

RESPONSE OF THE LAW SOCIETY OF IRELAND

**To the Competition Authority's
Study into Competition in the Professions
of Architect, Barrister, Dentist, Engineer, Medical Practitioner,
Optometrist, Solicitor & Veterinary Surgeon,
pursuant to Section 11 of the Competition Act, 1991 (as amended)**

April 2002

**QUESTIONNAIRE
TO BE COMPLETED
BY PROFESSIONAL BODIES**

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TERMS OF REFERENCE

The terms of reference of this Study are:

“To study and analyse methods and practices affecting competition in the provision of certain professional services, with a view to identifying any potential or actual restrictions on competition, whether arising from legal provisions, professional rules or customs, or otherwise, that have an appreciable effect on competition.

To identify and evaluate any consumer benefits claimed for any such restrictions and to consider whether the restrictions are proportionate to the achievement of any such benefits.

The Study will focus on professions in the medical, legal and construction sectors, specifically: medical practitioners, dentists, veterinarians, optometrists, solicitors, barristers, engineers, architects.”

EXECUTIVE SUMMARY

- The Law Society welcomes the Competition Authority's decision to study the provision of certain professional services. It is right and in the public interest that the provision of such services be reviewed from time to time to ensure that any inherent restrictions on competition result in consumer benefits and are proportionate to such benefits.

The Solicitors' Profession

- It is a vital role of the lawyer in any democratic society to interpose and mediate between the enormous power of the State and the relative weakness of the individual citizen. In order to act in such a capacity, the lawyer needs to be trained in the interpretation of the law, be independent in the advice provided to the client and be subject to the highest ethical standards.
- Competition law clearly applies to any restrictions within the solicitors' profession. Nevertheless, the European Court of Justice has recently held in the *NOVA* case that even a regulation inherently restrictive of competition may be justified where it does not go beyond what is "necessary for the proper practice of the legal profession". The key duties identified by the Court in this case were "the duty to act for clients in complete independence and in their sole interest, the duty to avoid all risk of conflict of interest and the duty to observe strict professional secrecy".
- There are no artificial barriers to entry into the solicitors' profession in Ireland. There are no quotas. Entry is open to law graduates, non-law graduates and non-graduates. The standards for entry are set by academics and specialist lawyers at arms' length from the Law Society of Ireland.
- There are no Law Society recommended standard or scale fees to which the solicitors' profession works. Fees are for negotiation between solicitors and their clients subject, in cases of dispute, to independent determination by Court officials, namely the Taxing Master and the County Registrar.
- Legislation controls legal charges and obliges solicitors to advise clients in advance of the manner, method or quantum of charges.
- People who are not qualified as solicitors can and do advise on Irish legal matters. There are foreign firms serving clients in Ireland. The geographical market is not as local as might be first imagined.

- There are no restrictions on advertising beyond what is required by law to meet the commonly accepted principles of fair and proper advertising to protect the public. There is extensive advertising by solicitors. Indeed, so much so that the Government has recently introduced legislation to curb certain types of advertising which it believes is not in the public interest.
- Every practising solicitor in Ireland contributes to a statutory Compensation Fund which compensates clients of solicitors who suffer loss as a result of the dishonesty of a solicitor in his or her practice as a solicitor. No other profession provides anything resembling this protection. Current reserves are €27.5 million, with additional insurance of €20 million.
- Every practising solicitor in Ireland must maintain professional indemnity insurance to protect the public against negligence in the minimum amount of €1.3 million in respect of each and every claim.
- Certain areas of practice were reserved to solicitors by the Solicitors Act, 1954 - namely the preparation of legal documents for reward to solicitors in the areas of conveyancing and probate – for reasons of consumer protection and to avoid any conflicts of interests or anti-competitive practices.
- There is active and vibrant competition in the market for legal services in Ireland which is demonstrated by the following facts:
 - there is a large number of solicitors and law firms operating in the Irish market;
 - there are no artificial restrictions on entry to the profession;
 - solicitors compete with other professionals/practitioners in the supply of a number of legal services;
 - there are no restrictions or recommendations on the fees to be charged and only limited restrictions on advertising (with no restrictions on the advertising of fees);
 - in a number of areas, users of legal services have countervailing power, e.g. large financial institutions and insurers.

The Law Society of Ireland

- The Law Society of Ireland (the “Law Society”) is a body established by charter, regulated by law generally (public statute in particular) and supervised by the Courts.
- The Law Society is not the only entity involved in regulating the solicitors’ profession – key roles in the regulation of solicitors are also played by the Oireachtas, the President of the High Court and the

Minister for Justice, Equality and Law Reform. It is thus a matter of shared or co-regulation.

- The Law Society is not a disciplinary body in that it has very few and minor purely disciplinary powers. The Law Society is empowered to investigate complaints and to monitor solicitors, but must refer those solicitors to the Disciplinary Tribunal which is independent of the Law Society, for further inquiry.
- Solicitors, in order to practise, do not have to be members of the Law Society.
- The Law Society's education system, facilities and teaching methodology are to the highest international standards.
- The Law Society's mission statement is to be a high performance organisation, which provides manifestly ever-improving quality of service to the Society's members and prospective members and to the public.
- The Law Society acts as a legal 'watchdog' on behalf of citizens by campaigning on issues such as the deficiencies in the courts system, the need for reform of out-dated laws and the efficiency of public administration.
- The Irish solicitors' profession needs to be studied in its specific circumstances. Any 'solution' adopted in another State or profession should not be applied to the solicitors' profession in Ireland without careful consideration.

INTRODUCTION

The Law Society welcomes the Competition Authority's decision to study the provision of certain professional services. It is right and in the public interest that the provision of such services be reviewed from time to time to ensure that any inherent restrictions on competition result in consumer benefits and are proportionate to such benefits.

The Competition Authority has invited the Law Society to complete a questionnaire as part of the Authority's Study. The Law Society is very pleased to do so.

Before responding in detail to the Competition Authority's questionnaire, it may be helpful for the Study if the Law Society:

- (i) discusses, albeit briefly, the role of the lawyer (including the solicitor) in society¹;
- (ii) provides an overview of the Law Society and its activities so as to facilitate the Competition Authority in obtaining a rounded and accurate understanding of the role and functions of the Law Society²; and
- (iii) makes a number of opening observations so as to ensure that the matters before the Competition Authority are described in their full and proper context.

It is the Law Society's firm view that to the extent that existing statutory or other rules may have any restrictive effect on competition in the supply of legal services in Ireland, those restrictions are of limited effect and are, in any event, outweighed by the benefits to consumers of those services and to the public generally and are necessary for the proper practice of the legal profession. Such restrictions are no more than are proportionate to the achievement of those benefits. The Law Society does not engage in any anti-competitive arrangement or practice and is confident that the Competition Authority will come to the same view once it has completed its Study.

The Law Society is committed to giving every reasonable assistance to the Competition Authority in its Study and hopes that this submission will be of assistance to the Competition Authority. The Law Society hopes that there will be an open and comprehensive dialogue on the issues involved. In this context, the Law Society would be happy to meet with the Competition Authority to discuss the issues involved, invites the Competition Authority to visit the Law Society and looks forward to being consulted on any issue relating to the Law Society and the legal profession before the Competition Authority comes to its conclusions on such issues.

¹ See Page 11 below.

² See Page 15 below.

SECTION A: OBSERVATIONS

A.I THE LAWYER IN SOCIETY

THE LAWYER IN A DEMOCRATIC SOCIETY

It is a vital role of the lawyer in any democratic society to interpose and mediate between the enormous power of the State and the relative weakness of the individual citizen. In order to act in such a capacity, the lawyer needs to be trained in the interpretation of the law, be independent in the advice provided to the client and be subject to the highest ethical standards.

Any analysis of the solicitors' profession must therefore take into account not only the ordinary commercial conditions of the market place but also the needs of society as a whole. It is manifestly clear that society must have solicitors and a solicitors' profession which meet, in an appropriate manner, the demands of the market place. It is also clear that where there is, and it will be rare, a conflict between the needs of society and the needs of the market place, the needs of society and the citizen must prevail over all else. This is a principle which was espoused and articulated yet again by the European Court of Justice ("ECJ") in the *NOVA* case on 19th February 2002 when the Court recognised, at paragraph 109 of its Opinion, that even a manifest and palpable restriction of competition, as in this case in the Netherlands, may be justified where it does not go beyond what is "necessary in order to ensure the proper practice of the legal profession"¹.

It is clear therefore that the rules of competition apply to the legal profession but some restrictions on competition may be tolerated where there are even more fundamental needs and imperatives of citizens to be vindicated. In any event, however, such restrictions must be no more than is strictly necessary to vindicate the public interest.

THE SOLICITOR IN SOCIETY

Society needs individual solicitors to be independent, highly ethical and well-trained in the substance and procedure of the law in the jurisdiction in which the solicitor proposes to practise. Each of these attributes of a solicitor deserves to be parsed and analysed individually.

A client should be able to rely on the *independence* of the advice of a solicitor. The solicitor should not have a conflict of interest such as acting for the other side or hoping to make some financial reward for his or her employer by selling some other product or service – equally, a solicitor must be free to give the right advice and not meet the commercial demands of someone who is not a solicitor and thus does not understand the issues involved.

The actions and advice of a solicitor should be the embodiment of integrity and should be *highly ethical* in every regard. Legal advice is not simply a commodity. Recent international business history exemplifies why a professional services firm which has one service to provide can be more independent and impartial while a multi-dimensional firm

¹ Case C-309/99, *J.C.J. Wouters, J.W. Savelbergh, Price Waterhouse Belastingadviseurs BV/Algemene Raad van de Nederlandse Orde van Advocaten*, Judgment of the Court of Justice of 19 February, 2002, (referred to in this submission as the "*NOVA*" case).

can be faced with financial challenges which interfere with the impartiality and integrity of the advice. So too, for example in a more local context, the advice given to a buyer of property must be impartial and not influenced by the considerations of anyone else be they sellers or lenders. The approach of the ECJ in *NOVA* may well have been influenced by the recent ENRON debacle in America which demonstrated clearly the need for high ethical standards and independence of advice.

Clients of any professional person are often at a disadvantage because the professional person has a great deal more information, experience and expertise in the service area. This gap, which is unavoidable, is known as “information asymmetry”. This exists in the context of solicitors also because of the fact that solicitors are specialists in their chosen field. A client is therefore, at times, at a disadvantage to the solicitor in terms of information and experience with which to assess the price and quality of the services the solicitor provides. This “information asymmetry” arises because many legal services are complex and are infrequently needed by most clients. A client therefore needs to be able to rely on his or her solicitor being *well-trained* to a consistent and high standard.

THE SOLICITORS’ PROFESSION IN SOCIETY

Society requires the solicitors’ profession to be independent, highly ethical, impartial, open, transparent, well-trained and to embody the very minimum of restrictions and those restrictions must be only those which are necessary to protect the public who are so reliant on the work of the profession. It should be open to anyone who is competent and capable of being a solicitor to become one. The profession should not be self-serving or self-centred but rather capable of handling, in a modern and sophisticated manner, criticisms and complaints as well as comments and compliments. The profession should emphasise quality and leave price to the market place. The legal profession should have resources and facilities available to it but should not inefficiently replicate those resources leading to greater costs to their clients simply for the sake of the appearance of choice. In an optimum environment, there should be co-regulation of a light-handed variety involving independent judicial and administrative agencies where appropriate.

CONCLUSIONS

Given the needs of society, it has long since been recognised throughout the democratic world, that the relationship between a solicitor and a client is legally and qualitatively different from almost any other commercial relationship. Society, acting through parliament, has made lawyers accountable for their actions, responsible for maintaining the confidentiality of matters entrusted to them by clients and requiring them to undergo training to the highest standards. Society could not tolerate a legal profession without some controls and constraints. Society has also sought to protect clients by bolstering the impartiality of the advice of solicitors by insisting that solicitors remain independent, ensuring a uniform and consistent level of education for solicitors and preserving the privileged nature of the dialogue between solicitor and client. Given the enormous work done by the Law Society over time and particularly in the last decade, and the Oireachtas,

it is submitted that solicitors and the solicitors' profession in Ireland match, and seek to exceed, these aspirations.

A.II THE LAW SOCIETY OF IRELAND

INTRODUCTION

The Law Society is a body established by charter, regulated by law and supervised by the courts. Subject to the supervision of, primarily, (a) the President of the High Court and (b) the Minister for Justice, Equality and Law Reform, the Law Society performs a number of statutory and other functions including the registration, training and supervision of solicitors.

HISTORICAL BACKGROUND

The origins of what is now the Law Society dates back to 1773. In that year, a statute was enacted to regulate the moral and educational qualifications of solicitors seeking admission as attorneys. This, in turn, led to the formation of the Society of Attorneys in 1774 and then the Law Club of Ireland in 1791. This became the Law Society of Ireland in 1830.

In 1841, the name “The Society of Attorneys and Solicitors” was adopted and its first Royal Charter was obtained from Queen Victoria in 1852 (Appendix 1). The Charter was granted in response to a petition by Irish solicitors for official recognition of The Society of Solicitors and Attorneys “with a view to the general benefit of the profession for the purpose of founding an institution for facilitating the acquisition of legal knowledge, and for the better and more conveniently discharging their professional duties.” A Supplemental Charter was granted in 1888 (Appendix 2). The modern Law Society thus traces its foundation to the granting of the Charter in 1852.

The Charters should now be read in conjunction with the Solicitors Acts, 1954-1994 (Appendix 3 contains a compendium of these Acts) and delegated legislation which together provide a continuing recognition of the Law Society’s educational and professional purposes and activities.

The Law Society has evolved into a modern institution which operates an open and non-discriminatory admission policy. There are already around 5,912 practising solicitors and another 1,000 will come on stream over the next 18 months. The Law Society is rightly concerned about quality standards and ethical issues but leaves all pricing decisions to the market place and the courts. Issues of practice such as advertising are left to the Oireachtas to decide.

STATUTORY BASIS

The Law Society is a body with a basis in charter and statute but is always subject to extensive statutory and judicial controls. It is not a self-regulating body of professionals. Its activities are extensively regulated by law and subject to the supervision of the courts.

It is worth emphasising that the Law Society is in a distinct position. It is clear from the case-law of the EU and Irish courts that a body such as the Law Society is not an association of undertakings in so far as it is engaged in, for example, regulatory-type functions which are undertaken by the State, (the Law Society being an emanation of the State) or in exercising powers conferred by the State.

MEMBERSHIP OF THE LAW SOCIETY

A person is entitled to practise as a solicitor if he or she is on the Roll of Solicitors and holds a current practising certificate; membership of the Law Society is not compulsory in order to practise as a solicitor. There are many solicitors who are on the Roll¹ of Solicitors and are not members of the Law Society. As of 31 December, 2001, there were 7,824 solicitors on the Roll with 6,478 being members of the Law Society (i.e. 17.2% of solicitors on the Roll are not members). Of the 5,912 solicitors holding practising certificates on the same date (i.e., 31st December, 2001), some 5,794 were members of the Law Society (i.e. 2% were not members.) It is easy for solicitors to become members of the Law Society: Bye-Law 2(1) provides that any “person whose name is on the Roll and does not stand suspended from practice may become, and may continue to be, a member of the Law Society, on payment, pursuant to this Bye-law, of the annual membership subscription for the current year and subsequent year.” The Law Society has never refused membership to any applicant who was an eligible solicitor. Membership is on an annual basis and can be resigned or not renewed at any time; Bye-Law 2(8) provides that any “member of the Society may resign his membership at any time by written notification to the Secretary, such resignation to take effect on the date such written notification is received by the Secretary.”

FUNCTIONS

Introduction

The statutory functions of the Law Society can be categorised as being:-

- (a) education;
- (b) regulation; and
- (c) maintenance and operation of the Compensation Fund.

The functions of the Law Society which do not have a direct statutory basis can be categorised as being:

¹ The Roll of Solicitors is the roll of solicitors established and maintained pursuant to Section 9 of the Solicitors Act, 1954 (as substituted by Section 65 of the Solicitors (Amendment) Act, 1994), containing an alphabetical list of all solicitors admitted as solicitors pursuant to Section 10 of the Solicitors Act, 1954. Such a roll has an important public interest function because it provides a publicly available record of those who are eligible to be called solicitors.

- (a) representation of the public interest over and above the Law Society's statutory functions;
- (b) representation of members' interests; and
- (c) the provision of services.

Education

While education is dealt with more extensively in Part III of the Questionnaire below, it is useful to make some preliminary observations at this juncture.

The two primary elements of the Law Society's educational function are:

- (i) the education and training of the future members of the solicitors' profession; and
- (ii) the on-going training of existing members of the profession.

The primary objective is to produce well-educated, properly trained and skilled professionals, who are not only conscious of their ethical and professional obligations, but who are also well-equipped with the management and business skills required to provide independent, efficient, reliable and high-quality legal services. Unlike so many other professions, there is a positive imperative for solicitors to ensure that colleagues live up to the highest standards, including ethical standards: every solicitor is anxious to ensure that every other solicitor complies with the highest standards because otherwise all solicitors may have to meet claims on the Compensation Fund by clients and others who suffer loss. Equally, solicitors in partnership are fully liable for all the liabilities arising from the conduct of their fellow partners. High standards also safeguard the reputation of solicitors generally. The maintenance of the highest possible standards, in the interests of both the profession and the public, is regarded as being of fundamental importance. This aim is achieved in very large measure by the very high level of involvement of *practising* members of the profession in the courses run by the Law Society¹. The Law Society seeks to provide training to apprentices/trainee solicitors² and seeks to do so on a long-run break-even basis³ (a policy that is overseen and supervised by the President of the High Court).

¹ Over 500 practising solicitors are involved, at their own choice, on a part-time/occasional basis, in the education courses run by the Law Society. Practising solicitors are able to give an insight into the practice of law which is critical to the training of aspirant or actual solicitors.

² Persons in training to be solicitors have been traditionally referred to as "apprentices" and "trainees" but since 1st January, 2002, they are referred to as "trainees". In this submission, the terms "apprentices" and "trainees" are used interchangeably.

³ See the response to Questions 33-35 above. There is an on-going policy of endeavouring to provide training on a long-run break-even basis. The President of the High Court has to approve any statutory instrument relating to fees. The Society submits accounts to him, indicating the basis of the calculations when seeking increases in fees, for his approval.

Regulation

While regulation is dealt with later at various points in the questionnaire, it is useful to set out some general observations at this juncture.

The rationale for the regulation of any market is that, without it, the market would not work in the best interests of consumers. The main causes of “market failure” are market power in the hands of suppliers and information asymmetries, that is situations where the customer has insufficient information to assess the quality or price of a supplier’s product or service. It is the latter that is relevant to legal services.

The economics literature provides a justification of regulation of legal services in these terms. Quinn (1982)¹ distinguishes two roles that a lawyer may have (a) *the agency function*, where he defines the client’s needs and selects the appropriate strategy to be followed, and (b) *the service function* according to which the lawyer uses his technical expertise in order to implement the chosen strategy. Normally, in the legal context the lawyer performs both functions. Faure (1993)² and Faure et al. (1993)³ suggest that there can be an incentive for a lawyer to recommend a more expensive strategy than the client needs, and that a measure of regulation is needed to protect the consumer from such a risk.

While not necessarily accepting all the points in these papers, the Law Society acknowledges the underlying argument. The law is a complex subject and clients, most of whom only occasionally have recourse to the services of a solicitor, can be in a poor position to assess the quality of a lawyer or of the service he or she provides before a client commits to the transaction. Of course, not all clients are at such a disadvantage vis-à-vis the solicitor. But nevertheless, where there is information asymmetry, clients need to be able to rely on the competence and honesty of solicitors (and others providing legal services). It is a purpose of regulation to provide the necessary protection, even if it should result in some limitation of competition, provided always that the regulation is no more than proportionate to the need to protect the public and the interests of consumers.

Regulation of the solicitors’ profession involves the courts, Government⁴ and the Law Society. While this regulation does not appreciably distort competition, it does ensure a very high degree of protection for the public and is rigorous enough so as to have very serious consequences for solicitors individually⁵. Through the Law Society, the Independent Adjudicator⁶, the Disciplinary Tribunal and the courts, the solicitors’ profession is scrupulously regulated and complaints thoroughly investigated⁷. In doing

¹ Quinn, J. (1982) *Multidisciplinary Services and Preventive Regulation* in Evans, R.M. and Trebilcock, M. (eds) *Lawyers and the Consumer Interest*, Toronto, Butterworths.

² Faure, M. (1993) *Regulation of Attorneys in Belgium* in Faure, M. Finsiger, J. Siegers, J. and Van den Bergh, R. (1993) *Regulation of Professions*, Antwerpen, Makla.

³ Faure, M. Finsiger, J. Siegers, J. and Van den Bergh, R. (1993) *Regulation of Professions*, Antwerpen, Makla.

⁴ Principally, this is the Minister for Justice, Equality and Law Reform.

⁵ See the response to Question 70 below.

⁶ On the Adjudicator, see the response to Question 68 below.

⁷ The media also plays an important role in ensuring high standards because it acts as a watchdog in certain situations.

so, the Law Society is bound to comply with various statutory requirements.¹ The Law Society believes that open and transparent procedures and the even-handed enforcement of high standards of conduct are of benefit to the public and the profession alike, both in terms of developing public confidence in the profession and in minimising the level of default within the profession. (While it will be examined in greater depth later², a default by solicitors may in certain circumstances lead to adverse consequences for some other solicitors³ or even every other solicitor practising in Ireland⁴. This means that solicitors have an incentive to ensure high standards by, for example, training solicitors to the highest standards and supervising solicitors to the highest level possible.)⁵

It is not possible to classify the regulation of the solicitors' profession as "self-regulation" because the regulation of the profession involves certain external bodies including the courts and the Government. Nevertheless, the Law Society does have a central role to play in the regulation of the profession.⁶ Shinnick and Stephen have stated in a recent (September 2000) article⁷ that:

"Commentators have identified three principal instruments of self-regulation, which work against the public interest: (1) restrictions on entry; (2) restrictions on fee competition; and (3) restrictions on advertising and other means of promoting a competitive process within the profession."

Whatever the validity of this classification as a generalisation, the Competition Authority will note that none of the three forms of self-regulation that the authors suggest could work against the public interest are applicable to regulation, whether self-regulation or statutory regulation, of the solicitors' profession in Ireland by the Law Society. In particular:

- (1) the Law Society does not restrict entry into the profession and in fact facilitates entry by operating non-discriminatory examinations open to graduates and non-graduates, treating law graduates and non-law graduates equally, not operating quotas, having independent examiners set standards etc, without regard to the demand for lawyers and publishing information on how to become a solicitor;

¹ A failure to comply with these requirements could lead to court action.

² See the response to Question 68 below.

³ E.g. negligence by one partner in a firm means that all other partners may be made personally liable for the default as well as having to pay higher personal indemnity insurance premiums. It is noteworthy that solicitors are personally liable.

⁴ A claim on the Compensation Fund to compensate someone can result in an increased levy on every other practising solicitor. There is no power to make an interim levy, i.e. mid-year. The contribution is an annual one. Claims may be paid in instalments as the Society feels necessary. If a large claim was to come out of the Fund with the effect of depleting it, rather than looking for additional contributions, payment would be staggered. However, this is highly unlikely to arise considering the €27.5 million currently in reserve.

⁵ As will be clear from the description and discussion below, the Law Society's regulatory functions are exercised in a manner discrete from other activities of the Law Society.

⁶ There are several efficiencies and other benefits to be gained by this means.

⁷ Shinnick, E. Stephen, F. (2000) *Professional Cartels and Scale Fees: Chiselling on the Celtic Fringe?*, International Review of Law and Economics 20, pp. 407-423 (Issue can be taken with several aspects of this paper).

- (2) the Law Society does not issue any guidance whatsoever on the fees to be charged by solicitors – fees are a matter for negotiation between the individual solicitor and client subject to independent determination, in cases of dispute, by Court officials, namely the Taxing Master and the County Registrar. Moreover, there is a statutory regime governing some aspects of the fees charged by solicitors¹; and
- (3) the very limited advertising restrictions discussed at Questions 48-52 below are necessary and proportionate for the protection of the public.²

In addition to its regulatory powers, the Law Society is vested with a number of statutory powers designed to protect the public. These powers all help to ensure the proper regulation of solicitors and protection of the public interest:

- the power to refuse a practising certificate;
- the power to issue a practising certificate with conditions;
- the power to seek a freezing order;
- the power to require the production of documents;
- the power to initiate bankruptcy proceedings;³
- the power to prosecute offences; and
- the power to make regulations governing solicitors' accounts and the treatment of clients' moneys.

These powers are examined at various other parts of the submission but suffice it to say, for the present, that, international and national experience amply demonstrates, the public interest could not be fully served without these restrictions being in place and they are proportionate to meeting the needs of the public.

Maintenance and Operation of the Compensation Fund

The Law Society has a statutory obligation to:

- maintain a Compensation Fund with a minimum reserve of €1.27 million (i.e. IR£1 million) as at 1st April in every year; and

¹ See, e.g. Section 68 of the Solicitors (Amendment) Act, 1994.

² In practice, there is a considerable amount of advertising of solicitors' services.

³ The Law Society is unable to appoint a liquidator because solicitors' firms are not allowed by law to incorporate.

- make payments out of that Fund to any client of a solicitor who suffers loss as a result of the dishonesty of that solicitor in his or her practice as a solicitor.

The statutory Compensation Fund is designed to protect clients in various circumstances. Every practising solicitor in Ireland contributes to the Fund. Many other professions may call for high standards to protect the reputation of the profession in question but, in the case of solicitors, there is a real tangible and practical reason why the Law Society and its members call for high standards – a claim against the Compensation Fund means that all the other practising solicitors must pay for this claim.

The Compensation Fund was established in 1954 and has operated since then. It is based in statute. The underlying rationale of the Fund is to ensure that a client of a solicitor who suffers loss as a consequence of the dishonesty of a solicitor should be compensated by the profession as a whole. The Fund complements the professional liability insurance which solicitors must have in any event. In “picking up the tab” for any dishonest colleague, the profession as a whole seeks to mitigate the damage caused - both financially and morally – by the dishonest deeds of a tiny minority of its solicitors. In the establishment and maintenance of the Fund, the profession demonstrates its commitment to integrity and reinforces the view that the profession is one in which members of the public can place their trust. The Law Society is not aware of any other profession that provides such a comprehensive guarantee of compensation to the users of its services. While it may well be a restriction – the need for a solicitor to be part of the Compensation Fund – the consumer or public benefit of such an obligation is very considerable¹ and proportionate to the aim to be achieved (i.e. protection of the public interest by compensating the victims of dishonesty).

Section 29 of the Solicitors (Amendment) Act, 1994 (or the “1994 Act”) provides for a fund to compensate clients. The Compensation Fund comes into operation when money entrusted to a solicitor is lost through fraud or dishonesty. Section 21(4)(a) of the Solicitors (Amendment) Act, 1960 (as inserted by Section 29 of the Solicitors (Amendment) Act, 1994) provides:-

“Where it is provided to the satisfaction of the Society that any client of a solicitor has sustained loss in consequence of dishonesty on the part of that solicitor or any clerk or servant of that solicitor arising from the solicitor’s practice as a solicitor within the jurisdiction of the State, then, subject to the provisions of this section, the Society shall make a grant to that client out of the Fund”.

The Compensation Fund must have a minimum reserve of €1.27 million with which to meet claims.² In practice, the Law Society maintains a fund greatly in excess of its statutory obligations (current reserves are €27.5 million, with additional insurance of €20 million and an excess of €5 million) and has never failed to pay out in respect of any

¹ The Compensation Fund applies to all practising solicitors (other than those in the full-time service of the State) and not just members of the Law Society.

² Section 22(2) of the Solicitors (Amendment) Act, 1960, as inserted by Section 30 of the Solicitors (Amendment) Act, 1994.

valid claim. Statutory annual contributions to the Fund are made by all practising¹ solicitors, with the exception of solicitors in the full-time service of the State². Since 1994, there is a statutory limit of IR£350,000 (i.e. ~444,408) on individual claims against the Fund, although this limit can be exceeded in cases of grave hardship (but this limit has not caused any difficulty in practice). The limit has been increased to ~700,000 by the Solicitors (Amendment) Act, 2002 and the minimum reserve in the Fund as at 1st April in every year has also been increased by virtue of that Act to ~2 million. The Act will come into effect on the making of Ministerial Orders.

The ability of solicitors to handle, hold and transfer clients' funds facilitates (and is often essential to ensure) the smooth conduct of legal transactions (e.g. property conveyancing) and serves the needs of both the individual³ and business world⁴. The risk and responsibility associated with the exercise of this right is recognised within the profession by the maintenance of the Fund and the obligation to contribute to the Fund.

Representation of the Public Interest

Apart from the protection and representation of the public interest in the areas of education, regulation and maintenance of the Compensation Fund, the Law Society performs certain other functions. The Law Society's public relations and policy initiatives are not exclusively defined by or confined to issues of interest to the profession. The Law Society seeks to proactively promote and protect the interests of the public, particularly in the area of law reform. The Law Society has a full-time Parliamentary and Law Reform Executive and has committed itself, through its Law Reform Committee, to the production of detailed studies and reports on areas of the law requiring reform. In recent years, it has produced reports on the law relating to domestic violence, adoption law, mental health and nullity (copies are enclosed at Appendices 4, 5, 6 and 7).

The Law Society is proud of its function as a legal 'watchdog' on behalf of citizens, concerned to ensure that justice is fairly and expeditiously done and to campaign on issues such as the deficiencies in the courts system, the need for reform of out-dated laws and the efficiency of public administration. In this context, the Law Society supports the role played by solicitors in society as a whole.

The Law Society awards prizes for ideas on law reform and makes awards to journalists for their contribution to informed debate in the media on legal issues. It is believed that these are valuable and tangible contributions by the Law Society to the representation and protection of the public interest.

In addition, the Law Society is involved in a technical assistance project for commercial law training for under-privileged lawyers in South Africa which has received aid from

¹ Irrespective of whether or not they are members of the Law Society of Ireland.

² The exception for State-employed solicitors owes its origin to Section 22(3) and (5) of the Solicitors (Amendment) Act, 1960.

³ E.g. taking a deposit for a house as a stakeholder.

⁴ E.g. receive the proceeds of sale of a company or business.

the Irish Government's Overseas Aid Budget. Approximately ten solicitors representing the Law Society have worked on a voluntary basis to produce and deliver a commercial law course in South Africa. This initiative followed on from voluntary legal training given to the Gdansk Bar in Poland approximately five years ago which was also aided by the Irish Government.

Representation of Members' Interests

As the representative body of the solicitors' profession, the Law Society has a role in representing the interests of its members and does so without apology. The Law Society has dealings with Government and other policy-makers and regularly makes submissions on a wide variety of legal, social and policy issues. It also seeks to express the views of the profession through the media and to secure support and understanding for the Law Society's position on various issues.

It might be naively suggested that the Law Society is a representative body of one distinct group of people – in fact, the Law Society is a combination of employed and employer solicitors, principals and employees, equity and salaried partners, large and small firms, urban and rural as well as generalist and specialist law firms. It is therefore not a special interest group serving and fulfilling a self-interest in the conventional sense of that term because of the diversity of interests involved¹.

The Provision of Services

The Law Society provides a variety of services² to its members, including a library service, a Website, consultation rooms, bar/catering facilities, group financial services schemes (e.g. pensions), a company formation service, accommodation facilities, various publications and advice from technical committees on particular areas of legal practice. Most of these services operate in competition with other service providers and members of the Law Society are free to accept or reject these services.

DIFFERENCES FROM THE LAW SOCIETY OF ENGLAND AND WALES

¹ The ECJ recently held in the *NOVA* case at paragraphs 113-115 that the Netherlands Bar Association could not be categorised as a group of undertakings for the purposes of Article 82 "inasmuch as registered members of the Bar of the Netherlands are not sufficiently linked to each other to adopt the same conduct on the market with the result that competition between them is eliminated... In the absence of sufficient structural links between them, members of the Bar cannot be regarded as occupying a collective dominant position for the purposes of Article [82] of the Treaty... Furthermore..., members of the Bar account for only 60% of turnover in the legal services sector in the Netherlands, a market share which, having regard to the large number of law-firms, cannot of itself constitute conclusive evidence of the existence of a collective dominant position on the part of those undertakings... In light of the foregoing considerations... a body such as the Bar of the Netherlands does not constitute either an undertaking or group of undertakings for the purposes of Article [82] of the Treaty".

² See the response to Question 11 below.

In the context of understanding the role of the Law Society, care should be taken not to seek to mistakenly apply in the Irish context, lessons learned in other jurisdictions. Some examples of the differences between (a) Ireland and (b) England and Wales demonstrates the dangers of assuming that Ireland is the same as elsewhere.

For example, the Law Society of England and Wales “issues guidance on how to calculate the value element in non-contentious work, based on a percentage of the value of the property or money concerned. There are a number of fee scales covering probate, domestic conveyancing, other non-contentious work and charges when acting on behalf of a mortgage lender”¹. The Law Society of England and Wales publishes a practice advice note on “Non-Contentious Costs” on its website at www.lawsociety.co.uk. The Irish Law Society is the direct opposite to its counterpart in England and Wales in regard to guidance on fees; the Irish Law Society gives no such guidance and has no fee scales whatsoever.

There has never been an exemption from the competition rules for the Law Society of Ireland such as the exemption that applied in the UK in respect of the Law Society of England and Wales. In this regard, the Law Society of Ireland has always endeavoured to act in accordance with competition rules (for example, the abolition of fee scales after the enactment of the Competition Act, 1991).

The profile of the legal profession in the UK is quite different to the Irish legal profession in that there is a much higher proportion of solicitors engaged in commercial practice. The “high street” practitioner is more defined in the UK than in Ireland where the vast majority of solicitor practices consist of one to two solicitors.

With regard to solicitor training, only solicitors who are licensed by the Law Society of England and Wales are permitted to take solicitor trainees. The Law Society of Ireland permits all solicitors who are five years qualified to take apprentices.

There should be no attempt to apply conclusions or prejudices developed abroad without local verification and validation in the context of the Irish market. There should be no assumption on the part of anyone that the situation in Ireland is the same as it is elsewhere or that models adopted elsewhere may be relevant in Ireland.

¹ OFT, *Competition in Professions* (2001), para. 213.

A.III A PERSPECTIVE ON THE MARKET

INTRODUCTION

The market(s) for legal services is easily capable of being misunderstood and misrepresented. Almost everyone has had some experience – but usually very limited – or has some story, perhaps true or false, about legal services. Indeed, so often, the view which so many people form about the legal profession in any country is influenced by such factors as the portrayal of the profession in the print and visual media (particularly, the media originating from the US). There is a real need for tangible and verifiable analysis.

Clearly, the Competition Authority (or any other competition regulator¹) may draw conclusions on the state of competition in a market only once it has conducted a thorough and proper analysis of the market. It is therefore expected that the Competition Authority will only draw conclusions in this Study after conducting a complete and incisive analysis of the relevant market(s). Any conclusion made on the basis of popular misconceptions, over-simplifications and wild inaccuracies without such an analysis could be flawed and not suitable for implementation.

SCOPE OF THE MARKET

The market for the provision of legal services is much wider than is contemplated in the terms of reference of this Study. The Study appears to approach the issue in terms of formal professional structures and seems to assume that solicitors have a particular market in which they alone operate. However, there is also the wider *legal services* market which is served by, among others, solicitors.

It is important to bear in mind that the legal profession supplies a wide spectrum of different services rather than a single discrete service. In some of these, the services are provided not only by solicitors but also by other professionals or practitioners. If the services offered by these various providers are regarded as close substitutes by customers, in that they would readily switch from one type of supplier to another in response to a change in their relative charges (demand-side substitutability), then those providers are engaged in the same market since the one type of provider exerts a competitive constraint over the other. Similarly, if one type of provider can readily switch from one field of legal service to another upon a change in their relative profitability (supply-side substitutability), those providers are engaged in the same market.

Where substitution is possible, the market will be wider than the services of solicitors only. For example, PriceWaterhouseCoopers claims that it is the largest law firm in the world and it operates in Ireland. In an assessment of competition in the supply of legal services, it would therefore be necessary to consider the substitutability between the services offered by this firm, for example in the field of tax law and advice, and those of solicitors. Another example is the provision of advice on competition law and policy. Here the services of economists may be substitutable, at least partially, for the services of

¹ E.g. in the context of the European Union, see Case 234/89 *Stergios Delimitis v Henninger Brau AG* [1991] ECR I-935, [1992] 5 CMLR 210.

solicitors. Indeed, several former members of the Competition Authority or other bodies who provide consultancy services would be considered by solicitors to be competitors in this area of work.

Legal services are also provided by in-house lawyers and by those members of the public willing and/or able to provide a service themselves, e.g. in making a will (self-supply). While not to be regarded as sufficiently close substitutes for the services of solicitors in private practice to be in the same market, these sources of supply can exercise some competitive constraint. If solicitors' charges for probate were to increase significantly, for example, an increase in self-supply could be forthcoming, eroding the revenues expected from the price increase.

In short, market definition with respect to the supply of legal services is not straightforward but what can be said is that the market is not to be identified solely with those solicitors in private practice.

SUPPLIERS IN THE MARKET

It is clear that the services provided by solicitors are, to some extent, substitutable by the services which are provided by other service providers. Obviously, not all of these suppliers can substitute their services for solicitors but there is a higher degree of substitutability than might be initially imagined. Indeed, the OECD noted in its Report on Competition in Professional Services¹ that:-

“Lawyers in nearly all Member States have a monopoly on representing clients in court... Some overlap with other professionals is emerging, though, as accountants enter into areas such as tax law, company law and corporate planning”.²

Such a conclusion is even more accurate in the Irish context in some respects. There are *some* areas of practice where the persons providing advice on various legal matters, to a greater or lesser extent include the following: solicitors; barristers; law graduates working as in-house lawyers;³ economists;⁴ accountants;⁵ tax advisors⁶; trademark attorneys; patent attorneys; accident claims consultants⁷; credit unions;¹ employers'

¹ OECD Report of 23rd February, 2000 (DAFFE)/CLP (2000)2.

² Ibid. page 22.

³ It is perfectly possible to act as an in-house counsel or legal advisor of a business or organisation in Ireland without being qualified as a solicitor, barrister or otherwise. There is no public register of lawyers working as in-house counsel. A significant number of such executives are neither solicitors nor barristers.

⁴ It will be well-known to the Competition Authority that many economists advise or comment on, for example, the Competition Acts, 1991-1996 and Articles 81-89 of the EC Treaty. The opinions and work of economists cover issues of competition law. These economists compete in many ways with solicitors.

⁵ It is well-known that accountants give tax advice as well as advice on a variety of issues such as employment law, company law, company secretarial matters and so on.

⁶ Solicitors, accountants and tax advisors normally compete very aggressively in terms of tax advice work. While accountants or 'tax advisors' are primarily the ones doing computational work, there is no doubt that solicitors, tax advisors and accountants compete aggressively for tax advice work. Many of these advisors, but not solicitors, are able to incorporate their practices with limited liability.

⁷ This is particularly so in the case of personal injury cases.

organisations;² trade unions;³ citizens' advice bureaux; free legal aid centres; family mediators; banks⁴; management consultants; operators of web-sites such as those relating to wills; self-supply;⁵ and foreign lawyers⁶.

There is a high degree of substitutability between these providers in certain, albeit limited, instances. There is very considerable freedom on the part of solicitors to compete with these providers and *vice versa*. Indeed, anyone may provide almost every legal service⁷. In respect of the very few services reserved to solicitors⁸, anyone may also provide those services provided it is not for reward.

¹ Since the entry into force of Section 78 of the Solicitors (Amendment) Act, 1994, credit unions may, in circumstances prescribed by that Act, provide probate services. It is believed that they have not done so because of the costs of obtaining professional indemnity insurance (the premiums for which are very high) and operating a compensation fund to protect clients. (As a matter of law, solicitors must obtain such insurance and operate, at their own expense, such a compensation fund).

