



LAW SOCIETY
OF IRELAND

Responses to Targeted Questions from the European
Commission on the Rule of Law Report 2024 – Ireland
Chapter

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The Law Society of Ireland (the **Law Society**) sets out its responses below to the seven targeted questions raised by the European Commission for its Rule of Law Report 2024 – Ireland Chapter.

- 1. The 2023 Rule of Law Report recommended Ireland to “ensure that the reform of the appointment and promotion of judges, as regards the composition of the Judicial Appointment Commission, is taking into account European standards on judicial appointments”. We take note that the Supreme Court on 8 December 2023 found that the new system for making judicial appointments is compliant with the Irish Constitution and did not evaluate the system in relation to the European standards. As regards the Judicial Appointments Commission Bill enacted on 8 December 2023: could you elaborate on the concerns that the new Bill does not provide for a majority of judges on the committee that will short-list judicial candidates?**

The Judicial Appointments Commission Bill became law on 8 December 2023 following the decision of the Supreme Court on the referral by the President of Ireland under Article 26 of the Constitution.

The Law Society highlighted its concerns regarding the composition of the Judicial Appointments Commission last year in the 2023 Rule of Law Report. There is no requirement that the commission consist of a majority of judges which is not in keeping with European standards. The Bar of Ireland (the **Bar Council**) and the Law Society also expressed concern that neither the Chair of the Bar Council or the President of the Law Society are members of the commission resulting that no member on the commission represents either of the professions from which candidates may be selected.

As the Judicial Appointments Commission Act 2023 is now in force it is unlikely any changes will be made to the composition of the Commission.

- 2. Could you provide a summary on your contributions to the ongoing work carried out by the Government in relation to litigation costs and the legal aid system in Ireland?**

The answer to this question is set out in three parts (1) civil legal aid, (2) criminal legal aid and (3) litigation costs in Ireland.

(1) Civil Legal Aid

A public consultation on the review of the existing legal aid scheme was conducted in 2023. In response to this, the Law Society made a [Submission to the Civil Legal Aid Review Group on 3 February 2023](#). The Law Society answered 26 specific questions arising from the Civil Legal Aid Review Group’s preliminary identification of issues. The Law Society recommended expanding the scope of the scheme to cover the following additional areas:

1. Local Authority Housing Disputes;
2. Mortgage Possession Proceedings;
3. Multi Party Actions;
4. Defamation;
5. Tribunals (i.e. quasi-judicial tribunals and bodies like the Workplace Relations Commission);

6. Adoption Authority hearings; and
7. Social Welfare appeals.

The aim of a civil legal aid scheme is to promote equal access to justice, equality in access to justice and to ensure that each party can have a fair determination of rights, and a fair trial. The Law Society highlighted that the values that should underpin a civil legal aid scheme are:

1. Accessibility, efficiency, professionalism and transparency;
2. A child-centred focus in relevant family law cases; and
3. Fairness.

As of February 2024, no updates have been announced by the Department of Justice on this consultation. The Law Society will continue to collaborate with the Department of Justice and others to progress reform of civil legal aid in Ireland in 2024.

(2) Criminal Legal Aid

In October 2023, the Government announced that criminal defence barristers and solicitors are to get a 10% increase in fee rates in 2024. This came in the wake of an unprecedented strike by members of the criminal bar in protest at the failure by Government to restore a 10% pay cut in rates which were applied in 2011. The Minister for Justice, Helen McEntee, announced an additional €9 million for the criminal legal aid scheme in 2024. Prosecution work led by the Director of Public Prosecutions (**DPP**) will also be paid more since, by law, parity must exist for both prosecution and defence lawyers.

[The Law Society](#) welcomed the announced increase in criminal legal aid fees and noted that the investment in the criminal legal aid scheme is an important step in increasing availability of criminal legal aid to those who cannot afford access to justice.

