

# **Research Study on the Creation of a new Profession of Conveyancer**

Submitted to

**Legal Services Regulatory Authority**

Prepared by

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## Glossary

ABS	Alternative Business Structures
AIC	Australian Institute of Conveyancers
ARNECC	Australian Registrars National Electronic Conveyancing Council
ARTL	Automated Registration of Title to Land
CCPC	Competition and Consumer Protection Commission
CILEX	Chartered Institute of Legal Executives
CLC	Council for Licensed Conveyancers
CMA	Competition and Markets Authority
DCT	Digital Comparison Tool
DSS	Digital Submission Service
Digitalisation	the use of digital technologies to change a business model and provide improved services or value-producing opportunities
e-conveyancing:	a conveyancing transaction settled electronically through a digital system
eConveyancing:	refers to the specific electronic conveyancing platform used in Australia
ELNO	Electronic Lodgement Network Operators
FTE	Full-Time Equivalent (Jobs)
GVA	Gross Value Added
IQR	Inter-Quartile Range
LeO	Legal Ombudsman
LSB	Legal Services Board
LSS	Law Society of Scotland
LSRA	Legal Services Regulatory Authority
NECS	National Electronic Conveyancing System
NZSoC	New Zealand Society of Conveyancers
PEXA	Property Exchange Australia
PIAB	Personal Injuries Assessment Board
PSRA	Property Services Regulatory Authority
SRA	Solicitors Regulation Authority
SCESB	Scottish Conveyancing and Executry Services Board
VCA	Victorian Conveyancers' Association

## Executive Summary

### Introduction and background

This research study represents an examination by Indecon for the Legal Services Regulatory Authority (LSRA) of the possibility of the creation of a new profession of conveyancer. The LSRA appointed Indecon following a competitive tender process. Established in 2016 the LSRA is Ireland's national statutory regulator for both branches of the legal profession – barristers and solicitors.

The background to this research is the request from the Minister for Justice to the LSRA under section 34(1)(c) of the Legal Services Regulation Act 2015, for a report on the creation of a new profession of conveyancer. This report represents Indecon's independent analysis and is one input to the assessment by the members of the LSRA in the preparation of their report to the Minister. The views and analysis in this report are solely the responsibility of Indecon.

The research includes a review of international models and experience in relation to conveyancing. It also examines the issue of technology and how this might impact the conveyancing process. The study considers the current market for conveyancing services in Ireland and its scale and economic impact. Competition concerns and barriers to entry for new practices are examined. We also reviewed submissions to an LSRA consultation process and obtained new stakeholder inputs concerning aspects of the study. In addition, we completed primary survey work of legal practitioners and examined consumer research undertaken on behalf of the LSRA. Based on the evidence, the report identifies the pros and cons of a new profession of conveyancer.

### Profile of the market for conveyancing services

Conveyancing is the “process of transferring ownership of immovable property from one person to another.”<sup>1</sup> The conveyancing process may include issues relating to land, rights of way, easements, leases, tenancies and mortgages, together with various statutory and other interventions in the ownership, control and use of land.

The number of solicitors practising in Ireland has increased from 6,436 in 2003, to 11,854 in 2020, up 84% over the 18-year period.<sup>2</sup> Around 70% of legal practices in Ireland have two or fewer practising solicitors. The prevalence of small firms is important in the context of the conveyancing market.

Conveyancing is one of the core services offered by many legal practitioners. A survey of sole practitioners and smaller legal practices in Ireland indicates that 92% provide residential conveyancing services and 72% provide commercial conveyancing services.<sup>3</sup> On average, residential and commercial conveyancing account for 29% and 13% of fee income, respectively, of these practices.<sup>4</sup>

Small practices tend to be general practitioners, and the majority of their clients are private individuals (78%) who require personal services such as probate/wills, conveyancing, and litigation.<sup>5</sup> A primary source of new business for smaller practices tends to be personal recommendations from family or friends.<sup>6</sup>

The Property Services Regulatory Authority (PSRA) recorded nearly 61,000 annual residential transactions in 2022. Assuming an average conveyancing fee of €1,800, this puts total residential/conveyancing fees at €109.6m for Ireland. The majority of property sales are in Dublin (30%) and within a €200k-€400k sale price range (50%). Large cities like Dublin, Cork, and Galway account for most conveyancing income due to their higher populations and supply of residential housing units. These counties accounted for €32.6m, €11.6m, and €4.9m, of conveyancing fees. There is a lack of definitive data on commercial conveyancing costs. However, Indecon has analysed the commercial property sales market and our indicative conservative estimates of conveyancing costs are around €25-30m per annum but may be higher. These figures are based on levels of solicitors' income/fees secured from payments received for conveyancing work.

<sup>1</sup> Law Society of Ireland: Conveyancing Manual, (2009) Oxford University Press at para 1.1

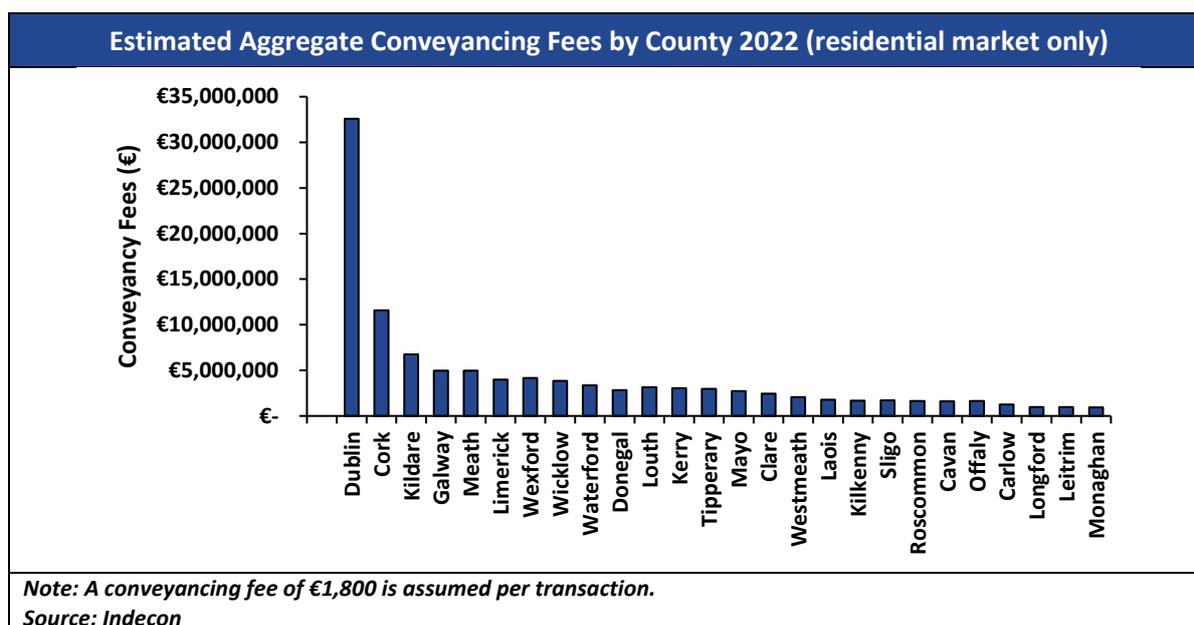
<sup>2</sup> <https://www.lsr.ie/wp-content/uploads/2021/06/LSRA-S33-Annual-Report-2020.pdf>, see p. 14, Table 3.2

<sup>3</sup> Crowe, (2018), “Market study of sole practitioners and smaller legal practices in Ireland”, published by Law Society of Ireland, available [here](#)

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.



As part of this review, Indecon has estimated the direct and indirect economic value of conveyancing services to the Irish economy. Indecon's input-output model of the Irish economy has been applied to estimate various economic indicators such as employment, gross value added, and incomes. Our estimates of the employment and economic impacts arising from the provision of conveyancing services are presented in the table below. The economy-wide impacts include the direct effects (i.e., jobs sustained directly by conveyancing services) and the indirect/multiplier effects (i.e., the additional effects generated as a result of the jobs directly supported by them). It is estimated that the conveyancing market supports approximately 1,041 full-time equivalent jobs<sup>7</sup> (FTEs), which translates into an estimated 1,261 FTEs on an economy-wide basis. The latter would support €94.4m in employment incomes on an economy-wide basis. The employment numbers associated with conveyancing include the employment of solicitors, legal executives and administrative and support staff. It should be noted that economic activities have an impact on other parts of the economy.

<b>Economic impact of conveyancing services in Ireland - estimated impacts on employment (2022)</b>			
	<b>Estimated expenditure- € million</b>	<b>Implied direct FTEs</b>	<b>Economy-wide FTEs (direct + indirect/ multiplier impacts)</b>
Economic impact	€136.9	1,041	1,261

*Source: Indecon*

### Review of comparable international models

As part of the study, we examined a number of comparator countries which have introduced a profession of conveyancer. The markets we reviewed were England, Wales, Northern Ireland, Scotland, New Zealand, and Australia (with particular emphasis on Victoria and New South Wales). The key findings are summarised in the

<sup>7</sup> This estimate of FTEs refers to any person employed in legal services who may be involved in the conveyancing transaction and not just solicitors.

next table.<sup>8</sup> Specialist conveyancing practices provide their services both alongside and in competition with solicitors, and in most cases their market share is small. Because of the low uptake to the profession in Scotland, new entrants to the conveyancing profession are no longer permitted.

In considering the available information on other jurisdictions Indecon notes that while there is some evidence of low consumer costs and fast timescales for transactions in jurisdictions where a conveyancing profession operates, causation cannot always be directly established. Additionally, in comparing Ireland with other jurisdictions, any differences in the type of work involved in conveyancing between different countries merits consideration. For example, in Ireland, solicitors are required to undertake planning due diligence, as well as work on the Registry of Deeds because of the absence of an e-conveyancing system. There is also a requirement in Ireland for solicitors to interact with the Revenue Commissioners which does not apply in many comparator countries.

Summary of conveyancing services in other jurisdictions	
Country	Overview of key features of conveyancer services
<b>Scotland</b>	<ul style="list-style-type: none"> <li>Conveyancing profession began practising in 1997 but discontinued in 2003 due to lack of participation (small number still practising but no new entrants).</li> <li>This may have been related to lack of transparency in market or due to other factors such as the bundling of conveyancing and estate agency fees in the Scottish market. On the issue of transparency, a Competition and Markets Authority 2020 Report of the legal profession found that 20% of conveyancing solicitors in Scotland did not have a website and only 6% published price information.</li> <li>Qualified conveyancing solicitors generally conduct this type of practice and are registered with the Law Society of Scotland.</li> <li>Scottish legislation had required conveyancers to be educated to degree level and serve a training period of one year with a solicitor or independent qualified conveyancer before being able to register with the Scottish Conveyancing and Executry Services Board (SCESB).<sup>9</sup></li> <li>Conveyancing solicitors specialise (many are also estate agents) and can advertise their properties for sale via Property Centres.</li> <li>Uptake of conveyancing profession designation was only 11 persons.</li> <li>Typical conveyancing costs were estimated at around €1,000 and timeframe involved 4-9 weeks.</li> </ul>
<b>England and Wales and Northern Ireland</b>	<ul style="list-style-type: none"> <li>Licensed conveyancers began operating in 1987.</li> <li>Conveyancing technicians and paralegals provide conveyancing support to solicitors.</li> <li>CLC requires cost information to be displayed on practitioners' websites and provides specific guidance to enable compliance.</li> <li>In Northern Ireland, conveyancing solicitors specialise, and no separate conveyancer profession operates.</li> <li>Typical costs around €900. Typical timeframe for conveyancing is 8-12 weeks.</li> <li>Licensed conveyancers supply around 9% of consumers in the UK conveyancing services market.</li> </ul>
<b>New Zealand</b>	<ul style="list-style-type: none"> <li>Licensed conveyancers began practising in 2007. Registered conveyancers and conveyancing solicitors are licensed to conduct conveyancing services. In common with comparator countries, licenced conveyancers operate alongside solicitor practices.</li> <li>Relatively well-developed e-conveyancing system (Landonline).</li> <li>Estimates suggest there are 200-300 registered conveyancing practitioners operate in the market with 15,000 solicitors (or less than 2%).</li> <li>Typical costs estimated at around €485 - €625. Average timeframe is around 4 weeks.</li> </ul>
<b>Australia (Victoria and New South Wales)</b>	<ul style="list-style-type: none"> <li>Licensed conveyancers providing conveyancing services began practising in 1989.</li> <li>Relatively well-developed eConveyancing system.</li> <li>Research indicates there are approximately 2,000 conveyancers' practices and approximately 11,500 solicitors' practices in Victoria and New South Wales. Conveyancers' practices represent around 15% of all firms in the Victoria and New South Wales conveyancing markets.</li> <li>Typical conveyancing costs estimated at around €567.</li> </ul>
<b>Source: Indecon</b>	

Details of other aspects of conveyancing services in different jurisdictions including entry requirements, regulation, consumer protection and the status of e-conveyancing, and the transparency of information are presented in the next table. In some comparator countries, transparency of information is a requirement of regulations, while in other cases, it has developed as a result of market forces.

<sup>8</sup> Note: The term "conveyancing solicitors" is used throughout this report to describe solicitors who perform conveyancing services generally. It is used to distinguish those individuals from "conveyancers", to whom we refer as those who are professionally licensed conveyancers who operate as a separate profession and do not perform other types of legal services.

<sup>9</sup> Scottish Parliament (2002), Justice 1 Committee, 11th Report 2002, Report on Regulation of the Legal Profession Inquiry, Volume 1: Report and evidence, para 241

International Experience – Summary by Jurisdiction	
<b>Scotland</b>	
<b>Entry Requirements</b>	<b>Conveyancers:</b> Degree-level education and complete a one-year training period with a solicitor or independent qualified conveyancer. <b>Solicitors:</b> Educational requirement (most commonly LLB), Diploma in Professional Legal Practice, Traineeship.
<b>Regulation</b>	<b>Conveyancers:</b> Scottish Conveyancing and Executory Services Board (SCESB), 75% Lay membership. Closed in 2003, powers transferred to Law Society of Scotland. <b>Solicitors:</b> Law Society of Scotland, which is self-governed.
<b>Consumer Protection</b>	<b>Conveyancers:</b> From 1997 to 2003, the SCESB handled complaints as specified in Law Reform Act. These responsibilities were later transferred to the Law Society of Scotland. <b>Solicitors:</b> Law Society of Scotland handles complaints as specified in Law Reform Act. <b>Conveyancers:</b> Required to hold separate accounts for each client's money, ensuring the best interest rates are obtained. Not required to hold indemnity insurance or a compensation fund.
<b>e-conveyancing</b>	Introduced Automated Registration of Title to Land (ARTL) in 2007 for electronic registration of deeds. ScotLIS launched in 2018 for online land register searches. Digital Submission Service (DSS) implemented during COVID-19.
<b>Transparency of Information</b>	Online information availability is limited. Digital comparison tools are scarce, making it challenging for consumers to compare prices.
<b>England and Wales, Northern Ireland</b>	
<b>Entry Requirements</b>	<b>Conveyancers:</b> Level 4 and Level 6 Diplomas in Conveyancing Law and Practice, or equivalent qualifications. Practical experience required. <b>Solicitors in England and Wales:</b> Legal education (LLB or non-Law degree plus Graduate Diploma in Law), Legal Practice Course (LPC), and qualifying work experience. <b>Solicitors in NI:</b> Legal education, Diploma in Professional Legal Studies taken within traineeship period.
<b>Regulation</b>	<b>Conveyancers:</b> Council for Licensed Conveyancers (CLC) <b>Solicitors:</b> Solicitors Regulation Authority (SRA) However, either can regulate a firm with employees of either profession. Both are self-funded. <b>Solicitors in NI:</b> Law Society of Northern Ireland (LSNI) Licensed conveyancers regulated by CILEX, SRA, and CLC. <sup>10</sup> These can be conveyancing solicitors or dedicated, licensed professional conveyancers.
<b>Consumer Protection</b>	Varies depending on regulator of firm. <b>CLC:</b> Complaints handled by CLC and Legal Ombudsman, depending on their nature. <b>SRA:</b> Complaints handled by SRA and Legal Ombudsman, depending on their nature. <b>LSNI:</b> All complaints handled by Law Society of Northern Ireland <b>CLC:</b> Required to hold professional indemnity insurance, with recommended agreement including set minimum coverage and maximum excesses. CLC operates compensation fund covering both firms and individuals. <b>SRA:</b> Required to hold professional indemnity insurance that is adequate and appropriate. SRA operates compensation fund covering both firms and individuals. <b>LSNI:</b> Master Policy for professional indemnity insurance. LSNI operates compensation fund.
<b>e-conveyancing</b>	Digitalization of conveyancing in the United Kingdom has been relatively slow. COVID-19 pandemic has accelerated this process, including plans for a fully digital conveyancing system and the development of e-signatures, cryptographic ID checking, digital property logbooks, and the BASPI dataset.
<b>Transparency of Information</b>	Conveyancing fee quotes are available online for many providers. Both the CLC and SRA implement transparency measures covering prices. The CLC also requires information on the complaints process to be available, while the SRA requires information on the experience of practitioners to be available.
<b>New Zealand</b>	
<b>Entry Requirements</b>	<b>Conveyancers:</b> Diploma of Conveyancing or equivalency assessment (requires 5+ years conveyancing experience in New Zealand and a law or legal executive qualification). <b>Solicitor:</b> Bachelor of Laws degree, a Professional Legal Studies Course, certificate of character, certificate of current practising, be admitted to the roll of barristers and solicitors.
<b>Regulation</b>	<b>Conveyancers:</b> New Zealand Society of Conveyancers (NZSoC) regulates and represents conveyancing practitioners in New Zealand <b>Solicitor:</b> Since 2008 the New Zealand Law Society has been responsible for the regulation of all solicitors in the country.
<b>Consumer Protection</b>	The first body to which a consumer complaint is made is either the New Zealand Law Society or New Zealand Society of Conveyancers <b>NZLS:</b> Regulates solicitors and those employed by law firms (including conveyancers). <b>NZSoC:</b> Regulates conveyancers. There exist two further bodies who regulate the legal professions, the Legal Complaints Review Officer, and the New Zealand Lawyers and Conveyancers Disciplinary Tribunal. <b>Conveyancers:</b> Practitioners and incorporated firms are required to carry professional indemnity insurance to protect their clients. The NZSoC operates a compensation fund. <b>Solicitors:</b> Not required to hold professional indemnity insurance, though levels of insurance must be disclosed. Law Society operates a compensation fund.
<b>e-conveyancing</b>	e-conveyancing system, Landonline, introduced in 2002 and made mandatory in 2009. Concerns about fraud and increased regulatory requirements have led to a shift towards lawyers handling the digitalization process.
<b>Transparency of Information</b>	Regulators require price transparency in terms of fair and reasonable costs and details of how prices are calculated.
<b>Australia</b>	
<b>Entry Requirements</b>	<b>Conveyancers:</b> Diploma of Conveyancing or accredited conveyancing course. In some states, work without a license is possible if working within a conveyancing business operated by a licensed conveyancer. <b>Solicitor:</b> Approved law degree, practical legal training course or supervised traineeship, admission to Roll of Lawyers, practising certificate
<b>Regulation</b>	Regulation of solicitors and conveyancers varies by state, and it is managed by regional societies such as the Law Society of NSW. <b>eConveyancing:</b> Australian Registrars National Electronic Conveyancing Council (ARNECC)
<b>Consumer Protection</b>	<b>Conveyancers:</b> Complaints made to local regulators in each state. Australian Institute of Conveyancers also handles complaints, though not a regulator. <b>Solicitors:</b> Complaints made to local regulators in each state. Some states have additional statutory bodies that handle complaints, though they do not set standards. <b>Conveyancers:</b> Required to hold professional indemnity insurance. Regulators maintain compensation funds in case of misappropriation. <b>Solicitors:</b> Required to hold professional indemnity insurance. Regulators maintain compensation funds in case of misappropriation.
<b>e-conveyancing</b>	National eConveyancing system to electronically prepare and lodge property dealings, transmit settlement funds, and eliminate the need for physical attendance at property settlements. Several states require its use for mainstream transactions.
<b>Transparency of Information</b>	Conveyancers must disclose estimated costs and billing arrangements prior to engagement. However, there is no requirement to post this publicly prior to client contact.
<b>Source: Indecon</b>	

<sup>10</sup> CILEX (Chartered Institute of Legal Executives), SRA (Solicitors Regulation Authority), CLC (Council for Licensed Conveyancers)

The international review of other jurisdictions presented in detail in Section 2 and Section 4.4 of the main report provides insights into the pros and cons of setting up a new profession in Ireland. These may be relevant to the consideration of options by the Authority. Relevant factors may include the low level of uptake in some jurisdictions. Indicative market shares were below 1% in Scotland, 2% in New Zealand and 9% in England and Wales, although the experience in some of the Australian markets suggests a higher level of uptake. This highlights the importance of addressing any barriers to new entrants if a decision is made to proceed with establishing a new conveyancing profession. The need to ensure price transparency in the market and to develop greater consumer awareness is particularly important.

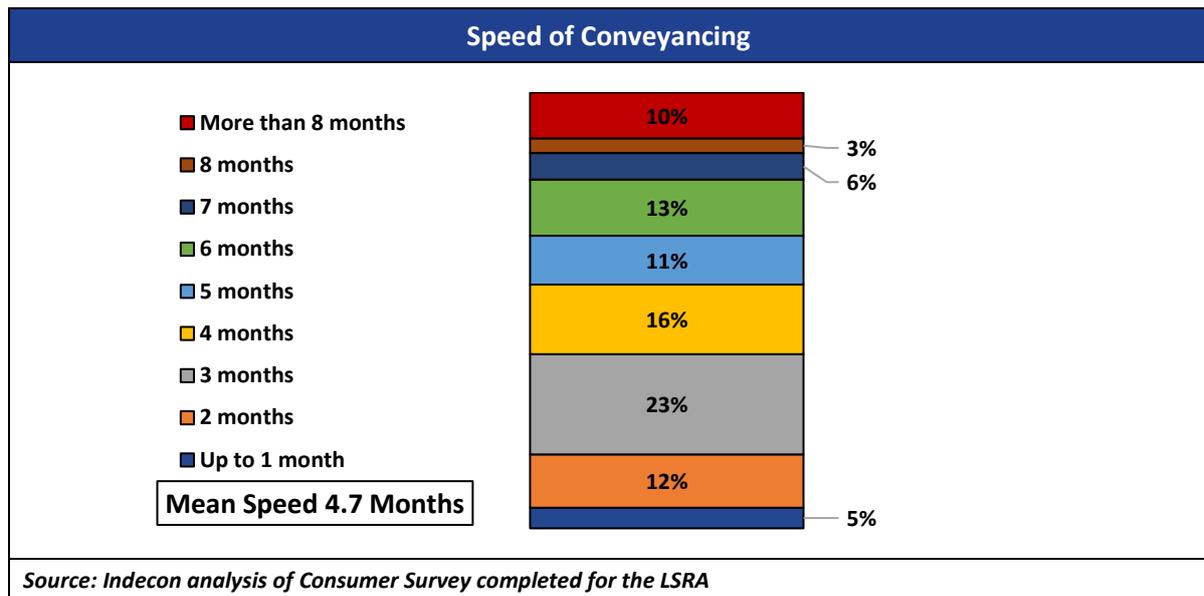
The international comparisons suggest that the increased competition from new entrants has the potential to impact costs for consumers and timescales although it is hard to be definitive on the precise impacts. On the issue of service quality, the review of comparable international models highlights the need for careful design of regulatory requirements and the introduction of consumer protection measures if a new profession is established. Also important is the intersection of digital technology with a new profession. The international review suggests that achieving the full benefits of a new profession would be dependent on enhancing the use of digital technology and on the development of an e-conveyancing system.

### Analysis of the market for conveyancing services in Ireland

Indecon’s analysis of the market for conveyancing services examined the speed and costs of conveyancing services. The analysis has been informed by new evidence obtained by Indecon from the legal profession and a valuable consumer survey undertaken on behalf of the LSRA. While there is a diversity in the timescales reported this can be influenced by title issues and other factors. The evidence suggests that solicitors estimate the average typical time to complete conveyancing for a domestic property purchase at 9.5 weeks.

Average time taken to complete a conveyance for a domestic property purchase		
	Average	Median
No. of weeks	9.5	8.0
<i>Source: Indecon confidential information request of legal practitioners</i>		

The next figure, based on a consumer survey undertaken on behalf of the LSRA, presents alternative estimates for conveyancing completion times. The average speed of conveyancing amongst this sample of respondents is 4.7 months. However, 40% of consumers report that the transaction was completed within three months or less. Alternative estimates of the timescale for completion of conveyancing transactions is indicated by a 2023 survey of 534 auctioneers and estate agents published by the IPAV, the Institute of Professional Auctioneers and Valuers. This suggested that on average, conveyancing of a property took about four months to complete, of which over 10.4 weeks was between a sale being agreed and contract signing and a further 5.3 weeks between signing and the closing of a sale. 60% of surveyed respondents said that the delays in securing documentation and problems with deeds were the biggest reason for conveyancing delays. The Sellers Legal Pack for Property Buyer’s Bill 2022 due to reach Second Stage in Dáil Éireann on 5<sup>th</sup> October, is designed to make the conveyancing process faster and more efficient.

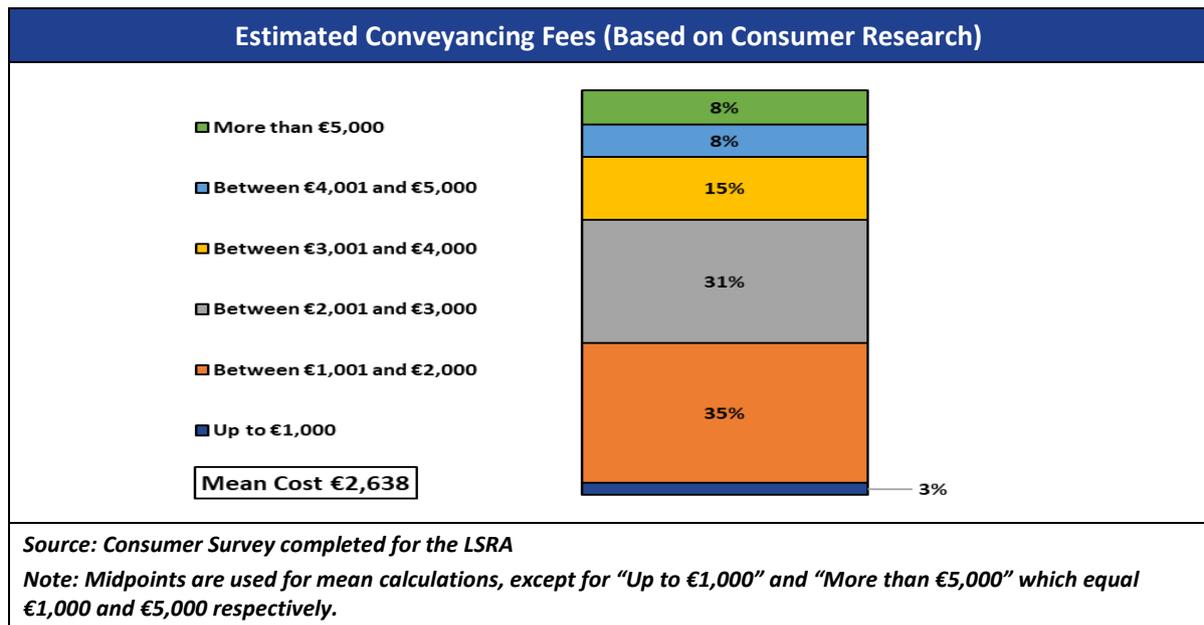


Initial desk research conducted by Indecon indicates that there is no one source that provides a definitive figure for the average conveyancing costs in Ireland. We also note that costs are likely to differ by the value of the property and the complexity of cases. Given this diversity and the absence of any comprehensive source of evidence on costs, it is not surprising that cost estimates vary depending on the research method and samples involved. For example, a small number of solicitors offer online quotations such as presented on the [www.auctioneera.ie](http://www.auctioneera.ie) website. Available evidence suggests average quotes of €1,707 but range from €1,029 – €2,588. Alternative estimates were obtained from Indecon’s survey of legal firms. The average professional fees for the sample of legal firms surveyed suggest fees of €1,839 for a typical residential house conveyancing transaction with a median of €1,750. There were, however, some firms that charged much higher fees.

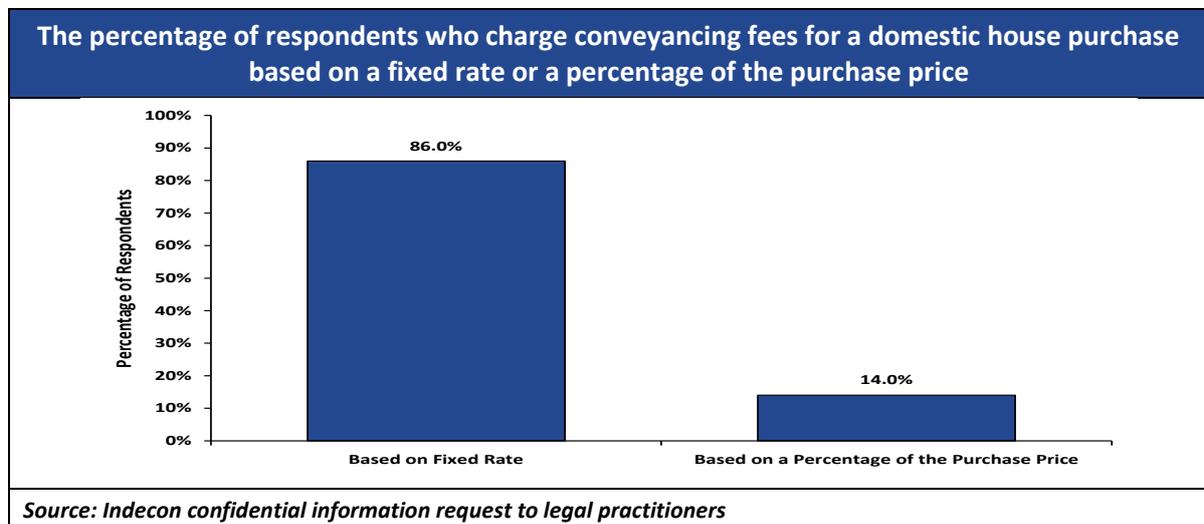
Analysis of professional fees for conveyancing services		
	Average (€)	Median (€)
Estimate of professional fees for typical conveyance	1,839	1,750

*Source: Indecon confidential information request to legal practitioners*

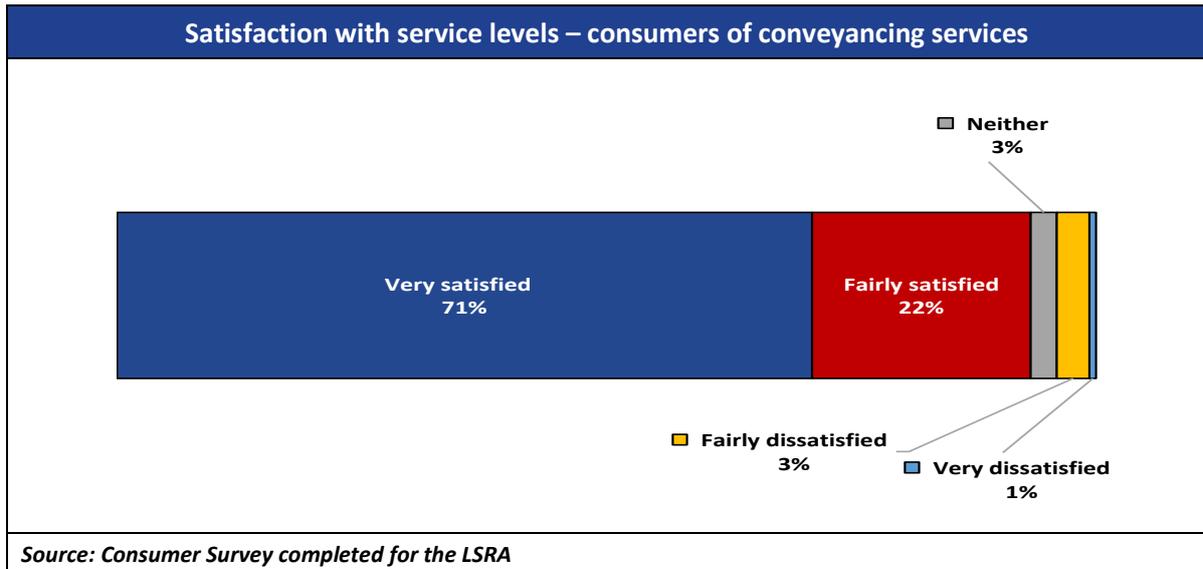
Alternative data of conveyancing costs showing the range in costs is evident from a consumer survey completed for the LSRA. (See figure overleaf.) This consumer research suggests a slightly higher average price of €2,638 among the sample. This excludes stamp duty but may include VAT and possibly some disbursements. In the main report, some indicative elements of the components of conveyancing costs are presented.



The Indecon survey of the legal practitioners suggests that the majority charge their clients "based on a fixed rate" (86%) for a typical domestic house purchase. Very few respondents (14%) indicated they charge their clients "based on a percentage of the purchase price."

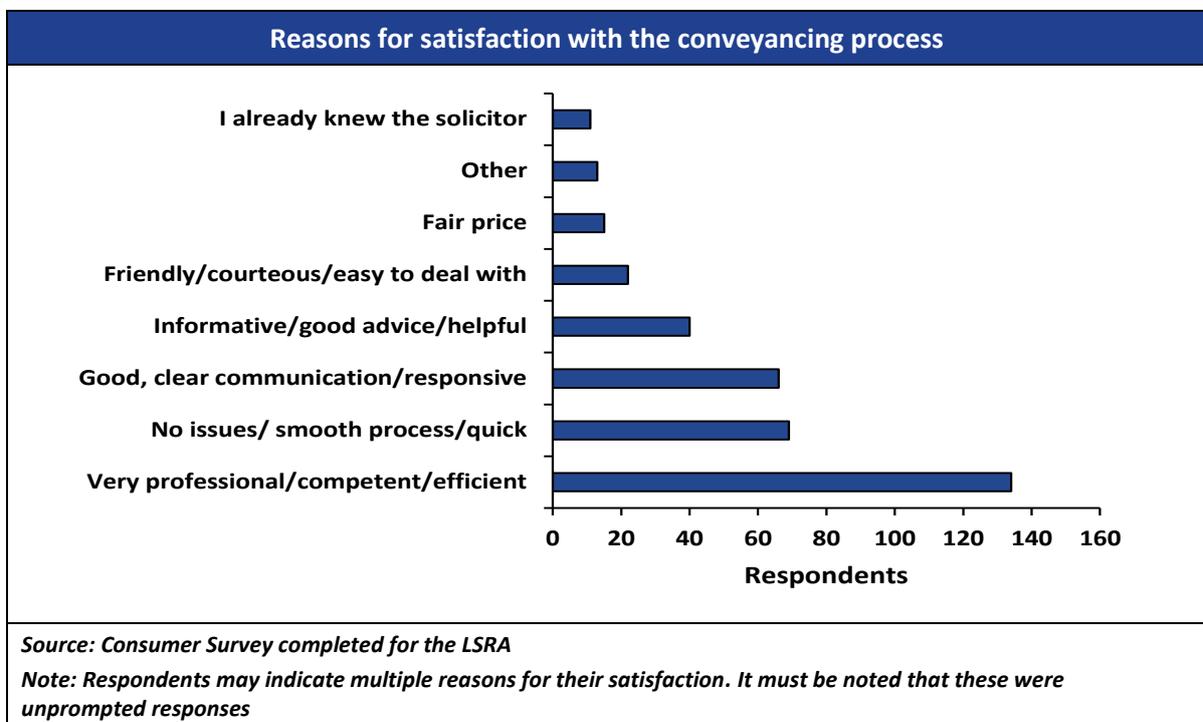


The level of consumer satisfaction with conveyancing services in Ireland is very high; 93% of consumers suggested they were satisfied while only 4% indicated any level of dissatisfaction. There is, however, a small percentage of dissatisfied consumers as reflected in complaints received by the LSRA. Overall, however, the high levels of satisfaction likely reflect the quality of conveyancing services offered. Consumer research undertaken by the LSRA indicated a range of issues identified during the conveyancing process. Among those who had issues, planning/boundary issues were the most common followed by mortgage and communication issues. This led to the need for additional advice by 54% of those consumers where there were issues. These issues may require some additional legal services supplied by solicitors as part of the conveyancing service. However, they are more likely to require specialist advice from other professionals such as planners or architects or financial advisers, but there would be a need for solicitors or whoever is handling the conveyancing to interact with these professionals and solicitors are likely to advise on the appropriate services.



There is some evidence in the market research conducted for the LSRA of a link between satisfaction with a conveyancing service and the cost. Consumers who paid higher costs were more likely to say they were dissatisfied with the service they received. The total number of respondents who were dissatisfied was small in the consumer survey completed for the LSRA and we would recommend caution in the interpretation of these findings.

The most common reason for respondents’ satisfaction was the provision of “very professional/competent/efficient” conveyancing services. This was followed by those with “no issues/smooth process/quick”. Only a very small percentage of consumers indicated “fair price” as the reason for their satisfaction.



While it is useful to compare the Irish experience, with that in other countries, any comparisons of the costs or timescale to complete conveyancing is inevitably complex and definitive data for Ireland or other countries is not available. There are also issues in interpreting comparisons due to the diversity of services provided. A summary of the available indicative evidence is presented in the next table. Indecon would recommend caution in interpreting the comparative figures as in many cases the figures may not reflect a like-for-like comparison due to the complexity of the Irish system. There is also uncertainty of what is included in the estimates and there are differences in the date of estimates. Further details are presented in the main report. For example, the latest estimates of costs reviewed from the UK were published in 2021, while more recent data was examined for New Zealand and Australia. Despite these qualifications on the precise numbers, the evidence points to the fact that Irish consumers incur higher costs and longer timescales to complete conveyancing transactions than in the comparator countries reviewed as part of this study.

<b>Comparison of Limited International Evidence on Fees and Timescales</b>	
<b>Timescale for Residential Conveyancing Transactions</b>	
<b>Scotland:</b>	Estimates for average timescale for completion 4 – 9 weeks
<b>Ireland:</b>	Estimates from legal profession suggest average 9.5 weeks while LSRA consumer research suggests average of around 20 weeks
<b>UK:</b>	Some estimates suggest average timescale of 8 – 12 weeks but the process can take up to 16 weeks
<b>New Zealand:</b>	Estimates suggests conveyancing can be completed in 4 weeks
<b>Australia:</b>	One estimate suggests conveyancing can take between 8 – 12 weeks
<b>Costs of Conveyancing</b>	
<b>Scotland:</b>	Median costs for conveyancing fee for typical house sale range from €679 to around €1,000 and median costs for conveyancing fee for typical house sale <u>and</u> purchase is estimated at €1,241
<b>Ireland:</b>	Legal professional services firms' estimate of costs suggested average fees of €1,839 while LSRA consumer research suggests an average of €2,638
<b>UK:</b>	Fees excluding disbursements were estimated to be between €900 - €1,800
<b>New Zealand:</b>	Estimates suggest average fees range from €485 - €625 depending on whether it is a sale or purchase or whether a mortgage is involved
<b>Australia:</b>	Estimates of fees vary by provider and typical costs are around €567 but estimates in the range of €278 - €1,159
<i>Source: Indecon analysis of available evidence</i>	

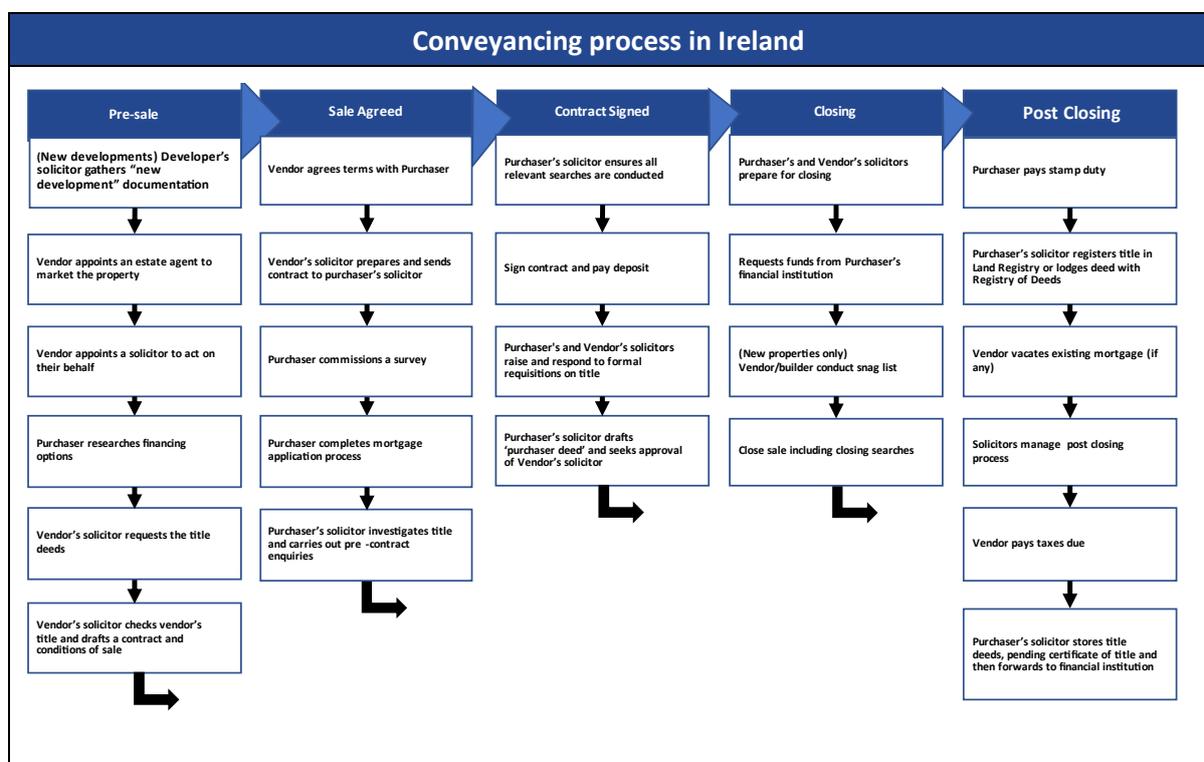
### **Analysis of the potential impact of digitalisation on the conveyancing process**

For purposes of this discussion, the term digitalisation refers generally to “the use of digital technologies to change a business model and provide new improved services or value-producing opportunities. It is the process of moving to a digital business.” The term e-conveyancing or “electronic conveyancing” refers to a conveyancing transaction settled electronically through a platform such as Landonline in New Zealand or eConveyancing in Australia. Both aspects of digitalisation are both important and interrelated. Digitalising internal manual or paper-based processes is the responsibility of the sector, however, the establishment of an eConveyancing system would require leadership by the state. E-conveyancing would be a complex undertaking and would require a detailed evaluation of the costs and risks of such an investment in comparison with the wider benefits that would be incurred. Given the government objectives in relation to achieving greater digitalisation for the Irish economy and the importance of the property sector in Ireland, this merits careful consideration.

In considering the potential impact of digitalisation, it is important to note there are a number of key elements in the Irish conveyancing process. Throughout it, solicitors on the buyer’s and seller’s side liaise with each other as well as with financial institutions and regulatory bodies when relevant. Various documents are sent back and forth between parties, such as a contract of sale, title deeds to the property, pre-contract enquiries, a deed of transfer, and a requisition on the title. Additionally, the Revenue Commissioners must stamp the transfer deed and the registration of title is stamped by the Property Registration Authority.

The digitalisation of the conveyancing system in Ireland (e-conveyancing) would require action by the Irish Government and by local authorities. This is relevant in considering the application of technology in that solicitors do not have the ability to change all aspects of the system and other factors also have a role. Electronic conveyancing would take time to introduce, however, there is potential for the greater application of technology by the legal profession to streamline existing processes.

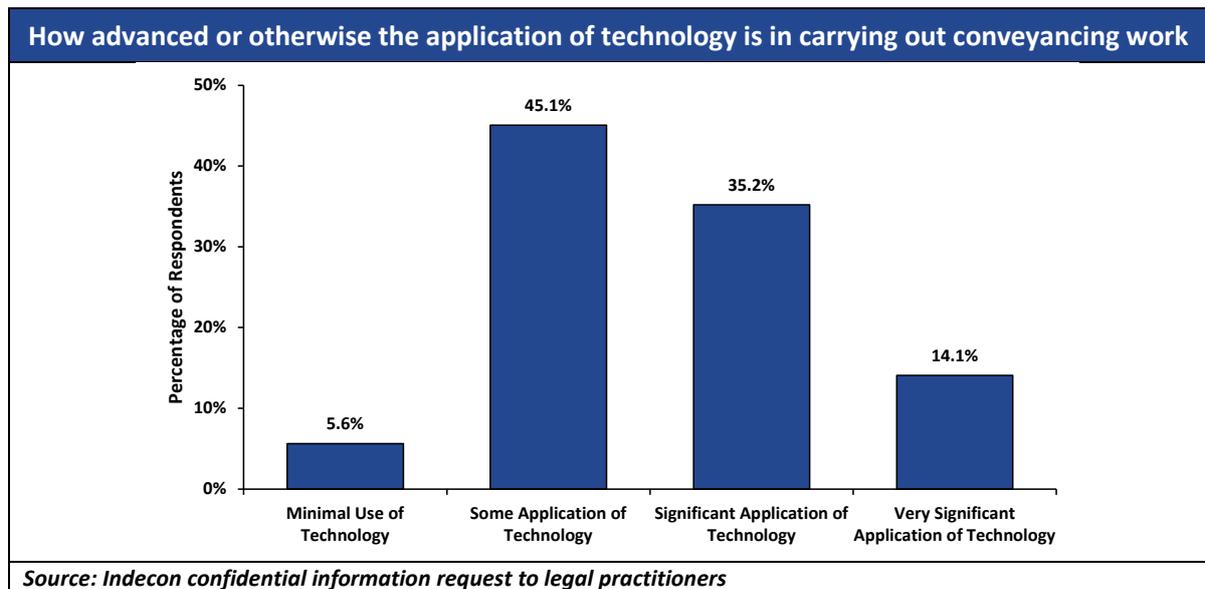
The next figure provides an overview of the elements in the conveyancing process in Ireland from pre-sale to post-closing, and actions at each stage of the process. There is potential for digitalisation to impact on many of these processes.



Source: Indecon analysis

Digitalisation, such as an e-conveyancing system, has significant potential to facilitate faster and more efficient transition of documents and information between parties. It reduces certain costs and saves time. When considering the possible introduction of a profession of conveyancer in Ireland it is important to account for the potential for a fully electronic system and enhanced online information on costs. The application of such technology can facilitate new entrants and speed up transactions for consumers. New Indecon survey results highlight that only 14.1% of legal practices surveyed indicated their assessment that the sector offering conveyancing services had “very significantly” applied technology in carrying out conveyancing work. A number of innovative firms have, however, applied technology including online client meetings, the use of eRegistration,<sup>11</sup> scanning of documents and access to various online resources as part of the overall conveyancing process. There is, however, potential for significant further improvements and a wider application of such technology.

<sup>11</sup> eRegistration enables the digital correspondence with the PRA and leads to faster registration times



The transformation potential of digital technology for conveyancing has been demonstrated by the experience in other countries. Electronic conveyancing can cover the entire or nearly all of the preparation process, as well as the tasks involved in executing and exchanging of contracts, and the final registration of properties. It also can impact on ways of working. To achieve this full potential, however, would require an electronic conveyancing system or e-conveyancing electronic hub, as well as the advanced use of technology within most solicitors' practices. Neither currently exists in Ireland. In terms of the greater application of IT and digital technology a market study by Crowe of sole practitioners and smaller legal practices published by the Law Society of Ireland reported that 60% of the practices identified improvements in ways of working/processes as an opportunity over the next three to five years and 48% identified the need for investment in IT systems. In the same survey, 19% of the firms rated inadequate IT systems as a top internal channel. Examples were provided of what the greater application of IT and digitalisation might involve and included:

- Introduction of case management;
- Voice recognition and dictation solutions;
- File scanning;
- Portal systems that allow clients to directly access files and information; and
- Improving the practice online profile.

Examples of elements of the conveyancing processes that Indecon believes would be impacted by digitalisation are presented in the next table. This suggests that most of the processes including searches and preparatory work, executing and exchange of contracts, and the final registration of properties would be impacted. The extent to which these processes are currently undertaken manually varies by solicitor practice. Indecon believes there is significant potential for digitalisation of all of these elements.

Examples of Elements of Conveyancing Process which could be Enhanced by Digitalisation	
Example	Impact
Initial briefing by clients following appointment of solicitor to act on their behalf	Online client meetings via video linkages
Preparation of contracts and scanning, filing of documentation and request title deeds	Significant impact as manual filing of many aspects of documentation would be unnecessary
Exchange of documentation between solicitors	Significant impact as of exchange of documents can be completed electronically
Investigation of title by purchaser's solicitors including, supporting documentation and carrying out of pre-contract enquiries	Full potential would require electronic conveyancing system
Conducting of all relevant searches	Full potential would require electronic conveyancing system
Submission of requirements to clients for additional supporting information	Some impact particularly if there was a portal is developed to enable various parties to access and update information
Reviewing and copying folio and filing plan	Some impact as copying and manual filing of many documents would not be necessary
Client authorisation	Significant impact as this can be provided digitally
Exchange of contracts	Can be completed electronically once client authorisation is provided
Sign contracts and pay deposit	Significant potential via use of digital certificates or online document signing tools
Completing and exchanging closing documents	Can be completed electronically once client authorisation is provided
Payment of any tax including purchaser's stamp duty and any vendor's tax	Can be completed electronically once client authorisation is provided
Purchaser's solicitor registers title in Land Registry or lodges deed with Registry of Deeds	Significant impact as this could be undertaken electronically
Storing of documentation	Can be completed electronically
<b>Source: Indecon</b>	

All of the main processes in conveyancing work could be impacted by the potential of digital technology. Some of these directly relate to making the conveyancing process more efficient, less costly, or faster, while other aspects could improve transparency and facilitate further competition in the market. The digital transformation of the conveyancing service may require investment by the public sector, as well as by the private sector. This is aligned with the National Digital Strategy Harnessing Digital: The Digital Ireland Framework which was published in February 2022 and presents a consolidated approach to maximising the economic and societal benefits from digitalisation. This builds on the Irish Government's 'Digital First' strategy for the public sector which encompasses everything from the core digitalisation of public services to the digital infrastructure, governance and processes. It is also consistent with Connecting Government 2030 which is the new digital and ICT strategy for Ireland's Public Service.

