

Competition in
Professional
Services

solicitors & barristers

The Competition Authority is undertaking a study across a range of eight professions in the construction, legal and medical sectors of the Irish economy. The specific professions being reviewed are engineers, architects, dentists, optometrists, veterinary surgeons, medical practitioners, solicitors and barristers

December 2006



The Competition Authority
An tÚdarás Iomaíochta

Executive Summary

1. The Competition Authority has concluded that the legal profession is in need of substantial reform. The profession is permeated with unnecessary and disproportionate restrictions on competition which should be removed so that consumers can benefit from greater competition in legal services. The Competition Authority's 29 recommendations are in line with previous recommendations made by other independent bodies which have not been implemented. Bodies that have made recommendations in the past include the Restrictive Practices Commission (1982), the Fair Trade Commission (1990) and the OECD (2001). The recommendations are also in line with the reform of the legal profession that has taken place, and is taking place, in other common-law countries, such as England, Wales, Northern Ireland, Australia and New Zealand.
2. The Competition Authority recommends comprehensive new legislation – a Legal Services Bill – to address the competition concerns identified in this report. The legislation would establish an independent Legal Services Commission with overall responsibility for regulating the legal profession and the market for legal services. The Legal Services Commission would be an independent, transparent and accountable body, involving a wider group of stakeholders than the current model of self-regulation. The Law Society and the Bar Council would continue to have a role in the day-to-day regulation of the profession but would be required to separate their representative and regulatory functions. A new regulatory structure of this type is required to meet the principles of good regulation established by the Government and to address adequately the risk associated with self-regulation. Currently, the Law Society and the Bar Council face a conflict of interest between their mandate to represent the interests of their members and their role in protecting consumers and the public interest.
3. Other key elements of the Legal Services Bill would be the removal of the Law Society's and King's Inns' role of setting standards for the provision of legal education - which has facilitated their monopolies in this area - and the introduction of the profession of conveyancers in Ireland. The Law Society and King's Inns and any other institutions that wish to provide training for solicitors or barristers should be required to apply to the Legal Services Commission for approval to do so. Conveyancers would be qualified to provide conveyancing services only and have the same consumer protection regulation as solicitors.
4. Overall, the legal profession is in need of root and branch reform reflecting the important need to create a modern system of regulation that is proportionate, accountable, transparent, flexible and reflects the needs of consumers. In the interim, there is much the legal profession can do itself to initiate reform for the benefit of consumers. Indeed the Bar Council has made changes in response to the Competition Authority's Preliminary Report on the Legal Profession, published in February 2005. The Law Society and Kings Inns, while not responding directly to the issues raised in the Preliminary Report, have introduced some changes to the way barristers and solicitors are trained. However, much more needs to be done. In particular, the Competition Authority recommends that:
 - The Law Society and the Bar Council should develop and actively provide useful and accessible information for consumers on their rights and key features of legal services. They should develop a "Consumer Information" page on their websites;
 - The Bar of Ireland should allow unlimited direct access to barristers for legal advice.
5. Legal services are essential for access to justice, a fundamental value in society, and for the operation of the entire economy. Access to justice requires not only that the legal advice given is sound but also that it is provided in a cost-effective and client-responsive manner. Excessive legal fees and inefficient business methods increase the cost of living and the cost of doing business in Ireland and negatively affect Ireland's competitiveness.
6. Irish consumers, businesses and organisations paid just over €1 billion for legal services in 2003. This is equivalent to almost 1% of everything bought or sold in the country (GDP). This underestimates the impact of the sector on the economy as a whole. Legal services provide part of the fundamental infrastructure of an economy and are the essential backbone for contracts in trade, property and employment.

