

DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE AND EQUALITY

Dé Céadaoin, 4 Iúil 2018

Wednesday, 4 July 2018

Tháinig an Comhchoiste le chéile ag 9 a.m.

The Joint Committee met at 9 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Jack Chambers,	Martin Conway,
Clare Daly,	Niall Ó Donnghaile.
Jim O'Callaghan,	
Mick Wallace.	

Teachta / Deputy Caoimhghín Ó Caoláin sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: I remind members to switch off their mobile phones as they interfere with the recording equipment. I am not advised of any apologies. I propose to go into private session to deal with housekeeping matters.

The joint committee went into private session at 9.02 a.m. and resumed in public session at 9.24 a.m.

Legal Services Regulatory Authority: Discussion

Chairman: The purpose of this session is to meet representatives of the Legal Services Regulatory Authority for an update on progress in its work. It is the first opportunity we have had to meet its representatives. I welcome Dr. Don Thornhill, chairman; Dr. Brian Doherty, chief executive officer; and Mr. Ultan Ryan, secretary.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the joint committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable.

I invite Dr. Thornhill to make his opening statement.

Dr. Don Thornhill: I thank the joint committee for inviting us to attend. As the Chairman said, it is our first appearance before it. In fact, it is perhaps our first physical public outing. The Legal Services Regulatory Authority is a new organisation. As such, we thank the committee very much for giving us this opportunity. I introduce my colleagues, Dr. Brian Doherty, chief executive officer, and Mr. Ultan Ryan, secretary. As we provided the committee with an advance copy of our statement, I will not need to go through it word for word.

As the members know, the narrative behind the authority is that the Act was signed into law at the end of December 2015. The authority was legally established on 1 October 2016 and the members of the authority were appointed by the Government following the statutory nomination process. That is quite an unusual approach in the sense that there are nominating organisations which provide two names to the Minister who, in turn, seeks approval of the nominations from Government. The nominations then go before the Dáil and Seanad for separate resolutions before the members are appointed by the Minister.

The authority commenced with no staff, no accommodation and no money. We thank the Department of Justice and Equality for helping us at the start-up stage to identify and secure the very experienced Ms Renee Dempsey, who took on the role of interim chief executive for

the authority as well as our experienced secretary, Mr. Ultan Ryan, who has stayed with us. Ms Dempsey and Mr. Ryan did a terrific job in the early period with no staff. They helped to secure our funding through the accounting labyrinths by the end of 2016. The authority faced an initial challenge in that we were required under the law to present within six months of the authority's establishment day two reports to the Minister for subsequent laying before the Houses of the Oireachtas. We were required to engage in public consultations and to prepare reports on legal partnerships and multi-disciplinary partnerships. Both of those requirements were met. Our reports have been presented to the Houses of the Oireachtas and are available on our website. Dr. Doherty came on board as permanent full time chief executive in September 2017 and he has shown remarkable and effective leadership.

There are six lay members of the authority who are nominated by the Citizens Information Board, the Higher Education Authority, the Competition and Consumer Protection Commission, the Irish Human Rights and Equality Commission, the Institute of Legal Costs Accountants and the Consumers' Association of Ireland, respectively. Of the non-lay members, one is nominated by the Bar Council of Ireland, one is a solicitor nominated by the Legal Aid Board, one member is nominated by the Honorable Society of King's Inns and two are nominated by the Law Society. The authority has a lay majority and a lay chair and each member is statutorily required to act on a part-time basis. The authority is required by law to be independent in the performance of its functions and to act in the public interest. We all understand that we are nominees and not representatives of the nominating organisations.

The authority is tasked with regulating the provision of legal services by legal practitioners and ensuring the maintenance and improvement of standards in the provision of those services in the State. We have six overarching objectives which are set out in law, including to protect and promote the public interest; to support the proper and effective administration of justice; to protect and promote the interests of consumers relating to the provision of legal services; to promote competition in the provision of legal services in the State; to encourage an independent, strong and effective legal profession and to promote and maintain adherence to the professional principles of legal practitioners as specified in the Act.

Within that overarching mandate there are a number of specific functions, which are listed in my opening statement, and I can go through them if the members wish me to do so.

Chairman: By all means, please do so.

Dr. Don Thornhill: The authority is required to keep under review and make recommendations to the Minister in respect of the admission requirements of the Law Society relating to the solicitors' profession and of the Bar Council and the Honorable Society of King's Inns relating to the barristers' profession; the availability and quality of the education and training, including ongoing training, for the solicitors' and barristers' professions, including the curriculum arrangements for the provision of legal education and the teaching of legal ethics, negotiating skills, alternative dispute resolution and advocacy, and the methods by which, and the persons by whom, such education and training is provided; the policies of the Law Society regarding the admission of persons as solicitors in the State, and of the Bar Council and the Honorable Society of King's Inns regarding persons becoming entitled to practise as barristers in the State; professional codes; and the organisation of the provision of legal services in the State. We are required to disseminate information in respect of the education and accreditation requirements and other matters to which I referred; to specify the nature and minimum levels of professional indemnity insurance; to establish a system of inspection of legal practitioners for the purposes prescribed in the Act; to receive and investigate complaints; to maintain the roll of practising

barristers; to promote public awareness and disseminate information to the public in respect of legal services, including the cost of such services; to keep the Minister informed of developments in respect of the provision of legal services by legal practitioners and to make recommendations to assist the Minister in co-ordinating and developing policy in that regard; to undertake, commission or assist in research projects and other activities in respect of the provision of legal services, which in the opinion of the authority may promote an improvement in standards for the provision of those services and public awareness of them, and make recommendations to the Minister arising from those objectives; and to perform any other functions conferred on it by the Act or by regulations made under it.

We are also required to conduct appropriate public consultation processes and to prepare and furnish reports to the Minister, including recommendations, regarding the education and training of legal practitioners - an area to which I will return - the unification of the solicitors' and the barristers' professions and the creation of a new profession of conveyancer.

By the end of March 2017, we had carried out the immediate public consultations required. We had submitted a further report on legal partnerships at the end of July and two more statutory reports followed at the end of September, which again involved public consultation exercises. The first was a report on the establishment, regulation, monitoring, operation of multi-disciplinary practices in the State. The second dealt with certain matters relating to barristers, including the restriction on barristers holding client money and the retention or removal of restrictions on a barrister receiving direct instructions in contentious matters.

We also have had to build the necessary governance and operational infrastructure of a modern State body. We have terms of reference, a code of governance, a protected disclosures regime and we have produced annual reports for 2016 and 2017. We are committed to a culture of openness and transparency and the minutes of each authority meeting are available online as soon as they are agreed. We have developed and published a strategic plan for 2018-20 - which we have included in the documentation forwarded to the Chairman and members - which sets out the timeframes for some of the deadlines for meeting some of the functions envisaged by the Act.

We are still a fledging organisation. We are in temporary accommodation. We have a small number of staff but we have sufficient for our immediate needs. We have a small project team to meet the statutory deadlines which are still outstanding and to put in place the infrastructure required.

Currently, we are involved in four key projects, as well as developing the personnel and organisation structures. One project includes establishing the framework required to introduce legal partnerships as a new business model for the delivery of legal services. We hope to have that necessary framework in place before the end of the third quarter of the year. Our next significant task is to establish the roll of practising barristers. This will list, for the first time, all qualified barristers who intend to provide legal services in the State, including those who work outside of the Bar library or are in-house barristers. Work is under way on this and we hope to have the roll completed and available online at the end of the year. We are carrying out a review of section 34 of the Act on the education and training arrangements for legal practitioners. This has required an extensive public consultation, which has just been completed. We will report to the Minister on that, with recommendations, by 30 September 2018. Our other task is pertinent to the point mentioned in the letter from the committee. We are carrying out a review under section 6 of the Act, requiring the authority to make recommendations for legislative amendment as it considers appropriate arising from its findings and conclusions.

