

The logo for the Legal Services Regulatory Authority (LSRA) features the letters 'LSRA' in a bold, white, serif font, set against a solid purple rectangular background.

**Legal  
Services  
Regulatory  
Authority**

## **ANNUAL REPORT 2017**

**Independence**

**Innovation**

**Consumer Protection**

**Accountability and Transparency**

**April 2018**

# Declaration

## **Annual Report for the year ended 31 December 2017**

This Annual Report is made to the Minister for Justice and Equality and to the Oireachtas Joint Committee on Justice and Equality in accordance with section 21(1) of the Legal Services Regulation Act, 2015.



### **Foreword by the Chairperson**

I am pleased to introduce the 2017 Annual Report for the Legal Services Regulatory Authority (LSRA). This is the Authority's second annual report and the first to reflect on a full year's activities.

The LSRA is still in start-up mode but this hasn't prevented the fledgling regulatory body from delivering a series of statutory reports within the challenging deadlines laid down by the Legal Services Regulation Act, 2015. Throughout 2017, the Authority completed public consultations and reported on Legal Partnerships, Multi-Disciplinary Practices and on issues relating to barristers.

The Authority members met on seven occasions in 2017 and I wish to thank my fellow Authority members for their hard work and engagement throughout the year. I have been especially struck by how quickly the cohesive manner in which the Authority has tackled the many complex tasks with which it has been faced has emerged. My thanks, in particular, are owed to David Barniville S.C., who resigned from the Authority in September following his appointment to the High Court. I am extremely grateful for his dedication to the Authority and for his commitment to establishing the LSRA as a functioning regulatory body. We, as an Authority, also owe our interim Chief Executive Renee Dempsey a huge debt of gratitude for providing focused and skilled leadership in the early days of the Authority.

The LSRA's governing legislation requires the Authority to be independent in the exercise of its functions. We are very aware that true independence from all possible influences is hard fought and easily lost. We as an Authority are dedicated, therefore, to ensuring that independence is the cornerstone on which the LSRA will be built. This means that we will be independent in our gathering and consideration of evidence, in our analysis and in our decision-making. This is the high standard by which we expect to be measured.

This report reflects the huge amount of work that has been done to date, but a lot also remains to be done before the LSRA can confidently, fulfil the full range of functions and duties conferred on it under the Act. I am confident that the Authority and the small, but highly effective executive team will meet the challenges of the many complex tasks that lie ahead.

**Dr. Don Thornhill**  
**Chairperson**



## **Introduction by the Chief Executive Officer**

I am delighted to introduce the second annual report of the Legal Services Regulatory Authority under section 21 of the Legal Services Regulation Act, 2015. In writing the Annual Report for 2017, I am of course conscious of the fact that a lot of the good work, which I have the privilege of reporting on, was conducted during the tenure of the interim Chief Executive Renee Dempsey. I am extremely grateful for the conscientious and diligent manner in which Renee began the process of forming the LSRA. It has been of great benefit to me, to have inherited an Authority which has key procedures and governance arrangements already in place and with key relationships with stakeholders formed.

This report reflects much of the large amount of work undertaken and the key milestones met by Renee and her small team. These include the five statutory reports into legal partnerships, multi-disciplinary practices and other issues relating to barristers which the Legal Services Regulatory Act, 2015 mandated were completed while only a skeleton staff were in place.

I am grateful for the staff and management of the Law Society, the Bar of Ireland, the Honorable Society of King's Inns, the Competition and Consumer Protection Commission, the Solicitors Disciplinary Tribunal, the Independent Adjudicator (Solicitors) and the Courts Service who have provided their support and shared their knowledge of regulatory and other issues in the legal services sector. Whilst respecting the independence of the new Authority, they have all been welcoming and supportive of our work.

I am grateful too to the other regulatory and public service agencies such as the Insolvency Service Ireland, the National Disability Authority, the Irish Audit and Accounting Supervisory Authority, the Irish Medical Council, the Teaching Council, CORU, the Charities Regulatory Authority and the Garda Síochána Ombudsman Commission who have provided advice and practical assistance in the early days of the Authority. Their generosity with their time and experience has been greatly appreciated. Our UK colleagues in the Solicitors Regulation Authority, the Legal Services Board, the Legal Ombudsman, the Bar Standards Board, the Council for Licenced Conveyancers and the Chartered Institute of Legal Executives have also provided invaluable assistance.

Finally, the start-up phase of any organisation is a critical and difficult time; key strategic and operational decisions are taken, the culture of the organisation begins to form and align to the objectives of the organisation and a team of skilled and dedicated people are brought together to work on a common purpose. I owe a huge debt of thanks to the small staff of the LSRA who have worked extraordinarily hard to meet the challenges both of setting up a new regulatory body and to meet the deadlines of the Act. As always, they have my heartfelt thanks.

**Dr. Brian J. Doherty**  
**Chief Executive Officer**

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## PART 1: Who We Are

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The Legal Services Regulatory Authority (the Authority) was established by the Minister for Justice and Equality on 1 October 2016 by virtue of S.I. 507 of 2016 in accordance with section 7 of the Legal Services Regulation Act, 2015 (the 2015 Act).

The Authority is a body corporate with perpetual succession and a seal. The executive function is provided by a Chief Executive Officer (CEO) and the secretary to the Authority.

The Authority is comprised of 11 Members nominated in accordance with section 9 of the 2015 Act. The Authority has a lay majority and chair. Authority members are appointed by the Government following nomination by 10 organisations. This nomination process was designed to ensure the independence of the Authority while also achieving a balance of interests between legal practitioners and those consumers who avail of their services. The nominating organisations are as follows:

Organisation	No. of Nominations
The Citizens Information Board	1
Higher Education Authority (An tÚdarás um Ard-Oideachas)	1
The Competition and Consumer Protection Commission	1
The Irish Human Rights and Equality Commission	1
The Institute of Legal Costs Accountants	1
Consumers' Association of Ireland	1
Bar Council (Bar of Ireland)	1
Legal Aid Board	1
Honorable Society of the King's Inns	1
Law Society	2

In appointing a person to be a member of the Authority, the Government must be satisfied that he or she has knowledge of, and expertise in relation to, at least one of the following: the provision of legal services, legal education and legal training, competition law and policy, the maintenance of standards in professions regulated by a statutory body, business and commercial matters and the needs of consumers of legal services.

