

Legal Services Regulatory Authority
Public Consultation on Multi-Disciplinary Practices
Submission of the Competition and Consumer Protection Commission

Overview

The Competition and Consumer Protection Commission (CCPC) welcomes the opportunity to respond to the public consultation on Multi-Disciplinary Practices (MDPs). We note the contents of the report prepared for the Minister for Justice and Equality in respect of MDPs and other practices involving non-lawyer owners. One of our predecessor agencies, the Competition Authority, considered MDPs in the ‘Solicitors and Barristers report’ in 2006¹. That report noted the potential competition and innovation-led improvements that such models might bring to the Irish legal services market. However the Authority reserved judgement at that point and recommended that further research be undertaken on non-competition related matters in respect of MDPs. The report to the Minister thereby provides the broader context required to consider more fully the relevant issues.

The CCPC regards the potential introduction of MDPs as a positive step toward greater competition on price, service, quality and diversity of offering in professional services. We note from the report to the Minister that MDPs have taken many diverse forms internationally and that consumer choice has increased in turn in a number of jurisdictions. The CCPC believes that there are certain key features of any profession regulated in the public interest. Those features include:

- ease of access for the consumer to professionals,
- transparency in respect of consumers understanding their rights and what to expect from those professionals,
- value for money for the consumer in terms of both cost and quality, and
- regulations that are designed to serve the public interest.

These features underline the positions that we take in response to this consultation.

The report indicates that the evidence in relation to innovation by MDPs is limited but there are welcome indications that the general trend of such partnerships is leading to more innovation in the delivery of services. The report also notes many important considerations in regard to the operation and governance of MDPs. Furthermore, the

¹ <https://www.ccpcc.ie/business/wp-content/uploads/sites/3/2017/03/Solicitors-and-barristers-full-report.pdf>

report notes the importance of resolving the issue of how to regulate such structures and the need to avoid stymying their potential through inappropriate regulation. The CCPC recommends that the Legal Services Regulatory Authority (LSRA) consider further the appropriate model of regulation for legal services more generally, including in regard to the liability of partners, to ensure that more diversity can be introduced into the market while ensuring a continued high standard of consumer protection. In that regard the consultations issued to date by the LSRA covering related issues such as the treatment of client money, direct access to barristers and the regulation of legal partnerships can, in turn, inform the operation and regulation of MDPs. The CCPC believes that the LSRA should ensure that encouraging competition and innovation in legal services is a key priority in future regulation while also safeguarding the consumer.

Consultation Response

The CCPC notes the extensive list of questions posed in the report to the Minister and highlighted in the consultation notification. We will respond to those questions - and the report - generally as many of the specific questions posed cover issues which fall outside of our remit and expertise. Our response is arranged thematically in two sections: 'Competition and Consumer Choice' and 'Consumer Protection and Regulation'

Competition and Consumer Choice

The CCPC maintains the view that MDPs have the potential to provide end-to-end services which should put downward pressure on costs and provide a greater choice of products and services to consumers. We note the international diversity of offering which is highlighted in the report to the Minister, albeit that the take up of MDP or similar structures has generally been low. We note however that there has been no evidence of a decline in the standards of consumer protection. We will return to this point in the next section.

The CCPC notes the contents of the report prepared for the Minister for Justice and Equality in respect of MDPs and other practices involving non-lawyer owners. The view of the Competition Authority (TCA) was that there are competition benefits to allowing MDPs. The analysis of TCA was that not providing for MDPs "prevents professional service providers from catering for clients who have a set of inter-related needs, and from integrating their supply with providers of complimentary services. Where economies of scope exist, they should result in lower costs to clients. The prohibition also limits the ability of clients to benefit from a "one-stop shop" and hinders innovations which might otherwise result from the combination of different services, which could allow for new products or services to be developed to the

benefit of clients.² These issues remain relevant as the report to the Minister makes clear.

