



The Law Society

## COUNCIL

The Council will meet at 11.00 on 24 March 2010  
in the Council Chamber, 113 Chancery Lane, London

### AGENDA

1	Apologies	
2	Requests for Leave of Absence	
3	Declaration of Interests	
4	Part 1 Announcements	
5	Part 1 minutes of the meeting on 10 February 2010	Attached
6	Part 1 Matters Arising	
7	Part 1 Question Time	
8	Part 1 Report of the Law Society Chief Executive	To follow
9	Part 2 Report of the Law Society Chief Executive <b>This paper contains information that is subject to legal professional privilege and is restricted under paragraph 14.8 of the Code of Practice on Freedom of Information to members of the Council.</b>	Attached
10	LSB Internal Governance Rules: Impact on the Law Society <b>This paper concerns formulation of policy and is restricted under paragraph 14.7 of the Code of Practice on Freedom of Information to members of the Council.</b>	Attached
11	Council Member Motions Support Services Resolution Board – Motion by Peter Adams <b>This paper concerns formulation of policy and is restricted under paragraph 14.7 of the Code of Practice on Freedom of Information to members of the Council.</b>	Attached
12	City of London Constituency Boundary	Attached
13	Professional Indemnity Insurance Survey for 2009-10 Renewal Period <b>This paper concerns formulation of policy and contains commercially sensitive data and is restricted under paragraphs 14.7 and 14.9 of the Code of Practice on Freedom of Information to members of the Council.</b>	To follow
14	The Hunt Review of the Regulation of Legal Services – Recommendations Reviewed by the Regulatory Affairs Board <b>This paper concerns formulation of policy and is restricted under paragraph 14.7 of the Code of Practice on Freedom of Information to members of the Council.</b>	Attached
15	Part 2 Announcements	
16	Part 2 minutes of the meeting on 10 February 2010	Attached
17	Part 2 Matters Arising	
18	Part 2 Question Time	
19	Access to Justice Review	To follow
20	Council Meeting Dates in 2011	Attached

21	Reports of the Chairs of the Non-Regulatory Boards (i) Membership Board (ii) Regulatory Affairs Board (iii) Management Board (iv) Legal Affairs and Policy Board	To follow To follow To follow Attached
22	Annual Report of the Council Members Conduct Committee	Attached
23	Part 1 Oral Reports	
24	Part 2 Oral Reports	
25	Review of the Proceedings in Part 1	

## COUNCIL

### Minutes of the meeting on 10 February 2010 in the Council Chamber at 113 Chancery Lane, London

#### PART 1

- Present** Robert Heslett (President)  
Linda Lee (Vice-President)  
John Wotton (Deputy Vice-President)
- Peter Adams, Robin ap Cynan, Adrian Barham, Paul Barnes, Richard Barnett, Richard Barr, Christina Blacklaws, Grace Brass, Louise Brough, Roger Buston, John Calladine, Denis Cameron, Andrew Caplen, Sue Carter, Sara Chandler, Stuart Collingham, George Curran, Helen Davies, Paul Davies, Simon Davis, Nigel Day, David Dixon, Nigel Dodds, Joe Egan, Keith Etherington, Nicholas Fluck, Jeffrey Forrest, Malcolm Fowler, Michael Franks, Derek French, Michael Garson, Jennifer Gracie, David Greene, Nicholas Gurney-Champion, Philip Hamer, Wendy Hewstone, Brian Hughes, Charlie Jones, Ian Kelcey, Carolyn Kirby, Ian Lithman, Patricia Lush, Kevin Martin, Clare McConnell, David McIntosh, Maria Memoli, David Merkel, Joy Merriam, Rod Mole, David Morgan, Tim Mutti, Sue Nelson, Nwabueze Nwokolo, Tim O'Sullivan, Penny Palmer, Michelle Penn, John Pickup, Basil Preuveneers, Patrick Richards, Lucy Scott-Moncrieff, Razi Shah, Michael Singleton, Jonathan Smithers, Jonathan Stephens, Anna Sutcliffe, David Taylor, Andrew Tucker, Beth Wanono, Rodney Warren, John Weaver, Michael Webster, Fraser Whitehead, Paul Widdup, Michael Williams, Stanley Williams, Gaynor Wragg, Peter Wright.
- In attendance** Desmond Hudson, Chief Executive of the Law Society
- By invitation** Antony Townsend, Chief Executive, Solicitors Regulation Authority (minute 90)  
Mike Jeacock, Chief Operating Officer, Solicitors Regulation Authority (minute 90)  
Hugh O'Brien, Enabling Programme Project Director, Solicitors Regulation Authority (minute 90)
- Apologies** John Bleasdale, David Bott, Christopher Clark, Helen Clarke, Laura Devine, Tom Flanagan, Angus King, Paul Marsh, Fleur Palmer, Alan Radford, Chris Welton.

#### 86 ANNOUNCEMENTS

##### New Council member

The President welcomed Charlie Jones, the new Council member for Merseyside and District.

##### Resignation from Council

Rashree Chhatrisha had resigned from the Council owing to work commitments; a by-election would be arranged.

### Commonwealth Professional Fellowship Programme

The five fellows from the Society's 2010 Commonwealth Professional Fellowship Programme were welcomed.

### Deputy Vice President Election Hustings

The DVP hustings would be held on the morning of the Council meeting on 24 March 2010 from 9.30 to 10.30 with the Council meeting starting at 11.00am.

### Sir Denis Marshall

The Council was informed of the death of former Law Society President, Sir Denis Marshall. Sir Denis had been a principal adviser to the international insurance markets and was responsible for launching the Solicitors Indemnity Fund.

## **87 MINUTES OF THE MEETING ON 16 DECEMBER 2009**

The Council approved the Part 1 minutes of the meeting on 16 December 2009.

## **88 MATTERS ARISING**

Nigel Dodds asked about the administrative support provided to the Law Society Charity. Des Hudson said that he would address this in his Part 2 Chief Executive's report.

## **89 QUESTION TIME**

A question from Christopher Clark regarding allegations made against solicitors and solicitor-advocates in the recent Public Accounts Committee report and subsequent comments by the Chairman of the Bar Council had been answered in an addendum to the Chief Executive's Part 1 report.

