

**LEGAL SERVICES
REGULATORY
AUTHORITY
INITIAL PUBLIC
CONSULTATION
ON LEGAL
PARTNERSHIPS**

**SUBMISSION BY THE
STANDING COMMITTEE OF
THE COUNCIL ON BEHALF OF
THE HONORABLE SOCIETY OF
KING'S INNS**

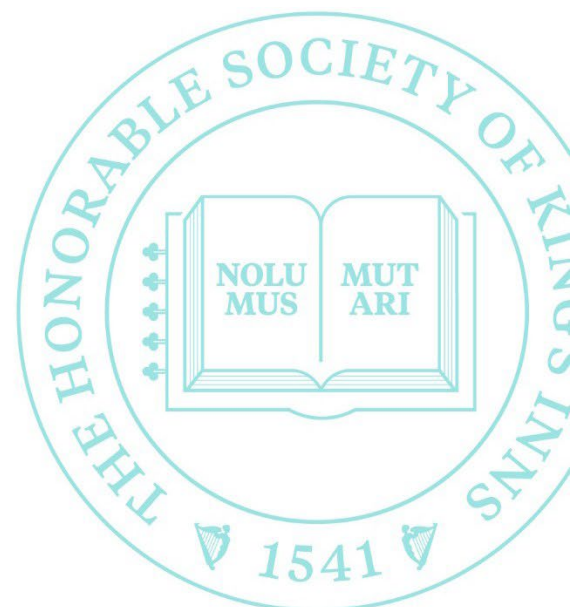
APRIL 2024

**KINGS
INNS¹⁵₄₁**



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I. INTRODUCTION

1. The Standing Committee of the Council makes these submissions on behalf of the Honorable Society of King's Inns ("the Society") in response to the invitation issued by the Legal Services Regulatory Authority ("the Authority") by way of public consultation notice dated 26 March 2024. As stated in that notice, the Authority intends to introduce Legal Partnership Regulations, revised Professional Indemnity Insurance Regulations, and the Code of Practice for Practising Barristers. The Authority has invited written submissions from the Society in relation to the following drafts:
 - a. Legal Partnership Regulations, under section 116 (1)(a) of the Legal Services Regulation Act 2015 (2015 Act) in relation to the operation and management of legal partnerships;
 - b. Limited Liability Partnership Regulations, under section 130 of the 2015 Act in relation to the operation of LLPs which include provisions in relating to legal partnerships who apply for authorisation to operate as an LLP;
 - c. Professional Indemnity Insurance Regulations, under section 47 of the 2015 Act which include minimum standards of professional indemnity insurance for practising barristers and for practising barristers in legal partnerships and limited liability partnerships; and
 - d. An updated Code of Practice for Practising Barristers under section 22 of the 2015 Act.
2. In light of the short time period between the date of notice and the date for submissions, these submissions cannot be viewed as comprehensive or final submissions on behalf of the Society on this subject-matter. These submissions ought to be viewed as initial observations on some of the potential issues associated with the proposed introduction and regulation of legal partnerships and the proposed ancillary measures which are also the subject of draft regulations. In that regard, the Society would welcome the opportunity to provide such elaboration as may be sought by the Authority on these or other issues affecting legal partnerships, limited liability partnerships, and professional indemnity insurance. The Society reserves its right to make further submissions on this subject-matter in future public consultations undertaken by the Authority.

II. Legal Partnership Regulations

3. The Authority has promulgated draft Regulations providing for the operation and management of legal partnerships and these have been carefully considered by the Society, particularly in light of certain concerns in relation to the operation and regulation of legal partnerships which were raised by the Society in its response to the initial public consultation on legal partnerships.
4. At the outset, the Society wishes to highlight its concern in relation to a number of fundamental incompatibilities between the operation of legal partnerships, as envisaged by the draft Regulations, and existing partnership law. These incompatibilities do not appear easily reconcilable and many are not, in the Society's submission, adequately resolved in the draft Regulations. In the submission below the Society has highlighted a number of specific issues which arise, but the consideration of those issues should be understood as being subject to that overarching concern.