² E.g. the Irish Business and Employers' Confederation (IBEC) has an extensive employment law advisory service. It has several people (including some solicitors) giving advice on employment law matters to around 8,000 member businesses. Solicitors elsewhere giving employment law advice on a regular basis would regard IBEC as a competitor.

³ E.g. various trade unions regularly provide employment law advice to their members and, indeed, represent their members before quasi-judicial tribunals e.g. the Labour Court, the Employment Appeals Tribunal etc.

⁴ E.g. trust services.

⁵ It is possible that a lay client may self-supply. It happens much more frequently than might be imagined. First, many people write their own wills and often use pre-printed will forms which are available from stationers. Secondly, some people defend themselves in litigation. Thirdly, many people conclude and write their own contracts; indeed, it may be argued that the vast majority of contracts are concluded without legal intervention. Some businesses file their own documents with bodies such as the Companies Registration Office. Many businesses and others will complain to the Competition Authority without legal assistance. Some businesses and organisations will approach barristers directly for opinions and not use a solicitor. (Obviously, there are very serious legal risks associated with such self-supply but that fact does not deny that it happens on an extensive basis).

⁶ This issue is examined in various parts of this submission. In passing, it is worth mentioning that following the entry into force of the European Communities (Freedom to Provide Services) (Lawyers) Regulations, 1979 (S.I. No. 58 of 1979) (which incorporated EC Council Directive 77/249 into Irish law), a foreign lawyer (as defined in the Directive) may provide legal services in the State, subject to certain conditions and exceptions (notably the preparation of a formal document (i) to obtaining title to administer the estate of a deceased person and (ii) creating or transferring an interest in land). (These being well-recognised restrictions around the EU). Furthermore, the European Communities (General System for the Recognition of Higher Education Diplomas) Regulations, 1991 (S.I. 1/1991) together with the European Communities (Second General System for Recognition of Professional Education and Training) Regulations, 1996 (S.I. 135/1996) introduced a general system for recognition of higher education diplomas awarded on completion of professional education and training of at least three years duration. The Regulations, which are based on Council Directives 89/48 and 92/51, promote the free movement and establishment of professional persons including lawyers throughout the EU. See also Directive 1998/5/EC of 16 February 1998, the Establishment Directive, which facilitates the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained and, despite, not yet being implemented into Irish law, the Law Society has already admitted a lawyer under the Establishment regime.

⁷ The services restricted by law to solicitors are very few: see the response to Question 55 below.

⁸ I.e. the limited restrictions relating to probate, conveyancing and litigation.

Thus, for example, businesses or State bodies hiring in-house counsel or in-house legal advisors may, and do, choose people who are (a) solicitors or (b) barristers¹ or (c) law graduates without being qualified as either a solicitor or barrister or (d) persons who are not formally qualified in law. Similarly, many clients in Ireland seeking advice on various matters such as taxation, company law, European Union law, financial services or competition law can seek, and do get, advice from persons who are not solicitors but may be, for example, barristers, former regulators or accountants.

The fact that there are some alternative suppliers does not take from the fact that there should be some restrictions and standards, provided they are reasonable and proportionate to the need to protect the public interest – as they are in the case of solicitors. Clearly, any restriction (e.g. the Compensation Fund) imposed on solicitors should apply equally to all others who serve the public in comparable circumstances.

There are, in law and practice, few areas of practice which are reserved to those who are qualified as solicitors² and not all of these solicitors are members of the Law Society. No practice area is reserved to members of the Law Society. In so far as there are restrictions, these restrictions are deemed necessary by the Oireachtas. The consumer benefits outweigh any such restrictions and are proportionate to the achievement of such benefits.

GEOGRAPHICAL MARKET

The extent of the geographical market for legal services should also be determined by reference to demand-side and supply-side substitutability. For many legal services, the client will initially choose among solicitors (and any competing providers) based in his locality. But this does not mean that the market is necessarily a local one. Clients are generally able to substitute the services of solicitors based further afield if it becomes economic to do so and solicitors in one part of the country can quite readily begin to offer services in another part if it becomes economic to do so. Solicitors in one area are therefore subject to competitive constraints from solicitors (and any non-solicitor providers of the service) who are based in other locations. For several reasons, the market for legal services can be considered to be at least national in its geographical scope.

First, the law is uniform throughout Ireland - there are no federal or regional jurisdictions - and this facilitates a national market. Some foreign jurisdictions are federal in nature and therefore have different laws leading to different actual or potential markets – this is why, for example, Australia, Canada or North America are not good comparators to the Irish market. In federal States, lawyers qualified in one State may not be able to practise in another State – for example, in the US, it is a criminal offence to practise law in a State without a licence from that particular State; even if the lawyer is qualified to do so in other States. In Ireland, solicitors are free to practise in all parts of the State (and beyond in certain cases as well).

¹ See the comments of Geoghegan J in *Bloomer et al v The Incorporated Law Society of Ireland*, High Court, 3rd December 1999, page 10 where the barrister was doing the work of a solicitor.

² See the answer to Question 55 below.

Secondly, many clients will continue to use the same firm irrespective of where the transaction arises or where they now live. For example, the conveyances of many houses in Dublin, Cork or other major population centres are undertaken by solicitors based outside those centres with whom the purchasers or vendors have connections.¹ Similarly, purchases of holiday homes in various parts of Ireland are often undertaken by solicitors elsewhere in Ireland.

Thirdly, there are several instances of lawyers (who are generally not Irish solicitors) from outside the State providing services in Ireland or to Irish-based clients. This has happened in a wide variety of contexts. English and US law firms regularly advise on various legal matters in Ireland. English and Northern Irish firms regularly advise on conveyances in Ireland. Some Northern Irish firms conduct litigation in Ireland. For example, an English law firm has established an Irish office to do construction-related work in Ireland. US, English and South African law firms have either established an office in Ireland or established links with Irish-based firms to handle litigation² or other disputes in Ireland. This international dimension is facilitated by reciprocal arrangements³ and multilateral measures. The multilateral measures include the European Union's Services Directive and the Establishment Directive. Ireland facilitates lawyers crossing borders – for example, a Northern Irish solicitor may become an Irish-qualified solicitor and may set up in practice in this jurisdiction without the need to have been in practice for any period of time.⁴ A foreign-qualified lawyer may become an Irish solicitor without having to relinquish his or her original foreign qualifications or sit an Irish language examination. Conversely, it should also be noted that Irish lawyers do a considerable amount of business overseas either through permanent offices or other representations or simply providing their services overseas. During 2001, some 78 persons having Irish practising certificates were practising, on a permanent basis, outside Ireland and many, many others were providing advice to persons outside Ireland on a services basis or without an Irish practising certificate.

Finally, it is perfectly practical for solicitors to serve clients in many instances nationwide because so much can be achieved by telephone, fax and e-mail. This is why many solicitors can, and often do, practise on a national basis.

CONCLUSIONS

¹ E.g. someone who moves to Dublin may use the solicitor used by their family elsewhere in Ireland.

² E.g. tobacco litigation where US firms have established operations in Ireland or formed links with Irish firms.

³ Reciprocal agreements are in place under two regimes. Under the Mutual Recognition of Diplomas Directive, the Law Society has complete reciprocity with those whose first place of qualification as lawyers are as solicitors in Northern Ireland and England & Wales. Under this, the Society also has a system of reciprocal examinations in place with the legal professions in all other EU and EEA Member States. Under Section 44 of the 1954 Act (as inserted by Section 52 of the 1994 Act), the Society has a reciprocal examination arrangement with the New York State Bar and the New Zealand Law Society. The Society has a similar arrangement with the Pennsylvania State Bar but five years post qualification experience is required in either jurisdiction.

⁴ Conversely, an Irish solicitor needs three years post-qualification experience before he or she is permitted to set up his or her practice in Northern Ireland.

It is submitted that solicitors operate in a wider product market and a wider geographical market than might first be perceived. The service market is, in many instances (but admittedly not in all instances) one for lawyers generally and not just solicitors. The geographical market is, in many instances, Ireland and not just a local market. This wider market should not prejudice the fact that all clients and anyone depending on the services of a solicitor (or alternative service provider) needs and deserves a certain level of proportionate protection in the public interest.

A.IV THE PUBLIC INTEREST DIMENSION AND THE ROLE OF STANDARDS

INTRODUCTION

It is submitted that the “public interest” dimension to the application of competition law to the provision of legal services must be borne in mind at all times. The public¹ must be protected at all times from unscrupulous² practices when perpetrated by the provider of any service, including the provision of legal advice. All providers of such services should be subject to the same minimum obligations.

Equally, there are certain values and principles which any civilised society needs to vindicate and lawyers (including solicitors) are charged by society with the task of upholding such public interest values.

NEED FOR SOME CONTROLS

There is a good policy reason for not allowing the provision of legal services to be entirely uncontrolled. The law is a complex subject and clients, most of whom only occasionally have recourse to the services of a solicitor, are usually in a poor position to assess the quality of a lawyer or the quality of the service the lawyer provides, before they commit themselves to the transaction. Indeed, in some circumstances, a client will be in a little better position to judge the quality of the service after the event – as in the case with some other services. Given such information asymmetries, a principal purpose of the regulation of the profession is to provide the public with the quality assurance that goes with knowing that every solicitor has had the same necessary training in the law and is subject to the rules and codes of conduct of the profession.

There would be a number of risks to the public interest if competition in the supply of legal services was entirely or substantially uncontrolled. Imagine if there were no restrictions or regulations in regard to the practice of solicitors. First, anyone could call themselves a ‘solicitor’ and the public would have no meaningful way of understanding or appreciating the quality (or lack of it) of any particular service provider. Secondly, clients would have none of the protections, as currently afforded to them – e.g. the Compensation Fund or professional indemnity insurance. Thirdly, misconduct would go undisciplined. Fourthly, clients would not have their legal rights and duties fully or properly explained to them or vindicated. Fifthly, third parties – such as beneficiaries of estates – may have their interests damaged if legal work were to be done by unsupervised and unqualified people.

While the work of solicitors is very similar to many service providers, there are some important differences. It has been recognised by competition authorities internationally that the maintenance of standards is critical. In the *NOVA* case, the European Court of Justice referred to the need to have circumstances which facilitated the proper practice of law. This meant, for example, that there could be restrictions on multi-disciplinary practices because the independence of the legal profession would be damaged. The

¹ In this context, the ‘public’ means not just clients but also third parties whose interests may be damaged by the (in)actions of solicitors (e.g. beneficiaries under a badly drafted will).

²The public needs to be protected not only from dishonest or unscrupulous but also inappropriate or negligent behaviour.

South African Competition Commission stated in its report “Competition Policy and the Professions” that the “position of the professions is a matter that must be addressed in a way that balances standards against market restrictive practices.”¹ The OFT in its 2001 *Competition in Professions* report stated that there is a need to strike “the right balance between consumer benefits from competition and from protection”.²

The need for protection of the public results in the need for regulation. This regulation can take various forms including self-regulation, regulation by voluntary adherence to codes, statutory regulation (or some combination thereof). It is submitted that competition law is neutral regarding the appropriate form of regulation, paying more attention to the substance and to the effect of the regulation.

The Law Society does not decide what controls are in the public interest. It is the Oireachtas, the European Union and the courts that largely do so. The Oireachtas has chosen to enact legislation to provide “for the admission, enrolment and control of solicitors of the courts of justice and to provide for other matters connected, with the matters aforesaid.”³ In this context, the courts ensure that the Oireachtas does not act unconstitutionally and that the Law Society does not act either unconstitutionally or *ultra vires*. The Law Society’s role in this context is explicitly provided for by the Oireachtas; for example, it has made statutory provision for the Council of the Law Society.⁴

Such restrictions on competition as may exist with regard to solicitors exist for the purposes of protecting consumers and the public generally or, for some other regulatory reason which has been judged to be necessary by, for example, the Oireachtas or the Minister for Justice, Equality and Law Reform.

It is also hoped that the Competition Authority will bear in mind that there must be, in certain circumstances, “regulation” alongside “competition” because of the need to protect some particular element or interest. It would be wholly unrealistic, impractical and poor policy to have uncontrolled competition without paying attention to the need to protect clients and the public generally from inappropriate or undesirable conduct. It is anticipated that the Competition Authority would not seek to interfere with the ability of the Oireachtas to legislate and regulate for such protection and regulation.

¹ Competition Commission, *The Evolution of Policy in South Africa*, chapter 6.

² Director General of Fair Trading, *Competition in Professions* (OFT 328, 2001), paragraph 9.

³ Solicitors Act, 1954, Long Title.

⁴ Solicitors Act, 1954, Section 3(1).

SECTION B: QUESTIONNAIRE

PART I – DETAILS OF YOUR ORGANISATION

This section seeks to elicit general information about your organisation, such as its contact details, organisational structure, and roles. It also requests provision of relevant documentation produced by your organisation.

CONTACT DETAILS

1. What is the full name of your organisation?

Full Name

As a matter of law, the full name of the organisation is the Law Society of Ireland.

The Law Society of Ireland was called the “Incorporated Law Society of Ireland” until November 1994 when the name was changed by virtue of Section 4(1) of the Solicitors (Amendment) Act, 1994.

2. What is its postal address? (Please include the addresses of any branches / sub-offices, if applicable).

Postal Address

Blackhall Place,
Dublin 7.

Branches/Sub-offices

The Law Society does not have any branches but it has:

- (i) a division based at 33 Manor Street, Dublin 7 which deals with the closure of solicitors' practices. The Practice Closures division involves the supervision and distribution of files of discontinued solicitors' practices (e.g. on the death of a sole practitioner); and
- (ii) a facility at the Four Courts, Dublin 7. The facility has meeting rooms, a café and equipment (such as faxes and photocopiers) which are used by solicitors and others at the Four Courts

3. Please provide further contact details (telephone, fax, e-mail) for its headquarters.

Contact Details:

Telephone: 01-672 4800
Fax: 01-672 4835
E-Mail: k.murphy@lawsociety.ie

4. Please nominate a contact at your organisation responsible for handling this Questionnaire, and provide their contact details (including a direct-line telephone number and e-mail address, if possible).

Contacts:

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5. What profession(s) does your organisation directly or indirectly govern and/or regulate? Please provide a description of the functions and purpose of this profession. If your organisation is involved with more than one profession, please provide answers for each such profession, both in this, and any further, question.

PROFESSION(S) GOVERNED OR REGULATED BY THE ORGANISATION

In the context of this question, the Law Society is only concerned with solicitors. It is part of the machinery established by the Oireachtas to govern or regulate solicitors. This structure includes: (a) the High Court (in particular, the President of the High Court) (and the Supreme Court on appeal); (b) the Minister for Justice, Equality and Law Reform; and (c) the Law Society. The Law Society has not simply accorded to itself the right or privilege to govern or regulate solicitors but operates within the structures and procedures established by law. It is more a case of co-regulation and not a case of self-regulation.

FUNCTIONS OF THE SOLICITORS' PROFESSION

In terms of function of the profession, solicitors advise, assist and represent clients in relation to legal matters. Typical examples of the matters on which solicitors advise, assist and represent (through advocacy in court or otherwise) would include:

- administrative law;
- arbitration;
- banking law;
- commercial law;
- company law;
- competition law;
- constitutional law;
- contract law;
- conveyancing of property;
- criminal law;
- custody of children;
- directors' duties;
- divorce;
- e-commerce;
- employment law;
- environmental law;
- equality law;
- European Union law;
- family law;
- financial services;

- human rights law;
- intellectual property;
- insolvency;
- injunctions;
- landlord and tenant;
- leasing of land;
- licensing (e.g. auctioneers, public houses and telecommunications);
- litigation;
- immigration law;
- personal injuries litigation;
- planning law;
- probate;
- property law generally;
- regulatory law;
- succession;
- taxation;
- tort law;
- trusts; and
- wills.

This is not a closed or fixed list but can, and does, change over time. Solicitors may also, in practice, give advice and assistance to clients on matters which are not, strictly speaking, legal issues (e.g. social welfare issues).

PURPOSES OF THE SOLICITORS' PROFESSION

Introduction

Given the diverse but significant functions performed by solicitors, it is only possible to touch on some “purposes” of solicitors in a submission such as this one.

At its simplest, as an officer of the court, the purpose of the solicitors’ profession in society is to provide independent, professional advice to citizens in order to vindicate their rights and to defend their legal obligations.

Independent Advice

Solicitors provide *independent* advice. There is no doubt that consumers respect the fact and indeed expect that a solicitor’s advice is independent and free from ‘conflicts of interest’. For example, a client welcomes the fact that the advice of a solicitor is independent of the interests of, for example, a bank lending money or anyone who could benefit under a will. By virtue of its Opinion in *NOVA*, the European Court of Justice has emphasised the need for independence in the legal profession. The recent Enron controversy in the United States has also cast serious doubt on the desirability of multi-disciplinary practices.

Rule of Law

Every democracy is characterised by respect for the rule of law. As officers of the Court, solicitors have a role to play in this regard. The ‘legal professional privilege’ which is enjoyed by clients of solicitors is part of that role. Solicitors contribute to the rule of law in society. The most obvious example of this is in the context of criminal law where solicitors take instructions, in absolute confidence, from their clients and then vindicate their clients’ rights before the courts.

Social Role

There is a social value and social role to the work of solicitors. It is not surprising that they are seen as influential commentators on some of the most pressing issues in any society – be those issues of life, liberty, property or the protection of the weak. While many solicitors may not be involved in high-profile cases on “life and liberty” every day, they do play an important role in operating a system which is part of the backbone of any democracy (i.e. an independent judiciary aimed at balancing the rights of the individual with the interests of a State).

Vindication of the Rights of Clients

Solicitors vindicate the rights of clients. They advise on how legal obligations can be met. Typically, they advise on arrangements and contracts, negotiate with the other side, litigate, arbitrate, mediate, conciliate, intervene/lobby, bring matters to the attention of government or European Union agencies, complain or otherwise seek to vindicate the interests of clients.

Role of Solicitors and Barristers

As discussed at Question 55 below, solicitors in Ireland can generally do whatever barristers do in the market. However, barristers have exclusivity in five areas: (a) appointment to senior judicial office;¹ (b) appointment as legal advisor in the Attorney General’s Office, although there is no bar on a solicitor becoming Attorney General (in this regard, see exchange of correspondence between the Director General and the Attorney General attached at Appendix 8); (c) appointment to be Master of the High Court; (d) the reporting of cases in law reports²; and (e) appointment as Senior Counsel.

¹ I.e. appointment to the High Court or Supreme Court but the Courts and Court Officers Act, 2002, due to be signed into law during the week ending 12th April 2002, ends this element of discrimination against solicitors.

² The Solicitors (Amendment) Act, 2002 removes this anomaly.

ORGANISATIONAL STRUCTURE

6. Please provide an outline of the structure of your organisation (for instance, an organisation chart with accompanying description of the workings of the structure). This outline should include details of the relevant governing bodies (e.g. general assembly of the members, council or other ‘board of directors’, committees and sub-committees etc.) and key individuals (e.g. chief executive, chairman) involved, and of their respective roles and powers. Please also include a brief note describing the legal or other basis grounding this structure (e.g. statute, statutory instrument, charter, memorandum and articles of association, practice or custom). Please also describe how membership of particular governing bodies is determined (e.g., “six members of the council are elected by the entire membership of the organisation, and the other two are appointed by the Minister for X”).

OUTLINE OF THE STRUCTURE OF THE ORGANISATION

Introduction

The structure of the Law Society is provided for, in part, by Charter and legislation enacted by the Oireachtas and, in part, by Bye-laws.¹ For example, both the Charters and Section 3(1) of the Solicitors Act, 1954 (or the “1954 Act”) provide for the Council.² The functions vested in the Law Society by or under the Solicitors Acts, 1954 to 1994 are, as a matter of law, to be performed by the Council of the Law Society.³ The Council is elected annually by members of the Law Society in accordance with the procedures described below. The Council operates under Bye-laws of the Law Society and regulations of the Council. A number of Committees of the Council have been established and some perform delegated statutory duties (see below). The individual with primary executive responsibility for the operation and running of the Law Society is its Director General.⁴ The Law Society has a President who is elected for one year from among the members of the Law Society.⁵

¹ See Appendices 1, 2, 3 and 13.

² In regard to the Council, see Bye-Law 6 of the Bye-Laws of the Law Society (contained in Appendix 13).

³ Solicitors Act, 1954, Section 4 provides: “The functions vested in the Society by or under this Act shall be performed by the Council.”

⁴ Bye-Law 8(1) of the Bye-Laws of the Society provide that the “Council shall appoint the Director General to be the chief executive of the Society; and, unless the Council otherwise expressly decides to the contrary, the Director General shall also hold the office of Secretary and the office of Registrar of Solicitors.” In fact, the office of Registrar of Solicitors is currently held by a separate officer.

⁵ In regard to the President, see Bye-Law 7 of the Bye-Laws of the Law Society (contained in Appendix 13).

The Council of the Law Society

Composition of the Council

The Charters of 1852 and 1888 and the Solicitors Acts, 1954-1994 provide for a Council constituted as follows:-

1. not less than 21 or more than 31 members elected from among all of the Law Society's members ("ordinary" Council members);
2. four provincial delegates, one each elected by the members resident in each province;
3. a maximum of five extraordinary members appointed by the Council from the Council of the Southern Law Association (SLA);
4. a maximum of five extraordinary members appointed by the Council from the Council of the Law Society of Northern Ireland (LSNI); and
5. a maximum of three extraordinary members appointed by the Council from the Council of the Dublin Solicitors Bar Association (DSBA).

Currently, the Council comprises the maximum provided for in each of the categories outlined, constituting a total membership of forty-eight. It should be noted, however, that the members from the Council of the LSNI traditionally attend only one Council meeting per annum in an honorary capacity and that only three of the five SLA members have a right to attend and vote at any meeting of the Council. Accordingly, voting membership is forty-one. The composition of the Council was examined by a special Review Working Group in 1995, which concluded that the interests of the members were best served by the existing structure and should not be adjusted to introduce regional elections, representation for each Bar¹ Association area or sectional representation (e.g. in-house solicitors, women, newly-qualified or assistant solicitors). A copy of the Report is attached at Appendix 9. The current system of election and representation is a fair and equitable one of one member/one vote.

In addition to the membership provided for in the Charters or by statute, Bye-law 6(24) of the Law Society's Bye-laws entitles a past President of the Law Society to attend (but not vote) at all Council meetings for a maximum of three years after he/she ceases to be an elected Council member². The three-year restriction was introduced in 1996, prior to

¹ In this context, a local or regional "Bar" Association refers to an association of solicitors and not barristers.

² Bye-law 6(24) provides: "(a) A past President, who ceases to be a member of the Council, may, so long as he is a member of the Society, for a maximum of three periods of office of the Council following upon his ceasing to be a member of the Council, shall have the privilege of receiving notice and agenda papers for, and attending (but not voting) at, all Council meetings (in the Bye-laws designated as "the past President's privilege"); provided that he notifies the Secretary of his desire to so participate in the affairs of the Council; and (b) a past President availing of the past President's privilege provided for in sub-clause (a)

which all past Presidents were entitled to attend Council meetings, without restriction. Former Presidents are, of course, eligible to stand for election to the Council in the ordinary course of events, but cannot present themselves for election to Presidency for a second time. This ensures an on-going dynamism in terms of the Presidency of the Law Society.

Service on the Council

Until 1996, there was no time-limit for service by Council members. Following the review of the structure of the Council in 1996, referred to above, amended Bye-laws were approved by the members in General Meeting establishing a ten-year time-limit for service on the Council (excluding any subsequent period of office as President), with time starting to run with effect from the Annual General Meeting in November 1997 (Bye-law 6(6)(a)). The reasoning underlying the new time-limit is two-fold:

- (a) it required 17 or 18 years' service on the Council before a Council member would succeed, on the traditional seniority basis, to the Presidency. This was regarded as too long and the ten-year time-limit, coupled with new rules relating to the election of the President, are designed to reduce that period for those who wish to proceed to Presidency; and
- (b) it was felt that a specific time-limit would encourage the involvement of solicitors who might otherwise be discouraged from participating in the Council and would also facilitate assistants/employees to stand for election. This facilitates 'new-blood' entering on to the Council.

Under the Bye-laws, the ten-year term need not be served consecutively and a Council member who wishes to seek re-election for a further ten years can do so after a "quarantine period" of four years (Bye-law 6(7)). This restriction facilitates "fresh blood" coming onto the Council and a rotation of members.

Election to the Council

Prior to 1997, the electoral system involved an annual national (one single constituency) election for 31 Council seats, together with an annual election for the 4 provincial delegates. In the course of the review in 1996, it was decided that an annual election of the entire Council required candidates to present themselves on too frequent a basis (once a year), while an election of the entire Council every two or three years would not provide a sufficiently-regular opportunity to interested new candidates to seek election.

of this clause, in an indication of his continued desire to so participate in the affairs of the Council, shall be expected, in the period between one annual general meeting and the next following annual general meeting, to attend at least three meetings of the Council."

It was agreed that the Bye-Laws should be amended to provide for an election to fill 50% of the ordinary Council seats and of the provincial delegate seats every year, with candidates being returned for two-year terms (Bye-Law 6(4) and 6(5)). Because of the uneven number of ordinary Council members (31) and rules relating to the automatic election of the outgoing Senior Vice-President (Bye-Law 6(13)), the number of actual vacancies in any given year varies between fourteen, fifteen and sixteen. In November 1996, following the last annual and provincial elections under the “old” system, a lot was conducted among the 31 ordinary Council members and the four provincial delegates to determine those 16 ordinary members and two provincial delegates who were deemed elected for a two-year period.

The extraordinary members of the Council representing the Southern Law Association, Law Society of Northern Ireland and the Dublin Solicitors Bar Association are nominated on an annual basis.

There are comprehensive rules relating to the nomination of candidates for the national and provincial elections; the scrutiny of the election process; the form, despatch and marking of voting papers, the counting of votes; and the co-option of members of the Council where vacancies arise. These are set out in detail at Bye-Laws 6(8) to (23). These Bye-Laws are designed to ensure fair procedures and maximum participation. For example, ballot papers and election literature are sent automatically to members – they do not have to request them or pay for their dispatch.

Committees of the Council

Section 4 of the Solicitors Act, 1954, provides that the functions vested in the Law Society by the Solicitors Acts, 1954 to 1994 are performable by the Council. However, section 73 of the 1954 Act (as amended by section 27 of the Solicitors (Amendment) Act, 1960 and by section 7 of the Solicitors (Amendment) Act, 1994) empowers the Council to appoint committees for any purpose that the Council considers would be better effected by a committee and to delegate to those committees, with or without restrictions, the “exercise of any functions of the Council”. Bye-Law 10 reflects this power and enables the Council to make Regulations for the establishment of committees. Council Regulation 15 deals with the delegation of functions to committees or designated officers.

The Council appoints committees at the commencement of each Council year (November) to perform either statutorily delegated functions (‘Standing Committees’), advisory functions or administrative functions. Council, non-Council and non-solicitor members participate in the work of the various committees. However, until 1994, where statutory functions were being performed by a ‘Standing Committee’, the committee was required by law to be composed entirely of Council members. The 1994 Act empowers the Law Society to appoint non-Council and non-solicitors to such Committees, but still requires a two-thirds majority of Council members. The Law Society has exercised its new powers to make non-Council appointments in relation to all of its Standing committees.

The Committee structure is essential to deal with the diversity of functions¹ vested in the Council as the governing body of the Law Society and the diversity of legal and practice areas of relevance to the profession. It also provides a valuable opportunity for non-Council and non-solicitor members to participate in the work of the Law Society.

Meetings of the Council

Pursuant to the Regulations of the Council for 2001/2002, ordinary meetings of the Council are held not less than six times a year. The business to be submitted to each meeting is, so far as is reasonably practicable, stated in the notice issued to the members of the Council. At all meetings of the Council and Committees, questions are decided by a majority of votes; in the event of an equality of votes, the Chairman has the casting vote. The Chairman is the President or in his absence, the Senior Vice-President or, in his absence, the Junior Vice-President. The chair at Committee meetings is ordinarily the Chairman of the Committee.

The General Meeting

The Charter of 1852 empowers the members of the Law Society, in General Meeting, to make Bye-laws of the Law Society “for the regulation and good government” of the Law Society, its members and officers, the manner of electing the President, Vice-Presidents and Council members, the filling of vacancies, the manner of admitting and expelling members of the Law Society, the convening of meetings of the members and other matters required to carry out the objects of the Law Society. The Bye-laws must “be reasonable” and cannot be repugnant or contrary to the laws of the State and a General Meeting of the members must be held annually “for the election of the Council and for other purposes of the Society”. Bye-Laws 4 and 5 set out in detail the procedures relating to the convening and conduct of the Annual General Meeting and Special General Meetings.

KEY INDIVIDUALS

Election of President and Vice-Presidents

The Charter of 1852 envisages the annual appointment of a President and two Vice-Presidents from among the ordinary members of the Council by a vote of the newly-elected Council. Provincial delegates and extraordinary members are prohibited, by the Charter, from becoming President or Vice-President. Former Vice-Presidents or Presidents are also excluded from serving again as an officer with the exception that a Vice-President may serve as President once. Prior to 1996, no further requirements were placed on prospective candidates, other than ordinary membership of the Council and, technically speaking, a newly-elected ordinary member could become President or Vice-

¹ The annual report of the Law Society (Appendices 19-21 to this submission contain the three most recent reports) demonstrates the diversity of the Law Society’s work.

President. However, a convention had developed within the Council to elect the President, Senior Vice-President and Junior Vice-President on the basis of seniority. As part of the convention, the Junior Vice-President reverted to ordinary membership after his/her term of office for a number of years before being regarded as eligible for the office of Senior Vice-President. The purpose of this practice was to allow a Council member who might not wish to proceed to Presidency to have the opportunity to serve as an office-holder, without any commitment to continue. It also recognised the onerous burden which three consecutive years of office¹ would represent, both for the individual and for his/her practice.

In the course of the review of 1996 (referred to above), it was decided that a minimum period of service on the Council should be required before a Council member could offer him/herself for election to office and the system of election on the basis of seniority was rejected in favour of an election from among a qualifying group of candidates on the basis of merit. The Bye-laws were amended so as to provide for a requirement of six years' service on the Council, of which two consecutive years must be served immediately before candidacy, before a Council member can seek election as Senior Vice-President (Bye-Law 7(2)). The Senior Vice-President proceeds automatically to Presidency in the following year (Bye-Law 7(1)). While service as a provincial delegate or an extraordinary member counts towards the minimum period of service required, only ordinary members of the Council may seek election to the office of Senior Vice-President.

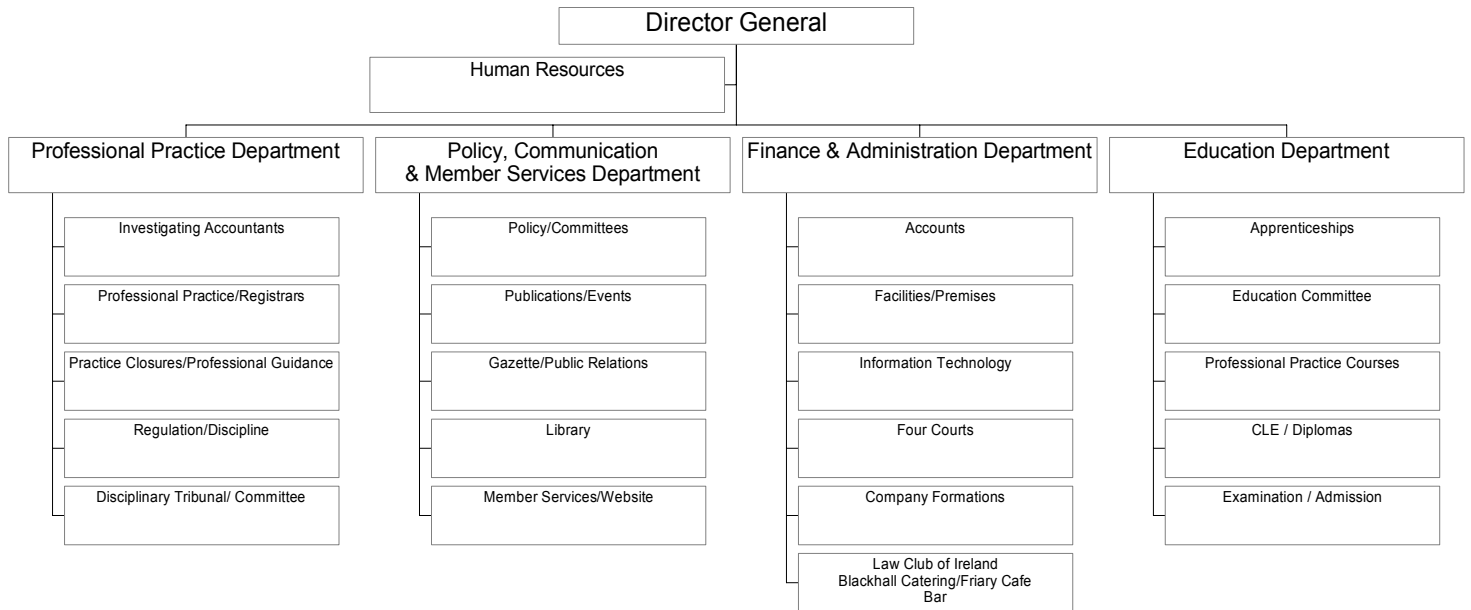
The Bye-laws were also amended to provide a requirement of four years' service on the Council, of which two consecutive years must be served immediately before candidacy, before a Council member can seek election as Junior Vice-President (Bye-Law 7(3)). Again, while service as a provincial delegate or an extraordinary member counts towards the minimum period of service required, only ordinary members of the Council may seek election to the office of Junior Vice-President. Service as Junior Vice-President has no bearing on candidacy for Senior Vice-President.

Where more than two candidates present themselves for election to either office, Bye-Law 7(4) provides that the election shall be conducted on a proportional representation basis. It also prevents a candidate from seeking election to both offices at the same time.

Director General

The Director General has the day-to-day executive responsibility for the four departments or directorates of the Law Society. A diagram of the departmental structure of the Law Society is provided below:

¹ I.e. Junior Vice-President, Senior Vice-President and President.



The Director General is responsible to the Council of the Law Society and works closely with its Officers. Through the Director General and his staff, the Law Society carries out the policies of the Council; supervises the regulation of the profession; provides substantial pre-qualification and post-qualification education; and represents the views and interests of the solicitors' profession to all with whom the Law Society comes in contact, including the media.

The Director General is the Chief Executive of the Law Society with all of the powers and responsibilities usually conferred on a Chief Executive. Broadly speaking, the Director General's role is to manage the organisation and the people in it. In addition, the Director General is the Secretary of the Law Society with a number of further powers and responsibilities provided under the Solicitors Acts, 1954 to 1994. He is the primary link between the Law Society's Council, (he attends all meetings to which he is the chief policy adviser), and the Law Society's staff, all of whom report to him either directly or indirectly. The Director General works very closely with the Law Society's President and will frequently represent the Law Society at meetings. As Director General, he frequently acts as spokesman for the Law Society in the media and he has represented the Law Society before Dail Committees and as a Law Society nominee on Ministerial Working Groups.

The Director General also works very closely with the Law Society's four Directors/Heads of Department. With their assistance, he recently drew up and implemented a two-year business plan which defined the mission of the Law Society as that of "a high performance organisation providing a manifestly ever-improving quality of service to the Law Society's members and prospective members and to the public".

The position of Director General, when available, is advertised in the media and the job is open to solicitors and non-solicitors alike. The current Director General, Ken Murphy, took up office in March 1995. Although the position is not required to be filled by a

solicitor, for the first time in some decades, the current Director General is a solicitor having qualified as such in 1981.

DEPARTMENTS

As stated above, there are four departments in the Law Society. It is useful to examine each of them in no particular order:-

<ul style="list-style-type: none">• Policy, Communication and Member Services Department
<ul style="list-style-type: none">• Professional Practice Department
<ul style="list-style-type: none">• Education Department
<ul style="list-style-type: none">• Finance and Administration Department

Policy, Communication and Member Services Department

As its name suggests, the *Policy, Communication and Member Services Department* focuses on the representational and membership functions of the Law Society.

The Department furthers the policies set by the Council and represents both the interests of the profession and the public interest in dealings with Government Departments, the legislature, policy-makers and other professional bodies. This is done through the auspices of the Law Society's advisory and specialist committees, in conjunction with the Law Society's permanent secretariat and the officers. The Law Society makes regular oral and written submissions to a variety of individuals and organisations of influence and these are produced and co-ordinated within the Department.

The Law Society's communication function is represented primarily by the *Gazette*¹ and, now, by the Website (www.lawsociety.ie) both of which fall within the Department's ambit, as does the library service, which serves a vital information function for the profession. Other information services provided by the Department include publication of the Law Directory (which is publicly available) and the Law Society's Annual Report (which is publicly available). The Law Society's design and print function is co-ordinated within the Department, so as to ensure a professional and quality approach. The Department is also responsible for the enhancement and promotion of the services provided throughout the Law Society for its members.

¹ The *Gazette* is available publicly and is on sale in various retail outlets.

Professional Practice Department

Practising Certificates¹ are issued annually by the Professional Practice Department to individual solicitors following verification of compliance by the individuals: (a) with the requirement in the Solicitors Accounts Regulations regarding the filing of an Accountant's Report; (b) that they hold sufficient professional indemnity insurance cover; and (c) that they have complied with the provisions of the Investor Business and Investor Compensation Regulations, 1998. All solicitors are required to complete an Application for a Practising Certificate, which contains various undertakings, on an annual basis. A copy of the application form is attached at Appendix 10.

The Department ensures that Accountants' Reports are received from each of the 1,960 (as at 31st January, 2002) solicitors' practices each year within six months of each practice's accounting date². Investigations of solicitors' practices are carried out by the Department's nine Investigating Accountants on an on-going basis³. Investigation reports are prepared for presentation to the Law Society's Compensation Fund Committee who decide what action should be taken with regard to same.

Compensation Fund claims are also handled by the Department. This involves vouching claims with supporting documentation, dealing with correspondence arising and listing claims on the agenda for the Compensation Fund Committee.

The Department also operates the Practice Closures division. This involves the supervision and distribution of files of discontinued solicitors' practices (e.g. on the death of a sole practitioner).

The Department's complaints section deals with all complaints against solicitors arising from clients, members of the public and the profession. These complaints are either resolved by the secretariat or are referred to the Registrar's Committee.

Where professional misconduct has been found or suspected, the Department deals with the preparation and presentation of cases before the Disciplinary Tribunal, together with petitions and applications to the High Court where appropriate. Litigation arising out of the Law Society's statutory regulatory function is also handled within the Department.

The seriousness with which the Law Society takes its functions in this area is demonstrated by the fact that it employs 33 staff including the Director of Professional Practice, 6 solicitors, 9 accountants and 13 secretaries at a projected cost for 2002 of e4,114,852. This figure includes all costs associated with the Compensation Fund including the investigating accountants, complaints, practice queries, the Disciplinary Tribunal, the Independent Adjudicator, relevant committees, regulatory cases legal fees,

¹ Practising Certificates have a statutory basis by virtue of Section 46 of the Solicitors Act, 1954 (as well as Section 3(1) and Part V of that Act generally).

² The data from these practices are not available to others inside the Law Society or to members of the Law Society or to others so there is no issue relating to the exchange of information between competitors. However, there are some efficiency gains in terms of facilities being shared.

³ These officials are paid for by the Law Society.

issue of practising certificates, professional indemnity insurance compliance and the Solicitors Acts Compendium. The figure excludes actual payments out of the Compensation Fund. Efficiencies are gained in the Department by sharing facilities but it is very much self-contained and decisions are taken based on the individual merits of each application.

