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By email: [freedominpractice@sra.org.uk](mailto:freedominpractice@sra.org.uk)

Dear Denise

**Re: SRA Consultation “Outcomes-focused regulation - transforming the SRA's regulation of legal services”**

The City of London Law Society (“CLLS”) represents approximately 13,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response in respect of the SRA's consultation “Outcomes-focused regulation - transforming the SRA's regulation of legal services” (the “Consultation Paper”) has been prepared by the CLLS Professional Rules and Regulation Committee (the “PR&RC”) and the CLLS Education and Training Committee (with respect to the Consultation Paper's questions 19 and 20). The PR&RC is made up of a number of solicitors from twelve City of London firms who have specialist experience in the area of the regulation of the profession.

The CLLS's responses to the specific numbered questions contained in the Consultation Paper are set out below.

**1. Do you have any comments on our goals and vision for outcomes-focused regulation (OFR)?**

This question relates to section III, which sets out “a new approach to regulation” and which contains a number of objectives/aspirations which could be achieved even without a move to OFR. We believe the question should ask if we have comments on this “new approach”, to which our response would be that we fully agree with it.

**2. Are there particular things we should consider to ensure that consumer protection remains central to our regulatory approach?**

Question 2 at the end of section IV is worded differently to the question above in that it refers also to 'the public interest'. Section IV fails to address the interests of business consumers (clients) of, in particular, City legal practises. Here, the public interest lies in ensuring that the reputation of England as the preeminent jurisdiction when it comes to choice of governing law and as a forum for the resolution of disputes is not only maintained but also enhanced. To achieve this, regulations must ensure and promote a competitive environment for the provision of legal services, coupled with innovation and the highest standards of integrity.

**3. How do you think we should work with consumers to help them to understand our role as a regulator for the wider benefit of consumers as distinct from the Legal Ombudsman's role in facilitating individual redress where appropriate?**

Following on from our response to question 2 above, the first step should be for the SRA to make it clear that it considers that working for the benefit of business consumers of legal services is a vital part of its role.

**4. Do you have any comments on the key implications for firms set out above?**

We would urge the SRA to seek only information about firms which it really needs and which it has the skills/resources to process/assess. In any event, firms will need to be given sufficient notice of what is required in order that they can ensure that their systems can generate the information in the form required. Modifying practice management information systems (which tend to be bespoke) is time-consuming and expensive and the SRA should bear this in mind when determining the extent and nature of any information required.

**5. Are there other implications we need to consider?**

The SRA is likely to expect firms to divulge information which they consider highly confidential. Firms will be reluctant to give such information unless they are entirely satisfied that it will be kept confidential. The SRA needs to convince firms that this will be the case, and to explain who in the SRA will be able to access the information. We assume it will be restricted to those who have a clear need to see the information.

Separately, we would encourage the SRA to work with the Law Society on how the Law Society Code of Practice on freedom of information will be applied to information submitted by firms under OFR. Particularly, it would be helpful for guidance to be provided so that firms were certain when the Law Society/SRA would accept that information had been provided 'in confidence' for the purposes of the Code of Practice. For example, the SRA could give a global confirmation to the profession, on requesting particular categories of data, that responses would be accepted as falling within this category under the Code.

**6. Do you have any comments on how the SRA and firms can work together to build the necessary degree of trust and confidence for the move to OFR?**

The SRA needs to demonstrate that it has staff who properly understand the market in which large firms operate before it can expect such firms to 'engage positively... when difficult issues emerge'. The SRA cannot expect such engagement until it shows it will itself engage positively. If the SRA establishes a track record of providing guidance to respond helpfully to difficult questions relating to the application of the code to commercial situations encountered by large commercial firms, that would assist. Moreover, the Code will need to be sufficiently certain / reassuring since firms will be reluctant to take everything on trust (see the reference to "a high degree of confidence" in paragraph 24 of the Consultation Paper).

## **7. Do you have any comments on the central role of the risk centre in our move to OFR?**

We don't find the description of the Risk Centre very clear. Is it a physical centre, or a group of people? Where will the Corporate Group exist in the context of the Centre?

This question seems to be the only opportunity to comment on paragraph 36. In this paragraph, there is reference to there being a "presumption" in the absence of a firm meeting the published indicative behaviours "that there is a risk to the firm's delivery of the outcomes". Unless we can be satisfied that the indicative behaviours will be suitably City firm / sophisticated client focussed, we do not believe this is appropriate. Whilst there might be an assumption that a firm has complied with the outcomes if it has met the indicative behaviours, we believe that in any other case there should be no assumptions.

## **8. Do you have any other suggestions for the activities the risk centre will undertake?**

We have views on the activities of the Corporate Unit, but are unclear whether these are relevant to this question.

## **9. Will firms understand our need to receive information from them in order to undertake high quality risk assessment?**

Large corporate firms would do so, subject (in particular) to our response to question 5 above.

