



Legal Services Regulatory Authority

Legal Partnerships

Report to the Tánaiste and Minister for Justice and Equality, Ms Frances Fitzgerald TD

**REPORT TO TÁNAISTE AND MINISTER FOR JUSTICE AND EQUALITY,
FRANCES FITZGERALD TD ON THE REGULATION, MONITORING AND
OPERATION OF LEGAL PARTNERSHIPS**

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PART 1: INTRODUCTION

1. Section 2(1) of the Legal Services Regulation Act 2015 (“the Act”) defines a “legal partnership” as “a partnership formed under the law of the State by written agreement, by two or more legal practitioners, at least one of whom is a practising barrister, for the purpose of providing legal services”. Legal practitioner is also defined in the Act, as “a person who is a practising solicitor or a practising barrister”, where “solicitor” can also mean a firm of solicitors.
2. The 2015 Act thus permits two different types of legal partnership: partnerships between barristers (“barrister partnerships”) and partnerships between solicitors and barristers (“barrister-solicitor partnerships”). The various issues raised in these submissions may relate to both types of legal partnership, or just one. Where this is not clear from the context, these submissions will endeavor to identify the type of legal partnership at issue.
3. The relevant “law of the State” referred to in the definition of ‘legal partnership’ is contained in the Partnerships Act 1890 (“the PA 1890”) and the Limited Partnerships Act 1907¹ (“the LPA 1907”). Both general and limited partnerships are forms of business that are currently permitted to be used by solicitors but not by barristers. The PA 1890 permits general partnerships between individuals in which all partners have joint liability for the partnership’s debts. The LPA 1907 permits partnerships to be formed by some combination of partners including at least one general partner and one limited partner. Limited partners have their liability capped in accordance with the contribution they have made to the partnership but only provided that they do not play an active role in managing the business of the partnership.
4. This report sets out the results of a public consultation on the regulation, monitoring and operation of ‘legal partnerships’ carried out by the Legal Services Regulatory Authority (“the Authority”)³ as required under section 118 of the Act. It also sets out the proposed approach which the Authority intends to take to the regulation and makes recommendations as to the regulation, monitoring and operation of legal partnerships, following the responses received from consultees.
5. Following its establishment on 1 October 2016, the Authority was required by section 118 of the Act to conduct a public consultation and submit a report to the Minister for Equality and Justice on or before 31 March 2017, about how it should exercise the power granted to it under section 116 to regulate and monitor legal partnerships, as well as how those partnerships should operate in practice. The Authority is further required by the Act to give due regard to the regulatory objectives set out in section 13(4), when carrying out its functions. These objectives are:
 - protecting and promoting the public interest,
 - supporting the proper and effective administration of justice,
 - protecting and promoting the interests of consumers relating to the provision of legal services,
 - promoting competition in the provision of legal services in the State,
 - encouraging an independent, strong and effective legal profession, and
 - promoting and maintaining adherence to the professional principles²

¹ <http://www.irishstatutebook.ie/eli/1907/act/24/enacted/en/print.html>

² Set out in S.13(5) “The Professional Principles are: (a) That Legal Practitioners shall (i) act with independence and integrity, (ii) act in the best interests of their clients, and (iii) maintain proper standards of work, (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.”

³ As per Annex F

The report is required by Section 118(2) to be submitted within six months following its establishment i.e. no later than March 31st 2017.

6. This report sets out the results of the consultation and the Authority's initial recommendation with regard to legal partnerships. The report is divided into the following sections:
 - Part 2 gives additional background to the consultation and the questions posed by the Authority;
 - Part 3 summarises the views received through the consultation exercise and the main issues arising from this;
 - Part 4 makes a recommendation to the Minister per section 118(3) of the Act.

PART 2: THE SECTION 118 CONSULTATION

7. On Friday 24 February 2017, the Authority published a general invitation calling for the submission of the views on the regulation, monitoring and operation of legal partnerships. A copy of this notice is appended at **annex A**. Written responses were requested by Friday 24 March 2017. This deadline of one month is within the suggested timescales contained in the guidance on public consultations³ published by the Department of Public Expenditure and Reform in November 2016. In determining the timing of this consultation, the Authority took into consideration the statutory timescales built into the Act, the fact that the subject matter of this consultation was about the mechanics of introducing legal partnerships and not the principle, and the fact that the views on these technical issues would most naturally come from the professional bodies and others who had been heavily involved in the previous debates about the legislation.
8. In addition to the online publication on the Authority's website, the Authority arranged for the notice to be published in three national newspapers, The Irish Times, The Irish Examiner and The Irish Independent on Saturday 25 February 2017. A copy of each of the respective notices can be seen at **annex B** to this report. The Authority also arranged for an email notification to be released and the recipients of this notification are detailed in **annex C** to this report.
9. The consultation was designed to elicit the views on the issues that could arise at various stages during the potential lifecycle of a legal partnership. It was not intended to reopen the question of whether or not legal partnerships should be permitted, since the passage of the Act and the automatic requirements placed on the Authority by section 1(2), had effectively resolved this question.
10. Given the business structures that are already accessible by solicitors, the Authority was most interested to learn through the consultation about the effect of including barristers in a partnership and the implications of a partnership comprising two different types of legal practitioner with different professional obligations. The two most significant questions which arise from this are:
 - Firstly, how can the differences in regulatory requirements imposed on solicitors and barristers be harnessed through legal partnerships to offer the greatest potential benefits to the users of legal services in terms of choice and possible cost reduction? In other words, how can the Authority ensure that the rules applying to solicitors' firms are not simply applied by default to legal partnerships?; and
 - Secondly, what are the potential barriers to the creation and operation of legal partnerships that could arise from differences in the codes of conduct applying to solicitors and barristers? Must these necessarily be resolved through regulation?
11. The consultation also sought to address the extent to which legal partnerships would meet the regulatory objectives of the Act in the following way:

³ Consultation Principles and Guidance, Department of Public Expenditure and Reform
<http://www.per.gov.ie/en/consultation-guidelines/>

- (i) **Public interest** considerations ran throughout the consultation questions. The Authority was seeking evidence from respondents of where regulation might be required in order to meet one or more of the other regulatory objectives but, in the absence of such justifications, was assuming that the public interest, expressed through the Act, was to favour partnerships to be permitted between solicitors and barristers, with minimum restrictions.
- (ii) Many of the questions posed in the consultation touched on the **administration of justice**. The Authority was interested to elicit the views on the information that should be made publicly available about legal partnerships (question 6). Should the register, for example, contain information about the complaints or disciplinary record of the individuals forming the partnership? Should it set out the services any limited partnership might be permitted to provide given its composition?

The consultation also sought to gather the views on how any individual legal partnership would obtain entry to the register (question 7). Whilst on the one hand the Act implies in section 104 that commencement of a legal partnership is merely a matter of notification, sections 105 and 116 suggest that there is some information that would need to be verified before a legal partnership could formally be entered on the register. The Authority was therefore particularly interested in the views on the procedural steps involved in setting up a legal partnership and the form of interaction that might be required between the Authority and the Law Society prior to commencement of a legal partnership.

The sequencing in which the Authority carries out the tasks given to it by the Act is also relevant, since other regulations may need to be made simultaneously or in advance of the regulations on legal partnerships (question 10)⁴. The consultation also requested the views on the events which a legal partnership might reasonably be required to provide notification to the Authority and which could, for example, include changes in the composition of the partnership (question 9). Finally, the Authority also asked for the views on the funding of the establishment and maintenance of the register (question 11). In posing this question it was particularly interested to find out whether respondents felt that the costs of maintaining the register should be borne by the levy referred to in Part 7 of the Act as a whole, or should be recovered through a fee imposed on the legal partnerships themselves.

- (iii) The regulatory objective of **protecting and promoting the interests of consumers** was a prominent theme of the consultation since the success of legal partnerships as a form through which legal services may be supplied will to a large extent need to be measured against the outcome for consumers. The consultation therefore sought the views both on the potential benefits for consumers that might be expected from allowing legal partnerships to offer legal services (question 1), the protections that should be put in place (questions 2 and 3) and how complaints should be dealt with (question 4).

⁴ See for example section 47(1) of the Act.

- (iv) The objective of “**promoting competition in the provision of legal services in the State**” was addressed implicitly in the consultation through the various questions that touched on the different professional requirements imposed on solicitors and barristers. The Authority was particularly interested to understand how it could ensure the preservation of those differences, where desirable (from responses to questions 2, 3, 7 and 12). The underlying objective of the Authority in this area is therefore to ensure that legal partnerships offer something new to the legal market, which will enhance competition, rather than simply offering a mechanism for solicitors’ firms to absorb barristers.

The consultation did not seek to address whether barristers should be permitted to practise as partners in a legal partnership, either alongside solicitors or with other barristers. As stated earlier this question was resolved by the passage of the Act in 2015. The task given to the Authority is now to ensure that the way in which any restrictions on the organisational structures that legal practitioners can use are removed in order to meet the regulatory objectives of the Act.

- (v) Finally, the two related regulatory objectives of “**encouraging an independent, strong and effective legal profession**” and “**promoting and maintaining adherence to the professional principles**” were addressed implicitly (question 8) on the consequences of breaches and explicitly in relation to professional ethical obligations (in question 12). The Authority is of the view, however, that answers to most of the questions posed in the consultation will help it to assess how legal partnerships might impact on these objectives.

12. The next section summarises the results of the consultation and provides an analysis of the issues raised. The recommendation of the Authority is set out in Part 4 of the report.