## **90 REPORT OF THE CHIEF EXECUTIVE OF THE SOLICITORS REGULATION AUTHORITY TO THE SRA BOARD**

Antony Townsend, SRA Chief Executive, presented his regular report to the Council, adding only that the consultation paper on outcomes-based regulation was now published on the SRA website.

Antony Townsend gave the following information in response to points or questions raised by members –

- The work-based learning project referred to on page 4 of the report would evaluate the way trainees were assessed, with a view to ensuring robust procedures, and at the same time it would examine ways for those without training contracts to have their work experience properly assessed. Training contracts would continue.

- Models were being worked up to show what a new Code of Conduct, incorporating firm-based regulation, would look like. There would be full consultation in April or May. Some of the powers needed for firm-based regulation were not yet available, pending approval of new rules. There would be no element of retrospection in the new Code. A programme of events, organised by the SRA and Law Society jointly, would inform the profession about the proposals and seek views. SRA staff would be briefed about the proposals.
- The SRA would share with Council members the criteria for deciding which firms within the Assigned Risks Pool (ARP) should receive a monitoring visit and the high level outcomes from the review of firms in the ARP.
- The new rules on higher rights of audience had received the necessary approvals and were now being implemented.
- He expected that outcomes-focused regulation would be introduced at the same time as regulation of Alternative Business Structures. The Legal Services Board favoured this approach.

Antony  
Townsend

Nwabueze Nwokolo, Chair of the Equality and Diversity Committee, requested an analysis of the firms in the ARP in terms of ethnicity, gender, size and other diversity characteristics. Antony Townsend said this would be provided in writing.

Antony  
Townsend

The Council noted the report.

91

## **REPORT OF THE CHAIR OF THE MEMBERSHIP BOARD**

The Council noted the report on matters discussed at the Board's 19 January meeting, including the Blueprint project; fellowship of the Law Society; the Gazette Editorial Advisory Board; relationships with local law societies; and the Interim Accreditation Schemes Board. Kevin Martin confirmed that the Board was still working on support for solicitors facing regulatory action and the accreditation schemes.

Linda Lee provided an update on the immigration accreditation scheme as follows:

- When the scheme transferred from the SRA there had been 1,700 practitioners who had not been reaccruited in the previous five years. Resolving this had been the Society's main priority;
- The LSC had wanted to ensure that practitioners bidding for new contracts were accredited and had set a deadline of December 2010, later extended to March 2011, for them to obtain reaccruitation;
- The Society had issued guidance for immigration solicitors on the re-accreditation exam.

Kevin Martin gave the following responses to points raised by Council members:

- No work was currently being undertaken on a model contract between solicitors and barristers.
- The revised draft of the memorandum of understanding with local law societies would be debated at the 4 March Membership Board meeting and, once approved, would be sent to local law societies.

**92 REPORT OF THE CHAIR OF THE REGULATORY AFFAIRS BOARD**

The Council noted the report on matters discussed at the Board's 21 January meeting, including a presentation by the Chief Executive of the Legal Services Board; the Hunt and Smedley reports; ABS; conflicts and confidentiality rules; professional indemnity insurance; practice notes; managing numbers seeking entry to the profession; and RAB membership.

Helen Davies gave the following responses to points raised by Council members:

- The LSB's Consumer Panel was conducting an investigation into referral arrangements. Mark Stobbs, Director of Legal Policy, had presented the Society's position to the Panel.
- A Practice Note on Rule 2 of the Solicitors' Code of Conduct 2007 had been updated and had been promoted on Professional Update. Rule 2.05 required that all practices have a process for responding to client complaints. Firms had to advise clients in writing, at the outset, of their right to complain, and the process for doing so. From 1 March 2010, they should also advise them of their right to complain about invoices.

**93 REPORT OF THE CHAIR OF THE SUPPORT SERVICES RESOLUTION BOARD**

John Wotton presented the report on the first two meetings of the Support Services Resolution Board (SSRB). He referred to an email sent by the Chief Executive to Council members about the SSRB's remit and operation in the context of relations with the SRA and the LSB internal governance rules which would be discussed later in the meeting.

John Wotton advised that the SSRB was the only body on which members of the Council and the SRA met on equal terms. He was pleased with the free discussion and level of engagement on both sides. The SSRB had not yet had to settle a dispute but had held two meetings, the first of which was for members to meet each other and be briefed on the current support services arrangements

and potential issues around them. At the second meeting, the LSB internal governance rules and the Society's 2010 budget were discussed, and the SRA expressed a wish to be accommodated in a single building. Provisional meeting dates for the year had been set but meetings would only proceed if the Chair and the two Chief Executives agreed that there was a dispute or an issue that the SSRB should be briefed on. It made sense for the SSRB to receive advance information on any issue that might develop into a dispute.

Peter Adams expressed concern that the SSRB was discussing issues on which no dispute had yet arisen, as the SSRB's remit, set after extensive debate by the Council, was to resolve disputes. He moved an amendment to the effect that the report should only be noted if it were agreed that the SSRB would defer meeting in the absence of a genuine disagreement over the provision of support services. He also said that the Council should invite the SRA to bring any request relating to its premises to the Management Board urgently, in view of the impact on services; and the Council should require the Management Board, subject to the powers of the SSRB, to resolve the SRA's premises needs quickly.

The President disallowed the amendment because no advance notice of it had been given and he did not consider there were exceptional circumstances to accept it in the absence of such notice.

John Wotton confirmed that, in discussion about the pending response to the LSB on Internal Governance Rules, the chief executives of TLS and the SRA had discussed whether the SSRB should take responsibility for recommending the SRA budget to the Council. This was not a matter for the SSRB itself. A Council member commented that extending the SSRB's remit would undermine the Society's current governance arrangements and it would be better to enable the SRA to gain an equal say on its budget by involving the SRA more in Management Board meetings.

The Council agreed to note the report.

*For: 31; Against 27; Abstentions 6 (carried)*

**94**

## **REPORT OF THE LAW SOCIETY CHIEF EXECUTIVE**

The Council noted the Chief Executive's report on the work being undertaken by the Society to support solicitors since the previous Council meeting.

