



An tÚdarás Clárúcháin Maoine
Property Registration Authority

LSRA Consultation for Report on the Creation of New Profession of Conveyancer

Submission of the Property Registration Authority

25th January 2022

1. The Property Registration Authority

The **Property Registration Authority (PRA)** was established on 4 November 2006 under the provisions of the Registration of Deeds and Title Act 2006. The PRA's primary statutory function is to provide and maintain a system of registration of Titles and Deeds in accordance with the relevant legislation. The PRA achieves this by its management and control of the Land Registry and the Registry of Deeds

The **Land Registry**, which has been in operation since 1891, provides a register of title to land guaranteed by the State and facilitates secure property transactions, thereby underpinning the creation of capital in the Irish economy and safeguarding property rights. Over 2.36 million live folios are registered on the National Land Register, representing 93% of the land mass of Ireland and 89% of the total number of titles. The Land Registry also deals with applications under Part 3 of the Landlord and Tenant (Ground Rents) (No. 2) Act, 1978.

The **Registry of Deeds**, which was established in 1707, provides a system of recording the existence of deeds and conveyances affecting unregistered property. Archival services are also provided at the Registry of Deeds which holds a repository of archival material related to property transactions dating from 1708.

2. PRA Views on the Creation of a New Profession of Conveyancer

While the PRA is tasked under the Registration of Deeds and Title Act 2006 with assisting the Minister for Housing, Local Government and Heritage in the development of policy in relation to registration of ownership of land, the PRA is not itself tasked with the formulation of policy.

With this in mind, the PRA will, in this submission, largely confine itself to commenting on issues that relate directly to registration of titles and deeds, rather than broader policy issues.

The PRA does not have a particular view on whether a new profession of conveyancer should be created. However, the PRA would be strongly of the view that the creation of such a profession should not introduce any new challenges to maintaining the integrity of the National Land Register or increase the likelihood of error or fraud. Such an increase could expose the compensation fund which is provided for under Section 120 of the Registration of Title Act 1964, and which underpins the State guarantee of title, to excessive claims.

For this reason, the PRA would wish to see a robust regulatory regime established, with clear standards for training and qualification, and provision for professional indemnity insurance and a contributory compensation fund. Our concerns regarding these, and other, issues will be set out in greater detail below.

To illustrate the level of applications received by the PRA and the general standard of applications received, figure 1, below, shows the level of intake and completions of Land Registry applications over the last 10 years and the rate of rejection and query.

Figure 1

Dealings Received (Excluding eRegistration) 2012 - 2020

	Total Gross Intake	Dealings Rejected	Net Intake Overall	Dealings Completed	Withdrawn, Abandoned, Refused	Total Output	Total Queried	Rejection Rate	Query Rate
2012	132,812	17,261	115,551	121,031	5,557	126,588	50,903	11%	33%
2013	100,693	12,567	88,126	104,060	5,513	109,573	49,651	10%	40%
2014	117,301	16,525	100,776	103,404	3,608	107,012	43,894	11%	30%
2015	142,668	24,103	118,565	112,722	3,562	116,284	46,391	14%	26%
2016	145,619	24,232	121,387	110,094	3,101	113,195	47,208	14%	27%
2017	156,645	29,009	127,636	115,379	4,217	119,596	59,655	15%	31%
2018	164,382	27,559	136,823	133,856	5,146	139,002	68,228	13%	33%
2019	172,281	27,741	144,540	138,681	5,785	144,466	72,970	13%	34%
2020	139,036	17,729	121,307	95,081	3,614	98,695	51,365	10%	29%
2021	158,331	22,199	136,132	116,397	5,957	122,354	63,083	11%	31%

10 Year Total	1,429,768	218,925	1,210,843	1,150,705	46,060	1,196,765	553,348	12%	31%
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It can be seen from the table in Figure 1 that the average rate of rejection over the last 10 years is 12% and the average query rate is 31%. The combined figure of 43% is the percentage of applications that are not initially in order when lodged for registration. The figure given for applications withdrawn, abandoned or refused shows the additional number of applications which, while initially accepted, encounter problems during processing and do not proceed to registration

The percentage of applications not in order is high. However, the majority of errors do not relate to complex legal issues, but to clerical errors or failure to use the correct forms. It is possible that professional conveyancers, specialising and focussing specifically on this area, may be in a position to avoid the more common errors through increased familiarity with the correct forms, practices and procedures.

