

**Response to the public consultation
on the introduction of a Statutory
Registration Scheme for all Providers
of Publicly Funded Legal Services in
Northern Ireland**

October 2014

1. Introduction

Housing Rights Service was established in 1964 and is the leading provider of independent specialist housing advice services in Northern Ireland. Housing Rights Service works to improve lives by tackling homelessness and housing problems in Northern Ireland. Our policy work is based on the experience of our clients. Our services are delivered throughout Northern Ireland and focus on the key areas of preventing homelessness; accessing accommodation; and tackling affordability and poor housing conditions.

2. Summary

Housing Rights Service welcomes the opportunity of responding to this consultation paper. As a voluntary sector organisation which provides legal aid services and participated in the pilot review of the Registration Scheme, we have a number of particular concerns which are detailed in this response. Be that as it may, we nevertheless support the introduction of the proposed scheme and the intention to be inclusive and comprehensive. The need to avoid conflicts of interest by separating the roles of regulation and representation held by professional bodies and introducing an independent oversight of publicly funded legal aid services has been recognised in successive reviews and we note that the proposals are not intended to supersede the roles of the professional bodies, such as the Law Society and Bar Council, which regulate the work of the legal profession.

The proposals in the current consultation exercise have emerged from the Access to Justice Review Report 2011 and the proposed Registration Scheme is designed to provide assurance on the use of public funding by ensuring that all those registered to provide legal services:

- sign up to a Code of Practice;
- commit to a minimum standard of service delivery and record keeping;
- facilitate audits of compliance; and
- are subject to sanctions for non-compliance.

Housing Rights Service believes it is important that those who receive public funding for the delivery of legal services should provide the appropriate level and quality of service both to clients and the taxpayer. Our key focus in this review is to ensure that access to justice for the most vulnerable members of our community, including many of our clients, will not be impeded by any of the changes proposed in this consultation process.

3. Legislative and Policy Context

Article 36 of the Access of Justice (NI) Order 2003 empowers the Northern Ireland Legal Services Commission to make Regulations for the registration of persons who are eligible to provide publicly funded legal services together with a supporting code of practice setting out the conditions for registration. We agree that all solicitors and barristers wishing to provide publicly funded legal services, whether in the private or voluntary sector, should be required to meet minimum standards defined in a statutory Registration Scheme. However, we would have welcomed more information on the proposed quality assurance mechanisms relating to advocacy and peer reviews. We note that peer reviews have proved to be very expensive to administer in England and, whilst we agree such a process can be very beneficial, we believe clarification is needed on the costs of implementing such a

rigorous review process in Northern Ireland. Our view is that the cost of peer reviews should not be passed onto the service provider but should instead be borne by the Commission.

We also believe that those providers who fail to meet or maintain the minimum standards should be precluded from providing publicly funded legal services. In addition, we agree that the data provided under the scheme should also be used to ensure the Commission meets its monitoring obligations under section 75 of the Northern Ireland Act 1998.

4. Registration Scheme Overview

We support the proposal that the register should be maintained by the Commission and made publicly available in publications and on its website. The register should be properly publicised in print and shared online via relevant government websites such as DOJ, NI Direct etc. with links to those sites maintained by relevant regulatory bodies. We agree with the description of the roles and responsibilities within the registration process as summarised in section 8.4 of the consultation paper. However we would argue that evidence of other relevant compliance and accreditation frameworks such as Lexcel and Investors in People should also be taken into account in the registration scheme.

In order to minimise the administrative burden on providers we believe the Commission should seek confirmation from their regulatory bodies that each provider holds a valid Practising Certificate and has undertaken relevant legal aid training. The use of electronic sharing processes should also be prioritised for the confirmation of such certification as well as for Law Society waivers and CPD records.

In addition we support the proposal that an annual self-assessment and certification of compliance with the Code of Practice by each provider should be issued in order to provide assurance to the Commission on the use of public funds. However, the light touch treatment for assessing the quality of advice provision is rather disappointing as we believe this focus needs to be paramount in monitoring the standard of performance.