PART 3: SUMMARY OF CONSULTATION RESPONSES

Breakdown of Responses

13. There were 8 written responses to the Authority’s consultation notice. A list of the Respondents is set out at **annex E**. The breakdown of these by type of respondent is set out in table 1 below:

Table 1: Responses to the Section 118 Consultation by Type of Respondent

Consultee type	Number of responses
Consumers/members of public	1
Legal Professional body or association	4
Other non-legal sector organisation	2
Government	1
Total	8

14. Overall, the number of responses to the consultation was low, which was not unexpected, given the technical nature of the issues covered and the tight timescales imposed by the Act. Since none of those responding to the consultation requested that any part of their responses should remain confidential, the responses will be published in due course.
15. The Authority is grateful to those organisations and individuals who took the time to respond and, without exception, with great thought and care. All of the observations made will be extremely useful as the Authority moves forward in the implementation of legal partnerships, as required by the Act. The Authority is also mindful that half of the responses received to the consultation notice were from professional bodies or other associations, but it feels, nonetheless, that there was a reasonable diversity of the views on a number of issues.

Overall Feedback from the Consultation

16. In general, respondents offered useful practical suggestions for the introduction of legal partnerships. There were, however, strong reservations voiced by the Bar Council and Honorable Society of King’s Inns (“the King’s Inns”) about the overall concept of legal partnerships.
17. The Bar Council argued that further research should be undertaken on the economic consequences arising from the establishment and formation of legal partnerships. It felt that the model proposed raised concerns in relation to access to justice given the potential impact of the proposed partnerships on competition. It also suggested that the model proposed was questionable since it had no precedents elsewhere and had been considered and rejected in most other jurisdictions, largely on grounds relating to the preservation of barristers’ independence. Both the Bar Council and the King’s Inns argued strongly that the consequences of legal partnerships on barristers’ ability to maintain their independence was a major concern attaching to legal partnerships.
18. The important question was raised whether legal partnerships between barristers and solicitors could work in a general partnership form, given a possible incompatibility between “joint and several liability” of partners under the *PA 1890*, and the different roles that solicitors and barristers would play in a legal partnership. Particularly significant in this regard is the issue of the handling of client money, since current regulatory arrangements impose very different requirements on barristers and solicitors. Indeed, the point is fairly made by the Bar Council that section 45 of the Act prohibits barristers

from holding client monies which would lead to a deeply uneven and therefore unstable partnership.

19. The Bar Council also questioned the order in which the various provisions of the Act might be enacted, suggesting that legal partnerships needed to wait on other areas of regulation to become clearer and that, in the absence of a “*comprehensive and planned regulatory infrastructure, legal partnerships could potentially damage rather than enhance the provision of legal representation to the general public*”. The Council further suggested that there was a need for the Authority to develop its thinking on a range of questions arising from the differences in the barrister and solicitor codes before legal partnerships could be effectively introduced.
20. The general thrust of the Law Society’s detailed and considered response was that, in order to work effectively from a regulatory perspective, legal partnerships should be regulated in the same way solicitors’ firms. Furthermore, regulation should be undertaken through the individuals within the LP as well as through the overall entity.

Commentary

21. *It is recognised that there are challenges in relation to the introduction of legal partnerships but any asymmetry in professional duties and obligations need not make a partnership model unworkable. There are challenges around timing, which are further addressed in Part 4 of this report. It may also be that the simple extension of solicitor regulation to legal partnerships containing solicitors is inappropriate. Whilst the Law Society’s ability to regulate its own members should not be undermined, the Act does support the introduction of new approaches. If it is decided to merely extend the concept of solicitor regulation to legal partnerships, it may not succeed in widening the variety of offerings of legal services in Ireland. If, on the other hand, the introduction of legal partnerships is used as a mechanism for introducing different types of regulation for different categories of lawyers working collectively under different practice requirements, then these legal partnerships may add value to the market. In other words, simply regulating legal partnerships as regulated solicitor-owned law firms, may add nothing to the market. Creating partnerships which have different scopes of practice authorisations, may facilitate the regulation of these entities in new ways. Nonetheless every effort will need to be taken to ensure that a different approach to regulating legal partnerships can operate in harmony with existing professional regulation regimes for regulating solicitor firms.*

Responses to Specific Questions

Question 1: The benefits for consumers of legal services (“services”) that can be reasonably expected to derive from enabling them to access legal partnerships.

The Views Expressed in the Consultation

22. Some respondents, such as the Dublin Solicitors Bar Association (“the DSBA”) were reluctant to express a firm position on this point, on the grounds that legal partnerships would be a new type of business structure and it was therefore difficult to assess what benefits and risks they might pose for consumers. Others had much more defined views.
23. The main supporters of the potential benefits of legal partnerships were the Competition and Consumer Protection Commission (“the CCPC”) and Mr Kieran Fitzpatrick. The CCPC reiterated many of the arguments that it had, in its previous guise as the Competition

Authority⁵, previously put forward on the potential benefits of new business structures such as legal partnerships. These arguments included:

- The potential for direct cost savings to the consumer through the elimination of a double-mark up on fees, which currently arises because of the involvement of two separate legal practitioners. In future the consumer would only face one mark-up, i.e. that of the partnership.
- The potential for further cost savings to be passed on through lower fees since the legal practitioners involved in legal partnerships will make both potential cost and efficiency gains. These may arise through the opportunities presented to share costs and facilities and the provision of infrastructure which could support the operational requirements of barristers, thus making them more efficient and effective.
- Benefits for clients in the form of more seamless access to various sources of expertise through a single entity.
- Potentially enhanced choice through greater competition, since it will be easier for newly qualified barristers to establish themselves within a legal partnership and build a reputation alongside colleagues to offer an alternative to longer established barristers.
- Benefits in terms of guarantees around continuity of representation for clients and, where necessary, access to quality replacements. The CCPC argued that the current sole trader model for barristers could expose clients to significant risk in situations where the barrister becomes unavailable for a Court hearing. It cited its own direct experience of barristers becoming unavailable at the last minute, requiring an alternative to be sourced and briefed on the case at short notice. The CCPC suggested that barrister partnerships might improve planning by barristers, minimise the chances of double-booking, offer some guarantee that the replacement would be of a similar standing to the original and make the process of briefing the replacement easier.
- Beyond this, the CCPC felt that by the introduction of legal partnerships could potentially act as a driver for procompetitive changes in the market. They suggested that such structures would give the profession the opportunity to deliver services in ways that were more suitable, more efficient and more cost effective for consumers and which could help to drive further innovation in service delivery.

24. Alongside these benefits, it should be noted that the CCPC did also highlight some risks which it felt could arise to consumers from the specific model of legal partnerships, as opposed to any other form of new business structure for the legal profession. These are picked up in more detail below together with the comments from other respondents who were doubtful about the benefits that might arise from introducing legal partnerships.

25. Kieran Fitzpatrick also rehearsed many of the same positive advantages of legal partnerships as the CCPC. He also pointed out that Chambers arrangements between barristers, which was one of the options that legal partnerships would make possible, were permitted in England and had produced no ill effects. On these grounds, he could see no reason to block their introduction in Ireland. Mr Fitzpatrick made the further point that, whilst flexibility for lawyers in the way in which they could operate could not only help to make legal services more affordable in Ireland, it was through reduced regulation and more transparency in all disciplinary and costs dispute systems that real benefits might be delivered to consumers.

⁵ <http://ccpc.ie/study-legal-professions>

26. In contrast to these views, the Bar Council, like the CCPC, reiterated previous submissions⁶ which it had made during the passage of the Act. Although the Council acknowledged the ‘superficial benefits’ to consumers, such as those advanced by the CCPC, it argued that such benefits would be outweighed by the risks of introducing legal partnerships. These arose from the potential risk to access to justice and the administration of justice more generally. As such, the Bar Council was of the view that it could not identify meaningful benefits for members of the public arising out of the existence of legal partnerships.
27. Views from respondents on the potential disadvantages of legal partnerships for consumers essentially fell into three broad categories: Concerns about the impact they could have on competition, concerns about the consumer effects arising from the effect of legal partnerships on conflicts of interest and independence and other potential impacts on consumer access and costs. These concerns prompted a call from a number of respondents for further, more quantitative, research to be done into the potential impact of introducing legal partnerships on the Irish market for legal services.
- In terms of competition, the Bar Council, the King’s Inns, and the CCPC itself, all cited the concerns previously identified in the 2006 Report published by the former Competition Authority⁷ about the potential impact of solicitor-barrister partnerships on competition in the legal market in Ireland. The nub of this concern was the risk that larger Dublin based solicitor firms might form partnerships with recognised specialist barristers, thus reducing the access of smaller rural solicitor firms and their clients to such sources of representation and opinion. The Competition Authority had in 2006 recommended further research and examination⁸ of the “*possible issues surrounding access the justice and regulation*” arising from structures such as legal partnerships. On the other hand, the CCPC noted in its submission to the Authority that there was now evidence, which had not been available in 2006, of the impact of Legal Disciplinary Practices (LDPs) and Alternative Business Structures (ABS) in England and Wales, which include forms of practice that permit solicitors and barristers to work in partnership. The CCPC cited a recent study⁹ by the UK Legal Services Board (LSB) which had found that the market for legal services in the UK had become less concentrated between 2011/12 to 2015. The research attributed this, at least in part, to the creation of ABS and LDPs. Other respondents, on the other hand, afforded less or little weight to the lessons that might be taken from the English experience, given the different nature and structure of the Irish legal market.
 - The Bar Council and the King’s Inns also raised the issue of conflicts of interest which could work to the detriment of consumers. The King’s Inns pointed out that there could be a risk to clients whom legal partnerships might consider “less valuable” in cases where a conflict arises. The Bar Council stressed the significance of this risk, given that it was not clear at present how the traditional role and duties of the independent barrister could be adapted to function in the legal partnership model where, as partners, barristers would owe

⁶This includes the Regulatory Impact Assessment carried out while the Act was before the Oireachtas: Compecon, *An Economic Analysis of the Government’s Proposed Regulatory Regime for the Legal Profession in Ireland*, 3rd March 2012.

⁷Competition Authority Study of the Legal Professions, 2006

<http://www.ccpc.ie/sites/default/files/documents/Solicitors%20and%20barristers%20full%20report.pdf>⁸

Paragraph 5.13ra 5.127 and 5.128⁸ Para 5.129.

