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Regulation of Legal Services in Northern Ireland

A Consultation Paper
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Ministerial foreword

In recent years the regulation of professions and the rights of consumers of professional services has become the focus of attention both nationally and internationally. Previously it was widely accepted that professions were best placed to regulate the activities of their members, but as the consumers rights agenda has developed that view has been increasingly challenged.

In the case of the legal professions in Northern Ireland self regulation has been the norm, although the Law Society's handling of complaints about solicitors has for many years been subject to oversight by the Lay Observer. The powers of the Lay Observer are, however, limited. He can only make recommendations and cannot require action or award financial compensation.

The special position of legal services providers compared with other professions is also relevant. If someone has a problem with another professional, they take the matter to their legal advisor. If they have a problem with a legal advisor, they must be sure that the matter will be investigated impartially.

I do, however, readily acknowledge the lower levels of complaints against legal services providers in Northern Ireland than in Great Britain or the Republic of Ireland. That may be because there is less to complain about. Nevertheless, that is not a reason why the customers of legal service providers in Northern Ireland should have access to complaints procedures that are any less consumer oriented than those available elsewhere in the United Kingdom. Equally the wider regulatory framework here needs to be reviewed to ensure that the market operates to provide value-for-money, quality, legal services with only necessary and appropriate restrictions placed on those wishing to provide such services.

This consultation follows the Clementi review in England and Wales. Reviews have also been carried out in Scotland, and in the Republic of Ireland, as well as in various other jurisdictions across the world. The launch of this consultation is the first step of the process here. To take the review forward I have decided to establish a review group which will include representation from the legal professions and consumer interests. The group will be charged with considering the regulatory principles developed by Clementi and bringing forward firm proposals for the future regulation of legal services here, in the light of those principles, the responses to this consultation, and the size of the local market. I am delighted to confirm that Sir George Bain has accepted my invitation to Chair the group.

I would commend this important consultation to your attention.



JEFF ROOKER

Minister of State

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Introduction

- 1.1 This review of regulation of legal services in Northern Ireland follows initiatives in several countries to review regulation in the professions, including the legal profession. Reviews of the regulation of that profession have recently been completed in England and Wales and in Scotland. A similar review has also been conducted in the Republic of Ireland.
- 1.2 This paper provides a background to the current regulatory arrangements in Northern Ireland and the issues relevant to the review of regulation, in light of reviews and initiatives conducted elsewhere, and to ensure public access to justice.
- 1.3 The Law Society of Northern Ireland currently acts as both the representative and regulatory body for solicitors. It seeks to ensure that solicitors observe proper standards of conduct and service when they are dealing with their clients and that they deal professionally with other solicitors. The Department of Finance and Personnel has responsibility for overseeing the regulatory function of the Law Society. The General Council of the Bar performs a similar representative and regulatory role for barristers. There are currently no public oversight arrangements in place for the Bar Council of Northern Ireland.

SUMMARY

- 1.4 Chapter 2 is a general introduction to, and explanation of, regulation. The purpose of professional services regulation and the concept of self-regulation is discussed. The core functions and objectives of regulation generally are set out along with the objectives of the regulation of the legal profession and the principles of the profession.
- 1.5 Chapter 3 sets out the current regulatory arrangements for the legal profession in Northern Ireland. The complaints system, the public face of regulation, is discussed in some detail, including a description of the role of the Lay Observer.
- 1.6 Chapter 4 introduces the regulatory mechanisms for the legal profession in other jurisdictions including the recommendations or results of recent reviews.
- 1.7 Chapter 5 sets out the issues arising concerning the regulation of the legal profession in Northern Ireland.
- 1.8 Chapter 6 briefly summarises the paper and sets out how the Government intends to proceed to establish proposals for the future regulation of legal services here.
- 1.9 The Appendix provides information on how to respond to this consultation.

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Regulation

BACKGROUND

2.1 The Better Regulation Task Force has defined regulation as “any government measure or intervention that seeks to change the behaviour of individuals or groups”. The basic purpose of regulation is to seek to ensure that members of a professional body (or other providers of a professional service) are (a) suitably qualified and (b) observe appropriate ethical standards.

2.2 Government interventions have an impact on us all. There are constant pressures for more regulation to protect the environment, workers or consumers. But where regulation is poorly designed or overly complicated it can impose excessive costs and inhibit productivity. The job of government is to get the balance right, providing proper protection while making sure that the impact on those being regulated is proportionate.

2.3 Politicians differ about the appropriate level of intervention, but all governments seek to ensure that regulations are necessary, fair, effective, affordable and enjoy a broad degree of public confidence. To achieve this, any policy intervention, and its enforcement, should meet the Better Regulation Task Force’s five principles:

- Proportionality

Regulators should intervene only when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.

- Accountability

Regulators must be able to justify decisions, and be subject to public scrutiny.

- Consistency

Government rules and standards must be consistent and implemented fairly.

- Transparency

Regulators should be open and keep regulations simple and user-friendly.

- Targeting

Regulation should be focused on the problem and minimise side effects.

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- 2.4 Professional services regulation may be appropriate if, for example, it seeks to redress consumers' information-deficit relative to providers' knowledge and expertise. Another legitimate purpose of regulation is to assure standards of competence, performance, ethical behaviour and personal accountability in the market. A decision to regulate a market arises when it is considered that leaving the activity unchecked could lead to undesirable consequences and that the benefits that will flow from regulation will outweigh the costs of that regulation.

MECHANISMS FOR REGULATION

- 2.5 There are various mechanisms for regulation in the public interest. These include some form of regulation by government and self-regulation, where the rules governing behaviour are developed, administered and enforced by those whose behaviour is being governed.

SELF-REGULATION

- 2.6 Self-regulation in the professions has been the focus of attention in recent years. Beyond the legal profession, a number of high-profile cases have also called into doubt the role of the General Medical Council in regulating its members. According to Ann Abraham, the former Legal Services Ombudsman for England and Wales, the media compared the medical profession's regulatory framework with those of other professions, including lawyers, and a common perception has emerged that:

“the professions react unsympathetically to public complaint and are slow to embrace reform”.

CORE FUNCTIONS OF REGULATION

- 2.7 In his review of the regulation of the legal profession in England and Wales, Sir David Clementi set out five commonly recognised core functions of regulation within professions:
- Entry standards and training: setting minimum standards of entry qualifications for candidates wishing to become “qualified”. It also encompasses matters such as continuing professional development.
 - Rule making: formulation of rules to which members are expected to adhere.

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- Monitoring and enforcement: checking the way in which members carry out their work, in the light of the prescribed rules, and enforcing compliance if rules are broken.
 - Complaints: systems for consumers to bring complaints about members who have served them poorly, focused on redress to the consumer.
 - Discipline: power to discipline a member where he or she is, for example, professionally negligent, or in breach of the professional rules, focusing on action against that individual.

