



Mr Brian Doherty
Chief Executive Officer
Legal Services Regulatory Authority
PO Box 12906
Dublin 2

19th April 2024

RE: Consultation Notice – Legal Partnerships framework and Code of Practice for Practising Barristers

Dear Brian

I refer to your letter of 26th March 2024 inviting submissions from The Bar of Ireland in relation to a series of regulations (LP's, LLP's and PII) and an updated Code of Practice for Practising Barristers.

As you are aware, the Council has an excellent track record in complying with reasonable response deadlines set by the LSRA. I wish to express concern in relation to the timing of this consultation that coincided with the Easter break and the limited time that was made available to the Council to review and consider the documentation, meaning that we have been limited by the lack of sufficient time to undertake a deep and detailed assessment of the draft regulations and the draft Code.

Updated Code of Practice for Practising Barristers

In the limited time that has been made available to the Council to review and comment on the updated draft Code of Practice for Practising Barristers, the Council makes the following observations:

1. Rule 3.11: The deletions here are a concern. The text to be deleted is:

'In contentious matters, as defined in the Act, a Practising Barrister shall not take instructions directly from a client. However, in a matter other than a contentious matter practising Barrister may accept instructions from a person who is not a solicitor.'

'Save where provided in this Code it is undesirable for Barristers to consult with a client or their representative in any matter unless the solicitor instructing them is present or has instructed them to do so. If the solicitor is not present, the Barrister should forthwith furnish a written memorandum of those instructions to the solicitor.'

The thinking behind this deletion is not clear. Section 101 has not been commenced of course, but that provision is confined to *non-contentious* matters. Section 120 does make provision for a public consultation process regarding the “retention or removal of restrictions on a barrister receiving instructions in a contentious matter, directly from a person who is not a solicitor”, and a report was published in 2017, but we are not aware of any legislative changes introduced on foot of that report.

Therefore, we do not understand why the LSRA’s Code would **not** include a prohibition on taking direct instructions in contentious matters. It is true to say that there is reference to instructing solicitors in the text that remains, but that is not the same thing as expressly stating that barristers shall not take instructions directly from clients in a contentious matter.

There would appear to be no sound basis for the deletion of this text and the failure to include this prohibition in the Code suggests that the Code permits conduct that is not in fact permitted under the primary legislation from which the Code is drawn.

2. Rule 3.26: The new text inserted converts the previous iteration of this rule (which was prohibitive in nature) to a rule that permits public comment on cases (even those cases in which a barrister was involved) but with a general caveat that this should be done with one eye on the other provisions of the code (re confidentiality, independence, integrity etc.). The Council believes that the general prohibition on comment, subject to limited exceptions (as appeared in the earlier draft codes) was more appropriate and struck a balance between the rights of clients and the rights of barristers. The Bar of Ireland will be proposing amendments to our own Code later this year which will provide further clarity, and which will allow for comment in appropriate circumstances and scenarios. We would suggest that the LSRA give consideration to similar amendments, and we are happy to share the draft of those proposed amendments with the LSRA.

Legal Partnership Regulations

As you are aware, the Council made a detailed submission to the Authority in March 2017 setting out observations in relation to the operation of Legal Partnerships, that submission continues to represent the position of the Council.

Limited Liability Partnership Regulations

No observations.

Professional Indemnity Insurance Regulations

As you are aware, The Bar of Ireland has a Group Professional Indemnity Insurance Scheme in place for members of the Law Library. While it is not compulsory for members to acquire their insurance through our group scheme, it is a requirement of membership of the Law Library to provide evidence of a PII policy to our Regulation Department on an annual basis.

I understand from our broker, AON, that a meeting is taking place between Zurich and the LSRA next week arising from clarifications required by Zurich in relation to the proposed changes to the draft PII regulations. Following that meeting, we expect to be in a position to engage with our broker, the insurer and submit any observations.

Yours sincerely

A handwritten signature in black ink that reads "Ciara Murphy". The signature is written in a cursive, flowing style.

Ciara Murphy
CHIEF EXECUTIVE