



**SUBMISSION  
TO THE  
LAW REFORM COMMISSION  
ON THE CONSULTATION PAPER  
ON  
EXPERT EVIDENCE**

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**APRIL 2009**

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## **OVERVIEW OF THE SOCIETY OF CHARTERED SURVEYORS**

Dating back to 1895, the Society of Chartered Surveyors is the largest professional body in Ireland representing both the construction and property industries. The Society has strong links with the RICS which represents over 110,000 members across 120 countries worldwide and is one of the most internationally respected and high profile global standards and membership organisations for professionals involved in land, valuation, property, construction and environmental issues.

Representing over 2,200 qualified chartered surveyors and a further 1,000 probationers who are undergoing their assessment of professional competence in order to achieve the gold standard of chartered status, members of the Society are typically professionals employed in the land, property and construction markets through private practice, in central, regional and local government, in public agencies, in academic institutions, in business organisations and in non-governmental organisations.

Their broad areas of expertise include:

- Quantity Surveying
- Building Surveying
- Valuations surveying
- Planning & Development
- Geomatics & Land surveying

Members' services are diverse and can include offering strategic advice on the economics, valuation, law, technology, finance and management in all aspects of the construction and property industry.

Accountable to both members and the public, the Society of Chartered Surveyors has six primary roles:

- Promoting the diverse knowledge of the profession

- Maintaining the highest educational and professional standards
- Protecting consumers through strict codes of practice
- Providing expert advice on property and built environment issues
- Appointing arbitrators and independent experts in commercial rent review disputes
- To act as the State Registration Body for the title of Quantity and Building Surveyor under the Building Control Act, 2007

## **ROLE OF SCS MEMBERS IN THE GIVING OF EXPERT EVIDENCE**

Chartered Surveyors are called to give expert evidence on a regular basis, in Court cases, Arbitration hearings and Valuation Tribunals. Indeed, Chartered Surveyors are actively involved in all aspects of the dispute resolution process – representing clients, acting as expert witnesses and being appointed as arbitrators, adjudicators, mediators and/or conciliators and other forms of dispute resolution relating to:

- Commercial rent reviews – retail, office and industrial properties
- Construction projects, both public and private
- Service charges in multi occupied office buildings, shopping centres, retail parks etc.
- Disputes arising under commercial leases and under other Landlord & Tenant relationships.

Chartered Surveyors may also be called upon to deal with disputes arising under complex development agreements and syndicated or other shared property ownership arrangements or at a more domestic level in relation to boundary or other similar disputes between owners of neighbouring properties.

The Society is currently in the process of updating it's own Guidance Notes for Chartered Surveyors acting as Expert Witnesses and Chartered Surveyors acting as Advocates and many of the issues raised in the Law Reform Document have already been raised within the Society.

In the light of these various factors the Society is in a unique position to provide informed and experienced comment on the practical implications of the Law Reform Commission Consultation Paper on Expert Evidence and the impact of its recommendations.

## **GENERAL COMMENTS ON THE LAW REFORM COMMISSION PAPER**

The Society of Chartered Surveyors welcomes the publication of the Law Reform Commission Consultation Paper on Expert Evidence.

The SCS believes that while the Paper deals with the issues of Expert Evidence before the Courts, many of its recommendations are equally applicable to other dispute resolution formats, in particular, Arbitration.

However, we would point out that in many civil dispute procedures, the acting Experts will have previously been involved in attempts to negotiate a settlement to the dispute and that fee arrangements will reflect this. The Society are of the view that, provided full disclosure as to the nature of the fee arrangement is made, this should not be necessarily seen as a negative factor.

**DETAILED OBSERVATIONS ON THE PROVISIONAL RECOMMENDATIONS OF THE  
LAW REFORM COMMISSION PAPER**

RECOMMENDATION	COMMENT	SCS RECOMMENDATION
7.13	The Society is not convinced that a definition for the term “Expert” is required, and would be concerned that such a definition would, in practice, be exclusionary only.	The SCS recommends that the Recommendation be deleted
7.14		The Society believe that experience-only based knowledge should be acceptable.
7.15	The Society does not believe that this recommendation can stand on it’s own and believes that the length of time that an Expert has been away from the relevant field is an important consideration (as per 7.16)	The SCS recommends that Recommendations 7.15 & 7.16 be combined.
7.17		The Society agrees that a formal Guidance Code be produced. The Society believes that this should be on a non statutory basis.
7.19	As previously outlined, in many civil dispute procedures, the acting Experts will have previously been involved in attempts to negotiate a settlement to the dispute.	
7.27	As outlined above, in many civil dispute procedures, the acting Experts will have previously been involved in attempts to negotiate a settlement to the dispute. The generally accepted practise of SCS members in such cases is that fees are paid on a contingency basis. This would be the norm in Compulsory Purchase Arbitrations and Rent Review Arbitrations, to take but two examples. It is not considered practical that fee	The Society agrees that conditional fee arrangements (i.e., no foal no fee) should be prohibited. The Society would be of the view that further consideration be given to the matter of contingency fees.

	arrangements should alter in the middle of a case.	
7.33	The Society does not agree that there should be a set form or structure to Experts reports, although it does feel that the items contained in the recommendation should generally be included. However, the Society would query the requirement that relevant certificates of proof for the Experts qualifications and experience be attached to any submission to be an and would consider such a requirement to be an unnecessary burden and an administrative quagmire.	

## **CONCLUSION**

In conclusion, the Society of Chartered Surveyors broadly welcomes the Law Reform Commission Consultation Paper on Expert Evidence and is available to provide further clarifications arising from this submission to the Commission should the need arise.