

Solicitor Education in Ireland Review Report

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Glossary of terms

ABS	Alternative Business Structure
AI	Artificial Intelligence
BCL	Undergraduate law degree (typically 3/4 years)
BIALL	British and Irish Association of Law Librarians
Blocks	The compulsory areas that must be covered during a training contract
BPTC	Bar Professional Training Course (England and Wales). Equivalent to the King's Inns Barrister-at-Law course.
BRIC	Brazil, Russia, India and China
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
DLO	Digital learning environment
DWS	Daniel Webster Scholar Program (USA)
ECTS	European Credit Transfer and Accumulation System
EC	Education Committee
FE-1	The entrance examination for the PPC
FE-2	(obs) Assessment at the PPC I stage
FE-3	(obs) 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).
GGSL	Glasgow Graduate School of Law
IBA	International Bar Association
IPLS	Institute of Professional Legal Studies, QUB
JD	Juris doctor (degree in law)
King's Inns	The Honorable Society of King's Inns
LETR	Legal Education and Training Review (England and Wales)
LFS	Law Firm School (Netherlands)

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LLB	Undergraduate law degree (typically 3 years)
LLM	Postgraduate law degree (typically 1 year)
LO	Learning outcome
LPC	Legal Practice Course (England and Wales), equivalent to the PPC
LSRA	Legal Services Regulation Act 2015
LSR Authority	Legal Services Regulation Authority, established by the LRSA
LSI	Law Society of Ireland
LSNI	Law Society of Northern Ireland
LSS	Law Society of Scotland
MDP	Multi-disciplinary practice
MOOC	Massive open online course
NFQ	National Framework of Qualifications
NUI Galway	National University of Ireland, Galway
NUI Maynooth	National University of Ireland, Maynooth
OLQE	Oversea Lawyer Qualification Exam (Hong Kong)
Paralegal	A person working in legal practice with no other title or designation
PBL	Problem based learning
PC	Practising certificate
PCC	Professional Competence Course (Scotland)
PEAT	Professional Education and Training (Scotland)
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 Lawyer Transfer Scheme (England and Wales)
QLTT	Qualified Lawyer Transfer Test
QQI	Quality and Qualifications Ireland
QUB	Queen's University Belfast
Reliability	Reliability is a statistical evaluation of the test. It is about the consistency of the results obtained from an assessment, and the reproduceability of the assessment outcomes. Reliability is a facet of Validity.

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SC	Simulated client
SIMPLE	SIMulated Professional Learning Environment
SQE	Solicitors Qualifying Examination (proposed for England and Wales)
SRA	Solicitors Regulation Authority (England and Wales)
TCD	Trinity College Dublin
TCPD	Trainee CPD (Scotland)
TL	Transactional learning
Training contract/ training	in-office The period of supervised practice (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
Validity	At its most basic, validity is about whether a test achieves what it sets out to achieve. It is “the hallmark of quality as far as testing is concerned” (Newton & Shaw, 2014). Validity refers to the inferences which can be drawn, or the quality of the decisions which can be made, on the basis of the test results, as opposed to being a property of the test.
WLS	Waterford Law Society

Chapter 1

Executive summary: Recommendations

1.1 Headline findings

The report recognises the high standards of professional legal education within the Law Society of Ireland (LSI). On the PPC the structures of teaching are well organised and designed, and current teaching is aligned to assessment practices. Some aspects of initial professional education provision for solicitors are ahead of the field in legal services education, including the use of some digital technologies. The development of CPD in the form of Diplomas and MOOCs leads the field. Our report also identifies a number of ways in which communications, and the educational design of learning, teaching and assessment could be enhanced to ensure that solicitor education is fit for future challenges. To this end, we propose a range of incremental reforms and review projects that, if undertaken, would work collectively to ensure more effective solicitor education, and more effective integration of the LSI's professional educational systems.

1.2 Summary of recommendations

1. Review communications with stakeholders, to facilitate greater transparency, increase recognition of the LSI's activities, and to communicate the content, standard and outcomes of solicitor education.
2. Keep a watching brief on the effects of legal practice on solicitor education.
3. Increase the educational resource-base of the LSI.
4. Create new models for the PPC.
5. Review PPC outcomes and standards.
6. Review the internal structure of the PPC.
7. Re-design forms of learning and teaching on the PPC.
8. Further clarify the development of Ethics within the PPC.
9. Further develop professional legal skills throughout the PPC.
10. Review assessment practices in the PPC.
11. Re-design the purpose of the FE-1 and communications surrounding the assessment.
12. Set benchmark standards for tutor training.
13. Review aspects of the training contract.
14. Review the provision of CPD and Diplomas.
15. Review the Qualified Lawyers Transfer Test.

1.3 Detailed recommendations

1.3.1 Review communications with stakeholders, to facilitate greater transparency, increase recognition of the LSI's activities, and to communicate the content, standard and outcomes of solicitor education

- Many practitioners involved in professional legal education appeared to have only a patchy understanding of its process, its cultures, role and outcomes. LSI should review its communicational processes, focusing on both content and ways of communicating effectively with the profession, other professional legal educators and other stakeholders.
- Many interviewees were unclear about the aims of the PPC. They were unsure what its general outcomes were to be, educationally, and, partly as a consequence, there was lack of consensus on what it was designed to do. The aims of the programme could be clarified in a process of review (see further 1.3.5 below).
- Similarly, communication processes to firms about the training contract requirements, and to potential trainees about recruitment opportunities, should be reviewed.
- It was noted that the PPC outcomes and standards (and those of the FE-1) are not currently accredited to a level in the Irish NFQ system. There is no formal reason to do this, but as a result, (and linked to the issues of aims and communications) it may be that this contributes to an uncertainty regarding the level of the programme. The LSI should review the issue, continue to liaise with QQI and, bearing in mind the results of other recommendations made here, make an explicit statement that clarifies the level of the qualification for all stakeholders.
- Publish more information on the subject of solicitor education in a LSRA and Brexit context.
- Publish relevant statistics on a regular basis in LSI annual reports. This would include proportions of solicitors and trainees in private and in-house practice, in Dublin and elsewhere, genders and age groups, pass rates for FE-1 papers and the PPC; diploma and LLM graduates.
- Proactively promote the professional qualification of solicitor in Ireland.

1.3.2 Keep a watching brief on the effects of legal practice on solicitor education

- Consider setting up a Horizon-Scanning Team to monitor developments in legal practice, in Ireland and internationally, and in other professions. Track developments in digital technologies in the legal professions and the administration of justice – for example the increasing automation in some areas of practice, and the increasing use of AI in others; and the use of AI and digital communications in courts.
- Explore how paralegals and legal executives are currently employed, and the impact this may have on professional practice in terms of strategic workforce planning and therefore solicitor education. This may, depending on the implementation of the reports mandated under the LRSA, include licensed conveyancers in due course.

- The LSI may wish to explore the possible scope of and opportunities for unbundling and consider the extent to which this can be represented in, for example, CPD provision in relation to practice management.

1.3.3 Increase the educational resource-base of the LSI

The expansion of LSI educational resources is essential for a vision of a global professional legal education in Ireland. To this end we would recommend the following:

- Expand the LSI's physical resources. While a detailed audit of current room usage would be helpful, together with an estimate of future needs based upon the recommendations below, we estimate that considerably more small-group and break-out spaces will be required – perhaps 10-15 rooms, with wireless connectivity to support collaborative learning between learners within the rooms and with others beyond it. We advise that a dedicated recording space be set aside for the development of audiovisual and multimedia resources in solicitor education. Another lecture theatre may also be required.
- Expand the LSI complement of staff:
 - Increase teaching staff numbers. This is essential for more small-group teaching and for future educational design work across the whole educational portfolio of the LSI.
 - Create an expanded Learning Development Unit, comprising an educational designer and digital applications staff, with responsibilities for educational and digital design, coding, the training of all teaching staff, and the development of research, and to which teaching staff could be seconded for short periods of intense resource development.
 - Increase the ratio of administrative support as required.
- Explore the use of technological applications/software currently in use in legal practice in Ireland, with a view to adapting them where appropriate to professional legal education.
- Explore the use of technologies that will support transactional learning, such as simulation, PBL, and other forms of active experiential learning.
- Employ the following five approaches to the use of digital technology in LSI curricula:
 - Use social media apps for learning where appropriate;
 - Support the development of digital professional literacies;
 - Consider micro-credentialling: for example, the use of digital badges in programme design;
 - Simulation;
 - Based on current good practices and future developments, create distinctive LSI approaches to the theory of legal practice and legal education.
- Where possible, LSI should work with colleagues internationally, with other regulators and with colleagues in legal education in Irish HE and with publishers to develop digital applications and new environments for student learning. Swift progress in the development of technology-enhanced learning can be achieved if institutions collaborate with each other and across levels of study, and by working in a targeted way with experts from other jurisdictions.

1.3.4 Create new models for the PPC

- Given that s.34(b) of the LSRA requires the LSR Authority to report to the Minister on the unification of the solicitors' and barristers' professions, the LSI may wish to reopen discussions with the Bar on the concept of joint training programmes, and model possible joint approaches.
- Make urgent arrangements for designing and implementing a part-time, block-attendance, or blended learning PPC programme such as currently exists in England and Wales, and in Scotland and which is offered by the King's Inns. This should improve access for mature and regional students; and the effects on the diversity of the intake and the profession should be monitored.
- Create flexibility in both PPC I and II by allowing modules to be of different length and structure. Expansion of elective choice in PPC II may assist in freeing up space and time in the core curriculum of PPC I.
- Adapt and use approaches such as logic modelling (van Melle 2016) to assist in the planning, implementation and evaluation of new approaches in the PPC programme.
- It may be possible to think of the PPC as being the first stage of an LSI-designed masters' programme, in which there is a choice of four options, within a particular time period, e.g. 10 years. The following structure may be possible as a result of the review suggested at 1.3.2 and elsewhere in 1.3.4):
 - No further commitment to study. Simply possess the PPC and remain in practice, undertaking CPD, possibly taking one of the LSI's specialist CPD Diplomas.
 - Choose one of three routes. In each route the student would be responsible for defining the area of study, its learning outcomes and standards, and would be responsible for negotiating a learning contract between the various bodies participating in the further study component
 - Further study in an area of academic law, culminating in a dissertation or other substantial piece of work (e.g. code, new co-ordinated practice structure such as a health justice partnership, etc.). This could be co-hosted with a range of partner institutions, in Ireland or internationally
 - Further study in an area of practice, where the dissertation could be co-supervised and assessed with a legal service employer in Ireland.
 - Further study in an area of legal education and practice / academic law where the negotiated learning contract draws upon both areas.

1.3.5 Review PPC outcomes and standards

- Develop learning outcomes and standards that apply to the varieties of segmentations of the legal profession in Ireland, and that give choice and options to students on the PPC. Outcomes and standards should reflect a variety of different forms of practice, including public law, regional and rural practice, in-house practice, financial services regulation, IP and the like. Standards should map learning outcomes to PPC assessments (see also 1.2 above on the communication of such outcomes and standards to stakeholders).

- Consider developing swift trust as a component of professionalism within the outcomes of the PPC curriculum.

1.3.6 Review the internal structure of the PPC

- Retain the structure of PPC I, traineeship, PPC II, which is a useful structure with much potential for close liaison with the legal and other professions.
- Design the PPC I and II curricula around a core of professionalism, values, attitudes, skills and knowledge for the entire profession which will thread through both curricula and, where possible, the traineeship.
- The LSI should consider re-developing PPC I and II as a spiral curriculum. PPC I standards should represent the benchmark level of a legal professional curriculum with both specialisms for different areas of practice and higher standards of skill and knowledge developed in PPC II.
- Consider the use of student-negotiated modules for part of the PPC II, with specialist elective modules designed and delivered in conjunction with other bodies and institutions.
- Explore the possibility of extending electives in PPC II as the first step of a masters' programme (see 1.3.4 above), with newly-qualified solicitors being given the opportunity to continue learning beyond qualification with the completion of a dissertation or a substantial equivalent piece of work-based research and learning.
- Along the lines of the curriculum development within the Dutch innovation of the Law Firm School, develop micro-electives in PPC II for specific areas of law that blend knowledge, skills, ethics and professionalism.
- PPC I should be viewed as being a core set of skills for the whole profession, with more specialist skills provision the subject of PPC II.

1.3.7 Re-design forms of learning and teaching on the PPC

- Reduce substantially the delivery of information by lectures. Expect students to prepare and have understood this information for workshops and transactional learning tasks.
- Transform many lectures into digital assets that complement and enhance other learning and teaching resources such as books, handouts, feedback from other students, staff teaching both online and f2f.
- Create more skills workshops, design collaborative work, work carried out at a distance, problem-based and transactional learning.
- Design blended learning, teaching and assessment environments where skills and ethics are foregrounded, as in the Daniel Webster programme at the University of New Hampshire Law School; and at regular intervals conduct research upon the achievement of students to verify the level of that attainment.
- Specific pedagogies such as simulation, games and PBL can have a significant effect on learning and assessment. The LSI should consider the use of simulations and PBL and similar approaches

to professional learning and assessment for the PPC, and in particular using them to bridge the transfer of skills and knowledge from the PPC into traineeship.

1.3.8 Further clarify the development of Ethics within the PPC

- We note that although Ethics is included in several parts of the curriculum in different ways (Brennan et al, 2015) the specific module appears in PPC II and there seems to be some lack of clarity about how it is mapped throughout the curriculum. The PPC course team should create a map detailing where, in the spiral curriculum, and to which levels, ethics and professionalism are taught, both individually and in clusters. Standards should be made explicit as indicated in 1.2 above.
- Ethics, in the shape of a re-constituted professionalism, should be a core element of the early weeks in the PPC I and pervade the course from then on. Consolidate the place of professionalism and professional ethics - as a code, as an experiential mode of professional practice, and as a core value and foundational capability - from the outset of and throughout the PPC curriculum.

1.3.9 Further develop professional legal skills throughout the PPC

- Liaison should take place with representatives of the profession to establish the required skill-set for the next 5-10 years using Delphi and other processes. Such liaison could be a regular process, taking place at least every decade, so that the process is more cumulative, building on earlier events, and thus easier to embed in the process of curricular change.
- There are challenges in tracking which skills are included in which substantive modules of the PPC with the result that the focus in a substantive module may be more on content than on the skill in order not to interfere with what has been taught on the Skills module. We would recommend clarifying communications on this point.

The LSI Curriculum Development Unit should consider creating a skills map for PPC I and II detailing where, in the spiral curriculum (see 1.3.6 above), and to which level, skills are taught, both individually and in clusters. Standards should be made explicit (see 1.3.2 above). If skills are introduced in discrete introductory skills modules, the skills should be embedded, in a planned approach, into other modules so that the spiral curriculum approach can be achieved.

1.3.10 Review assessment practices in the PPC

- In alignment with the re-design of approaches to learning on the PPC, the LSI should re-design assessment practices to include peer evaluation, performance evaluations by trained practitioners, simulated client evaluations, self-perception and reflection. Such re-design should bring assessment closer to the forms used in professional practice.
- Consider linking with general tracking of trainee experiences in the traineeship, with the use, e.g. of an ePortfolio system. This will need to be subject to careful design so as to avoid difficulties with client confidentiality and legal professional privilege.

- Introduce methodologies that enable the validity and reliability of the assessment of skills and knowledge to be evaluated on an ongoing basis. This will enhance the qualification as a whole.
- Where possible, place assessment of discrete skill-sets and knowledge close to the learning zone where students learn and practise the skills and knowledge. Construct small-scale but high-stakes summative assessments of all relevant skills.

1.3.11 Re-design the purpose and structure of the FE-1 and the communications surrounding the assessment

We are concerned about the purpose and structure of the FE-1, and would recommend the following actions:

- Align FE-1 content and standards closely with the PPC. The assessment should be based explicitly on the PPC core knowledge components, ie those items of knowledge that students need to know in order to understand and learn skills, values and transactions on the PPC.
- Carry out periodic validation of the assessment. Regularly review the purpose and content of the FE-1, for example on a three-year cycle, to ensure it meets the needs of modern professional practice, thus ensuring validity of assessment.
- Review communications regarding the FE-1 (see 1.1 above). In our interviews there appeared to be confusion regarding the purpose and structure of the FE-1. The LSI needs to review the nature and purpose of the information it disseminates about the FE-1 assessment so as to provide evidence to students, the profession and to all other external stakeholders of the rigour, fairness and validity of the FE-1 assessment.
- In anticipation of requests from the LSR Authority, the LSI may wish to conduct a thorough and regular data review covering: pass rates, pass marks, drop-out rates (by subject, by university, by law/non-law graduates, overall, by duration of attempts); marking trends (by subject, by individual marker); and should also seek to assess the reliability of the assessments. Once set up, the information from this review could form part of the communications to stakeholders recommended at 1.3.1 above.
- In the longer term (though bearing in mind the LSRA reporting timetable), the LSI may wish to model alternatives to the current FE-1 (e.g. the LSNI approach, the General Medical Council approach, the licensing of undergraduate degrees, the setting of FE-1 only for non-law graduates) and consult with stakeholders over its purpose and structure.

1.3.12 Set benchmark standards for tutor training

- We recommend training for all PPC teaching staff to benchmark standards around the time of their first induction as tutors. Such training is more important now and in the future, given the increased presence of digital technologies, their use in solicitor education at all levels of the LSI educational portfolio and the rapid turnover of digital applications and their uses in the curriculum. Web resources could be deployed to disseminate information, too, with occasional email alerts for tutors.

1.3.13 Review aspects of the training contract

- Review the configuration of the requirement for blocks of training to align it with modern practice, including public law, regional, commercial and in-house practice.
- If a part-time PPC is designed, review training contract options for part-time students.
- Establish a single portal by which students can identify those firms that are offering traineeships (see 1.3.1 above).
- Develop with training firms the concept of ‘entrustment’ as a core element of training and professionalism.
- Reduce bureaucracy for training firms wherever possible.

1.3.14 Review the provision of CPD and Diplomas

- Engage with the profession on the concept of life-long learning; and develop a plan to implement that with the profession, building on the achievement of the LSI’s professional Diplomas.
- Retain the Ethics component of the existing scheme.
- Retain and extend the range of activities that attract CPD credit for practitioners.
- Facilitate the monitoring by individuals, CPD providers and firms of reflection and of the learning that emerges from CPD activity (see for example, Goodall, Day, Lindsay, Muijs, & Harris, 2005; Muijs & Lindsay, 2008). It may be possible in the longer term to move towards a cyclical or outputs-based system, or, as does Chartered Accountants Ireland, offer individuals or firms the choice. However, at present, and until the SRA scheme in England and Wales beds down and can be learned from, positively or negatively, this may be premature.
- Enhance the Diploma and LLM provision offered by the LSI and with the LSI’s educational partners, and use the expanded resources advocated at 1.3.3 above (particularly in digital education) for this purpose.

1.3.15 Review the Qualified Lawyers Transfer Test

- The QLTT should be revised and made an assessment that is much more robust, not merely on the assessment of knowledge but on the assessment of skills, ethics and values. This will undoubtedly improve all aspects of the assessment – its fairness and validity. We recommend the embedding of skills to relevant practice areas and the use of exemptions to avoid infringement of the relevant EU Directive.
- A Working Party should be set up to map out the process of setting up a new QLTT, to determine the knowledge components, skills outcomes and standards that will form the QLTT assessment purpose and assessment criteria.

Chapter 2 Introduction

2.1 Background

This Review focuses on the professional legal education of the solicitor branch of the legal profession in the Republic of Ireland.¹ It interprets widely all the concepts in that first sentence – what legal education might comprise, what professional education for solicitors might be, what the legal profession both is and might become in Ireland in the next five years and the political context of all of these topics, given such recent events as the global financial crisis and the position of Ireland in the EU. There is also a focus on the regulation of professional legal education in Ireland, which is particularly relevant since the enactment of the Legal Services Regulation Act 2015 (LSRA).

2.2 Remit of the Review

The Review is informed by the broad frame of reference provided by s.34 of the LSRA, taking into account earlier Solicitors Acts 1954-2012. It includes comparisons with solicitor educational structures and content in other jurisdictions. In addition, the review draws upon relevant best practices in other professions such as medical education, accountancy and others. It provides the Law Society of Ireland (LSI) with an analysis of the current system of solicitor education with recommendations for its improvement. It focuses on a range of current and future issues facing solicitor education in Ireland. These include the professional education stages, from the place of the Entrance Examination (FE-1), the structure and content of the curriculum of the Professional Practice Course (PPC), the training contract, the nature and extent of CPD and the Diplomas, the QLTT, and the context of Irish solicitor education within an evolving EU context. In more detail, the Review's research questions are set out below.

2.3 Review research questions

The following are the key subjects we address in the Review, and which were agreed with the LSI as part of the Review's functional specification:

- 1 What are the effects of legislation upon solicitor education in Ireland? Taking into account the Solicitors Acts from 1954 onwards and including the recent Legal Services Regulation Act 2015 (LSRA), this includes the following topics:
 - a) issues of transfer between legal professions.
 - b) defining and securing competence.
 - c) effects upon forms of learning and teaching.
 - d) the effects of terminal assessments and their positioning in the Irish solicitor educational regime.

¹ By 'professional legal education of the solicitor branch' we refer primarily to the legal education processes, structures, skills and knowledge that pertain to the qualification and continuing professional development of solicitors in Ireland. As will become clear, we also take into account many other aspects of this form of legal education, including culture, history, its links with undergraduate legal education, links with other professions, other jurisdictions and the like.

e) the re-testing of undergraduate law degree topics in solicitor education.²

2 What are the aspirations of the Irish solicitor profession for legal education in the next 5 years? This includes:

- a) how the solicitor profession is changing and developing, and how legal education is perceived to need to change as a consequence.
- b) the structure and content of CPD for solicitors (including structure and content stipulated by some other jurisdictions).

3 How will the legal services market in Ireland develop in the next 5 years? This includes:

- a) contextual mapping generally of topics affecting many jurisdictions such as globalisation
- b) the relationship with Northern Ireland.
- c) availability of legal services outside Dublin, the split between corporate work and general practice, the development of the training contract, and the extent of and skills demanded of the broader legal workforce.

4 What are the potential directions that Irish solicitor education may take within the EU and the jurisdictions of these isles? Topics include:

- a) the FE-1.
- b) dual qualification in England and Ireland.
- c) the continuing effect of the EU Directives pertaining to recognition of professional qualifications in Ireland.
- d) the review of the English solicitor qualification by the SRA.
- e) the process of strict reciprocity of qualification between the Republic and Northern Ireland.
- f) import/registration/recruitment/influx of English solicitors across all areas of law in Ireland.
- g) the potential for increased opportunities/global influence post-Brexit.

5 How should the provision of solicitor education in Ireland develop to meet the challenges facing it? This includes the following issues:

- a) questions of breadth of professional knowledge and skills versus specialisation in knowledge acquisition and skills development.
- b) curriculum design for innovation and change.
- c) integration of the training contract with professional solicitor education and continuing professional education.
- d) teaching resources and assessment (including teaching methodologies of legal education, legal ethics, development of skills and the validity of assessment).
- e) outcomes and standards for professional legal education.
- f) use of digital technologies.
- g) best practices in professional legal education in a range of jurisdictions, to include England and Wales, Scotland, USA, Canada, Australia.
- h) best practices in professional education in a range of other professions, to include accountancy, health professions.

² That is, the FE-1 examination system.

Table 1: References for research questions in the Phase 1 Comparative Analysis and in the body of the Phase 3 report

Research Question/topic	Comparative Analysis	Phase 3 report
1. What are the effects of legislation upon solicitor education in Ireland? Taking into account the Solicitors Acts from 1954 onwards and including the recent Legal Services Regulation Act 2015, this includes the following topics:	Chapter 8	3.2, 3.5, 4.4, 4.5, 4.6, 7.6.7
issues of transfer between legal professions	8.4, 8.3.2	3.2.4,
defining and securing competence	2.2, 2.3, 2.4	3.2.1, 6.2
effects upon forms of learning and teaching	8.3.1, 8.2.2, 8.3.2	3.2.1,
the effects of terminal assessments and their positioning in the Irish solicitor educational regime	1.5.3, 1.5.4, 1.5.5, 1.6.1, 1.6.2,	3.2.3, 5.2
the re-testing of undergraduate law degree topics in solicitor education	1.6.2, 4.7, 5.6.1	4.2, 5.2
2. What are the aspirations of the Irish solicitor profession for legal education in the next 5 years? This includes:		
how the solicitor profession is changing and developing, and how legal education is perceived to need to change as a consequence		3.5, 3.6, 4.3, 4.4, 5.2.1.2, 6.5, 7.6
the structure and content of CPD for solicitors (including structure and content stipulated by some other jurisdictions)	4.8.3, Chapter 3	3.2.3.3, 3.2.4.2, 3.5.1.3, 4.4, 5.2, 5.3
3. How will the legal services market in Ireland develop in the next 5 years? This includes:		
contextual mapping generally of topics affecting many jurisdictions such as globalisation		3.3
the relationship with Northern Ireland	4.4.8, 4.4.9, 6.2.2	3.4
availability of legal services outside Dublin, the split between corporate work and general practice, the development of the training contract,	4.8.2, Chapter 6, Chapter 7	3.3, 3.5, 4.3.1.1, 4.4

Research Question/topic	Comparative Analysis	Phase 3 report
and the extent of and skills demanded of the broader legal workforce		
4. What are the potential directions that Irish solicitor education may take within the EU and the jurisdictions of these isles? Topics include:		
the FE-1	1.6.2, 4.7, 5.6.1	4.2, 4.3, 5.2, 7.6.5
dual qualification in England and Ireland	8.4	4.3
the continuing effect of the EU Directives pertaining to recognition of professional qualifications in Ireland	8.4	3.3.2, 4.3
the review of the English solicitor qualification by the SRA	6.3.2	3.2.3, 4.4, 5.2.2
the process of strict reciprocity of qualification between the Republic and Northern Ireland	1.6.5	3.4.4
import/registration/recruitment/influx of English solicitors across all areas of law in Ireland	1.6.5	3.3
the potential for increased opportunities/global influence post-Brexit		3.3
5. How should the provision of solicitor education in Ireland develop to meet the challenges facing it? This includes the following issues:		4.3
questions of breadth of professional knowledge and skills versus specialisation in knowledge acquisition and skills development	2.3, 2.4.2, 2.8, 3,3,4, 3.4, 9.4	3.5, 4.3.1, 4.4.5, 6.3.3
curriculum design for innovation and change	Chapter 9	3.3, 4.3.2.2, 6, 7
integration of the training contract with professional solicitor education and continuing professional education	2.3, 9.3,	4.3, 4.4, 5.2.2, 5.3, 6.6.4, 6.7
teaching resources and assessment (including teaching methodologies of legal education, legal ethics, development of skills and the validity of assessment)	2.3, 2.6, Table 7, Table 8, 9.4	5.2, 6.3-6, 7.2
outcomes and standards for professional legal education	2.4, Table 7,	3.6.2, 4.3.2, 4.5

Research Question/topic	Comparative Analysis	Phase 3 report
use of digital technologies		3.5.1.2, 3.6, 5, 6.7.5, 7
best practices in professional legal education in a range of jurisdictions, to include England and Wales, Scotland, USA, Canada, Australia	Table 1, Table 6, Table 7, 9.2, 9.3.1, 9.3.2, 9.5	4.3.2.1, 5.2, 5.3, 5.4, 6.7, 7
best practices in professional education in a range of other professions, to include accountancy, health professions	Table 1, Table 8	5.3.2, 5.4.4, 6.7, 7.6.7

Our recommendations cover both short-term improvements and longer-term proposals for change and re-alignment to political and economic trends such as Brexit. They are focused on educational issues and curriculum development but we have also taken into account other issues that may be related to professional legal education including the dominant themes raised by interviewees which were not always identified in the initial remit.

2.4 Review research methods

Our methodology was agreed at the outset with the LSI, and encompasses a variety of evidence-based research methods and a contextual analysis of the framework of solicitor education in Ireland that provides the LSI with international comparators. This is set out in more detail below.

2.4.1 Phase 1 – Solicitor education in Ireland – a comparative analysis

The comparative analysis document compiled from available literature and a small number of documents kindly provided by the LSI that are not generally available, consists of the following topics:

1. History of the process and development of solicitor education in Ireland.
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.
3. Requirements for continuing education and quality.
4. The requirements placed on the providers of professional legal education.
5. Analysis of existing equality and diversity issues.
6. Analysis of the training contract: its development in Ireland, England and Scotland, and future directions.
7. Comparative analysis of international systems and other relevant sectors and professions
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.
9. Analysis of a range of good practices in curriculum design that are appropriate to a small jurisdiction.

This analysis appears, as a stand-alone document, as part of the final report. It is used in items 1-6 of the final report in two ways:

- a) Cross references are provided where evidence, or further background is required for assertions made in items 1-6.
- b) In some cases, where a research question is answered from the analysis rather than from the phase 2 data, sections of the comparative analysis appear in the report verbatim, or in summary.

2.4.2 Phase 2 – Semi-structured interviews with key stakeholders.

Research ethics approval for this phase of the review was given by the Research Ethics Committee of the College of Business, Law and Social Sciences of Nottingham Trent University under application number 2017/158 on 22nd June 2017. Interviewees were selected by the LSI, and interviews were arranged by the LSI. The interviews were carried out in accordance with the terms of the approval and with the Socio-Legal Studies Association's Statement of Principles of Ethical Research Practice (2009).

Interviews with the data subjects took place both in Dublin and in the regions.

The interviews so arranged included:

- Members of regulatory bodies for legal professions in Ireland;
- Legal educators in the Republic and in Northern Ireland;
- Senior solicitors in private practice;
- Senior solicitors in in-house practice;
- Trainee solicitors.

Twenty-nine interviews were undertaken. In some cases participants occupied a dual role as, for example, both a member of an LSI committee and as a senior practitioner. The consent form and interviewee information sheet are included as Appendix I.

Interviews were semi-structured, and five broad questions were used to prompt discussion, although not all participants were in a position to, or did, answer all the questions:

1. How will the legal services market in Ireland develop in the next 5 years?
2. What does the profession want from legal education?
3. How do you think the provision of legal education in Ireland should develop to meet the challenges?
4. Where do you see the future of the Irish qualification in relation to the EU and other qualifications?
5. What are the implications for the profession/legal education of the Legal Services Regulation Act 2015?

Interviews were audio-recorded but not transcribed, and summaries were made for the purpose of analysis. Audio recordings were stored securely for the duration of the project according to the terms of the project's ethics approval and were destroyed at the end of the Review project.

The interview summaries, which included verbatim transcription of words and phrases, were entered into NVivo software for the purposes of thematic analysis. A set of codes was generated, based upon the five research questions and their sub-topics, as set out above. The interview data were coded, collated and distributed within the Phase 3 Report according to relevance of topic and discussion. Quite often a single coded text could be, and was, used in a number of chapters. For instance much of the interview data on the Bar straddled both chapter 3 (the future of legal services) and chapter 4

(the profession's aspirations for solicitor education) and our decision to allocate to one or the other chapter was based upon whether the datum was more relevant to an argument about the development of legal services than the future of legal education. Verbatim quotations could be sourced from the original audio-recordings where these had been recorded, and were sometimes used in the Report. If attributed by name, that attribution takes place by explicit consent of the participant.

2.4.3 Phase 3 – Review report

This Phase has entailed report writing based upon prior sections, on the data collected and on other research, e.g. upon best practices in other jurisdictions and other professions, and based upon the legal educational literatures appropriate to the report.

The structure of the phase 3 report underwent modification as we completed the comparative analysis, and it became clear that a number of topics were better dealt with in the Phase 1 Comparative Analysis rather than in the final report itself. Data from Phase 2 were collated, analysed and arrayed in appropriate chapters. We read the many varied, often contradictory, views expressed in the data and, by combining them with an analysis of current and future best educational practices in professional education, have outlined potential projects and interventions that we hope may improve aspects of the system. Those recommendations are made in chapters throughout the report, and appear as a collection of recommendations in Chapter 1.

Throughout our report we have understood solicitor education in Ireland as a highly complex and sophisticated type of professional education, as befits the preparation of solicitors for employment in the jurisdiction. Indeed, a mark of sophistication in contemporary regulatory reports on legal education is the extent to which they treat professional legal education as a socially complex problem. The authors of the Legal Education and Training Review in England and Wales defined this as follows (Webb, Ching, Maharg, & Sherr, 2013, para 1.18):

Table 2: Professional legal education as a socially complex problem

Characteristics of socially complex problems	Corresponding features of professional legal education (e.g.)
There is no definitive definition of the problem	Some agreement over a need for reform, but widespread disagreement over the extent, priorities and nature of the changes required.
They tend to be intractable	General lack of effect from a number of recent education and training reviews Specific intractable problems: <ul style="list-style-type: none"> • Achieving consistency of standards • Reducing costs of training • Managing increasing numbers.

<p>The information needed to make sense of the problem is often ill-defined, changing and may be difficult to put into use</p>	<p>Currently operating in rapidly changing work and educational environments.</p> <p>Relative lack of robust, especially longitudinal, data.</p> <p>Costs of deriving meaningful information are relatively high</p>
<p>They emerge in fields where there are multiple stakeholders; limited consensus as to who the legitimate stakeholders and/or problem-solvers are, and stakeholders are likely to have different criteria of success</p>	<p>Large number of stakeholders, with different understandings of the problem(s), and different levels of engagement with the process</p> <p>Legitimacy questions exist, e.g., over the extent of professional and regulatory interest in the Bachelor of Laws (LLB)</p> <p>Evidence of different stakeholders having different ‘objectives’ for the review</p>
<p>Every attempt at a solution matters significantly</p>	<p>Reform tends to be a ‘one-shot’ operation so relatively high risk.</p> <p>Exacerbated by uncertainties about the new regulatory environment, and the tendency of LSET system to operate as a relatively low trust environment</p>

How might this be managed in the context of the regulation of professional legal education? Webb et al went on to say in the following paragraph (ibid, para 1.19) that ‘traditional linear resolution’ of such problems was not helpful — instead decision-makers needed to:

- recognise that there are few right/wrong solutions as opposed to better/worse outcomes
- build shared understanding of the problem amongst a range of stakeholders
- build a shared commitment to action
- recognise that ‘one-shot’ reforms will affect the system dynamics, often in unexpected or unintended ways
- recognise that capacity for continuing engagement, and institutional (re)design needs to be taken seriously.

While some of the problems outlined in the second column of Table 2 are specific to England and Wales, we regard all the issues outlined in column one to be applicable to all common law jurisdictions and their legal educational systems. They are issues that define the research we have undertaken, our methods, and the recommendations that we offer in this Report.

2.5 Acknowledgments

We have, from the discussion throughout this document, derived recommendations which we hope will improve education for the solicitors' profession in Ireland, and enhance the many positive features of professional legal education in Ireland, some of which are noted in our Conclusion (Chapter 8).

We would like to acknowledge the time and resources given to this report project by the Law Society of Ireland's executive team. We would also like to thank all those who participated in interviews and provided a wealth of insights into solicitor education in Ireland. As those interviews took place under conditions of individual anonymity, it is not possible for us to thank by name the academics and academic support staff, solicitors, firms' learning and development staff and trainee solicitors who kindly gave of their time. Nevertheless, we would like to acknowledge the invaluable contribution that they made to this report which could not, of course, have been created without them.

2.6 References

Socio-Legal Studies Association. (2009, January). SLSA Statement of Principles of Ethical Research Practice. Socio-Legal Studies Association. Retrieved from <https://www.slsa.ac.uk/index.php/ethics-statement>

Webb, J., Ching, J., Maharg, P., & Sherr, A. (2013). *Setting Standards: The future of legal services education and training regulation in England and Wales*. Legal Education and Training Review. Retrieved from <http://letr.org.uk/the-report/index.html>

Chapter 3

The development of legal services market in Ireland in the next five years

3.1 Introduction

The development of legal services depends upon many factors – economic, political, cultural, and historical. Our focus in this report is legal education, and therefore we shall report on the evidence in market trends as this affects education. We shall report from some of the literature on the legal services market, and the interview information obtained from our interviewees in Phase 2 of the project. We shall deal with both types of data under each of the headings below, and comment at the end of the chapter on the possible implications of the market movements for professional legal education.

The data obtained from interviewees was wide-ranging and, by necessity, speculative. It can, however, be broken down into a number of distinct categories: regulation and the relationship with the bar; Brexit and the relationship with both the UK in general and Northern Ireland in particular; practice in a variety of different contexts and practice models and the effect of technology.

3.2 Regulation of legal services

The LSRA legislation has already been analysed in the Comparative Analysis (8.3-8.33), and we will not repeat that here. Although several respondents were aware of the history of the Bill, and one expressed disappointment that incorporation of legal practices had not been authorised, the effect of the LSRA was, at the stage of data collection, unclear.

3.2.1 Regulation v Representation

It has long been the position of the LSI that it is appropriate for it to continue to hold both representative and regulatory roles:

There is no conflict in the objectives of the Law Society in both regulating and representing the profession. The ultimate objective of both activities, serving simultaneously the interests of the public and of the profession, is the same. It is to maintain the integrity and reputation of the solicitors' profession.

(Murphy, 2002, p 223)

There was, however, a considerable degree of uncertainty about what shape any new regime would take. One respondent was of the view that the issue affected the LSI rather than practitioners. This respondent also felt that large firms did not need the LSI to fight their corner but that smaller firms expected the LSI to defend them when necessary. A few felt that a split between regulatory and

representative functions would be a good thing. The comments reflect a wide range of views about the regulatory role and effect of LSRA. From the lack of detail that our interviewees were able to give, we would suggest that more detailed information from the LSRA, as it becomes established, and from the LSI, would be welcomed by the profession.

If the views of the small sample of the profession that we interviewed are widely varied, it is probably the case that in the future the LSI will be drawn much more to behave as a regulator rather than a professional body. Much depends on the future relationship between the LSR Authority and the LSI, but as in all hierarchical relationships that are built upon policy and audit; those who are being audited are inevitably drawn deeper into the regulatory framework, particularly if they already wield regulatory powers for which they are responsible. The LSI may find that as an organisation, the double responsibility of regulation and representation becomes strained, should there be pressure from the LSR Authority to change practices. Such pressure is already there in the 2016 Competition and Consumer Protection Commission report (Competition Authority, 2006, p.32), as we noted in the Comparative Analysis (8.3). The CCPC argues for further competition in legal services, less ‘sheltering’ of lawyers from competition and the ‘maintenance of standards in legal services’.

Such maintenance of standards applies, of course, to legal education too, as a legal service; but the standards are not those of legal practice or services. In the context of education, the term refers to two separate forms of standards. First, there is the standard of quality that applies to most aspects of the teaching, assessment, administrative and other processes within a law school. Such standards have been seen in the past as critical to the learning of students, and regulators have interpreted them as being what might be termed standards of delivery – minimum ratios of staff to students, standards for library provision, room quality, IT equipment and the like. In recent years the interpretation has generally shifted from delivery standards to learning outcome standards, following a line of argument about the nature of educational standards that stretches back at least to the 1980s. Learning outcomes (LOs), however, are merely statements of what is to be achieved. They say little about the level or benchmark of the outcome, i.e. its standard of difficulty. In recent years, therefore, regulators have become much more interested in what might be termed ‘outcomes-focused regulation’, where the description and maintenance of LO standards as these are achieved by learners are critical descriptors of the quality of the educational system.

The creation and maintenance of such standards requires policy and audit built around law school activity to communicate what their standards are, prove their effects and demonstrate ongoing development in the future. These constitute policy, and are the staple of higher education institutions generally. The question of what knowledge and skill is learned, who will have that knowledge and skill, and how it will be acquired and to what standard, is essential to legal education. It is clear from our interview data that there is a lack of consistency in what practitioners think the standard at the end of the FE-1, the PPC and the training contract is, or should be.

It is also essential to the LSI’s power and legitimacy in the new legal services regulatory field created by the LSRA. Control over knowledge and skill is central to that power, for if control over knowledge and skill is lost, so too is power (Boon et al, 2005). The situation in England and Wales, where the Law Society (as a professional body) lost control of the legal educational and admission processes to the profession is a classic instance of this.³ Under the LSRA, therefore, control, maintenance and

³ It could be argued that technically the Joint Statement (Solicitors Regulation Authority, 1999); LPC Outcomes (Solicitors Regulation Authority, 2014a) and Day One Outcomes (Solicitors Regulation Authority, 2017a) still attach to the Law Society of England and Wales. However the SRA are clearly in control of regulatory processes regarding these standards, and have shown, in their proposed introduction of the Solicitors Qualifying Examination (SQE), that they are quite willing to overturn a system of professional legal learning in favour of an assessment regime.

development of the curriculum will become more important to the LSI Professional Education Centre, which may increasingly be caught between regulator, profession, students and other stakeholders, including the state (Anderson & Ryan 2010) and the EU. We shall analyse the implications of this in more depth in Chapter 7.

3.2.2 Effect on practitioners

One interviewee felt that the opportunity to streamline costs was a good thing. Several interviewees commented that it was too early to determine what the impact of the Act would be on them.

Another interviewee tried to put the LSRA into recent historical context:

When the LSR Authority look at the profession it will find that it is not remotely as problematic as they had thought. A lot of problems have been found and fixed in the last few years. People are running things a lot tighter now and not taking risks. The market has fixed a lot of the problems e.g. when the cost of insurance went from 3,500 to 20,000 euros overnight. People have not forgotten those days (although they are starting to).

(summary of interview)

3.2.3 Comparison with England and Wales

Some interviewees drew a comparison with the implementation of the Legal Services Act 2007 in England and Wales (specifically, the move from the regimes of the Law Society of England and Wales to those of the Solicitors Regulation Authority (SRA)⁴) and the LSRA in Ireland, and drew a cautionary note. One interviewee advised ‘firms to be careful what they wish for – firms were anti-the Law Society in the UK [sic] in the 90s and now they have the SRA above them all – is that what they wanted?’ Another felt that the starting point for the LSR Authority would be to identify what was wrong with the design of regulation in England and Wales before implementing reforms based upon the re-shaping of legal services regulation. There was a view that there was an over-readiness, in the Republic of Ireland, to adopt approaches from England and Wales.

One interviewee commented on a perception that the Law Society of England and Wales had given in too easily to the new regulation regime under the Legal Services Act 2007. Another interviewee had the sense that, in England and Wales, ‘they [solicitors] have lost their professionalism’. A similar view, comparing Ireland’s professional legal education regime to England’s, expressed confidence that the Chair of the LSR Authority (Don Thornhill) ‘will be conscious of education but the pressure will be from what the SRA are doing and they will be judged in comparison to that’. One interviewee commented that anyone reviewing [professional legal education] would be looking at what is happening in England

⁴ Following the Legal Services Act 2007, the Law Society of England and Wales was required to separate the regulation of solicitors (the SRA) from the professional (or representative) body (the Law Society of England and Wales), both bodies currently sit within the overarching Law Society Group. References to the Law Society of England and Wales refer to the professional body rather than the Group.

and Wales, suggesting that the starting point for the LSR Authority would be to ask 'What's wrong with what they're doing there?'⁵

Although questions of legal education are covered in Chapters 5, 6 and 7, it is convenient, while discussing the relationship with the UK, to summarise respondents' view on some of the recent developments initiated by the solicitors' regulator in England and Wales, as they may foreshadow local responses to any similar proposals that might be made in the course of potential deregulation in the Republic of Ireland.

It should also be noted in relation to the future of the FE-1 discussed at 4.2 and 5.2, that there may be an element of competition between the qualification regimes of the two jurisdictions. Although the combined length of the PPC and training contract is less than the combined length of the LPC and period of recognised training, the critical difference, it appeared to many, was the additional time taken to complete the FE-1.⁶ One respondent commented that the FE-1 serves no purpose 'whatsoever' for the respondent's firm, 'in fact it acts as a deterrent' so that students are tempted by the Magic Circle in London as they will be qualified at least a year before they would be if they stayed in Ireland. Further, at least at present (see references below to the proposed SQE), it was possible to complete the LPC and a training contract in London and then automatically requalify in Ireland, causing one respondent to suggest that it could take nearly a year longer to qualify in Ireland because of the FE-1. One respondent had gone to London for reasons that included an inability to pay for the FE-1. Another respondent, however, had seen good students go to England and Wales, but felt they would have gone anyway, and that they did not indicate they were leaving because of the FE-1.

3.2.3.1 Views on the LPC

The Legal Practice Course (LPC) occupies a similar position in the qualification system of England and Wales to that of the PPC in the Republic of Ireland. It is normally a year-long⁷ (full-time) skills-based course in which both practice areas and a range of skills are summatively assessed (Solicitors Regulation Authority, 2014a). It is offered, at present, by 28 providers, each of whom designs and delivers its own course in accordance with a prescribed set of benchmarks (see Solicitors Regulation Authority, 2014a; Chambers and Partners, 2017). It is different from the PPC, however, in four key respects:

- It is not necessary to have secured a training contract before embarking on the course. This was a particular concern to respondents in both Irish jurisdictions.
- Part-time versions of the course are available (taking two years to complete).
- There is a small number of undergraduate degrees which combine the degree subjects with the LPC to create an "exempting degree" (Solicitors Regulation Authority, No date).

⁵ It was also observed that large firms in Ireland were merging with UK firms; and that LLPs and listed companies were likely to become available in Ireland.

⁶ It should be noted that students vary in the timing of their attempt at FE-1, with some attempting it soon after their law degree and others taking more time to prepare for it.

⁷ Accelerated versions are available (University of Law, 2011).

- Some larger law firms have arrangements with providers to deliver bespoke courses or electives for their trainees. These may be accelerated so as to permit students to complete them in less than a year (see e.g. BPP Professional Education, 2016).

One respondent disliked the phenomenon of bespoke LPCs for larger firms and another commented positively on the fact that the PPC was taught by active practitioners rather than former practitioners, as on the LPC. Another respondent wanted LSI to get rid of what does not work, but did not want them to simply adopt what has been done and is being done in the UK.

3.2.3.2 Views on the SQE

The desire not simply to adopt developments from England and Wales was particularly the case in relation to the SRA's latest proposal (SRA, 2017b). This is to reconfigure the qualification system so that it consists of:

- A degree level qualification, not necessarily in law.
- Two examinations, SQE1 and SQE2. Rather like the FE-1, there will be no mandated or accredited preparatory courses for these assessments.
- Two years of work experience.
- An assessment of character.

Views expressed by our interviewees about the Solicitors' Qualifying Examination (SQE) were largely negative.⁸ One interviewee felt it would create a further split in the profession between those who have had dedicated training contracts and those who had simply worked in the sector. Another felt that although assessment was important, so too was the quality of training – therefore the objection was not that there was an assessment, but that the model was assessment only. This might lead to problems of recognition of the English qualification in other countries. It is worth quoting the summaries of the views of a number of respondents from different parts of the country:

It will be problematic if/when the England and Wales qualification is not perceived to be the same level. There are discussions going on at EU-level at the moment. The French/Spanish position is that the SQE will not be comparable, so it will be harder for the England and Wales qualified to be recognised in the EU.

(summary of interview)

One interviewee reflected on the nature of the consultations and debates around the SQE, and compared the assessment to the FE-1:

The SRA arguments are rational arguments, but are they legal professional education arguments? Are they valuable to the people who come out through the

⁸ It should be noted that practitioner understanding of the proposals was not very detailed.

grinder? Students will say [sitting the FE-1] is too hectic although students have a more practical way of thinking post FE-1.

(summary of interview)

Another looked internationally, and was concerned that the new regime, and UK influence might lead to Ireland being pushed towards a US model:

They were worried about Ireland being taken down the US Bar Exam route, but there may be no resisting it. They felt it would be a disappointment if that happened. There seems to be a trend to copy what goes on in England and that will be of persuasive value in Ireland until in 10 years' time when England changes its mind. Much prefer if [Irish educators] just stuck to their guns: the 'current system is working quite well so let's stick with what we're doing'.

(summary of interview)

3.2.3.3 Views on CPD

In common with the Law Societies of Alberta (Law Society of Alberta, 2017) and New Zealand (New Zealand Law Society, 2017), and the Chartered Institute of Legal Executives (Chartered Institute of Legal Executives, no date), the solicitors' profession in England and Wales has recently moved from an inputs CPD system to a more cyclical system of 'continuing competence' (Solicitors Regulation Authority, 2016). See further discussion of CPD models across Europe in the Comparative Analysis at section 3. We discuss CPD more generally at 6.7, but it is convenient to place reactions to the new model for England and Wales here.

One interviewee felt that the two jurisdictions were moving in different directions, particularly in relation to CPD. Two interviewees felt the self-certification model now adopted by the SRA was not appropriate as a degree of checking and policy was necessary. Another liked the reflective element of the SRA model but felt that although most solicitors wanted to stay up to date because it was the right thing to do; others just want to fulfil their regulatory requirements.

The differences in certification methods were discussed by some. It was noted by one respondent that the SRA is:

...back to self-certification, but humans need a policeman at their elbow – do you do it for moral reasons or because there are policemen. They think they still need a mandatory requirement. LSI make members certify CPD and there are random checks. It is part of the EC agenda to look at those who have not complied with CPD. What is taking place in England and Wales is in one sense logical i.e. doing it because it is useful and relevant to your practice.