The Authority met for the first time on 29 October 2016 following the completion of the nomination process for membership.

The initial membership of the Authority on 29 October 2016 was as follows:

<b>Authority Member</b>	<b>Organisation</b>	<b>Term<sup>1</sup> of Appointment</b>
Angela Black	The Citizens Information Board	4 Years
Don Thornhill (Chair)	Higher Education Authority	4 Years
Deirdre McHugh	The Competition and Consumer Protection Commission	3 Years
Gerry Whyte	The Irish Human Rights and Equality Commission	4 Years
Stephen Fitzpatrick	The Institute of Legal Costs Accountants	3 Years
Dermott Jewell	Consumers' Association of Ireland	3 Years
David Barniville <sup>2</sup>	Bar Council (Bar of Ireland)	3 Years
Joan Crawford	Legal Aid Board	4 Years
Eileen Barrington	Honorable Society of the King's Inns	4 Years
James MacGuill	Law Society	4 years
Geraldine Clarke	Law Society	3 Years

The Authority met on nine occasions from 29 October 2016 to 16 November 2017. Seven of those meetings took place within the 2017 reporting period of this annual report.

The Authority has adopted the Department of Public Expenditure and Reform Code of Practice for the Governance of State Bodies and commenced the implementation of the relevant provisions of the DPER Code throughout 2017.

The Authority undertook procurement exercises in 2017 with the advice and assistance of the Office of Government Procurement. The procurement exercises employed the existing All-of-Government Frameworks. Following these exercises, McDowell Purcell solicitors were appointed as legal advisors to the LSRA and Crowleys DFK were appointed to provide accountancy services.

The Executive function of the LSRA is provided by a Chief Executive Officer and the Secretary to the Authority. Renee Dempsey performed the duties of Interim CEO until the appointment of Brian Doherty on 14 September 2017.

Under section 21(1) of the 2015 Act the Authority shall, no later than 30 April each year, make a report (referred to as the Annual Report) to the Minister and to the Oireachtas Joint Committee on Justice, Defence and Equality, or any Oireachtas Joint Committee that may replace that Committee, on the performance of its functions during the preceding year. The annual report may be in such form and shall include information in respect of such matters as the Authority considers appropriate. This annual report is submitted in compliance with section 21(1) of the 2015 Act.

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<sup>1</sup> Under section 10 of the 2015, Act 5 of the Authority members, selected by the drawing of lots, shall hold office for a period of 3 years with the remaining members, including the Chair holding office for a period of 4 years.

<sup>2</sup> Following the appointment of David Barniville as a High Court judge in November 2017 the nomination of the Bar Council to the LSRA remains unfilled.

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## Part Two: Our Vision, Mission, Objectives, Functions and Values

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The LSRA has adopted the following Strategic Vision for 2018-2020

### Our Vision:

***“To develop the LSRA into an efficient, effective and accountable regulatory body with the capacity to protect and promote the public interest and the interests of consumers of legal services whilst encouraging an independent, strong, competitive legal profession with high standards of professionalism and integrity.”***

The Mission of the LSRA comes directly from section 13(1) of the Legal Services Regulation Act, 2015:

### Our Mission:

***“The Legal Services Regulatory Authority will regulate the provision of legal services by legal practitioners and will ensure the maintenance and improvement of standards in the provision of legal services in the State.”***

The Six Statutory Objectives of the LSRA are taken from the 2015 Act.

### Our Six Statutory Objectives:

The Legal Services Regulatory Authority will<sup>3</sup>

- (1) Protect and promote the public interest.**
- (2) Support the proper and effective administration of justice.**
- (3) Protect and promote the interests of consumers relating to the provision of legal services.**
- (4) Promote competition in the provision of legal services in the State.**
- (5) Encourage an independent, strong and effective legal profession.**
- (6) Promote and maintain adherence to the professional principles of legal practitioners specified in the 2015 Act.<sup>4</sup>**

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<sup>3</sup> As per section 13(4) of the 2015 Act

<sup>4</sup> Section 13(5) of the 2015 Act outlines the professional principles of legal practitioners as follows:

- (a) That legal practitioners shall
  - (i) act with independence and integrity,
  - (ii) act in the best interests of their clients,
  - (iii) maintain proper standards of work,

## Our Eleven Key Functions:

The Authority will undertake the following specific functions as part of its role:

