

Solicitors Regulation Authority
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**FAO Juliet Oliver
Crispin Passmore**

20th December 2017

Dear Sirs,

Response of the CLLS Professional Rules and Regulation Committee to the SRA Consultation, “Looking to the future, phase two of our Handbook reforms”.

Introduction

The City of London Law Society (“CLLS”) represents approximately 15,000 City lawyers through individual and corporate memberships 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 of importance to its members through its specialist committees. This response has been prepared by the CLLS Professional Rules and Regulation Committee (see list of members attached). In the sections that follow we have responded to the questions in the Consultation Paper that we consider are directly relevant to our members.

1. **Question 5: Do you agree with our proposal to allow individual self-employed solicitors to provide reserved legal services to the public subject to the stated safeguards?**
 - 1.1 The CLLS’s response to the SRA Phase 1 Consultation on the SRA Handbook Review clearly set out the CLLS member firms’ concerns with the proposals to allow solicitors to practise using their solicitor title in unregulated entities. In summary, the concerns are that by removing entity based regulation from those operating as solicitors there will be increased risks to clients (including risks to client confidentiality) and potential to damage the solicitor brand. Whilst we

accept that the SRA have decided to press on with these proposals, the CLLS remains concerned.

- 1.2 These further proposals to allow self-employed solicitors to provide reserved legal services give rise to fewer concerns primarily because of the requirement for these solicitors to obtain PII insurance. This is because insurers will scrutinise any applicant solicitors' proposed business plans, practice and regulatory history before providing insurance and because the cost of insurance is such that this type of practice will be most suited to well established and experienced solicitors who may want to retire from private practice but continue to advise occasionally without the expense and administrative burden of setting up as a sole practitioner. This form of practice is therefore less likely to be attractive to newly qualified solicitors (who may not have the competence to provide such services).
- 1.3 However, what is not clear is why the same (or similar) safeguards are not thought to be required where solicitors are providing services which comprise non-reserved activities. Whilst the SRA Consultation on "Looking to the future: better information, more choice" has put forward proposals to require solicitors working in non-Legal Services Act 2007 (LSA) regulated firms to inform clients of the absence of the requirement to hold compulsory PII, this requirement does not appear to extend to those solicitors working on non-reserved activities on a freelance basis. This means that in effect solicitors providing non-reserved legal services freelance will have very little external quality control or regulatory oversight particularly as the volume of this type of work is likely to be low (as opposed to that of solicitors working in non-regulated businesses) and therefore the number of clients or third parties complaining is also likely to be low.
- 1.4 Although non-solicitors are already able to provide non-reserved legal services without insurance or indeed any regulatory oversight, they are prohibited from using the solicitor title. Although we accept that solicitors who have been trained may well be better equipped to provide these types of services, without any oversight the risks to clients and the potential to compromise the solicitor brand remain, and we believe that these should be addressed in part by ensuring that clients are protected by adequate professional indemnity insurance whether or not they are purchasing reserved services.
- 1.5 Please note that whilst the consultation makes it clear that only solicitors operating under the new freelance provisions or in regulated entities would be able to provide reserved legal activities, the wording in Rule 9.1 of the draft SRA Authorisation of Individuals Regulations allows all solicitors and RELs (regardless of where they practise) to provide reserved legal activities (except notarial activities). The SRA should therefore revisit the drafting of this Rule.
- 1.6 Finally, although not applicable to CLLS members but rather to many of their in-house lawyer client contacts, we note that the consultation does not make clear that in-house lawyers will continue to be able to provide reserved legal activities (as entitled under Section 15 of the Legal Services Act 2007) as they will not be providing services as freelancers or as employees of a SRA regulated entity.

