

**DEPARTMENT OF FINANCE AND PERSONNEL
(NORTHERN IRELAND)**

REGULATION OF LEGAL SERVICES IN NORTHERN IRELAND

**A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS
(APIL01/06)**

JANUARY 2006

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following individuals in preparing this response:

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REGULATION OF LEGAL SERVICES IN NORTHERN IRELAND

Executive Summary

- APIL believes that the current regulation of legal services in Northern Ireland is both effective and efficient. We would, therefore, question whether such a review is necessary for the Northern Ireland jurisdiction.
- A further illustration of APIL's belief that there is no need for radical changes to the regulation of the legal profession within Northern Ireland is that there is no indication that there are problems with the current system.
- APIL believes that the low number of complaints made to the Bar and Law Society of Northern Ireland illustrates that the current system is working well and does not need wholesale change.
- APIL suggests that the Lay Observer should produce a publicly available annual report containing recommendations for the improvement of the complaints handling process. The legal regulatory bodies would, in turn, have a statutory obligation to respond within a specified time limit to the Lay Observer's report, indicating the reasons for them not adopting certain recommendations.
- In terms of awarding compensation to complainants, APIL does not feel it is appropriate for complaints to be redressed financially, as the purpose of redress is to place a person into the same position which he occupied prior to the problem.
- APIL feels that due to the unique constitution of legal services within Northern Ireland the introduction of new business models – such as Legal Disciplinary Practices (LDPs) and Multi-Disciplinary Practices (MDPs) – would be inappropriate.

Introduction

1. APIL welcomes the opportunity to put forward its comments on the Department of Finance and Personnel's (DFP) consultation on the '*regulation of legal services in Northern Ireland*'.
2. APIL believes that the current regulation of legal services in Northern Ireland is both effective and efficient. We would, therefore, question whether such a review is necessary for the Northern Ireland (NI) jurisdiction. While the review and "*consultation follows the Clementi review in England and Wales*"¹, APIL is unsure whether the same issues need to be addressed and whether the changes suggested are appropriate for Northern Ireland. Indeed this concern appears to be echoed by the DFP itself which states that 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*"².

Issues of concern

The regulatory framework

3. APIL considers that the current NI legal regulatory system works effectively. The DFP, however, suggests that "*there is a potential conflict of interest between the promotion of the [solicitors] profession and its regulation*"³. A possible solution to this issue - which was suggested by Sir David Clementi in his report - would be for the representative and regulatory roles of the legal services regulators to be separated. APIL would only endorse such a change if it was *not* accompanied by the setting-up of a new expensive and unnecessary oversight regulator. For example, the Clementi review in England and Wales proposed the introduction of a Legal Services Board (LSB) to

¹ Consultation Document – page 1

² *Ibid* – page 27, paragraph 5.9

³ *Ibid* – page 28, paragraph 5.13

operate as a 'light-touch' oversight regulator to the current front line regulators. Instead the newly separated functions should be governed by the current bodies but with strict 'ring-fencing' policies in place in order to avoid any potential conflicts of interest. APIL feels that while there has been a significant growth in the legal profession in Northern Ireland over the last twenty years – approximately a 78 per cent increase in the number of solicitor partners and over a hundred per cent increase in the number of qualified barristers⁴ – the number of practitioners is still relatively small. The cost of an oversight regulator would therefore be disproportionate when compared to the size of the legal services profession which it would govern. To illustrate the potential costs of such a regulator, the proposed LSB for England and Wales will cost the profession an initial £4 million with subsequent annual operating costs of £4.5 million⁵. Admittedly these costs represent the regulation of a significantly larger legal profession – there are 35 solicitors in private practice in England and Wales for every solicitor in private practice in Northern Ireland⁶ – yet the costs for legal professionals in Northern Ireland would still be considerable. APIL envisages that any increase in solicitors and barristers costs would ultimately be passed onto consumers in the form of higher fees and undermine any possible benefits which a new regulator would bring.

4. A further illustration of APIL's belief that there is no need for radical changes to the regulation of the legal profession within Northern Ireland is that there is no indication that there are problems with the current system. For instance, while the DFP uses the examples of Enron, Arthur Anderson and the Shipman cases to indicate regulatory regime failures, it states that these are extreme cases "*with no connection to the professionalism of lawyers in Northern Ireland*"⁷. A good illustration of the consumer protection offered by the legal

⁴ *Ibid* – page 15 & 16, tables 2a and 2b

⁵ Department for Constitutional Affairs (DCA): *The Future of Legal Services – Putting Consumers First* (October 2005) page 68 & 69, paragraph 9.2 (see <http://www.dca.gov.uk/legalsys/folwp.pdf> for a copy of document).

⁶ Consultation document – page 15, paragraph 3.22

⁷ *Ibid* – page 26, paragraph 5.4

profession in Northern Ireland is the fact that all solicitors are covered by the Law Society's professional indemnity insurance. This insurance is a centrally negotiated fund which provides compensation for clients in the event of negligence or misfeasance by a solicitor. The minimum cover is £2 million per transaction. In addition, there is a compensation fund which is financed directly by solicitors which provides for eventualities such as solicitor dishonesty or theft. The use of this fund ensures no consumer is left out of pocket.