OBJECTIVES OF REGULATION OF THE LEGAL PROFESSION

- 2.8 Beyond the five principles of good regulation established by the Better Regulation Task Force, Clementi also set some specific objectives for the regulatory framework for legal services in England and Wales.

Maintaining the rule of law

- 2.9 A predictable and proportionate legal system with fair, transparent, and effective judicial institutions is essential for the protection of citizens against any arbitrary use of state authority and lawless acts of both organisations and individuals. Those charged with regulating the legal service providers have an important part to play in ensuring the rule of law by creating conditions necessary for the delivery of a strong, independent and effective legal services industry.

Access to justice

- 2.10 It might be expected of a regulator that a key objective is to improve access to justice for all, working closely with other relevant bodies.

Consumer considerations

- 2.11 A consumer-based approach can be described as one where the aim of the regulator is to protect and to further the interests of the consumer. The consumer's principal interests include quality and value for money. In part this concerns the giving of choice to an informed consumer. A central task of the regulator must, therefore, be to ensure that the consumer has sufficient information about the standards of the services provided to take a decision as to what level of service is personally necessary. But despite the best efforts of the regulator, consumers may not always be "informed" and consumer-driven regulation might also take such form as

prohibiting oppressive marketing practices, raising or setting standards, information awareness programmes to develop “informed” consumers, resolving disputes, and protecting vulnerable groups.

Competition considerations

- 2.12 A trend of recent years has been the increased emphasis on competition. Within the legal services industry, Government has encouraged competition between lawyers from different professional bodies in Great Britain. The Courts and Legal Services Act 1990 gave solicitors in England and Wales the opportunity to acquire rights to appear in all courts. Other professional bodies, for example the Institute of Legal Executives and the Chartered Institute of Patent Agents, have been granted limited rights of audience in court. The withdrawal of the solicitors’ monopoly in conveyancing in England and Wales has increased competition in this market. It must be expected that, subject to proper safeguard of consumers’ interests, a regulatory regime should prevent unjustified restrictions on the supply of, and encourage competition in, the provision of legal services and encourage choice in both the number and type of providers.

Confident, strong and effective legal profession

- 2.13 A regulatory objective of maintaining a strong and effective legal profession will help to ensure access to justice and serve the public interest.

Promoting public understanding of the citizen’s legal rights

- 2.14 In the financial services industry there is a broad obligation placed on the regulator to play a role in improving public understanding of financial markets, so that, for example, consumers are better informed when making important financial decisions. Within the legal services sector, there is a professional obligation on lawyers to set out for clients their rights and the consequences of different options. A regulator would be expected to support and enhance this, but there is a question as to whether there is a wider duty, in conjunction with the Law Society, to improve consumer knowledge of some of the most commonly used parts of the law, for example, around buying a house.

PRINCIPLES OF THE LEGAL PROFESSION

2.15 The principles of the legal profession have been set out in Clementi's review of the regulatory framework in England and Wales. Some of the key factors are given below.

Independence

2.16 Lawyers have a duty, as officers of the court, to act with independence in the interests of justice and to comply with their professional bodies' rules of conduct. The Government has made it clear that:

"Those duties override any other civil law obligation which a person may be under, including the duty to the client or a contractual obligation to an employer or to anyone else. A barrister, solicitor, or other authorised advocate or authorised litigator must refuse to do anything required, either by a client or by an employer, that is not in the interests of justice".

Integrity

2.17 The codes of conduct maintained by the major legal professional bodies generally require their members to act with integrity towards clients, the courts, lawyers and others. The main legal professional bodies also require their members to maintain high standards of professional conduct and professional service, and not to bring the profession into disrepute.

Duty to act in the best interests of the client

2.18 The codes of conduct maintained by the main legal professional bodies require their members to act in the best interests of the client, except where it would be unlawful to do so or where the interests of justice would be compromised.

Confidentiality

- 2.19 The codes of conduct of the legal professional bodies require lawyers to keep clients' affairs confidential. Additionally, communications between a client and his lawyer may be subject to legal professional privilege. In essence this means that certain communications between a client and legal advisor in the context of obtaining legal advice or assistance are protected from disclosure, even in legal proceedings. This feature is extremely important to the legal profession and regarded as a cornerstone of the basis of the lawyer-client relationship.

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?

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Current regulatory arrangements for Northern Ireland

INTRODUCTION

3.1 This chapter discusses the current regulatory arrangements in place in Northern Ireland and summarises some of the distinctive characteristics of the legal services sector in Northern Ireland compared with England and Wales, Scotland and the Republic of Ireland.

REGULATORY ARRANGEMENTS IN NORTHERN IRELAND

3.2 In Northern Ireland the role of the Law Society in regulating solicitors is statutory and is set out in the Solicitors (Northern Ireland) Order 1976, as amended by the Solicitors (Amendment) (Northern Ireland) Order 1989 (hereinafter referred to as "The Order"). It can be described as broadly self-regulation with oversight of some regulatory functions. The main features are set out below.

3.3 In contrast there is no statutory framework for regulation of barristers by the Bar Council. The main features of self-regulation as practiced by the Bar Council are also set out.

Law Society complaints procedure

3.4 The procedure on complaints against solicitors is set out in Article 46 of the Order. The Law Society of Northern Ireland is responsible for ensuring that all solicitors observe proper standards when they are dealing with their clients and deal professionally with other solicitors. The Society recommends that the public attempt to settle any complaints they may have directly with their solicitor or the senior partner in the firm. If this approach fails, complaints about a solicitor can be made to the Law Society. The Society does not provide assistance in setting out the complaint and all complaints have to be in writing.

3.5 The Society will accept a matter as a complaint only if it falls within its own definition of a complaint. To do so, it must be about the service provided by a solicitor or about his or her behaviour according to the professional rules governing solicitors, or both. Examples of the type of issue the Society may consider are:

- delays in answering letters or enquiries, or in dealing with a case;
- failure to deal with money properly;
- acting in cases for two parties where there may be conflict of interest;
- dishonesty;
- failure to provide papers on request (provided no money is owing to the solicitor);
- inadequate professional service; and

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- overcharging, with evidence of attempting to overcharge required (the Law Society publish a leaflet 'Unhappy about your bill?')

3.6 In investigating a complaint about a solicitor the Society does not take actions until it has received the solicitor's reply to the complaint. A Committee appointed by the Law Society supervises the whole procedure (15 members: 4 lay members, 8 from the Law Society Council and 3 solicitors from outside the Council). At the conclusion of the investigation the Society can take action against the solicitor. The Society cannot, however, order the solicitor to pay compensation. Financial loss through the negligence of a solicitor must be addressed through the courts.