7. The Competition Authority finds that competition in legal services is severely hampered by many unnecessary restrictions permeating the legal profession. These restrictions emanate mainly from the regulatory rules and practices of the Law Society, the Bar Council and the Honorable Society of King's Inns but also from the relevant legislation. For example:
 - There are a number of unnecessary restrictions on becoming a solicitor or barrister. For example, those wishing to enter either branch of the legal profession must do so by way of a training school monopoly;
 - The legal profession in Ireland is organised into a highly rigid business model: access to barristers for legal advice is limited to a few approved clients, barristers cannot form partnerships or chambers or represent their employers in court;
 - There is no profession of "conveyancers" in Ireland, as in other common-law countries, and this limits competition in conveyancing services;
 - Consumers seeking legal services are not given relevant information to help them choose services that best meet their needs;
 - Known anti-consumer practices - such as barristers charging fees in proportion to one another and solicitors charging fees as a percentage of the award their client receives - have continued unchecked;
 - The title of Senior Counsel is inclined to distort rather than facilitate competition;
 - There is a near blanket ban on advertising by barristers and some unnecessary restrictions on solicitor advertising;
 - Consumers wishing to switch to another solicitor or barrister face unnecessary obstacles.
8. The Law Society, the Bar Council and the King's Inns have not sufficiently promoted the interests of consumers of legal services. They have failed to provide consumers with necessary information for dealing with the legal profession. They have also placed unnecessary limits on how consumers access legal services and on who can become a solicitor or barrister. They have presided over restrictions on competition which may have benefits for lawyers, by sheltering them from competition, but which harm consumers. The overall effect of the myriad restrictions on competition in legal services has been to limit access, choice and value for money for those wishing to enter the legal profession and those purchasing legal services.
9. The Competition Authority makes recommendations in this report to remedy all of these issues.

Legal Services Commission

10. The Competition Authority's key recommendation is that regulation of the legal profession and legal services should be overseen by a Legal Services Commission. This would be an independent, transparent and accountable body, involving a wider group of stakeholders than the current model of self-regulation.
11. The current regulatory framework for the legal profession in Ireland raises the potential for conflicts of interest between the commercial interests of lawyers and the interests of consumers of legal services. Barristers are totally self-regulated via the Bar Council, and solicitors are largely self-regulated via the Law Society, with minimal independent oversight in some areas. The Bar Council and the Law Society are also the representative bodies for barristers and solicitors respectively, and in that role, lobby for and promote the interests of the legal profession. In their role as regulators of the legal profession, the Bar Council and the Law Society must ensure that the legal

profession operates to the benefit of consumers. These two roles can come into conflict. Housing them in the same organisation lacks transparency.

12. Under the new model for regulation proposed by the Competition Authority, the Law Society and the Bar Council would still have a role to play in the regulation of the profession but would be required to separate this role completely and distinctly from that of representing their members.
13. A new regulatory structure of this type is required to meet the principles of good regulation established by the Government and to address adequately the risk associated with self-regulation. Independent regulation of the legal profession would be consistent with reform towards greater transparency, accountability and consumer-focused regulation in other professions and sectors in Ireland (for example, financial services and the medical professions) and in the legal profession internationally. Most recently, a Bill has been introduced in England and Wales for the creation of an independent regulator of the legal profession.
14. The establishment of a Legal Services Commission would complement the establishment of a Legal Services Ombudsman which has been proposed by Government. The role of the Ombudsman is to provide an independent forum for complaints about breaches of the rules by lawyers; the Commission would provide independent scrutiny of the rules themselves. These two reforms go hand in hand.

Training Solicitors and Barristers

15. Entry into the legal profession in Ireland is controlled by those already in the profession. The Law Society and the Honorable Society of King's Inns control who may train to be a solicitor or barrister respectively, and the location and format of that training.
16. This situation has resulted in these bodies having a monopoly in the markets for training solicitors and barristers respectively. Potential trainee solicitors and barristers have no choice as to the format in which they can pursue their training - full-time/part-time/weekends - as there is only one choice on offer. This arrangement has the potential to exclude suitable candidates from pursuing a career as a solicitor or barrister, particularly individuals who do not have the means to finance full-time study for substantial periods of time. Other jurisdictions use a number of schools for training lawyers. For example, in the Australian State of New South Wales the Legal Profession Admissions Board recognises 10 accredited law schools and 7 providers of practical legal training.
17. The Competition Authority strongly recommends the removal of the Law Society's and King's Inns' role of setting standards for the provision of legal education. This role should instead be given to the Legal Services Commission. The Law Society and King's Inns and any other institutions that wish to provide training for solicitors or barristers should be required to apply to the Legal Services Commission for approval to do so. Competition between solicitor and barrister training schools will drive efficiency in the market and push course fees to competitive levels. This reform will ensure that an appropriate number of training places are available to match demand for legal services and that competition in legal services is not restrained.
18. The Competition Authority further recommends a new system for the recognition of non-EU lawyers' qualifications, a new way of encouraging lawyers to be competent in the Irish language, and that lawyers should be more readily able to switch between the solicitors' and barristers' branches of the profession.

