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**LEGAL SERVICES REGULATORY AUTHORITY  
CONSULTATION FOR REPORT ON THE CREATION OF A NEW PROFESSION OF CONVEYANCER**

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

The Dublin Solicitors Bar Association (“**DSBA**”) has over 2,500 members from various types and size of solicitors practices throughout Dublin city and county and beyond. This submission is made for and on behalf of the DSBA membership and is representative of the views of our membership on the proposal for the creation of a new profession of conveyancer.

Regarding the role of conveyancing and meaning of conveyancing, it is important to bear in mind that in a typical conveyance, a solicitor deals with a significant amount more than just title or issues of ownership or the transfer of title. It extends to matters related to planning compliance, value added tax (with assistance from VAT advisors) family law legislation, boundaries, easements, licensing and regulatory matters, outgoings including service charges and matters related to the Multi-Unit Developments legislation.

The solicitor acting in a conveyance, also has significant responsibilities to various state bodies and the banking industry. The solicitor has responsibilities to Revenue relating to taxes including Stamp Duty, Local Property Tax, Capital Gains Tax and in certain circumstances Capital Acquisitions Tax, and historically had responsibility for ensuring payment of water charges and other taxes. The solicitor in addition to the responsibilities to the client also has responsibilities to lenders under the Undertaking and Certificate of Title Scheme for residential conveyancing which will typically include attending to redemption of existing mortgages, regarding safe keeping of deeds, certifying title and stamping and registration of deeds.

**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?**

The CCPC Report on Competition in Professional Services (solicitors and barristers) was published in December 2006 ("**2006 Report**"). The 2006 Report was critical of both the solicitor and barrister professions and made a number of recommendations for reform, including the introduction of the profession of a licensed conveyancer. While the 2006 Report is not prescriptive in terms of what exactly this profession can and cannot do, it suggested that the new profession would have the same consumer protection regulation as solicitors. The 2006 Report suggests that a position of licensed conveyancer should be introduced in Ireland because (a) it has been introduced in other common law countries with some success, (b) it will make conveyancing more cost effective for consumers and (c) it will lead to "consumer focused and innovative ways of providing .... services, such as use of the internet and offering services outside normal business hours without any reduction in the level of consumer protection".

Since the 2006 Report was published 15 years ago, both the legal profession and the consumer have changed significantly.

The legal profession has implemented many of the changes recommended by the 2006 Report in the Legal Services Regulation Act 2015. As a consequence of the high profile misconduct of certain solicitors in conveyancing and banking matters, requirements around certifying title, insurance and handling client funds have changed. Plans for e-conveyancing have progressed significantly. Even before the present hybrid working brought on by the Covid-19 Pandemic, solicitors are for the most part available to clients on a 24/7 basis with the widespread use of email and other technologies. The profession relies heavily on electronic communication such that many solicitors' offices are paperless, a plain English policy is adopted in most firms, and almost all business is done by way of email or conference call.

In 2022, consumers have access to more information than ever about options available to them in all areas of their lives, including the legal profession. Traditionally, clients may have used the family solicitor and stayed with a particular firm due to family connections and loyalty and this is probably what the consumer in 2006 looked like also. However, the consumer in 2022 is more likely to read around before instructing a solicitor and most certainly goes to a number of firms seeking a quote for legal advice before engaging a solicitor.

Therefore, the DSBA is of the view that the legal profession has already changed since the 2006 Report, and the area of conveyancing is already more competitive as a consequence of the changing consumer and the changed legal environment in which we now all operate.

The challenges that have faced the solicitors' profession since the 2006 Report and already averted to have led to an increase in costs for law firms, particularly on the insurance front. It has also changed the way that Banks in particular finance transactions. Therefore, while conveyancing has become more competitive, it is likely that costs have increased since the 2006 as a direct result of these changes.

It is acknowledged that in certain circumstances, a licensed conveyancer may be in a position to offer value to a consumer by way of alternative to a solicitor – akin to a legal executive - in a residential conveyancing transaction where the title is fully registered, all planning matters and taxes are in order and the purchaser is a cash buyer for example. However, in higher value transaction where there is more complexity, based on the cost of insurance alone, the fees of a solicitor will be as competitive as a licensed conveyancer who should have exactly the same overheads as a solicitor. The licensed conveyancer will also be running a business, and will not be able to be so competitive such that it would operate at a loss.

