The Law Society

COUNCIL

The Council will meet at 10.00 on Wednesday 12 November 2008 in the Council Chamber at 113 Chancery Lane, London

AGENDA - PART 1

1	Apologies	
2	Request(s) for leave of absence	
3	Announcements	
4	Minutes of the Council meeting on 8 October 2008	Attached
5	Matters Arising from the Minutes	
6	Question Time	
7	Presentation: Colombia Human Rights mission	-
8	Effective Modern Regulation	Attached
9	Council Size and Membership: Council Membership Committee Report	Attached
Representation		
10	Impact of the Legal Aid Settlement	Attached
11	Contingency Funding	Attached
Regulation		
12	Report of the LCS Board Chair	Attached
13	Report of the SRA Board Chair	Attached
Governance		
14	Charter Amendments: Postal Ballot Results	Attached
15	The Committee Structure: Report of the Legal Affairs and Policy Board	Attached
16	*Item deferred*	
17	Publicising General Meetings	Attached
18	Council Workplan 2008-2009	Attached
Reports and motions		
19	Chief Executive's report	Attached
20	Reports of the Chairs of the Non-regulatory Boards	
	(i) Membership Board	Attached
	(ii) Regulatory Affairs Board	Attached
	(iii) Management Board	To follow
	(iv) Legal Affairs and Policy Board	To follow

21 Council member motions

22 Oral reports

Posted on Corporate Business on 28 October 2008
as approved by the Chair

The Law Society

COUNCIL

Minutes of the meeting on 8 October 2008 in the Common Room at 113 Chancery Lane, London

PART 1

Present

Paul Marsh (President)
Bob Heslett (Vice-President)
Linda Lee (Deputy Vice-President)

Peter Adams, Robin ap Cynan, Adrian Barham, Paul Barnes, Richard Barnett, Richard Barr, Christina Blacklaws, Verity Boocock, John Calladine, Denis Cameron, Andrew Caplen, Sue Carter, Sara Chandler, Rajshree Chhatrisha, Christopher Clark, Helen Clarke, Stuart Collingham, George Curran, Helen Davies, Paul Davies, Simon Davis, Nigel Day, David Dixon, Nigel Dodds, Frank D'Souza, Joe Egan, Keith Etherington, Paul Finch, Nicholas Fluck, Jeffrey Forrest, Malcolm Fowler, Michael Franks, Derek French, Michael Garson, Jennifer Gracie, David Greene, Wesley Gryk, Philip Hamer, Wendy Hewstone, Brian Hughes, Anne Jarvis, Ian Kelcey, Angus King, Ian Lithman, Patricia Lush, Kevin Martin, Clare McConnell, David McIntosh, Maria Memoli, David Merkel, Rod Mole, David Morgan, Tim Mutti, Sue Nelson, Michael Orton-Jones, Tim O'Sullivan, Fleur Palmer, Penny Palmer, David Payne, John Pickup, Basil Preuveneers, Tony Prichard, Patrick Richards, Lucy Scott-Moncrieff, Razi Shah, Michael Singleton, Jonathan Smithers, Jonathan Stephens, David Taylor, Andrew Tucker, Rodney Warren, John Weaver, Michael Webster, Chris Welton, John White, Fraser Whitehead, Michael Williams, Stanley Williams, John Wotton, Gaynor Wragg, Peter Wright, Simon Young.

In attendance

Desmond Hudson, Chief Executive of the Law Society

By invitation

Deborah Evans, Chief Executive, Legal Complaints Service (minute 7)
Antony Townsend, Chief Executive, Solicitors Regulation Authority (minute 7)
Peter Williamson, Chair, Solicitors Regulation Authority Board (minute 7)

Apologies

John Bleasdale, Grace Brass, Rob Brown, Christopher Digby-Bell, Andrew Holroyd, Carolyn Kirby, Nwabueze Nwokolo, Jonathan Ripman

1 ANNOUNCEMENTS

The President welcomed Paul Barnes, Stuart Collingham, Paul Finch and Angus King to their first meeting as Council members.

2 PART 1 MINUTES OF THE COUNCIL MEETING ON 16-17 JULY 2008

The Part 1 minutes of the Council meeting on 16-17 July 2008 were approved, subject to the following amendment: Flick Heron

Minute 209 – Chief Executive's Report – the reference to the Interim Strategic Equality and Diversity Officer in a query raised by Nwabueze Nwokolo should be changed to the Membership Development Officer.

3 MATTERS ARISING FROM THE MINUTES

There were no matters arising.

4 QUESTION TIME

There were a number of questions from members which were circulated with responses.

5 MEMBERSHIP STRUCTURE

Kevin Martin, Chair of the Membership Board, presented this report, which asked the Council to approve proposals for new and amended membership categories. The Board was bringing the proposals forward under its remit in General Regulation 24(2) ('…policy relating to services for members and others to include…family members, potential entrants to the profession, non-solicitor employees of firms and to the public'). The aim was to create a Society fit for the purpose of meeting the demands of a changing market for legal services.

He highlighted the features of each proposal, indicating whether it was subject to the outcome of the postal vote taking place on proposed Charter amendments –

Student membership

The proposal was for the student membership category to be defined as for students undertaking the LPC course only. There would be no practical impact on the Society's longstanding practice of referring to students as members if the related Charter amendment were lost.

Associate membership

The paper recommended no change to the present position, and so the postal vote was not relevant.

RFLs

The enabling power to grant RFLs full membership was in the Charter amendments agreed at the SGM and not subject to the postal vote.

Affiliates

The proposal was covered by a Bye-Law amendment which had been agreed at the SGM in July 2008, and so was not subject to the postal

vote. However, the proposal was linked to other proposed Charter amendments for non-solicitors to have a relationship with the Society which were subject to the postal ballot, and it would not be appropriate for the Council to make a decision in advance of the ballot result being known.

Kevin Martin stressed that under the proposal –

(1) affiliates would have no corporate rights and the Society would neither represent them nor lobby on their behalf;

(2) unregulated will-writers would not be eligible to be affiliates;

(3) applicants would be vetted and would have to be working in solicitors' firms or LDPs;

(4) several other bodies such as the RICS and ICAEW had affiliate schemes.

Simon Young suggested that the first bullet point in paragraph 14 of the paper, describing those who would be eligible to become affiliates, should be amended to –

'authorised persons as defined by the Legal Services Act 2007 (other than solicitors)'

Kevin Martin accepted this amendment.

The following points were made in the debate –

- The Charter amendments had been put to the SGM as 'enabling' provisions, yet the Council was now being asked to press ahead with actual proposals, which could lead to a very large number of affiliates who would demand voting rights on the basis of 'no taxation without representation'.

- The proposals would dilute the 'brand' of solicitor.

- Several members said there was considerable opposition in their constituencies to the proposals.

- Would the SRA have regulatory jurisdiction over affiliates?

- The Society would have to represent affiliates if the need arose, if only to protect its own brand.

- The proposals were an essential step to generate income. The Society was able to provide valuable services for which people were prepared to pay; the more who were prepared to pay, the better, to keep down the PC fee.

- Several members made the point that their local law societies opened membership to non-solicitors.

- Joint ownership of law firms would happen very quickly after March, when the rules changed; any abuses would be checked by the SRA, which would be regulating all those within a law firm.

- It would be provocative for the Council to make any decision on the proposals until the results of the postal vote were known.

- The proposals would help the Society internationally. A parallel would be the ABA, which had a large number of UK lawyers as affiliates.

- The proposals might weaken the Society's claim to be the principal spokesman for the whole legal profession.

Kevin Martin responded to the debate, stressing the example of other professional bodies and pointing out that there was support within the profession for the proposals, as shown by a GFK NOP survey which had been circulated.

The Council agreed –

Anne Godfrey

(1) to confirm a new definition of 'Student Member of the Law Society' limited to LPC students enrolled with the SRA.

(2) that 'Associate Member of the Law Society' should continue to be restricted to trainee solicitors (whether on training contracts or, in future, undertaking work-based learning).

(3) to amend the category of 'Member of the Law Society' to include Registered Foreign Lawyers (RFLs).

(Voting on the above three recommendations was *en bloc* – *For: 72; Against: 4: Abstentions: 2)*

(4) to re-define the non-solicitor 'affiliate' category as described in paragraphs 14 (as amended) and 15 of the report, subject to the outcome of the postal ballot.

(For: 49; Against: 27: Abstentions: 2)

6 COUNCIL WORK PLAN 2008-9

The proposed work plan for 2008-9 had been revised since the July Council meeting and input from the Board chairs.

Council members made the following comments:

- The debate on higher rights of audience might usefully be brought forward as the SRA's new mandatory scheme was likely to begin early in 2009.

- The Council should debate assistance for members looking to exit the profession, and the state of the professional indemnity insurance market.

- The boards should report on their future workplans to the Council in the summer, to trail the issues for Council members at an earlier stage.

The Chief Executive said that work was underway on supporting solicitors seeking exit strategies; the work was at an early stage, and a report would be made to Council in due course. The President advised that the workplan was flexible and would be kept under review at each Council meeting. Flick Heron

The Council endorsed the work plan.

7 REPORT OF THE CHAIR OF THE SOLICITORS REGULATION AUTHORITY BOARD

Peter Williamson introduced his report which covered the setting up of a BME Group, adjudicator recruitment, IT, rules made to facilitate the implementation of LDPs under the Legal Services Act, the strategic plan and equality and diversity strategy, higher rights of audience, the ethics guidance helpline, student enrolments, efficiency improvements and the work of the committees.

Peter Williamson confirmed that, with effect from 1 January 2009 Sir Stephen Lander, Dr Jonathan Spencer and Andrew Long had been reappointed as the chairs of SRA's Compliance Committee, Education and Training Committee and Financial Protection Committee respectively and that Dick Taylor would be chair of its Rules and Ethics Committee in place of Eddie Solomons who was retiring.

Indemnity insurance

It had been a difficult year for professional indemnity insurance renewals and applications to join the assigned risks pool from firms having difficulty getting cover had risen sharply. Some had since found cover which could be backdated to 1 October, and in those circumstances the firms were deemed never to have joined the pool. The SRA made annual checks on firms' insurance arrangements and those in the pool were subject to regulatory investigation. Advice on the rules for firms in the pool would be republished. Peter Williamson

The SRA had approved 26 insurers, but was unlikely to be able to influence premiums as they were determined by market forces. Some insurers had advised firms very late that they were not prepared to provide cover and SRA was looking to address this problem through the qualified insurers agreement. It would not be possible to insist that all qualifying insurers offered cover to all types of firm, as many insurers would then withdraw from the market. The possibility of staggering renewal dates was also being considered, but there were drawbacks to this. There were no plans to resurrect the Solicitors Indemnity Fund. An advice note would be sent to all Council members on this subject and SRA would engage with RAB's Indemnity Insurance Working Group on these matters. Peter Williamson

Higher Rights of Audience

The current higher rights of audience scheme had been extended to 31 December 2008 and SRA was considering whether to introduce the agreed streamlined system from January 2009 before considering more changes or to briefly extend the current scheme until a fuller review could be undertaken. There would be a full consultation including TLS before any further alterations to the scheme. A member asked that consideration be given to reducing accreditation fees for those with exemption.

Ouseley report

There would be regular updates on action taken to deal with the recommendations made in Lord Ouseley's report into disproportionate regulatory outcomes for BME solicitors, and details of the resources allocated to this would be provided.

Questions

Peter Williamson would respond in writing to the following questions from members: Peter Williamson

- a request for details of the changes to the law against excluding liability for negligence in litigation cases, resulting from the second Legal Services Act commencement order.

- clarification of the status of advice from the ethics guidance helpline, in terms of whether solicitors who acted on advice received could rely upon it if subsequently faced with regulatory action .

- whether the referral arrangements review would cover the impact of referral fees on charging rates.

The Council noted the report.

8 THE COMMITTEE STRUCTURE

Linda Lee gave a presentation on the review of the committee structure. Council members were invited to give their views on the following questions:

1. Does Council think that the existing suite of Committees provides the right mix of areas of expertise for the Law Society, or should the LAPB explore including other areas?

2. Does Council feel, in principle and subject to competing priorities, that additional resources should be made available to support policy work and should LAPB be identifying areas of work on which additional resources could be spent in order to allocate this between the existing or any new committees?

3. If no additional resources are available would Council like;

(a) the existing committees to remain unchanged?

(b) the LAPB to look at a new structure retaining as much of the existing committees' work as possible; or
(c) to consider the abolition of some committees.

In discussion, members raised the following points;

- the review of the committee structure was welcome as a useful process; and that the process should be ongoing;
- more money should be made available for law reform;
- committees tended to operate in isolation and there should be more joint activity;
- the Gazette should promote the committees' work;
- a fine tuning of the committee structure was required, rather than an overhaul;
- new committees were needed to look at areas which were not currently covered, such as domestic human rights;
- the size of committees should be reviewed because of the disparity in numbers;
- committees should report directly to the Council on a regular basis;
- more use of 'virtual meetings' and time-limited task forces were cheaper alternatives to face-to-face meetings and standing committees;
- virtual meetings would not always be appropriate because of the high volume of consultations that some committees dealt with.

Linda Lee thanked members for their views. She acknowledged that there was support for more money to be spent on the committees, and particularly on policy support.

The Council was invited to provide an indicative vote to guide the LAPB on how to proceed with the review of the committee structure.

The Council agreed — Mark Stobbs

(1) that the review should consider the possibility of scope for more committees.

(For: 37; Against: 35; Abstentions: 0)

(2) that if no additional resources were available the abolition of some committees should be considered.

(For: 32; Against: 20; Abstentions: 10)

The LAPB would look into the options suggested by members and bring a further report to the next Council meeting.

9 COUNCIL'S SIZE AND STRUCTURE: EXTERNAL CONSULTATION RESPONSES

Before this item was opened, the President indicated that he would not accept two proposed amendments to the CMC's proposals (one that the Council be reduced to 85 seats; the other supported a Council of 95 members).

Tim O'Sullivan, Chair of the CMC, presented this report, which summarised the findings of the external consultation on the size and structure of the Council, and invited the Council to make decisions in principle on how the Council should be re-structured.

Tim O'Sullivan reminded the Council of the main features of the 2001 changes, and said the CMC was now recommending a Council of 75, which the Committee felt was the right number to be effective and would allow the Council to continue as an electoral college. The CMC could, however, come up with other workable models if required. The matter was pressing, since all non-geographical members' terms of office would be expiring at the AGM in 2009. The CMC would in due course review the geographical constituencies.

Some members asked that the Council be given the chance to consider alternatives; others asked that the CMC put forward proposals to deal with the geographical seats.

Other points made in the debate included the following –

- A large Council had not impeded its effectiveness.
- A reduction in the size of the Council would reduce its diversity.
- The Council had lost its appetite for reform.
- The 2001 reforms had been aimed at increasing the inclusiveness and representativeness of the Council, and it was wrong now to depart from that basic approach, although some of the area of law seats could be discontinued to bring the Council down to 85.
- Area of law seats should be discontinued only if those areas of law had proper representation through the committee structure.
- It would be better to concentrate on improving the effective working of the Council rather than reducing its size.
- A predominantly geographical Council could not properly reflect the diversity of interests within the profession.
- The consultation was flawed as it gave too great an emphasis to geographical-based views, especially as no changes were proposed to the geographical constituencies. Geographical representation was an anachronism.

After the debate had proceeded for some time, the President said that in view of the number of members still wishing to speak, and the other important business which needed to be dealt with at the meeting, he would, with the consent of the Council, adjourn the debate on the report to the next meeting when it would be high on the agenda. The debate was accordingly adjourned. Flick Heron

10 CHIEF EXECUTIVE'S REPORT

The Council noted the Chief Executive's regular report on work undertaken by the Society in representing the profession since the last meeting.

11 REPORT OF THE CHAIR OF THE MEMBERSHIP BOARD

In Kevin Martin's absence for this item, Rod Mole presented the Board's report highlighting issues considered at its meeting on 18 September at the Law Society's Brussels Office.

The report summarised the main issues discussed at the meeting. Kevin Martin had presented a full report on the new membership structures to Council earlier in the meeting. Other significant issues were the ongoing problems in the delivery of a membership database and the development of the website with member and non-member areas.

The Council noted the report.

12 REPORT OF THE CHAIR OF THE REGULATORY AFFAIRS BOARD

In Helen Davies' absence for this item, Nigel Day gave an oral report highlighting the main issues considered at the Board meeting on 7 October.

- Remuneration Certificates. The Board had considered LCS's proposal to abolish the system of remuneration certificates. Two representatives from the LCS had attended the meeting and noted the Board's concerns at the proposals.

- Improving Government regulation. Rick Haythornthwaite, Chair of the Risk and Regulatory Advisory Council, had attended the meeting. He said that the Prime Minister had asked the RRAC to provide a catalyst for the change needed in the way policy was developed across all departments.

- Work Plan. The Board wished to hear from Council members about key issues for the profession.

- SRA issues. The Board had discussed the SRA Strategic Plan and draft Equality and Diversity Strategy, which were available on the SRA website.

- The Board had also discussed a Draft Practice Note for the European Transparency Initiative, the Attorney General's consultation on extending the powers of the Court to prevent fraud and compensate victims, and mortgage fraud.

The Council noted the report.

13 REPORT OF THE CHAIR OF THE LEGAL AFFAIRS AND POLICY BOARD

The Council noted the report which covered the Board's discussions on the committee structure and chairman's handbook, contingency fees and third party funding, judicial appointments, virtual courts, conveyancing, working groups, restructuring of the legal policy directorate and committee appointments.

14 COUNCIL MEMBER MOTIONS

There were no motions.

15 ORAL REPORTS

An oral report by Sara Chandler on a recent visit to Colombia by representatives of the City of Westminster and Holborn Law Society and the Law Society Charity was deferred due to shortage of time.

There were no other oral reports.

Signed: ……. Date: ……..
Paul Marsh, President

COUNCIL **Item 8**
12 November 2008

Classification – Public

Purpose - For noting

EFFECTIVE MODERN REGULATION

The Issues

This paper informs Council about the background to the review of regulation which the Society has commissioned.

Policy Position

The review is intended to assist the Regulatory Affairs Board and the Society to develop policy on regulatory matters.

Financial and Resourcing implications

This project is expected to cost £85,000 in 2008 and £240,000 in 2009.

Equality and Diversity implications

One key element in the terms of reference for the review recognises the need to promote equality and diversity.

Consultation

This paper has been prepared directly for the Council.

Directors: Mark Stobbs/Russell Wallman
Author: Russell Wallman
Date of report: 28 October 2008

Introduction

1. This paper sets out the background to the review of regulation which the Law Society has commissioned. The project briefs both for the main review and for the sub-strand looking at the regulation of corporate law firms have already been circulated to Council Members under cover of the President's letter of 21 October.

Background

2. The main review – which the Society has commissioned Lord Hunt of Wirral (David Hunt) to undertake - alighted from the Law Society's wish to continue to play a major role in influencing the agenda for regulation of the Solicitors' profession, notwithstanding the delegation of responsibility to the SRA Board. It is important that the Regulatory Affairs Board (and the Society generally) do not merely respond to consultations issued by the SRA, but take a pro-active role to help set the agenda. Commissioning an independent report from a distinguished external figure is an important contribution to that work.

3. The thinking behind the corporate firms strand of the review is slightly different. It has become increasingly apparent in recent months that there is very considerable dissatisfaction amongst the largest law firms with the approach taken by SRA to regulation. The firms feel that the SRA has not effectively thought through what is required to regulate their firms in the public interest, bearing in mind that the consumer protection considerations which play such a large part in regulation of other firms are far less significant in the context of regulating firms that deal almost exclusively with corporate clients. The firms have expressed doubt as to whether SRA as currently constituted has the skills necessary to regulate them effectively. It is important both as a representative body and indeed as approved regulator for the Law Society to ensure that concerns of this sort from a very significant section of its membership are properly examined.

Conduct of Reviews

4. We considered carrying out these pieces of work as two separate reviews. However, we concluded that it was not desirable to exclude from the main review considerations about the structure of regulation for corporate law firms. We considered also treating the issues concerning corporate law firms simply as an undifferentiated part of the overall review. However, we concluded that there were in fact distinct areas which required specific investigation, and that it was both possible and desirable to get advice on them in advance of the conclusions of the full review. We concluded, therefore that the best course was to recognise the corporate firms review as a distinct sub-strand but to have it report both to the overall reviewer and to the Law Society, so that the individual carrying out the overall review could take the corporate firms review into account in settling his recommendations.

5. It will be for Lord Hunt himself to determine how best to conduct his review. He has agreed to the project brief, which not only sets out his terms of reference, but also the expectation as he will consult widely with stakeholders, and will conduct some at regional roadshows. But, it is not for the Law Society to dictate the way in which he conducts the review. The Law Society will, however, be providing some staff support to the review – in much the same way – as the then Lord Chancellor's department provided the staff support for Sir David Clementi's review of the Regulation of Legal Services.

6. The thinking behind the view is essentially that whereas Sir David Clementi's review concentrated on the governance structure for the regulation of legal services, there has been comparatively little attention devoted to the substance of regulation of legal services – apart from initiatives such as the Law Society's own review of the requirements for admission. Whilst there is no doubt about the integrity and conscientiousness with which the regulatory functions are carried out, there is a question as to whether they have fully adapted to modern thinking about regulation. An independent assessment of what modern effective regulation of the legal profession means, in the light of the regulatory objectives in the Legal Services Act and the better regulation principles, seems very timely.

7. Similarly, the corporate firms review – conducted by a former Civil Servant at the Ministry of Justice, who now works as an independent consultant – will be conducted by the independent reviewer, but with staff support. The corporate firm strand also has a reference group, chaired by the Vice President and comprising representatives of corporate firms and of corporate consumers of legal services.

Action following the reviews

8. It is obviously premature to speculate about what the reviews might say at this point. But it is clear that any recommendations which may be made for changes to substance of the way in which regulation is carried out cannot be influenced by the Law Society itself. It will be for the SRA to decide whether or not to implement the recommendations. The Law Society will need to decide to what extent it supports the recommendations – and to lobby SRA accordingly, but it will not and cannot be the decision maker.

9. The position is different so far as any possible changes to the responsibilities of the SRA are concerned. If it became desirable to establish a separate regulatory body to deal with some or all of the SRA's current functions in respect of corporate law firms, the decision on that would rest with the Law Society as approved regulator. Clearly, by the time any such decisions come to be made the Legal Services Board is likely to be up and running and their consent would be required for any changes. But, the SRA Board – an important consultee on any such issues – would not hold a veto on change.

Budget for the reviews

10. The cost of Lord Hunt's review – including road shows and staff support – is expected to be around £60,000 in 2008 and £220,000 in 2009. The cost of the corporate firms review is expected to be around £25,000 in 2008 and £20,000 in 2009. The 2008 costs are being met from within existing budgets. Provision is being sought for 2009 costs as part of the business planning process.

Recommendation

11. Council is invited to note this report.

The Law Society

COUNCIL
12 November 2008 **Item 9**

Classification – Public

Purpose – For decision

COUNCIL SIZE AND MEMBERSHIP: SUPPLEMENTARY COUNCIL MEMBERSHIP COMMITTEE REPORT

The Issue

This paper follows up the Council's adjourned debate from October 2008, and presents revised propositions from the Council Membership Committee. The Committee's earlier report is appended, in full.

Decision

The Council is invited to vote on the following options:

a) 75 members (61 geographical members and 14 non-geographical members);

(b) 85 members (61 geographical members and 24 non-geographical members)

(c) No change

Policy Position

The Bye-Laws set out the Council's size and composition: changes would therefore have to be confirmed at a general meeting.

Financial and Resource implications

The CMC's original report covers this.

Equality and Diversity implications

The CMC's original report covers this.

Consultation

The CMC's original report covers this.

Director Frances Low, General Counsel
Authors Andrew Dobson/Mark Paulson
Date of report 31 October 2008

1. At the October Council meeting, several members said in the debate they would have liked to vote on the option of a Council of 85 members, as an amendment to the CMC paper.

2. There is a Convention or protocol (added as Annex 11 to the report), agreed by the Council in 1997 and confirmed by the Council in 2001, on how the Council should treat CMC recommendations. Under the Convention, the Council

   'would only differ from the Committee if they had first given the Committee the chance to review the matter; although the Council would not be quick to set aside the careful judgment of a broadly-constituted committee of senior members of the profession'.

3. Although technically the Convention may not yet have been engaged, the CMC has in the light of the October debate reviewed its recommendations. Views on the CMC were not unanimous but, by a majority, the CMC now wishes to offer the Council a specific choice of either 75 or 85 as the size of a reduced Council, made up of 61 geographical seats as now and either 14 or 24 non-geographical seats.

4. The Convention will not be triggered by the Council opting for either 75 or 85, since the CMC is in terms recommending that the Council choose between these two figures. It is open to the Council to reject both alternatives and vote for the status quo, and an initial proposition is presented to allow a vote on this question.

5. If both options are rejected, technically the Convention would be engaged, but it is possible that the CMC will be unwilling to bring forward any further proposals and take the view that it had exhausted its remit.

6. The arguments in favour of reducing the Council to 75 (61 + 14) are set out in the original report (see paragraphs 17-21). An approach based on a Council of 85 (61 + 24) could be seen as a reasonable compromise between the CMC proposals and the current Council size of 94 seats. The CMC noted that no single member opted for 85 in the Council member consultation carried out earlier in the year.

7. Once the Council has decided (assuming it does not wish to maintain the status quo) between 75 and 85, the CMC will bring a further report to the December Council meeting on the composition of the non-geographical seats. Accordingly, the CMC does not ask that the Council vote on these issues now, although they are discussed in the report and this material may be helpful background. The Council is asked to vote only on the options set out below.

8. The Council will be aware that the size and structure of the Council has been under review, both as a free-standing issue and as part of wider governance issues, since 2004. The following developments have taken place over that period–

   - The Governance Review Group (GRG) chaired by Baroness Prashar reported in November 2004 recommending, among other things, a smaller Council.

- The Non-Regulatory Governance Group (NRGG) chaired by Fiona Woolf reported in June 2005 and discussed the size and composition of the Society's governing body.

- The 'Have Your Say' consultation took place in 2005/6, and reported in April 2006, with views of respondents on, among other things, the preferred size of the Council.

- The Law Society Governance Group (LSGG) chaired by Andrew Holroyd worked up several governance models (including the size and composition of the Council) in consultation with the CMC between January and July 2006. This led to Council debates in September and October 2006.

- The CMC (then chaired by Carolyn Kirby) worked in 2006/7 to produce an information paper on size and structure of the Council, which was never formally debated by the Council but formed part of the background leading to the discussion at the Council meeting in October 2007 which initiated the current review. (The Council's decisions on that occasion are set out in paragraph 6 of the report.)

9. This underlines the fact that the Council needs to make a definite decision and reach closure on the overall size of the Council now, particularly if we are to stick to the proposed timetable (agreed by the Council in October 2007) of putting proposals to the AGM in July 2009.

10. All non-geographical members' terms come to an end at the conclusion of the 2009 AGM, and even if the Council opts to maintain the status quo, the CMC still needs plenty of time to plan and implement the review process for the filling of the current 33 non-geographical seats with effect from the AGM, as required by Bye-Law 70(3) and General Regulation 31(2).

Options

11. The CMC therefore wishes to present the following options on the Council's size:

    (a) 75 members (61 geographical members and 14 non-geographical members);

    (b) 85 members (61 geographical members and 24 non-geographical members)

    (c) No change

    In the light of the Council's decision, the CMC would advise further on the make-up of the non-geographical seats in December.

Outstanding matters

12. The CMC report in October included the following matters, which, unless there is clear consensus on them, will now be deferred to a future meeting:

(1) That solicitors outside England and Wales should have dedicated representation on the Council, by creation of an extra-territorial seat; and

(2) That the proposal to exempt the office-holders and Immediate Past President (IPP) from the need for re-election to the Council be implemented by extending their current terms to the end of the IPP year.

The Law Society

COUNCIL **Item 11**
8 October 2008

Classification – Public

Purpose – For decision

COUNCIL SIZE AND STRUCTURE –EXTERNAL CONSULTATION RESPONSES

The Issues

This report from the Council Membership Committee (CMC) summarises the findings of the external consultation on the size and structure of the Council and invites the Council to make decisions in principle on how the Council should be re-structured.

Decision

The Council is invited to agree in principle (subject to the approval of the 2009 AGM)–

(1) That the overall size of the Council be reduced to 75 members;

(2) That the Council should consist of 61 geographical members and 14 non-geographical members;

(3) What the balance should be between 'sectoral' and 'special interest' members in the non-geographical component of the Council;

(4) That no seats be made available under the re-structuring for areas of law;

(5) That solicitors outside England and Wales should have dedicated representation on the Council, by creation of an extra-territorial seat; and

(6) That the proposal to exempt the office-holders and Immediate Past President (IPP) from the need for re-election to the Council be implemented by extending their current terms to the end of the IPP year.

Policy position

The Council has not yet taken any policy decision on changes to its size and structure. In October 2007 the Council agreed that a review should be undertaken by the CMC, to enable the Council to put proposals to the AGM in 2009 so that a reconstituted Council could take office in January 2010. This paper is in response to that decision.

Financial and Resource implications

There are none which would arise immediately if the recommendations are agreed. A reduction in the number of non-geographical Council seats, as proposed in the report, would bring about some savings in the cost of administering ballots to fill those seats, and would also reduce the cost of holding Council meetings.

The proposal to create an extra-territorial Council seat would incur travelling costs for the member concerned to attend Council meetings. These cannot be quantified as costs will depend on the location of the member, but could be significant.

Equality and Diversity implications

Equality and diversity are key issues in any consideration of options for a Council with a different size and structure, and must be fully reflected in the change process. The paper deals with the equality and diversity implications of the proposed changes. The review by Lord Ouseley (published July 2008) into disproportionate regulatory outcomes at the SRA for BME solicitors highlights the need for urgent work in a number of areas to enable the SRA to meet the requirements of equality and diversity.

The Society through the Council is the 'approved regulator' under the Legal Services Act, and under the Act, and under the Race Relations (Amendment) Act, is therefore responsible for ensuring that the SRA, which exercises the relevant statutory powers on a delegated basis, complies with the statutory obligations. The Council needs to be appropriately representative to enable it to discharge this responsibility properly.

In this connection, it should be noted that BME solicitors are and have always been under-represented in the geographical constituency seats. If, as is proposed in this report, the geographical seats are to continue to be the major segment of the Council, it will need to be a priority to encourage participation by all parts of the profession, particularly those who are currently under-represented, in the work of the local law societies, which are a principal pathway to election to the Council.

Consultation

This paper has been prepared by the CMC for the Council directly. An earlier paper for the CMC meeting in July which contained some of the material in this paper was copied to all Council members for information, and an oral report was made by the CMC Chair to the July Council meeting. This report was considered by the Management Board on 24 September 2008. The Management Board is not putting forward a recommendation to the Council.

Director Frances Low, General Counsel
Author Andrew Dobson
Date of report 25 September 2008

Introduction

1. This report from the CMC –

   (1) Summarises the findings of the external consultation on the size and structure of the Council;

   (2) Invites the Council to make decisions in principle on how the Council should be re-structured;

   (3) Invites the Council to agree the proposal that the office-holders and Immediate Past President (IPP) should be exempt from the need to seek re-election to the Council and to agree that the method for doing so should be by extending the current Council terms of office of these members;

   (4) Suggests a timetable for implementation of the changes and deals with a number of practical and procedural issues.

2. The first part of the paper deals with the size and composition of the Council. The report then deals with the issue of exempting the office-holders and IPP from election.

Background material

3. The main results of the consultation are summarised in the body of the report. Background information is in the Annexes which are available on Corporate Business –

Annex 1	Respondents to the consultation
Annex 2	Detailed findings
Annex 3	Narrative comments in response to the 'General comments' section of the questionnaire
Annex 4	Text of the consultation document
Annex 5	Text of the questionnaire
Annex 6	Non-geographical Council seats (September 2008)
Annex 7	Information on areas of practice of geographical Council members
Annex 8	Recommendations of Constituency Boundaries Sub-Committee
Annex 9	Geographical constituency boundary descriptions
Annex 10	Ratios of geographical Council members to constituents

Annex 11 Protocol on the way the Council deals with CMC recommendations

Scope of the consultation

4. The consultation document and questionnaire was issued (under cover of a letter from Tim O'Sullivan, the Chair of the CMC) on 14 April 2008, with a deadline for responses of 13 June 2008 (later extended to 20 June 2008). The documents were sent to –

   (1) Local law societies;

   (2) Regional associations;

   (3) Recognised groups and associations (including the JLD); and

   (4) Sections

5. There was no general invitation to firms or individual solicitors to comment, although one firm did submit a response, which was not taken into account.

The context of the consultation

6. The Council on 3 October 2007 agreed the following provisional order of events and timetable for a review of its size and structure, with a target date for approval of changes of the 2009 AGM –

   (1) Consultation with individual Council members and boards to determine if a consensus arose.

   (2) Consultation with City/regional/local law societies and stakeholders in the light of the first stage.

   (3) CMC asked to provide detailed advice in the light of responses to the consultations.

   (4) Council to consider advice from the CMC in the light of the consultations.

   (5) Council to sign off proposals to be put to the 2009 AGM.

7. The timetable agreed envisaged a progressive process, and therefore the external consultation was not, and did not purport to be, open-ended, in the sense of calling for respondents to comment at large on the Council's size and structure. The consultation called for preferences to be expressed on four basic options for a re-structuring of the Council, based on the key findings of the survey carried out among Council members in the latter part of 2007, which identified options which might prove to be acceptable to the Council.

8. The CMC felt it sensible, and consistent with what the Council had decided in October 2007, for the consultation to proceed in this way, rather than offering an open-ended consultation which would probably have produced a wide range of differing views on the key elements of any changes, and from which no clear conclusions could have been derived. There was however an

opportunity given in the questionnaire to indicate 'none of the above', and some respondents availed themselves of this opportunity.

9. It was made clear in the consultation that the options presented were not set in stone and were indicative only of a broad approach which would need further working out in detail.

Size/structure options consulted on

10. The four basic options put on the basis described above to respondents on the overall size and geographical/non-geographical split of the Council were –

    (1) A Council of **70/75** made up of **60 geographical** and **10/15 non-geographical** seats (Option 1)

    (2) A Council of **70/75 split equally** between geographical and non-geographical seats (Option 2)

    (3) A Council of **60** made up of **45 geographical** and **15 non-geographical** (Option 3)

    (4) A Council of **60 split equally** between geographical and non-geographical seats (Option 4)

11. Those respondents supporting any of the above options were also asked to indicate their view as to the proportions of the non-geographical seats to be allocated to 'sectoral' and 'special interest' seats respectively. These terms have been defined as terms of art for the review by the CMC in the following ways (and were explained as such in the consultation document) –

'Special interest' seats

12. Non-geographical seats whose purpose is to represent solicitors with certain personal characteristics, and who are likely to be under-represented or not represented at all in either geographical or sectoral seats. This category will include young solicitors, BME solicitors and solicitors with disabilities. These seats could also be described as 'demographic' seats.

'Sectoral' seats

13. Non-geographical seats whose purpose is to represent –

    (a) areas of practice, such as commerce and industry, Crown Prosecution Service and local government;

    (b) areas of law, such as residential conveyancing, employment law, criminal law or civil litigation;

    (c) recognised groups and associations (some of which fall within (a) and indeed also the special interest definition) and the Sections.

    (Category (c) here effectively excludes those bodies encompassed by certain of the special interest seats, such as the JLD and the GSD.)

Overview of responses

14. Twenty-nine of the 118 local law societies (24%) responded to the consultation, including several of the larger societies. Four regional associations responded. Six recognised groups and associations responded. The Honorary Secretary of one regional association (East Anglia) gave his personal views in response to the consultation, and one firm responded, whose comments were not taken into account.

Factors affecting interpretation of the results

15. It is important in considering the findings to bear in mind the following –

    (1) The analysis gives an equal value to every response, regardless of the number of members of the responding body; in other words equal value is given to a small local law society as to one of the largest, such as the City of London.

    (2) The consultation proceeds on the assumption that the committee or other governing body of the responding organisation is able to speak on behalf of the members, both generally and on the specific issues raised.

    (3) Not every respondent dealt with every question.

    (4) A few respondents expressed their views in a narrative form which did not always lend itself to numerical analysis.

    (5) In one or two cases, there appeared to be internal inconsistencies in responses.

16. The consultation was not a referendum, and nor was it a scientific market research exercise, but notwithstanding this and the points made in the previous paragraph, the CMC considers that the results give a valid impression of opinion within the profession and a proper basis on which the Council can move forward to make changes. The final say will of course lie with the AGM in 2009.

Overall size and composition of Council

17. The main findings were –

    (1) Twenty-three respondents favoured a reduced Council of 70/75 members made up of 60 geographical seats and 10/15 non-geographical seats (Option 1).

    (2) Four respondents favoured a Council of 70/75 equally divided between geographical and non-geographical seats (Option 2).

    (3) Six respondents preferred a Council of 60, made up of 45 geographical seats and 15 non-geographical seats (Option 3).

