

## **Minutes of the meeting of the CLLS Professional Rules & Regulation Committee**

**20 December 2011 4.30 pm**

**Location:** Freshfields Bruckhaus Deringer, 65 Fleet Street, London EC4Y 1HT

### **Present:**

Chris Perrin (Clifford Chance LLP) (Chair)  
Roger Butterworth (Bird & Bird LLP)  
Sarah de Gay (Slaughter and May)  
Antoinette Jucker (Pinsent Masons LLP)  
Jonathan Kembery (Freshfields Bruckhaus Deringer LLP)  
Mike Pretty (DLA Piper UK LLP)  
John Trotter (Hogan Lovells International LLP)  
Raymond Cohen (Linklaters LLP)  
Julia Palca (Olswang LLP)  
Clare Wilson (Herbert Smith LLP)

### **In attendance:**

David Hobart (Chief Executive, CLLS)  
Bahare Heywood (Clifford Chance LLP) (minutes)

### **Apologies:**

Alastair Douglas (Travers Smith LLP)  
Heather McCallum (Allen and Overy LLP)

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## **1. SRA Green Paper on International matters**

The Chair provided an update on the recent meeting at the Law Society which discussed this paper and other related topics. The Chair also provided an update on the meeting with the SRA he and Sarah de Gay had attended which also covered this paper. At that meeting it had been explained that the PR&RC had yet to meet to discuss the paper, but it was expected that it would be generally supported. A number of points were discussed, and the SRA indicated they might issue some further thoughts on possible provisions to inhibit 'gaming' – i.e. deliberate moves to carry out work overseas to avoid fuller regulation. At the end of the meeting, the SRA suggested that there would not, in fact, be any relaxation of the rules around individuals abroad - that the Outcomes would still apply to individuals who are solicitors. This was questioned, and the SRA subsequently confirmed that they were mistaken; individual solicitors working abroad would only have to comply with the Principles as suggested in the paper (unless there is any element of "gaming", in which case the Outcomes may not be relaxed). The SRA also mentioned the possibility of introducing annual self-certification by law firms in respect of their overseas operations.

Overall, it was generally agreed that the paper was along the right lines and that the SRA should be praised for their approach. However, given that any recommendations would not be coming into effect until 2013, there was a query as to what this meant for COLPs once their obligations take effect in late 2012. It was suggested that the SRA would not publicly state that the current overseas application provisions would not be applied, but in practice this is not an area which would attract SRA attention pending the advent of the new regime,

assuming it is approved. It was suggested that the Relationship Managers may be able to provide some comfort.

It is noted that there are still areas where further guidance would be helpful; for example, it is not entirely clear how Principle 9 (on equality) would apply overseas, but it was noted that the Principles were subject to being in accordance with local laws. It was also suggested that the approach was quite simplistic in relation to international practices and does not take into account multi-jurisdictional work. The paper also does not deal clearly with verein structures. However, it was felt that the SRA are aware of these issues and that further detail will be developed. The Chair also reported that the SRA had confirmed that it did not envisage any increase in cost or further levy as a result of the proposals and the fact that the proposed approach would bring into SRA regulation (albeit in a very light form) parts of firms which hitherto have not been within their ambit (i.e. overseas entities other than branch offices).

It was agreed that the Committee would wait for the Law Society to provide comments on this paper before the Committee should prepare its own response, supplementing the comments of the Law Society.

## **2. SRA Consultation on Financial Protection**

John Trotter provided a summary of the Committee's response to the consultation paper and a number of minor changes were agreed. Subject to these, the response was agreed.

In relation to 6 (iii) of the consultation paper, it was queried whether it was a good idea to make any changes to the minimum terms at all. It was thought that, on the whole, they were advantageous and it may not therefore be a good idea to set a precedent for changing them. It was agreed that this point should be included in the response and that it would be left to the discretion of the SRA whether they would propose the change or not.

## **3. The new SRA Authorisation Rules and Suitability Test and their implications for the partnership promotions process**

This related to the need for individuals who are to become partners in authorised bodies to pass a suitability test. The SRA had yet to explain what information would be required. It was suggested that firms needed to see a copy of the form as soon as possible. A query was raised as to whether approval was also required for lateral hires (of individuals who are already partners) from other authorised bodies. Further, would firms be able to get advance approval for new partner candidates and what would happen to partner candidates if they were to fail?

While Rule 13.2 of the Authorisation Rules indicates that solicitors with practising certificates would be deemed "suitable", the SRA still need to be notified in advance on a "prescribed form".

Concerns about timing were raised given that the test comes into force on 31 March 2012, most city firms make up their new partners on 1 May and there isn't a form yet available, even in draft.

Sarah de Gay had already raised some of these points with the SRA and agreed to provide a copy of her email so that the PR&RC could raise the issues on behalf of CLLS member firms generally.

#### **4. CLLS/SRA meetings**

It was agreed by all that the biannual meetings of CLLS member firms and the SRA previously discussed were a good idea. David Hobart fully supported the idea and gave an update on how he envisaged these working. It was suggested that the first meeting might focus on the Legal training and education review in May. Others felt that an earlier meeting was necessary.

It was suggested that the meetings should cover topics which would be of interest to CLLS members generally and that they should also be an opportunity to directly address the SRA. It was decided that the first meeting would take place in early March and might focus on a number of topics, such as:

- Information requirements
- Additional changes to the Handbook
- Requirements of the COLP
- Reporting
- Suitability testing

It was generally agreed that the meetings should be limited to two individuals attending from each firm and that senior level attendance by the SRA was important - David Hobart offered to follow up with both Alastair Douglas and the SRA.

In addition to the meetings referred to above, the plan to hold conference calls for CLLS members following each PR&RC meeting was also discussed further. It was agreed that the first such call should take place in January. On that call, the Chair would be accompanied by two other Committee members. John Trotter and Jonathan Kembery volunteered to attend.

It was decided that once the minutes to this (December) meeting are posted on the CLLS website, David would send them round to CLLS member firms and invite them to the de-brief call in January.

It was also suggested that, in due course, the minutes of these meetings should be shared with COLPs. In relation to this, it was suggested that at some point, it would be helpful to have some kind of mechanism for capturing those who are part of the COLP community.

#### **5. Other business**

- i. Potential representatives of small firms were discussed and it was agreed that David Hobart would provide the Committee with a list of CLLS members which fall into that category.
- ii. John Trotter will be stepping down in the New Year. The Chair thanked him for all his contribution over recent years and asked the Committee to think about potential replacements.