Definition

5. Section 2(1) of the 2015 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".
6. The 2015 Act thus envisages two different types of legal partnership: partnerships between barristers and partnerships between solicitors and barristers.
7. Regulation 2(1) of the Regulations defines "barrister-only legal partnership" as "a legal partnership in which only practising barristers are partners" and "solicitor-barrister legal partnership" as "a legal partnership in which at least one practising barrister is a partner and at least one practising solicitor is a partner".
8. A key characteristic of partnerships is that each partner is liable for the acts of co-partners done as part of the ordinary course of business of the firm. This principle must be kept in mind at all times when planning and preparing for the introduction of legal partnerships; it potentially has significant implications for the protection of consumers, the professional regulation of legal practitioners and the administration of justice. The joint and several liability of partners flows from the fact that each partner is his co-partner's agent for the purposes of the partnership business. It is a general principle of partnership law and is set out in the Partnership Act 1890, s. 5:

Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

Partnership Business

9. As is clear from the previous section, the concept of the “business of the partnership” is fundamental in partnership law. It is the foundation stone for the principle of joint and several liability. Partners are agents of each other, and bind one another, when they carry on “business of the kind carried on by the firm”. This important principle would appear to be premised on the provision of a unitary professional service. There are questions surrounding its application to legal partnerships where not all partners are members of the same profession.
10. The “business” of barrister-solicitor legal partnerships can be described as the provision of legal services, but the reality is that barristers and solicitors provide legal services of a different nature. There are, in particular, services offered by solicitors, representing a significant part of the business carried on by solicitors, which barristers cannot offer. Notably, these include the handling of client moneys and the provision of undertakings. This complicates the definition of the partnership business. There will be significant aspects of the business which barrister partners are professionally and/or statutorily prohibited from undertaking. This confusion surrounding the partnership business poses potential difficulties for consumers who may seek to rely on the principle of joint and several liability or who may seek payment out of the solicitors’ compensation fund.

ISSUES

A. Different Professional Codes

11. The question of the application of professional codes to legal practitioners in solicitor-barrister legal partnerships arises. All barristers, even those in legal partnerships, will continue to be subject to the professional code of the Society, in addition to any profession specific code of practice issued by the Authority. The Society notes, in this regard, that the Authority has issued a draft Code of Practice for Practising Barristers.

12. All solicitors will continue to be subject to the professional code of the Law Society, as well as relevant rules promulgated by the Authority. While many of the rules in the separate professional codes regarding barristers and solicitors overlap, there are also critical differences. For example, there is a wider discretion afforded to solicitors not to accept clients; however, barristers are subject to the “cab rank” rule, requiring them to accept instructions in any case in the field in which they practice, subject to certain limited exceptions.¹
13. It is not clear, in the Society’s respectful submission, that this issue of potential conflict in professional obligations in the context of a solicitor-barrister legal partnership is adequately addressed in the draft Regulations.
14. The Society notes, in this respect, that Regulation (6) of the draft Regulations provides that it shall be the responsibility of the legal partnership, and every partner in a legal partnership to *“ensure the legal partnership complies with applicable obligations under the Act of 2015, these Regulations, such other regulations as may be made under the Act of 2015 and any relevant code of conduct or professional code to include a code of practice issued by the Authority”*.
15. Regulation (8) of the draft Regulations confirms that *“[n]othing in these Regulations shall be deemed to affect the obligations of practising solicitors, whether as partners of a legal partnership or employees in a legal partnership, to comply with applicable provisions of the Solicitors Acts and any regulations made thereunder”*.
16. Regulation (9) of the draft Regulations provides that a practising barrister *“shall not by any act or omission interfere with a practising solicitor’s obligations under the Solicitors Acts and any regulations made thereunder”*.
17. There is no proposed Code of Practice for legal partnerships. The legal practitioners in solicitor-barrister legal partnerships will therefore be subject to different, and distinct, codes of practice with no harmonising rule. Under partnership law, the firm itself is liable for the wrongful acts or omissions of another partner, and all partners are jointly and severally liable for everything for which the firm becomes liable (while they are partners therein). This raises the possibility that a barrister partner may be impacted by a breach of a professional code by which they are not themselves