(4) There was no support for a Council of 60 equally divided between geographical and non-geographical seats (Option 4).

(5) There was a spread of views among respondents as to how non-geographical seats should be divided as between sectoral and special interest seats (as defined) for Options 1-3; the most favoured individual options (seven in each case) being –

(a) 66% sectoral/33% special interest; and

(b) a 50:50 split.

18. The CMC considers that the consultation gives a clear steer for a significantly smaller Council than at present. The CMC has indicated in previous reports its view that a Council of 100 seats is unwieldy, and this view appears to be generally accepted. This was also the view of the Governance Review Group chaired by Baroness Prashar.

19. The CMC recommends that the actual size of the new Council be set at 75 seats, as this will allow extra leeway in the size of the non-geographical sector. A Council of 75 members will be much more workable, while allowing sufficient scope for proper representation of the profession as well as providing a pool from which future members of boards and committees can be drawn. The remaining comments and recommendations in this report are predicated on the size of the Council being set at 75.

Proportions of geographical/non-geographical members

20. The consultation also gives a clear steer for the majority of the seats on the Council of 75 members to be geographical, with the same number (61) of geographical seats as now, with the remainder a mix of sectoral and special interest seats.

21. This trend in views is not surprising, as geographical representation in practice gives local law societies a major role in producing candidates for election, and the societies identify with 'their' local Council member(s). However, significant numbers of solicitors now identify themselves more by areas of practice or types of practice than with locality, and this factor would argue for a reduction in the geographical sector. Nevertheless, the CMC feels that it would be unrealistic to seek such a reduction at this juncture, although it must be regarded as a possibility for the future, following a full review by the CMC of the geographical constituency boundaries.

Proportions of sectoral/special interest seats

22. The results of the consultation offer less assistance on the proportions of the 10/15 sectoral/special interest seats that should apply on the proposed Council of 70/75. There were a wide range of suggested proportions but the two options commanding those most specific support were 66% sectoral/33% special interest and an equal split. The Council needs to decide which option should be followed, and the CMC does not wish to make any recommendation in this regard.

23. In previous reports, the CMC has drawn a distinction in discussing the non-geographical seats between **representation** and **representativeness**. If the

Council is to fulfil its objectives of being the collective voice of the profession as well as a forum for debate on issues of importance to the profession, all parts of the profession must be heard.

24. This need not be achieved through designated Council seats for particular interests, since other means can be found for views from parts of the profession to be fed into Council discussions, for example, by direct communication facilitated by electronic means, or by inviting the chairs of groups and associations to attend Council meetings for items of relevance to them. The technical committees also have a role to play in acting as an interface between sectors of the profession and the Council. The geographical members also come from a range of professional backgrounds. This is what the CMC means by ***representation***.

25. By **representativeness** the CMC means the idea that the Council should be an accurate statistical reflection of the profession as a whole, in terms of demographic groups, types of practice and areas of work. It is obvious that this idea cannot ever be fully achieved since all the various sectors and interests add up to far more than 100%; some kind of balancing exercise is required in order to find a compromise between representation (which clearly dictates some Council seats for certain sectors and groups) and a concept of representativeness which will 'feel right' in the mind of the profession at large.

26. It is obvious that a reduction in the number of non-geographical seats available from the present 39 (not all of which have been filled and some of which are lying fallow) to 10/15 means that many of the present designations will not continue. The CMC has analysed the seats which have been designated to classify them as 'sectoral', 'area of law' or 'special interest'.

27. While not expressing a view on the proper balance of the sectoral and special interest categories, the CMC does recommend that as a matter of principle the Council should agree now that areas of law should no longer be represented within the 'sectoral' category on the Council – whether as a generic area of law or through relevant practitioner associations. This is for the following interlocking reasons –

    (1) There is no other way to reduce the non-geographical component on the Council without detracting from the representation of demographic groups that should on grounds of inclusiveness continue.

    (2) Technical input on areas of law is not normally needed at Council meetings, but if it is it can be provided by the Chair of the relevant technical committee and/or the Chair of the relevant practitioner association attending by invitation (or on a standing basis). (The current review of technical committees does not affect this basic proposition.) Links between the Council and the technical committees can be maintained and enhanced by Council member representation on all the committees.

    (3) In any event, geographical members (and the special interest members) cover a wide range of professional interests so far as areas of law are concerned; this is shown in **Annex 7**.

    It is apparent from the classification of seats incorporated in Annex 6 that certain 'area of law' designations are therefore likely to disappear.

28. It should be emphasised, however, that (with one exception) at this stage the Council is **not** being asked to decide generally the allocation of actual seats to specific bodies or designations – once a framework had been set, the CMC would exercise its function of advising on the designations of particular non-geographical seats. This will be done in the knowledge of the number of seats available to be filled, and (as was done in 2001 when the number of seats was increased) in the light of consultations with interested organisations. The classification is indicative only in the sense of showing how the non-geographical element in the Council could be reduced to the 14 seats available under the projected make-up of the Council.

Representation of solicitors outside England and Wales

29. The exception to the statement above is that the CMC considers that there should as a matter of democratic principle be representation on the Council of solicitors working outside England and Wales, and recommends that the Council agrees this in principle now, subject to consultation. (The EU Law and International Practice seats would be likely to disappear as 'area of law' seats and in any case have never purported to fill this role.)

30. The CMC recommends that this representation be achieved by creating an extra-territorial constituency (which would however be one of the 14 non-geographical seats), which would encompass all those solicitors with a practising address outside England and Wales, thereby avoiding the need for any form of self-registration.

31. The CMC appreciates that to elect a member from any part of the world outside England and Wales raises the possibility of costs being expended by the Society in meeting the travel costs of the member in attending Council and other meetings, and these could be significant, depending on the location of the member's home base. An option would be to limit the franchise to those solicitors in other parts of the United Kingdom and other EU Member States, and this could potentially reduce the costs involved.

The Council as an electoral college

32. One of the reasons why the Council was expanded in 2001 was so that it could credibly act as an electoral college for the election of the Deputy Vice-President who, under the scheme of automatic succession introduced at the same time, would thereafter become Vice-President and then President. Concerns have been expressed (for example by West London Law Society in its response to the consultation) that reducing the size of the Council, for example to 70 or 75, would deprive the Council of legitimacy in acting as an electoral college.

33. It is clearly right that the Council should be perceived as having a legitimate mandate from the profession to elect its leaders and ambassadors, but the CMC sees no compelling reason why a Council of 70 or 75 members, appropriately constituted, should not be regarded as a legitimate electoral college, particularly as the Council is in the best position to judge the merits of the candidates for election.

34. The approach taken in 2001 to the issue of an electoral college was coloured by awareness of the problems linked to contested office-holder elections in

the years 1995-2000, which Dennis Stevenson (now Lord Stevenson) regarded as lowering the reputation of the Society in the eyes of stakeholders and the public. Those problems are now in the past.

Geographical constituency boundaries

35. The CMC has not carried out as part of its current work a root and branch review of the geographical constituency boundaries or of the number of Council members representing each constituency, since this would be a major exercise which is beyond its resources at the present time. Changes in the size and structure of the Council need to be progressed incrementally.

36. The CMC intends that a review of the boundaries, which is part of the CMC's remit under the Bye-Laws, will be carried out in due course after the 2009 AGM and the changes in the non-geographical component of the Council have been implemented. Some work has been done in the past which can be drawn upon. Such a review would involve extensive consultation with local law societies and the membership in particular areas.

37. Any proposals for re-drawing the constituency boundaries could not realistically be brought forward until the 2010 AGM, with a view to the new boundaries applying for the Council elections in 2011. For the time being, therefore, the CMC is assuming that the geographical constituency structure will continue generally in its current form, but this is not necessarily to be taken as ruling out fundamental changes at a later date.

38. The CMC did however appoint a Constituency Boundaries Sub-Committee (with the President of the Associated Law Societies of Wales as an external member) to identify any obvious anomalies or straightforward adjustments in the boundary descriptions that could conveniently be dealt with at the 2009 AGM without prejudice to a wider review and without affecting the number of geographical members.

39. The Sub-Committee noted that the geographical constituency boundary descriptions are in many respects unsatisfactory as working documents, for example, by using obsolete local government boundaries and nebulous lines as reference points. The Sub-Committee made a number of recommendations which have been endorsed by the CMC. Some of the changes would relate to drafting or clarification of the descriptions, but others relate to rationalisation of certain boundaries. The recommendations are summarised in **Annex 8**.

40. The recommendations are being drawn to the attention of the Council now for the sake of giving a full picture, but there would need to be proper consultation with the affected Council members, local law societies and regional associations before any formal proposals were brought forward, and the Council is not asked to consider them now.

41. The Sub-Committee proposed also that constituency descriptions be defined by reference to postcodes for the sake of clarity and to reduce risk of errors in allocating Society members to constituencies, and this is being put in hand as an administrative matter. (The actual descriptions in the Bye-Laws will continue to be stated in narrative form, however.)

Exempting office-holders and IPP from elections

42. The earlier consultation among Council members showed considerable support for relieving the office-holders and IPP from any need to seek re-election during their terms as such. It is not proposed therefore to rehearse in this report the arguments of principle for or against the idea.

43. Two possible methods have been identified for implementing this suggestion. The first is that four *ex officio* Council seats be created for the three office-holders and IPP, and accordingly that on election as DVP a member would occupy an *ex officio* seat and continue to do so until the conclusion of his or her year as IPP. The previous seat held by the member would be filled either as a casual vacancy or in the normal rotation as if the member was not standing again. The other method would be to extend the member's existing term by such number of years as would carry him or her forward to the end of the IPP year.

44. In the external consultation, 25 respondents supported excluding the office-holders and IPP from the need for re-election, but there was no consensus as to the method for implementing this suggestion. Support was split almost equally between those supporting the creation of *ex officio* seats and extending the member's term of office.

45. The CMC recommends that the Council should confirm its acceptance of the proposal and decide that it should be implemented by extending the members' current terms of office until the conclusion of the IPP year. This avoids the need to create four *ex officio* seats at the expense of the non-geographical element of the Council, and has the advantage that it would maintain the contact between the member and his or her constituents, and allows them to take pride in the fact that their member has achieved the office of President of the Society.

46. On the other hand, the creation of *ex officio* seats preserves a regular rotation of elections in the seats vacated by the office-holders and allows the members the chance to change their representation. The CMC feels this argument is outweighed by the arguments above in favour of extending the terms.

Timetable and procedural issues

47. As previously noted, the timetable agreed by the Council in October 2007 envisages that all proposals on the size and structure of the Council should be taken to the 2009 AGM for approval. The requisite Bye-Law amendments will therefore need to be agreed not later than early June 2009 for inclusion in the AGM notice.

48. The CMC envisages that it would, prior to the 2009 AGM, recommend to the Council the designations of the 14 non-geographical seats which will apply from 2010, having taken into account representations from organisations and interests wishing to be represented. The Council would be asked to agree those recommendations, subject naturally to the relevant Bye-Law amendments being agreed at the AGM.

49. Arrangements would then be made for the seats to be filled and sufficient time will need to be allowed for these processes to be completed so that the members elected can take office on 1 January 2010.

50. Since all non-geographical members' terms expire at the conclusion of that meeting, it will be necessary for those seats where the designations will be continuing for there to be an extension of the relevant members' terms to 31 December 2009.

Recommendations

51. The CMC recommends that the Council agrees in principle (subject to the approval of the 2009 AGM) –

(1) That the overall size of the Council be reduced to 75 members;

(2) That the Council should consist of 61 geographical members and 14 non-geographical members;

(3) What the balance should be between 'sectoral' and 'special interest' members in the non-geographical component of the Council;

(4) That no seats be made available under the re-structuring for areas of law;

(5) That solicitors outside England and Wales should have dedicated representation on the Council, by creation of an extra-territorial seat; and

(6) That the proposal to exempt the office-holders and IPP from the need for re-election to the Council be implemented by extending their current terms to the end of the IPP year.

ANNEX 1

LIST OF RESPONDENTS TO THE CONSULTATION

Local law societies (29)

Berks, Bucks and Oxfordshire
Bolton Incorporated
Bournemouth and District
Burnley and Pendle
Cambridgeshire and District
Chester and North Wales Incorporated
Chichester and District
City of London
Cornwall
Devon and Somerset
Gloucestershire and Wiltshire Incorporated
Harrogate and District
Hertfordshire
Hull Incorporated
Isle of Wight
Leicestershire
Newcastle Incorporated
Northamptonshire
Plymouth
Preston Incorporated
Rochdale Law Association
Southport and Ormskirk
Surrey
Tunbridge Wells, Tonbridge and District
West Essex
West London
Westmorland
West Wales
Worthing

Regional associations (4)

Association of South Western Law Societies
East Anglian Region Law Societies (personal view of Honorary Secretary)
Southern Area Association of Law Societies
West Midland Association of Law Societies

Groups and associations (6)

Association of Women Solicitors
Commerce and Industry Group
Group for Solicitors with Disabilities
Junior Lawyers Division
Solicitors in Local Government
Solicitor Sole Practitioners Group

ANNEX 2

DETAILED RESPONSES

Q.1 Options for size and structure of the Council

Option 1 (70/75 total; 60 geographical + 10/15 non-geographical)	**23**
Option 2 (70/75 total; 35/37 geographical + 35/37 non-geographical)	**4**
Option 3 (60 total; 45 geographical + 15 non-geographical)	**6**
Option 4 (60 total; 30 geographical + 30 non-geographical)	**0**

Q.2 Proportion of non-geographical seats sectoral or special interest (as defined in the consultation paper)

The main options supported were –

(1)	Two-thirds sectoral + one-third special interest	**7**
(2)	Equal split sectoral + special interest	**7**
(3)	80% sectoral + 20% special interest	**4**

Q.3 'If your organisation disagrees with all the options in Question 1, and feels the Council should be significantly larger than 75 or smaller than 50, please state below the size of Council and its make-up that the organisation favours'

Several organisations expressed views under this heading, in some cases having opted for either (1) or (2) under Q.1.

The SSPG expressed a preference for a Council of 90 – 100, split equally between geographical and non-geographical seats.

West London expressed a preference for a Council of 100, made up of 60 geographical and 40 non-geographical, that is to say, effectively the status quo.

Newcastle felt the Council should be smaller than now, but was undecided as to what the size should be or the split between sectoral and special interest seats.

Leicestershire felt there was no need to reduce the size of the Council.

Devon and Somerset felt that the Council should consist of 75 geographical members.

Surrey favoured a Council of below 50 members, one-third being sectoral and two-thirds special interest.

[See the JLD narrative comments below]

Q.4 Exempting office-holders and IPP from need for re-election

In favour	**26**
Against	**7**

Q.5 Options preferred for implementation

Ex officio seats	**12**
Extend existing terms	**13**
'None of the above'	**1**

ANNEX 3

NARRATIVE COMMENTS BY RESPONDENTS

Association of Women Solicitors

In respect of Q.4 all office-holders except the DVP should have the benefit of non-election. In the case of the DVP we do not believe that the benefit should be extended because the DVP is elected at least one year before assuming office as VP. During the VP period and thereafter until the end of the term as IPP the DVP will not suffer re-election. In practice, this means that an individual could have 4 years in senior positions without election. We do not think this is politic and the lack of election raises questions of how accountable is the DVP.

Berks, Bucks and Oxfordshire Law Society (Peter G Clark, President)

I would like to add some further personal thoughts on this matter, which I hope will be given some further consideration by the Law Society. Having attended SAALS (Southern Area Association of Law Societies) yesterday I feel there is a general view of dissatisfaction with regards to the format of the consultation document limiting the discussion to a small number of options.

There seems only to be proposals for 70/75 or 60.

The first point of issue is that I and other Committee Members strongly support the geographical representation on the Law Society as this affords real connection between Local Law Societies, Council Members and the Law Society itself. In my experience it works and with the right candidates, works really well.

The next point is that the Law Society should be as small as possible to remain effective and, therefore, 60 members seems to be entirely appropriate. One option not offered for consideration is that there should be no sectoral or interest groups represented. The make-up and indeed which sectoral and interest groups should be represented has not been put forward for consideration or consultation and I think that is a mistake. There is no need for sectoral interests to be represented on the Law Society if those sectoral interests are readily represented from the geographical members so long as Solicitors within those sectors know who they can contact and who is on the Special Interest Group as the Law Society Member. For example, there is no need for family law, civil litigation or residential conveyancers to have separate representation as there is a large number of Solicitors who are geographical members and will be on the relevant Boards/Committees in any event. What is important is that we are able to know who is on those Committees and how we can communicate with them, and how in turn they can communicate with us. My own personal preference is that there should be 60 geographical seats with the ability to co-opt members should a particular interest or sector be under represented.

The issue as to whether ex-officio members should be exempted from democratic vote as a geographical member is a difficult one and there are good arguments on both sides for this. What I feel is absolutely essential is that the local relationship is not broken, it is frequently a matter of pride for a Local Law Society to have the

President as its representative. Also, is it right for an unelected (but nominated) interest member to be appointed?

There is a clear overwhelming view that the Law Society does need to reduce size but retain its geographical basis.

Cambridgeshire and District Law Society

In general the Working Party felt the smaller the better, with the proviso that there should be sufficient numbers to fulfil the essential Council obligations. [Similar comment by East Anglian Region Law Societies.]

Gloucester and Wiltshire Incorporated Law Society

It was also felt that the rules for office-holders should include safeguards for the removal of candidates in the event of serious or criminal misconduct.

Group for Solicitors with Disabilities

This Group submits that, in view of the disability equality duty placed upon the Law Society by the Disability Discrimination Acts, 1995-2005, it should have a 'special interest' seat on the Council, to supply information and advise on disability issues, and generally to assist the Society in complying with its duty.

Hertfordshire Law Society

Council size and structure

Hertfordshire Law Society has ticked option 1 as being the preferred option out of the four choices given. This decision was not however reached without reservations. It was felt we did not have before us sufficient information to make an entirely properly formed judgment.

We considered that each geographical area should have certainly one elected Council member and if cuts were made then they should first come from some of those geographical areas which had more than one member. On the other hand it was felt that it would not be right for a member to be 'over-stretched' by having to represent more than one geographical area.

Concern was also expressed that the sectoral and special interest groups might not be capable of being properly represented if their number were reduced to 10/15.

Office-holders' seats on the Council

In general terms we agreed that the office-holders should not be subject to the need for re-election to the Council while holding office. This was not however a unanimous decision. The voting was in fact 7 to 3 in favour.

In opting for 'ex officio' seats for the office-holders we wish to make it clear that this is on the understanding that four additional seats are created so that there is no reduction in either the geographical seats or the sectoral or special interest seats. We believe this is covered by paragraph 24(1) of the consultation document but nevertheless we wanted to ensure that we had properly understood that particular paragraph.

Letter from Katherine Gibson, Chair of the Junior Lawyers Division

Thank you for the opportunity to comment on the current proposals concerning the reduction in the size of Council.

The Junior Lawyers Division would not welcome the reduction in Council. Accordingly, we cannot make a choice on the current selections within the questionnaire documentation provided. It is not clear from the documentation provided how this reduction would be achieved, and the JLD would not support any changes which meant that the three seats we currently have allocated would be removed. We cannot envisage how the reduction would be able to be fairly made, given the need for Council to be representative of the profession as a whole, and therefore we would support the status quo.

Indeed, the JLD notes that of the 108,000 Practising Certificate holders currently in England and Wales, the JLD represents approximately 50% of those (based on age, which we accept is not a fair indicator). We do not have a 50% representation on Council, however. We are concerned that if the size of Council is reduced, then the number of Council members falling into the JLD membership would also be reduced. The JLD comments that any representative body should reflect its demographic, and whereas the average age of a solicitor in this country is currently 37 – 43 (depending on gender), the average age of the Council is 57.

The JLD notes that it is difficult for its own members to get elected to Council seats, due to the way in which the seats are elected. It is usually always those who are more senior within the profession who are successful, and the geographical seats tend to go to those more senior and well-known in the area. In this way, our representation is also eroded. Having a JLD member (or indeed 'young solicitor') as President is highly unlikely.

In addition to our qualms about representation, the JLD also notes practical problems faced by the Society should the Council size be reduced. These are as follows:

1. Populating committees

With a reduced pool from which to draw, the composition of the committees needed to manage Council business would be vastly reduced. This could lead to the same members appearing on many committees and some not at all.

2. Workload

The workload on the current size of Council is already very high, and removing hands you will increase the workload of those remaining.

3. Presidential elections

Not only would there be a reduced amount of people to stand for election as President, there would also be a reduced pool for elections. If Council is not fully representative, how can we say we have a representative President? Perhaps the Law Society should then consider re-expanding the Electoral College for the role of President to the entire membership?

4. Early departure from meetings

We understand that there is currently an issue with members leaving meetings early, which reduces the number of those present. This would be a real problem in a reduced size Council, as the already depleted numbers would be reduced further with those who need to catch trains or have prior commitments. Therefore, the Council size for voting becomes even less representative.

A better solution may well be to look at the issue from a different perspective and to review seats as and when they come up for election. It may well be that Council size can be reduced organically, but there should be real drivers for the change coming in relation to the specific seat in question. That way a real assessment of the value of the seat to the effectiveness and representation of Council can be made.

The JLD is more than happy to elaborate on any of the above points should the need arise and again is grateful for the opportunity to participate in this discussion.

Solicitors in Local Government

SLG supports the move to reduce the Law Society Council.

SLG believes that there should be geographical, sectoral and special interest seats on the newly restructured Council.

SLG believes the employed sector is a growing sector within the profession (currently standing at almost 25% of the profession). If the employed sector is not represented on the Council by the retention of non-geographical seats on the newly restructured Council there is a significant risk of inadequate representation of that significant sector of the membership.

The retention of the non-geographical sector will enable the Law Society's drive to support diversity to continue. There is a perception that the high street partner group could dominate the newly restructured Council were it comprised of geographical seats only.

SLG believes the 12 or so non-geographical sectors dealing with discrete and specialist areas of law (such as Child Law, Commercial Property Law, Immigration Law etc seats) could better perform and support the restructured Council within specialist Law Society Committees and that a random election of the geographical sector would generate a comprehensive representation of that area.

SLG believes that the representation of the non-geographical sector should be limited to one seat per group.

SLG believes in order to achieve the stated aims of the Law Society to provide representation of the profession as a whole the Local Government Seats should be retained by the Council.

Solicitor Sole Practitioners' Group

Our profession continues to expand in size and in diversity, and in order to be reasonably representative and to bring the many strands of our profession together the Council needs to be large. The Council is a vital forum for providing an exchange

of views and cohesiveness amongst our members, and without it our profession would be in greater danger of fragmentation. It is important that the Council remains big enough to serve this fundamental purpose. We have seen, in the not very distant past, the dangers of having a Council that is too small.

Since the time that the Council was radically expanded in size, the number of solicitors has increased dramatically, by nearly a quarter. The expansion in the size of the Council appears to have been timely and to have brought benefits to the profession in terms of stability in the way the Council works and in the way its officers are chosen. In the view of our Group it would be unwise at this stage to reverse the reforms of the size of the Council, which were put in place only a few years ago.

We consider that a Council of 75 members would be too small and would fail adequately to provide the wide scope of representation that is necessary. We recognise that there are difficulties in finding a chamber large enough to seat all the Council members satisfactorily. However, a matter of such importance as the size of our Council rises above such considerations. The physical size of our existing chambers should not be treated as a significant factor in determining the size of our present and future Council. The practical difficulties can surely be overcome.

Our Group greatly values being able to have two of its executive committee members on the Council. It adds a breadth to the representation of the members of our Group, and it ensures that our committee is always kept in close touch with important decisions and discussions that are taking place, even if, as can occasionally happen, one of our Council members is unable to attend. In our view it is important for sectors to be represented by having members who are on the Council itself. It also enables sectors to contribute more effectively. To be represented instead via an intermediate committee, as has been suggested, would, we feel, be to take away the immediacy of the direct contact and representation which is so valuable to us and to the other groups and sectors - and, we suggest, to the Council itself

<u>West London Law Society</u>

In paragraph 11 of the paper sent out by the Council Membership Committee it is said that as there is no suitable room at the Law Society's Hall in Chancery Lane there are strong arguments that a Council of 100 is too large and unwieldy.

The West London Law Society would comment: firstly that the size of meeting room available for Council should not be a major criterion in determining the size of Council and secondly as the Law Society has an annual income of over £125,000,000 it should be possible to find an appropriate venue even if the meetings have to be held outside the Law Society's Hall which might be better value for money anyway!

Thirdly it is disappointing that the Council Membership Committee chose to ignore more imaginative high tech solutions to this problem such as virtual Council meetings possibly using a Second Life System with avatars to give a possibly more modern approach!

The West London Law Society considers that the key principle is that the Council should represent an increasingly diverse profession. When the Napier reforms took place in 2001, care was taken to ensure that Trainee Solicitors, Sole Practitioners and other groupings were given adequate representation on Council. This is put at risk by a reduction in the size of Council. Strangely the paper makes no mention of the reasons why it was felt necessary to increase the size of Council only seven years ago.

There is also the fact that the profession is continuing to increase in size. In 1998 there were 95,521 on the Roll of Solicitors. By 2001 when the size of Council was increased there were 109,553 on the Roll. The latest 2007 figure is 134,378.

A further point is that it has always been very helpful for West London to have two Council members. They have been able to work as a team and if one of them is unable to make a meeting due to illness or pressure of work the other member has been able to attend.

Another argument for keeping a large Council is that for the Council to function well you need a large number of Council members to serve on the four boards and committees of Council and if you reduce the size of Council you reduce the available pool of people to fill these roles.

In paragraph 10 of the paper the Council Membership Committee states that a Council of 60 is required to provide a sufficient body of members for this. The West London Law Society considers that the present Council of 100 provides a larger pool of members to discharge the workload of Council which is more representative and ensures that if members are unable to attend meetings due to pressure of work, illness or other pressing engagements there are still sufficient members to allow the workload of the Council to be discharged which would be at risk if the membership of the Council is reduced given that at present with a Council of 100 at most meetings only 80 to 90 members are present and towards the end of the day only 50 Council members are present which could mean with a Council of only 60 decisions might be made by only 30 members!

It should be borne in mind that if the number of Council members is reduced the workload of the remaining Council members is proportionally increased which may lead to even more absenteeism.

It is possible that the absenteeism issue could be addressed by paying Council members fully for the time they devote to the Law Society.

However the West London Law Society considers that having volunteer Council members not fully compensated for their time is desirable since it means that Council members tend to be engaged as practising members of the profession and thus are aware of the issues facing practitioners.

West London Law Society considers that the present size of Council is an advantage in that it prevents the workload of Council members from becoming too onerous.

However, there is a further fundamental issue. When the size of Council was increased in 2001, one of the reasons for the increase in size was so that the enlarged and more representative Council could serve as an electoral college to elect the President of the Law Society.

Before the 2001 reforms, there had been direct election of the President and other office-holders. However, because there had been problems with bad publicity as a result of mud-slinging by the candidates fighting direct elections, it was felt that with an enlarged Council it would be fair to remove the profession's right to directly elect the President.

The question therefore arises if the size of Council is to be reduced should not the profession be asked whether it once again wants to directly elect the President. The

Council Membership Committee considers that a reduced size Council of 50-70 members would be sufficient (paragraph 18 of the paper) they further comment that contested elections among the whole membership brought the profession into disrepute.

The West London Law Society considers that the selection of a President of a Law Society of over 134,000 members by a cabal of less than 60 people is more likely to bring the Law Society into disrepute which was why there were contested elections in the first place as it was felt that Chancery Lane was a self-perpetuating oligarchy and out of touch with the profession.

The West London Law Society considers that the Profession should be offered this choice if the Council is going to be reduced in size and this question should need to be put as a special resolution at an Annual General Meeting.

On balance the West London Law Society considers that in order to have a properly representative Law Society Council should not be reduced in size though if there is an issue with the size of the meeting room that innovative high-tech solutions be considered.

ANNEX 4

TEXT OF CONSULTATION DOCUMENT

This consultation document by the Council Membership Committee (CMC) sets out issues relating to the size and structure of the Council, and asks organisations to complete the questionnaire at the end of the document. The consultation covers local law societies, regional associations, recognised groups and associations and Law Society Sections

The CMC has been established by the Council in accordance with Bye-Law 70(3), and its remit as set out in Bye-Law 70(3) includes '…to keep under review the size of the Council, the constituency boundaries and the representative nature of the Council…'.

Introduction

1. On 3 October 2007, the Council agreed a provisional timetable for a review of its size and structure, with a target date for approved changes of the 2009 Society AGM.

2. An outline order of events covered the following stages in the review -

    - Consultation with individual Council members and boards to determine if a consensus of views arose
    - Consultation with City/regional/local law societies and stakeholders in the light of the first stage
    - CMC asked to provide detailed advice in the light of responses to the consultations
    - Council to consider advice from the CMC in the light of the consultations
    - Council to sign off proposals to be put to the 2009 AGM
    - Period between 2009 AGM and end of 2009: procedures implemented for election/nomination of Council members
    - Members to take office under new arrangements 1 January 2010

3. It was made clear that this timetable and direction of travel was flexible, and did not preclude earlier action if appropriate.

4. This consultation is the second stage in the review process. The first stage consultation has been completed among members of the Council – the outcome of this is summarised in this paper (paragraph 21).

The functions of the Council

5. Consideration of the size and structure of the Council must take into account (1) the functions of the Council (2) the extent to which the Council has delegated such functions to boards and committees and (3) the size of these bodies and the extent to which Council members need to serve on them.

6. The Council concentrates on strategic and high-level issues, and has delegated to its boards much of the detailed work of running the Society. The high-level/strategic matters dealt with by the Council (in many instances on advice from the relevant board) include -

    - Agreeing the Society's Corporate Plan
    - Setting policy on issues of profession-wide significance
    - Providing a forum for debate on issues of significance to the profession
    - Establishing a rolling 3-year business plan and reviewing it annually
    - Setting the Society's budget and recommending the Practising Certificate fee to the Master of the Rolls
    - Recommending Compensation Fund contributions to the Master of the Rolls
    - Approving the Accounts and appointing the auditors
    - Overseeing the Society's relationship with the SRA Board and acting as the SRA Board's principal consultee on policy matters relating to the regulation of the profession
    - Dealing with governance issues, such as proposed amendments to the Bye-Laws
    - Electing the Deputy Vice-President each year
    - Establishing arrangements for holding the Society's Chief Executive to account
    - Ensuring arrangements are in place for co-ordinating the work of boards and committees and resolving differences where necessary

7. The Council retains for a transitional period certain powers over rule-making; these will shortly be delegated to the SRA Board, as permitted by the Legal Services Act 2007, although the Council is the approved regulator under the Act and ultimately responsible for ensuring that the regulatory functions are carried out properly.

The impact of the new board structure

8. The impact of the new board structure needs to be taken into account. There are four representative boards: Legal Affairs and Policy, Management, Membership and Regulatory Affairs. Thirty-two Council members (plus the

office-holders who are ex officio members of all four boards) are engaged in the work of the boards.

9. The optimum size of the Council reflects the need to have a Council large enough (in addition to having a back-bench element) to populate the boards, to provide for membership of committees which have a scrutiny role (for example, Audit, Scrutiny) and to ensure that all specialist technical committees have the benefit of at least one member drawn from the Council,

Minimum/maximum size of Council needed

10. Based on these factors, it seems unlikely that a Council of fewer than 60 members would provide a body of members able to discharge the workload of the Council, its boards and committees.

11. At the other end of the spectrum, the CMC is aware there are strong arguments that a Council of 100 members (the current prescribed figure, although four seats are currently not filled) is too large and unwieldy to be an effective body, particularly as no suitable room exists at the Society's Hall in Chancery Lane to accommodate such a body effectively. A Council of more than 85 is likely to suffer from the same difficulties, to a greater or lesser degree.

A representative Council

12. If the Council is to fulfil its objectives of being the collective voice of the profession and a forum for debate on issues of significance to the profession, as well as its other important functions, its composition should as far as is reasonably practicable reflect the diversity of interests found across the profession, while not being so large as to be unwieldy

13. The central issue is the balance between geographical and the various kinds of non-geographical interests on the Council (whether sectoral or special interest), within the overall size regarded as most workable. A wholly geographical or wholly sectoral Council is not realistic, in terms of opinion within the Council, and is not pursued further in this document.

14. Representation of areas of practice or areas of legal specialism in the governance of the Society does not inevitably mean that any Council seats should be sectoral in nature, since this representation is available through the specialist technical committees, and means can readily be devised for input to Council meetings from those committees when it is needed, for example, by inviting the chair to attend and advise the Council on a particular issue.

15. The geographical component of the Council's membership also covers a wide spread of interests, both in terms of areas of law and types of practice, within the profession as a whole. For example, according to figures compiled in June 2007, 17 geographical members recorded residential conveyancing as an area of practice, ten members recorded criminal law and eight members recorded employment law.

Representative and communication structures

16. The Council must not only be a credible representative body in itself, but must also be easily accessible to representation of views from others, such as

practitioners' associations, interest groups, regional associations and local law societies and consumer groups. This will be facilitated by better communications through an improved website and (subject to resolving data protection issues) email links. As previously mentioned, the specialist technical committees are able to bring issues of concern to the Council.

Representation of solicitors outside England and Wales

17. It will be vital for the Council to meet the need for representation of the several thousand solicitors practising outside England and Wales. This could be done by allocating a special seat to them.

The Council as an electoral college

18. Any newly-constituted Council will need to be sufficiently representative as to be credible and have legitimacy as an electoral college for the Deputy Vice-President (who will then automatically succeed as Vice-President and President). The CMC would see any Council of between 50-75 members as meeting this requirement. In considering this aspect, it is important to bear in mind that contested elections among the whole membership in the late 1990s and the manner in which these were conducted brought the Society and by extension the profession itself into disrepute.

Outcome of the Council consultation

19. As previously mentioned, a consultation among Council members was the first stage in the review process, and this has recently been completed. Just over half of the Council responded. The key findings emerging from this consultation were –

    (1) A majority of respondents (67%) want the Council to be substantially smaller than it is now at between 50-75 members (75 being the single figure favoured by most respondents).

    (2) There was little or no support for a Council composed solely of either geographical or sectoral members.

    (3) Support was equally divided between those members who wanted either a mixture of geographical and sectoral representation or a primarily geographical Council with some representation of special interest groups.

    (4) Most respondents who supported a mixture of geographical and sectoral representation favoured either equal geographical/sectoral representations or a majority of geographical members to a greater or lesser degree)

Options on which advice is sought

20. The CMC feels it would be helpful to focus this consultation on four basic options which might secure a fair wind in the Council, on the basis of the conclusions stated above. The Council must approve any proposals for

changes to its size and structure before these can go to a general meeting for approval.

21. Equally, an open-ended consultation that simply invited respondents to suggest their own ideal size of Council and its relative proportions as between geographical, sectoral and special interest seats, might well produce a large number of slightly different suggestions and no real consensus in favour of any of them. The questionnaire does however offer respondents the opportunity to indicate (on a 'none of the above' basis) support for a Council (a) either significantly smaller than that predicated in these options or (b) one significantly larger.

Assumptions underlying the options

22. In setting out the options, the following assumptions apply, and should be borne in mind by respondents when indicating their views on the options –

(1) The geographical constituency boundaries may not necessarily be as they are now, even if there are 60 geographical seats in any new arrangement. (The CMC has identified a number of possible adjustment which seem to be desirable and anomalies to be rectified, and would consult the affected local law societies on these.) Clearly, if there are to be 30 geographical seats, as compared to the present 61, significant changes would be required to the present pattern of representation in terms both of the number of geographical constituencies, the boundaries and the number of Council members allocated to each constituency. Particular geographical areas might no longer have their 'own' Council member.

(2) The CMC defines 'special interest' seats as non-geographical seats whose purpose is to represent solicitors with certain personal characteristics, and who are likely to be under-represented or not represented at all in either geographical or sectoral seats. This category includes young solicitors, BME solicitors and solicitors with disabilities.

(3) 'Sectoral' seats means non-geographical seats whose purpose is to represent -

(a) areas of practice, such as commerce and industry, Crown Prosecution Service and local government; or

(b) areas of law, such as residential conveyancing, employment law, probate or civil litigation; or

(c) recognised groups and associations (some of which also fall within (a) and Sections, which are stakeholders in the Society.

(4) The CMC has identified the need to represent the significant number of solicitors who practise outside England and Wales. This could be done by either creating an extra-territorial seat (or seats) within the geographical element of the Council or by including it as part of the non-geographical element.

