



An tÚdarás Rialála
Seirbhíse Dlí
Legal Services
Regulatory Authority

Consideration of a new profession of conveyancer

Report to the Minister for Justice

*November
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Executive Summary

1. This is the Authority's report to the Minister for Justice in relation to the creation of a new profession of conveyancer in fulfilment of its statutory obligations under section 34 of the Legal Services Regulation Act 2015 (the Act).
2. The Authority is committed to ensuring at all times that its statutory objectives, as articulated in section 13(4) of the Act, are to the forefront of its conclusions and recommendations. This is the statutory context in which this report has been prepared and in which the Authority's recommendation are made.
3. The report is in four parts. Part 1, the introduction, provides background to the LSRA and its role and remit. It sets out the terms of section 34 of the Act in relation to this report to the Minister on the creation of a new profession of conveyancer.
4. Part 2 describes the consultation and research process undertaken by the LSRA in fulfilment of its obligations under the Act and summarises the evidence gathered and its conclusions.
5. Part 3 contains the Authority's conclusions based on its careful consideration of the evidence and a discussion of the potential benefits as well as the barriers and risks associated with the creation of a new profession of conveyancer.
6. Part 4 contains a discussion of priority areas for reform and the Authority's recommendations to the Minister for Justice under section 34(5)(b) of the Act.

1. Introduction

1.1 Objectives and functions of the Authority

1.1 The Legal Services Regulatory Authority (the Authority) is responsible for the regulation of the provision of legal services by legal practitioners. The Legal Services Regulation Act 2015 sets out, at section 13(4), the six statutory objectives of the Authority – the operating principles. These are:

- (a) protecting and promoting the public interest,
- (b) supporting the proper and effective administration of justice,
- (c) protecting and promoting the interests of consumers relating to the provision of legal services,
- (d) promoting competition in the provision of legal services in the State,
- (e) encouraging an independent, strong and effective legal profession, and
- (f) promoting and maintaining adherence to the professional principles for legal practitioners as specified in the Act.

1.2 The Authority's eleven functions are set out in section 13 of the Act. These are:

13. (1) Subject to this Act, the Authority shall regulate the provision of legal services by legal practitioners and shall ensure the maintenance and improvement of standards in the provision of such services in the State.

(2) Without prejudice to the generality of subsection (1), the Authority may, and where required by this Act, shall—

(a) keep under review, and make recommendations to the Minister in respect of, the following:

(i) the admission requirements of the Law Society relating to the solicitors' profession and of the Bar Council and the Honorable Society of King's Inns relating to the barristers' profession;

(ii) the availability and quality of the education and training (including on-going training) for the solicitors' and barristers' professions, including—

(I) the curriculum arrangements for the provision of clinical legal education and the teaching of legal ethics, negotiation skills, alternative dispute resolution and advocacy, and

(II) the methods by which, and the persons by whom, such education and training is provided;

- (iii) the policies of the Law Society in relation to the admission of persons as solicitors in the State, and of the Bar Council and the Honorable Society of King's Inns in relation to persons becoming entitled to practise as barristers in the State, including the arrangements for—
- (I) accreditation of foreign legal practitioners, and
 - (II) movement by legal practitioners between the professions of solicitor and barrister;
- (iv) professional codes;
- (v) the organisation of the provision of legal services in the State,
- (b) disseminate information in respect of the education and accreditation requirements and other matters referred to in paragraph (a) to such extent and in such manner as it thinks fit,
- (c) specify the nature and minimum levels of professional indemnity insurance in accordance with sections 46 and 47,
- (d) establish and administer a system of inspection of legal practitioners for such purposes as are provided for in this Act,
- (e) receive and investigate complaints under Part 6,
- (f) maintain the roll of practising barristers in accordance with Part 9,
- (g) promote public awareness and disseminate information to the public in respect of legal services, including the cost of such services,
- (h) keep the Minister informed of developments in respect of the provision of legal services by legal practitioners and make recommendations to assist the Minister in co-ordinating and developing policy in that regard,
- (i) undertake, commission or assist in research projects and other activities in respect of the provision of legal services, which in the opinion of the Authority may promote an improvement in standards for the provision of those services and public awareness of them, and make recommendations to the Minister arising from those projects or activities, and
- (j) perform any other functions conferred on it by this Act or by regulations made under it.

