



Legal Services Regulatory Authority

MINUTES FINAL

9th Meeting of Legal Services Regulatory Authority – Minutes (FINAL)

Location: RCSI (Sir Thomas Myles Room)

Date: 16 November, 2017

Time: 17:30 to 19:00

Agenda: Annex I

Attendees:

Authority Members	Executive and Secretariat	Others
David Barniville	Brian Doherty (CEO)	
Eileen Barrington	Ultan Ryan (Secretary)	
Angela Black		
Geraldine Clarke		
Joan Crawford		
Stephen Fitzpatrick		
Dermott Jewell		
James MacGuill		
Deirdre McHugh		
Don Thornhill		
Gerry Whyte		

Item 1

1. The Chairperson, on behalf of the Authority congratulated David Barniville on his nomination to the High Court.
2. Agenda Adopted.
3. Minutes approved.

4. Declaration of Interests. None arising. See also Item 2.

Item 2

1. The Executive presented a proposal document regarding Declarations of Interests. Executive proposed that in order to comply with the 2016 Code of Governance for State Bodies and with regard to a recommendation of the internal audit report, a process and policy was to be developed including annual disclosure of relevant interests for Members and senior management. The policy and procedure would be presented at the first Authority Meeting of 2018. Approved.

Item 3

1. Financial Report: Management Accounts for October 2017 were presented and approved. It was noted that budget line for 2018 will better reflect the apportioning of categories and values for that year based on the experience of 2017.

Item 4

1. Audit Report and the associated LSRA Executive action plan was noted and approved by the Authority.
2. The subject of funding models for the Authority was discussed in the context of advances from the Minister for Justice & Equality as provided for under Section 32 of the Act during start-up mode.

Item 5

1. Action Plan for Operational Implementation of Legal Partnerships

The Executive outlined the background to the decision by the Minister for Justice & Equality to proceed with commencement of Section 100.

2. Section 118 Report submitted 31 March 2017 had included references to LSRA legal advices sought in relation to the consequences of the triggering of Section 100 of the Act. LSRA legal advice outlined counsel's view that commencement of Section 100 in isolation would not allow a legal practitioner to provide legal services as part of a legal partnership. DJE had consulted with AG's Office in recent weeks and received advice contrary to that received by the LSRA. This had led to the Departmental decision to commence section 100 and section 104 of the Act. In addition to this commencement, the DJE indicated that it would commence a number of related sections on Legal Partnerships on a short phased basis. A document outlining the proposed schedule of commencements had been received from the Department and circulated to Authority members.

3. CEO has met with key stakeholders and further meetings are scheduled to discuss the requirements for introduction of Legal Partnerships. This will include the setting up of working groups, drawing on the expertise needed to identify regulatory requirements.
4. CEO has met with DPER in relation to staffing and workforce planning generally and has already flagged that dedicated external resources may be required to facilitate the LSRA in achieving objectives for implementation of Legal Partnerships, including drafting of necessary regulations. The Authority approved the Executive plans to put resources in place and to seek sanction from DPER to proceed with that plan.
5. The Authority noted the paper from the Executive regarding the commencement of section 100. The Authority also noted and approved the action plan for the implementation of Legal Partnerships that had been proposed by the Chief Executive and agreed that the CEO should proceed, insofar as this was possible, with the implementation of the draft programme.
6. However, the Members of the Authority were unanimous in expressing grave concern with regard to the feasibility of the implementation plan given the very tight timelines proposed and the limited resources available to the LSRA Executive. The quality of any resulting regulations and their impact on the market was a key concern for the Authority Members.
7. Members agreed that the implementation programme, and requirements set out in relevant sections of the Act raised external contingencies and dependencies over which the Authority has little or no control and which raised serious questions as to the feasibility of a safe and effective implementation and regulation of Legal Partnerships in such a short period of time. These included, but were not confined to, the statutory need for consultation with the professional bodies and the need to ensure that insurance products were available to meet the requirements of Sections 105 and 47 of the Legal Services Regulation Act¹. Having discussed the issue of insurance at length, Members were clear in their position that value for money in the design of appropriate insurance cover that would benefit both the provider and the consumer was critically important to avoid distortion. Members agreed that the necessary resources and time must be put into stakeholder consultations to ensure the design and delivery of an optimum policy of professional indemnity insurance for Legal Partnerships.
8. The Authority also noted and carefully considered the potential risk created by the commencement of Section 100 in the absence of the necessary robust regulatory framework for the protection and interests of consumers and the smooth operation of the market in legal services.

¹ Section 105 (LSR Act 2015): A legal partnership shall not provide legal services unless there is in force, at the time of the provision of such services, a policy of professional indemnity insurance which complies with regulations made under *section 47* and section 26 of the Act of 1994 (if applicable).

9. Members fully accepted and agreed with the statutory commitment in Section 100 of the Act to provide for Legal Partnerships. In that context, Members noted that the timetable for the commencement by the Minister of Section 100 was statutorily determined.
10. The Authority also noted a timeline for the implementation of Legal Partnerships prepared by the Department of Justice & Equality (Appendix A to the document under reference).
11. Aside from the commencement timetable for Sections 100 and 104 (which were statutorily determined), the Authority was concerned that the timelines outlined in that document did not respect the statutorily mandated principle of its independence in the performance of its functions and responsibilities detailed under Section 13 of the Legal Services Regulation Act². In particular, members were agreed that the timelines proposed did not appear to accord with provisions of Section 13(4) of the Act.
12. The Authority was further of the view that it would be impossible to continue to operate as an independent regulatory authority where the timetable for the progressive implementation of the Legal Services Regulation Act was being externally determined.
13. The Authority has engaged an independent consultant (Tom Boland) to determine a reasonable and manageable commencement schedule for its functions under the Act. This had been shared with the Minister for Justice and Equality on 20 October 2017. The Authority remains of the view expressed in the report by Tom Boland, that the order and pace of the commencement of the remaining provisions of the Act are dependent on the capacity and resources available to the LSRA, in terms of both staff and competencies as well as the time and resources of external stakeholders key to the achievement of the necessary regulatory provisions.

