

The logo for the Legal Services Regulatory Authority (LSRA) features the letters 'LSRA' in a white, serif font, set against a dark purple rectangular background.

An tÚdaras Rialála
Seirbhísí Dlí
Legal Services
Regulatory Authority

Review of the Operation of the Legal Services Regulation Act, 2015

Report to the Dáil and the Seanad under section 6 of the Legal Services Regulation Act, 2015

Independence

Innovation

Consumer Protection

Accountability and Transparency

March 2019

Report to the Dáil and the Seanad under section 6 of the Legal Services Regulation Act, 2015 on the Review of the Operation of the Legal Services Regulation Act, 2015

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Executive Summary

The Legal Services Regulatory Authority (LSRA) has conducted a review of the operation of the Legal Services Regulation Act, 2015 (the Act) in accordance with section 6 of the Act.

Following a public consultation process, 18 submissions were received from organisations and private individuals. The LSRA has also conducted an in depth analysis of the Act.

The submissions received during the public consultation have been given due consideration and the LSRA now reports to each House of the Oireachtas on the findings and conclusions of its review along with recommendations for amendments to the Act, the Solicitors Acts 1954 to 2015 (the Solicitors Acts) and to other statutory instruments as appropriate.

By way of general comment on the Act, the LSRA is of the view that the hard wiring of trigger events within the Act, which legislate for the automatic triggering of commencement of sections of the Act, without due consideration of the resources and infrastructure required for their implementation, is unhelpful. The establishment of the LSRA as a fully functioning regulatory body has been delayed due to the requirement to meet statutorily mandated deadlines that run throughout the Act. The LSRA are of the view that such deadlines are restrictive and not conducive to the ordered roll out of its regulatory function.

Following the review of the operation of the Act, the Solicitors Acts and other statutory instruments, the LSRA has concluded that legislative amendment is required to ensure the effective operation of the Act and delivery of the LSRA's objectives and functions.

In particular, the LSRA recommends that the Act is amended so as to;

- Ensure that the funding model envisaged by the Act will operate to provide sufficient and sustainable funding to enable the LSRA to perform its functions and fulfil its objectives under the Act,
- Ensure that the Roll of Practising Barristers, as established, fulfils the legislative intention of the Act, and
- Facilitate information and data sharing between the LSRA and the professional bodies.

The LSRA has also made recommendations to correct drafting anomalies and technical errors where they have been found in the Act. The LSRA further endorses a series of 40 recommendations proposed by the Law Society to the Solicitors Acts with the objective of promoting the public interest in its interaction with solicitors.

The LSRA is of the view that the recommendations made in this report are necessary for the effective implementation of the Act and the ordered and controlled roll out of the functions and objectives of the LSRA under the Act.

The 42 recommendations for legislative amendment made by the LSRA are as follows:

Recommendation 1:

The LSRA recommends that Part 7 of the Act be amended to provide sufficient and sustainable funding to enable the LSRA to perform its functions and fulfil its objectives under the Act.

Recommendation 2:

It is recommended that any revised levy model contain specific provisions to provide for the funding of the Legal Practitioners Disciplinary Tribunal.

Recommendation 3:

It is recommended that the definition of practising barrister and qualified barrister and the provisions for the Roll of Practising Barristers be reviewed in their entirety to ensure that they accurately give effect to the legislative intent behind them.

Recommendation 4:

That section 2 is expanded to include a definition of *“practising barrister in the full time service of the State”*.

Recommendation 5:

It is recommended that section 2 be amended to clarify the nature of the provision of legal advice that meets the definition of 2(4)(b) and to introduce a *“de minimis”* test to restrict the scope of the current definition of providing legal advice.

Suggested wording for a further exception to the definition of legal advice :

“... and does not include an opinion on the application of the law provided by a person who is a qualified barrister to another person in circumstances where the Authority or a court of competent jurisdiction is satisfied are so “de minimis” that it would be disproportionate to require the barrister to be treated as a practising barrister for the purposes of this Act.”

Recommendation 6:

It is recommended that the LSRA is provided with the necessary powers to access information that is required for the establishment and enforcement of the Roll of Practising Barristers including the power to compel information from relevant parties where required.

Recommendation 7:

That the provisions of part 9 are reviewed to ensure that specific provisions are included that all practising barristers intended to be captured by the Roll are compelled to apply to the Authority for inclusion.

Recommendation 8:

It is recommended that the necessary data sharing provisions be incorporated into the Act to provide for the Law Society to supply the LSRA with any information obtained during the course of a financial investigation that relates to a contravention or likely contravention of the Solicitors Acts.

Recommendation 9:

It is recommended that the LSRA is provided with the necessary power to provide the Law Society with any information obtained during the course of an inspection under Part 3 of the Act that the Law Society may require to exercise its regulatory functions.

Recommendation 10:

It is recommended that appropriate provisions are included in the Act to allow the LSRA to request and receive the information required to enforce section 107(4).

Recommendation 11:

It is recommended that the necessary provisions relating to information sharing be provided in the Act to allow the LSRA to access historic complaints data in relation to complaints that have already been determined in respect of both solicitors and barristers and further to allow access to records of civil and criminal proceedings that have been determined in relation to solicitors and barristers.

Recommendation 12:

It is recommended that section 59 be amended to include the necessary information sharing provisions to allow the Authority, the Complaints Committee and the Legal Practitioners Disciplinary Tribunal to provide the Law Society with any information necessary to allow them to conduct any requested investigation.

Recommendation 13:

The LSRA recommend that the Act be reviewed and the necessary amendments made to ensure that the LSRA can comply with the requirements of GDPR.

Recommendation 14:

It is recommended that a definition of 'registered European lawyer' is included in section 2 of the Act.

Recommendation 15:

It is recommended that section 2 of the Act is expanded to insert the definition of a solicitor as set out in section 3 of the 1994 Act in order to set out the distinction between a 'solicitor' and a 'practising solicitor'.

Recommendation 16:

That section 23 be amended to provide the LSRA with a mechanism to compel professional bodies to provide to the Authority any professional code that has been issued and with an enforcement mechanism should they refuse to comply. Section 23 should also clarify that the test as to whether a professional code relates to the provision of legal services should rest with the LSRA.

Recommendation 17:

It is recommended that section 35 be expanded to allow for applications in respect of a professional body, legal partnership, limited liability partnership or multi-disciplinary practice.

Recommendation 18:

It is recommended that a new provision should be inserted in section 42 to make it an offence for any person to fail to comply with a request from an inspector to provide his/her name and/or home address.

Suggested wording:

“42(2)(a) A person commits an offence if he or she refused to comply with or provides false or misleading information in response to a requirement made of him or her by an inspector under subsection (2).”

Recommendation 19:

It is recommended that section 43(1) of the Act is amended to insert the requirement for the preparation of a report by an inspector of any inspection which relates to paragraph (a) of section 38 i.e. an inspection for the purpose of an investigation of any complaint made or deemed to made under the Act.

Recommendation 20:

It is recommended that the issue of legal partnerships holding client monies be clarified and the internal controls required specifically addressed by way of legislative amendment.

Recommendation 21:

It is recommended that the terms of subsection 50(1)(j) be amended so as to ensure that the definition of misconduct by legal practitioners in relation to acts or omissions that consist of the commission of an arrestable offence is clear and unambiguous and the remit of the LSRA to investigate such an allegation is clearly defined.

Recommendation 22:

It is recommended that section 52(2) of the Act is amended to insert a further provision for the referral of complaints to the Authority by the registrar under section 14C of the 1994 Act.

Recommendation 23:

It is recommended that the word ‘shall’ in sections 60(1), 61(1) and 64(1) be replaced by the word ‘may’ to allow the LSRA a discretion as to the circumstances in which the complainant and the legal practitioner will be invited to make efforts to resolve a complaint.

Recommendation 24:

It is recommended that section 68 of the Act is clarified to ensure that all misconduct complaints, including those that have been successfully resolved under section 64 are to be referred to the Complaints Committee.

Recommendation 25:

It is recommended that section 79(2)(b) of the Act be amended to include reference to the Law Society as one of the parties who may make submissions to the Legal Practitioners Disciplinary Tribunal in cases where they have made an application in accordance with section 77(b) of the Act.

Recommendation 26:

It is recommended that section 79(4) of the Act is amended to make reference to the Law Society as a party who may also consent or not to an application made in accordance with section 77(b) of the Act being determined on the basis of affidavits and supporting documentation.

Recommendation 27:

It is recommended that the Act is amended to clarify that determinations can be made by the Disciplinary Tribunal following the holding of an oral inquiry pursuant to section 81 or the consideration of an application pursuant to section 79(4).

Recommendation 28:

It is recommended that section 82(1)(k) of the Act be amended to clarify that a direction from the Legal Practitioner's Disciplinary Tribunal to impose a specified condition on a solicitor's practising certificate should be made to the Law Society.

Suggested wording:

"(k) where the legal practitioner is a solicitor, a direction to the Society that a specified condition be imposed on his or her practising certificate."

Recommendation 29:

It is recommended that section 85(7)(d) be amended to require the Authority to notify the Law Society where a solicitor is suspended from practice as a legal practitioner and subject to such terms and conditions as the Court considers appropriate through an application to the High Court by the Authority.

Recommendation 30:

It is recommended that provision be made in the Act to allow a solicitor to apply to the High Court for restoration to the Roll of Solicitors.

Recommendation 31:

It is recommended that section 85(7)(f) be amended to require the Authority to notify the Law Society where a solicitor is struck off the Roll of Solicitors through an application made to the High Court.

Recommendation 32:

It is recommended that a new section 85(10) be inserted with the following suggested wording:

“Where the Court makes an order under subsection 7(e) directing the Authority to strike the name of a person who is a barrister off the roll of practising barristers, that person shall thereupon stand disbarred and be removed from the Register of Members maintained by the Honorable Society of King’s Inns.”

Recommendation 33:

It is recommended that section 87 be amended to allow for an appeal to the Court of Appeal to be made by the Law Society in circumstances where the Law Society is a party to applications before the Legal Practitioners Disciplinary Tribunal that result in orders made by the High Court.

Recommendation 34:

It is recommended that section 90 of the Act be amended to include the Law Society as a party who may bring an enforcement application in respect of orders made by the Legal Practitioners Disciplinary Tribunal.

Recommendation 35:

It is recommended that section 114(4)(a)(iii) be amended to replace the word “finding” with the words “belief of the Authority.”

Recommendation 36:

It is recommended that section 115 of the Act be amended to provide for a statutory power to the High Court to grant, or refuse to grant, an order under section 115(1)(a).

Recommendation 37:

It is recommended that section 115(6) be amended to refer to the multi-disciplinary practice and/or the managing legal practitioner.

Recommendation 38:

It is recommended that the Act be amended to include specific provision for the review of Part 8, Chapter 3 as it relates to limited liability partnerships.

Recommendation 39:

It is recommended that section 135(1) of the Act be amended to capture the further circumstance under section 92(5)(c) in which the High Court may direct the removal of a barrister’s name from the Roll of Practising Barristers.

Recommendation 40:

It is recommended that the European Communities (Lawyers’ Establishment) Regulations 2003 (S.I. No. 723 of 2003), the European Communities (Freedom to Provide Services)(Lawyers) Regulations (S.I. No. 58 of 1979) and the European Union (Recognition of Professional Qualifications) Regulations 2017 (S.I. No. 8 of 2017) are reviewed in line with the provisions of the 2015 Act to ensure that there are no instances of conflict and that the

LSRA is properly empowered to fulfil its objectives under section 136 in relation to all relevant legal practitioners.

Recommendation 41:

It is recommended that section 212 be amended to provide clarity as to how it will operate in practice.

Technical and Drafting Recommendations

Recommendation 42:

A number of technical drafting anomalies and errors have come to light in the course of the Review and the following amendments to the Act are recommended to rectify these matters:

- a) It is recommended that the subsections of section 18 be renumbered.
- b) It is recommended that section 19(3) of the Act be amended to replace the reference to the *“Competition Authority”* with a reference to the *“Competition and Consumer Protection Commission.”*
- c) Section 43(3) should be amended and the reference to section 42(1) be changed to a reference to section 50(1).
- d) It is recommended that section 52(3) of the Act be amended to replace the reference *“to the Society”* with *“to the Authority”*.
- e) It is recommended that subsections 80(3) and 80(4) are amended to insert the word *“the”* before the word *“opinion.”*
- f) It is recommended that section 83(2) be amended to refer to a determination made by the Legal Practitioners Disciplinary Tribunal under section 81(8) of the Act.
- g) It is recommended that section 85(8) be amended to refer to an order made under subsection (7).
- h) It is recommended that section 92(5) be amended to replace the reference from ‘subsection’ to ‘section’.
- i) It is recommended that the heading of section 103 of the Act be amended to change the words *“limited partnerships”* to *“legal partnerships”*.
- j) It is recommended that the heading of section 104 and section 106 of the Act should be amended from *“Notification of Authority”* to *“Notification to Authority”*.
- k) It is recommended that, for the purpose of clarifying persons who are considered unqualified to provide legal services as a practising barrister, that the word *“not”* is removed from section 136(c).
- l) It is recommended that section 140(2)(e) is amended to insert the word *‘a’* before the word *‘determination’*.
- m) It is recommended that section 140(7) of the Act be amended to correctly refer to a determination made by a Legal Costs Adjudicator under section 157(1) of the Act.

PART 1: Introduction

1.0 Background and Context

1.1 The Legal Services Regulatory Authority (the Authority/LSRA) was established by the Minister for Justice and Equality on 1 October 2016 by virtue of S.I. 507 of 2016 in accordance with section 7 of the Legal Services Regulation Act, 2015 (the Act).

1.2 In the LSRA's First Strategic Plan for 2018-2020 the Authority adopted the following as its strategic vision:

"To develop the LSRA into an efficient, effective and accountable regulatory body with the capacity to protect and promote the public interest and the interests of consumers of legal services whilst encouraging an independent, strong, competitive legal profession with high standards of professionalism and integrity."

1.3 The Mission Statement of the LSRA is derived from section 13(1) of the Act and states as follows:

"The Legal Services Regulatory Authority will regulate the provision of legal services by legal practitioners and will ensure the maintenance and improvement of standards in the provision of legal services in the State."

1.4 Under section 13(4) of the Act, the Authority has six statutory objectives. These are to:

- (1) Protect and promote the public interest.
- (2) Support the proper and effective administration of justice.
- (3) Protect and promote the interests of consumers relating to the provision of legal services.
- (4) Promote competition in the provision of legal services in the State.
- (5) Encourage an independent, strong and effective legal profession.
- (6) Promote and maintain adherence to the professional principles of legal practitioners specified in the Act.¹

¹ Section 13(5) of the Act outlines the professional principles of legal practitioners as follows:

- (a) That legal practitioners shall
 - (i) act with independence and integrity,
 - (ii) act in the best interests of their clients,
 - (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.

1.5 When fully operational, the Authority will undertake the following specific functions as part of its role:

- (1) Keep under review and make recommendations to the Minister in respect of:
 - a. admission requirements of the Law Society, Bar Council, and Honorable Society of King's Inns;
 - b. availability and quality of education and training including ongoing training for the solicitors' and barristers' professions;
 - c. policies in relation to admission and, or, entitlement to practice of the Law Society, Bar Council and the Honorable Society of the King's Inns;
 - d. professional codes;
 - e. the organisation of the provision of legal services in the State.
- (2) Disseminate information in respect of the education and accreditation requirements and any other matters referred to above as the LSRA thinks fit.
- (3) Specify the nature and minimum levels of professional indemnity insurance required.
- (4) Establish and administer a system of inspection of legal practitioners for the purposes of the Act.
- (5) Receive and investigate complaints.
- (6) Maintain the roll of practising barristers.
- (7) Promote public awareness and disseminate information to the public in respect of legal services, including the cost of such services.
- (8) Keep the Minister for Justice and Equality informed of developments in respect of the provision of legal services including their cost.
- (9) Keep the Minister informed of developments in respect of the provision of legal services and make recommendations to assist the Minister in coordinating and developing policy.
- (10) Undertake, commission or assist in research projects and other activities in respect of the provision of legal services which may increase public awareness and promote an improvement in standards for their provision, and make recommendations to the Minister for Justice and Equality.
- (11) Perform any other functions conferred by the Act or by regulations made under it.

1.6 Under section 6 of the Act, the LSRA is required to commence the first review of the operation of the Act no later than 18 months after the establishment day of the Authority, to conduct a public consultation as part of that review process and to furnish a report to the Minister not later than twelve months after the commencement of the review.

- 1.7 The 1 October 2016 date is the establishment day of the Authority by virtue of S.I. 507 of 2016.
- 1.8 Section 6(1) of the Act, therefore requires that the LSRA commence a review of the operation of the Act by the 31 March 2018 and make a report to each House of the Oireachtas of its findings and conclusions, including such recommendations to the Minister as it considers appropriate, including recommendations (if any) for amendments to the Act or to the Solicitors Acts 1954 to 2015 or any instrument made under those Acts, by 31 March 2019.
- 1.9 At a meeting of the Authority on the 15 February 2018, the LSRA Executive proposed commencing the review with immediate effect and to conduct the review expeditiously so as to allow for the consideration and implementation of the resulting recommendations prior to the commencement of the core functions of the LSRA under the Act.
- 1.10 The Authority members approved the commencement of the review and tasked the Executive with conducting a thorough and wide reaching public consultation on the operation of the Act.
- 1.11 The LSRA Executive commenced the review of the Act on 16 February 2018.
- 1.12 This report is to be submitted to each House of the Oireachtas in fulfilment of the obligations on the LSRA under section 6 of the Act.
- 1.13 In conducting the review under section 6, the LSRA is required under subsection (3) to consult with the Competition and Consumer Protection Commission, professional bodies and such other persons, as the Authority considers appropriate for such purpose. Section 2(1) of the Act defines “professional bodies” as *“the Bar Council, the Law Society, the Honorable Society of King’s Inns or such other body of legal practitioners as the Authority may prescribe.”* Prescribed under the Act means prescribed by way of regulations. As of the time of writing, the LSRA has not prescribed any other body of legal practitioners as a professional body under the Act.
- 1.14 It should be noted that section 6(1) also requires the LSRA to commence a further review of the Act within three years of the commencement of its first review of the Act report and then within every three year period thereafter. This means that the LSRA is required to commence the second review of the Act under section 6 by no later than 16 February 2021 and to report on that review within 12 months of its commencement. The LSRA therefore has significant ongoing legislative remit to formally review and report on the operation of the Act.
- 1.15 Report under Section 6**
- 1.16 Part 2 of this report summarises the sections of the Act that have been commenced to date and outlines the work that has been undertaken by the LSRA on foot of these sections.
- 1.17 Part 3 of the report outlines the public consultation process conducted in compliance with section 6(3) of the Act. A summary of all of the submissions received in relation to section 6 is provided as well as any appropriate commentary. All of the submissions received will be

published on the LSRA website at www.lsr.ie once the report has been laid before the Houses of the Oireachtas.

- 1.18 Part 4 of the report provides a summary of the LSRA's detailed analysis of the Act and of the submissions received under section 6(3) and outlines the conclusions and findings of that analysis. This analysis provides a detailed examination of the key sections of the Act and sets out the recommendations made. Recommendations for amendments are made across the Act but with a particular focus on the provisions relating to the Roll of Practising Barristers under Part 9 of the Act and the levy provisions under Part 7 of the Act. The section also examines the need for specific legislative provisions to be made in relation to information sharing with other agencies including the professional bodies.
- 1.19 Finally, Part 5 of the report outlines the conclusions of the review and looks to the future operation of the 2015 Act.

PART 2: The Commencement and Operation of the Legal Services Regulation Act, 2015

2.0 Introduction

- 2.1 The Legal Services Regulation Act 2015 (the Act) was signed into law on 30 December 2015. S. 1(2) of the Act provides for the commencement of the Act by Ministerial order “*either generally or by reference to any particular purpose or provision, and different days may be so fixed for purposes or different provisions*”, with the exception of s. 100, the commencement of which, also by way of Ministerial order, is linked to the receipt of a statutory report on legal partnerships as provided for under s. 118 of the Act.
- 2.2 There are 15 Parts to the Act, 12 of which are directly relevant to the functions of the LSRA. Of the three Parts that are not directly relevant to the LSRA, Part 10 Legal Costs, is primarily focussed on the establishment of the Office of the Legal Costs Adjudicator, Part 11 of the Act relates to Legal Costs in Civil Proceedings and is primarily directed at the Courts, which is also the case with Part 15 related to Clinical Negligence Actions. The LSRA’s principal role in relation to these provisions will be in the promotion of public awareness and dissemination of information to the public in respect of legal services, including the cost of such services. It will also have the power under s. 35 of the Act to seek orders from the High Court prohibiting contraventions of any provisions of the Act and regulations made thereunder. None of the above Parts had been commenced at the time of the making of this report.
- 2.3 Of the commencements that are directly relevant to the functions of the LSRA, four such commencement orders have been made to date.

2.4 The First Commencement Order

- 2.5 On 19 July 2016, the Legal Services Regulation Act 2015 (Commencement of Certain Provisions) Order 2016 (S.I. 383/2016), provided for the commencement on that date of various provisions in Parts 1 and 2 of the Act.
- 2.6 The order provided for the commencement of all sections in Part 1, with the exception of section 5, which deals with various repeals, the making of which were not necessary to facilitate the commencement of the other provisions commenced on that date.
- 2.7 Section 1 provides for the Act’s short title, the aforementioned commencement provisions and the collective citation of the Solicitors Acts 1954 to 2011 and Part 13 (which provides for various amendments of the Solicitors Acts) as the Solicitors Acts 1954 to 2015.
- 2.8 Section 2 of the Act provides various definitions that are relevant to the further provisions of the Act.
- 2.9 Section 3 provides for the making of regulations under the Act by the Minister or the Authority, which regulations may contain such incidental, supplementary and consequential provisions, as the party making the regulations considers necessary or expedient. It also provides for the laying of every such regulation before the Houses of the Oireachtas as soon as maybe after it is made and the annulment of such regulation by resolution by either House within a specified time frame. It might be noted that no such regulation has been made by

the Authority to date, and the only regulations made by the Minister have been commencement orders.

- 2.10 Section 4 relates to the payment out of the public purse of expenses incurred by the Minister in the administration of the Act.
- 2.11 Section 6, which is the final section contained in Part 1, provides for the periodic review of the operation of the Act. The within report is the first report provided for under the provisions set out in that section.
- 2.12 S.I.383 of 2016 also provided for the commencement of all sections of Part 2, with the exception of paragraphs (c) to (f) of section 13(2), section 31, section 33, section 35 and section 36. The various paragraphs of section 13(2) that were not commenced relate to functions of the LSRA, the underpinning provisions of which are set out elsewhere in the Act. Section 31 provides for the charging of fees by the LSRA. Section 33 provides for the making of an annual report on admissions policies to the legal professions. Section 35 provides for the aforementioned power to seek a High Court order to prohibit contraventions of the Act and section 36 provides for the summary prosecution by the LSRA of offences under the Act.
- 2.13 The following paragraphs provide a summary of the sections of Part 2 of the 2015 Act commenced by S.I. 383/2016.

Section 7 provides that the Minister shall, by order, appoint a day to be the establishment day for the purposes of the Act. By virtue of the Legal Services Regulation Act 2015 (Establishment Day) Order 2016 (S.I. 507/2016), the Minister subsequently appointed 1 October 2016 as the establishment date for the LSRA.

