

**Minutes of the Meeting of the CLLS Professional Rules & Regulation Committee held on
Wednesday 9 December 2015 at 4:30 pm**

Location: Slaughter and May, One Bunhill Row, London EC1Y 8YY

Present: Roger Butterworth (Bird & Bird LLP)
Clare Wilson (Herbert Smith Freehills LLP)
Chris Vigrass (Ashurst LLP)
Mike Pretty (DLA Piper UK LLP)
Jo Riddick (Macfarlanes LLP)
Raymond Cohen (Linklaters LLP)
Tracey Butcher (Mayer Brown)
Annette Fritze-Shanks (Allen & Overy)

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

Apologies: Sarah de Gay (Slaughter and May, Chair)
Jonathan Kemberly (Freshfields Bruckhaus Deringer LLP)
Douglas Nordlinger (Skadden, Arps, Slate, Meagher & Flom LLP)

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1 Update on 10.11.15 meeting with SRA

In the absence of the Committee's Chair, David Hobart presided over the meeting and provided an update on the latest meeting with the SRA:

- There was a brief discussion of the recent meeting with Michael Gove, which focused on the role of law firms and a review of the Legal Services Act.
- Also discussed with the SRA was HM Treasury's upcoming consultation paper on "A better deal: boosting competition for families and firms", subsequently published on 30th November 2015. The aim of the paper is to provide a "*blueprint for ambitious action to increase competition in our economy – bringing down bills for families and firms while creating the conditions for businesses to thrive*". The paper discusses the increasing cost of mortgages, energy, insurance and healthcare (among others), but legal and banking fees also figure in the report.
- The inclusion of legal fees in the paper has been a catalyst for a Ministry of Justice review of how to encourage new entrants to the legal services market and the paper's summary of actions states that the Government will further reduce barriers to alternative business structures, to allow supermarkets and estate agents, among others, to offer certain legal services (e.g. conveyancing, probate and litigation). The paper suggests that a consultation on this topic will be launched by the spring of 2016, led by the Ministry of Justice.
- The paper also notes that the upcoming consultation will look at how to separate the legal service regulators from their representative bodies. The SRA is currently preparing for this by considering how this will affect their relationship with the Law Society and the two bodies' respective responsibilities and mandates.
- The SRA met with Alison White from the Office of the Registrar of Consultant Lobbyists regarding the register of law firms. To date, there has been little support in the legal

community for the suggestion that more law firms should be registered. The Committee's view is that very few law firms fall under the definition of "lobbyist".

- The SRA's tone of voice project is going ahead – the language used in SRA letters is set to change in line with a move towards a "plain English" writing style.
- The SRA noted that Nick Eastwell is due to leave in 2016 and that it is uncertain whether he will be replaced. The Committee voiced support for finding a replacement, noting that Mr. Eastwell has been a helpful contact and advocate.
- The SRA discussed their "A Question of Trust Campaign" – see Item 5, below, for more details on this topic.
- There was a discussion regarding legal training providers and a consultation on whether there should be changes to the timing and structure of examinations.
- The SRA reported that the changes to their rules on consumer credit had been approved by the FCA. Included in the approved rules are measures to allow solicitors to carry out certain consumer credit activities under the SRA's authorisation where those activities are central to the legal services provided.
- The SRA discussed its Innovate project, which aims to assist legal services advisors who want to develop their businesses as well as potential new entrants to the legal services sector. The SRA published a report on *Innovation and growth in legal services* in November 2015.
- The SRA's AML report has been delayed and they have indicated that it is likely to be released early in 2016.

