



RESPONSE OF THE LAW SOCIETY OF IRELAND

QUESTIONNAIRE FOR CIVIL SOCIETY AND BAR ASSOCIATIONS

- 1. Taking into consideration the guarantees for the functioning of lawyers, contained in principles 16-22 of the [Basic Principles on the Role of Lawyers](#), please describe the constitutional, legal, administrative and policy measures adopted in your country to enable lawyers to exercise their professional activities in favour of their clients in a free and independent manner.**

In Ireland, the legal profession is split into two branches: solicitors and barristers. There are no limitations on either solicitors or barristers advising throughout Ireland. However, barristers cannot generally provide advice directly to clients and must be instructed by a solicitor.

The Law Society of Ireland (**the Society**) is the educational, representative and co-regulatory body of the solicitors' profession in Ireland as provided for in the [Solicitors Acts 1954-2015](#). Traditionally, the Society had very significant powers with some checks and balances in place, including a right of appeal to the High Court in certain circumstances, for example, applications to strike off solicitors from the role of solicitors.

The Bar of Ireland is the representative body for the barristers' profession where membership is recommended but optional. Until recently, barristers were self-regulated and independent sole practitioners with no government-imposed controls.

The Society's code of conduct is [A Guide to Good Professional Conduct for Solicitors](#) while barristers also have [A Code of Conduct for the Bar of Ireland](#).

Principle 16

The right to legal representation in Ireland is well established. The Constitution of Ireland enshrines fair trial and fair procedure rights as well as equal treatment before the law. These rights have been expanded by the Irish judiciary and legislation in criminal law to include the right to legal representation during trial (but not in all cases), the right to free legal aid for

those who otherwise cannot afford it, the right to effective representation (including adequate time to consult and prepare a defence), the right of access to a lawyer whilst in police detention, the right to trial with reasonable expedition, the right to have unconstitutionally obtained evidence excluded etc.¹

It is possible to pursue the State for failure to ensure these constitutional rights and indeed Irish lawyers regularly initiate proceedings against any State body which does not respect these rights through constitutional challenges, appeals, judicial reviews, habeas corpus applications as well as the possibility to bring a consultative case stated. There are also a number of independent statutory bodies to which complaints can be brought if State bodies do not comply with their obligations, such as the [Office of the Ombudsman](#), the [Garda Síochána Ombudsman Commission](#)² and the [Data Protection Commissioner](#).

In addition, Ireland has incorporated the European Convention on Human Rights (**ECHR**) into domestic law through the [European Convention on Human Rights Act 2003](#), which further confirms the right to legal representation in Ireland. There is a possibility of bringing a case to the European Court of Human Rights where the ECHR is being infringed by the State.

Following the seminal European Court of Human Rights case *Airey v Ireland*³, the Irish State was obliged to introduce a scheme to afford financial assistance to those who needed it in order to vindicate their rights before the Courts. See further detail below in relation to current difficulties with the legal aid system in Ireland.

Principles 19-22

Legal professional privilege is guaranteed by common law and statute in Ireland, as well as ECHR jurisprudence.⁴ The [Data Protection Act 2018](#) more recently copper fastened the right to assert legal professional privilege in circumstances of data requests by the Data Protection Commission.⁵ It may be lost in certain circumstances, including where furthering a criminal purpose, testamentary disputes or involving the welfare of children.

Lawyers are permitted to seek disclosure from State bodies in the course of proceedings – whether as a party to the proceeding or by the third party disclosure procedure. The State is also obliged to adhere to requests under the Data Protection Acts or Freedom of Information Acts. The latter applies to bodies that are publicly funded. If the former is not complied with, a complaint may be made to the Data Protection Commissioner.

The right of audience before a Court is contained in section 211 of the [Legal Services Regulation Act 2015](#), which relaxes some of the traditional divisions between solicitors and barristers⁶.

¹ See O'Malley, *The Criminal Process* (1st Edition, 2009), at Chapter 4 “Elements of a Fair Trial”, Chapter 8 “The Right to Counsel” and Chapter 17.

² An Garda Síochána is Ireland's National Police Service

³ *Airey v Ireland* 32 Eur Ct HR Ser A (1979): [1979] 2 E.H.R.R. 305

⁴ For further detail on what exactly is covered by legal professional privilege as well as legal advice privilege and litigation privilege in Ireland, please see Law Society of Ireland, [Practice note on Legal Professional Privilege 3 July 2020](#).

⁵ *Ibid.*

⁶ For a more detailed analysis of the proposal to merge the two professions, see Law Society of Ireland, *Submission in relation to the Unification of the Solicitors' Profession and the Barristers' Profession* (Law

The Law Society regulates the eligibility of foreign solicitors practising in Ireland with the Bar of Ireland regulating foreign barristers' admission to the Bar.