On 14 December 2023 the Oireachtas Joint Committee on Justice published its [Report on pre-legislative scrutiny of the General Scheme of the Criminal Justice \(Legal Aid\) Bill 2023](#). Among the General Scheme's objectives are transferring administrative responsibility for the criminal legal aid scheme from the Department of Justice to the Legal Aid Board; to strengthen the oversight and governance relating to the criminal legal aid scheme; and to introduce a simplified and transparent written or online application system for criminal legal aid. The recommendations in the pre-legislative scrutiny report include:

- That responsibility for the payment of criminal legal aid would not be transferred to the Legal Aid Board.
- Consideration be given to introducing a system of direct payment of fees to barristers, representing criminal legal aid cases at district court level, which should be put on a statutory basis.
- Legislation should state clearly that victims of sexual offences shall not be required to comply with a means test or make any contributions to access legal aid services.
- The right to legal advice should also apply to victims of all domestic violence related offences.

The Law Society supports reform of the criminal legal aid scheme and will collaborate with the Department of Justice and others to progress this in 2024.

(3) Litigation Costs in Ireland

The 2020 Report of the Review Group on the Administration of Civil Justice (known as [the Kelly Report](#)), made a recommendation, supported by a majority of its working group, that non-binding guidelines should be introduced as a mechanism to control legal costs on the basis of flexibility and fairness. Both the Law Society and the Bar Council supported that majority recommendation, however the Review Group also published the minority view that supported a table of binding maximum costs chargeable.

The Law Society, in conjunction with the Bar Council, made a [Submission](#) in February 2022 to Indecon Economic Consultants (**Indecon**). Indecon had been appointed by the Department of Justice to carry out research around legal costs in Ireland. We highlighted four areas which we believed would positively impact on litigation costs:

- Increased resources in the justice system with particular focus on the number of judges and support staff. Increased investment in case management enhancements and the adoption of technology.
- Investment in a fit for purpose system of civil legal aid to ensure access to justice for all.
- The introduction of non-binding guidelines in respect of legal costs.
- A reduction in State-imposed revenue on a Bill of Costs.

The EY report commissioned by the Law Society and the Bar Council forming the basis of the Submission to Indecon was based on an international benchmarking exercise, a review of past reports on legal costs and analysis of 256 litigation cases from 2011 to 2019. The report addressed concerns regarding the misrepresentation of legal costs in Ireland in recent years.

On 7 February 2024 the Department of Justice published the Indecon report entitled [Multi-Criteria Impact Evaluation of Options for the Control of Litigation Costs](#). The Report recommended considering new options to reduce litigation costs in particular “(I) non-binding guidelines on litigation costs but with significantly enhanced transparency measures and (II) binding maximum litigation costs but only for non-complex personal injury cases”. The Indecon analysis concluded that non-binding guidelines with significantly enhanced transparency measures are most likely to have positive effects in terms of both reducing the costs of litigation and enhancing competition within the profession.

The submission by the Law Society and the Bar Council which provided data on legal fees provided by the Institute of Legal Cost Accountants (ILCA) was described by Indecon as being “helpful” to their analysis. Indecon further commented that its analysis of these figures shows “the extent of variance in costs and the very small number of cases in the ILCA database for any given year”. “This highlights the challenge in attempting to identify any trends in costs,” the report adds.

The Law Society will continue to assist the Department of Justice with progressing the recommendations set out in the Indecon report.

3. What are your views on the resources (in terms of number of judges and budget) of the judiciary?

The Department of Justice has set up a judicial panel working group as part of the Programme for Government to consider the number and type of judges required to ensure the efficient administration of justice. [The Judicial Panel Working Group](#) published its

report in February 2023. The Working Group made 54 recommendations on the future resourcing needs of the judicial system including the need to appoint new judges. The main conclusions of the Working Group are that the Irish judiciary is undersized in relation to international standards. It was acknowledged that initiatives underway (such as the Courts Modernisation Programme) should be progressed steadily, and the report highlighted the importance of developing a structured system for planning and deploying judicial resources which recognises organisational interdependencies and a whole of system approach.

It recommended that 44 additional judges be appointed in two phases starting in 2023. Additional numbers in further phases should be determined by a review in 2025 of judicial needs up to 2028. Officials in the Department of Justice are in the process of establishing an implementation programme to oversee the delivery of the recommendations. The Law Society welcomes the report of the Working Group and looks forward to the implementation of the recommendations by the Department of Justice and the Courts Service.