Of interest is that even with evolving developments in technology over the next three to five years, only a minority of legal firms suggested that the quality of service will significantly improve or that there will be an impact on costs. The reasons for this assessment by the profession are unclear but may reflect their judgement on the high quality of existing services. The views of the legal profession on the impact of technology on conveyancing are presented in the next table. This highlights the potential of technology to improve the speed of conveyancing. Indecon believes that with increased use of technology, combined with changes in the process of title registration, conveyancing could be faster, as has occurred in other markets. The process of title registration can vary based on requirements for first registration, transfers of part of a folio, registration of mortgages, or burdens such as rights of way. Some examples presented in the previous table of areas where digitalisation could improve the overall process include the use of online document signature tools such as

DocuSign, digitisation of title deeds and online registration of all lands. The system would also benefit from a comprehensive portal where the various parties to transactions could access and update information as required. There would be a range of options concerning the development of such a portal and who would be responsible for maintaining it. Consultations with Tailte Éireann<sup>12</sup> would be necessary if the development of such a portal was being considered.

Views of impacts of technology on cost, speed, and quality of provision of conveyancing	
Impacts of technology on cost, speed and quality of provision of conveyancing	Percentage
Will marginally reduce the cost of conveyancing	5.6%
Will significantly reduce the cost of conveyancing	2.8%
Will have no impact on costs	12.7%
Will marginally improve the speed of conveyancing	22.5%
Will significantly improve the speed of conveyancing	18.3%
Will have no impact on speed of conveyancing	1.4%
Will marginally improve the quality of service	9.9%
Will significantly improve the quality of service	12.7%
Will have no impact on quality of service	12.7%
Don't know	1.4%
<b>Total</b>	<b>100.0%</b>
<i>Source: Indecon confidential information request to legal practitioners</i>	

### Competition concerns and barriers to entry

The market for conveyancing has changed in recent years and there has been a significant growth in the number of solicitors operating in the Irish market and some providers are advertising their fees for conveyancing services. Currently, there is a legislative barrier to establishing a new conveyancing profession. Section 58 of the Solicitors Act (1954) restricts “the process of transferring ownership of property” to “practising solicitors when there is an expectation of a fee gain or reward.”<sup>13</sup> There is an exemption provided under the Act for “persons undertaking conveyancing while in the employment of a practising solicitor and under their supervision.” The removal of the legislative monopoly currently restricting conveyancing services to solicitors would facilitate further competition in the Irish market.

Indecon notes some measures have been implemented in recent years and have enhanced competition. These include the establishment of the LSRA and its statutory objectives, *inter alia*, to promote competition. The LSR Act 2015 (including Section 150 Notices) introduced new costs transparency measures. It also required the LSRA to introduce regulations to regulate advertising by legal practitioners.<sup>14</sup> Section 150 Notices provide greater transparency for consumers compared to the obligations under the previous Section 68 of the Solicitors (Amendment Act) 1994. Fundamentally, a key difference is the greater obligations on solicitors to inform their clients on the details of the legal costs that will be incurred once they receive instructions from a client. The Section 150 Notice is larger and more detailed than the precedent Section 68 and must be written in clear language. It also provides greater certainty for consumers of the legal costs that will be incurred. Where this is not reasonably practical to do so at that time, the solicitor must provide the basis upon which the costs will be calculated. If a solicitor becomes aware of an issue which would be likely to make the legal costs incurred significantly greater than disclosed or included in a Section 150 Notice, they must, as soon as possible, provide the client with a new Section 150 Notice. In the context of conveyancing, the legal costs required include fees, charges, disbursements and any other costs incurred in completing the conveyancing including VAT.

Also of importance from a competition perspective is that consumers of conveyancing services face a number of challenges in making informed decisions. These include information gaps concerning the price, quality, and service levels offered by various suppliers. The incomplete information available to consumers represents information asymmetry. This constitutes a barrier to new entrants and hinders competition in the market. In evaluating the merits or otherwise of the introduction of a new conveyancing profession, it is therefore

<sup>12</sup> For further details on the remit and role of Tailte Éireann please see Section 4 of the main report.

<sup>13</sup> Solicitors Act (1954)

<sup>14</sup> Legal Services Regulation Act 2015 (Advertising) Regulations

important to consider the extent to which information gaps may reduce competition from innovative or more cost-competitive suppliers. This issue is in addition to specific legislative barriers preventing the introduction of a new conveyancing profession.

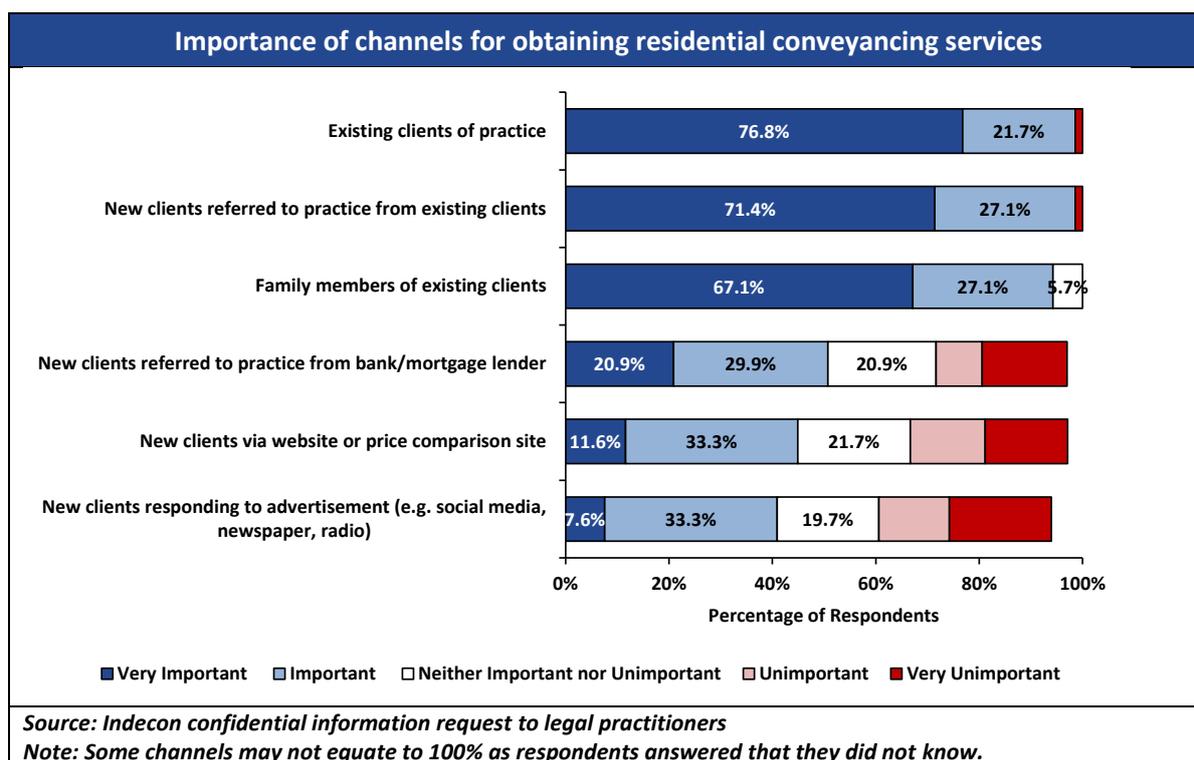
Most consumers only need conveyancing services very infrequently and may not have the experience or information to fully inform their choice of providers. This was one of the factors which led to concerns regarding the level and intensity of competition in the Irish legal services market, raised previously by the Irish Competition Authority (now the Competition and Consumer Protection Commission). This investigation found that at that time there was “limited information available to consumers of legal services about fees and costs prior to engaging the services of a lawyer. The lack of transparency in the price of legal services makes it difficult for consumers to shop around for legal services. If consumers cannot compare the prices for legal services there is little incentive for lawyers to compete on price.”<sup>15</sup> As noted above there has, since the publication of the previous Competition Authority Report, been some improvements including the introduction of Section 150 Notices.<sup>16</sup> While Section 150 Notices are an important new transparency measure, there are some limitations as these only arise where a client has approached a solicitor. Despite the implementation of this requirement, there remain major gaps in the transparency of information on costs and other aspects of conveyancing in Ireland. This was evident in Indecon’s research for the current research project which showed the absence of independent, readily available price comparisons. Furthermore, consumer survey research conducted for the LSRA suggests not all of consumers received written quotations of costs. As a result of the lack of transparency of information on conveyancing services, competition is weakened, and this also acts as a barrier to entry. Of interest is that the new Indecon research with the legal profession highlighted that business obtained via websites or price comparison sites is not a very important source of instructions for conveyancing for most legal practices. The consumer research showed very similar findings with only 5% of consumers choosing a solicitor based on a price comparison website or internet search. This takes place against a background of significant information gaps faced by consumers. Even where consumers are not inert and where they have the expertise to review information on costs and aspects of service, this takes time and commitment and may deter consumers from shopping around for such services.

We note that consumers are likely to use either a solicitor they employed for other services or from a recommendation by a family member or friend. This is evident from new research completed by Indecon (and from consumer research undertaken on behalf of LSRA) which showed the importance of different sources of conveyancing businesses for Irish legal practitioners. The most important channel for obtaining conveyancing business by legal practices is through “existing clients of practice”. Business referred to the practice from existing clients and family members was also an important source. While the findings on channels used is very understandable and may provide consumers with greater confidence that the provider will meet their needs, it represents a barrier for new entrants.

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<sup>15</sup> Competition in Professional Services, Solicitors and Barristers, The Competition Authority, 2006

<sup>16</sup> Section 150 of the Act requires legal service practitioners, on instruction of a client, to disclose legal costs “that will be incurred in relation to the matter concerned” and “if it is not reasonably practicable for the notice to disclose the legal costs at that time, set out the basis on which the legal costs are to be calculated.”



Other potential barriers to new entrants from a separate conveyancing profession may include the availability and costs of professional indemnity insurance. It is not clear, ex-ante, whether insurance companies would be willing to provide insurance to companies operating with such a narrow focus. This would, however, depend on the regulatory requirements and the size and resources of any new conveyancing firm. It should, however, be feasible as is the case in other countries, for most firms to secure such insurance if the regulatory requirements are set at the appropriate level. This highlights the fact that a potential barrier would arise if regulatory requirements were set too high. The procedural work involved in conveyancing requires a narrow set of legal skills compared to a solicitor. If new conveyancers had to adhere to rules designed for solicitors in circumstances not applicable to straightforward conveyancing transactions this would represent a barrier to competition. This could lead to "...inconsistent treatment of providers and a regulatory gap" because "regulatory costs that are not necessary and proportionate may be a barrier to innovation and the introduction of new business models."<sup>17</sup>

### Potential Alternative Models for the Delivery of Conveyancing Services

In considering potential alternative models for the provision of conveyancing services for the delivery of conveyancing services there are a number of options which merit consideration. These include: (i) establishing a separate profession with its own regulatory bodies; (ii) implementing regulation via existing solicitors' statutory and professional bodies; and (iii) initially establishing a new profession but requiring that conveyancing practitioners are employed by solicitor practices. The detailed design of any model will depend on the overall decision by the Government informed by recommendations by the LSRA on whether to establish a separate profession. Implementation plans need to consider issues flagged in submissions to Indecon and the LSRA regarding the need to set appropriate entry requirements, and decisions on compensation funds, training and complaints handling mechanisms. Some of the key implementation issues relevant to the design of alternative models are presented in the next table.

<sup>17</sup> Competition Markets Authority (December 2020), "Review of the legal services market study in England and Wales", accessed at: [https://assets.publishing.service.gov.uk/media/5fd9e53cd3bf7f40ccb335e1/Legal\\_Services\\_Review\\_-\\_Final\\_report.pdf](https://assets.publishing.service.gov.uk/media/5fd9e53cd3bf7f40ccb335e1/Legal_Services_Review_-_Final_report.pdf)

Key considerations in the design of Potential alternative models	
Issue	Overview of considerations
Entry requirements	<ul style="list-style-type: none"> <li>Which skills/qualifications are required to practice and undertake conveyancing?</li> <li>Which body will certify and decide on achievement and renewing of qualifications?</li> <li>What impact will digitalisation have on entry requirements?</li> </ul>
Professional indemnity insurance	<ul style="list-style-type: none"> <li>What level of professional indemnity insurance will be required? Current solicitors have insurance to cover the wider aspects of their practice (not solely conveyancing).</li> <li>At what level would the market set insurance premiums for more firms that specialise in conveyancing?</li> </ul>
Compensation fund	<ul style="list-style-type: none"> <li>Currently, a compensation fund covers consumers in the event of wrongful actions by a solicitor. All practising solicitors pay into this fund.</li> <li>A fund will likely be required for any professionals operating separately, funded by its members.</li> </ul>
Regulatory framework	<ul style="list-style-type: none"> <li>In order to protect consumer interests, any alternative model should be subject to an effective licensing and regulatory framework.</li> <li>A regulatory framework needs to address minimum entry requirements, how complaints are handled and any ethical or legal issues. There will also be costs involved in establishing the body or bodies to address these issues. While it may be feasible for some or all of these costs to be levied on the profession, ultimately, they represent a cost to society.</li> </ul>
<i>Source: Indecon analysis</i>	

### Pros and cons of a new conveyancer profession

In line with the terms of reference set for the study, Indecon has considered the pros and cons of introducing a new profession of conveyancer. Indecon believes that these should be considered against the counterfactual of the current position where the provision of conveyancing services is restricted to the legal profession. A wide range of pros and cons were suggested in stakeholder submissions and in wider consultations completed by Indecon. There was also some limited evidence on the potential impacts from the international experience although this was not definitive. The pros and cons covered areas such as:

- The impact of competition;
- The implications for the efficiency in the provision of conveyancing services;
- The consequences for the time to complete conveyancing transactions;
- The impact on quality and on service innovation;
- The regulatory requirements and costs; and
- Other implications.

Each of these areas merits consideration by the LSRA and are discussed below. In considering the pros and cons of each option, it is important to recognise that the benefits of establishing a new profession will be dependent on achieving a sufficient take-up of a new profession. Under one of the options whereby separate conveyancing firms would be established, the competition benefits would likely only arise if a sufficient number of new entrants were attracted to the market. It is not possible to identify what number of new entrants would be needed to achieve a change in the market dynamics. However, even a small number of significant new entrants could impact behaviour within the market. If a decision was made to establish a new profession, it may be desirable for the LSRA to undertake research with existing players in the UK market to establish the level of their interest in entering the Irish market and under what conditions they would consider establishing practices in Ireland. This, however, should only be undertaken once further consideration is given to the overall assessment of the different options which are discussed later in this report.

### **The impact on competition**

The CCPC in a detailed submission to this review referenced a study by Crowe for the Law Society of Ireland which suggested that competition is increasing in terms of conveyancing fees, and noted the use of discounting as a method of differentiation. The report by Crowe noted that smaller practices operate in an environment which includes medium-sized firms, large firms and increasingly global firms. They suggested that this makes the operating environment both competitive and dynamic. They noted that smaller firms saw a threat of competition in traditional areas of practice. In assessing the conclusions of the Crowe study, Indecon examined the survey evidence included in the report. This showed that a survey of legal practitioners indicated that 44% of firms reported that their profit margin had declined and this compared to only 18% who reported an increase on margin. The explanations provided for the low margins included the fact that fees were constant or declining, higher overhead costs or greater competition. Data presented in the annex of the Crowe Report also demonstrated the emergence of small new entrants to the market. However, we believe the introduction of a new conveyancer profession is likely to drive additional competition both among existing solicitors, as well as providing competition from new entrants. This is aligned with the considered view of the CCPC which is the statutory agency responsible for competition and consumer protection. The ability of innovative solicitors' practices or specialist conveyancing firms to embrace the efficiency gains from employing conveyancing specialists would enable them to offer lower cost services. New specialist conveyancing firms would need to offer lower costs, enhanced service innovations, or faster timescales in order to gain business. This would give consumers greater choice and would further enhance competition. Indecon believes this is a significant benefit and merits careful consideration. In considering the impact on competition, Indecon believes that competition can be enhanced in a way which does not reduce consumer protection. This would, however, require appropriate regulation. The benefits from enhanced competition would only arise if there was a significant take up of conveyancing professionals in the market. The experience in Scotland suggests this is not certain.

### **The implications for the efficiency in the conveyancing services**

The introduction of significant numbers of conveyancing specialists could improve efficiency in delivering services. The establishment of these new professionals would result in a different cost base reflecting their more limited albeit specialist training and qualifications. Combined with greater digitalisation, this would offer the potential for alternative business models with improved cost efficiency. This may explain why many of the solicitor practices surveyed said the likely impact of a new profession would involve them employing conveyancing specialists, presumably to secure a lower cost base and enhanced efficiencies.

### **The consequences for the time to complete conveyancing**

For standard transactions, a new specialised conveyancer profession has the potential to reduce the time needed for conveyancing. This point was highlighted by a number of stakeholders and is aligned with the limited international evidence. This, however, may not always be the case, especially if more complex legal issues arise. As with other positive impacts, the link with digitalisation is important and the introduction of a new specialist profession, combined with digitalisation, is likely to have positive benefits for consumers and result in faster timescales. In complex cases where legal issues arise, the handling by a separate conveyancer profession could result in additional time delays. Indecon believes it is unlikely that such additional time delays would arise in most cases but there is a need to consider the potential risks in this area.

### **The impact on quality and on service innovation**

The introduction of a specialised profession has the potential to promote service innovation. This would include a growth in online and easy to use price comparison platforms. While the precise nature and extent of service innovation is uncertain, if the model chosen involved a separate conveyancing firm, it is likely to lead to service innovation. This could for example, involve greater access to services outside standard office hours or enhanced technological options for consumers. It must be noted that existing legal practices may also decide to offer similar service innovations. The overall impact on service quality is however more uncertain. The research with consumers as part of this review highlighted high levels of satisfaction with the quality of conveyancing services. A potential risk from a new conveyancer profession is a reduction in the quality of services. This was highlighted

in our survey of legal practitioners and was also evident in various wider stakeholder submissions. Indecon believes this risk could be successfully mitigated through rigorous consumer protection measures and appropriate training and regulatory controls.

### **Regulatory Costs**

The introduction of a conveyancer profession would require regulatory changes. Apart from any costs in reforming legislation and designing the regulatory regime, there will be regulatory costs in setting up the mechanisms and structures to supervise a new profession. There will also be regulatory costs in monitoring the profession and setting up and implementing standards for conveyancing education and training. These costs would be justified if there would be a significant increase in the number of practising conveyancers operating in the market and an enhancement in competition. However, if other barriers to entry remain, the number of new entrants may be low and the regulatory costs could be prohibitive. This highlights the importance of introducing enabling measures. Of particular importance is the issue of digitalisation and market transparency on costs, as well as consumer awareness programmes. The regulatory costs which would be involved in establishing and supervising a new conveyancing profession would depend on future decisions on the specific regulatory models being considered. An examination of the detailed costs which would be required for the establishment of the regulatory regime is a significant separate exercise which is outside the scope of this project. However, it would involve the initial set-up costs of any regulatory functions and the administrative costs of ongoing operations. Another cost component would be the funding of any disciplinary tribunal or mechanisms concerning any alleged misconduct by licensed conveyancers. This would involve the costs of managing any complaints, investigations and resolutions. For illustrative purposes it is of note that the annual expenditure of the Property Services Regulatory Authority in 2020 amounted to €2.49 million. Also of interest is to note that the annual cost of the Council for Licensed Conveyancers in the UK amounted to around £3.5 million in 2022 of which £870,000 represented levies charged by other regulatory bodies. These costs could be levied on the sector. In addition, there would be costs incurred by conveyancers seeking professional indemnity insurance and there would be a need for resources to cover the costs of establishing a compensation fund. On the cost of professional indemnity insurance, this would be determined by market factors and would depend on what levels of indemnity insurance was required and also on the levels of exclusions and factors such as the size and resources of the conveyancing firms involved.

The need for effective insurance and the establishment of a Compensation Fund is in part related to the role of solicitors in providing undertakings (for example to forward settlement funds). This is important as a solicitor's undertaking is a legally binding promise by a solicitor or someone on their behalf to do or not do something. They could, for example, provide an undertaking a specified sum of money to facilitate the redemption of charges in the context of mortgages, or to discharge all stamp duty or registration fees due. A solicitor's undertaking is usually unconditionally enforceable and is a professional conduct matter. Undertakings are not subject to any limitation period. In the absence of solicitors undertakings, ensuring that any risks arising from a change in who is providing conveyancing services are mitigated, would be an important issue in designing the regulatory regime.

In addition to insurance, there would be a need to establish a new compensation fund if the individual completing the conveyancing services did not have access to the current solicitor's compensation fund. This fund is statute based and most claims on the fund relate to buying a property. Clients of a solicitor can make a claim on the fund if they have lost money that they provided to the solicitor because the solicitor was dishonest or because they lost money received by the solicitor which was due to be passed on to the client or others, or if their money is under the control of the Courts or the Law Society. This fund only applies if the solicitor was dishonest and claims for negligence are not eligible under the current solicitor's compensation fund.

In the event that a model was chosen whereby conveyancers operated outside of solicitor's practices and did not have access to the solicitor's compensation fund, there would be operational challenges in levying conveyancers to resource a compensation fund in a start-up situation of creating an entirely new profession. This may require some government involvement or a requirement that insurance cover is put in place to meet any claims for dishonesty which resulted in a loss of client funds.

On the issue of professional indemnity insurance, a recent survey of Irish law firms, noted that PI insurance costs have increased by more than 10% for many firms as a number of insurance companies exited the market.<sup>18</sup> Indecon notes that there are 19 brokers who provide professional indemnity insurance with cover being offered by 13 participating insurers for the 2022/2023 indemnity period. Despite this, obtaining adequate Professional Indemnity Insurance could be challenging unless new entrants had significant resources and a track record from operating in the UK or other markets.

### Other Implications

In addition to the main issues identified, two potential issues were raised in our stakeholder consultations were: (i) the potential of a new conveyancing profession to facilitate solicitors to engage in higher value work; and (ii) the risks to the viability of small practices. Indecon however, does not believe they represent significant impacts. While a new conveyancing profession could potentially facilitate solicitors to engage in higher value work, this was not seen as a benefit by most solicitor practices and we accept this is not a key issue. On the impact on the viability of small legal practices, the research completed for this study indicated the significance of conveyancing fee income for small legal practices. Ensuring the survival of some small practices in rural and other areas is important and if they lost significant business to specialist conveyancers this could, in some cases, impact on their viability. Indecon would point out that regulatory policy should not be designed to ensure the profitability of any profession, but we recognise that one of the LSRA's objectives is to encourage an independent and effective legal profession. We also accept that if existing practices were prevented from employing conveyancers, this could damage the viability of small practices. We therefore believe that if a separate profession is established, solicitors should be free to employ conveyancers. Indecon further notes that a small practice which employs a conveyancer could reduce costs and this is not a zero-sum game. We also note that legal executives currently undertake part of the conveyancing work. In addition, the quality of services provided by solicitors, and the reputation and relationships developed, represent a competitive advantage if they can offer competitive prices. As solicitors should be eligible to employ lower cost conveyancer support staff, we do not see any significant risk to the viability of existing firms. In other countries where conveyancers have been established, solicitors continue to provide most conveyancing services.

### Pros and Cons of Alternative Models

The potential pros and cons will differ depending on the alternative models chosen. It is important to also note that there may be an option to make changes on an incremental basis and to assess the impacts over time. In considering alternative options each of the pros and cons should be evaluated against a counterfactual of Option 1 which represents a no change scenario. The options are outlined below:

- Option 1: No change and conveyancing restricted to qualified solicitors.
- Option 2: Establish a new conveyancer profession with a separate regulatory system.
- Option 3: Establish a new conveyancer profession and utilise existing solicitor regulatory organisations to regulate the profession.
- Option 4: Permit establishment of conveyancing profession but initially restrict membership to individuals employed by solicitor practices.

The pros and cons of the different options compared to the existing position are summarised in the following table.

<sup>18</sup> Survey of Law Firms in Ireland 2022, Evelyn Partners.

Pros and Cons of Different Options					
Option 2		Option 3		Option 4	
Establish a new conveyancing profession with a separate regulatory system		Establish a new conveyancing profession and to utilise existing solicitor regulatory organisations to regulate the profession		Permit establishment of conveyancing profession but initially restrict membership to individuals employed by solicitor practices	
<b>Pros</b>	<b>Cons</b>	<b>Pros</b>	<b>Cons</b>	<b>Pros</b>	<b>Cons</b>
<ul style="list-style-type: none"> <li>Enhanced competition resulting in greater choice and lower costs</li> <li>Efficiency in provision of services</li> <li>Likely reduction in time to complete most conveyancing transactions</li> <li>Service innovation including access outside standard hours</li> </ul>	<ul style="list-style-type: none"> <li>Higher regulatory costs</li> <li>Risks to consumer protection unless measures are introduced</li> <li>Risk of impact on quality of services</li> </ul>	<ul style="list-style-type: none"> <li>Some enhanced competition resulting in greater choice and lower costs</li> <li>Efficiency in provision of services</li> <li>Likely reduction in time to complete most conveyancing transactions</li> <li>Service innovation including access outside standard hours</li> </ul>	<ul style="list-style-type: none"> <li>Risks of discouraging significant new entrants</li> <li>Some higher regulatory costs compared to the existing position</li> </ul>	<ul style="list-style-type: none"> <li>Efficiency in provision of services</li> <li>Likely reduction in time to complete conveyancing</li> </ul>	<ul style="list-style-type: none"> <li>Absence of enhanced competition</li> <li>No change in service innovation</li> </ul>
<b>Source: Indecon analysis</b>					

The key differences between the options relate to the regulatory costs and risks which have to be weighed against forgoing the benefits of enhanced competition.

### Conclusions

Based on the independent examination by Indecon of the available evidence on the impact of the possible creation of a new profession of conveyancer the next table summarises our key conclusions. The conclusions and the detailed analysis presented are designed to assist the LSRA in considering the merits or otherwise of the introduction of a new profession of conveyancer and in advising the Minister.

### Summary of Conclusions

1. Ireland has a well-developed conveyancing market which is served by a large number of solicitor practices and there are high levels of overall satisfaction with conveyancing services among consumers.
2. There is a range of prices for conveyancing services available in the Irish market.
3. Most conveyancing services are provided on a fixed-fee basis.
4. There is a lack of transparency in the market arising from major gaps in availability of the comparative information on the cost of conveyancing services although some improvements have been made.
5. There is evidence of consumer inertia in the choice of conveyancing service providers.
6. A trained conveyancer could conduct routine conveyancing but would have a lower level of legal expertise than is needed to qualify as a solicitor.
7. Many of the legal firms providing conveyancing services have not significantly applied technology in carrying out conveyancing work.
8. Other jurisdictions have established a conveyancer profession.
9. The establishment of a new profession of conveyancer would increase competition for the provision of conveyancing services.
10. Enhancing competition and improving the efficiency of conveyancing services would require measures to ensure:
  - a. Greater use of technology and digitalisation in conveyancing services;
  - b. Significantly enhanced price transparency for conveyancing costs; and
  - c. Consumer awareness campaigns of the costs and other aspects of conveyancing.
11. There is a range of alternative models feasible for the delivery of conveyancing services.
12. Potential issues in introducing a new profession of conveyancer would be regulatory costs. These are also some risks to consumer protection but these could be addressed by appropriate regulatory actions. Models for regulation should prioritise consumer protection and the enhancement of competition.

Source: Indecon

1. Ireland has a well-developed conveyancing market served by a large number of solicitor practices and there are high levels of overall satisfaction with conveyancing services among consumers of conveyancing services among consumers.

Ireland has a sophisticated well-working conveyancing market and there is a large number of providers. There is a large diversity of providers of different scales. The well-developed nature of the market comprising a diversity of suppliers assists in consumer choice. New survey evidence commissioned by the LSRA and examined by Indecon, confirms a very high level of overall satisfaction among consumers of conveyancing services. The evidence suggests that 93% of consumers were satisfied with the service levels provided. (71% were very satisfied and a further 22% fairly satisfied). These relate to the professionalism and quality of providers rather than satisfaction with the price of the service. The level of satisfaction is lower among consumers who paid higher prices. This has implications for transparency in the cost of conveyancing. There are however some issues with the conveyancing market related to delays and the registration of titles. There are also inefficiencies in the current system of conveyancing property which are external to how legal services are provided and raise issues wider than that of the introduction of a profession of conveyancer. (Please see Section 3 of the report for further analysis of the market).

**2. There is a range of prices for conveyancing services available in the Irish market.**

Indecon's research with legal practices for this study showed a diversity in the costs of conveyancing. This is also evident from consumer research. In some cases, prices are more than twice the average. Indecon notes that there are a number of other factors which could influence the costs of conveyancing. These include differences in the type of work required and differences in the complexity of transactions. This reflects the fact that conveyancing is not necessarily a homogeneous product. The evidence from the consumer research indicates that 35% of consumers paid between €1,000 and €2,000 for their conveyancing services. 31% paid between €2,000 and €3,000, and a further 15% paid between €3,001 and €4,000. Interestingly, 16% of consumers paid more than €4,000. Such price diversity may be a feature of a functioning market or may reflect weakened incentives to compete on price due to consumer inertia and the lack of transparency of comparative prices. (Please see Section 3.2 of the report for the evidence on the price of conveyancing services).

**3. Most conveyancing services are provided on a fixed-fee basis.**

Possibly reflecting the number of providers and some increased competition, conveyancing services are mainly provided on a fixed-fee basis. If these costs are communicated effectively to potential customers, and if comparative information on costs was available the fixed price options have advantages for consumers in understanding the costs involved and in facilitating consumers to engage on the merits of different offerings. There is, however, part of the market where prices are not fixed. (Please see Section 3 for further evidence which has informed this conclusion).

**4. There is a lack of transparency in the market arising from major gaps in availability of the comparative information on the cost of conveyancing services although some improvements have been made.**

While some improvements have been made on price transparency, including the introduction of Section 150 Cost Notices, there remain major gaps in the transparency of comparative information on the cost of conveyancing services. As a result, consumers face difficulties comparing prices for these services. Many solicitors do not provide prices for conveyancing on their websites and there is an absence of comprehensive price comparison websites. This limits competition in the market and reduces the incentive for suppliers to compete on price. Ready access to such information is needed to facilitate informed consumer choice. Regardless of any decision on the setting up of a new profession, there is strong merit in continuing measures to enhance price transparency of conveyancing services, building on the initiatives previously introduced by the Act.

**5. There is evidence of consumer inertia in the choice of conveyancing service providers.**

In line with other countries, there is evidence of significant consumer inertia in the choice of conveyancing providers. The research shows there is a strong tendency to use the solicitors recommended by family or friends or whom they have employed previously. While this is understandable it reflects information asymmetry, and represents a barrier to competition in the market. It also represents a barrier to entry of a new profession of conveyancer. The level of consumer inertia is a feature of many professional services and other markets. This is particularly the case where transparency of comparative information on costs and other aspects of services is not available.

**6. A trained conveyancer could conduct routine conveyancing but would have a lower level of legal expertise than is needed to qualify as a solicitor.**

Conveyancing work requires a lower level of skill and expertise than that required to practice as a solicitor. If there is to be a new profession of conveyancer, it is important that education, training, and other qualifications are set at a level appropriate level to conveyancing work rather than that requiring wider legal expertise. The proposed Legal Practitioner Education and Training Commission could play a role in informing the appropriate level of training and accrediting providers of training services for conveyancing work. On the issue of specialist training, Indecon notes there is currently a course offered by the Law Society of Ireland Diploma Centre leading

to Certification in Conveyancing. This course takes account of the introduction of the 2019 Pre-Contract Investigation of Title (PCIT) process to improve the conveyancing process. Indecon notes the course is reserved to solicitors and post-Professional Practice Course I (PPCI) trainees. Opening up this course to a wider range of applicants would facilitate access to an expanded pool of skills and provide efficiency gains for the legal profession and benefits for consumers.

**7. Many of the legal firms providing conveyancing services have not significantly applied technology in carrying out conveyancing work.**

The survey research undertaken for this project has demonstrated that solicitors believe that only a very small percentage of the sector had significantly applied technology in conveyancing work. This impacts on costs and efficiency and also has implications for the time required to complete conveyancing tasks. The Government's 'digital-first' strategy (National Digital Strategy) is relevant context for digitalisation/e-conveyancing. Indecon also notes that a project was previously considered at the Law Society on digitalisation for conveyancing but we understand it was ultimately not pursued. (Please see Section 4 of the report for evidence on the use of technology.)

**8. Other jurisdictions have established a conveyancer profession.**

Indecon's analysis of other jurisdictions has confirmed it is possible to establish a separate profession of conveyancer. Existing models to reform regulations and establish adequate consumer protection exist. While these firms provide alternatives to consumers and represent additional competition to solicitors, they in general have only secured a very small market share and solicitors continue to be the main provider of conveyancing services. Indecon believe that this would also be the case if such a profession was established in Ireland. While there is some evidence of lower consumer costs and a faster timescale for conveyancing transactions in jurisdictions where a conveyancing profession has been established, causation cannot always be directly estimated. (Please see Section 2 for a review of international markets.)

**9. The establishment of a new profession of conveyancer would increase competition for the provision of conveyancing services.**

There is a legislative restriction on individuals not employed by solicitor practices providing third-party conveyancing services. This results in a monopoly of conveyancing services to qualified solicitors. The number of solicitors holding practising certificates has increased from 6,436 in 2003 to 11,854 in 2020. While this may have facilitated increased competition, Indecon notes that this increase does not necessarily imply increased competition if there are gaps in price transparency, consumer inertia or other barriers which weaken the incentive to compete on price. The CCPC has noted a number of positive developments and planned innovations of conveyancing processes in recent years. The CCPC concluded that despite these developments, the introduction of a profession of conveyancer can serve to increase competition further regardless of the current level of competition among solicitors in conveyancing services. Given the lack of transparency on comparative fees and the levels of consumer inertia, Indecon would concur with the evaluation by the CCPC. We believe, however, that this is conditional on a significant take up of the profession and the establishment of a suitable regulatory model. (Please see Section 6 of the report for further analysis of competition issues). As identified in our assessment of the pros and cons of the different options, if the barriers to entry remain high, the number of new entrants may be low and this could reduce the pro-competitive impacts. In such cases the regulatory costs could be prohibitive. This highlights the importance of enabling measures as discussed below.

**10. Enhancing competition and improving the efficiency of conveyancing services would require measures to ensure:**

- Greater use of technology and digitalisation in conveyancing services;
- Significantly enhanced price transparency for conveyancing costs; and
- Consumer awareness campaigns of the costs and other aspects of conveyancing.

Legislative reforms on their own will not be sufficient to have a material impact on the market. The CCPC has pointed out that the introduction and the regulation of such a profession will not be sufficient to ensure conveyancing services are as competitive as possible. This issue was also highlighted by the Competition and Markets Authority (CMA) in its review of the legal services market in the United Kingdom. It pointed out that consumers require access to information on price, service and quality available in a market in order to make informed purchasing decisions, and to drive competition in a sector. There is therefore a need for new measures to provide information to consumers on conveyancing services, particularly on the cost and quality of such services. Measures to enhance consumer cost comparisons are also important. There is a need as part of any plan to introduce a conveyancer profession to enhance price transparency, develop consumer awareness of price and quality issues, and facilitate the use of technology in conveyancing. Greater use of technology and digitalisation in conveyancing will have benefits in terms of efficiency. Digitalisation of conveyancing would result in enhanced efficiency in the market and facilitate greater competition. In this context, we noted the development by the Property Registration Authority of the eRegistration service to register transfers electronically. All of these actions would be of benefit regardless of whether a new profession is introduced.

**11. There is a range of alternative models feasible for the delivery of conveyancing services.**

The Minister requested that the LSRA complete an analysis of alternative models for the delivery of conveyancing services by professionals other than solicitors to meet the statutory objectives of the LSRA. Indecon's analysis suggests there are a number of alternative models feasible for the delivery of conveyancing services. These include: (i) specialist firms providing conveyancing services in competition to solicitors with a separate regulatory system; (ii) establishing a new profession but utilising existing regulatory structures, and (iii) establishing a new profession but requiring that conveyancing practitioners are employed by solicitor practices. Any option implemented could be reviewed and the merits of additional reforms could be evaluated over time. The key differences between the options relate to the regulatory costs and risks which have to be weighed against forgoing the benefits of enhanced competition.

**12. Potential issues in introducing a new profession of conveyancer would be the regulatory costs. There are also some risks to consumer protection but these could be addressed by appropriate regulatory actions. Models for regulation should prioritise consumer protection and the enhancement of competition.**

Potential issues in introducing a new profession of conveyancer are the regulatory costs and risks to consumer protection. While these costs could be levied on the professionals, they represent a wider economic cost to be considered in the context of benefits. The risks to consumer protection and quality of service could, be addressed by policy and regulatory measures. Solicitors are required to have professional indemnity insurance and also have access to the Law Society of Ireland's compensation fund. Indecon believes that if a new profession is established, it must have a robust but appropriately designed regulatory regime that would protect consumer interests. This would require a compensation fund and a requirement that specialist conveyancers have professional indemnity insurance. There would also be a need to set a requirement to provide the type of information to consumers required by solicitors under the Legal Services Regulation Act Sections 150 and 152, but we note that more significant transparency measures would also be needed to strengthen competition. Ensuring adequate training and qualification would also be necessary to ensure services are of sufficient quality. There would also be a need to ensure there are robust conflict of interest rules applied to licenced conveyancers. Regulatory measures should also be carefully designed to ensure that they do not prevent new innovative market entrants.

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# 1 Introduction and Background

## 1.1 Introduction

This research study represents an examination by Indecon Research Economists for the Legal Services Regulatory Authority (LSRA) into the possibility of the creation of a new profession of conveyancer. The LSRA appointed Indecon following a competitive tender process. The LSRA was established in 2016 and is Ireland's national statutory regulator for both branches of the legal profession – barristers and solicitors.

## 1.2 Background to the research

The background to this research is the request from the Minister for Justice to the LSRA under section 34(1) of the Legal Services Regulation Act 2015, for a report in relation to the creation of a new profession of conveyancer. This report represents Indecon's independent analysis and is one input to the assessment by the members of the Authority of the LSRA in the preparation of their report to the Minister. The views and analysis in this report are solely the responsibility of Indecon.

The research includes a review of international models and experience in relation to conveyancing. The issue of digital technology and how this might impact conveyancing services is considered. The study examines the current market for conveyancing services in Ireland and its scale and economic impact. It also examines competition concerns and barriers to entry for new practices and based on the evidence, identifies the pros and cons of a new conveyancer profession.

The key aspects of the research can be summarised as follows:

- An analysis of comparable international models and experience;
- An economic analysis of how Ireland compares to other jurisdictions in terms of the cost and the speed of conveyancing, particularly for domestic property purchases, including any barriers;
- Consideration of how digital technology, which is rapidly evolving, could transform the manner, cost, and speed of carrying out a conveyance, and how digitalisation should inform a decision to establish such a profession;
- Profile of the scale of provision and value to the economy of conveyancing services and activities in the State;
- The path through which such services are currently provided and at what transactional cost;
- Analysis of any barriers to new providers and greater competition in this area;
- The pros and cons of introducing a new profession of conveyancer and models for its regulation (including entry requirements) with protection for consumers;
- Potential benefits, if any, to private consumers and enterprise and to national competitiveness of a new profession of conveyancer; and
- An analysis of alternative models for the delivery of conveyancing services by professionals other than solicitors to meet the statutory objectives of the LSRA as outlined above.

The legal profession and conveyancing services have been subjects of review since before 2006, when the Competition Authority published a series of comprehensive reports on competition in eight professional services markets, including solicitors and barristers.<sup>19</sup> The report “concluded that the legal profession is in need of substantial reform” as it is “permeated with unnecessary and disproportionate restrictions on competition which should be removed so that consumers can benefit from greater competition in legal services.”<sup>20</sup> The study examined a variety of issues, including the regulatory structure and legal education standards. The authority recommended abolishing the prohibition of professionals other than solicitors from providing conveyancing services and allowing a professional designation of conveyancers to be “qualified to provide conveyancing services only and have the same consumer protection regulation as solicitors.”<sup>21</sup>

### 1.3 Methodological approach

We also reviewed submissions to an LSRA consultation process and obtained new stakeholder inputs concerning aspects of the study. In addition, we completed primary survey work of legal practitioners<sup>22</sup> and examined consumer research undertaken by the LSRA.

#### Survey of Legal practitioners

To obtain insights from the legal profession who currently provide conveyancing services, Indecon undertook a survey of legal practitioners. The sample for this survey was based on solicitor practices who have registered with the Law Society to provide conveyancing services.<sup>23</sup> This is part of a pilot project run by the Law Society to help consumers get quotes for particular legal services (such as conveyancing) from participating legal firms. Currently, around 200 legal firms have opted into this service. Indecon identified these firms and obtained contact details from their own websites. A total of 78 legal practitioners replied to this survey which represents a very good response rate of participating professionals.

#### Consumer survey

The consumer research was conducted via telephone by Ipsos interviewers based across Ireland. A national stratification was used to ensure all regions were represented in the survey. To qualify to take part, respondents must have bought a residential property in Ireland in the past four years (not before July 2018) and used the services of a solicitor based in Ireland for this purpose. The survey was conducted from 14th July to 19th August 2022. The objectives of the research include:

- Measure how satisfied or not home buyers/sellers in Ireland are with the services provided by the solicitors during the conveyance process and why.
- Determine what are the key factors taken into consideration when looking for a solicitor.
- Evaluate the level of satisfaction with the conveyance process in relation to the time taken for completion and the amount of information provided beforehand.

<sup>19</sup> The Competition Authority (2006), “Competition in Professional Services: Solicitors and Barristers” accessed at: <https://www.ccpic.ie/business/wp-content/uploads/sites/3/2017/03/Solicitors-and-barristers-full-report.pdf>

<sup>20</sup> Ibid. Executive Summary, p. iii

<sup>21</sup> Ibid.

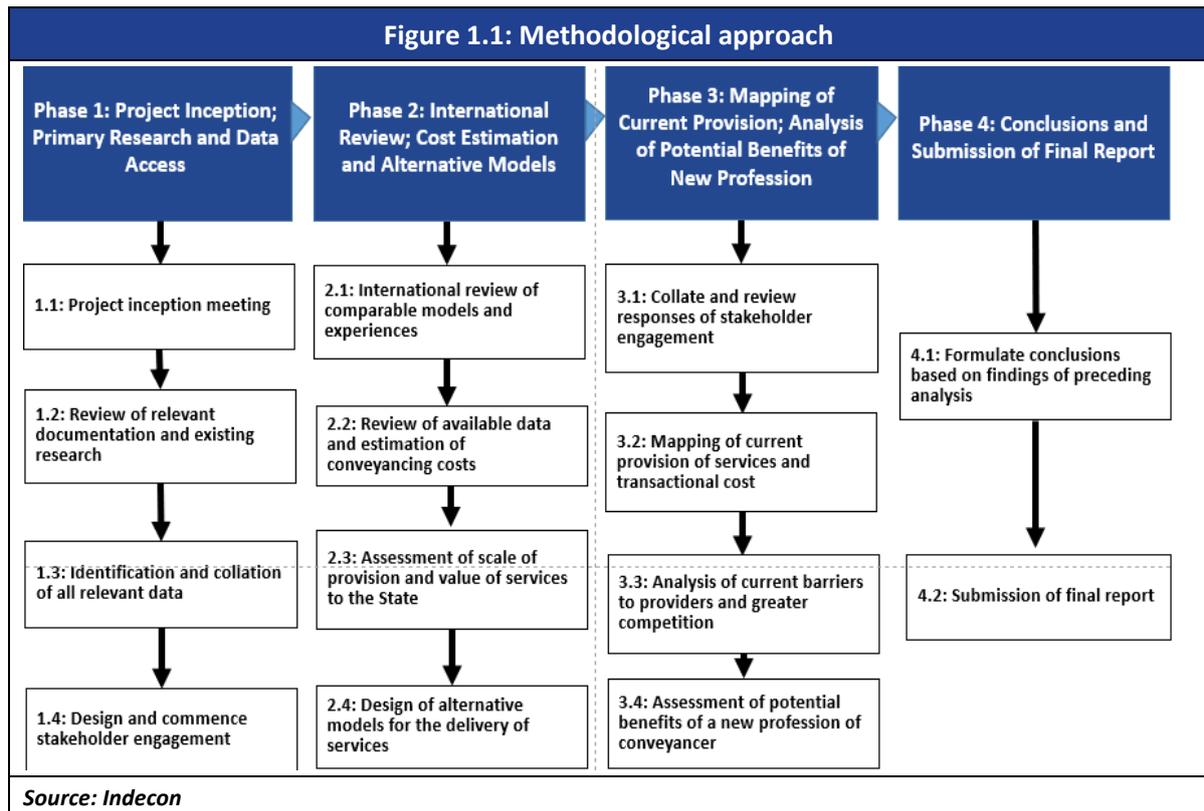
<sup>22</sup> These firms are listed on the Law Society website as providers of conveyancing services.

<sup>23</sup> <https://www.lawsociety.ie/public/Get-a-Quote/Buying-a-residential-property>

- Understand the perception of value for money that buyers/sellers in Ireland have of the conveyance services provided by solicitors.
- And determine opportunities for improvement and innovation on how the process is conducted.

A total of 300 respondents completed the survey.

A summary of the overall approach undertaken to complete this research is outlined in Figure 1.1.



## 2 Review of Comparable International Models

### 2.1 Introduction

In order to consider the issues around introducing a conveyancer profession in Ireland, it is useful to review international experience and approaches in countries which have a conveyancer profession. In addition to the background and current status of conveyancing in each market, we consider the role of the conveyancing solicitor, and where information is available, we review the levels of conveyancing fees and costs, as well as the timescale for residential transactions. We also consider the key features of the experience in the markets. The markets we reviewed are as follows:

- England, Wales, and Northern Ireland
- Scotland
- New Zealand
- Australia, with a focus on Victoria and New South Wales

Each of these markets was chosen as they are common law jurisdictions with a separate conveyancer profession where solicitors and/or specialist conveyancers, and/or paralegal professionals also deliver conveyancing services.

In considering the available information on other jurisdictions Indecon notes that while there is some evidence of low consumer costs and fast timescales for transactions in jurisdictions where a conveyancing profession operates, causation cannot be directly established. Additionally, in comparing Ireland with other jurisdictions, any differences in the type of work involved in conveyancing between different countries merits consideration. For example, in Ireland, solicitors are required to undertake planning due diligence, as well as work on the Registry of Deeds because of the absence of an e-conveyancing system. There is also a requirement in Ireland for solicitors to interact with the Revenue Commissioners which does not apply in many comparator countries. The key differences in the specific services provided in Ireland compared to some other countries relate to greater requirements on planning due diligence, additional work on the registry of deeds, and the requirement to interact with the Irish Revenue on tax issues.

The term “conveyancing solicitors” is used throughout this report to describe solicitors who perform conveyancing services generally. It is used to distinguish those individuals from “conveyancers”, to whom we refer as those who are professionally licenced conveyancers who operate as a separate profession and do not perform other types of legal services.

Definitive evidence on the impact of the introduction of conveyancing in other countries is often not available. Factors such as costs and timescales can vary for reasons other than the establishment of a new profession. Nonetheless, it is valuable in understanding the issues and the potential impacts, to review the background and current status, the entry requirements, the level of conveyancing fees and costs and the timescale for residential conveyancing transactions in each of the countries reviewed. We also consider the regulation and consumer protection measures, the extent of e-conveyancing<sup>24</sup> and the transparency of information.

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<sup>24</sup> The term e-conveyancing refers to the general digitalised system whilst eConveyancing refers to the specific system used presently in Australia

## 2.2 Scotland

### **Background and current status**

Scotland first authorised dedicated, professional conveyancing practitioners (conveyancers) in 1997 to conduct legal aspects of buying/selling property.<sup>25</sup> From 1997 to 2003 the Scottish Conveyancing and Executry Services Board (SCESB) provided regulation and since 2003 the Law Society of Scotland (LSS) has been the regulator.<sup>26</sup> As of 2003, no new conveyancing practitioners can register, as the Scottish Government abolished the SCESB when regulation of existing conveyancers moved to the LSS.<sup>27</sup> A 2002 Justice Committee Report for the Scottish Parliament indicated reasons for abolition of the approval board, including the low number of conveyancing practitioners (11) and the relative complexity of educational requirements and professional oversight.<sup>28</sup> Barriers to entry in the legal services market may have played a role in the low uptake of conveyancers' services in Scotland. It must be also acknowledged that "professional service markets, particularly of a personal nature, tend to be spatially localised."<sup>29</sup>

In 2018, the Consumer Study on Scottish Users of Legal Services found that consumers tend to be confused about legal services they receive from solicitors, and that "for certain tasks such as conveyancing, solicitors should have a consistent pricing model, and they should be able to advise of the costs up front."<sup>30</sup> The report emphasises the importance of competition in the market for legal services and the removal of barriers such as licensing and regulatory burdens on "alternative business structures" which would include conveyancers not working in law firms.<sup>31</sup>

As of 2019, there remained only eight combined conveyancing and executry practitioners in Scotland.<sup>32</sup> "This contrasts with trends in England and Wales, where alternative authorised providers appear to be more common and operate in greater numbers and types. For example, in 2018 there were 1,368 licensed conveyancers in England and Wales."<sup>33</sup> Qualified conveyancing solicitors generally conduct this type of practice and are registered with the Law Society of Scotland. A report by the Competition and Markets Authority of the Scottish legal market (discussed later) highlighted the lack of transparency in information on conveyancing fees. The low level of take-up of the conveyancing profession in Scotland may have been related to this lack of transparency in the market as well as other factors including the bundling of conveyancing and estate agency fees in the Scottish market.

The conveyancing process in Scotland differs from that in the rest of the United Kingdom and from Ireland. Solicitors are prominent in selling homes in Scotland and many also act as estate agents<sup>34</sup> unlike standard practice in the rest of Britain. Solicitors in Scotland may be responsible for:

- Marketing: checking the title when the property is put on the market;

<sup>25</sup> The Independent Qualified Conveyancers (Scotland) Regulations 1997, No. 316 (S. 20) accessed at: <https://www.legislation.gov.uk/ukxi/1997/316/contents/made>

<sup>26</sup> Competition and Markets Authority, Legal Services in Scotland, Research Report (24 March 2020) at p. 29, accessed at: [https://assets.publishing.service.gov.uk/media/5e78cc9b86650c296f6eda63/Research\\_report\\_-\\_Legal\\_services\\_in\\_Scotland\\_publication.pdf](https://assets.publishing.service.gov.uk/media/5e78cc9b86650c296f6eda63/Research_report_-_Legal_services_in_Scotland_publication.pdf)

<sup>27</sup> CMA (2020) op. cit. at p. 79, fn 255

<sup>28</sup> Scottish Parliament (2002), Justice 1 Committee, 11th Report 2002, Report on Regulation of the Legal Profession Inquiry, Volume 1: Report and evidence, paragraphs 235 – 260.