Role of the Lay Observer in Northern Ireland

3.7 Article 42 of the Order provides for the Head of the Department of Finance and Personnel, after consultation with the Lord Chief Justice, to appoint one or more persons as "lay observers". Since 1977 Northern Ireland has had an official called the Lay Observer, a non-lawyer whose job is to report on the nature of complaints made to the Law Society and the manner in which the complaints are dealt with by the Society. The Lay Observer cannot investigate complaints against a legal practitioner. He looks only at complaint handling by the Law Society. If complainants are dissatisfied with the way the Law Society has handled a complaint, they can then ask the Lay Observer to investigate.

3.8 The role of the Lay Observer is to determine whether a complaint has been handled fairly, thoroughly and impartially by the Law Society, and also to influence good practice in complaints handling. When the Lay Observer disagrees with the Law Society, he can ask the Society's Professional Conduct Committee to assess the complaint. The Lay Observer can also refer cases to the Disciplinary Tribunal of the Law Society.

3.9 Uniquely among legal ombudsmen, the Lay Observer in Northern Ireland has access to the complaint files held by the Law Society (on average the Lay Observer audits 35%, around 80 to 90 cases, of the total complaints received by the Law Society in a year). Consequently, he is in a position to comment on complaints at both an individual and a strategic level.

3.10 While the Legal Services Ombudsman in Great Britain can order compensation, the Lay Observer here has no such power. Thus complainants in Northern Ireland are disadvantaged compared to their counterparts elsewhere in the UK. Moreover the Lay Observer cannot enforce any recommendations which he makes. Nor can he investigate a "complaint" that falls outside the Law Society's definition of a complaint.

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- 3.11 In his annual reports and a review of six years' experience as Lay Observer, Professor Vincent Mageean considered that, as presently constituted, the post of Lay Observer is perceived as having "no teeth" and the post cannot attain full consumer confidence because of (a) the limits in the remit and (b) the title "Lay Observer".

Solicitors' Disciplinary Tribunal

- 3.12 The Solicitors' Disciplinary Tribunal is a disciplinary body independent of the Law Society; it includes a ratio of solicitors to lay members of 2:1. Article 43(1) of the Order provides that the Lord Chief Justice, after consultation with the Law Society Council, shall appoint a tribunal, to be known as the Solicitors' Disciplinary Tribunal. Article 43(8) provides that the Tribunal may, with the concurrence of the Lord Chief Justice, make rules regulating applications and complaints to the Tribunal and the hearing, conduct and determination of such applications and complaints and of inquiries held by the Tribunal. It was set up by Parliament as a part of the High Court and has the powers to strike solicitors off the roll of solicitors, suspend them from practice, impose restrictions or fines and order restitution. However, the Tribunal cannot order a solicitor to pay compensation.

Law Society assessment of solicitors' costs

- 3.13 The Law Society administers a scheme to assess the reasonableness of a solicitor's charges, provided the bill is not more than six months old and has not been paid. There is also a statutory right to have costs assessed by the Taxing Master.

Law Society scrutiny of solicitors' accounts

- 3.14 The Order empowers the Law Society Council to make regulations regarding solicitors' accounts. The current regulations, made in 1988, authorise the Law Society Council, either on its own initiative or following a written complaint, to require solicitors to produce their accounts for inspection. If any irregularity is discovered, the Law Society Council may use this as a basis for proceedings under the Solicitors (NI) Order.

Bar Council of Northern Ireland

- 3.15 As previously explained there is no statutory provision for regulation of the General Council of the Bar. Public oversight arrangements for the Bar do exist in England and Wales, Scotland and the Republic of Ireland.

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- 3.16 The Bar Council's complaints procedure is therefore non-statutory. It was revised in 2003, and some noteworthy elements are:
- Complaints may be considered from any source, and the Bar Council may investigate any matter that comes to its attention in relation to professional behaviour.
 - When a complaint is referred to a disciplinary committee, the committee may nominate a barrister to prosecute the case, free of charge, on behalf of the complainant.
 - Disciplinary committees are chaired by a judge or a retired judge and have between 5 and 7 members (of whom 2 are lay members).
 - Disciplinary committees have power to order the payment of compensation.
 - Disciplinary hearings are public hearings and, in the case of serious misconduct, details are published on a notice board in the Bar Library and in the Great Hall of the Royal Courts of Justice.
 - The code of conduct of the Bar is published on the Bar Council website. Barristers may be admonished, suspended and/or fined.
- 3.17 The Bar Council received 20 complaints in 2002, 22 in 2003 and 38 in 2004. Many of these complaints were made by other barristers and complaints by members of the public remain quite rare. That may, however, be due to lack of knowledge of how to complain or reflect the indirect way that members of the public engage barristers through solicitors.

DISTINCTIVE CHARACTERISTICS OF THE LEGAL SERVICES SECTOR IN NORTHERN IRELAND

Role of Northern Ireland Legal Services Commission

- 3.18 In common with England and Wales, the Government's objectives on improving access to justice in Northern Ireland are supported through the provision of publicly funded legal services by a non-departmental public body – the Northern Ireland Legal Services Commission (NILSC). The NILSC is responsible for administering expenditure of some £60m per year on the various types of legal aid. However, the supply and procurement environments here are very different from those in England and Wales. As the bulk purchaser of publicly funded legal services in Northern Ireland, the NILSC is developing a programme of reform measures which will have a significant impact on the legal services market here.

Nature of the legal services market compared with other jurisdictions

3.19 Some distinguishing characteristics of the solicitors' profession in England and Wales, Scotland and Northern Ireland are set out in the table below.

Table 1: Comparison of level of complaints

	England and Wales	Scotland	Republic of Ireland	Northern Ireland
Number of staff in the Ombudsman's/Lay Observer's office	27	4	1	1 (part-time)
Number of staff dealing with complaints in the Law Society	250	20+ (excluding reporters)	8	2
Number of complaints received by the Law Society 2003/04	16,989	2,036	1,200	300
Number of complaints per 100,000 population	32.4	40.3	31.8	17.7
Law Society complaint handling budget 2003	£29 million (includes investigation and disciplinary procedures)	£1.4 million	n/a	n/a

3.20 It is clear that the level of complaints about solicitors in Northern Ireland is proportionately about half of that in Great Britain. There could be many reasons for that ranging from less reason to complain because professional standards are higher to a perception that there is no point complaining because the complaint will not be dealt with outside the legal "family".

3.21 Away from the area of complaints, another difference between the legal services market in Northern Ireland and that in England and Wales is that solicitors here are competing solely with other solicitors for conveyancing work. In England and Wales they also have to compete with licensed conveyancers.

