

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

**7 February 2013 4.30pm**

**Location:** Mayer Brown

### **Present:**

Chris Perrin (Clifford Chance LLP) (Chair)  
Heather McCallum (Allen & Overy LLP)  
Clare Wilson (Herbert Smith LLP)  
Raymond Cohen (Linklaters LLP)  
Sarah de Gay (Slaughter and May)  
Antoinette Jucker (Pinsent Masons LLP)  
Mike Pretty (DLA Piper UK LLP)  
Douglas Nordlinger (Skadden, Arps, Slate, Meagher & Flom LLP) (By phone)  
Bill Richards (Lawrence Graham LLP)  
Jo Riddick (Macfarlanes LLP)  
Tracey Butcher (Mayer Brown LLP)

### **In attendance:**

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

### **Apologies:**

Alasdair Douglas (Chairman, CLLS)  
Jonathan Kembery (Freshfields Bruckhaus Deringer LLP)  
Roger Butterworth (Bird & Bird LLP)

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### **1. Minutes of last meeting**

There were no comments on the minutes of the meeting on 18 December 2012.

### **2. Report on CLLS/SRA quarterly meeting on 24 January 2013**

The Chair provided a report of the quarterly meeting with the SRA on 24 January. Issues covered included Relationship Management, the SRA's reform programme and the regulation of in-house lawyers.

### **3. Report on SRA International regulation**

Heather McCallum and Raymond Cohen provided an overview of the meeting with SRA dated 5 February which had two areas of focus:

Firstly, what standards of regulation to apply overseas: the Principles; or separate International Principle as previously suggested by the PR&RC.

It is understood the SRA accept there should not be differing standards between individuals and organisations. The PR&RC welcomes the proposal in this respect and believes confusion

arises when it is suggested that an individual should comply with one set of standards and an entity another.

The SRA remain of the view that the Principles applicable in England should also still apply overseas. They felt that with appropriate guidance on a principle-by-principle basis and explanatory notes, they could remove most of the PR&RC's concerns that detailed notes as to how each principle would apply overseas would make it very complicated. It was noted that a number of Committee members feel quite strongly that a simplified Overseas Principle would be more appropriate. It is understood that the SRA were concerned this approach would be seen to be too 'light' and would cause them problems with regulators overseas, who seek confirmation that the SRA continues to regulate individuals abroad.

The second point of focus was whether group based regulation was the answer and how far it should go. It was suggested that firms would be more open to this approach if it was just a narrow set of standards which applied; the broader the standards, the more concerns firms would have.

It was noted that, as it stands, any part of an Authorised Body will be caught by what is in chapter 13. With this in mind, the PR&RC would welcome a clearer definition of "connected entities".

Separately, in view of these discussions with the SRA, the PR&RC is not able at this stage to provide comments as part of the Law Society's meeting with top 100 firms to pull together a response to the International paper. The next meeting on this issue is scheduled for 25 February. The Chair agreed to let Jemma Ralph at the Law Society know that the PR&RC will provide comments after the meeting on 25 February.

#### **4. LSB consultation on its draft strategic and business plan for 2013/14**

David Hobart provided an update to the Committee on the LSB's draft strategic and business plan. It is understood that underlying the plan is a research programme which will review the cost of regulation. David also reported on a separate conversation with David Edmonds in which the latter had aired the possibility that it might even be possible for city law firms not to be regulated so long as there were measures in place to deal with high level issues and therefore deal with any disquiet in respect of public interest.

[Douglas Nordlinger joined the meeting by phone]

David noted it was important that the PR&RC contribute to future discussions about the regulation of general legal advice. David agreed to draft a response to the LSB.

#### **5. Agenda for the Open forum meeting on 20 March**

It was agreed the following items will be on the agenda for the next Open Forum Meeting:

- International review
- Obligation to report internally to the COLP
- Best practice feedback from RM's
- Phase 2 of Red tape

The Chair asked that any further suggestions be communicated to him as soon as possible.

The Chair agreed to ensure discussions and meetings with the Law Society were re-invigorated to ensure there was no confusion or overlap on issues.

#### **6. Hudson comments on independence of financial advisers**

The PR&RC discussed an issue put forward by a partner in one CLLS firm concerning comments made by Des Hudson in a press release relating to solicitors referring clients to retail investment firms that are not "independent".

While PR&RC members could appreciate the concern expressed and felt that the comments should have been more nuanced, it was also felt that this was not so much a member firm issue, but rather a member firm's client's issue and should therefore be dealt with by the firm.

#### **7. Lobbying**

It was noted that the bill has been withdrawn. No further discussions took place.

#### **8. Consultation launched on financial penalty guidance**

Concerns were expressed that if response to the consultation was that it will apply to ABS, it would apply to all firms.

Deadline for consultation is 19 April. Mike Pretty and Tracey Butcher agreed to put together a draft response.

The PR&RC would welcome further clarification on the definition of ABS.

#### **9. AOB**

- **Terms on which barristers are retained**

It is understood a number of barristers have put forward terms which are not CLLS Combar terms. David Hobart wanted to draw member firms' attention to this issue. The recommended terms can be found on the CLLS website.

- **The Chair queried whether any firms have enforcement of clean desk policies**

It was generally agreed that all firms encourage it, but do not make a policy of it.

- **The Chair queried whether other firms encrypt back-up tapes**

It was thought that if backup tapes are encrypted, it could potentially be very difficult to retrieve specific documents, for instance as part of a discovery process. Some members agreed to find out their firm's policy and revert but no member was aware of his/her firm doing this. However, concerns were expressed about overseas offices and cyber espionage. It was agreed that this is a big issue and an increasing area for concern.

- Heather McCallum brought up a query about whether firms conduct CRB checks. Generally, it was believed that they did not.