<sup>29</sup> FH Stephen, JH Love and AA Paterson, "Deregulation of conveyancing markets in England and Wales", (1994) 15:4 *Fiscal Studies* 102,105

<sup>30</sup> E. Roberton, (2018) "Fit for the future: report of the Independent Review of Legal Services Regulation in Scotland" at p. 24

<sup>31</sup> Ibid.

<sup>32</sup> CMA (2020) op. cit. at p. 62

<sup>33</sup> CMA (2020) op. cit. at p. 62, fn 191

<sup>34</sup> <https://www.reallymoving.com/conveyancing/guides/guide-to-conveyancing-solicitors-in-scotland>

- Transactions: managing initial transactions;
- Documentation: sourcing all documentation relating to the home;
- Negotiation: negotiating the contract on the client's behalf with the buyer's solicitor; and
- Finalising the contract: assisting with every aspect of finalising contracts, including checking title deeds, carrying out land register searches, drawing up the missives (contracts) and agreeing the completion date, known as "settlement".

Solicitors' firms in Scotland are typically members of solicitors and property centres, showrooms which advertise available properties from members. Conveyancing solicitors are often also licenced real estate agents. While separate estate agents also operate in Scotland, they have a smaller share of the market than in other parts of Britain. A key difference to other markets is that a solicitor may be the first point of contact for someone planning to sell rather than an estate agent. The Scottish contracts system is also different from the rest of the United Kingdom and the contract is usually completed quickly.<sup>35</sup>

### **Entry Requirements**

Scottish solicitors, now the only new entrants qualified to undertake conveyancing work, go through a standard qualification route consisting of an educational period, normally a Bachelor of Laws (LLB), followed by a Diploma in Professional Legal Practice, then by a two-year traineeship under the supervision of a qualified solicitor.<sup>36</sup>

The role of conveyancer necessitated significantly less training. Scottish legislation had required practitioners to be educated to degree level and serve a training period of one year with a solicitor or independent qualified conveyancer before being able to register with the Scottish Conveyancing and Executry Services Board (SCESB).<sup>37</sup>

### **Regulation and Consumer Protection**

Scottish Solicitors are governed by the Law Society of Scotland, which both represents and regulates its members. The role of conveyancers was initially regulated by the Scottish Conveyancing and Executry Services Board (SCESB). In contrast to the Law Society of Scotland, the board had 75% lay membership.<sup>38</sup> After the dissolution of the SCESB in 2003, its functions were taken on by the Law Society of Scotland.<sup>39</sup> The parliamentary inquiry of this dissolution noted that the cost to the Scottish Government of the SCESB was approximately £130,000, additionally, the SCESB estimated that less than £50,000 of this was due to the independent nature of the board, as opposed to the functions being carried out by the Law Society of Scotland.<sup>40</sup>

In its regulatory role, the SCESB was tasked with handling complaints of misconduct and inadequacies, as well as considering the cases of practitioners who had been convicted of a criminal offence.<sup>41</sup> These functions were then passed to the Law Society of Scotland. During the time of the board's existence,

<sup>35</sup> Ibid.

<sup>36</sup> <https://www.lawscot.org.uk/qualifying-and-education/qualifying-as-a-scottish-solicitor/>

<sup>37</sup> Scottish Parliament (2002), Justice 1 Committee, 11th Report 2002, Report on Regulation of the Legal Profession Inquiry, Volume 1: Report and evidence, para 241

<sup>38</sup> Scottish Parliament (2002), Justice 1 Committee, 11th Report 2002, Report on Regulation of the Legal Profession Inquiry, Volume 2: Evidence, submission from the Scottish Conveyancing and Executry Services Board

<sup>39</sup> Public Appointments and Public Bodies etc. (Scotland) Act 2003

<sup>40</sup> Scottish Parliament (2002), Justice 1 Committee, 11th Report 2002, Report on Regulation of the Legal Profession Inquiry, Volume 1: Report and evidence, paras 245-247.

<sup>41</sup> Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Section 33.

however, only two complaints were ever received.<sup>42</sup> In 2008, the Scottish Legal Complaints Commission (SLCC) came into being, replacing the previous Scottish Legal Ombudsman.<sup>43</sup> Though the Law Society of Scotland is still responsible for complaints regarding conduct of a conveyancer or solicitor, all complaints are initially handled by the SLCC.<sup>44</sup>

Regulations enacted by parliament required that qualified conveyancers hold separate accounts for each client's money, rather than one client account. These were required to pay the best rate of interest reasonably available at the bank or building society in which the funds were held.<sup>45</sup> The SCESB noted that these requirements had caused problems for practitioners.<sup>46</sup> Solicitors, while required to hold a client account, are not subject to this same requirement.<sup>47</sup>

Qualified conveyancers were not required to hold any professional indemnity insurance, only to ensure that any successful claims could be satisfied.<sup>48</sup> The SCESB's role was the same.<sup>49</sup> The Law Society of Scotland maintains both professional indemnity insurance and a compensation fund in cases of dishonesty by solicitors or employees of their firms.<sup>50</sup> Solicitors' firms are also required to hold professional indemnity insurance.<sup>51</sup>

### **Conveyancing fees and costs**

Legal fees in Scotland, including those charged for conveyancing services, are not fixed by government or any regulatory body; however, the Law Society of Scotland maintains standards relating to professional fees which its members must follow. Fees charged by lawyers must be "fair and reasonable", which take account of:<sup>52</sup>

- Amount of work and time involved;
- Level of specialised knowledge, responsibility, and supervision needed;
- Length, number, and importance of any documents prepared or read;
- Place and circumstances under which the work is done;
- Urgency of the matter; and
- Amount of money or value of any property involved.

Furthermore, the Law Society of Scotland requires that lawyers communicate clearly and transparently with their (prospective) clients about details of the work to be carried out, cost estimates including all foreseeable fees, any significant developments in the case (or transaction), and who will perform the work.<sup>53</sup> In other words, the consumer must receive an accurate estimate of costs based on the above factors before work commences. This promotes competition and encourages consumers to "shop around" for a lawyer.

<sup>42</sup> Scottish Parliament (2002), Justice 1 Committee, 11th Report 2002, Report on Regulation of the Legal Profession Inquiry, Volume 2: Evidence, submission from the Scottish Conveyancing and Executry Services Board

<sup>43</sup> Legal Profession and Legal Aid (Scotland) Act 2007

<sup>44</sup> <https://www.lawscot.org.uk/for-the-public/client-protection/complaints-against-solicitors/>

<sup>45</sup> The Independent Qualified Conveyancers (Scotland) Regulations 1997, Part V

<sup>46</sup> Scottish Parliament (2002), Justice 1 Committee, 11th Report 2002, Report on Regulation of the Legal Profession Inquiry, Volume 2: Evidence, submission from the Scottish Conveyancing and Executry Services Board

<sup>47</sup> Law Society of Scotland, Rules and Guidance, Rule B6 [Link](#)

<sup>48</sup> The Independent Qualified Conveyancers (Scotland) Regulations 1997, Part VII

<sup>49</sup> Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Section 17

<sup>50</sup> Solicitors (Scotland) Act 1980, Section 43

<sup>51</sup> <https://www.lawscot.org.uk/members/regulation-and-compliance/master-policy/>

<sup>52</sup> <https://www.lawscot.org.uk/for-the-public/client-protection/cost-of-legal-services/>

<sup>53</sup> <https://www.lawscot.org.uk/for-the-public/client-protection/standards-for-solicitors/>

The Competition and Markets Authority (CMA) published a review of legal services in Scotland in 2020.<sup>54</sup> As part of its overall study, it surveyed solicitor firms in Scotland to gather information on their commercial strategies. The survey focused on the three most common areas of practice including conveyancing, wills, and family law. The CMA survey went to all (882) solicitor firms in Scotland practising in at least one of those three areas; there were 160 responses.<sup>55</sup> The majority of respondents indicated conveyancing fees are usually charged on a total cost basis (either a fixed fee or an estimate of final cost), while complex divorces or estate administration are usually charged on an hourly basis.<sup>56</sup> Conveyancing fees based on a fixed percentage of the sale or estate value were much less common with only a few solicitors indicating they typically use them.<sup>57</sup>

Pricing becomes more complex when multiple legal services are involved. For example, bundled fees may be charged by a firm providing both conveyancing and estate services. Nearly half of all respondents to the CMA survey with an estate agency (45%) stated that “they usually included estate agency fees within their quote. An additional 27% said that they sometimes included estate agency fees within their quote.”<sup>58</sup> This bundling of fees can make pricing more difficult for consumers to understand and compare among providers.

The CMA (2020) review also included a review of solicitors’ information available online for prospective clients. The CMA examined 60 solicitor firms (30 each in conveyancing and employment law) in addition to price comparison websites and online directories.<sup>59</sup> In line with survey results, the CMA (2020) found that:

- 12 of 60 (20%) did not have a webpage or had a basic web presence with no detailed information;
- Only four of 60 reviewed (6%) published price information of any type;
- There are few digital comparison tools (DCTs) for Scottish legal providers. The CMA reviewed four DCTs and found limited options for solicitors listed on these sites; and
- Other online resources include the online directory of solicitors operated by the LSS (e.g., Find a Solicitor) which only provides a directory of solicitor firms and their areas of practice.

The CMA concluded: “The lack of information available online, together with the limited meaningful uptake on DCTs by firms, means that consumers have limited readily accessible information to compare prices. To do so they must instead contact and discuss their case with each solicitor directly, which increases search costs. This appears to confirm further the finding from our solicitor survey that firms do not consider price to be an important parameter of competition.... For consumers to shop around effectively, it is important that they have access to information about the prices of multiple providers, based on which they can choose a specific solicitor.”<sup>60</sup>

The CMA (2020) review of conveyancing fees indicated that the median charge for a house sale is £700 with an inter-quartile range (IQR)<sup>61</sup> of £200. This means the majority of fees fell within the £600-£800 range. The median fee for house sale and purchase is £1,280, with an IQR of £455, or a range of £1,053-£1,507.<sup>62</sup> The CMA (2020) noted, with respect to entry to the conveyancing solicitor

<sup>54</sup> CMA, March 2020, “Legal services in Scotland – research report”, accessed at: [Research report - Legal services in Scotland \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>55</sup> Ibid. at p. 40

<sup>56</sup> Ibid. at p. 43

<sup>57</sup> Ibid.

<sup>58</sup> CMA op. cit., (March 2020) at p. 44

<sup>59</sup> CMA op. cit., (March 2020) at p. 46

<sup>60</sup> Ibid.

<sup>61</sup> IQR refers to the difference between the upper and lower quartiles and indicates a price range that a consumer may typically find.

<sup>62</sup> CMA op. cit., (March 2020) at p. 48, Figure 3.3

profession, that unnecessary costs could create barriers to entry, especially if they fall disproportionately on new or smaller providers.<sup>63</sup>

### **Timescale for residential conveyancing transactions**

As with all legal matters, the length of time it takes to resolve a case is a function of its specifics and conveyancing is no different. The complexity of the sale and/or purchase will greatly determine how long the process lasts. Some estimates indicate, that on average, the process can be completed in approximately 4-9 weeks<sup>64</sup> from the moment of offer to completion.<sup>65</sup> This may well be the case for some solicitor offices, but each solicitor or conveyancer's office differs in their capacity to offer such a timeline. Other sources outline smaller ranges such as 6-8 weeks from sale agreed to the date of entry.<sup>66, 67</sup> According to Huuti Money, it can take 4-8 weeks to buy a house in Scotland, compared to the 8-12 weeks in England, Wales, and Northern Ireland.<sup>68</sup>

### **Key features**

We outline below some key features of conveyancing in Scotland.

- The conveyancer profession was “tried and tested” in Scotland from 1997-2003. However, due to low participation and educational and regulatory requirements, continuing with a separate regulatory system was not seen as justified.
- Conveyancing solicitors in Scotland play a larger role in residential transactions than in the rest of Britain. This may improve efficiency and timescale.
- The timescale for transactions is around 4-9 weeks, the lowest in the United Kingdom.
- There has been a slow uptake from solicitors to place fee rates online and consumers do not have ready access to information on competing firms. This may impact on the low number of new conveyancing firms established post-1997.

## **2.3 England, Wales, and Northern Ireland**

### **Background and current status**

In England and Wales, the solicitors' historical monopoly of conveyancing derives from the Stamp Act (1804). It became a bedrock of solicitors' practice in England and Wales with the growth of real property ownership in the Victorian period. From the 1970s it was a target of government regulators and consumer organisations. A practical concern for government was the high cost of conveyancing which threatened to impede the growth of a housing market fuelled by social and geographical mobility.<sup>69</sup> The Solicitors' Act (1974) stated that conveyancing by a non-solicitor for a fee was an

<sup>63</sup> CMA op. cit., (March 2020) at p. 83, fn 265, CMA discussions with the SLCC. Data published by the SLCC for 2018/19 show that the bulk of complaints are focused on certain segments such as conveyancing (29%), litigation (26%) and will and trusts (19%). Historical trends reflect a similar story. See SLCC (2019), Annual report 2018-19

<sup>64</sup> Scottish solicitors, Jones Whyte

<sup>65</sup> <https://joneswhyte.co.uk/a-simple-guide-to-conveyancing-in-scotland/#:~:text=Normally%2C%20the%20process%20can%20be,offer%20being%20made%20to%20completion.>

<sup>66</sup> <https://www.homereportcompany.co.uk/guide/selling-your-home/the-conveyancing-process-scotland/>

<sup>67</sup> <https://www.davidclapham.co.uk/how-long-does-it-take-to-buy-a-house-in-scotland.html>

<sup>68</sup> <https://www.comparemymove.com/advice/conveyancing/conveyancing-scotland>

<sup>69</sup> S Domberger and A Sherr, “Competition in conveyancing: an analysis of solicitors' charges 1983–85”, (1987) 8:3 *Fiscal Studies* 17

offence, preserving this monopoly.<sup>70</sup> The conveyancing monopoly was one of the reasons behind the establishment of the Benson Commission on Legal Services, but the 1979 report recommended its retention.

The Administration of Justice Act (1985) allowed licensed conveyancers to provide conveyancing services only, defined as “the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land.”<sup>71</sup> Members had to belong to a Council for Licensed Conveyancers (CLC) created to examine and license. Licensed conveyancers began operating in 1987.

The Courts and Legal Services Act (1990) contained extensive provisions designed to liberalise the provision of conveyancing services, including a new regulatory body, the Authorised Conveyancing Practitioners Board.<sup>72</sup> The provisions also allowed banks and building societies to provide conveyancing for clients, through employed solicitors or licensed conveyancers,<sup>73</sup> but by 1994 the Lord Chancellor had failed to create a statutory instrument to bring the provision into effect.<sup>74</sup>

The Legal Services Act (2007) encouraged the growth of one-stop shops for conveyancing by, allowing alternative business structures (ABS) and regulated organisations providing legal services which were not owned or managed by lawyers. ABS could apply to offer conveyancing services as part of a wider operation if they employed solicitors or licensed conveyancers to carry out any work “reserved” to them in the Act. This caused some confusion over which standards would apply,<sup>75</sup> but ABS could offer conveyancing services along with any other business accepted by an approved regulator able to authorise the conduct of a reserved activity.

The conveyancing process consists of six steps:<sup>76</sup>

1. Instruction – transaction details confirmed, identification of property, and evidence of funds submitted;
2. Production of contract papers – property information forms completed and draft contract details terms and conditions of sale;
3. Investigation of title and arranging funding – enquiries on contract, title, and property; mortgage arrangements made;
4. Reporting and signing contract documentation;
5. Exchange of contracts; and
6. Completion.

The number of residential conveyancing transactions in the United Kingdom as a whole has been running at a little over 1 million per year for several years up to 2020,<sup>77</sup> though it is likely that the stamp duty holiday during the COVID-19 pandemic will have temporarily increased this number in 2021. Conveyancing in England and Wales is largely led by practitioners who are solicitors, licensed conveyancers, and authorised Chartered Institute of Legal Executives (CILEX)<sup>78</sup> conveyancing practitioners. However, these are also supported by others – such as legal executives and paralegals

<sup>70</sup> Ibid. at p. 19, Table 1

<sup>71</sup> Administration of Justice Act (1985) s.11(3).

<sup>72</sup> Ibid, s.34.

<sup>73</sup> Ibid, s.37

<sup>74</sup> FH Stephen, JH Love and AA Paterson, “Deregulation of conveyancing markets in England and Wales” (1994) 15:4 *Fiscal Studies* 102, 105

<sup>75</sup> Alternative business structures – what effect on the conveyancing industry?, Today’s Conveyancer ([todaysconveyancer.co.uk](http://todaysconveyancer.co.uk)), last accessed 29 May 2022

<sup>76</sup> [The stages of the conveyancing process explained | SO Legal](https://legalservicesboard.org.uk/market-structure-dashboard)

<sup>77</sup> See <https://legalservicesboard.org.uk/market-structure-dashboard>

<sup>78</sup> CILEX is one of the three main professional bodies covering the legal profession in the United Kingdom.

– who carry out much of the work under supervision. The number of solicitors practising in conveyancing is not available, although a report on residential conveyancing by the Solicitors Regulation Authority in 2019<sup>79</sup> suggested that about 60% of the roughly 10,000 firms that it regulated were involved in conveyancing and that it made up “a large proportion” of the legal services market. There are over 2,300 solicitors currently practising in Northern Ireland. Each solicitor is a member of that branch of the legal profession which advises clients, represents them before the lower courts and prepares cases for barristers to try in the higher courts.

Licensed conveyancers began operating in the jurisdiction in 1987. As of 31 December 2021,<sup>80</sup> there were 1,499 licensed conveyancers and probate practitioners practising in 223 firms (with a combined turnover of £276m or €278m)<sup>81</sup> regulated by the CLC. The CMA legal services market (2016) study found that licensed conveyancers supply 9% of consumers in the conveyancing services market and carried out 10.3% of property transactions by value in 2015.

In December 2020, the United Kingdom Competition and Markets Authority (CMA) published a review of the legal services market in England and Wales.<sup>82</sup> This report includes references to service and price transparency for regulators of conveyancers in addition to the broader legal services sector. Among the interesting features to ensure effective competition and consumer protection are the following:

- CLC Code of Conduct<sup>83</sup>
  - CLC “badge” must be displayed on all communications/website;
  - Price information must be provided in a prominent place on the website and by reasonable means of request; and
  - Complaints process and information re ombudsman must be displayed prominently on the website and by reasonable means of request.
- CLC Informed Choice Guidance<sup>84</sup>
  - Detailed cost information is required on the website and upon request;
  - Cost calculation template available for providers to determine fees;
  - Cost information must include VAT and disbursements, etc.; and
  - Detailed breakdown of services/fees required.
- CLC Informed Choice Toolkit<sup>85</sup>
  - Online support for providers regarding cost information required, facilitating compliance;
  - Implementation instructions for clarity to providers and consumers;

<sup>79</sup> See <https://www.sra.org.uk/sra/research-publications/residential-conveyancing-thematic-report/>

<sup>80</sup> See <https://www.clc-uk.org/about/income-and-expenditure/>

<sup>81</sup> The Competition and Markets Authority legal services market study in 2016 reported that licensed conveyancers supply 9% of consumers with conveyancing transactions (footnote 95):

<https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>  
This compares with 2% of conveyancing services provided by paid-for but unauthorised providers of “non-reserved” activities such as the provision of guides on the conveyancing process or template contracts, property information forms, fixtures and fittings list, letters, Legal Services Board (2016), “Mapping of for profit unregulated legal services”, <https://www.legalservicesboard.org.uk/wp-content/media/Mapping-unregulated-providers.pdf>, paragraph 7.6.

<sup>82</sup> Competition and Markets Authority (December 2020), “Review of the legal services market study in England and Wales”, accessed at:

[https://assets.publishing.service.gov.uk/media/5fd9e53cd3bf7f40ccb335e1/Legal\\_Services\\_Review\\_-\\_Final\\_report.pdf](https://assets.publishing.service.gov.uk/media/5fd9e53cd3bf7f40ccb335e1/Legal_Services_Review_-_Final_report.pdf)

<sup>83</sup> <https://www.clc-uk.org/wp-content/uploads/2018/09/180815-Code-of-Conduct-AMENDMENTS.pdf>

<sup>84</sup> <https://www.clc-uk.org/wp-content/uploads/2018/10/180924-Informed-Choice-guidance.pdf>

<sup>85</sup> <https://www.clc-uk.org/lawyers/informed-choice/>

- Service information for transparency; and
- Sample wording for providers to use in correspondence or website, facilitating compliance.

Sparkes and Sebastian (2007) characterised the conveyancing system in England and Wales as adversarial in that both sides had their own lawyer, who usually acted for a party in both selling and buying a property. This was because there was often a chain of up to eight transactions. Contracts were exchanged on the same day, providing for the completion of each transaction simultaneously, usually 28 days later. In Scotland and most of continental Europe, transactions are not linked in this way, so there can be different lawyers for purchases and sales. The chain system is suited to England and Wales, where a shortage of residential property leads to a competitive market and short-term price fluctuations. Chains protect consumers from the risk of transaction breakdown, those without property in a rising market, or who need to find bridging finance or rent.

A consumer survey conducted by the Solicitors Regulation Authority (SRA) found that 85% of respondents were either satisfied or neutral with regards to conveyancing services they received.<sup>86</sup> The respondents had all used conveyancing services by solicitors within the five years prior to the study. There were similar results for users of wills and probate services, whilst there was a slightly higher rate of satisfaction for users of criminal defence services. In other areas such as personal injury, marital law, employment claims, and civil disputes, satisfaction rates were lower than for conveyancing services.<sup>87</sup>

The features of the property market in England and Wales meant that conveyancing work consisted of “organisation, administration, the process of lining up documentation, searches, finance and other professionals to a set date when contracts are exchanged.”<sup>88</sup> A large part of the effort of the Law Society of England and Wales since its establishment was to build solicitors’ reputations for reliability and financial integrity and provide compensation for default. This is important because solicitors handled large sums and managed conflicts of interest. So, for example, conveyancers also often acted for the mortgage lenders to their purchasing clients. This removed the pressure on purchasers to accept a weak title, which was a major concern for lenders. After numerous cases of mortgage fraud in the 1980s and 90s, conduct rules were amended to protect lender interests where they conflicted with those of purchasers.

The conveyancing profession in Northern Ireland is broadly similar to that in England and Wales as discussed above but the Law Society in Northern Ireland “is the professional body for the solicitors’ profession in Northern Ireland with the aim of protecting the public. Under the Solicitors (NI) Order 1976, the Law Society acts as the regulatory authority governing the education, accounts, discipline and professional conduct of solicitors in order to maintain the independence, ethical standards, professional competence and quality of services offered to the public.”<sup>89</sup>

Conveyancing providers in Northern Ireland must comply with United Kingdom laws. Consumers in Northern Ireland are protected by statutes such as the Provision of Services Regulations 2009.<sup>90</sup> In 2018, a Memorandum of Understanding was agreed by the Law Society of Northern Ireland, the Royal Institution of Chartered Surveyors (NI), and the National Association of Estate Agents (NI). The purpose of the Memorandum was to serve “the interests of facilitating the smooth operation of the residential property market in Northern Ireland and the related necessary formal contractual and financial arrangements between Vendors and Purchasers and their Lenders.”<sup>91</sup> The document clearly

<sup>86</sup> Solicitors Regulation Authority (2008), “Consumer views on their experiences using solicitor services and their awareness of the Solicitors Regulation Authority: Baseline research report for the SRA, p. 14

<sup>87</sup> Ibid.

<sup>88</sup> Ibid, p. 181 para 383

<sup>89</sup> About Us (lawsoc-ni.org)

<sup>90</sup> Guidance Note on the Provision of Services 2009 (March 2021)

<sup>91</sup> Joint Memorandum.indd (lawsoc-ni.org)

lays out the roles and responsibilities of each professional party involved in the purchase and sale of residential property so as to make clear to consumers what to expect and who is responsible for each element of the transaction.<sup>92</sup> It does not, however, refer specifically to conveyancers, but indicates responsibilities of solicitors involved in the conveyancing transactions. There is no specialist conveyancer profession in Northern Ireland.

### **Entry Requirements**

Solicitors in England and Wales can qualify via an apprenticeship. However, most qualify via university education. Solicitors obtain a legal education (either an LLB or non-Law degree plus Graduate Diploma in Law), followed by a Legal Practice Course (LPC), normally lasting one year, and two years of qualifying work experience. The process in Northern Ireland is similar, though the equivalent to the LPC is taken within the period of training.<sup>93</sup> In England, the process of solicitor qualification has recently changed so that for students beginning the qualification process since 2021, the legal education and LPC requirements are replaced by a requirement for a degree in any discipline, and a pass in the Solicitors Qualifying Examination.<sup>94</sup>

In contrast, licensed conveyancers do not require a degree, however, they must complete both Level 4 and Level 6 Diplomas in Conveyancing Law and Practice. Those with a legal education as above may qualify for exemptions to these qualification requirements. Both the Level 4 and Level 6 can be completed full-time in as little as 18 months. This must be followed by 1200 hours of practical experience, which includes time spent working in banks and building societies.<sup>95</sup> Additionally, there exists a role of Conveyancing Technician, which requires the Level 4 Diploma only. Typically, the diploma takes about six months to achieve; however, advanced qualification is available with at least six months of work experience combined with the Level 4 Diploma in Conveyancing Law and Practice.<sup>96</sup> This role is not able to take on instrument activity work that is “reserved” under the Legal Services Act (2007).

Another route to become an authorised person to carry out reserved work is through CILEX, the Chartered Institute of Legal Executives. This does not require a formal educational course, only a demonstration of equivalent knowledge through either examinations or a portfolio of cases. However, persons must have at least two years of experience to qualify through this route.<sup>97</sup> Authorised CILEX conveyancing practitioners must undertake conveyancing activities through an entity regulated by CILEX or another approved regulator, such as the SRA or CLC.

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<sup>92</sup> Ibid.

<sup>93</sup> <https://www.lawsoc-ni.org/law-degree-route>

<sup>94</sup> <https://www.lawsociety.org.uk/career-advice/becoming-a-solicitor/qualifying-with-a-degree/>

<sup>95</sup> <https://www.clc-uk.org/trainees/become-a-clc-lawyer/licensed-conveyancer/>

<sup>96</sup> <https://www.clc-uk.org/trainees/become-a-clc-technician/conveyancing-technician/>

<sup>97</sup> See CILEX Conveyancing Practice Rights Handbook:

<https://cilexregulation.org.uk/wpcontent/uploads/2019/01/Conveyancing-Practice-Rights-Handbook.pdf>

## Regulation and Consumer Protection

Conveyancing, as such, is not a “reserved activity” that can only be carried on by an appropriately authorised person. The reservation applies to the narrower “reserved instrument activity”.<sup>98</sup> This means (Legal Services Act 2007, Sch. 2, paragraph 5): (a) preparing any instrument of transfer or charge for the purposes of the Land Registration Act 2002; (b) making an application or lodging a document for registration under that Act; or (c) preparing any other instrument relating to real estate for the purposes of the law of England and Wales, including a contract for the sale or other disposition of land (other than to grant a short lease of up to three years), but excluding a will. Although authorised, barristers generally do not undertake conveyancing and notaries (who are nearly all dually qualified as solicitors) undertake conveyancing as solicitors.

Solicitors in England and Wales are regulated by the Solicitors Regulation Authority,<sup>99</sup> whereas in Northern Ireland they are regulated by the Law Society of Northern Ireland. Previously the Law Society of England and Wales had both represented and regulated its own members, however this was changed by the Legal Services Act (2007). The act also introduced the Legal Services Board (LSB), which regulates the regulators.<sup>100</sup>

Licensed conveyancers are regulated by the CLC to carry out “conveyancing services”, as defined in section 11(3) of the Administration of Justice Act 1985: (a) the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land; and (b) any other activities which are reserved instrument activities (as above).

The CLC is self-funded, charging an annual practice fee on all practices under its regulation, based on a percentage of annual turnover. Its annual costs were around £3m in 2021, and £3.5m in 2022, of these, £870k in 2022 and £670k in 2021 were due to levies charged by other regulatory bodies.<sup>101</sup> Other regulatory bodies are similarly self-funded via annual fees charged to service providers.<sup>102</sup>

The Council for Licensed Conveyancers also regulates some businesses offering conveyancing services. The firms may also provide non-conveyancing services. However, any firm regulated by the CLC may only provide non-contentious work. The SRA can regulate all types of legal work, including conveyancing.<sup>103</sup> Legal executives who are not CILEX conveyancing practitioners,<sup>104</sup> as well as paralegals, typically engage in conveyancing under the supervision of authorised persons in firms regulated by the SRA or CLC.

Firms regulated by the CLC are required to have professional indemnity insurance, in addition to this it provides a participating insurance agreement with several insurance providers, including set minimum coverage and maximum excesses, though it does not require that firms use this agreement.<sup>105</sup> The CLC also operates a Compensation Fund for firms it licenses, the majority of claims

<sup>98</sup> The origins of (and political appeasement that led to) this reservation can be found in Mayson & Marley (2010) *Reserved legal activities – history and rationale*, paragraph 2.4: <https://stephenmayson.files.wordpress.com/2013/08/mayson-marley-2010-reserved-legal-activitieshistory-and-rationale.pdf>.

<sup>99</sup> <https://www.sra.org.uk/sra/how-we-work/>

<sup>100</sup> <https://www.legislation.gov.uk/ukpga/2007/29/part/2/enacted>

<sup>101</sup> The Council for Licensed Conveyancers, 2022 Annual Financial Statements

<sup>102</sup> <https://www.sra.org.uk/sra/how-we-work/investments-reserves/>, Law Society of Northern Ireland, Corporate Statement, available [here](#).

<sup>103</sup> <https://www.sra.org.uk/consumers/who-we-are/what-sra-about/where-we-fit-with-other-approved-regulators/>

<sup>104</sup> The CILEX Annual Review for 2020 reports that of the total CILEX membership of 21,000, almost 6,000 practise in conveyancing:

[https://www.cilex.org.uk/~media/pdf\\_documents/main\\_cilex/policy\\_and\\_governance/agm\\_minutes\\_and\\_agendas/cilex\\_2020\\_annual\\_report.pdf?la=en](https://www.cilex.org.uk/~media/pdf_documents/main_cilex/policy_and_governance/agm_minutes_and_agendas/cilex_2020_annual_report.pdf?la=en)

<sup>105</sup> <https://www.clc-uk.org/regulation/professional-indemnity-insurance-1/>

on which arise from loss of monies entrusted to licensees by clients.<sup>106</sup> Firms regulated by the SRA are required to have indemnity insurance that is adequate and appropriate, solicitors providing reserved legal services such as conveyancing are also required to hold such insurance.<sup>107</sup> The solicitors' compensation fund is also operated by the SRA, and provides compensation for those who have had money stolen or not accounted for by a person regulated by the SRA (or for those who do not have insurance).<sup>108</sup> In Northern Ireland all solicitors in private practice are required to maintain professional indemnity insurance, however, this is maintained through a Master Policy held by the Law Society. The Society maintains a compensation fund.<sup>109</sup>

In addition to regulation by the CLC, licensed conveyancers are subject to oversight by the Law Society, which is the United Kingdom's independent professional body for solicitors. The Law Society is "the voice of solicitors, driving excellence in the profession and safeguarding the rule of law."<sup>110</sup> It maintains a Conveyancing Quality Scheme (CQS) for practices which offer residential conveyancing services and are authorised and regulated by the SRA. Practices must demonstrate compliance and amend their policies or draft new ones, if necessary, to meet those requirements.<sup>111</sup> Additionally, the Law Society has published a Conveyancing Protocol to assist the process for both consumers and practitioners. This is a set of steps to follow in residential transactions for owner-occupiers but not designed for use in new-build property transactions.<sup>112</sup> The purposes of the protocol are to: standardise the residential conveyancing process; make conveyancing more transparent and efficient; and improve the experience for solicitors, lenders and clients.

The SRA also has responsibility for oversight of conveyancers insofar as they are part of a firm providing legal services. Whilst the CLC is specific to the regulation of firms providing conveyancing services only, the SRA can regulate all types of legal work done by a firm, including conveyancing and probate. In other words: "Lawyers are allowed to set up law firms with other lawyers and non-lawyers. This means that, while individuals are regulated by their own approved regulator, the firm for which they work is regulated by either the SRA or the CLC. Firms are primarily responsible for ensuring compliance with regulators. But individuals within those firms are responsible for their own conduct."<sup>113</sup>

In general, SRA professional conduct standards and transparency requirements are very similar to those adopted by the CLC, with differences specific to the various types of services offered. Transparency requirements include the following details:<sup>114</sup>

- The services included in the displayed price;
- Any services not included in the price that might reasonably be expected to be included;
- Typical timescales and key stages for the given legal service (the practitioner is not required to provide cost information for each stage, just a total cost);
- Experience and qualifications of all individuals who carry out work within the areas specified under the rules. This may include:
  - Number of years post-qualification experience;

<sup>106</sup> The Council for Licensed Conveyancers, Compensation Fund Policy Statement, June 2021

<sup>107</sup> <https://www.sra.org.uk/solicitors/guidance/adequate-and-appropriate-indemnity-insurance/>

<sup>108</sup> <https://www.sra.org.uk/consumers/compensation-fund/compensation-fund/>

<sup>109</sup> <https://www.lawsoc-ni.org/role-of-the-law-society-of-northern-ireland->

<sup>110</sup> <https://www.lawsociety.org.uk/>

<sup>111</sup> <https://www.lawsociety.org.uk/topics/firm-accreditations/conveyancing-quality-scheme/>

<sup>112</sup> <https://www.lawsociety.org.uk/topics/property/conveyancing-protocol>

<sup>113</sup> <https://www.sra.org.uk/consumers/who-we-are/what-sra-about/where-we-fit-with-other-approved-regulators/#:~:text=The%20regulation%20of%20firms&text=The%20SRA%20is%20able%20to,other%20lawyers%20and%20non%20lawyers.>

<sup>114</sup> <https://www.sra.org.uk/solicitors/guidance/transparency-in-price-and-service/>

- Estimated numbers or examples of cases they have dealt with in given areas;
- Percentage of their time spent on given areas; and
- Complexity or type of issues they typically deal with.
- Experience and qualifications of those who supervise the individuals who carry out the work, although it is not necessary to specify who supervises whom.

In England and Wales, in cases of consumer dissatisfaction, the consumer may complain to the regulator of the firm (CLC or SRA) about matters of dishonesty or unethical behaviour. However, in cases of dissatisfaction with the service received, the Legal Ombudsman, also established by the Legal Services Act (2007), is the organisation to which the consumer can make a complaint.<sup>115</sup> In Northern Ireland, the Law Society handles both types of complaints.<sup>116</sup>

### **Conveyancing fees and costs**

Typical conveyancing fees depend on factors such as location, type of firm, and complexity of the transaction(s) involved. In general, conveyancing fees run from £850 - £1,500 plus the cost of disbursements.<sup>117</sup> For both purchase and sale, fees average £1,805 for a residential property valued at £350k.<sup>118</sup> These fees are generally lower than those for solicitors; however, solicitors can also handle more complex legal matters that may arise during real estate transactions. Conveyancers often charge fixed fees which should not change throughout the buying or selling process. This trend is replacing the hourly rate fee structure in conveyancing and enables consumers to budget more effectively. Some solicitors offer a “no sale, no fee” clause where legal fees are not due if the sale falls through.<sup>119</sup>

In October 2020, the SRA conducted a survey among practitioners relating to their fee structure as advertised to prospective clients. For residential conveyancing services, 57% of respondent practitioners indicated they provide a price range; 41% provide a fixed price; 13% provide an hourly rate; 19% provide a price calculator; and 15% offer a scenario-based estimate.<sup>120</sup> Figures add up to greater than 100% as some practitioners offer more than one fee structure based on services required. Some conveyancing practitioners offer their services online.<sup>121</sup> These are not “self-help” portals, but rather fully accredited practitioners operating conveyancing services for clients without the need to meet in person. This is possible in large part due to the routine, form-focused documentation requirements of conveyancing.

The CMA and Legal Services Board (LSB) carried out a survey of the prices of individual consumer legal services (including conveyancing) in England and Wales in 2020.<sup>122</sup>

- Mean prices for the sale or purchase of residential freehold property have increased since 2015, and in 2020 were reported at, respectively, £718 and £891 (with median prices slightly lower), plus VAT.

<sup>115</sup> <https://www.sra.org.uk/consumers/problems/> and <https://www.clc-uk.org/consumers/reporting-problems/>

<sup>116</sup> <https://www.lawsoc-ni.org/making-a-complaint>

<sup>117</sup> <https://www.conveyancingcalculator.co.uk/index.cfm/average-conveyancing-fees-costs/#are-conveyancers-cheaper-than-solicitors>

<sup>118</sup> Average Conveyancing Fees & Costs 2020 into 2021 | Buying & Selling a House | UK (conveyancingcalculator.co.uk)

<sup>119</sup> Ibid.

<sup>120</sup> [https://assets.publishing.service.gov.uk/media/5fd9e53cd3bf7f40ccb335e1/Legal\\_Services\\_Review\\_-\\_Final\\_report.pdf](https://assets.publishing.service.gov.uk/media/5fd9e53cd3bf7f40ccb335e1/Legal_Services_Review_-_Final_report.pdf) and <https://www.sra.org.uk/sra/research-publications/better-information-legal-services-market/>

<sup>121</sup> See, e.g., Is online conveyancing right for me? - HomeOwners Alliance (hoa.org.uk), Online Conveyancing Solicitors - Get a Quote - Bird & Co (birdandco.co.uk), and Online conveyancing experts | My Home Move Conveyancing

<sup>122</sup> See [https://legalservicesboard.org.uk/price\\_research\\_dashboard\\_2020](https://legalservicesboard.org.uk/price_research_dashboard_2020)

- There are regional variations, with London and the south-west reporting higher prices by up to around one-third.
- Fixed fees are the predominant charging method, with those fees being 12% cheaper.
- Average prices charged by providers accredited as specialists (such as through the Law Society Conveyancing Quality Scheme) were not significantly different to the market average, and despite some anecdotal evidence that licensed conveyancers tend to be cheaper than solicitors, there was no such evidence in this survey. They may, in fact, be more expensive in the purchase of leasehold property and for combined sale and purchase of freehold properties.

Data from the CLC's 2019 regulatory return<sup>123</sup> also confirm average prices broadly in line with the CMA/LSB survey (at £640 for sale and £681 for purchase in respect of property values of £250,000, though with no reference to whether these figures include or exclude VAT). More recent, anecdotal, data suggest<sup>124</sup> the average fee for buying or selling an average UK home (valued at £277,000 is about £1,000, including VAT (which, adjusted for the VAT element, is broadly consistent with the CMA/LSB survey). Fees are somewhat correlated to property value so that a property of twice the average value will attract a fee that is 35-40% above the average, and at three times the average value the fee will be 75-80% the average. These fees do not include disbursements, such as local authority searches, anti-money laundering checks, bank transfer fees, Land Registry fees, and stamp duty. The evidence is more mixed on whether leasehold conveyancing is more expensive than freehold (some survey evidence suggests up to 20% higher), or whether licensed conveyancers tend to be cheaper.

According to the December 2020 CMA report, the Legal Services Review (2020) surveyed legal service providers relating to trends over the period 2017-2020 and indicates that 36% of conveyancing providers raised their prices in the 12 months prior to conducting the survey for the study, whilst 4% lowered their prices in the same period; and 60% indicated no change.<sup>125</sup>

Solicitors in Northern Ireland charge fees according to the purchase price of the house (to reflect the responsibility and insurance risk assumed) and the amount of time and effort required. Fees can vary from £1,000 to £1,800 per transaction.<sup>126</sup> Additional costs such as stamp duty, title search, registration fees, and VAT (20%) apply. Separate charges are made for a purchase and a sale, and fees can vary widely.<sup>127</sup>

The CLC published a cost transparency template for conveyancing practitioners in 2018.<sup>128</sup> This template consists of a form laying out all the various possible costs associated with the purchase and/or sale of a home, including legal fees, search fees, registration fees, copies, and stamp duty. A list of variable factors impacting these costs accompanies the fee breakdown; for example, first-time buyers, new build, freehold vs. leasehold, and primary residence status.<sup>129</sup> Fixed-fee services can be illustrated simply by listing the range of property values to which each fee level applies.<sup>130</sup>

<sup>123</sup> See <https://www.clc-uk.org/wp-content/uploads/2019/09/CLC-Annual-Regulatory-Return-2019Report.pdf>, page 22

<sup>124</sup> See <https://www.comparemymove.com/advice/conveyancing/average-conveyancing-costs> and <https://www.propertyolvers.co.uk/homeowners-hub/conveyancing/conveyancing-fees/>

<sup>125</sup> CMA, op. cit. (December 2020)

<sup>126</sup> <https://mortgagesnorthernireland.com/first-time-buyer-mortgages/the-costs-of-buying-a-house>

<sup>127</sup> Ibid.

<sup>128</sup> 180924-Cost-estimate-templates-FINAL.pdf (clc-uk.org)

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

Conveyancing fee quotes are available online in the United Kingdom. Consumers can readily compare prices, usually based on fixed fees, so no hourly rates apply nor extra costs beyond the scope of the quoted amount unless unforeseen circumstances arise relating to the title/deed or other complicating factors.<sup>131</sup>

In its discussion paper *Conveyancing 2030*,<sup>132</sup> the CLC foresees that conveyancing will be a fully electronic process by 2030 which may impact on fees. This could result in greater opportunities for unbundling the conveyancing process, with consumers taking on more of the process themselves. Given the money laundering and professional indemnity implications of conveyancing, as well as the need to invest in technology to support e-conveyancing, the CLC also predicts further concentration of the market in specialist rather than generalist firms.

In considering the impact of licensed conveyancers on fees in England and Wales, it should be noted the initial take-up of the new professional (or paraprofessional) designation was slow. Perhaps fewer conveyancing legal executives in law firms were tempted into independent practice as licensed conveyancers than expected.<sup>133</sup> However, it appears the prospective loss of their conveyancing monopoly and increased competition meant solicitors offered anticipatory price reductions<sup>134</sup> to their long-term economic detriment.

In evaluating fees, it is also important to consider the quality of services. Evidence from the Legal Ombudsman (LeO) about service complaints not resolved to the client's satisfaction shows that:<sup>135</sup>

- Residential conveyancing is the largest practice area for complaints (about 30% of the total);
- In 2021, LeO resolved 1,376 residential conveyancing complaints, 83% of which concerned SRA-regulated solicitors and 17% licensed conveyancers;
- Evidence of poor service in residential conveyancing was found in 66.7% of licensed conveyancers and 64.6% of solicitors; and
- The complaints handling processes of licensed conveyancers in respect of residential conveyancing were found by LeO to be inadequate.

### ***Timescale for residential conveyancing transactions***

Conveyancing process completion times can vary wildly depending on the specifics of the case. The technicalities of the property being bought or sold, as well as the resources of the solicitor or conveyancer come into play. Some estimates in England, Wales and Northern Ireland suggest an average time from first instructing a conveyancer to completing the sale of 8-12 weeks, but other estimates suggest a longer time period.<sup>136, 137, 138, 139, 140</sup> Other bodies, such as HomeOwners Alliance

<sup>131</sup> <https://www.propertyolvers.co.uk/homeowners-hub/conveyancing/online-conveyancing/>

<sup>132</sup> See *The\_CLC\_Conveyancing\_2030\_Discussion\_Paper.PDF* (designingbuildings.co.uk)

<sup>133</sup> See Stephen, Love & Paterson (1994), "Deregulation of conveyancing markets in England and Wales", *Fiscal Studies*, Vol. 15, page 102

<sup>134</sup> See footnote 66 and Domberger & Sherr (1987), "Competition in conveyancing: an analysis of solicitors' charges 1983-85", *Fiscal Studies*, Vol. 8, page 17

<sup>135</sup> See <https://www.legalombudsman.org.uk/information-centre/data-centre/complaints-data/>

<sup>136</sup> See <https://www.sra.org.uk/sra/research-publications/residential-conveyancing-thematic-report/>

<sup>137</sup> <https://www.graysons.co.uk/advice/how-long-does-conveyancing-take/#:~:text=The%20average%20time%20taken%20from,between%20eight%20and%20twelve%20weeks>

<sup>138</sup> <https://helpandadvice.co.uk/how-long-does-conveyancing-take/>

<sup>139</sup> <https://www.quittance.co.uk/conveyancing/advice/general-property/how-long-does-conveyancing-take>

<sup>140</sup> <https://www.comparemymove.com/advice/conveyancing/conveyancing-scotland>

state the process can take up to 16 weeks.<sup>141, 142</sup> According to Quittance Legal Services, certain steps take longer than others. When selling, obtaining leasehold management information can take 2-6 weeks and when buying, mortgage approval can take 2-6 weeks.<sup>143</sup>

In Northern Ireland, a number of law firms provide timescale estimates. For example, some estimate the average time to completion at 6-8 weeks,<sup>144</sup> while other practices suggest a range of 8-10 weeks.<sup>145</sup>

### **Key features**

We outline below some key features of the conveyancing experience in England and Wales.

- There is very strong regulatory protection for consumers of conveyancing services delivered by regulated providers: solicitors, licensed conveyancers, and legal executives either employed or supervised in law firms or authorised CILEX conveyancing practitioners.
- Conveyancing technicians are qualified to perform administrative tasks relating to conveyancing transactions and work alongside/in support of legal professionals.
- There are specific regulatory provisions for handling client money in conveyancing transactions, and compensation in the event of a practitioner's dishonesty or failure to account.
- Protected titles offer market and regulatory signals to consumers. An offence is committed when someone "wilfully pretends to be, or takes or uses any name, title, addition or description implying that he is, qualified or recognised by law as qualified to act as a solicitor (section 21 of the Solicitors Act 1974) or describes themselves or holds themselves out as a licensed conveyancer when they do not hold a current licence" (section 35 of the Administration of Justice Act 1985).
- It is an offence for someone to carry out the reserved instrument activity elements of conveyancing if not authorised to do so (section 14 of the Legal Services Act 2007) or wilfully to pretend to be entitled to do so when not authorised or to take or use any name, title or description with the intention of implying falsely that they are so entitled (Section 17 of the Legal Services Act 2007).
- There is some fragmentation in the regulation of legal activities carried out as part of conveyancing transactions between the SRA, CLC, CILEX Regulation, the Bar Standards Board (for barristers), and the Master of the Faculties (for notaries) all having regulatory jurisdiction over their practitioners.

<sup>141</sup> <https://hoa.org.uk/advice/guides-for-homeowners/i-am-buying/how-long-does-conveyancing-take/>

<sup>142</sup> <https://www.propertiesolvers.co.uk/homeowners-hub/conveyancing/how-long-does-conveyancing-take/>

<sup>143</sup> <https://www.quittance.co.uk/conveyancing/advice/general-property/how-long-does-conveyancing-take>

<sup>144</sup> <https://propertylawyerni.com/faqs/#:~:text=In%20all%20probability%20some%20if,to%20the%20point%20of%20completion,https://content.propertynews.com/advice-moving-home-northern-ireland/advice-buying-house-northern-ireland/frequently-asked-questions-buying-home/>; <https://www.mkmsolicitors.com/a-new-dawn-for-residential-conveyancing-ni/>; <http://www.mcmanuskearney.com/conveyancing/>; <https://mtb-law.co.uk/insights/what-is-conveyancing/>

<sup>145</sup> <https://www.loosemores.co.uk/conveyancing-explained/>

- There is a relative weakness in the requirement that only an authorised person can supervise the conduct of a reserved activity undertaken by someone who is not so authorised.<sup>146</sup>
- Also lacking is full, practical transparency, the potential distortion of consumer choice and the underlying economics of conveyancing fees, arising from conveyancers paying referral fees to estate agents.<sup>147</sup>
- No protected title of “conveyancer” (cf. “licensed conveyancer” above) exists, which could result in a consumer unwittingly engaging an unregulated conveyancer who, perfectly legally, could outsource the reserved activity elements of the transaction but potentially hold the client’s money without being subject to regulatory requirements or compensation fund coverage.
- Operation of a compensation fund can have problems of operation and perception.<sup>148</sup>

## 2.4 New Zealand

### **Background and current status**

In New Zealand in 2002, solicitors conducting conveyancing transactions began using an electronic system called Landonline.<sup>149</sup> Until then, the Land Transfer Act 1952 set out the legal regime for land registration which required paper documents to be presented, which were subjected to close scrutiny by land registry staff. In effect, the registry staff took significant responsibility in determining whether a presented dealing was acceptable for registration. As a consequence of this, registration was often slow. The registration gap between presentation of dealings to acceptance was anywhere between 1-6 (or more) months. This had long been a problem as under the New Zealand Torrens system, “indefeasibility”<sup>150</sup> only occurs once registration is completed. Given this, there was the possibility of unregistered third-party interests arising within the registration gap which legally, could bind the unregistered buyer.<sup>151</sup> Under the current system, real estate purchase and sale documents are presented online for registration. Initially, this was voluntary, with the land titles registrar indicating a progressive move to compulsory automated registration which finally occurred in 2009.<sup>152</sup>

The Landonline digital system provides automated registration services to “licensed practitioners” only.<sup>153</sup> These are individuals the registrar considers appropriate to receive a licence to operate the online system.<sup>154</sup> In essence, Landonline is a relatively simple data processing system. It relies on the integrity of the licensees to operate it with due diligence and competence. By giving undertakings to the registrar, a licenced practitioner can register straightforward dealings that immediately achieve the status of indefeasibility without involvement of the registry staff. The given undertakings relate

<sup>146</sup> This point is considered in detail in Mayson (2022), “Consumer harm and legal services”, <https://stephenmayson.files.wordpress.com/2022/04/irlsr-supplementary-report-2022-final-220413.pdf>, paragraph 7.3.6

<sup>147</sup> See, for example, <https://www.clc-uk.org/conveyancing-referral-fees/>

<sup>148</sup> See, for example, Mayson (2020), “Reforming legal services: regulation beyond the echo chambers”, <https://stephenmayson.files.wordpress.com/2020/06/irlsr-final-report-final-1.pdf>, Viewpoint 2 on page 63, and <https://www.legalfutures.co.uk/latest-news/sdt-releases-ecohouse-documents-to-campaign-group>

<sup>149</sup> See generally, Robert Muir, “Landonline – the automated system”, in E Toomey (ed) *New Zealand Land Law*, 3<sup>rd</sup> ed, Thomson Reuters, Wellington 2018, at ch 3.

<sup>150</sup> State given protection against having the registered result overturned, accompanied by a State given guarantee of the registered result.