Des Hudson highlighted the following issues in an addendum to his report which had been tabled:

- From March, his part one report would be posted on the Society's website and would include a full index to enable easy navigation of the contents.
- He congratulated Dave Harris, Head of Facilities and Procurement, and his team for their work to reduce the

Society's energy consumption by 20 per cent. The carbon footprint for the organisation had reduced from 3.05 tonnes to 2.79 tonnes CO2 emissions per employee in three years. ISO certification had been recommended for all four main sites.

- Corporate Business would undergo a redesign as a priority and Council members would be provided with access to all confidential papers from groups and committees by 19 May 2010. Council members would be kept informed of progress.

The President recorded the Council's unanimous thanks to Rona Chester, the out-going Director of Group Finance, for all the work she had done for the Society.

**95 COUNCIL MEMBER MOTIONS**

There were no motions.

**96 CONSTITUTENCY UPDATE**

No members had given advance notice of any matters they wished to raise and, due to lack of time, the President did not invite any late submissions.

**97 OTHER ORAL REPORTS**

There were no other oral reports.

Signed: .....  
Robert Heslett, President

Date: .....



The Law Society

**COUNCIL**  
**24 March 2010**

**Item 12**

**Classification – Public**

**Purpose – For decision**

## **CITY OF LONDON CONSTITUENCY BOUNDARY**

### **The Issue**

A proposal to redefine the City of London constituency to reflect the movement of firms from the City. Any amendment to the boundary descriptions set out in the Bye-Laws will require approval at an AGM.

### **Decision**

The Council is invited to approve for submission to the AGM the Bye-Law amendment as set out in the Annex.

### **Policy Position**

The boundary for the City of London constituency was agreed by a general meeting when the current constituency structure was introduced.

### **Financial and Resourcing implications**

There are no implications arising directly from the proposed change, although there is a risk that the proposal could be subject to a postal ballot, at an estimated cost of £85,000.

### **Communications**

If the proposal were to go ahead, it would have to be passed at the AGM. Local law societies both inside and outside London might be interested in the possible implications for them in future, so communication with all local law societies in advance of the AGM might be desirable.

### **Equality and Diversity implications**

There are no implications.

### **Consultation**

The proposal for change comes from the City of London local law society (CLLS). The City of Westminster and Holborn local law society has in the past expressed concerns about such a change. The North East London and South London local law

societies do not oppose the proposal in principle, although formal consultation should still take place. The Council Membership Committee has considered this matter on a number of occasions, and its views are summarised in the paper. The Management Board considered the Bye-Law amendment set out in this paper on 3 March 2010 and endorsed its submission to the Council.

**Director:** Lorraine Jones  
**Author:** Andrew Dobson  
**Date:** 5 March 2010

## **Background**

1. Constituency No 2 the City of London, is defined in Appendix 1 to the Bye-Laws as 'The area of the City'.
2. Under Bye-Law 50, a member may vote and nominate candidates only in the constituency in which his or her registered address is situated. However, a member may stand for election not only in the constituency where the registered address is situated, but in any constituency where he or she is a member of the local law society (Bye-Law 49(1)).
3. In recent years, a number of large commercial firms have moved from the City to neighbouring areas, Clifford Chance's move to Canary Wharf being an obvious example. Such moves mean that the firms concerned (described as émigré firms in this report) are now based in adjoining Law Society constituencies, No 4 North East London or No 7 South London.
4. This does not prevent members in émigré firms from standing for election to the Council, since membership of the CLLS would render them eligible. However, only those with a registered address in the City of London may nominate candidates and vote in an election for the City of London constituency.
5. What this means is that the many members in émigré firms have no right to stand or nominate candidates in the City of London constituency, although they have such rights in the North East London or South London constituencies, as the case may be, where their registered addresses are now situated. It might be said that such large firms have little in common with other firms in those constituencies.
6. The City of London Law Society (CLLS) has proposed that the designated addresses of certain 'City' firms now based outside the City proper should nevertheless be within the City of London constituency for electoral purposes.

## **Views of the Council Membership Committee**

7. The CMC has discussed this matter on several occasions and at its meeting on 13 October 2009 received a presentation by David McIntosh, Chair of the CLLS, and Neil Cameron, the Secretary of the CLLS. At that meeting, the CMC concluded that some change in representational arrangements was desirable to reflect the exodus of 'City' firms to areas like Canary Wharf or Broadgate which are outside the Square Mile.
8. However, the CMC was split equally on whether a modified version of the proposal, which seemed better in terms of drafting and safeguards, should be taken to the Council and, subject to approval by the Council, the AGM. Both the original CLLS proposal and the modified proposal are described below.

## **Extra-territoriality as a matter of principle**

9. The proposal would involve an element of extra-territoriality in that certain addresses outside the area of the City of London would nevertheless be deemed to be part of the City area for electoral purposes. An initial question is

whether any kind of 'extra-territorial' constituency element of the kind proposed should exist at all as a matter of principle.

10. A strict geographical approach, whereby a member's franchise is determined solely by having a registered address within the defined geographical area which forms the constituency, has the merit of consistency and clarity, and avoids the need for judgments.
11. However, a departure from this strict principle already applies with the provision that a member may seek election in another constituency if he or she is a member of a local law society within that constituency.

### **The original CLLS proposal**

12. The original CLLS proposal was that specific designated addresses occupied by certain émigré firms be added to the description of the City of London constituency in Appendix 1 to the Bye-Laws, with a preamble referring to those firms as having previously operated in the City and carrying out financial, commercial and corporate work.
13. A difficulty with the original CLLS proposal is that if wording referring to specific addresses/firms is to be used in the Bye-Laws, this will need amending, with the agreement of a general meeting, every time a firm moves out of the City and there is a desire to bring that firm within the scope of the provision. This would be inconvenient and delay implementation of any changes for up to a year, pending the next AGM. Some mechanism whereby the Bye-Law authorises the CMC to designate the address, if it is satisfied the firm concerned meets the criterion, might well be preferable.
14. The views of other local law societies are relevant. The CLLS has had informal contact with the North East London and South London Law Societies, and it appears they do not oppose the proposals in principle. These societies will have to be consulted formally in any event if any formal proposals are taken forward.
15. However, the City of Westminster and Holborn Law Society has in the past expressed considerable reservations about this kind of proposal, on the basis that it could be a precedent which could affect it in the future. It can also be said that similar proposals might arise in other parts of the country. It therefore seems desirable to incorporate in the wording a requirement that the consent of the 'host' local law society be obtained.