We have prepared and submitted our first strategic plan. We believe it sets out a realistic and achievable timetable for the introduction of the new regulatory regime and the delivery of the full range of functions of the authority. Clearly, there is a quite an amount of work to be done. By October 2019 we plan to have introduced the frameworks necessary for both the legal service delivery models of legal partnerships and, following that, limited liability partnerships. We also plan to have delivered a series of significant statutory reports, including a review of the education and training of legal practitioners, a review of the admission of persons to the legal professions and a review of the Act. In addition, we plan to have established the roll of practising barristers and we are working on the introduction of a levy on the legal profession. We also, by October 2019, will have commenced the receipt and investigation of complaints and we will be in a position to conduct disciplinary hearings under Part 6 of the Act.

We believe the authority, acting within the framework of the Act, has the potential to act as an agent of significant change in the landscape for the provision of legal services. Our approach will be in line with the principles set out in the Act, which I mentioned, and will be measured and consultative. We are at an early stage in our development but we intend to continue to deliver on our statutory and governance obligations, while planning and delivering on the ambitious possibilities for future reform set out in the Act.

I thank the Chairman and members and we look forward to engaging with them.

Chairman: Thank you, Dr. Thornhill. I call Deputy Clare Daly, who indicated first.

Deputy Clare Daly: I thank Dr. Thornhill for attending. I have another meeting at 10 a.m. and must leave to attend it but I hope to be back. I will ask a few questions before that time and I will certainly be back if I can make it.

We have to consider this discussion in the context of the fierce resistance put up by the legal profession to the introduction of this legislation and the fact that the previous Minister, Alan Shatter, basically allowed the legal profession to rewrite the original legislation against the backdrop that reducing legal costs in Ireland was the only troika demand that has not been implemented. According to the National Competitiveness Council, legal service prices were 8.3% higher in the first quarter of 2016 compared with the first quarter of 2012. That is the backdrop, namely, a battle to avoid regulating the profession. The authority has been established for a number of years but progress has been incredibly slow. I am not blaming the witnesses or personalising the issue but I would like to tease out why that has taken so long. The authority carried out the statutory public consultations and completed the reports that have been laid before the House but it has not yet found a permanent office. It took a year to get a chief executive for the authority and it has only just published its strategic plan. The process is moving incredibly slowly. How many of the functions under the legislation are currently operational and how many are not? Given that matters are moving very slowly, can Dr. Thornhill account for the delays? Are organisations such as the Law Society standing in the authority's way, is there a cultural reluctance to move matters forward or is there some other way in which Dr. Thornhill can account for the slow progress?

The authority's public complaints function is a major issue for the public. Is it anticipated it will come into effect in the first half of 2019, which will be three years after the Act commenced? Why will it have taken three years before the public can bring their complaints to the Legal Services Regulatory Authority? Does Dr. Thornhill have any qualms about the fact that while this was an area of reform, we are two years on from the regulatory authority being established and that has not been forthcoming yet?

Chairman: Perhaps we can take that first batch and then I will come back to Deputy Clare Daly.

Deputy Clare Daly: That is fine.

Dr. Don Thornhill: I thank Deputy Clare Daly. First of all, as a former chair of the National Competitiveness Council, I was involved in reports which commented, I think over a period of ten years, on the high cost of legal services in Ireland. I am very much aware of the background.

On why it has taken so long, it has been a matter of frustration for us that it has taken so long. The regulatory authority was established on 1 October 2016. That was purely a legal act. There was nothing there other than an almost complete membership of the regulatory authority - it was not quite complete. We were not able to meet as a full regulatory authority until 26 October. Then we had to find accommodation and begin the process of trying to develop an administrative and management resource because, as the Act says - deliberating and wisely - members of the regulatory authority can only act in a part-time capacity. I am a former civil servant - I left a number of years ago. One of the things that struck me is how much more rigorous, demanding and time consuming the public administration requirements are today than they were 20 years ago. Painstaking processes now have to be undergone in respect of procurement and appointments. All of those take time.

We moved as quickly as we could. We had an interim chief executive - a very experienced individual - in place quickly. We immediately began the contractual process of appointing a recruitment consultant from a process supervised by the Office of Government Procurement. That was not there in my time as a civil servant. The process ended in Dr. Doherty's appointment as chief executive. Ideally, we should not have begun without staff. We should not have had the statutory deadlines we had to meet for carrying out consultations but those are facts and requirements of the Act. We were obliged to allocate such resources as we had in that area before we could get into the business of building up the structure of the organisation.

In respect of the disciplinary procedures, I take on board what Deputy Clare Daly stated. It is taking some time. One of the factors we want to be absolutely assured about when we open those important functions - because not only do they open up the possibility of redress for clients of legal services but they also have very serious implications for legal practitioners as well - is that we are resourced adequately in respect of personnel and facilities to handle that work and that the basis on which we are doing it is absolutely legally sound. All of that requires very careful attention to detail and planning when it is being done quickly.

Deputy Clare Daly: Are we sure this is going to come in the first half of-----

Dr. Don Thornhill: That is our resolve and intention.

Deputy Clare Daly: Is Dr. Thornhill optimistic that will be met?

Dr. Don Thornhill: Optimism might be a misplaced characteristic. We are determined that it should be met. We will do everything possible.

Deputy Clare Daly: Dr. Thornhill has acknowledged that the process has been incredibly slow. He could not but do that.

Dr. Don Thornhill: It has.

Deputy Clare Daly: He has also acknowledged the regulatory authority is frustrated in

that. The opening statement talks about the unusual requirements in the beginning. Is Dr. Thornhill saying all of this should have been done before the Act was passed? It is almost as if we were suspicious - which we would obviously not be - that the organisation was set up with two hands tied behind its back to create an inevitable delay in the carrying out of its functions. It is so slow for even a justice issue.

Dr. Don Thornhill: I cannot speak about what happened during the pre-enactment phase. I was not involved and I am not terribly familiar with the detail. I see no evidence in our engagement with the Department of Justice and Equality or the Minister of an intention to keep us in a type of limbo situation. It is quite the contrary in fact. I have heard it said - but never to me officially - that one of the reasons we were established in the way we were - without offices, staff and funding - was an anxiety on the part of the Minister and the Department not to be seen to be interfering in our affairs. I do not know what credence can be attached to that. We were launched on a very flimsy craft. The Department did give us practical help at that particular point.

Deputy Clare Daly: If we look at the minutes from the regulatory authority's meeting last year, they reflect that the members were recording concern at the Department and at the role of the Department in providing the regulatory authority with timelines on the implementation of legal partnerships. In those minutes, the members felt the regulatory authority's independence was potentially being undermined by the Department. An external consultant was engaged and I refer to the rest of that as well. It reflected a certain tension between the regulatory authority and the Department. This ties in with my question, which Dr. Thornhill referred to in his opening statement, about the establishment of the framework to introduce legal partnerships. Dr. Thornhill is saying that this will be in place by before the end of the third quarter of this year. These partnerships were fiercely resisted by the Bar Council and the Honourable Society of King's Inns. Is Dr. Thornhill saying that, by the end of September, legal professionals will be in a position to get partnerships up and running at long last? Is that what is clearly being said?

Dr. Don Thornhill: That is our plan. To be fair to the Department and the Minister, in that particular instance, there was anxiety to get legal partnerships - and, following those, limited legal partnerships - up and running. The unanimous view of the regulatory authority at that time - myself, the professional and lay members all agreed on this point - was that the Department's intervention was inappropriate. That was conveyed to the Minister in strong terms in the minutes that Deputy Clare Daly would have read. Since then - and Dr. Doherty can go into this in more detail - we have had very satisfactory co-operation with the Department. I put that down to perhaps an excess of anxiety and zeal on the part of the Department to get things moving without a sufficient appreciation of the practical issues we had to contend with.

Deputy Clare Daly: Deputy Wallace was just remarking that would be the first indication of zeal on the part of the Department of Justice and Equality. I think we can all relate to that. In any event----

Dr. Don Thornhill: I am sure both Deputy Clare Daly and Deputy Wallace will understand that I could not possibly comment.

