

# LAW SOCIETY SUBMISSION

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**SUBMISSION TO THE JUDICIAL PLANNING WORKING  
GROUP ON ITS TERMS OF REFERENCE**

**JULY 2021**

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#### ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

## 1. Introduction

Following the Programme for Government commitment “to establish a working group to consider the number and type of judges required to ensure the efficient administration of justice over the next five years”, the Judicial Planning Working Group (‘the **Group**’) invited the Law Society (‘the **Society**’) to make a submission on the following terms of reference:

1. *To consider the number of and type of judges required to ensure the efficient administration of justice over the next five years in the first instance, but also with a view to the longer term.*
2. *To consider the impact of population growth on judicial resource requirements.*
3. *To consider, having regard to existing systems, the extent to which efficiencies in case management and working practices could help in meeting additional service demands and/or improving services and access to justice.*
4. *To evaluate the estimated impact of the Covid-19 pandemic on court caseload in the short, medium, and long term and strategies for reducing waiting times to significantly improve on pre-Covid levels.*
5. *To examine the experiences of other jurisdictions (particularly Common Law areas), and obtain accurate and up to date information on judicial practices and case management systems, together with caseload data in relation to Irish courts.*
6. *To consider the costs associated with additional judge numbers, including salaries, allowances, judicial support staff and chambers.*
7. *To review forthcoming and proposed policy and legislative reforms that may impact on the requirement for judge numbers including;*
  - *Recommendations of the Civil Justice Review*
  - *The O’Malley Review on victims of crime*
  - *Family Justice Reform*
  - *Review of Legal Aid financial eligibility criteria*
  - *Courts Service Modernisation Programme*
  - *Commencement of relevant provisions of the Assisted Decision Making Capacity Act 2015*
  - *Judicial Appointments Commission Bill*
  - *PfG commitment to establish a new Planning and Environmental Law Court*
  - *Insolvency Review*
  - *Economic development.*
8. *To make recommendations for developing judicial skills in areas such as white-collar crime.*
9. *To make recommendations on relevant issues such as judicial workload, barriers to entry, efficiency gains, and speed of access to justice.*
10. *To consider the implications of Brexit on the courts in regard to judicial resources and potential increased workloads arising.*

## **2. Previous Commentary**

The Society has engaged extensively, over many years, in the consideration of issues related to judicial planning and appointment.

As such, it is hoped that the following submissions, together with recent input to the Joint Committee on Justice's pre-legislative scrutiny of the General Scheme of the Judicial Appointments Commission Bill, will assist the Group in its work:

### **i. January 2014 Submission**

[Review of Procedures for Appointing Judges](#)

### **ii. March 2017 Submission**

[Scheme of the Judicial Appointments Commission Bill 2016](#)

### **iii. September 2017 Submission**

[Action Plan for Jobs 2018](#)

### **iv. February 2021 Submission**

[General Scheme of the Family Court Bill](#)

### **v. March 2021 Submission**

[General Scheme of the Judicial Appointments Commission Bill 2020](#)

### **vi. May 2021**

- a. [Opening Address to the Joint Oireachtas Committee on Justice on the General Scheme of the Judicial Appointments Commission Bill 2020](#): and
- b. [Transcript of Joint Committee on Justice debate](#) (between the Committee and the Law Society, Bar Council and legal academics).

## **3. Terms of Reference**

Focus on issues which are the subject matter of the terms of reference is timely given the backlog in the courts system which has been exacerbated by the pandemic.

The Society provides the following commentary arising from consideration of the terms of reference:

### **3.1 Judicial Appointments**

The Society is committed to supporting policy reforms which reinforce and enhance the Irish judiciary as a core pillar of the democratic governance of the State.

Like other stakeholders, we share the objective of ensuring a strong, independent judiciary and believe that a transparent process of appointment is a crucial safeguard in delivering that foundational tenet of the effective administration of justice in Ireland.

As mentioned, the Society has been heavily engaged in the work of legislators to bring about a Judicial Appointments Commission Bill which will enhance the diversity and independence of the judiciary.

It is welcome that the General Scheme of the Judicial Appointments Commission Bill proposes that the Commission's Procedures Committee will publish statements which set out selection procedures as well as required skills and attributes, having regard to certain criteria.

In our view, the requirement that the Procedures Committee will have regard to "the need for selection criteria to comprise comprehensive procedures, including provision for interviews and other selection tests, approaches and methods in line with the requirements of the vacancy or vacancies proposed to be filled" will assist in stream-lining and aiding transparency in the system.

The requirement that the Committee will also 'monitor and review international developments in the selection and appointment of persons for judicial office, including any international instruments and conventions relevant to such selection and appointment' is also welcome.

Having sought to ensure that basic criteria for judicial selection would be as broad as possible to allow for the widest range of candidates, the Society considers that the intention that 'different statements of requisite skills and attributes may be prepared by reference to different judicial offices or, in the case of judicial offices in the same court, different classes of business in the court that is reasonably anticipated a particular' provides a wide discretion to create different statements for a broad range of judicial candidates.

