

MINUTES of a meeting of the City of London Law Society Professional Rules and Regulation Committee held on 7 February 2008 at 4.30 p.m.

Present:

Chris Perrin	=	Clifford Chance
David Frank	=	Slaughter & May
Heather McCallum	=	Allen & Overy
John Trotter	=	Lovells
Mike Pretty		DLA Piper
Raymond Cohen	=	Linklaters
Julia Palca	=	Olswang
Antoinette Jucker	=	Pinsent Mason
Stella Dunn	=	CLLS
Clare Wilson	=	Herbert Smith
Apologies		
Brian Greenwood		Taylor Wessing
Julian Francis		Freshfields, Bruckhaus, Deringer

Action

1. MINUTES OF THE PREVIOUS MEETING

Approved.

2. UPDATE FROM THE SRA

Alison Crawley of the SRA spoke about the forthcoming consultations on the provisions required to put in place the legal disciplinary practices regime. During the course of the week of the 8 February, we are expecting consultation documents on amendments to:

- The Code of Conduct
- The Accounts Rules
- The Framework of Practice Rules

Things to look out for in particular were, for example:

- The proposal that a non-legally qualified manager should be able to sign on client account.

- A restriction in the Legal Services Act which appears to limit the number of tiers of corporate ownership of an LLP (which may be an unintended consequence of the Legal Services Act).
- The provisions about competition between regulators; for example where a solicitor becomes a manager of a body such as a licensed conveyancer, then the SRA proposes to disapply most of the Code, except the core duties.
- The definition of "solicitor services" – where the SRA's intention is to keep the definition as wide as it currently is.
- The transitional provisions for small firms where they are very close to the 25% non-legally qualified manager limit and there are unforeseen events (such as death) which tip them over the 25% rule.

Comments on these papers are required by the 21 April. The intention is that the rules will be made by the end of June, such that the consequential work to the forms, processes etc. can be done by the 1 March 2009.

Subsequent consultations will be on:

1. The information required from firms – i.e. what information firms will be required to supply to the SRA on, for example, an annual return basis.
2. The SRA fee structure – i.e. changes to how the levy on solicitors will be gathered; although there is unlikely to be a significant change before 2010.
3. Changing the regulatory application processes – i.e. the process by which practising certificates are renewed and the process by which information is gathered from individuals and firms.

These consultations will be open until the 1 May.

Chris Perrin to divide up the consultation papers between the members of the Committee so that each would take the lead on one.

Chris Perrin

Alison Crawley confirmed that on technical matters such as these, it was the quality of the response to consultation that was important and not the quantity, such that it was not necessary for each firm to write in to emphasise points already otherwise made.

The Committee had no additional comments (having commented before) on the consultations on (i) character and suitability of non-legally qualified managers and (ii) the publication of complaints.

3. SRA RULES UPDATE

The Committee asked Alison to look into the point that the Committee had previously made to the SRA (Penny Butler and Anthony Townsend) about

Chris to follow up

a concern in relation to the use of client account, where a matter had originated in an office located overseas where that office was not a branch of the LLP.

Alison Crawley left the meeting.

4. SRA PSU VISIT

A meeting with the SRA PSU visit had been fixed for the 13 March at the Law Society in order to discuss the practicalities of the SRA proposals for monitoring city firms. Heather McCallum, Mike Pretty, Melvyn Hughes and Stella Dunn are due to attend; any other volunteers to attend to contact Stella Dunn.

Volunteers
to contact
Stella

5. PAYMENT SERVICES DIRECTIVE

A concern had been raised that the Payment Services Directive may affect the use of client account and the payment of disbursements on behalf of a client. However, the FSA had confirmed that that was not the intention. The point would be monitored.

6. CONFLICTS RULE

The paper presented to the Ethics Committee in May 2007 had not yet been considered by the Ethics Committee. It was due to be heard on 12 March. The Committee expressed their disappointment at the delay. In addition, it was noted that, although the SRA referred to the conflict rules as "new", they had effectively been in place for a number of years and that therefore it was not unreasonable to expect that amendments could be made. In addition, it was noted that amendments were being made to the Code in the context of the regulatory framework for LDPs and, again, the Committee expressed their disappointment that it seemed unlikely that these changes would be considered in sufficient time for amendments to be made simultaneously.

7. FSA – VOLUNTARY CODE OF CONDUCT ON PRICE SENSITIVE INFORMATION

Negotiations with the FSA, LIBA and the CBI on this code were progressing with James Palmer of Herbert Smith leading. However, the message contained in the Chairman's newsletter was felt to be overly optimistic at this stage.

8. CLIENT ACCOUNT – THE CREDIT CRUNCH

A solicitor had raised a concern about the possible liability of solicitors in the event that the bank holding client account monies was unable to repay them. The Committee thought it was key that the selection of the bank was not negligently made. It did not feel that further guidance to the profession was necessary.

9. AUDITORS ENQUIRY LETTERS

The Committee noted that firms continued to rely on the guidance from the Law Society dated 1970 that it was not appropriate for solicitors to respond to "non-specific enquiries", as this may result in waiver of privilege and liability for the solicitor. It was thought that the ICAEW may be seeking to discuss this issue with the SRA and Stella Dunn would make appropriate enquiries. It was agreed that the practice of auditors sending general letters to which solicitors then send standard replies did no one any favours. It would be better if the accountancy profession could be persuaded to stop sending non-specific letters.

Stella Dunn

10. THE SRA STATEMENT ON RISK BASED REGULATION

This statement on the SRA website was noted with concern; in particular the multiplication factor attaching to high profile matters. All city matters were likely to be high profile because of the media interest in them and, based on the SRA approach, therefore a minor issue in a city firm would attract a higher risk score than a serious financial or breach of trust issue in a less high profile firm. It was also noted that incompetence or negligence appeared to attract a lower rating than failing to deliver a client care letter. In addition, it was noted that the risk calculation was made by reference to allegations and not proven matters. Heather McCallum to draft a response on behalf of the Committee.

Heather
McCallum

11. AML – LAND REGISTRY RULES

Paul Marsh, Vice-President of the Law Society, is due to meet with the Land Registry to express the concern over the proposals whereby solicitors give some form of confirmation/representation to the Land Registry in relation to the AML status of their client (and, potentially, the identity of the counter-party to the land transaction where that counter-party did not have their own solicitor). Concern was expressed that this could be argued to constitute a representation on which a subsequent purchaser of the property might seek to argue that they had relied. CLLS members would be attending a meeting to brief Paul Marsh ahead of the meeting.

Stella to
follow up

12. APPOINTMENTS TO THE LEGAL SERVICES BOARD

It was noted that a recruitment agent was currently seeking applications for membership of the Legal Services Board.

13. NEXT MEETING

Stella Dunn to organise the next meeting in early April to discuss the consultation papers referred to in paragraph 1 above.

Stella