

Regulatory Impact Analysis
of the
Legal Services Regulation Bill 2011



November 2013

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Summary of Regulatory Impact Analysis (RIA)

RIA available to view or download at: <http://www.justice.ie>

<i>Department/Office:</i> Department of Justice and Equality	<i>Title of Legislation:</i> Legal Services Regulation Bill 2011
<i>Stage:</i> Second Stage completed 23 rd February 2012. Committee Stage commenced 17 th July 2013 and ongoing.	<i>Date:</i> 22 nd November 2013.
<i>Related Publications:</i> Legal Services Regulation Bill and Explanatory Memorandum available on www.oireachtas.ie , related documents on www.justice.ie . Reports and sources as cited. <i>Contact Person:</i> Clare Dowling, Civil Law Reform Division - ☎ 01 4790255	

Policy Options:

1. **No action.**
2. **A new full-spectrum regulatory regime.**
3. **A targeted, lean and independent legal services regulator.**

Preferred Option:

Option 3: A targeted, lean and independent legal services regulator.

OPTIONS

	COSTS	BENEFITS	IMPACTS
1	<p>Failure to deliver a key EU/IMF/ECB Troika structural reform commitment and its attendant reforms.</p> <p>Failure to deliver <i>independent regulation, improved access and competition, transparency in legal costs and more adequate procedures for consumer complaints</i>, as undertaken in the Programme for Government.</p> <p>Damage to Ireland's international reputation and ongoing obstacles to enterprise, competitiveness and economic recovery.</p>	<p>No changes in existing policy or existing regulatory structures.</p> <p>No added public expenditure.</p> <p>No disruption of traditional legal services models.</p> <p>Regulatory framework still administered by the legal professional bodies themselves.</p> <p>No additional compliance burdens.</p> <p>No sectoral uncertainty</p>	<p>Continued self-regulation which does not attract public confidence. No re-balancing or empowering of consumer interests.</p> <p>Continued restrictive practices, a sheltered profession and market concentration.</p> <p>Hampered competitiveness. No legal services innovation, static productivity.</p> <p>No new and more transparent legal costs regime.</p> <p>No improvement in legal costs for the enterprise sector.</p> <p>Conflicted representational and regulatory functions of the legal professional bodies.</p> <p>Growing competitive disadvantage for Irish legal services sector.</p> <p>Exposure to the rapidly diversifying UK legal services sector.</p> <p>Duplicated disciplinary structures for two professions.</p>

<p>2</p>	<p>This option takes a maximalist approach, it assumes the entire range of regulatory functions pertaining to the legal professions, legal costs and the provision of legal services.</p> <p>This option will cost at least €15 million with further costs likely to arise with each other function subsumed.</p> <p>There will be major set-up and transitional costs with ensuing increases in the compliance burden and in regulatory cost for all.</p>	<p>A fully independent and all-encompassing regulatory regime for the Irish legal professions would exist.</p> <p>Greater public confidence in the independence of regulation.</p> <p>The maximum possible demarcation of the representational and regulatory functions of the two legal professional bodies.</p>	<p style="text-align: right;">(ii)</p> <p>One, clearly identifiable, go-to, full-spectrum, legal services regulator impinging on all areas but multi-layered and very costly.</p> <p>Consumer awareness, benefits and enhanced competition but with the likely passing on by practitioners of the incurred regulatory costs.</p> <p>Catch-all regulation with no strategic focus on areas of most public concern or of most risk.</p> <p>Replication of all existing certification and regulatory regimes (e.g. third-level institutions).</p> <p>An over-scaled legal services regulator that neither the legal professions themselves nor the public purse could afford to carry.</p>
<p>3</p>	<p>Approx. €4 million annually, to be self-funded by a levy on the legal practitioners concerned. Each year's budget to be based on actual cost of the previous year.</p>	<p>The delivery of long-outstanding reforms and an independent regulator. Affordable and self-funding body with no ongoing cost burden on the State. Proportionate to the objectives of the Programme for Government and our EU/IMF/ECB Troika obligations. Proportionate to the scale of the legal services sector in the State. One single body to regulate both solicitors and barristers with streamlined disciplinary bodies. Controlled regulatory cost, full public accountability. Informal resolution enabled.</p>	<p>Targetted regulation by a lean and independent body. An independent complaints handling body for both solicitors and barristers enjoying greater public confidence. Greater innovation and cost efficiencies on the supply side of legal services. Increased transparency and knowledge of legal costs. Increased competition, end of market concentration. Greater balance of citizens interests and access to law. Greater consumer and enterprise bargaining- power and choice. Existing regulatory costs will transfer with the functions of the new body. A more responsive sector with new opportunities for expansion and employment.</p>

**Regulatory Impact Analysis
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Regulatory Impact Analysis

The Legal Services Regulation Bill 2011

A. Policy Context and Objectives

This Regulatory Impact Analysis (RIA) has been carried out under the Revised RIA Guidelines published by the Department of the Taoiseach in June 2009. While initial drafting of a RIA had been underway when the Legal Services Regulation Bill was published in October 2011, the emergency measures that had to be taken by the Government in response to the international economic and banking crisis at that time did not allow for its timely completion. Those measures included the structural reforms set forth in the EU/IMF/ECB Memorandum of Understanding on Specific Economic Policy Conditionality 2010¹ relating to the provision of legal services and to legal costs which also complement the Government's Programme for National Recovery commitments. In keeping with the Revised RIA Guidelines this RIA will, therefore, focus on how best to implement the relevant and pressing policy commitments while also seeking to take account of any relevant intervening developments.

Policy History and Development

1. For over thirty years now, the regulation of a more open legal profession, greater transparency in the charging of legal costs and the removal of restrictions on competition in the provision of legal services have been matters of recurrent and cumulative policy concern.
2. The succession of Reports relating to various aspects of change in these areas have included those published by the Restrictive Practices Commission (1982)²; the Fair Trade Commission (1990)³; the OECD (2001)⁴; the Legal Costs Working Group (2005)⁵; the Legal Costs Implementation Advisory Group (2006)⁶; the Competition Authority (2006)⁷;

¹ *Memorandum of Understanding on Specific Economic Policy Conditionality 2010*¹.

² Restrictive Practices Commission : *Report of Enquiry into the effects on Competition of the Restrictions on Conveyancing and the Restrictions on Advertising by Solicitors* (April 1982)

³ Fair Trade Commission: *Report of Study into Restrictive Practices in the Legal Profession* (March 1990).

⁴ Organisation for Economic Co-Operation & Development: *Regulatory Reform in Ireland* (2001).

⁵ *Report of the Legal Costs Working Group*: (November 2005) Chair: Mr. Paul Haran. Government Publications Office.

⁶ *Report of the Legal Costs Implementation Advisory Group*: (November 2006) Chair: Mr. Desmond Millar. Government Publications Office.

⁷ The Competition Authority: *Competition in Professional Services: Solicitors & Barristers*: (December 2006).

the Law Reform Commission (2010)⁸; the National Competitiveness Council (2010, 2011, 2012)⁹, the Dáil Committee of Public Accounts (2011)¹⁰ and the National Consumer Agency (2012)¹¹. The Legal Costs Working Group, in the preparation of its report of 2005, was assisted by two research papers by Ms. Nessa Cahill BL, in one case describing the regime for assessment of legal costs in Ireland and in the other comparing legal costs systems in a number of jurisdictions.¹²

Current Policy Imperatives

3. These earlier policy iterations have culminated in the *Programme of the Government for National Recovery 2011-2016*¹³, which undertakes, among other things, to

“establish independent regulation of the legal profession to improve access and competition, make legal costs more transparent and ensure adequate procedures for addressing consumer complaints”.

4. These programmatic undertakings augment those structural reforms undertaken by the Government in the *EU/IMF/ECB Memorandum of Understanding on Specific Economic Policy Conditionality 2010*¹⁴ aimed at removing restrictions to trade and competition in the legal sector, namely, to establish an independent regulator for the legal professions and implement the recommendations of the Legal Costs Working Group¹⁵; and to implement the outstanding Competition Authority¹⁶ recommendations to reduce legal costs.

5. There is continued urgency in relation to the advancement of these legal sector reforms which are being given expression in the Legal Services Regulation Bill. The updated *Memorandum of Understanding on Specific Economic Policy Conditionality for Ireland* of 3rd June 2013 and its successor of 11th September 2013 include a specific undertaking (Action 51) under the title of Legal Services Reform that “once the relevant legislation has been enacted, the authorities will take the appropriate measures to establish the Legal Services Regulatory Authority in an expedited fashion”. This action is to be completed by the end of Q4 2013 for the thirteenth review under the Troika programme. The June 2013 Staff Report of the European Commission was critical of the delay in enactment of the Bill and opined that legal services costs have, for the most part, failed to adjust during the economic crisis and that legal services

⁸ Law Reform Commission: *Consolidation & Reform of the Courts Acts : Report – Legal Costs*. (November 2010).

⁹ National Competitiveness Council: *Ireland’s Competitiveness Scorecard* (2010, 2011, 2012)

¹⁰ Dáil Éireann: Committee of Public Accounts: *Third Interim Report on the Procurement of Legal Services by Public Bodies*: (January 2011).

¹¹ National Consumer Agency: *Solicitors – Fees Charged & Price Availability* (February 2012).

¹² Nessa Cahill BL, *Research Paper on legal Costs in Ireland* (November 2004); *Comparative Research Paper on Legal Costs* (February 2005).

¹³ Page 51, Programme of the Government for National Recovery.

¹⁴ *Memorandum of Understanding on Specific Economic Policy Conditionality 2010*¹⁴.

¹⁵ *Report of the Legal Costs Working Group*: (November 2005) Chair: Mr. Paul Haran. Government Publications Office.

¹⁶ The Competition Authority: *Competition in Professional Services: Solicitors & Barristers*: (December 2006).

“remain sheltered from competition and a drag on the economy’s overall competitiveness”. In October 2013, in the course of its review mission, the Troika has publicly expressed its dissatisfaction with the lack of progress in bringing the Legal Services Regulation Bill¹⁷ to the stage of implementation.

6. The Government’s *Action Plan for Jobs 2013*¹⁸ undertakes to enact the Legal Services Regulation Bill to deliver a more efficient, transparent and competitive legal services sector in Ireland and reduce costs for the enterprise sector by progressing the completion of Committee stage of the Legal Services Regulation Bill and its passage through the Houses of the Oireachtas.

7. The EU/IMF/ECB Troika deadline to introduce legislative proposals for the agreed structural reforms to legal services and legal costs was that of the end of the third quarter of 2011. This deadline was met by the Government in the publication of the Legal Services Regulation Bill on 12th October, 2011¹⁹ which gives expression to the relevant policy undertakings. The Bill commenced Second Stage on 16th December 2011 which was completed after substantial debate on 23rd February 2012. It commenced Committee Stage in the Dáil on 17th July 2013. As set out below, the starting-point for the delivery of current Government policy in this area is going to be the model of more independent regulation to be provided under the Legal Services Regulation Bill 2011²⁰. Hence, the Bill represents a timely working convergence of past legal services reform efforts with current and urgent Government policy objectives and responses.

Previous Reform Efforts

8. The plethora of reports over the past thirty years has created a succession of *ad hoc* responses to the prevailing regulatory concerns of their respective times. However, when it comes to meeting the need for greater efficiency and competitiveness in the way legal services are provided in the State and for greater transparency in the determination and administration of legal costs, these efforts have been patchy in terms of reach and impact. They are an amalgam of responses going back to the 1980s. Some of these responses relating to solicitors have occurred in legislation and some, it must also be recognised, have been made by the introduction of changes to their respective Codes by the legal professional bodies concerned. Yet, it was twenty-three years ago that the Fair Trade Commission, in paragraph 11.35 of its 1990 Report²¹, recommended that there

¹⁷ *Troika wants swift action on banks and legal profession*: Irish Times, 30th October 2013.

¹⁸ Action 121 of the *Action Plan for Jobs 2013* - Q4 and ongoing.

¹⁹ The Press Release of 4th October 2011 on Government approval for the publication of the new Legal Services Regulation Bill is available at <http://www.justice.ie/en/JELR/Pages/PR11000184>: The Press Release for publication of the Bill on 12th October 2011 is available at <http://www.justice.ie/en/JELR/Pages/PR11000190>

²⁰ The link to the published Legal Services Regulation Bill on the website of the Houses of the Oireachtas is <http://www.oireachtas.ie/viewdoc.asp?DocID=19208&&CatID=59>

²¹ Fair Trade Commission: *Report of Study into Restrictive Practices in the Legal Profession* (March 1990).

should be the greatest possible freedom allowed to individual solicitors and barristers to decide themselves upon the most suitable form of business organisation through which to offer their services to clients, with adequate safeguards to ensure the preservation of standards.

9. A salutary example of unrealised change is to be found in the Solicitors (Amendment) Act 1994 which predates both the report of the Legal Costs Working Group in 2005 and that of the Competition Authority in 2006. This took account of the Fair Trade Commission's *Report of Study into Restrictive Practices in the Legal Profession* that had been published in March 1990 by making respective provision for "incorporated practices" and for the "sharing of fees" by solicitors with non-solicitor partners arising from either a partnership or an agency arrangement. When introducing these provisions at Second Stage, the then Minister of State noted that "the Solicitors' Acts contain restrictions on the organisation of solicitors practices" and that "multi-disciplinary practices involving solicitors and members of other professions and multi-national practices involving Irish solicitors and lawyers from other jurisdictions" were not up to that time permitted. He stated that, "It would not be prudent to statutorily preclude the possibility of future developments in these areas and, accordingly, sections 70 and 71 enable the Incorporated Law Society to bring forward regulations to provide for these new forms of working arrangements". These modernisation measures and the opportunities they represent have, however, lain untapped for the intervening 19 years thereby prolonging a competitive disadvantage for legal services providers and consumers alike. It is noteworthy that 1994 was the same year that multi-disciplinary practices were permitted in New South Wales, Australia.

10. In 2001, that is to say twelve years ago, the OECD report on *Regulatory Reform in Ireland* again recommended that control of legal education should be removed from the "self-governing bodies". It also identified areas for further reform including the removal of remaining impediments to competition among solicitors; opening up the provision of conveyancing services; direct access to barristers and allowing barristers and solicitors to practise in other business forms. The Civil Law (Miscellaneous Provisions) Act of 2008 contained provisions to strengthen the powers of the Solicitors' Disciplinary Tribunal and to increase its lay membership.

