



Northern Ireland
Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Draft Legal Complaints and Regulation Bill:
Department of Finance and Personnel

29 January 2014

those strides could have been catalysed in part by the Bain recommendations and an understanding from the professional bodies that some improvements could be made to the complaints-handling process. Most of the points that members have correctly asked both branches of the profession today are very much caught up in the role of the legal services oversight commissioner. Members raised issues around accessibility, transparency, making sure that members of the public are aware of how to complain and to whom to complain, and the whole nuts and bolts in and around the complaints process.

The Chairperson: Have you any thoughts on the point that a member made about the oversight commissioner being the first point of contact for complaints, where the complaint will be registered and then referred to the appropriate body?

Mr M Foster: I think that the system that we envisage will see the oversight commissioner — I suppose that the clue is in the title — oversee that process. However, from a practical perspective, the system at the moment, particularly referred to by the Law Society, where attempts are initially made to resolve the complaint informally with the solicitor in question, is one that is generic among all complaints-handling systems. Even those that have, as a second tier, a completely independent body would see that as part of their process. From our perspective, the key is that we have in place lay majority and lay chairs dealing with complaints, with the oversight commissioner there to guide, help and, if necessary, criticise and report on those types of issues. The proportionality issue, which both professional bodies have raised, is a key one, and a key part of the draft Bill.

The Chairperson: I will throw the meeting open to members.

Mr Cree: I know that it is a wide subject, but why have you deferred from Bain recommendations in several cases?

Mr M Foster: It is not a case of deferring from them as such. A number of Bain recommendations would not be appropriate to appear in primary legislation, and there are others that the predecessor at the Department felt did not quite go far enough. Some of those have been mentioned already. One is the fact that Bain recommended that there should be lay majorities on committee. When Sammy Wilson was Minister, he took the view that he wanted to see even more independence in the system and advocated that that should be increased to 66%, or a two-thirds majority. The Department is reflecting on that carefully. We will, of course, want to hear what other consultees, not just the professional bodies, have to say on the matter. However, our initial view is that the professional bodies have made a strong case as to why that might be going too far. We will certainly reflect as we take this forward.

The second issue, which has been raised by a number of members, including Mr Weir, and the professional bodies, is that the Bill as it stands would give the legal services oversight commissioner a veto of appointments to the various committees. That also goes further than Bain, which envisaged a consultative role for the commissioner.

Mr Weir: What is the rationale for shifting from the post having a consultative role to a veto? That seems quite strong.

Mr M Foster: The predecessor at the Department felt that Bain did not go far enough. It is something that we are reflecting on and will give careful consideration to.

Mr Weir: That is very diplomatic language, Michael.

The Chairperson: Sammy said it.

Mr Mitchel McLaughlin: We could have an internal complaints procedure here very soon. *[Laughter.]*

Mr Weir: I am not sure whether former employees come into it.

The Chairperson: A number of points have been made about the Bill being silent on consultation. Is that something that you are considering?

Mr M Foster: The answer to that has almost been given. There are areas of the Bill in which it would be inappropriate to put in, in very stark language, that there must be consultation with the Law Society on certain aspects. The key one, from its perspective, is to do with the levy itself. That reflects the costing of the legal services oversight commissioner, which is already in the draft Bill at clause 6. When the levy regulations, which will follow from the primary legislation, are made, the Department must consult each professional body on the levy. That will be fleshed out in secondary legislation.

From the Department's perspective, there is no doubt that both the Law Society and the Bar Council have a very clear role to play in the office of the legal services oversight commissioner, but that role will be a consultative one. The word "veto" has been mentioned. It would certainly not be right for the Law Society or the Bar Council to have a veto on the legal services oversight commissioner. However, they will have an important role to play. Whether that appears in the Bill, in secondary legislation or, as is probably most likely, in protocols drawn up between the Department, the Law Society and the legal services oversight commissioner, there is no doubt whatsoever that the consultation will happen.

Mr Paulin: You referred to consultation with the Law Society on appointments, arrangements, and so on. We are in the process of a consultation in a different sense, in that we have consulted on the Bill. We are still waiting for quite a number of key players to come back to us with their views on the consultation. You will notice in the Bar's response to consultation that it indicated that it had not yet responded formally to the consultation. Although it is very interesting to hear what people have to say today, it is important that they respond to the consultation formally and tell us what they think.

The Law Society has said that it will go into the detail. It is important that it go into the detail at this stage rather than wait until the consultation process is over before going into it. The consultation would be much more effective if people told us what they think about the draft Bill at this stage rather than at a later stage. Consultation works both ways.

Mr Girvan: From what I picked up, there was a comment made about a concern about the lack of consultation up to this stage.

Mr Paulin: No, it was about lack of provision in the Bill to require consultation on various things that the Department would be doing.

The Chairperson: When is this likely to hit the Chamber?

Mr M Foster: It really depends on the nature of the responses. There is close to three weeks of the consultation process left. Once the process closes, we will have a look at the responses in their entirety, analyse them and reflect on the Bill. If any changes required to the Bill are fairly minimal, we hope to turn things around relatively quickly, depending on the capacity in and the timing for the Office of the Legislative Counsel.

I think that we are pencilled in to come back to the Committee to give an outline of the consultation in the early part of April. If the Bill gets Executive clearance, we hope that, given a fair wind, it will be ready and in the House some time between Easter and summer. It is difficult to predict with any degree of certainty whether it will be April, May or June, but we are certainly looking at some time around then.

The Chairperson: Are members content?

Mr Cree: What is the closing date for the consultation?

Mr M Foster: It is 14 February.

Mr Cree: That is a very good choice: St Valentine's Day.

Mr Mitchel McLaughlin: Were you thinking of the massacre?

Mr Cree: I was, actually.

Mr M Foster: Perhaps it will help members if I clarify a couple of factual points that I picked up on.

I think that Mr Cree mentioned a figure of £3,500 in a number of cases. I will give you some background on that. When the Office for Legal Complaints came into force in England and Wales, there was an upper limit of £20,000. There is a much more proportionate scheme in Scotland, where the figure is capped at £5,000. The Law Society was quite right to point out that, in theory at least, the maximum here is not £3,500 but £7,000 if an element of negligence is involved in the case. From our perspective, the key point is that the figure can be reviewed and changed if necessary, by way of secondary legislation, if a case is made to us that it is too low or too high.

The only other point that I want to make concerns clause 34, which Mr Weir raised. It is a similar point, and it relates to who can complain. The Department deliberately put the clause in to employ a degree of flexibility, but that flexibility will be subject to a significant degree of control. If other groups ultimately fall into the categories of who can complain, a case will have to be made by either the legal services oversight commissioner or either of the complaints committees to the Department, which would then be required to make secondary legislation to amend the categories of people who can complain. That would be subject to scrutiny by the Committee and the Assembly.

The Chairperson: OK, gentlemen. Thank you very much.