the outcomes is submitted to the professional regulator with corroboratory evidence (including eg samples of work) and corroborating references from employers Nevertheless, the form assesses not against the Practice Skills Standards but the Work-based Learning Outcomes with	SRA assessors will have regard to reg 12.1 (although there is a requirement that 3-6 months has been spent in each area of law) and to "how you have worked alongside solicitors, the legal nature of the work you have undertaken, the level of supervision, feedback and appraisals and interaction with clients or similar. We will be looking for a clear alignment between the work that you have done and the work which would be done by a trainee".	None	Implicit that supervision is by a solicitor	Advocacy and communication skills Client care and professional standards Financial and Business Skills Electives (Solicitors Regulation Authority, No date)	

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Country	Profession	References	Length of period	Assessment/certification of work experience requirements	Specification for the work	Specification for the organisation	Specification for the supervisor	Mandatory courses during the period	Post-qualification limited licensure
				the addition of negotiation.					
Northern Ireland	Solicitor	(Law Society of Northern Ireland, no date; 1988 a and b; Education Review Working Group, 2009)	2 years. Can be extended if student fails vocational course assessments. Indentures must be signed before the trainee starts to vocational course	Both Master and Apprentice must co-operate with the Society should the Society require an assessment to be made of the quality of training during apprenticeship.		Law firm or public service [NB: ABSS are not available in Northern Ireland]	Proposed master must have been admitted for at least 7 years and a partner/sole practitioner for at least 3 years. Alternatively solicitor in public services for at least 10 years Solicitors' Admission & Training Regulations (Qualification of Masters) 1988	4 months of the period must be completed prior to beginning the vocational course and a final year after completion of the course (Education Review Working Group, 2009, p 5). Education Review Working Group, 2009, p 25 recommended refresher basics in tort, contract, etc during the initial 4 month period.	Practice must be supervised for a further 3 years (or 2 years if sufficient CPD acquired)
Republic of Ireland	Solicitor	Law Society of Ireland (no date)	11 months post PPC I, 10 months post PPC II. Credit is available for work in a solicitors' office	Supervisor certifies trainee is a fit and proper person. Trainee must also pass the PPC I and PPC II assessments	<ul style="list-style-type: none"> the opportunity to practise the skills associated with the practice of law and the practice and profession of a solicitor (drafting, letter writing, interviewing and advising, legal research, negotiation, advocacy⁴⁵ and oral presentation)" Experience in both contentious and non-contentious work Experience in: <ul style="list-style-type: none"> Block 1 Conveyancing and Landlord and Tenant Law; and Block 2 Litigation And in two out of the remaining Blocks 3, 4 and 5: <ul style="list-style-type: none"> Block 3 Wills, Probate and Administration of Estates Block 4 Commercial Law; Corporate Law; Insolvency Law Block 5 Criminal Law and Procedure; Employment Law; 	Law firm, in-house.	Practising solicitor with at least 5 years' experience (The Solicitors Acts, 1954 To 1994 (Apprenticeship and Education) Regulations, 2001; Solicitors Acts 1954 to 2008 (Apprenticeship and Education) (Training Officer) Regulations 2011)	PPC I and PPC II	

⁴⁵ Although trainees have no rights of audience.

Solicitor Education in Ireland: A Comparative Analysis

Country	Profession	References	Length of period	Assessment/certification of work experience requirements	Specification for the work	Specification for the organisation	Specification for the supervisor	Mandatory courses during the period	Post-qualification limited licensure
					European Union Law; Family Law; Intellectual Property Law; Pensions Law; Planning and Environmental Law; Revenue and Taxation Law; Other specialised area(s) of legal practice				
Scotland	Solicitor	(Law Society of Scotland, 2017a)	2 years though can seek admission (but not discharge of t/c) after 1 year at the discretion of the firm if competence achieved. Part-time and training contract shared between organisations available	8 quarterly PEAT 2 reviews and reflective record. Must meet outcomes by end of period.	PEAT 2 outcomes: professionalism; professional communication; professional ethics and standards; and business, commercial, financial and practice awareness.	Includes local and central government, in-house and procurator fiscal. No requirement to provide seats.		Trainee continuing professional development	If admitted after 1 year can appear in court. Practice must be supervised for a further 3 years

6.2 Ireland

6.2.1 Republic of Ireland

This training period can be traced back with certainty to 1607 but may be even older. Until 2001 it had been known as an apprenticeship but with the advent of new regulations, apprentices became known as trainees, masters as training solicitors and the apprenticeship became the training contract. The period served has changed through the years from six years to three and in 1994 it became two. (Kennedy & Shannon, 2011, p 393)

As indicated in section 1, the professional legal education frameworks in both Northern Ireland and the Republic share a common root. Further, sections 1.5.6 and 1.6.4 set out the historical development and current position for trainees and their supervisors. That material is not repeated here, but it is worth noting that the current regulatory prescription for the training contract is that it should allow trainees the opportunity to practise certain skills, and to have experience in a breadth of fields of activity: it is a bottom up system.

The 2007 review by the LSI explored the possibility of making all trainees carry out four months of their training contract before embarking on the PPC. This was rejected on the basis that requiring trainees to have entered into their training contracts would mean that they would have to be paid by their employers whilst attending the PPC I, and a fear that this might reduce the number of training contracts available (Law Society of Ireland, 2007, paras 2.4.2, 3.4.2). Concern was also expressed, given, amongst other things increasing specialisation in the workplace, about the continued requirement to provide trainees with the designated blocks of experience (*ibid*, para 2.4.4) and it was recommended that this should be reviewed (*ibid*, para 3.4.6). Amongst other recommendations was increased support for supervisors (*ibid*, paras 3.4.4-3.4.5).

Clinical legal education in Ireland was comparatively slow to establish itself in the universities (Donnelly, 2008) but is now substantially more developed (Donnelly, 2015). Whether this could be used to help spread the difficulty of breadth of experience may be worth consideration.

6.2.2 Northern Ireland

A distinction with the Republic of Ireland in terms of what is still known in Northern Ireland as the apprenticeship is that the requirement that four months of the apprenticeship should be served before embarking on the vocational course has been reviewed (Education Review Working Group, 2009, para 6.3.7) and retained. Current regulations are those of 1988, as amended, and it is not clear to what extent, if at all, the recommendations of the 2009 review have been accepted.

The review was, however, strongly in favour of retaining the integrated system:

Consequently, lectures and course exercises at the Institute or Graduate School can be applied in practice to situations taking place in the office with clients of the firm in which the applicant is apprenticed.

...

Similarly, in-office experiences involving real cases and real clients can be informed by the classroom teaching.

...

Apprentices who are students of the Law Society are, from the outset of their training, part of the profession and are exposed to the needs and expectations of their firms and clients. From an educational perspective integration changes the culture and working and learning environment of the course. Training in an integrated system gives a greater understanding of the practical working environment. Training in a sequential model, where trainees attend vocational training first and then seek a training contract, can lead the vocational training course to be viewed as another stage in academic training, removed from the office..... The admissions system in Northern Ireland has the advantage that an applicant who has both a training place and an office will, on satisfactory completion of their two-year training period, be eligible to be admitted as a qualified solicitor.

(*Ibid*, paras 6.25-6.26, 6.2.9)

Nevertheless,

The ERWG considered that insufficient attention had been paid to the provision of training for Masters, the development of guidelines for apprentices, the measurement of quality of in-office training, the assessment of skills and knowledge progression of the apprentice and the development of contact between the Law Society, the apprentice and their host firm.

(*ibid*, para 12.4)

Suggestions to assist in remedying this included:

- Online reporting by both apprentice and supervisor (and prior approval of supervisors);
- That training officers with at least five year's PQE and having attended a training course (at least 3 CPD hours) should be introduced;
- That apprentices should be exposed to at least four areas of work including at least Conveyancing, Wills & Probate, Corporate, Employment, Commercial Property, Litigation (County Court, High Court or Magistrates Court), Criminal and Family Law
- That a list of target tasks for apprentices to complete should include "attending client interviews, taking phone calls, making appointments, attending with Counsel, filing court papers at various court offices, attending at the Companies Registry and Land Registry, observing cases at Petty Sessions, County Court and High Court, drafting documentation for approval by the relevant supervising solicitor (e.g. Wills, Conveyances, Land Registry Transfers, Writs, corporate or commercial documents)" (*ibid*, para 12.13.12)

6.3 England and Wales

6.3.1 Current position

Compared to some of the civil law countries, where the universities became the site of legal education in the 16th and 17th centuries, the common law countries tended to rely for much longer on workplace routes to legal qualification. The English solicitors' profession became graduated only after the second world war and through an increase in access to higher education in the 1960s and 1970s.

The "five years' articles" route to qualification as a solicitor persisted into the 1980s, with the result that some graduates of this system are still in practice (Gurney-Champion, 2016). A non-graduate route has been retained, however, with Fellows of the Chartered Institute of Legal Executives able to transfer into the solicitors' profession. As the rights of legal executives to, for example, practise independently of solicitors, become partners in firms and members of the judiciary have increased, there seems to be a concomitant decrease in interest in changing profession (Ching & Henderson, 2016, p 8). The route remains available, but statistics routinely demonstrate that the take up is small.

So, in 2015-2016, 247⁴⁶ legal executives cross-qualified, 3.9% of the total new admissions in that year (Law Society of England and Wales, 2017, p 51)

Arising in part from the work based learning project, (Ching, 2010, BMG Research, 2012) between 2008 to 2013, which had, in part, explored a clinical supervisor/educational supervisor outcomes and portfolio based approach for LPC graduates without a training contract, in July 2014, the Solicitors Regulation Authority created a mechanism to assess non-standard applicants. This proceeds on a case by case basis to see if applicants have attained the relevant competences for any (or all) of the three elements (degree, vocational course, training contract): “equivalent means”. The process consolidates exceptional routes for legal executives, *Morgenbesser* applicants (including holders of Irish law degrees) and mature entrants (Solicitors Regulation Authority, 2014a). Including a partial exemption route for graduates of the barristers’ vocational qualification and the Qualified Lawyers Transfer Scheme for fully qualified foreign lawyers – but excluding the different permutations by which one can achieve the CILEx qualification -, there are, therefore, now 19 different routes by which to qualify as a solicitor in England and Wales (Ching, 2016, table 11).

Something that also adds to the complexity of the field is the proliferation of sets of outcomes and competence statements that have been used to deal with this stage of training and its assessment. In March 2007, the SRA developed a set of competences for the point of qualification (the “day one outcomes”). It was apparently intended that these should become a common benchmark for the point of qualification for all applicants. In fact, this set of outcomes has been explicitly assessed only for transferring lawyers, where some are tested in the Qualified Lawyers Transfer Scheme (Solicitors Regulation Authority, 2017c). The outcomes relating to “Intellectual, analytical and problem-solving skills” and “Personal development and work management skills” are, not, however, assessed with this group “as they are assumed of all qualified lawyers” (even if they have been able to “qualify” without any prior workplace experience).

The domestic training contract had, however, moved, over time from a checklist of experiences to be obtained, to a comparatively passive set of Practice Skills Standards although there is reference to also achieving the day one outcomes in the material provided to trainees and to firms. The SRA intended to replace the Practice Skills Standards with the more active work-based learning outcomes. This was postponed when the Legal Education and Training Review was announced, with the result that only participants in the work-based learning pilot project were assessed against those outcomes, although they are now, with the addition of a competence relating to negotiation, used in assessing equivalent means applications against the training contract. The work-based learning outcomes were, then, intended to represent close of business on the last day of the training contract; and the day one outcomes the point of opening for business on the first day after qualification. They did not, unfortunately, map neatly against each other (Ching, 2009, appendix IIB).

6.3.2 Post 2020 proposals

It is perhaps unsurprising that, even aside from the LETR recommendations that outcomes be developed for each profession, the SRA should have revisited the question and produced what is now the Statement of Solicitor Competence (Solicitors Regulation Authority, 2015b). Although this is intended to represent day one competence in both scope and level, current trainee information still refers to the Practice Skills Standards and Day One Outcomes (Solicitors Regulation Authority, 2016b),

⁴⁶ For the purposes of comparison, over the same period, 5, 489 people qualified through the conventional domestic degree plus vocational course route; 532 overseas lawyers and 17 barristers cross-qualified.

with the result that it is only currently in use in relation to qualified solicitors' CPD. It is the regulator's current plan that, from 2020 (Solicitors Regulation Authority, 2017a) the plethora of existing routes and required courses (including those for transferees) will be replaced by a single assessment in two parts, modelled along the lines of the QLTS, which will assess the Statement of Solicitor Competence (Solicitors Regulation Authority, 2017b). Applicants will need to have "a degree [in any discipline] or equivalent qualification or experience". It also seems to be assumed that candidates will take the second part of the Solicitors Qualifying Examination after they have completed "qualifying legal work experience, for at least two years (or part time equivalent), and which can be certified by either a solicitor or a compliance officer for legal practice" (Solicitors Regulation Authority, 2017a). Whether employers in England and Wales will adapt to taking the risk of employing trainees who may yet fail the assessment in the way that is familiar and accepted in Ireland, remains to be seen.

6.4 Scotland

In 2001 and 2002, the Law Society of Scotland piloted a centralised assessment of trainees, intended to be taken shortly before the end of the traineeship and to assure competence at the point of qualification (Maharg, 2001, 2002). Problems including insuperable difficulties in aligning the assessment and its criteria with an open book assessment resulted in a different approach, that remains in place. This involves a set of layered competence statements (PEAT 1 and PEAT 2), for the vocational course and for the traineeship (for some aspects of this in the law firm context, see Westwood, 2015).

Although an alternative entry route exists, by-passing the degree (Law Society of Scotland, 2017b) and the vocational course using workplace experience, fewer than 20 people are known to be using these routes (Law Society of Scotland, 2017d, pp 2-3). A consultation is in train on alternative routes to qualification, but, as in England and Wales, there is no appetite to drop the workplace experience component (ibid, p 4) and, other than a proposal to allow Scottish Accredited⁴⁷ Paralegals (Law Society of Scotland, 2017c) a progression route, the proposals involve variants of alternatives to the degree and the vocational course.

⁴⁷ From 2017, previously "Registered Paralegals".

6.5 References

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7 Comparative analysis of international systems and other relevant sectors and professions

7.1 Introduction

Discussion of the qualification and CPD systems of legal professions in the EU and elsewhere, and comparison with accountancy, medicine and surveying pervade this document. In this section, therefore, that discussion is synthesised into a substantial comparative table of pre-qualification requirements. CPD requirements are covered separately in Table 1 of section 3.

Globally, there is a limited repertoire of elements in professional legal structures:

- Aptitude tests (e.g. LNAT (LNAT Consortium, no date), LSAT (Law School Admission Council, 2017), BCAT (Bar Standards Board, 2017) and entrance examinations such as the FE-1;
- Continuing legal education/continuing professional development (see section 3);
- Investigations into fitness and character;
- Periods of apprenticeship (variously called articles, in-office training, training contract, pupillage, clerkship, internship);
- Postgraduate law degrees (e.g. LLM or conversion courses for graduates in non-law disciplines) or JD;
- Postgraduate vocational courses (variously called professional practice course, practical legal training course, diploma in professional practice, legal practice course, postgraduate certificate in laws etc.);
- Short courses, interventions or assessments undertaken whilst working;
- Specialist accreditations and qualifications (see section 3.3.4);
- Summative bar examinations (written, oral, by interview, by portfolio);
- Undergraduate law degrees (3-5 years) which may include voluntary/mandatory clinic/placement/sandwich elements.

To this one can perhaps add alternative routes, which may, as do the “law office/law reader” routes in some US states, and the Trailblazer apprenticeship routes and “equivalent means” processes in England and Wales, provide alternative routes bypassing one or more of these elements. Although most professions will have concerns about widening access, fairness in recruitment and the predictive validity of assessments, they will also have their own concerns. So, for example, medical professions may have a more strongly articulated cultural attachment to teaching as a competence for individual professionals, and have a current interest in co-learning with members of other health professions. Unlike law at the academic stage, there is no question that medicine, as studied in universities, is envisaged as a preparation for professional practice. Accountancy, as discussed in section 7.4.3, has a more ostensibly coherent global framework by virtue of the requirements of the IAESB.

Arrangements for transfer between professions, including arrangements for foreign lawyers, have not been included in this section. Investigations into fitness and character have not been included. It should be noted that information may have become out of date although attempts have been made wherever possible to obtain current information.

7.2 Legal Professions

Table 7 Comparative analysis of legal professions

Country	Profession	Reference	Academic (UG/PG, content, length, assessment)	Vocational (content, length, assessment)	Work experience (content, length, place, assessment)	Centralised summative assessment (if any)
IRELAND						
Republic of Ireland	Barristers	(The Honorable Society of King's Inns, No date a, b, c; 2014; Bar of Ireland, No date)	Law degree from approved provider/two year Kings' Inn Diploma in Legal Studies covering six core subjects: Land Law (including the Law of Succession)/ Equity & Trusts/Jurisprudence/Company Law/Law of the European Union/Administrative Law	1 year FT/2 years PT Admission by entrance examination in contract/criminal/constitutional/torts /evidence Content: remedies and quantum/practice and procedure/legal skills/ethics and practice management/mock trials/court attendance/ two options Compulsory non-examined Irish course	One year pupillage/devilling (unpaid) + CPD following the vocational course. Since 2015, a new practitioners programme.	By default as there is a single provider for the vocational course
Republic of Ireland	Legal Executives (MILEx)	(Irish Institute of Legal Executives, 2014)	University Law Degree/Diploma in Law or Legal Studies from a recognised provider		3 years employment (10 years plus submission of a paper for FILEx)	Possibility of assessment by oral interview
Republic of Ireland	Solicitors	(Law Society of Ireland, no date a and b, 2016; Kennedy & Shannon, 2011)	Preliminary examination for non-graduates/law or other degree/ law clerk with 5 years' experience	1 year FT (in two instalments) Admission by entrance examination in company/constitutional/contract/criminal/EU/equity/land/tort Content: PPC I : foundation course/land law/probate and tax/business/litigation/Irish/skills (DRAIN and professional development) PPC II: employment/family/professional practice, conduct and management/electives	24 months in parallel with vocational course (see Table 6 for details)	By default as there is a single provider for the vocational course
UK						
Northern Ireland	Barristers	(Bar of Northern Ireland, No date, 2017; Queen's University Belfast Institute of Professional	Qualifying law degree	1 year FT Admission by admissions test in tort/contract/criminal/land/grammar /numeracy Bar Post-Graduate Diploma in Professional Legal Studies	12 months pupillage with a pupilmaster of at least 7 years standing. Must complete CPD including an advocacy course	By default as there is a single provider for the vocational course

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Country	Profession	Reference	Academic (UG/PG, content, length, assessment)	Vocational (content, length, assessment)	Work experience (content, length, place, assessment)	Centralised summative assessment (if any)
Northern Ireland	Solicitors	Legal Studies, 2017)	Approved law degree covering constitutional/tort/contract/criminal/equity/EU/land/evidence. Alternatively non-law degree and knowledge of those subjects or 30 years of age and experience	Content: High Court, Chancery, Family Law, County Court/Consumer Law, Criminal Procedure (both summary and on indictment), Evidence, Conveyancing, Company Law & Partnership, Insolvency, Tribunals, Accounts, Enforcement of Judgements, PACE, Professional Conduct, Wills, Revenue, Administration of Estates, Licensing, Legal Aid and Human Rights, DRAIN skills and practice management	2 years in parallel with vocational course (see Table 6 for details)	By default as there is a single provider for the vocational course
		(Law Society of Northern Ireland, No date; Queen's University Belfast Institute of Professional Legal Studies, 2017)				
Scotland	Advocates	(Faculty of Advocates, No date a and b)	Degree in Scots law from approved university covering prescribed subjects	1 year course at one of six providers covering PEAT 1 outcomes. Content: professionalism/professional communication (including DRAIN)/professional ethics and standards Admission by examination in evidence/practice and procedure	Must complete at least 21 months of solicitors' 2 year training contract, then 8-9 month pupillage/devilling. Compulsory advocacy skills. Must cover both civil and criminal practice.	
Scotland	Solicitors	(Law Society of Scotland, 2009, 2017)	Degree in Scots law from approved university covering prescribed subjects/3 year training contract plus examinations	1 year course at one of six providers covering PEAT 1 outcomes. Content: professionalism/professional communication (including DRAIN)/professional ethics and standards	2 years including trainee CPD. Must meet PEAT 2 outcomes: professionalism; professional communication; professional ethics and standards; and business, commercial, financial and practice awareness. (see section 6, table 1 for details)	
England and Wales	Barristers	(Bar Standards Board, 2016a, and b, 2017)	Qualifying law degree/GDL (2:2 or better)	Admission by BCAT ⁴⁸ (must also be a member of an Inn) BPTC ⁴⁹ (1 year FT/2 years PT) at one of 8 providers. Content: Civil litigation, evidence & remedies/Criminal litigation, evidence & sentencing/Advocacy, Conference skills/ Opinion writing/Drafting/Professional Ethics/Resolution of Disputes out of court Partly assessed by provider (including performance assessments) and partly centrally assessed	1 year pupillage (rights of audience after 6 months) Mandatory courses in advocacy/practice management/forensic accountancy Assessed against competence statement by pupilmaster	Parts of the BPTC are centrally assessed

⁴⁸ This is a critical thinking test rather than a re-test in law.