11. The Legal Services Ombudsman Act 2009²² was introduced, by the then Government, to oversee the complaints systems operated by both the Law Society and the Bar Council and to assess, on an ongoing basis, the adequacy of their admissions policies – i.e. it provided a framework for supervised self-regulation. This model would not meet the current Government's commitment to more independent regulation and the current EU/IMF/ECB Troika undertakings for a more ambitious structural reform of the legal services sector and legal costs regime. It is also considered that the 2009 Act would, in effect, leave the duality of regulatory and representational functions with the professional bodies concerned thereby preserving its inherent working conflicts and tensions to an unacceptable degree. Anticipating the forthcoming structural reforms, the Minister for

²² Act No. 8 of 2009 – The Legal Services Ombudsman Act

Justice, Equality & Defence, Mr. Alan Shatter TD, secured Cabinet Agreement (Decision No. S180/20/10/1068) on 10 May 2011 not to proceed with the appointment of a Legal Services Ombudsman so as to provide the necessary policy space for the development of the Legal Services Regulation Bill. Similarly, the Civil Law (Miscellaneous Provisions) Bill which was signed into law by the President on 2nd August 2011, has broadened the criteria of appointment of Taxing-Master as a precursor to the modernisation of that function under that Bill. Two new Taxing-Masters have been appointed from the panel of candidates established by public competition under the new recruitment criteria.

12. In 2010 the Law Reform Commission published its report on the *Consolidation and Reform of the Courts Acts* which contained a number of proposals in relation to the codification of legal costs. These recommendations have naturally augmented the work of the Legal Costs Working Group of 2006 in shaping the new Legal Services Regulation Bill.

13. The sectoral reform initiatives of the past three decades in relation to the modernisation of legal services have tended to underpin a predilection towards professional self-regulation. Such responses do not adequately meet the targets of transparency and competitiveness necessary to inspire lasting public confidence and to encourage sectoral growth and competition in a modern, recovering, open economy. Moreover, since the publication of Competition Authority Report in 2006 there have been seismic shifts in the national and international economic spheres exacerbated by a banking crisis that has necessitated concerted and robust fiscal responses in this country to which no one sector can reasonably expect to remain immune.

14. The key objectives of the ensuing EU, IMF and ECB-supported recovery programme have been to address financial sector weaknesses, put the national economy on a path of sustainable growth, sound public finances and job creation and regain international capital markets access while protecting the poor and vulnerable. That programme has included loans from the European Union and EU Member States amounting to €45 billion along with a €22.5 billion Extended Fund Facility with the IMF. All of these intervening developments have further informed the ongoing consideration and development of current Government policy objectives aimed at delivering the desired structural reforms of the legal services sector at this crucial time. The 2010 EU/IMF/ECB Memorandum of Understanding, including in its subsequent reviews and updates, clearly identifies the remaining and recalcitrant barriers to structural reform, growth and competitiveness in the provision of legal services and in the legal costs regime to be burdens that the country can no longer afford to either carry or sustain.

National Competitiveness and Legal Costs

15. The Competition Authority found that the amount spent on legal services in Ireland had risen significantly in the decade preceding its 2006 Report and had reached a total of

approximately €1 billion in 2003 compared to a figure of about €320 million in 1992²³. At the same time it was found that, as a proportion of total expenditure in the economy, expenditure on legal services had oscillated between 0.70 % and 0.80 % of GDP, that is to say, it had displayed a tendency to remain relatively constant at just under 1% of Gross Domestic Product (GDP). With GDP in Ireland of €164 billion for 2012 the legal services contribution to GDP would be indicated at a similar level while also allowing for the fluctuations of the recent economic boom. What may be considered as our underlying GDP trend, therefore, compares favourably to the UK situation where Legal services accounted for around 1.7% of GDP or £24.7 billion in 2009²⁴.

16. A timely snapshot of the current legal services market has been provided in the *Survey of Irish Law Firms 2013/2014*²⁵ conducted by Smith & Williamson which finds that one in every two firms anticipates improved economic conditions (having been one-in-four in last year's survey). Most firms surveyed expect their 2013 profits will either remain at, or show an increase over, those of 2012 - the areas of business where the most growth is anticipated are those of property/conveyancing and litigation. The survey also finds that close to half, that is to say 46%, of the international work carried out by the firms surveyed comes from the UK, 29% from Europe and 17% from the United States. In the cohort of larger firms within the overall survey the European share of international work is 14% while the USA represents over a third of their international business at 36%. Most firms agree that maintaining profitability remains a key issue while two in three firms experienced significant downward pressure from clients on fees - 81% of firms surveyed have agreed more "fixed-fee" arrangements in the past year. The survey also identified the seven key issues facing the legal sector for the coming year to be, in order of precedence, monitoring profitability; managing cash flow; pressure on fees; the economy; the Legal Services Regulation Bill; partner performance and recruitment and retention. While 45% of the firms surveyed saw profits over the last twelve months increase, 30% saw them decrease. Over two in three law firms have increased their marketing activities and targeted new markets. The survey is of the opinion that were limited liability partnerships or incorporated law firms to be permitted there would be an increase of merger and acquisition activity in the Irish legal services sector. It reports substantial numbers of exploratory approaches having been made and/or received by law firms in relation to merger-like activity. The latest Smith & Williamson survey would, therefore, seem to indicate, notwithstanding Law Society figures indicating that over 1,000 solicitors are unemployed, a legal services sector that is changing some of the emphasis in its areas of operation amid early signs of an economic recovery. These trends clearly point to the fact that there are already areas of legal practice that are pushing the limits of the traditional legal service models and challenging the boundaries of existing regulation in response to which some regulatory reform is now necessary.

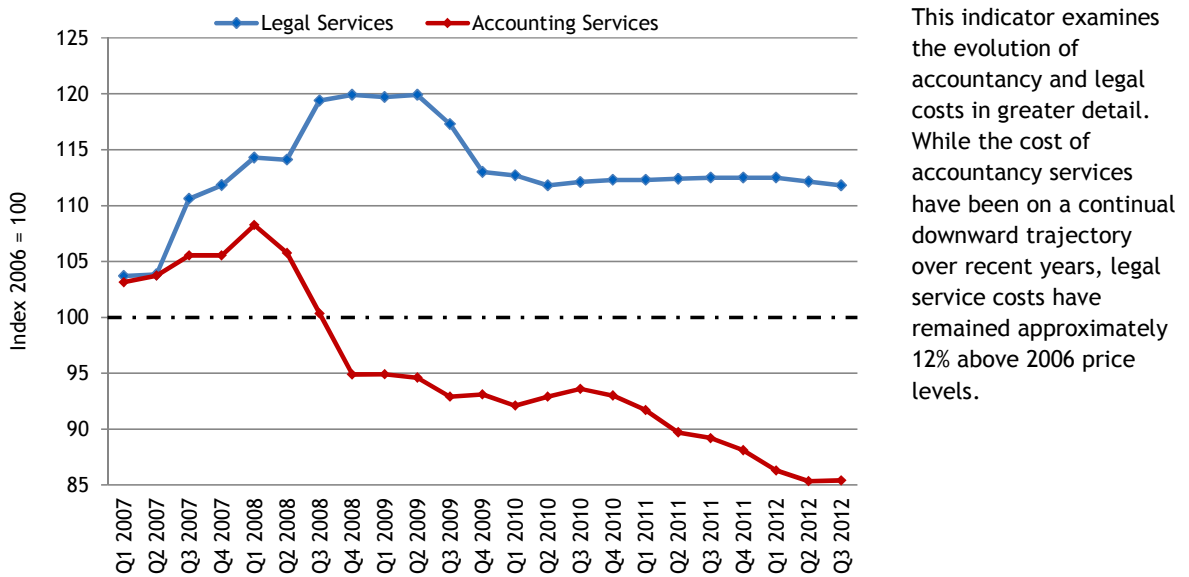
²³ See Paras 2.69 and 2.70: Report *Competition in Professional Services: Solicitors & Barristers* (Competition Authority, December 2006): CSO, Dr. Vincent Hogan. Legal and accounting services are not disaggregated under the annually reported CSO figures.

²⁴ *Office of National Statistics*, ABI, Section K. - includes export earnings for UK based firms, but not the earnings of their subsidiaries.

²⁵ *Survey of Irish Law Firms 2013/2014*: Smith & Williamson, Nov. 2013 – www.smith.williamson.ie. A survey of 101 law firms (66% Dublin-based) comprising 16 of the top 20; 16 mid-tier and 69 small firms.

17. No doubt mindful of its 2006 and other Reports, the Competition Authority has welcomed the Legal Services Regulation Bill and its potential benefits for consumers. The Competition Authority has also acknowledged that its own particular proposals do not in any way constrain the specific policy responses that may be taken by the Government. The National Competitiveness Council, in its *Statement on Competitiveness Priorities* of March 2011, considered the competition measures in the EU/IMF/ECB Troika Programme on removing restrictions in sectors such as law to be “welcome and overdue”. In July 2012, the Council published Ireland’s *National Competitiveness Scorecard* for that year and quoted CSO data that would indicate that while accountancy costs have fallen sharply over the course of the recent recession legal costs remain more than 12 per cent higher than they were in 2006 across this sample²⁶. While these figures are a discrete sampling that may not be representative of the entire legal services market, they do provide comparative data on the historical price dynamic of a group of 18 legal firms, the majority of whom employ between 10 and 49 employees. At the same time, there is anecdotal evidence of what some observers would now describe as “permanent price pressure” across the legal services sector which has had some downward impact on legal costs and has emboldened consumers of those services to shop around and compare price options, including through internet providers, before committing themselves to procuring a legal service.

Figure 1: Accountancy and Legal Costs, Q1 2007- Q3 2012



This indicator examines the evolution of accountancy and legal costs in greater detail. While the cost of accountancy services have been on a continual downward trajectory over recent years, legal service costs have remained approximately 12% above 2006 price levels.

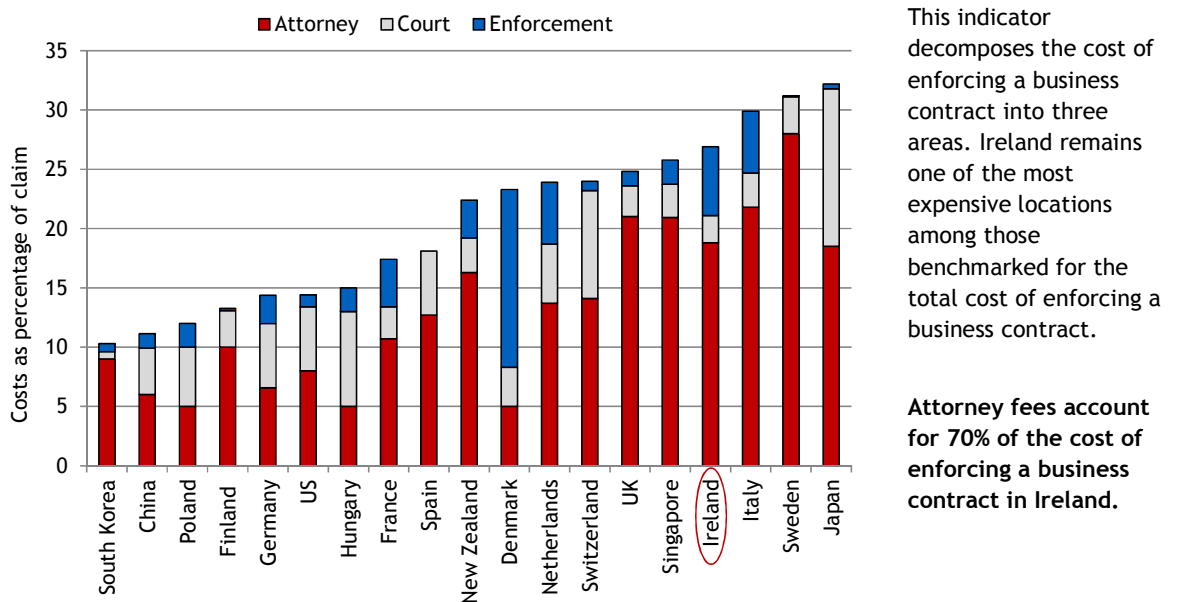
Source: CSO, Services Producer Price Index²⁷

²⁶ The CSO data concerned is based on responses received from 18 companies (and 112 price observations), the majority of whom employ between 10 and 49 employees. The survey does not include data on prices for barrister services. Given the small sample size, caution should be used when interpreting the results.

²⁷ The CSO’s experimental Services Producer Price Index (SPPI) tracks the evolution in prices for a range of services. It measures changes in the average prices charged by domestic service producers to other businesses for a selected range of services. In most cases these services are provided to business customers only and so individual price indices should not

18. The Competitiveness Council also continues to cite annual World Bank data comparing international costs for enforcing a business contract. The World Bank data, broken down into attorney, court and enforcement fees as a percentage of the total claim, indicates that legal costs in Ireland (25.8% of the total claim) are significantly more expensive than the overall OECD average cost (19.7%), making Ireland the fourth most expensive location benchmarked – unchanged from 2010. The Competitiveness Council considers the World Bank data to suggest that this trend is driven by relatively high lawyers’ fees.²⁸

Figure 2: Legal Fees, Cost of Enforcing a Business Contract, 2011



Source: World Bank, Doing Business 2012

19. Early in 2012 the National Consumer Agency²⁹ published a survey looking at the professional fees charged for three common services namely, a typical conveyancing transaction, making a will and taking out a grant of probate. The survey found that consumers could potentially make big savings by shopping around and comparing quotes for solicitor’s services:

be considered indicative of more general price trends in the economy. The index covers transaction costs from business to business and excludes consumers who are covered in the Consumer Price Index (CPI).

²⁸ Figure 4.40 of the 2012 Competitiveness Scorecard quoting from the World Bank: *Doing Business 2012: Legal Fees, Cost of Enforcing a Business Contract*, 2011.

²⁹ National Consumer Agency: *Solicitors – Fees Charged & Price Availability* (February 2012).

- The national average fee for a typical conveyancing transaction was €1,302, ranging from a low of €750 to a high of €4,000 - a difference of €3,250.
- The average fee for making a will was €119, ranging from €50 to €300.
- The national average fee for taking out a grant of probate was €2,767. The lowest price quoted €950 and the highest was €6,150, a difference of €5,200.

20. The National Consumer Agency called for greater price transparency for consumers when getting quotes for routine legal services and expressed its willingness to work with the legal professionals to make this happen. While there will always be a proportion of clients with more complex legal requirements and while some valid critical observations have been made by the professional bodies, these findings nonetheless point up a lack of coherence and transparency and of public confidence in how the relevant legal costs are being communicated and applied. In this case, costs relating to three basic types of legal transaction that also happen to be among those proving most amenable to new legal business models in other common law jurisdictions - where providers now advertise set fees in advance of doing the work concerned.

21. Action 1.16 of the *Action Plan for Jobs 2012*, published by the Department of Jobs, Enterprise and Innovation, required of the Department of Justice and Equality to “place downward pressure on insurance costs and the cost of legal services via enactment of the Legal Services Bill.” This focus has been maintained under Action 121 of the *Action Plan for Jobs 2013* which undertakes to “Enact the Legal Services Bill to deliver a more efficient, transparent and competitive legal services sector in Ireland and reduce costs for the enterprise sector”³⁰ as a driver of continued improvement in Ireland’s competitiveness. The OECD *Economic Report for Ireland* of September 2013 similarly presses for the Legal Services Regulation Bill to be passed without delay in support of competition.

