



Legal Services Regulatory Authority

Legal Partnerships

Further Report to the Minister for Justice and Equality, Mr Charles Flanagan TD

31st July 2017

PART 1: Introduction

- 1.1. This is the second report of the Authority on the issue of legal partnerships. The first report was submitted to the then Minister for Justice and Equality on the 31st of March 2017¹.
- 1.2. The report confirmed that the Authority was committed to putting in place an enabling framework for legal partnerships as quickly as possible. It also noted that there was a risk in introducing them prematurely without putting in place a coherent structure for regulating them.
- 1.3. Section 13(4) specifies that in performing its functions that Authority shall have regard to the following objectives: -
 - a. protecting and promoting the public interest,
 - b. supporting the proper and effective administration of justice,
 - c. protecting and promoting the interests of consumers relating to the provision of legal services,
 - d. promoting competition in the provision of legal services in the State,
 - e. encouraging an independent, strong and effective legal profession, and
 - f. promoting and maintaining adherence to the following professional principles: -
 - i. that legal practitioners shall –
 1. act with independence and integrity,
 2. act in the best interests of their clients, and
 3. maintain proper standards of work,
 - ii. that legal practitioners who exercise before any court a right or 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
 - iii. 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.
- 1.4. The Authority is particularly concerned to ensure that at all times the objectives of the Act, especially as articulated in S 13(4), are to the forefront of its conclusions and recommendations. This is the context in which the Report has been prepared and the following recommendations are made.
- 1.5. The report made three recommendations: -
 - a. That the Authority would consider commencing further statutory consultations under the Act in relation to specific aspects of the regulation, monitoring and operation of legal partnerships.

¹ A copy of the report is available on the Authorities website at <http://lsra.ie/en/lsra/pages/reports>

- b. That the Authority will prepare a report setting out the consultations conducted, the matters raised, and the draft measures proposed, together with any other relevant recommendations, and will report to the Minister on the completion of the final such consultation.
 - c. That the Authority be afforded the opportunity to secure the necessary personnel and other resources, to include offices and IT capacity, as necessary to support:
 - i. the establishment and maintenance of a register of legal partnerships and
 - ii. the commencement of the other parts of the Act as may be necessary to support the regulation, monitoring and operation of legal partnerships.
- 1.6. The report concluded by noting that the Authority required the time to develop both an appropriate strategy for the introduction of legal partnerships and also the resources to support that strategy.
- 1.7. The Authority committed to next reporting to the Minister on these issues by the 31st of July 2017.

PART 2: Progress to Date

Other Reports:

- 2.1. The Authority is currently involved in two other consultations and is preparing reports consequent on the outcome of those consultations for submission to the Minister by 30th September 2017. Those consultations are firstly in relation to certain issues relating to barristers² and secondly in relation to multi-disciplinary partnerships³.
- 2.2. The Authority sought submissions in relation to three issues relating to barristers:
- i. the extent, if any, to which the restriction on barristers hold client moneys should be retained,
 - ii. the retention or removal of the restrictions on barristers receiving instructions directly from clients in contentious matters and the reforms that are required to be made if the restrictions are retained or removed, and
 - iii. the circumstances and manner in which a barrister may hold client moneys and the mechanisms to be applied for the protection of client moneys so held.
- 2.3. The deadline for submissions was the 2nd of June. Eight submissions were received and the Authority is currently preparing a report for the Minister.
- 2.4. The Authority published an initial report on Multi-Disciplinary Partnerships in March. These are partnerships between solicitors and barristers with other non-legal professionals. Such partnerships would offer legal and non-legal services.
- 2.5. The Authority sought submissions in relation to the issues raised in that report by the 16th of June. Five submissions were received and the Authority is currently preparing its final report on the issue.
- 2.6. From these consultations and having carefully considered the various issues raised, it is clear to the Authority that the three issues, legal partnerships, multi-disciplinary partnerships and issues relating to barristers, cannot be dealt with separately. The issues are inter-locking to a considerable extent and require to be viewed and considered as a whole.
- 2.7. For example, the issue of whether barristers should hold client moneys has fundamental implications for the structure, nature and feasibility of both legal partnerships and multi-disciplinary partnerships. As can be seen from the previous report of the Authority on legal partnerships, substantial issues relating to the potential requirement for a compensation fund, the additional accounting

² See S.120 of the Legal Services Regulation Act 2015.

³ See S.119 of the Legal Services Regulation Act 2015.

regulations required and related issues, will require to be considered in detail should barristers be permitted to hold client moneys within a legal partnership.

- 2.8. Therefore, the detailed consideration of the regulation, monitoring and operation of legal partnerships must await the outcome of the S.120 report in relation to barristers.

