



**Submission to the
Legal Services
Regulatory
Authority on the
Creation of New
Profession of
Conveyancer**

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Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Introduction

The Competition and Consumer Protection Commission (CCPC) welcomes the opportunity to provide its views in relation to the creation of a new profession of conveyancer. In 2006, the CCPC's predecessor agency, the Competition Authority ('TCA'), recommended the establishment of this profession in its 'Solicitors and Barristers' Market Study which reviewed competition in the legal sector ('the Market Study')¹. The CCPC reiterates this recommendation, as it is its view that the new profession would increase competition for conveyancing services and bring about significant consumer benefits such as reduced conveyancing fees and improved quality of service. However, the CCPC notes that the full potential of this new profession will only be achieved under a suitable regulatory model.

In this submission, the CCPC will outline its views on the key questions highlighted by the Legal Services Regulatory Authority (LSRA) in its consultation and provide its recommendations on the introduction of a new profession of conveyancer.

Summary of Recommendations to support the Introduction of the New Profession of Conveyancer	
1	Necessary legislative arrangements should be made to provide for the introduction of a conveyancer profession.
2	A Conveyancers' Council of Ireland ('the Council') should be established by statute to regulate a new profession of Conveyancer. The LSRA should retain oversight but delegate day-to-day functions to the new regulatory body.
3	The Council should be independent and self-funded through registration fees from conveyancers.
4	There should be a lay majority on the governing body of the Council.
5	There should be clear roles and responsibilities identified in legislation for the Council and the LSRA respectively for the regulation of conveyancers.
6	The role of the Council should include the promotion of competition and innovation, including digital innovation, and the simplification of conveyancing processes. The Council should advise the LSRA on the matter.
7	Conveyancers should be required to have professional indemnity insurance.
8	The Council should also establish a compensation fund for the protection of client monies which licensed conveyancers should be required to contribute to.
9	The Council should also develop a binding code of ethics for the profession.

¹ <https://www.ccpc.ie/business/research/market-studies/study-legal-professions/>

10	The LSRA should be the body responsible for receiving relevant complaints related to licenced conveyancers. The Council should ensure that consumers are informed of the complaints procedure and transfer relevant complaints received to the LSRA.
11	A key role of the Council should be to provide and promote information to consumers on conveyancing services.
12	The LSRA should explore ways which enable consumers to review and compare information about conveyancing services and help consumers understand the quality of service offered by competing providers.
13	<p>In respect to digitalisation, the LSRA should consider key issues related to e-conveyancing in its report to the Minister, including:</p> <ul style="list-style-type: none"> a) Necessary legislative and regulatory changes to enable e-conveyancing, b) The appropriate design and implementation of an e-conveyancing model, including security features, c) Issues related to accountability and liability between the different parties involved in the conveyancing process, d) Considerations regarding conveyancing data, e) Stakeholder buy-in to e-conveyancing.
14	The Council should articulate strong conflict of interest rules for conveyancers as part of the code of ethics. The code of ethics should require transparency, accountability and integrity from licenced conveyancers.
15	<p>Conveyancing practitioners should be enabled to form and be part of Multi-Disciplinary Practices (MDPs), subject to the development of regulation to provide for MDPs. To enable this, the LSRA, with the assistance of the Council, should ensure that:</p> <ul style="list-style-type: none"> - Regulatory arrangements for conveyancers delivering services as part of a MDP should be clear and maintain high standards of consumer protection, - Consumers are empowered to understand the relationship between the legal and non-legal elements of such a practice and what their consumer rights are. The relevant complaint procedure related to conveyancing services delivered through MDPs should also be clear and communicated to consumers, - Liability arrangements for conveyancers working for MDPs should be considered.
16	The proposed Legal Practitioner Education and Training Committee (LPET Committee), assisted by the Council, should set and assure standards for conveyancing education and training. The LPET Committee should also be responsible for the accreditation of providers of conveyancing education and training.

17	The LPET committee should carry-out periodic reviews of the definition of competences and standards, and for reviewing accreditations. The Council should advise the LPET Committee on any new important developments in conveyancing.
18	The CCPC recommends that the Council should regularly review rules and regulations and be required to carry out regulatory impacts assessments in order to ensure that they remain relevant and justified.
19	The Council, when making regulations, should consider whether licensed conveyancers should be allowed to act for both sides of a conveyancing transfer.