Business Structures

19. The legal profession in Ireland is currently required to follow a highly rigid business model:
 - A consumer or organisation wishing to avail of legal services may retain a solicitor directly but not a barrister. Where they wish to retain a barrister, the solicitor retains the barrister on behalf of his/her client.¹
 - Barristers must operate as sole practitioners.
 - Solicitors may enter partnerships, but only with other solicitors.
 - Some firms have solicitors and barristers as employees. Employed solicitors can represent their employers in court, but employed barristers cannot.
20. Though this model of delivering legal services may suit many clients, it should not be 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 their clients.
21. First, the Competition Authority strongly recommends that the Bar Council's current Direct Access Scheme – whereby certain approved clients are allowed to approach barristers directly for legal advice - should be extended to all members of the public. The option of going directly to a barrister for legal advice should not be reserved to a few approved clients. Doing so imposes an additional cost on other clients who are obliged to retain a solicitor in order to access legal advice from a barrister. From a competition perspective, direct access to barristers for litigation would also be desirable but is not recommended at this time.
22. Second, barristers should be permitted to operate in partnerships and not be confined to operating as sole traders. Allowing barristers to form partnerships would allow them to benefit from the economies and efficiencies derived from shared costs, shared work, shared risk and shared professional reputation. Clients would benefit from a choice of service delivery that suits their needs. Also, groups of barristers who share premises and overheads, but not fee income (i.e. they are groups of sole traders), should be allowed to advertise themselves as a group.
23. Third, the Competition Authority recommends that barristers in employment be allowed to represent their employer in court. The current restriction preventing this forces businesses and organisations to engage the services of an outside barrister, through a solicitor, and reduces the supply of available barristers. It is also at odds with the fact that solicitors can represent their employers in court. Removing the restriction will promote competition between barristers.
24. Other restrictions on the business structures used by lawyers to deliver their services, such as multi-disciplinary practices, raise regulatory issues. These issues encompass public policy issues not limited to competition and require further examination by a larger group of stakeholders. The Competition Authority recommends that these issues be explored by the Legal Services Commission.

Conveyancing

25. Transferring the ownership of a house, apartment or piece of land from one person to another is known as conveyancing. Legally anyone can do it for themselves, if they have the necessary time, knowledge and confidence. However, most people prefer to employ a professional.

¹ Some organisations may go directly to barristers for legal advice.

26. In Ireland, solicitors are the only professionals allowed to provide conveyancing services. In Britain and Australia, specialist professionals known as “conveyancers”, or “licensed conveyancers”, also offer conveyancing services and are regulated to protect consumers in a similar fashion to solicitors.
27. The Competition Authority strongly recommends the introduction of a similar profession of conveyancers in Ireland. This would lead to downward pressure on conveyancing fees and more consumer-focused and innovative ways of providing these services, such as use of the internet and offering services outside normal business hours without any reduction in the level of consumer protection. The UK’s Department for Constitutional Affairs says that, while conveyancers have secured only 5% by value of the market for conveyancing, the average cost of conveyancing a £65,000 house fell by 25% between 1989 and 1998.² Licensed conveyancers in England have comprehensive websites, give on-line quotes and operate outside normal business hours.

Legal Fees

28. Consumers should be able to make informed decisions about which lawyer to choose and at what rates. Currently, there is limited information available to consumers of legal services about fees and costs prior to engaging the services of a lawyer. The lack of transparency in the price of legal services makes it difficult for consumers to shop around for legal services. If consumers cannot compare the prices for legal services there is little incentive for lawyers to compete on price.
29. In addition, the lack of information available to consumers of legal services has facilitated the persistence of a number of anti-consumer practices in the legal profession. In particular:
- Consumers do not always receive a letter laying out actual or estimated charges on retaining a solicitor, even though they have a legal right to such a letter;
 - Solicitors still frequently charge fees based on a percentage of the value of the assets being sold or disputed though this is not necessarily in the client’s interest;
 - Although it is prohibited by law to base legal fees on the monetary award a client receives in a case, evidence from two different independent sources shows that the principal determinant of legal fees in contentious issues is the size of the award;
 - Junior counsel generally charge a fee equal to two-thirds of the senior counsel’s fee, regardless of the work done by each barrister, despite the fact that this practice was identified as anti-competitive in an independent report on the legal profession 16 years ago.³
30. These features and practices can affect all buyers of legal services, even well-informed repeat buyers, but they are particularly likely to occur when the consumer is unaware of their effects. The Law Society and the Bar Council have failed to provide sufficient information for consumers of legal services about the legal profession generally and the charging of fees specifically. Neither has a section for consumers on its website. This contrasts with the efforts of regulators in other sectors of the economy, for example, the Commission for Communications Regulation and the Financial Regulator.
31. The Competition Authority strongly recommends that the Law Society and the Bar Council develop and actively provide useful and accessible information for consumers on their rights and on key features of legal services. They should develop a “Consumer Information” page on their websites.