## **10. Do you have any comments on our proposed approach to authorisation?**

At the individual level, we assume the same approach would apply for RFLs and RELs. The SRA should take interest in the extent to which individuals have undertaken, when qualifying as lawyers, specific training in legal ethics.

## **11. Do you have any comments on our proposed approach to supervision?**

If the question in paragraph 69 is intending to re-open the question of whether it is appropriate to have a dedicated team focused on the larger corporate firms, we repeat our full endorsement of the approach set out in the Smedley Report.

In our view, the success or failure of the SRA and its introduction of OFR will to a large degree depend on the quality of its supervisors and the work they do. High quality individuals and considered application of the Code will be essential.

In the context of paragraph 77, we believe that "the relevant supervisors" should always be involved in any investigation.

## **12. What might be the particular issues for smaller firms and how might we address them?**

No comments.

## **13. Are there other regulatory tools we could consider?**

The SRA should participate in the current debate (see the Law Society Report: Preparatory Ethics Training for future Solicitors<sup>1</sup> and the Initiative of the UK Centre for Legal Education) over the tuition of legal ethics and encourage debate on ethical issues, such as by supporting any institution focusing on this area and by proposing subjects for research papers/recommended standards.

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<sup>1</sup> <http://www.lawsociety.org.uk/influencinglaw/policyinresponse/view=article.law?DOCUMENTID=419357>

**14. Is there a role for representative bodies in supporting their members' compliance with the principles and outcomes in the Handbook?**

We consider this question in the light of the additional comments in paragraph 39. We doubt if any representational body could realistically have anything more than an educational role. In particular, we foresee problems if the SRA did not agree with the body's guidance and the liability implications for the body if SRA enforcement proved the guidance wrong.

**15. Do you agree with our approach to formal investigations?**

Yes, broadly.

**16. If not, please explain why.**

n/a

**17. Do you have any comments or feedback on our draft enforcement strategy?**

In paragraph 23 of Annex A (which sets out the SRA's enforcement strategy) there is a reference to the SRA's "assessment criteria". We believe this in turn to be a reference to a risk matrix paper which we have commented on in the past. We note, from the version which is on the SRA's website, that none of our concerns seem to have been addressed. In particular:

- a) A "routine motoring offence" is still listed as a breach of Rule 1 (Integrity). Why?
- b) Failure to give transparency information attracts a higher risk score than incompetence. Particularly in an OFR world, this seems muddled.
- c) Anything which involves "large sums of money" or is a "high profile case" attracts the highest possible impact score. Arguably this catches everything a City law firm does. Looking at the other impact descriptions, we are not sure why this description is needed at all – all possibilities seem to be covered.

**18. Do you have any comments on our proposed approach to making new Handbook provisions?**

The SRA should discuss its plans with selected users before progressing to formal consultations.

**19. Do you have any comments on our proposed approach to consumer education? Are there particular initiatives we should consider?**

We assume this question is aimed at consumers of legal services who are unfamiliar with the legal process or with instructing solicitors. As the member firms of the CLLS act principally for more experienced or sophisticated clients who are well aware of the market in legal services (as well as the relevant law in many cases), there will be respondents who are better placed to respond on this point than the CLLS.

Nevertheless, CLLS members do advise less experienced clients whether as part of their normal businesses or through their pro bono activities. That group of clients can only benefit from improved education & information to help raise their awareness both of their rights and the support which the profession can provide to them to help them make informed choices.

The SRA will be aware of the methods available to it for providing consumers with relevant education. The nature and content of the proposed education initiatives will determine what is the appropriate method to use.

**20. Do you have any comments on the SRA's current approach to formal education and training for the profession? Are there additional approaches we could take to improving pre- and post-qualification training?**

The SRA has started down the path of improving the training of future and current solicitors from the academic stage through to CPD. It has not, however, reached the desired destination and there is more work to be done. That said, we would strongly advocate building on the work already done and not reopening the work which was begun with the Training Framework Review. The profession needs certainty & stability in this area.

We will respond in more detail when the SRA's plans are publicised but we wish to emphasise now that it is important that any move to the "flexible achievement of outcomes" at least maintains and ideally enhances the quality of both entrants to the profession and the qualified members of it. Rigorous, consistent and measurable standards need to be applied though imposing unnecessary barriers to entry for talented people must be avoided.

Looking at each stage in the training continuum:

**1) *The academic stage - QLD/GDL***

The content, quality and level of assessment of QLDs is in urgent need of review. The proliferation of QLDs (some 600 globally) has made it impossible to monitor the quality of each on a regular and in-depth basis. The result is varied quality which is of little benefit to the students, their prospective employers or, ultimately, the public.