3.22 In drawing comparisons with the regulation of solicitors in Northern Ireland we also need to consider the differences in the structures of the professions in other jurisdictions:

- England and Wales: although firms with no more than four partners make up 85% of solicitor's firms the impact of the large London firms means that nearly 70% of solicitors work in firms of five partners or more. In Northern Ireland less than 30% of solicitors work in firms of five or more partners. There are 35 solicitors in private practice in England and Wales for every solicitor in private practice in Northern Ireland. Based on the respective population (Northern Ireland's population is 3.23% of that in England and Wales) the expected figure would be 31.
- Republic of Ireland: in the Republic of Ireland the number of single partner/practitioner firms make up 73% of the total number of firms, compared to 49% in Northern Ireland. In the Republic of Ireland 46% of solicitors are employed in such firms compared to 22% in Northern Ireland.

Changing profile of the legal services sector

3.23 One significant factor has been the increase in the number of solicitors, reflecting to a certain degree the growth of the market for legal services. The table below outlines some changes to the number of solicitors in private practice in Northern Ireland. It is clear that in a relatively short period the profile of the profession has changed significantly. For every firm in 1983/4 there were 1.4 firms in 2005; for every partner in 1983/4 there were 1.8 partners in 2005; for every qualified assistant in 1983/4 there were 2.4 qualified assistants in 2005.

Table 2a: Increase in the size of the solicitors' profession

Solicitors	1983/4	2005
No. of firms	356	517
No. of partners	604	1,073
No. of qualified assistants	325	795

Table 2b: Increase in the size of the barristers' profession

Barristers	1986	1996	2005
No. of qualified barristers	276	397	560

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?

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Regulation of the legal professions in other jurisdictions

INTRODUCTION

- 4.1 There is a significant element of self-regulation in the way most of the existing legal professions regulate their members. In practice, however, that self-regulation operates within parameters clearly laid down by law, with the state involved in many aspects of regulation.
- 4.2 The right of the legal and some other professions to self-regulate has, in the past, been perceived as being in the public interest and in the interest of the profession. However, more recently, government has responded to the concerns of interest groups, including consumer movements, business organisations, academics, media, politicians and regulatory bodies by reshaping the client/public protection framework, for example, through the establishment in 1990 of the Legal Services Ombudsmen for England and Wales and Scotland.
- 4.3 A crucial part of the debate has focused on whether professional bodies for lawyers can simultaneously represent their members and regulate their conduct, because of the real and perceived tensions between the representation and regulation roles. It is argued that this method of operating is no longer acceptable because of the need for consumer protection and public confidence.
- 4.4 This chapter outlines the regulatory mechanisms for the legal profession in other jurisdictions. The main recommendations of the Clementi review of the regulation of the profession in England and Wales are presented. Similar reviews of the professions have been carried out in Scotland and the Republic of Ireland, and the main recommendations of these reviews are also outlined.

REGULATION OF THE LEGAL PROFESSIONS IN ENGLAND AND WALES

Solicitors' profession

- 4.5 The Law Society of England and Wales, responsible for regulating the conduct of solicitors, is overseen in many of its functions by the Master of the Rolls, the third most senior judicial office in the UK. The Legal Services Ombudsman oversees the handling of complaints about lawyers.
- 4.6 The Law Society of England and Wales deals with complaints through its Consumer Complaints Service. Although this service is funded and managed as part of the Law Society, the Society has guaranteed that it will be wholly independent so far as the handling of individual complaints is concerned. The Service has over 225 staff and employs solicitors, accountants, qualified mediators and administrative support staff.

Legal Services Ombudsman

- 4.7 The Legal Services Ombudsman investigates how the professional bodies handle complaints made by the public. She can widen her investigation to include the cause of an original complaint to the professional body. However, her role is not to look at every case as if it were an appeal against the professional body's decision. If the Ombudsman believes that a complaint has not been investigated properly, she can recommend that the professional body look at the matter again.
- 4.8 The Legal Services Ombudsman has been critical of the Law Society for failing to meet agreed targets. The Lord Chancellor has also criticised the large backlog of complaint cases, approximately 8000 cases carried over in 2003/04. This is despite the current system of complaint handling costing approximately £29 million.

Legal Services Complaints Commissioner

- 4.9 A Legal Services Complaints Commissioner has also been appointed by the Government to work with the Law Society on improving how it handles complaints about solicitors in England and Wales. The Commissioner can set performance targets for the Law Society and make recommendations for improving complaints handling. To ensure the Law Society does make the changes needed the Commissioner can require it to produce, for approval, formal plans setting out how it is going to improve the handling of complaints.

Barristers' profession (The Bar)

- 4.10 The General Council of the Bar (known as the Bar Council) represents the interests of barristers. As the governing body for the Bar, its functions include laying down and implementing policies affecting the Bar on education and training and on rules of conduct, particularly with regard to rights of audience as required under the Courts and Legal Services Act 1990 and the Access to Justice Act 1999. The Bar Council also acts as the representative body of the Bar and deals with all aspects of barristers' work.
- 4.11 Any complaints made to the Bar Council are received by the Bar's Complaints Commissioner, who is not a lawyer, but is appointed by the Bar. The Commissioner may dismiss complaints considered unfounded, or with which he considers the Bar is not able to deal, or where he is able to broker a conciliation.
- 4.12 If the Commissioner feels that the complaint may be justified, he will refer it to the Professional Conduct and Complaints Committee (PCC) of the Bar Council. The PCC cannot dismiss a complaint unless the lay members agree.

4.13 There is no provision for a complainant to appeal against the decisions of the Bar Council, although a complaint can be made to the Legal Services Ombudsman.

RECOMMENDATIONS FROM THE CLEMENTI REVIEW OF THE REGULATION OF THE LEGAL PROFESSIONS IN ENGLAND AND WALES

4.14 The Final Report of the Clementi review was published in December 2004 following a consultation process. Further details of the review are available at <http://www.legal-services-review.org.uk/content/report/>. Concerns about the current arrangements for the regulation of the legal profession in England and Wales included:

- The regulatory framework – “There are no clear objectives and principles which underlie the regulatory system and the system has insufficient regard to the interest of the consumers”.
- Complaints systems – efficiency with which the systems are run; overlapping powers of the regulatory bodies; and, at a level of principle, whether systems for complaints against lawyers should be run by lawyers themselves.
- Restrictive nature of the current business structures – “There is pressure for change from those who represent consumer interests, but also from many in the legal profession, particularly the Law Society who have made a strong case for liberalisation of law practices such that different types of lawyers can work together on an equal footing”.

4.15 Clementi’s solutions to these issues can be summarised very generally as:

- Regulatory models – Setting up an oversight regulator, the Legal Services Board, and the separation of regulatory from representative functions within the front-line regulatory bodies, e.g. the Law Society and the Bar Council.
- Complaints and discipline – Single independent complaints handling body, the Office for Legal Complaints, to handle all consumer complaints. Existing disciplinary systems are considered to work reasonably well.
- Alternative business structures – Legal Disciplinary Practices are law practices which permit lawyers from different professional bodies to practice together as equals. The Clementi review concluded that non-lawyers should be permitted to be managers of such practices. Lawyers, however, should be in a majority in the management group. Non-lawyers would be there to enhance the services of the law practice, not to provide other services to the public. It further recommended that outside ownership of Legal Disciplinary Practices should be permitted.