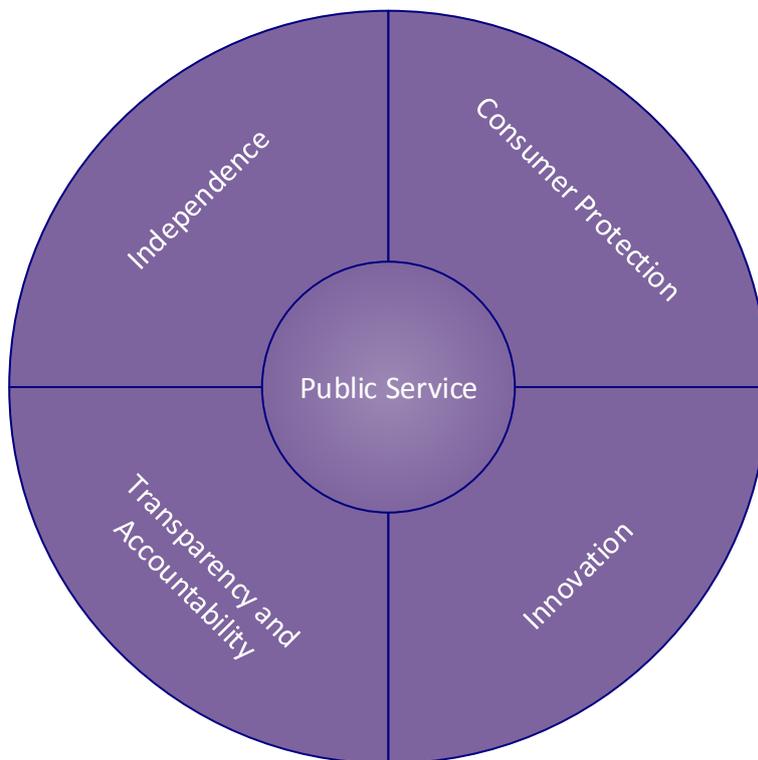
- (1) Keep under review and make recommendations to the Minister in respect of:
  - a. admission requirements of the Law Society, Bar Council, and Honorable Society of King's Inns;
  - b. availability and quality of education and training including ongoing training for the solicitors' and barristers' professions;
  - c. policies in relation to admission and, or, entitlement to practise of the Law Society, Bar Council and the Honorable Society of the King's Inns;
  - d. professional codes;
  - e. the organisation of the provision of legal services in the State.
- (2) Disseminate information in respect of the education and accreditation requirements and any other matters referred to above as the LSRA thinks fit.
- (3) Specify the nature and minimum levels of professional indemnity insurance required.
- (4) Establish and administer a system of inspection of legal practitioners for the purposes of the Act.
- (5) Receive and investigate complaints against legal practitioners.
- (6) Establish and maintain the roll of practising barristers.
- (7) Promote public awareness and disseminate information to the public in respect of legal services, including the cost of such services.
- (8) Keep the Minister for Justice & Equality informed of developments in respect of the provision of legal services including their cost.
- (9) Keep the Minister informed of developments in respect of the provision of legal services and make recommendations to assist the Minister in coordinating and developing policy.
- (10) Undertake, commission or assist in research projects and other activities in respect of the provision of legal services which may increase public awareness and promote an improvement in standards for their provision, and make recommendations to the Minister for Justice & Equality.
- (11) Perform any other functions conferred by the Act or by regulations made under it.

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- (b) that legal practitioners who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court by virtue of being legal practitioners, shall comply with such duties as are rightfully owed to the court, and
  - (c) that, subject to any professional obligation of a legal practitioner, including any obligation as an officer of the court, the affairs of clients shall be kept confidential.

## Our Four Core Values:

The work of the LSRA as a public service body will be guided by our four core values:

1. Independence
2. Consumer Protection
3. Innovation
4. Transparency and Accountability



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## Part Three: 2017 At A Glance

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01 January 2017	Appointment of Renee Dempsey as Interim CEO
19 January 2017	At the 4 <sup>th</sup> meeting of the Authority, the Budget for 2017 was reviewed and approved. The DPER Code of Practice for the Governance of State Bodies was adopted by the LSRA. Authority members agreed on the process for engaging Executive Search Services.
21 February 2017	Work commenced on the section 118 public consultation and 119 public consultations and statutory reports.
09 March 2017	At the 5 <sup>th</sup> meeting of the Authority, updates were provided on the progress of the public consultation process for the section 118 and 119. Systems for the review of financial controls were put in place and staffing, resources and accommodation requirements were outlined.
30 March 2017	A Special Authority Meeting was held to finalise and approve reports under section 118 and 119 for submission to the Minister for Justice and Equality.
31 March 2017	The section 118 report following public consultation in relation to the regulation, monitoring and operation of Legal Partnerships was submitted to the Minister for Justice and Equality.
31 March 2017	The section 119 research report on the establishment, regulation, monitoring, operation and impact of multi-disciplinary practices in the State was submitted to the Minister for Justice and Equality.
30 April 2017	The First Annual Report of the LSRA for 2016 was submitted to the Minister and the Oireachtas Joint Committee on Justice and Equality.
15 June 2017	At the 7 <sup>th</sup> Meeting of the Authority, the appointment of the permanent CEO was approved subject to contract and notice.
31 July 2017	A further interim report under section 118 in relation to Legal Partnerships was submitted to the Minister for Justice and Equality.
29 August 2017	Joint workshop on Legal Partnerships and Limited Liability Partnerships was held with the Law Society and the Bar of Ireland.
13 September 2017	LSRA moved into serviced office accommodation.
14 September 2017	Brian Doherty was appointed as permanent CEO.
29 September 2017	Following a public consultation exercise, the second report under section 119 on the establishment, regulation, monitoring, operation and impact of multi-disciplinary practices in the state was submitted to the Minister for Justice and Equality.

- 29 September 2017 Following a public consultation exercise a report under section 120 of the 2015 Act on certain matters relating to barristers was submitted to the Minister for Justice and Equality.
- 16 November 2017 At the 9<sup>th</sup> Meeting of the Authority an action plan was agreed for the implementation of legal partnerships subject to a revised and realistic timetable. A staffing structure for the LSRA was reviewed and approved, and the executive was tasked with development of a strategic plan for presentation at the first meeting of 2018.
- 22 November 2017 A full day workshop was held with the Law Society Regulation Department on Legal Partnerships.
- 21 December 2017 Staffing structure report is finalised by LSRA Executive

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## Part Four: Statutory Reporting in 2017

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In 2017 the LSRA published six reports required under the Legal Services Regulation Act, 2015. One of these was the Annual Report for 2016 published in April 2017 and which covered the first few months following the establishment of the Authority. As has been mentioned elsewhere in this annual report the Authority was also required by the Legal Services Regulation Act, to produce a series of reports on new business models and related issues to pressing and challenging statutory deadlines with minimal staffing in place.

