

**Office of the Director of Public Prosecutions**  
**Submission to the Legal Services Regulatory Authority**

Public Consultation under Section 34 of the Legal Services Regulation  
Act 2015 in relation to the education and training of legal  
practitioners in Ireland

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## Introduction

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The Office of the Director of Public Prosecutions (DPP) is pleased to make a submission in response to the public consultation. We refer to the Secretary Mr. Ultan Ryan's email of the 4<sup>th</sup> of May 2018 and we are very much obliged for the extension granted to make this submission up until the 10<sup>th</sup> of August 2018.

The Office of the DPP is a significant employer of both solicitors and barristers. It also retains many more solicitors in the private sector and a large number of barristers to prosecute cases and represent the Director in related applications.

We have a particular interest therefore in the education and training of lawyers in criminal litigation and related matters. While the bulk of this submission focuses on the continuation and maintenance of the criminal litigation education delivered at present by the two professional bodies, we will also highlight how the breadth of the issues to be dealt with by this Office is expected to expand in years to come.

### 1. Professional Profile of Legal Staff Currently Employed by the Office of the Director of Public Prosecutions

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The Office of the DPP is located in a single headquarters in Dublin and employs approximately 110 lawyers. The vast majority of these currently are solicitors, while seven are barristers. However, recruitment at entry level Prosecutor grade has recently been opened up to barristers and so this profile may alter somewhat over time.

### 2. Background

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The office of the Director of Public Prosecutions was established by the Prosecution of Offences Act, 1974. The Director is independent in the performance of her functions.

The Director enforces the criminal law in the courts on behalf of the People of Ireland; directs and supervises public prosecutions on indictment in the courts; and gives general direction and advice to the Garda Síochána in relation to summary cases and specific direction in such cases where requested.

The Office of the Director of Public Prosecutions has three legal divisions:

- The Directing Division is responsible for the overall direction of serious criminal proceedings. This includes making the decision whether to prosecute and for what offence, for making any decision to withdraw proceedings or to accept pleas to

lesser offences, and to bring appeals in relation to points of law or seek reviews of unduly lenient sentences.

- The Solicitors Division is responsible for providing the solicitor service in Dublin to the Director. This includes the general preparation of indictable cases, including the preparation of books of evidence, the instruction and attendance on counsel at the hearing, the conduct of summary prosecutions, District Court appeals and of all Judicial Review, Article 40 and constitutional proceedings on the Director's behalf.
- The Legal Support Services Division is responsible for knowledge management strategies, developing policy responses to a range of issues arising both nationally and internationally, devising responses as required to national and EU legislation, ensuring that victims' rights arising from the EU Victims Directive and national legislation are implemented, and for work arising from international co-operation and mutual legal assistance in prosecutions. This division also has responsibility for seizure, confiscation and forfeiture of the proceeds of criminal conduct.

### **3. Professional Education of Lawyers**

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It is the Director's strong view that education in criminal litigation is an essential core subject which all professional trainees should undergo prior to qualification, whether as a solicitor or barrister. Knowledge of criminal law practice and procedure is essential to every lawyer practising in Ireland today. It is the Director's view that such knowledge will become even more essential in the future as the regulatory environment develops and impacts the practice of most lawyers, whether directly or tangentially.

It is the submission of the Office of the DPP that a basic knowledge of criminal legal issues is essential for any lawyer to assess a client's needs in individual instances. A certain amount of knowledge is required even to decide whether the matter needs to be referred for further specialised advice or not. It is submitted that this is required in order to make an accurate assessment in the best interests of the client.

The Director considers that the education currently provided in criminal litigation before being admitted into the professions of solicitor or barrister is of a high standard and equips members of the profession in their future practice. While it is accepted that the practice of pure criminal law can be highly specialised requiring further on the job or in-house training, whether for the prosecution or the defence, the pre-qualification education provides an excellent and substantial foundation.

Most solicitors in general practice in Ireland have a District Court practice. Solicitors in those practices need to have a sufficient level of knowledge of criminal law and procedure to advise a client charged with a criminal charge, including road traffic matters, as to their options and to assess the strength of the prosecution case against their client. Most Barristers also commence practice in criminal cases before the District and Circuit Court. More recently, it has been our experience that victims of crime seek the advice of solicitors to advise them on their rights and to advocate on their behalf. The Law Society's professional course currently provides education in this area. These are legal services, delivered locally throughout Ireland, upon which citizens depend to defend their rights.

The Director supports the efforts of the professional bodies to make qualification courses as useful and relevant as possible and for that reason is content, for example, to release Office prosecutors to provide tutorials and lectures across a range of topics within the criminal litigation course of the Law Society of Ireland. Indeed the Director has personally delivered lectures to students over the course of her tenure.

