THE CITY OF LONDON LAW SOCIETY

Legal Services Act: New forms of practice and regulation

Consultation Paper 3: Miscellaneous amendments to the Code of Conduct

The City of London Law Society (CLLS) represents over 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 regarding changes to the "Framework of Practice" Rules has been prepared by the CLLS Professional Rules and Regulation Committee.

This response is set out below in relation to the questions and numbering as they appear in Consultation Paper 3.

Legal Services Act: New Forms of Practice and Regulation Consultation Paper Three (Miscellaneous Amendments to the Code of Conduct)

1	**Have we overlooked any consequential amendments to the rules listed in paragraph 3.2 i.e. those rules we have identified and not appearing to need amendment?** See 8 Below.
2	**Do you have any comments on the minor changes to the rules listed in paragraph 3.3 – i.e. those changes where provisions have simply been applied to the authorised individuals and bodies the SRA will regulate under the LSA?** See answers to Q.8 below.
3	**In relation to rule 3 and the proposed amendment to 3.12 dealing with conflicts in property selling, what are your views on the proposal to include non-SRA authorised firms in the definition of a "participating firm" in a SEAL? Do you agree that at least one "participating firm should be SRA regulated?** This is not an area where CLLS has expertise and so no comment is made.
4	**In relation to rule 5:** • **Do you agree with our proposal to allow all lawyers (including those regulated by other regulators such as licensed conveyancers, costs**

	draftsmen etc) who have the relevant experience and training required by the rule to be "qualified to supervise"? • **What are your views on non-lawyer managers being "qualified to supervise"?** • **Do you think that the requirement for firms to have someone qualified to supervise is no longer necessary?** The Code (Introduction to Rule 5) states that that "supervise" is "professional overseeing of staff and clients' matters", whereas management is the "overall direction and day to day administration" of the firm. However the guidance at paragraph 42 specifies that the "qualified to supervise" obligation relates to the "management of the firm". We are not clear precisely what is meant in the current rules. However, • We think a non solicitor lawyer should be able to be qualified to supervise; • We think that the requirement of (i) undergoing SRA specified training and (11) being qualified for 36 months should remain.
5	**In relation to rule 7 we are proposing that all partnerships and sole practitioners must indicate on their letterhead their SRA recognised name and their unique SRA number. In the case of an LLP or company we propose that the corporate name and number must be included. Do you agree that this would be helpful to the public and no be too burdensome to the profession?** There seems no reason why a law firm should have any different requirements from the equivalent entity under the law (e.g. under the Companies Act or Business Names Act). However, the emphasis on requirements for firm letterhead is becoming increasingly ineffective in an era where a vast amount of correspondence now takes place electronically. We note in particular the very old fashioned reference to "letterhead includes fax". We would like to see a move towards being able to keep regulatory information on a website, and away from the costs of printing letterhead and away from the requirement to have a hard copy for inspection, which latter in practice is rarely if ever used.
6	**Do you agree with the proposal in relation to rule 8 to allow fee sharing with the practices of lawyers which are authorised non-SRA firms?** Yes.

7	**In rule 9, do you agree that the referral arrangement requirements should be dis-applied to authorised non-SRA firms?** Yes.
8	**Are there any other points you would like to make with regard to the proposed consequential amendments?**
	General comments We find the rules very complex and difficult to follow. The good work done in July to simplify the Code and make it more readable seems to be in parts undone. We do not have great confidence that all lawyers and non-lawyer managers will be able to identify the obligations which bite on them. The use of the word "you" in the Code now could apply as follows to: • The solicitor • The recognised body • The manager of a recognised body (who may or may not be a solicitor) • The employee of a recognised body (see the comments to Paper 2) And sometimes to the same person in different capacities (e.g. the solicitor partner in his capacity as solicitor and in his capacity as manager). It is therefore difficult to read. It must be made clearer which obligations apply to people and bodies and in which capacity. The Code is expressed to apply to managers (e.g. 23.01). (It is not clear whether this obligation is intended to be an obligation to ensure that the recognised body does what it is supposed to do.) In addition, managers also have a compliance obligation under 14 .02(2) …"a manager must not…. instigate or connive at any breach of the rules by the recognised body…" (para-phrased). It is not clear how these two obligations fit together; are they two ways of expressing the same concept? Or is the application of the rules by virtue of 23 intended to confer more onerous obligations on managers than rule 14.02? Does a solicitor who is a manager need to have the Code applied to him twice (i) qua solicitor and (ii) qua manager, when there is the compliance obligation in 14.02? (We can see that a non-solicitor manager would need to be dealt with separately in the drafting as the Code would not otherwise apply to him save qua manager.) As most by number reading this code will be solicitors and partners, the simpler you can make the drafting for them the better. Some obligations have been amended to refer expressly to the obligation of the recognised body and the managers (in addition of course to the obligation on a

