

Minutes of the meeting of the CLLS Professional Rules & Regulation Committee (the Committee) held on Thursday 5 March 2020 at 4:00pm

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

Present:

Jonathan Kembery (Freshfields Bruckhaus Deringer LLP) (Chair) (**JAK**)
Raymond Cohen (Linklaters LLP) (Co-Vice Chair) (**RMC**)
Clare Wilson (Herbert Smith LLP) (Co-Vice Chair) (**CW**)
Mike Pretty (DLA Piper UK LLP) (**MP**)
Annette Fritze-Shanks (Allen & Overy LLP) (**AFS**)
Julia Adams (Slaughter and May) (**JA**)
Jo Riddick (Macfarlanes LLP) (**JR**)
Iain Miller (Kingsley Napley LLP) (**IM**)
Tracey Butcher (Mayer Brown) (**TB**)
Sonya Foulds (Cleary Gottlieb Steen and Hamilton LLP) (**SF**)
Sarah Boland (Freshfields Bruckhaus Deringer LLP) (Committee Secretary) (**SB**)
Mickael Laurans (Head of International, Law Society) (**ML**) (present for part of the meeting)

Apologies:

Fergal Cathie (Clyde & Co LLP) (**FC**)

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1. Minutes and matters arising

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

2. Brexit

2.1 ML summarised the Brexit position on certain matters from the perspective of the Law Society. In summary those comprised the following.

2.2 The general election in the UK had made a difference with respect to the UK government's stance, which was likely to result in a more distant relationship with the EU and a less ambitious free trade agreement (**FTA**). It was unlikely there would be substantive information provided by the government on the position with respect to legal services at this stage albeit that the UK appeared more ambitious and keener for the issue of mutual recognition of qualifications to be addressed.

2.3 The Law Society (given that the UK would be leaving Brussels I), had requested that the UK accede to Lugano Convention on recognition and enforcement of judgments. This had not yet been agreed by the EU but was a better outcome than a country by country recognition/enforcement approach.

2.4 The Law Society was also seeking to improve the approach with respect to AML.

- 2.5 There was a substantial discussion of the position in France. The starting position was that this was one of the most complex jurisdictions as there was a prohibition on profit sharing with non-EU lawyers and no recognition of branches of UK LLPs. Following significant lobbying, in February 2019 an Ordinance that grandfathered the rights of law firms to operate by means of UK LLPs after Brexit was granted. However, it now appears that that law is only effective in the event of a no-deal scenario. This means that, if the transition period were to come to an end without a deal in December 2020, then the rights of LLPs would be protected. However, if a FTA is concluded, the Ordinance will fall away even if the FTA does not actually grant LLPs the rights to operate. The Law Society was continuing to engage on this issue alongside those firms in Paris who had lobbied previously.
- 2.6 ML also confirmed that the Law Society was continuing to monitor the situation with respect to Iris Practising Certificates.
- 2.7 ACTION: RMC to confirm whether he is also content to attend any further meeting(s) with the Law Society of Ireland alongside the Law Society of England & Wales.

3. SRA Standards and Regulations

- 3.1 JAK reported that the SRA had reconsidered the issue highlighted at the previous meeting regarding Rule 6.2 in the Code for Authorised Persons and the accompanying guidance – in particular with respect to the approach to running ‘virtual trees’.
- 3.2 RMC reflected that it had also been suggested to the SRA that it may be valuable for the Committee to have ongoing involvement in developing more sophisticated case studies in certain areas, which suggestion had been well received.
- 3.3 ACTION: for a sub-group consisting of certain members of the Committee to be established to take forward the ongoing liaison with the SRA with respect to providing clarity in the SRA’s guidance (particularly in relation to conflicts). Members of the Committee to confirm to JAK and/or RMC if they/their firms want to be involved probably with other member firms not represented on the Committee.
- 3.4 ACTION: IM confirmed that he would undertake a ‘mapping exercise’ to identify the various guidance documents issued by the SRA related to particular issues.
- 3.5 ACTION: Committee members to suggest areas related to the conflicts rules where they would think that working on guidance with the SRA would be advisable; for example, on the lateral movement of assistants. The principle was that the subgroup should work on matters that were generally agreed by the Committee.

4. Membership of the Committee

- 4.1 It was noted that the Committee had lost two members and there was a need to replace those.
- 4.2 ACTION: JAK to draft and circulate adverts inviting applications for membership of the Committee. AFS offered to provide a copy of the advert used last time for him work from.
- 4.3 ACTION: JAK to revert to the Committee (with FC) on the Committee’s terms of reference.

5. LSB consultation on continuing competence

- 5.1 JAK confirmed that he had been contacted by the LSB and the Law Society with respect to involvement in the above consultation in respect of which the Law Society was

producing a response. It was agreed that it would be desirable for the Committee to liaise (involving others in the CLLS) with the Law Society on its response.

- 5.2 ACTION: JAK to contact Patrick McCann of Linklaters (the Chair of the CLLS Training Committee) to confirm that CW would be taking this forward on behalf of the Committee to the extent required.

6. AOB

- 6.1 The Committee agreed that, for the next SRA symposium in May 2020, a discussion on mental health and the law (perhaps with the involvement of Law Care) would be appropriate.

- 6.2 ACTION: JAK to revert to the SRA accordingly.

- 6.3 The Committee agreed that the CLLS could upload the Overseas Rules guidance note onto the CLLS website.

- 6.4 ACTION: JAK to revert to David Hobart to confirm the Committee's agreement accordingly.

- 6.5 The Committee agreed that, with respect to DAC6, the tax committee of the CLLS should take the lead on that.

- 6.6 ACTION: TB to contact the tax committee to confirm they are proceeding on that basis.

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