

**Response of the Northern Ireland Legal Services Commission to the
Department of Finance and Personnel Document
‘Regulation of Legal Services in NI:
Consultation Paper-September 2005’**

1.1 The Northern Ireland Legal Services Commission welcomes the opportunity to respond to the Department of Finance and Personnel (DFP) consultation document ‘Regulation of Legal Services in NI’. The regulation of legal services is of fundamental importance to the Commission’s statutory obligations, and its developing programme of improving access to justice.

1.2 The NI Legal Services Commission was established under the Access to Justice (NI) Order 2003. The Commission is tasked with ensuring that, within the resources made available to it, people in Northern Ireland will have access to civil legal services that meet their needs and, where they are involved in criminal investigations, that they have access to criminal defence services. The Commission’s objective is to make the justice system in Northern Ireland fair, accessible and affordable for all, and to combat social exclusion.

1.3 This response briefly sets out the background to the establishment of the Commission and the fit between the Commission’s reform agenda and the regulatory review. However, it must be stressed that the Commission’s remit is much narrower than that of the Review Group focussing specifically on the quality of those legally aided services which it supports to make the justice system fair, accessible and affordable to all.

2. Background to the establishment of the Commission

2.1 On February 1998 the Government announced a review into the provision and administration of legal aid in Northern Ireland. As a result of this review a Consultation Paper, “*Public Benefit and the Public Purse*” was published on June 1999.

2.2 Following extensive consultation the Government published a Decisions Paper “*The Way Ahead*” [CM 4849] in September 2000. The Decisions Paper indicated that the first stage of the reform programme would be the establishment of a new independent body to administer legal aid, the Northern Ireland Legal Services Commission. Following further consultation, on 27 February 2003, the Access to Justice (Northern Ireland) Order 2003 (The Order) was made. The most immediate and visible aspect of the changes to be introduced by the Order was the establishment of an Executive Non-Departmental Public Body, in November 2003 – **the Northern Ireland Legal Services Commission) (NILSC).**

2.3 The Decisions Paper also gave the NI LSC responsibility for establishing a Registration Scheme and Codes of Practice. All firms, bodies and individuals wishing to provide publicly funded legal services must be registered and comply with the Codes of Practice. Only firms and individuals who satisfy the quality mechanisms will be entitled to provide publicly-funded legal services. This requirement is particularly relevant to the regulatory objective that ‘maintaining a strong and effective legal profession will help ensure access to justice and serve the public interest’.

3. Response to Proposals

3.1 The Consultation Paper acknowledges the role of the Commission and the ongoing programme of reform and poses a number of questions about the regulatory arrangement appropriate to the NI context having particular regard to its population of 1.6million and the need to avoid duplicity of regulation or over regulation.

3.2 The Commission supports the principle of independent regulation splitting regulatory and representative functions having taken over the administration of legal aid from the Law Society providing independent administration of this process. The Legal Aid Advisory Committee summarised the concerns relating to the conflict of interest of the Law Society administration of legal aid: ‘The Law Society may have been trammelled in the scope of resources

available to it but its members could not be expected to be fully vocal in their criticism of poor delivery. They would be in effect criticising themselves'¹. Similar criticisms could be made of the current regulatory system.

3.3 The suggestion that there should be a single complaints body also appears administratively appropriate to the small size of the NI jurisdiction and the relatively modest number of complaints against the profession. The matter of cost is particularly relevant given the small size already referred to. It is always important to ensure that solutions for matters in Northern Ireland are relevant in that context.

3.4 The Reform Programme that is being taken forward by the Commission leading to the full implementation of the Access to Justice Order 2003 in 2007 will provide an environment for a mixed model of legal services provision involving the 'not-for-profit' sector. The Commission therefore supports other sensible and relevant efforts to 'open up' legal services.

3.5 It is outside the Commission's remit to comment on the appropriateness or not of lawyers from different professional bodies acting together as equals or whether outside ownership of practices should be permitted.

3.6 The Commission has no reason to doubt the professionalism of lawyers in Northern Ireland and agrees that the evidence of dysfunction is perhaps not as strong as in other jurisdictions. However, the Commission is aware that its programme of reform and the review of regulation of legal services will complement each other in important ways and therefore wishes to register its overall support for the Review Group in the task ahead.

¹ The Annual Report 2002-2003 of the Law Society for Northern Ireland Legal Aid Department, HC 675 p 83.