	solicitor), for example 10.05 (obligation to comply with an undertaking), whereas other have not (e.g. 10.07 obligation to pay the fee of an overseas lawyer). It is not clear if a different standard is intended and if so what that difference is. There would be a great concern if the express obligations on managers were such that they created a breach in the protection offered by LLP status. For example, could the obligation on managers to fulfil an undertaking (10.07) (for example the payment of £1 million) in circumstances where the LLP is insolvent, cause joint and several liability for that debt of the LLP? It would clearly be a regulatory breach were the LLP to be unable to fulfil the undertaking for the LLP itself, the solicitor who gave the undertaking and the managers. But if the obligation was enforceable by a third party directly against each of the managers, this would be a breach in the LLP protection. It is not for a regulator to undermine the provisions of the LLP Act, which was designed to avoid joint and several liability between members. This could be addressed by having a statement in the Code that the obligations in it do not create enforceable rights for third parties.
	General comment - extra territoriality We have no problem with the ironing out of anomalies in how the overseas operations of firms are regulated, particularly if firms are not being dealt with consistently. However, there is an overarching concern about the extra-territorial application of the Regulation by the SRA. In particular, it seems illogical that the extent of the Regulation depends on how a firm chooses to structure itself, which choice will be made for a number of reasons, some a matter of internal choice (for example tax efficiency) and some a matter of external regulation (for example restrictions on operating as a lawyer in the relevant jurisdiction). Where the choice of structure is an internal choice for the firms, it seems unfortunate from a regulatory point of view if they are able to take into account a lighter touch regulation in deciding the legal form of their overseas operations. Equally, the fact that some structures are forced on firms by the laws and regulations of another country should not drive the extra–territorial reach of the SRA It does not seem appropriate for the SRA to seek to impose the Code on a lawyer from another jurisdiction who is adequately regulated in that jurisdiction simply by virtue of the fact of being a partner in, or even employed by, or under a contract of services with, a UK law firm. For example, where a French avocat in the Paris branch of a UK law firm is dealing with a conflicts question relating to French clients and French property, where no English lawyers are involved in the transaction nor any lawyers operating in England and Wales, it seems illogical that the UK conflict rules have to be considered. Rather than presenting SRA's views of its extra-territorial reach in the context of detailed drafting of the various regulations (which, as we have said before, is extremely difficult to understand) we recommend that the SRA put forward a clear statement of its policy of what it is seeking to achieve in the regulation of:

	1. Activities carried on outside of England and Wales by English lawyers; 2. Activities carried on outside of England and Wales by lawyers qualified in other jurisdictions; 3. The activities of lawyers qualified in jurisdictions other than England and Wales which are being carried on in England and Wales; and 4. Those with managerial responsibilities.
5.01 (a)	We note the change from an obligation to ensure "adequate" supervision to "proper" supervision. What is the purpose of the change? We note also the change in the July Code of Conduct away from an obligation in the previous rules to provide a "proper" standard of services to a "good standard of service", presumably because of some dissatisfaction with the word "proper". Please explain if a change is intended.
	<u>Comments on specific rules</u>
1.06	We do not think the addition of the word “legal” helps. It could mean that a solicitor could not say that using a solicitor was better than using a conveyancer. Should the rule refer instead to "you and your profession"? Alternatively, the rules could be reworded to talk to the trust the public places in “you and your profession”.
7.03	The prohibition on contacting members of the public used to exclude contacting "lawyers". This has now been limited to contacting "firms or managers of firms". It is not clear why the exclusion has been restricted. In practice a call must be to a human person, and therefore the exemption should include individuals.
8.01	(Fee-sharing). Paragraph C allows fee-sharing with a "retired manager, member" etc. We do not think it sufficiently clear that this means such a person retired from your firm.
Rule 24	"Employee". Is this definition intended to catch a company secretary or non-executive director of a recognised body? If so, (a) (employed as a director) could be replaced with "an officer of the company".
Rule 24	The definition of "manager" includes a partner (which includes a person held out as a partner,) a director (which will include (although not expressly) the company

	law concepts of shadow director) and a member. The definition of "member" should include those who are treated as members and have the equivalent status and qualification (although see below in relation to this phrase). (Currently, those who are non-members in an LLP, but who are treated as such by being called partners, do have equivalent regulatory obligations.)
Rule 24	Non–lawyer. We query the position of lawyers who are employed in a firm or are members of that firm who do not practice (e.g. advise clients), but advise the firms themselves (e.g. involved in management). We assume there is no intention to classify these as "non lawyers".
Rule 24	"Solicitor–controlled". See the comments of the CLLS to paper 2.
Other	LLPs will continue to use the word partner. We assume that requirement to state "Partner means member or employee or consultant with equivalent standing and qualifications" will remain. Although not in the Code, this is in the Guidance and we assume it will be carried forward. Will "qualification" in this context for the non-lawyer members mean those who have satisfied the SRA suitability test?
	We note that only if a company is to be a recognised body, it needs to be one of the three types of company specified in 14.03(c). We do not know the reason for this restriction.