- 2. Question 6: What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?**
- 2.1 The CLLS agrees with the SRA adopting a more flexible approach to considering character and suitability issues. We also agree with the SRA taking a “common-sense case by case approach” in deciding character and suitability issues and its proposal to take into account any harm or mitigating factors.
- 2.2 In respect of the requirement only to report cautions from the police not involving dishonesty or violence, local warnings or Penalty Notice for Disorder (**PNDs**) etc., where the solicitor has received “more than one”, more guidance should be provided on what is meant by “more than one”. For example, does this refer to the number of occurrences on an annual basis or are solicitors only excused from having to report the first ever occurrence (but thereafter every other occurrence must be reported)? When reporting the second occurrence, should reference be made to the first, even if that occurred many months or years earlier?
- 2.3 In general, the CLLS would prefer for local warnings and PNDs to be excluded from the list as a “criminal finding”. The wording “criminal findings” suggests that a decision to convict has been made by a competent authority after a proper process. However, local warnings are in effect just a subjective note by an officer and penalty notices are really fines.
- 2.4 Given that relevant applications to the SRA now go direct to case workers (rather than through regulatory managers) it is difficult for individuals/firms to establish whether applications will be rejected for lack of evidential requirements. It is worth noting that the table of evidential requirements suggests that in each case you need to seek a reference in order to show you have learnt from an experience. It is extremely burdensome and personally stressful for lawyers to have to seek such references from existing or previous employers or tutors and to do so for some of the less serious offences/conduct (e.g. a PND for littering) is completely disproportionate. If the list of offences is to include minor matters, the SRA needs to provide more robust and proportionate guidance on this point.
- 2.5 In respect of the removal of character and suitability testing from students and people about to enter the profession (or within a period of recognised training), provision should be made to ensure that those seeking confirmation from the SRA during their period of study that any particular issue will not give rise to a character and suitability issue can then rely on those confirmations (so that they do not incur expense studying only to find they have a problem later).
- 2.6 Finally, Rule 5.2 of the proposed Assessment of Character and Suitability Rules does not specify when you must provide a certificate from the Disclosure and Barring Service.

3. **Question 8 – Yes**

4. **Question 9: Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-Border Practice Rules?**

We have a number of comments on the proposed new Overseas Rules which we are setting out in two parts. More significant issues are set out in Section 4.1 and more minor/drafting comments are set out in Section 4.2.

4.1 **More significant issues**

4.1.1 **The new requirement is to “actively monitor compliance with these rules, and report any serious breach to the SRA”:** this in terms seems significantly to extend the current limited regime, which requires monitoring and reporting of only material and systemic breaches (as specifically explained as being much more limited) of the Overseas Principles. The proposed drafting suggests a new more extensive monitoring and reporting regime for overseas practices perhaps unintentionally bringing it more in line with “domestic” monitoring and reporting under the Codes of Conduct for Firms and Individuals. We refer specifically to Rule 6.2 of the current Overseas Rules. This states:

“In relation to an overseas practice, a material or systemic breach will relate either to the character and suitability of an individual, the financial vulnerability of an overseas practice outside of established business planning, or a pattern of behaviour within an overseas practice that infringes Overseas Principle 6 [*bringing the overseas practice, regulated individual or firm or the legal profession into disrepute etc*]”. Examples are then provided of the sorts of breaches required to be reported which, in relation to “behaviour problems” refer to criminal convictions and regulatory disciplinary action.

We do not support that extension of the monitoring and reporting regime and the SRA has not provided any explanation of why they think that is needed in order to meet a regulatory concern. The more proportionate approach addressed in the current Overseas Rules which effectively narrows the SRA’s regulatory oversight of overseas practice to matters that engage public trust and confidence (such as financial stability and individual character and conduct issues) has not in our view caused concerns and should be continued.

