Minutes of the meeting of the CLLS Professional Rules & Regulation Committee
Freshfields Bruckhaus Deringer LLP, 65 Fleet Street, London EC4Y 1HT
4.30 pm 23 June 2011

Present:
Chris Perrin (Clifford Chance LLP) (Chair)
Roger Butterworth (Bird & Bird LLP)
Sarah deGay (Slaughter and May)
Alastair Douglas (Travers Smith LLP)
Antoinette Jucker (Pinsent Masons LLP)
Jonathan Kembery (Freshfields Bruckhaus Deringer LLP)
Heather McCallum (Allen and Overy LLP)
Mike Pretty (DLA Piper UK LLP)
John Trotter (Hogan Lovells International LLP)

In attendance:
Robert Leeder (Policy & Committees Coordinator, CLLS)
David Hobart (Chief Executive, CLLS)

Apologies:
Raymond Cohen (Linklaters LLP)
Julia Palca (Olswang LLP)
Clare Wilson (Herbert Smith LLP)

1. **Best practice in internal risk mitigation. What systems firms have/think it may be appropriate to have:**

   a. **Making improper expense claims etc.**

   b. **Reducing the risk of people in firms from accessing confidential information when they do not need to do so, misusing it (whether by trading themselves or otherwise).**

   c. **Identification of potential personal ("own interest") conflicts.**

   d. **Outside interests of employees (i.e. what approach should firms take to ensure that the outside interests of employees (or just partners?) do not potentially expand the availability of a firm's sensitive information).**

   e. **Having representatives of client organisations on secondment within firms' working floors, and how to simultaneously assure other clients that their information is secure.**

Agenda items a. - e. above were considered.

In terms of expenses:

- Most firms currently do not require a second partner signoff for expenses claims, although some do. Some others were considering whether such a procedure now be introduced, although it was acknowledged that there could be difficulties with the

arrangement (including consistency of applied standards and other difficulties (e.g. lack of separation when the signing off partner is part of the same team as the person submitting the claim))

- Firms were looking at implementing a second partner sign-off requirement which would require a second signature above a certain threshold only (although that threshold may be fairly low).

- Some thought that second partner sign-off provides little protection in reality – and that Accounts departments need to be trained to spot matters of potential concern.

- It was noted that new electronic monitoring systems for expenses were now available. Some systems could apparently raise alerts if, for example, it appeared that the same item was being claimed for twice.

In terms of confidentiality:

- Some firms restricted access to their electronic documents to the teams working on the matters to which the documents related as a matter of course. Some others did so only for “sensitive” matters. There was the issue that some solicitors outside these teams could feel disadvantaged by such restrictions, in that the restrictions would prevent them from searching the firm’s document management system and accessing such documents as "precedents", but such a practice was in any event considered undesirable as it was felt that it could create the risk that solicitors would use heavily negotiated documents out of context. Generally, there was a growing trend towards “closed” access.

- It was noted that some firms encouraged a clean desk policy but the practical difficulties were acknowledged. Locking of rooms when working on highly sensitive matters was another option encouraged by some.

- In terms of addressing the concern regarding inward secondees’ access to confidential information:

    - One option was to temporarily make each secondee an employee of the firm to which he/she had been seconded to (for the duration of his/her secondment) to ensure that such an individual would not have duties to other employers which might conflict with the confidentiality requirements imposed by the firm during the secondment.

    - Another (more commonly used) option was to draw up a tripartite agreement between each secondee, the secondee’s employer and the firm to which the secondee had been assigned, covering the secondee’s confidentiality obligations during the term of the secondment. One member expressed the belief that the SRA was thought to be happy with this approach.

    - Generally, firms were increasingly uncomfortable about inward secondments and were seeking to cut back on them.

In terms of conflicts of interest:

- Some considered conflicts registers (to keep track of employees' outside interests) to be too difficult to maintain - it would be extremely difficult to keep them up-to-date, especially if they covered the interests of close family too. One firm asked every lawyer to declare any personal connections with (known) clients of the firm in a general annual declaration.

- One firm imposed a "no share dealing" rule for employees, but acknowledged that it was difficult to "police" this, and it led to applications for exemptions. Another firm allowed employees to deal in shares while employed but restricted this to selling their existing holdings. Others had dealing rules which required, subject to specified exemptions, consent to deal to be sought – something administered by their Compliance team.

- It was acknowledged that having partners serving as directors could create a risk of them obtaining confidential information via their appointments. It was perceived that there was also a risk that the companies/institutions on whose boards they served could later get into financial trouble, which could create a reputational/financial risk for those partner's firms. Some firms apparently allowed board appointments (although most of those required the firm's permission to be sought first).

Furthermore, the UK Corporate Governance Code (formerly the Combined Code) was also referred to. (See http://www.frc.org.uk/corporate/ukcgcode.cfm for background on the Code.) There was a suggestion by the Chief Executive that compliance with something similar to the Code may assist firms in this area. Further thought would be given to this – in particular whether the CLLS should develop a Code.

2. PRRC Committee administration issues:

a. Committee size

The Chair referred to the CLLS Committee proposal that the PR&RC take on an additional member from a US firm (preferably a US national). The CLLS Committee had tasked a member of that Committee with finding an additional member and he had suggested an individual as a potential recruit. Some discussion of options followed and the final position was that the Chair agreed to contact the suggested individual as a first step.

It was agreed that it was better for the PR&RC to be the interface point with the SRA rather than the "Informal Group" and that it was inappropriate for a member of the PR&RC to be a member of that group as well. However, the Informal Group was useful for those not on the PR&RC to keep in touch, share views on regulation etc.

In light of his recent commencement as Chair of the CLLS, Alasdair Douglas said he wished to step down from the PR&RC. He was thanked for his very valuable contribution as a committee member.

It was agreed that the Committee would benefit from one further member, this being a representative from a smaller City firm.

b. Meeting dates

The Chair agreed to get back to the Committee with some proposed meeting dates (which would probably be the back end of September 2011, January 2012, May 2012).

c. Minutes

It was agreed that, from the next meeting of the PR&RC, members of the Committee would be responsible for providing someone to take the minutes for the Committee (to make practice consistent with the other CLLS Committees). The Chair agreed to liaise with the Committee to determine who would be responsible for preparing the next set of minutes.

3. Bi-annual meeting with the SRA and Law Society (timing, possible updated list of topics for discussion)

Robert Leeder mentioned that there had been ongoing scheduling difficulties affecting the organisation of the bi-annual meetings with the Law Society and the SRA, and that, as such, it was not likely that either of these meetings would be scheduled to occur before October 2011.

The Chair mentioned that as Alasdair would in future be attending in his capacity as Chairman, volunteers from the Committee to accompany Chris to the meetings would be welcome.

4. Report on ABS implementation

Alasdair mentioned that there was no SRA pro forma application form for ABS approval at this stage, although it was understood that a form was being trialled.

5. Report on the outcomes of the first meeting of the CLLS Corporate Crime and Corruption Committee (7 June 2011) and an article co-written by that Committee's Chair Michael Caplan QC in the Law Society Gazette ("Tackling dishonesty among legal partners") (http://www.lawgazette.co.uk/in-practice/practice-points/takling-dishonesty

The Chief Executive referred to the inaugural meeting of the CLLS Corporate Crime and Corruption Committee (the "CCC Committee") on 7 June. It was mentioned that that Committee had considered which issues it would be considering, and had expressed an interest in areas such as the Bribery Act 2010.