² Department for Constitutional Affairs: “*Competition and Regulation in the Legal Services Market*” A report following the consultation “In the Public Interest?” July 2003, Annex A paragraph 24.

³ Fair Trade Commission (1990).

32. The Competition Authority recommends that the statutory requirement on solicitors to provide fee letters be made more prescriptive to ensure that solicitors' clients get a useful insight into the cost they face for legal services. Failure to provide fee letters should be subject to a meaningful penalty. The Competition Authority also recommends that the Bar Council should oblige barristers to provide similar fee information.
33. The practice whereby junior counsel charge a fee at two-thirds that of the senior counsel's fee in a case (without reference to work done) is anti-competitive and anti-consumer. It is vital that consumers are made aware that junior counsel need not charge a fee at two-thirds that of the senior's in a case. The Competition Authority also recommends that the Bar Council, as the regulator of barristers, should point out to its members that the practice is anti-competitive.
34. The Competition Authority makes further recommendations regarding the State's system of taxation of costs to ensure that the practices outlined above are no longer accepted by the State's system for adjudicating on legal costs.
35. Finally, the Competition Authority recommends that, as the largest buyer of legal services, the State considers introducing competitive tendering for legal services.

Advocating in Court

36. Barristers who have practised for a certain number of years may be appointed by Government as "Senior Counsel". The title is intended to be a quality mark, indicating that the barrister has extensive experience and a high level of legal knowledge, skill and judgment in the field of advocacy.
37. In reality, the title of Senior Counsel is not a reliable mark of quality because there are no transparent criteria for awarding the title. Neither is there any ongoing monitoring of quality, nor any procedure for withdrawing the mark in the event of a reduction in the level of quality. The title has the potential to distort the market for legal services, by leading solicitors and their clients to believe, without adequate justification, that in engaging senior counsel they are always engaging a lawyer who excels in his field or that other practising barristers are not of the same calibre.
38. The Competition Authority recommends that the Government establish objective criteria for awarding the title of Senior Counsel, together with a procedure for monitoring and removing it.
39. Solicitors have the right to advocate in every court in Ireland, in competition with barristers, but are inhibited from exercising this right by two restrictions. First, solicitors are not allowed to hold the title of Senior Counsel, irrespective of their ability to provide advocacy services. Second, solicitors are prohibited from being the lead advocate where for example a team of both barrister(s) and solicitor(s) is representing a client in court. The Competition Authority recommends that solicitors be eligible for the title of Senior Counsel, as is the case in Britain, and that they be allowed be lead counsel when advocating in court with a barrister. Removing these unnecessary restrictions will encourage greater competition in advocacy services.

Advertising

40. In Ireland, advertising by barristers is severely restricted by the rules of the Bar Council. The only advertising permitted is the placing of barristers' names and specialisations on the Bar Council's website and in the Law Society's Law Directory. The UK, in contrast, allows barristers to advertise subject to a few limitations. The restrictions on advertising by barristers in Ireland are disproportionate and limit competition. Allowing barristers to advertise becomes more important in the context of widening direct access to barristers for legal advice.

41. Solicitors are not prevented from advertising; the restrictions that are in place relate more to the manner and content of the advertisements. There are a number of unnecessary restrictions contained in the Law Society's Regulations on advertising. These restrictions can impinge on the ability of firms to undertake effective and/or innovative advertising campaigns. In particular, the Law Society's regulations prevent a solicitor advertising that he/she has specialist knowledge of a certain area of law.
42. The Competition Authority recommends, for both barrister and solicitor advertising, that the existing rules should be reformed. Truthful and objective advertising gives clients useful information and helps them to choose among competing lawyers. Advertising should be controlled in a more pro-consumer manner by way of rules that focus on preventing factually inaccurate advertising or advertising which would bring the administration of justice into disrepute.