4.1.2 **The retention of Principles 7 and 8 (proper standard of service; and proper governance and sound risk management principles) when these no longer apply domestically as Principles:** we query if that is really justifiable, in circumstances where breaches would not be reportable or enforceable by the SRA (unless they are material or systemic within the explanation provided in current Rule 6.2, in which case it is likely that in many cases they would engage new Overseas Principle 2 anyway) and so would support deleting them from the Overseas Rules. If they are regarded as important standards the SRA feels should nevertheless be complied with overseas (even where local regulatory

requirements may not be so prescriptive) and even though they would not be applicable domestically (other than indirectly within the terms of the Codes), we query if it would not perhaps be better cosmetically to include them as separate standards/Rules rather than add them as additional Principles that are inconsistent with those that apply domestically.

- 4.1.3 **Likely confusion about what “other rules” are applicable to overseas practice. See the last sentence of the third para of the introduction and Rule 1.4:** we believe it would be much more helpful if the proposed new Rules could be seen to be a complete set of rules for overseas practice (**OP**) even if, as under the current Overseas Rules, they expressly cross refer to specific other rules. Leaving this to guidance would be an alternative (albeit less desirable) possibility rather than leaving it open-ended but we think that would not be as user friendly as the current Rules and it may be seen to open up the possibility of additional regulation “by the back door” in future without having to change the Overseas Rules which we think would be undesirable.
- 4.1.4 **Confusion about which individuals the Overseas Rules apply to: under Rule 1.1 (a) the Rules apply to “you” as “a regulated individual who is practising overseas”.** Applying the definitions in the Glossary that means it will cover the “managers, members and owners” of an overseas practice when acting in that capacity. So, it will clearly include a member of the LLP working within an overseas branch. But it won’t include “nominal/as if” partners who are held out as partners within many international firms even if they are actually managing an overseas branch if they are not themselves LLP members. It probably – although we think this isn’t very clear – also won’t include those LLP members in an international firm who are based in London or elsewhere around the world who have no involvement with the particular overseas practice (as we do not think they would be “practising overseas” for these purposes just because they happen to members of the global LLP). However, it is not clear if this is what is actually intended to meet the SRA’s regulatory objectives. Similarly, criminal conduct of a “nominal/as if” partner who is not an LLP member, even if he/she may be in charge of an overseas branch would seem not be required to be reported under Rule 4.3(a) because the definition of “manager” will not capture those held out as partners in relation to an LLP who are not actually members. We also query if that is really what is intended in relation to international firms.

4.1.5 **The SRA's rights to authorise withdrawals from overseas client accounts under Rule 3.1(d)(iii) and otherwise to "prescribe" permitted circumstances:** this new power works in connection with the practise of England & Wales solicitors to whose practise overseas these Rules apply directly, but it seems to us to be inappropriate encroachment on the local regulator's prerogative in connection with the practise with a foreign lawyer who is not directly regulated by the Overseas Rules, and whose conduct when handling this money will be regulated locally and subject to local rules. We query if this encroachment is what is intended. More generally in relation to the provisions concerning overseas client accounts, we think a strong case can be made (which we would expect that our CLLS membership would support) for reducing and streamlining further the level of detail of what is required for overseas accounts. We would support the rules retaining a statement about what the SRA expects of E&W solicitors/regulated firms practising overseas when handling money, and which provides a safety net for those jurisdictions where there are no local rules which come into play. However, we think that it may be more difficult to justify the sort of prescription which is in these draft Rules as really being required to protect consumers/clients. Why not instead just preserve a standard equivalent to the current Overseas Principle 10, which states that "You must protect client money and assets", whilst retaining the guidance that is currently in the Overseas Rules about the need to comply with local regulatory requirements in relation to client money, documents and assets and to ensure that they are protected appropriately?

4.2 **More minor/drafting issues**

4.2.1 The definition of "established" seems to have disappeared from the Glossary. This is currently important to many firms to ensure there is clarity on when someone working on a temporary basis overseas – and international firms will regularly have quite a number of them - still has to comply with the "full" Codes rather than the less extensive Overseas Rules. If it is intended that it will now be covered expressly in guidance, that may be less helpful than the current position to provide certainty in the application of the Rules.