Education Department

The Education Department, which comprises the Law School, runs courses for (a) those seeking to become solicitors (“apprentices” or “trainees”) and (b) solicitors. Answers to later questions will deal more extensively with the issue of education but some general observations are useful.

The training programme for apprentices/trainees features:

- (a) a Professional Practice Course I;
- (b) a Professional Practice Course II; and
- (c) an in-office training period totaling 24 months.

The subjects taught on the training courses include the core areas of professional practice; also skills such as negotiation, advocacy, interviewing and drafting; and some discrete specialisms which would not ordinarily be taught at undergraduate level in the law faculties at universities and would not be studied by non-law graduates. Tuition is imparted by full-time staff solicitors and through the generosity of members of the practicing profession who lecture for a few hours every few months at a fee which would not fully recognize the lost opportunity of having to leave their offices. This latter element – to hear from practising solicitors in all disciplines – is absolutely critical to the training of lawyers. It has been very difficult to organise and to get solicitors, who are busy meeting the demands of clients, to commit to this but now a system is in place. At this stage, a vast network of practitioners (mostly, but by no means all, being Dublin-based) have been assembled and a huge amount of materials drawn-up; for example, the basic materials to students would comprise five books produced in conjunction with the Law School and over ten lever arch binders of notes. It would not be practical to seek to replicate these resources because the efficiencies and higher standards gained by the Law School would be lost.

The Education Department runs Continuing Legal Education (“C.L.E.”) courses and also longer post-qualification diplomas courses for solicitors.

The C.L.E. courses, of which there are normally two each week, involve day-long or shorter refresher or introductory courses on core areas of practice, a number of interactive skills courses and also briefing courses on new developments in the law and legal practice. (An example of recent C.L.E. programmes is attached at Appendix 11). The C.L.E. programme now operates on a country-wide basis. (A number of CLE seminars have been broadcast by video link to locations around the country but such video-links have their drawbacks; they do not allow tutorial work to be done, would not facilitate

studying or consultation of the library but are very useful to conduct individual lectures to practitioners.)

The diploma programme likewise focuses on professional practice disciplines. The completed course is followed by examinations and the award of a Law Society diploma. Courses already run or currently being run include - Property Tax, Applied European Law, Commercial Law, E-Commerce, Legal French and Legal German (Certificate). These courses are open to non-members of the Law Society. A Certificate course for solicitors in Advanced Advocacy has also recently been launched.

The Education Department also services and supervises the apprenticeship/traineeship training programme and administers a number of external and course-related examinations. This element of supervision is very important because the adequacy of the training programme within offices for trainees is monitored and supervised.

The educational function of the Law Society is aided in no small measure by the presence of an excellent library at Blackhall Place which is available to students and solicitors alike.

Finance and Administration Department

The Department's primary responsibilities include the accounts, information technology, administrative and commercial activities of the Law Society.

The accounts function prepares detailed annual budgets which ultimately determine the Practising Certificate fee level set by the Council. Income and expenditure is closely monitored against these budgets. Management accounts for the year are completed in early February and are subject to external audit, with final accounts being sent to members in early May.

On the IT side, there are two major databases covering Practising Certificate holders¹/members and students. Internally, there is a Local Area Network supporting 70 users with normal office automation and e-mail systems. The IT function also supports the technology function of (i) the Practice Management Committee in running exhibitions and seminars and providing publications such as 'Get Connected' (attached at Appendix 12), and (ii) the Technology Committee in providing publications such as 'Get Integrated' (attached at Appendix 13).

In terms of administration, the normal elements of operating a large organisation such as post (500 items per day), circulars to members (15 per annum), telephone services (600 calls per day), printing (12 million copies per annum), security etc. all fall within the Department.

The running of the Blackhall Place premises falls within the facilities section of the Department and this involves the management of a myriad of functions including AGMs,

¹ See the Solicitors (Amendment) Act, 1994, Section 54(3).

meetings, weddings, seminars and corporate functions for both the Law Society and external clients.

The main commercial services provided are the Four Courts consultation rooms, the Company Formation Service¹ and the sale of publications such as Requisitions on Title etc. Services such as Solicitors Financial Services, Group Life Assurance Scheme and the Practising Certificate Financing Scheme are also arranged through the Finance and Administration Department.

COMMITTEES

Section 73(1) of the Solicitors Act, 1954 provides that the:

“...Council may appoint a committee for any purpose which the Council considers would be better effected by means of a committee and may delegate to the committee, with and without restrictions, the exercise of any functions of the Council”.

The Law Society has the following Standing Committees:

- (a) the Compensation Fund Committee;
- (b) the Co-ordination Committee;
- (c) the Education Committee;
- (d) the Finance Committee;
- (e) the Registrar’s Committee; and
- (f) the Professional Indemnity Insurance Committee.

The Law Society also has the following non-Standing Committees:

- (a) the Arbitration Committee;
- (b) the Business Law Committee;
- (c) the Conveyancing Committee;
- (d) the Corporate and Public Sector Committee;
- (e) the Criminal Law Committee;
- (f) the Employment and Equality Law Committee;
- (g) the EU and International Affairs Committee;
- (h) the Family Law and Civil Legal Aid Committee;
- (i) the Gazette Editorial Board;
- (j) the Guidance and Ethics Committee;
- (k) the Law Reform Committee;
- (l) the Litigation Committee;

¹ This operates in competition with other company formation services. Solicitors are entirely free to use, or not use, this service and not all solicitors do so. For 2001, the Society’s Company Formation Service held 7.43% of the total market (based on the total number of companies incorporated in Ireland). In any one year, 250 to 300 solicitors firms use the service. It is reckoned that the vast majority of solicitors firms (approx. 1,960) would, at some point in the year, be engaged to form a company/companies, i.e. approximately 13% to 15% of solicitors firms avail of the service.

- (m) the Litigation Management Committee;
- (n) the Probate, Administration and Taxation Committee;
- (o) the Publications Committee; and
- (p) the Technology Committee.

These committees are primarily composed of members of the profession serving on a voluntary and unpaid basis and are supported by full-time executives of the Law Society.

7. How many people does your organisation employ:

a) on a full-time basis?

b) on a part-time basis?

As at 1st February, 2002, the Law Society employed a total of 144 people as follows:

Permanent Employees:	91
Part-time Employees:	21
Job-sharers:	5
Executive Staff on Fixed Term Contracts:	23
Temporary Staff:	4

It is also worth noting that there are very many solicitors and some others who contribute to the work of the Law Society. For example, there are over 500 solicitors who participate annually in the Law Society's education and training programme for trainee solicitors and qualified solicitors.

8. When was your organisation founded?

This response should be read in conjunction with the description of the Law Society in the introductory remarks.

The body which is now the Law Society of Ireland was founded in 1852 but the Society can trace its origins back to 1773 when a statute was enacted to regulate the moral and educational qualifications of solicitors seeking admission as attorneys.

This in turn led to the Society of Attorneys in 1774 and then the Law Club of Ireland in 1791. This became the Law Society of Ireland in 1830.

In 1841, the name Society of Attorneys and Solicitors was adopted and its first Royal Charter was obtained from Queen Victoria in 1852.

The organisation formally adopted the title “Incorporated Law Society of Ireland” in 1888, an event which was formally noted by a supplemental charter, again granted by Queen Victoria.

In 1889, the Incorporated Law Society adopted its first set of Bye-laws setting out the procedures of membership, conduct of general meetings and elections of a Council.

The modern legislative basis for the Law Society is set out in the Solicitors Acts 1954 to 1994. The Solicitors (Amendment) Act, 1994 officially changed the name of the Society to Law Society of Ireland.

9. Please provide an outline of its source(s) of funding, including the proportion of funding coming from particular sources (including membership fees, dues, etc).

The funding for the Law Society's activities is derived primarily from contributions by members of the Law Society and from registration fees from practising solicitors and, in respect of trainees' education, from trainees' fees. It does not receive any direct funding from the State, the public or the clients of solicitors. It is worth stressing that the excellent educational facilities in the Law School (built at a cost of around €6 million) which came on stream in October 2000 did not involve any public expenditure. According to the last three Law Society's reports, the sources of funding are as follows:

Table No. 1: Sources of Funding (IR£)

Source/Year	1998	1999	2000
Registration Fees	1,921,843	2,583,856	2,895,695
Membership Subscriptions	221,507	234,045	326,834
Admission Fees	40,425	77,468	73,391
Education ¹	1,405,537	2,038,544	3,008,575
Hire of Premises	277,866	317,013	310,220
Interest Received	108,613	71,418	192,892
Publications Surplus	39,092	28,066	96,252
Company Formation Surplus	80,203	88,317	179,336
TOTAL	4,095,086	5,440,140	7,083,195

Sources: Annual Reports 1998/1999; 1999/2000; and 2000/2001.

Note:(a) The total for 1999 includes IR£1,333 surplus on sale of a fixed asset, (b) the increase in income from education is due, in large measure, to the increased number of students going through the system to qualify as a solicitor, and (c) in the context of education, it is the policy of the Law Society that the income/fees derived from the Law Society's trainee courses may only be used for educational purposes.

¹ "Education" includes trainees' fees, income from CLE and income from Diploma and Certificate courses.

10. How does an applicant join the organisation?

INTRODUCTION

In essence, membership is voluntary and any solicitor may join or resign from the Law Society (at the solicitor's own discretion). Before examining the details, it is useful to make some background comments.

BACKGROUND

First, in order to be a solicitor (whether practising or not), it is necessary to be registered on the Roll of Solicitors.¹ This is a roll maintained by the Law Society (as part of its statutory functions) but it is possible to be on the Roll of Solicitors without being a practising solicitor or member of the Law Society.

Secondly, there are (a) solicitors who have practising certificates² and (b) solicitors who do not have practising certificates. It is an offence to practise as a solicitor without a practising certificate. In order to have a practising certificate, a solicitor must be on the Roll of Solicitors but does *not* have to be a member of the Law Society. Of course, non-solicitors may provide many legal services with the exception of those limited services which have been reserved to solicitors in the public interest (these relate to certain aspects of probate, conveyancing and litigation).

Thirdly, there are solicitors (i.e. persons who are on the Roll of Solicitors) who choose to be members of the Law Society. A solicitor may be a member of the Law Society whether he or she is a practising solicitor or not. Practising and non-practising members are treated equally by the Law Society with equality of voting and participation rights.

In tabular form, the position may be described in the following way:

¹ The Roll is defined by Section 9 of the Solicitors Act, 1954 as substituted by Section 65 of the Solicitors (Amendment) Act, 1994.

² The term "practising certificate" is defined by Section 46 of the Solicitors Act, 1954.

**Table No. 2: Number of Solicitors on the Roll,
with Practising Certificates and/or who are Members of the Law Society**

Roll		Practising Certificate		Membership of Law Society	
Solicitors (name included on the Roll of Solicitors)	7,824*	Solicitors with Practising Certificates	5,912*	Members of the Law Society	6,478*
		Solicitors without Practising Certificates	1,912*	Not Members of the Law Society	1,346*

**As at 31/12/01*

MEMBERSHIP IS VOLUNTARY

Membership of the Law Society, which is voluntary¹, is by way of application to the Law Society. The application may be made at any time of the year. The application does not have to be proposed and seconded. It is a completely open and transparent process. It is highly unlikely that an application would be refused and the incumbent executives of the Law Society are unaware of any application for membership of the Law Society from a solicitor being rejected and they cannot envisage membership being refused except in the most extreme circumstances.

Membership is on an annual basis and can be resigned at any time. Bye-Law 2(8) provides that any “member of the Society may resign his membership at any time by written notification to the Secretary, such resignation to take effect on the date such written notification is received by the Secretary.”

MEMBERSHIP PROCESS

It is easy for solicitors to become members of the Law Society. Bye-Law 2(1) of the Bye-Laws of the Law Society (as amended) sets out the pre-conditions for membership of the Law Society as follows:-

“Any person whose name is on the Roll and does not stand suspended from practice may become, and may continue to be, a member of the Society, on payment, pursuant to this Bye-law, of the annual membership subscription for the current year and each subsequent year.”

¹ Voluntary membership is not the norm in most OECD countries. The OECD noted in its Report on Competition in Professional Services, DAF/CLP 2000) 2 at page 23 that “for lawyers membership in law societies or bars is compulsory in most OECD countries...”

11. What would you say are the benefits (such as, for instance, entitlements to practice, and/or to use or display accreditation certificates, etc.) of membership of your organisation?

INTRODUCTION

By way of preliminary observation, two comments are worth making. First, membership of the Law Society is not compulsory unlike most other OECD countries. Secondly, many of the benefits of membership are obtainable by other means.

ENTITLEMENT TO PRACTICE

A solicitor is entitled to practice as a solicitor because he or she is on the Roll of Solicitors and holds a current practising certificate; it is not necessary to be a member of the Law Society.

Unlike some other jurisdictions, there are no courts or tribunals in Ireland which are “off-limits” to solicitors; all solicitors may practice in any court or tribunal – ‘rights of audience’ are not matters for the Law Society but are determined by statute.

Of course, any person, whether or not a solicitor, may provide legal services other than the very few restricted services¹ discussed below.

ACCREDITATION CERTIFICATES

The certificate to practice, the Practising Certificate, is given to any solicitor on the Roll of Solicitors who meets the basic requirements to practice and is not given by virtue of membership of the Law Society. Holding membership of the Law Society does not entitle a solicitor to practise. The Law Society does not confer ‘accreditation’ in terms of fellowships, associateships and so on; every member of the Law Society is equal and there is no demarcation.

BENEFITS OF MEMBERSHIP

In addition to its general website² (which is available to the general public, including solicitors who are not members of the Law Society), the Law Society has a website which is available only to its members and which contains a great deal of technical and practical information.³

¹ See the response to Question 55 below.

² See www.lawsociety.ie.

³ See www.lawsociety.ie/members.

Like many other groups, the Law Society has group financial services schemes for credit cards, motor insurance, pensions and health insurance. Clearly, members are perfectly free to decide whether or not to participate in such schemes and participation is not exclusive in any way.

The Law Society has established a pension fund which its members may join and which is administered by Bank of Ireland Asset Managers and KBC. Non-members of such schemes are easily able to obtain pensions from other providers. Again, members may join the Law Society scheme and other schemes equally.

The Law Society's premises at Blackhall Place in Dublin are available to members to hold meetings or events as well as to stay while in Dublin. Comparable facilities are easily available to non-members at other locations so there is no competition law issue.

The Law Society publishes its *Law Society Gazette* and sends it free to members. However, this publication is also available to the public and is sold in, for example, Eason's bookshops. It is, thus, available to members and non-members alike and therefore no competition law issues arise.

The Law Society has a library. Members around the country may contact the library and ask for books or copies of articles to be sent to them. The library deals with approximately 3,600 queries on an annual basis. It lends books to members and copies journal articles. Again, there are no competition issues because there are other libraries available (e.g. at some court houses and at universities as well as on-line resources). The library has a superb collection which has been built up over many years and there are considerable efficiencies to be gained from the fact that the facilities are shared between the Law Society and the Law School (i.e. there is no need to inefficiently replicate the library).

The Law Society also has a company formation service which has been assessed by the National Standards Authority of Ireland and holds the Certificate of Registration of Quality Systems (ISO: 9002). The Law Society's Company Formation Service includes private companies limited by shares, guarantee companies and single member companies. Again, no competition issues arise as there are other companies providing the same service.

Members of the Law Society may attend and vote at general meetings of the Law Society and may stand for and vote in the elections to the Council of the Law Society.

The Law Society runs various courses as part of its CLE programme which provide a useful opportunity for delegates to learn about new areas of the law, management and taxation issues and/or to update themselves on recent developments. These courses run in competition to the many dozens of conferences, seminars and lectures held by others on legal issues in Ireland each year.

LEGAL BACKGROUND

12. What is your organisation's legal form? (e.g. body corporate established by statute, body corporate established by charter, limited company operating under the Companies Acts 1963 to 2001, unincorporated association). Please provide details as applicable (e.g. registered number of a company, the name and year of pertinent statutes).

The Law Society is a body established by royal charter, regulated by statute and supervised by the courts.

The Law Society's Charter was granted in 1852¹ and was supplemented in 1888².

The principal statutes governing the Law Society at present are the Solicitors Acts, 1954-1994.³ The Solicitors (Amendment) Act, 2002 has also just been passed by the Oireachtas and is due to be signed into law by the President during the week ending 12th April, 2002.

¹ Appendix 1.

² Appendix 2.

³ I.e. the Solicitors Act, 1954; the Solicitors (Amendment) Act, 1960; and the Solicitors (Amendment) Act, 1994.

13. Please specify the key statutory or other provisions governing the functioning of your organisation, and particularly those provisions setting out the extent of your organisation's powers and responsibilities. Please also provide, as appropriate and relevant, a description of relevant case-law and administrative practice concerning the scope of your organisation's duties and obligations.

KEY STATUTORY OR OTHER PROVISIONS GOVERNING THE FUNCTIONING OF THE LAW SOCIETY

Statutes

As stated above, a Royal Charter in 1852¹ and a supplemental Charter in 1888² were instrumental in the formation of the Law Society. Today, the Law Society is governed by the Solicitors Act, 1954³, as amended by the Solicitors (Amendment) Act, 1960 and the Solicitors (Amendment) Act, 1994. The Solicitors (Amendment) Act, 2002 has also just been passed by the Oireachtas and is due to be signed into law by the President during the week ending 12th April, 2002.

Statutory Instruments

A series of statutory instruments have been also adopted over time and the existing and relevant ones are appended. They include:

- ***Solicitors (Disciplinary Committee) Rules 1955 and 1961 (S.I. No. 33 of 1995 and S.I. No. 30 of 1961)***

The Rules set down certain procedural requirements in relation to the conduct of the Disciplinary Committee and specify the forms which must be used during the disciplinary procedure.

- ***Solicitors (Compensation Fund) Regulations, 1963 (S.I. No. 115 of 1963)***

The Regulations set down certain procedural requirements in relation to the Compensation Fund.

¹ See Appendix 1.

² See Appendix 2.

³ Act No.36 of 1954.

- ***European Communities (Freedom to Provide Services) (Lawyers) Regulations, 1979 (S.I. No. 58 of 1979, as amended by S.I. No. 197 of 1981, S.I. No. 226 of 1986 and S.I. No. 132 of 1999)***

The Regulations implement Directive 77/249/EEC into Irish Law. They enable a lawyer from another Member State to pursue professional activities in the State by way of provision of services, subject to the reservation to Irish lawyers of the preparation of formal documents for obtaining title to administer estates of deceased persons or for creating or transferring interests in land.

- ***Solicitors' Remuneration General Order, 1884 to 1886***

The taxation of all non-contentious costs is governed by these Orders which are made pursuant to the Solicitors Remuneration Act, 1881.

- ***Land Registration Rules, 1937 to 1986***

These Rules, which vary the Solicitors' Remuneration General Orders, govern the taxation of Land Registry costs.

- ***Solicitors (Professional Practice) Regulations, 1988 (S.I. No. 343 of 1988)***

The Regulations state that a solicitor shall not share his professional fees with any person who is not a solicitor or a duly qualified legal agent in another country.

- ***Solicitors (Practice, Conduct & Discipline) Regulations, 1990 (S.I. No. 99 of 1990)***

The Regulations provide that any settlement of a personal injuries claim on behalf of a minor must first be approved by the appropriate court.

- ***The Solicitors Acts, 1954 and 1960 (European Community Lawyers) (Fees) Regulations, 1991 (S.I. No. 84 of 1991)***

These Regulations determine the fees to be paid to the Law Society by qualified lawyers in other Member States of the European Community on submission of an application to the Law Society, on sitting an aptitude test and on applying for entry to the Roll of Solicitors.

- ***Solicitors Act, 1954 and 1960 (European Community) Regulations, 1991 (S.I. No. 85 of 1991)***

The Regulations make provision for the Qualified Lawyers' Transfer Test for lawyers who have obtained their qualifications in other Member States of the EU.

- ***Solicitors (Interest on Clients' Moneys) Regulations, 1995 (S.I. No. 108 of 1995)***

The Regulations provide for certain client money to be held in a deposit account and for interest to be paid to the client in respect of such money.

- ***Professional Indemnity Insurance Regulations, 1995 (S.I. No. 312 of 1995, as amended by S.I. No. 209 of 1998 and S.I. No. 362 of 1999)***

The Regulations provide for the creation and role of the Professional Indemnity Insurance Committee in accordance with Section 26 of the 1994 Act.

- ***Solicitors (Practice, Conduct and Discipline) Regulations, 1996 (S.I. No. 178 of 1996)***

The Regulations contain provisions relating to professional names and notepaper of solicitors.

- ***Solicitors (Advertising) Regulations, 1996 (S.I. No. 351 of 1996)***

These Regulations provide for fair advertising that is not misleading and are referred to in detail in the response to Question 48.

- ***Solicitors Act, 1954 (Section 44) Order, 1997 (S.I. No. 241 of 1997)***

This Order brings Section 44 of the Solicitors Act, 1954, inserted by Section 52 of the Solicitors (Amendment) Act, 1994, into operation in relation to the profession of attorney in the states of New York and Pennsylvania of the USA. The effect of the Order is that an attorney qualified in New York or Pennsylvania may be admitted as a solicitor in Ireland subject to the corresponding conditions under which solicitors whose names are on the Roll may be admitted to practice in those states.

- ***Solicitors Adjudicator Regulations, 1997 (S.I. No. 406 of 1997)***

The Regulations provide for the appointment of an independent adjudicator for the examination of complaints made by a client of a solicitor against the Law Society regarding the handling by the Law Society of a complaint against that solicitor made to the Law Society by that client.

- ***The Solicitors Acts, 1954 to 1994 (Investment Business and Investor Compensation) Regulations, 1998 (S.I. No. 439 of 1998)***

The Regulations provide that a solicitor, who is not an authorised investment business firm or who does not hold himself out as a provider of investment business services or investment advice, must undertake: (a) only to provide investment business services or investment advice to clients incidental to the provision of legal services; (b) not to hold himself out as being an investment

business firm; and (c) when providing such incidental services and acting as an investment product intermediary, not to hold an appointment in writing other than from Central Bank of Ireland-authorized financial firms, institutions or persons situated in the State, when applying to the Law Society for a practising certificate.

A solicitor who operates as an authorised investment business firm providing investment business services or investment advice not incidental to the provision of legal services, or who holds himself out as providing such services or advice, is required to provide forms of indemnity against losses due to his default that may be suffered by clients to whom he provides such non-legal services. The indemnity must be of an equivalent level to that provided by law to clients who are in receipt of legal services from a solicitor.

- ***Solicitors Act, 1954 (Section 44) Order, 1999 (S.I. No. 133 of 1999)***

This Order brings Section 44 of the Solicitors Act, 1954, inserted by Section 52 of the Solicitors (Amendment) Act, 1994, into operation in relation to the profession of solicitor in New Zealand. The effect of the order is that a solicitor qualified in New Zealand may be admitted as a solicitor in Ireland subject to the corresponding conditions under which solicitors whose names are on the Roll may be admitted to practise in that country.

- ***Solicitors Acts, 1954 to 1994 (Apprentices' Fees) Regulations, 2001 (S.I. No. 331 of 2001)***

The Regulations increase the fees payable to the Law Society in respect of courses and examinations.

- ***Solicitors Accounts Regulations, 2001 (S.I. No. 421 of 2001)***

The Regulations update, extend and repeal the Solicitors Accounts Regulations, 1984 to reflect new policy provisions, primarily to reflect the wording of the Solicitors (Amendment) Act, 1994. The principal policy change prevents a solicitor from keeping his or her own money in the client account. In this respect, the Regulations strengthen the Law Society's regulatory regime which will more effectively protect clients' moneys in the interest of the public generally and in the interests of the solicitors' profession. These regulations have no impact on competition.

- ***Solicitors Acts, 1954 to 1994 (Euro Changeover) Regulations, 2001 (S.I. No. 504 of 2001)***

The Regulations facilitate the changeover from Irish Punt to euro, specifically in relation to The Solicitors Acts, 1954 to 1994 (Professional Indemnity Insurance) Regulations, 1995, the Solicitors (Interest on Clients' Moneys) Regulations, 1994 and the Solicitors Acts, 1954 to 1994 (Investment Business and Investor Compensation) Regulations, 1998.

- *Solicitors Acts, 1954 to 1994 (Apprenticeship and Education) Regulations, 2001 (S.I. No. 546 of 2001)*

The Regulations provide for the appointment of an Education Committee and set down detailed rules in relation to apprenticeships and the education of apprentices.

- *Solicitors Acts, 1954 to 1994 (Practising Certificate Fees 2002 Fees) Regulations, 2001 (S.I. 634 of 2001)*

The Regulations set down the appropriate registration fee and the annual contribution to the Compensation Fund payable to the Law Society by solicitors applying for a Practising Certificate for 2002.

- *Solicitors Acts, 1954 to 1994 Solicitors (Practising Certificate 2002) Regulations, 2001 (S.I. No.635 of 2001)*

The Schedule to the Regulations sets out the application form on which applications for a Practising Certificate must be made to the Law Society.

Bye-Laws

The Law Society is also subject to its Bye-laws, a copy of which is attached at Appendix 14.

Relevant Case-Law

There have been some cases before the courts concerning the Law Society. It is important to stress that many of the cases are purely historical and therefore no longer relevant – for example, the Law Society no longer has a quota system for entry to the Law School (and has not done so for over a decade).

Code of Conduct

The Law Society has a 1988 Guide to Professional Conduct of Solicitors in Ireland (Appendix 15) and a draft Guide (Appendix 16) will be considered in the coming months by the Society's Council. It is noteworthy that the OECD has accepted the necessity for codes of conduct in professional services:

“The need for ethical standards or codes of behaviour, and the desirability of high standards of professional competence to ensure integrity and public confidence, are unquestionable. But the two objectives of

promoting competition and maintaining professional standards are not necessarily contradictory.”¹

It is worth emphasising that the Law Society does not have fee scales or fee recommendations. Equally, there is no prohibition on solicitors taking cases or referring cases other than in the case of ‘conflicts of interest’ and these are rules which are designed to protect the client rather than the solicitor.

The Family Law and Legal Aid Committee of the Law Society has also published a Code of Practice for solicitors practising family law in Ireland. The Code of Practice deals with matters such as the solicitor as mediator, conflicts of interest, the minor as a client etc. The Code of Practice is attached at Appendix 17.

¹ DAFPE/CLP (2000) 2, page 17.

BASIC DETAILS REGARDING THE ROLES OF YOUR ORGANISATION

14. Does your organisation fulfil any of the following roles: regulatory body, disciplinary body, educational body, professional association representing the interests of its members? Please specify which roles are undertaken and provide a brief outline of these roles.

INTRODUCTION

It is not uncommon for a body to fulfil different roles. Indeed the trend is towards centralisation of functions into a single body or institution so as to ensure efficiency and effectiveness¹. There are certain advantages to such an approach including the achievement of efficiencies and the centralisation of facilities. A replication of facilities would involve the wasteful allocation of resources and the risks associated with entirely separate bodies.

REGULATORY BODY

Statutory Role

The Oireachtas involves the Law Society in the regulatory process for solicitors. The Law Society is involved in the regulatory process along with the High Court and the Oireachtas.

Administrative Role

It would be unfortunate if the only mechanisms to protect the public were statute-based systems.² Therefore, in order to ensure some flexibility, there should also be an administrative-based system. For that reason, there is an Independent Adjudicator appointed by the Law Society under regulations.³ Annual Reports produced by the lay persons on the Registrar's Committee and the Independent Adjudicator are given to the Minister for Justice, Equality and Law Reform⁴ and copies of the latter have been deposited in the Oireachtas Library.

The Regulatory Area of the Law Society

¹ E.g. the proposed Single Financial Regulator and the Competition Authority.

² Administrative-based systems can result in more appropriate responses to various issues.

³ See the response to Question 68 below.

⁴ They are thus independently available by virtue of the Freedom of Information Act, 1997.

This distinct area is staffed by the Registrar of Solicitors, seven solicitors, nine investigating accountants and support staff who report to three standing Committees of the Law Society, namely: the Registrar's Committee, the Compensation Fund Committee and the Professional Indemnity Insurance Committee.

The Registrar's Committee deals with complaints made against members of the profession by the public and/or colleagues.

The Compensation Fund Committee is responsible for the maintenance and administration of the Compensation Fund. It deals with claims made by clients of solicitors alleging dishonesty by solicitors and ensures the enforcement of the obligations contained in the Solicitors Accounts Regulations.

The Professional Indemnity Insurance Committee deals with matters relating to solicitors' professional negligence insurance.

About the Registrar's Committee

Complaints dealt with by the Registrar's Committee include the following:

- delay in dealing with a case;
- delay or failure to reply to telephone calls or correspondence;
- acting in a conflict of interest situation;
- dishonesty or deception;
- failure to hand over papers when instructed by the client to do so etc;
- excessive fees;¹ and
- inadequate professional services.

The Law Society can make a determination under these sections such as directing the solicitor to waive fees, to rectify matters at his own expense or directing him to hand over the file to another solicitor nominated by the client.

According to the Annual Report of the Registrar's Committee of 2000/2001, the Committee investigated 1,094 complaints and referred 18 complaints to the Disciplinary Tribunal. On 43 occasions, a formal determination upholding a complaint was made, 340 complaints were resolved and in 107 cases, although the Law Society did not consider that there were any grounds for complaint, nonetheless provided assistance to the complainant. A total of 229 complaints were rejected and 38 were withdrawn or abandoned. The balance were still under investigation at the time of the Report.

¹ In this context, excessive fees means a level of fees which would be entirely unreasonably in the circumstances not a level of fees which departs from a prescribed schedule or scale – because there is no such scale.

About the Compensation Fund Committee

The Committee is responsible for:

- maintenance and administration of the Compensation Fund;
- assessment and determination of claims against the Fund by clients who have sustained loss in consequence of the dishonesty of solicitors or clerks or servants of solicitors;
- ensuring compliance by solicitors with the requirements of the Solicitors Accounts Regulations;
- considering applications for Practising Certificates by solicitors.

About the Professional Indemnity Insurance Committee

This Committee deals with all matters relating to professional indemnity insurance. Each solicitor in private practice is required to carry professional indemnity insurance cover in the minimum amount of €1.3 million in respect of each and every claim. The regulatory area monitors compliance with the requirement.

DISCIPLINARY BODY

The Law Society is not a disciplinary body in that it has very few and minor purely disciplinary powers. The Law Society is empowered to investigate complaints and to monitor solicitors, but must refer those solicitors to the Disciplinary Tribunal for further inquiry. The Tribunal is independent of the Law Society and can impose some minimal sanctions itself. However, the Tribunal must itself refer the matter to the President of the High Court for strike off or suspension from practice.

EDUCATIONAL BODY

The Law Society has an educational role. This area of education is dealt with in response to Questions 27-33 below. At this juncture, a few preliminary observations are worth making. It educates both trainee solicitors as well as qualified solicitors. In regard to trainee solicitors, the education involves both (a) attendance at the Law School, and (b) training in a solicitor's office. The Law Society does not control entry into the Law School. Admission is by way of sitting non-discriminatory examinations open to graduates and non-graduates, and meeting standards set by academics and other independent lawyers rather than by the Law Society or anyone involved in the market place.

PROFESSIONAL ASSOCIATIONS REPRESENTING MEMBERS' INTERESTS

The Law Society comments on various issues which are of interest to members. This issue is examined in response to Questions 60 and 72 below.

VINDICATING THE INTERESTS OF CLIENTS

It should be mentioned for completeness, that the Law Society expends substantial resources and expertise in dealing with complaints and providing a mechanism for clients to have complaints dealt with effectively and expeditiously. Clearly, such a mechanism comes into operation in respect of only a small minority of solicitors. The Law Society operates this mechanism in its role as the regulatory body for solicitors.

15. Must a practising member of the Relevant Profession(s), whether working as an independent or in the employment of a third party, be a member of, or registered with your organisation? Please explain how, in practice, this system is regulated.

No. A practising solicitor does not have to be a member of the Law Society but is required to be enrolled on the Roll of Solicitors.

In order to be a solicitor, a person must be enrolled on the Roll of Solicitors. This is an administrative function which is conferred by the Oireachtas on the Law Society. To this extent, a solicitor must be 'registered' but only in terms of having his or her name on the Roll of Solicitors. This does not involve having to be a member of the Law Society.

In order to practise as a solicitor, a solicitor must have a practising certificate. Such certificates are issued by the Law Society and signed by the Registrar of Solicitors but are issued according to criteria laid down by law and are available on a non-discriminatory basis to members and non-members of the Law Society alike. The matters in relation to each applicant, considered by the Registrar before issuing a practising certificate are related to the need to protect the public and are set out in Section 49 of the 1960 Act (as amended by Section 61 of the 1994 Act). The Registrar will consider whether the applicant:

- (a) has, for 12 months or more, ceased to hold a practising certificate in force;
- (b) has not held a practising certificate in force within 12 months following the date of his admission as a solicitor;
- (c) is a person in respect of whose person or property any of the powers and provisions of the Lunacy Regulation (Ireland) Act, 1871, or any Act amending or extending that Act, relating to management and administration of property apply;
- (d) has an office or place of business in more than one place at any one time (disregarding, where he has a Dublin agent, the office or place of business of such agent) and having been invited by the Law Society to satisfy them that he exercises adequate personal supervision over each office or place of business, he has failed to satisfy the Law Society as aforesaid and has been notified in writing by the Law Society that he has so failed;
- (e) has been invited by the Law Society to give an explanation in respect of any matter affecting his conduct (including conduct in another jurisdiction), and he has failed to give the Law Society an explanation in respect of that matter which the Law Society regards as sufficient and satisfactory, and has been notified in writing by the Law Society that he has so failed;
- (f) has had an order of attachment or committal made against him;
- (g) has had a judgment or decree given against him which involves the payment of moneys, and which is not a judgment or decree in relation to which he is entitled, as respects the whole effect of the judgment or decree upon him, to indemnity or relief from any other person, and he has not produced to the Registrar evidence of the satisfaction of such judgment or decree;

- (h) has been adjudicated a bankrupt;
- (i) has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors;
- (j) has failed to comply with an order of the High Court;
- (k) has failed to comply with regulations made under Section 66 (as substituted by the Solicitors (Amendment) Act, 1994) or Section 71 (as amended by the Solicitors (Amendment) Act, 1994) of this Act or Section 73 of the Solicitors (Amendment) Act, 1994;
- (l) has failed to comply with a determination, requirement or direction of the Law Society under *section 8, 9 or 10* of the Solicitors (Amendment) Act, 1994;
- (m) has been sentenced to a term of imprisonment;
- (n) has failed to comply with the terms of any regulations in force by virtue of the power vested in the Law Society by *section 26* of the Solicitors (Amendment) Act, 1994;
- (o) has failed to attend a course or courses of further education or training (or both), where his attendance at such course or courses was required in the prescribed manner by the Law Society;
- (p) has failed to satisfy the Law Society that he is fit to carry on the practice of a solicitor, having regard to the state of his physical or mental health; and
- (q) has failed to satisfy the Law Society that, having regard to all the circumstances, including the financial state of his or her practice, s/he should be issued with a practising certificate or a practising certificate not subject to specified conditions.

16. How many members of the relevant profession are:

a) members of your organisation?

B) registered with your organisation?

C) practising the profession on a full-time basis (or near full-time) basis, but neither registered with nor members of your organisation?

Note: If exact figures are unavailable, please provide estimates.

The information may be set out in the following tabular format:

Table No. 3: Members of the Profession and the Law Society

Solicitors who are 'registered' with the Law Society (i.e. on the Roll)	7,824
Solicitors who are members of the Law Society (practising and non-practising)	6,478
Practising solicitors who are members of the Law Society	5,912
Practising solicitors who are not members of the Law Society	118

It is important to stress that the people providing services in the market (i.e. the relevant professions) comprise solicitors, accountants, business consultants, foreign lawyers, regulatory consultants and others. In regard to solicitors, there were, as of 31st December, 2001, 7,824 persons entered on the Roll of Solicitors of whom 5,912 had practising certificates. Of the 7,824, some 6,478 solicitors were members of the Law Society with the remaining 1,346 being non-members. Of the 1,346 solicitors, 118 held practising certificates with the remaining 1,228 not holding practising certificates. It will be recalled that the Law Society has never refused an application for membership.

17. Does your organisation charge a fee for registration with or membership of the organisation? If so, please provide details of the levels of fees, including any initial fees and any continuing fees (e.g. annual practising, registration or membership fees).

Yes.

MEMBERSHIP OF THE LAW SOCIETY

The fees for 2002 are as follows: €76 (€44 for solicitors admitted less than 3 years on 1 January 2002). The fees to be a member of the Law Society are modest – it does not represent a deterrent or barrier to entry.

PRACTISING CERTIFICATE

The fee for 2002 for a practising certificate is €1,643 (€885 for solicitors admitted less than 3 years on 1 January 2002). The fee is modest and would not be a deterrent to market entry. Many banks provide a loan package to cover the costs should it be reached.

COMPENSATION FUND CONTRIBUTION

Of the practising certificate fee for 2002, €508 relates to the Compensation Fund contribution and this element of the fee is segregated and is not available for the provision of services or the performance of functions not related to the Compensation Fund.

DOCUMENTS PRODUCED BY YOUR ORGANISATION
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18. Please supply to the Authority copies of all documents relating to:

a) The legal and “constitutional” basis and structure of your organisation (such as, for instance, framework instruments establishing your organisation and setting out the basic governance rules of your organisation and its various sub-structures).

b) Rules and bye-laws governing members’ conduct (such as, for instance, codes of ethics, codes of practice, guidelines for members of the association and/or the profession, regulations, professional conduct or other rules, recommendations to members of the association and/or the profession).

c) Annual reports and/or accounts produced for the last three years.

A. LEGAL AND CONSTITUTIONAL DOCUMENTS

The legal and constitutional documents comprise:

(a) the Charters of 1852 and 1888; they are attached as Appendices 1 and 2 to the submission; and

(b) three principal Acts of the Oireachtas: the Solicitors Act, 1954; the Solicitors (Amendment) Act, 1960; and the Solicitors (Amendment) Act, 1994. A marked-up compendium of the three statutes is attached at Appendix 3.

There are statutory instruments governing the conduct of affairs by the Law Society attached at Appendix 18.

Obviously, the Law Society operates within the confines of the law generally, including European Union law (e.g. the *NOVA* case).

B. RULES AND BYE-LAWS GOVERNING MEMBERS’ CONDUCT

The Bye-Laws of the Law Society are attached as Appendix 14.

The Guide to Professional Conduct of Solicitors in Ireland and Council Regulations are attached as Appendices 15 and 19 respectively.

C. ANNUAL REPORT AND/OR ACCOUNTS PRODUCED FOR THE LAST THREE YEARS

Appendix 20 contains the Annual Report and Accounts for 1998/1999.

Appendix 21 contains the Annual Report and Accounts for 1999/2000.

Appendix 22 contains the Annual Report and Accounts for 2000/2001.

D. ADVICE AND INFORMATION TO MEMBERS

While it is not strictly within the scope of the question, it is important, for the sake of completeness, to indicate that the Law Society provides a substantial amount of technical information to its members which is ultimately to the benefit of clients. The Law Society provides advice and information to its members on various legal issues of practical importance. Typically, the Law Society gives information on conveyancing (for example, the Conveyancing Handbook attached at Appendix 23), litigation and commercial matters. The Law Society publishes a wide variety of booklets and pamphlets on particular legal topics, e.g., Divorce in Ireland (attached at Appendix 24) and Handbook on Arbitration in Ireland (attached at Appendix 25). In addition, the Law Society issues “Practice Notes” on, as their name suggests, issues relating to practice. The Practice Notes of the Law Society are attached at Appendix 26.