¹ The Law Society Guide to Professional Conduct (4th ed), p 21: “The decision to accept instructions in any particular case is a matter for the discretion of the individual solicitor.” Rule 32 of the Professional Code of Conduct of the Society, however, sets out the “cab rank” rule for barristers: “Save insofar as legal services as a barrister are being provided under a contract of service, having regard to the anticipated length and complexity of a case and having regard to their other professional commitments and the provisions of the Code, barristers are bound to accept instructions in any case in the field in which they profess to practise (having regard to their experience and seniority) subject to the payment of a proper professional fee. A barrister may be justified in refusing to accept instructions where a conflict of interest arises or is likely to arise or where they possess relevant or confidential information or where there are other special circumstances.”

bound. It is difficult to see how such a situation can be seen as fair or reasonable, and in the Society's respectful submission, is simply one scenario that illustrates the obstacles to attempting to provide for the establishment of legal partnerships within the existing structure of partnership law and regulation of the legal professions.

B. Independence

18. One of the most prominent and distinctive features of the role played by barristers in the administration of justice is their status as independent advocates². It is respectfully submitted that this long-established independence is an important offering to consumers of legal services.
19. Related to the independence of barristers is their "overriding duty to the court to ensure in the public interest that the proper and efficient administration of justice is achieved"³. This is an equally important feature of the profession, without which the administration of justice would be impaired. The Society has previously cautioned that the provision for the operation and regulation of legal partnerships must have regard to the implications for, and the importance of preserving, barristers' overriding duty to the court.⁴
20. It is not clear whether the draft Regulations, as currently constituted, take adequate account of this consideration, beyond stipulating, in Regulation 16(b), that the partners and employees in the legal partnership must "*conduct themselves professionally and ethically and in accordance with any relevant code of conduct or professional code to include a code of practice issued by the Authority*".
21. A stark example of the importance of the principle of independence is the role of a barrister in a situation where the barrister is of the view that a conflict of interest may have arisen between the client and the instructing solicitor.

² The Law Society Guide to Professional Conduct (4th ed), p 21: "The decision to accept instructions in any particular case is a matter for the discretion of the individual solicitor." Rule 32 of the Professional Code of Conduct of the Society, however, sets out the "cab rank" rule for barristers: "Save insofar as legal services as a barrister are being provided under a contract of service, having regard to the anticipated length and complexity of a case and having regard to their other professional commitments and the provisions of the Code, barristers are bound to accept instructions in any case in the field in which they profess to practise (having regard to their experience and seniority) subject to the payment of a proper professional fee. A barrister may be justified in refusing to accept instructions where a conflict of interest arises or is likely to arise or where they possess relevant or confidential information or where there are other special circumstances."

³ The Professional Code of Conduct of the Society, Rule 20.

⁴ Submission by the Standing Committee of the Council on behalf of the Honorable Society of King's Inns to the Legal Services Regulatory Authority Initial Public Consultation on Legal Partnerships, 24 March 2017.

22. Pursuant to the barrister's professional obligations under the Code of Conduct of the Bar of Ireland, the Barrister must provide advice for the client stating the nature of the barrister's concerns and recommending that the client instruct a different solicitor. The barrister should first notify the instructing solicitor that that advice must be given and then immediately advise the client, either at a consultation at which the client and the solicitor are both present; or in writing to the client through the instructing solicitor; or in writing to the solicitor.⁵
23. Where such advice is given other than in the presence of the client, the barrister must seek the written acknowledgement of the client, and if that is not forthcoming within a reasonable time, the barrister, having warned the solicitor of their obligations in this regard, must provide the advice to the client directly in writing.⁶
24. The formulation of this rule recognizes, and takes appropriate account, of the risk that a solicitor in the situation at issue may not in fact inform the client of the conflict of interest that has arisen, because the solicitor is in that conflicted position. The independence on the part of the barrister is therefore an important protection for the client.
25. However, a barrister member of a legal partnership who identifies a conflict of interest between a solicitor member and a client, or indeed between the firm itself and a client, would find themselves in a potentially compromised position where the barrister him or herself is in fact in a conflicted position by virtue of their membership of the legal partnership, with the consequent impact on the protection for the client.