⁹UK Legal Services Board Evaluation: “Changes in the Legal Services Market 2006/07 – 2014/15- Main Report”, 2016

fiduciary duties to the firm itself. This is a central issue also arises in the responses to many of the other questions in this consultation.

- In terms of other points relating to access and costs, the Bar Council expressed concerns that the introduction of new practice structures for barristers and solicitors could pose risks of confusion for the public, since it may not be clear to them within the new structures, who is providing the service they are getting, what is the role and professional duties of the particular legal practitioner in providing that service, and what protections they might have against negligence or fraud on the part of that legal practitioner. The Bar Council also referred to possible risks to pro-bono work from the formation of legal partnerships, since there may be less willingness by partners to undertake such work as it would, presumably, require the acquiescence of their partners. Finally, the Bar Council also suggested that there could be a risk that consumers would see higher legal costs as a result of legal partnerships, since the Law Library provided economies of scale. Legal partnerships would have to replicate the benefits of the services the Law Library provided, which would need to be factored, as an overhead, into the prices charged to clients.

Commentary

- 28. The potential advantages to competition in the legal market (and notably to consumers who are identified as a particular category of interest in the regulatory objectives enshrined in the Act) are acknowledged. The potential risks both to clients and to the public interest of legal partnerships are also recognised. The task of implementing regulations in relation to legal partnerships will be to strike the right balance between enabling more flexibility in the legal market, as required by the Act, and protecting consumers. These two objectives may not hold any inherent contradiction.*
- 29. Part of the balance to be struck will involve maintaining adherence to professional duties whilst introducing new forms of practice which can add to competition and choice in the market. It is understood that there are various choices to be made in how to strike this balance. On the one hand this might be achieved by insisting on a high common threshold for regulating legal practices, which equates them to solicitors' practices. This however, would not take account of the specificity of barrister practice, nor the possibility of barrister-barrister legal partnerships. But above all, it would not allow for the introduction of any new regulatory approaches into the legal market. It is understood that the introduction of new structures like legal partnerships will necessarily require a flexible regulatory approach, since there will be different varieties of such legal partnership (solicitor-barrister and barrister-barrister). Rather than seek to extend the same level of regulation, based on the equivalent of what are current Law Society requirements, across all new business structures, the public interest may be better served by the creation of new models which preserve the equality of treatment of legal practitioners in circumstances in which they are undertaking the same roles but also permit them to have a different scope of practice and hence a different regulatory risk profile. This means that it should be theoretically possible to impose different regulatory requirements on both solicitors and barristers in legal partnerships compared to traditional modes of practice, provided those practitioners have a different scope of practice (e.g. are not permitted to hold client monies directly but empowered to do so under other mechanisms external to their firm).*

Question 2: The measures that need to be included in any regulations adopted by the Authority in order to provide adequate protections to consumers procuring services from legal partnerships

The Views from the Consultation

30. The main issues raised by this question were: the need for robust information to be provided to clients of legal partnerships; the appropriate 'ethical infrastructure' for legal partnerships, client monies, insurance, compensation fund and some additional supplementary issues raised under this heading. The headline comments on each of these topics is set out in more detail below:
31. Information for clients: Most respondents stressed that it would be important for the Authority to strike the right balance in setting the information requirements that legal partnerships should provide to clients. The CCPC suggested that the Authority should give consideration to producing a Terms and Conditions document to be provided to clients of legal partnerships. The Bar Council recommended that regulations should be introduced to ensure that clients of legal partnerships were given clear information and "visibility" of who was carrying out the service on their behalf within the partnership, as well as the obligations imposed on them. Others felt that it was important for clients to understand which services are being provided by which legal practitioners within the legal partnership. Other information requirements in relation to handling of client money, insurance and compensation fund are considered in more detail below. Many respondents felt that, at the very least, the legal partnership should be required to provide detailed information on these matters to clients.
32. Ethical infrastructure. The role of professional codes of conduct in protecting clients were highlighted by all respondents, albeit with slightly different emphases. Various solutions were suggested as ways to deal with the asymmetry in the solicitor and barrister codes of conduct.¹⁰ The CCPC suggested that there would be a role of regulations requiring each partnership to have a robust internal complaints-handling procedure in place as this would help to give confidence to consumers. The Bar Council recommended that the proposed requirement in the Act for MDPs to have a 'managing legal practitioner', should be extended to legal partnerships. This would mean that the legal partnership would have a person who would be responsible to the Authority for matters of professional ethical compliance.
33. The Bar Council also suggested that the regulations governing legal partnership should emphasise the ethical duty of legal practitioners only to offer those services that they were competent to perform. The Bar Council's submission was, however, reluctant to endorse the approach adopted by the Bar Standards Board in England and Wales in relation to alternative business structures. This deals with the potential for conflicts of duties by restricting the scope of what English barristers can do when they are not working as sole traders. The Bar Council felt that this would be misleading.
34. Clients' Monies: Many of the responses touched on the asymmetry of client protection provisions in the professional codes of solicitors and barristers and concerns were widely expressed on the difficulty of reconciling these differences with the general partnership model. A particular concern in this regard was, not surprisingly, the issue of client monies. The Law Society suggested an approach in the regulations enacting legal partnerships which would preclude barristers in barrister-solicitor partnerships from receiving client monies or from giving or joining in giving any instruction whatsoever with respect to client monies. The Society also recommended that measures should be

¹⁰ Legal Services Regulation Act 2015, Powers of Authority in relation to codes of practice, Section 22 (1)

put in place to compel barrister partners in solicitor-barrister legal partnerships to replace any monies misappropriated by any partner or employee of the legal partnership, and make good any deficits on the client account, in line with similar requirements already in place for solicitors. These strictures are based on the premise of joint and several liability.

35. The Bar Council referred to section 45 of the Act (which prohibits barristers from holding client monies and the possible implications of this provision). It expressed the view that no partnerships should be allowed to operate where there was any legal risk to client monies or where the legal position about liability for issues concerning client moneys was not clear.
36. The DSBA recommended that any solution in relation to this issue should await the outcome of a consultation by the Authority under section 120 of the Act regarding certain issues relating to barristers (such as holding of client monies). It submitted that where such partnerships are allowed to operate, the issue of holding client moneys is a fundamental issue that needs to be addressed.
37. Insurance: Similar concerns relating to the current differing requirements on different types of legal practitioners in relation to insurance. The Law Society recommended that legal partnerships should be required to meet the same PII requirements, including minimum level of cover and minimum terms and conditions, as solicitor firms in order to ensure the same level of protection for clients. There are also detailed issues which will need to be considered in relation to the implications of legal partnerships for current PII regulations, and access to the Assigned Risks Pool and the Run-off Fund.
38. A contrasting view was advanced by Kieran Fitzpatrick who suggested that while professional indemnity insurance was often presented as a protection for consumers, it was in reality mainly a protection for lawyers, since the costs were ultimately passed on to consumers. This was a helpful reminder that well-intentioned regulation, designed to offer protection, can have a net damaging effect by inflating costs to the end users of regulated services.
39. Compensation Fund: The Law Society was at pains to point out that the Solicitors Compensation Fund is paid for only by solicitors and remains within the remit of the Society together with the associated regulatory powers, subject to oversight by the Authority. The Society's concern was that even though the Act is clear that only the dishonest acts of a solicitor would be covered in a legal partnership, there would be a danger that, even if the solicitor partner had only the slightest involvement in a transaction that involves fraud, there could be an exposure for the Fund. It is the recommendation of the Society that measures be put in place to ensure that clients of solicitor-barrister legal partnerships are made fully aware of the limitations on their access to the Compensation Fund and that this point is further clarified in any regulations relating to solicitor-barrister legal partnerships.
40. The impact on clients of the asymmetric coverage of partners in a legal partnership was also picked up by other respondents. The risk that consumers would be confused and unclear about how they might claim on the compensation fund was highlighted as a significant one, but an inevitable consequence of the proposal to permit legal partnerships between solicitors and barristers. The DSBA broadly concurred with the views expressed by the Law Society and suggested that, as a minimum, legal partnerships should be required to inform clients of whether, and to what extent, they are protected by the Compensation Fund.
41. The CCPC also suggested in relation to consumer protections that the Authority should consider a wider suite of tools in order to help consumers to make informed decisions about legal services.

These could, for example, include online resources, provided by the Authority itself and action to promote online comparison tools which might have a role to play in the market.

Commentary

42. *This question lies at the heart of the additional benefit that legal partnerships could offer to the market. Legal partnerships should offer new options for consumers. This need not necessarily mean that the protections offered by legal partnerships need to be weaker, they could simply be different and appropriate for the practice that the relevant legal partnership is engaged in. In other words, why should a legal partnership be required to maintain the same level of indemnity insurance as a solicitor's firm, if it does not engage in higher risk profile services such as conveyancing or holding client money? In drawing up the regulations and engaging in further consultation the full range of possibilities afforded by the Act (see sections 45, 47 and 120) must therefore be taken into account.*

Question 3: The information that legal partnerships are required to provide to clients, given the obligations that arise from the codes of practice and professional codes that will apply to practising solicitors and practising barristers (e.g. on compensation fund coverage or professional indemnity cover or provision of information regarding the basis of professional fees).

