



Submission to the LSRA Consultation on Legal Partnerships framework and Code of Practice for Practising Barristers

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Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Introduction

The Competition and Consumer Protection Commission ('the CCPC') welcomes the opportunity to respond to the Legal Services Regulatory Authority ('LSRA') consultation on legal partnerships framework and a Code of Practice for Practising Barristers.

The CCPC welcomes the LSRA's proposed introduction of Legal Partnership Regulations, revised Limited Liability Partnership Regulations, revised Professional Indemnity Insurance Regulations and a Code of Practice for Practising Barristers ('the Code of Practice'). The CCPC particularly welcomes the introduction of Legal Partnership Regulations, which will enable legal practitioners to set up legal partnerships in Ireland. At present the legal profession in Ireland is organised in highly rigid business models. This results in less choice and higher costs for consumers. These regulations will finally introduce a structural reform in the legal services market that the CCPC have long been advocating for as part of a broader reform agenda to promote competition and safeguard the consumer interest in the legal sector.

In this submission, the CCPC will provide its views on the draft Legal Partnership Regulations and the Code of Practice. The submission then outlines the CCPC's recommendations regarding certain aspects of the draft statutory instruments, including conflicts of interest rules, and the provision of information for consumers.

Introduction of Legal Partnerships

The CCPC strongly welcomes the content and purpose of the Legal Partnerships Regulations ('the Regulations'). In 2006, the CCPC's predecessor agency, the Competition Authority, made two recommendations in its *Solicitors and Barristers Market Study*¹ relating to the ability of barristers to form partnerships, and not simply to work as sole traders. Those recommendations were:

- (i) Barristers who share premises and costs should be permitted to hold themselves out as practising as a group, and
- (ii) Barristers should be allowed to offer their services in partnerships, subject to appropriate regulation.

The CCPC maintains the view that barristers forming partnerships with other barristers or with solicitors would enable greater innovation in the delivery of legal services and provide for more competition, ultimately benefiting consumers. There are a number of benefits to enabling legal partnerships including:

- Legal partnerships, as opposed to the sole trader model, can draw together persons with different levels of experience and differing areas of expertise, potentially enabling a 'one-stop-shop' for consumers.
- Partnerships may allow legal professionals to pool resources and facilitate their access to resources they might not have been able to access on their own, such as administrative support.
- Legal partnerships may help support and facilitate entry into a profession in which newly qualified barristers often face significant challenges to make a living in the profession².

The CCPC also noted the need for appropriate regulations to ensure that legal partnerships have in place strong professional and ethical rules to govern the conduct of partners and the management of the business to ensure that consumers are protected in their dealings

¹ [Solicitors and Barristers market study](#)

² As outlined in the CCPC's 2017 submission to the LSRA on legal partnerships, allowing barristers to enter a partnership with established legal practitioners could result in a steadier income in the first few years, compared to the financial risks of operating as a sole trader. [Submission-to-LSRA-Consultation-on-Legal-Partnerships.pdf \(ccpc.ie\)](#) This was reiterated in the CCPC's 2022 submission to the LSRA on 'Barriers for Early Career Solicitors and Barristers and Increasing Diversity' [Barriers for early career legal professionals - CCPC Business](#)

with these new business models. The draft Regulations provide such a basis for the protection of consumers. The CCPC has previously suggested in our 2017 submission that a significant benefit of a legal partnership model is that a basis will exist for ensuring continuity of representation for a client and, where necessary, access to a quality replacement. The CCPC believes that provision should be made in the draft Regulations to ensure continuity of representation by the partnership in situations where a lead barrister is unavailable at short notice, and that greater transparency is required on the situations in which instructions may be returned by barristers. We return to this point in the next section.

Code of Practice for Practising Barristers

The CCPC also welcomes the introduction of the Code of Practice. The CCPC notes that the Code of Practice will apply to barristers providing services whether through a Legal Partnership or as a sole trader. The CCPC further notes that the Code of Practice sets out expectations in paragraph 3.8 on barristers when dealing with a client. The obligations on barristers include providing services competently, efficiently, professionally, and in a timely manner. The CCPC notes that the efficiency of the courts system in Ireland, including the length of court proceedings, have been the focus of recommendations of the Judicial Planning Working Group, the Review of the Administration of Civil Justice and the European Commission's 'Rule of Law' Reports. We believe that a positive obligation on barristers to provide services in an efficient and timely manner is particularly welcome in light of the wider agenda to reform the administration of justice in Ireland.