Switching lawyers

43. If a client wishes to switch solicitor, for example in response to poor quality of service, the solicitor has the right to withhold the client's file until the client has paid the solicitor's bill, even if the bill is disputed. As a practical matter, full payment may not be possible to achieve in a short space of time and, in the interim, the client is disadvantaged with possibly serious consequences. For example, a consumer who believes his/her current solicitor is putting their case in jeopardy, or is failing to act in a timely manner, cannot take his/her business elsewhere.
44. This special protection for solicitors against bad debts does not exist for any other profession in Ireland and is an unnecessary restriction on competition between solicitors and on consumers' rights. While it is proper that solicitors should be paid for work they have done, this can be achieved either through dispute resolution channels or by enforcement of the contract they have with their client through the courts, as all other suppliers of professional services have to do. Of all professionals, solicitors are best placed to pursue clients for monies owed to them as they can self-supply the legal service.
45. Consumers of legal services, especially small infrequent buyers, are in a far more vulnerable position. There is little that a client, or a new solicitor acting on their behalf, can do to compel the first solicitor to relinquish the file in a timely manner. Delays in legal matters can cause significant financial and other harm to clients even if they eventually receive a favourable outcome. The Competition Authority recommends legislative change to remove solicitors' rights over their clients' files.
46. Prior to March 2006, the Bar's Code of Conduct precluded a barrister from taking over a case from another barrister until that other barrister had been paid. In response to the Competition Authority's concerns, the Bar removed this restriction in March 2006.

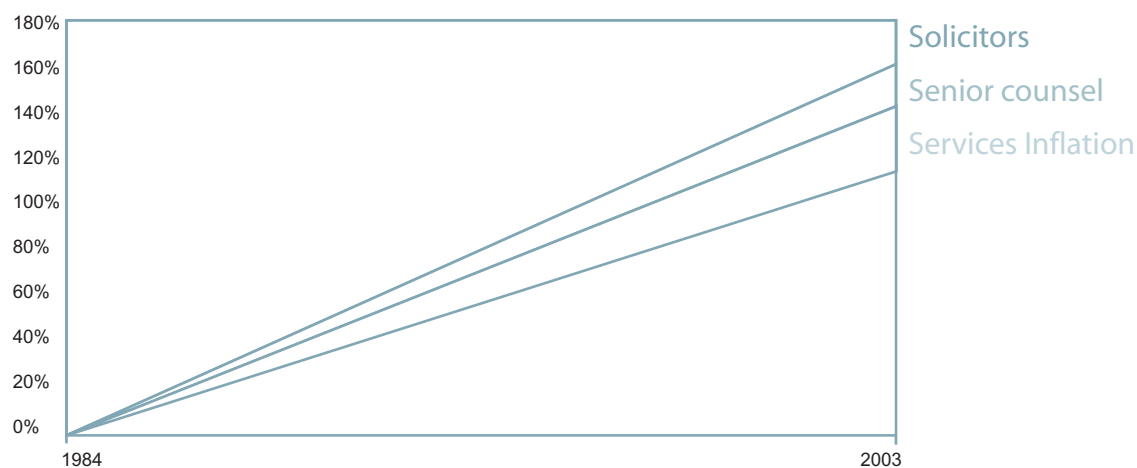
Restrictions on New Barristers

47. In its Preliminary Report on solicitors and barristers, the Competition Authority recommended the abolition of the rules of the Bar's Code of Conduct that prohibited practising barristers from having other part-time employment and from acting for a former employer for a specified period after commencing practice at the Bar. These rules made it more difficult for new barristers to make a living and reduced the competitive threat they posed to established barristers. The Bar implemented these recommendations in March 2006.

The Market for Legal Services

48. As of July 2006 there are 8,907 lawyers in Ireland, 7,242 solicitors and 1,665 barristers⁴. Other common-law countries have more lawyers per head of population than Ireland.
49. The level of solicitors' fees in the High Court increased by 4.2% above general inflation annually over the period 1984 to 2003 while the level of senior counsel fees in the High Court increased by 3.3% above general inflation annually over the same period. The figure below shows how the increase in legal fees for solicitors and senior counsel was significantly above general inflation in services in the Irish economy over the period 1984 to 2003.⁵

Inflation in Legal Fees in High Court Cases, 1884-2003



Source: Report of the Legal Costs Working Group; Central Statistics Office.

