

## Consultation response

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### REGULATION OF LEGAL SERVICES IN NORTHERN IRELAND

#### *Introduction to Which? and our legal services campaign*

Which? is the largest consumer organisation in Europe, with around 700,000 members. Entirely independent and not-for-profit, we are funded through the sale of our Which? range of consumer magazines and books. We are also a provider of legal services through Which? Legal Service, offering consumer advice to subscribers. The service is regulated by the Law Society and the Bar Council. A subscription to W?LS costs £51 per annum (or £39 to Which? members). Which? was formerly known as the Consumers' Association.

Which? strongly supports the decision of the Department of Finance and Personnel to review the regulation of legal services in Northern Ireland. Access to legal services is a fundamental consumer right. Many people are happy with the service they receive from solicitors, but when they are not they find it hard to make a complaint. Which? thinks consumers deserve better and welcomes the opportunity to contribute to the consultation.

Once in a while we will all need to use a solicitor to help us with legal issues, most commonly buying a home, drafting a will or getting divorced - all very stressful events. Which? research<sup>1</sup> shows that eight in ten people have used a solicitor, but a third don't feel they are getting a good service. Almost a quarter think their

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<sup>1</sup> Which? surveyed 2002 adults 18+ using an online omnibus survey between 11-14 March 2005. This was weighted up to 2027 adults to make them representative of all adults in the UK.



solicitor did not listen to their opinion, and almost a third did not feel well informed about how much they would be charged. Sadly for solicitors, this means only financial advisers, estate agents and politicians are trusted less by consumers.

Although our past research has not focused on Northern Ireland we believe the issues are likely to be common across the UK. In 2004<sup>2</sup>, we asked people who had had a problem with solicitors to get in touch with us to tell us about their experiences. Key issues were excessive delay, negligence, making mistakes, poor communication, including not being informed of delays, and bills coming in much higher than the original estimate with no prior warning. In addition, more than half the people in our survey said they received no cost estimate at all, and only about a quarter said they had one in writing.

Worse still, more than 40 per cent of our respondents told us that, despite being unhappy enough to write to us, they hadn't made an official complaint, mainly thinking it would be a waste of time, too stressful or too much hassle. We believe customer care needs to be embedded in this industry. Until solicitors start treating their paying customers as the people who pay their wages, consumers will feel frustrated with their treatment.

We support the government's view that Northern Ireland, like the rest of the UK, needs a more consumer-orientated approach in the regulation of the legal professions. Consumers need to be confident legal advisers are acting on their behalf and not in their own interest and should have information to enable them to make informed choices. This means there must be independent oversight for the profession and business structures that meet consumers' needs. In framing and driving forward change in Northern Ireland, there should be some detailed research on consumers experiences of the legal professions and how they would like to see regulation reformed to meet their needs.

As well as responding to the specific questions raised in this consultation, we have also attached our full response to the Clementi review of legal services in England and Wales which has more detail on some of the issues involved.

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<sup>2</sup> Which? survey of 321 people in January 2004 who felt their solicitor had given them a poor service in the last three years



## *Responses to questions*

### *Question 2.1*

*Have you any comments on any issues raised in relation to designing a regulatory regime appropriate to the legal services market in Northern Ireland?*

We welcome the discussion of what the objectives of regulation should be - it is critical both for those regulated and consumers that they are clear. We believe the Better Regulation Task Force's five principles should apply to the system in Northern Ireland, namely:

- > Proportionality
- > Accountability
- > Consistency
- > Transparency
- > Targeting

Furthermore, we think the objectives should reflect those set out by Sir David Clementi in his review of legal services regulation in England and Wales and adopted by the Department of Constitutional Affairs in its recent White Paper<sup>3</sup> proposals:

- > maintaining the rule of law
- > access to justice
- > consumer considerations
- > competition considerations
- > maintaining a confident, strong and effective legal profession
- > promoting public understanding of the citizen's legal rights

The key objectives of a regulator should be access to justice, consumer and competition considerations and these should take precedence over any others (particularly maintaining a confident, strong and effective legal profession).