The Law Society does not issue guidance to its members or the public as to the fees or fee scales which ought to be charged or used for any matter. Since 1991, the staff of the Law Society have been expressly advised not to enter into discussions with the public or members of the profession as to pricing. The Law Society does not have a scale fee. It is true that the Law Society used to do so – before the entry into force of the Competition Act, 1991 – and some of that may still live in popular folklore (see the response to Question 46 below) but the Law Society has not and does not engage in such activity. The Competition Authority will recall that this is a point of distinction from the Law Society of England and Wales.

**PART II – INFORMATION ABOUT THE STRUCTURE OF THE IRISH
MARKET FOR THE PROFESSIONAL SERVICE IN QUESTION**

The Authority is eager to gain a full understanding of the markets for the relevant professional services. In particular, the Authority is interested in compiling information on the economic importance of professional services that are the subject of this review. As a professional body with considerable knowledge and experience of the operation of the relevant profession, your association is in a unique position to inform the Authority in this regard. The Authority realises that exact statistics may not always be available – in such cases, your best estimates should be provided. In all cases, please include reference to the source of your information (e.g. best estimate, survey conducted by the organisation, survey conducted by another body (please specify), study conducted by academic researchers (please provide details)) and indicate, if possible, your assessment of the reliability of such estimates.

INTRODUCTORY NOTE

The Law Society wishes to emphasise that while the geographical market for the provision of legal services should be seen as national rather than a number of local markets, there is nevertheless an increasing international dimension to that market.

A significant number of persons entering the Roll of Solicitors each year are people who have already qualified abroad. When these people re-qualify in Ireland, they do not have to relinquish their foreign qualification; it is possible to be both an Irish solicitor and a foreign lawyer at the same time. The following table shows the proportion of overseas qualified lawyers as a proportion of those entering the Irish Roll of Solicitors.

Table No. 4: Percentage of Foreign Qualified Lawyers Admitted to the Irish Roll of Solicitors

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Percentage of Foreign Qualified lawyers admitted to the Irish Roll of Solicitors	17%	9%	5%	6%	8%	8%	18%	15%	14%	16%	14%

Thus, about one-seventh of all new entrants on the Roll of Irish Solicitors are foreign qualified lawyers. This is characteristic of an open market.

It is also interesting to see where foreign-qualified lawyers are coming from in this context.

Table No. 5: Source of Pre-Existing Foreign Qualifications in the Case of New Irish Solicitors

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
N Ireland	16	10	6	10	7	7	15	19	21	18	18
England	26	19	12	11	23	24	39	35	39	42	41
Germany		1				1		1		1	
Scotland						2					
New York									1	3	4
Pennsylvania										1	
New Zealand										1	2
TOTAL	42	30	18	21	30	34	54	55	61	66	65

The range of foreign jurisdictions is likely to grow over time.

MARKET STRUCTURE

The market for legal services in Ireland is highly competitive and, indeed, far less concentrated than the markets for other professional services in Ireland. In this regard, although there are no market share figures available for the Irish market for legal services, LECG's comments in their Report for the OFT in regard to the UK legal market could aptly be applied to the Irish market:-

“The market for solicitors’ services overall appears to be far from concentrated – with a Herfindhal Index of 315 for the top 100 firms ranked by turnover.... As such, the top 5 firms...had a combined market share of 31.9% in 2000... In respect of concentration, these figures compare favourably with other professions, especially accountancy where the top 5 firms have a market share in excess of 70%.”¹

MARKET DATA

The financial turnover of the Irish solicitors’ firms is not available because they are not allowed to incorporate and therefore do not have to file returns or share their figures. What is known includes the following general facts.

As at 30th September 2001, the practising status of Irish solicitors holding practising certificates was that, of the 5,711, some 5,107 worked in private practice, 438 were in corporate positions, 119 worked for the State and 47 were working abroad. Interestingly, the age profile in 2001 was that 44% of all solicitors in Ireland were less than 40 years of age.

¹ Page 47 of LECG's Report on *Restrictions on Competition in the Provision of Professional Services*, December 2000.

19. In total, how many people practise the Relevant Profession(s) in Ireland on a full-time or near full-time basis? If this number differs from the answers given in question 16, please explain.

The Law Society does not know the total number of people who provide legal services generally in Ireland.

In respect of practising solicitors, there were 5,912 holders of practising certificates for the year 2001 but the number of people who are not practising solicitors but who perform services analogous to those of a solicitor is much higher and includes lawyers who are in-house lawyers, barristers and in some areas of practice, other professionals who are giving advice of a type which would ordinarily be given by solicitors.

It is useful to note the number of solicitors holding practising certificates in Ireland each year between 1991 and 2001 (Table No. 6 below but it is also very interesting to note the growth of practising solicitors year-on-year (Table No. 7 below) and the growth in the total number of solicitors qualifying (including those who do not go on to hold practising certificates.)

Table No. 6: Number of solicitors holding practising certificates

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Number of solicitors holding practising certificates	3,642	3,808	3,959	4,131	4,395	4,593	4,776	4,950	5,257	5,551	5,912
Year-on-year Growth	-	+4%	+4%	+4.3%	+6.4%	+4.5%	+3.9%	+3.6%	+6.2%	+5.6%	+6.5%

Table No. 7: Number of new solicitors admitted to the Roll each year (Tabular)

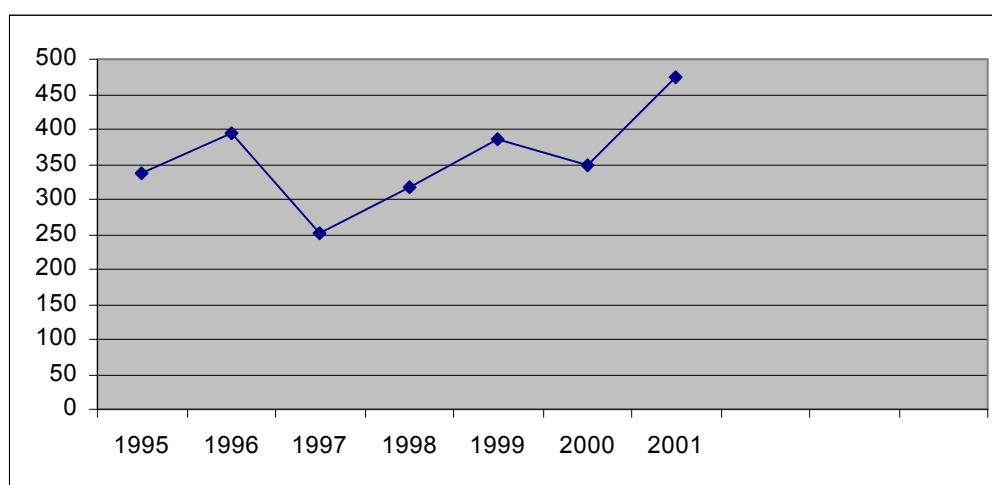
Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Number	203	298	315	308	337	394	252	318	385	350	474
Change year-on-year	-	+47%	+6%	-2%	+9.4%	+17%	-36%	+26%	+21%	-9%	+35%

It is clear that there is no fixed pattern year-on-year.

Table No. 8: Solicitors qualified in the Republic of Ireland

Year	Irish	Foreign Solicitors	Transferring Barristers	Total
1995	306	30	1	337
1996	358	34	2	394
1997	196	54	2	252
1998	263	55	0	318
1999	322	61	2	385
2000	281	66	3	350
2001	406	65	3	474

Table No. 9: Number of New Solicitors admitted to the Roll each year (Graphic)



20. Where various practice structures are available (e.g. sole practitioner, partnership, limited company, public sector or private sector employee), please indicate how many and/or what proportion of those practising the profession in Ireland practise within each form of practice structure.

INTRODUCTION

The Law Society is unable to answer this question in respect of the legal services market generally as a whole but is happy to provide the following statistical information in relation to solicitors.

With regard to solicitors, the following table sets out the practice status of members of the Law Society for the year 2001:

Table No. 10: Practice Status of Law Society Members (2001)

Solicitors Employed in Law firms	5107 (83%)
Solicitors Employed in Corporate Bodies	438 (7%)
Solicitors Employed in the Service of the State	119 (1%)
Abroad	47 (1%)
Not practising	467 (8%)
Members	6178* (100%)

**As at 30th September, 2001*

The table below demonstrates practice structures of practising solicitors in Ireland:

Table No. 11: Firms by Number of Solicitors as % of all Firms

Solicitors in the Practice	Firms	%	Cumulative
1	899	48%	48%
2	455	24%	72%
3	234	12%	84%
4	112	6%	90%
5	52	3%	93%
6 to 10	86	5%	98%
11 to 15	25	1%	99%

16 to 20	4	0%	99%
20+	16	1%	100%
Total	1,883*	100%	100%

As at 30th September 2001

QUALIFIED SOLICITORS

Solicitors working in the service of the Irish State are deemed, by law, to have practising certificates. This means that the State does not have to pay the fees for practising certificates.

SOLE PRACTITIONERS

Solicitors may practise as sole practitioners. In fact, about 48% of all solicitors' practices (i.e. 899 solicitors) during 2001 were sole practices/sole practitioners. There are no restrictions on the establishment of sole practices in Ireland as opposed to, for example, England and Wales. In England and Wales, a solicitor must have at least three years of supervised practice before commencing practice in his or her own right – in Ireland, a newly qualified solicitor may establish a sole practice on the first day of qualification. This ability of Irish solicitors to commence practice on the day of qualification requires the highest standards of training to a commonly high uniform standard. Moreover, there are no restrictions on entering practice as a sole practitioner: there are no formal requirements; office space may be rented; there are no qualification periods; and advice is available to a newly qualified solicitor from the Law Society, colleagues and their local Bar Association. The Law Society has published guides on how to set-up an office and practice (attached at Appendix 27) which further facilitates market entry. The Law Society has published Practice Management Guidelines for its members on a regular basis, a sample of which are attached at Appendix 28.

There are obvious risks associated with establishing as a sole practitioner including unlimited personal liability. Such unlimited personal liability provides no real protection to clients – the protection for clients comes from professional standards, professional indemnity insurance and the Compensation Fund. Unlimited liability is a historical anachronism which serves no useful function and is a restriction on market behaviour without any justifiable consumer benefit. A tax advisor advising a client on tax matters may shield behind a limited liability company but a solicitor giving the exact same advice may not do so. It is a restriction which could be easily withdrawn as being discriminatory, no longer useful and of no practical value to the public.

PARTNERSHIPS

Some 52% of all solicitors' practices are partnerships of two or more solicitors – i.e. 4,208 solicitors were in partnership (as partners or employees). All of these partnerships in Ireland are unlimited liability partnerships. This means that solicitors who are partners

in such firms are personally liable, without limitation, for all the liabilities of the firm. This means that one partner is liable for the liabilities of all other partners – so the negligence of anyone (partner or not) in the firm is the responsibility of the whole firm. This restriction on business organisation serves no useful function in the modern age and has been overtaken by reforms in other jurisdictions. The introduction of limited liability partnerships (LLPs) would bring Ireland into line with developments in the US and the UK. There is no doubt that Irish solicitors are therefore at a competitive disadvantage. The issue of LLPs is discussed in response to Question 60 below. (It is worth noting that if the LLP legislation proposed by the Law Society were enacted then an Irish solicitor who was negligent would still be liable to the full extent of his or her assets but the negligent solicitor's partners would not be liable.)

LIMITED COMPANIES

There is a legal restriction on Irish solicitors carrying on practice as solicitors through limited liability companies. This is part of the broader prohibition on solicitors being bodies corporate. Section 64(1) of the Solicitors Act, 1954 provides:-

“A body corporate or director, officer or servant thereof shall not do any act of such nature or in such manner as to imply that the body corporate is qualified or recognised by law as qualified, to act as a solicitor”.

Therefore, there are no bodies corporate which carry on practice as solicitors. However, Section 70 of the 1994 Act provides for the introduction of Regulations permitting the incorporation of solicitors' practices with the concurrence of the Minister for Justice, following consultation with the Minister for Enterprise, Trade and Employment. Regulations have never been enacted pursuant to Section 70.

PUBLIC SECTOR EMPLOYEES

There is no restriction on solicitors being employed by public sector bodies. In 2001, around 119 solicitors were in the service of the State. An increasing number of solicitors are being employed by the State and this is a useful and timely recognition of the valuable contribution which can be made by solicitors.

PRIVATE SECTOR EMPLOYEES

There is no restriction on solicitors being employed in the private sector as employees of private sector bodies. Typically, they are employed as in-house counsel or legal advisors. Unlike some other jurisdictions, Irish solicitors employed in-house may remain as members of the Law Society and must retain practising certificates if they are to practice as solicitors. In 2001, the Law Society believes there were 438 solicitors employed in-house and holding practising certificates. The Law Society publishes an Information

Booklet for solicitors commencing employment in the corporate and public services sectors. This booklet is attached at Appendix 29.

21. What is the median income of a member of the profession practising on a full-time/near full-time basis? The relevant figure is gross income and including all bonuses, profits-shares etc., but excluding expenses deductible against tax in accordance with Irish law.

QUALIFIED SOLICITORS

Subject to the comments below, the Law Society does not know the answer to this question and does not have the means to obtain this information. Indeed, the Law Society believes that members of the profession would be unwilling to share such information. It is likely that no-one has the answer to this question because solicitors' practices do not, and cannot, file returns with the Companies Registration Office (as they are not allowed to be companies whether limited by guarantee or by share capital) and the figures are, thus, not disclosed. The Law Society has not conducted surveys of the type outlined in the question. However, it is worth noting that the Law Society conducted, on a once-off basis, a report in 2000 on practice management. The methodology involved the circulation by post to firms of a questionnaire and the compilation of the report attached at Appendix 31. Appendix 31 is attached as a Business Secret. The rationale for it being a Business Secret is the commitment given at the time to the respondents of the survey that the Law Society would not reveal the results of the survey to any firm or solicitor which had not participated and therefore, in order to meet that commitment to the participants, the Law Society insists that it be treated as a Business Secret and not be revealed or disclosed. It should be stressed that only approximately 24% of firms responded and there was no verification of the information or benchmarking. The generality of the information contained in the report is vague and the report is not as reliable as it might be for this purpose. Indeed, it would not be able to answer the type of question asked in this questionnaire.

There are two further points that should be made in regard to members' income.

First, it is worth mentioning that there are some statutory, quasi-judicial and judicial-like controls in some situations. The fee income of any solicitor, which is earned by way of fees from clients, is subject to control by, among others, the Taxing Master. An Information Booklet on the Role of the Taxing Masters of the High and Supreme Courts is attached at Appendix 30. Thus, for example, if a solicitor seeks to charge a fee which the client does not accept then the client may bring the matter to the attention of the Taxing Master. The vast majority of fees levied by solicitors do not give rise to any difficulty or dispute but if there is a dispute then the Taxing Master can reduce the fee. Similarly, there are some statutory instruments prescribing fees subject to control by the Taxing Master.

Secondly, the regulatory functions of the Law Society may mean that specific officials of the Law Society see accounts of practices but this function, the people and the information are kept entirely separate and distinct from the rest of the Law Society and

thus no information would be circulated or available to anyone competing in the market place.

Thirdly, it should be noted that the Law Society's recommends a salary in the region of €18,000 to €24,000 for newly qualified solicitors.

TRAINEE SOLICITORS

Appendix 32 sets out the minimum weekly wages which trainee solicitors must be paid. It should be noted that many firms pay significantly more than this. The availability of these minimum wages means that entry to the profession is more open than ever because trainees are now paid throughout their apprenticeship.

22. What is the average income of a member within the

a) top 20%

b) bottom 20%

Of earners within your profession on a full-time or near full-time basis?

[Again, the relevant figures are take-home pay before tax and including all bonuses, profit-shares etc., but excluding expenses deductible against tax in accordance with Irish law.]

The answer to this question is the same as the answer to Question 21 so please see the response to Question 21 above.

23. If your profession is, by rule or in fact, divided into a variety of distinct or quasi-distinct segments based on categories such as, (i) the characteristics of clients served; (ii) the rank, or level of expertise, of the professional; (iii) the different nature of the services provided by different members of the profession; (iv) the geographical areas served by different members of the profession; or indeed any other category, please list these segments.

INTRODUCTION

The solicitors' profession is not divided into distinct or quasi-distinct segments as a matter of law, regulation or custom. Obviously, as a matter of fact, particular specialisations among solicitors may emerge but they are not sanctioned by the Law Society nor do they prevent solicitors doing other types of work. Thus, for example, a solicitor may develop a reputation as a conveyancer, a banking lawyer, a competition lawyer or intellectual property lawyer but these are not formal specialisations as they would be in, for example, the medical profession.

CHARACTERISTICS OF CLIENTS SERVED

As a matter of law, there is no division of the variety of clients which a solicitor may serve – put another way, all solicitors may be retained by all type of clients. Solicitors may be instructed by any type of client. In some jurisdictions abroad, there are specialist “public/State law firms” but no such distinction exists in Ireland which means that there are no restrictions in Ireland on the type of clients which a solicitor may act for. In practice, all firms are open to all clients except that, for example, a few practices choose not to provide criminal law services and others choose not to provide particular types of commercial law services.

RANK OR LEVEL OF EXPERTISE OF THE PROFESSION

A solicitor does not need a particular rank or level of expertise to accept instructions from any client. Obviously, the client will choose the solicitor for various reasons and those reasons might include the experience and expertise of the solicitor but there is no restriction on the solicitor's ability to take instructions. There is no formal ranking or status conferred on a solicitor. Clearly, solicitors with more experience have the opportunity (which they may not take up) to charge at a higher rate for their services than those with less expertise or experience.

DIFFERENT NATURE OF THE SERVICES PROVIDED BY DIFFERENT MEMBERS OF THE PROFESSION

The solicitors' profession is not, by rule or regulation, divided into distinct or quasi-distinct segments based on the nature of the services provided by different members of the profession. The only practical distinction of any significance is that some firms do not practice in, as a matter of choice, certain areas of the law, such as criminal or commercial law.

GEOGRAPHICAL AREAS SERVED BY SOLICITORS

There is no formal or regulatory regime restricting solicitors to practise within particular regions or locations in Ireland. Thus, solicitors are free to practise throughout Ireland. Obviously, very many practices will deal with clients in a relatively local area but for the reasons outlined in the introductory comments to this questionnaire, the geographical market is often far from local.

24. Are there significant differences in remuneration and/or other working conditions between the various segments listed in your answer to question 23? Please provide details.

There are no formal segments within the solicitors' profession. Even if there were such segments, the Law Society does not know the answer to this question; see the answer to Questions 21-23 above.

25. Please provide details on how the service is supplied within each of the various segments you have listed above. For example, how many members of the profession fall into each of the segments? What requirements determine whether or not an individual member is part of a particular segment? Which are the largest suppliers (or other practice structures) on each of the segments? What are their respective market shares? What proportion, if any, of the supply of these services comes from abroad, and of that proportion, how much of it is composed of direct supply from abroad and how much comes from immigration by foreign professionals into the country? Have there been significant changes in the total amount of services offered for supply, or in the market shares, in recent years? Feel free to provide any further information you believe to be relevant to an understanding of supply.

There are no segments in the solicitors' profession in Ireland in the sense of distinct categories of legal work. It is a single profession which is not divided into different segments. Of course, specialisms emerge out of the experience and reputation of firms and because of the increasing complexity of some areas of work. However, the following general comments may assist the Competition Authority in its analysis of the issues involved.

The solicitors' practice is, as a matter of fact, divided into a number of groups which are not finely drawn but are somewhat overlapping. They include firms who provide legal services in all areas of the law, firms who mainly do criminal law, firms who mainly do personal injuries litigation, firms who mainly serve commercial clients and firms who mainly do property, litigation and probate work. However, these are not finite and distinct groups but overlap and come into regular contact with each other. Market share data is not available.

Whether a solicitor or a firm of solicitors fits into a particular 'segment' (in the loosest sense of that term) is entirely a matter of choice. There is a high degree of supply-side substitutability between firms with different specialisms. A firm may decide to move from one area of the law to another quite easily and without much investment. Equally, it may leave a 'segment' without too much difficulty as well. A solicitor does not have to possess a particular qualification or undergo any particular training and could therefore 'migrate' quite easily and this is all the easier because there is no demarcation in the profession.

The Law Society does not have any information on the number of solicitors and practices by specialisation. In the UK, there are unofficial directories which classify law firms by specialisms but these do not exist in Ireland.

With regard to market share data, there is no information on the market share held by solicitors or solicitors' firms in Ireland. In any event, the Law Society submits that such data would not be very meaningful because the boundaries to such "segments" are so

imprecise and because specialisms can change with changes in practice work-loads and personnel.

The service of solicitors is normally supplied via offices but there are other methods developing through telephone and on-line advice services. The work is normally done through telephone, consultations, meetings and correspondence.

There is a growing trend to have some Irish-based clients served by overseas lawyers, whether established in Ireland or, and this is more common, based outside Ireland but serving the needs of Irish-based clients.

Overall, the number of solicitors supplying the Irish market has risen quite dramatically in recent years with growing numbers of Irish qualifying solicitors and foreign lawyers acquiring the qualifications of Irish solicitors¹.

¹ See the response to Questions 10 and 16 above and the Introduction to Part II.

26. Please provide details of the nature and structure of demand for professional services within each of the various segments you have listed above. For example, from whom does the demand come (i.e. what types of organisation / individual – what are their characteristics? Do you feel the majority of those demanding the service are well informed about it)? What proportion, if any, of the demand for these services comes from abroad? Have there been changes in demand, either in the pattern or the total amount, in recent years? Feel free to provide any further information you believe to be relevant to an understanding of demand.

There are no segments within the legal profession. However, within the context of the general market, the nature of demand for solicitors' services may be described in the following terms.

First, the demand for legal services is growing as is probably reflected in the rising number of solicitors¹. In addition, as discussed above, more and more “non-lawyers” are entering the market for the provision of legal services. The reasons for the growth in demand are difficult to pin-point but factors such as a demand for increasingly technical legal advice (e.g. in the areas of e-commerce, telecommunications, etc.), the “Celtic Tiger” which has resulted in a wave of new incorporations, the increase in conveyances etc. are important.

Secondly, unlike many other professions, demand in the solicitors' profession is not very cyclical. Legal advice is consistently required both in good and bad economic climates. For example, during an economic upturn, law firms will advise on mergers and acquisitions etc. while in a bad economic climate, insolvency and restructuring advice may prove more common.

Thirdly, the sources of demand vary between private individuals, businesses and State bodies. The variety in the source of demand is another reason why demand tends not to be cyclical.

Fourthly, whether or not clients are well-informed varies with the type of client and the legal service provided. Generally speaking, the market is becoming better informed as a result of an increasing knowledge of the law e.g. through the Internet, advice bureaux, press coverage and the efforts of the Law Society. However, some elements of information asymmetry remain. In terms of areas such as succession/probate and conveyancing, there is a need to protect clients to an even greater extent than is normally the case.

¹ See the table set out in the response to Question 19.

**PART III – ENTRY INTO, AND CONTINUED MEMBERSHIP OF, THE
PROFESSION**

A defining feature of the relevant professions is the specialist expertise of their members, which expertise must be developed by extensive education and training. The Authority is anxious to learn about the relevant entry regimes and this part of the Questionnaire is designed to further that end. The first number of questions in this Part is designed to elicit factual information. You are given the opportunity to comment on the entry regime later in the Part.

EDUCATIONAL REQUIREMENTS

27. Does your organisation require applicants to have attended stipulated third-level courses before those applicants can be considered for membership of professions? Please provide details of any such stipulated courses (e.g., duration, core subjects, entry and exit level numbers, failure rates).

INTRODUCTION

A person does not need to have attended stipulated third-level courses before applying to attend the Law Society to become a trainee/apprentice solicitor or before being entitled to transfer as a foreign lawyer. This means that solicitors come from a wide variety of educational backgrounds; some are law graduates, some are non-law graduates; and some are non-graduates.

The fact that all trainee solicitors undertaking an apprenticeship in Ireland are required to attend the Law School ensures that there is a consistency in the training standards of solicitors in Ireland. There is a need for consistency so as to achieve high standards. A single institution can achieve efficiencies. For example, in England and Wales where there are several law schools, resources are replicated and the fees are several times higher (see article from the Law Society Gazette attached at Appendix 33) than those in Ireland¹. Moreover, the level of teaching contact is about a third or less than in Ireland, the law schools are the subject of constant reviews² and there are many disappointed candidates (estimated to be as many as 2,000) who have sat the commercially-run courses and now have no place to take up in a firm for training. It should be noted that English solicitors are not able to practise on their own for three years post-qualification but Irish solicitors are trained to the point where they may and can do so. Finally, there is considerable inconsistency in the courses taught by the various law schools.

The Law Society does not operate any quotas or any other mechanisms to manipulate entry unlike the position in other jurisdictions. For example, in Northern Ireland where vocational training is provided by the Institute of Professional Legal Studies (which trains both barristers and solicitors - with much separate training for both), a strict numerical quota for places is set and the highest scoring candidates in the admissions examination fill these places. The quota in recent years for Apprentice Solicitors has been as follows:

Table No. 12: Quotas for Apprentice Solicitors in Northern Ireland

1995/1996	1996/1997	1997/1998	1998/1999	1999/2000	2000/2001
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¹ Fees can be up to Stg£8,250 without any guarantee of a place.

² England and Wales are currently having their fourth review of education.

95	95	70	70	70	95
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The number of places is set by the professional bodies in Northern Ireland. Government bursaries are available for 40 places at the Institute.

BEFORE ATTENDING THE LAW SCHOOL AT THE LAW SOCIETY

If a person is becoming a solicitor by virtue of the Irish apprenticeship/traineeship route then he or she may be:-

- (a) a law graduate; or
- (b) a non-law graduate; or
- (c) a non-graduate.

In effect, no specific qualification is needed before sitting the necessary examinations. No specific exemptions are given to law graduates¹. Persons transferring to become solicitors may not have taken any third-level courses or have had any education in Ireland.

Some of the information given in later questions should be read in conjunction with this answer.

ATTENDANCE AT THE LAW SCHOOL

Unless an applicant is transferring across as a foreign lawyer to qualify as an Irish solicitor under the EU or reciprocation rules outlined elsewhere in the responses to this questionnaire, the applicant must attend the Law School at Blackhall Place in Dublin. A copy of the Law Society's Education Department Handbook is attached at Appendix 34.

At first glance, someone looking at the situation superficially or without deep analysis might believe that attendance at one law school was anti-competitive or restrictive. In fact, in the Irish context, the system of education at the Law School in Blackhall Place best meets the public need for highly qualified/well-educated solicitors, optimises the allocation of the scarce resource of professionals willing and able to teach at such courses, while simultaneously operating on a long-run financial break-even basis (thereby not providing any financial benefit to the Law Society or its members) and on the basis of an objective entry standard set by external academics and others who have no knowledge of (or regard to) the conditions of the market place. It would be very difficult to replicate this Law School, particularly in a small jurisdiction, without unduly reducing the quality and diversity of the training facilities currently available at the Law School. (As these are, for the most part, busy practitioners, it is unlikely that they would duplicate

¹ It should be pointed out however, that non-graduates have to do a basic examination on general knowledge to test certain basic skills and knowledge but, law graduates, non-law graduates and non-graduates are treated equally. This examination is designed to ensure that applicants have basic writing and general knowledge skills.

their teaching commitments. If they were to do so then that would have to be handsomely rewarded which would drive up the cost of the courses for students.)

The Law Society does not control the number of entrants into the Law School.

In order to ensure the maximum diversity of entry routes to the solicitors' profession, it is useful to have a statutory-based regime to ensure minimum qualifications.

The following provides a summary of the requirements of the qualification process:

- (a) pass the Preliminary Examination or receive an exemption from it¹;
- (b) pass the First Irish examination²;
- (c) pass the Final Examination – First Part;
- (d) secure an apprenticeship³ with a practising solicitor and obtain the Law Society's consent to become apprenticed;
- (e) attend the Professional Practice Course I and pass the Course examinations;
- (f) spend a total period of 24 months as an apprentice/trainee solicitor in the master's office starting 14 days after completion of the last Professional Practice Course I examination⁴;
- (g) attend the Professional Practice Course II and pass the Course examinations;
- (h) pass the Second Irish examination; and
- (i) serve the remainder of the two-year term of apprenticeship if any such time remains.

Please refer to the response to Question 28 for further detail.

The Law Society facilitates people who wish to become solicitors (irrespective of whether they become members of the Law Society) by publishing a guide on how to become a solicitor and by giving lectures to various groups to explain how the process works (e.g. career guidance, teachers conferences or students in school). The guide entitled "How to Become a Solicitor", published by the Law Society, is attached as Appendix 35.

STATUTE LAW

The education regime has its basis in law.

Part IV of the 1954 Act as amended by Part V of the 1994 Act, together with the following statutory instruments regulate the education regime:

¹ Solicitors Act, 1954, s.42.

² Solicitors Act, 1954, s.40(3).

³ Since 1st January, 2002, the 'apprenticeship' is known as a 'traineeship'.

⁴ The Law Society is flexible in this regard to some limited extent and would allow part of the apprenticeship/traineeship to be spent in a solicitors office in a business/company rather than a traditional law firm *provided the training regime in the particular environment would allow trainees to be adequately and properly trained*. With the consent of the Education Committee, a trainee may spend up to six months of his or her apprenticeship on secondment in a firm or institution which would be of value to the trainee, e.g. a Stage in the European Commission etc.

- (a) The Solicitors Acts, 1954 to 1994 (Apprentices Fees) Regulations, 2001 (SI No.331 of 2001);
- (b) The Solicitors Acts, 1954 and 1960 (European Communities) Regulations, 1991 (SI No.85 of 1991); and
- (c) The Solicitors Acts, 1954 to 1994 (Apprenticeship and Education) Regulations, 2001 (SI No.546 of 2001).

The Competition Authority will note that Section 10(1) of the Solicitors Act, 1954 provides that:

“a person who has fulfilled such of the requirements of Part IV of the [1954] Act as apply in relation to him may apply to the Chief Justice to be admitted as a solicitor”.

28. Does your organisation require applicants to complete professional accreditation and/or certificate courses? Please provide details of any such stipulated courses (e.g., duration, core subjects, entry and exit level numbers, failure rates). Are there currently in place any minimum requirements for those seeking to enter such courses? Please provide explanation of the entry process into such courses and, in particular, the requirements (i.e., minimum degree level, etc.) applicants must meet for entry into such courses? If there are several types of entry criteria that are satisfactory (e.g. relevant university degree, ‘conversion course’), please provide details.

STATUTORY EXAMINATIONS

The Preliminary Examination

The preliminary examination is held once a year at the Law Society’s Headquarters, Blackhall Place, Dublin 7, usually in March, as required by Section 40 of the 1954 Act (as amended by Section 49 of the 1994 Act). To sit the Preliminary Examination, a candidate must be at least 21 years old. The examination consists of the following three papers:

- English
- Irish government and politics
- General knowledge

The pass mark in each paper is 50% and all three papers must be passed at one sitting in order to pass the examination. There is no quota. The papers are corrected by persons who are not connected with the Law Society, namely, Professor Terrence Brown, TCD, Jim O’Donnell, IPA and Professor Tom Garvin, UCD. Candidates are allowed a maximum of three attempts. Exemptions are given for university graduates from Ireland and the UK and for law clerks with at least five years’ experience and holding a Diploma in Legal Studies or equivalent qualification. In addition, the Law Society is empowered to grant exemptions from sitting the Preliminary Examination and does so on a regular basis. For example, persons whose education and experience equates with the standard of the Preliminary Examination may apply to the Education Committee for exemption from the Preliminary Examination.

University graduates from Ireland and the UK or holders of degrees awarded by the National Council for Educational Awards are exempt from this examination. Holders of such degrees are not required to apply for exemption from the Preliminary Examination but they must provide a copy of their degree certificate when applying to sit the Final Examination – First Part. Holders of degrees from other universities may apply to the

Education Committee for exemption from the Preliminary Examination. Such applications are generally granted.

Table No. 13 below sets out details of the numbers taking and passing the Preliminary Examination in recent years.

Table No. 13: Preliminary Examination – 1996-2001

Year	No. Sat	No. Pass	No. Fail	Pass Rate
2001	23	13	10	57%
2000	17	8	9	47%
1999	14	8	6	57%
1998	15	8	7	53%
1997	11	8	3	73%
1996	13	10	3	77%

The First Irish Examination

Pursuant to Section 40(3) of the 1954 Act, there is a first Irish language examination. Every candidate seeking an apprenticeship/traineeship must sit the First Irish examination which is held twice a year usually in January and July. A tiny minority of candidates fail this examination – approximately two out of every three hundred. The Law Society cannot grant exemption from this examination. The examination is conducted by a person who is unconnected with the Law Society (currently a professor in the Irish Faculty in Trinity College).

Table No. 14 below sets out details of the numbers taking and passing the First Irish Examination in recent years.

Table No. 14: First Irish Examination

Date	No. Sat	No. Fail	Pass Rate
January 2002	484	7	99%
July 2001	228	5	98%
January 2001	423	9	98%
July 2000	141	12	91%
January 2000	455	6	99%
July 1999	201	7	97%

Final Examination – First Part (FE-1)

The FE-1 is held twice a year, normally in April and October. Only those who have passed or have gained exemption from the Preliminary Examination may sit the FE-1. The FE-1 consists of eight papers, namely the law of tort, law of contract, real property,

equity, constitutional law, company law, criminal law and EU law. These basic subjects are examined so as to ensure that students who attend the Courses are well-equipped to attend the courses, and that there is no need to teach these subjects on the Courses – these subjects then become “assumed substantive” knowledge as the basis for the “procedural” and “vocational” law courses. By having this structure, all potential applicants (whether law graduates or not) are treated equally and have an equal choice.

Most candidates who are required to sit some or all of the subjects of the FE-1 attend courses in the relevant subjects which are offered by several private institutions in Ireland. Although the Law Society has no control over and does not authorise or contribute to these courses, it provides a list of some of the providers of these courses to any inquirer.

Although applicants are required to pass eight examinations in the FE-1, it is not necessary to pass all the subject examinations at one sitting - it is possible to carry forward passes obtained in various sittings subject to certain rules under the Solicitors Acts, 1954 to 1994 (Apprenticeship and Education) Regulations, 2001, as follows:

- (i) a candidate sitting the Examination for the first time must sit examinations in at least four of the eight subjects. In this case, he/she must achieve a pass mark in at least three of the examinations in order to be deemed to have passed those examinations.
- (ii) a candidate sitting the Examination for the first time who is entitled to exemptions from five or more of the examinations must sit all the remaining examinations together at one sitting. Such a candidate must achieve a pass mark in at least two of the examinations in order to be deemed to have passed those examinations.
- (iii) a candidate who has previously sat the Examination and who has been deemed to have passed three or more examinations, may sit the remaining examination or examinations at one sitting of the Examination or may sit them individually, or in combinations less than the total remaining, in separate sittings of the Examination, and shall be deemed to have passed each such remaining examination by obtaining the pass mark.

The pass mark in each examination subject is 50%. The Law Society does not set any limit on pass rates. These pass rates are entirely dependent on whether independently set standards are met. There is no limit to the number of attempts a candidate may make to pass the Examination, provided the candidate has passed the examinations in all eight subjects within a period of not more than five years.

The numbers sitting the examination since 1996 have increased significantly as demonstrated by Table No. 15 below.

Table No. 15: Total No of Candidates Attempting Each Sitting: 1996-2001

Examination	No of Candidates
1996	255

May 1997	204
October 1997	247
April 1998	211
October 1998	234
April 1999	218
October 1999	310
April 2000	313
October 2000	493
April 2001	543
October 2001	783

Most applicants do not attempt to pass the eight examinations in the FE-1 in one sitting and instead carry forward passes obtained in two or more sittings. The pass rates in the individual subjects for recent sittings are set out at Tables 14-16 below.

Table No. 16: FE-1: October 1999: Subject Pass Rates

Subject	Company	Constitutional	Contract	Criminal	Equity	EU	Property	Tort
No Sat	144	155	155	175	136	121	161	151
No Pass	74	88	94	149	124	62	110	86
% Pass	51%	57%	61%	85%	91%	51%	68%	57%

Table No. 17: FE-1: April 1999: Subject Pass Rates

Subject	Company	Constitutional	Contract	Criminal	Equity	EU	Property	Tort
No Sat	38	59	54	78	51	18	58	46
No Pass	76	91	100	90	80	47	80	97
% Pass	50%	65%	54%	87%	64%	38%	73%	47%

Table No. 18: FE-1: October 1998: Subject Pass Rates

Subject	Company	Constitutional	Contract	Criminal	Equity	EU	Property	Tort
No Sat	104	124	111	106	88	77	106	97
No Pass	50	62	51	78	54	55	68	50
% Pass	48%	50%	46%	74%	61%	71%	64%	52%

A more detailed list of subject pass rates for the FE-1, total number of exemptions obtained by candidates over all attempts and the number of subjects passed by candidates in specific years are attached at Appendix 36. The Law Society submits that the most relevant figures are those relating to the number of subjects passed in specific years due to the fact that most candidates carry forward exemptions and do not attempt to pass all the examinations in a single sitting.

Second Irish Examination

As a matter of statute, all apprentices/trainees must pass the Second Irish Examination. This Examination is held twice a year (January and July). It must be emphasised that the failure rate of the Second Irish Examination is very low: approximately two out of 300 students would typically fail the Examination at each sitting. There is the opportunity to re-sit the Examination but, in practice, the Examination is not a barrier to entry into the profession. A solicitor who is qualified in a country other than Ireland is exempt from the examination process including the Second Irish Examination (such lawyers, however, may have to sit a separate examination – the Qualified Lawyers Transfer Test).

Table No. 19 below sets out details of the numbers taking and passing the Second Irish Examination in recent years.

Table No. 19: Second Irish Examination

Date	No. Sat	No. Fail	Pass Rate
January 2002	232	3	99%
July 2001	253	3	99%
January 2001	203	6	97%
July 2000	235	2	99%
January 2000	106	1	99%
July 1999	178	1	99%

PROFESSIONAL PRACTICE COURSES

Introduction

The Law School runs two full-time courses for trainee solicitors – the Professional Practice Course: Part I and the Professional Practice Course: Part II.

The Professional Practice Courses are full-time training courses. The courses are practice-oriented and their purpose is to train a trainee solicitor to do the work of a solicitor. Instruction is given almost entirely by practising solicitors and by members of the Law Society's staff, the majority of whom are also qualified solicitors. The courses are assessed through continuous assessment and end of course examinations. The courses are radically different from those taught at universities or other third level

institutions because those courses are academic rather than professional in nature and the high number of solicitors which are needed to teach such a training course.

Duration of Courses

Attendance is over two courses: the first course (the Professional Practice Course I, which leads to the Final Examination – Second Part (“FE-2”)) lasts 6-7 months while the second course (the Professional Practice Course II, which leads to the Final Examination – Third Part (“FE-3”)) lasts approximately 4 months.

Core Subjects

The subjects taught during the Professional Practice Courses at the Law School are:

Professional Practice Course I

- Foundation Course
- Applied Land Law
- Probate and Tax
- Private Client (EU, Human Rights, Family and Employment Law)
- Business Law
- Litigation (Civil and Criminal)
- Skills (Interviewing, Advocacy, Presentation Skills and Negotiation)

Professional Practice Course II

- Solicitors’ Accounts
- Practice Management
- Professional Conduct

The remainder of the Professional Practice Course II is currently composed of elective subjects.

From 15th April, 2002, a new model PPC II will be implemented. The PPC II will be divided into two sections, the first 3 weeks being devoted to Professional Practice, Conduct and Management (“PPCM”) followed by an examination. The final 6 weeks are given over to a range of electives. Students have to choose one elective from each of three streams – Business Law, Practice and Procedure and Private Client, set out in Table No. 20 below - and must also make three other choices of electives from any of the streams.