Deputy Clare Daly: I know that.

Chairman: The Chair was about to suggest that.

Deputy Clare Daly: Absolutely not. I have one or two other quick questions. They may

not have anything to do with the regulatory authority. The Act that established the regulatory authority also contains a section on pre-action protocols for clinical negligence cases, which is critical. Does the Legal Services Regulatory Authority have any role in that?

Dr. Don Thornhill: We do not have any role in that.

Deputy Clare Daly: No role at all?

Dr. Don Thornhill: No role at all. We are not mentioned once.

Deputy Clare Daly: The regulatory authority does not see itself taking on any of that?

Dr. Don Thornhill: We are obviously available to give advice and consultation but we have no statutory role.

Deputy Clare Daly: Staying with the medical negligence issue, the Medical Protection Society, MPS, which provides indemnity cover for most Irish hospital consultants, has previously said that in some negligence cases, barristers' brief fees in Ireland are twice those in the UK. It cited one trial where a barrister's brief of €30,000 was charged. That was double the amount a Queen's Counsel would seek in England. A brief fee, as we know, only covers trial preparation and the first day of hearing.

One of the jobs of the Legal Services Regulatory Authority is to protect and promote the interests of consumers in respect of the provision of legal services. It is also charged with promoting competition in the provision of legal services in the State with a view to driving down costs. What does the regulatory authority see itself doing to reduce costs in the short term? Is the regulatory authority optimistic it can play a role in that? This is a major issue for people and the MPS said it had been involved in a case where the award made was dwarfed by the legal costs. In one case of misdiagnosis, damages were settled at €100,000 but the legal costs were €268,885. In another case damages of €17,500 were awarded, but legal costs were €46,000, which is utterly ludicrous. Is Dr. Thornhill confident that the Legal Services Regulatory Authority will be able to reduce costs? What measures will it take in the short term to do so?

Dr. Don Thornhill: I thank the Deputy for her questions. On the specific issue of disproportionate and inappropriate costs or costs that are too high, it can be a matter of complaint to the authority.

On the structural reforms provided for in the Legal Services Regulation Act 2015, there are a number of pillars, the first of which is the introduction of legal partnerships, followed by limited legal partnerships. This will change structures in the legal profession. As I understand it, the intention behind the legislation is that it will change some of the competitive and cost dynamics in the provision of legal services. There are other provisions such as multidisciplinary partnerships. We have suggested this and it is implied from our advice that should be implemented downstream once there has been experience of legal and limited liability legal partnerships.

We have reviewed the education and training of barristers and solicitors and are aspiring to have a range of policy and practical changes to improve and create a more competitive dynamic in the provision of legal services. Can we guarantee that there will be a dramatic change overnight? We cannot do so, but we will certainly hope there will be significant changes in behaviour.

Deputy Clare Daly: It will certainly be a first in Ireland in this profession. We know that

the authority is supposed to be self-funding, to be funded from the operation of a levy on legal practitioners. I asked the Minister a question about this last month. My concern is that, in spite of the fact that the authority is supposed to be self-funding, to date it has cost €3 million - €1 million in each year from 2016 to 2018, with no sign in the meantime of anything being levied on the Law Society of Ireland or the Bar Council of Ireland. The answer I have received is that “we are in the process of setting up the levy.” We are dealing with two organisations that are sitting on a pot load of money. Why have they not been asked to fund the authority? Why should the taxpayer have to pay it? The sum of €3 million is not insignificant. I also point out that the money that has been paid upfront by the State is supposed to be recoupable by it. When does the authority envisage the State getting its money back and the legal profession starting to cough up?

Dr. Don Thornhill: I thank the Deputy, but her questions are related to operational matters, in which Dr. Doherty has been very much involved. With the permission of the Chairman, I will hand over to him.

Dr. Brian Doherty: The figure of €3 million is not accurate. The moneys actually spent by the Legal Services Regulatory Authority are closer to €1.3 million, or less than half of that figure.

Deputy Clare Daly: The authority has been allocated €1 million each year.

Dr. Brian Doherty: We have received an advance under section 32 of €1 million, the first €1 million being paid at the end of 2016 and the second at the end of 2017. There has been no drawdown of the third €1 million. What we have actually spent up to this point, in the period from late 2016, has been-----

Deputy Clare Daly: The money has been given to the authority, although it may not have been drawn down.

Dr. Brian Doherty: What we have spent to date is €1.3 million, not €3 million. A sum of €2 million has been allocated to us and another €1 million is available to be drawn down during 2018. I want to ensure nobody has the impression that our operating costs to date have been €3 million, as that is not the case.

Deputy Clare Daly: However, a sum of €1 million per year was assigned to the authority.

Dr. Brian Doherty: Yes.

Deputy Clare Daly: I accept that the authority has not expended that amount to date. Some of the money could be paid back, but a sum of €1 million has been assigned every year for three years to the Legal Services Regulatory Authority.

Dr. Brian Doherty: I am not disputing that; I just want to ensure the Deputy knows the position.

Deputy Clare Daly: That is fine.

Dr. Brian Doherty: On the levy and how it is to be administered, Dr. Thornhill has explained the challenges involved. We must comply with the statutory timelines for reporting on the various issues raised in the Act. The other challenge is that the Act is interlinked; therefore, there are certain pieces in it that need to follow in order. One of the key elements of the levy on the professions is the roll of practising barristers. In order to calculate the levy, we need to

have the roll of practising barristers, for which, as required under the Act, there is a six months establishment phase. The roll went live last Friday, 29 June. There is a period of six months allowed for from that date for the establishment phase. The roll will be established fully in 2018 and the levy notices will issue in 2019.

Deputy Clare Daly: Will the levy be backdated? How will the Legal Services Regulatory Authority pay back the €1.3 million that has been spent? Probably another €1 million will be spent by the time the levy is actually in place.

Dr. Brian Doherty: The levy will be calculated based on expenditure in the previous year. Therefore, if the levy is collected in 2019, it will be calculated on the basis of the costs incurred in 2018.

Deputy Clare Daly: How will the State recoup the sum of more than €1 million that has been spent up to 2017 and which will not be included in the figures for 2018?

Dr. Brian Doherty: Because of the way the Act has been designed, the will levy will be based on expenses in the previous year. Once we have the expenditure figure for 2018, the levy notices will issue in 2019.

Deputy Clare Daly: Is Dr. Doherty saying, in effect, that money spent prior to 2018 is not recoupable? My understanding of the legislation is that it is.

Dr. Brian Doherty: Because of the way the Act is written, that is the intention. The intention has been stated by the Government that the moneys expended in 2018 will be subject to levy notices in 2019.

Deputy Clare Daly: I get that point. However, my question refers to the money expended in 2016 and 2017. Do I understand from Dr. Doherty that it is his impression that this money is not recoupable?

Dr. Brian Doherty: That is one interpretation of the Act. We have been engaging with the Department on the issue and exploring extensively, looking at the levy provisions, as drafted. Dr. Thornhill mentioned a review under section 6 of the Act.

Deputy Clare Daly: The interpretation of the Legal Services Regulatory Authority is that it is not recoupable. Dr. Doherty is acknowledging that it is something that is open to interpretation. My interpretation, as a legislator, was that the organisation was to be self-funding and that the State would get back moneys expended. Dr. Doherty is saying that is not his interpretation, which is fine, but what is the Department's interpretation of the section?

Dr. Brian Doherty: As I said, this is something on which we have been engaging with the Department. We will have a further meeting with it later today. This is an issue that must be resolved.

As Dr. Thornhill raised the issue of one of the statutory reports we have to complete - the review of the operation of the Act - under section 6, it will actually include a review of the levy provisions. The authority brought forward the review of the entire Act in order to aid its commencement in the manner in which we wished to do it. We are engaged in a public consultation process on all aspects of the operation of the Act, but specifically mentioned in section 6 is the operation of the levy provisions. We have engaged an economist to look at the levy to ensure it provides a funding stream. We also are engaging on the issue of recoupability, on which I will

be meeting the Department. The executive must submit the report under section 6 to authority members by 6 September, with a view to publishing and submitting it to the Minister on 30 September.