The views from the Consultation

43. Consultees generally agreed that transparency was important to enable clients to make informed choices and to understand the nature of the legal practitioners with whom they were dealing. The Law Society suggested that solicitor-barrister legal partnerships should have the same requirements as pure solicitor firms in relation to legal costs and professional fees, complaints procedures, limited access to the Compensation Fund, and professional indemnity insurance. The submission from the DSBA broadly agreed that information requirements should be similar to those required under Chapter 3 of Part 8 of the Act (dealing with limited liability partnerships) but added that additional points of information might need to be added to reflect the regulatory framework to which a legal partnership is made subject.
44. There was a consensus amongst those who expressed a view on this point that legal partnerships should make clear to clients and potential clients that they were operating as a legal partnership. This would mean that barristers involved in a legal partnership should be capable of being "marketed" as part of a legal partnership business and clearly distinguished from barristers operating as sole traders. The Bar Council also suggested that the Authority should go further and require a legal partnership to give their clients the option alongside their own bundled services, of an unbundled version involving "an estimate of likely costs from a barrister operating as a sole trader either in the Law Library or otherwise".

Commentary

45. *Following this consultation consideration should be given to a requirement on legal partnerships to provide certain information to clients when they are instructed and therein to make certain minimum details available. The Authority needs to consider suggestions from consultees that provisions should be broadly similar to those applying to solicitor firms. However, it will also need to balance this against the cost implications of imposing additional requirements (or even maintaining existing ones).*

Question 4: The manner in which the Authority deals with complaints from clients or other parties in relation to allegations of inadequate services, excessive costs and professional misconduct on the part of practising solicitors or barristers who work in legal partnerships

The views from the Consultation

46. The views of consultees were split on how complex this would be as an issue. On the one hand, the DSBA and the CCPC appeared to see this as relatively straightforward. The CCPC argued that as the partners in a legal partnership would be responsible for everything which happened in that firm, this should extend to the handling of complaints. The DSBA was more nuanced in its view of this and suggested that whilst the same standards should be applied to legal practitioners involved with the new legal partnership model, there would need to be some reflection of the different professional codes applying to solicitors and barristers and a need to liaise closely with the professional bodies in relation to individual practitioners. The CCPC also recommended that legal partnerships should be required to implement effective internal complaint handling procedures, which had positive results elsewhere.
47. The Bar Council, on the other hand, thought that this issue might be more complicated. The Bar Council emphasised that the Bar Council would not regulate those in practice outside the independent referral bar organised through the Law Library. In such circumstances, the Bar Council argued that a new, specific code of conduct/practice may need to be established in order “to address issues which do not come within the existing Code such as the handling of client monies, conflicts of interest and the maintenance of records by barristers who operate in partnerships”. In the light of this, the Bar Council suggested that a separate mechanism might need to be established in order to deal with complaints against barristers in legal partnerships. Finally both the Bar Council and the Kings’ Inns expressed doubts about relying on contractual arrangements between partners and the principle of joint liability in order to deal with what should be disciplinary matters.
48. A further view was expressed by Kieran Fitzpatrick, who argued that the complaints mechanism should be kept as simple as possible in relation to disputes between legal partnerships and their clients (or similar complaining parties). This respondent proposed the introduction of a lead lawyer for the practice who should be responsible for costs and resolving complaints.

Commentary

49. *The idea of encouraging legal partnerships to maintain their own internal complaints handling processes is attractive. Legal partnerships should deal with service matters themselves, wherever possible, subject to the jurisdiction in Part 6 to deal with complaints in respect of excessive fees. However, particularly when complaints relate to issues of professional conduct there is then a need for these to be dealt with by the Authority and the professional bodies. The question of the relationship between the individual legal practitioner’s responsibilities and those of the legal partnership as a whole are dealt with in more detail in the next question.*

Question 5: The relationship between complaints about legal partnerships and complaints about the individual legal practitioners who work in those partnerships

Views from the Consultation

50. All consultees responding on this point noted that there was a potential regulatory lacuna which could arise in relation to legal partnerships. As a matter of fact, the Act provides in Part for a disciplinary regime applicable to individuals only. But there were differences of view about how difficult this would be to resolve. The CCPC argued that the Law Society was not currently able to discipline firms or entities for violations of its code of conduct which could result in ineffective regulation if those breaches arose from systemic failures within organisations. It, and other respondents, argued in favour of a unified complaints mechanism in which, the Authority would take a lead in complaints handling.
51. On the other hand, the Law Society's response underscored that there is not really an alternative to treating complaints against solicitors and barristers who are operating in legal partnerships in the same way as complaints against all other legal practitioners. The point was made that the approach to complaints and discipline in the Act and in particular in Part 6 is individual based as opposed to entity based. The Bar Council suggested on this point that if a complaint were to be made about a legal partnership then, even if this were dealt with as a complaint about an individual, the Authority should ensure that all members of the partnership were advised that such a complaint had been made.
52. The DSBA also raised the concern that if this issue was not resolved, a legal practitioner could end up being subject to double jeopardy (and double costs etc.) for the same complaint. But others thought that it would be sensible to allow for the possibility of individual sanction, and sanction against the legal partnership (i.e. all the partners), or both, depending on the circumstances. Any proposals envisaging disciplinary action against legal partnerships would seem to require an amendment to the Act.
53. The Bar Council suggested that the sort of powers the Authority might have against a legal partnership as a whole, in circumstances in which there is a serious complaint against it, could include: The power to suspend the operation of the partnership, or impose directions that it could not take on new clients, and/or distribute files of the partnership to other legal practitioners. The Bar seemed unsure about the Authority's powers to order a legal partnership to cease practice and/or seek a High Court order to that effect.
54. A useful suggestion was made by the Law Society that robust data sharing procedures should be put in place between the Authority and the Society in order to ensure the effective exchange of knowledge and information in relation to complaints against solicitors in legal partnerships, and any other issues which might indicate a risk to client monies held by legal partnerships.

Commentary

55. *It is expected that where there are complaints concerning individuals in legal partnerships or about a legal partnership as a whole, these may either come directly to the Authority or via one of the professional bodies. It is recognised that the scheme of the Act provides for an individual based, as opposed to an entity based, complaints system. Careful consideration of the scope of its powers in respect of the continued registration of legal partnerships arising from sanctions imposed on individual legal practitioners following complaints will be needed. The creation of a mechanism which would*

enable service complaints to be dealt with e.g. through the offices of a lead partner, is something that is definitely worth exploring further.

Question 6: The form in which the Authority shall publish the register of legal partnerships under section 117 of the Act, and in particular, the information that the public register should include.

The views Expressed in the Consultation

56. The views of consultees ranged widely. Some, like the DSBA, recommended that the requirements of the register should simply be broadly similar to the information required by Chapter 3 of the Act, with perhaps some relevant additional points of information arising from the specific regulatory framework applying to legal partnership. On the other hand, a more radical suggestion was put forward by Kieran Fitzpatrick, who saw the requirement for a register as simply an unnecessary layer of regulation, given that the individuals involved were already registered and regulated by their professional bodies.
57. The CCPC took a more expansive view and suggested that the register could be a useful resource for consumers which the LSRA should make available both online and at its premises. It suggested that the aim of any requirements made of partnerships should be to ensure that consumers can make informed decisions. This suggested that the sort of useful information required could include the name of the partnership; the head of the partnership / managing partner; the address and contact details; and, if the partnership has been formed out of an existing solicitor firm, or the merger of firms, the name(s) of those firms.
58. The Law Society also recommended a comprehensive list of information requirements for the register of legal partnerships, which included: The full name of the legal partnership; the place or places of business; contact details including landline and mobile phone numbers, email and website address; notified date of commencement; notified date of cessation for closed legal partnerships; current professional indemnity insurance details including insurer, date of commencement and cessation of the policy, policy number, broker details, and minimum level of cover; names of current partners and commencement dates; names of all legal practitioners in the partnership, including commencement dates, job titles and professional qualifications; confirmation that legal practitioners in the partnership are all practising solicitors and/or barristers; professional qualifications of partners; historic data including previous names of the partnership, previous places of business, previous partners (including commencement and cessation dates), previous legal practitioner employees (including commencement and cessation dates), insurance details for previous indemnity periods, and details of any preceding or succeeding legal partnerships.
59. The consultation question of what information should be published in the register also prompted respondents to address the question of what information should, or could, be required from a legal partnership in order to trigger registration? The Law Society recommended, for example, that it should not be possible for a partnership to be entered on the register without being in compliance with the section 105 requirements for professional indemnity insurance.
60. More than one respondent raised the question of the extent to which the Authority could undertake any scrutiny of a legal partnership before it began providing legal services. The response from the King's Inns suggested that the Authority should consider obtaining legal advice on its powers to vet legal partnerships before they began operating.

61. The Bar Council argued that the Authority should have a role to ensure that legal partnerships do not provide legal advice and representation to members of the public before they are registered by the Authority and have satisfied the Authority that they have the adequate controls in place to deal with issues such as client moneys, insurance, corporate governance, continuing professional development and the other matters referred to in this submission.
62. The Department of Jobs, Enterprise and Innovation (“the DJEI”) noted that any registration scheme for Legal Partnerships would also need to be made available to European registered lawyers and that Article 9 of the Services Directive¹ states that “Member States shall not make access to a service activity subject to authorisation schemes unless certain conditions are satisfied (authorisation schemes may be maintained only if they are non-discriminatory, justified by an overriding reason relating to the public interest and proportionate)”.