23. The four options, which are intended to be indicative, and inevitably may have to be adjusted if and when any of them are implemented, are –

Option 1

A Council of **70/75** made up of –

- **60** geographical seats
- **10/15** non-geographical seats (proportions of sectoral and special interest seats to be determined)

Option 2

A Council of **70/75** made up of –

- **35/37** geographical seats
- **35/37** non-geographical seats (proportions of sectoral and special interest seats to be determined)

Option 3

A Council of **60** made up of –

- **45** geographical seats
- **15** non-geographical seats (proportions of sectoral and special interest seats to be determined)

Option 4

A Council of **60** made up of –

- **30** geographical seats
- **30** non-geographical seats (proportions of sectoral and special interest seats to be determined)

Office-holders' seats on the Council

24. The CMC would welcome views on the suggestion is that the office-holders, with the Immediate Past President (IPP) should have be protected from having to fight a Council election during their periods of office. This could be achieved by –

(1) Creating *ex officio* seats for the office-holders and IPP (who would on taking up an *ex officio* seat vacate their former seat, which would then be filled by an election); or

(2) By extending the current term of the member so far as necessary until the end of his or her year as IPP.

25. Both suggestions would assist succession planning and an orderly progression, by obviating the need for an office-holder to face the need for re-

election (and possibly losing the seat) during his or her progression through from DVP to IPP. Dedicated *ex officio* seats would free office-holders from constituency responsibilities but would add to the overall number of Council seats, while deferring the need for re-election would maintain the office-holder's constituency role, but would not have any effect in itself on the number of seats. However, it could be argued that office-holders should remain accountable to their electorates, and should subject themselves to the need for re-election in the usual way.

26. If four ex officio seats were to be created for the office-holders and the Immediate Past President, this would have to taken into account in settling the final figures for the composition of the Council.

Conclusion

27. Organisations are requested to complete and return the attached questionnaire no later than **Friday 13 June 2008.** Responses and any enquiries should be addressed to -

Andrew Dobson
Secretary, Council Membership Committee
The Law Society
113 Chancery Lane
London WC2A 1PL
DX 56 Lon/Ch Lane
Andrew.Dobson@lawsociety.org.uk

ANNEX 5

TEXT OF QUESTIONNAIRE

Name of Organisation ……

Council size and structure

1. Please indicate which of the following options for the size and structure of the Council (as described in the accompanying consultation document) your organisation supports

   [Please tick **ONE** option in the box beside it]

   Option 1 (70/75 total; 60 geographical + 10/15 non-geographical) ☐

   Option 2 (70/75 total; 35/37 geographical + 35/37 non-geographical) ☐

   Option 3 (60 total; 45 geographical + 15 non-geographical) ☐

   Option 4 (60 total; 30 geographical + 30 non-geographical) ☐

2. If you have ticked one of the above options, please state what proportion (in percentage terms) of the non-geographical seats should be sectoral or special interest (as explained in paragraph 22 of the consultation document) –

   Geographical……..

   Sectoral…….

   Special interest……

3. If your organisation disagrees with **all** of the options in Question 1, and feels the Council should be significantly larger than **75** or smaller than **50** please state below the size of Council and its make-up that the organisation favours -

Overall size……..

Proportion sectoral……..

Proportion special interest…….

Office-holders' seats on the Council

4. Do you agree that office-holders should not be subject to the need for re-election to the Council while holding office or Immediate Past President? (see paragraphs 24-27 of the consultation document)

[**Delete** as applicable] **YES / NO**

5. If you answered 'Yes' to Question 4, please indicate which of the following options you would prefer –

[Please tick the relevant box beside your preferred option]

Ex officio seats for the office-holders and the Immediate Past President ☐

Extending office-holders' terms as Council members until the conclusion of the member's year as Immediate Past President ☐

Please feel free to expand on your answers or give general comments to assist the consultation (if necessary continuing on a separate sheet)

Signed……..

Designation……

Please return this questionnaire to Andrew Dobson, Secretary, Council Membership Committee, The Law Society, 113 Chancery Lane, London WC2A 1PL (DX 56 Lon/Ch Lane) (andrew.dobson@lawsociety.org.uk) not later than FRIDAY 13 JUNE 2008

ANNEX 6

NON-GEOGRAPHICAL COUNCIL SEATS

[September 2008]

Seats currently designated and filled

1. Association of Personal Injury Lawyers (area of law)
2. Association of Women Solicitors (special interest)
3. Black Solicitors' Network (special interest)
4. Child Care Law (area of law)
5. Civil Litigation (area of law)

6/7 Commerce and Industry Group (two seats) (sectoral)

8. Commercial Property (area of law)
9. Criminal Defence (area of law)
10. Crown Prosecution Service (sectoral)
11. Employment Lawyers Association (area of law)

12/13 Ethnic Minorities (two seats) (special interest)

14. EU Matters (area of law)
15. Financial Services and Investment Management (area of law)
16. Forum of Insurance Lawyers (area of law)
17. Government Legal Service (sectoral)
18. Group for Solicitors with Disabilities (special interest)
19. Housing Law (area of law)
20. Immigration Law (area of law)
21. International Practice (area of law)

22/23/24 Junior Lawyers Division (three seats) (special interest)

25. Law Management Section (area of law)

26. Legal Aid Practitioners Group (sectoral)

27. Probate Section (area of law)

28. Residential Conveyancing (area of law)

29/30 Solicitor Sole Practitioners Group (two seats) (sectoral)

31/32 Solicitors in Local Government (two seats) (sectoral)

33. Voluntary Sector (sectoral)

Seats discontinued/in abeyance etc

34. Education and Training (? Sectoral)

35. Environmental Law (area of law)

36. Indemnity Insurance (area of law)

37. Resolution (area of law)

Notes

Total number of non-geographical seats is 39.

Two seats have never been designated and have been held in reserve since created in 2001.

All current terms expire at the conclusion of the AGM in July 2009.

ANNEX 7

NUMBERS OF GEOGRAPHICAL COUNCIL MEMBERS PRACTISING IN BROAD CATEGORIES OF LAW (JUNE 2007)

Administration of estates/probate 8

Advocacy 12

Agricultural property 2

Bankruptcy and insolvency 3

Building and construction 1

Building society law 1

Charities 4

Commercial and business law 9

Company law 1

Compulsory purchase 1

Computers and technology (inc. IT law) 6

Consumer law 1

Conveyancing – commercial 14

Conveyancing – residential 17

Costs 7

Criminal law 10

Education law 2

Employment law 8

Energy law 1

Environmental law 3

EU law 1

Family law 6

Financial services 1

Health and safety 1

Housing law 2

Human rights 9

Immigration law 2

Inquests 4

Insurance law 1

International law 1

Judicial experience 3

Landlord and tenant 9

Licensing 1

Litigation – general commercial 2

Litigation – general civil 8

Local government 3

Marketing 7

Medical negligence 2

Mediation and ADR 3

Mental health and disability 2

Notary public 2

Partnership 5

Personal injury 4

Planning law 3

Practice management & IT for practices 12

Prison law 1

Pro bono 5

Professional negligence 5

Property portfolio management 12

Property selling 3

Public law - child care cases 1

Revenue law 1

Tribunals 7

Trusts and trustees 6

Welfare benefits 3

Wills 8

ANNEX 8

PROVISIONAL RECOMMENDATIONS OF CONSTITUENCY BOUNDARIES SUB-COMMITTEE

[Subject to consultations with relevant local law societies etc]

(1) Meirionnydd should be transferred from Constituency No 20 Mid and West Wales to Constituency No 26 Cheshire and North Wales.

(2) Montgomery should be transferred from Constituency No 20 Mid and West Wales to Constituency No 21 The Welsh Marches.

(3) The nebulous line referred to in the descriptions of Constituencies No 24 Wolverhampton and Staffordshire and No 32 Derbyshire and East Staffordshire should be replaced by references to A38 and A511.

(4) The exclusion of certain small towns in Worcestershire from Constituency No 21 The Welsh Marches should no longer apply.

(5) The nebulous line referred to in the description of Constituency No 38 Norfolk should be replaced by a reference to a specific highway such as the A46.

ANNEX 9

Constituency Boundary Descriptions

(The number in parentheses after each description is the number of Council members allocated to the constituency.)

1 Central and South Middlesex

The London Boroughs of Hillingdon, Harrow, Brent, Ealing and Hounslow; that part of the London Borough of Richmond-upon-Thames lying west of the River Thames and the Borough of Spelthorne. (1)

2 The City of London

The area of the City. (5)

3 Holborn

The area of the former Metropolitan Borough of Holborn enclosed by a continuous line drawn along the middle of the following streets or parts thereof - Torrington Place, Byng Place, south sides of Gordon Square and Tavistock Square, Tavistock Place, Marchmont Street, Coram Street, Kenton Street, Bernard Street, Herbrand Street, Guilford Street, Doughty Mews, Roger Street, Gray's Inn Road, Elm Street, Mount Pleasant, Warner Street, Herbal Hill, Clerkenwell Road, Farringdon Road, Charterhouse Street, Holborn, Chancery Lane, Carey Street, Serle Street, south side of Lincoln's Inn Fields, Sardinia Street, Kingsway, Kemble Street, Wild Street, Drury Lane, Shelton Street, Litchfield Street, West Street, Cambridge Circus, Charing Cross Road, St Giles Circus and Tottenham Court Road to its junction with Torrington Place. (2)

4 North East London

The London Boroughs of Islington, Hackney and Tower Hamlets. (1)

5 West London

The London Borough of Hammersmith and Fulham; the Royal Borough of Kensington and Chelsea; that part of the City of Westminster lying north of a line drawn along the middle of the Bayswater Road and Oxford Street from the junction of the Bayswater Road and Ossington Street to St Giles Circus; that part of the London Borough of Camden lying west of a line drawn along the middle of Tottenham Court Road from Torrington Place to St Giles Circus and lying north and east of a continuous line drawn along the middle of the following streets or parts thereof - Torrington Place, Byng Place, south sides of Gordon Square and Tavistock Square, Tavistock Place, Marchmont Street, Coram Street, Kenton Street, Bernard Street, Herbrand Street, Guilford Street, Doughty Mews, Roger Street, Gray's Inn Road, Elm Street and Mount Pleasant. (2)

6 North Middlesex

The London Boroughs of Barnet, Enfield and Haringey. (1)

7 South London

The London Boroughs of Wandsworth, Lambeth, Southwark, Lewisham and Greenwich. (1)

8 The City of Westminster

The City of Westminster (excluding that part lying north of a line drawn along the middle of the Bayswater Road and Oxford Street from Queensway Tube Station to St. Giles Circus). (3)

9 Croydon and North Kent

The London Boroughs of Croydon, Bromley and Bexley; that part of the London Borough of Merton which was formerly the Borough of Mitcham; that part of the London Borough of Sutton which was formerly the Borough of Beddington and Wallington and the Urban District of Carshalton; those parts of the Districts of Dartford and Sevenoaks which were formerly within the Borough of Dartford and the Rural District of Dartford. (1)

10 Kent

The County of Kent excluding the District of Dartford (being those parts of the Districts of Dartford and Sevenoaks which were formerly within the Borough of Dartford and the Rural District of Dartford). The area of the unitary authority of the Medway Towns. (1)

11 Surrey

The County of Surrey (excluding the Borough of Spelthorne); the Royal Borough of Kingston-upon-Thames; that part of the London Borough of Sutton which was formerly the Borough of Sutton and Cheam; that part of the London Borough of Merton which was formerly the Borough of Wimbledon and the Urban District of Merton and Morden; that part of the London Borough of Richmond-upon-Thames lying east of the River Thames. (2)

12 Inner Sussex

The County of East Sussex (excluding the Boroughs of Eastbourne and Hastings, the District of Rother - excluding the Parishes of Burwash, Etchingham and Ticehurst - and that part of the Wealden District comprising the Parishes of East Dean, Folkington, Friston, Hooe, Jevington, Ninfield, Pevensey, Polegate, Westham, Willingdon and Wilmington) and the area of the unitary authority of Brighton and Hove. The County of West Sussex (excluding the Borough of Worthing and the Districts of Arun, Chichester and that part of the Adur District comprising the Parishes of Coombes, Lancing and Sompting). (1)

13 Outer Sussex

In the County of East Sussex the Boroughs of Eastbourne and Hastings, the District of Rother (excluding the Parishes of Burwash, Etchingham and Ticehurst) and that part of the Wealden District comprising the Parishes of East Dean, Folkington, Friston, Hooe, Jevington, Ninfield, Pevensey, Polegate, Westham, Willingdon and Wilmington. In the County of West Sussex the Borough of Worthing and the Districts of Arun, Chichester and that part of the Adur District comprising the Parishes of Coombes, Lancing and Sompting. (1)

14 Oxfordshire and Buckinghamshire

The Counties of Oxfordshire and Buckinghamshire and the area of the unitary authority of Milton Keynes. (1)

15 Berkshire and North Hampshire

The Royal County of Berkshire and that part of the County of Hampshire comprising the Districts of Basingstoke and Dene, Rushmoor and Hart. The

areas of the unitary authorities of Bracknell Forest, Newbury, Reading, Slough, Windsor and Maidenhead and Wokingham. (1)

16 Hampshire and the Isle of Wight

The County of Hampshire excluding the areas of the Districts of Basingstoke and Dene, Rushmoor and Hart. The areas of the unitary authorities of Portsmouth, Southampton and the Isle of Wight. (1)

17 Dorset

The County of Dorset and the areas of the unitary authorities of Bournemouth and Poole. (1)

18 West Country and Gwent

The Counties of Cornwall, Devon, Gloucestershire, Somerset, Wiltshire and the Isles of Scilly. The areas of the unitary authorities of North Somerset, Bath and North East Somerset, South Gloucestershire, Plymouth, Torbay, Blaenau Gwent, Monmouthshire, Newport, Torfaen and Swindon and that part of the unitary authority of Caerphilly which was part of the former County of Gwent (4)

19 South Wales

The areas of the unitary authorities of Bridgend, Cardiff, Merthyr Tydfil, Caerphilly (except that area which was part of the former County of Gwent), Rhondda Cynon Taff and Vale of Glamorgan. (1)

20 Mid and West Wales

The areas of the unitary authorities of Carmarthenshire, Ceredigion, Neath Port Talbot, Pembrokeshire, Swansea, and the areas of the former Districts of Meirionnydd and Montgomery. (1)

21 The Welsh Marches

The area of the unitary authority of Powys (excluding the area of the former District of Montgomery), the County of Worcestershire (other than the towns of Blakedown, Hagley, Clent, Belbroughton, Wythall, Alvechurch and Barnt Green) and the County of Shropshire. The areas of the unitary authorities of Herefordshire and The Wrekin. (1)

22 Coventry and Warwickshire

The County of Warwickshire (excluding the towns of Coleshill, Polesworth and Curdworth); that part of the Metropolitan County of the West Midlands which includes Coventry, Meriden, and Balsall Common. (1)

23 Birmingham and District

The Metropolitan County of the West Midlands excluding in the North the town of Wolverhampton and the towns of Walsall, Bilston, Coseley, Darlaston, Wednesbury, Tettenhall, Wednesfield, Brownshills and Aldridge and also excluding in the East the City of Coventry, Balsall Common and Meriden; that part of the County of Warwickshire which includes the towns of Coleshill and Curdworth; that part of the County of Staffordshire which includes the town of Enville and that part of the County of Worcestershire which includes Blakedown, Hagley, Clent, Belbroughton, Wythall, Alvechurch and Barnt Green. (2)

24 Wolverhampton and Staffordshire

The County of Staffordshire excluding the town of Enville and also excluding that part of the District of East Staffordshire east of the line drawn between

Tutbury and Barton under Needwood to include Burton-on-Trent; that part of the County of Warwickshire which includes the town of Polesworth and that part of the Metropolitan County of the West Midlands which includes the town of Wolverhampton, and the towns of Walsall, Bilston, Coseley, Darlaston, Wednesbury, Willenhall, Tettenhall, Wednesfield, Brownhills and Aldridge. The area of the unitary authority of Stoke-on-Trent. (1)

25 Cheshire and North Wales

The County of Cheshire (excluding the area of the unitary authority of Warrington, the portion of the area of the unitary authority of Halton which lies to the north of the River Mersey, the area of Neston in the District of Ellesmere Port, the District of Macclesfield and the former Rural District of Disley). The areas of the unitary authorities of Anglesey, Caernarfonshire and Merionethshire (excluding the area of the former District of Meirionnydd), Conwy, Denbighshire, Flintshire and Wrexham. (1)

26 Merseyside and District

The Metropolitan County of Merseyside; the District of Wigan in the County of Greater Manchester; the area of the unitary authority of Warrington, the portion of the area of the unitary authority of Halton which lies to the north of the River Mersey, and the area of Neston in the District of Ellesmere Port, all in the County of Cheshire; the areas of Ormskirk and Skelmersdale in the District of West Lancashire in the County of Lancashire. (2)

27 Manchester, Salford, Stockport and District

The Metropolitan Districts of Manchester and Salford; the Metropolitan Boroughs of Stockport, Tameside and Trafford (excluding Dunham Massey, Carrington, Warburton and Partington); Glossop and Tintwistle in the District of High Peak; in the County of Cheshire the District of Macclesfield; and the former Rural District of Disley. (2)

28 Central Lancashire and Northern Greater Manchester

In the County of Lancashire the Districts of Burnley, Chorley, Fylde, Hyndburn, Pendle (excluding the former Urban District of Barnoldswick and Earby and the former Rural District of Skipton), Preston, Ribble Valley (excluding the former Rural District of Bowland), Rossendale, South Ribble and Wyre. In the County of Greater Manchester the Districts of Bolton, Bury, Oldham and Rochdale. The areas of the unitary authorities of Blackburn and Blackpool. (2)

29 Cumbria and Lancaster

The County of Cumbria and the District of Lancaster. (1)

30 Northumbria

The Counties of Northumberland, Durham, Tyne and Wear, and those parts of North Yorkshire being the former Rural Districts of Bedale, Leyburn, Richmond and Stokesley, the Borough of Richmond, the Parishes of Girsby and Over Dinsdale and the former Rural District and Urban District of Whitby. The areas of the unitary authorities of Darlington, Hartlepool, Middlesbrough, Redcar and Cleveland and Stockton-on-Tees. (2)

31 Yorkshire

In the County of North Yorkshire the District of Hambleton (except the former Rural Districts of Bedale and Stokesley and the Parishes of Girsby and Over Dinsdale); the Districts of Ryedale and Scarborough (except the former Rural District and Urban District of Whitby); the Districts of Craven, Harrogate, York

and Selby. In the County of Lancashire the former Rural District of Bowland, the former Urban Districts of Barnoldswick and Earby and the Parishes of Bracewell, Brogden and Saltforth. The County of West Yorkshire (except the area of the Metropolitan District of Leeds). The County of South Yorkshire (except the northern part of the former Urban District of Harworth and the former Rural District of Finningley). The areas of the unitary authorities of York, the East Riding of Yorkshire and the City of Kingston-upon-Hull. (3)

32 Derbyshire and East Staffordshire

The County of Derbyshire (excluding Glossop and Tintwistle); that part of the District of East Staffordshire east of a line drawn between Tutbury and Barton under Needwood (including Burton-on-Trent); and in the County of Nottinghamshire the former Borough of Worksop together with the Parishes of Carlton in Lindrick, Welbeck, Holbeck, Nether Langwith, Cuckney, Norton and Carburton. The area of the unitary authority of the City of Derby. (1)

33 Nottinghamshire

The County of Nottinghamshire, excluding the area of the former Borough of Worksop together with the Parishes of Carlton in Lindrick, Welbeck, Holbeck, Nether Langwith, Cuckney, Norton and Carburton. The area of the unitary authority of the City of Nottingham. (1)

34 Lincolnshire

The County of Lincolnshire. The areas of the unitary authorities of North Lincolnshire and North East Lincolnshire. (1)

35 Leicestershire, Northamptonshire and Rutland

The Counties of Leicestershire and Northamptonshire. The areas of the unitary authorities of the City of Leicester and Rutland. (1)

36 Bedfordshire and Cambridgeshire

The Counties of Bedfordshire and Cambridgeshire including the township of Saffron Walden in the County of Essex and the District of Forest Heath in the County of Suffolk. The areas of the unitary authorities of Luton and the City of Peterborough. (1)

37 Hertfordshire

The County of Hertfordshire. (1)

38 Norfolk

The County of Norfolk including the City of Norwich and also including the towns of Bungay, Beccles and Lowestoft in the County of Suffolk and that part of the County of Suffolk north of the line drawn between Harleston and Shadingfield to include Pakefield, Carlton Colville, Kessingland, Homersfield, St John and Ilketshall. (1)

39 Suffolk and North Essex

The County of Suffolk (excluding the District of Forest Heath and excluding the towns of Bungay, Beccles and Lowestoft and excluding that part of the County north of the line drawn between Harleston and Shadingfield to include Pakefield, Carlton Colville, Kessingland, Homersfield, St John and Ilketshall); the north-east part of Essex comprising the whole of the Districts of Colchester and Tendring and that part of the District of Braintree formerly comprising the Urban and Rural Districts of Halstead. (1)

40 Essex

The County of Essex (excluding the township of Saffron Walden and the north-east part of the County comprising the whole of the Districts of Colchester and Tendring and that part of the District of Braintree formerly comprising the Urban and Rural Districts of Halstead); the London Boroughs of Waltham Forest, Redbridge, Havering, Barking and Newham. The areas of the unitary authorities of Southend and Thurrock. (1)

41 Leeds

The area of the Metropolitan District of Leeds. (1)

42 Bristol

The area of the unitary authority of Bristol. (1)

ANNEX 10

CONSTITUENCY MEMBERSHIP NUMBERS

[as at 24 July 2008]

Constituency No.	Constituency Name	No. of Council Members	No. of Members	Ratio
1	Central and South Middlesex	1	3,187	1: 3187
2	The City of London	5	19,317	1:3863
3	Holborn	2	2,571	1:1285
4	North East London	1	5,518	1:5518
5	West London	2	4,784	1:2392
6	North Middlesex	1	1,821	1:1821
7	South London	1	4.447	1:4447
8	The City of Westminster	3	3,742	1:1247
9	Croydon and North Kent	1	1,500	1:1500
10	Kent	1	2,014	1:2014
11	Surrey	2	3,728	1:1864
12	Inner Sussex	1	1,578	1:1578
13	Outer Sussex	1	990	1:990
14	Oxfordshire and Buckinghamshire	1	2,750	1:2750
15	Berkshire and North Hampshire	1	2,489	1:2489
16	Hampshire and the Isle of Wight	1	2,218	1:221
17	Dorset	1	1,058	1:1058
18	West Country and Gwent	4	6,395	1:2132
19	South Wales	1	2,119	1:2119
20	Mid and West Wales	1	1,024	1:1024
21	The Welsh Marches	1	1,623	1:1623
22	Coventry and Warwickshire	1	1,275	1:1275
23	Birmingham and District	2	4,516	1:2258
24	Wolverhampton and Staffordshire	1	1,524	1:1524
25	Cheshire & North Wales	1	1,557	1:1557

Constituency No.	Constituency Name	No. of Council Members	No. of Members	Ratio
26	Merseyside and District	2	3,229	1:1615
27	Manchester, Salford, Stockport and District	2	5,763	1:2882
28	Central Lancashire and Northern Greater Manchester	2	2,657	1:1329
29	Cumbria and Lancaster	1	816	1:816
30	Northumbria	2	3,560	1:1780
31	Yorkshire	3	5,210	1:1737
32	Derbyshire and East Staffordshire	1	1,076	1:1076
33	Nottinghamshire	1	1,714	1:1714
34	Lincolnshire	1	933	1:933
35	Leicestershire, Northamptonshire and Rutland	1	1,906	1:1906
36	Bedfordshire and Cambridgeshire	1	2,036	1:2036
37	Hertfordshire	1	1,962	1:1962
38	Norfolk	1	1,161	1:161
39	Suffolk and North Essex	1	1,136	1:113
40	Essex	1	2,851	1:2851
41	Leeds	1	2,989	1:298
42	Bristol	1	2,428	1:242

ANNEX 11

Council Membership Committee: The Convention

[Council report by Policy Committee on 12 July 2001]

Introduction

1. At the Council meeting on 14th June it was suggested that further information was needed about the convention concerning the way in which the Council deals with recommendations of the Council Membership Committee.

Background to the recommendations

2. In terms of the Law Society's governance structure, the Council Membership Committee is one of the Law Society committees. Regulation 46(1) provides that "the Law Society committees shall advise the Council on matters set out in their terms of reference and shall not discharge any of the Council's functions".

3. The terms of reference of the Council Membership Committee include:-

> "(1) To keep under review the representative nature of the Council, taking into account the views of recognised groups and associations.
>
> (2) Before the end of the term of each non-constituency Council member, and also on a casual vacancy arising for such a member, to consider the composition of the Council and to recommend to the Council, the type of solicitor who should be elected to fill the vacancy and the appropriate means of doing so".

4. The Council Membership Committee does have special status in the sense that the Council is required by Paragraph 70(3) of the Bye-Laws to establish a Council Membership Committee (with a majority of non-Council members). That requirement does not apply to other Law Society Committees. But there is nothing in the General Regulations which give recommendations of the Council Membership Committee any greater status than any other Law Society committee.

5. Nevertheless, there is a convention that the Council does not lightly overturn the recommendations of the Council Membership Committee. The origins of the convention are obscure. The best assumption may be that the convention arises from one key purpose of the Council Membership Committee, which is to provide external advice to the Council on filling non-constituency seats with a view to improving the representativeness of the Council. On this analysis, it was unsatisfactory for the Council effectively to co-opt additional members, rather than following external advice.

6. The convention was formalised by the Council in June 1997. The summary of the report considered by Council then states:-

> "The President suggested that a way forward would be for the Council to accept that it would only differ from the Committee if they had first given the Committee a chance to review the matter; although the Council would not be quick to set aside the careful judgement of a broadly-constituted committee of senior members of the profession. The Committee is one of the "checks and balances" of the constitution and would be able to make its concerns known to the profession."

7. It is thus clear that the Council did not (and could not have) bound itself to follow the recommendations of the Council Membership Committee. The convention merely requires the Council first to refer back for re-consideration recommendations with which it disagrees, and to depart from the CMC's advice only if satisfied that it is right to do so after the Committee have had an opportunity for a rethink.

8. The Council may also feel that one justification for the convention – that it avoids the impression of the Council co-opting individuals of its choice – is of less relevance now that the normal method of filling the additional seats will be through election from the group or section of the profession concerned, rather than by appointment.

Recommendation

9. The Council is invited to note this report.

COUNCIL
12 November 2008 **Item 10**

Classification – Public

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Purpose – For noting

IMPACT OF THE LEGAL AID SETTLEMENT

The Issues

This paper outlines developments in relation to the main issues arising from the Unified Contract settlement.

Policy Position

Not applicable.

Financial and Resourcing implications

None arising directly from this report.

Equality and Diversity implications

None arising directly from this report.

Consultation

This paper has been prepared for Council

Director: Mark Stobbs
Author: Simon Cliff, Policy Officer, Legal Aid Team
Date of report: 27 October 2008

A. Quality Working Group

1. The group was set up under terms of reference set out in the settlement. The main orientation of the group is to streamline quality requirements by reducing duplication where possible and ensuring that quality requirements are proportionate. The group is scheduled to produce a draft report by 31 October although there may be an element of slippage.

Peer review

2. The question of peer review has been a main area of discussion for the group. The LSC and IALS (Institute of Advanced Legal Studies) have produced a paper addressing concerns about peer review expressed by the Society.

3. It has also been agreed to set up a joint project with the LSC to devise a peer review feedback questionnaire to be completed by firms who have been peer reviewed. It is hoped that this will help to identify problems with peer review in a structured and quantifiable way, rather than having to rely on anecdotal evidence.

4. The group has contributed to the LSC's revised peer review guidance document that reflects current peer review practice.

5. The Society has strongly resisted pressure from the LSC to put in place a timetable to transfer of ownership peer review from the LSC to the Society. This would constitute a transfer of costs from the LSC to the profession and would pose a substantial reputational risk to the Society.

Peer review and accreditation

6. The group has also set up a sub group to examine whether there is any correlation between accreditation and peer review ratings. This will entail a preliminary study of the family category which is the only civil category where there is both accreditation and where a statistically significant number of peer reviews have taken place. There are a number of methodological problems to be resolved. Avrom Sherr of IALS will draft a hypothesis and TLS will obtain input from family practitioners on different variables that can affect outcomes. The LSC will seek to involve their research arm, the LSRC, subject to availability of funding.

Quality Mark

7. It has been agreed in principle that the LSC will accept Lexcel as an alternative to their Specialist Quality Mark (SQM). Work has been undertaken to compare the requirements of both schemes. This will provide an immediate benefit for the current small number of legal aid firms (about 170) that also have Lexcel accreditation and, in the long run could provide a boost to Lexcel if more firms decide to go down this route.

8. The group has commented on the LSC proposals to revise the SQM. The main revisions concern the removal of requirements that are no longer relevant or are duplicated elsewhere, such as in the contract documentation.

B. Contract Compliance Audit Working Group

9. The Contract Compliance Audit (CCA) working group has almost completed its work, and will be producing a report before the end of the year. The group has made good progress, and has secured some significant changes to the process, including:

    - No recoupment if only 1-2 files are nil-assessed.
    - Firms which score well ('A1' firms) on CCA audit to be removed from the random audit sample (the 'pool') for the next year; moving up to 2 and 3 years following any further A1 audit results.
    - Guidance to be completely re-written to make clear the key issues examined on audit. A 'key card' will be attached to the guidance to provide easy reference for practitioners to the key requirements of the audit.
    - Letters to firms re-written to include timescales for the LSC to take various actions; not only requiring firms to meet certain timescales. It was also accepted that the drafting style of the letters could be improved and in consultation with practitioner groups, they have been amended.

C. Standard Monthly Payments and reconciliation

10. The new process began in July 2008. However the first reviews commenced in September 2008 when the value of July claims became known.

11. Benefits of the new process include:

    - More notice of any change in the level of payments.
    - The LSC will no longer be looking to balance a contract at a fixed point of time in the future, and will not be projecting claims forward but will simply look at an actual balance.
    - Fewer interventions in the way the contract is operating providing smoother cash flow for providers.
    - The aim of the new process is to reconcile accounts (claims versus payments) to 100%, but where an account is within the 90-110% band, then no action will be taken to either increase or reduce the SMP.

12. Feedback from suppliers has indicated a few initial problems where firms have undergone fairly swift growth and therefore sharp increases in billing patterns. These individual cases have been forwarded to the Legal Services Commission for resolution. The Society has not been made aware of any other significant concerns with the process.

13. A full review of the new process will take place in December, with input from the Law Society.

D. Immigration Work in Progress

14. This is a longstanding issue between immigration providers and the LSC which concerns accumulation of work in progress (WIP) and the resulting cash flow difficulties following the abolition of 'stage billing' for immigration and asylum cases in 2004. The settlement required the LSC to investigate this issue and publish a report by 30 June 2008. In July, the LSC circulated a draft report, which they themselves accepted as an inadequate solution to the problem. After meetings with the Society and other representative bodies the LSC agreed to create a small dedicated team to look into the matter further. However the second report was also criticised by the Society and others as being too restrictive in scope and further proposals from the LSC are expected by the end of October.

E. New Fees Schemes

15. The increased fees for Legal Help, Controlled Legal Representation (immigration and mental health) and some care proceedings fees were introduced on 1 July as agreed.

F. Improved Relationship with LSC

16. The settlement promotes 'constructive engagement' between the LSC and the Society. This has led to the setting up a high level Civil Contract Consultative Group as well as a series of representative body meetings for the main civil law categories such as family, immigration, mental health and social welfare law. In addition the LSC has published a civil 'route map' which confirms that Best Value Tendering will not be introduced for civil work before 2013.

17. Whilst there is no doubt that this dialogue has improved relationships, it is probably too early to say whether this will translate into tangible benefits for providers in the medium to long term.

The Law Society

COUNCIL
12 November 2008 **Item 11**

Classification – Public

Purpose – For decision

CONTINGENCY FUNDING

The Issues

A proposal to formally consult the profession on contingency funding of claims in contentious business matters.

Decision

The Council is invited to agree to review its policy on contingency fees and if minded to do so to also agree that there should be a consultation with the profession in the form as attached at Appendix A.

Policy Position

The existing policy on contingency fees is that solicitors should only be prohibited from making contingency fee arrangements where this is forbidden under statute or common law. (*Council minute 139, 4 June 1998)*

Financial and Resourcing implications

This project is expected to come within existing budgets and resources as the consultation will be done by electronic means.

Equality and Diversity implications

None identified at this time.

Consultation

This matter has been considered by the Civil Litigation Committee and the Legal Affairs and Policy Board whose comments have been embodied within the attached report and consultation paper.

Director: Mark Stobbs – Legal Policy
Author: Martin Heskins – Civil Justice Policy Officer
Date of report: 28 October 2008

The Issues

1. The Civil Litigation Committee ("the Committee") has recommended that the Law Society should review its policy on contingency fees and the Legal Affairs and Policy Board ("LAPB") has agreed with that proposal.

2. Contingency fees are a controversial issue as any decision to recommend their introduction is likely to have public interest and reputational ramifications. Whilst judicial attitudes to the unlawfulness of champertous and maintenance agreements have changed there remain serious professional issues that will need resolving.

3. The Committee and LAPB therefore consider that Law Society members should be consulted on this issue.

4. In 2007 the Civil Justice Council recommended that *"Properly regulated Third Party Funding should be recognised as an acceptable option for mainstream litigation. Rules of Court should also be developed to ensure effective controls over the conduct of litigation where third parties provide the funding".*

5. In June 2008 the Master of the Rolls, Sir Anthony Clarke, announced that he intended to appoint a senior judge to conduct a root and branch review of the litigation costs system. The review will, apparently, include contingency fees, the costs shifting rule and fixed costs.

6. On 25 June 2008 Justice Minister Bridget Prentice announced a research-based review of no win, no fee arrangements in England and Wales. Senior academics have been engaged to "look at whether no win, no fee arrangements are still operating in the best interests of giving people access to justice".

7. The Committee therefore considered that any consultation should include additional questions regarding costs as responses would then assist in the Society's policy making process, thereby enabling it to fully engage in the Costs reviews.

8. A copy of the draft consultation is attached at Appendix A.

9. A background to contingency funding is attached at Appendix B.

Contingency Fees

10. The main arguments against solicitors being able to undertake contentious work on a contingency fee basis have been as follows:-

    - They give solicitors an interest in the action, which may conflict with the duties they owe to their clients and to the court.

    - The English legal system aims that damages should cover the actual loss suffered and make appropriate provision for the future, particularly in the case of seriously injured claimants – there is a danger that this could be jeopardised if costs account for a substantial proportion of those damages.

    - If costs are to be recovered from the other side, there may well be an increase in the costs of litigation generally.

    - There might be an increase in unmeritorious claims.

- They may lead to an increase in damages to compensate for the fact that damages will be eroded.

- There may be reputational damage to the profession as has arisen to an extent from the conditional fee system.

11. It should be noted that conditional fee agreements ("CFAs") are a form of contingency fee agreement which are permitted by law in civil contentious business matters. Since the introduction of CFAs in 1995 there has been no evidence to suggest that any of the above arguments have any foundation. Furthermore, between 1995 and 2000 any CFA success fee was recoverable from the client's damages.

12. The arguments in favour of permitting contingency fee agreements appear to involve the following elements:

    - They give greater access to justice as there are instances where other forms of funding are not available, often in what might be seen as the most deserving of cases.

    - In seriously contested cases they offer clients an assurance of their lawyer's motivation to win their case.

    - They offer a wider range of choice for funding litigation because After the Event insurers are not supporting some types of CFA cases due to perceived higher than acceptable risks of not succeeding.

    - They are already used to fund a wide range of disputes in the Employment Tribunals including certain types of contractual disputes and injury disputes where the contentious tribunals have a parallel jurisdiction.

    - They are already extensively used in some areas of contentious work without any apparent problems, for example the predictable costs regime in RTA cases.

    - They offer costs recovery which is proportionate to the value of the case meeting the increasing call for costs to be more proportionate as reflected in the increasing move to fixed costs.

    - The recovered costs can be structured as capped/ recoverable in a way that they do not put at risk certain client recoveries, for example future care costs.

13. Undertaking a consultation to assist with a review of policy on contingency fees will show that the Society is taking a pro active step on behalf of solicitors as it may now be time to reconsider the prohibition against contingency fee agreements in contentious business matters in the light of modern practising conditions.

14. Since the Law Society last considered its policy on contingency fees there have been a number of developments:-

    - The concept of Solicitors operating on a contingency basis in contentious business was introduced with the advent of CFAs.

- The concept of paying a percentage of damages to the solicitor in the event of success was widely accepted when CFAs were first introduced.

- In 2004 the BRTF recommended that the Department for Constitutional Affairs (now the Ministry of Justice) should research the potential impact and effectiveness of contingency fess in securing access to justice in the U.K.

- Third Party Funders and other "non solicitor" bodies or individuals are able to lawfully operate on a contingency basis in contentious business matters.

15. Furthermore, Solicitors are able to operate on a contingency basis in Tribunals, particularly the Employment Tribunal which, although classified as non contentious business, invariably involves very contentious matters analogous with civil litigation in the courts.

16. It has been suggested that a prohibition against contingency fees on public policy issues must now, therefore, be considered to be outdated as long as clients are protected against unfair or unreasonable agreements. This is supported by the increasing change in attitude of the judiciary towards champerty and maintenance.