1.2 Origin and purpose of report

- 1.3 Under section 34(1) of the Act, the Authority shall, following appropriate public consultation processes, prepare and furnish reports to the Minister in relation to the following:
- (a) the education and training (including on-going training) arrangements in the State for legal practitioners, including the manner in which such education and training is provided;
 - (b) unification of the solicitors' profession and the barristers' profession;
 - (c) the creation of a new profession of conveyancer;
 - (d) such other matters as the Minister may, from time to time, request the Authority to report on to him or her.
- 1.4 Under section 34(5) of the Act, a report in respect of the matters referred to in subsection (1)(c) and (d) shall—
- (a) be provided to the Minister within a period specified by the Minister in a written notice to the Authority requesting the report,
 - (b) contain such details and make recommendations as to such matters as may be specified by the Minister in the notice referred to in paragraph (a).
- 1.5 On 4 March 2021 the Minister for Justice issued a written notice to the Authority under section 34(5) of the Act. The Minister requested that the Authority include consideration of the following matters by way of making any relevant findings and recommendations as may be considered appropriate:
- Background and context including 2006 Report of the Competition Authority on Solicitors and Barristers and stakeholder mapping.
 - An analysis of comparable international models and experience.
 - An economic analysis of how Ireland compares to other jurisdictions in terms of the cost and the speed of conveyancing, particularly for domestic home purchases, including any particular barriers in Ireland.
 - Intervening developments of relevance including in policy, law, regulation and conveyancing technologies.
 - A full consideration of how digital technology, which is rapidly evolving, could transform the manner, the cost and the speed of carrying out a conveyance, and how digitalisation should inform a decision to establish a conveyancer profession.

- Profile of the scale of provision and value to the economy of conveyancing services and activities in the State.
- The path through which such services are currently provided and at what transactional cost.
- Analysis of any barriers to new providers and to greater competition in this area.
- Outcome of section 34 public consultations and views of key stakeholders including those who avail of conveyancing services.
- The pros and cons of introducing a new profession of conveyancer and models for its regulation (including entry requirements) with protections for consumers.
- Potential benefits, if any, to private consumers and enterprise and to national competitiveness of a new profession of conveyancer.
- Any other matters that the Authority considers appropriate.

2. The Evidence

2.1 Consultation and Research

- 2.1 The Authority undertook a range of actions to meet the Minister's request under section 34(5), including:
- Carrying out an extensive statutory public consultation under section 34 of the Act.
 - Conducting a wider stakeholder analysis.
 - Commissioning an external expert report by Indecon International Consultants.
 - Undertaking the LSRA's first national survey of consumers of conveyancing services with the market research company Ipsos Ireland.

Statutory Consultation and Stakeholder Analysis

- 2.2 On 8 September 2021 the LSRA commenced its statutory consultation under section 34 of the Act with the launch of a brief discussion paper and call for written submissions. This public consultation notice was distributed via email to approximately 300 recipients and was posted to the LSRA's website, with additional awareness raising via the LSRA's communications and social media resources. The text of this consultation notice is in Annex B of this report.
- 2.3 The consultation was designed to elicit views on the matters documented in the Minister's written notice to the Authority. Written responses were required by 6 January 2022, with the closing date for receipt of written submissions subsequently extended to 31 January 2022. This timescale for submissions is in keeping with government guidance on public consultations.¹
- 2.4 A total of 16 respondents made written submissions. A list of respondents to the statutory consultation is in Annex A of this report.
- 2.5 Following a wider stakeholder analysis, the LSRA executive also directly contacted a number of organisations in the property, insurance and banking sectors who are not routinely consulted by the LSRA, to provide them with an opportunity to contribute as part of the public consultation.

¹ Department of Public Expenditure and Reform (November 2016) *Public Consultation Principles & Guidance*. Available here: <https://www.gov.ie/en/publication/e9b052-consultation-principles-and-guidance/>

Expert Report

- 2.6 Following an appropriate procurement exercise, the LSRA engaged Indecon International Consultants (Indecon) to undertake the research required and to report to the Authority on its findings. The consultants worked closely with the Chief Executive and staff of the LSRA in carrying out this exercise.
- 2.7 The Indecon research includes a review of international models and experience in relation to conveyancing. It also examines the issue of technology and how this might impact the conveyancing process. The study considers the current market for conveyancing services in Ireland and its scale and economic impact. Competition concerns and barriers to entry for new practices are examined. Indecon also reviewed written submissions to the LSRA's statutory consultation process and obtained new stakeholder inputs concerning aspects of the study.
- 2.8 In addition, Indecon undertook primary survey work of legal practitioners and examined consumer research undertaken on behalf of the LSRA (see below). Based on the evidence, the Indecon report identifies the pros and cons of a new profession of conveyancer.
- 2.9 The Authority reviewed the emerging findings from the expert report in March 2023. The Authority received a draft report from Indecon in May 2023 and provided feedback. It received the final Indecon report, *Research Study on the Creation of a new Profession of Conveyancer*, in October 2023.

Consumer Survey

- 2.10 In June 2022, following a competitive tender process, the LSRA executive commissioned Ipsos Ireland to carry out a national survey of consumers to seek their experience of residential property conveyancing services provided by solicitors. The survey gathered consumer views and experiences of: how they sourced their solicitor; the costs of the services; the time taken to complete the conveyancing; satisfaction levels; the information available on the conveyancing process and related costs; and difficulties or issues experienced by the consumer.
- 2.11 The LSRA executive worked closely with Ipsos Ireland on the survey design, which was also shared with Indecon for its expert input. The survey fieldwork was undertaken between 14 July and 19 August 2022. The survey was conducted by telephone with 300 respondents around the country. The target population was consumers who had hired a solicitor to carry out conveyancing services in the past four years. The survey included both vendors and purchasers of residential properties in a variety of locations and property types.

2.2 Expert Report content and conclusions

2.12 The Indecon report, *Research Study on the Creation of a new Profession of Conveyancer*, contains eight parts as follows.

