



# THE CITY OF LONDON LAW SOCIETY

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Solicitors Regulation Authority  
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14 May 2009

By email: [consultation@sra.org.uk](mailto:consultation@sra.org.uk)

Dear Cerys

## **Legal Services Act - Consultation Paper on enhanced investigatory powers – policy statement**

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 the CLLS's Professional Rules and Regulation Committee. The Committee comprises representatives of 12 firms (as listed in the appendix to this letter).

Turning to the specific questions in the Consultation:

### **Q1: Do you think that the purpose of our policy statement on the use of enhanced investigatory powers is clear and that the statement is able to be understood by non-lawyers?**

No. We think the language in paragraph 3 (About the policy statement) could be less formally drafted and without the external references.

### **Q2: Do you agree that a notice to attend interview should only be authorised by the Head of Legal, Legal Director or Chief Executive as proposed in the policy statement?**

Yes. The issue of a notice will generally be a serious matter for the practitioner concerned. It cannot be regarded as a merely administrative step. It should therefore only be authorised at the highest levels within the SRA.

### **Q3(a): Do you consider that it would be helpful, necessary or not necessary for an SRA lawyer to be present at the investigation meeting.**

We consider it would be helpful and necessary. In general terms, it would be helpful to have an SRA lawyer present to ensure the propriety of the interview process (in particular in relation to the validity or otherwise of objections made to questions or obstruction by the interviewee's representative) and in many cases to provide questions.

It will not be necessary in every case (and of course the interviewee's position ought to be protected by their own representative) but there will be cases where the attendance of a lawyer will be necessary to ensure the effectiveness of the meeting.

**Q3(b): If SRA lawyers attend investigation meetings, what do you think their function should be?**

One of two alternative functions:

- 1 As an assistant to the investigators (see 3(a)); or
- 2 Taking part in the questioning process alongside a non-legally qualified investigator (in the same way as a legally-qualified BERR inspector).

**Q4: Do you agree that a person attending for interview should have the right to be accompanied?**

Yes.

**Q5: Do you agree that the SRA lawyer should be able to exclude representatives who obstruct the meeting or otherwise act unreasonably?**

No. It is doubtful whether the exclusion of a representative will be justified except in cases of gross misconduct. The represented person's right to a fair hearing/process should be the overriding consideration in all but the most clear cases.

**Q6: Any further comments.**

Like all powers, they need to be exercised with caution, respecting the rights of the affected person. With that in mind:

- 1 The draft policy statement is insufficiently clear/helpful on rights of review or appeal. "Penal" Court documents/Orders explain what the recipient is required to do and what they should do if they disagree with the Order. At a policy level, a similar open approach should be taken by the SRA.
- 2 In relation to paragraph 5, it is unclear why it is said that a power is likely to be used frequently on the basis that it is proportionate because it does not involve major cost or inconvenience. Cost and inconvenience are together only one measure of proportionality. The SRA's approach should include consideration of other factors, for example, whether the requirement affects the confidentiality of any party, the seriousness of the alleged infringement and the steps taken by the practitioner to assist the SRA. In any case, it may not be for the SRA to judge cost or inconvenience. Compliance may be very costly in larger or more complex matters or very inconvenient to a busy sole practitioner.
- 3 In relation to paragraph 12 (c), the general exclusion of the advance provision of questions is unhelpful and inappropriate to an investigation of which the interviewee is unaware, unless it is thought that the provision of questions will lead to the investigation being obstructed or evidence being destroyed. It would be more helpful to allow interviewees to prepare for interviews by having questions in advance or at least a summary of the topics on which questions will be asked.

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 COMMITTEE**

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