Table No. 20: PPC II Electives

Business	Practice & Procedure	Private Client
Advanced Competition Law	Alternative Dispute	Advanced Probate &

	Resolution	Administration of Estates
Banking and Corporate Finance Law	Civil Advocacy	Child Law
Competition Law for General Practice	Civil Litigation	Commercial Conveyancing/Investment Property
Corporate Crime	Cross Border Issues in Family Law	Conveyancing
Entertainment and Media Law	Criminal Advocacy	Environmental Law
Health and Safety Law	Human Rights	Tax Issues in Conveyancing
Insolvency	Legal Research	Tax Management
Intellectual Property	Licensing Law	
Sector Regulation		

Students are allowed to claim credit for a course of study undertaken during their training period, an academic extra-curricular activity or having an article printed in a refereed journal. Many students undertake a secondment in a company or public body, complete stages in the European Commission or the European Court of Justice.

Pass Rates

Details of the pass rates for the FE-2 and FE-3 are attached at Appendices 37 and 38.

ENTRY LEVEL NUMBERS

It is useful to examine the relevant levels:

Table No. 21: No. of Students Registered

1996	1997	1998	1999	2000	2001
338	425	399	420	299	338

INDENTURES

It is imperative that solicitors who serve the public are well-trained. The indentures system ensures that trainee solicitors have access to the experience of a trained solicitor and gains practical legal training during his or her traineeship from an experienced solicitor. The Indentures of Apprenticeship are agreements between a solicitor and a trainee solicitor whereby the solicitor commits to training the trainee solicitor. The Indentures must be registered with the Registrar. A copy of Indentures of Apprenticeship are attached at Appendix 39.

The indentures system has no material effect on the supply of legal services and is in no way designed to limit the numbers entering the profession.

Pursuant to Section 29(2) of the 1954 Act (as amended by Section 44 of the 1994 Act), a solicitor must be at least 5 years qualified before he or she may take on a trainee solicitor. In addition to the 5 year qualification requirement, Section 31 of the Solicitors Act, 1954 provides that the Law Society may prohibit solicitors in certain limited circumstances from taking trainee solicitors. It is submitted that the restriction (i.e. prohibiting some solicitors from taking trainees) is justified (i.e. the consumer welfare benefit justifies the restriction). Section 31 of the Solicitors Act, 1954 provides:

“(1) In the case in which the Society have directed, or have power to direct, the registrar to refuse the application of a solicitor for a practising certificate, they may, by notice in writing served on the solicitor, prohibit him from taking any apprentice, and thereupon the solicitor shall not take any apprentice unless and until the Society withdraw the prohibition.

(2) Service by an apprentice to a solicitor who has taken him in contravention of a prohibition in force under this section shall, unless the Society direct otherwise, be deemed not to be good service by the apprentice under his indentures.

(3) Where under this section the Society prohibit a solicitor from taking any apprentice, they may, of their own motion, by order, discharge the indentures of any apprentice then already apprenticed to that solicitor upon such terms, including terms as to return of premium, as they think fit, and determine what period (if any) of service by the apprentice under the indenture shall be deemed good service.”

The Law Society has never issued a direction under Section 31.

It is notable that any solicitor who is 5 years qualified may take an apprentice. This is comparable to the situation in England and Wales where only “licensed” solicitors may take trainees. There are also onerous obligations in England and Wales with regard to training programmes and the designation of a training partner. As a result of these obligations, the average “high street” practitioner in England and Wales does not take trainee solicitors.

The Law Society provides an Apprenticeship Training Manual which contains guidance for apprentices and masters. The Manual is attached at Appendix 40. In addition, all apprentices are required to complete training guidelines which indicate the tasks undertaken by the apprentice during the course of his or her apprenticeship. The Training Guidelines are attached at Appendix 41.

COMMITMENT TO TRAINING

The consumer benefit derived from having properly trained solicitors justifies the restriction embodied in Section 38 of the Solicitors Act, 1954 that a trainee solicitor should not ordinarily hold any office or engage in alternative employment. Section 38 of the 1954 Act provides:-

- “(1) An apprentice shall not hold any office or engage in any employment other than employment under his apprenticeship unless, before doing so, he obtains the consent in writing of the solicitor to whom he is bound and the consent of the Society.
- (2) The following provisions shall have effect with respect to a consent by the Society for the purposes of this section:
 - (a) the consent shall be by order of the Society;
 - (b) before making the order, the Society shall be satisfied that the holding of the office or the engagement in the employment will not prejudice the applicant’s work as an apprentice;
 - (c) the order may impose on the applicant such terms and conditions regarding the office or employment and the applicant’s service as an apprentice as the Society think fit;
 - (d) where terms and conditions are so imposed, the applicant shall, before being admitted as a solicitor, satisfy the Society that he has fulfilled those terms or conditions.”

29. If there are additional post-graduate courses and qualifications necessary to reach different 'levels' within the profession (e.g. specialist consultant status), please provide details.

Note: Details should include a list of particular subjects that must be passed (at each stage and for each 'level').

Once qualified, there are no additional post-graduate courses or qualifications necessary to reach different 'levels' within the profession. The Law Society does not confer any forms of status such as 'consultant', 'fellow', 'associate', etc.

Obviously, solicitors may decide to earn additional qualifications and may attend courses. Some of these courses lead to qualifications while others do not. The Law Society offers some continuing legal education courses which do not lead to qualifications (see the answer to Question 32) and others which lead to diplomas or certificates. Clearly, solicitors are free to, and many do, take additional courses so as to gain new skills and knowledge as well as to enhance existing skills and knowledge.

30. What, if anything, is required to maintain qualifications once they have been obtained?

ROLL OF SOLICITORS

Once qualified, a solicitor will remain on the Roll of Solicitors forever, unless he/she is struck off the Roll by the President of the High Court for misconduct.

PRACTISING SOLICITOR

In order to remain in practice as a solicitor, a solicitor must have a practising certificate. The regime for the issue of practising certificates is prescribed by Part V of the Solicitors Act, 1954.

Section 46 of the Act provides:

“The registrar shall issue, in accordance with this Part of this Act, certificates (in this Act referred to as practising certificates) certifying that the solicitors named therein are entitled to practice as solicitors.”

In order to remain as a practising solicitor, a solicitor must not be adjudged as bankrupt. Section 50 of the Solicitors Act, 1954 provides that adjudication in bankruptcy of a solicitor shall operate immediately to suspend the solicitors’ practising certificate.

MEMBERSHIP OF THE LAW SOCIETY

All solicitors, whether practising or not, may decide to join or renew their membership of the Law Society but membership of the Law Society is not a prerequisite to continuing to be a solicitor or continuing to practice as a solicitor. In any event, it is worth noting that, as far as the current executives of the Law Society are aware, no one has ever been refused membership of the Law Society. Therefore, non-membership of the Law Society is not a barrier to practising as a solicitor in competition with solicitors who are members of the Law Society.

CONTINUING LEGAL EDUCATION

There is already extensive continuing legal education on a voluntary basis. However, it is anticipated that by the beginning of 2003, regulations will be in place with regard to continuing legal education. The Solicitors Acts permit the introduction of compulsory continuing legal education. The new requirements are aimed at maintaining standards in

the solicitors' profession and embodying an ethos of life-long learning in the profession.
(In this context, see the response to Question 40 below.)

31. Who decides that the qualification(s) referred to in questions 27 and 28 are required for entry? Are the powers of the person or group who so decides based on explicit statutory mandate (and, if so, please refer to the relevant statutory provisions)? If not, please explain the legal basis for the exercise of such powers. Are any of these requirements set down directly in statute?

ENTRY REQUIREMENTS - THE STATUTORY EXAMINATIONS

Pursuant to the Solicitors' Acts, the Law Society is vested with exclusive jurisdiction in relation to "the provision of courses and the holding of examinations for the education or training (or both) of ...persons seeking to be admitted as solicitors".¹ However, the Law Society cannot itself decide the qualifications referred to in Questions 27 and 28. The qualifications have a statutory basis in that they are adopted by the Oireachtas. They are objectively necessary to protect the public interest.

The Solicitors Acts, 1954 to 1994 (Apprenticeship and Education) Regulations, 2001² (the "2001 Regulations" attached at Appendix 18), provide for membership and the powers of the Education Committee, the procedure to be followed to become a trainee solicitor, the holding of Law Society examinations and the subjects to be examined.

Regulation 5 of the 2001 Regulations sets out the pre-requirements to an apprenticeship as follows:

"A person seeking the consent of the Society to be bound by indentures of apprenticeship to a practising solicitor shall first:

- (a) have passed the Preliminary Examination, or have been exempted therefrom by reason of:
 - (i) holding a recognised degree³, or
 - (ii) holding a degree (not being an honorary degree) or other qualification which, in the opinion of the Committee in the particular case, is equivalent to a recognised degree, or
 - (iii) holding the degree of barrister at law from the Honorable Society of King's Inns, Dublin, or other professional qualification which, in the opinion of the Committee in the particular case, is equivalent thereto, or
 - (iv) having satisfied the Society that he or she is a law clerk within the meaning of section 26 (as substituted by section 42 of the Act of 1994) of the Act and, in the opinion of the Committee in the particular case,

¹ Section 40(1) of the Solicitors Act, 1954, as amended by Section 49 of the Solicitors (Amendment) Act, 1994.

² SI. No. 546 of 2001.

³ This need not be a law degree.

is a person who has attained a standard of education and experience which is equivalent to the Preliminary Examination¹; and

(b) have passed the Final Examination - First Part; and

(c) have passed the First Irish Examination.”

The Education Committee has recently decided that Regulation 5(a)(iv) should be amended so as to allow the Committee to exempt any applicant whose education and experience equates with the standard of the Preliminary Examination. This broadens the criteria considerably so as to remove any perceived advantage which a law clerk might seem to have over other persons equally experienced and educated in other fields.

Regulations 9, 10, 11 and 12 of the 2001 Regulations set out the procedures for holding the First and Second Irish Examinations, the Preliminary Examination and the Final Examinations and the subjects to be examined.

Regulation 13 provides for the appointment of, on a part-time basis, an internal examiner and an external examiner for each of the eight subjects comprising the Final Examination – First Part. Externs are appointed on an annual basis. The current examiners for the FE-1 are as follows:

1. Tort: Intern Examiner, Eoin Quill, University of Limerick.
Extern Examiner, Dr Clive Symmons, TCD.
2. Real Property: Intern Examiner, Ray Murphy, NUI Galway.
Assistant Examiners, David Alexander, Solicitor and Jack Andersen, University of Limerick.
Extern Examiner, Dr Alan Dowling, Queen's University Belfast.
3. Contract: Intern Examiner, Kevin Hoy, Solicitor.
Extern Examiner, Prof Robert Clark, UCD.
4. Constitutional: Intern Examiner, Dr Eamonn Hall, Solicitor.
Extern Examiner, Dr Gerard Quinn, NUI Galway.
5. Company Law: Intern Examiner, Tom Courtney, Solicitor.
Extern Examiner, Prof. Liam O'Malley, NUI Galway.
6. Criminal Law: Intern Examiner, David Keane BL.
Assistant Examiner, Tom Cahill, BL.
Extern Examiner, Dr Barry McAuley, UCD.
7. Equity: Intern Examiner, Nuala Egan, BL.
Extern Examiner, Oonagh Breen, UCD.
8. EU Law: Intern Examiner, Dermot Cahill, Solicitor, UCD.
Extern Examiner, Alex Schuster, BL, TCD.
Assistant Examiner, Dr. Sarah Drake, NUI Galway.

¹ The Law Society is willing to grant exemptions from sitting the Preliminary Examination and does so on a regular basis. For example, persons whose education and experience equates with the standard of the Preliminary Examination may apply to the Education Committee for exemption from the Preliminary Examination.

No examiner, intern or extern, is a member of the staff of the Law Society and only five are solicitors.

Regulation 13(d) provides for a Board of Examiners which consists of the internal examiners, the internal assistant examiners and the external examiners; members of the staff of the Law Society (not exceeding three), other suitably qualified and independent persons (not exceeding three) are nominated by the Education Committee to represent the public interest. The current public interest representatives on the Board of Examiners are Dr Sheelagh Drudy (Department of Education, Maynooth) and Patrick Diggins (Director, Education Centre, Drumcondra). The Board of Examiners has a number of functions including presiding over the individual examiners, making recommendations on the organisation and conduct of the FE-1 and supervising the re-checking of examination scripts. It should be noted that the Board of Examiners is independent of the Law Society and the Education Committee has never altered or changed a single decision of the Board of Examiners. Of the 16 intern and extern examiners, there are only five solicitors. None of the five solicitors are members of the Council of the Law Society or members of the Law Society's Education Committee. The examiners are not aware of the level of demand for solicitors. They set standards but no-one sets quotas.

It is important to note that the Law Society, the Board of Examiners or the Education System do not operate numerical quotas or failure rates in regard to the requisite examinations.

Pursuant to Section 52 of 1994 Act, the Minister for Justice may make regulations providing for exemptions from the educational requirements referred to above in respect of a profession in another jurisdiction outside the EU which corresponds substantially to the profession of a solicitor.

It is worth noting that the entry requirements are there for the protection of the public but are not so restrictive as to deter entry. For example, the number of mature students sitting the Law Society examinations and becoming solicitors is probably higher than other professions. It is notable that approximately 15% of all students at present are 35 years or older. The solicitors' profession is seen as a second career for many people.¹

It is worth re-emphasising, so as to dispel any myth to the contrary, that there are no quotas or any other mechanisms to manipulate entry.

Thus, the Law Society is quite different from those professions referred to by the Chairman of the Competition Authority in his radio interview on 11 December, 2001 on the announcement of the Study when he said:

“Members control the standards for entry and sometimes the numbers of people who can enter”. (*Competition Press, Vol. 10, page 236*)

As discussed above, this is not true for the solicitors' profession.

¹ Many of these people have only chosen to pursue a legal career in recent years and were not people who delayed entry into the legal profession for some years.

ENTRY REQUIREMENTS – THE MUTUAL RECOGNITION OF QUALIFICATIONS

As discussed at Question 32 below, lawyers from other EU Member States, may, in accordance with certain EU Directives, qualify as Irish solicitors. In addition, lawyers qualified in another Member State of the EU may provide legal services in Ireland, pursuant to the European Communities (Freedom to Provide Services) (Lawyers) Regulations, 1979¹.

Ireland also permits the qualification of lawyers from outside the EU on a reciprocal recognition basis. Ireland has negotiated bilateral agreements with the Bars of New York, Pennsylvania and New Zealand.

ENTRY REQUIREMENTS – THE ESTABLISHMENT DIRECTIVE

Directive 1998/5/EC of 16 February 1998, the Establishment Directive, facilitates the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained. The Establishment Directive allows European lawyers to establish themselves within another Member State (other than the host State) and practice the law of that State. After three years establishment together with regular and effective practice of the law of that State, the Directive also allows for European lawyers to be admitted to the profession of the host State.

Despite not yet being implemented into Irish law, the Law Society has already admitted a lawyer under the Establishment regime.

ENTRY REQUIREMENTS - TRANSFER FROM THE BAR

Section 51 of the 1994 Act which amends Section 43 of the 1954 Act provides that a barrister who has practised as a barrister in the State² for a period of three years must sit the FE-2 and the FE-3 and the second Irish examination but shall not be re-examined in any subject of substantive law which he or she has passed or is deemed to have passed as

¹ S.I. No. 58/1979, as amended by S.I. No. 197/1981, S.I. No. 226/1986 and S.I. No. 132/1999. The Regulations implement Directive 77/249/EEC of 22nd March, 1977 on the provision of services by lawyers.

² Service by a person as a member of the judiciary in the State, or as a barrister in the full-time service of the State or as a barrister in employment shall be deemed to be practice as a barrister. “Barrister in employment” means a barrister who satisfies the Society that he or she has been engaged, under a contract of employment with an employer, full-time in the provision of services of a legal nature for a prescribed period (not exceeding three years) at such time or times as may be prescribed. “Barrister in the full-time service of the State” means a barrister who is required to devote the whole of his or her time to the service of the State in the provision of services of a legal nature and is remunerated for such service wholly out of moneys provided by the Oireachtas.

part of a qualifying examination for the degree of barrister-at-law. Such a barrister is not required to complete an apprenticeship but may be required to spend a period of up to six months in a solicitor's office.

The Law Society would favour greater ease of transfer between the two branches of the profession.

32. Where can students undertake the courses referred to in questions 27 and 28? How many places currently exist per year for the attainment of these qualifications? Are qualifications outside the State recognised? Are there any arrangements for mutual recognition of qualifications obtained in other jurisdictions, either through negotiated bilateral agreements, EU directives, etc.?

LOCATION OF COURSES

In 1978, the Law Society commenced operating the present Law School with its Professional Course/Advanced Course programme for those seeking to become solicitors (“apprentices”) at Blackhall Place, Dublin 7.

The training programme at Blackhall Place for apprentices/trainees features two Professional Practice Courses (now known as the PPC 1 and the PPC 2) and an in-office training period with a practising solicitor. The subjects taught on the training courses include the core areas of professional practice; legal skills such as negotiations, advocacy, interviewing and drafting; and some discrete specialisms. Teaching is done by full-time staff solicitors and, for the most part, through the generosity of members of the practising profession.

The numbers attending the Law School would not currently justify another Law School located outside Dublin. It is notable that approximately 70% of apprenticeships are in Dublin firms. While the Law School provides video conferencing for CLE courses, video conferencing would not be appropriate for the PPC 1 and PPC 2 because almost 50% of these courses are group-based. For example, there are five core subjects in the PPC 1. These are divided into 30 hours of lectures (each lecture given twice to two groups of 180). There are 21 hours of tutorials in each core area and there are 22 tutorial groups.

The courses available at the Universities are not substitutable with the courses taught at the Law School in Blackhall Place. The Law School courses do not repeat the academic legal courses taught at university e.g. contract, tort, criminal law, but instead concentrate on the practical aspects of various subjects¹, legal skills², or areas of the law which are not taught at university³.

Given the fact that the courses are primarily vocational, it is vital that there is a very heavy input from practising lawyers. The courses at Blackhall Place are currently serviced by over 500 practising lawyers and 33 full-time staff. It is not possible to replicate such a representation of lawyers elsewhere.

¹ E.g. negotiation and drafting.

² E.g. advocacy.

³ E.g. competition law.

In addition, the Law School runs Continuing Legal Education (CLE) courses and also longer post-qualification diploma and certificate courses for solicitors and others. The CLE courses, of which there are normally two per week, involve day-long or shorter refresher courses on core areas of practice, a number of interactive skills courses and also briefing courses on new developments in the law and legal practice, practice management and taxation. The CLE programme operates on a country-wide basis.

The diploma programme likewise focuses on professional practice disciplines. The completed course is followed by examinations and the award of a Law Society diploma. The Diploma Courses already held or current include: (i) Applied European Law; (ii) Commercial Law; (iii) Electronic Commerce; (iv) Legal French; (v) Legal German; and (vi) Property Tax. The Law School has recently launched a Diploma and Certificate Programme in Advance Advocacy.

NUMBER OF PLACES

There is no set number of places on the Law Society's professional training courses. The demand from students is determined by the attractiveness of the legal profession vis-à-vis other professions or occupations in any given year. The numbers qualifying are generally increasing all the time to the point that there is now a record number of solicitors qualifying and taking out practising certificates. The table below sets out the number of solicitors qualifying and taking out practising certificates in the last ten years.

Table No. 22: Comparison of Solicitors entered on Roll v. new Practice Certificates taken out

Year	Entered on the Roll	New Practising Certs.	% of PCs/Roll
1990	162	105	65%
1991	203	113	56%
1992	298	166	55%
1993	315	151	48%
1994	308	172	56%
1995	337	264	78%
1996	394	198	50%
1997	252	183	73%
1998	318	174	55%
1999	385	307	80%
2000	350	294	84%
2001	474	361	76%

Details of the examinations, which must be taken by applicants wishing to become solicitors, are provided in the response to Question 28 above.

RECOGNITION OF QUALIFICATIONS FROM OUTSIDE THE STATE

England, Wales and Northern Ireland

Qualified lawyers from the following jurisdictions may apply to go on the Roll of Solicitors in Ireland without further examination:

- (i) a person whose first place of qualification as a solicitor is England and Wales (if the applicant was formerly called to the Bar, he or she must have three years post-qualification experience in England and Wales to avail of the direct reciprocity ruling);
- (ii) a person whose first place of qualification as a solicitor is Northern Ireland (if the applicant was formerly called to the Bar, they must have three years post-qualification experience in Northern Ireland to avail of the direct reciprocity ruling);
- (iii) a person whose subsequent place of qualification as a solicitor is England and Wales and has three years post-qualification experience in England and Wales; and
- (iv) a person whose subsequent place of qualification as a solicitor is Northern Ireland and has three years post qualification experience in Northern Ireland.

The process takes approximately eight weeks and if all documents are in order, a Certificate of Admission will be issued to the applicant.

Other jurisdictions

Lawyers from certain other jurisdictions are entitled to sit the Qualified Lawyers Transfer Test (“QLTT”) (or parts thereof depending on their previous experience) enabling them to qualify as solicitors in Ireland. There are two sittings of the test each year – usually June and November. The test is held at the Law Society’s Headquarters, Blackhall Place, Dublin 7. Before entering for the QLTT examination, applicants must first obtain a Certificate of Eligibility from the Law Society’s Education Committee which will be issued if the Law Society is satisfied that an applicant is a qualified lawyer and that he or she is a fit and proper person to be a solicitor. Lawyers eligible to apply to sit the QLTT must be qualified in one of the jurisdictions listed below:

Austria, Belgium, Denmark, England and Wales, Finland, France, Germany, Greece, Iceland, Italy, Liechtenstein, Luxembourg, The Netherlands, New York¹, Norway, Pennsylvania (must have five years post-qualification experience in Pennsylvania)², Portugal, Spain, Sweden, Scotland, Switzerland and New Zealand³.

Applicants will be required to pass any or all of the following subjects:⁴

¹ See the Solicitors Act, 1954 (Section 44) Order, 1997 (S.I. No. 241 of 1997).

² See the Solicitors Act, 1954 (Section 44) Order, 1997 (S.I. No. 241 of 1997).

³ See the Solicitors Act, 1954 (Section 44) Order, 1999 (S.I. No. 133 of 1999).

⁴ The Society has a discretion to exempt applicants from all or any part of the QLTT.

- (a) professional conduct of solicitors (oral examination)
- (b) constitutional law and either criminal or contract law;
- (c) law of contract and law of tort;
- (d) land law and conveyancing;
- (e) probate and taxation law;
- (f) solicitors' accounts, and
- (g) European Union law (EU qualified lawyers are given an automatic exemption from the EU law examination).

The Law Society is very open to entering into other reciprocal arrangements with *bona fide* law societies and other bodies worldwide.

MUTUAL RECOGNITION OF QUALIFICATIONS

By virtue of certain EU Directives, lawyers from other EU Member States, may, in accordance with the Directives, re-qualify as Irish solicitors. In this respect, the European Communities (General System for the Recognition of Higher Education Diplomas) Regulations, 1991¹, which implements Council Directive No. 89/48/EEC of 21 December, 1988, introduced a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration. Under it, solicitors, among others, are entitled to establish a practice in any other EU Member State, subject to any aptitude test that the designated authorities in the foreign state are entitled to apply.

Further, the European Communities (Second General System for the Recognition of Professional Education and Training) Regulations, 1996², which implemented Council Directive 92/51/EEC of 18 June, 1992, introduced a second general system for the recognition of professional education and training. More specifically, The Solicitors Acts, 1954 and 1960 (European Communities) Regulations, 1991 (S.I. No. 85 of 1991) provide for the Qualified Lawyers' Transfer Test for lawyers qualified in another Member State of the EU (see above). There is little doubt that the number of Irish solicitors who were originally foreign qualified lawyers will rise over time.

In addition, lawyers qualified in another Member State of the EU may provide legal services in Ireland, pursuant to the European Communities (Freedom to Provide Services) (Lawyers) Regulations, 1979³. The Regulations enable a lawyer from another Member State to pursue professional activities in the State by way of provision of services. This right is subject to certain exceptions where Irish lawyers have the exclusive right to perform services, namely the preparation of formal documents for obtaining title to administer estates of deceased persons or for creating or transferring interests in land. Further, in court appearances, the lawyers from another Member State must work with an Irish lawyer entitled to practice before the court in question.

¹ S.I. No. 1/1991.

² S.I. No. 135/1996.

³ S.I. No. 58/1979, as amended by S.I. No. 197/1981, S.I. No. 226/1986 and S.I. No. 132/1999. The Regulations implement Directive 77/249/EEC of 22nd March, 1977 on the provision of services by lawyers.

Council Directive 1998/5/EC which was introduced to facilitate practice of the profession of lawyers on a permanent basis in a Member State other than that in which the qualification was obtained, supplements the provisions of Directive 77/249/EEC. The Directive has not yet been implemented into Irish law.

Outside the EU, Ireland permits the qualification of lawyers on a reciprocal recognition basis. The Minister is given power in Section 44(6) of the Solicitors (Amendment) Act, 1994 to bring into force a series of provisions which permit the qualification of the lawyers of a non-EC State in Ireland, once reciprocal provisions are in operation in that jurisdiction in respect of Irish lawyers. Ireland has negotiated bilateral agreements with the Bars of New York, Pennsylvania and New Zealand. The Law Society must be satisfied that the profession in the other jurisdiction corresponds substantially to the profession of solicitor and that the applicant is fit and proper person to be admitted as a solicitor. Once this is the case, the bilateral agreements entitle applicants with the requisite qualifications to sit an examination to qualify as a lawyer in the reciprocating jurisdiction (i.e. the QLTT referred to above). The Law Society may also stipulate that the non-EC lawyer has practised for a minimum period in the foreign State.

THE ESTABLISHMENT DIRECTIVE

Directive 1998/5/EC of 16 February 1998, the Establishment Directive, facilitates the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained. The Establishment Directive allows European lawyers to establish themselves within another Member State (other than the host State) and practice the law of that State. After three years establishment together with regular and effective practice of the law of that State, the Directive also allows for European lawyers to be admitted to the profession of the host State.

Despite not yet being implemented into Irish law, the Law Society has already admitted a lawyer under the Establishment regime.

33. Is the number of places referred to in question 32 a fixed number? How is the number, whether fixed or not, of such places determined?

There is no fixed number of places. As discussed above, the number of places is determined by the level of demand from students wishing to enter the legal profession vis-à-vis other professions or occupations in any given year. Standards are set by the examiners who are distinguished academics or professional lawyers who make their decisions independently of the Law Society and the needs of the market place. This is not contrary to competition law as the Competition Authority itself has stated in its Decision regarding the Bye-Laws of the Institute of Chartered Accountants¹ that “the Authority considers that controlled entry into a profession does not contravene Section 4(1) [of the Competition Act, 1991] as long as the effect of such restrictions is not to control artificially the numbers entering the profession”. This is clearly not the case here as the Law Society does not, and will not, set quotas passing any examination, entering the Law School, graduating from the Law School, entering the Roll of Solicitors, obtaining practising certificates or otherwise. The number of places is determined solely by the number who meet the standards set independently for entry.

¹ Dec. No.520 *Institute of Chartered Accountants in Ireland/Bye-Laws* Notification CA/826/92E.

34. Is your organisation involved, at any stage and in any way, in the examination process for potential entrants into a profession? If so, please provide details. In particular, does your organisation determine standards required? If so, how does it do so? Does it set any limit on pass rates? If your organisation does not administer this process, please provide details on who does.

INTRODUCTION

As a matter of law, the Law Society is involved in the examination process for potential entrants into the profession. However, there are external examiners and external advisors involved. The Law Society does not set the standard; the examiners do so. In any event, the courts are a check on any attempt to use improper influence or to fix any quota. The standards are set independently and objectively.

SETTING OF STANDARDS

The standards for passing an examination are set by the external examiners. The syllabus is devised and advised upon by the external examiners. The role of the Education Committee is merely to approve the syllabus set by those examiners – the Education Committee does not seek to interfere in such matters. There are no quotas.

Candidates sitting the FE-1 for the first time must sit a minimum of four subjects and must pass at least three subjects in order to carry any passes forward to their next attempt. The pass mark is 50%. There is no limit on the number of attempts a candidate may make at the FE-1, but all subjects must be passed within five years of the date upon which a candidate first obtained three passes. The Law Society does not set any limit on pass rates. These pass rates are entirely dependent on whether independently set standards are met.

35. What are the current fees (annual or otherwise) for attendance at the course(s) referred to in questions 27 and 28 and for sitting the examinations referred to in question 34? To whom are the fees payable? What were the fees for attendance at such courses and for sitting the examinations 2 years ago, 5 years ago and 10 years ago?

INTRODUCTION

It is important to stress that there is no financial assistance provided to the Law Society by the State and therefore the courses have to be self-financing. In the accounts for 2000, total expenditure on education was £2,751,162. There are 37 staff members directly employed in the Law School. There are many others employed in other departments, such as the library, who also provide educational services. Of that 37, 12 are lawyers and 18 are employed in a professional capacity.

The fees which are charged are subject to annual review by the President of the High Court who, quite rightly, has always been very vigilant in reviewing them and will only allow the Law Society to break-even financially. The fees for the Law Society's courses in 2001, two years ago and five years ago were as follows:

Table No. 23: Law Society Education Fees

	1991	1996	1999	2001
PPC I (formerly the Professional Course)	£2,039	£2,800	£3,250	£4,250
PPC II (formerly the Advanced Course)	£730	£1,260	£1,550	£2,000

The increase in the PPC I fees in 2000 and in the PPC II fees in 2001 was necessitated by additional funding required to increase staff level, equip the Law Society in the manner envisaged in the Education Policy Review Group Report and to offset the interest rate costs payable on the new Education Centre.

The Law Society also operates a Bursary Scheme in respect of each course. Any student that considers his or her own resources are inadequate to fund their study can apply for a bursary. In addition, a number of students avail of the Higher Education Grant Scheme and Mature Student Grant Scheme. There are also a limited number of places on an Access Programme for students from socially disadvantaged backgrounds.

It is worth noting that these fees are significantly lower than the fees paid in England and Wales where there are several colleges providing such courses. In Ireland, there are

economies of scale derived from having one school. There is a uniformity of standards. The fees paid to part-time lecturers are very modest and much less than those available to the part-time lecturers in terms of continuing to attend to their clients. These rates would rise where several schools are competing for the services of busy practitioners who could, and would, earn more practising.

TO WHOM ARE THE FEES PAYABLE?

The fees are payable to the Law Society. As a matter of policy and under the supervision of the President of the High Court, the Law School operates on a long-run 'break-even' basis and does not operate to make a profit.

OTHER REQUIREMENTS

36. Other than the educational requirements already discussed in questions 27 to 35, are there other requirements (e.g. requirements of character, of registration/membership, of work experience, of attendance at events) for entry into the profession or any 'level' of the profession. If so, please provide details, including details of how these requirements can be fulfilled and whether there is any restriction (numerical in nature, or otherwise) on fulfilment.

INTRODUCTION

Apart from educational requirements, it has been common practice in a number of countries to set restrictions of a geographical sort. For example, in the United States, lawyers may appear before courts only in the local area to whose bar they have been admitted. Several economists have argued that geographical restrictions on movement could prove harmful to competition in the supply of legal services (see, for example, Kleiner et al¹) although this finding is not universally accepted. In particular, a recent empirical study by Lueck, Olsen and Ransom (1995)² finds little support for the view that licensing restrictions affect the price of legal services. It is notable in any case that there are no such geographical restrictions in Ireland.

However, given the need to protect the public, it is not surprising that in Ireland there are some other requirements, in addition to the educational requirements discussed above. It is submitted that these requirements are not only necessary but are both reasonable and proportionate.

CHARACTER

A person applying to be a solicitor must be of good character. This is a requirement which is objectively necessary because a solicitor, for example, will handle money on behalf of a client, will receive certain information which must be kept confidential, must not utilise information given to him for his own use and must uphold various ethical and professional standards.

The Competition Authority will recall its decision in *Institute of Chartered Accountants in Ireland – Bye-Laws*³. The Competition Authority had to review the following bye-law of the Institute: “the Council may in its absolute discretion (by a resolution of not less

¹ Kleiner, M. Gay, R. and Greene, K. (1982) “Barriers to Labour Migration: The Case of Occupational Licensing” *Industrial Relations* 12, pp. 383-391.

² Lueck, D. and Ransom, M. (1995) *Market and Regulatory Forces in the Pricing of Legal Services*, *Journal of Regulatory Economics* 7 (1) pp. 63-83.

³ Decision No.520 and Notification CA/826/92E.

than two-thirds of the members present and voting thereon) refuse to admit any person to membership if it considers him not to be a fit and proper person to be so admitted.” The Competition Authority accepted that the intent of this bye-law was “to ensure the integrity of members” and it considered that “the discretion to refuse membership into a professional body does not contravene Section 4(1) of the Act, as long as what constitutes a fit and proper person is reasonable and is not used to control artificially the numbers entering the profession.” The requirement for all solicitors to be of “good character” is designed to protect the interests of the public relying on the services of solicitors and to protect the integrity of the legal profession but it does not prevent, restrict or distort competition.

REGISTRATION/MEMBERSHIP

One of the requirements to becoming a solicitor is to sign and register indentures. These indentures are agreements between a solicitor and a trainee solicitor. The solicitor commits to training the trainee solicitor.

The indenture must be registered with the Registrar. Section 28 of the Solicitors Act, 1954 provides:

- “(1) Indentures of apprenticeship shall be produced to the registrar for registration and the registrar, on being satisfied by statutory declaration or such other evidence, as he considers sufficient of the due execution of the indentures, shall enter in a register the names and addresses of the parties to the indentures, the date thereof and the date of the making of the entry.
- (2) The register under this section shall be kept available for public inspection during office hours without payment.
- (3) Where the indentures of apprenticeship of an apprentice are not produced to the registrar for registration within six months from the date thereof, the service of the apprentice shall, unless the Society otherwise direct, be reckoned as commencing only upon the date of the production of the indentures.
- (4) The provisions of this section with respect of the production and entry of indentures shall apply in the case of fresh indentures, and in the case of an assignment or transfer of indentures under section 32 or under an order under section 34 and 35 of this Act, in the same manner as they apply in the case of the original indentures.”

WORK EXPERIENCE

For someone becoming a solicitor through the Irish apprenticeship/traineeship route, the student must spend two years in a solicitors’ firm or working under the supervision of a solicitor. This practical or vocational element of the training provides the

apprentice/trainee with the required and appropriate level of work experience. A trainee must be paid a salary during his or her apprenticeship. The rates of pay currently recommended by the Law Society are:

- Post- PPC 1: e336.48 gross per week
- Post-PPC 2: e399.97 gross per week

While there is no requirement upon the training solicitor to pay the apprentice pre-PPC 1, the Law Society recommends that a figure of e253.95 be paid to the apprentice.

ATTENDANCE AT EVENTS

Prior to qualification as a solicitor, attendance at the two professional courses is compulsory. After qualification, attendance at courses is at present optional. However, there are proposals for compulsory continuing legal education as discussed at the response to Question 40.

AGE

In order to sit the Preliminary Examination, an applicant must, by statute, be 21 years old. Further, a person must be at least 17 years old to enter into Indentures of Apprenticeship and must be 21 years old before he can be admitted as a solicitor.

These age restrictions are not restrictions on competition and do not cause a problem in practice. In practice, most people becoming solicitors are between 23-26 years old when they qualify as a solicitor. There is no upper age limit on those who want to become solicitors.

The age profile of persons entering the Law School in recent years is as follows:

Table No. 24: Age Profile of Students entering the Law School

Age Group	February 2000	October 2000	October 2001
20-25	192	230	218
26-30	88	73	83
31-35	11	22	20
36-40	2	20	5
41-45	1	8	7
46-50	2	4	7
51-55	4	2	2
56-60	0	1	1
TOTAL	300	360	343

ADMISSION TO THE ROLL

Solicitors Qualified in the Republic of Ireland

Trainee solicitors are eligible for admission to the Roll of Solicitors, once they have completed their two year-term of apprenticeship/traineeship and attended the prescribed training modules and passed their related examinations. The examinations are:

- (a) First Irish Examination;
- (b) The Final First Part Entrance Examination;
- (c) Professional Practice Course I;
- (d) Second Irish Examination;
- (e) Professional Practice Course II.

Applications take approximately three weeks to process. The qualification is complete once the Certificate of Admission has been signed by both the President of the High Court and the Registrar of Solicitors, and the name is placed on the Roll of Solicitors.

Solicitors Qualified in Other Jurisdictions

Please refer to the response to Question 32 for information on the recognition of qualifications from outside the State.

37. Who decides that the qualification(s) referred to in questions 36 are required for entry? Are the powers of the person or group who so decides based on explicit statutory mandate (and, if so, please refer to the relevant statutory provisions)? If not, please explain the legal basis for the exercise of such powers. Are any of these requirements set down directly in statute?

INTRODUCTION

It is the State who primarily sets down these qualifications and criteria in the Solicitors Acts, 1954 to 1994. In addition, various regulations (which require the approval of the Minister for Justice) deal with educational requirements. It is submitted that the requirements set down in the response to Question 36, which are set by the State in legislation, are both objectively valid and justified.

CHARACTER

Section 24 of the Solicitors Act, 1954 (as amended by Section 40 of the Solicitors (Amendment) Act, 1994) provides that:

“a person shall not be admitted as a solicitor unless-

...

(e) he has satisfied the Society that he is a fit and proper person to be admitted as a solicitor.”

It must be emphasised that, where the Law Society decides that a person is not a fit and proper person to be admitted as a solicitor, they must send the relevant person a written notice setting out the reasons for such a decision. The person may then, within a period of 2 months, apply to the President of the High Court to rescind that decision.¹

Further, Section 43 of the Solicitors (Amendment) Act, 1994, which amends Section 27 of the Solicitors Act, 1954, provides that:

“27. (1) Before a person becomes bound by indentures of apprenticeship, he shall give notice to the Society of his intention so to do and shall furnish the Society with such evidence as may be prescribed of his previous education and employment record and of his character.”

Where the Law Society is not satisfied with the evidence furnished, it must provide a written notice to the applicant, stating the reasons for its decision. Such a decision can also be appealed to the President of the High Court within 2 months.

¹ Section 24(2) of the Solicitors Act, 1954, as amended by Section 40 of the Solicitors (Amendment) Act, 1994.

Although the above is the law on the matter, in practice it is very rare for anyone to be refused admission on this ground.

REGISTRATION

See the response to Question 36.

WORK EXPERIENCE

Section 24 of the Solicitors Act, 1954 (as amended by the 1994 Act) states that:

“a person shall not be admitted as a solicitor unless-

...

(b) he has been bound by indentures of apprenticeship for the appropriate term and has satisfied the Society that he has duly served under such indentures of apprenticeship, or has been exempted...”

Further, Section 26 of the Solicitors Act, 1954, as amended by Section 42 of the 1994 Act, states that “the Society may by regulations provide for the term or terms (not to exceed two years) of service under indentures of apprenticeship of persons”.

Regulation 8(a) of The Solicitors Acts, 1954 to 1994 (Apprenticeship and Education) Regulations, 2001 (S.I. No. 546 of 2001) provides that the term of service under Indentures of Apprenticeship shall be two years.

ATTENDANCE AT COURSES

Section 24 of the Solicitors Act, 1954, as amended by the 1994 Act, provides that:

“a person shall not be admitted as a solicitor unless-

...

(c) he has duly attended such course or courses of education of training (or both) and passed such examination or examinations as may be prescribed, or has been exempted...”

Regulations 9 to 22 of The Solicitors Acts, 1954 to 1994 (Apprenticeship and Education) Regulations, 2001 (S.I. No. 546 of 2001) set out the courses which a person must attend to become a solicitor. Please refer to the response to Question 28 above for further details on the relevant course requirements.

