

Solicitors Regulation Authority
Keeping of the roll consultation
Policy and Strategy Unit
The Cube
199 Wharfside Street,
Birmingham,
B1 1RN

12 May 2014

By post and email (consultation@sra.org.uk)

Dear Sirs

Response of the CLLS Professional Rules and Regulation Committee to the SRA's consultation regarding the annual keeping of the roll exercise (the "Consultation")

The City of London Law Society ("CLLS") represents approximately 15,000 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 specialist committees. This response to the Consultation has been prepared by the CLLS Professional Rules and Regulation Committee.¹

The Consultation Questions

1 Do you agree with the proposal to stop the annual updating process while keeping the power for the SRA to carry out updates when they think this is needed?

1 Overview response:

1.1 The Committee members are broadly in agreement with the proposal and its expressed purpose, being 'to remove the unnecessary and burdensome process' involved with solicitors who do not have Practising Certificates ('PCs') having to renew their roll applications annually.

1.2 On the face of it, the stopping of 'KR1' appears appropriate for the reasons set out in the 'Benefits of the proposals' section of the consultation, which, précised, are reduced administration for non

¹ A list of the members of the CLLS Professional Rules & Regulation Committee can be found here: http://www.citysolicitors.org.uk/index.php?option=com_content&view=category&id=151&Itemid=469

PC holding solicitors who want to remain on the roll and for the SRA contact centre and associated SRA staff costs savings.

- 1.3 We would, however, query whether some of the burden on the contact centre has been caused by the move from a paper based system to MySRA, meaning that (for example) retiring solicitors are no longer being made aware of what they need to do, once their PCs have lapsed, to remain on the roll.

2 Impact of remaining on the roll

- 2.1 We note that the consultation fails to address the impact of remaining on the roll in any detail. Non practising solicitors who remain on the roll, remain subject to SRA regulation and discipline and currently, we understand, specifically subject to principles 1, 2 and 6 and Outcomes 11.1 and 11.2 of the Code (per paragraph 13.7 of the Code, which deals with application of the Code 'outside practice').
- 2.2 Outcome 11.2 deals with undertakings. There appears to be an unacceptable lack of clarity over whether the SRA's disciplinary regime bites on undertakings (for these purposes being statements that a person will do or not do something, on which another reasonably places reliance, given outside the course of practice 'as a solicitor') if given by an individual who is on the roll but without a PC, either:
- 2.2.1 as 'Jane Smith', without any reference to Jane's current or former status as a solicitor;
or
- 2.2.2 as 'Jane Smith, non-practising solicitor'.
- 2.3 Professional Ethics has indicated, in response to a telephone enquiry, that this is a 'grey area' and whilst it is 'probable' that the SRA would not seek to proceed in relation to a breach of an undertaking provided by Jane Smith in either of the above scenarios, there would be more of a risk that 'Jane Smith, non-practising solicitor' would thus be undertaking 'as a solicitor' if in the context of provision of unreserved legal services.
- 2.4 There is an associated education/disclosure issue, as we would query whether all those who apply to remain on the roll, having let their PCs lapse, are aware that the SRA can seek to proceed against them in the future in relation to a compliance breach.
- 2.5 This caucus may principally currently comprise retirees, who want to hold themselves out as 'non practising solicitors' (as opposed to 'former solicitors' which has a potentially negative

connotation). This is only permitted if they remain on the roll. Potentially, in future, it will increase to include all those who, having let their PCs lapse, simply don't get around to removing themselves from the roll.

3 Further issues consequent on losing the annual renewal process

- 3.1 If solicitors do not automatically 'fall off' the roll, having let their PCs lapse, they may stay on it indefinitely, despite intervening events such as bankruptcy or death.
- 3.2 We note that there is no obligation in the Handbook, on solicitors who are on the roll but without PCs, to notify the SRA of significant adverse events such as their bankruptcy or commission of a serious crime.
- 3.3 Outcome 10.3, which requires that the SRA be notified of material changes to relevant information held by them, including serious financial difficulty, action taken by another regulator and serious failure to comply with the Handbook provisions, does not apply to solicitors who are on the roll without PCs, (see paragraph 13.7 of the Code).
- 3.4 Regulation 3 of the Practising Regulations which variously fetters the SRA's discretion to grant or replace PCs or gives them discretion to impose PC conditions or to refuse grant or replacement of PCs, does not apply to solicitors without PCs who are on the roll and not seeking to renew their PCs.
- 3.5 We would query if this absence of a disclosure obligation poses a brand reputational issue and whether a solicitor who has been e.g. convicted of a serious crime should be permitted to hold him/herself out as a 'non practising solicitor'?
- 3.6 Furthermore, it seems unlikely that the Personal Representatives of solicitors who die will be aware of a need to apply to the SRA to request removal of the deceased's name from the roll. Of course, this situation pertains now but the admission to the roll of solicitors who die will currently lapse at some point in the year following their death, on their failure to renew such admission.
- 3.7 We would query whether a roll which appears likely, pursuant to the proposal, to include an increased proportion of deceased solicitors' names in future, could provide an inadvertent target for identity fraudsters or individuals seeking to pass themselves off as solicitors (albeit non practising) for nefarious purposes? The future roll, if the proposal is approved, may also include an increased proportion of solicitors who, post lapse of their PCs, have fallen into crime and/or bankruptcy and have not been obliged, by virtue of having to renew their roll application annually,

to disclose the same. This group may also seek improperly to utilise their 'non practising solicitor' status.

2. If not, what other suggestions do you have.

Whilst, as stated, we agree in principle with the proposal, further to our comments above, we make the following suggestions:

- 1 Is this consultation a good opportunity for the SRA to review with which Handbook provisions it is reasonable and proportionate to require solicitors, who are on the roll without PCs, to comply?
- 2 We suggest that the SRA agrees to notify all solicitors, on the occasion of their first failing to renew their PC, for a reason other than being exempt pursuant to s 88 of the Solicitors Act from doing so, in writing, of the provisions of the Handbook (subject to the suggestion in 1 above) to which they will remain subject (simply by remaining on the roll) and of their right to request removal from the roll and associated removal from the SRA's regulatory and disciplinary remit.
- 3 We suggest that the SRA bears the points made in 3.7 above in mind when reviewing the frequency of the ad hoc roll updates, which the proposal envisages.

Yours faithfully



J.R. Jo Riddick
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On behalf of the Professional Rules & Regulation Committee