



THE BAR
OF IRELAND

The Law Library

**SUBMISSION OF THE
COUNCIL OF THE BAR OF IRELAND**

**Consultation on Scheme of Consumer Rights Bill
2021**

JUNE 2021

INTRODUCTION

The Council of The Bar of Ireland (“the Council”) is the accredited representative body of the independent referral Bar in Ireland, which consists of members of the Law Library and has a current membership of approximately 2,150 practising barristers. The Bar of Ireland is long established, and its members have acquired a reputation amongst solicitors, clients and members of the public at large as providing representation and advices of the highest professional standards. The principles that barristers are independent, owe an overriding duty to the proper administration of justice and that the interests of their clients are defended fearlessly in accordance with ethical duties are at the heart of the independent referral bar.

This submission is made in response to the Public Consultation on the Transposition of Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC.

THE CONSULTATION

The Department of Enterprise, Trade and Employment seeks the view of the Council on the Scheme of the Consumer Rights Bill 2021, which seeks to consolidate and update the legislative provisions that regulate the main types of consumer contract.

The Department is also seeking views on an amendment to the Regulations on the Indication of Product Prices which does not form part of the Scheme.

The Department is seeking the Council’s views to focus on the Parts of the Scheme where Member States have a freer hand in terms of implementation of EU Directives. In some cases, the Directives contain optional provisions that Member States can choose whether or not to implement, or minimum harmonisation provisions that can be extended or supplemented in national legislation. Specifically, the Department has sought views on the provisions of contracts for the supply of non-digital services in Part 4 of the Scheme as they are not regulated by EU legislation.

EXECUTIVE SUMMARY

The Council welcomes a consolidated Consumer Rights Act which creates clearer rules for businesses and improves protections for consumers.

The Council approves of a Scheme that deals with matters that are not currently subject to statutory regulation such as rights and remedies in consumer contracts for the supply of digital content and digital services and the rights and the cancellation of distance and off-premises contracts.

The Council submits that barristers at law providing legal services should be exempted from the legislation as providers of services due to the unique type of service provided by barristers, and the fact that any complaint in relation to the service a barrister renders may be made to the Legal Services

Regulatory Authority (“the LRSA”), and that it would be an unwelcome development if barristers were being sued in circumstances where the LRSA had not had an opportunity to determine a complain, or had determined the complaint and the complainant decided to proceed with a civil case.

The Council has submitted its views in respect of Part 4 of the Scheme in the requisite response form attached.

Views are invited on the provisions of Part 4 of the Scheme (Limit to 500 words)

Part 4 of the Scheme relates to “Contracts for the supply of a service”. This part of the Scheme does not give effect to the provisions of an EU Directive, and are matters that are currently dealt with under the Sale of Goods and Supply of Services Act, 1980. While it is acknowledged that barristers do not at present supply services to consumers, this is a matter that will change if s.101 of the Legal Services Regulatory Act, 2015 is commenced. It is entirely possible that such a consumer of legal services would be requesting services personal to him or her rather than acting in the course of a business.

The provisions of Part 4 imply certain terms into service contracts, principally that the supplier of the service has the necessary skill to render the service and will supply it with due care and diligence. The Part specifically includes professional services or advice.

It is the view of the Council that barristers providing legal services should be specifically exempted from the legislation due to the unique legal services that barristers provide and the existing regulatory regime. In the first instance barristers provide advocacy services, specifically in the courts and in mediations and arbitrations. It is foreseeable that person who are unsuccessful in their litigation may seek to sue a barrister on the basis that the barrister did not exercise due skill care and diligence.

Whilst the Council acknowledges any consumer’s right to make such a case it is submitted that it is undesirable to allow the instigation of such a case without such checks and balances that are in place for other professionals. By way of example negligence cannot be alleged against a professional without the plaintiff being in receipt of a report from a suitably qualified professional stating in their professional opinion the professional services fell below the standard of care expected of that professional. Further the LRSA, being the regulatory body of barristers, is the appropriate body to determine whether a barrister’s services fall below the standard expected (s.50 of the 2015 Act).

It is the view of the Council that it would be undesirable that a consumer be in a position to instigate a case against a barrister under the proposed Scheme where the LRSA had already determined that the service provided did not fall below the requisite standard; where the LRSA had not been first asked to consider whether the services provided had fallen below the standard expected.

In conclusion it is the view of the Council that barristers should be exempted from the Scheme, or in the alternative that there be a bar on instigating a claim against a barrister in the absence of a finding from the LRSA that the service provided fell below the standard expected from a barrister.