To conclude, developments and events since 2006 have meant that many of the recommendations of the 2006 Report have been superseded. The level of competition for legal services has increased and the cost of running a law firm has also increased. A licenced conveyancer may be useful in the limited circumstances described, but we expect that conveyancing costs for the consumer will not necessarily decrease or be more competitive as a consequence of there being a new service provider. In fact, if the role of the licenced conveyancer is limited and events require a solicitor to be instructed as well, it will result in increased costs to the consumer.

We acknowledge some of the observations in the 2006 Report around the fact that "Consumers do not have the choice of employing a specialist property conveyancer and instead must employ a solicitor, who is qualified to provide a range of other services which they may not need". Given the high risk area that property law has become, the DSBA would support a requirement that solicitors must undertake a particular number of CPD training hours per year in property law if they are to offer conveyancing services.

**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?**

It is the DSBA's submission that the conveyancing landscape, and indeed the entire legal profession, has moved on significantly in the 15 years since the publication of the 2006 Report. As a result, the impact of a new role of "licensed conveyancers" envisaged in the 2006 Report will not necessarily have the impact originally envisaged in 2006.

The 2006 Report does not establish what the suggested role of a "licensed conveyancer" will be. The 2006 Report states that "[I]n many other countries, paralegal professionals known as "conveyancers" are licensed to provide conveyancing services to consumers, in addition to solicitors". However, the 2006 Report does not specify exactly what types of conveyancing services are to be provided. 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). Nevertheless, it would need to be established what form of legal training would be required for a licensed conveyancer and what body would provide the training (be it the Law Society or a newly established body).

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. This may be an attractive business model to some practitioners who practise as a sole practitioner and want to limit liability. Similarly, the new role could potentially open new avenues in terms of establishing new positions in a legal firm partnership as an attractive business model.

The 2006 Report also refers to the success of such a role in other countries and makes specific reference to Australia, New Zealand, England, Wales and Scotland. As 15 years have now passed since the 2006 Report was published, enquiries should be made as to what impact the role has impressed into the professions in those respective countries.

**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?**

It is assumed that the benefits to consumers of legal services will be two fold; firstly, in terms of a greater choice of legal professional to carry out conveyancing services and secondly in terms of cost. It is arguable however that consumers have far greater access to legal services now than ever before with advances in technology and social media platforms with many solicitors' practices who specialise in conveyancing advertising widely on social media. In addition, there has been a sustained downward pressure on conveyancing legal fees since the property crash in 2009. Today's consumers will generally "shop around" to get competitive quotes for conveyancing transactions before instructing a solicitor.

The risks to consumers are perhaps less obvious but consideration must be given to the fact that large sections of Irish property titles remain unregistered titles and without the proper education and training in the investigation of unregistered titles, is there a risk that licensed conveyancers will not be adequately qualified to carry out transactions involving unregistered titles?

It is presumed that licensed conveyancers will carry professional indemnity insurance but such insurance is likely to be limited to specific tasks. In Australia, legislation has been passed prescribing what is and is not "conveyancing work". Licensed conveyancers in that jurisdiction will only be insured for providing services which comes within the definition of "conveyancing work". When one looks at those services which are excluded they include many services which are intrinsically linked with conveyancing including applying for Probate, initiating or maintaining legal proceedings, legal work connected with the sale of a business including dealing with goodwill, stock in trade, employees.

The issue of professional indemnity insurance for licensed conveyancers will need to be carefully scrutinised so as to provide maximum protection for consumers.

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.

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

As mentioned elsewhere in this submission there are a number of small sole practitioner solicitors' firms who engage almost exclusively in residential conveyancing and such firms may see an opportunity to redefine themselves as licensed conveyancers with limited liability through the establishment of conveyancing companies. This may encourage more entrants to the conveyancing market.

There may also be potential for firms to retain talent and encourage career development of certain staff members who currently operate within firms as legal executives but in respect of whom all conveyancing transactions from a lending and insurance perspective must still be overseen by qualified solicitors. Some longstanding and undoubtedly very experienced legal executives who are not inclined to have to take the arduous route to qualify as solicitors by engaging in FE1s and 2-3 year traineeships may be attracted to the prospect of attaining a qualification of licensed conveyancer and enhancing career prospects, assuming of course that the training and steps to qualification as a licensed conveyancer will be far shorter and quicker than the training required to qualify as a solicitor.