- 2.14 Section 8 provides for the establishment of the Legal Services Regulatory Authority to perform the functions conferred by it by and under the Act. The LSRA is a body corporate with perpetual succession and a seal and the entitlement to sue and be sued in its corporate name. Section 8 also provides for the making of instruments under seal and the entering into or execution of contracts or instruments on behalf of the LSRA by persons authorised to act in that behalf.
- 2.15 Section 9 provides that the Authority shall consist of 11 members, the necessary expertise of such members, the nominating bodies and the manner of and procedure for appointment. This takes account of the requirement to have a majority of 'lay members' and no fewer than four members of either sex on the Authority. Section 10 provides for the terms of appointment of members of the Authority, who shall act on a part-time basis. It also provides for the payment of expenses to members, and the procedure by which a member may resign and be replaced. Section 11 provides for the disqualification from office of members of the Authority for various specified reasons. Section 12 provides for the removal from office of a member of the Authority for various specified reasons under a process that provides for a statutory appeal to the High Court.
- 2.17 Section 13 identifies the Authority's functions and regulatory objectives. In addition to the general mandate to regulate the provision of legal services by legal practitioners and ensuring the maintenance and improvement of standards in the provision of such services in the State, a number of specific functions of the Authority are enumerated in s. 13(2) and, in many instances, underpinned by other provisions of the Act. Section 13(3) provides that subject to the Act, the Authority shall be independent in the performance of its functions. Section 13 (4)

identifies the Authority's regulatory objectives and the professional principles of practitioners are set out in section 13(5). The balance of the subsections provide a general power for the Authority to do anything which it considers necessary or expedient to enable it to perform its functions, the capacity for the Authority to perform its functions through or by the chief executive or any other member of staff duly authorised in that behalf by the Authority, and a statutory presumption that such performance has been authorised until the contrary is proven. The Authority may also provide for the performance of one or more of its functions by a committee, under the general direction of the Authority.

- 2.18 Section 14 provides for the holding of meetings by the Authority, the means by which such meetings shall be held, the quorum for meetings and various related matters including the manner in which votes are taken at meetings, if required. The Authority held its first meeting on 26 October 2016 and has held regular meetings thereafter. Approved minutes of all Authority meetings are published on the Authority's website www.lsr.ie.
- 2.19 Section 15 provides that members of the Authority, members of a committee of the Authority or the chief executive of the Authority shall cease to hold such positions if elected or appointed to various specified political or judicial offices. Members of staff of the Authority shall stand seconded by the Authority in such circumstances.
- 2.20 Section 16 provides for the establishment of Committees by the Authority to either assist or advise it in relation to any or all of its functions or to perform such functions of the Authority as may stand delegated to it under section 13. That section also provides for the appointment of persons to committees (which shall have a lay majority), the removal of members of committees, the manner in which committee procedures are regulated, fees or allowances for expenses paid and ancillary matters.
- 2.21 Section 17 provides for the power of the Authority to enter into contracts with persons or bodies or to appoint consultants and advisers to assist it in the performance of its functions.
- 2.22 Section 18 provides for the power of duly authorised officers of the Authority to compel a legal practitioner to provide such officer with information or documentation that he or she would otherwise be entitled to refuse to produce on the grounds of legal professional privilege when required to do so for the purpose of enabling the Authority to discharge its functions under the Act. Section 19 provides for the handling by the Authority and its staff of confidential information, the circumstances in which and to whom it may legitimately be disclosed, and the procedure by which privilege may be claimed and adjudicated upon.
- 2.23 Section 20 provides for the preparation by the Authority of a strategic plan and its submission to the Minister. The LSRA's First Strategic Plan was submitted to the Minister in April 2018 and subsequently published on the Authority's website www.lsr.ie.
- 2.24 Section 21 provides for the making by the Authority of annual reports on the performance of its functions. The Authority's first Annual Report (for 2016) was submitted to the Minister in April 2017, with the 2017 Annual Report submitted in April 2018. Both of these reports are available on the Authority's website www.lsr.ie.
- 2.25 Section 22 provides for the power of the Authority to issue codes of practice either to legal practitioners generally or to legal practitioners of such class or classes as may be specified in the code. The Authority decided to issue a Code of Practice for Practising Barristers in the context of the new regulatory challenges posed by the establishment of the Roll of Practising

Barristers and other issues raised in the context of the establishment of legal partnerships. The Authority followed the consultative process provided for in the section. It issued a draft Code and invited submissions from interested parties, individuals and professional bodies whose members would be affected by the Code. That consultative process was completed and a final version of the Code, taking into account the submissions received, has been prepared and has been considered by the Authority, and is expected to issue shortly.

- 2.26 Section 23 provides the Authority with a general and ongoing power to review the professional codes that have been adopted, by or on behalf of the professional bodies specified in the Act. The term “*professional body*” is defined in the Act as the Bar Council (the Council of the Bar of Ireland), the Law Society and the Honorable Society of King’s Inns or such other body as the Authority may prescribe. The Authority has not to date prescribed any professional bodies other than those set out in the Act. “*Professional codes*” are defined as meaning any code of conduct, code of practice, rule, regulation, practice note, guideline or other code, or any part thereof, relating to the provision of legal services by members that has been adopted by or on behalf of a professional body or to which member of a professional body, as a condition of their membership of that body, are otherwise subject. Where the Authority forms the view that a professional code operates or is likely to operate to hinder a legal practitioner in complying with his or her obligations under the 2015 Act, is frustrating or is likely to frustrate an objective of the Authority as specified in section 13(1) or 13(4) or that the amendment of the code is otherwise necessary in order to maintain or improve standards in the provision of a legal service the Authority may issue a notice to the relevant professional body directing them to amend the professional code in a manner specified by the Authority, which direction is enforceable by or appealable to the High Court, which Court can revoke or vary the direction for specified reasons. The professional bodies have an ongoing obligation to furnish to the Authority any amendments to existing codes or new codes adopted by them, and the Authority has an obligation to make all such codes available for inspection free of charge to members of the public. By 1 November 2016 (i.e. one month after establishment date, as required by the Act), the Authority had received professional codes from the Honorable Society of King’s Inns, the Law Society and the Council of the Bar of Ireland, and continues to receive such codes on an ongoing basis. As the Authority commences its various functions, this will require an ongoing review of these codes.
- 2.27 Section 24 states that the Authority shall appoint a Chief Executive Officer under a written contract of service and sets out the roll and function of the office. Section 24 also sets out procedures for the removal or suspension of the Chief Executive, their accountability to the Authority and their ability to delegate functions. On 1 January 2017, the Authority appointed Renee Dempsey as interim chief executive and on 14 September 2017, the Authority appointed Dr. Brian Doherty as the chief executive of the LSRA.
- 2.28 Section 25 allows the Authority to appoint persons to be the staff of the Authority and to determine their duties. Section 25(2) of the Act requires the Authority to obtain the approval of the Minister for Public Expenditure and Reform before determining the terms and conditions of employment, including terms and conditions relating to remuneration and allowances, the grades of staff and the numbers of staff in each grade. The LSRA has liaised extensively with DPER in relation to the appointment of, and terms and conditions of, staff. The remuneration and allowances of staff are payable by the Authority out of funds at the Authority’s disposal and all members of staff of the Authority shall be public servants.
- 2.29 Section 26 of the 2015 Act relates to the transfer of staff of the Law Society and the Council of the Bar of Ireland to the Authority. The Authority may, for the purposes of discharging its

functions relating to complaints and disciplinary hearings in respect of legal practitioners, give appropriately qualified staff of the Law Society and the Council of the Bar of Ireland an option to transfer to the Authority. The section requires that the LSRA determine with the approval of the Minister for Public Expenditure and Reform the terms and conditions of staff appointed under this section, and the numbers and grades of staff. A person transferred to the Authority under the section shall become a member of staff of the Authority and shall become a member of the Single Public Service Pension Scheme. Unless otherwise by a collective agreement negotiated with a recognised trade union or staff association, persons who transfer to the Authority shall not be brought on less favourable terms and conditions as regards basic remuneration. The LSRA has engaged with DPER, the Law Society and with the Council of the Bar of Ireland in relation to the transfer of staff under section 26. Arrangements for the transfer of staff from the Law Society to the LSRA are at an advanced stage.

- 2.30 Section 27 relates to a superannuation scheme for the Authority.
- 2.31 Section 28 relates to the accounts and audit responsibilities of the LSRA. The LSRA is required to submit estimates of income and expenditure to the Minister in such form and at such periods as the Minister may specify and provide to the Minister any information, which the Minister may require regarding those estimates and any proposals or plans of the Authority. The Chief Executive is required to keep in such form and in respect of such accounting periods as may be approved by the Minister with the consent of the Minister for Public Expenditure and Reform all proper and usual accounts of moneys received and spent by the Authority, including an income and expenditure account. The accounts are to be submitted to the Comptroller and Auditor General for audit no later than 3 months after the end of the accounting period to which they relate. The first accounts for the LSRA, covering the period 1 October 2016 to 31 December 2017, were submitted to the Comptroller and Auditor General on 29 March 2018 for audit.
- 2.32 Section 29 relates to the accountability of the Chief Executive to the Oireachtas Committee established to examine appropriation accounts. The Chief Executive shall attend and give evidence to the Committee on the regularity and propriety of the transactions recorded or required to be recorded in the accounts, the economy and efficiency of the Authority in the use of the resources, the systems, procedures and practices employed by the Authority for the purposes of evaluating the effectiveness of its operations and any matter referred to in a report of the Comptroller and Auditor General.
- 2.33 Section 30 relates to the accountability of the Chief Executive to Oireachtas Committees wherein the Chief Executive shall, at the request in writing of the Committee, attend before it to give account for the general administration of the Authority as required by the Committee.
- 2.34 On 4 July 2018, the Chairperson of the LSRA and the Chief Executive attended, on foot of a written invitation, before the Joint Oireachtas Committee on Justice and Equality to give evidence on the operation of the Legal Services Regulatory Authority.
- 2.35 Section 32 of the 2015 Act states that the Minister shall advance to the Authority out of moneys provided by the Oireachtas such amount or amounts as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine for the purposes of expenditure by the Authority in the performance of its functions. On 30 December 2016, the LSRA received €1 million from the Minister under section 32 and a further €1 million was received on 22 December 2017.

- 2.36 Finally, as part of this commencement, section 34 requires the Authority to prepare and furnish reports to the Minister, following appropriate public consultation processes, on the education and training of legal practitioners in the State, the unification of the solicitors' profession and the barristers' profession, the creation of a new profession of conveyancer and such matters as the Minister may, from time to time, request the Authority to report on.
- 2.37 Under section 34(1), the report in relation to the education and training of legal practitioners in the State is required to be submitted to the Minister within 2 years of the establishment day of the Authority of 1 October 2016. Following extensive public consultation, the report under section 34 was submitted to the Minister for Justice and Equality in September 2018 as required by the Act. The report has been laid before the Houses of the Oireachtas and is available on the LSRA website www.lsr.ie.

2.38 The Second Commencement Order

- 2.39 The second commencement order related to a number of statutory reports on new and potential business structures and practices, all of which had to be delivered to the Minister within specified timeframes linked to the establishment date of 1 October 2016. On 5 December 2016, the Legal Services Regulation Act 2015 (Sections 118 to 120)(Commencement) Order 2016 (S.I. 630/2016), provided for the commencement on that date of sections 118, 119 and 120 of the Act.
- 2.40 Section 118 relates to a public consultation on the regulation, monitoring and operation of legal partnerships. A *“legal partnership”* is defined in the Act 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”*. As neither partnerships of two or more barristers nor partnerships including solicitors and barristers exist in the State, legal partnerships constitute a new form of business structure for the purpose of providing legal services, presenting new regulatory challenges. Section 118 required the Authority to conduct the aforementioned public consultation and provide its initial report to the Minister including any recommendations within six months of the establishment of the Authority.
- 2.41 On 31 March 2017 the report following public consultation in relation to the regulation, monitoring and operation of legal partnerships, required by section 118 was submitted to the Minister for Justice and Equality. A further report on legal partnerships was submitted to the Minister on 31 July 2017. Both reports are available on the Authority's website www.lsr.ie.
- 2.42 Section 119 relates to reporting on the operation of multi-disciplinary practices. A *“multi-disciplinary practice”* is defined as *“a partnership formed under the law of the State by written agreement, by two or more individuals, at least one of whom is a legal practitioner, for the purpose of providing legal services and services other than legal services”*. To date, any fee-sharing arrangements between legal practitioners and non-legal practitioners have been either the subject of specific statutory prohibition or otherwise prohibited. The Authority was required to initially report to the Minister within six months of the establishment day on the operation of multi-disciplinary practices in other jurisdictions and the likely consequences and impact of the operation of multi-disciplinary practices in the State.
- 2.43 On 31 March 2017 the LSRA research report on the establishment, regulation, monitoring, operation and impact of multi-disciplinary practices in the State was submitted to the Minister

for Justice and Equality under section 119. This report is available on the Authority's website www.lsr.ie.

- 2.44 Section 119(3) required that, within six months of the initial report to the Minister on multi-disciplinary practices, the Authority submit a further report, following a public consultation exercise, including recommendations in relation to the establishment, regulation, monitoring and operation of multi-disciplinary practices. This report, which is also available on the Authority's website www.lsr.ie was submitted to the Minister by the Authority on 29 September 2017.
- 2.45 Section 120 required the Authority to engage in a public consultation process on certain issues relating to barristers. These issues included the restriction on barristers from holding the moneys of clients and, in the event that such restrictions were to be lifted, the circumstances and manner in which barristers might hold such moneys and the mechanisms to be applied for the protection of moneys so held. Furthermore, the Authority was required to report on the issue of direct access to barristers in contentious matters, whether the restrictions on a barrister receiving instructions in a contentious matter from a person other than a solicitor should be retained or removed, and the necessary administrative, legislative or professional code reforms that are required in the event of retention or removal of the restrictions.
- 2.46 Following consideration of the responses to the public consultation and research conducted by the LSRA the report required under section 120 was submitted to the Minister on 29 September 2017 and is also available on the Authority website www.lsr.ie.

2.47 The Third Commencement Order

- 2.48 The third commencement order provided for the establishment of the Roll of Practising Barristers, a core regulatory function of the Authority. On 28 June 2018, the Legal Services Regulation Act 2015(Commencement of Certain Provisions) Order 2018 (S.I. 228/2018), fixed 29 June 2018 as the day on which section 13(2)(f), sections 133 and 134 and section 135, other than paragraphs (a) and (b) of subsection (1) and subsection (2), should be commenced.
- 2.49 Section 13(2)(f) lists maintaining the Roll of Practising Barristers under Part 9 of the Act as a function of the Authority.
- 2.50 Section 133 of the 2015 Act, requires the LSRA to set up and maintain the Roll of Practising Barristers, to enter on the Roll the name of every practising barrister within six months of the establishment date and to make the Roll available for inspection by the public at its offices free of charge or make to it available on its website. The Roll of Practising Barristers is to be a dynamic Roll providing a live register of barristers who are providing legal services within the State, be that as self-employed barristers, as barristers in partnerships or as barristers in employment. Section 133 specifies the information that each entry on the Roll shall contain in respect of each practising barrister, including, whether he or she is a member of the Law Library and whether he or she is in the full time service of the State. It also empowers the LSRA to prescribe *'additional information'* for inclusion on the Roll, but this is limited to information about *'professional qualifications and areas of expertise'*.
- 2.51 Section 134 places an onus on all persons who have been called to the Bar and who intend to provide legal services to apply to the LSRA for entry on the Roll. The section also requires the LSRA to put the name of every applicant on the Roll once it has confirmed that the person is a *"qualified barrister"* as defined by the Act. The LSRA may prescribe the application form for entry on the Roll.
- 2.52 Section 135 provides for a number of ways in which entries on the Roll of Practising Barristers may be varied. The parts of that section that were commenced as part of this commencement require the LSRA to remove from the Roll the name and additional information in respect of any person who no longer wishes to provide legal services and who applies for voluntary removal or the name and additional information in respect of any deceased barrister. Other provisions in this section relating to removal from the Roll for disciplinary reasons have not yet been commenced, pending the commencement of other sections of the Act.
- 2.53 On 29 June 2018, the LSRA commenced the establishment phase of the Roll of Practising Barristers and has begun to receive and process applications from persons wishing to be entered on the Roll. The six months establishment phase concluded on 29 December 2018. The LSRA will shortly, in accordance with section 133(3) of the Act, make the Roll publicly available on its website www.lsr.ie. The LSRA continues to fulfil its ongoing responsibility under the Act to maintain the Roll of Practising Barristers.

2.54 **The Fourth Commencement Order**

- 2.55 On 20 December 2018, the Legal Services Regulation Act 2015(Commencement of Certain Provisions) (No. 2) Order 2018 (S.I. 584/2018), fixed 29 December 2018 as the day on which section 35, section 36, section 47(2) and section 95(2)(a) and (3) came into operation.
- 2.56 Section 35 allows the High Court, upon application by the LSRA, to prohibit by order a legal practitioner or other person concerned from contravening the Act or regulations made under it, or in the case of a solicitor contravening the Solicitors Acts 1954 to 2015 or any regulations made under those Acts. Section 35(2) states that any order made may contain such provisions of a consequential nature, as the Court considers appropriate.
- 2.57 Section 36 of the Act allows for any offence under the Act to be prosecuted summarily by the LSRA.
- 2.58 Section 47(2) requires the LSRA to consult with the professional bodies before making regulations regarding professional indemnity insurance under the Act. The LSRA prepared draft regulations and carried out the process of statutory consultation on the draft regulations with the professional bodies, as defined in the Act. In addition to its statutory obligation to consult with the professional bodies, the LSRA invited practising barristers who are not members of such bodies but who may be subject to the proposed regulations to make observations on same should they wish to do so. A final set of regulations, taking account of the submissions made during the consultation process, is at an advanced stage and is expected to issue shortly.
- 2.59 Finally, section 95(2)(a) relates to the imposition of the levy on the professional bodies and certain barristers and requires the LSRA at the end of the financial year, with the consent of the Minister, to determine the operating costs and administrative expenses that are properly incurred in that financial year by the Authority in the performance of its functions. This process will be carried out in 2019 for the first time, prior to the issuing of levy notices in relation to the approved expenses of the Authority for 2018.

PART 3: Public Consultation and Submissions under Section 6(3)

3.0 The Public Consultation

- 3.1 Under section 6(3), in conducting the review of the operation of the 2015 Act, the LSRA is required to consult with the Competition and Consumer Protection Commission, the professional bodies, defined under the Act as the Law Society, the Bar Council and the Kings Inns and such other persons as the Authority considers appropriate for such purpose.
- 3.2 At the Authority meeting on 15 February 2018 the LSRA Executive was tasked with ensuring that the public consultation was “extensive and thorough.”
- 3.3 The review of the Act was commenced on 16 February 2018.
- 3.4 On that date the LSRA Executive wrote to the bodies listed under section 6(3) and informed them of the decision of the Authority to commence the review of the Act.
- 3.6 LSRA launched its public consultation under section 6(3) on Friday 8 June 2018. A notice calling for submissions on the operation of the Act was circulated to a large number of relevant organisations. The notice was also published on the LSRA website and in print media. The notice calling for submissions for the section 6 review is included at appendix A and the notices that appeared in print media are included at appendix B. The consultation process conducted complied with the requirements of section 6 and also of the DPER Consultation Principles and Guidance (2016).
- 3.7 The closing date for the submissions to the public consultation was 27 July 2018. A small number of submissions were received after that date but have been considered and included as part of the review.
- 3.8 A total of 18 submissions were received. The key points from the submissions received are summarised below. All of the submissions will be published in due course on the LSRA website.

3.9 Submissions Received from Private Individuals

3.10 [Submission from Garrett Simons SC:](#)

- 3.11 Mr. Simons states in the introduction to his submission that he is a practising barrister and a member of the Law Library and that the submission is made in a personal capacity.
- 3.12 Mr. Simons’ submission relates to what he refers to as an anomaly arising from the current wording of section 100 of the 2015 Act.
- 3.14 Mr. Simons states, *“One of the objectives of the LSRA 2015 is to allow barristers in employment to provide ‘legal services’ as defined. The Act envisages that this can occur in two circumstances: first, where a barrister is employed by a legal partnership; and, secondly, where a barrister is directly employed by a client. As explained below, the effectiveness of the first of these provisions is undermined by the fact that the definition of ‘legal partnership’ is too narrow.”*

- 3.15 Mr. Simons argues that the current definition of “legal partnerships” excludes a partnership made up solely of solicitors, as the definition requires that at least one member of a partnership be a barrister. The practical effect of this, put forward by Mr. Simons is that a barrister cannot be employed by a firm of solicitors. This would produce the anomalous result, following the commencement of Part 8 that a barrister will be allowed to take up employment with a mixed solicitor/barrister partnership but not with a conventional solicitor-only partnership. Mr. Simons states that there does not appear to be any rationale for such a distinction.
- 3.16 Mr. Simons states that anomaly is likely to delay the achievement of the objective of the 2015 Act to allow barristers in employment to provide legal services.
- 3.17 Mr. Simons suggests that section 100 of the 2015 Act could be amended so as to ensure that it applies equally to solicitor-only partnerships and that this could be achieved by adding the words “*or a firm of solicitors*” to section 100, and then providing a definition of “*firm of solicitors*” at section 2.
- 3.18 [Submission from Tom Lynch:](#)
- 3.19 In his brief submission to the section 6 review of the 2015 Act, Mr. Lynch states that he wishes to complain about the delay in the commencement of Part 6 of the 2015 Act. He states that due to the three-year time limit in making a complaint that lawyers will “*escape sanction for bad behaviour*”.
- 3.20 Mr. Lynch suggests that the time limit be increased to 5 years.
- 3.21 [Submission from Bob Lawlor:](#)
- 3.22 In his submission on the operation of the 2015 Act, Mr. Lawlor states that there is a total lack of transparency in Ireland in respect of solicitors’ fees and the Solicitors Disciplinary Tribunal and that this is in breach of the European Convention on Human Rights.
- 3.33 Mr. Lawlor suggests that there should be a simple legal requirement on all solicitors to provide their clients with a monthly statement of their costs to date.
- 3.34 [Submission from Derek Binchy:](#)
- 3.35 In his brief submission to the review of the operation of the 2015 Act, Mr. Binchy states that he had had what he described as a “*a very poor experience with our insurance companies legal representation.*”
- 3.36 Mr. Binchy went on to state that he had little or no contact with the legal service provider, that he felt that his insurer’s solicitor had no interest in defending the case and were happy to settle and that he felt the case was “*an obvious trawl for compensation which is enabled by the legal profession.*”
- 3.37 [Submission from Liam M. Nolan BL:](#)

- 3.38 The submission from Liam M. Nolan BL sets out a detailed argument in support of legislative amendment to allow direct public access to barristers in all matters. Mr. Nolan is a practising member of the Bar of Ireland and a member of the Law Library.
- 3.39 Mr. Nolan BL states that the Code of Conduct of the Bar of Ireland and/or King's Inns stipulate *"that a barrister may not, except in certain limited circumstances and including non-contentious matters, deal directly with any member of the public qua client, and must in contentious matters direct that a solicitor be retained in order for the barrister to continue to advise and to provide other professional services as a barrister."*
- 3.40 Mr. Nolan BL submits that these provisions are *"restrictive, professionally limiting, anti-competitive and contrary to the public interest, as well as being oppressive, unreasonable or unnecessary."*
- 3.41 Mr. Nolan BL further submits that, *"the public interest is best served by the availability of direct public access to barristers, including immediate access to specialised knowledge and competence and to containment of legal costs, both of which are achievable without prejudice to the administration of justice."*
- 3.42 Mr. Nolan BL sets out the current arrangements for direct access to barristers in his submission. He comments that as solicitor-advocates are appearing more and more as advocates in the courts and applying for appointment to the bench, there has already been a blurring of the distinctive role of solicitor and barrister.
- 3.43 Mr. Nolan BL outlines the difficulties experienced by newly qualified barristers in building a practice, *"Newly qualified barristers find it increasingly hard to earn a living as they build a practice. Two-year and even three-year apprenticeships ("devilling") is now the norm and it will now take up to seven years before a barrister can look to earn the average industrial wage at the Bar. The rate of attrition among younger barristers in particular is excessively severe, with fifty to sixty percent of every cohort leaving the profession as self-employed practitioners within the first four to five years of practice."*
- 3.44 Mr. Nolan sets out the provisions of the Bar of Ireland Code of Conduct and the King's Inns Professional Code in relation to direct access and outlines the terms of the Bar of Ireland's Direct Professional Access scheme whereby a barrister may accept instructions directly from different categories of specified professional persons or organisations without breach of the Bar's Code of Conduct. Mr. Nolan B.L. comments that this scheme does not extend to contentious matters but only to legal opinion.
- 3.45 Mr. Nolan provides a comparative analysis of the practice and administration of law in England and Wales where Direct Public Access to barristers is now an accepted feature. Citing figures from the Bar Standards Board's Public and Licensed Access Review Report, March 2017, he states, *"The scheme in England and Wales was introduced in 2004, since which date it has grown to the point at which up to one third of all practising barristers in England and Wales participate in the scheme, to the advantage of the public and with no prejudice to the administration of justice."*

- 3.46 Mr. Nolan’s submission calls for amendment of section 101 of the 2015 Act dealing with direct public access to barristers, by the deletion of the words *“other than a contentious matter”*.
- 3.47 Mr. Nolan submits that the adoption of this proposal will lead to a competitive, cost efficient and needed legal environment and framework, which will benefit the consumer of legal services and contribute to the better administration of justice. He states that adoption of the Direct Public Access model in England and Wales has led to *“no great foundering of either profession, barristers or solicitors”* and that, *“an equilibrium has been achieved, with no momentous change experienced, except that direct public access appears to have met a market need amongst consumers while allowing practitioners to develop career opportunities which might otherwise be denied to them.”*

3.48 Submissions from Organisations

3.49 Submission from the Association of Judges of Ireland:

- 3.50 The Association of Judges of Ireland (AJI) comprises most of the judges of the Supreme Court, the Court of Appeal, the High Court, the Circuit Court and the District Court.
- 3.51 In its submission to the review of the operation of the 2015 Act, the AJI lists the following amongst the aims and objectives set out in its constitution,
- “(a) To maintain and promote the highest standards in the administration of justice; and
- (b) To promote the exchange of ideas on the administration of justice.”
- 3.52 The AJI had previously set out in comprehensive terms its views on the initial training and continuous education of legal practitioners as part of the LSRA’s review of the education and training of legal practitioners under section 34 of the 2015 Act. In its submission under section 6 the AJI repeated those submissions, *“which it believes will protect and promote the public interest, maintain an independent and strong legal profession and assist in the proper and effective administration of justice.”*
- 3.53 The AJI submission in this regard states as follows, *“The AJI is firmly of the view that high standards in the education and training of legal practitioners not only in the practice of law but also in the area of ethics is essential to ensure proper and effective administration of justice. While it is acknowledged that the professional training bodies for Solicitor and Barristers, the Law Society and Kings Inns provide excellent training for legal practitioners, nevertheless it is essential that the Authority maintain a proactive supervisory role in the education of legal practitioners so as to ensure the maintenance of high standards. It is particularly important that high ethical standards are promoted and given prominence.”*
- 3.54 The AJI submission encourages the Law Society and Kings Inns’ use of practising lawyers in the education of solicitors and barristers as it gives young lawyers a practical grounding in their duties to the court, their clients and society at large and states that the LSRA should assist and

encourage wherever it can practising lawyers to partake in the initial and continuing education and training of lawyers.