- Part 1 is the introduction and background to the research and the methodological approach.
- Part 2 is a review of comparable international models in relation to conveyancing in Scotland, England and Wales, Northern Ireland, New Zealand and Australia (Victoria and New South Wales). It also contains reflections on the experiences in these jurisdictions.
- Part 3 is an analysis of the market for conveyancing services in Ireland. It examines the speed of conveyancing, the costs and pricing structure for conveyancing services, levels of consumer satisfaction, issues with conveyancing, conveyancing fees as a source of revenue for solicitor practices and comparative evidence.
- Part 4 is an analysis of the potential impact of digitalisation on conveyancing, new evidence on the extent of digitalisation in the Irish conveyancing sector and the international experience of digitalisation.
- Part 5 contains a profile of the market for conveyancing services in Ireland, the scale and impact of the conveyancing market, a review of how services are currently provided, the role of Section 150 notices and an examination of competition concerns and barriers to entry for new practices.
- Part 6 examines competition concerns and barriers to entry including regulatory barriers to entry for conveyancing professions, information gaps as barriers to market entrants and to competition, and other barriers to entry. It also contains the views of the Competition and Consumer Protection Commission.
- Part 7 is on the impact on competition. It examines the implications for efficiency in the provision of conveyancing services, the consequences for the time to complete conveyancing, the impact on quality and on service innovation, regulatory costs, other implications and the pros and cons of alternative models for the delivery of conveyancing services.
- Part 8 contains the report's conclusions.

Expert Report Conclusions

2.13 The research study contains many significant findings. Based on the evidence gathered, the report concludes the following:

1. Ireland has a well-developed conveyancing market which is served by a large number of solicitor practices and there are high levels of overall satisfaction with conveyancing services among consumers.
2. There is a range of prices for conveyancing services available in the Irish market.
3. Most conveyancing services are provided on a fixed-fee basis.
4. There is a lack of transparency in the market arising from major gaps in the availability of comparative information on the cost of conveyancing services although some improvements have been made.
5. There is evidence of consumer inertia in the choice of conveyancing service providers.
6. A trained conveyancer could conduct routine conveyancing but would have a lower level of legal expertise than is needed to qualify as a solicitor.
7. Many of the legal firms providing conveyancing services have not significantly applied technology in carrying out conveyancing work.
8. Other jurisdictions have established a conveyancer profession.
9. The establishment of a new profession of conveyancer would increase competition for the provision of conveyancing services.
10. Enhancing competition and improving the efficiency of conveyancing services would require measures to ensure:
 - a. Greater use of technology and digitalisation in conveyancing services;
 - b. Significantly enhanced price transparency for conveyancing costs; and
 - c. Consumer awareness campaigns of the costs and other aspects of conveyancing.
11. There is a range of alternative models feasible for the delivery of conveyancing services.
12. Potential issues in introducing a new profession of conveyancer would be regulatory costs. These are also some risks to consumer protection but these could be addressed by appropriate regulatory actions. Models for regulation should prioritise consumer protection and the enhancement of competition.

3. Authority Conclusions and Discussion

3.1 Conclusions

- 3.1 The Authority has closely considered the extensive evidence and analysis presented in the Indecon report. In so doing, it has been mindful of its six statutory objectives under the Act as well as the need to balance any potential conflicts between objectives. The Authority is satisfied that all of the expert report's conclusions flow from the evidence gathered.
- 3.2 The Authority is persuaded by the evidence that the introduction of a new conveyancer profession is likely to drive additional competition among existing solicitors, as well as providing competition from new entrants. As the report notes, this is aligned with the considered view of the Competition and Consumer Protection Commission (CCPC), the successor agency to the Competition Authority which published a significant report on competition in legal services in 2006.
- 3.3 The Authority also considers that it would potentially be possible to devise a regulatory model for the creation of a new profession which would ensure adequate consumer protections. As with any new business model, there is considerable uncertainty as to the resources that may be required and the scale of risks that would need to be addressed. The Authority anticipates that the creation of a new profession would require State investment including potentially initial government funding for a compensation fund to protect consumers.
- 3.4 Any potential advantages to competition, most notably to consumers who are identified in the Authority's regulatory objectives, must be weighed against a range of potential barriers and risks identified in the Indecon report.
- 3.5 Having carefully weighed the report's evidence, the Authority's conclusions are as follows:
 - Establishing a conveyancer profession based on one of the models identified in the expert report would further the Authority's statutory objective of promoting competition in the delivery of legal services.
 - Whilst it would potentially be possible to devise a regulatory model for the creation of a new profession which would ensure adequate consumer protections, there is considerable uncertainty as to the resources that may be required and the scale of potential barriers and risks that would need to be addressed.
 - While the creation of a new profession of conveyancer could potentially fulfil the Authority's statutory objectives as set out in the Act, it would only be viable as part of a wide range of other more significant and pressing reforms.