5. A further protection for legal services clients in Northern Ireland is the fact that the retainer between solicitor and client is a binding contract which the client, if unhappy, can rely on in court. APIL therefore believes that there are sufficient consumer protections within the current Northern Ireland legal services profession to justify the rejection of any substantial changes.

Complaint handling

6. APIL believes that the low number of complaints made to the Bar and Law Society of Northern Ireland illustrates that the current system is working well and does not need wholesale change. For example, in 2003/04 the Law Society of England and Wales received nearly 17 thousand complaints compared to only 300 complaints received by the Law Society of Northern Ireland⁸. Furthermore, the Law Society of Northern Ireland received 17.7 complaints per 100,000 population compared to nearly double that figure (32.4 complaints per 100,000 of population) received by the Law Society of England and Wales⁹.

7. In fact *“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*

⁸ *Ibid* – page 14, table 1

⁹ *Ibid*

*reasonable time*¹⁰. This pressure eventually led to Sir David Clementi's review of the regulatory system in England and Wales, with particular emphasis on complaints handling:

*"The record of complaints handling against solicitors [in England and Wales] has been the subject of much criticism over recent years. In particular, several recent annual reports of the LSO [Legal Services Ombudsman] have been critical of deficiencies in the system. In the main, concerns have centred around the issues of substantial delay in dealing with complaints, and questionable quality in terms of the outcome."*¹¹

8. In contrast, APIL contends that the Northern Ireland system operates efficiently. This view appears to be shared with the DFP which states that the issues with the complaints system in England and Wales *"may not be a problem in Northern Ireland"*¹² and that *"there is evidence [that complaints] are dealt with in a timely manner [in Northern Ireland]"*¹³.

9. While APIL considers that the current system on the whole works effectively, we feel there could be some minor changes in order to increase client satisfaction with the complaints process. These changes, however, should occur within the current complaints structures. The need to address the issue of customer dissatisfaction in Northern Ireland legal services follows the October 2004 Omnibus Survey which indicated that almost 60 per cent of people who pursued a complaint were dissatisfied with how it was handled¹⁴. In England and Wales, the post of Legal Services Complaints Commissioner (LSCC) was specially created in order to tackle such problems by independently reviewing and monitoring how the

¹⁰ *Ibid* – page 30, paragraph 5.19

¹¹ Department for Constitutional Affairs (DCA): *'Review of the Regulatory Framework for Legal Services in England and Wales – Final report'* (December 2004) – page 57, paragraph 17 (see <http://www.legal-services-review.org.uk/content/report/report-chap.pdf> for a copy of the document).

¹² Consultation document – page 30, paragraph 5.19

¹³ *Ibid* – page 32, paragraph 5.22

¹⁴ *Ibid* – page 30, paragraph 5.21

complaints process was functioning. APIL believes there is no need for the creation of a similar post for Northern Ireland as the Lay Observer role – which currently involves the assessment of complaints handling by the Law Society of Northern Ireland – could simply be expanded. It should be noted that the Lay Observer, uniquely, already has complete access to the Law Society's complaints files. We therefore suggest that the Lay Observer could produce a publicly available annual report containing recommendations for the improvement of the complaints handling process. The legal regulatory bodies would, in turn, have a statutory obligation to respond within a specified time limit to the Lay Observer's report, indicating the reasons for them not adopting certain recommendations or the acceptance of the proposals and a timetable to take them forward. This will provide independent oversight of complaints to be transparent as well as allow the Lay Observer to have "*teeth*"¹⁵ in terms of getting the regulators to respond to his recommendations. Part of his role would also include an analysis of why a particular complaint was rejected in addition to the more traditional role of assessing how complaints are handled. Finally, the Lay Observer could investigate ways of promoting the complaints process more widely in order to target the 20 per cent of dissatisfied clients who did not pursue a claim because they "*didn't know how to go about it*"¹⁶.

10. In terms of awarding compensation to complainants, APIL does not feel it is appropriate for complaints to be redressed financially, as the purpose of redress is to place a person into the same position which he occupied prior to the problem. Naturally, if a person has lost money due to the actions of a legal provider, it is only appropriate for this money to be compensated back to him. Where there is no financial loss, however, any monetary award would effectively either be punitive or compensation for the inconvenience caused to the

¹⁵ *Ibid* – page 31, paragraph 5.22

¹⁶ *Ibid* – page 31, paragraph 5.21

complainant, neither of which is appropriate in a complaints system which is designed solely to ensure that any problem is dealt with quickly and efficiently. If this does not happen, then the Law Society should be audited on its procedures and suitable recommendations should follow. By introducing financial compensatory awards, APIL feels that the original intention behind redress is fundamentally altered.

Competition

11. APIL feels that due to the unique constitution of legal services within Northern Ireland the introduction of new business models – such as Legal Disciplinary Practices (LDPs) and Multi-Disciplinary Practices (MDPs) – would be inappropriate. The reason for this is that legal services in Northern Ireland are provided by a network of general practitioners providing a range of services to the local community. Unlike England and Wales – and to a certain extent Scotland – there are not large specialised legal practices. For instance, in England and Wales over 70 per cent of solicitors work in firms of five or more partners, while in Northern Ireland this figure is below 30 per cent¹⁷. There appears, therefore, to be no demand or need for specialised legal services – such as those provided by a LDP – in the vast majority of legal firms within Northern Ireland.

¹⁷ *Ibid* – page 15, paragraph 3.22