The content and coverage of the QLDs should be reviewed to ensure the required syllabus is fit for purpose. Topics such as the jurisprudential aspects of ethics (rather than professional standards rules) and company law could usefully be added to the list of Foundation subjects and it should be a condition of validation that an agreed syllabus for each Foundation subject will be covered to an appropriate level or standard. (We would not want to prescribe how that syllabus was covered nor what non-Foundation subjects are taught. That is the prerogative of the teaching institutions.)

**2) *The vocational stage - LPC***

We welcome the greater flexibility the SRA is allowing with this course. Quality assurance is very important for these courses and we welcome the SRA's proposals for a new approach to quality assurance of LPC provision, including the reinstatement of monitoring visits and grading.

**3) *The practical stage - Work-based learning***

The pilot of this is coming to an end. We will reserve judgement on the outcome until more information is available on the SRA's plans for changing this aspect of the training continuum. Whatever changes may be introduced, we would not want there to be any risk of a "two tier" route to qualification developing. We support widening access and improvements to quality. However, we would not want to see introduced an excessively bureaucratic structure (for example, in relation to testing trainees against the Day One Outcomes) as that would, to some extent, defeat the benefits of having an outcomes-based rather than process-driven approach.

**4) *Post-qualification training - CPD***

A review of the CPD scheme is long overdue. We would advocate greater flexibility in what will count as "CPD activities" so that solicitors can tailor the ways they satisfy their CPD obligations to the needs of their businesses and their clients. However, we recognise that some prescription may be needed if the profession is to maintain its reputation, and increasing the current requirements (within reason) may be appropriate. There is probably a need for the introduction of compulsory ethics/professional standards training into the CPD regime. Furthermore, encouraging solicitors to undertake rigorous & relevant

management training can only help support their businesses. We realise that cost (both to the profession and the SRA in terms of monitoring) may place a brake on what is feasible. However, there should at least be a comprehensive review to identify the ideal even if that has to be scaled back in the face of pragmatism.

There has been some debate across the profession about accreditation schemes and the extension of existing schemes or the introduction of new ones could be the outcome of a review of the CPD regime. These schemes are of less relevance to many CLLS members than to solicitors working in other parts of the profession, so we will not make comments on them in the abstract. We will wait until any concrete proposals are formulated.

However, linked to the issues of accreditation schemes is the issue of qualified or limited practising certificates. Again, we will comment in detail on this should definite concrete proposals be put forward though our current thinking is that such a move would probably be undesirable.

### **5) *The Qualified Lawyers Transfer Scheme***

This new Scheme will come into effect at the same time as we move to outcomes-focused regulation. We can see there may be reasons for reviewing the new Scheme in the light of the new regulatory approach. However, we would advocate that it is allowed to "bed down" for a period so that all necessary revisions can be made together, rather than there being a series of piecemeal amendments.

### **21. Are there other ways we can engage with our stakeholders on our move to OFR?**

The SRA should press the new government to relax pressure on the LSB to introduce ABSs in October 2011 so that stakeholders can have a proper opportunity to consider and comment on the proposed new outcome focused Code.

### **22. Do you have any comments on any aspect of our approach and its implications for equality issues? For example how might our approach impact on black and minority ethnic solicitors, women solicitors, disabled solicitors, and older and younger solicitors?**

No.

### **Questions on Annex B.**

### **23. Do you have any comments about the risks arising from the current financial management of firms?**

On the risks themselves, no. To evaluate the extent of the risk, however, it would be useful to have some statistics on the proportion of the firms that become insolvent in any year. The SRA's regulation of the issue should be proportionate to that risk.

### **24. Do you have any comments regarding the SRA's responsibilities for addressing the financial stability of firms and its proposed desired outcomes?**

While you say the SRA will have no responsibility to prevent firms from failing, it may inadvertently widen its remit so as to give consumers the impression that that is its role if the proactive approach envisaged is adopted. What resources will the SRA need to monitor the life-cycle events envisaged? Where the SRA requires to be notified of "significant changes" to a firm, what will its next steps be? Is it intended that the SRA would have any role in the mergers of substantial firms, bearing in mind the transatlantic mergers that are presently in train? We doubt whether this involvement in the financial affairs of firms is necessary to achieve the regulatory objectives under the Act.

**25. To what extent do you consider the proposed response outlined in this section meets the objectives of outcomes-focused regulation?**

From our response to question 24, you will have gathered that it's our view that the SRA may take on more than it can properly discharge in extending its information-gathering requirements as envisaged. In short, the response is disproportionate. An extension of the annual accountants' report to include some reporting on a firm's financial standing may be a more economical way of achieving the goal.

**26. Do you have any suggestions regarding what information may be requested of firms and how frequently it may be requested?**

See our response to question 25. We consider it inappropriate for the SRA to adopt a quasi-auditors' role in relation to the financial stability of firms

Yours sincerely

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Chair  
CLLS

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