1. Do you have views on the creation of a new profession of conveyancer?

The CCPC strongly recommends that a new profession of conveyancer be established in Ireland. Conveyancers should be licenced and regulated by a transparent, accountable and self-funding statutory body. The LSRA should remain the oversight body but delegate day-to-day functions to the new regulatory body.

In 2006, the predecessor agency of the CCPC, the Competition Authority (TCA) published the ‘Solicitors and Barristers’ Report² (the ‘Market Study’) which reviewed competition in the legal sector. The Market Study concluded that the legal profession required substantial reform. Overall, it recommended that comprehensive new legislation be introduced to address the competition concerns identified in the report, and which would establish an independent regulator for the sector.

The Market Study identified the monopoly that solicitors currently maintain on providing conveyancing services as restricting competition in the sector. It argued that solely allowing solicitors to provide conveyancing services limits competition and contributes to both the high fees and comparatively lengthy duration of the process in Ireland. It cited examples of other jurisdictions with common law systems which had established a profession of conveyancer, such as in England and Wales, and highlighted the benefits it had brought³.

² <https://www.ccpc.ie/business/research/market-studies/study-legal-professions/>

³ Conveyancers are also provided for in a number of Australian provinces, New Zealand and Scotland.

The Market Study recommended that legislation be introduced to provide for the profession of conveyancer in Ireland. It also outlined further regulatory measures which would be required to ensure the maintenance of good practice and consumer protection in conveyancing services.

Since the publication of the Market Study, the legal sector has undergone significant changes, in particular through the enactment of legislation establishing the LSRA as an independent regulator for the sector in 2015⁴. However, the Market Study's recommendations relating to conveyancing still stand today.

Therefore, the CCPC recommends that the necessary legislative amendments be made to allow for the introduction of a profession of conveyancer. A Conveyancers' Council of Ireland (the 'Council') should be established by statute to regulate a new profession of Conveyancer, similar to the Council for Licensed Conveyancers in England and Wales⁵. The Council should be independent and self-funded through registration fees from conveyancers. The CCPC recommends that the Council should be established with a lay majority on its governing body.

There should be clear roles and responsibilities established for the Council and the LSRA in the regulation of conveyancers. The CCPC reiterates the view that the Conveyancer Council should be set up as a 'front line regulator' for conveyancers, similar to the role of the Law Society of Ireland, under the oversight of the LSRA.

The Council should perform similar regulatory functions to the Law Society of Ireland in regards to conveyancers, such as the maintenance of a register and the making of professional rules related to the conduct and practice of conveyancing. The LSRA, in turn, should be given explicit powers to veto or repeal any of the Council's professional rules. The LSRA should be the body responsible for receiving complaints related to inadequate services, excessive costs or misconduct on the part of licenced conveyancers.

⁴ Legal Services Regulation Act 2015 <https://www.irishstatutebook.ie/eli/2015/act/65/enacted/en/html>

⁵ The Council for Licensed Conveyancers was established under the Administration of Justice Act 1985 as the regulator for the profession of licensed conveyancers. It operates under the oversight of the Legal Services Board.

2. What impact do you consider the establishment of a new profession of conveyancer could have in Ireland in terms of competition in the provision of legal services?

The CCPC is of the view that restricting the provision of conveyancing services to solicitors limits competition and keeps conveyancing fees high. The establishment of a profession of conveyancers in Ireland should lead to downward pressure on conveyancing fees and more consumer-friendly and innovative ways of providing these services.

Previous studies have found that the cost of conveyancing in Ireland is significantly higher than in other countries with similar legal systems⁶. Other reports have described the conveyancing process in Ireland as inefficient, complex and paper intensive⁷, and noted that the degree of innovation in Ireland has been slow⁸.