It should be noted that the average level of rejection of applications lodged electronically through the eRegistration system in the same 10 year period is only 0.37%. This is because smart forms are used and certain information is extracted directly from the Land Registry's internal system. Unfortunately, only eDischarges by financial institutions and eCharging

Orders connected with the Nursing Home Support Scheme can be completed using a fully electronic end-to-end process. All other applications for registration require lodgement of paper documents. This is discussed further below, in the context of digitalisation.

3. Impact on Competition in the Provision of Legal Services

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.

Studies detailed in the Competition Authority report on Competition in Professional Services, Solicitors and Barristers, published in 2006, link the reduction of conveyancing fees in the jurisdictions of New South Wales and in England and Wales to the introduction of the new profession of conveyancer. However, it is not made completely clear that all of the reduction could be attributed to that factor alone.

The PRA's concern would be to ensure that any change in practices adopted by conveyancing professionals would not lead to a slippage in standards and that the regulation of the profession would be such as to ensure that the new profession could be trusted to perform conveyancing tasks with competence and integrity.

4. Implications for the Legal Services Sector and Solicitors' Profession

The implications for the sector and for the profession of solicitors will largely depend on the market share which the profession of conveyancer could carve out from the market.

The overall effect is something that is probably best left to the LSRA to discover from an examination of the effects of the introduction in other jurisdictions, bearing in mind any specific issues relevant only to the Irish legal sector.

However, the PRA does have two specific concerns in this area, one of which flows from the other. The first is that if large-scale conveyancing practices were to carve out a large portion of the market that relates to the more straight-forward conveyancing transactions, this would leave only the more complex conveyancing transactions in respect of which solicitors could act. If there is not a balance between the more straight-forward and the more complex transactions in which a firm acts, that firm may decide not to offer conveyancing services, hence reducing the level of competition.

The second issue is that solicitors require experience in order to become expert in the area of conveyancing. If the more straight-forward applications flow to the licensed conveyancers, the level of practice on the day-to-day transactions for solicitors will be reduced. This could mean that the number of solicitors who have the level of experience to be considered expert conveyancers would also be reduced. Essentially, a solicitor may be

expected to act in a transaction with several complex legal elements, including conveyancing, but the solicitor's lack of practical experience with the more "bread and butter" applications could lead to simple elements being overlooked.

5. Potential Benefits and Risks to Consumers

(a) Legal Costs

In the Competition Authority report on Competition in Professional Services, Solicitors and Barristers, published in 2006, studies are quoted that are stated to show a reduction of conveyancing fees in the jurisdictions of New South Wales and in England and Wales was linked to the introduction of the new profession of conveyancer. The figures in these studies were challenged by the Law Society of Ireland, in their response to the preliminary report, which they issued in July 2005.

It is logical to expect that the introduction of licensed conveyancers specialising in this area and adopting new business models, while employing less highly qualified staff, would lead to a reduction in fees. It would be helpful, however, if it could be clearly shown how, and to what degree, the introduction of the profession of licensed conveyancers has led to such a reduction in other jurisdictions.

(b) Access to Legal Services

Increased choice for consumers is something which is generally to be welcomed in all sectors, including the legal sector. The availability of services outside of normal business hours and the provision of online services would result in increased convenience for consumers in some cases. Digital service delivery will be further discussed below. However, in the situation where a wet signature must still be used for a conveyance of real property, it will not be possible to provide a fully online/ electronic service for conveyancing transactions.

There would not appear to be a significant shortage of conveyancing providers at present. All areas of the country have solicitor firms acting in conveyancing transactions. If, as quoted in the Competition Authority Report of 2006, professional conveyancers in England and Wales have a share of only 5% of the conveyancing market in that jurisdiction, it is difficult to see how the introduction of the profession could be seen as having significantly improved the level of access to legal services for consumers in that jurisdiction.

Also to be considered is the fact that many of those offering legal services in Ireland are small firms or sole practitioners. Conveyancing is one of the areas upon which these firms rely in order to be sustainable. If a significant amount of this business were lost to large specialist firms of professional conveyancers, focussed on straight-forward transactions, this could challenge the viability of such firms. This could lead to the closure of some firms,

producing the opposite effect of that which is desired, a reduction in level of access to legal services. This would be a particular issue in smaller rural communities.