<sup>151</sup> See generally, Rod Thomas, “Fraud, risk and the automated register” in D Grinlinton (ed) *Torrens in the Twenty-first Century* (LexisNexis Wellington 2003).

<sup>152</sup> In essence, solicitors are obligated by the registrar to use the automatic system, the manual system only being available for consumers who wish to do their own conveyancing without legal assistance.

<sup>153</sup> This term includes conveyancers and lawyers (here discussed as “solicitors”). See Land Transfer Act 2017, s 5.

<sup>154</sup> Terminology can confuse, as the terms in use easily confuse between conveyancers, licenced practitioners, and solicitors.

to the identity of the client, competence, details of ownership, and compliance with all relevant statutory requirements for registration.<sup>155</sup> The Land Act 2017 which modernised land transfer has influenced this process.<sup>156</sup>

In 2006, the Government passed the Lawyers and Conveyancers Act after significant pressure to open up conveyancing to competition.<sup>157</sup> Licensed conveyancers began operating in 2007; this allowed “conveyancers”<sup>158</sup> as well as solicitors to undertake conveyancing and solicitors to sell real estate.<sup>159</sup> The Lawyers and Conveyancers Act 2006 provides the framework for conveyancing. Consumers have a choice for their legal support when buying or selling property by using the expertise and services of a Conveyancing Practitioner.<sup>160</sup> In New Zealand, there are two types of conveyancers: conveyancing practitioners either in a sole practice or working for another legal entity; or registered conveyancers who work for a conveyancing firm or another legal entity.

There are only a few licensed conveyancers in New Zealand.<sup>161</sup> The limited evidence available, however, suggests they charge less in order to maintain market “edge”.<sup>162</sup> There is currently no suggestion they will soon become a significant feature in terms of the New Zealand conveyancing market. Conveyancing can be conducted by solicitors or conveyancers with certain qualifications. The New Zealand Society of Conveyancers (NZSoC)<sup>163</sup> is the professional body regulating and representing conveyancing practitioners in New Zealand. Conveyancers specialise in property law and have specific training and skills in all areas relating to the sale and purchase of real estate and related transactions, leases, subdivisions, and refinances.<sup>164</sup> All registered conveyancers must comply with the Society’s registration requirements and all practitioners must carry professional indemnity insurance to protect their clients.<sup>165</sup> The purposes of the NZSoC are to:<sup>166</sup> 1. regulate conveyancers; 2. represent the conveyancing profession and its members; 3. promote and improve the conveyancing profession; 4. promote the Diploma of Conveyancing; 5. encourage principled conduct and best practices throughout the conveyancing profession.

<sup>155</sup> Rod Thomas, “Automation of the New Zealand Register: practitioner abuse, risk and liability”, in D Grinlinton and R Thomas (eds) *Land Registration & Title Security in the Digital Age*, Routledge, London, 2020

<sup>156</sup> Given the age of the Land Transfer Act 1952, and in recognition of the advent of automated registration, this more clearly set out the rights and obligations required for the operation of the automated system.

<sup>157</sup> The Act was also to change the way legal services were offered, regulated and administered.

<sup>158</sup> “Conveyancer” under s 6 of the Act “means a person, not being a lawyer or a person acting under the supervision of a lawyer, who provides conveyancing services”.

<sup>159</sup> At that time, there was much attention paid to the Scottish conveyancing market, where it was perceived that a competitive conveyancing market involved solicitors being able to sell real estate. However, this initiative, although legislated, has not occurred in New Zealand.

<sup>160</sup> Lawyers and Conveyancers Act 2006 No 1 (as of 28 October 2021), Public Act Contents – New Zealand Legislation

<sup>161</sup> It appears that only 200 or 300 conveyancers claim to be practising. This may be compared with some 15,000 solicitors. See generally, on the interaction of conveyancers with Landonline, the discussion in Rod Thomas, “Automation of the New Zealand Register: practitioner abuse, risk and liability” in D Grinlinton and R Thomas (eds) *Land Registration & Title Security in the Digital Age*, Routledge, London, 2020.

<sup>162</sup> Ibid.

<sup>163</sup> About NZSOC » New Zealand Society of Conveyancers (nzskonveyancing.co.nz)

<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

The conveyancing process in New Zealand consists of the following steps:<sup>167</sup>

1. Preparation of offer – purchase price, dates, deposit, and identification of property;
2. Documentation – essential terms of offer drafted by solicitor;
3. Contract – terms may be negotiated and final terms form contract when signed;
4. Post-contract – title search and conditions of sale established;
5. Satisfying conditions – any valuation or inspection conditions to be met;
6. Confirmation of contract;
7. Post-confirmation – Solicitors prepare and file documents with Landonline system;
8. Loan and Mortgage documentation;
9. Inspection – results of inspection to be notified to purchaser’s solicitor;
10. Settlement – vendor’s solicitor releases title to buyer’s solicitor via Landonline; and
11. Post-settlement – Title passes via Landonline system.

Almost all conveyancing transactions in New Zealand are undertaken through the Landonline digital system.<sup>168</sup> Given that registration is instantaneous for straightforward transactions, the registration gap has disappeared for those transactions. More complex dealings still involve the registry staff, and for these, the registration gap is reduced to one to two weeks.

At first, conveyancers appeared to struggle to obtain licences to operate the Landonline system (thus becoming licenced practitioners). This may be partly due to the lack of any credible conveyancer “fidelity fund”, assuring the registrar compensation was available in situations of abuse. Conveyancers may also have struggled to obtain professional indemnity insurance. Such premiums can be considerable, potentially driving up the cost of their charged fees. By contrast, legal practitioners have always carried professional indemnity policies and, by law, are required to contribute to an indemnity fund which provides a pool for reimbursing consumers who suffer loss through incompetence.

In New Zealand, secondly, conveyancing transactions rely on the exchange of undertakings between solicitors. These include issues such as promising to forward settlement funds or the release of online dealings for registration. As officers of the court, solicitors may be held to account if they breach given undertakings. Failing to do so may result in the solicitor being struck off. No such regime operates for conveyancers. Indeed, a solicitor could be considered professionally negligent if he or she accepts an undertaking given by a conveyancer.<sup>169</sup>

The Registrar has indicated there will be a significant update of Landonline within a couple of years.<sup>170</sup> What appears to be little understood, is the amount of funding required to keep Landonline relevant and protected, in terms of updates and future iterations. This has become an issue in terms of the latest proposed changes to it.<sup>171</sup> Also, for a jurisdiction as small as New Zealand, it could take only one or two significant incidents of abuse to shake public confidence in the register. It should be

<sup>167</sup> Conveyancing: Buying a Home - The Legal Process

<sup>168</sup> The introduction of Landonline still allowed registration of paper documents, but only by consumers, keen to do their own registration. This option is only rarely used. At present the professional indemnity insurance for conveyancers is set at a minimum of NZD1.2 million. See <https://www.nzconveyancing.co.nz/professional-indemnity-insurance/> (accessed 18 May 2022). This roughly equates to the sale price of one “average” property in New Zealand, as at the date of writing.

<sup>169</sup> Anecdotal information suggests a New Zealand Law Society initiative is underway to accept undertakings from conveyancers for certain purposes. Indecon is unaware of the details.

<sup>170</sup> <https://www.lin.govt.nz/about-us/what-were-doing/projects/modernising-landonline> (accessed 16 May 2022).

<sup>171</sup> It should be noted that the operation of registries in Australasia jurisdictions are being privatised, optimising significant cash injections for central government.

remembered that as a consequence of indefeasibility, the registered result is final, except in the case of fraud.<sup>172</sup>

There has been some criticism of the Landonline system.<sup>173</sup> However, there appears to have been less user abuse under the automated system than under the old, manual system.<sup>174</sup> In this regard, New Zealand appears to have achieved a high standard of user competence. This may be due to an appreciation that solicitors (when acting as licensed practitioners) are gatekeepers of Landonline. Thus, the integrity of the system depends on their continued compliance with registrar requirements. New Zealand has developed a reputation as one of the most efficient and transparent places in the world to do business.<sup>175</sup> In part, this is due to the speed of registration and the perceived transparency of the operation of Landonline.

### Entry Requirements

Solicitors in New Zealand must complete both a Bachelor of Laws (LLB) degree and a Professional Legal Studies Course. Then, they must obtain a completion certificate from the New Zealand Council of Legal Education and certificates of character and current practising from the Law Society. Finally, they must be admitted to the roll of barristers and solicitors of the High Court of New Zealand.<sup>176</sup>

To become a conveyancer, the New Zealand Society of Conveyancers (NZSoC) offers the following registration options.<sup>177</sup>

- A Registered Conveyancer is a person who has successfully completed the Diploma of Conveyancing (see following subsection) *or* successfully applies through the NZSoC under an equivalency assessment. This confirms the applicant's prior conveyancing experience and training meet the requirements of the Diploma of Conveyancing.

A person is eligible to apply for an equivalency assessment as a Registered Conveyancer if the applicant has:

- A legal executive or law qualification and at least five years conveyancing experience in New Zealand; and
- The NZSoC must assess whether the applicant's qualifications, professional training and experience are the equivalent of the Diploma of Conveyancing. It may require the applicant to undergo further examination and assessment.
- A conveyancing practitioner is a registered conveyancer who successfully applies through the NZSoC to obtain a practising certificate *or* who successfully applies through the NZSoC to practice on their own account. A registered conveyancer can apply to the NZSoC to become a conveyancing practitioner and if successful, receives a practising certificate. Conveyancing practitioners can also apply to the NZSoC to operate on their own account.<sup>178</sup>

<sup>172</sup> There are also limited situations where registration errors may be reversed. These are not addressed.

<sup>173</sup> See generally, Rod Thomas, "Fraud, risk and the automated Register" in D Grinlinton (ed), *Torrens in the Twenty-first Century*, LexisNexis Wellington 2003; Rod Thomas, "Automation of the New Zealand Register: practitioner abuse, risk and liability" in D Grinlinton and R Thomas (eds), *Land Registration & Title Security in the Digital Age*, Routledge, London, 2020

<sup>174</sup> Rod Thomas, "Automation of the New Zealand Register: practitioner abuse, risk and liability", in D Grinlinton and R Thomas (eds) op. cit. 2020

<sup>175</sup> <https://www.pearse-trust.ie/blog/new-zealand-best-place-to-do-business-in-2020> (accessed 16 May 2022)

<sup>176</sup> <https://www.careers.govt.nz/jobs-database/government-law-and-safety/law/solicitor/#how-to-enter-the-job>

<sup>177</sup> Qualifications and Registration » New Zealand Society of Conveyancers (nzskonveyancing.co.nz)

<sup>178</sup> *Ibid.*

The Diploma of Conveyancing is essential to become a registered conveyancer. This is a Level 6 degree, offered by the Toi Ohomai Institute of Technology, the only authorised provider of the degree.<sup>179</sup> The diploma meets the requirements set by the NZSoC and allows graduates to specialise in the legal field for the transfer of residential and commercial property.<sup>180</sup>

Graduates must take courses in and demonstrate sufficient understanding of the following areas to be awarded the Diploma:<sup>181</sup>

- Basic elements of the New Zealand legal system;
- Requirements of the Lawyers and Conveyancers Act 2006 and associated regulations and rules in relation to conveyancing;
- Principles of property law relating to matters commonly encountered by conveyancing professionals providing these services;
- Basic business and commercial law matters, and transactions commonly encountered in conveyancing practice;
- Professional practices and management, including current accounting practice, that relate to conveyancing;
- Basic understanding of wills, the administration of deceased estates, and trusts;
- Basic understanding of contract and dispute resolution;
- Conveyancing history, policies, and regulation in the general business environment;
- Legislative requirements relating to resource management, building law, and local government; and
- Principles and practices relating to land registration and the use of the Landonline survey and titles system.

### **Regulation and Consumer Protection**

The New Zealand Law Society has been responsible for the regulation of solicitors since 2008, when it became the national regulator for both solicitors and barristers.<sup>182</sup> As a result of the Lawyers and Conveyancers Act, the New Zealand Society of Conveyancers (NZSoC) was established in 2008 as the professional body regulating and representing conveyancing practitioners in New Zealand.<sup>183</sup>

<sup>179</sup> New Zealand Diploma of Conveyancing (Level 6) | Toi Ohomai Institute of Technology

<sup>180</sup> Ibid.

<sup>181</sup> Lawyers and Conveyancers Act (Conveyancers: Registration and Practice) Regulations 2008 (SR 2008/189) (as of 07 August 2020) – New Zealand Legislation

<sup>182</sup> New Zealand Lawyers and Conveyancers Act 2006, Sections 65

<sup>183</sup> New Zealand Lawyers and Conveyancers Act 2006, Section 79

In cases of complaints against solicitors, consumers can make complaints to the New Zealand Law Society. However, complaints against conveyancers employed by law firms can also be made to the Law Society, in their role as the regulator of legal firms.<sup>184</sup> There also exists the Legal Complaints Review Officer and New Zealand Lawyers and Conveyancers Disciplinary Tribunal, the latter of which considers particularly serious complaints, and which has the power to strike off a practitioner.<sup>185</sup>

The Lawyers and Conveyancers Act Regulations stipulate that all Conveyancing Practitioners and incorporated conveyancing firms must carry professional indemnity insurance to protect their clients. A master policy is available, but not required.<sup>186</sup> The NZSoC also maintains a Compensation Fund called the Conveyancers Fidelity Fund.<sup>187</sup> By law, the New Zealand Law Society maintains a Fidelity Fund, which compensates clients for theft by lawyers.<sup>188</sup> However, the Law Society does not require firms to hold professional indemnity insurance,<sup>189</sup> though they have the power to do so.<sup>190</sup> A firm must disclose its insurance arrangements to its clients, though if the insurance meets a minimum standard set by the society, only this fact is necessary to be disclosed.<sup>191</sup>

Whilst the New Zealand Law Society requires that “a lawyer must not charge a client more than a fee that is fair and reasonable for the services provided”, there are no requirements that estimated or standard costs be displayed publicly.<sup>192</sup> Similarly, New Zealand law requires that fees must be “fair and reasonable”, and that practitioners provide information on how the fee is calculated.<sup>193</sup>

In relation to New Zealand, a major new report on regulation of the legal profession<sup>194</sup> was published in March 2023 following an independent review commissioned by the New Zealand Law Society. This noted that since the Lawyer and Conveyancer Act 2006, there had been significant changes to a number of areas including the delivery of legal services, the role of non-lawyers, and the use of technology. The report recommended major changes to the regulation of the legal profession, including the establishment of a new independent regulator,<sup>195</sup> permitting new business structures including enabling lawyers to enter into legal partnerships with non-lawyers, and measures to enable the regulator to better protect consumers and support practitioners. While the report did not examine the conveyancing profession, it noted that there may be a case for any newly established regulator to regulate both lawyers and conveyancers.

### **Conveyancing fees and costs**

Research by Indecon has identified examples of costs of conveyancing services for purchases and sales, with or without a mortgage for a range of providers. Costs exclude potential disbursements that are specific to each case such as additional titles, urgency fees, tenanted property and more. Analysis of costs suggests average conveyancing fees are 16% higher for purchasers with a mortgage and 12% higher for sellers with a mortgage. Overall, purchasers pay more, with an average

<sup>184</sup> <https://www.lawsociety.org.nz/for-the-public/complaining-about-a-lawyer/how-your-complaint-is-processed/>

<sup>185</sup> <https://www.lawsociety.org.nz/for-the-public/complaining-about-a-lawyer/other-bodies-involved-in-resolution-of-complaints-against-lawyers/>

<sup>186</sup> About NZSOC » New Zealand Society of Conveyancers (nzconveyancing.co.nz)

<sup>187</sup> <https://conveyancingplus.co.nz/information-for-clients/>

<sup>188</sup> New Zealand Lawyers and Conveyancers Act 2006, Section 309

<sup>189</sup> <https://www.lawsociety.org.nz/professional-practice/client-care-and-complaints/client-care/insurance-disclosure/>

<sup>190</sup> New Zealand Lawyers and Conveyancers Act 2006, Section 99

<sup>191</sup> <https://www.lawsociety.org.nz/professional-practice/client-care-and-complaints/client-care/insurance-disclosure/>

<sup>192</sup> <https://www.lawsociety.org.nz/professional-practice/practice-briefings/open-and-transparent-billing/>

<sup>193</sup> Lawyers and Conveyancers Act (Conveyancing Practitioners: Conduct and Client Care) Rules 2008, Part 7

<sup>194</sup> Regulatory Lawyers in Aotearoa New Zealand. Independent Review commissioned by the New Zealand Law Society, March 2023.

<sup>195</sup> The independent regulator would take over the statutory and regulatory functions whilst the Law Society would remain a membership body representing interests of those in the profession.

conveyancing cost (with mortgage) of NZD1,393 (€625) compared to sellers' average (with mortgage) of NZD1,081 (€485).

It is estimated that that only 200 or 300 conveyancers are practising in New Zealand.<sup>196</sup> This compares to some 14,981 lawyers. The 2018 Census of Population estimated that there were 144 conveyancers and 1,887 legal executives, and there may be some overlap between the two occupation classifications. Overall, the number of conveyancers represents less than 2% of the market for conveyancing services.

Provider	Purchase with Mortgage (NZD)	Purchase without Mortgage (NZD)	Sale with Mortgage (NZD)	Sale without Mortgage (NZD)
Right Move Legal	1,380 (€619)	1,180 (€530)	1,170 (€525)	1,070 (€480)
Key Conveyancing	1,390 (€624)	1,190 (€534)	1,190 (€534)	1,090 (€489)
The Property Law Centre	1,790 (€804)	1,640 (€736)	1,580 (€709)	1,480 (€664)
Conveyancing Plus	1,320 (€593)	-	1,135 (€510)	-
Urban Property Law	1,380 (€619)	1,180 (€530)	1,180 (€530)	1,080 (€485)
Just Conveyancing	1,350 (€606)	1,150 (€516)	1,050 (€471)	950 (€426)
Kiwi Conveyancing	1,450 (€651)	-	1,350 (€606)	-
Home Transfer Centre	1,550 (€696)	1,150 (€516)	1,350 (€606)	1,050 (€471)
Keil & Associates	850 (€382)	800 (€359)	750 (€337)	700 (€314)
Property Law Centre	1,500 (€673)	1,300 (€584)	1,300 (€584)	1,100 (€494)
Property Transfer	950 (€426)	850 (€382)	800 (€359)	700 (€314)
Muchanan Gray	1,300 (€584)	1,000 (€449)	1,090 (€489)	1,000 (€449)
Donnell Sherry	1,800 (€808)	1,500 (€673)	1,600 (€718)	1,400 (€628)
Property Legal	1,495 (€671)	1,395 (€626)	1,425 (€640)	1,350 (€606)
<b>Average Conveyancing Cost</b>	<b>1,393 (€625)</b>	<b>1,195 (€536)</b>	<b>1,212 (€544)</b>	<b>1,081 (€485)</b>

*Source: Indecon Research*

### **Timescale for residential conveyancing transactions**

On average, it takes four weeks from initial contract to final settlement of a residential purchase and sale agreement.<sup>197</sup> The initial sale and purchase agreement can take 24-48 hours as the real estate agent prepares a draft to be reviewed by a lawyer, subsequently sent to the vendor as an offer.<sup>198</sup>

### **Key features**

We outline below some key features of the conveyancing experience in New Zealand.

- The Landonline digital system has increased consumer access to information as well as efficiencies in the transaction process.

<sup>196</sup> Automation of the New Zealand Register: practitioner abuse, risk and liability" in D Grinlinton and R Thomas (eds) Land Registration & Title Security in the Digital Age (Routledge, London, 2020)

<sup>197</sup> <https://www.wynyardwood.co.nz/the-conveyancing-process-is-more-complex-than-you-might-think/>; <https://premium.co.nz/buying>

<sup>198</sup> <https://mortgagelab.co.nz/all-about-conveyancing/#:~:text=This%20process%20can%20take%2024,solicitor%20may%20have%20to%20meet>

- Registered conveyancers and conveyancing practitioners offer specialised professional services and thus greater efficiencies than general solicitors.
- The low average completion time for transactions is approximately four weeks; initial purchase and sale agreement takes as little as 24 hours.
- Costs of conveyancing transactions appear to have increased over time, and it is unclear if any consumer savings have resulted from improved efficiencies of this system.

## 2.5 Australia – Victoria and New South Wales

### **Background and current status**

In all Australian states, title to estates over land, and therefore procedures for conveying title, are administered under the Torrens system of land title, the central feature of which is that legal title to, and legal interests in, land are created by registration with a registrar – in practice, the Land Titles Office. The register is evidence of the legal estates and interests that exist in officially surveyed allotments of land (including title to units in group and multistorey developments). Conveyancing is therefore directed towards securing the registration of a transfer of an estate in land, and of associated mortgages (charges on the land) and other encumbrances. In the federal territories, land is generally held under Crown lease but, again, the leasehold interest is conclusively identified by entry on the register. The Torrens system simplifies conveyancing significantly when compared with the old systems title it has generally replaced, as conveyancers need not search the root of title and can confirm an entitlement to transfer property by the assurance of the register.

In Australia, there are qualifications to the predominance of the Torrens system. Even for Torrens land, equitable interests may exist without registration. Large portions of rural land are held under Crown leasehold, and rights and interests of native title may exist where freehold estates in land have not been granted. However, the Torrens system governs almost all domestic residential purchases. Each state and territory have enacted its own regulatory legislation relating to the legal profession, although in most states and the territories this tends to reflect the Legal Profession Model Provisions of 2004.<sup>199</sup> In New South Wales and Victoria, the legislation is unified under the Legal Profession Uniform Law<sup>200</sup> and there is currently some prospect that the Western Australian Parliament will also adopt the Uniform Law. All of this legislation provides that only lawyers who hold practising certificates may engage in “legal practice” – and unauthorised practice is subject to criminal penalty.<sup>201</sup>

In 2005, the Law Council established the National Electronic Conveyancing System Committee (NECS Committee) to advise on issues related to developing a national e-conveyancing system. The system is seen as beneficial to the legal profession, clients, and the economy as a whole due to efficiencies and reduced conveyancing costs.<sup>202</sup> In July 2008, the Council of Australian Governments agreed on a new single national electronic system for settling real property transactions in all Australian States and Territories. The system allows legal practitioners, conveyancers and financial institutions to:<sup>203</sup>

- Electronically prepare and lodge land property dealings with title registries;

<sup>199</sup> Legal Profession Act 2006 (ACT); Legal Profession Act 2006 (NT); Legal Profession Act 2004 (Qld); Legal Profession Practitioners Act 1981 (SA); Legal Profession Act 2007 (Tas); Legal Profession Act 2008 (WA)

<sup>200</sup> Legal Profession Uniform Law 2014 (NSW); Legal Profession Uniform Law Application Act 2014 (Vic)

<sup>201</sup> Legal Profession Act 2006 (ACT) s 16; Legal Profession Uniform Law 2014 (NSW) s 10; Legal Profession Act 2006 (NT) s 18; Legal Profession Act 2004 (Qld) s 24; Legal Profession Practitioners Act 1981 (SA) s 21; Legal Profession Act 2007 (Tas) s 13; Legal Profession Uniform Law Application Act 2014 (Vic), s 10; Legal Profession Act 2008 (WA) s 12

<sup>202</sup> *Ibid.*

<sup>203</sup> National Electronic Conveyancing System - Law Council of Australia

- Transmit settlement funds and pay associated duties and tax; and
- Remove the need to physically attend property settlements.

By 2012 in Australia, all six states and the Northern Territory agreed to develop the national regulatory framework for its digital system, eConveyancing, including the underpinning legislation. An Electronic Conveyancing National Law was developed with the Inter-Governmental Agreement and gives the legal structure for the national eConveyancing system. Five states and the Australian Capital Territory have commenced eConveyancing. New South Wales, Victoria, South Australia, and Western Australia have mandated its use for all mainstream transactions.<sup>204</sup> The state and territory governments also established the Australian Registrars National Electronic Conveyancing Council (ARNECC), comprising all of the state and territory registrars of title. ARNECC does not only advise on legislation to establish Australia-wide eConveyancing, but all registrars were also included to ensure uniform eConveyancing practices across the nation, and to develop a uniform set of model operating requirements and model participation rules.

Conveyancing lawyers provide the following services:<sup>205</sup>

1. Carry out property and title searches;
2. Prepare, arrange execution, and lodge legal documents;
3. Calculate adjustment of rates and taxes;
4. Attend settlement of property;
5. Monitor critical dates; and
6. Represent client interests with the other party to sale.

Critical to the operation of the eConveyancing system is the electronic lodgement network (ELN), provided by the relevant registrar of titles.<sup>206</sup> The registrar also approves one or more ELN operators (ELNOs),<sup>207</sup> who undertake the daily operation of the ELN. Any ELNO must comply with operating requirements that relate to factors such as the ELNO's solvency, the ELN's technical and operational requirements and insurance cover.<sup>208</sup> The registrar in each state and territory is encouraged to align the operating requirements with the model operating requirements.<sup>209</sup> A lawyer, conveyancer or financial institution should subscribe to an ELNO and can then access the ELN to lodge documents with the registrar electronically. These subscribers must comply with participation rules,<sup>210</sup> which include rules about who is eligible to be a subscriber, their obligations, client authorisations, verification of client identity, certification, digital signing and the retention of electronic documents.<sup>211</sup> The registrar should have regard to the model participation rules when prescribing the relevant participation rules.<sup>212</sup> A subscriber – the lawyer, conveyancer or financial institution – can lodge electronic documents with the registrar through the ELN.<sup>213</sup> The registrar – really, the Land Titles Office – must then receive and process the electronic document as it would under the governing Torrens legislation.<sup>214</sup> So long as the document is in the prescribed electronic form, it is processed as if it were the equivalent prescribed paper form.<sup>215</sup> The digital signature of the subscriber has the same

<sup>204</sup> Ibid.

<sup>205</sup> [What Is Conveyancing in Australia? \(gmlaw.com.au\)](http://gmlaw.com.au)

<sup>206</sup> Electronic Conveyancing National Law, ss 13-14.

<sup>207</sup> Ibid. at s 15

<sup>208</sup> Ibid. at s 22

<sup>209</sup> Ibid. at s 24

<sup>210</sup> Ibid. at s 26.

<sup>211</sup> Ibid. at s 23(2)

<sup>212</sup> Ibid. at s 24

<sup>213</sup> Ibid. at s 7

<sup>214</sup> Ibid. at s 8

<sup>215</sup> Ibid. at s 9(1)

effect as if the subscriber had signed the paper document.<sup>216</sup> Special provision is made in the national law entitling the registrar to rely on digital signatures created for conveyancing transactions.<sup>217</sup>

In Victoria, Independent Conveyancers have provided services since the early 1980s. In 1989, a small group of independent conveyancing practitioners formed the Victorian Conveyancers' Association (VCA), which was incorporated, and provided educational standards and professional indemnity insurance as of 1991.<sup>218</sup> The VCA became a division of the Australian Institute of Conveyancers, and its name changed to the Australian Institute of Conveyancers – (Victorian Division) – or AIC Vic – in 1997. The focus of AIC Vic has always been to promote high educational, ethical and professional standards for Conveyancers.<sup>219</sup> In 1998, AIC Vic took its first steps towards introducing quality standards for the profession with the launch of the Certified Practising Conveyancer (CPC) Programme for members. As a result of its advocacy, the Victorian Government introduced licensing for conveyancers with the introduction of the Conveyancers Act 2006.<sup>220, 221</sup>

In New South Wales, around the same time as in Victoria (1989), a small group of unregulated practising conveyancers joined together to create the Association of Property Conveyancers Ltd, to lobby the state government to establish official regulatory licensing of conveyancers. These were typically paralegal employees with skills in conveyancing, working under the direction of a solicitor.<sup>222</sup> The Association became the New South Wales Division of the AIC and joined with other states to gain recognition of conveyancing as a profession. This occurred with the 1992 Conveyancers Licensing Act<sup>223</sup> which acknowledged there was a role for non-lawyers in conveyancing. The 1992 Act restricted conveyancers to small residential properties.<sup>224</sup>

### **Entry Requirements**

Currently, to become a conveyancer in Australia involves the following steps:<sup>225</sup>

- Complete an accredited conveyancing course, a Diploma/Advanced Diploma of Conveyancing or a recognised law degree;
- Apply for a conveyancing licence in most states, including Victoria and New South Wales; and
- Continue professional development with organisations like the AIC after graduation.

A Conveyancer's License is required to operate as a conveyancer in Victoria and New South Wales if not approved as an Australian legal practitioner or incorporated legal practice. Both companies and individuals carrying on a conveyancing business must be licensed. In addition, companies must have at least one director who is a licensed conveyancer. Employees undertaking conveyancing work within a conveyancing business operated by a licensed conveyancer do not require a licence.<sup>226, 227</sup>

<sup>216</sup> Ibid. at s 9(2)

<sup>217</sup> Ibid. at s 12

<sup>218</sup> Our History - Australian Institute of Conveyancers Victorian Division ([aicvic.com.au](http://aicvic.com.au))

<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> Conveyancers Act 2006 ([legislation.vic.gov.au](http://legislation.vic.gov.au))

<sup>222</sup> Conveyancing in NSW - Australian Institute of Conveyancers NSW ([aicnsw.com.au](http://aicnsw.com.au))

<sup>223</sup> [ca1992n5248.pdf](http://ca1992n5248.pdf) ([austlii.edu.au](http://austlii.edu.au))

<sup>224</sup> Ibid.

<sup>225</sup> How to become a Conveyancer | Career Paths & Education | Open Universities Australia

<sup>226</sup> Conveyancer's Licence - VIC - Australian Business Licence and Information Service

<sup>227</sup> Conveyancer's Licence - Individual - NSW - Australian Business Licence and Information Service

A solicitor must complete an approved law degree and an approved practical legal training course or in some jurisdictions a supervised traineeship. Then, they must successfully apply for admission to Roll of Lawyers and a practising certificate (which is renewed annually).<sup>228</sup>

### **Regulation and Consumer Protection**

Regulation of conveyancers and solicitors varies by state. At the introduction of the licensed conveyancer role, the Law Society of New South Wales (the regulatory and representative body for lawyers became responsible for regulation and oversight of the new profession. Initially, there were 43 licensed conveyancers.<sup>229</sup> About this time, the New South Wales Government introduced a deregulation approach to the legal profession to break the monopoly of solicitors. In 1994, the legal profession became deregulated in that most costs were no longer fixed to a scale. It also became apparent that the Conveyancers Licensing Act 1992 could only partially expand consumer choice and break the conveyancing monopoly as the scope of work they could do was restricted and control by the Law Society was anti-competitive.

The Conveyancers Licensing Act 1995 expanded the work performed by licensed conveyancers to encompass commercial and rural property and businesses and passed control of the profession from the Law Society to the Department of Fair Trading as it was seen as desirable to have an independent body administer the Act. The Department controls the licensing of conveyancers and handles all matters under the Act. The AIC New South Wales is now the professional body representing conveyancers in the state with representatives on committees with the various Government Departments. It is also consulted on the educational requirements for licensed conveyancers including mandatory continuing education.<sup>230</sup>

In Victoria, while the AIC recommends standards and administers the Certified Practising Conveyancer Program, a program certifying independent standards for those with experience in the profession,<sup>231</sup> the regulatory role is fulfilled by Consumer Affairs Victoria, a wider regulator.<sup>232</sup>

The regulation of solicitors also varies by state; in New South Wales, regulation of standards is by the Law Society of NSW<sup>233</sup> which both represents and regulates, and in Victoria by the Legal Services Board,<sup>234</sup> whilst there exists a separate representative body, the Law Institute Victoria.<sup>235</sup> However, the regulatory authority to whom consumers complain may be separate again. For example, in New South Wales, complaints can be lodged with the Office of the Legal Services Commissioner, while in Victoria, consumers can contact the Legal Services Commissioner. In addition, some states have independent statutory bodies that also investigate complaints against solicitors, such as the NSW Legal Services Commissioner and the Victorian Civil and Administrative Tribunal.<sup>236</sup>

All regulatory bodies of solicitors in Australia require firms under their jurisdiction to hold professional indemnity insurance.<sup>237</sup> Compensation from the regulatory authority for misconduct by solicitors also

<sup>228</sup> <https://www.lawyer-monthly.com/2022/11/how-to-become-a-lawyer-in-australia/>

<sup>229</sup> Conveyancing in NSW - Australian Institute of Conveyancers NSW ([aicnsw.com.au](http://aicnsw.com.au))

<sup>230</sup> Current version of the act: NSW legislation - Conveyancing Act 1919 No 6

<sup>231</sup> Our History - Australian Institute of Conveyancers Victorian Division ([aicvic.com.au](http://aicvic.com.au))

<sup>232</sup> <https://www.consumer.vic.gov.au/licensing-and-registration/conveyancers>

<sup>233</sup> <https://www.lawsociety.com.au/about-us/what-we-do>

<sup>234</sup> <https://www.lsb.vic.gov.au/about-us/board-and-commissioner/our-powers>

<sup>235</sup> <https://www.liv.asn.au/Web/About-LIV/Web/Content/About-the-LIV/About.aspx?hkey=f3466504-7b81-4973-b97b-036219c72ebe>

<sup>236</sup> <https://lsbc.vic.gov.au/consumers/complaints/making-enquiry-or-complaint>, [https://www.olsc.nsw.gov.au/Pages/lsc\\_complaint/olsc\\_type\\_complaint.aspx](https://www.olsc.nsw.gov.au/Pages/lsc_complaint/olsc_type_complaint.aspx)

<sup>237</sup> <https://corporatesolutions.swissre.com/australia-newzealand/insights/knowledge/rethinking-professional-indemnity-insurance-for-lawyers.html>

varies by state, given the differing regulatory bodies. However, all states have some form of compensation fund in case of theft by solicitors.<sup>238</sup> Conveyancers in New South Wales are required to be covered by professional indemnity insurance with certain minimum standards,<sup>239</sup> in Victoria a minimum coverage of \$2m is required through a specified broker.<sup>240</sup> Both states' conveyancers regulator maintain a property fund, for compensation due to misappropriation by either conveyancers or agents.<sup>241</sup>

Regulatory structures, best exemplified by the New South Wales Conveyancers Licensing Act 2003, also recognise that while non-lawyer conveyancers bring competition to lawyers, they are themselves also competing with lawyers and other conveyancers in a demanding market. The New South Wales model includes:

- Minimum qualifications are diploma level, with two years practical training.<sup>242</sup> In general, with the legal education prescribed, this should be sufficient to raise the conveyancer's understanding of legal issues to the point where the boundaries between conveyancing and other legal work are clear.
- There are externally drafted and enforced Rules of Conduct.<sup>243</sup>
- Billing obligations that include comprehensive disclosure of costs estimates and the method of calculating costs and outlays, and clear pathways for challenging costs.<sup>244</sup>
- Unique reporting obligations exist for any industry organisations.<sup>245</sup>
- The regulator has comprehensive powers to intervene in conveyancing practices.<sup>246</sup>
- Remedial security from negligence or fraud, through mandatory indemnity insurance and a compensation fund.<sup>247</sup>

Licensed conveyancers are non-lawyers who are licensed to perform a part of the legal work associated with a real estate transaction, so long as it does not go beyond conveyancing work as defined in the Conveyancers Act 2006.<sup>248</sup> Lawyer conveyancers are those whose main area of practice is conveyancing. While licensed conveyancers are restricted to performing only conveyancing work, i.e., offer and acceptance, title search, deed transfer, etc., lawyer conveyancers are able to perform all legal work associated with a conveyancing transaction, including complications that may arise such as contractual disputes, inheritance conflicts, or defective property title.<sup>249</sup> Lawyers provide the most comprehensive form of legal representation in real estate conveyancing transactions. There are

<sup>238</sup> NSW, Victoria, South Australia, Queensland

<sup>239</sup>

[https://www.fairtrading.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/370363/Approval\\_Guidelines\\_professional\\_indemnity\\_insurance.pdf](https://www.fairtrading.nsw.gov.au/__data/assets/pdf_file/0004/370363/Approval_Guidelines_professional_indemnity_insurance.pdf)

<sup>240</sup> <https://www.consumer.vic.gov.au/licensing-and-registration/conveyancers/running-your-business/maintain-your-licence/professional-indemnity-insurance>

<sup>241</sup> NSW, Victoria

<sup>242</sup> Conveyancers Licensing (Qualifications) Order 2006 (NSW)

<sup>243</sup> Conveyancers Licensing Regulation 2021 (NSW), Sch 2 rule 16

<sup>244</sup> Conveyancers Licensing Act 2003 (NSW) , ss 36-41

<sup>245</sup> *Ibid.*, s 25

<sup>246</sup> *Ibid.*, ss 90-131

<sup>247</sup> *Ibid.*, ss 15, 87-9

<sup>248</sup> Cheap conveyancing or low-cost conveyancing - licensed conveyancer or lawyer conveyancer? - How to make the right choice ([lawyersconveyancing.com.au](http://lawyersconveyancing.com.au))

<sup>249</sup> Conveyancers Act 2006, Part 1 Section 4 defines conveyancing work as: legal work carried out in connection with any transaction that creates, varies, transfers, conveys or extinguishes a legal or equitable interest in any real or personal property; sale of a freehold interest in land; creation, sale or assignment of leasehold interest in land; or the grant of a mortgage or other charge. It does not include legal work for commencing or maintaining legal proceedings; applying for probate or administration; establishing a corporation; creating, varying or extinguishing a trust; preparing a testamentary instrument, giving investment or financial advice or investing money; or provision of legal advice.

always times when a licensed conveyancer is duty-bound to refer a client to a qualified lawyer for further assistance (i.e., beyond simple conveyancing work, issues too complex for the licensed conveyancer to handle).<sup>250</sup> When a conveyancing matter entails unforeseen complications and the other party threatens legal action, most conveyancers tell the client to obtain advice from a lawyer.

In New South Wales, Victoria, and several other states, conveyancers must disclose estimated costs and billing arrangements to clients before being engaged or commencing any conveyancing work.<sup>251</sup> If the client challenges the costs, they can notify a relevant external authority of the dispute.<sup>252</sup> In New South Wales and Victoria this is the state Civil and Administrative Tribunal.<sup>253</sup> The authority may appoint an independent expert to assess costs, but ultimately the Tribunal can determine costs to be paid and make an enforceable order to that effect.<sup>254</sup>

Conveyancing practices are under obligation to maintain records relating to the business and client transactions;<sup>255</sup> in New South Wales to have them audited every financial year;<sup>256</sup> and all conveyancing practices must hold professional indemnity insurance.<sup>257</sup> Whilst this insurance protects the client generally, it does not do so in cases where a conveyancer acts beyond the scope of simple conveyancing duties. This can result in referral to a solicitor after the conveyancing process has begun, increasing fees and the time required to complete the transaction.

Conveyancing businesses must hold a trust account and make provision to handle trust money that mirrors the standard provisions of the model provisions of 2004 applicable to lawyers.<sup>258</sup> However, unlike with lawyers, there is no provision for conveyancers to invest trust money in an interest-bearing account. There is also a risk that clients may be referred from conveyancers to lawyers for complications arising in the midst of a transaction.

### **Conveyancing fees and costs**

Conveyancing fees in New South Wales and Victoria are on various websites, so it is not difficult for consumers to find and compare fees among practitioners. For example, according to one site, comprehensive conveyancing fees average AUD1,000-AUD2,500 (€464-€1,159) in New South Wales and AUD600-AUD1,400 (€278-€649) in Victoria.<sup>259</sup> According to another site, average conveyancing fees for an existing house range from AUD1,100-AUD1,450 (€510-€672) in New South Wales and AUD870-AUD1,150 (€403-€533) in Victoria.<sup>260</sup> Differences are usually based on property type (i.e., land vs. an existing house), sales amount, and complexity of transaction details (e.g., title search will vary in complexity based on type of ownership).<sup>261</sup> Fees for licensed conveyancers are slightly lower than those for lawyer conveyancers.

Identifying accurate figures on the number of conveyancing firms operating in Australia and estimating their market share is difficult. This is, in part, due to the fact that some conveyancers are licenced, while non-licenced conveyancers may also operate in the market. This is further complicated by the fact that not all practitioners are members of the representative associations. The

<sup>250</sup> Ibid.

<sup>251</sup> NSW, ss 36-41; NT, ss 65A-65E; *Conveyancing Regulations 2015* (Tas), Sch 1, rule 2; Vic, s 47; WA, s 43

<sup>252</sup> NSW, ss 43; Vic, s 47; WA, s 44(5).

<sup>253</sup> NSW, s 3; Vic, s 47. In Western Australia, it is the Commissioner of Fair Trading; WA, s 44(5). 29 NSW, ss 44-46; Vic, s 47

<sup>254</sup> NSW, ss 47-51; Vic, s 47

<sup>255</sup> NSW, ss 69-74; Vic, s 47; WA, s 45

<sup>256</sup> NSW, ss 75-80

<sup>257</sup> NSW, s 15; NT, ss 108A-108D; SA, s 9; Tas, s 13; Vic, ss 41-4; WA, s 35

<sup>258</sup> R Mortensen, (2017) Client money: trust account management for Australian lawyers

<sup>259</sup> Conveyancing costs - 2022 Comprehensive Fees Guide ([whichrealestateagent.com.au](http://whichrealestateagent.com.au))

<sup>260</sup> Conveyancing Fees - Australia 2022 Average Costs for Buying and Selling ([leadconveyancing.com.au](http://leadconveyancing.com.au))

<sup>261</sup> Ibid.

Australian Institute of Conveyancers has indicated they represent some 1,500 conveyancers.<sup>262</sup> However, official Census of Population data indicates there are approximately 6,500 conveyancers in Australia.<sup>263</sup> The Law Society of Australia has estimated that there are 16,500 solicitor firms with 90,329 solicitors nationally and the number of solicitor firms operating in Victoria and New South Wales is 11,467 (2022). If it assumed that of the 6,500 conveyancers operating in Australia there are 2,000 conveyancing practices in Victoria and New South Wales,<sup>264</sup> this would suggest an indicative market share of around 15%. However, as comprehensive details on the number of conveyancing practices are not available, this is an indicative estimate.

Also of note is that the number of firms may not equate with the number of transactions. A much higher market share for some markets was suggested by the Australian Institute of Conveyancers (Victoria Division) which estimated that in Victoria, the licenced conveyancers undertake approximately 45-50% of all conveyancing transactions with solicitors undertaking the remaining share. However, given the absence of official data on market share, we believe it would be prudent to assume the lower estimate of 15%.

### ***Timescale for residential conveyancing transactions***

The conveyancing process can take 8-12 weeks according to PB Lawyers, but as with all firms, it advises that complications may arise and extend the process.<sup>265</sup> Property settlement takes from one to four months.<sup>266</sup> The length of the settlement period is typically between 30 and 90 days, the most common in different states is 60 days, except in New South Wales where it is 42 days.<sup>267</sup>

### ***Key features***

We outline below some key features of the conveyancing experience in Australia.

- Conveyancing fees are readily available to the consumer online with easy-to-use price comparison platforms.
- Fees charged by licensed conveyancers are typically lower than for solicitors.
- Online land registry simplifies the purchase and sale process nationwide.
- Average timeframe for transactions in New South Wales is 42 days. However, a relatively lengthy process from initial offer to final sale can extend from one to four months, most commonly eight weeks.
- Complications with the transaction may require subsequent referral to a solicitor, potentially increasing costs and the overall timeframe.

<sup>262</sup> This is a very indicative estimate. While the population of these two areas is equal to approximately 57% population of the total population, and if these regions held a proportion share of 6,500 conveyancers, this would suggest approximately 3,700 conveyancers operating in these states. As conveyancers do not operate in all states, the number may be higher. However, they may not operate as sole practices and so a lower indicative estimate of 2,000 practices was used.

<sup>263</sup> Census of Population 2016.

<sup>264</sup> The population of Victoria and New South Wales is equal to approximately 57% of the total population of Australia. If these regions held a proportional share of the 6,500 conveyancers, this would suggest approximately 3,700 conveyancers operating in these states. As conveyancers do not operate in all states, the number may be higher. However, they may not operate as sole practices and so a lower indicative estimate of 2,000 practices was used.

<sup>265</sup> <https://pblawyers.com.au/how-long-does-property-conveyancing-take/>

<sup>266</sup> <https://www.anz.com.au/personal/home-loans/tips-and-guides/property-settlement-what-is-it-how-does-it-work/#:~:text=It%20involves%20various%20legal%2C%20financial,between%20the%20buyer%20and%20seller>

<sup>267</sup> <https://www.yourmortgage.com.au/refinancing-home-loans/how-long-should-the-property-settlement-process-be>

## 2.6 Reflections on the experience in other jurisdictions

In considering the experience in other countries it is useful to reflect on the current status of the conveyancing profession, market shares secured, and on costs and other aspects of service provision. These are summarised in the next table.

Table 2.2: International experience – key measures by jurisdiction	
<b>England and Wales</b>	
<b>Current status of conveyancing profession</b>	Fragmentation of regulation of legal activities as part of conveyancing transactions, in particular with the SRA, CLC, CILEX Regulation, the Bar Standards Board (for barristers), and the Master of the Faculties (for notaries) all having regulatory jurisdiction over their practitioners, but not necessarily requiring identical qualification or practice standards.
<b>Market share of conveyancing professionals</b>	The CMA legal services market (2016) study found that licensed conveyancers supply 9% of consumers in the conveyancing services market. CLC-licenced practices carried out 10.3% of property transactions by value in 2015.
<b>Impacts on conveyancing costs and/or service provision</b>	Mean prices for the sale or purchase of residential freehold property have increased since 2015, and in 2020 were reported at, respectively, £718 and £891 (with median prices slightly lower), plus VAT. Providers accredited as specialists (such as through the Law Society Conveyancing Quality Scheme) charged average prices that were statistically similar to the market average, and (despite some anecdotal evidence that licensed conveyancers tend to be cheaper than solicitors) there was no such evidence in the 2020 LSB survey. Virtually complete regulatory protection for consumers, resulting from conveyancing services provided by regulated providers (solicitors, licensed conveyancers, and legal executives either employed and supervised in law firms or as authorised CILEX conveyancing practitioners).
<b>Scotland</b>	
<b>Current status of conveyancing profession</b>	Separate conveyancer profession adopted in 1997, abandoned in 2003 due to Justice Committee report finding inefficiencies due to low rate of participation and the relative complexity of educational and regulatory requirements.
<b>Market share of conveyancing professionals</b>	Uptake of conveyancing profession designation was only 11 persons.
<b>Impacts on conveyancing costs and/or service provision</b>	Lack of price transparency/availability is seen as a problem in the Scottish market for conveyancing services even in the absence of a separate profession. The CMA (March 2020) concluded: "The lack of information available online, together with the limited meaningful uptake on DCTs by firms, means that consumers have limited readily accessible information to compare prices. To do so they must instead contact and discuss their case with each solicitor directly, which increases search costs. This appears to confirm further the finding from our solicitor survey that firms do not consider price to be an important parameter of competition."
<b>New Zealand</b>	
<b>Current status of conveyancing profession</b>	Conveyancer profession introduced in 2006. Landonline digital conveyancing and land registration system operational since 2002.
<b>Market share of conveyancing professionals</b>	Estimates suggest there are 200-300 registered conveyancing practitioners operate in the market with 15,000 solicitors (or less than 2%).
<b>Impacts on conveyancing costs and/or service provision</b>	Speed of conveyancing transactions is favourable and attributable to digital conveyancing system. Costs of conveyancing transactions are relatively low (compared to other jurisdictions) but have increased over time, so it is unclear if any consumer savings have resulted from improved efficiencies of Landonline or conveyancing practitioners.
<b>Australia (Victoria and NSW)</b>	
<b>Current status of conveyancing profession</b>	As of 2012, all mainstream transactions take place via the eConveyancing system. Complications with the transaction require subsequent referral to a solicitor, potentially increasing costs and timeframe overall.
<b>Market share of conveyancing professionals</b>	Estimates suggest there are approximately 2,000 conveyancers' practices and approximately 11,500 solicitors' practices in Victoria and New South Wales. Conveyancers practices represent around 15% of all firms in the Victoria and New South Wales conveyancing markets.
<b>Impacts on conveyancing costs and/or service provision</b>	Conveyancing service fees are readily available to the consumer online with easy-to-use price comparison platforms. Fees by licenced conveyancers are slightly lower than those of solicitors.
<i>Source: Indecon analysis of international review</i>	

Details of other aspects of conveyancing services in different jurisdictions including entry requirements, regulation, consumer protection, and the status of e-conveyancing and the transparency of information are presented in the next table.