⁴⁹ The structure of this course will become more flexible from 2018: (Bar Standards Board, No date)

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Country	Profession	Reference	Academic (UG/PG, content, length, assessment)	Vocational (content, length, assessment)	Work experience (content, length, place, assessment)	Centralised summative assessment (if any)
England and Wales	FILEx	(Chartered Institute of Legal Executives, No date a and b; 2017a and b)	No degree necessary (although a graduate fast track route is available) If not exempt: <ul style="list-style-type: none"> level 3⁵⁰ Professional Diploma (PT). Content: introduction to law and practice/contract/crime/land/tort/client care/legal research and 3 other units level 6⁵¹ Diploma in Law and Practice (PT). Content: 1 practice unit and its associated law unit/2 law units/client care/legal research 		3 years qualifying employment of which one year must occur after the level 6 diploma has been achieved.	Qualifying employment assessed by portfolio (using competence statement) submitted to the regulator
England and Wales	Solicitors (until 2020) (excluding apprenticeship route) ⁵²	(Solicitors Regulation Authority, 2014a, and b)	Qualifying law degree/GDL/FILEx/equivalent means ⁵³	1 year FT/2 years PT Legal Practice Course ⁵⁴ at one of c30 providers ⁵⁵ Content: professional conduct/wills/tax/business/property/litigation/practical legal research/writing/Drafting/interviewing/advocacy/two electives The LPC is sometimes embedded into an LLM Assessed by provider	2 years including mandatory Professional Skills Course. Must satisfy Practice Skills Standards (see Table 6 for details). Signed off by employer	
	Solicitors (from 2020)	(Solicitors Regulation Authority, 2017)	Degree or its equivalent (need not be in law)/apprenticeship SQE1 – linked to competence statement - may be taken during or after the degree	[Likely that grinds will emerge to support SQE1 and SQ2 but they will not be mandatory]	2 years supervised by a solicitor and completion signed off by employer	SQE2 (may be taken during or after the 2 year period) linked to competence statement.
SELECTED OTHER JURISDICTIONS						
Australia ⁵⁶	Lawyer	(Australian National University, 2015; Bond University, 2017; Douglas & Nottage, 2009;	LLB/JD ⁵⁷	Practical Legal Training/Tasmanian LPC. Often a combination of face to face and online delivery, may be embedded into a graduate diploma. Usually PT 2 semesters/6 months	In states where a training contract is available: 1 year (which may, as in WA, have courses in parallel) Otherwise 15 weeks or 5 weeks plus Clinical Experience Module within the vocational course	Signed off by supervisor/assessed within vocational course linked to competence framework

⁵⁰ Irish level 5.

⁵¹ Irish level 8.

⁵² See Solicitors Regulation Authority, 201).

⁵³ There is a small number of exempting law degrees that combine the LLB and the LPC or BPTC: (Solicitors Regulation Authority, No date).

⁵⁴ A small number of exempting degrees, combining both stages is available.

⁵⁵ It is theoretically possible to separate the LPC into two stages and study them separately at two different providers and, as with the PPC, with a period of work experience between. Not only has this caused difficulty for providers in determining which of two institutions makes the relevant award, but there has been almost no take up as employers did not wish to take on the risk of a part-qualified trainee who might yet fail.

⁵⁶ For further discussion, particularly of the apprenticeship stage, see (Ching, 2016, para 9.2.1).

⁵⁷ Flinders University offers a 4-year exempting degree: (Flinders University, 2017).

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Country	Profession	Reference	Academic (UG/PG, content, length, assessment)	Vocational (content, length, assessment)	Work experience (content, length, place, assessment)	Centralised summative assessment (if any)
		Leo Cussen Centre for Law, 2017; Law Admissions Consultative Committee, 2017)				
Canada ⁵⁸	Lawyer/solicitor/barrister ⁵⁹	(lawyer.edu.org, 2015)	Admission may be by LSAT JD in either common law or civil law (Quebec)	Provinces vary in having the vocational course precede articles or take place (possibly online) during articles	6-12 months (or LPP course including a workplace component in Ontario)	Bar examinations in New Brunswick, Northwest Territories and Nunavut and Ontario. Otherwise assessment is by the vocational course and sign off of work experience. Linked to competence statement
New Zealand	Barrister and solicitor	(New Zealand Law Society, 2017; New Zealand Council of Legal Education, No date; College of Law, 2016).	LLB at approved university	Professional Legal Studies Course at one of two providers of 13-18 weeks in length (PT and online options are available) Content: civil litigation/commercial/property/professional responsibility/professional skills/office and personal management and elective ⁶⁰		Only for foreign entrants
USA ⁶¹	Attorney	(National Conference of Bar Examiners, 2017 a and b; University of New Hampshire, 2015; SCR CHAPTER 40 Admission to the Bar, No date, s 40.3; Cravath, Swaine & Moore LLP, 2017)	JD/law office programme	Some states require completion of short face to face or online courses prior to admission	Delaware: 5 month clerkship New York: 50 hours pro bono Some states have mentoring schemes and some law firms operate schemes for their staff	Bar exam organised by local bar or local courts (exceptions in New Hampshire and Wisconsin)
REMAINDER OF EUROPE						

⁵⁸ For further discussion of Ontario, particularly of the apprenticeship stage, see (Ching, 2016, para 9.2.3).

⁵⁹ Quebec notaries have been excluded.

⁶⁰ One of the two providers takes a skills-led rather than transaction-led approach: (Institute of Professional Legal Studies, 2017).

⁶¹ For further discussion, particularly of pro bono requirements and law office/law reader routes, see (Ching, 2016, para 9.1).

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Country	Profession	Reference	Academic (UG/PG, content, length, assessment)	Vocational (content, length, assessment)	Work experience (content, length, place, assessment)	Centralised summative assessment (if any)
Austria	Rechtsanwalt/in	(Gesamte Rechtsvorschrift für Rechtsanwaltsprüfungsgesetz, 1985; Österreichische Rechtsanwaltskammer, 2014)	Law degree	5 years including 42 days of compulsory courses. Must include 5 months in a court, 3 years in a law firm and 19 months in another entity (eg public prosecutor's office)		Examinations can be taken after 3 years' of the training contract and completion of compulsory courses Written examination is 8 hours of drafting pleadings. 2 hour oral examination in civil and criminal law, procedure, company law and insolvency, tax, administrative law and professional conduct.
Belgium	Dutch speaking lawyers	(Orde van Vlaamse Bailees, 2014)	Law degree	At least 3 years. The trainee must cover judicial procedures, criminal, administrative law, family, labour law, commercial and bankruptcy law, financial law, ethics and business accounting.		Examination (written and evaluation of a case) taken during first year
Belgium	French/German speaking lawyers	(Ordre des Barreaux Francophones et Germanophones, 2014 ;Barreau de Bruxelles Ordre français, No date)	Law degree	3 years of which the first two are organised by the bar and the third involves at least 20 CPD points a year. During the period the trainee must cover a common curriculum of ethics/law firm organisation/judicial procedures/criminal law/legal aid and at least three electives, including skills and take part in mootings and marshalling as well as dealing with at least 15 cases and carrying out pro bono work.		Written and oral examinations at the end of the first two years of the training contract.
Bulgaria	адвокат	(Supreme Bar Council, 2014)	Law degree		Must have at least 2 years' experience before attempting the examinations but there is no formal training contract.	Written and oral examination (candidates with a doctorate or 5 years' experience are exempt)
Croatia	Odvjetnik	(Hrvatska odvjetnička komora, 2014)	Law degree	3 years in a law firm or 4 years in-house. Mandatory CPD of 150 hours in preparation for the bar examination		Bar examination
Cyprus	Advocate	(Cyprus Bar Association, 2014)	Law degree		At least 12 months with a supervisor of at least 5 years PQE in private practice or central government	Written examinations
Czech Republic	Právník	(Česká advokátní komora, 2014)	Law degree	At least 3 years in a law firm or in-house with compulsory training courses on private law/public law/criminal law/lawyers' skills and elective topics		Written and oral examinations
Denmark	Advokat	(Advokatsamfundet, 2014)	3 year UG law degree and 2 year LLM	3 years under the supervision of a lawyer (can be reduced to 1 year for prior experience). Covers procedural law/legal skills/other professional skills. Compulsory core curriculum and training on legal skills.		Written and oral examinations and evaluation of a case
Estonia	Advocaat	(Eesti Advokatur, 2014; IBA, No date)	Law degree (possibly masters or PhD)	3 years. Training on skills including drafting, office management organised by a university through a school of legal practice		Written examination, oral examination, interview

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Country	Profession	Reference	Academic (UG/PG, content, length, assessment)	Vocational (content, length, assessment)	Work experience (content, length, place, assessment)	Centralised summative assessment (if any)
Finland	Lakimies	(Suomen Asianajaliitto, No date a and b, 2014)	Master of laws degrees	"a two-day course on ethical and practical issues of advocacy (the ethical part) and a course that lasts 12 weeks covering basic process skills (process part) starting with written home work before a two-day course." [considered to be part of the bar exam]	"at least four years in the field of judicial administration or in comparable duties requiring legal education but, in any case, for at least two years as an associate, public legal aid attorney or independent legal practitioner resulting in comparable experience in advocacy"	Examination in professional ethics and professional conduct (can be taken before or after the four years' work experience)
France	avocat	(Conseil national des barreaux, 2016, 2017a and b)	Master of Laws 1 (exemptions for some legal professionals) First CAPA examination	18 months at one of 15 providers. <ul style="list-style-type: none"> Initial 6 month curriculum is ethics/drafting/advocacy/procedure/office management/foreign language 6-8 months on an individual project Admission by CRFPA entrance examination (includes a modern language test and an oral presentation on a case)	6 months in a law firm following initial 12 months of vocational course. There is a proposal to replace the current 18 month period, to, amongst other things, avoid repeating topics that students have already covered at university. This will include: <ul style="list-style-type: none"> A 4 month vocational course 6 months internship 2 months project work An optional additional 6 – 12 months 	Final CAPA examination Proposal is to replace this by a certificat d'aptitude à la profession d'avocat référendaire examination with an emphasis on ethics
France ⁶²	Notaire (voie professionnelle)	(Notaires de France, 2014)	Masters 2 in law	1 month FT at a Centre de Formation Professionnelle Notariale	30 months including 5 modules	Internship report
	Notaire (Voie universitaire) ⁶³		Masters 2 in law (includes 1 month placement)	Diplôme supérieur du notariat: 1 internship alternating with four periods in the classroom		
Germany ⁶⁴	Rechtsanwalt	(Grimm, No date; LTO, No date; Wolff, 2006; Bundesrechtsanwaltskammer & Deutscher Anwaltverein, 2014)	4-5 year university course includes mandatory subjects related to the first examination	Preparation for Erste Juristische Prüfung (up to a year) may be supported by a grind provider	2 years organised by the state (it may be necessary to wait for up to a year before a place is available). Rotation is around courts, prosecutors, law firms.	Zweites Staatsexamen
Greece	δικηγόρος	(Adamopoulos, 2016; Athens and	Law degree		18 months and curriculum set by local bar association. Possible to take 6 months of the	Written examination

⁶² For further discussion, particularly of the apprenticeship stage, see (Ching, 2016, para 9.2.2)

⁶³ A third route for experienced notarial clerks is not set out here.

⁶⁴ For further discussion, particularly of the apprenticeship stage, see (Ching, 2016, para 9.3)

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Country	Profession	Reference	Academic (UG/PG, content, length, assessment)	Vocational (content, length, assessment)	Work experience (content, length, place, assessment)	Centralised summative assessment (if any)
		Piraeus Bar Associations, 2014)			period in public legal practice eg in the court service.	
Hungary	Jogász	(Budapest Bar Association, 2007; Chu, 2016; Magyar Ügyvédi Kamara, 2014)	5 year Law degree (doctor of law)	3 years with a mandatory 42 days of classroom training organised by the local bar		Examinations (oral examination has been abandoned)
Italy ⁶⁵	Avvocat	(Villani, 2017)	Law degree	18 months (up to 12 months of which can be in a public body/court service). Attendance at a scuole di specializzazione per le professioni legali		State examination (written and oral)
Latvia	Advokāts	(Latvijas Zvērinātu advokātu padome, 2014)	Law degree (or period of practice)	At least 5 years under the supervision of a lawyer of at least 7 years PQE. Must publish a paper and contribute to the work of the bar council in the first year; practice in criminal administrative and civil law in the second year and after the second year practise in those areas independently Lectures once a month on the bar examination topics.		Bar examination (PhDs are exempt): after first, second and final year of apprenticeship
Lithuania	Teisininkas	(Lietuvos advokatūra, 2014; Anon, No date b)	Law degree: bachelor or masters of “a lawyer’s professional qualification degree (one-cycle university education in law)”		2 years (assessed through written reports) as advocates’ assistant (those with 7 years’ practice experience are exempted from this)	Written and oral examination
Luxembourg	Avocat	(Mémorial A n° 140 de 2009, 2009) Ordre des avocats du Barreau de Luxembourg, 2014)	Masters degree in law	October to April “complementary course” (examined and with provision for referrals). Written examinations in knowledge areas	2 years plus (examined) training in parallel on eg skills. Must cover sources of law/procedure/criminal law/family law/labour law/commercial and bankruptcy law/financial law/ethics/business accounting/drafting	Written examination
Malta	Avukat	(Chamber of Advocates, 2014)	LLD (equivalent to an LLM) required for advocates (LLB for procurators) (from 2016 a 4 year BA and a 1 year LLM)		1 year (there seems to be a proposal to extend it to 2 years for advocates)	State examination (written and oral and including ethics)
Netherlands ⁶⁶	Advocaat	(Kolb, No date; Nederlandse orde van advocaten, 2014)	Undergraduate law degree followed by doctorate/masters degree	3 years Content: Year 1 civil law, administrative law, criminal, ADR, ethics Year 2 professional attitude, evidence gathering, optional courses in civil, administrative, criminal, accounting Year 3 professional attitude, ethics, skills, options in civil, administrative and criminal		Written and oral examinations and reports from tutors
Poland	Prawnik	(Krajowa Izba Radców	LLM at least	Admission to apprenticeship by entrance exam on various areas of law (which candidates may already have covered		Examinations (PhDs, judges, notaries are exempt)

⁶⁵ For further discussion, particularly of the apprenticeship stage, see (Ching, 2016, para 9.4)

⁶⁶ A review of Dutch legal education is taking place: (Nederlandse orde van advocaten, 2017)

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Country	Profession	Reference	Academic (UG/PG, content, length, assessment)	Vocational (content, length, assessment)	Work experience (content, length, place, assessment)	Centralised summative assessment (if any)
		Prawnych, 2014, 2015)		3 years (exemptions for substantial periods in practice). Divided up into periods on different areas of law and with accompanying classes in theory		
Portugal	Advogado	(Comissão Nacional de Estágio e Formação da Ordem dos Advogados, 2014; Estatuto da Ordem dos Advogados, 2015, Anon, 2016)	Law degree or recognised foreign law degree (art 194)	Initial examination and additional courses (6 months) (art 195)	Second stage (12 months)	Written and oral exams and reports from tutors evaluating the learning from both stages
Romania	Avocat	(Uniunea Națională a Barourilor din România, 2014; (Anon, No date a)	Law degree		Admission as probationary lawyer by entrance exam[? Information conflicts] 2 years covering civil law and procedure, criminal law and procedure, UU and ECHR law, professionalism, competition law	State examination (written and oral)
Slovakia	Právnik	(Slovenská advokátska komora, 2014)	Law degree	5 years Compulsory courses on law and skills in eg Bar seminars. Content: criminal/civil/family/labour/company/administrative/tax/constitutional/ethics		
Slovenia	Odvetnik	(Odevetniška zbornica Slovenije, 2014)	Law degree (LLB)		4 years (of which at least 1 year is after having passed the state exams) Training is focused on the exams: written exam (drafting judgments) and an oral exam in criminal/civil/commercial/labour/administrative law and procedure/constitutional law/judicial system/EY law	Test on law regulation the legal profession, legal fees and legal ethics (organised by the Bar)
Spain	Abogado	(Anon, No date c; Mamou, No date; Consejo General de la Abogacía Española, 2014)	Law degree (5 year graduate degree)	11 months masters training course	6-7 months internship	State examination (MCP and case study)
Sweden	Advokat	(Anon, 201; Anon, 2017; Sveriges Advokatsamfund, no date, 2014)	Law degree	3 years Bar association training		Swedish bar examination

7.3 Non-Legal Professions

Table 8 Comparative analysis of selected non-legal professions

Country	Profession	Reference	Academic content, (UG/PG length, assessment)	Vocational (content, length, assessment)	Work experience (content, length, place assessment)	Centralised summative assessment (if any)
Republic of Ireland	Accountants (flexible route for those already working)	(Chartered Accountants Ireland, 2017.)	Accredited or non-accredited UG or PG degree in accounting or another subject, or Accounting Technicians Ireland qualification	Minimum length: three years for accredited masters or postgraduate students, three-and-a-half years for graduates, four years for Accounting Technicians; maximum eight years Examinations (CAP 1 and CAP2, with exemptions for those with existing accountancy degrees/qualifications). Final FAE assessment can be taken only after at least one year's experience		CAP1, CAP2 and FAE
Republic of Ireland	Accountants (training contract route, more structured route)			Three-and-a-half years; for recognised masters or postgraduates, three years; Accounting Technicians, four years. Examinations (CAP 1 and CAP2, with exemptions for those with existing accountancy degrees/qualifications). Final FAE assessment can be taken only after at least one year's experience		
Republic of Ireland	Doctors	(Australian Council for Educational Research, 2016; Medical Careers for Ireland, No date; RCPI, 2017; Health Service Executive, 2017, Medical Council, 2011)	Admission by HPAT to NUI Galway, Royal College, TCD, UCC, UCD and UL (for qualifications in therapy) 4-6 year undergraduate medical degree assessed by the university.	12 months (minimum) in a hospital approved by the Medical Council Content (compliance with standards for intern's exposure): 3 months general surgery 3 months general medicine 2 3 month rotations in other areas Formal training sessions Internship may be assessed. Followed by <ul style="list-style-type: none"> basic specialist training as an SHO in a hospital (2 years) and higher specialist training as a registrar (4-6 years) 	Specialist training is by relevant professional body	
Republic of Ireland	Surveyors (graduate route 1) ⁶⁷	(Society of Chartered Surveyors Ireland, No date a, b, c, d)	RICS/SCSI accredited degree	2 years linked to competence statement 48 hours of professional development each year		60 minute interview, including presentation:

⁶⁷ Academic, senior and eminent professionals routes omitted.