(c) Consumer Protection

It would obviously be necessary for the establishment of a profession of conveyancers that the profession would be fully regulated, in a manner similar to the regulation of solicitors. The training of conveyancers must be subject to a requirement of specific minimum qualifications and a requirement that conveyancers can demonstrate a satisfactory level of experience before being allowed to act independently in conveyancing transactions.

It would be helpful if clear guidelines are set out as to the specific areas in which conveyancers are, and are not, competent to act for a client and to state which areas would remain the preserve of solicitors alone.

A scheme of continuous professional development would be necessary to ensure that conveyancers take all steps to keep their training up to date and remain abreast of developments in the law and practice of conveyancing.

It would also be necessary that all conveyancers carry professional indemnity insurance and that there be a compensation fund available for conveyancers, similar to that of the Law Society for solicitors. The availability of insurance cover, in particular, should not be assumed in a small, idiosyncratic market such as Ireland where insurance issues are constantly cited by businesses in general as a challenge to their viability.

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.

The risk in such situations is that the issue will not always be immediately be apparent to the conveyancer themselves, either. What can happen in such situations is that the issue is only raised as a difficulty upon lodgement of an application for registration with the PRA. Obviously, at this point, a purchaser has already completed the purchase and paid over the monies due.

Such difficulties do arise at present, despite the fact that almost all applications for registration are lodged by solicitors. However, this risk could be exacerbated by the introduction of a profession that is more narrowly focussed on conveyancing only and does not have the broader training on issues which, while outside such narrow focus, nevertheless interact with, and impact upon, the area of conveyancing. Examples would be the law on insolvency, receivers and powers of attorney. Such matters arise with some degree of frequency in conveyancing transactions.

6. Benefits and Challenges to Enterprise and National Competitiveness

The PRA is not in a position to offer an opinion on this question.

7. Issues Related to Digital Technology and Digitalisation

It is likely that a firm wishing to set up as specialising in conveyancing would wish to conduct as much of its business as possible electronically. The PRA offers many of its services electronically through its landdirect.ie website. Searches may be conducted, applications may be pre-lodged, fees may be paid, copy documents may be requested, all electronically. It is also possible for deeds of transfer and deeds of charge to be created electronically. However, while discharges or releases of registered charges may be processed in a fully electronic process without paper documents, this is not possible for transfers and charges. The reason is because section 10(1)(b) of the Electronic Commerce Act 2000 provides that electronic signatures may not be used for deeds in respect of real property.

This means that a deed created electronically in the PRA's eRegistration portal must be printed down so that a wet ink signature may be attached and witnessed, before the application may be lodged for registration. This means that it will not be possible for a firm of conveyancers to offer a fully electronic/ online service to consumers. It is also likely that this requirement will make it more difficult for such firms to attract clients at a significant geographical remove, if the client is required to attend at the office for the execution of a deed of transfer or mortgage.

If digital signatures are to come into use in conveyancing, the verification of the identity of each party to a transaction is critical to the protection of all those involved in a transaction. There are various methods of identification employed in different jurisdictions using eConveyancing systems. Some of these rely on the identification of parties by solicitors/ notaries. If this approach were to be adopted for the introduction of eConveyancing in Ireland, it would be critical that the regulation of any profession involved would be sufficiently robust as to ensure the integrity of those professionals involved in the process.

8. Barriers to the Establishment of New Providers of Conveyancing Services

The PRA is not in a position to identify barriers to the establishment of new providers of conveyancing services.

9. Training and Models for Regulation

The PRA has inspected the qualification requirements set down by the Council for Licensed Conveyancers in England and Wales. In that jurisdiction, a person is in a position to work as a Registered Conveyancing Technician upon completion of 6 months work experience combined with completion of a Level 4 Diploma in Conveyancing Law and Practice.

According to the CLC, conveyancing technicians manage a small caseload of residential property transactions and their role is to support the work of a property lawyer.