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<sup>3</sup> The future of legal services: Putting consumers first



### Question 3.1

*Have you any comments on how the current regulatory system operates or on the other points made about the comparability of the legal services market here?*

It is clear from the consultation document that the regulatory system in Northern Ireland needs to be reformed to bring it more in line with modern consumer requirements. A key area is the complaints system.

Our research and the work of the Legal Service Complaints Commissioner in England shows that it is unacceptable that legal advisers continue to investigate complaints about themselves. Despite the relatively low number of complaints in Northern Ireland, Which? believes this is far more likely to be because people are put off complaining rather than because there are significantly less problems than elsewhere in the UK. It is also unacceptable that the Law Society of Northern Ireland will only accept complaints that fall within its own definition of a complaint. Consumers should be able to complain about any aspect of the service they receive, even if this is later found to be unjustified.

The consultation cites research from the Northern Ireland Statistics and Research Agency in 2004 that suggests consumer dissatisfaction is higher than indicated by the numbers of complaints to the Law Society of Northern Ireland. Our research<sup>4</sup> in 2005 showed that about 16 per cent of people felt they had received a poor service from their solicitor. If only 25 per cent of dissatisfied consumers complained in Northern Ireland<sup>5</sup>, this suggests significant problems with the complaint system. In comparison, our research<sup>6</sup> in August 2001 showed, despite the problems the Law Society in England and Wales was having with complaints handling, 58 per cent of dissatisfied consumers complained. Reasons given reflect those found in Northern Ireland:

- > I thought there was no point
- > I had been through enough stress already
- > I didn't know how to go about it

Furthermore, with nearly 60 per cent of consumers in Northern Ireland dissatisfied with the way their complaint was handled<sup>7</sup>, the system clearly needs to be reformed (the Legal Services Complaints Commissioner also found that only 60 per

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<sup>4</sup> Which? online omnibus by YouGov of 2081 adults across GB, 2-4 November 2005

<sup>5</sup> Regulation of Legal Services in Northern Ireland consultation paper, DFPNI, September 2005, page 30

<sup>6</sup> Which? survey of 343 people in February 2001 who felt their solicitor had given them a poor service in the last three years

<sup>7</sup> Regulation of Legal Services in Northern Ireland, page 30



cent of consumers in England and Wales were satisfied with the way their complaint was handled by the Law Society between April and September 2005<sup>8</sup>).

We would also concur with the conclusions at paragraph 3.17 that the small number of complaints to the Bar Council in Northern Ireland is likely to be at least in part due to the fact that consumers don't know how to complain about barristers and that they have little direct interaction with them. This does not mean that the complaints system of the Bar should not be modernised along with that of the Law Society.

In addition, consumers who have suffered from inadequate professional services should not then be faced with the prospect of having to instruct another solicitor in order to obtain compensation for negligence through the courts. A future complaints system should set out an informal system for dealing with claims for negligence as well as inadequate professional service. Such a system may also provide benefits for solicitors and their professional indemnity insurers by avoiding escalating claims and allowing an opportunity to resolve without the inevitable entrenchment and delay of litigation.

#### *Question 6.1*

*Clementi recommended a fully independent Legal Services Board (LSB) to deal with the regulation of legal service providers on matters other than complaints with powers to delegate the functions to front line bodies, such as the Law Society, where the LSB is satisfied that satisfactory arrangements on the split between regulatory and representative functions have been made. Given the different scale of the Northern Ireland market, what do you think would be appropriate arrangements here?*

Professionals, including providers of legal services, often distinguish themselves from other providers of services by reference to their ethics, which, they claim, serve to protect the public against the unrestricted pursuit of profit. They often argue they are best placed to regulate themselves and can do so effectively in the public interest. This represents a somewhat idealised view since commercial pressure and self-interest are inescapable.