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Country	Profession	Reference	Academic content, (UG/PG, length, assessment)	Vocational (content, length, assessment)	Work experience (content, length, place assessment)	Centralised summative assessment (if any)
						competencies, professional practice and ethics
	Surveyors (graduate route 2)		RICS/SCSI accredited degree + at least 5 years' experience (which may be pre-degree)	1 year linked to competence statement 48 hours of professional development		60 minute interview, including presentation: competencies, professional practice and ethics
	Surveyors (graduate route 3)		RICS/SCSI accredited degree + at least 10 years' experience			Competence records, CPD records, CV and 3,000 word critical analysis. 60 minute interview including 10 minute presentation on critical analysis
	Surveyors (adaptation route)		RICS/SCSI approved professional or non-accredited degree AND 450 study hours from the final year of an RICS/SCSI degree before applying for Final Assessment + at least 10 years' experience			Competence records, CPD records, CV, evidence of the 450 hours and 3,000 word critical analysis. 60 minute interview including 10 minute presentation on critical analysis
England and Wales ⁶⁸	Chartered Accountants	(Institute of Chartered Accountants of England and Wales, 2017a, b, c, d)	School leaver programme (typically over a 4-5 year period) 450 days of work experience 15 courses and written assessments in aspects of finance accountancy and business, with a complex case study as the final module and assessment Demonstrated development in skills of Communication/Team working/Decision making/Consideration/Adding value/Problem solving/Technical competence Ethics pervades the diet of modules			Modules are assessed centrally by the professional body
			UG degree in any subject (normally at least a 2:1) ⁶⁹	Graduate programme (typically 3-5 years) 450 days of work experience 15 courses and written assessments in aspects of finance accountancy and business, with a complex case study as the final module and assessment ⁷⁰		

⁶⁸ For further discussion, particularly of the apprenticeship stage, see (Ching, 2016, para 8.1). A five year apprenticeship integrated with a vocational degree is also available: (Institute of Apprenticeships, 2016)

⁶⁹ Only 21% of students have degrees in accounting and finance. Those that do may be allowed exemptions from some modules (and law graduates may be allowed exemption from the law module).

⁷⁰ It is possible to study the first six modules whilst still a student.

Country	Profession	Reference	Academic content, (UG/PG, length, assessment)	Vocational (content, length, assessment)	Work experience (content, length, place assessment)	Centralised summative assessment (if any)
				Demonstrated development in skills of Communication/Team working/Decision making/Consideration/Adding value/Problem solving/Technical competence Ethics pervades the diet of modules		
England and Wales ⁷¹	Doctors	(British Medical Association, 2017; Health Careers, 2015a and b)	Admission by UKCAT, BMAT or GAMSAT 4 -6 year undergraduate medical degree assessed by the university ⁷²	Foundation years 1 and 2 Core Medical Training 2 years Formal training sessions and assessments Followed by <ul style="list-style-type: none"> specialist training (4-6 years) or GP training (3 years) 	MRCP (UK) exam after Core Medical training Specialist training by relevant professional body	
England and Wales ⁷³	Surveyors ⁷⁴	(Royal Institution of Chartered Surveyors, 2017a, b)	RICS accredited degree ⁷⁵	2 years linked to competence statement 48 hours of professional development each year		Final assessment interview linked to competence statement supported by summary of experience, CPD records and case study. Includes 10 minute presentation on the case study. Online ethics test
			RICS accredited degree + 5-9 years' experience	1 year linked to competence statement or 48 hours of professional development for the last 12 months		
			RICS accredited degree + 10+ years' experience	48 hours of professional development for the last 12 months		
			Non RICS accredited degree + 5 years' experience of which at least 1 year is postgraduate	Preliminary review 48 hours of professional development for the last 12 months		

⁷¹ For further discussion, particularly of the apprenticeship stage, see (Ching, 2016, para 8.3)

⁷² The standard is five years, with 4 years accelerated courses for graduates. Six year courses may include the first foundation year. Pre-clinical access courses are also available.

⁷³ For further discussion, particularly of the apprenticeship stage, see (Ching, 2016, para 8.2.2)

⁷⁴ There are multiple specialist pathways for different sub-specialisations. Qualifications for senior professionals and specialists with experience but not necessarily with a degree follow a slightly different route.

⁷⁵ A non RICS accredited degree, or no degree and no experience leads to an RICS Associate qualification.

7.4 Some conclusions

7.4.1 Legal Professions in Europe

Many countries expect a masters' degree in law as the minimum academic stage (i.e. law must be studied at least in part at postgraduate level). Alternatives to a law degree, if they exist, are usually through extended periods of practice rather than graduate entry conversion courses.

Re-testing on areas of law already covered in the law degree is comparatively rare, but apparent in the Republic of Ireland for both barristers and solicitors, Northern Ireland, Germany, Luxembourg, Poland, Romania and in the proposed SQE1 in England and Wales.

Apprenticeship periods vary and are not always compulsory, but the majority operate in parallel with compulsory courses that may be organised by the bar or through other training providers, including universities. It seems likely that the majority at least of these are for periods of days at a time and consequently shorter than the two components of the PPC. Sequential approaches are, however, seen in England and Wales, Finland, France, Germany, Luxembourg, Portugal and Spain. A curriculum for the period and the courses is frequently prescribed, covering a breadth of areas of law and skills. If the courses do not prepare for any terminal bar examinations, or there are no required courses, grinds (as in Germany) may be used.

Terminal bar exams, often with a case evaluation and oral component are common, and generally centralised through the state or the bar.

7.4.2 Selected Legal Professions outside Europe

In Canada, the USA, and increasingly in Australia, the academic degree is postgraduate in time, although as indicated in Table 1, several of the European legal professions demand an academic law degree of at least masters level. The US JD is seen in principle as a vocational degree (Stuckey, 2009, p 309), combining both academic study and practice skills. There have been some criticisms that the course is insufficiently practical, and there are now requirements that a minimum element of experiential learning (although this may be by simulation) have now been imposed (American Bar Association Section of Legal Education and Admissions to the Bar, 2015).

However whether any individual law school ostensibly teaches to the test is more controversial (Tacha, 2013, p 360; contra, Reeves, 2014). Consequently bar prep courses with private providers – grinds – have a substantial market in the USA, not dissimilar to that for FE-1 courses.

The Canadian and Australian versions, by contrast, are conversion courses for graduates of other disciplines and succeeded by a training contract, vocational course or a combination of both. Admission through an undergraduate degree remains possible in Australia, although these are often five year double degrees (see, e.g. Australian National University, 2014).

The three countries represent different approaches to mandatory workplace requirements. In the USA, there is no formal workplace requirement except in Delaware (Holland, 2009), although post qualification mentorship scheme and incubators may occupy a similar role.⁷⁶ Nevertheless, young lawyers do expect to spend some time in an employed role, and there are concerns that increasing student debt may be pushing young lawyers into premature sole practice (Illinois State Bar Association, 2013). US "law office" or "law reader" options, available in some states are, in effect, private tutoring

⁷⁶ For a list, see Ching, 2016, p 44.

towards the relevant bar examination (Ching, 2016, para 9.1.3), undertaken by a very small number of individuals. Mandatory pre-qualification pro-bono requirements, in some US states, have service, rather than learning, as their primary function (ibid, para 9.1.2).

Both Australia and Canada retain the concept of a period of work-based learning. Their responses to it, however, are different. In Australia, concerns about its haphazardness have led it to be absorbed into the vocational course, with a period of limited licensure after qualification and, in those states where training contracts are available as an alternative, students and presumably employers seem to prefer the course route. This trend began to be evident from the 1960s (Douglas & Nottage, 2009, p 3). The shift was initially a response to increasing numbers of graduates placing pressure on available articling positions (Law Admissions Consultative Committee, 2010, p 3) although a five year apprenticeship route remained available in New South Wales and Queensland until the 1970s (Giddings & McNamara, 2014, fn 26). Queensland, Victoria and Western Australia nevertheless continue to offer a training contract as an alternative to a vocational course within an embedded clinic or placement component. There is no centralised terminal examination, except, arguably, in Tasmania by default, as there is only one provider there. Although there is no requirement for a formal training contract, new lawyers are normally required to work in “supervised legal practice” for up to two years after qualification (Douglas & Nottage, 2009).

In Canada the attachment to articles (Law, 2001) – albeit with short courses in parallel - is such that the vocational course equivalent trialled in Ontario (described in section 2.5) is consciously seen as an alternative to articles (Fish, 2013). Both countries have competence statements for the point of practice (Federation of Law Societies of Canada, 2012; Law Admissions Consultative Committee, 2015). In Australia it is the responsibility of the vocational course providers to see that students reach them and there is no centralised assessment. In Canada, it is the responsibility of the professional regulator in each province to carry out the assessment. A plan for a centralised examination set by the regulator for the whole country (National Admission Standards Project Steering Committee, 2015a andb) has been abandoned on the basis that “there is not a critical mass of law societies ready to move forward with the development of a national assessment tool” (Federation of Law Societies of Canada, 2017).

New Zealand has been selected here as one of the comparators, as it has a similar general and legal population to that of the Republic of Ireland (further discussion will take place in section 9.3.1). Although the profession is fused, 1,368 of the total of 13,031 practise entirely as barristers. The gender split in the profession as a whole is very close to equipoise (52:48 in favour of men) (New Zealand Law Society, 2017). Given the remit provided to the Legal Services Regulatory Authority by the 2015 Act, s34(1)(c) it is perhaps also relevant that New Zealand has a separate conveyancing profession (NZ Society Of Conveyancers, No date; Toi Ohomai Institute of Technology, No date, see further, 8.3.3).⁷⁷

7.4.3 Selected non-legal professions

Accountancy professions are assisted by the supra-national IAESB statements (see McPeak, Pincus, & Sundem, 2012; Crawford, Helliard, Monk, & Veneziani, 2014) although these do allow a certain amount of latitude (see the example of the CPD statement discussed in section 3.3.1). They do, however, face the challenge of including those from a range of academic disciplines and, in the UK at least, those who circumvent university study through apprenticeship (Institute of Chartered Accountants in England and Wales, 2017) or who wish to start their study straight from school. There is also evidence that the audit team structure is a particularly helpful learning environment, allowing for support,

⁷⁷ For the qualification route for licensed conveyancers in England and Wales, see Council for Licensed Conveyancers, 2014.

collegiality and incremental progress through increasingly complex tasks requiring greater responsibility (Eraut & Furner, 2003). It is of course possible that transactional teams in larger law firms offer a similar environment.

Surveyors, as well as embracing, in the UK, an apprenticeship route, focus their structures on acknowledging experience in the field, supplemented by a discipline specific degree which might in some cases succeed, rather than precede, the experience. The style of assessment, essentially a viva, is, however common and also recognises the learning in the workplace as well as in the classroom. It also allows for candidates to present an example of their own work as an “apprentice piece” (see further 9.5.1).

Medical professions seem to have a clearer transition than legal professions between an explicitly vocational undergraduate degree and the workplace, coupled with a distinct practicum for work and learning in the teaching hospital where structures such as the case presentation (Chan, 2015) and ward round (Andrew, 2011) combine both dimensions. There may also be a stronger focus than there is in law on senior members of the profession as teachers as a fundamental component of the ethics and culture of the profession (General Medical Council, 2013, para 39).

7.5 References

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8 The impact of legislation (including the Solicitors Acts from 1954 onwards and the Legal Services Regulation Act 2015) on education, training and practice models.

8.1 Introduction

The impact of legislation on professional legal education for solicitors in Ireland over time has been outlined in some detail in section 1. This section, therefore, focuses in more detail on the implications of changes to legislation for practice and regulation. It is, therefore, indebted to a considerable extent to Hosier's recent work on regulation of the legal professions in Ireland (Hosier, 2014).

As the mechanisms for transfer between professions are included in the legislative framework and have not been discussed elsewhere, they are outlined in this section. Wider economic and cultural factors, such as the Celtic Tiger period, the Troika bailout and the implications of Brexit are also discussed in this section as part of the background to changes in the practice environment.

8.2 Legislative history

Legislation prior to the 1954 act has not been included. Clearly, however, some of the earlier legislation, as described in section 1, created the foundations of the current professional education system, including the requirement for a period of work experience. It is also significant, in the context of the 2015 act and the background to it, that the solicitors' profession in Ireland has had a monopoly over conveyancing since 1816. Further, as Hosier points out (Hosier, 2014, p 43) the regulatory environment includes not only the Constitution, statutes and the statutory instruments issued under them, but the common law, professional codes of conduct and non-legal mechanisms such as insurance and peer pressure.

8.2.1 Solicitors Act, 1954

The 1954 act is the result of "a lengthy campaign on the part of the [LSI] to secure what it considered to be appropriate regulatory legislation for the solicitors' profession" (Hosier, 2014, p 22, see also Hogan, 2002, p 86).⁷⁸ Section 5 of the act empowers the LSI to make regulations⁷⁹ which, once made, were to be laid before each House of the Oireachtas as soon as possible. It remained possible, therefore, for such regulations to be revoked, as was the case in Solicitors' Remuneration General Order, 1957 (Disallowance) Order, 1957. Nevertheless, the act marked the transfer of responsibility for the examinations from the Department of Education to the LSI (Gherain, 2007, p 12, fn 26).

Section 9 created a roll of solicitors and section 10 permitted the Chief Justice to admit to the roll those who have satisfied the requirements of Part IV. Section 13 created the disciplinary committee, prescribed its process and the sanctions it was empowered to levy.⁸⁰ A requirement to obtain practising certificates was created under s 46 with the detail prescribed by Solicitors' Act, 1954 (Practising Certificates and Restrictions on Solicitors) Regulations, 1955 and the fees for such

⁷⁸ By section 86, the act, in its entirety, was disappplied to solicitors employed by the Revenue Commissioners who were also specifically exempted from the requirement to obtain a practising certificate.

⁷⁹ Section 71 specifically allowed for regulations on professional conduct and discipline.

⁸⁰ The detail appears in Solicitors Act, 1954. Solicitors' (Disciplinary Committee) Rules, 1955. Appeals from the committee or other decisions made by the Society under the 1954 act were provided for by Rules of the High Court and Supreme Court. Solicitors Act Rules, 1955. See also Hogan, 2002, p 86.

certificates prescribed by the Solicitors Act, 1954 (Fees) Regulations, 1954. Sections 55 and 57 created offences when an “unqualified person”⁸¹ acted as a solicitor or pretended to be a solicitor. Section 58 stipulated that conveyancing and land work, grants of probate and letters of administration were reserved to solicitors.⁸² Part VIII of the act established the Compensation Fund, whose details then appeared in Solicitors’ (Compensation Fund) Regulations, 1955.

At this stage, admission was, by virtue of s 24 on the basis of having attained 21 years of age and completed indentures of apprenticeship with a practising solicitor of at least seven years’ PQE (s 29) and passing the “appropriate prescribed examinations”. Section 40(3) introduced the two examinations in the Irish language and s 40(4) the preliminary and final examinations.⁸³ Law graduates of “any of the universities of Ireland, England, Scotland or Wales” and transferring barristers were exempt from the preliminary examination. The term of apprenticeship was three years for law graduates, transferring barristers and law clerks with at least seven years’ experience; four years for those with two years of academic law study or who started their law degree after starting their apprenticeship (*ibid*, second schedule) and five years for anyone else. The provision for interview of potential supervisors appears in Solicitors’ Act, 1954 (Practising Certificates and Restrictions on Solicitors) Regulations, 1955, reg 10.

Two sets of subsequent regulations in 1955 provided further detail of the qualification framework, including the division of the final examination into three parts, of which one was on bookkeeping (Solicitors Act 1954 (Apprenticeship and Education) Regulations, 1955, reg 8). As described in section 1, these regulations also set out the subjects for the preliminary examination and final examinations and the intervals between them as well as for the Irish examinations (Solicitors’ Act, 1954 (Apprenticeship and Education) Regulations, 1955, reg 9). They also provided for TCD and NUI to provide lectures and examinations on real and personal property, contract and tort in preparation for the first law examination and on other subjects in preparation for the second (reg 21).⁸⁴ The LSI would provide lectures in the examination subjects (reg 22). Transferring barristers were to be exempt from the first of the final examinations (reg 23(2)).

The Solicitors Act, 1954 (Professional Practice, Conduct and Discipline) Regulations, 1955 forbade advertising⁸⁵, fee sharing or undercutting the prescribed schedule of fees.⁸⁶ Solicitors’ Accounts Regulations, 1955; The Solicitors’ Accounts Regulations, 1956; The Solicitors’ Accounts Regulations, 1957; Solicitors’ Accounts (Amendment) Regulations, 1958 set out the arrangements for solicitors holding client’s money.

8.2.2 Solicitors (Amendment) Act, 1960

This act was passed in response to the decision in *re O’Farrell and the Solicitors Act 1954*, in which it was held that a decision of the LSI’s disciplinary committee to strike off two solicitors for misconduct

⁸¹ Corporate bodies were entirely precluded from acting as a solicitor by s 64.

⁸² With exceptions for work done free, barristers, public and diplomatic officials, notaries and employees of solicitors and barristers. Fees for land registration work were set out in Land Registration (Solicitors’ Costs) Rules, 1954.

⁸³ Fees for the various examinations, for registering indentures and for attending the Society’s lectures were set out in Solicitors Act, 1954 (Fees) Regulations, 1954 and in Solicitors’ Act, 1954 (Apprentices’ Fees) Regulations, 1956.

⁸⁴ Details adjusted in Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1956.

⁸⁵ For a history of the LSI and statutory regulation of advertising, see Hall, 2002, p 149ff.

⁸⁶ The existing regulations about fees, remuneration certificates and taxation of costs were adjusted in Solicitors’ Remuneration General Order, 1957 although, unusually, this was revoked by the Seanad in Solicitors’ Remuneration General Order, 1957 (Disallowance) Order, 1957.

Fees were also prescribed for specific kinds of transactions, for example Labourers Acts (Solicitors’ Remuneration) Order, 1957.

was exercise of a judicial power (contained in s18 of the 1954 act) outside the limited remit given by art 37 of the Constitution (Hosier, 2014, p 48-50). As a result it made adjustments to the disciplinary committee and to the compensation fund (Hogan, 1996).