AGE

Section 24 of the Solicitors Act, 1954, as amended by Section 40 of the 1994 Act, states that “a person shall not be admitted as a solicitor unless (a) he has attained the age of 21 years...”.

Further, Section 25 of the 1954 Act, as amended, states that “ a person shall not be capable of being bound by indentures of apprenticeship unless (a) he has attained the age of 17 years...”.

Regulation 10(c) of The Solicitors Acts, 1954 to 1994 (Apprenticeship and Education) Regulations, 2001 (S.I. No. 546 of 2001) states that: “In order to sit the Preliminary Examination, a person shall have attained the age of 21 years at the date of commencement of the sitting of the Preliminary Examination in question.”

IRISH LANGUAGE EXAMINATION

The requirement to pass two Irish language examinations is a requirement laid down by the Oireachtas. Presumably, the rationale for this requirement is to ensure that there are solicitors available to conduct business through the medium of the Irish language.

The requirement for both Irish examinations stems from Section 40(3) of the Solicitors Act, 1954 and Regulation 9 of The Solicitors Acts, 1954 to 1994 (Apprenticeship and Education) Regulations, 2001 (S.I. No. 546 of 2001).

38. Is there a distinction between becoming a member of the profession, and being actually entitled to practise that profession? For example, must the person register with a particular body, authority, council etc., or serve a professional ‘apprenticeship’ of some kind? If so, please give details.

DISTINCTION BETWEEN BECOMING A MEMBER OF THE PROFESSION AND BEING ENTITLED TO PRACTICE

There is a distinction between becoming a member of the profession (i.e. becoming a solicitor by being entered on the Roll of Solicitors) and being entitled to practice (i.e. having a practising certificate). This is a statutory-based distinction. By having to apply for, and obtain, an annual practising certificate, there is the ability to ensure that solicitors are up to date in terms of their compliance with certain key requirements. The response to Question 10 contains a table demonstrating the numbers of solicitors on the Roll, the number of practising solicitors and the number of solicitors who are members of the Law Society.

As already discussed, a person may practise as a solicitor and not be a member of the Law Society.

An apprenticeship must be served before becoming a member of the Law Society unless the person is transferring into the profession.

A person who is practising as a solicitor must be on the Roll of Solicitors and must have a practising certificate.

A distinction can be drawn between a solicitor and a barrister. There is no “devilling” to be done by a solicitor after qualification; such a vocational element of an solicitor’s training is completed before qualification.

39. Are there any other qualifications/factors/experiences/practices that are not, strictly speaking, required for entry into the profession, but which it could be said are required by convention/ the tradition of the profession? If so, please provide details.

None whatsoever.

CONTINUING REQUIREMENTS

40. Are there any obligations in relation to continuous professional development or any other ongoing obligation (e.g. professional indemnity insurance) as a pre-requisite for continued practice? If so, what are these? Are there any obligations required to maintain membership of your professional association, and, if so, what are these?

PRACTISING CERTIFICATES

All solicitors who intend to practise in private practice must have practising certificates.

PROFESSIONAL INDEMNITY INSURANCE

Professional indemnity insurance must be in place¹ (although this is not ordinarily required for in-house solicitors).

ACCOUNTANT'S CERTIFICATE

An accountant's certificate is a requisite for continuing in practice.

CONTINUING EDUCATION

The Law Society strongly recommends (but does not at present require – see next paragraph) qualified solicitors to continue to pursue post-qualification education, for example, by attending seminars held by the Law Society as part of the Continuing Legal Education (CLE) programme. The Law Society is the main provider of CLE in the market place. The purpose of the CLE is to provide the profession with continuing education and training as a means of maintaining and enhancing standards of legal services. Seminars also provide practitioners with the opportunity to have on-going changes in legislation explained and clarified by specialists in the relevant area of law. Seminars are run over full days, half days and evenings. In addition, several series of seminars have been held.

The Law Society is currently planning to introduce a requirement that every practising solicitor shall have undertaken, as a condition of renewing a practising certificate, a minimum number of hours of continuing professional development in each two-year

¹ See Section 47(2) of the Solicitors (Amendment) Act, 1954 as inserted by Section 54 of the Solicitors (Amendment) Act, 1954.

cycle. It is anticipated that this requirement will be effective from 1st January, 2003. The Law Society's Council voted in favour of this proposal in principle at its meeting in September 2000. The intention is that solicitors should embrace the concept of 'lifelong learning' whereby every practising solicitor will spend a minimum number of hours each year improving their legal skills including practice management skills and keeping their legal/professional knowledge up to date in their field of practice. This proposal shows the commitment of the Law Society to constantly improve both the pre-qualification and post-qualification education and training of solicitors. Education improves the practising solicitor's ability to deliver a wider range of services, together with services of higher value. The proposal is still at a preliminary stage but it is hoped that the proposed changes, if adopted, will benefit both practitioners and their clients, particularly in terms of quality, speed and cost of services offered to the public.

YOUR COMMENTS ON THE EDUCATIONAL, OTHER AND CONTINUING REQUIREMENTS

41. What are the objectives of the requirements discussed in your answers to the questions so far in this Part? What benefits, if any, do these requirements contribute to the provision of professional services? Please explain any benefits claimed.

There are several objectives for the Law Society in its direct involvement in Professional Education. These include the need to provide to trainees/apprentices a practical education and training in areas of law and legal practice and other relevant areas; the imparting to apprentices/trainees of a knowledge of the solicitors' profession, its governance and its ethical standards and; through the involvement of practitioners, to help apprentices to relate to the profession. Indeed, the principal objective of the Professional Education is to prepare apprentices for working as solicitors. Moreover, the involvement of the Law Society ensures a consistent level of knowledge in all of the subjects examined. The primary purpose of these requirements is to protect the public and other solicitors¹ by maintaining the highest standards possible. This is achieved by employing teaching skills which are not taught at undergraduate level, such as advocacy, drafting, negotiation, interviewing and professional conduct. In addition, alternative dispute resolution is planned to be introduced shortly as a further skill. Apprentices are prepared for a career in private practice by the involvement of practitioners, as well as academics, on the teaching panel.

The objective of the Irish examinations is to ensure that all newly qualified solicitors have a minimum level of Irish so that in the event a solicitor is requested by a client to represent them through Irish, they are capable of doing so. The requirement that all newly trainee solicitors pass the First and Second Irish Examinations is a requirement laid down in statute by the Oireachtas.

The training of apprentices is organised so that, as newly-qualified solicitors, they are equipped:

- (a) to know and understand the principles of law underlying the more common areas of practice and to be able to apply their knowledge in a practical way and to adapt to ongoing legal changes and developments in those areas;
- (b) to understand the needs of clients in the more common areas of practice and to communicate clearly with clients while at the same time effectively meeting their legal needs; and

¹ Solicitors need to be able to rely on other solicitors because they need to exchange undertakings on matters such as conveyancing.

- (c) to appreciate the ethical standards which govern the practice of law and the sense of justice which must always guide lawyers in their practice.

It must be remembered that, pursuant to the Solicitors' Acts, the Law Society is vested with exclusive jurisdiction in relation to "the provision of courses and the holding of examinations for the education or training (or both) of ...persons seeking to be admitted as solicitors".¹ It is acknowledged that it would be open to the Law Society, while retaining its overall jurisdiction over the content of courses and examinations, to "license" other educational institutions to provide courses and examinations. However, the Society's Education Policy Review Group Report which considered this matter in detail in 1998, concluded that "it is only because the Society is directly involved as a non-profit professional organisation that member practitioners in sufficient numbers are motivated to be involved in Professional Education to provide that critically important "hands-on dimension"" (the Report is attached at Appendix 42). Also, it was recognised that the Law Society, as a non-profit organisation, is able to provide professional education at a considerably lower cost than any other institution could do for a similar system. The Group considered this as beneficial both directly for those who have to pay the course fees and indirectly in terms of ensuring that persons seeking to be admitted as solicitors are not prevented from doing so purely for financial reasons. Therefore, the Education Policy Review Group recommended that the Law Society should continue as the direct and exclusive provider of the Professional Course and the Advanced Course and should retain its direct jurisdiction over examinations for apprentices. It did however recommend that the Law Society, while retaining its exclusivity, should be prepared to avail of the services of outside providers for particular aspects of the courses.

The OECD in its Report on Regulatory Reform in Ireland made the following recommendation in regard to the education role of the Irish Law Society:-

*"Move the control of education and entry of legal professionals from the self-governing bodies but maintain close ties as regards quality of entrants and content of education and training. Entry and education are in the hands of the professions' self-governing body. While their stated purpose is to guarantee a minimal quality of professional knowledge and skills, the logical connection between the input, education, and output, quality enhancement, is tenuous. The contrast with the absence of mandatory continuing legal education is marked. There is also a difference in the interests of the professional bodies and the public where the latter would prefer choice of professionals at lower costs."*²

The Law Society submits that the OECD's recommendations in regard to the solicitors' profession are flawed. First, the OECD, in recommending that the education and entry of legal professionals be moved away from the Law Society, failed to recognise that the education and entry of trainee solicitors is effectively carried out by bodies independent of the Law Society – namely, the Oireachtas, the Minister for Justice, the President of the High Court and the Board of Examiners. The Board of Examiners is empowered to make

¹ Section 40(1) of the Solicitors Act, 1954, as amended by Section 49 of the Solicitors (Amendment) Act, 1994.

² See page 105 of the OECD's report.

recommendations on the organisation and conduct of the FE-1, preside over the individual examiners and supervise the re-checking of examination scripts. Of the 16 intern and extern examiners, there are only five solicitors, none of which are members of the Council of the Law Society or members of the Law Society's Education Committee. The examiners are not aware of the level of demand for solicitors.

For the reasons discussed above, the Law Society does not stand alone as the "self-governing body" of the solicitors' profession in Ireland – it is merely part of a regulatory process involving the Oireachtas, the Minister for Justice and the President of the High Court.

The OECD also failed to recognise the nexus between education and the Compensation Fund – the removal of the education role from the Law Society would break the nexus, thereby reducing the safeguards the Law Society has established vis-à-vis the Compensation Fund.

The Law Society refutes the OECD's statement that "while their stated purpose is to guarantee a minimal quality of professional knowledge and skills, the logical connection between the input, education, and output, quality enhancement, is tenuous". The PPC 1 and PPC 2 are primarily vocational courses specifically aimed at quality enhancement. It is notable that the Fair Trade Commission, in its report into restrictive practices in the legal profession in 1990, expressed general satisfaction with the vocational education of solicitors by the Law Society. The course is heavily subsidised by the teaching contribution of several hundred practitioners. It would be very difficult to replicate the Law School without unduly reducing the quality and diversity of the training facilities currently available.

With regard to "the absence of mandatory continuing legal education", the OECD failed to note that the Law Society has proposed a system of compulsory continuing legal education which is proposed to be implemented on 1st January, 2003.

With regard to the "difference in the interests of the professional bodies and the public where the latter would prefer choice of professionals at lower costs", the Law Society has no influence over the costs charged to the general public. Unlike the Law Society of England and Wales which issues guidance on how to calculate the value element in non-contentious work and publishes fee scales covering probate, domestic conveyancing and other non-contentious work, the Irish Law Society gives no such guidance and has no fee scales whatsoever. In addition, it is notable that the fees charged by the Law School are considerable less than those charged in the UK (where there are several law schools providing solicitors' training courses). The Law Society does not consider that those charges have any influence over the costs charged to the general public.

42. Please explain how you consider these requirements maximise overall consumer benefit by striking the right balance between consumer benefits from competition and other benefits. Are there alternative ways to achieve these objectives?

The educational and training requirements are necessary to ensure that minimum standards of competence are achieved by all practising solicitors in a field of considerable and increasing complexity. The public need to be able to rely on solicitors' competence and integrity. Qualification provides a quality assurance in areas where quality can be inherently difficult to assess. Although the Law Society provides the training, it does so with this wider purpose in mind. It does not seek to regulate entry for the benefit of its members. It is because there is no attempt to restrict entry for such a purpose that the Law Society believes that the right balance between competition and consumer benefits is struck in the area of education and training.

The Law Society organises a number of speakers to address students on public interest issues. During the most recent Professional Practice Course, the following speakers addressed the students:

- Fr Peter McVerry
- Brice Dixon, Human Rights Commissioner, Northern Ireland
- John Lonergan, Governor of Mountjoy Prison
- Dr Margaret Smyth, Forensic Scientist
- Madeleine Reid, Legal Advisor, Director of Equality Investigations
- Prof John Harbison, State Pathologist
- Paul Morris, President, Coroners Association
- Judge Mary Kotsonouris
- John Fingleton, Competition Authority.

In addition, the Law School funds participation in the "Innocence Program" in New York on an annual basis.

It should be noted that the Fair Trade Commission, in its report into restrictive practices in the legal profession in 1990, expressed general satisfaction with the vocational education of solicitors by the Law Society. The Law Society is strongly opposed to any change to the system that would have the effect of diluting or downgrading the quality and value of the course, a course which is heavily subsidised by the teaching contribution of several hundred of practitioners.

The current system of education ensures consistency of standards throughout the solicitors' profession in Ireland. This is essential given the informational asymmetry that exists between the solicitor and the client. All newly qualified solicitors, having passed the FE-1, FE-2 and FE-3, are equally capable of performing the same tasks to a minimum standard. This is unlike the situation in the UK where there are a number of LPC training establishments with differing emphasis on different topics.

Due to the relatively small size of the Irish jurisdiction, it would be inefficient and unreasonable to fragment the solicitors' training courses. It is notable that 70% of all trainees have indentures in Dublin. This indicates that the solicitors' profession is a very centralised profession, mainly concentrated in Dublin.

The Law Society does not consider that any of the alternatives offered by other jurisdictions would be appropriate for Ireland.

43. What do you think are the general effects of the entry restrictions you have discussed on:

- a) the profession itself?**
- b) clients and the general public?**
- c) The range, quality and prices of the services offered?**

There are no entry restrictions but only entry requirements. The Law Society believes that the effect of these entry requirements is threefold in that:

- (a) in terms of the profession itself**, only those persons who possess the necessary skills and aptitude to become a solicitor are admitted – this is essential for the profession as all solicitors have to meet claims on the Compensation Fund by clients and others who suffer loss caused by a solicitor. High standards also safeguard the reputation of the profession generally;
- (b) in terms of the clients and the general public**, the clients' interests and those of the public generally are protected in that only those persons who possess the necessary skills and aptitude to become a solicitor can provide legal services as a solicitor – this is essential in a profession where informational asymmetries exist; and
- (c) in terms of the range, quality and prices of the services offered**, there is a wide range of services available at a high level of competence because of the skills acquired by solicitors during their training to meet the requirements of the public. At the same time, there is no impact on prices or fees charged for services offered. The entry requirements ensure that all solicitors achieve a minimum standard in a wide range of subjects and skills.

The purpose of the educational/entry requirements is to ensure minimum necessary standards of knowledge and professional competence to protect the public in an area where they are often at a disadvantage information-wise. It is not the policy of the Law Society to use the requirements to regulate entry in any quantitative fashion and the Law Society believes that there is no indication that its training operates to restrict competition in the market place. The entry requirements ensure a flow of well-trained solicitors, capable of handling a wide and widening range of work. The consumers of legal services, and the public generally, benefit from the assurance of the quality of services to be expected in areas where they can find it difficult to assess quality before the event. The entry requirements have no artificial effect on income and prices since they are not designed to restrict supply, nor do they have that effect, i.e. there are no quotas, and the Law Society makes every effort to keep its educational and training efforts up-to-date so

that solicitors are able to satisfy the widening range of demands for their skills and services.

The Law Society's training programme is extremely efficient as it avoids duplication of courses taught at universities by setting the FE-1 as an entry requirement. This allows the Law Society to offer a wider range of courses during its professional training as it can assume a certain standard of in-depth knowledge from all students entering the law school. This in turn enables the Law Society to meet its objective for its educational/training programmes, i.e. to enable solicitors to provide the wide range of services expected of the profession and also to be able to adapt to new needs/provide new services. As there is no attempt to restrict entry artificially, there can be no effect on fees (and incomes) over and above those that can always be commanded by better trained/qualified persons. In fact, the existence of the FE-1 as an entry requirement allows the Law Society to be more cost efficient by avoiding costs which may otherwise be incurred through duplication of courses. This cost efficiency is passed on to students in full as the Law Society is not allowed to make any profit from its educational activities.

The Law Society's entry requirements to its law school thus have a positive impact on the range and quality of services offered by solicitors without affecting the fees or prices charged for such services.

**PART IV – RESTRICTIONS ON THE CONDUCT
OF MEMBERS OF THE PROFESSION**

Traditionally, many professions have imposed restrictions on the conduct of their members. The Authority is also aware that some of the remaining restrictions may be justifiable on public interest grounds. This Part is designed to elicit information on whatever conduct-type restrictions may be imposed on members of the profession on which you are commenting. The first number of questions in this Part is designed to elicit factual information and you will be afforded the opportunity to comment on these restrictions later in the Part.

44. Please provide a list of restrictions on (i) what suppliers in your profession can do; (ii) on who can supply; and (iii) on allowed forms of supply. Please provide an explanation of these restrictions and, in particular, state whether the restrictions stem from statute, from rules set by the professional bodies, and/or from custom and practice.

RESTRICTIONS ON WHAT SUPPLIERS IN THE SOLICITORS' PROFESSION MAY DO

- (i) There are no restrictions imposed by the Law Society on what solicitors may do to compete in the market and there are no restrictions on which markets they may choose to compete in. There are no geographical restrictions on the areas in which solicitors practice.

The law imposes certain restrictions on the form of business which may be used by solicitors – for example, they may not use limited partnerships or any form of corporate vehicle.

RESTRICTIONS ON WHO MAY SUPPLY

- (ii) There are no restrictions imposed by the Law Society on who may provide services. All solicitors may practice in any area of the law and appear before any court or tribunal without discrimination. There are very few services that only solicitors may supply and these are prescribed by statute (in this regard, see the response to Question 58).

ALLOWED FORMS OF SUPPLY

- (iii) There are no restrictions imposed by the Law Society on the forms of supply.

PROFESSIONAL FEES

45. Does the Relevant Profession involve itself with the level or structure of charges levied by its members for their services? Please provide details, including whether there is any scale of charges in operation in relation to any of these charges?

No, the Law Society does not involve itself with the level or structure of charges levied by solicitors (irrespective of whether or not they are members of the Law Society). The Law Society does not know, or keep any record, of the charges imposed by solicitors.

In the past, the Law Society did involve itself with the level or structure of charges but the Law Society does not do so now and has not done so for over a decade (since before the entry into force of the Competition Act, 1991).

Accordingly, the Law Society has no influence over the fees that are quoted or charged by its members or by solicitors generally. A survey of fees charged for conveyancing in 1994 (Shinnick and Stephen (2000)¹) showed that there was then a wide variation of fees around the previously prevailing recommended scale.

The Law Society accepts unreservedly that competition and market forces should be the determinants of solicitors' fees. It would condemn any attempt by individual solicitors or firms to engage in anti-competitive agreements on fees or in any other way to restrict competition on fees.

¹ Shinnick, E. Stephen, F. (2000) *Professional Cartels and Scale Fees: Chiselling on the Celtic Fringe?*, International Review of Law and Economics 20, pp. 407-423.

46. If there are recommendations relating to charges, please attempt to provide details of the degree to which members adhere to the recommendations and/or how closely prices actually charged correspond to the recommendations. If your organisation conducts price surveys of its members, and/or non-members also in the profession, please provide details.

This is not applicable because the Law Society does not now (a) issue recommendations relating to charges by solicitors (whether or not they are members of the Law Society), or (b) conduct price surveys of its members or non-members of the profession.

Before the entry into force of the Competition Act, 1991 and pursuant to the Solicitors' Remuneration General Orders 1884-1972, there was a concept of a scale fee for conveyancing transactions whereby a fee was charged at up to one per cent of the sale price of the property plus IR£100. The Law Society ceased using such a scale fee on the entry into force of the Competition Act, 1991. It is important to stress that (a) the Law Society does not operate such a scheme and strongly condemns any system of scale fees, and (b) a recent article by a journalist in the *Sunday Independent* (attached at Appendix 43) clearly demonstrates that none of the solicitors canvassed quoted a fee which was the same as the scale fee and the Law Society made clear in a letter to the *Sunday Independent* that the fees quoted involved a divergence of €1,636 between the lowest and highest quotation received.

Although the Law Society does not favour scale fees, it may be noted that the European Parliament has recently adopted a Resolution on scale fees and compulsory tariffs for certain professions¹. The Resolution recognises "the importance attached in some Member States to compulsory tariffs with a view to providing high-quality services to citizens and to creating a trustful relationship between liberal professions and their clients"² The Resolution is attached at Appendix 44.

¹ B5-0247/2001 European Parliament resolution on scale fees and compulsory tariffs for certain liberal professions, in particular lawyers, and on the particular role and position of the liberal professions in modern society, published in EC O.J. C21 of 24 January, 2002.

² Paragraph 7.

47. Who decides upon the restrictions and recommendations referred to in questions 44-46? Are the powers of the person or group who so decides based on explicit statutory mandate (and, if so, please refer to the relevant statutory provisions)? If not, please explain the legal basis for the exercise of such powers. Are any of these requirements set down directly in statute?

This is not applicable as there are no restrictions and recommendations of the nature referred to in Questions 44-46.

The Law Society does not impose any anti-competitive restriction or recommendation on its members. Any restriction on the ability of solicitors to compete, or on others to compete with solicitors (and they are admittedly few in number and limited in effect) are imposed by the Oireachtas.

ADVERTISING & PUBLICITY OF SERVICES

48. Are members of the profession restricted in any way (or subject to any form of control) in their freedom to advertise or publicise their services (other than by any general laws relating to advertising, such as the Consumer Information Act, 1978)? Please provide details and the extent of any restriction. Please construe ‘advertise or publicise’ broadly, so as to include any form of publicity (such as nameplates at a place of business, the names of practising groups of professionals, limited announcements in directories, journals etc.) and any restriction on actively approaching potential clients (including the existing clients of other members of the profession), as well as more obvious forms of advertising in the print and broadcast media. Please also distinguish between what may constitute “active” versus “passive” advertising.

PRELIMINARY OBSERVATIONS

Before answering the question, it is important to stress that the Law Society has no interest in seeking to restrain lawful advertising or other forms of publicity by solicitors. The limited statutory restrictions that do exist will be examined below. The Law Society believes that they do not restrict competition to any appreciable degree and that they are fully justified in the public interest.

The Competition Authority will be familiar with the considerable body of literature, both analytical and empirical, on the effects of restrictions on advertising in the professions. Interesting as these studies undoubtedly are, they are not all of great relevance to the Competition Authority’s Study in that some of them are mainly concerned with restrictions that ban advertising altogether.

Bentham and Bentham (1975)¹ analyse restrictions on advertising by professionals and argue that the restrictions reduce competition and increase the dispersion of prices by increasing the costs of consumer search. They conclude that the removal of such restrictions would enhance competition and consumer welfare.

Advertising can be beneficial not only in providing information on suppliers and their charges and services but also in providing an indicator of quality. Rogerson (1988)² argues that even if price cannot communicate any direct information about the quality of a product or service, it can do this indirectly, *provided that price advertising is allowed*, by acting as a positive signal to quality. As a result, price advertising will be welfare enhancing because it improves consumer choice. A concern with this proposition is that

¹ Bentham & Bentham (1975) *Regulation through the professions: a perspective on informational control*, The Journal of Law and Economics.

² Rogerson, W.P. (1988) *Price Advertising and the Deterioration of Product Quality*, Review of Economic Studies 55, pp. 215-229.

if price advertising is undertaken exclusively by low-price/low-quality suppliers, then price will become an adverse signal to quality. However, Rizzo and Zeckhauser (1992)¹ reasoned that this is an unlikely outcome since clients will assume that the low price for the non-standardised legal service reflects low quality and therefore will opt not to buy these services.

Love and Stephen (1996)² have carried out a review of the empirical evidence on advertising restrictions by professionals. The general conclusion is that restrictions on advertising have been associated with increased fees for professional services. For example, Cox, Schroeter and Smith (1986)³ find that law firms that advertise themselves charge lower fees, on the whole, than those that do not advertise. Love et al. (1992) find that this result is valid only for some forms of lawyer advertising. Rizzo and Zeckhauser (1992) provide the only study that clearly contradicts the general conclusion that restrictions on advertising increase charged fees.

On the other hand, the evidence concerning the quality of services in the presence of advertising of lawyer services is mixed. Murdock and White (1985)⁴ conclude that advertisers are more likely to be low quality firms. By contrast, Dormberger and Sherr (1989)⁵ provide evidence for the case of England and Wales that the liberalisation of the rules on advertising has resulted in a rise in the service quality. Finally, Cox, Schroeter and Smith (1986)⁶ argue that although service quality is lower in localities with greater advertising, there is no statistical evidence to support the view that there are differences in the quality of the services provided by advertisers and non-advertisers.

LAW SOCIETY INITIATIVES

The Law Society facilitates solicitors in bringing their services to the public and in competing with other solicitors. If the Law Society were a lethargic body that did not want competition but sought to maintain a closed shop, the Law Society would not, for example:

- publish a 113-page book entitled “Marketing Handbook for Solicitors” dealing with topics such as the concept of marketing, the marketing mix, market research, business planning, the marketing plan, the promotional mix, interpersonal selling skills, presentations and pitches, client care and the management of marketing (Appendix 45).

¹ Rizzo, J.A. and Zeckhauser, R.J. (1992) *Advertising and the Price, Quantity and Quality of Primary Physician Services*, Journal of Human Resources 28, pp. 381-421.

² Love, J.H. and Stephen, F.H. (1996) *Advertising, price and quality in self-regulating professions: a survey*, International Journal of the Economics of Business, 3 (2), pp. 227-247.

³ Schroeter, J.R. Smith, S.L. and Cox, S.R. (1987) *Advertising and Competition in Routine Legal Service Markets: An empirical Investigation* Journal of Industrial Economics 36, pp. 49-60

⁴ Murdock, G.W. and White, J. (1985) *Does Legal Service Advertising Serve the Public's Interest? A Study of Lawyer Ratings and Advertising Practices* Journal of Consumer Policy 8, pp. 153-165.

⁵ Dormberger, S. and Sherr, A. (1987) *Competition in Conveyancing: An Analysis of Solicitors' Charges 1983-1985* Fiscal Studies 8 (3), pp. 17-28.

⁶ Schroeter, J.R. Smith, S.L. and Cox, S.R. (1987) *Advertising and Competition in Routine Legal Service Markets: An empirical Investigation* Journal of Industrial Economics 36, pp. 49-60

- organise Continuing Legal Education courses on marketing;
- publish brochures and guides such as “Farmers and the Law” which can be used by solicitors to advertise their services (Appendix 46);
- publish a “Quality Service Statement” stressing issues such as confidentiality, courtesy, legal options, charges, efficiency, the provision of information and the handling of money.

This proactive activity by the Law Society is not symptomatic of a closed shop opposed to marketing or competition.

RESTRICTIONS

The Solicitors (Advertising) Regulations, 1996 (attached at Appendix 18), set down the conditions which solicitors must adhere to in any advertisement. Regulation 5 provides that an advertisement shall not:

- (i) be likely to bring the solicitors’ profession into disrepute; or
- (ii) be in bad taste; or
- (iii) reflect unfavourably on other solicitors; or
- (iv) contain an express or implied assertion by a solicitor that he has specialist knowledge in any area of law or practice superior to other solicitors; or
- (v) be false or misleading in any respect; or
- (vi) comprise or include unsolicited approaches to any person with a view to obtaining instructions in any legal matter; or
- (vii) be contrary to public policy.

This reflects the provisions of Section 71 of the Solicitors Act, 1954 (as amended by Section 69 of the Solicitors (Amendment) Act, 1994).

The Competition Authority has previously stated in the *Optometrists* decision¹ that “a requirement that advertisements not be misleading or untruthful or of a character that could reasonably be regarded as likely to bring the profession into disrepute... would not normally be anti-competitive. It does not believe that a requirement to adhere to such a rule offends against Section 4(1) [of the 1991 Act].” The Competition Authority also stated in the same Decision that it would only be concerned if such a rule were to be interpreted in a way that sought to restrict competition or to prevent innovative marketing of services by members of the profession.

It should also be noted that the Solicitors (Amendment) Act, 2002, which has just been passed by the Oireachtas and is due to be signed into law by the President during the week ending 12th April, 2002, amends Section 71 of the Solicitors Act, 1954 so as to include, *inter alia*, the following restrictions in relation to advertising by solicitors:

¹ Decision No.16 29 April, 1993, *Association of Optometrists, Ireland: Memorandum, Articles of Association and Code of Ethics*, paragraph 113.

“(2) A solicitor shall not publish or cause to be published an advertisement which—

- (a) is likely to bring the solicitors’ profession into disrepute,
- (b) is in bad taste,
- (c) reflects unfavourably on other solicitors,
- (d) without prejudice to any regulations under subsection (8) of this section, contains an express or implied assertion that the solicitor has specialist knowledge in any area of law or practice which is superior to that of other solicitors,
- (e) is false or misleading in any respect,
- (f) is published in an inappropriate location [which includes a hospital, clinic, doctor’s surgery, funeral home, cemetery, crematorium, or other location of a similar character.]
- (g) does not comply with subsection (3), or regulations under subsection (5) or (6), of this section,
- (h) expressly or impliedly refers to—
 - (i) claims or possible claims for damages for personal injuries,
 - (ii) the possible outcome of claims for damages for personal injuries, or
 - (iii) the provision of legal services by the solicitor in connection with such claims,
- (i) expressly or impliedly solicits, encourages or offers any inducement to any person or group or class of persons to make the claims mentioned in paragraph (h) of this subsection or to contact the solicitor with a view to such claims being made, or
- (j) is contrary to public policy.

(3) An advertisement published or caused to be published by a solicitor shall not include more than—

- (a) the name, address (including any electronic address), telephone number, facsimile number, place or places of business of the solicitor and any reference to the location of information provided by the solicitor that is accessible electronically,
- (b) particulars of the academic and professional qualifications and legal experience of the solicitor,
- (c) subject to subsection (2) of this section, factual information on the legal services provided by the solicitor and on any areas of law to which those services relate,
- (d) subject to any regulations under subsection (6) of this section, particulars of any charge or fee payable to the solicitor for the provision of any specified legal service, and
- (e) any other information specified in regulations under subsection (5) of this section.”

The above proposal manifests the Minister for Justice, Equality and Law Reform’s aim to restrict advertising by solicitors in the area of personal injury claims. The Minister believes that this type of advertising, engaged in by only a very small minority of the profession, has tended to diminish the public esteem in which the profession is held.

Such advertising has encouraged the ‘ambulance chasing’ image of the legal profession (so common in the USA) which can be very distressing to members of the public who find themselves in a very vulnerable position.

While the justification for the restrictions imposed by the Oireachtas or the Minister for Justice, Equality and Law Reform is more correctly to be made by the Oireachtas or the Minister, it is appropriate that the Law Society should comment. In this regard, the Law Society submits that the very limited advertising restrictions discussed above are necessary and proportionate for the protection of the public.

Further, the 1988 Guide to Professional Conduct of Solicitors provides, at paragraph 2.13, that a solicitor who is an agent for a financial institution or insurance company must ensure that advertisements which that financial institution publishes do not assume the character of advertisements for the solicitor. Such advertisements must conform to the Solicitors’ Accounts Regulations and the disciplinary regulations of the Law Society.

Finally, Appendix B (para 7) of the 1988 Guide to Professional Conduct of Solicitors states that:

“A criminal law solicitor shall not solicit business, as this can turn colleague against colleague and can create dissension, disturbance and ill-feeling within a profession which in itself requires the highest standards of honesty, integrity and honour. Unless the criminal law solicitor has business before the court, or within the precincts of the court, he should not be there in the first instance.”

This is a restriction that is specific to criminal law solicitors and is considered necessary to protect both solicitors and clients alike.

49. Who decides upon the restrictions referred to in question 48? Are the powers of the person or group who so decides based on explicit statutory mandate (and, if so, please refer to the relevant statutory provisions)? If not, please explain the legal basis for the exercise of such powers. Are any of these requirements set down directly in statute?

The restrictions referred to in Question 48 are decided upon by, (a) the Oireachtas; or (b) the Minister for Justice, Equality and Law Reform; or (c) the Law Society acting on the basis of a legal mandate. There is a constitutional or statutory mandate for each to act.

The Solicitors (Advertising) Regulations, 1996, while having been made by the Law Society in accordance with the Solicitors Acts, have been approved by both Houses of the Oireachtas in the same way as all other Statutory Instruments.

50. In addition to the restrictions mentioned in question 48, are there any conventions or traditions of the profession that restrict advertising and publicity of services? What is the general practice of the profession in this regard? Please provide details.

There are no conventions or traditions that restrict advertising and publicity of services. Such restrictions as do exist are based on statute law.

There may be a misconception that solicitors do not canvass or seek out work from potential clients – particularly, clients of other firms. Nothing could be further from the truth. Solicitors' firms engage in assertive, and even aggressive, marketing and solicitation of business. Firms employ various marketing strategies to attract, and retain, clients. The fact that firms have to act to retain clients is indicative of the competitive nature of the market.

There may be a misconception that solicitors do not use certain forms of advertising because of some convention or tradition, for example, billboard advertising or broadcasting. In fact, some firms of solicitors do engage in this form of advertising. The fact that all, or many firms, do not do so is more due to the fact that it may not be cost effective or efficient. The essence of a competitive market is that firms will choose those policies that they think best for growing the business, or whatever is their objective. Some will consider advertising beneficial, others will take a different view.

There may be a misconception that solicitors do not engage in marketing. In fact, this is not true. Some firms spend considerable sums of money on marketing brochures, organising conferences, holding seminars, conducting briefings, organising client entertainment, issuing publications and conducting other marketing exercises. They seek clients by telephone, by e-mail shots, by mail shots, by personal visits, by attendance at networking events, by speaking at conferences, by publications and by the range of activities which any supplier of services would be expected to utilise. While some firms have full-time departments dedicated to marketing and other firms engage outside marketing expertise on a part-time basis, every firm to a greater or lesser extent has someone involved in marketing the firm. In addition to the production of the Marketing Handbook for Solicitors, the Law Society has also put in place discounted arrangements with professional advisors on graphic design and corporate image which can be availed of by solicitors at their own choosing.

**51. Are there any other behavioural restrictions involved in your profession?
If so, please provide details of these.**

INTRODUCTION

The 1988 Guide to Professional Conduct of Solicitors in Ireland and the Solicitors Acts, 1954-1994 contain some behavioural restrictions which are designed to protect the public interest, to minimise the risk of conflicts of interests, to ensure the confidentiality of clients' secrets and the independence and integrity of the profession and to uphold the ethical conduct of the solicitors' profession as a whole.

In the Competition Authority's Decision on the *Rules of Professional Conduct of the Institute of Chartered Accountants*¹, the Institute pointed out that the general case law on competition and professional organisations recognised that:-

“those activities of a professional organisation which dealt with such matters as establishing and upholding professional standards by rules on training, registration of members, codes of conduct, disciplinary measures etc. did not infringe competition law provided they were confined to realising these objectives, were based on objective qualitative criteria and were not deployed in a manner which could give rise to a restriction of competition. For example, Rules of Conduct should be designed solely to uphold the professional integrity of members and of the overall profession itself, and should not be a means of co-ordinating the competitive behaviour of members. Also, there should be no suggestion or evidence of imposing or recommending fee levels, minimum fees, allocating or sharing customers, co-ordinating marketing strategies etc.”

The Law Society submits that the limited behavioural restrictions imposed on members of the solicitors' profession are objectively justified, are necessary to achieve the objectives discussed above and are not restrictive of competition. In this regard, neither the Law Society or statute imposes any restrictions on price or recommend or prescribe the allocating or sharing of customers or the co-ordination of marketing strategies.

A brief summary of some of the behavioural restrictions contained in the Guide to Professional Conduct of Solicitors in Ireland and statute are set out below.

CONFLICT OF INTEREST

With regard to conflict of interest, rule 1.2 of the Guide to Professional Conduct of Solicitors in Ireland provides as follows:-

¹ *Institute of Chartered Accountants in Ireland/ Rules of Professional Conduct/ Ethical Guide for Members*, Decision No. 584 of 18th September, 2000.

“Where a solicitor acts for two clients and a conflict arises between the interests of those clients, he should cease to act for both clients.

In non-contentious business, there may be circumstances where a solicitor may, with propriety, choose the client he will continue to represent, but only if the other client (who has to instruct another solicitor) does not object. However, a solicitor should cease to act for both clients in cases where there is any possibility that a conflict of interest might arise between those clients.

Where a solicitor acts for two or more clients in non-contentious business, that solicitor has a duty to ensure that each client will be independently advised in the event of any contentious matters arising between those clients.”

The Law Society submits that the above behavioural restrictions are objectively justified and are necessary to uphold the ethical standards of the profession. The Guide to Professional Conduct of Solicitors in Ireland seeks solely to protect the interest of the client – indeed, where a conflict arises in a non-contentious matter, the client is given the choice as to whether the solicitor should be permitted to act for the other client. It is therefore the client, and not the solicitor or the Law Society, that has control over the restriction to be imposed on a solicitor in a conflict situation in a non-contentious matter. In a contentious matter, it would be unethical for a solicitor to act for either client and therefore the choice is taken away from the client. The Law Society submits that this is objectively justifiable in such circumstances and protects the independence of the solicitor’s advice. In the words of the European Court of Justice in the recent *NOVA*¹ case, such restrictions are “necessary in order to ensure the proper practice of the legal profession”.

CHANGE OF SOLICITOR AND SOLICITOR’S LIEN

Rule 1.23 of the 1988 Guide to Professional Conduct of Solicitors in Ireland provides that “a client may change his solicitor whenever he wishes to do so”. Rule 1.26 provides that “where a solicitor holding documents of a former client under a lien for undischarged costs hands them to another solicitor who is then acting for that client, subject to and without prejudice to the first solicitor’s lien for costs, the other solicitor is obliged to return them on demand to the solicitor claiming the lien as long as the lien subsists”.

In the *Optometrists* decision², the Competition Authority had to consider a provision in the Code of Ethics of the Association of Optometrists which provided that a practitioner should not deal professionally with a patient while the patient is currently receiving attention from a colleague. The Competition Authority held that provided such a provision is not interpreted in such a way that the customer is effectively denied the option of changing from one professional to another if dissatisfied with the service offered, such a rule would not offend against Section 4(1) of the Competition Act, 1991.

¹ Case C-309/99, Judgment of the Court of Justice of 19 February, 2002, paragraph 109.

² Decision No.16, *Association of Optometrists, Ireland: Memorandum, Articles of Association and Code of Ethics*.

It is submitted that a client has the option at any time of changing from one solicitor to another if dissatisfied with the service offered. Rule 1.22 of the 1988 Guide to Professional Conduct of Solicitors in Ireland facilitates this change of solicitor by imposing an obligation on the former solicitor to hand over all files, papers and documents on receipt of an undertaking to discharge, within a reasonable time, properly drawn costs and outlays". Rule 1.26 provides that " a client should not be prejudiced by too rigid an application of the right of a solicitor to a lien". Moreover, rule 1.24 requires that " the second solicitor should ensure, in his initial discussions with the client, that the client fully appreciates and understands the client's obligations to pay all costs due for work properly done by the first solicitor. The second solicitor must endeavour to ensure that such costs are discharged by the client". Rule 1.24 therefore places an obligation on the second solicitor with regard to the discharge of the first solicitor's costs. Such rules are designed to facilitate clients in terminating their relationships with their existing solicitors and to change to a new solicitor. The Law Society does not consider that the provisions relating to solicitors' liens in any way deny a client the option of changing solicitors.

