

FROM THE OFFICE OF THE JUSTICE MINISTER



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Our ref SUB/1280/2014

Christine Darrah
Committee Clerk
Committee for Justice
Northern Ireland Assembly
Parliament Buildings, Stormont Estate
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7 November 2014

Dear Christine,

**RESPONSES TO PRELIMINARY DISCUSSION PAPER INVITING VIEWS
ON ANY WIDER IMPLICATIONS OF MAKING LEGISLATIVE PROVISION
IN RELATION TO RIGHTS OF AUDIENCE FOR LAWYERS WORKING IN
THE ATTORNEY GENERAL'S OFFICE**

As the Committee is aware from previous correspondence, dated 8 August, the Department issued a short discussion paper (copy enclosed again for reference) to a number of key stakeholders inviting views on any wider implications of a request by the Attorney General for legislative provision to confer on lawyers employed in his office and designated by him, the same rights of audience as barristers in private practice.

A summary of the responses received by the Department is enclosed for the Committee's information. As the Committee will note, many of the responses express concern that such bespoke provision would fragment the rights of audience landscape and dilute the role of the professional bodies. Some also request the same special rights of audience for lawyers in their offices.

Having considered the matter carefully, including the responses, the Minister is not persuaded that it is necessary to make the particular legislative provision which the Attorney General has requested and which others might now also seek.



The Minister recognises the potential benefits of suitably skilled lawyers in the Attorney General's office (and those in other offices) having the right to appear in the higher courts. He considers, however, that this will be achievable under the mechanisms already legislated for in the Justice (Northern Ireland) Act 2011. As the Committee may recall, the relevant provisions of that Act confer power on the Law Society to make Regulations authorising solicitors, with the prescribed training or experience, to exercise the same rights of audience in the higher courts as barristers in independent practice. Under the current Bar Code such rights of audience would also then extend to employed barristers. (It is possible that the Bar may wish to amend its Code in this regard, but we expect that any proposal that employed barristers should have fewer rights of audience than authorised solicitors would be the subject of some consultation.)

Key to progressing this matter is the Law Society Regulations under the 2011 Act. The Minister has asked his officials to continue working with the Law Society to establish a timeline for the making of those Regulations as soon as possible.

Once those Regulations are in place, the lawyers employed in the Attorney General's office (and those elsewhere) will be able to obtain rights of audience in the higher courts on the same basis as other lawyers. The Minister does not therefore think that a bespoke arrangement under the Justice Bill is necessary to achieve the desired outcome.

Officials would be happy to brief the Committee further if required.

TIM LOGAN
DALO

Enc – preliminary discussion paper and summary of responses

Preliminary Discussion Paper

Proposal by the Attorney General for Northern Ireland for legislative provision in relation to rights of audience for lawyers working in his office

Summary of Responses

Introduction

1. This paper summarises the responses to the preliminary discussion paper on the proposal by the Attorney General (AG) for legislative provision to confer the same rights of audience as barristers in private practice on lawyers working in his office.
2. The paper invited views on two issues:
 - (i) the wider implications for the legal profession and the provision of legal services of the AG's proposal; and
 - (ii) whether there is a case for treating lawyers working in the AG's office differently to other employed lawyers.
3. The paper was issued to the following key stakeholders: the Departmental Solicitor, the Director of Public Prosecutions, the Director of Legal Services, the Crown Solicitor, the Bar Council, the Law Society and the Law Centre. Responses were received from all except the Law Centre.

Responses

Issue (i)

4. Several of the responses express concern about making discrete provision on rights of audience for any group of employed lawyers outside the provision on rights of audience prescribed in legislation (in the Justice Act (Northern Ireland) 2011, which is still to be commenced) and the Bar Code of Conduct.
5. The Departmental Solicitor considers that this issue is primarily one for the professional bodies however, is concerned that exempting one group from the

normal arrangements would diminish the standing of the process of authorisation and the requirements for education, training and experience and undermine its rationale.