Decision of the Authority under Item 5

14. The Authority agreed that the Chair should write to the Minister for Justice and Equality informing him of the Authority's concerns and noting that the communication from the Department may have trespassed into timetabling and scheduling provisions that were in fact the independent prerogative of the Authority.
15. The Authority remains committed to the introduction of Legal Partnerships as soon as practicable and has directed the LSRA Executive to progress the implementation plan for Legal Partnerships having full regard to the difficulties and external dependencies that will arise and to develop in the first instance a realistic and achievable timetable for implementation.

² Section 13(3) of the 2015 Act states that *"the Authority shall be independent in the performance of its functions."*

David Barniville excused himself from the Meeting at this point.

Item 6

1. **Staffing Structure:** The Executive presented a short paper to the Authority and a draft organisational plan. The Authority approved the following actions arising:
 - a. Executive to engage a workforce planning expert to produce a detailed workforce plan for the LSRA to be used in engagement with Department of Public Expenditure & Reform.
 - b. Executive to proceed with short-term resource solutions for secondment of key staff.
 - c. Executive to formally commence engagement with Law Society and Bar of Ireland in respect of possible transition of staff in accordance with Section 26 of the Act.

Item 7

1. **Strategic Planning:**

CEO pointed out that the first Strategic Plan will effectively run until October 2019 after which a new 3-year Strategic Plan will be required. The first plan will effectively cover approximately 12 months of start-up and 6 months of operation.
2. Authority approved executive development of Strategic Plan based on a lean planning model for presentation at the first Authority meeting of 2018.

Item 8

1. **Code of Governance Compliance:** Action plan was approved subject to earlier prioritisation of requirements of the reserved functions of the Authority.

Item 9

1. **Meeting Dates for 2018.** Member to communicate with Secretary on this. Six dates scheduled for 2018.

Item 10

1. **CEO Report:**

CEO highlighted the following items for update:-

 - a. Executive met with OPW on 16 November 2017 to update position. OPW have sent through accommodation requirements template for completion by Executive as next step. Authority approved continued engagement with OPW.
 - b. The contract for Accounting Services is ending on 31 December 2017. The Authority has tendered through OGP framework for new contract and is working with OGP to evaluate responses received. It is anticipated that selection will be

completed by 24 November 2017. Authority approved completion of this process by the Executive.

- c. Executive flagged to Members that solutions for members' document management system for papers were being examined. Authority approved Executive to proceed with this plan.
- d. CEO flagged upcoming statutory deadlines, in particular in respect of admissions policies under s.33(1) and education and training under s.34(1)(a). Authority approved Executive to proceed with developing specifications for RFT under OGP Framework for the selection of service provider to progress these requirements.
- e. CEO flagged the key requirement for the LSRA to have a Communications Strategy in place and Authority approved Executive plan to engage with OGP on possible framework solutions to have communications services engaged. The Authority also approved Executive sourcing a provider for workshop for the Authority Members on communications.

Item 11

1. Closed Session

Item 12


1. AOB No items

Action Points – Meeting of 16 November, 2017

Agenda Item	Action
2.1	Authority approved development by Executive of Policy & Procedures on Declarations of Interests, including Annual Declaration to be presented at the first Authority Meeting of 2018.
3.1	Authority approved Executive to work with Accounting Services provider for completion of 2018 Budget Line.
4.1	Authority approved Executive to proceed with tasks as set out in Action Plan on Audit Report.
4.2	Authority approved Executive to proceed with application for drawdown of 2017 allocation (€1m) from Department of Justice & Equality.
5.14	Chairperson to write to Minister for Justice & Equality in respect of implementation of Legal Partnerships in line with the Decision of the Authority on the matter.
5.15	Authority approved Executive to progress the implementation plan for Legal Partnerships in line with the Decision of the Authority on the matter.
6.1	Authority approved Executive to: <ul style="list-style-type: none"> a. Engage workforce planning expert; b. Put in place short-term resource solution for secondment of key staff; c. Formally commence engagement with Law Society and Bar of Ireland in relation to transition of staff under Section 26 of the Act.
7.2	Authority approved Executive to develop Strategic Plan for presentation at first meeting of 2018.
8.1	Authority approved Code of Governance Compliance Action Plan subject to amendment by Executive in respect of reserved functions of the Authority.
9.1	Executive to finalise meeting dates for 2018

10.1.a	Authority approved Executive to continue engagement with OPW on long-term premises.
10.1.b	Authority approved Executive to complete evaluation and selection process for Accounting Services provider under OGP Framework tender.
10.1.c	Authority approved Executive to evaluate solutions for management of Authority Papers.
10.1.d	Authority approved Executive to proceed with procurement of research service provider, through OGP if feasible to meet statutory requirements under Sections 33(1) and 34(1)(a).
10.1.e	Authority approved Executive to engage with OGP in respect of procurement of Communications Strategy service provider and to examine possible solutions for dedicated workshop for Authority Members on Communications.

Final Minutes Signed

A handwritten signature in blue ink, appearing to read 'Ultan Ryan', written over a horizontal line.

Ultan Ryan, Secretary

Date: 15 February 2018

A handwritten signature in black ink, appearing to read 'Don Thornhill', written over a horizontal line.

Don Thornhill, Chairperson

Date: 15 February 2018