Commentary

63. *Any public register that is established should at least contain the information that a member of the public would expect to find through the Companies Registration Office. In other words, the type of legal partnership (limited or unlimited), the date of registration, the address of the partnership, the names of the partners, the status (active or dissolved) and whether annual returns required are up to date. The extent to which additional information, for example, linked to disciplinary action should be included, as suggested by some respondents, must depend on the cost effectiveness of gathering such information and maintaining it up to date. The extent to which this could be done through a process of annual declaration will also be considered.*

Question 7: The registration requirements for legal partnerships that may arise from sections 104, 105 and 116 of the Act

The views Expressed in the Consultation

64. Both the Law Society and the Bar Council recommended that legal partnerships should be prohibited from commencement until they had been given written permission to commence and been entered into the register of legal partnerships and, moreover that express permission should be sought to commence. The Law Society also outlined in some detail the sort of issues that might be dealt with as part of this express permission to establish. This included: Approval of the proposed professional name of an applicant legal partnership and of its headed notepaper; powers in relation to its website, contact and emergency numbers (for use in the event of forced closure etc.).
65. The Law Society also recommended that the Authority seek the express power to refuse a legal partnership permission to commence. The Law Society recommended that commencement should take a particular sequence under which the legal partnership should submit its intention to commence practising no later than one month in advance of their proposed commencement date.
66. The Law Society further recommended that the Authority should seek the express power to refuse a legal partnership permission to commence, and that a notification of commencement as detailed in the Act, should not be deemed to have been received by the Authority until all the necessary documentation, and full payment of fees had been received. The Bar Council suggested that the Authority should consider the circumstances under which it might refuse to allow a partnership to be formed, for example, if that partnership might undermine competition in the legal services market

¹ Directive 2006/123/EC on services in the internal market

or fail to protect client interests. It cited the example of the formation of a legal partnership which could reduce competition and questioned whether the Authority should have the capacity to refuse such a partnership. The Bar Council has raised the issue in the preceding section about the establishment and commencement of practice of legal partnerships where it believes that the Authority must have a vetting procedure for such partnerships before they commence practice as such.

67. In terms of the general requirements for registration itself, the DSBA and others suggested that these would be broadly similar to the requirements of Chapter 3 of Part 8 of the Act, with some appropriate variations to reflect the specific legal partnership regulatory framework. The Law Society and others referred to the need for the Authority to obtain information about the indemnity insurance cover of the legal partnership, before authorising commencement. The Law Society also submitted a lengthy list of information that it believed should be required of a legal partnership, equivalent to the requirements imposed on solicitors' firms. It also suggested that a unique registration number be given to each legal partnership.
68. The Bar Council suggested that an emphasis should be placed on ensuring that the governance arrangements were effective, given the challenge of different professionals working alongside each other. It recommended in particular that legal partnerships should have appropriate corporate governance structures in place. These could be affected through a partnership agreement which should be lodged with the Authority. The legal partnership should also be asked to demonstrate that it had appropriate policies and protections in place for the holding of client monies and client confidentiality and protection, before being authorised to commence.
69. The Law Society recommended that the commencement process should also involve partners in legal partnerships providing a certificate of good standing from their respective professional bodies when applying to commence a legal partnership or join a legal partnership. This was important given that there may be existing practising certificate conditions applying to individuals which conditions would need to be taken into account by the Authority, especially if they restricted certain solicitors from acting as principals or partners in solicitor firms. It also stressed that suspended and struck off solicitors should not be permitted to be employed by a legal partnership, or engage in any work in any capacity involving or in connection with the provision of legal services unless granted permission by the Society. An important recommendation was therefore the suggestion that data sharing procedures be put in place between the Society and the Authority in relation to practising certificate conditions.
70. The Bar Council elaborated on its suggestion that a legal partnership should also be required to appoint a managing legal practitioner. It suggested that such a person should be identified as part of the registration process and this individual would then be there would be the main point of contact with the Authority in relation to registration and other requirements.
71. The DJEI also noted that the Authority would need to consider the implications of various articles of the EU Services Directive when designing any scheme for Legal Partnerships.

Commentary

The wording of section 104 of the Act implies a degree of automaticity about the registration of legal partnerships. However, sections 105 and 116 suggest that some prior steps may need to be taken between notification of the intention of a legal partnership to commence providing legal services and permission being granted through entry on the register of legal partnerships. The scope of the Authority's powers under the current legislation will require to be carefully considered so that these powers may be harnessed in any regulations around legal partnership.

Question 8: The consequences for legal partnerships and practitioners of a breach of the Act and/or any regulations made under the Act

The views expressed in the Consultation

72. The views of consultees on this question followed naturally from their earlier responses on the issue of complaints handling.
73. The DSBA felt that the answer to this would depend on whether regulation of the legal partnership was conducted through the individual legal practitioners in the legal partnership or in some other form. It would however likely be undesirable from a legal practitioner perspective in a legal partnership to be exposed to dual investigations of the same breach, as that could give rise to double jeopardy (and double costs etc.) for the same breach.
74. The response from the King's Inns opined that it was recognised that an important duty of the profession was the individual responsibility of the legal practitioner for their own conduct. In the view of this respondent therefore, this needed to be reflected in the responsibilities imposed on legal practitioners through legal partnerships.
75. The Law Society supported the view that legal partnerships should be regulated through individual legal practitioners, rather than as the legal partnership entity. The Law Society also offered a useful suggested approach to breaches, as follows:
- Breaches of the Act and regulations by legal practitioners in legal partnerships should be treated the same as breaches by all other legal practitioners;
 - The Act should be amended to acknowledge that partners of legal partnerships are jointly and severally liable;
 - Consideration should be given to dealing with failure by legal partnerships to meet notification requirements by way of fines to be paid to the Authority.
76. The Law Society further recommended that the same range of sanctions should be applicable to legal partnerships as were currently applicable to solicitors' practices and provided a lot of additional, useful detail.
77. The point was raised by those respondents who had also recommended that a legal partnership should have a "managing legal practitioner" that the interaction between the accountability of such a role holder and individual practitioners for breaches and the implications for sanctions would need to be carefully considered.
78. However, the consultation also raised important questions about the powers of the Authority and the need for it to make provision to deal with specific egregious circumstances:
- Firstly, the question of the powers available to the Authority to suspend the legal partnership from operating if a serious issue comes to its attention. This could include its ability to take over a practice, distribute files to other legal practices and deal with residual client funds (and compensation issues) in the same way as the Law Society currently does with solicitors' practices. The Law Society argued that it should have the same primary functions of investigation and enforcement in relation to the solicitors' accounts

regulations, and all investigative powers to inspect documentation and accounts for legal partnerships as it does for solicitor firms. It is noted that a power to apply to the High Court for suspension in respect of Multi-Disciplinary Practices and Limited Liability Partnerships.

- Secondly, the powers that the Authority might have to impose some type of restrictions on the continued practice of an individual legal practitioner within the partnership who is involved in a breach and/or on the legal partnership itself.
- Thirdly, the need for the Authority to have powers to require the closure of a legal partnership.
- Doubts were expressed by both the Bar Council and the Law Society as to whether the existing provisions in the Act were sufficiently strong enough to take account of the potential for such circumstances to arise. A number of respondents recommended that the Authority should take further advice on its powers under the Act and, if necessary, seek amendments. At the very least, the interaction of this issue with the disciplinary procedures addressed under Part 6 of the Act needed to be considered.

Commentary

There is a requirement separately to make regulations in relation to complaints and disciplinary proceedings per Part 6 of the Act. These regulations must inevitably overlap with the proposed regulations on legal partnerships. Although the Act itself is silent on the possibility of any breaches by constituent partners on the ongoing registration of a legal partnership, advice will be required on the circumstances under which breaches by individual partners or employees of the legal partnership might trigger material action against the partnership as a whole and if so, what this might be.

Question 9: The events in respect of which the Authority should require notification from legal partnerships after registration apart from cessation of practice (e.g. should legal partnerships be required to provide periodic declarations to the Authority and if so, what information should be required in such declarations?)

The views Expressed in the Consultation

79. The views of consultees covered issues ranging from annual renewals, notification of specific ‘events’ and cessation of practice. The views expressed were generally divided into two camps: Those who felt that the information requirements on legal partnerships post- registration should not be made too onerous and those who erred on the side of caution.

i) Annual Declarations>Returns

80. The DSBA, for example, recommended that there should be a requirement for an annual renewal declaration by a legal partnership but that evidence that all its legal practitioners held current practising certificates would suffice.
81. The CCPC suggested that the approach on new event notification should be triggered only if there were any changes to the information required on registration should be notified
82. The Law Society, on the other hand, recommended that solicitor-barrister legal partnerships should be required, at least, to meet the same annual reporting standards as solicitors’ firms,

including, for example, the submission of an annual accountant's report. It further suggested that the Authority carry out an annual data capture process for legal partnerships to ensure the details in the register of legal partnerships is up to date and to give consideration as to whether an annual process should be introduced requiring legal partnerships to reapply on an annual basis for approval to practice.

83. The approach suggested by the Law Society was also advanced by the Bar Council, which also recommended that legal partnerships should be required to make a declaration annually on the complaints they had received and how these had been handled.

ii) Specific Event Notification

84. The Society further identified specific events in respect of which it recommended that legal partnerships should be required to notify the Authority within 14 days. These events include:

- Change of partner,
- Change of professional name
- Change of legal practitioner employees or consultants,
- Change of contact details;
- Notification of disciplinary issues, such as orders of findings of misconduct against partners or employees of the legal partnership, or imposition of restrictions on the legal practitioners' practising certificates;
- Annual professional indemnity insurance notification,
- Notification if the legal partnership no longer meets the minimum commencement requirements prescribed by the Authority (e.g. if there are no longer a mixture of legal practitioners which would qualify the partnership to be a legal partnership).

iii) Cessation

85. The Law Society usefully set out the possibility of a variety of different cessation scenarios, ranging from the voluntary to emergency closures, due to the death or illness of a partner, appointment of a partner as a judge, or forced closure by order of the High Court. It recommended that in the event of a planned cessation, a legal partnership should be required to provide prior written notification not less than one month advance and that the cessation notice should deal with run-off professional indemnity insurance and the same sort of information requirements that are made of closed solicitor practices.
86. It helpfully also recommended various information requirements which might be sought on registration of a legal partnership which would assist in dealing with closure issues and recommended that the Authority impose the same prohibitions and reporting requirements on closed legal partnerships as currently exist for solicitor firms in matters relating to client files and client monies,.