C. Holding Client Moneys

26. Barristers are prohibited, by professional duty and by statute⁷ from handling client moneys.
27. The Society has previously submitted to the Authority that the restriction on

⁵ Code of Conduct of the Bar of Ireland, 24 July 2023, Rule 3.28(a).

⁶ Ibid.

⁷ Rule 22 of the Professional Code of Conduct of the Society provides: "It is the duty of barristers to be independent and free from influence, especially such as may arise from their personal interests or external pressure, in the discharge of their professional duties. Barristers must avoid any impairment of their independence and be careful not to compromise their professional standards in order to please their client, the court, third parties, or, as the case may be, their employer(s) or partner(s)." This prohibition is also reflected in the draft Code of Practice for Practising Barristers issued by the Authority, at Rule 3.18, which provides: "A practising barrister shall not hold moneys of clients. This applies whether the practising barrister is a self-employed barrister, an employed barrister, or a barrister in a Legal Partnership or Limited Liability Partnership". Section 45(1) of the 2015 Act provides: "Subject to subsection

barristers holding client moneys ought to be retained.⁸ This view was principally based on the likelihood that any such relaxation would expose clients to unnecessary risks, in absence of compelling reasons for the relaxation of the rule, where the necessary protections were not in place, and where it was difficult to see how they could be put in place. The absence of necessary protections includes the absence of a Compensation Fund. The Society also submitted that in light of the differing services offered by barristers and solicitors, identifying in particular the conveyancing and probate work engaged in by solicitors which may require them to hold client moneys, the relaxation of the prohibition was unnecessary to a considerable degree.

28. However, it is inescapable to conclude that the prohibition on barristers holding client moneys poses a major difficulty for barrister-solicitor legal partnerships, and one which the draft Regulations do not, in the Society's respectful submission, adequately address.
29. The draft Regulations envisage that solicitors in a legal partnership may receive and handle client moneys⁹ and that would be a key part of the services that they offer. Barrister partners, however, are prohibited from doing so. This prohibition is reflected in the draft Regulations at Regulation 15(1), which provides that a *“legal practitioner shall not hold moneys of clients unless that legal practitioner is a practising solicitor. For the avoidance of doubt, this applies to legal practitioners in a legal partnership”*, and Regulation 15(4), which provides that a *“practising barrister shall not hold moneys of clients, whether as a partner in a legal partnership or as an employee of a legal partnership”*.
30. Regulation 2(2) defines the concept of holding client moneys as follows:

“For the purposes of these Regulations a practising barrister or a barrister-only legal partnership is deemed to hold moneys of clients if the practising barrister or the barrister-only legal partnership receives moneys of clients and/or has the capacity to effect transactions in respect of an account or accounts in which the moneys of clients is held”.
31. Regulation 15(5) provides that a *“solicitor-barrister legal partnership shall have systems and controls in place to ensure that a practising barrister does not hold the moneys of clients within the meaning of the Act of 2015 and these Regulations”*.

⁸ See the Submission by the Council on behalf of the Honorable Society of King's Inns to the Legal Service Regulatory Authority Public Consultation on Certain Issues Relating to Barristers, 29 May 2017.

⁹ Regulation 15(1): *“A legal practitioner shall not hold moneys of clients unless that legal practitioner is a practising solicitor”*.