2. What entities and/or mechanisms are in place to prevent and/or punish interferences with the free and independent exercise of the legal profession? Please briefly describe them and specify whether they are independent bodies or if they belong to the administrative structure of the State.

As stated above, the self-regulating Law Society and Bar of Ireland were the traditional bodies representing solicitors and barristers in Ireland.

However, the profession came under increasing scrutiny for regulatory reform in 2012, particularly from the then Minister for Justice Equality and Defence. Matters came to a head when the [Legal Services Regulatory Act 2015](#) (the **2015 Act**) was introduced by the government following a recommendation by the EU/IMF.

That Act was amended substantially from the first draft due to heavy criticism from certain sectors. The final publication faced further criticism for adversely interfering with the performance of lawyers' independent professional functions⁷. The 2015 Act, largely coming into force in late 2019, established the Legal Services Regulatory Authority (the **LSRA**) to "*regulate the provision of legal services by legal practitioners and ensure the maintenance and improvement of standards in the provision of such services in the State*".

The LSRA is independent in the performance of its functions but submits an annual report to the Minister for Justice detailing the number of new solicitor and barrister admissions and assessing whether this number is consistent with the public interest. The LSRA also deals with a broader remit of professional misconduct complaints. LSRA inspectors have the power to inspect legal practitioners to ensure compliance with requirements under the 2015 Act. It also permits limited liability partnerships in law firms.

A number of secondary legislation was introduced on foot of the 2015 Act, including the [Legal Services Regulation Act 2015 \(Advertising\) Regulations 2020](#) on 18 December 2020, which amended the previous guideline of the Bar of Ireland prohibiting barristers from advertising.⁸ In addition, all barristers are now required to have professional indemnity insurance, including those who are not members of the Bar.⁹

In relation to other recent mechanisms in place to ensure the free and independent exercise of the legal profession, new legislation is currently being proposed to make protesting outside private residences a criminal offence. Although introduced as a result of recent picketing outside politicians' homes and the Chief Medical Officer, the Bill includes all private residences, which would include lawyers and judges.

Society, June 2020), available at <https://www.lawsociety.ie/globalassets/documents/submissions/2020-lsra-unification.pdf>

⁷ See in particular, Shelley Horan, "The Legal Services Regulation Bill" 17(1) *The Bar Review* 11-14

⁸ Solicitors and barristers are now subject to the same provisions in relation to advertising. See Dara Hayes BL, "New Advertising Regulations for Barristers" 26(1) *The Bar Review* 13.

⁹ S.I. No. 572/2019 - Legal Services Regulation Act 2015 (Professional Indemnity Insurance) Regulations 2019

In this regard, a District Court judge and his wife secured an injunction to prevent picketing outside his private home by a group following the imposition by him of a custodial sentence in Court¹⁰.

The [General Scheme of the Judicial Appointments Commission Bill](#) has also been published, which provides for the establishment of a Judicial Appointments Commission in appointing judges, expanding on the previous Board in place.¹¹ In relation to the current topic, concern has been expressed around the exclusion of the Bar of Ireland and the Law Society from membership of the Commission.¹²

3. Please indicate if there are any legislative, administrative, or institutional barriers that have hindered the work of lawyers and the exercise of the legal profession in your country, and describe them.

It is generally accepted that the State does not deliberately hinder or interfere with lawyers conducting their professional duties. However, there are a number of areas in which lack of resources can nonetheless impede lawyers working freely.

Perhaps one of the biggest criticisms levelled against the State in interfering with the performance of lawyers' professional functions relates to State-run legal aid schemes. In relation to the civil scheme, the [Civil Legal Aid Act 1995](#) established the Legal Aid Board to provide assistance to persons of insufficient means. However, it excludes many areas from its mandate – such as land disputes or representation before many quasi-judicial tribunals – thus hindering legal aid lawyers in the advice they can provide.¹³ The Society has observed how the system is underfunded by the State and continues to advocate for more resources, improved streamlined systems and process and providing feedback on how the civil and criminal schemes are working.¹⁴

The [Criminal Justice \(Legal Aid\) Act 1962](#) provides for the criminal legal aid scheme wherein free legal aid may be granted, in certain circumstances, for the defence of persons of insufficient means in criminal proceedings. It is again means tested and accused are represented by solicitors and barristers who work in private practice but whose fees are discharged by the State on a case by case basis. Whilst it is regarded as functioning more effectively than the civil legal scheme, the fees chargeable by lawyers were significantly reduced during the economic crash in 2008 and have not been reinstated. The Society has expressed its concern that failure to adequately fund the criminal legal aid system will have an impact on access to justice for individuals.¹⁵