50. Compared with other professions, such as architects, engineers and accountants, lawyers earn relatively high incomes. The average gross income for lawyers in 2002 was approximately €164,000.
51. Barristers are totally self-regulated through the Bar Council. Solicitors are largely self-regulated through the Law Society with minimal independent oversight in some areas.

Recommendations

52. The following recommendations add up to a comprehensive piece of legislation – a Legal Services Bill - to address adequately the concerns identified in the report and to provide for a competitive legal services market in Ireland. The Competition Authority has also identified changes and initiatives that the Law Society and the Bar Council can make for the benefit of consumers of legal services. The recommendations come with a proposed timetable for implementation; a Legal Services Bill by June 2008 and a number of changes and initiatives by the profession in the interim. This timetable is based on the Competition Authority's experience of the timeframe involved in preparing similar legislation and making changes to the Bar's Code of Conduct etc.

⁴ Source: The Law Society and the Bar Council.

⁵ Source: *Report of the Legal Costs Working Group*, November 2005.

Recommendation 1:	Establish an independent Legal Services Commission to oversee the regulation of legal services
Details of Recommendation	Action By
The Minister for Justice, Equality and Law Reform should bring forward legislation to establish a Legal Services Commission ("LSC"), an independent statutory body with responsibility for regulation of both branches of the legal profession. The Legal Services Commission would delegate many regulatory functions to existing and possibly new self-regulatory bodies. The Legal Services Commission would be given explicit authority to make new regulations and would have the power to veto the rules of self-regulatory bodies. The Legal Services Commission would undertake research and analysis of the market for legal services to identify priority areas for reform and also to set guidelines for the assessment of costs in contentious matters. The Head of the Legal Services Commission, and also a majority of its members, should not be practicing members of the legal profession. Self-regulatory bodies would not be permitted to exercise representative functions.	Minister for Justice, Equality and Law Reform June 2008
Recommendation 2:	Have an independent body to set standards for solicitor training and approve institutions that wish to provide such training
Details of Recommendation	Action By
The Minister for Justice, Equality and Law Reform should remove the Law Society's role of setting standards for the provision of legal education. This role should instead be given to an independent body such as the Legal Services Commission. The Law Society and any other institution that wishes to provide training for solicitors should be required to apply to the Legal Services Commission for approval to do so.	Minister for Justice, Equality and Law Reform June 2008
Recommendation 3:	An independent body should set standards for barrister training and approve institutions that wish to provide such training
Details of Recommendation	Action By
The Minister for Justice, Equality and Law Reform should give an independent body, such as the Legal Services Commission, the task of setting standards for the provision of legal education. The Honorable Society of King's Inns and any other institution that wishes to provide training for barristers should be required to apply to the Legal Services Commission for approval to do so.	Minister for Justice, Equality and Law Reform June 2008

Recommendation 4:	The existing basic Irish competency requirement should be abolished and replaced by a voluntary system of high level Irish language training
Details of Recommendation	Action By
The Minister for Justice, Equality and Law Reform should introduce legislation to repeal sections 3 and 4 of the Legal Practitioners Qualification Act 1929.	Minister for Justice, Equality and Law Reform June 2008
The Law Society and the Honorable Society of King's Inns should publish criteria for a voluntary system whereby solicitors and barristers who wish to represent clients in Irish, or who have a particular interest in Irish, could be trained and examined to a high and consistent standard. Institutions other than the Law Society and King's Inns should be permitted to provide such courses and examinations.	The Law Society Honorable Society of King's Inns December 2007
Recommendation 5:	The current system of reciprocity in recognition of legal training of non-EEA lawyers should be replaced by mirroring the existing provisions for EEA lawyers
Details of Recommendation	Action By
Legislation should be enacted to replace the current system of reciprocity with a system that mirrors Council Directive 98/5/EC for non-EEA lawyers who wish to practise in the State under their home title.	Minister for Justice, Equality and Law Reform June 2008
Legislation should be enacted to replace the current system of reciprocity with a system that mirrors Council Directive 89/48/EC for non-EEA lawyers who wish to practise in the State as an Irish solicitor or barrister.	Minister for Justice, Equality and Law Reform June 2008
Recommendation 6:	Remove unnecessary barriers to switching between the branches of solicitor and barrister
Details of Recommendation	Action By
The Law Society and the Bar Council should ensure that all unnecessary barriers are removed for lawyers wishing to switch from one branch of the legal profession to the other.	Law Society June 2007 Bar Council Implemented July 2006