Table 2.3 International Experience – Summary by Jurisdiction

Scotland	
Entry Requirements	<b>Conveyancers:</b> Degree-level education and complete a one-year training period with a solicitor or independent qualified conveyancer. <b>Solicitors:</b> Educational requirement (most commonly LLB), Diploma in Professional Legal Practice, Traineeship.
Regulation	<b>Conveyancers:</b> Scottish Conveyancing and Executry Services Board (SCEBS), 75% Lay membership. Closed in 2003, powers transferred to Law Society of Scotland. <b>Solicitors:</b> Law Society of Scotland, which is self-governed.
Consumer Protection	<b>Conveyancers:</b> From 1997 to 2003, the SCEBS handled complaints as specified in Law Reform Act. These responsibilities were later transferred to the Law Society of Scotland. <b>Solicitors:</b> Law Society of Scotland handles complaints as specified in Law Reform Act. <b>Conveyancers:</b> Required to hold separate accounts for each client's money, ensuring the best interest rates are obtained. Not required to hold indemnity insurance or a compensation fund.
e-conveyancing	Introduced ARTL in 2007 for electronic registration of deeds. ScotLIS launched in 2018 for online land register searches. Digital Submission Service (DSS) implemented during COVID-19.
Transparency of Information	Online information availability is limited. Digital comparison tools are scarce, making it challenging for consumers to compare prices.
England and Wales, Northern Ireland	
Entry Requirements	<b>Conveyancers:</b> Level 4 and Level 6 Diplomas in Conveyancing Law and Practice, or equivalent qualifications. Practical experience required. <b>Solicitors in England and Wales:</b> Legal education (LLB or non-Law degree plus Graduate Diploma in Law), Legal Practice Course (LPC), and qualifying work experience. <b>Solicitors in NI:</b> Legal education, Diploma in Professional Legal Studies taken within traineeship period.
Regulation	<b>Conveyancers:</b> Council for Licensed Conveyancers (CLC) <b>Solicitors:</b> Solicitors Regulation Authority (SRA) However, either can regulate a firm with employees of either profession. Both are self-funded. <b>Solicitors in NI:</b> Law Society of Northern Ireland (LSNI)
Consumer Protection	Varies depending on regulator of firm. <b>CLC:</b> Complaints handled by CLC and Legal Ombudsman, depending on their nature. <b>SRA:</b> Complaints handled by SRA and Legal Ombudsman, depending on their nature. <b>LSNI:</b> All complaints handled by Law Society of Northern Ireland <b>CLC:</b> Required to hold professional indemnity insurance, with recommended agreement including set minimum coverage and maximum excesses. CLC operates compensation fund covering both firms and individuals. <b>SRA:</b> Required to hold professional indemnity insurance that is adequate and appropriate. SRA operates compensation fund covering both firms and individuals. <b>LSNI:</b> Master Policy for professional indemnity insurance. LSNI operates compensation fund.
e-conveyancing	Digitalization of conveyancing in the United Kingdom has been relatively slow. COVID-19 pandemic has accelerated this process, including plans for a fully digital conveyancing system and the development of e-signatures, cryptographic ID checking, digital property logbooks, and the BASPI dataset.
Transparency of Information	Conveyancing fee quotes are available online for many providers. Both the CLC and SRA implement transparency measures covering prices. The CLC also requires information on the complaints process to be available, while the SRA requires information on the experience of practitioners to be available.
New Zealand	
Entry Requirements	<b>Conveyancers:</b> Diploma of Conveyancing or equivalency assessment (requires 5+ years conveyancing experience in New Zealand and a law or legal executive qualification). <b>Solicitor:</b> Bachelor of Laws degree, a Professional Legal Studies Course, certificate of character, certificate of current practising, be admitted to the roll of barristers and solicitors.
Regulation	<b>Conveyancers:</b> New Zealand Society of Conveyancers (NZSoC) regulates and represents conveyancing practitioners in New Zealand <b>Solicitor:</b> Since 2008 the New Zealand Law Society has been responsible for the regulation of all solicitors in the country.
Consumer Protection	The first body to which a consumer complaint is made is either the New Zealand Law Society or New Zealand Society of Conveyancers <b>NZLS:</b> Regulates solicitors and those employed by law firms (including conveyancers). <b>NZSoC:</b> Regulates conveyancers. There exist two further bodies who regulate the legal professions, the Legal Complaints Review Officer, and the New Zealand Lawyers and Conveyancers Disciplinary Tribunal. <b>Conveyancers:</b> Practitioners and incorporated firms are required to carry professional indemnity insurance to protect their clients. The NZSoC operates a compensation fund. <b>Solicitors:</b> Not required to hold professional indemnity insurance, though levels of insurance must be disclosed. Law Society operates a compensation fund.
e-conveyancing	The e-conveyancing system, Landonline, introduced in 2002 and made mandatory in 2009. Concerns about fraud and increased regulatory requirements have led to a shift towards lawyers handling the digitalization process.
Transparency of Information	Regulators require price transparency in terms of fair and reasonable costs and details of how prices are calculated.
Australia	
Entry Requirements	<b>Conveyancers:</b> Diploma of Conveyancing or accredited conveyancing course. In some states, work without a license is possible if working within a conveyancing business operated by a licensed conveyancer. <b>Solicitor:</b> Approved law degree, practical legal training course or supervised traineeship, admission to Roll of Lawyers, practising certificate
Regulation	Regulation of solicitors and conveyancers varies by state, and it is managed by regional societies such as the Law Society of NSW. <b>eConveyancing:</b> Australian Registrars National Electronic Conveyancing Council (ARNECC)
Consumer Protection	<b>Conveyancers:</b> Complaints made to local regulators in each state. Australian Institute of Conveyancers also handles complaints, though not a regulator. <b>Solicitors:</b> Complaints made to local regulators in each state. Some states have additional statutory bodies that handle complaints, though they do not set standards. <b>Conveyancers:</b> Required to hold professional indemnity insurance. Regulators maintain compensation funds in case of misappropriation. <b>Solicitors:</b> Required to hold professional indemnity insurance. Regulators maintain compensation funds in case of misappropriation.
e-conveyancing	National eConveyancing system to electronically prepare and lodge property dealings, transmit settlement funds, and eliminate the need for physical attendance at property settlements. Several states require its use for mainstream transactions.
Transparency of Information	Conveyancers must disclose estimated costs and billing arrangements prior to engagement. However, there is no requirement to post this publicly prior to client contact.
<b>Source: Indecon</b>	

## 2.7 Summary of key findings

As part of the study, we examined a number of comparator countries which have introduced a profession of conveyancer. The markets we reviewed were England and Wales, Northern Ireland, Scotland, New Zealand, and Australia (with particular emphasis on Victoria and New South Wales). Specialist conveyancing practices provide their services both alongside and in competition with solicitors, and in most cases their market share is small. Because of the low uptake to the profession in Scotland, new entrants to the conveyancing profession are no longer permitted. The key findings are summarised in Table 2.4.<sup>268</sup> In some comparator countries, transparency of information is a regulatory requirement, while in other cases, it has developed as a result of market forces.

Table 2.4: Summary of conveyancing services in other jurisdictions	
Country	Overview of key features of conveyancer services
<b>Scotland</b>	<ul style="list-style-type: none"> <li>Conveyancing profession began practising in 1997 but discontinued in 2003 due to lack of participation (small number still practising but no new entrants).</li> <li>This may have been related to lack of transparency in market or due to other factors such as the bundling of conveyancing and estate agency fees in the Scottish market. On the issue of transparency, a Competition and Markets Authority 2020 Report of the legal profession found that 20% of conveyancing solicitors in Scotland did not have a website and only 6% published price information.</li> <li>Qualified conveyancing solicitors generally conduct this type of practice and are registered with the Law Society of Scotland.</li> <li>Scottish legislation had required conveyancers to be educated to degree level and serve a training period of one year with a solicitor or independent qualified conveyancer before being able to register with the Scottish Conveyancing and Executry Services Board (SCESB).<sup>269</sup></li> <li>Conveyancing solicitors specialise (many are also estate agents) and can advertise their properties for sale via Property Centres.</li> <li>Uptake of conveyancing profession designation was only 11 persons.</li> <li>Typical conveyancing costs were estimated at around €1,000 and timeframe involved 4-9 weeks.</li> </ul>
<b>England and Wales and Northern Ireland</b>	<ul style="list-style-type: none"> <li>Licensed conveyancers began operating in 1987.</li> <li>Licensed conveyancers regulated by CILEX, SRA, and CLC.<sup>270</sup> These can be conveyancing solicitors or dedicated, licensed professional conveyancers.</li> <li>Conveyancing technicians and paralegals provide conveyancing support to solicitors.</li> <li>CLC requires cost information to be displayed on practitioners' websites and provides specific guidance to enable compliance.</li> <li>In Northern Ireland, conveyancing solicitors specialise, and no separate conveyancer profession operates.</li> <li>Typical costs around €900. Typical timeframe for conveyancing is 8-12 weeks.</li> <li>Licensed conveyancers supply around 9% of consumers in the UK conveyancing services market.</li> </ul>
<b>New Zealand</b>	<ul style="list-style-type: none"> <li>Licensed conveyancers began practising in 2007. Registered conveyancers and conveyancing solicitors are licensed to conduct conveyancing services.</li> <li>Relatively well-developed e-conveyancing system (Landonline).</li> <li>Estimates suggest there are 200-300 registered conveyancing practitioners operate in the market with 15,000 solicitors (or less than 2%).</li> <li>Typical costs estimated at around €485 - €625. Average timeframe is around 4 weeks.</li> </ul>
<b>Australia (Victoria and New South Wales)</b>	<ul style="list-style-type: none"> <li>Licensed conveyancers providing conveyancing services began practising in 1989.</li> <li>Relatively well-developed eConveyancing system.</li> <li>Estimates suggest there are approximately 2,000 conveyancers' practices and approximately 11,500 solicitors' practices in Victoria and New South Wales. Conveyancers practices represent around 15% of all firms (including solicitors) in the Victoria and New South Wales markets.</li> <li>Typical conveyancing costs estimated at around €567.</li> </ul>

*Source: Indecon analysis*

<sup>268</sup> Note: The term "conveyancing solicitors" is used throughout this report to describe solicitors who perform conveyancing services generally. It is used to distinguish those individuals from "conveyancers", to whom we refer as those who are professionally licenced conveyancers who operate as a separate profession and do not perform other types of legal services.

<sup>269</sup> Scottish Parliament (2002), Justice 1 Committee, 11th Report 2002, Report on Regulation of the Legal Profession Inquiry, Volume 1: Report and evidence, para 241

<sup>270</sup> CILEX (Chartered Institute of Legal Executives), SRA (Solicitors Regulation Authority), CLC (Council for Licensed Conveyancers)

## 3 Analysis of Market for Conveyancing Services in Ireland

### 3.1 Introduction

In this section, we examine the market for conveyancing services in Ireland. This considers the speed and costs of conveyancing services. Further insights on how legal firms secure conveyancing business are discussed in Section 6 of the report. New evidence obtained by Indecon of the legal profession informs the analysis in this chapter. It has also been informed by a valuable consumer survey undertaken on behalf of the LSRA.

### 3.2 Speed of conveyance in Ireland

The average time to complete a conveyance for a domestic property purchase is 9.5 weeks.

	Average	Median
<b>No. of weeks</b>	9.5	8.0

*Source: Indecon confidential information request to legal practitioners*

It is also important to consider the variation between legal practitioners in relation to the typical time required to complete a conveyance. The analysis in Table 3.2 shows that over 87% of conveyancing services are completed within three months.

	%
<b>Less than 1 month</b>	11.3%
<b>2-3 months</b>	76.1%
<b>4-5 months</b>	9.9%
<b>6-7 months</b>	2.8%
<b>8 months+</b>	0.0%

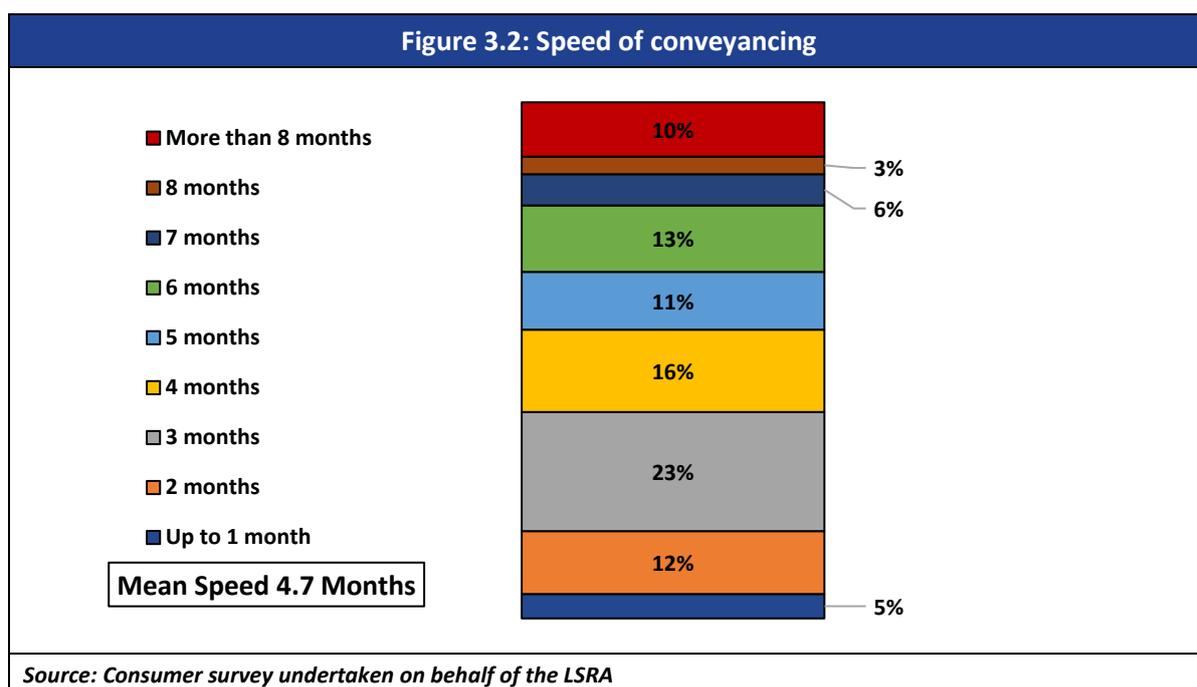
*Source: Indecon confidential information request to legal practitioners*

Solicitors' views on the factors influencing the speed of conveyancing services and associated delays are presented in the next figure.

**Figure 3.1: Factors outside the solicitor's control which may delay the time required to complete conveyancing for domestic property purchases**

<p>"Bank delays in drawdown."</p> <p>"Issue of loan approval."</p> <p>"Clients procuring and producing up-to-date documents from third parties required for sale."</p> <p>"Banks delays in releasing title deeds."</p> <p>"Dealing with the other side solicitor and the lending institution and title issues."</p> <p>"While there are occasions when solicitors are dilatory most delay occurs from non-legal causes."</p> <p>"Delays on the part of lending institutions in releasing deeds can delay the time required to complete a conveyancing transaction."</p> <p>"What appears on a survey if there are any planning issues or boundary issues these can take months to resolve and may involve third parties and third-party solicitors."</p> <p>"Planning issues, property taxes, land registry mapping issues."</p> <p>"Main delay is getting funds from loan companies. This creates great uncertainty especially when a chain of sales is involved."</p> <p>"Contracts issued without full supporting documentation to include NPPR, LPT, planning and compliance resulting in extensive pre contract queries."</p> <p>"Time taken for (i) issue of loan offer from funder (ii) time taken to get title deeds from funder."</p>
<p><b>Source: Indecon confidential information request from legal practitioners</b></p>

Alternative estimates of the time for completion of conveyancing are presented in the next figure based on consumer research undertaken on behalf of the LSRA. This shows the distribution of the speed of conveyancing reported in the sample. The average speed amongst respondents is 4.7 months (around 20 weeks), higher than the estimate from the legal profession. However, 40% of consumers report that the transaction was completed within three months or less. Alternative estimates of the timescale for completion of conveyancing transactions is indicated by a 2023 survey of 534 auctioneers and estate agents published by the IPAV, the Institute of Professional Auctioneers and Valuers. This suggested that on average, conveyancing of a property took about four months to complete, of which over 10.4 weeks was between a sale being agreed, contract signing and a further 5.3 weeks between signing and the closing of a sale. 60% of surveyed respondents said that the delays in securing documentation and problems with deeds were the biggest reason for conveyancing delays. The Sellers Legal Pack for Property Buyer's Bill 2022 due to reach Second Stage in Dáil Éireann on 5<sup>th</sup> October, is designed to make the conveyancing process faster and more efficient. This will gather documentation up front prior to a property going on the market.



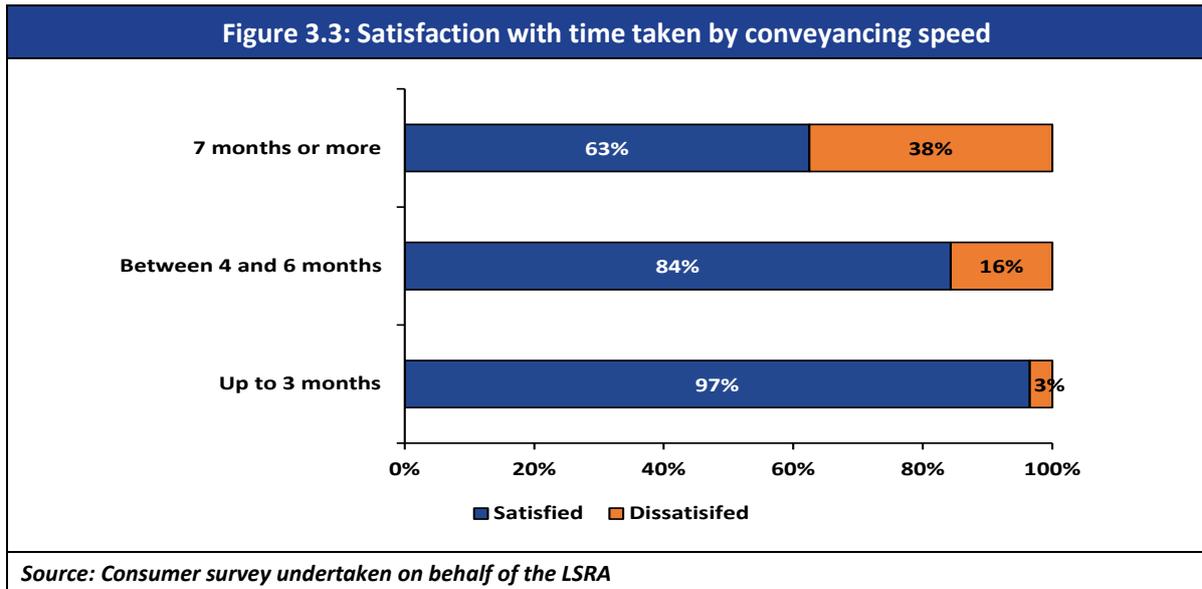
The type of build and property can impact on the conveyancing speed as Table 3.3 shows. New builds take 1.6 months more than a second-hand build, and a terraced house takes longer on average than other types of property.

**Table 3.3: Average speed of conveyancing by build and property type**

	Average conveyancing speed (months)
<b>Build type</b>	
<i>New build</i>	5.8
<i>Second-hand build</i>	4.2
<b>Property type</b>	
<i>Detached house</i>	4.8
<i>Semi-detached house</i>	4.4
<i>Terraced house</i>	5.1
<i>Flat or apartment</i>	4.4
<i>Other</i>	3.0

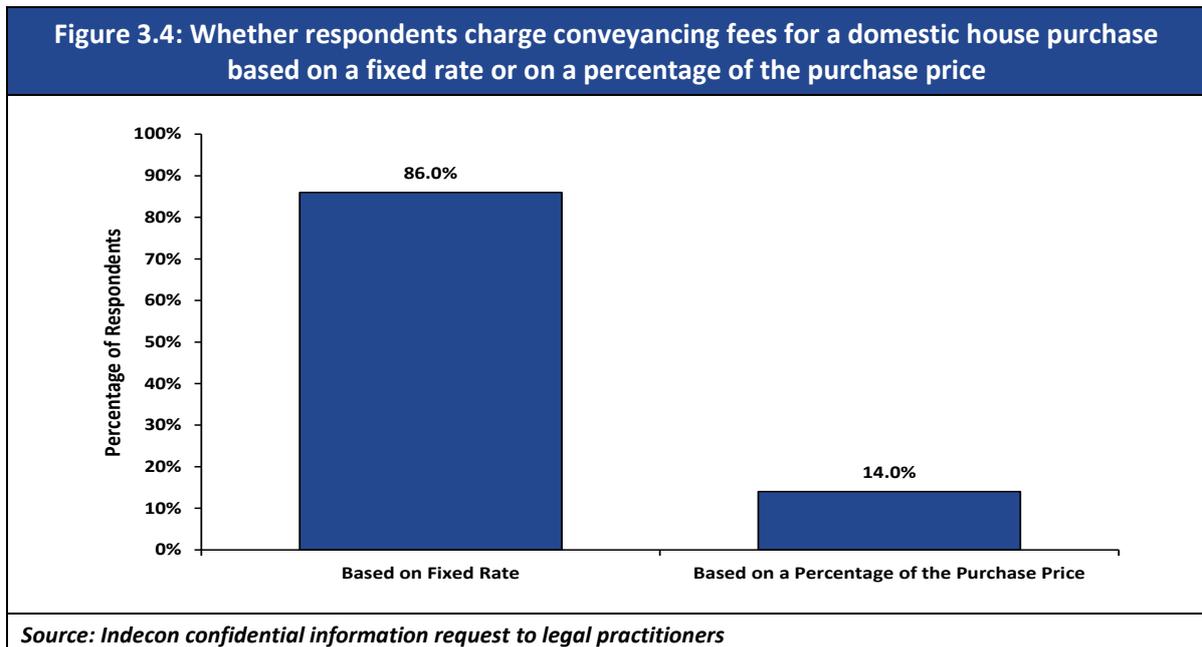
*Source: Consumer survey undertaken on behalf of the LSRA*

Consumer satisfaction with the time taken is greater for respondents who had shorter conveyancing than those that took longer. As shown in Figure 3.3, 97% of those whose conveyancing took up to three months said they were satisfied. In contrast, only 63% were satisfied when the process took seven months or more.



### 3.3 Costs and pricing structure for conveyancing services

The Indecon survey of the legal practitioners suggests the majority of respondents charge their clients “based on a fixed rate” (86%) for a typical domestic house purchase. Very few indicated they charge their clients “based on a percentage of the purchase price” (14%).



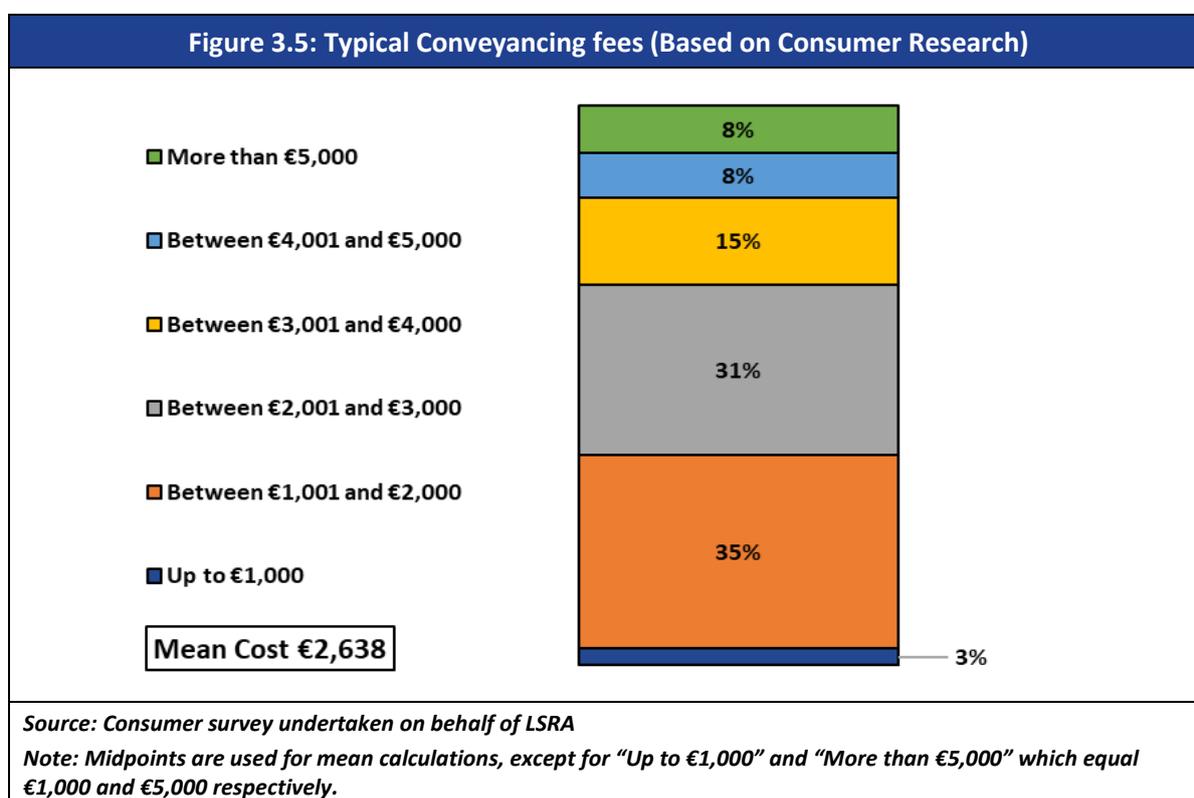
Initial desk research conducted by Indecon indicates that there is no one source that provides a definitive figure for the average conveyancing costs in Ireland. We also note that costs are likely to differ by the value of the property and the complexity of cases. Given this diversity and the absence of any comprehensive source of evidence on costs, it is not surprising that cost estimates vary depending on the research method and samples involved. For example, a small number of solicitors offer online quotations such as presented on the [auctioneera.ie](http://auctioneera.ie) website. Available evidence suggest average quotes of €1,707 but range from €1,029 – 2,588. Alternative estimates were obtained from Indecon’s survey of legal firms. The average professional fees for the sample of legal firms surveyed

suggests fees of €1,839 for a typical residential house conveyancing transaction with a median of €1,750.<sup>271</sup> There were, however, some firms who charged much higher fees. It must be noted that the lack of price transparency creates a search cost for consumers.

	<b>Average</b>	<b>Median</b>
<b>Range €</b>	1,839	1,750
<b>Range as % of purchase price</b>	1.14	0.68

*Source: Indecon confidential information request to legal practitioners*

Alternative data of conveyancing costs in Figure 3.5 shows the range in costs is evident from a consumer survey completed for the LSRA. This consumer research suggests a slightly higher average price of €2,638 among the sample. This excludes stamp duty but may include VAT and possibly some disbursements. In the main report some indicative elements of the components of conveyancing costs are presented.



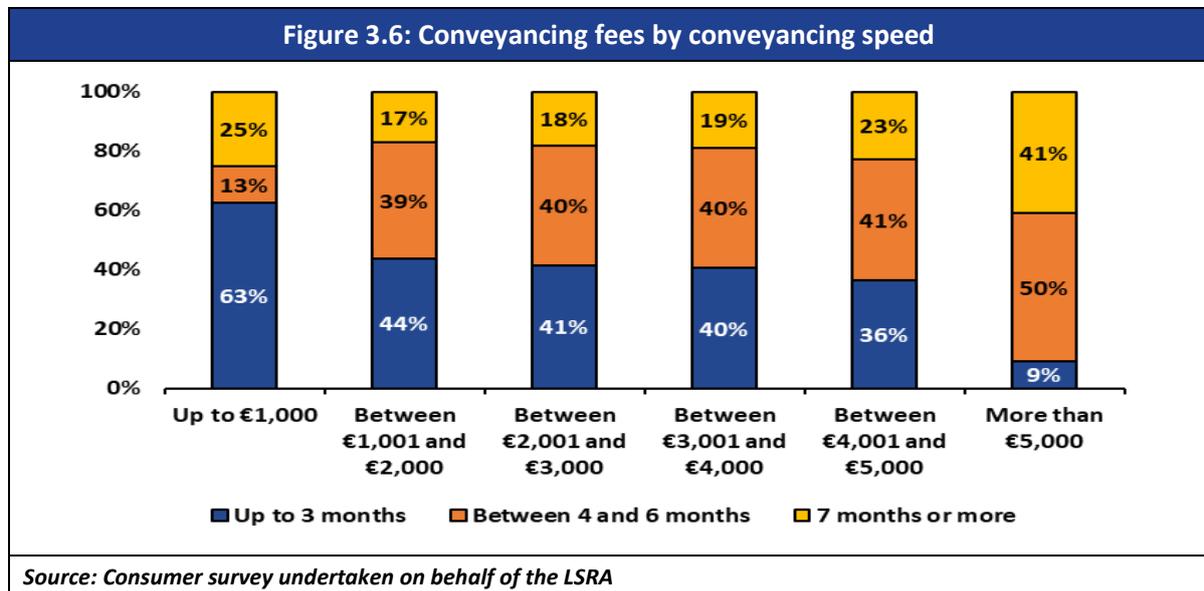
The type of build and the type of property can have some small impact on the conveyancing fee as shown in Table 3.5. Second-hand builds cost slightly more than a new build, and flats and apartments cost slightly more than other property types.

<sup>271</sup> It must be noted that these figures are net of VAT and outlays. VAT is charged at 23%.

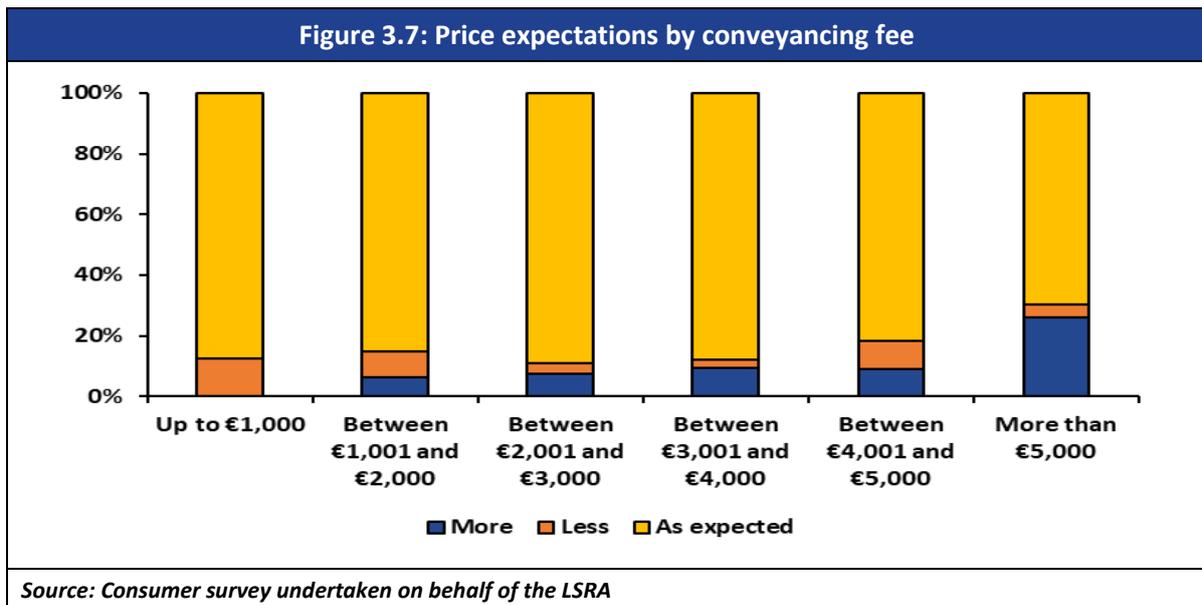
Table 3.5: Average fees of conveyancing services by build and property type	
	Average conveyancing fee (€)
<b>Build type</b>	
<i>New build</i>	2,605
<i>Second-hand build</i>	2,691
<b>Property type</b>	
<i>Detached house</i>	2,797
<i>Semi-detached house</i>	2,600
<i>Terraced house</i>	2,468
<i>Flat or apartment</i>	2,808
<i>Other</i>	2,500

*Source: Consumer survey undertaken on behalf of the LSRA*

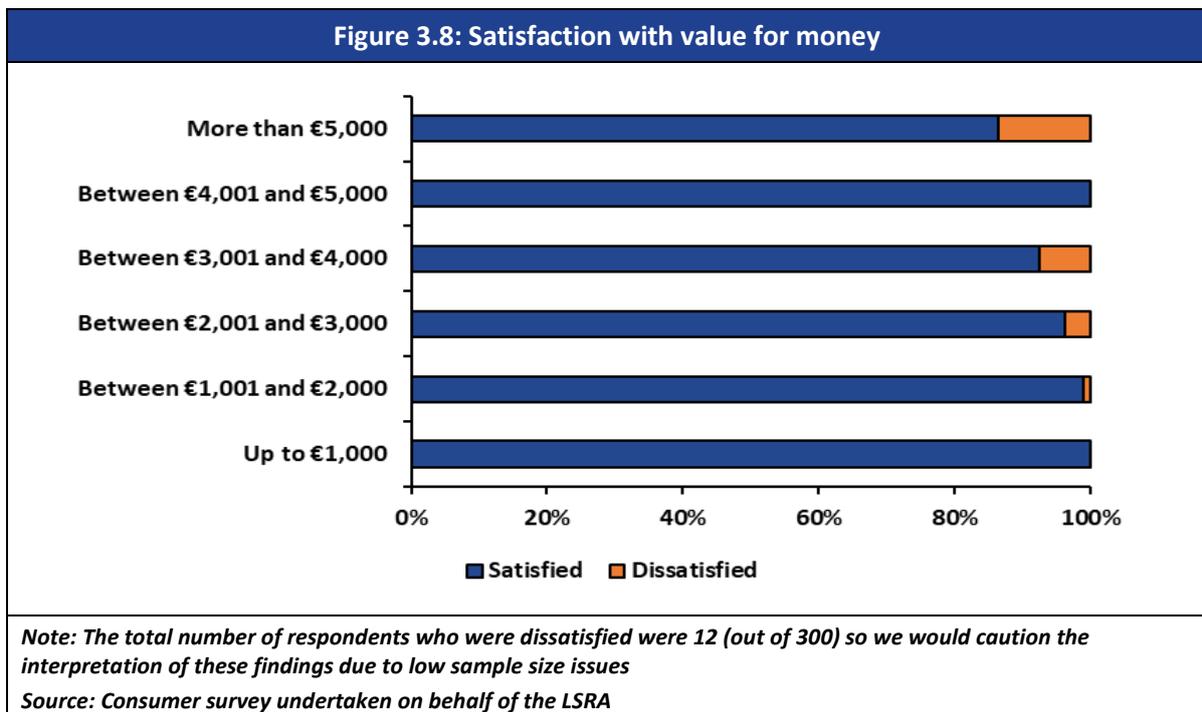
Figure 3.6 shows the relationship between conveyancing costs and times. They are positively correlated meaning that as the cost increases so does the time. Forty-one per cent of those paying more than €5,000 will see a conveyancing process of seven months or longer. In comparison, only 25% of respondents who pay up to €1,000 will see a conveyancing process of seven months or longer.



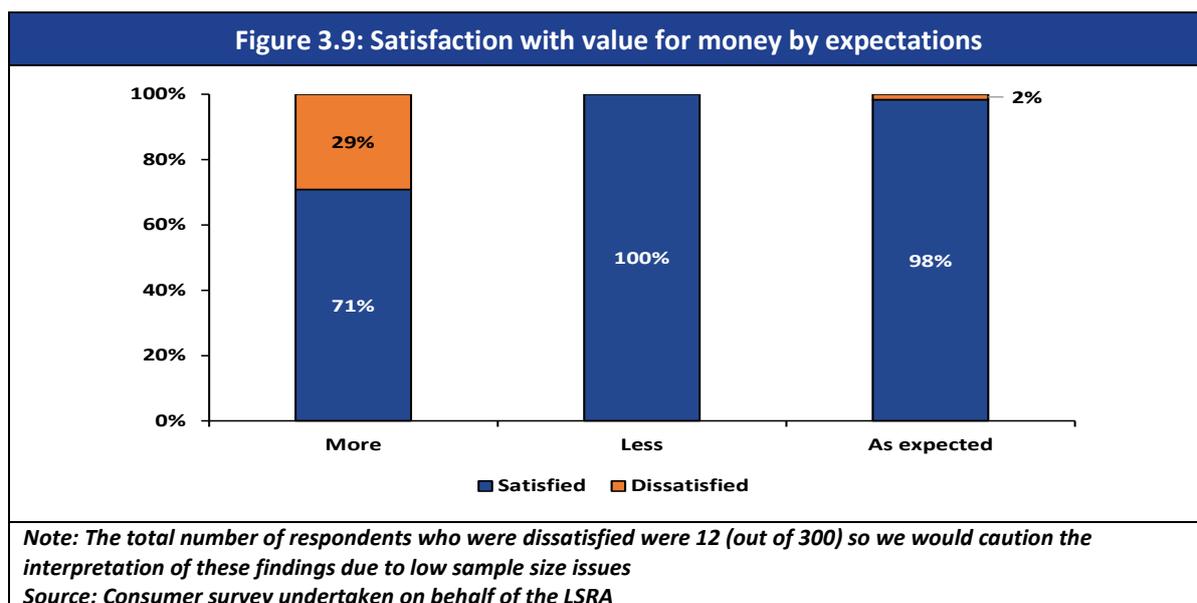
Most respondents received a conveyancing price which was “as expected”. However, Figure 3.7 shows that as the price increases, more respondents state it is more than they expected.



The majority of respondents were satisfied with the value for money received but Figure 3.8 shows that as prices get higher, levels of dissatisfaction increase.



Satisfaction with the value for money is in part explained by expectations. Figure 3.9 shows that those who received a price less than or equal to what they expected were satisfied with the value for money nearly 100% of the time. In comparison, 29% of those who received a price more than they had expected felt they were dissatisfied with the value for money.



The overall cost of conveyancing for consumers is based on different elements of costs including professional fees and registration fees. An indicative outline of some costs can be gleaned by the illustrative example which was included on the website of one solicitor's practice in Ireland. While this example shows lower professional fees than faced by many consumers it is interesting as a means of highlighting the overall components of costs. (See Table 3.6.)

<b>Table 3.6: Indicative Conveyancing Costs (Different Components – Illustrative Example)</b>	
<b>Solicitors fees for buying a house</b>	€
<i>Professional fee</i>	990
<i>Registration fee (to set value of property)</i>	400-800
<i>Registration fee (to register your mortgage)</i>	175
<i>Copy folio and file plan</i>	40
<i>Search fees</i>	67
<i>Bank eft fees</i>	25
<i>Law clerk fees</i>	15
<i>Registered post fees</i>	20
<i>commissioner for oaths</i>	20
<i>Printing and postage (incl VAT)</i>	15
<i>Stamp duty @ 1%</i>	
<i>Total Solicitor Fee (Excluding Registration Fee)</i>	1,192
<b>Solicitors fees for selling a house</b>	
<i>Professional fee</i>	990
<i>Copy folio and file plan</i>	40
<i>Property registration fee</i>	40
<i>Bank eft fees</i>	25
<i>Law clerk fees</i>	15
<i>Registered post fees</i>	20
<i>commissioner for oaths</i>	60
<i>Printing and postage (incl VAT)</i>	15
<i>Total Solicitor Fee</i>	1,205

**Source:** Breakdown of Costs from Website of one Solicitors Practice in Ireland

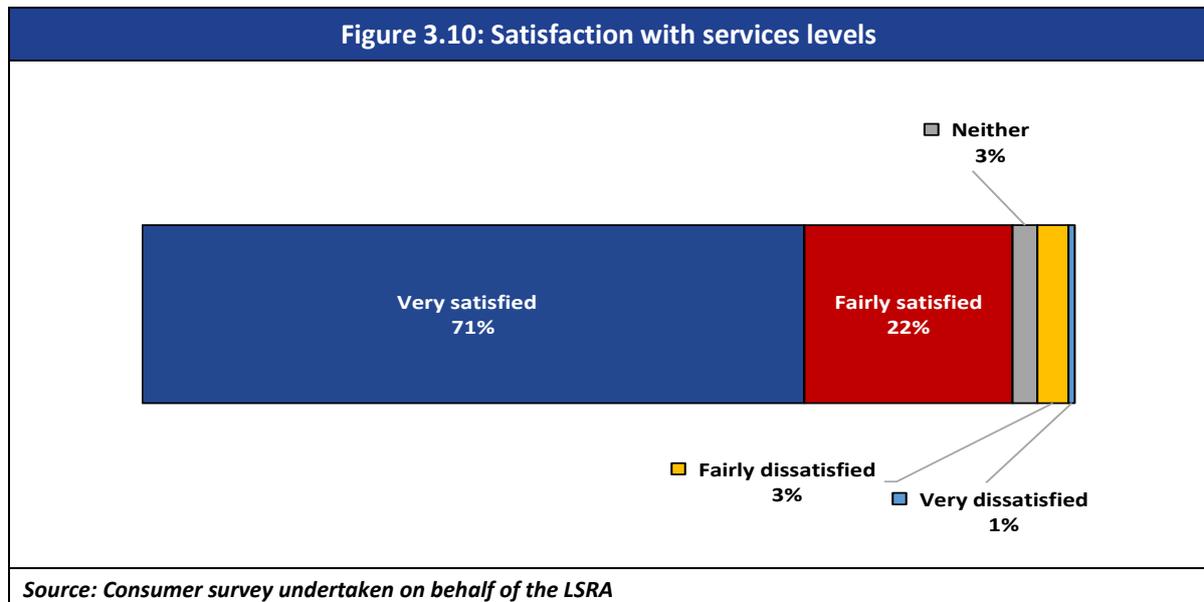
The average fee for conveyancing services for those who were dissatisfied is significantly greater than the average fee of those who were satisfied, as per Table 3.7. The average time taken is also greater for those that report being dissatisfied with the value for money.

	Average fee (€)	Average speed (months)
<b>Satisfied</b>	2,599	4.6
<b>Dissatisfied</b>	3,450	5

*Source: Consumer survey undertaken on behalf of the LSRA*

### 3.4 Levels of consumer satisfaction

The level of consumer satisfaction with conveyancing services in Ireland is very high. Figure 3.10 shows that 93% of consumers suggested they were satisfied while only 4% indicated any level of dissatisfaction. This is likely to reflect the quality of conveyancing services offered. There are, however, a small number of consumers who are not satisfied with some aspects of conveyancing as reflected in complaints to the LSRA. In 2021, 98 complaints were received by the LSRA concerning inadequate standard of legal services in the area of conveyancing. This compares with 112 in 2020. Twelve complaints were received alleging that excessive costs had been sought for conveyancing services and this compares to 18 in the previous year. Every valid complaint is a matter of concern; however, these represent only a very small number of complaints compared to the number of conveyancing transactions implemented.



There is some evidence in the survey research conducted for the LSRA of a link between satisfaction with a conveyancing service and its cost. Consumers who paid higher costs were more likely to say they were dissatisfied with the service they received. The total number of survey respondents who were dissatisfied was small, and we would recommend caution in the interpretation of these findings.

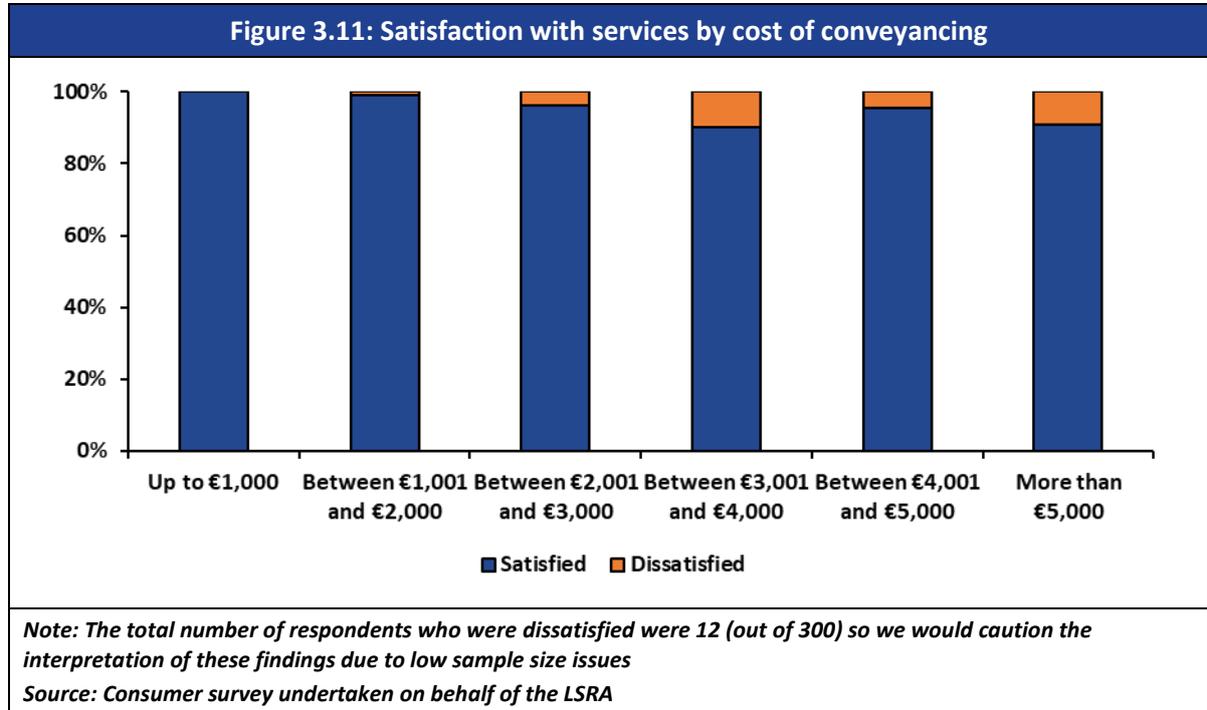
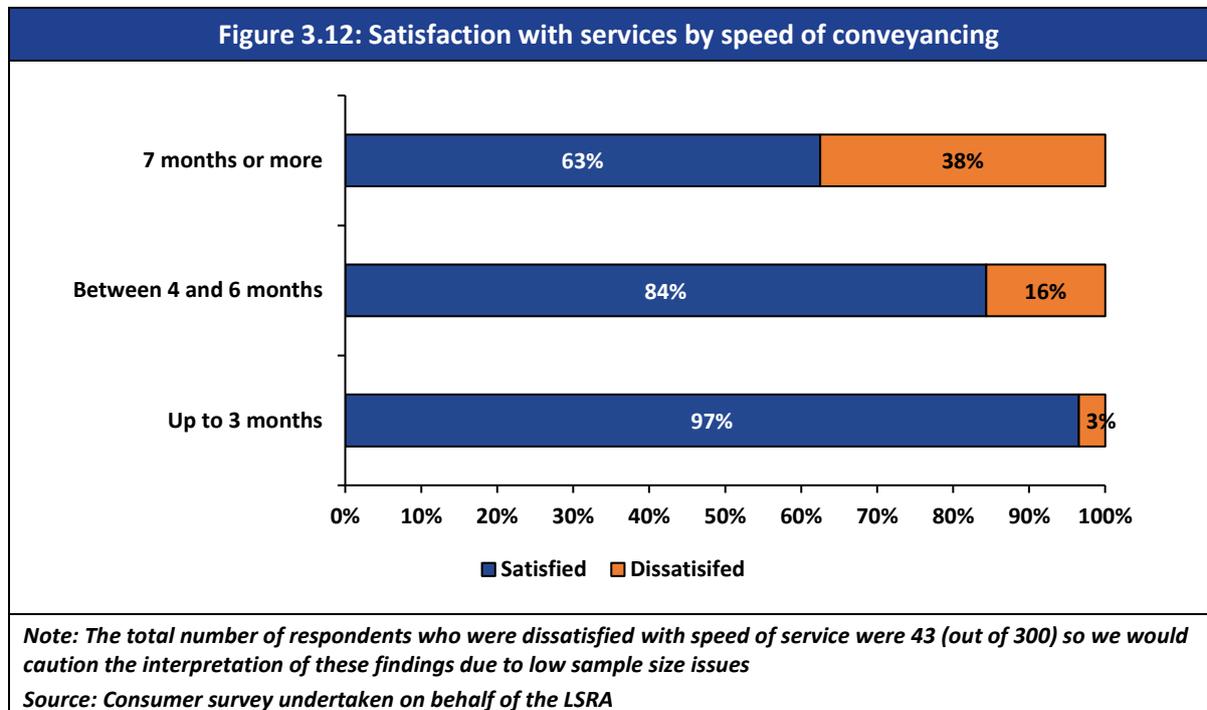


Figure 3.12 shows the relationship between satisfaction with conveyancing services and speed. Respondents who experienced a faster process were more likely to state they were satisfied with the service they received.

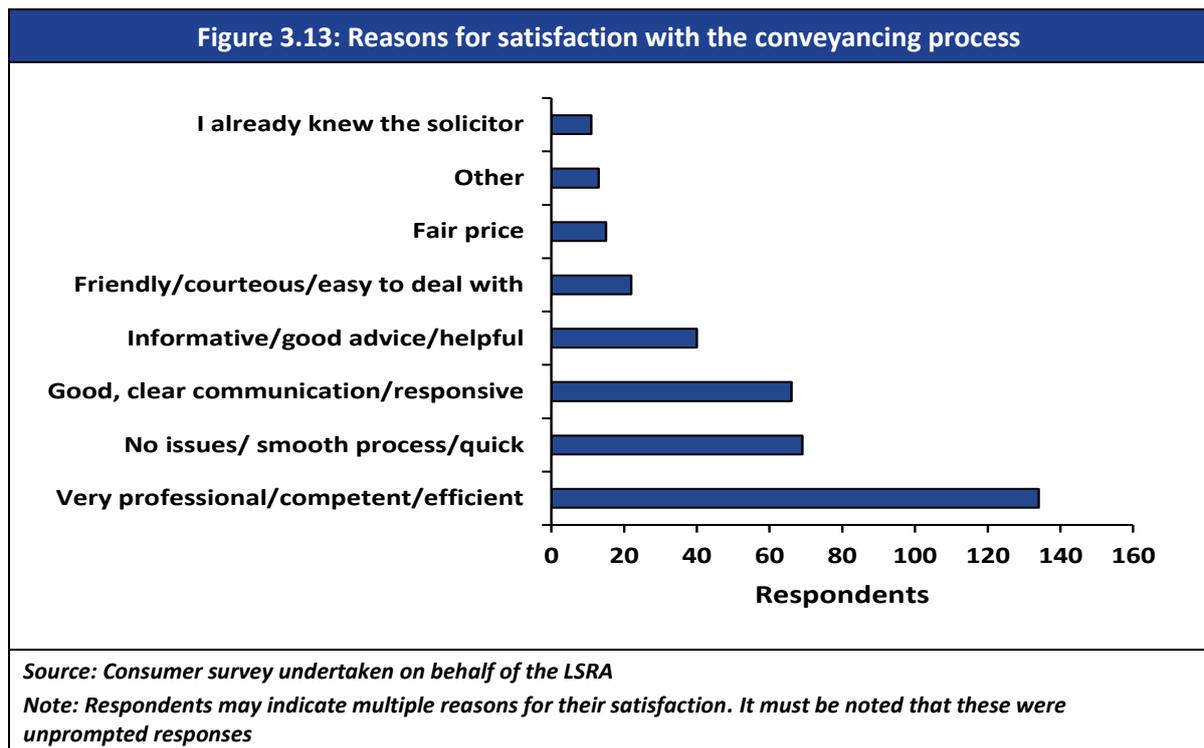


The average cost and speed of conveyancing for satisfied and dissatisfied respondents is outlined in Table 3.8. Satisfied respondents also had lower costs and a faster completion time compared to those who were dissatisfied.