4.2.2 We query what the prescribed form of annual return for each overseas practice, required by Rule 4.5, will look like. It would be good to have some comfort that there is no intention to expand the current arrangements and in effect require more substantial supervision and regulation of overseas practices by the back door.

4.2.3 "European cross-border practice" does not seem to be defined in the Glossary any more. This needs to be reinstated although redefined as it is currently defined by cross reference to Rule 2.1 of the Cross-Border Practice Rules which are being replaced by Part B of these Rules. We query if there is any intention substantively to change this definition. It would perhaps be helpful to clarify this since the current definition is somewhat confusing in referring to professional

contact and professional activity, in each case, that is regulated by the SRA without clarifying what/where/how. We also query if there is any risk of conflict between the Rules in 4.1 and 4.2 of these Rules where, for example, a solicitor established in an overseas practice works together with an external lawyer on cross border work regulated by the SRA: is it clear that there can be no conflict between the requirements of the Overseas Principles in Part A and the applicable provisions referred to in Rule 5.3 and, if there is such a conflict, which provisions would prevail?

4.2.4 **Removal of guidance notes:** it would be good to know whether it is intended that any or all of the current guidance, much of which is helpful, is to be reproduced in new guidance in future. We would prefer, if it is deleted from the Rules, that it is retained and reissued as guidance at the time the new Rules are made.

4.2.5 **Enforcement strategy:** there seems to be nothing in the draft Enforcement Strategy that expressly addresses the approach to the Overseas Rules. As drafted, it is certainly arguable that the Enforcement Strategy is not relevant as it expressly refers to the Principles and Codes of Conduct not the Overseas Principles and Overseas Rules. Query if that is the intent and/or whether there should be a statement made about a different approach for dealing with enforcement of the Overseas Rules.

4.2.6 On the definition of client money, we note that “Client money (overseas)” has been replaced with “client money” and in the Glossary this references Rule 2.1 of the domestic SRA Accounts Rules for its definition. This domestic definition of “client money” does not work in this context - it refers to “regulated services” which few if any of the overseas offices of international firms will be supplying. That will mean that very little of the money handled for clients in overseas offices will be “client money” and thus subject to these rules but we query if that is really what is intended. Cross referencing these Rules back to the domestic Rules also undermines the concept which underpinned the drafting of the Overseas Rules, of cutting them loose entirely from the domestic Rules so they stood alone for ease of use and interpretation. It doesn’t add anything to the user-friendliness of the Rules, which are much easier to navigate if all these sorts of cross references and interdependencies are eliminated. The solution would be to reinstate a separate definition of “client money (overseas)”.

5. **Questions 11, 12 & 13: Do you agree with our new proposed review powers? Do you agree with the proposed 28 day time limit to lodge all requests for internal reviews? Do you agree with our proposed approach to enforcement?**

5.1 **Enforcement:** We agree with some of the proposed approach. We have both a general point and some specific ones to make here.

- 5.1.1 Generally, while understanding the rationale behind the approach proposed by the SRA, the CLLS is concerned that the overall Handbook creates an uncertain and unstable environment for firms and their staff.

There is a lack of clarity in the draft Enforcement Strategy which, combined with the proposed draft SRA Regulatory and Disciplinary Procedure rules and the more principles orientated Codes, will lead to a lack of certainty about expectations, enforcement and discipline. The SRA has stated that its purpose in reducing the size of the Handbook is to make it easier to understand (and follow). Having an enforcement strategy that is a “living document which will be updated/revised as the need arises”, coupled with guidance that will be similarly fluid will threaten this aim; and will certainly give the perception of doing so.

We are also concerned that too much of the enforcement strategy is open to interpretation with the result that actions will rest with, and be subject to, the individual view of each SRA decision maker. This does not provide sufficient certainty in order to assist the regulated with deciding how to carry out their roles, it does not provide the appropriate level of predictability that anyone would have the right to expect when facing disciplinary action, and it will not provide the level of assistance required by those within firms who are tasked with particular risk functions, including the COLP.