The CCPC notes that these reports are now dated and there has been some change in the Irish conveyancing market. The number of solicitors in Ireland has risen considerably in recent years. A 2019 Study for the Law Society of Ireland on sole solicitor practitioners and smaller legal practices in Ireland stated that competition is increasing in terms of conveyancing fees, given the prevalence of these services and the use of discounting as a method of differentiation. In terms of fee pressure, it argued that there is a constant price pressure on the traditional areas of practice, in particular, conveyancing.⁹ Furthermore, we note developments and planned innovation of conveyancing processes in recent years, particularly regarding e-conveyancing¹⁰, although these changes have been much slower than in other jurisdictions such as England and Wales and Australia.

Despite these positive developments, it is the view of the CCPC that the introduction of a profession of conveyancer can serve to increase competition further and deliver greater benefits for consumers, regardless of the levels of competition among solicitors in conveyancing services. As an important component of the regulatory reform agenda for

⁶ https://ec.europa.eu/competition/sectors/professional_services/studies/csm_study_complete.pdf

⁷ The Law Reform Commission's Report on e-conveyancing: Modelling of the Irish Conveyancing System – (2006) <https://www.lawreform.ie/fileupload/Reports/reConveyancing.pdf>

⁸ https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/2003-03_Indecon_Report_1.pdf

⁹ Crowe & Law Society of Ireland (2019) 'Market Study of Sole Practitioners and Smaller Legal Practices in Ireland' <http://www.crowe.ie/wp-content/uploads/2019/02/crowe-report-lawsociety2019.pdf>

¹⁰ <https://www.lexology.com/library/detail.aspx?g=88d971bc-7e2d-46d0-9bf9-22150a484b35>

the legal sector, the establishment of the new profession would remove a barrier to entry for external competitors in the provision of conveyancing services. This, in turn, should produce better outcomes for consumers in terms of price, quality of service and choice¹¹.

3. Are there specific implications, positive or negative, for the legal services sector and the solicitors' profession that in your view would arise from introducing a new profession of conveyancer?

As previously stated, the introduction of a new profession of conveyancer would enable greater competition in the delivery of conveyancing services. This is expected to put downward pressure on conveyancing fees and foster greater innovation in service delivery.

Research suggests that currently sole solicitor practitioners and small legal practices in Ireland rely more on income gained through conveyancing services than larger firms¹². It is therefore reasonable to expect that these practitioners and small practices might be most impacted by the introduction of a conveyancer profession.

It is the CCPC's view that the introduction of a new profession of conveyancer would lead to better customer value in conveyancing services. While solicitors, particularly sole practitioners and small practices, may face greater fee pressure for their conveyancing services, they may also have the opportunity to compete on the quality and transparency of their services. It might also provide practitioners with greater incentive to enhance their competitive advantage on other types of firms and professionals, and to communicate with consumers on the value of their services.

The CCPC considers that increased digitalisation of conveyancing, coupled with the introduction of a conveyancer profession, would open up the market to greater competition, with the potential for entry by alternative business models to provide conveyancing services. The nature of conveyancing services offered by conveyancing practitioners will likely change along with developments in the sector, with more emphasis on advice rather than on the technical components of a property transaction, which are

¹¹ https://ec.europa.eu/competition/sectors/professional_services/studies/csm_study_complete.pdf

¹² Crowe & Law Society of Ireland (2019) 'Market Study of Sole Practitioners and Smaller Legal Practices in Ireland' <http://www.crowe.ie/wp-content/uploads/2019/02/crowe-report-lawsociety2019.pdf>

likely to become automated in the future. To that end the CCPC notes the development by the Property Registration Authority of the eRegistration services which facilitates the registration of transfers electronically¹³. It could be expected that quality of service would become a point of competitive differentiation¹⁴. The CCPC recommends that one function of the Council should be to keep informed of developments in the conveyancing sector and review their potential impacts on competition. The Council should advise the LSRA on the matter.

4. What are the potential benefits and risks to consumers of legal services (including businesses) that can be reasonably expected from enabling them to access the services of a conveyancer, specifically in terms of legal costs, access to legal services and consumer protections?

It is the CCPC's view that consumers would gain significant benefits from greater competition in the delivery of conveyancing services. Other countries with similar legal systems that have introduced an independent conveyancer profession have reported positive impacts for consumers, particularly when combined with regulatory reform in legal services. In New South Wales in Australia, the combination of an introduction of licensed conveyancers and a deregulation of advertising standards for solicitors led to a considerable reduction of fee levels for conveyancing¹⁵.