Further regulations in the 34 years between this act and the 1994 act included:

Education and Training

- Adjustments to the topics on which the LSI would provide lectures (The Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1960.);
- Adjustments to the fees for examinations, lectures and similar matters (Solicitors Act 1954 (Apprentices' Fees) Regulations 1960; Solicitors Act, 1954 (Apprentices' Fees) Regulations, 1962; Solicitors Acts 1954 and 1960 (Apprentices' Fees) Regulations, 1975; Solicitors Acts 1954 and 1960 (Apprentices' Fees) Regulations, 1977; The Solicitors Acts 1954 and 1960 (Apprentices' Fees) Regulations, 1978; Solicitors Acts 1954 and 1960 (Apprentices' Fees) Regulations, 1981; The Solicitors Acts 1954 and 1960 (Apprentices' Fees) (No. 2) Regulations, 1981; The Solicitors' Acts 1954 and 1960 (Apprentices' Fees) Regulations, 1983; The Solicitors Acts 1954 and 1960 (Apprentices' Fees) Regulations 1984; The Solicitors Acts 1954 and 1960 (Apprentices' Fees) Regulations, 1985; The Solicitors Acts 1954 and 1960 (Apprentices' Fees) Regulations, 1986; The Solicitors Acts 1954 and 1960 (Apprentices' Fees) Regulations, 1987; The Solicitors Acts 1954 and 1960 (Apprentices' Fees) Regulations, 1988, The Solicitors Acts, 1954 and 1960 (Apprentices' Fees) Regulations, 1989; The Solicitors Acts 1954 and 1960 (European Community Lawyers) (Fees) Regulations, 1991; The Solicitors Acts 1954 and 1960 (Apprentices' Fees) Regulations, 1992; The Solicitors Acts 1954 and 1960 (Apprentices' Fees) Regulations, 1992; The Solicitors Acts, 1954 and 1960 (Apprentices' Fees) Regulations, 1993);
- Alterations to the preliminary examination (Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1966; Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1972; (Solicitors Act 1954 (Apprenticeship and Education) (Amendment) Regulations, 1973; Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) No. 2 Regulations, 1973; Solicitors Act, 1954 (Apprenticeship and Education) (Amendment No. 1) Regulations 1974; Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1991; The Solicitors Acts, 1954 To 1994 (Apprenticeship and Education) Regulations, 2001);
- Adjustments to the fitness and character requirements for admission (Solicitors Act 1954 (Apprenticeship and Education) (Amendment) Regulations, 1968);
- Alterations to the topics for the first and second law examinations (Solicitors' Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1970; Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1991; Solicitors' Acts 1954 and 1960 (Apprenticeship and Education) (Amendment No. 2) Regulations, 1992;
- Forms to be completed at the end of the period of apprenticeship by apprentice and master (Solicitors Act, 1954 (Apprenticeship and Education) (Amendment) Regulations, 1971);
- Establishment of the LSI's law school and consequential adjustments to the preliminary examination, Irish examinations and exemption from the first part of the final examination for law graduates from Irish universities (Solicitors' Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1975)⁸⁷. Adjustments were made to exemption from the preliminary

⁸⁷ Prior to these regulations it was apparently the case that most apprentices were attempting to work, take the Society's courses and study for a degree at the same time, (Curran, 1979, p 70).

examination and for transferring barristers in Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1981; Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1987. Further adjustments of the diet of assessments and exemptions appear in Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1991. A period of minimum validity for a law degree for the purposes of admission to law school was imposed by Solicitors' Acts 1954 and 1960 (Apprenticeship and Education) (Amendment) Regulations, 1992) and provision for certain courses at NUI Galway in 1993 (The Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) (Amendment) Regulations, 1993);

- The controversial exemption from the first examination of graduates from some Irish universities (The Solicitors Acts 1954 and 1960 (Apprenticeship and Education) Regulations, 1989; Solicitors Acts, 1954 and 1960 (Apprenticeship and Education) Regulations, 1991)
- Establishment of the qualified lawyers' transfer test for EU lawyers: (The Solicitors Acts 1954 and 1960 (European Community) Regulations, 1991).

Solicitors' Practice

- A more successful amendment to the regulation of solicitors' remuneration than had been the case in 1957⁸⁸ and subsequent amendments to the schedule of fees (Solicitors' Remuneration General Order, 1960; Land Registration (Solicitors' Costs) Rules, 1962; Solicitors' Remuneration General Order, 1964; Solicitors' Remuneration General Order, 1970; Solicitors Act, 1954 (Fees) (Amendment) Regulations, 1970; Land Registration (Solicitors' Costs) Rules 1970; Solicitors' Remuneration General Order, 1972; Solicitors' Remuneration General Order 1978; Solicitors' Remuneration General Order, 1982; Solicitors' Remuneration General Order, 1984; Solicitors' Remuneration General Order, 1986);
- Adjustment to the processes of the disciplinary committee (Solicitors (Disciplinary Committee) Rules 1961). A specific disciplinary offence of settling a minor's personal injury case without obtaining court approval was added in 1990 (Solicitors (Practice, Conduct and Discipline) Regulations 1990);
- Adjustments to the requirements for solicitors to have their accounts audited (Solicitors' Accounts (Amendment) Regulations, 1961; Solicitors' Accounts (Amendment No. 2) Regulations, 1966; Solicitors Accounts (Amendment No. 2) Regulations, 1970; Solicitors' Accounts (Amendment No. 3) Regulations, 1970) and other financial matters⁸⁹ (The Solicitors Accounts (Amendment) Regulations 1965; The Solicitors' Accounts (Amendment) Regulations, 1966; Solicitors' Accounts (Amendment) Regulations, 1970; Solicitors' Accounts (Amendment) Regulations, 1971; Solicitors Accounts (Amendment) Regulations, 1976; Solicitors' Accounts (Amendment) Regulations, 1977) including holding of clients' money (Solicitors' Accounts Regulations, 1967; Solicitors' Accounts Regulations 1984; The Solicitors' Accounts Regulations No. 2 of 1984; Solicitors Professional Practice, Conduct and Discipline Regulations, 1986);
- Adjustments to the operation of the compensation fund (Solicitors (Compensation Fund) Regulations, 1963);
- Adjustments to practising certificate fees (Solicitors Act, 1954 (Fees) Regulations, 1968; Solicitors' Practising Certificate Fees Regulations, 1971; Solicitors Act 1954 (Fees) Regulations 1973; Solicitors Acts, 1954 and 1960 (Fees) Regulations, 1975; Solicitors Acts, 1954 and 1960 (Fees) Regulations, 1976; Solicitors Acts 1954 and 1960 (Fees) Regulations 1978; Solicitors Acts

⁸⁸ A further remuneration order was similarly revoked in 1972: Solicitors' Remuneration General Order, 1971 (Disallowance) Order, 1972.

⁸⁹ A number of these statutory instruments deal with the banks in which it is permitted to hold client accounts.

1954 and 1960 (Fees) Regulations 1979; Solicitors Acts, 1954 and 1960 (Fees) Regulations, 1982; Solicitors Acts, 1954 and 1960 (Fees) Regulations, 1983; Solicitors Acts, 1954 and 1960 (Fees) Regulations 1984; Solicitors Acts, 1954 and 1960 (Fees) Regulations, 1985; Solicitors Acts 1954 and 1960 (Fees) Regulations 1986; Solicitors Acts 1954 and 1960 (Fees) Regulations 1988; Solicitors Acts 1954 and 1960 (Fees) Regulations 1989; Solicitors Acts 1954 and 1960 (Fees) Regulations 1990; Solicitors Acts, 1954 and 1960 (Fees) Regulations 1992; Solicitors Acts 1954 and 1960 (Fees) Regulations, 1993);

- Adjustments to the prohibitions on advertising (Solicitors' (Professional Practice, Conduct and Discipline) (Amendment) Regulations, 1971).⁹⁰ Advertising (with the exclusion of touting and price and comparative advertising: (Quinn, 1991, pp 432-433)) was, following a postal ballot of all members of the LSI, finally permitted in 1988: (Solicitors (Advertising) Regulations, 1988)⁹¹. Quinn suggests that there were several reasons for the change:
 - Controlling abuse of the existing limited exceptions;
 - Parity with other professions, particularly accountants;
 - A 1982 report of the Restrictive Practices Commission that had concluded the ban was contrary to the public interest (Quinn, 1991, pp 429-431);
- Adjustments to the rules on fee-sharing (Solicitors (Professional Practice) Regulations, 1988).

8.2.3 Solicitors (Amendment) Act, 1994

Hogan (2002, p 86) suggests that there is a practice of revising professional regulation once every forty years or so, rendering this act the most substantial review since the 1954 act. Hall describes it as “profoundly important for the future of the profession” (2002, p 170).

This act marked the change in title of the LSI from “the Incorporated Law Society” (s4). It also added to the LSI’s disciplinary powers by amending the provisions of the 1960 act as to complaints and allowed the LSI to sanction solicitors who charged excessive fees (Hosier, 2014, p 51). It also strengthened provision for indemnifying clients, for practising certificates (s54ff) and the compensation fund (s 26ff) and about advertising (s 69).⁹² This issue of excessive fees clearly continued to be an issue and the point has found its way into the 2015 act. In particular, s68 required solicitors to provide clients with details of fees or an estimate on taking instructions and forbade use of contingency fees (see Hall, 2002, p170). Section 70 provided for regulations to be issued that would allow legal practices to be incorporated.

The term of apprenticeship was reduced to two years (s 42) and supervisors need only have been in practice for five years (s 44). The number of apprentices who could be allocated to a supervisor was increased to two, provided the firm contained at least two assistant solicitors for every apprentice (s47). Exemption from the preliminary examination was extended to graduates of the Institutes of Technology (s50). Transferring barristers, provided they were of no more than three years’ call, could transfer subject to passing the final examination (51). Lawyers from non-EU jurisdictions could transfer (s 52) subject to passing prescribed assessments and not practising unsupervised for the first three years. Transferees under Directive No. 77/249/EEC were added to the list of exemptions from

⁹⁰ In fact, the LSI did permit press notification of for example, changes of address but this was “difficult to police in practice and was exploited” (Quinn, 1991, p 429).

⁹¹ Quinn also reports that (ibid, pp 431-431) that the 1990 Fair Trade Commission report criticised these exceptions.

⁹² Hosier argues that the relaxation of the prohibition on advertising led to allegations in the Dáil of ambulance chasing (Hosier, 2014, p 56).

the conveyancing monopoly (s77). Provision was made under s78 for credit unions to be allowed to offer wills and probate services.

Section 71 allowed fee sharing in limited circumstances although, by the time of the Competition Authority report in 2006, no regulations had been made to activate this section (Competition and Consumer Protection Commission, 2006, para 5.111), so that alternative forms of practice structure had to wait for the 2015 act.

Further regulations in the period between this act and the 2002 act included:

Education and Training

- Adjustments were made in 1995 to the preliminary examinations, arrangements for what was now in-office training the new structure and terminology of the Professional Course and Advanced Course: (Solicitors Acts, 1954 To 1994 (Apprenticeship and Education) (Amendment) Regulations, 1995);
- Adjustments to the fees for examinations, lectures and similar matters: (The Solicitors Acts, 1954 To 1994 (Apprentices' Fees) Regulations, 1995; The Solicitors Acts, 1954 To 1994 (Apprentices' Fees) Regulations, 1998; The Solicitors Acts, 1954 To 1994 (Apprentices' Fees) Regulations, 200; The Solicitors Acts, 1954 To 1994 (Apprentices' Fees) Regulations, 2001);
- Creation of an education committee, reducing the term of apprenticeship to two years making arrangements for the Irish examinations and confirming the position of the law school: (The Solicitors' Acts, 1954 To 1994 (Apprenticeship and Education) Regulations, 1999);
- Alterations to the preliminary examination: (The Solicitors' Acts, 1954 To 1994 (Apprenticeship and Education) Regulations, 1997; The Solicitors Acts, 1954 To 1994 (Apprenticeship and Education) Regulations, 2001);
- Alterations to the topics for the first and second law examinations: (The Solicitors' Acts, 1954 To 1994 (Apprenticeship and Education) Regulations, 1997; The Solicitors Acts, 1954 To 1994 (Apprenticeship and Education) Regulations, 2001,);
- Provision for decisions of the disciplinary tribunal to be overseen by the High Court: (Rules of the Superior Courts (No. 1) (Solicitors (Amendment) Act, 1994), 1998).

Solicitors' Practice

- Adjustments to practising certificate forms and fees: (Solicitors Acts 1954 and 1960 (Fees) Regulations, 1994; Solicitors (Practising Certificate 1995/96) Regulations, 1994; (Solicitors (Form of Practising Certificate 1995/96) Regulations, 1995; Solicitors (Practising Certificate 1995/96 Fees) Regulations, 1995; Solicitors (Practising Certificates 1996) Regulations, 1995; Solicitors (Practising Certificate 1996 Fees) Regulations, 1995; Solicitors (Practising Certificate 1997 Fees) Regulations, 1996; Solicitors (Practising Certificate 1997) Regulations, 1996; Solicitors (Practising Certificate 1998) Regulations, 1997, Solicitors (Practising Certificate 1998 Fees) Regulations 1997; The Solicitors Acts, 1954 To 1994 (Investment Business & Investor Compensation) Regulations, 1998; The Solicitors Acts, 1954 To 1994 Solicitors (Practising Certificate 1999 Fees) Regulations 1998; The Solicitors Acts, 1954 To 1994 Solicitors (Practising Certificate 1999) Regulations, 1998; (he Solicitors Acts, 1954 To 1994 Solicitors (Practising Certificate 2000) Regulations, 1999; The Solicitors Acts, 1954 To 1994 Solicitors (Practising Certificate 2000 Fees) Regulations, 1999; The Solicitors Acts, 1954 To 1994 Solicitors (Practising Certificate 2001 Fees) Regulations, 2000; The Solicitors Acts, 1954 To 1994

Solicitors (Practising Certificate 2001) Regulations, 2000; The Solicitors Acts, 1954 To 1994 Solicitors (Practising Certificate 2002 Fees) Regulations, 2001; The Solicitors Acts, 1954 To 1994 Solicitors (Practising Certificate 2002) Regulations, 2001);

- Arrangements for accounts and interest accruing on clients' money: (Solicitors (Interest on Clients' Moneys) Regulations, 1995; Solicitors Accounts Regulations, 2001);
- Arrangements for insurance: (The Solicitors Acts, 1954 To 1994 (Professional Indemnity Insurance) Regulations, 1995; The Solicitors Acts, 1954 To 1994 (Professional Indemnity Insurance) (Amendment) Regulations, 1999);
- Prescription for the nameplate and notepaper of solicitors firms (Solicitors (Practice, Conduct and Discipline) Regulations 1996);
- Further provision on solicitors' advertising, in particular around "no foal no fee" arrangements: (Solicitors (Advertising) Regulations 1996);
- Prohibition on acting for vendor and purchaser where the vendor is a builder of a newly constructed house: (Solicitors (Professional Practice, Conduct and Discipline) Regulations 1997);
- Creating the role of adjudicator, in effect an ombudsman handling disputes about the LSI's treatment of complaints: (Solicitors (Adjudicator) Regulations 1997);
- Allowing transfer by lawyers from other countries: (Solicitors Act, 1954 (Section 44) Order, 1997, 1997⁹³; Solicitors Act, 1954 (Section 44) Order, 1999⁹⁴);
- Transition to the euro: (The Solicitors Acts, 1954 To 1994 (Euro Changeover) Regulations, 2001; The Solicitors Acts, 1954 To 1994 (Euro Changeover) Regulations, 2001).

8.2.4 Solicitors (Amendment) Act, 2002

This act refined the regulations about advertising (ss 4-6) following the affair of the army deafness claims (McKittrick, 1997). It also placed on a statutory footing lawyers' rights to freedom of establishment in the EU under Directive 98/5/EC in s20 (Hosier, 2014, p 51, 57) as well as continuing to make adjustments to the disciplinary procedures, including applying them to apprentices (s 19).

The Courts and Court Officers Act, 2002 amended the Courts (Supplemental Provisions) Act 1961 to allow solicitors to become members of the judiciary in the higher courts. The first solicitor High Court judge was appointed in 2002 (McKenna & Hurley, 2002; Cahill, 2002). The Court of Appeal Act 2014 retains the provision but adjusts the terminology.

In 2003, EU lawyers became entitled to practise as EU registered lawyers in Ireland, and, after three years practising Irish law, to seek admission in Ireland by virtue of Directive 98/5/EC (the Establishment Directive).

In 2005, a legal costs working group recommended, amongst other things, costs guidelines to provide some predictability when costs were ordered to follow the event; that the arbitrary rules about paying counsel by reference to their grade rather than the work done should be abolished; that detailed costs information should be given in the retainer letter and that changes should be made to the way in which costs were taxed. (Legal Costs Working Group, 2005; pp 11-16)

Further regulations in the period between this act and the 2008 act included:

⁹³ New York and Pennsylvania.

⁹⁴ New Zealand.

Education and Training

- Adjustments to the fees for examinations, lectures and similar matters: (The Solicitors Acts, 1954 To 2002 (Apprentices' Fees) Regulations, 2002; The Solicitors Acts, 1954 To 2002 (Apprentices' Fees) Regulations, 2003; The Solicitors Acts, 1954 To 2002 (Apprentices' Fees) Regulations, 2004; The Solicitors Acts, 1954 to 2002 (Apprentices' Fees) Regulations, 2005; The Solicitors Acts, 1954 to 2002 (Apprentices' Fees) Regulations, 2006; The Solicitors Acts, 1954 to 2002 (Apprentices' Fees) (No. 2) Regulations, 2006; The Solicitors Acts, 1954 to 2002 (Apprentices Fees) Regulations, 2007);
- Creation of, and adjustments to, a CPD scheme: Solicitors (Continuing Professional Development) Regulations 2003; Solicitors (Continuing Professional Development) Regulations 2007) (see section 3 above);
- Provision for admission to the roll: (Rules of the Superior Courts (Solicitors (Amendment) Act 2002);
- A procedure for dealing with *Morgenbesser* applicants: (The Solicitors Acts, 1954 To 2002 (Apprenticeship and Education) (Recognition of Qualifications) Regulations, 2004) 9see section 1.6.5 above).

Solicitors' Practice

- Adjustments to practising certificate forms and fees: (The Solicitors Acts, 1954 To 2002 Solicitors (Practising Certificate 2003) Regulations, 2002; The Solicitors Acts, 1954 To 2002 Solicitors (Practising Certificate 2003 Fees) Regulations, 2002; The Solicitors Acts, 1954 To 2002 Solicitors (Practising Certificate 2004) Regulations, 2003; The Solicitors Acts, 1954 To 2002 Solicitors (Practising Certificate 2004 Fees) Regulations, 2003; The Solicitors Acts, 1954 To 2002 Solicitors (Practising Certificate 2005) Regulations, 2004; (The Solicitors Acts, 1954 to 2002 Solicitors (Practising Certificate 2006) Regulations, 2005; The Solicitors Acts, 1954 to 2002 Solicitors (Practising Certificate 2007) Regulations, 2006; The Solicitors Acts 1954 to 2002 Solicitors (Practising Certificate 2008) Regulations 2007);
- Establishment of the advertising regulations currently in force: (The Solicitors Acts, 1954 To 2002 Solicitors (Advertising) Regulations, 2002);
- Allowing transfer by lawyers from other countries: (Solicitors Act 1954 (Section 44) Order 2003;⁹⁵ (Solicitors Act 1954 (Section 44) Order 2007⁹⁶);
- Arrangements for accounts and interest accruing on clients' money: (Solicitors (Interest on Clients' Moneys) Regulations, 2004; Solicitors Accounts (Amendment) Regulations, 2005, 2005; Solicitors Accounts (Amendment) Regulations, 2006);
- Arrangements for insurance: (The Solicitors Acts 1954 To 2002 (Professional Indemnity Insurance) (Amendment) Regulations, 2004; The Solicitors Acts 1954 To 2002 (Professional Indemnity Insurance) (Amendment) Regulations 2005; The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007);
- Adjustments to disciplinary procedures: (Rules of the Superior Courts (Solicitors (Amendment) Act 2002), 2004);
- Adjustments to the adjudicator process: (Solicitors (Adjudicator) (Amendment) Regulations, 2005);

⁹⁵ California.

⁹⁶ New South Wales.

- Providing for independent law centres: (The Solicitors Acts, 1954 to 2002 (Independent Law Centres) Regulations, 2006).

8.2.5 Civil Law (Miscellaneous Provisions) Act 2008

This act adjusts a number of statutes relating to the operation of the court system, including allowing civil proceedings to take place by video conference (s26). Its provisions relation to solicitors include:

- Reducing the qualification period for an apprentice's supervisor to four years (s 33);
- Adjusting provisions for committees of the LSI (s34);
- Adjusting the operation and powers of the Disciplinary Tribunal (ss 35, 37, 38, 39, 42, 43, 45);
- Clarifying the LSI's powers to investigate misconduct including that of an apprentice (ss 36, 40, 46);
- Providing that charging excessive costs was misconduct (s 41); and
- Regulating limitation clauses in solicitors' retainers (s44).