### **The revised proposal**

16. In the light of these factors, an alternative proposal evolved at the CMC meeting on 13 October 2010. The CMC was equally divided on whether this alternative proposal should be recommended to the Council, but it was subsequently endorsed by the Management Board, and is set out in the Annex. It permits the CMC to approve the designation of an émigré firm's address for inclusion in the City of London constituency, subject to the consent of the 'host' local law society (ie the society into the area of which the firm has moved).

**PROPOSED BYE-LAW AMENDMENT ON THE CITY OF LONDON  
CONSTITUENCY BOUNDARY**

In Appendix 1 to the Bye-Laws, delete the constituency boundary description for Constituency No 2 The City of London and replace with –

**‘No 2 The City of London**

The area of the City, together with designated addresses outside the City of firms undertaking financial, commercial and corporate practice who previously undertook such practice inside the City.

In this description, ‘designated’ means designated for this purpose by the committee established under Bye-Law 70(3), provided that the committee may make such a designation only –

- (a) on the recommendation of the City of London Law Society, and
- (b) with the consent of the local law society in the area of which the relevant firm now has its address.’



The Law Society

Item 20

**COUNCIL**  
**24 March 2010**

**Classification – Public**

**Purpose – for decision**

## **COUNCIL MEETING DATES IN 2011**

### **The Issues**

To set dates for Council meetings in 2011.

### **Decision**

The Council is invited to agree the following meeting dates:

Wednesday 16 February  
Wednesday 23 March  
Wednesday 4 May  
Wednesday 8 June  
Wednesday/Thursday 13/14 July (AGM on 14 July)  
Wednesday 5 October  
Wednesday 9 November  
Wednesday 14 December

Meetings to begin at 10.00, except July which will start at 14.00 on the Wednesday and continue at 09.30 on the Thursday.

### **Finance and Resourcing implications**

The budget for 2011 will reflect the Council's decisions.

### **Communications implications**

The dates will be listed in the Council diary and on Corporate Business.

### **Equality and Diversity implications**

The dates of major religious festivals have been taken into account.

### **Consultation**

This paper has been prepared directly for the Council.

<b>Director</b>	Lorraine Jones
<b>Author</b>	Flick Heron
<b>Date of report</b>	10 March 2010



The Law Society

**COUNCIL**  
**24 March 2010**

**Item 21 (iv)**

**Classification – Public**

**Purpose – For noting**

## **REPORT OF THE CHAIR OF THE LEGAL AFFAIRS AND POLICY BOARD**

### **The Issues**

This is the report of the Chair of the Legal Affairs and Policy Board giving an update since the last report to Council

### **Policy Position**

Not applicable.

### **Financial and Resourcing Implications**

None arising directly from this report.

### **Equality and Diversity Implications**

None arising directly from this report.

### **Communications**

No communication needs or opportunities arise directly from this report. Any arising from the issues reported to the Board are taken into account in the individual reports.

### **Consultation**

This report has been prepared for the Council directly.

**Author** Linda Lee, Chair of the Legal Affairs and Policy Board  
**Date of report** 10 March 2010

The LAPB met on Monday 8 March 2010 and considered the following issues:

### **Jackson Review of Civil Litigation Costs**

Following on from the work of the Civil Justice Committee, who are still in the process of reviewing and commenting on the Jackson proposal, it became clear that there are a number of issues which divide the profession by claimant and defendant and in terms of different business models. It was felt appropriate to consult the profession on key issues as follows:-

- fixed costs in the fast track
- one way costs shifting
- irrecoverability of success fees and ATE premiums
- referral fees
- cost management

The Board approved proposals for consulting the profession on the Jackson recommendations. These will involve a series of focus groups and other events aimed at firms undertaking civil litigation and a major costs event in September or October. The Board was concerned about the length of the timetable suggested and it was agreed this would be revisited with the aim of Council taking a final decision in the summer.

### **Judicial appointments**

The Board noted the update on the substantial work that was being undertaken on judicial appointments. It considered the outcomes of the Lord Chancellor's Advisory Panel on Judicial Diversity, chaired by Baroness Neuberger, and was disappointed to note that diversity did not appear to include diversity in the professional background of judges. The Board asked for a new lobbying platform to be developed which would offer practical suggestions as to how to make the judiciary more accessible to solicitors, for example, the requirement to have held a part time position prior to appointment and the parts of the process by which appointments are made which cause difficulties for those in partnership.

### **Legal aid**

The Board considered the interim report of the Access to Justice Review. It also noted that there were significant difficulties over restrictions on new matter starts in the current financial year. The Board asked that a Freedom of Information request be made to obtain the information with regard to re-allocation, removal and lack of availability that the Legal Services Commission had not provided. It also requested that a parliamentary question be put highlighting these difficulties and the effects on access to justice.

### **Appointments to external bodies**

The Board considered its policy with respect to making appointments to external bodies and considered a useful paper from Mark Paulson. The Board was keen to ensure that there were appropriate opportunities and a fair process for making appointments, while noting that a number of the appointments were not central to the Law Society's purpose and, therefore, that the appointments process should not involve too many resources. A policy document is being developed which will make

the Society's position clear on the external appointment and re-appointment process so that where the appointment should be restricted to a current member of the Law Society Council and where the appointment should be open to a wider pool would be clear.

### **The Law Commission**

Lord Justice Munby, the Chairman of the Law Commission, and Mark Ormerod, the Chief Executive, attended the Board for their annual discussion about the Commission's work. The Board noted that there had been a substantial increase in the number of Bills which were enacted following Commission reports. It also noted that the Commission's current programme of work would end in April 2011 and that the Commission would be consulting on its new programme in the summer of 2010. The Board would consult committees about suggestions for new work.