This lack of specificity means it is even more important that professional obligations are defined and written into the Handbook. It is our view that when it comes to regulation, clear rules need to be set out in one easily accessible place so that people can understand what is expected of them and, should they ever become subject to disciplinary proceedings, have clarity about how that process will work and the standard to which they will be held. For example, we believe that specific rules around reporting and associated other obligations (as currently set out in the Authorisation Rules or Practising Regulations) should be put in a discrete part of the Handbook (in a “Reporting Rules” section perhaps) rather than discussed generally in the Enforcement Strategy and touched on in other places such as the Code Principles and the Solicitors Accounts Rules.

We accept that it is important for the SRA to have appropriate internal guidance on when and how to progress cases and that there should be a dialogue with the profession on issues - but at a fundamental level the regime should be clear and should be defined, for the benefit of the SRA’s own staff and the profession.

One specific way to mitigate the lack of specificity in the proposed Enforcement Strategy would be to publish and maintain a database of cases and outcomes, giving factual summaries, organised by subject matter. We would envisage this being a purely informative tool for the profession and the SRA’s staff, and for that reason we would expect it to be anonymised (so that it does not impose a yet further publication sanction on the firms or individual concerned, or publish by name cases where the decision was to impose no sanction.) Presently there is an inequality of arms and therefore a risk of procedural unfairness in that the SRA has access to all data concerning previous cases, including unpublished

cases, whereas the regulated do not. Databases of this nature by subject matter are now maintained by several Ombudsmen and other regulators, and it could prove an immensely valuable tool for the profession.

We have the following specific points which highlight our general concerns in this area.

5.2 Reporting:

- 5.2.1 The definition of serious breach (which appears both in the enforcement strategy and in the disciplinary procedure rules) does not exist in the proposed new Handbook. Is it intended to be different from “serious misconduct” or “material breach” in the previous Code and Authorisation rules and if so, why and how? We believe that “serious breach” should be defined in the Handbook so as to lead to certainty. Further, in our view it would be disproportionate for the rephrasing of these expressions to amount to a significant change in substance to a regime that is well understood by the profession and apparently effective.
- 5.2.2 The Handbook should be clear about where the reporting threshold lies. The draft Enforcement Strategy states, “For example, where a breach is minor and unlikely to be repeated, we are likely to decide that no action would be warranted.” Under the current rules a minor breach that is unlikely to be repeated would be viewed by most firms and individuals as immaterial and therefore not reportable in the first place. We feel that guidance such as this, together with the rephrasing of the breach provisions referred to above, will give rise to a regime of over-reporting in which any perceived breach of the Code of Conduct will be reported.
- 5.2.3 Further, we consider that the Handbook should be clear about the effect on the reporting threshold of any subsequent guidance issued by the SRA. For example, the warning notice on offensive communications issued on 24 August 2017 states that “we treat any communications which are offensive seriously, whether on the grounds of the ‘protected characteristics’ under the Equality Act 2010 **or otherwise** (our emphasis)”. Does that mean that any offensive communication, of whatever nature, must be reported?

We would like to see an express recognition in this regard of the right and obligation of firms to be given the opportunity (and time) to conduct a reasonable amount of investigation in order to decide whether a reporting obligation has arisen and what should be reported. This would enable firms to respect their obligations to their staff and partners by ensuring that matters are not wrongly notified, and it would enable firms to assist the SRA not to waste resources.

The SRA has advanced no evidence that a fundamental readjustment of the circumstances in which a report needs to be made is required in order to meet the regulatory objectives. Such an adjustment would represent an ever widening divergence from the regimes that operate for legal professionals on the Continent or in the United States without any apparent objective justification based on

protecting clients or advancing the profession. Rather, excessive reporting without a clear regulatory purpose will increase costs and distraction within firms, steps that will ultimately be to the detriment of clients in terms of the passing on operating overheads if not otherwise.