17. Damages awards are relatively low in England and Wales and consequently it is unlikely that contingency fee arrangements will flourish to the same extent as CFAs.

Third Party Funding

18. Third party funding is already an established and accepted method of funding litigation and it is an example where the judiciary has adopted a more modern attitude to champertous and maintenance agreements. It is beginning to attract more interest from the profession as an alternative method of funding which can be offered to clients.

19. At the moment, TPF is an unregulated activity. There is no statutory limit on the percentage charged as a contingency although it is likely that the factors dictating this are commercial (most funders require a return of 3 or 4 times their potential exposure) and dependent on the merits of each particular case.

20. There is a risk that funders may want to exert an unacceptable degree of control over the conduct of a case. However, should a Solicitor allow that to happen, he/she is likely to guilty of professional misconduct and/or in breach of his/her duty to the court.

21. The relationship between the client and a funder is contractual and the contract provides for the funder to withdraw the funding in certain circumstances. The most common example of this would be when the merits of a case have changed so as to make it unreasonable to continue. There could, however be occasions when a funder might be considered to have acted unreasonably in withdrawing funding. The only form of redress to challenge this decision currently is to issue proceedings against the funder for breach of contract.

22. There is no guarantee or protection against a third party funder becoming insolvent and therefore having to withdraw funding prematurely and/or being unable to meet its liability under the terms of the contract. This would leave the funded party being liable for his/her own costs and disbursements and, possibly any adverse costs order in the absence of ATE cover.

23. Consequently, Third Party Funding is another area in which the Society can take a pro-active role. From a reputational point of view, this will also be advantageous to the Society and its members as external stakeholders, who look to the Society for guidance on such matters, will see that the Society can take an effective lead role in issues involving the future of litigation. The Society will also be in a better position to engage in any discussions regarding the future regulation of third party funders.

Other Costs Issues

24. If the membership is to be consulted on the contingency funding of claims then this would also be an opportunity to seek their views on the retention of the indemnity principle and the costs shifting rule which would assist the Society when engaging in the planned reviews of costs and CFAs.

Decision

25. Council is invited to agree to review its policy on contingency fees and if minded to do so to also agree that there should be a consultation with the profession in the form as attached at Appendix A.

APPENDIX A

The Law Society

DRAFT

CONSULTATION PAPER

LITIGATION FUNDING

supporting solicitors

DATE

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INTRODUCTION

This consultation paper seeks your views on a number of issues about funding civil litigation and, in particular, contingency fees and the third party funding of actions. Your comments will assist the Law Society to review its policies on costs, particularly contingency arrangements. This is important both in terms of access to justice and for the maintenance of England and Wales as the jurisdiction of choice for dispute resolution,

In this country, dispute resolution has a reputation of being too costly and there are frequent accusations that costs are disproportionate. In recent years this has led to major initiatives by the Civil Justice Council who have made a number of recommendations to the Government regarding costs and access to justice.

Costs, particularly conditional fees, have frequently been the subject of significant "satellite litigation" but recent years the judiciary has moved away from declaring champertous agreements as unlawful. They have accepted that third party funding agreements which are contingent upon the success of a claim are acceptable in the public interest.

In June 2008 the Master of the Rolls, Sir Anthony Clarke, announced that he intended to appoint a senior judge to conduct a root and branch review of the costs system. The review will, apparently, include contingency fees, the costs shifting rule and fixed costs.

On 25th June 2008 the Minister of State at the Ministry of Justice, Bridget Prentice MP announced a research-based review of no win, no fee arrangements in England and Wales. Senior academics have been engaged to "look at whether no win, no fee arrangements are still operating in the best interests of giving people access to justice".

In the light of these announcements the Law Society's Civil Litigation Committee has recommended that the Society should review its policies on costs and funding, particularly contingency funding. The Committee supports a change in existing policy, as does the Society's Costs Reference Group, with a view to changes being made to existing costs rules in order to increase access to justice, strengthen the reputation of solicitors and develop new business opportunities. As costs, proportionality and contingency arrangements are key reputational and

ethical concerns for solicitors the Society has decided to formally consult with its members on these issues. The responses to this consultation will form part of the Society's decision making process.

1. BACKGROUND TO THE CONTINGENCY FUNDING OF CLAIMS

Contingency Fees

1.1 A contingency fee is defined in the Solicitor's Conduct Rules 2007[1] as "*any sum (whether fixed or calculated as a percentage of the proceeds or otherwise) payable only in the event of success.*"

1.2 The Solicitor's Conduct Rules 2007[2] prohibit solicitors from entering into a contingency fee arrangement for contentious business which is defined as: *"……business done, whether as solicitor or advocate, in or for the purposes of proceedings begun before a court or before an arbitrator appointed under the Arbitration Act 1996, not being business which falls within the definition of non-contentious or common form probate business contained in section s128 of the Supreme Court Act 1981"*[3].

1.3 Examples of contentious and non-contentious matters:

Contentious	Non-contentious
Proceedings actually begun in the County Court, High Court, Magistrates Court (including licensing), Crown Court and the Court of Protection.	Proceedings before all tribunals other than the Lands Tribunal and the Employment Appeal Tribunal.
Proceedings actually begun before the Lands Tribunal and the Employment Appeal Tribunal.	Planning and other public enquiries including Coroners Court work.
Contentious probate proceedings actually begun.	Non-contentious or common form probate business.
Proceedings on appeal to the Court of Appeal, Privy Council and House of Lords.	Conveyancing, company acquisitions and mergers, the administration of estates and trusts out of court, the preparation of wills, statements and contracts, and any other work not included in the "contentious" column.
Proceedings in arbitration.	Criminal Injuries Compensation Board.
Motor Insurers Bureau Uninsured drivers' claims (proceedings issued).	Motor Insurers Bureau Untraced drivers' claims. Motor Insurers Bureau Uninsured drivers' claims (proceedings not issued).
Work done preliminary to proceedings covered above, including advice, preparation and negotiations, provided proceedings are subsequently begun	Work done preliminary to the proceedings included in the "contentious" column if such proceedings are not subsequently begun

[1] Rule 24

[2] Rule 2.04

[3] s87(1) Solicitors Act 1974 [as amended by s107(2) and Schedule 4 Arbitration Act 1996 and S.8 and Schedule 1 Administration of Justice Act 1985]

1.4 The rules prohibiting contingency fees follow the common law rules prohibiting what is otherwise known as maintenance and champerty. In fact, the courts have, as a matter of public policy, condemned maintenance and champerty arrangements since the Statute of Westminster in 1275.

1.5 In 1966 The Law Commission stated that "*maintenance and champerty as crimes are a dead letter in our law…and… the great bulk of litigation which engages our courts is maintained from the sources of others, including the state, who have no direct interest in the outcome, but who are regarded by society as being fully justified in maintaining it*."[4]

1.6 However, the Law Commission specifically recommended that *"champertous agreements (including contingency fee arrangements between solicitor and client) should for the present, continue to remain unlawful as contrary to public policy".*

1.7 A memorandum issued by the Law Society in 1970 confirmed that it remained professional misconduct for a solicitor to enter into a contingent fee agreement.[5]

1.8 In 1979, the Royal Commission on Legal Services unanimously rejected contingency fees as a way of financing litigation on the ground that it may *"lead to undesirable practices including the construction of evidence, the improper coaching of witnesses, the use of professionally partisan expert witnesses and …… lead the courts into error and competitive touting."*[6]

1.9 The Government accepted the Royal Commission's views which included *"the lawyer is exposed to strong temptation to settle the claim before incurring the heavy expense of preparing for trial, and of trial itself, although it may not be in his client's best interest to do so. Alternatively, the client, having nothing to lose, may insist that a hopeless or irresponsible claim be pursued to litigation in the hope that some profit will result".*

1.10 In a report in July 1987[7], a Law Society working party also agreed with the views of the Royal Commission and added *"we would go further and say that conflict of*

[4] Proposals for Reform of the Law Relating to Maintenance and Champerty, Law Com. No 7, paras7,15 (1966).
[5] Law Soc. Gaz. 237 (April 1970)
[6] Cmnd 7648, para 16.4, p.177 (1979)
[7] See it's report – "Improving Access to Civil Justice"

interest between solicitor and client is inherent in contingency fee arrangements…… it would be impossible to overcome the ethical and consumer protection problems".

1.11 The working party's paper took the form of a consultation and there was little support for contingency fees amongst respondents to the paper with only a few significant exceptions (e.g. the Consumers Association).

1.12 In January 1989, in its second report[8], the Law Society's working party advised the Society's Council *"to seek an opportunity to remove the statutory bars on contingency fees… … and that if they are removed the Council should immediately permit "speculative" funding of all types of cases."*

1.13 Shortly after this the Lord Chancellor (Lord Mackay) published a Green paper which included proposals for contingency fees which effectively invited lawyers to adopt that form of funding. This led to the provisions in the Courts and Legal Services Act permitting conditional fees (see below).

1.14 In April 1989 the Council of the Law Society resolved that contingency fees "whether restricted or unrestricted or whether for commercial or private clients" should not be permitted. The Council did, however, support a recommendation for speculative funding which later led to the introduction of CFAs.

1.15 In 2004 the Better Regulation Task Force ("BRTF") recommended that the Department for Constitutional Affairs should carry out research into the potential impact and effectiveness of contingency fess in securing access to justice in the U.K. At that time the Government rejected the recommendation.

1.16 In June 1998 the Council of the Law Society decided that its policy on contingency fees would be that solicitors should only be prohibited from making contingency fee arrangements where this is forbidden under statute or common law. (*Council minute 139, 4 June 1998).*

1.17 In 2005 in the Court of Appeal case of R (Factortame) v Secretary of State for Transport[9] Lord Phillips MR explained the law relating to champerty and maintenance as follows:

[8] Improving Access to Civil Justice – some further proposals
[9] [2002] EWCA Civ 932

A person is guilty of maintenance if he supports litigation in which he has no legitimate concern without just cause or excuse. Champerty occurs when the person maintaining another stipulates for a share of the proceeds of the action or suit. Because the question of whether maintenance and champerty can be justified is one of public policy, the law must be kept under review as public policy changes. As Danckwerts L.J. observed in Hill v Archbold [1968] 1 QB 686 at 697: "…the law of maintenance depends upon the question of public policy, and public policy …is not a fixed and immutable matter. It is a conception which, if it has any sense at all, must be alterable by the passage of time.""[10] *The introduction of conditional fees shows that even this requirement of public policy is no longer absolute. …*[11]

Conditional Fees

1.18 The Courts and Legal Services Act 1990 ("CLSA") first introduced the concept of conditional fees in the UK.[12] Since their inception, conditional fee agreements ("CFAs") have grown in popularity.

1.19 A solicitor will offer to act for a client on a conditional fee basis if he considers that there are sufficient prospects of success. If the case is lost, then the solicitor will not be entitled to any payment for the work undertaken on the case. If, however, the claim is successful, the solicitor will be able to claim an uplift on the profit costs. This uplift is known as a "success fee".

1.20 A CFA only provides protection against a party having to pay his/her own Solicitor's costs (i.e. "No Win No Fee"). In order to obtain protection against an adverse costs order an "After the Event Insurance" ("ATE") market developed. This type of insurance provided cover against the opponent's costs in the event the case was unsuccessful.

1.21 Section 58 CLSA (as amended by section 27 of the Access to Justice Act 1999) set out the mandatory requirements for CFAs which:

- must be in writing.
- must not relate to criminal or family proceedings, and

[10] Factortame para 32
[11] Factortame para 34
[12] S.58

- in the case of a success fee, the agreement must specify the percentage increase, which must not exceed that specified by the Lord Chancellor (currently set at 100%).

1.22 When conditional fees were introduced in 1995 it was only lawful to use them in very limited case types (including defamation and appeals to the ECHR), areas of law in which legal aid was not available. In 1998 conditional fees were permitted in all kinds of cases except family and criminal matters in relation to which it remains forbidden to use any form of conditional fee. It is thought that in these cases it would pervert public justice to give solicitors an interest in the outcome of a case. This extension coincided with a substantial reduction in the availability of civil legal aid.

1.23 In the 1995 scheme only the solicitor's basic charges could be recovered from the losing paying party. The success fee and after the event insurance premium were paid by the client from his/her own money - usually from the damages. The Law Society promoted the adoption of a cap (25%) on the proportion of damages which should be eroded.

1.24 It was in a climate of restrictions placed upon public funding by the Government that CFAs developed and continue to evolve. When legal aid was withdrawn for most personal injury claims the CFA scheme was amended.[13] From April 2000 the success fee and insurance premium (insuring against an adverse costs order) could be recovered from the unsuccessful opponent and was therefore no longer payable from the client's damages.

1.25 The removal of legal aid funding for personal injury cases and the introduction of recoverability of after event insurance premiums and success fees from the losing party brought about a marked increase in the use of CFAs. However, since their inception they have been, and continue to be, the cause of criticism and an abundant source of satellite litigation.

1.26 In the context of criticism, this has generally been restricted to the increase in the amount of legal costs paid to solicitors since the introduction of CFA's and what is perceived to be the willingness of some solicitors and claims management companies to take on spurious claims. However, there is an overpowering financial

[13] Access to Justice Act 1999

disincentive for solicitors acting on a conditional fee basis to take on a case that has little or no merits as they are only entitled to payment if the case is successful. Moreover, the uplift is important to provide solicitors with an appropriate incentive to justify the risk that they are taking in supporting the case. It is also clear that the new arrangements have enabled claims managers to enter the market and that some of the arrangements involved have not been in the interests of clients. The Government has addressed these through greater regulation of claims management companies.

1.27 In the context of litigation, challenges have been made to:

- the level of success fees claimed,
- the legality of the agreements themselves (sometimes due to minor technical omissions),
- the necessity to enter into a CFA in the first place and
- the amount of after event insurance premium paid,

1.28 The advent of CFAs has been met with a mixed reception. They have dominated the personal injury market but they are not restricted to that type of work and neither are they restricted to claimants only. There has, for example, been criticism of the fact that some litigants have used CFAs who are well placed to fund the litigation themselves. It is hard to see what is wrong with this. Despite criticism and complaints by insurers and other compensators and the amount of satellite litigation funded by them, CFA's have, to a large extent been successful. There are very many genuine claimants who, had it not been for a CFA, would not have succeeded in obtaining compensation for genuine claims. Solicitors have a vested interest in these cases and clearly the presumption is that if the solicitor considers the risk worthwhile then the client is likely to have a reasonable prospect of success. However it is argued by some that there still remains an access to justice deficit and that contingency fees should be available to meet that deficit

1.29 Damages awards are relatively low in England and Wales and consequently it is unlikely that contingency fee arrangements would flourish to the same extent as CFAs. Certainly some supporters of Contingency fees make it clear that they should be a funding mechanism to be used only where other mechanisms are not available.

Third Party Funding

1.30 Agreements involving a third party who supports legal proceedings without being a party to it have also, historically, been held to be unlawful under the law of champerty and maintenance (see Factortame case above). In recent times, in so far as third party funding ("TPF") is concerned, the law has changed, mainly driven by judicial decisions made in the public interest. Gradually the courts have moved away from declaring champertous agreements unlawful and making the third party funder of an unsuccessful party liable for all of the successful party's costs.

1.31 The following cases demonstrate the change in attitudes of the judiciary when considering the third party funders liability for costs:

- In 1995 in the case of McFarlane v EE Caledonian Ltd (No.2)[14] a claims consultant company maintained an unsuccessful action for a claimant and was ordered to pay all of the successful defendant's costs.

- In 2004 in Dymarks Franchise Systems (NSW) pty. Ltd[15], the Privy Council expressed the view that generally speaking the decision to award costs against "pure funders" will not be exercised. However, where the third party funder substantially controls, or at any rate stands to benefit from the proceedings, justice will ordinarily require that the third party should pay the successful party's costs if the proceedings fail.

- The most recent decision on TPF in the U.K. was in 2005 in the case of Arkin v Bouchard Lines Ltd[16]. In that case a claimant without means was funded by MPC, a commercial third party funder. Although the claimant's solicitors acted on a CFA, the funder had paid £1.3 million to support the claim which failed. The defendant's costs were in the region of £6 million. In this case the third party funder, MPC, was ordered to pay £1.3

[14] [1995] 1 WLR 366
[15] [2004] UK PC 39
[16] [2005] EWCA Civ 655

million, which was equivalent to the amount it had already funded the claimant, towards the Defendants costs.

Civil Justice Council Recommendations

1.32 In 2005 in its first report on the future funding of litigation and alternative funding structures "Improved Access to Justice – Funding Options & Proportionate Costs", the Civil Justice Council ("CJC") made the following recommendations:

- *"In contentious business cases where contingency fees are currently disallowed, American style contingency fees requiring abolition of the fee shifting rule should not be introduced. However, consideration should be given to the introduction of contingency fees on a regulated basis along similar lines to those permitted in Ontario by the Solicitors' Act 2002 particularly to assist access to justice in group actions and other complex cases where no other method of funding is available."*[17]
- *".....further consideration should be given to the use of third party funding as a last resort means of providing access to justice."*[18]

1.33 In its second report, published in 2007, the CJC recommended:

- *"A Supplementary Legal Aid Scheme (SLAS) should be established and operated by the Legal Services Commission…….The SLAS would introduce a form of self-funding mechanism into the legal aid scheme whereby, if a case was won, costs would be recovered and an additional sum would be payable to the fund by means of a levy to be paid as a percentage of damages recovered, or out of recovered costs."*[19]
- *"Properly regulated Third Party Funding should be recognised as an acceptable option for mainstream litigation. Rules of Court should also be developed to ensure effective controls over the conduct of litigation where third parties provide the funding."*[20]

[17] First Report – Recommendation 11
[18] First Report - Recommendation 13
[19] Second Report – Recommendation 2
[20] Second Report - Recommendation 3

- *"In multi party cases where no other form of funding is available, regulated contingency fees should be permitted to provide access to justice. The Ministry of Justice should conduct thorough research to ascertain whether contingency fees can improve access to justice in the resolution of civil disputes generally."*[21]

Conclusions

1.34 Since the Law Society last considered its policy on contingency funding there have been a number of developments:-

- The notion that contingency fee agreements are contrary to public policy and should be unlawful because they are champertous was eroded by the introduction of conditional fees in 1995, as pointed out by the Master of the Rolls in the Factortame case (see above). Simply put, a conditional fee agreement is a contentious business contingency arrangement with a client which is permitted by law.

- The concept of Solicitors operating on a contingency basis in contentious business was introduced with the advent of CFAs.

- The concept of paying a percentage of damages to the solicitor in the event of success was widely accepted when CFAs were first introduced.

- In 2004 the BRTF recommended that the Department for Constitutional Affairs (now the Ministry of Justice) should research the potential impact and effectiveness of contingency fess in securing access to justice in the U.K.

- The CJC recommendations are important to note for two reasons. They not only confirm that neither champertous agreements or a client having to pay out an element of the

[21] Second Report – Recommendation 4

recovered damages and/or costs are now contrary to public interest but that these types of arrangements may, in certain circumstance, increase access to justice.

- Third Party Funders and other "non solicitor" bodies or individuals are able to lawfully operate on a contingency basis in contentious business matters. An increasing number of clients are entering into TPF arrangements and agreeing to pay a proportion of any award contingent upon success.

- Solicitors are able to operate on a contingency basis in Tribunals, particularly the Employment Tribunal which, although classified as non contentious business, invariably involves very contentious matters analogous with civil litigation in the courts.

1.35 Some solicitors have suggested that a prohibition against contingency fees on public policy issues is now outdated as long as clients are protected against unfair or unreasonable agreements. This is supported by the increasing change in attitude of the judiciary towards champerty and maintenance.

1.36 However, any decision regarding solicitors acting on a contingency basis in contentious business must not be taken lightly. There are many issues to consider including the reputation of our profession. Whether or not contingency fees should be extended to contentious business will have to be balanced against the possible reputational damage this could cause and not just whether or not there is any benefit to clients in solicitors being able to offer that particular form of claims funding.

1.37 Furthermore, any proposal to allow contingency funding by solicitors in contentious business matters will require legislative and professional conduct rule changes.

1.38 Finally the most recent papers from the CJC which deal with the reform of collective redress actions hint strongly that some form of Contingency fee will be required to deliver effective access to justice in that area of dispute resolution.

2. CONTINGENCY FEES

Arguments in Favour of Contingency Fee Agreements

2.1 The arguments in favour of permitting contingency fee agreements appear to involve the following elements:

- It could be argued that they give greater access to justice as there are instances where other forms are not available often in what might be seen as the most deserving of cases.

- In seriously contested cases they may offer clients an assurance of their lawyer's motivation to win their case.

- The may offer a wider range of choice for funding litigation required because After the Event insures are not supporting some types of CFA cases due to perceived higher than acceptable risks of not succeeding.

- They are already used to fund a wide range of disputes in the Employment Tribunals including certain types of contractual disputes and injury disputes where the contentious tribunals have a parallel jurisdiction.

- They are already extensively used in some areas of contentious work without any apparent problems, for example the predictable costs regime in RTA cases is to all intents and purposes a contingency fee regime in that costs in the event of success are percentage of the damages recovered payable by the Defendants.

- They offer costs recovery which is proportionate to the value of the case meeting the increasing call for costs to be so proportionate as reflected in the increasing move to fixed costs

- The recovered costs may be structured as capped/ recoverable in a way that they do not put at risk certain client recoveries for example future care costs.

2.2 Where people are involved in civil litigation, the funding of such litigation is a crucial issue and one which can deter people from obtaining appropriate compensation. While the conditional fee system has significantly widened access to justice, there remain gaps. Also, CFAs have proved to involve complications whereas contingency fee agreements may prove simpler in operation. It must also, as a matter of policy, be appropriate for individuals to have a choice about the way in which litigation is funded, provided that there are appropriate safeguards for the administration of justice and to protect clients and their opponents being faced with unjustified costs demands.

Question 1

Do you agree with these arguments? Are there others that you would list?

Arguments Against Contingency Fee Agreements

2.3 The main arguments against solicitors being able to undertake contentious work on a contingency fee basis have been as follows:-

- They give solicitors an interest in the action, which may conflict with the duties they owe to their clients and to the court.

- The English legal system aims that damages should cover the actual loss suffered and make appropriate provision for the future, particularly in the case of seriously injured claimants – there is a danger that this could be jeopardised if costs account for a substantial proportion of those damages.

- If costs are to be recovered from the other side, there may well be an increase in the costs of litigation generally.

- There might be an increase in unmeritorious claims.

- They may lead to an increase in damages to compensate for the fact that damages will be eroded.

- Although they offer proportionality they do not get over the fact the client may be a paying a proportion of their damages towards the solicitors costs.

- There may be reputational damage to the profession as has arisen to an extent from the conditional fee system.

Question 2
Do you agree that these are the main arguments against contingency fees?

Are there others that ought to be mentioned?.

2.4 Relationship with ethical duties

Solicitors owe duties to the court to act in the interests of justice and to clients to act in their best interests. It has been suggested that the fact that the solicitor has an interest in the case (in this case, the question of whether or not he or she will be paid for the work) is likely to place an incentive to behave unethically (for example by not disclosing damaging material or by advising acceptance of an unduly low settlement).

2.5 In fact, these incentives exist equally under the current conditional fee system. There has been no evidence to suggest that in fact solicitors have behaved unethically or that settlements have been unduly low. The arrangements have been in place for over 13 years and it is likely that such evidence would have been observable by now. Indeed, it is arguable that a contingency fee arrangement is less likely to lead to a disadvantageous settlement because of the direct link between the fee and the level of damages.

2.6 The existing regime prohibits conditional fees being used in criminal and family cases because it is thought that these cases, particularly those involving children or criminal matters are inherently unsuitable for such fees – the lawyer's

duties to the justice system and to the interests of the child generally are more likely to be put under pressure. Moreover, the fact that the outcome of these cases rarely involves money suggests that they would be particularly inappropriate for contingency fees. However, there are exceptions to this, which will be discussed below.

Question 3

Do you agree with these views?

If not please give reasons.

2.7 Deciding the Percentage

There would clearly need to be some mechanism which limited the proportion of damages that could be claimed as a contingency fee. This could be set:

- simply as a general cap on the proportion of damages that could be claimed as a contingency fee;
- as a sliding scale depending on the value of the claim (so that high claims did not lead to disproportionately high fees); or
- on assessment after the event, to take account of whether the amount agreed adequately reflected the level of risk of the case.

In deciding which is the most suitable, a balance will need to be struck between protecting the litigant from unreasonable percentages, the need to ensure that the lawyer's risk in undertaking the case is adequately reflected and the need for certainty.

2.8 It is suggested below (2.13) that at least some of the element of the Contingency fee would be recoverable under the normal cost shifting rule from the defendants as at present and it could be provided that unsuccessful defendants would bear the same base costs as they do now. This is desirable as if the contingency fee were not recoverable from the other side, then the uplifted fee would need to come from the damages. Unless the basis on which damages awards are made is changed radically, this would be likely to mean that the costs would come out of the client's damages. While this might be thought to be unimportant in a

minority of cases (e.g. defamation), this could be particularly unfortunate where an award has been made which includes, for example, an element to pay for long term care. Such a reduction could lead to serious consequences for the victim later on. There may be other cases where any diminution of damages would have similar effects.

2.9 It may be that this issue could also be addressed by prohibiting contingency fees in particular areas of work (e.g. any personal injury claim where care damages would be a significant element of the award) in addition to those currently prohibited. However, it may also be that some of these cases are difficult to fund but they could also be the ones where some solicitors are most likely to welcome contingency fee arrangements because of the opportunities for enhancing the fee. The effect of such a restriction could be to deny litigants access to justice in particularly complex cases.

2.10 It may also be appropriate to review the types of case where conditional fees are currently prohibited. One example of an area in which contingency fees might be appropriate could be high value matrimonial cases where there are no children involved and it is hard to see the public policy reasons for prohibiting contingency fees in such cases.

2.11 The existing conditional fee regime provides for various safeguards (for example, the other side must be informed if a CFA is in place) and these should probably apply equally in contingency fee cases.

Question 4

If costs were not recoverable, should certain types of case be excluded from contingency fee funding? Please give your reasons.

Question 5

Do you agree that a mechanism needs to be set to limit the percentage of damages that can be claimed?

Please give your reasons.

Question 6

What mechanism do you favour?

Please give your reasons.

Question 7

Do you agree that the existing mechanisms for conditional fees are sufficient for contingency fees? Should there be others?

Please state your reasons.

Question 8

Should certain work (e.g. clinical negligence) be specifically excluded from any contingency fee arrangements?

If yes, please specify and give reasons.

Question 9

If the answer to question 8 is no, should certain elements of damages in personal injury and clinical negligence claims be exempt from the contingency percentage calculation?

If yes, please specify and give reasons.

2.12 Recovery of Costs

The English legal system has tended to work on the basis that costs should follow the event – in other words, the loser will pay the costs of the successful party (subject to an assessment that those costs are reasonable). The extension of this to conditional fees in 1999 meant that the problem of the reduction in damages was avoided. However, it did lead to extensive satellite litigation over exactly what costs could be recovered and what uplifts were reasonable in particular cases.

2.13 The Law Society's policy has always been that the principle that costs should follow the event should be maintained. It would obviously be possible for the losing party to pay, in addition to the damages, the proportion of the damages payable in costs, together with the disbursements. It is hard to see why the defendant should not pay the costs simply because a contingency fee agreement is in place. In such circumstances, it is inevitable that satellite litigation will arise over the reasonableness of the proportion, emphasising the need to have a clear mechanism for assessing this.

Question 10

Do you agree that costs should follow the event where there is a contingency fee agreement? Please give your reasons.

Question 11

Are there additional safeguards needed to protect defendants from inappropriate high contingency fees? Please give your reasons.

2.14 It may also be the case that such arrangements may increase the costs of litigation. It is certainly unlikely that a claimant's solicitor will choose an arrangement where the likely outcome will be lower than could be achieved from the other option. Thus, a relatively low value case is more likely to be done under a conditional fee agreement and a higher value case under a contingency fee. The Law Society does not consider that this is inappropriate and believes that, as a result, solicitors are more likely to take on a wider range of cases. Obviously, it is appropriate for there to be additional safeguards.

Question 12

Do you agree that it is appropriate for solicitors to have access to a wide number of funding options in order to assure access to justice?

2.15 Unmeritorious claims

It has been suggested that conditional fee agreements have given rise to a growth in unmeritorious claims and, therefore, that contingency fee agreements will exacerbate this. There is no evidence to suggest that this is the case. The Law Society's view is that the fact that the solicitor has a stake in the action is likely to mean that he or she is more careful about the merits of cases they accept on this basis. However, it also means that clients are likely to have greater access to justice for claims that have merit but would otherwise be too expensive to pursue.

2.16 We consider that the insurance industry is well placed to resist unmeritorious claims. It can do so both by resisting such cases in court and, in its own interests, through the cases that it accepts by way of after the event insurance.

Question 13

Are you aware of evidence to suggest that there are unmeritorious claims being put forward as a result of the existence of conditional fee arrangements? If so, please give full details .

2.17 Undoubtedly concerns existed about the way in which conditional fees operated. These were largely directed a claims handlers, but solicitors were not immune from concerns from clients who found that they received less money than they expected or from insurers accusing them of taking forward inappropriate cases. These will not be reduced by permitting contingency fees in all matters. Many can be addressed by appropriate rules and regulations and by proper explanations to the client. It is for the profession to consider, however, whether the opportunities the arrangement will create will overcome the reputational disadvantages that may arise.

3. CONDITIONAL FEES

3.1 This is also an opportune moment to consider whether the existing conditional fee system works well or whether it needs reform. The Law Society's view is that it has succeeded in providing appropriate access to justice. There is no evidence of solicitors acting unethically. Difficulties that have arisen have, in our view, have largely been as a result of the involvement of unregulated claims

managers and we believe that the new arrangements to regulate these will address the concerns.

Question 14
Do you agree with this view of conditional fees?

Question 15
Do you consider that CFAs have led to a profusion of unmeritorious claims?

If so, please give reasons and provide supporting evidence.

3.2 The Government is undertaking a review which will investigate whether no win, no fee arrangements are still operating in the best interests of giving people access to justice. The Society will be engaging with the Government about this review so as to ensure that reforms to the existing CFA regime does not hinder access to justice.

Question 16
Are there any reforms that you think should be made?

4 THIRD PARTY FUNDING

4.1 It can be said that third party funding is well established and has been accepted by the courts as, in certain cases, a lawful means of funding litigation. It would not, therefore, seem appropriate for the Law Society to stand in the way of what is perceived to be another method of funding which increases access to justice, albeit for higher value cases. However, the law on this is developing piecemeal in response to individual cases and there is considerable uncertainty as to what counts as legitimate third party funding and the extent to which a third party funder should be liable for costs if the action is unsuccessful.

4.2 Third party funders can take a wide variety of forms. They can include:

- the Government acting through the legal aid fund;
- charities, unions or representative groups supporting particular cases;
- commercial providers who see the action as a source of income.

4.3 It is understandable that there might be particular concerns about the last class of funder. In those cases the funder will be seeking a portion of the damages on success and the concerns that arise out of contingency fees where there is no cost shifting will apply here. There will also be a concern that such providers are not currently regulated and, unlike solicitors, are under no duty to act in the interests of the client. There is an obvious danger that clients using such organisations may suffer considerable loss if there is no proper protection.

4.4 Such arrangements could also pose problems in respect of access to justice. It is possible that commercial providers will have firms of solicitors on their panels and it will be important to clarify to whom those solicitors will owe their duty, how far the funder is required to continue the action if it becomes significantly more costly and how this fits with a client's choice of solicitor.

4.5 There are a number of options for regulating third party funding. These include:

- General statutory provisions governing third party funding, including limiting the proportion of damages that can be obtained;
- Extending the powers of the Claims Managers Regulator, the SRA or the FSA to licence those who are not currently regulated;
- A new regulatory regime with detailed rules governing conflicts of interest etc.

4.6 The question also will obviously arise as to whether these arrangements should be limited to commercial providers or whether all funders should be subject to them.

Question 17

What arrangements in your view are most suitable to ensure that claimants' interests are properly protected where a third party is funding the action?

4.7 One of the major considerations about TPF is the funder's liability for adverse costs and whether or not they should be liable for the full amount or just an amount equivalent to their outlay (as happened in the Arkin case – see paragraph 1.30). Given that the case would be unlikely to have continued without the support of the funder, it seems reasonable that the funder should be required to pay the reasonable costs of the other side if the case is lost. There seems no reason why this should not apply to all such funders whether they have a commercial interest or not.

Question 18

Should third party funders in an unsuccessful case be responsible for all of the successful party's costs?

4.8 At the moment, TPF is an unregulated activity. There is no statutory limit on the percentage charged as a contingency although it is likely that the factors dictating this are commercial (most funders require a return of 3 or 4 times their potential exposure) and dependent on the merits of each particular case.

Question 19

Should third party funders be restricted to a maximum amount that they can charge on a contingency basis and, if so, what should the maximum be?

4.9 Solicitor's Conduct Rule 9 (Referrals of Business) prevents Solicitors from acting for a personal injury client with the benefit of third party funding. Rule 9.04(1) states "*You must not, in respect of any claim arising as a result of death or personal injury……. act in association with any person whose business, or any part of whose business, is to make, support or prosecute (whether by action or otherwise, and whether by a solicitor or agent or otherwise) claims arising as a result of death or*

personal injury, and who, in the course of such business, solicits or receives contingency fees in respect of such claims."

4.10 Whilst it is unlikely that claims arising from personal injury or death will be a large market for third party funders, it is, nevertheless, an area which is likely to become an issue.

Question 20

In the light of the changing attitudes of the judiciary and the current regulatory regime of Claims Management Companies, should Solicitors Conduct Rule 9.01(4) be removed?

Question 21

Should Solicitors be permitted to engage in third party funding activities?
If yes – Should Solicitors be permitted to fund their own client's case ?

5 OTHER COSTS ISSUES

5.1 The satellite costs litigation ("the costs wars") in respect of CFAs have been based on breaches of the indemnity principle[22] which, simply put, states that in contentious business matters a solicitor may not recover from a paying party more than the client would be liable to pay. Consequently, if any funding agreement between a solicitor and client is held to be unenforceable, the unsuccessful party has no liability to pay the successful party's solicitor's costs. This results in a "windfall" for the wrongdoer or tortfeasor, or more usually, their insurer.

5,2 For some time now it has been the recommended policy of the Law Society's Civil Litigation Committee that the indemnity principle should be abolished. When this was last raised with the Ministry of Justice (then the Department for Constitutional Affairs) they considered that this may require legislation and consequently any proposal in this respect was likely to take some time.

[22] S.60(3) Solicitors Act 1974

5.3 However, in June 2003, s.51(2) of the Supreme Court Act 1981 ('the SCA 1981'), which stated:

"Without prejudice to any general power to make rules of court, such rules may make provision for regulating matters relating to the costs of those proceedings including, in particular, prescribing scales of costs to be paid to legal and other representatives …"

was amended so as to add:

"or for securing that the amount awarded to a party in respect of the costs to be paid to such representatives is not limited to what would have been payable by him to them if he had not been awarded costs."

Whilst the amendment did not abolish the indemnity principle it delegated its curtailment to the Civil Procedure Rules.

5.4 The amendment conferred the power to make Rules of Court which provided for the inter-party recovery of costs which would otherwise be precluded by the Indemnity Principle. Because of this and the fixed costs regime in RTA cases (CPR Parts 45.7 to 45.14) the High Court has previously decided[23] *"…..the receiving party does not have to demonstrate that there is a valid retainer between the solicitor and client merely that the conditions laid down under the Rules have been complied with."* Consequently, in cases falling with the RTA fixed costs regime, compliance with the CFA regulations is irrelevant to the recovery of the fixed costs or the success fee as the indemnity principle will not apply in these cases. This principle has not, as yet, been challenged in the Court of Appeal.

5.5 Whilst there appears to be some doubt that full abolition of the indemnity principle without legislation is possible it is likely that it could be disapplied in specific areas under existing legislation and by amendment to the CPR.

5.6 As stated by Michael J Cook,[24] *"removal would end the validity of challenges by paying parties and leave funding arrangements where they ought to be – between client and solicitor."*

[23] Butt v Nizami [2006] EWHC 159 (QB)
[24] Cook on Costs 2005 edition

Question 22

Should the indemnity principle be abolished?

Please give reasons.

Question 23

Should the costs shifting rule be retained?

APPENDIX B

CONTINGENCY FEES

1. A contingency fee is defined in the Solicitor's Conduct Rules 2007[1] as "*any sum (whether fixed or calculated as a percentage of the proceeds or otherwise) payable only in the event of success.*"

2. The Solicitor's Conduct Rules 2007[2] prohibit solicitors from entering into a contingency fee arrangement for contentious business (see Appendix A).