The Commission's current work includes adult social care, defences of unfitness to plead and insanity, easements and governance, pre-nuptial agreements and remedies against public bodies.

### **Exit strategies**

The Board noted that substantial work was being undertaken to assist solicitors wishing to leave the profession to do so. Most of these, however, fell within the ambit of the Regulatory Affairs Board and the Membership Board. The Board agreed to revisit the topic in six months to see if any further input would be required from the Board at that stage.

### **Conveyancing Consumer Forum**

The Legal Complaints Service has been operating a consumer forum to discuss issues arising out of conveyancing. This has proved a useful forum for discussing issues relating to conveyancing with others in the industry. The Board agreed that the Law Society should take over the running of this forum once the LCS ceases to exist and that Paul Marsh should be invited to chair it.

### **Advocacy**

The Board was asked to comment on the proposals from the Bar Standards Board, SRA and ILEX about quality assurance standards for advocacy. The Board was concerned that the proposals were very heavy and were likely to be cumbersome and expensive to administer. In addition, the proposals did not appear likely to distinguish between good and bad advocates.

### **Practice notes**

The Board approved three practice notes: on use of interpreters in criminal cases, on prosecution and defence of trafficking victims and on holiday pay.

### **Anti-money laundering**

The Board approved the policy position set out by the Anti-Money Laundering Task Force which was aimed at ensuring that the obligations placed on solicitors were no more onerous than necessary.

## **Road Traffic Accidents Portal**

A new procedure is being implemented in April to deal with crimes in respect of road traffic accidents. This will be supported by a major IT system. The governance surrounding this system has yet to be resolved and the Society is being approached to be part of the governing body overseeing delivery and maintenance of the system. The Board had an initial discussion of the issue and will await more details of the proposals and the options before reaching a view.

## **Committee work plans**

The Board noted and approved the committee work plans and the progress for 2009. It noted, in particular, that whilst most of the committees had delivered against the majority of the plans, many of the events that were proposed for the committees had not taken place. It was agreed that there should be greater liaison between committees and the events section. The Board indicated that a protocol similar to that in place with the web teams should be developed so that expectations could be managed and events delivered.

Reports on the work of the Criminal Law and Civil Justice Committees are annexed to this paper.

## **CCBE**

The Board noted that the difficulties with the SRA regarding the restrictions on the appointment to the CCBE had been resolved.

Prior to the existence of the Board, it had been decided that the Law Society representative of the UK delegation could not be a member of the Council.

Following discussions with the SRA, this had now been reversed and the appointment will only be a current member of the Council. Where the appointed individual ceases to be a member of the Law Society Council they will give up the seat.

The terms agreed are as follows:

The Law Society delegate will represent agreed Law Society/SRA policy positions. In particular the delegate will be required as a condition of appointment to feed back to both the Law Society and the SRA the outcomes of meetings and other activities of CCBE in which he/she is involved.

The Law Society delegate will be briefed appropriately by reference to the subject matter before the CCBE by the SRA and the Law Society and will "take the brief" from the Law Society/SRA.

The selection and appointment of the individual will be completed by a process involving the SRA.

Committee appointments to "non-political" levels of the CCBE will, as now, be made on the basis of the most appropriate Committee/staff member, whether from TLS or the SRA.

## ANNEX



The Law Society

Item 19(ii)

### LEGAL AFFAIRS AND POLICY BOARD 8 March 2010

**Classification – Public**

**Purpose – For Noting**

### CRIMINAL LAW COMMITTEE UPDATE

#### **The Issues**

This paper briefs the Board in relation to the work of the Criminal Law Committee. The Board is invited to note the report.

#### **Remit**

The Board's Terms of Reference (4): *'to set and oversee implementation of policy to promote the Society as a leading voice on law reform'*.

#### **Policy Position**

The policy compendium does not require updating for the purposes of this paper.

#### **Financial and Resourcing implications**

No additional resource or financial implications arise at this stage.

#### **Equality and Diversity implications**

None at this time.

#### **Communication**

No communication needs or opportunities arise from this.

#### **Consultation**

This paper has been prepared directly for the Legal Affairs and Policy Board

**Director:** Mark Stobbs  
**Author:** Janet Arkinstall  
**Date of report:** 22 February 2010

## **CRIMINAL LAW COMMITTEE ('CLC') UPDATE**

### **1. Review of the Police and Criminal Evidence Act 1984**

CLC work with respect to PACE continues, following the submission in late 2008 of the Law Society's response to the Home Office consultation paper entitled 'PACE Review: Government proposals in relation to the review of PACE 1984.'

The outcome of the PACE Review process is a series of relatively minor proposals, some of which will require legislative change and some that will not, which the Police Powers Unit is now considering how to facilitate. This may be considered something of a victory, in that initially the suggestion was that PACE be subject to a major revamp, which may well have resulted in a dilution of suspects' rights, including access to advice. The resulting proposals are of a limited nature, and are included in the Home Office summary of responses. It is presently unclear when these will be taken forward, due to the forthcoming election. The Crime and Security Bill 2010 contains measures in relation to the recording of stop of search procedures, and the DNA data base (see below).

The Chair sits on the PACE Strategy Board, a multi-agency group that assists the Home Office Police Powers Unit. Most recently, it considered changes to PACE Codes on recording police interviews to allow interviews to be recorded via a digital system, rather than using old cassette tape recorder technology. Although generally supportive, the CLC has expressed concerns that there will not be a sealed master recording. The Association of Chief Police Officers has considered concerns raised by the Law Society about detainees in police stations changing their initial decision to seek legal advice, and it has been suggested that there should be a change to the relevant PACE Code to require the detainee to communicate that decision directly to the legal adviser.

### **2. Virtual Courts**

The Committee continues to be represented on the Virtual Courts Practitioners Group, and on the Virtual Courts Project Board (the Chair and Andrew Caplen, and Rodney Warren respectively). The evaluation process is well underway and an interim report has been published. The pilot will end in May 2010 and the CLC will study the findings of the evaluation with care.

The Law Society's concerns in relation to virtual courts have been forcefully communicated to those responsible for the pilot, and have attracted extensive media coverage.

