



Comhairle Cathrach  
Bhaile Átha Cliath  
Dublin City Council



## **Unification of the Solicitors Profession and Barristers Profession**

***Submission of Dublin City Council Law Department***

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2020***

## Introduction

The Dublin City Council Law Department provides legal advice and legal services to the Chief Executive and all of the departments of the Council. Advice and legal services are offered in all areas of local government law.

The law department handles the defence of all proceedings brought against the City Council such as personal injury, property damage proceedings and judicial review proceedings. The section also deals with debt collection for the City Council, statutory prosecutions and civil litigation concerning planning, building control, fire safety, waste management, housing, bye-laws and other matters on behalf of the City Council. The sections deal with numerous legal problems that arise on a daily basis in relation to the workings of various City Council departments and advises on the effect new legislation will have on operations and policy.

The Law Department deals with all legal work relevant to the purchase and disposal of property by the City Council including all necessary title transfers. The Department advises on all aspects of compulsory purchase orders and represents the City Council at oral hearings that may take place.

This submission in relation to unification of the solicitors' profession and the barristers' profession shall have regard to S34 (4) (c) of the Legal services Regulation Act 2015 and shall treat of same under the following headings: The Public Interest and the interest of consumers of legal services; The need for competition in the provision of legal services in the State; Effect on the proper administration of justice; The Experience in other jurisdictions; and Potential effects on a local authority law department.

### **The Public Interest and the interest of consumers of legal services**

It is not apparent how the unification of the professions would be in the public or consumers interest. Should the fusion of the professions occur it would in the contrary for the following reasons.

#### *Access to specialised lawyers*

The current system employed in this jurisdiction ensures that the public at large, through their solicitor, have access to specialist advice provided by counsel. Such system is supported by the "cab-rank" rule, which obliges barristers to accept instructions, from a referring solicitor, in their practice area subject to appropriate payment. The public may, through the network of over 12,000 solicitors throughout the country, seek out such specialist knowledge as is provided by the body of over 2000 barristers.

Were the professions to be unified there is a risk that specialist knowledge and expertise would be harvested by only the wealthiest individuals. Such specialists may be induced to work for or be employed by only the larger resource rich firms on a full service basis placing them outside the grasp of the vast majority of the public. The fees that such firms charge would be largely beyond the financial grasp of the majority and therefore insert barriers to justice not previously present.

#### *Cost of access to justice*

Were the distinction between Counsel and Solicitors dispensed with, this would result in a greater regulatory burden being placed on those practitioners who previously practiced as barristers. The right to take instructions directly from the public, which would likely include the right to handle client monies, would result in obligations not previously borne by counsel.

Such obligations would include the requirement to undertake Anti-Money Laundering compliance, increased regulations in respect of handling of clients monies together with greater cost of professional indemnity insurance. This cost would in turn likely be passed on to the client.

### *Quality of work*

In addition, the complex clerical work currently carried out by a solicitor in a situation where counsel are instructed would not simply disappear as a result of the fusion of the professions. Such tasks would remain a necessity and therefore the cost of same would remain. This work could not easily or adequately be carried out by most practitioners solely and any attempt to do so may merely result in the degradation of the quality of service offered to the public.

The independence and objectivity that Counsel bring to a case is also something that is to be valued. It allows the client to obtain the advices of somebody who can look at the case from a position of objectivity. It also gives the client the benefit of a second opinion which is not influenced by the client given the degree of remoteness from the client. Were the professions to be fused such benefits would be lost to the client.

### *The need for competition in the provision of legal services in the State*

Were the professions be fused, it is submitted that competition would be adversely affected as follows.

As previously averted to the current system allows any person to seek, through one of the over 12,000 solicitors throughout the country, the services of one of approximately 2,000 barristers with varying specialisms. Such is assisted by the current referral system in that overheads that a sole practitioner barrister must bear are relatively small. This in turn lends itself to the “cab-rank rule” and indeed permits counsel, who do not have the high running costs that a solicitor may have, to take on cases on a no foal no fee basis thereby assuring access to the courts regardless of a client’s means.

Were the professions to be fused, the costs which former barristers would have to bear, as outlined above, would undoubtedly increase. The damage this increase would pose to competition would be twofold. Firstly, a decreasing amount of practitioners would be open to acting on a no foal no fee basis owing to the new financial pressures, which they would find themselves under. Secondly, in light of such financial pressures, practitioners, particularly those of a particular niche specialism would likely be attracted to larger firms with high net worth clients placing their services outside the grasp of all but the wealthiest of individuals.

The access the general public would have through the extensive countrywide solicitors network to the knowledge and expertise of the current bar would be damaged and it is submitted not be conducive to the competition a low overhead referral bar offers.