Commentary

87. *The register of legal partnerships should not be a one-off list of partnerships that have been registered but must contain relevant up-to-date information in order to be useful. The events which trigger notification by limited companies to the Companies Registration Office (www.cro.ie) provide a useful precedent. Following this example, it would be appropriate, subject to legal advice in respect of its powers, to require legal partnerships to inform it within 14 days, of changes to the individuals making up the partnership or of a change in the practising address of the partnership. It is also inclined to*

require an annual return, as the CRO requires, as this is an effective way of ensuring that all relevant events have been notified. The possibility of requiring an annual declaration/return is also linked to the question of who pays for the activity underpinning the maintenance of the register, since this would be an obvious occasion on which to levy a regular fee. An annual return might also require the disclosure of any relevant information that might arise as a result of an act or omission under article 50 of the Act.

- 88.** *More critically, if the register is to contain information about complaints and/or disciplinary outcomes, it may be necessary to set out more clearly when this information will need to be notified to it. It is also very important that any change which means that a legal partnership no longer fulfils the minimum compositional requirements is notified to the Authority promptly. This may, again subject to advice in relation to its powers, then trigger the immediate removal of that legal partnership from the register, although this would not necessarily have implication on the ongoing right of practice of the individual legal practitioners who had comprised that legal partnership.*

Question 10: *The relationship between on the one hand, the roll of solicitors and the roll of practising barristers and, on the other hand, the register of legal partnerships*

The views Expressed in the Consultation

- 89.** The views expressed in the consultation responses all helpfully point in the same direction. The CCPC, for example, identified that it will be important for the protection of the consumer interest to ensure that practitioners who are struck off from the relevant professional Roll, or voluntarily remove themselves from those, cannot continue to be a partner in a legal partnership.
- 90.** The Bar Council addressed the specific point that in order to reduce the potential for confusion for consumers, it would be important to ensure that the roll of practising barristers, which is required by section 133 of the Act, should set out whether a barrister is a member of the Law Library or otherwise is a sole trader barrister or whether the barrister is in a legal partnership. The Council also undertook to provide the Authority with the necessary information about its members who are members of the Law Library, updated as and when required. The Authority will nonetheless still need to obtain the matching information from those barristers who choose to practise outside of the Law Library, whether as an independent sole trader or in a legal partnership.
- 91.** The Law Society made the helpful recommendation for some form of reciprocal notification requirement to be established between the Authority, the Law Society and the Bar Council. This would require the different registering authorities to notify each other of amendments to the register of legal partnerships, or to the roll of solicitors, and roll of practising barristers where these different types of legal practitioners were in legal partnerships.

Commentary

- 92.** *Consideration will be given to whether a roll of practising barristers (section 133 of the Act) might ideally be established prior to the establishment of a register of legal partnerships, once all of the required rolls/registers are operational. It is recognised that there will be some crossover between these. These linkages can best be managed through a protocol(s) between the Authority and the Law Society and the Bar Council which may be referred to in the regulations on legal partnerships.*

Question 11: The manner in which the establishment of the register of legal partnerships is funded, and also the manner in which the ongoing regulation, monitoring and operation of legal partnerships is funded with reference to the levy to be paid by the Law Society, Bar Council and certain barristers per Part 7 of the Act

The views Expressed in the Consultation

93. There was broad unanimity amongst consultees that whilst the structure set out in section 95 of the Act should apply to the Authority, where specific costs (e.g. of creating a register) could be attributed to legal partnerships then they should be paid for directly by legal partnerships. Both the Bar Council and the Law Society took a 'polluter pays' approach to the costs of complaints and disciplinary action against legal partnerships and recommended that legal partnerships should themselves pay for the cost of investigating and dealing with any complaints against members of such partnerships. The Bar Council further argued that the cost of investigating and dealing with complaints should be borne by the legal partnership in which a barrister had been practising at the time the complaint was made or determined. In the event this practice no longer existed some provision similar to 'run-off' cover would need to be made to ensure the cost of barrister wrongdoing in a legal partnership was not underwritten by barrister members of the Law Library.
94. The Law Society also suggested that any funds recovered from legal partnerships should be offset against the levy sought for the regulation of legal partnerships from the professional bodies and non-Law Library barristers.
95. The CCPC commented only by reinforcing that any approach should prioritise the creation and implementation of an effective and proportionate regulatory regime, at minimal cost either to clients or the profession.

Commentary

96. *The starting position is that funding of all its activities, including the establishment and maintenance of a register of legal partnerships, is rooted in the complex formula set out in Section 95 of the Act. There also exists a power to charge fees in respect of, inter alia, the performance of its functions and the provision of services and in this regard the Authority will have to achieve the appropriate balance, in terms of funding legal partnerships, between the imposition of levies per Section 95 and the charging of fees in respect of its functions/services around legal partnerships.*

Question 12: The extent to which the creation of legal partnerships would have ethical implications for members of the professions and, if so, how those implications could be addressed in the professional codes

The views expressed in the Consultation

97. There were widespread concerns expressed in the consultation about the potential issues that might arise in relation to the conflicts between the ethical obligations of different legal practitioners in a legal partnership.
98. On the barrister side of the equation, the Bar Council highlighted key concerns such as the application of the Cab-Rank Rule and the handling of conflicts of interest in legal partnerships.

The response from King's Inns also raised the Cab-Rank Rule, noting that there was a wider discretion granted to solicitors not to accept clients by the Solicitors Code of Conduct both the Bar and King's Inns suggested that any regulations on legal partnerships would need to deal with this potential conflict. The Bar Council also made reference to the approach of modifying the application of the barristers' code in specific practising circumstances, which the approach is taken by the Bar Standards Board in England and Wales. The Bar Council warned that this approach could create confusion for clients.

99. There were a number of points raised in relation to the different roles of solicitors and barristers which are reflected in their respective codes of conduct. In addition to the issues around the handling of client money raised by the Bar and King's Inns, both also mentioned the fact that solicitors can provide investment business services, investment advice or insurance intermediary services to clients. These are not services that barristers have provided or can provide. Therefore, once again, there are difficulties in how a legal partnership will operate and be regulated with respect to such services.
100. The Bar Council also highlighted the potential difficulties around the ethical duties and responsibilities attaching to the different roles and functions of solicitors and barristers in relation to the holding client money, in addition to the problems already mentioned in relation to partnership obligations. The Council was of the view that these matters could not be dealt with through its own Code of Conduct and the Authority should develop a Code of Practice for barristers operating in them. It also pointed out that there might need to be different treatment of solicitor-barrister partnerships, compared to barrister-barrister partnerships all of which would impose additional regulatory costs.
101. From the solicitor perspective, the Law Society recommended that any regulations and professional codes applying in solicitor-barrister legal partnerships should be harmonised in respect of the requirements for solicitors and the Authority should seek to ensure that exactly the same regulatory standards applied in legal partnerships, as in other types of legal practice, for the protection of the public. Although it did also recommend that further clarifying language be put in place to ensure that access to the Compensation Fund would be strictly limited to losses suffered by clients of legal partnerships by reason of dishonesty by a solicitor in a legal partnership, and there will be no access to the Compensation Fund for dishonesty by non-solicitors in the legal partnership.
102. Finally, the Society noted that section 62 of the Solicitors Act 1954 would need to be amended to facilitate the sharing of fee income between solicitors and barristers.

Commentary

103. *Whilst regard must be given to section 100(2) of the Act which prohibits a professional body from restricting of its members in having dealings with a legal partnership, section 13(5) requires the Authority to promote and maintain "adherence to the professional principles specified in the Act". In addition, it is also mindful of the potential benefits of maintaining the diversity of professional requirements in order to offer greater choice to the profession and consumers. Going forward, the experience of other jurisdictions may be drawn on in regulating entities such as legal partnerships comprising individuals with different professional obligations. It is noted, however, that there are a variety of different ways in which the application of different professional codes within the same body can be achieved.*
104. *It is also recognised that in order to make legal partnerships an attractive structure for conducting legal business, legal practitioners must be reassured on the obligations that will apply to them.*

PART 4: RECOMMENDATION BY THE AUTHORITY

105. The consultation exercise undertaken by the Authority under section 118 has produced some extremely useful inputs. However, it has also underlined the complexity of effective regulation of legal partnerships and the need for this to be carefully thought through in order to deal properly with the specific concerns and risks arising from legal partnerships and to ensure that legal partnerships have the best possible opportunity to gain traction with the professions and also to maximise benefits to consumers of legal services. This also then throws into sharp focus the linkages between the framework that would be needed for the effective regulation of legal partnerships, the powers that have been granted to the Authority under the Act and the order in which provisions are to be enacted.
106. The Authority fully accepts the statutory and policy commitment to introduce legal partnerships and is committed to putting in place an enabling framework (including regulations) as rapidly as possible. However, in the view of the Authority there is a risk in introducing legal partnerships prematurely without putting in place a coherent structure for regulating this new model and allowing legal partnerships to become a significant structure for the provision of legal services.
107. The objective should be to ensure that the Authority creates the right low cost and effective regulatory framework to allow the required flexibility for legal practitioners to work together and provide different and more efficient and more competitively priced legal services to consumers. It is more likely to achieve this by approaching the creation of a new framework in an orderly fashion. The Authority's goal should therefore be to ensure that the legal market understands that legal partnerships are going to be introduced but that equally that as much information about potential regulatory requirements is given at as early a stage as possible. This would help to encourage legal practitioners to take preparatory steps, so that registrations of new partnerships could begin immediately after the enabling regulations are enacted.
108. The point of introducing legal partnerships is to offer something new to the legal market in Ireland and not simply, for example, to extend the regulation of solicitors to barristers operating in legal partnerships. True novelty is more likely to happen if the Authority is able to look more carefully at how the introduction of legal partnerships will interact with other areas of the regulatory framework. The Authority is also mindful of the risks of over-regulation in its approach to legal partnerships and believes a better balance is likely to be achieved, between on the one hand empowering legal practitioners to form new types of businesses and on the other hand the justifiable need for some regulation of how legal practitioners work together, if the design of the regulatory framework is not unduly rushed.
109. It would therefore best protect the interests of consumers and the public generally, and would advance an effective, strong and independent legal profession, if those sections of the Act governing the provision of legal services by legal partnerships, are **not** commenced until the Authority is satisfied that the necessary consultations have been conducted and regulations and other necessary measures prepared so that a robust, yet workable and attractive framework is in place.
110. It is recommended that the following steps be taken before any provisions in connection with legal partnerships, other than section 100 of the Act, are commenced;
- a. The Authority consider commencing further consultations under section 118(1)(b) and/or, to the extent necessary, consultations under section 22(3) and/or section

47(2) and/or section 120(1) and/or section 217(5) and/or section 218(3) in relation to specific aspects of the regulation, monitoring and operation of legal partnerships including the following:

- 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.
- b. As a result of the foregoing the Authority will consider the results of that consultation (or those consultations, as applicable) and prepare a report in respect of the matters listed above and any other relevant aspects of the regulation, monitoring and operation of legal partnerships that emerge through the consultation(s). Insofar as regulations or other measures are required to be drafted, the Authority will prepare such drafts and may (or, when required to do so, will) commence specific consultations on such draft measures. The Authority will prepare a report setting out the consultation(s) 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. It is recommended that the Authority is 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 coterminous parts/sections of the Act deemed necessary by the Authority to support the regulation, monitoring and operation of legal partnerships.