Recommendation 7:	Allow qualified persons other than solicitors to provide conveyancing services
Details of Recommendation	Action By
The Minister for Justice, Equality and Law Reform should bring forward legislation to permit qualified persons other than solicitors to provide conveyancing services. Persons wishing to provide conveyancing services should be required to be registered as "conveyancers" by a Conveyancers' Council of Ireland with responsibility for regulating the training, qualification and operation of conveyancers. Conveyancers should be required to abide by a code of ethics, to have professional indemnity insurance and to contribute to a compensation fund in order to ensure the greatest possible degree of consumer protection.	Minister for Justice, Equality and Law Reform June 2008
Recommendation 8:	Allow unlimited direct access to barristers for legal advice
Details of Recommendation	Action By
Permit unlimited direct access to barristers for legal advice.	The Bar Council December 2007
Recommendation 9:	The Legal Services Commission should undertake research in the area of direct access
Details of Recommendation	Action By
The Legal Services Commission should be given the power to undertake research in any area of the market where reform may be beneficial for consumers or the functioning of the market. The Legal Services Commission should undertake research in the area of direct access to barristers for contentious issues.	Minister for Justice, Equality and Law Reform June 2008

Recommendation 10:	Barristers sharing premises should be allowed to promote themselves as a group
Details of Recommendation	Action By
Barristers who share premises and costs should be permitted to hold themselves out as practicing as a group.	The Bar Council December 2007
Recommendation 11:	Barristers should be allowed to form partnerships
Details of Recommendation	Action By
Barristers should be allowed to offer their services in partnerships, subject to appropriate regulation.	The Bar Council December 2007
Recommendation 12:	The Legal Services Commission should undertake research in relation to business structures
Details of Recommendation	Action By
The Legal Services Commission should be given the power to undertake research in any area of the legal services market where reform may be beneficial for consumers or the functioning of the market. The Legal Services Commission should examine alternative business structures so that solicitors and barristers have the greatest possible freedom in choosing their preferred structure.	Minister for Justice, Equality and Law Reform June 2008
Recommendation 13:	Allow employed barristers to represent their employers in court
Details of Recommendation	Action By
The Bar Council should propose to the Bar of Ireland, the amending of Rules 2.6, 2.7 and 8.3 of the Code of Conduct of the Bar of Ireland to allow barristers in employment to represent their employers in court.	The Bar Council December 2007
Recommendation 14:	Establish objective criteria for awarding the title of Senior Counsel
Details of Recommendation	Action By
The Government should establish objective criteria for the awarding, monitoring and withdrawing of the title of Senior Counsel.	The Minister for Justice, Equality and Law Reform June 2007

Recommendation 15:	Remove restrictions on solicitors advocating in court
Details of Recommendation	Action By
The Bar Council should propose to the Bar of Ireland the amendment of Rule 11.1 of the Bar's Code of Conduct to remove the restriction on solicitors holding the title of Senior Counsel.	The Bar Council December 2007
The Bar Council should propose to the Bar of Ireland that Rule 7.4 of the Bar's Code of Conduct, which stipulates that a barrister shall only be led by a barrister, be abolished.	The Bar Council December 2007
The Government should, (where it awards the title of Senior Counsel and on the basis of transparent criteria consistent with recommendation 14) award the title to both barristers and solicitors.	The Government June 2007
Recommendation 16:	Remove unnecessary restrictions on barristers' ability to advertise
Details of Recommendation	Action By
The Bar Council should promulgate regulations permitting advertising so long as it does not: • Give false or misleading information; or, • Bring the administration of justice into disrepute, or otherwise be considered in bad taste The Legal Services Commission should be given the power to monitor and analyse solicitor advertising and to identify and promote reform where this will be consistent with public policy objectives and beneficial to consumers of legal services.	The Bar Council December 2007 Minister for Justice, Equality and Law Reform June 2008
Recommendation 17:	Remove unnecessary restrictions on solicitors' ability to advertise
Details of Recommendation	Action By
The Law Society should amend its Regulations to enable the designation of solicitors as specialists and to allow such solicitors to advertise as specialists.	The Law Society December 2007
The Legal Services Commission should be given the power to monitor and analyse solicitor advertising and to identify and promote reform where this will be consistent with public policy objectives and beneficial to consumers of legal services.	Minister for Justice, Equality and Law Reform June 2008