It is the view of the CCPC that innovation has not been prioritised to date by providers in the legal services market in Ireland. In light of the rapid changes being brought about in markets generally by technology, and with the high level of uncertainty generated by the impending exit of the United Kingdom from the European Union, it is all the more important that businesses in Ireland embrace innovative ways of meeting consumer needs. In the legal sector it is vitally important that competition, competitiveness and innovation are key factors in the design of future regulatory frameworks. The report to the Minister raises a number of important issues in relation to how regulation can or should work in respect of MDPs and with more general application. It is the view of the CCPC that there is a unique opportunity for the LSRA to consider the overall regulatory approach to legal services with a view to ensuring greater competition within the sector alongside a continued high standard of consumer protection. It will be important that any new regulatory approach facilitates the entry and exit of firms and partnerships to and from the market. Furthermore, the CCPC endorses the suggestions in the report that the LSRA give ‘consideration to the objectives or outcomes which it would want to achieve in the legal market through the introduction of MDPs’ and that it seek out the ‘priorities of the Irish consumer’.

In respect of the regulation of MDPs, it will be important that non-legal professionals are enabled to form and be employed in MDPs with regulatory certainty while ensuring that the consumer is empowered to understand the relationship between the legal and non-legal elements of such a partnership and the duties owed to them. In our submission to the LSRA consultation on Legal Partnerships we suggested that the LSRA examine the scope for online resources to guide consumers in the new legal services environment. Such resources would be particularly useful for consumers on the introduction of MDPs due to their novelty and the overlapping regulatory requirements likely to arise.

A further issue for consideration relates to the ability of consumers to compare offerings in the market. There is a distinct lack of transparency in relation to legal fees both in Ireland and internationally. The report to the Minister notes that this lack of information makes it difficult to assess the impact of MDPs (or equivalent structures) on costs. An improvement in this regard could be made by the licensing and promotion of price comparison tools³. Such tools could prove to be of value in encouraging competition and innovation between partnerships, alongside assisting consumers in making informed decisions about the services offered to them. The report to the Minister notes that MDPs have been credited with alerting some clients to the legal nature of a problem which had previously gone unidentified as such. This

² Competition Authority (2006) ‘Solicitors and Barristers report’ p.99

³ See a further discussion of this point in the submission of the CCPC to the consultation on Legal Partnerships.

suggests that ease of access to legal services could be enhanced by the introduction of MDPs.

A critical issue arising from the report to the Minister relates to the liability of partners in MDP type structures. The implication of the evidence highlighted in the report is that there will be a very low take up of MDPs without the option for partners to limit their liability. As the report states, the legislation does not currently allow for a limited liability option for MDPs. Upon commencement of the relevant sections of the Act, existing solicitor firms and legal partnerships will be entitled to apply to convert to Limited Liability Partnership (LLP) status. MDPs will not be entitled to avail of LLP status. The CCPC notes the need to consider the issue of liability to enhance the attractiveness of MDPs. We recommend that the LSRA undertake further analysis on the need for, and most appropriate model of, liability limitation for MDPs. Building on the evidence in the report to the Minister, any such examination should consider the international evidence on limitation of liability among MDPs (or equivalent structures) and maintain a clear focus on the possible regulatory implications.

Consumer Protection and Regulation

Key points of opposition to the introduction of MDPs have included that it could lead to a diminution of professional standards and the standard of consumer protection currently available to consumers of legal services. The report to the Minister suggests that these fears are unfounded according to the evidence of their operation to date. It will be critical for the LSRA to ensure through its role as regulator that this is the case in Ireland if such structures are introduced. Appropriate regulations and a clear, easily navigable legal market will be essential in ensuring that MDPs maintain high standards and secure the trust of consumers.

The report to the Minister highlights a number of factors which the LSRA will need to resolve, including the potential overlap of regulation where MDPs are formed with non-legal professionals as partners and the role of the managing legal partner(s). The CCPC believe that a clear and certain regulatory framework should be established which would allow consumers to have confidence in the MDP structure and provide an easy to use framework for the formation of partnerships. The Better Regulation principles of necessity and proportionality will be important in guiding the process. We recommend that the LSRA consider undertaking a regulatory impact assessment in relation to these matters. It is noteworthy that the report to the Minister suggests that jurisdictions which failed to secure engagement by the market with MDP type structures did not fully consider the proportionality and necessity of regulations.

ENDS