The Authority is at the very early stages of its development as the new and independent regulator of legal practitioners and recognises that it needs to quickly augment its personnel resources beyond its current staff comprising two executives. Indeed a key task is to identify and appoint a permanent Chief Executive, which process is underway. The Authority is also commissioning an expert review of workforce requirements.

111. While Section 1(3) of the Act provides for the automatic commencement of Section 100 before the end of October 2017, the above recommendation does not necessarily conflict with the Act. The Authority has taken legal advice that notwithstanding Section 1(3), the provisions within Part 8 relating to legal partnerships need **not** be commenced within six months of the delivery of the Report to be sent to the Minister on this Friday 31st March 2017. This would afford the Authority the opportunity to consider the extent to which the above “interlocking” parts of the Act would need to be coordinated with the introduction of legal partnerships.

112. In summary:-

- 1) The Authority accepts the statutory commitment to the introduction of legal partnerships and is resolved to provide for their implementation. The Authority is however concerned about the risks attaching to the premature introduction of legal partnerships. The Authority wishes to ensure that all appropriate intervening steps are taken which will lead to a robust framework within which legal partnerships will deliver:
 - Genuinely new model of practice which will have an influence on the market in which legal services are delivered
 - Significant take up by legal practitioners
 - The minimum possible risk for users of legal services (particularly in the area of protecting client’s moneys)
- 2) The Authority therefore requires the time to develop both an appropriate strategy around their introduction and also the resources to support that strategy.
- 3) Against that background the Authority commits to continuing with an intensive period of review and further consultation in respect of the detailed regulations for legal partnerships and will continue to report to the Minister. In this regard the Authority commits to next reporting in respect of the issue of legal partnerships no later than the 31st July 2017.

ANNEX A: LEGAL SERVICES REGULATORY AUTHORITY - PUBLIC CONSULTATION NOTICE ON LEGAL PARTNERSHIPS

Invitation by the Legal Services Regulatory Authority for Submissions

Initial Public Consultation prior to Report of the Legal Services Regulatory Authority (“the Authority”) to the Minister for Justice and Equality (“the Minister”) into the Regulation, Monitoring and Operation of Legal Partnerships.

The Legal Services Regulatory Authority was established on October 1st 2016.

One of the new structures proposed by the Legal Services Regulation Act 2015 (“the Act”) is a “legal partnership”. This will, for the first time, allow barristers to enter into partnership together and also for solicitors and barristers to enter into partnership together. (<http://www.irishstatutebook.ie/eli/2015/act/65/enacted/en/html> - note that Part 8 contains the relevant provisions relating to legal partnerships.)

The Authority is required to conduct an initial public consultation on legal partnerships and to submit a report to the Minister within six months of establishment day (i.e. by Friday March 31st 2017).

The Authority now invites written submissions from members of the public and any other interested parties in relation to legal partnerships as part of that initial public consultation. These submissions will inform the report which the Authority is obliged to provide to the Minister on or before the statutory deadline. That report will include preliminary recommendations in relation to the regulation, monitoring and operation of legal partnerships.

Scope of the Consultation

The Authority seeks submissions in respect of the regulation, monitoring and operation of legal partnerships, to include the following issues:

1. The benefits and risks for consumers of legal services (“services”) that can be reasonably expected from enabling them to access legal partnerships.
2. The measures that need to be included in any regulations adopted by the Authority in order to provide adequate protections to consumers procuring services from legal partnerships.
3. The information that legal partnerships are required to provide to clients, given the obligations that arise from the codes of practice and professional codes that will apply to practising solicitors and practising barristers (e.g. on compensation fund coverage or professional indemnity cover or provision of information regarding the basis of professional fees).
4. The manner in which the Authority deals with complaints from clients or other parties in relation to allegations of inadequate services, excessive costs and professional misconduct on the part of practising solicitors or barristers who work in legal partnerships.

5. The relationship between complaints about legal partnerships and complaints about the individual legal practitioners who work in those partnerships.
6. The form in which the Authority shall publish the register of legal partnerships under section 117 of the Act, and in particular, the information that the public register should include.
7. The registration requirements for legal partnerships that may arise from sections 104, 105 and 116 of the Act.
8. The consequences for legal partnerships and practitioners of a breach of the Act and/or any regulations made under the Act.
9. The events in respect of which the Authority should require notification from legal partnerships after registration apart from cessation of practice (e.g. should legal partnerships be required to provide periodic declarations to the Authority and if so, what information should be required in such declarations?).
10. The relationship between on the one hand, the roll of solicitors and the roll of practising barristers and, on the other hand, the register of legal partnerships.
11. The manner in which the establishment of the register of legal partnerships is funded, and also the manner in which the ongoing regulation, monitoring and operation of legal partnerships is funded with reference to the levy to be paid by the Law Society, Bar Council and certain barristers per Part 7 of the Act.
12. The extent to which the creation of legal partnerships would have ethical implications for members of the professions and, if so, how those implications could be addressed in the professional codes.

The above list of issues is not closed. Respondents may wish to comment also on any other issues which the Regulations may address per Section 116(3) given the objectives set out in Section 13(4) of the Act and the issues referred to in Section 116(5) of the Act.

It would be helpful for respondents to set out the reasons for the views expressed, and to provide any available evidence which may be deemed relevant.

Respondents are requested to indicate on whose behalf they are responding (e.g. as a member of the public, a public representative, an individual or firm within either profession, a client, or a body representing collective interests etc).

Members of the public or other interested parties wishing to contribute should send a written submission as soon as possible but in any event to be received no later than midday on Friday 24th March 2017.

Submissions may be sent:

- By email to public118@lsra.ie or
- By post to

“Legal Partnership Public Consultation”
Legal Services Regulatory Authority

St Stephen's Green House
Earlsfort Terrace
Dublin DO2PH42

Freedom of Information

Attention is drawn to the fact that information provided to the Authority may be disclosed in response to a request under the Freedom of Information Act 2014. Therefore, should it be considered that any information provided is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Authority will consult with interested parties making submissions regarding information identified by them as sensitive before making a decision on any Freedom of Information request. Any personal information, which you volunteer to the Authority, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 and 2003.

Publication of Submissions

The Authority may also decide to publish any submissions received by it on its website and otherwise. A decision on any such publication may occur without prior consultation with respondents to this consultation process. Thus, it is in the interests of respondents to highlight, in their submissions, any commercially sensitive or confidential information which they would not wish to be disclosed.

Legal Services Regulatory Authority

24th February, 2017.

ANNEX B: NOTICES APPEARING IN THE NATIONAL MEDIA

Public Notice - LEGAL SERVICES (REGULATION) ACT 2015

The Legal Services Regulatory Authority is seeking submissions in advance of the introduction of "legal partnerships" which, for the first time, will allow for barristers to enter into partnership together and also for solicitors and barristers to enter into partnership together.

Submissions must be received by at latest midday on Friday 24th March 2017. For further detail in relation to the consultation notice, please go to www.lsr.ie

Legal Services Regulatory Authority

24th February, 2017

PUBLIC NOTICE - LEGAL SERVICES (REGULATION) ACT 2015

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Legal Services Regulatory Authority
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Submissions must be received by at latest midday on Friday 24th March 2017.