The Law Society supports the [Bar Council submission](#) that increasing the number of judges alone is not sufficient to improve the efficiency within the courts system, and additional supports such as training, IT, building facilities and administrative support are also required.

4. What do you consider the main challenges for the attractiveness of legal careers in Ireland?

The Law Society continues to work hard in improving the attractiveness of legal careers in Ireland.

Over the past 25 years, the number of practicing solicitors in Ireland has increased from 4,500 to almost 12,000. There are, and continue to be, many reforms in the area of access to legal education to facilitate greater access to the profession.

The Law Society's education model is deeply rooted in the public interest and focuses on increasing access to the profession for trainee solicitors across diverse educational, professional and socio-economic backgrounds. Training solicitors to meet any and all challenges they will face in their careers is some of the most important work carried out at the Law Society.

In recent years legal education has become significantly more accessible for graduates and non-graduates. Solicitor training can be approached from several different angles and doesn't require a law degree or indeed any degree.

To qualify to become a solicitor, every person, regardless of their educational background, must pass the Law Society's entrance exams (**FE1s**) and then complete the necessary in-office training and one of the relatively new professional practice courses.

The Law Society's Professional Practice Course Hybrid (**PPC Hybrid**) was designed specifically to suit people based outside Dublin or with existing work/family/other commitments, thereby allowing a more flexible pathway to becoming a solicitor.

The Law Society has also developed several programmes and projects to connect with teenagers and young people who traditionally may not have viewed the law as a career option. These include Street Law, Solicitors of the Future and the Legal Ambitions Summer Schools.

The Law Society provides a report on admission policies of legal professions to the Legal Services Regulatory Authority (**LSRA**) each year. The 2023 Report is currently being finalised and will be submitted to the LSRA at the end of February 2024.

Some up-to-date statistics include:

- 24,161 solicitors on the Roll of Solicitors as of 31 December 2023.
- 772 new solicitors were admitted in 2023 – a 50% increase on the 515 in 2022.
- 548 trainees were admitted – the highest figure since 2011. English admissions at 158 has increased from 134 last year. Our post Brexit English admission figure seems to be stabilising somewhere between 100-150. Pre-Brexit we almost never admitted more than 100 English solicitors in any given year.
- Transferring barrister numbers have fallen to 8, which is the lowest they've been since 2012. This may indicate that conditions for barristers have improved over the last few years. Foreign lawyer admissions are well up at 27 – 19 of these are from common law states and the remaining 8 being drawn from 6 different EU states.
- In terms of gender, 2023 has seen an increase from 56% female admission to 60% this year.

The larger firms continue to be the most sought-after jobs for trainee solicitors. This is an age-old issue of rural vs cities and in particular the pull of the larger Dublin city firms versus the rest. This has probably accelerated in recent years due to the increased possibility of more structured hybrid or remote policies and a spotlight on work life balance within these firms. There has also been an influx of UK or international legal and financial services firms offering more employment opportunities. [Law firms in Ireland survey: Economic turmoil, finding and keeping staff are key concerns – The Irish Times](#)

5 How do you assess recent developments regarding the digitalisation of justice, such as in the area of e-litigation?

The answer to this question is set out in three parts dealing with the separate areas of (1) Litigation, (2) Conveyancing and (3) Probate.

(1) Litigation

[The Review of the Administration of Civil Justice Report](#) (the **Kelly Report**) was published by the Department of Justice in December 2020 and made clear that the present level of digitalisation of the Irish Court Service is totally inadequate.

Digitalisation provides a huge opportunity to open up the courts system, make it more efficient and cost effective. The Law Society recognises that progress is being made and that digitalisation is hardwired into the [Court Service' Corporate Strategic Plan 2021-2023](#), but we are still some way away from having a system appropriate to the twenty first century. The latest iteration of the [Courts Service's IT strategy 2021-2024](#) sets out 6 themes and 42 action points to progress this agenda.