Both professional ethics and self-regulation depend on retaining consumer trust. But if consumers do not trust legal professionals, they will not trust their regulation and will believe a profession is running things in its own interest. Certainly our

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<sup>8</sup> Pushing for Change, interim report on the Law Society's complaints handling performance April to September 2005, Legal Services Complaints Commissioner, page 9



experience shows that self-regulation or professionalism is no guarantee that consumers' interests will be served. It is not even a guarantee of good customer service.

So it is reasonable to assume that the problems for consumers in using legal services in Northern Ireland are at least as large as those for consumers in the rest of the UK, meaning reform of the system is crucial. At the very least, the Law Society of Northern Ireland should be required to split its representative and regulatory functions - it is inconceivable that these functions can be combined in one body in a modern regulatory system. Furthermore, there should be statutory provision for regulation of the General Council of the Bar. It would be sensible for this to be combined with a reinforced regulatory oversight role for the Department of Finance and Personnel, since the size of the market in Northern Ireland suggests setting up a new oversight regulator, such as the proposed Legal Services Board for England and Wales, would be prohibitively expensive.

#### *Question 6.2*

*Clementi recommended a single complaints body - the Office of Legal Complaints - for all legal services consumer complaints. What arrangements do you think would be appropriate for Northern Ireland?*

A well functioning complaints system should be well publicised, directly accessible, free to complainants, and quick and easy to use. Consumers also have a right to know about upheld complaints against solicitors. We believe the best way to ensure this is a one-stop-shop for consumers, independent of the professional bodies and handling all complaints about legal advisers once the consumer has exhausted the firm's own complaints system. It can be extremely difficult for consumers to know where things have gone wrong and to whom they should complain - an independent one-stop-shop will build consumer confidence in the system and make it more efficient.

This one-stop-shop should be set up as a similar - if smaller - version of the proposed Office for Legal Complaints in England and Wales. Its remit should be extended to cover all legal advisers - not just solicitors - and it should be more robust than the current Lay Observer. Crucially, it should be able to award compensation thus ensuring consumers in Northern Ireland are put on the same footing as those in the rest of the UK.

Service complaints should be kept separate from disciplinary issues. However, there needs to be a clear arrangement between the consumer complaint and disciplinary bodies to ensure swift and consistent referrals and preventing the consumer having to make the same complaint twice. We would add that where a



complaint includes matters of conduct, the complainant should not be excluded from the process since most referrals to the disciplinary body are likely to come via a consumer complaint. Importantly, all outcomes should be published within a given timescale (e.g. 90 days).

#### *Question 6.3*

*At present in Northern Ireland we do not have Licensed Conveyancers. Is there any good reason why the conveyancing market here should not be opened up in this way? Are there any other areas of legal services that could also be opened up?*

Which? would support opening up some of the legal services markets in Northern Ireland as has been done with conveyancing in England, allowing licensed conveyancers to compete with solicitors. Indeed, it was a Which? campaign that ended the monopoly solicitors used to have in conveyancing. We believe this has increased competition in the market, improving access and choice for the consumer. We also support the government's proposals further to open up the conveyancing market in England and Wales and to relax the prohibition on delivering probate services. We can see no reason why similar provisions should not be made in Northern Ireland.

#### *Question 6.4*

*Clementi recommended that lawyers from different professional bodies should be allowed to practice together as equals and that outside ownership of such practices should be permitted. Should such practices be allowed in Northern Ireland and why or why not?*

Which? believes that most consumers are not concerned about the business structure of the organisation providing them with legal services, but rather the service they receive. Our research in England and Wales has shown that 63 per cent think it would be a good idea to be able to access legal services from a supermarket or high street bank.<sup>9</sup> We believe the potential to deliver a range of related services under one roof - for example, conveyancing, mortgage advice, estate agency and surveying- could offer significant benefits for consumers. As well as the convenience of the "one-stop-shop", the possibility of attracting further investment in such multi-disciplinary practices (MDPs) will potentially open up the market and

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<sup>9</sup> May 2004, face-to-face omnibus of 1009 adults



promote choice for consumers. The issues around ensuring robust and thorough regulation of MDPs should not justify continuing the restrictions.