We feel that the limited resources of firms, and of the SRA, should be focussed on what really matters for consumer protection and the vitality of the profession. This means that the existing approach in the Authorisation Rules concerning “material” and “non-material” breaches should be retained along with factors that assist in determining whether something is material. It is currently well understood, for example, that one would consider the level of impact on a client, whether a failure was a one-off or systemic and/or whether money was involved as determinates of materiality.

We must not let reporting become a ‘white noise’ of no practical benefit or a tactical tool. We have raised concerns before that more widespread tactical use may be made of a lower reporting threshold when matters arise between firms whilst acting ‘across the table’ on a matter. We suggest that clarity be given regarding the duty to report when dealing with an internal firm matter by comparison with the conduct of individuals at another firm (which may be different). Again, this should be in a “Reporting Rules” section of the new Handbook.

- 5.2.4 **Cooperation:** Whilst we recognise that co-operation is properly a mitigating factor, we are concerned at the suggestion that if a firm or individual does not voluntarily provide information, that will be viewed as a lack of cooperation – and factored into the decision about sanction. There may be some cases where, for example, in order to protect client confidential information or avoid client criticism, a firm requires a Section 44 notice to be issued prior to the delivery of certain information. Likewise, a firm’s considerations of its obligations under its partnership arrangements and of the risk of disclosure in associated civil action may constrain its engagement with the SRA in relation to, for example, a matter of partner conduct, and that should not be taken as a failure to cooperate. In appropriate circumstances, the SRA should also be prepared to receive sensitive information without written communications taking place.
- 5.2.5 **Role, experience and seniority:** Large firms would like to see some explicit recognition in this section of the Enforcement Strategy of the fact that junior solicitors simply do not have the same degree of autonomy or executive decision-making as more senior members of the team on a client matter. Junior solicitors are of course solicitors, and they must take the responsibility of being solicitors, but it is unrealistic for the SRA to treat them as having the same level as responsibility as, for example, their supervising partners, and we would like to see this explicitly recognised.
- 5.2.6 **Mitigations/Mitigating Features & Harm:** The section of the Enforcement Strategy dealing with factors that decide what action to take is vague, particularly when discussing the difference between “mitigating features” and “personal

mitigation". We also consider that "no harm" occurring would be relevant and ought to be a factor in a decision not to progress a matter further; even, in certain circumstances, where a clear breach of the Code occurred.

We have argued above that the disciplinary regime should be clear and certain and should avoid leaving unnecessary subjective judgement to the SRA decision-maker. The proposed position falls short of that. For example, the mitigation section creates the possibility that an SRA decision-maker could decide what should be an appropriate outcome, based perhaps on subjective beliefs, a personal moral code or prevailing social attitudes at the time.

5.2.7 **Concurrent investigations:** There is a risk here of contradicting (or restating without sufficient clarity) the existing guidance on parallel investigations. The ICO example given in the text is a good one, but we suggest it be added into the existing guidance on parallel investigations.

5.2.8 **Negligence as a regulatory matter:** We are concerned that the suggestion in the draft Enforcement Strategy that the SRA would look at errors of law or professional judgement in a disciplinary context. The SRA might rightly ask questions of a firm where errors are uncommonly prevalent, but ordinarily, the SRA should be asking whether there has been a breach of supervision or competency requirements at the firm level, rather than focussing on whether a civil standard of care has been met. We believe strongly that the position set out in **Connolly v Law Society** ([2007] EWHC 1175 (Admin) Stanley Burnton J at p62) and elsewhere i.e. that "*generally the honest and genuine decision of a solicitor on a question of professional judgment does not give rise to a disciplinary offence*" should continue to apply. If the Enforcement Strategy is not very carefully worded in this regard, the SRA could become a cost-free forum for speculative civil claims.

5.2.9 **Level of fines:** We do not accept the proposition that the size of a firm alone necessarily justifies a more substantial enforcement approach i.e. larger fines for larger firms. Moreover the structure of the organisation in question is highly relevant since some of our member firms form part of global practices while in fact only having a comparatively small presence in England & Wales.