8.2.6 Legal Practitioners (Irish Language) Act 2008

An obligation to ensure Irish proficiency in the legal profession first appeared in the Legal Practitioners (Qualification) Act, 1929, s4, although it was "vociferously opposed by the Society at the time" (Gherain, 2007, p 12).

Under the Official Languages Act 2003, public bodies (including universities, the Courts Service, the Land Registry and Legal Aid Board) are required to be bilingual.

The 2008 act placed an obligation on both the LSI and the King's Inns to "seek to ensure that an adequate number of solicitors are competent in the Irish language so as to be able to practise law through the Irish language as well as through the English language" (s 2, see Hall, p 163). By contrast with early requirements that individual lawyers should pass examinations in the Irish language, the 2008 act requires the LSI to include a mandatory but non-examined "course of instruction in Irish legal terminology and the understanding of legal texts in the Irish language" in the PPC. The aim of the course is not competence in Irish, but that all solicitors should have enough Irish to be able to identify with an Irish-speaking client "a legal service that is required" and to be able to refer the client to a solicitor who is able to advise and act for the client through the medium of Irish. The LSI is also required to offer an advanced Irish course as part of the PPC and also to others (who may or may not be solicitors). Successful graduates of the advanced course (Law Society of Ireland, No date a) are then listed on a register of solicitors competent in Irish (Law Society of Ireland, No date b). The LSI must report annually to the Minister for Justice and Equality on those taking and passing the advanced course. The LSI provision has received national recognition for its provision (Ní Mhóráin, 2012).

More recent developments include the Official Languages (Amendment) Bill 2017 which proposes increased court sittings in Irish, a target of 20% Irish speakers in the public sector workforce and replacement of public sector language schemes with language standards.

8.2.7 Legal Services Ombudsman Act 2009

This act created the position of legal services ombudsman (not to be a member of parliament, practising barrister or solicitor or a member of the Bar Council or the LSI or a bencher of King's Inns). By s9, the role of the ombudsman⁹⁷ is:

- (a) to receive and investigate complaints,
- (b) to review under section 32 the procedures of the Bar Council and the Law Society for dealing with complaints made to those bodies,
- (c) to assess the adequacy of the admission policies of the Law Society to the solicitors' profession and of the Bar Council to the barristers' profession,
- (d) to promote awareness among members of the public of matters concerning the procedures of the Bar Council and the Law Society for dealing with complaints made to those bodies, and
- (e) to carry out any other duties and exercise any other powers assigned to the Ombudsman by this Act.

Amongst the matters on which the ombudsman is required to report annually, and with which the LSI and Bar Council are obliged to co-operate, is, (s 15)

- (a) ...the number of persons admitted to practise as barristers and solicitors respectively during that year, and
- (b) ...an assessment as to whether, having regard to the demand for the services of practising barristers and solicitors and the need to ensure an adequate standard of education and training for persons admitted to practice, the number of persons admitted to practise as barristers and solicitors in that year is consistent with the public interest in ensuring the availability of such services at a reasonable cost.

The act was not, however, brought into force and was formally repealed by the 2015 act.

8.2.8 Civil Law (Miscellaneous Provisions) Act 2011

This made a minor correction to the 1994 act and, in s 58, enhanced the LSI's disciplinary powers.

Further regulations in the period between the 2008 act and the 2015 act included:

Education and Training

- Adjustments to the fees for examinations, lectures and similar matters: (The Solicitors Acts 1954 to 2008 (Apprentices Fees) Regulations 2008);
- Changes to the Irish language requirements: (Solicitors Acts, 1954 To 2008 (Apprenticeship and Education) (Amendment) Regulations 2009);
- Adjustments to the CPD scheme: (Solicitors (Continuing Professional Development) Regulations 2009; Solicitors (Continuing Professional Development) Regulations 2012; Solicitors (Continuing Professional Development) (Amendment) Regulations 2014);
- Provision for law firms to have training officers to assist training solicitors and to liaise with the LSI: (Solicitors Acts 1954 to 2008 (Apprenticeship and Education) (Training Officer) Regulations 2011);

⁹⁷ Funded by a levy on the professional bodies (s19).

- Adjustments to forms, arrangements for the first examination and provision for the LSI to create a trainee code of conduct: (Solicitors Acts 1954 to 2011 (Apprenticeship and Education) (Amendment) Regulations 2014).

Solicitors' Practice

- Adjustments to practising certificate forms and fees: (The Solicitors Acts 1954 to 2008 (Practising Certificate 2009) Regulations 2008; The Solicitors Acts 1954 To 2008 (Practising Certificate 2010) Regulations 2009; The Solicitors Acts 1954 to 2008 Solicitors (Practising Certificate 2011) Regulations 2010; The Solicitors Acts 1954 to 2008 Solicitors (Practising Certificate 2012) Regulations 2011; The Solicitors Acts 1954 to 2011 Solicitors (Practising Certificate 2013) Regulations 2012; Solicitors Acts 1954 to 2011 Solicitors (Practising Certificate 2014) Regulations 2013; The Solicitors Acts 1954 to 2011 Solicitors (Practising Certificate 2013) (Amendment) Regulations 2013; The Solicitors Acts 1954 to 2011 Solicitors (Practising Certificate 2015) Regulations 2014);
- Fees for state solicitors: (Financial Emergency Measures In the Public Interest (Reduction In Payments To State Solicitors) Regulations 2009; Financial Emergency Measures in the Public Interest (Reduction in Payments to State Solicitors) (Adjustment) Regulations 2013);
- Reinforcement of provisions about conflicts of interest and undertakings: (Solicitors (Professional Practice, Conduct and Discipline — Secured Loan Transactions) Regulations 2009; Solicitors (Professional Practice, Conduct and Discipline — Commercial Property Transactions) Regulations 2010; Solicitors (Professional Practice, Conduct and Discipline - Conveyancing Conflict of Interest) Regulation 2012);
- Arrangements for insurance: (The Solicitors Acts, 1954 To 2008 (Professional Indemnity Insurance) (Amendment) Regulations 2009; The Solicitors Acts, 1954 To 2008 (Professional Indemnity Insurance) (Amendment (No. 2)) Regulations 2009; The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment) Regulations 2010; The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011; The Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2012; Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2013; The Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) Regulations 2014);
- Arrangements for admission of lawyers from California, Pennsylvania, New York, New South Wales and New Zealand under reciprocal arrangements already made in principle: (Solicitors Acts 1954 (Section 44) Regulations 2009);
- Applications for which the LSI could charge a fee: (The Solicitors Acts 1954 to 2008 (Sixth Schedule) Regulations 2011; The Solicitors Acts 1954 to 2008 (Fees) Regulations 2011);
- Adjustments to the requirements for solicitors' accounts: (Solicitors Accounts (Amendment) Regulations, 2013; Solicitors Accounts Regulations 2014);
- Arrangements for serving documents on the LSI: (Solicitors (Delivery of Documents) Regulations 2013);
- Arrangements for applying to the compensation fund: (Solicitors (Compensation Fund) Regulations 2013).

8.3 Legal Services Regulation Act 2015

During the Celtic Tiger period, there was an explosion in property work, leading to a situation where "... solicitors who lacked the requisite skills frequently provided conveyancing services to the

commercial sector without ensuring that appropriate safeguards were in place” (Hosier, 2015, p 197). This led to a glut of negligence claims, the effect of which caused at least one professional indemnity insurer to collapse (O’Dwyer, 2015) and the Solicitors Mutual Defence Fund, formed in 1987, to suffer a shortfall of €308m. This resulted in a successful bid – but only after a postal vote - by the LSI to bail it out by levying an additional €200 on each solicitor for a 10-year period (Duncan, 2011; Harris, 2011). The fund is now in run-off (Randall & Quilter Investment Holdings Ltd., 2016).⁹⁸ When the banking sector also began to collapse (Hosier, 2015, p 201), the government sought a bailout from the IMF, ECB and European Commission (the Troika) (Lenihan & Honohan, 2010). The letter of intent (*ibid*, p 27) contained the following critical commitment:

To increase growth in the domestic services sector Government will introduce legislative changes to remove restrictions to trade and competition in sheltered sectors including:
 - the legal profession, establishing an independent regulator for the profession and implementing the recommendations of the Legal Costs Working Group and outstanding Competition Authority recommendations to reduce legal costs.⁹⁹

The Bill, introduced in 2011, was highly controversial and received “Significant and voluminous amendments” (Competition and Consumer Protection Commission, 2016, p 32) in its passage towards enactment. Both professional bodies made substantial submissions (e.g., Bar of Ireland, 2011, 2012), themselves criticised as inappropriate lobbying (Beesley, 2016)

Much of the criticism of the bill was that its provisions were being diluted in favour of the legal profession (Smith, 2016; Gartland, 2015) with the Bar Council retaining rights to reject new business models and rights of access to the Law Library to the employed bar, and the LSI retaining the regulation of solicitors’ finances (Anon, 2016a). In a report noting improved business in the legal sector, including increased recruitment of trainees, 78% of a sample of 104 firms believed the Bill would not reduce legal costs and two thirds felt that the bill would lead to more mergers and objected to multidisciplinary practices (Mac Cormaic, 2014). Others felt that the loss of self-regulation might be compensated by, among other things, the availability of LLPs might be a positive move to protect sole practitioners in particular (Walsh, 2015, p 13)

Another criticism of the original bill was that it placed the proposed regulator too close to government, thus undermining the independence of the profession (Anon, 2016b). Hosier, by contrast, argued that the bill did not go far enough and should positively have created a conveyancer profession, prohibited sole practice, set up a register of solicitors’ undertakings, adopt process a pre-emptive New South Wales approach to regulation, develop protocols for lawyers dealing with lay litigants¹⁰⁰ and, rather than extend the availability of patents of precedence to solicitors, simply abolish the process altogether (Hosier, 2013, pp 33-35). She also felt that the power to strike off should be vested in the LRSA rather than in the High Court but recognised that, as a result of *O’Farrell*, this would require constitutional amendment (*ibid*, pp 35-36). She also refers to suggestions by others for mandatory mediation and provisions for those of limited means (*ibid*, p 35).

At the time the 2015 act was signed into law, the Competition and Consumer Commission commented that:

⁹⁸ We are indebted to Associate Professor Jane Jarman, of Nottingham Law School, for discussion about solicitors’ professional indemnity insurance.

⁹⁹ Hosier points out that the removal of entry barriers to the legal professions has been a feature of the bailout provisions in other countries (Hosier, 2014, p 201; 2015, p 205).

¹⁰⁰ Whose numbers appear to be increasing (Gallagher, 2017).

... [its 2005 and 2006 reports had shown that] competition in legal services was severely hampered by many unnecessary restrictions on the commercial freedom of buyers and sellers permeating the legal profession. These restrictions were found to limit access, choice, and value for money for those wishing to enter the legal profession and for those purchasing legal services. They went beyond their stated aim of protecting the public interest, and in reality did more to shelter lawyers from further competition. They were unrelated to the maintenance of standards in legal services and offered inadequate protection to consumers

... While not all of the CCPC concerns were fully addressed in the enacted legislation, the CCPC looks forward to the early establishment of the new independent regulatory body, the Legal Services Regulation Authority ("the LSRA"). The CCPC considers that the Legal Services Regulation Act provides a basis for further reform of the legal profession and the LSRA can serve as a key driver of such reform in the coming years.

(Competition and Consumer Protection Commission, 2016, p 32)

A summary of the act is as follows:

- In Part 2 of the act, the creation of the Irish Legal Services Regulatory Authority (LSRA)¹⁰¹;
- In Part 3, power to the LRSA to inspect practitioners' offices;
- In Part 4 a general provision about the holding of clients' money;
- In Part 5, requirements on practitioners to hold professional indemnity insurance and restrictions on the ability to limit liability in the retainer;
- In Part 6, provision for complaints and disciplinary hearings;
- In Part 7, a levy on the professions to fund the LSRA and disciplinary tribunal;
- In Part 8, power to authorise legal disciplinary partnerships between barristers and solicitors (s 100); prohibition on excluding direct access to the Bar in non-contentious cases(s101);¹⁰² multidisciplinary practices (s 102) and limited liability partnerships (s 122);¹⁰³
- Part 9 begins to place the operation of the bar on a statutory footing for the first time, covering admission to the roll of barristers and offences where unqualified persons act as a barrister or pretend to be a barrister equivalent to those created for solicitors in the 1954 act;
- Part 10 deals with legal costs, costs adjudication (s 154), requirements to notify clients of costs in advance (s150);
- Part 11 allows costs orders to be made in civil proceedings and confirms that the normal basis for the award of costs is that they follow the event;
- Part 12 regulates the grant of patents of precedence, allowing both barristers and solicitors to attain the title of Senior Counsel;
- Part 13 contains consequential amendments to the Solicitors' Acts;
- Additionally, s 210 prohibits any bail out of the compensation fund from public moneys; s211 amends Courts Act 1971, s 17 to confer rights of audience in any court on solicitors;¹⁰⁴ s212 allows employed barristers to act for their employers in litigation and arbitration; s213 abolishes the wearing of wigs and gowns in court. Significantly for the purposes of this investigation, s217 allows the LRSA to exempt transferring solicitors and transferring barristers from elements of the receiving profession's admission requirements, including courses, examinations and "apprenticeship or pupillage". Section 218 allows law firms,

¹⁰¹ There is an organisation of the same title in Singapore.

¹⁰² For an example of the rule in contentious cases, see Anon, 2017.

¹⁰³ The Competition Authority did not recommend Alternative Business Structures with non-lawyer ownership (Competition and Consumer Protection Commission, 2006, para 5.108), legal disciplinary partnerships (ibid, para 5.134), or multidisciplinary partnerships (ibid, para 5.143) although felt that they should be considered by the regulator in the future. It is understood that reports on this proposal have already been obtained (Keena, 2017).

¹⁰⁴ At least one firm anticipated this development by recruiting its own in-house advocacy team in 2012 (Anon, 2012).

chambers, MDPs, LLPs and legal partnerships to advertise their services subject to regulations made by the LRSA. The act closes with amendments to law on clinical negligence actions and on limitation periods which are not relevant to this discussion.

Further regulations in the period since the 2015 act to date included:

Education and Training

- Adjustments to the CPD scheme: (Solicitors (Continuing Professional Development) Regulations 2015).

Solicitors' Practice

- Adjustments to practising certificate forms and fees: (The Solicitors Acts 1954 to 2011 Solicitors (Practising Certificate 2016) Regulations 2015; The Solicitors Acts 1954 to 2011 Solicitors (Practising Certificate) Regulations 2016);
- Arrangements for insurance: (The Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2015; The Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) Regulations 2016);
- Prohibition of money laundering and terrorist financing: (Solicitors (Money Laundering and Terrorist Financing Regulations) 2016);
- A schedule of recoverable costs in certain kinds of landlord and tenant cases: (District Court (Solicitors' costs) Rules 2016);
- Fees for state solicitors: (Financial Emergency Measures in the Public Interest (Payments to State Solicitors) (Adjustment) Regulations 2016; (Financial Emergency Measures in the Public Interest (Payments to State Solicitors) (Adjustment) Regulations 2017).

8.3.1 Education and training

Section 34 of the 2015 act requires the LRSA to report to the Minister on a list of specific issues:

- (a) the education and training (including on-going training) arrangements in the State for legal practitioners, including the manner in which such education and training is provided;
- (b) unification of the solicitors' profession and the barristers' profession;
- (c) the creation of a new profession of conveyancer;
- (d) such other matters as the Minister may, from time to time, request the Authority to report on to him or her

The entirety of this literature review is directed towards answering some of the questions that arise under this heading. A particular issue is understood to be that already raised by the Competition Authority: the LSI's monopoly over the PPC (s 34(3)(c)vi) and the future of the FE-1 (s34(3)(c) iv). Other issues may well be recommendations for a part-time PPC; whether there is scope to broaden the range of environments in which in-office training can be served; the configuration of the PPC¹⁰⁵ and whether a cyclical or out-puts focused model of CPD is appropriate. In terms of curriculum and syllabus,

¹⁰⁵ For example, could PPC I and PPC II be offered by different providers or whether PPC II could be delivered in house by some firms or specialist affinity groups.

matters for discussion might be the extent to which the PPC and the law degrees address globalisation, in-house practice, outsourcing and the use of technology.¹⁰⁶

8.3.2 Unification

A number of jurisdictions in fact make a distinction between categories of legal services provider because in the civil law world at least, they distinguish between notaries and advocates, or between sworn advocates and assistants who may have a more paralegal or legal executive role. In house lawyers may also be treated separately (see discussion of French legal professions in Nollent & Ching, 2011). Nevertheless, fusion does take place in civil law jurisdictions. For example, in 2011, the French professions of *conseils juridiques* and *avoués* were merged with that of *avocat* under Loi n° 2011-331 du 28 mars 2011 de modernisation des professions judiciaires ou juridiques et certaines professions réglementées.

The solicitor/barrister distinction remains in place in some common law jurisdictions such as England and Wales, Northern Ireland, the Republic of Ireland, Hong Kong (Wesley-Smith, 1992), New South Wales, Queensland, Victoria (on a de facto basis: Bishop, 1989, p 336) and in some hybrid jurisdictions such as Scotland and Mauritius. In some places, such as New South Wales (NSW Bar Association, no date), Victoria (Victorian Bar, No date) and Scotland (see section 7) qualification is first as a solicitor and only thereafter as a barrister, in Australia on a voluntary basis rather than as a separate profession. In many places where there is fusion, or where there has always been a single profession, there remains a de facto split between “trial lawyers” and others (Bishop, 1989, p 337; Choudree, 1993, p 781).

In the common law jurisdictions the debate about fusion has been very long standing (Maute, 2002), and with a certain amount of vested interest on both sides. Fusion was, for example, suggested in Ireland in 1884 (Lawson, 1892) and it has been suggested more recently that a result of the 2015 act and a drive to modernise might result in moves towards it (Lee, 2014). The idea was considered in the Fair Trade Commission report of 1990 that investigated restrictive practices in both Irish legal professions. This body did not go as far as to recommend fusion, but seemed to hope that the professions might move towards unification (Hall, 2002, p 162). The question of a common vocational education was, however, again in the air at that time (Hall, p 162, and see further 9.5.8).

The argument is almost exclusively about the need for specialism and expertise in advocacy, which says nothing about whether those specialists should be trained and regulated as a separate profession, or, indeed, what should be done about other specialisms including advocates who operate only in specialist fields (Kerridge & Davis, 1999, p 816).¹⁰⁷ A summary, taken from literature covering the UK, Ireland, Australia and South Africa suggests the following arguments. They are not in any particular order and it will be apparent that some conflict and others are about specialism in advocacy rather than division/fusion. Citations are given for the source of the argument, which does not mean that the source necessarily endorsed it. Benson, for example, carefully examines arguments both for and against his thesis that fusion was not appropriate. We have located a lengthy comparative document generated for the Bar of Ireland on the *Values and Functions of a Referral Advocate*, which sets out

¹⁰⁶ A 2014 survey of firms found that only 28% could handle e-disclosure and 46% had no social media presence (Mac Cormaic, 2014)

¹⁰⁷ Indeed, Kerridge & Davis (1999, p 816) recommend, rather than fusion, a fourfold division into a) general practitioners; b) specialist non-advocates; c) specialists in advocacy and d) advocates who specialise in particular areas of law.

details of a number of jurisdictions but which does not of itself address the arguments for or against fusion (Hogan, Nesterchuck, & Smith, 2016).