### **3. Legislation**

The Security and Crime Bill 2010 is in Committee Stage in the House of Commons. The main issue on which the Law Society has briefed has been the proposals in relation to the retention of DNA and fingerprints from people who have not been convicted of any offence. The Law Society's initial

comments in relation to the proposals were contained in its response to the Home Office DNA Consultation in 2009. The Society's opposition to the retention of DNA profiles and fingerprints from persons not convicted of an offence was set out. Were the Government not to accept that, it was suggested that a more limited period of retention than the proposed 12 years should apply, and the Scottish system was suggested as an alternative model. There, the profiles of innocent people must be deleted unless there is good reason for their retention, on the basis of the nature of the offence for which they were arrested (violent and sexual offences). The current provisions in the Bill will allow retention for a period of 6 years, which despite the fact the period is half that originally suggested, the Society still considers is similarly disproportionate and arbitrary.

It is likely that the Crime and Security Bill will be part of the legislative 'wash up' prior to the election, and given the opposition to the proposals by both main opposition parties, there is the possibility for negotiations around this issue.

#### **4. Events**

A very successful event concerning the role of the solicitor in the police station, tied to the 60<sup>th</sup> anniversary of legal aid, took place in October 2009. It was very well attended and the evaluation comments were extremely positive. In addition, an evening seminar on conducting a case in the Court of Appeal Criminal Division was also very successful.

An Events 2010 Sub-committee has been formed, and has suggested that there be a flagship all-day criminal law conference, with several other smaller late afternoon or evening seminars to take place throughout the year on a range of issues of relevance to criminal lawyers. Suggested ideas include the European Arrest Warrant, advocacy tips, and issues around human trafficking. The latter is likely to be of interest to solicitors in a number of different practice areas.

Two very successful presidential dinners with relevance to criminal law took place. The Director of Public Prosecutions, Keir Stamer QC, was the guest of honour at the first, along with his colleagues concerned with the CPS assisted suicide policy. Lord Justice Goldring, the Senior Presiding Judge for England and Wales, was the guest of honour at the second, and an interesting discussion of his recently commenced review of the operation of the Crown Courts took place.

#### **5. Preparing for the new government**

At its February meeting the CLC considered ways of influencing the future government in relation to criminal law and the criminal justice system. A Sub-committee has been formed, with the intention of generating a number of ideas on how to improve the efficiency and effectiveness of the criminal justice system, while not detracting from its fairness. It is proposed that the ideas developed by the Sub-committee be submitted to the Ministry of Justice and/or the Home Office, probably within six months of the election.

## **6. Recent consultations**

Most recently, consultation responses have been submitted in relation to the DPP's Draft Policy on prosecuting cases involving assisted suicide, CPS Code for Crown Prosecutors and CPS Standards, and an Office for Criminal Justice Reform consultation on a Code of Practice for the Interviewing of Defence Witnesses by Investigators.

## **7. Media Coverage**

There have been several issues on which the Chair has made media comment, for example, witness anonymity legislation, and most recently in relation to Ministry of Justice research project findings in relation to juries, entitled 'Are Juries Fair?'.

## **8. Practice Notes**

The CLC redrafted the Virtual Courts Practice Note to take into account the fact that the former requirement that the defendant consent to appear at their first hearing by way of video link, has now been removed.

The Criminal Procedure Rules 2005 Practice Note was amended to provide guidance to solicitors when acting for a defendant who wishes to put the prosecution to proof, rather than advance a positive defence, and how this situation can potentially create a tension with the Rules.

Most recently, the Defendants' Costs Orders Practice Note was issued on 8 January 2010. This concerns the award of costs out of central funds for a successful defendant, and the impact of the Costs in Criminal Cases (General) (Amendment) Regulations 2009, which purport to limit the amount of costs to legal aid rates regardless of the actual costs incurred. The Practice Note was issued at the same time as the Law Society commenced judicial review proceedings challenging the validity of those regulations.



# The Law Society

Item 19(iii)

**Legal Affairs and Policy Board  
8 March 2010**

**Classification – Public**

**Purpose – For Noting**

## CIVIL JUSTICE UPDATE

### **The Issues**

Attached at Annex A is an update on the Civil Litigation Committee work projects and other associated issues concerning civil justice. The paper reports on new issues and ongoing issues since the last update.

### **Financial and Resourcing implications**

No additional resources or financial implication at this stage.

### **Equality and Diversity implications**

None at this time.

### **Consultation**

None.

**Director** Mark Stobbs, Director of Legal Policy  
**Author** Martin Heskins  
**Date of report** 1 March 2010

**Annex A:** **Civil Justice Update**

**1. Personal Injury Claims Process in RTA Claims with a value up to £10,000**

The Law Society continues to be represented on the stakeholder group by members of policy staff, Civil Litigation Committee and other expert practitioners (e.g. Rehabilitation and Motor Insurers Bureau claims).

The new claims process will apply to all RTA claims involving personal injury with a value up to £10,000 with effect from 30 April 2010. It will consist of a three stage process with fixed costs payable at each stage and all communications will be conducted electronically.

IT Fraser Whitehead (CM) represents the Society on the governance board of the platform which has been specifically designed for this process which is likely to capture between 400,000 and 500,000 cases per annum.

**2. Advisory Committee on Civil Court Costs**

This Committee continues to meet on a regular basis in order to fix the guideline hourly rates for summary assessment and deal with other costs issues. The legal profession is represented by Fraser Whitehead (CM).

An interim guideline hourly rate has been set for the year commencing 1 January 2010 and the Master of the Rolls has asked the Council to provide more information regarding its recommendations for this year's annual rate.

**3. Civil Litigation Costs Review**

See separate paper

**4. Success Fees in Defamation CFAs**

The CJC recently assisted with the Society's response to the Draft Conditional Fee Agreements (Amendment) Order 2010. These draft regulations set a new maximum success fee percentage of 10% for all CFAs in defamation proceedings.

The basis of the response was that the 10% uplift means that, in effect, a firm will have to win ten out of every eleven cases in order to ensure that it is able to meet the risks inherent in CFA cases. This is likely to mean that, given the uncertainties inherent in litigation and in defamation law in particular, solicitors will be risk averse in taking meritorious cases on this basis given the uncertainty of the system.

