

COUNTY LOUTH SOLICITORS BAR ASSOCIATION

President : Catherine MacGinley, Ivy House, Roden Place, Dundalk, Co. Louth
Tel. 00 353 42 9332238; Fax 00 353 42 9334565;
e-mail: cmg@mgq.ie

Secretary : Megan Murphy Byrne, Ahern & McDonnell Solicitors, Roden Place,
Dundalk, Co. Louth Tel. 00353 42 9335384
email: megan@ahernandmcdonnell.ie

Treasurer : John McGahon, Francis St., Dundalk, Co. Louth
Tel. 00 353 42 9334065; Fax 00 353 42 9336678; DX 24003 Dundalk
e-mail: john.mcgahon@danieloconnellsol.ie

P.R.O. : Richard McDonnell, Market Square, Ardee, Co. Louth
Tel. 00 353 41 6853275; Fax 00 353 41 6853126; DX 59001
e-mail: richard@rhmcdonnell.ie

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Conveyancer
Consultation Legal Regulatory Authority

By email: publicconsultations@lsra.ie

Re: LSRA consultation on new profession of Conveyancer

Dear Sirs,

Following discussions amongst our members, we would like to make the following points, with regard to the question of a new profession of Conveyancer:

Apart from the requirement of Section 34 of the Legal Services Regulation Act 2015, it is difficult to see where the requirement for a new profession is coming from. Presumably the inclusion of the mandate to consult on this subject was to consider and promote competition. However, there is no demand from the public for this new profession.

If the objective is to promote competition, it is difficult to see how competition in this area could be any more intense. The vast majority of solicitors practising in Ireland offer

conveyancing services and in terms both of cost and efficiency very few could be said to be uncompetitive. Many of our members will confirm that they offer conveyancing services at a level of fees which is at or below cost, such is the level of competition. As practitioners in this area of law we believe that the market for these services is already saturated.

It is difficult therefore to see what ill this new profession is to be introduced to cure. Can it be said that consumers of conveyancing services are dissatisfied either on price or service?

Of considerable value to the consumer of these services are the level of qualifications and experience of their solicitor, their solicitor's professional indemnity insurance and the Law Society's Compensation Fund.

What would be the mechanics of setting up this new profession and what justification is there for the costs and duplication (with the provisions already in place as regards solicitors) this will involve? What body will educate Conveyancers? What body will regulate them? Given that solicitors are regulated by two separate bodies in terms of conduct and financial matters, how will this be applied to Conveyancers who will not have access to the Compensation Fund of the Law Society?

There is a heavy burden of regulation on solicitors particularly because we handle clients' monies. Is this to be duplicated in the case of Conveyancers? What protections will be in place for clients in relation to the handling of client monies by Conveyancers?

How is a Conveyancer, whose only qualification is in that area of law, to deal with a purchase from a receiver or a legal personal representative which requires knowledge of company law or probate? Very often, in the course of a conveyancing transaction with their solicitor, the client's other needs will arise, for example, the client may require tax advice or to make a will. How is a Conveyancer to resolve a matter which starts off appearing to be straightforward but evolves into a dispute or other complication which requires, for example, the provision of dispute resolution or litigation services?

The solicitor's undertaking is the currency which keeps the sale and purchase of property, both domestic and commercial afloat. Are Conveyancers to be empowered to provide undertakings and how are they to be underpinned? Will the banks funding the movement of property accept undertakings given by someone other than a solicitor? Will this separate profession have its own Compensation Fund and professional indemnity insurance?

In the present PI insurance market this seems impossible to achieve. Firms of solicitors with more than 40% of their fee income arising from property transactions are struggling to find insurance cover. Will the providers of professional indemnity insurance have any appetite for a profession which does nothing but conveyancing?

In terms of the effect on the solicitors' profession, we believe the introduction of a separate profession of Conveyancer will be catastrophic, particularly for smaller firms in provincial

locations. Conveyancing work is one of the pillars of firms like these which provide an excellent and essential overall service to their clients.

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”. Unless they are subject to the same level of regulation and insurance requirements, including the provision of a Compensation Fund to deal with fraud, they will be competing with solicitors on an unfair basis. Furthermore, any Conveyancer employed by or indeed self-employed as both estate agent and Conveyancer will be entirely conflicted and unable to offer anything approaching independent representation to the client.

The temptation may be to see the services provided in relation to conveyancing as becoming more straightforward, particularly with increasing digitisation. However, the reality is that conveyancing is becoming more, not less complex. Solicitors are routinely dealing with planning law, taxation, boundary issues, services, easements and myriad other issues.

The only possible addition to the current manner in which these services are provided which we can see would be if the Conveyancer was to be a specialist form of Legal Executive, employed by and under the supervision of a solicitor.

Taking the statutory objectives of the LSRA in turn;

a. Protecting and promoting the public interest.

For the foregoing reasons, we do not believe that the creation of this additional profession achieves the objective of protecting and promoting the public interest, quite the opposite.

b. Supporting the proper and effective administration of justice.

It does not appear to us, for the reasons set out above that the creation of an additional profession will have any positive effect on the proper and effective administration of justice.

c. Protecting and promoting the interests of consumers relating to the provision of legal services.

There is no protection for the interests of consumers in creating a profession which offers them less protection in terms of insurance and redress in the event of fraud and with which banks and solicitors will not engage due to concern about the enforceability or otherwise of their undertakings (if they are empowered to provide them in the first place).

d. Promoting competition in the provision of legal services in the State.

Solicitors already operate in a highly competitive environment and have no difficulty with competition per se. However, such is the level of competition in

this area, we cannot see how the introduction of a new profession will offer any gain to the consumer. The danger however is of an inferior service offered in circumstances where the Conveyancer is not independent of other interested parties such as estate agents or mortgage brokers.

e. Encouraging an independent, strong and effective legal profession

For the reasons outlined, we believe the opposite effect will be achieved. A separate profession of Conveyancers will undermine the solicitors' profession and devalue the service we provide. It will have fatal results for many small firms.

f. Promoting and maintaining adherence to the professional principles specified in subsection 5 (of Section 13(4) of the Legal Services Regulation Act 2015).

The principles referred to require acting with independence and integrity, acting in the best interests of the client and maintaining proper standards of work. We have serious concerns about how those principles will be maintained and seen to be maintained by a new profession. In particular, a race to the bottom in terms of fees payable for conveyancing services will inevitably affect the standard of work carried out.

We trust these comments are of some assistance.

Yours sincerely,

Catherine MacGinley
PRESIDENT