32. There is no enumeration of the features or requirements of the “*systems and controls*” which solicitor-barrister legal partnerships will be required to maintain to ensure that a practising barrister does not hold client moneys. In the Society’s view, further specifications of such systems and controls ought to be included in the draft Regulations.
33. A deeper question remains, however, as to whether a distinction between the powers of partners is desirable or practicable. The partners are agents of each other in the course of the partnership business, but it is difficult to see how a barrister partner could be considered a principal in relation to the handling of client moneys by a solicitor partner where the barrister partner is statutorily and ethically prohibited from doing so. A question also arises, which is relevant to a number of issues raised in this submission, as to whether it is fair or appropriate that a barrister partner may be liable for the partnership’s handling of client moneys where the barrister partner is not permitted to exercise any powers in relation to same.
34. An issue arising in this context is how the situation is to be addressed where a barrister partner of a solicitor-barrister partnership suspects, or identifies, that client moneys have been misappropriated by a solicitor partner of the legal partnership.
35. The barrister in such a scenario would be placed in a compromised position. On the one hand, the barrister owes an obligation to the client to report that concern as a conflict of interest. However, the barrister partner is also liable, under partnership law, for the full amount of the loss to the client; in circumstances where the barrister partner has at all times been precluded from handling client moneys. A clear conflict of interest arises here, which, in the Society’s respectful submission, is not adequately addressed in the draft Regulations, and which further highlights the incompatibilities between the proposed operation of legal partnerships and existing partnership law and professional obligations.

D. Compensation Fund

36. There exists a solicitors’ compensation fund, governed by s 21 of the Solicitors (Amendment) Act 1960 and the Solicitors (Compensation Fund) Regulations 2013, the purpose of which is to provide compensation where a client of a solicitor has suffered loss due to the dishonesty of a solicitor or the clerk or servant of a solicitor arising from that solicitor’s practice as a solicitor (“the Compensation Fund”). This is an extremely important and valuable protection afforded to the clients of solicitors in circumstances where, in ordinary practice, an extraordinary level of trust is placed in the solicitors’ profession.
37. The Society has previously suggested that the Authority required to consider the increased exposure to risk faced by consumers where legal partnerships hold their money, in particular in light of the non-availability of the Compensation Fund in

respect of acts by barrister partners.¹⁰

38. Section 113 of the 2015 Act makes clear that the Law Society will not be required to expand the coverage provided by the Compensation Fund to acts of barrister partners or barrister employees of the legal partnership.¹¹
39. However, under the Partnership Act 1890, the firm is liable for the wrongful acts and omissions of any partner, to the same extent as the partner in question¹². Where a partner receives and misapplies the money or property of a third person, and where the firm in the course of its business receives money or property from a third person, and that money or property is misapplied by one of the partners while it is in the custody of the firm, the firm is liable for that loss¹³. Every partner is liable jointly with his or her co-partners and also severally for everything for which the firm while he or she is a partner therein becomes liable.¹⁴
40. This limitation of the Compensation Fund is reflected in the draft Regulations. Regulation 11(1) of the draft Regulations sets out certain information which is required to be furnished in writing by a legal partnership to a client upon, or as soon as practicable after, accepting instructions from that client. Regulation 11(1)(e) provides that this information includes “*confirmation that the Law Society’s obligations to reimburse losses caused by the dishonesty of practising solicitors from the Compensation Fund does not extend to practising barristers in a legal partnership*”.
41. In the context of a barrister-solicitor legal partnership, therefore, the protection afforded by the Compensation Fund would be undermined because it would not be available in respect of acts by barrister partners. Although barrister partners would be prohibited from handling client moneys, it is not inconceivable that, given the practicalities of a partnership, situations could arise whereby a client of the legal partnership suffers a loss which would have been covered by the Compensation Fund but for the fact that the relevant acts are attributable not to a solicitor but to a

¹⁰ Submission by the Standing Committee of the Council on behalf of the Honorable Society of King’s Inns to the Legal Services Regulatory Authority Initial Public Consultation on Legal Partnerships, 24 March 2017.