3.55 The AJI submission is also supportive of judicial activism in providing guidance to legal practitioners through lectures, presentations and CPD events and states that they would support initiatives undertaken by the LSRA which it believes are supportive of the proper and effective administration of justice, encourage an independent, strong and effective legal profession and promote and maintain adherence to the professional principles of independent and integrity.

3.56 The AJI submission concludes, *“The AJI is appreciative of the valuable work done to date by the LSRA and is available when appropriate to assist the LSRA in achieving its objectives, provided such assistance does not encroach on the fundamental and inviolable principle of judicial independence.”*

3.57 [Submission by the Council of the Bar of Ireland:](#)

3.58 The Council of the Bar of Ireland (the Council) is the accredited representative body of the independent referral Bar in Ireland, which consists of members of the Law Library and has a current membership of approximately 2,200 practising barristers.

3.59 In its submission to the review of the 2015 Act the Council notes that, *“the Council is mindful that the pace of the implementation of the Legal Services Regulation Act 2015 has been very slow, primarily arising from the fact that it is a newly established organisation that has not been provided with an appropriate level of resources in order to deliver on its full remit as set out in the Act.*

In addition the statutory deadlines laid down in the Act to consult and report to the Minister for Justice & Equality in relation to a number of areas, including Legal Partnerships, MDPs, certain issues relating to barristers and a review of the education and training of legal practitioners in the State, caused the Authority to focus its limited resources in those areas at the expense of establishing its core role in the regulation of the legal profession and ensuring that standards in legal services are maintained and improved.”

3.60 The Council expressed its view that as there are large swathes of the Act that have not yet been commenced, it is impossible to make any detailed submissions on the operation of an Act that has not yet come into force. Therefore, the Council have confined their submission to two main areas: the pace of the implementation of the 2015 Act to date; and the application of the Levy as provided for in Part 7 of the 2015 Act.

3.61 In relation to legal costs the Council’s submission states that, *“Part 10 of the Legal Services Regulation Act 2015 sets out an improved structure for the manner in which legal costs will be adjudicated through the Office of the Legal Costs Adjudicator.”* The Council submission states that it continues to lend its full support for the enhanced mechanism to address legal costs, as it will benefit both those who obtain legal services in the State and the legal practitioners concerned.

- 3.62 The Council's submission states, *"There is growing frustration with the slow pace of implementation of this Part of the legislation and we urge the LSRA to highlight that the commencement of Part 10 of the Act should occur in as expeditious a manner as is possible. Furthermore, the Council considers that the appropriate resources, both in terms of legal costs adjudicators and support staff, need to be provided so that the commencement of Part 10 of the Act results in a more efficient and expeditious resolution of legal costs disputes into the future. Delays in the taxation process are a frequent complaint by lawyers and do nothing to assist the development of the market for legal services here. They also result in uncertainty for clients and lawyers alike. This should be addressed when Part 10 of the Act is commenced."*
- 3.63 In a section titled "Complaints and Discipline" the Council note that whilst this is a key function of the LSRA, the Authority's strategic plan states that this part will not commence until mid-2019.
- 3.64 The Council states, *"Again, the Council is disappointed with the slow progress in commencing this section of the Act and is keen to see resources appointed at the earliest opportunity to enable the LSRA to fulfil its role in that regard."*
- 3.65 The Council notes that it is difficult to make any further detailed submissions on the matter, however the Council does make two observations about particular issues.
- 3.66 The first issue relates to the definition of professional misconduct in section 50 of the 2015 Act which refers, *inter alia*, to an act or omission by a legal practitioner which *"consists of the commission of an arrestable offence"* in s.50(1)(j) of the 2015 Act.
- 3.67 The submission states, *"The Council queries whether the language in s.50(1)(j) is clear and precise where it refers to "commission" of such an offence. The operation of the presumption of innocence in such circumstances is unclear where the requirement to report the "commission" of such an offence even though it may be denied or where the allegation in question is bare in its terms. For instance, if a bare assertion of "fraud" is made does that constitute an allegation involving the commission of an arrestable offence under the Criminal Justice (Theft and Fraud Offences) Act, 2001 such that it must be investigated by the Authority?"*
- 3.68 The submission also notes that it is not clear whether the Authority should investigate such complaints parallel to or instead of An Garda Síochána and that this should be clarified as legislative machinery to deal with these issues could prevent uncertainty and difficulties arising in the future regarding complaints under this heading.
- 3.69 The second issue about which the Council makes observations relates to section 52(1)(3) of the Act.
- 3.70 The submission states as follows, *"Pursuant to s.51(3) of the 2015 Act, complaints under Part 6 may only be made to the Authority. But this is qualified in that subsection with an explicit reference to s.52 of the Act."*

Thereafter, s.52 of the Act requires complaints made to the Council of the Bar of Ireland to be referred to the Authority where they are made by “clients” of barristers and which relate to acts or omissions to which s51(1) or (2) apply.

However, unlike s.51(5) of the 2015 Act s.52(1) does not contain any provision for the Council to form an opinion that the complaint does, in fact, relate to s.51(2) of the 2015 Act (concerning misconduct) before it is referred to the Authority itself.”

- 3.71 The Council states that the precise role of the Council in relation to such complaints should be clarified with due regard to the fact that the Council will operate its own Code of Conduct for its members and the fact that complaints may be made to the Council which do not fall within s.51(2) of the Act itself.
- 3.72 The Council submission suggests that s.51(3) of the Act could be amended so that it requires without any qualification, that all complaints may only be made to the Authority for matters contained in s.51(1) and (2) of the Act. This, it is submitted, would result in the need to delete s.52(1)-(3) inclusive as unnecessary and potentially confusing to complainants. The Authority could then refer complaints that do not come within subsections 51(1) and (2) to the Council.
- 3.73 The submission goes on to state that section 55 of the Act already enables the Authority to make regulations for the handling of complaints and that the Authority could prescribe that if a person complains to the Council about a particular matter any such person should be directed by the Council to make their complaint to the Authority instead.
- 3.74 The Council states that the principal concern with such an approach would relate to possible costs and delays if complaints were made to the Authority, which should instead be dealt with the Council at an early juncture.
- 3.75 The Council propose an alternative suggestion that s.52(1) be amended, insofar as it relates to the Council, so that if a “client” of a barrister complains to the Council and the matter does not relate to s.51(1) of the Act the Council is to form an opinion as to whether the act or omission of a barrister constitutes “misconduct” under the Act before it refers it to the Authority.
- 3.76 The submission continues, *“Such an explicit reference might ensure a clear delineation between complaints which are investigated by the Authority and ensure greater clarity about the role of the Council if it receives a complaint itself. A client may complaint to the Council about a matter which they perceive does not relate to any matter in s.51 (2) of the Act and it would be appropriate to give the same power to form an opinion on such a complaint before referring it to the Authority, similar to the power as exists in s.51(5) of the Act for the Law Society relating to its functions under the Solicitor Acts 1954 to 2015.”*
- 3.77 The next section of the submission relates to the *“Application of the Levy to Fund Complaints and Discipline.”*
- 3.78 The Council notes that part 7 of the 2015 Act provides for the imposition of a levy on professional bodies and certain barristers to cover expenses of the Authority and the Legal Practitioners Disciplinary Tribunal.

3.79 The Council submission states, *“However, there are also other public interest functions entrusted to the LSRA in the legislation, including:*

- 1) Structures under which legal practitioners may practice, i.e. Legal Partnerships, Limited Liability Partnerships, Multi-Disciplinary Practices;*
- 2) The restriction on barristers holding the money of clients;*
- 3) The restriction on a barrister receiving instructions in a contentious matter;*
- 4) The education and training arrangements in the State for Legal Practitioners.”*

3.80 The Council states that it is arguable that it is the Authority itself, with the support of the State, who should bear the cost of fulfilling the public interest aspects of the Authority functions. The Council submit that this is for two reasons; to ensure the independence of the Authority, and to avoid placing an unreasonable cost on the profession.

3.81 The Council’s submission then includes a section titled, *“Unfair Apportionment of the Levy”*.

3.82 Citing figures from the Law Society Annual Report 2016/17 the Council states that, as of June 30 2017, there are 17,604 names on the Roll of Solicitors in Ireland and 2,146 members of the Law Library with an unknown number of practising barristers who are not members of the Law Library.

3.83 The Council submission states, *“Despite the ratio of 89:11 in the professions and the fact that barristers are prohibited from holding client monies, 20% of the approved expenses of the Authority under Part 6 and 20% of the expenses of the Disciplinary Tribunal will be levied as follows:*

- 10% to barristers in the Roll of Practising Barristers (apportioned by number of members and non-members of Law Library)*
- 10% to the Law Society.*

The Council maintains that this anomaly in the legislation lacks fairness and is inconsistent with the approach taken in sections 95(7)(a)(iii) and 95(7)(c)(iii).”

3.84 The Council puts forward the view *“that this anomaly should be corrected to apportion 100% of the costs for both areas in accordance with section 95(7)(a)(iii) and 95(7)(c)(iii) or, alternatively, to apportion the 20% of the costs for both areas in proportion to the number of practising solicitors and the number of practising barristers on the Roll of Practising Barristers.”*

3.85 The Council submission also states as follows, *“The Council is aware that the Authority itself has commissioned expert input into the manner in which the levy is constructed in the Act and that there are challenges relating to its implementation arising from the legislative drafting as currently provided.”* The Council also notes that it would welcome the opportunity to be consulted on any proposed legislative amendments that may be put forward in due course to address the anomalies that have arisen.

3.86 The submission concludes as follows,

“The Council of The Bar of Ireland makes this submission to assist the Authority and the Minister in relation to the operation of the 2015 Act although it is difficult to do so where so many of those functions have not been commenced and, therefore, remain untested and where the resources required for other provisions of the 2015 Act have not been made available.

In order for core policies and structures as enacted in the legislation- namely the introduction of a reformed legal costs regime and the introduction of new disciplinary structures for lawyers- to operate in an efficient, effective manner in the public interest while maintaining access to justice for all, appropriate financial resources and personnel will have to be assigned to the Authority itself and to the new legal costs adjudicators.

The Council reserves its right to make further submissions to the Minister for Justice in relation to the final report of the Authority on this review and in relation to all aspects of the 2015 Act at any appropriate juncture.”

3.87 Submission from the Competition and Consumer Protection Commission:

3.88 The Competition and Consumer Protection Commission (the CCPC) notes that *“while the progress that has been made by the LSRA since the Act came into effect has been positive, it must be noted that the pace of work and the impact on the sector has been slow. The issues which led to the establishment of the LSRA, including low levels of competition, barriers to entry, self-regulation and resulting high costs, largely remain.”*

3.89 The CCPC suggests that the full complement of resources, which the LSRA needs to fulfil its statutory functions, should be allocated and recruited as a matter of urgency.

3.90 The CCPC notes the publication of the LSRA’s statement of strategy 2018-2020 as a further positive development towards addressing the issues in the sector and welcomes the mission, vision and values set out in the statement and the pathway established for the further implementation of aspects of the Act.

3.91 The CCPC submission also;

- *“Recommends the commencement of Part 14 of the Act making provision for switching between the professions at the earliest possible juncture.*
- *Recommends that consideration be given to empowering the LSRA to give direction to the professional bodies in relation to recommendations arising from the review of education and training arrangements.*
- *Recommends that the LSRA establish a function enabling it to monitor cost and price trends in the legal services market.*
- *Reiterates our concerns regarding certain matters which can be considered by the Office of the Legal Costs Adjudicator in determining whether costs are reasonable.”*

3.92 The CCPC also point out that if Brexit is, as is frequently cited, an opportunity for the legal profession in Ireland to gain additional international work and for Ireland to become a global

centre for legal services then the reforms of the sector which the LSRA is working towards need to be significantly accelerated.

3.93 Further to the above the CCPC make a number of observations in respect of potential amendments to the Act.

3.94 In relation to the powers afforded to the LSRA, the CCPC observe as follows:

“The CCPC appreciates that the LSRA will issue a report to the Minister for Justice and Equality in September 2018 on the education and training arrangements for legal practitioners in the State. If that report were to recommend changes to the current arrangements, which are the preserve of the Law Society of Ireland and the Honorable Society of King’s Inns, it may be most effective to empower the LSRA so as to ensure that the incumbent providers of education and training do not present an obstacle to the delivery of these reforms. Currently the Law Society’s role in this regard is governed by the Solicitors Acts 1954-2011, while the power of the Honorable Society of King’s Inns is derived from historical custom and practice. The LSRA will be well served by an ability to make decisions in respect of crucial aspects of structural reform in the legal services market. In regard to arrangements for education and training, changes in this regard could have long-lasting effects on the nature of the market. It is essential that the LSRA has the appropriate means at its disposal to deliver on any potential reforms and suitable amendments might be made to section 13(2) in that regard.”

3.95 The CCPC welcome the establishment of the Office of the Legal Costs Adjudicator and expresses the hope that it will provide a source of downward pressure on legal costs.

3.96 The CCPC further state, *“The CCPC has, however, in the past expressed its concern in relation to Schedule 1 of the Act which sets out the Principles Relating to Costs. That schedule is intended to be used by the Office of the Legal Costs Adjudicator in determining whether costs in dispute are reasonable. In advance of the passage of the Act, the CCPC wrote to the Minister for Justice and Equality expressing our concern regarding the contents of that schedule. The CCPC reiterates its view that the 12 matters set out in paragraph 2 of the Schedule involve a number of overlapping factors which are likely to be used as a basis for justifying increases in legal costs rather than providing a basis for reducing the cost of legal services in Ireland. For example, references to overlapping factors such as “complexity”, “difficulty”, “novelty” and “specialised knowledge” and to factors that do not relate to the nature and quality of the service provided, such as “the importance of the matter to the client” and “the value of the property” are likely to result in higher legal costs than would be justified by reference simply to the work actually and appropriately done. To that end the CCPC believes that the schedule should be amended as outlined here.”*

3.97 Finally, the CCPC recommends that the LSRA should consider, possibly as part of its research function, establishing a method of tracking the evolution of legal costs over time and to issue annual reports on cost and price trends. This, the CCPC submit, would be in keeping with the function of the LSRA under section 13(2)(g) to promote public awareness and disseminate information to the public in respect of legal services, including the cost of such services.

3.98 [Submission from the Honorable Society of King’s Inns:](#)

- 3.99 The Honorable Society of King’s Inns (the Honorable Society) made two submissions to the public consultation.
- 3.100 In its first submission to the review of the Act made two recommendations for legislative amendment to the Act.
- 3.101 The first recommendation is that the subsections of section 18 be renumbered so as to remove the duplication of subsection (2).
- 3.102 The second proposed amendment is that a new section 85(10) be inserted along the following lines:
- “Where the court makes an order under subsection (7)(e) directing the Authority to strike the name of a person who is a barrister off the roll of practising barristers, that person shall thereupon stand disbarred and shall be removed from the Register of Members maintained by the Honorable Society of King’s Inns.”*
- 3.103 The Honorable Society submits that this amendment flows logically from the definition of “qualified barrister” in section 2 of the Act and is intended to provide greater clarity and enhanced protection for consumers.
- 3.104 Section 2(1) of the Act defines a “qualified barrister” as a person who *“has been admitted by the Honorable Society of King’s Inns to the degree of Barrister-at-Law or has been called to the Bar of Ireland, other than where, subsequent to his or her being admitted to that degree or being so called ... his or her name has been struck off the roll of practising barristers or the roll of solicitors by the High Court, which order remains in effect.”*
- 3.105 A person subject of an order under section 85(7)(e) ceases under the Act to be a qualified barrister.
- 3.106 The Honorable Society has amended its General Rules to provide for automatic removal of persons struck off the roll of practising barristers to also be struck off the roll of qualified barristers which is maintained by the Society and which, as per the Society’s General Rules is incorporated into its “Register of Members.”
- 3.107 The Honorable Society recommends that the Act be amended to explicitly state that persons struck off the roll of practising barristers should also be automatically removed from the Society’s roll of qualified barristers.
- 3.108 The second submission made by the Honorable Society of King’s Inns also relates to the definition of “qualified barrister” in section 2(1) of the 2015 Act.
- 3.109 The Honorable Society proposes that subsection 2(1) be amended as follows,
- “A “qualified barrister” means a person who (a) has been admitted by the Honorable Society of King’s Inns to the degree of Barrister-at-Law **and** has been called to the Bar of Ireland, other than where, subsequent to his or her being admitted to that degree **and** being so called ...”*
- 3.110 The submission continues,

“The reason for the proposed amendment is as follows. For centuries, the legal meaning –and popular understanding- of a ‘barrister’ is of a person with a right of audience in court. This understanding is reflected in other provisions of the 2015 Act. On one view, the language of the definition of qualified barrister in section 2(1) suggests that a person can be a barrister without being called to the Bar and thus without enjoying such a right of audience. It is respectfully submitted that it was not the intention of the Oireachtas to change the definition of a barrister in this way: accepted canons of construction of legislation dictate that such a fundamental change to a pre-existing legal and generally understood state of affairs can only be achieved through clear expression. If unnecessary litigation and confusion around the issue is to be avoided, the definition should be changed to reflect the legally presumed legislative intention and, even as presently worded, probable meaning of the definition.”

3.111 The submission later states,

“It could not have been the intention of the Oireachtas to define ‘qualified barrister’ in such a way as to include a person who has not been called to the Bar. It could not have been intended that a person who has neither the legal capacity nor qualification generally associated with a barrister –the entitlement to appear and be heard in a court of law- could describe themselves as a ‘barrister’. Indeed, it cannot have been intended that there could be a category of persons who are qualified legal practitioners yet uniquely amongst such legal practitioners do not have a right of audience in court, but are nonetheless described in law as barristers.”

3.112 [Submission from the Alliance for Insurance Reform:](#)

3.113 In a section titled “Background” the Alliance for Insurance Reform (the Alliance) describes its organisation as follows, “The Alliance for Insurance Reform brings together 23 civic and business organisations from across Ireland, representing 36,000 members, over 775,000 employees, 43,000 volunteers and 150,000 cooperative members, highlighting the negative impact of persistently high premiums and calling for real action to tackle the issue.”

3.114 The Alliance states that the *“scale and unpredictability for legal costs remains a significant barrier to the pursuit of justice on personal injury claims, deterring policyholders and their insurers from challenging even manifestly fraudulent, exaggerated or misleading claims.”*

3.115 The Alliance therefore asks, *“that the LSRA have a direct role in the control of legal costs for personal injury cases in the Circuit Court and High Court using the District Court model.”*

3.116 The Alliance states, *“Our members tell us that claim harvesting websites are acting as the ambulance chasers of old, pursuing potential claimants with promises of money to be made with no costs or consequences, regardless of how dubious the claim is. They are adding fuel to the fire of fraudulent, exaggerated and misleading claims. Regulation and registration would bring us in line with the regime the UK have operated since 2007 under the aegis of the UK’s Ministry of Justice.”*

3.117 The Alliance asks, *“that Claims Management Companies be registered and regulated by the State through the LSRA. In particular, the levying of any fee for the referral of live cases onto solicitors must be banned outright, regardless of how it is packaged. This must apply to both*

those CMCs operated by solicitors and those not operated by solicitors as these are quasi-legal businesses.”

3.118 The Alliance states that their members are frustrated by the number of fraudulent, exaggerated, misleading and vexatious claims being lodged against them and state that this does not reflect well on the legal profession, as there is a sense that they apply no filter to claims before driving them through the PIAB and on to the Courts.

3.119 The Alliance recommends, *“That the LSRA should have a provision that where any case is dismissed because of exaggerated or misleading evidence, per section 26 of the Civil Liability and Courts Act 2004, the barristers and solicitors acting for the plaintiff must set out to the LSRA the steps they had taken to ensure that the court was not misled in any way. Based on that explanation and the facts of the case including comments made by judges, the LSRA should consider whether a disciplinary process is necessary.”*

3.120 The Alliance states that several of their members believe that certain solicitors are manipulating claims, *“e.g. if the real medical evidence is ‘too bland’ a solicitor will send a client to certain medical experts who will maximise or even exaggerate the extent of the injuries.”*

3.121 The Alliance makes two recommendations in this regard,

- *“It should be mandatory that all professional reports declare at the outset who requested them to write the report and why.*
- *When Solicitors produce a report, be it Medical, Dental, Financial etc. they should be required to make a declaration as to how that professional became necessary.”*

3.122 Finally, the Alliance expresses its frustration at what it states is the slow speed at which the existing functions of the LSRA are being implemented and endorse any additional supports from Government that will get those functions up and running quickly.

3.123 [Submission from the Chief State Solicitor’s Office](#)

3.124 The Chief State Solicitor’s Office (the CSSO) clarifies in its submission that as solicitors in the full time employment of the State, the Office is in somewhat of a unique position in that they do not engage in the provision of legal services to the public. As such, they note that many of the operational features of the Act do not arise for the most part, for the solicitors of the Chief State Solicitor’s Office on a daily basis.