LORD CHANCELLOR'S RESPONSE TO CLEMENTI

4.16 The Lord Chancellor expressed his views on Clementi's recommendations at a recent conference on the future of legal services. The full text of his speech, 'Making Legal Services Consumer Friendly', is available from <http://www.dca.gov.uk/speeches/2005/lc210305.htm>. The Lord Chancellor is of the opinion that there are strong arguments for reform of the regulation of the legal professions in England and Wales as recommended by Clementi. He believes the current system is structured to hinder rather than help the consumer. For example:

- Partnership restrictions – Barristers and solicitors cannot go into partnership with each other. This requirement, which applies in most cases, prevents direct access to barristers, meaning that people are often required to pay two sets of professional fees.
- Service organisations – Lawyers cannot provide their services through an entity that is not wholly owned by lawyers; therefore service organisations cannot employ lawyers to provide advice to their external customers. The Lord Chancellor believes that consumers should be able to access services more easily, if the market demands such a service.
- Vision for legal services – The Lord Chancellor does not believe that the consumer can have confidence in a system that is self-regulating. He believes that the current systems lack transparency and give the impression of self-interest.

4.17 The Lord Chancellor outlined proposed reforms and progress under the four key areas: the regulatory model, complaints and discipline, new business structures and regulatory gaps:

- The regulatory model – Regulatory powers should be formally vested in the proposed Legal Services Board by statute, with the Board delegating powers to front-line regulatory bodies as it sees fit. All front-line regulatory bodies will be required to separate clearly their regulatory and representative functions.
- Complaints and discipline – A single and fully independent body, the Office for Legal Complaints, will be set up to handle all consumer complaints against regulated legal service providers where the complaint cannot be resolved at the local level.
- New business structures – The Lord Chancellor supports progressive moves towards new business structures, including Multi-Disciplinary Practices that could see non-lawyers not only as managers of legal practices but also as owners and investors in them.

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- Regulatory gaps – The Lord Chancellor is particularly concerned with claims management companies and will-writing. He announced that he is currently considering further liberalisation in the provision of probate and conveyancing services. His intention is to allow, with appropriate safeguards, new providers, such as financial institutions, to enter the market.

4.18 The Lord Chancellor has undertaken to publish a White Paper on the reforms this year and has committed to bringing forward legislation to put in place the reforms needed. He has set up a consumer panel to advise the Government on these reforms, with representatives from the Federation of Small Businesses, the National Consumer Council and the Welsh Consumer Council, from Which? and from Citizens Advice.

REGULATION OF THE LEGAL PROFESSION IN SCOTLAND

Solicitors' profession

4.19 The Law Society of Scotland has a dual role under the Solicitors (Scotland) Act 1980 to promote both the interests of the solicitors' profession in Scotland and the interests of the public in relation to that profession.

4.20 The Law Society of Scotland has a Client Relations Office to deal with complaints received (approximately 2,000 in 2003). The complaint is handled by a case manager, who may decide that the complaint cannot be dealt with by the Society. A panel of two people who do not work for the Society check this decision. One is a solicitor and one is not. The complainant has the right to ask the Scottish Legal Services Ombudsman to review this decision, but not to investigate the complaint.

4.21 If the case manager decides that the Law Society can take forward a complaint, and a conciliation process has failed, a written investigation will be conducted. There are standard procedures for addressing complaints as they progress through a number of stages.

4.22 There are some problems in the complaint handling system of the Law Society of Scotland. The Scottish Legal Services Ombudsman has reported that 28% of cases handled by the Law Society of Scotland are investigated by her and over 20% of complaints received and examined by the Law Society of Scotland are outstanding for more than two years. In 1999 the Scottish Consumer Council published the results of a survey of clients who had complained to the Law Society of Scotland about the service they had received from their solicitor. These showed that there was widespread concern that the body that represents the interests of solicitors also has statutory responsibility for investigating complaints against its members. The clearest

conclusion of the research was that 50% of complainants did not consider the Law Society's investigation of complaints to be fair. Even where complaints were upheld, there was considerable disappointment with the outcome. Research conducted on behalf of the Scottish Executive produced a similar finding.

Faculty of Advocates

- 4.23 The Faculty of Advocates is a body of independent lawyers who have been admitted to practice as advocates before the Courts of Scotland. The Faculty is self-regulating and controls its own admissions and discipline.
- 4.24 The Complaints Committee is composed of professional and lay members in equal proportions. More serious complaints may be referred to the Faculty of Advocates Disciplinary Tribunal which is also composed in equal proportions of professional and lay members. In 2003 the Faculty received 26 complaints about advocates.

Scottish Executive consultation paper

- 4.25 The Scottish Executive published their consultation paper in May 2005. The proposals, concerned primarily with the complaint handling system, include enhanced powers for the Legal Services Ombudsman and options for a single gateway for complaint handling. The Scottish Executive's report may be found at www.scotland.gov.uk/Publications/2005/05/09103027/30286

REGULATION OF THE LEGAL PROFESSION IN THE REPUBLIC OF IRELAND

Solicitors' profession

- 4.26 The Law Society is the principal body responsible for the regulation of the profession on a day-to-day basis. It is concerned primarily with the education and training of solicitors and the continuing education of established solicitors. The Society is also responsible for the regulation of solicitors' conduct.
- 4.27 The Law Society is empowered to investigate complaints about solicitors and to monitor solicitors. A member of the public who is dissatisfied with the way their complaint has been dealt with by the Law Society may apply to the Office of the Independent Adjudicator of the Law Society for independent examination. The Independent Adjudicator may then direct the Law Society to re-examine the complaint or make an application to the Disciplinary Tribunal of the High Court, which may lead to the disciplining of a solicitor.

Barristers' Profession (The Bar)

- 4.28 The Bar Council of Ireland regulates and acts as the representative body for barristers. The professional education of barristers is provided solely by the Honourable Society of King's Inns.
- 4.29 Practising barristers in Ireland are subject to the Bar Council's Code of Conduct. The purpose of the Code of Conduct is to ensure that barristers uphold the highest professional and ethical standards in the conduct of their relations with clients, the courts and the public.
- 4.30 The Barristers' Professional Conduct Tribunal considers complaints of misconduct from the public, solicitors and other clients. It comprises five practising barristers, including a chairman, and two lay representatives: one nominated by the Irish Business and Employers' Confederation, and one nominated by the Irish Congress of Trade Unions.