¹¹ Section 113 of the 2015 Act provides as follows: “Nothing in this Part shall be construed as extending the obligation of the Law Society under section 21(4) (as amended by section 29 of the Solicitors (Amendment) Act 1994) of the Solicitors (Amendment) Act 1960 to loss sustained in consequence of dishonesty on the part of a legal practitioner who is a partner in or an employee of a legal partnership or, as the case may be, a multi-disciplinary practice or any clerk or servant of that legal practitioner arising from the provision by that legal practitioner of legal services to a client, where that legal practitioner is not a practising solicitor”.

¹² Section 10 of the Partnership Act 1890.

¹³ Section 11 of the Partnership Act 1890.

Section 12 of the Partnership Act 1890. See, for example, *McAleenan v. AIG (Europe) Ltd* [2013] 3 IR 202; *Best v. Ghose* [2018] IEHC 376, [2024] IECA 58.

barrister.

42. This would leave consumers exposed. It would also complicate the process of making an application to the Compensation Fund. Clients would only be able to avail of compensation for dishonest acts of solicitor partners. It is not a distinction which, it is respectfully submitted, to the consumer would seem justifiable. However, it is an inevitable consequence of the proposal to permit legal partnerships under the current Compensation Fund regime.
43. The Society welcomes the requirement, in Regulation 11(1)(e), to inform clients that they are not protected by the Compensation Fund in respect of acts of practising barristers in a legal partnership as an important consumer protection. However, it is concerning that there do not appear to be any other measures envisaged in the draft Regulations to protect clients of legal partnerships where there is a gap in coverage of the Compensation Fund.

E. Undertakings

44. The provision of undertakings by solicitors is an issue which arises in respect of barrister-solicitor legal partnerships. Undertakings are a part of the ordinary business of solicitors, but they are not a feature of barristers' practices. Currently, where a solicitor in partnership gives an undertaking as a solicitor in the course of practice, all partners are responsible for its performance.¹⁵
45. Regulation 7 of the draft Regulations provides that "*[a]ny obligations which are expressed to apply to the legal partnership apply to each individual partner within the partnership, save where expressly otherwise provided in the Act of 2015, these Regulations or such other regulations as may be made under the Act of 2015*".
46. The Society has previously raised the issue of how the giving of undertakings will be regulated and where will liability for failure to comply with undertakings fall in barrister-solicitor legal partnerships.¹⁶ If a solicitor partner, or indeed a solicitor employee, provides undertakings which a barrister partner is incapable of giving, or over which he cannot exercise any control *qua* partner, is it fair, just and reasonable that a barrister partner would be exposed to liability on foot thereof? Is it consistent with the nature of a partnership that certain partners are professionally prohibited from exercising or supervising such important functions which potentially expose the partnership to significant liabilities?
47. These are issues which, in the Society's respectful submission, are not adequately addressed in the draft Regulations.

¹⁵ Law Society Guide to Professional Conduct (4th ed), p. 80.

¹⁶ Submission by the Standing Committee of the Council on behalf of the Honorable Society of King's Inns to the Legal Services Regulatory Authority Initial Public Consultation on Legal Partnerships, 24 March 2017.