These detailed and complex reports required the LSRA to engage in public consultation exercises and to conduct research into international practice in the provision of legal services. Two reports were prepared under section 118 of the 2015 Act on the operation of Legal Partnerships<sup>5</sup>. The 2015 Act required that the LSRA engage in a public consultation process in relation to the regulation, monitoring and operation of legal partnerships immediately following its establishment and to report on the consultation within six months. The 2015 Act also required the Authority, having regard to any submissions made to prepare a report to the Minister setting out recommendations in relation to the regulation and monitoring of legal partnerships. The LSRA's first report on Legal Partnerships was submitted to the Minister, within the statutory deadline, on 31 March 2017. The second report on Legal Partnerships was submitted to the Minister on 31 July 2017.

Two reports were also prepared by the LSRA on the establishment, regulation, monitoring, operation and impact of Multi-Disciplinary Practices under section 119 of the 2015 Act. The first report was required to cover the operation of similar practices in other jurisdictions, the likely consequences of the operation in the State of multi-disciplinary practices, the likely impact on legal costs, the provision of legal services to consumers and the access of persons to legal practitioners. The report was also required by Statute to include information on the likely effect of the operation of Multi-Disciplinary

### FIRST REPORT ON LEGAL PARTNERSHIPS

On 31 March 2017, following a public consultation, the LSRA submitted a report under s. 118 in relation to the regulation, monitoring and operation of legal partnerships.

#### Key findings:

- The Authority accepts the statutory commitment to the introduction of legal partnerships and is resolved to provide for their implementation.
- The Authority is concerned about the risks attaching to the premature introduction of legal partnerships.
- The Authority wished to ensure that all appropriate intervening steps are taken which will lead to a robust framework for legal partnerships.
- The Authority committed to an intensive period of review and further consultation. The Authority also committed to producing a second report on Legal Partnerships no later than 31 July 2017.

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<sup>5</sup> A "Legal Partnership" is a partnership between two or more barristers or a partnership between one or more barristers and one or more solicitors for the purpose of providing legal services.

Practices<sup>6</sup> in the state on the objectives of the LSRA. These objectives are specified in section 13(4) of the Act and are outlined earlier in this Annual Report. The Act required that the first report be submitted six months from the establishment date of the LSRA. The report was submitted to the Minister on 31 March 2017 within the statutory time frame. The second report was required to be submitted within six months of the submission of the first report. This report required a public consultation exercise to be completed in relation to the introduction of Multi-Disciplinary Practices in the State. The LSRA completed the public consultation and the reporting requirements within the statutory time limit and the report was submitted to the Minister on 29 September 2017.

Finally, the LSRA submitted a report under section 120 of the 2015 Act following a public consultation process in relation to certain issues relating to barristers. The issues included the extent to which the restriction on legal practitioners, other than solicitors, holding clients' money should be retained, direct access to barristers in contentious matters and the circumstances and manner in which a barrister may hold clients' moneys and the mechanisms to be applied for the protection of clients' moneys which may be so held. The report was submitted to the Minister on 29 September 2017 within the statutory timeline.

All of these reports are available on the LSRA website and the key findings of each report are summarised in the sidebars to this Annual Report:

## SECOND REPORT ON LEGAL PARTNERSHIPS

On 31 July 2017 the LSRA submitted its second report to the Minister for Justice and Equality on the issue of legal partnerships.

This report outlined the key steps that the LSRA would undertake in preparation for the introduction of legal partnerships at the earliest possible date.

These included reporting to the Minister in relation to the issues relating to barristers and engaging in direct consultation exercises to obtain the views of all key stakeholders in relation to Legal Partnerships, Multi Disciplinary Partnerships and Issues relating to Barristers.

The report also set out the need to continue to prepare for the introduction of the investigatory, complaint and discipline functions of the Authority and to continue to put in place the necessary personnel, premises and resources required for the Authority to fulfil its mandate.

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<sup>6</sup> A "Multi-Disciplinary Practice" (MDP) means a partnership formed under the law of the State by written agreement by two or more individuals, at least one of whom is a legal practitioner, for the purpose of providing legal services and services other than legal services.

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## Part Five: Building an Independent, Effective Regulatory Body

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### Building a New Regulatory Body

As might be expected from a start-up agency, a huge focus of the efforts of the LSRA has been on growing as an organisation and putting in place the necessary staffing, procedures, governance and infrastructure that will allow the LSRA to undertake the wide remit envisaged by the 2015 Act. This has required careful and thorough analysis of the 2015 Act and other legislation that may impact upon the work of the Authority. The task of reviewing the statutory obligations of the LSRA and then developing processes and procedures through which they can be operationalised is both time consuming and labour intensive. The LSRA is committed, however to setting strong foundations on which a new independent and effective regulatory body can be built.

It should also be recognised that the 2015 Act is interlocking in nature. This means that there are interdependencies between Parts of the Act that cannot neatly or easily be separated. By way of example, under Part 9 of the Act, the LSRA must establish and maintain the Roll of Practising Barristers. This is a living roll of all qualified barristers who provide or hold themselves out as providing legal services as per a series of relevant definitions under the Act. The Roll of Practising Barristers must be in place in order for the necessary calculations to be carried out to apportion the levy on the legal professions under Part 7 of the Act which is the LSRA's principal funding mechanism. The interlocking nature of the 2015 Act means that careful analysis of the Act and thorough planning as to how it is to be implemented is essential for the efficient operation of the LSRA.

The small team of the LSRA has analysed the interlocking sections of the Act carefully and thoroughly and produced the necessary documentation to guide their implementation. The LSRA also engaged the services of an expert consultant to produce a commencement schedule for the Act 2015. This

### FIRST REPORT ON MULTI-DISCIPLINARY PRACTICES

On 31 March 2017, the Authority submitted its first report on Multi-Disciplinary Practices (MDPs) under section 119 of the 2015 Act.

The report included information on the operation of similar practices in other jurisdictions, the likely consequences for existing models of practice in Ireland and the likely impact of MDPs on legal costs, on the provision of legal services to consumers, on access to legal practitioners and on the regulatory objectives set out in the 2015 Act.