Deputy Clare Daly: I thank the delegates. I am beginning to see a method in the madness of the legal experts who redrafted the original legislation to protect themselves. I hope to come back to the issue.

Chairman: If the Deputy wishes to come back to it and has a supplementary question, we will, of course, accommodate her. I have no doubt that our next speaker will concur with everything she said.

Deputy Clare Daly: I will listen to him.

Chairman: His name might appear on the register.

Deputy Jim O'Callaghan: It will appear on her roll of offenders.

I thank Dr. Don Thornhill, Dr. Brian Doherty and Mr. Ultan Ryan for attending the committee.

I know it is a difficult task for the first people who must set up a new statutory body. People look at successful bodies. At the beginning, there is significant work to be done, notwithstanding the fact that the legislation presents it as though it will be easy.

As alluded to by Deputy Clare Daly, the most important point is that the public will have confidence in this body. The Deputy is an able legislator. One of the impressions she conveyed is that the legal profession managed to get this legislation changed for the benefit of itself. I welcome the fact that, as the regulator, Dr. Thornhill, is a lay person. I also welcome the fact that the majority of the people on the board are lay people. It is appropriate that the regulatory body should not be dominated by members of the profession it is regulating. However, is it the case that this regulatory body has been captured by legal interests or the lawyers on its board? What can Dr. Thornhill say to give confidence to the public that he is putting its interests first and foremost in the establishment of this body?

Dr. Don Thornhill: That is an interesting question and one that I am conscious of as chair. At the first meeting of the authority, I reminded members that they were there to represent the public interest, not as representatives of their nominating bodies. I am satisfied all members of the authority are conscious of their wider public interest obligations. When it comes to seeking legal advice, we have had, and have, some distinguished lawyers as members of our authority but we do not seek legal advice from them. We seek independent legal advice, particularly regarding our documents. That is one precaution against what one might regard as subtle capture by a particular interest.

We also have other strong interests on the authority from the consumer and legal education spheres. It is often the case that impartiality is helped when one has contending views and opinions. I see it as a particular responsibility on myself to ensure that independence. The episode to which Deputy Clare Daly referred was in itself significant. I shared a sense of severe disappointment when I saw the initial communications from the Department. Those were shared unanimously by members of the authority. We had no hesitation as an authority in dealing openly with this issue, rather than doing it by way of conversations. We felt it was important that we should put the discussion of the authority into the full minutes of the authority meeting

and to convey them in writing to the Minister in order the public knew what was going on. That was one instance of where we were conscious of our independence. As chair, I was particularly conscious of that. It is a process of being vigilant and being aware of what the public interest is.

Deputy Jim O’Callaghan: There are two potential oppressors on the regulatory authority. On the one hand, there are the interests of the legal profession and, on the other, the interests of the Government. Part of the reason there was opposition to what was originally proposed by the previous Government was that it would have given the Government too much control over the regulation of legal services, particularly in circumstances where the State might be a defendant in cases. Is Dr. Thornhill satisfied the authority is standing up to encroachment from the Government and from the legal profession?

Dr. Don Thornhill: I am. I have been involved in regulatory organisations prior to this and I am aware pressures can arise from time to time. Aside from that one incident which Deputy Clare Daly highlighted, I have no experience or knowledge of government pressure on us.

Deputy Jim O’Callaghan: Lawyers are never going to be popular. Shakespeare said, “Let’s kill all the lawyers”. It is not a question of lawyers being popular. From the public’s point of view, however, there are legitimate concerns about the legal profession, namely, complaints procedures, costs, and, one which may not get much traction in public, education, in order to broaden the diversity of those coming into the legal profession.

Is it Dr. Thornhill’s objective and intention that when the complaints procedure is up and running, there will be a mechanism on a website for the public to make complaints about members of the legal profession whom they allege have been involved in misconduct or wrongdoing? How will that operate in practice?

Dr. Don Thornhill: As the Deputy is a distinguished practising lawyer himself, he is probably aware one cannot give free rein to opportunities for maligning and libelling people without due cause.

Dr. Brian Doherty: We will take over the complaints function for both barristers and solicitors. Under the Act, there is a regimen as to how complaints will be received by the authority. We can take complaints about inadequate legal services, excessive costs and any act or omission of the legal practitioner which constitutes misconduct. There is quite a structured system by which those complaints will be processed for admissibility. There is a problem-solving informal resolution and mediation scheme within the Act. There is a function for the authority to determine complaints at certain levels and for the establishment of the legal practitioners disciplinary tribunal.

Deputy Jim O’Callaghan: Will the authority have sufficient staff to deal with this? The Law Society and the Bar Council currently carry out those functions. They can be quite time-consuming and heavily dependent on staffing. Will the staffing be in place when the authority comes online with that responsibility?

Dr. Brian Doherty: That is what we are determined to have happen. We are currently working with an external adviser on the staffing requirements of the authority, determining and analysing the workload we will inherit from both the Law Society and the Bar Council. What is required under the new structures is more formalised in law. The informal resolution process, which has been carried out to some degree by the Law Society, is now enshrined in legislation. Once we are satisfied we have a robust staffing plan, we will take it to the Department of Public

Expenditure and Reform for its sanction for the staffing levels and grades required. It is certainly our intention that we will be able to take complaints from the end of quarter two. It will be one of our objectives that they will be dealt with in a timely and robust fashion.

Deputy Jim O’Callaghan: I have noted when people contact me - I am sure other legislators have too - that there can be a lack of awareness on the part of the public as to whom the appropriate complaint should be made. There is a bit of an awareness that if one has a complaint about An Garda Síochána, one directs it to the Garda Síochána Ombudsman Commission, GSOC. I am conscious, however, that it has been in place for a long time. While I do not suggest the authority needs to have an enormous advertising campaign, has it plans to apprise the public of the fact that if someone has a complaint about a solicitor or barrister, he or she should contact the authority?

Dr. Brian Doherty: It is one of our objectives in our strategic plan until 2019 to increase awareness of the LSRA through communication and engagement. It is important the members of the public who have cause to complain know exactly where to go. We have commenced some of the work on the LSRA website and engaged with the necessary people. Our profile has increased over the previous months as we have been involved in, for example, the review of education as provided for under section 34 of the Legal Services Regulation Act 2015.

Deputy Jim O’Callaghan: There is a public concern that the costs of the legal profession are too high. I presume the objective behind the establishment of limited liability partnerships, and in the future, multidisciplinary partnerships, irrespective of whether they are a good idea, is to reduce costs. What is Dr. Doherty’s assessment as to what steps can be taken for the purpose of trying to reduce legal costs or to create new mechanisms and bodies such as partnerships that can cut down on legal costs?

Dr. Brian Doherty: There is no one single piece of the Act that addresses legal costs in isolation but there are multiple streams within it that may have an impact upon legal costs. The office of the legal costs adjudicator is outside the scope of the Legal Services Regulatory Authority, LSRA, which is provided for under Part 10 of the Act, which has yet to be established. One of its tasks will be to maintain the register of determinations, which will be a public document and will assist in public information and comparative analysis of legal costs. We have a role to play in that also. One of the specific functions under section 13 is to promote and disseminate information to the public in respect of legal services, including the costs. There is a research function we will have to undertake to ensure the public are aware of the range of costs available. As the Deputy mentioned, the promotion of competition through legal partnerships and potentially multidisciplinary partnerships will be one other strand that may have an effect in bringing down the cost of legal services.

Deputy Jim O’Callaghan: Does Dr. Doherty have any concerns about the establishment of limited liability partnerships in circumstances where at present if somebody sues a partnership, the partnership is fully liable for the claim against it? If it is a limited liability partnership, obviously that liability is limited. Is that an issue of concern?