Consumer Benefits

In England and Wales, research has shown that the introduction of the conveyancer profession has led to less price discrimination (i.e. fees based on the value of the transaction or 'percentage fees') and the emergence of a flatter fee structure.¹⁶ However, international experience also shows that the chosen approach to regulation for licensed conveyancers will also determine the extent to which consumers will benefit from the establishment of the new profession. In Scotland, the conveyancing profession is regulated by the Law Society of Scotland, which requires licenced conveyancers to hold a

¹³ <https://www.eregistration.ie/>

¹⁴ Deloitte (2018) 'The future of the Australian conveyancing industry 2025 and 2030' <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-future-australian-conveyancing-industry-2025-2030-111018.pdf>

¹⁵ <https://www.ghostdigest.com/articles/de-regulation-of-conveyancing-australia/51821>

¹⁶ https://ec.europa.eu/competition/sectors/professional_services/studies/csm_standalone_en.pdf

law degree¹⁷ - a requirement in excess of the regulations in England and Wales and New South Wales in Australia. As noted by the Market Study, this has resulted in a very low take-up of professionals registering as conveyancers.

Consumer Protection

The CCPC notes that consumers are financially protected when seeking conveyancing services by the requirement on solicitors to carry indemnity insurance to cover instances of negligence¹⁸. In addition, solicitors' clients have access to the Law Society of Ireland's compensation fund to cover instances of fraud. Furthermore, solicitors must adhere to the Law Society of Ireland's Code of Conduct when delivering their services, and are required under Sections 150 and 152 of the Legal Services Regulation Act to provide certain information to consumers, particularly around legal costs and billing¹⁹.

The CCPC therefore recommends that the Council be given similar statutory functions. The Council should oversee a system of professional indemnity insurance required to be registered as a conveyancer. It should also establish a compensation fund for the protection of client monies which licensed conveyancers should be required to contribute to. The Council should also develop a code of ethics for the profession with appropriate enforcement mechanisms, which conveyancers would be bound by. Sections 150 and 152 of the Legal Services Regulation Act should apply to conveyancers. Regulations made in this respect should be kept under review and evolve in keeping with technological and other developments in how conveyance transfers are executed.

It is the CCPC's view that there should also be a clear complaint and redress mechanism for consumers for conveyancing services performed by licensed conveyancers. In order to ensure a streamlined mechanism for complaints regarding legal services, the CCPC recommends that the LSRA should be the body responsible for receiving complaints related to inadequate service, excessive costs and misconduct by licenced conveyancers.

¹⁷ In Scotland, qualified conveyancers must hold either a law degree or a diploma/certificate in legal studies from a Scottish university or approved institution.

https://letr.org.uk/references/storage/AWAQVXQE/licensed_conveyancer_entry_requirements.html

¹⁸ Section 26 of the Solicitors Act (1994)

<https://www.irishstatutebook.ie/eli/1994/act/27/section/26/enacted/en/html>

¹⁹ <https://www.irishstatutebook.ie/eli/2015/act/65/enacted/en/print#sec150> and <https://www.irishstatutebook.ie/eli/2015/act/65/enacted/en/print#sec152>

The Council should ensure that consumers are informed of the complaints procedure and transfer any relevant complaints received to the LSRA.

Consumer Awareness

The CCPC is also aware that the introduction and the regulation of a profession of conveyancing will not be sufficient to ensure that conveyancing services are as competitive as possible. As highlighted by the Competition and Markets Authority (CMA) in its 2016 review of the legal services market in the United Kingdom²⁰, consumers require access to information on price, service and quality available in a market in order to make informed purchasing decisions, and to drive competition in a sector. Licensed conveyancers in England and Wales still represent a small percentage of professionals providing conveyancing services, as the CMA found that consumers lack awareness of conveyancers.

The CCPC therefore recommends that a key role of the Council should be to provide and promote information to consumers on conveyancing services. Furthermore, the CCPC recommends that the LSRA, as part of its function to 'Promote public awareness and disseminate information to the public in respect of legal services, including the cost of such services'²¹, should explore ways which enable consumers to review and compare information about legal services and help consumers understand the quality of service offered by competing providers.