3.125 The submission makes two observations for consideration in the review of the operation of the Act.

3.126 Firstly, the CSSO recommends that it would be helpful and timely if the Act could be amended to include a specific definition of barristers in the full time service of the State to include any limitations on the role, both as to practice in public and in the private sector.

3.127 Secondly, the CSSO recommends that the Authority give consideration to guidelines in the course of its input into the curricula on ethics and professional training of solicitors, in engaging with the Court and lay litigants, given the constitutional right to access to justice.

3.128 [Submission from the Bar of Northern Ireland:](#)

3.129 The submission from the Bar of Northern Ireland (the BNI) draws comparisons and highlights common themes between the arrangements governing regulation of the profession across the Republic of Ireland and Northern Ireland.

3.130 The submission outlines the extensive and independent review of the regulatory system in Northern Ireland and the recommendations of Sir George Bain's 2006 report for the introduction of more transparent oversight mechanisms through legislation in the Northern Ireland Assembly, subject to these being effective, proportionate and cost effective.

3.131 The Legal Complaints and Regulation Act (Northern Ireland) 2016 includes the creation of a Legal Services Oversight Commissioner to oversee new structures for complaints handling across both the solicitor and barrister professions. The Bar of Northern Ireland believe that the resulting system, which has yet to take full effect, has the potential to be of interest to the LSRA given that it has broadly adopted appropriate delineation of responsibilities and includes the imposition of a levy on the professional bodies.

3.132 In relation to the levy provisions the BNI states, *"We recognise the need for public confidence in regulation but it is important to ensure that the profession is not unnecessarily burdened by the weight and cost of this. The Bar of Northern Ireland has always been keen to ensure that, prior to considering a levy mechanism, there must be effective safeguards and controls in place to ensure that the costs associated with the expenditure of the systems required to administer the LSRA are subject to proper scrutiny and must be proven to be kept tightly controlled, benchmarked and open to challenge on grounds of necessity and proportionality.*

The Bar would in general also contend that the costs of administering such a system could reasonably be argued to be borne by government as they designed and are one of the main beneficiaries of the system; it is unreasonable to apply a series of levies to the profession and the independence of the profession must be preserved."

3.133 The BNI notes that any such levy system must be governed by proportionality for the legal profession and has repeatedly stressed the need for any levy system for funding the Legal Services Oversight Commissioner to reflect the greater number of complaints overseen by the solicitor profession than the barrister profession.

3.134 The BNI notes that whilst the necessary secondary legislation to give effect to the levy has yet to be brought forward due to the lack of a functioning Assembly in Northern Ireland, the Bar has welcomed the Department of Finance's intention to proceed with a per capita split based on the number of members of each professional body to be covered by the regime.

3.135 The BNI submission goes on to comment on other aspects of the Legal Complaints and Regulation Act (Northern Ireland) 2016, which may be of interest to the LSRA. These include the precondition in the legislation for the Commissioner to be a lay person which the Bar of Northern Ireland view as neither reasonable or fair, the difficulty in differentiating between service and conduct complaints and the potential for regulatory overreach due to the wide-ranging provisions in the Act which allow the Legal Services Oversight Commissioner to conduct reviews into the organisation and regulation of the professional bodies.

3.136 [Submission from the Irish Small Medium Enterprise Association:](#)

3.137 The Irish Small Medium Enterprise Association (ISME) makes four recommendations to the review of the operation of the 2015 Act as follows.

3.138 ISME recommends that the LSRA should seek the establishment of a full schedule of costs for Circuit Court proceedings, similar to that set out in SI 17 of 2014 for the District Court.

3.139 ISME recommends that due to the prohibitive and unpredictable costs of defending an action in the courts and to discourage what it refers to as ‘settlement mentality’, Chapter 3 of the Act should set out a requirement for a legal practitioner to *“zealously recover all costs from the plaintiff in cases where the defendant has actually or substantively won their case.”*

3.140 ISME recommends that so called Claims Management Companies or Claims Harvesters who assist in any way with the identification, capture or presentation of a claim against a third party must be regulated under the Act.

3.141 Finally, ISME recommends that *“Legal Practitioners administering the production of an affidavit of verification for a plaintiff in a personal injuries action should be required to append a statutory declaration to the effect that they have advised the plaintiff of the necessity to ensure that the affidavit of verification is truthful, honest and accurate in all material respects.”*

3.142 [Submission from the Legal Costs Unit of the State Claims Agency:](#)

3.143 The Legal Costs Unit of the State Claims Agency (the Agency) made a submission to the review of the Act that related to the provisions of Part 10 (Legal Costs). The submission covered four matters: time costs, proportionality, section 5 of the Courts Act 1988 and HC 71 Payments on Account.

3.144 In relation to time costs the Agency states in its submission that legal practitioner records, or the absence thereof, present a particular difficulty in the taxation of costs system at present.

3.145 The submission notes that legal practitioner records fall into three categories: actual or contemporaneous time records, ex post facto reconstructed records, time estimates and or a combination of one or other system.

3.146 The Agency states, *“Other than stipulating that time records should be exhibited to a bill of costs where time is a substantial factor in the calculation of a professional fee, Part 10 does not provide for any system of verification.”*

3.147 The Agency submits that the recent Supreme Court Decision in *Sheehan v Corr* [2017] IESC 44 provides some examples of the issues that may arise where anything less than actual contemporaneous time recording has been kept.

3.148 The Agency submits that whilst recent jurisprudence emphasises that the benefit of the doubt in such cases should fall in favour of the paying party and recommend that this needs to be underpinned in the Act. They further state that directions for affidavits of verification and other guidance would also be helpful.

- 3.149 On the issue of proportionality the Agency submits that there is a very strong case for the codification of the concept of proportionate costs stating, *“The ‘de minimis’ nature of party and party indemnification is important. There are lots of steps taken in litigation over which the losing party has no control and it would be unfair to expect full indemnification for all items of costs incurred without limit. Proportionality is a key tool in the maintaining of affordability of legal costs, particularly for smaller litigation.”*
- 3.150 The Agency outlines the issue in relation to the regulation of the number of counsel and section 5 of the Courts Act, 1988 as follows,
- “The Taxing Master has recently confirmed that he does not have jurisdiction to enforce or supervise the Bar Council undertaking provided in or about December 1997 restricting or limiting the number of counsel in personal injury claims to a maximum of two. The undertaking was provided in contemplation of Section 5 of the Courts Act 1988. The act was introduced coinciding with the abolition of jury trials in personal injury cases. In particular, section 5 mandated the Minister for Industry and Commerce to regulate the number of counsel appearing in certain actions. An undertaking was provided by the Bar Council that no more than 1 Senior Counsel and 1 Junior Counsel would charge brief fees in all personal injuries actions. These events give rise to arrangements which became known colloquially as the ‘three eights, three eights, two eights rule’.”*
- 3.151 The Agency submits the proposal that the Legal Costs Adjudicator should be provided with enhanced powers to determine the number of Counsel briefed in respect of any particular action.
- 3.152 The Agency in its submission requests that the Authority might consider whether the aims and objectives of section 5 of the Courts Act 1988 might be usefully introduced to strengthen the voluntary undertaking of the Bar Council of December 1987. It further suggests that such provision might, for example, provide that a maximum of two Counsel be allowed in respect of all High Court actions save where otherwise certified by the Trial Judge on grounds as stated in any such certificate.
- 3.153 The final section of the submission by the Agency is titled, “HC71 Practice Direction for Payments on Account”.
- 3.154 The Agency states as follows, *“R99 O5 (1) provides, inter alia that costs may be awarded at any stage of the proceedings. This particular provision has given rise to the system of payments on account of costs (HC 71 Practice Direction). The introduction to the practice direction recited that it is a measure required to overcome delays in the taxation of costs. This particular issue of delay in the Taxing Master’s list has passed and early return dates are now the norm.”*
- 3.155 The Agency submits that it would save on valuable court resources if the Taxing Master was empowered to assess a reasonable payment on account immediately upon the filing of a bill of costs and suggest that this might be achieved by way of a case management hearing to be held in close proximity to the lodgement of the bill of costs.

3.156 The Agency notes that an application to the Taxing Master for a payment on account is not presently provided for in the rules and if this was rectified it might carry an additional benefit of focussing the parties on resolving the issue of costs at an early stage.

3.157 The Agency further notes that the Taxing Master has particular expertise in relation to assessing what would amount to a reasonable and meaningful payment on account.

3.158 It is also submitted that consideration should be given as to whether a payment on account actually made should act as a tender for the purposes of taxation. The Agency queries whether the current provision whereby any surplus payment is required to be repaid does not go far enough as a deterrent for overcharged bills and the costs of taxation should also be dependent on successfully overcoming the amount paid on account.

3.159 [Submission from the Dublin Solicitors Bar Association:](#)

3.160 The Dublin Solicitors Bar Association (the DSBA) in its submission to the review of the operation of the Act focuses on a small number of recommendations that it wishes to put forward to the Authority for its consideration. It states that its recommendations, *“envisage a number of suggested amendments to the existing governing legal and regulatory framework in the interests of better balancing the relationship as between solicitors as providers, and the public as recipients, of legal services.”*

3.161 The DSBA make the following five recommendations:

1. (Complaints) *“To amend the 2015 Act to provide that a complainant is prohibited from bringing any claim against a solicitor before the Courts in respect of (and to the extent) the subject matter of the claim was in substance included in a complaint (being one as to ‘misconduct’) made before a regulatory authority which was disposed of in favour of the solicitor- and vice versa if the claim was made before the Courts.*

2. (Complaints) *“To amend the 2015 Act so as to provide that a solicitor shall be entitled upon request to a regulatory authority to be advised whether such authority has received and disposed of (without reference to the solicitor) any third party complaint against such solicitor, and if so to provide such particulars of the complainant and complaint as the solicitor may reasonably request.”*

3. (Levy) *“To amend the 2015 Act so as to distinguish for Levy application purposes between day to day regulatory related costs & expenses of the Authority (subject to the Levy) versus project costs incurred by the Authority as to mandated under the 2015 Act and otherwise to explore and consider developments relating to the provision of legal services in the State (not subject to the Levy).”*

4. (Levy) *“To amend the 2015 Act so as to require the Authority to ensure that the Levy is subject to a proportionality fairness test as against the amount to be paid (each year) by solicitors to the Law Society for their annual solicitors practicing certificate.”*

5. (Business Structures) “To amend section 70 of the Solicitors (Amendment) Act, 1994 so as to empower the Authority to review draft regulations as and when prepared by the Law Society under section 70.”

3.162 [Submission from solicitors employed in the Legal Office of University College Dublin.](#)

3.163 The solicitors pointed out that, in that office, they have a team of experienced and qualified solicitors who have worked both in private practice and in in-house legal departments but, due to restrictions in the law as it currently stands, are unable to directly instruct legal counsel.

3.164 They recommend that solicitors who are employed in-house and who hold practising certificates, which they note is a requirement for any solicitor who is employed in-house and who provides legal advice, should be permitted to instruct legal counsel directly.

3.165 They state, *“This would lead to significant saving of costs to the organisation, greater efficiencies, greater competition and leave behind an archaic rule that has little justification in the modern age.”*

3.166 [Submission from the Irish Institute of Legal Executives:](#)

3.167 The Irish Institute of Legal Executives (the IILEX) is the professional body representing Legal Executives in Ireland. The aim of the Institute, as outlined in their submission to the review of the Act, is *“to provide a system of training and examination so that Legal Executives obtain a recognised legal professional qualification.”*

3.168 The IILEX, in its submission to the review of the Act under section 6, state whilst Legal Executives have some degree of statutory recognition, including a requirement to follow ethical guidelines, more clarity is required as to the regulation and recognition of Legal Executives. IILEX states in its submission that it is, *“seeking to have the work of the Legal Executives and the work they have been doing for many years recognised worldwide.”*

3.169 It further states that Legal Executives provide a greater choice to the consumer and more competitive legal costs arguing that if Legal Executives had greater rights under the governing legislation and more recognition it would free up solicitors and barristers to do *“other legal work of a more substantial nature.”*

3.170 The IILEX states that it wants Legal Executives to be recognised by the LSRA as this would be a *“step forward not only for us, Legal Executives, but the consumer and the Legal Service in Ireland.”*

3.171 [Submission from the Law Society of Ireland:](#)

3.172 The Law Society, as the professional body for solicitors in Ireland, made a submission to the LSRA setting out the Society’s views in relation to suggested amendments to the Legal Services Regulation Act 2015 and the Solicitors Acts 1954 to 2015, including any statutory instruments made under those Acts.

3.173 The Law Society state that their submission is made *“with the objective of protecting the public interest in its interaction with legal services, in particular the services provided by solicitors.”*

- 3.174 They continue, *“The submission considers amendments that will be necessary for both the Authority and the Society in order to effectively manage the operation of the Act. Many of the recommendations are made to ensure a better alignment between the Authority and the Society and to achieve clarity of the Authority’s and the Society’s respective roles across a range of statutes.”*
- 3.175 In all the Law Society have made 106 recommendations for legislative or other amendments. These include recommendations in relation to data sharing, solicitors’ practising certificates, and the definition of misconduct, the changeover of the complaints function between the LSRA and the Law Society and matters that pertain to the movement from the Office of the Taxing Master to the Office of the Legal Costs Adjudicator.
- 3.176 The Law Society has also proposed a number of minor amendments to the Act for the purposes of ensuring that the legislation is clear and unambiguous and amendments to the Solicitors Acts to remove outdated and obsolete terminology.
- 3.177 In making the submission the Law Society states that it considers, *“the recommendations provided in this submission should assist in easing the administrative burden for all parties, to ensure the regulation of solicitors is conducted with ease and clarity for the benefit of the public and the profession.”*
- 3.178 Due to the number of recommendations made, and for ease of reference, a full list of the recommendations made by the Law Society is included at Appendix E. The Law Society recommendations have all been considered as part of the LSRA’s analysis in the next section.

PART 4: Review of the Operation of the Legal Services Regulation Act, 2015

4.0 Overview

- 4.1 The Legal Services Regulatory Authority (LSRA) has conducted a review of the operation of the Legal Services Regulation Act, 2015 (the Act) in accordance with section 6 of the Act.
- 4.2 Following a public consultation process, as require by statute, 19 submissions were received from organisations and private individuals. The submissions received during the public consultation have been given due consideration and the LSRA has also conducted an in depth analysis of the Act.
- 4.3 The LSRA now reports to each House of the Oireachtas on the findings and conclusions of its review along with recommendations for amendments to the 2015 Act, the Solicitors Acts 1954 to 2015 (the Solicitors Acts) and to other statutory instruments as appropriate.
- 4.4 The recommendations are set out in this Part and are set out in the following order. Firstly, there is a general comment on the effect the structure of the Act is having on the ordered roll out of the LRSA's regulatory function. Then the key recommendations are set out in the areas of the funding provisions for the LSRA, the Roll of Practising Barristers and information sharing which the LSRA considers critical to its establishment as a fully functioning regulatory body. Other recommendations for more substantive legislative amendments are listed at 4.67. Recommendations for amendments to correct anomalies and errors where they have been found in the Act are listed at 4.160.

4.5 General comment

- 4.6 The LSRA is of the view that the hard wiring of trigger events within the 2015 Act, which legislate for the automatic triggering of commencement of sections of the Act, without due consideration of the resources and infrastructure required for their implementation, is unhelpful.
- 4.7 The establishment of the LSRA as a fully functioning regulatory body has also been delayed due to the requirement to meet statutorily mandated deadlines that run throughout the Act. The LSRA are of the view that such deadlines are restrictive and resource intensive and not conducive to the ordered roll out of the regulatory functions of the LSRA.

4.8 Key Recommendations relating to Part 7: Imposition of Levy on Professional Bodies and certain Barristers to Cover Expenses of Authority and Disciplinary Tribunal.

- 4.9 Following analysis of the provisions relating to the levy on the professional bodies and certain barristers contained in Part 7 of the 2015 Act, the LSRA Executive wrote to the Department of Justice and Equality on 28 November 2017 highlighting some concerns as to how the levy model was constructed in the Act and its viability as a funding model for the LSRA.

- 4.10 Among the concerns highlighted by the LSRA Executive were that there was no basis in the Act for the LSRA to impose a levy based on the approved expenses of the Authority and the expenses of the Legal Practitioners Disciplinary Tribunal other than those incurred in the previous financial year, and that there was no basis in the 2015 Act to carry over expenses from one year into the next in the levy, to backdate the expenses to be recouped by the levy or to aggregate out expenses into the levy over a number of years. This meant that any expenses incurred within a financial year had to be subject of a levy assessment notice in the following year or they could not be recovered.
- 4.11 The letter also highlighted that the implementation of the levy provisions was contingent on the establishment of the Roll of Practising Barristers, as this will determine the number of non-Law Library barristers practising in the state, which is required to calculate the proportion of the levy payable by each category of legal practitioner.
- 4.12 A concern was highlighted as to the possible breadth of the definition of practising barrister under the Act. This concern is the subject of recommendation 3.
- 4.13 The LSRA also identified concerns as to the adequacy of the levy as a source of funding in that it would be unlikely to ever be in a position to recover all of the 'levy payable' from all of the legal practitioners who may be liable and no provision had been made to deal with any short fall in funding. The levy as framed also does not provide for any 'spikes' in expenditure for example for any significant capital spending and the retrospective nature of the levy did not allow the LSRA to match its income to its funding requirements for the year ahead.
- 4.14 Further issues were outlined in relation to the complex methodology for the apportionment and delineation of expenses under Part 6, which meant that even the most robustly regulated and labour intensive time recording system would struggle to generate defensible figures to calculate the levy.
- 4.15 Following engagement with the Department of Justice and Equality on the issue of the levy, the LSRA commissioned a financial consultant to review the levy provisions under Part 7 of the Act.
- 4.16 The financial consultant was asked to provide an independent opinion on whether the levy model provided for in the 2015 Act would provide sufficient and sustainable funding to enable the LSRA to perform its functions and, if necessary, to make recommendations to resolve any issues either by additional conditions or by a redesign of the levy model as a whole.
- 4.17 The report concluded, *"The methodology set out in the Act to provide the funding for the LSRA is not adequate because it is backward looking and does not take into account the start-up nature of the organisation. Also, the anticipated growth in activity and, consequently, expenditure in its early years will result in deficits being incurred annually and an increasing reliance on Ministerial advances. Such deficits will constrain the LSRA as it attempts to fulfil its mandate."*
- 4.18 The report made 9 recommendations "designed to provide the LSRA with sufficient and sustainable funding." These recommendations are listed in the table below.

No.	Issue	Recommendation
1.	Retrospective Nature of the Levy	Revise the Act to facilitate start-up provisions and move to basing the Levy for year x on the budgeted expenditure for year x.
2.	Carry Forward Provisions for a surplus or deficit	Revise the Act to facilitate carry over provisions.
3.	Lack of Provision for Capital Funding	Agree with the Department the capital expenditure areas to be funded and the manner and timing of repayment. Repayment of Ministerial advances for Capital expenditure to be repaid from the depreciation charge and related levy recoveries of the relevant asset.
4.	Funding of Public Service Activities	Identify and budget the public interest type activities and agree with the Department the funding requirements.
5.	<i>Creation of Reserves</i>	<i>Agree on the need for and level of reserves and budget a specific sum to be taken into account when considering advances from and repayment to the Minister.</i>
6.	<i>Power to Borrow</i>	<i>Revise the Act to provide the LSRA with power to borrow subject to the appropriate consents being provided.</i>
7.	<i>Interpretation of 'Proportion' in section 95(8)</i>	<i>Revise the Act on the following lines: The levy amount to be charged to each class of legal practitioner should be based on the percentage division of the workload of the LSRA allocated using such proxy measures and cost accounting methodologies as the LSRA may determine by regulation. The proxy measures and cost accounting methodologies are to be reviewed at least every three years. The LSRA regulations may, having regard to the number and type of complaint received by the LSRA, prescribe a different levy in respect of different categories of legal practitioners.</i>
8.	Date for liability to pay the levy	Revise the Act and either set a date in the Act or give the LSRA the power to set a specific date by regulation.
9.	Discretion regarding Levy and Charges.	The LSRA has powers of discretion set out in the Act in relation to fees but this would not appear to cover discretionary powers in relation to the Levy itself or other charges such as interest. Revise the Act by the inclusion of "and levies, interest or other charges" in section 31 and/or section 95 as appropriate.

4.19 The report of the financial consultant was provided to the Department of Justice and Equality who subsequently sought the advice of the Attorney General's Office. The Department of Justice and Equality subsequently informed the LSRA that based on the advices of the Attorney General and their analysis of the levy provisions that there was a pressing need for the

Authority to commence the operation of the levy process for 2019 based on 2018 expenditure to meet the demands of the current start-up phase, that a working group of the Department and the Authority could be established to examine the levy provisions over a period of 3 months and recommend any changes that are necessary and that any changes recommended to the levy model should be prioritised in relation to those items which are regarded as necessary urgent measures which can be effected quickly.

Recommendation 1:

The LSRA recommends that Part 7 of the Act be amended to provide sufficient and sustainable funding to enable the LSRA to perform its functions and fulfil its objectives under the Act.

- 4.20 It is also noted that several of the submissions received during the public consultation on the Act made recommendations in relation to Part 7 and the levy. These submissions should be taken into account in the consideration and implementation of Recommendation 1.
- 4.21 The Council of the Bar of Ireland (the Council) in its submission stated that it was arguable that the LSRA, with the support of the State, should bear the cost of fulfilling the public interest functions entrusted to the LSRA in the legislation, including the introduction of the new structures under which legal practitioners may practice and research such as the section 34 report into the education and training of legal practitioners.
- 4.22 The Council also drew attention to what they believe to be the unfair apportionment of the levy under the current provisions.
- 4.23 The Council acknowledged that the LSRA had commissioned an expert report in relation to the levy and that there were challenges relating to its implementation. The Council stated that it would welcome the opportunity to be consulted on any proposed legislative amendments that may be put forward.
- 4.24 The Council published its submission on its website. Subsequently, the Law Society wrote to the LSRA challenging the basis on which the Council had concluded that the apportionment of the levy under Part 7 was unfair.
- 4.25 The Bar of Northern Ireland referred to its experience of levy provisions on the legal profession in its jurisdiction. It stressed the need for the levy to be governed by the principle of proportionality to reflect the greater number of members and complaints overseen by the solicitor profession than the barrister profession and stated that it was important to ensure that there were safeguards and controls in place to ensure that the costs associated with the expenditure of the systems required to administer the LSRA were subject to proper scrutiny.
- 4.26 The Dublin Solicitors Bar Association (the DSBA) in its submission stated that, in the interests of fairness and better balance, the approved expenses framework provided for in section 97 of the Act, should be amended so as to distinguish between the day to day regulatory costs incurred by the Authority relating to legal practitioners versus what the DSBA refer to as

‘project costs’ incurred by the Authority on topics such as the new business practice models and legal education.

- 4.27 The DSBA also submit that, as there is to continue a dual regulatory structure for solicitors as between the Authority and the Law Society and that the amount of the levy per legal practitioner is yet to be established, that consideration be given to amending the Act to ensure that the levy is subject to a “proportionality fairness test as against the amount to be paid (each year) by practitioners to the Law Society for their practising certificate.”
- 4.28 The Law Society in their submission noted that section 95(12)(b) of the Act requires the Authority to make reference to the number of practising solicitors in a given financial year, exempting those in the full-time service of the State, for the purposes of calculating the annual levy to be paid by the Society to the Authority.
- 4.29 The Law Society recommend that appropriate data sharing provisions are put in place to allow the Society to provide the Authority with the relevant information concerning the number of solicitors holding practising certificates issued by the Society in the relevant financial year and information concerning the number of solicitors who practice in the full-time service of the State.
- 4.30 The LSRA is of the view that the nature of this data may be statistical and may not require explicit information sharing provisions to be included in any new levy provisions, however, the LSRA would endorse the view that consideration should be given to any information sharing provisions that may be required between the LSRA and the professional bodies or any other organisation to allow for the implementation of any new levy model.
- 4.31 The LSRA further note that the Act contains no explicit provisions as to the funding of the Legal Practitioners Disciplinary Tribunal. Although it might be assumed from Part 7 that it is intended that the LSRA will fund the Tribunal’s activities, while respecting its operational independence, this is not specifically provided for.

