The City of London Law Society

4 College Hill
London EC4R 2RB
Tel: 020 7329 2173
Fax: 020 7329 2190
www.citysolicitors.org.uk

CLLS Response to SRA consultation "Moving toward a fairer fee policy – second consultation"

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 second SRA consultation on "Moving toward a fairer fee policy: Second consultation" has been prepared by the CLLS Professional Rules and Regulation Committee. Our comments are as follows:

1. We do not agree that a banded turnover model as currently proposed is the best model for the firm based fee. As stated in our response to the first consultation dated 21 September 2009, we believe strongly that Model 1 (a flat sum per FTE fee earner approach) would be best until a risk-based approach is adopted.

Moving to the banded turnover model currently proposed has a disproportionate impact on the most efficient firms, which are also typically those who have invested in effective risk management processes and systems, have higher ratios of qualified to unqualified fee earners, and so require least supervision.

We are supportive of the principle that the cost of regulation should be spread more fairly but are concerned that City firms are likely to incur significant increases applying the current proposal; the calculations undertaken by some of our member firms are showing very significant increases which cannot be justified (see our answer to question 6.1). This very real concern has to be set against the background of general disquiet amongst City firms about the current cost of regulation, in absolute terms and in comparison with other professions, and the value this represents.

The answers to the questions which follow should be read in the light of this overriding comment and no subsequent answers should be read as approving the turnover model in its current form.

2. Yes as a starting point and in the absence of reliable information on the split of the regulatory burden between firms and individuals. As data becomes available this needs to be revised to properly allocate the fees to reflect the actual cost of regulation in support of the move towards a risk based model and the principle of polluter pays.

3. The intention to move towards a risk based approach should be far more explicit than the cursory reference in paragraph 33. In addition, the SRA needs to be live to the fact that information about a firm's turnover is not necessarily public and can be commercially sensitive. What steps is the SRA taking to ensure that turnover details are not shared widely within the SRA and only accessed on a need-to-know basis?

4. Yes.

5. Option 1. Options 2 and 3 are unacceptable in that they are entirely inconsistent with a risk based approach, which is what the SRA says it is ultimately aiming for. Moreover, Model 2 for the firm fee will work against firms which recover higher sums per fee earner and if this was to be combined with either option 2 or 3 in relation to the Compensation Fund payments, it would be disproportionate for those firms who require least supervision and do not create calls on the Fund.

6.1. We do not believe the current proposal will deliver an equitable or proportionate outturn for larger firms.

Setting the top band at £100m and applying the same rate to all turnover above this figure delivers anomalous results for firms with high turnover resulting in significant increases for many such firms (see our response to question 1). This inequity increases exponentially with turnover.

6.2. Probably appropriate, until the SRA can implement its objective of moving to risk-based assessment.

7.1. To an extent, some of the calculations assumed a 50:50 individual/firm split, rather than the 40:60 which is in the proposal, which diminish their relevance.

7.2. It is helpful. Only a computer model giving the result for each specific firm if it fed in its relevant data would provide full information. This may be too expensive for the SRA to provide at this stage.

8.1. A one-stage process makes budgeting easier and imposes less administrative burden on firms. Whatever the timing of the turnover snapshot used there will be winners and losers; providing a common basis is used (whatever it is) it will deliver a broadly equitable result.

8.2. If data is required under a two-stage process in June/July, it might be slightly too soon for a firm with a 30 April year end to provide audited figures. The SRA might therefore be given inaccurate information.

8.3. If the cost of a two-stage process is material this should be avoided, we believe a one stage process places fewer burdens on the profession generally. A two stage process may be particularly burdensome for smaller firms who do not employ accountants in house, or those with less sophisticated accounting and reporting systems.

9. We prefer option 1 but feel this is only appropriate if a two-stage model is adopted.
If the one-stage model is adopted this data will be collected through the recognition renewal process; the penalty of not being able to practice if recognition is not renewed should be sufficient incentive alone.

10. Assuming this refers only to overseas branches of a recognised body, we think a small flat fee (in the region of £120 per branch office) is appropriate.

11. We support the premise that any charge should not be a barrier to entry and that a flat fee is appropriate assuming this is in addition to the standard individual fee for each fee earner engaged within the new firm.

We do however question whether the actual firm fees currently proposed are not too low, particularly given that a new start up could required significant regulatory support, and given that no adjustment is proposed to take account of the size of the firm involved.

12. We support the proposals that new firms without actual turnover data should be required to provide an estimate in the manner specified. We do not support the proposal that turnover data for part of the year should be scaled up; typically new businesses will generate losses initially and calculating the fee on this basis may generate an erroneous result.

13. We prefer option 1. Option 2 will be too inexact where the period since the merger is short.

When applying option 1 the SRA will need to be alert to, and have discretion to take account of, situations where aggregating the historic turnover of the two firms would produce and inequitable result, e.g., where a significant element of the old business has split off at merger.

14. We prefer option 1, with the ability of the SRA to impose an allocation by reference to a percentage split of partners going to the de-merged entities if the firms do not define their own split percentage in a timely manner.

15. Assuming this refers to branches in England which are regulated and the fee is similar to that proposed for an overseas branch of an English firm, yes.

16. We reiterate our comment in response to questions 1,3 and 5. There needs to be a clear commitment to moving towards a risk-based approach on the part of the SRA and in the meantime the fairest approach would be for firms to contribute on a flat fee per fee earner basis.

With reference to the move to a risk-based approach; we would like to have a clearer understanding of the SRA roadmap for achieving this and the estimated timeframe.
We would also like to suggest that a third consultation on the fee policy should be undertaken following the 2010 renewal.

22 December, 2010

THE CITY OF LONDON LAW SOCIETY
PROFESSIONAL RULES AND REGULATION COMMITTEE

Individuals and firms represented on this Committee are as follows:

Chris Perrin (Clifford Chance LLP) (Chair)

Raymond Cohen (Linklaters LLP)

Sarah deGay (Slaughter and May)

Alasdair Douglas (Travers Smith LLP)

Antoinette Jucker (Pinsent Masons)

Jonathan Kembery (Freshfields Bruckhaus Deringer LLP)

Heather McCallum (Allen and Overy LLP)

Julia Palca (Olswang)

Mike Pretty (DLA Piper UK LLP)

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