The sole trader model exposes clients to potentially significant risk in situations where the barrister becomes unavailable for a Court hearing – proceeding with a barrister other than that initially chosen (and briefed) potentially exposes the client to additional cost and may diminish the prospects of a successful outcome³. As noted above, another potential benefit of legal partnerships is that they may enable participating barristers to better plan for availability and provide, where necessary, contingency of representation and access to a quality replacement. The CCPC welcomes the provision in the Code of Practice at 3.9

³ The CCPC highlighted this in our submission to the consultation on legal partnerships in 2017.
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that “A practising barrister should not accept instructions to act in a matter if they know, at the time at which the instructions are given, that they are not available to so act”. That provision does not exist in the Bar of Ireland’s Code of Conduct and is a positive obligation.

The CCPC strongly welcomes paragraph 3.15 of the draft Code of Practice which stipulates that a practising barrister must inform their instructing solicitor or client promptly and immediately if it becomes apparent that they are unlikely to be able to attend to their instructions, or if there is likely to be a substantial delay in attending to them. It further welcomes that practising barristers are expected to return that client’s brief in sufficient time to allow their client to make alternative arrangements regarding legal representation. This would be aligned with the obligation at 3.8 of the Code of Practice to conduct their business in an efficient and timely manner. While these provisions mirror those in the Bar Council’s Code of Conduct, a breach of these obligations could now be considered a form of misconduct that could be subject to a complaints procedure⁴. This is welcome and should provide the clients of barristers with better protections. The CCPC recommends that the Code of Practice be amended to oblige barristers to give reasons for returning instructions.

Conflict of Interest Rules

As noted by the CCPC in its 2017 submission⁵, the introduction of legal partnerships in Ireland also implies certain risks, albeit these risks could be mitigated against by instituting an appropriate regulatory framework. The CCPC maintains that legal partnerships require strong professional and ethical rules to govern the conduct of partners and the management of the business. In particular, there should be robust rules around conflicts of interest. The CCPC therefore strongly welcomes the conflict of interest rules contained in the draft Regulations, which will help to address ethical concerns with legal partnerships and prevent concentration in certain specialties⁶.

⁴ See Section 50(1)(m) of the Legal Services Regulation Act 2015

⁵ [Submission-to-LSRA-Consultation-on-Legal-Partnerships.pdf \(ccpc.ie\)](#)

⁶ If all or most of the leading barristers in one specialisation formed a legal partnership, there would be a reduction in choice for the consumer who needed a lawyer with that specialisation. This is unlikely to be a significant issue with measures to address conflict of interest issues. Such measures would make entry to a legal partnership less attractive for some barristers as it would limit the client base, and thereby maintain consumer choice for barristers with specialised expertise.

The CCPC strongly welcomes Section 3.14 of the Code of Practice, which provides for instances where a practising 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. The CCPC also welcomes the proposal that the practising barrister shall inform the client or the client's solicitor of any such conflict of interest or other circumstances of which they are aware that precludes or may preclude them from acting in the matter. This goes further than existing codes and will provide more transparency to clients of barristers.

Complaints

The CCPC notes that the Regulations on Legal Partnerships state that clients should be informed of such a partnership's "internal complaints procedure (if any)". The CCPC notes that existing codes for both solicitors and barristers make provision for how individual legal practitioners should receive and deal with complaints. The CCPC further notes the requirements of S.I. No. 533/2010 - European Union (Provision of Services) Regulations 2010 for service providers to make details of submitting a complaint about the services of the provider available to consumers, including the availability of dispute resolution procedures⁷. We would welcome greater clarity in the regulations on how legal partnerships should ensure compliance with those requirements.

The CCPC notes that the Code of Conduct for Solicitors issued by the Law Society of Ireland stipulates that a solicitor should have a dispute-resolution procedure in place for dealing with complaints, which should be communicated to the client⁸. There do not appear to be equivalent requirements for barristers in regard to handling complaints made against them by a consumer. The CCPC recommends that the Code of Practice should mandate barristers to provide information on complaint procedures to clients, particularly in cases where the client has accessed them directly.