¹⁰ See "[Judge Secures Injunction Stopping Group Picketing Home](#)" 14 October 2016 *Irish Times*

¹¹ See "Commission has Concerns about AG's appointments role" 20 July 2021 *Law Society Gazette*, available at <https://www.lawsociety.ie/gazette/top-stories/2021/07-july/commission-has-concerns-about-ags-jac-role> (last accessed on 27 November 2021), wherein it is stated that the Bill has been criticised by the European Commission's 2021 Rule of Law Report by including the Attorney General as member of the Commission and leaving too much discretion to the government

¹² Hallissey "Sound the Alarm" 115(5) (2021) *Law Society Gazette* 44 as well as Joint Committee on Justice, [Report on Pre-Legislative Scrutiny of the General Scheme of the Judicial Appointments Commission Bill 2020](#) (Houses of the Oireachtas, October 2021)

¹³ See Free Legal Advice Centre, [FLAC Submission to the Office of the United Nations High Commissioner for Human Rights: Third Review of Ireland under the UN UPR Mechanism](#) March 2021.

¹⁴ See Law Society of Ireland appearance before Oireachtas Joint Committee on Justice and Equality, [Access to Justice and Legal Costs: Discussion](#), 27 November 2019

¹⁵ *Ibid*

Another area of criticism relates to the lack of adequate facilities and inappropriate buildings for family law proceedings where it is not possible to ensure: effective and confidential consultations with clients or witnesses, separate and secure rooms for lawyers etc. Following the establishment of a Committee by the Minister for Justice and Equality to review the situation in 2019, a major overhaul was recommended, including the prioritisation of the establishment of a dedicated and integrated Family Court in Dublin. This construction has yet to commence¹⁶, with the Minister recently indicating that she “hopes” to have the Bill establishing the Family Court ready in early 2022¹⁷.

4. Please describe the role of the national bar association(s) in protecting lawyers and the free exercise of the legal profession. Is the bar association de jure and de facto independent from the State?

The Society is governed by a Council, comprising elected and nominated members of the solicitors' profession. The Director General is the Chief Executive of the Law Society with all of the powers and responsibilities usually vested in a Chief Executive. It exercises statutory functions under the Solicitors Acts 1954 to 2015 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. A key strategic objective of the Society is to provide a strong voice in policy debate to inform decision makers on matters pertaining to the justice system and law reform, including the free exercise of the legal profession.¹⁸

5. Please provide detailed information on the number of lawyers that have been subject to criminal, administrative or disciplinary proceedings in the last five years for alleged violations of standards of professional conduct. How many of them were found guilty? How many of them were ultimately disbarred?

From 7 October 2019, complaints about a solicitor or enquiries about making a complaint should be referred to the LSRA. Complaints received by the Law Society prior to 7 October 2019 continue to be dealt with by the Society. On this date, 704 live files were open with the Society. In relation to those files, please see relevant figures below regarding referral by the Society to the [Solicitors Disciplinary Tribunal](#). The Tribunal is an independent statutory tribunal appointed by the President of the High Court to consider complaints of misconduct against solicitors.

¹⁶ See “Justice Minister Confirms Hammond Lane Go-Ahead” July 2020 *Law Society Gazette*, available at <https://www.lawsociety.ie/gazette/top-stories/2020/07-july/justice-minister-confirms-extra-funds-for-hammond-lane-development>. See also more recent criticism contained in Dr Coulter’s Report, as referred to in “Prioritise Family Court Bill call by child law experts” 24 November 2021 *Law Society Gazette*, available at <https://www.lawsociety.ie/gazette/top-stories/2021/11-november/prioritise-family-court-bill-call-by-child-care-law-experts>.

¹⁷ See “Early 2022 Target for Family Court Bill” 26 November 2021 *Law Society Gazette*, available at <https://www.lawsociety.ie/gazette/top-stories/2021/11-november/early-2022-target-for-family-court-bill>

¹⁸ See <https://www.lawsociety.ie/Solicitors/Representation/Policy-and-Law-Reform>

Referrals to the Solicitors Disciplinary Tribunal

Year	Complaints	Referrals
2017	1,829	28
2018	1,407	23
2019	1,274*	8
2020	560**	7
2021	73***	9

* On 7 October 2019 responsibility for complaints handling transferred from Law Society to LSRA. On this date, 704 live files were open with the Society and required resolution

**number of live files as of 9 January 2020

***number of live files as of December 2021

From 1 December 2016 –1 December 2021, the Society can advise the following:

- 1) The register records 11 solicitors who have a strike off order (disbarred) recorded against their record.
- 2) The register records 235 findings of Solicitors Disciplinary Tribunal listed for that period. These findings relate to 121 solicitors.