5. What are the potential benefits and challenges to enterprise and national competitiveness with the introduction of a new profession of conveyancer?

Conveyancing services have a direct bearing on the cost base of Irish enterprises, which can impact on the cost of other vital services. Lower prices and greater choice in conveyancing services will benefit enterprises and other bodies seeking to conduct property transactions and transfers. The introduction of the conveyancing profession and e-conveyancing may also lead to faster and more efficient conveyancing service delivery, which would enhance national productivity and growth.

²⁰ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>

²¹ <https://www.irishstatutebook.ie/eli/2015/act/65/enacted/en/print#sec13>

Regulatory reforms which enable new market entry, increased efficiency and the development of key services will help increase national competitiveness. Regulatory reform of non-traded services, such as legal services, are a crucial part of national competitiveness. For the majority of legal services, mostly domestic competition, not foreign competition, can keep downward pressure on prices. It is therefore crucial that a competitive business environment is maintained for legal services, including conveyancing²². The CCPC notes that in 2016, the National Competitiveness and Productivity Council (NCPC) recommended that a specialist conveyancer profession be developed to enhance competition in legal services²³.

6. Are there specific issues related to digital technology and how digitalisation that should inform a decision to establish a conveyancer profession?

The CCPC strongly supports the development of an e-conveyancing system in Ireland. We believe that the digitalisation of the conveyancing process would have significant benefits for consumers and the wider economy. E-conveyancing is expected to reduce conveyancing transaction times, reduce opportunities for fraud, errors and delays and improve transparency²⁴. This would be particularly beneficial in Ireland, where the conveyancing process has been criticised for being prone to delays and errors²⁵.

A sustained move towards an e-conveyancing model would also provide an opportunity to reform the process, simplifying procedures where possible, allowing for a greater ease of access to conveyancing services and ensuring greater transparency between conveyancers and the consumer²⁶. The CCPC recommends that a function of the Council should be to promote competition and innovation, including digital innovation and the simplification of the conveyancing processes. Furthermore, the Council should also keep

²² Shinnick, Edward, 2003. "Aspects of Regulatory Reform in the Irish Solicitor Profession: Review & Evaluation," Quarterly Economic Commentary: Special Articles, Economic and Social Research Institute (ESRI), vol. 2003(2-Summer), pages 1-15. https://www.esri.ie/system/files?file=media/file-uploads/2015-07/QEC2003Sum_SA_Shinnick.pdf

²³ <http://www.competitiveness.ie/bulletins/legal-costs-bulletin.pdf>

²⁴ <https://www.irishtimes.com/news/crime-and-law/move-to-electronic-transactions-part-of-radical-overhaul-of-conveyancing-1.2147509>

²⁵ <https://www.lawsociety.ie/globalassets/documents/media-pressreleases/evison.pdf>

²⁶ <https://www.lawreform.ie/fileupload/Completed%20Projects/LRC%2079-2006%20APPENDIX%20B%20Bearing%20Point%20Modelling%20of%20Irish%20Conveyancing%20System.pdf>

abreast of key issues related to the digitalisation of conveyancing in Ireland. The Council should inform and advise the LSRA on this matter.

The design and implementation of an e-conveyancing model are crucial in order to enable its many benefits. E-conveyancing systems must be robust and secure to be reliable, and must be designed to protect the process from fraud. Furthermore, the regulations and rules relating to conveyancing must allow for e-conveyancing. The current requirement for physical documents and ‘wet ink’ signatures should be reviewed, and alternatives (e.g. digital signatures, secure document transmission/storage) identified and accepted to facilitate e-conveyancing. Section 88 of the Land and Conveyancing Law Reform Act (2009)²⁷ empowers the Minister for Justice to introduce new regulations regarding the general conditions of sale or the contracts for sale or other disposition of an estate or interest in land, which will facilitate ease of introduction of e-conveyancing. The CCPC recommends that the LSRA, in its report to the Minister on this matter, should highlight any changes to rules and regulations necessary to enable e-conveyancing in Ireland²⁸.

