

**Minutes of the Meeting of the CLLS Professional Rules & Regulation Committee**  
**held on Tuesday 22 September 2015 at 4:30 pm**

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

**Present:** Sarah de Gay (Slaughter and May, Chair)  
Roger Butterworth (Bird & Bird LLP)  
Jonathan Kembery (Freshfields Bruckhaus Deringer LLP)  
Clare Wilson (Herbert Smith LLP)  
Chris Vigrass (Ashurst LLP)  
Mike Pretty (DLA Piper UK LLP)  
Jo Riddick (Macfarlanes LLP)  
Raymond Cohen (Linklaters LLP)  
Tracey Butcher (Mayer Brown) *via telephone*  
Annette Fritze-Shanks (Allen & Overy)

**In attendance:** David Hobart (CLLS)  
Kevin Hart (CLLS)  
Lara Still (Linklaters LLP) (minutes)

**Apologies:** Douglas Nordlinger (Skadden)

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**1. Update on 7.7.15 meeting with SRA**

The Chair gave an update on the latest quarterly meeting with the SRA as follows:

- the SRA indicated that they are considering relaxing the Separate Business Rule and Rule 4 of the Practice Framework Rules. They saw no need to deter solicitors from working in unregulated bodies when having them there could “raise the game”.
- the report on professionalism commissioned by the SRA, including research by Dr Steven Vaughan and Claire Coe, is in near final form and is scheduled for release on 19 October. It was suggested that the subject of the report would be a good topic for the next SRA symposium, which could focus on “What it means to be professional”;
- The CLLS had flagged that the Legal Education and Training (LETR) proposals risk dumbing down the profession in the eyes of clients, especially internationally. Concerns were raised by the SRA in relation to certain LPC providers offering courses to individuals without training contracts, citing statistics that indicate that one in three individuals undertaking the LPC course does not have a training contract;
- the AML thematic review has been completed and the report on the review is scheduled to be launched at the October COLP conference in Birmingham; and
- the SRA’s planned meeting with the Registrar for Consultant Lobbyists was postponed and is to be rescheduled.

## **2. Response to SRA Consultation Paper on protecting Clients' Financial Interests**

The Committee discussed their response to the SRA's 8 July 2015 Discussion Paper regarding its ongoing work in this area, and particularly PI insurance. Those who worked on the Committee's response noted that the position taken is aligned with that of the national Law Society.

## **3. Department of Business, Innovation and Skills (BIS) Review of AML identity requirements**

The Committee discussed the BIS review of AML requirements, which is being conducted in an effort to reduce red tape by looking at the implementation of the Money Laundering Regulations 2007 to identify any areas for improvement and greater efficiency. The Committee noted that the Law Society is engaged in the debate and took the decision not to contribute to the response to the consultation on this issue, noting their satisfaction with the Law Society's AML guidance.

## **4. Next CLLS/SRA Symposium – Preserving Professionalism**

The Chair discussed the topic for the next joint CLLS/SRA Symposium, which is to focus on Preserving Professionalism. Relevant scenarios to be discussed at the Symposium are in the process of being prepared by the SRA. One focus of the agenda is likely to be the negotiation of outside counsel terms with clients, and the increasing pressure on law firms to accede to terms that are difficult to comply with.

## **5. The client file – Law Society interest**

It was reported that the Law Society had contacted the Committee in response to the minutes of the last Committee meeting in which the issue of conflicting guidance on what constitutes the client file was discussed. Raymond Cohen subsequently spoke to Clive Black of the Law Society and discussed the relevant case law. The Law Society is now engaged in an effort to revisit their guidance with a view to revising it in line with changes to the law. The Committee welcomed the news and agreed that an update to the guidance would help the profession as a whole by reducing the risk of inconsistent approaches being taken in light of the currently conflicting guidance on what constitutes the client file. The Committee agreed to remain engaged with the Law Society and offered to help with their review of current guidance.

## **6. Modern Slavery Act 2015**

The Committee briefly discussed the implications of the Modern Slavery Act and noted that law firms will all be expected to publish transparency statements once the provisions relating to supply chain transparency are implemented.