Recommendation 18:	Remove the unnecessary restriction on switching barrister
Details of Recommendation	Action By
The Bar Council should propose to the Bar of Ireland that it amend Rule 7.5 of its Code of Conduct which prevents one barrister taking over a case from another until satisfied that the first barrister has been paid.	The Bar Council Implemented March 2006
Recommendation 19:	Remove the unnecessary restriction on switching solicitor
Details of Recommendation	Action By
The Minister for Justice, Equality and Law Reform should introduce legislation to prohibit a solicitor from retaining a client's file pending payment from the client.	Minister for Justice, Equality and Law Reform June 2008
Recommendation 20:	Permit practising barristers to exercise part-time occupations
Details of Recommendation	Action By
The Bar Council should propose to the Bar of Ireland, amendments to Rule 2.6 of the Code of Conduct and/or new rules to enable part-time employment in other professions.	The Bar Council Implemented March 2006
Recommendation 21:	Allow new barristers to act for former employers
Details of Recommendation	Action By
The Bar Council should propose to the Bar of Ireland, amendments to Rule 2.15 of the Code of Conduct to enable barristers to be engaged by previous employers.	The Bar Council Implemented March 2006
Recommendation 22:	Advise barristers that the practice whereby junior counsel charge fees at two-thirds of senior counsel's fee is anti-competitive
Details of Recommendation	Action By
The Bar Council should formally advise barristers that the practice of junior counsel marking a fee, without reference to work done, at two-thirds of the senior counsel's fee, is anti-competitive and must cease.	The Bar Council March 2007

Recommendation 23:	Provide useful information for consumers
Details of Recommendation	Action By
(a) The Law Society should, in consultation with the National Consumer Agency, develop a Consumer Information page on its website.	The Law Society June 2007
(b) The Bar Council should, in consultation with the National Consumer Agency, develop a Consumer Information page on its website.	The Bar Council June 2007
Recommendation 24:	Require solicitors to issue meaningful fee or fee estimate letters
Details of Recommendation	Action By
The Minister for Justice, Equality and Law Reform should bring forward legislation:	Minister for Justice, Equality and Law Reform
(a) requiring solicitors to issue more detailed and accurate fee letters;	June 2008
(b) outlining a meaningful sanction for solicitors who fail to provide clients with an appropriate fee letter.	
Recommendation 25:	Require barristers to issue meaningful fee or fee estimate letters
Details of Recommendation	Action By
The Bar of Ireland should:	The Bar Council
(a) Amend Rule 12.6 of its Code of Conduct by removing the words "on request" from the second line thereof;	June 2007
(b) Amend its Code of Conduct to require that barristers' fee information letters provide the same level of information as the Section 68 letters recommended by the Legal Costs Working Group.	
Recommendation 26:	Legal costs should be assessed on the basis of work done
Details of Recommendation	Action By
Legal costs should be primarily assessed on the basis of the work undertaken by individual lawyers and not primarily on the basis of the size of the award as is currently the case.	Taxing Masters and County Registrars Immediate

Recommendation 27:	Cease the practice of taxing junior counsel fees at two-thirds of the senior counsel.
Details of Recommendation	Action By
Taxing Masters should cease the general practice of allowing junior counsel's fees at two-thirds that of senior counsel. Instead fees should be set on the basis of the work undertaken by each of senior and junior counsel.	Taxing Masters and County Registrars Immediate
Recommendation 28:	Persons other than solicitors should be eligible for appointment to the Legal Costs Assessment Office
Details of Recommendation	Action By
Appropriately qualified persons should be eligible for appointment to the proposed Legal Costs Assessment Office.	Minister for Justice, Equality and Law Reform
Recommendation 29:	Examine the possibility of introducing competitive tendering for the provision of legal services
Details of Recommendation	Action By
The Department of Justice, Equality and Law Reform should (a) identify those legal services purchased by the State where competitive tendering would be an appropriate form of procurement; and (b) examine systems of competitive tendering for the provision of legal services operating in other jurisdictions with a view to introducing such a system in Ireland.	Department of Justice, Equality and Law Reform December 2008