(summary of interview)

Satisfaction was expressed with the LSI's regime of CPD: 'CPD is necessary and it's fine the way it is'.

3.2.4 Relationship with the Bar

One possibility under the LRSA was for a different relationship with the bar, including direct access and, possibly, joint training. The Comparative Analysis, at 8.3.2, details the historical and current position regarding Bar fusion, and the place of legislation in governing the relationship between the King's Inns and the LSI. In the context of that, we asked for views on the future development of the relationship, and general responses as to the two branches of the profession are set out below. We discuss the question of co-education with the Bar at 4.4.7, the King's Inns and LSI entrance examinations at 5.2.1 and an example of common initial training for both professions at 5.3.

3.2.4.1 Role of the Bar

One respondent felt that traditional attitudes to the Bar were changing, and that as a consequence the deferential referral to the Bar's expertise was breaking down. Another interviewee noted that:

Experienced barristers tell him that while they're doing OK at the moment, they don't think the future will be as good. This means there are a lot of barristers transferring to become solicitors. It's still the Bar doing the advocacy largely in the higher courts. Higher courts are largely doing commercial work; childcare is almost exclusively dealt with in the District Court.

(summary of interview)

It was thought by a number of interviewees that advocacy in the higher courts, where commercial work is concentrated, was still largely the province of the Bar. One interviewee from a large firm was concerned that, if there were barristers employed within a firm, there might be pressure to use them rather than external counsel who might be better qualified to deal with the case in hand.

3.2.4.2 Regulatory matters

Several interviewees commented that the Bar Council's rules were strict, anti-competitive or prevented early career barristers making a living. As one put it, 'the Bar think they are specialists – there is an "If you were any good you'd have done the Bar" attitude. It is a good few years before you can make a living at being a barrister because of their rules' (summary of interview). Another observed that if you want to specialise as an advocate, that was fine but the current Bar restrictions were just too tight (summary of interview). It was thought that the Bar Council would oppose greater co-operation between the two professions. One respondent thought there was tension between the two regulators over solicitor appointments to the judiciary, but that there was parity between the two professions when acting as mediators. It was remarked that Blackhall could grow its CPD provision in this area (summary of interview).

3.2.4.3 *Fusion/blurring/competition*

See further the discussion of possible unification between the professions in the Comparative Analysis at 8.3.2 and table 9. We also note, in that section and in the discussion of 'Y-shaped courses' in section 9.5.8, historical discussion about joint educational provision for intending solicitors and barristers. We return to this topic at 5.3.1

Some interviewees perceived blurring of the different roles of solicitors and barristers to be likely. There might be a new type of barrister or solicitor who would primarily do court work because commercial firms wanted to have such expertise in-house. The fact that at present barristers cannot be partners in solicitors' firms was noted: as one interviewee put it, it 'makes a difference once you can make barristers partners in firms. It's a topic of considerable interest at the Bar'. (summary of interview). Another interviewee, however, felt that greater co-operation would be unlikely because the Bar Council would prevent it (even if ostensibly permitted by legislation) – and that this would have the effect of lessening the impact of the LSRA in that regard. More than one interviewee noted that it was not possible, at present, to be dual qualified.

3.2.4.4 *Transfer from and into the Bar*

The process of transfer into the Bar is described in the Comparative Analysis at 8.4.1. A number of interviewees commented that the numbers of barristers becoming solicitors was increasing. Linked to that, one interviewee was concerned that the LSRA would change relations between the LSI and the Bar, and commented:

When the provisions of the Act are brought in it may change relationship with the Bar – it may become more American. Can see people who would traditionally be barristers becoming solicitors and becoming 'attorneys'. EC have seen an 'extraordinary number of barrister wanting to become solicitors in the last year'.

(summary of interview)

Another was concerned that transferees would lack a grounding in financial matters and accountancy. Another felt that transfer might not be viable as solicitors and barristers differed in their personality and skills.

Solicitors with three years' post qualification experience can, provided they come off the Roll, become barristers through a one month, unassessed transfer course (Honorable Society of King's Inns, No date). As this is a reciprocal arrangement, similarly qualified barristers can become solicitors through the three week Essentials of Legal Practice course delivered by the LSI, although they may also be required to complete up to six months experience in a solicitors' office (Law Society of Ireland, 2018). There was thought to be an increase in barristers from England and Wales cross-qualifying and that the larger firms seemed to be targeting young talented barristers and recruiting them rather than putting their trainees through the PPC. We return to this topic at 4.6, when we discuss the possibility of a part-time PPC. On EU transfer, one interviewee thought that there are only two to four part-qualified *Morgenbesser* applicants from other EU countries each year seeking admission to the Bar (see Comparative Analysis at 8.4.3).

3.3 Brexit and the EU

This was one area where there was extensive comment from interviewees, and given the fast-moving field at present, we thought it may be useful to give a snapshot of some of the recent comments in the general and legal press on the issue, before turning to interviewees' views.

3.3.1 Comment and research

Brexit continues to absorb much of the legal press, given the almost daily narratives that are related in the general press of the negotiations between Westminster and Brussels. Stuart Gilhooly's address to the IBA Bar Leaders Conference in May 2017 balanced the debate on Brexit (Gilhooly, 2017). On the one hand, he could see serious challenges for Ireland and for lawyers – a potential loss of 40,000 jobs generally, decline of UK/Ireland trade by as much as 20%, Ireland's fragile recovery from the Great Financial Crisis exposed to 'negative Brexit shocks'. In the legal field, there was the potential of reduced fee income, the entry of UK/Northern Irish firms, and a negative impact on client acquisition. On the other hand, there were 'potential strategic alliances with UK firms', and 'part relocation of the financial services sector to Dublin'. He also identified the advantages of the strategic position of Ireland as one of the 'main common law jurisdictions within the EU', and a high demand for new talent as positives in the Brexit landscape.

With regard to education and training, he noted the need for Irish law firms to develop competences in international trade law, cross border regulation, and a knowledge of the post-Brexit UK regime'. He also argued that the LSI should 'continue to educate and inform policy makers', and he called for ongoing assessment of 'the future needs of the legal sector and [recalibration of] our training approach where necessary'. New areas of law and skills mentioned were sometimes linked with Brexit – languages being the obvious example. As one interviewee put it:

If we are going to get more business from the rest of Europe then the new skills which are needed are: language skills, negotiation skills in a different language, arranging/negotiating contracts with other jurisdictions, international trade.

(summary of interview)

Some of Gilhooly's remarks are reinforced by others. According to Smith & Williamson's 2016 Report of Irish law firms, (Amárach Research, 2017), Brexit has created a period of uncertainty that will result in a slowdown in investment and growth. All of the top 20 firms (59% of all firms) surveyed suggested that Brexit will have a significant impact on the legal sector over the next five years. Only 36% of the firms surveyed (31% of the top 20 firms) believed that Brexit will have a positive impact on the legal sector, with 44% (62% of the top 20 firms) believing it will have a negative impact. Most identified the economy and uncertainty as areas that concerned them most. Most firms (87%) expected more UK law firms to open offices in Dublin through a strategy of merger or acquisition rather than greenfield starts.

As a result of this, Smith & Williamson report that lateral hires are on the increase, largely driven by firm expansion or through firms wishing to increase services to clients. Forty per cent of firms (69%

of top 20 firms) had been approached over the last two years for merger discussions; and it was anticipated that this would increase as UK law firms began to open offices in Dublin. These data are summarised in the following helpful infographic:

Figure 1: Smith & Williamson infographic (Smith & Williamson, 2017)



Brightwater’s research on the professional job market generally in Ireland (Brightwater, 2017, headlined ‘Salary Survey 2017’ but which deals with issues beyond that) notes that the instability caused by the election of Donald Trump as US President is relatively short-term by comparison with the effects of Brexit. According to them, though, 2016 was ‘a very strong year for growth across many sectors of the job market’ (ibid, p 2), with unemployment figures at 7.8% - ‘the lowest since 2008’ (ibid, p 2). Brightwater noted that the ‘market outlook for 2017 is positive and in a recent survey, over 80% of Irish employers said they expected to be recruiting in 2017’ (ibid, p 2). The report observed that in 2016 ‘the legal sector has been busy recruiting marketing professionals throughout the year, focusing on marketing candidates with a background in law and professional services, with tender and bid experience being a distinct advantage’ (ibid, p 28).

3.3.2 Interview responses

EU law was already perceived to have varying impacts on legal practice from substantial to nil depending on the area of practice and the client demographic. Its impact was thought to be less substantial for those working in the regions. One respondent felt that reading EU legislation was a particular skill which ought to be taught to lawyers. Another believed that the influence of the EU was beneficial in promoting an equality and diversity agenda and causing Irish lawyers to be less introverted and more able to take their place on an EU or global stage. A number of Polish firms were noted as having established in Ireland.

Several interviewees noted the existing links with the UK, both in terms of joint economic interests and family connections. Brexit would mean that Ireland could no longer make common cause with or follow the UK. One interviewee observed that there was a ‘danger of increased fragmentation and stratification with professional training and we have to consider the natural justice and public policy issues, and the fact you cannot treat professional training as a “tradeable commodity”’.

There was a broad range of responses on the topic of Brexit from interviewees who were, as might be expected, influenced by their place of work and the types of legal work they undertook. Opinions varied as to the scope of the impact, whether it would come from competition from relocating UK lawyers, or the impact on particular areas of law such as criminal law (including cross border issues with Northern Ireland); intellectual property law, childcare law. Lack of certainty and concrete political response was a factor. It was thought that the impact might be slight for large commercial firms, except insofar as their UK clients were concerned and that such firms might not be affected by competition from relocating UK lawyers.⁹ It was also noted that there were knock-on effects, for example if a business closed due to uneconomic market conditions, its EU workers would not need other legal services.

The already complex social and legal services problems were further compounded by the effects of Brexit. In the opinion of a number of interviewees Brexit was thought likely to increase commercial work in Dublin (although one respondent queried how attractive Dublin might be as a financial centre as it lacked housing capacity to which lawyers might relocate). Opportunities were thought by some to have increased, both in law firms and in regulatory authorities, possibly reducing the number of Irish lawyers moving to the UK.

The following indicates the range of responses we received (summaries of interviews):

- One respondent observed that the impact of Brexit on Ireland was potentially huge – in particular in relation to criminal law and in terms of the impact on researchers based in the UK. It was noted that ‘Policy makers are treading water and lawyers don’t like uncertainty so there is an under-belly of panic going on’.
- When asked about the future of the Irish qualification in relation to the EU and other qualifications, one solicitor from a large firm noted that a lot of the firm’s work was already international-facing, and that two of the main jurisdictions with which they work are the USA and Hong Kong, both of which are common law jurisdictions. Their view was that the firm would continue to do what they currently do for their EU clients and that Brexit was not really

⁹ Though there was some concern expressed regarding the position of UK clients of large firms – for example would clients switch to English law firms if their business interests lay predominantly in the UK rather than Ireland or in Europe?

going to impact them except to the extent that it affected their UK clients. There was therefore no need to change the education associated with practice.

- By contrast, a Dublin solicitor observed that Brexit would be a big issue and it was already having an impact because of the number of England and Wales solicitors registering. It would affect every area of law in Ireland, e.g. in child law it will impact on adoption, maintenance orders etc. and the enforceability of these documents. At the moment, with the EU, there were conventions and the European Court. He did not know how this would work out under Brexit, and found it quite worrying in a childcare context. 'As a country, we are quite vulnerable'.
- A large firm practitioner (Dublin) was seeing lots of English solicitors applying for practising certificates and beginning to see English firms establishing e.g. Simmons and Simmons, Pinsent Mason.¹⁰ If banking/finance moved to Ireland then the big firms would move over from England. Brexit will change the Dublin scene in terms of firm profiles. Brexit will affect the unitary patent regime – it was all going to be in London but she could not see how the Unitary Patent Court could now be sited in London.¹¹
- Others were of the opinion that while Brexit as a political process was causing enough turbulence, the effects on local markets would be significant. The market would determine where the profession would be in five years' time. This need not be down to legal factors. For example, if Brexit goes badly, then the mushroom farms would close and the workers will go back to Europe which means 'two of them won't be done for drink-driving and 10 of them won't buy a house. There are huge external factors.'
- A small firm practitioner from rural Ireland had a different opinion. He thought that Brexit would be good economically for the big firms. He did not think it will make much difference outside of Dublin. In the border areas, there is a worry that there will be an impact on Ireland if Northern Ireland becomes economically depressed. He did not think the influx of UK lawyers will reduce the work available to Irish lawyers and thought Brexit might be good for Irish lawyers who want to work in London. His view was that big firms in Dublin will do extremely well even if only a fraction of the work is diverted from London to Dublin.
- An EC member thought that lawyers and notaries would benefit from Brexit, but that Ireland would not move to civil law. A large-firm practitioner observed that the growth areas are in finance, funds, asset management (in the top 12 firms) and that there was practically no offering from the LSI in relation to this. There would be an expected influx of jobs following Brexit. In terms of future-proofing the profession, it would be useful for trainees to get this during qualification to some extent. It was thought not to be available as a topic at university or in-house seminars, so unless learned on the job it was difficult to get into that area.

The relationship with the EU was subject to comment. Several interviewees noted that Brexit would mean that Ireland was the only common law country in the EU. It might also be necessary to balance relationships with the EU and relationships with the UK. A possible or inevitable increase in the influence of civil law approaches was foreseen by several interviewees and welcomed by one respondent. Another noted that in their field, the City of London had been influential in policy-making

¹⁰ There has been at least one conference in the UK designed to advise on 'setting up in Ireland' (Murray, 2018)

¹¹ The issue (as with the entire Brexit situation) is still very fluid, see CMS Cameron McKenna Nabarro Olswang LLP (2017). At the time of writing (January 2018), the position of the London site of the UPC is still unclear.

at EU level, so that Ireland would need to take additional steps to fill this gap and avoid legislation that may not be in Ireland's economic interests.

Ireland had been largely immune from the trend seen elsewhere in the world for international law firms to establish but some English firms now did intend to open offices. Some students might specifically wish to qualify in Ireland to obtain access to work in Europe, which might have an adverse effect on domestic students.

3.4 Northern Ireland

3.4.1 Cross-border practice

Although we have limited data on Northern Ireland, there are some areas of concern that could have an effect on legal education and qualification. The economies of the two regions are distinct, and it was perceived that the economy had picked up more quickly in Dublin than in Belfast. In the border areas, there was a worry that there would be an impact on the Republic of Ireland if Northern Ireland becomes economically depressed.

3.4.2 Impact of Brexit

Although we have discussed the impact of Brexit more generally at 3.3.1 and 3.3.2 above, it is convenient in this section to isolate comments that related specifically to relationships between the two Irish jurisdictions. One interviewee commented that the Northern Irish commercial sector is very concerned by Brexit. 'Their commercial firms expect to work with the EU and especially with Dublin.' (summary of interview). Another said: 'It all depends on what happens about the border' (summary of interview).

Specific issues mentioned by interviewees were the impact on criminal justice including powers of arrest for offenders who cross the border (see also Goldsmith, 2018) and a perception that commercial work would move to Dublin to the disadvantage of commercial firms in Belfast. It was also suggested that Northern Irish provincial practices would not be affected except in terms of any knock-on impact of changes to the whole Northern Irish economy. How the border was dealt with would be highly significant.

We discuss the effect of Brexit on transfer of solicitors between Northern Ireland and the Republic below at 3.4.4.

3.4.3 Professional qualification in Northern Ireland

As with England and Wales, it is useful here to summarise the position in Northern Ireland as an inevitable comparator for possible future developments in the Republic. The Northern Irish training contract arrangements are described in the Comparative Analysis at Table 6 and 6.2.2; the qualification models for both barristers and solicitors in Table 7 and the CPD models for both professions in Table 1. Here we signal key differences between the two jurisdictions.

Law degrees are available at Queen's University and the University of Ulster (see Comparative Analysis at 4.4.8 and 4.4.9). It is possible to enter the vocational course from those degrees and from a list of

other approved degrees available in England and Wales, at Dundee and in the Republic (see Queen's University Belfast Institute of Professional Legal Studies, 2017b, pp 26-41).

The admission test for entry to the vocational course is taken during the third year of the degree and does not seek to retest academic subjects (Queen's University Belfast Institute of Professional Legal Studies, 2017a). It is a three-hour examination, viewed as an aptitude test and mandated by a government report, that tests students' ability to read large quantities of information, assess what is important and follow-through a narrative so as to establish the key legal principles. Admission to the course is determined by a combination of results in the degree and in the admissions test. We discuss this admission test, by comparison with the FE-1, at 5.2.1.

The vocational course is governed by a Council of Professional Legal Studies which has representatives from Queen's University, the Bar and the Law Society of Northern Ireland. It is provided by Queen's University Belfast Institute of Professional Legal Studies, who also provide the equivalent course for intending barristers. We were told that a deliberate choice was made in the 1980s to have a single course to assure consistent standards. The number of places for potential solicitors and potential barristers is, by contrast with the position in the Republic, restricted. Solicitor students are required to have obtained an apprenticeship before starting the course, as in the Republic. There is further discussion of the rationale for this, and of the training contract in Northern Ireland more generally, in the Comparative Analysis at 6.2.2. However, unlike the Republic, they are required to have completed four months in the office before starting the vocational course. This was a deliberate decision in the 1980s designed to help students become office-aware before they began the course. Students then spend a calendar year on the course, returning to their offices during the Easter and summer breaks. Once they finish the course in December they return to their offices for a further eight months and are then admitted in September.

Unlike the LSI course, the Belfast course is accredited as a level 7 NQF postgraduate diploma (level 9 in the Republic of Ireland) to enhance its transferability, although this does constrain to some extent how the course is configured. The policy of the Law Society of Northern Ireland is that the qualification is and should be generalist, with the result that there is limited elective content. The provider does not set the curriculum. The rationale for this is that, unlike the Republic, more than half of solicitors are in family or small firm practices with only 30-40% of trainees coming from the bigger firms.

Development for the course is currently specifically related to skills, including inter-personal relationships, mediation, negotiation and problem-solving. It was suggested that students need a core knowledge, but that computers will be doing legal research within 4-7 years and at a high level of expertise. The aim of the course is to prepare students for the first one or two years of practice so that they can 'be safe', 'don't put a client at risk' and can raise red flags when appropriate. Northern Irish solicitors, unlike their colleagues in the Republic, are not permitted to enter sole practice without a further two years of supervised practice

3.4.4 Reciprocal qualification/joint activity

Transfer into and from the UK was a subject upon which we asked interviewees for comment and it was noted by a number of respondents. It was thought that although it was still in the country's interests to have reciprocal transfer arrangements with England and Wales in particular, Brexit might be a factor, combined with the introduction of the SQE, that could bring that to an end. The ability to work in the UK (specifically in London and Northern Ireland) was valued by Irish lawyers. The influx of UK lawyers cross-qualifying (now including Scottish lawyers) was commented on, although it was

noted that the majority of transferees did not intend to practise and that the phenomenon might be short-lived.

Solicitors qualified in England and Wales or the Republic of Ireland may join the profession in Northern Ireland on demonstration of qualification and good standing (Law Society of Northern Ireland, No date). Similarly, solicitors who originally qualified in Northern Ireland may join the profession in the Republic through a certificate of admission (Law Society of Ireland, No date). As explained in the Comparative Analysis at 1.6.5, however, the current position is as a result of EU directives. Attempts to provide for reciprocal qualification arrangements immediately after independence were unsuccessful and repealed by the Solicitors (Amendment) Act 1947. We have commented elsewhere in this report on concerns about the land border post Brexit and on the phenomenon of “border solicitors” who work in both jurisdictions.

The position post-Brexit is, of course, unknown. It is clearly an issue that affects other professions. For example, a recent meeting of the General Medical Council for Northern Ireland reported:

Uncertainty over Brexit continues to cause concerns. Members mentioned the unique circumstances of Northern Ireland having a land border with another EU state. Brexit could have significant impact on planned increases in cross border delivery of services, on those coming from the EU to Northern Ireland for medical training and those already working in Northern Ireland from the EU, especially given the high numbers from the Republic of Ireland.

(General Medical Council, 2017, p 3)

Other professions have been concerned to seek to protect incoming EU professionals to the UK through, for example, special visa arrangements for architects (Braidwood, 2017).

The possible alternatives appear to be:

- No change (but by negotiation, rather than based on a directive);
- A special arrangement between Northern Ireland and the Republic of Ireland (as has been made by the LSI in the past with jurisdictions such as Pennsylvania and New Zealand: see Comparative Analysis at 1.6.5 and 4.8.4);
- Insistence that Irish lawyers complete the non-UK process for qualification into Northern Ireland.¹² It is inevitable that if this is the case, that the generosity of the Irish legal regulators will be withdrawn: ‘if changes were introduced by the England and Wales/Northern Ireland authorities to qualification requirements, this could lead to a revision of the conditions for UK solicitors wishing to register at the Irish Bar’. (Law Society of England and Wales, 2017b).

A rather more radical alternative is that of Chartered Accountants Ireland, whose regulation and qualification system is common to both jurisdictions (Chartered Accountants Ireland, 2017). The

¹² The LSNI website asks potential transferees who are not from other UK nations, the Republic of Ireland or (at present) the EU to contact the LSNI direct. Consequently, we are at present unable to say what form, if any, such a transfer mechanism would take.

extent to which that rests on collegiality and policy, rather than on underlying EU drivers, is, however, less clear to us.

That there is the potential for liaison between the two regulators might be demonstrated by the extent to which there are joint CPD courses offered to solicitors in both jurisdictions. Our interviewees hoped, or expected, that some form of reciprocal qualification arrangements would continue.

3.5 Practice

3.5.1 Geography and practice type

The geography of a jurisdiction, physical and economic, always affects the distribution and nature of legal services within it. There are obvious physical features to Ireland's topography that affect legal service provision – the absence of large cities apart from Dublin, the location of towns, the remoteness of some regions, the rural spaces and economies, and the centrality of Dublin as a national and international hub of legal services. These variations and more were discussed by our interviewees, and their comments are summarised below.

3.5.1.1 Regional and general practice

It was thought that the recession, and increasing Dublinisation, were creating problems for regional general practice. In smaller firms there is often a direct link between the types of work available to the firm and decisions whether or not to take on a trainee.

The split between large firm and smaller firm work was thought to be becoming more pronounced, but not yet as pronounced as it is in London. Smaller firms might, for example, register a company. Conveyancing had decreased during the recession causing some firms to move into crime or litigation. It might however, now be picking up. Family work was increasing but was not particularly profitable with a fixed fee for family legal aid work of €347 for each case, irrespective of complexity. Personal injury and medical negligence work was well-represented, as was wills and probate.

One interviewee from a large Dublin firm, putting the issue into an international context, observed:

Eighty-four per cent of trainees are at city firms, which is very worrying. In Mayo there are no trainees and given that you tend to stay where you qualify, this is a problem for replacing retiring solicitors. There is a concern about how it is going to evolve. 'Our whole job is to provide a service to the public, that's what we do.' How will that service be provided in County Mayo in five years' time – same issues in Australia and Scotland.

(summary of interview)

Another interviewee commented on this from a historical perspective:

When he did the PPC I in 2002/3, his perception was that 40-50% were based in Dublin. Who will replace solicitors in regional towns?

(summary of interview)

Some interviewees had different views regarding likely take up of the provision of services by local solicitors in rural and out-of-town areas. For example, two observed:

In regions if you do their house purchase and they like you, then why should they have to go somewhere else if they have a slip and fall? There's not too broad a step between each of the general practice areas.

(summary of interview)

He would refer commercial work to someone else, he's always got the client back for other stuff.

(summary of interview)

To a certain extent the range of work that a client might ask a solicitor to undertake, and that a solicitor might consider feasible, would depend on the complexity of the matter. There are, though, many factors that affect a client's decision to take a matter to a local solicitor, or that affect a solicitor's decision to take on the matter, as much legal services research has pointed out. Baxter and Yoon, for instance, have made the case for access to justice to be 'premised on the goal of territorial justice as an equitable distribution of legal services rather than a narrower emphasis on the equal distribution of lawyers' (2015, p 9).

There were other consequences of greater urbanisation of legal services. One interviewee observed that MDPs could impact general practice in rural communities. It was thought that personal injury work and conveyancing were becoming uneconomic for regional solicitors, and as always on such topics in the interviews, there was the implicit comparison with Dublin, whose economy was substantially different to that of regional Ireland. A practitioner from a mid-sized firm in a regional centre commented:

Commercial property prices have been driven down and the amount you can charge is to some extent commensurate with the value of the property. Some of the work is bordering on non-viable e.g. bank panel work.

(summary of interview)

A large firm practitioner commented

There is a growing gap between Dublin and the regional legal market. Cork is quite strong – has a strong economy.

Most of his work will involve Dublin or international law firms, only very occasionally will he work with another Cork firm.

(summary of interview)

A small-firm practitioner commented that the work of a general practitioner

...will continue on its current track i.e. move East towards Dublin, some practice areas are disappearing for smaller practitioners e.g. PI and conveyancing which is substantially uneconomic for most practitioners.

Regulation as an area of practice is growing in Dublin but not outside of Dublin; as economy grows, the need for lawyers will grow but that will be confined to Dublin.

He is pessimistic for lawyers outside of Dublin but that reflects what he is seeing.

(summary of interview)

The same practitioner commented upon the effect that the drain to Dublin and the east coast would have on legal education and recruitment:

He does not think the market is big enough for another law school; people don't want to study in the regions; the job opportunities are in Dublin and Greater Dublin area, maybe Cork/Galway; profession is becoming top-heavy around the East Coast; 59% of solicitors are in City/County of Dublin; new graduates want to work in city; it is very difficult for him to recruit an assistant in a regional area.

He does not see the draw of Dublin changing.

The mainstay of regional practice i.e. conveyancing and PI has diminished. He would not recommend young lawyers to work in the regions.

(summary of interview)

It is clear from these and other comments that legal practice is becoming more Dublin-focussed. Dublin was described as having a different economy from the rest of the country. There was also a societal divide between the capital and the regions, and a distinct draw in the capital for young lawyers. All this raised questions about who would service clients in the regions, and which work would remain in the regions.

It would appear that the tensions between regional firms and large, Dublin-based firms may increase as Dublin attracts more work and more lawyers. The social and legal problems created by increased urban focus at the expense of regions are well attested. The tension may also create a regulatory

problem for the LSI in the future – indeed is probably there in terms of educational content and generalists vs specialists in legal services, a topic that we deal with at 4.3.1.2. One interviewee noted a tension between large law firms and the LSI, the majority of whose council members were from the regions. Another felt that legal education, for economic reasons, was not of interest to a small country solicitor, by contrast to the big firms whose economic resources enabled them to invest in educational programmes and extensive CPD. It was observed that the debates, culture and discourse about professional education was dominated by the large firms, who have staff whose role it is to make representations about it. This issue of the influence, real or perceived, legitimate or not, of large firms and large firm practice on the PPC and on the Diplomas, will be considered in more detail at 4.3.1.1.

3.5.1.2 Large firms and commercial practice

Deloitte has recently reported upon future trends in their global research study (Deloitte 2016), which bears upon the activities of large firms in Ireland, particularly in Dublin. They see the market as growing, and ‘purchasing patterns for legal services are changing’, with many participants in their study considering a review of their legal services (ibid, p 2). Areas where client expectations are not being met include the following:

- **Integrated, cross-border advice beyond legal.** Law firms are seen to be trailing other professional services firms in their ability to offer integrated multi- disciplinary services (see 3.5.3.3 below).
- **Use of technology.** Participants are looking for better, more relevant technologies, to be used and shared on integrated platforms.
- **Regulatory and global compliance advice.** Nearly half (49%) of all participants said that their department’s legal spend was growing in the area of regulatory compliance. Global compliance is perceived as a major issue for in-house lawyers.
- **Fixed fees, value pricing and greater transparency.** Participants most frequently mentioned fixed or capped fees (30% of all responses), while over a quarter of responses (27%) referred to some form of value-based pricing. (ibid, p 2)

While many of Deloitte’s participants were purchasers of legal services for their organisation, typically General Counsel, Legal Counsel, CEO or some such, it is interesting to note that at least some of their points have been made by other researchers recently with regard to legal markets in other jurisdictions.

Although there was some uncertainty about the future, there was a perception amongst our interviewees that large firms would grow and become (even more) Dublin-centred. One interviewee predicted that in five years’ time half of Irish solicitors would be in a very large firm or in-house. Another interviewee, however, felt that numbers had settled and that there was unlikely to be further growth. Other comments included (summaries of interviews):

Bigger firms will get bigger, fewer small general practice firms, more specialists – assuming the economy remains reasonably strong

The top five to seven firms have been the same for a long time. From the mid-2000s onwards the number of those qualifying increased exponentially and that

seems to have tapered off. Not sure they will see further growth in the legal sector overall. Numbers have settled.

3.5.1.3 In-house practice

Approximately 20% of the solicitors' profession was thought to work in-house at present, with around 20-30 of newly called barristers each year going in-house or to work in other European countries. In its Annual Report for 2016/2017 (Law Society of Ireland, 2017), the LSI states there is an action plan that 'provides a framework for the Society to continue and deepen its support for in-house solicitors in the areas of skills and value, education and training, professional issues, and trainees'. The LSI also provides a Diploma for in-house lawyers. Barristers were also thought to be increasingly moving into in-house positions. One interviewee remarked on the change this had brought about within the profession, 15-20 years ago, most solicitors were in smaller practices and if that continued to remain the same, then the training that was in place then would fit those coming into the profession. But in five years' time, the interviewee observed, around 50% would work in a large firm or in-house, so that would change things significantly.

In-house work was seen as having advantages for work/life balance and as being divorced to some extent from competition and the long hours culture of private practice. It was thought that opportunities to work in-house were increasing as the sector expanded. The context of one in-house lawyer who was employed within the public sector was cited – working there, lawyers were insulated from competition because they provided in-house legal advice, and the need for that is growing all the time. There is an increasing emphasis in the literature in England and Wales, however, not only identifying the different needs of in-house practitioners, but also beginning to question the idea that the work/life balance is necessarily more comfortable in that field of activity (see, for example, Gilbert, 2015).

3.5.1.4 Sole practice

Our data suggested a degree of consensus that sole practice was under significant pressure and that it might die out. Comments included (summaries of interviews):

- Sole practitioner (days are numbered) in a smaller town - better to pool resources so partnerships will grow in that category.
- Number of sole practitioners will continue to reduce, due to insurance, economies of scale etc.
- 'The day of the sole practitioner will go – it just won't make sense.'
- Small practices are not hiring trainees to come in behind them, it is them and their secretary; it is burn-out stuff, they cannot go on holiday; often they are working longer hours and are less profitable than they were 10 years ago, so they are not willing to invest in their business. Who will replace them in 5-10 years' time?

An additional subset of the data related to the point at which newly qualified solicitors are able to enter sole practice. In several jurisdictions, including Northern Ireland, newly qualified solicitors are required to work under supervision for a period after qualification (see Comparative Analysis, Table 6 under 'post-qualification limited licensure'). In some countries, (e.g. Australia) a lengthy period of

post-qualification supervised practice may compensate for a reduced or absent period of pre-qualification work experience (see Comparative Analysis, 6.1.1).

In our data, one respondent expressed surprise that newly qualified solicitors did not have to work in supervised practice for a period before they were able to enter sole practice. One respondent felt that a provisional licence for a year and a ban on sole practice for two or three years would be appropriate. Another suggested restricted practising certificates. The fact that the PPC has, in principle, to equip solicitors for sole practice placed pressure on that course. However another respondent felt that as, by the time they qualified, newly qualified solicitors had 7-8 years' experience it might be appropriate for them to practise on their own straight away.

Members of the Bar must do one year's period of devilling before they can practise as a sole practitioner member of the Law Library. In Northern Ireland a solicitor must have had a practising certificate for two years before being able to enter sole practice. Consequently, the Northern Irish vocational course, unlike the PPC with its PPCM course, is designed with that in mind.

3.5.1.5 Use of paralegals and legal executives

Although one interviewee pointed out that the Irish system includes legal executives, 'but not in a formalised way', it is possible to qualify as a registered legal executive in the Republic of Ireland through a Diploma offered in conjunction with Griffith College and other courses at approved institutions (see Comparative Analysis, table 7; Irish Institute of Legal Executives, 2014). Such legal executives may become commissioners for oaths by application to the Supreme Court. One respondent from a regional firm noted that most firms in his area would have one legal executive who might have started out as a legal secretary and go on to complete a legal executive course. He felt it was an efficient process of learning and working (summary of interview).

Paralegals were used in a variety of ways in legal services. A legal secretary might provide substantial support to a solicitor in a small firm. There was some comment on the developing role of paralegals in the jurisdiction. This is clearly an area of change in employment roles in some law firms. Given the relatively recent upturn in market conditions and the uncertainty of Brexit, it may well develop further. In the bigger firms, as one respondent noted, paralegals were employed in discovery, with some newly qualified solicitors taking on paralegal work. Some paralegals were law graduates who might aspire to qualification by taking the FE-1 examinations slowly over a number of years.

One firm was expanding its use of paralegals as a form of unbundling to promote efficiency; another had only one or two paralegals in a lean structure and focused recruitment on fee-earners. One respondent noted an advantage of employing paralegals was that they would not, by contrast with trainees, leave for prolonged periods to attend the PPC. As Ching and Henderson noted in their SRA-commissioned research on workplace learning, some English respondents stated that they preferred to give work to paralegals rather than trainees as they stayed in one department and would not be rotated away to another seat after three months (Ching & Henderson, 2016, p 33).

There was, as might be expected, a mix of views about how useful it was to employ paralegals over solicitors. For some, new practices such as unbundling (see 3.6 below) meant that paralegals could be employed in new roles and tasks. As one in-house solicitor noted of the organisation: we are expanding the paralegal/legal executive type roles, it can be a great asset, not everything needs to be done by the solicitor and it means the firm can be more efficient. It does add value (summary of interview). Paralegals could be seen as being part of the new and younger employees in an

organisation. The problem of legacy was there for small practices. As we explained at 3.5.14 above, a sole practitioner might have only a secretary to assist and not be planning for a successor.

For others, paralegals had a role to play in flexibility and human resource planning, but only extended so far. One practitioner, who employed ‘a lot of paralegals’, said that they were being replaced by solicitors, as solicitors are more flexible because they can do all the work (summary of interview).

3.5.2 Competition in legal services

3.5.2.1 Commercial work

It was thought that Brexit would bring incomers into commercial work who might compete (although see discussion in section 3.4.2 above, where others felt that the commercial sector may be less affected). Some substantial clients might establish a presence in Dublin, bringing work with them. There might be a loss in international transactions, as international firms would use their branch office in Ireland rather than an Irish firm.

3.5.2.2 Competition

It was generally thought that the market would become more competitive, but not simply because of Brexit. Other factors were mentioned, including a respondent who was surprised that big firms in Ireland have merged with UK firms, as he had assumed they did not need to. Another saw great competition for fees, including for criminal certificates for legal aid. Another saw a growing gap between Dublin and the regional legal market. In-house work was, as indicated in section 3.5.1.3 above, protected from competition, but was expanding. Some areas of work could be automated but there was currently no substitute for a lawyer in others.

3.5.2.3 Conveyancing and Licensed Conveyancers

Conveyancing was a key area of interest, particularly for firms in the regions, as the possibility of the creation of a distinct licensed conveyancer profession is specifically referred to in the LRSA at s 34(1)(c). Consequently, discussion of the history of attempts to introduce such a profession in the past, and of licensed conveyancer professions in other jurisdictions, appears in the Comparative Analysis at 8.3.3.

Conveyancing was seen as a particular area of concern, with lawyers undercutting each other by, for example, using unqualified staff to investigate title. One respondent perceived that conveyancing could be taken out of the hands of solicitors and allocated to non-lawyer ABSs. Another respondent, however, felt that dealing with unregistered land was highly complex and could not be placed in the hands of non-lawyers: there was more to conveyancing than the title – until all land is registered it would be a dangerous thing to do. One member of a large firm from Dublin, however, suggested that conveyancing could be conducted (as in England and Wales) by a licensed conveyancer rather than a solicitor. This respondent felt that Ireland may be able to achieve that in years to come but at the moment property law is very complicated (for non-lawyers).

See further discussion below at 3.6.4 of the technological aspects of conveyancing.

3.5.3 New areas of law, new providers and practice models

3.5.3.1 *New areas of knowledge and skill*

As well as new areas of law or skills required as a result of Brexit, other suggested areas of knowledge or skill included: aviation, mediation, arbitration, leadership, managing own firm; regulatory or corporate crime; finance, funds, asset management; financial services, Fintech, money laundering, immigration. One interviewee felt that professional management should be a priority area and another suggested regulatory crime would come to have greater significance. Trade marks and patent laws might also become more significant, depending on how Brexit turned out.

Another interviewee felt that the PPC should include understanding business. One interviewee felt that if there was more training on how to make business decisions it would make law firms more resilient in a recession.

3.5.3.2 *New providers of legal services and new business models*

One respondent felt that it was inevitable that the LSRA would open up the market to cheaper forms of legal adviser. The Bar was considered to be under pressure from solicitors, but advocacy in the higher courts was still the province of the Bar (see 3.2.4.3 above). One respondent foresaw the possibility of threats to work from barristers and accountants. Another also felt that accountants, already offering company secretarial functions, would want to compete further with solicitors for legal work.

One respondent thought it inevitable that the market would be opened up to new and cheaper forms of legal advisor and there might be new roles. This interviewee was quite explicit about this (summary):

- New roles for people representing people with a vulnerability or mental health issues – what are the differences between lawyers and people conducting advocacy. It hasn't really hit here yet [unlike in the UK].

(summary of interview)

This is an interesting point on how the LSRA may provide new roles for lawyers and others in the area of vulnerable adults – in elder care, with those in care because of mental health issues or for some other reason. There are possibly also new employment categories, and certainly new clusters of professionals who could specialise in care for the needs of vulnerable people.

3.5.3.3 *Multidisciplinary partnerships*

Interviewees had different views about whether multidisciplinary partnerships (MDPs), if introduced, would take on although other firms were preparing for them. One respondent felt that one-stop shops including barristers or accountants could have an advantage over general practice. There were also differences of opinion about joint working between solicitors and barristers in particular. Non-lawyer alternative business structures (ABSs) were discussed by one respondent who foresaw them developing in conveyancing. Another respondent had hoped that the LSRA would allow solicitors to

incorporate to reduce risk, pointing out that larger firms already put their company secretarial work through limited companies.

MDPs present problems for professional legal education curricula. As an organisational construct, they have been introduced in England and Wales, for instance (Solicitors Regulation Authority, 2014b); but as they are not yet available, there is no comment on them in the literature in the Republic of Ireland. Given the profession's views, it might be too soon for legal education to try to reflect these untried practice models. Even if the LSI tried to do so, it is difficult to imagine how it might train students differently for them.

3.5.3.4 *Unbundling*

The areas of new practice are extensive, and we did not have time to explore many of them. Nevertheless, from the point of view of future legal services, a key future characteristic is the way in which client services, hitherto bound up in a conventional package, are being separated out or 'unbundled', with the work going to technology itself, or to other professionals, or other lawyers.

The unbundling of legal services and the effects of it was not a familiar term to several interviewees. One interviewee felt that different approaches were visible in different types of firm: sole practitioners in smaller towns would pool resources and enter into partnerships; mid-sized firms were already likely to be sharing tasks with legal secretaries and larger firms would, for example, hire paralegals for large discovery tasks. Another interviewee also commented on the use of a PA to undertake tasks that a newly qualified solicitor might once have taken on. Some interviewees felt that unbundling would be attractive to clients. Some respondents felt that delegation of tasks would be risky at least in some areas of practice (e.g. conveyancing, see 3.5.2.3). One respondent, for example, thought it was common sense and already happening to some extent in larger firms. Others felt it would be "dangerous" or could be risky even if only part of the work was delegated, as that could have an impact on the final case/file, in terms of liability and responsibility even if from the perspective of the client it might seem like a good idea.

We have, therefore, limited data from our interviewees on unbundling as a concept, and what we have tends to work on the assumption that delegation might take place within the organisation, rather than to the client, or to an external freelance or other supplier. This suggests that there is scope for the LSI to explore the advantages, the challenges¹³ and the proposed solutions to those challenges taking place elsewhere in the world (e.g., Ipsos Mori, 2015; Mediate BC, 2017).

3.6 Technology and future practice

There was extensive comment on the ways that technology was being and could be used in professional legal education, which we shall deal with in chapter seven. In this chapter, we will consider the ways in which digital technologies are being used in the profession, and will be used in the next five years.

¹³ See, for example, *Sequence Properties Ltd v Patel*, [2016] EWHC 1434 (Ch) and *Minkin v Landsberg* [2015] EWCA Civ 1152, coming to different conclusions in England and Wales about the extent of a solicitor's 'limited retainer'.

3.6.1 Legal practice: automation

Several respondents referred to the need to adapt to change. One remarked that an electronic world poses new challenges because we need to adapt and we need to get it right (e.g. not just choosing new IT products at random). There was comment on the amount of information now readily available to clients and to clients' own expectations and use of IT over the web. As one interviewee put it, 'Information is now available at the touch of a button; clients have a lot of info already'. Financial technology (or Fintech) was quoted as a field where some commercial clients already had a fair degree of software application knowledge. Some interviewees associated technological innovation with other forms of innovation, signalling that the one complemented the other.

Technology adoption often has hidden or unforeseen consequences associated with it. Automated task-work, for example, might lead one to believe that there would be less human presence at least on the client side of the transaction. One respondent noted that the firm was recruiting on 'emotional intelligence', so that staff would be able to understand clients better, and mediate between automated work and clients.

The consequences of automation include training. This will mostly be dealt with at 7.2, but at this stage it is worth noting that one practitioner said that LSI should be training for the future and not for areas of practice that will be replaced by IT. It is an interesting distinction: it refers to the disintermediation of knowledge and skills taking place in every profession, and the distinction between automative technologies (those that can and will replace humans) and assistive technologies (those that help humans to know, make decisions, earn fees for high-value work). If it is the case that automative technologies are replacing tasks hitherto carried out by humans, then the LSI probably needs to identify the training that is required in order to interface with machine lawyering, and solicitor education beyond the tasks that will be automated. This pre-supposes that the LSI will be able to identify which tasks will be subject to automation, and which will remain the purview of solicitors in the future. This is a notoriously difficult area of prediction. Nevertheless it is a significant future trend with substantial implications for the sector. In England and Wales, for example, the Law Society has estimated a possible loss of 67,000 full time equivalent jobs in the legal services sector to automation by 2038 (Law Society of England and Wales, 2017a, p 3).

In a sense we already know in general terms, from the work of Susskind (Susskind, 2010, 2013; Susskind & Susskind, 2015), Furlong (Furlong, 2017) and others on the legal profession, and from commentators on professional patterns of work in the future, and from social media and media experts what the employment trends might be in the near future. Part of the problem, however, is that these bodies of knowledge are seldom pooled so that in a single jurisdiction such as Ireland, differentiated categories of work can be identified and analysed – for example the sectors of solicitor practice that will be most affected by automative technologies, the models of transactions, in which technology can assist, and those models of high-value work where automative and assistive technologies may play little part. Another part of the problem is that the distinctions between automative and assisted tasks shift from one area of practice to another (albeit that there are many cross-over technologies that apply to many areas of practice – the concept of a web-based register in blockchain, for example).

It is clear from the interviews, though, that some solicitors are already thinking along these lines. Thus one firm commented (summary) that they are 'developing IT products in-house, and they will replace some labour, to streamline legal process'. The firm gave examples as follows; and what is interesting about their remarks is their adoption of technology design is seen as the product of a certain innovative way of re-defining and thinking about the profession (summary of interviews):

- Within the firm we think of law as a business, traditionally law has been a profession with a sense of entitlement– we don't believe in that at all.
- They are adding business lines to the firm, 'doing what firms have done for the last 20-30 years isn't going to work anymore'.
- A lot of the new buyers of legal services are going to be very tech savvy and they don't want to go into some dusty old office with stuff lying around all over the place: 'the profession needs to wake up to that'.

Firms are also doing their own research. The firm described above noted that at a conference (summary): Dan Katz talked about how there will be an increase in MDPs.¹⁴ 'Computers on their own is not good, lawyers on their own is not good, computers and lawyers together is where it's got to be.'

There were even more radical statements about how technology will be used in the profession in the next five years:

- Digital/tech will change everything; legal work will become automated and done by technicians.
- Students need a core knowledge, but computers will be doing legal research within four to seven years and at a high level of expertise (without missing anything). This respondent gave an example of a computer that could read x-rays that she had read about, the expert would prefer the computer to read the x-ray because it would be aware of ALL the research, not what the individual had managed to read. If you had a rare medical condition, a computer would pick up on that.

Another respondent agreed with this view of the future of professional legal technology, and put it into the context of other potentially transformative changes: 'Brexit, the development of inhouse sector, and technology will impact the market. Susskind says we'll be gobbled by computers anyway'. (summary of interview). While this is not quite what Susskind says (when quoting even his most radical book title *The End of Lawyers?*¹⁵ Susskind insists on reminding readers of the question mark), nevertheless it is hard to miss the futureshock attitude of statements such as these.

More measured is the view taken of younger members of the profession by an older practitioner:

- Solicitors need to be more tech savvy. There is a presumption that youth know about technology but often they just know how to use their phone not a case management system.

(summary of interview).

The research into technology use by students and novice professionals has proved this, and the point will be explored further at 5.3.3 and 7.2.3.

¹⁴ Daniel Katz is Associate Professor of Law, Chicago-Kent College of Law at Illinois Institute of Technology, and an expert on informatics, law, entrepreneurship and design thinking. See Chicago-Kent College of Law, (2017).

¹⁵ Susskind (2010); see also Susskind & Susskind, (2015).

3.6.2 Legal practice: case management

Case management systems were perceived as important and one respondent felt it would be useful for trainees to learn about them at Blackhall. A respondent with experience of the PPC put the opposite case and it is hard to argue against the points he makes:

- It comes down to how much does Blackhall need to teach them and how much will the firm teach them? E.g. there is an argument that Blackhall should be training them up on litigation management systems, but firms use different ones, so which one would they train them on? They [the LSI] have looked at that from time to time.

(summary of interview)

A practitioner from a boutique Dublin firm agreed: useful future skills include case management systems – what they are and how to use them. As for other skills and bodies of knowledge, he was not sure PPC I and II were the places to deal with them; he could see the benefits of covering cyber security or coding but not at Blackhall: ‘it could be on a CLE programme or an elective’.

3.6.3 Legal practice: coding

Two practitioner interviewees felt it would be useful for solicitors to learn coding, but only one agreed that the skills should be part of the PPC: ‘basic coding skills would be brilliant. If the LSI came in here and said we are going to do a coding module e.g. how to code and re-code a DMS they would welcome that’ (summary of interview).

3.6.4 Legal practice: conveyancing

General issues about conveyancing and the possible introduction of a licensed conveyancer profession are addressed at 3.5.2.3 above. There were suggestions that conveyancing was a field of practice that would be dealt with online. This had implications for the number of staff involved in dealing with it; and the amount of the PPC course hours that should be devoted to it. It should, however, free up solicitor time to deal with the more complex aspects. One practitioner from a mid-sized Dublin firm commented that their firm paid a lot of attention to this and went on to say that if more and more residential conveyancing is going online, then it did not make sense to spend weeks studying it. It was an area that is increasingly automated.

We were told that LSI is working on electronic conveyancing that is intended to simplify conveyancing. There is a fear that it will drive prices down further, as has happened in the UK. The proposed new process appears, however, to be time-consuming in itself, but there appears to be a continued role in it for solicitors and might allow solicitors more time to deal with the more difficult issues.

3.7 Conclusion

From our range of interviews it is clear that the legal profession and legal services in Ireland are in the midst of complex and – in Dublin at least – swift-moving change. From large firms in Dublin to small firms in the rural regions, and mid-sized firms in regional centres such as Cork and Waterford there is significant and ongoing change that is expected in the next five years. The snapshot picture that this gives us of the profession in late 2017 is useful as a backdrop to the discussion of the aspirations of solicitors in Ireland for the profession in the next five years. There will be implications in automation, and increasing opportunities in in-house practice.

On the larger issues of LSRA and Brexit, we would observe that:

- On LSRA, practitioners are wary of the way such regulatory reforms have taken shape in England and Wales, but see the differences between the two jurisdictions and are reasonably confident that LSRA is a regulatory regime that may improve matters.
- By contrast, Brexit gives cause for grave concerns and, in the long term, solicitors see it affecting a broad front of legal services and business.

On the subject of the ongoing effects of both the LSRA and Brexit on legal education it may be that a watching brief on the two developments would help understanding and commitment to ways forward. Such a brief might take the form of a short online newsletter on the subject of professional legal education in a LSRA and Brexit context, possibly also taking into account the uptake and use of new technologies in the profession (and students may be drawn into this as in part a student project). We recommend that a communications plan should include how these important developments affect the future direction of solicitor education in Ireland (see 1.3.1 above).

