THE CITY OF LONDON LAW SOCIETY

Legal Services Act: New forms of Practice and Regulation

Consultation Paper 7: information requirements from firms in the context of a risk-based approach to regulation

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 information required from regulated firms has been prepared by the CLLS Professional Rules and Regulation Committee.

1. INFORMATION REQUIREMENTS

We have a general but very significant concern that the SRA is asking for large quantities of information from firms without a clear indication of why the information is necessary or how the SRA intends to process the information once it has it. Not only does this have resourcing issues for firms but also for the SRA with consequential efficiency and cost implications for the profession. We would suggest that a better approach may be for the SRA to start by targeting the information it really needs and once it has processed that information, work out what (if any) additional information it requires. In addition, since some of the data potentially being requested will be "personal data" the SRA will need to ensure that the collection of the information is necessary, lawful and fair.

In the context of the above, three points arise in particular:

(a) Many of the issues which it is suggested could be addressed through the provision of information or through some formal "confirmation" from the firm would be far better dealt with in discussions during monitoring visits. The SRA has said it wants to develop a "light touch" for monitoring large firms, but has yet to develop methodologies whereby this might best be done. The benefits of this approach will be undermined if those same firms are required to provide extensive and detailed information separate from any monitoring visits.

(b) No large firm will be able to give an unqualified (or even useful) response to a request for "confirmation of compliance with professional conduct requirements" or "confirmation of standards of competence", or "details of complaints". It is unrealistic to expect any individual to give such assurances; it is quite impossible to be sure, for instance, that an appropriate client care letter has been sent in every instance, especially where it may be a matter of personal judgment (see for example rule 2.02(3)). In relation to complaints, see further below.

(c) Given the move to entity based regulation we are particularly concerned that this information will be needed not only for the UK offices of international firms but also their overseas branches.

We would welcome more clarity from the SRA about how it will process and use the information gathered, how it ties in with plans for monitoring visits and what its priorities are. We think it is important for that to be clearly addressed before the information gathering is commenced. We also do not accept the general principle that information that is relevant to a firm's PI insurers is necessarily relevant to a regulator.

If however, firms are to be required to supply much of the same information to the SRA as they currently supply to their respective PI insurers, for the sake of efficiency it would be helpful if the SRA were to choose

a date for the supply of information which coincides with the date that the relevant firm supplies information to its PI insurers. We would recommend that this be the case whether the information is supplied on an annual or three yearly basis (see answer to (l) below).

SHOULD THE SRA GATHER THE FOLLOWING TYPES OF INFORMATION AND IF SO, IN WHAT FORMAT WOULD WE PREFER TO PROVIDE SUCH INFORMATION?

1(a) Details of the extent of managers' ownership of firms

In principle, yes. As part of an initial information pack updated periodically (see answer to (l) below).

1(b) Amount of the firm's turnover

In principle, yes. As part of an initial information pack updated periodically (see answer to (l) below).

1(c) Work Types by percentage of turnover

If there are particular types of work that are considered to be higher (or indeed lower) risk and such distinction is in turn relevant to the way in which firms are to be regulated, we can see the relevance of this information. However, we would like further information on how such work types are to be defined. Different firms may well define similar types of work differently and there is scope for inconsistency.

As part of an initial information pack updated periodically (see answer to (l) below).

1(d) Associations, connections or relationships with other firms or non-solicitor businesses

In principle yes, subject to clarification of what is meant by the terms used (in particular "connection"). As part of an initial information pack updated periodically (see answer to (l) below).

1(e) Details of involvement or influence in the firm not evident from details of ownership

Assuming that this is a question about the governance and operational control within a firm, in principle, yes; as part of an initial information pack updated periodically (see answer to (l) below).

1(f) Negligence claims made against firms

We do not think the number of claims alone will serve any useful purpose. Many claims are settled and we think that information should remain confidential to the firm. Moreover, the information given by firms to professional indemnity insurers is highly confidential and any leak could prove very damaging to a firm and its insurers. We doubt if insurers would be happy, for example, if the reserving policy on all extant claims against law firms was communicated to (and then stored by) the SRA each year. Can firms and underwriters be sure that no one in the SRA with access to such information has a personal connection (such as through a spouse) with any claimant against a firm? See also response under 3 below.

