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## **Submission in relation to the Creation of a New Profession of Conveyancer in Ireland** **on behalf of the Law Department, Dublin City Council.**

Under section 34(5)(a) of the Legal Services Regulation Act 2015 Act the report on the creation of a new profession of conveyancer ‘shall be provided to the Minister within a period specified by the Minister in a written notice to the Authority requesting the report’. Also, under section 34(5)(b) ‘it shall contain such details and make recommendations as to such matters as may be specified by the Minister in the notice’ to the Authority.

*Minister McEntee has asked the Legal Services Regulatory Authority to consider creation of a new conveyancer profession to increase competition in legal services*

*“My request to the Legal Services Regulatory Authority to report on the creation of a new profession of Conveyancer is an important step in continuing the process of legal services reform and providing more options and choice to the users of legal services. It also supports my objective to reduce legal costs for consumers and businesses.*

*“Most of us engage in conveyancing at key stages of our lives, when we buy homes or business premises, so we all have an interest in reforming this area.*

*“Justice Plan 2021 also puts the Digital First agenda at the centre of the Justice Sector. In considering the establishment of a new conveyancer profession, I have asked that the LSRA specifically consider the potential of digital technology to reduce the cost and the time in which it takes to carry out a conveyance, and that this consideration is taken into account in carrying out their work”*

It is in this context that Relevant Stakeholders are being asked to give their views on the creation of the new profession of conveyancer.

The Law Department in Dublin City Council having canvassed the opinions of the solicitors and other relevant parties in the department and noting that the Legal Service Regulatory Authority have posed specific questions would make the following submission.

### **1. Do you have views on the creation of a new profession of conveyancer?**

The creation of this new profession raises a number of concerns.

Firstly, what is the necessity for this profession? Solicitors throughout the country currently provide full conveyancing services to the consumer. 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. Further, access to a solicitor has greatly improved

with numbers of practising solicitors increasing year on year since 2009, according to the LSRA Pathways to Profession Report 2019. The LSRA report notes 6,436 solicitors holding practising certificates in 2003, 8,225 solicitors holding practising certificates in 2009 and 11,959 solicitors holding practising certificates in 2019. Whilst not all these solicitors practice in the area of conveyancing it must be recognised that most urban and rural areas in Ireland have excellent access to conveyancing services. The creation of this role solely on the basis of costs and access does not appear to be justified.

What impact will this new role have on the solicitors' profession? The fee earning ability of solicitors will be adversely affected. Many solicitors rely on conveyancing work as the "bread and butter" of their practice. The introduction of PIAB has already severely impacted the earning ability of the profession and it may become unsustainable for some practices to stay afloat if this new profession is introduced.

There may however be a role for a professional who would be qualified to deal with Property Registration Authority transfers and associated straightforward registered titles or registration of discharges.

**2. What impact do you consider the establishment of a new profession of conveyancer could have in Ireland in terms of competition in the provision of legal services?**

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. With more professionals providing the service, access to the service also will increase. Further with a sole focus, it may be that the conveyancer will be in a position to speed up the process for consumers.

It is unknown at this juncture what training, regulation and insurance requirements a conveyancer will be required to have. A solicitor is required to have a very high level of training, is required to engage in continuous professional development on an annual basis, is regulated by its professional body and is required to carry professional indemnity insurance.

Unless the role of a conveyancer is subject to the same rules, a competitive advantage may be given to the conveyancer who may potentially have less overheads. It may make it impossible for smaller firms to compete. This would also potentially have a disproportionately negative impact on small practices located outside of Dublin where such practices rely heavily on conveyancing. This may cause the closure of firms in rural areas thereby reducing access to full legal services for consumers.

**3. Are there specific implications, positive or negative, for the legal services sector and the solicitors' profession that in your view would arise from introducing a new profession of conveyancer?**

Positive Implication for the Legal Services Sector

It will allow for more competition in the marketplace and provide potentially lower cost conveyancing to the consumer. It may also increase access to Conveyancing services.

Negative Implication for the Legal Services Sector

As noted above 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.

In relation to conveyancing services specifically, it must be noted that a conveyancer would not have overall legal training and therefore may not be able to advise the client on potential flaws on title and potential risks and would not be in a position to deal with complicated transactions. In certain cases, this may require the consumer to access the services of a solicitor if an issue arises thereby potentially increasing costs to the consumer.

The role of conveyancer would also have to be very clearly defined so as to properly inform the consumer as to the services they provide and the limitations to their role. There is the risk that consumers may have difficulty ascertaining what service they require, that of a solicitor or a conveyancer.