Recommendation 2:

It is recommended that any revised levy model contain specific provisions to provide for the funding of the Legal Practitioners Disciplinary Tribunal.

4.32 Key Recommendations relating to the Roll of Practising Barristers

- 4.33 Part 9 of the Act requires the LSRA to establish the roll of practising barristers. As outlined in section 2 of this report the necessary sections for the establishment of the roll were commenced by S.I. 288 of 2018 on 29 June 2018. The establishment phase of the Roll ended on 28 December 2018 at which point the LSRA had received 2,246 applicants for entry onto the Roll of Practising Barristers.

Section 2 Interpretation

- 4.34 The LSRA is concerned that due to the interlocking definitions of the Act required to be interpreted to define a practising barrister i.e. the definitions assigned to qualified barrister, practising barrister, provision of legal services and legal advice that there is a risk that the Roll of Practising Barristers established by the Act is contrary to the legislative intent behind the Roll.

Recommendation 3:

It is recommended that the definition of practising barrister and qualified barrister and the provisions for the Roll of Practising Barristers be reviewed in their entirety to ensure that they accurately give effect to the legislative intent behind them.

- 4.35 The LSRA is of the view that a definition for “*practising barrister in the full time service of the State*” as referred to in section 133 is required.
- 4.36 This definition is key to the operation of the Act as it impacts upon the establishment of the Roll of Practising Barristers and the calculation of the levy on the professional bodies and certain barristers.

Recommendation 4:

That section 2 is expanded to include a definition of “*practising barrister in the full time service of the State*”.

- 4.37 The LSRA is concerned that the definition of ‘legal advice’ is too broad and requires further clarification.
- 4.38 Legal advice under the Act means “*any oral or written advice-*
- (a) on the application of the law (whether the law of the State, another state or the European Union, international law, or a combination of these) to any particular circumstances that have arisen or may arise in relation to a person, and*
 - (b) as to any actions that might appropriately be taken by or on behalf of a person (whether the person referred to in paragraph (a) or another person) having regard to the application of the law in those circumstances,*
- But does not include an opinion on the application of the law provided by a person to another person in the course of,*
- (i) lecturing in or teaching an area of the law, as part of a course of education or training,*
 - (ii) writing or editing a book, report or article, or*
 - (iii) carrying out research in an area of the law, for the purposes of enhancing the other person’s knowledge of the area concerned.”*

- 4.39 Under section 2(4)(b)(ii) a person provides legal services as a barrister where they provide legal advice to another person. The language used raises the question for example as to whether a simple conversation between a qualified barrister who has been called to the Bar of Ireland, but is not working as a lawyer in any capacity, and a neighbour in which information advice has been given as to a boundary issue would fall within the provision of legal services as defined by section 2(4)(b).
- 4.40 It should be noted that there is no express provision in section 2(4)(b) that before a barrister is regarded as providing legal services, the barrister must habitually or regularly undertake one or more of the activities mentioned in the subsection. On the face of it, the provision on a single occasion of legal advice to another person might be said to fall within the ambit of section 2(4)(b). This has the effect of requiring such a person providing legal advice on such a single occasion to be required to apply for entry on the Roll of Practising Barristers.
- 4.41 It is recommended that section 2 be amended to clarify the nature of the provision of legal advice and to provide a “*de minimis*” test.

Recommendation 5:

It is recommended that section 2 be amended to clarify the nature of the provision of legal advice that meets the definition of 2(4)(b) and to introduce a “*de minimis*” test to restrict the scope of the current definition of providing legal advice.

Suggested wording for a further exception to the definition of legal advice :

“... and does not include an opinion on the application of the law provided by a person who is a qualified barrister to another person in circumstances where the Authority or a court of competent jurisdiction is satisfied are so “de minimis” that it would be disproportionate to require the barrister to be treated as a practising barrister for the purposes of this Act.”

- 4.42 Section 134 requires the Authority to satisfy itself that a person applying to the LSRA under that section to have his or her name entered onto the Roll of Practising Barristers is a qualified barrister. There is no provision providing the LSRA with the power to access the information required to satisfy itself that any person meets the definition of qualified barrister under the Act. In establishing the Roll of Practising Barristers the LSRA have relied on the consent of applicants to clarify their qualifications with the King’s Inns. A memorandum of understanding was agreed with King’s Inns for this purpose. However, should the applicant refuse, the LSRA has limited options as to how to fulfil this statutory requirement.
- 4.43 It is submitted that as section 137 creates a criminal offence of pretending to be a qualified barrister that the LSRA should have the power under the Act to compel persons to provide relevant information in relation to whether a person is qualified or not.

Recommendation 6:

It is recommended that the LSRA is provided with the necessary powers to access information that is required for the establishment and enforcement of the Roll of Practising Barristers including the power to compel information from relevant parties where required.

- 4.44 Section 134 requires any person who has been called to the Bar of Ireland and who intends to provide legal services as a barrister to apply to the LSRA to have his or her name entered on

to the Roll. There is no such compulsion for a qualified barrister, who has not been called to the Bar of Ireland as allowed by section 2 of the Act, to apply to the Authority. It could be argued that this compulsion is achieved by virtue of section 136(4)(c) which includes in the definition of unqualified person for the purposes of the offence of an unqualified person providing legal services as a practising barrister, a person who notwithstanding that he or she is a qualified barrister, is not a person whose name is entered on the Roll. However, it is submitted that a specific provision ensuring that all those who meet the definition of a practising barrister are compelled to apply to be entered onto the Roll would bring greater clarity to the Act.

Recommendation 7:

That the provisions of part 9 are reviewed to ensure that specific provisions are included that all practising barristers intended to be captured by the Roll are compelled to apply to the Authority for inclusion.

- 4.45 In consideration of recommendation 7, the submission received from King’s Inns in relation to the definition of “practising barrister” as summarised at 3.109 to 3.111 is of particular relevance.
- 4.46 It should be noted that the above recommendations set out amendments to the Act that the LSRA consider essential for the maintenance of the Roll of Practising Barristers in such a way that it will be robust and enforceable under the Act.

4.47 Key Recommendations relating to information/data sharing

Section 35- Order to prohibit contravention of the Act

- 4.48 Section 35 of the Act provides the Authority with the power to make an application to the High Court for an order prohibiting “a legal practitioner or any other person” from contravening any provision of the Act, the Solicitors Acts 1954 to 2015 or any regulations made under those Acts.
- 4.49 Two amendments to this section are recommended in this report. The second recommendation can be found at Recommendation 17 below.
- 4.50 The first recommendation for amendment to section 35 relates to circumstances where during a financial investigation of a firm, the Law Society becomes aware of a contravention of the Solicitors Acts 1954 to 2015 by a solicitor, which would come under the investigative remit of the LSRA. The current legislative framework does not provide a legal mechanism by which this information could be provided to the Authority by the Law Society, to facilitate an application to the High Court under section 35. The LSRA, therefore agree with the recommendation of the Law Society, Law Society Recommendation 46, that express data sharing provisions should be included in the Act to allow the Law Society to supply any data that relates to a contravention or likely contravention of the Solicitors Acts that is obtained during a financial investigation.

Recommendation 8:

It is recommended that the necessary data sharing provisions be incorporated into the Act to provide for the Law Society to supply the LSRA with any information obtained during the course of a financial investigation that relates to a contravention or likely contravention of the Solicitors Acts.

Part 3 Inspections- Legal Practitioners

- 4.51 Part 3 of the Act outlines the power of the Authority to carry out inspections of any place that it is reasonably believed is being used to carry on the business of a legal practitioner, where records or documents relating to the business of a legal practitioner are being kept. Inspections can be carried out for purpose of an investigation into a complaint or to ensure compliance by a legal practitioner with any requirements imposed by the Act, any regulations made under the Act that are applicable to the practitioner or any code of practice issued by the Authority.
- 4.52 Section 39 includes that an inspector may require a legal practitioner to produce books, records or other documents as the Inspector may reasonably require for the purposes of his or her functions under the Act.
- 4.53 It is possible, therefore, that in the course of an inspection by the LSRA that information may be obtained from a legal practitioner that may be necessary for the Law Society to exercise its financial regulatory functions.
- 4.54 The LSRA agrees with the submission of the Law Society, Law Society Recommendation 47, that the LSRA should be provided with an explicit power to provide the Law Society with any information obtained during the course of an inspection that may be necessary for the Society to exercise its remaining regulatory functions.

Recommendation 9:

It is recommended that the LSRA is provided with the necessary power to provide the Law Society with any information obtained during the course of an inspection under Part 3 of the Act that the Law Society may require to exercise its regulatory functions.

Section 107 Partners in multi-disciplinary practice

- 4.55 Section 107(4) of the Act provides a list of persons who are prohibited from being a partner in a multi-disciplinary practice.
- This includes a person who is an unqualified person as defined by section 107(9), a person who, having been a qualified barrister, is disbarred (other than voluntarily disbarment with a view to becoming a solicitor), a person who has been convicted on indictment of an offence, a person who is an undischarged bankrupt in this or another jurisdiction etc.
- 4.56 The Act does not contain specific information provisions that would allow the LSRA to request this information from any of the relevant agencies or organisations e.g. the Law Society, An Garda Síochána, the Honorable Society of King's Inns.

- 4.57 The Law Society in their submission to the LSRA recommended, at Law Society recommendation 75, that appropriate data sharing provisions be included in the Act to allow the Law Society to share data with the Authority as to whether a person is an unqualified person for the purpose of section 107(4) of the Act. The LSRA agree with this recommendation.

Recommendation 10:

It is recommended that appropriate provisions are included in the Act to allow the LSRA to request and receive the information required to enforce section 107(4).

Section 58 on admissibility of complaints

- 4.58 Section 58 of the Act deals with the admissibility of complaints. Under section 58(4) the LSRA shall determine a complaint in respect of a solicitor to be inadmissible where it is satisfied that the act or omission to which the complaint relates is the same or substantially the same as that which was the subject matter of a complaint that was previously determined under the Solicitors Acts by the High Court, or the Law Society or any of its Committees or Tribunals.
- 4.59 Section 58(4)(b) also requires the LSRA to determine that a complaint in respect of a solicitor to be inadmissible where the act or omission to which the complaint relates is the same or substantially the same as that which was the subject of civil proceedings or criminal proceedings in respect of which a final determination of the issues has been made by the court in favour of the solicitor concerned.
- 4.60 Section 58(5) requires the LSRA to determine a complaint in respect of a barrister to be inadmissible where it is satisfied that the act or omission to which the complaint relates is the same or substantially the same as that which was the subject matter of a complaint which was previously determined by the Barristers' Professional Conduct Tribunal or the Honorable Society of King's Inns. A similar provision to that at 58(4)(b) also exists for barristers under section 58(5)(b).
- 4.61 The Act, however, does not contain any specific provisions to facilitate or permit the sharing of information that would allow the LSRA to ascertain whether any complaint against a solicitor or barrister had previously been determined under the respective regimes or had been the subject of civil and criminal proceedings that were determined in favour of the solicitor or barrister.
- 4.62 It is recommended that the necessary provisions relating to information sharing are included in the Act. This recommendation, as it relates to solicitors was included in the Law Society submission under recommendation 53.

Recommendation 11:

It is recommended that the necessary provisions relating to information sharing be provided in the Act to allow the LSRA to access historic complaints data in relation to complaints that have already been determined in respect of both solicitors and barristers and further to allow access to records of civil and criminal proceedings that have been determined in relation to solicitors and barristers.

Section 59 request to Law Society

- 4.63 Section 59(1) of the Act allows the Authority to request the Law Society to carry out an investigation under the Solicitors Acts into any matter that is relevant to the complaint. Section 59(2) similarly allows the Complaints Committee or the Legal Practitioners Disciplinary Tribunal to request the Law Society to carry out an investigation under the Solicitors Acts into any matter that is relevant to the consideration of a complaint under Part 6.
- 4.64 The Act does not contain provision for the sharing of information by the Authority, the Complaints Committee or the Legal Practitioners Disciplinary Tribunal, which might provide the basis for such a referral.
- 4.65 It is recommended therefore that the Act be amended to include the necessary data sharing provisions. The Law Society in their submission made a similar recommendation at recommendation 54.

Recommendation 12:

It is recommended that section 59 be amended to include the necessary information sharing provisions to allow the Authority, the Complaints Committee and the Legal Practitioners Disciplinary Tribunal to provide the Law Society with any information necessary to allow them to conduct any requested investigation.

- 4.66 The 2015 Act predates the introduction in May 2018 of the General Data Protection Regulations. The LSRA in particular refers to the principle that personal data should be processed lawfully, fairly and in a transparent manner and collected for specified, explicit and legitimate purposes. The LSRA recommend that the Act be reviewed and the necessary amendments made to ensure that the LSRA can comply with the requirements of GDPR.

Recommendation 13:

The LSRA recommend that the Act be reviewed and the necessary amendments made to ensure that the LSRA can comply with the requirements of GDPR.

It should be noted that the Law Society have included in their submissions recommendations for the consideration of other information sharing provisions that may be required. Specifically, Law Society recommendations 45, 86, 89, 91, 92, 93, 98 and 106 should be considered in the context of ensuring that the necessary data sharing provisions are in place.

4.67 Other Substantive Recommendations

Section 2 Interpretation and Construction

- 4.68 Section 2 should provide for a definition of a registered European lawyer. In making this recommendation, the LSRA concurs with Law Society Recommendation 43 made in their submission to the public consultation.

Recommendation 14:

It is recommended that a definition of ‘registered European lawyer’ is included in section 2 of the Act.

4.69 The LSRA agrees with the recommendation made by the Law Society, Law Society Recommendation 42, that there is a need for a definition of ‘solicitor’ in section 2 to distinguish between ‘practising solicitor’ and ‘solicitor’.

4.70 Section 2 of the Act defines a ‘practising solicitor’ as *“a person who has been admitted as a solicitor, whose name is on the roll of solicitors, who provides legal services and who-*

(a) is, by reason of section 56 of the Solicitors’ (Amendment) Act 1994, required to hold a practising certificate, or

(b) is, by reason of that section, exempted from the requirement to hold a practising certificate”

4.71 The definition of ‘solicitor’ is set out in section 3 of the 1954 Act, as substituted by section 3(1)(a) of the 1994 Act, which states that a solicitor, *“means a person who has been admitted as a solicitor and whose name is on the roll; and a reference to a solicitor includes a reference to a firm of solicitors unless the context otherwise requires and includes a former solicitor or a deceased solicitor unless the context otherwise requires.”*

Recommendation 15:

It is recommended that section 2 of the Act is expanded to insert the definition of a solicitor as set out in section 3 of the 1994 Act in order to set out the distinction between a ‘solicitor’ and a ‘practising solicitor’.

Section 23 Powers of Authority in relation to professional codes

4.72 Section 23(1) permits the Authority having reviewed a professional code to issue a notice directing a professional body to amend the code where it is of the opinion that the professional code operates or is likely to hinder a legal practitioner in complying with his or her obligations under this Act, the professional code is frustrating or is likely to frustrate an objective specified in subsection (1) or (4) of section 13 or the amendment of the professional code is otherwise necessary in order to maintain or improve standards in the provision of a legal service.

4.73 Section 23(6) outlines the requirements on a professional body to provide professional codes to the Authority.

4.74 Section 2 of the Act defines a professional code as follows,

“any code of conduct, code of practice, rule, regulation, practice note, guideline or other code, including any part thereof, relating to the provision of legal services by its members-

(a) that has been adopted by or on behalf of a professional body, or

(b) to which members of a professional body, as a condition of their membership of that body are otherwise subject.”

- 4.75 Section 23 as it is currently drafted leaves the test as to whether a code of conduct, code of practice, rule, regulation, practice note or other code relates to the provision of legal services by its members with the relevant professional bodies. This means that the professional bodies can decide which of their professional codes should be provided to the Authority for their review.
- 4.76 Section 23 also does not provide the LSRA with a mechanism to compel professional bodies to provide to the Authority any professional code that has been issued or for an enforcement mechanism should they refuse to comply.

Recommendation 16:

That section 23 be amended to provide the LSRA with a mechanism to compel professional bodies to provide to the Authority any professional code that has been issued and with an enforcement mechanism should they refuse to comply. Section 23 should also clarify that the test as to whether a professional code relates to the provision of legal services should rest with the LSRA.

Section 35 Order to prohibit contravention of the Act

- 4.77 This is the second recommendation for amendment to section 35. Section 35 allows the LSRA to apply to the High Court in instances where a legal practitioner or any other person has contravened or is likely to contravene any provisions of the 2015 Act, the Solicitors Acts 1954-2015 or regulations made under those Acts.
- 4.78 Legal practitioner is defined under the Act as *“a person who is a practising solicitor or a practising barrister and a reference to a solicitor includes a reference to a firm of solicitors.”* Section 2(2) further clarifies that a reference to a legal practitioner shall be construed as including references to a person who formerly practised as a solicitor or as a barrister.
- 4.79 Section 35 does not allow for such an application to be made where the contravention or likely contravention of the relevant Acts or regulations is made by a professional body, a legal partnership, a limited liability partnership or a multi-disciplinary practice.

Recommendation 17:

It is recommended that section 35 be expanded to allow for applications in respect of a professional body, legal partnership, limited liability partnership or multi-disciplinary practice.

Section 42 requirement to provide name and address to Inspector

- 4.80 Section 42(2) of the Act provides that where an inspector believes, upon reasonable grounds that a person has committed an offence under Part 3, he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

- 4.81 However, the Act is silent as to the consequences flowing from the refusal of any person to provide their name or address. It is recommended that it should be an offence to fail to comply with the requirement to provide your name and address under section 42.

Recommendation 18:

It is recommended that a new provision should be inserted in section 42 to make it an offence for any person to fail to comply with a request from an inspector to provide his/her name and/or home address.

Suggested wording:

“42(2)(a) A person commits an offence if he or she refused to comply with or provides false or misleading information in response to a requirement made of him or her by an inspector under subsection (2).”

- 4.82 Section 43 of the Act provides for the preparation of a report by an Inspector appointed under the Act after they have carried out an inspection to ensure compliance by a legal practitioner with the Act, regulations of a code of practice or in circumstances where the LSRA is investigating an Act or omission of a legal practitioner where no complaint has been received.
- 4.83 The Act is silent on the requirement of an Inspector to prepare a report following an inspection under section 38(a) where the inspector is directed by the Authority to carry out an inspection for the purposes of an investigation of any complaint made or deemed to be made under the Act.
- 4.84 The LSRA agree with the recommendation of the Law Society, Law Society recommendation 48, that section 43(1) should be amended to require the preparation of a report following an inspection for the purposes of an investigation of a complaint. Under section 44 any report or interim report prepared under section 43 and any information or documents obtained in the course of an inspection may be admitted in evidence in any proceedings in respect of a legal practitioner under Part 6 and any investigation, inquiry or proceedings under the Solicitors Acts.

Recommendation 19:

It is recommended that section 43(1) of the Act is amended to insert the requirement for the preparation of a report by an inspector of any inspection which relates to paragraph (a) of section 38 i.e. an inspection for the purpose of an investigation of any complaint made or deemed to be made under the Act.

Part 4 Holding of Clients’ Moneys by Legal Practitioners

- 4.85 Section 45 prohibits all legal practitioners other than solicitors from holding moneys of clients.
- 4.86 Part 8 of the Act allows for the formation of legal partnerships.
- 4.87 Section 2 of the Act defines a legal partnership as follows,
- “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.”*

- 4.88 The provisions of the Partnership Act 1890 establish that every partner is an agent of the firm and his other partners for the purpose of the business of the partnership, that an act or instrument relating to the business of the firm done or executed in the firm name by any authorised person is binding on the firm and all the partners and that every partner is liable jointly with the other partners.
- 4.89 The prohibition under section 45 of barristers holding client moneys also prohibits barristers in legal partnerships from holding client moneys. The Authority has received the advices of Senior Counsel to the effect that the prohibition is on the individual and not on the partnership generally. Senior Counsel has advised that it would be possible to operate a partnership between solicitors and barristers that satisfies the requirements of the Act and in particular section 45(1). However, effective internal controls would be necessary in the partnership. It is recommended that the position of legal partnerships holding client moneys be clarified and the internal controls specifically addressed by way of legislative amendment.

Recommendation 20:

It is recommended that the issue of legal partnerships holding client monies be clarified and the internal controls required specifically addressed by way of legislative amendment.

Section 50 Misconduct by legal practitioners

- 4.90 Section 50 of the Act provides a definition of acts or omissions by legal practitioners that may be considered as constituting misconduct.
- 4.91 Section 50(1)(j) refers to an act or omission which “*consists of an arrestable offence.*” Section 50(3) states that “*arrestable offence*” has the same meaning that it has in the Criminal Law Act, 1997.
- 4.92 In their submission to the review of the operation of the 2015 Act, the Council of the Bar of Ireland query whether the language of section 50(1)(j) is clear and precise where it refers to the “*commission*” of such an offence.
- 4.93 The Council states as follows, “*The operation of the presumption of innocence in such circumstances is unclear where the requirement is to report the “commission” of such an offence even though it may be denied or where the allegation in question is bare in its terms. For instance, if a bare assertion of “fraud” is made does that constitute an allegation involving the commission of an arrestable offence under the Criminal Justice (Theft and Fraud Offences) Act, 2001 such that it must be investigated by the Authority?*”
- 4.94 The Council further submits that clarity is required as to the interaction of this subsection with the criminal justice system in that it is not clear, whether the Authority should investigate such complaints parallel to or instead of the relevant State agency i.e. An Garda Síochána. The Council submit, and the LSRA concurs, that this requires clarification.

Recommendation 21:

It is recommended that the terms of subsection 50(1)(j) be amended so as to ensure that the definition of misconduct by legal practitioners in relation to acts or omissions that

consist of the commission of an arrestable offence is clear and unambiguous and the remit of the LSRA to investigate such an allegation is clearly defined.

Section 52 Referral of complaints

- 4.95 As per the Law Society submission, at paragraph 7.22, section 14C of the 1994 Act, as inserted by section 42 of the Civil Law (Miscellaneous Provisions) Act 2008, provides for circumstances where the Registrar of the Law Society may make a complaint in relation to the contravention of the Solicitors Acts or any regulation made under the Acts or any conduct by a solicitor tending to bring the solicitors' profession into disrepute.
- 4.96 Section 52(2) of the Act requires the Law Society to refer any complaint made by clients of solicitors or persons acting on behalf of such a client to the Authority, in relation to an act or omission to which section 51 relates, for inadequate professional services or excessive fees, or to which section 52 relates for misconduct.
- 4.97 The Law Society submit, and the LSRA concur, that it would be in the spirit of the complaints system under Part 6 to have any complaint by the Registrar referred to the Authority. It is recommended that section 52(2) of the Act be amended to facilitate the referral of complaints to the Authority under section 14C of the 1994 Act.

Recommendation 22:

It is recommended that section 52(2) of the Act is amended to insert a further provision for the referral of complaints to the Authority by the registrar under section 14C of the 1994 Act.

Sections 60 and 64 resolution of complaints

- 4.98 Section 60(1), section 61(1) and section 64(1) require that the LSRA invite the complainant and the legal practitioner to make efforts to resolve matters subject of a complaint of provision of inadequate legal services, excessive costs and misconduct respectively.
- 4.99 It is the view of the LSRA that there will be occasions where inviting the complainant and the legal practitioner to make efforts to resolve matters subject of a complaint will be inappropriate. This could be because the subject matter of the complaint is such that resolution between the parties is highly unlikely, that the subject matter of the complaint raises a public protection concern or that it is clear from the submissions already made by the complainant or legal practitioner that every avenue for resolution has been exhausted.
- 4.100 The mandatory requirement on the LSRA to invite the parties to attempt to resolve the issues has the potential to cause unnecessary delay and to potentially undermine the confidence of the public and the legal profession in the complaints process.
- 4.101 It is recommended that the discretion whether to invite the complainant and the legal practitioner to make efforts to resolve matters subject of a complaint should sit with the LSRA.

