

**Minutes and actions arising from the CLLS Professional Rules & Regulation
Committee held on 8 December 2016**

- Location:** Freshfields Bruckhaus Deringer
- Present:** Jonathan Kembery (Freshfields, Chair)
Roger Butterworth (Bird & Bird)
Clare Wilson (Herbert Smith Freehills)
Chris Vigrass (Ashurst)
Mike Pretty (DLA Piper)
Raymond Cohen (Linklaters)
Hilary Foulkes (Skadden, Arps, Slate, Meagher & Flom)
Tracey Butcher (Mayer Brown)
Annette Fritze-Shanks (Allen & Overy)
Jo Riddick (MacFarlanes LLP)
- In attendance:** Sonya Foulds (Freshfields, Committee Secretary)
- Apologies:** Antoinette Jucker (Pinsent Masons)

1. Committee Review, Terms of Reference & Next Steps

The Committee endorsed the results of the recent internal review of its remit and functioning. There was a discussion about whether the scope of the Committee's remit should be wide or narrow (i.e. purely sectoral). A wide role was difficult to sustain but there was a risk that some matters may not be covered by other committees and could be left without any CLLS consideration if the Committee restricted itself purely to matters that involved the regulation of the practice of law. As an example, it was not clear which committee would cover GDPR. It was agreed to discuss the remit of the specialist committees with CLLS management and to investigate drawing up and circulating a programme of work for the Committee. As long as sufficient certainty could be obtained from SRA and others on the pipeline for the year ahead, this would signal to firms where the Committee would focus its work.

ACTIONS: Jonathan will draft a short set of Terms of Reference for the Committee. Jonathan will speak to David about liaison with Chairs of other committees, overlap of roles and Terms of Reference generally. Jonathan will follow up with the SRA regarding their programme of work.

2. Report on SRA Handbook meeting

Raymond briefed the Committee on the meeting earlier that day with SRA. 3 items had been covered: feedback on responses to consultation; conflicts proposals and reactions; and enforcement strategy.

Consultation responses:

The SRA is still considering feedback; it is not yet ready to discuss the Committee's response but eager to do so shortly. The SRA reported that, generally, responses had supported the idea of two Codes as long as there was guidance. There had been quite a lot of pushback with regard to the idea of allowing solicitors to work in the unregulated sector. The SRA is still considering its response on this issue. With

regard to the 2nd stage of the consultation, the Committee had said to the SRA that it did not see that the SRA could start this phase without having decided on its vision in relation to allowing solicitors to work in the unregulated sector. It would be difficult for the Committee to input on any proposals if there was no certainty as to the outcome in that area. The SRA acknowledged this difficulty but did not confirm it would wait. The SRA have an Away Day 12 December to consider timing and will revert after this with their programme of work.

Conflicts:

There had been extensive discussion about this area. The SRA were under the impression that many firms did not understand the current drafting and frequently asked for guidance. This was not the experience of the Committee. The Committee explained how conflicts rules applied in the work done by member firms. The SRA were interested to receive information on any scenarios where we felt the current rules were too restrictive. There was also some discussion around the concept of informed consent in a conflict situation, where it was noted that a range of views existed between members of the Committee and member firms. SRA to revert.

Enforcement strategy:

The SRA is developing a paper to share with the Committee in January. The SRA's position is that it is seeking to take a proportionate approach and only enforce where it is in the public interest to do so. They are considering raising the threshold for reporting to limit it to circumstances where enforcement would naturally follow. There was a discussion about the point raised in the Committee's response distinguishing "serious misconduct" (to be reported in relation to conduct generally) and material breaches (to be reported in relation to matters arising within your own firm). The Committee had made the point that we really need to understand the approach to enforcement in order to be able to give views on the draft Codes.

3. SRA survey on guidance

Further to recent email to firms on this, the Committee was encouraged to respond to the SRA's survey. It was noted with concern that there was a risk of any guidance becoming secondary "rules" and that it was important that firms were still able to decide for themselves how they achieved the Outcomes. This point should also be covered in any future response on the enforcement strategy.

4. Response to SRA paper on regulatory data

ACTION: Julia is drafting the response and will circulate to members of the Committee for comments.

5. Report on SRA quarterly meeting

Jonathan reported that the areas covered included SQE, Handbook reform, Looking to the Future consultation and an overhaul of SRA IT system.

6. Report on Law Society/CLLS PR&RC meeting on Brexit

The Committee agreed in principle to increased cooperation with the Law Society on areas where there was alignment. It was agreed that it would be very helpful to invite Mickaël Laurans (TLS's International Policy Manager for Europe) to a meeting to update the Committee us on his work with international bars.

ACTIONS: Sonya to follow up with Clive Black. Jonathan to follow up with Mickaël Laurans.

7. **PWC waiver**

Roger noted a potential concern regarding the implications of a waiver granted to PwC, which may give rise to an uneven playing field in the area of conflicts if his interpretation was correct.

ACTIONS: Roger to revert with detail on how he interprets the waiver. Jonathan then to follow up with Juliet Oliver to ask for clarification/explanation.

8. **Membership**

It was agreed there was no immediate need for new members.

9. **AOB**

Jonathan advised the Committee of an invitation to the Annual CLLS Committees/Court/Livery Dinner, taking place on 31st January 2017. This is an opportunity for members of the specialist committees to meet and for the CLLS and CLSC to acknowledge the valuable work which the committees carry out. Further details, including the cost of tickets, will be sent nearer the time.