22. In terms of national competitiveness and the need for structural reform it continues to be considered that the high cost of legal services continues to pose problems for Ireland³¹. This would relate to the area of cost competitiveness, in particular for SMEs, for which the high level of legal costs can act as an impediment to business success, particularly in contentious contract law issues. Since non-tradable like legal services also feed into the cost base in the Irish export sector, it is considered that high legal service costs also hamper external competitiveness. There are also ongoing equity concerns whereby low income households who cannot afford high legal fees may be locked out of equal access to justice. On a broader fiscal scale, the State’s position as the largest buyer of legal services makes the high legal costs incurred a further challenge in terms of meeting fiscal or structural reform targets under any economic recovery programme. Some of the measures being taken by the State to control its enormous legal services costs are outlined later in this document.

³⁰ 2013 *Action Plan for Jobs*: Action 121, page 72.

³¹ European Commission: Staff Report, June 2013.

Remaining Obstacles to Competition

23. The Competition Authority Report *Competition in Professional Services: Solicitors & Barristers* (December 2006)³² makes a number of convincing responses to those arguments that had been made at the time against more innovative changes in the way legal services are delivered. Some of those arguments persist. The merits of those earlier responses and rebuttals by the Competition Authority have been borne out by subsequent developments in the way such legal services are now being delivered in a number of common law jurisdictions around the world building on new business technologies; “alternative business structures” and the introduction of the relevant structural reforms. These reforms also have a role to play in this jurisdiction as active supports for early national recovery from the global crises in banking and finance. It is untenable to argue that these intervening developments have not had a substantial impact on consumer behaviour and on the viability of those policy options now available for the delivery of services by legal practitioners - either in their own right or in a mixed discipline business arrangement. Many of the earlier responses in support of new legal business models have, therefore, gained a much deeper policy relevance and force than that which they enjoyed upon initial iteration. Moreover, many of those innovative models have, or are being, road tested in their regulated roll-out in other jurisdictions, a process which is set to continue - including in our closest competing market, that of the UK, particularly in England and Wales. Enumerating those jurisdictions where the new legal or “alternative business structures” are not being introduced or have only gained partial acceptance is to miss the point, namely, that these new models represent viable policy options for implementation at this time and are being realised as such in real time with direct implications for the competitiveness of our own legal services market.

24. The underlying case for competition and free-movement of services, be that in the legal sector or otherwise, is now a policy given, including at European Union level and in terms of stated Government policy. It is not conducive to such competition to maintain market concentration in the delivery of legal services within the confines of narrow historical models which could not possibly have anticipated current markets, technologies and circumstances. Observing, even in 2006, that the “*legal profession in Ireland is currently organised in a highly rigid business model from which lawyers cannot deviate*” the Competition Authority remarked that

*though this model of delivering legal services may suit many clients, it is not necessary that it be imposed as the only way of delivering legal services. Relaxing some of the rules enforcing this model will allow solicitors and barristers the opportunity to deliver their services in other ways which are more suitable, more efficient and more cost effective for the clients without any harm to the administration of justice.*³³

³² See Chapter 5: “Restrictions on Competition and Rivalry Between Lawyers” in the Report *Competition in Professional Services: Solicitors & Barristers* (Competition Authority, December 2006)

³³ Paragraph 5.6 The Competition Authority: *Competition in Professional Services: Solicitors & Barristers*: (December 2006).

25. The fact that previous Governments and the legal professional bodies have been willing, since 2006, to relax some of the traditional restraints on the delivery of legal services, albeit on an incremental basis, highlights the policy inconsistencies of those remaining barriers to more open legal services provision that are in place. Moreover, this has not prevented the legal professions and their representative bodies from being open to engaging in expanding areas of practise such as those of arbitration and mediation and in adapting to new service delivery platforms such as the internet. These are areas in relation to which both legal professions have successfully diversified. In some cases, including in Ireland and in the UK, this has actually extended to investing in the delivery infrastructure for new services which are being sold internationally building on the reputational capital of the hosting common law jurisdiction. For example, Dublin Dispute Resolution Centre Limited is a joint venture between the Bar Council of Ireland and the Chartered Institute of Arbitrators (Irish Branch)³⁴ providing state of the art dispute resolution facilities in the city's legal quarter. There are also mutually reinforcing professional networks in play such as that of Arbitration Ireland which brings together those involved in the practice of international arbitration in Ireland including leading law firms, the professional bodies for barristers, solicitors and engineers, Chambers Ireland and the Chartered Institute of Arbitrators. The principal aim of Arbitration Ireland is to promote Ireland as a venue for international arbitration.

26. The Irish legal services sector, like its comparators further afield, is also highly networked from the local and regional levels right up to the international domain. Irish law firms are among the leading exemplars of international practice and feature in the *Legal 500* for top firms in Europe and have received awards at international level. Our legal firms are also prominent members of leading global law firm networks such as the *International Employment Law Network*; *Avrivo Advocati*; *Lex Mundi*; *Terra Lex*; *Law Pact* etc. Such legal business networks and their affiliation of Irish law firms of all sizes have been growing exponentially over the past decade and a half and now extend in reach to all potential markets with ongoing expansions into China and the Middle East. Moreover, the representative bodies of the legal professions themselves are also affiliates of like-minded international networks in Europe and beyond with a dynamic exchange of information and learning. All of these developments represent key responses to the challenges of the globalisation and in some cases, commoditisation, of legal services. Legal professionals, therefore, already displaying their willingness to reach out into new and innovative legal business areas and networks need only to actively embrace the reciprocation of those models inwards to ensure the future viability of the indigenous legal services sector.

27. Over all, the last thirty years have shown the legal services sector in this jurisdiction to be something of a “second mover” in terms of opening up the supply side of its activities to competition and alternative business models. To the extent that the sector continues to impose restrictions on key aspects of how it conducts its business it very deeply resonates against the Competition Authority perspective of 2006 that

These restrictions deny lawyers in the State the freedom available to nearly all firms in nearly all other sectors to choose the way in which they operate. The effect of these

³⁴ Link: www.dublinarbitration.com

restrictions is that lawyers are unable to organise themselves in ways which could be more efficient. Furthermore, the restrictions on business structures limit the ability of lawyers to offer consumers alternative ways of delivering legal services.³⁵

28. From a current competition policy perspective, therefore, the case against market restrictions put forward by the Competition Authority in Chapter 5 of its 2006 Report has more than stood the test of time. When considered in the light of ongoing national and international actions in support of early and sustainable economic recovery and enhanced competitiveness, it is now of itself a policy imperative, namely,

The overall effect of these restrictions is to dampen competition between lawyers and prevent the delivery of legal services from evolving to meet Ireland's needs. Persons and businesses requiring legal services are restricted in their choices of how and from whom they can obtain legal services; lawyers are not free to operate in the most efficient model for their clients, and prices are likely to be higher and the quality of services lower than would prevail in the absence of these unnecessary restrictions.³⁶

29. Similarly, the observations of the Competition Authority in relation to Multi-Disciplinary Practices (whereby legal practitioners can work alongside other professions such as architects or accountants) now have a resonance and applicability that cannot be ignored in the iteration and implementation of Government policy, that is to say

The ban on the formation of multi-disciplinary practises prevents the supply of inter-related services together in a way which may generate synergies known as economies of scope. It prevents professional service providers from catering for clients who have a set of inter-related needs, and from integrating their supply with providers of complementary services. Where economies of scope exist, they should result in lower costs to clients. The prohibition also limits the ability of clients to benefit from a one-stop-shop and hinders innovations which might otherwise result from the combination of different services, which could allow for new products or services to be developed to the benefit of clients³⁷.

Global Transformation of Legal Services

30. Academic and market research on the forces of change impacting on the global legal services market continues to presage the opening up of traditional service models in this and other common law jurisdictions. One leading authority, Professor Richard Susskind, who also addressed the conference on *Tomorrow's Irish Lawyers* hosted by the UCD School of Law in May 2013, predicts the following changes to the legal market, several of which are already happening,

'a movement towards commoditisation of legal services; a shift toward 'decomposing' legal work into its constituent tasks and sourcing each in the most

³⁵ Para 5.57: The Competition Authority: *Competition in Professional Services: Solicitors & Barristers*: (2006)

³⁶ Ibid. Para 5.2

³⁷ Ibid. Para 5.115

efficient way; a related increase in the outsourcing, off-shoring and ‘multi – sourcing’ of legal work; the emergence of new forms of legal businesses underpinned by novel business models and innovative external funding; a rapid increase in the impact of various disruptive information technologies; and much more besides’.

31. Susskind goes on to argue that these changes are being hastened by ‘a growing need for most clients (businesses and individuals) to secure ‘more for less’- more legal service at less cost’³⁸. The Eversheds’ Report of 2010 identifies a shift towards a buyer’s market, the emergence of clients as major agents of change, downward pressure on fees, new efficiencies being driven by recession, and the uptake of novel ways of sourcing legal work.³⁹ All of these have a ready resonance in the Irish legal services market.

32. Professor Stephen Mayson also argues that as the twenty–first century proceeds, lawyers must expect an increasing competitive environment. He considers that the evolution of the market for legal services will impose a requirement to think and act in ever more business–like ways. Like other observers, he points to several key drivers of change, namely; the increase in competition; the impact of technology; globalisation; generational differences; as well as new thinking and opportunities around ownership and management.⁴⁰ On the issue of competition, Mayson argues that the law as a profession has only begun to resemble a ‘marketplace’ in the past thirty years or so. During this time, the number of lawyers has increased and the law has become more proceduralised and commoditised. He argues that the volume of work requiring the knowledge and skills of qualified lawyers almost certainly has not risen at the same rate as the growth in the number of lawyers. A lower proportion of the work now requires intellectual firepower and virtuosity. The result has been a significantly more competitive environment –for clients and work, for lawyers and staff, and for partnership and profit. To wit,

“Because of standardisation and even commoditisation I think we will see one-stop-shops and I think we will get cheaper and higher quality. Not everything has to be done by lawyers. Roughly 80 per cent of what lawyers do is not a reserved activity – it doesn’t have to be done by lawyers – so 80 per cent of the market is open to people.”⁴¹

33. He argues that the legal profession now struggles with producing too much quality rather than too little and that there may be too many qualified lawyers for the volume and value of work available. On the impact of technology, Mayson suggests that technology is moving from a support service to a delivery service. He argues that technology is not

³⁸ Susskind, R. (2010) *The End of Lawyers: Rethinking the Nature of Legal Services*, Revised Edition, Oxford: Oxford University Press, Intro., p. xviii.

³⁹ Eversheds (2010) *Law firm of the 21st century : The clients’ revolution*. Accessed at: www.eversheds.com

⁴⁰ Mayson, S. (2007) *Law Firm Strategy: Competitive Advantage and Valuation*, Oxford: Oxford University Press.

⁴¹ Accessed at: <http://www.birminghampost.net/birmingham-business/birmingham-business-news/businesslatest/2012/09/20/legal-revolution-is-good-for-business-says-entrepreneur-65233-31875679/#ixzz2As6AThg>

limited to helping lawyers do their job, but is now beginning to replace them. Online access to advice and legal products such as wills and other legal documents, expert systems etc. are opening up new possibilities in the delivery of legal services. He suggests that the current 'Generation Y' – those born in the 1980s and 1990s and defined by growing up in the media and computer age – has different expectations around communication, social interaction and buying goods and services.

34. On globalisation and MDPs, Mayson states that globalising businesses have great need for professional services: strategy advice from management consultants, banking and financial advice and support, accounting services, and legal advice being the major requirements. Yet the boundaries between the respective disciplines are becoming increasingly blurred (he cites the example of tax advice which is offered by all four). He argues that for some clients the 'division of labour' between professional advisors is difficult to see - and the cost of it too high. He argues that,

“This is not the time to resist, deny or challenge; it is time to reinvent the delivery of legal services. Not just changing a few of the moving parts, but fundamentally re-thinking what lawyers and law firms do, why they do it, where it comes from, who they do it with, where and how they do it, and how they charge for it, as well as the ownership and financing structures. There is a vast market still out there – and one which I remain convinced will continue to grow. But it is not one which is just going to walk through the doors of law firms because they have always been there or because of some vague notion that they are somehow ‘better’.”⁴²

The array of studies of the current pressures for change and other driving factors in relation to the way legal services are provided in modern market economies points⁴³ towards a number of common factors that are now shaping such change with increased immediacy and with growing inevitability. These common factors now include globalisation, technology, market liberalisation, deregulation, disaggregation, new electronic markets and communications media, workplace demographics and economic conditions.

35. Leaving aside any obvious advantages to consumers of a more diversified legal services model, a number of benefits accruing to legal practitioners under the proposed alternative business and multi-disciplinary models arise. These would include –

- o Increased clientele generated by linking-up with the client base of other professional service providers.
- o Greater access to investment, liquidity and debt equity in support of practice viability and business expansion - nationally or internationally.
- o Better spread of financial risk which will lower the rate of return on investment and encourage it while achieving economies of cost at the same time.

⁴² Accessed at: <http://stephenmayson.com/2012/10/05/abs-one-year-on-rushing-headlong-slowly/>

⁴³ e.g. *The Future of Legal Services in Canada: Trends and Issues*. The Canadian Bar Association, June 2013.

- o Increased operational flexibility and service options that are more attractive to consumers by creating working synergies with non-legal providers in areas such as insurance, real estate, accounting, finance.
- o Greater discretion in the hiring and retention of high-quality legal and non-legal staff with incentivised remuneration.
- o More choice and opportunity for new or as yet untapped legal professionals who are in the labour market but inhibited or restricted in opportunity by existing structures.

36. In 1994, the same year in which multi-disciplinary practices were permitted in New South Wales Australia, the Solicitors (Amendment) Act was enacted in this jurisdiction. Taking account of the Fair Trade Commission's 1990 *Report of Study into Restrictive Practices in the Legal Profession* the Act provided for incorporated practices and the sharing of fees arising from a partnership or an agency arrangement by solicitors with non-lawyers. As pointed out previously in this RIA, this opportunity was left wither on the vine. Now, almost twenty years later, alternative business structures (ABS) and multi-disciplinary practices have been, or continue to be, rolled out in England and Wales, Scotland, Australia, Germany, Netherlands and parts of Canada, including British Columbia, Quebec and Ontario and there is a wealth of information and analysis now available on them. The Legal Services Act 2007 provided for the introduction of ABS, including multi-disciplinary practices, in England and Wales - over 240 licences for ABS have been issued to date. The Legal Services (Scotland) Act 2010 also allows for ABS that include multi-disciplinary practices. In Canada, the legislation relates more narrowly to multi-disciplinary practices.