### **3.2 Merit**

Judicial candidates must be selected on merit and our previous submissions (provided at paragraph 2 above) outlined various merit standards and how same are employed by international commissions of judicial selection.

Merit is not just depth of legal knowledge and, while technical merit is essential, it must be accompanied by a host of the other skills which are necessary to enable a judge to manage a court fairly, efficiently and with appropriate consideration for all court users.

For example, our previous commentary on the range of qualities and characteristics which may contribute to judicial merit included considerations around professionalism, communication, integrity, decision-making, efficiency, leadership and management.

### **3.3 Gender Equality, Diversity and Inclusion**

The solicitors' profession is proud of the diversity of its members. Since 2015, women have outnumbered men and the profession has also proven attractive to mature entrants with 10% - 15% of applicants to our Professional Practice Course in the last decade being 30 years and over.

The Society continues in its commitment to ensure greater gender diversity in the judiciary, in keeping with significant improvements in gender diversity across the profession.

Concerted efforts have been made over the last decade to appoint more females to the judiciary and, in particular, to the superior courts. The initiative was a welcome political intervention, based on a desire to achieve a judiciary that is more reflective of the society it serves, which is an essential component of its enduring legitimacy.

### **3.4 Diversity Within the Legal Profession**

While, in theory, solicitors have the same opportunities to become members of the judiciary as barristers, that is simply not the case in practice.

Solicitors have been eligible for appointment to the superior courts since 2002 however, the period 2002 and 2016 saw 90 appointments to the superior courts, eight of whom were solicitors.

It is a matter of significant concern that, even though solicitors comprise approximately 80% of practising lawyers in the jurisdiction, the number of superior court appointments from within their ranks remains a small fraction of that.

Solicitors have broad experience in life and law; as legal practitioners and advisers, as employers, as operators of large and small businesses, and as the branch of the legal profession which deals directly with the public, often at the most difficult times in people's lives.

In addition to technical legal skills, solicitors bring lived-experience and humanity to the courts and we believe that the public interest would be better served if more solicitors were appointed to the senior ranks of the judiciary.

The lack of solicitor appointments to the superior courts represents an issue of diversity which the system of judicial selection and appointment has yet to fully confront.

We believe that an approach, similar to that taken to enhance gender diversity in the judiciary, must be adopted to appoint a greater number of solicitors, who represent the broadest and most societally and geographically diverse portion of the legal profession, to the judiciary.

### **3.5 Developing Judicial Skills**

The Society's professional training provides a solid grounding across a broad spectrum of legal practice.

We also provide a Diploma in Judicial Skills and Decision-Making which has run four times (for 93 participants) since its launch in 2016.

The Diploma, which prepares participants for a variety of adjudicatory, tribunal and board roles, focuses on the exercise of judicial skills and decision-making; mediation, managing proceedings and administering justice; written judgments and decision-making skills; and the social context of law.

The Group will no doubt be aware of ongoing work at EU level in the area of judicial training which can be accessed [here](#).

### **3.6 Senior Counsel**

The Society was concerned to note that, when inviting applications for recommendation for the grant of Patents of Precedence in January of this year, Minister McEntee was quoted as having stated:

*“Senior Counsel are also, of course, our future judicial candidates”.*

This was particularly in circumstances where solicitors only began to be appointed as Senior Counsel last year and the Society had never previously encountered any suggestion that appointment as Senior Counsel would, in some way, operate as a steppingstone to judicial selection and appointment.

Applications for recommendation for a grant of Patents of Precedence are examined by an Advisory Committee established under the Legal Services Regulation Act 2015 and chaired by the Chief Justice.

The focus of the Advisory Committee is on the skill set required of a Senior Counsel, not a member of the judiciary and, as such, the idea that success in a completely separate process would somehow be viewed as a pre-requisite to judicial selection is, in our view, inappropriate and contrary to the objective of achieving greater diversity in judicial appointments.

### **3.7 Brexit**

In the above referenced submission on the *Action Plan for Jobs 2018*, the Society highlighted a number of areas for consideration in the context of Brexit. This continues to represent the Society's position on the issue.

The Society is also engaged in the [Ireland for Law initiative](#) which works to progress matters which will no doubt also be of interest to the Group and which the Department of Justice has [committed to supporting](#).

## **4. Conclusion**

While wishing the Group every success in its important work, we would conclude our observations by emphasising that any change to qualifications for appointment to the bench must be clearly reasoned and demonstrated to be in the public interest.

There is no room for experimentation in the system, as the importance to individual citizens of each decision, whether in the courts of local and limited jurisdiction or in the higher courts, precludes that.

Because of the system of precedents, significant knowledge of case law, practice and procedure, as gained by legal professionals in the course of their education and post-qualification training, is essential for the credibility of the administration of justice in Ireland.

We trust that the Group will find this commentary, together with the Society's previous submissions on issues which are relevant to its terms of reference, to be helpful and will be glad to engage further on any of the matters raised.

### **For further information please contact:**

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