The research into MDPs in other jurisdictions produced the following key findings:

A growing number of jurisdictions permitted some form of non-lawyer ownership of law firms. Most jurisdictions do not permit non-lawyers to enter into partnership, or fee share with lawyers.

Within the jurisdictions that have introduced non-lawyer ownership, there is a wide variety of models that have been used. This has been influenced by the objectives each jurisdiction had in introducing them.

All the non-lawyer ownership models that have been introduced elsewhere have put in place specific features designed to deal with the fundamental issues of lawyer independence and conflicts of interest. The MDP models in other jurisdictions have also, to varying degrees, removed limitations on the scope of services that business structures owned by lawyers can provide, removed barriers to co-ownership and permitted the limitation of liability.

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commencement schedule in turn was used as the basis for the implementation timescales set out in the LSRA Strategic Plan 2019-2020 that was developed over the last quarter of 2017 and the first quarter of 2018. The Strategic Plan was submitted to the Minister for Justice and Equality in April of 2018.

In relation to the commencement of all of the functions required under the 2015 Act, the Strategic Plan recognises that this would require the recruitment and training of appropriate staff, the necessary IT systems to be in place, permanent premises to have been secured and the development of the required additional infrastructure. The Strategic Plan provides an indicative timeline for the achievement of the key milestones required to safely undertake the full scope of the functions required under the Act. The LSRA Strategic Plan is available on the LSRA website.

### **Staffing**

Staffing of the LSRA in 2017 was limited to the CEO, the Secretary to the Authority and a small team. The team consisted over the course of the year of an Advisory Counsel seconded from the Department of the Oireachtas, a specialist solicitor seconded from the legal advisors to the Authority, and two clerical officers on Fixed Term Contract.

The LSRA has invested significant effort in analysing the requirements of the 2015 Act and developing a staffing structure that will deliver an efficient regulatory system. The staffing structure was completed in late 2017 and will be reviewed by an expert consultant prior to implementation.

Under section 25 of the 2015 Act, whilst the LSRA may appoint its own staff it requires the approval of the Minister for Public Expenditure and Reform in determining the terms and conditions of employment and the numbers and grades of staff in the Authority. The LSRA has engaged extensively with DPER in relation to the eventual staffing structure and numbers.

## **FIRST REPORT ON MULTI-DISCIPLINARY PRACTICES (CONTD)**

The MDP share of the market is very small in all jurisdictions which have adopted the model which makes it difficult to identify any significant effect on the legal sector. There appear to have been no problems arising in relation to standards or ethical behaviour and the most common effect of introducing MDPs elsewhere has been the impact on the diversity of services available and the economy of scale and scope offered by bundling of services.

The report recommended that the Authority gave more consideration to the objectives or outcomes which it would want to achieve in the legal market through the introduction of MDPs, seek more evidence on potential entrants into the legal market in Ireland in order to understand any barriers or attractors for those considering engaging in the sector and to recognise that MDPs if introduced would only ever likely be a small share of the total legal services market. Other tools should be considered which may impact wider on behaviour in the traditional legal sector.

Finally the report made suggestions about the shape of the public consultation exercise that the Authority was required to conduct before submitting the second report on Multi-Disciplinary Practices.

Under section 26 of the 2015 Act, the Authority may give appropriately qualified staff of the Law Society and the Bar Council the option of transferring to the Authority. The LSRA has commenced formal engagement with both professional bodies regarding the possible transfer of staff.

### **Complaints Function under Part 6 of the 2015 Act**

The LSRA is, of course, very conscious that the focus of a large part of the public interest in the work of the Authority is on the introduction of the complaints function under Part 6 of the Act. The LSRA has undertaken careful analysis of the new complaints regime provided for under the Act.

Work continues to develop the required infrastructure, staffing and other resources required for the careful implementation of Part 6 of the Act. The task required for the implementation of Part 6 should not be underestimated as it requires the staffing and resources to operate the complaints system to be in place, including the transfer of staff from the professional bodies, an IT complaints handling system to have been developed, alongside premises and additional infrastructure, the establishment of complaints resolution procedures, as well as the establishment of the Complaints and Review Committees (the two key regulatory committees that underpin the LSRA's operations in this area), and the Legal Practitioners Disciplinary Tribunal. The Tribunal, while operationally independent, will be fully funded by, and receive logistical and administrative support from, the LSRA.

Work in this area will be a large focus of 2018 as the LSRA's efforts continue in working toward the strategic goal of building an independent and effective regulatory body and complaints function.

### **Roll of Practising Barristers**

Throughout 2017, the LSRA carried out extensive preparatory work for the commencement of the Roll of Practising Barristers in 2018. This work included analysis of the various definitions outlined in the Act that are interlinked to mandate who is required to be entered on to the Roll as well as logistical and other requirements for the creation of a public facing register.

## **SECOND REPORT ON MULTI-DISCIPLINARY PRACTICES**

On 29 September 2017, the LSRA submitted its second report on Multi-Disciplinary Practices to the Minister for Justice and Equality. The report summarised the views expressed in a public consultation conducted by the LSRA.

The report concluded that the Authority should focus its resources on the introduction of Legal Partnerships, Limited Liability Partnerships and the commencement of the complaints function of the Authority at the earliest possible date. The Authority has committed to revisiting the subject of Multi-Disciplinary Practices after the introduction of the new business models and the commencement of the other important functions of the Authority under the 2015 Act.

The LSRA has engaged with the Department of Justice and Equality on the requirements of the Roll throughout.

As it is a requirement for any barrister intending to provide legal services as a barrister to apply to have their name entered on the roll, and also as the Act makes it a criminal offence for unqualified persons to provide legal services as a barrister or to pretend to be a qualified barrister, the analytical work required for the implementation and commencement of the Roll has been thorough.