37. In competition policy terms, the world has not stood still since the Fair Trade Commission Report of 1990 nor that of the Competition Authority of 2006. Moreover, the reforms put forward by these and other reviews of legal services and of legal costs over the last three decades have very much come home to roost in shaping current Government responses to the economic crisis. The policy problem and its debate are way past the question of whether or not such reforms should be implemented or merely considered further. Rather, as iterated in both the current Programme for National Recovery and the EU/IMF/ECB Troika Memorandum of Understanding, the current Government, in response to current policy imperatives, has determined in the exercise of its policy prerogative how and when the relevant reforms should be implemented – in this instance through the enactment of the Legal Services Regulation Bill.

Part of a Range of Government Responses

38. It is important at this point to contextualise the structural reform policies of the Legal Services Regulation Bill in relation to those other initiatives being taken by the Government to mitigate any negative impacts of either restrictive legal service models or opaque legal costs on national competitiveness and early economic recovery. Key areas of relevance in this regard include those of the proposed Mediation Bill, the State's procurement of legal services and the efficiencies being achieved in relation to legal aid expenditure and in the delivery of courts services. These initiatives, along with the Legal Services Regulation Bill are best poised to achieve the desired impacts on the legal services

market and on legal costs through their joint implementation as a collective Government policy endeavour.

Mediation Bill

39. Building on the relevant Scheme published in 2012, the Government is to bring forward a Mediation Bill in 2014 to promote mediation as a viable, effective and efficient alternative to court proceedings, thereby reducing legal costs and speeding up the resolution of disputes. The Bill that is currently being drafted will introduce an obligation on solicitors and barristers to advise any person wishing to commence court proceedings to consider mediation as a means of resolving a dispute before embarking on such proceedings. It will also provide that a court may, following the commencement of any such proceedings, on its own initiative invite parties to consider the mediation option and suspend the proceedings to facilitate such a process.

State Procurement of Legal Services

40. Within the broader legal costs debate substantial public and media concern has centred upon the high levels of expenditure by the State as a major consumer of legal services. The Dáil Public Accounts Committee, in its *Third Interim Report on the Procurement of Legal Services by Public Bodies* (January 2011), puts the legal services procured by such bodies in the State at “anything up to €500 million” for a given year. It cites the combined cost of legal services to the Chief State Solicitor’s Office, the Office of the Attorney General and the Office of the Director of Public Prosecutions in 2008 at €103 million of which €31.5 million was paid to barristers in private practice. The National Asset Management Agency (NAMA) paid €9.5 million in legal fees in 2011 (€5.0m in 2012).

41. The Committee expressed similar concerns about the cost to the State of successive Tribunals of Inquiry putting the combined costs of the Morris, Mahon and Moriarty Tribunals up to the end of 2010 at over €200 million. This aspect is being addressed separately by the Tribunals of Inquiry Bill 2005 now restored to Report Stage and follows recommendations of the Law Reform Commission’s final report on *Public Inquiries Including Tribunals of Inquiry* (May 2005). The State Claims Agency is reducing fees paid to barristers by 25% and is establishing a legal costs unit which will handle third party costs associated with the Mahon and Moriarty Tribunals.

42. Given that State Bodies remain the largest single consumer of legal services, it remains critical to ensure that the State is achieving maximum value for money. The Department of Public Expenditure and Reform has, therefore, been reviewing both the level of expenditure on, and the procedures that are being used to procure, legal services. The paper "*Reducing Public Expenditure on Legal Services: Avoid, Minimise, Recover*" published in the Expenditure Report 2013⁴⁴, details some guiding principles along with a range of measures which have already been taken to reduce expenditure as well as making

⁴⁴ Expenditure Report 2013: Government Publications Office: Prn A11/2173 :Part III, page 80: “Reducing Public Expenditure on Legal Services: Avoid, Minimise, Recover” :

recommendations for further areas where savings may be achieved. These include those measures taken under the Financial Emergency Measures in the Public Interest Act (No. 5 of 2009) which imposed a number of reductions on levels of professional fees including legal fees. The range of reductions that have already been made include⁴⁵:

- an 8% reduction to all legal fees with effect from 1 March 2009 applied to legal counsel fees in the Chief State Solicitor's Office; Brief and Refresher fees in the Director of Public Prosecution's Office; Payment of Witness Expenses; Criminal and Civil Legal Aid fees including barrister, private practitioner, medical and legal fees; and Tribunal fees,
- on foot of budget 2010, a further 8% reduction with effect from 1 January 2010 applied to legal counsel fees in the Chief State Solicitor's Office; Brief and Refresher fees in the Director of Public Prosecution's Office; and Criminal and Civil Legal Aid fees,
- a fee reduction of 10% on Criminal Legal Aid fees was applied with effect from 13 July 2011 and 1 October 2011 for District, and Circuit and Higher Courts, respectively,
- a reduction of 50% in the rate paid in respect of travel and subsistence and a reduction of 50% in the rate paid for sentence fees in respect of adjourned sentence hearings in the Circuit and higher courts was applied,
- in October 2011, a further 10% reduction was applied to brief and refresher fees paid by the Director of Public Prosecutions Office to reduce the level of fees in parallel with the reductions applied to fees payable under the Criminal Legal Aid Scheme, and
- a further 10% reduction was applied to Tribunal fees on 1 March 2012.

43. As part of the review of this area underway in the Department of Public Expenditure & Reform, a number of further cost-saving measures are being examined, including greater use of Alternative Dispute Resolution mechanisms; greater use of competitive tendering procedures and more informed structures in departments to enable better case management and control access to legal services. A range of Offices have now unilaterally sought and achieved reductions in legal fees. From peak expenditure levels and as of February 2013, the Chief State Solicitor's Office (CSSO), had made reductions in spending of 28.6%, the Office of the Attorney General (AGO) 14.4%, and the Office of the Director for Public Prosecutions (DPP) 11.3%.

44. The National Procurement Service set up a working group in 2012 to examine appropriate ways in which to assist public bodies that procure legal services and to examine how resources can be leveraged to achieve best value for money. The Working Group

⁴⁵ See Reply to Parliamentary Question No 38 of 27th Feb. 2013 by Brendan Howlin TD, Minister PE&R.

consisted of representatives from the National Procurement Service, the Department of Public Expenditure and Reform, the Department of Justice and Equality, the Chief State Solicitor's Office and the Office of the Attorney General. In December 2012, Mr. Paul Quinn was appointed as the Chief Procurement Officer (CPO) for the Public Service. Subsequently, the Department of Public Expenditure and Reform issued a circular relating to the "Procurement of Legal Services and Managing Legal Costs"⁴⁶. This Circular clarifies and underlines the importance of the obligations upon public bodies to comply with the procurement rules and guidelines in retaining legal services. It outlines appropriate competitive procedures that can be used in the engagement of legal services and sets out a number of approaches and tools for public bodies to use in managing legal costs. The CPO and the Office for Government Procurement, which was launched on 19th July 2013, are now driving a major efficiency drive in relation to Government spending in relation to supplies and services amounting to €9 billion per year.

Legal Aid Costs

45. Spending under the criminal legal aid scheme, which amounted to €56.1 million in 2011, was marginally down on the €56.5 million outlay recorded in 2010. The comparable figure for 2012 was €50.5m. On the civil legal aid front, Exchequer funding fell marginally from €24.22m in 2010 to €24.12m in 2011. The Legal Aid Board's law centre network for general civil matters experienced a 9% increase in applications in 2011 on top of a 21% increase the previous year while staffing levels fell by 4.7%. During 2010-2011 the number of cases processed by the law centre network increased by 7% to over 17,800. The Legal Aid board took over the running of the Family Mediation Service in 2011. The Board's grant in aid for 2013 including that function is €32.659m and it is anticipated that with other income, including a carry-over of €1.43m, its total budget for the year will be €36.5m.⁴⁷

Courts Service Costs

46. In 2012 the output of the Courts Service was at almost 5.6% less cost to the State than in 2011 (down from €62.6m to €59.2m) contributing to what is now an overall reduction of 41% since 2008. Compared to the year 2008 wage costs have decreased by €8.8m (15%), administrative costs by €16.6m (38%) and capital funding by €28.8 (nearly 80%)⁴⁸. There has also been a 14% decrease in the number of approved staff in the Courts Service since 2009, a reduction of 151 personnel, with an accompanying rise in the number of cases per staff member representing a 37% increase in productivity for 2011.

⁴⁶ Circular 05/13 of 10th July 2013.

⁴⁷ <http://www.justice.ie/en/JELR/Pages/PR13000338>

⁴⁸ Annual Report of the Courts Service, 2012.

Meeting the Policy Objectives

Figure 3:

Policy Objectives

Long-Term

“establish independent regulation of the legal profession to improve access and competition, make legal costs more transparent and ensure adequate procedures for addressing consumer complaints”

– Programme for National Recovery 2011-2016

Immediate:

- To meet the deadline of the EU/IMF/ECB Troika programme for the introduction of the relevant proposals for legislative change in relation to the legal sector by the end of Quarter 3 of 2011. This has been met.
- Complete Second Stage of the Legal Services Regulation Bill. This has been met with completion of that Stage on 23rd February 2012.
- Complete Committee and Final Stages of the Legal Services Regulation Bill. Committee Stage is ongoing having commenced on 17th July 2013. Further amendments for this Stage are to be published before Christmas 2013 with the resumption of Committee Stage anticipated early in the new year.
- Enactment of the Legal Services Regulation Bill. This is anticipated in the first half of 2014.
- Establishment of an independent Legal Services Regulatory Authority and the independent complaints and disciplinary entities. Recruitment of Head of new Authority. These outcomes are similarly anticipated for the first half of 2014.

47. In meeting the above long-term policy objectives the Legal Services Regulation Bill provides four key levers of modernisation and reform –

- **a new, independent, Legal Services Regulatory Authority** with responsibility for oversight of both solicitors and barristers. The Authority will have a lay majority and a lay chair and will be independent in terms of both its appointment (through nominating bodies) and functions. The Authority will have transparent governance and reporting structures appropriate to a modern regulatory body. Part 2 of the Bill mainly refers.

· **an independent complaints system** to deal with public complaints including those relating to professional misconduct. This will provide a first port-of-call for the public, independent of the professional bodies. There will also be an independent **Legal Practitioners' Disciplinary Tribunal** to deal with both legal professions that will be independent of Government, the new Regulatory Authority and the professional bodies. Part 5 of the Bill mainly refers.

· **an Office of the Legal Costs Adjudicator** that will assume the role of the existing Office of the Taxing-Master which will be conferred with enhanced transparency in its functions. The Bill provides that a new Office of the Legal Costs Adjudicator will deal with disputes about legal costs – at present these are dealt with by the Office of the Taxing-Master. The new Office, headed by a Chief Legal Costs Adjudicator, will modernise the way disputed legal costs are adjudicated. It can prepare Guidelines and will maintain a public Register of Determinations that will include the outcomes and reasons for its determinations about disputed legal costs. The legal costs regime is bolstered, to the benefit of both practitioners and clients, by new Legal Costs Principles to be found, for the first time in statute, in Schedule 1 of the Bill. There will be enhanced obligations on both solicitors and barristers to keep clients informed about the details of their legal costs. Part 9 of the Bill mainly refers.

· **a framework for Alternative Business Models.** Taking account of developments and the pressures being experienced by legal practitioners in other open common law jurisdictions there is a very real danger of Irish law firms and legal practitioners being left to languish at a competitive or structural disadvantage. Several types of new alternative business structure models have been, or continue to be, rolled-out in England and Wales, Scotland, Australia, Germany, Netherlands and parts of Canada. Moreover, the need for structural change on the supply side of legal services in Ireland has been highlighted by the Government and EU/IMF/ECB Troika as a necessary structural reform. The Bill, therefore, includes several measures aimed at opening up the provision of legal services in a way that takes account of these emergent new business models and the huge advances that have been made in business technology. The Bill provides a framework for a number of structural reforms building upon a framework of public consultations. These new or "alternative" business structures will be optional. Members of both legal professions will continue to be entitled to deliver legal services under the current structures of solicitors practices and through the Law Library. Part 7 of the Bill mainly refers.

A Modern Balance of Interests

48. The Legal Service Regulation Bill, in Part 2, section 9(4), sets out six objectives to which the new Legal Services Regulatory Authority must have regard in performing its functions. Three of these are in the public/consumer interest –

- Protecting and promoting the public interest
- Protecting and promoting the interests of consumers relating to the provision of legal services
- Promoting competition in the provision of legal services in the State,

while three support high standards in the provision of legal services –

- Supporting the proper and effective administration of justice
- Encouraging an independent, strong and effective legal profession
- Promoting and maintaining adherence to the professional principles.

Further, section 9(5) (a) of the Bill gives clear statutory expression to the core ‘professional principles’. Thus, legal practitioners must –

- (i) act with independence and integrity,
- (ii) act in the best interests of their clients, and
- (iii) maintain proper standards of work.

Moreover, under section 9(5)(b), they must comply with the duties that are rightfully owed to the court, and, under section 9(5)(c), they must, subject to professional obligations, keep the affairs of their clients confidential. Both the professional and client interests are being mutually upheld under the Bill. This balance informs the entire Bill and will continue to shape it through Committee and subsequent Stages.

The Legal Profession

49. The legal profession in Ireland is divided into two branches: solicitors and barristers. Based on membership of the two legal professional bodies (i.e. the Bar Council and the Law Society) the ratio between solicitors and barristers in the State remains at just over four to one –

Figure 4

The Legal Professions			
Profession / Total Number	Breakdown	Male : Female Ratio	Members Under 40 years of age
Barristers: 2,292⁴⁹	Senior Counsel - 321 Junior Counsel – 1,971	60 : 40	52%
Solicitors: 9,962⁵⁰	Number practising - 8,768	50 : 50	46%

50. The regulatory powers of admission, practice, conduct and discipline of solicitors under the Solicitors Acts 1954-2008 are vested in the Law Society of Ireland. In terms of location 55% of solicitors with the Law Society are located in Dublin followed by 19% in Munster; 13% in the rest of Leinster; 7% in Connaught; 4% in Ulster and 2% outside Ireland⁵¹. Further data on the solicitor's profession is also readily accessible in the Annual Report of the Law Society accessible on www.lawsociety.ie. The Law Society is also the representative body of the solicitors' profession and provides an independent forum to which the public may apply if dissatisfied with the manner in which the Law Society has dealt with their complaints, namely the Office of the Independent Adjudicator. Though not having a statutory regulatory framework at present, the Bar Council is the representative body of the profession of barrister adopting Codes of Practice and other governance measures. The Honorable Society of King's Inns provides the education and training that enables admission to the degree of Barrister-at-Law and being called to the Bar of Ireland. The disciplinary process for barristers is operated independently by the Barristers' Professional Conduct Tribunal and the Professional Conduct Appeals Board both of which consist of a majority of non-lawyers. Hence, the solicitor's profession has been governed under a model of self-regulation set out under statute while the barrister's profession has been self-regulating without an overarching statutory framework.

51. A significant feature of the solicitors' branch of the legal profession is that solicitors may form partnerships and operate as firms of solicitors. Many such firms exist, but there are also many 'sole practitioners' or one person firms. Historically, solicitors have tended to

⁴⁹ The Bar Council: Total Members at 13th February 2013.

