



THE CITY OF LONDON LAW SOCIETY

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The Review of the Regulation of Corporate Legal Work
c/o The Law Society, 113 Chancery Lane
London, WC2A 1PL

8 January, 2009

Dear Mr Smedley

Review of the Regulation of Corporate Legal Work

I write regarding the "Call for Evidence" circulated in the context of the above Review.

The City of London Law Society (CLLS) represents over 13,000 City lawyers, through corporate membership of 52 firms, including some of the largest international law firms in the world, and through individual memberships. 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. The Call for Evidence on Regulation of Corporate Legal Work has been considered by the CLLS's Professional Rules and Regulation Committee. The Committee has representatives of 12 firms, as listed in the appendix to this letter. It is inevitably the case that firms will have differing views on the detail of the points raised by your review. However, the views set out below are held by all 12 firms represented on the Professional Rules & Regulation Committee. In addition, this letter is being made available to all 52 CLLS member firms and they are being encouraged to respond to the Call for Evidence if they disagree with this letter or wish to add points of their own. Before turning to the specific points raised in the Call for Evidence, there are 10 points which all firms represented on the Professional Rules & Regulation Committee agree with. These are set out in A-J below.

- (A) We are concerned that the 'one size fits all' approach to regulation is insufficient in today's environment where there is a huge range in the firms regulated by the SRA
- (B) The approach and preoccupation of the SRA is (understandably) driven by the need to protect relatively unsophisticated consumers of legal services rather than sophisticated corporate users.

- (C) The CLLS does not seek 'light' regulation for firms which focus predominantly on work for sophisticated corporate users, but good and proportionate regulation which will be seen to enhance the reputation of the profession.
- (D) Good regulation can only be achieved where the regulators understand the markets in which the regulated firms operate, and the needs of their clients.
- (E) The large firms represented by the CLLS contribute very large sums to the cost of the Law Society, the SRA and the LCS, far more than the cost of their regulation. As a result, they feel even more than they would otherwise that they should have regulators who understand them and their market.
- (F) There are a number of provisions in the Solicitors Code of Conduct which are inappropriate or unnecessary in the context of work for sophisticated users of legal services and the ability should exist for such provisions to be flexed, but a separate Code should not be necessary. The current problematic provisions are generally in Rules 2, 3 and 15, and in the Solicitors Accounts Rules.
- (G) A separate regulatory team should be responsible for those firms which are predominantly or regularly handling complex corporate/financial work (for ease here referred to as 'City Work Regulators'), and which have well developed risk/compliance functions led by one or two identified individuals who would be the main contact point for the regulator. The City Work Regulators should be staffed by people who have experience of the type of work done by such firms and understand the environment in which it is carried out. The Takeover Panel (which we touch on below) may be a useful model to follow, given that it is staffed by employees and secondees from law firms and others involved in the financial services sector.
- (H) Given that firms not falling within G above (i.e. not regulated by City Work Regulators) might well also provide legal services to sophisticated clients, the 'flexed' provisions of the Code should be applicable to such firms when they do so; in other words, the test for when the flexed code is applicable (the client is a sophisticated client) is not the same as the test for when City Work Regulators are the regulators (firms focused on complex 'City' work, with well developed risk/compliance functions).
- (I) We have no strong views on whether the City Work Regulators should be a separate division within the SRA, or a separate regulator, but the former would likely be more cost effective. It should also ensure better coordination to ensure all firms are appropriately regulated, and that the Law Society can satisfy the requirements of s28 of the Legal Services Act.
- (J) A firm regulated by the City Work Regulators would not also be regulated by the existing SRA team even though the firm does some work which is not 'City Work' (such as pro-bono work). The same should apply in reverse; a firm regulated by the existing SRA team would not also be regulated by the City Work Regulators even though it does some work for sophisticated corporate clients (although it would seem sensible that the existing SRA team could call in the City Work Regulators to assist in relation to any issues which arise in the context of any complex work handled by a firm regulated by the existing SRA team).

There are some additional points raised in the specific issues set out in the Call for Evidence which are not addressed in the views expressed above. Using the numbering in the Call for Evidence, our views are as follows:

- 1 The public interest which the regulator of corporate law firms should protect is not so much the interests of vulnerable clients but those of the business community, which needs to be confident that the regulator understands the market in which these legal services are provided and can therefore monitor it appropriately. To a material extent, this should be done by monitoring the firm's own internal compliance processes and making suggestions for any improvements. If there are shortcomings in such firms, the regulator should take proportionate action. In our view, that should be done having considered, at a strategic level, the real need for action given the public interest being protected.
- 2 No. Given the nature of the public interest outlined above, the focus of the current regulatory regime (which is vulnerable consumers) is inappropriate.
- 3 Yes. Elements of rules 2, 3 (although necessary changes are currently the subject of SRA consultation), 4 (likewise) and 15. In addition, other provisions in the Solicitors Accounts Rules need review.
- 4 Yes, see 2 and 3 above. Enforcement on issues which may be important to protect unsophisticated consumers can either be unnecessary in the context of services to sophisticated clients, or can and should be achieved effectively (and far more cheaply) through a more collaborative approach to regulation with firms which have well developed risk/compliance functions. The approach to enforcement needs to reflect both the nature of the alleged shortcoming and the interests which it is necessary to protect.
5. We believe that the open dialogue approach encouraged by the Takeover Panel is a useful model. We envisage firms regulated by the "City Work Regulator" we have suggested above feeling able to consult the regulator in an open and trusted manner on issues which they encounter. The representatives of the City Work Regulator would, given their experience of City type work, understand the circumstances in which any such issues were raised and be able to give practical, informed guidance.
- 6 The necessary skills, knowledge and experience are, essentially, an awareness of how firms focused on City Work operate, the types of transactions they do and the needs of their clients. Some understanding/experience of how law firms operate (and are regulated) in other jurisdictions would also help.
7. Yes, see our comments in A-J above.
8. See our comments in A-J above.
9. See our comments in A-J above.

We hope these views are of assistance. Of necessity, they are at this stage expressed in general terms only, with a view to flagging the issues we consider material. Representatives of our 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 LLP (Chairman)
Raymond Cohen - Linklaters LLP
Sarah de Gay - Slaughter and May
Alistair Douglas - Travers Smith LLP
Brian Greenwood - Taylor Wessing LLP
Antoinette Jucker - Pinsent Masons LLP
Jonathan Kembery - Freshfields Brukhaus Deringer LLP
Heather McCallum - Allen & Overy LLP
Julia Palca - Olswang
Mike Pretty - DLA Piper UK LLP
John Trotter - Lovells LLP
Clare Wilson - Herbert Smith LLP