In addition, it should be borne in mind that since 1971<sup>1</sup> solicitors have a full right of audience before the Courts. The solicitors Code of Conduct dictates that counsel are to be retained by solicitors only where the client so instructs.<sup>2</sup> Given same, and indeed the relatively low uptake in the direct access scheme, which admittedly is a restrictive scheme, it would appear there remains a strong demand for a referral bar even where the option remains to use solicitors as a one stop shop. At present, the client has the option of instructing a solicitor solely however the facts would appear to reveal a lack of public appetite to so do.

Furthermore, should either a solicitor wish to practice as a barrister or a barrister practice as a solicitor there is great ease with which to transfer between the professions after a rudimentary application to the relevant body. There is therefore no appreciable barrier to competition between the professions.

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<sup>1</sup> S. 17 Courts Act, 1971

<sup>2</sup> *A Guide to Good Professional Conduct for Solicitors*, Law Society of Ireland 3<sup>rd</sup> Ed 2013 p 83

## **Effect on the proper administration of justice**

The fusion of the professions would it is submitted, through its potential to distort rather than encourage access to the expertise, knowledge and experience of the body of barristers in this jurisdiction not aid the proper administration of justice.

It should be borne in mind that the fusion of the professions will not likely result in a reduction in the actors involved in legal proceedings. The same work as is required of a solicitor in a case in which counsel is instructed will subsist. If it is the aim that such work shall be completed by one practitioner rather than solicitor and counsel working in tandem this may go too far. An attempt to so do may neither be in the interest of the legal practitioners who would bear this increased burden or the public who would suffer a reduction in quality of service from a practitioner placed under increasing pressure to deliver a quality service with less resources. This would in turn lead to a reduction in the quality of advocacy before the Courts, which would be a barrier to the Courts proper administration of justice.

## **The Experience in other jurisdictions**

Whilst I note that the LSRA invited insights into the experience in other jurisdictions, given the nature of the work carried out by the law department I do not propose to make submissions in that regard. I do however note from a perusal of the LSRA Report on Issues Relating to Barristers<sup>3</sup> the experience in the various common law jurisdictions does offer limited direct access to counsel where there is a split in the profession in matters not before the Courts. I do also note however that in circumstances whereby there is a single profession there does then tend to be a number of ways in which one may practice, including as a barrister.

It would seem from same that the fusion of the professions in those jurisdictions is little more than a change of nomenclature and the system works in the same manner as the system operated in this jurisdiction.

## **Potential effects on a local authority law department**

The Dublin City Council Law Department is the largest local authority legal office in the country, providing a complete and comprehensive legal service to Dublin City Council in all areas of local government including property management, planning and environmental, housing, waste management, roads and traffic, culture, recreation, economic and community development. The Law Department provides legal services to the council departments in four distinct practice areas - Property and Commercial, Personal Injury Litigation, Chancery Litigation and Data Protection/Freedom of Information.

In order to provide legal services over a broad range of specialist areas the departments solicitors utilise their specialist knowledge supplemented with the specialist knowledge and expertise provided by a wide panel of barristers. Were the professions fused, this may have a profound effect on how the department does this and indeed its ability to do so.

If an independent referral bar was not available from which to draw upon expertise in dealing with what can often be complex and niche areas of law, the law department would be faced with the difficult task of retaining specialist legal practitioners on a full service basis. To employ the requisite specialists on a full service basis would prove costly and could prove beyond the reach of a publicly funded local authority. This would particularly be so in an area of specialism such as planning and environmental law in which there are players in the private sphere who wield significant financial resources. Such private resources could be used to ensure that local authorities do not have access to the most specialised of counsel who would not be governed by the cab rank rule if the professions were fused.

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<sup>3</sup> *Report on Issues Relating to Barristers*, Legal Services Regulatory Authority, 29 Sept 2017, Part 3 p 21 onwards

It is submitted that the current system whereby counsel is retained on a case-by-case basis allows the department access to specialist knowledge in niche areas whilst it would be nigh on impossible to retain the requisite number of specialists on a full service basis. This would potentially result in further outsourcing of legal services resulting in a loss of internal knowledge and expertise within the organisation, ultimately to its detriment.

## **Conclusion**

In conclusion, the unification of the solicitor's profession and barrister's profession may have a profound effect on the public at large, consumers, the administration of justice and the legal practitioners themselves. The notion that the fusion shall reduce costs is one that assumes a duplication of work between counsel and solicitor, which is not the experience of this department. Such a change may result in a distortion of the legal services market with the most specialist of legal experts being siloed in large resource rich firms whom serve only high net worth individuals. At its most benign it may simply lead to a change in the titles of solicitors and barristers with little else changing and the legal practitioners reverting to the roles which have served the public well since the foundation of the state.