Dr. Brian Doherty: There are protections built within the Act regarding the level of professional indemnity insurance a limited liability partnership must hold. We have a regulatory function in that regard in that we can inspect to ensure limited liability partnerships, first and foremost, advertise they are limited liability partnerships and inform any clients of the limited liability partnership of the limitations on the extent of its liability, and with the professional indemnity insurance aspect, there is another safeguard.

Deputy Jim O’Callaghan: While this is provided in the legislation, does Dr. Doherty believe it will have a positive impact in reducing costs if there is a higher incidence limited liability partnerships? What is the public benefit of limited liability partnerships?

Dr. Brian Doherty: Some of the information and research we have seen would indicate there is a possibility firms that would not have found Ireland an attractive place in which to operate may now, with the introduction of limited liability partnerships, come on board. That point has been made in a few quarters. The knock-on effect of that would increase competition and it might drive down some costs. There may be multiple different aspects of what is both enshrined in the Act and other factors and rights leaning towards decreased costs.

Deputy Jim O’Callaghan: I direct this question to Dr. Thornhill. The education of people entering the legal profession is extremely important not only for the purpose of having well qualified lawyers who are important in any society but also because, as in every other country, one can only become a judge if one is a lawyer. We have had a discussion for many years about the judiciary Bill. One of the objectives of this committee is to try to increase and broaden diversity within the Judiciary. Obviously, there is a responsibility on the legal profession and the Legal Services Regulatory Authority to broaden that diversity by enabling more people to gain access to legal education in order that they can become lawyers and judges. Is the issue of broadening access to legal education of concern to Dr. Thornhill? I would have thought costs is a precluding factor for many people when they want to try to become lawyers. I would be interested to hear his comments on that.

Dr. Don Thornhill: The considerations the Deputy set out are very much to the forefront of our minds. I would approach this from the position that competition is better than its absence. Essentially, is the legal education landscape a monopoly or an oligopoly? I am not sure how one would describe it. I will not go much further than that. We have completed consultation and are preparing a report, which we will publish in early September, in which the issue of access will be very much to the forefront of our minds, and I believe it is to the forefront of everybody’s mind. For example, most people in Ireland are aware of how difficult it is not so much to qualify as a barrister but to get traction and develop a living as a barrister. That, in itself, is limiting in terms of the number of people who can pursue a career at the Bar. Limited partnerships, legal partnerships and the other forms of partnerships will allow for the early employment of young barristers working in a legal environment. That, in itself, should be a positive step in improving access.

Deputy Jim O’Callaghan: Has the Bar Council nominated anyone yet to replace Mr. Justice Barniville?

Dr. Don Thornhill: Yes. Sara Moorhead is now a member of the authority.

Deputy Jim O’Callaghan: Thank you.

Chairman: I call Deputy Mick Wallace.

Deputy Mick Wallace: I thank witnesses for attending. Forgive me if my questions are a little different as I do not know enough about this matter but I am interested to learn about it. To follow up on Deputy O’Callaghan’s point on education and opportunity, he made the point that the efforts we have been making to bring more diversity and societal representation into the Judiciary have not been easy. We are up against serious obstacles. Regarding people studying law, it is fair to say that the vast majority of people becoming solicitors and barristers

come from a well off background. Many of them come from private schools. It is an elitist profession. For example, I know a girl who trained to be solicitor and when she had completed her training it was as if she had to serve her time in that she was paid very little for the first few years. One could not do that without parental support. Only those who come from well off families could possibly spend so long trying to get on the first rung of the ladder at which point they could get a decent wage. The system seems to be structured to keep it elitist. Will the authority be able to challenge that?

Dr. Don Thornhill: Certainly. It would be our intention that the legal profession would be an open access profession. What the Deputy said is interesting. It is the anecdotal perception many of us have. We all know bright people who qualified for the Bar and had to give up active practice at the Bar because they simply were not earning enough to support their families or they were relying too much on the financial support of their parents. My anecdotal experience is that I know of clever sons and daughters of my friends who went to London. In all cases they did postgraduate law degrees in London and ended up working in high reputation chambers very quickly. The same would not have happened in Dublin.

Deputy Mick Wallace: Has the authority the potential to address that?

Dr. Don Thornhill: That is our plan. We see the various reforms, particularly the legal partnerships and the limited liability legal partnerships, as affording that. To take the specific instance of young barristers, we see those as a vehicle under which newly qualified barristers will be able to seek employment while practising law. The role of barristers will also include a comprehensive list of barristers who are available to practise law, which has not been the case up to now.

Deputy Mick Wallace: While those serving their time in the profession have to work for slave trade labour prices, when they get up the ladder our legal services are one of the dearest in Europe. That will be challenging for the authority to address. While it is relying on the partnerships to address that and bring costs down a little, as far as I am aware no ceilings have been put on costs in the legal profession in Ireland. I have dealt with plenty of those in the profession and I know my way around the Four Courts fairly well for different reasons. The variation in what can be charged by different people is phenomenal. There does not seem to be any kind of measure or control over what someone can charge. Is that manageable? Can the LSRA just go there and be effective?

Dr. Don Thornhill: Dr. Doherty might want to come in on this as well. There are no price control provisions in the Act. It does not state that we can regulate the fees that will be charged. The Act also provides for an office of legal costs adjudicators which is independent from us. The role of the office will be a public one and one hopes it will, over time, establish norms that will be viewed as reference prices. In other words, the consumer would be aware of what the going rate is for the provision of certain types of legal services. If we take an example at the other extreme, a consumer going into a supermarket has a general idea of the price of particular commodities in the supermarket and whether it is an expensive store and he or she will make decisions accordingly. The other factor is that we have no role in the management of the Courts Service or the management by the Judiciary of its processes. There are a number of actors in the legal costs area.

Dr. Brian Doherty: I will address Deputy Wallace's previous question on the admission of people from less wealthy backgrounds into the legal profession. As Dr. Thornhill mentioned, the LSRA has just finished a public consultation exercise on legal education and training in the

State. This was done under section 34 of the Act and the report is broad and significant for the LSRA. We have a research team currently involved in pulling together a wide range of data. One of the issues to be encompassed within that report is access to legal education and professional training as solicitors and barristers for those from a less wealthy background. The LSRA will address that issue and a range of other matters in its report to the Minister, which, by statute, must be submitted by 30 September this year.

As Dr. Thornhill said, a number of aspects of the 2015 Act deal with legal costs. One point I will add to what Dr. Thornhill already said is that the LSRA will be able to investigate any complaints of charging of excessive costs. The LSRA will have a research function and will publish information on the costs of legal services. Under the Act - I believe it is under section 150 - legal practitioners will be required to provide estimates of the cost of legal services in advance of providing those services. There are a number of different aspects that will hopefully increase transparency around legal costs for the benefit of the consumer and may also serve to bring costs down.

Deputy Mick Wallace: I return to the point that someone who qualifies must work for peanuts for a few years until he or she gets more experience. We all know that if someone comes onto a building site and wants to do carpentry but has not served his or her time, he will not be of great benefit to the builder. He will be only worth apprenticeship wages. In the case of someone who qualifies in the legal profession, however, there seems to be an abuse of the recruits entering the profession in respect of wages. This creates a major obstacle for a broad section of society gaining entry to the legal profession. Will the LSRA have an influence or potential influence in that area if a barrister takes on a devil, which is like an apprentice? Will the LSRA be able to have an impact on what that apprentice, so to speak, is paid?

Dr. Brian Doherty: I would not wish to presume what evidence we will ultimately gather in respect of the section 34 report into education and training. We have attempted to get as broad a perspective as possible, including in the public consultation to which we had 35 responses from different organisations. We have also sought the experience of trainee solicitors and barristers as well as the masters in that relationship. We are seeking their input to see what possible difficulties there may be at that point of their career. When we report under section 34 in September we are required by statute to make recommendations on any issues we identify that may be remedied. It is our intention, as we stated in the strategic report, to do a broad and comprehensive analysis of legal education and training, including the issue of access that Deputy Wallace raised, and to make recommendations to the Minister on 30 September.