Legal services at present are provided to a very high standard. There is a risk that with less experience and less overall legal expertise, standards of conveyancing could fall putting consumers at risk. As noted by Minister McEntee ***“Most of us engage in conveyancing at key stages of our lives, when we buy homes or business premises.”*** This only underlines the importance of this area, and a solicitor is qualified to deal with all aspects of law including rectifying any problems that may arise and that may require non-conveyancing related input. Having cost as a primary aim does not serve consumers.

Positive Implication for the Solicitors’ Profession

It cannot be seen that there will be any positives to the solicitors’ profession.

Negative Implications for the Solicitors Profession

Potential closure of many firms who rely on conveyancing.

**4. What are the potential benefits and risks to consumers of legal services (including businesses) that can be reasonably expected from enabling them to access the services of a conveyancer, specifically in terms of legal costs, access to legal services and consumer protections?**

Benefits to the Consumer

Cost saving and increased access to conveyancing services– Increased competition will likely lead to a reduction in costs to the consumer.

Risks to Consumer

The risk is that the conveyancer (who may not be familiar with complicated titles) would not be in a position to deal with flaws on title or complicated matters.

A solicitor is proficient in many other areas of law which impact on conveyancing, will a conveyancer with such a narrow focus be in a position to provide the same level of service as an experienced conveyancing solicitor?

What protections will be in place for the consumer if they engage a conveyancer?

The solicitors’ profession is a regulated profession with members accountable to a professional body together with insurance requirements. Unless the conveyancer is bound by the same rules and standards the consumer will not be protected to the same extent.

What are the extent of the services that a conveyancer will legally be in a position to provide? If issues, arise outside the conveyancers’ remit to whom who does the consumer turn?

The legal sector provides other legal services aside from conveyancing which the consumer needs to be able to access. With the potential closure of solicitors' firm access to these other legal services will be more restricted.

**5. What are the potential benefits and challenges to enterprise and national competitiveness with the introduction of a new profession of conveyancer?**

Currently companies and investors may see legal costs and delays as a barrier. The benefit is cost saving and efficiencies for straightforward transactions.

The challenge is to change the practices in place currently to allow for this new role.

**6. Are there specific issues related to digital technology and how digitalisation that should inform a decision to establish a conveyancer profession?**

The PRAI will need to be much further advanced prior to considering this new profession.

At present many titles in the Dublin area are unregistered. First registrations at present are too cumbersome and time consuming. That will remain the position with regard to historic titles unless the PRAI introduces incentives to property owners to register historically owned unregistered titles. In this regard the following measures are proposed:

- Accept Form 3 applications for all unregistered titles.
- Form 3's should not have a monetary limit, or the limits should reflect the PI Insurance held by the certifying solicitor.
- Remove payment of PRAI fees by Local Authorities.
- PRAI need to breakdown large folios (containing numerous properties at different locations) without any cost to the property owners.
- Consideration should be given to digitising non-title matters (planning, VAT, LPT) or removing them from the conveyancing process.

**7. Do you consider that there are any particular barriers to the establishment of new providers for conveyancing services?**

**Availability of insurance**

Consumer protection should be to the forefront of any discussions on this role. The question arises as to whether insurance companies will be willing to provide insurance to a profession with such a narrow focus and legal expertise. Non-conveyancing legal matters can arise in the context of conveyancing and the conveyancer may not have the remit or expertise to deal with same. The insurer may be exposed to increased claims as a result of same.

**Willingness of financial institution to deal with them**

The established conveyancing system in this country requires the lending financial institution to accept the solicitors undertaking in matters of title. Agreement will have to be reached with the banks that the same will apply to the conveyancer.

**Objections from members of the legal profession to dealing with non-solicitors.**

The conveyancing process relies on undertakings from solicitors in respect of certain matters particularly on closing. The solicitors' profession is bound by a code of conduct. 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.

## Regulatory Issues

A new system of regulation will have to be established prior to the introduction of this role.

**8. Are there any specific considerations for the training and models for regulation of a new profession of conveyancer in line with the Authority's statutory objectives that should be taken into account?**

In order to fully protect consumers and to ensure that they receive the same level of service and protection as they do from a practising solicitor the same level of education, training in conveyancing matters and regulation should be required for a conveyancer as is required for a solicitor. The standard of conveyancing in Ireland has traditionally been very high and any lesser requirement would put consumers at risk.

The conveyancer should be required to have the same level of professional indemnity insurance as a practising solicitor.

There should be a regulatory body that consumers have recourse to in the event of any issues, similar to the Law Society.

Ongoing continuous professional development should be a requirement.

**9. Are there any further considerations that in your view should be taken into account, including in respect to Ireland's domestic economy and the wider legal services sector?**

Issues in relation to the PRAI should be resolved prior to the introduction of any such role.

An extensive study should be undertaken to ascertain the impact this new role will have on the Solicitors profession with a focus on the future viability of the Solicitors profession particularly in rural areas and the impact of the closure of many firms on overall access to legal services, not just conveyancing.



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