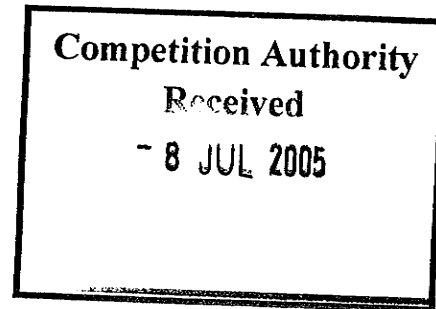


The Secretary
Competition Authority
Parnell House
14 Parnell Square
Dublin 1



30 June 2005

**RE: STUDY OF COMPETITION IN LEGAL SERVICES IN IRELAND:
PRELIMINARY REPORT**

Dear Secretary,

Thank you for providing the Higher Education Authority with the opportunity to make a submission on the Preliminary Report of the Competition Authority. Echoing the Report, we would re-iterate that the provision of quality legal services, accessible to all is the hallmark of a civilised, democratic society and a thriving economy. Routes to professional qualification and practice in law, that reflect the elements of quality and open access, are, in our view, essential to the provision of effective legal services. Your Report identifies a number of areas where such routes are blocked or are impeded with various barriers. This is not in the interests of society, or indeed of those who practice, or wish to practice, the profession of barrister or solicitor. The HEA welcomes and support the overall thrust of the recommendations on legal education and we will focus on these in our observations.

You should be aware that the HEA has the following statutory functions which form the background to our observations on the Report –

- Furthering the development of higher education,
- Assisting in the co-ordination of State investment in higher education and preparing proposals for such investment,
- Promoting an appreciation of the value of higher education and research,
- Promoting the attainment of equality of opportunity in higher education, and
- Promoting the democratisation of the structure of higher education.

In addition, the Authority advises the Minister for Education and Science on policy issues relating to higher education and research.

As further background, you should note that all current projections of the third-level student population predict steady increases in the numbers of enrolled students. Over the period to 2015 the HEA projects that the admission rate to higher education of school leavers will increase from approximately 54% to 67%. There is every reason to believe that the number of law students in third level education will increase in pace with the overall rise in enrolments. King's Inns assertion (paragraph 4.37) that there is insufficient demand to sustain multiple providers of certification courses implies that the proportion of law graduates seeking professional certification will decrease as overall numbers increase; an assertion which appears contrary to the facts as we know them.

Given the HEA's role and our projection of an increasing student body at third level, we offer observations on the Report under three broad headings relating to the parties that stand to benefit from a reformed system of legal education:

- candidates seeking certification as legal professionals,
- the legal services profession itself, and
- Institutions offering certification courses (focusing on the Irish higher education institutions in this instance).

In addition, we also comment on the proposals regarding barriers to entry for trainee solicitors and barristers.

Benefits to candidates attending legal certification courses

We concur with the Report's analysis and proposals. We also believe there are further benefits to be gained - benefits which are desirable for the broader provision and improved quality of legal education in Ireland:

- **Improved Access**

Provision of multiple modes of study (fulltime and part-time, etc.) in a range of higher education institutions is a desirable objective across higher education – it is also seen as good practice internationally and is necessary if we are to reach a broader constituency of learners for whom traditional modes of study pose particular problems. This approach provides enhanced access opportunities for mature students and those from lower socio-economic backgrounds in particular. The decision by the King's Inns to terminate its two-year part-time course in favour of a one year full-time course runs counter to trends of diversifying access to higher education generally, which the HEA is anxious to promote.

Offering recognised qualification courses in a range of higher education institutions provides increased geographical access, as candidates will no longer have to travel to Dublin to study. This has the potential to greatly enhance participation in the course from a wide range of geographical locations and social backgrounds. It is assumed that the professional bodies see such wide participation as desirable as it ensures the professions encapsulate the experience and perspectives of society as a whole, the better to serve all of society.