- The barriers, risks and regulatory costs associated with the establishment of a new profession of conveyancer in Ireland are too significant to justify its creation in the absence of these wider reforms.
- Priority should be given to the introduction of a range of significant reform measures to alleviate the barriers and risks identified in the Indecon report and to introduce more transparency and efficiencies into the conveyancing process for the benefit of consumers. The successful implementation of such alleviating measures could create conditions in which the creation of a new profession of conveyancer could be reconsidered for recommendation at an appropriate future date.

3.2 Discussion and analysis

- 3.6 The Authority sets out below the potential barriers and risks identified in the Indecon report as associated with the creation of a new profession of conveyancer, and provides its assessment of each of them.

1. Low take up of conveyancer profession

- 3.7 Indecon's assessment is that if a profession of conveyancer were to be established in Ireland, it would secure only a very small market share and solicitors would continue to be the main provider of conveyancing services.
- 3.8 The Indecon report's international review of jurisdictions where a separate profession operates shows that this has been the pattern elsewhere. In Scotland, the new profession was discontinued after six years due to a lack of participation, with the report noting that the low level of take-up of the profession there may have been in part related to a lack of transparency in the market. Indicative market shares for professional conveyancers documented in the report are 2% in New Zealand and 9% in England and Wales, although the experience in some of the Australian markets suggests a higher level of take-up.

Assessment

- 3.9 There are potentially reduced benefits to consumers arising from the introduction of the profession, should professional conveyancers secure only a very small market share in Ireland. If solicitors were to continue to be the majority providers of conveyancing services, and absent wider reforms in the delivery of conveyancing services, the creation of an entirely new profession with all the legislative, regulatory, educational and other measures required, risks being a reform that is at best symbolic without significant market penetration and impact.

- 3.10 The Authority is persuaded by the Indecon report's analysis that the data on take-up rates of the profession in other jurisdictions highlights the importance of addressing any barriers to new entrants, if a decision were made to proceed with establishing a new conveyancing profession. In particular the report identifies the need to ensure price transparency in the market, introduce greater digitalisation, and develop greater consumer awareness.

2. Consumer benefits not conclusive

- 3.11 The Indecon report's evidence points to the fact that Irish consumers incur higher costs and longer timescales to complete conveyancing transactions than in comparator countries. While the report finds some evidence of lower consumer costs and a faster timescale for conveyancing transactions in jurisdictions where a conveyancing profession operates, causation cannot always be directly attributed to the existence of a new profession. The report states that "the international comparisons suggest that the increased competition from new entrants has the potential to impact costs for consumers and timescales although it is hard to be definitive on the precise impacts."

Assessment

- 3.12 The Authority recognises that in comparing Ireland with other jurisdictions, differences in the type of work involved in conveyancing between different countries and the also complexity of transactions must be taken into consideration. For example, as the Indecon report points out, in Ireland solicitors are required to undertake planning due diligence, as well as work on the Registry of Deeds, because of the absence of an e-conveyancing system. There is also a requirement in Ireland for solicitors to interact with the Revenue Commissioners which does not apply in many comparator countries.
- 3.13 Nevertheless, the Authority considers that it must give due regard to the inconclusive nature of this important research finding. The Authority further notes that the fastest time frame for conveyancing transactions documented in the report was in New Zealand where an online digital system has increased consumer access to information as well as efficiencies in the transaction process.

3. The role of undertakings

- 3.14 The example of New Zealand also highlights potential issues around the role of undertakings in conveyancing processes. As the Indecon report documents, issues have arisen there in relation to solicitors accepting undertakings from conveyancers. Submissions made to the Authority as part of its statutory consultation in preparing this report also raised undertakings as a potential issue in Ireland, as conveyancing transactions often involve solicitors' undertakings.

- 3.15 An undertaking is a legally binding promise by a solicitor or someone on their behalf to do or not do something.² In a conveyancing transaction, such undertakings are often given to other solicitors or financial institutions and are binding upon the parties to the undertakings.

Assessment

- 3.16 Solicitors' undertakings are a very important element within the conveyancing system and the circumstances in which they can be given in conveyancing transactions is subject to statutory regulation. The Authority considers that it would be essential for the smooth running of the conveyancing process for any regulatory model involving a new profession of conveyancer to give serious consideration to this issue.

4. Consumer protections

- 3.17 It is acknowledged that a trained conveyancer could conduct routine conveyancing but would have a lower level of legal expertise than is needed to qualify as a solicitor. A risk therefore arises of consumers incurring additional costs and facing time delays in conveyancing transactions where legal expertise from a solicitor is required. Several respondents to the consultation highlighted such potential risks in the context of contractual disputes that may require resolution through legal argument, mediation, arbitration or legal proceedings.
- 3.18 As licensed conveyancers would not be capable of representing clients in the context of any such dispute, clients would have to be referred from conveyancers to lawyers for complications arising in the midst of a transaction. Such a scenario would be less likely to apply if the conveyancer professional is employed in a solicitor's practice.
- 3.19 In addition, the Authority is conscious that 42% of its consumer survey respondents indicated that they had "issues" during the conveyancing process. The issues related to items of legal significance during the conveyancing process, planning permission, mortgage issuance, title/deed defect, tax, etc. Of those, more than half (54%) reported the complications required significant additional advice from, and interaction with, their solicitor. As the Indecon report notes, "this suggests a significant need for legal services beyond simple transactional paperwork."