Dr. Don Thornhill: If I could come in here with a more general point, the structures of the legal profession have been frozen in time for a considerable period dating to before the establishment of the State. I refer to the division of roles between barristers and solicitors, with barristers acting as sole agents and solicitors acting in partnership or as single agents. The reforms and changes that will follow the application of the Act will be the first time for more than a century that there will have been changes in the structures of the delivery of legal professions. One would hope that increased competition will prevent the types of abuses referred to by Deputy Wallace. In a more competitive market, for example, a solicitor will not have the comfort of being able to underpay staff, if such is happening, simply because good staff will go elsewhere.

Deputy Mick Wallace: That it is not the case at the moment.

Dr. Don Thornhill: Why are these provisions in the Act? It is because its authors, the legislators, believed that changes to the structures of the legal profession were required and that is

the belief in which we are working.

Deputy Mick Wallace: Is it the case that the concept of free legal aid is outside the remit of the LSRA?

Dr. Don Thornhill: Yes, that is correct.

Deputy Mick Wallace: I recognise that this is a different area but people cannot afford legal services, which means justice is denied. This is a serious problem.

In response to a point raised by Deputy Clare Daly regarding the levy, Dr. Doherty indicated that the expenses the LSRA will incur in 2018 will form the basis for the levy in 2019. Deputy Daly asked about the moneys spent in 2016 and 2017. Is it not a runner for all the LSRA's expenses for 2016, 2017 and 2018 to be built into the levies for 2019? Is that an option?

Dr. Brian Doherty: It may be an option under the legislation and it is an area we are examining. I do not want to make a definitive statement on the issue while we are still taking legal advice on it. We have obtained the advice of an economist on the provisions of the levy and we have been meeting with the Department throughout. We met officials on Monday and we will meet them again later today to discuss the issue.

Deputy Mick Wallace: The witnesses indicated the LSRA will be able to deal with complaints. I assure them that in more than seven years as a Member of the Oireachtas, I have received more complaints about solicitors than I have about gardaí and that is saying something. If the LSRA will be in a position to deal with complaints about solicitors, my God, it will be under an avalanche. I wonder if this will be possible? We know for a fact that the Garda Síochána Ombudsman Commission, GSOC, does not have the colour of the money it requires to do its job properly. We have argued that GSOC remains designed to fail because of a lack of proper legislation and funding. Will the LSRA receive the funding necessary to deal in an effective manner with all the complaints that will come its way?

Dr. Don Thornhill: Certainly, if we are compared with GSOC in respect of funding arrangements, we will be a levy funded organisation and not an Exchequer funded organisation. The evidence will be there. We are still under the control of the Department of Public Expenditure and Reform with regard to public expenditure. Nonetheless, the facts will be there. If we have an unmanageable backlog of complaints from which our determinations of admissibility are significantly in arrears, it will make a very compelling case for us to levy accordingly and to recruit the staff to be able to deal with that.

Deputy Mick Wallace: Is there a limit to the levy that can be put on the legal profession?

Dr. Brian Doherty: In theory it is structured under the Act. This simplifies it to quite an extent because the levy provisions are quite complicated. If the Legal Services Regulatory Authority, LSRA, were to have an increase in complaints, it would lead to an increase in costs which would lead to an increase in the levy. If there is a significant increase in complaints about the legal profession, which the LSRA is statute bound to deal with, it would be reflected in the following year's levy. There is no cap on the levy in the provisions as drafted.

Deputy Mick Wallace: Is the Legal Service Regulatory Authority of the mindset that if the public realises it is a body that will deal with complaints, just as GSOC does with Garda issues, it will expect lot of complaints, or am I wrong?

Dr. Don Thornhill: The Act sets up a structure which allows for efficient operation. The authority first has to make a decision as to whether a particular complaint is admissible. If it determines it is admissible, it then goes into an informal dispute resolution or mediation-type process. If it is not resolved, it goes into a more arbitration type of process. We will have a complaints committee which will operate in a series of divisions. This structure in itself will allow for the efficient handling of cases. If, however, either a lawyer or complainant is dissatisfied with our original decision on admissibility, it goes to a review committee and that committee's decision must be taken on board by both sides. The structures in the Act were not our design. We have encountered issues as we are working through the implementation of the Act, but this seems to be a thoughtful and well-designed structure.

Deputy Mick Wallace: I have issues with it. We have dealt a lot with GSOC and we have been looking at its problems for the seven years we have been in here. Rather than reinventing the wheel, it would not do the Legal Services Regulatory Authority any harm to look at the problems GSOC has faced, the mountains it has run into and the obstacles put in its way. The witnesses are not going into an easy job.

The UK-based legal publication *The Lawyer* described Ireland as the least transparent jurisdiction in Europe when it comes to the application of the law. Why do the witnesses think it stated this?

Dr. Don Thornhill: I did not see the report. As far as it mentions the application of the law, is it with regard to the reasoning of legal judgments or the legal costs arena?

Deputy Mick Wallace: It is on costs and the lack of transparency.

Dr. Don Thornhill: Certainly the aspiration behind this Act and our work is that this type of comment will not be made in future when we become operational.

Deputy Mick Wallace: As a matter of interest, how many staff does the Legal Services Regulatory Authority have at present?

Dr. Don Thornhill: These are the two leadership figures. I will ask Dr. Doherty how many other permanent staff we have.

Dr. Brian Doherty: There are seven in total, with one on maternity leave.

Dr. Don Thornhill: We also have a number of short-term advisers.

Dr. Brian Doherty: Three more staff are expected in the coming weeks and we have just started recruiting. I believe the advertisement went out yesterday. We are starting to expand.

Deputy Mick Wallace: I reckon the Legal Services Regulatory Authority will need a good few more. Good luck to the witnesses.

Dr. Don Thornhill: We are gearing up.

Chairman: Does the Deputy think it is an area that might interest him post his role in these Houses?

Deputy Mick Wallace: Does the Chairman think I should retire with him?

Chairman: No. My leaving is planned to be on its own.

Deputy Jack Chambers: I welcome Dr. Thornhill, Dr. Doherty and Mr. Ryan. I want to start with education and training. The strategic plan mentions that education and training will be kept under review and recommendations will be made on the availability and quality of education and training. How do the witnesses envisage this playing out in terms of the Law Society and the Bar Council and the provision of training and education? Do they expect there to be other providers who will be registered with the Legal Services Regulatory Authority? What do they see as the competing interests? Clearly, we have had an historic duopoly among the two bodies. What do the witnesses envisage occurring in education and training in legal services? Will it be in the context of the two existing providers?

Dr. Don Thornhill: We are working on a report at present, and with the Deputy's permission Dr. Doherty will answer the question, within the confines of answering a question about something that is not yet in the public domain.

Dr. Brian Doherty: I am not in any way trying to avoid or evade the question, but the Deputy will appreciate one of the cornerstones of the LSRA is its independence. Something we have also put in the strategic plan is that we will be independent in our decision-making. This means we have to follow the evidence to where it may lead us. We are still in the process of gathering that evidence. We see the section 34 report as significant. We have been heartened by the fact we have had so many submissions and we have had engagement from members of the legal profession in some of the firms in Dublin and elsewhere, from junior barristers and junior solicitors. We are still in the process of analysing this evidence. The research team was conducting interviews on Monday and Tuesday of this week, so it is too early to say, from the point of view of the LSRA, as to what the direction of travel might be regarding the issues the Deputy has raised. The intention and the statutory imperative is that by 30 September we will have published and submitted a comprehensive report that will deal with the issues raised by Deputies Chamber and Wallace.

Deputy Jack Chambers: What will happen after the report is submitted to the Minister?

Dr. Brian Doherty: It is for the Minister to consider the recommendations made. There is a facility under the Act for us to revisit this issue in future years. Further scope is built in with regard to several issues but also with regard to education and training.