It is the firm view of the Director that excellent criminal litigation promotes and underpins the constitutional right to a fair trial ("trial in due course of law") and that it is in the public interest that practitioners are educated properly so as to ensure that rights are vindicated. Robust and skilful defence practitioners are a vital component in any democratic legal process. The education of solicitors and barristers equipped to provide that public service, schooled in the values and ethics associated with that role, is important to uphold the constitutional rights of citizens.

It is noted that one of the objectives of the Authority is to protect and promote the public interest and another is to support the proper and effective administration of justice. It is submitted that having an effective system of compulsory criminal litigation education for trainees is essential to uphold those objectives.

Insofar as legal training might be delivered by third party providers in the future, this is of course a matter for the Authority. However, this office would simply observe that the criminal education course, for example, that which is currently operating in the Law Society, has been developed and improved over many years. The Law Society course focuses on the practical application of criminal law as opposed to the very academic and theoretical approach to criminal law taught in undergraduate courses. This better prepares lawyers with an understanding of the practice of criminal law. It will be a challenge for this to be reproduced by other providers in a reasonable time frame, particularly having regard to the large number of practitioners from both the defence community and prosecution who contribute to that course at present.

#### 4. Trial Advocacy Training

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It is important to emphasise that the training currently provided in relation to advocacy in court to trainees, for both the solicitors and barristers professions, is essential as a stepping stone to developing the court skills of a practising lawyer. It need hardly be highlighted that criminal litigation involves extensive advocacy by members of both the solicitors' and barristers' professions, and also requiring an understanding of the rules of evidence. The Office of the DPP is represented on a daily basis by solicitor advocates and of course by barristers.

#### 5. Advantages to Employers of Basic Education in Criminal Litigation

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The fact that professional bodies provide criminal litigation education prior to qualification means that employers such as the Office of the DPP can consider newly qualified lawyers, who already have an understanding of criminal practice and procedures, for recruitment. The employment market for lawyers fluctuates over time and employers can sometimes find the majority of applicants in a particular competition are newly qualified or recently qualified solicitors, with little or no post qualification experience in the area of criminal law. The high standard of professional education currently delivered means that the knowledge and aptitude of these lawyers for the criminal law can be assessed at interview. They can then be brought up to speed more quickly once in the post. Such opportunities provide valuable experience for newly qualified lawyers.

The Director prosecutes all crime on indictment, but many regulatory authorities have investigative and prosecutorial powers whereby offences can be prosecuted summarily by those agencies in the District Court. We understand that it is increasingly the case that the work associated with summary prosecutions brought by regulatory agencies is put out to tender to solicitors in private practice and indeed some practices devote significant resources to such regulatory prosecution work. The criminal litigation training provided to trainee solicitors assists those private sector employers to retain suitably trained solicitors, with limited post qualification experience, to support the regulatory work within their practices.

It is our understanding that the Solicitors' Regulatory Authority which runs the LPC course in England and Wales, and the Institute of Professional Legal Studies (required for qualification in Northern Ireland) both retain criminal law as a core subject. This underlines the importance attached to criminal law education for lawyers in other jurisdictions, although we understand that there are some variations in course content in England and Wales, for example a course delivered in London might have a greater

commercial emphasis, criminal law remains a core subject throughout. It may also be important to bear this in mind to ensure that the Irish professional qualification continues to be deemed transferable to those jurisdictions in the future.

## **6. Increased Awareness of Criminal Offences and Regulatory Environment in which Business Operates**

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It is submitted that as the regulatory environment becomes ever more complex and particularly as criminal law develops, for example in company law and other regulated areas of business, knowledge of criminal law will become essential to a vast number of lawyers. It is no longer possible to completely insulate oneself as a lawyer away from criminal law issues. Developments in relation to white collar crime, money laundering, health and safety offences, data protection offences, revenue offences, environmental offences and many more categories of regulatory offences require that practitioners advising business and companies must have a minimum knowledge of criminal law and procedure in order to properly advise their clients. It is essential that all lawyers have a firm foundation so as to adequately deal with matters which arise for their clients such as searches of their premises, or ensuring compliance with the relevant legislation and regulations.

A robust administration of justice is a foundation stone of the rule of law which is so vital for a strong democracy. Building a strong foundation amongst legal practitioners in the legal principles associated with the rule of law, which includes criminal litigation, enhances the profile of Ireland as a country within which to do business and wherein informed, ethical and expert legal services can be engaged to assist with business needs.

## **7. Recommendation**

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It is therefore the submission of the Office of the DPP that the maintenance of a high standard of criminal law education as a core element of the professional education programme of all lawyers leading to qualification is essential to the proper functioning of the system of justice in this jurisdiction.

Office of Director of Public Prosecutions

**DATE: 10<sup>th</sup> AUGUST 2018**