The automation of conveyancing has certain implications which will need to be considered, particularly with regard to which party (e.g. the practitioner, owner of the software, the consumer) can be held accountable if something goes wrong in the conveyancing process. The CCPC understands that the e-conveyancing model currently being developed by the Law Society of Ireland would ultimately lead to an e-conveyancing hub with a centrally administered system where key stakeholders of the process could interact. There would be participants who progress the property transfer for the consumer such as conveyancing practitioners, estate agents, and financial institutions, information providers that store property-related information such as land registry, local authorities, court services and Revenue. Other parties may also have some access such as consumers and government agencies and value-added service managers²⁹. As more of the

²⁷ <https://www.irishstatutebook.ie/eli/2009/act/27/enacted/en/html>

²⁸ The CCPC notes that there are already anticipated legislative changes to the [Electronic Commerce Act \(2000\)](#) which would enable exploration of the use of digital signatures in property registrations as part of a paperless registration system: https://www.prai.ie/download/publications/strategic_reports/Statement-of-Strategy-2022-2024.pdf

²⁹<https://www.lawreform.ie/fileupload/Completed%20Projects/LRC%2079-2006%20APPENDIX%20B%20Bearing%20Point%20Modelling%20of%20Irish%20Conveyancing%20System.pdf>

conveyancing process is carried-out through digital means, it will be important that questions in respect of liability between the different parties involved are addressed.

There are also important considerations related to the data being used in conveyancing. As noted by the Council for Licensed Conveyancers in the UK, e-conveyancing requires that data be held on a central platform and becomes the ‘single source of truth’³⁰, it will be important to identify who becomes responsible for data accuracy and data validation³¹. To address this issue, land registrars in a number of jurisdictions such as Sweden, New South Wales (Australia) and the UK are exploring the use of distributed ledger technology or blockchain for title registration or for certain covenants, while some private companies are studying the possibility of completing the entire e-conveyancing process through a distributed ledger³². However, the use of this type of technology still implies the need for careful review of data and data validation and issues concerning this technology should be considered³³.

Attaining the benefits of e-conveyancing will also depend on buy-in and engagement from all stakeholders in the process. For the full conveyancing process to be enabled online, all parties must be present on the platform, and ease of access to the service will be critical for its success³⁴. Experience with e-conveyancing abroad shows that a transition to e-conveyancing and stakeholder buy-in can take time, particularly as there can be significant financial barriers to entry for practitioners in transitioning to an electronic system. The CCPC recommends that the issues explored above should be key considerations for the LSRA when reporting to the Minister on the matter of e-conveyancing. When established, the Council should continue to monitor these and any other emerging issues related to e-conveyancing and keep the LSRA informed of any developments.

³⁰ A single source of truth (SSOT) in information systems is the practice of structuring information models and associated data schema such that every data element is mastered (or edited) in only one place.

³¹ <https://www.clc-uk.org/wp-content/uploads/2020/01/CLC-Conveyancing-Discussion-Paper-singles.pdf>

³² Rosa M. Garcia-Teruel (2019) Legal challenges and opportunities of blockchain technology in the real estate sector. <https://www.emerald.com/insight/content/doi/10.1108/JPEL-07-2019-0039/full/pdf?title=legal-challenges-and-opportunities-of-blockchain-technology-in-the-real-estate-sector>

³³ RICS Research Trust (2020) A critical review of distributed ledger technology and its applications in real estate <https://www.rics.org/globalassets/rics-website/media/knowledge/research/research-reports/rics0077-001-distributed-ledger-technology-review-report--final.pdf>

³⁴ <https://www.rics.org/globalassets/rics-website/media/knowledge/research/research-reports/rics0077-001-distributed-ledger-technology-review-report--final.pdf>

7. Do you consider that there are any particular barriers to the establishment of new providers for conveyancing services?

Legislative Barriers

Currently, as stipulated in Section 58 of the Solicitors Act (1954)³⁵, the process of transferring ownership of property is restricted to practising solicitors when there is an expectation of a fee, gain or reward. Persons undertaking conveyancing while in the employment of a practising solicitor and under their supervision, are exempted from the prohibition³⁶.