For further detail in relation to the consultation notice, please go to www.lsr.ie

Legal Services Regulatory Authority

24th February, 2017

ANNEX C: LIST OF RECIPIENTS OF NOTICE

1. The Law Society of Ireland
2. The Honorable Society of the King's Inns
3. The Bar Council of Ireland
4. Citizens Information Board
5. Higher Education Authority
6. Competition and Consumer Protection Commission
7. Irish Human Rights and Equality Commission
8. Institute of Legal Costs Accountants
9. Consumers Association of Ireland
10. Legal Aid Board
11. Office of the Director of Public Prosecutions
12. Chief State Solicitor's Office
13. Department of Taoiseach
14. Department of Education
15. Department of Environment
16. Department of Finance
17. Department of Health
18. Department of Public Expenditure and Reform
19. Department of Justice and Equality
20. Department of Social Protection
21. Department of Transport
22. The Courts Service
23. The Supreme Court
24. The Court of Appeal
25. The High Court
26. The Circuit Court
27. The District Court
28. The Court of Criminal Appeal
29. The Association of Judges of Ireland
30. The Judges Library
31. NAMA
32. IDA
33. Enterprise Ireland
34. National Competitiveness Council
35. Irish Congress of Trade Unions
36. IBEC
37. Irish Farmers Association
38. Economic and Social Research Institute
39. Think-Tank for Action on Social Change
40. PublicPolicy.ie
41. Nevin Economic Research Institute
42. The Economic and Social Research Institute
43. National University of Ireland, Galway
44. National University of Ireland, Maynooth
45. Trinity College Dublin
46. University of Limerick
47. University College Dublin

48. Dublin City University
49. University College Cork
50. Griffith College Dublin
51. The Scottish Law Reform Commission
52. The Jersey Law Reform Commission
53. Carlow Bar Association
54. Cavan Bar Association
55. Clare Bar Association
56. Cork Bar Association
57. West Cork Bar Association
58. Donegal Bar Association
59. Drogheda Bar Association
60. Dublin Solicitors Bar Association
61. Dublin City Council
62. Galway Bar Association
63. Inishowen Bar Association
64. Kerry Bar Association
65. Kildare Bar Association
66. Kilkenny Bar Association
67. Laois Bar Association
68. Leitrim Bar Association
69. Limerick Bar Association
70. Longford Bar Association
71. Louth Bar Association
72. Mayo Bar Association
73. Meath Bar Association
74. Midland Bar Association
75. Monaghan Bar Association
76. Roscommon Bar Association
77. Sligo Bar Association
78. Tipperary Bar Association
79. Waterford Bar Association
80. Wexford Bar Association
81. Wicklow Bar Association

ANNEX D: RELEVANT EXTRACTS FROM THE LEGAL SERVICES REGULATION ACT 2015

CHAPTER 2

Legal Partnerships, Direct Professional Access and Multi-Disciplinary Practices

Legal partnerships and professional codes

100. (1) Subject to this Part, a legal practitioner may provide legal services as a partner in, or an employee of, a legal partnership.

(2) A professional body shall not, through its professional codes or otherwise, prevent or restrict a legal practitioner who is a member of that body from working with, or otherwise doing business with, a legal practitioner providing legal services in a legal partnership in accordance with *subsection (1)*.

Complaints under *Part 6* in respect of legal practitioners in limited partnerships, multidisciplinary practices and limited liability partnerships

103. For the avoidance of doubt, nothing in this Part shall be construed as preventing a person making a complaint to the Authority under *Part 6* in respect of a legal practitioner who provides a legal service as a partner or employee of a legal partnership, a multidisciplinary practice or a limited liability partnership.

Notification of Authority of commencement, cessation of provision of legal services by a legal partnership

104. (1) A legal partnership that intends to provide legal services—

(a) shall notify the Authority, in accordance with *subsection (3)*, of that fact, and

(b) shall not provide such services until it has complied with *paragraph (a)*.

(2) A legal partnership that ceases providing legal services shall—

(a) notify the Authority in accordance with *subsection (3)* of that fact, and

(b) having complied with *paragraph (a)*, shall not provide legal services without providing the Authority with a further notification under *subsection (1)*.

(3) A notification under *subsection (1)* or *(2)* shall be in writing and in such form and subject to such fee (if any) as may be prescribed.

Legal partnership to have professional indemnity insurance

105. A legal partnership shall not provide legal services unless there is in force, at the time of the provision of such services, a policy of professional indemnity insurance which complies with regulations made under *section 47* and *section 26* of the Act of 1994 (if applicable).

Regulations on operation of legal partnerships and multi-disciplinary practices

116. (1) Subject to this section, the Authority may make regulations in relation to the operation and management of—

(a) legal partnerships, and

(b) multi-disciplinary practices.

(2) The Authority shall—

- (a) upon the commencement of *section 100* or as soon as practicable thereafter, make regulations under *subsection (1)(a)*, and
 - (b) upon the commencement of *section 102* or as soon as practicable thereafter, make regulations under *subsection (1)(b)*.
- (3) Without prejudice to the generality of *subsection (1)*, regulations under that subsection may provide for—
- (a) the standards to be observed in the provision by the practice of legal services to clients, including standards relating to:
 - (i) the professional and ethical conduct of persons providing legal services to clients;
 - (ii) the obligation of such persons to keep the affairs of clients confidential;
 - (iii) the provision of information to a client in relation to the duties owed by the practice to him or her,
 - (b) the rights, duties and responsibilities of a practice in respect of moneys received from clients,
 - (c) the management and control of the practice so as to ensure that:
 - (i) the standards referred to in *paragraph (a)* are at all times observed;
 - (ii) it has in place appropriate systems of control, including systems for risk management and financial control;
 - (iii) where, in the provision by it of services, a conflict of interest or potential conflict of interest arises, this is dealt with adequately and in accordance with any relevant code of conduct or professional codes;
 - (iv) its obligations under this Act and regulations made under it are complied with,
 - (d) the maintenance by the practice of records,
 - (e) the regulation of the names that may be used by a practice,
 - (f) the regulation of the advertising by the practice of its services.
- (4) Without prejudice to the generality of *subsection (1)*, regulations under *subsection(1)(b)* may—
- (a) specify procedures that are to be included in the written procedures referred to in *section 110(1)*, and
 - (b) provide for:
 - (i) the type or types of bank accounts that may be opened and kept by a multidisciplinary practice, and the opening and keeping of such accounts;
 - (ii) the accounting records to be maintained (or caused to be maintained) by a legal practitioner, who is a partner in or an employee of a multi-disciplinary practice arising from the provision by him or her of legal services, including the minimum period or periods for which accounting records shall be

retained by a legal practitioner during the period of, and following the conclusion of, the provision of legal services;

(iii) the keeping by a legal practitioner referred to in *subparagraph (ii)* of accounting records containing particulars of and information as to moneys received, held, controlled or paid by him or her arising from the provision by him or her of legal services, for or on account of a client or any other person or himself or herself.

(5) In making regulations under this Part, the Authority shall have regard to the objectives specified in *section 13(4)* and to the following:

(a) the need to ensure that the provision by a practice of legal services to its clients is of a standard that it is reasonable to expect of a legal practitioner in the provision of those services;

(b) the need to ensure that a practice is operated or managed in such a way as to ensure that a legal practitioner who is a partner in or an employee of that practice has, in the provision by him or her of legal services, adequate regard to—

(i) the codes of practice and professional codes that are applicable to him or her, and

(ii) the professional principles specified in *section 13(5)*;

(c) the need to ensure that the interests of clients of practices are protected and that the duties owed to them by practices are complied with and, in particular, that the activities of a practice do not expose the interests of a client to risk or pose a risk to monies received by it from a client;

(d) the need, in the case of a multi-disciplinary practice, to ensure that the provision by it of services other than legal services does not have the effect of lowering the standard referred to in *paragraph (a)* or the regard by legal practitioners referred to in *paragraph (b)* to the matters specified in that paragraph;

(e) the need to ensure that public confidence in practices is maintained.

(6) In *subsections (3) and (5)*, “practice” means a legal partnership or a multi-disciplinary practice.

Authority to maintain register of legal partnerships and multi-disciplinary practices

117. (1) The Authority shall maintain a register of—

(a) legal partnerships that have notified it in accordance with *section 104(1)(a)*, and

(b) multi-disciplinary practices that have notified it in accordance with *section 106(1)(a)*.

(2) Where a legal partnership or a multi-disciplinary practice referred to in *subsection (1)* notifies the Authority in accordance with *section 104(2)(a)* or *106(2)(a)*, as the case may be, the Authority shall remove the name of that legal partnership or multidisciplinary practice from the register referred to in that subsection.

(3) The Authority shall make the register referred to in *subsection (1)* available in an appropriate format to members of the public for inspection free of charge.

Public consultation on operation etc., of legal partnerships

118. (1) The Authority—

(a) immediately following its establishment, shall, and

(b) periodically thereafter, may,

engage in a public consultation process in relation to the regulation, monitoring and operation of legal partnerships.

- (2) The Authority shall conduct its initial consultation referred to in *subsection (1)(a)* and report to the Minister within a period of 6 months following its establishment.
- (3) Following any consultation conducted under *subsection (1)*, and having regard to any submissions duly received, the Authority shall prepare a report to the Minister setting out any recommendations in relation to the matters specified in *subsection (1)*.
- (4) The Minister shall cause copies of any such report to be laid before each House of the Oireachtas within 30 days of its receipt by him or her.

ANNEX E: LIST OF RESPONDENTS

1. Competition and Consumer Protection Commission
2. Mr Matthew Maguire BL
3. Mr Kieran Fitzpatrick
4. The Law Society of Ireland
5. The Bar of Ireland
6. The Standing Committee of the Council on behalf of the Honorable Society of King's Inns
7. Dublin Solicitors Bar Association
8. Department of Jobs, Enterprise and Innovation

ANNEX F: NOTE ABOUT THE AUTHORITY

The Authority was established on 1 October, 2016 under the Legal Services Regulation Act, 2015 (“the Act”). In accordance with Section 9(3) of the Act, the Authority comprises membership with knowledge and expertise in one or more of the following areas specified in the Act:

- a) the provision of legal services;
- b) legal education and legal training;
- c) competition law and policy;
- d) the maintenance of standards in professions regulated by a statutory body;
- e) dealing with complaints against members of professions regulated by a statutory body;
- f) business and commercial matters;
- g) the needs of consumers of legal services.

The members of the Authority are nominated by organisations prescribed in the Act, appointed by Government and approved by the Oireachtas. The members do not act in a representative capacity. The Authority has a lay majority and a lay Chairperson.

The Members of the Legal Services Regulatory Authority:

<u>Name</u>	<u>Nominating Body</u>
Don Thornhill (Chair)	The Higher Education Authority
Angela Black	The Citizens Information Board
Deirdre McHugh	The Competition and Consumer Protection Commission
Gerry Whyte	The Irish Human Rights and Equality Commission Stephen
Fitzpatrick	The Institute of Legal Costs Accountants
Dermot Jewell	The Consumers Association of Ireland
David Barniville	The Bar Council
Eileen Barrington	The Honorable Society of King’s Inns
Joan Crawford	The Legal Aid Board
Geraldine Clarke	The Law Society
James MacGuill	The Law Society