F. Availability of Barristers

48. This is a major area of concern for consumers of legal services. If legal partnerships as currently envisaged in the 2015 Act and the draft Regulations are permitted, it is not inconceivable that the largest solicitors firms and the leading barristers may enter into partnership whereby these barristers would no longer accept briefs from smaller solicitor firms. This would restrict the access of many solicitors throughout the country to the professional services of the leading barristers. It would deprive many individual litigants of their services, which would in all likelihood have a negative impact on their ability to assert their legal rights and further negative consequences for the administration of justice.
49. Moreover, the choice of barristers for the clients of legal partnerships would likely be diminished as the solicitors in a legal partnership would presumably encourage, or at least have an interest in, the client being represented by a barrister partner. This would not appear to be in the best interests of consumers.
50. In this regard, the Society notes that Regulation 11(2) provides that where a practising solicitor in a legal partnership proposes to instruct a practising barrister who is *“a partner or employee of that legal partnership on behalf of a client in any matter, the client shall be informed of their right to request the instruction of a practising barrister who is not a partner or an employee of that legal partnership”*. Regulation 11(3) envisages the instruction of a practising barrister in a legal partnership by a practising solicitor other than a practising solicitor who is a partner or employee within the same legal partnership and provides that *“the legal partnership shall furnish to that practising solicitor upon, or as soon as practicable after the practising barrister accepts instructions from the practising solicitor”* the information required by Regulation 11(1) of the draft Regulations.
51. The Society welcomes the inclusion of the requirement to inform a client of a legal partnership of their right to request the instruction of a different barrister, who is not a partner or employee of the legal partnership. However, an issue still arises, in the Society’s view, as to whether this requirement in and of itself represents sufficiently robust protection against the risk of reduction in availability of barristers as set out above.
52. It is, further, not clear to the Society that the Authority has given adequate consideration to the issues arising in a situation where a barrister partner or employee of a legal partnership is briefed by a solicitor partner or employee of another legal partnership, and the consequent impact on independence and availability of barristers.
53. The barrister in such a situation, pursuant to the Code of Conduct of the Society, is

generally required to accept those instructions, but in reality it is not difficult to see how a conflict may arise between the barrister's obligation in that regard and the interests of the other members of the legal partnership in ensuring that the barrister is available to give priority to the clients of the legal partnership. This tension does not appear to be reconciled in the draft Regulations.

G. Conflicts of Interest

54. The Society has previously cautioned that barrister partners in legal partnerships will face an increased risk of conflicts of interest and suggested that these risks, including the potential for conflict between the interests of barristers' clients and the interests of their partners, as well as the potential for conflict between the interests of their clients and the interests of their partners' clients, will require detailed regulation.¹⁷

55. Regulation 12(1) of the draft Regulations provides that a legal partnership "*shall not accept instructions from a party to act in any matter in which the legal partnership, a partner or employee of the legal partnership, is acting for an opposing or counter party in the same matter*" although the following exceptions are enumerated, so that the acceptance of such instructions is permitted where:

12 (1)(a) *each of the parties are given full information about the proposed acceptance of instructions;*

b) each of the parties consent to the acceptance of such instructions; and,

c) information and communications of and related to the two parties are fully segregated and protected against disclosure (save for where otherwise agreed by both parties).

56. Regulation 12(2) provides:

A legal partnership shall not accept instructions to act in any matter in which the ability of the legal partnership, a partner or employee of the legal partnership, to act with full independence and to comply with their professional duties owed to a client, would or could be impaired. This includes, but is not restricted to, a matter in which the legal partnership, its partners or employees are or could reasonably be expected to be aware that the legal partnership, a partner or employee of the legal partnership, has a significant pecuniary interest, or a matter in which it is, or could reasonably be expected to be, aware that the legal partnership, a partner or employee of the legal partnership, may be a party.

¹⁷ Submission by the Standing Committee of the Council on behalf of the Honorable Society of King's Inns to the Legal Services Regulatory Authority Initial Public Consultation on Legal Partnerships, 24 March 2017.

57. While these Regulations assist in clarifying certain obligations of practising barristers as partners or employees of a legal partnership, it is the respectful view of the Society that the safeguards contained in Regulation 12, which appear to be principally directed at situations in which a partner or employee of the legal partnership is already acting for an opposing party or where such partners or employees, or the legal partnership itself, has an interest.
58. The Society respectfully submits, however, that the draft Regulations as currently constituted do not specify adequate structures and procedures to identify and address potential conflicts of interest or to mitigate the risks which may present to clients considered “less valuable”. For example, if a conflict arises between two clients, will the partnership automatically cease to represent the “less valuable” client? This does not appear to be a situation which is provided for or for which protections are enumerated under the draft Regulations. Barristers are currently prevented from doing this under the current regulatory regime, which is, it is submitted, of significant benefit to consumers of legal services.

