

## **Consultation by DFP on the Draft Legal Complaints and Regulation Bill (NI) 2013**

### **Introduction**

In 2006, the Legal Services Review Group reported on three key areas of Legal Services reform, namely competition, regulation and complaints handling. The key issues on competition included whether the Legal Services market should be opened up in Northern Ireland to competition through the development of legal disciplinary practices (ie solicitors and barristers working together in an organisation) and that non-lawyers should be able to be involved in the management and ownership of such practices. On regulation, the main issue was whether the Law Society and Bar Council's regulations should be separated with the regulatory function being given to a body external to the profession. On complaints, there had been major problems with complaint handling within the Law Society for England and Wales with major delays in handling complaints and considerable consumer dissatisfaction with the process and outcomes of complaints handling.

The issue had been examined by the Clementi Review (undertaken by a single individual Sir David Clementi) who recommended that competition should be opened up to allow legal disciplinary practices though the government decided to go further than this. On regulation, the Clementi Review recommended setting up a Legal Services Board to act as a regulator to provide regulatory oversight of the Law Society and Bar Council in England and Wales with certain functions being devolved back to front line regulators subject to satisfactory governance and competence requirements being met. On complaints, the Clementi Review recommended that the existing process was not 'fit for purpose' and that a new independent organisation, the Office of Legal Complaints, be set up while the existing complaints about professional misconduct remained the responsibility of the relevant professional legal bodies. These new independent institutions were to be paid for by the professions themselves. These recommendations were largely implemented in England and Wales through the Legal Services Act 2007. In Scotland, the handling of complaints has also moved to a body separate from the profession.

### **The review in Northern Ireland**

The Northern Ireland review took a different approach. The review noted that the considerable problems encountered in England and Wales were not experienced in Northern Ireland. As a result, the review group concluded that the Law Society and Bar Council should not separate its regulatory and representation roles, but should be subject to enhanced oversight arrangements with increased lay participation. On competition, the review concluded that neither multi-disciplinary nor legal disciplinary practices would enhance competition and that existing restrictions on competition should be maintained. The most significant changes recommended covered complaints, in particular, that there should be increased lay involvement including a majority of non-lawyers and a lay chair to hear complaints. The Review also concluded that a Legal Services Oversight Commission should be created with powers mainly related to complaints handling but, also powers to set new targets, on complaints, with enforcement powers including the power to set financial penalties and to be consulted on specific issues. The new body created would be paid for by the profession and should be proportionate to the needs of consumers in Northern Ireland. At the time of the review, the Law Society was prepared to accept changes to the complaints

handling arrangements providing the regulatory and representation roles were not split. The current consultation document is the legislative response to the Legal Services Review.

## **The proposals**

The legislation proposes the following for solicitor complaints:

- the establishment of a legal services oversight commissioner with discretionary powers including to monitor and set targets for handling complaints, and to imposing targets when not agreed, offer recommendations on training, and to investigate the manner in which complaints are made.

In addition, the oversight commissioner must be consulted on any additional regulatory provisions introduced for the profession by the Law Society. The Department may also ask the oversight commissioner to look into existing rules.

- that the oversight commissioner must be a lay person; and that the cost of the Oversight Commissioner post and office will be paid for by the profession.
- the post of Lay Observer will be abolished.
- that a solicitor complaints committee separate from the Law Society Council must be created with a two-thirds lay majority.
- that complaints must normally start by going through the firm's internal complaints procedure but , this requirement can be waived in appropriate circumstances. The scheme can cover individuals or other bodies (for example, companies) but, not a solicitor complaining about another solicitor.
- that the complaints committee will be able to set out rules of procedure, for example on time limits and these must be published and consulted on including with the Legal Services Oversight Commissioner.
- the forms of redress which includes an apology, compensation of up to £3,500, a direction to take specification and payment of costs of the complaint. A right of appeal from the complaints committee is also provided for.

## **Issues/Questions for the Law Society**

The committee may wish to explore the following issues:

- how does the existing complaints procedure work and what changes does the Law Society envisage having to make beyond the statutory requirements to have more lay people involved. The Law Society already requires firms to have their own complaints procedure and has a good leaflet available online. The distribution of the leaflet elsewhere – eg to libraries, advice centres, political party constituency offices and solicitors offices itself is worth asking about as information about complaints is harder to obtain elsewhere.

There are relatively few complaints. This may reflect high levels of satisfaction with the work of solicitors, a lack of awareness of the complaints mechanisms or a lack of faith in a solicitors body investigating its own members. There is no empirical evidence of which it is.

- what size of an organisation and how much funding does the Law Society think the Legal Oversight Commissioners Office needs? As the Law Society will be footing the bill for this they are likely to want a relative small, limited resourced commissioner's officer.
- does the Law Society believe there are any weaknesses in the current arrangements. If so what are they?
- has the profession ever done any surveys of consumer confidence in complaints handling procedures? If so what were the outcomes?
- how will the Society recruit the lay people who will become involved in the process? The lay people currently involved in Law Society activities are not usually recruited through open advertisement. How are lay people currently provided with an induction, training, support and opportunities to feedback their experiences?
- are there any significant amendments to existing rules or any new rules the Law Society has in the pipeline before the new legislation comes in?
- what does the Law Society think of the redress mechanisms including the level of the compensation. The Review recommended a £3,500 limit in 2005 and the consultation is proposing no increase despite the passage of 8 years.
- how does the Society see the arrangements for passing complaints elsewhere working in practice, for example, an issue of alleged negligence which may potentially be worth far more than £3,500?

**Law Centre (NI)**  
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