⁵⁰ The Law Society: Annual Report & Accounts 2012-2013.

⁵¹ Ibid. page 17.

instruct barristers to appear in court, this being especially true in the High and Supreme Courts though solicitors do enjoy the relevant right of audience. In contrast to solicitors, barristers or ‘counsel’ have been historically obliged to operate as sole traders and have not been allowed to form partnerships or ‘chambers’ or to work as employee barristers. With the exception of certain permitted forms of ‘direct-access’ (e.g. by accountants, architects, etc.), barristers usually receive their briefs from clients through solicitors. The bulk of barristers’ work involves the provision of legal research, opinion and advice, the conducting of negotiations and court advocacy.

52. Most barristers practise in Dublin, but approximately 106 practise in Cork and 191 in the rest of the country. The majority of practising barristers tend to be members of the Law Library, thus subject to the Code of Conduct for the Bar of Ireland - the main regulatory instrument of the Bar Council (www.lawlibrary.ie) which is to that extent a self-regulatory and representative body. Some barristers choose to operate outside of the Bar Council – Law Library structure. As such they present something of a regulatory gap which is among those issues that the Legal Services Regulation Bill is seeking to address.

Complaints About Legal Professionals

53. The Law Society of Ireland investigates, through its Complaints and Client Relations Section, complaints against solicitors alleging inadequate professional services, excessive fees or misconduct. Complaints related to matters where there is an alternate legal remedy, such as cases of alleged negligence or breach of contract are not considered admissible. The complaints process has a statutory basis in the Solicitors Acts 1954-2008 under which the Law Society is the designated regulator of the solicitors’ profession.

Figure 5

SOLICITORS: Total Complaints and Admissibility				
<i>Source: Annual Reports of the Independent Adjudicator</i>				
Year	2012-2013	2011-2012	2010-1011	2009-2010
Admissible Complaints	2116	2453	2622	2117
Inadmissible Complaints	361	360	360	387
Total	2477	2813	2982	2504

54. If the problems cannot be resolved at an early stage, the complaint may be referred to the Society’s Complaints and Client Relations Committee which tends to have around 24 meetings a year to deal with a yearly referral rate of over 400 matters. The Committee considers the complaint based on the investigations carried out by the Complaints and Client Relations Section and may reject the complaint, sanction the solicitor or refer the solicitor to the independent Solicitors Disciplinary Tribunal. Over 500 cases are resolved in each year with others withdrawn or rejected.

Figure 6

Solicitors Disciplinary Tribunal Sittings by Year	
Year	Sittings
2012	96
2011	106
2010	92
2009	100
2008	110
2007	84
2006	59
2005	55
2004	57
2003	38

*Source: Chairman's Report of the Solicitors
Disciplinary Tribunal*

55. The Solicitors Disciplinary Tribunal only deals with allegations of misconduct. Complaints may also be made directly to it by members of the public without going first to the Law Society. An application to the Tribunal concerning a solicitor may ultimately result in a solicitor being sanctioned by the Tribunal or by the President of the High Court, up to and including the sanction of being suspended from practice for a period or having his/her name struck off the Roll of Solicitors. Comprehensive information and tables on the annual work and outputs of the Solicitors Disciplinary Tribunal is made public in the Chairman's Annual Reports. These can be readily accessed on www.distrib.ie.

56. Persons who are unhappy with how their complaint was handled by the Law Society may apply to the Independent Adjudicator for a review of the file. She has the power to direct the Law Society to re-consider the complaint. Comprehensive data and tables relating to the work and outputs of the Independent Adjudicator and to complaints about solicitors overall can be found on www.independentadjudicator.ie. The Independent Adjudicator's Annual Report shows that the total number of new complaints received by the Law Society in 2012-2013 was 2,477 of which 361 were deemed inadmissible, leaving a balance of 2,166 admissible complaints. 2,007 complaints were carried forward from the previous year, making a total of 4,123 complaints handled by the complaints division during the year. 416 complaints were referred on to the Complaints Section of the Law Society during that year. A further 954 files were opened by the Complaints and Clients Relations Section representing a mix of queries and requests from members of the public and of the profession as well as records of direct applications made to the Solicitors Disciplinary Tribunal. 873 of the 2,166 admissible complaints made last year were solicitor-against-solicitor and were made largely by solicitors representing financial institutions.

Figure 7

SOLICITORS: Complaints by Type and Year				
<i>Source: Annual Reports of the Independent Adjudicator</i>				
Year	2012-2013	2011-2012	2010-2011	2009-2010
Allegations of Excessive fees	84	100	118	135
Allegations of Inadequate Professional Services	314	266	301	340
Allegations of Misconduct	1718	2087	2203	1642
Total	2116	2453	2622	2117

57. In discharging her particular functions during 2011-2012 the Independent Adjudicator reviewed 102 complaints along with 16 claims against the Compensation Fund. A total of 9 solicitors had their practising certificates suspended in 2012 compared to 6 in 2011 and 11 in 2010. There has been a persistent trend in complaints relating to solicitors' undertakings since the erstwhile property boom. While these were down 25.6% in 2012-2013 they continue to represent a goodly portion of all complaints made against solicitors. They represented 1,288 of 1,718 admissible complaints of solicitor misconduct dealt with in the 2011-2012 period – this means that if the issue of solicitors undertakings were to be fully resolved there would be much smaller residue of other types of complaints about solicitors' misconduct to deal with – in this case only 430 of them. According to the Report of the Chairman for 2012, the Solicitors' Disciplinary Tribunal held inquiries in 28 cases (in respect of 18 respondents) arising from practice as conveyancers. Of these 28 cases, 61% related to the failure to comply with undertakings given to banks and other lending institutions.

58. A decision was taken by the Council of the Law Society on 20th January 2012 with effect that "it would be in the best interests of the public and the profession" if complaints were no longer to be dealt with by the Society but by the new Legal Services Regulatory Authority to be established under the Bill. This decision represented a major step forward in enhancing public confidence in the way complaints about legal practitioners will be dealt with in the future. Notwithstanding the various measures put in place over time to ring-fence the existing complaints regimes from the representative bodies of the two branches of the legal profession currently involved, this development addresses a pervasive public distrust in mechanisms that might in any way create a perception of self-interest in the modalities of their operation.

Figure 8

SOLICITORS MISCONDUCT: Complaints by Category and Year

Source: Annual Reports of the Independent Adjudicator

Year	2012-2013	2011-2012	2010-2011	2009-2010
CATEGORY				
Delay	11	3	5	8
Failure to communicate	58	50	56	60
Failure to hand over	99	80	92	104
Failure to account	104	70	102	88
Undertakings	1288	1732	1647	1134
Conflict of interest	16	11	16	22
Dishonesty or deception	8	7	9	12
Witness expenses	1	4	4	2
Advertising	22	4	8	3
Counsel's fees	34	40	-	-
Other	77	86	264	209
TOTAL	1718	2087	2203	1642

59. The Barristers' Professional Conduct Tribunal investigates allegations of misconduct made by any person or body against a barrister and decides whether that barrister has been guilty of misconduct constituting a breach of the Code of Conduct for the Bar of Ireland or constituting a breach of proper professional standards. Complaints made against a barrister by another barrister or a judge are investigated by the Professional Practices Committee. The Tribunal is composed of nine members, four of whom are practising barristers appointed by the Bar Council and five of whom are non-lawyers. Of the non-lawyers, two are nominated by bodies other than the Bar Council. While, within the Bar Council framework, the Barristers' Professional Conduct Tribunal is independently constituted, its proximity to the profession can, in the perception of the general public as clients or non-lawyers, detract from their confidence in the principle of *nemo iudex in causa sua*⁵².

60. The Tribunal may impose one or a combination of disciplinary measures up to and including fines or ordering the barrister to forego the payment to him of specified fees; the suspension of the barrister from membership of the Law Library or in the case of a non-member of the Law Library, the Tribunal may require the Bar Council to present a complaint against the barrister to the Disciplinary Committee of the Benchers of the Honorable Society of King's Inns. The complainant or the barrister can appeal any Decision of the Tribunal to the Barristers Professional Conduct Appeals Board.

61. The Bar Council states that, on average, 35 complaints are registered annually against barristers. The Barristers' Professional Conduct Tribunal dealt with 62 cases in 2011, 18 of which were carried over from 2010. In 2011, the Tribunal dismissed 30

⁵² "no person should be a judge of his/her own case".

complaints and held 24 oral hearings. One recommendation for disbarment was made to King's Inns and one case was referred to the Professional Practice Committee for discipline. The Benchers of the Honorable Society of the King's Inns resolved at their meeting on 11th January 2012 that a named barrister at law be disbarred following their confirmation of a finding of professional misconduct made against him by the Disciplinary Committee of the Society of the King's Inns.

Professional Indemnification and Compensation Fund

62. Complaints alleging fraud or dishonesty on the part of a solicitor that resulted in financial loss for the client are dealt with separately and through a Compensation Fund administered by the Law Society's Regulation of Practice Committee. The Society is required to maintain this Fund in order to compensate clients for losses arising due to fraud or dishonesty on the part of solicitors or their employees. That Committee also oversees compliance with the Solicitors' Accounts Regulations. The Compensation Fund therefore brings with it a rigorous inspection and compliance regime administered by the Law Society over its members – last year its team of investigating accountants conducted approximately 400 investigations. As such, the Fund and its attendant inspection procedures form an important protection against fraud and dishonesty that may be perpetrated by solicitors in the handling of clients' monies or assets. The Compensation Fund has been relied upon in a number of high profile cases in recent times and has paid out a total of €17.7 million in claims during the five years of 2008 to 2012 – the total claimed in that period amounted to close to €48 million. There was a 9% increase in the 266 claims made against the Compensation Fund in 2012 over the previous year though this remains much less than the peak of 672 claims received in 2008. The net assets of the Solicitors Compensation Fund were valued at €18 million as at 30th June 2013. The annual contribution to the Fund for 2013 is €760 per solicitor. Annual insurance cover for €50 million with an excess of €5 million is also in place.

Figure 9

Solicitors Compensation Fund Statistics: 2008-2012					
<i>Source: Annual Reports of the Independent Adjudicator</i>					
Year >	2008	2009	2010	2011	2012
Claims Received	672	424	255	244	266
Amount Claimed €	17,162,298	9,310,731	10,406,247	7,571,531	3,351,694
Amount Paid €	8,627,712	2,721,936	2,485,829	2,538,894	1,325,591

63. At present, because they do not handle clients' monies, Barristers do not require the type of cover provided by the Compensation Fund for solicitors. However, in broader cover terms, barristers do take out Professional Indemnity Insurance (PII) through corporate insurance providers. The average rate for PII paid by barristers has, in recent times, tended

to be around €790 per annum. The minimum level of PII required by solicitors is set under the Solicitors Acts in the public. It is currently set at €1.5 million⁵³. The *Solicitors Mutual Defence Fund* is currently in the process of an orderly wind-down that is being closely monitored by the Law Society – the approval of its members of a special financial support levy (€200 per year per practising solicitor) has yielded €3.4 million to date and there has been no requirement, as yet, to draw on these funds.

64. All in all, therefore, the Compensation Fund would represent an ongoing, substantial and costly undertaking were the State or a statutory body to assume responsibility for it and to thereby become answerable as a guarantor for the substantial claims that continue to be made against it. As custodians of the Compensation Fund, the Law Society has a vested interest in supervising and investigating its members in a vigorous way to ensure that acts of fraud or dishonesty that could lead to a payment from the Fund are kept to a minimum. For this reason, the Government has been persuaded by the view that the power to supervise and inspect compliance with the regulations relating to solicitors' accounts should remain vested in the Law Society. It is now intended that, under the Bill, the Society will continue to carry ultimate administrative and financial responsibility for the Solicitors' Compensation Fund but that there should be an obligation on the Society to report all cases that arise so that the relevant misconduct or disciplinary aspects can be expedited independently – including as appropriate by reference to the new and independent Legal Practitioners' Disciplinary Tribunal or the High Court. The retention by the Law Society of its functions with regard to the Compensation Fund along these proposed lines is, therefore, considered to optimally incentivise compliance by solicitors in both the public and professional interests while avoiding the imposition of a substantial, continuous burden of actual and potential liability on the State and public resources. If, at a future stage, any decision is made to confer barristers with similar access to clients' monies or assets (e.g. allowing direct access to barristers for contentious business) then the issue of regulating and inspecting barristers' accounts will need to be duly considered and addressed in a similarly rigorous manner by a mechanism similar to the Solicitors' Compensation Fund. The Legal Services Regulation Bill provides for public consultation on this key issue.

Current Costs of Professional Regulation

65. The current costs of regulation were initially considered at the time of publication of the Legal Services Regulation Bill in October 2011. The breakdown of regulation costs provided by the Law Society at that time was as follows:-

⁵³ Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) (Amendment) Regulations : SI 433 of 2013.

Category	€ million
Complaints	2.2
Compensation Fund	6.5
General Regulation	0.85
Practice Closures	0.82
Solrs Disciplinary Tribunal	0.86
Independent Adjudicator	0.18
Total	€11.4 m

The total for the *Compensation Fund* figure includes litigation costs and the value of voluntary committee contributions. The *General Regulation* category essentially comprises the administration of practising certificates and Professional Indemnity Insurance carried out by the Law Society's *Registration Unit*. Of the above cost categories cited by the Law Society three are not to be taken over by the new Legal Services Regulatory Authority, namely, those of the *Compensation Fund* (€6.5m) , *General Regulation* (€0.85m) and *Practice Closures* (0.82m) representing over €8 million combined while the Office of the Independent Adjudicator (€0.18 million) is to be abolished.

66. The costs of regulation to be carried over to the new Legal Services Regulatory Authority would therefore seem to indicate a figure of just over €3 million based on the Law Society figures, subject of course, to any more minor subsidiary procedures that may emerge in the process of regulatory transition. The current staffing allocation at the Law Society for those functions that will be taken-over by the new Regulatory Authority, including the Disciplinary Tribunal, is just over 18 full-time equivalent posts and this has informed the relevant costs estimates for the new body later in this RIA. While the total regulation costs of the Law Society can fluctuate from year to year, particularly in relation to the Compensation Fund, and can combine varied elements, the above figures can nonetheless inform the estimation of the relevant regulatory costs for the purposes of this Regulatory Impact Analysis.

67. The Bar Council has reported the direct costs incurred in handling complaints about barristers, including under the Barristers' Professional Conduct Tribunal and the Barristers Professional Conduct Appeals Board, to have been €135,200 during 2011-2012 and €123,800 during 2010-2011. However, these figures do not include office accommodation and other supports provided free of charge and the voluntary service of barrister members of the bodies. All in all, a round figure to take account of all the costs incurred by the Bar Council in dealing with complaints would probably be in the region of €200,000 a year.

