



# The City of London Law Society

4 College Hill  
London EC4R 2RB  
Tel: 020 7329 2173  
Fax: 020 7329 2190  
[www.citysolicitors.org.uk](http://www.citysolicitors.org.uk)

Dear Sirs

## ***Regulatory-risk information requirements – 2009***

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The City of London Law Society (CLLS) represents approximately 13,000 City lawyers, through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations and other requests for views on issues of importance to its members through its 17 specialist committees. This Consultation has been considered by members of the CLLS's Professional Rules and Regulation Committee. The Committee comprises representatives of 12 firms (as listed in the appendix to this letter).

Before turning to the specific questions, we have the following comments on the Consultation paper itself:

We are pleased that some of the concerns which we raised in relation to Consultation Paper 7 (*Information gathering for risk assessment*) have been taken on board by the SRA and that the SRA has recognised that a better approach is for it to start by targeting the information it really needs and once it has processed that information, working out what (if any) additional information it requires.

We would still welcome more clarity from the SRA about how it will process and use the information gathered, how it ties in with plans for monitoring visits and what its priorities are. We think it is important for that to be clearly addressed before the information gathering is commenced although we accept that the information being sought at this stage is quite limited in scope.

We have concerns about the confidentiality of any information supplied to the SRA. Whilst the Law Society/SRA is not formally subject to the Freedom of Information Act (FOIA), given that the Law Society's Freedom of Information - Code of Practice voluntarily subjects the Law Society/SRA to the FOIA, it would potentially be possible for third parties to request copies of information supplied by firms. We would ask the SRA to publicly state that information supplied would be supplied "in confidence" such that any information would fall within an exception to the FOIA.

Finally, we would ask that where the same information as is required by the SRA has been prepared for another purpose in the 12 month period prior to recognition renewal, this information should be accepted by the SRA in lieu of the firm having to produce new information to the renewal date. For example, if a firm's accounting year end is 30 April and its recognition renewal date is 30 June, then we would ask that the SRA

accept information (e.g. turnover) for the accounting period rather than requiring it to be produced for the 12 month period ending 30 June.

Turning to the specific questions in the Consultation:

### **TURNOVER**

We think the request in paragraph 13 is appropriately worded and that firms should easily be able to provide the requested information. We would note however that for firms which are not LLPs or companies, such information is not currently in the public domain and such firms would need to be confident that in supplying such information to the SRA it would be kept confidential (see our general point on confidentiality above). The view has also been expressed that a more appropriate measure for determining fees would be the number of solicitors rather than the turnover of a firm.

### **NON-SOLICITOR FEE-EARNERS**

We think the question is worded appropriately and that firms should easily be able to provide the requested information. However, we do not believe that this is information which is generally sought by insurers and we are not sure why the number of non-solicitor fee earners is relevant to the fee which should be payable by a firm.

### **WORK TYPES**

We have significant concerns about this question and the suggested list of work type codes. For firms with turnover of the size of our member firms and with the variety of work types undertaken by such firms, we do not think it is feasible to break it down by reference to 58 different work type codes.

Many pieces of work will encompass various different work type codes. For example, a piece of litigation relating to allegations of fraud and/or negligence and involving a claim under a professional indemnity insurance policy – should that be "Fraud" or "Insurance" or "Litigation – Commercial" or "Litigation – General" or "Professional Negligence" or all of the above? Allocation to any particular work type is therefore likely to be arbitrary and different for different firms so we question the merit of collecting such data.

Each firm will apply work type codes to its matters in the way that works for it in terms of its management accounts or as required to by its clients and to super-impose a third set of work type codes seems to us to be an unnecessary burden. We can see some merit (for example in terms of being able to ascertain whether any particular types of work give rise to disproportionately high risks of complaints) in asking firms to apply some broad categories to the types of work undertaken by the firm and this is the level of detail usually supplied to insurers. This would however generally be by reference to say 10 broad work types (and not 58).

It also seems to us that some categories are not related to the risk that the type of work carries and that the list mixes up "types of legal work" with "sectors". We would suggest that the SRA reviews the list of work types having regard to the risks associated with that type of work. For example, would "Media/Entertainment law", "Travel and Tourism", "Computer and IT law" have inherently different risk profiles and would they not all in fact be covered by "Business Affairs"? We would also question in particular what is meant to fall within "Common Law" and ask for clarification of what "Financial and Investment Services" encompasses.

## **NEGLIGENCE CLAIMS**

We are not convinced that collecting information in relation to the number of claims alone will serve any useful purpose. It is historic rather than forward-looking so is of limited use in terms of assessing the risk currently posed by any particular firm and there is no clear definition of a claim which could lead to different interpretations being taken by different firms. In addition, many claims are settled and we think that information in relation to settled claims should remain confidential to the firm.

If this is to be included, we think that a clear definition of a claim is needed and that it must be distinguished from circumstances which may give rise to a claim. In our view, a claim for these purposes should be limited to cases where there is a firm intention to proceed with issuing a formal statement of claim. It should be borne in mind that many firms notify "claims" to their insurers on a very prudent basis (perhaps in cases where there may not even be circumstances which may give rise to a claim). Notification in itself does not therefore necessarily indicate that there is a claim.

In addition, our member firms are generally concerned as a matter of best practice to ensure that any lawyer who thinks he/she might have made a mistake reports it promptly so that, where possible, it can be rectified and, where necessary, it can be reported to insurers. If it is known that details of claims have to be reported to the SRA, it may only serve to discourage individuals from coming forward which we would see as a retrograde step.

We hope these views are of assistance. Representatives of the Professional Rules and Regulation Committee would be happy to elaborate if that is required.

Yours sincerely

**David McIntosh**  
**Chairman**  
**City of London Law Society**

**Chris Perrin**  
**Chairman**  
**Professional Rules & Regulation**  
**Committee**

**APPENDIX**  
**PROFESSIONAL RULES & REGULATION**

Chris Perrin - Clifford Chance (Chairman)

Raymond Cohen - Linklaters

Sarah de Gay - Slaughter and May

Alistair Douglas - Travers Smith

Brian Greenwood - Taylor Wessing

Antoinette Jucker - Pinsent Masons

Jonathan Kembery – Freshfields Bruckhaus Deringer

Heather McCallum - Allen & Overy

Julia Palca - Olswang

Mike Pretty - DLA Piper

John Trotter - Lovells

Claire Wilson - Herbert Smith