1.1 *Greater availability of and access to Wi-Fi*

There is no Wi-Fi access in many courts, including in much of the Four Courts, and it is difficult to obtain Wi-Fi passwords where it is available. (The latest [Courts Service Annual Report for 2022](#) states that there are now 120 technology enabled court rooms in the State's 106 court buildings.)

1.2 *Live list of cases in the courts for public and practitioners*

As a means to enhance efficiency, it would be useful if, when court is in session, people could see what cases are gone/ongoing/left to be heard, the order cases are to be called and estimated timeframes.

1.3 *E-portal facilities*

These would avoid mass printing and reduce the potential for data breaches where significant volumes of paper are being brought to court by practitioners.

1.4 *Paperless facilities in Court*

A facility to plug in laptops and share screens with the court would be useful.

1.5 *An online payment system*

A facility for the online payment of court duty is awaited. As many other State Departments have provision for the payment of fees online (e.g. Revenue, Companies Registration Office), we hope this will be rectified soon.

1.6 *Environmental considerations*

In the course of tendering for State contracts, firms are required to have an Environmental (Green) Standard. A move towards greater technological improvements in the Courts Service, and away from mass printing, would assist greatly in achieving environmental goals.

(2) Probate

The Probate Office is an office of the High Court. An eProbate project has been identified as part of the Courts Service Corporate Strategic Plan 2021-2023 (see above) and an initial budget has been allocated to the Courts Service to facilitate the commencement of the project, which is expected to be delivered in 2024.

It is envisaged that eProbate will include a single point of contact for all applications, leading to faster and more efficient processing of applications. As part of the development of the new system the application process will be simplified for users and there will be reduced opportunities for errors, thereby speeding up the process. In addition, by reducing the number of invalid applications, the development of the new system will allow staff resources to be better utilised in processing other applications for the benefit of the public.

(3) Conveyancing

The Law Society has worked for many years to engage stakeholders and map out the complexities of the Irish conveyancing process as part of its eConveyancing project. The project's foundational goals and structure have been shared with solicitors and other key stakeholders in various forums. Initially focusing on collaboration with the Banking & Payments Federation Ireland and the Land Registry (now part of Tailte Éireann), our engagement strategy has evolved to seek broader advice, opinions, and direction from practitioners across Ireland. This ensures that the insights and needs of practitioners directly shape the project's future.

Building on this stakeholder engagement, the project is initially focusing on the pre-contract and contract stages and the digitalisation opportunities within this scope. The Law Society, in close collaboration with practitioners nationwide, is eager to delve deeper into understanding their specific needs and requirements. This collaborative approach is key to understanding the requirements to support a transformative leap in digital conveyancing practice tools.

The Law Society notes that eConveyancing has been a long-standing objective of the Irish government and has made a [Submission](#) to the Department of Justice on using Statements of Truth in place of Statutory Declarations in conveyancing which would improve efficiencies in the conveyancing process. In 2023 the Law Society, through its Conveyancing Committee published General Conditions of Sale which for the first time allow for the execution and formation of contracts for the sale of real estate by digital means. From 1 November 2023 this land contract is now universally used throughout the jurisdiction.

6 Are you aware of any systematic issues with the implementation of final court judgments by public authorities?

The Law Society is not aware of any systematic issues with the implementation of final court judgements by public authorities.

7 Could you please provide more details on the update of the Solicitor's Guide to Professional Conduct 2022?

The 4th edition of the Solicitor's Guide to Professional Conduct was published in 2022 (the **Guide**). The Guide represents current Law Society policy and recommendations, and the regulation department of the Law Society regularly communicates with members on ethical questions via its helpline, practice and guidance notes, Gazette articles and CPD Skillnet presentations. Although the Guide is neither a rule book or a manual, and does not have the force of law, it is considered a valuable reference tool on matters of professional conduct and extends the Law Society's commitment to communicating practical and effective guidance to its members.

The Guide was updated in 1988, 2002, 2013 and 2022. It is a living document enhanced by regular practice notes which are published on the Law Society's web site.

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