3. Contentious business is defined in s87(1) of the Solicitors Act 1974 [as amended by s107(2) and Schedule 4 of the Arbitration Act 1996 and S.8 and Schedule 1 of the Administration of Justice Act 1985] as: *"……business done, whether as solicitor or advocate, in or for the purposes of proceedings begun before a court or before an arbitrator appointed under the Arbitration Act 1996, not being business which falls within the definition of non-contentious or common form probate business contained in section s128 of the Supreme Court Act 1981".*

4. Examples of contentious and non-contentious matters:

Contentious	Non-contentious
Proceedings actually begun in the County Court, High Court, Magistrates Court (including licensing), Crown Court and the Court of Protection.	Proceedings before all tribunals other than the Lands Tribunal and the Employment Appeal Tribunal.
Proceedings actually begun before the Lands Tribunal and the Employment Appeal Tribunal.	Planning and other public enquiries including Coroners Court work.
Contentious probate proceedings actually begun.	Non-contentious or common form probate business.
Proceedings on appeal to the Court of Appeal, Privy Council and House of Lords.	Conveyancing, company acquisitions and mergers, the administration of estates and trusts out of court, the preparation of wills, statements and contracts, and any other work not included in the "contentious" column.
Proceedings in arbitration.	Criminal Injuries Compensation Board.
Motor Insurers Bureau Uninsured drivers' claims (proceedings issued).	Motor Insurers Bureau Untraced drivers' claims. Motor Insurers Bureau Uninsured drivers' claims (proceedings not issued).

[1] Rule 24

[2] Rule 2.04 (see Appendix B 1)

Work done preliminary to proceedings covered above, including advice, preparation and negotiations, provided proceedings are subsequently begun (although see note above*).	Work done preliminary to the proceedings included in the "contentious" column if such proceedings are not subsequently begun

5. It can be interpreted from the above that work prior to proceedings being issued is regarded as non-contentious provided proceedings are not subsequently begun. For example, if a solicitor takes instructions on a personal injury matter and the parties reach settlement before proceedings are issued, the work is regarded as non-contentious (this is an argument sometimes put forward by insurers in an effort to avoid paying costs in cases which settle prior to proceedings).

THE RECENT HISTORY OF CONTINGENCY FEES

6. The rules prohibiting contingency fees follow the common law rules prohibiting what is otherwise known as maintenance and champerty. In fact, the courts have, as a matter of public policy, condemned maintenance and champerty arrangements since the Statute of Westminster in 1275.

7. Lord Phillips MR explained the law relating to champerty and maintenance in the decision of the Court of Appeal in R (Factortame) v Secretary of State for Transport[3] as follows:

8. *"Champerty is a variety of maintenance. Maintenance and champerty used to be both crimes and torts. A champertous agreement was illegal and void, involving as it did criminal conduct. Ss. 13(1) and 14(1) of the Criminal Law Act 1967 abolished both the crimes and the torts of maintenance and champerty. S.14(2) provided, however:*

> *"The abolition of criminal and civil liability under the law of England and Wales for maintenance and champerty shall not affect any rule of that law as to the cases in which a contract is to be treated as contrary to public policy or otherwise illegal."*

Thus, champerty survives as a rule of public policy capable of rendering a contract unenforceable.[4]

9. *A person is guilty of maintenance if he supports litigation in which he has no legitimate concern without just cause or excuse' – Chitty 28th Ed. Vol.1 17-050. Champerty 'occurs when the person maintaining another stipulates for a share of the proceeds of the action or suit' – ibid 17-054. Because the question of whether maintenance and champerty can be justified is one of public policy, the law must be kept under review as public policy changes. As Danckwerts L.J. observed in Hill v Archbold [1968] 1 QB 686 at 697:*

> *"…the law of maintenance depends upon the question of public policy, and public policy …is not a fixed and immutable matter. It is a*

[3] [2002] EWCA Civ 932
[4] Factortame para 31

> *conception which, if it has any sense at all, must be alterable by the passage of time."*[5]
>
> *The introduction of conditional fees shows that even this requirement of public policy is no longer absolute. …*[6]

10. *In Trepca Mines Ltd (No.2) [1963] 1 Ch 199 at p.219 Lord Denning MR observed:*

> *"The reason why the common law condemns champerty is because of the abuses to which it may give rise. The common law fears that the champertous maintainer might be tempted, for his own personal gain, to inflame the damages, to suppress evidence, or even to suborn witnesses. These fears may be exaggerated, but, be that so or not, the law for centuries had declared champerty to be unlawful, and we cannot do otherwise than enforce the law; and I may observe that it has received statutory support, in the case of solicitors, in section 65 of the Solicitors Act 1957."'"*[7]

11. In 1966 The Law Commission stated that "*maintenance and champerty as crimes are a dead letter in our law…and… the great bulk of litigation which engages our courts is maintained from the sources of others, including the state, who have no direct interest in the outcome, but who are regarded by society as being fully justified in maintaining it*."[8]

12. However, the Law Commission specifically recommended that *"champertous agreements (including contingency fee arrangements between solicitor and client) should for the present, continue to remain unlawful as contrary to public policy"*.

13. A memorandum issued by the Law Society in 1970 confirmed that it remained professional misconduct for a solicitor to enter into a contingent fee agreement.[9]

14. In 1979, the Royal Commission on Legal Services unanimously rejected contingency fees as a way of financing litigation on the ground that it may *"lead to undesirable practices including the construction of evidence, the improper coaching of witnesses, the use of professionally partisan expert witnesses and …..… lead the courts into error and competitive touting."*[10]

15. The Government accepted the Royal Commission's views which included *"the lawyer is exposed to strong temptation to settle the claim before incurring the heavy expense of preparing for trial, and of trial itself, although it may not be in his client's best interest to do so. Alternatively, the client, having nothing to lose, may insist that a hopeless or irresponsible claim be pursued to litigation in the hope that some profit will result"*.

16. In a report in July 1987[11], a Law Society working party also agreed with the views of the Royal Commission and added *"we would go further and say that conflict of interest between solicitor and client is inherent in contingency fee arrangements.…..… it would be impossible to overcome the ethical and consumer protection problems"*.

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[5] Factortame para 32
[6] Factortame para 34
[7] Factortame para 35
[8] Proposals for Reform of the Law Relating to Maintenance and Champerty, Law Com. No 7, paras7,15 (1966).
[9] Law Soc. Gaz. 237 (April 1970)
[10] Cmnd 7648, para 16.4, p.177 (1979)
[11] See it's report – "Improving Access to Civil Justice"

17. The working party's paper took the form of a consultation and there was little support for contingency fees amongst respondents to the paper with only a few significant exceptions (e.g. the Consumers Association).

18. In January 1989, in its second report[12], the Law Society's working party advised the Society's Council *"to seek an opportunity to remove the statutory bars on contingency fees.… … and that if they are removed the Council should immediately permit "speculative" funding of all types of cases."*

19. Shortly after this the Lord Chancellor (Lord Mackay) published a Green paper which included proposals for contingency fees which effectively invited lawyers to adopt that form of funding.

20. In April 1989 the Council of the Law Society resolved that contingency fees "whether restricted or unrestricted or whether for commercial or private clients" should not be permitted. The Council did, however, support a recommendation for speculative funding which later led to the introduction of CFAs.

21. In June 1998 the Council of the Law Society decided that its policy on contingency fees would be that solicitors should only be prohibited from making contingency fee arrangements where this is forbidden under statute or common law. (*Council minute 139, 4 June 1998)*

22. In 2004 the Better Regulation Taskforce recommended that the Department for Constitutional Affairs should carry out research into the potential impact and effectiveness of contingency fess in securing access to justice in the U.K. At that time the Government rejected the recommendation.

CONDITIONAL FEES

23. The notion that contingency fee agreements are contrary to public policy and should be unlawful because they are champertous has been eroded by the introduction of conditional fees in 1995, as pointed out by the Master of the Rolls in the Factortame case (see paragraph 7).

24. The Courts and Legal Services Act 1990 ("CLSA") first introduced the concept of conditional fees in the UK.[13] Since their inception, conditional fee agreements ("CFA's") have grown in popularity.

25. Simply put, a solicitor will offer to act for a client on a conditional fee basis if he considers that there is a sufficient prospect of success. If the case is lost, then the solicitor will not be entitled to any payment for the work undertaken on the case. If, however, the claim is successful, the solicitor will be able to claim an uplift in costs. This uplift is known as a "success fee".

26. A CFA only provided protection against a party having to pay his/her own Solicitor's costs (i.e. "No Win No Fee"). In order to obtain protection against an adverse costs order an "After the Event Insurance" ("ATE") market developed. This type of insurance provided cover against the opponent's costs in the event the case was unsuccessful.

[12] Improving Access to Civil Justice – some further proposals
[13] S.58

27. Section 58 CLSA (as amended by section 27 of the Access to Justice Act 1999) set out the mandatory requirements for CFAs which:

    - have to be in writing.
    - must not relate to criminal or family proceedings, and
    - in the case of a success fee, the agreement must specify the percentage increase, which must not exceed that specified by the Lord Chancellor (currently set at 100%).

28. When the CFA scheme was introduced in 1995 it was only permitted to use conditional fees in very limited case types. In 1998 this was extended to all kinds of cases except for family and criminal matters in relation to which it remains forbidden to use any form of conditional fee. It is thought that in these cases it would pervert public justice to give solicitors an interest in the outcome of a case.

29. In the 1995 scheme only the solicitor's basic charges could be recovered from the losing paying party. The success fee and after the event insurance premium were paid by the client from his/her own money - usually from the damages. The Law Society promoted the adoption of a cap on the proportion of damages which should be eroded in fees at 25%.

30. When legal aid was withdrawn for most personal injury claims the CFA scheme was amended.[14] From April 2000 the success fee and insurance premium (insuring against an adverse costs order) could be recovered from the unsuccessful opponent and was therefore no longer payable from the client's damages. Previously CFA's had operated to provide access to justice for "Middle England" – people of moderate incomes who nonetheless did not qualify for legal aid on the grounds of means. This new measure was introduced so that people did not have their damages reduced by lawyer's fees and to place them in a similar position as they would have been if they were legally aided.

31. It was in a climate of restrictions placed upon public funding by the Government that CFAs developed and continue to evolve. In particular the removal of legal aid funding for personal injury cases and the introduction of recoverability of after event insurance premiums and success fees from the losing party brought about a marked increase in their use. However, since their inception they have been, and continue to be, the cause of criticism and an abundant source of satellite litigation.

32. In the context of criticism, this has generally been restricted to the increase in the amount of legal costs paid to solicitors since the introduction of CFA's and what is perceived to be the willingness of some solicitors and claims management companies to take on spurious claims.

33. However, there is an overpowering financial disincentive for solicitors acting on a conditional fee basis to take on a case that has little or no merits as they are only entitled to payment if the case is successful.

34. In the context of litigation, challenges have been made to:

    - the level of success fees claimed

[14] Access to Justice Act 1999

- the legality of the agreements themselves (sometimes due to minor technical omissions).
- the necessity to enter into a CFA in the first place
- the amount of after event insurance premium paid

35. The regulations which originally governed CFAs were considered to be unnecessarily complex, causing significant problems and a great deal of satellite litigation (known colloquially as "the costs wars"). A consultation by the Department for Constitutional Affairs in 2004 resulted in a consensus on this.

36. Consequently, on 31st October 2000 the previous Regulations[15] were revoked and new Regulations[16] came into force. These provided that for CFAs entered into on or after 1st November 2005, primary responsibility for client care, contractual and guidance matters were to come under the Law Society's Solicitors' Costs Information and Client Care Code 1999 ("the Code"). . The purpose of the change was to simplify how CFAs are governed. The Law Society had pressed for this for some years.

37. Prior to this, if S.58 CLSA requirements were not met then the CFA was unenforceable and, by virtue of the indemnity principle, the losing party was not liable for the winning party's costs. By moving the detailed requirements of the Regulations to the Law Society's Costs Information Code it became less likely that minor failures to fully comply would result in disproportionate sanctions.

38. The advent of CFAs has been met with a very mixed reception. They have dominated the personal injury market but they are not restricted to that type of work and neither are they restricted to claimants only. Despite criticism and complaints by insurers and other compensators and the amount of satellite litigation funded by them, CFA's have, to a large extent been successful. There are very many genuine claimants who, had it not been for a CFA, would not have succeeded in obtaining compensation for genuine claims.

39. Solicitors have a vested interest in these cases and clearly the presumption is that if the solicitor considers the risk worthwhile then the client is likely to have a reasonable prospect of success.

40. To this day, a conditional fee agreement is still the only form of contingency fee agreement which a Solicitor is allowed to enter into for contentious business.

CONTINGENCY FEES IN OTHER JURISDICTIONS

41. In Canada, contingency fees are not permitted in all provinces. Some provinces which do not permit them do, however, allow an attorney to recover a contingent fee if successful but if not successful, the attorney must charge an hourly rate.

42. In Ontario, Canada, contingency fees are permitted by the Solicitor's Act 1990[17] as amended by the Statutes of Ontario 2002.[18] Contingency fee agreements are specifically dealt with in S.28.1 but other sections apply as well (see appendix C).

[15] The Conditional Fee Agreements Regulations 2000 and the Collective Conditional Fee Agreements Regulations 2000.
[16] The Conditional Fee Agreements Regulations 2005 and the Collective Conditional Fee Agreements Regulations 2005.

[17] See appendix B 2
[18] Chapter 24, Schedule A, S.4

43. The Ontario Solicitor's Act permits a Solicitor to enter into a contingency fee agreement subject to the agreement being in writing and that the amount to be paid does not exceed the maximum percentage prescribed by Regulation (unless the Solicitor and the Client apply to the Superior Court and obtain approval). Contingency fee agreements are prohibited in Criminal and Family cases. Costs against an unsuccessful party can be recovered in addition to the contingency fee but only with the approval of a judge.

44. In the United States of America there is no loser pays rule so each party to litigation will pay their own costs. Contingency fees are the most common form of funding and some States regulate the amount of the contingency fee. Two main factors to bear in mind are that all civil trials are by jury and punitive damages can be awarded. These factors tend to inflate awards which lead to higher lawyer's fees because of the contingency arrangement. An agreement must be in writing and must not relate to a domestic (i.e. family) or crime matter and the fee must not be unreasonable. The A.B.A. model Rules of Professional Conduct[19] sets out the factors for determining whether or not a fee is reasonable.

45. In France contingency fees are prohibited but a lawyer can agree to an uplift in fees, as long as they are agreed in advance, in the event of a successful outcome to the case. However, the "loser pays" costs rule does not always apply and the unsuccessful party rarely has to pay a great deal in costs to the successful party. It has been said that this is one of several reasons why the majority of cases in France proceed to trial. This can result in an early offer of settlement being seen as a sign of weakness in the merits of the case.

THIRD PARTY FUNDING

46. Agreements involving a third party who supports legal proceedings without being a party to it have also, historically, been held to be unlawful under the law of maintenance and champerty (see Factortame case above). In recent times, in so far as third party funding ("TPF") is concerned, the law has changed, mainly driven by judicial decisions made in the public interest. Gradually the courts have moved away from declaring champertous agreements unlawful and making the third party funder of an unsuccessful party liable for all of the successful party's costs. However, there continued to be reservations about the effect this would have on the conduct of the litigation.

47. Later in the Factortame judgment, Lord Phillips dealt with what Lord Mustill had said in *Giles v Thompson*[20] in 1994 when he was considering whether the mischief against which public policy was directed had been established in that case:

> *" … [Lord Mustill] observed at p.161:*
>
> *"It is sufficient to adopt the description of the policy underlying the former criminal and civil sanctions expressed by Fletcher Moulton LJ in British Cash and Parcel Conveyors Ltd v. Lamson Store Service Co. Ltd [1908] 1 K.B. 1006, 1014:*
>
> *"It is directed against wanton and officious intermeddling with the disputes of others in which the [maintainer] has no interest whatever,*

[19] See Appendix B 3
[20] [1994] 1 AC 142

> *and where the assistance he renders to the one or the other party is without justification or excuse."*

This was a description of maintenance. For champerty there must be added the notion of a division of the spoils.[21]

48. Lord Phillips MR went on to say:

"Lord Mustill held that in neither case was this mischief established. Summarising the position, he said at p.165:

> *"Returning to the company, is it wantonly or officiously interfering in the litigation; is it doing so in order to share in the profits? I think not. The company makes its profits from the hiring, not from the litigation. It does not divide the spoils, but relies upon the fruits of the litigation as a source from which the motorist can satisfy his or her liability for the provision of a genuine service, external to the litigation. I can see no convincing reason for saying that, as between the parties to the hiring agreement, the whole transaction is so unbalanced, or so fraught with risk, that it ought to be stamped out. The agreement is one which in my opinion the law should recognise and enforce."*[22]

49. Finally Lord Phillips MR pointed out:

"The greater the share of the spoils that the provider of legal services will receive, the greater the temptation to stray from the path of rectitude."[23]

50. The following cases demonstrate the change in attitudes of the judiciary when considering the third party funders liability for costs.

51. In 1995 in the case of McFarlane v EE Caledonian Ltd (No.2)[24] a claims consultant company maintained an unsuccessful action for a claimant and was ordered to pay all of the successful defendant's costs.

52. In 2004 in Dymarks Franchise Systems (NSW) pty. Ltd[25], the Privy Council expressed the view that generally speaking the decision to award costs against "pure funders" will not be exercised. However, where the third party funder substantially controls, or at any rate stands to benefit from the proceedings, justice will ordinarily require that the third party should pay the successful party's costs if the proceedings fail.

53. The most recent decision on TPF in the U.K. was in 2005 in the case of Arkin v Bouchard Lines Ltd[26]. In that case a claimant without means was funded by MPC, a commercial third party funder. Although the claimant's solicitors acted on a CFA, the funder had paid £1.3 million to support the claim which failed. The defendant's costs were in the region of £6 million.

54. In that case the Court of Appeal stated:

". … In our judgment the existence of this rule, and the reasons given to justify its existence, render it unjust that a funder who purchases a stake in an action for a commercial motive should

[21] Factortame para 42
[22] Factortame para 43
[23] Factortame para 85
[24] [1995] 1 WLR 366
[25] [2004] UK PC 39
[26] [2005] EWCA Civ 655

be protected from all liability for the costs of the opposing party if the funded party fails in the action. Somehow or other a just solution must be devised whereby on the one hand a successful opponent is not denied all his costs while on the other hand commercial funders who provide help to those seeking access to justice which they could not otherwise afford are not deterred by the fear of disproportionate costs consequences if the litigation they are supporting does not succeed."[27]

"We consider that a professional funder, who finances part of a claimant's costs of litigation, should be potentially liable for the costs of the opposing party to the extent of the funding provided. The effect of this will, of course, be that, if the funding is provided on a contingency basis of recovery, the funder will require, as the price of the funding, a greater share of the recovery should the claim succeed. In the individual case, the net recovery of a successful claimant will be diminished. While this is unfortunate, it seems to us that it is a cost that the impecunious claimant can reasonably be expected to bear. Overall justice will be better served than leaving defendants in a position where they have no right to recover any costs from a professional funder whose intervention has permitted the continuation of a claim which has ultimately proved to be without merit."[28]

55. In giving its decision in "Arkin" the Court of Appeal said:

"*If the course which we have proposed becomes generally accepted, it is likely to have the following consequences. Professional funders are likely to cap the funds that they provide in order to limit their exposure to a reasonable amount. This should have a salutary effect in keeping costs proportionate."*[29]

56. In this case the third party funder, MPC, was therefore ordered to pay £1.3 million, which was equivalent to the amount it had already funded the claimant, towards the Defendants costs.

57. In 2006 the High Court of Australia (the final appeal process) considered the case of Campbells Cash and Carry Pty Ltd v Fostiff Pty Ltd[30] which involved TPF. This was commenced as a representative action in which a firm of accountants, Firmstones, offered to fund litigation for the attempted recovery of payments of state based licence fees on behalf of a group of tobacco retailers and to protect those retailers from any adverse costs orders. In return for this they would take one third of any recovered compensation plus all of the recovered costs. Firmstones instructed solicitors to "front" the action on terms which severely limited access to the clients. Effectively, the clients were represented in the proceedings by Firmstones as they had a high degree of control over the conduct of the claims. The proceedings were stayed in the court of first instance for two reasons:

    - the claim did not meet the requirements for representative proceedings; and

    - the funding arrangements were contrary to public policy

58. The Australian Court of Appeal reversed the decisions and the case went on to appeal to the High Court. Whilst the High Court confirmed that the requirements for a representative action had not been met it did, however, find that the TPF arrangements were not an abuse of process and contrary to public policy.

[27] Arkin para 38
[28] Arkin para 41
[29] Arkin para 42
[30] [2006] HCA 41

59. The Fostiff case was a majority decision (5:2) and there were some interesting comments made by three of the majority judges in favour of TPF:

Chief Justice Gleeson

"Even if the intervention of a litigation funder seeking to promote an assertion by more retailers of their rights be regarded as some form of intermeddling there is no justification for denying the existence of the matter."[31]

Justices Gummow, Hayne and Crennan

"The appellants submitted that special considerations intrude in "class actions" because, so it was submitted, there is the risk that such proceedings may be used to achieve what, in the United States, are sometimes referred to as "blackmail settlements". However, as remarked earlier in these reasons, the rules governing representative or group proceedings vary greatly between courts and it is not useful to speak of "class actions" as identifying a single, distinct kind of proceedings. Even when regulated by similar rules of procedure, each proceeding in which one or more named plaintiffs represent the interests of others will present different issues and different kinds of difficulty…."[32]

"The difficulties thought to inhere in the prosecution of an action which, if successful, would produce a large award of damages but which, to defend, would take a very long time and very large resources, is a problem that the courts confront in many different circumstances, not just when the named plaintiffs represent others and not just when named plaintiffs receive financial support from third party funders. The solution to that problem (if there is one) does not lie in treating actions financially supported by third parties differently from other actions. And if there is a particular aspect of the problem that is to be observed principally in actions where a plaintiff represents others, that is a problem to be solved, in the first instance, through the procedures that are employed in that kind of action. It is not to be solved by identifying some general rule of public policy that a defendant may invoke to prevent determination of the claims that are made against that defendant."[33]

Justice Kirby

"To lawyers raised in the era before such multiple claims, representative actions and litigation funding, such fees and conditions may seem unconventional or horrible. However, when compared with the conditions approved by experienced judges in knowledgeable courts in comparable circumstances, they are not at all unusual. Furthermore, the alternative is that very many persons, with distinctly arguable legal claims, repeatedly vindicated in other like cases, are unable to recover upon those claims in accordance with their legal rights..." [34] and

"It is against the inherent inequalities, presented by these litigious facts of life, that a representative action may, under proper conditions, afford a litigant with an individual claim and a justifiable prospect to secure practical access to that litigant's legal rights in association with many others. The individual claim may (as in the case of many tobacco retailers in these proceedings) be comparatively small and hardly worth the expense and trouble of suing. But the aggregate of the claims of those willing to proceed together, as proposed by a funder and organiser such as Firmstones, might be very large indeed. What is a theoretical possibility, as an individual action or series of actions, needs therefore to be converted into a practical case by the intervention of someone willing to undertake a test case, followed by others willing to organise

[31] Fostiff – para 19
[32] Fostiff – para 94
[33] Fostiff – para 95
[34] Fostiff – para 120

litigants in a similar position, and under appropriate conditions, to recover their legal rights by helping them to act together..."[35]

60. The minority judgment of Justices Callinan and Hayden was firm in its disapproval of TPF:

"Institutions like Firmstone & Feil, which are not solicitors and employ no lawyers with a practising certificate, do not owe the same ethical duties. No solicitor could ethically have conducted the advertising campaign which Firmstone & Feil got Horwath to conduct. The basis on which Firmstone & Feil are proposing to charge is not lawfully available to solicitors. Further, organisations like Firmstone & Feil play more shadowy roles than lawyers. Their role is not revealed on the court file. Their appearance is not announced in open court. No doubt sanctions for contempt of court and abuse of process are available against them in the long run, but with much less speed and facility than is the case with legal practitioners. In short, the court is in a position to supervise litigation conducted by persons who are parties to it; it is less easy to supervise litigation, one side of which is conducted by a party, while on the other side there are only nominal parties, the true controller of that side of the case being beyond the court's direct control"…[36]

61. At the end of their judgment, they added:

"If that conclusion is thought by those who have power to enact parliamentary or delegated legislation to be unsatisfactory on the ground that the type of litigation funding involved in these appeals is beneficial, then it is open to them to exercise that power by establishing a regime permitting it. It would be for them to decide whether some safeguards against abuse should be incorporated in the relevant legislation."[37]

[35] Fostiff – para 138
[36] Fostiff – para 266
[37] Fostiff - para 289

APPENDICES

Appendix B 1

SOLICITORS CODE OF CONDUCT 2007

Rule 2 – Client Relations

2.04 Contingency fees

(1) You must not enter into an arrangement to receive a contingency fee for work done in prosecuting or defending any contentious proceedings before a court of England and Wales, a British court martial or an arbitrator where the seat of the arbitration is in England and Wales, except as permitted by statute or the common law.

(2) You must not enter into an arrangement to receive a contingency fee for work done in prosecuting or defending any contentious proceedings before a court of an overseas jurisdiction or an arbitrator where the seat of the arbitration is overseas except to the extent that a lawyer of that jurisdiction would be permitted to do so.

Guidance to Rule 2 –Client Relations

Contingency fees – 2.04

41. A "contingency fee" is defined in rule 24 (Interpretation) as any sum (whether fixed, or calculated either as a percentage of the proceeds or otherwise) payable only in the event of success.

42. If you enter into an arrangement for a lawful contingency fee with a client, what amounts to "success" should be agreed between you and your client prior to entering into the arrangement.

43. Under rule 24 (Interpretation), "contentious proceedings" is to be construed in accordance with the definition of "contentious business" in section 87 of the Solicitors Act 1974.

44. Conditional fees are a form of contingency fees. In England and Wales a conditional fee agreement for certain types of litigation is permitted by statute. See section 58 of the Courts and Legal Services Act 1990 (as amended by section 27 of the Access to Justice Act 1999) and 2.03(2) above for more information.

45. It is acceptable to enter into a contingency fee arrangement for non contentious matters (see section 87 of the Solicitors Act 1974 for the definition of "non-contentious business") but you should note that to be enforceable the arrangement must be contained in a non-contentious business agreement.

46. An otherwise contentious matter remains non-contentious up to the commencement of proceedings. Consequently, you may enter into a contingency fee arrangement for, for example, the receipt of commission for the successful collection of debts owed to a client, provided legal proceedings are not started.

SOLICITORS ACT 1974

Contentious business

59.— (l) Subject to subsection (2), a solicitor may make an Contentious agreement in writing with his client as to his remuneration in business respect of any contentious business done, or to be done, by him agreements. (in this Act referred to as a "contentious business agreement ") providing that he shall be remunerated by a gross sum, or by a salary, or otherwise, and whether at a higher or lower rate than that at which he would otherwise have been entitled to be remunerated.

(2) Nothing in this section or in sections 60 to 63 shall give validity to—

(a) any purchase by a solicitor of the interest, or any part of the interest, of his client in any action, suit or other contentious proceeding; or

(b) any agreement by which a solicitor retained or employed to prosecute any action, suit or other contentious proceeding, stipulates for payment only in the event of success in that action, suit or proceeding; or

(c) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which under the law relating to bankruptcy is invalid against a trustee or creditor in any bankruptcy or composition.

60.— (l) Subject to the provisions of this section and sections 61 to 63, the costs of a solicitor in any case where a contentious business agreement has been made shall not be business subject to taxation or to the provisions of section 69.

(2) Subject to subsection (3), a contentious business agreement shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the solicitor, and that person may, unless he has otherwise agreed, require any such costs to be taxed according to the rules for their taxation for the time being in force.

(3) A client shall not be entitled to recover from any other person under an order for the payment of any costs to which a contentious business agreement relates more than the amount payable by him to his solicitor in respect of those costs under the agreement.

(4) A contentious business agreement shall be deemed to exclude any claim by the solicitor in respect of the business to which it relates other than—

(a) a claim for the agreed costs; or
(b) a claim for such costs as are expressly excepted from the agreement.

(5) A provision in a contentious business agreement that the solicitor shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as a solicitor, shall be void.

Supplementary

87.— (1) In this Act, except where the context otherwise requires,— ……..

"contentious business" means business done, whether as solicitor or advocate, in or for the purposes of proceedings begun before a court or before an arbitrator appointed under the Arbitration Act 1950, not being business which falls within the definition of non-contentious or common form probate business contained in section 175(1) of the Supreme Court of Judicature' (Consolidation) Act 1925;

"contentious business agreement" means an agreement made in pursuance of section 59;

SOLICITOR'S ACT 1990 - ONTARIO, CANADA

Agreements Between Solicitors and Clients

Definitions

15. In this section and in sections 16 to 33,

"client" includes a person who, as a principal or on behalf of another person, retains or employs or is about to retain or employ a solicitor, and a person who is or may be liable to pay the bill of a solicitor for any services; ("client")

Note: On a day to be named by proclamation of the Lieutenant Governor, section 15 is amended by the Statutes of Ontario, 2002, chapter 24, Schedule A, section 1 by adding the following definition:

"contingency fee agreement" means an agreement referred to in section 28.1; ("entente sur des honoraires conditionnels")

See: 2002, c. 24, Sched. A, ss. 1, 5.

"services" includes fees, costs, charges and disbursements. ("service") R.S.O. 1990, c. S.15, s. 15.

Agreements between solicitors and clients as to compensation

16. (1) Subject to sections 17 to 33, a solicitor may make an agreement in writing with his or her client respecting the amount and manner of payment for the whole or a part of any past or future services in respect of business done or to be done by the solicitor, either by a gross sum or by commission or percentage, or by salary or otherwise, and either at the same rate or at a greater or less rate than that at which he or she would otherwise be entitled to be remunerated. R.S.O. 1990, c. S.15, s. 16 (1).

Definitions

(2) In this section,

"commission" and "percentage" apply only to non-contentious business and to conveyancing. R.S.O. 1990, c. S.15, s. 16 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed by the Statutes of Ontario, 2002, chapter 24, Schedule A, section 2 and the following substituted:

Definition

(2) For purposes of this section and sections 20 to 32,

"agreement" includes a contingency fee agreement.

See: 2002, c. 24, Sched. A, ss. 2, 5.

Approval of agreement by assessment officer

17. Where the agreement is made in respect of business done or to be done in any court, except the Small Claims Court, the amount payable under the agreement shall not be received by the solicitor until the agreement has been examined and allowed by an assessment officer. R.S.O. 1990, c. S.15, s. 17.

Opinion of court on agreement

18. Where it appears to the assessment officer that the agreement is not fair and reasonable, he or she may require the opinion of a court to be taken thereon. R.S.O. 1990, c. S.15, s. 18.

Rejection of agreement by court

19. The court may either reduce the amount payable under the agreement or order it to be cancelled and the costs, fees, charges and disbursements in respect of the business done to be assessed in the same manner as if the agreement had not been made. R.S.O. 1990, c. S.15, s. 19.

Agreement not to affect costs as between party and party

20. (1) Such an agreement does not affect the amount, or any right or remedy for the recovery, of any costs recoverable from the client by any other person, or payable to the client by any other person, and any such other person may require any costs payable or recoverable by the person to or from the client to be assessed in the ordinary manner, unless such person has otherwise agreed. R.S.O. 1990, c. S.15, s. 20 (1).

(2) However, the client who has entered into the agreement is not entitled to recover from any other person under any order for the payment of any costs that are the subject of the agreement more than the amount payable by the client to the client's own solicitor under the agreement. R.S.O. 1990, c. S.15, s. 20 (2).

Awards of costs in contingency fee agreements

20.1 (1) In calculating the amount of costs for the purposes of making an award of costs, a court shall not reduce the amount of costs only because the client's solicitor is being compensated in accordance with a contingency fee agreement.

(2) Despite subsection 20 (2), even if an order for the payment of costs is more than the amount payable by the client to the client's own solicitor under a contingency fee agreement, a client may recover the full amount under an order for the payment of costs if the client is to use the payment of costs to pay his, her or its solicitor.

(3) If the client recovers the full amount under an order for the payment of costs under subsection (2), the client is only required to pay costs to his, her or its solicitor and not the amount payable under the contingency fee agreement, unless the contingency fee agreement is one that has been approved by a court under subsection 28.1 (8) and provides otherwise.

Claims for additional remuneration excluded

21. Such an agreement excludes any further claim of the solicitor beyond the terms of the agreement in respect of services in relation to the conduct and completion of the business in respect of which it is made, except such as are expressly excepted by the agreement. R.S.O. 1990, c. S.15, s. 21.

Agreements relieving solicitor from liability for negligence void

22. (1) A provision in any such agreement that the solicitor is not to be liable for negligence or that he or she is to be relieved from any responsibility to which he or she would otherwise be subject as such solicitor is wholly void.

Exception, indemnification by solicitor's employer

(2) Subsection (1) does not prohibit a solicitor who is employed in a master-servant relationship from being indemnified by the employer for liabilities incurred by professional negligence in the course of the employment.

Determination of disputes under the agreement

23. No action shall be brought upon any such agreement, but every question respecting the validity or effect of it may be examined and determined, and it may be enforced or set aside without action on the application of any person who is a party to the agreement or who is or is alleged to be liable to pay or who is or claims to be entitled to be paid the costs, fees, charges or disbursements, in respect of which the agreement is made, by the court, not being the Small Claims Court, in which the business or any part of it was done or a judge thereof, or, if the business was not done in any court, by the Ontario Court (General Division). R.S.O. 1990, c. S.15, s. 23.

Enforcement of agreement

24. Upon any such application, if it appears to the court that the agreement is in all respects fair and reasonable between the parties, it may be enforced by the court by order in such manner and subject to such conditions as to the costs of the application as the court thinks fit, but, if the terms of the agreement are deemed by the court not to be fair and reasonable, the agreement may be declared void, and the court may order it to be cancelled and may direct the costs, fees, charges and disbursements incurred or chargeable in respect of the matters included therein to be assessed in the ordinary manner. R.S.O. 1990, c. S.15, s. 24.

Reopening of agreement

25. Where the amount agreed under any such agreement has been paid by or on behalf of the client or by any person chargeable with or entitled to pay it, the Ontario Court (General Division) may, upon the application of the person who has paid it, within twelve months after the payment thereof, if it appears to the court that the special circumstances of the case require the agreement to be reopened, reopen it and order the costs, fees, charges and disbursements to be assessed, and may also order the whole or any part of the amount received by the solicitor to be repaid by him or her on such terms and conditions as to the court seems just. R.S.O. 1990, c. S.15, s. 25.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 25 is amended by the Statutes of Ontario, 2002, chapter 24, Schedule B, subsection 46 (2) by striking out "within twelve months after the payment thereof". See: 2002, c. 24, Sched. B, ss. 46 (2), 51.

Agreements made by client in fiduciary capacity

26. Where any such agreement is made by the client in the capacity of guardian or of trustee under a deed or will, or in the capacity of guardian of property that will be chargeable with the amount or any part of the amount payable under the agreement, the agreement shall, before payment, be laid before an assessment officer who shall examine it and may disallow any part of it or may require the direction of the court to be made thereon. R.S.O. 1990, c. S.15, s. 26; 1992, c. 32, s. 26.

Client paying without approval to be liable to estate

27. If the client pays the whole or any part of such amount without the previous allowance of an assessment officer or the direction of the court, the client is liable to account to the person whose estate or property is charged with the amount paid or any part of it for the amount so charged, and the solicitor who accepts such payment may be ordered by the court to refund the amount received by him or her. R.S.O. 1990, c. S.15, s. 27.

Solicitors not to purchase any interest in litigation or to make payment dependent upon success

28. Nothing in sections 16 to 33 gives validity to a purchase by a solicitor of the interest or any part of the interest of his or her client in any action or other contentious proceeding to be brought or maintained, or gives validity to an agreement by which a solicitor retained or employed to prosecute an action or proceeding stipulates for payment only in the event of success in the action or proceeding, or where the amount to be paid to him or her is a percentage of the amount or value of the property recovered or preserved or otherwise determinable by such amount or value or dependent upon the result of the action or proceeding. R.S.O. 1990, c. S.15, s. 28.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 28 is repealed by the Statutes of Ontario, 2002, chapter 24, Schedule A, section 4 and the following substituted:

Purchase of interest prohibited

28. A solicitor shall not enter into an agreement by which the solicitor purchases all or part of a client's interest in the action or other contentious proceeding that the solicitor is to bring or maintain on the client's behalf.

See: 2002, c. 24, Sched. A, ss. 4, 5.

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by the Statutes of Ontario, 2002, chapter 24, Schedule A, section 4 by adding the following section:

Contingency fee agreements

28.1 (1) A solicitor may enter into a contingency fee agreement with a client in accordance with this section.

Remuneration dependent on success

(2) A solicitor may enter into a contingency fee agreement that provides that the remuneration paid to the solicitor for the legal services provided to or on behalf of the client is contingent, in whole or in part, on the successful disposition or completion of the matter in respect of which services are provided.

No contingency fees in certain matters

(3) A solicitor shall not enter into a contingency fee agreement if the solicitor is retained in respect of,

(a) a proceeding under the Criminal Code (Canada) or any other criminal or quasi-criminal proceeding; or

(b) a family law matter.