SOLICITOR ACTING AS AGENT

Where a solicitor acts as an agent for insurance companies, banks, building societies and other financial institutions or where he shares commission with stockbrokers, patent or trade mark agents and solicitors in this jurisdiction or lawyers in other jurisdictions, certain rules must be observed by the relevant solicitor. These are set out in the Law Society's Guide to Professional Conduct at paragraphs 2.10 to 2.14.

Paragraph 2.12 states that:

"In acting as a commission agent a solicitor should be conscious of the following:-

- (i) The principal/agent relationship should not give rise to unfair attraction of business.
- (ii) A solicitor holding an agency must not give members of the public the impression that his office is a branch or office of an insurance company, building society, etc.
- (iii) A solicitor should not allow himself to be put at a disadvantage to others similarly operating such agencies but who are not subject to professional rules, as a solicitor is.

The following guidelines are recommended by the Law Society in these matters:-

- (a) The office of a solicitor must be clearly seen to be the office of a solicitor.
- (b) The agency connection should not be described otherwise than as an agency and any word or words indicative of agency should be prominent. The lettering of any of the agencies visible from outside should not be larger than that of the sign indicating the presence of the office of the solicitor.

- (c) Not more than one exterior projecting sign for the same agency is permissible.
- (d) Information relating to financial institutions such as building societies, banks, etc., may be displayed and made available to clients and other members of the public within the confines of the offices occupied by the solicitor.”

There is a manifest need to protect client interests by ensuring that solicitors give independent and impartial advice which avoids a conflict of interests and protects the confidentiality of information given to solicitors. It is therefore right and proper that the law prevents solicitors employed by, for example, supermarkets and banks, from providing legal services to clients of those organisations. In the absence of any equivalent precautions to those provided by the solicitors’ profession (e.g. the Compensation Fund), the Law Society would oppose any move to allow solicitors employed by such organisations from providing legal services to the customers of those organisations. The Law Society has noted earlier in this response that an increasing number of non-solicitors are already operating in some parts of the market. The Law Society does not object to additional competition, or to new ways of providing legal services, but it is important that the public have confidence in the independence and integrity of those providing legal services. If a supermarket etc. organises itself for the purpose of providing legal services, there must inevitably be a concern whether the employed solicitor’s loyalty to his company could intrude into the duty he owes to the interests of his client.

There might be more of a case to consider if there was an absence of competition in the market for legal services. As this response has sought to show, that is emphatically not the situation.

SHARING FEES

The Guide further prohibits a solicitor from receiving or sharing commission due to auctioneers, estate agents, surveyors, architects and/or engineers (see paragraph 2.11). This rule is a result of the Solicitors (Professional Practice) Regulations, 1988 (S.I. No. 343 of 1988) which state that “a solicitor shall not agree to share his professional fees with any person, not being a solicitor or a duly qualified legal agent in another country.”¹ Under the provisions of the Solicitors Acts 1954 to 1994 (Investment Business and Investor Compensation) Regulations, 1998, as amended by the Euro Changeover Regulations, 2001, a solicitor who provides investment services to a client and receives commission in excess of e95, must disclose that fact in writing to the client.

SHARING OFFICE ACCOMMODATION

¹ Regulation 3(1).

A solicitor in private practice should also not share accommodation or staff with a person who is not a solicitor (see paragraph 6.5 of the Guide). The reason for this restriction is that the practice of sharing accommodation could lead to a failure by the solicitor to maintain the confidentiality of the business and affairs of clients. Further, neither an office, nor a sub-office of a solicitor should be located in premises licensed to sell alcohol (see paragraph 6.6) - this has no impact on competition.

ADVISING CLIENTS OF LEGAL CHARGES IN ADVANCE

Section 68 of the Solicitors (Amendment) Act, 1994 requires solicitors to provide advance notice of their legal charges to clients, as follows:

“(1) On the taking of instructions to provide legal services to a client, or as soon as is practicable thereafter, a solicitor shall provide the client with particulars in writing of:-

- (a) the actual charges, or
- (b) where the provision of particulars of the actual charges is not in the circumstances possible or practicable, an estimate (as near as may be) of the charges, or
- (c) where the provision of particulars of the actual charges or an estimate of such charges is not in the circumstances possible or practicable, the basis on which the charges are to be made,

by that solicitor or his firm for the provision of such legal services and, where those legal services involve contentious business, with particulars in writing of the circumstances in which the client may be required to pay costs to any other party or parties and the circumstances, if any, in which the client's liability to meet the charges which will be made by the solicitor of that client for those services will not be fully discharged by the amount, if any, of the costs recovered in the contentious business from any other party or parties (or any insurers of such party or parties).”

The objective of Section 68 is clearly to protect the public from excessive charging. The Law Society publishes a pamphlet for consumers, entitled “*Information in relation to Legal Charges*”. This pamphlet contains information which solicitors are required by law to give to their client in relation to their charges pursuant to Section 68. In addition, the Law Society publishes Precedent Letters for solicitors which contain sample letters which must be forwarded to clients upon the taking of new instructions pursuant to Section 68. Both the pamphlet and Precedent Letters are attached at Appendix 47.

PROHIBITION ON PERCENTAGE FEES

Section 68(2) of the Solicitors (Amendment) Act, 1994 provides as follows:

“A solicitor shall not act for a client in connection with any contentious business (not being in connection with proceedings seeking only to recover a debt or liquidated demand) on the basis that all or any part of the charges to the client are to be calculated as a specified percentage or proportion of any damages or other moneys that may be or may become payable to the client, and any charges made in contravention of this subsection shall be unenforceable in any action taken against that client to recover such charges.”

The prohibition on percentage fees only applies in respect of contentious work and is justified on the basis that it diminishes a proliferation of unnecessary litigation and prohibits a solicitor from having a vested interest in the outcome of a case. Such a prohibition is common in a number of jurisdictions and a recent survey conducted by the CCBE in relation to the extent to which such rules apply throughout Europe is attached at Appendix 48. In Ireland, it is permissible to enter into a *pactum de quota litis* for non-contentious work. The level of the fee will be contingent on the value of the result. Pursuant to Section 68(1), discussed above, the agreement must be made at the time when instructions are obtained or as soon as is practicable thereafter.

PROFESSIONAL UNDERTAKINGS

Rule 7.3 of the Guide to Professional Conduct of Solicitors in Ireland provides as follows:

“An undertaking of a solicitor is binding in law and, furthermore, the failure by a solicitor to honour an undertaking is unprofessional conduct...”

The use of professional undertakings is an important aspect of the practice of law in Ireland. Solicitors commonly give undertakings to each other in areas such as conveyancing or to the courts in litigation to expedite matters. Failure to comply with a professional undertaking may be deemed misconduct by the Law Society and may also give rise to legal consequences.

The Law Society’s Professional Guidance Committee has published a brochure on Principles relating to Professional Undertakings which is attached at Appendix 49.

YOUR COMMENTS ON THE CONDUCT RESTRICTIONS

52. What are the objectives of the requirements discussed in your answers to the questions so far in this Part? What benefits, if any, do these requirements contribute to the provision of professional services? Please explain any benefits claimed.

As discussed in the response to Question 51 above, the objectives of imposing certain requirements on solicitors relate to (i) the protection of the public interest; (ii) the need to minimise the risk of conflicts of interests; (iii) the need to ensure the confidentiality of clients' secrets and the independence and integrity of the profession; (iv) the need to operate and maintain a system whereby certain basic standards are upheld (e.g. no advertising at cemeteries or hospitals); and (v) the need to uphold the ethical conduct of the solicitors' profession as a whole.

The benefits afforded by these objectives are benefits afforded to the client and not to members of the solicitors' profession or the Law Society. The conduct restrictions contained in the 1988 Guide to Professional Conduct of Solicitors in Ireland and in the Solicitors Acts 1954-1994 ensure that clients are assured that solicitors will act in a proper professional manner in the handling of their affairs and that they are acting in complete independence and in the sole interest of the client. The public interest is therefore protected by these conduct restrictions.

The restrictions on advertising achieve, in the Law Society's view, an acceptable balance between commercial freedom and therefore competition and the need to restrain more aggressive, persuasive advertising in a field where consumers are not always able to judge quality and hence could easily be misled, sometimes with costly consequences.

It should be noted that there are no restrictions imposed by the Law Society of any kind on fees, (the most important dimension of competition in any market) and minimal constraints on advertising. Advertising restrictions are no wider than generally accepted as compatible with protecting standards. Solicitors have considerable freedom to advertise. It is difficult to see how competition could be promoted any further without some risk to standards e.g. by encouraging (some) solicitors to cut corners in the quest for business (expecting to get away with it because of information asymmetries). The incidence of advertising varies across the profession (see, for example, solicitors' advertisements in the Golden Pages) as would be expected. There is no problem if solicitors choose not to advertise, preferring to compete in other ways.

53. Please explain how you consider these requirements maximise overall consumer benefit by striking the right balance between consumer benefits from competition and other benefits. Are there alternative ways to achieve these objectives?

Please see the responses to Questions 51 and 52 above.

54. What are the general effects of the conduct restrictions on:

- a) the profession itself?**
- b) clients and the general public?**
- c) the range, quality and prices of the services offered?**

Please see the responses to Questions 51 and 52 above.

PART V – DEMARCATION AND ORGANISATIONAL ISSUES

Many professions work closely with other professions, and with allied or ancillary professions. Moreover, many professions are divided into numerous branches or segments, which work closely with each other. Also, many professions afford their members the opportunity to practise using a variety of practice structures – e.g. sole practitioner, limited company. The Authority is anxious to understand these relationships and forms of organisation, and this is the purpose of this Part. As with the previous two Parts, the first number of questions is designed to elicit mainly factual information and you are given greater opportunity to comment on the issues raised towards the end of the Part.

55. Is the provision of certain services reserved to members of one or more allied/ ancillary professions, or to groups of members within a profession, or to groups of members within a profession who have particular qualifications or a certain level of seniority? If so, please explain.

INTRODUCTION

This question is, with respect, open to some ambiguity so, for completeness, the Law Society would like to answer it comprehensively. At the outset, it is useful to consider the distinction between solicitors and barristers.

There is a long-established distinction between solicitors and barristers. Not only is the distinction one which is of longevity, it is also a distinction which still has validity.

Solicitors provide legal advice to the public on the whole range of legal matters and have, but do not always exercise,¹ rights of audience in the courts. Barristers have, and exercise, rights of audience in the courts and provide consultancy services to solicitors.² Bishop (1989)³ analyses this division in the profession as a prohibition on vertical integration between successive stages in the “production process”, that is the preparation of a case by a solicitor and its prosecution through advocacy in the courts. Bishop discusses some external benefits of having two distinct professions. For example, the division is likely to allow more effective policing of lawyer misbehaviour due to a “club” effect. Moreover, the cost incurred by the trial judge for judicial administration is likely to be lower. This is because poor advocacy places a burden on the trial judge to make sure that the decision reached is not influenced by inadequate advocacy. This problem will not arise with highly specialised and skilled advocates.

The Law Society notes that such distinctions as remain between the work of, for example, solicitors and barristers are “upheld as a matter of public policy in the due administration of justice” according to a recent judgment of the High Court.⁴ There are efficiencies to be gained by this specialisation. If there were not such efficiencies to be gained then it could be imagined that solicitors would engage in barrister-like activities

¹ It might well be asked as to why all solicitors do not exercise their rights of audience (granted under 1971 legislation). It is not that there is some arrangement between solicitors and/or barristers not to do so. Instead, it is due to reasons of efficiency and specialisation. Solicitors practise in their offices and attend court but the time commitment and inefficiencies involved in trying to run an office, serve other clients not interested in litigation and plead a case would deter many of them from doing so.

² Rights of audience in the higher courts have recently changed in the UK to allow some solicitors with considerable experience in advocacy in the lower courts to appear in the higher courts.

³ Bishop, W. (1989) *Regulating the Market for Legal Services in England: Enforced Separation of Function and Restrictions on Forms of Enterprise* Modern Law Review 52, pp. 326-351.

⁴ See the comments of Geoghegan J in *Bloomer et al v The Incorporated Law Society of Ireland*, High Court, 3rd December 1999, page 11.

on a widespread basis as they are largely entitled to do for over 30 years. A solicitor may legally and practically do many of the things which a barrister can do. For example, a solicitor may draft pleadings and appear in court. Section 17 of the Courts Act, 1971 provides that a solicitor has full rights of audience in the Irish courts:

“[a] solicitor who is acting for a party in an action, suit, matter or criminal proceedings in any court and a solicitor qualified to practice (within the meaning of the Solicitors Act, 1954) who is acting as his assistant shall have a right of audience in that court.”

There are solicitors whose practice is tantamount to that of a barrister – including appearing in court. Not all solicitors have chosen to take up the option of appearing in court (in terms of advocacy) - this is solely a decision for each solicitor on an individual basis and is probably a matter of weighing up the most efficient allocation of resources and talents.

SERVICES RESERVED WITHIN THE SOLICITORS’ PROFESSION

The provision of services by solicitors is not reserved to members of one or more allied/ancillary professions or to groups of members within the solicitors’ profession or to groups of solicitors who have particular qualifications or certain levels of seniority or who practice in particular parts of the country.

There is no barrier to competition between solicitors. Any solicitor may take on the same type of work as is taken on by any other type of solicitor. For example, major constitutional, criminal, commercial, competition or other cases are taken by solicitors in firms both large and small. Assistance is available, if desired, from other solicitors or the Bar. Unlike some jurisdictions world-wide, there are no restrictions on the courts in which solicitors may take cases – a solicitor anywhere in Ireland may take a case before any court in the country (i.e. there are no local Bars). Equally, there is no ranking or seniority among solicitors.

WORK CONFINED TO THE SOLICITORS’ PROFESSION

If the question is designed to ask whether certain types of work are confined to solicitors, then the answer is yes. There are certain types of work which are, as a matter of law, confined to solicitors.

Section 58 of the Solicitors Act, 1954 provides certain restrictions on drawing certain documents. The section reads:

- “1. (a) The drawing or preparing of a document relating to a real or personal estate or any legal proceeding;
- (b) the procuring or attempting to procure the execution by an Irish citizen of a document relating to -

- (i) real or personal estate or movable or immovable property, situated or being outside the State and the United Kingdom; or
 - (ii) any legal proceeding, actual or in contemplation of which the subject-matter is any such estate or property,
- (c) the making of an application, or the lodging of a document for registration, under the Registration of Title Act, 1891, or any Act amending that Act, at the Land Registry or to or with a local registering authority.
- (d) the taking of instructions for, or drawing or preparing of, documents on which to found or oppose a grant of probate or letters of administration.”

However, certain acts are exempted from section 58 including the following:

- “(a) an act not done either directly or indirectly for or in expectation of any fee, gain or reward, ...
- (c) an act done by any public officer in the course of his duty,
- (d) an act done by a duly accredited diplomatic or consular officer of another State in the course of his duty,
- (e) an act done by a notary public as such,
- (f) an act consisting merely of engrossing a document,
- (g) an act done by a person in the employment of a practising barrister or a solicitor qualified to practise and while acting in the course of such employment by the direction and under the supervision of his employer.”

There would be no protection for the public if the rules could be easily circumvented. Section 59 of the Solicitors Act, 1954, provides:-

- “(1) A solicitor shall not wilfully-
 - (a) act, in business carried on by him as a solicitor, as agent for an unqualified person so as to enable that person to act as a solicitor;
 - (b) permit his name to be made use of, in business carried on by him as a solicitor, upon the account, or for the profit of, an unqualified person, or
 - (c) do an act enabling an unqualified person to act as a solicitor.
- (2) This section shall have effect subject to the provisions of this Act and to any exceptions that may be made by regulations under Section 71 of this Act.”

Section 55 of the Solicitors Act, 1954, (as amended by Section 63 of the Solicitors (Amendment) Act, 1994):

- “(1) An unqualified person shall not act as a solicitor.
- (2) A person who contravenes subsection (1) of this section shall, without prejudice to any other liability or disability to which he may be subject, be guilty of an offence under this Section and shall be liable.
- (a) on conviction thereof on indictment, to imprisonment for a term not exceeding two years or, at the discretion of the Court, to a fine not exceeding IR£10,000 or to both such fines and such imprisonment¹, or
- (b) on summary conviction thereof, to imprisonment for a term not exceeding six months or, at the discretion of the Court, to a fine not exceeding IR£1,500 or to both such fines and such imprisonment².
- (3) A person who contravenes subsection (1) of this section in relation to a court of justice shall also be guilty of contempt of that court and shall be punishable accordingly.”

Section 56 of the Solicitors Act, 1954, as amended by Section 64 of the Solicitor (Amendment) Act, 1994, provides a prohibition on persons pretending to be a solicitor:

- “(1) A person who is not a solicitor shall not pretend to be a solicitor or take or use any name, title addition or description or make any representation or demand implying that he is a solicitor.
- (2) A person who contravenes subsection (1) of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding IR£1,500.”³

Such a provision is important in protecting the public from persons pretending to be solicitors. The public might have no easy way to verify whether someone is a solicitor or not and therefore such a prohibition is useful in protecting the public. The restriction is therefore justified by the protection afforded to the public.

Section 57 of the Solicitors Act, 1954 protects the public from having to pay an unqualified person who may be intending to sue for fees in respect of work which they were not entitled to do:-

¹ The amount of £10,000 has been amended by the Solicitors (Amendment) Act, 2002 to €30,000.

² The amount of £1,500 has been amended by the Solicitors (Amendment) Act, 2002 to €3,000.

³ The amount of £1,500 has been amended by the Solicitors (Amendment) Act, 2002 to €3,000.

- “ (1) Where a solicitor acts as a solicitor while he is not a solicitor qualified to practise, costs in respect of anything done by such solicitor so acting shall not be recoverable in any action, suit or matter by such solicitor or any person claiming through or under him.
- (2) Nothing in subsection (1) of this section shall effect any indemnity which a client or a solicitor has under an order of any court in respect of costs awarded under the order, to the extent (if any) to which the client may have paid such costs to the solicitor at the date of the order.”

Certain areas of practice were reserved to solicitors by the Solicitors Act, 1954, which restricted the preparation of legal documents for reward to solicitors in the areas of conveyancing and probate. These restrictions have subsequently been relaxed. In any case, there are strong justifications for such restrictions as set out in the response to Question 58.

56. Who decides upon the restrictions referred to in question 55? Are the powers of the person or group who so decides based on explicit statutory mandate (and, if so, please refer to the relevant statutory provisions)? If not, please explain the legal basis for the exercise of such powers. Are any of these requirements set down directly in statute?

WITHIN THE SOLICITORS' PROFESSION

This is not applicable because there are no restrictions within the profession.

RESTRICTIONS OF CERTAIN TYPES OF WORK TO SOLICITORS

The Law Society maintains that, even with the restriction outlined in the response to Question 55, there is no lack of competition in conveyancing and probate services. There is a large number of solicitors keen to provide services in this important area of legal work, and they are entirely free to advertise their services and to quote what fees they like. The consumer is well served by the present arrangements. A risk in opening up the market to banks would be the scope they would have for conditional selling. Banks and supermarkets with market power in the provision of retail services could make it a condition of taking those services that customers used their conveyancing services. This could distort the competitive process and be detrimental to consumers.

57. In addition to the restrictions mentioned in question 55, are there any conventions or traditions of the profession that reserve the provision of certain services to members of one or more allied or ancillary professions or to groups of members within a profession or to groups of members with a profession who have particular qualifications or a certain level of seniority? What is the general practice of the profession in this regard? Please provide details.

No, there are no conventions or traditions of the solicitors' profession in Ireland that reserve the provision of certain services to members of one or more allied or ancillary professions or to groups of members within the profession. There are no qualifications which demarcate work.

There are no levels of seniority within the profession which demarcate work. Obviously, clients may seek the advice of someone who is experienced or has expertise but this may be any member of the profession.

It is worth noting that every solicitor who holds a practising certificate which is in force is now able to witness oaths in the same way as Commissioners for Oaths may do. This is by virtue of Section 72 of the Solicitors (Amendment) Act, 1994.

58. Do you feel that any services currently reserved to members of a profession and/or allied profession, or to certain subgroups of a profession, could be provided by individuals or groups (e.g. para-professionals) not belonging to that profession? If so, state what such services might be. If not, please outline why such services should be reserved.

There are very few services confined to solicitors and of those which are, there are very substantial reasons of public policy why they should be confined to solicitors.

Section 58 of the Solicitors Act, 1954 restricted the preparation of particular legal documents for reward to solicitors. The principal areas of practice reserved to solicitors were conveyancing and probate. The area of conveyancing is a highly complex area of law so much so that the Law Society has published a Handbook to provide assistance to solicitors in conveyancing transactions. The Conveyancing Handbook is attached at Appendix 23. The Fair Trade Commission, in their report in 1990, recommended that banks, as well as building societies, should be empowered to provide conveyancing services. This issue was discussed in detail during the Dail and Seanad debates for the 1994 Act. As a result of these discussions, the Oireachtas rejected the Fair Trade Commission's suggestions and decided that it was in the best interests of the public not to allow banks to provide these services.

The Law Society is opposed to banks, supermarkets, etc. providing probate and conveyancing advice for a number of reasons.

First, probate, administrations and conveyancing (particularly when acting on behalf of purchasers) involve complex legal work that should be done by legally qualified persons. Such areas cannot be considered in isolation from other areas of law – for example, in conveyancing transactions, consideration must also be given to family law (e.g. the Family Home Protection Act, 1976) and planning laws. Conveyancing transactions in Ireland are considerably more complex than those in England and Wales (where a new profession of “licensed conveyancers” was established in 1985) due to the complexities in Ireland of dealing with the Registry of Deeds and the Land Registry. The fact that not all land in Ireland is registered creates potential hazards at every stage of the conveyancing transaction. It is notable that the Restrictive Practices Commission in its 1982 Report on restrictions on conveyancing and restrictions on advertising by solicitors¹ accepted that there was a greater danger that a conveyance conducted by a non-solicitor would be defective and it recommended that the conveyancer employed by the purchaser should be a solicitor. The Law Society submits that a radical reform of property law in Ireland would first be required before expanding the list of those permitted to perform conveyancing transactions.

¹ Restrictive Practices Commission: Report of Enquiry into the effects on Competition of the Restrictions on Conveyancing and the Restrictions on Advertising by Solicitors (Stationary Office, Dublin, 1982).

Secondly, in the complex areas of probate and conveyancing, there is a greater need to ensure sufficient consumer protection due to the considerable information asymmetry that exists. The statutory provisions restricting the provision of these complex services to solicitors ensures minimum standards and quality and minimises conflicts of interest. If non-solicitors were permitted to provide the reserved services, there would be no protection for clients' funds (such as the solicitors' Compensation Fund) and there would be no professional indemnity insurance to cover negligence. In addition, there would be difficulties in supervising entities such as supermarkets and petrol stations in their provision of legal services. Lawyers working in such organisations would be answerable to non-lawyers with different ethical and professional values.

Thirdly, there would be a serious risk of a conflict of interest if banks, supermarkets and other providers of retail services were permitted to act for their own customers. If such organisations were permitted to provide legal services, there would be a greater risk that the client would not receive independent and impartial legal advice. In the *NOVA* case, the Court of Justice noted that:

“The current approach of the Netherlands... is that the essential rules adopted for that purpose [i.e. the proper practice of the profession] are, in particular, the duty to act for clients in complete independence and in their sole interest, the duty... to avoid all risk of conflict of interest and the duty to observe strict professional secrecy.

Those obligations of professional conduct have not inconsiderable implications for the structure of the market in legal services, and more particularly for the possibilities for the practice of law jointly with other liberal professions which are active on that market.

Thus, they require of members of the Bar that they should be in a situation of independence *vis-à-vis* the public authorities, other operators and third parties, by whom they must never be influenced. They must furnish, in that respect, guarantees that all steps taken in a case are taken in the sole interest of the client.

...The Bar of the Netherlands was entitled to consider that members of the Bar might no longer be in a position to advise and represent their clients independently and in the observance of strict professional secrecy if they belonged to an organisation which is also responsible for producing an account of the financial results of the transactions in respect of which their services were called upon and for certifying those accounts...

A regulation such as the 1993 Regulation could therefore reasonably be considered to be necessary in order to ensure the proper practice of the legal profession, as it is organised in the Member State concerned.”¹

¹ *NOVA* case, paragraphs 100-107.

Fourthly, there could be opportunities for “tying” or other anti-competitive practices which might not be subject to control under competition law if the services were provided by an undertaking not in a dominant position.

It is important to note that Section 78 of the 1994 Act opened up will-making and probate services to competition from credit unions while Section 31 of the Building Societies Act, 1989, ended the exclusive right of solicitors to carry out conveyancing work by empowering building societies to do so. However, credit unions and building societies have not extensively made use of these powers.

The Law Society strongly believes that this area of work must be reserved for properly trained persons, supported by professional indemnity insurance, a compensation fund and a disciplinary procedure to deal adequately with complaints from the public. Solicitors are the only persons with the required expertise, insurance cover and regulatory control.

59. Has your organisation sought legislation, or made representations to a Minister and/or government department, to prevent, restrict or limit allied, ancillary or related professionals from undertaking certain work? If so, please discuss.

None of the existing executive team of the Law Society has sought legislation or made representations to a Minister and/or a Government department, to prevent, restrict or limit allied, ancillary or related professionals from undertaking certain work. However, the Law Society has been constantly vigilant to bring to the attention of Government, the Civil Service, politicians and the public any attempts to damage or interfere with the proper practice of the legal profession and/or the protection of clients.

ORGANISATIONAL ISSUES

60. Are members of the profession restricted as to the type of practice structure and/or organisation through which they may provide their services (e.g. prohibition on partnerships, incorporation, fee sharing, or inability to provide such services in the same organisational framework as the providers of other professional services)? If so, please give details of such restrictions.

INTRODUCTION

There are restrictions outlined below on the type of practice structure and/or organisation through which solicitors may provide their services which are intended to protect the public. In setting structures, the criteria should include the need to minimise the risk of conflicts of interests, ensure the confidentiality of clients' secrets and the independence and integrity of the profession and limit the risks of excessive claims to the Compensation Fund. However, the Law Society believes that the introduction of an additional practice structure, that of the Limited Liability Partnership, would cause no difficulty from the perspective of protecting the public interest. The Law Society has made a submission to the Tanaiste and Minister for Enterprise, Trade and Employment outlining the rationale for the introduction of limited liability partnerships in Ireland which is attached at Appendix 50.

RESTRICTION ON THE FORMATION OF BODY CORPORATES

Pursuant to Section 64 of the Solicitors Act, 1954 a solicitor may practise only as a sole practitioner or in partnership with another solicitor. Section 64 provides:-

- “(1) A body corporate or director, officer or servant thereof shall not do any act of such nature or in such manner as to imply that the body corporate is qualified, or recognised by law as qualified, to act as a solicitor.
- (2) Where there is a contravention of subsection (1) of this section, the body corporate shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding one hundred pounds and, where the act was done by a director, officer or servant of the body corporate, he also shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding twenty-five pounds.
- (3) In Section 55, 58 and 59 of this Act, references to unqualified persons, and references to persons, include references to bodies corporate.”

RESTRICTION ON LIMITED LIABILITY PARTNERSHIPS

Under Irish law, and in particular the Partnership Act, 1890, a partner is liable to the full extent of his personal assets if either he is negligent or one of his fellow partners is negligent. He is also personally liable for all the debts and obligations of the firm. The Law Society believes that the imposition of unlimited liability on partners belongs to an earlier era when few varieties of professional services were available, financial capital requirements of partnerships were relatively low, services were normally provided by very small groups of people and potential exposure to significant claims in respect of legitimate professional activity was relatively rare.

Following the enactment of the Limited Liability Partnership Act, 2000 in the UK, the introduction of Limited Liability Partnerships (LLPs) has been a subject of discussion in Ireland. The Law Society has argued in favour of introducing LLPs in Ireland. The effect of the LLP legislation introduced in the US and the UK is to provide that innocent partners should not be held personally liable for the acts of negligent partners and to provide that the LLP and not the individual partners should be liable for the debts and obligations of the partnership.

It is useful to explore the extent to which partners in law firms in a variety of European jurisdictions are personally exposed to liability. The following table shows that most jurisdictions do, in fact, offer some means of restricting potential personal liability:

Table No. 25 – Limited Liability of Lawyers – EU Member State Profile

Country	Liability Limitable?	Mechanism for Limiting Liability
Austria	Yes	Limited Company
Belgium	Yes	Acting as advisor via a Limited Company
Denmark	Yes	Limited Company
Finland	Yes	Limited Company
France	Yes	Limited Company
Germany	Yes	Limited Company
Greece	Yes	Specific Legislation
Ireland	No	
Italy	No	
Netherlands	Yes	Limited Company
Norway	Yes	Acting as advisor via a Limited Company
Portugal	Yes	Bilateral Contracts
Spain	No	
Sweden	Yes	Contract
Switzerland	Yes	Acting as advisor via a Limited Company

United Kingdom	Yes	LLP
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In several jurisdictions lawyers actually have a range of options. Ireland, however, appears to have the most onerous regime for partners in law firms (when compared to the above-mentioned jurisdictions). This arises as, unlike most other countries, partners cannot limit their liability through contractual arrangements or use of legal structures. Further, unlike the cases in Italy and Spain, partners in Irish law firms are also liable to the full extent of their personal assets with respect to negligence caused by their fellow partners. Apart from offering the least options for partners in law firms to limit liability to their personal assets, Ireland also appears to have the highest minimum requirement for professional indemnity insurance.

The Law Society is of the opinion that the imposition of unlimited liability on partners in law firms, and in particular on innocent partners for negligent acts committed by another person, is no longer justifiable for the following reasons:

- (a) Irish lawyers are operating at a distinct competitive disadvantage to their mainland European, North American and UK counterparts, some of whom already conduct business in Ireland;
- (b) the management systems of modern partnerships do not allow every partner to take a personal interest in every aspect of the business;
- (c) due to the growth in size of partnerships in recent years many partners will not be well known to each other;
- (d) in an era of specialisation, partners do not have sufficient knowledge of each other's specialities to oversee each other's work;
- (e) the increased volume and magnitude of business transactions results in potential exposure for Irish solicitors considerably greater than insurance cover which can be obtained – and thus solicitors face a real risk of bankruptcy;
- (f) it is likely that if LLP legislation is not enacted, Irish law firms will consider establishing across the border in Northern Ireland to avail of LLP benefits. The result could be a potential loss of primary regulatory control by the Law Society;
- (g) clients will continue to have remedies against solicitors, in that both the assets of the firm and the proceeds of the Law Society Compulsory Insurance Fund (with minimum proceeds of €1.3 million per claim) will be available; and
- (h) clients will continue to be protected by the cover of the Law Society's Compensation Fund in cases of fraud and dishonesty (which has currently reserves of €27.5 million and additional insurance of €20 million).

RESTRICTION ON MULTI-DISCIPLINARY PARTNERSHIPS

Sections 59 and 64 of the 1954 Act prohibit the formation of multi-disciplinary partnerships (MDPs), i.e. partnership with persons other than solicitors. Section 71 of the 1994 Act permits the Law Society to allow fee-sharing between solicitors and other professions provided that the Minister for Justice and, in the event of regulations being proposed, the Minister for Enterprise, Trade and Employment have consented. The restrictions on fee sharing and being in partnership with anyone who is not a solicitor are reflected in the majority of legal professions around the world (for example, the recent

NOVA case dealt with a prohibition on MDPs contained in the regulations of the Dutch Bar – i.e., the Nederlandse Orde van Advocaten).

Under the Solicitors (Professional Practice) Regulations, 1988:

“A solicitor shall not agree to ‘share’ his professional fees with any person, not being either a solicitor or a duly qualified legal agent in another country”.

This prohibition is subject to certain exceptions and services to retain the independence of solicitors. Further, Rule 2.11 of the Guide to Professional Conduct states that:

“A Solicitor may not receive or share commission due to auctioneers, estate agents, surveyors, architects and/or engineers...”.

Under Rule 6.5 of the Law Society’s 1988 Guide to Professional Conduct of Solicitors in Ireland:

“A solicitor in private practice should not share accommodation or staff with a person who is not a solicitor, as to do so may be unprofessional conduct. The practice of sharing accommodation could lead to failure by the solicitors to maintain the confidentiality of the business and affairs of clients.

A solicitor may share a street entrance, passage-way, vestibule or landing with other occupants of a building”.

The effect of these provisions is that solicitors may only form partnerships with other solicitors but may not engage in partnerships, or any other form of business organisation, with members of any other profession, trade or occupation. Solicitors may, however, act as practising solicitors while employed by non-solicitors. Further, while they may not carry on business as a limited company, they can operate as unlimited corporations.

The CCBE code which is, in effect, the common code for lawyers in Europe, also prohibits fee-sharing. In its press release on the *NOVA* judgment, the CCBE remarked as follows:

“The CCBE has long had a policy of cautioning against the difficulties of MDPs. While realising that such partnerships are lawful in some Member States, it has always emphasized the necessity of measures for safeguarding lawyer independence, professional secrecy and the avoidance of conflicts of interests, the very duties recognised by the Court in its decision.

The recent collapse of Enron in the United States has led to new demands regarding the selling of different services by professionals working in the same organisation, and regarding conflicts of interests between those professionals working for the same client. These were the very dangers that the CCBE foresaw in its policy.

Commenting on the Court decision, CCBE President, John Fish, said: ‘We are delighted by the outcome, which we think is clearly in the public interest. It is for very good reasons that the CCBE has always cautioned against the difficulties inherent in multi-disciplinary partnerships.’

The origin of the restriction is (a) the need to preserve the independence of lawyers (who must be assured that the advice they receive from a lawyer is unaffected by any other consideration), and (b) the wider public interest (in that legal professions must be independent of government control in order to protect the role of law).

Economic literature on the subject of MDPs would also suggest that MDPs may work against the public interest for the following reasons:

- unauthorised practice;
- dually-qualified practitioners;
- firm ownership by non-lawyers; and
- conflicts of interest.

Each of these are discussed below.

Unauthorised Practice

Partnerships with unlicensed professionals of different disciplines may lead to the result that the quality of service delivered is below the average standards. Consequently, rules prohibiting partnerships with unlicensed persons are supported on the basis that they protect clients against practice by incompetents.

Dually-qualified Practitioners

The concurrent practice of two licensed occupations by dually qualified individuals is opposed because the rapid expansion of technical knowledge within the traditional professions makes it almost impossible to maintain competence in two complex disciplines simultaneously.

Firm Ownership by Non-Lawyers

If a non-lawyer has any type of financial control over a lawyer partner, that lawyer partner may lose his independent judgement. The problem lies in the fact that the non-lawyer may be driven or bound by a completely different set of ethical standards and interests and this may interfere with the proper performance of the lawyer’s agency function.

Conflicts of Interest

The conflict of interest argument between lawyer and client is based on the fact that the lawyer will have some influence upon the client's demand for service from which he will himself benefit. Therefore, the lawyer may attempt to persuade the client to pay for services that are either unnecessary or of poor quality. This "feeding" problem is more likely to occur in a MDP which will have other professionals keen to provide any additional service.

MDPs have, for a considerable period of time existed, in the Netherlands, principally between lawyers and notaries. In that jurisdiction, it has been found that the difference in the type of practice does create difficulties regarding conflicts of interest.

For example, the notary may have clients who always use his services for conveyancing matters in real estate. However, the notary client may not necessarily use the same MDP firm for other legal services. It may happen that such a notary client is engaged in a conflict leading up to a legal action against a client of one of the lawyer partners. Where the notary client has instructed another law firm to handle this matter there seems to be no problem. What may happen, however, as occurred in one instance, is that the notary client objects to the lawyer partner acting in the matter on the ground that the notary partner had privileged knowledge of certain real estate transactions he intended to complete involving considerable amounts of money. He felt that this prejudiced him. Despite reassurances by the MDP that the lawyer partner would not have access to this privileged knowledge, it was in the end decided to withdraw from the lawsuit which caused difficulties not only within the firm but also with the client. The problem is that, to be aware of conflicts of interest, information must be made available within a MDP. However, this in itself could create difficulties.

MDPs are, of course, an issue which are currently under discussion in legal professions globally and a recent case from the European Court of Justice (the *NOVA* case discussed below), confirms that a restriction on MDPs is not necessarily incompatible with the competition rules.

There are several reasons for opposing the formation of MDPs.

(a) General

Concerns may arise as to solicitors acting on both sides in a transaction as MDPs are likely to give rise to many incidences where potential and actual conflicts of interest will arise. This will lead to "ring fencing" and "Chinese walls" within MDPs which have not been favoured by the courts. In *Re a firm of Solicitors*¹, the Court of Appeal stated that it doubted "very much whether an impregnable Chinese wall can ever be created".

¹ *Re a Firm of Solicitors* [1992] QB 959, [1992] 1 All ER 353.

(b) Independence of the Solicitors' Profession

The solicitor has a duty to ensure that advice given by him is totally independent and free from any suggestion of outside influence. It is unlikely that such independence of advice can be guaranteed if the solicitor is practising in an MDP where part of the advice required is that of recommending another professional. The solicitor's independence of advice may thus be compromised and the consumer's freedom of choice restricted.

(c) Foreign Dependence

If partners of multi-national accountancy firms become partners of Irish solicitors, it is questionable whether the independence and integrity of Irish law and the prevailing legal system itself can be fully maintained.

(d) The Rights and Obligations of Confidentiality

In many respects, the solicitor has no higher duty than that of maintaining the confidences of the client. If a solicitor practises only with other solicitors, the client's secrets are not jeopardised because all legal professional colleagues have the same duty and the solicitor and his or her firm are responsible to the client for any unauthorised disclosure of confidential information.

Problems may, however, arise in MDPs where non-lawyers are not under the same duty of confidentiality. What if, for example, the information relates to confidential contingent liability of the client and the partners or affiliates of such solicitors perform audit services for the same client and the applicable audit standards would require the disclosure of the client's secret? The potential conflict of duties is clear.

In view of this potential conflict, if client confidences are to be preserved, the legal and professional regimes which also authorise the combination of solicitors and auditors into multi-disciplinary firms or groups must authorise a sustainable mechanism for doing so which ensures that each profession may fulfil its obligations independently without the risk of compromise of professional standards. However, there is always a danger of legal imputation of knowledge among members of the same organisation. There is also the practical risk of disclosure of confidential information, and possible loss of privilege, in an organisation which encompasses two or more professions. This is especially the case where such information is stored in a common database available to all in the organisation.

Added to this difficulty is the multi-jurisdictional nature of the larger accounting firms which are global organisations operating as worldwide partnerships or as affiliate organisations. In the longer term, the integrity of the financial markets

worldwide will depend upon the public's confidence in the actual independence of the auditors. This in turn will depend in part upon the ability of the firm performing the audit service to separate the legal from the accounting function.

(e) Reduction of Choice

If MDPs are able to exploit economies of scale and scope, as the advocates claim, there is the likelihood that MDPs would come to hold a dominant position in the supply of the various services that MDPs were able to offer. They would then be in a position to behave anti-competitively, for example, by conditional selling. The result could be that specialised law firms would be put at a competitive disadvantage and consumers would find their choice of supplier of legal services reduced.

(f) Professional Standards/Discipline

Safeguards would have to be introduced to ensure that the professional conduct and disciplining of solicitors would not be affected by MDPs. The UK experience with utility regulation has shown that ring-fencing regulated activities is not always straightforward.

(g) Compensation Fund

MDPs may involve small or medium sized accountancy practices, auctioneers, engineers or architects operating within a small locality. Care would have to be taken that solicitors organising themselves within a MDP could always be able to account for money in a transparent and clear fashion in order to avoid any possibility of a claim being made on the Fund by the act of a person who is not a solicitor.

(h) Taxation of Accounts

It could be argued that solicitors and accountants who are part of an MDP should no longer be subject to taxation and special fee-charging arrangements between solicitors and clients.

(i) Lack of Benefits

The Law Society does not believe that there would be any increase in effective competition or benefits to consumers that would offset the risks in permitting MDPs. In its view, the benefits of the so-called one-stop-shop have been exaggerated by advocates of a change.