3.8 References

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Chapter 4

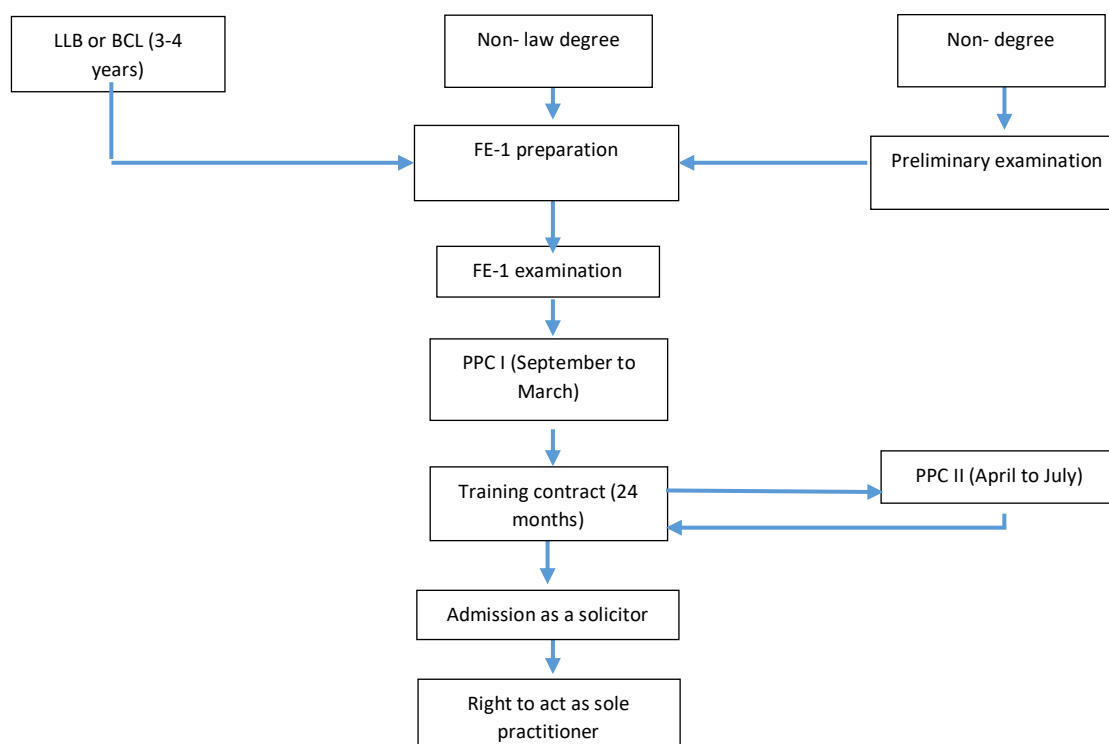
The aspirations of the profession for solicitor education in Ireland in the next five years

4.1 Introduction

In Phase Two of this project we asked our interviewees to give us their aspirations for solicitor education in Ireland in the next five years. Inevitably, some of the data is linked to their views on the directions in which the profession was heading in the same time period. We report on those views here.

For those who are less familiar with the details of the qualification process, it may be useful briefly here to summarise the qualification process in the Republic of Ireland. This diagram does not include details of transfer mechanisms for barristers, foreign qualified lawyers or *Morgenbesser*¹⁶ applicants.

Figure 2: Routes to qualification as a solicitor in the Republic of Ireland¹⁷



¹⁶ *Christine Morgenbesser v Consiglio dell'Ordine degli avvocati di Genova*, C-313/01, 2003.

¹⁷ Note that some students undertake some of their training contract before PPC I begins.

4.2 Law degrees and the FE-1

A snapshot of the range of law degrees, including those designed for graduates in other disciplines is provided in the Comparative Analysis in sections 4.4 and 4.5. Figure 6 in the Comparative Analysis provides data on the number of new law undergraduates at each of the universities and institutes of technology in the Republic of Ireland in 2016. It can be seen from this that, with the exception of Waterford IT, the majority of undergraduates are in the university sector, and concentrated to some extent at Trinity, NUI Galway, UCC and UCD.

In our data, law degrees and universities were discussed in three contexts:

- The relationship, if any, between the degree and the FE-1;
- The extent to which the status of university was a factor in law firm recruitment;
- As possible competitors for the LSI in provision of all or part of the PPC, should competition in that market become permitted as a result of the LSRA.

4.2.1 Law degrees and the FE-1

Details of the development and content of the FE-1, and preparatory courses for it appear in the Comparative Analysis at 1.6.2 and 4.7. The issue for several of our respondents was the extent to which the FE-1 duplicated (or not) the assessments of law degrees. At one end of the spectrum, some respondents felt that the FE-1 was an expensive, duplicative and time-consuming barrier and that a law degree should be sufficient for entry to the vocational course. At the other were respondents who perceived that varying standards in universities were sufficient to justify an additional entry assessment as a common standard or “leveller” that united all entrants.

In our data, there was also a distinction between those who felt that FE-1 created a benchmark in terms of standard or fairness of entry to the professions and those who discussed the type of assessment or the relevance of the outcomes of the FE-1 to the PPC or to practice. The formal standard of the FE-1, utilised by examination markers, was unclear. Examples of possible approaches to creating a standard for a professional qualification can be found at Kaplan (No date), Solicitors Regulation Authority (No date). Because of the significance of this issue to the LSI and to the profession, we discuss the FE-1 in more detail at 5.2.1.

4.2.2 Recruitment into the training contract

Chronologically, the next stage for an aspiring lawyer might be recruitment into the training contract. We were, however, told of firms that recruited from the second or third year at university. Consequently, FE-1 results did not figure in their recruitment criteria. Indeed, uncertainty about whether trainees would or would not pass FE-1 at their first sitting caused such firms challenges in knowing whether they would meet their annual recruitment targets.

However, one practitioner from a smaller firm felt that recruiting during the degree was too early: in that it put pressure on students to make decisions when they still have a lot to learn. Students are, he felt, delighted to get a big firm training contract but he was not sure that would be the best for them.

By contrast with the large firms, we did not receive any information about whether smaller firms treated the FE-1 as significant in their recruitment decisions.

There was a perception that larger firms at least recruited from a particular pool of universities and that therefore the FE-1 (provided the applicant passed it) did not create a level playing field: 'There are solicitors who won't employ trainees unless they are Trinity regardless of what they got in FE1s'. There were concerns about differing standards between universities although one interviewee felt that those universities with higher Central Applications Office (CAO) requirements attracted brighter students and could therefore cover topics in more depth.¹⁸ We do not have data on the extent to which the assertion that status of university plays a part in recruitment is justified, but this could usefully be pursued.

4.2.3 Universities as possible competitors in a new regime.

There was a strong consensus that the universities would be interested in entering the PPC market. Respondents named specific universities and views were articulated as to which of them would be more interested or effective than others.

The area of potential competition that might be opened up under the LRSA was perceived to be, if at all, to the PPC, and we return to the question of possible new PPC models and new PPC providers at 4.4.6. First, we deal with more specific suggestions relating to the PPC as it is currently offered.

4.3 The PPC

The vocational PPC is taken in two parts (see Comparative Analysis at 1.6.3 and 1.6.4 for details). PPC I, the more generalist section, is taken after the trainee has secured a training contract, and lasts for seven months. Its content is mandatory, and includes a discrete skills course (although only advocacy is formally assessed). There is currently only one provider of this course, the LSI itself which employs a core staff but retains in the region of 1,200 practitioners who teach on the course on a part-time basis.

Unlike Northern Ireland, where, as indicated at 3.4.3 there is a requirement that trainees spend some time in the office before starting the vocational course, trainees need not do so in the Republic. Some of our respondents, however, felt that it would be useful for them to do so and one noted enhanced performance on the course by those who had.

Respondents who commented on the requirement to obtain a training contract before enrolling on the PPC compared this requirement positively by comparison with England and Wales, normally on the basis that it prevented aspiring lawyers wasting time and cost on the course without the security of a job that would enable them to qualify. In Ireland there is the added factor of passing the FE-1 assessment. The figure of passes exceed those enrolling in the PPC. For instance in 2016, 422 candidates passed the FE-1 overall and the PPC I enrolment was 412; and there are comparable figures for earlier years.¹⁹ The 'dark figure' of FE-1 completers who are still in the market for a training contract may therefore be comparatively small.

¹⁸ On this point, see the Comparative Analysis, p.101, Table 5.

¹⁹ Data kindly provided by the LSI.

PPC II contains some mandatory courses, including one designed to prepare students for managing a practice (PPCM). Employment and family law are compulsory subjects (they were moved from PPC I to accommodate the skills module) but not seen as relevant to all firms. One of the mandatory courses is England and Wales property law. The SRA has determined that, under Directive 2005/36/EC (Recognition of Professional Qualifications) the only substantial area of difference between the two jurisdictions is land law. Consequently, coverage of this topic on the PPC as a matter of course enables Irish qualified solicitors, at present, to transfer into England and Wales without having to pass the Qualified Lawyers Transfer Scheme assessments (Solicitors Regulation Authority, 2017).

It is the case, although several respondents seemed unsure or alarmed about this, that once admitted following completion of the training contract and PPC, a solicitor is entitled to set up in practice in his or her own right. This is by contrast with those jurisdictions, including Northern Ireland, where a period of supervised practice is required after qualification (see Comparative Analysis, Table 6 under 'limited licensure').

It should be said that the consensus amongst our interviewees was to retain the PPC in some way, and suggestions were for its improvement, rather than for its abolition or for substantial change. One practitioner in a regional firm was entirely happy:

- He is not surprised that LSI have sent [Jenny Crewe] down to speak to them because his perception is that there are not many country trainees. He is very pro LSI. 'The training is excellent – it's good, it's modern, he can't find any holes in it.'

(summary of interview)

4.3.1 Aspirations about its content

Focus for change in relation to the content of the PPC was around two key concepts, both related to its alignment with practice, or with particular practice types.

4.3.1.1 *Corporate practice v traditional practice*

To some extent, the argument about the extent to which the PPC does, or should, represent corporate or commercial practice was articulated as a difference of opinion between the larger, Dublin-based firms and the smaller or regional firms. One interviewee, however, pointed out that small firms also undertake work such as registering companies. Others identified topics that they would like to see on the curriculum, such as research, negotiation and use of social media, that could benefit all students.

The divide is not, therefore, necessarily as straightforward as an argument about the size of firm. Some respondents perceived a stronger influence on the content of the course by larger, Dublin-based firms, who supplied the majority of the trainees, and were thought to have the resources and the interest to lobby the LSI in a way that smaller or regional firms did not. The fact that the majority of trainees on the PPC came from commercial firms caused logistical issues for the course providers in ensuring that students from all types of firms learned from each other. One firm, which worked with the LSI to develop content, was a strong advocate of collaboration with the LSI (and was certainly not alone in this regard). Even in a larger firm, however, the emphasis was on encouraging the LSI to

address the issue, rather than on going elsewhere – an interesting point and symptomatic of the sense of collegiality that firms felt towards the LSI:

- Is it too hard to create a qualification that meets needs of top firms and generalist firms? 'That is entirely possible.'

There was some concern that if multiple providers were to be allowed, bespoke courses, along the lines of those available in England and Wales, would emerge:

- 'It would be to the detriment of our profession going forward if we allowed a position to exist whereby training schools allowed students to focus exclusively on certain specific areas of law just because that's where the trainee got their traineeship.'

We detect a divergence of opinion here between those respondents who emphasised that the LSI is the guardian of what solicitors need to be taught, and those who felt that the purchaser of the course should have an influence on its content:

- Firms are paying huge fees, there is a feeling that we are subsidising the training of general practice around the country and we are getting little value from this training ourselves.
- The interviewee did not think training completely focused on commercial makes for a good solicitor. It suits the person paying the bill and that's why he would be concerned about big firms having more influence.

(summaries of interviews)

Some respondents, even if they perceived value in a generalist core to the PPC to some extent, wished to see a greater proportion of PPC content aligned to their own areas of practice, and topics such as residential conveyancing, probate, employment, accounts, criminal law, not represented in their practice, minimised, removed or made optional. We shall address these issues (for they are a key concern for the profession) below, and in particular at 6.3.3.

Others - see also the discussion about specialism versus generalism below at 4.3.1.2 - thought that an increased commercial context could be included in PPC II. Some interviewees, however, felt that the elective stage of the PPC in particular was already slanted towards commercial practice topics or perspectives (such as approaching employment law from the perspective of the employer). Perhaps inevitably, the larger firms felt the curriculum was too focused on non-commercial law. We were also told that some firms mandate which elective subjects their trainees must take.

On our question ‘What does the profession want from legal education?’ there are two points that should be made. Of necessity, we made the profession a collective noun, and made legal education singular in the question. However in practitioner’s answers we found that the issue of training was often matched to the work that the firms found and were pursuing, and so the training environment was to some extent seen as a dynamic one that required to change as firms’ work changed. It is hard to disagree with this view; but of course this highly dynamic view of educational processes poses problems for the LSI: the context of education and training is ever-moving, fluid and highly context dependent. Our question also revealed that while divergent views are clearly present, and are the result of solicitors from different backgrounds and sectors of the profession arguing for their own interests, it is also the case that there are a significant number of instances where practitioners have erroneous or incomplete information about Irish professional legal education, suggesting the need for the LSI to engage in more communication with the profession about the nature and aims of professional education.

Our data included the following comments:

- If the new order comes in the whole thing [PPC] will start to polarise towards the big centres (and the reputation of the big firms i.e. [an individual’s] reputation will attach to that not the qualification).
- It is their hope that there would be a legal education body that provides training which is more closely aligned with the type of work they do, whether LSI or a 3rd party, they are open.
- Would more closely align in terms of the training content and also the legal education can be more closely aligned in terms of timing and business interruption.
- Large firms are putting pressure on LSI to increase commercial law, but it is important to keep general practice in mind.
- The PPC is based on a historic model of solicitor provision, a more general practice. It is not directed towards their business needs at all, e.g. practical legal research, drafting and negotiation. ‘The academic value of the PPC for the trainees who come here is practically nil’ they are not gaining skills which are of benefit to the work they will be doing in this firm.
- Probate, etc. would be helpful if you will be setting up your own firm, but not in a big firm.
- ‘It doesn’t even try to meet the needs of what, in many classes, will be the majority of the work the students will be training in.’
- There are people at the firm who think there should be separate training for trainees going to big firms. She is not sure of the merits of that (it’s probably something everyone should consider) but LSI could come some way within the current structure to meet the needs of larger firms.
- PPC II – there is a compulsory module on family and child law – very few practitioners in the top five firms would do this. She can understand the logic of including conveyancing, litigation, probate and tax. Family law/employment law – not everyone will use.
- Trainees paid fees and benefits and salary, [this firm] reimburses cost of FE-1 exam costs – it is a ‘significant figure’. ‘It’s hard to see the benefit’ – when they are being taught residential conveyancing.
- There is a big drum being banged by the big firms and what they want. It is an unhappy dilemma to work out how to meet different demands – a skill is a skill.

- One of the problems is that some of the people in the large firms do not last there and they are probably the least prepared to set up on their own or move into smaller practice. He is not saying that it is them causing all the problems, but there have been issues.
- The majority of training contracts are with large commercial firms which 'creates a demand for a certain type of training which ignores the need for a qualified solicitor to cover a diverse range of areas'. Increasingly trainees are doing aircraft financing in their firms and this is not giving them sufficient diversity of experience to enable them to choose where they want to be in the marketplace if they are not kept on.
- The syllabus for PPC I and II seems to have been designed with a small private practice in mind – so it doesn't sit with the [organisation's] work. Thinks the syllabus blocks should be revised to recognise areas which a lot of solicitors will be working in. 'There needs to be more of a balance.' In her intake there appeared to be more big firm trainees. She would have liked to have seen more commercial options.

4.3.1.2 *Generalist v specialist*

A slightly different approach to the corporate practice versus traditional practice debate was the discussion of the extent to which it was appropriate to have a generalist background, possibly with specialisation beginning during PPC II electives or following qualification through a Diploma, or, indeed, through in-house training in the firm (summaries of interviews):

- '[The LSI's] role is to produce capable members of the profession that can be let loose on the public on their own if it comes to it.' If they need specialist expertise for a top tier firm then they should get that element of the training at the firm.
- The answer to the big firms' concerns about lack of specialist training is in the Diploma Centre; Blackhall has to provide a basic education, specialisation is something which happens on qualification. His view was that good post-qualification training was the way to go.

As with the perceived drive towards commercialisation, a drive towards early specialisation was perceived to be connected to the influences or desires of the larger firms:

- There is a lot of pressure on the old idea that you qualified as a generalist, there is pressure from the larger firms to specialise at an earlier stage and he "thinks that's regrettable". It is coming from the large firms.

(summary of interview)

However, we were also told that not all big firms were pushing the specialisation agenda. Several respondents saw a benefit in a broad education, allowing the solicitor to identify when an issue trespassed into other areas of law (summaries of interviews):

- The aim is to provide a well-rounded solicitor who knows a little about a lot of areas when they start off and this will be put at risk; although she has specialised, she learnt enough during training to understand when she needs to ask someone else.
- In her (large) firm you may find some corporate/banking lawyers who want specialisation from the outset, but she disagrees with it fundamentally, because you need a wide knowledge to be able to advise in every sphere.

There were mixed views as to whether a generalist qualification broadened the career prospects of the solicitor by allowing them to move later in their career. We have no data, at present, on the extent to which there is movement between larger and smaller or more or less commercial firms (or in and out of in-house practice, for that matter). Neither do we have data on post-qualification retention rates for different kinds of firms. Comments included (summaries of interviews):

- Generalist training at Blackhall is important because people move. People start in the big firms and the next thing they are out in the country. And friends have gone the other way too.
- 'People are trapped in a particular field of law which they can't move out of' – when they train at commercial firm, those jobs pressure people into a particular lifestyle.
- There are trainees coming through smaller firms who do not have much of a career trajectory ahead of them. They would never really consider hiring someone from a small regional practice into this office because nothing in Blackhall that they will have learned will equip them for what they would do here and their traineeship would not have helped. So, there is not that much movement between small and larger firms (or vice versa) but there could be if there was a really strong training in Blackhall and that trainee geared their training towards more commercial work.

One interviewee understood that some larger firms would like graduates who are more specialist and noted that the LSI had concluded that specialist accreditations were not appropriate for Ireland (and to a large extent prohibited by regulations governing solicitor advertising (Hall, 2002, p 149). One interviewee, who challenged the notion that a generalist qualification enabled solicitors to transfer between firms post-qualification, commented that 'it's almost easier to hire a brand-new trainee and train them ourselves than to hire from a smaller firm because nothing in their background will prepare them [for commercial practice]'

4.3.2 Aspirations about outcomes and standards

Part of the function and aspirations of a profession regarding its educational processes rest in the standards that are achieved as an outcome of that process. This was a key focus in the interviews with practitioners, and we set out their views below in a number of subsections. It should be noted at the outset that we have taken a broad view of the concept of an educational standard, taking it as a statement of formal accreditation, and as a standard of complexity and difficulty in itself, and as a level of professional performance.

4.3.2.1 Standards and accreditation

The Northern Irish PPC-equivalent course is formally accredited as a level 7 postgraduate diploma (level 9 in the framework used in the Republic: Quality and Qualifications Ireland, No date), as described in Chapter 3 at 2.3.3. The LPC in England and Wales is normally accredited as a combination of levels 6 and 7 (8 and 9 in the Republic) although this is not a requirement imposed by the SRA.

It was noted that the PPC standards are not currently accredited to a level in the Irish NFQ framework (see also Comparative Analysis at 4.8.1). One interviewee explained why

- Because they have separate statutory authority under s49 [of the Solicitors (Amendment) Act, 1994] to grant certificates they are not NFQ (National Framework of Qualifications) aligned, but they do peg it to Level 8. They do map it to that but have never sought to align as it is not something they need to do. The qualification is viewed as around masters' level but not explicitly pegged to the NFQ.²⁰

(summary of interview)

There were other comments regarding the general levels of the standards in the PPC. For example (summaries):

- One interviewee found it difficult to say whether each elective was of an equivalent academic standard – she thought it was like comparing apples and oranges.
- A practitioner from Dublin stated that he thought the 'solicitor qualification is quite good, could be improved but unfortunately the trend is to bring it down [in terms of standards]'.
• Another respondent added (summary):
 - The profession wants LSI to be the leader in legal education, and know that trainees come out of Blackhall ready for practice.
 - They do and don't like us, but some of their views are back in the 90s when they trained and they haven't noticed that things have changed and moved forward and try to be as leading edge as LSI can be.
 - All firms should be given what they need.

The challenge of giving all firms, whether corporate or traditional, what they *need* – which may be different from what they *want* - is a substantial challenge, demonstrated by the discussion of corporate and traditional practice as represented on the PPC and the appropriate place for specialisation as described above. Another theme, which occurs at intervals in our data, but sufficiently frequently to be of interest, is the question of the effectiveness of LSI communications to the profession, to students and to society as a whole, about what it provides and what that provision is designed to achieve.

4.3.2.2 *Specific desired competences*

We asked many of our interviewees how they specifically wanted to see the PPC develop, and the competences that they wished for on the PPC, or at the point of qualification. One respondent seemed to see it as incumbent on the LSI not simply to maintain standards, but to be ahead of the curve in terms of delivering new subjects. On the subject of defining and articulating standards for legal practice, see the Comparative Analysis at 2.4.

Specific competences or topics were variously articulated as follows:

²⁰ Level 8 in the Irish system is the last year of honours degree: Quality and Qualifications Ireland. (No date). In the Irish system masters' level is level 9.

- Business law should start from a higher starting point, given that it has been tested on the FE-1.²¹
- Communication skills.
- Conveyancing (this interviewee felt standards had slipped).
- Drafting and presentation are very important; he constantly hears people complaining about low standards; he thinks standards in conveyancing have dropped significantly.
- Due diligence and corporate transactions.
- Employment and family law need to be more integrated.
- English language skills– ability to write/draft clearly and unambiguously [but it is not for the PPC to teach this].
- PPC I Applied Land Law does not have to look exclusively at residential conveyancing i.e. it could have a more corporate angle.
- Teamworking.
- There should be more tech on the course, he does not think the newly qualified solicitors are much more tech-savvy than he is. He is not impressed, he expects them to be better.²²
- What a modern business economy is dealing with even in a small practice.

If, as we said above, practitioners seem to see the PPC programme and traineeship as a dynamic construct, it should come as no surprise that there are a number of suggestions for new competences and skills, and new clusters of skills. We shall discuss these interesting suggestions in the subsequent chapters of this report. Regarding the last suggestion, the increasing use of technology in practice was covered in Chapter 3. We discuss the important issue of technology in education at 7.2.

4.3.2.3 Holistic desired outcomes for the PPC

These were variously articulated (and not necessarily without conflict) as follows (summaries of interviews):

- Competent well-educated professionals that understand the world that they are in, that have some integrity, that understand how to treat colleagues.
- 'A client wants a lateral thinking strategic adviser who can be their professional support throughout whatever it is that you are dealing with.'
- 'There is an expectation from the client that the lawyer will be well-rounded and not just niche.'
- A newly qualified solicitor should be able to run a file unsupervised. Another interviewee, however felt that this was not appropriate.

One interviewee perceived that firms expected the finished product from their PPC graduates and forgot that they [the law firms] have some training to do too. We were told that the Northern Irish

²¹ In comment on the draft version of this report, we were informed by the LSI that it is Company Law that is assessed on the FE-1, and that the Business Law course on the PPC is designed to have a broader scope.

²² Note in this context the respondent who would like the PPC to include coding (above at 3.6.3).

equivalent is designed to prepare students for the first one or two years of practice (they are unable to enter sole practice until two years after qualifying) and to render the newly qualified solicitor 'safe', 'not putting the client at risk' and able to recognise problems that should be escalated. This is perhaps rather on the negative side, along with the medical principle of 'First, do no harm'; but it is a start to a more holistic and positive portrait of capable and dynamic graduates. Additional practitioner comments on this topic included (summaries):

- They [trainees] will become niche but they will have behind them true professional competency and it would be shocking to lose that.
- Expectation of a newly qualified solicitor: at the moment a lot of solicitors who qualify would not be able to run a full file properly without supervision, and that has always been the way, it varies from firm to firm as to how they deal with it (i.e., let them loose or keep them under supervision). Sometimes it takes another year to get into that position.
- Because the training is generalist, it does not qualify them to be particularly competent in any of [the practice areas covered]!
- LSI for most part does a good job at resisting demands for a more populist education in favour of a more rounded and grounded education which means that every trainee has met a minimum standard in certain areas.
- "No matter what training system you have in place, it's all about practice" [i.e. in-office training].

It has, therefore, become apparent to us that there is a lack of clarity in some quarters – particularly perhaps in the profession - about what the PPC is intended to achieve, and to which standards. This also has implications for those aspects of competent day one practice that are developed, not through the PPC but through the training contract and learning in the workplace (see the Comparative Analysis at 3.2 and 6.1.2). That is, it has significance for the role of the law firm or other employer in their share of responsibility for the development of the newly qualified solicitor. It is of fundamental significance in the Republic of Ireland, given the possibility that on admission, newly qualified solicitors might be practising independently and without supervision. This may be a question of communication for the LSI about what the PPC is intended to and can achieve, or a question of more collaborative work between the LSI, the course team, and the profession (including young lawyers).

4.3.3 The relationship between PPC I and PPC II

The split between the two courses, with a period in the office between the two, received a range of comments. These can broadly be divided into the educational and the logistical.

Some respondents felt there was a noticeable benefit to trainees from the period in the office between the two courses, for example (summaries of interviews):

- 'It was easier to bite into the subjects in PPC II with that year behind me.'
- The [firm] has two trainees. They come back much more confident. The trainees feel like they have learned a lot of stuff; there's no expectation that he would run a whole file himself. He still needs to read everything they write before it goes out.

There were some views that PPC II was too short (having been shortened over the years) and time too constrained to go into as much depth as might be desirable. Others noted a decrease in student

engagement and attendance when they returned to the classroom after their stint in the office. There might also be a problem for students from the regions, maintaining homes and possibly families there whilst having to find accommodation for PPC II in Dublin. One respondent felt that if PPC II involved coverage of the same topics but at a higher level, the split would be justified, but not as it was. Another would like to see PPC II being made longer, commenting that PPC I provides a broad education followed by the on the job training which is hugely beneficial, so that students then come back for a refresher and a more concentrated lesson in an area that they are interested in. One respondent felt that if the course was changed to involve more online content to be covered while students were in the workplace, work priorities might cause them to struggle to study. The same respondent, however, noted that the split facilitated trainees in transferring between firms at a point after completion of PPC I.²³ Another respondent suggested an increase in blended learning during the interim between PPC I and PPC II.

There was some lack of clarity about whether the electives were of an equivalent academic standard. It was suggested, for example, that commercial property and advanced litigation are perceived as being harder than other electives, so students avoid them.²⁴ We were told that the PPC II was a test of stamina. Elective courses were of different lengths and that the volume of work on the PPC II, with eight lectures and two tutorials for each of three electives together with Family, Employment, PPCM and England & Wales Property Law as compulsory modules, resulted in seven exams at the end of a ten-week course (we address the question of assessment at 6.6).

The logistical issues were raised by law firms who had to manage trainees moving into and out of the office, sometimes in more than one intake (see further 4.5.2 below). Managing the split, especially with multiple intakes, could be a challenge for firms, particularly as it meant a large number of trainees being back in the office during the summer period. One respondent, who valued the split, suggested as an alternative six months pre-PPC I (part of training contract), 12 months between PPC I and II, then six months at the end and these timescales would be fixed. Sample comments included the following (summaries):

- PPC II is April-July – it's a really bad time for a bunch of bodies to be out of the office – then they are all back in July and August when it's holiday time and it's difficult to manage their rotations.
- The split of the courses is very difficult to manage, they have periods when there is one intake in the building and then sometimes there are three. ... It is difficult finding places to find people to sit. Also it has an impact on their training, if you have one trainee instead of three – they get great training but they're working like a maniac, if you have five or six trainees, then there's not enough work, then they end up doing low-level work.
- If it could be a bit more predictable it would be good, same date every year – they never know what the dates are until the last moment.

Suggestions for substantial change to the configuration could be summarised as:

- Lengthen the course;
- Abbreviate the course;

²³ We would however note that there appears to be no evidence for this statement. Data collection on the issue would certainly be useful.

²⁴ In comment on the draft version of this report, we were informed by the LSI that Advanced Litigation is in their experience 'consistently one of the more popular courses'.

- Combine the two parts;
- Abandon PPC II or make more of it, including the possibility of new providers.

In relation to the fourth suggestion, a number of respondents suggested that additional PPC II electives could be useful (see 4.3.1 above). Several interviewees thought there might be potential for PPC I to continue to be provided by the LSI with other providers competing to provide PPC II, perhaps in specialist courses for the corporate sector (see discussion of previous consideration of this idea by the LSI in the Comparative Analysis at 9.5.8 and Law Society of Ireland, 2007, para 5.1.10, 5.2.4).²⁵ This we discuss further at 4.4 and 6.3.2 below.

Exemptions can be obtained from some of the electives. Interviewees commented on trainees training in mediation as a replacement for a PPC II elective. This was clearly seen as a significant benefit, although it involved substantial additional cost to the firm. Another interviewee, however, queried what use trainees might make of the PPC time released to them when they had a PPC II exemption. One interviewee felt that it would be important in future for the solicitors' qualification to be integrated more closely with those of other bodies such as trade mark attorneys, mediator (CEDR etc.), ADR. If part of the education system was tailored so as to give trainees extra qualifications it would help to future-proof the trainees and not just the qualification.

4.3.4 Advantages of collegiality

Several interviewees identified an advantage to the profession in the collegiality, community of practice, mutual support and professional identity created as a result of all solicitors having passed through the same programme in a small jurisdiction. This could extend to the fact that the LSI is free of commercial interests and has, as its objective, the quality of the entire profession: the “utter strength that there is one institution which has the overall interests of the profession at heart and they can reflect that in the training”.

Another disliked the phenomenon of bespoke LPCs for large corporate firms that had appeared in England and Wales (see Faulconbridge, 2011). A third observed that:

- It is also a huge advantage in your career to know the people you qualified with so that you can pick up the phone to someone else who specialises in a particular area if you have a problem. It also engenders trust in your colleagues – their trainees talk about which ‘intake’ they were in, she thinks it’s an important social thing for them which is a valuable human thing.

(summary of interview)

One trainee interviewee agreed that it was a good thing for all trainees to be together to study. At Blackhall she learnt that ‘your peers are your wealth’, everyone helped each other out, whereas at ‘[university] people would tear pages out of books to stop others from seeing it. It’s good to mix the trainees up at Blackhall.’

²⁵ This was not successful in England and Wales; but the fact that the PPC is already split, and spliced with work experience means that the programme is significantly different; and its organisation could support such innovation.

On a similar theme, but taking an example of unethical practice, a practitioner believed that (summary): ‘Standardised training is good when you ring another member of the profession, and they try to do something not quite right – you know they’ve had the same ethical training and you can pull them up’. An academic made the opposite point, arguing for heterogeneity (summary):

- The long period of training at Blackhall facilitates a community of practice within the profession, and professional identity; however, it doesn’t allow for much heterogeneity and there’s an element of indoctrination. There should always be pathways in and recognition of prior learning. It takes time to create a core sense of identity.

4.4 The question of multiple providers of the PPC

There is, of course already competition in some elements of the qualification process. First of all, there is a market for FE-1 preparation courses. Interviewees acknowledged this (see further the description of the variety of provision in the Comparative Analysis at 4.7). One respondent felt that this market is crowded, with Griffith College and DIT as the main providers and some courses for non-law graduates. This respondent also referred to the information provided by LSI about providers and their cost (Law Society of Ireland, 2016).

There is also clearly a competitive market in CPD, LLM and Diploma provision (see Comparative Analysis at 4.8.3). We discuss this aspect of solicitors’ education further in Chapter 6. We have also identified, in Chapter 3, a de facto competition, at present, in qualification in London, particularly if it enables trainees to avoid the time and cost of completing the FE-1.

Finally, there appears, in our data, to be some element of competition from the King’s Inns. They clearly also provide CPD and Diploma courses. Bar training was described by more than one respondent as more flexible than the solicitors’ equivalent. Perhaps most significantly in this context, we were told of an organisation deliberately choosing to train some of its staff as barristers because of the availability of the evening course at the Kings’ Inns. The availability of part-time study options clearly has implications for matters of equality and diversity, discussed further at 4.6 below.

In discussion about new models of course and new providers generally, one interviewee suggested that an option that included more online learning would be popular. Others suggested a split course or additional courses for specialisation and one suggested LSI should further expand its training in judicial training. There was some concern that additional providers of part of the PPC would not be able to draw on the same quantity or quality of practitioners to teach, or that new providers would cater for lucrative, corporate work or create bespoke courses at the behest of the larger firms, rather than catering for everyone. On this last point, a practitioner noted that a disadvantage of the LPC system was (summary): ‘that it’s a 2-tier system. Do we want to imitate that with our own little LPCs like the City firms in London have had over the years? The answer she thinks to that is no’.

4.4.1 Arguments for removing the monopoly

If competition was inevitable, some interviewees felt that it was healthy and would require LSI to become more dynamic; that LSI was in a good position to take on competition or that LSI would still be the preferred choice. Some interviewees felt that competition was good as a matter of principle. Views are set out below (summaries):

- Blackhall would feel they now have to sit up and compete for students to come there as a preferred option, which is a challenge.
- It is a healthy thing to move from a monopoly model in relation to training. It will create a more positive dynamic. Where you have one provider, it can become introspective (although the LSI looks to other UK nations and there is a Curriculum Development Unit).
- Firm's [interviewee working in large firm] view is not that they want more competition but they do currently have an issue with the LSI provision.

4.4.2 Arguments for retaining the status quo

A number of interviewees felt that a market place for legal qualification was risky; that there was a tension between the law school and the market that would lead to a weakening of any control over standards in legal education. There were fears of a dilution of the practitioner-tutor cohort, of treating qualification as a 'tradeable commodity'; of law firms controlling qualification routes in their own interests and an over-readiness to adopt solutions adopted in England and Wales. Positive aspects of the single course such as standardisation and collegiality were emphasised. A number of interviewees wished to retain the legal educational status quo, possibly with some limited changes -- for example the addition of new PPC II electives. Comments we received included the following (summaries of interviews):

- 'Keep it standardised.'
- Can see education becoming more market-driven and that is a pity, he has only seen that creep in in the last few years.
- Fundamentally they should not change the PPC I, she would like to add other modules to PPC II because by then they have some idea about what they might be able to qualify into; 'specialisation is the way, I don't think we're going to go back to the general practitioner'.
- He likes what they have – healthy balance – so many rumblings outside he knows it is bound to change. The amount of control LSI has over legal education will weaken.
- If you interview solicitors who are not connected to the LSI, if randomly questioned, they would say they want the existing traineeship system and examination system.
- In a small jurisdiction, putting more providers in would make it uneconomic, you might have many initial entrants but the interviewee was not sure that would produce any long-term benefit. 'Danger of increased fragmentation and stratification with professional training and we have to consider the natural justice and public policy issues' and the fact you can't treat professional training as a 'tradeable commodity' and there is an over-readiness to adopt solutions which have taken place in England.
- Not sure if competition would be a good thing for professional legal education; he would be worried that the universities would take an academic approach to law rather than a practical approach; he is not sure that a university would have the skill-set to teach practical law.
- One respondent liked the centralising impulse because 'it provides consistency, but you have to ensure there's not complacency' and you can avoid that through constant evaluation and looking at other jurisdictions.

- She wants them to get rid of what does not work, but does not want them to simply adopt what they have done and are doing in the UK; hopefully end up with a resolution which still leaves them with a very good PPC I that enables them all to have that good broad knowledge. And that course would still be the core law school course where trainees from all sizes of firms are together and learn respect for the different types of firm and lawyer within the small jurisdiction of Ireland.
- Should be avoiding change for change sake, whilst making improvements.
- Some of the changes that have happened in the UK will have to come over here (LLPs/listed companies). 'We're living in the dark ages here', but of the idea of de-centralised training: 'I don't think that's a good idea, it's very risky and it's hard to get it back again'.
- They [practitioners in a small firm] do not think it would be a good idea for there to be other providers of the PPC – you get the top lawyers in all areas in to teach.
- Throwing qualification back to the market place is risky; someone getting qualification at moment is much more secure in their qualification.

A further issue here was the role of the LSI as guardian of the profession and its values, signalled at 4.3.4 above. As one respondent put it (summary):

- He thinks it should remain as it is. The LSI should be the only educator. His concern would be that if you have other providers, will they be acting in the best interests of trainee solicitors or of larger law firms who have their own mandate?

Another suggested:

- Our core structure here is to be admired and quite frankly to be replicated. Change should not be adopted for change's sake and in particular English or British approaches should not be blindly adopted. The interests of new PPC providers might be questionable, linked to particular law firms rather than the interests of the whole profession (summary of interview).

4.4.3 Size of jurisdiction and numbers entering the profession

One concern was about whether there was sufficient demand, or sufficient demand outside Dublin, for additional providers. Alternatively, one interviewee wondered whether the training model was to be changed so as to increase the market. It was thought by one respondent that the LSI had the potential to increase its numbers by 20-25% (perhaps if it also expanded its premises). Some interviewees felt that centralised training worked well in a small jurisdiction, particularly perhaps on topics such as ethics. Comments included (summaries of interviews):

- Competition in professional education is difficult in Ireland because the market is so small. LSI set up branch office for training in Cork but everyone still wanted to go to Dublin so it closed. Lasted about four years and cost a fortune. It did not work.
- 400 students a year start the professional training. There is talk about an LPC model (that is being dropped in England and Wales) being adopted so that people can train without a training contract so that would increase numbers.
- Blackhall is focused on how to deliver the best education, but once it is opened up it will be determined by how to deliver it cheaply. She is unsure how the regulatory people at LSI would

ensure that education is being delivered properly in other locations. There are a finite number of students and people who can get an apprenticeship/job in the profession. They will be fighting for the same people, there is a limit to the number of jobs available.

- The Law School needs to improve its facilities; when they hold exams, they are held all around the city. Blackhall has potential, not sure they need to increase the number of students.
- One respondent did not think the market was big enough for another law school. People do not want to study in the regions; the job opportunities are in Dublin and Greater Dublin area, maybe Cork/Galway. The profession is becoming top-heavy around the East Coast; 59% of solicitors are in City/County of Dublin; new graduates want to work in city; it is very difficult for him to recruit an assistant in a regional area.

4.4.4 Consistency

A number of interviewees expressed concern about the effect on consistency in curriculum and the variable standards that might be the result of multiple PPCs being available (summary): 'It will be interesting how it will impact recruitment because recruiting solicitors have all been through Blackhall, also will there be a perceived difference in standard between the providers? Time will tell'.

It was noted that, at present, recruiters are all familiar with the LSI PPC, which might have an impact on recruitment. There were concerns about the degree of prescription of the curriculum and teaching approach that might be necessary, or might be deployed, to try to assure consistency between different providers. One interviewee commented (summary):

- If you open it [the PPC] up to other providers, who determines what has to be covered?
There are 20-30 hours of skills training but no prescription about how that time is spent.

A large firm practitioner's concerns, if professional training were to be opened up to others on the PPC, were as follows (summary):

Training will be diverse.

Standards will vary hugely between providers.

At its peak there were 600 going through Blackhall and if they were spread out regionally, then it is questionable whether it would be viable. Her main concern would be the difference in the courses and the lack of consistency across the board

One interviewee wondered if there might be a distinction between multiple providers of courses and, implicitly, a single provider of the assessments: 'Are [the LSI] distinguishing between providing courses/exams?' Another considered the question of standards (summary): 'how do you judge that the training is up to standard – would there be a generalised test? Or tick box? But it could be seen as over-competitive if overly prescriptive'.

4.4.5 Cost

Interviewees were split about whether additional providers of professional legal education might be more efficient and help to address financial barriers to qualification, or whether cheapness of delivery might outweigh quality. There was distrust of market forces that might lead cheapness to overtake

quality, although one trainee felt that a choice of different courses could lead to ‘people ... competing to get your business as a trainee ...’ which she thought would be a positive change.

However, interviewees were split about whether additional providers of professional legal education might be more efficient and help to address financial barriers to qualification, or whether cheapness of delivery might outweigh quality. One training principal was interested in training being opened up if it made it less expensive ‘because it is a big undertaking for people’. This respondent felt that plenty of people did not have the opportunity to qualify because they did not have the funding.

Another respondent, however felt that ‘[t]here is a real danger that the cheapest model is not going to be the most effective’ because it would not give the time and energy to skills training. In a similar vein, a respondent commented that the 1:1 teaching approach used for skills on the PPC was expensive, but felt that it was the best way to give skills training for people to develop. It should be noted that while skills education can be expensive, it need not always be so, and much training need not be 1:1. Indeed it could be said that the best training often involves peers and collaboration as much as supervisor or mentor feedback, or coaching.

4.4.6 New providers

Interviewees generally felt that new providers would be amongst the universities, some of which were thought already to have expressed an interest into moving into this area. Several institutions were mentioned by name. One interviewee questioned whether other providers would ‘fly’ because of their lack of experience vis á vis the LSI.

It was also thought that some law firms might enter the market (or work with providers to produce bespoke courses representing their own worktypes and business objectives). One interviewee noted that they already do this (summary): ‘Some large firms have their own in-house training and that seems to compete. Firms think it’s better’. Whether all firms agreed with that, of course, is another matter. Nevertheless, another interviewee felt that an issue for the PPC was that:

- Firms do (inevitably) want their trainees to follow their own in-house practice and procedures rather than those of LSI or another firm. (summary of interview)

One possibility for a future in which there were multiple providers was that some law firms might carry out their own training or do so in conjunction with universities with which they already had a sponsorship arrangement. Some respondents saw a role for universities, and also law firms, in delivering PPC II electives.

There was concern about new providers’ lack of experience and about new providers not amongst the existing universities and possibly some of the private institutions. On the one hand, it was thought that the universities have the resources to plough into IT and more practical/small group teaching; but that they were unlikely to have the staff to teach non-corporate topics such as conveyancing or probate; or in a way relevant to practice. Below are typical points (summaries):

- Not sure if competition would be a good thing for professional legal education; he would be worried that the universities would take an academic approach to law rather than a practical approach; he is not sure that a university would have the skill-set to teach practical law.
- If one is going to open up the market then there will need to be more numbers, otherwise the market is too small and it will not be viable for the universities to train.

- If professional legal education is opened up in Ireland, it is likely that individually or as a group, the big firms will approach certain universities to have their own more business-orientated course. They would resist more intervention in the in-office period.
- If UCD/Trinity were providing courses that would be fine, but there will be a lot of institutes who have an accreditation with a university and they're going to be in the market e.g. Griffith College. The biggest problem is that standard would come down to lowest available standard. Griffith do a lot of training for FE-1 (which he thinks is good).

One interviewee, however, thought there could be a useful marriage of academics and practitioners if there was careful design.

- Properly structured you could combine the best cutting-edge academics and marry that up with great practitioner experience 'but you have to be careful because universities are often not best aligned with practitioners' needs'.

One large firm practitioner suggested (summary) that the 'LSI should provide the generalist part of the course (60%) and there should be competition for the rest (which would cover specialisms)'. Another large firm interviewee agreed, and set out a vision of a foundational core and options structure for professional education.

- There could be a wide-variety of options for people who want to do human rights or legal aid or competition/big law, and they would have the opportunity to have training that would be relevant to them for a good percentage of their time and money. However, it was important to these firms that all trainees still attended a really good foundation core course.

It was interesting to hear that some practitioners suggested that universities become involved in organising and teaching the second, more detailed PPC II (summary): 'Universities would be looking to run specialist courses. This interviewee had heard rumours that some of the big universities would like to run the whole course, but there was doubt amongst several interviewees that this would work in practice: "they're not qualified to do it."' This was primarily felt to be because most academics will not have practised law at all, and this would impact on their ability to add value to a professional practice programme. However it seems that at least some practitioners were open to the idea that academics could be involved in teaching specialisms. The idea seems to speak to a pre-supposition on the part of at least some interviewees that electives are higher-level because they contain more complex or arcane or sophisticated law or transactions than that dealt with in PPC I. Whether that is actually the case is another matter. Some electives could be such; or they could be the same as the PPC I core, but the skill level is at a higher level. Or they could involve more sophisticated law and skills, perhaps incorporating new skills (for example complex mediation or arbitration), and built around a spiral curriculum.²⁶

²⁶ A 'spiral' curriculum is one in which students encounter the same or similar knowledge and skill sets, but at increasing degrees of complexity and sophistication. The concept is generally attributed to Jerome Bruner (1960).

4.4.7 Co-Education with the Bar

The potential for common training with the bar has been discussed more than once in the history of Irish legal education (Bourke, 1968, p 3; Law Society of Ireland, 1998, p 4). These proposals are summarised in the Comparative Analysis at 8.3.2 and 9.5.8 (as Y-shaped courses).

One interviewee felt there should be far more overlap between the training of the Bar and solicitors. Another felt that the LSRA had as one of its aims the duplication of examinations, and therefore in terms of Bar and LSI this could involve one entrance examination for both professions. However, this interviewee, noted earlier, queried the governance issues involved in that, and whether the LSI would be permitted to run the assessment process. In Northern Ireland, however, with a joint initial course, there is strong competition for the smaller number of barrister places and the Bar and solicitor students interact increasingly less as the professions have become increasingly specialised.

4.5 The training contract

The training contract lasts for 24 months although, as one interviewee commented, trainees can get time off their training contract if they have worked at their firm prior to training contract (e.g. as a paralegal when doing the FE-1). There is no longer a minimum salary other than the national minimum. One respondent felt that if trainees were not in fact being paid, they were unlikely to say so. One respondent felt that the psychological and wellbeing support made available on the PPC could be extended into the workplace.

4.5.1 Learning in the workplace

A number of respondents emphasised the value of learning in the workplace (see the Comparative Analysis at 3.2 and 6.1.2). The way in which learning in the workplace was supported might differ between large and smaller firms, with large firms offering in-house courses in specialist topics and their own methods of practice. Some respondents felt that the firms should be more realistic, or responsible about their own training obligations. Only one respondent felt that the appropriate approach was that of the USA where qualification takes place prior to entry into the workplace, although this respondent similarly emphasised the significance of learning in the workplace and was primarily interested in removing opportunities for nepotism from the system.

4.5.2 Blocks and other regulatory requirements

The training contract is required to cover a prescribed set of practice areas (described in the Comparative Analysis at 1.6.4). The bigger firms were thought to have training managers and well-organised training systems to ensure that trainees completed requirements for all the mandatory blocks during the training contract. However with reference to small- and mid-sized firms it was thought that there was at best creative compliance and at worst complete breach of the rules. In smaller firms there is often a direct link between the types of work available to the firm and decisions whether or not to take on a trainee. Support for trainees in smaller firms was thought by one respondent to be more personal and less regimented than was likely in larger firms, for example, an individual taking a trainee through a matter.

Rotation of seats through the different blocks was viewed by one respondent as a means, for large firms, of identifying potential future areas of specialisation. Several respondents emphasised the importance of breadth of experience. The mandatory blocks caused a problem to some firms, and prevented others from taking trainees. They were thought by some not to align to large firm or in-house practice. For example (summary):

- Wills, probate and administration of estates have to be covered during the training contract. They have to cover three out of four blocks of practice areas – it is ‘very confining’ what they must cover during their training and this should be modified, to be reasonable and reflecting the reality for the bigger firms and the in-house trainees. You have to have a workshop on an area that no-one will be practising in – this would be much better dealt with on the PPC.

Several respondents, who nevertheless, felt that whilst the practice of rotation was valuable more leeway could be given as to the nature of the blocks. Two respondents suggested that the only mandate should be for coverage of both contentious and non-contentious work. One respondent understood that some firms did not in fact comply with the rotation requirements and this was ‘something the Law Society needs to clamp down on’.

Other regulatory requirements could be a challenge, requiring detailed form-filling twice a year and formal requirements including registration/indenture deeds, a covenant by the person taking on trainee, using up partner time, and which, could, one respondent felt, be substituted by a simple and clear contractual document. Another, however, felt that the regulatory requirements were not arduous. There might also be challenges in finding out what taking on a trainee involved.²⁷

4.5.3 Family influence

The question of family influence in obtaining training contracts was discussed by several interviewees. There was a view that the FE-1 enabled access to the profession to be based on competence rather than contacts. An interviewee from a larger firm, however, felt that in such firms, recruitment was by merit and the FE-1 played no role in the recognition of merit. Other interviewees felt that there was still a perception of smaller firms as family businesses that had a right to employ their children (provided they could pass FE-1), although some solicitors in small firms might be actively dissuading their children from entering the profession as the era of small family-based practice declines.

There are some who acknowledge the move away from kin-based appointment to meritocratic appointment (summary):

- Amongst the larger firms, access to training contracts is based on merit rather than contacts. They are run like businesses and they want to recruit the best talent. There is no role for nepotism and it would prevent them recruiting competent lawyers. He does not know if it is different in smaller firms, but he does not think FE-1s help with that at all.