1(g) Reasons for dismissals of managers and employees in connection with conduct matters

We do not think there should be any extension of the existing obligations in the Code to report serious misconduct.

1(h) Details of any other roles or occupations undertaken by managers of firms

No; this should be an internal matter for the firms.

1(i) Information on the financial stability of firms

We would suggest that it is appropriate to rely on the reporting accountants though in principle we do not have any objection to providing this information provided there is greater clarity on what the relevant tests will be.

1(j) General requirement to disclose "appropriate" information (from 2009)

We think (as stated at the head of this response) that the SRA should start by collating basic information and then add to it as necessary.

1(k) Other information – yes or no?

Information	Yes or No
Equality and diversity	In principle yes but we would note potential data protection and other regulatory issues in particular outside the UK. The firm should be allowed to keep data by reference to whatever categories it reasonably chooses rather than any required by the SRA.
Details of internal complaints	The reference to "internal" complaints seems to be an error: the focus is on internal handling of complaints by clients (and presumably third parties). It is unrealistic to require reports on the numbers of complaints. In the case of large firms, clients rarely ask for details of the firm's complaints procedure, or go through that process. Many minor issues which might be said to be "complaints" will be readily dealt with by the file (or client) partner. Examples might be that a draft has been produced late or does not reflect an aspect of instructions which had been given. There will be no centralised tracking of such "complaints". More substantive complaints will normally be tracked centrally, but the proposal is impractical and reporting should be limited to those complaints which reach the LCS.
Confirmation of compliance with professional conduct requirements	No; see comments above.
Confirmation of standards of competence	No; see comments above.
Details of training in general conduct and underlying legal issues	No. This is better dealt with in any monitoring visit.
Details of legal actions, other than negligence claims	No.
Details of staff	In principle; yes.

Information	Yes or No
Details of other income received by firms	In principle; yes.
Details of banks or other institutions in which client money is held	No.
Confirmation of satisfaction of staff citizenship status	No.

1(l) Do you think that some information should be collected less frequently than annually?

Yes. We consider that the information sought could more reasonably be collected every three years with firms being required to provide update information on an ad hoc basis in the event of a significant or material change (by reference to a list).

1(m) Are there other types of information that we might gather to help us in risk assessment?

No.

1(n) Are there particular types of information which it is easy to provide? If so, is there a particular approach to requesting the information that would make it easier for firms to provide?

For corporates and LLPs certain information is provided in Annual Returns to Companies House and published Annual Reports.

2. THE STRATEGY WOULD BE TO COLLECT THE SAME INFORMATION FROM ALL TYPES OF FIRM. DO YOU THINK THERE IS ANY MERIT IN COLLECTING EXTRA INFORMATION FROM SOME FIRMS? IF YES, WHAT EXTRA INFORMATION AND FORM WHAT TYPES OF FIRM?

We do not think this can be determined until the SRA has decided the nature of "light touch" regulation/monitoring it intends to apply to large City firms. The CLLS is already working with Fred Jacobs on this.

3. IF YOU ARE A SOLICITOR, CAN YOU FORESEE ANY POTENTIAL IMPACT (OF THE INFORMATION-GATHERING ACTIVITIES WE ARE SUGGESTING) ON YOUR OWN BUSINESS PRACTICES?

There will be significant additional cost in terms of the people required to collate the information and the additional red tape.

In addition, large firms are concerned to ensure that any lawyer who thinks he/she might have made a mistake reports it promptly so that, where possible, it can be rectified and, where necessary, it can be reported to insurers. If it is known that details of claims have to be reported to the SRA, it will only serve to discourage individuals from coming forward.

Finally, if the SRA requires the provision of information of the breadth suggested in this consultation, there will be very real scepticism amongst City firms and the suspicion that this is simply an unnecessary bureaucratic exercise. It is likely to alienate such firms and undermine the "light touch" regulation which the SRA has said it wants to implement.

4. CAN YOU FORESEE ANY POTENTIAL ADVERSE IMPACT (OF THE INFORMATION GATHERING ACTIVITIES WE ARE SUGGESTING) ON EQUALITY AND DIVERSITY?

No (but that does not justify requesting it).