Assessment

- 3.20 If there was to be a new profession of conveyancer, it is important that education, training, and other qualifications would be set at a level appropriate to conveyancing work rather than that requiring wider legal expertise.

² An undertaking is "any unequivocal declaration of intention addressed to someone who reasonably places reliance on it which is made by a solicitor in the course of their practice whereby the solicitor becomes personally bound". Source: Law Society of Ireland (2013) *A Guide to Good Professional Conduct for Solicitors 3rd Edition*. ISBN 978-0-902027-99-2

- 3.21 As the Indecon report notes, in complex cases where legal issues arise, the handling by a separate conveyancer profession could result in additional time delays. While the Authority agrees with Indecon's assessment that it is unlikely that additional costs over time delays would arise in most conveyancing transactions for domestic home purchases, nevertheless the potential risks in this area must be considered.

5. Professional Indemnity Insurance and a compensation fund

- 3.22 A potentially serious risk to consumer protection arising from the creation of a new profession of conveyancer centres on the twin issues of Professional Indemnity Insurance (PII) and a compensation fund. All solicitors are required to have PII and they also contribute annually to the Law Society of Ireland's statutory compensation fund.
- 3.23 On the issue of insurance, the Indecon report highlights research showing that rising insurance costs are already an issue for smaller legal firms. It states that despite the presence of participating insurers currently, "obtaining adequate Professional Indemnity Insurance could be challenging unless new entrants had significant resources and a track record from operating in the UK or other markets."
- 3.24 In its submission to the Authority for this report, the Law Society of Ireland stated that increases in the cost of PII over the last number of years have largely been driven by conveyancing related claims, which it said comprise over 50% of all negligence claims against solicitors.
- 3.25 In relation to a compensation fund, the Indecon report states that a new fund would have to be established if the individual completing the conveyancing services did not have access to the current solicitors' fund. It envisages "operational challenges in levying conveyancers to resource a compensation fund in a start-up situation of creating an entirely new profession. This may require some government involvement or a requirement that insurance cover is put in place to meet any claims for dishonesty which resulted in a loss of client funds."

Assessment

- 3.26 Potential negligence in conveyancing transactions by solicitors is currently underwritten by PII which provides for protection for consumers. In order for a new profession to be able to operate, PII must be available at an appropriate cost to conveyancers in order to protect consumers. A question which was posed during the statutory consultation, and which cannot be answered with any certainty currently, is whether insurance companies would be willing to provide insurance to a new profession with such a narrow focus and legal expertise.

- 3.27 In addition, the Authority has concerns about the costs of establishing and maintaining a compensation fund in the context of a regulatory regime which would have to be self-financing and which would also require a system for handling complaints against conveyancers.
- 3.28 Currently, solicitors' handling of client monies received in the course of conveyancing transactions is regulated by the Law Society of Ireland. The Law Society operates a statutory compensation fund which has been funded by solicitors since 1954. The purpose of the fund is to protect consumers from misappropriation of client monies.
- 3.29 The Authority considers that any proposed profession of conveyancer would have to provide the same protections for consumers by way of a compensation fund. Otherwise, consumers would potentially face a lower level of protection when dealing with a conveyancer compared to a solicitor. An obvious question which arises for the Authority is that conveyancers will almost certainly be too few in number to finance an adequate compensation fund, at least at the outset. In the absence of any further analysis or proposals, the Authority can only conclude that the costs of such a fund would have to be borne initially by the State until the numbers of conveyancers in the market permitted otherwise.
- 3.30 The Authority is very mindful of the serious nature of these potentially significant regulatory issues and their impact on consumer protections. It takes the cautiously optimistic view that while a regulatory model for a new conveyancer profession could be devised which would ensure adequate consumer protections, this would be at potentially significant cost to the exchequer, conveyancers themselves and, ultimately, consumers.

6. Quality of services to consumers

- 3.31 A reduction in the quality of services to consumers is a potential risk from the introduction of a new conveyancer profession identified in the Indecon report. This was highlighted in Indecon's survey of legal practitioners and was also evident in various stakeholder submissions to the Authority's statutory consultation.

Assessment

- 3.32 While the Authority recognises this potential risk, it nevertheless agrees with Indecon's analysis that it is one which could be successfully mitigated through rigorous consumer protection measures and appropriate training and regulatory controls.

7. Impact on small solicitors' practices

- 3.33 The Indecon report pointed to the significance of conveyancing fee income for small legal practices, which are important in the context of the conveyancing market. It found that if such practices lost significant business to specialist conveyancers this could, in some cases, impact on their viability. The Authority is aware that concerns have already been voiced by the Law Society of Ireland about the future of the country solicitor and the emergence of legal “deserts” across the State in terms of law and legal-aid services.³

Assessment

- 3.34 Within this context, the Authority concurs with the analysis by Indecon that if a separate profession was to be established, solicitors should be free to employ conveyancers. Legal executives currently undertake elements of conveyancing work and a small solicitors' practice which employs a lower cost conveyancer staff could potentially reduce costs. The Authority also agrees with the report's conclusion that “the quality of services provided by local solicitors, and the reputation and relationships developed, represent a competitive advantage if they can offer competitive prices.”
- 3.35 While the Authority fully recognises that regulatory policy should not be designed to ensure the profitability of any profession, it is also mindful that its statutory obligations go beyond matters of profitability to wider issues related to access to justice. Section 13(4)(e) of the Act states that in performing its functions, the Authority shall have regard to the objective of “encouraging an independent, strong and effective legal profession”.
- 3.36 Within this context, it is not a question of safeguarding the survival of small practices in rural and other areas but rather of ensuring that the regulatory objectives laid down in the Act guide the Authority in the appropriate exercise of its functions.