The *NOVA* Case

The European Court of Justice has recently confirmed in the *NOVA* case¹ (attached at Appendix 51) that rules prohibiting MDPs between members of the Bar and accountants are compatible with the Treaty. In that case, the Netherlands Bar refused to allow two lawyers enrolled at the Amsterdam and Rotterdam Bars to enter into partnership with two accountancy firms (Arthur Andersen and Price Waterhouse) established in the Netherlands. The Netherlands Bar based its rejection on a regulation of the Bar (the “1993 Regulation”) which provided as follows:-

“Members of the Bar shall not be authorised to enter into or maintain any professional partnership unless the primary purpose of each partner’s respective professions is the practice of the law.”

The 1993 Regulation therefore allowed members of the Bar, subject to certain conditions, to enter into partnership with other professions involved in the practice of law (notaries, tax accountants and patent agents). However, in order to guarantee the independence of members of the Bar, the 1993 Regulation did not allow members of the Bar to enter into integrated partnerships with accountants.

The Court noted that the prohibition of conflicts of interest on lawyers in all Member States “may constitute a structural limit to extensive concentration of law-firms and so reduce their opportunities of benefiting from economies of scale or of entering into structural associations with practitioners of highly concentrated professions.” In view of this limitation, the Court noted that “unreserved and unlimited authorisation” of MDPs between the legal profession and accountants could “lead to an overall decrease in the degree of competition prevailing on the market in legal services”.

Moreover, the Court considered that the obligations of professional conduct imposed on lawyers, who must advise and represent their clients independently, justified any restriction on competition arising from the 1993 Regulation. In particular, the Court stated that there “may be a degree of incompatibility between the advisory activities carried out by a lawyer and the supervisory activities carried out by an accountant”. The Court noted that accountants are not, in the Netherlands, subject to a duty of secrecy comparable to that of members of the Bar. Therefore, the Court considered that:

“it does not appear that the effects restrictive of competition such as those resulting for members of the Bar practising in the Netherlands from a regulation such as the 1993 Regulation go beyond what is necessary in order to ensure the proper practice of the legal profession.”

The Law Society welcomes the decision in the *NOVA* case which reiterates many of the concerns that the Law Society’s has expressed in regard to MDPs. Moreover, the *NOVA* case confirms that rules similar to those contained in Sections 59 and 64 of the 1954 Act (i.e., the prohibition on the formation of MDPs) are not contrary to the competition rules.

¹ Case C-309/99J.C.J. *Wouters, J.W. Savelbergh, Price Waterhouse Belastingadviseurs BV. V. Algemene Raad van de Nederlandse Orde van Advocaten.*

61. Who decides upon the restrictions referred to in question 60? Are the powers of the person or group who so decides based on explicit statutory mandate (and, if so, please refer to the relevant statutory provisions)? If not, please explain the legal basis for the exercise of such powers. Are any of these requirements set down directly in statute?

The restrictions referred to in Question 60 are decided upon by (a) the Oireachtas, or (b) the Law Society acting on the basis of a legal mandate. There is a constitutional or statutory mandate for each to act.

The requirements are mainly set down in statute – i.e., Sections 59 to 64 of the 1954 Act; statutory instrument - Regulation 3(1) of the Solicitors (Professional Practice) Regulations, 1988 which prevents solicitors from sharing professional fees with any person who is not a lawyer; and in the Guide to Professional Conduct of Solicitors in Ireland - Rules 6.5 which prohibits the sharing of an office with a person who is not a solicitor.

YOUR COMMENTS ON THE DEMARCATION AND ORGANISATIONAL ISSUES

62. What are the objectives of the requirements discussed in your answers to the questions so far in this Part? What benefits, if any, do these requirements contribute to the provision of professional services? Please explain any benefits claimed.

The response to Question 60 discusses the objectives of the restrictions on the formation of multi-disciplinary partnerships. In summary, the objective of the restriction is to ensure that solicitors' core duties to clients are not affected. Those core duties include:

- the independence of advice;
- the duty of loyalty, i.e. avoiding conflict of interest;
- the duty of confidentiality; and
- the client's right to legal professional privilege.

In addition, the restriction on MDPs helps to safeguard certain further protections for clients:-

- the client's money is protected;
- solicitors are subject to a compulsory insurance scheme; and
- the solicitors' profession operates a Compensation Fund which can offer redress to clients.

In addition to the benefits discussed above, removal of the restrictions on MDPs could lead to adverse effects on competition. As the Court of Justice has pointed out in the *NOVA* case, the accountancy market is highly concentrated "to the extent that the firms dominating it are at present known as "the big five". The Court noted that the prohibition of conflicts in the legal profession "may constitute a structural limit to extensive concentration of law-firms and so reduce their opportunities of benefiting from economies of scale or of entering into structural associations with practitioners of highly concentrated professions". If MDPs were permitted between the legal and the highly concentrated accountancy professions, the Court noted that there could be "a decrease in the degree of competition prevailing on the market in legal services".

63. Please explain how you consider these requirements maximise overall consumer benefit by striking the right balance between consumer benefits from competition and other benefits. Are there alternative ways to achieve these objectives?

In regard to the balance between the restrictions and consumer benefit, please see the responses to Questions 60 and 61.

The Law Society submits that there are no feasible alternatives that would achieve the public interest objectives discussed at Questions 60 and 61. The Law Society does not consider that a requirement for “Chinese walls” in MDPs would safeguard conflicts of interest or client confidentiality. In *Re a firm of Solicitors*¹, Parker LJ held that that any reasonable man, with knowledge of the facts of the particular case, including the proposals for a Chinese wall, would consider that some confidential information might permeate the wall. He concluded by saying that, save in special cases, he doubted very much whether an impregnable wall could ever be created and that only in very special cases should any attempt be made to do so.

¹ *Re a Firm of Solicitors* [1992] QB 959, [1992] 1 All ER 353.

64. What are the general effects of the demarcation and organisational structure restrictions on:

- a) the profession itself?**
- b) clients and the general public?**
- c) the range, quality and prices of the services offered?**

EFFECTS OF THE LLP RESTRICTIONS

- (a) The main effect on the profession is that partners in a law firm cannot limit their liability through using the vehicle of the LLP. Therefore, partners in Irish law firms are liable to the full extent of their personal assets with respect to negligence caused by their fellow partners. The restriction on LLPs in Ireland places the Irish solicitors' profession at a disadvantage vis-à-vis their counterparts in Europe, the U.S. and the UK.
- (b) The restriction on LLPs has a very limited effect on clients and the general public. Clients are already protected by the Compensation Fund and the professional indemnity insurance that all solicitors are required to have in place. The Law Society considers that the restriction on LLPs does not afford the client or the general public any great advantage and would welcome the introduction of an additional practice structure such as the LLP.
- (c) The restriction on LLPs does not have any effect on the range, quality or prices of the services offered.

EFFECTS OF THE MDP RESTRICTIONS

- (a) The main effect on the profession is that solicitors may only form partnerships with other solicitors but may not engage in partnerships, or any other form of business organisation, with members of any other profession, trade or occupation. The justification for these restrictions has been discussed in greater detail at Question 60 above, but in summary, the restrictions on MDPs are justified by the need to preserve the independence of the solicitors' profession, to protect confidentiality and to prevent conflicts of interest.
- (b) The effects of the restrictions on MDPs on clients and the general public is limited. The public already has a wide range of choice for the provision of legal services which is not restricted to the solicitors' profession. The general market for legal services (which is much wider than the solicitors' profession as discussed in the Preliminary Observations above), is highly competitive. There is,

therefore, no indication that reducing or abolishing the ban on MDPs would have any appreciable effect on the market.

- (c) As stated in (b) above, there is strong competition among solicitors' firms and other "non-solicitors" providing legal services. Although clients of a law firm are prevented from obtaining all the "business" services they may require from a law firm (e.g., auditing services etc.), the public interest in preventing conflicts of interest and ensuring client confidentiality outweigh the disadvantages in not being able to obtain the greater "range" of business services. The Law Society does not believe that the restriction on MDPs has a significant effect on the range, quality, and prices of the services offered.

PART VI – DISCIPLINE, COMPLAINTS & ENFORCEMENT

Many professions work closely with other professions, and with allied or ancillary professions. Moreover, many professions are divided into numerous branches or segments, which work closely with each other. Also, many professions afford their members the opportunity to practise using a variety of practice structures – e.g. sole practitioner, limited company. The Authority is anxious to understand these relationships and forms of organisation, and this is the purpose of this Part. As with the previous two Parts, the first number of questions is designed to elicit mainly factual information and you are given greater opportunity to comment on the issues raised towards the end of the Part.

THE DISCIPLINARY ROLE OF THE ORGANISATION

65. If your organisation undertakes any disciplinary role, please explain the mechanism by which disciplinary actions are taken, the legal basis for any disciplinary bodies, and how the body disciplines members of the organisation/ of the profession. Please include details of penalties and remedies available to the organisation, including details of the legal basis for the exercise of these powers.

INTRODUCTORY NOTE

Section 71 of the Solicitors Act, 1954, provides that regulations may be made with respect to the professional practise, conduct and discipline of solicitors.

Section 77 of the Solicitors Act, 1954 provides that the Law Society may prosecute any offence under the Solicitors Act, 1954.

The Law Society may, within the confines of its limited statutory role, discipline persons. These persons may or may not be members of the Law Society; no distinction whatsoever is drawn between members and non-members. Persons who are subject to discipline are not disciplined *qua*/in their capacity as members of the Law Society.

STATUTORY BASIS

The Oireachtas has struck a careful balance when establishing a statutorily-based disciplinary regime. The Oireachtas first established this regime in Part III of the Solicitors Act, 1954 but further amended the regime quite extensively by the Solicitors (Amendment) Act, 1960 and the Solicitors (Amendment) Act, 1994.

NEGLIGENCE SUITS

One of the key mechanisms of ‘disciplining’ (in the widest sense of that word) a professional is for the professional to be sued for negligence. A successful suit for negligence would result in damage to the professional’s reputation, almost invariably substantial damages being awarded against the professional, possible disciplinary action being taken by the disciplinary regime and increased insurance premia. Even an unsuccessful negligence claim can damage reputation and involve a considerable amount of distress and loss of time. A concern which might well be held by those unconnected with the solicitors’ profession is that instituting negligence actions against solicitors is all very well in theory but a potential litigant might not be able to find a solicitor who is willing to sue another solicitor. To enable aggrieved clients to find a solicitor who is willing to sue another solicitor, the Law Society has compiled a list (‘The Negligence

Panel') of solicitors who have expressed a willingness to sue, on behalf of clients, other solicitors. The list, appended as Appendix 52, is a list of approximately 242 solicitors who are willing to sue solicitors for negligence. This list is only a selection of those solicitors because this is the list of those who have responded to a request to have their names included on the panel but there are many others who are willing to conduct such cases.

The Competition Authority will note that the Law Society “recommends that solicitors on the panel should not accept instructions to bring proceedings against a local colleague”. This has no effect on competition but is a sensible recommendation.

BYE-LAWS: SUSPENSION AND EXPULSION OF MEMBERS OF THE SOCIETY

Bye-Law 14 of the Law Society’s Bye-Laws provides for the possibility of persons being suspended or expelled as members of the Law Society. It is important to stress, before examining the text of Bye-Law 14, that suspension or expulsion does not mean that someone may not practise as a solicitor. Bye-Law 14 provides:

“(1) The Council may, after due consideration, and for what the Council deems a grave and serious reason, suspend a member of the Society from membership of the Society and from all rights and privileges of membership (including the right and privilege to resort to the Society’s premises) for such period as the Council may deem reasonable and appropriate but not extending beyond the date of the next following annual general meeting; provided that at least twenty-five members of the Council be present at the meeting of the Council at which such suspension shall be resolved upon and that at least two-thirds of the members of the Council so present shall by vote consent thereto.

(2) Whenever the Council, in accordance with clause (1) of this Bye-law, has suspended any member of the Society from membership of the Society, the Council shall report the fact of such suspension to the next following annual general meeting; which annual general meeting, by a majority of members of the Society present and voting, shall have the right to expel, or to further suspend for a specified period, such member of the Society from membership of the Society, if deemed by such annual general meeting as reasonable and appropriate so to do; or to otherwise act under the circumstances as deemed by such annual general meeting as reasonable and appropriate.”

No member has ever been expelled or suspended from the Law Society to date.

66. Does your organisation undertake any disciplinary role in relation to allied, ancillary or related professions and para-professions? Please include details of penalties and remedies available to the organisation, including details of the legal basis for the exercise of these powers.

No. The Law Society does not undertake any disciplinary role in relation to allied, ancillary or related professions and para-professionals.

67. How often does your organisation use the disciplinary powers referred to in

a) question 65, above?

b) question 66, above?

Note: Please include a rough breakdown of the proportion of different types of breaches of codes, rules, regulations that were disciplined. Also, please provide an outline of the different types of action taken for different types of breaches.

(a) The Council has never suspended or expelled a member from the Law Society.

(b) This is not relevant.

COMPLAINTS FROM MEMBERS OF THE PUBLIC

68. Please explain how your organisation deals with complaints from members of the public relating to:

- a) members of the profession who are members of your organisation?**
- b) members of the profession who are not members of your organisation (if applicable)?]**
- c) the organisation itself?**

INTRODUCTORY REMARKS

At the outset, it is notable that the relevance of this question to a competition law analysis is not clear but the Law Society is more than happy to answer the question because it is proud of its record of dealing with members of the public.

The Law Society expends substantial resources and expertise in dealing with complaints and providing a mechanism for clients to have complaints dealt with effectively and expeditiously. Clearly, such a mechanism comes into play in respect of only a tiny minority of solicitors. The Law Society operates this mechanism in its role as the regulatory body for solicitors.

With regard to a) and b), all solicitors on the Roll of Solicitors may be the subject of a complaint to the Law Society. There is no distinction between members of the Law Society and non-members of the Law Society. With regard to c), an independent adjudicator has been established to provide a forum to which members of the public may complain if dissatisfied with the manner in which the Law Society has handled a complaint.

The following description explains the Law Society's procedures for dealing with complaints and what members of the public should do if they wish to complain about a solicitor.

THE COMPLAINTS SYSTEM

If a client wishes to make a complaint, the client can write to the Complaints Section of the Law Society and outline in reasonable detail, with such correspondence as is readily available, the nature and extent of the complaint.

The Law Society may investigate complaints against solicitors made by or on behalf of clients alleging:-

a) Misconduct, which is defined in the Solicitors Acts 1954 to 1994 as:-

- (i) the commission of treason or a felony or a misdemeanor,
- (ii) the commission, outside the State, of a crime or an offence which would be a felony or a misdemeanor if committed in the State,
- (iii) the contravention of a provision of the Principal Act or this Act or the Solicitors (Amendment) Act 1994, or any order or regulation made thereunder,
- (iv) conduct tending to bring the solicitors' profession into disrepute.

The definition of misconduct is extended, under the Solicitors (Amendment) Act, 2002 to include, in the course of practice as a solicitor:-

- (i) having any direct or indirect connection, association or arrangement with any person other than a client whom the solicitor knows, or upon reasonable enquiry should have known, is a person who is acting or has acted in contravention of Section 55 or 56 or Section 58 (which prohibits an unqualified person from drawing or preparing certain documents), as amended by the Act of 1994, of the Principal Act, or Section 5 of the Solicitors (Amendment) Act, 2002, or
- (ii) accepting instructions to provide legal services to a person from another person whom the solicitor knows, or upon reasonable enquiry should have known, is a person who is acting or has acted in contravention of those enactments.

b) Inadequate Professional Services

This is defined in Section 8 of the 1994 Act as services which are inadequate in any material respect and are not of a quality that could reasonably be expected of a solicitor or a firm of solicitors.

The Law Society cannot investigate complaints under this heading which relate to services provided by a solicitor more than five years ago.

c) Excessive fees

Where the Law Society receives a complaint from a client of a solicitor (or from any person on behalf of such client) that a solicitor has issued a bill of costs that is excessive, the Law Society will investigate the complaint and take all appropriate steps to resolve the matter by agreement between the parties concerned. If satisfied that the bill of costs is excessive, the Law Society can direct the solicitor to comply or to secure compliance with one or both of the following requirements, namely:

- (i) a requirement to refund without delay, whether wholly or to any specified extent, any amount already paid by or on behalf of the client in respect of solicitor's costs,
- (ii) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs.

The Law Society is not permitted to consider any complaint about a bill that is more than five years old. (A client also has the option, within a year of delivery of the bill, of requesting his solicitor to have the bill taxed, which means that the bill is reviewed by a court official. It may be more appropriate to request taxation if there are elements of the bill, in addition to the solicitors' professional fee (i.e. barristers fees, professional witness expenses etc) which are in dispute. Once a request is made for taxation, the Law Society cannot deal with a complaint of overcharging.)

The Complaints Department

The Complaints Department of the Law Society is staffed by experienced full-time solicitors with appropriate backup personnel. The Complaints Department, on being notified of a complaint (after getting such information as they think is necessary to fully deal with the complaint), refers the matter immediately to the solicitor and will attempt to resolve the matter as between the complainant and the solicitor by correspondence and/or telephone.

If the complaint is not capable of resolution, an initial decision will be made as to whether or not the complaint warrants formal intervention by the Law Society, which would involve a referral to the Law Society's Registrar's Committee.

Registrar's Committee

The Registrar's Committee deals with complaints made to the Law Society which cannot be resolved by the Complaints Department or are of such a nature that they require the consideration of the Committee.

The Registrar's Committee is comprised of a number of experienced solicitors, mostly members of the Council of the Law Society together with two or more lay members. These lay members are persons who are not solicitors but are an essential part of the Registrar's Committee in every matter. They are entitled to attend all meetings of the Committee and have the right to make a report every year commenting on the manner in which the Law Society have dealt with complaints, which is published, and forwarded to the Minister for Justice, Equality & Law Reform. The latest available reports are attached at Appendix 53.

The Registrar's Committee sits in two divisions at regular intervals (normally once a month) and a lay member must be present in order for the Committee to be quorate. The Committee regard the involvement of lay members as crucial to the Committee's

operation as their participation dispels the myth that solicitors are judged exclusively by their peers. The Committee will consider the documents and correspondence compiled by the Complaints Department and, if necessary, having interviewed the solicitor and sought any other information which it thinks relevant, will again try to resolve the matter as between the complainant and the solicitor. If the complaint cannot be resolved, the Committee will make a formal decision, based on the facts before it, whether to uphold or reject the complaint.

If the Registrar's Committee decide that the complaint is one with which it can deal effectively, they can:

- a) require the solicitor to waive or refund fees,
- b) direct the solicitor to take such action as the Law Society may specify at his own expense,
- c) direct the solicitor to transfer the documents to another solicitor, or
- d) refer the solicitor to the Disciplinary Tribunal (see below).

The aim of the Committee is to deal with all complaints fairly, impartially and efficiently and wherever possible to resolve matters to the satisfaction of both parties. In a small number of cases, where there is evidence of misconduct, a complaint will be referred to the Disciplinary Tribunal.

Recommended Steps that a Member of the Public Should Take if they Have a Complaint

The Law Society suggests that members of the public should take the following steps in making a complaint against a solicitor:

- (i) Write to the solicitor explaining their dissatisfaction and allow a reasonable time for the solicitor to reply. Send a copy of this letter to the Senior Partner (if there is one) of the firm in question, if relevant.
- (ii) If they do not get satisfaction, consider carefully whether the solicitor has been negligent or in breach of contract and whether they think they are entitled to compensation. If so, arrangements should be made to consult another solicitor immediately. If necessary the Law Society will provide a list of such solicitors. If the level of dissatisfaction is such that the person believes that it should be the subject of a complaint to the Law Society, then the Complaints Department of the Law Society should be contacted. The complaint will then be forwarded to their solicitor and an explanation sought.
- (iii) If, in the first instance, the complainant does not wish their complaint to be made known to the solicitor or if the complainant wishes to be advised as to the manner in which the complaint should be formulated, it should be indicated clearly to the Complaints Department of the Law Society, that the correspondence should not be forwarded to the solicitor until permission has

been given. The details of the complaint will be treated in full confidence by the Law Society.

- (iv) As soon as possible the Law Society will contact the complainant to advise the outcome of the complaint i.e. whether the solicitor's explanation is satisfactory, whether the solicitor will be required to take action to remedy the situation or whether the matter has been referred to the Disciplinary Tribunal.

The Law Society publishes a number of brochures on the complaints system attached at Appendix 54.

What the Law Society Cannot Do

The Law Society's powers to investigate complaints are aimed at complaints which arise from a solicitor/client relationship subject to certain statutory limitations. The Law Society therefore cannot:

- a) interfere with court proceedings to have a decision of a court overturned;
- b) deal with complaints about Gardai, Barristers, Court Officials, Judges etc;
- c) deal with complaints, particularly complaints of negligence, where legal action is a more appropriate remedy;
- d) except in exceptional circumstances, deal with complaints about a solicitor where the complainant is not the client of that solicitor. If the complainant is complaining about the behaviour of a solicitor who is acting for someone on the other side of a case or transaction, the Law Society will require their solicitor to endorse the complaint;
- e) deal with a complaint which does not relate to the professional services provided by a solicitor;
- f) deal with a complaint of excessive fees arising out of a bill which issued more than five years ago; or
- g) deal with complaints of inadequate professional services which were provided more than five years ago.

The solicitors working in the Complaints Department will answer any queries the complainant may have about the complaints procedure, but they cannot give legal advice or provide legal representation.

COURT ACTION

The courts established by the Constitution are usually the forum where conflicts relating to negligence and breach of contract are resolved. If the complaint is one which involves allegations of negligence and breach of contract where the complainant is seeking compensation, or if the Registrar's Committee consider that a civil remedy available in the courts is appropriate in the circumstances of a complaint, the complainant will be informed of this and the Law Society is not empowered to take any further action in relation to the complaint and/or the solicitor.

Quite often, especially in serious cases, the speediest and most effective remedy for a complainant is legal action against the solicitor. The Law Society understands that sometimes complainants having had an unsatisfactory experience with their previous solicitor, are reluctant to become involved with legal action and/or more solicitors. However, this should not be an impediment to bringing an action. The Law Society maintains a list of solicitors who are prepared to take negligence and breach of contract actions against colleagues and this list will be supplied to the complainant on request.

COMPENSATION FUND

The Law Society maintains a Compensation Fund to protect clients who suffer loss arising from the dishonesty of their solicitor. Every solicitor pays an annual contribution to the Fund in order to provide this protection to the public. If a client has lost money through the dishonesty of their solicitor, the client can make a claim on the Fund.

DISCIPLINARY TRIBUNAL

Section 6 of the 1960 Act (as amended by Section 16 of the 1994 Act) provides for the Disciplinary Tribunal. The members of the Disciplinary Tribunal, which is independent of the Law Society, are appointed by the President of the High Court and include lay members. If a complaint has not been resolved or dealt with by the Registrar's Committee as outlined above, the Law Society may refer the complaint to the Disciplinary Tribunal on behalf of the complainant. The Disciplinary Tribunal has limited judicial powers and its primary function is to establish, by evidence and documents, the facts of the complaint and to decide whether misconduct is proved. Where there is a finding of misconduct, the Tribunal can itself impose a sanction on the solicitor (which can include a direction to pay restitution of a sum not exceeding £5,000 to any aggrieved party) or the Tribunal may refer its finding and recommendation to the President of the High Court who ultimately will decide on the nature of the sanction to be imposed on the solicitor.

Every client of a solicitor has a right to make a direct application to the Disciplinary Tribunal and it is not necessary to have the complaint dealt with in the first instance by the Law Society. If a person has already made a complaint to the Law Society and the complaint has not been upheld, the complainant is still entitled to apply to the Tribunal.

To make an application to the Tribunal, a form of application and a sworn affidavit must be completed. The Law Society will provide an information leaflet and application form to facilitate the application.

INDEPENDENT ADJUDICATOR OF THE LAW SOCIETY

Introduction

The office of the Independent Adjudicator was established on 1 September 1997 (S.I. No. 406 of 1997) to provide an independent forum to which members of the public may apply if they are dissatisfied with the manner in which the Law Society has dealt with any complaint made by or on behalf of any person against their solicitor. The Independent Adjudicator is currently appointed for a term of 3 years. The role of the Independent Adjudicator is to ensure that complaints about the conduct of a solicitor are dealt with fairly and impartially by the Law Society. If a complainant is dissatisfied with the way in which a complaint has been handled by the Law Society, a written complaint to the Independent Adjudicator may be made.

The Independent Adjudicator is also charged with generally reviewing the procedures of the Law Society in relation to the receipt and examination of complaints and making whatever recommendations are thought necessary for the purpose of improving the complaint process.

A member of the public who is dissatisfied with the way in which their complaint has been handled by the Law Society may, any time within the three year period immediately following the Law Society's decision, apply to the Independent Adjudicator. It is important to note that the Independent Adjudicator can only deal with a complaint about the Law Society's handling of a complaint against a solicitor - the Independent Adjudicator cannot investigate at first hand a complaint about a solicitor.

Complaints to the Independent Adjudicator

Complaints, which must be in writing, should contain the following information:

- the reference used by the Law Society on its correspondence;
- the date on which the Law Society made its decision (a copy of the letter conveying the Law Society's decision should be enclosed if available);
- confirmation that the subject matter of the complaint to the Independent Adjudicator has not already been considered by the Disciplinary Tribunal of the High Court.

If the Independent Adjudicator is satisfied that the complaint made to him falls within his terms of reference, he will examine the Law Society's file, make whatever enquiries are considered necessary by him and, having completed his investigation, he may if he considers it appropriate, direct the Law Society to either re-examine the complaint or to make an application to the Disciplinary Tribunal of the High Court. The Independent Adjudicator cannot award compensation and cannot consider any matters which have been dealt with by the Law Society's Compensation Fund Committee, the Disciplinary

Tribunal of the High Court or, in the case of complaints about excessive fees, the Taxing Master. If a complaint is still under investigation by the Law Society, the Independent Adjudicator will await the Law Society's determination before dealing with any complaint made to him.

The Independent Adjudicator, in his third annual report for 1999/2000 (the Independent Adjudicator's second and third Annual Reports are attached at Appendix 55), acknowledged that the Complaints Section of the Law Society appears to be well superior to any comparable institutions, such as the Law Society of England and Wales and the Law Society of Scotland. The Independent Adjudicator also pointed out that the Law Society is unique among Law Societies in this and neighbouring jurisdictions in allowing independent access to any or all of its files in the Complaints Section.

ENFORCEMENT OF RULES, REGULATIONS AND CODES

69. How does your organisation enforce rules, regulations and codes (including recommendations and guides) relating to the profession and/or to the organisation and its members? Please provide details.

The Council of the Law Society, the Professional Practice Department, the Registrar's Committee, the Independent Adjudicator, the Disciplinary Tribunal and the High Court all have a role to play in the enforcement of the rules, regulations and codes relating to the solicitors' profession. These entities operate within the confines of statute law. There are a number of actions, prescribed by statute, that may be taken to enforce the rules, regulations and codes. These are set out below.

Pursuant to Section 7 of the 1960 Act (as amended), where the Disciplinary Tribunal finds that there has been misconduct on the part of a solicitor, they are empowered to do one or more of the following:-

- “(a) to advise and admonish or censure the respondent solicitor;
- (b) to direct payment of a sum, not exceeding £5,000, to be paid by the respondent solicitor to the Compensation Fund¹;
- (c) to direct that the respondent solicitor shall pay a sum, not exceeding £5,000, as restitution or part restitution to any aggrieved party, without prejudice to any legal right of such party²;
- (d) to direct that the whole or part of the costs of the Society or of any person appearing before them, as taxed by a Taxing Master of the High Court, in default of agreement, shall be paid by the respondent solicitor.”

Pursuant to Section 8 of the 1960 Act (as amended), where the Disciplinary Tribunal makes a report to the High Court, which has been brought to that court by the Law Society, the Court is empowered to make the following orders:

- “(I) strike the name of the solicitor off the Roll;
- (II) suspend the solicitor from practice for such specified period and on such terms as the Court thinks fit;

¹ The amount of £5,000 was increased to €15,000 by the Solicitors (Amendment) Act, 2002.

² The amount of £5,000 was increased to €15,000 by the Solicitors (Amendment) Act, 2002.

- (III) prohibit the solicitor from practising on his own account as a sole practitioner or in partnership for such period, and subject to such further limitation as to the nature of his employment, as the Court may provide;
- (IV) restrict the solicitor practising in a particular area of work for such period as the Court may provide;
- (V) censure the solicitor or censure him and require him to pay a money penalty...;

In addition, Section 8(c) empowers the High Court to make an order directing the solicitor “to make such restitution to any aggrieved party as the Court thinks fit”.

As discussed at Question 65 above, Bye-Law 14 prescribes the method for suspending or expelling a member from the Law Society. A member can only be suspended for a “grave and serious” reason and two-thirds of the Council must be in favour of the suspension. The expulsion of a member can only be effected by a majority of the Annual General Meeting who must consider whether it is “reasonable and appropriate to expel the member”.

In the *Optometrists* decision¹, the Competition Authority considered that Articles 21-24 of the Code of Ethics of the Association of Optometrists (which dealt with the procedures relating to the expulsion of a member), did not *per se* offend against Section 4(1) of the Competition Act, 1991². The Competition Authority considered that it is only where the expulsion or the threat of expulsion effectively represent a means of enforcing anti-competitive practices, that the Competition Authority would take a different view. As neither the bye-laws nor the regulations of the Law Society are contrary to the competition rules, the Law Society does not consider that suspension or expulsion or the threat thereof raise competition concerns. In any event, while a member may be suspended or expelled from the Law Society, as long as he or she remains on the Roll of Solicitors and has a valid practising certificate, he or she will be entitled to practice as a solicitor in Ireland.

¹ See above.

² See paragraph 88 of the decision.

70. Has your organisation taken legal action to enforce any rules, regulations or codes relating to the profession and/or to the organisation and its members? If so, please provide details of legal action taken within the last ten years.

Note: Details of actions relating to conduct of ‘moral turpitude’ (such as fraud), including gross/ criminal negligence, need not be included.

The Law Society has not taken legal action to enforce any rule, regulation or code relating to the profession and/or the organisation and its members that would constitute a breach of competition law. The Law Society has never sought to utilise litigation to enforce the Law Society’s rules, guidelines and codes. The Law Society has only taken legal action in so far as it is necessary or appropriate to uphold or enforce the Solicitors Acts, 1954 to 1994 or Regulations made thereunder (e.g. the Solicitors Accounts Regulations).

PART VII – OTHER ISSUES

This Part is designed to provide you with the opportunity to comment on any competition issues that you feel have not been adequately addressed in the rest of the Questionnaire. Please feel free to include detailed comments if desired

71. Are there any other ways in which you consider the delivery of professional services (in the profession you are commenting upon) to be restricted? If so, what do you think are the objectives of such restrictions and do you feel such objectives are justified?

The Law Society does not believe that the delivery of any of the services provided by the solicitors' profession are restricted in any material or appreciable way. While there are certain rules and regulations discussed herein which impose some limited restrictions on the conduct of solicitors, those rules are designed to protect the public interest, prevent conflicts of interest, ensure client confidentiality and uphold professional ethics.

The solicitors' profession is an "open" profession which revolves around full accessibility for clients to solicitors. It is notable that any member of the public may directly approach a solicitor for legal advice and there is no necessity to go through any intermediary. A client is not restricted to using only one firm of solicitors – a client may use several solicitors' firms at any time for different matters.

72. Do you feel the governing body(s) of the profession on which you comment is (are) representative of the profession as a whole? If certain interests in the profession are over- or under-represented, please say what these are and provide details of any restrictions that might contribute to this.

REPRESENTATIVE OF THE PROFESSION AS A WHOLE

The Law Society believes that the governing body of the Law Society, the Council, which represents the members of the Law Society, is representative of the profession on an age and gender basis. Pursuant to Bye-law 6 of the Bye-Laws of the Law Society, the Council consists of 31 ordinary members elected by the members of the Law Society. The Council comprises four provincial delegates, one elected by the members resident in each province.

Each member of the Law Society has one vote in elections for membership of the Council of the Law Society. Elections are held annually with candidates being elected for two year terms. Members of the Council may only sit on the Council for a maximum of ten periods of office (whether or not consecutive). The Law Society facilitates candidates to stand for election by distributing, at the cost of the Law Society, candidates' election literature to voters. The Law Society writes to each member of the Law Society with a ballot paper and election literature; therefore elections are not somehow confined to those who attend an annual general meeting or otherwise are "in the know". It is a postal ballot so that members from around the country, and around the world,¹ have an opportunity to vote.

CERTAIN INTERESTS

The Law Society believes that all interests of the profession are fairly and equitably represented in the Council and in the Law Society itself and that there is no over-representation or under-representation of any interest.

¹ There are approximately 48 members of the Law Society with addresses outside the Republic of Ireland.

73. What is the appropriate role of competition in the specific profession on which you are commenting?

INTRODUCTION

Competition is vital for every market including the legal services market. Competition clearly helps to keep fees low and stimulates rivalry among solicitors so as to constantly improve services. The Law Society supports the view that the public will generally benefit when goods or services are supplied in a competitive market.

THE MARKET FOR LEGAL SERVICES IS COMPETITIVE

There is active and vibrant competition in the market for legal services in Ireland. The grounds for this view are:

- there is a large number of solicitors and law firms operating in the Irish market, none of which is in a dominant position and clients therefore have a wide choice of which solicitor to use;
- there are no artificial restrictions on entry to the profession, e.g. quotas;
- solicitors compete with other professionals/practitioners in the supply of a number of legal services;
- there are no restrictions or recommendations on the fees to be charged, and only limited restrictions on advertising (with no restrictions on the advertising of fees);
- in a number of areas, users of legal services have countervailing power, e.g. large financial institutions and insurers.

As with so many goods and services, there are some necessary and appropriate regulatory interventions. No-one would suggest that as competitive as the airline industry should be, there should be no constraints on safeguards provided they are necessary in the public interest. So too with the solicitors' profession, there should be active competition but with such light-handed regulation as is necessary to meet the needs of protecting the public interest. A characteristic of the market for legal services that justifies a degree of regulation notwithstanding the usual benefits of competition is information asymmetry, particularly in the provision of services to the general public. The areas of probate and conveyancing, the educational and training requirements and such restrictions as those on MDPSs are all intended to protect the public, partly for reasons of information asymmetry but also for ensuring minimum standards and quality, minimising conflicts of interest and protecting the public through the provision of the Compensation Fund.

The Law Society believes that a balance needs to be struck between (a) unfettered competition, and (b) the public interest dimension. The striking of this balance is a

difficult task. The Law Society believes that the present balance best serves the interests of users of legal services and the public as a whole.

It will be clear from the table below¹ that there is a steadily increasing number of new entrants to the profession. The annual rate of increase in terms of the new solicitors entering on to the Roll of Solicitors is impressive.

Table No. 26: Number of new solicitors admitted to the Roll each year (Tabular)

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Number	203	298	315	308	337	394	252	318	385	350	474
Percentage Rate of Increase	-	+47%	+6%	-2%	+9.4%	+17%	-36%	+26%	+21%	-9%	+35%

THE COMPETITION ACTS 1991-1996

Competition law exists to deal with anti-competitive agreements or the conduct of firms that could amount to the abuse of a dominant position. There are no rules or guidelines imposed by the Law Society which could be considered as amounting to arrangements which prevent, restrict or distort competition in Ireland contrary to Section 4(1) of the Competition Act, 1991 (as amended). Moreover, the Law Society believes that there is no single or collective dominance in the market for legal services or any conduct in that market which could be considered abusive. In the event that there was ever such arrangements or conduct, the Competition Acts would be applicable. Indeed, it is noteworthy that the Irish, as opposed to English, solicitors' profession has always been subject to competition law.

REMOVAL OF RESTRICTIONS MUST SERVE A PURPOSE

A proposal to remove restrictions may be "good copy" or "newsworthy" but that is not the acid test for whether there should be change. If restrictions which provide protection for the public are removed then quality will fall and protections for the public will be removed. That would lead to consumer dissatisfaction.

ROLE OF THE LEGAL PROFESSION – PAYING PARTICULAR ATTENTION TO SOLICITORS

The legal profession is unique in many respects but one of the most important aspects of the legal profession is the independence of the profession. There is clearly a need for the

¹See also, for example, the response to Question 19 above.

legal profession to be independent to ensure the advice provided to a client is unaffected by any other consideration. Moreover, the legal profession has a crucial role to play in the administration of justice. If a person suspected of breaching the law is being tried before the courts, then that person must be able to have full and frank discussions with his or her lawyers. This is a principle recognised in every civilised democratic jurisdiction in the world. The solicitor has a duty at all times to ensure that advice given by him is totally independent and free from any suggestion of outside influence.

Another important aspect of the legal profession is the principle of legal professional privilege. Legal professional privilege is essential to protect the confidentiality of the relationship between the solicitor and client and is fundamental to the administration of justice. It is unique to the legal profession. The Law Society believes that privilege is something which is naturally restricted and as it is unique to the legal profession and the administration of justice, it should not be extended to others. In the *AM & S* case¹, the Court of Justice noted that:

“...the requirement as to the position and status as an independent lawyer, which must be fulfilled by the legal adviser from whom the written communications which may be protected emanate, is based on a conception of the lawyer’s role as collaborating in the administration of justice by the courts and as being required to provide, in full independence, and in the overriding interests of that cause, such legal assistance as the client needs. The counterpart of that protection lies in the rules of professional ethics and discipline which are laid down and enforced in the general interest by institutions endowed with the requisite powers for that purpose . Such a conception reflects the legal traditions common to the Member States and is also to be found in legal order of the Community, as is demonstrated by Article 17 of the protocols on the statutes of the Court of Justice of the EEC and the EAEC, and also by Article 20 of the protocol on the Statute of the Court of Justice of the ECSC.”

¹ *AM & S Ltd. Europe v. Commission*, Case 155/1979, judgment of the Court of Justice of 18 May, 1982, [1982] ECR 1575.

74. What is the role of competition in the professions generally?

INTRODUCTION

Given the complexities and complications in the professions markets generally, the Law Society knows that it would be rash and inappropriate to make sweeping statements about competition in the professions without having conducted a thorough theoretical and empirical analysis of all the issues involved. Therefore, it is with some hesitation that it responds to this question – but does so in order to assist the Competition Authority in its work.

The Law Society favours the trend towards increasing competition in the professions but recognises that the need to strike a balance between competition and the protection of the public will apply in all professions - though the particularities of any necessary regulation will depend on the circumstances of the case.

APPLICATION OF COMPETITION IN THE PROFESSIONS GENERALLY

The Law Society believes that the UK's Office of Fair Trading was absolutely right in its *Competition in Professions* Report in 2001 in laying down the general principle that the “professions should not be shielded from the competition laws that apply elsewhere in the economy”¹ but that the professions are “entrusted with the delivery of services of considerable public importance”.²

ROLE OF STANDARDS

It has been recognised by competition authorities internationally that the maintenance of standards is critical. The South African Competition Commission has stated in its report “Competition Policy and the Professions” that the “position of the professions is a matter that must be addressed in a way that balances standards against market restrictive practices.”³ The OFT in its 2001 *Competition in Professions* report stated that there is a need to strike “the right balance between consumer benefits from competition and from protection”.⁴ It is hoped that, just as the European Court of Justice did in *NOVA*, that the Competition Authority of Ireland will recognise the need for standards to protect the public and that such standards are needed for the “proper practice of law” in a democratic society.

¹ Director General of Fair Trading, *Competition in Professions* (OFT 328, 2001), paragraph 37.

² *Ibid.*, paragraph 1.

³ Competition Commission, *The Evolution of Policy in South Africa*, chapter 6.

⁴ Director General of Fair Trading, *Competition in Professions* (OFT 328, 2001), paragraph 9.