⁷ <https://www.irishstatutebook.ie/eli/2010/si/533/made/en/print>

⁸ [solicitors-guide-to-professional-conduct_4th-edition.pdf \(lawsociety.ie\)](#)

Consumer Information

Consumers should be well informed as to their rights when accessing legal services, no matter the type of legal structure they choose. The CCPC recognises that consumers can find it difficult to understand and compare different legal services, and that the introduction of new structures providing legal services could add to this difficulty. This is why the CCPC considers that it is important that the LSRA enable the provision of useful and accurate information to consumers regarding the legal services available in the State.

The development of resources for consumers regarding legal services and their cost, a key action listed under the LSRA's Statement of Strategy for 2022 to 2025⁹, will be highly beneficial in this regard. In this regard the CCPC welcomes the LSRA's recommendation for transparency requirements for solicitors in relation to conveyancing services and their costs as well as its recommendation to lead and engage with a range of stakeholders in developing national awareness campaigns for consumers aimed at allowing them to make informed decisions when seeking conveyancing services¹⁰. We reiterate our call for these measures to be implemented in parallel to the creation of a new profession of conveyancer.

The CCPC is strongly of the view that this approach to price transparency should be adopted across the legal sector – and for as extensive a range of legal services as is practicable – including by solicitors, barristers and those practising in legal partnerships. The CCPC recommends that section XI (Fees) of the Code of Practice should stipulate that a practising barrister should publish on their website, or by other suitable means, in a sufficiently accessible and prominent place information on the service provided, the pricing model¹¹, indicative fees and the circumstances in which they may vary¹², whether fees are inclusive of VAT, and any likely additional costs¹³. Legal partnerships may provide price information with respect to individual barristers or in the form of a range, or average

⁹ [LSRA_StrategicPlan_2022_2025_FINAL_SP.pdf](#) Goal 3.2

¹⁰ <https://www.lsr.ie/wp-content/uploads/2024/04/LSRA-S34-Consideration-of-Conveyancer-Profession-Report-to-Minister.pdf>

¹¹ Fixed fee, hourly or daily rate etc.

¹² For example, a fixed fee and the circumstances in which additional fees may be charged, or an hourly rate by seniority of barrister.

¹³ For example, administration fees, expert witnesses etc. Where precise costs are unknown, a typical range of costs could be provided.

fees, charged by barristers in the partnership. This requirement could be extended to all barristers, but will be particularly important for those participating in the Direct Professional Access Scheme. In addition, it will be important that barristers licensed at a future point to provide direct access in contentious matters are obliged to provide price transparency. Such transparency requirements should be included in all other relevant codes to ensure uniform obligations on legal practitioners.

Currently, legal practitioners are obliged to provide information on legal costs by way of a Section 150 notice¹⁴. In practice, however, this often happens at a stage when there has already been extensive engagement by the client with the legal practitioner. It is not feasible at present for consumers to be able to compare quotes on the basis of price. Ex-ante price transparency would greatly enhance the ability of clients and their solicitors to shop around.

In addition, the CCPC welcomes the forthcoming establishment of a public register for legal partnerships. The CCPC considers that the register should be a useful resource for consumers which the LSRA should make available both online and at its premises. Furthermore, any potential online resource or comparison tool of legal services should enable consumers to access information on all different types of legal services structures.

Conclusion

The CCPC strongly welcomes the ability for legal practitioners to form new types of business structures, such as legal partnerships, for the delivery of their services. It is a positive step in the reform of the legal services sector in Ireland toward greater competition on price, service, quality and diversity of offering. The CCPC also considers that, for the LSRA's reforms to be successful, it will be important that consumers have clear access to complaint mechanisms and information about the legal services they are engaging with.

The CCPC would welcome further engagement around any of the matters included in the submission. Furthermore, the CCPC looks forward to continuing to engage with the LSRA

¹⁴ [Legal Services Regulation Act 2015, Section 150 \(irishstatutebook.ie\)](#)

on other important reforms of the legal sector, including the introduction of other types of business structure for legal services, such as multi-disciplinary practices.

ENDS