³ See: <https://www.lawsociety.ie/gazette/top-stories/2023/july/legal-deserts-emerging-as-irish-trainees-flock-to-cities>

4. Authority Recommendations

4.1 Priority areas for reform

- 4.1 Having concluded that wider reform of conveyancing services would be necessary to enable any future recommendation to support the introduction of a new profession of conveyancer, the Authority now considers the range of significant reform measures which it considers should be given priority in order to alleviate the barriers and risks identified in the Indecon report and to introduce much needed efficiencies and transparency in the conveyancing process.
- 4.2 As noted above, the successful implementation of such alleviating measures could create conditions in which the establishment of a new profession of conveyancer could be reconsidered at an appropriate future date.
- 4.3 The Indecon report concludes that enhancing competition and improving the efficiency of conveyancing services would require measures to ensure:
 - a. Greater use of technology and digitalisation in conveyancing services;
 - b. Significantly enhanced price transparency for conveyancing costs; and
 - c. Consumer awareness campaigns of the costs and other aspects of conveyancing.
- 4.4 The Authority is of the view that many measures could be introduced to achieve these three goals in the short to medium term. These would lead to discernible benefits for consumers without carrying any of the potential barriers and risks associated with the establishment of a new profession of conveyancer. Some of the measures, in particular in the area of digitalisation of the conveyancing process at a national level, are complex and longer-term projects but the Authority believes that their impact would be direct and tangible.
- 4.5 The three reform areas as presented in the Indecon report merit the following further examination:

Greater use of technology and digitalisation in conveyancing services

- 4.6 Greater use of technology and digitalisation in conveyancing services will have benefits in terms of enhanced efficiency in the market and will also facilitate greater competition. As the Indecon report notes, the transformative potential of digital technology for conveyancing has been demonstrated by the experience in other countries. In fact, it goes further and states that its international review “suggests that achieving the full benefits of a new profession would be dependent on enhancing the use of digital technology and on the development of an e-conveyancing system.”

- 4.7 The term digitalisation refers generally to the use of digital technologies to change a business model and provide new improved services or value-producing opportunities. The term e-conveyancing or “electronic conveyancing” refers to a conveyancing transaction settled electronically through an online platform. As the Indecon report notes, both aspects of digitalisation are important and interrelated. Digitalising internal manual or paper-based processes is the responsibility of the sector, however, the establishment of an e-conveyancing system would require the involvement of the State.
- 4.8 As the Indecon report notes, e-conveyancing can cover the entire or nearly all of the preparation process, as well as the tasks involved in executing and exchanging of contracts, and the final registration of properties. It also can impact on ways of working. To achieve this full potential, however, would require an electronic conveyancing system or e-conveyancing electronic hub, as well as the advanced use of technology within most solicitors' practices to digitise manual processes. Neither currently exists in Ireland.

Significantly enhanced price transparency for conveyancing costs

- 4.9 A modernised and streamlined conveyancing system in which consumers had access to information on price, service and quality would enable them to make informed purchasing decisions, which would also drive competition whilst ensuring the maintenance of robust consumer protections.
- 4.10 The Legal Services Regulation Act 2015 introduced additional transparency for consumers in relation to legal costs notices under section 150, which commenced in October 2019. This has strengthened the entitlement of a client to receive written information on costs both at the outset of the client-solicitor relationship and in circumstances where the legal practitioner becomes aware of a factor significantly increasing the extent of the charges.
- 4.11 While these measures are welcome, the Authority is aware of the limitations of the requirements of section 150 notices, with major gaps remaining in the transparency of comparative information on the cost of conveyancing services. Placing an obligation on legal practitioners to disclose charges, or the basis for charges, will not in and of itself provide a prospective client with access to sufficient information on levels of charges in the wider market for conveyancing services to enable them to judge whether the prices quoted are competitive or not. Furthermore, the consumer survey research conducted for the LSRA for this report showed that not all consumers of conveyancing services had received written quotations of costs.
- 4.12 It is clear much more transparency is needed. For example, the Indecon report finds that many solicitors do not provide prices for conveyancing services on their websites and there is also an absence of comprehensive price comparison websites.

- 4.13 As the Indecon report notes, the lack of price transparency creates a search cost for consumers. In the absence of transparent information, consumers are likely to source their conveyancing services from solicitors which they, or their family or friends, may have used previously. While this is an understandable consumer trend, it reflects information asymmetry which can lead to consumer inertia and a failure to use the most competitive provider. The Indecon report also finds evidence of consumer inertia in the choice of conveyancing service providers which it says is a feature of many professional services and other markets. This is particularly the case where transparency of information on costs and other aspects of services is not available.

