

Minutes of the meeting of the CLLS Professional Rules & Regulation Committee (the Committee) held on Thursday 7 March 2019 at 4:00pm

Location: Freshfields Bruckhaus Deringer LLP, 65 Fleet Street, EC4Y 1HS

Present:

Jonathan Kembery (Freshfields Bruckhaus Deringer LLP) (Chair) (**JK**)
Clare Wilson (Herbert Smith LLP) (Co-Vice Chair) (**CW**)
Raymond Cohen (Linklaters LLP) (Co-Vice Chair) (**RC**)
Annette Fritze-Shanks (Allen & Overy LLP) (by telephone) (**AFS**)
Julia Adams (Slaughter and May) (**JA**)
Mike Pretty (DLA Piper UK LLP) (**MP**)
Sonya Foulds (Cleary Gottlieb Steen and Hamilton LLP) (**SF**)
Jo Riddick (Macfarlanes LLP) (**JR**)
Iain Miller (Kingsley Napley LLP) (**IM**)
Fergal Cathie (Clyde & Co LLP) (by telephone) (**FC**)
Kevin Hart (City of London Law Society) (**KH**)
David Hobart (City of London Law Society) (**DH**)
Sarah Boland (Freshfields Bruckhaus Deringer LLP) (Committee Secretary) (**SB**)

Apologies:

Roger Butterworth (Bird & Bird LLP)
Tracey Butcher (Mayer Brown)

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1. Minutes and matters arising

1.1 The previous meeting's minutes were accepted as approved.

2. Update on SRA quarterly meeting

2.1 JK and JR reported back from the quarterly meeting with the SRA held on 12 February 2019. The discussion included the following:

- (a) The new SRA Handbook which had been discussed at the SRA's Board meeting on 6 March 2019. Publication of the decision, with the date for the implementation of the new Code of Conduct, was expected on 19 March 2019. The SRA was developing a set of case studies and had invited the involvement of the Committee. Greater clarity would be desirable on the ambit of the new Overseas Practice Rules;
- (b) Implementation of the Transparency Rules and the approach to review the SRA was undertaking;

- (c) The pilot for SQE 1 (400 candidates were expected to sit the exam in March 2019) and timing of the pilot for SQE 2 (expected to be at the end of the calendar year); and
 - (d) The ‘unhappiness’ expressed by the SRA following visits to 23 firms (to date) regarding AML compliance. The SRA is expected to continue its audit of AML compliance, with high level reviews of AML risk assessments from a further 400 firms anticipated. The SRA highlighted (i) the need to consider repeat external screening of ‘relevant’ employees on an ongoing basis (it is unclear who the SRA would consider to be ‘relevant’ for this purpose), and (ii) the lack of awareness of certain individuals who held the role of MLCO. Recipients of the visits had subsequently commented on the apparent ‘tick-box’ approach of the SRA.
- 2.2 ACTION: JK to follow-up with the SRA with respect to the ambit of the new Overseas Practice Rules.

3. SRA Reporting Consultation update

- 3.1 SF reported on the meeting she and FC had had with Juliet Oliver of the SRA on 9 January 2019 in relation to the reporting consultation.
- 3.2 As was evident from the guidance which had now been formally published, the SRA had demonstrated little flexibility in its approach. Whilst the reference to ‘wider concerns’ had been removed, the lack of clarity remained challenging – in particular: (i) there was no definition or guidance regarding what constitutes ‘serious breach’ and; (ii) the disparity between the enforcement strategy and proposed rules with respect to whether reporting a matter to the COLP absolves an individual of the need to make a separate report.
- 3.3 JK confirmed that a separate meeting was proposed including representatives of the Committee, the SRA and the Bar Standards Board to discuss certain other relevant issues regarding reporting.

4. Posted Workers Directive

- 4.1 SF raised the ambit and application of the Directive to the secondment of individuals and, in particular, whether the Directive imposed registration requirement on firms seconding individuals.
- 4.2 ACTION: JK and AFS both agreed that they would consider the Directive with their respective mobility teams and revert back.

5. Brexit

- 5.1 It was noted that the SRA had confirmed that the status of RELs and EELs would remain unchanged until the end of 2020.
- 5.2 The Committee discussed the position of Austria, Spain and Ireland.
- 5.3 It was noted that Austria was implementing grandfathering provisions for England and Wales firms for one year.
- 5.4 Whilst it had initially been considered that this was the same for Spain, advice differed. In particular, there was a question as to whether the grandfathering would apply to branches of UK LLPs or only to those firms operating in Spain as formal Professional Services Companies.

5.5 With respect to Ireland, JK had been provided with a copy of a letter from the Law Society of Ireland which appeared to suggest a shift in the approach with respect to whether it was possible for those with Irish practising certificates to continue to practise EU law outside Ireland. The letter appeared (contrary to previous understanding) to suggest that an Irish practising certificate would only afford the ability to practise EU law in Ireland.

5.6 ACTION: JK agreed to circulate a copy of the letter from the Law Society of Ireland to the Committee.

6. Department for Business, Energy & Industrial Strategy Consultation on NDAs

6.1 KH confirmed that the Employment Law Committee would be taking the lead on considering this and would raise specific points for consideration by the Committee to the extent necessary. IM agreed to be the main contact in this regard.

7. Governance of the Committee

7.1 It was agreed that CW and RC would lead a review of the governance of the Committee.

8. AOB

8.1 KH reminded Committee members of upcoming City of London Law Society events including the annual service on 13 May 2019 and the AGM on 17 June 2019.

8.2 It was noted that the Mayson Review had moved forward and the new materials considered the implications of technology on regulation.

8.3 There being no further business, the Chair brought the meeting to an end.