It is the CCPC's view that this restriction constitutes an unnecessary barrier for individuals wishing to provide conveyancing services. Providing a high level of consumer protection does not require that the delivery of conveyancing services be limited to solicitors. As previously mentioned, the introduction of a new profession of conveyancer in other common law jurisdictions has not created any consumer detriment and has in fact stimulated competition and brought benefits for consumers.

As noted in the Market Study, it is not necessary for service providers to undergo training in all areas of law in order to provide conveyancing services. Experience in other jurisdictions shows that, while some conveyancing demands a high level of general legal knowledge, much of it is procedural work which can be performed by someone with a narrower legal training. Requiring excessive training to perform a particular function adds to the costs for consumers and is a major barrier to the establishment of new providers for conveyancer services.

Multi-Disciplinary Practices

As stated in a previous submission to the LSRA³⁷, the CCPC maintains the view that multi-disciplinary practices (MDPs) in the legal sector have the potential to provide end-to-end services which should put downward pressure on costs and provide a greater choice of

³⁵ <https://www.irishstatutebook.ie/eli/1954/act/36/enacted/en/print#sec58>

³⁶ There is also a provision in the Building Societies Act 1989 allowing for the possibility that Building Societies might provide conveyancing services. Section 78 of the Solicitors (Amendment) Act (1994) allows credit unions to carry out trust and probate work. However, regulations were never made under these powers.

³⁷ <https://www.ccpc.ie/business/business/research/submissions/multi-disciplinary-practices/>

products and services to consumers³⁸. It is the view of the CCPC that conveyancing practitioners should be enabled to form and be part of MDPs. However, there are important issues in relation to how regulation can and should work in respect of MDPs. In general, the regulatory framework for MDPs should be clear and communicated to consumers.

In this context, the CCPC recommends that the LSRA, with the assistance of the Council, should ensure that regulatory arrangements for conveyancers delivering services as part of an MDP should be clear and maintain high standards of consumer protection. Consumers should be empowered to understand the relationship between the legal and non-legal elements of such a partnership and what their consumer rights are. The relevant complaint procedure related to conveyancing services delivered through MDPs should also be clear and communicated to consumers. Furthermore, the LSRA should consider liability arrangements for conveyancers working for MDPs.

Retail financial services

In 2006, the Market Study also considered other potential restrictions on the provision of conveyancing services, including whether banks and building societies should be able to provide such services. The Market Study noted that these institutions provide a range of products and services which could imply a conflict of interest with the provision of conveyancing advice. This could result in conditional selling or tying, or even cross-subsidisation. The Market Study recommended that such a possibility would probably require detailed regulation and careful monitoring to ensure that such practices would not occur. It also suggested that the possibility of prohibiting banks and building societies from supplying conveyancing services to consumers to whom they are also providing mortgages could be considered³⁹.

³⁸ In the, Market Study TCA noted the potential competition and innovation-led improvements that such models might bring to the Irish legal services market. However, it reserved judgement at that point and recommended that further research be undertaken on non-competition related matters in respect of MDPs.

³⁹ Since then, S.I. 142/2016 which transposed the Mortgage Credit Directive states the following: '13. (1) Subject to the provisions of this Regulation, a creditor or mortgage credit intermediary shall not sell, or offer to sell, to a consumer a credit agreement to which these Regulations apply in a package with other distinct financial products or services or conveyancing services, auctioneering services or other services relating to land which that person may require whether or not in connection with the loan where that credit agreement is not made available to the consumer separately.' In principle this allows for financial service providers to offer conveyancing services to consumers as part of a bundle so long as they are also offered separately to the consumer (i.e. they do not tie the consumer solely to a packaged approach).

The CCPC considers that many of the risks previously implied by the provision of conveyancing services by banks and building societies are now mitigated to a reasonable extent. The CCPC recommends, however, that the Council should articulate strong conflict of interest rules for conveyancers as part of the code of ethics. The code of ethics should also require transparency, accountability and integrity from licenced conveyancers.

8. Are there any specific considerations for the training and models for regulation of a new profession of conveyancer in line with the Authority's statutory objectives that should be taken into account?