Table 9 Perceived strengths and weaknesses of fusion between professions

Strengths of fusion		Weaknesses of fusion	
If permitted, the market selects for vertical integration (ie preparation of the case and advocacy in the same organisation)	(Bishop, 1989, p 329)	The choice of the advocate is removed from the financial self-interest of the law firm ("agency cost" is reduced)	(Bishop, 1989, p 329; Kerridge & Davis, 1999, p 814)
Additional costs of the solicitor as intermediary may not be required by sophisticated clients and are a dead weight cost	(Bishop, 1989, p 330; Hoppenstein, 1959)	Temptation to do within the firm (and receive payment for) what could more effectively be done by a specialist outside it	(Benson, 1988 p 426, 432; Bishop, 1989, p 329)
The judiciary is not in favour of maintaining the social hierarchy (Canada)	(Bishop, 1989, p 336)	If the specialist advocate is in a different profession and not in another law firm, the risk of losing the client to the specialist is reduced	(Benson, 1988, p 426; Bishop, 1989, p 330)
Avoids fee scales that mean there is no incentive on solicitors to economise	(Bishop, 1989, p 336)	Advocacy skills are improved by practice and in a split profession only specialists are to be found conducting advocacy	(Bishop, 1989, p 330)
As a one-stop shop the law firm can provide its service at lower costs, resulting in higher profits/lower fees	(Bishop, 1989, p 337)	A collegial group of specialist advocates is better able to resist the temptation to commit misconduct in the name of the client's best interests	(Bishop, 1989, p 331)
Reduces costs and complexity of moving between professions	(Bishop, 1989, p 337)	High quality advocacy in the higher courts where precedent is set) has an impact on the quality of substantive law in a common law system	(Bishop, 1989, pp 332-333)
The additional costs of the solicitor are not a deadweight: employing two solicitors from a firm rather than a solicitor and a barrister might be cheaper	(Stephen & Love, 1999, p 1007)	Specialist advocates reduce the need for the judge to make up for deficiencies in advocacy in a strongly oral court system; trials are shorter and more efficient ¹⁰⁸	(Benson, 1988, p 242; Bishop, 1989, p 333; Sweet, 1890, p 153)
There can be failures in communication between the solicitor and barrister	(Benson, 1988, p 427)	The judiciary is in favour of maintaining the social hierarchy (Australia)	(Bishop, 1989, p 336)
Using two lawyers causes delay	(Benson, 1988, p 427)		
Problem of clashes and returned briefs would be avoided if the advocacy work could be spread more widely	(Benson, 1988, p 428)	De facto specialisation in a fused jurisdiction indicates that it is not worth the effort and would only create confusion	(Anon, 1924)
A separately instructed barrister is too remote from the client, causing loss in confidence in the client who would prefer to have the lawyer they know deal with the whole case	(Benson, 1988, p 428)	The question only arises because solicitors are "aggrieved" that they have no or limited rights of audience. It would lower standards.	(Anon, 1924; Moyses, 1995, p 748)
One lawyer can handle the case all the way through	(Benson, 1988, p 429)	A fused profession does not satisfy the principles that change should: benefit the public, not the profession; address a growing need for specialisation or support the professional obligation to give an impartial opinion to a client	(Benson, 1988)
A separate bar is not appropriate where there are problems of travel/geography	(Benson, 1988, p 430)	There are insufficient barristers to place one in each solicitors firm	(Benson, 1988, p 425)

¹⁰⁸ Stephen & Love, 1999, p 1007 point out that Bishop did not cite empirical evidence for these assertions.

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Strengths of fusion	Weaknesses of fusion		
to be overcome to provide access to justice			
Specialists in firms in Western Australia reduce costs, sit in with the instructing solicitor from the beginning and create a more streamlined service	(Choudree, 1993, p 781)	Division means that even the smallest law firm has access to a highly skilled and specialist referral profession	(Benson, 1988, p 425, 427)
Avoids the perception of mystique and elitism in the bar	(Choudree, 1993, p 782; Kerridge & Davis, 1999, p 808)	Fusion would mean barristers would have to stop specialising and carry out (generalist) solicitors work	(Benson, 1988, p 425)
If the bar is elitist and judges are recruited from the bar, fusion would allow greater access to disadvantaged groups (the example is black attorneys in South Africa)	(Choudree, 1993, p 782)	The additional costs of the solicitor are a deadweight: employing two solicitors from a firm rather than a solicitor and a barrister would be more expensive as solicitors' overheads are greater	(Benson, 1988, p 426, 428)
Firms of specialists could still exist and operate on a referral/cab rank system	(Choudree, 1993, p 784)	Failures in communication between the solicitor and barrister are the result of poor work by the solicitor and could still happen within a firm	(Benson, 1988, p 427)
The distinction between professions is "increasingly anomalous" in the modern world and unknown in civil law countries	(Clayton, 2012)	Using two lawyers would still cause delay if they were both in the same firm (and two would be necessary because of the need for a specialist advocate)	(Benson, 1988, p 427)
It makes no sense for the bar to take on additional responsibilities such as direct access when they could operate in mixed organisations	(Clayton, 2012)	Solicitors' diaries are filled with meetings and office work so they would not be likely to be able to increase the pool of advocates/don't have time	(Benson, 1988, p 428; Kerridge & Davis, 1999, p 811)
Using freelance counsel adds to the costs. If the work is the same then why should the overheads be different.	(Kerridge & Davis, 1999, p 812)	The barrister is able to provide an objective second opinion which can result in settlement and reduced costs or help manage a difficult client	(Benson, 1988, p 428; Kerridge & Davis, 1999, p 812)
If solicitors have higher rights of audience and can become judges, why train as a barrister at all?	(Kerridge & Davis, 1999, p 813)	The question only arises because solicitors feel socially inferior to barristers: their remedy is to transfer to the bar	(Benson, 1988, p 429)
Analogies drawn from medicine do not work as medical specialists train as generalists first	(Kerridge & Davis, 1999, p 817)	Having a small number of barristers, known to the judges, makes it easier to select judges from amongst them	(Benson, 1988, p 431)
Barristers do not always deal with matters efficiently as they cannot be sure they will still have the case for trial	(Kerridge & Davis, 1999, p 821)	"The independence and integrity of the bar and of the judiciary are pillars on which the function of the law rests. They should never be allowed to crumble."	(Benson, 1988, p 431)
Barriers are now historical and the separation of function is so blurred as to be obsolete	(Moyle, 1995, p 748; Seneviratne & Peysner, 200, p v)	If solicitors took on cases that young barristers could train on, that would have an adverse effect on the development of specialisation	(Benson, 1988, p 432)
Allows the client to decide how many lawyers to use	(Randall, 1903, p 118)	Allowing direct access to the bar solves many of the problems	(Choudree, 1993, p 784)
		The rights to choose between professional titles and regulators "are facets of lawyers' professional independence"	(Clayton, 2012)
		No strong current of opinion in favour fusion (England and Wales)	(Clayton, 2012)

Strengths of fusion		Weaknesses of fusion	
		Implications for training as the key skills and topics for both professions would have to be covered (New South Wales)	(Handler, 1983, p 15)
		If two lawyers are needed, it might be cheaper if one of them is an independent contractor than a permanent employee	(Kerridge & Davis, 1999, p 809)

Insofar as the issue is about competence and expertise in advocacy, regulation of barristers – whether as a separate profession or by way of sequential specialisation - can be perceived as a form of activity-based regulation. This is complicated where, as in Ireland, both professions now have equal rights of audience, at least in principle.

Where, as in England and Wales but not in Ireland, in addition to rights of audience, direct access to barristers is available to clients and the Bar Standards Board now regulates barrister led entities, it has been said that there is now fusion “in all but name” (Hack, 2015). This was acknowledged, at least on a *de facto* basis, by the then president of the Law Society:

...there are now few restrictions on members of the separate legal professions practising together in partnership or other permitted business structures.

There are already 62 mixed solicitor/barrister practices, which can provide advocacy services in courts and tribunals where a member or employee of the firm has rights of audience and can also provide the practice-based final stage of training for both professions; training contracts and pupillage.

...

I assume, however, that the two separate professional titles of barrister and solicitor will survive for the foreseeable future, if only because there is no strong current of opinion in favour of fusion. The Bar has a well-established, relatively low-cost model for its traditional work, from which it will not lightly depart (though I harbour doubts about the long term sustainability of the low fees charged by junior barristers in some cases). One might, however, envisage a time at which the distinction between barrister and solicitor is more a matter of tribal culture than function.

(Clayton, 2012)

That this is implicitly the case is supported by the current position of the Legal Services Board, which is to move towards activity-based regulation and away from regulation by title at all:

Regulation should not be based on professional title. However, the strong brand power of some protected titles (eg solicitor and barrister) means that transitional arrangements will be required during a further shift to activity-based regulation. Award of professional title should therefore continue to be the responsibility of the relevant regulator for the time being, where this is currently the case.

(Legal Services Board, 2016, p 19)

A different approach, not fusion but common training (Knott, 1999), used in Hong Kong and in Northern Ireland (Montrose, 1974), is what is described at 9.5.8 a Y-shaped course. The Irish Fair Trade Commission, in 1990, called for a fusion of the vocational courses (Paris & Donnelly, 2010, p 1075; see also Hall, 2002, p 163) and the idea has also been endorsed by a president of the Law Society of England and Wales (Clayton, 2012)

Hong Kong provides a model of the Y-shaped course in a non-fused jurisdiction. Candidates for both professions (and those who are undecided) enrol on the same vocational course at one of three providers. They cover the core courses together but then take more solicitor- or barrister-oriented electives or, at one provider, a distinct bar course (City University of Hong Kong, No date). There are clear economies of scale here in a small jurisdictions, together with an advantage for barristers and those instructing them in understanding at least in outline areas of work normally undertaken by solicitors. Another approach described in section 9.3.2 is that adopted in Scotland, where lawyers qualify as solicitors first and then, if they wish to do so, as barristers.

8.3.3 Conveyancers

The Fair Trade Commission investigation of 1990 suggested the development of a separate conveyancing profession (Hall, 2002, pp 157-159). In many civil law jurisdictions, the role of conveyancer is, at least in part, carried out by the notary (see e.g. *Notaires de France*, 2014.). As ever, in comparative investigations, one should be careful to remember that what a “lawyer” is, and does, varies from jurisdiction to jurisdiction (Edward, 2011).

A first attempt to break the solicitors’ monopoly on conveyancing in Ireland was included in the Solicitors (Amendment) Bill 1994, by allowing banks and financial institutions to conduct conveyancing (Shinnick, 2002, p 154), but did not find its way into the act. The disastrous effects of solicitors’ appetites to take on conveyancing, and their monopoly in doing so has been seen, alongside deficiencies in the conveyancing system itself, as a contributing factor to the economic collapse justifying, amongst other things, the creation of a separate profession (Hosier, 2015, p 200).

Prior to the bailout, the Competition Authority had recommended that “Conveyancers would be qualified to provide conveyancing services only and have the same consumer protection regulation as solicitors” (Competition Authority, 2006, para 3);

This would lead to downward pressure on conveyancing fees and more consumer-focused and innovative ways of providing these services, such as use of the internet and offering services outside normal business hours without any reduction in the level of consumer protection. The UK’s Department for Constitutional Affairs says that, while conveyancers have secured only 5% by value of the market for conveyancing, the average cost of conveyancing a £65,000 house fell by 25% between 1989 and 1998.

Licensed conveyancers in England have comprehensive websites, give on-line quotes and operate outside normal business hours.

(Competition Authority, 2006, para 27)

This section conducts a comparative analysis of separate conveyancer professions in common law jurisdictions, with a focus on their regulation and education systems.

England and Wales and Scotland

The licensed conveyancer profession in England and Wales was a creature of the Administration of Justice Act 1985. It was designed to break the solicitors’ monopoly, despite the fact that its continuation had been recommended for England and Wales in the Benson Report of 1979 (Stephen, Love, & Paterson, 1994). By contrast, the Hughes Report did endorse creation of a separate profession in Scotland (Elliot, 1988), where it was not implemented.

In England and Wales, then, the Council for Licensed Conveyancers regulates licensed conveyancers under the ambit of the overarching Legal Services Board, who obtained rights to conduct probate work in 2008 and, more recently, “probate practitioners” who, can now qualify to carry out probate work without having previously qualified as a licensed conveyancer. It was the first of the professional regulators in that jurisdiction to be able to authorise ABSs (Council for Licensed Conveyancers, 2014a) and actively solicits regulator-shopping (Council for Licensed Conveyancers, 2014b).

By 2012 “two firms of licensed conveyancers, MyHomeMove and Countrywide Property Lawyers, handle[d] more transactions than any solicitors' practice” (Rose, 2012). Figures from 2015 indicate that there were 1,262 licensed conveyancers compared to 142,109 solicitors with practising certificates at that point (Legal Services Board, 2009). Under Deregulation Act 2015, s 87, the profession has obtained rights to carry out litigation and advocacy in property matters.

The profession has adopted an education system that takes entrants from school with diplomas at level 4¹⁰⁹ and level 6¹¹⁰ that can be studied at a number of colleges throughout the country and completing a period of supervised practice in the workplace (Council for Licensed Conveyancers, 2017).

Australia

The legislation governing conveyancers is dealt with at a state level. Conveyancing remains a solicitors' monopoly in Queensland.

For example, in New South Wales, the profession is governed by the Conveyancers Licensing Act 2003 and Conveyancers Licensing Regulations 2015. Non-lawyer conveyancers are licensed and regulated by NSW Fair Trading rather than by a legal professional body. Qualification is through an advanced diploma or associate degree obtained at one of three providers (Australian Institute of Conveyancers NSW Division Ltd, 2015). Students must also complete two years' work experience under the supervision of a conveyancer or a lawyer.

In Victoria, Consumer Affairs Victoria is the regulator and conveyancers must be licensed by the Business Licensing Authority on the basis of the relevant qualifications, one year's experience and sufficient professional indemnity insurance. The classroom requirements are to complete “a course in property law and conveyancing practice with a Registered Training Authority” (Australian Institute of Conveyancers Vic Division Inc, No date). Once a licence has been obtained a further qualification is available to allow conveyancers to carry out business conveyancing.

New Zealand

Conveyancers, as a separate profession, came into being in 2008 as a result of the Lawyers and Conveyancers Act 2006. The background was contentious, with a law society obtaining an injunction against a non-lawyer conveyancer, who then went on to force the issue by obtaining Australian conveyancing qualifications which had to be recognised under Trans-Tasman arrangements for reciprocal recognition of professional qualifications (New Zealand Society of Conveyancers, No date b).

There are two grades:

¹⁰⁹ Equivalent to the level of the first year of a degree.

¹¹⁰ Irish level 7 or 8.

- registered conveyancers, who have passed the Diploma in Conveyancing run by a single provider (Toi Ohomai Institute of Technology, No date) or an equivalency assessment,¹¹¹ and who work under supervision; and
- conveyancing practitioners with at least three years of practice who are issued a practising certificate (and after a further two years may apply to practise independently) (New Zealand Society of Conveyancers, No date a, b).

South Africa

Conveyancing is a substantial practice area in South Africa (Law Society of South Africa & LexisNexis, 2016, p 17). Conveyancing Attorneys are normally¹¹² qualified attorneys who have successfully completed the Law Society's Conveyancing examination and are entered on a separate specialist roll. They remain, therefore, regulated by the Law Society although they do have rights to carry out conveyancing that other attorneys do not.

8.4 Transfer between professions

Transfer provisions in the Irish system have been discussed above at 1.6.5 and 4.8.4.

Conceptually there is a range of approaches to transfer from a) other professions in the same jurisdiction (intra-jurisdiction) and b) lawyers from other jurisdictions (inter-jurisdiction). These can be summarised as:

- Prohibition or no special arrangements to transfer;
- As a matter of principle the transferee must take the same course/pass the same examination as domestic entrants;
- Special arrangements that may involve curtailing part of the qualification route or using a special test such as the Irish qualified lawyers transfer test;
- In certain circumstances, re-qualification by registration with the receiving regulator.

As transfer regulations are, by definition, designed by the receiving regulator, there is always a risk that they do not keep pace with changes to qualification structures and titles of qualifications used by other regulators.

How transfer is carried out depends to some extent on the local culture. Countries with a diaspora, or large numbers of students attending university abroad, may take a generous approach to recognition of foreign qualifications. Former colonies may still have an attachment to qualifications awarded by the former colonial power. Some jurisdictions with a particularly international outlook, may offer attractive exemptions for incoming foreign lawyers, possibly to compete with other international centres (e.g. Law Society of Hong Kong, No date). In federal countries, convenience dictates that there are arrangements for intra-jurisdictional movement (e.g. Federation of Law Societies of Canada, 2002, 2010, 2011, 2012).

¹¹¹ This requires 8-10 years of experience in the field as a legal executive or paralegal.

¹¹² It appears to be possible in some parts of the country at least for non-attorneys to be permitted to take the examination and to qualify (Law Society of South Africa, 2015).

8.4.1 Intra jurisdictional transfer

The 2015 act, in s217, gives the LRSA power to control transfer between the professions of solicitor and barrister. The report into legal education and training to be commissioned under s 34 of the act also makes reference to removal of duplication in transfer mechanisms (s34(3)(c) iv). It is implicit, although the section does not say so in terms, that this is between the two domestic professions and does not refer to, for example, a Northern Irish solicitor wishing to become a barrister in the Republic.

At present, Irish barristers who have practised for at least three years and can provide evidence of their qualifications, a CV, references from two benchers and an academic reference may, on condition of first being voluntarily disbarred, become solicitors by undertaking the non-examined two-week Essentials of Legal Practice course at a minimum cost of €2,830. They may also have to undertake a 6 month period of supervised practice in a solicitor's office although this requirement can be waived (Law Society of Ireland, No date d, e).

Similarly, Irish solicitors who have practised for at least three years and can provide evidence of their voluntary removal from the roll, a statutory declaration that he or she retains no financial interest in a solicitors' practice, certificates of good standing and an undertaking to keep two terms of commons in the first two years of practice, may be admitted to the Bar provided they also complete the non-examined four week solicitors transfer course at a cost of €3,000 (Honorable Society of King's Inns, No date a, b).

8.4.2 Inter jurisdictional transfer

Discussion must also consider the extent to which a foreign lawyer may practise the law of their own jurisdiction in another as a "registered foreign lawyer" or on the basis of temporary admission to the local bar. Here one has to distinguish between transfer within the EU and transfer from jurisdictions outside it (which will in due course include the UK).

Within the EU

Directive 98/5/EC (the establishment directive) allows qualified lawyers to register in another state and practise their home country's law (art 2) or, after three years of practice, to requalify (art 10).

Directive 2005/36 (as amended by Directive 2013/55) requires competent authorities to recognise certain professional qualifications and to consider whether they can recognise others that meet particular criteria. The competent authority may then set an aptitude test to ensure the incoming professional has met similar competency requirements to home Member State professionals. This directive also, in article 4f, allows partial access, on a case by case basis, to professional activity in a receiving EU state.¹¹³

Irish solicitors wishing to transfer and requalify in the UK are required:

- In England and Wales, to take the property law elements of the Qualified Lawyers Transfer Scheme test or to have completed the compulsory course in English property law in PPC II (Solicitors Regulation Authority, 2017);¹¹⁴
- In Scotland, to pass the same aptitude test as other non-UK EU qualified lawyers (Law Society of Scotland, 2017);

¹¹³ We are indebted to Ms Jenny Crewe for clarification in this area.

¹¹⁴ Consequently, recently qualified Irish solicitors have a straightforward transfer route.

- In Northern Ireland, to submit documents including character references (Law Society of Northern Ireland, No date).

Beyond the EU

Some, but not all jurisdictions will take qualification as a solicitor as the starting point for recognition without looking behind it (to see whether, for example, the solicitor has come through a non-law degree route) (Solicitors Regulation Authority, 2016, pp 16-18).