## **6. Specific issues in respect of digital technology and how digitalisation that should inform a decision to establish a conveyancer profession**

In 2005, the Law Society established its e-Conveyancing task force. Since that time the Law Society has worked to engage with all relevant stakeholders to establish a framework which would facilitate the implementation of e-conveyancing. E-conveyancing is not a system whereby the current process is digitised but envisages one platform to which all participants of a conveyancing transaction will have access and through which all aspects of a conveyancing transaction will be conducted.

Following a strong backing from stakeholders such as the Property Registration Authority and the Irish Banking Federation to the move the transition to an e-conveyancing system is now entering the implementation process. The Law Society have engaged the assistance of a technology partner to build the electronic framework within which all parties to the transaction will work to complete a transaction.

The framework proposed will lead to a direct engagement by all parties such as lending institutions, Revenue and local authorities to the e-conveyancing platform. It is envisaged that this direct linking in of these bodies will significantly streamline conveyancing processes and reduce much publicised delays.

The framework will also provide for Client funds to be transferred independently and not routed through Solicitors Clients accounts, thereby reducing the possibility of interception through fraud or misappropriation.

The e-conveyancing system envisages the deeds of transfer of legal interest in property being standardised leaving less room for error and the associated difficulties which arise from same.

Once implemented the e-conveyancing structure will fundamentally change the manner in which conveyancing is currently being conducted and the benefits to name but a few will be to reduce transaction times, costs and risks associated with the current conveyancing process.

These benefits will in turn lead to a greater transparency to the conveyancing process for all participants and with the reduction in transaction times it is felt that the implementation of this process will lead to an increase in consumer confidence.

In circumstances where the conveyancing process is on the brink of such a radical overhaul it is difficult to see the requirement of the new licensed conveyancer role.

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

- a. Insurance - Practitioners are reporting a hardening market for securing professional indemnity insurance.

Whilst the scope of the licenced conveyancer will be more limited than a conveyancing solicitor, given the licensed conveyancer will have more limited qualification and training requirements obtaining the requisite insurance may prove difficult and/or cost prohibitive.

- b. Confidence of stakeholders – there are reports in England of certain lending institutions having a set panel of licenced conveyancers with whom they will work and outside of which panel they will not do business. This means that consumers may be limited in what licensed conveyancer they may be entitled to engage if financing the transaction with a lending institution which adopts such an approach in this jurisdiction.

- c. Regulation and training – it is uncertain as to the training requirements and regulation proposed over the new profession, who is to monitor same and how the associated costs will be covered.
- d. Limitations – should the profession be brought in, the consumer must be made aware of the limitations of such a role. Clarity must be given so the consumer is aware that the licensed conveyancer will be responsible solely for the sale and or purchase of the property and will not be in a position to act should the transaction prove litigious or should a title issue require a court application to perfect. This may lead to a two tier and ultimately more expensive system for the consumer.

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

**Training**

It is not clear from the consultation paper produced by the LSRA what form of training is anticipated in respect of licensed conveyancers. It appears that a licensed conveyancer course may be provided by the Law Society but also by private colleges who can provide specialist training in conveyancing. Private colleges who currently provide Law Society entrance exam courses may be equipped to provide a licensed conveyancer course.

The DSBA submits that training should be vocational in nature but coupled with significant academic training equivalent to diploma level or above. Academic training should not be as narrow to only relate to conveyancing. Licensed conveyancers will need to have a grounding in contract law, planning law and a working knowledge of tax law – VAT and stamp duty.

Licensed conveyancers should undertake a period of in office training equivalent to that undertaken by trainee solicitors. Given the specialist nature of this role, this training should be undertaken in a solicitor's office and overseen by a practising solicitor (and possibly in time through licensed conveyancers) of more than 5 years' experience. The DSBA would submit that training in a bank, estate agency etc would not be sufficiently specialist to train an individual in the transactional nature of licensed conveyancing. We would look to the training requirements in jurisdictions like Australia which have statutory requirements for such training.

A substantial part of academic training should deal with the ethical issues which arise in property transactions by way of example conflicts of interest, undertakings and handling client funds (assuming licensed conveyancers will handle client funds). This is of crucial importance in order to protect the public.

There should be targeted and mandatory CPD Hours per annum so that licensed conveyancers keep abreast of developments in property law and related disciplines such as tax, land registry practice and planning law.

**Models of Regulation**

The 2006 report states that the same consumer protection should be available to clients of licensed conveyancer as that of Solicitors. The DSBA would agree and endorse such an approach. The DSBA would also like to know if it is intended that licensed conveyancers can

incorporate in a limited company. If so, what additional measures do the LSRA envisage to protect the public sufficiently so there are sufficient reserves to meet any claim?