Education and training required for licensed conveyancer should be provided at a high and consistent standard, and should be as high as that required for solicitors in the area of conveyancing. However, it is important that education and training requirements for conveyancers should only cover what is necessary to provide conveyancing services and should not represent an unnecessary barrier to entry,

The CCPC recommends that the proposed Legal Practitioner Education and Training Committee (LPET Committee), assisted by the Council, should set and assure standards for conveyancing education and training. As outlined in the LSRA's report on legal practitioner education and training⁴⁰, the LPET should be responsible for the accreditation of providers of legal education and training, and this should include providers of conveyancing education and training.

The LPET Committee should also be responsible for periodic reviews of the definition of competences and standards, and for reviewing accreditations. When doing so, it should consider the risk of any rule or standard in acting as a barrier to entry. The Council should advise the LPET Committee on any new important developments in the delivery of conveyancing services which should be considered. In particular, developments in e-conveyancing should be a key area of focus as they may demand new skills for conveyancers and their education and training should reflect this.

⁴⁰ <https://www.lsr.ie/wp-content/uploads/2020/11/Section-34-ET-Final-Report-to-Minister.pdf>

9. Are there any further considerations that in your view should be taken into account, including in respect to Ireland’s domestic economy and the wider legal services sector?

As a general principle, the Council should regulate the conveyancing profession in a way that is proportionate and does not create unnecessary barriers to the establishment of new conveyancing providers.⁴¹ The CCPC recommends that the Council should regularly review rules and regulations and be required to carry out regulatory impact assessments in order to ensure that they remain relevant and justified.

The CCPC recommends that the Council, when making or proposing regulations, should consider whether licensed conveyancers should be permitted to act for both sides of a property transfer. The CCPC notes that, in England and Wales, licenced conveyancers are permitted to act for both the buyer and the seller in a transaction, while solicitors are forbidden from acting for both side of any case without informing their customer. In Ireland, when providing conveyancing services, solicitors are prohibited from representing both sides of a transaction by the ‘Conveyancing Conflicts Regulation 2021’⁴², which were drafted after a review by the Law Society of Ireland into the issue⁴³. The report recommended that there should be an outright prohibition on one solicitor or firm acting for both vendor and purchaser in transactions for value⁴⁴ because of the inherent risk of conflict of interest involved when negotiating on behalf of a client, or clients, in any transaction involving the acquisition of rights over land.

Conclusion

The introduction of a new conveyancer profession would increase competition in legal services and bring many benefits to consumers such as lower fees and higher quality of service.

⁴¹ The Better Regulation principles of necessity and proportionality will be important in guiding the process.
<https://assets.gov.ie/3477/281118144439-cf60aac3e3504e6f9f62f0ccda38f203.pdf>

⁴² <https://www.lawsociety.ie/Solicitors/Practising/Practice-Notes/Solicitors-Professional-Practice-Conduct-and-Discipline--Conveyancing-Conflict-of-Interest-Regulation-2012-SI-no-375-of-2012>

⁴³ Law Society of Ireland (2012) Conveyancing Conflicts Task Force Report
<https://www.lawsociety.ie/News/News/Stories/Conveyancing-Conflicts-Task-Force-Report1>

⁴⁴ There are two specific exemptions where a solicitor may represent both sides of a transaction and these are detailed in the report.
<https://www.lawsociety.ie/globalassets/documents/committees/conveyancing/report-conveyancingconflicts-tf.pdf>

An independent, levy-funded, Conveyancers' Council should be established by statute to act as a regulator to ensure high standards of conveyance in Ireland and maintain consumer protection, under the oversight of the LSRA. In order to further improve competition in the conveyancing sector and the legal sector in general, consumers should be informed of changes in the market and be enabled to better compare services offered.

An important aspect of the role of the Council should be to keep informed of key issues and developments in the conveyancing sector. While the CCPC strongly supports the development and adoption of technologies and principles that allow for e-conveyancing, there are key issues related to this area which should be reviewed. In general, the Council should regulate the profession in way that is proportionate and which does not create unnecessary restrictions on the sector.

The CCPC is strongly of the view that the introduction of a conveyancer profession under the appropriate regulatory regime would be another positive step in the regulatory reform of the legal sector in Ireland. The CCPC would welcome the opportunity for further engagement with the LSRA in regard to the matters set out in this submission.

ENDS