### **The New Legal Service Business Models MDPs, Legal Partnerships and Limited Liability Partnerships**

Following the completion of the statutory reports highlighted in Part 4 above, the 2015 Act contained a statutory imperative that the work required to implement Legal Partnerships in the State be prioritised.

Again, the work required to implement Legal Partnerships should not be underestimated. This is, in effect, the introduction of a new legal service delivery model in the state. Under the Act, legal partnerships can be formed for the first time between barristers or between barristers and solicitors. The LSRA is required to introduce regulations in relation to the operation and management of Legal Partnerships and in relation to the Professional Indemnity Insurance requirements of Legal Partnerships. As this is a new delivery model for legal services the LSRA has commenced engagement with the insurance industry to explore the necessary insurance requirements. The LSRA is also required to review the professional codes of the Law Society, King's Inns and Bar of Ireland to ensure that nothing in the codes would prevent or restrict a member of those bodies from working with, or otherwise doing business with a legal practitioner providing services in a legal partnership. The LSRA must also develop and maintain a register of Legal Partnerships. The implications of the statutory prohibition on

## REPORT ON ISSUES RELATING TO BARRISTERS

On 29 September 2017 the LSRA submitted a report to the Minister for Justice and Equality on three issues relating to barristers:

- (a) The extent, if any, to which the existing restriction on barristers holding client moneys should be retained;
- (b) The retention or removal of restrictions on a barrister receiving instructions in a contentious matter, directly from a person who is not a solicitor, and the reforms, whether administrative, legislative or to existing professional codes, that are required to be made in the event that the restrictions are retained or, as the case may be, removed, and
- (c) The circumstances and manner in which a barrister may hold clients' money which may be so held.

The Authority conducted a public consultation and received eight responses.

Following consideration of the responses to the public consultation and research conducted by the LSRA, the Authority made the following eight recommendations:

Recommendation 1: Barristers, who are not members of a Legal Partnership or a Multi-Disciplinary Practice, should not be permitted to hold client moneys.

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barristers holding client funds on the operation of legal partnerships requires careful analysis and planning.

As required under the Act, the work on the introduction of Legal Partnerships has been a significant focus of the LSRA's resources over the last quarter of 2017.

The LSRA intends, once the Legal Partnership project is complete and Legal Partnerships have been introduced to focus on the introduction of Limited Liability Partnerships. The LSRA is of the view that the work undertaken in introducing Legal Partnerships will inform the logistical and other requirements of introducing Limited Liability Partnerships.

As per the conclusions of the statutory reports on Multi-Disciplinary Practices, once Legal Partnerships and Limited Liability Partnerships are in place and resources permit, the LSRA will then revisit the consideration of the viability of Multi-Disciplinary Practices.

### **Funding and the Levy on the Professions**

Under the 2015 Act, the LSRA has two main sources of funding. The first source is funds advanced to the LSRA under section 32 of 2015 Act, which states that the Minister for Justice and Equality shall advance to the Authority such amounts as the Minister, may determine for the purposes of expenditure by the Authority in the performance of its functions. The second source of funding is provided for in Part 7 of the Act, which introduces a levy to be paid by the Law Society, Bar Council and certain barristers. It should be noted that the LSRA is also entitled to charge fees for certain aspects of its work.

As the levy has not yet been introduced, the LSRA has relied to date on funds advanced under section 32.

In 2017, the LSRA completed a thorough analysis of the statutory provisions that allow for the

## REPORT ON ISSUES RELATING TO BARRISTERS (CONTD)

Recommendation 2: The possibility of barristers holding client moneys as part of a legal partnership or a multi-disciplinary practice to be considered as part of the ongoing consultations and consideration of those issues.

Recommendation 3: The regulatory and associated costs of barristers holding client moneys as part of a legal partnership or multi-disciplinary practice should be borne by those barristers in so far as is possible unless such an approach would make those business models uneconomical.

Recommendation 4: Direct Access to Barristers in contentious matters be permitted in certain circumstances.

Recommendation 5: Barristers wishing to undertake direct access work be required to apply to the Authority for authorisation.

Recommendation 6: Clients who wish to directly instruct barristers in contentious matters be required to be approved by the Authority.

Recommendation 7: Direct Access be permitted in contentious matters only in respect of specific categories of cases.

Recommendation 8: Direct Access barristers not be permitted to undertake the functions currently performed by solicitors.

implementation of the levy on the professional bodies and has liaised closely with the Department of Justice in this regard.

### **Stakeholder Engagement**

Throughout 2017, the LSRA engaged with key stakeholders in the legal sector, legal and other regulatory bodies and with consumer protection agencies.

The LSRA has had regular meetings with the Law Society, King's Inns, the Bar of Ireland and the Dublin Solicitors Bar Association to outline the progress of the LSRA in developing its capacity to implement the 2015 Act. Whilst respecting the independence of the LSRA, each of the organisations has been welcoming and generous of their time in sharing their experiences of the legal service sector in the state.

The LSRA is grateful to the Consumer Protection and Competition Commission, the Charities Regulator, the Policing Authority, the Irish Medical Council, the Teaching Council, CORU, the Courts Service, the Insolvency Service of Ireland, the Personal Injuries Assessment Board, the Irish Auditing and Accounting Supervisory Authority, to name but a few, for their advice and assistance.

The LSRA has also begun to build relationships with our UK counterparts and have engaged with the Solicitors Regulation Authority, the Legal Services Board, the Bar Standards Board, the Council for Licenced Conveyancers, the Chartered Institute of Legal Executives and the Legal Ombudsman in England and Wales with a view to learning from their considerable combined experience of regulating legal services.

In 2017, the LSRA became a member of the International Conference of Legal Regulators, which provides a platform for interacting and sharing learning and good practice with an international network of legal regulators.