For information on proceedings since the LSRA took over the regulation in October 2019, please see <https://www.lsr.ie/publications/reports-and-laws/>

6. Please provide information on any case where lawyers in your country have been subject to intimidation, hindrance, harassment or improper interference, whether from State authorities or non-State actors, for action taken in accordance with their recognized professional duties. Please also describe the measures that State authorities have taken to investigate and bring perpetrators to justice.

Incidents of harassment or interference by non-State actors are rare but there have been a few isolated incidents whereby lawyers were put at risk in conducting their professional obligations, including the following:

1. An accused person in a murder case punched the prosecuting barrister during Court proceedings. He was thereafter restrained by five prison officers and removed from the Courtroom.¹⁹
2. A party to family law proceedings claimed to have brought a bomb and a gun to the family law courthouse and refused to permit his ex-wife and her solicitor leave the courtroom. The Irish police arrived within minutes and the situation was diffused

¹⁹ See O’Riordan, “Murder Accused Punches Prosecuting Barrister in Face” 7 April 2017, available at <https://www.irishtimes.com/news/crime-and-law/courts/criminal-court/murder-accused-punches-prosecuting-barrister-in-face-1.3040491> (last accessed on 27 November 2021).

without casualties.²⁰ Increased security was introduced by the Courts Service thereafter.²¹

According to a survey conducted by the Bar of Ireland in 2019, more than half of barristers experienced violence or aggression in the course of their work, with family law courts being cited as the most dangerous place to practice.²² No similar findings have been made in relation to solicitors.

As against this, the Office of the Director of Public Prosecutions (the State prosecutor) recently successfully prosecuted a convicted rapist who threatened to kill the State barristers prosecuting him during the course of his original trial as well as harassing the State barrister and his former defence solicitor.²³

7. What activities does your organization carry out to promote the independence of the legal profession? Do you co-ordinate with other organizations with similar functions in other countries or regions? Are you part of a network for this purpose? Please give examples.

The Society is a member of the Council of Bars and Law Societies of Europe (CCBE) and the International Bar Association (IBA). The CCBE is an international non-profit association which has been, since its creation, at the forefront of advancing the views of European lawyers and defending the legal principles upon which democracy and the rule of law are based. The IBA is the foremost organisation for international legal practitioners, bar associations and law societies. It has considerable expertise in providing assistance to the global legal community, and through its global membership it influences the development of international law reform and shapes the future of the legal profession throughout the world.

8. To what extent has, the legislation and/or measures adopted in your country because of the Covid-19 pandemic, affected the exercise of the independence of the legal profession or security of lawyers. Please explain.

Restrictions were introduced during the COVID-19 pandemic which has led to further issues arising for lawyers and in turn created issues of access to justice. In this regard, in September 2020, the Society made a submission to the [Oireachtas Special Committee on Covid -19 Response](#), established to consider and take evidence on the State's response to the Covid-

²⁰ See Gallagher, "Judge Refused to leave Smithfield courtroom despite bomb threat" 21 December 2018 *Irish Times*, available at <https://www.irishtimes.com/news/crime-and-law/judge-refused-to-leave-smithfield-courtroom-despite-bomb-threat-1.3738757>

²¹ See "Beefed-up Court Security Follows 'Traumatic' Incident" 9 January 2019 *Law Society Gazette*, available at <https://www.lawsociety.ie/gazette/top-stories/2019/01-january/beefed-up-family-court-security-follows-traumatic-incident>

²² Gallagher, "Half of Barristers Experience Threats in Their Work, Survey Finds" 14 February 2019 *Irish Times*, available at <https://www.irishtimes.com/news/crime-and-law/half-of-barristers-experience-threats-in-their-work-survey-finds-1.3792810>

²³ Bourke, "Convicted Rapist Found Guilty of Threatening to Kill Barristers" 5 July 2021, available at <https://www.irishtimes.com/news/crime-and-law/courts/criminal-court/convicted-rapist-found-guilty-of-threatening-to-kill-barristers-1.4612341>

19 pandemic. The Committee published its final report and laid it before the Houses of the Oireachtas on 8 October 2020. The Society outlined its concerns in a submission to the Committee which can be accessed [here](#).

9. Please describe the measures and policies you would suggest to better protect and guarantee the free exercise of the legal profession.

As outlined above, lack of resources, particularly in relation to legal aid as well as dedicated court facilities would better protect the free exercise of the legal profession.

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