Consumer awareness campaigns of the costs and other aspects of conveyancing

- 4.14 Empowering consumers through awareness raising will allow them to make informed decisions when seeking conveyancing services. Under section 13(2)(g) of the Act, one of the Authority’s functions is to “promote public awareness and disseminate information to the public in respect of legal services, including the cost of such services.” As part of its Strategic Plan 2022-2025 the Authority has identified consumer awareness of legal services and costs as a priority action area in the coming years.
- 4.15 Based on the findings of the Indecon report, and reflecting the recommendations in this report to the Minister, the Authority now intends to explore additional pathways through which consumer awareness can be enhanced, including collaborative work with a range of other State agencies.

4.2 Recommendations

- 4.16 As outlined above, under section 34(5) of the Act, a report in respect of the matters referred to in subsection (1)(c) shall—
- (a) be provided to the Minister within a period specified by the Minister in a written notice to the Authority requesting the report,
 - (b) contain such details and make recommendations as to such matters as may be specified by the Minister in the notice referred to in paragraph (a).
- 4.17 The details of the matters specified in the Minister’s notice are set out in Part 1 above. In making the below recommendations, the Authority is conscious that it is also overseeing the statutory introduction of legal partnerships and the potential subsequent introduction of multi-disciplinary partnerships. These are both significant new business models which should be allowed some time to bed in in order for the Authority to be able to assess their impact on the legal services market including on competition and costs to consumers of legal services.

Recommendation 1 – Digitalisation of the conveyancing system

- 4.18 All relevant stakeholders should consider giving urgent priority to the digitalisation of the conveyancing system in Ireland. A system of electronic conveyancing (e-conveyancing) would take time to introduce and would require significant action by the government and by local authorities as well as, potentially, other State agencies. The Authority agrees with the Indecon report’s analysis that e-conveyancing would be a complex undertaking and would initially require a detailed evaluation of the costs and risks of such an investment in comparison with the wider benefits that would be incurred. Given the wider government objectives in relation to achieving greater digitalisation for the Irish economy and the importance of the property sector in Ireland, the Authority considers this merits careful consideration.
- 4.19 Key stakeholders in the legal services sector need to work intensively to increase the application of technology by solicitors’ practices in order to streamline existing conveyancing processes by facilitating and encouraging solicitors to integrate digital technology into their practices.

Recommendation 2 – Enhanced price transparency requirements

- 4.20 The LSRA should be given statutory powers to, following appropriate stakeholder engagement, introduce enhanced transparency requirements for solicitors in relation to conveyancing services and their costs. As the Indecon report shows, in some jurisdictions transparency of information is a requirement of regulations, while in other cases it has developed as a result of market forces. In the absence of significant organic developments in this arena in Ireland, the Authority considers it appropriate to use legislative means to bring about increased transparency.
- 4.21 The Authority considers there is strong merit in advancing measures to enhance price transparency in conveyancing services, building on the initiatives previously introduced by the Act.

Recommendation 3 – Targeted consumer awareness campaigns

- 4.22 The LSRA will lead and engage with a range of stakeholders in developing national awareness campaigns for consumers aimed at allowing them to make informed decisions when seeking conveyancing services. These could be sponsored by a range of agencies, including the LSRA.

5. Annexes

Annex A – Respondents to section 34 statutory consultation

Bar of Ireland
Dublin City Council
Dublin Solicitors' Bar Association
Competition and Consumer Protection Commission
Consumers' Association of Ireland
Department of Transport
Institute of Legal Executives
Institute of Professional Auctioneers and Valuers
Honorable Society of King's Inns
Law Society of Ireland
Louth Bar Association
Property Registration Authority
Society of Chartered Surveyors of Ireland
Individual – academic
Individual – property consultant
Individual – solicitor

Annex B – Public consultation notice

Consultation for Report on the Creation of New Profession of Conveyancer

8 September 2021

1. Introduction and Background

The Legal Services Regulatory Authority invites interested parties to make written submissions ahead of its report for the Minister for Justice in relation to the creation of a new profession of conveyancer in Ireland.

Section 34(1)(c) of the Legal Services Regulation Act 2015 states that the Authority shall furnish a report to the Minister for Justice in relation to the creation of a new profession of conveyancer.

Under section 34(5)(a) of the Act, a 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”.

In March 2021, in accordance with section 34(5)(a) of the Act, the Minister gave notice in writing to the Authority requesting that a report on the creation of a new profession of conveyancer be prepared and furnished by the Authority within a period of eighteen months.

Under section 34(5)(b) the Authority’s report “shall contain such details and make recommendations as to such matters as may be specified by the Minister” in the notice to the Authority.

The Authority is required under section 34(1)(i) to carry out an appropriate consultation process prior to furnishing its report to the Minister. This invitation for written submissions is among a number of phased consultation processes which the Authority intends to conduct in preparing this report to the Minister.