The 2006 report states that a Conveyancers Council of Ireland would be responsible for regulation of Licensed Conveyancers. Given that the LSRA is now acting as regulator of the solicitor and barrister branches of the profession, it would seem sensible that it should also have regulatory oversight on licensed conveyancers thereby obviating the requirement to have a separate "Conveyancer's Council of Ireland".

The LSRA would have regard to its six objectives set out in the Legal Services Regulation Act 2015

1. Protecting and promoting the public interest.
2. Supporting the proper and effective administration of justice.
3. Protecting and promoting the interest of consumers relating to the provision of legal services.
4. Promoting competition in the provision of legal services in the State.
5. Encouraging an independent strong and effective legal profession.
6. Promoting and maintaining adherence to the professional principles.

Licensed conveyancers would adhere to the same requirements in place for other branches of the profession and its engagement with the public around such issues as costs estimates and resolution of complaints.

Licensed conveyancers should also be bound by a code of conduct similar to the code which operates for solicitors.

As with regulation of solicitors, regulation of licensed conveyancers should be held in public so that consumers can be assured that such regulation is transparent and any finding against a licensed conveyancer should reflect the principles of proportionality, accountability, transparency and flexibility.

It is assumed that there will be a publicly searchable register of licensed conveyancers. It is also assumed that licensed conveyancers will pay a practising certificate fee, which will then be used to defray the costs of regulation by LSRA. Further information is required as to the likely costs of regulation and the likely practising certificate fee. Whilst the DSBA supports regulation being paid by practising licensed conveyancers through practising certificate fee, this may be a barrier to current legal executives "converting" and retraining as licensed conveyancers.

More information is required about if licensed conveyancers are intended to hold client monies and if so, what additional protections are required.

It is important for consumers that licensed conveyancers operate independently and as such they should not be affiliated in any way to the counterparty on a transaction. A licensed conveyancer should also be prohibited from paying an estate agency or equivalent a referral fee to introduce business.

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

In deciding to set up a profession of licensed conveyancer, the DSBA submits that the LSRA should have regard to equivalent jurisdictions where such a system operates. The

cost/benefit analysis needs to be considered carefully as the initial set up costs for licensed conveyancers are likely to be quite substantial.

Ireland is a population 4.94 million (per latest census) and our domestic economy is much smaller than that of our immediate neighbour United Kingdom. In England and Wales, a population of 55.98 million demands alternatives to solicitor model. As such, it is our view that England and Wales is not an appropriate comparator.

In looking at the demand for this model in Ireland, DSBA submits that one should have regard to New Zealand with a population of 4.93 million and approximately 11,000 solicitors so on a par with Ireland. Conveyancers were introduced in New Zealand in 2008<sup>1</sup> and with a 13 year integration period, there are less than 100 Conveyancers<sup>2</sup>. Therefore, in our opinion the Irish economy may not require such an alternative business model.

Licensed conveyancers would be limited in the work which they could undertake and a consumer may want a “one stop shop” to attend to a number of legal matters e.g. probate/wills/property sale so there may be limited scope for this. Outside of the large urban centres, solicitors often act as the “family” solicitor and as such a consumer expects to deal with that person as trusted adviser who knows their affairs. Licensed conveyancing may have a role in project and new homes teams within large organisations but given that most firms in the state operate as sole or small practices, we would submit that the appetite for this is limited.

In the wider legal services sector, it is good for a consumer to have choice but also to know and understand the differences between what various legal professionals do. The LSRA need to set out a scope of what licensed conveyancers can and cannot do. How will they interact with other stakeholders such as banks, estate agents and other firms? Will they be allowed to give undertakings or sign certificates of title. If not, is there an element of double cost here for a client?

In tandem with the introduction of a profession of licensed conveyancer, there should be a media campaign explaining the distinctions for the consumer. It is also important to realise the multi-disciplinary nature of solicitor’s practice. For example, court applications both contentious and non-contentious regarding title matters. This can range from disputed matters such as rights of way to statutory applications such as under the Landlord and Tenant Acts. A consumer may not necessarily understand that the person who acted as a licensed conveyancer in the purchase of a property cannot then act in a court application to acquire the freehold interest in the property. A consumer may find that their legal costs may in fact be more if they are not aware of the limitations on the role of a licensed conveyancer.

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<sup>1</sup> Lawyers and Conveyancers Act 2006 introduced on 1 August 2008

<sup>2</sup> According to public register with NZ Society of Conveyancers