However, graduates of shortened conversion courses such as the GDL in England and Wales or UCD's two year MCL Common Law may encounter difficulties in some jurisdictions. So, for example, in Switzerland, an EU or EFTA national must have studied for at least three years in a university as a condition of transfer (Federal Act on the Freedom of Movement for Lawyers, 2000, art 31). Similar duration requirements will inhibit non-graduate, conversion course and some joint honours graduates from requalifying in New York without taking an LLM in that jurisdiction (New York State Board of Law Examiners, no date, IV A(3) and IV B(4)).

In some cases of transfer from outside the EU to inside it, an EU law degree may be demanded or the foreign law degree may need to be evaluated against local norms (e.g., Advokatsamfundet, No date).

8.4.3 Part-qualified transfer

The discussion above assumes that the transfer is of a qualified lawyer. There is also, of course, an interest in transfer from part-qualified individuals. In the UK, CILEx has proved assiduous in providing an intra-jurisdictional route into its own qualification framework for LLB graduates unable or unwilling to continue to pursue the route to qualification as a solicitor (Chartered Institute of Legal Executives, no date).

Part-qualification inter-jurisdictional recognition of a law degree is comparatively common, at least if it is in the same civil or common law legal tradition as the receiving country. This may be from a list of pre-approved degrees (Legal Professional Qualifying Board, Malaysia, 1999) or through a process (e.g., Federation of Law Societies of Canada, No date b).¹¹⁵ There may be specific courses or assessments to make up deficiencies in local law (Federation of Law Societies of Canada, No date a) or language (Hong Kong University, 2017; Legal Professional Qualifying Board, Malaysia, 1999).

Part-qualification intra-jurisdictional recognition of the vocational course is sometimes available where there are multiple legal professions. It is far less common on an inter-jurisdictional basis but there are exceptions as, for example Legal Profession Act, 1986, s 15A in Trinidad and Tobago.

Within the EU, regulators are bound by case law of which the best known example is *Christine Morgenbesser v Consiglio dell'Ordine degli avvocati di Genova*, (2003, see also CCBE, 2004). This involved a part-qualified French lawyer who tried to re-register as a trainee lawyer in Italy. She was serially refused on the basis that she did not have an Italian law degree nor was she fully qualified in France (which would have allowed her to transfer). Eventually the dispute reached the European Court of Justice where it was held that Ms Morgenbesser should not have been refused, although the Italian regulator was entitled to require her to compensate for any gaps between her French education and the Italian requirements. The Irish response to dealing with this kind of application is found in The Solicitors Acts, 1954 To 2002 (Apprenticeship and Education) (Recognition of Qualifications)

¹¹⁵ This process is also applied to Canadian graduates with civil law degrees who wish to qualify in common law provinces.

Regulations, 2004. However, we understand that the majority of applications of this nature that cannot be dealt with through the QLTT or other directives are handled by invoking the EU legislation on mutual recognition of diplomas.¹¹⁶

¹¹⁶ Directive 89/48/EEC enacted in European Communities (General System For The Recognition of Higher Education Diplomas) Regulations, 1991. See also European Union (Recognition of Professional Qualifications) Regulations 2017, reg 22(3).

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9 Analysis of a range of good practices in curriculum design that are appropriate to a small jurisdiction.

9.1 Introduction

This section introduces in outline a number of practices in professional education that could be of interest in reviewing how professional legal education is constructed in the future in the Republic of Ireland. It does not attempt to be comprehensive, but to introduce some approaches for further enquiry and discussion.

9.2 Innovations in Irish legal education

There is, of course, a literature on innovation in Irish legal education that can be drawn on and potentially expanded. This may be read in parallel with changes in the funding and quality assurance of the higher education sector as a whole, including the way in which academics are recruited and employed (Courtois & O’Keefe, 2015) but of which the most recent include renewed plans for conversion of some of the Institutes of Technology into technological universities (McGuire, 2016; McAleer, 2017) and a review of funding allocation (Higher Education Authority, 2017).

Examples of innovation that we have identified in the course of this literature review include:

- Raising students’ political awareness in a legal research context (Devlin, 1989);
- Investigation of approaches to information literacy (Kerins, Madden, & Fulton, 2004);
- Proposals for the use of open-book examinations (Donnelly, 2005);
- Clinical legal education (Donnelly, 2008, 2010, 2011, 2015);
- Mooting in a criminal law module (Daly & Higgins, 2010);
- Use of field trips (Higgins, Dewhurst, & Watkins, 2012);
- Use of standardised clients in CPD (O’Boyle, 2013);
- Innocence project work (Langwallner, 2013);
- Research on the teaching of professionalism (Hession, 2016);
- The University of Limerick’s practice-focused LawPlus degree (University of Limerick, No date).

When the LSI established its own law school in the 1970s, it was consciously on an experiential basis, drawing from models then developing in Australian legal education (Curran, 1979, p 73). It has also pioneered use of tablet technology in its teaching in the PPC (Bainbridge et al., 2013; Law Society of Ireland, 2016c) and both this and webcasting in the Diploma Centre (Grealy, 2015; Grealy, Kennedy, & O’Boyle, 2013). The LSI’s MOOCs have also been popular (Law Society of Ireland, 2016b).

9.3 Small jurisdictions

For the purposes of this section, two jurisdictions have been selected on the basis of the similarity of their general and legal populations to that of the Republic of Ireland. Population distribution is also significant, particularly if it is concentrated in a small number of urban areas, with more rural areas more difficult to reach and potentially “advice deserts”. Clearly there are cultural differences between the jurisdictions in terms of indigenous and other minority populations, religion, schooling (see O’Flaherty & Gleeson, 2014; Leahy, 2016) and languages (see Atkinson & Kelly-Holmes, 2016; Darmody, 2016) that mean comparison must, as ever, be cautious.

Nevertheless, this comparison allows readers to examine two professional legal education frameworks as a whole, before moving on to section 9.5 in which individual elements of best practice in delivery and assessment are drawn from a number of professions and jurisdictions and discussed in isolation.

Table 10: Comparison of the Republic of Ireland, New Zealand and Scotland

	Population		Lawyer/solicitor population		Population distribution		Number of domestic (professionally accredited) law degree providers		Number of domestic (solicitors') vocational course providers	
Republic of Ireland (solicitors)	4,761,865	(Central Statistics Office, 2016, p 8)	10, 825 of whom almost 60% are based in Dublin	(Law Society of Ireland, 2016a)	Roughly 1,100,000 (25% of the population) live in the Dublin area and a further 198,582 in the Cork area	(Central Statistics Office, 2016, p 15)	16	(see section 4)	1	
New Zealand (fused profession)	4.69 million	(Statistics New Zealand, 2016)	12, 816, of whom 60% are based in Auckland, Wellington or Christchurch, with 40% in Auckland. Of these, 1,356 describe themselves as barristers sole.	(Adlam, 2016, p 18)	77% live in the North Island; 1,495,000 live in Auckland (30% of the population) and in the region of 400,000 in each of Wellington and Christchurch	Statistics New Zealand, 2016)	6	New Zealand Law Society, 2017)	2	(New Zealand Law Society, 2017)
Scotland (solicitors)	5.4 million	(National Statistics, 2017, chapter 1, fig 1.1)	11,538	(Law Society of Scotland, 2016)	Roughly 600,000 live in Glasgow, 500,000 in Edinburgh and 230,000 in Aberdeen	(Scotland.org, No date)	10	(Law Society of Scotland, 2017)	6	(Law Society of Scotland, 2017)

9.3.1 New Zealand

From the outset, even if New Zealand was intended to inherit a divided profession from the UK, in practice, the need to address pioneer conditions and problems of distance meant that the profession was in fact fused from the outset in 1841 (Spiller, 1993, p 224). The Legal Practitioners Act 1899, however, allowed solicitors to be called to the bar after five years of practice without further study (McLay, 1999, p 335) and in fact, as Spiller points out (*op cit*, p 224, fn 4), the admission requirements were listed separately until the Law Practitioners Act 1982. By the 1860s there were separate examination regimes, administered by the judiciary, for intending barristers and solicitors, including general knowledge assessments and an examination in New Zealand law for those who had been admitted elsewhere (Spiller, 1993, p 225). Domestic entrants were also required to serve a period of articles until the Law Practitioners Act 1882, when the concept was abolished as an undemocratic barrier to access to the profession (Spiller, 1993, p 226). The requirement has never been reinstated, leaving New Zealand, along with the USA and India as one of the few prominent countries without a formal work experience requirement for qualification. There are, nevertheless, as described below, limitations on sole practice.

By the 1870s, LLB programmes at university level had been established, although, as only barristers were required to take the LLB, it was routine until the 1920s for lawyers to qualify as solicitors, who only needed to matriculate, as solicitors had the right to practise as both solicitors and barristers (Spiller, 1993, p 227). By the 1960s, trainees were required to take a year's part time vocational course after their LLB (*ibid*, p 250). Following a damning report commissioned by the Law Society and the Council for Legal Education in 1987, a full time vocational course operated by the Institute of Professional Legal Studies, an arm of the Council of Legal Education, was set up to be delivered twice a year at four of the universities (*ibid*, p 252-253).

Qualification is now governed by the Lawyers and Conveyancers Act 2006 implemented by the Lawyers and Conveyancers Act (Lawyers: Admission) Rules 2008. Section 48 of the act provides that all those admitted are admitted as barrister and solicitor and have full rights of audience. Section 49 delegates the requirements for qualification to the Council for Legal Education and s 52 provides that admission is granted by the High Court. Section 53 allows reciprocal admission of foreign lawyers and s 25 provides that foreign lawyers can work in New Zealand under their home title without re-qualifying provided they do not trespass into reserved activities.

Somewhat confusingly, the term "barrister sole" is used, to denote a sole practitioner who has been permitted to practise on his or her own account by the Law Society (New Zealand Law Society, 2017b) and who may join a voluntary representative organisation. The New Zealand Bar Association, then, unites "advocate barristers" in sole practice and "advisory barristers" who act as freelance consultants to law firms (New Zealand Bar Association, 2017). It is also possible, following the same route, to practise as a sole practitioner as a barrister and solicitor and

The unusual approach taken to CPD in New Zealand is described in section 3. Legal Executives are envisaged in a paralegal role with a distinct qualification (New Zealand Law Society, 2017a).

There are currently two providers of the 13-18 week vocational course, which was revised in 1990. The College of Law is a private institution, owned until 2010 by the Law Society of New South Wales. It provided the vocational course for the first time in 2003 and its first online version in 2004. Although the relevant regulations are entitled Professional Examinations in Law Regulations 1987, in fact, by s6 they delegate examination of the academic subjects to the universities (subject to moderation and

appeal to the Council of Legal Education) and by s7 to the provider of the vocational Professional Legal Studies Course. The only centralised examination is, therefore, the (New Zealand Law and Practice Examination for incoming transferring lawyers.

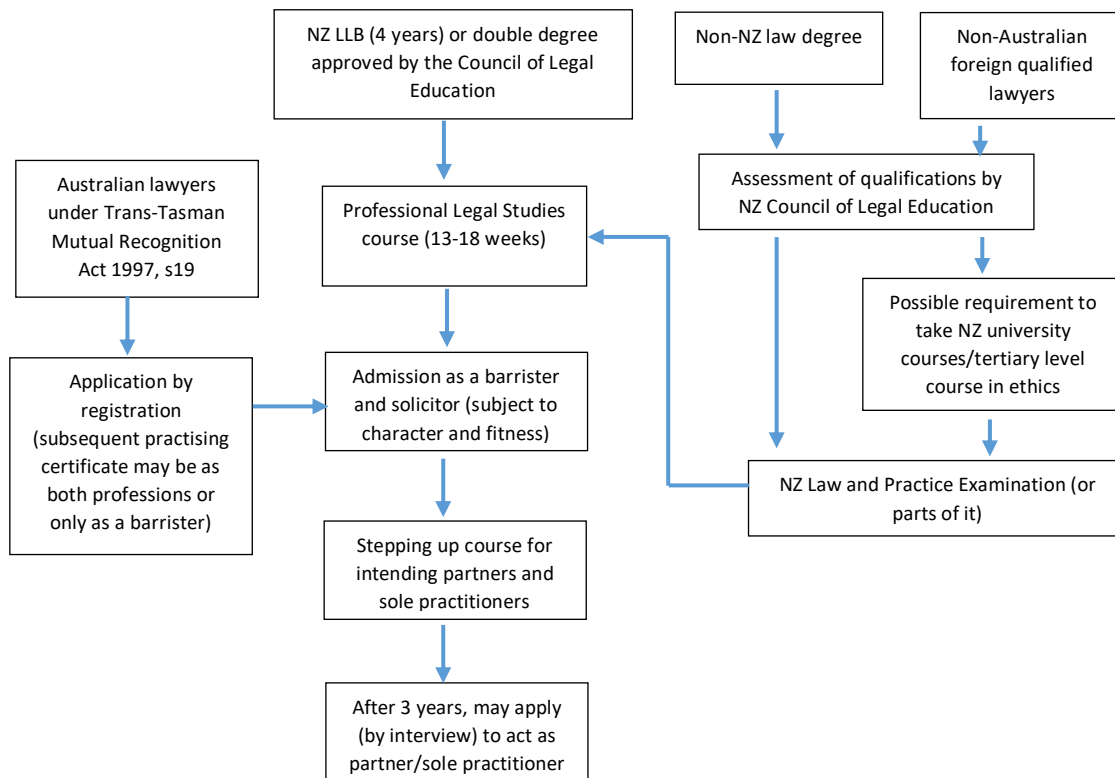
Both vocational courses are, however, governed by the same Professional Legal Studies Course Regulations 2004 which provide for parity in how assessments are marked, attendance requirements, plagiarism, resits, deferments and appeals, use of the Maori language and so on. Both courses therefore in effect operate from the same set of assessment regulations. The quality assurance for both is governed by the Professional Legal Studies Course Accreditation Regulations 2006 and overseen by the Council of Legal Education. Curriculum, outcomes and weighting between the different subjects is prescribed for both by the Professional Legal Studies Course and Assessment Standards Regulations 2002.

The longer-established Institute of Professional Legal Studies course focuses on competencies and skills as applied to transactions, on the basis that “Skills are enduring, whereas transactions are finite and ever changing” (Institute of Professional Legal Studies, 2017). Consequently, the curriculum is defined by skills, with the range of required transactions allocated to an associated skill. Three models are available:

- A 13 week course of which two weeks are onsite and the remainder online
- An 18 week course of which two weeks are onsite and the remainder online
- A 13 week full time onsite course

The College of Law course benchmarks its course against the Australian equivalents offered by its sister organisation in that jurisdiction. It offers a range of models of delivery including evening and weekend delivery of the onsite components in 13 and 18 week versions and with a 30 week part time model (College of Law, 2016). Its onsite components are also identified by skills such as problem solving, office management, representing a client in court.

Figure 6: Routes to qualification as a barrister and solicitor in New Zealand



9.3.2 Scotland

Examples of the professional qualification system in Scotland have been included elsewhere in this document. This includes discussion of the CPD system in section 3, table 1; the training contract in section 6.4 and an overview of the routes to qualification for both solicitors and barristers in section 7, table 1. It is, in addition, possible to qualify (voluntarily) as an accredited paralegal,¹¹⁷ regulated by the Law Society (Law Society of Scotland, 2017a).

The Society also accredits, monitors and sets outcomes for the Scottish Exempting degree, that is, an LLB that enables graduates to progress to the vocational course and so exempts them from the alternative non-graduate route (Law Society of Scotland, 2010). It is not, however, envisaged as a degree that can lead solely to professional practice in the same way as a US JD, however (Law Society of Scotland, 2010, para 1.5.1). In other jurisdictions the phrase “exempting degree” is used in a different sense, see section 9.5.2 below.

Discussion here, therefore, focuses on the PEAT 1 stage; the vocational course offered by six providers the way in which consistency is assured in that provision by the Law Society of Scotland. Essentially this is through the PEAT 1 outcomes embedded in the Diploma in Professional Legal Practice, designed to interlock with the PEAT 2 outcomes for the training contract and point of qualification. Student loans may be available for the Diploma Course (Law Society of Scotland, 2017c, p 1), but the fees of the different providers vary, from £7,700 including course materials and books at the University of Glasgow to £6,630 plus a maximum of a further £380 for textbooks at Robert Gordon University (Law Society of Scotland, 2017b, p 2). Admission to the Diploma is on the basis of undergraduate degree

¹¹⁷ The titles was changed from “registered paralegal” in August 2017 (Law Society of Scotland, 2017e).

results but there are understood to be more places available – full and part-time - than applicants (Law Society of Scotland, 2017c, p 3).

Providers of the course are accredited and monitored by the Law Society under powers devolved to it by the Solicitors (Scotland) Act 1980, s 5 (Law Society of Scotland, 2010). Rather like the New Zealand equivalent, the accreditation requirements set out outcomes and the balances between different subjects. Unlike the New Zealand equivalent, the Scottish Diploma is required to contain electives, but not all providers offer the same electives. The accreditation requirements allow considerable variety in delivery model (face to face, blended, online) and in mode of assessment (Law Society of Scotland, 2010, p 114) including OSCEs (see section 9.5.3 below). It may, but need not, be configured as a university postgraduate degree.