**5. Contingency Fees (DBAs) in Employment Tribunal Matters**

The CJC also assisted with the Society's response to an MoJ consultation on the Draft Damages-Based Agreements Regulations. These regulations will

regulate contingency fee agreements between solicitors and clients in Employment Tribunal matters.

Originally the draft regulations proposed a contingency fee cap of 25% plus VAT in these matters. The Society argued this would mean that lower value and/or more complex claims would be uneconomical to conduct on a contingent basis. Our lobbying proved partly successful in that the draft regulations now set a cap of 35%, although this will be inclusive of VAT (29.8% exclusive of VAT). The Law Society also strenuously lobbied against the Regulations applying to solicitors as they were already regulated in the conduct of this work by the SRA but the Government would not accept that argument, unfortunately.

The most worrying factor about these regulations is that a failure to comply with them will render the agreement unenforceable, in which case the client will have no liability for any costs.

## **6. Fixed Costs**

As part of his review of the costs of litigation Lord Justice Jackson proposed that there should be fixed costs in the fast track in respect of RTA, employer liability (including disease), public liability and housing claims. The Civil Justice Council was requested to facilitate stakeholder discussions with a view to obtaining industry agreements based upon historic costs data provided by Professor Paul Fenn, insurers and claimant solicitors. These stakeholder discussions concluded without any agreement on the actual fixed costs which could be applied to any particular type of claim.



**COUNCIL**  
**24 March 2010**

**Item 22**

**Classification – Public**

**Purpose – For noting**

## **ANNUAL REPORT OF THE COUNCIL MEMBERS' CONDUCT COMMITTEE**

### **The Issues**

This report reminds the Council about the role of the Council Members' Conduct Committee (CMCC) and the facility for Council members to raise informally with the Chair of the CMCC any issues of concern.

### **Policy Position**

The terms of reference of the CMCC are laid down in the General Regulations agreed by the Council.

### **Financial and Resourcing implications**

None arising directly from this paper.

### **Communications implications**

No significant implications.

### **Equality and Diversity implications**

None arising directly from this paper.

### **Consultation**

This paper has been prepared directly for the Council.

**Director:** Lorraine Jones, Director of Group Human Resources and Development  
**Author:** Andrew Dobson  
**Date:** 5 March 2010

## **Introduction**

1. This report reminds the Council about the role of the Council Members' Conduct Committee (CMCC) and the facility for Council members to raise informally with the Chair of the CMCC any issues of concern.

## **Terms of reference and membership of the CMCC**

2. The full terms of reference of the CMCC, as set out in General Regulation 30, are in Annex A, as is the membership of the Committee. The CMCC is a Special Committee, reporting directly to the Council.
3. In essence, the CMCC has a twofold role –
  - (1) To review from time to time the Code of Conduct for Council members and recommend any changes to the Council. The Code was last reviewed and amended in 2007/8, and is set out at Annex B as an introduction to new Council members and as a reminder to all other Council members.
  - (2) To investigate (through a small panel) any complaints against Council members under the Code and report to the Council. No formal investigation has yet been necessary. Although no formal investigation has been carried out, a formal complaint was lodged by one Council member against another Council member, which triggered the initial process, but the complaint was subsequently withdrawn.
4. The CMCC would also be the appropriate body to advise the Council on whether a Council member should be removed from office following a criminal conviction, in accordance with Bye-Law 69(1). The occasion for this has so far not arisen.

## **Investigation procedures**

5. The CMCC has agreed standard procedures, incorporating natural justice safeguards, to apply to the investigation of complaints by a panel. These have previously been noted by the Council.
6. A panel investigating a specific complaint will have as one of its members a non-Council member of the Council Membership Committee (nominated by the Chair of the CMC in consultation with the Chair of the CMCC) in order to bring an independent element to the investigation.

## **Chair's advisory role**

7. The Chair of the CMCC, Maria Memoli, has given informal advice to Council members about the Code of Conduct (including the rules on conflicts of interest annexed to the Code), is available to give such advice and to deal with any concerns Council members may have. Any major issue of significance would be referred to the full Committee for consideration, and any formal complaint would trigger the investigation procedure.

## **Recommendation**

8. The Council is invited to note this report.

## TERMS OF REFERENCE OF THE CMCC

[Regulation 30]

- “(1) To keep under review, promote and give guidance on the Code of Conduct for Council Members (‘the Code’) and related documents, and to report to the Council from time to time with proposals for amendment to them.
- (2) To investigate and report to the Council on all complaints made by any Council member or the Chief Executive regarding the conduct as such of Council members, and non-Council members of boards (with the exception of the chairs and members of the regulatory boards and the sub-committees of those boards), committees and sub-committees and working parties, other than those arising under the Society’s Dignity at Work Policy.
- (3) In dealing with complaints within the scope of (2), the Committee shall follow the requirements in paragraph D2 (or any successor paragraph) of the Code.
- (4) The Council Members’ Conduct Committee shall when dealing with complaints within the scope of (2) sit in panels of three or five of its members, as decided by the Chair of the Committee, and the Chair or Vice-Chair of the Committee shall normally be a member of each such panel. Each panel shall include a non-Council member of the Council Membership Committee nominated in accordance with Regulation 28(7A).”

## MEMBERSHIP OF THE CMCC

Maria Memoli (Chair)  
Richard Barnett  
Nicholas Fluck  
Malcolm Fowler  
Brian Hughes  
Pat Lush  
Michael Singleton

The CMCC Chair and members are elected by the Council by ballot.

## CODE OF CONDUCT FOR COUNCIL MEMBERS

(Adopted by the Council under Article XL of the Charter on 19 March 2008)

[Note: 'Member' in this Code primarily means a Council member, but also, depending on the context, non-Council members of boards, committees and other bodies. The Code only applies to members when acting in that capacity.]

### Core principles

#### *Selflessness*

1. Members must act in the best interests of the Society and must not improperly seek or accept any financial or other advantage for themselves or people closely connected with them.