The provision of legal professional education by a range of higher education institutions also has the capacity to enhance the education provided in a way that is not possible in an institution dedicated solely to legal education. Cross disciplinarity and multi-disciplinarity are increasingly seen as very desirable objectives in all higher education programmes and are usually implemented through modularisation and semesterisation. Such an approach offers the prospect to students of a deeper and more diverse learning experience, with the result that they graduate with a wider range of skills, knowledge and competences. Having regard to the complex role that a solicitor or barrister is asked to undertake, such outcomes should be especially desired.

- **Quality assurance in higher education**

The legal profession are, rightly, concerned about quality in the education and training of entrants. However, confining legal education to the King's Inns and the Law Society is not a necessary precondition to quality entrants to the profession, and is unlikely to be the optimal way to ensure such quality. The provision by a broader range of higher education institutions of programmes leading to professional qualification, delivered in accordance with reasonable criteria laid down by the professional bodies, has worked well in a number of areas, including medicine and architecture. It can work in legal education.

Higher education institutions are currently subject to both internal and external rigorous quality assurance (QA) reviews under statute. In the first instance, the higher education institutions themselves are responsible for the quality of their education provision. In the case of the universities, the HEA has a review role in respect of QA procedures which we take very seriously. The European Universities Association (EUA) recently completed a review of these QA procedures at the joint behest of the HEA and the Irish Universities Quality Board. The review found that in general the procedures were a model that they would like to see replicated in all European higher education institutions, while making recommendations for further improvement which are now being implemented. Courses underpinned by such effective QA procedures are the best guarantee of effective teaching and learning. It is noteworthy that current providers of professional legal certification are not subject to the same rigorous QA regime as universities – the discussion in paragraph 4.5 concerning the educational provision in Kings' Inns is noted. Higher education institutions that offer barrister and solicitor qualification courses will offer high-quality teaching and learning as a result of the QA regime under which they now operate.

- **Improved course provision**

Your report points out in paragraph 4.21 that trainee solicitors must all take the same core subjects. By improving the range of institutions providing legal professional education, one increases the choice students have of the institution where they will undertake their professional training, exposing them to a range of different approaches (all fitting within the criteria determined by the professional bodies). This will help the profession to be more flexible and prepared in meeting demands for specific

requirements that will emerge as Ireland's society and economy develops and changes, without compromising the core knowledge every law practitioner is required to have. A real and exciting opportunity exists for a fundamental change in the breadth and depth of course provision, done in an educational environment underpinned by robust and effective QA mechanisms.

Benefits to the legal profession from strengthening relationships with higher education institutions

Almost all professions are subject to change in the nature of their work and their working environment. This has particularly been the case in recent years as a result of the impact of globalisation and information and communications technology. A good example in an Irish context is architecture. The emergence of a range of architecture specialisations (conservation architecture, civic planning, landscape design, etc.) has vastly increased the employment opportunities for architects. This in turn has created a strong demand for architecture graduates. The current training and education of architects in Ireland is being reviewed as a result. This type of engagement between the professions and third level education is common; other examples are engineering and nursing.

The legal professions could benefit from similar adaptation and growth, brought about by synergistic relationships with higher education institutions. However, the relationship between the professions and the institutions is weakened by the absence of the certification of education providers other than the Law Society and King's Inns (paragraph 4.20) and the failure of the professional bodies to set down criteria for such certification. This acts as a direct barrier to the development of the legal profession itself, in a way that the architecture profession is currently benefiting from and other professions have experienced.

Benefits to the higher education institutions of awarding qualifications which lead to professional certification

Currently, Irish higher education institutions operate in a very competitive environment. Previous competitive funding for research has seen the institutions respond with very high quality proposals that, in a short period of time, have transformed third level research in Ireland from being very poorly developed to a level where in many cases it is comparable with other developed countries. Recent proposals for new competitive funding streams for the higher education institutions will raise the level of effectiveness higher. The higher education institutions have demonstrated that they can respond and thrive under such a regime.

