

Minutes of the meeting of the CLLS Professional Rules & Regulation Committee (the Committee) held on Tuesday 4 June 2019 at 4:00pm

Location: Freshfields Bruckhaus Deringer LLP, 65 Fleet Street, EC4Y 1HS

Present:

Jonathan Kembery (Freshfields Bruckhaus Deringer LLP) (Chair) (**JK**)
Clare Wilson (Herbert Smith LLP) (Co-Vice Chair) (**CW**)
Raymond Cohen (Linklaters LLP) (Co-Vice Chair) (**RMC**)
Annette Fritze-Shanks (Allen & Overy LLP) (**AFS**)
Julia Adams (Slaughter and May) (**JA**)
Jo Riddick (Macfarlanes LLP) (**JR**)
Iain Miller (Kingsley Napley LLP) (**IM**)
Fergal Cathie (Clyde & Co LLP) (**FC**)
Tracey Butcher (Mayer Brown) (by telephone) (**TB**)
Sarah Boland (Freshfields Bruckhaus Deringer LLP) (Committee Secretary) (**SB**)

Also in attendance (for part of the meeting):

Robert Cummings (Head of Regulatory Affairs, Law Society) (**RC**)
Einat Sohar (Relationship Manager (City), Law Society) (**ES**)
Marzena Lipman (Policy Adviser, Law Society) (**ML**)

Apologies:

Mike Pretty (DLA Piper UK LLP)
Sonya Foulds (Cleary Gottlieb Steen and Hamilton LLP)

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1. Minutes and matters arising

1.1 The previous meeting's minutes were accepted as approved.

2. Discussion with representatives of the Law Society

2.1 RC confirmed the key priorities of the Law Society relevant to the work of the Committee as follows.

(a) AML and economic crime.

RC confirmed that the Law Society was giving increased focus and resource to this area. In particular it was considering (i) the policy aspects (including engagement with HMT and working with the Home Office with respect to the SARs reform), and (ii) wider economic reform by the Treasury.

The Law Society remained the supervisory body for AML for the profession although the SRA was responsible for all regulatory activities. It was confirmed that the Law Society would look to work with the SRA in terms of engagement and to take a more active role in this area; for example, it would increase its offering to members who had been harder to connect with regarding AML issues.

Consideration should be given to the reasons for the perceived lack of reporting. It was agreed that there needed to be research with respect to why the numbers of reports appear to be low. This was a matter which the Law Society could give some thought to.

JAK mentioned that the CLLS also had a tax sub-committee which could assist with consideration of AML issues.

(b) Mayson Review.

ML confirmed that the Law Society had taken a strategic decision to engage, being mindful that the audience for the Review was the Ministry of Justice (**MoJ**). No concluded view had been formed as to the preferred regulatory options at this stage, although ML reiterated that the Law Society wanted the MoJ to hear the views of the profession. The focus of the Law Society was on four key issues: (i) reserved legal activities, (ii) how to regulate non-reserved legal activities, (iii) professional titles in the future, and (iv) independence of the regulator.

ML confirmed that a response to those issues was being drafted and was to be discussed internally by the Society in July 2019.

It was acknowledged that, with respect to the distinction between reserved and non-reserved legal activities, now that the SRA had embraced solicitors operating in the non-regulated sector by means of its separate codes, it would be difficult to move towards a more restrictive approach.

(c) Handbook changes.

RC confirmed that the Law Society was awaiting publication of guidance from the SRA but would be drafting new practice notes and providing information on the new Principles.

JAK hoped that any guidance issued by the Law Society would not overlap with that produced by the SRA as had been perceived to be the case with guidance regarding the use of NDAs because this might create confusion.

2.2 ACTION: to consider whether Colette Best, the new AML Director at the SRA, might attend a future meeting of the Committee.

2.3 ACTION: RC to confirm whether the Law Society was proposing to issue guidance on DAC6.

2.4 The representatives from the Law Society left the meeting at 4.40 pm.

3. Ireland

3.1 The Law Society of Ireland had issued new guidance which confirmed the removal of the condition requiring Irish PII to be in place. It was also re-issuing practising certificates without that condition.

3.2 Having said that, the guidance still left a number of issues unresolved. Further guidance clarifying those matters was expected shortly. The approach was being led by the Law Society of England and Wales.

3.3 A meeting between interested firms was due to take place at Chancery Lane on 25 June 2019.

4. Update on SRA quarterly meeting

4.1 JK reported back from the quarterly meeting with the SRA held on 14 May 2019. The discussion included the following:

(a) The next symposium on 23 October 2019. Ideas to assist firms to prepare for the transition to the new Handbook were requested;

(b) SQE 1 pilot had completed and the results were awaited. With respect to SQE 2, the SRA was looking for firms to volunteer trainees to take part. In addition, the SRA was liaising further with the CLLS and firms on several matters including the overall weighting in the marking scheme between contract and tort and when the exams should be run so as not to interfere with the trainee intake cycles; and

(c) The ongoing issues with respect to AML and the fact that there was a varied approach taken to risk assessments by firms, with some not investing enough consideration as to their specific circumstances.

4.2 ACTION: the next quarterly meeting was on 3 September 2019 and it was suggested that members of the Committee may wish to volunteer to attend.

5. SRA workshop on reporting 13 May 2019

5.1 JR reported on the workshop which had taken place for firms with regulatory managers.

5.2 ACTION: JR to circulate the case studies that were discussed and notes of the approach by the SRA.

6. Governance of the Committee

6.1 CW and RMC had made good progress with respect to the review of the governance of the Committee.

6.2 Key themes emerging from discussions that had taken place were (i) balancing the scope of what the Committee looks at with the workload of members, and (ii) the implications of seeming to have a work programme that was driven by the activity of the SRA i.e. that was reactive in nature.

6.3 ACTION: CW and RMC to finish this stage of their review and to provide a brief written summary on the outcome.

7. Overseas Practice Rules

7.1 RMC confirmed that, following his discussions with Juliet Oliver, he had been invited to and had drafted some case studies to give clarity to the Overseas Practice Rules.

7.2 ACTION: subject to any further comments from Committee members, RMC was to move matters forward with the SRA.

8. AOB

8.1 JAK confirmed that he was due to attend a further meeting with Juliet Oliver and others with respect to difficult reporting decisions and would revert to the Committee thereafter.

8.2 There being no further business, the Chair brought the meeting to an end.