To apply for a qualifying licence with the CLC, a conveyancer requires a Level 6 Diploma and also needs to undertake 1200 hours of practical experience in a conveyancing role. This can be completed as full or part time, paid or unpaid work experience under the direct supervision of a property lawyer or solicitor. Licensed conveyancers, according to the CLC, specialise in all of the legal aspects surrounding buying and selling property in England and Wales.

It is not clear whether the LSRA is looking only at the introduction of a profession of licensed conveyancer or whether the introduction of the associated role of registered conveyancing technician is also being considered. It is currently the case that some of the work in relation to a conveyancing file may be carried out by persons other than solicitors in a legal firm, not all of whom will be legally trained. There would appear to be some merit in placing a requirement upon all persons interacting with a conveyancing file to have a level of qualification and experience to ensure a base level of competence in carrying out such work, even where the work is overseen by a solicitor.

With regard to the profession of licensed conveyancer, the level of qualification and experience required in England and Wales would appear to be appropriate to prepare a conveyancer to deal with most conveyancing transactions. The only concern with regard to the specialised focus of training is that a conveyancer, lacking the broader training of a solicitor, may not be in a position to recognise an important issue in a particular file, which may then give rise to significant problems for a client, after they have completed their purchase and paid over the purchase money.

Of particular concern to the PRA here would be the involvement of conveyancers in applications for first registration. While applications for first registration may be lodged for full examination of title by the PRA in Form 1 (freehold) and Form 2 (Leasehold) of the Land Registration Rules 2012 to 2021, the majority of applications for first registration are lodged in Form 3.

In an application in Form 3, the title is investigated by the solicitor for the purchaser and the application for registration is based upon a certification of that title by that solicitor. At present, 78% of applications for first registration are lodged in Form 3. The PRA does not look behind this certificate, but rather relies on the certificate of the solicitor.

There would be some trepidation in adopting a similar approach to a professional who, while qualified and experienced in the area of conveyancing, does not possess the broader training of a solicitor which may allow the latter to spot problems with a title which may go

unnoticed by the conveyancer, whose training has a narrower focus. Such issues will not always be conveyancing issues, per se, but may still present significant problems.

Although the PRA relies upon the certificate of the solicitor in these cases, the PRA is deemed to have approved such titles and is liable for compensation in respect of loss or damage arising from such registrations where incorrect or, indeed, fraudulent. Section 120 of the Registration of Title Act 1964, as amended, provides for this compensation. Any compensation payments made are funded by the State and, ultimately, the taxpayer. It would not be in the interest of the State to introduce any increased level of risk to the compensation fund and the acceptance of applications for first registration based on a certification by a conveyancer could be seen as increasing this risk.

There are various other matters that a solicitor is entitled to do attend to on behalf of a client under the Land Registration Rules 2012 to 2021 that would need to be extended to a profession of conveyancer, if created. Examples are making an application for a copy instrument in Form 96 or making an application for entry of an inhibition on a folio in Form 76.

The PRA would also accept the certificate of a practicing solicitor to overcome some issues that arise in applications, rather than insisting on documentary proofs. An example would be a certificate that an applicant for first registration has not dealt with (conveyed or mortgaged) their interest since acquisition. Such certificates are accepted on the basis of a solicitor's standing as an officer of the court. Would, or should, a conveyancer enjoy similar standing?

The issue of training providers is another which would need to be considered. From a search of the CLC's website, it is noted that there are currently six approved training providers for professional conveyancers in England and Wales. This would seem a relatively small number for what is a market considerably larger than that of Ireland.

Consideration should be given to whether the number of applicants for professional conveyancing courses will be sufficiently large to warrant the provision of courses in this jurisdiction by a number of training providers. It would be unfortunate if all of the work of preparing for a new profession of conveyancer were to be undertaken, only to discover after a short period of time that the demand for courses was at a low enough level that training providers decided to no longer offer the courses necessary to qualify.

With regard to the model for regulation, it would be expected that a professional conveyancer would be subject to the same level of regulation as a solicitor. It would also be expected that the same sanctions that exist for misconduct by a solicitor would be available to sanction a conveyancer for misconduct.

It is noted that different regulatory bodies regulate solicitors and licensed conveyancers in England and Wales. It is suggested that having both professions regulated in Ireland by the same body would avoid any possible perception that one profession may be less regulated than the other.

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