Report by the Law Society of Ireland

- 4.31 The Law Society of Ireland set up a Regulatory Review Task Force, chaired by the Secretary General of the Department of Justice, to examine the procedures and systems whereby the Law Society regulates its members and deals with complaints against solicitors. The Task Force report, published in January 2005, includes 56 recommendations. The report includes the view that:
- a majority of the Law Society's disciplinary body should be non-members of the Council of the Law Society and there should be no communication between the Council and this committee on specific cases;
 - a client who has made a justifiable complaint should be eligible for compensation up to a maximum of €3,000;
 - there should be an independent panel of solicitors to assist members of the profession about whom complaints are made;
 - there should be more information to members about regulation, with a mandatory course on practice management for new entrants;
 - there should be more information to the public about complaints procedures; and
 - solicitors who refuse to deal with the Society's disciplinary committee should be severely dealt with and where there is a history of complaints, special investigation should be triggered.

Report by the Competition Authority

- 4.32 The Competition Authority published a preliminary report on competition in the Legal Profession in February 2005. A copy of the full report can be obtained from the Competition Authority's website - <http://www.tca.ie>. The report identifies a number of restrictions to competition within the profession and puts forward various proposals for change.
- 4.33 The Competition Authority proposes that an independent, transparent and accountable Legal Services Commission be created with a majority of non-lawyer members. The body would take responsibility for regulating the profession as a whole. It is argued that the establishment of a Legal Services Commission would bring the regulation of the legal profession into line with other professions, such as the medical and dental professions, and with other sectors of the economy, such as financial services.

UK-WIDE COMPLAINTS PROCEDURES IN OTHER PROFESSIONS

Financial services sector

- 4.34 Consumer complaints and redress (but not compensation on insolvency) are dealt with separately by the Financial Ombudsman Service with disciplinary matters resting with the Financial Services Authority. Rules set down by the Financial Services Authority require providers to have in-house complaints handling procedures that must be followed before a complaint can be made to the Financial Ombudsman Service.

Accountancy sector

- 4.35 Members or firms are generally required to investigate any complaints received. There are six accountancy bodies which may investigate complaints or other matters coming to their attention that raise an issue of misconduct. However, for all members of the sector, there is within the Financial Reporting Council a single accountancy Investigation and Discipline Board to hear cases of public interest; other cases continue to be dealt with by the individual accountancy body of the member concerned.

Medical profession

4.36 Complaints are generally made first to the relevant local organisation (e.g. hospital, GP surgery etc.). If a complainant is unhappy with how the complaint has been handled by a local NHS organisation, they can apply for an independent review and ultimately put their complaint to the Health Service Ombudsman. Complaints of a serious nature about an individual doctor can be referred to the General Medical Council. Anyone can refer a doctor to the General Medical Council but many referrals are made by the organisations which employ or contract them. The General Medical Council is responsible for maintaining standards of medical care and performs a disciplinary and complaint handling role. This role is separate and distinct from that of the British Medical Association, the professional association representing the interests of doctors.

Question 4.1

What are your views on the relevance of the matters discussed in this Chapter for the regulation of the legal professions in Northern Ireland?

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The case for a review of regulation

IMPETUS FOR REGULATORY REFORM

- 5.1 In response to many pressures, regulatory reform is being carried out in almost all OECD countries. The OECD review of regulatory reform in the UK states that the regulatory framework for the professions is important in keeping an appropriate balance between competition and consumer interest.
- 5.2 The European Commission Report of February 2004 set out its thinking, from the perspective of competition policy, on the scope for reforming or modernising specific professional rules. Its research findings suggest that there are unnecessary regulatory barriers to the provision of professional services in some member states and that those barriers are not in the interests of consumers and the European economy generally. The Commission intends to report on progress in 2005.

FAILURE OF REGULATORY REGIMES

- 5.3 The Enron scandal and the alleged accounting abuses at Arthur Andersen provided one of the most dramatic examples of the failure of regulatory regimes. In the UK the most high-profile debate on the failure of regulation in the professions was provided by the recent inquiry into the Harold Shipman case. The inquiry's fifth report examined the responsibility of the General Medical Council (GMC) in its regulation of the medical profession. The report criticises the GMC for "looking after its own" and recommends a radical shake-up in its structure. The president of the GMC, Professor Sir Graeme Catto, believes it is vital that the Council involves members of the public in the regulation process:

"Self-regulation, without public involvement, has been shown in the past to be a flawed model, which can lead to professions becoming increasingly isolated and losing touch with society. I know that self-regulation contributes to a loss of the public trust in the professions".

- 5.4 It is important to emphasise that the example of Enron, Arthur Andersen and the Shipman case are extremes with no connection to the professionalism of lawyers in Northern Ireland. However, there is an opportunity to learn from the generic recommendations of the reviews of other professions.

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- 5.5 The lack of balance of information between practitioner and client is one of the main arguments advanced to justify regulation of professional services. Indecon Consultants found in their report on professions in the Republic of Ireland that, despite the weight attached to this particular form of market failure, no comprehensive attempt had previously been made by professional organisations to assess the extent of the information deficit in markets for professional services.

REFORM IN NORTHERN IRELAND

- 5.6 In 1991 a policy paper entitled 'Legal Service in Northern Ireland: The Government's Proposals' was published. The Government proposed a package of reforms, aimed at securing for the general public as wide a choice as possible in the provision of legal services, while at the same time ensuring that those providing such services achieve the high standards of integrity and competence that are vital to the administration of justice. However, the proposals were not progressed for various reasons. In the intervening years several studies have been conducted in England and Wales, Scotland and the Republic of Ireland, and the consumer rights agenda has also moved on.
- 5.7 As highlighted in Chapter 4 above, Clementi's review in England and Wales identified three particular areas of concern:
- (i) about the current regulatory framework,
 - (ii) about complaints systems, and
 - (iii) about the restrictive nature of current business structures.
- 5.8 While there has been little research on the efficacy of the current regulatory framework and the effect on the market of the restrictive nature of current business structures in Northern Ireland, the generic issues raised by Clementi, and endorsed by the Government, are very relevant.
- 5.9 The argument can be made that because of the differences in the sectors between England and Wales and Northern Ireland it would be inappropriate to adopt similar recommendations to those proposed by Clementi. Such views have to be set against the higher-level principles of regulation. It is the Government's view that, irrespective of jurisdiction, a more consumer-orientated approach should be adopted to the regulation of the professions. This means ensuring that customers have ready access to the information necessary to make an informed choice, that the provision of legal services can be seen to be open and transparent, with recourse to independent oversight, and not as a 'closed shop'. And it means a profession which is responsive to the needs of business, whether large or small, in an ever more competitive world.