Recommendation 23:

It is recommended that the word 'shall' in sections 60(1), 61(1) and 64(1) be replaced by the word 'may' to allow the LSRA a discretion as to the circumstances in which the complainant and the legal practitioner will be invited to make efforts to resolve a complaint.

Section 68 Authority to refer complaints

- 4.102 Section 68 of the Act is titled *“Authority to refer complaints relating to misconduct to Complaints Committee”*.
- 4.103 Section 68 states, *“The Authority shall refer a complaint under section 51(2) to the Complaints Committee where the client and the legal practitioner concerned do not succeed in resolving a matter in accordance with section 64.”*
- 4.104 The section as drafted raises a number of issues.
- 4.105 It appears that the section could provide legal practitioners with an incentive to resolve complaints of inadequate service so as to avoid a potential misconduct issue from being scrutinised by the Complaints Committee and potentially referred to the Legal Practitioners Disciplinary Tribunal.
- 4.106 Further section 64(2) allows the Authority to continue with its consideration or investigation of the complaint notwithstanding the agreement of the parties to make efforts to resolve the matter. The continued investigation would be pointless if the LSRA was prohibited from referring the matter to the Complaints Committee in circumstances where a resolution was reached.
- 4.107 Finally, the reference in section 68 to “client” should read “complainant” as per section 64(1) as you do not have to be the client of a legal practitioner to make a complaint of misconduct under section 51(2).
- 4.108 A similar recommendation was made by the Law Society in recommendation 55 of their submission to the Authority.

Recommendation 24:

It is recommended that section 68 of the Act is clarified to ensure that all misconduct complaints, including those which have been successfully resolved under section 64 are to be referred to the Complaints Committee.

Sections 79 – 90 The Legal Practitioners Disciplinary Tribunal

- 4.109 Section 79(1) of the Act provides that the Legal Practitioners Disciplinary Tribunal may make regulations consistent with this Act regulating the making of applications to the Disciplinary Tribunal. Under 79(2)(b) the regulations may make provision for the parties, other than the Authority, the complainant and the legal practitioner concerned who may make submissions to the Disciplinary Tribunal.

- 4.110 In their submission at recommendation 58 the Law Society recommended, that the Law Society be included in section 79(2)(b) as a party that may automatically make submissions to the Legal Practitioners Disciplinary Tribunal. This, it is submitted, is in keeping with the rest of Part 6 and in particular with section 77(b) of the Act which permits the Law Society to make an application to the Legal Practitioners Disciplinary Tribunal under subsection (6) or (7)(c) of section 14A of the Solicitors (Amendment) Act 1994.

Recommendation 25:

It is recommended that section 79(2)(b) of the Act be amended to include reference to the Law Society as one of the parties who may make submissions to the Legal Practitioners Disciplinary Tribunal in cases where they have made an application in accordance with section 77(b) of the Act.

- 4.111 Section 79(4) of the Act states that the *“Disciplinary Tribunal may consider and determine an application to it under this Part on the basis of affidavits and supporting documentation and records where the legal practitioner, and the Authority consent.”*
- 4.112 The Law Society, in its submission at Law Society Recommendation 59, propose that, where the Law Society is a party to an application to the Disciplinary Tribunal, reference should also be made to it as a party that may also consent or not to the determination of the application on the basis of affidavits and supporting documentation.

Recommendation 26:

It is recommended that section 79(4) of the Act is amended to make reference to the Law Society as a party who may also consent or not to an application made in accordance with section 77(b) of the Act being determined on the basis of affidavits and supporting documentation.

- 4.113 The Law Society at recommendation 61 of its submission makes the point that it is necessary to clarify in Part 6 of the Act that there are two ways in which the Legal Practitioners Disciplinary Tribunal may reach a determination i.e. based on written evidence as permitted by section 79(4) and on the holding of an oral inquiry in accordance with section 81.
- 4.114 This is because in the drafting of Part 6 the only reference to a determination made by the Disciplinary Tribunal appears to relate solely to a determination following an oral inquiry.

Recommendation 27:

It is recommended that the Act is amended to clarify that determinations can be made by the Disciplinary Tribunal following the holding of an oral inquiry pursuant to section 81 or the consideration of an application pursuant to section 79(4).

- 4.115 The Law Society at recommendation 62 of its submission to the LSRA, highlight that section 82(1)(k) provides that the Legal Practitioners Disciplinary Tribunal may direct that a specified condition be imposed on a practising solicitor’s practising certificate.

- 4.116 As the regulation of practising certificates remains with the Law Society it is suggested that section 82(1)(k) should refer to a direction to the Law Society to impose the specified condition on the solicitor's practising certificate.

Recommendation 28:

It is recommended that section 82(1)(k) of the Act be amended to clarify that a direction from the Legal Practitioner's Disciplinary Tribunal to impose a specified condition on a solicitor's practising certificate should be made to the Law Society.

Suggested wording:

"(k) where the legal practitioner is a solicitor, a direction to the Society that a specified condition be imposed on his or her practising certificate."

- 4.117 Section 85(7)(d) of the Act provides for the power of the High Court to suspend a legal practitioner for a specified period and subject to appropriate terms and conditions following a finding of misconduct.
- 4.118 In its submission the Law Society recommend that in circumstances where the Law Society is not a party to the application before the Legal Practitioners Disciplinary Tribunal provision be made for the Authority to inform the Law Society of any such suspension to ensure that the Society's records, including the public facing Roll of Solicitors, are kept up to date.

Recommendation 29:

It is recommended that section 85(7)(d) be amended to require the Authority to notify the Law Society where a solicitor is suspended from practice as a legal practitioner and subject to such terms and conditions as the Court considers appropriate through an application to the High Court by the Authority.

- 4.119 The Law Society in its submission point out that whilst section 10 of the Solicitors Act 1960, as amended by the 1994 Act, allows a solicitor who has been struck off the Roll of Solicitors to apply to the High Court for restoration to the Roll, no such corresponding provision exists in the 2015 Act for solicitors struck off the Roll of Solicitors under section 85(7)(f).
- 4.120 As the Law Society have indicated this would mean that a solicitor who is struck off the Roll of Solicitors by the High Court through a recommendation of the Solicitors Disciplinary Tribunal would have a right to apply to the High Court for restoration but where a solicitor is struck off the Roll under the Act, no such recourse would be available.

Recommendation 30:

It is recommended that provision be made in the Act to allow for a solicitor to apply to the High Court for restoration to the Roll of Solicitors.

- 4.121 In similar terms to recommendation 29 above, the Law Society submit that 85(7)(f) be amended to require the Authority to inform the Law Society in circumstances where a solicitor is struck off the Roll of Solicitors by an order of the High Court.
- 4.122 Similar provisions exist under section 85(7)(e) for informing the Chief Justice and the Honorable Society of King's Inns where a similar sanction has been imposed on a barrister.

Recommendation 31:

It is recommended that section 85(7)(f) be amended to require the Authority to notify the Law Society where a solicitor is struck off the Roll of Solicitors through an application made to the High Court.

- 4.123 The Honorable Society of King's Inns also recommend that section 85 be amended to include explicitly what is implicitly required by the definition of "qualified barrister" i.e. the automatic removal from the Society's roll of qualified barristers of persons struck off the Roll of Practising Barristers.

Recommendation 32:

It is recommended that a new section 85(10) be inserted with the following suggested wording:

"Where the Court makes an order under subsection 7(e) directing the Authority to strike the name of a person who is a barrister off the roll of practising barristers, that person shall thereupon stand disbarred and be removed from the Register of Members maintained by the Honorable Society of King's Inns."

- 4.124 Section 87 allows for the right of appeal to the Court of Appeal of an order by the High Court by the Authority or the legal practitioner concerned. This does not provide for the possibility of the Law Society appealing to the High Court in cases where it is a party to applications before the Legal Practitioners Disciplinary Tribunal.
- 4.125 This relates to recommendation 68 made by the Law Society in their submission to the LSRA.

Recommendation 33:

It is recommended that section 87 be amended to allow for an appeal to the Court of Appeal to be made by the Law Society in circumstances where the Law Society is a party to applications before the Legal Practitioners Disciplinary Tribunal that result in orders made by the High Court.

- 4.126 Section 90 allows the Authority to apply to the High Court for an enforcement order in respect of a direction of the Authority under section 60(6) or 61(6), a determination of a Review Committee under section 62(5), a direction of a Divisional Committee under section 71(1)(a) or an order of the Disciplinary Tribunal under section 82(1).
- 4.127 It is submitted by the Law Society, at recommendation 69 of its submission, and accepted by the LSRA that there are circumstances under the Act whereby the Law Society may wish to seek enforcement of an order of the Disciplinary Tribunal in accordance with section 90(4)(d).

Recommendation 34:

It is recommended that section 90 of the Act be amended to include the Law Society as a party who may bring an enforcement application in respect of orders made by the Legal Practitioners Disciplinary Tribunal.

Section 114 Power of Authority to specify measures

- 4.128 Section 114(4)(a)(iii) of the Act refers to inviting a multi-disciplinary practice or the managing legal practitioner to make observations on a “finding or proposal, or both”. It is submitted that the word “finding” is an error and it should instead refer to a “belief”.
- 4.129 This amendment is in keeping with other parts of section 114 and with section 127(2)(c) where the word belief is used in a similar context in relation to limited liability partnerships. Further, the word “finding” suggest that the Authority have made a determination in the matter.

Recommendation 35:

It is recommended that section 114(4)(a)(iii) be amended to replace the word “finding” with the words “belief of the Authority.”

Section 115 Application to the High Court

- 4.130 Section 115(1)(a) of the Act, allows the Authority to make an enforcement application to the High Court in respect of a direction issued to a multi-disciplinary practice or managing legal practitioner pursuant to section 114.
- 4.131 No provision exists to provide for the power of the High Court to make an order sought under section 115(1)(a).
- 4.132 This recommendation reflects recommendation 78 of the Law Society in their submission to the LSRA.

Recommendation 36:

It is recommended that section 115 of the Act be amended to provide for a statutory power to the High Court to grant, or refuse to grant, an order under section 115(1)(a).

- 4.133 Section 115(6) of the Act provides a right of appeal to the Court of Appeal against an order of the High Court made under section 115. The section states, “*The Authority or legal practitioner concerned may appeal to the Court of Appeal against an order of the High Court ...*”
- 4.134 All other sections relating to this process as outlined in the Act refer to the multi-disciplinary practice and/or the managing legal practitioner.
- 4.135 As per recommendation 79 of the Law Society submission, it is recommended that section 115(6) is amended to reflect the correct parties to the appeal.

Recommendation 37:

It is recommended that section 115(6) be amended to refer to the multi-disciplinary practice and/or the managing legal practitioner.

Section 121 Review of the Operation of the Act in relation to LLPs

- 4.136 Section 121 provides at section 121(1) for a review of the operation of the Act insofar as it relates to legal partnerships and at section 121(2) for a review of the operation of the Act insofar as it relates to multi-disciplinary practices.
- 4.137 There is no equivalent specific provision for the review of the operation of the Act insofar as it relates to limited liability partnerships. It is suggested that such a review would be consistent with the objectives of the Authority under section 13(4) in particular 13(4)(c) protecting and promoting the interests of consumers relating to the provision of legal services and 13(4)(e) encouraging an independent, strong and effective legal profession.

Recommendation 38:

It is recommended that the Act be amended to include specific provision for the review of Part 8, Chapter 3 as it relates to limited liability partnerships.

Section 135 Variation of entry on the Roll of Practising Barristers

- 4.138 Section 135 of the Act provides for the circumstances in which the Authority may remove a barrister's name from the Roll of Practising Barristers. However, section 135 omits to make reference to section 92(5)(c). Under section 92(5)(c) the High Court may make an order directing that a barrister's name be removed from the Roll in circumstances where the Authority has determined that misconduct on part of a barrister has occurred, following the receipt of notification and a report from the Honorable Society of the Kings Inns.

This recommendation reflects recommendation 81 of the Law Society submission.

Recommendation 39:

It is recommended that section 135(1) of the Act be amended to capture the further circumstance under section 92(5)(c) in which the High Court may direct the removal of a barrister's name from the Roll of Practising Barristers.

Section 136 Prohibition on Unqualified Person

- 4.139 The LSRA is concerned that the European Communities (Lawyers' Establishment) Regulations 2003 (S.I. No. 723 of 2003), the European Communities (Freedom to Provide Services)(Lawyers) Regulations (S.I. No. 58 of 1979) and the European Union (Recognition of Professional Qualifications) Regulations 2017 (S.I. No. 8 of 2017) may not have been given full consideration in the drafting of part 9 in relation to the Roll of Practising Barristers.
- 4.140 Consideration should be given as to whether the Council of the Bar of Ireland should remain the 'competent authority' under the Establishment Regulations to establish and maintain a register of persons who have successfully applied to it for establishment as a barrister in light of the responsibilities of the LSRA in relation to the Roll of Practising Barristers.

- 4.141 In relation to the Freedom to Provide Services Regulation, it would appear that an anomaly exists in the Act in relation to inadvertent criminalisation of ‘visiting lawyers’ who are established in another EU member state and who are granted the right to provide legal services in the State under their home professional title. Whereas such barristers are required to comply with Irish rules of professional conduct while providing legal services in the State, visiting barristers who are pursuing “*activities relating to the representation of a client in legal proceedings or before public authorities...shall not be required to be...registered with a professional organisation in the state*” (regulation 5(1)). As matters stand, such lawyers are not recognised in the Act as being “qualified barristers” under section 2, exempt from the requirement to enrol on the Roll of Practising Barristers under Part 9 or exempt from prosecution under section 136 when he or she exercises his or her entitlement under the Regulations to provide legal services in the State.
- 4.142 A similar anomaly may also exist in relation to those persons who have become established as lawyers in the State following the recognition of their qualifications under the Professional Qualification Regulations. Whereas in practice, most if not all of these persons will have been called to the Bar, and thereby separately captured by the definition, It may be necessary to expand the definition of “qualified barrister” to ensure that the activity of such persons is not inadvertently criminalised.

Recommendation 40:

It is recommended that the European Communities (Lawyers’ Establishment) Regulations 2003 (S.I. No. 723 of 2003), the European Communities (Freedom to Provide Services)(Lawyers) Regulations (S.I. No. 58 of 1979) and the European Union (Recognition of Professional Qualifications) Regulations 2017 (S.I. No. 8 of 2017) are reviewed in line with the provisions of the 2015 Act to ensure that there are no instances of conflict and that the LSRA is properly empowered to fulfil its objectives under section 136 in relation to all relevant legal practitioners.

Section 212 Prohibition on Unqualified Persona

- 4.143 Section 212 of the 2015 Act states that a barrister whose name is entered on to the Roll of Practising Barristers may take up paid employment and as part of that employment, provide legal services to his or her employer, including by appearing on behalf of that employer in a court, tribunal or forum for arbitration.
- 4.144 Section 212(2) states that a professional body shall not, through its professional codes or otherwise, prevent or restrict a barrister who is a member of that body from working with, or otherwise doing business with, barristers providing legal services in accordance with subsection (1). Section 212(3) clarifies that this includes part-time employment.
- 4.145 It is the view of the LSRA that this section is silent on some key issues that require clarification. These would include whether a solicitor is required to brief a barrister who is representing their employers in a court, tribunal or forum for arbitration and whether a barrister is permitted to provide legal services to his or her employer where their employer acts in representation of third parties.

Recommendation 41:

It is recommended that section 212 be amended to provide clarity as to how it will operate in practice.

Part 10 Legal Costs

- 4.146 As is set out in Part 2 of this report, part 10 of the Act is not directly relevant to the LSRA as it is primarily concerned with the establishment of the Office of the Legal Costs Adjudicator.
- 4.147 The LSRA may, however, have a role in investigating complaints in relation to non-compliance with the requirements of section 150 which requires legal practitioners to provide a notice disclosing the legal costs that will be incurred in relation to a matter or if not reasonably practicable to do so, setting out the basis on which the legal costs are to be calculated.
- 4.148 Several organisations and an individual made submissions in relation to part 10 of the Act and these are summarised here.
- 4.149 Bob Lawlor, in his submission to the LSRA complained of *“the total lack of transparency on solicitor’s fees in Ireland”* which may be remedied by the provisions of Part 10 of the Act.
- 4.150 The Council of the Bar of Ireland in their submission stated that Part 10 of the Act *“sets out an improved structure for the manner in which legal costs will be adjudicated through the Office of the Legal Costs Adjudicator.”* The Council state that it continues to lend its full support to this enhanced mechanism to address legal costs, which it states, *“will benefit both those who obtain legal services in the State and the legal practitioners concerned.”*
- 4.151 The Council states that there is growing frustration with the slow pace of the implementation of Part 10 of the Act and ask that the LSRA highlight in this report that the commencement of Part 10 should occur in as expeditious a manner as is possible.
- 4.152 The Council considers that, *“the appropriate resources, both in terms of legal cost adjudicators and support staff, needed to be provided so that the commencement of Part 10 of the Act results in a more efficient and expeditious resolution of legal cost disputes into the future.”*
- 4.153 Finally, the Council states that delays in the taxation process are a frequent complaint by lawyers, result in uncertainty for both clients and lawyers and do nothing to assist the development of the market for legal services in the State.
- 4.154 In their submission to the LSRA, the Competition and Consumer Protection Commission (CCPC) welcomes the establishment of the Legal Costs Adjudicator and express the hope that it will provide a source of downward pressure on legal costs.
- 4.155 The CCPC expresses a concern that schedule 1 of the Act which sets out the Principles Relating to Legal Costs involves a number of overlapping factors which are likely to be used as a basis for justifying increases in legal costs rather than providing a basis for reducing the cost of legal services in Ireland.

- 4.156 The CCPC states that reference to overlapping factors such as “complexity”, “difficulty”, “novelty” and “specialised knowledge” and to factors that do not relate to the nature or the quality of the service provided such as “the importance of the matter to the client” and “the value of the property” are likely to result in higher rather than lower legal costs. The CCPC advocate that schedule 1 should be amended and reference made to the work actually and appropriately done.
- 4.157 The CCPC also states that notwithstanding its concerns in regard to schedule 1, that the Office of the Legal Costs Adjudicator has the potential to apply downward pressure on costs and also to provide a valuable source of information in regard to costs.
- 4.158 ISME states that it believes the LSRA should seek the establishment of a full schedule of costs for Circuit Court proceedings, similar to that set out in S.I. 17 of 2014 for the District Court. This was also echoed by the Alliance for Insurance Reform, which asked that the LSRA have a direct role in the control of legal costs for personal injury cases in the Circuit Court and High Court using the District Court model.
- 4.159 The Legal Costs Unit of the State Claims Agency made a submission to the review of the 2015 Act, which wholly related to the provisions of Part 10 (Legal Costs). The submission covered four matters: time costs, proportionality, section 5 of the Courts Act 1988 and HC 71 Payments on Account and is set out at para 3.138 above.

4.160 Technical and Drafting Recommendations

Recommendation 42:	
A number of technical drafting anomalies and errors have come to light in the course of the Review and the following amendments to the Act are recommended to rectify these matters:	
n)	It is recommended that the subsections of section 18 be renumbered.
o)	It is recommended that section 19(3) of the Act be amended to replace the reference to the “ <i>Competition Authority</i> ” with a reference to the “ <i>Competition and Consumer Protection Commission</i> .”
p)	Section 43(3) should be amended and the reference to section 42(1) be changed to a reference to section 50(1).
q)	It is recommended that section 52(3) of the Act be amended to replace the reference “ <i>to the Society</i> ” with “ <i>to the Authority</i> ”.
r)	It is recommended that subsections 80(3) and 80(4) are amended to insert the word “ <i>the</i> ” before the word “ <i>opinion</i> .”
s)	It is recommended that section 83(2) be amended to refer to a determination made by the Legal Practitioners Disciplinary Tribunal under section 81(8) of the Act.
t)	It is recommended that section 85(8) be amended to refer to an order made under subsection (7).
u)	It is recommended that section 92(5) be amended to replace the reference from ‘subsection’ to ‘section’.
v)	It is recommended that the heading of section 103 of the Act be amended to change the words “ <i>limited partnerships</i> ” to “ <i>legal partnerships</i> ”.

w)	It is recommended that the heading of section 104 and section 106 of the Act should be amended from “ <i>Notification of Authority</i> ” to “ <i>Notification to Authority</i> ”.
x)	It is recommended that for the purpose of clarifying persons who are considered unqualified to provide legal services as a practising barrister that the word “not” is removed from section 136(c).
y)	It is recommended that section 140(2)(e) is amended to insert the word ‘a’ before the word ‘ <i>determination</i> ’.
z)	It is recommended that section 140(7) of the Act be amended to correctly refer to a determination made by a Legal Costs Adjudicator under section 157(1) of the Act.

Amendments of Solicitors Acts 1954-2011

4.157 The Law Society in their submission to the Authority made 40 recommendations for amendments to the Solicitors Acts 1954-2011. The Authority has considered these recommendations and endorses recommendations 1-40 made by the Law Society. These are included at Appendix E.

PART 5: Conclusions and Next Steps

- 5.0 The LSRA has conducted a thorough and extensive public consultation on the operation of the 2015 Act as required under section 6. The LSRA has considered the submissions made as part of the public consultation and has also conducted its own analysis of the Act.
- 5.1 As per the requirements of section 6(2) the LSRA has made such recommendations for amendments to the 2015 Act, including specific recommendations in relation to Part 7 of the Act as it considers appropriate arising from its findings and conclusions. The LSRA has also made and endorsed recommendations for amendments to the Solicitors Acts 1954 to 2015 as appropriate.
- 5.2 The recommendations vary in their seriousness. Some of the amendments relate to minor drafting errors within the Act. Other recommendations, however, are fundamental to the efficient operation of the legislation and the ability of the LSRA to discharge its obligations under the Act and to fulfil its statutory objectives and functions.
- 5.3 To that end the LSRA is of the view that the recommendations for statutory amendments relating to the levy on the legal professions, the Roll of Practising Barristers and those relating to information/data sharing to be of the highest priority.

Legal Services Regulatory Authority
March 2019



Legal Services Regulatory Authority

Invitation by the Legal Services Regulatory Authority for Submissions

The Legal Services Regulatory Authority (LSRA) invites submissions as part of a public consultation prior to a report to the Minister for Justice and Equality on the operation of the Legal Services Regulation Act, 2015.

The Legal Services Regulatory Authority was established on 1 October 2016 and is responsible for the regulation of the legal profession and ensuring that standards in legal services are maintained and improved.

Under section 6 of the Legal Services Regulation Act, 2015 the Authority is obliged to commence a review of the operation of the Act within 18 months of the establishment date and to make a report of its findings and conclusions, within 12 months, to each House of the Oireachtas, including such recommendations, if any, to the Minister resulting from that review as it considers appropriate.

Recommendations shall include such recommendations, if any, for amendments to be made to the Act, to the Solicitors Acts 1954 to 2015 or to any instrument made under those Acts as the Authority considers appropriate arising from its findings and conclusions.

The Authority commenced its review on 16 February 2018 and intends, subject to resourcing, to report on its findings and conclusions to the Houses of the Oireachtas before the end of 2018.

As part of the review under section 6 of the 2015 Act, the Authority is required to consult with the Competition and Consumer Protection Commission, the Law Society, the Bar Council and the Honorable Society of Kings Inns. The Authority may also consult with such other persons, as the Authority considers appropriate.

The Authority now invites written submissions from members of the public, public representatives, members of the legal profession and any other interested party in relation to the operation of the Legal Services Regulation Act, 2015.

Scope of the Consultation

The Authority seeks submissions in respect of the general operation of the Legal Services Regulation Act, 2015.

The Authority seeks submissions as to whether it should recommend for the consideration of the Minister any amendments to the 2015 Act.