6. Similarly, the Crown Solicitor expresses concern that making the discrete provision proposed would serve to fragment the rights of audience available throughout public sector lawyers generally and that this would be detrimental to the consistency of standards, training and regulation. The Crown Solicitor considers that it is questionable whether the factors on which the AG has based his proposal are sufficient to justify a fragmented approach.
7. The Bar Council advises that they are not in favour of carving out a distinct class of lawyers who enjoy rights of audience independently from the rights of audience conferred on barristers or solicitors generally. They highlight the safeguards contained in the Justice Act (Northern Ireland) 2011 in relation to the exercise by solicitors of rights of audience in the higher courts and that the Bar Council has its own procedures for ensuring the highest standards of training and provision of professional services. The Bar considers that the use of in-house lawyers by the AG's office would undermine these protections and interests. In addition the Bar Council (without in any way challenging the good faith of the AG) expresses concern that the AG's ability to personally supervise his staff may be overstated and about the impact on the independent Bar.
8. The Law Society notes that the Justice Act (Northern Ireland) 2011 confers responsibility on them to set regulatory requirements for solicitors seeking to exercise rights of audience across higher court tiers and considers that no departure from this holistic and comprehensive regulation is warranted without good reason. The Law Society emphasises that exempting all or some solicitors working in the public service from the new advocacy regulations has the potential to diminish the importance of the regulations and undermine attempts to successfully launch and accredit solicitor advocacy in the higher courts. Whilst the Law Society does not doubt the professional credentials of the current AG, they do not regard investing oversight within a particular individual as best practice in terms of designing regulation of the profession. The also

express concern that crafting exemptions from regulatory requirements also carries with it the potential for unintended consequences. The Law Society suggests that irrespective of the organisation a solicitor works for, the substance of the skills required remain the same and that regulatory requirements should reflect this. The Law Society concludes that the test for departing from comprehensive application of the advocacy regulations has not been met in the circumstances proposed.

Issue (ii)

9. All of the respondents consider that a case for treating lawyers working in the AG's Office differently to other lawyers employed in the public sector has not been made out.

10. The Departmental Solicitor is of the view that legislating as proposed by the AG would make an unnecessary and undesirable distinction between lawyers working in one branch of the public sector and those working in other branches. He notes that his office also has a number of barristers and solicitors skilled in advocacy and rights of audience similar to those sought by the AG for his staff would also be helpful to his own staff. The Departmental Solicitor, making reference to the AG's rationale for his proposal, also states that he believes the AG would not suggest that he (or indeed the Crown Solicitor, the Director of Public Prosecutions or the Director of Legal Services) would be in any way inferior in terms of conscientiousness, concern for the reputation of their offices or engagement in cases where their staff had an advocacy role. The Departmental Solicitor concludes that either all lawyers in the public service should have a statutory right of audience or all should be subject to the same arrangements as apply to the professions in general. He expressly requests that if provision is made in respect of the staff in the AG's office, it extend beyond the AG's staff at the very least to his staff also.

11. The Director of Legal Services considers that the same arguments used on behalf of lawyers working in the AG's Office can be extended to those working elsewhere in the public and private sectors. He notes that within DLS there are 18 (of 43) solicitors who have completed the Advanced Advocacy course,

whose skills and ability have been recognised by clients and who are subject to rigorous management and administrative systems and concludes that, if there is a case for treating the lawyers in the AG's office differently, that must logically extend to the 18 solicitors working in DLS.

12. The Crown Solicitor is of the view that, if the Department considers it appropriate to take forward the AG's proposal, a case could be made for other employed lawyers based on factors of equal if not greater strength as those highlighted by the AG and that this should be taken into account.
13. The Director of Public Prosecutions (DPP) does not oppose the AG's proposal however, considers that this facility should not be exclusive to the office of the AG. The DPP suggests that the reasons cited by the AG in support of his proposal would apply equally to him and expressly requests that he is also given the power to designate the small group of experienced advocates currently prosecuting as Higher Court Advocates in the Crown Court as lawyers who have rights of audience to conduct work in the High Court and Court of Appeal.
14. The Bar Council considers that there is no convincing justification as to why it is necessary to extend rights of audience to the AG's legal staff. Whilst acknowledging it may be of assistance to the AG, they consider this is not the same as these rights of audience being necessary or in the public interest. They also consider that the AG's proposal would see employed barristers working in his office treated more favourably than other employed barristers.
15. The Law Society considers that many of the arguments for making special provision for the AG's legal staff could apply equally to solicitors working in the public sector and therefore it is not possible to justify bespoke provision limited to the AG's office without opening up the question of exemptions more broadly.