²⁷ One training principal said that whilst the LSI had been very helpful it had been difficult for them to find things out themselves from the website – another indication of the need to review communications with the profession (see 1.3.1 above).

And there seems to be a broad opinion on kin-based appointment – this from an interviewee from a small regional firm (summary):

Vociferously against the profession being a closed shop where training contracts are gained because of contacts rather than competence.

A period of apprenticeship is fine 'but not where connection trumps ability'.

4.6 Equality and diversity issues

These are central issues for any regulator; and in Irish professional legal education will in the future become more important as a result of the LSRA. Issues of equality and diversity as they affect the Republic of Ireland and lawyers in the jurisdiction generally are discussed in the Comparative Analysis at Chapter 5. Where decisions are taken with regard to qualification or training requirements it is important that, as a baseline, the requirements are necessity,²⁸ effectiveness, proportionality, transparency, accountability and consistency (Department of Taoiseach, 2004). Some issues of equality and diversity, such as the status of university attended, are dealt with at 4.6 below. Two issues, however, are more generic.

4.6.1 Mature students and part-time study: access to the profession

We have already noted a respondent who described an organisational policy which preferred the part-time King's Inns course for employees. Other respondents discussed problems of cost, commuting and maintaining families and accommodation whilst attending the PPC. PPC staff, as far as they could, attempted to address the commuting issue in their timetabling, but this initiative clearly could not completely solve all the issues. A specific issue, identified by one respondent, in creating a part-time PPC that might be delivered in weekend blocks, was in being able to recruit the practitioner tutors who are a significant, and valued, feature of the PPC. We do not know whether the logistics or market for a part-time PPC have been recently investigated.

A number of interviewees commented on the challenges facing mature students, particularly those with families based outside Dublin, in doing both FE-1 and the PPC. These included cost, commuting and accommodation and personal wellbeing issues. The PPC was contrasted with the King's Inns part-time course, designed to facilitate access for those with existing employment, with one interviewee suggesting that colleagues would train as barristers rather than solicitors because of the existence of the part-time course. Interviewee comments are below (summaries):

- Part-time – currently the PPC course is only available full time; one would favour a block release scheme over two years (Friday-Sunday) which seemed to work well at Nottingham;²⁹ she thinks it is hard for people to do a day's work and then come in – also that does not work if you are outside of Dublin.

²⁸ That is, targeting regulation only at cases in which action is needed.

²⁹ We believe this to be a reference to the Nottingham Law School block attendance LPC (Nottingham Law School, 2017).

- It is not easy to persuade practitioners to come in on a weekend;³⁰ but she can see it happening; content would be the same; it would have to run over 2 years; she thinks it would appeal to some students and not others.
- Commuting is an issue for a lot of their students, they have tried to address that with the timetable. To help with this, nothing happens on Monday morning nor normally on a Friday afternoon. They also try to ensure that when they come in, they are in for more than one slot. But if they are in for a lecture in the morning and a tutorial in the afternoon, there is no-where for them to study in between. 'It's impossible to find a space or a room', which makes it difficult to move the curriculum around or change the balance of lecture and tutorials.
- The training is in Dublin, for PPC II it is problematic because trainees are trying to find accommodation in Dublin whilst keeping their accommodation rented in Cork. It can be difficult if they have family or commitments in Cork, some of them commute. So, there is a student welfare issue around that. If it is for a long period of time they do not mind so much.

The weaknesses of the current access arrangements were summarised by a small firm practitioner (summary):

- Long, expensive, access issues (particularly for older students).
- They have 'more life baggage' – he is shocked by how many students use the counselling service at the Law School – he thinks this is because of greater complexity in their lives (mainly financial and relationship, perhaps also coming to the big city); the hope is they will deal with troubles before they get too bad.

In the early years of the millennium in Scots professional legal education, one of the pressures building on the Law Society of Scotland (LSS) was that of access to the profession. The only version of the Diploma in Legal Practice running in five centres was a full-time model, requiring full-time access. After objections from mature students and others on the grounds of access to justice and the profession, the LSS opened the course to part-time models. It is significant that access to the LPC and through it to the profession was one of the reasons given by the SRA in England and Wales for abandoning the LPC model in favour of a single point of entry by assessment.³¹

The challenge is not, therefore, confined to Ireland, but is one that we recommend be met, in order that the LSI is able to meet its own statutory equality obligations, and follow its enviable reputation for access by women to the profession (see Comparative Analysis at 5.2.1), by progress in access by other demographics and equality groups.

4.6.2 Socio-economic factors

We have addressed some of the issues of cost earlier in this chapter. However, questions of cost can be a symptom of a deeper issue connected with the overall diversity of the profession. We have noted

³⁰ In comment on the draft version of this report, we were informed by the LSI that in their experience of Diploma delivery, senior practitioners 'are if anything more available and willing to lecture/tutor out of office hours and at the weekends'.

³¹ See for example SRA (2016, p.5): 'In the current system, prices for the LPC have risen inexorably since it was introduced, in part (at least) because price is used as a proxy for quality. The [SQE] proposals would also remove the LPC gamble in which some students pay up to £15,000 for an LPC in the hope of securing a training contract'. Access for part-time students was also a concern, given the cost of degrees generally in England and Wales (but not Scotland) had resulted in a serious decline in the numbers of part-time students entering Higher Education.

in the Comparative Analysis at 5.1, that, unlike its equivalent for England and Wales, there is no requirement in the LRSA to foster a more diverse profession. The country has, however, as described in the Comparative Analysis in Chapter 5, other legislation and other national policies relating to diversity. One interviewee felt that the FE-1 created a level playing field for entrants for any background; though of course it should be pointed out that this is only the case for those students who can afford the fees, the preparation course and the time out from employment to study for it. An interviewee from a law firm, however, as discussed in section 4.2.2 above, noted that trainees were recruited prior to taking their FE-1 so the exam had no effect on the breadth of the pool from which they were recruiting.

Other interviewees raised issues of cost of the FE-1 and PPC, commuting and accommodation as barriers to some potential entrants. One interviewee commented that 'we don't have a diverse profession', feeling that the profession's demographic was solidly middle-class and that some action should be taken, whilst also noting grants and access funding given by LSI to help address these issues. Comments below (summaries):

- Social mobility – FE-1 allows people to come up through the Diploma and be on the same level playing field.
- The common thing is that everyone does that exam and that is a good thing. 'They more or less have to take it in two sittings.'
- They hire them before they have done the FE-1 so it does not broaden their pool in any way. Passing the FE-1 is a condition to joining but it is not a factor in recruitment. It is only a condition to joining because they cannot get them into Blackhall without them. They would not make it a condition themselves.
- He would like to see people facilitated more (to enter) legal education, €12,500-13,000 in fees is expensive; bigger firms will pay but not the smaller firms.
- Cost is very high, 'finance is the biggest barrier to those not from a middle-class background', rather than access.
- Compared to other jurisdictions, some felt that the cost of qualification was perceived to be value for money. However, on a personal level for some trainees having to come to Dublin for their training – the cost can be huge, they are supposed to be paid by the firms but she's not sure trainees would say anything if they were not. Thirty or 40 years ago trainees paid firms to be trained. If you do not come from a privileged background then it is 'quite a struggle' – also people who have to leave their children to come up to study.

4.7 Conclusions

Predictably, the aspirations of the profession for its legal education are widely varied, depending very much on the fragmented cultures, different modes of working, types of work, different regions of Ireland and many other factors. As we noted in the Introduction, it is our hope for this report that it helps to build a shared understanding in the profession of the range of problems facing the stakeholders, and to build, too, a shared commitment to action.

As we said in the previous chapter, Chapters 3 and 4 set the ground for discussion of educational issues in the following chapters, where we shall reference the debates taking place in the profession. In

place of detailed recommendations on education here, therefore, we will summarise briefly the issues raised by the profession, and to be taken forward into subsequent chapters.

Recruitment (4.2.2) was linked to issues of diversity for some of our interviewees, with others concerned about variable standards between university law degrees, and the extent to which that impacted upon professional standards in the PPC. It was noted that FE-1 had no equity effect on recruitment.

On content of the programme (4.3.1), there was a diversity of opinions; and a sense that while knowledge content and skills required to be updated and tailored, there was a reluctance to create bespoke PPCs for specific professional sectors.

There were some possible solutions proffered for the resolution of the debate between the PPC as a generalist or a specialist degree (4.3.1.2). Standards (4.3.2.1), understood broadly, were of concern to a number; and to others, communication of which standards applied when in the programme was an issue. Communication was a persistent theme, evident at times in the erroneous information practitioners had about the LSI's activities and programmes, but also evident from statements about the lack of useful communications about the PPC.

On the relationship of PPCs I and II, there was considerable comment as to the efficacy of the two halves of the programme, and how they dovetailed with the traineeship. Nevertheless, collegiality (4.3.3) was discussed as an advantage of the programme.

The question of multiple providers was raised by quite a few interviewees, with more in favour of retaining the status quo. The arguments for and against both raised interesting and detailed structural solutions that will be considered in later chapters.

The training contract was discussed, with ways to ensure its efficiency within the spliced structure of the PPC. Equality and diversity issues, access to the profession and above all access to the PPC were discussed, with a number questioning the absence of a part-time programme, and costs.

Finally, there are three further issues that cut across many of these themes, and require a slightly longer discussion.

4.7.1 Competition

The subject of competition in teaching and assessing a complete PPC is not within the remit of the project report, but inevitably it needs to be addressed. This is not just because, given the presence and function of the LSRA now in the field, competition is a much more of a reality, but because an alternative to competition for hosting the entire PPC could be competition in teaching and assessing parts of it. The issue affects the re-design of PPC I and II, particularly the latter.

As noted at various points in the Comparative Analysis (e.g. 1.6.2), the Competition Authority made a number of recommendations regarding legal education. We do not seek to address those recommendations here. We note that there could be an argument that competition is not feasible under existing legislation. This mandates the provision of the PPC by the LSI itself or in conjunction with others, with the latter element regarded as delegation. The LSRA does not repeal any of this and does not enable new legislation. However, the LSR Authority could recommend competition, which would then require primary legislation. Section 34(3)(c) of the LSRA mandates the LSR Authority to obtain a report on the topic of accreditation of providers within two years. It is reasonable to assume that the only reason to obtain such a report is that it is made with a view to potential legislative change.

Apart from the findings of the Competition Authority and the legislation of the LSRA, it was clear from our interviews that competition is a key topic for the profession. Given that, we believe it is better to know what people think than not, and our data fulfils that modest function.

From our reading of the data, it is clear that there are mixed views on the subject. Open competition is by no means regarded as a good thing, nor are market economics generally held up as being the way forward, particularly so in a small jurisdiction (indeed this tended to be a minority opinion). There are other concerns – that large firms may split off in some sense, particularly on PPC II; or form their own bespoke mini-courses. In actuality, the two practitioners from large firms that we interviewed on the issue did not want to go down that route: they simply wanted the PPC to serve their needs better, i.e. better specialist training with the potential for some of that to be conducted outside of Blackhall (one of them does that already with CEDR). Paradoxically, both practitioners were very averse to what they perceived as the negative impact on standards if the market is opened up. This point is probably symptomatic of a debate where the correlative issues are not clear-cut because they tend to be extensive and wide-ranging in their effects. In addition, the data, here as elsewhere in Irish professional legal education, could be more detailed.

In our view, opening up the PPC to competition will result in variable standards in professional legal education, much as these came to exist on the LPC in England, as the Legal Education and Training Review in England and Wales (Webb, Ching, Maharg, & Sherr, 2013) and the SRA, observed (Solicitors Regulation Authority, 2016). On the other hand it is clear that more flexibility is required at the PPC II in particular, and also arguably PPC I, and that the current architecture of the PPC cannot presently sustain such flexibility. This will be discussed in more detail at 6.3.2. Competition can of course improve standards; but not always, and perhaps less so in education than in other markets (Maharg 2012). Collaboration can improve standards, but it is an argument seldom presented by predominantly liberalised and market-oriented regulators.³² We would recommend that regardless of the arguments for and against wholesale competition the LSI needs to address the concerns raised by the profession in this report, and take a collaborative approach with the profession and with all other stakeholders in their consideration of the recommendations we make in this report.

4.7.2 Equality and diversity

It will probably be the case that this report will be used *vis-a-vis* the LSR Authority report that will be compiled under the LSRA. In that context we should make it clear that, while issues such as equality, diversity and social mobility have not hitherto been important topics in prior reports on Irish professional legal education, they will become so in the context of wider statutory (not to say European) contexts, and ethical concerns on the subjects.

On the wider perspective, it is clear that the world is generally learning in shorter more intensive bursts. Long undergraduate study is increasingly a period of luxury and for many students, not least those first-generation students, value for money and effective use of time is becoming of paramount importance. Financial access is critical, and a measure of equality, and enhances diversity.

In the interviews, there was a fundamental tension between those who thought firms should be able to determine the content and structure of the PPC programme and those who thought the

³² It is an argument that is being made across a range of different industries. See for example Benkler's study of social production (2006). In the field of education, Benkler makes the case for collaboration, as well as the general philanthropic and democratic case for the use of open educational resources by educational providers. As he put it, educational resources are little more than the "'side-effect" of teaching' (2006, 327).

programme's aim should be the good of the student/profession as a whole, not the firm. This is a fundamental tension in almost every jurisdiction's professional education. However, a regulator and an educator such as the LSI needs to balance the issues. On the value and costs issue, the King's Inns flexible learning models are interesting and we can see why they attract people (and possibly a more diverse range of people) as a result. We would argue that diversifying the curriculum, in access, structure and content, will have a beneficial effect on diversity and social mobility within the profession. It will in effect help to define positively the discourse of the relationship between LSI, the profession, the LSR Authority and other stakeholders in Irish society.

4.7.3 General vs specialist professional education

It is always problematic to define what precisely the terms general and specialist mean, but many interviewees, if they did not try to define in the abstract, knew what for them constituted generalist or specialist professional education at the vocational stage. It was interesting that the only firm apparently in favour of specialisation was one of the larger ones and, even then, there was equivocation. It may be the case that any argument for a generalist approach needs to be made by the LSI to persuade those who might think otherwise of the LSI's vision for a mix of generalist and specialist education. The issue is an important one. It brings in other issues such as the wellbeing of trainees, the general skills of employees facing the next global financial crisis and possible redundancy that that may bring. Further, there does seem to be overall agreement that the current 'specialist' electives are too flimsy to achieve much. The general issues of specialisation and generalisation in an educational programme, while they cannot be designed away entirely, can be mitigated and better organised, and that is what we shall attempt to do at 6.3.3.

4.8 References

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Chapter 5

Irish solicitor education and solicitor education in the UK and the EU

5.1 Introduction

In this chapter we turn our attention to aspects of current solicitor education in the jurisdictions of the UK and the EU. There are broad overviews of both in the Comparative Analysis, at Table 7. Following on from the aspirations of Irish solicitors for professional legal education in Ireland that were outlined in the last chapter, we turn our attention to a number of issues that were raised by interviewees in that chapter, and consider how the issues are dealt with in other jurisdictions. In the first section we consider the FE-1 assessment that governs access to the PPC, in the light of common entry examinations elsewhere in the world, and particularly with reference to the Solicitors Qualifying Examination (SQE) that will admit successful candidates to the profession in England and Wales. As we noted in Chapter 4, there was no appetite among the solicitors we interviewed in Ireland for an entry examination such as the SQE; but its format and detail make for an interesting contrast with the FE-1.

A number of our interviewees seemed to be unclear what to expect of trainees who had completed their professional education. Some of them raised this explicitly. In part, this is a communications issue, and we have commented on that in Chapter 4 and will return to it at 7.6. However, it is also a deeper challenge for the LSI, given the pivot-point that the PPC will soon occupy politically, economically and culturally as well as educationally in Ireland's future. We discuss the question of 'standards' and the challenges in defining and assessing them in section 2 of the Comparative Analysis in general terms. In the second section of the chapter, therefore, we give attention to some of the changes brought about in the Scots system of professional education, in particular the prominence given to its definition of professionalism, and the ways that that concept was cascaded throughout the three year programme of professional learning and assessment.

Finally, we turn our attention to the EU, which, in the context of Brexit, will set the tone for professional legal education in Ireland. We examine the Netherlands, a small jurisdiction where transitions have occurred, and how lawyers and legal educators have attempted to deal with the changes around them – transition to globalisation and globalised justice, international law and international corporations, increasingly complex and interventionist EU governance.

5.2 Entrance and terminal assessments

In this section, we examine the FE-1 data in the context of developments in self-standing professional assessments elsewhere in the world. We can divide these, roughly, into two categories:

- Entrance examinations that permit access to a subsequent stage of the qualification system (such as the FE-1).
- Terminal assessments that permit access to the profession (such as the New York bar exam).

A wide range of examples of both is described in Table 7 in the Comparative Analysis.

5.2.1 Entrance assessments

This category of assessment also seems to break down into two categories. One subgroup consists of assessments that are ostensibly predictive (see Comparative Analysis at 2.6) and attempt in some way to assess aptitude for the next stage in the system. Critical reasoning tests such as the LNAT (LNAT Consortium, no date) or LSAT (Law School Admission Council, 2017) are used in some quarters to assist in filtering applicants for study of law at university. Others, such as the BCAT (Bar Standards Board, 2017), are used to filter out or dissuade those unsuitable for the vocational stage of professional education. Some aptitude tests have been criticised as discriminating against particular groups and their predictive value may not be strong (see Baron, 2011; Dewberry, 2011; Webb, Ching, Maharg & Sherr, 2013a, paras 39-45 and the Comparative Analysis at 2.6). To the extent that such a test purports to assess aptitude only for the next stage in the education process, rather than for practice, much may also depend on the extent to which the vocational course is representative of practice.

We understand that the admissions test for entry to the vocational course in Northern Ireland is of this predictive type (Queen's University Belfast Institute of Professional Legal Studies, 2017). This admissions test is taken during the third year of the degree and does not seek to retest academic subjects. It is a three hour examination covering tort; contract; criminal law; land law, grammar and numeracy. It is viewed by those responsible for it as an aptitude test that tests students' ability to read large quantities of information, assess what is important, follow-through a narrative and establish what are the key legal principles. Admission to the vocational course – for which there are pre-determined limited numbers - is determined by a combination of results in the degree and in the admissions test.

The other category is retrospective in that it (re)tests subjects that law graduates, at any rate, will or at least may, have covered during their degrees. Examples are:

- The CRFPA entrance examination for bar school in France. This is formally perceived as a test of knowledge, rather than as an aptitude test for the profession (by contract with the terminal CAPA examination). It is composed of written and oral examinations in a variety of legal subjects, including procedure and accounts, and a foreign language test (Devenir Avocat, 2017).
- The FE-1 that tests Company Law; Constitutional Law; Law of Contract; Criminal Law; European Union Law; Equity; Real Property and the Law of Tort (for further details, see the Comparative Analysis at 1.6.2).
- The King's Inns entrance examination that tests Contract; Criminal Law; Irish Constitutional law; Torts and Evidence (Honorable Society of King's Inns, no date b). The King's Inns entrance examination is perceived to have a different purpose from the FE-1 and is viewed by those responsible for it as more practical than academic though not as a formal aptitude test.
- The law school admissions examinations used in the English-speaking Caribbean that test Contract; Tort; Property; Equity; and Criminal Law (e.g. Hugh Wooding Law School, No date).

5.2.1.1 *The purpose of the FE-1*

Attitudes to the FE-1 were some of the most strongly polarised in our data, occupying a range between a perception that it is well-received to an argument that it had no purpose 'whatsoever' or was 'not remotely needed'. Some participants felt that the commonality was a good thing (although it should be noted that several of our respondents had been exempted from it). Other proponents perceived

a value inherent in having overcome a challenging hurdle. Those against the FE-1 were likely to argue that a law degree should be sufficient, or to perceive the FE-1 as a redundant “resit” of academic law examinations. We have noted elsewhere (3.2.3) the possibility of qualification in England and Wales being used as a mean of avoiding the FE-1 and its cost and the fact that, for those large firms who recruit during the second year at university, it may not figure as a criterion in recruitment decisions. Several firms noted challenges in planning to deal with the risk that recruits would not pass the FE-1 when they were expected to do so.

There was a consensus that the reason that exemptions had been withdrawn after the court case (see Comparative Analysis, 5.6.1) was the challenge of identifying who, from which institution (including institutions elsewhere in the EU), should be exempted. One respondent understood that the LSI did have power to exempt from the FE-1. Another pointed out that it was possible to obtain exemption from the ADR element of the PPC by completing external mediation training, demonstrating, from their perspective, an inconsistency in approach. Another respondent perceived the FE-1 (itself and preparatory courses for it) as a ‘money-making racket’.

Those respondents who felt that the FE-1 had no useful function or that it acted as a positive deterrent in terms of time and cost tended to recommend its abolition. Alternatives were to exempt law graduates but retain the FE-1 for non-law graduates or to exert control over the content or quality of the law degrees (see the recommendations for appointing professional external examiners to the law faculties in Bourke, 1968, p 5).

Others felt the FE-1 had a value as a guarantee of common standards at the point of entry to the PPC or as a satisfying hurdle to have completed and thought it should be retained, at least provided that it continued to be under the auspices of the LSI rather than the universities. There was some lack of clarity in interviewees’ understanding about who had ultimate control or responsibility for the FE-1. We discuss this, as an operational matter, further below at 5.2.1.2 and in the context of the LSI’s regulatory position at 7.6.5.

There are a number of possible purposes for such an entrance examination, which we examine here in the context of our data about the FE-1.

[Aptitude/practicality](#)

One possible rationale for an examination of this kind would be to establish in advance how well students are able to apply their academic knowledge into the more practical situations that they are likely to encounter during the PPC and later in practice. This might also have the effect of dissuading those unlikely to succeed on the PPC or in practice.

Several respondents felt that the examination was highly academic and in some cases that the topics covered were irrelevant to practice generally or to particular kinds of practice. Another view was that the FE-1 *does* include matters of practice and procedure that were unlikely to be on a university curriculum and presents them in a way that allows topics to be mixed and for ‘anything to come up’ in a way that was different from a university examination, with a broader syllabus and a more limited choice of questions. It is noted in section 1.6.2 of the Comparative Analysis that in 1998, it appeared that the vocational course would build on, and not duplicate, substantive law subjects covered in the FE-1, leaving the vocational course only to cover those areas of substantive law not included in the FE-1.

For example (summaries of interviews):

- FE-1 is not about taking education to a more practical level, it is meant to be an academic exam.
- Cannot see how FE-1s are relevant for a young lawyer in their firm 'they are an awful curse for people to have to do' and the 'relevance to day to day practice is nil'.
- The FE-1 syllabi are much broader than at university; what he likes is that fact that 'anything can come up'" and in that way, it more aligns with practice, topics are mixed, issues are mixed, there are good examiner reports, but students don't know what will come up

Consistency, difference and repetition in the FE-1

Consistency in standards between university law schools was noted in a number of interviews. Several respondents understood there to be differences in content and level between universities, noting the fact that some universities have higher CAO point tariffs than others and so might be able to deal with topics to a higher standard than those institutions with what were perceived to be weaker intakes (see Comparative Analysis, Table 5). Some of these respondents felt that the FE-1 was an appropriate way to address such differences, while others believed that an appropriate response would be to create greater consistency amongst law degrees so that the FE-1 would be unnecessary.

Some respondents expressed very strong views that the FE-1 duplicated law degree assessments: 'They are effectively repeat exams of what they've studied in college, there just doesn't appear to us to be any value-add in relation to the exams'. Another was of the view that many trainees expressed satisfaction in having, through the FE-1, achieved a higher level of understanding than they had in their academic study. The question whether the FE-1 examination is set at a higher formal level than final year undergraduate examinations is difficult to establish as although it is set by an Independent Board of Examiners with an internal and external examiner for every subject, the majority of whom are academics, it is not formally pegged to the NFQ or to the law degrees. Further, it is not clear to what extent, if at all, it is pegged to or related to the PPC. PPC staff do not appear to be involved with its setting, marking or administration. One practitioner felt that Business Law on the PPC started at too low a level, considering that it would have been covered by many students at university and is a prescribed topic on the FE-1. This discontinuity serves to indicate that the FE-1 is currently envisaged as a retrospective testing of what has already been covered, rather than as a preparation for the PPC. This is particularly the case if, as we heard, some elements of the PPC do not in fact assume that students already have knowledge from the FE-1 that is ostensibly a guarantor of a common standard of knowledge at the point they start the PPC.

A different kind of difference between university study and FE-1 was identified by one trainee as 'With the volume of work and content in the subjects, it's really just rote learning', which led to a particular kind of exam technique and knowledge which was unlikely to be retained.

For example (summaries of interviews):

- FE-1 is about ensuring everyone has the same academic standard rather than testing practical application of academic subjects.
- She accepts that all law degrees are not equal, particularly with combined honours. But she does not think it is right that those students who have done pure law at their best universities, should have to resit their undergraduate exams.

- He thinks there is something to be said for FE1s – each university will have their own standards – with FE1s there is one standard. It is not the easiest of exams – that is potentially an impediment to competition but it is probably right that it should be there.
- LSI should go back and look where the problem is, i.e. the universities are not teaching the right subjects or in enough detail or to the right standard. Equalise the law degrees. His legal education at [one university] was streets ahead of what he got at [another more high profile university] but they have the reputation.
- Law degrees are the cheapest to run of the university courses and he perceives that many are very badly run. He suspects LSI does not trust the law degrees. He would have felt it was ridiculous if he had had to do FE1s. If the feeling is that law degrees have weakened, then FE1s are the only way.
- He would probably like to see the FE1s ditched, if there is an issue with the law degrees then address that issue, do not set another lot of exams to deal with it.
- LSI has decided they will not make decisions about individual degrees (because of the challenge), they have decided they themselves will determine what is needed. [The interviewee's] former students think the FE1s are rigorous and challenging, they did not think they were pointless or repetitive; students seem to think it is more rigorous than university because the syllabus is wider and the pass mark is higher and you have less choice of questions. ... 'To some extent [it replicates university] but not completely.'

The currency of FE-1 content

The research team considered that a possible role for the FE-1 could be in ensuring that all entrants had an up to date knowledge of the law when starting the PPC, irrespective of the point at which they had studied the same topic at university. For example, TCD covers all but one of the FE-1 subjects in the first two years of its LLB (Trinity College Dublin, 2017), at least two years before students will embark on their PPC. However, as we also heard of candidates commonly taking up to a year to complete their FE-1, and other candidates working as paralegals, and taking 10 years or more, it is inevitable that, in fact, the currency of students' legal knowledge when they start the PPC will vary.³³

One respondent felt the need to re-learn topics that had been studied several years ago was counter-productive. However, another, who had had a gap after graduating, had found it helpful to use the FE-1 to refresh old knowledge.

The symbolic value of common assessment

There could be a symbolic value, related to professional identity and the cohesiveness of the profession, in having come through a difficult and challenging assessment, irrespective of its content or relevance. Two respondents commented on the FE-1 in terms of its status as a significant hurdle, expressing a view that something would be lost to the profession if it were to be abandoned.

³³ In comment on this the LSI noted that candidates have to pass the FE-1 within five years of passing the first three subjects.

Non-law graduates and the FE-1

Some of those who felt that the FE-1 inappropriately duplicated the law degree still felt that there was a role for it as a route into qualification for non-law graduates. Others felt that a law degree should be a pre-requisite for qualification. For example (summaries of interviews):

- At the moment anyone can qualify without a law degree if they pass the FE-1 – he’s not sure that is a good thing. It is a difficult question as he knows a lot of very good solicitors who don’t have a law degree; thinks it shouldn’t be sufficient to do non-law degree then FE-1 – there should be some other requirement.
- She does not think they should require people to have a law degree. FE-1 are good for people without a law degree/essential because you cannot learn all the law on the PPC.
- FE1s is fine if you are a non-law graduate, although you can learn no law at degree level and then just cram.
- He thinks about 40% of Blackhall students do not have a law degree, so FE1s serve a purpose there. Failure rates are often high but that is because either (a) they have not studied law previously or (b) they are just not at the required standard.³⁴ For him FE1s serve a particular purpose in terms of allowing non-lawyers to transfer in.

FE-1 and the prevention of nepotism

We have discussed issues of nepotism at 4.6, and recruitment based on the status of university attended, at 4.2.2. Nevertheless, as we noted, FE-1, as a hurdle, does not necessarily play a large part, or any part at all, in recruitment decisions, provided that the candidate does pass it.

Some interviewees argued that there was a positive social mobility effect in the FE-1, as it “prevented” recruitment of trainees through personal contacts and created a level playing field. Clearly, this can only be the case if those who might be the subjects of nepotism in recruitment were not able to pass the FE-1. If they are able to pass the FE-1, this argument falls away in its entirety and does not appear in itself to be a reason to retain the FE-1. However, it was also noted that a number of firms (particularly the larger ones) recruit their trainees before they have taken the FE-1, and therefore the FE-1 has no impact on recruitment for these firms. As entry to the PPC is guaranteed to all those who pass the FE-1 and who wish, and can afford, to do so, the FE-1 in fact acts as a brake on the number of those who can qualify to the extent that demand for trainees could exceed places on the PPC. In Northern Ireland, where the admissions test is envisaged differently, the number of places is limited in advance. However, we understand from the LSI that the number of those who reach the last sitting of the FE-1 is currently three times the number of training contracts available each year. It is a moot question whether more training contracts could be made available if the FE-1 were not part of the filtering process.

³⁴In comments from the LSI on the draft report we understand that the percentage of non-law graduates is currently around 25-30% and that they do not consider failure rates to be particularly high.

5.2.1.2 Operational matters relating to the FE-1

There seemed to be a lack of clarity in some respondents' understanding of the relationship between the LSI and the setting and administration of the FE-1. Some respondents understood that the LSI set the examinations.³⁵ As we have indicated above, there is an apparent disconnect between the FE-1 and the PPC. The lack of clarity suggests that there is also further work to be done with the profession, in articulating the relationships between the LSI and the board of examiners, and between the FE-1 and the PPC.

One respondent wondered whether in the future there would be a single entrance examination for both solicitors and barristers but questioned whether the LSI would then be permitted to administer a common examination.

Respondents familiar with the FE-1 described (summaries of interviews):

- Examiners, appointed by but independent of the LSI, most of whom are academics but some of whom are practitioners.
- Both academics and practitioners involved in setting the papers.
- A pass mark of 50% (also described as 'pass/fail').
- No predetermined quota for the number who can pass (this is by contrast with Northern Ireland, where there is a predetermined number of solicitor places and barrister places).
- Use of grade descriptors.
- Annual updating of the syllabus, publication of papers and examiners' reports.
- A process of referral to the external examiner of:
 - The first 10 scripts marked (so as to calibrate the level).
 - The first seven scripts marked that have been assessed in the low fail range 39-43%.
 - All scripts in the mid/marginal fail range 44-49 %.³⁶

³⁵ In comments from the LSI on the draft report we understand that according to the relevant regulations, the Education Committee 'designate the syllabus for Society examinations' and the examiners set the examination papers. The statutory basis for the FE-1-is set out in The Solicitors Acts, 1954 To 1994 (Apprenticeship and Education) Regulations, 2001

³⁶ In comments from the LSI on the draft report we understand that it is not the first seven scripts marked, but a random selection. Further, what is described here happens as part of the initial marking and is the minimum that has to be referred to the external examiner. Most internal examiners and external examiners confer throughout the marking period and often send more scripts. Assistant Internal examiners send scripts to both the internal and external examiners. There are public interest representatives (two education academics) on the Board of Examiners.

In addition, candidates have the right to have failed scripts rechecked, and a recheck fee is refunded if a candidate passes on a recheck. It should also be noted that appeals can be made on the basis of extenuating circumstances, and that the whole process is overseen by the Education Committee which declares results.

While interviews are not necessarily the best occasions to elicit detail about a complex process such as examination marking and appeals, nevertheless it is notable that even those interviewees who were involved with the FE-1 had only a vague and sometimes factually incorrect view of process. This speaks to the need for much more communication about the FE-1, its purpose and process.

5.2.1.3 *The impact of the FE-1*

The FE-1 clearly has a personal effect on candidates in terms of time, cost and intellectual endeavour. As indicated above, it may act as an irritant at best to some law firms, who find that the need to complete it disrupts their recruitment process. In this section we deal with three impacts of the FE-1 that emerged from our data.

Preparatory courses

The existence of the examinations, without a mandated or accredited prior course has, of course, generated an open market in preparatory courses (see for details, the Comparative Analysis at 4.7). This was widely acknowledged and one respondent singled out one of the providers as being good. Respondents noted the additional cost, and it was suggested as amongst the reasons an individual might choose to qualify in England and Wales. Although some firms would reimburse fees, not all did, and this could place pressure on a student who had not secured a training contract before taking the FE-1. We have calculated that a student who takes a face-to-face preparatory course, as well as attempting all the assessments, may spend up to €4,000 (not including travel and living costs) to get through the FE-1 stage. This could be a significant deterrent, particularly if it is all to be expended in a single year.

One respondent felt that the lecture/tutorial system used in the preparatory courses helped prepare students for the approach used on the PPC. Opinion was divided on whether the preparatory courses were useful, or not needed and potentially simply a money-making exercise. By comparison, although preparatory courses are available for the King's Inns examination, students are advised that a course should not be necessary.

Comments included (summaries of interviews):

- A current trainee thought you really need the courses for the FEs because they are a different sort of exam. 'With the volume of work and content in the subjects, it's really just rote learning' and then unfortunately you are not going to remember it. It's 'irritating'. 'You just have to cram it in and get it out and that sort of learning just doesn't stay with you.'
- Not sure whether LSI should do prep training for them, ethos is now probably against that.
- She thinks it is an 'unnecessary hurdle' and also an expense for people who don't have the money, because a lot of people do another course to prepare for them. She thinks it is 'not a fair hurdle'. For her the cost of the FE-1s is a big factor
- Students do not tend to find there is a disconnect [on the PPC] between lectures and tutorials because they've grown up with that sort of system. Especially if they have attended an FE-1 crammer course.
- She found it very isolating as she was not on a course and you are never really sure whether you're meeting the mark. She got materials and did not do a course.
- They find even 1st class university students are persuaded by the private colleges that they need more coaching but he thinks if they've covered it at university they should be fine; but he does think it's different to university, it's a generic way of creating a gateway
- FE-1 training – not compulsory, firms do not pay, but most people seem to do it

Time and cost

Although at least one respondent believed that it was no longer possible for candidates to attempt all the FE-1 papers in one sitting, one academic respondent quoted a figure of 10-20 people annually who did so and this was endorsed by one law firm respondent. There is a consensus, however, that most people attempt them in two groups of four papers and then retake any that they fail: “They more or less have to take it in two sittings”.

Pass rates are not published as not everyone in each sitting is eligible to pass the whole FE-1. The pass rates tend to be between 70-80% but vary between subjects. One respondent was aware of candidates who had been unable to pass all the papers in three or four sittings. There were some calls for sittings of the FE-1 to take place more than twice a year. Several respondents commented on the stress and expense involved in taking the FE-1.

Some candidates take one subject at a time, possibly while working as a paralegal, and one respondent believed that they could take 10-12 years to complete all eight papers.³⁷ We understand from the LSI that in fact the FE-1 regulations provide for a five year limit once the first three papers have been passed. However, the normal two-stage approach takes candidates a year to complete and some law firm respondents perceived that they lost trainees to London where they could qualify without the additional year as a result. One respondent noted a trend for students to use their FE-1 year to complete a masters’ degree, perceiving this to be positive.

Failure rate on the FE-1

The FE-1 is perceived to have a high failure rate. Respondents were divided about whether or not this was a concern. The failure rate might, for some, demonstrate that the FE-1 was a robust and challenging filtering mechanism so that it was almost a badge of honour to have survived the process and overcome multiple failures. One respondent perceived that it was possible to tell which university a trainee had attended by noting which FE-1 papers they failed. Others were of the view that law graduates at least should be in a position to pass the FE-1 without too much difficulty. To judge by the pass rates for the years 2008-17 in the eight subjects, this is not always the case (see Appendix 2). Pass rates vary from subject to subject, and from exam to exam. In the two diets for Equity for example the October cohort averaged 67% while the March cohort averaged 34% - quite a remarkable discrepancy in either student attainment or in examiner marking, or possibly both.

5.2.2 Terminal assessments

Terminal assessments are, we think, more common than entrance examinations. Across the world, professions may, as a matter of principle, require all new members to take the same assessment (e.g. the New York Bar exam), or devise separate assessments for incoming transferring lawyers, such as the QLTT in the republic of Ireland, QLTS in England and Wales (Solicitors Regulation Authority, 2013)

³⁷ In comments from the LSI on the draft report we understand that candidates cannot take one subject at a time until they have passed three subjects. They then have five years to pass the remaining subjects. The 10 – 12 years’ timeframe is exceptional. Once candidates have passed three subjects they tend to proceed to pass the remainder relatively quickly.

or OLQE in Hong Kong (Law Society of Hong Kong, No date). For examples in a number of jurisdictions, see the Comparative Analysis, at Table 7.

Where a terminal assessment is coupled with a training contract equivalent, the placing of the assessment gives at least a clue to the extent to which the assessment attempts to assess what has been learned in the workplace (see Ching, 2016, para 10.5). It is rarely the case in the legal professions that such assessments attempt the task of assessing what has been learned in the uncertain and unpredictable world of work, even if the regulator requires certain tasks to be completed or areas of work experienced (see the Comparative Analysis at 6.1.3). Other professions, including the medical and built environment professions do, however attempt this (see the Comparative Analysis, Table 8 and 9.5.1).

In both jurisdictions in Ireland, and in some of the smaller professions in England and Wales, there is a centralised terminal assessment for domestic entrants because there is one course, one course provider and consequently one set of assessments. One of our respondents, however, wondered whether, if there were multiple PPC providers in the future, the LSI would need to set terminal assessments. This could be a means of assuring consistency to the satisfaction of the profession and LSR Authority, otherwise each new institution would set its own assessments, with the likely result that the same concerns about differing standards would emerge as has been the case in England & Wales.

As was known to some of our respondents, albeit not generally in detail, the most radical current approach to the question of differing standards at the vocational stage has been that of the Solicitors Regulation Authority in England and Wales, which we described at 3.2.3.2 (see also the Comparative Analysis at Table 7 and 5.6.1). This proposes to replace the vocational course, currently offered and assessed by a number of providers with a centralised SQE examination. The first part of the SQE will be a written examination (this will assess topics covered on the law degree and LPC for both law degree and non-law degree entrants as well as research and writing tasks). It is envisaged that this assessment will be at final undergraduate year level (Maughan, 2017). Current proposals for the SQE 2 are that it will assess at masters' level interviewing, advocacy (or persuasive oral communication), case and matter analysis, legal research and written advice and legal drafting, skills currently assessed in the LPC (Solicitors Regulation Authority, 2017). Each of these will be assessed in the context of two practice areas (selected by the candidate), in a manner similar to that of the QLTS for incoming lawyers using, for example, OSCEs (see Comparative Analysis at 9.5.3). It will be taken during or after the completion of a period of work experience.

Although there is, as there is with the FE-1, some controversy about the relationship between the law degree and the proposed SQE, the larger part of the controversy about the proposal is the removal of mandated or accredited preparation for the SQE assessments. The SRA has argued that moving, in effect, from a finite but multiple, set of routes into the profession, including law and non-law degree routes, routes for legal executives and now, higher-level apprenticeships, to an infinite set of routes, could promote equality and diversity in the profession. That it will do so is uncertain at best (Bridge Group, 2017). It has, however, led to a very vigorous debate about what will replace the LPC as suitable preparation: a reborn LPC, perhaps re-engineered as an LLM; private sector preparatory courses as for the FE-1, the QLTS, US and German bar examinations; training delivered in law firms, a new form of exempting law degree (see Comparative Analysis at 9.5.2) or autodidacticism. It seems likely that larger law firms, for want of any other available quality indicator, might resort either to their familiar sources of graduates from the more elite universities; further embed their own apprenticeship routes and diversity schemes, or adopt both approaches.

5.3 Scots professional legal education: the centrality of professionalism

5.3.1 Introduction

Descriptions of the Scottish qualification process appear in the Comparative Analysis at 6.4 and in some detail, at 9.3.2. Scotland is particularly relevant to this project as its population, and its population of lawyers, can be compared with that of the Republic of Ireland (see Comparative Analysis, Table 10).

At first glance the Scottish, English and Welsh and Irish systems of professional legal education are broadly similar, with an undergraduate system of legal education feeding a professional programme that includes traineeship. There are, however, significant differences. Clementi-type reforms (Clementi, 2004) were not enacted in Scotland and therefore, in broad similarity with Ireland, the regulator is still the Law Society of Scotland (LSS), whose Education & Training Committee oversees the maintenance and development of all stages of legal education in Scotland. The Scottish system has a predominantly graduate intake from the undergraduate LLB programme in which there are 'qualifying subjects' that, according to the LSS, must be attained before the primary professional programme is undertaken (called PEAT 1 – Professional Education and Training). The programme is followed by a two-year programme based around work-based learning in a contracted traineeship (see Comparative Analysis, Table 6), and specialist trainee continuing professional development (TCPD) which, if completed satisfactorily, leads to the award of a Practising Certificate by the LSS. There is a non-degree route (see the diagram in the Comparative Analysis at Figure 7), but only a handful of applicants take this route annually.³⁸ Degree-entry, and from one of 11 university law schools in Scotland, is the overwhelming route into the profession. There are strong similarities with England and Wales, but significant differences too, and with Ireland; and we shall explore them below.

The Diploma in Professional Legal Practice (or PEAT 1) is the common watershed programme for professional education in law (Law Society of Scotland, 2017 a). At around 28 weeks in duration, it is shorter than the one year LPC or the combined PPC I and PPC II, and its focus is significantly different in a number of ways. The whole professional educational structure was reviewed almost a decade ago, and is now more flexible than it was previously. Two examples will suffice:

1. The LSS designed as much flexibility into the system as it could, recognizing that this was a way to futureproof against changes in the economy and the profession. Thus PEAT 1 was designed to be embedded within the LLB/Foundation, along the lines of the exempting degrees at Northumbria and elsewhere in England and Wales that combine the LLB and LPC into a single course (but with a different infrastructure) (Solicitors Regulation Authority, No date, see also Comparative Analysis at 9.5.2). PEAT 1 and PEAT 2 (the more vocational outcomes) were also designed to be integrated as a joint learning experience. However this has yet to come about. In part, the outcomes of PEATs 1 and 2, though porous to the LLB/Foundation and trainee-specific CPD (TCPD), meant that the provision of innovative programmes would always be difficult *ab initio*; and it would always be easier for providers to adapt existing programmes. According to the LSS, blending may have taken place, at least as experiments in the larger firms, perhaps in

³⁸ A form of work-based learning, the Law Society Exam route, involves entering into a three-year pre-Diploma training contract with a Scottish solicitor and studying for the Society's professional exams (see the diagram in the Comparative Analysis at Figure 7. The route is currently being re-designed by the Society's Education and Training Committee as one of the final stages of the re-design of the whole professional educational structure undertaken by the Society (Law Society of Scotland, 2017). Currently very few entrants take this route into the profession.

association with some providers, had the recession not taken over with cut-backs on HR and education and training budgets.

2. TCPD, both the in-house and the external models, was developed by providers including commercial organisations, law firms and law schools (Law Society of Scotland, 2017b). Of the 60 trainee annual hours mandated by the LSS, 40 have to be drawn from authorised providers and have to include four hours of ethics education, and 20 hours were designed to be 'non-authorised', e.g. in-firm activities or some other activity (Law Society of Scotland, 2017b). The LSS noted that more providers were coming forward to offer TCPD in-house than had done so for its predecessor, the Professional Competence Course (PCC), largely because the process of becoming a provider had been streamlined in the move from PCC to TCPD. The LSS stated that the process was now one of authorisation, not accreditation. The process was one based on a questionnaire aimed at helping the provider to support the PEAT 2 outcomes that the trainee is expected to satisfy by the end of their period of traineeship (Law Society of Scotland, 2017 c). The LSS could query the provider before authorisation. There was a process of annual review that was to be self-critical, as well as quarterly reports on the TCPD learning and teaching. TCPD providers were given one of four possible licences for their activities:

- A separate licence for firms doing all in-house, i.e. legal service employers, who would provide reports themselves on their trainees, and not rely on documentation by the LSS. This licence was helpful to the LSS because the firm carried out the monitoring processes rather than the LSS, which was limited in the resources it could devote to this activity. Clearly the larger firms, with larger HR departments, were those who, it was perceived, were going to apply for this type of licence.
- External provider, e.g. a commercial CPD provider.
- A separate Ethics licence, licensing providers to supply TCPD on Ethics.

The Diploma programme, now offered by six providers (see Comparative Analysis, Table 11) is organized by providers working closely with the LSS. The LSS provides the set of PEAT 1 learning outcomes for the programme (Law Society of Scotland, no date) together with guidance on achieving the outcomes (Law Society of Scotland, 2010), and accredits the programmes, but allows freedom for innovation – a hallmark of the LSS's approach.³⁹

The programme is organized by small teams of full- or part-time staff in law schools. It is taught largely by tutor-practitioners, as is the PPC. It is this, more than anything else that contributes to the relatively low cost-base of the programme, compared to the LPC or the BPTC in England and Wales. In addition the programme is available either as a full-time option or a part-time version. The core and elective curriculum is designed as a spiral curriculum, where transactional elements are practised and revisited at higher levels of sophistication throughout the programme. The whole professional programme model was designed as holistic and spiral, so that learners will return to knowledge or skills at successively higher levels of understanding and processing, and in different contexts, not only between PEAT 1 and PEAT 2, but within PEAT 1 and PEAT 2 and in the LLB/Foundation and TCPD as well.

³⁹ Note that the LSS 'accredit' providers of PEAT 1 but take a different approach to providers of traineeship under PEAT 2. There, they 'authorise' providers, which is less of a rigorous approach than accreditation, but maintains more constant monitoring of the PEAT 2 provider's practices.

In its core, the programme focuses not just on the knowledge and skills that a trainee solicitor would need in chambers. The knowledge and skills in the Diploma's litigation domain also requires to be sufficient for the Restricted Practising Certificate that trainees may apply for in their second year of traineeship and which gives them restricted rights in inferior courts. The Certificate also gives them a practical basis for understanding the work of advocates, upon which the Faculty of Advocates builds in its own educational provision for trainee advocates (called devils), should newly-qualified solicitors wish to go to the Bar (Faculty of Advocates, no date b).

All these points are useful comparators for improving practice in professional education in Ireland, and would address some of the current challenges in professional training. While there are issues that need to be overcome with common training (notably the extent, placing and costs of further specialist training), there are many advantages, not least delaying critical decisions as to which programme to enter for the two legal professions. For discussion of other 'Y-shaped' course designs that accommodate multiple professions, see the discussion in the Comparative Analysis at 9.5.8.

Perhaps the most significant difference between the professional educational structures of the Republic of Ireland and Scotland is the absence of a King's Inns' Diploma -type programme for those intending to practise at the Bar; and it is useful to summarize how Scottish professional legal education deals with that. Under Faculty of Advocates regulations, applicants to the Bar must have completed the Diploma in Professional Legal Practice and at least 21 months of the two-year traineeship (Faculty of Advocates, No date a), and are advised to complete the two-year period of training. They may then, on passing or being exempt from Faculty examinations, undertake a mandatory period of pupillage or 'devilling' which lasts between eight and nine months. Devilling comprises blended skills training (particularly in oral advocacy and written pleadings), and work-based learning with a devilmaster. Skills education amounts to around a third of the total time spent in devilling. During the time spent with a devilmaster the devils attend court, attend consultations with solicitors who instruct their devilmaster, and assist in the preparation and presentation of cases, including written pleadings. There is a Free Representation Unit that enables devils to provide advice and representation to clients of CABx across Scotland.

Skills education at the Bar begins with a five-week Foundation Course, followed by three months or so work with devilmasters (Faculty of Advocates, no date b). This is repeated on a block basis and there is a final block entitled the Preparation to Practise Course. There is no specific assessment of skills on any of the skills blocks. Instead, devils are assessed in an evaluation called the Faculty Scheme for Assessment of Devils, which evaluates the devil's performance in both skills and work-based learning. At the end of the period of devilling the devils are signed off by devilmasters as fit and proper persons to be advocates. According to regulations, if a devil is deemed not competent in skills, he or she will not be admitted to the Faculty.

This form of training has much to recommend it. It is work-based; the assessment arises directly from the workplace evaluation of a devil's developing practice as well as skills assessment. The fee is minimal: currently an entry fee of £850.00 + VAT which, together with various other fees, can amount to less than £1,400 (approximately €1592). Devils are not paid salaries during the nine months or so of devilling; but on the other hand they do not require to pay the high fees of the BPTC. There are some scholarships available.