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## Part Six: Governance and Structure

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### Attendance at Authority Meetings

The Authority met on seven occasions in 2017. A schedule of attendance at the Authority Meetings is set out below:

<b>2017 Date</b>	<b>19/01</b>	<b>09/03</b>	<b>30/03</b>	<b>15/06</b>	<b>11/07</b>	<b>14/09</b>	<b>16/11</b>
<b>Member</b>							
David Barniville	✓	✓	✓	✓	✓	x	✓
Eileen Barrington	✓	✓	✓	✓	✓	✓	✓
Angela Black	✓	✓	✓	✓	✓	✓	✓
Geraldine Clarke	✓	✓	✓	✓	✓	✓	✓
Joan Crawford	✓	✓	✓	✓	✓	✓	✓
Stephen Fitzpatrick	✓	✓	✓	x	✓	✓	✓
Dermott Jewell	✓	✓	✓	x	✓	✓	✓
James MacGuill	✓	✓	✓	✓	x	✓	✓
Deirdre McHugh	✓	✓	✓	✓	✓	x	✓
Don Thornhill (Chairperson)	✓	✓	✓	✓	✓	✓	✓
Gerry Whyte	✓	✓	✓	✓	✓	✓	✓
<b>Totals</b>	<b>11</b>	<b>11</b>	<b>11</b>	<b>9</b>	<b>10</b>	<b>9</b>	<b>11</b>

**Table: Attendance at Authority Meetings 2017**

## **Governance Arrangements**

The Legal Services Regulatory Authority is a statutorily independent body. Under the Legal Services Regulation Act, 2015 the Authority is required to be independent in the performance of its functions.

The LSRA's governance framework is guided by:

- the Legal Services Regulation Act, 2015;
- the DPER Code of Practice for the Governance of State Bodies (2016) which has been adopted by the Authority;
- the DPER Code of Practice for the Governance of State Bodies: Business and Financial Reporting Requirements (2016)
- Public Financial Procedures including the Public Spending Code.

The Legal Services Regulatory Authority has developed a suite of governance documents including:

- Code of Conduct for Authority members and staff;
- A Terms of Reference for the Authority;
- A schedule of delegations and matters reserved to the Authority;
- A Protected Disclosures Policy;
- Risk Register and Risk Management Strategy;
- A Strategic Plan 2018-2020; and
- A Corporate Governance Assurance Document Agreement with the Department of Justice and Equality.

Where appropriate these documents have been made available on the Authority's website.

## **The Role of the Authority**

The Authority is responsible for

- i. Reviewing and guiding the strategic direction and major plans of action of the LSRA;
- ii. Ensuring compliance with all applicable statutory objectives;
- iii. Holding the CEO and senior management to account for the effective performance of their responsibilities;
- iv. Risk management policies and procedures,
- v. Annual budgets and business plans,
- vi. Setting performance objectives,
- vii. Monitoring implementation and performance,
- viii. Overseeing major capital expenditure and investment decisions.

## **The Role of the Chief Executive**

The Authority delegates operational responsibility for the day-to-day running of the LSRA to the Chief Executive Officer and the LSRA's senior management team.

The Chief Executive Officer attends Authority meetings at the invitation of the Authority chairperson and provides regular reports on all aspects of the operation of the LSRA as required by the Authority members.

The Chief Executive Officer's role and responsibilities are set out in the 2015 Act. Section 24(3) of the 2015 Act states that the Chief Executive Officer shall:

- (a) implement the policies and decisions of the Authority,
- (b) manage and control generally the Authority's staff, administration and business,
- (c) be responsible to the Authority for the performance of his or her functions, and
- (d) perform such other functions (if any) as may be required by the Authority or as may be authorised under this Act.

Under section 13(7) of the 2015 Act, any function of the Authority may be performed through or by the Chief Executive or any member of its staff duly authorised in that behalf by the Authority.

The Chief Executive Officer ensures that the Authority is kept up to date and fully informed about strategic issues and challenges affecting the LSRA and the environment in which it operates.

### **Conflicts of Interest**

The Legal Services Regulatory Authority has developed a "Policy and Procedure for the Disclosure of Interests". Under the policy, and the Code of Conduct for Authority Members and Employees, the Authority members and the Chief Executive register their interests in other relevant undertakings with the Secretary of the Authority on appointment and on an annual basis.

### **Performance Evaluation**

An evaluation of the Authority's performance in 2017 will be undertaken in Quarter 2 of 2018. The evaluation will be conducted by means of a self-assessment exercise based on the model self-assessment questionnaire set out in the Code of Practice for the Governance of State Bodies and administered by the accounting services provider of the LSRA. The themes and lessons arising from the self-assessment evaluation process will be discussed at the next appropriate meeting of the Authority.

### **Audit and Risk Committee**

The LSRA in 2017 drew on the Department of Justice and Equality Audit Committee in the short term. The LSRA has commenced formation of its own Finance Audit and Risk Committee, which is intended to be in place in the second quarter of 2018.

In 2017, risks to the LSRA were considered and evaluated at each Authority meeting and any mitigating action required was taken. Risk and measures to mitigate risk was considered in the context of all decisions made by the Authority. A formal risk register and risk management strategy were put in place in early 2018.

## **Internal Audit**

As an internal audit function had not been established by the LSRA in 2017, the Internal Audit Unit of the Department of Justice and Equality were requested to conduct a review of the governance and internal financial controls carried out in the LSRA.

The Internal Audit report commented that the Interim CEO and the LSRA staff had implemented a significant body of controls since the Authority commenced operations in October 2016. The Internal Audit made 11 medium priority recommendations including that the LSRA should develop its own formal internal audit programme, strategic plan and relevant governance manuals. The Internal Audit also made five low priority recommendations including recommendations relating to the stamping of supplier invoices and the template coversheet used for invoices.

No high priority recommendations were made by Internal Audit Unit.

The LSRA Executive accepted all of the recommendations and an action plan was drafted and agreed by the Authority. The Executive provides updates on progress of the implementation of the action plan at each Authority meeting.