#### *Integrity*

2. Members must not allow themselves to be placed in a situation where their integrity or independence could justifiably be called into question.

#### *Accountability*

3. Members are accountable for their conduct, and should be prepared to justify their conduct.

#### *Openness*

4. Members should be open about their decisions.

#### *Honesty*

5. Members must declare their relevant financial and other interests in accordance with the rules on declarations of interests set out in the Appendix to this Code.

#### *Leadership*

6. Members should promote these principles and lead by example.

#### *Equality and diversity*

7. Members must comply with best practice on equality and diversity issues and promote compliance by others. In this context, 'best practice' includes, but is not limited to, relevant legislation and the Society's own Equality and Diversity Policy.

#### *Respect*

8. Members should follow the principles of mutual respect in all their dealings and be prepared to accept that others may have equally strong views in good

faith that differ from their own. Council members should treat colleagues with respect and not engage in any behaviour towards other members or staff which might reasonably be interpreted as discriminatory, bullying or harassment.

## **Application of the principles**

### Representation of constituents

9. Members are representatives not delegates. Members should strive to represent their constituents' interests, keep them informed and be reasonably accessible to them.

### Collegiality

10. Members should recognise that decisions with which they disagree may be made by a majority of the Council. Members may dissent, but should not seek to frustrate the implementation of decisions properly reached.

### Roles of members and staff

11. Members must recognise that staff are part of a line management structure responsible to the Chief Executive for the implementation of corporate decisions, and not to individual Council members. Members must not place staff in any position where this principle might be compromised.

### Confidentiality

12. Council members must take all appropriate steps to safeguard information given to them in confidence or which otherwise comes into their possession in circumstances where confidentiality arises. For the avoidance of doubt, it is permissible for such information to be given to another Council member (unless that member has a conflict of interest which would prevent him or her having access to the information).

### Standards of debate

13. Members must uphold high standards of courtesy and respect in Council debates and Society meetings.

### Regulatory matters

14. When dealing with regulatory matters, members should bear in mind the primacy of the public interest and strive to ensure that their decisions on such matters cannot be legally challenged.

### Financial matters

15. Members should deal responsibly and prudently with financial matters, particularly proposals for expenditure.

### Gifts and hospitality

16. Members must not accept gifts or hospitality where this might cause their integrity or independence to be questioned. Gifts and hospitality over the value of £100 must be reported to the Head of Constitutional Affairs within 28 days of receipt.

### Use of members' services

17. Members must not seek any preferential treatment when using services provided by the Society generally for Law Society members or other persons.

### Electioneering

18. Members should not improperly use Society meetings as an arena for partisan or electioneering statements.

### Attendance at meetings

19. Members should commit themselves to attending Council and other meetings, unless prevented by compelling personal or professional reasons, and should seek leave of absence from Council meetings only where this is absolutely necessary.

### Speaking for the Society

20. Members must not represent themselves as speaking officially for the Society when this is not the case, and should take care to avoid as far as possible being placed in a position where they might be misrepresented as speaking for the Society.

### **Complaints against members**

21. Any complaint against a member (other than members of the LCS and SRA boards, for whom there is a separate procedure) under this Code (or, pending amendment of the Dignity at Work Policy, under that Policy) will be referred to the Council Members' Conduct Committee ('the CMCC').
22. The CMCC (through a panel) will investigate the complaint and report to the Council, which alone has the power to administer any sanction.
23. The CMCC is empowered (subject to the rules of natural justice) to decide its own procedure (which may include the power for the Chair or Vice-Chair to dismiss any complaint he or she deems to be trivial or vexatious in nature),

### **Interpretation**

24. Questions about the interpretation of the Code, or concerns about the conduct of a member, should be referred initially to the Head of Constitutional Affairs.

## APPENDIX TO THE CODE

### CONFLICTS OF INTERESTS AND DECLARATIONS OF INTERESTS

#### General points

1. Where a matter concerns the exercise of the Council's public law powers, for example, over the making of Rules, it is not legally possible for the rules on conflicts of interest to be waived, and they must be applied strictly.
2. For other matters, relating to the Society in its representative role, or as a private law corporation, the application of these rules may be lawfully waived by simple majority of the members present. However, in general, these rules should be followed.
3. No possible conflict can arise when the matter affects solicitors generally in a particular category, such as holders of practising certificates or those engaged in conveyancing, and the member has no interest except as a member of that category and over above other solicitors in that category.
4. Members must declare all relevant interests at the time the matter concerned arises, whether or not those interests have been included in the register of members' interests (see below). In case of doubt, an interest should always be declared.
5. If a member has an interest which could lead him or her to be influenced, or to be reasonably seen to be influenced, by the real possibility of significant personal gain (or loss) of a financial or non-financial nature, the interest will be deemed to be prejudicial and the member should not speak or vote on that matter, and may also need to withdraw from the room.
6. If a member has an interest in a matter where no significant personal gain (or loss) could arise, but has a personal connection or previous involvement in an issue, it will be a matter for the member's discretion (having declared the interest) whether to take part in the proceedings, based on whether he or she feels he or she can bring an open mind to the question.
7. A member who has identified a potential area of conflict of interest should consult the Head of Constitutional Affairs.

#### Register of interests

8. The following interests (which are not an exhaustive list) should be declared in the register –
  - (1) Posts held in the course of employment or practice, including partnerships and directorships.
  - (2) Any contract for goods, services or works between the Society and the member or any firm or organisation in which the member is a partner, director or employee.

- (3) Any office held in a public or professional body (other than the Society or where the appointment is by the Society.)
  - (4) Any position in an organisation which might be affected by regulatory or commercial decisions taken by the Society, the LCS or the SRA.
  - (5) Membership of a body (including a political party) whose principal purposes including influencing public opinion or policy in areas relevant to the Society's work.
  - (6) Any significant financial interest relevant to the Society's work.
  - (7) Membership of a private society or club (other than a religious body), provided the body has substantive entry requirements for membership.
  - (8) The interests of a relative or related-party, where –
    - (a) the member is aware of the interest; and
    - (b) a fair-minded observer might reasonably perceive a conflict of interest.
9. Registration of an interest does not obviate the need to declare the interest in debate when the need arises.