Written agreement

(4) A contingency fee agreement shall be in writing.

Maximum amount of contingency fee

(5) If a contingency fee agreement involves a percentage of the amount or of the value of the property recovered in an action or proceeding, the amount to be paid to the solicitor shall not be more than the maximum percentage, if any, prescribed by regulation of the amount or of the value of the property recovered in the action or proceeding, how ever the amount or property is recovered.

Greater maximum amount where approved

(6) Despite subsection (5), a solicitor may enter into a contingency fee agreement where the amount paid to the solicitor is more than the maximum percentage prescribed by regulation of the amount or of the value of the property recovered in the action or proceeding, if, upon joint application of the solicitor and his or her client whose application is to be brought within 90 days after the agreement is executed, the agreement is approved by the Superior Court of Justice.

Factors to be considered in application

(7) In determining whether to grant an application under subsection (6), the court shall consider the nature and complexity of the action or proceeding and the expense or risk involved in it and may consider such other factors as the court considers relevant.

Agreement not to include costs except with leave

(8) A contingency fee agreement shall not include in the fee payable to the solicitor, in addition to the fee payable under the agreement, any amount arising as a result of an award of costs or costs obtained as part of a settlement, unless,

(a) the solicitor and client jointly apply to a judge of the Superior Court of Justice for approval to include the costs or a proportion of the costs in the contingency fee agreement because of exceptional circumstances; and

(b) the judge is satisfied that exceptional circumstances apply and approves the inclusion of the costs or a proportion of them.

Enforceability of greater maximum amount of contingency fee

(9) A contingency fee agreement that is subject to approval under subsection (6) or (8) is not enforceable unless it is so approved.

Appendix B 2

Non-application

(10) Sections 17, 18 and 19 do not apply to contingency fee agreements.

Assessment of contingency fee

(11) For purposes of assessment, if a contingency fee agreement,

(a) is not one to which subsection (6) or (8) applies, the client may apply to the Superior Court of Justice for an assessment of the solicitor's bill within 30 days after its delivery or within one year after its payment; or

(b) is one to which subsection (6) or (8) applies, the client or the solicitor may apply to the Superior Court of Justice for an assessment within the time prescribed by regulation made under this section.

Regulations

(12) The Lieutenant Governor in Council may make regulations governing contingency fee agreements, including regulations,

(a) governing the maximum percentage of the amount or of the value of the property recovered that may be a contingency fee, including but not limited to,

(i) setting a scale for the maximum percentage that may be charged for a contingency fee based on factors such as the value of the recovery and the amount of time spent by the solicitor, and

(ii) differentiating the maximum percentage that may be charged for a contingency fee based on factors such as the type of cause of action and the court in which the action is to be heard and distinguishing between causes of actions of the same type;

(b) governing the maximum amount of remuneration that may be paid to a solicitor pursuant to a contingency fee agreement;

(c) in respect of treatment of costs awarded or obtained where there is a contingency fee agreement;

(d) prescribing standards and requirements for contingency fee agreements, including the form of the agreements and terms that must be included in contingency fee agreements and prohibiting terms from being included in contingency fee agreements;

(e) imposing duties on solicitors who enter into contingency fee agreements;

(f) prescribing the time in which a solicitor or client may apply for an assessment under clause (11) (b);

(g) exempting persons, actions or proceedings or classes of persons, actions or proceedings from this section, a regulation made under this section or any provision in a regulation.

A.B.A. Model Rules of Professional Conduct

Client-Lawyer Relationship

Rule 1.5 Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

The Law Society

COUNCIL **Item 12**
12 November 2008

Classification – Public

Purpose - For noting

REPORT OF THE CHAIR OF THE BOARD OF THE LEGAL COMPLAINTS SERVICE

The Issues

The regular update to Council. Council is invited to note the report.

Policy Position

Not applicable.

Financial and Resourcing implications

The report contains financial and resource implications in respect of the business Plan 2009-10, adjudication in the LCS, the Coal Health Compensation Schemes Phase 2 redress programme and E&D strategy.

Equality and Diversity implications

The report contains equality and diversity implications in respect of the business plan 2009-10, adjudication in the LCS and the Coal Health Compensation Schemes Phase 2 redress programme.

Consultation

This report contains information relating to the views of the Board of the LCS as expressed at its meeting on 15 October 2008.

Author Shamit Saggar, Chair of the Board of the Legal Complaints Service.
Date of report 27 October 2008.

1. Meeting of the Board of the Legal Complaints Service

The Board of the Legal Complaints Service met on 15 October. This is a summary of the decisions taken at the meeting:

Equality and Diversity (E&D) strategy:

The Board agreed the draft E&D strategy, a copy of which is attached at the appendix.

Business plan 2009-10

The Board approved the draft plan, subject to small amendments, for presentation to TLS.

2. Development of non-statutory business plan

In response to TLS's intention to require from LCS a (non-statutory) plan in respect of the calendar year 2009 (which will match the TLS-LCS budget year), LCS has submitted to Management Board a draft business plan (as agreed by the Board of the LCS) to cover the fifteen months to March 2010. The performance objectives as set out in the draft plan are:

Performance Objectives

We will handle all new and existing work to maintain the high standards we have achieved over the past years. Below are listed our Performance Objectives (PO) to give a clear focus for our decision-making up until closure. Full achievement of these levels may be made more difficult or even impossible by the changing circumstances, e.g. higher staff attrition, but they will continue to serve as fundamental objectives in the day-to-day management of the organisation.

These objectives will set a minimum intended standard, measured as an average for the year, recognising that 2009 may be more subject to short-term fluctuations.

Performance Area	**Forecast Performance 2008**	**Performance Objective 2009**
Getting the Right Answer Q1 We will achieve a reasonable outcome and service, without significant failings, in at least 90% of cases closed	90%	90%
Doing it Quickly T1 We will investigate and resolve at least 60% of cases within 3 months of receipt, and 100% of cases within 12 months, apart from in exceptional circumstances.	tbc	60% in 3m 100% in 12m
Informing the Customer S1 We will ensure at least 80% of our Customers are satisfied with our service.	80%	80%
Providing Value for Money C1 We will reduce the cost index of our service by 6% per year in real terms.	-6% (vs 2007 actual)	-6% (vs July 08 forecast)
Preparation for Handover and close down. H1 Optimise total number of cases in progress (WIP) H2 Optimise number of Unallocated cases (by measuring duration of unallocated buffer) *WIP and Unallocated must be kept low to minimise delay, yet must not be allowed to go below set levels, to maintain efficient utilisation of staff.*		3,600 21 days

The Performance Objectives for 2010 will be set during the latter part of 2009 when more is known with regards to the vesting date of the OLC, and the priorities of the OLC.

TLS has communicated issues in respect of the 2009 plan to the Commissioner, who had requested sight of it. LCS has forwarded the draft document to the OLSCC for comment.

3. Coal Health

a) Phase 2

The first firm to mail out has commenced its programme of writing to its clients as part of Phase 2 of our plan to contact miners in England and Wales regarding the compensation awards. Over 1000 letters have been sent out by the firm. We will report on the outcomes of the exercise as these are analysed.

A further 17 firms will be following in the footsteps of the initial firm in an exercise which will deal with in excess of 400,000 former miners' cases.

b) Ex gratia payments

TLS has now made ex gratia payments to the former miners who had their complaints dealt with several years ago and who did not manage to attain a full refund of their deduction. This was in compliance with the request of the LSCC. The exercise generated a very mixed response amongst recipients of the cheques as a number of the former miners who made claims in 2005 have since died.

c) BERR/DECC

A meeting took place at BERR (Department for Business, Enterprise and Regulatory Reform) on Wednesday October 1 2008. During the meeting a number of data issues were discussed and agreement reached as to how to proceed.

On Friday October 3 2008, it was announced that the energy directorate of BERR was to be included in a new government department called the Department for Energy and Climate Change (DECC) with the Secretary of State named as Ed Milliband.

Lord Hunt of Kings Heath now holds responsibility for Coal Health issues at the newly-formed Department.

4. E&D

a) All staff meetings

All LCS colleagues were asked to participate in a consultation on the draft E&D strategy. 172 responded, providing a range of views on the strategy and E&D in the LCS generally.

An update on the E&D strategy and feedback from the staff consultation survey was shared with all staff. This was carried out in late September/early October through all staff updates and delivered jointly by Deborah Evans and E&D manager Aisha Hussain.

b) EDAT

LCS has recently established the Equality and Diversity Advisory Team (EDAT). EDAT consists of members of staff who have volunteered to help assist LCS in implementing the E&D work and embedding E&D across the organisation. EDAT provides a forum for discussion of E&D related issues and concerns and make recommendations for improvement to LCS SMT.

c) DAG

/CS recently invited several organisations working with disabled people to form a Disability Advisory Group to assist LCS in improving the service it delivers to its disabled customers, staff and solicitors. Two members of staff and seven organisations have agreed to be part of the Disability Advisory Group.

Organisations currently represented are: Royal National Institute for the Deaf (RNID), The Royal National Institute for the Blind (RNIB), Mencap, Mind, Age Concern, Council of Disabled People and the Rowan Organisation. The group will be holding its first meeting on 3 November when it will discuss amongst other things producing some best practice for LCS staff on working with customers with disabilities.

d) DWG

LCS has recently established a Diversity Working Group (DWG). This group is chaired by CEO Deborah Evans and includes Head of Operations, Business Change, Communications, HR and others. The group will be responsible for co-ordinating activity under the E&D action plan. The group will also be responsible for co-ordinating activity on the recommendations arising from the equality impact assessments.

5. Adjudication in the LCS

The transfer of adjudicators from the SRA into LCS is scheduled to take place with effect from Monday 20 October. This is a budget and headcount transfer from SRA. It will enable LCS to have more control over the end-point of its process and should aid adherence to external targets, notably in relation to timeliness of casework.

6. Cost reduction target

The LCS is on track to achieve its forecast £1.4 million of potential savings by year end 2008. Further savings are now being identified for 2009 to enable a further cost reduction of 6%.

7. September 2008 - summary of performance measures

Headlines against plan targets

Doing it quickly				
	Current month	Year to date	Plan Target	Variance
Target T1: To investigate and close all complaints within 12 months, apart from in exceptional circumstances				
Cases closed with no exceptional circumstances	0	1	0	1
Target T2: To refer to the SRA within 3 months of receipt all matters of misconduct identifiable at the time				
Referrals within 3 months	96%	98%	100%	-2%
Getting the right answer				
Target Q1: We will achieve a reasonable outcome and service, without significant failings, on at least 90% of cases closed. (This is measured quarterly).				
Cases	88%	88%	85%	3%
Target Q3: Referrals to the LSO in which the LSO upholds the handling of the case (This target does not come into effect until January 2009).				
Referrals upheld by LSO	*64%*	*67%*		

Informing the customer			
	Year to date	Plan Target	Variance
Target S1: We will ensure at least 80% of our customers are satisfied with our service.			
Customer satisfaction	85%	80%	5%
Target P1: Initiatives to support the delivery of the Law Society's plan are delivered to time and cost in accordance with the plan			
Delivery	100%	100%	0%
Coal health complaints			
Target M1: We will fully investigate the case and inform the customer, in at least 90% of cases, of adjudication as an option to conciliation, the seriousness category of their complaint and the likely size of award at adjudication and the amount of distress and inconvenience likely to be due in addition to any financial cost. (This is measured quarterly).			
Cases	93%	90%	3%

Questions and requests for further information

If Council members have questions relating to this report or wish to have additional information about any aspect of the work of the Board of the LCS, I would be grateful if they could email me in advance of the meeting, so that I can ensure that I am appropriately briefed to answer their questions (either written or orally). Requests should be sent to:

Shamit Saggar - Chair of the Board of the LCS - Shamit.Saggar@legalcomplaints.org.uk and copied to
Claire McCarthy - Executive Assistant - Claire.McCarthy@legalcomplaints.org.uk

Shamit Saggar
Chair of the Board of the Legal Complaints Service

27 October 2008

Appendix

- **LCS E&D strategy 2008-10**

LCS EQUALITY AND DIVERSITY STRATEGY 2008-10

1 INTRODUCTION

1.1 The Legal Complaints Service (LCS) is committed to placing equality and diversity (E&D) at the heart of the organisation. We aim to deliver a non discriminatory service by being transparent, fair, accessible and inclusive taking into account diverse backgrounds and needs.

1.2 As diversity orientated employer, our aim is to improve recruitment, motivation, retention and promotion of outstanding people reflective of the diverse communities we serve. Our commitment is to ensure equality of opportunity in all areas of employment, including the promotion and development of staff. We aim to treat all our colleagues fairly, with dignity and respect.

1.3 This document sets out our commitment to, policy about and strategy for promoting equality and diversity in all that we do in the next two years. It sets out for the first time our diversity vision & commitment. This is underpinned by a number of strategic objectives which show what specific action we will be taking to support the achievement of our vision.

1.4 The Law Society of England and Wales is subject to a range of statutory duties which it must comply with. The Race, Disability and Gender Equality Schemes and action plans have been produced by the Law Society. Our Diversity Action Plan 2008-2010 ensures we meet our actions identified in the Law Society equality schemes and actions plans.

1.5 The Law Society has delegated its regulatory function of complaints handling to us. We are also subject to the range of statutory duties which we must comply with. These duties help us to focus on what we would want to be doing anyway. The duties are governed by the Race Relations (Amendment) Act 2002, the Disability Discrimination Act 2006, the Gender Equality Duty 2007 and a variety of duties and regulations covering our responsibilities as an employer.

1.6 This strategy incorporates the diversity action plan for 2008-2010, which details the actions which need to be undertaken to realise each strategic objective. The achievement of these actions will go some way to making LCS an organisation that truly values diversity.

1.7 Our equality and diversity strategy is aligned to LCS values and objectives set out in our Improvement Agenda 2007-2010 which articulate how we will achieve our overall strategic vision of becoming the best independent Legal Complaints Service of the highest quality.

1.8 The equality and diversity strategy will be reviewed annually and will include an updated action plan.

2 STRATEGIC CONTEXT

2.1 The LCS is an independent complaints handling body. We are a part of the Law Society of England and Wales but operate independently. The Law Society delegated its complaints handling functions to us and has charged us to exercise those functions independently and in the public interest. We were previously known as the Consumer Complaints Service (CCS) and, before that, as the Office for the Supervision of Solicitors (OSS)

2.2 There are currently around 120,000 solicitors registered in England and Wales. Although a majority of their work is carried out well, there are a small proportion of cases where clients are not fully satisfied about the service they have received from their solicitors.

2.3 The LCS resolves consumer complaints about solicitors' fees, failure to follow direction or delays in communication. There are several things we may be able to do, for example reducing a solicitor's bill, ordering the solicitor to pay compensation, or telling the solicitor to correct a mistake and pay any costs. We also refer complaints of misconduct about solicitors to the Solicitors Regulation Authority (SRA).

2.4 Our services are confidential and free to use. We look at each case impartially and try to find a solution that is fair and acceptable for everyone concerned.

2.5 Governance

2.5.1 We are governed by the LCS board which was created in January 2006 following the separation of the representative, regulatory and complaints handling functions of the Law Society. The Board has fourteen members (seven non-solicitors and seven solicitors) including the chair, Professor Shamit Saggar. The Board, as a whole, meets every six weeks. In addition, committee and working group meetings are held around certain issues such as consumer focus, audit and risk, industrial diseases and liaison.

2.5.2 The LCS Consumer Focus Committee has responsibility for overseeing the progress on equality and diversity and in guiding the LCS management towards mainstreaming and embedding diversity in the heart of the organisation.

2.5.3 In addition to this the Legal Services Complaints Commissioner sets us targets which we must achieve in the plan year. These targets are based around the fairness of the outcome, the quality of our customer service and the speed and cost efficiency of our complaints handling.

2.5.4 Our 2008/2009 plan sets out how we aim to achieve these targets, it also sets out our strategic improvement of the organisation. This includes a work programme on equality and diversity. This work programme will ensure that our E&D strategy and work is aligned with our overall business priorities.

2.6 Profile

2.6.1 In 2007-2008 we closed 13,841 cases, 5,800 of our customers answered the E&D questions we asked. From the information provided to us we know that out of the 5,800 customers 39.6% were women, 9.5% were from Black and Minority Ethnic (BME) backgrounds and 15.6% stated they had a disability.

2.6.2 Through our complaints helpline service 6,355 of our consumers who completed an automated telephone survey answered the E&D questions asked. From the information

provided we know that out of the 6, 3555 customers; 50.4% were women, 15.1% were from BME backgrounds and 14.7% stated they had a disability.

2.6.3 Internally we currently employ 379 members of staff, 282 (74%) of which are women 97(24%) are men and 66 (17.2%) are from BME backgrounds. Only three members of staff (0.8%) have declared a disability to us. 77% of our workforce is under the age of 44.

2.7 Transition

2.7.1 The Legal Services Act 2007 aims to put consumers at the heart of the delivery of legal services through a regulatory system that promotes competition, innovation, consumer choice and flexibility in legal services. The Act also encourages a strong, diverse and effective legal profession.

2.7.2 Our key concerns are of course continuity of service as responsibilities are handed over as anticipated in 2010. One of the aims of the Legal Services Act is to ensure that redress is easily understood and accessible. We are committed to making sure that consumers are not confused as the changes to the legal services market begin in advance of the inception of the Office for Legal Complaints (OLC).

2.7.3 We are also aware that a smooth and well-planned handover to the Office for Legal Complaints is very important so consumers can continue to access redress easily – and so that solicitors know how any complaints against them will be handled and by which organisation. We are working closely with the Law Society and the Ministry of Justice to make sure that our expertise in handling complaints informs the creation of the OLC, and that our experience of working with consumers and solicitors helps make the handover from the LCS to the OLC as smooth as possible for the people that use our service.

2.7.4 This will not prevent us from continuing to focus on our current and future responsibilities and the actions we need to take to promote diversity and equality of opportunity in the LCS. As noted above, equality and diversity will remain a central part of making sure that all consumers are able to seek high quality redress for complaints now.

3 LCS ORGANISATIONAL VALUES AND OBJECTIVES

3.1 LCS improvement agenda 2007-2010

3.1.1 In 2007 we developed a three year organisational improvement agenda in conjunction with our partners and stakeholders who have an interest in our service. It represents our commitment to become a modern consumer redress organisation.

3.1.2 One of the main aims of our improvement agenda is to educate and empower people who use legal services. We want to reduce the number of complaints generated and to become a centre of excellence for handling complaints. It sets out our organisational vision and values and is underpinned by strategic objectives which determine how we will achieve our vision and values.

3.2 Our values

Our improvement Agenda 2007-2010 defines our organisational values:

- To be open and accessible;
- To have high professional standards; and
- To be independent and fair.

3.3 Organisational strategic objectives

Our improvement agenda sets out three strategic objectives which will help us to embed our organisational values. These are:

1. We will improve our service by providing a high-quality, accessible, cost-effective and timely complaints service that is fair and easy to understand;
2. To inform consumers by: educating and empowering them to make the right decision at every stage of the legal process; and
3. To improve standards by supporting solicitors to provide a better service to prevent grounds for legal complaints.

3.4 Our equality and diversity strategic objectives (see below at 7) are aligned to and compliment our objectives defined by the improvement agenda, this ensures that diversity is at the heart of everything we do and is integrated into our business delivery. This will ensure that our Diversity strategy is implemented in line with our improvement agenda, not in isolation.

4 WHERE ARE WE NOW?

4.1 The LCS Board, Chief Executive and Senior Management Team (SMT) have given their commitment to ensuring that E&D becomes embedded within the LCS. To ensure it becomes a key facet of any organisational and business change. A number of key steps have already been taken towards the embedding and mainstreaming of E&D in the organisation.

4.2 Complaints Handling and Improvement Project (CHIP1)

4.2.1 To date in 2008 we have delivered a challenging Complaints Handling and Improvement Project (CHIP1) specifically on equality and diversity. This project had key deliverables and outcomes which it delivered on. One of the key outcomes of this project was the commissioning of a baseline audit on diversity within the organisation. CHIP1 also established a framework and process for the impact assessment of our policies, processes and functions.

4.2.2 The project highlighted the need for a LCS equality and diversity resource who would be dedicated to assisting the organisation in embedding and mainstreaming equality and diversity. As a result of which we have recruited an Equality and Diversity Manager who is responsible for assisting the LCS in our strategy implementation and providing advice and guidance to all sections of the organisation on diversity issues.

Baseline Audit

4.2.3 We commissioned an external organisation to conduct a baseline audit of where we were in terms of embedding diversity and equality in the organisation. The audit was designed to review equality and diversity within the LCS in order to identify the key strengths and weaknesses in progressing and integrating equality and diversity within the daily business of LCS.

4.2.4 An action plan was produced in order to action the recommendations from the baseline audit. These actions were delivered by CHIP1. The actions carried forward from the baseline audit findings are incorporated into our diversity action plan 2008-2010 (appendix 1.)

4.3 Equality Impact Assessment

4.3.1 Under our statutory duties we are required to assess the impact of our policies, processes and practices on race, gender and disability equality. In 2007 we developed a new equality impact assessment toolkit and methodology to address the impact that a policy, process or practice might have on all aspects of equalities and diversity. We currently have eight members of staff trained as equality impact assessors with a view to training twelve more colleagues in this plan year.

4.3.2 LCS policies, processes and practices have all been screened to determine their relevance to delivering the objectives of the Race, Disability and Gender legislation. Five of the policies and processes deemed as high priority were assessed in 2007; the remaining high risk policies, processes and practices will be assessed in 2008-2009 with the remaining medium and low risk policies being assessed by 2010.

4.3.3 Although the legal equality impact assessment requirement extends to race, disability and gender we are committed it identifying and tackling inequality on all grounds of diversity. We have been and are committed to continuing to carry out impact assessments on all diversity grounds.

4.4 Complainant database

4.4.1 Equality and diversity monitoring data is requested on the Customer Complaint Form, on the Customer Feedback Form, and, from March 2007, from our Telephone Helpline Survey. This data is collated and held on our complainant database.

4.4.2 We have through CHIP1 made changes to our complaints and satisfaction form to include questions on disability. We have revised and improved the complainant database including linking the collected data to decisions and outcomes.

4.4.3 The revision and improvements to the complainant database have set the groundwork for in depth consumer profiling and analysis based on decisions, levels and types of service and overall satisfaction. This work is a key priority for us in 2008 and forms a key driver for strategic objective one.

5 OUR VISION

5.1 We aim to deliver a non discriminatory service by being transparent, fair, accessible and inclusive taking into account diverse backgrounds and needs.

6 STRATEGIC OBJECTIVES

6.1 We have set five key strategic objectives which highlight our priorities and show specific action we will be taking in order to support the achievement of our Equality and Diversity vision and commitment.

STRATEGIC OBJECTIVE ONE:

6.2 **Deliver an accessible customer service tailored to the diverse needs of our consumers and solicitors;**

6.2.1 We work in the interest of consumers of legal services who come from all backgrounds and communities. In order to be a truly customer focussed service provider it is vital that our services are accessible to everyone who needs to use them.

6.2.2 Our first key priority in this area is to identify our current consumer profile; we will do this by analysing our complainant database data in order to determine who is using our services at present and what they think of our services. By knowing who is using our service we can begin to review and evaluate the service we provide to improve accessibility for our existing consumer base.

6.2.3 We are in the process of sending out satisfaction forms to capture feedback about our service from solicitors, we will capture solicitor diversity information on this form and monitor satisfaction levels against this data to ensure that we are delivering a fair and accessible service to the profession.

6.2.4 We will audit our external and internal websites in order to determine their accessibility for our disabled consumers, solicitors and staff. We will make the necessary changes to improve our website accessibility.

6.2.5 We will review where we advertise and communicate our services, we will identify ways in which we can communicate our services to those diversity groups who are not currently using our services and those who come from traditionally 'hard to reach' communities. Thereby improving our accessibility to potentially vulnerable or disadvantaged groups.

STRATEGIC OBJECTIVE TWO:

6.3 **Build staff and stakeholder engagement and effectively communicate our E&D Commitment;**

6.3.1 We will build relationships with our key stakeholders to create a framework for consultation and involvement on our E&D delivery. This will include organisations working on equality and diversity issues such as the Equality and Human Rights Commission (EHRC), advocacy and support groups working for vulnerable or disadvantaged people, groups who provide support for users of the legal services, Government organisations and other professional bodies.

6.3.2 We will build relationships with groups that provide support for solicitors. We will liaise with these groups on our service delivery and decision making and its impact on the profession.

6.3.3 We are keen to have a wider impact on the legal services market where possible. The educating the profession role rests with the Solicitors Regulation Authority (SRA) and the responsibility for training rests with The Law Society (TLS). However we will work with both TLS and the SRA in advising the profession on ways in which solicitors can build E&D into complaint handling and client care.

6.3.4 We will regularly communicate progress on our strategy and action plan with our staff internally and our stakeholders externally to ensure transparency and more importantly to

provide staff and our stakeholders with an opportunity to play an active part in helping us shape our existing and future policy and work.

6.3.5 We will establish a forum for staff and stakeholders to discuss equality and diversity delivery in the LCS and make suggestions for improvement. We will do this by creating advisory and working groups on diversity consisting of staff (internal) and external bodies in particular those working with disabled people.

STRATEGIC OBJECTIVE THREE:

6.4 **Identify and tackle any inequality in our service delivery.**

6.4.1 We will develop our equality impact assessment toolkit and methodology and conduct assessments in order to identify and tackle any inequality in our service delivery. We will impact assess all our policies, processes and functions by 2010 and take prompt action to remedy and inequality identified in the assessment process. We will carry out assessments for impact on the grounds of age, disability, gender, race, religion and sexual orientation.

6.4.2 We will regularly monitor and review our policies, processes and practices once they have been assessed to ensure they continue to operate in a non discriminatory manner.

6.4.3 We will consult widely and effectively with our staff, key stakeholders and those who will be particularly affected on our policies, processes and practices;

6.4.4 We will publish the evidence from our impact assessments both internally and externally to ensure openness and transparency.

Data collection

6.4.5 We acknowledge that there is a significant gap in the collection of data which can allow us to identify the current profile of users of solicitors' services. This means that we are not able to effectively determine whether or not there is any disproportionality between the users of our services and the users of solicitors.

6.4.6 We will work closely with The Law Society, SRA and The Ministry of Justice (MOJ) and the Legal Services Commission in order to research means of identifying the profile of solicitors' clients.

6.4.7 We currently collect consumer profiling data on gender, ethnicity and disability. In addition to this we also collect data on age. We do not currently collect consumer profiling data on religion or belief. We will research how other organisations currently collect this data and work with our stakeholders in order to determine the best method of introducing this into the LCS.

Procurement

6.4.8 The procurement policy and practice LCS works from is centrally managed by The Law Society (TLS). We will work closely with TLS to look at ways in which we can integrate equality and diversity requirements into our procurement work. This includes looking at who we currently use to conduct business for us and researching what they do to promote equality and diversity in their work.

6.4.9 We will look at ways in which we can work closely with TLS to ensure we are using diverse advertisement approaches and integrating relevant equality and diversity requirements into our tendering and contractual practices for future procurement.

STRATAGIC OBJECTIVE FOUR:

6.5 Deliver training and raise organisational diversity awareness

6.5.1 We are committed to placing equality and diversity at the heart of everything we do. In order to achieve this we will promote equality and diversity in all aspects of LCS. This includes our decision making processes, our policy development, business planning, change, project and transition planning and in our employment practices.

6.5.2 We will deliver training to all staff on key equality and diversity legislation and our duties to ensure that all staff hold an understanding of equality and diversity issues and how they can play an active part in promoting equality and diversity within the organisation.

6.5.3 We will raise awareness amongst staff on the issues that different diversity groups face. Understanding these issues and exploring how their work can affect outcomes will encourage staff to provide due consideration to equality and diversity when engaging with consumers, interacting with each other and when developing policy.

STRATEGIC OBJECTIVE FIVE:

6.6 Be a fair and diversity orientated employer

6.6.1 We will ensure that managing diversity is a long-term business objective and a responsibility for all employees.

6.6.2 We will ensure all our internal processes and systems, for example, recruitment, selection, induction, performance appraisals, will be audited and continually re-audited to ensure that no particular age group, sex, ethnicity or type predominates at any one level. Hindrances to diversity will be removed where possible and the tools and techniques for assessment regularly examined to ensure that no other techniques are available that are more objective or fair.

6.6.3 We will have a workforce who are aware of, and are guided by, the principles of managing diversity. Everyone in the organisation will understand what it means to manage diversity and everyone will be aware of its importance to the business. All employees will be trained to recognise how their biases and prejudices can influence their decisions and actions, and will be knowledgeable about the ways to prevent this happening.

6.6.4 Managers will understand individual difference within their teams and will use this understanding to manage people effectively and maximise the potential of all their employees in order to meet our goals.

6.6.5 We recognise the diverse needs of employees and will respond by providing a flexible approach, an approach which will enable the potential of employees to be maximised. Flexibility will be within what LCS can reasonably provide and will be fairly applied across all parts of the organisation

6.6.6 We will focus on facilitating the development of all employees based on their development needs and not their group membership, in line with the development plan agreed with their

line manager. LCS will ensure that policies are inclusive and do not unlawfully or unfairly discriminate against any specific group.

7 MEASURING SUCCESS

7.1 To implement our equality and diversity strategy we need to understand what success will look like for the LCS. Our strategic objectives describe what we are trying to achieve over the next two years and provide us with a clear basis for assessing our performance.

7.2 We have identified the expected outcomes for each strategic objective in order to measure our progress and the success of this strategy. We aim to keep this strategy under review as we implement the diversity action plan 2008-2010.

7.3 As part of the measurement process we have established a set of success indicators which we can relate to our strategic objectives, these indicators will allow us to reach informed conclusions about the implementation of our equality and diversity strategy.

STRATEGIC OBJECTIVE	SUCCESS INDICATOR
1. Delivering an accessible customers service tailored to the diverse needs of our consumers and solicitors	- Improvements made to website to increase accessibility resulting in increased website access hits; (Captured through good feedback from disability advisory group) -Advertising/communicating LCS to groups not currently represented in consumer base, reflected in a change in the people complaining to the LCS; - Improvements made in the collecting, retention and analysis of customer profiling data: we understand how our service is used by a diverse range of people
2. Building staff and stakeholder engagement and effectively communicating our Equality and Diversity Commitment	- 80% staff respond positively regarding knowing what the vision is in the next staff survey - Positive staff participation in diversity and disability advisory groups -Increased collaboration with a range of external stakeholders: good quality of exchange of info and views (e.g. participation in complaints handling sector discussions about diversity and accessibility) - An effective working relationship with solicitors' support groups: captured through feedback; - An increase in diversity of groups and individuals responding to LCS consultations - Benchmarking exercise
3. Identifying and tackling any inequalities in our service delivery	- Improvements carried out to data capture, retention and analysis resulting in easily accessible data for the purpose of impact assessments; - All high, medium and low priority policies, processes and practices initially impact assessed. -Full impact assessment carried out on all relevant policies, processes and practices

	- Documented changes to relevant policies, processes and practices as highlighted by assessment process - Evidence from equality impact assessments is published externally to ensure openness and transparency.
4. Delivering training and raising Equality and Diversity Awareness	- Diversity strategy linked to LCS values - Diversity part of LCS's decision making governance structure - 90-100% staff participation in E&D training - An ongoing programme of diversity training for LCS is agreed - Diversity commitment and strategy included in induction training for all staff - Diversity vision sent to all new starters as part of their induction documentation - Positive feedback from staff on range of awareness raising events -Dedicated areas on internal and external website to communicate equality and diversity information
5. Becoming a fair and diversity orientated employer	- The diversity vision statement and strategy communicated to staff. - LCS Behavioural competencies reviewed to ensure diversity is embedded within them. - Improvements made in the collecting, retention and analysis of employee profiling data: we understand the diversity of the people we employ - Staff Survey conducted to measure LCS's current status against becoming a diversity orientated employer.

8 ACTION PLAN

8.1 Our diversity action plan 2008-2010 details the actions which need to be undertaken to realise each strategic objective. It translates the objectives into specific actions, the achievement of which will go some way to making LCS an organisation that truly values diversity.

8.2 Progress against the diversity action plan will be monitored on a monthly basis by our Strategic Management Team and on a quarterly basis by the LCS Board. This will ensure that any potential issues, risks or barriers to the effective achievement of the outlined actions in the plan are identified and reduced/remedied at the earliest opportunity.

8.3 The action plan has been developed taking into account our legislative duties, LCS business needs and the resources available to the LCS. The action plan is attached for 2008-2010 as appendix 1.

9 IMPLEMENTATION

9.1 Responsibility

9.1.1 The LCS board and CEO are ultimately responsible for the delivery of the organisation's statutory responsibilities.

9.1.2 LCS Strategic Management Team has responsibility for the operational delivery and implementation of the Equality and Diversity Strategy and action plan within LCS

9.1.3 The LCS Equality and Diversity Manager will work to ensure that positive and effective action is taken to promote Equality and Diversity in all aspects of LCS service delivery.

9.1.4 The LCS staff diversity advisory groups will assist in the reviewing and implementation of the activities in the action plan.

9.2 Review and Reporting

9.2.1 LCS will review progress on the Diversity Strategy on an annual basis. A full report detailing progress will be incorporated into our annual report.

9.2.2 A quarterly report will be presented to the LCS Board and Strategic Management Team detailing progress on the Diversity Action Plan.

9.2.3 An annual report detailing progress on the overall Equality and Diversity Strategy will be presented to the LCS Board and Strategic Management Team a summary of which will be included in the Law Society annual Diversity Report.

9.3 Communicating the strategy

9.4 We will communicate our Equality and Diversity strategy effectively to our staff internally using a variety of methods including presentation at staff meetings, workshops, email and internal information bulletins.

9.5 Our E&D vision will be sent to all new employees as part of their starting information pack and will form part of their initial training.

9.6 We will consult widely with our stakeholders in the finalisation of our strategy and ensure the final strategy is communicated effectively to all our stakeholders.

9.7 We will set up a dedicated section on the LCS intranet for E&D so that our staff has access to information and advice, our website will clearly communicate what we are doing to promote, manage and implement our strategy.

9.8 We will ensure our strategy is available in a variety of formats, Braille, easy read, CD, different languages and is available on external website for all to access.

The Law Society

COUNCIL
12 November 2008 **Item 13**

Classification – Public

Purpose – For noting

REPORT OF THE CHAIR OF THE SOLICITORS REGULATION AUTHORITY BOARD

The Issues

This paper is the periodic report of the Chair of the SRA Board.

Policy Position

N/A

Financial and Resourcing implications

There are no direct implications to the report.

Equality and Diversity implications

There are no direct Equality and Diversity implications arising from consideration of this report, though equality and diversity issues are covered in the report.

Consultation

This report has been prepared directly for the Council.

Author: Peter Williamson, Chair SRA Board
Date of report: October 2008

1. The Board met on 16 October when it considered the following matters:

LEGAL SERVICES ACT 2007: COMPENSATION FUND RULES

2 Subject to the concurrence of the Master of the Rolls and the Lord Chancellor, the Board made the Solicitors Compensation Fund Rules [2009]. The new rules set out, amongst other things, the Board's policy on multi-party and multi-profession claims.

LEGAL SERVICES ACT 2007: CHANGES TO SRA RULES & REGULATIONS

3 In July and September 2008 the Board made a set of rules and regulations to implement legal disciplinary practices (LDPs) and firm-based regulation under the Legal Services Act 2007. In response to representations from the SRA, the Law Society and the City of London Law Society, the Ministry of Justice agreed the text of a re-write of section 9A of the Administration of Justice Act 1985 which defines a "legal services body". The essence of those representations was that the original s9A introduced a two-tier limit on the structure of recognised bodies which was onerous and not justified on any regulatory ground.

4 As a consequence, the Board was asked to approve, subject to further consultation, changes to the rules and regulations to reflect the changes to section 9A and to correct earlier errors and omissions.

USE OF NEW INVESTIGATORY POWERS – DRAFT CONSULTATION

5 The Board considered a paper which proposed a draft consultation paper and policy statement on the use of the enhanced investigatory powers in sections 44B, 44BA and 44BB of the Legal Services Act 2007 which will come into force in early 2009. It agreed to the publication of the consultation paper, subject to some adjustments.

HIGHER RIGHTS OF AUDIENCE

6 The Board considered a paper incorporating the Education & Training Committee's draft application to the Secretary of State for approval of changes to the regulations for solicitors' rights of audience before the higher courts. It sought the Board's approval for the application to be submitted under Schedule 4 of the Courts and Legal Services Act 1999 as amended. The paper also contained a detailed analysis of the responses to the 2008 consultation, asked the Board to approve a further application for an extension to the Higher Courts Qualification Regulations 2000 to cover the interim period until 31 December 2009 (or on the coming into force of the Solicitors Higher Rights of Audience Regulations 2009, whichever was earlier), explained expected delays in the progress and implementation of the new regulatory regime and sought the Board's agreement to a revised timetable for the development and implementation of the new regulations. The Board agreed the proposals.