ISSUES OF CONCERN – THE REGULATORY FRAMEWORK

Current system of self-regulation

- 5.10 The present self-regulatory system is in need of reform to make it more acceptable to consumers, more representative of the public interest, and more relevant to promoting and facilitating access to justice in Northern Ireland. The increasing scope and complexity of legal services have changed the nature of the tasks being undertaken by lawyers, but the legislative framework for solicitors in Northern Ireland has stood still. And there is no legislative framework for barristers. In the past, the right of the legal profession to self-regulate was perceived as being in the interest of both the public and the profession. Critics of self-regulation now believe that it is an outdated concept that is flawed and should not be allowed to continue.
- 5.11 The Lord Chancellor's view on the dual role of the professional bodies was expressed at a conference on legal services reform in March 2005 when he expressed the view that the consumer cannot have confidence in a system that is self-regulating, with one lawyer regulating another:

“The two don't go. It lacks transparency and gives the impression of self-interest”.

Conflict of interest

- 5.12 Self-regulation through the Law Society carries with it two competing responsibilities. The first is concerned with ensuring the effective delivery of legal services to clients/citizens, including giving advice and providing representation free from, for example, the arbitrary use of power by Government and/or powerful interest groups in society. To do so the Law Society has to a) protect the profession, giving it stability; and b) champion the profession's independence. Both are vital if access to justice is to be meaningfully delivered. The second responsibility is the regulation function which is operated to protect clients from potential abuse within the self-regulatory framework itself and its operating systems, practices and procedures.
- 5.13 Tensions between these roles can arise if members perceive that the interests of the profession are neglected or the public believe that members' interests are being put first. The former Lay Observer has suggested that there is a potential conflict of interest between the promotion of the profession and its regulation, between championing the solicitors' profession and managing and monitoring the same profession.

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- 5.14 Concern about the appropriateness of the representative and regulatory roles of professional bodies is widespread, with the majority of respondents to the Clementi review arguing that the regulatory and representative roles should be separated. The Council for Licensed Conveyancers stated that:

“It is difficult to understand how one body can effectively both regulate a profession and also represent and lobby for its interests without prejudice to either its regulatory or representative functions” .

- 5.15 Clementi identified the potential conflict of interest between the two roles which needs to be tackled. In a regulatory body the public interest must have primacy. Issues such as changes in practice rules should be examined, not against the wishes or demands of the membership, but against the test of the public interest. Equally in a representative body the interests of the membership should have primacy.
- 5.16 In terms of public interest, the potential conflict between regulatory and representative issues is evident in those issues which deal with the negotiation of fees for lawyers. Both the Law Society and the Bar Council have argued on behalf of their members in connection with rates for legal aid work. It is reasonable that a representative body should use its influence in the interests of its members to raise remuneration levels funded by the state, as argued by the Chief Executive of the Law Society – see ‘Solicitors not laughing all the way to the bank’, the Law Society of Northern Ireland (www.lawsoc-ni.org). However, the function of representing members in such matters sits uneasily with the regulatory responsibility to act in the public interest.
- 5.17 This tension has been acknowledged by the Law Society of England and Wales which, in their contribution to the consultation on the regulation of legal services in England and Wales, has commented:

“The Society also agrees that, in order to retain public confidence, regulatory and representational functions must be - and must be seen to be - clearly separated in any governing body’s work” .

5.18 In considering change to the regulatory framework, it could be argued that Northern Ireland is a small area and that the current arrangements avoid significant public expenditure and have, over many years, provided an effective framework. However, the Government believes that the issues of principle are strong and that the balance of advantage lies in consideration of change.

ISSUES OF CONCERN - COMPLAINT HANDLING

5.19 In practical terms the process of complaint handling and adjudication, and its effectiveness, has been the main focus for criticism of self-regulation by the legal profession. The pressure for change in the UK has been influenced by the difficulty that the Law Society of England and Wales was experiencing in coping with complaints against solicitors within a reasonable time. While this may not be a problem in Northern Ireland, that does not mean that the current complaint processes of the Law Society here are appropriate for this time. Similarly, in the case of the Bar, there is no evidence at all of any independent research on customer satisfaction.

Independent research on customer satisfaction

5.20 Under current arrangements the Law Society of Northern Ireland alone decides whether a concern received from a member of the public regarding their solicitor constitutes a complaint. It is also the case that only clients can make complaints against solicitors. Thus, for example, where a relative is unhappy about a solicitor's performance in the execution of a will there is no provision to make a complaint. It is, therefore, very difficult to assess whether the number of complaints 'recognised' and processed by the Law Society reflects satisfaction with the profession or a deficiency in the process of complaint handling or consumer awareness.

5.21 Initial research carried out in preparation for this document by the Northern Ireland Statistics and Research Agency as part of its October 2004 Omnibus Survey suggests that the level of dissatisfaction among consumers is higher than is indicated by the number of complaints received by the Law Society. Of those people who had sought help, advice or assistance from a solicitor in the last five years:

- The level of dissatisfaction with the service provided by solicitors was measured at over 11%.
- Of those dissatisfied, just over 25% pursued a complaint.
- Of those who pursued a complaint, almost 60% were not satisfied that their complaint was handled appropriately.

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- The main reasons why approximately 75% of dissatisfied clients did not pursue a complaint were:
 - I thought there was no point (60%)
 - I had been through enough stress already (30%)
 - I didn't know how to go about it (20%).

5.22 While the number of complaints against the legal profession in Northern Ireland is relatively small and there is evidence they are dealt with in a timely manner, there is also some evidence as reported above that this may hide a degree of dissatisfaction. In addition, the lack of teeth in the independent oversight of these arrangements and the inability to award compensation are issues of concern. Accordingly the Government considers that a review of the current system of handling complaints is required.

Issues of concern - competition

- 5.23 The European Commission Competition Directorate-General report on competition in the professional services (2004) views regulations governing business structures and limiting or prohibiting multi-disciplinary practices as an area of potentially restrictive regulation. It is necessary to consider whether the business structures currently in place for the legal profession facilitate an appropriate level of competition and are appropriate for 21st century business practice. For example, in England and Wales licensed conveyancers are permitted to compete with solicitors in the conveyancing market and solicitors have rights of audience in higher courts, previously the preserve of members of the Bar. Such competition is currently not possible in Northern Ireland.
- 5.24 Clementi also considered that the issue of developing appropriate business skills to produce cost-effective services is important:

“High quality legal services are important to society, but of limited value if available only to the very rich or those paid for by the state”.

5.25 In its report on competition and regulation in the legal services market (July 2003), the Government expressed its support for the principle of enabling legal services to be provided through alternative business structures:

“The Government supports in principle enabling legal services to be provided through alternative business structures. Such new structures would provide an opportunity for increased investment and therefore enhanced development and innovation, for improved efficiency and lower costs”.