It is common training in Scotland that, more than anything else gives the system of professional education its flexibility. We note that common training has, over the years, been suggested for Ireland (see Comparative Analysis at 9.5.8). All entrants to the Scottish legal profession, regardless of whether they intend, ultimately, to become solicitors or barristers, must complete the Diploma *and* undertake

a traineeship with a legal service employer. This too is in contrast to the professional education system in England and Wales and in Ireland. There are plans to introduce a work-based alternative to the degree and Diploma route, but there are no plans to introduce anything like the SQE in England and Wales. In a sense there is less need. The costs of higher education in Scotland are much lower for Scots students, both undergraduate and at postgraduate vocational stages, than they are in England and Wales. Costs in Ireland are difficult to estimate in the round but are certainly less expensive than England and Wales, while Scotland's professional programme may be more expensive.

The courses in Scotland tend to be more flexible. Thus, additional training to become an advocate normally takes less than a year (including devilling and associated examinations). In England and Wales, a barrister is required to undertake the expense of and devote a year to, the BPTC, and successfully complete (paid) pupillage – at least another year.

In terms of flexibility, Ireland does not have the single portal of the Scottish Diploma. Instead there is a separate Degree of Barrister-at-Law (King's Inns, no date) to which students are admitted after the academic stage of an approved law degree or the King's Inns Diploma in Legal Studies. Thereafter there is a one-year period of unpaid devilling with an approved Dublin-based practitioner for those who wish to practice (Bar of Ireland, no date, see also Comparative Analysis, Table 7). The solicitor route in Ireland is more involved than in Scotland, where students may apply direct to Diploma centres without undertaking the FE-1 (for a description of the Diploma centres, see the Comparative Analysis, table 11). PEAT 1 is around 27 weeks length, and separate from the PEAT 2 stage of traineeship and traineeship training. Generally the Irish system tends to be a longer process when preparation for FE1 is taken into account.

As we point out in the Comparative Analysis at 8.3.2, fusion of legal professions does take place in civil jurisdictions (discussing the example of the French legal professions of *conseils juridiques* and *avoués*). Given that s.34(b) of the LRSA requires the LSR Authority to report to the Minister on the unification of the solicitors' and barristers' professions, and that if this comes to pass, the professional educational system will require fundamental re-organisation, we believe that the Scots model of a common entry programme offers an educationally rational and cost-effective way of doing so.

There is however one more important difference between the system in Ireland and in Scotland, and that has less to do with the structural distinctions between the two systems and more to do with the overall outcome espoused by the LSS.

5.3.2 The construction of professionalism as a foundational value in Scots legal education

The critical literature on professionalism analyses the term as a social construct, and how it might be brought into educational processes, and inform the regulatory process. Stronach *et al* (2002) for instance, has explored the nature of professionalism, caught between an 'economy of performance' and various 'ecologies of practice', with professionals themselves located in the 'nexus between policy, ideology and practice'. The authors go on to critique the 'reductive typologies and characterizations of current professionalism' (*ibid*), and they argue for the construction of professional identities that arise from the local, situated and indeterminable nature of professional practice, and the inescapable dimensions of trust, diversity and creativity' (Stronach *et al* 2002, p 109). We note that there is an emerging interest in researching how professionalism is engendered during professional legal education in Ireland, which we commend (see, e.g. Hession, 2016).

Under the aegis of the LSS, the Diploma in Legal Practice had undergone several revisions in the eighties and nineties. These were, however, limited to adapting content, and where skills were concerned, there was little general consultation with stakeholders within and beyond the profession. There was little information issued to providers on the nature of skills education, the skills to be the focus on the programme and the assessment of the skills. It was decided that inside-curriculum reform really needed outside-curriculum reform to happen too, and therefore the LSS embarked on an ambitious consultation exercise across the profession, and many groups of stakeholders, to alter the whole professional programme. As a result of the extensive data obtained from this consultation, a Working Party was formed to draw up new learning outcomes for a new Diploma, one that would sit within a new structure that would be based on the old structure, but renewed.

The design of the set of new learning outcomes was based upon a core consisting of professionalism statements that would define professional standards (see Comparative Analysis at 9.3.2 and Table 7). These statements were really the ethical and relational foundation for the entire professional programme, and went through a number of iterations before they were finally accepted by the Working Party.

The statements had an educational grounding too, and in the literature that stemmed from medical education and medical professionalism in particular. Thus, Papadakis et al, for instance, set out to determine if medical students who demonstrated unprofessional conduct in medical school were more likely to be disciplined by their State Board. Their study investigated possible correlative factors, including gender, grade point average, Medical College Admission scores, school grades, National Board of Medical Examiner Part 1 scores and negative excerpts from evaluation forms. The study subjects were *alumni* of the University of California (San Francisco) graduating between 1943 and 1989. They revealed correlations between unprofessional behaviour at medical school and practitioners who had been disciplined by their profession (for further discussion of the predictive value of tests and educational interventions, see the Comparative Analysis at 2.6 and 2.7). As they reported,

We found that UCSF School of Medicine students who received comments regarding unprofessional behaviour were more than twice as likely to be disciplined by the Medical Board of California when they become practicing physicians than were students without such comments. The more traditional measures of medical school performance, such as grades and passing scores on national standardized tests, did not identify students who later had disciplinary problems as practicing physicians.

(Papadakis, Hodgson, Teherani, & Kohatsu, 2004, p 248; see also Papadakis, Loeser, & Healy, 2001)

What this and similar research reveals is the misalignment between professional values and conventional educational methods and assessment processes. But it also reveals a significant issue in the educational structure of professions' values, namely the definitions of what constitutes professionalism – what do we mean by 'unprofessional behaviour'? Who determines that? What are the normative performance baselines for such a concept? There are also basic issues arising from a definition of professionalism as learner-centred, and the more technical models of learning, teaching and assessment that are teacher-centred, and where the internal coherence of teaching designs matter more than the developing professionalism and identities of students. These can be summarised in the table below:

Table 3: Technical and professional models (Bevis & Watson, 1990, adapted and cited in Maharg & Owen, 2007)

Technical Model	Professional Model
The only learning worth evaluating can be seen as behavioural changes.	Worthwhile learning is often personal, obscure and private. Only some learning appears as behavioural changes.
Everything that exists, exists in some quantity, and therefore can be counted and measured.	Many things that exist are not externally verifiable.
The teacher-selected goals are the important ones, therefore the evaluated ones.	Both teacher and student selected goals are important, as is learning attained without goals.
Comparing behaviours to some objectively held criteria or comparing to the progress of other students determines how well something is learned.	Educative learning cannot be rated on a scale. Most learning cannot be compared either to some "objectively" conceived criteria or to the progress of other students.
The teacher-student relationship is hierarchical and the teachers assess students by how well they have met specific objectives.	The teacher-student relationship is egalitarian. Learning requires a process of trusting grades to exploration among expert and novice learners and thrives on constructive criticism.
The quality of rigour of a course can be determined by how well it helps its students meet the discipline requirements as reflected by test scores, attainment of behavioural objectives, and accreditation requirements, since these reflect the agreed-upon discipline content.	The quality of rigour of a course can be determined by how well it helps students collect paradigm experiences, develop insights, see patterns, find meanings in ideas and experiences, explore creative modes of enquiry, examine assumptions, form values and ethics in keeping with the moral ideal of the caring scholar-clinician, respond to social needs, live fully and advance the profession.

A contrast such as this helps us to define the limitations of a too-strict adherence to a competency-based model of outcomes. And, yet, a regulator must attempt a definition of profession for all stakeholders in the educational process. The LSS Working Party therefore defined professionalism by reference to professional standards. Thus, 'Professional Relationships' focused largely on professional relations in the programmes and traineeships while 'Professional Communications' was sub-divided into communication areas such as interviewing, negotiation, advocacy, etc.

It was not sufficient that the Working Party outlined which skills or knowledge components were going to be the focus of PEAT 1, or how they would be taught and learned within the programme of study. We also needed to consider the moral and ethical context of the programme, and the values underpinning the skills and knowledge of the substantive curriculum. Instruction without moral context implicitly teaches our students a value-neutral model of legal practice. As Ronald Barnett has pointed out:

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A higher education designed around skills is no higher education. It is the substitution of technique for insight; of strategic reason for communicative reason; and of behaviour for wisdom.

(Barnett, 1994, p 61)

and we would argue that this is true also of professional education. The professionalism values as originally accepted by the LSS are set out in the following table, and are restated as the current values with some minor rewordings (see Law Society of Scotland. No date).

Table 4: Professionalism PEAT 1 and 2 in the Scottish professional legal education programme

Major domain 1. Professionalism			
Minor domain	Throughout the programme a student should demonstrate a commitment to:	Positive indicators	Appropriate forms of assessment
1.	The interests of justice and democracy in society	Displays an interest in the workings of justice in society; has an ethical awareness of legal practice, and a developing sense of the regulatory framework of professional ethics. Shows awareness of his or her responsibility to improve the capacity of legal institutions and process.	<p>Best assessed longitudinally throughout the programme, by more than one assessor, and in more than one assessment, so that a variety of views are obtained under different conditions. Providers should be under an obligation to inform the Society of students who obtain problematic scores in any of the minor domains.</p> <p>Forms of assessment could include:</p> <ol style="list-style-type: none"> 1. Client-based long case 2. Case file review of simulated client file 3. Portfolio – self-assessment 4. Log book/activity log/confidential file 5. Critical incident review 6. Peer-review 7. Transactional assessment 8. Tutor reports
2.	Effective and competent legal services on behalf of a client	Updates and expands knowledge of the law, knowledge of legal practice, client-centred practice and management of client service. Pays careful attention to standard of detail in legal work; evaluates own client care; appraises new forms of client care and adopts improvements; acts quickly to protect clients and the public from risk.	
3.	Continuing professional education and personal development	Is aware of own strengths and weaknesses and forms plans to develop character, values, knowledge and skills throughout the course.	
4.	Diversity and public service	Shows an awareness of the importance of equality of access to and participation in legal services regardless of culture, race, religion, gender, disability; assists in the training of new lawyers through peer learning and training of undergraduate students or other groups in society.	
5.	Personal integrity and civility towards colleagues, clients and the courts	Is honest with all others on the course; relates to colleagues on the programme	

		with civility; treats tutors, administrative staff and others with respect.	
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Thus the first value statement in the Scottish list ('a commitment to the interests of justice and democracy in society') is an attempt to find a common ground to what is otherwise incommensurable in the values of democratic commitment. Just what that commitment might entail on the PEAT 1 programme is set out in the positive indicators; and could be elaborated for various future educational stages. They are not described definitively as outcomes generally are, only as indicators: the debate is left for the profession, teachers and students to engage in, and in the open, porous nature of the statement – a 'commitment to' – lies both its strength and its weakness. That debate is important, though, because it helps us to move beyond values that are 'mostly unremarkable and unobjectionable, not least because they coincide with the commitments and objectives of lawyers' traditional professionalization project' (Nicolson & Webb, 2005, p168). Instead, a commitment to democracy reaches out to the fundamental values of our western societies and one that, in its recognition of the tensions implicit in those values, rejects 'the possibility of the conventional monistic approach capturing the complexity of ethical life' (ibid, p, 169).

The Working Party therefore needed to define the value-context within which skills would be learned.⁴⁰ At the outset, there were a number of key issues to be addressed, and the Working Party refined these as statements of guidance for providers, such as:

1. *Knowledge and skills must be taught critically within the value system of the profession.* Values such as integrity, industry, service and duty, wisdom, compassion, accountability and responsibility, all of which underpin professional relationships and activities – these values were part of the essential context of knowledge and skills, and had to be acknowledged as such.
2. *Knowledge and skills are part of professional behaviour,* and professional behaviour can never be taught in classroom activities alone. It required the presence of practitioners, and often the setting of the office or the court in order to deepen the learning process, even if such settings were proxy, e.g. in simulations. Even in office and court, however, the process of learning professional behaviour is not only taught overtly – it is caught in trainees' observations of practitioners at work, in conversation, and at leisure. Similarly, on the PEAT 1 programme professional behaviour is 'caught' in the interstices of the curriculum. Law students learn professional behaviours by observing and imitating peers, tutors, and other role-models, not just in the classroom but in hallways, cafeterias, and lifts.⁴¹ It is in this sense that the 'hidden curriculum' and the 'null curriculum' of the Diploma are useful concepts – that is to say, the unintentional lessons that students learn from a curriculum. They learn, too, by observing what is unofficially labelled as irrelevant or unimportant by its absence in a curriculum (Jackson 1991, p 353; Eisner 1985).
3. *New practices on the PEAT 1 programme would require to be developed and shared among all.* There was a recognition in the Working Party that very few PEAT 1 and 2 providers would be starting *de novo*, but there needed to be change in educational practices. The relation between old and new practices made change a highly complex process. There was a considerable body of existing practice at each existing Diploma centre that needed to be taken account of in the

⁴⁰ Maharg was one of the Working Party, as well as a member of the LSS' Education & Training Committee.

⁴¹ In this regard, it is one of really useful aspects of the LSI's PPC curriculum that there is space between PPC I and II for students to develop their professional identities in offices.

development of skills for the future. The course directors of these centres had a body of design experience, and knowledge of their tutor base. The tutors had experience of teaching and communicating with students; and they would probably have taught with a high degree of autonomy in their classes. The LSS needed to facilitate change in educational practices but also to enable the shared experience within centres to thrive and develop effectively, while at the same time ensuring that models of good practice were being carried out by all providers, both new and old, and were applied with reasonable consistency across the range of different providers.

If PEAT 1 really were to be a 'bridge' course, then the foundations of that bridge to professionalism were the core modules, Ethics and Standards, and Professional Communications. These modules were designed to declare to students and others that ethics are regarded as critical to professional practice by the LSS, and that effective communication is a critical part of the ethical dimension of professionalism. Other professions recognise this: see for example the work of Hickson *et al* (1992) and others in medical education and ethics.⁴² It was also proof that professionalism was held as a key educational quality by the Society – and again, there was good evidence from the Working Party's research that other professions had similar perspectives.⁴³ As regards communications outcomes, three points were borne in mind:

1. The list of learning outcomes generated by the Working Party and the Consultation was a definition of the minimum or threshold experience that students should have had on PEAT 1 (Law Society of Scotland, 2010). In other words, students should have had the opportunity to practise every minor domain on this list at least once, and preferably twice or more, with feedback. Providers were encouraged to innovate imaginatively and go beyond the threshold skill set, ideally in the form of Bruner's spiral curriculum (Bruner 1960; see also Harden and Stamper 1999).⁴⁴
2. Hitherto the Diploma and traineeship had been predominantly modelled on Scots private law, and aimed at the cultures and economies of small firms and solo practitioners in regional centres largely. The spiral curriculum needed to take into account the varieties of new legal practices in Scottish society, and this included areas such as government executive and parliamentary law (which in recent years had grown substantially on the re-constitution of the Scottish Parliament after a 292-year hiatus), as well as new areas of public-private partnership, in-house lawyering and social lawyering (e.g. in law centres). Nor was it enough to provide new knowledge content only. There was a recognition that the knowledge, skills and values of a segmented and fragmented legal profession needed to be represented in the learning outcomes and their standards.
3. Because there is a difference between teaching and learning, as we have said, the list was not to be regarded as prescriptive of the skill or knowledge set for a capable trainee. Students themselves were to be encouraged to develop beyond the outcomes. In this regard, providers were encouraged to use portfolio learning in order to enable students to develop not merely the

⁴² The medical educational literature is extensive. See also Frank, V. *et al* (2000) who explored the patient perspective, 'patients who feel ignored, deserted, or who suspect that there is a "cover up" by the medical profession, may be more inclined to sue. Failure to understand the patient and family's perspective and devaluing their point of view have also been identified as common triggers for lawsuits.'

⁴³ See for instance in medical education, Brownell and Côté (2001); Ginsburg & Stern, 2004; Ginsburg *et al* (2000); Papadakis, Loeser and Healy (2004a); Papadakis *et al* (2004b). See also, in the legal profession, Breger, Calabrese & Hughes (2004).

⁴⁴ Harden & Stamper's brief account is a very lucid introduction to the sophistication of Bruner's concept. In their words, 'topics are revisited [...] there are increasing levels of difficulty [...] new learning is related to prior learning [...]' (op cit, p141).

skills nor the fundamental values of ethics and communications alone, but also the student's own developing sense of professionalism. It was suggested that a portfolio could link to an undergraduate personal development file, and the forms of work-based assessment that trainees were required to undertake as part of PEAT 2.⁴⁵

5.3.3 Approaches to good practice

The development of professionalism in a course of study is never an easy task, and general guidelines were drafted by the LSS Working Party for providers on the following topics:⁴⁶

- the ways in which the teaching environment and the available resources could be used to structure student activity;
- types of teaching and learning, and how the mix of learning styles contributed to knowledge acquisition and professional development;
- how tasks and transactions could be interleaved and integrated with each other;
- the acquisition and development by students of the shared set of terms, external representations that provide a common ground for communication and shared understanding between trainees and training firms, and between client and lawyer.

There is extensive literature on this in medical education. On a practical level, medical educators have experimented with the use of logic models in order to plan the design of a curriculum. In Van Melle's example, the diagram reveals graphically how purpose, inputs, activities and outputs (Van Melle, 2016) can be organised to re-develop the curriculum.

In the case of Irish professional legal education, the development of professional reasoning would be a helpful cross-curricular theme. This has already been developed in medical education. In a series of experiments on the role of biomedical knowledge in clinical reasoning, for instance, Boshuizen and her collaborators have shown that experts acquire a robust knowledge base that integrates situated and general knowledge (Boshuizen & Schmidt, 1992, 2008; Boshuizen, 2004a, 2004b). Knowledge integration is an active process that involves articulating a global framework (the biomedical knowledge), reflecting on situated experiences (individual cases as they are encountered), and actively making connections between situated knowledge and the global framework (see also references in the Comparative Analysis at 2.4.1).

This is also true of the legal domain. A lawyer in private practice will see something in the order of many thousands of cases in a working life. Through the experience of casework, she gains an extensive stock of what might be termed mental schemas and performance knowledge. Blasi's vignettes showing the different approaches of novices and experts to a legal problem demonstrate this difference vividly (Blasi, 1995). Solicitors know this implicitly. When presented with a set of facts within their area of practice they are able quite quickly to invoke a schema and can test this initial schema against the evidence. Lesgold suggests that, in the process of becoming an expert, a trainee acquires fragments of automatized procedure that gradually become integrated into extended sequences that guide performance (Lesgold *et al* 1989; see also Salthouse 1991). These sequences

⁴⁵ The development of this functionality is not a trivial task. A special working party was set up under the aegis of the Society's Education and Training Committee to develop software and educational guidelines around the use of the software by staff, students and trainees.

⁴⁶ On file with the author, Maharg.

can be formed quite slowly from practice through the composition of fragments of activity, but the process can be made much more efficient if students are taught the procedures explicitly, as a list of steps towards problem identification and solution, and taught also to begin the process of case pattern recognition. These two forms of learning can bring trainees to a practical knowledge of a transaction much more efficiently if learning is carried out *via* simulation and transaction. In this respect, what is true of biomedicine and radiology and many other professional domains is equally true of legal practice.

What are the best ways to bring this about? There is no one royal road, and there is much literature about which methods are effective for which skills and in which teaching environments and stages of learning. See for example Taverner *et al* (2000), and Eaton and Cottrell (1999). Whatever method is used, it ought to be highly experiential and include elements such as role-plays, case studies, simulations (see Comparative Analysis, at 9.5.6), structured interviews, prompted recall, detailed analysis of achievements and performance problems in skill practice and the like.

Considerable benefit can be derived from intensive coaching sessions, where such sessions focus on feedback and review. It is also the case that development in professionalism is greatly enhanced if skills are embedded across the curriculum in realistic transactions. Much of the medical literature on clinical skills emphasises the importance of immediate feedback, of opportunities for practice following review, and of practice within different contexts (Kneebone *et al* 2002). Curriculum designers are best placed to know where to embed skills within their courses, given their educational experience, their knowledge of their tutors and the subject, and other conditions pertaining to the course. There is of course always a tension between local innovation and standards across the jurisdiction.⁴⁷ In the case of the LSI, there is a strong case for retaining in this regard a single portal to professional development in order to develop and sustain standards. However, given the role that any regulatory body plays in setting not just rules and benchmarks but also tone, culture and relationships, it is essential that key professional concepts such as fitness and accountability are defined, not in terms of the narrow technicism of policy-audit culture, but in terms of collaboration, trust and openness.

5.4 Small jurisdictions in Europe: the example of the Netherlands

We have described the legal education system of a small jurisdiction outside the EU, New Zealand, in the Comparative Analysis at 9.3.1. In this section of the chapter we have taken a case study of a small jurisdiction in the EU, namely the Netherlands. Its population of 17,046,564 (World Population Review, 2017) and its lawyer population of 17,486 members of the Bar in 2014 (Council of Bars and Law Societies of Europe, 2015, p 8) are both larger than the Republic of Ireland. However, as a civil law state, and once with a well-established legal education system, and with a number of innovations on which to report, it is a useful comparator for the purposes of this report. An overview of its qualification system appears in the Comparative Analysis at Table 7, and of its CPD system at Table 1. A review of the qualification system has recently begun (Nederlandse orde van advocaten, 2017).

⁴⁷ In a wider context, this is precisely what a number of bodies in medical education have set out to explore and improve. The work of the Institute for International Medical Education is crucial in this regard (www.iime.org). See for instance Schwarz and Wojtczak (2002); World Federation For Medical Education Task Force (2000); and World Health Organization/Education Commission For Foreign Medical Graduates (Miranda, 1995).

5.4.1 Introduction

A useful overview of the business and legal context of the Netherlands is presented in a report compiled by Baker & McKenzie (2016). As in other civilian systems, the Dutch legal professions consist of both regulated and quasi-regulated sectors. The regulated professions consist of the *advocaat* or advocate, whose public law professional body is *de Orde* or Netherland Bar Association, the *notaris* or notary (who belong to the *Koninklijke Notariële Beroepsorganisatie*); and the (*gerechts-*) *deurwaard*, or bailiff, who is responsible for administrative and other functions in legal process. Beyond these protected professions, there are the *belastingadviseur* or tax advisor, the *rechtskundig adviseur* (legal advisor) and *octrooigemachtigde* (patent lawyer). Beyond these occupations, there are of course judges (appointed by the Crown and working under the aegis of the Minister for Security and Justice), a Public Prosecution Service (*Openbaar Ministerie*), a National Public Prosecutor's Office, a Functional Public Prosecutor's Office and government employees working in the domain of law.

5.4.2 Dutch legal education: the civilian model adapting to change

Legal education in Dutch universities is structured according to the civilian model. A three-year bachelor's programme (180 ECTS) is followed by a one year Master's programme in Law (60 ECTS), or a doctoral programme three to four years in length. To enter legal practice, Dutch law students are required to complete a three-year apprenticeship which is integrated with a professionally-oriented programme of study. Most students take up work in law firms, or as notaries or in tax firms. Wilson notes of the three-year apprenticeship stage of training:

The general shape of the three-year trainee period has not changed much over the past 25 years. It consists of three broad elements: (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. Upon completion of the trainee phase, admission to practice follows without further testing, and membership in the national bar association is automatic.

(Wilson, 2012, p 178)

As Kolb (no date) notes:

The formal training courses during the apprenticeship have undergone significant reform over the past three decades in order to enable the trainees to put their skills into practice at an earlier stage of their training. The single most significant change – the creation of the Law Firm School in 2009 – to the formal training process during the apprenticeship has come from outside the influence of the *Nederlandse Orde van Advocaten*. The 14 participating law firms set up a separate curriculum to the Bar's training courses with the aim of providing a tool for more effective and practical-oriented training. The associates of those 14 firms have exclusive access to the Law Firm School, but are required to complete the 'ordinary' bar courses just like any other trainee advocate.

We shall discuss the Law Firm School (Law Firm School, no date) in more detail at 7.4, but for now it is useful to note that Wilson criticises the concept and structure of this initiative for being a move away from public education to private education within the Dutch system. Finally, we should note that under the European Directive 89/48/EEC,⁴⁸ a legal professional who has obtained qualification in another Member State of the European Union will be granted permission to practise law in the Netherlands, after passing an aptitude-test. The effects of the Bologna process have been criticised in the Netherlands. Otterlo, quoted by Wilson (2012, p 178), noted that the Bologna process reforms had weakened legal education in the Netherlands

by being narrowed in overall time of legal study within the academy. He believes that legal education should spend more time on teaching how to deal with the complex economic and financial transactions with which firm clients are involved.

The literature on the professional three-year trainee period is sparse, but the general content and structure does not seem to have changed radically since Wilson's study of practical training in the Netherlands in 2012. As he describes it, office work is supplemented by intensive and mandatory bar-designed classroom courses which are controlled by each of the 19 judicial districts that comprise the Dutch national bar. Content is uniform, nationally, and includes procedural and practical training (see the curriculum described in the Comparative Analysis in Table 7). Methods include lectures, discussions, videos, demonstrations and occasionally role-plays:

Courses on particular subjects are offered in modules of five to 15 half-day sessions and include topics like civil, administrative, and criminal procedure, reading annual account statements, basic communication, writing skills, ADR and mediation, and practical training. (Wilson, 2012, p 178)

There is assessment of these interventions:

A one-day written examination is given in each subject at the middle and end of the nine-month period, and all mid-term and final exams must be passed to obtain admission; the trainee may take an exam up to three times in the three-year period. Three-time failures are rare, but as many as 20-30% of trainees fail an exam on first administration.

(Wilson, 2012, p 178)

There does not seem to be any in-depth study of how successful this model is, but it bears comparison with the LSI's structure of PPC I and II and traineeship (with PPC I roughly equivalent to the first year of the Masters' degree). The Dutch model, as with many of the European systems described in Table 7 of the Comparative Analysis seems to put the emphasis upon work in the office, to which the courses are supplements; and the supplementary courses are spaced throughout the three-year period. Content and skills are assessed rapidly after instruction and practice. There is no final bar examination as there is, for example, in the USA or in some other EU countries (see Comparative Analysis, Table 7) – this may change in the near future.

⁴⁸ This introduced a system for the recognition of higher educational diplomas awarded on completion of professional training for a duration of at least three years in any of the Member States of the European Union.

Wilson notes that the same pressures upon an in-firm learning process that have led to the breakdown of the so-called Cravath system in the USA (Cravath, Swaine & Moore LLP, 2017) are affecting professional legal education apprenticeships in the Netherlands:

In difficult economic times, however, firms are finding that clients are more and more reluctant to have new associates work on their legal matters, which results in billing for hours during which learning is going on. The training in question, however, has little to do with professional values and the lawyer's role in society. Instead, it is about the bottom line.

(Wilson, 2012, p 187)

His solution is the development of legal clinics, such as already exist in Maastricht Law School and other centres, seeing that as a method by which initial legal education can be rendered more practical, and professional education more focused.⁴⁹ As he puts it,

Even if public interest law does not itself catch on and thrive within the Netherlands, clinics have intrinsic value as a training model. The purpose of a law school clinic is primarily as a learning environment for development of problem-solving skills, clinical judgment and conscience; it can teach students to practice law with their hearts as well as their minds.

(ibid, p 188)

It is unclear, however, to what extent a clinical experience can dovetail with an office experience. The problems of transition are complex – what a student may be taught in a clinic about transactions and client processes may well be not the process and procedures practised in the trainee's firm. Even the transference of learning from the courses that are embedded within the three-year apprenticeship to office practice will be problematic in that regard.⁵⁰ See, in England and Wales, discussion of 'practice validity' in the Comparative Analysis at 2.3 and in Webb, Ching, Maharg, & Sherr (2013b, para 4.125ff) and comparison between the vocational classroom and training contract experience in Ching & Henderson (2016, para 8.1).

These changes need to be seen in the context of wider changes in the Dutch version of civilian legal education. One of the interesting characteristics of Dutch legal culture is its paradoxical porous yet traditional quality. Dutch legal education, particularly professional education, has been regarded as even more traditionally civilian than most other European jurisdictions.⁵¹ There have been attempts to align the two halves of a conventional, doctrinal, code-based academic curriculum and an equally

⁴⁹ For his earlier work on clinics in the Netherlands, see Wilson, (2010).

⁵⁰ This was the case in the experience of providers of the PCC in Scotland. There, trainees were required by the Law Society of Scotland to take time out of the office to attend a 10-15 day course in professional skills that would build upon the skills they learned in the Diploma in Legal Practice. It was relatively easy to design a spiral curriculum that would do this. Much harder, however, was the design of the embedding of these skills within trainees' experiences of office practice and process. Even within a particular speciality, e.g. criminal defence lawyering, the range and variety of trainees' experiences of office tasks and responsibilities within the office, together with the range and variety of the work undertaken, and the extent to which various offices took their educational responsibilities seriously, meant that the PCC, even when run for particular specialisms, e.g. Family Law, was insufficiently customized to each individual trainee.

⁵¹ Wilson cites the three main conservative factors influencing Dutch academic legal education as follows: 'its heavy reliance on required courses; a conservative professoriate who are products of a system that emphasizes theory over practice; and the rigid segregation of legal training into academic and practical tracks controlled by the academy and the profession or the courts, respectively' (Wilson 2012, p 181). The third, of course, affects professional legal education as well.

traditional apprenticeship-based system of professional training. Van den Bosch (2001), for instance, describes one attempt by the Department of Law in the University of Nijmegen to put into effect the principles of *duaal leren* proposed by the then Minister of Education, Culture and Science in a 'Policy Plan on Higher Education and Research' (1998). This plan attempted to combine traditional doctrinal classes with work experience, e.g. in law firms. Van den Bosch follows the attempts by Nijmegen academics to implement an experimental programme in the fourth year of the law school programme, while leaving the first three years as they were.

More significant for this report on Irish professional legal education, a number of commentators recently (Mahoney 2010, Heringa 2016, and van Gestel, 2013, for example) have wondered if Dutch legal education is generally in the process of transition from a traditional civilian, typically European- and nation-bound past to a more globalised, uncertain future. Van Gestel cited the influential Koers Committee on the assessment of legal research in law schools:

According to the committee, law is moving, among others from a national to an international or transnational discipline, from monodisciplinarity to multidisciplinarity, from individualism towards research programming, from being a service towards legal practice towards a purpose in itself, from implicit traditions towards more attention for methodology.

(van Gestel, 2013, p 3)

Van Gestel saw legal education moving in a similar direction. What he is describing is in effect a re-definition of the basis of civilian legal education:

In other countries we observe that some law schools are developing a more transnational or 'global law' profile aiming for students who want to build an international career. A counterargument might be that Europeanization and internationalization are an absolute must for every law school today. Though this certainly holds true, there is a difference between offering courses in which the European and international context are strongly interwoven with positive national law, and aiming for training programmes that try to go beyond European and international law towards a transnational or global perspective on law and legal research.

(ibid, p 5)

Van Gestel neatly describes here some of the choices facing the LSI, in the face of a Brexit which, according to the latest reports (e.g. Behr, 2017), will have a serious negative effect on the economy of Ireland. It is a future where in the face of that, Ireland will pivot to the EU more, and where Irish laws and legal education will reflect that. But it will also need, as the Netherlands is debating, to go beyond an EU focus and begin to consider a role for itself as an international *entrepôt*. In our legal educational context, it is entirely realistic to see a place for Ireland as a mixed jurisdiction, drawing the best from both common law and civilian jurisdictions, and creating of that something new and fitting for the situations that Ireland is now facing – a globalised law school for professional education that both critiques practice and promotes outstanding educational practices and professional legal practices.

In the Netherlands there have been a number of initiatives that have sought to reform legal educational methods. Two Dutch initiatives in the last 15 years have resonances for the position of professional legal education in Ireland, and are discussed below.

5.4.3 RechtenOnline

In the early years of the new millennium Dutch Higher Education was still seen to be in some sense lagging behind other jurisdictions in Europe in its organisation, and particularly in its use of educational technology. In February 2002 an ambitious inter-university project called *RechtenOnline: ICT in het academisch juridisch onderwijs* was launched (Law Online: Information Communications Technologies (ICT) in Academic Legal Education), chaired by the distinguished Dutch academic, Dr Prof A.W. Koers, Professor Emeritus Utrecht Universiteit (CALI.nl, 2009). The aim of the initiative was to assist Dutch law schools to use technology-enhanced learning in the education of law students. There were two key principles. The first set the direction of the entire initiative, which was experiential in nature: namely, that the local creation of rich digital learning environments based on international best practice was the best way to help legal students become more reflective in their legal education, and more aware of the advantages of digital technologies when they entered professions. The second principle was that the best way to achieve good designs and implementations in a rich variety of learning environments was to invest in training teachers, to assist them in collaboration, and to invest in the supply of tools that would support them.

The initiative brought together for a week a range of experts internationally and this intensive period of activity resulted in a number of innovative projects.⁵² One of these, the Sieberdam virtual town, designed to support academic legal education, and based on Maharg's work on Ardcalloch in Scotland, could be a useful device for the PPC. In a number of other projects innovative educational methods were adopted. For example, flowcharting was used to plan out branching learning in the CALI software, and logic models and software tools were used to develop Sieberdam simulations (Weiss 1972; van Melle 2016).

Sieberdam, later called Cyberdam, was successful enough to be spun out of RechtenOnline (where it was used by law schools at universities) and used as an application within Dutch *Hogescholen* (or polytechnics) and schools. At one point, over 25 projects were running in 15 institutions within the Sieberdam ecosystem. It was also the basis for successful international simulation projects. The Glasgow Graduate School of Law (GGSL) then co-operated with two institutions to run two international projects on the Sieberdam platform with two Dutch institutions. The Scots postgraduate students on the professional course, the Diploma in Legal Practice, liaised with clients in the Netherlands who were, in one project, Dutch law students acting as Dutch lawyers, and in another, Dutch businesspeople.

What is interesting about games and simulations on platforms such as SIMPLE (SIMulated Professional Learning Environment) and Cyberdam is that they afford a third space which is neither academic

⁵² These were:

1. CALI / NL, Part I - Dutch legal authoring system (Jan L. at Leij & Peter S. de Graaf, and Rudi W. Holzhauser);
2. Support for Student Cooperative Work (Richard V. De Mulder and Kees C. van Noortwijk);
3. Legislative Drafting Tools Online (Cees J. Bax);
4. Portfolios for Open Assignments in Legal Education (Thomas Oudejans [Tilburg University] and Kees van Noortwijk);
5. Multimedia Materials: Intellectual Property (Rudi W. Holzhauser);
6. Sieberdam - designing a virtual town for academic legal education (Rudi W. Holzhauser).

education nor professional education (see Hughes, Gould, McKellar, Maharg, & Nicol, 2008). They provide a unique environment where it is easier to rebuild aspects of a curriculum that is both academic and professional. Thus in the simulations that were developed at Strathclyde, students focused not merely on acquiring knowledge and skills, but on discovering the complexities of professional communications and practice, and developing their own unique professional identities within the bounds of what was acceptable behaviour for a solicitor in Scotland (Maharg 2007).

It would appear that no Dutch law school is still using Cyberdam; but 17 years after simulations were first introduced at Strathclyde they are still in use extensively on the Diploma in Professional Legal Practice there. SIMPLE is still in use in a LLB first-year, first-semester module in Torts at the University of South Wales (USW), and a module at Northumbria University Law School, as well as in an international Masters programme on online dispute resolution between USW and the University of Hong Kong. It generated similar environments at Kwansai Gakuin Law School, Osaka, University of Hong Kong Faculty of Law and The Australian National University College of Law – all of these developed at the professional education stage of legal education. RechtenOnline left many traces throughout Dutch legal education, in part because it was profoundly collaborative from the start of its projects. So too was the GGSL, working not just with Dutch partners, but with other institutions in the UK (the College of Law in England and Wales, the Oxford Institute of Legal Practice, UK Centre for Legal Education). What RechtenOnline proved beyond doubt was that convergences of collaborative practice, digital technologies and educational innovation could improve legal education.

The *duaal leren* system that was proposed back in 1998, and implemented at Utrecht Law School as two separate stages of education, academic then professional workplace education, was similarly ambitious but unachieved, largely because it could not envision how such integration could be brought about. RechtenOnline was not so much a dualism as a highly designed ecology of education and technology, and the more successful for that. At present, Ireland has a highly dualistic system of legal education, with academic and professional legal education quite distinct in many respects. This is nothing new in a common law jurisdiction. However, we would argue that part of the problem is a dualistic mode of thinking about legal education that frames an either/or: either academic or vocational. We would argue for an integration in a third space where professional critical thinking is a possibility, one that continues what is best about undergraduate legal thinking and fuses it with professionalism.

Finally, we would observe, from the RechtenOnline example, that games and simulations clearly have a place in professional education, and the LSI should probably consider their place further within the PPC (see also Comparative Analysis at 9.5.5 and 9.5.6). They would be ideal as bridges between office work and coursework that was required for the PPC II – more of that in the next chapter.

5.4.4 Problem-based learning (PBL) at Maastricht Law School

The second initiative is the use of problem-based learning (PBL) at the University of Maastricht, which is famous for its use of PBL across many disciplines in the university. One of them is Law, and the implementations of PBL curricula have been studied in some depth (Moust 1998). The research presents some interesting ways in which PBL could be used within the developing curriculum in the PPC. PBL and similar approaches are amongst the innovative approaches to delivery and assessment described in the Comparative Analysis, specifically at 9.5.5.

There are many descriptions and definitions of PBL. As Maharg points out in a recent article, Barrows' six core characteristics are generally cited as a classic definition (Maharg 2015):

1. Learning is student-centred
2. Learning occurs in small student groups
3. A tutor is present as a facilitator or guide
4. Authentic problems are presented at the beginning of the learning sequence, before any preparation or study has occurred
5. The problems encountered are tools to achieve the required knowledge and the problem-solving skills necessary to solve the problems
6. New information is acquired through self-directed learning

(Dochy, Segers, Van den Bossche, & Gijbels, 2003).

Boud (1985) describes its nature in eight characteristics – it is:

1. An acknowledgement of experience of learners
2. An emphasis on students taking responsibility for and control of their own learning
3. Interdisciplinary boundary-crossing
4. The fusion of theory and practice
5. A focus on processes, not merely the products, of knowledge acquisition
6. Change in tutor role from instructor or tutor to facilitator
7. Change in focus from tutor / lecturer assessment of learning outcomes to student self-assessment and peer-assessment
8. A focus on communication and interpersonal skills.

In more detail on the learning method, Moust *et al* describe the ‘Seven Jump’ stages of PBL at Maastricht as instructions to students:

Table 1. Steps involved in PBL

1. Clarify unclear phrases and concepts in the description of the problem.
2. Define the problem; which means: Describe exactly which phenomena have to be explained or understood.
3. Brainstorm: Using your prior knowledge and common sense, try to produce as many different explanations as possible.
4. Elaborate on the proposed explanations: try to construct a detailed coherent personal ‘theory’ of the processes underlying the phenomena.

5. Formulate learning issues for self-directed learning.
6. Try to fill gaps in your knowledge through self-study.
7. Share your findings in the group and try to integrate the acquired knowledge in a suitable explanation for the phenomena. Check whether you know enough. Evaluate the process of knowledge acquisition.

(Moust, Van Berkel, & Schmidt, 2005, p 668)

More generally, Savin-Badin and Major perceptively point out that PBL is less of set of curriculum changes and more in the way of a collection of general characteristics, which they group under three headings:

1. *Curriculum* organised around problems rather than disciplines; an integrated curriculum and an emphasis on cognitive skills
2. *Conditions* that facilitate PBL such as small groups, resource-based learning and active learning
3. *Outcomes* that are facilitated by PBL such as development of skills and motivation, and development of life-long learning.

(Savin-Baden & Howell Major, 2004, p 19)

Research has shown that PBL is an effective way to enhance at both undergraduate and postgraduate professional stages (Barrows, 1980; Savin-Baden & Howell Major, 2004; Schmidt et al, 2011). Amongst many questions, we might ask is it effective for the investment made in it, does it develop the cluster of skills and capabilities around professionalism, and finally, is it possible to transition from a conventional curriculum to PBL?

On the question of transitioning from a conventional to a PBL curriculum, Tamblyn *et al* (2005) set out to discover whether the transition from a traditional curriculum to a community-oriented problem-based learning curriculum at Sherbrooke University in Canada exhibited the expected improvements in preventive care and continuity of care, without a decline in diagnosis and management of disease. The study involved 751 doctors across one PBL institution (Sherbrooke University) and three traditional medical schools in Quebec.

The results were significant. After transition to a community-oriented PBL curriculum, graduates of Sherbrooke University showed a statistically significant improvement in mammography screening rates, and continuity of care compared with graduates of a traditional medical curriculum. Indicators of diagnostic and management performance did not show the hypothesised decline. Sherbrooke graduates showed a significant fourfold increase in disease-specific prescribing rates compared with prescribing for symptom relief after the transition. The study proved significant improvements in preventive care and continuity of care and an improvement in indicators of diagnostic performance.

There are many other studies that prove similar gains in professional performance. A large-scale study (Schmidt et al, 2006) among graduates of a problem-based medical school and those of a conventional medical school set out to study the long-term effects of problem-based medical training on the professional competencies of graduates. Participants were requested to rate themselves on 18

professional competencies derived from the literature. The graduates of the PBL school scored higher on 14 of 18 professional competencies. The graduates of the PBL school also rated themselves as having much better interpersonal skills, better competencies in problem solving, self-directed learning and information gathering, and somewhat better task-supporting skills, such as the ability to work and plan efficiently. There were no sizeable differences with regard to general academic competencies, such as conducting research or writing a paper. Graduates from the conventional school rated themselves as having slightly more medical knowledge. These findings suggest that PBL not only affects the typical PBL-related competencies in the interpersonal and cognitive domains, but also the more general work-related skills that are deemed important for success in professional practice.

The gains are proven in other studies. One meta-analysis (Schmidt et al, 2009) summarised the effects of one well-established PBL curriculum at Maastricht. The analysis was based on effect sizes from 271 comparisons of PBL and conventional curricula. Students and graduates from the PBL curriculum performed much better in the area of interpersonal skills, and with regard to practical medical skills. In addition, they consistently rated the quality of the curriculum as higher. Moreover, fewer students dropped out, and those surviving needed less time to graduate. Differences with respect to medical knowledge and diagnostic reasoning were on average positive but small (*ibid*, p 236). These outcomes are at variance with expectations voiced in recent contributions to the literature. They demonstrate that constructivist curricula such as PBL can have positive effects on learning even if they de-emphasize direct instruction (*ibid*, p 227).

On knowledge acquisition, Schmidt et al noted what many others observed: that PBL students better integrate their knowledge, which resulted in more accurate reasoning; that in the clinical case recall (a measure of expertise) and processing speed (a sign of better understanding) they were superior to the conventionally-educated cohorts. In skills acquisition, PBL students demonstrated much better interpersonal skills, and knowledge about skills (a variable closely related to skilled performance). Finally – and this is important for the PPC, both stages I and II – Schmidt et al noted that PBL ‘not only affects the typical PBL-related competencies in the interpersonal and cognitive domains, but also the more general work-related skills that are deemed important for success in professional practice (*ibid*, p 227).

PBL is of course an essential part of the LLB curriculum at York Law School, in England (York Law School, no date), where it has been successfully introduced, and from where, in clinic work at least, students are better prepared to understand and work with clients in clinic matters. In Chapter 7 we shall discuss an example of PBL within another common law jurisdiction, and the similarities of it to a curriculum that is a postgraduate professional preparation for the legal profession. Consequently, to the extent that the PPC does not currently adopt this approach, we think it should seriously be considered in any redevelopment of the PPC design.

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Chapter 6

Curriculum development in solicitor education in Ireland – strengths and challenges

6.1 Introduction

In this chapter, we turn our attention to curriculum development in the legal education field that the LSI operates within. This includes not just the PPC but traineeship, QLTT and CPD. As we pointed out in the Introduction, while we make remarks in this study upon the forms of education used in the programmes, we are very much aware that the data upon which we base those remarks is limited. The evidence-base includes what is written about Irish legal education (summarized in the Comparative Analysis), what is written about and practised in other jurisdictions and professions, and our dataset from a limited number of interviews with Irish lawyers and professional education teachers and designers. Any close design work upon a curriculum requires empirical research work with students and trainees as well as members of the profession and clients. We have almost no data from students or trainees. Our construction of the professional curricula is a form of ‘post-holing’, to take an archaeological metaphor – that is to say, testing the ground to gain a sense of how the LSI might proceed.

While our recommendations are extensive, it is fair to say that the evidence we have gathered points to many positive features within the programmes. The programmes and assessments are well-organised. Given the numbers of staff and the size of the learner cohorts there is an impressive efficiency about the administration and general operation of legal education at Blackhall Place. Many we spoke to in the profession were complimentary of the links that the LSI had formed with the profession. There is much goodwill and the LSI clearly takes its role seriously as the peak professional body for solicitors in Ireland, and that professionalism is evident in many aspects of its operation. An academic summed up the comments of many others:

- The practitioner element is more about law in action, and lawyering skills. At Blackhall he feels like there is a huge professionalism and it is very well organised.

Our analysis and our recommendations are designed to look to the future of professional legal education in Ireland. Future-proofing is relatively easy to articulate in generalisations about the changing nature of professional services, the flows of globalization and the like. It is much more problematic to make specific recommendations for the curricula operated by the LSI. Where there is evidence from earlier chapters for our analyses, we cite it. Where the evidence lies elsewhere, e.g. in the research literature or in the grey paper literature in other jurisdictions, we indicate that too. Clearly there will need to be a priority list drawn up by the LSI for the recommendations we make: not all can be implemented immediately, or in the near future; and indeed some recommendations are less to do with structural or content alterations to the curriculum, and more to do with how the process of change could be carried out in the LSI. All are subject to negotiation by the LSI with its partners and stakeholders in the legal communities in Ireland.

We address in order the following assessments and curricula:

1. Qualified Lawyers Transfer Test;

2. PCC I and II;
3. Traineeship;
4. Diplomas and continuing professional development.

6.2 Qualified Lawyers Transfer Test

The question of transfer into the Irish solicitors' profession is addressed in the Comparative Analysis at 1.6.5, 4.8.4 and 8.4.

In the era of Brexit, the uncertainty that process has caused in Europe and increasing global turbulence and flows of population, control over the quality of lawyers qualifying into Ireland has become more important than before. As the profile of the profession becomes more diverse and the profession itself more segmented, the need to retain standards of practice and ethical awareness becomes critical for a professional body such as the LSI.

Current regulatory strategy relies upon a combination of EU directive and domestic enabling legislation described in the Comparative Analysis. According to the LSI (Law Society of Ireland, No date) this is implemented in an examination syllabus for non-EU lawyers, but including lawyers from California, Pennsylvania, New York, New South Wales and New Zealand under reciprocal arrangements.⁵³

This comprises the following:

An oral examination in Professional Conduct.

Written examinations 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
- Paper 5 Solicitors Accounts
- Paper 6 EU Law

The oral examination on Professional Conduct would appear to take the form of questions and answers. Each of the six written examinations consist of problem- or essay-type questions or a combination of both. The pass mark for each examination is 50%. Every candidate for the Qualified Lawyers Transfer Test must first obtain a Certificate of Eligibility from the Education Committee to sit the Test. The Education Committee will also determine on receipt of the appropriate application form and documentation, what subject or subjects the applicant is required to take.

⁵³ (Solicitors (Amendment) Act, 1994, s 52; Solicitors Acts 1954 (Section 44) Regulations 2009).

There is at least one college programme that sets out to prepare candidates for the assessments (see the Comparative Analysis at 4.8.4). None of these programmes is associated with the LSI, whose role is limited to preparing assessment materials, organising the assessment, marking and disseminating the results.

There is little research literature on either the English or Irish QLTTs which is no surprise given the sparsity of literature generally on professional legal education assessment (though the English and Welsh QLTT had been in existence since around 1990). Perhaps the most extensive work is that of Economides and Rogers (2009) on the role of ethics on the English QLTT, produced for the Law Society of England and Wales just as the English QLTT was undergoing revision by the SRA. Many of their points could be asked of the Irish QLTT. In their description, the English QLTT ‘follows a “replication model” or code-based model, one that is designed to satisfy the requirements of the assessment (an examination). This illustrates the important point that assessment is, in many ways, the driver of content’ (Economides and Rogers 2009, p 44). They recommended using for the assessment of ethics what is called Extended Matching Sets Questions (EMSQs), a sophisticated form of multiple choice questions. These can be useful for problem-solving in the abstract, but actually enforce the concept of ethical learning as simply the learning of professional conduct rules, and still leaves embodied ethical behaviour in a behavioural vacuum.

In its revision of the QLTT the SRA took quite a different approach, and divided the assessment, broadly speaking, into two halves – the first half consisting of assessment of knowledge acquisition and knowledge application via sophisticated multiple-choice Q&As; and assessment of skilled practices. Both halves, it should be noted, were significantly different from most other practices in knowledge acquisition or skills practices in most jurisdictions in that sophisticated statistical analysis of candidates’ performance were applied to the examination data, which not only gave a much more nuanced portrait of individual candidates, but provided reassurance about the reliability (in a statistical sense relating to the consistency of assessment outcome), quality and fitness for purpose of the assessment as a whole. The statistical analytical tools (also used in the development of the assessment) were drawn from medical education and educational statistical practices more generally, but, until then, were rarely if ever employed in the legal education.