UNSOLICITED VISITS: RULE 7.03 SOLICITORS CODE OF CONDUCT

7 Subject to the concurrence of the Master of the Rolls, the Board made an amendment to rule 7.03 (unsolicited visits) to clarify the intended effect of the rule and make explicit the long understood policy that "visits" should be interpreted broadly and should include, for example, approaching people in the street.

CHIEF EXECUTIVE'S REPORT

8 The Chief Executive reported on various operational matters within the SRA.

9 There had been increases in casework in a number of areas, including complaints handling and ethical inquiries, but the organisation had responded well to the increased pressures. Extensive consultation was under way on the Equality & Diversity Strategy and discussions had been held with the Equality & Human Rights Commission, the Ministry of Justice, and BME practitioner groups.

10 The decision-making project continued to make good progress and a satisfactory review had been carried out by Law Society Internal Audit. There was now a need to extend the project to cover areas in which significant discretion was exercised in advance of formal decisions. That work was now being planned.

11 It was confirmed that a report would be made in due course on the consumer engagement work planned for 2009.

COMMITTEES

12 The Compliance Committee met on 23 September when it gave preliminary consideration to the draft consultation document referred to at paragraph 5 above on the exercise of new investigatory powers. The Committee noted a report on operational performance.

13 The Education & Training Committee met on 15 September and was updated generally on the work of the Education & Training Unit. The Committee also considered the issues surrounding higher rights of audience as outlined at paragraph 6 above, had a discussion about strengthening training contract inspections and reviewed its quality strategy. The Committee agreed a blanket extension to accreditation schemes where no re-accreditation system was in place, until 1 January 2010 to enable the correct approach for each scheme to be determined.

14 The Financial Protection Committee met on 9 September when it was updated on the state of the insurance market. The Committee was informed that the market had hardened as a result of the economic down turn and uncertainty in financial markets generally. The indications to date were that there had been particular impact upon smaller firms, especially those involved in conveyancing.

15 The Quality Assurance Sub Committee met on 11 September when it considered and was asked to comment on the new LPC Handbook which was shortly to be published.

16 The Rules & Ethics Committee met on 17 September when it discussed the rule change on unsolicited visits referred to at paragraph 7 above. The Committee also approved a consultation on changes to rules 3 (conflicts of interest) and 4 (confidentiality and disclosure). The consultation will be published shortly

Further information

17 A copy of the Chief Executive's report to the October Board meeting is attached. If Council members wish to have additional information about any aspect of the Board's work, I would be grateful if they could email me (Peter.Williamson@sra.org.uk) and Antony Townsend (Antony.Townsend@sra.org.uk) in advance of the Council meeting, so that I can ensure that I am briefed to answer their questions as fully as possible.

SRA BOARD
16 October 2008

CLASSIFICATION – PUBLIC

Chief Executive's report
PUBLIC

1. Introduction

1.1 This paper provides an update for the Board on key issues in SRA. It is presented by reference to the Board's strategic objectives.

2. Recommendation

2.1 The Board is asked to note the report.

3. Setting the standards

3.1 Legal Services Act 2007

Legal disciplinary practices (LDPs) and firm-based regulation

3.1.1 Since my last report there has again been considerable progress in implementing what is for us the first phase of the Legal Services Act (the LSA), i.e. the introduction of: (1) legal disciplinary practices; (2) firm based regulation; and (3) related changes in the SRA's regulatory powers. This work has involved staff across the SRA, and has included detailed work on forms, policies, and procedures and the development of suitable IT processes, as well as the development of the SRA's thinking on the structure of fees, charges and contributions for the new firm-based regulatory regime.

3.1.2 On 4 September the Board amended the Solicitors' Indemnity (Enactment) Rules, made new Solicitors' Training Regulations and Qualified Lawyers Transfer Regulations, and approved new Solicitors' Admission Regulations to be made by the Master of the Rolls. By the time the Board meets, requests will have been sent to the Master of the Rolls, the new Lord Chief Justice and the Ministry of Justice (MoJ) for making, concurrence and/or approval.

3.1.3 Agreement has at last been reached with the MoJ on the wording of an order to amend the LSA to allow a recognised body to have more than two tiers of corporate ownership, as requested by the Law Society and the City of London Law Society. To reflect the changes that will be made by this order, further changes to some of the rules and regulations will be needed. These will be brought to the Board, hopefully at this meeting, and the opportunity will be taken to correct a number of errors and omissions.

3.1.4 We are assisting the MoJ in their work on the third LSA commencement order, expected in December. It is still assumed that its provisions – which will pave the way for LDPs and firm based regulation – will come into force on 1 March 2009 and 1 July 2009 to meet the SRA's timetable.

3.1.5 The SRA is working with the MoJ on obtaining an exemption from the Rehabilitation of Offenders legislation in relation to non-solicitor managers of a recognised body. It is important that such an exemption is in place in time for the SRA to be able to process applications in advance of the 1 March commencement date.

3.1.6 The SRA is also working with the MoJ on the further statutory instruments which will be needed to apply certain provisions of the LSA to registered European lawyers and registered foreign lawyers, and to apply certain provisions of existing legislation to the new types of recognised body permitted by the LSA.

Other rules and regulations

3.1.8 The SRA is working with the MoJ on bringing forward an early Non-Contentious Business Remuneration Order which, under the changes made by the LSA, will deal only with general principles of remuneration, and will abolish the procedure whereby the Legal Complaints Service issues a remuneration certificate when a non-contentious bill is challenged. The Firm-Based Regulation Group have already approved in principle a new rule which will require solicitors' bills to alert clients to the remaining ways of challenging a bill, whether contentious or non-contentious. Consultation on such a rule will take place when the content of the new Remuneration order becomes clearer.

3.1.9 Work is proceeding on three new sets of rules and regulations needed to implement the LSA:

- the SRA Disciplinary Rules to allow the SRA to rebuke and fine solicitors and firms, and "managers" and employees of firms,
- the regulations to allow the SRA to levy charges on solicitors and firms, and "managers", employees and owners of firms, for investigations into their conduct, and
- the Statutory Trust Rules, to govern the SRA's treatment of sums vested in the Law Society by virtue of the exercise of the SRA's intervention powers.

Alternative business structures (ABSs)

3.1.10 The SRA is in discussion with the Legal Services Board about what is for us the second phase of the LSA – the implementation of ABSs.

3.1.11 The Firm-Based Regulation Group has had an initial brain-storming session on ABSs with a view to developing the SRA's approach to the issues, and in particular the preparation of a consultation document.

Work of the Ethics Policy Team

3.2 *The Solicitors' Code of Conduct*

3.2.1 The Board has made changes to the Code to implement the LSA – see above. We now await the concurrence of the Master of the Rolls and the Lord Chancellor and the approval of the Secretary of State – this last will not be given until the Legal Services Consultative Panel, the Director General of Fair Trading and the designated judges have given their views. We are now starting work on amending the guidance which accompanies the rules in the Code to reflect the changes just made.

3.2.2 The Rules and Ethics Committee at its meeting on 17 September approved a consultation on changes to rules 3 (conflicts of interest) and 4 (confidentiality and disclosure) proposed by the City of London Law Society subject to final approval by the Chair of some minor amendments. Discussions concerning the City proposals took place over the summer with members of the Commerce and Industry Group and the GC100 Group who indicated general support for them. The consultation will be published shortly and run for 12 weeks.

3.3 *Accounts Rules*

3.3.1 The SRA awaits the concurrence of the Master of the Rolls, and of the Lord Chancellor, to the changes made to the Accounts Rules to implement the Legal Services Act.

3.3.2 At its November meeting, the Rules and Ethics Committee will give its initial views on various exploratory proposals made by the Compliance Committee to reduce the risks arising from holding client money.

3.4 *Referral arrangements*

3.4.1 Work on the review continues and is being co-ordinated by the Director of Standards. Two papers were considered by the Rules and Ethics Committee on 17 September. The first was a draft report which will be presented to the Board in December analysing all the issues identified last year for review and making recommendations on how they should be dealt with. The second looked specifically at various areas of the rule where there is continued non compliance and where there are interpretational issues which have become apparent through requests for guidance. The Committee discussed suggestions made by the paper for further guidance and clarification to the rule and the Committee's views will be incorporated into the Board paper.

3.5 *Relations with Office of the Immigration Services Commissioner (OISC)*

3.5.1 We are continuing to work with the OISC's on the draft updated guidance note on the regulatory issues governing solicitors undertaking immigration work and on other issues.

3.6 *Framework Services Directive.*

3.6.1 The Department for Business Enterprise and Regulatory Reform (BERR) has reported on the results of its consultation on the implementation of the Framework Services Directive (to which the SRA responded). The Directive aims to facilitate the free movement of persons either providing services across borders or providing services by establishing in another state within the EU. It governs all service providers, and includes lawyers' services, "topping up" the existing directives which govern lawyers' establishment (EC/98/5) and the provision of lawyers' services on a temporary basis (EEC/77/249). The Directive will impose a number of obligations which impact on the SRA from 27 December 2009. They include the following:

- the UK government must set up a "point of single contact" (PSC) through which EU lawyers and the public must be able to access information on all rules, requirements and processes a European lawyer may have to fulfil in order to become established in the UK (this will include REL registration, recognition of recognised bodies, recognition of recognised sole practitioners and even RFL registration and practising certification);

- all such processes must be capable of being transacted fully on-line via the PSC – so the SRA's website will need to be linked to the PSC in some way and the SRA must either have its own on-line processes or amend its processes to enable the PSC to provide on-lie application handling;

- the SRA must fulfil various obligations to co-operate with, share information with and conduct investigations for other EU regulatory bodies;

- the SRA may (and will probably want to) facilitate this by participating in a secure internet system (the IMI), which will involve training and possibly participation in a pilot scheme; and

- the SRA will probably need to amend rule 2 of the Code of Conduct to impose new obligations in relation to giving information to clients.

3.6.2 The BERR, having consulted on its proposals for implementing the Directive, has begun a series of workshops to gather information about the needs and capacities of the various "competent authorities" concerned. Members of staff from Information, the Change team and Professional Ethics attended a workshop on 31 July. A cross-departmental staff group has been set up to work on the project.

3.6.3 A meeting was held on 2 September between lawyers from the BERR and the MoJ and staff from the SRA, Law Society, Bar Standards Board, Bar Council and Law Society of Scotland to discuss the paper annexed to the SRA's response to the BERR consultation (the "mapping exercise") which sets out arguments in relation to the scope of application of the Directive in relation to lawyers. The BERR and MoJ have accepted nearly all the arguments in that paper. Further discussion is needed about the interpretation of Article 13(2) which provides that the fee for an application for authorisation may not exceed the cost of the procedure. If this is interpreted to mean that the fee must not exceed the administrative cost of dealing with the application, further legislative change may be needed because the practising certificate fee, registration fees and the fee for recognition of a recognised body include a share of regulatory costs.

Education and Training Update

Pre-qualification reform programme

3.7 *Legal Practice Course*

3.7.1 Applications have been received from 18 organisations seeking authorisation to become LPC providers under the new framework and, in most cases, also seeking validation of courses they wish to make available from September 2009. A programme of panel events at which the applications will be considered is being finalised. Guidance and protocols for authorisation/validation panels has been finalised and published on the website.

3.8 *Work based learning*

3.8.1 The first cohort of the pilot is now in its launch stage, both for candidates who will be assessed by their employers (internal assessment organisations) and by external assessment organisations.

3.8.2 *External candidate selection*. Details of 41 candidates have been passed to Nottingham Law School (NLS) who will act as their external assessment organisation. A pack of key information, prepared by NLS and checked by ETU staff, is being set to each candidate. The candidates are attending an introductory event at Nottingham on 10 October. ETU staff are participating in the event, and representatives from candidates' employers are also invited. This event will start the process of meetings and reviews of work which will take place over the next two years, culminating in candidates' final assessment.

3.8.3 *Internal Assessment Organisations.* 9 firms/in-house practices are piloting the internal assessment model: Beachcroft (Bristol office), Campbell Hooper (London), De Marco (Warwickshire), Dickinson Dees (Newcastle-on-Tyne), Freeth Cartwright (Nottingham) Hodge Jones Allen (London), Jones Day (London), Leeds City Council and Linklaters (London). ETU staff have evaluated the work based learning development, review and assessment plans from each of these participants, and have conducted three training workshops with all of them, in order to address any issues and to encourage the sharing of ideas between the participants. Feedback from these workshops has been extremely positive.

3.8.4 *External Assessment Organisations.* In addition to NLS (see 3.8.2 above), discussions continue with two other organisations. One of them has submitted a detailed bid which meets all the requirements, and it is expected that the SRA will contract with them shortly. That element of the pilot would involve them providing work based learning review and assessment for trainees at a small network of small and medium sizes firms. The other organisation has proposals for 2009, but these are at an early stage of consideration. An initial meeting is likely to take place in October.

3.9 *Qualified Lawyers Transfer Arrangements*

3.9.1 The draft consultation paper seeking views on proposals for a new transfer scheme, considered by the Board at its last meeting, is being finalised, with a view to publication before the end of October.

3.10 *Higher Rights of Audience*

3.10.1 The consultation closed on 25 July. The SRA Board decided, following the consultation, to simplify and streamline the Higher Rights qualification regime but to keep it mandatory. The Board also affirmed a commitment to a further review in around three years' time.

3.10.2 Further to this, at its meeting on 15 September, Education and Training Committee considered the detail of the proposals to be submitted to the Board for approval in October, following which the proposals will need to follow the Courts & Legal Services Act 1990 Schedule 4 procedure for approval. Before the Committee meeting, a meeting also took place between ETU staff and the Ministry of Justice to discuss the Schedule 4 process and timetable. The process is currently very busy, because other changes consequent on the Legal Services Act are also going through Schedule 4. The process is therefore likely to take some time and go beyond 1 January 2009.

3.10.3 In the light of this, the Committee agreed that the SRA should make an application should be made for an extension for the exemption and accreditation routes (currently due to lapse on 1 January 2009) and associated procedures for a full year, in order preserve the current position and to allow time for the Schedule 4 process. Of course

it would be possible, if all goes well, to implement the new regime in advance of 1 Jan 2010.

3.10.4 The Committee also discussed the detailed proposals for the new regime. The committee agreed that the Chair should be authorised to approve the final version of the proposals for submission to the SRA Board in October.

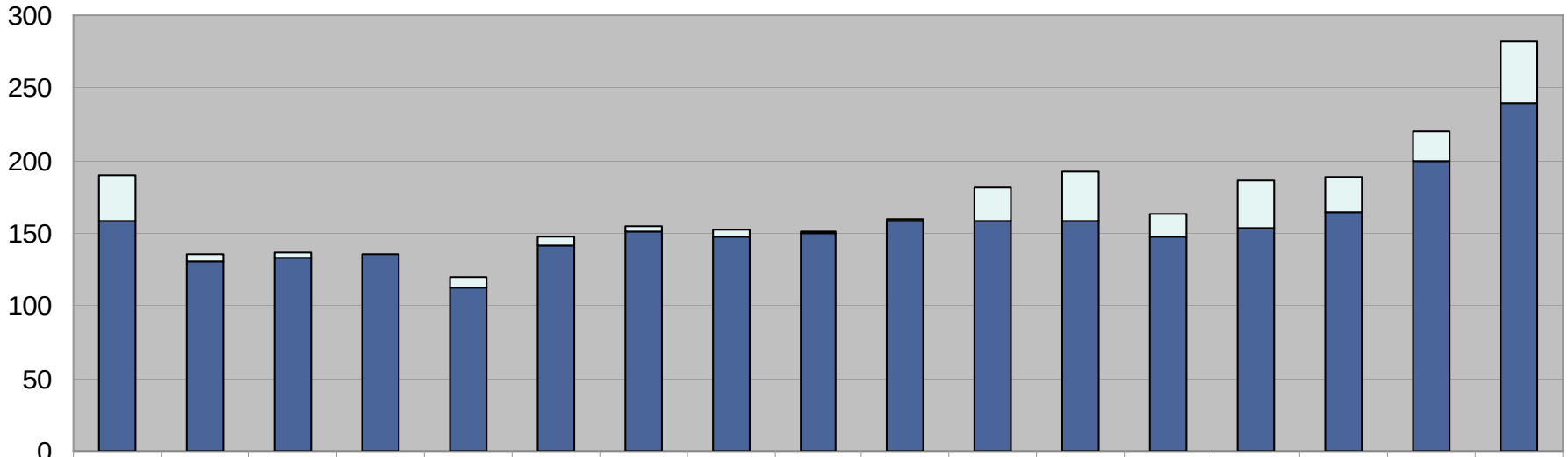
3.11 *Accreditation schemes*

3.11.1 The Committee considered a blanket extension to re-accreditation for the five schemes for which no re-accreditation process yet exists: criminal litigation, immigration and asylum, family law (advanced), family mediation and civil and commercial mediation. This would allow the SRA time to clarify its position on accreditation in view of the wider work on quality assurance of legal services, and, if appropriate, a suitable re-accreditation process to be designed and consulted on.

3.11.2 The Committee approved the blanket extension until 1 January 2010. It was felt, however, that this should be a definite end date, as by that time a strategic approach to accreditation will be in place which will permit the correct approach for each scheme to be determined.

SRA BOARD
16 October 2008

Ethics - Correspondence awaiting response as at week end

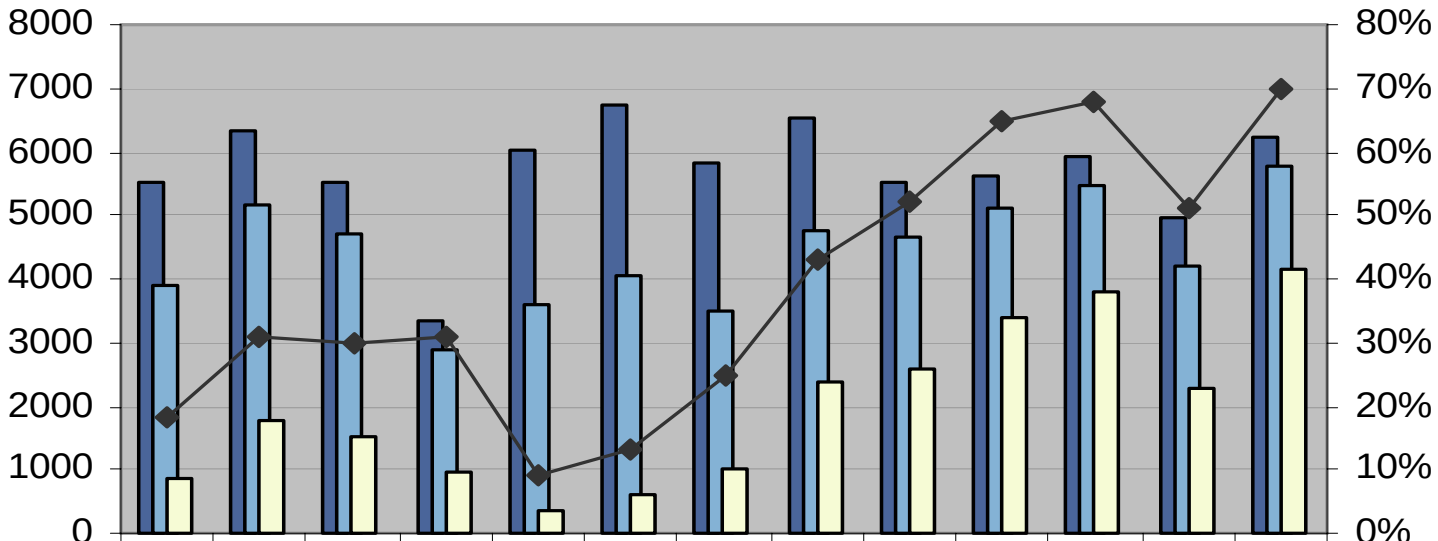


	06-Jun	13-Jun	20-Jun	27-Jun	04-Jul	11-Jul	18-Jul	25-Jul	01-Aug	08-Aug	15-Aug	22-Aug	29-Aug	05-Sep	12-Sep	19-Sep	26-Sep
over SL	32	5	4	0	7	6	4	4	1	2	22	34	16	32	24	21	43
within SL	158	131	133	136	113	142	151	148	150	158	159	158	147	154	165	199	239

Although the post which is out of service level has increased this month, the amount of post received and dealt with has also increased during September. Combined with staff holidays we have had 5 new advisers start in September and 8 working days greatly disturbed by staff meetings, pay/pensions/Ouseley Report etc.

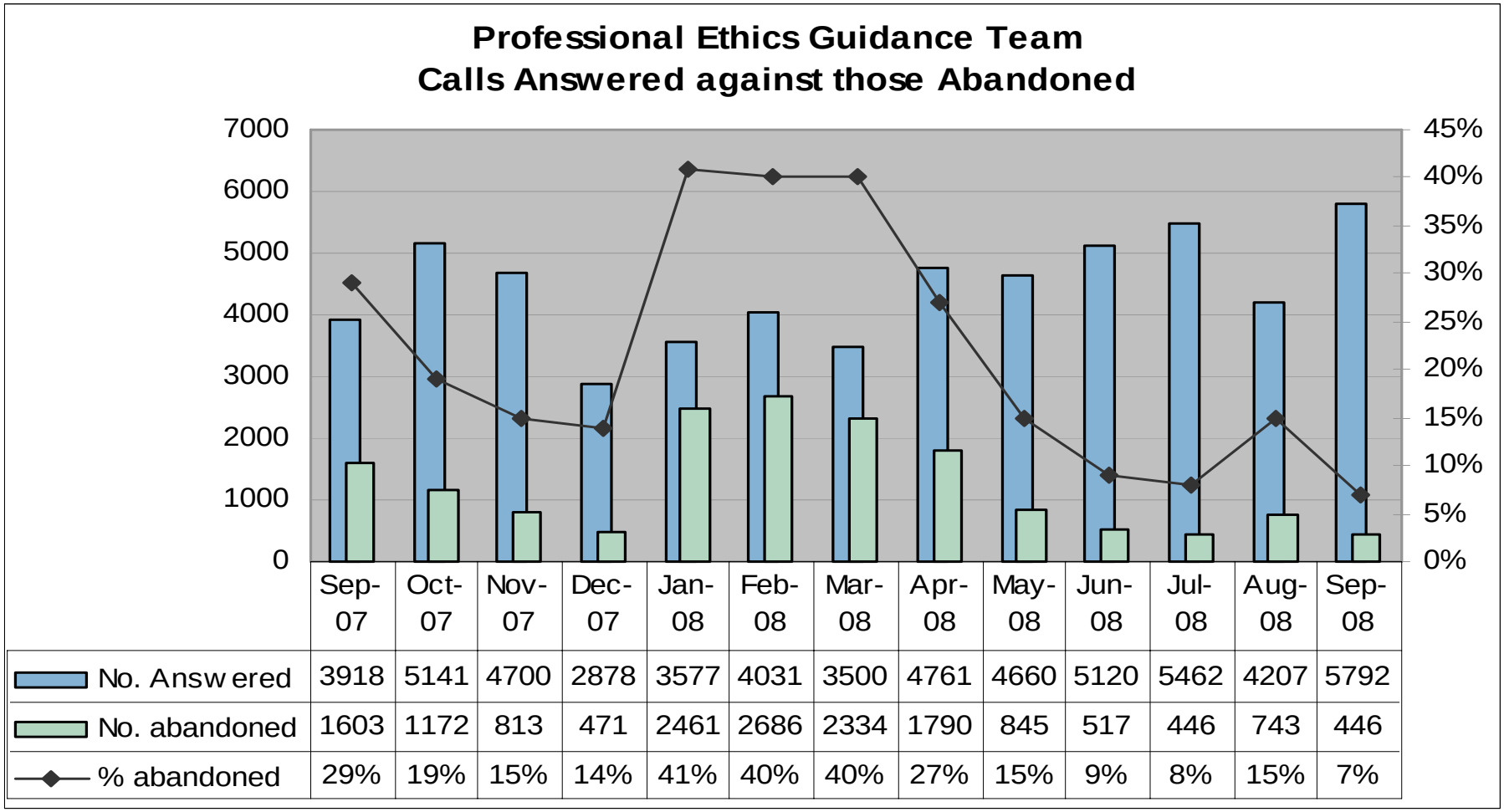
SRA BOARD
16 October 2008

Professional Ethics Guidance Team
Calls to the Ethics Guidance Helpline



	Sep-07	Oct-07	Nov-07	Dec-07	Jan-08	Feb-08	Mar-08	Apr-08	May-08	Jun-08	Jul-08	Aug-08	Sep-08
No. Received	5534	6323	5513	3349	6038	6717	5834	6551	5505	5637	5908	4950	6238
No. Answered	3918	5141	4700	2878	3577	4031	3500	4761	4660	5120	5462	4207	5792
Calls to Target	844	1792	1516	981	352	583	1036	2380	2559	3399	3782	2297	4141
% SL	18%	31%	30%	31%	9%	13%	25%	43%	52%	65%	68%	51%	70%

SRA BOARD
16 October 2008



	Sep-07	Oct-07	Nov-07	Dec-07	Jan-08	Feb-08	Mar-08	Apr-08	May-08	Jun-08	Jul-08	Aug-08	Sep-08
No. Answered	3918	5141	4700	2878	3577	4031	3500	4761	4660	5120	5462	4207	5792
No. abandoned	1603	1172	813	471	2461	2686	2334	1790	845	517	446	743	446
% abandoned	29%	19%	15%	14%	41%	40%	40%	27%	15%	9%	8%	15%	7%

Calls have started to increase in September – this will continue until mid/end November

SRA BOARD
16 October 2008

Week ending	Weeks	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39
1 - 04 Jan	OPEN	293	305	307	322	327	269	270	247	265	301	271	203	219	162	115	146	142	159	170	144	180	167	158	131	133	136	113	142	151	148	150	158	159	158	147	154	165	199	
2 - 11 Jan	INSIDE SL	196	214	207	260	286	267	252	217	254	293	239	184	214	162	115	146	142	159	166	137	162	146	126	126	129	136	106	136	147	144	149	156	137	124	131	122	141	179	
3 - 18 Jan	O/S SL 20	97	91	100	62	41	2	18	30	11	8																													
4 - 25 Jan	O/S SL 10								49	17	80	32	19	5	0	0	0	0	0	4	7	18	21	32	5	4	0	7	6	4	4	1	2	22	34	16	32	24	21	
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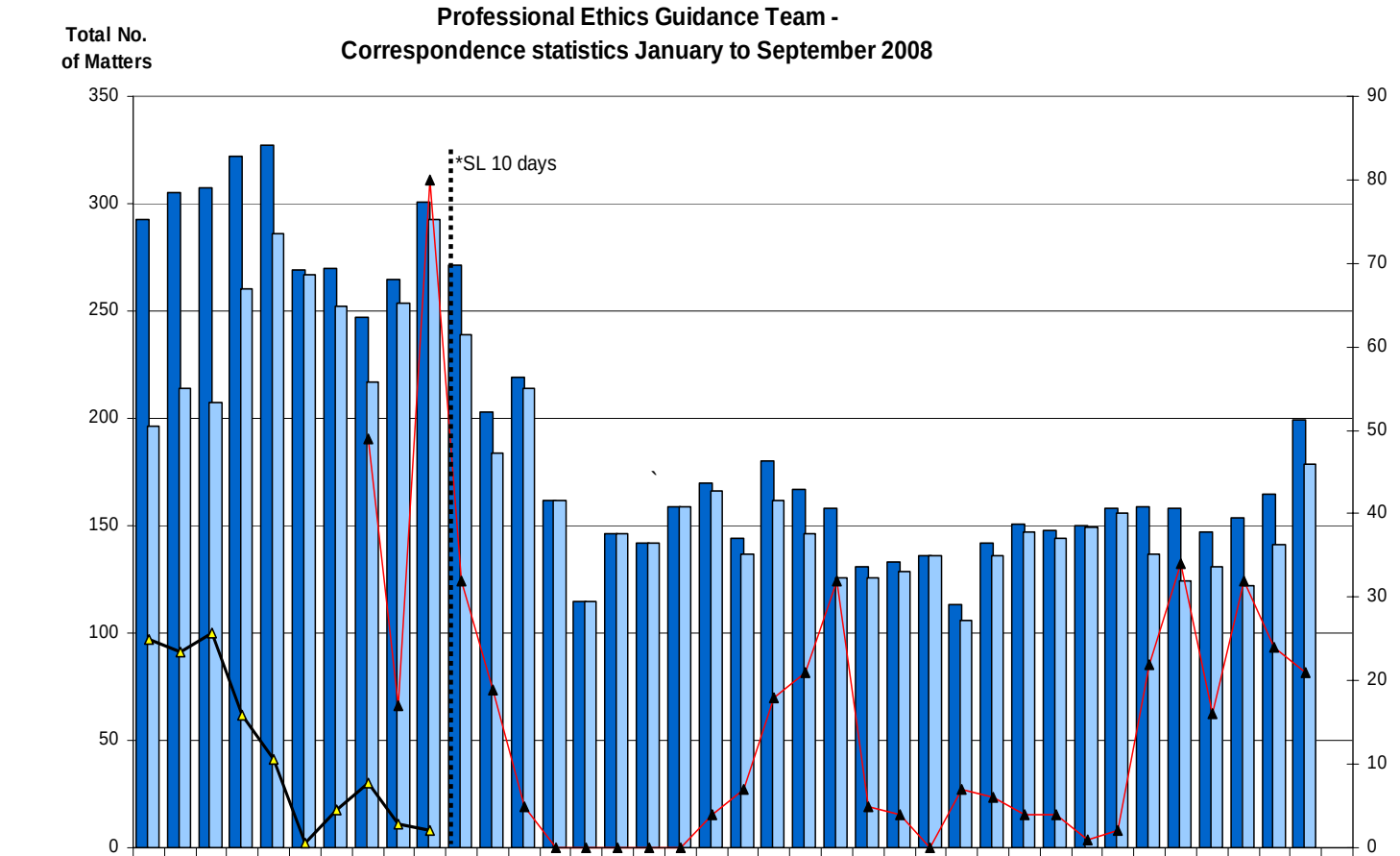
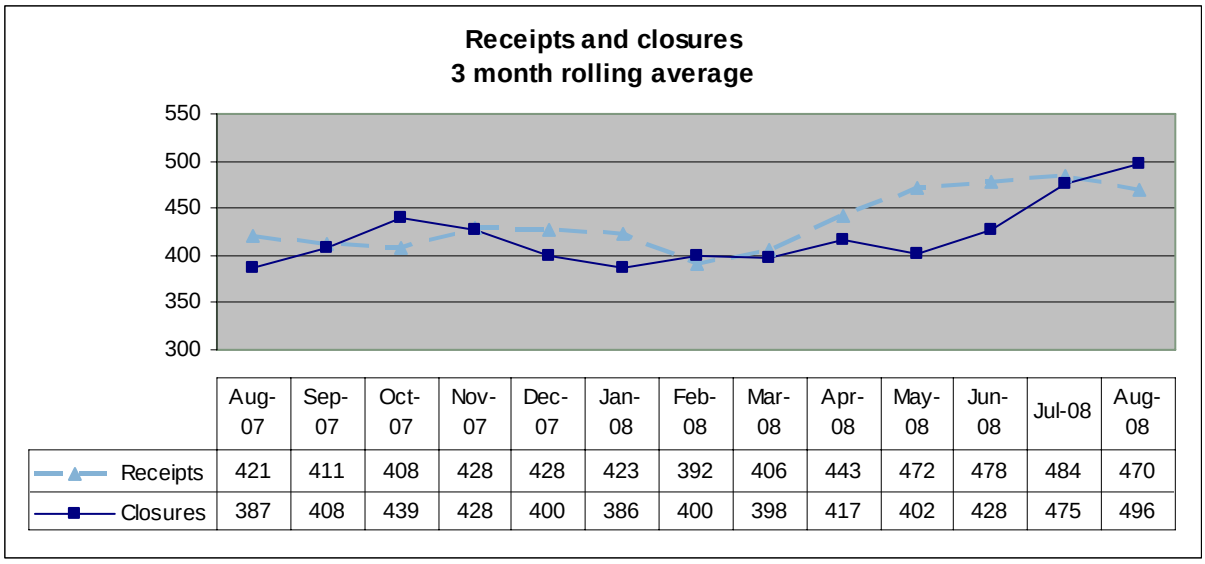


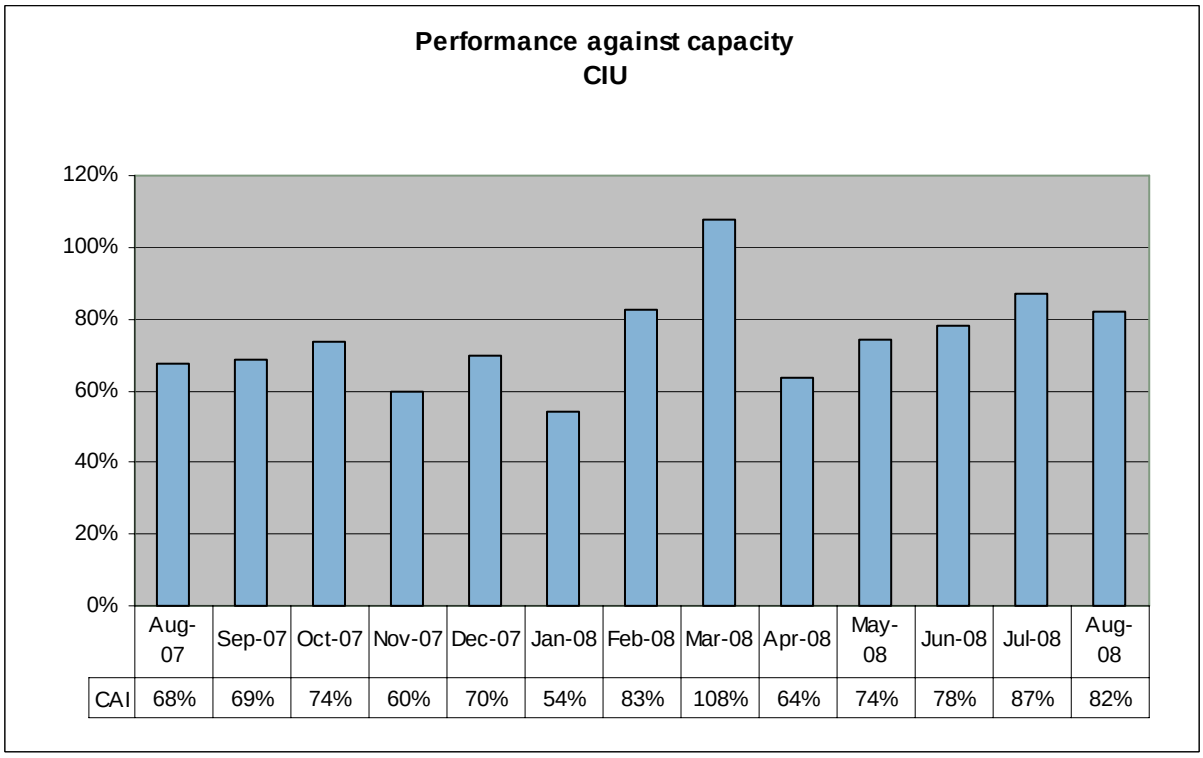
4. Consumer protection, enforcement and discipline

4.1 Regulation Response (RR)

The flow of new work into Conduct Investigations slowed down markedly during August but remains, on a rolling three-month basis, some 15% higher than a year ago. An LCS audit of the referrals processes to the SRA has concluded that the sharply higher volume of referrals is likely to persist. However thanks to increased outsourcing and better than planned caseworker efficiencies, the unit is now keeping on top of the increased workload.



	Aug-07	Sep-07	Oct-07	Nov-07	Dec-07	Jan-08	Feb-08	Mar-08	Apr-08	May-08	Jun-08	Jul-08	Aug-08
Receipts	421	411	408	428	428	423	392	406	443	472	478	484	470
Closures	387	408	439	428	400	386	400	398	417	402	428	475	496



	Aug-07	Sep-07	Oct-07	Nov-07	Dec-07	Jan-08	Feb-08	Mar-08	Apr-08	May-08	Jun-08	Jul-08	Aug-08
CAI	68%	69%	74%	60%	70%	54%	83%	108%	64%	74%	78%	87%	82%

Regulatory Investigations also maintained a high level of efficiency and both caseworking units are performing well against their planned quality and timeliness standards.

4.2 Inspection & Investigation

In spite of some slippage in the timeliness of allocation of referrals and commencement of visits in the Directorate in August, it remained only slight below target to complete 25% more visits in 2008 compared with 2007; thanks to a very strong performance by PSU.

A review of timeliness KPI's and reporting is under way to improve clarity and reporting.

Efficiency in PSU has recovered strongly this year to a satisfactory level. FI's efficiency had a poor month but is recovering from the very low levels reached at the turn of the year.

A full review of operating measure in the CIAO caseworking unit is also being undertaken to enable performance to be properly assessed and realistic targets set.

An initiative to improve the focus of evidence-gathering has been satisfactorily concluded. The linked project to pilot streamlining of report-writing and closer teamworking across CIAO, FI and Legal has now been started.