These may include a further round of calls for written submissions on particular points of detail arising from expert studies which will be commissioned by the Authority to assist it in addressing its obligations under section 34 including the detailed terms of reference as set out by the Minister in her notice of March 2021.

The Authority also intends to conduct surveys of potential consumers of the services of conveyancers and to host workshops with key stakeholders.

2. Authority's Objectives

In reporting to the Minister on the creation of a new profession of conveyancer, the Authority will have constant regard to the regulatory objectives contained in section 13(4) of the Act, which states that:

“The Authority shall, in performing its functions of the regulation of the provision of legal services under this Act, have regard to the objectives of –

- (a) protecting and promoting the public interest,
- (b) supporting the proper and effective administration of justice,
- (c) protecting and promoting the interests of consumers relating to the provision of legal services,
- (d) promoting competition in the provision of legal services in the State,
- (e) encouraging an independent, strong and effective legal profession, and
- (f) promoting and maintaining adherence to the professional principles specified in subsection (5).”

The professional principles referred to in s 13(4)(f) are:

- (a) that legal practitioners shall—
 - (i) act with independence and integrity,
 - (ii) act in the best interests of their clients, and
 - (iii) maintain proper standards of work,
- (b) that legal practitioners who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court by virtue of being legal practitioners, shall comply with such duties as are rightfully owed to the court, and
- (c) that, subject to any professional obligation of a legal practitioner, including any obligation as an officer of the court, the affairs of clients shall be kept confidential.

3. Terms of Reference of Authority Report

In preparing a report on this matter, the Minister for Justice has asked the Authority to include consideration of the following matters:

- The background and context including 2006 Report of the Competition Authority on Solicitors and Barristers and stakeholder mapping.
- An analysis of comparable international models and experience.

- An economic analysis of how Ireland compares to other jurisdictions in terms of the cost and the speed of conveyancing, particularly for domestic home purchases, including any particular barriers in Ireland.
- Intervening developments of relevance including in policy, law, regulation and conveyancing technologies.
- A full consideration of how digital technology, which is rapidly evolving, could transform the manner, the cost and the speed of carrying out a conveyance, and how digitalisation should inform a decision to establish a conveyancer profession.
- Profile of the scale of provision and value to the economy of conveyancing services and activities in the State.
- The path through which such services are currently provided and at what transactional cost.
- Analysis of any barriers to new providers and to greater competition in this area.
- Outcome of section 34 public consultations and views of key stakeholders including those who avail of conveyancing services.
- The pros and cons of introducing a new profession of conveyancer and models for its regulation (including entry requirements) with protections for consumers.
- Potential benefits, if any, to private consumers and enterprise and to national competitiveness of a new profession of conveyancer.
- Any other matters that the Authority considers appropriate.

See Minister's [press release of 4 March 2021](#)

4. Consultation Questions

Interested parties are invited to respond to this consultation on the possible creation of a new profession of conveyancer. To assist in this process, this consultation poses the following specific questions relevant to the discussion. These are not exhaustive and any submissions relevant to the terms of reference are welcome.

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

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**?
5. What are the potential **benefits and challenges to enterprise and national competitiveness** with the introduction of a new profession of conveyancer?
6. Are there specific issues related to **digital technology and how digitalisation** that should inform a decision to establish a conveyancer profession?
7. Do you consider that there are any **particular barriers to the establishment of new providers** for conveyancing services?
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?
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?

5. Consultation Period – Up to 6 January 2022

The Authority is inviting replies from interested parties to any or all of the above questions with a view to informing its report to the Minister for Justice.

The consultation period will run from **8 September 2021 to 6 January 2022**. Any submissions received after this date may not be considered.

It would be helpful for respondents to set out the reasons for the views expressed, and to provide any available evidence which they consider to be relevant.

Request for Respondents

Respondents are asked to indicate on whose behalf they are responding, for example as a member of the public, a public representative, an individual or a firm within the solicitor or barrister profession, a client or a body representing collective interest etc.

How to Respond

The preferred means of response is by email to: publicconsultations@lsra.ie

Alternatively, you may respond by post to:

Conveyancer Consultation
Legal Services Regulatory Authority
P.O. Box 12906, Dublin 7

Please include contact details if you are responding by post.

Freedom of Information

Responses to this consultation are subject to the provisions of the Freedom of Information Acts. Therefore, should it be considered that any information provided is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Authority will consult with interested parties making submissions regarding information identified by them as sensitive before making a decision on any Freedom of Information request. Any personal information which you volunteer to the Authority will be treated with the highest standards of security and confidentiality and in accordance with the Data Protection Acts, 1998 and 2003 and the General Data Protection Regulation (GDPR).

Publication of Submissions

The Authority intends where appropriate to publish any submissions received on its website and otherwise. Please note that a decision on any such publication may occur without prior consultation with respondents to this consultation notice. It is in the interest of respondents to highlight, in their submissions, any commercially sensitive or confidential information, which they would not wish to be disclosed.

Meetings with key stakeholders

The LSRA may also invite stakeholders to meet with them, including the professional bodies under the Act, consumer bodies, legal professionals and other interested groups or individuals.

ENDS

8 September 2021



LSRA

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