5. Codes of Practice

We agree that the standards detailed in the Code of Practice for providers reflect the quality expected for those in the receipt public funds. The codes should be regularly reviewed and updated in light of changing circumstances. We welcome the inclusion of definitions within each of the codes and would suggest that this listing could be usefully reviewed and expanded upon in order to address any perceived misunderstandings and lack of clarity. In Scotland there exist specific schemes and codes of practice which focus on areas of law such as children's advice which could be considered by the Department.

6. Education & Support

We welcome the emphasis on the provision of education and support to providers by the Commission, particularly at the pre-registration stage. Housing Rights Service agrees that all legal service providers receiving public funds should undertake a minimum level of training relative to the provision of publicly funded legal services each year (as specified in each of the respective Codes of Practice). Clarity is required on whether the Commission will directly provide this training or ensure

that other training organisations can adequately provide this service. This level of education and support should be provided free to service providers.

7. Audit and Compliance

We welcome the proposed audit cycle and framework summarised in section 10 and detailed at Annex D of the consultation paper and support the proposed 3 year cycle of routine audits, with special, extended or final audits as required. We believe other quality standards such as the Lexcel practice management standard and Investors in People should also be taken into account by Commission staff in evidencing quality services.

We do not have any particular views on how the audit and compliance framework for barristers should be further developed however we believe the costs of Extended or Final audits should be only charged to the impacted providers when required. We note in Britain the costs of the peer review process are met by legal aid agencies however charges are incurred by providers who fail the initial and subsequent reviews. HRS currently engage specialists to undertake peer reviews of its casework services and will be pleased to discuss this experience with the Department.

8. Sanctions

Housing Rights Service agrees that the proposed sanctions should only be considered after providers have had opportunities to demonstrate compliance as proposed. Such sanctions, as imposed by the profession's regulatory bodies, should be notified to the Commission and reflected in the Registration Scheme.

9. Registration Scheme Panel

In regard to the proposed composition of the Registration Scheme Panel we would expect major stakeholders such as the Law Society, Bar Council and at least one representative from voluntary sector providers to be represented in addition to senior Commission officials. We believe the decisions of this Panel to revoke a registration certificate should not be final and instead should be subject to appeal to a special sub-committee of the panel with a remit designed solely for this purpose and involving staff and representatives from the above stakeholders not involved in the original decision. Such appellate panels appear to work well in Ireland and should be considered as part of this proposed framework.

10. Registration Scheme Fee

While not opposed in principle to the proposal for the Commission to charge a registration fee in order to cover the costs of administering the scheme, we nevertheless believe such fees need to be reasonable and proportionate to the size and operation of the provider. We note that registration fees are not charged in Scotland and in the Partial Regulatory Assessment the Department envisages there will be a financial impact experienced by voluntary sector organisations and other providers as a result of these proposed changes. We believe there is a special case for registered charities to be made exempt from such fees given the particular pressures faced by such organisations in carrying out legal aid work.

Be that as it may, we would be opposed to the proposal to charge fees for all providers on the same basis irrespective of the volume of legal aid cases and earnings and we would suggest that further consultation is needed on the precise model that would be employed to calculate membership fees for the scheme. A phased approach to the introduction of such fees is preferable and we would urge that any future increases in the fee level should not be prohibitive.

11. Phased Implementation of Registration Scheme

We agree that the scheme should be implemented in the phases outlined at section 12 of the consultation paper with the initial Registration charge met by the Department and Commission. We believe details of valid Practising Certificates, CPD records and Law Society waivers for voluntary sector providers should be provided directly by the Law Society in bulk to the Commission in order to reduce the administrative burden for individual providers. As detailed above, other frameworks such as Customer Service Excellence (CSE), Lexcel and Investors in People should be used by the Commission in order to help evaluate customer service.

12. Further information

Housing Rights Service will be pleased to provide additional information in support of this response and would welcome opportunities to further engage in future working groups and/or piloting initiatives.

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