We suggest it is relevant to bear in mind that larger firms already contribute more to sums levied on the profession through practising certificates. Further, largely because they tend to invest more in risk management, large law firms also present a lower level of risk to clients or to the profession. Finally we suggest also that it would be fair for the SRA to recognise that sanctions imposed publicly on larger firms are in effect already more harsh, in that adverse publicity and harm to reputation invariably follows: there is a direct correlation between the level of that negative publicity and the size/ profile of the firm.

5.2.10 **Private Life:** The current provisions of the SRA Practising Regulations provide a clear list of what outside matters are reportable. In the absence of any evidence

that a widening of the circumstances considered to be relevant is needed to protect clients we do not believe that the proposed changes are warranted.

5.2.11 **Firm/Individual responsibility for breach:** There is insufficient clarity concerning when the SRA would take action against a firm, as compared to an individual, where there is a breach and *vice versa*. As the SRA has opted for a separate Code for individuals and firms, it should now be possible for the SRA to make explicit the criteria for deciding when a firm will be investigated and prosecuted, and when an individual. The controlling principle should be that entities should be disciplined when they breach their Code and individuals disciplined when they breach their Code, and that the actions and knowledge of individuals should not routinely be attributed to the entity. Clearly, as indicated above, it is right that entities should, in principle, be disciplined for serious systemic failures (such as supervision failures) but, in our view, individuals should not be disciplined in respect of one off acts or omissions which amount to mere negligence.

5.3 **Review Powers and Time Periods: SRA Regulatory and Disciplinary Procedure Rules**

5.3.1 Our principal concern here is the practical one of re-balancing the expectations of firms and the SRA respectively during the investigation process. Firms recognise that the SRA has limited resources and various stakeholders to consult and align, particularly in substantial or complex matters, and would ask that the SRA afford them the same recognition. At present, firms and individuals are expected to commit to a particular timetable for their input at various stages of an investigation, that timetable is invariably very short (usually 14 days), and they are given little flexibility. By contrast, those firms and individuals are given no indications whatsoever (let alone certainty) as to when they can expect the SRA to take its next step or to reach a decision. We are aware of some investigations which have gone on for years. This leads to excessive anxiety for individuals – sometimes with a chilling effect on their practices – and for firms, great challenges in planning, resourcing, and communicating.

5.3.2 A second concern relates to the question of seeking to agree ‘outcomes’. This is clearly a growing trend, and there are good reasons for it. In particular, it can be a means of conserving limited resources and enabling individuals to ‘move on’. But we consider that a clearer protocol or framework for dealing with agreed outcomes – and what should happen if the SDT declines to sanction them – would be desirable. In particular, it should be recognised that ‘plea bargains’ are often proposed to provide closure. Especially where there is growing evidence that the SDT has been pushing back on agreed outcomes, it would be unfortunate if uncertainty (for example, as to whether the SRA will continue fully to support an agreed outcome, if challenged by the SDT) were to discourage parties from seeking consensual resolutions.

Yours sincerely

City of London Law Society

Professional Rules & Regulation Committee

The individuals and firms represented on this Committee are as follows:

Jonathan Kembery (Freshfields Bruckhaus Deringer LLP) (Chairman)

Julia Adams (Slaughter and May)

Tracey Butcher (Mayer Brown International LLP)

Roger Butterworth (Bird & Bird LLP)

Raymond Cohen (Linklaters LLP)

Annette Fritze-Shanks (Allen & Overy LLP)

Antoinette Jucker (Pinsent Masons LLP)

Mike Pretty (DLA Piper UK LLP)

Jo Riddick (Macfarlanes LLP)

Chris Vigrass (Ashurst LLP)

Clare Wilson (Herbert Smith Freehills LLP)

Sonya Foulds (Freshfields Bruckhaus Deringer LLP) (Secretary)

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