## **7. New BIS Register of People with Significant Control Regulations (PSC Regime)**

The BIS is currently finalising regulations that will require UK-incorporated companies to maintain a register of persons with significant control (the "PSC Register"). From January 2016, UK companies will be required to maintain a register of persons having significant control over them. From April 2016 this information will have to be provided to Companies House when

companies deliver their annual confirmation statement (which replaces the annual return) and will be recorded on a searchable central public register. These requirements were introduced as part of the UK's commitment to enhance transparency about company ownership.

The Committee briefly discussed the implications of the PSC Regime on how to approach disclosure on e.g. the use of trust structures as well as how to reconcile the requirements of the regime with obligations of client confidentiality. Other issues that might arise relate to data protection. One Committee member noted that banks are likely to face similar issues to law firms once the PSC Regime is implemented.

Further guidance on the Regime is expected from the BIS this autumn, following the consultation on the draft over the summer.

#### **8. Norton Rose's new forum for associates/junior compliance professionals**

David Hobart from CLLS discussed a Norton Rose-led initiative to bring junior compliance professionals together and the Committee noted that he would attend their first event in October. Going forward, the forum is likely to host guest speakers and will be a networking opportunity for junior compliance professionals.

#### **9. Recent experiences of scams/fraud**

The Committee discussed the recent increase in fraudulent scams targeting both law firms and their clients and most members of the Committee noted that their firms had recently dealt with various threats. One member noted the increase of "financial engineering" scams, whereby the cashiers and finance departments of firms and their clients have been contacted directly. Scams have included impersonation of firm partners using similar emails. One member of the Committee noted several key steps to avoid falling prey to scams, including increasing awareness firm-wide of what to look out for; reviewing procedures and safeguards in place for dealing with client monies; and potentially looking into external training.

#### **10. HMRC consultation paper on facilitating offshore tax evasion**

The Committee discussed the implications of the HMRC's consultation paper on tackling offshore tax evasion (published in July 2015), noting that, as currently drafted, the proposed regulations are potentially very broad and law firms could be made liable for the acts of others via facilitation (e.g., an introduction to a local firm that then assists a client with tax evasion advice could put you on the hook). One Committee member noted that there does not seem to be any *mens rea* requirement and there is no requirement that one would have benefitted from the alleged act of tax evasion.

The main implication of the proposed measures for firms is that they will have to show that they have taken "positive steps" to prevent tax evasion through e.g., due diligence. The Law Society is expected to issue guidance for tax lawyers on what questions to ask clients (i.e. what constitutes "positive steps" to prevent tax evasion).

It was thought that the HMRC is expecting pushback on some of their suggestions and that their intent may be to focus more on the activity of financial institutions rather than that of law firms.

There was some concern that the measures could result in additional red tape for law firms who are already regulated via other means, including the Proceeds of Crime Act 2002.

The Committee agreed not to actively undertake a response to the consultation at this point but David Hobart agreed to check in with the CLLS Revenue Committee as to whether they might be preparing a response.

**11. Consumer credit update**

The Committee briefly discussed the SRA's consultation on their role and obligations in the regulation of consumer credit activities, noting that the SRA has reacted positively to the feedback received during the consultation.

**12. Membership of the Committee**

The Chair noted that Heather McCallum has decided to resign from the Committee given that she is no longer working in the risk and compliance field. She further noted that there is no need to recruit an additional Committee member following Heather's departure as this had been anticipated and dealt with recently.

**13. Next PRRC meeting (9 December 2015) at Slaughter and May**

The Chair noted that the next Committee meeting will be held at Slaughter and May's offices on 9 December 2015.

**14. AOB**

David Hobart of CLLS discussed recent consultations with the SRA regarding the use of proceeds from 2015/16 Practising Certificate fees. He also mentioned two upcoming events at which the Rt. Hon. Michael Gove, Lord Chancellor and Secretary of State for Justice, will be in attendance. The first event is a round table discussion on 26 October, hosted by Clifford Chance. The second event is a CLLS member dinner at the Guildhall on 27 October. The focus of these events is likely to be a discussion of how to export English law and how law firms can increase their pro bono activities and contributions. Mr. Hobart recommended that Committee members read Michael Gove's *Legatum Institute speech* of 23 June 2015.

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Chair