This includes any recommendations for the consideration of the Minister of any amendments to Part 7 of the 2015 Act, which is entitled, *“Imposition of Levy on Professional Bodies and Certain Barristers to cover expenses of Authority and Disciplinary Tribunal”*.

The Authority seeks submissions as to whether it should recommend for the consideration of the Minister any amendments to the Solicitors Acts 1954 to 2015 or any instrument under those Acts.

Respondents may wish to comment on any other issues in relation to the operation of the Act including the objectives of the Authority under section 13(4) of the Act, which are:

- a) protecting and promoting the public interest,
- b) supporting the proper and effective administration of justice,
- c) protecting and promoting the interests of consumers relating to the provision of legal services,
- d) promoting competition in the provision of legal services in the State,
- e) encouraging an independent, strong and effective legal profession, and
- f) promoting and maintaining adherence to the professional principles of independence and integrity, acting in the client’s best interests, compliance with duties owed to the court and confidentiality.

It would be helpful for respondents to set out the reasons for the views expressed, and to provide any available evidence that they consider to be relevant.

Respondents are asked to indicate on whose behalf they are responding, for example as a member of the public, a public representative, an individual or a firm within the solicitor or barrister profession, a client or a body representing collective interest 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 Friday 27 July 2018.

Submissions may be sent:

- By e-mail to S6Consultation@lsra.ie or
- By post to
Section 6 Consultation
Legal Services Regulatory Authority
P.O. Box 12906
Dublin 2

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 and in accordance with the Data Protection Acts, 1998 and 2003 and the General Data Protection Regulation (GDPR) when commenced.


Publication of Submissions

The Authority intends where appropriate to publish any submissions received by it on its website and otherwise. Please note that a decision on any such publication may occur without prior consultation with respondents to this consultation notice. It is in the interest 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
8 June 2018

Appendix B: Notices Published in National Media

The Examiner



Legal Services Regulatory Authority

INVITATION BY THE LEGAL SERVICES REGULATORY AUTHORITY FOR SUBMISSIONS
Notice for the National Media

Public Notice
- Legal Services Regulation Act, 2015

The Legal Services Regulatory Authority is seeking submissions as part of a statutory review on the operation of the Legal Services Regulation Act, 2015.

Submissions received will inform consideration of possible recommendations to be made to the Minister for amendments to the Legal Services Regulation Act, 2015 or to the Solicitors Acts 1954 to 2015.

Submissions must be received by 5.00 p.m. on **27 July 2018**.


For further details please go to www.lsra.ie

Legal Services Regulatory Authority

14 June 2018

The Irish Times

LEGAL NOTICES



Legal Services Regulatory Authority

INVITATION BY THE LEGAL SERVICES REGULATORY AUTHORITY FOR SUBMISSIONS
Notice for the National Media

Public Notice
- Legal Services Regulation Act, 2015

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Submissions must be received by 5.00 p.m. on **27 July 2018**.

For further details please go to www.lsra.ie


Legal Services Regulatory Authority

14 June 2018

The Irish Independent

Irish Independent
Thursday, June 14, 2018

PUBLIC NOTICES



Legal Services Regulatory Authority

INVITATION BY THE LEGAL SERVICES REGULATORY AUTHORITY FOR SUBMISSIONS
Notice for the National Media

Public Notice
- Legal Services Regulation Act, 2015

The Legal Services Regulatory Authority is seeking submissions as part of a statutory review on the operation of the Legal Services Regulation Act, 2015

Submissions received will inform consideration of possible recommendations to be made to the Minister for amendments to the Legal Services Regulation Act, 2015 or to the Solicitors Acts 1954 to 2015.

Submissions must be received by 5.00 p.m. on **27 July 2018**.

For further details please go to www.lsra.ie

Legal Services Regulatory Authority

Appendix C: List of Bodies to Which Notice was Circulated

1. The Law Society of Ireland
2. The Honorable Society of King's Inns
3. The Bar 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 Cost 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 the Taoiseach
14. Department of Education and Skills
15. Department of Housing, Planning and Local Government
16. Department of Finance
17. Department of Health
18. Department of Public Expenditure and Reform
19. Department of Justice and Equality
20. Department of Employment Affairs and Social Protection
21. Department of Transport, Tourism and Sport
22. Department of Business, Enterprise and Innovation
23. Department of Rural and Community Development
24. Department of Communications, Climate Action & Environment
25. Dublin City Council
26. The Courts Service
27. Association of Judges of Ireland
28. The Judges' Library
29. National Asset Management Agency
30. IDA Ireland
31. Enterprise Ireland
32. National Competitiveness Council
33. Irish Congress of Trade Unions
34. IBEC
35. Irish Farmers' Association
36. Economic and Social Research Institute
37. Think-tank for Action on Social Change
38. PublicPolicy.ie
39. Nevin Economic Research Institute
40. National University of Ireland, Galway

41. National University of Ireland, Maynooth
42. Trinity College Dublin
43. University of Limerick
44. University College Dublin
45. Dublin City University
46. University College Cork
47. Griffith College Dublin
48. Dublin Institute of Technology
49. Waterford Institute of Technology
50. Athlone Institute of Technology
51. Letterkenny Institute of Technology
52. Institute of Technology Carlow
53. Limerick Institute of Technology
54. Cork Institute of Technology
55. Dundalk Institute of Technology
56. Galway-Mayo Institute of Technology
57. Institute of Technology Sligo
58. Institute of Technology Blanchardstown
59. Institute of Technology Tralee
60. Institute of Technology Tallaght
61. Queens University Belfast
62. Ulster University
63. Dublin Business School
64. City Colleges
65. Scottish Law Reform Commission
66. Jersey Law Reform Commission
67. Dublin Solicitors Bar Association
68. Carlow Bar Association
69. Cavan Bar Association
70. Clare Bar Association
71. Cork Bar Association
72. West Cork Bar Association
73. Donegal Bar Association
74. Drogheda Bar Association
75. Galway Bar Association
76. Inishowen Bar Association
77. Kerry Bar Association
78. Kildare Bar Association
79. Kilkenny Bar Association
80. Laois Bar Association
81. Leitrim Bar Association

82. Limerick Bar Association
83. Longford Bar Association
84. Louth Bar Association
85. Mayo Bar Association
86. Meath Bar Association
87. Midland Bar Association
88. Roscommon Bar Association
89. Sligo Bar Association
90. Tipperary Bar Association
91. Waterford Bar Association
92. Wexford Bar Association
93. Wicklow Bar Association
94. Chartered Accountants Regulatory Board
95. Chartered Accountants of Ireland
96. Engineers Ireland
97. Society of Chartered Surveyors Ireland
98. Irish Management Institute
99. Institute of Professional Auctioneers and Valuers
100. Association of Chartered Certified Accountants
101. Irish Institute of Legal Executives
102. Society of Actuaries Ireland
103. Employment Law Association of Ireland
104. Professional Regulatory & Disciplinary Bar Association
105. Employment Bar Association
106. Construction Bar Association of Ireland
107. Commercial Litigation Association of Ireland
108. Health and Safety Lawyers' Association of Ireland
109. Family Lawyers Association of Ireland
110. Irish Environmental Law Association
111. Irish Women Lawyers Association
112. Irish Mental Health Lawyers Association
113. Irish Criminal Bar Association
114. Irish Association of Law Teachers
115. Personal Injuries Assessment Board
116. Quality and Qualifications Ireland
117. Medical Council
118. Law Society of Northern Ireland
119. Law Society of England and Wales
120. Solicitors Regulation Authority
121. Bar Library of Northern Ireland
122. Bar Library of England and Wales

123. Bar Standards Board
124. Property Services Regulatory Authority
125. Solicitors Disciplinary Tribunal
126. Public Interest Law Association
127. Irish Funds Industry Association
128. Irish Tax Institute
129. Residential Tenancies Board
130. An Garda Síochána
131. Hibernian Training Courses
132. International Dispute Resolution Centre
133. The Mediators' Institute of Ireland
134. Friarylaw ADR
135. Health Service Executive
136. An Bord Pleanála
137. Central Bank of Ireland
138. EU Commission in Ireland
139. Institute of Professional Legal Studies
140. Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
141. CCBE Training Committee
142. State Claims Agency
143. Association of Chief Executives of State Agencies
144. An Chomhairle um Oideachas Gaeltachta & Gaelscolaíochta
145. Education and Training Boards Ireland
146. Transparency Legal Advice Centre
147. Phoenix Project
148. Mercy Law Resource Centre
149. Law Centre for Children and Young People
150. Irish Refugee Council
151. Northside Community Law & Mediation
152. Limerick Social Service Centre
153. The Solicitors Group
154. CMG Events
155. La Touche Training
156. Irish Centre for Human Rights
157. Independent Colleges
158. Immigration Council of Ireland
159. National Disability Authority
160. The Teaching Council
161. Tusla – Child and Family Agency
162. SOLAS
163. Dublin Rape Crisis Centre

164. Ballymun Communiy Law Centre
165. Irish Rule of Law International
166. Irish Council for Civil Liberties
167. Law Reform Commission
168. Irish SME Association
169. Step Ireland, Society of Trust and Estate Practitioners
170. Faculty of Notaries Public in Ireland
171. Disability Federation of Ireland
172. Free Legal Advice Centres

Appendix D: List of Respondents to Public Consultation

- 1. Garret Simons S.C.**
- 2. Tom Lynch**
- 3. Bob Lawlor**
- 4. The Association of Judges of Ireland**
- 5. The Council of the Bar of Ireland**
- 6. Irish Institute of Legal Executives**
- 7. The Competition and Consumer Protection Commission**
- 8. The Honorable Society of King's Inns**
- 9. Alliance for Insurance Reform**
- 10. Chief State Solicitor's Office**
- 11. The Bar of Northern Ireland**
- 12. Irish Small Medium Enterprise Association**
- 13. Liam M. Nolan B.L.**
- 14. The Law Society of Ireland**
- 15. State Claims Agency**
- 16. Dublin Solicitors' Bar Association**
- 17. Derek Binchy**
- 18. UCD Legal Office**

Appendix E: Law Society Complete List of Recommended Legislative Amendments

The recommendations of the Law Society are as follows:

Law Society Recommendation 1 – Limitation on use of title ‘solicitor’

It is the recommendation of the Society that use of the title ‘solicitor’ be limited under primary legislation to “solicitor entitled to practise” as set out under section 54 of the 1954 Act (as substituted) by way of amendment of the definition of ‘solicitor’ under Section 3 of the 1954 Act (as substituted).

Law Society Recommendation 2 – Apprenticeships in new business models

It is the recommendation of the Society that section 29 of the 1954 Act (as substituted and amended) be expanded to allow an apprentice solicitor to undertake their indentures under a practising solicitor in a legal partnership or multi-disciplinary practice.

Law Society Recommendation 3 – Repealing section 41(c) of the 1954 Act

It is the recommendation of the Society that the provisions of section 41(c) of the 1954 Act, as substituted, are repealed at the time the regulations under section 217 of the 2015 Act are commenced to prevent two statutory provisions being in place regulating the movement between the two professions at the same time.

Law Society Recommendation 4 – Repealing section 43 of the 1954 Act

It is the recommendation of the Society that the provisions of section 43 of the 1954 Act, as substituted, are repealed at the time the regulations under section 217 of the 2015 Act are commenced to prevent two statutory provisions being in place regulating the movement between the two professions at the same time.

Law Society Recommendation 5 – Backdating practising certificates

It is the recommendation of the Society that section 180 of the 2015 Act be amended to confer the power to backdate practising certificates to the Society instead of the Authority, and that the Society be granted the power to charge a fee in excess of €350 per practising certificate backdated.

Recommendation 6 – Breaches of regulations as circumstances which the Society may consider when issuing a practising certificate

It is the recommendation of the Society that section 49(1)(u), as substituted and amended, be further amended to provide for the insertion of circumstances where there is a breach by a solicitor of any regulations made under the Solicitors Acts 1954 to 2015. Similar amendments should be made to section 59 of the 1994 Act (as amended).

Law Society Recommendation 7 – Power to impose practising certificate conditions for multiple years

It is the recommendation of the Society that appropriate amendments are made to section 49 of the 1954 Act (as substituted and amended) and section 59 of the 1994 Act to grant the Society the power to impose practising certificate conditions for multiple years, rather than just the year in question.

Law Society Recommendation 8 – Limitation period for an application to appeal the refusal of the Society to grant permission for the employment of an unqualified person

It is the recommendation of the Society that section 60(3) of the 1954 Act (as substituted) be amended to provide for a period of 21 days within which an aggrieved solicitor may make an application to appeal the refusal of the Society to grant permission for the employment of the solicitor as an unqualified person.

Law Society Recommendation 9 – Direction to see a registered medical practitioner where concerns arise for the physical or mental health of a solicitor

It is the recommendation of the Society that section 61 of the 1954 Act (as substituted) be amended to include new subsections (6) and (7) to grant the Society the power to direct a solicitor to be examined by a registered medical practitioner where there are concerns regarding the physical or mental health of that solicitor. Suggested wording could be as follows:

“(6) The Society, where it has reason to consider that a solicitor may not be fit to carry on the practice of a solicitor having regard to the state of his physical or mental health, may, for the purposes of subsection (2) of this section, direct that the solicitor be examined by a registered medical practitioner nominated by the Society.

(7) In subsection (8), ‘registered medical practitioner’ means a person who is a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 2007.”

Law Society Recommendation 10 – Fee sharing provisions

It is the recommendation of the Society that appropriate amendments be made to section 62 of the 1954 Act to provide for the sharing of fees between solicitors and non-solicitors, where non-solicitors are partners in legal partnerships or multi-disciplinary practices with a solicitor, to allow the correct functioning of legal partnerships and multi-disciplinary practices.

Law Society Recommendation 11 – Statutory requirement for principals of solicitors’ firms to ensure accuracy of details

It is the recommendation of the Society that a statutory obligation be introduced in primary legislation for principals in solicitors’ practices to ensure that all firm records including title, contact details, number and names of solicitors in the firm are accurate and up to date. Any changes, including solicitors commencing or leaving the practice or any solicitors going on maternity / paternity leave, should be provided to the Society within 14 days, including the relevant dates.

Law Society Recommendation 12 – Inclusion of new File C in regulations under section 66 of the 1994 Act and section 82 of the 1954 Act

It is the recommendation of the Society that regulations should be made under section 66 of the 1994 Act and section 82 of the 1954 Act in order to reflect the amendment made to section 17 of the 1960 Act, where a new File C will be created. This will ensure that the Sixth Schedule now makes reference to applications, and fees that may be charged in respect of such applications, in respect of File C.

Law Society Recommendation 13 – Removal of felony and misdemeanour terminology

It is the recommendation of the Society that outdated references under section 3 of the 1960 Act (as amended by section 24 of the 1994 Act) to felonies and misdemeanours are amended to reflect the correct terminology.

Law Society Recommendation 14 – Solicitors Disciplinary Tribunal recommendation to the High Court to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment be made to section 7(3)(c)(iv)(II) of the 1960 Act (as substituted and amended) to allow a recommendation of the Solicitors Disciplinary Tribunal to the High Court to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal.

Law Society Recommendation 15 – Order of Solicitors Disciplinary Tribunal to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment be made to section 7(9)(d) of the 1960 Act (as substituted and amended) to allow the Solicitors Disciplinary Tribunal, when making an order, to take into account any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal.

Law Society Recommendation 16 – Reference to both taxation of costs and adjudication of costs in a finding by the Solicitors Disciplinary Tribunal

It is the recommendation of the Society that an amendment be made to section 7(9)(d) of the 1960 Act (as substituted and amended) following a finding of misconduct made by the Solicitors Disciplinary Tribunal directing the whole or part of the costs of the Society or any other person appearing before them to be paid by the solicitor, to insert a reference to reflect costs being taxed by a Taxing Master of the High Court or adjudicated upon by the Chief Legal Costs Adjudicator.

Law Society Recommendation 17 – High Court granted power to take into account findings of misconduct by Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when censuring a solicitor

It is the recommendation of the Society that section 8(1)(a)(i)(V) of the 1960 Act (as substituted and amended), be further amended to allow the High Court, when making an order under that section, to have regard to findings of misconduct by both the Solicitors Disciplinary Tribunal and the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court and any other order made by the Court under the Solicitors Acts in respect of the solicitor.

Law Society Recommendation 18 – High Court granted power to take into account findings of misconduct by Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal when making ancillary orders

It is the recommendation of the Society that section 8(1)(c)(viii) of the 1960 Act (as substituted and amended) be further amended to allow the High Court, when making an order under that section, to have regard to findings of misconduct by both the Solicitors Disciplinary Tribunal and the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court and any other order made by the Court under the Solicitors Acts in respect of the solicitor.

Law Society Recommendation 19 – Submissions made by the Society to take into account findings of misconduct by the Solicitors Disciplinary Tribunal and Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment be made to section 8(1A)(b) of the 1960 Act (as substituted and amended) to provide for submissions made by the Society to the High Court in relation to the recommendations of the Solicitors Disciplinary Tribunal to include any findings of misconduct made by the Legal Practitioners Disciplinary Tribunal and not rescinded by the Court.

Law Society Recommendation 20 – Powers, rights and privileges of the High Court in applications for removal from the Roll of Solicitors

It is the recommendation of the Society that section 15 of the 1960 Act (as substituted and amended) be amended by inserting a new subsection (5) to provide for the powers, rights and privileges of the High Court to be vested in the Society for the purposes of applications for removal from the Roll of Solicitors. The new subsection could be worded as follows:

“(5) For the avoidance of doubt, references to the Disciplinary Tribunal in this section shall be construed as including references to the Society where the Society considers an application made to it under section 9 of this Act.”

Law Society Recommendation 21 – Removal from the Roll of Solicitors

It is the recommendation of the Society that an amendment be made to section 16 of the 1960 Act to replace any references to the Solicitors Disciplinary Tribunal with references to the Society to facilitate applications for removal from the Roll of Solicitors.

Law Society Recommendation 22 – Filing of High Court and Legal Practitioners Disciplinary Tribunal orders

It is the recommendation of the Society that section 190(a)(3) of the 2015 Act is not commenced and that a new subsection 1A is inserted into section 17(1) of the 1960 Act which could be worded as follows:

“1A. – A copy of any decision or order made by the High Court and any determination made by the Legal Practitioners Disciplinary Tribunal under Part 6 of the Legal Services Regulation Act 2015 in relation to a complaint under that Part in respect of a solicitor shall be filed by the Legal Practitioners Disciplinary Tribunal with the registrar.”

Law Society Recommendation 23 – Insertion of reference to the new File C

It is the recommendation of the Society that section 17(3) of the Act of 1960 (as amended) is further amended to include reference to the new File C which could be worded as follows:

“The registrar shall maintain separate files on which all orders made under this Act by the High Court or the Society or by the High Court or the Legal Practitioners Disciplinary Tribunal under Part 6 of the Legal Services Regulation Act 2015 shall be entered in the following manner –”

Law Society Recommendation 24 – Amended wording for section 17(3) of the 1960 Act

It is the recommendation of the Society that section 17(3) of the 1960 Act (as amended) is further amended to replace any references to the Disciplinary Committee with a reference to the Society for the purposes of applications made for removal from the Roll of Solicitors under section 9 of the 1960 Act.

Law Society Recommendation 25 – Amendment for the filing of orders in File B

It is the recommendation of the Society that section 17(3)(b) of the 1960 Act be amended to replace the references to the Solicitors Disciplinary Tribunal with references to the Society for the purposes of filing orders made under section 9 of the 1960 Act in File B which could be worded as follows:

“17(3)(b): on a file to be termed File B, there shall be entered any other order made under this Act by the High Court and any order made under section 9 of this Act by the Society or the High Court.”

Law Society Recommendation 26 – Findings of misconduct not precipitated by complaints

It is the recommendation of the Society that section 17(3)(c) of the 1960 Act, as amended by section 190 of the 2015 Act, be amended to delete the phrase *‘in relation to a complaint under that Part’* to allow the new File C to show a complete record of a solicitor’s disciplinary history rather than only findings relating to complaints.

Law Society Recommendation 27 – Reference to section 14B of the 1994 Act

It is the recommendation of the Society that section 2(2) of the 1994 Act (as amended and substituted) be amended to refer to any complaints made to the Society by the registrar under section 14C of the 1994 Act.

Law Society Recommendation 28 – Allowing for either the taxation of costs or adjudication of costs for complaints of an excessive bill of costs

It is the recommendation of the Society that an amendment be made to section 9(4) of the 1994 Act (as amended) to provide for a bill of costs that has subsequently been taxed or adjudicated upon to facilitate the changeover period from the Office of the Taxing Master to the Office of the Legal Costs Adjudicator.

Law Society Recommendation 29 – Amendment to section 10A of the 1994 Act regarding the obstruction of complaints

It is the recommendation of the Society that section 10A(1) of the 1994 Act (as inserted by section 13 of the 2002 Act) be amended by inserting a reference to complaints made to the Society before the date on which Part 6 of the 2015 Act comes into operation which could be worded as follows:

“10A. –(1) Where, in relation to a complaint made to the Society, made before the date on which Part 6 of the Legal Services Regulation Act 2015 comes into operation, alleging misconduct by a solicitor or a complaint under section 8(1) or 9(1) of this Act, it appears to the Society...”

Law Society Recommendation 30 – Amendment to section 12 of the 1994 Act in relation to complaints made to the Society alleging misconduct

It is the recommendation of the Society that an amendment to section 12(b) and (c) of the 1994 Act (as substituted) by referring to complaints made to the Society before the date on which Part 6 of the 2015 Act comes into operation which could be worded as follows:

“(b) Paragraph (a) (other than subparagraph (i)) of this subsection shall apply in relation to a complaint made to the Society, made before the date on which Part 6 of the Legal Services Regulation Act 2015 comes into operation, alleging misconduct by a solicitor...”

“(c) Where, in relation to a complaint made to the Society, made before the date on which Part 6 of the Legal Services Regulation Act 2015 comes into operation, alleging misconduct by a solicitor or a complaint under section 8(1) or 9(1) of this Act...”

Law Society Recommendation 31 – Provisions relating to the charging of excessive fees

It is the recommendation of the Society that section 14B of the 1994 Act be repealed at a time when section 184 of the 2015 Act is commenced with the proviso that section 14B may be relied on for the purposes of dealing with an instance of misconduct for the purposes of section 91(3) of the 2015 Act which could be worded as follows:

“Section 14B shall stand repealed on such day as section 184 of the Legal Services Regulation Act 2015 is commenced, save insofar as it may be relied upon as an instance of misconduct for the purposes of section 91(3) of the Legal Services Regulation Act 2015.”

Law Society Recommendation 32 – Insertion of a new section 14D into the 1994 Act

It is the recommendation of the Society that section 199 of the 2015 Act be amended to provide for the insertion of a section 14D into the 1994 Act, rather than the insertion of section 14C, which already exists.

Law Society Recommendation 33 – Requirement for solicitors in new business structures to have a practising certificate in force when providing legal services

It is the recommendation of the Society that section 56(2) of the 1994 Act is amended to provide for the requirement of solicitors practising in legal partnerships, limited liability partnerships or multi-disciplinary practices to have a valid practising certificate in force when providing legal services which could be worded as follows:

“(2) Without prejudice to section 29(5) (as substituted by this Act) of the Principal Act, a solicitor shall be deemed to practise as a solicitor if they engage in the provision of legal services whether as a sole practitioner or as a partner in a solicitor’s practice or as an employee of any solicitor or of any other person or body or as a solicitor practising within any of the practice models provided for in Part 8 of the Legal Services Regulation Act 2015, or as a solicitor in the full-time service of the State within the meaning of section 54(3) (as substituted by this Act) of the Principal Act.”

Law Society Recommendation 34 - Removal of practising certificate exemption for solicitors in the full-time service of the State and conveyancing-only solicitors

It is the recommendation of the Society that the exemption from the requirement to hold a practising certificate under section 56(3) of the Solicitors (Amendment) Act 1994 for solicitors in the full-time service of the State and solicitors employed full-time to provide conveyancing services to non-solicitors be removed, but that such solicitors be exempt from paying practising certificate fees.