Legal Costs and the Office of the Taxing-Master

68. A Taxing-Master provides an independent and impartial process of assessment of legal costs, seeking to achieve a balance between the costs involved and the services rendered. Party and party costs are those which may be recovered by one party to

proceedings from another and are usually recovered by the successful party at the conclusion of proceedings. Solicitor and client costs are those a solicitor claims for his or her own client and can arise in relation to either contentious or non-contentious matters. The principles upon which party and party costs are awarded are different than those applied to solicitor and client costs.

69. The Taxing-Master's jurisdiction to assess solicitor and client costs derives from the Attorneys and Solicitors (Ireland) Act 1849. The Court Officers Act 1926 attached the Office of Taxing-Master to the High Court. Over time, a series of Practice Directions have also been issued by the Office of Taxing-Master. At Circuit Court level, costs incurred in an action are, as a general rule, taxed by the County Registrar of the area concerned. The Courts (Supplemental Provisions) Act 1961 determined that there should be two Taxing-Masters while elaborating their duties and functions in its Eighth Schedule. Further provisions were made in the Courts and Court Officers Act 1995.

70. The Attorneys and Solicitors (Ireland) Act 1849, a similarly-named Act in 1870, *Order 99* of the Rules of the Superior Courts 1986 and the Solicitors (Amendment) Act 1994 govern the remuneration of solicitors for contentious business i.e. business done by a solicitor in or for the purpose of, or in contemplation of, proceedings before a court, a tribunal or an arbitrator. The remuneration of solicitors for non-contentious business, i.e. any business other than contentious business, is governed by the Solicitors' Remuneration Act 1881. Section 68 of the Act of 1994 requires solicitors to provide written particulars of the fees that will be charged in relation to both contentious and non-contentious costs.

71. There have been a series of judgments in recent years where judges have emphasised the necessity of solicitors keeping meticulous notes of all professional work done in order to assess the true value of the taxation claim. Judges are also becoming increasingly aware, and indeed vocal, about the high legal costs still being charged during this time of financial crisis. Mr Justice Kearns framed his argument against inappropriate levels of legal costs in terms of a threat to the constitutional right of access for all citizens to the Courts.⁵⁴ Mr Justice McGovern, in a case involving an extremely large accountancy fee and a smaller but still significant legal fee, publicly expressed concerns about professionals "feasting on the carcasses of insolvent and semi-solvent companies" in the current climate.⁵⁵ There were over 430 complaints relating to excessive fees made to the Law Society in the past four years. In addition, while the total costs claimed before the Office of the Taxing-Master in 2011 were €58.6m, the costs actually allowed only amounted to €41.3m, a differential of €17.3m or 30%. There was a reduction in costs claimed in 2012 to €19.9 million with only €13.9 million in costs allowed.

⁵⁴ In *Scott Bourbon (a Minor) v John Ward & Ors.* [2012] IEHC 30.

⁵⁵ Mary Carolan, "Some professionals 'feasting on carcasses' of firms, judge says.", *Irish Times*, 27 July 2012.

Figure 10

Office of the Taxing-Master		
Outcomes by Year ⁵⁶	2012	2011
Costs claimed	€19,845,528	€58,591,775
Costs allowed	€13,870,202	€41,317,752
Total fees collected	€1,115,596	€2,646,891
Duty on summonses (included in total fees)	€310,025	€458,000

72. The costs of running the Office of the Taxing-Master are around €0.7 million, the actual costs for 2010 having been as follows: Two Taxing-Master Salaries amounting to €280,946; Other Staffing Costs of €105,901 and Other Expenditure of € 285,341 giving a total of € 672,188. The Legal Services Regulation Bill will reform the existing Office of the Taxing-Master conferring it with some additional functions and governance obligations in support of greater transparency and public access to its operations and decisions about legal costs. As such, it is not anticipated that the new Office of the Legal Costs Adjudicator will impose additional costs but that it will, rather, subsume those resources and capacities currently enjoyed by the Office of the Taxing-Master while also continuing to collect substantial fees on an annual basis.

⁵⁶ Annual Report of the Courts Service 2013, Part 3.

B. Identification and Description of Options

Three Options Considered

73. Three options were considered for implementing the Government's structural reform and modernisation policy objectives relating to the provision of legal services and to legal costs, namely,

- 1) Taking **no action** and leaving the existing regulatory and legal costs structures in place with regulation being centred on the legal professional bodies concerned with some independent procedures (e.g. fire-walled disciplinary tribunals).
- 2) Introducing a **full-spectrum regulatory superstructure** that would assume all existing regulatory and governance functions carried out by the legal professional bodies across the two legal professions.
- 3) A **targeted, lean and independent legal services regulator** for the efficient and cost-effective delivery of the Government's key policy objectives.

Option 1: No Action

74. This would essentially maintain the *status quo ante* including under the un-commenced Legal Services Ombudsman Act of 2009 whereby an independently functioning and overseeing Ombudsman, to be appointed by the Government, would,

- receive and investigate complaints about the handling by the Law Society and Bar Council of complaints made to them by clients of barristers and solicitors, respectively;
- ensure that such complaints are dealt with fairly, effectively and efficiently by the two professional bodies;
- assess and report annually on the adequacy of their admissions policies,
- promote public awareness of the complaints procedures of the two bodies,
- be financially supported by a levy on the two professional bodies with a proportional adjustment according to the number of complaints made.

75. The underlying powers of admission, practice, conduct and discipline of solicitors under the Solicitors Acts 1954-2008 would remain vested in the Law Society, which is also the representative body of the solicitor profession. Similarly, the Bar Council would remain both the representative and disciplinary body of the barrister profession with its attendant Barristers' Professional Conduct Tribunal. The respective disciplinary and representational functions of both professional bodies would continue to co-exist under what would essentially constitute supervised self-regulation.

Option 2: A new full-spectrum regulatory regime

76. This option would, essentially, create a new regulatory superstructure to oversee and assume all supervisory functions of the legal profession – this would cover the “full-spectrum” of regulating the respective professions from their education and qualification frameworks to their ongoing professional conduct and governance including in the carrying-out of legal business and the charging of legal costs. It would apply universal standards of transparency and competitiveness. The new body would be tasked with the setting and maintenance of all professional standards including the making of regulations and setting of guidelines and practise directions; approval and certification of professional training and its providers; financial governance and inspection, compensation funding and indemnity cover, the conduct of all research and analysis relating to the professions, including in relation to legal costs. Such a new statutory super-structure would, in effect, take over the entire range of regulatory and supervisory functions currently provided by (a) the professional bodies; (b) the Office of Taxing-Master in relation to the taxation of legal costs (c) the professional training and education bodies (d) the professional conduct and discipline bodies and tribunals.

77. The new entity would be a major undertaking on a comparable scale to the new regime introduced in the UK in recent years requiring exponentially high levels of working capacity and resources. The new architecture could also seek to reflect the proposed three-tiered model of a separate Legal Costs Regulatory Body supported by a Legal Costs Assessment Office (to replace the existing Office of Taxing-Master) supported by an Appeals Adjudicator to conduct assessment appeals.

Option 3: A targeted, lean and independent legal services regulator.

78. This option would set out to reform and consolidate regulation of the legal professions by conferring key aspects of that function with greater statutory independence. This would involve transforming the regime from the primarily self-regulatory model that has prevailed up to now including in the recent Legal Services Ombudsman Act. This option would also recognise realities of scale in our market for legal services and avoid the enormous resource, capacity and roll-out requirements of a supervisory superstructure such as that outlined in Option 2 above. Instead it would establish a leaner and more strategic and risk-focussed framework aimed at meeting the Government’s key policy objectives in relation to the legal services sector and legal costs.

79. In keeping with this leaner but direct approach, the proposed Legal Services Bill would provide for two entities, namely,

- an independent but publicly accountable Legal Services Regulatory Authority with responsibility for oversight of the legal professions and with independent structures to deal with matters of professional conduct that would be similarly independent and be the first port of call for members of the public – at present complaints by the public are dealt with through the professional bodies.

- an Office of the Legal Costs Regulator to replace, modernise and enhance the functions of the existing Office of the Taxing-Master.

Together, these would promote competition and transparency in the organisation and provision of legal services in the State with a better balance of the respective public, consumer and professional interests involved. The functions of the proposed Legal Services Regulatory Authority would include taking core regulatory functions and the determination of complaints against legal practitioners totally out of their respective professional domains – be they solicitors or barristers. The functions of the Office of Legal Costs Adjudicator would not only extend to solicitors but, for the first time in national legislation, also to barristers. The new Bill would consolidate and modernise the existing statutes relating to the “taxation” of legal costs – a term which would be abandoned – while bringing the previously layered legal costs assessment procedures into full public view for the mutual protection of both providers and clients.

80. While targeted on the core policy priorities of complaints handling and transparency in legal costs, the Bill also seeks to drive forward the modernisation of what is undeniably a staid professional structure that is struggling to keep up with the reality of the globalisation of legal services. The modernisation provisions in the Bill include allowing barristers to form partnerships, to advertise, to advocate in court on behalf of their employers and the establishment of multi-disciplinary practices. Solicitors are to be allowed to act jointly with barristers as advocates in court and will be eligible to apply for appointment as Senior Counsel to a new Advisory Committee on the grant of Patents of Precedence.

C. Analysis of Costs, Benefits and Impacts for all Options

81. **Option 1: No Policy Action:** Though some internal reforms have been introduced by the professional bodies concerned in recent years (e.g. amended codes of conduct, disciplinary procedures and practice directions) and there have been some strides towards legislative reform, these continue to fall short of the qualitative policy objective of independent regulation, in a number of key respects. While there is anecdotal and other evidence that the present economic recession is putting some downward pressure on legal costs this fluctuation does not, of itself, constitute sustainable structural reform. Indeed, as evidenced by some indicators such as those of the cost of doing business in Ireland published by the Work Bank, without the introduction of real structural reform in the provision of legal services their cost will not reduce. As evidenced by the recent economic boom the tendency is for legal and other service costs to rise unabated in an economic recovery to the likely detriment of our international competitiveness. Under this option, the costs to existing businesses and to private consumers of legal services of the lack of choice and innovation in the current legal services and legal costs structures would remain unchallenged.

82. By the same token, other weaknesses of existing regulatory measures, addressed *inter alia* by the Legal Costs Working Group and by the Competition Authority and in successive reports over recent decades, would remain unchallenged. Restrictions on innovative service provision and on alternative business structures would remain with no new incentives to improve productivity or to reduce costs. New innovations in business technology and in the global provision and outsourcing of services would be ignored without due response. The current system for the taxation of legal costs by the Office of Taxing-Master, based on legislation dating back to the early 1800s with some intervening amendments, would similarly persist. The way in which legal costs are determined, administered, “taxed” or assessed would continue to lack the transparency and legislative accountability conducive to competition and the proper balancing of consumer interests in a modern, open and recovering economy. These aspects are currently encased in a labyrinth of legislation, regulations, practice directions, Court Rules and jurisprudence. Consumers, and indeed legal practitioners, would remain without the relevant information to make informed choices about legal services and their value for money in real time. In relation to consumer complaints or allegations of professional misconduct, the lack of public confidence arising from the linking and proximity of current redress structures to the professional bodies would remain. The independence of the public complaints structures would not be put beyond doubt and this would continue to undermine consumer confidence in the legal services market. The current structural duplication of complaints committees and disciplinary tribunals by the Law Society and the Bar Council would remain.

83. While maintaining the *status quo ante* would undoubtedly impose a smaller resource burden on the Exchequer it would, by the same token, have no impact on issues of cost, transparency, accountability and competitiveness in the legal services market and in the application of legal costs. It would utterly fail to meet our national commitments under the Programme for Government and the EU/IMF/ECB Memorandum of Understanding and the ensuing policy imperatives cited previously in this document. Policy inaction would have

no impact on the current situation and fail to deliver the Government's declared economic and structural reform objectives. Policy inaction is not, therefore, an option.

84. **Option 1: Impacts**

- a) **Rights of Citizens** – Taking no action will maintain the imbalance of the current regulatory regime towards self-regulation and the maintenance of standards by the professions themselves without a modern iteration of clients' rights and interests and the introduction of a more transparent regime in relation to the charging and basis of legal costs.
- b) **Consumers** – the existing standards applied by legal service providers have been layered and largely opaque to consumers – taking no action maintains this problem and a historical predilection towards self-regulation.
- c) **Economic Market** – the economic costs of arcane structures on the supply side of legal services will continue to impede the market if unaddressed under this Option. Though not easy to quantify, there will be an undesirable economic opportunity cost in taking no action.
- d) **Competition** – concerns about the sheltered nature of the legal professions and access to them and about the market concentration of legal services in restrictive frameworks will not be met at all by Option 1. Innovative new legal business models will not be facilitated.
- e) **Compliance Burden** – the compliance burden for solicitors and barristers would remain largely as before but with the identified shortcomings in relation to competition, costs transparency and consumer's interests remaining as well.
- f) **Regulatory** – the regulatory impact will maintain its current defects and underlying lack of public confidence arising from the model of self-regulation.
- g) **Some Productivity Gains** – the legal services domain has not been very receptive to new or more efficient operating practise models and many of its structures come from an age which has been overtaken by developments in information technology, business administration and corporate governance. The transactional efficiencies brought by these new developments will not be acknowledged or exploited and will remain prohibited under the existing professional regimes.
- h) **Business environment** – the costs to business of the existing legal services structures will remain exactly the same with no incentivisation of more innovative service provision.
- i) **Knowledge Infrastructure** – legal professional education provision will remain as is, data on the basis and determination of complaints and legal costs will remain inaccessible. The defence of intellectual property rights will remain highly expensive.
- j) **Cost** – the cost would be determined in terms of a lack of structural reform that is responsive to current economic legal services sector realities and the further embedding of anti-competitive or otherwise restrictive practices in the provision of legal services in the State. Similarly, there would be a continued lack of transparency in relation to legal costs to the continued detriment of corporate and private consumers of those services.

Option 2: A new full-spectrum regulatory regime

85. In the State of New South Wales, Australia, notwithstanding the new business models introduced, the establishment of a new statutory regime for the supervision of the legal professions has generated a Legal Profession Act of 2004 with 739 sections and 9 extensive schedules – its Law Society represents 21,000 solicitors and the State has 2,106 practising barristers. In England and Wales the similarly framed Legal Services Act 2007 comprises 214 sections and a series of 24 schedules under which, *inter alia*, the Solicitors' Regulation Authority (SRA) regulates over 120,000 solicitors in England and Wales (15 times the 8,000 or so practising solicitors covered by the Law Society in Ireland). The SRA had an annual budget of £48.7 million (€55m) for 2010 and employs 600 staff across two office locations. There is also a Bar Standards Board that shadows the Bar of England and Wales. The additional and overarching Legal Services Board for England and Wales has 33 employees and an annual operating budget of around £5m – this compares more favourably to Option 3 being put forward in this RIA.