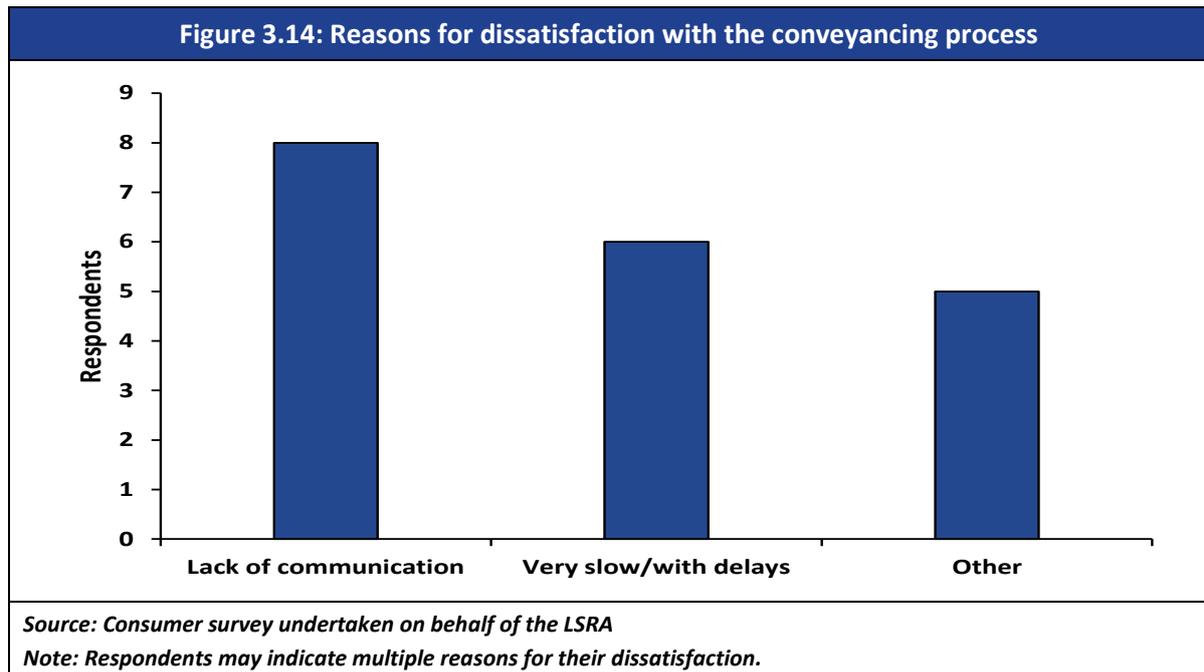
Table 3.8: Average cost and speed of conveyancing by satisfaction with service		
	Average fee (€)	Average speed (months)
Satisfied	2,598	4.6
Dissatisfied	3,409	5.2

*Source: Consumer survey undertaken on behalf of the LSRA*

Figure 3.13 shows that the most common reason for satisfaction amongst respondents was the provision of “very professional/competent/efficient” conveyancing services. This was followed by “no issues/smooth process/quick”. Only a very small percentage of consumers indicated “fair price” as the reason for being satisfied.



The reasons for dissatisfaction include a “lack of communication” and “very slow/with delays”. Figure 3.14 outlines the small number of respondents who cited these issues. The overall survey had 300 responses and 12 individuals indicated they were dissatisfied or very dissatisfied.



Complaints relating to the provision of conveyancing services represent about one in four of those received by the LSRA in relation to inadequate legal services. Almost one third of complaints of excessive costs (18 out of 58) related to conveyancing work.<sup>272</sup> This represents a very small share of the overall number of transactions involving conveyancing services in 2022.

### 3.5 Issues with conveyancing

Consumer research undertaken by the LSRA indicated a range of issues identified during the conveyancing process. Among those who had issues, planning/boundary issues were the most common followed by mortgage and communication issues. This led to the need for additional advice by 54% of those consumers where there were issues. These issues may require some additional legal services supplied by solicitors as part of the conveyancing service. However, they are more likely to require specialist advice from other professionals such as planners or architects or financial advisers, but there would be a need for solicitors or whoever is handling the conveyancing to interact with these professionals.

<sup>272</sup> LSRA Annual Report 2022

Table 3.9: Issues During the Conveyancing Process	
Amongst those who had issues:	% with issues during the conveyancing process
Planning issues/boundaries issues	14%
Mortgage issues	9%
Communication issues	8%
Issues of legal significance raised by other party's solicitor	7%
Issues with deeds to the property	5%
Tax issues	4%
Issues with management fees	4%
Issues to do with restrictions on the 'enjoyment' of the property (i.e., no animals allowed in an apartment, etc.).	2%
Dispute or uncertainty related to ownership of the property	2%
Other	5%
None	58%

*Source: Consumer survey undertaken on behalf of the LSRA*

Figure 3.15 shows the relationship between those experiencing issues and the cost of the conveyancing process. Respondents who experienced any of the issues were more likely to have paid more for their conveyancing. Those who paid in excess of €5,000 were 61% more likely to experience an issue. This compares to those who paid up to €1,000, who were only 13% likely to experience an issue.

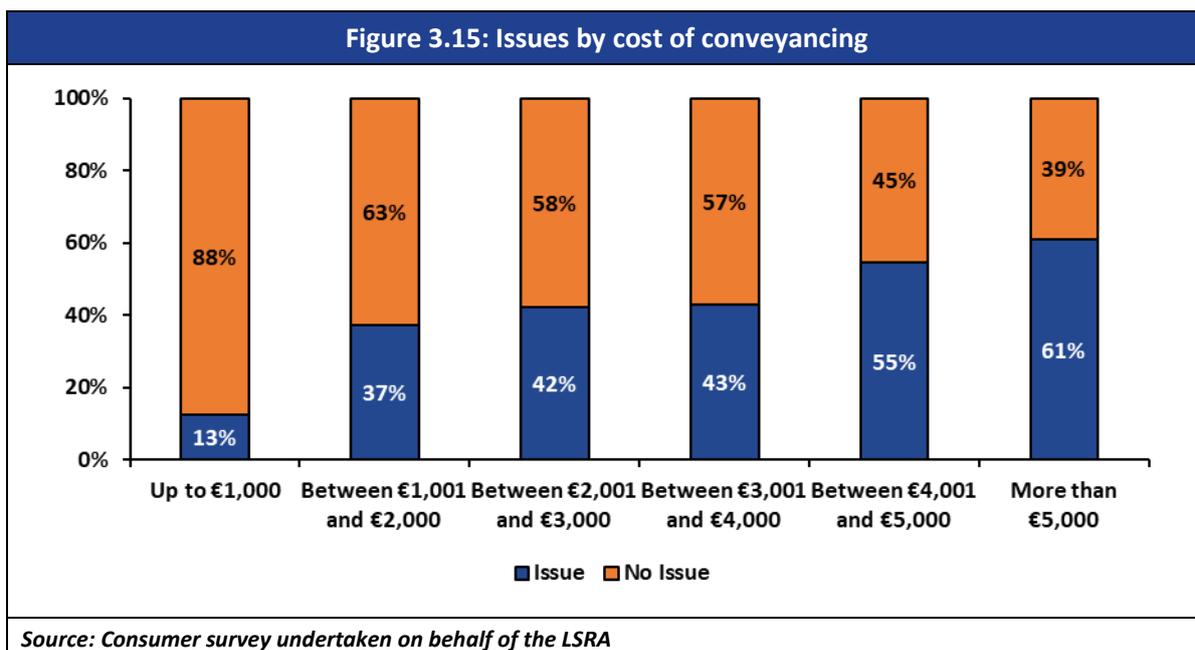
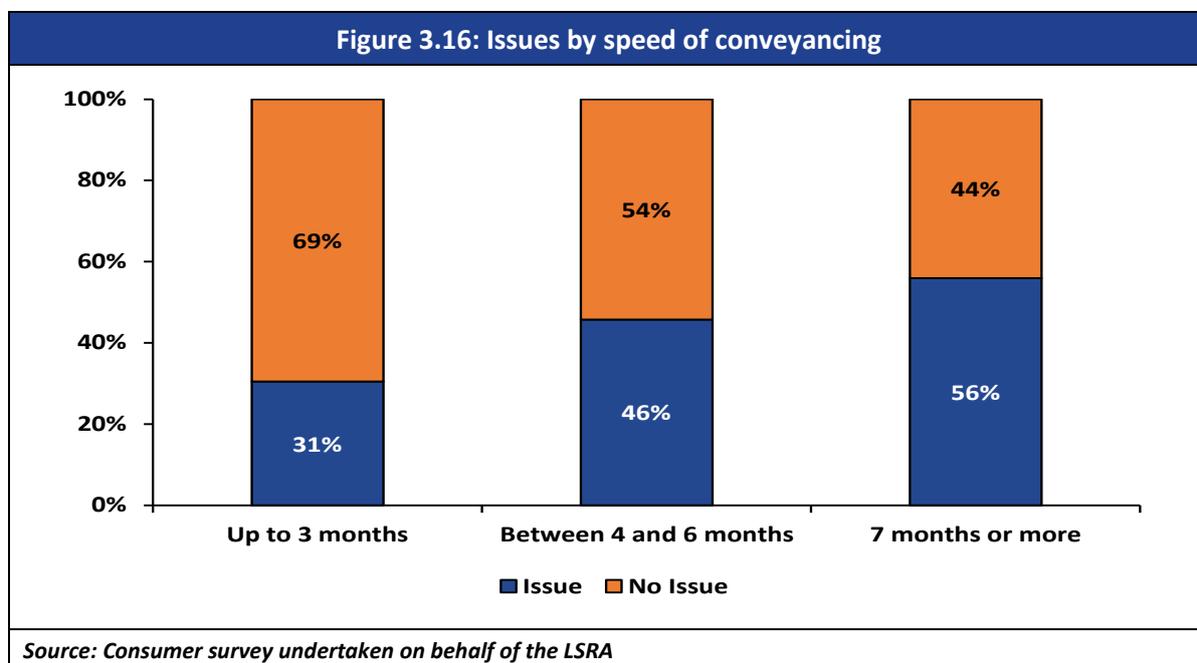


Figure 3.16 shows the relationship between experiencing issues and the speed of the conveyancing service. Respondents who experienced any of the issues outlined previously were more likely to experience a longer conveyancing process. About 56% of individuals with conveyancing processes of seven months were likely to experience an issue. This is compared to conveyancing processes of up to three months, where only 31% were likely to experience an issue.



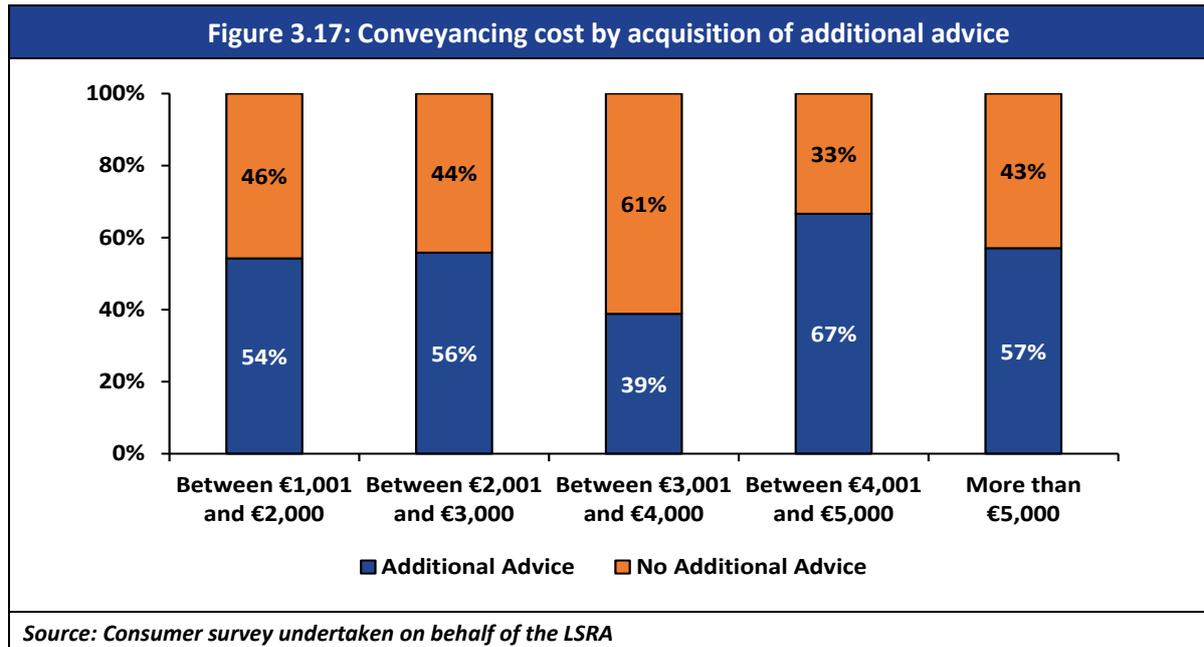
The average cost and speed of conveyancing for respondents who experienced or did not experience issues are outlined below. Table 3.10 shows that respondents who experienced issues also had higher average costs and a longer average conveyancing process compared to those who did not experience issues.

**Table 3.10: Average cost and speed of conveyancing by experience of issues**

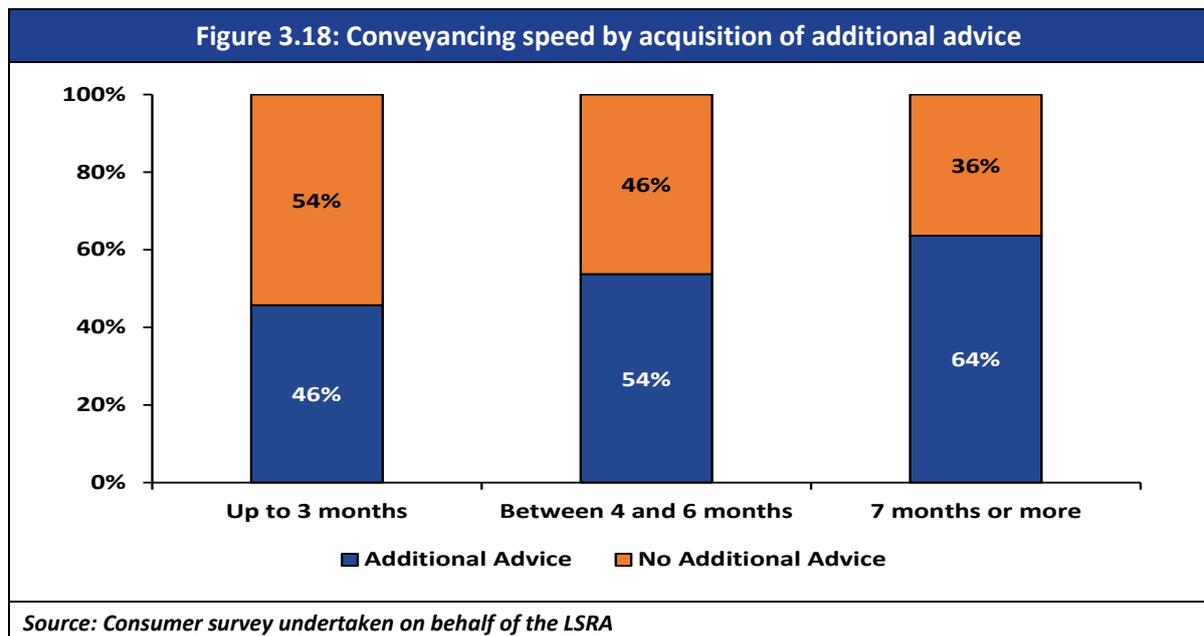
	Average cost (€)	Average speed (months)
Issue	2,906	5.1
No Issue	2,481	4.3

Source: Consumer survey undertaken on behalf of the LSRA

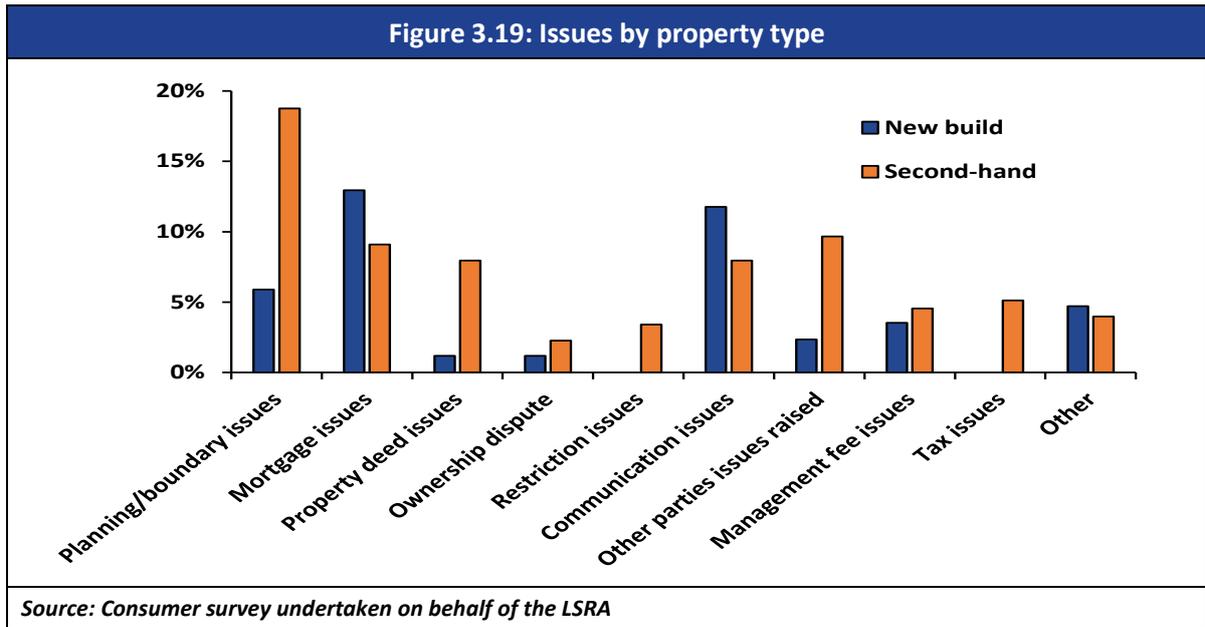
The respondents who experienced issues were asked had they used additional services due to these issues. Figure 3.17 shows the cost of conveyancing between those who did and those who did not. There is little indication that using additional services is associated with a higher price for conveyancing.



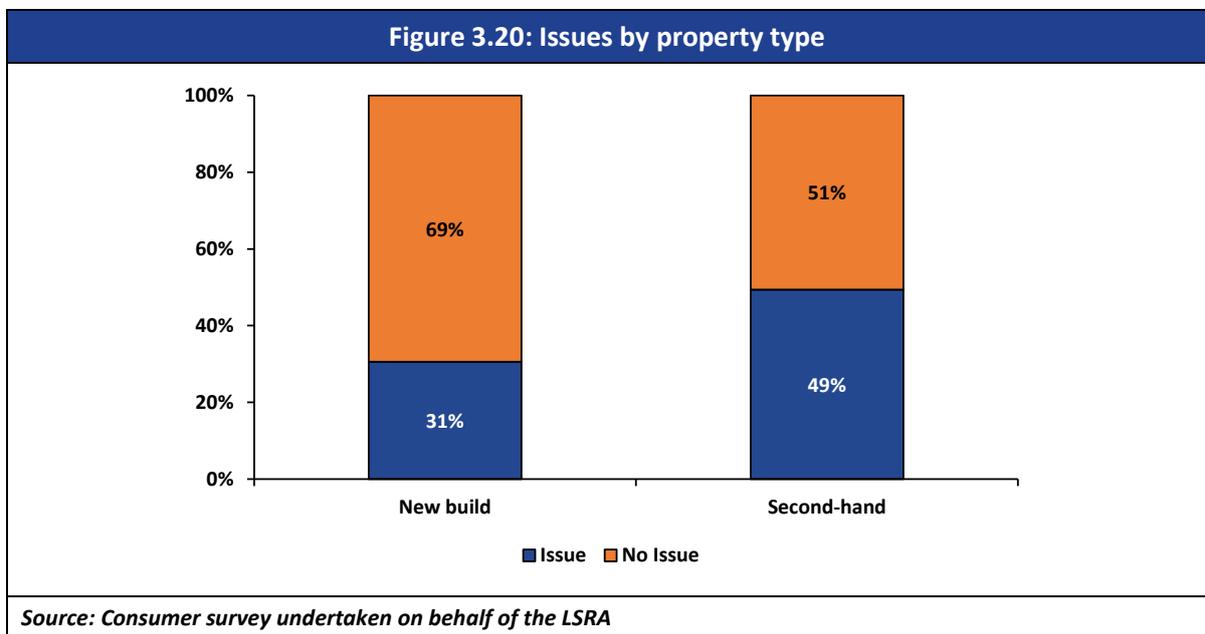
The speed of the conveyancing process is slightly correlated with seeking advice. Figure 3.18 shows that a larger proportion of respondents who experienced a process of seven months or more acquired additional advice compared to those who did not.



While many of the aforementioned issues could occur at any time, the type of property in the conveyancing process gives some indication as to which issues are more likely to arise. Figure 3.19 shows that a second-hand build is more likely to experience planning or boundary issues than a new build. 19% of respondents with a second-hand build reported these issues, compared to only 6% with a new build. Similarly, second-hand builds are more likely to experience restriction and tax issues compared to new builds. In contrast, new builds are more likely to experience mortgage and communication issues.

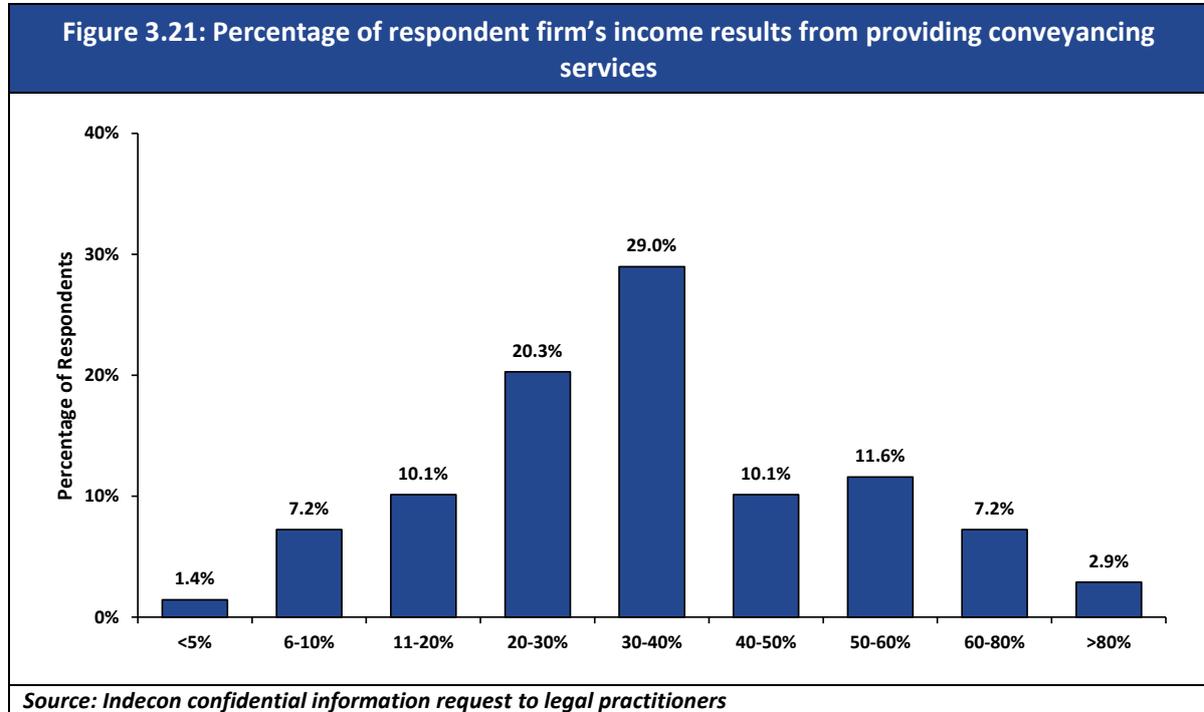


Overall, there are more issues associated with second-hand builds than new builds as per Figure 3.20. 49% of respondents who used conveyancing services on a second-hand build experienced an issue. A much lower 31% of respondents with a new build experienced an issue. However, the average speed of conveyancing is significantly longer for new builds which is likely to reflect issues outside of conveyancing.

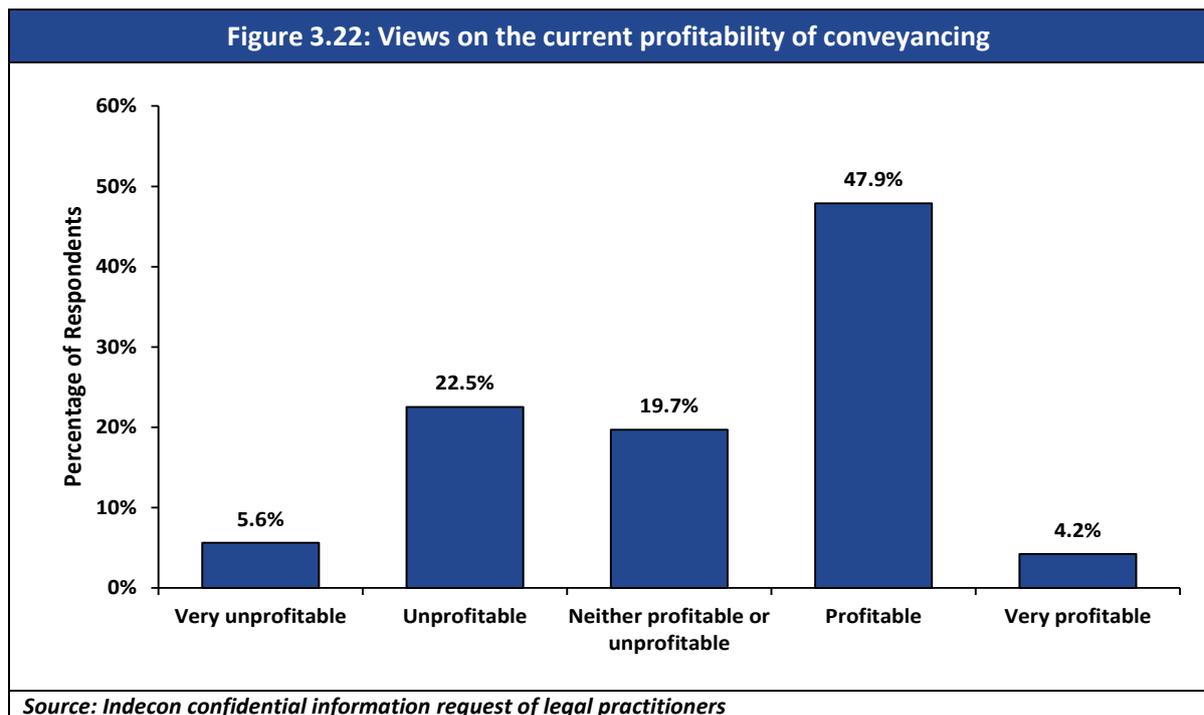


### 3.6 Conveyancing fees as a source of revenue for solicitor practices

Figure 3.21 shows that for a large percentage of firms surveyed, the income from conveyancing is significant. It must be noted that our sample of solicitor practices is of firms who provide conveyancer services and are listed on the Law Society website.



Slightly more than half of legal practitioners surveyed consider conveyancing to be “profitable” or “very profitable” (see Figure 3.22). Others, however, suggest such services are not profitable for the practice.



There are other issues with the current conveyancing process in Ireland that are also important to consider in the context of any potential reforms, such as the approach to digitalisation. Some of these issues, as highlighted by legal practitioners, are outlined in Figure 3.23.

Figure 3.23: Views on any other issues of relevance to improving the current provision of conveyancing services in Ireland, and the merits, or otherwise, of the introduction of a new profession of conveyancer
<p>“Property titles in Ireland are currently too complicated and technically incomplete for the introduction of a new profession.”</p> <p>“Would affect sole practitioners drastically and may close some businesses.”</p> <p>“We deal with a lot of conveyancing, and it would be difficult to see how retaining such a professional conveyancer into our firm would be most cost effective for this office.”</p> <p>“I do not believe there is the need for nor the room in the small conveyancing market for the concept of conveyancer.”</p> <p>“Having been a practising solicitor for almost 50 years I see no need for a new Conveyancing Profession. I believe a lot of these will work from home driving down prices to an uneconomic level for the regular solicitor’s practice.”</p> <p>“Conveyancing is already highly competitive and barely profitable. The public would be better served by making more use of technology to speed up the existing process rather than introduce new conveyancer firms.”</p> <p>“I would not be in favour of a new profession of conveyancers. Conveyancing involves the transfer of significant funds and discharge of mortgages.”</p> <p>“Doing conveyancing work in Ireland requires a skillset beyond just conveyancing skills because of the myriad of legislative and contractual issues that are involved.”</p>
<p><b>Source: Indecon confidential information request of legal practitioners</b></p>

### 3.7 Comparative evidence

A 2003 report by Shinnick et al published by the ESRI examined aspects of comparative prices in a review of the potential benefits of regulatory reform to the conveyancer profession in other countries.<sup>273</sup> It cited sources finding fee reductions for conveyancing services in Australia (17% in real terms)<sup>274</sup> and in the Netherlands (12% in real terms).<sup>275</sup> In England and Wales, fee reductions took place upon the announcement to introduce competition, but fees increased to a new high level after licensed conveyancers entered the market.<sup>276</sup> The author suggested that “this initially counterintuitive result was explained by the total dependence licensed conveyancers had on just the conveyancing market, resulting in an incentive for them to keep fees high.”<sup>277</sup>

While it is useful to compare the Irish experience with that in other countries, any comparison of the costs or timescale to complete conveyancing is inevitably complex and definitive data for Ireland or other countries is not available. There are also issues in interpreting comparisons due to the diversity of services provided. The application of technology and the facilitation of innovative new suppliers could reduce the timescale to complete most conveyancing transactions. As noted elsewhere in the report, the timescale required in Ireland is influenced by the lack of an e-conveyancing system and issues concerning the registration of title. There are also additional requirements in Ireland for solicitors to ensure the payment of local authority charges and interaction with the tax authorities.

<sup>273</sup> Shinnick, E., (2003) “Aspects of Regulatory Reform in the Irish Solicitor Profession: Review & Evaluation”, ESRI.

<sup>274</sup> Ibid. citing BAKER, J., 1996 Conveyancing Fees in a Competitive Market, Sydney: Justice Research Centre, Law Foundation of NSW.

<sup>275</sup> Ibid. citing BRUINSMA, F., 2002. “Marktwerking in de taxibranche en de rechtshulpverlening”, Nederlands Juristenblad, Vol. 77, pp. 553-559.

<sup>276</sup> Ibid. citing STEPHEN, F. and J. LOVE, 2000. “Regulation of Legal Profession”, in New Palgrave Dictionary of Economics and the Law, London: Macmillan.

<sup>277</sup> Shinnick (2003) op. cit.

The timescale to complete transactions is also influenced by any backlog or rejected applications for land registry. This is now handled by Tailte Éireann which replaced PRA in March 2023.

A summary of the available indicative evidence is presented in the next table. Indecon would recommend caution in interpreting the comparative figures as in many cases the figures may not reflect a like-for-like comparison due to the complexity of the Irish system. There is also uncertainty of what is included in the estimates and there are differences in the date of estimates. For example, the latest estimates of costs reviewed from the UK were published in 2021, while more recent data was examined for New Zealand and Australia. Despite these qualifications on the precise numbers, the evidence points to the fact that Irish consumers incur higher costs and longer timescales to complete conveyancing transactions than in the comparator countries reviewed as part of this study.

<b>Table 3.11: Comparison of Limited International Evidence on Fees and Timescales</b>	
<b>Timescale for Residential Conveyancing Transactions</b>	
<b>Scotland:</b>	Estimates for average timescale for completion 4 – 9 weeks
<b>Ireland:</b>	Estimates from legal profession suggest average 9.5 weeks while LSRA consumer research suggests average of around 20 weeks
<b>UK:</b>	Some estimates suggest average timescale of 8 – 12 weeks but the process can take up to 16 weeks
<b>New Zealand:</b>	Estimates suggests conveyancing can be completed in 4 weeks
<b>Australia:</b>	One estimate suggests conveyancing can take between 8 – 12 weeks
<b>Costs of Conveyancing</b>	
<b>Scotland:</b>	Median costs for conveyancing fee for typical house sale range from €679 to around €1,000 and median costs for conveyancing fee for typical house sale <u>and</u> purchase is estimated at €1,241
<b>Ireland:</b>	Legal professional services firms estimate of costs suggested average fees of €1,839 while LSRA consumer research suggests an average of €2,638
<b>UK:</b>	Fees excluding disbursements were estimated to be between €900 - €1,800
<b>New Zealand:</b>	Estimates suggest average fees range from €485 - €625 depending on whether it is a sale or purchase or whether a mortgage is involved
<b>Australia:</b>	Estimates of fees vary by provider and typical costs are around €567 but estimates in range of €278 - €1,159
<i>Source: Indecon analysis of available evidence</i>	

### 3.8 Summary of key findings

- ❑ Indecon’s analysis of the market has examined the speed and costs of conveyancing services. Solicitors estimate the average time it takes to complete conveyancing for a domestic property purchase is 9.5 weeks.
- ❑ Alternative estimates of the time for completion are presented in the next figure based on consumer research undertaken on behalf of LSRA. The average speed of conveyancing amongst this sample of respondents is 4.7 months.

- ❑ The Indecon survey of the legal profession suggests the majority of respondents charge their clients “a fixed rate” (86%) for a typical domestic house purchase.
- ❑ The average professional fees reported by legal firms surveyed suggest they charged €1,839 for a typical residential house conveyancing transaction with a median of €1,750. However, some firms charged much higher fees.
- ❑ The level of consumer satisfaction with conveyancing services in Ireland was very high, 93% while only 4% indicated any level of dissatisfaction. This is likely to reflect the high quality of conveyancing services offered.
- ❑ There is some evidence in the survey research conducted for the LSRA of a link between consumer satisfaction with a conveyancing service and its cost. Consumers who paid higher costs were more likely to say they were dissatisfied with the service they received. The total number of respondents who were dissatisfied was small, and we would recommend caution in the interpretation of these findings.
- ❑ The most common reason for satisfaction amongst respondents was the provision of “very professional/competent/efficient” conveyancing services, followed by “no issues/smooth process/quick”. Only a very small percentage of consumers indicated “fair price” as the reason for their satisfaction with the process.

## 4 Analysis of the Potential Impact of Digitalisation on the Conveyancing Process

### 4.1 Introduction

In considering the potential impact of digitalisation, it is important to note there are a number of key elements in the Irish conveyancing process.<sup>278</sup> Throughout it, solicitors on the buyer's and seller's sides liaise with each other as well as with financial institutions and regulatory bodies when relevant. Various documents pass back and forth between parties such as a contract of sale, title deeds to the property, pre-contract enquiries, a deed of transfer, and a requisition on title. Additionally, the Revenue Commissioners must stamp the transfer deed and the Property Registration Authority must stamp the registration of title.

For purposes of this discussion, the term digitalisation refers generally to “the use of digital technologies to change a business model and provide new improved services or value-producing opportunities. It is the process of moving to a digital business.”<sup>279</sup> The term e-conveyancing or “electronic conveyancing” refers to a conveyancing transaction settled electronically through a platform such as Landonline in New Zealand or eConveyancing in Australia. Both aspects of digitalisation are both important and interrelated. Digitalising internal manual or paper-based processes is the responsibility of the sector, however, the establishment of an e-conveyancing system would require leadership by the state. E-conveyancing would be a complex undertaking and would require a detailed evaluation of the costs and risks of such an investment in comparison with the wider benefits which would be incurred. Given the government objectives in relation to achieving the greater digitalisation for the Irish economy and the importance of the property sector in Ireland, this merits careful consideration.

Digitalisation, such as an e-conveyancing system, has significant potential to facilitate faster and more efficient transition of documents and information between parties. It reduces certain costs and saves time. When considering the possible introduction of a profession of conveyancer in Ireland it is important to account for the potential for a fully electronic system and enhanced online information on costs. The application of such technology can facilitate new entrants and speed up transactions for consumers. A number of innovative firms have, however, applied technology including online client meetings, and the use of eRegistration, which enables clients to review and submit documentation online, scanning of documents, and access to various online resources as part of the overall conveyancing process. There is, however, potential for significant further improvements and a wider application of such technology.

Digitalisation can transform the way in which conveyancing works. For most jurisdictions, the laws relating to property transfer are extremely complicated, and so it is not a simple matter to convert paper-based systems built up over several centuries to straightforward electronic processes.<sup>280</sup> The digitalisation of the conveyancing system in Ireland (e-conveyancing) would require action by the Irish Government and by local authorities. This is relevant in considering the application of technology in that solicitors do not have the ability to change all aspects of the system and other factors also have a role. E-conveyancing would take time to introduce, however, there is potential for the greater application of technology by the legal profession to streamline existing processes.

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<sup>278</sup> Bearing Point, the Law Reform Commission's Report on eConveyancing: Modelling of the Irish Conveyancing System available [here](#)

<sup>279</sup> Definition of Digitilization – IT Glossary | Gartner

<sup>280</sup> Real estate conveyances from livery of seisin to electronic transfer: Real estate transactions enter the digital/electronic world available [here](#)

The Law Reform Commission recommended e-conveyancing in 2006, and in 2014, the European Commission suggested that Ireland’s “full integration of properties currently covered by the Registry of Deeds system into the more modern Land Registry” would facilitate an e-conveyancing system.<sup>281</sup> In its strategic report *Construction 2020*, the Government noted that a “key component” of the property market is the conveyancing process, and that: “...a system of e-conveyancing which harnesses modern technology to assist in the timely transfer of property ownership would provide a more modern, efficient, cost-effective and secure system to support transactions in the property market in the future. Moving to a full e-conveyancing system will require a number of further elements over and above existing and planned developments to be put in place to provide for the secure transmission of communications, the management and disbursement of funds between parties, and the creation and management of digital signatures. It is recognised that such work will require representatives of the legal profession, the banking sector and the relevant statutory agencies to work together closely, and could build on work already completed on this issue under the aegis of the Law Society.”<sup>282</sup> The Joint Committee on Justice, Defence, and Equality supported the project, and banking lenders have expressed their commitment to introducing e-conveyancing.<sup>283</sup> There is a model of the proposed e-conveyancing system but implementation requires formal engagement of a technology partner as well as further design, development, testing, and rollout in collaboration with lenders and the Property Registration Authority.<sup>284</sup>

Tailte Éireann is the state agency brought about by the merger of the Property Registration Authority, the Valuation Office, and Ordnance Survey Ireland. Tailte Éireann provides a comprehensive and secure property title registration system, a professional state valuation service, and an authoritative national mapping and surveying infrastructure. Customers can continue to use existing channels for all registration, valuation, and surveying services.

## 4.2 Impacts of digitalisation on conveyancing

Digitalisation has the potential not only to reduce unnecessary costs, but also save time on existing tasks, which in turn can allow redeployment of efforts elsewhere. Systems like Precisely are already speeding up legal tasks – this software allows users to create contracts, obtain electronic signatures from other parties, and archive them.<sup>285</sup> This reduces the time required to prepare legal documents, obtain signatures, and archive files.

Given the increasingly complex nature of conveyancing, an e-conveyancing system will help reduce the time it takes to complete the main tasks. Checking planning permission, regulations, documentary requirements and tax compliance will benefit from an e-conveyancing system.<sup>286</sup> It will save time in areas such as confirming loan funds are available from the mortgagee; editing documents within the platform; facilitating lodgement; and management of and close of settlement.

The other main impact of digitalisation is more efficient conveyancing work. McKinsey has suggested that in different sectors digitalisation could increase productivity, and for information-intensive processes, potentially reduce costs by up to 90%.<sup>287</sup> Individuals seek digitisation for their own ease of use, and firms, institutions, and government bodies are aware of the benefits it can bring.

<sup>281</sup> European Commission (2014), “Assessment of the 2014 national reform programme and stability programme for IRELAND, SWD(2014) 408 final, Brussels, 2.6.2014 at p. 33

<sup>282</sup> Government of Ireland (2014), “Construction 2020: A strategy for a renewed construction sector” accessed at: <https://merrionstreet.ie/en/wp-content/uploads/2014/05/construction-strategy-14-may-20141.pdf>

<sup>283</sup> The Law Society of Ireland (2015), “Overview of proposed eConveyancing system”

<sup>284</sup> Ibid.

<sup>285</sup> Journal available [here](#)

<sup>286</sup> Bearing Point, The Law Reform Commission’s Report on eConveyancing: Modelling of the Irish conveyancing system available [here](#)

<sup>287</sup> McKinsey report, Accelerating the digitization of business processes available [here](#)

Digitalisation has already aided various aspects of conveyancing work particularly for larger firms. Cloud computing frees up physical space and resources at law firms, while machine learning technology like Contract Analyzer can extract relevant information from contracts and display them for the lawyer.

There are also wider potential benefits from digitalisation including the removal of the need for storage and maintenance of paper files; a lower risk of errors and missing documents causing future costs; and the potential to integrate financial institutions into the system which could reduce bank fees and charges.

In response to Indecon's information request as part of this study, the Law Society of Ireland submitted its Overview of Proposed E-Conveyancing System. Its "initial aim is to make electronic the interaction between solicitors, lenders and the Property Registration Authority (PRA)" (Law Society, undated). The Law Society acknowledges the current paper system is "slow, inefficient, and costly." It describes the proposed e-conveyancing system electronic hub as follows:

"...solicitors will exchange information and documents via this central hub. The hub will provide a secure central electronic work area allowing solicitors, lenders and the PRA to view information, exchange data and communicate information in order to complete property transactions. Via interaction with lenders, the hub will allow solicitors track the loan transaction, see when loan conditions are satisfied, arrange for release of loan funds and create and sign digital documents. Solicitors will be able to pull information directly from the PRA title register into the hub and into the documentation and this will be linked to their case management system. Loan funds will be transferred by electronic funds transfer with same day value. Once both solicitors are ready to complete, all aspects of the closing will occur almost simultaneously with documents lodged for registration and funds disbursement happening according to a predetermined sequence thus virtually eliminating the gap between completion and registration."<sup>288</sup>

Digitalisation will have benefits for both private and corporate consumers of conveyancing services with wider national benefits. Consumer oriented benefits of the proposed system include:

- Transaction timeframe reduced from months to weeks;
- Costs reduced with less physical transfer of paperwork;
- Fraud less likely due to fewer gaps in the process, secure transfer of funds, and independent management of purchase monies;
- Fewer errors or missing documents and delays as documents are system-generated;
- Improved transparency and efficiency gains as solicitors and banks has system access on all sides of transaction;
- Increased consumer confidence due to modernisation, simplification, and standardisation; and
- Remove need for storage and maintenance of paper files with cost and environmental benefits.

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<sup>288</sup> Law Society of Ireland submission to Indecon

National benefits of the digitalisation of conveyancing could:

- Encourage inward investment in the Irish property market;
- Facilitate implementation of government strategies;
- Improve Ireland's World Bank rating in property benchmarks;
- Enable Property Registration Authority's eRegistration agenda;
- Meet European Union Information Society agenda, data protection, and green agenda; and
- Deliver efficiencies in revenue collection.

In considering the potential for digitalised conveyancing and an e-conveyancing process, it is important to recognise that there are barriers to its introduction. A Law Reform Commission report in 2006 on a proposed Irish e-conveyancing system examined barriers to its implementation and the various issues for different stakeholders preventing its adoption, based on input from would be users.<sup>289</sup> These issues are summarised in Figure 4.1. One particular issue relates to the current registration of titles. The Land Registry estimates that 93% of the land mass of the state and almost 90% of the legal titles in Ireland are now registered, but the coverage is significantly lower in Cork and Dublin (less than 60%).<sup>290</sup> It is necessary to regulate titles to facilitate a digital solution and establish a fully effective conveyancing profession.

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<sup>289</sup> BearingPoint eConveyancing Report (lawreform.ie)

<sup>290</sup> <https://www.prai.ie/land-registry-services/>

**Figure 4.1: Issues re implementation of E-Conveyancing in Ireland***Real estate agents*

- High volume agencies can more readily adapt to an e-conveyancing system.
- Culture change required, as there is reduced in-person client contact.
- Costs of entry may be higher for smaller estate agencies due to financial and technical resources.

*Solicitors*

- Privacy issues and cautious methods of communication may discourage some solicitors.
- Concerns that e-conveyancing may lead to new entrants to the conveyancing market.
- Concerns of dilution in the role of solicitors within the transaction and significant impact on income.

*Financial institutions*

- Benefits of e-conveyancing system may not be large enough to offset costs.
- Regulatory impacts on institution already burdened with compliance duties may cause resource constraints.

*Property developers*

- IT competency and/or resources of some (smaller) firms may be inadequate.

*Law search agents*

- Cost of implementation may be prohibitive for some (smaller) firms.

*Surveyors*

- Formats for survey reports not subject to guidelines.
- Digital mapping standards need to be agreed between parties re storage and transfer.
- Safeguards required to ensure integrity of digital maps and prevent change after agreement has been made.

*Revenue Commissioners*

- No major barriers to e-conveyancing were identified.

*Land Registry*

- Ongoing legislative requirements for paper-based forms.
- Current paper-based use of land certificates and certificates of charge are not compatible with e-conveyancing system.
- Electronic commerce legislation needs to be brought in line with e-conveyancing system.

*Registry of Deeds*

- Current low level of technology sophistication remains a barrier for implementing e-conveyancing system.

*Local authorities*

- Data migration and archiving re planning records.
- Access to resources to implement systems and process development.
- Planning moratorium may be required to implement new system.

*Courts Service*

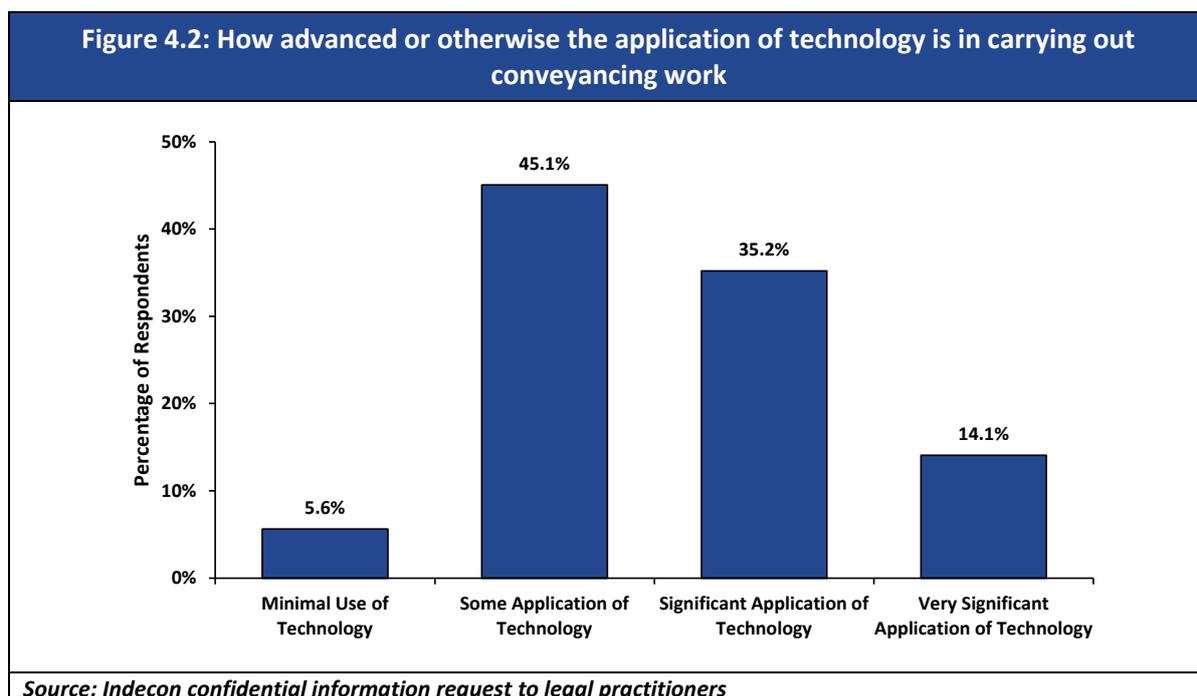
- Legal requirements to be met before moving registers to electronic format.
- Extent of data conversion required may be prohibitive.

**Source: Based on analysis of Law Reform Commission**

### 4.3 New evidence on extent of digitalisation in Irish conveyancing sector

New Indecon evidence on the extent of digitalisation in conveyancing work highlights that only 14.1% of legal practices indicated their assessment that the sector had significantly applied technology in carrying out conveyancing work. This suggests there is potential for considerable improvement. The use of specific digital technologies varies by practice and is curtailed due to the lack of an e-conveyancing system. Some practices use eRegistration to register a mortgage. This reduces the requirement for manual re-entry of information. Many legal practitioners have also moved away from paper files and have digitalised all correspondence and documents. Revenue Online System (ROS) and Land Direct have advanced over the past five years which is likely to have improved efficiency.

However, there are still major elements of conveyancing that could be digitised, enabling legal practitioners to increase their use of digital solutions.



The transformation potential of digital technology for conveyancing has been demonstrated by the experience in other countries. Electronic conveyancing can cover the entire or nearly all of the preparation process, as well as the tasks involved in executing and exchanging of contracts, and the final registration of properties. IT can also impact on ways of working. To achieve this full potential, however, would require an electronic conveyancing system or e-conveyancing electronic hub, as well as the advanced use of technology within most solicitors' practices. Neither currently exist in Ireland. In terms of the greater application of IT and digital technology a market study by Crowe of sole practitioners and smaller legal practices published by the Law Society of Ireland reported that 60% of the practices identified improvements in ways of working/processes as an opportunity over the next three to five years and 48% identified the need for investment in IT systems. In the same survey, 19% of the firms rated inadequate IT systems as a top internal channel. Examples were provided of what the greater application of IT and digitalisation might involve and included:

- Introduction of case management;
- Voice recognition and dictation solutions;
- File scanning;
- Portal systems that allow for clients to directly access files and information; and
- Improving the practice online profile.

Examples of elements of the conveyancing processes which Indecon believes would be impacted by digitalisation are presented in the next table. This suggests that most of the processes including searches and preparatory work, executing and exchange of contracts, and the final registration of properties would be impacted. The extent to which these processes are currently undertaken manually varies by solicitor practice. Indecon believes there is significant potential for digitalisation of all of these elements.

<b>Table 4.1: Examples of Elements of Conveyancing Process which could be Enhanced by Digitalisation</b>	
	<b>Impact</b>
Initial briefing by clients following appointment of solicitor to act on their behalf	Online client meetings via video linkages
Preparation of contracts and scanning, filing of documentation and request title deeds	Significant impact as manual filing of many aspects of documentation would be unnecessary
Exchange of documentation between solicitors	Significant impact as of exchange of documents can be completed electronically
Investigation of title by purchaser's solicitors including, supporting documentation and carrying out of pre-contract enquiries	Full potential would require electronic conveyancing system
Conducting of all relevant searches	Full potential would require electronic conveyancing system
Submission of requirements to clients for additional supporting information	Some impact particularly if there was a portal is developed to enable various parties to access and update information
Reviewing and copying folio and filing plan	Some impact as copying and manual filing of many documents would not be necessary
Client authorisation	Significant impact as this can be provided digitally
Exchange of contracts	Can be completed electronically once client authorisation is provided
Sign contracts and pay deposit	Significant potential via use of digital certificates or online document signing tools
Completing and exchanging closing documents	Can be completed electronically once client authorisation is provided
Payment of any tax including purchaser's stamp duty and any vendor's tax	Can be completed electronically once client authorisation is provided
Purchaser's solicitor registers title in Land Registry or lodges deed with Registry of Deeds	Significant impact as this could be undertaken electronically
Storing of documentation	Can be completed electronically
<b>Note: It must be noted that there are other agents such as estate agents, banks, surveyors who may also be part of the transaction.</b>	
<b>Source: Indecon</b>	

All of the main processes in conveyancing work could be impacted by the potential of digital technology. Some of these directly relate to making the conveyancing process more efficient, less costly or faster, while other aspects could improve transparency and could facilitate further competition in the market. The digital transformation of the conveyancing service may require investment by the public sector, as well as by the private sector. This is aligned with the National Digital Strategy Harnessing Digital: The Digital Ireland Framework which was published in February 2022 and presents a consolidated approach to maximising the economic and societal benefits from digitalisation. This builds on the Irish Government's 'Digital First' strategy for the public sector which encompasses everything from the core digitalisation of public services to the digital infrastructure, governance and processes. It is also consistent with Connecting Government 2030 which is the new digital and ICT strategy for Ireland's Public Service.