As Irish higher education institutions mature to the point where they regularly compete for research and other funding at an international level, increasing the size of their student bodies (all of which are small by EU standards) is critical to ensuring that they will be in a position to compete with the best European and US institutions. Institutions large enough to offer a comprehensive range of courses across a wide spectrum of subjects benefit from much higher opportunities for inter-disciplinary studies, cited as the most likely area to yield fruitful research in years to come. Higher

education institutions that can offer qualifications leading to certification as an element of legal education will benefit from increased law faculty sizes. The resultant increase in law researchers and interdisciplinary studies that incorporate law will allow the field to develop in Ireland in ways not likely under the current certification regime. The inability to offer such qualifications also artificially inhibits Irish higher education institutions' ability to grow their student body at a time when third level enrolments are on the increase in most other developed economies, where such qualifications are commonplace (as shown by your examples of England and Scotland in paragraph 4.12).

Barriers to entry – entrance examinations

The HEA regards entrance examinations for entry to the Law Society and King's Inns courses, for those candidates who have already completed a degree in law, as neither necessary or desirable. An individual's assessment of her/his own ability to complete a course, coupled with the financial outlay required to undertake it, act as barriers to entry in their own right (as discussed in paragraph 13.15 of the Report). In undergraduate education, where supply cannot meet demand, exams are a method of allocating places to the best-performing applicants (as in the case of the CAO entry system). However, for postgraduate qualifications, the accepted method is to assess a candidate's previous academic performance and any relevant experience. The system of preliminary and entrance exams as described in your Report is considered by the HEA to be excessively onerous for applicants, with little benefit over the accepted assessment methods. Therefore, the HEA strongly supports proposals 33, 34 and 35 of your report as a minimum change, but would suggest that the need for candidates to sit entrance exams be reduced even further, so that only those candidates whose ability to complete the course cannot be determined by an assessment of their prior learning be required to sit the exams.

Recognition of prior learning by the King's Inns, when considering which candidates need not complete the Diploma in Legal studies (paragraph 4.54), is a welcome approach. However, it is our view that the assessment of what courses are acceptable is overly restrictive, and ignores the role of the National Qualifications Authority of Ireland (NQAI). We recommend that the King's Inns liaise closely with the NQAI on this matter.

The Diploma provided by the King's Inns, in our view has merit as an approach to providing a background course in law. However, applicants not possessing specific law qualifications from specific institutions should not be required to complete the Diploma prior to applying for the Degree. Removing this restraint will also allow for credible alternative courses providing background knowledge to be provided by other institutions. We therefore support Proposal 4 in your report, recommending the abolition of the requirement for candidates not in possession of a specific law qualification to obtain the Diploma in Legal Studies.

Separation of roles

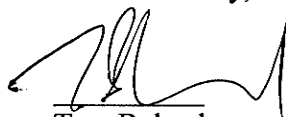
The HEA is strongly in favour of a separation of the multiple roles currently exercised by both King's Inns and the Law Society. Best practice indicates that the role of teaching and administering exams should be performed by bodies separate from those performing the role of accreditation and quality assurance. The setting out by the Law Society and the King's Inns of criteria for other institutions seeking to provide professional legal qualifications would go some way to allowing the benefits discussed above to materialise. Such a change would ensure that the quality of professionals taking up practice will be maintained, while facilitating increased provision by others. Recommendations 1 and 2 in Chapter 4 therefore present immediate, practical and effective measures that, by allowing the higher education institutions to award graduates with qualifications allowing them to be certified as legal professionals, have the potential to greatly enhance legal education.

Conclusion

As a society we have largely been well served by our legal professionals. But access to those professions should no longer be predicated on structures which have monopolistic elements, discouraging wider participation in legal education and hence in the professions. Higher education is, in general, undergoing far-reaching change. Commitment to equality of access, to quality education, in strategically managed institutions, serving personal, social and national needs is at the heart of those changes. Legal professional education can benefit by joining the mainstream of higher education.

I trust that our observations will be of assistance in finalising the Report. Should you have any questions or require any additional information, please do not hesitate to contact me.

Yours sincerely,



Tom Boland
Chief Executive