## **Procurement**

All procurement activity is guided by the Department of Public Expenditure and Reform Public Spending Code. The LSRA Executive has developed a Financial Policies and Procedures Manual which includes a Purchasing and Procurement Policy which is in line with the DPER Public Procurement and OGP Guidelines for Goods and Services (July 2017).

Formal sanction is sought from the Department of Public Expenditure and Reform where required. The LSRA are grateful to have been assisted in their procurement exercises by the Office of Government Procurement.

## **Department of Justice and Equality**

Over the course of 2017, the LSRA has engaged extensively with officials from the Department of Justice and Equality. Formal meetings take place on a regular basis on issues of common interest such as the implementation of Legal Partnerships, the Roll of Practising Barristers and the Levy on the Legal Professions.

The LSRA is, of course, independent and has a statutory obligation to be independent in the performance of its functions. In recognition of the independence of the Authority, a Performance Delivery Agreement as required under the DPER Code of Practice for the Governance of State Bodies has not been entered into with the Department. Instead, and in recognition of the independence of the Authority, a Corporate Governance Assurance Agreement has been reached between the LSRA and the Department of Justice.

This document sets out the roll of the Authority and the Chief Executive and the governance requirements under the DPER Code.

## **Financial Reporting**

All appropriate procedures for financial reporting were adhered to in 2017 by the Authority.

An annual budget for 2017 was agreed by Authority members at the first Authority meeting of the year.

At each meeting of the Authority, up-to-date management accounts were presented by the Chief Executive. Monthly management accounts were produced throughout the year by the accounting services to the Authority and presented to the Executive team ensuring that senior management have access to relevant and timely financial and non-financial information.

An annual Financial Statement of the Accounts of the LSRA for the period from establishment date of 1 October 2016 to 31 December 2017 was prepared and has been submitted to the Comptroller and Auditor General.

Once the Financial Statement of Accounts has been audited, a copy of the accounts and the report of the Comptroller and Auditor General shall be presented to the Authority and the Minister. The Minister will lay a copy of the accounts and the audit report before each House of the Oireachtas.

The Financial Statement of Accounts, including the statement of internal control, will also be published on the LSRA website.

## **Tax Law**

The Legal Services Regulatory Authority has complied with its obligations under tax law in 2017.

## **Prompt Payment of Accounts Act 1997**

It is the policy of the Legal Services Regulatory Authority to fully comply with the terms of the Prompt Payment of Accounts Act, 1997. The LSRA has introduced procedures to ensure that all invoices are paid within the statutory time limit.

Whilst it is accepted that procedures designed to ensure compliance with the Act can only provide reasonable assurance and not absolute assurance against non-compliance, no invoices incurred late payment fees in 2017.

## **GDPR and Data Protection**

The LSRA is registered as a Data Controller with the Office of the Data Protection Commissioner.

In preparation for the introduction of the General Data Protection Regulations in May 2018, the Authority is in the process of developing a Data Protection Policy to ensure compliance with the regulations and relevant legislation.

## **Freedom of Information**

The LSRA is an FOI body under the Freedom of Information Act, 2014.

The Authority has adopted Transparency and Accountability as one of its four core values. The Authority is committed to transparency in relation to its work and decision-making. In line with the

core value of transparency the minutes of all Authority meetings and the actions points arising are published on the LSRA website. The statutory reports prepared by the LSRA, the submissions made as part of public consultations and all relevant internal policy documentation can be found on the site.

The LSRA website is also regularly updated with information relating to the progress of the implementation of the Act.

In 2017, the LSRA received no requests under the Freedom of Information Act, 2014.

A number of queries and requests for general information were received in 2017. Queries and requests for general information from the public and members of the legal professions are acknowledged and responded to by the Executive team. It is the objective of the LSRA to acknowledge all queries and requests within three days of receipt and to issue a substantive response, where possible, within 14 days.

### **Protected Disclosures Act 2014**

The LSRA has developed and introduced a Protected Disclosure Policy and Procedure. The policy has been developed with regard to the DPER “Guidance under section 21(1) of the Protected Disclosures Act, 2014 for the purpose of assisting public bodies in the performance of their functions under the Act” and in compliance with the obligations of the Protected Disclosures Act, 2014

Although the staff numbers in the LSRA are still limited, the policy was introduced to encourage and facilitate avenues for “workers” to raise concerns within the workplace of the LSRA so that appropriate action can be taken. Under this policy, any worker is entitled to raise concerns or issues or to disclose information without fear of penalisation or the threat of less favourable treatment, discrimination or disadvantage.

There were no Protected Disclosures made to the Legal Services Regulation Authority in 2017. A report reflecting the position up until June 2018 will be published on the LSRA website.

### **Level of Compliance with the DPER Code**

The LSRA adopted the Department of Public Expenditure and Reform Code of Practice for the Governance of State Bodies in 2017. A detailed gap analysis of the requirements of the DPER Code was presented to the Authority and throughout the year governance arrangements were put in place to ensure compliance with the Code.

The LSRA has limited staff numbers at present and it is difficult to reach complete compliance with the DPER Code within its first full year of operations.

The LSRA has complied with the DPER Code with the following exceptions:

- As the LSRA is still in start-up mode and has minimal staffing at present, it has not yet established an Audit and Risk Committee. Work has commenced on establishing Finance, Audit and Risk Committee in 2018. This timeframe has been agreed with the Department of Justice and Equality as part of the Corporate Governance Assurance Agreement.

- The LSRA has not yet developed a Post Resignation/Retirement Employment or Consultancy procedure as per paragraph 1.10 of the DPER Code. The procedure will be developed by the end of 2018.
- The LSRA will develop induction-training packs for the formal induction of new Authority members under paragraph 3.10 of the DPER Code in 2018.
- The LSRA has not yet developed a Customer Charter and Customer Action Plan as per paragraphs 10.1 and 10.5 of the DPER Code. The LSRA Customer Charter will be developed and introduced in 2018.

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## Contact Us

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