III. Limited Liability Partnerships Regulations

59. The Authority has promulgated draft Limited Liability Partnership Regulations, under section 130 of the 2015 Act in relation to the operation of Limited Liability Partnerships (“LLP’s) which include provisions in relating to legal partnerships who apply for authorisation to operate as an LLP.
60. Partnerships of solicitors registered with the Law Society of Ireland may apply to the LSRA for authorisation to operate as Limited Liability Partnerships (LLPs). All partners listed on the LSRA’s Register of Limited Liability Partnerships are provided with limited liability and their personal assets are protected from the negligence of other partners. Partners may still be held liable for liabilities arising from their own acts of fraud, dishonesty, misconduct or criminality.
61. The draft LLP Regulations largely mirror the Legal Services Regulation Act 2015 (Limited Liability Partnerships) (Section 130) Regulations 2019, with some amendments made to reflect the proposed inclusion of legal partnerships as businesses that may apply to operate as an LLP.
62. Regulation 3(1) of the draft Regulations provides that a “*relevant business*” that “*wishes to operate as an LLP shall make an application for authorisation in accordance with these Regulations*”.
63. Regulation 2(1) of the draft LLP Regulations defines “*relevant business*” as “(a) a *partnership of solicitors, or (b) a legal partnership in accordance with section 99 of the Act of 2015*”.
64. Regulation 4 of the draft LLP Regulations provides that a legal partnership that is authorised as an LLP “*shall operate in accordance with the provisions of the Act of 2015 that are applicable to legal partnerships and of regulations that are issued from time to time by the Authority thereunder (including under section 116 of the Act of 2015)*”.
65. Regulation 5(1) of the draft LLP Regulations specifies certain information to be provided to the clients and creditors of the LLP, including at Regulation 5(1)(f) “*where the LLP is also a legal partnership, the LLP is subject to the Act of 2015 (and in particular section 45(1) and Part 8 thereof) and with the Legal Services Regulations Act 2015 (Legal Partnership) Regulations for the time being in force*”.
66. The Society understands that the draft provision for limited liability partnerships is

being considered as an ancillary measure to the draft provision for the setting up and operation of legal partnerships. The Society, in this regard, repeats the concerns enumerated above in relation to the provision for, and operation of, legal partnerships as set out in its submission on the draft legal partnership regulations above.

IV. Professional Indemnity Insurance Regulations

67. The Authority has promulgated draft Professional Indemnity Insurance Regulations, under section 47 of the 2015 Act which include minimum standards of professional indemnity insurance for practising barristers and for practising barristers in legal partnerships and limited liability partnerships.
68. The draft PII Regulations mirror, in some respects, the Legal Services Regulation Act 2015 (Professional Indemnity Insurance) Regulations 2019. For practising barristers outside of partnerships, one key amendment is the reduction in time afforded for putting in place a new qualifying insurance policy after an insolvency event or non-performance event in respect of their insurer. The current Regulations provide that a barrister must obtain such new qualifying policy with effect from the date not later than 30 days from the date upon which the insolvency event or non-performance event occurs, or he or she must immediately cease the provision of legal services. The draft PII Regulations, at Regulation 5(2) and (3), provide for a period of 14 days within which this must be done.
69. Regulation 8(1) of the draft PII Regulations provides that a partnership to which Part 3 of the draft PII Regulations applies “shall have in place a qualifying insurance policy which covers legal services provided by its partners and employees who are practising barristers”. The draft Regulations therefore appear to envisage a situation whereby there are separate policies of professional indemnity insurance in place for the barrister and solicitor employees of barrister-solicitor legal partnerships. The Society, in this regard, repeats the concerns enumerated above in relation to the provision for, and operation of, legal partnerships as set out in its submission on the draft legal partnership regulations above.