Deputy Jack Chambers: The LSRA is not empowered under the Act to go in the direction it sees fit. The Higher Education Authority is empowered to take a direction and all aspects of education and training would not necessarily be at the Minister's discretion. Within the LSRA's 11 key functions are many references to research, recommendations and reports to Ministers, but very little on the LSRA's own discretion on matters, which leads me to query the quality of the board's independence. If the LSRA refers everything to someone who has a de facto veto in every aspect, will this be an issue? Within the 11 key functions, many references to the Minister are made. What is the thinking of the witnesses on this? Is it a matter of concern? Is it a matter they would like to see addressed in the future legislative context? Are the witnesses happy with the quality of their independence in terms of the current legislative basis? Would they like to see anything looked at in future? They are now before an Oireachtas committee and we want to hear about it. It has been a slow process during the first two years. The LSRA found it difficult to get up and running. It started with two staff. It has not set up the complaints process yet, obviously the costs issue is still ongoing, and it has to refer to the Minister with regard to education and training. Are there legislative roadblocks in its current workings? What would the witnesses like to see changed to give the LSRA greater discretion to act according to its functions?

Dr. Don Thornhill: That is a very well-placed question. We are doing some hard thinking about what we would like to see in an amended version of the Act. For example, let us consider the specific instance of legal education and imagine the current providers have provisions that prevent people from qualifying unless they have gone through the current educational institutions. If a report were to suggest that there was room for more dynamic and varied provision arrangements, then that is something that would have to be challenged. I will not go any further than that at the moment.

Deputy Jack Chambers: I understand what Dr. Thornhill is saying. One aspect is around education and training but there are many others. Dr. Thornhill referred to keeping Ministers informed in respect of the provision of legal services, including the cost. Is much of this a recommending or research role rather than exercising the independence of the authority around the provision of legal services?

I am a little concerned because the strategic report has many references to the Minister. The members of the Joint Committee on Justice and Equality know that agencies of the State are rather bound to the Department and Minister in their legislative context. That makes it difficult for them to function according to their remit. Has the board examined whether the authority is constrained by the current legislative basis to do the things it wishes to do?

Chairman: Before Dr. Thornhill responds, I wish to highlight that a telephone is beeping. Could members and guests ensure that their devices are in switch-off mode, please? It is coming across on the microphones.

Dr. Don Thornhill: Our frustration at the moment as an authority is not around the issues mentioned by Deputy Jack Chambers. They could possibly arise at a later point as we become more operational. I will go back to my response in the earlier discussion with Deputy Clare Daly. Our frustration was at being pushed off from the shoreline in a rather frail canoe. That is where most of our frustration has been to date. The issues mentioned by Deputy Jack Chambers have not confronted us yet. We will grow in experience. The quality and composition of members of the current authority are impressive. I have no reason to believe that will change over time given the nature of the nomination process. I think the present authority and future authorities will face up to any challenges.

Deputy Jack Chambers: Has the authority received many calls from the public in respect of complaints? Have people complained that they are not satisfied with the complaints procedure? Has the authority been obliged to push people back to the current process?

Dr. Brian Doherty: I am sorry. I missed the start of the question.

Deputy Jack Chambers: Has the authority received telephone calls or communications from members of the public who are dissatisfied with the current complaints process? Has the authority had to push people back to the existing procedures in respect of the legal profession?

Dr. Brian Doherty: A small number of people - fewer than ten - have contacted us or communicated with us in respect of complaints. Some of those go back many years.

Deputy Jack Chambers: How does the authority address them?

Dr. Brian Doherty: I have been answering the correspondence personally for the most part. I have tried to set out, in terms as plain as possible, the structures of the authority and what we can and cannot do. I have advised on when we will take on the functions that we intend to

take on. I cannot stray into the area of legal advice in setting out the current position. A small number of complaints have been received.

Deputy Jack Chambers: There have been reported difficulties between the authority and the Department of Justice and Equality in one of the newspapers – it may have been *The Sunday Business Post* – in recent weeks. What was the basis for that? Is there some disagreement?

Dr. Don Thornhill: That is possibly the issue Deputy Clare Daly raised with us earlier, that is to say, the issue of the Department showing excessive zeal – I think that was the term I used – on the timetable for the introduction of legal partnerships. In essence, the authority recorded in public its concern or objection to an inappropriate intervention into matters that were the responsibility of the authority. We are confident that the issue is settled to our satisfaction.

Deputy Jack Chambers: When does the authority envisage its complaints process being up and running? What is the timeline for that?

Dr. Brian Doherty: Under the strategic plan it is for quarter 2 of 2019, by the end of June in that year.

Deputy Jack Chambers: Are there any targets the authority has not met in the strategic plan? There is reference to targets for quarter 2 of 2018. Has there been difficulty in implementing any of the things set out in the strategic plan?

Dr. Brian Doherty: To date, we have met every statutory obligation. We have hit the timelines. As with any strategic plan, the timelines are listed as indicative because we are dependent on some external factors. The target with a date of quarter 2 of 2018 to which Deputy Chambers referred relates to establishing the role of practising barristers, something we have commenced.

Deputy Jack Chambers: The authority representatives said that the functions of the authority included encouraging a strong independent and effective legal profession, the promotion of interests in respect of consumers and the proper and effective administration of justice. Does the authority have any opinion on the current Judicial Appointments Commission Bill that is going through the Oireachtas? It relates to the proper and effective administration of justice. It has been criticised from a European perspective. Has the authority taken a view on that?

Chairman: You are very welcome to answer the question, Dr. Thornhill, but I can anticipate it. I gather the Bill is before the Seanad today. If there is any comment you wish to make or even if you wish to decline to comment, it would be acceptable.

Dr. Don Thornhill: I think the terms of reference of our appearance preclude me from making any comment on that.

Chairman: I think that is acceptable.

Deputy Jack Chambers: Where is it in the terms of reference?

Dr. Don Thornhill: That is not a matter under examination by the committee.

Deputy Jack Chambers: One of the functions of the authority is to support the proper and effective administration of justice. One of the matters going through the Oireachtas relates to that.

Dr. Don Thornhill: That is a good point but I would still decline the opportunity to com-

ment.

Deputy Jack Chambers: I would like to see more comment from the authority on matters that relate to its functions. I have not heard enough in terms of education and training. I understand the authority has an ongoing report. I would like to see the authority being more forthright in the exercise of its independence. I realise and appreciate the authority is at an embryonic stage. The authority representatives want to be careful about what they say and the associated implications, but it has been a slow start in the context of a two-year window. There are serious issues around cost, such as those gone through by Deputy Clare Daly. There are issues around the complaints process as well as education and training. These issues are within the statutory remit of the authority. The public needs to see strong statements from the authority to get progress. I hope we get more commentary from the authority.

What I have learned here during the past two years is that bodies related to the Department of Justice and Equality might have been reluctant initially to comment on particular matters. We started engaging with them and, because of their frustration and because they found it difficult to exercise their independence, they have become far more forthright in the recent period. The authority should learn from the experience of the Garda Síochána Ombudsman Commission, to which Deputy Wallace referred. I recall two years ago everything was fine and there was little criticism from the people there. They said there was proper engagement with the Department of Justice and Equality. It was all politically correct around the engagement of the commission and how it was getting on. Underneath it all, it was very difficult for GSOC. The authority needs to learn from the experience of the commission. I appeal to the authority not to keep referring to the Department and the Minister. The authority will need reform in terms of the legislative basis. There is a great deal of recommending to the Minister and I fear that nothing will change unless the authority exercises its independence, and that is something it can do. I will leave it at that.

Dr. Don Thornhill: I thank the Deputy for his encouragement. We have not yet gone into the public domain on the issue of education and training, which is of concern for him, but we will do so.

Chairman: I have some questions. Deputy Clare Daly may wish to come in afterwards.