Law Society Recommendation 35 – Suspension of practising certificates

It is the recommendation of the Society that an amendment be made to section 58 of the 1994 Act to provide for further instances where conditions may be imposed on a solicitor's practising certificate by virtue of the provisions of the 2015 Act which could be worded as follows:

"...or with any conditions specified in a direction relating to a practising certificate under section 59 or directed pursuant to section 14A(3)(b) of this Act or with any conditions imposed on a practising certificate by virtue of a direction given pursuant to section 71(6)(a) or 82(1)(k) of the Legal Services Regulation Act 2015..."

Law Society Recommendation 36 – Restriction or suspension of practising certificate where certificate previously issued under section 49 of the 1954 Act (as substituted and amended)

It is the recommendation of the Society that amendments be made to section 59 of the 1994 Act (as amended) to ensure that the Society is not estopped from imposing conditions under section 59 of the 1994 Act (as amended), or seeking the imposition of conditions or suspension under section 58 of the 1994 Act (as amended) before the Disciplinary Tribunal and/or High Court, where the Society has previously issued a practising certificate to that solicitor under section 49 of the 1954 Act (as substituted and amended), even where the Society was aware of circumstances listed under section 49 applying or potentially applying at the time of issue of the practising certificate.

Law Society Recommendation 37 – Expanding section 72 of the 1994 Act (as amended) to include the updated collective citation of the Solicitors Acts 1954 to 2015

It is the recommendation of the Society that section 72 of the 1994 Act be amended to update the collective citation for the Solicitors Acts 1954 to 2015 to incorporate any conditions issued on a solicitor's practising certificate under the 2015 Act.

Law Society Recommendation 38 – Extending the prohibition on advertising legal services

It is the recommendation of the Society that section 5 of the 2002 Act (as amended) be amended to replace the reference to *'a person who is not a solicitor'* with the broader reference of *'an unqualified person'*.

Law Society Recommendation 39 – Claims harvesting websites

It is the recommendation of the Society that section 5 of the 2002 Act (as amended) be amended to provide a stated definition of “specified service” such that a specified service is *“a service of a legal nature that could otherwise be provided by a solicitor, for or in expectation of a fee, gain or reward that is directly related to the provision of that service”*.

Law Society Recommendation 40 – References to Disciplinary Tribunal

It is the recommendation of the Society that section 19(6) of the 2002 Act (as amended) be amended to replace the word ‘them’ with ‘the Disciplinary Tribunal’ to give full effect to the intentions of section 208 of the 2015 Act.

Law Society Recommendation 41 – Referral to the Society of alleged misconduct by an apprentice solicitor

It is the recommendation of the Society that provisions be made for the Authority to refer to the Society any complaints made to it of alleged misconduct by an apprentice solicitor.

Law Society Recommendation 42 – Definition of ‘solicitor’

It is the recommendation of the Society that the definition of a solicitor as set out in section 3 of the 1994 Act is inserted into section 2 of the 2015 Act in order to set out the distinction between a ‘solicitor’ and a ‘practising solicitor’.

Law Society Recommendation 43 – Definition of ‘registered European lawyer’

It is the recommendation of the Society that a definition of ‘registered European lawyer’ is inserted into section 2 of the 2015 Act as follows:

“A person who has been admitted as a lawyer in another member state of the European Union and has been entered on the Register of Registered European Lawyers who is entitled to practise law in the State under his or her home legal qualification in respect of whom a registration certificate is in force.”

Law Society Recommendation 44 – Reference to Competition Authority

It is the recommendation of the Society that section 19(3) of the 2015 Act is amended to replace the reference to the “Competition Authority” with a reference to the “Competition and Consumer Protection Commission”.

Law Society Recommendation 45 – Data in relation to the transfer of staff

It is the recommendation of the Society that appropriate data sharing provisions are put in place to allow the Society to share necessary data with the Authority for the purposes of transferring staff members who from the Society to the Authority.

Law Society Recommendation 46 – Data sharing to prevent contravention or likely contravention of the Solicitors Acts 1954 to 2015

It is the recommendation of the Society that the Society is provided with data sharing provisions to allow it to supply the Authority with any information obtained during the course of a financial investigation that relates to a contravention or likely contravention of the Solicitors Acts 1954 to 2015.

Law Society Recommendation 47 – Information obtained by inspectors during an inspection

It is the recommendation of the Society that the Authority is provided with the necessary power to provide the Society with any information obtained during the course of an inspection that may be necessary for the Society to exercise its remaining regulatory functions.

Law Society Recommendation 48 – Preparation of a report by an inspector on foot of a complaint made to the Authority

It is the recommendation of the Society that section 43(1) of the 2015 Act is amended to insert the requirement for the preparation of a report by an inspector for the purposes of section 44.

Law Society Recommendation 49 – Preparation of a report by an inspector as to whether they have found evidence of misconduct

It is the recommendation of the Society that section 43(3) of the 2015 Act is amended to refer to section 50(1) of the Act as this is the correct section that deals with misconduct.

Law Society Recommendation 50 – Referral of complaints against solicitors by the registrar

It is the recommendation of the Society that section 52(2) of the 2015 Act is amended to insert a further provision for the referral of complaints to the Authority by the registrar under section 14C of the 1994 Act.

Law Society Recommendation 51 – Replacing reference ‘to the Society’ with reference ‘to the Authority’

It is recommended that section 52(3) of the 2015 Act be amended to replace the reference ‘to the Society’ with the correct reference ‘to the Authority’.

Law Society Recommendation 52 – Charging fees for processing complaints

It is the recommendation of the Society that section 56 of the 2015 Act concerning the charging of fees for processing complaints is not commenced as this could cause unnecessary hardship on those with limited means and may prevent clients with legitimate complaints from putting these matters before the Authority.

Law Society Recommendation 53 – Admissibility of complaints to the Authority

It is the recommendation of the Society that the Society and the Solicitors Disciplinary Tribunal be provided with the necessary provisions to provide the Authority with historic complaints data pertaining to solicitors that have previously been determined in order to give effect to section 58 of the 2015 Act.

Law Society Recommendation 54 – Request by the Authority to the Society to carry out an investigation

It is the recommendation of the Society that necessary data sharing provisions are inserted into section 59 of the 2015 Act to allow the Authority, the Complaints Committee and the Legal Practitioners Disciplinary Tribunal to provide the Society with such necessary information in order to conduct any requested investigation.

Law Society Recommendation 55 – Clarification for section 68 of the 2015 Act

It is the recommendation of the Society that section 69 of the 2015 Act is amended to make the intentions of that section clear which could be worded as follows:

“The Authority shall refer a complaint under section 51(2) to the Complaints Committee and, where applicable, a complaint under section 51(2) where the client and the legal practitioner concerned do not succeed in resolving the matter in accordance with section 64 of this Act.”

Law Society Recommendation 56 – Financial sanctions by Divisional Committee not to cause undue hardship on legal practitioners

It is the recommendation of the Society that section 71(9) is amended to provide for sanctions of a financial nature issued under section 71(5)(c)(i) to have regard to the means of the legal practitioner concerned.

Law Society Recommendation 57 – Chairperson for divisions of the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that section 75(5) of the 2015 Act is amended to require the chairperson of a division of the Legal Practitioners Disciplinary Tribunal that hears a matter against a solicitor, to be a practising solicitor and the chairperson of a division that hears a matter against a barrister, to be a practising barrister as set out in section 75(1)(b) and (c) of the 2015 Act.

Law Society Recommendation 58 – Regulations relating to the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that an amendment should be made to section 79(2)(b) of the 2015 Act to make reference to the Society as one of the parties who may make submissions to the Legal Practitioners Disciplinary Tribunal.

Law Society Recommendation 59 – Determination of applications to the Legal Practitioners Disciplinary Tribunal on the basis of affidavits and supporting documentation

It is the recommendation of the Society that an amendment be made to section 79(4) of the 2015 Act to make reference to the Society as a party who may also consent, or not, to an application being determined on the basis of affidavits and supporting documentation.

Law Society Recommendation 60 – Amendment to section 80 of the 2015 Act

It is the recommendation of the Society that section 80(3) and (4) are amended to include the word *'the'* before the word *'opinion'*.

Law Society Recommendation 61 – Determinations by the Legal Practitioners Disciplinary Tribunal

It is the recommendation of the Society that a clarifying subsection be inserted into section 79 of the 2015 Act to clarify that determinations, whether they are made on the basis of affidavits and other supporting documentation or by way of oral evidence, constitute determinations for the purposes of Part 6 of the Act which could be worded as follows:

“For the avoidance of doubt, a reference to a determination made by the Disciplinary Tribunal pursuant to section 79(4) of this Act, or to the holding of an inquiry pursuant to section 81 of this Act, shall be construed as a reference to a determination made pursuant to that section, whether that determination has been made by the Disciplinary Tribunal following the holding of an oral inquiry pursuant to section 81 or the consideration of an application pursuant to section 79(4).”

Law Society Recommendation 62 – Direction to the Society to impose a specified condition on a solicitor’s practising certificate

It is the recommendation of the Society that an amendment is made to section 82(1)(k) of the 2015 Act clarifying that a direction by the Legal Practitioners Disciplinary Tribunal to impose a specified condition on a solicitor’s practising certificate should be made to the Society which could be worded as follows:

“(k) where the legal practitioner is a solicitor, a direction to the Society that a specified condition be imposed on his or her practising certificate.”

Law Society Recommendation 63 – Minor amendment to section 83(2) of the 2015 Act

It is the recommendation of the Society that an amendment is made to section 83(2) of the 2015 Act to refer to a determination made by the Legal Practitioners Disciplinary Tribunal under section 81(8) of the Act.

Law Society Recommendation 64 – Notification to be given by the Authority to the Society where a solicitor is suspended from practice

It is the recommendation of the Society that an amendment is made to section 85(7)(d) of the 2015 Act requiring the Authority to notify the Society where a solicitor is struck off the Roll of Solicitors through an application made to the High Court by the Authority which could be worded as follows:

“(d) that the legal practitioner be suspended from practice as a legal practitioner for a specified period and subject to such terms and conditions as the Court considers appropriate, and, where the legal practitioner is a solicitor and the Society is not a party to the application to the Disciplinary Tribunal, that the Society be notified of the fact.”

Law Society Recommendation 65 – Application for restoration to the Roll of Solicitors

It is the recommendation of the Society that appropriate provisions be made to the 2015 Act to allow for a solicitor who is struck off the Roll of Solicitors to make an application to the High Court for restoration to the Roll.

Law Society Recommendation 66 – Notification from the Authority to the Society where a solicitor is struck off the Roll of Solicitors

It is the recommendation of the Society that an amendment is made to section 85(7)(f) of the 2015 Act requiring the Authority to notify the Society where a solicitor is struck off the Roll of Solicitors through an application made to the High Court by the Authority which could be worded as follows:

“(f) where the legal practitioner is a solicitor, that the name of the solicitor be struck off the Roll of Solicitors and, where the Society is not a party to the application to the Disciplinary Tribunal, that the Society be notified of the fact.”

Law Society Recommendation 67 – Amendment to section 85(8) of the 2015 Act

It is the recommendation of the Society that section 85(8) of the 2015 Act is amended to refer to subsection (7), rather than subsection (6), where subsection (7) provides that the Court may, by order, direct the imposition of a number of sanctions.

Law Society Recommendation 68 – Right of the Society to appeal to the Court of Appeal

It is the recommendation of the Society that section 87 is amended to make reference to the Society in circumstances where the Society may equally be a party to applications before the Legal Practitioners Disciplinary Tribunal that result in orders made by the High Court.

Law Society Recommendation 69 – Enforcement applications to the High Court by the Society

It is the recommendation of the Society that section 90 of the 2015 Act be amended to include the Society as a party who may bring an enforcement application in respect of orders made by the Legal Practitioners Disciplinary Tribunal.

Law Society Recommendation 70 – Clarification of powers of the Authority

It is the recommendation of the Society that the powers made available to the Authority under section 94 of the 2015 Act are revised to ensure that the Authority may only exercise such powers conferred on the Society under the Solicitors Acts 1954 to 2015 in relation to the complaints and disciplinary functions under Part 6 of the 2015 Act.

Law Society Recommendation 71 – Information concerning the number of practising solicitors in a financial year to calculate the levy

It is the recommendation of the Society that appropriate data sharing provisions are put in place to allow the Society to provide the Authority with information concerning the number of solicitors holding practising certificates in the relevant financial year and information concerning the number of solicitors who practice in the full-time service of the State.

Law Society Recommendation 72 – Minor amendment to heading of section 103 of the 2015 Act

It is the recommendation of the Society that the heading of section 103 of the 2015 Act be amended to change the words "*limited partnerships*" to "*legal partnerships*".

Law Society Recommendation 73 – Minor amendment to heading of section 104 of the 2015 Act

It is the recommendation of the Society that the heading of section 104 of the 2015 Act be amended to change the words from “*Notification of Authority*” to “*Notification to Authority*”.

Law Society Recommendation 74 – Minor amendment to heading of section 106 of the 2015 Act

It is the recommendation of the Society that the heading of section 106 of the 2015 Act be amended to change the words from “*Notification of Authority*” to “*Notification to Authority*”.

Law Society Recommendation 75 – Society to be provided with power to advise the Authority if a person is an unqualified person

It is the recommendation of the Society that the Society be provided with necessary provisions to allow it to share data with the Authority for the purposes of advising the Authority whether a person is an unqualified person for the purposes of 107(4) of the 2015 Act.

Law Society Recommendation 76 – Notification to multi-disciplinary practice or managing legal practitioner

It is the recommendation of the Society that an amendment to section 114(4)(a)(iii) is made to replace the word ‘*finding*’ with the word ‘*belief*’.

Law Society Recommendation 77 – Replacing the word ‘*notice*’ with ‘*direction*’ under section 115 of the 2015 Act

It is the recommendation of the Society that section 115 of the Act is amended to replace any reference to the word ‘*notice*’ with the word ‘*direction*’ for clarity and to prevent ambiguity.

Law Society Recommendation 78 – Statutory power for the High Court to grant an order under section 115(1)(a) of the 2015 Act

It is the recommendation of the Society that section 115 of the 2015 Act be amended to provide for a statutory power to the High Court to grant, or to decline to grant, an order under section 115(1)(a).

Law Society Recommendation 79 – Section 115(6) of the 2015 Act should refer to the correct parties in an appeal

It is the recommendation of the Society that section 115(6) of the 2015 Act should refer to the right of appeal to the Court of Appeal against an order made under section 115 by the Authority, the multi-disciplinary practice and / or the managing legal practitioner.

Law Society Recommendation 80 – Publication of notice of suspension or revocation of an authorisation to provide legal services as a limited liability partnership

It is the recommendation of the Society that section 128(8) of the 2015 Act is amended to refer to the publication by the Authority of the suspension of an authorisation under subsection (4) and revocation of an authorisation under subsection (5).

Law Society Recommendation 81 – Power of the Authority to remove a barrister's name from the Roll of Practising Barristers

It is the recommendation of the Society that section 135(1) of the 2015 Act be amended to capture the further circumstance where the High Court may direct the removal of a barrister's name from the Roll of Practising Barristers under section 92(5)(c).

Law Society Recommendation 82 – Prohibition on an unqualified person providing legal services as a practising barrister

It is the recommendation of the Society that section 136(c) of the 2015 Act is amended to remove the word '*not*' for the purposes of clarifying persons who are considered unqualified to provide legal services as a practising barrister.

Law Society Recommendation 83 – Minor amendment to section 140(2)(e) of the 2015 Act

It is the recommendation of the Society that section 140(2)(e) of the 2015 Act is amended to insert the word '*a*' before the word '*determination*'.

Law Society Recommendation 84 – Minor amendment to section 140(7)(a) of the 2015 Act

It is the recommendation of the Society that section 140(7) of the 2015 Act be amended to correctly refer to a determination made by a Legal Costs Adjudicator under section 157(1) of the Act.

Law Society Recommendation 85 – Authority’s approval over regulations made by the Society

It is the recommendation of the Society that section 178 of the 2015 Act is not commenced in its current form. It is recommended that the Authority should have approval over all regulations made by the Society with the exception of matters in relation to the education, financial regulation, practising certificate or professional indemnity insurance functions of the Society.

Law Society Recommendation 86 – Data sharing of complaints and failure to comply with a notice issued by the Complaints Committee

It is the recommendation of the Society, for the purposes of the Society considering whether to refuse to issue a practising certificate or to issue a practising certificate subject to conditions under section 49 of the 1954 Act (as amended), that the Authority be granted data sharing provisions to provide the Society with information concerning the following:

- a) The failure of a solicitor to comply with a notice issued under section 70(6)(c) of the 2015 Act by the Complaints Committee;
- b) The nature and number of complaints made to the Authority against a solicitor in the preceding two years;
- c) Where a solicitor has failed to comply with a direction issued under section 71(1)(a) of the 2015 Act;
- d) Where a solicitor has contravened the Solicitors Acts 1954 to 2015;
- e) Where a solicitor has contravened the 2015 Act or any regulations made under that Act.

Law Society Recommendation 87 – Inclusion of failure to pay levies, contributions, awards, fines and costs under section 49 of the 1954 Act (as substituted and amended)

It is the recommendation of the Society that section 49 of the 1954 Act (as substituted and amended) be further amended to include failure by a solicitor to pay levies and contributions imposed by the Society or the Authority, and awards, fines and costs (following taxation) imposed by order of the Solicitors Disciplinary Tribunal, Legal Practitioners Disciplinary Tribunal and High Court, be included as one of the circumstances under which the Society may make a direction to restrict or refuse a practising certificate. Consequential amendments should also be made to section 59 of the 1994 Act (as amended).

Law Society Recommendation 88 – Substituting the new definition of misconduct under the 2015 Act

It is the recommendation of the Society that section 184 of the 2015 Act should substitute, rather than insert, the definition of misconduct under section 50 of the 2015 Act to prevent the repetition of offences under the Solicitors Acts 1954 to 2015.

Law Society Recommendation 89 – Publication of information on complaints

It is the recommendation of the Society that the Legal Practitioners Disciplinary Tribunal be provided with data sharing provisions to provide the Society with the necessary data for the Society to publish information on the number of complaints together with a description of the general nature of those complaints and the outcome of the investigation of those complaints by the Legal Practitioners Disciplinary Tribunal.

Law Society Recommendation 90 – Suspension of practising certificate in the event of criminal conviction or imprisonment

It is the recommendation of the Society that the Society be granted the power to apply to the High Court for an order suspending a solicitor's practising certificate in the event of that solicitor being convicted of an indictable offence and / or sentenced to a term of imprisonment.

Law Society Recommendation 91 – Sharing information from the Roll of Solicitors

It is the recommendation of the Society that data sharing provisions are in place to permit the Society to share necessary data from the Roll of Solicitors with the Authority to allow the Authority to process complaints and to prosecute allegations of misconduct against solicitors in the Legal Practitioners Disciplinary Tribunal.

Law Society Recommendation 92 – Provision of complaints information to assess financial risks

It is the recommendation of the Society that strong data sharing procedures are put in place permitting the Authority to share data relating to complaints made against solicitors which would allow the Society to continue to assess the risk profile of solicitors' firms for the purposes of its financial regulation functions and to continue to protect clients' money and the Society's Compensation Fund.

Law Society Recommendation 93 – Data sharing for identification of legal partnerships, limited liability partnerships and multi-disciplinary practices

It is the recommendation of the Society that the Authority be permitted to provide the Society with all identifier codes for legal partnerships, limited liability partnerships and multi-disciplinary practices that contain solicitors to ensure the two bodies use similar references when exercising their respective regulatory functions.

Law Society Recommendation 94 – Legal fees lawfully earned

It is the recommendation of the Society that a statutory defence of “adequate consideration” should be provided in respect of legal fees lawfully earned by solicitors in representing clients.

Law Society Recommendation 95 – Repeal of the Solicitors Remuneration Act 1881 and the Attorneys’ and Solicitors’ Act 1870

It is the recommendation of the Society that on the commencement of section 151 of the 2015 Act that the Solicitors Remuneration Act 1881 and the Attorneys’ and Solicitors’ Act 1870 be repealed in their entirety.

Law Society Recommendation 96 – Evidence of criminal conviction

It is the recommendation of the Society that both the Society and the Authority be given the statutory right to call for written evidence of criminal conviction of a solicitor or in the case of the Authority, a legal practitioner.

Law Society Recommendation 97 – Commencement and cessation in practice regulations

It is the recommendation of the Society that the Society be provided with the express power to make regulations for both the commencement and cessation of solicitors’ practices which should be provided for in primary legislation.

Law Society Recommendation 98 – Data sharing for the cessation of limited liability partnerships

It is the recommendation of the Society that the Authority be provided with data sharing procedures to ensure the Society is advised of any notified cessation of a limited liability partnership.

Law Society Recommendation 99 – Responsibility of firm principal(s) or partners regarding practising certificates

It is the recommendation of the Society that a statutory requirement be introduced for principals of solicitor firms to ensure that all solicitors in their firm have a valid practising certificate in force before, and throughout, provision of legal services by those solicitors. It should be professional misconduct for a principal of a solicitor firm to permit an unqualified person to practise as a solicitor in their firm.

Law Society Recommendation 100 – Professional indemnity insurance

It is the recommendation of the Society that the Society is enabled to share the professional indemnity insurance details of solicitors with the Authority for solicitors who commence practice in a legal partnership, limited liability partnership or multi-disciplinary practice.

Law Society Recommendation 101 – Prohibition on solicitors' firms providing legal services without a principal in place

It is the recommendation of the Society that solicitors' firms be prohibited from providing legal services, either reserved or unreserved, unless and until there is a solicitor principal in place or a practice manager appointed. The following wording is proposed:

- (a) *Every solicitor firm must have a solicitor or registered lawyer principal with a valid practising certificate or qualifying certificate in place in order to carry on a practice.*
- (b) *If a principal with a valid practising certificate or qualifying certificate is not in place, the firm must immediately cease practice until such time as a principal with a valid practising certificate or qualifying certificate is appointed.*

Law Society Recommendation 102 – Statutory definition of ‘principal’ of a solicitors’ firm

It is the recommendation of the Society that a statutory definition of ‘principal’ of a solicitors’ firm be put in place to ensure that solicitors’ practices do not provide legal services, either reserved or unreserved without a principal being in place.

“principal” means, with regard to a solicitor firm, :—

- (i) the sole practitioner of any solicitor firm which carries on or carried on business as a sole practitioner and includes a sole practitioner who employs or employed one (1) or more solicitors or registered lawyers; or*
- (ii) every partner of a firm being a solicitor or registered lawyer and every person held out as a partner of a firm that carries on or carried on business as a partnership*

with all principals required to be solicitors qualified to practise

Law Society Recommendation 103 – Statutory protection of the term ‘lawyer’

It is the recommendation of the Society that consideration be given to whether the term ‘lawyer’ should be subject to statutory protection in order to prevent persons who are not legal practitioners from misrepresenting themselves to members of the public as a person qualified to provide legal services as a lawyer.

Law Society Recommendation 104 – Use of digital recording in Disciplinary Tribunals

It is the recommendation of the Society that the Legal Practitioners Disciplinary Tribunal should use digital recording, transcripts should only be produced on request and the party calling for the transcript should be required to pay for same.

Law Society Recommendation 105 – Liability of solicitors and their estates for Society’s costs of practice closure exercises

It is the recommendation of the Society that amendments be introduced to allow the Society to recoup the costs of practice closure exercises by the Society from principal(s), partners or from their estate(s) where appropriate. Provisions may also be made to allow a principal of a closed firm to challenge or appeal a decision by the Society to become involved in a file distribution exercise including the right to put forward alternative proposals for the wind-down of the practice subject to the satisfaction of the Society.

Law Society Recommendation 106 – Further data sharing provisions

It is the recommendation of the Society that consideration is given in the future to further data sharing provisions, which are not dealt with in this submission, between the Authority and the Society to ensure both bodies are facilitated in exercising their respective regulatory functions.