2 Update on 26.11.15 meeting with Law Society

David Hobart provided an update on the latest meeting with the Law Society. The discussion focussed on the work being done following publication of the "Preserving Professionalism" report, which was discussed at the last SRA/CLLS Symposium in October 2015. It was noted that the SRA has indicated that they would like the CLLS to be involved in that work. Among the issues addressed in the report were:

- the increased pressure on firms by clients, in particular with respect to engagement terms. The Committee queried however, whether this pressure is a matter of regulatory concern and suggested that it may more of a contractual issue. The report notes that 25% of law firms reported that they do push back on client relationship terms that contain clauses that are viewed as unacceptable. There was a discussion of what might be done to encourage a dialogue with the Law Society/SRA regarding engagement terms.
- One member of the Committee raised the issue of "issue" conflicts or conflicts of principle, which is addressed in the report. Although no specific measures are recommended in the report, the Committee member suggested that there may be a need for further training to remind people of their obligations to clients. It is expected that the Law Society may provide more ethics guidance/training in response to publication of the report.
- There was a discussion of non-conflicts related risk taken by law firms and the view by some at the Law Society meeting that the fall out from risk taking could, in theory, lead

to the downfall of a large City firm if left unchecked. One Committee member noted that the SRA had prepared a categorisation of law firms from high to low impact in the event of such a downfall.

The Law Society also discussed the Apprenticeship Levy, details of which were clarified in the autumn statement by HM Treasury. The levy will be used to fund 3 million new apprenticeships through 2020 and will come into effect in April 2017. It will apply to all firms with more than 250 employees at a rate of 0.5% of an employer's pay bill. A £15,000 allowance for employers will mean that the levy will only be paid on employers' pay bills over £3 million. The cost of apprenticeships at a firm can be offset. David Hobart noted that traineeships at law firms are not considered to be apprenticeships but that firms may have non-legal apprenticeships that could be offset.

Raymond Cohen noted that the Law Society has been working to update its practice note on what constitutes the client file, following his discussions with the Law Society on behalf of the Committee regarding inconsistencies between the existing Law Society practice note and current case law. The Law Society has now added a "health warning" to their existing practice note pending an update. The Committee supported a call for further review of what the current law says, particularly as it relates to electronic files. Raymond Cohen agreed to get in touch with the Law Society to follow up on their progress.

Finally, the Law Society noted that they had agreed and published a new strategy. David Hobart pointed out that the strategy does not address how the Law Society envisions working with the SRA going forward.

3 Outcome of/feedback on 10.11.15 "Preserving Professionalism" Symposium

Please see item 2, above.

4 Lawyers' levy, an update

David Hobart reported on the CLLS round table discussion with the Rt. Hon Michael Gove, held on 26 October 2015, where the issue of a levy on solicitors to fund legal aid was discussed and debated. Mr. Gove stressed the importance to the judicial system of a high quality criminal bar. In Mr. Gove's view, solicitors have benefitted significantly from the reputation of the English judicial system and it is right that they should give back to help fund legal aid to ensure the quality of the criminal bar. Some representatives of City firms challenged Mr. Gove's assumptions regarding the root of City firms' success. It remains unclear how the levy might be implemented and whether a distinction would (or could) be made between solicitors and barristers when defining who would be caught by the levy. Although Mr. Gove stated that a levy is still in the running, there was no mention of the levy in the Autumn Treasury Statement, which suggests that plans for a levy are on hold.

5 "A question of trust", SRA consultation paper

In September 2015, the SRA launched 'A question of trust' campaign "to give everyone a chance to have their say about action taken against those solicitors who fall short of the expected standards", which will run through January 2016. The SRA has published a consultation paper in connection with the campaign, as well as a "professional standards survey" that is open to all and asks how ethical dilemmas should be categorised, with a range of six choices from "no concern" (no SRA action) to "the most serious matters" (permanent loss of one's ability to act as a solicitor).

The SRA's aim is to finalise a schedule of disciplinary responses to the behavioural issues raised in the consultation paper, in accordance with the severity, to inform SRA action in response (if any); clarify what form of investigation might take place and who would be responsible for it; and determine the consequences if there is a finding of wrongdoing. Raymond Cohen noted that the SRA's suggested approach gives special prominence to the rule of law when considering solicitor behaviour.

Raymond Cohen noted that a working group of the Committee made up of himself, Mike Pretty, Annette Fritze-Shanks and Clare Wilson are looking at the SRA's draft with a view to providing a response to the consultation on behalf of the CLLS.