The second half of the assessment, focusing on skills assessment, borrowed assessment practices from medical education, in particular the use in health disciplines of simulated or standardized patients, and the structural device of an OSCE, an objective structured clinical examination. Standardized patient techniques had already been adapted to legal education by those legal educationalists in the Simulated Client Initiative (SCI).⁵⁴ These were adapted by the SRA Working Party and again (another innovation within law) had statistical analyses applied to the candidates’ performances (see Fry, Crewe, & Wakeford, 2012, 2013).

The use of reliability statistics had the dual advantage of enabling the SRA to assure itself that candidates were passing only when they met the required standard (and not by chance) and of being able to robustly defend its assessment approach to external stakeholders and candidates.

In our view, the QLTT should be revised and made an assessment that is much more robust, not merely on the assessment of knowledge but of skills, ethics and values. This will undoubtedly improve all

⁵⁴ See (Standardized Client Initiative, No date). The initial correlational study was carried out in 2005 at the Glasgow Graduate School of Law at Strathclyde University Law School (Barton, Cunningham, Jones, & Maharg, 2006). The SCI now is based in at least 11 centres globally, and produces research papers on the topic. A book that brings together medical SP and legal SC interventions is in planning. Standardised clients are in use in the Law Society of Ireland’s continuous professional development programmes.

aspects of the assessment – its fairness, reliability and validity. As the SRA and Kaplan (who won the tender to deliver the assessment) have shown, while much more sophisticated than the English QLTT, it is still also a financially feasible model of professional assessment, both for the for-profit organization that has in part developed and currently hosts the assessment, and also for the candidates undertaking the assessment. The SRA's model of the QLTS is a good exemplar to follow. It should be noted that the project of setting up and using simulated clients at the LSI has already given the LSI a good introduction to the method. In our view, this sound basis could be relatively easily adapted to provide a more robust assessment.

In addition we would argue that the forms of assessment (rigorous assessment of knowledge acquisition by MCQ; rigorous assessment of skills and ethics, and both methods subject to appropriate statistical analysis) should be used where relevant in other areas of assessment of professional skills – for example the PPC I and II. In so doing, the LSI will be streamlining the work they require to do in order to improve assessment across all areas of the assessment of professional knowledge and skills.

6.3 PPC I and II

In this section of the chapter, we shall examine five areas:

1. general issues raised by the profession in chapter 3.⁵⁵
2. the issues surrounding skills on the PPC.
3. assessment on the PPC.
4. the place of ethics.
5. the place of technology on the PPC.

that will also have implications for QLTT, the traineeship and the LSI's Diploma programmes.

At the end of Chapter 4 we summarized issues that were of concern to our interviewees, which were as follows – programme content, general or specialist qualifications (and the related issues surrounding competition), and outcomes and standards.

6.3.1 Programme content

On content of the programme (see 4.3.1), there was a diversity of opinions; and a sense that while knowledge content and skills required to be updated and tailored, there was a reluctance to create bespoke PPCs for specific professional sectors.

6.3.2 Efficacy of PPC I and PPC II structure

We have discussed some of the issues arising from or benefits of, the split course in 4.3.3. On the relationship of PPCs I and II, there was considerable comment as to the efficacy of the two halves of the programme, and how they dovetailed with the traineeship. Outcomes and standards, too, needed to be reviewed in the opinion of some, while others saw a need for new competencies.

In our interviews with LSI staff there were views expressed on the issue. The historical process was still a dominant one (summary):

⁵⁵ One has already been dealt with, namely the variable standards between university law degrees, the effects upon the PPC and the FE-1. We have dealt with this in the previous chapter, in our discussion of the FE-1.

- PPC I subjects have developed organically over time; a previous review gave rise to 5 streams which have equal weight and equal time; of itself this doesn't make sense, it's arbitrary how that was decided
- The Education Policy Review Group report⁵⁶ was pre-Fenton, and was when they started the PPC structure; it identified the five areas and established that the purpose of the course was training for general practice;⁵⁷ within the core subjects, they teach what is relevant whether they go into general practice or not e.g. business law is equally relevant for small and large practice.

As a result the curriculum appears to have been fixed for some time (summary):

- [Staff] have not considered whether the [PPC] core could be more flexible because that was established by the earlier review, and they do not feel like they have that mandate. This is being put under pressure due to policy pressures.

This interviewee welcomed the process of review and the report (summary):

- Previous reviews of education have been imposed on them so they have not really had discussions like they are now having. This review process is more organic

Change, it appeared, would be welcome. The sandwich structure of PPC I, then training in-office followed by PPC II was approved of by many, even though in practice the model was more complex than a simple sandwich analogy would imply.

- One sees a threat to the sandwich structure – she can see PPC I and II being amalgamated.
- Can also see problems with de-coupling course and training period as students can be exploited in the market place and you end up with unregulated market of 'pseudo-solicitors'.

This interviewee spoke for many in the desire to keep the distinction between a PPC I and II. There were, as we saw in Chapter 3, many ideas for re-configuring PPC I.

- Outcomes-based approach – [interviewee] is concerned that a professional regulator that takes this approach is not concerned about training in professional attributes, skills and professionalism.⁵⁸

The key issue for many interviewees, who could appreciate the arguments for both specialist and generalist education, and for the separation of PPC I and PPC II, was the re-design of the PPC (summary):

- [Interviewee] would like to strip Business back to the core and then allow different pathways for trainees going into different firms. It may be easier to do that with Business Law than it would be with some other subjects which are more linear. This would be harder with Applied Land Law (2/3 conveyancing. 1/3 landlord & tenant); not just because it is linear, and partly because of specific terminology which is used.

⁵⁶ Law Society of Ireland, (1998).

⁵⁷ See the Comparative Analysis at 1.6.

⁵⁸ Because, we deduce, the regulator might be interested only in measuring the outcomes and not in the prior training (see the example of the SRA's SQE), or because an outcomes approach can be mechanistic in some forms of application. We discuss learning outcomes in a somewhat different sense in Chapter 7.

- Conveyancing is at a different stage in its evolution in Ireland than in the UK, unregistered land is highly complex and not possible for non-lawyers (see also 3.6.4 on future use of technology in conveyancing).

One of the problems was inflexibility of the structure of PPC I (summary):

- Must be 30 lectures, it's not clear how they could change the format, they've not felt they had the freedom to change the format.

Allied to this was a learning structure that was based upon academic learning, with lectures and seminars (summary):

- Seminars are primarily skills focused (practical law).
- Learning cycle is pre-reading before a lecture, lecture, pre-work before tutorial, tutorial, more advanced exercises in the tutorial then follow-up exercises.
- Business – generally use problem based scenarios, always given them a relevant experience with a skills focus, their highlight is the tutorials. Which would be down to experiential learning during tutorials.
- Tutors are set up in role of facilitator; lecturers are in the role of information-provider.
- In lectures, students freeze (they are more passive); it's very difficult to generate true interaction.
- Students don't tend to find there is a disconnect between lectures and tutorials because they've grown up with that sort of system. Especially if they have attended an FE-1 crammer course.
- Tutorials and lectures are completely linked and synchronised. Course managers are coordinating both.

The system works well, then, to 'deliver' knowledge and apply it in seminars. The fact that lectures and seminars are linked and synchronised can only be a good thing, in this context, and indicative of how well managed the curriculum is. The problem is, as some practitioners noted in Chapter 3, that this is an academic structure, and not entirely supportive of professional learning. It also leaves little space for skills learning, which would appear to be backgrounded by the focus on knowledge that predominates in lectures and cascades down into seminars.

If this is problematic in PPC I's structure (while it was acknowledged that it was, nevertheless, successful there as a mode of learning), it was the view of a number of interviewees that the structure of PPC II was in need of reform (summary): 'PPC II in its current format does not work'. The reasons were various (summary):

- Students are challenged on PPC II by the volume; she doesn't think it's educationally sound; eight lectures and two tutorials for each elective and three electives; family, employment, PPCM and England and Wales Property Law⁵⁹ are compulsory; seven exams at the end of ten weeks – it becomes a test of stamina. She is never proud of what she delivers on the PPC II modules, not enough small-group work.

⁵⁹ See discussion of the relevance of this mandatory course to requalification in England and Wales in the Comparative Analysis at 8.4.2.

- Agreed that the electives do not work. Four lectures into one tutorial x2.
- You can get exemptions from the electives.⁶⁰
- PPCM is an excellent course.
- To a degree PPC II includes an overspill from PPC I; historically Employment and Family would have been on PPC I (Private Client); but this was moved when the Skills course was included as a core subject.
- Agreed that some re-design is needed.

The problems with PPC II led one member of LSI staff to wonder about re-designing PPC I and II as a 'compound course' (summary):

- Not a fan of the split between PPC I and II, she would prefer a single longer compound course. She may be tainted by the fact that PPC II doesn't really work at the moment. The compound course would cover the core components. The split is also problematic for students needing to find expensive accommodation in Dublin for three months.

We discussed, in 4.3.3, on the relationship between the two courses, perceptions of a lack of engagement and attendance by some students during the PPC II stage.

If the PPC were combined, the LSI would of course lose the sandwich structure that can be valuable for student learning. But it would appear that at present the PPC I may be too academic in structure and content to prepare students for the traineeship; and the PPC II too constrained and formalised to act as the flexible and focused traineeship CPD that is required at that stage in the professional curriculum.

If highly structured academic forms of teaching and knowledge are dominant (and we should point out that not all interviewees agreed this was so; but nevertheless it was the view of those close to the programme), then what happens to professional skills, and how are they learned and assessed? It was observed that a previous report had mentioned the need for more skills learning:

- There was a skills workforce, they went and observed other jurisdictions; came on the back of previous review which said they needed more skills.

However, the problem for staff was finding the time to re-design and implement:

- They are all very busy and it is an 'absolute impossibility' for course leaders to meet to discuss what they're doing (and which skills are being taught and assessed where); a few years ago they had away days for blue skies thinking.
- Agreed [that skills] could be more integrated, time is an impediment.
- There is no opportunity to exchange thoughts and get together.

⁶⁰ We refer in Chapter 4 to a CEDR course used as replacement for the ADR course.

- One [member of staff] was not involved in design of the skills course and therefore has no idea what is on it and how she could link it into her course.

Part of the issue with skills learning was integrating across the curriculum; and not only do the skills teaching need to integrate, but the assessment must also be integrative (summary):

- Business course, they assess drafting and it makes up 15-20% of the mark; also negotiation and presentation skills and research within the Business course.
- They have to be careful that they do not teach skills within Business (or any other area) in a different way to how it is being taught on the Skills course; so they hold back on the feedback they deliver, they focus on the content.
- Business writing – will be marked on content, style and structure.
- PPC I (assessment) – skills course is compulsory; everything else is assessed by exam.
- Some formative assessment in tutorials, for skills there is a practical, the main form of assessment is exam, in PPCM they do a business plan in a team – ‘an excellent assessment’, that works very well. This was not imported into PPC I because it requires a lot of logistical planning and it’s a group assessment which isn’t appropriate across the board.
- Skills module – attendance is required but only advocacy is assessed.
- They test a lot in exams, when people fail it is because they have run out of time or their exam technique was not up to scratch.

Assessment was seen as problematic, and we shall deal with that in a separate section below. Meanwhile, four other issues were raised as affecting the curriculum: the single issue of time expectations of students, flexibility and commuting (obviously linked), the physical resources of the Law School, the training of practitioners and the need for a part-time version of the PPC.

Flexibility in curriculum design was generally felt to be a good thing; but staff felt that time constraints on students needed to be borne in mind:

- If [management] wanted to change [the curriculum], then they would have to be careful about increasing the time expectations for the students.
- Generally speaking, [staff] deliver content via a lecture. Students should and do generally come prepared; they could have some video content, but someone needs to have a sense of the overview. A degree of uniformity helps to prevent students being overloaded.
- There are a few things that mitigate against flexibility:
 - E.g. if the students aren’t expected to be at Blackhall and can watch videos then they would be working in the offices. Some students really struggle with that, they cannot [do PPC work] when they are in-office.
 - Huge space and resourcing constraints.
 - Potential loss of practitioner input.
- Commuting is an issue for a lot of their students, they have tried to address that with the timetable. To help with this, nothing happens on Monday morning nor normally on a Friday afternoon. They also try to ensure that when they come in, they are in for more than one slot.

But if they are in for a lecture in the morning and a tutorial in the afternoon, there is no-where for them to study in between. 'It's impossible to find a space or a room', which makes it difficult to move the curriculum around or change the balance of lecture and tutorials.

Allied to this point are what were perceived as the physical constraints of the Law School, despite the enhancements to its premises in 2000 (Buckley, 2002, p 188), given the increased number of students now attending the PPC (summary):

- It is hard for them to feel visionary or creative when they are working with the same limited physical structure.
- Tutorial rooms are small and they take up to 18 students in them, and that impacts on how much movement you can have in that room.
- At the moment they don't know whether they will get 450-500 students next year or the existing 400; planning happens quite late in the day; they would need to revisit the structure completely if it went up to 500.

Finally, there were suggestions on the creation of a part-time programme. We have discussed this issue in the context of the impact of the full time PPC on mature students at 4.6.1 above. Other comments relating to a possible part-time course were (summary):

- At the moment, students are in a good position to transfer during their training contracts as they have a good amount of PPC I under their belts, but they wouldn't have the same experience/study if it was spread out over a longer period of time.
- It could go the other way, the City firms might like block release more than the current model. There are advantages of the full-time provision because they can focus on learning.

Whatever change takes place, some staff in the LSI were concerned to keep the identity of Irish professional training as distinct and not simply to transplant a model from England and Wales (see 3.2.3 and 3.3.2 above). In this respect the physical constraints of the campus location at Blackhall may well be alleviated if there were a model of the PPC that was part-time, and supported by digital resources, some of which could also be used on the full-time model of the curriculum to release pressure on lecture spaces and seminar spaces.

6.3.3 General or specialist qualification

There were some possible solutions proffered for the resolution of the debate between the PPC as a generalist or a specialist course and we explored this at 4.3.2. Standards (see 4.3.2.1), understood broadly, were of concern to a number; and to others, communication of which standards applied when in the programme was an issue. This was an important concern, and linked to the need for students to have access to a broad range of skills, and find a balance between specialisation and generalisation (summary):

- Further challenge is not giving in to specialisation and further internationalisation of legal services.
- The majority of training contracts are with large commercial firms which 'creates a demand for a certain type of training which ignores the need for a qualified solicitor to cover a diverse range of areas'. Increasingly trainees are doing aircraft financing in their firms and this isn't giving them sufficient diversity of experience to enable them to choose where they want to be in the marketplace if they're not kept on.

- Trainees need a broad range of skills and a broad range of experience which means that you can make an informed decision about where to qualify when you qualify.

The training contract was discussed, with ways to ensure its efficiency within the spliced structure of the PPC. Equality and diversity issues, access to the profession and above all access to the PPC were discussed, with a number questioning the absence of a part-time programme (see 4.6.1), and cost (4.6.2).

6.4 Ethics and professionalism

As Economides & Rogers point out of English legal education (2009, p.16), and this is true of Irish legal education as well, there is no requirement to undertake ethics education at the academic stages. Ethics training is therefore undertaken in England and Wales at the LPC stages and during the training contract – a situation, they observe, unchanged over 15 years.⁶¹ What they do not say, but which again is applicable to English and Welsh and Irish professional programmes, is that the unintended outcome of reserving ethical discussions to the professional educational domain is that the general subject of ethics and ethical behaviour becomes closely aligned with the rules of professional conduct, and seldom explored beyond that. In turn, this affects educational approaches to ethics. The focus of education, both teaching and assessment, becomes the primary legislation, the secondary rules, the precedential case patterns, the narratives of others' professional lapses. It becomes corpus-focused, teacher-focused, examination-focused. This has its place in the curriculum; but what is lacking is the experiential exploration and development of ethical behaviours and good ethical habits within students and trainees. This educational approach, we hold, is essential to the ethical awareness of the profession, and should be developed much further. As a practitioner from a boutique firm put it (summary):

- There should be more on the PPC about interacting with clients and fellow solicitors properly, and more on ethics and regulation.

A PPC tutor observed (summary):

- Ethics is covered throughout⁶² and specifically on PPCM, ethics is covered on every PPC I module and pervasive; although they were not sure where the 'home' of ethics was. The Foundation Course on PPC I includes ethics. She thinks the pervasive model does work. '[It] does come back to the fact that none of them knows exactly what the other is doing.'

A recent article demonstrates a sophisticated approach to ethics education on the PPC. Grealy (2018) describes a two-month pilot Certificate in Legal Ethics and Lawyering Skills that 21 PPC students took between starting their traineeships and the PPC II. She describes it in her abstract as an intervention that took an

⁶¹ The same was true of Scotland, but in the revision of the professional education programme that also included recommendations from the Law Society of Scotland to Scots law schools, one such recommendation was the embedding of ethics as a subject within the undergraduate and graduate LLB programmes. Document on file with one of the authors on the Working Party, Maharg.

⁶² We are indebted to the LSI for providing us with a copy of a document explaining how and where Ethics appears in the PPC curriculum (Brennan et al., 2015).

experiential learning approach and a wide view of ethics that moves beyond a defensive rule-based approach and supports trainees in grappling with ethics and negotiating within the more rigid and collectively based moral discourses which are a necessary part of constructing professional identity. The course framework embraced a variety of pedagogic approaches for effective teaching and fostering ethical professional identity such as role-play, small group discussion, video and online discussion forums and mixed method assessment.

(Grealy 2018)

The content and structure of the Certificate as describe in this article is a model of what could be achieved on the PPC, not only at the later stages of the programme, but (and with some alteration of approach, naturally) from the first days of the PPC I.

On the related subject of professionalism (see 5.3.2) interviewees offered a number of significant ideas. A practitioner from a small firm observed the following (summary):

- General practice is about providing a service, not necessarily about making a profit on every case.
- Hallmarks of profession – competence, confidentiality, held to ethical standards.
- On general practice: 'You may not make money out of everyone that comes in, but you're providing a service'.
- What is a profession? Expectation that you will not screw them when they are in a vulnerable position - that they will be protected. In recent years people have lost trust in solicitors, it means a lot to him when clients tell him that he has restored their trust in the profession.
- Thinks the LSI campaign 'We're in your corner' was good, and 'Speak to your solicitor today' – was very effective in generating work for them.

A practitioner in a mid-sized firm noted (summary):

- Thinks the 'role of the profession is dead' – but he takes no pleasure in saying that.
- [Professionalism is] reconfiguring what it means to be a profession rather than abandoning it.
- 'Within the firm we think of law as a business, traditionally it has been a profession with a sense of entitlement and everything will be fine because I am a professional – we don't believe in that at all.'
- When people decide to become a lawyer, it's because they want to be part of a profession.

6.5 Skills

We obtained an extensive array of comment upon skills in the PPC curriculum, and will discuss it under the following headings:

1. General PPC approach to skills;
2. Advocacy;
3. Interviewing;

4. Legal research;
5. Negotiation;
6. Writing and drafting;
7. Irish language skills;
8. Further skills education.

6.5.1 General PPC approach to skills

Attendance at the Skills course on PPC I is mandatory (Law Society of Ireland, 2016a) but only advocacy is summatively assessed. The skills in the dedicated Skills module are Civil & Criminal Advocacy, Interviewing & Advising, Legal Research, Legal Presentation Skills, Legal Writing & Drafting, Negotiation & Professional Development (see Comparative Analysis at 1.6.3). There is no specific skills component in PPC II (other than in PPCM). The skills subjects are taught in groups of no more than 12 students, in two-hour rather than 1.5 hour sessions and with practitioner tutors. Actors are used in role play exercises. Feedback on the module is good.

One respondent felt that it would be more pragmatic to have the skills training at the end of the course. Another respondent felt it odd that skills had their own module rather than being pervasive. The skills did not necessarily reflect large firm practice. Skills may be taught and assessed in other modules. For example, drafting makes up 15-20% of the mark for the Business course and this course also includes negotiation and presentation skills and research. However, there are challenges in tracking which skills are included in which substantive modules with the result that the focus in a substantive module may be more on content than on the skill in order not to interfere with what has been taught on the Skills module. We would recommend better communications on this point, and the creation of a skills map for the curriculum.

A PPC tutor was perceptive about many aspects of skills teaching and learning on the PPC (summary):

- About seven years ago skills was evaluated and revamped along these lines (went from half a day to the current offering).
- Runs through whole six-month course, eight modules, sizes of modules vary.
- Maximum 12 in the group, which is a different group to their tutorial group. Two hour slots (longer than usual 1.5 hours), they bring in and train up big teams of tutors.
- They bring in external expertise to help with presentational skills; students also have 1:1 reviews to see where they can improve – they do something similar for advocacy; very much learning by doing.
- [LSI] train their practitioners and evaluate them, she keeps a very close eye on them. Quality assurance will vary across the board; before every workshop [tutors] have a planning meeting with clear directions (half an hour). She finds that very informative, she picks up on people who aren't prepared and are not listening – those ones do not last long. She creates a serious environment, it is not something they should be dabbling in. Tries to get broad range from big and small firms and regional and Dublin firms. They need to be receptive to the way LSI do things.
- Students find it very difficult to make the leap from academic to practical writing.

- She thinks they are advanced in terms of how they teach skills. They will keep revising it. It gets great feedback.
- She tries to have a variety of scenarios to reflect different areas of practice; some people argue that it does not matter what the subject area is but she's not entirely convinced by that.
- There is a big drum being banged by the big firms and what they want. It is an unhappy dilemma to work out how to meet different demands – a skill is a skill.

The last comment was borne out by comments from a large firm practitioner (summary):

- Litigation – trainees said it was good but not getting into skills in any in-depth way.
- PPC I Applied Land Law does not have to look exclusively at residential; business law should start from a higher starting point; courses could be crafted with an eye towards what the corporate firms need in terms of skills.

6.5.2 Advocacy

The PPC advocacy practical assessment runs over three days. Students receive a set of papers to go and research the case, then they have six minutes to present to the judge, the judge asks a question (to make it more realistic); it is marked against criteria, the scenario always includes an ethical issue. The advocacy training is expensive as it involves 1:1 feedback. The skills training and advocacy competitions were well-regarded.

Newly qualified solicitors have rights of audience up to and including the Supreme Court. One respondent would prefer it if the PPC advocacy course was longer as most cases are in the district courts and most advocacy there is carried out by solicitors. One respondent thought that the LSRA⁶³ might mean more competition in advocacy if direct access was made available to the Bar.

An EC member commended the LSI's advocacy training (summary):

- Commended the advocacy competitions arranged by Blackhall, she has been bowled over by their competence. Blackhall do their best to teach skills in a non-work setting.

A PPC tutor had some suggestions for improvement (summary):

- Mock trials etc. are great but only a few people get access to it.
- Think having skills training towards the end is more pragmatic. There is an argument that the electives could be post-qualification.

The PPC tutor also observed (summary):

- [The LSI] brings in actors to role play, they get the students to role-play.
- Civil advocacy exam – research, formulate application, make application (recorded).
- They have criteria to determine pass or fail; advocacy practical runs over three days – they get a set of papers to go and research the case, then they have six minutes to present to the judge, the

⁶³ s101.

judge asks a question (to make it more realistic); marked against criteria, there's always an ethical issue. External examiner is a judge, and [the judge] suggested the question was added to the assessment.

- Students have a formative workshop before the assessment so they get to practise.
- Litigation on PPC is a core subject but it is split evenly between civil and criminal litigation, which means it is only half a subject for each and you have to focus on the basics. This makes it difficult to focus on specific issues that might be relevant to specific areas of law. Tends to get a big firm in to talk about injunctions; and for judicial review.

6.5.3 Interviewing

There was surprisingly little comment on this although one PPC member of staff noted that there was little time devoted to this skill (summary):

- Lawyering skills – there is a module, but negotiating/client counselling have a very small amount of time allocated to them.
- Finds it strange that skills have their own module – should be woven into every subject, that would make trainees practice-ready.

6.5.4 Legal research

Legal Research is a required part of the PPC I Skills module. One interviewee felt that the PPC was not directed towards that firm's business needs, citing practical legal research as an area of concern. Another interviewee appeared to understand that legal research was not included in the PPC. One was, however, surprised by the standard of students' legal research skills ('Surprised at the level of legal research competency of some students (same with legal writing and drafting)'). Research was also a component of the civil advocacy examination. One practitioner noted (summary):

- Firms are paying huge fees, there is a feeling that we are subsidising the training of general practice around the country and we are getting little value from this training ourselves.
- Practical legal research/negotiation is generalist and [the skills] aren't on the course and would benefit everybody – also mentioned using social media/media savvy.

6.5.5 Negotiation

Negotiation is a required part of the PPC I Skills module and also appears in the Civil Litigation module. One interviewee felt that the PPC was not directed towards that firm's business needs, citing negotiation as an area of concern. Another respondent appeared to understand that negotiation was not included in the PPC. One respondent felt that cross-border negotiation skills, and the ability to negotiate in other languages, would become important in the future. Another felt that a focus on negotiation was important and that too many solicitors relied on counsel to settle their cases. A PPC tutor noted:

If Irish solicitors are going to get more business from the rest of Europe then new skills are needed: language skills, negotiation skills in a different language, arranging/negotiating contracts with other jurisdictions, international trade.

A large firm practitioner commented:

- [The PPC is] based on a historic model of solicitor provision, a more general practice. It is not directed towards their business needs at all e.g. practical legal research, drafting and negotiation. 'The academic value of the PPC for the trainees who come here is practically nil.' They are not gaining skills which are of benefit to the work they will be doing in this firm.
- Practical legal research/negotiation is generalist and they are not on the course and would benefit everybody – also mentioned using social media/media savvy

This is a significant concern. Skills are of course transferable, but they need to be designed as such. It may be that general skills could be the subject of the PPC I, with more specialist versions of the legal skills the subject of the PPC II. We recommend this in our re-design of the PPC.

6.5.6 Writing and drafting

Drafting is a required part of the PPC I Skills module and also appears in the Business module. As we indicated above, it can also appear in any of the written exams.

Several respondents, however, felt it would be useful to increase the coverage of writing and drafting. One respondent felt that the PPC was not directed towards that firm's business needs, citing drafting as an area of concern. Another felt that the coverage of writing and drafting on the PPC was too superficial (summary):

- Legal writing and drafting are key skills, there is something on PPC I but it's not even scratching the surface
- Project management is a general skill that would be good practice for all lawyers to understand; this firm pays a lot of attention to this

A PPC tutor noted (summary):

- Surprised at the level of legal research competency of some students (same with legal writing and drafting).⁶⁴

A practitioner from a boutique firm observed (summary):

- Core syllabus is pretty good – could be more of a focus on precedents and drafting.
- Drafting skills are very important – relevant to all areas of law, he thinks there is a fear factor about drafting for trainees – they should be told that letters and contracts are all stories that need to be told. Thinks there should be more of a focus on it.

⁶⁴ It is not clear whether this was a positive or a negative surprise.

6.5.7 Irish language skills

See the Comparative Analysis, 1.6.1 on the Irish language examinations, and 8.2.6 on the Legal Practitioners (Irish Language) Act 2008.

Under the Official Languages Act 2003, public bodies (including regulatory bodies) are required to be bilingual. The Legal Practitioners (Irish Language) Act 2008, s2 imposes a regulatory requirement to ensure that there are enough qualified lawyers who can represent clients in Irish. There is an advanced legal Irish programme as a PPC II elective, which is also attended by qualified lawyers.

We found the work of the LSI complimented by the profession (summary):

- The Solicitors Act includes a regulatory requirement to ensure there are enough qualified lawyers who can represent clients in Irish. In 2012, they got the EU Language Label Award. There are now 190 lawyers listed as available to do this work. The 2003 Act means that regulatory bodies have to be bilingual.
- ... [the tutor] runs an advanced legal Irish programme – qualified lawyers come in and do it too.

6.5.8 Further skills education

There was a variety of answers to the question as to which skills our interviewees would like to see learned and assessed on the PPC. A number of these are discussed at 4.3.2.2 as desired competences for the PPC. We have listed them below:

- arranging/negotiating contracts with other jurisdictions.
- business development skills (although one respondent felt this was more likely to be addressed in the office).
- communication skills.
- emotional intelligence.
- interacting with clients and fellow solicitors properly.
- international trade.
- interpersonal skills/psychology of client relations/how to deal with an angry client.
- language skills.
- management skills – leadership, HR training, how to handle people.
- negotiation.
- negotiation skills in a different language.
- practical legal research.
- project management skills (although one respondent felt this was more likely to be addressed in the office).
- representing people with a vulnerability or mental health issues.
- social media skills.
- team working.
- technological skills (see also the reference to coding at 3.6.3).

It is significant that apart from the last item, almost none of the suggestions concerned technology. We shall deal with that in the next chapter.

6.6 Assessment

This was probably one of the most controversial topics for our interviewees. A minority were satisfied with current practices. One EC member thought there was little wrong with the assessment practices on the PPC, apart from their number (summary):

- In general exams work well – they are scheduled at the end of each course (PPC I or II). Students might feel differently! Gives them plenty of time to reflect on course and content. But then they have a lot of exams in one week.

Others disagreed. Assessment was a controversial topic in a number of interviews, with a broad range of views on current practices. One respondent, discussing a possible multiple provider model in the future wondered if there might be a distinction between the bodies providing the courses and the bodies providing the examinations.

Assessments are scheduled at the end of each component course during the PPC. The focus on end of term written assessments was queried by another respondent who felt they could be inadequate in terms of assessing students' practical skills/fitness for practice.

PPC I is assessed by four written examinations together with advocacy. While knowledge acquisition is important at any stage of legal education, we do not think that the weight of written examinations, the staff effort they generate and the student attention they attract is warranted in a professional programme. This is even more the case in the context of the FE-1 which is largely a test of knowledge that must be passed before students enter the PPC. We would argue the case for less assessment of knowledge and more of a focus on skills learning – a greater variety of learning opportunities, a wider set of skills assessment, and a focus, too, on high-stakes assessment of skills within the context of ethics and professional values. We note that currently attendance at skills courses is mandatory but only advocacy is summatively assessed. This assessment seems to us to be a model of good practice, involving as it does students in individual preparation, presentation to a decision-maker, who questions the student upon the presentation, and there is an ethical dimension to the scenario.

PPC II is also assessed by exit examinations apart from two modules. We would argue, that there is even less of a case for the emphasis to be on examinations at this stage in a student/trainee's career. There would appear to be two exceptions to this regime. The first is the PPCM assessment that involves creation of a business plan for a new firm, carried out in small groups which also involves team-working. The second part of the assessment has students working on ethical issues on files. This was described by one respondent as "an excellent assessment", that works very well. The second example is an ADR elective which is assessed by continuous assessment involving role-play and other exercises during the course.

We agree that these are excellent assessments, and would want to see more of this approach to assessment. We note that, according to the LSI, a number of the electives require role play and other activities. According to some, the use of such activities as high-stakes assessment of skills was not used in other PPC II modules because of the logistical planning required, and because, in the case of PPCM, it is a group assessment which is not seen to be appropriate across the wider curriculum. In our view it would be possible to take the same approach to PPC II assessment as to PPC I, by switching staff attention from conventional forms of examination to those forms of assessment more appropriate to professional learning. If it is difficult to design and implement such assessments given the duration of PPC II, then this is all the more reason to consider the re-design of the entire PPC II.

There were some suggestions of lack of consistency between different courses in their practicality, the extent to which they were up to date and the perceived rigour of their assessments. However, another respondent felt that the in-course assessments seemed to be rigorous enough and that the skills training worked well. Some respondents indicated that they felt the assessments were too academic and not practical enough, although they might be more practical than the FE-1 assessment. Firms might need to need to retrain trainees to some extent when they were back in the office.

Comments included (summaries)

- PPCM assessment – [Students] work in small-groups and have to produce business plan, have to identify how to set up in practice – funding, marketing etc. The second part is ethical issues – all groups are given the same files. It is about content but also about team-working. They give them a lot of flexibility and initially they are lost (especially this generation they want instruction) but the feedback is good at the end- they realise why it was important.

There was criticism that what is taught at Blackhall is not practical enough, and that assessments are inadequate in terms of assessing practical skills/fitness for practice (summary). A member of PPC staff commented (summary):

- Lectures would tell them about practice but students do not get to experience practice.
- Students say that with more practical courses they go into office knowing what they're doing, but with others they do no .
- Assessment is huge – almost entirely assessed by end of term written exams – how can they assess whether you are fit for practice?
- There is one continual assessment course – the dispute resolution elective – online lectures, workshops, peer assessment (three people see their work and vice versa) and oral and written assessment. Students seem to like that despite it being a lot of extra work. They can see themselves progressing through the course. Some are told by their firms to do it now. They feel more confident because they have been able to role play etc.

Another member of PPC staff observed (summary):

- [The PPC] is purely law-based. It is the same as being at university 20 years ago...law being tested not application of the law. Students copy out of the book or learn off a set answer. If marking is for the law then they will pass but not if it is for application of the law.
- Mentions long case problems used in the medical profession where student has to go off and research a particular long problem. You could do it throughout the course and assess it throughout. It would come down to resources.

A large-firm practitioner commented (summary):

- On-course assessments seem to be rigorous enough. She thinks skills training works well. Complaint is often that some area of law is not up to date or about a particular exam, e.g. a tutor has given them improper hints about what will or won't come up.
- Electives – there are four to six lectures of one hour. There are commercial property and advanced litigation electives but students do not opt for them because the exams are regarded as being a lot harder than the others. Students opt for the course that will enable them to pass quickest [i.e.

most easily, since save for ADR, all electives are of equal duration]. That is another thing to look at to ensure there is a reasonably level playing field between the electives.

- Even if you are a general practitioner, some of the stuff being taught down there is just out of date/old-fashioned, so there needs to be a re-vamp even for the general stuff.

A PPC tutor commented (summary):

- Business course, they assess drafting and it makes up 15-20% of the mark; also negotiation and presentation skills and research within business course.

A practitioner from a mid-sized firm similarly commented on the weight of examinations, wondering if this were the best practice for the PPC (summary):

- Thinks they are doing the right topics on PPC. The exams should be closed-book – give them a file (akin to what they would get in the office), he thinks it must be quite hard to fail. Would like to see the exams reflecting practice more closely. He then said he could understand the logic of having open book (because you would look things up in practice), but he would like them to make the exams more realistic and less academic.⁶⁵

A large firm practitioner criticised the alignment of PPC assessment to preparation for the office (summary):

- Feedback on electives is that it tends to be a bit more detail than PPC I but not a great deal.
- Sometimes trainees can pass the exams well but you need to retrain them a bit when they are back in the office.

We have commented at 4.4.3 generally on the pressure of student numbers. The comment was, in fact, specifically about assessments: 'The Law School needs to improve its facilities; when they hold exams, they are held all around the city'.

6.6.1 Modes of assessment on the PPC

Given the variety of responses on assessment, and its critical importance to a programme of professional accreditation, what might the LSI do to rethink assessment for the future on the PPC? Professional competence is a multi-dimensional concept, and it is unlikely that a single approach to assessment will be adequate in the assessment of professional skills, knowledge and attitudes. Within a professional education and training programme, it is essential that assessments are part of the aims of the programme and its learning outcomes, and are fair, valid, reliable and feasible assessments of professional learning and teaching. It is of course a counsel of perfection to insist upon these four

⁶⁵ In comments from the LSI on the draft report we understand that the LSI operates a mixture of open book and closed book examinations. The PPCM course is a closed book examination on the basis that students need to be aware of the ethical rules governing the profession and presumably they are expected to memorise them. The remainder of the exams are open book examinations on the basis that the PPC tests the student's ability to apply the law rather than a student's knowledge of the law.

At any stage of professional preparation it is often the case that open-book examinations are preferable to closed-book; but we would query whether knowledge-based examinations should be set at this latter stage of the PPC. The application of knowledge in open-book exams still does require memorisation of legal content and does not remove the focus of the examination, from the candidate's point of view, from knowledge *per se*. By contrast, an assessment such as a simulated interview does require knowledge of the area of the law dealt with in the interview; but this type of assessment shifts the focus away from knowledge alone to the nexus of knowledge, skills (including the client-facing communication skills of the student lawyer), values and attitudes within a human and live situation.

criteria. Nevertheless it ought to be part of the LSI's task to evaluate and seek to ensure that assessment conforms as closely as possible to these four criteria.

Professionalism is a key concept here. Assessments of student performance should take into account the professionalism outcomes set out by the LSI, and should include qualities such as integrity and the distinctive habits of mind that define the domain of practitioners. In this sense, the assessments should be based upon the values inherent in the Irish profession's moral and social context. Professionalism is a complex concept, and requires a wide range of assessments to give a valid and reliable sense of professional competence.

Assessment of professional competence is a complex and fast-evolving field. In other professional educational fields there is a recognition that appropriate assessment requires innovation and imaginative thinking. At the same time, it is the case that all forms of assessment are limited in the data they give assessors. This is true of assessment in professional legal education too. In general terms the:

- *content* of assessment should be as close to actual practice as possible;
- *form* of assessment should be as close to actual practice as possible;
- *consequences* of assessment should matter to students. These should be high-stakes assessment: students should not progress if they fail skills or knowledge assessments.

Part of the problem with assessment is a cultural one. Assessment practices are a statement of institutional and professional practice. It would appear that until recently knowledge assessments predominated on the PPC and to some extent still do. With the expansion of skills learning in the last decade on the programme, the revision of assessments does not seem to have kept pace, and this has been reflected in the form of assessments still used on the programme. The culture of assessment needs to shift so that both staff and students will come to have confidence in assessment instruments that measure improvement in professionalism and skills. In this respect we can learn a lot from the assessment procedures of other professions such as medicine, and construct our own versions of assessments of legal professionalism, skill and knowledge. However, if assessments of professionalism are to become predictive of ability, then careful thought needs to go into their construction so that, as high-stakes assessment, they are valid and fair.

Inevitably this leads us to consider the reason why an assessment is being held. Contrary to the ranking system in undergraduate education, the LSI should be much more concerned in the professional education programme with competence in professionalism and the demonstration of performance of ethical values. The best forms of professional skill assessment combine the following to give a profile of a student's developing professionalism:

- Peer evaluation.⁶⁶
- Performance evaluations by practitioners.⁶⁷
- Simulated client evaluations.⁶⁸

⁶⁶ For instance by calibrated peer review (University of California, 2017) or self- and peer-assessment evaluation criteria supported by learning resources – see Barton & Westwood, (2006).

⁶⁷ For example, objective structured video examination, in Humphris & Kaney, (2000).

⁶⁸ See for instance Chalabian & Dunnington, (1997); Barton, Cunningham, Jones, & Maharg, (2006).

- Real client comments or comments from traineeship experiences.
- Self-perception and reflection.⁶⁹

Use of a combination of these approaches will help to ensure that the LSI has reliable and valid instruments for ensuring competence in skills.

6.6.2 Spiral learning and assessment

Most models of outcomes education take a linear approach to learning, where students move from simple to more complex tasks. There is a place for such learning, particularly in the early stages of the 'performative' skills of interviewing, negotiation and advocacy. Nevertheless, simple-to-complex models of outcomes education do not represent well the multi-layered quality of professional learning in this context. In a long programme of study such as the PPC and traineeship involving a number of different modes of study, assessment and work-place learning, it is appropriate to consider how outcomes will be developed across the range of learning environments, activities and tasks. As we have already seen, the curriculum can be envisaged as an ascending spiral, in which learning tasks are encountered in more realistic environments, and in more contextual complexity through time. This requires that general levels of performance should be set for the PPC programme.

For a spiral curriculum to operate effectively, it is essential that the curriculum is viewed holistically. There needs to be integration of one learning environment with another so that students and trainees appreciate the professional training programme as a coherent, challenging and rewarding educational experience. Students also need to be clear about the deliberate and coherent design of the curriculum in this way, so that they do not simply assume that returning to issues is a product of lack of communication between the staff.

Given all this, it may be useful to apply the following eight general principles:

6.6.2.1. *Assessment must be valid*

Assessment must be valid according to the learning outcomes. A variety of evidence is needed to ensure the validity of assessment. Validity can be enhanced by including the profession in the design of the assessment and to develop a clear and agreed construct which enables all stakeholders to understand the purposes of the assessment. This can be done by initial consultation, and the ongoing use of external examiners, or by the formative evaluation of an assessment by practitioners prior to the use of assessment with students.

6.6.2.2 *Assessment must be reliable*

Clearly, assessment ought to produce reliable data about student knowledge and skill. Reliability can be tested by a number of methods – the use of statistical co-efficients, the use of observers and the monitoring of inter-rater reliabilities, are some of them.

⁶⁹ For example in professional ePortfolios.

6.6.2.3. Assessment must be fair

Assessments ought to be constructed so that they are fair to all candidates. Where appropriate, for instance, fresh scenarios should be constructed so that there is no unfair advantage in the first approach to an assessment.

6.6.2.4. Assessment must be feasible

All the above three qualities must be viewed in the light of what is feasible or practicable for the LSI to arrange as regards assessment. There is little point in setting a high number of questions which may well achieve high reliability, but which are unfeasibly long or expensive.

6.6.2.5. Assessment ought to be aligned with the learning outcomes of the programme

The student and trainee learning experience lies at the heart of a professional programme, and teaching and resources should be aligned to ensure that this experience is meaningful, challenging and relevant. Learning should be both individual- and group-based. It should involve use of a variety of learning resources, and providers should ensure that student learning is aligned to assessment. Learning activities should be imaginatively designed, well-resourced and should support student learning.

6.6.2.6. Learning outcomes and assessment objectives should be embedded in the key tasks to be undertaken in any module.

It is not feasible to assess every item of knowledge, skill or attitude on a programme, and therefore the LSI should identify those task objectives which are representative of the more general learning outcomes through blue-printing, and structure assessment around these.

6.6.2.7. Assessment should include multiple assessment points and observations

Professionalism is multi-dimensional, and assessment practice should reflect this, not least because it increases the reliability of the assessment framework. Formative feedback should be given to students throughout the PPC, and where feasible, assessments should give both staff and students data that will show a line of improvement or failure to meet learning outcomes. Pre-specified standards of performance should be available to staff and students. In particular, such standards should indicate the criteria under which borderline pass or fail performance is judged.

6.6.2.8 Assessment should support the values of the professional community.

Assessment should engender reflection on, and be an analysis of, the culture, values and attitudes of the legal profession.

6.6.3 Useful forms of assessment

In more detail below is set out a number of approaches to assessment practice that the LSI may want to consider, with comment on their appropriateness (note that the categories are by no means closed).

6.6.3.1 *Open book and case-based examinations*

These assessments mimic some of the features of professional practice, and therefore are more valid assessments of the learning outcomes that are taught in the PPC. Examples of assessment types include:

- multiple choice question sets that assess speed of information recall and application to problem-solving scenarios.
- constructed answer questions (which test application levels as well as content knowledge) (see Tankersley, 2007).
- modified essay questions (which test problem identification and decision-making skills).
- extended matching items (which test application of knowledge within an extended case-based system of assessment, and which is often employed in a context of multiple-choice questions). (see Wood, 2003).
- objective structured long examination record (a 10 item analytical record of the traditional long case in medical education) (see for instance Troncon et al., 2000).

6.6.3.2 *Coursework assessment*

This can take the form of specific pieces of work that are submitted during the course of the PPC programme, and can include the following:

- case histories.
- case assignments (for example, simulated interview, followed by a letter on action, thus assessing interviewing and drafting skills in the same scenario).
- simulated client records, either paper or electronic or both.
- video essay or report (where students comment upon performance in video).
- project assessment.
- 360-degree evaluation instrument (ratings completed by supervisors, tutors, peers, mentees, standardized clients).
- Objective Structured Clinical Evaluation (OSCE) using standardized clients (see Comparative Analysis at 9.5.3).
- diagnostic thinking inventory.
- oral presentations.

- critical incident reports.
- educational mentoring and appraisal.
- workbook, log or portfolio.
- creation of checklists.
- transactional learning.
- reflective learning projects (see Howells, 2003).

6.6.3.3 Collaborative assessment

Some forms of assessment actively promote collaboration between students; and this is certainly a practice to be encouraged. While all students concerned in a collaborative assessment may agree that all have contributed to the work, it is useful to have a more objective measure of this, too. We note that the designers of the PPCM course are currently using a team activity for assessment purposes.

6.6.4 Modes of tracking trainee experience and linking with PPC learning

The LSI may wish to track trainee learning in traineeships, and to help bring this learning into the PPC II electives. Bearing this in mind, the following three forms of assessment may be useful.

6.6.4.1 E-portfolios

An e-portfolio can contain a record of all student work, including coursework, reflection and review, digital copies of assessments, e.g. essays, reports or video. It can also contain all assessment results achieved by students. The strength of many of them is that they enable students and trainees to:

- Reflect upon their learning.
- Build a body of work that represents their cumulative learning.
- Can be linked to work-based contexts in a very flexible way.
- Can contain or be linked to any other digital asset, e.g. word-processed document, file, video, audio, etc.⁷⁰

⁷⁰ Ching led part of an SRA project running from 2008 to 2011 to assess by way of portfolio, a set of 37 “work-based learning outcomes”, for LPC graduate paralegals. Each competence had to be assessed formatively and summatively and demonstrated in more than one context. The project did not continue in part because it was superseded by the LETR investigation, although the process remains in use for ‘equivalent means’ applicants. One issue was, however, in the drafting of, and interrelationship between, the competences to be assessed and work included in compiling the portfolios over a period of years. Another, at least in the part of the pilot that involved the LPC graduate paralegals, was that volunteer candidates were often very senior and experienced, so the learning demonstrated was in how to evidence their existing competence, rather than achieving the competence itself. The Chartered Institute of Legal Executives has, however, continued to use a very similar process for application for Fellowship. For discussion of the experience of the pilot see Ching, 2010, 2012, 2016 at 5.2, Institute for Work Based Learning (IWBL), 2010; BMG Research, 2012, Sylvester, 2015.

6.6.4.2 *Self- and peer assessment*

A key theme of the PPC could be the development of self-awareness in professional development. This should be developed within the context of the traineeship or PPC II so that, for example, a trainee can be given formative feedback by assistants or administrative staff or assessors, and logged in an ePortfolio.

6.6.4.3 *Negotiated learning assessment*

A key feature of the PPC II landscape could be negotiated learning, where the trainee negotiates the learning that is to be achieved on the PPC II in discussion with the trainee's employer and the LSI, and the learning contract or plan is signed off by all three parties. This plan of action could be part of the e-portfolio being developed by the trainees, and links well with the concepts of life-long learning being developed as the LSI CPD scheme becomes more mature.

Finally in this section on assessment, and although it may not be entirely in our remit, we should note interviewee responses to the subject of the SRA's SQE. These are set out at 3.2.3.2 above. Although one respondent could see the logic of the SRA's regulatory position, there was unanimity among those respondents who mentioned the SQE. They did not approve of a model which was assessment only, suggesting that, for example, it would lead to intense pressure being put upon apprenticeships, or would lead universities teaching to the test, or the creation of cramming colleges (as for the FE-1).

6.7 CPD and Diplomas

This discussion draws, to a large extent, on the exploration of CPD and CPD systems in the Comparative Analysis, at Chapter 3. The CPD system for solicitors in the Republic of Ireland is an inputs based model demanding a minimum of 20 hours of activity in each cycle. Solicitors who are not sole practitioners or compliance officers must include in that activity three hours of management and professional development skills and a minimum of two hours on regulatory matters. Those who are sole practitioners or compliance offices must spend a minimum of three hours on regulatory matters, of which two must be devoted to accounting and anti-money laundering compliance (Law Society of Ireland, 2017). Permitted activities are face-to-face group study;⁷¹ e-learning (up to 50%) and writing material that is published (up to 50%). There are reductions for those with forty years' experiences, and those who are ill or on parental or adoption leave and for those working part-time (Law Society of Ireland, 2016b). The LSI makes members certify their CPD activity and there are random checks (i.e., it is a 'sanctions' model).

The number of hours was thought to be reasonable and acceptable by interviewees who discussed it although one respondent thought it was light compared to requirements for medicine.⁷² It is compliant with the recommendations of the CCBE for an annual minimum of 10 hours (Council of Bars and Law Societies of Europe, 2013).

In terms of the different kinds of activity that could count for CPD, one respondent was not sure that anyone fully understood the rules. Another respondent felt that the Bar requirements were more

⁷¹ There is additional credit if there is interactive activity and group study can include sitting on committees, working groups or tribunals (Law Society of Ireland, 2016, p 11). It is fairly common for professional bodies to reward service to the profession and to the professional body in this way, although the benefit in terms of learning for the individual professional is, at best, ambiguous.

⁷² Fifty hours a year – see Comparative Analysis, table 1.

flexible than those for solicitors. The Bar of Ireland requires at least 10 points annually minimum (of which at least one is on ethics) but the variety of activities permitted is wider than that for solicitors (Bar Council of Ireland, no date.).

There appears to be no mandatory requirement for registered legal executives, although events are offered (Irish Institute of Legal Executives, 2016). Similarly, there appears to be no mandatory CPD requirement for patent and trade mark attorneys (APTMA Ireland, 2017).