86. A further complexity of a new and full-spectrum regulatory regime along the lines of England and Wales is that it would necessitate a regulatory entity to shadow each and every professional organisation with the attendant costs involved – a regulator of regulators. There is currently an ongoing public debate being led by the Minister for Justice and Lord Chancellor on the future of legal services regulation in that jurisdiction where some observers consider that the shadowing entities remain victims of regulatory capture by their professional bodies. For example, the board of the Solicitors Regulatory Authority of England and Wales is seen to be in some ways answerable to the Law Society of England and Wales. A new, single and independent regulator is one of the options now among those being considered for the future regulation of the legal professions in England and Wales.

87. This full spectrum regulatory regime would involve the State in totally subsuming the professional, educational and accreditation governance frameworks currently administered by the professional bodies themselves. For example, the latter option would involve setting up a quasi- Legal Education Authority to set and monitor curricular structures, standards and outputs for the formation of legal professionals with a major injection of staffing and other resources – while also duplicating the standard-setting and performance-monitoring structures already in place for third-level education in the State. It would take over each and every regulatory function of the two legal professional bodies at a cost of millions of euro per year in replicating their existing infrastructures.

88. Fundamentally, this option would run contrary to current policy against the setting up of a major statutory body where alternative and more streamlined options can be relied upon. The fact that Northern Ireland and Scotland, whose legal sectors compare better in scale to our own, have chosen not to go the maximalist route lends credence to the case for observing the economies of scale at play in our jurisdiction and tailoring our responses accordingly. Simply put, we cannot afford, and with a more focussed approach, do not need to resort to, a full-spectrum and maximalist regulatory regime to achieve the desired level of independent regulation to which the Government is firmly committed.

89. **Option 2: Impacts**

- a) **Rights of Citizens** – this option has the potential to improve the balance of client interests in the legal services domain but its prohibitive cost is likely to undermine the benefits that may arise.
- b) **Consumers** – consumers would be more aware of their rights and interests under this model but this would be at great administrative cost.
- c) **Economic Market** – the market would be burdened by substantial and additional regulatory cost under this full-spectrum regulatory regime including for both practitioners and consumers of legal services.
- d) **Competition** – The structures of the legal services market, previously delimited and defined by self-regulation would be opened up but not in the most cost-effective manner due to the regulatory burden that would arise.
- e) **Compliance Burden** – the compliance burden for solicitors and barristers would substantially increase as the new regime would impinge on every aspect of their regulation from professional qualification and induction to retirement. This would be a blunderbuss regulatory regime without strategic focus on those areas of most risk.
- f) **Regulatory** – the regulatory impact would be qualitatively deeper but given its wide range and scope would also be excessive in depth and cost.
- g) **Some Productivity Gains** – The transactional efficiencies brought on by new business models and technologies are likely to be offset by the burdens of satisfying an all-encompassing regulatory regime.
- h) **Business environment** – The business community would probably be given more choice and more accessible service options but also with more red-tape and cost.
- i) **Knowledge Infrastructure** – the opening up of legal professional education provision could be achieved but with a very costly regime to oversee it which would duplicate current academic excellence regimes.
- j) **Option Cost** – As outlined earlier in this RIA, the total cost of regulation alone to the Law Society can be in the region of €11 to €14 million and this cost would be subsumed in total by any new regulatory superstructure. On top of that amount there would be additional costs accrued in the setting and enforcement of educational standards and their certification which it is assumed would add at least another €1 million to the cost burden of this Option. This option would also include, for the State, the burdens and potential liabilities of the onerous Solicitors Compensation Fund. Cost - **€15 million plus.**

Option 3: A targeted, lean and independent legal services regulator

90. Option 3 offers greater proportionality in the application of the Government's policy commitment to an independent regulator for the legal professions. It avoids the massive costs that would accrue were the new body to take the full-spectrum approach envisioned by Option 2. There are, therefore, a number of factors that are likely to positively affect the

costs that will have to be borne by consumers and by legal practitioners in buying into this third option as follows:-

- i. *Replacement of bodies, not additions* - The Solicitors Disciplinary Tribunal will be replaced and the functions of the existing Independent Adjudicator will cease. The Complaints functions of the Law Society as well as those of the Bar Council including the Barristers' Professional Conduct Tribunal and the Barristers Professional Conduct Appeals Board, will be taken over by the new Regulatory Authority. There will be just one Complaints Committee structure and one Legal Practitioners' Disciplinary Tribunal to deal with both legal professions. The Office of the Taxing Master will be replaced by the Office of the Legal Costs Adjudicator maintaining the current revenue-streams from the determination of legal costs. The Advisory Committee on the grant of Patents of Precedence being created under the Bill will formalise an existing structure by statute. The Legal Services Ombudsman Act 2009 will be repealed redirecting its anticipated resources to the new Legal Services Regulatory Authority.
- ii. *Minimising additional liabilities on the Exchequer and public resources:* By maintaining the functions of the Law Society in relation to financial regulation of its members, particularly as they relate to the Compensation Fund and Professional Indemnity Insurance and the issue of Practising Certificates, a major administrative burden and potential liability will be avoided.
- iii. *Accountability to Minister for Public Expenditure & Reform, Oireachtas Committees etc.* Key measures will be put in place to monitor and manage regulatory cost. The consent or approval of the Minister for Public Expenditure and Reform will be required in a number of important areas, including in relation to payments made to members of the Authority and committee members; in the appointment of staff, consultants and advisers; in relation to advances made to the Authority and in agreeing on the operating costs of the Authority that will be recoupable through the levy. In addition, the CEO will be accountable to the relevant Oireachtas Committees. It is a certainty that the legal practitioners who will be paying the levy and who will have some representation on the new Authority will also be keeping a close eye on the Authority's and the Tribunal's expenditure and this should contribute to keeping costs down. Each year's budget for the new Regulatory Authority will be based on the actual spend of the preceding year while the levy will be based on actual costs to each of the professions of the new regime and on the cost of the actual complaints they have respectively generated.
- iv. *Public Accountability-* the new Legal Services Regulatory Authority will be subject to a modern array of governance provisions in relation to its business and strategic planning and annual reporting by reference to the Houses of the Oireachtas and the relevant Joint Committees. In tandem with those stakeholders who will be appointed by nominating bodies to the new Regulatory Authority, these controls on regulatory cost should also help to prevent any mission creep by the new Regulatory Authority.

- v. *Transfer of moneys from old to new system* - The monies currently paid by solicitors and barristers, through their membership fees, to the Law Society and Bar Council for the purposes of complaints handling and discipline should, in effect, transfer to the new bodies with the relevant disciplinary and other functions. It should be noted that consumers are already carrying the burden of these costs through the practitioners concerned. At the same time, it must be allowed that there will be some modest additional cost that may arise as the price to be paid for “independent” regulation by a dedicated regulating entity.
- vi. *Volunteerism* - Given that the professional bodies have made a virtue of the voluntary services provided by their members in the context of the current disciplinary process, it is open to them to continue to do so. This will help to keep down the costs to the bodies that will have to be met by means of the levy and obviate the need to permanently appoint and salary personnel for the new disciplinary structures while still allowing their out of pocket expenses to be covered.
- vii. *Resolving matters by alternative dispute resolution.* The Legal Services Regulation Bill places importance on the process of mediation and the informal resolution of disputes between parties in a number of ways. The Bill places a statutory obligation on the Legal Services Regulatory Authority to invite parties to engage in mediation where it believes this might resolve the matter in hand. It also places an obligation on legal practitioners to similarly attempt to resolve disputes with their clients in an informal way before engaging with the Authority or the Tribunal. It is provided that the Legal Costs Adjudicator also invite parties to mediation. While mediation cannot be forced on parties, the consequence of unreasonably refusing to engage in mediation or otherwise resolve disputes informally is that may affect the awarding of costs by the court to winning parties. In addition the Authority’s complaints handling apparatus will be front-loaded in that the staff of the Authority will attempt to resolve any complaints informally and at a very early stage.

91. There are also a number of factors which may adversely affect the costs to be borne under the new regulatory regime, including the following possibilities:

- i. *Increase in number of complaints* – It may be that, notwithstanding any limitation periods that may apply, some dissatisfied clients of solicitors and barristers are awaiting the establishment of the new Regulatory Authority to lodge their complaints. There may be some expectation that the new Authority will, therefore, experience an initial surge in complaints received.
- ii. *Potential for increase in Tribunal hearings* - On average, over the past three years, the Solicitors Disciplinary Tribunal has sat 100 times, made 100 findings and received 150 new applications per year. The majority of the Tribunal’s inquiries are completed in one day with a small number of lengthy cases stretching the average to 2.5 days. In the crudest terms, it costs around €0.8m annually, giving an average of €8000 per hearing. It is difficult to determine the exact number of cases that will be referred to the Tribunal by the

Authority. Equally, it is difficult to put an exact figure on the cost of a hearing before the Tribunal. However, on the basis of the number of cases opened in recent times – a period involving an exceptional level of complaints and coinciding with a boom and a downturn – and given the Law Society’s confidence in the integrity of the current process, the expectation would be that the cost of the Tribunal would be in or around the current costs of €0.8 million per year.

- iii. *Transition and building up of expertise* - New staff members for the new bodies will require induction training and up-skilling for their areas of responsibility. By anticipating this need in the early recruitment and training of such staff any operational lags can be avoided but there will, no doubt, be some transitional costs involved.
- iv. *Cost of Judicial Reviews* – the new regulatory bodies are likely to face a number of challenges of Judicial Review and these can lead to substantial legal costs. However, the costs of such challenges are expected to be mitigated by any costs recovered by successful defence of the actions concerned. Overall, it is anticipated that they will be manageable in the application of the levy on the legal professions that will fund the new regulatory regime. Some appeals to the High Court can also be anticipated from the Disciplinary Tribunal. However, the record of the Solicitors Disciplinary Tribunal provides some comfort here. In 2010, the High Court made orders in respect of seven appeals, initiated prior to 2010. In all cases, the appeals were dismissed and the decisions of the Tribunal affirmed.

92. **Option 3: Impacts:**

- a) **Rights of Citizens** – the Bill achieves a greater balance of client interests which have not been adequately to the fore previously and sets them out plainly. Citizens will have a more transparent basis upon which to exercise their rights when they engage legal practitioners and this should be at lower cost.
- b) **Consumers** – the existing standards applied by legal service providers have been layered and largely opaque and redolent of an age focussed on professional standards rather than standards of service. The new public information function and open regulatory regime will now place consumer interests in full view and confer greater consumer empowerment. Consumers will be able to shop around on the back of greater consumer choice and value thereby enhancing their engagement including in service areas that may be neglected by the traditional service models at present.
- c) **Economic Market** – concerns about the sheltered nature of the legal professions and access to them are being addressed in the proposed new legislation using the building blocks of the Legal Costs Working Group and the Competition Authority reports. Innovation will come into the legal services sphere, the economic burden of legal transactions across the economy should be mitigated. Routine legal transactions that have been carried out in artisan fashion will be provided on a more competitive and cost efficient basis. Costs to enterprise/SMEs should be mitigated by the new measures.

- d) **Competition** – The structures of the legal services market, previously delimited and defined by self-regulation are now to be open and amenable to contemporary and modern regulatory responses, in the case of barristers for the first time. Market concentration in traditional working frameworks will be opened up with the backing of legislation. Traditional restrictions on the structure of legal practices and their interface with potential clients will be removed.
- e) **Compliance Burden** – the compliance burden for solicitors and barristers remains largely as before but will now be implemented independently and from outside the professional domain. Compliance costs should migrate in proportion to the transfer of the regulatory functions concerned to an independent body. Some set-up costs can be anticipated.
- f) **Regulatory** – the regulatory impact will be qualitatively deeper and predicated upon stated statutory principles and objectives and will be backed by a new array of powers and functions. Regulatory outcomes will be in plain view through modern governance and reporting structures provided for in the new Bill. Independence will be brought to bear to the utmost degree on the processing of complaints about legal services.
- g) **Some Productivity Gains** – the legal services domain has not been very receptive to new or more efficient operating practice models and many of its structures come from an age which has been overtaken by developments in information technology, business administration and corporate governance. The transactional efficiencies brought by such developments will now be enabled and acknowledged as realisable options with current restrictive approaches lifted.
- h) **Business environment** – clients will have more direct access and bargaining power by virtue of enhanced cost transparency and the diversification of practice models. Businesses will have increased bargaining power in shopping around for more effectively delivered legal services. There will be new business opportunities in the area of legal services but they will also have substantial regulatory requirements that will need to be met by any newcomers to the sector.
- i) **Knowledge Infrastructure** – the possibility of legal professional education provision being opened up to alternative providers under objective standards will be explored by the Legal Services Regulatory Authority. More public data will be available in relation to legal services and to legal costs.
- j) **Cost** – Building on the above considerations and the estimated figures that follow in this RIA it would be estimated that the new Legal Services Regulatory Authority would cost between €3.5 and €4.0 million per annum to run.

93. **Preferred Option:**

On the basis of the above analysis reflected in the multi-criteria comparison at Table 1 annexed below, the targeted, lean and independent legal services regulator of Option 3 is that preferred as the most proportionate and cost-effective means to create a compact, strategically focussed framework which can meet the Government's core policy objectives in relation to the structural reform of the legal sector. This option is being given expression in the Legal Services Regulation Bill 2011 and the amendments to it being brought forward.

Estimated Size and Costs of the Bodies

94. The staffing costs calculations are estimated by using the formula, as set out in the 2009 *Revised RIA Guidelines – How to conduct a Regulatory Impact Assessment* and are based on public sector salary levels. It should be noted that the staff configurations are projected for estimate purposes and that within the overall cost figure it is likely that the distribution of staffing and grades will adjust to meet actual work requirements upon establishment of the new entities envisaged under the Legal Services Regulation Bill.

Figure 11

A	Pay	Mid point of pay range using formula above
B	Direct Salary Cost	Pay + Employers PRSI
C	Total Salary Cost	B + Imputed pensions cost (typically 25% of A)
D	Total Staff Cost	C + 40% of A in respect of 'overheads'

These estimated costs are based on a projected staff configuration of 24 for the new Regulatory Authority and 5 for the Disciplinary Tribunal plus other related costs and expenses arising. The 24 staff of the Regulatory Authority would comprise the following in terms of number and projected levels: 1 Asst. Secretary; 1 Principal Officer; 2 Asst Principals; 7 Higher Executive Officers; 8 Executive Officers; 6 Clerical Officers. In the case of the new Legal Practitioners' Disciplinary Tribunal the projected staffing distribution is 1 Asst. Secretary; 1 Principal Officer; 1 Higher Executive Officer; 2 Executive Officers; 1 Clerical Officer. The final figure reached has been rounded up to €4 million as set out below thereby allowing some spending flexibility to meet any additionally identified needs.

95. The Legal Services Regulatory Authority

Chief Executive:

Calculation: A full-time position at Assistant Secretary level. Salary €135,000 with overheads giving rise to a working cost of €237,263.