Of interest is that even with evolving developments in technology over the next three to five years, only a minority of legal firms suggested that the quality of service will significantly improve or that there will be an impact on costs. The reasons for this assessment by the profession are unclear but may reflect their judgment on the high quality of existing services. The views of the legal profession

on the impact of technology on conveyancing are presented in the next table. This highlights the potential of technology to improve the speed of conveyancing. Indecon believes that with increased use of technology and with changes in the process of title registration, conveyancing could be faster, as has occurred in other markets. The process of title registration<sup>291</sup> can vary based on requirements for first registration, transfers of part of a folio, registration of mortgages, or burdens such as rights of way. Some examples presented in the previous table of areas where digitalisation could improve the overall process include the use of online document signature tools such as DocuSign, digitisation of title deeds and online registration of all lands. The system would also benefit from a comprehensive portal where the various parties to transactions could access and update information as required. There would be a range of options concerning the development of such a portal and who would be responsible for maintaining it. Consultations with Tailte Éireann would be necessary if the development of such a portal was being considered.

<b>Table 4.2: Impacts of technology on cost, speed and quality of provision of conveyancing</b>	
<b>Impacts of technology on cost, speed and quality of provision of conveyancing</b>	<b>Percentage</b>
Will marginally reduce the cost of conveyancing	5.6%
Will significantly reduce the cost of conveyancing	2.8%
Will have no impact on costs	12.7%
Will marginally improve the speed of conveyancing	22.5%
Will significantly improve the speed of conveyancing	18.3%
Will have no impact on speed of conveyancing	1.4%
Will marginally improve the quality of service	9.9%
Will significantly improve the quality of service	12.7%
Will have no impact on quality of service	12.7%
Don't know	1.4%
<b>Total</b>	<b>100.0%</b>
<i>Source: Indecon confidential information request of legal practitioners</i>	

Figure 4.3 presents views from legal firms on how technology could impact on the speed and costs of conveyancing.

<sup>291</sup> Title simply refers to ownership of land, and titles are registered in the Land Registry (established 1892) which is managed and controlled by the Property Registration Authority (established 2006) and now part of Tailte Éireann. In order to register a property, an application must be made to the PRA providing deeds of the property and relevant information regarding ownership. The Land Registry examines this application, interprets the legal effect and records this in what is known as a folio. The folio is guaranteed by the state and thus serves as evidence of title for potential buyers. 93% of the total land mass of the State and almost 90% of the legal titles in Ireland are now registered in the Land Registry.

**Figure 4.3: Views on how technology could impact on the speed and cost of carrying out a conveyance with benefits for consumers and the legal profession**

“I don't believe that there will be a reduction until such time as all titles are registered in the PRA.”

“Easier access to information relating to the property online - follow UK model where all documentation relating to the property is available in one location.”

“If Deeds were all on digital technology it would be helpful.”

“Solicitors still insisting upon receipt of hard copy documentation upon issuing of Contracts, when soft copies being emailed should be sufficient, would reduce bulk on file and reduce paper wastage.”

“It will be game changing in short. Portal systems will be available for all parties to log into together so that the process is entirely transformed in terms of communication.”

“The introduction of e-conveyancing involving all the players via a common portal would significantly impact on the speed of delivery of the service.”

“Little impact unless there is a change in how planning matters are dealt with and unless all land is registered in the land registry.”

“Immediate transfer of copy documents with greater ease than traditional email will expedite transactions.”

“There are so many aspects to a conveyance, so many parties involved, and so much unregistered issues that it is difficult to see how technology could improve the speed or cost.”

“Ireland needs a system like in many other countries where there is a single, universal document about the property - dealing with all issues like planning permission, compliance, LPT, rates, roads/services in charge, payment of contributions, BER, etc.”

“Digital technology could greatly improve the speed and efficacy of conveyancing, but it can only be as good as the documentation input.”

**Source: Indecon confidential information request to legal practitioners**

#### 4.4 Digitalisation international experience

As part of this review, Indecon examined experience relating to digitalisation of conveyancing in other countries. In general, they have either fully digitalised or are in planning stages to do so.

In Scotland, an e-conveyancing product was launched in 2007 known as Automated Registration of Title to Land (ARTL).<sup>292</sup> The system allowed online e-registration to register deeds electronically and pay taxes. In 2018, ScotLIS replaced Registers Direct and allows anyone to search the land register online and make requests for information and documents on properties and land.<sup>293</sup> These systems reduce the use of paper and postage. They also require less bureaucracy and allow more control for users with reduced risk of delayed registration and lower registration fees.<sup>294</sup>

Scotland has also seen an uptake in digitisation due to COVID-19. In March 2020, the Registers of Scotland closed their offices and launched a Digital Submission Service (DSS) underpinned by temporary legislation.<sup>295</sup> The DSS allowed applicants to upload and submit electronic copies of paper deeds for registration.<sup>296</sup> Legislation followed to allow electronic signatures and transmission of

<sup>292</sup> Conveyancing at a crossroads: the transition to e-Conveyancing applications in the U.S. and abroad, available [here](#)

<sup>293</sup> Registrars of Scotland, available [here](#)

<sup>294</sup> Conveyancing at a crossroads: the transition to e-Conveyancing applications in the U.S. and abroad, available [here](#)

<sup>295</sup> Thomas Reuters Practical Law, available [here](#)

<sup>296</sup> Registers of Scotland, available [here](#)

documents in conveyancing, changing it in a very short period. The previous paper-based system meant paper applications were manually opened, sorted, prepared, and scanned. In a typical day more than 2,000 pieces of post were received and processed.<sup>297</sup>

### England, Wales and Northern Ireland

In 1983, Austin Mitchell's House Buyer's Bill stated that the conveyancing process "is slow and certainly far slower than it need be in an age of computerisation and quick access to information." Nearly two decades later, the Land Registration Act (2002) was passed. This aimed to facilitate online investigation of title, minimising enquiries, and inspections. However, apart from e-signatures, there has been little progress in digitalising conveyancing. The Act's aspirations have still not been achieved and may take time.<sup>298</sup> Reasons for this delay include system finance, digitalisation of local charges and digital signatures. The COVID-19 pandemic appears to have acted as a push towards greater digitalisation. For example, the HM Land Registry Business Plan 2021-24 states there is an investment of £28m in "preparing the way for a wholly digital, wholly secure conveyancing process."<sup>299</sup> In addition, the British Government has taken steps to develop e-signatures<sup>300</sup> and introduce cryptographic ID checking.<sup>301</sup> The Digital Registration Service can be used to submit Land Registry applications online.<sup>302</sup> The Department for Levelling Up, Housing and Communities supports digital property logbook technology.<sup>303</sup> A Buying and Selling Property Information (BASPI) dataset assembled by the Home Buying and Selling Group (HBSG) aims to be the "the 'one source of truth' when it comes to upfront information about a property."<sup>304</sup>

### New Zealand

The e-conveyancing system in New Zealand is Landonline. Introduced in 2002 it became mandatory in 2009 for lawyers and conveyancers to search records, lodge new survey plans, and conduct title dealings online.<sup>305</sup> Straightforward dealings can be registered without involving registry staff by uploading client identification, ownership details, and relevant statutory requirements. The registrar performs audits after registration to ensure compliance and more complex deals still require registry staff input.

Digitalisation presents a dramatic change from the manual system which required a kilometre of extra shelving every year to handle new paper records.<sup>306</sup> Landonline is quite different due to its laissez-faire approach to registration. It is argued that the system is open to fraud and risk because title registration is at the mercy of a dishonest or incompetent conveyancer.<sup>307</sup> Given the integrity of the register is only as good as the lawyers who update it via Landonline<sup>308</sup> practitioners might be trained in registry practice. However, evidence of corrupt behaviour is "extremely rare".<sup>309</sup>

<sup>297</sup> Registers of Scotland, available [here](#)

<sup>298</sup> R Abbey and M Richards, *A Practical Approach to Conveyancing* (19<sup>th</sup> Edition), Oxford, OUP, 2017, pp 23-27, particularly para 1.130, available [here](#)

<sup>299</sup> HM Land Registry Business Plan 2021-2024, available [here](#)

<sup>300</sup> The developing use of electronic signatures (2022), available [here](#)

<sup>301</sup> Encouraging the use of digital technology in identity verification (PG81) (2022), available [here](#)

<sup>302</sup> Digital Registration Service (2022), available [here](#)

<sup>303</sup> Residential Logbook Association (2022), available [here](#)

<sup>304</sup> Home Buying and Selling Group (2022), available [here](#)

<sup>305</sup> The Australia and New Zealand School of Government, LINZ and the development of Landonline, available [here](#)

<sup>306</sup> LINZ and the development of Landonline (2006), available [here](#)

<sup>307</sup> Fraud, risk and the automated Register (2003), available [here](#)

<sup>308</sup> Duncan Terris, "Electronic signing of A & Is, remote witnessing and digital retention", 18 (3) 2018, *The Property Lawyer* at 8.

<sup>309</sup> *The Queen v Xu and others* [2018] NZHC 1971, at [60].

Digitalisation causes other changes as well – some argue it has reduced the number of conveyancers in New Zealand as they struggled to get Landonline licenses.<sup>310</sup> It needs a fidelity fund and professional indemnity insurance, as required by lawyers but not conveyancers. Hence, digitalisation pushed the practice into the hands of lawyers. Further differences between lawyers and conveyancers may have reduced the number of conveyancers. As “officers of the court” solicitors must uphold conveyancing transactions such as promising to forward settlement funds, or the release of online dealings otherwise they can be struck off. There is no similar regime in place for conveyancers, meaning a solicitor could be considered negligent to accept undertakings from a conveyancer. Lawyers may have been unwilling to work with conveyancers, thus causing further difficulties for the profession in the face of digitalisation.

## Australia

Section 2 of this report discussed details on the eConveyancing System in Australia. The background is that in 2011, the Intergovernmental Agreement for an Electronic Conveyancing National Law allowed legal practitioners, conveyancers, and financial institutions to do the following.<sup>311</sup>

- i) Electronically prepare and lodge land property dealings with title registries;
- ii) Transmit settlement funds and pay associated duties and tax electronically; and
- iii) Remove the need to physically attend property settlements.

A year later, the Electronic Conveyancing National Law laid out the legal structure for the national e-conveyancing system. Table 4.3 below shows where the digital system is used. Use of this system is mandatory in four states, which hold 75% of the Australian population as per 2021 figures.<sup>312</sup>

<b>Region</b>	<b>E-conveyancing Usage</b>
New South Wales	Mandatory
South Australia	Mandatory
Victoria	Mandatory
Western Australia	Mandatory
Australian Capital Territory	Available
Queensland	Available
Northern Territory	Not available
Tasmania	Not available
<i>Source: Indecon research</i>	

<sup>310</sup> Rod Thomas, Associate Professor in the School of Law at Auckland University

<sup>311</sup> Intergovernmental Agreement for an Electronic Conveyancing National Law, available [here](#)

<sup>312</sup> Australian Bureau of Statistics (2021), available [here](#)

The backbone of digitalising the conveyancing system lies with an electronic lodgement network (ELN). This allows lawyers, conveyancers, and financial institutions to lodge electronic documents with the land title registrar, who then processes the document as normal. Parties subscribe to the ELN, provided by certain operators. At present, the only operator of an ELN in Australia is Property Exchange Australia Ltd (PEXA).<sup>313</sup> It can be used to lodge land title documents and related instruments, allow parties to view and complete documents to conclude transactions, and the electronic settlement of all financial transactions at a nominated date including settlement monies, duties, taxes, and any disbursements.<sup>314</sup> These tasks previously generated large amounts of paperwork and manual processes which can cause opacity between parties with weak communication channels. Costly and time intensive tasks such as attendance at the land titles office for settlement and postal document transfer between relevant parties are gone. These resulted in long delays in the sale and purchase of a property and motivated introduction of a digital system.

The PEXA system in Australia had a low take-up of 2% in 2016/17. Despite this, the conveyancing profession saw over AU200k in net benefits that year and according to Deloitte, 100% utilisation would realise AUD89m in net yearly benefits for the conveyancing profession.<sup>315</sup> These benefits are due in part to the removal of bank fees and other costs associated with the manual paper-based system.<sup>316</sup> More generally in the economy, PwC states that 100% use of the PEXA system would result in AUD184m net benefits for consumers, businesses and government in 2017/18.<sup>317</sup>

Take-up rates in New South Wales and Victoria are the first and second highest, these states also saw the two highest net benefits of AUD23k and AUD189k, respectively. Despite Western Australia being the third highest adopting state, it experienced a net loss using the system which may be due to variations in conveyancing processes between states or a difference in the number of lawyers vs conveyancers undertaking the transactions.

State	Benefit (AUD)	Cost incl. transition (AUD)	Net benefit (AUD)	Take-up rate (%)
New South Wales	1,314,000	1,290,000	23,000	2
Victoria	1,204,000	1,014,000	189,000	3.7
South Australia	128,000	113,000	15,000	0.7
Queensland	83,000	71,000	15,000	0.4
Western Australia	315,000	352,000	-36,000	1.4
<b>Total</b>	<b>3,045,000</b>	<b>2,840,000</b>	<b>205,000</b>	<b>2</b>

*Source: Deloitte*

<sup>313</sup> Australian Registrar's National Electronic Conveyancing Council (2022), available [here](#)

Two other operators have met the model operating requirements and are in a position to commence negotiations for approval to operate (Purcell Partners Pty Ltd and Sympli Australia Pty Ltd).

<sup>314</sup> Australian Settlement Limited .available [here](#)

<sup>315</sup> Deloitte, Impact of e-Conveyancing on the conveyancing industry. available [here](#)

<sup>316</sup> Hume Taylor and Co Lawyers. available [here](#)

<sup>317</sup> PwC (2015). available [here](#)

In New South Wales, the PEXA system saves purchasers 4.25 hours and lawyers 2.25 hours per transaction in the post stages of the conveyancing process.<sup>318</sup> Deloitte suggest that for a transfer, practitioners save on average 3.7 hours per transaction nationally under the PEXA system. The e-conveyancing system has saved time through eliminating physical attendance at settlements, faster registration of transfers and simpler record keeping.<sup>319</sup> The shorter times to complete government services tend also reduce any uncertainties during the conveyance that can upset or defer settlement or registration of the transfer.<sup>320</sup> The PEXA system changed the way conveyancing was conducted but also helped to save several hours per transaction with an overall net benefit for the Australian conveyancing market in 2016/17.<sup>321</sup>

**Table 4.5: Time savings of PEXA e-conveyancing system in Australia**

State	Time saved (hrs)	Time transitioning (hrs)	Net time saved (hrs)	Take-up rate (%)
New South Wales	3.8	1.2	2.5	2
Victoria	3.6	1.1	2.6	3.7
South Australia	4.7	0.9	3.9	0.7
Queensland	3.6	0.7	2.9	0.4
Western Australia	3.5	0.8	2.8	1.4

*Source: Deloitte*

## 4.5 Summary of key findings

- ❑ In considering the potential impact of digitalisation, it is important to note that there are a number of key elements in the Irish conveyancing process. Throughout, solicitors on the buyer's and seller's side liaise as well as with financial institutions and regulatory bodies when relevant. Various documents go back and forth between parties such as a contract of sale, title deeds, pre-contract enquiries, a deed of transfer, and a requisition on title. Additionally, the Revenue Commissioners must stamp the transfer deed and the Property Registration Authority needs to stamp registration of title.
- ❑ Digitalisation, such as an e-conveyancing system, has significant potential to facilitate faster and more efficient transition of documents and information between parties. It reduces certain costs and saves time. When considering the possible introduction of a profession of conveyancer in Ireland it is important to account for the potential for a fully electronic system and enhanced online information on costs. The application of such technology can facilitate new entrants and speed up transactions for consumers. New Indecon survey results highlight that only 14.1% of legal practices surveyed indicated their assessment that the sector had very significantly applied technology in carrying out conveyancing work. A number of innovative firms have, however, applied technology including online client meetings, the use

<sup>318</sup> KPMG Analysis of the benefits of electronic conveyancing to conveyancers and lawyers in NSW. available [here](#)

<sup>319</sup> Peter Rosier, "Electronic conveyancing: where are we now?" (2015), *New South Wales Law Society Journal* 78, 79, available [here](#)

<sup>320</sup> Eugene Clark, "E-Conveyancing in Australia: an important step along the journey to e-government" (2011) 23(1), *Journal of Law, Information and Science* 62, 67-70, available [here](#)

<sup>321</sup> Deloitte, Impact of e-Conveyancing on the conveyancing industry, available [here](#)

of eRegistration, scanning of documents, and access to various online resources as part of the overall conveyancing process. There is, however, potential for significant further improvements and a wider application of such technology.

- Of interest is that even with evolving developments in technology over the next three to five years, only a minority of legal firms suggested that the quality of service will significantly improve or that there will be an impact on costs. The views of the legal profession on the impact of technology on conveyancing are presented in the next table. This highlights the potential of technology to improve the speed of conveyancing. Indecon believes that with increased use of technology, combined with changes in the process of title registration, conveyancing could be faster, as has occurred in other markets. Some examples presented in the previous table of areas where digitalisation could improve the overall process include the use of online document signature tools such as DocuSign, digitisation of title deeds and online registration of all lands. The system would also benefit from a comprehensive portal where the various parties to transactions could access and update information as required.

## 5 Overview of the market for Conveyancing services in Ireland

### 5.1 Profile of the market for conveyancing services

Conveyancing is the “process of transferring ownership of immovable property from one person to another.”<sup>322</sup> The conveyancing process may include issues relating to land, rights of way, easements, leases, tenancies and mortgages, together with various statutory and other interventions in the ownership, control and use of land.

As shown in Table 5.1, the number of solicitors practising in Ireland has increased from 6,436 in 2003, to 11,854 in 2020, up 84% over the 18-year period.<sup>323</sup> Based on Central Statistics Office population data, the figures indicate the number of solicitors per capita while showing yearly variance has increased, from 1.62 per thousand of population in 2003, to approximately 2.23 in 2022.

Year	Practising certificate holders	Total population per practising solicitor
2003	6,436	1.62
2004	6,746	1.67
2005	7,039	1.70
2006	7,416	1.75
2007	7,876	1.80
2008	8,231	1.84
2009	8,225	1.81
2010	8,335	1.83
2011	8,571	1.87
2012	8,768	1.91
2013	8,895	1.93
2014	9,224	1.99
2015	9,688	2.07
2016	10,080	2.13
2017	10,470	2.18
2018	10,972	2.26
2019	11,959	2.43
2020	11,978	2.41
2021	11,836	2.36
2022	11,392	2.23

*Source: Law Society of Ireland submission to LSRA, Law Society Annual Reports 2013-2020, and Law Society Gazette; CSO Census Data for 2006, 2011, 2016, and 2022*

#### Sole practitioners and small practices

The figures in Table 5.2 show that around 70% of legal practices in Ireland have two or less practising solicitors. The prevalence of small firms is important in the context of the conveyancing market.

<sup>322</sup> Law Society of Ireland: Conveyancing Manual, (2009) Oxford University Press at para 1.1

<sup>323</sup> <https://www.lsr.ie/wp-content/uploads/2021/06/LSRA-S33-Annual-Report-2020.pdf>, see p. 14, Table 3.2

Table 5.2: Size of legal firms in Ireland			
No. of solicitors in firm	Number of firms (2021/2022)	2021/2022	2005/2006
1	1,012	45%	45%
2	567	25%	25%
3	270	12%	12%
4	155	7%	6%
5	73	3%	3%
6-10	115	5%	6%
11-15	30	1%	1%
16-20	13	1%	0%
21+	33	1%	1%

*Source: Indecon analysis of Law Society Annual Reports*

Conveyancing is one of the core services offered by many legal practitioners. A survey of sole practitioners and smaller legal practices in Ireland, indicated that 92% provide residential conveyancing services and 72% provide commercial conveyancing services.<sup>324</sup> On average, residential and commercial conveyancing account for 29% and 13% of fee income, respectively, of these practices.<sup>325</sup>

Small practices tend to be general practitioners, and the majority of their clients are private individuals (78%) who require personal services such as probate/wills, conveyancing, and litigation.<sup>326</sup> It is important to note that sole practitioners and smaller practices are small business owners as well as legal professionals. As a result, issues surrounding recruitment, regulation/compliance, and growth opportunities tend to present internal challenges for these firms. A primary source of new business for smaller practices tends to be personal recommendations from family or friends.<sup>327</sup> An issue in the Irish legal services market is the planned introduction of legal partnerships as a business model and this may impact on the profile of the market. Following the introduction of legal partnerships, the LSRA has undertaken to consider the introduction of multi-disciplinary practices (MDPs). MDPs are partnerships of two or more people, including at least one solicitor/barrister. Such partnerships, if introduced, could offer legal and non-legal services including conveyancing.

In the context of conveyancing services in Ireland, it is also of note that in many solicitors practices, the solicitor is assisted by a legal executive. A legal executive is a professional person who is a member of The Institute of Legal Executives. The Irish Institute of Legal Executives estimated they represent over a thousand legal executives in Ireland. Not all of legal executives would be employed by solicitors and some are employed in the public sector or in financial institutions or semi-state companies. Within solicitors practices not all would be involved in conveyancing work. The Institute in conjunction with Griffith College, have developed a course specifically for the Legal Executive. The Diploma in Professional Legal Studies and Practice is a two-year course designed to give the Legal Executive the necessary academia and practical skills for the legal office.

<sup>324</sup> Crowe, (2018), "Market study of sole practitioners and smaller legal practices in Ireland", published by Law Society of Ireland, available [here](#)

<sup>325</sup> Ibid.

<sup>326</sup> Ibid.

<sup>327</sup> Ibid.

## Residential market

The Property Services Regulatory Authority (PSRA) recorded nearly 61,000 annual residential transactions. Assuming an average conveyancing cost of €1,800, this puts total fees at €109.6m for Ireland. The majority of property sales are in Dublin (30%) and within a €200k-€400k sale price range (50%). Large cities like Dublin, Cork, and Galway account for most conveyancing income due to their higher populations and supply of residential housing units. These counties accounted for €32.6m, €11.6m, and €4.9m, of conveyancing fees. There is a lack of definitive data on commercial conveyancing costs. However, Indecon has analysed the commercial property sales market and our indicative conservative estimates of conveyancing costs is around €25-30m per annum, but may be higher. These figures are based on solicitors' income/fees secured from payments received for conveyancing work.

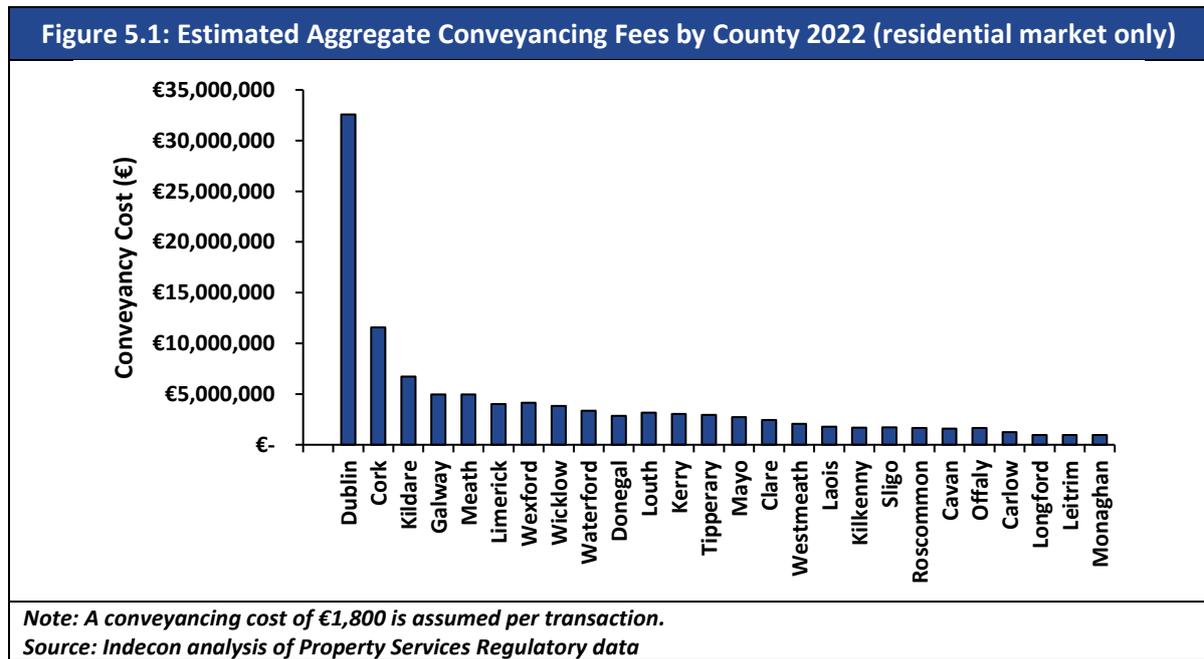
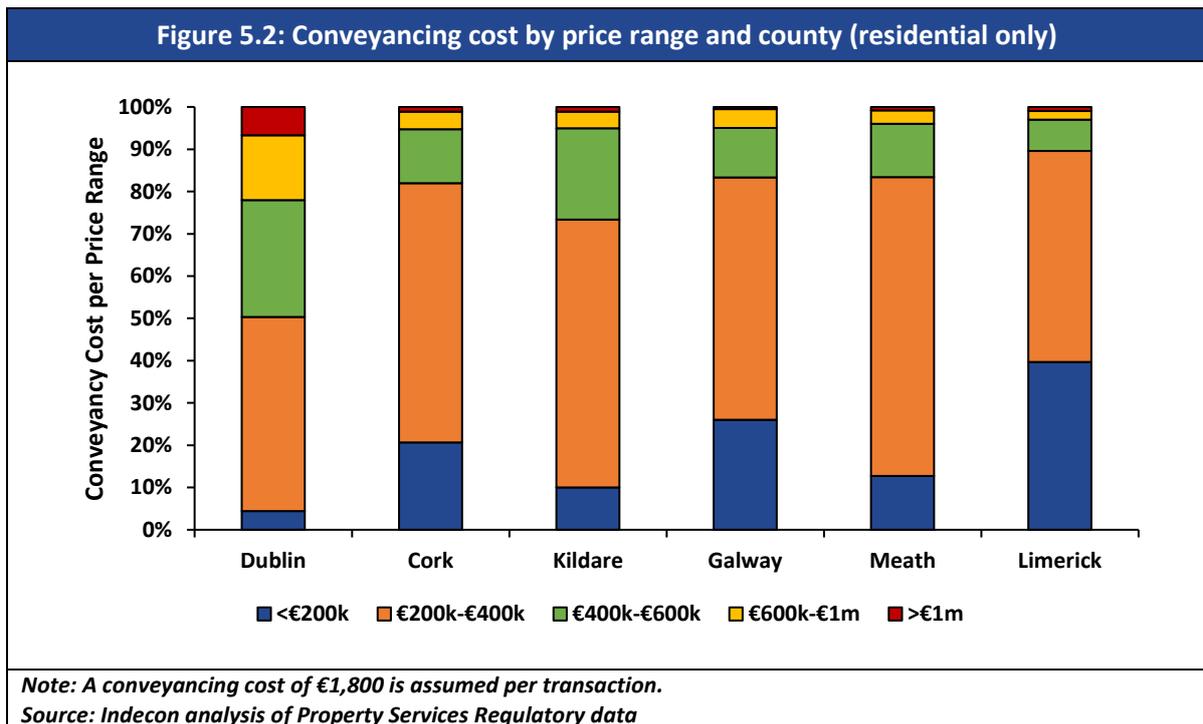


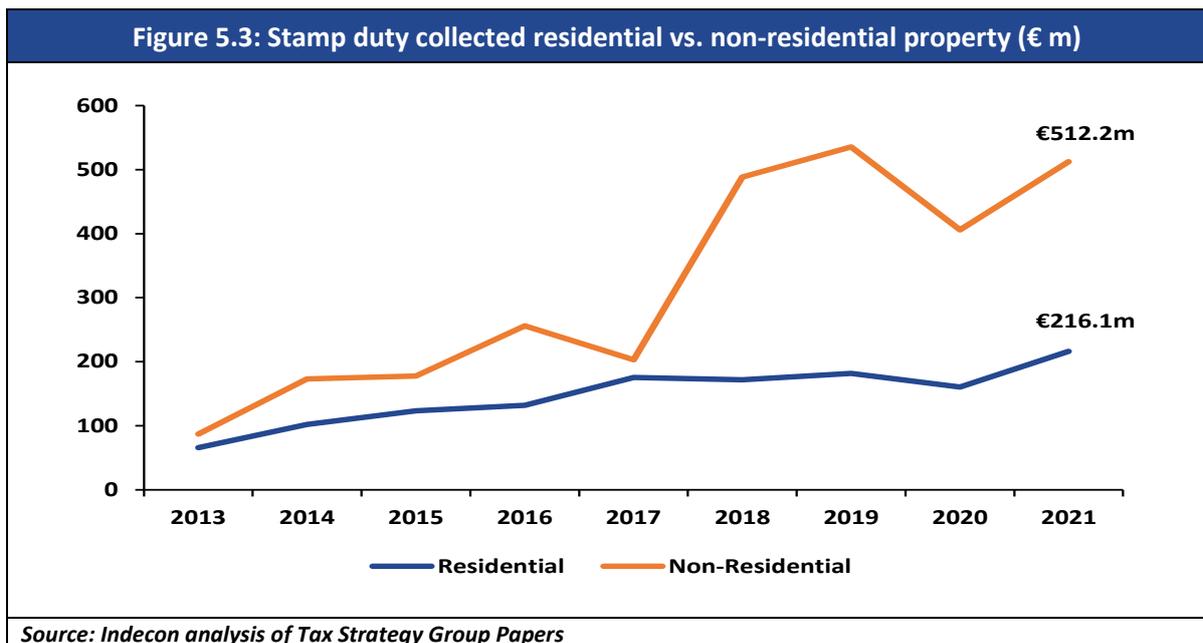
Figure 5.2 breaks down where the proportion of conveyancing costs lie across different price ranges and counties. Nationally, 80% of conveyancing costs are accrued on property transactions worth less than €400k. For Dublin and Wicklow, this is much lower, at approximately 55%. These areas have high populations and are attractive due to their proximity to Dublin city centre. This drives up the price and means these counties see a greater proportion of conveyancing costs originate from high value sales. In Dublin, 7% of conveyancing fees are on properties worth in excess of €1m.

In contrast, counties with smaller populations and a more rural backdrop see essentially no sales above €400k. In Leitrim and Donegal, approximately 67% of conveyancing costs are for property transactions worth less than €200k and the majority of the remaining 33% are for transactions worth less than €400k.



**Commercial market**

While the above research provides a useful insight into conveyancing costs in Ireland, it does not address the commercial side of conveyancing which may be considerable. Figure 5.3 shows the growth in stamp duty collected from residential and non-residential property sales. Both have grown consistently over time, but non-residential property stamp duty is more than double that of residential property as of 2021. Its significant growth is likely to reflect an increase in the tax rate from 2% in 2017 to around 7.5% currently. The rate of stamp duty for the typical residential property is 1%.



There is a lack of definitive data on commercial conveyancing costs. However, Indecon has analysed the commercial property sales market to give an indication of costs. Table 5.3 shows the total turnover and number of commercial property sales in Ireland over the last five quarters.

Table 5.3: Commercial property investment turnover and number of deals				
Year	Quarter	Total turnover (€ million)	Number of deals	Average deal size (€ million)
2022	Q3	1,750	44	39.8
	Q2	1,240	53	23.4
	Q1	762	31	24.6
2021	Q4	1,990	56	35.5
	Q3	793	38	20.9

*Source: Indecon analysis of Colliers Capital Markets Reports*

The nature of conveyancing services is likely to differ somewhat for the non-residential sector. It is likely that commercial clients require legal services in excess of a standard conveyance which lead to higher average legal fees. Based on the assumption that the typical cost of a non-residential conveyance as a share of property value is the same as the residential sector indicates that the scale of the commercial conveyancing market was around €27 million in 2022. However, as noted previously, it is likely that many transactions in the table include a number of legal services and thus it is difficult to estimate the exact value of the conveyancing aspect of legal costs. Using stamp duty receipts as the basis for the estimates indicates a figure of around €32m in 2021.

Table 5.4: Estimate of the scale of commercial conveyancing market			
2022	Total value of transactions - € million	% Conveyance cost	Estimated expenditure - € million
Residential	23,079	0.47%	109.6
Commercial	5,742	0.47%-1%	27.3-57.4

*Source: Indecon analysis*

There are other costs in a typical property transaction such as VAT, stamp duty, property registration fees, estate agent fees and outlays which significantly increase the cost of the transaction. Many of these are paid by the solicitor who recovers them from their client.

## 5.2 Scale and impact of the conveyancing market in Ireland

As part of this review, Indecon has estimated the direct and indirect economic value of conveyancing services to the Irish economy. Indecon's input-output model of the Irish economy is applied to estimate various economic indicators such as employment, gross value added and incomes. The direct expenditure involved in conveyancing services will generate economic impacts on local, regional and national economies. These impacts comprise:

- Employment, employment incomes and value-added; and
- Indirect employment, incomes, and value-added impacts.

Table 5.5 presents the direct conveyancing-related employment, incomes and other employment arising from these professional services. The economy-wide impacts include direct effects (i.e., the jobs sustained directly by conveyancing services) and the indirect/multiplier effects (i.e., the knock-on or additional effects generated as a result of the jobs directly supported by them).

It is estimated the conveyancing market supports approximately 1,041 full-time equivalent jobs (FTEs)<sup>328</sup> which translates into an estimated 1,261 FTEs on an economy-wide basis. The employment numbers associated with conveyancing include the employment of solicitors, legal executives and administrative and support staff. However, as discussed previously, it is likely conveyancing only represents a small (but important) share of a law firm's overall business.

<b>Table 5.5: Economic impact of conveyancing services in Ireland - estimated impacts on employment</b>			
	<b>Estimated expenditure - € million</b>	<b>Implied direct FTEs</b>	<b>Economy-wide FTEs (direct and indirect/multiplier impacts)</b>
Economic impact	€136.9	1,041	1,261
<i>Source: Indecon analysis</i>			

It is also possible to consider other important economic indicators such as gross value added (GVA). This measures the value added by service providers taking account of inputs. The input-output model indicates a high-level of GVA associated with this sector. Table 5.6 summarises these results.

<b>Table 5.6: Economic impact of conveyancing services in Ireland - estimated impacts on gross value added</b>			
	<b>Estimated expenditure - € million</b>	<b>Implied direct GVA - € million</b>	<b>Economy-wide GVA (direct and indirect/multiplier impacts) - € million</b>
Economic impact	€136.9	101.9	127.5
<i>Source: Indecon analysis</i>			

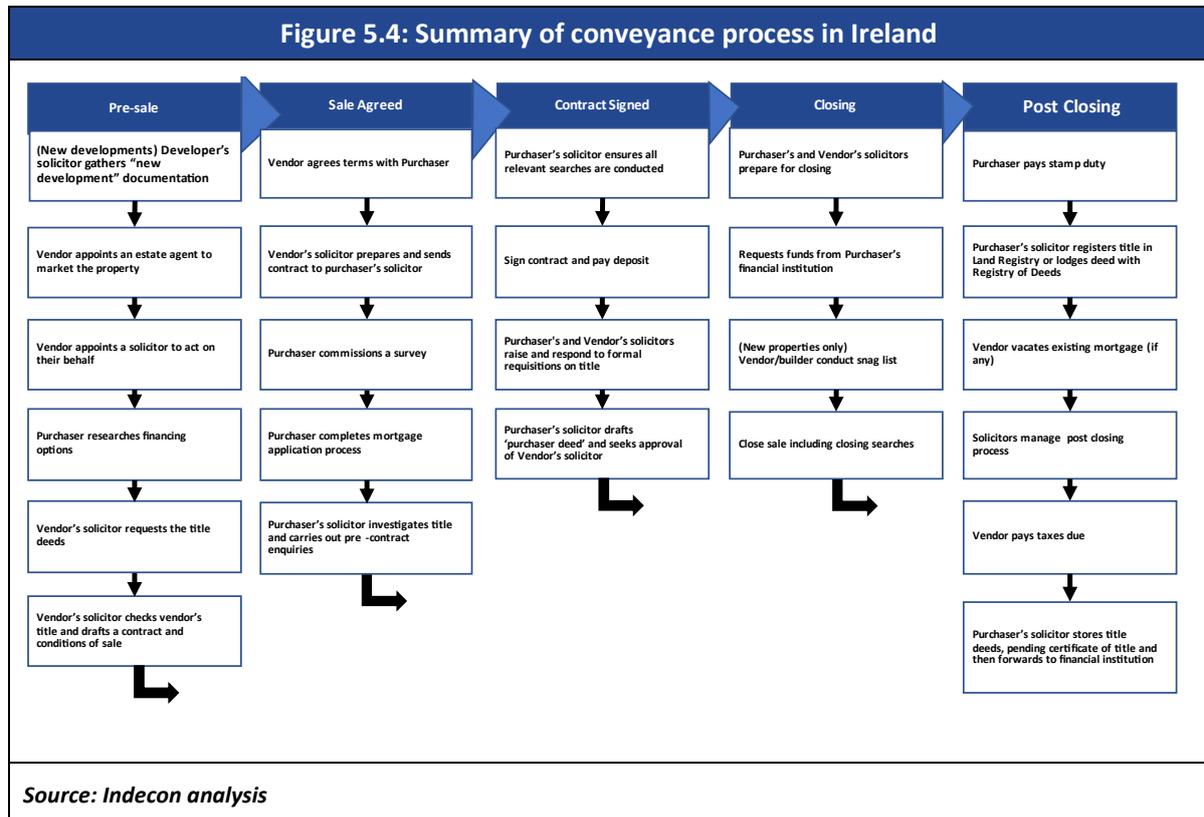
It is possible to examine how expenditures on conveyancing services support employment incomes in the sector. Our modelling estimates suggest they support €94.4 million in employment incomes on an economy-wide basis.

<b>Table 5.7: Economic impact of conveyancing services in Ireland - estimated impacts on employment incomes</b>			
	<b>Estimated expenditure - € million</b>	<b>Implied direct employment Incomes - € million</b>	<b>Economy-wide incomes (direct and indirect/multiplier impacts) - € million</b>
Economic impact	€136.9	78.1	94.4
<i>Source: Indecon analysis</i>			

<sup>328</sup> This estimate of FTEs refers to any person employed in legal services who may be involved in the conveyancing transaction and not just solicitors.

### 5.3 Review of how services are currently provided

Figure 5.4 provides an overview of the current elements in conveyancing in Ireland, from pre-sale to post-closing, and actions at each stage of the process. This highlights the complexity of the system. It also highlights the involvement of solicitors in ensuring tax compliance and other areas of statutory enforcement. In its submission to the LSRA as part of this study, the Law Society of Ireland indicated that : “Only those elements in the current process which impact on the transfer of title should be retained. The current system is utilised by the State as a tool for implementing social policy, for the collection of tax, for statutory enforcement and various other objectives. The process was not designed for these ‘add-ons’ and as a result, even the most basic residential conveyance now requires multiple investigations that have little do with ownership, transfer and security of title. All these enquiries add to the complexity of the conveyancing process thereby causing delays and, ultimately, increased cost to the consumer.”<sup>329</sup> Indecon believes that as well as any of these additional elements, there is potential for significant time savings from greater digitalisation of the conveyancing process. This would require an enhanced use of digitalisation by the legal profession. Major improvements could also be made by the introduction of an e-conveyancing system which would require state involvement.



<sup>329</sup> LSI submission to LSRA/Indecon, 06.01.2022, at para. 6.3

**Pre-sale**

Land developers must engage solicitors at the earliest stage of the process to gather new development documentation. The vendor then appoints an estate agent to bring the property to market, i.e., placing ads, conducting viewings, etc., and a solicitor to act on their behalf throughout the remaining stages. The purchaser usually engages first with the estate agent and then looks into their financing options. The vendor's solicitor requests title deeds, conducts a title search, and drafts a contract for sale.

From the consumer/purchaser's perspective, the process begins with choosing a solicitor. Based on the survey conducted as part of this review, 78% of consumers knew the solicitor they planned to use prior to the transaction, basing this decision largely on past experience or a recommendation from a family member or friend. It is notable that almost no respondents indicated their choice of solicitor was based on online information (presumably due to lack of website information or price comparison tools for legal services in Ireland), and that fair pricing was ranked second in importance, just after reliability. Estimated fees were ranked at the top of the list of items of information provided by the solicitor at the outset of engagement.

**Sale agreed**

Once the vendor and purchaser agree on a price and terms of sale, the vendor's solicitor draws up contracts and sends them to the purchaser's solicitor. The purchaser may commission a survey at this stage to check the property has been constructed properly and in accordance with regulations. Also at this stage is the purchaser's mortgage application. The purchaser's solicitor conducts a title search and makes any necessary enquiries relating to the terms of sale. At this stage, legal issues may arise which require the solicitor to provide additional advice or services relating to them.

Indecon consumer survey respondents indicated that 42% had "issues" relating to items of legal significance such as planning permission, mortgage issuance, title/deed defect, tax, etc. Of those, more than half reported the complications required additional advice. This suggests a significant need for legal services beyond simple transactional paperwork.

**Contract signed**

Once the title searches and property inspections are complete and financing obtained, assuming there are no outstanding issues, contracts are signed, and a deposit paid. Solicitors for both parties raise and respond to formal requisitions on the title. The purchaser's solicitor drafts a purchase deed and sends to the vendor's solicitor for approval.

Legal issues may arise during this stage, such as title or property defects, failure to obtain financing, or other disagreements over terms of the sale.

**Closing**

After resolving these issues, parties prepare for the closing. Funds are requested from the purchaser's lender and a "snag list" (of items to be corrected or finished) prepared and resolved in the case of new properties. Legal issues may arise at this stage if there are significant unresolved problems from the snag list. The sale is closed when funds are transferred to the vendor.

### **Post-closing**

Once the purchase is complete, the purchaser pays stamp duty and their solicitor registers title in the Land Registry or lodges the deed with the Registry of Deeds. The vendor vacates any prior existing mortgage and pays any final taxes due. The purchaser's solicitor stores title deeds pending certificate of title, and forwards this to the financial institution when received.

## **5.4 Role of Section 150 Notices**

In considering the current market for conveyancing services it is useful to rate the role of Section 150 Notices. Section 150(1) of the Legal Services Regulation Act 2015 requires that Section 150 Notices are provided. The commenced in October 2019 under Part 10 of the Act and involved new legal costs rules. The Act requires that the notices are written in clear language that is likely to be easily understood by clients. These require that the provision of information on the amount of legal costs that have been incurred up to the date the notice is provided. These notices also detail the costs of a fixed nature that are certain to be incurred such as property registration fees and stamp duty. The introduction of Section 150 Notices has increased transparency for clients of conveyancing.

Section 150 Notices provide greater transparency for consumers compared to the obligations under the previous Section 68 of the Solicitors (Amendment Act) 1994. Fundamentally, a key difference is the greater obligations on solicitors to inform their clients on the details of the legal costs that will be incurred once they receive instructions from a client. The Section 150 Notice is larger and more detailed than the precedent Section 68, and must be written in clear language. It also provides greater certainty for consumers of the legal costs that will be incurred. Where this is not reasonably practical to do so at that time, the solicitor must provide the basis upon which the costs will be calculated. If a solicitors becomes aware of an issue which would be likely to make the legal costs incurred significantly greater than disclosed or included in a Section 150 Notice, they must, as soon as possible, provide the client with a new Section 150 Notice.

## **5.5 Summary of key findings**

- ❑ Conveyancing is one of the core services offered by many legal practitioners. In a survey of sole practitioners and smaller legal practices in Ireland, 92% provide residential conveyancing services and 72% provide commercial conveyancing services. The Property Services Regulatory Authority recorded nearly 61,000 annual residential transactions. Assuming an average conveyancing fee of €1,800, this puts total fees at over €109.6m for Ireland.
- ❑ As part of this review, Indecon has estimated the direct and indirect economic value of the provision of conveyancing services to the Irish economy, applying Indecon's input-output model of the Irish economy to estimate economic indicators such as employment, GVA and incomes. It is estimated the conveyancing market supports approximately 1,041 full-time equivalent jobs (FTEs) and this translates into an estimated 1,261 FTEs on an economy-wide basis.

## 6 Competition Concerns and Barriers to Entry

### 6.1 Introduction

In line with the terms of reference, it is important to analyse the barriers to new entrants and to greater competition in this area. In particular, it is informative to review regulatory barriers to entry, the issue of information gaps and other barriers to entry. It is also particularly important to consider the assessment by Ireland's statutory agency, the Competition and Consumer Protection Commission. In considering the impact on competition, Indecon believes that competition can be enhanced in a way which does not reduce consumer protection. This would, however, require appropriate regulation.

### 6.2 Regulatory barriers to entry for conveyancing professions

The market for conveyancing has changed in recent years and there has been a significant growth in the number of solicitors operating in the Irish market and some providers are advertising their fees for conveyancing services. Currently, there is a legislative barrier to establishing a new conveyancing profession. Section 58 of the Solicitors Act (1954) restricts "the process of transferring ownership of property" to "practising solicitors when there is an expectation of a fee gain or reward."<sup>330</sup> There is an exemption provided under the Act for "persons undertaking conveyancing while in the employment of a practising solicitor and under their supervision." The removal of the legislative monopoly currently restricting conveyancing services to solicitors would facilitate further competition in the Irish market.

Indecon notes some measures have been implemented in recent years and have enhanced competition. These include the establishment of the LSRA and its statutory objectives, *inter alia*, to promote competition. The LSR Act 2015 (including Section 150 Notices) introduced new costs transparency measures. It also required the LSRA to introduce regulations to regulator advertising by legal practitioners.<sup>331</sup> In the context of conveyancing, the legal costs required include fees, charges, disbursements and any other costs incurred in completing the conveyancing including VAT.

### 6.3 Information gaps as barriers to market entrants and to competition

Of importance from a competition perspective is that consumers of conveyancing services face a number of challenges in making informed decisions. These include information gaps concerning the price, quality, and service levels offered by various suppliers. The incomplete information available to consumers represents information asymmetry. This constitutes a barrier to new entrants and hinders competition in the market. In evaluating the merits or otherwise of the introduction of a new conveyancing profession, it is therefore important to consider the extent to which information gaps may reduce competition from innovative or more cost-competitive suppliers. This issue is in addition to specific legislative barrier preventing the introduction of a new conveyancing profession.

Most consumers of conveyancing services only rarely need them and may not have the experience or information to fully inform their choice of providers. This was one of the factors which led to concerns regarding the level and intensity of competition in the Irish legal services market raised by the Irish Competition Authority as far back as 2006. This investigation found that at that time there was "limited information available to consumers of legal services about fees and costs prior to engaging the services of a lawyer. The lack of transparency in the price of legal services makes it

<sup>330</sup> Solicitors Act (1954)

<sup>331</sup> The Legal Services Regulation Act 2015 (Advertising) Regulations 2020

difficult for consumers to shop around for legal services. If consumers cannot compare the prices for legal services, there is little incentive for lawyers to compete on price.”<sup>332</sup>

The Legal Services Regulation Act 2015 (as amended in December 2020) has made a number of changes. Section 150 of the Act requires legal service providers, on instruction of a client, to disclose legal costs “that will be incurred in relation to the matter concerned” and “if it is not reasonably practicable for the notice to disclose the legal costs at that time, set out the basis on which the legal costs are to be calculated.”<sup>333</sup> The LSRA also regulates the advertising of legal services under the Legal Services Regulation Act 2015 (Advertising) Regulations 2020.<sup>334</sup> Subject to some restrictions, legal practitioners can advertise their services. These regulations cover print, audio and online advertising and apply to solicitors, barristers, Limited liability partnerships (LLPs) and groups of legal practitioners who advertise themselves as a group. New consumer research commissioned by the LSRA highlights that advertising (online or in print) plays a relatively minor role in how consumers choose a conveyancing professional.

Despite these improvements, there remain major gaps in transparency of information on costs and other aspects of conveyancing services in Ireland. This was evident in Indecon’s research for the current project which showed there is an absence of independent, readily available price comparisons. Furthermore, a consumer survey conducted for the LSRA indicate that not all of consumers received written quotations of costs. This is not just an Irish problem and a major study of the legal services market undertaken by the Competition and Markets Authority in Britain concluded that consumers of legal services “generally lack the expertise and information they need to find their way around the legal services sector and to engage with providers. Consumers find it hard to make informed choices because there is little transparency about price services and quality.”<sup>335</sup> This represents a barrier to new entrants as practices offering lower costs or better services may find it hard to gain market share due to the lack of transparency in the market.

The Consumer Association of Ireland made a detailed submission to the public consultation on this topic undertaken by the LSRA. This recognised the competition concerns and suggested that there could be a number of benefits from enhanced competition through the introduction of a new profession of conveyancer including:

- Delivery of services in a timely and efficient manner;
- Reduction in fees; and
- Opportunities for efficiencies that could improve the quality of the service, the timely provision of the service and the introduction of efficiencies of delivery through e-services.

In the absence of transparent information, consumers are likely to source their conveyancing services from solicitors which they, or their family or friends, may have used previously. This can lead to consumer inertia and a failure to use the most competitive provider. It has been pointed out, for example, that: “information plays a direct role in driving competition as consumers need to have access to accurate information on price, service and quality to make informed decisions. If this competitive process works well it can lead, for example, to lower prices, higher quality, and greater innovation.... Studies over a number of years have shown that knowledge and awareness of the legal services sector is low.”<sup>336</sup> As a result of the lack of transparency in information on conveyancing services, competition is weakened, and this also acts as a barrier to entry. The impact is that consumers are likely to either use a solicitor they used for previous services or by a recommendation from a family member or friend. This is evident from new Indecon research which showed the

<sup>332</sup> Competition in Professional Services, Solicitors and Barristers, The Competition Authority, 2006, p. vii.