6.7.1 Regulation

On regulation of CPD we would, for convenience, repeat here what we say in the Comparative Analysis at 3.3.1. 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 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 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).

Globally, most lawyer CPD systems, are inputs based (see Comparative Analysis, table 1). There is a recent trend however, amongst legal professions in common law countries, to move towards a different model. These different models attempt to focus on the outputs, the learning and benefit to practice, of CPD activity. This is, of course, challenging, and a model sometimes adopted could be described as cyclical, in which the practitioner identifies learning goals, plans to address them and reports on the activity undertaken to meet the goals (see Comparative Analysis at 3.3.2). Examples are those of England and Wales (Bar Standards Board, 2016; CILEx Regulation, no date; Solicitors Regulation Authority, 2016); New Zealand (New Zealand Law Society, 2017), Scotland (Law Society of Scotland, 2017) and Alberta (Brower & Woodman, 2012; Law Society of Alberta, 2017). Some respondents were aware of the recent change by the SRA in England and Wales to a more cyclical model. This requires solicitors annually, to reflect on the quality of their performance by reference to the regulator's competence statement; identify their learning and development needs, plan to address them and address them; record the process in the event of later regulatory enquiry and make an annual declaration of compliance (Solicitors Regulation Authority, 2016). It is also deliberately linked to Principle 5 of the SRA's Handbook, requiring solicitors and solicitors' firms to deliver a competent service to their clients (Solicitors Regulation Authority, 2017).

One respondent in our interviews felt that this model was "crazy" as they understood that it only required solicitors to state they had met their developmental needs. Another liked the reflective learning approach. A third felt that a mandatory input requirement was required for policing purposes although there was logic in doing CPD activity because it was useful and relevant to an individual's practice. There is further discussion of different ways of monitoring CPD activity in the Comparative Analysis at 3.6.

Other professions in the Republic of Ireland, such as the medical profession, also adopt inputs models. However, the accountants are, in line with internal accountancy education standards, given an individual choice of adopting an inputs, outputs or combination approach (Chartered Accountants Ireland, 2016) and surveyors are required both to 'plan, undertake, record and evaluate' but also to complete a minimum of 60 hours in each three year period (Society of Chartered Surveyors Ireland, No date). Nevertheless, there is evidence that, globally, professions are moving towards more outcomes-focussed or cyclical CPD systems with 89% of the professional organisations in a recent study requiring evidence of planning and reflection in some way, a third requiring changes in working practice and a quarter 'evidence of client outcomes' (Professional Associations Research Network, 2015).

6.7.2 Course providers

As with the FE-1, there is a variety of providers (e.g. Legal Training Services, no date; LegalCPD.ie, 2017) including local legal associations (e.g. Dublin Solicitors Bar Association, 2017) although, unlike the position with the FE-1, the LSI is amongst them. See also a description of the range of provision in the Comparative Analysis at 4.8.3.

We were told that post-qualification training is provided by two sections of the LSI: (1) Law Society Professional Training, which offers shorter two- day courses, conferences and an annual gala (2) the Diploma Centre which offers Diplomas, Certificates and MOOCs, and a Streetlaw project. Both are run on a commercial basis, and many courses are open to non-lawyers. They have over 500 lecturers and tutors who receive a small payment. This, we were told, helps to ensure buy-in from the profession and allows tutors to say to their peers that they are the acknowledged expert in a particular area.

Another respondent, however, questioned the motives of practitioners delivering CPD who, it was felt, might be seeking referral work rather than sharing their knowledge fully.

The LSI's position on providers of courses is as follows:

The Society does not accredit any particular course provider and the onus is on a solicitor to exercise his/her own reasonable judgement as to the quality of education/training being provided and its relevance to his/her practice. Courses of CPD may be provided by the Society itself, by local bar associations or other legal associations, by universities or other learned institutions or organisations, or courses may be provided by way of in-house training whether the training is provided by in-house professionals or by external professionals.

Courses of CPD may be completed within or outside the State and its attendees do not have to be comprised only of solicitors but, as with all CPD, the courses must be relevant to the practice of the solicitor attendee concerned, either at the time it is undertaken or in the future.

(Law Society of Ireland, 2016b, pp16-17)

One respondent in our interviews felt that CPD providers are 'patchy in quality' and some are so cheap there was doubt whether they were any good. One respondent expected competition to increase but hoped that could be good in terms of encouraging continuous improvement of the courses.

The LSI provision of both CPD and Diplomas was viewed very positively by the majority of respondents who discussed it, although one respondent (who had experience of both organisations) had preferred the organisation, timetabling and depth of content of a King's Inn Diploma. Specialist accreditation however, was not thought appropriate yet and is forbidden by rules on advertising (see 4.3.1) although one respondent was in favour of restricted practising certificates. One respondent understood that some people were against post-qualification Diplomas as they thought the initial qualification was sufficient and that additional qualifications detracted from it in some way.

Diplomas are designed and taught by practitioners and the system is reliant on a great deal of goodwill, which was noted by several respondents. They were thought to be well-organised (although one respondent felt they were less well-organised than the King's Inns equivalent). Because the LSI has statutory authority to grant awards, the Diplomas and Certificates are not formally aligned with the NFQ but are thought by those involved within them to be at masters' level.

Not all respondents used LSI courses, as they might have all or most of their CPD provided in-house, or use regional law society/bar association provision. For solicitors in the regions, online delivery of CPD was significant.

6.7.3 Content

Lawyers, particularly perhaps in common law countries, may tend, not unreasonably, to focus on CPD as a means of maintaining currency in their knowledge of the law. Although McGuire et al found that 'CPD is conceptualised in terms of core management and personal skills rather than specific legal knowledge and/or skills' (McGuire, Garavan, O'Donnell, & Murphy, 2001, p 36), the default position of our interviewees was that CPD was about keeping up to date. It may become necessary to separate this kind of activity, which maintains static competence, from activity that promotes innovation in practice. This dilemma has been noted in the literature:

Providing CPE [/CPD] 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)

... it is clear that some forms of practice are likely to be so circumscribed and limited that continuing engagement in them alone will inhibit the broader development of the professional. This implies that CPD requires far greater opportunities to engage in practices that extend the repertoire of practitioners and that the focus needs to move from an analysis of individual knowledge skills and competencies to an analysis of environments and what the practices in them generate in terms of extending practice scope. ...Professional bodies would need to be more nuanced in their recognition of members ... and accredit specialisations and particular scopes of practice rather than taking a one-size-fits-all stance.

(Boud & Hager, 2012, p. 27)

See further the discussion in the Comparative Analysis at 2.8 of the role of learning in the workplace to development of capability and expertise. It is not uncommon for lawyers' CPD schemes to include mandatory coverage of ethics and regulatory matters, as does the LSI system (see the Comparative Analysis at 3.3.3 and Table 1).

Topics mentioned in the course of our interviews for possible inclusion in post-qualification education included:

- cyber security/coding (see 3.6.3).
- juvenile justice (suggested as something that required specific accreditation).
- management skills – leadership, HR training, how to handle people.
- regulatory crime (although the respondent may have felt this should be covered before qualification).
- areas which will be more relevant in the post-Brexit era.

The mandatory management component in the current system might, we were told, be treated in a more box-ticking way in large firms as such firms have separate teams to deal with accounts and anti-money laundering compliance.

Respondents thought there was scope for the LSI to expand its activities into mediation and judicial training, areas which, we have been informed by the LSI, they already cover, including a diploma delivered with the Judicial Studies Institute. Coverage on coaching/wellbeing/professional psychology was emerging and resource-intensive but well-received. The respondent who discussed this felt that if the LSI could get people to change the way they think about professional life, it could lead to a paradigm shift. The LSI could lead the way in re-educating the profession.

Another respondent felt that when deciding areas for their Diplomas, LSI was too influenced by commercial firms and which areas are lucrative: there should be greater focus on areas where the client is vulnerable.

6.7.4 Attitudes

As described in the Comparative Analysis at 8.2.4, the LSI CPD scheme was introduced in 2003 (Solicitors (Continuing Professional Development) Regulations 2003). It is, therefore, comparatively recent as a mandatory scheme. Prior to the formalisation of CPD for solicitors in Ireland, an empirical study (McGuire, Garavan, O'Donnell, & Murphy, 2001) showed that there was already 'a reasonably high level of participation' in CPD activity (ibid, p 31, see also the list of benefits and disbenefits in Table 4). It is notable, however, that some of the CPD interventions listed as being used (including reading of books or journals, and participation in coaching and mentoring, ibid, p 35) would not 'count' under the current mandatory scheme.

Although some respondents felt there was still an element of box-ticking amongst some members of the profession, others felt that the attitude of practitioners was now generally positive. One respondent, however who felt that the profession sees CPD as an onerous obligation rather than life-long learning that is useful and beneficial wondered if the LSI could do more to promote a culture of lifelong learning, noting that there was always a rush to complete CPD requirements at the end of the year. Another respondent felt that most solicitors want to stay up to date because it is the right thing to do; but some just go to CPD events to fulfil their requirements. Another felt that reasons for participation beyond regulatory compliance included wanting to upskill or change practice area.

6.7.5 Use of technology

The LSI has invested a considerable amount of resource in MOOCs, use of iPads, apps and webcasting with a view to reaching all of the profession and enhancing student-centred learning (see e.g. O'Boyle, 2012; Greal, Kennedy & O'Boyle, 2013, O'Boyle, 2013 Greal, 2015 and Comparative Analysis at 4.8.3)). The benefit of this was appreciated by solicitors in the regions. One respondent felt that education on case management systems, cyber security and coding might fit better into CPD provision than into the PPC (unless offered as an elective).

6.7.6 Training of practitioner tutors

We note that the 2007 report suggested that CPD points might be available for training supervisors (Law Society of Ireland, 2007) and we understand from the LSI that CPD credit is available for tutors and lecturers, who also receive credit for their preparation time. A number of respondents commented on the value and the goodwill of the practitioner tutors on the PPC. There are about 1,000 members of associate faculty. Practitioners are paid €140 for each 1.5 hour tutorial and €190 for an hour's lecture, more for a workshop. One respondent felt that this did not really cover their time if they properly prepared for classes. One challenge in creating a part-time model, or a PPC run outside Dublin, would be in recruiting sufficiently expert staff able to teach at the weekend or in the regions.

Some respondents perceived a variation in quality between different tutors, one suggesting that 60% were good and 40% OK or just fine with some lecturers not particularly engaged. One perceived that different lecturers working on the same module could repeat content. There were clearly challenges

in staff liaising with each other for consistency and to manage topics such as ethics or skills to ensure that pervasive subjects were taught and assessed consistently. One respondent (a tutor) thought it would be useful if tutors occasionally sat in on the relevant lectures in preparation for tutorials.

The PPC staff train their practitioners and evaluate them. PPC staff are alert to practitioners who are not sufficiently committed or receptive to the way the course is delivered. Attempts are made to recruit tutors from big and small firms and regional and Dublin firms.

Annual faculty training including workshops run by staff in August is attended by slightly over 100 attendees who also value it for the networking. In terms of formalised training, each manager trains their practitioner team. A website with useful information proved not to be used by practitioner tutors. Some specialist tutors come in only once a year. They are unlikely to commit to formal training and the law school's priority is getting them in the building, as there are not many to choose from. There are challenges in trying to keep all the teams of practitioners up to speed and ensuring consistency of standards, whilst recognising the advantages of such a system as they bring the office practice directly into the course.

A certificate in professional education is offered and taken by a small number of tutors. We understand from the LSI that there is a progression route from the certificate to an MA in Education offered in conjunction with DIT. There is, however, no training requirement before a practitioner can teach. One respondent felt that the [annual faculty] training available was of limited value given the numbers that it is seeking to reach.

When the iPad project – which received an innovation award from Apple (Law Society of Ireland, 2016c, 2016d, Comparative Analysis 4.8.1) - was rolled out on the PPC, staff were given iPads. Practitioner tutors were offered a scheme to purchase iPads at a discount. In addition, many went out and bought themselves one which was thought to demonstrate their dedication. Tutors are given an iPad for use in tutorial.

Comments included:

- Training of tutor practitioners – they do run a certificate in professional education and a small number do that; they run yearly faculty training – they get slightly over 100 attendees and they have workshops run by staff, practitioners like it for the networking. In terms of formalised training, each manager trains their practitioner team but it's quite ad hoc, at one point they set up a website with useful information but it wasn't used by practitioners.
- Some tutors have specialist expertise and come in once a year, they're not going to commit to formal training and the law school's priority is getting them in the building as there aren't many to choose from.

It would appear that the structure of training could be reviewed. For example, if it is not already happening, it might be that occasional email alerts might reach more practitioners than a web site that they need to click to; and which could take tutors directly to online training resources.

6.7.7 Conclusion

Clearly, formal CPD in the classroom, through research and writing or online webcast is far from the only form of learning that takes place in the workplace (see the Comparative Analysis at 2.8 and 3.2) and for a recent evaluation of the range of activities, IFF Research & Sherr, 2014). Supervision, reflection and mentoring in the workplace are significant contributors to the development and

maintenance of competence, as well as to innovation and enhancement of practice. A wider range of activities could be regarded as legitimate CPD activity.

An inputs based model of CPD has the attractions, for a regulator in being straightforward to measure and to monitor. As a policing mechanism, it could be described as low trust and potentially infantilising of the individual professional. It must be recognised that it permits practitioners to have the time and space to learn, but does not demand that they do. It may at least ensure that employers provide time that can be devoted to learning rich activity (although in England and Wales, Henderson et al found employers demanding that employees take leave for CPD activity and pay for it themselves). Some combination of a prescribed minimum time, in order to protect employees, with resources and evaluation mechanisms designed to focus on learning, may be a medium term compromise, bearing in mind the comparative youth of the LSI scheme. Nevertheless, it is in the interests not only of individual solicitors, but also of their employers, to monitor the impact of CPD activity on practice, whether through appraisal, cost/benefit analysis of the CPD budget, or effects on claims against the firm or, indeed, insurance premia.

The use of specialist Diplomas as a focus for post-qualification specialism is to be commended. The LSI has also, since 2015, worked with a British university in the delivery of an LLM designed around practice. If the LSI can work to encourage its members to achieve masters' level qualifications, this may add to the profession's standing, particularly in those EU countries where it is the norm for legal practitioners to hold a masters' degree.

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Chapter 7

Future development of solicitor education

7.1 Introduction

In this chapter, we consider first the field of legal education technology, including possible approaches, the use of tools and what may in the future be valuable for the LSI. Next, we consider the future possible models of professional legal education that the LSI may wish to consider as models of good practice that they can draw upon to develop their curriculum models. The models are presented as three case studies. We give general comment on their applicability to professional education in the LSI. We do not privilege one over the other. As we said in the assessment section in the last chapter, professionalism is a complex phenomenon, and it is never the case that one approach can embody all that need be learned about it. We do, however, point out which aspects might be adapted to Irish solicitor education.

Finally, we turn to the LSI itself, and consider what our interviewees told us about their relationship to the LSI. The organisation is at an interesting point in its development, and it is useful to hear from interviewees in the profession, speaking anonymously, on what they value of the relationship that they have with the LSI.

7.2 Technology and Irish solicitor education

Technology is transforming many aspects of our lives – mobile telephony, smart homes, the internet of things, autonomous vehicles, AI, biotech life extension, the development of Fintech by banks and others, smart cities (see for example Alphabet’s announcement of its development of a 12 acre Waterfront development in Toronto) – these are just some of the remarkable applications of digital technologies.⁷³ It is probably fair to say that the digital domain has influenced the legal professions less than others – compare the slow pace of digital courtrooms in any jurisdiction, for example, with the speed and transformative power of the use of technologies around medical imaging in hospitals and surgeries.

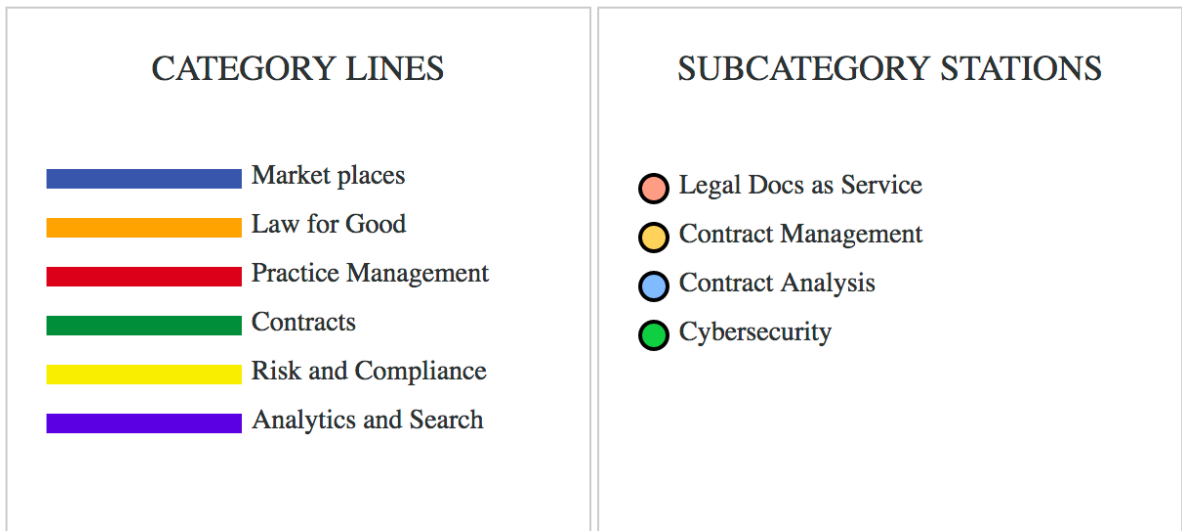
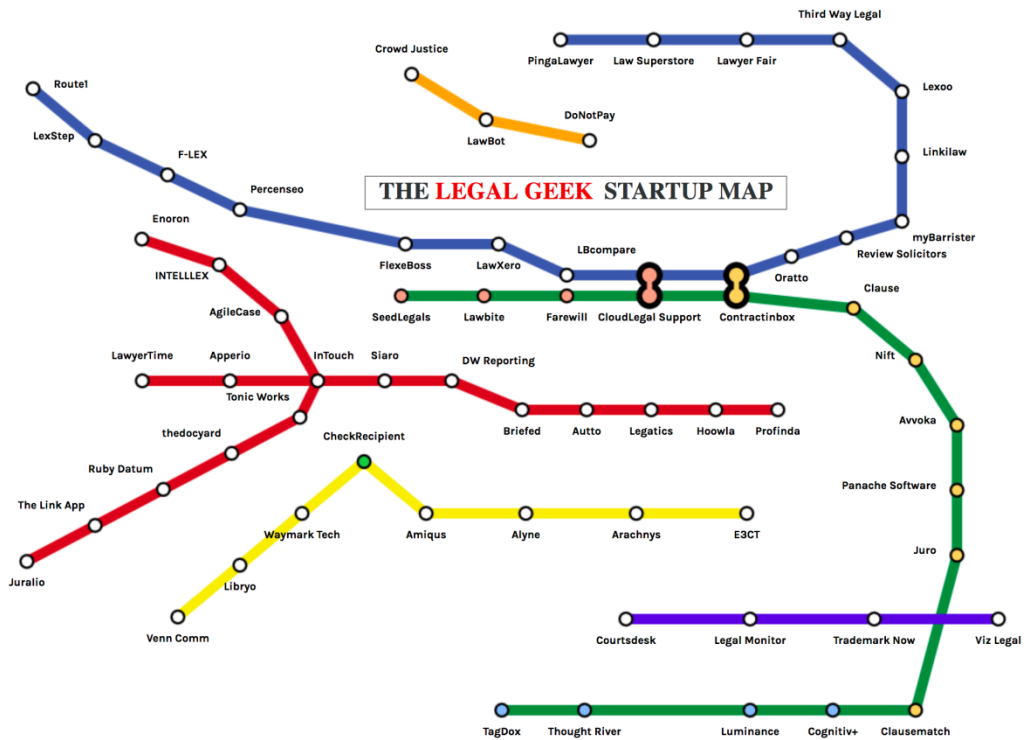
7.2.1 Mapping the field

It is useful for us to consider what is in use in professional legal technologies before we think about digital technology use in professional legal education. Mapping the area of legal tech innovation is problematic, however, because there are currently no established categories or taxonomies. There are a large number of informal ‘maps’, often jurisdictionally-based, and these provide a sense of the areas under development, the possible disruptions to established practices, and a sense of future developments. However, they rarely give anything but a fragmentary sense of global shifts. Much of the academic research tends to snapshots, rather than careful longitudinal analyses.

A good example of this is the Legal Geek subway map of start-up applications, where the lines and stations are categories and subcategories:

⁷³ For a description of the Alphabet Sidewalk Lab project in Toronto, see McConnell, (2017).

Figure 3; Legal Geek startup map (Legal Geek, 2017)



The map serves to show us the gathering richness of applications in the marketplace, which was once dominated by larger publishers and legal software companies, and shows the extent to which the rules of the social media fields play out in the digital legal fields. Few of these will survive for long; but they will contribute to the collective wisdom of start-ups, the digital legal commentariat, and add to the collective experience of law firms eager to exploit new advances in AI, data exploitation and practice innovation (should that experience be usefully preserved as knowledge management). But the map cannot give us a reliable guide to what may survive for more than a few years, or what is developing

pace in other jurisdictions or globally. CBI Insights (no date) has published an extensive range of maps, but again, these go quickly out of date.

The size of the online legal services market is considerable. Estimates are highly variable in reliability.⁷⁴ Digital legal services, which are expanding almost every month, include the following:

- AI legal technologies.
- Blockchain.
- E-discovery.
- Intellectual property software services.
- Lawyer search.
- Legal research.
- Litigation finance.
- Notarization technologies.
- Online legal services.
- Outsourcing (both off-shoring and near-shoring).
- Practice management software.

The most recent report on the effects of digital technologies on legal services comes from the International Bar Association (IBA) and is probably the most sophisticated in its research methodologies (IBA, 2017). The report summarises what we are experiencing as the emergence of new forms of value creation. The drivers are well-recognised in the literature: unmet client need (also called the latent legal market), increased pressures on conventional models of legal service delivery, the reconfiguration of legal services, and increasing competition in a delivery market that where, since the global financial crisis, is increasing in complexity, and in business mix and organization. Inevitably, regulation is trying to catch up with the nature, extent and speed of change. In the UK and Australia, for instance, there is a focus on consumer interests, the creation of alternative business structures including MDPs, new roles for other (sometimes non-lawyer) regulated and unregulated legal services providers, outcomes-focused regulation, and a move towards co-regulation as the regulatory fields become more and more complex (Webb, Ching, Maharg, & Sherr, 2013).

The report also signalled the geographical shift of power and business globally, from the north and west to the global south and east. The geographical expansion of western firms faces challenges in the complex social processes at work in the local-global boundaries, as evidenced by the slow pace of expansion by elite UK law firms into the emerging markets of Asia-Pacific, Africa and Central and South America. Coupled with this the report sees the growing power of emerging economies and associated legal services providers in the BRICS global legal markets that signal a shift of economic power to those emerging economies.

The report also summarised the challenges for legal education, and these include professional development and identity gaps in students. The new skills required included interpersonal and interdisciplinary skills, commercial skills, the competitive advantage of being literate in technology,

⁷⁴ McKinsey, (Manyika et al., 2013) for instance, estimated a spend in the value of automation of the worldwide knowledge industry within the legal sector by 2025:

Based on our estimates, it is possible that by 2025, productivity gains of 45 to 55 percent could be achieved for the 25 million knowledge workers in this category, which would lead to economic impact of \$0.6 trillion to \$0.8 trillion per year. (p 47)

communication skills, management skills and adaptability to change. The report saw a trend towards lifelong learning in technical, professional and networking skills; towards internationalization, online learning and employability. Allied to this was, they saw, a shift in legal education from one size fits all to diversification (i.e. different paths for different legal jobs). In the face of increased complexity of legal knowledge, innovative programmes were being developed which also attempted to cope with increased globalization of legal services (and the globalization of legal education itself). In general, the report saw a skills mismatch between the new skills required, and current legal education architecture.⁷⁵

In general, though, and considering legal education in particular, this is not much different from the conclusions of the Legal Education and Training Review (LETR) report for England and Wales (Webb, Ching, Maharg, & Sherr, 2013). Following the publication of that report, there has been a movement by regulatory bodies towards a greater recognition of the role technology plays in professional legal education in at least two jurisdictions – the USA and the UK -and much more engagement with the topic, both in research on legal services and in legal education (but not so much on the research into digital technologies in legal education). In both the USA and Canada there has been an acknowledgement that more responsive regulation and more understanding of the meta-regulation of technology and innovation is required. In the USA, the ABA Task Force Report observed that innovations in legal services required greater understanding of and use of technology in law schools, and that ‘only a modest number of law schools currently include developing this competence as part of their curriculum’ (ABA, 2014, p 14). It called for the accreditation system to facilitate innovation, observing that ‘current procedures under which schools can seek exceptions from ABA Standards in order to pursue experiments or innovations are narrow and confidential’, and ‘energetically restructure the variance system as an avenue to foster experimentation by law schools and open the variance process and results to full public view.’⁷⁶

In a report published in 2014, the Canadian Bar Association declared that technology, along with innovation and liberalization of legal services, constituted the three drivers of ‘transformative forces’ changing the Canadian legal profession (CBA, 2014). At 4.1 the Report explicitly links analysis of professional use of technology with legal education, not just for CPD purposes, but for Canadian law

⁷⁵ It should be noted that the report database is heavily weighted towards legal services, not legal education, and so the methodology sometimes skews the results. For example, and rather confusingly, legal education appears to have a citation of only 4% in the Stanford Law School CodeX Techindex company – hardly a surprise, given the nature of the database. And a number of authors on legal education innovation do not appear in the database of citations.

⁷⁶ The ‘variance system’ is a procedure by which the ABA can negotiate its own highly-restrictive standards on the use of technology and innovation for ABA-accredited law schools in the USA. Currently the variance with the highest profile was that granted to Mitchell Hamline Law School to enable it to offer a hybrid online/on campus JD law degree (see Mitchell Hamline School of Law, 2017). The structure of permissive variance, it is fair to say, is not one that is conducive to the design and implementation of agile innovation or creative design thinking.

Though the Task Force did not investigate different meta-models of regulatory change or regulatory agents to bring this about, it advocated improved frameworks:

To expand access to justice, state supreme courts, state bar associations, admitting authorities, and other regulators should devise and consider for adoption new or improved frameworks for licensing or otherwise authorizing providers of legal and related services. This should include authorizing bar admission for people whose preparation may be other than the traditional four-years of college plus three-years of classroom-based law school education, and licensing persons other than holders of a J.D. to deliver limited legal services. The current misdistribution of legal services and common lack of access to legal advice of any kind requires innovative and aggressive remediation.

Commentators point out the need for ethical frameworks to take account of new technological challenges, e.g. Podgers (2014).

schools as well.⁷⁷ It urged law schools to innovate, and many of its recommendations on legal education echo those in the LETR report – the adoption of new models for legal education, enhancement of problem-solving in the practising world, focus on learning outcomes, easing restrictions on students in legal clinics, structured, consistent, rigorous pre-call training, consistent knowledge and skills standards for certification, the creation of parallel legal programmes, and the improvement of CPD (Webb, Ching, Maharg, & Sherr, 2013, recommendations 15-22; CBA 2014, pp 58-63).

As we reported at 3.6 above, there is an acknowledgment on the part of at least some solicitors we interviewed that while novice solicitors may be more experienced in the use of consumer devices and apps, they may not necessarily know how to use the more complex and niche systems in use in legal practice and in the administration of justice. Nor might they necessarily know the principles underlying new technologies: not every Facebook user who tags a photograph may understand the concept of meta-data and its use in professional contexts.

The LSI already makes use of digital technologies on its professional education programmes. Moodle is the LSI's learning management software platform, which is used to host SCORM-compliant video lectures with embedded quizzes compiled using authoring applications such as *Articulate*.⁷⁸ iPads are used extensively on the PPC, where each student is equipped with the device that is set up as their personal device, and which contains course information, college email, the college virtual learning environment, legal databases, wi-fi printing and real time course information. In addition there is an array of apps and technologies that are used for teaching and learning on the programme, including iTunes University and iBooks. For their use of digital technologies in this way the PPC was justly awarded the title of an *Apple Distinguished Program* (Law Society of Ireland, 2016c and d). The LSI also participates in *Apple Teacher*, a new professional learning programme from Apple that supports teacher activities. Apple TVs are used in all learning spaces in the LSI.

Plagiarism software is in use (*Urkund*), while *Kahoot* and *Socrative* are used to facilitate student participation during lectures and tutorials. PDFs are commonly used for textual downloads and printing, and *iCloud*, *One Drive* and *Dropbox* are used for online archiving and data collaboration. Other applications are in use, including professional productivity software. Online Diplomas and the use of MOOCs are particularly innovative examples of the LSI's use of digital technologies for professional education.

These are impressive digital educational practices. However the LSI may want to consider adopting more of such digital innovation generally, on the PPC I and II, in the technologies that could be used as part of a reconstituted QLTT and in the digital technologies appropriate to lifelong learning, on the current Diploma and other CPD programmes. We mention these in dealing with each in turn below; but first we shall outline five general approaches that might be useful to the developments that we recommend for the LSI and which bear upon many of the comments made by interviewees about the use of technology in practice and in legal education at the LSI. They are as follows:

- Social media apps for learning.
- Digital literacies.
- Credentialling: badges, regulation and programme design.

⁷⁷ The Report contains many examples of innovation and technology development, largely from branches of the legal profession. On legal education it advocated that 'legal education providers, including law schools, should be empowered to innovate so that students can have a choice in the way they receive legal education, whether through traditional models or through restructured, streamlined or specialized programs, or innovative delivery models (CBA, 2014, p 58).

⁷⁸ Irish language audio recordings are also created using *PoodLL* software, and hosted on Moodle.

- Simulation.
- Legal practice and technology theory.

7.2.2 Social media apps for learning

As Maharg pointed out (2016, pp 15-16), the last decade has seen remarkable advances in what might be termed the mobilisation of our culture – the creation and use of mobile devices and software applications built around most of our daily activities, and allied to data collection on a global, massive scale. Always-on and mobile connectivity are now the norm for us, and their cultures will affect almost every aspect of legal learning. Social media can be used to powerful effect in legal education, as many have noted – from the use of Twitter (Bruns & Hallvard, 2013) to the use of computer-aided qualitative data analysis for both teachers and students (Greaves, 2016). These can be exceptionally useful for professional learning; but there seem to be few applications in the field. A useful distinction was drawn between apps for legal education and legal education as an app. In our view, the latter is a much more powerful approach, and involves changing many aspects of legal educational design and implementation, use of physical and online spaces and much more. (Kirchberger & Storr, 2012). We note that the LSI has already embarked on work in this area, using Twitter, LinkedIn and other platforms; and in our view this work is to be commended, and taken forward. Many of the software applications in use serve to host data and information for students, and we would argue for more use of interactive and participative digital technologies. We would also advocate for the use of technologies such as ePortfolios that allow the considerable quantities of data that a student will encounter and use on the PPC to be used within traineeships and in a novice solicitor's early years in practice. In this regard an ePortfolio can be a useful app for the purposes of keeping in touch with alumni/ae, and marketing the CPD that the LSI already provides for the profession.

7.2.3 Digital literacies

This is a complex subject. While it is reasonably clear to us that the LSI could adopt a new and explicit approach to digital literacy, nevertheless such an approach is always highly contextualised. In the case of professional legal education in Ireland, digital literacy needs to build upon digital literacy standards in undergraduate law degrees, dovetail with what is essential to traineeships and what is likely to happen in terms of technology change in the near future. There are models of academic digital literacy that can be adapted. The British and Irish Association of Law Librarians (BIALL), for instance, has developed a useful model based in part upon their research that the academic stage focused too much on content at the expense of process, that is to say how a student learns, transfers learning, and is able to move between search modes and writing modes (British and Irish Association of Law Librarians, 2012). In the LETR report we cited critical views given by three senior librarians in interview, commenting on trainee research behaviour:

Trainees appeared to be generally unfamiliar with paper-based resources by comparison with digital resources. In addition they noted that trainees seemed to depend on one-hit-only searching [...] They used Google extensively and their searches tended to be shallow and brief. Trainees were also increasingly unable to distinguish between the genres of legal research tools – the difference between an encyclopaedia and a digest, for example. They seemed to lack persistence and diligence in searching, as well as organisation.

(Webb, Ching, Maharg, & Sherr, 2013, para 2.100)

The interviewees pointed to the development of a number of key documents, namely the BIALL Legal Information Literacy Statement (British and Irish Association of Law Librarians, 2012) and the Society of College, National and University Libraries (SCONUL) Digital Literacy Lens (Society of College, National and University Libraries, 2016), as key documents for the development of digital legal literacies.

Other commentators have pointed to the need to revise our concept of what digital literacy actually means. Dominguez, for example, observed that many of the frameworks for understanding the components of web literacy are limited in value because they rely on conceptual definitions, and do not take into consideration the social practices governing the use of and writing on the web. Neither do they take account of open and participative accounts of the internet and particular the genres and voicings of social media. As Dominguez puts it:

The classical approach to digital literacy is the reference framework for web literacy. This approach assumes that digital skills are useful in order for people to be capable of selecting, analyzing, processing, organizing, and transforming information into knowledge based on context and personal and social needs. We believe that this approach is excessively instrumental. This is because it does not take into account the new competencies the web offers for people to be active in constructing new pathways for social participation and, especially, learning.

(Dominguez, 2017, p 108)

Thus, it could be argued that the genres and voices that students require to learn on the PPC are significantly different from those academic genres and forms of argument that students learn and practise within the academy. The many different forms of letters, forms of drafting, technical documents such as research reports, client file notes, document review reports and other forms of communications with professionals, clients and others, e.g. professional discussion forums – all these and many more require to be learned and practised in a professional legal programme such as the PPC.

If, as Dominguez points out, social participation and learning are key to digital literacies, then novice lawyers need to learn how to interact over the web. This goes beyond both basic digital research literacy and the cautionary literacy with regard to legal and other information obtained on the web. It also includes writing skills across a wide range of contexts and social situations. We would argue that the LSI should develop a statement on an interactive and engaged model of digital legal literacy for solicitors – not just at the PPC stages but for later professional work, too.

7.2.4 Credentiailling: badges, regulation and programme design

The Diploma Unit might consider the use of badges to signal micro-credentialling, instead of relying upon the usual academic categories of Certificate and Diploma; or use badges to break down the certification of these titles into competence- or outcomes-based learning. This makes learning more transparent to the profession and the regulator, and could be cascaded into PPC I and II, thus creating strong links between the primary professional programme, PCC I and II, the training contract and

continuing professional development. We would particularly recommend that such credentialing initiatives should be trialled on a part-time PPC, where the new model of programme provision will occupy the digital space more than the current full-time version of the programme.

While still a new concept, there are many examples of badges in practice in Higher Education. Perhaps the most recent is the Massachusetts Institute of Technology's offering of digital degree certificates to students when they graduate, which they offer in partnership with Learning Machine (Massachusetts Institute of Technology, No date). Students download a digital version of their degree certificate to smartphones, while also receiving a paper transcript. By using a free and open-source app called the Blockcerts Wallet (Learning Machine, 2017), the digital diploma can be shared on social media and other platforms. The credential is secured using blockchain technology (just one way that the LSI could leverage blockchain at little cost).

Such certificates could be used to verify highly granular competence in transactional work (e.g. the successful completion of a conveyancing or a litigation in a particular court), or competence in PBL or in skilled performance such as interviewing or drafting. Learners could collect and carry with them their CPD badges in digital containers such as Mozilla's Backpack (Mozilla, 2017).

Verification is really a mode of generating trust in a process or product – or both, in the case of a digital diploma. Trust also lies at the heart of the use of blockchain in legal services. Where every transaction is digitally signed, chained together and replicated on many hundreds of servers globally, trust in identity becomes much less of a problem in the digital domain. The same may be said for the development of applications such as ePortfolios where one of the two problems of use outside the bounded domain of higher education was the issue of trust and verification of work undertaken, and accreditation of that work. Blockchain is a solution to this problem. It is also a solution to the second problem, namely that of privacy. Even in higher education, privacy issues have dogged the implementation of ePortfolios which, even when well designed for use within the higher education environment, do not of themselves guarantee privacy of data beyond it. In professional practice, care also needs to be taken in relation to client confidentiality, evidential value (Goldstein, 2016) and, in the legal context, whether the contents can be protected by legal professional privilege.

However there are further and more radical implications to this for all the LSI's programmes (and indeed for higher education generally). Credentials of the future will not be credentials: they will be the work itself. Credentials are really just a verification of work completed to certain standards approved by an institution. If not just credentials but *all student work* is stored on the blockchain, then from the point of view of students transitioning out of higher education into professional employment, it is possible to take with them their badged work as well as the badge itself, if the ePortfolio is designed to be portable beyond the professional programme. The key to this of course is that students give permissioned access to trusted bodies or individuals to view specific pieces of work or credentials to through the blockchain's ledger. These need not be humans: they may in the future be robot algorithms searching through ePortfolios for exactly the sort of grade and experience that a student or professional can demonstrate in the ePortfolio.

There are other implications of the credentialing revolution. Much of regulation ought to be about culture shift and balance. Regulators and professional bodies need to identify the culture that they wish to encourage in legal education, and plan to bring that about. It also needs the balancing of vision with reality: with the aspirational and felt desire to do what is best, balanced by the reality of the resources (especially financial) that exist or can be obtained, and what actually exists in the field and how what is there might be changed with practical and real results for the better. Such planning will always be a matter of persuasion, negotiation and pragmatic shifts. Key to this is the idea of

planning networks and communities that will develop and sustain such change, and infuse it into already existing networks and practices. The issues that arise from regulation are less about the nature of regulation in terms of command and prohibition (regulation as legislation) and more about the formation and nurturing of social relations (regulation as culture change).

This is true of most levels of legal education, from student-teacher communications to student-law school or trainee-law firm, and between regulator and training provider. Part of the reason for this is that we often think episodically about legal education – either as episodes of broad education, e.g. undergraduate, or postgraduate or vocational professional stages. Or we think in terms of singleton relationships, e.g. student-lecturer/tutor, law school-regulator. There is a complex social context to each of these relations, but we rarely give serious thought to its existence through time. Shulman described this well:

[t]oo often teaching is identified only as the active interactions between teacher and students in a classroom setting (or even a tutorial session). I would argue that teaching, like other forms of scholarship, is an extended process that unfolds over time.

(Shulman, 1999, p. 5)

According to Shulman, the unfolding of that ‘extended process’ involves vision, design, interactions, outcomes and analysis. He does not restrict the process to teachers and one presumes that if they are important to teachers, these qualities are even more important to the activities of legal education regulators and professional bodies. Vision is not to be confused with mission statement. It is clear that Shulman is thinking more of a penumbra of qualities and values. Design is a process rather similar to the design process in architecture, where there are multiple real-world factors that have to be managed.

The heart of the process is the educational interaction and the outcome of that interaction which, as Bernstein observes, involves ‘a “transactional relation” between teaching practice and student performance” that is a “benchmark of excellence in scholarly practice”’ (Bernstein, 1999, p. 80). As one commentator on this shift put it (quoting a movie, *The Matrix*), ‘There is no spoon. There are only social relations mediated by richly rendered communications platforms. The question of “who should own this spoon” should be understood as a question about what we want the social relations using the platform to be like’ (Benkler, 2006, pp. 180–86).

Benkler’s point has an import right up the relational scale; and it may be that beyond the five-year boundary that is the speculative end point of this report, we would want to rethink the relations between first qualification in law and the PPC. Across professions and in law across a number of jurisdictions the distinctions between higher education and vocational education are blurring. In Victoria, Australia for example it is possible to become an engineer by associate degree or advanced diploma leading to a four-year degree. The advanced diploma leads to immediate entry to the labour market, where the student would enter at a lower point than the four-year graduate, but would be earning for that period (Karmel and Lu, 2012).

At the very least, technology enables the creation of online learning that is highly personalised and effective – and we shall consider instances of this below.

7.2.5 Simulation

We provided an introduction to the concept of simulation in the Comparative Analysis at 9.5.8. Simulation goes beyond legal hypotheticals, where students are still observers of legal argument, and puts students in the midst of such argument, asking them to act for a client and enact legal representation.⁷⁹ There are numerous examples in the literature. Maharg and Nicol (2015) conducted a systematic review of the literature on sims and technology in legal education in the timespan 1970-2012, across nine jurisdictions, settling upon a dataset of 123 items. Since then the literature has grown, with authors in a special edition of *The Law Teacher* in 2016, for instance, edited by Maharg, describing and analysing their practices.

There is plenty of evidence that properly designed and implemented, digital simulations can provide absorbing and effective environments for student learning (Maharg 2007, Newbery-Jones 2016, Jackson 2016). We recommend that they be used for that purpose on the PPC I, and in some electives in PPC II.

Sim platforms remain problematic, however, for they tend to require specialist software and plug-ins for learning management systems such as MOODLE. SIMPLE was one of the more sophisticated, as was the Sieberdam platform (described at 5.4.3); but neither platform has been continued, for a variety of reasons. Now, a new platform is being developed at The Australian National University College of Law's School of Legal Practice. It includes elements of gamification, and is currently in beta. It has been positively evaluated by ANU students, and is of the type that could be used on a pilot basis by LSI. It allows for single-player sims, virtual firms and for transactions that are generally linear and bounded (e.g. the sale or purchase of property) or more adversarial and more open-field (e.g. a personal injury dispute).

7.2.6 Legal practice and technology theory

How might we operationalize the growing body of research on technology in the legal profession? Curiously, it is rare that a professional legal education programme will consider technology theory; and yet the theorizing of technology practices is as important to an understanding of digital legal services as a knowledge of digital legal services themselves. Technology does not exist in a cultural vacuum. Strongly associated with it, indeed essential to its development in the early twenty-first century, are concepts such as globalization of commerce and service markets; innovation and disintermediation in the professions; the liberalization of market economies; deregulation, disaggregation, e-markets, digital communications media, the economics of digital reach and digital exclusion, the flows of demographics. We argue that some grounding in how lawyers might think about digital legal services is essential to sound digital practices in law. The problem, in what is often an overcrowded curriculum, is how to design and implement such knowledge and practice.

There are a number of different models of how institutions could provide this. The University of New South Wales' (UNSW's) Innovation Law Masters is one (UNSW, 2016). This is modelled as a relatively conventional masters' programme, and for the purposes of the LSI and professional education, is not a useful model. Law Without Walls is a quite different model (Miami Law, No date)) but in spite of

⁷⁹ It may even be that we want to blur the categories of real and unreal, between actual legal practice and simulation or proxy of it. As Maharg (2007, p 283) put it in a vision of future education, talking of a student in 2047:

Her learning [in law] is part of every other activity and boundaries between real and virtual are so blurred that the idea of separate categorisation would appear inexplicable to her.

being highly organic and experiential, is perhaps difficult to operationalize in a curriculum with more conventional professional subjects and topics.

Chicago-Kent's Law Lab (Illinois Tech & Chicago-Kent College of Law, No date) has yet another model. Its Legal Innovation + Technology Certificate Program, still in the process of being formed, is designed as follows:

REQUIRED⁸⁰

Practice + Professionalism (3 credits)

Legal Analytics I (2 credits)

Justice + Technology Practicum I (2 credits)

Legal Project Management + Process Improvement (Lean / Six Sigma) (2 credits)

Legal Tech / Innovation Externship or Clinic (3 credits)

ELECTIVES

Legal Analytics II (2 credits)

Justice + Technology Practicum II (2 credits)

Lawyers as Social Innovators (2 Credits)

eDiscovery (2 credits)

ELECTIVES IN DEVELOPMENT

Transactional Automation

Financial Technology + Compliance

Design Thinking ∩ Law

This is an interesting model from the perspective of regulator and provider. It starts with basic knowledge components which clearly can be fed into the elective structure. And of course it could be

⁸⁰ Credit hours are defined by the American Bar Association (ABA 2017). ABA Standard 310(b) provides that:

A 'credit hour' is an amount of work that reasonably approximates:

(1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time; or

(2) at least an equivalent amount of work as required in subparagraph (1) of this definition for other academic activities as established by the institution, including simulation, field placement, clinical, co-curricular, and other academic work leading to the award of credit hours.

developed as a pathway into a masters' programme, for those solicitors who are interested in pursuing it further. The qualification could be co-hosted and co-taught with institutions internationally.

7.3 Case study 1: Transactional learning at Glasgow Graduate School of Law at the University of Strathclyde in Scotland

We have discussed the overall shape of, and changes to, Scottish professional legal education in the Comparative Analysis at 9.3.2 and earlier in this report at 5.3. Transactional learning was developed at the Glasgow Graduate School of Law (GGSL), a joint school between the law schools of the University of Glasgow and the University of Strathclyde, in Glasgow, Scotland. The merged graduate school was an experiment in collaboration, and lasted from 1999 till 2010.⁸¹

Transactional learning (TL) is analysed in depth in chapter seven of Maharg (2007). At surface level, it means that students learn by doing legal transactions – whatever those transactions happen to be, and in any area of legal practice.⁸² At a deeper level, and following John Dewey's view that education arises from the interaction or transaction between a person and the world, it has been applied by other researchers to focus attention away from the mechanics of teaching (hours, place, outcomes, class organisation) to the relationship between learners and the learning task. For Garrison and Archer for instance, the shift to transaction in distance learning was a way of moving from an industrialised conception of distance learning being 'at-a-distance', to a form of learning where peer collaboration and dialogue lie at the heart of the educational experience (Garrison and Archer, 2000; see also Baynes, et al, 2014). It has seven key features, comprising:

1. *Active learning*

Transactional learning should be active learning, not passive. In that sense, we want students to be involved in activities within legal actions, rather than standing back from the actions and merely discussing them. There is, of course, a place for learning about legal actions. Indeed, transactional learning is rarely possible unless students first have a conceptual understanding of what the process actually entails. However, transactional learning goes beyond learning *about* legal actions to learning *from* legal actions.

2. *Performance in authentic transactions*

As befits the type of learning that students do in a professional legal course, we aim to give them experience of legal transactions. In addition to learning about how property might be conveyed, for example, students also take part in the transaction. They thus learn considerably about the practical realities of legal actions.

3. *Deep collaborative learning*

Transaction as collaboration, indicating the root of the word: literally 'acting across'. Students are valuable resources for each other, particularly if they have

⁸¹ The background detail is at Maharg (2011).

⁸² It is therefore wider in scope than the meaning of the phrase 'transactional lawyering', and can include court actions and extra-legal actions too.

opportunities to engage in both cumulative talk (the accumulation and integration of ideas) and exploratory talk (constructive sharing of ideas around a task).

4. *Reflective learning*

Transactional learning involves thinking about transactions -- indeed (to go back to the root of the word) thinking *across* transactions. It includes the ability to rise above detail, and 'helicopter' above a transaction; or the development of the ability to disengage themselves from potentially damaging views of the group process within the firm, and re-construct that view. It includes documenting firm transactions.

5. *Holistic or process learning*

In seminars and lectures and in their reading of texts, students engage with ideas, and form understandings of legal concepts, the identity and purpose of documents, actions and the like. However such learning is part-to-whole; we also need to give them opportunities for whole-to-part learning, and for learning about legal process. The transactional projects provide the environment for this form of learning.

6. *Relevant professional assessment ...*

Forms of relevant professional assessment could include the following:

- Client-based long case, such as constructing and completing a client file in a simulation.
- Case file review of simulated client file.
- Portfolio – self-assessment and peer-assessment.
- Log book/activity log/confidential file.
- Critical incident review.
- Peer-review on collaborative work.
- Collaborative activities that provide the ground for assessment.

7. ... that includes *ethical standards*.

The standards, while aligned to jurisdictional codes of conduct and ethical rules, are primarily encountered in conflicts between the rules in practice. In other words learners are required not just to know and be aware of ethical conduct, and to formulate a response, but to *enact* a response and any necessary follow-ups. In this sense learners construct the case and construct ethical frameworks within the case for themselves, drawing up knowledge of conduct rules and the ethics of legal custom and practice. Ethics and professionalism are thus fused within transactional learning. Learners do not stand outside the case as observers. They are inside it as participants, and compelled to act, communicate and made decisions.

Transactional learning has been the subject of literature as far afield as Scotland (Barton, Maharg & McKellar, 2006), Australia (Ferguson, 2015), and Hong Kong (Chow & Ng (2016), and many subsidiary concepts and approaches to legal learning have been developed within it. One approach that has not hitherto been discussed in depth, and that may be of use on the PPC, is that of 'swift trust'. Garrison and Arbaugh note that it is difficult for cognitive discourse to occur without a foundation of social presence, involving affective communication, social bonds, and the trust to engage in open communication (Garrison and Arbaugh 2007). In transactional learning students worked in collaboration with each other, in virtual firms, and one of the key skill relation they had to develop and practise was that between learning and trust; and *swift* trust was an essential component.