Authority Members:

Calculation: In the interests of prudence, the possibility that the five lawyer representatives will continue to offer their services voluntarily is not included in this calculation. Therefore, 10 board members at a current annual rate of €7695 + one chairperson at current annual rate of €11,970 = €88,920. Plus expenses estimated at 10% (€8,892) + overheads of 40% (€35,568) = €133,380.

Complaints Committee:

The Bill provides for 27 members, who may be non-members of the Authority, that is, additional to the board of 11. Twelve must have practised as solicitors or barristers for 10 years or more, so there is a possibility that these persons will continue to give their services voluntarily as they do in the current system. However, that possibility will again be discounted for the purposes of this calculation. Another point to note is that there is no 'per sitting' or 'per diem' rate on which to base this calculation as there is no comparable State body. Therefore,

this calculation is based on the amount currently paid to on an annual basis to members of State boards, which incidentally roughly mirrors that currently paid to lay members of the Barristers Professional Conduct Tribunal.

Calculation: 27 members at €7695 = €207,765 + 10% expenses (€20,777) + overheads of 40% (€83,106) = €311,648.

Other Committees:

Section 12 of the Bill permits the Authority to establish committees to assist and advise it and to perform delegated functions. It is presumed these committees will consist of persons drawn from the pool of Authority members, Complaints Committee members and staff, therefore, no additional cost is incurred here.

Consultancies:

Any contracts for consultancy-type services would have to be put out to tender and would be temporary. This estimate is therefore based on HEO level costs in the Civil Service.

Calculation: 2 at €80,000 + PRSI (€17,200) + overheads (€64,000) + (zero pension) = €241,200.

Staff:

The current staff contingent of the Complaints and Client Relations Division of the Law Society forms the basis of this calculation. It has a Head, a Deputy Head, five Solicitors / Complaints Executives, an Office Manager and six Secretaries. In the public sector model, these might be described as a Principal Officer (PO), an Assistant Principal Officer (APO), five Higher Executive or Administrative Officers (HEO/AO), an Executive Officer (EO) and six Clerical Officers (CO). In the interests of prudence as there may be an increase in the number of complaints received by the new Authority, this calculation includes extra middle-level staff as set out below.

Calculation: 1 PO, 2 APOs, 7 HEO/AOs, 8 EOs and 6 COs at approximate mid-point salary scale + PRSI + pensions + overheads = PO (€158,175) + 2 APOs (€246,050) + 7 HEO/AOs (€615,125) + 8 EOs (€562,400) + 6 COs (€316,350) = €1,898,100.

Inspectors:

If the Authority decides to appoint persons to the role of inspector, it may do so from within the staff contingent. Therefore, no additional cost is foreseen here. Inspectors appointed externally may give rise to recoverable costs in the actions concerned.

Office Premises:

This cost should be covered by the 40% overhead calculations in relation to staff and members above.

Other Costs or Expenses:

The levy provision at S.69(3)(f) foresees other recoupable costs or expenses. Legal representation, especially in relation to Judicial Review challenges to the Authority will factor here. However, this is impossible to calculate. If judicial reviews are taken, legal representation will be expensive, but costs might also be awarded in favour of the Authority.

96. **The Legal Practitioners Disciplinary Tribunal**

Chairperson:

It is possible the position of Chairperson of the Tribunal will be part-time only, but will be calculated here as a full-time position as a precaution. The position will carry with it a five year renewable term.

Calculation: One full-time position at Assistant Secretary level. Salary €135,000 with overheads giving rise to a working cost of €237,263.

Members:

There will be at least 16 Tribunal Members. The majority will be lay with several members being nominated by the Law Society and the Bar Council, thus opening up the possibility of volunteerism by these bodies. Each sitting may be in a quorum of three to five committee members, but it is presumed that three will be the norm. The logic of the following estimate is that the new Tribunal could sit 200 times per annum, which is twice the current average number of sittings in the Solicitors Disciplinary Tribunal. The payment per sitting is based on the current scale of fees to members of the Refugee Appeals Tribunal (RAT) for 'accelerated appeals' and 'on papers' hearings. It is presumed that the higher payments made to RAT members for oral hearings is not justified here where the burden would be shared between three to five people.

Calculation: 3 x €276 = €828 per sitting x 200 sittings = €165,600 plus 40% overheads cost of €66,000 giving a total of €231,600.

Registrar:

There could be a Registrar's position with a five year renewable term. This is estimated at the Principal Officer rate, including overheads and PRSI, to be €135,675.

Staff:

The Solicitors Disciplinary Tribunal currently has additional staff of a Secretary to the Registrar, an Administration Assistant, and an Administrator/Receptionist. The following calculation is similar, but provides for an extra staff member in case of an increase in the number of sittings etc.

Calculation: 1 HEO = €87,875; 2 EO = €140,600; 1 COs = €52,725. Total = €281,200.

Office Premises:

This cost has been included in the above estimates for staffing costs as an overhead.

Other Costs or Expenses:

S.62 provides for appeals from the Tribunal to the High Court, which may necessitate legal representation expenses for Tribunal. However, the record of the Solicitors Disciplinary Tribunal shows that in 2010, the High Court made orders in respect of seven appeals initiated prior to 2010. In all cases, the appeals were dismissed and the decisions of the tribunal affirmed. Calculated here at nil.

97. **The Office of the Legal Costs Adjudicator**

At present, the Office of the Taxing Master comprises of the two Taxing Masters and three support staff (1 HEO, 1 EO and 1 CO). This staffing complement deals with a case range of 400-500 cases per year, but has a large backlog, which suggests this staff complement is too small. The Bill provides for a Chief Legal Costs Adjudicator and an unspecified number of Legal Costs Adjudicators. Current expenditure is approximately €670,000, but it also generates revenue of approximately €2.8m.

Calculation: All costs absorbed by revenue generated by the Office.

98. **The Advisory Committee on the grant of Patents of Precedence**

The Bill contains no reference to payments to members of this Committee and all members will already be persons in public and legal positions. In addition, fees may be prescribed for the consideration of applications for patents, therefore the cost is calculated at nil.

Figure 12

Total Costs Estimate for the New Regulatory Regime

The total costs estimate for the new bodies (the 'Authority' and the 'Tribunal'), based on the estimates above, is €3,707,329 per annum. Allowing flexibility for additional expenditure to meet identified needs, the above figure is rounded up to an estimated total cost of

€4 million per annum.

D. Consultation

99. The array of reviews and reports cited at the outset of this RIA points to a succession of consultative processes and ensuing recommendations, which have involved an array of stakeholders in the legal services domain. Indeed, the patchy reform which has taken place over the years can be linked to the pattern of these reports and to that extent has been inadequately driven by them. Previous reform initiatives of the Restrictive Practices Commission (1982) and the Fair Trade Commission (1990) received 33 and 80 submissions respectively, while the latter also held 40 days of meetings with interested parties. The Legal Costs Working Group (2005) received 26 written submissions. The Competition Authority (2006) received 17 written submissions in response to its preliminary report as part of its extensive consultations.

100. Consultations in relation to the Legal Services Regulation Bill have been ongoing since its publication in November 2011 as a key structural reform under the Programme for National Recovery and under the EU/IMF/ECB Memorandum of Understanding. A wide range of stake-holders have now provided views on the Bill reflecting its modern balance of interests between those of the legal professions and those of business or private clients who avail of legal services. This process has included the very detailed Second Stage debate of the Bill which took place from 16th December 2011 to 23 February 2012. There were also separate discussions on the Bill which took place at the Joint Committee on Justice, Defence and Equality. The Bill has attracted wide public debate including in the press and other media.

101. The Minister for Justice and Equality also met with the Legal Services Commissioner of New South Wales, Mr Steve Mark, and visited a model multi-disciplinary law practice in Sydney as well as the High Court of Australia as part of the fact-finding component of his March 2012 visit to Australia. New South Wales has been to the forefront of legal professional reform since the 1990s and has led the way internationally in rolling-out new legal business models. The Minister made a similar visit to meet his UK counterpart and the relevant regulatory authorities of England and Wales on 1st November 2013.

102. In July 2012, in supporting discussion of the Bill, the Minister for Justice and Equality hosted a conference on "Regulatory Reform for a 21st Century Legal Profession" with guest speakers from home and abroad who shared their experiences of legal sector reform including the Legal Services Commissioner of New South Wales and the Chief Executive of the Legal Services Board for England and Wales.

103. In terms of written submissions, the Minister for Justice and Equality has received just under 50 since publication of the Bill representing nearly 30 interested parties along with dozens of individual letters from concerned members of the public and practitioners and the formal observations of other Government Departments. The submissions have come from a wide range of bodies including the main legal professional bodies and associations,

academics, civil liberties and human rights organisations, private businesses and government entities. For their part, the Law Society, the Bar Council and the King's Inns have provided substantive views, across a number of submissions, that are among those to which consideration continues to be given. In addition, the Minister for Justice and Equality and his officials have, together and separately, had meetings with various other interested groups and bodies. Alongside those representing the legal professions, these have included such entities as the Competition Authority, the Consumers' Association, the Independent Adjudicator and the Committee of Heads of Irish University Law Schools.

104. A wide range of stake-holders have therefore provided, and continue to submit, views on the Legal Services Regulation Bill. These views continue to inform the development of the Bill which introduces a new and more modern balance of interests between those of the legal professions and those of business or private citizens who avail of legal services. In exercising its policy prerogative and in conducting its consultations, the Government is seeking to maintain this balance so as to avoid any actual or perceived regulatory capture by any particular lobby or interest group.

105. The focus of the submissions has ranged from enthusiastic support for the Bill's reform agenda to calls for the amendment, revision or deletion of key aspects of the Bill. Many of the concerns expressed in the submissions are among those that have been, or will be, responded to during the Bill's ongoing Committee Stage. Key areas of change, some of which have already been signalled by the Minister for Justice and Equality, include:

- the removal of several *pro forma* Ministerial consents and oversights which, though usually applied to statutory bodies, were perceived by some as impinging on the independence of the new Legal Services Regulatory Authority. Some of these amendments were already introduced by the Minister for Justice and Equality at Committee on 17th July 2013.
- the appointment of the new Legal Services Regulatory Authority independently of Government through nominating bodies with a similar approach to the appointment of the new Complaints Committee and Legal Practitioners' Disciplinary Tribunal. These amendments put to rest earlier concerns about possible interference with the independence of the new Authority and of the legal professions.
- the retention, by the Law Society of its obligations and functions in relation to matters of fraud and dishonesty obviating a substantial administrative and potential financial liability on public resources that could arise from the Solicitors' Compensation Fund. However, all matters of professional conduct and discipline that may arise in relation to the Fund will be dealt with separately under the new independent complaints regime including, where appropriate, by the new Legal Practitioners' Disciplinary Tribunal.
- the elaboration of complaints procedures including in relation to less serious service-type complaints and their preliminary assessment.

- elaboration of the application of the Levy that is to be charged to the legal professionals being regulated by the Bill under which the new regulatory regime is to be self-funding. The new Regulatory Authority will now maintain the Roll of Practising Barristers.
 - enhanced regulatory provisions in relation to legal partnerships and multi-disciplinary practices including by reference to professional standards and in relation to designated “managing legal practitioners”.
 - some technical and other amendments to the legal costs provisions.
-

E. Enforcement and Compliance

106. The Legal Services Regulatory Authority will regulate both solicitors and barristers in place of a situation where solicitors are self-regulating under the Solicitors Acts and barristers are self-regulating under their own Codes and other internal governance arrangements. Where the new Regulatory Authority introduces new regulations or codes these will prevail over any existing standards. A lack of cooperation with the work of the new Regulatory Authority or its duly appointed inspectors will be punishable under statute.

107. The existing *lacuna* in regulation whereby some barristers can practise outside the Law Library-Bar Council axis will be addressed for the first time. The Roll of Practising Barristers will, therefore, be maintained by the new Regulatory Authority.

108. The accountability and independence of the Legal Services Regulatory Authority will be assured by its modalities of appointment (i.e. by nominating bodies) and the fact that it will be accountable in its own right and on an annual reporting basis to the Houses and Committees of the Oireachtas.

109. Solicitors and Barristers will now both be independently regulated in relation to their professional conduct through the new and independent Complaints Committee and the independent Legal Practitioners Disciplinary Tribunal. Issues of misconduct will be referable to the High Court in appropriate instances and the conduct regime will have a range of sanctions at its disposal right up to the striking-off or disbarment of a legal practitioner. All matters of misconduct will now be dealt with independently under the new architecture.

110. The legal costs regime will be modernised and underpinned with modern governance and reporting structures making visible its performance, functions and outcomes for the first time. The determinations made by the new Legal Costs Adjudicator will be made public. A set of Legal Costs Principles, iterated in Schedule 1 of the Legal Services Regulation Bill, provides a benchmark for the first time against which legal costs can be adjudicated. Additional transparency obligations are being placed on both solicitors and barristers in relation to how they convey legal costs to clients or keep clients up to date on any cost implications arising from the conduct of their case. There is an existing delineation of the functions of the Taxing-Master who is an officer of the court and this will continue under the legal costs transparency and compliance structures provided for in the Bill – the Legal Costs Adjudicator will report annually through the Courts Service.

111. New policies and principles are set out, in some cases with supporting public consultation processes, for the regulation of new business models for the provision of legal services in the State alongside the traditional models currently employed by the legal professions which will continue to be a practising option.

112. The costs of enforcement and compliance should remain much the same in that they will transfer to the new Legal Services Regulatory Authority with the relevant functions currently carried out by the legal professional bodies for whom they represent an existing charge on members. Under the Bill these costs will be recovered by a levy on the legal practitioners covered by the new regulatory regime taking account of actual costs of dealing with relevant complaints year to year and the actual breakdown in numbers of practising solicitors and barristers who are being regulated.

113. The retention of the current Compensation Fund and financial inspection regime administered by the Law Society supports a high level of vigilance and compliance in an areas of highest risk (i.e. fraud and dishonesty) while also ensuring that the actual and potential liabilities of the Fund do not fall back by way of a drain on Exchequer or other public resources.

F. Review

114. The Legal Services Regulatory Authority will be accountable to the Houses and relevant Committees of the Oireachtas. It will report annually and compile its own strategic and business plans supported by the relevant data in real time.

115. Similar governance and reporting provisions are made in relation to the Office of the Legal Costs Adjudicator for the first time. Performance indicators will include the specific outputs of the new entities and of the new professional conduct architecture and the degree of public confidence that comes to be enjoyed by the new regulatory regime.

116. Over time these should impact on the relevant data of the CSO, World Bank and other authoritative sources including in terms of the legal costs burden on competitiveness and enterprise.

117. The annual expenditure of the Legal Services Regulatory Authority will be matched to the actual expenditure of each preceding year and will be subject to the scrutiny of its board and of the Minister for Public Expenditure and Reform by way of managing regulatory cost.

118. The Regulatory Authority will have research and review functions in relation to several key areas of the provision of legal services in the State with attendant reporting obligations as set out in the Bill. A number of the provisions in the Bill involve public consultations.



November 2013