5.26 The Office of Fair Trading has identified the most significant restrictions which affect the types of alternative business structures able to offer legal services. These restrictions are contained within the rules of the professional bodies:

- Rules that prohibit partnership between barristers and between barristers and other professionals (both lawyers and non-lawyers); employed barristers may work for firms of solicitors, but may not, without re-qualification, become partners.
- Rules that prohibit solicitors from entering partnership with members of other professions (both lawyers and non-lawyers).
- Rules that prevent, with a small number of exceptions, solicitors in the employment of businesses or organisations not owned by solicitors (e.g. banks or insurance companies) from providing services to third parties.

5.27 Business systems must be developed which minimise costs whilst maintaining high standards. Clementi considered two main proposals regarding business structures:

- Legal Disciplinary Practices. These are law practices which permit lawyers from different professional bodies to practice together as equals. Non-lawyers may be managers of such practices but lawyers should be in a majority in the management group. The non-lawyers will be there to enhance the services of the law practice, not to provide other services to the public. This concept seeks to sweep away many of the current restrictions on the business forms under which lawyers may practice.

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- Multi-Disciplinary Practice. These are practices which bring together lawyers and other professionals (e.g. accountants, chartered surveyors) to provide legal and other professional services to third parties. They do not solely provide legal services; indeed legal services may be a small part of their work.

5.28 Clementi recognised the difficulties which regulation of Multi-Disciplinary Practices would pose; for example, a legal services regulator would not have jurisdiction over activities outside the legal sector. He therefore recommended that Legal Disciplinary Practices should be authorised within the legal services regulatory system. He regarded that as a major step towards Multi-Disciplinary Practices if, subsequently, regulatory authorities should consider that sufficient safeguards were in place.

THE CASE FOR CHANGE – CONCLUSION

5.29 The make up of the legal profession in Northern Ireland is quite different from that in England and Wales and it could be argued that there is little evidence of a demand for change. However, the Government considers that removing unwarranted restrictions is right in principle and will of itself stimulate competition in business. Accordingly this is clearly an area where change must be fully considered.

5.30 It has been acknowledged throughout this document that the professionalism of lawyers in Northern Ireland is clear and that the evidence of dysfunction is perhaps not as strong as in other jurisdictions. However, the Government regards the argument of principle in favour of change as compelling in terms of the regulatory framework, complaints systems and business structures. How that change will be identified and the extent of change are considered in the next Chapter.

6

Summary and way forward

- 6.1 The previous chapters in this paper have set out the general principles behind the regulation of professional services generally and the legal professions in particular. The current arrangements for the regulation of legal services in Northern Ireland have been explained and the results of recent reviews in other jurisdictions have been outlined. The issues arising from these reviews, particularly the Clementi Review in England and Wales, for Northern Ireland have been discussed.
- 6.2 The significant differences between the legal services market here and elsewhere have also been outlined. These include differences in the structure of firms of solicitors and in the performance of the Law Society in dealing with complaints. Nevertheless consumers in Northern Ireland should have access to legal services which are regulated in a way which can be seen to take due account of the consumer interests. They should also have rights of redress that are at least as effective as those in other parts of the United Kingdom.
- 6.3 The Government is mindful of the dangers of importing solutions, designed for a different set and, particularly, scale of issues, to Northern Ireland. At the same time the Government regards the principles and arguments behind the conclusions of Clementi as compelling. These are that there should be a fundamental shift away from the self-regulation of the legal professions and that complaint handling in particular must be fully independent of the professions.
- 6.4 To consider how these principles could or should be applied in Northern Ireland, including establishing regulatory systems that are in proportion to the market, the Government is establishing a review group to consider the issues identified and the responses to this consultation. The group will commission whatever research on the local legal services market it deems necessary and develop proposals for the future regulation of legal services in Northern Ireland.
- 6.5 The group will also consider and develop proposals on the other issues raised by Clementi: such as how to regulate those providing legal type services which are not restricted by statute to lawyers (e.g. will drafting and employment advice) and whether Northern Ireland should also open up the provision of some services, such as conveyancing, to appropriately qualified people who are not solicitors. Similarly, it will consider the issues of wider ownership of legal practices.
- 6.6 The review group will be chaired by Sir George Bain and will have seven other members. These members will consist of legal service providers, consumer representatives, a legal academic and an economist. The Department will announce the membership of the group in due course.

6.7 The terms of reference of the group are:

In light of:

- the findings of the Clementi Review of the Regulatory Framework for Legal Services in England and Wales,
- the subsequent White Paper due to be published later in 2005, and
- the responses to the Northern Ireland consultation document launched in September 2005,

to bring forward firm proposals for the regulation of legal services in Northern Ireland that are consistent with:

- protecting and promoting consumer interests;
- promoting competition through the removal of unjustified restrictions;
- promoting public understanding of citizens' legal rights; and
- encouraging a strong, effective and independent legal profession.

These proposals should take due cognisance of:

- the study of competition in legal services in the Republic of Ireland;
- the emerging findings of the Scottish Executive's inquiry into the regulation of the legal profession;
- the annual reports of the Lay Observer for Northern Ireland and the Review of Legal Services provision here carried out by the former Lay Observer, Professor Vincent Mageean; and
- the European Commission Director-General 2004 report on competition in professional services.

The proposals should be presented to Government by end of October 2006.

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?

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 in Northern Ireland?

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?

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?

APPENDIX

Consultation details and questions

This Consultation Paper seeks your views on the issues discussed. A summary of the document will be made available, on request, in alternative formats.

There are various questions posed throughout the document on which we invite response. These questions are set out again at the end of this section in a form that could be used for reply. It is stressed that the questions are only meant to stimulate thought and responses dealing with other issues will be welcomed and given full consideration. Space for such responses is also made available at the end of this Section.

The closing date for responses to the consultation is 6th January 2006.

Your written responses should be sent to:

Central Support Division
Department of Finance and Personnel
Room P8
Rathgael House
Balloo Road
BANGOR
BT19 7NA

As an alternative we would encourage you to e-mail responses to: cpu.csd@dfpni.gov.uk

You may wish to fax your comments to 028 9185 8048.

This document is available on the Department of Finance and Personnel website at www.dfpni.gov.uk

It is also intended that consultation responses will be placed on the Department's website. The Department can only refuse to disclose information in exceptional circumstances. Corporate confidentiality clauses automatically attached to e-mails will not be taken into account.

Before you submit your response, please read the paragraphs below on the confidentiality of consultations. They give guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority, in this case the Department of Finance and Personnel. This right

of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- The Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided.
- The Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature.
- Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses please contact the Information Commissioner's Office (or see website at: www.informationcommissioner.gov.uk).



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?

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?



Question 4.1

What are your views on the relevance of the matters discussed in this Chapter for the regulation of the legal professions in Northern Ireland?

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?



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