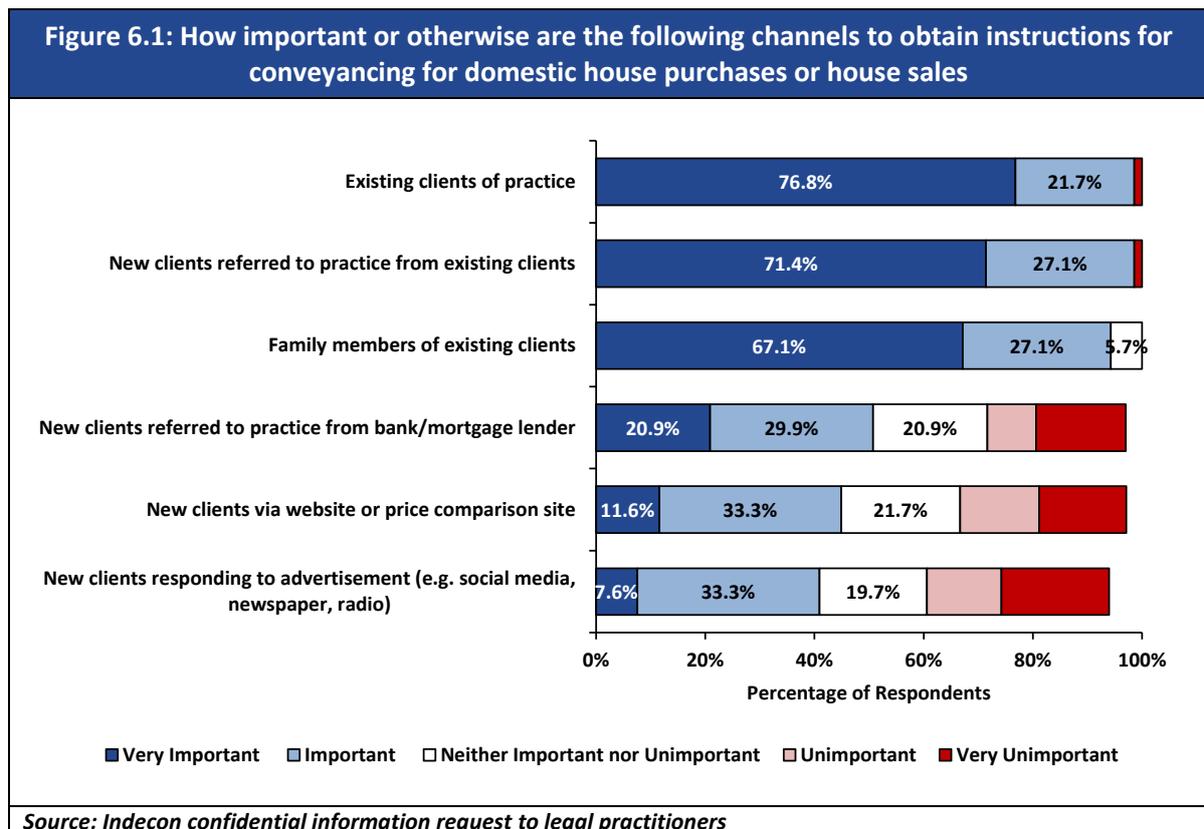
<sup>333</sup> Ibid.

<sup>334</sup> <https://www.lsr.ie/for-consumers/advertising-by-lawyers/>

<sup>335</sup> Competition and Markets Authority. Legal Services Market Study, Final Report, 15 December 2016.

<sup>336</sup> Competition and Markets Authority, op. cit., p. 8

importance of different sources of conveyancing businesses for Irish legal practitioners. The figure below shows that the most important channel for obtaining conveyancing business by legal practices is through “existing clients of practice”. Clients referred to the practice from existing clients and family members of existing clients were also an important source of business. New clients via websites or price comparison sites were only seen as a very important source of instructions for conveyancing for a small number of legal practices. This finding was also evident in the consumer survey undertaken on behalf of the LSRA. This survey of consumers who have used conveyancing services in the last four years found that only 5% of consumers found their solicitor via an online search. This takes place against a background of significant information gaps faced by consumers and may deter consumers shopping around for such services.



## 6.4 Other barriers to entry

Other potential barriers to new entrants to be considered in any design of models for a conveyancing profession include the availability and costs of professional indemnity insurance. Dublin City Council raised this point in a submission to Indecon/LSRA noting that: “the question arises as to whether insurance companies would be willing to provide insurance to a profession with such a narrow focus and legal expertise.”<sup>337</sup> In addition, a barrier arises if regulatory requirements are set too high. The procedural work involved in conveyancing requires a narrow set of legal skills compared to a solicitor. If a new conveyancer profession must adhere to rules designed for solicitors in circumstances not applicable to straightforward conveyancing transactions this would represent a barrier to competition. This could lead to: “...inconsistent treatment of providers and a regulatory gap” because

<sup>337</sup> Submission to LSRA Public Consultation 2022.

“regulatory costs that are not necessary and proportionate may be a barrier to innovation and the introduction of new business models.”<sup>338</sup>

## 6.5 Views of the competition and consumer protection commission

In considering competition for conveyancing services, it is important to take account of the assessment by Ireland’s statutory authority in this area, the Competition and Consumer Protection Commission (CCPC). In a detailed submission it referred to the previous Market Study undertaken by the Competition Authority, extracts of which are presented below. The CCPC identified the legal barrier to new providers of conveyancing which results in a monopoly for solicitors and prevents greater competition. It pointed out that the earlier market study “identified the monopoly that solicitors currently maintain on providing conveyancing services as restricting competition in the sector. It argued that solely allowing solicitors to provide conveyancing services limits competition and contributes to both the high fees and comparatively lengthy duration of the process in Ireland. It cited examples of other jurisdictions with common law systems which had established a profession of conveyancer, such as in England and Wales, and highlighted the benefits it had brought.” It also noted that conveyancers are permitted in a number of Australian states, in New Zealand and Scotland. This is discussed in more detail in Section 2 of this report. The CCPC submission recognised that since their previous Market Study was undertaken, there have been some changes but concluded the earlier recommendations relating to the pro-competition benefits of a conveyancing profession still stand today. Indecon agrees with this recommendation.

Indecon notes that a report by Crowe published by the Law Society of Ireland and based on research undertaken in 2018 suggested that “competition is increasing in terms of fees, given the prevalence of some services and the use of discounting as a method of differentiation, e.g., conveyancing. In terms of fee pressure, it was argued that there is a constant price pressure on the traditional areas of practice, in particular, conveyancing.”<sup>339</sup> Also of relevance is that as discussed in Chapter 5, the growth in the number of practising solicitors showed that numbers increased by 84% over the period 2003 to 2020. The increase in the number of solicitors on its own does not necessarily imply increased competition if there is no price differentiation and gaps in transparency. However, the increase in capacity provides a basis for increased competition.

<sup>338</sup> CMA, *op.cit.*, December 2020 at p. 98

<sup>339</sup> *Ibid.* at p. 43

**Table 6.1: CCPC assessment of the impact on competition of a conveyancer profession**

The CCPC believes restricting the provision of conveyancing services to solicitors limits competition and keeps fees high. Establishing a profession of conveyancers in Ireland should lead to downward pressure on fees and more consumer-friendly and innovative ways of providing these services. Previous studies have found that the cost of conveyancing in Ireland is significantly higher than other countries with similar legal systems. Other reports have described the conveyancing process in Ireland as inefficient, complex and paper intensive, and noted that the degree of innovation in Ireland has been slow. The CCPC notes these reports are now dated and there has been some change in the conveyancing market. The number of solicitors in Ireland has risen considerably in recent years.

A 2019 Study for the Law Society of Ireland on sole solicitor practitioners and smaller legal practices in Ireland stated that competition is increasing in terms of conveyancing fees, given the prevalence of services and use of discounting as a method of differentiation. In terms of fee pressure, it argued there is constant price pressure on the traditional areas of practice, in particular, conveyancing. Furthermore, we (CCPC) note developments and planned innovation of conveyancing processes in recent years, particularly regarding e-conveyancing, although these changes have been much slower than in other jurisdictions such as England and Wales and Australia. Despite these positive developments, it is the view of the CCPC that the introduction of a profession of conveyancer can serve to increase competition further and deliver greater benefits for consumers, regardless of the levels of competition among solicitors in conveyancing services.

*Source: CCPC Submission to LSRA Public Consultation 2022*

## 6.6 Summary of key findings

- ❑ Consumers of conveyancing services face a number of challenges in making informed decisions with information gaps on the price, quality, and service offered by alternative suppliers. This incomplete information or information asymmetry represents a barrier to new entrants and hinders competition in the market.
- ❑ As a result of the lack of transparency of information on conveyancing services, competition is weakened, and this represents a barrier to entry. The impact is that consumers are likely to either choose a solicitor they used previously or from a recommendation by a family member or friend.
- ❑ Currently, there is a legislative barrier to a new conveyancing profession. Section 58 of the Solicitors Act (1954) restricts: “the process of transferring ownership of property” to “practising solicitors when there is an expectation of a fee gain or reward.” There is an exemption provided under the Act for: “persons undertaking conveyancing while in the employment of a practising solicitor and under their supervision.”<sup>340</sup>
- ❑ Other barriers to entry for a conveyancing profession relate to the availability and costs of professional indemnity insurance. Dublin City Council raised this point in a submission to Indecon/LSRA, noting that: “the question arises as to whether insurance companies would be willing to provide insurance to a profession with such a narrow focus and legal expertise.”<sup>341</sup> In addition, a barrier arises if training or qualification requirements are set too high.
- ❑ While there is some evidence of an increase in competition and potential pro-competition developments have occurred since the previous Irish Competition Authority Market Study was undertaken. Indecon concurs with the assessment of the CCPC that the introduction of a profession of conveyancer can serve to increase competition further.

<sup>340</sup> CMA, December 2020, “Review of the legal services market study in England and Wales” accessed at: [https://assets.publishing.service.gov.uk/media/5fd9e53cd3bf7f40ccb335e1/Legal\\_Services\\_Review\\_-\\_Final\\_report.pdf](https://assets.publishing.service.gov.uk/media/5fd9e53cd3bf7f40ccb335e1/Legal_Services_Review_-_Final_report.pdf)

<sup>341</sup> Submission to Indecon.

## 7 Pros and Cons of a new conveyancer profession

### 7.1 Introduction

As background context to examining the pros and cons it is informative to consider the views of the legal profession on the likely overall impact. These are presented in Table 7.1 and suggest that many of the legal profession believe that separate conveyancing firms would secure a share of the conveyancing work currently undertaken by solicitors over 40% of firms surveyed also believed it would result in legal firms employing conveyancing specialists.

<b>Table 7.1: Legal Professions Views on Likely impact of the introduction of a new conveyancing profession in Ireland</b>						
	<b>Very likely</b>	<b>Likely</b>	<b>Neither likely nor unlikely</b>	<b>Unlikely</b>	<b>Very unlikely</b>	<b>Don't know</b>
Would result in the establishment of separate conveyancing firms who would secure a significant share of conveyancing work currently undertaken by solicitors' practices	34.8%	27.5%	11.6%	15.9%	7.2%	2.9%
Would result in the establishment of separate conveyancing firms who would only secure a small share of conveyancing work currently undertaken by solicitor practices	10.0%	34.3%	11.4%	27.1%	11.4%	5.7%
Would likely result in legal profession employing conveyancing specialists	11.4%	30.0%	14.3%	22.9%	12.9%	8.6%
<i>Source: Indecon confidential information request to legal practitioners</i>						

In line with the terms of reference set for the study, Indecon has considered the pros and cons of introducing a new profession of conveyancer. Indecon believes that these should be considered against the counterfactual of the current position where the provision of conveyancing services is restricted to the legal profession. A wide range of pros and cons were suggested in stakeholder submissions and in wider consultations completed by Indecon. There was also some limited evidence on the potential impacts from the international experience although this was not definitive. The pros and cons covered areas such as:

- The impact of competition;
- The implications for the efficiency in the provision of conveyancing services;
- The consequences for the time to complete conveyancing transactions;
- The impact on quality and on service innovation;
- The regulatory requirements and costs; and
- Other implications.

## 7.2 The impact on competition

In reviewing the conveyancing services market in Ireland, it is useful to note that legislative, regulatory, and market developments are changing, and these will impact on the sector. For example, the Courts and Civil Law (Miscellaneous Provisions) Act 2023 paves the way for the introduction of legal partnerships as a new business model for legal services. This allows for barristers and solicitors, as well as barristers and other barristers, to form legal partnerships to provide services together.

The CCPC in a detailed submission to this review referenced a study by Crowe for the Law Society of Ireland which suggested that competition is increasing in terms of conveyancing fees, and noted the use of discounting as a method of differentiation. The report by Crowe noted that smaller practices operate in a wider environment which includes medium-sized firms, large firms and increasingly global firms. They suggested that this makes the operating environment both competitive and dynamic. They noted that smaller firms saw a threat as competition in traditional areas of practice. In assessing the conclusions of the Crowe study, Indecon examined the survey evidence included in the report. This showed that a survey of legal practitioners indicated that 44% of firms reported that their profit margin had declined and this compared to only 18% who reported an increase on margin. The explanations provided for the low margins included the fact that fees were constant or declining, higher overhead costs or greater competition. Data presented in the annexe of the Crowe Report also demonstrated the emergence of small new entrants to the market. However, we believe the introduction of a new conveyancer profession is likely to drive additional competition both among existing solicitors, as well as providing competition from new entrants. This is aligned with the considered view of the CCPC which is the statutory agency responsible for competition and consumer protection. The ability of innovative solicitors' practices or specialist conveyancing firms to embrace the efficiency gains from employing conveyancing specialists would enable them to offer lower cost services. New specialist conveyancing firms would need to offer lower costs, enhanced service innovations, or faster timescales in order to gain business. This would give consumers greater choice and would further enhance competition. Indecon believes this is a significant benefit and merits careful consideration. However, the benefits from enhanced competition would only arise if there was a significant take up of conveyancing professionals in the market. The experience in Scotland suggests this is not certain. In Indecon's survey of legal practitioners, over 60% indicated that it was likely that a new profession would lead to separate conveyancing firms being established.

The CCPC recognised that, since the publication of their previous market study, the legal sector has undergone significant change, in particular through the enactment of legislation establishing the LSRA as an independent regulator for the sector. The CCPC noted the changes which had taken place in the conveyancing market as well as developments and planned innovation of conveyancing processing, particularly regarding e-conveyancing. The CCPC noted that "despite these positive developments, it is the view of the CCPC that the introduction of a profession of conveyancer can serve to increase competition further and deliver greater benefits for consumers regardless of the level of competition among solicitors in conveyancing services."<sup>342</sup>

A summary of some of the views of stakeholders on the impact on competition is presented in the next table. The likely impact on competition is consistent with the experience in other countries, however, these stakeholders' submissions often reflect the views of specific stakeholder groups.

<sup>342</sup> CCPC submission to the Legal Service Regulatory Authority on the creation of new profession of Conveyancer. 6 January 2022.

**Table 7.2: Views of stakeholders on impact on competition**

“It is the view of the CCPC that the introduction of a profession of conveyancer can serve to increase competition further and deliver greater benefits to consumers.”

**Competition and Consumer Protection Commission**

“Clearly, the introduction of a new profession of conveyancer would impact on competition because there would be more individuals in a position to carry out a conveyancing transaction rather than if it stayed confined...to practising solicitors. Whether the extra competition is necessary is not entirely clear.”

**The Bar of Ireland**

“With the introduction of this new profession competition in the provision of legal services will increase.... For the consumer an increase in competition will result in lower costs.” **Dublin City Council**

“There is vigorous price competition within the sector. The available evidence suggests that conveyancing services are generally provided below cost.... No evidence has been produced that the introduction of a new profession of conveyancer will have any effect on either the price or the quality of conveyancing services – it is more likely that it will have an adverse effect.... It is unlikely that any conveyancer or firm of conveyancers will be able to finance their operations, likely leading to a small number of monolithic providers operating their own monopoly to the detriment of consumers.” **Law Society of Ireland**

“If such a new profession emerges and unless some restriction is placed on the manner in which they are to operate, the likelihood is that estate agents will go into competition with solicitors by employing Conveyancers in a ‘one stop shop’.”

**Louth Bar Association**

“The creation of a new profession of conveyancer could reduce the costs associated with conveyancing and could reduce the time taken to complete the conveyancing process.” **Property Registration Authority**

**Source: Submission to LSRA Public Consultation and Indecon Review Team**

### 7.3 The implications for efficiency in the provision of conveyancing services

The introduction of significant numbers of specialists focused on conveyancing has the potential to enhance efficiency in these services. The establishment of these new professionals would result in a different cost base reflecting their more limited albeit specialist training and qualifications. Combined with greater digitalisation, this would offer the potential for alternative business models with improved cost-efficiency impacts. This may explain why many of the solicitor practices surveyed indicated that the likely impact would involve the employment of conveyancing specialists by the legal profession. The views of stakeholders on the impact on efficiency in the provision of services are presented in the next table.

**Table 7.3: Stakeholders' views on impact on cost efficiency**

"Opportunities for effectiveness through a professional provider... and the introduction of efficiencies of delivery through e-Services." **Consumers' Association of Ireland**

"It is not entirely clear whether the introduction of more individuals prepared to carry out the same service will result in a lower fee for consumers, given that overheads will have to be discharged by the individuals and certain expenses in transaction would be fixed." **The Bar of Ireland**

"The CCPC considers that increased digitalisation of conveyancing, coupled with the introduction of a conveyancer profession, would [have] the potential for entry by alternative business models to provide conveyancing services." **Competition and Consumer Protection Commission**

"If the only rationale surrounding the introduction of this new profession is to reduce the costs of conveyancing and access to conveyancing it must be noted that over the past number of years, the cost of conveyancing has reduced dramatically." **Dublin City Council**

"The new role of a 'licensed conveyancer' may be advantageous to larger law firms that employ legal executives in a specific role within the Conveyancing Department (e.g. sales of new homes in a development)." **Dublin Solicitors' Bar Association**

"It is the view of the Irish Institute of Legal Executives that the creation of a new profession of Conveyancer in Ireland would merely place on more formal footing the work the Legal Executives have been doing for many years, and also, that of the consumer." **Institute of Legal Executives (ILEX)**

"The SCSI is of the view that there is no single solution to reducing the costs and time of conveyancing and while the introduction of a new profession may increase efficiency, as a standalone measure it may not achieve the objectives of the LSRA." **Society of Chartered Surveyors of Ireland**

"Establishing a standalone profession of conveyancer will deliver systematic efficiencies as the conveyancer will be full-time and will not be attending to other unrelated duties in a practitioner's office." **Institute of Professional Auctioneers and Valuers**

**Source: Submission to LSRA Public Consultation and Indecon Review Team**

## 7.4 The consequences for the time to complete conveyancing

For standard transactions, introducing a new specialised conveyancer profession could reduce the time to complete conveyancing. This was highlighted by a member of stakeholders and is aligned with the limited international evidence, however, may not always be the case if more complex legal issues arise as discussed later in this section. As with some other positive impacts, the link with digitalisation is important and the introduction of a new specialist profession, combined with digitalisation are likely to have positive benefits.

While some legal practitioners suggested they thought a new profession could delay the speed of conveyancing, Indecon's judgement is that a shorter timeframe is more likely for standard cases. Indecon notes that there is some evidence from New Zealand that a conveyancing profession resulted in a lower average completion time of four weeks<sup>343</sup> and the extent to which the sector is digitalised. Indecon, however, accepts that other issues including title registration may be more significant in reducing conveyancing times. The views of stakeholders on the impact on conveyancing times are presented in Table 7.4.

<sup>343</sup> However, it must be noted these efficiency gains may also have been related to increased digitalisation of the process in New Zealand.

Table 7.4: Views of stakeholders on impact on time to complete conveyancing
<p>“The current delays being experienced by consumers are unacceptable – they lead to real, tangible and stress-inducing problems for families, couples and individuals navigating the choppy waters of the Irish property market today.... Establishing a standalone profession of conveyancer will deliver systematic efficiencies as the conveyancer will be full-time and will not be attending to other unrelated duties in a practitioner's office.” <b>Institute of Professional Auctioneers &amp; Valuers (IPAV)</b></p> <p>“The creation of a new profession of conveyancer could reduce the costs associated with conveyancing and could reduce the time taken to complete the conveyancing process.... Anything that improves the speed of conveyancing, particularly for the purchase of residential homes, is to be welcomed.” <b>Property Registration Authority</b></p> <p>“It may be that the conveyancer will be in a position to speed up the process for consumers.” <b>Dublin City Council</b></p> <p>“Opportunities for efficiencies through a professional provider that could improve the quality of the service, the timely provision of the service and the introduction of efficiencies of delivery through e-services.” <b>Consumers’ Association of Ireland</b></p>
<p><b>Source: Submission to LSRA Public Consultation and Indecon Review Team</b></p>

In complex cases where legal issues arise, handling by a separate conveyancer profession could result in additional time delays. This will be less likely to apply if the conveyancer professional is employed in a solicitor’s practice. While it is possible to imagine such a scenario, Indecon believes it is unlikely additional costs over time delays would apply in most cases but there are potential risks in this area to consider. Stakeholders’ views are in the following table.

Table 7.5: Views of stakeholders on additional costs or time delays for complex cases
<p>“It is possible to envisage situations, specifically where a transaction is not proceeding according to plan, where the fact that a conveyancer being engaged in the transaction may result in the consumer incurring extra expense than would otherwise be the case, especially if conveyancers are not entitled to instruct barristers in relation to any necessary litigation, presumably it would then be necessary to engage a solicitor as well, thus increasing costs.” <b>Bar of Ireland</b></p> <p>“Solicitors may not be satisfied with an undertaking from a conveyancer particularly if it relates to a contentious matter. This has the potential to stall and delay transactions.” <b>Dublin City Council</b></p> <p>“A number of conveyancing transactions will end up in contractual disputes. Licensed conveyancers will not be in a position to deal with such disputes and therefore such matters will ultimately be passed to solicitors with the risk to consumers of added costs involved in file transfers.” <b>Dublin Solicitors’ Bar Association</b></p> <p>“There is considerable benefit to the client if the firm of solicitors which is acting in the conveyance is capable of representing the client in the context of any such dispute whether it is resolved through legal argument, mediation, arbitration or legal proceedings.” <b>Property Industry Ireland</b></p>
<p><b>Source: Submission to LSRA Public Consultation and Indecon Review Team</b></p>

## 7.5 The impact on quality and on service innovation

The introduction of a specialised profession has the potential to promote service innovation. This would include a growth in online and easy to use price comparison platforms. While the precise nature and extent of service innovation is uncertain, if the model chosen involved a separate conveyancing firm, it is likely to lead to service innovation. These could, for example, involve greater access to services outside standard office hours and enhanced technological options for consumers. It must be noted that existing legal practices may also decide to offer similar service innovations. The overall impact on service quality is however more uncertain. The research with consumers as part of

this review highlighted high levels of satisfaction with the quality of conveyancing services. A potential risk from a new conveyancer profession is a reduction in the quality of services. This was highlighted in our survey of legal practitioners and was also evident in various wider stakeholder submissions. Indecon believes this risk could be successfully mitigated through rigorous consumer protection measures and appropriate training and regulatory controls.

Table 7.6 presents examples of stakeholders' views about various actions on service level innovation. It should be noted that some comments, such as those from the Law Society of Ireland, do not refer to introducing a new profession but rather ensuring the conveyancing system is both modern and progressive and refers to the impact of e-conveyancing.

**Table 7.6: Views of stakeholders on impact on innovation**

"A potential positive impact is that a solicitor who only does conveyancing and wishes to incorporate under a limited company, could potentially "convert" to the role of a licensed conveyancer and incorporate and limit liability in this way." **Dublin Solicitors' Bar Association**

"Conveyancing practitioners should be enabled to form and be part of Multi-Disciplinary Practices (MDPs), subject to the development of regulation to provide for MDPs." **Consumer and Competition Commission**

"It is of key importance that the system of conveyancing is both modern and progressive. Reforming and updating the law to reflect this goal and to offer a cost effective, efficient system of conveyancing is vital to the Irish economy.... In circumstances where the Law Society of Ireland (LSI) is actively driving a substantial reform agenda by the introduction of a system of e-conveyancing which will streamline and expedite the conveyancing process, reduce costs and enhance the experience of stakeholders, any substantial change to the current model of delivery is premature." **Law Society of Ireland**

"Priority should be afforded to introduce e-Conveyancing in full ahead of a new Profession of Conveyancer." **Society of Chartered Surveyors of Ireland**

"Digital technology and digitalisation are unlikely to be of any great significance to conveyancers any more than they would be of benefit to solicitors." **Bar of Ireland**

"The creation of the professional conveyancer role opens real and positive opportunities for those who have entrepreneurial business focus in a marketplace that is evolving rapidly." **Consumers' Association of Ireland**

"Further progress would need to be made in e-conveyancing before a specialist conveyancer profession should be even considered." **Property Industry Ireland**

**Source: Submission to LSRA Public Consultation and Indecon Review Team**

Stakeholder consultations suggested that there are also potential risks to consumer protection. Solicitors provide conveyancing and there are strong mechanisms in place to guarantee consumer protection. Indecon's assessment is that there are risks to consumer protection unless adequate regulatory measures ensure consumer interests are protected. However, these can be managed and from the experience in other countries introducing such measures is possible. Stakeholders' views are outlined in Table 7.7.

**Table 7.7: Views of stakeholders on impact on risks to consumer protection**

“There is a risk that there may be an absence of adequate insurance and/or oversight, that would clearly be a matter of significant detriment to a consumer.” **Bar of Ireland**

“Unless the conveyancer is bound by the same rules and standards the consumer will not be protected to the same extent.... The conveyancer should be required to have the same level of professional indemnity insurance as a practising solicitor.” **Dublin City Council**

“A Conveyancers’ Council of Ireland (‘the Council’) should be established by statute to regulate a new profession of Conveyancer.... The Council should also develop a binding code of ethics for the profession.... Conveyancers should be required to have professional indemnity insurance.” **Consumer Protection and Competition Commission**

“The area of risk to consumers to which the PRA would most like to draw attention is the risk that a consumer will not be able to judge when a particular transaction contains a level of complexity or a complex legal issue that renders it unsuitable for the engagement of a specialist conveyancer and makes it necessary to engage the services of a solicitor, who has the benefit of a broader legal training.” **Property Registration Authority**

“The proposal for a specialist conveyancing profession must involve a meaningful consideration of the complexity of the conveyancing process and need to protect the purchaser. The consequences of exposing consumers to the risk of conveyancing in the absence of significant legal reform would be extremely serious.” **Property Industry Ireland**

**Source: Submission to LSRA Public Consultation and Indecon Review Team**

Research with consumers as part of this review highlighted high levels of satisfaction with the quality of conveyancing services provided. A potential risk from the introduction of a new conveyancer profession is reduced quality of services, an issue highlighted in our survey of legal practitioners. Indecon believes this risk could be successfully mitigated through rigorous consumer protection measures, but this will involve some costs. Stakeholders’ views on the risk to the quality of services are presented below.

**Table 7.8: Views of stakeholders on reduction in quality of services**

“It is not yet clear how individuals could show that they have met the standard, it would presumably also be necessary to ensure that the conveyancer carried indemnity insurance and was subject to oversight from a professional body and subject to the rules of same so as to ensure that they act appropriately and properly.” **Bar of Ireland**

“There is a risk that with less experience and less overall legal expertise, standards of conveyancing could fall putting consumers at risk.” **Dublin City Council**

“A potential positive impact is that a solicitor who only does conveyancing and wishes to incorporate under a limited company, could potentially ‘convert’ to the role of a licensed conveyancer and incorporate and limit liability in this way.” **Dublin Solicitors’ Bar Association**

“The new profession would increase competition for conveyancing services and bring about significant consumer benefits such as reduced conveyancing fees and improved quality of service.” **Consumer and Competition Commission**

“Opportunities for efficiencies through a professional provider that could improve the quality of the service, the timely provision of the service and the introduction of efficiencies of delivery through e-services.” **Consumers’ Association of Ireland**

**Source: Submission to LSRA Public Consultation and Indecon Review Team**

## 7.6 Regulatory costs

The introduction of a conveyancer profession would require regulatory changes. Apart from any costs in reforming legislation and designing the regulatory regime, there will be regulatory costs in setting up the mechanisms and structures to supervise a new profession. There will also be regulatory costs in monitoring the profession and setting up and implementing standards for conveyancing education and training. These costs would be justified if there would be a significant increase in the number of practising conveyancers operating in the market and an enhancement in competition. However, if other barriers to entry remain, the number of new entrants may be low and the regulatory costs could be prohibitive. This highlights the importance of introducing enabling measures. Of particular importance is the issue of digitalisation and market transparency on costs, as well as consumer awareness programmes. The regulatory costs which would be involved in establishing and supervising a new conveyancing profession would depend on future decisions on the specific regulatory models being considered. An examination of the detailed costs which would be required for the establishment of the regulatory regime is a significant separate exercise which is outside the scope of this project. However, it would involve the initial set-up costs of any regulatory functions and the administrative costs of ongoing operations. Another cost component would be the funding of any disciplinary tribunal or mechanisms concerning any alleged misconduct by licensed conveyancers. This would involve the costs of managing any complaints, investigations and resolutions. For illustrative purposes it is of note that the annual expenditure of the Property Services Regulatory Authority in 2020 amounted to €2.49 million. Also of interest is to note that the annual cost of the Council for Licensed Conveyancers in the UK amounted to around £3.5 million in 2022 of which £870,000 represented levies charged by other regulatory bodies. These costs could be levied on the sector. In addition, there would be costs incurred by conveyancers seeking professional indemnity insurance and there would be a need for resources to cover the costs of establishing a compensation fund. On the cost of professional indemnity insurance, this would be determined by market factors and would depend on what levels of indemnity insurance was required and also on the levels of exclusions and factors such as the size and resources of the conveyancing firms involved.

The need for effective insurance and the establishment of a compensation fund is in part related to the role of solicitors in providing undertakings (for example to forward settlement funds). This is important as a solicitor's undertaking is a legally binding promise by a solicitor or someone on their behalf to do or not do something. They could, for example, provide an undertaking a specified sum of money to facilitate the redemption of charges in the context of mortgages, or to discharge all stamp duty or registration fees due. A solicitor's undertaking is usually unconditionally enforceable and is a professional conduct matter. Undertakings are not subject to any limitation period. In the absence of solicitors undertakings, ensuring that any risks arising from a change in who is providing conveyancing services are mitigated would be an important issue in designing the regulatory regime.

In addition to insurance, there would be a need to establish a new compensation fund if the individual completing the conveyancing services did not have access to the current solicitor's compensation fund. This fund is statute based and most claims on the fund relate to buying a property. Clients of a solicitor can make a claim on the fund if they have lost money that they provided to the solicitor because the solicitor was dishonest or because they lost money received by the solicitor which was due to be passed on to the client or others, or if their money is under the control of the Courts or the Law Society. This fund only applies if the solicitor was dishonest and claims for negligence are not eligible under the current solicitor's compensation fund.

In the event that a model was chosen whereby conveyancers operated outside of solicitor's practices and did not have access to the solicitor's compensation fund, there would be operational challenges in levying conveyancers to resource a compensation fund in a start-up situation of creating an entirely new profession. This may require some government involvement or a requirement that insurance cover is put in place to meet any claims for dishonesty which resulted in a loss of client funds.

On the issue of professional indemnity insurance, a recent survey of Irish law firms, noted that PI insurance costs have increased by more than 10% for many firms as a number of insurance companies exited the market.<sup>344</sup> Indecon notes that there are 19 brokers who provide professional indemnity insurance with cover being offered by 13 participating insurers for the 2022/2023 indemnity period. Despite this, obtaining adequate professional indemnity insurance could be challenging unless new entrants had significant resources and a track record from operating in the UK or other markets.

Indecon contacted Brokers Ireland on how a separate specialist conveyancing practice might work and understandably there was difficulty in sharing any insights until decisions were made concerning the nature of what was proposed and how a conveyancing profession would work.

## 7.7 Other implications

In addition to the main issues identified two potential issues were raised in our stakeholder consultations were (i) the potential of a new conveyancing profession to enable solicitors to engage in high value work and; (ii) the risks to the viability of small practices. Indecon however, do not believe they represent significant impacts. While a new conveyancing profession could potentially facilitate solicitors to engage in higher value work, this was not seen as a benefit by most solicitor practices and we accept this is not a key issue. On the impact on the viability of small legal practices, the research completed for this study indicated the significance of conveyancing fee income for small legal practices. Ensuring the survival of some small practices in rural and other areas is important and if they lost significant business to specialist conveyancers this could, in some cases, impact on their viability. Indecon would point out that regulatory policy should not be designed to ensure the profitability of any profession, but we recognise that one of the LSRA's objectives is to encourage an independent and effective legal profession. We also accept that if existing practices were prevented from employing conveyancers, this could damage the viability of small practices. We therefore believe that if a separate profession is established, solicitors should be free to employ conveyancers. In addition, the quality of services provided by solicitors, and the reputation and relationships developed, represent a competitive advantage if they can offer competitive prices. As solicitors should be eligible to employ lower cost conveyancer support staff, we do not see any significant risk to the viability of existing firms. In other countries where conveyancers have been established, solicitors continue to provide most conveyancing services.

Stakeholders' views on the issue of the impact on viability are outlined below. However as Indecon has indicated, we believe there is no reason why smaller firms could not adapt by hiring conveyancers, reducing costs and competing effectively in the market.

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<sup>344</sup> Survey of Law Firms in Ireland 2022, Evelyn Partners.

**Table 7.9: Views of stakeholders on risks to viability of small legal practices**

“Many solicitors rely on conveyancing work as the ‘bread and butter’ of their practice.... The introduction of this new profession could force the closure of many solicitors’ firms especially in rural Ireland thereby reducing access to full legal services for the consumer.” **Dublin City Council**

“Conveyancing is often described by solicitors as their ‘bread and butter’ income while their profit is made from large personal injury cases.” **Institute of Legal Executives (ILEX)**

“This would disproportionately impact small rural practices which rely heavily on conveyancing. This could see the closure of firms which would in turn reduce access to full legal services for consumers, particularly in rural areas which are already heavily impacted by the concentration of professional services in larger centres of population.” **Law Society of Ireland**

**Source: Submission to LSRA Public Consultation and Indecon Review Team**

## 7.8 Pros and cons of alternative models

### Pros and Cons of Alternative Models

The potential pros and cons will differ depending on the alternative models chosen. It is important to also note that there may be an option to make changes on an incremental basis and to assess the impacts over time. In considering alternative options each of the pros and cons should be evaluated against a counterfactual of Option 1 which represents a no change scenario. The options are outlined below:

- Option 1: No change and conveyancing restricted to qualified solicitors.
- Option 2: Establish a new conveyancer profession with a separate regulatory system.
- Option 3: Establish a new conveyancer profession and utilise existing solicitor regulatory organisations to regulate the profession.
- Option 4: Permit establishment of conveyancing profession but initially restrict membership to individuals employed by solicitor practices.

The pros and cons of the different options presented in Table 7.10.

Table 7.10: Pros and Cons of Different Options					
Option 2		Option 3		Option 4	
Establish a new conveyancing profession with a separate regulatory system		Establish a new conveyancing profession and utilise existing solicitor regulatory organisations to regulate the profession		Permit establishment of conveyancing profession but initially restrict membership to individuals employed by solicitor practices	
Pros	Cons	Pros	Cons	Pros	Cons
<ul style="list-style-type: none"> <li>Enhanced competition resulting in greater choice and lower costs</li> <li>Efficiency in provision of services</li> <li>Likely reduction in time to complete most conveyancing transactions</li> <li>Service innovation including access outside standard hours</li> </ul>	<ul style="list-style-type: none"> <li>Higher regulatory costs</li> <li>Risks to consumer protection unless measures are introduced</li> <li>Risk of impact on quality of services</li> </ul>	<ul style="list-style-type: none"> <li>Some enhanced competition resulting in greater choice and lower costs</li> <li>Efficiency in provision of services</li> <li>Likely reduction in time to complete most conveyancing transactions</li> <li>Service innovation including access outside standard hours</li> </ul>	<ul style="list-style-type: none"> <li>Risks of discouraging significant new entrants</li> <li>Some higher regulatory costs compared to the existing position</li> </ul>	<ul style="list-style-type: none"> <li>Efficiency in provision of services</li> <li>Likely reduction in time to complete conveyancing</li> </ul>	<ul style="list-style-type: none"> <li>Absence of enhanced competition</li> <li>No change in service innovation</li> </ul>
<i>Source: Indecon analysis</i>					

The key differences between the options relate to the regulatory costs and risk which have to be weighed against forgoing of benefits of enhanced competition. In considering the pros and cons of different options, there are a number of factors which merit consideration if a new profession was proposed. These are presented in the next table.

Table 7.11: Key considerations in the design of a Potential alternative models	
Issue	Overview of considerations
Entry requirements	<ul style="list-style-type: none"> <li>Which skills/qualifications are required to practice and undertake conveyancing?</li> <li>Which body will certify and decide on achievement and renewing of qualifications?</li> <li>What impact will digitalisation have on entry requirements?</li> </ul>
Professional indemnity insurance	<ul style="list-style-type: none"> <li>What level of professional indemnity insurance will be required? Current solicitors have insurance to cover the wider aspects of their practice (not solely conveyancing).</li> <li>At what level would the market set insurance premiums for more firms that specialise in conveyancing?</li> </ul>
Compensation fund	<ul style="list-style-type: none"> <li>Currently, a compensation fund covers consumers in the event of wrongful actions by a solicitor. All practising solicitors pay into this fund.</li> <li>A fund will likely be required for any professionals operating separately, funded by its members.</li> </ul>
Regulatory framework	<ul style="list-style-type: none"> <li>In order to protect consumer interests, any alternative model should be subject to an effective licensing and regulatory framework.</li> <li>A regulatory framework needs to address minimum entry requirements, how complaints are handled and any ethical or legal issues. There will also be costs involved in establishing the body or bodies to address these issues. While it may be feasible for some or all of these costs to be levied on the profession, ultimately, they represent a cost to society.</li> </ul>
<i>Source: Indecon analysis</i>	

## 7.9 Summary of key findings

- ❑ In line with the terms of reference set for the study, Indecon has considered the pros and cons of introducing a new profession of conveyancer. The benefits will not automatically arise and there is need for any regulatory reforms to be accompanied by measures to enhance price transparency and encourage the digitalisation of conveyancing processes. In relation to the cons, some but not all of these could be mitigated by appropriate regulatory or other measures.
- ❑ The main benefits of the introduction of a new profession of conveyancer include:
  - Enhanced competition resulting in greater choice and lower costs;
  - Efficiency in provision of services;
  - Reduction in time to complete conveyancing; and
  - Service innovation including access outside standard hours.
- ❑ The potential costs include:
  - Regulatory costs;
  - Potential risks to consumer protection; and
  - Potential reduction in quality of services.

Indecon also notes that the pros and cons will vary by the model introduced for the delivery of conveyancing services. We also believe these could be managed with effective regulation.

## 8 Conclusions

Based on Indecon’s independent examination of the possibility of the creation of a new profession of conveyancer, Table 8.1 presents a number of conclusions. The conclusions and the detailed analysis presented are designed to assist the LSRA in considering the merits or otherwise of the introduction of a new profession of conveyancer and in advising the Minister.

**Table 8.1: Summary of Conclusions**

1. Ireland has a well-developed conveyancing market which is served by a large number of solicitor practices and there are high levels of overall satisfaction with conveyancing services among consumers.
2. There is a range of prices for conveyancing services available in the Irish market.
3. Most conveyancing services are provided on a fixed-fee basis.
4. There is a lack of transparency in the market arising from major gaps in availability of the comparative information on the cost of conveyancing services although some improvements have been made.
5. There is evidence of consumer inertia in the choice of conveyancing service providers.
6. A trained conveyancer could conduct routine conveyancing but would have a lower level of legal expertise than is needed to qualify as a solicitor.
7. Many of the legal firms providing conveyancing services have not significantly applied technology in carrying out conveyancing work.
8. Other jurisdictions have established a conveyancer profession.
9. The establishment of a new profession of conveyancer would increase competition for the provision of conveyancing services.
10. Enhancing competition and improving the efficiency of conveyancing services would require measures to ensure:
  - a. Greater use of technology and digitalisation in conveyancing services;
  - b. Significantly enhanced price transparency for conveyancing costs; and
  - c. Consumer awareness campaigns of the costs and other aspects of conveyancing.
11. There is a range of alternative models feasible for the delivery of conveyancing services.
12. Potential issues in introducing a new profession of conveyancer would be regulatory costs. These are also some risks to consumer protection but these could be addressed by appropriate regulatory actions. Models for regulation should prioritise consumer protection and the enhancement of competition.

*Source: Indecon*

**1. Ireland has a well-developed conveyancing market served by a large number of legal practices and there are high levels of overall satisfaction with conveyancing services among consumers of conveyancing services among consumers.**

Ireland has a sophisticated well-working conveyancing market and there is a large number of providers. There is a large diversity of providers of different scales. The well-developed nature of the market comprising a diversity of suppliers assists in consumer choice. New survey evidence commissioned by the LSRA and examined by Indecon, confirms a very high level of overall satisfaction among consumers of conveyancing services. The evidence suggests that 93% of consumers were satisfied with the service levels provided. (71% were very satisfied and a further 22% fairly satisfied). These relate to the professionalism and quality of providers rather than satisfaction with the price of the service. The level of satisfaction is lower among consumers who paid higher prices. This has implications for transparency in the cost of conveyancing. There are however some issues with the conveyancing market related to delays and the registration of titles. (Please see Section 3 of the report for further analysis of the market). There are also inefficiencies in the current system of conveyancing property which are external to how legal services are provided.

**2. There is a range of prices for conveyancing services available in the Irish market.**

Indecon's research with legal practices for this study showed a diversity in the costs of conveyancing. This is also evident from consumer research. In some cases, prices are more than twice the average. Indecon notes that there are a number of other factors which could influence the costs of conveyancing. These include differences in the type of work required and differences in the complexity of transactions. This reflects the fact that conveyancing is not necessarily a homogeneous product. The evidence from the consumer research indicates that 35% of consumers paid between €1,000 and €2,000 for their conveyancing services. 31% paid between €2,000 and €3,000, and a further 15% paid between €3,001 and €4,000. Interestingly, 16% of consumers paid more than €4,000. Such price diversity may be a feature of a functioning market or may reflect weakened incentives to compete on price due to consumer inertia and the lack of transparency of comparative prices. Indecon notes that there are a number of other factors which could influence the costs of conveyancing. These include differences in the type of work required and differences in the complexity of transactions. This reflects the fact that conveyancing is not necessarily a homogeneous product. (Please see Section 3.2 of the report for the evidence on the price of conveyancing services).

**3. Most conveyancing services are provided on a fixed-fee basis.**

Possibly reflecting the number of providers and some increased competition, conveyancing services are mainly provided on a fixed-fee basis. If these costs are communicated effectively to potential customers, and if comparative information on costs was available the fixed price options have advantages for consumers in understanding the costs involved and in facilitating consumers to engage on the merits of different offerings. There is, however, part of the market where prices are not fixed. (Please see Section 3 for further evidence which has informed this conclusion).

**4. There is a lack of transparency in the market arising from major gaps in availability of the comparative information on the cost of conveyancing services although some improvements have been made.**

While some improvements have been made on price transparency, including the introduction of Section 150 Cost Notices, there remain major gaps in the transparency of comparative information on the cost of conveyancing services. As a result, consumers face difficulties comparing prices for

these services. Many solicitors do not provide prices for conveyancing on their websites and there is an absence of comprehensive price comparison websites. This limits competition in the market and reduces the incentive for suppliers to compete on price. Ready access to such information is needed to facilitate informed consumer choice. Regardless of any decision on the setting up of a new profession, there is strong merit in continuing measures to enhance price transparency of conveyancing services, building on the initiatives previously introduced by the Act.

**5. There is evidence of consumer inertia in the choice of conveyancing service providers.**

In line with other countries, there is evidence of significant consumer inertia in the choice of conveyancing providers. The research shows there is a strong tendency to use the solicitors recommended by family or friends or whom they have employed previously. While this is understandable it reflects information asymmetry, and represents a barrier to competition in the market. It also represents a barrier to entry of a new profession of conveyancer. The level of consumer inertia is a feature of many professional services and other markets. This is particularly the case where transparency of information on costs and other aspects of services is not available.

**6. A trained conveyancer could conduct routine conveyancing but would have a lower level of legal expertise than is needed to qualify as a solicitor.**

Conveyancing work requires a lower level of skill and expertise than that required to practice as a solicitor. If there is to be a new profession of conveyancer, it is important that education, training, and other qualifications are set at a level appropriate level to conveyancing work rather than that requiring wider legal expertise. The proposed Legal Practitioner Education and Training Commission could play a role in informing the appropriate level of training and accrediting providers of training services for conveyancing work. On the issue of specialist training, Indecon notes there is currently a course offered by the Law Society of Ireland Diploma Centre leading to Certification in Conveyancing. This course takes account of the introduction of the 2019 Pre-Contract Investigation of Title (PCIT) process to improve the conveyancing process. Indecon notes the course is reserved to solicitors and post-Professional Practice Course I (PPCI) trainees. Opening up this course to a wider range of applicants would facilitate access to an expanded pool of skills and provide efficiency gains for the legal profession and benefits for consumers.

**7. Many of the legal firms providing conveyancing services have not significantly applied technology in carrying out conveyancing work.**

The survey research undertaken for this project has demonstrated that solicitors believe that only a very small percentage of the sector had significantly applied technology in conveyancing work. This impacts on costs and efficiency and also has implications for the time required to complete conveyancing tasks. The Government's 'digital-first' strategy (National Digital Strategy) is relevant context for digitalisation/e-conveyancing. Indecon also notes that a project was previously considered at the Law Society on digitalisation for conveyancing but we understand it was ultimately not pursued. (Please see Section 4 of the report for evidence on the use of technology.)

**8. Other jurisdictions have established a conveyancer profession.**

Indecon's analysis of other jurisdictions has confirmed it is possible to establish a separate profession of conveyancer. Existing models to reform regulations and establish adequate consumer protection exist. While these firms provide alternatives to consumers and represent additional competition to solicitors, they have secured a very small market share, and solicitors continue to be the main

provider of conveyancing services. Indecon believes that this would also be the case if such a profession were established in Ireland. While there is some evidence of lower consumer costs and a faster timescale for conveyancing transactions in jurisdictions where a conveyancing profession has been established, causation cannot always be directly estimated. (Please see Section 2 for review of international markets.)

**9. The establishment of a new profession of conveyancer would increase competition for the provision of conveyancing services.**

There is a legislative restriction on individuals not employed by solicitor practices providing third-party conveyancing services. This results in a monopoly of conveyancing services to qualified solicitors. The number of solicitors holding practising certificates has increased from 6,436 in 2003 to 11,854 in 2020. While this may have facilitated increased competition, Indecon notes that this increase does not necessarily imply increased competition if there are gaps in price transparency, consumer inertia or other barriers which weaken the incentive to compete on price. The CCPC has noted a number of positive developments and planned innovations of conveyancing processes in recent years. The CCPC concluded that despite these developments, the introduction of a profession of conveyancer can serve to increase competition further regardless of the current level of competition among solicitors in conveyancing services. Given the lack of transparency on comparative fees and the levels of consumer inertia, Indecon would concur with the evaluation by the CCPC. We believe, however, that this is conditional on a significant take up of the profession and the establishment of a suitable regulatory model. (Please see Section 6 of the report for further analysis of competition issues). As identified in our assessment of the pros and cons of the different options, if the barriers to entry remain high, the number of new entrants may be low and this could impede pro-competitive impacts. In such cases the regulatory costs could be prohibitive. This highlights the importance of enabling measures as discussed below.

**10. Enhancing competition and improving the efficiency of conveyancing services would require measures to ensure:**

- Greater use of technology and digitalisation in conveyancing services
- Significantly enhanced price transparency for conveyancing costs; and
- Consumer awareness campaigns of the costs and other aspects of conveyancing.

Legislative reforms on their own will not be sufficient to have a material impact on the market. The CCPC has pointed out that the introduction and the regulation of such a profession will not be sufficient to ensure conveyancing services are as competitive as possible. This issue was also highlighted by the Competition and Markets Authority (CMA) in its review of the legal services market in the United Kingdom. It pointed out that consumers require access to information on price, service and quality available in a market in order to make informed purchasing decisions, and to drive competition in a sector. There is therefore a need for new measures to provide information to consumers on conveyancing services, particularly on the cost and quality of such services. Measures to enhance consumer cost comparisons are also important. There is a need as part of any plan to introduce a conveyancer profession to enhance price transparency, develop consumer awareness of price and quality issues, and facilitate the use of technology in conveyancing. Greater use of technology and digitalisation in conveyancing will have benefits in terms of efficiency. Digitalisation of conveyancing would result in enhanced efficiency in the market and facilitate greater competition. In this context, we noted the development by the Property Registration Authority of the eRegistration service to register transfers electronically. All of these actions would be of benefit regardless of whether a new profession is introduced.

**11. There is a range of alternative models feasible for the delivery of conveyancing services.**

The Minister requested that the LSRA complete an analysis of alternative models for the delivery of conveyancing services by professionals other than solicitors to meet the statutory objectives of the LSRA. Indecon's analysis suggests there are a number of alternative models feasible for the delivery of conveyancing services. These include: (i) specialist firms providing conveyancing services in competition to solicitors with a separate regulatory system; (ii) initially establishing a new profession but utilising existing regulatory structures, and (iii) establishing a new profession but requiring that conveyancing practitioners are employed by solicitor practices. Any option implemented could be reviewed and the merits of additional reforms could be evaluated over time. The key differences between the options relate to the regulatory costs and risks which have to be weighed against forgoing the benefits of enhanced competition.

**12. Potential issues in introducing a new profession of conveyancer would be the regulatory costs. There are also some risks to consumer protection but these could be addressed by appropriate regulatory actions. Models for regulation should prioritise consumer protection and the enhancement of competition.**

Potential issues in introducing a new profession of conveyancer are the regulatory costs and risks to consumer protection. While these costs could be levied on the professionals, they represent a wider economic cost to be considered in the context of benefits. The risks to consumer protection and quality of service could, be addressed by policy and regulatory measures. Solicitors are required to have professional indemnity insurance and also have access to the Law Society of Ireland's compensation fund. Indecon believes that if a new profession is established it, must have a robust but appropriately designed regulatory regime that would protect consumer interests. This would require a compensation fund and a requirement that specialist conveyancers have professional indemnity insurance. There would also be a need to set a requirement to provide the type of information to consumers required by solicitors under the Legal Services Regulation Act Sections 150 and 152, but we note that more significant transparency measures would be needed to strengthen competition. Ensuring adequate training and qualification will also be necessary to ensure services are of sufficient quality. There would also be a need to ensure there are robust conflict of interest rules applied to licenced conveyancers. Regulatory measures should also be carefully designed to ensure that they do not prevent new innovative market entrants.