In the view of the working group, the main issue with the current draft of the SRA's proposal is that many of the ethical and behavioural issues addressed are somewhat disconnected from the types of issues faced by City firms. The working group is putting together a response, which will include examples of some suggested ethical issues that are more regularly faced by City firms. The Committee agreed that there is a need to ensure consistency and proportionality in the approach to be taken by the SRA.

6 SRA's "Looking to the future" press release, 26 November 2015

The SRA announced plans in November to further simplify their overall approach to regulation, including streamlining the Solicitor's Handbook. It is expected that the SRA will publish a consultation paper on changes to the Handbook in the spring of 2016. Several Committee members attended a preliminary meeting with the SRA on this topic, and some noted that they had also spoken with external consultants hired by the SRA to advise on the planned changes. The Committee agreed that it would be preferable to have additional input into the SRA's positioning prior to the publication of the consultation paper. Crispin Passmore, the SRA's Executive Director for Policy, had already asked Sarah de Gay to put together a working group for these purposes. The working group would comprise of Raymond Cohen, Clare Wilson and Jo Riddick, in addition to Sarah de Gay. That group would regularly report back to all members of the main PRRC Committee and involve all CLLS member firms if/when appropriate.

7 HMRC consultation "Tackling offshore tax evasion: a new corporate criminal offence of failure to prevent the facilitation of evasion"

Following the discussion at the September Committee meeting of HMRC proposals to tackle offshore tax evasion, Annette Fritze-Shanks provided a brief update to the Committee and noted that there have been no significant developments since September and that new legislation is not expected in the short term. It is expected that the HMRC will provide more clarity on their proposals early in 2016.

Jo Riddick also noted that HMRC has indicated that it will seek to use its data gathering powers under the Finance Act 2011 to gather factual, non-public client data (e.g. ultimate beneficial owner information) from law firms who have gathered such data in connection with anti-money laundering checks, with a view to tackling offshore tax evasion. She noted that HMRC has not provided specific information on how this might work. The Committee agreed that more information is needed and voiced concern that any measures to gather confidential client data may negatively impact clients' perception of English law firms as an attractive option compared to other jurisdictions.

The Law Society Tax Committee responded to the HMRC consultation paper in October 2015. In their response, the Law Society notes that "there is a clear distinction to be drawn between those [tax] arrangements which can be said to be abusive, and those which fall short of that but

may still be found ineffective by the courts.” It was also agreed that the Committee would follow up with the CLLS Tax Committee regarding their views in order to coordinate a CLLS response to the consultation.

8 Changes to SRA’s Regulatory Management team

The Committee briefly discussed the recent changes to the SRA regulatory management teams. The principal change is that reports to the SRA will now be handled by a centralised team in Birmingham with less of a role for a firm’s SRA liaison. Jo Riddick commented that she has expressed concerns about that aspect to the SRA and Nick Eastwell, in particular that it may remove one of the key perceived benefits of regulatory management for City firms, which is being able to discuss any issues arising out of reports with a familiar face who knows the firm. In addition, going forward firms will have one rather than two SRA regulatory managers assigned to them.

9 HMT “A better deal: boosting competition to bring down bills for families and firms”

Please see Item 1, above.

10 Membership of the Committee

The Committee agreed to discuss this item at the next meeting.

11 Next PRRC meeting (10.3.16) - venue

Annette Fritze-Shanks kindly offered to host the next Committee meeting at Allen & Overy on 10th March 2016.

12 AOB

Raymond Cohen raised the likelihood of changes to the regulation of lawyers operating in Russia. New legislation was expected to be passed by the Russian parliament relatively soon, with a two-year transition period. Whereas the Russian legal profession is now self-regulated, the legislation is expected to introduce a new regulatory structure. While the impact of the legislation is not yet clear, it is expected that the new rules will require firms to use a specific structure to practice law in Russia. It is also understood that there are no proposed carve-outs for “foreign lawyers”. The Committee agreed that the Law Society’s City and International Division should be encouraged to respond on this issue and Raymond Cohen agreed to discuss the matter with Stephen Denyer.

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David Hobart, CLLS Chief Executive