Trust in temporary groups has been the subject of scholarship for some time. The concept of 'swift trust' was first articulated based on observations of high risk, high stake temporary groups including cockpit and film crews (Meyerson, Kramer, & Weick, 1996). Without adequate time to make informed judgements about the integrity,⁸³ capability⁸⁴ and benevolence⁸⁵ of other participants, temporary groups must presuppose trust in order to function.

Eight of the nine characteristics of temporary systems they consider seem particularly apt in the context of professional legal education in Ireland:

- Participants with diverse skills are assembled to enact expertise they already possess;
- Participants have limited (or no) history working together;
- Participants have a limited prospect of working together in the future;
- Tasks are often complex and involve interdependent work;
- Tasks have a deadline;
- Assigned tasks are non-routine and not well understood;
- Assigned tasks are consequential;
- Continuous interrelating is required to produce an outcome.

Meyerson et al note that in temporary systems, 'swift judgements about trustworthiness can't be avoided, because they enable people to act quickly in the face of uncertainty' (1996, p 170). They also suggest three reasons why participants in temporary systems entrust their fate to the others:

- Implicit threats within the system (i.e. mutual control of each other's fate);
- The prospect of future interaction;
- Role clarity – dealing with others as 'roles' (which are familiar) rather than as individuals (who are not).

The last point is an interesting one from the point of view of emerging professionalism in students and trainees. Dealing with others as roles does not deny their humanity, their agency or their identity as persons. But it develops a familiarity with the culture of deep collaborative activity. Airline cockpit crew are an extreme example of this, as are swift partnerships in extreme sports such as high-altitude

⁸³ Will they do what they say they are going to do?

⁸⁴ Are they competent? Do they have the skills/ knowledge to complete the task?

⁸⁵ Can I trust this person? Over time will they do the right thing by me and treat me with care and respect?

mountaineering or trans-ocean yacht racing. Within roles, activities, communication, attention and trust are essential.

Simulation, transactional learning and swift trust thus converge as a matrix of three useful elements in the development of professionalism. Given the short periods of PPC I and II, it is a useful matrix for the LSI to consider developing in the future. This is important, not just for the development of the individual student, but for how the firms or legal service providers in traineeship provide a training programme for the student. It also compels us to rethink not just learning but assessment processes, too. In medical education, for example, an increasingly important topic is that of 'entrustment' – the decision to trust a medical trainee with the critical responsibility to care of a patient. Holding back entrustment constrains a trainee's development towards unsupervised practice. Careless or negligent decisions to entrust a trainee place patients in jeopardy. As Ten Cate et al point out, 'the competency-based movement and the introduction of entrustable professional activities force educators to rethink the grounds for assessment in the workplace' (2016, p 191).⁸⁶

7.4 Case study 2: The Law Firm School in the Netherlands

In the last chapter we described the professional educational system of the Netherlands, noting where aspects of it were useful from the perspective of the LSI. One interesting innovation is the Law Firm School or LFS. This initiative is a partnership of the Dutch branches of 16 international law firms, and focused entirely on educating their newly-qualified lawyers. The novice lawyers enter a programme that is partly organised by the Dutch Bar Association (Orde van Advocaten) and partly by the LFS itself. In terms of programme responsibilities, the Bar helps to design and teach skills-based components in the curriculum, while much of the knowledge acquisition is designed and taught by the Law Firm School staff themselves.

The curriculum comprises eight courses: civil law, administrative law, financial accounts, tax law, business law, financial law, litigation and insolvency. The LFS uses the mandatory knowledge components set down by the Dutch Bar Association, and which are the subjects of the final national exam for each course (organised, again, by the Dutch Bar Association). To this, the LFS has added subjects to the courses that are designed especially for lawyers who work for large international law firms.⁸⁷ Faced with adding the skills and knowledge for this into the Dutch Bar Association's mandatory core, the curriculum designers opted to splice the two together. Skills include ADR, professional attitude and professional ethics, technology skills, and writing skills. There are electives, major and minor courses, and exemptions can be granted from tuition, but relevant assessments still require to be passed.

Assessment closely matches the nature of professional learning and development in the partnership's offices. Thus, at the end of the first year an evaluation meeting takes place and at the end of the course, in the third year, a final interview. There is triangulation upon student performance: each

⁸⁶ See also McMurray et al (2017), describing a robust process for developing training and assessment of competence in resuscitation early in hospital residency. The course was simulation-based, and performance was assessed using a validated Simulation Assessment Tool and an OSCE. The course was also costed and demonstrated feasibility and acceptability. It also 'detected several [resident doctors] not meeting a minimum competency threshold, and directed them to additional training' (p.503).

⁸⁷The curriculum for the entire programme is available (in Dutch) at Nederlandse orde van advocaten, 2017. It is interesting to note that publication on the web is a remarkable instance of open learning materials, for what is effectively a private programme. It contains all skills and knowledge components, details of class administration, assessment descriptions, assessment tools, class activities and much else.

student, his or her programme mentor and office supervisor take part in these conversations. The main text for these discussions is the student ePortfolio, which has information that provides evidence upon which to make judgments as to student competency matched against the programme competency profile, the learning objectives that the student has formulated for himself or herself for that year, and the feedback he or she has received from the office supervisor. During the evaluation meeting, the three participants review the year, the work undertaken and the achievements of the student. Students also receive input during the meeting for their learning objectives for the next academic year.⁸⁸

The study plan for the programme comprises blended learning - a combination of classroom and digital education. Students have access to a digital learning environment (DLO), upon which readings, self-assessments and assignments are posted. The DLO is made available for the relevant course more than a month prior to the first day of contact education for a course. Face-to-face tuition is based upon the prior preparation undertaken by students.

The study load in the first year of the programme is 62 half-days, in the second year 57 or 61 half-days (depending on programme choices) and in the third year 9 day parts. These are the hours of contact education and preparation time to be spent and the time you spend learning for the tests. The novice lawyers prepare for classes by reading articles, watching webcasts, taking self-tests and collaborating in group assignments. The classes are taught by senior lawyers from the 16 participating law firms and by university professors. Real life cases are the starting point for every class, and case studies and some simulations are the mode of tuition. As far as possible, training and education tracks what the lawyers do in their law firm practices.

Passing the assessments of the BA degree and the LFS together leads to the LFS Certificate. After the lawyers have obtained the LFS Certificate, they are deemed to have the knowledge and skills at the required level to be able to function in the international commercial and financial practice of the 16 participating LFS offices.

This case study is interesting for the LSI for a number of reasons:

1. From the start, the LFS is a collaborative enterprise: not only between international law firms but also between those law firms and the Netherlands Bar. The LSI may wish to consider how this might be adapted in Ireland and internationally. If the LSI wishes to be a centre for international training and education, this is one model that may be followed. It may be possible to design collaboratively a curriculum that is customised for the needs of specific groups of lawyers, and at a masters' level.
2. A national Bar curriculum has been adapted to the specific needs of a sector of the legal profession. This could be adapted by the LSI in PPC II, where electives that splice knowledge and skills to a higher level in the spiral curriculum than in PPC I could be developed, in association with firms working in any particular sector of the profession. The domain of the LFS is clearly the financial and arbitration work of international law firms. But the LSI could develop a PPC II set of electives in Family Law, Employment, and the like, and design a set of intensive electives around a blend of skills and knowledge appropriate to the sub-area of law, much as the LFS has done on the much larger scale.

⁸⁸See (in Dutch) Beroepsopleiding Advocaten (No date). Information was checked by email for accuracy and currency with Ms Martine van Poucke, Programme Manager at LFS.

3. Lawyers who are students in the LFS are working and learning as nearly as possible simultaneously. At the same time, they obtain access to expertise in skills and knowledge that they may not have within their own firms. This has significance for the ways in which the LSI may want to re-design the PPC II. It is clear that PPC II could be improved if there were closer alignment between learning on the electives and in-office work.
4. The use of ePortfolios, and their place as evidence in what is effectively a high-stakes oral assessment, is interesting. We have already described, above, how an ePortfolio can be used in association with simulation and for credentialing purposes. In the LFS programme we see it being used extensively as a tool of high-stakes assessment.

7.5 Case study 3: The Daniel Webster Scholar Honors Program at the University of New Hampshire Law School

This case study is an example of a US law school adapting a range of innovative approaches to learning and assessment, and using them to provide an exemption for a much more conventional and almost certainly less reliable assessment, namely the state bar examination. The innovations were embedded in an extended programme within the second and third year of the University of New Hampshire Law School's JD programme, called the Daniel Webster Scholar (DWS) Honors Program (University of New Hampshire, 2015). Students taking this programme engage in a series of workshops, simulations and intensives on the following subjects:

- DWS Advanced Pretrial Advocacy.
- DWS Business Transactions.
- DWS Capstone.
- DWS Mini-series (including Family Law, Law Office Management, Commercial Paper (Articles 3 and 9) and Conflicts of Law.
- DWS Negotiations and ADR.
- DWS Pretrial Advocacy.
- DWS Trial Advocacy.

The DWS programme uses simulated clients (SCs). They are used for standardized client interviews with the Webster Scholars, and also serve as clients and witnesses in the Pre-trial Advocacy simulation. The School has a training review session lasting about four hours before each evaluative session. There are at least four review sessions per year, two empirical study interview sessions per year and two Webster Scholar sessions per year, and the University of New Hampshire is expanding the use of SCs.⁸⁹

There are many unique aspects to this programme that could be of interest to the LSI. It is, as with the LFS above, a collaborative initiative, comprising UNH Law School, the New Hampshire Supreme Court, and the New Hampshire Board of Bar Examiners. It is skills-intensive, builds upon knowledge learned in the first year of the JD but also blends knowledge, skills and ethics throughout the programme. The assessments are aligned to modes of learning; the assessment zones are as nearly as possible the learning zones, and a range of assessments are used, including formative, reflective and summative assessments.⁹⁰ In focus group sessions there were reservations expressed about the replicability of the programme with other groups of students elsewhere, and in other law schools – in

⁸⁹ Maharg and Karen Barton trained the SCs for the DWS programme, and trained faculty and administrative staff in the SC training processes.

⁹⁰ For further information see Dalianis and Sparrow (2005), Garvey (2010), Barton, Garvey & Maharg (2012).

other words, DWS succeeded because it created a small and highly-focused programme capable of boosting the standards of student innate capabilities. This may be true of DWS, but it is also true of many areas of legal practice, jurisdictions and international practices. As we saw with the LFS, it is possible to map out and design professional education for a small sub-set of international lawyers. It is equally possible to do the same for employment lawyers, family lawyers, solicitors wishing only to practise in Ireland in specific areas of law, or international lawyers who wish to practise in Ireland as a base from which to service both a common law and a civil practice. In other words, the success of the DWS programme lies not in its dependence upon one small (and culturally very homogeneous) state, but in its adaptation of a variety of experiential learning approaches to the specifics and culture of an area of legal practice – and that can be applied almost anywhere, globally.

Perhaps the most unusual aspect of the DWS, though, is that the attainment of students exiting the programme has been statistically analysed in some detail in an independent report, commissioned by the Institute for the Advancement of the American Legal System (IAALS) based at Denver University Law School (Gerkman et al 2015).⁹¹ This was a comparative study, comparing the performances of DWS newly-qualified lawyers in practice with newly-qualifieds who had not gone through the DWS programme. One hundred and ninety-two total standardized client interviews were included in this study, 69 by DWS scholars and 123 by non-DWS lawyers. As the report says,

The findings corroborate the focus group participants' impression that DWS scholars are as competent—or more competent—in client interactions than lawyers with up to two years of experience. 29 DWS scholars significantly outperform non-DWS lawyers on both the overall assessment and the percentage of relevant information learned. [...] DWS scholars' overall performance was rated an average of 3.76 out of 5, compared to non-DWS lawyers whose overall performance was rated an average of 3.11. This difference is large and statistically significant. [...] Only 3% of DWS scholars (two students) were rated below a three, compared to 40% of non-DWS lawyers (55 lawyers). Finally, looking at only the final item on the overall assessment [by a SC], 'If I had a new legal problem, I would come back to this lawyer', 56% of DWS scholars were rated a 4 or 5 compared to only 25% of non-DWS lawyers.

(Gerkman et al 2015, p 16)

The report summarised its findings as follows:

- In focus groups, members of the profession and alumni said they believe that students who graduate from the program are a step ahead of new law school graduates;
- When evaluated based on standardized client interviews, students in the program outperformed lawyers who had been admitted to practice within the last two years; and
- The only significant predictor of standardized client interview performance was whether or not the interviewer participated in the Daniel Webster Scholar Honors Program. Neither LSAT scores nor class rank was significantly predictive of interview performance. (ibid, p 1)

⁹¹ Note that both Bond and Sullivan, co-authors on this report, were also co-authors of the influential Carnegie Report in 2007 into US legal education (Sullivan, Colby, Welch Wegner, Bond, & Shulman, 2007), which recommended programmes such as DWS.

There are at least five points of interest here for the LSI. First, the emphasis on skills and ethics, blended with knowledge, was a powerful driver for students, both in their learning and their assessment. Second, their achievement was *sensed* in the programme: attorneys and teachers knew, even without rigorous statistical proof, that the DWS programme worked to raise the standard of lawyering by students undertaking it. Third, the statistical evidence was a powerful persuader for sceptics that conscious and unconscious bias was not the basis for believing that the DWS programme succeeded. Fourth, the success of the programme rested upon good design – of learning, teaching, resources and assessment. Finally, the programme could not have come into being without strong collaborations between the stakeholders involved in the justice system and the legal educational system in New Hampshire.

7.6 Perceptions of the Law Society of Ireland’s role in legal education

In this final section of the chapter we consider the role of the LSI itself, as reflected in the interviewees’ responses on the subject. The subject is a fascinating one because so few studies exist in the research literature on the effectiveness of multi-role professional bodies in small jurisdictions. It is clear that the perceptions are rich and varied, and overall positive. Two caveats should be issued before we begin. First, and as we said in the Introduction, the range of interviewees was not chosen at random and also there was an attempt to represent the likely range of viewpoints, it was not a strictly representative sample, but was chosen by the LSI. This in itself skews the results we obtain. Nevertheless, with anonymity as a shield it is clear (and this is certainly the case in earlier chapters) that members of the profession have not been slow to criticise aspects of LSI programmes where they felt it was merited. Second, terminology was a little loose in the interviews. Interviewees will say ‘Blackhall’ or ‘LSI’ in circumstances where it is not clear that they are talking about the PPC course team, the LSI as professional body, or the PPC or other courses. That said, most of the time the LSI role that is being discussed can be inferred from the context.

7.6.1 Facilitating collegiality

We discussed the PPC as a site for developing collegiality between students above at 4.3.4. A number of respondents emphasised the substantial goodwill in the profession towards the LSI in relation to education, including the practitioners who teach on the PPC and in relation to CPD and the Diplomas. The fact that the LSI’s objectives were to support and enhance the profession, rather than simply to make a profit, was also singled out as a factor in favour of the LSI provision. Several respondents cited at 4.3.4 commented positively on the advantages of the collegiality engendered through the PPC, with all trainees studying together: “your peers are your wealth”.

Comments included (summaries of interviews):

- Legal education - thinks it should be part of the professional body, because it works, she remembers Store Street [a London site of the University of Law] being so envious of the fact they have practitioners coming in to teach.
- At Blackhall it’s not just about profit, they want to invest in the profession.
- 1000 students over 33 different [CPD] offerings last year; philosophy is value for money, relevant and practical. Designed by solicitors for solicitors. They are able to draw on goodwill of faculty to come and teach. Huge goodwill towards LSI.

- Would this change if LSI was not the only training provider? LSI is not the sole provider of CPD already. Thinks so much would be lost. Everyone has this common ownership, foundational experience. He has worked in UK on LPC. Thinks that it is an 'utter strength that there is one institution which has the overall interests of the profession at heart and they can reflect that in the training'. It is not just about profit – want to invest in the profession.
- Feels very strongly that collegiality and paternalistic approach is very valuable.

It is interesting that practitioners see the place of the LSI as a platform that encourages a commonality in a small jurisdiction, where getting to know each other is an important part of the process of social learning in the profession:

- There is a benefit to all trainees training together – it's good to have an awareness of what others are doing, keeps the profession cohesive, there's a lot of commonality between all of our lives. Not everyone who starts in a big firm stays in a big firm. At the same time, you do find on the courses that the trainees stick with trainees from their own firm, there's no negative to them mixing together and getting a bit of visibility of other firms.
- In an ideal world LSI would be the sole provider of professional education (it does not necessarily need to be LSI but there needs to be a sole provider). Has seen the detriment caused by [opening up legal education to competition] in other jurisdictions, and the difficulties trying to control learning outcomes. Attitude to learning is lost, (knowledge and skills would be OK) i.e. professionalism, counselling service (Shrink Me), what it means to be a profession and how to inculcate that in trainees. When you have multiple providers that gets lost.
- Centralised training works well in a small jurisdiction like Ireland (gives example of police training); it means you can produce a consistency of outcome which is really necessary for training e.g. in relation to ethics training.
- He likes the centralising impulse because 'it provides consistency, but you have to ensure there's not complacency' and you can avoid that through constant evaluation and looking at other jurisdictions.

7.6.2 Facilitating legal practice for the future

Several respondents felt that it was part of the role of the LSI to help the profession prepare for and navigate changes: 'LSI needs to facilitate this change not be afraid of it'. The statutory obligation on the LSI to ensure there are sufficient solicitors who can practise in the Irish language was also noted (see the Comparative Analysis at 8.2.6 and earlier in this report at 6.4.7). Changes might involve e.g. increased competition or legal work becoming automated. We have, for example, discussed attitudes to the LSI's eConveyancing initiative above at 3.6.4. One respondent felt that the LSI should perhaps be ahead of the curve in terms of delivering new subjects while another was of the view that the profession wanted LSI to be the leader in legal education, and to know that trainees come out of Blackhall ready for practice (summaries of interviews):

- LSI needs to prepare solicitors for the competition.
- Solicitors should look at [the future] as an opportunity and not be scared of these new challenges. And that's where education comes in, in particular CPD.

- Northern Ireland – it would be very tricky if the system radically changes, seems like a logical thing for there to be some sort of agreement. They do joint courses etc.

On the question as to how the profession thought the provision of legal education in Ireland should develop to meet the challenges, there were predictably mixed views about the role of the LSI. (summaries):

- Some subjects will always be relevant.
- LSI should perhaps be ahead of the curve in terms of delivering new subjects.
- Employment and Family need to be more integrated.
- Profession wants LSI to be the leader in legal education, and know that trainees come out of Blackhall ready for practice.
- All firms should be given what they need.
- LSI should be training for the future and not for areas of practice that will be replaced by IT.
- LSI training is OK but it is very general and broad-based. Thinks that IT will eat a lot of the work that general practitioners do, therefore not a good idea to design training with that in mind – that's where the LSI's opportunity is to change.
- 'The Law Society are making a good fist of [the training] most of the time.'

7.6.3 LSI and communication to the profession

Several respondents, as we indicated earlier, for example at 4.5.2, felt that the LSI could do more to communicate with the profession or that the LSI assumes that firms know more than they actually do. We have discussed views on regulatory requirements relating to the training contract in particular at 4.5.2 above. It was also suggested that firms might be sent information by the LSI which they did not necessarily understand or pay much attention to. There might also be a difference between LSI council members, drawn largely from smaller firms, and the larger firms. Some respondents however felt that the larger firms had more resources to lobby the LSI than other firms and that this meant that they had an undue influence on the content of the PPC and Diplomas. It was suggested that the LSI could communicate more strongly in terms of:

- The expected standards of the PPC (see 3.2.1).
- Clarity about which date the PPC courses end on.
- Explaining that the qualification is a good basis even if students go on to leave the profession.
- Explaining what the PPC training currently involves (bearing in mind that many of the profession would base their assumptions on the training model they had qualified by and that things have changed) (see 4.3.1.1).
- Requiring firms to submit information about trainees such as dates they passed the FE-1, which the LSI presumably already holds.
- Seeing CPD as lifelong learning rather than simply box-ticking (see 6.7.1. and 6.7.4 above).

- What taking on a trainee involves.

In a sense these communicational issues are on the same lines as the lack of publicly available research literature on the PPC that was noted in the Comparative Analysis, and in earlier chapters. There is a need for the LSI to communicate more, not just with the profession, but beyond it, and beyond the jurisdiction, too. In that sense, publication of the good practices in Irish professional legal education within the EU could help to establish Ireland as a leader in the field, in the EU.

Comments in this context included the following, grouped by themes (summaries):

7.6.3.1 Generally

- The profession values what the LSI provides in terms of education.
- Not everyone at LSI is embracing change.

The issue of listening to some type of firms was raised:

- Why are people not engaged with LSI in terms of putting themselves forward for election? They don't feel like LSI are listening to their sort of business. "We do want to make a positive change to the profession"
- Commercial firms tend to be quite autonomous – they have their own meetings and conferences which is quite good but also quite bad because you don't have as much integration. They tend not to be as involved in LSI.

Of the LSI's communications practices, a member of a mid-sized firm commented:

- There's the Waterford Law Society which is voluntary. They don't get any CPD from Dublin, it's all organised by WLS. You can do LSI eLearning which is helpful. It's too much effort to go to Dublin. The Gazette is very useful. Practice Directives and articles are good and email updates. They do rely on LSI to tell them about something new e.g. when the Companies Act changed LSI sent people out to the provinces to lecture – that's what they expect from the PC fee.

7.6.3.2 On the PPC and training contract:

- Commercial firms are the ones who have resources to come and tell Blackhall what they think so they have a disproportionate influence.
- LSI is not good at telling profession what the training actually entails..
- LSI should emphasise that the qualification is a good basis even if you go on to leave the profession
- She feels they're not doing enough to tell the profession what they are doing so people believe them to be what it was before (when they came to Blackhall), and they haven't got time to sit down and read what the students are doing.
- LSI assumes that firms know more than they actually do.
- LSI should focus on what the profession needs rather than wants. There should be a broad-based practice-centred period of learning.

A large firm practitioner queried the value for money offered by the LSI:

- Currently there is an issue for them around the services they are getting from LSI and value for money, so they are looking for something more suitable for their trainees.

Related issues were timings of courses and training for types of practices:

- Timing of Blackhall so [the firm] can have a consistent number of trainees at Blackhall and in the office at any one time.
- Training in PPC which at least makes an attempt to look to the types of practices they have there and at a higher level (summary, large firm practitioner).

A PPC tutor made the useful point that solicitors who work with the LSI have a different view of the organisation because of that closeness:

- Solicitors who are involved in the training at Blackhall will have a different view of Blackhall to those who aren't; doesn't feel that what they do has been promoted enough, there is not enough effort put into ensuring that firms really get it – they can send them books but they do not read it.
- There needs to be a bigger drive to ensure the big firms really understand what they do at Blackhall. This is something that has been said for quite some time.

Cost was raised as an issue:

- LSI's advocacy training [in the PPC] is really good but really expensive [to deliver because of the 1:1 ratio]
- From a training partner: 'it's a significant investment for sure'.

The LSI was criticised for giving too much attention to commercial firms:

- Their No. 1 priority is their business needs, LSI has been very helpful, however 'it is expensive'. It is comparable to a lot of other courses but [the trainee] will be out of the office for 13 months.
- It was difficult for a training partner to find out information about what taking a trainee would involve, LSI were helpful but the information could have been more accessible.

Some of those involved with the LSI felt that others in the profession were unaware of how their educational programmes had changed (again, a communicational issue):

- Attitude of her corporate/commercial colleagues to the LSI as a whole but also to the LSI courses is not positive; she doesn't think her colleagues know how the course has changed or how well the courses are taught; 'and we need to communicate to people like them so that they understand that they are learning about banking and aircraft financing'.
- 'Communication is not something that we're great at in the law school.'
- She does not think the profession holds the law school with sufficient respect because they don't know what's going on.

7.6.3.3 On CPD and Diplomas

- LSI has developed its clusters of CPD training to allow access in the regions. It would be a given if you were a doctor that you would keep up to date ... but that message is going forward [implication that CPD is being increasingly recognised as necessary rather than an imposition by LSI].
- Thinks the profession sees CPD as an onerous obligation rather than life-long learning that is useful and beneficial for you. Maybe that is LSI's fault for not selling it that way? There's always a rush at the end of the year. Perhaps if LSI had a robust life-long learning problem the issue of early specialisation wouldn't be such a problem.
- When deciding areas for their Diplomas, LSI is too influenced by commercial firms and which areas are lucrative. There should be greater focus on areas where the client is vulnerable.
- At LSI you might feel like you're getting the same lecture twice or not enough of one subject.

7.6.4 LSI and communication to young lawyers

Two interviewees commented on the difficulty in finding out which firms are recruiting trainees. Comments on this topic included:

- How trainees find their firms: LSI could look at this and streamline/structure it more; at the moment LSI might hold a record of trainees but how does that work at a practical level? When he was looking for a contract he got the Directory and just wrote letters to lots of people.
- Is there something that can be done to inform trainees about who is recruiting trainees?
- Barriers to firms recruiting trainees in a small town i.e. confidentiality, unaware how they can help.

On communications, it may well be the case that the LSI could create better communications through a platform that will also add value to a solicitor's firm, and his or her individual practice. One recent example of such is The New York State Bar Association decision to develop a meaningful, ground-breaking member benefit that would create value for its members in an effort to maintain existing membership and to attract new, and particularly younger, bar members. The New York Bar approached a consultancy, CuroLegal, and began to rethink the evolution of bar associations as an extension of a lawyer's practice. The platform that they built was called LawHUB (CuroLegal, 2017) – a single-source platform for a lawyer to manage his or her practice by having quick and seamless access to:

- Relevant i.e. curated Bar content;
- Third-party technology tools that were regarded as essential for a lawyer's day-to-day practice;
- The ability to network with colleagues in the Bar;
- Access to robust practice management resources.

This may be an interesting example for the LSI of how to communicate with members involved in legal education, and at the same time provide added value to the communications process for those involved in legal education.

7.6.5 LSI and FE-1

We have discussed the FE-1 in some detail above at 5.2.1 and on its operational matters at 5.2.1.2. Here we focus on understandings of the role of the LSI in relation to that assessment. One respondent was of the view that the LSI set the exam which is not the case: the LSI advertises for and appoints examiners but the FE-1 board of examiners is independent of the LSI. One respondent, concerned about the failure rate, understood that the LSI response was that the assessments were not getting more difficult. Another respondent commented on the FE-1 as a source of funding for the LSI.

Another commented that they were not sure whether LSI should do preparation training for [the FE-1], but felt that the ethos is now probably against that.

A member of LSI staff observed:

- An independent Board of Examiners decide what goes in the exam, there is an internal and external examiner for every subject, some solicitors are examiners but the majority of them are academics. They advertise publicly for examiners and conduct interviews, they are appointed by LSI but independent. There is never any interference from LSI committees.

7.6.6 LSI and its responsibility to young lawyers

A number of respondents suggested that it was the responsibility of the LSI to ensure that trainees were employable beyond the firm that initially employed them; that is, that it should support the broad-based education model, despite calls for specialisation from larger firms. One respondent felt that the LSI for the most part does a good job at resisting demands for a more populist education in favour of a more rounded and grounded education which means that every trainee has met a minimum standard in certain areas. This respondent was of the view that the role of the LSI is to train solicitors for sole practice and that it is 'Not the LSI's job to produce recruiters' dreams'. The LSI should supply what solicitors need, not what they want. Another respondent, however, felt that the LSI might have a view that it was necessary need to prioritise commercial topics, although it in fact has an obligation to provide services to everyone.

The LSI stopped requiring that firms pay a particular salary to their trainees some years ago (so that the minimum is the national minimum wage). One respondent also felt that the LSI has a quasi-parental responsibility to counsel those who wish to terminate their study during the FE-1 or PPC, to encourage them to continue and to see if they can be supported.

- LSI has a responsibility to ensure that trainees are employable if it does not work out at their firm (i.e. importance of broad-based education).

In relation to the idea of certification part way through training:

- [An] example of someone who had got most of the way through pre-PPC II and wanted to pull out (7/8 of the way through).
- It does not make any rational sense for them to stop part way through, what is the value in that? LSI would certify if someone decides to go off part way through to go into insurance or something. EC would be thinking like parents – it would be a terrible waste. No problem in giving them a certificate but feel that individuals should be encouraged to keep going and getting qualification before they change direction. Why are they leaving the field? LSI would want to know if there is some support they could give them e.g. financial.

- A few years ago, LSI stopped requiring that firms pay a particular salary (still have to pay minimum wage).
- What LSI wants can be different to what solicitors want.
- LSI might have a view that need to prioritise commercial side of things, she doesn't think commercial firms should have more say just because they have more trainees.
- Bottom line is that LSI has an obligation to provide services to everyone.
- The split between big and smaller firms is not as stark in Ireland as it is in London, it is accepted that small firms might e.g. register a company on AIM, but the split has got more pronounced.
- He is very much of the view that LSI needs to be conscious of getting people on the Roll who have a core base. It is for LSI to decide what that core base is.
- LSI for most part does a good job at resisting demands for a more populist education in favour of a more rounded and grounded education which means that every trainee has met a minimum standard in certain areas.

7.6.7 Managing future change in professional legal education

This report has been instructed by the LSI at a period of unprecedented change in the Irish legal services sector as well as legal services education. It is outwith the scope of this review to analyse the wider political, legislative and structural changes of solicitor education in Ireland in the present and future. Our Comparative Analysis does give a sense of those changes in the past, the challenges faced by many stakeholders and their decisions and actions that have come to shape current practices in solicitor education. But if the tournament of regulators in Irish legal services education is beyond our remit, then since this review deals predominantly with the future of professional legal education, we need to give voice to those of our interviewees who expressed opinions about how future change and the infrastructure for change could be managed by the LSI within the current legislative framework of governance, and a future that is conditioned at least in part by LSRA and Brexit.

Comments were very varied, and included the following (summaries of interviews):

- Does not think [the LSRA] will change anything for legal education.
- Might give impetus for a practice management standard like Lexcel.
- In Ireland the focus of training has remained all about the client.
- 'Everything we do here we are watching what is going on in England either positively or negatively' –Tension between law school and the market, anticipates that control of LSI over legal education will weaken.
- He likes what they have – healthy balance – so many rumblings outside he knows it is bound to change. Amount of control LSI has over legal education will weaken.
- CPD/Diplomas isn't of particular interest [to this firm] because they cover it themselves inhouse - but they know it's very good. They seldom send people on LSI courses, but they're very useful for smaller firms.

- CPD system is flexible. There is an MPD (Management and Professional Development requirement) – LSI has to trust that something is MPDP. They don't have to go externally they can do it all in-house.
- Thinks having compulsory number of hours of CPD is reasonable (20 hours) – knows plenty of people in small practices and they don't think it is unreasonable. They sometimes get together in little cooperatives and share out who develops the training/bounce ideas off one-another.
- CPD system works. Initially there might have been a tick-box approach but she does not think this is the case anymore because LSI is flexible – they can do eLearning, clustering.
- 'There is an awful lot of good in the Law Society courses', the LSI depends a lot on the profession for its courses 'so this is the collegiality coming back'; 'it's all about the circle going round and round'.
- Rural firms probably would not be looking for those specialist courses, they would go to LSI.

And a practitioner in a mid-sized firm, when asked about the implications of the LSRA for the profession and legal education, responded:

- It does not concern him, the people who it will most concern are at the LSI.
- Big firms do not need LSI to fight their corner; smaller firms expect LSI to defend them when necessary.

One small-firm practitioner disagreed with others on the sole-provider position of the LSI (summary):

- He wants legal education taken away from the LSI because it is a closed shop.

On the subject of the profession and the part that it will play in the provision of legal education in the future, it may be useful for the LSI to benchmark itself against another regulator in another profession – for example the General Medical Council. It is interesting that medical codes of conduct often include a commitment not only to learning but also to teaching, and that is a cultural change with regard to education that the LSI may want to encourage further in the Irish legal profession. In that respect there are a number of regulatory strategies that have come to be adopted as alternatives to more adversarial command-and-control regimes (see Baldwin, 1997). These include risk-based regulation, meta-regulation, principles-based regulation, outcomes-focused regulation, strategies of enrolment, and shared space regulation, among others.⁹²

Shared space regulation is characterised by interdisciplinarity; and the idea that regulation is too important to be left only to regulators, and that it is the responsibility of all stakeholders to share in it: to share their educational practices, the evaluation data they generate as well as their research, and to engage in mutual learning, transparently and openly. It gives responsibility to actors in the regulated field to regulate their own behaviour, subject of course to monitoring. It is a dynamic concept, and challenges regulators as much as other players in the field. Conventional regulatory activity, rather than directly changing behaviour, may well merely ratify already-established practices and opinions; and this effect can be mitigated by giving actors freedom to act in the field. In addition

⁹² For an account of these and other approaches, and their performance within the financial services industry in the recent global financial crisis, see Black, (2012). Such forms of regulation are of course in competition with each other; and, as Casey and Scott pointed out, quoting Black, are responses to an underlying legitimacy dilemma: it 'is simply not possible to have complete legitimacy from all aspects of [the regulated] environment' (Casey & Scott, 2011, p 92, citing Black (2008, p 153))

a shared space allows for innovation to be disseminated, critiqued, improved much faster, and for the design & implementation cycle to be made more effective.

In a sense this is what the LETR argument articulated, on the concept of shared space and which, as we have seen earlier, can be articulated within the space of educational technology. We can see this happening already in quite a few aspects of LSI activity in legal education. From the data we have above in this chapter (though we have noted that it is not a comprehensive dataset and should be treated with caution) and in previous chapters, the LSI is embedded in complex and creative ways within the legal profession. It is our opinion that, in the ways we have outlined in our recommendations, the LSI could further develop the shared space of legal education. This issue underlies many of the responses of our interviewees over a range of issues – for example:

Shared space also assists with one of the significant issues for the LSI, namely the communication of its activities, plans and values to the profession. The FE-1 is a good instance, where one of the problems with the assessment is that there is insufficient clarity around what it is intended to do and no robust evaluation of whether it achieves it. As a consequence of this there is no clear ownership of the process – some interviewees thought the LSI was independent of the FE-1, some thought it were not. A member of the LSI observed (summary):

- They [the profession] do and don't like us, but some of their views are back in the 90s when they trained and they haven't noticed that things have changed and moved forward and [we] try to be as leading edge as LSI can be.

There may be longer-term infrastructural issues that are beyond the remit of this report, but as this interviewee rightly implies, communication of the changes that have been made in recent years, and communication of the complex position of the LSI is something that needs to happen in the short term. Along with a commitment to shared space, it would help to improve professional legal education in the jurisdiction.

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Chapter 8

Conclusions

As we point out in the Introduction at 2.4.3, it has been part of our approach to solicitor education in this report that we treat it as a socially complex problem. Traditional linear resolutions of such problems are seldom helpful, certainly in the longer term. Instead we have sought to construct an approach that:

- recognises that there are few right/wrong solutions as opposed to better/worse outcomes;
- builds shared understanding of the problem amongst a range of stakeholders;
- builds a shared commitment to action;
- recognises that 'one-shot' reforms will affect the system dynamics, often in unexpected or unintended ways;
- recognises that capacity for continuing engagement, and institutional (re)design needs to be taken seriously.

Part of the complexity of education is the exploration of what works well, and why it does so. There are many aspects of professional legal education that work well in the LSI's programmes, and on the basis of our desk-based research in Phase 1 and from our interviewees in Phase 2 we can list some of these below. Since part of the complexity of education involves making choices that may often have good outcomes, sometimes poor outcomes and perhaps also unanticipated outcomes, and sometimes all three at once, we explore what is positive about the LSI's educational practices in the 10 points below:

1. *Campus-based learning is well-organised around the campus-based facilities of the LSI.* With the teaching and learning facilities next door to the historic Law Society buildings, there is a sense of a continuum of tradition and modern located in the architecture itself. The physical law school facilities are well designed and organised for their purposes. On the other hand, there are probably insufficient learning spaces for the numbers of students in each cohort, and for the growing CPD activities being undertaken by the LSI. If there is to be more group work then more small-group rooms are required, where there can be wireless connectivity within rooms, between rooms and between students and staff in the room and students or staff beyond it. In addition, new and more flexible models of learning and teaching, where students need not be on campus, should be the focus of future activity.
2. *Collegiality amongst students on the PPC appears to be strong, setting a standard for a career as a solicitor in a small jurisdiction.* This is undoubtedly a strength. The Diploma Centre clearly makes use of such strength and builds upon it successfully. On the other hand, it is useful also to ensure that students look beyond the jurisdictional boundaries to globalised legal practice, to the swift and powerful changes wrought in society by digital industries, and to the changes being promulgated by Ireland's new position as the largest common law jurisdiction in the EU. Indeed as we point out at 5.4.2 above, it is possible to see the future of the LSI educational institution as an educational mixed jurisdiction, drawing the best from both common law and civilian educational practices, and creating of that something new and fitting for Ireland's new place in Europe – a globalized professional law school that both critiques legal practice and promotes

outstanding professional educational practices. Collegiality is a good basis for the development of such global collaborative development.

3. *Digital technologies are used well to provide information to students.* As noted in the last chapter, mobile devices and a broad range of software is used enhance learning. The range includes learning management tools (such as Moodle), 'push' technologies, used to host and disseminate information (such as webcasts on the Articulate platform) and some interactive apps. Technology that supports conventional forms of teaching and learning and their situations are useful and relatively easy to implement; but digital technologies could be used for more collaborative educational purposes.⁹³ We think that interactivity could be the focus for more activity by staff, with experimentation in the use of digital technologies for feedback, peer- and self-assessment and high-stakes skills assessments. This requires re-thinking the design of core subjects on the PPC I and electives on PPC II. There could be more emphasis on interactivity and collaborative learning designs in the use of technologies, particularly in multimodal learning and teaching models. A good place to start such experimentation might be a part-time model of the PPC.

If the current range of digital experimentation within the LSI is impressive, it is so not least because much of this innovation takes place in staff timetables that are already under pressure with teaching and assessment activities and other responsibilities. In this respect success that stems from flexibility, creativity and innovation (as noted at point eight below) comes trailing HR problems. The LSI needs to give serious thought to increasing its complement of staff, and not just teachers but also educational designers and particularly technologists.

4. *LSI international communications and networking appear to be of a high standard.* This is particularly impressive given the size of the jurisdiction. On the other hand, there are many places in the report where we note that communications with other stakeholders in the jurisdiction could be improved; where higher quality and more accessible information needs to be provided; and where the 'brand' of professional qualification as a solicitor in Ireland could be proactively promoted.
5. *There is a high level of loyalty from profession towards the LSI, which contributes towards a professional sense of community.* This was apparent from many of our interviews, and arose from a variety of comments and perspectives on legal education; and not just from a minority of legal services sectors. There are also tensions arising from the implicit model of the PPC: inevitably, some firms and members of the profession want more specialised professional education for their trainees and young lawyers. If the LSI committed to new models of professional education that could accommodate this, for example in an expanded elective programme, while retaining in the professional programmes a core of professional values that applied across specialisms, such revisions to the programme may increase loyalty, rather than fragmenting professionalism and commitment to the profession.
6. *Despite the growth of large firms, there seems to be a high level of shared professionalism.* Members still act as a profession, but perhaps inevitably this is under strain as differences between firms and business models become more accentuated. The increasing disparities between urban and rural legal services, and between Dublin and regional city centres

⁹³ As many have observed, PowerPoint and PDF applications are widely used because they bring to the digital domain conventional forms of information display, dissemination and teaching. Putting it into historical perspective, Tony Bates has noted that PowerPoint 'is nothing more than a merger of a magic lantern and a chalkboard [while] the form of teaching remains the same'. See <https://www.tonybates.ca/2018/01/02/five-old-educational-technologies/>

were a source of much comment in interviews. The maintenance of a shared commitment to a diverse professional legal education could be one of the strong bonds by which the LSI can maintain shared professionalism, not least in its commitment to a shared sense of public interest. Within the PPC such shared professionalism requires co-ordination in setting threshold levels of competence in skills and transactional competence, and linking what students learn from the traineeship with PPCs I and II.

7. *The integration of wellbeing initiatives with the life of a lawyer is well implemented, and beneficial to the students in developing them as professionals for a changing and challenging work environment. Indeed being a life skill this will probably stay with them longer than most legal knowledge they encounter on the programme. We would urge the LSI to do more on this, for example by embedding it within a stronger structure of skills development within both PPC I and PPC II.*
8. *The LSI allows staff to experiment with new ways of delivery e.g. with digital technologies; and to explore new areas e.g. regulatory litigation (white collar crime). Not all regulators recognise or reward this as an activity, but we regard it as essential for the continuing intellectual development of teaching staff. Indeed staff should be encouraged to become researchers of their own practices. Often innovations have the effects of requiring us to re-think conventional context and practice in fundamental ways, and in this sense draw teacher/researchers into active and practice-oriented research. A practice-research culture, however, raises issues of staff resourcing and interdisciplinary collaboration. The LSI needs to act upon the need for more staff – more teaching staff, more digital technologists, and educational designers, as noted at point three above. All these staff should be encouraged to form interdisciplinary projects that improve legal education at the LSI, and to research and write about such innovations.*
9. *Public interest is clearly more important to the LSI than commercial gain. This is true of legal education, where there is a paternalism which is both positive and facilitative, and which can be negative and cautious about large-scale change. Many of the larger-scale projects and reviews that are set out in this report's recommendations, however, are in the public interest, in that they aim to improve solicitor education not just for students or for the profession, but for the public interest as well. Problem-based learning, for example, as practised by medical faculties, is clearly a mode of professional learning that can be aligned with the public interest, with its emphasis on problems, their legal and sociolegal analysis, their extra-legal and interdisciplinary explorations, and their possible resolutions.*
10. *CPD provision in the Diploma Centre is successful in engaging practitioners in high-quality learning. The use of specialist Diplomas as a focus for post-qualification specialism is particularly to be commended. Many of the basic building-blocks of this success could be replicated within the PPC and elsewhere. They include not just digital innovations but educational innovation too. Moreover, if the LSI can work to encourage its members to achieve masters' level qualifications, this may add to the profession's standing, particularly in those EU countries where it is the norm for legal practitioners to hold a masters' degree.*

Looking ahead, the state of solicitor education in Ireland is at a crossroads – indeed it is that sense of different and divergent paths opening up for the LSI that informs our remit in this review. We hope that our report may provide information that can assist professional legal educators in the LSI to decide on future directions for solicitor education. We hope it may also assist the Law Society to interpret its role as a body concerned with professional legal education that is turning from what was predominantly a common law past towards a future that will be at least partly civilian, in Europe. We

hope, too, that it will assist the LSI to enhance the many positive features of its educational mission, some of which are set out above. If our report helps the Society to re-define its place in the new legal, political, social and technological orders taking shape in Europe and in these isles, then it will have served its purpose.

Appendix 1: Phase 2 information sheet and consent form

Review of Professional Legal Education in Ireland

Information sheet - interviews

We would like to invite you to participate in an interview. As you know, the Law Society is interested in reviewing a number of aspects of legal education, both pre-and post-qualification, in the light of the Legal Services Regulation Act 2015.

Why have I been invited?

You have been invited because you or your organization have been identified by the Law Society as able to provide useful information to this project. You have been selected to help the researchers fill in gaps in their information.

Do I have to take part?

No. You will be contacted by the Law Society or by one of the research team to arrange an interview. If you do not wish to participate, or a suitable appointment cannot be made, then you will not hear from the researcher again. If you change your mind before the interview appointment, or at any stage during the interview, you can withdraw without any adverse consequences. Because there are time constraints on the study, it will not be possible to withdraw your information or ask for any part of it not to be used once the interview has taken place.

What will happen to me if I take part?

You will be asked to take part in an interview about your opinions on a number of aspects of professional legal education and professional regulation in the Republic of Ireland by an experienced academic researcher who is contracted to the Law Society to carry out this part of their investigation. This interview should take no longer than 45-60 minutes and may be face to face, by telephone or by Skype. You will be asked for permission for the interview to be audio-recorded, as this will help us in making sure we have complete details of the information you provide to us.

Interviews may take place in the evenings or at weekends if this is more convenient for you. We may be able to provide you with some information about likely topics in advance. If you feel uncomfortable with any individual questions, you do not need to answer them. You should also consider, in deciding what to tell the researcher, whether any of that information might accidentally identify you or your organization (e.g. a particular work practice which the researcher will not know is unique to your firm). In some cases, you will have been selected by the Law Society as a representative of your organization. If this is the case we will ask for your consent for quotations from your interview to be attributed to that organization by name in the report or other publications. You do not have to consent to this. We would, however, like to include in a final appendix to the report, the names of the organizations consulted for the purposes of the report.

What are the possible advantages and disadvantages of taking part?

The benefits of taking part are that you will be able to contribute to the Law Society's current thinking on how solicitors qualify.

The Law Society, and your own organization will not be told whether or not you, as an individual, have taken part. As organizations will have been selected for us to approach by the Law Society, it may, however, be obvious to them if no-one from your organization has been able to take part, but it will not be assumed that this is because your organization did not wish to participate (it could just as easily have not been possible to arrange an interview in the time parameters for the project). Neither you nor your organization will receive any payment for your participation.

What will happen to the information I provide?

Your contact details will be kept securely by the researchers, under password and all contact details and, e.g., emails and other correspondence will be deleted after the project. Copies of hard copy consent forms will, however, be printed out and held in a locked cabinet at Nottingham Law School for a period of 6 years, following which they will be destroyed.

The audio recordings will be kept on an encrypted memory stick until the completion of the project. Anonymous summaries will be created in the course of analysis of the group of interviews as a whole. These will be deleted after the project unless the Law Society has given its consent to the researcher for its use in other publications, and/or in an open access format. Audio recordings (these cannot be fully anonymised) will not be passed on to the Law Society at the conclusion of the project but will be deleted on completion of the analysis. It will not be possible to provide you with a duplicate of the audio recording.

The information you provide will be analysed and used in the creation of a report for the Law Society which will be used to inform their policy on this issue. The report may include anonymised quotations from surveys and interviews. If the Law Society has given its consent to the researchers for its use in other publications, and/or in an open access format, it may also be used there but will still be anonymised.

What if there is a problem?

We hope this is unlikely. However, if you do have any concerns or wish to complain, please contact us. However, if you do have any concerns or wish to complain, please contact the Law Society on [xxxx] or by email on [xxxx]. You can contact the researchers on [xxxx]. [xxxx] and [xxxx]

Review of Professional Legal Education in Ireland

Consent form – interviews

I have read and understood the information sheet for this project which I may keep for my records.

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I have had the opportunity to ask any questions I may have.

I understand that my information will be held and processed for the purposes of the Law Society's research project and possible reports and publications arising from it.

I understand that data will be held confidentially and that I will not be personally identified in any publications or reports without my prior consent.

If I am speaking on behalf of an organization or institution, I understand that the views I express may be attributed to that organization or institution by name in any publications or reports, unless I ask otherwise. If I give my prior consent to identification of my organization or institution, I understand that I will be contacted by the researchers prior to completion of the report and asked to re-confirm such consent. If I do not participate, or withdraw, I understand that it may be apparent to the Law Society that, for whatever reason, my organization was not able to participate in the project.

I understand that my personal participation is voluntary and that I am free to withdraw at any time until the conclusion of the interview without giving any reason and without being penalised or disadvantaged in any way.

I understand who to contact if I have any concerns or complaints.

Name of Participant

Date

Signature

Researcher

Date

Signature

Appendix 2: Final Examination – First Part (FE-1) Pass Rates, 2008-17

Subject	Oct 2017	Mar 2017	Oct 2016	Mar 2016	Oct 2015	Mar 2015	Oct 2014	Apr 2014	Mar 2014	Oct 2013	Mar 2013	Oct 2012	Mar 2012	Oct 2011	Mar 2011	Oct 2010	Mar 2010	Oct 2009	April 2009	Oct 2008	April 2008
Tort	69%	62%	72%	65%	65%	65%	66%	61%	64%	64%	60%	53%	69%	67%	68%	60%	64%	63%	57%	67%	63%
Contract	60%	68%	54%	62%	57%	61%	59%	54%	64%	60%	53%	61%	48%	43%	59%	52%	72%	64%	66%	67%	59%
Property	74%	80%	76%	74%	79%	75%	74%	77%	82%	70%	78%	81%	73%	84%	81%	72%	80%	47%	67%	66%	56%
Equity	48%	68%	58%	57%	60%	52%	49%	49%	62%	43%	57%	67%	34%	41%	49%	58%	47%	57%	51%	54%	59%
Criminal	68%	73%	69%	76%	63%	68%	68%	62%	83%	68%	69%	68%	55%	64%	63%	65%	64%	60%	64%	63%	57%
EU	77%	75%	77%	71%	81%	70%	76%	71%	85%	59%	67%	71%	70%	58%	66%	61%	62%	57%	69%	64%	59%
Company	60%	81%	66%	74%	66%	68%	66%	55%	81%	59%	55%	49%	67%	58%	57%	47%	41%	59%	60%	44%	60%
Constitutional	71%	72%	76%	82%	65%	66%	58%	63%	47%	72%	76%	60%	65%	57%	56%	45%	47%	51%	64%	63%	51%