In his presentation Dr. Thornhill spoke about protecting and promoting the interests of consumers, while the advent of the complaints function has been referenced by Dr. Doherty. Is there a cut-off time? Are historical cases open to being addressed by the Legal Services Regulatory Authority, or might they be statute barred? In my role as an elected public representative I have come across cases, the genesis of which would have been years ago, such is the nature of the legal profession and its outworking. Many years later there could be some serious matters of continuing concern and dissatisfaction. Is there a cut-off time or are they open to being addressed by Legal Services Regulatory Authority?

Allied to that question, will Dr. Thornhill advise us not of the individuals but the make-up of the review committee that was referenced?

Dr. Don Thornhill: They are very pertinent questions. In very recent times the chief executive and I went through that territory as part of our briefing discussions. I might ask him to deal with it specifically.

Dr. Brian Doherty: The Chairman asked about time limits for dealing with complaints.

In effect, the Act provides for three categories of complaint: the provision of services of an inadequate standard; excessive costs; and misconduct. There is no time limit for the making of a misconduct complaint. There is a three-year time limit for making a complaint about services of inadequate standard or excessive costs. The time limit runs from either the date of the incident or the date on which the client became aware. If the client was to become aware of the provision of inadequate services quite some time after the fact, a complaint would still be admissible.

The review committee is made up of three persons. It has a lay majority - two laypersons and one legal practitioner.

Chairman: Are they members of the board of the Legal Services Regulatory Authority board or external appointees?

Dr. Brian Doherty: They are external appointees established by the Legal Services Regulatory Authority.

Chairman: In his opening remarks Dr. Thornhill mentioned the unification of the professions of solicitor and barrister. What does the proposition “translate the unification of” entail? Where stands the proposition? What has the Legal Services Regulatory Authority done to date in this area of responsibility?

Dr. Don Thornhill: We are obliged to report within four years of the authority’s establishment date. We have not yet reported on the matter. We have not done so purely because of time pressures. We have not investigated the particular issue. There are varying practices across common law countries, which are the easiest comparators. As far as I know, Singapore is the only country to have a totally unified attorney or lawyer profession. The classic distinction is that a solicitor is involved in an array of functions on behalf of clients - probate, conveyancing, litigation, etc. - whereas a barrister is responsible for giving opinions and advocacy. For a number of years solicitors in Ireland have raised the issue of the advocacy role. Solicitors now have the right of audience, as it is referred to quaintly, in the upper courts and can act as advocates. What will be the outcome of our deliberations on the issue? Some argue vehemently that not only are there economies in the current dual track, but it also means that people can have access to the best barristers in the country. There is obviously a cost issue for some people under what is called the “cab rank” rule, whereby barristers line up and take briefs from solicitors. Clearly, any reform in this area would be very fundamental for the profession. Perhaps the draftspersons were wise in drafting those provisions, particularly the four-year rule, to give us all an opportunity to see how legal partnerships and limited liability legal partnerships worked because, in effect, they provide for the possibility of solicitors and barristers working under the same roof and dealing as a unity with a client.

Chairman: While it may be open to interpretation, it does not go as far as to suggest the structure of the unification of the respective professions. It does not suggest an option that entails interchangeability, with an individual holding a specific responsibility, that he or she can be a solicitor today and a barrister tomorrow or both on the one day.

Dr. Don Thornhill: There is huge complexity. Aside altogether from some people seeing a change of this type as the end of civilisation as they know it - others see it as presenting great opportunities - there are prohibitions on barristers holding money on behalf of clients. With a unified profession, people who today are acting in what we consider to be a barrister role might, in fact, also be holding clients’ money.

Chairman: The Legal Services Regulatory Authority has not yet had an opportunity to address the area in detail.

Dr. Don Thornhill: No, we have not done a deep dive into it.

Chairman: The issue of barristers holding clients' money was also referenced in Dr. Thornhill's opening address. On the other hand, solicitors hold clients' money.

Deputies Mick Wallace and Jim O'Callaghan asked about young barristers and Dr. Thornhill and Dr. Doherty responded accurately in that regard. I do not want to walk into the dark side - one refers to the other as the dark side; I suppose it depends on to whom one is talking - but there is a practice of holding clients' money and withholding payment to a barrister for services given. A number of reasons were given for young barristers not being able to stay the course; it all comes down to affordability. However, it could take years for payment to issue. While it is not a word I like to use, there is a significant drop-out rate among young qualified barristers in moving over to a solicitor's practice, into corporate work or perhaps away altogether, with all of their years of study and preparation lost. It is attributable to a number of issues which include the fact that solicitors who hold clients' money do not pay barristers as readily as I believe they should. I ask Dr. Thornhill to comment on that issue.

Dr. Don Thornhill: It should be a matter of a complaint to the authority once it is operational. What the Chairman has said is interesting. Undoubtedly, there are practical barriers to entry to a satisfying professional career as a barrister. I have had personal experience of benefiting from it. I had several colleagues who had studied at the Bar when I was a civil servant. Their period of study at the Bar certainly helped them to become remarkably effective civil servants and make great contributions, not just to the drafting of legislation but also to the implementation of policy. I can think of a number of cases when I was saved from rash acts by a colleague who had legal training.

Chairman: However, it might not necessarily have been the pathway that they had planned when going through those years of study.

Dr. Don Thornhill: That is the case. To be fair, others had no intention of ever pursuing a career at the Bar. It was simply to gain a good understanding of law and a good grounding in it to function better as civil servants. Both factors apply here.

Chairman: My final question is prompted by a remark regarding how complaints could be received. Could a complaint be received by the LSRA from a practising solicitor or barrister and not just from members of the public?

Dr. Brian Doherty: That is certainly the case regarding misconduct. Now, I would like-----

Chairman: Would it apply where the withholding of moneys was concerned?

Dr. Brian Doherty: I would like to have a more forensic examination of the Act based on the question the Chairman has raised, because it is an interesting point. Certainly, from a quick glance at the key provisions, it would not seem to be prohibited.

Chairman: It is not prohibited.

Dr. Brian Doherty: As I said, however, I would like to sit down and go through it line by line to ensure that what I am saying is accurate.

Dr. Don Thornhill: It is certainly true that this is an issue. In our examination of possible changes to the Act, a person of the Chair's stature raising this issue is something the authority would have to consider.

Chairman: I thank the witnesses. I do not know whether Deputy Daly wishes to add anything.

Deputy Clare Daly: No, because I missed some of the discussion, but I will listen to it on playback. The LSRA will be incredibly busy. Of that there is no doubt.

Chairman: Accepting that, I just want to say that the committee membership hugely welcomes the advent of the LSRA and expresses goodwill towards its work. It is an area that has not been covered or addressed, and it gives people hope. I have been in elected roles for a long time, and there have been a number of times through the years that I found there was nowhere to direct an issue properly, no independent complaints pathway. Now that will be there, and I cannot say strongly enough how important that development is. The witnesses are the trailblazers, and we wish them the very best. I have no doubt that this is a first engagement, whatever about the composition of the Joint Committee on Justice and Equality after the advent of the full exercise of the complaints function. Is the end of the second quarter of 2019 when Dr. Doherty expects things to be fully up and running?

Dr. Brian Doherty: That is our determination, yes.

Chairman: We wish our witnesses the best of good luck. Whether we will be here at that time as we are currently constituted is a question, but I have no doubt that the witnesses will be before a committee on justice and equality in the future to review how things progress. We wish them a fair wind in all that they undertake.

Deputy Mick Wallace: It would be remiss of us not to add that we are certainly looking forward to the witnesses' future appearances and we wish them well. They would be disappointed if we were not merciless in holding them to account the next time they appear.

Dr. Don Thornhill: I thank the committee members for their kind words, and we will go away from here encouraged. There has been quite a lot of commentary and questions raised here, to which we will give very careful thought in the context of our section 6 review under the Act. We will go away encouraged and with the burden of the world upon our shoulders.

Chairman: On behalf of the committee, I thank Dr. Thornhill, Dr. Doherty and Mr. Ryan for their attendance.

The joint committee adjourned at 11.05 a.m. until 9 a.m. on Wednesday, 11 July 2018.