The PEAT 1 outcomes cover:

- Business, Financial & Practice Awareness (Law Society of Scotland, No date a)
- Conveyancing (Law Society of Scotland, No date b)
- Litigation (Law Society of Scotland, No date c)
- Private client (Law Society of Scotland, No date d)
- Professional Communication (Law Society of Scotland, No date e)
- Professional Ethics (Law Society of Scotland, No date f)
- Professionalism (Law Society of Scotland, No date g)

The offerings of the six providers can be summarised as follows :

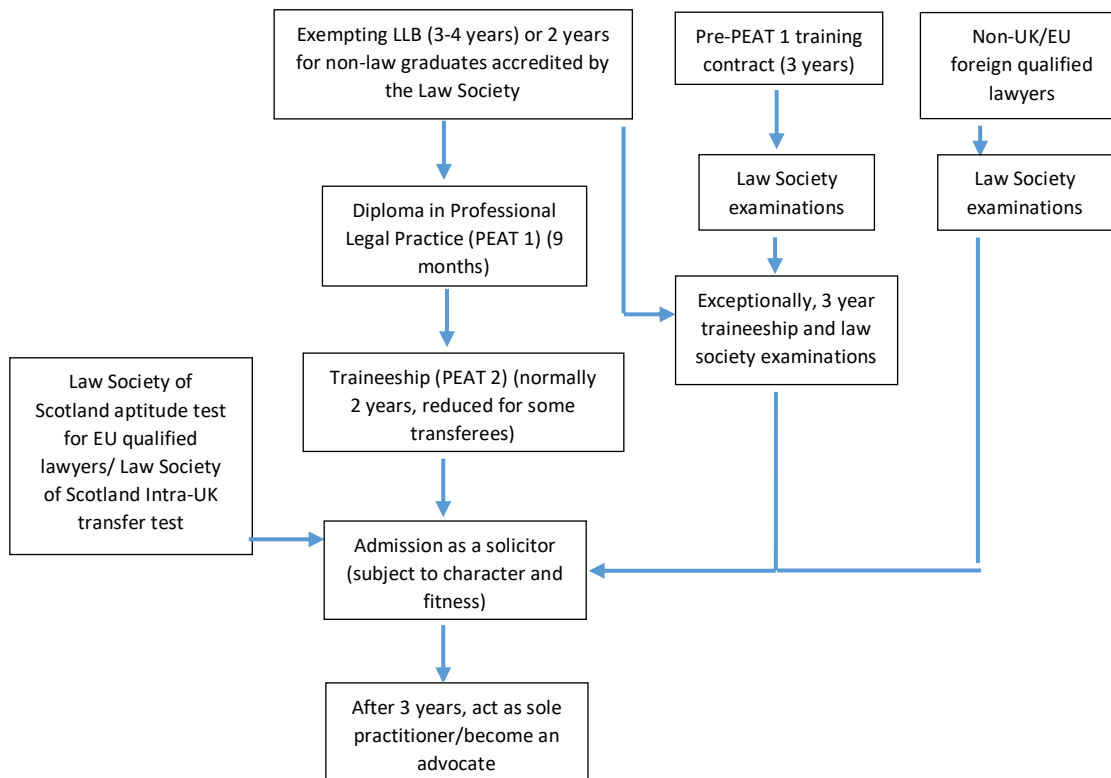
Table 11: Scottish PEAT 1 providers

		2017/2018 places FT/PT ¹¹⁸	Length (FT)	Teaching model	Assessments
University of Aberdeen	(University of Aberdeen, No date)	120/0	September – April	Transaction based learning	No examinations, but “a combination of written summative assignments, skills based oral assignments and online tests”
University of Dundee	(University of Dundee, No date)	70/15	September – April	“learning by doing”. Taught by practising solicitors. Configured as a postgraduate diploma.	“All aspects - attendance, completion of coursework, participation in tutorials, performance in examinations - are taken into account in judging student performance”
University of Edinburgh	(Edinburgh Law School, No date)	140/by arrangement	Two semesters	Lectures, podcasts and case study based tutorials; mock plea in mitigation at Edinburgh Sheriff Court and professional skills through Edinburgh University Free Legal Advice Centre. Taught by former or current solicitors and advocates. Contains a mandatory Financial Services and Related Skills/Accountancy course	No information on website
University of Glasgow	(University of Glasgow, No date)	200/0	9 months	“Courses are delivered through a combination of online resources, e-modules, lectures and small group tutorials”, mock plea in mitigation at Glasgow Sheriff Court. Taught by “experienced legal practitioners”. Possible to take courses in International Private Law and Roman Law required for later qualification as an advocate at no additional cost.	Reference to “practical assessments” without further detail
Robert Gordon University	(Robert Gordon University, No date)	33/no limit	26 weeks FT/2 years PT	“In full time mode, you will learn through a combination of lectures, seminars and workshop sessions. These comprise of a mix of group study, discussion, simulation and presentations of findings by teams and individuals. You will work as an individual and also as part of a team on case studies, presentations and discussions.”	Roleplay, coursework, class participation, portfolio, group work, open-book examination
University of Strathclyde	(University of Strathclyde, no date)	No limit/no limit	9 months FT/24 months PT	Simulation, lectures, demonstrations and workshops. Full time skills training period in semester 2. Taught by practising solicitors. Students are assigned to working “firms” of four students from the beginning of the course. Use of SIMPLE sim software, simulated clients, webcasts, multimedia, Foundation Course in Professional Legal Skills ¹ . Under the col Assessment, 'Collaborative groupwork, simulations, both digital and face-to-face, portfolios, open-book examinations, high-stakes skills assessments in interviewing, negotiation, advocacy, drafting, letter writing, legal research. ¹¹⁹	No information on website

¹¹⁸ Law Society of Scotland, (2017b).

¹¹⁹ Additional information provided by Professor Paul Maharg.

Figure 7: Routes to qualification as a solicitor in Scotland



9.4 Knowledge and skills

The list of knowledge areas, whether in civil or common law countries, tends to occupy a limited range of options. Sometimes these are prescribed as topics, or with very detailed content (bottom up) or top down by way of outcomes for degrees (see eg Australian Learning and Teaching Council, 2010; Federation of Law Societies of Canada, 2011; Quality Assurance Agency, 2015) and vocational courses or increasingly by competence statements provided by the professional body benchmarked for the point of qualification. Where there is variation it tends to be about whether business law, family law and employment law are included; and evidence and ethics may also be required in jurisdictions where the law degree is more consciously oriented towards practice (see for some examples Webb, Ching, Maharg, & Sherr, 2013, table 4.4). Competency based models are increasingly used in accountancy education, with ICAS doing so from 1999 (Gammie & Joyce, 2009) but not without criticism of the variety of approaches taken to do so (Boritz & Carnaghan, 2003).

Skills are typically defined in terms of DRAIN,¹²⁰ emphasised in different proportions. Particularly where graduates can enter independent practice comparatively soon after formal qualification, client care, practice and office management skills are often added. ADR is sometimes compulsory, at least on vocational courses (the University of Limerick makes it compulsory in their degree). Risk management is also covered to varying degrees, of which the most extensive is the mandatory programme for all trainees, solicitors and registered foreign lawyers in Hong Kong (Hong Kong Academy of Law, 2015).

What is less clear is the extent to which such mandatory knowledge and skills requirements keep up with the times in terms of models of practice, in considering in-house and outsourcing practice (the

¹²⁰ Drafting, research, advocacy, interviewing/conferencing, negotiation.

latter, it is suggested, will become of increasing interest in Ireland post Brexit (Leonard, 2016; Manning, 2016)).

Two questions arise as to use of technology. One is the extent to which the law of technology is covered. If it is a separate topic, this is comparatively easy to identify. If, however, e-business is covered as part of commercial law, or cybercrime as part of crime, detecting and evaluating coverage is more challenging. A study of undergraduate accountancy degrees in the UK and Ireland, for example, found that coverage of e-business was less developed in those two countries than in the USA (Kotb & Roberts, 2011)

The other question is the extent to which students and trainees use technology for learning and in the context of vocational courses in particular, learn to use the kinds of technology that are used in legal practice for, for example, spreadsheets, case management, videoconferencing, e-disclosure, electronic data rooms and the like. Taken further, the question is whether legal education prepares trainees for the kind of new legal jobs that Richard Susskind envisages.

9.5 Approaches to delivery and assessment

In this section we describe a number of different approaches to delivery and assessment that are in use in legal and other professions. This does not pretend to be an exhaustive list, but to provide sufficient information on which to base further investigation. Identifying what is “best practice” is challenging as it involves balancing educational outcomes against practicalities, and is particularly challenging in the absence of the kind of systematic review of educational practice seen in medicine through the BEME Guides.

9.5.1 Centralised but personalised: the built environment interview

It will be noted from discussion in earlier chapters that some of the built environment professions operate a terminal assessment system that is centralised, on the basis that it is organised, criteria set and examiners recruited by the professional body. However, rather than a pre-determined written or oral assessment, with each candidate facing the same questions, the assessment is personalised to the extent that it is a form of viva, with candidates presenting on a case study which represents a project they have been involved within the workplace (Royal Institution of Chartered Surveyors, 2017, p 12). The model is resource intensive and, in the legal context, questions of conflicts of interest, privilege and client confidentiality would need to be addressed, but provides a form of investigation into what has been learned in the workplace and reflective capacity that might not be assessed by other means.

9.5.2 Exempting degrees

An “exempting degree” other than in Scotland is an academic award that combines both academic and vocational requirements, allowing graduates to progress to bar examinations, training contracts or straight to qualification. In principle, the US JD is an exempting degree, as it is expected to provide both the skills and knowledge required for entry level practice. Some JDs are more ostensibly practice-focused than others, an example being the Washington and Lee JD whose later years are, in effect, a combination of vocational course and training contract activities (Washington and Lee University, no date.)

The Australian, Canadian or Hong Kong JD is not envisaged as an exempting degree, as there are further requirements and other learning environments to be navigated before qualification. Exempting degrees are not currently possible in Ireland, but have, however, been developed in England and Wales (Solicitors Regulation Authority, No date); Ontario (Lakehead University, 2013) and South Australia (Flinders University, No date). The possibility exists, within the Scottish system, to combine the degree with the PEAT 1 stage (Law Society of Scotland, 2010 para 3.3.1).

On one hand, therefore, an exempting degree is a regulatory construct, combining two courses, possibly at masters level (Northumbria University, 2017), with possible benefits in, for example, securing undergraduate funding. It is, therefore, contingent on the professional body, government or both, allowing the vocational course to be embedded in this way and, by definition, delivered by an HE provider. On the other, an exempting degree may be more or less successful at integrating theory and practice in its curriculum by contrast with treating the vocational elements as bolt-ons to the third year and an additional fourth year. Where circumstances permit, an exempting degree has been able to encompass all or part of a training contract served as a placement.

9.5.3 “Hot action”: OSCEs and charrettes

One challenge in assessment is to differentiate between Miller’s “knows how” and his “shows how” in a way that replicates practice. One aspect of practice is that it can involve decision-making individually or in a team under pressure and at speed. Another is that a professional may need to be able to turn their attention to a sequence of very different problems presented sequentially. The OSCE (Objective Structure Clinical Examination) has been used since the 1970s in medical assessments to the extent that there are now specialist resources to prepare students to take them (eg Shelmerdine, North, Lynch, & Verma, 2012; OSCE Skills, 2017). Put simply, students are presented, in sequence with a number of stations, each of which presents a problem to be addressed within a predetermined time limit. Setting up an OSCE assessment is complex although the medical experience provides guidance (Khan, Ramachandran, Gaunt, & Pushkar, 2013) and assuring consistency of marking can be challenging (Meskell et al., 2015). They have been used in Ireland in nursing (Brosnan, Evans, Brosnan, & Brown, 2006); medical general practice (Irish College of General Practitioners, No date); midwifery (Smith, Muldoon, & Biesty, 2012) and surgery (Royal College Surgeons in Ireland, No date) and almost certainly in other fields such as pharmacy, dentistry and veterinary medicine. They have been adapted to a legal setting for the Qualified Lawyers Transfer Scheme in England and Wales (ICF GHK, 2012; Maharg, Gill, & Rawsthorne, 2011).

A charrette is a group activity under time pressure and originally referred to the cart in which French architecture students would make last minute adjustments to their models as it travelled towards the university where the models were to be submitted for assessment (Willis, 2010). The concept developed in the context of architecture education and has since been extended to collaborative design, research (Gibson & Whittington, 2010) and community engagement (Kennedy, 2017). It has occasionally also been used for assessment (eg McLaughlin, 2013). To the extent that solicitors, particularly in large firms, work in collaborative teams, the concept may be of use in future developments in professional legal education.

9.5.4 Internationalised and multi-jurisdictional delivery

Definitions of “international” legal education are broad, and can include activities such as Erasmus or LawwithoutWalls (Lawwithoutwalls, No date). There are also examples of attempts to set up “global”

law schools with an emphasis on transnationalism (Flood, 2011, p 9) and McGill University in Canada, seeking to embrace both civil and common law, operates a “transsystemic” model of legal education (Arthurs, 2009). Some of these activities, particularly if situated in the university may be designed to develop cultural awareness (Dunne, 2009; Jurgens & Robbins-O’Connell, 2008; Khoo, 2011) or modern foreign language skills that can be used in a number of working environments rather than specifically to facilitate international legal practice.

Gopalan and Paris have described Irish legal education as “adapted to ensuring, or at least facilitating, admission in other common law jurisdictions” (Gopalan & Paris, 2016, p 161) and describe lawyer exchange programmes for trainees and solicitors (ibid, p 162). They note, however, that opportunities for foreign law students to undertake internships in Irish firms have become increasingly competitive as a result of budget cuts (ibid). It was noted in section 8 that Ireland has reciprocal admission arrangements with some jurisdictions in the USA and Australasia and that PPC II is configured so as to satisfy the admission arrangements for England and Wales. Writing at the time of the Legal Services Regulation Bill, they note that there is no centralised authority governing the undergraduate law curriculum; (ibid, p 166) “efforts to impose any mandatory standards for legal education” even though a focus on internationalisation would, in the reforming context “align the Irish legal profession with global best practices” (ibid, p 169) and that one challenge for Irish legal education is the limited diversity in the student population (ibid, p 171).

Another development, however, is that of the *double maîtrise* degrees that act as qualifying law degrees for more than one jurisdiction. Insofar as they equip graduates to qualify in either the Republic or in Northern Ireland, the law degrees offered by Queen’s University Belfast fall into this category and arguably may be of increasing interest to students wishing to keep their options open post-Brexit or ultimately to dual qualify. Accountants (Chartered Accountants Ireland, 2017; Institute of Chartered Accountants of England and Wales, 2017) and doctors, whose core knowledge is more easily transferable to other jurisdictions, find it substantially easier to cross-qualify or to practice abroad than do lawyers.

In some small jurisdictions, circumstances force a multi-jurisdictional approach for pragmatic reasons which may then have positive impacts on students. To qualify as a Jersey advocate, for example, it is necessary to have completed all or almost all of the qualification route for solicitors or barristers in England and Wales (Institute of Law Jersey, 2017). As a matter of principle, given the EU-like harmonising structure of CARICOM in the Commonwealth Caribbean nations under the Revised Treaty Of Chaguaramas (2001), but also pragmatically, it was until comparatively recently, impossible to complete the sequence of both academic and vocational courses in one’s home country (Barnett et al., 1996). The vocational courses at (currently) three providers: one in Jamaica (Norman Manley Law School, 2016), one in Trinidad (Hugh Wooding Law School, No date) and one in the Bahamas (Eugene Dupuch Law School, 2017), were and still are taught to mixed cohorts (although some streaming takes place) and, once completed, graduates are in principle entitled to practise in any of the member nations, including the civil law jurisdiction of St Lucia and Guyana (which has a Roman Dutch land law system). The concentration in one place of the student body also promotes inter-jurisdictional collegiality and referral networks.

9.5.5 PBL and related approaches

Problem based learning (PBL) is an approach to teaching where students are presented first with a problem and, in solving it, acquire the knowledge and skills desired by the curriculum. It has been used at undergraduate level in law (York Law School, no date). It is likely that some of the vocational

courses described in this document approach it, but they may continue to depend on the lecture plus tutorial approach in which the relevant knowledge is disseminated by the tutor first, before being applied to a problem in the classroom and by the students in their own revision and reinforcement activities afterwards. There is, however, an increasing interest in “flipped learning” in legal education (Wolff & Chan, 2016) in which material that would otherwise have been delivered by lecture is transmitted online, to be studied by students in their own time, before attending the interactive classroom. There is clearly an upfront cost in developing and maintaining the online material, but there may be a saving in lecturing time, in addition to the less passive approach to student learning. In medicine, the approach has been shown to enhance learning (Kaufman & Mann, 1999).

An extension of the flipped- approach is a concept derived from Physics teaching that allows for interactive group work in large class settings, facilitated by technology. In a SCALE-UP¹²¹ classroom, students work in small groups around computer terminals to solve a problem, carrying out research as necessary, as the tutor tours the room to facilitate. This approach has been used in the undergraduate law classroom (Burke, 2015; Nottingham Trent University, No date)

9.5.6 Simulation

Simulation make take place face to face or online, and is frequently used in legal vocational education where students role play the part of lawyer in a transaction. In principle this allows students to experiment and take risks in a safe environment. Senior lawyers in simulation may have some difficulty in doing this without simply reverting to what they normally do in the office (Ching, 2014). A question in design of simulation activity is the extent of its fidelity, in this context, to legal practice. Stretch identifies three aspects to fidelity: content, process and context (Stretch, 2000). Moves to develop realistic courtrooms and office spaces in legal education represent content fidelity; creation of realistic legal case study documents, with realistically named characters, represents content fidelity. For novices, because of their lack of experience, process fidelity is less significant because the situation of the simulation is, by definition, simplified: “the design must mirror reality only as far as the learner has the capacity to handle it” (Stretch, 2000, p 35)

Other participants in a simulation may be played by other students, tutors, external experts (eg a member of the judiciary brought in to judge a mock trial) or actors. Increasingly in interviewing skills courses, consistency and feedback on client care skills is enhanced by use of trained standardised clients (Barton, Cunningham, Jones, & Maharg, 2006), a model, adapted from medical education, that is already in use on the LSI’s Diploma courses (O’Boyle, 2013).

Simulation of interdisciplinary or interprofessional education is increasingly a feature of medical education. Healthcare professionals from different disciplines work and learn together; the most obvious example would be nurses and doctors participating in a simulation in which each takes on their appropriate professional role. A systemic review of literature on this approach found that it assisted in development of collaboration skills, but not necessarily in improving attitudes to members of different professions (Hammick, Freeth, Koppel, Reeves, & Barr, 2007). Clearly, with some co-operation, simulated activities could be designed that involved both solicitor- and barrister- trainees, each taking the appropriate role.

¹²¹ Student-Centred Active Learning Environment with Upside-down Pedagogies

9.5.7 Specialisation and accreditation

Where professions are split, there is already a degree of recognition of advocacy as a separate specialist field for which special education and assessment is required. This is also the case where separate conveyancing, patent and trade mark and notarial professions exist. Moves towards activity based regulation would, however, suggest that one might qualify into a specialist area of practice, in which the education is narrowed in scope but arguably increased in depth, and be licensed only to practise in that area. Other forms of specialist accreditation that are available involve licensing (eg of solicitors to obtain rights of audience in the higher courts in England and Wales); title (eg of the German *Fachanwalt* described in section 3.3.4) or as a form of marketing (see the conveyancing schemes discussed in section 3.3.4)

It is unusual for a legal professional regulator to accredit qualified lawyers other than by specialisation, although, as described above some European professions distinguish between assistants and “sworn advocates”. In England and Wales, the Chartered Institute of Legal Executives has a number of grades of membership, with only a proportion achieving full Chartered status and the lower grades operating as a form of paralegal qualification (Chartered Institute of Legal Executives, 2017). The LSI has investigated the accreditation scheme for Writers to the Signet (Society of Writers to HM Signet, No date) with a view to a possible similar development (Law Society of Ireland, 2016a). It is, however, comparatively common for other professions to have a stepped series of membership grades in which recognition of senior status is granted by the professional body rather than the employer or the market (see, e.g. Society of Chartered Surveyors Ireland, No date; Engineers Ireland, No date). The clear structure and associated grading within medical education serves a similar purpose.

9.5.8 Y-shaped courses and split delivery

The idea that Irish solicitors and barristers should share their initial vocational training in some way, or at least share a law school, has been in the air for some time. In 1968, for example, “a combined professional school – amalgamating the courses at present given to solicitors apprentices by the Incorporated Law Society and to prospective barristers by the Honorable Society of King’s Inns” was suggested (Bourke, 1968, p 3), as was a two year vocational course, of which the first should be in common for aspiring members of both professions, with the second year split. As with the PCLL in Hong Kong, the vocational course could then be described as “Y-shaped”. A proposal for at least some element of common education with the bar also appears, much more recently, in the Education Committee Report of 1995 (Education Policy Review Group, 1998, p 41).

To the extent that courses such as the Scottish PEAT 1 diploma, the English LPC and the PPC offer electives in their final stages, they could be said to be Y-shaped, as students diverge according to their interests or those of their employer in the final stages. A more radical version is where, as in Hong Kong and Mauritius, students from more than one profession initially study together before breaking off to study topics specific to their intended profession in the later stages. The likelihood, in a small jurisdiction, is that this is perceived as a suitable use of resources in circumstances where delivering a dedicated course to a small number of students is not economically feasible. It has the advantage, however, of ensuring that different kinds of lawyers have a common core of knowledge and skills and, in the slightly different Scottish model, that advocates understand more clearly the work of a solicitor.

The LSI considered the possibility of splitting PPC I and PPC II in 2007 (Law Society of Ireland, 2007, para 5.1.10, 5.2.4). This could in theory allow other providers to enter the market for PPC II or large firms to offer PPC II in-house. It would be possible, in the Scottish system, for a collaborator with a PEAT 1 Diploma provider to offer electives separately (Law Society of Scotland, 2010, p 6). In principle,

it is possible for stages 1 and 2 of the English LPC to be studied at different providers but this option was not taken up. Employers in England and Wales, unlike their Irish counterparts, expect trainees to have safely passed all their examinations before reaching the workplace. Consequently the only real development in this regard has been one firm that opted, working with a provider, to take the elective stage in-house and to overlap it with the first stages of the training contract (Heine, 2011).

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