Commencement of the Act:

- 2.9. The Authority's Section 118 public consultation report of March, 2017 recommended that a number of steps be taken before any provisions in connection with legal partnerships are commenced (except Section 100 which is already triggered). Paragraph 110 of that report lists those steps as follows:

- i. Professional indemnity insurance requirements of legal partnerships;
- ii. The application of new and/or existing codes of practice;
- iii. The inspection/investigation of legal partnerships;
- iv. Accounting reporting requirements to be imposed on legal partnerships;
- v. The impact of legal partnerships on current Law Society Professional Indemnity Insurance regulations and access to the Assigned Risks Pool and Run-Off Fund;
- vi. The appropriate data sharing arrangements between the Law Society and the Authority in relation to practising certificate conditions so as to facilitate migration of that information onto the Register of Legal Partnerships;
- vii. The appropriate approach to the dissolution of distressed legal partnerships;
- viii. Amendment of Section 62 of the Solicitors Act 1954 to facilitate the sharing of fee income by solicitors with barristers;
- ix. The appropriate timing of consultation and reporting to the Minister, pursuant to section 120, in respect of, inter alia, the issue of barristers holding clients' moneys;
- x. The timeframe for the commencement of limited liability partnerships pursuant to Chapter 3 of Part 8 of the Act, including access by legal partnerships to limited liability;
- xi. The timeframe for the commencement of Part 6 to deal with complaints received in respect of legal partnerships;
- xii. The timeframe for the commencement of Part 9 in relation to the Roll of Barristers.

- 2.10. In the context of the above, it may be, for example, that the introduction of Legal Partnerships has the best chance of succeeding where Limited Liability Partnerships are allowed to operate. However, the Authority needs to complete its research and analysis in respect of Multi-Disciplinary Partnerships (Section 119) and issues relating to barristers (Section 120) so that a clear picture of what will work best in the Irish context and in what order changes should be introduced here.

- 2.11. Furthermore the Authority is concerned that the three public consultations engaged in so far may not have generated adequate feedback from all key stakeholders. For example, no submissions have been received from the business community who account for a substantial portion of the legal services market nor were there any submissions from consumers or from any solicitors.
- 2.12. The Authority is considering a more focused and direct consultation exercise which would obtain the views of all the key stakeholders.
- 2.13. Quite apart from reflecting on the adequacy of the responses to the consultations, the Authority has also been considering in detail how the remaining parts of the Act should be commenced in order to commence legal partnerships at the earliest possible date.
- 2.14. The previous report indicated that there must be a robust regulatory framework in place in order to safely introduce legal partnerships. Such a framework would include: -
- i. Regulations on the operation and management of legal partnerships. [S.116]
 - ii. Regulations on the operation and management of limited liability partnerships⁴. [S.130]
 - iii. Regulations in relation to the professional indemnity insurance required to be maintained by legal partnerships. [S.47]
 - iv. A complaints and disciplinary procedure to deal with breaches of such regulations. [Part 6]
 - v. An inspection regime for legal partnerships. [Part 3]
- 2.15. This means that the introduction of parts 3 and 6 are a key priority for the Authority. Without parts 3 and 6, any of the new business models cannot be safely introduced.
- 2.16. Part 3 of the Act refers to Inspections in respect of Legal Practitioners. Inspectors under Part 3 will have the power to carry out inspections in relation to complaints received (under Part 6) or to ensure compliance with requirements set out in the Act and any regulations or codes of practice issued by the Authority under the Act.
- 2.17. Part 6 of the Act covers Complaints and Disciplinary Hearings in respect of Legal Practitioners. The implementation of Part 6 requires that the Authority has the necessary resources in place, including premises, staff and infrastructure.
- 2.18. Parts 3 and 6 of the Act together provide for the key mechanisms for review and control which the Authority can exercise in relation to legal practitioners. In the

⁴ A Limited Liability Partnership is where the partners are, with limited exceptions, not personally liable for the debts, liabilities and obligations of the firm unlike a general partnership, where they are.

absence of these functions, the Authority is reliant upon other bodies to ensure compliance in the sector.

- 2.19. With this in mind, the Authority has been seeking permanent premises of a size and quality that would accommodate our regulatory functions. To date, no suitable premises have been identified, and there is increasing urgency to locate appropriate accommodation. Current accommodation prevents any expansion beyond the existing number of staff (3). This is a major barrier to effective delivery of the ambition of the Act, which cannot be met without the necessary staffing resources. The Authority has also been in discussions with the Department of Public Expenditure and Reform in order to agree appropriate staffing numbers and grades.

PART 3: Next Steps

- 3.1. The Authority will be undertaking the following steps in preparation for the introduction of legal partnerships at the earliest possible date: -
- a. Report to the Minister in relation to the issues relating to barristers before the end of September per Section 120 of the Act.
 - b. Engage in a direct consultation exercise to obtain the views of all key stakeholders in relation to Legal Partnerships, Multi Disciplinary Partnerships, and Issues Relating to Barristers.
 - c. Continue to prepare for the introduction of the investigatory, complaint and discipline functions of the Authority.
 - d. Continue to put in place the necessary personnel, premises and resources required for the Authority to fulfil its mandate.