A clear statement of our approach to I&I visits is being drafted in line with the overall Board strategy and to clarify the developing initiatives on large and City firm supervision.

Other important projects on the horizon include ensuring adequate and consistent Quality Assurance; and completing the processes associated with the final rollout of the remote working technology.

4.3 Client Protection

Indemnity insurance

It is evident that the insurance market has hardened as a result of the economic down turn and uncertainty in financial markets. Indications to date are that there has been particular impact upon smaller firms, especially those involved in conveyancing.

The Law Society Gazette has recently published an article raising the profile of small firm closures and it is likely that this will be the outcome for some of the smaller conveyancing practices faced with both reduced business income and a significant increase in insurance premiums. The Gazette article also mentioned a call for staggered renewal dates. We have looked at this before and concluded that a single renewal date is more likely to create a competitive market with most insurers and brokers gear up for the renewal. Moving to staggered renewal date carries with it the real risk of increasing rather than reducing premiums in most circumstances.

To date the ARP has received 261 requests for application forms and 155 completed applications. Many of these are precautionary applications whilst firms continue to seek cover back dated to the 1 October. In 2007 the ARP had received 27 requests for applications and 8 completed applications by early November. The figure will change on a daily basis as some firms will be able to secure cover and will come out of the ARP and others will emerge that will fall into the ARP. There have been more than 100 firms in the ARP in the past but numbers have quickly reduced as they have found cover in the wider market. The final picture will not be known until the end of November.

4.4 Equality and Diversity Strategy

The SRA's first Equality and Diversity (E&D) Strategy and Strategic Action Plan were agreed at the last board meeting on 4 September 2008. We are using different approaches to encourage as much feedback as possible, which include:

- Using Surveylab, an independent research company, to host the survey to encourage staff to respond confidentially
- The external and full public consultation was launched on 26 September and is available on our website
- Online consultation
- Direct engagement with key equality target groups
- Letters to key external stakeholders.

The strategy has also been sent to the Equality and Human Rights Commission and we have met them to discuss the strategy and Lord Ouseley's report. We have also met officials from the Ministry of Justice and Chris Kenny, of the Legal Services Board, to discuss the strategy and our response to Lord Ouseley's report.

Meetings on the E&D strategy have been held with:

1. Black Solicitors Network 25 September
2. Society of Asian Lawyers 25 September
3. Group for Solicitors with Disabilities 3 October
4. Association of Muslim Lawyers 10 October

Further meetings are being arranged with:

- British Nigeria Law Forum
- Society of Black Lawyers

Policy (Inclusion) Unit - General

- Staff briefings with Lord Herman Ouseley on the report, its findings and the way forward
- Antony Townsend now chairs the Diversity Working Group (DWG)
- The Policy (Inclusion) Unit has provided Equality and Diversity Training for the following:

- SRA Induction (29 September 2008)
- SRA Induction for new Adjudication Panel members (28 August 2008 and 16 September 2008)

- Interim Complaints Protocol has been improved and implemented and Investigation Officers in each directorate have been identified. Training for these Investigation Officers took place on 13 October 2008

- The Policy (Inclusion) Unit has advised on a number of discrimination complaints
- The Policy (Inclusion) Unit has advised on the Equality Impact Assessment (EIA) for the Decision Making Project. EIA Training is scheduled for CIAO, Regulation Response and Inspection and Investigation on 4th November 2008.

Consumer Engagement
The first meeting of the professional regulators forum, organised by the SRA, is due to take place on 15 October 2008. Planned themes for discussion are:

V) Common challenges in consumer engagement for professional regulators
VI) What works and what doesn't work
VII) Engaging minority consumers.

Attendees at the meeting are:
- General Dental Council
- Bar Standards Board
- General Medical Council
- Royal Institute of Chartered Surveyors
- Human Fertilisation and Embryology Authority.

The scoping work on research has begun.

4.5 Other

Decision-making

This Project was successfully audited by the Law Society's Internal Audit Team during September 2008.

Achievements to date, on time and within budget

In the first Quarter of 2008 the project delivered:

- Guidelines for Decision Making and now published on the website
- An audit pilot (Regulatory Investigations – s12)
- A verification of Audit methodology
- A process for publishing regulatory decisions on the website; and publication commenced.

In the second Quarter of 2008 the project delivered:

- A completed audit for the Information Directorate
- A completed audit for the rest of the Regulation Unit
- Completion of the Assuring Fitness for Purpose criteria
- Development of the Criteria Working Group established
- An Adjudicators recruitment process, with the involvement of an OCPA independent assessor

In the third Quarter of 2008 the project delivered:

- The start of the audits for Inspection and Investigation; and Education

- Full E&D Impact Assessment planned
- Procedures for monitoring & management review
- The completion of Adjudicators' recruitment (appointments made on 24/7/08; and working party set up to take forward identified areas for improvement)
- 25% of the detailed decision-making criteria now ready for consultation

Looking Forward

In the Fourth Quarter of 2008:

- Client Protection Directorate audit will be completed
- Standards Directorate audit will be completed
- Legal Directorate audit will be completed
- All criteria will be developed, and consultation underway & process for ERB criteria development delivered
- Modernisation of delegations will be underway
- A Training Needs Analysis for decision-makers and Training Plan will be delivered
- 10 Principles will be updated (Ouseley Report)

In the first Quarter of 2009:

- Implementation complete; & phase two initiation underway
- Audit Action List review and follow-up underway
- Training for Decision Makers to be delivered
- Monitoring & management review to be completed
- Communications Review to be completed
- Adjudication arrangements between LCS and SRA to be rationalised.

Phase two of the plan is being developed in recognition of the fact that, in addition to formal delegated decisions, there is widespread exercise of discretion at early stages of our processes which also require criteria and audit, as highlighted in the Ouseley Report.

Governance

Discussions with the Law Society and the Legal Services Board on the appropriate arrangements for the governance of our regulatory functions continue.

Author: **Antony Townsend**
Date: **7 October 2008**

The Law Society

COUNCIL
12 November 2008 **Item 14**

Classification – Public

Purpose – For noting

CHARTER AMENDMENTS: POSTAL BALLOT RESULTS

The Issue

This paper follows up the Council's debate on membership structures in October by reporting to the Council the outcome of the recent postal ballot on proposed Charter amendments.

Policy Position

As a result of the ballot, the proposed amendments cannot proceed to the Privy Council, and the current definitions of Law Society membership and of associate and affiliate status therefore remain unchanged.

Financial and Resource implications

None directly from this paper.

Equality and Diversity implications

None.

Consultation

This report is about the outcome of consultation with the profession.

Director	Frances Low, General Counsel
Author	Mark Paulson
Date of report	30 October 2008

1. At the SGM in July 2008, the second resolution on proposed Charter amendments was referred to a postal ballot of the profession. Ballot papers were sent out on 3 October, and the ballot closed on 24 October. Electoral Reform Services subsequently reported the outcome as follows:

Resolution 2 Confirmation of Charter Amendments

Number of eligible voters:		138,131
Votes cast by post: Votes cast online:	13,728 3,956	
Total number of votes cast:		17,684
Turnout:		12.8%
Number of votes found to be invalid:		116
Total number of valid votes to be counted:		17,568

Result

Number voting for the amendments	7,123	(40.5% of the valid vote)
Number voting against the amendments	10,445	(59.5% of the valid vote)
Total	17,568	(100% of the valid vote)

2. The first resolution on Charter amendments consequential upon the Legal Services Act was not referred to a postal ballot; those Charter amendments were approved by the Queen in Privy Council on 9 October.

The Law Society

COUNCIL **Item 15**
12 November 2008

Classification – Public

Purpose – For Decision

THE COMMITTEE STRUCTURE

The Issues

Following on from the Council meeting in October 2008, the LAPB presents a range of options for changes to the committee structure to enable existing resources to be focussed on the remaining committees. The Board feel there is a case for a Constitution and Human Rights Committee to be created. However, there are a number of options about the funding and the role of other committees which will need to be considered and decided.

Decision
Council is asked to vote on the following options:

Vote 1-E-law

Does Council wish to convert the E-law committee into a reference group rather than a standing committee? The resources saved will be used to provide more support to the existing committees.

Vote 2-ADR

Does Council wish to transfer responsibilities for ADR to the Civil Litigation committee and create an ADR seat on the Family Law Committee? The resources saved will be used to provide more support to the existing committees.

Vote 3-Increased Spend/Public Constitutional and Human Rights Committee

Does Council wish to allocate an extra £95,000 (£120,000 if options 1 and 2 are rejected) over existing budget to enable additional support to existing committees and to create a Constitutional and Human Rights Committee? These monies coming either from increases in the PC fee or from savings elsewhere.

Vote 4 No increased spend

Option 1 No change other than that decided in votes 1 and 2.

Option 2 A new Constitutional and Human Rights Committee be formed by reducing the resources and meetings of existing committees.

Option 3 A new Public Constitutional and Human Rights Committee be formed by abolishing or putting into abeyance up to two existing committees.

Vote 5 Change of name for Civil Litigation Committee

Is Council content for the Civil Litigation Committee to be renamed the Civil Justice Committee?

Policy Position

Not applicable.

Financial and Resourcing implications

These are considered in the paper. The proposals will enable the Constitutional Affairs section to administer the remaining committees more effectively and will enable policy advisers to provide more effective support to the remaining committees.

Equality and Diversity implications

The abolition of some committees may mean that sections of the profession or its clients may lack a voice.

Consultation

The committees affected have been written to and their comments will be provided to Council in time for the meeting.

Director	Mark Stobbs, Director of Legal Policy
Author	Mark Stobbs
Date of report	27 October 2008

1. As agreed by Council at its last meeting, this paper offers options on the future of the committee structure for Council's consideration. It will be recalled that Council asked for options to be set out for spending more money on committees but authorised the LAPB to look at all options for the future.

New Committee

2. The LAPB has identified a gap in the Society's ability to deal with constitutional and general public law and human rights issues. These issues are likely to become important in the coming years. They will need input from the profession and significant advice in dealing with the policy. The LAPB believes that, if more money were to be spent on policy work, then it should be in this area. Unless resources were freed up elsewhere, through the abolition of other committees, the costs of this would be in the region of £120,000, made up of a new policy assistant, a new member of staff in Constitutional Affairs (who would support other committees) and some additional budget to support research, consultancy or other work it wished to undertake. This would have the additional advantage that some further support could be provided to the other public law-type committees. If Council supported this proposal, full terms of reference could be agreed later. The Board proposes that such a Constitution and Human Rights Committee should have a life span of 3 years, at which point its role should be reviewed.

E-Law Committee

3. The E-law committee provides enormously important assistance to a wide range of Committees but it does relatively little work on its own account in this area of policy. The Board was anxious to retain the Committee's expertise but felt that a full committee was not necessary for this. It proposed that the E-law committee become the E-law Reference Group, meeting a couple of times a year and with its members available to provide advice on individual projects as appropriate.

4. Assuming that reference group members would still be able to claim the annual expense allowance, and that the group will meet twice instead of 4-5 times a year, this is likely to save a small amount of meeting costs and would free up some committee administration time. The total would be around £5,000.

ADR Committee

5. The Board considered the future of the ADR Committee. Notwithstanding that the Committee had provided some ambitious proposals for work on ADR which would take up a substantial amount of resource, the Board concluded that it was inappropriate to continue to have an ADR committee for the following reasons:

    - There is a good deal of overlap with other committees and the work, if it is a priority, could and ought to be carried out by the Civil Litigation and Family Law Committees respectively. Both of these are essentially about dispute resolution and are best placed to look at the priority that should be given to this work;
    - ADR has become mainstream – it is part of the CPR and is relatively well known to solicitors;
    - A major campaign on ADR is unlikely to be a priority for the Society over the coming years;

- Work on promoting solicitors in ADR could be done by the Dispute Resolution section.

6. Against this it could be said that:

   - There is still work that can be specifically on ADR and there is a danger that it might get lost in the other work of the committees;
   - The promotional work ought to be spearheaded by a committee of the Law Society rather than a section.

7. On balance, the Board considered that abolition of this committee and the addition of specialist ADR seats on the Family and Civil Litigation committees was the appropriate way forward, irrespective of resource considerations.

8. This is likely to save around £7000 in direct meeting costs and £7500 on the annual expense allowance; and would free up about 36 days of committee administrator time (at 6 days each for 6 meetings) = about £6000 and a (small) element of a policy adviser. This totals about £20,000.

9. This means if all of the above options were accepted that the net increase in the annual budget would be £95,000.

No Additional Resources

10. Council has previously agreed that the PC Fee for the period November 2008 to October 2009 will be £995 (based on all budgets for TLS, SRA and LCS being flat and absorbing annual pay inflation) but the increase from £950 to £995 being directed to meet the cost of the Pension deficit.

11. At this stage in the budgeting process indicative group budgets are in excess of a PC Fee set above £1000.

12. Additional resources can only be released by cutting spending in other areas or financing a budget (that requires a PC Fee greater than £995) by releasing funds from reserves.

13. Our policy to date has been to build the strength of our balance sheet to meet medium term Capital costs.

14. If no additional resources are made available, then Council will need to consider the following options:

    (i) Creation of the new Constitution and Human Rights Committee to be funded by a reduction of resources available to other committees or abolition of some committees;
    (ii) No change to existing budget and committees;
    (iii) Abolition of one committee to increase the support available to the remainder.

15. The existing resources in the Constitutional Affairs and Legal Policy sections could not support a new committee as substantial additional spending is planned for a major project on Civil Procedures and to continue the focus on Conveyancing reform. In any event the Constitutional Affairs team is unable to support the existing committees adequately, never mind another.

16. The following options can be considered as a means of either funding a new committee or increasing support to others:

    - Abolition of one or, more likely, two committees;
    - A minor reduction in the support and number of face to face meetings for other committees.

17. Given the constraints in the Constitutional Affairs section, it is clear that, in addition to the changes proposed for ADR and E-Law, two committees would probably also need to go to enable the new committee to be supported properly from that section. If committees were to be abolished for the new committee, it would be consistent with the proposals set out above if this were to be one of the "public law"- type committees, probably Housing and Mental Health. This is because:

    - The expertise involved for a policy adviser is similar and it is practically unlikely that other advisers would have the skills and knowledge to transfer readily to this;
    - The committee could keep an eye on issues affecting those committees and take up any individual campaigns if they had a high priority;
    - The Access to Justice Committee also has a remit in these areas which would continue.

18. The advantage of losing a single committee is that other committees' work is likely to be unaffected and, as has been suggested, it would be possible for the new committee to keep some eye on issues from the abolished one.

19. The disadvantage is that the Law Society effectively gives up involvement in a socially important area of law and limits the support it is providing to practitioners.

<u>Reducing support to committees</u>

20. Under this approach, the LAPB would take a decision based on the priorities of the Society and the resources available as to how individual committees' work should be reduced to provide support for the new committee. Given the resources available and the need to ensure that there is appropriate expertise to support the committees, it is likely that the support will need to come from the Employment, Immigration, Housing and Mental Health and Disability committees, though others could be affected.

21. It would also be possible to divert staff from other activities, such as developing policy in support of particular sectors of the profession (eg the City, employed and other sections). The Board's view is that this would be undesirable because the Society needs to focus more on these key representational issues. Moreover, this would not address the difficulties in the Constitutional Affairs team.

22. The advantages of this option are that the Law Society retains committee involvement in the current areas of work. The disadvantage is that the resources may be spread so thinly that the effectiveness of committees is badly reduced.

<u>No Change</u>

23. It would be possible not to have the new committee and to carry on with the existing arrangements. This may mean that some committees still feel under-

resourced (the abolition of the ADR Committee and change of status of the E-law committee may assist the Constitutional Affairs team slightly but the other difficulties remain). In addition, the policy advisers involved may have less time to do the horizon scanning and other work that committees find valuable.

Further reductions

24. It might assist advisers to provide more support and more horizon-scanning for committees if there were fewer committees: this would enable remaining committees to have a greater share of the resource. Advantages and disadvantages are similar to those described above.

Possible candidates for abolition

25. In addition to the ADR committee, the Board identified the following as possible candidates for abolition or alternatively for putting into abeyance for a year or so.

- Housing – this committee currently appears to have relatively little that is of high profile significance on its agenda. The Board felt that the other issues it would be dealing with were ones which were discretionary and could be dropped – there would, in any case, be continuing support from the legal aid team on those issues and, if the new committee were formed, it could keep issues under review. £4000 in direct meeting costs; about £7500 in the annual expense allowance; and would free up about 36 days of committee administrator time (at 6 days each for 6 meetings), plus policy adviser time. This would total around £35,000.
- Mental Health and Disability – again, this committee seemed to have less high profile work on its agenda than others and to take up significant resource. Again, if the new committee were formed it could keep issues under review. £3000 in direct meeting costs, about £8000 in the annual expense allowance, about 36 days in committee administrator time (£6000) and an amount of policy adviser time. The total would be around £35,000.
- Planning and Environment – this committee has a full work plan and does a substantial amount of high profile work. The quality of its work is not questioned, but the Board felt that the subject matter was relevant only to a relatively small number of practitioners and was, therefore, of relatively low priority. The issue could be monitored by the Conveyancing and Land Law Committee. This would save around £13000 in meeting costs; about £12 500 in the annual expense allowance; and about 36 days of committee administrator time (=£6000). With some policy adviser saving, this would save around £40,000.

26. Abolition of these committees would lose the expertise forever and they would be unlikely to be replaced. Putting them into abeyance for a year, with a review afterwards would at least keep them in the Society's mind, though it must be recognised that many members would be unlikely to be willing to carry on as members if this were to take place, so it might have the same effect as abolition.

27. A table of possible options is attached.

Other issues

28. In addition, the Board felt that the Civil Litigation Committee could be renamed the Civil Justice Committee to reflect the breadth of its workload and to take account of the ADR responsibilities that it will be taking on.

Questions for Council

29. Council is asked to vote on the following options:

Vote 1-E-law

Does Council wish to convert the E-law committee into a reference group rather than a standing committee? The resources saved will be used to provide more support to the existing committees.

Vote 2-ADR

Does Council wish to transfer responsibilities for ADR to the Civil Litigation committee and create an ADR seat on the Family Law Committee? The resources saved will be used to provide more support to the existing committees.

Vote 3-Increased Spend/Public Constitutional and Human Rights Committee

Does Council wish to allocate an extra £95,000 (£120,000 if options 1 and 2 are rejected) over existing budget to enable additional support to existing committees and to create a Constitutional and Human Rights Committee? These monies coming either from increases in the PC fee or from savings elsewhere.

Vote 4 No increased spend

Option 1 No change other than that decided in votes 1 and 2

Option 2 A new Constitutional and Human Rights committee be formed by reducing the resources and meetings of existing committees

Option 3 A new Public Constitutional and Human Rights committee be formed by abolishing or putting into abeyance up to two existing committees.

Vote 5 Change of name for Civil Litigation Committee

Is Council content for the Civil Litigation Committee to be renamed the Civil Justice Committee?

TABLE OF OPTIONS

Option	Cost/Saving	Effect	Advantages	Disadvantages
Increase PC fee to enable £120,000 extra spend.	+ c. £120k	Would provide a new committee and additional support for others	Would achieve Council's desire to spend more on policy work.	Would result in an increase in PC fee at a difficult time for the profession.
Abolish ADR Committee	- c. £20k	Would provide further space for the support of other committees.	Would enable Civil Litigation and Family Law Committees to assess priority of this work in their areas	Would mean Society had no dedicated resource for ADR.
E-Law Committee becomes a Reference Group	- c. £5k	Would provide further support for other committees	Would be unlikely to affect the support given by the Committee.	Might be thought to signal a diminution in the Society's interest in this area
In addition to ADR and E-law proposals, abolish one or two committees	- £35k - £75k	In addition to the other savings, would provide the space for the Constitution committee.	Would enable a new committee to establish.	Would lose the Society's expertise in this area?
In addition to ADR and E-law proposals, reduce support to committees	Would need to be sufficient to allow appropriate support for the new committee.	Would significantly reduce meetings and other support available to committees but would enable Constitution Committee to be established	Would enable establishment of new committee and avoid abolition of others	Would be likely to significantly reduce effectiveness of committees.

The Law Society

COUNCIL
12 November 2008 **Item 17**

Classification – Public

Purpose – For decision

PUBLICISING GENERAL MEETINGS

The Issues

This paper responds to Council members' concerns about the publicity given to general meetings by setting out the steps that the Chief Executive has instructed will be taken to publicise the 2009 AGM. The same steps will be taken for any SGM (none is planned).

Decision

The Council is invited to endorse the proposed steps to be taken to publicise the 2009 AGM (and any SGM).

Policy Position

The Bye-Laws set out the minimum requirements for publicising general meetings (Annex). It is clear that we need to do much more than simply complying with these minimum requirements.

Financial and Resourcing implications

The proposed steps do not incur significant costs.

Equality and Diversity implications

None.

Consultation

The Management Board endorsed these steps on 29 October.

Director: Frances Low, General Counsel
Author: Mark Paulson
Date of report: 29 October 2008

1. The 2009 AGM will be on Thursday 23 July at 14.00. The following steps will be taken to publicise the meeting and the agenda (the same steps would be taken for any SGM).

   Council diary

   The meeting date and time are in the diary, which has been sent to Council members and local law society officers.

   Website

   The preliminary notice of the AGM will be published prominently on the website home page at least 70 clear days before the meeting. The final notice will be published prominently on the website home page at least 28 clear days before the meeting. The notice will remain on the home page up until the meeting date. The AGM will also be listed in the meetings and events part of the website with a link to the notices.

   Special interest group websites will also carry the preliminary notice and the final notice.

   Professional Update

   The preliminary notice of the AGM will be published prominently in PU at least 70 clear days before the meeting. The final notice will be published prominently in PU at least 28 clear days before the meeting. PU will carry the final notice prominently up until the meeting date.

   The Gazette

   The Gazette will devote a half page to the preliminary notice and again to the final notice as close to the 70/28 day limits as publication dates permit, setting out the full text of these notices.

   Local law societies

   An email will be sent to local law societies with the preliminary notice and with the final notice, asking them to publicise the AGM locally.

2. It is not proposed to write to all Law Society members. This would cost around £60 000, money which could be used to provide member services. Whatever steps we take to publicise the AGM, attendance is likely to remain relatively low, at less than 200 members, and to be mainly London-based members. There has never been a golden-age of AGM attendance, and we should be realistic and proportionate in the steps that we take to publicise future meetings.

Annex

Bye-law requirements for publicising general meetings

Annual General Meeting

Preliminary notice

13 Preliminary notice of the annual general meeting shall be posted in the Society's Hall and published at least 70 clear days before the date of the meeting.

[14 – deleted]

Notice of motion

15(1) Thirty or more members, or the president and secretary of a local law society authorised to do so, may give written notice of an appropriate motion to be moved at the annual general meeting. The notice must be received by the Chief Executive at least 42 clear days before the date of the meeting.

(2) The notice may be accompanied by a statement of not more than 1000 words relating to the motion.

Notice of the annual general meeting

16(1) Notice of the annual general meeting shall be published at least 28 clear days before the date of the meeting.

(2) The notice shall state any appropriate motion to be moved at the meeting and the names of the members who have given notice of it. The notice shall request members of the Society to inform the Chairman in advance of any amendment which they wish to move to the motion but shall also state that failure to do so will not prevent the amendment being moved.

(3) Any statement received under Bye-Law 15(2) shall be published at the same time as the notice of the meeting.

(4) The Council may publish at the same time as the notice of the meeting a statement of not more than 1000 words on any motion.

(5) Accidental omission to give notice to a member shall not invalidate the meeting.

(6) The Chief Executive shall remove from the text of any appropriate motion or any statement received under Bye-Law 15(2) any material the publication of which might, in his opinion, be unlawful. If substantially the whole motion consists of such material it shall not be included in the notice of the meeting.

Special General Meeting

Notice of special general meeting

21(1) Notice of every special general meeting, stating its purpose, including any motion to be moved, and stating on whose requisition (if any) it is called, shall be

posted in the Society's Hall and published at least 28 clear days before the date of the meeting. The notice shall request members to inform the Chairman in advance of any amendment which they wish to move to the motion but shall also state that failure to do so will not prevent the amendment from being moved.

(2) Any statement received under Bye-Law 19(2) shall be published at the same time as the notice of the meeting.

(3) The Council may publish at the same time as the notice of the meeting a statement of not more than 1000 words on the motion.

(4) Accidental omission to give notice to a member shall not invalidate the meeting.

(5) The Chief Executive shall remove from the text of any motion or any statement received under Bye-Law 19(2) any material the publication of which might, in his opinion, be unlawful. If substantially the whole motion consists of such material it shall not be included in the notice of the meeting

Service of notices

Service of documents

94 Any notice sent to a member by post, addressed to him by his name and registered address, shall be deemed to have been properly given on the day on which it was posted. Any such notice or document may be sent through a document exchange service, and shall be deemed to have been properly given on the day when it is left at the relevant document exchange office. Any notice or other document required by these Bye-Laws to be published may be published on the Society's website, sent in or with the Gazette or published by such other means as the Council may direct.

Use of electronic communications

94A Subject to Bye-Law 59A, any reference in these Bye-Laws to any form of document or to any procedure to be carried out in writing shall be taken to include a document in electronic form, and any such reference to any procedure to be carried out in writing shall be taken to include a procedure carried out wholly or partly using one or more documents in electronic form or using electronic communications.

The Law Society

COUNCIL
12 November 2008 **Item 18**

Classification – Public

Purpose – For discussion

COUNCIL WORKPLAN 2008 -2009

The Issues

This paper presents the current workplan. The Council meeting is an opportunity to make changes to the issues that are included in the workplan or their scheduling.

Policy Position

Not applicable.

Financial and Resource implications

None arising directly from this paper. The substantive debates may well have significant financial and resourcing implications.

Equality and Diversity implications

None arising directly from this paper. The substantive debates may well have significant equality and diversity implications.

Consultation

The Council reviews the workplan at each meeting.

Director	Frances Low, General Counsel
Author	Flick Heron
Date of report	30 October 2008

Meeting	Matters for decision	Reports
8 October 2008	Law Society membership structure (Membership Board) Council size and composition (CMC) Committee structures (LAPB)	CEO and Board reports (to be given individually) SRA/LCS Board reports
12 November 2008	Draft 2009 budget and business plan (Management Board) Committee structures-follow up to October (LAPB). Council size and composition-follow up to October (CMC) Law Society membership – postal ballot results (Membership Board) Board workplans for 2009 and year-end reports on 2008 (all Boards) Legal aid: the impact of the settlement (LAPB) Contingency funding (LAPB) The Council's E&D strategy (E&D Committee)	CEO and Board reports SRA/LCS Board reports
17 December 2008	Final 2009 budget and business plan (Management Board) Communications: the website and communications with LLSs and constituents (Membership Board) Oversight of SRA (Management Board) The QLTR (RAB) Indemnity insurance renewals (RAB) Accreditation schemes (RAB) Higher rights of audience (RAB)	CEO and Board reports SRA/LCS Board reports

28 January 2009	SRA Board appointments (Management Board)	CEO and Board reports SRA/LCS Board reports TLS committee reports: the social welfare committees
11 March 2009	Conveyancing: the Society's strategy and new developments (LAPB). Judicial appointments (LAPB)	CEO and Board reports SRA/LCS Board reports Annual reports of Council committees for 2008 TLS committee reports: conveyancing committees
29 April 2009	Approval of the annual accounts for 2008 (Management Board) Compensation Fund contributions (Management Board) Following the LSB's formal establishment, settling responses to any LSB consultations on (a) the rules for separating regulation and representation; (b) the principles for the apportionment of the levy; (c) LSB policy statements (Management Board/RAB)	CEO and Board reports SRA/LCS Board reports TLS committee reports: City committees
10 June 2009	Deadline for Bye-Law changes to go to the AGM (including Council size and composition)	CEO and Board reports SRA/LCS Board reports
22-23 July 2009	PC fee–setting (Management Board) Review of Board structure/working (Management Board/all)	CEO and Board reports SRA/LCS Board reports Mid-year report on budget

The Law Society

COUNCIL
12 November 2008 **Item 19**

Classification –Public

Purpose – For noting

REPORT OF THE CHIEF EXECUTIVE OF THE LAW SOCIETY

The Issues

The regular report by the Chief Executive

Decision

For noting.

Remit

The Chief Executive is responsible for the overall direction of the Law Society.

Policy Position

N/A

Financial and Resourcing implications

N/A

Equality and Diversity implications

N/A

Consultation

This report has been prepared for Council.

Director: **Desmond Hudson**
Author: **Stephen Ward**
Date of report: **29 October 2008**

Membership Services

Library

- A new Model Copyright Licence for law firms has been finalised in negotiations between the Copyright Licensing Agency (CLA) and the Law Society Librarian, with support from the City of London Law Society. The new licence has been updated to include permissions for digital scanning from copyright materials and storage of digital copies. It also recognises the business need of solicitors to send both digital and paper copies to third parties such as clients and counsel. The new CLA "Law Licence" will be available to law firms from 1st November 2008.

- The new series of organised tours of the Library aimed at solicitors, which were started during the summer, have proved very popular with City law firms and others, with each tour over-subscribed.

- Legal information enquiries received by the Library are currently averaging 2,428 per month, which is 3% up on 2007. Personal visits to the Library are averaging 116 per day.

- The Library has launched a new display entitled "Murder most horrid" which highlights the various ways in which the crime of murder and associated punishments have been reported from the 17th century onwards, using materials from our historical collections. The display is attracting considerable interest.

- The library is negotiating a trial subscription to Westlaw online services to compare them with our existing range of online legal information subscription services, which are used to meet member requests for legal information. It is expected that the trial subscription will start in November. The intention is that members will be able to access the service freely in the Library.

- The OLIB library management software which is the basis for the library information which is made available in Law Society Library Online has been successfully upgraded in order to maintain the support arrangements for the software.

Law Society Helplines

- Following the Banking Crisis Practice Note, the Practice Advice Service received a record number of 187 calls in one day. In 2007, the average number of calls received per day was 112. This therefore constitutes a 66 % increase to the average day in 2007. Like for like comparison for 2008 with 2007 to the months of January to September constitutes a 17% increase in the number of contacts received. The PAS received very positive feedback from several top 100 firms (these include Kingsley Napley, Taylor Wessing, Field Fisher Waterhouse and Macfarlanes) in the way it has dealt with feeding back to the 'think tank' set up at the Law Society to deal with the banking crisis and its effect on solicitors.

- The Pastoral Care Helpline has continued to receive an average of 300 calls per month and has had in excess of 20,000 hits on the website since its launch. This generates calls to external stakeholders and the SAS has

reported that they have received more calls in the last 2 months than it did in the whole of 2006.

- The PAS and the library will be holding a coffee morning on the 20th November for local government solicitors. This is with a view to increasing awareness amongst this target group as to the services and assistance both the PAS and library can offer generally and specifically to them.

Lexcel

Law Society Excellence Awards

- There was a high quality of entry for the Lexcel Award for Excellence in Practice Management Standards. Six finalists were chosen with one clear winner. Promotional activities with the practice will be produced following the awards on the 23 October. Outside of the Lexcel award category, there were 10 Lexcel practices shortlisted for other awards.

Lexcel Insurance Working Party

- The next meeting will take place in early December following the end of the renewal period. Insurer and broker delegates have offered to share information on this year's renewal cycle with the Lexcel office who will provide feedback to the Regulatory Affairs team.

Lexcel awareness seminars

- Following the success of the first open-evening seminar for small firms, the Lexcel office has planned three additional events for October, November and December. These will target management within in-house legal departments and medium and large private practices. These events are designed to provide delegates with an insight into how Lexcel accreditation can affect practices of different types and sizes. A similar event for Lexcel Assessors, provided update training and guidance to ensure consistency across the Lexcel assessment process.

- The Lexcel office recently exhibited and ran a workshop at the annual Legal Aid Practitioners Group conference and several enquiries and leads were received.

- Following feedback from numerous practice visits, opportunities to develop more specific Lexcel forums have been identified. This currently includes Risk Manager and Practice Manager forums..

- The Lexcel office has recently issued revised guidance on the duration of assessments and the interviews conducted as part of these. In addition, in-house and sole practitioner guides have been produced to highlight the differences for different types of legal practice.

Media coverage

- Practices gaining Lexcel accreditation continue to be highlighted in local media throughout England and Wales. This coverage is regularly seen, sometimes at least one article per week if not several.

Standard development

- There has been much interest in Lexcel from both domestic and foreign legal practices and Law Societies. Initial discussions have been held and a

feasibility study, including consultation, is being drafted to help identify more specific the interest and demand or need for an international standard.

- Interest in other standards related to Lexcel has also been received and initial investigations into the exact requirement and feasibility of these as products for the Law Society are being conducted.

Sections
Sections have had a busy programme of autumn events, with the LMS running the Junior Lawyers' forum, Lexcel forum, HR forum, Finance forum, Business Development forum and the Business of Law conference on 6 November. The Property section annual conference on 29 October focussed on the business challenges for conveyancing firms and looked ahead to the much needed reforms in the house buying process. The Master of the Rolls will be they keynote speaker at the Dispute Resolution annual conference on 18 November which will focus on the Woolf reforms, ten years on.

The first Law Society live webinar " Surviving the credit crunch " on 20 October received excellent feedback and continues to be available via the Law Society website.

The new Competition special interest group, formerly the Law Society European Group, is being soft launched at the end of October.

Membership Development

Careers
The Law Society's sixth careers event 'Preparing students for entry to the solicitors' profession' was held on 24 October 2008, in association with the Association of Muslim Lawyers, Black Solicitors Network, Group for Solicitors with Disabilities, Society of Asian Lawyers and the Junior Lawyers Division. The event was aimed at undergraduate and LPC students and covered all aspects of preparation for a career in the legal profession. The event has proved popular with students and attracted 140 delegates and sponsorship from Wilde Sapte and Burges Salmon.

A second event will be held on 21 November aimed at inner city school students aged 14-16 with a view to giving them an insight in to a career in the legal profession. The event will be held in collaboration with the Institute of Legal Executives, Institute of Paralegals and the Bar Council. The Junior Lawyers Division is also participating. The event is open to 120 students. A number of schools have been approached and places are being registered.

Careers Guide – Redundancy
A brochure on dealing with and surviving redundancy will be available in November. This is being prepared in response to a number of calls to Law Society and JLD helplines and mentoring schemes from trainees and junior lawyers fearing the possibility of being made redundant and having training contracts terminated.

Career Guide – Flexible Working
Preparation is underway for a flexible working brochure. The brochure is being produced in collaboration with the Association of Women Solicitors and will provide information on how to go about applying to work flexibly ;the benefits of flexible working for individuals and firms; case studies of individuals' experiences

Mentoring Scheme
1 October 2008 saw the launch of the Law Society Mentoring Scheme. The scheme provides those at the early stages of their career with a mentor who is able to provide advice and support on work related issues. 80 mentors have been recruited, ranging from trainees, newly qualified solicitors, Council members and those in senior positions within the profession. All mentors received a half day training session in September 2008. To date 170 mentees have applied to the scheme.

Association of Women Solicitors (AWS)

- The annual returner course from 19 – 26 September was successful and fully booked
- The Chair made a presentation on equal pay at the City Diversity Forum with top 100 firm heads of HR/Diversity
- The Press Office ran a press/media training day for AWS members which was very successful and will be repeated later in the year
- The Chair is on the Judging Panel for the Woman City Lawyer of the Year
- The Chair & Vice-Chair met with the President who offered his continued support for the Group and the equal pay campaign
- An event on Judicial/Public Appointments is being planned and Janet Gaymer, an AWS Patron, will speak about the potential and opportunities for public appointments

BME forum

- The second BME forum took place on 30 October and looked at the LS equality and diversity strategy and work programme; commented on the SRA action plan post Ouseley report; discussed the LCS equality and diversity action plan; and explored joint LS/BME projects for 2009.

- Pilot regional initiatives include:
    - Newcastle : An event hosted by Northumbria University will be held in March 2009 bringing together representatives from law firms and law students and will focus on legal opportunities for BME law students. The Law Society President will be among the speakers
    - Southampton: A local BME support group is being developed, facilitated by TLS. If it is successful the idea would be to roll out the concept across the country
    - A further initiative to boost risk management capability in BME firms is being planned with the Lexcel office

Sole Practitioners and small firms

- The Law Society's free Small Legal Business toolkit has been a huge success and related products and guidance are being considered, especially around the topics of succession planning and management. The related seminar on "successfully managing a small practice" in London was a sell-out and regional seminars are being organised
- Difficulties in the insurance market led to a contraction of the market for sole practices and small firms. The Law Society and SPG were acutely aware of the difficulties some members were having in securing reasonable insurance cover and worked together monitoring and advising members on suitable brokers and products available
- SPG is engaged in continuing dialogue with the SRA on issues including possible legislative changes allowing for an interim measure prior to interventions, and, the review of the regulation of sole practices

Employed solicitors

Local Government:

- The Law Society and SLG's consultation paper on the profile of monitoring officers is about to be launched
- SLG's SIG Convenors and SLG Specialists Conference on 29 October at Camden Town Hall will review their National Knowledge Network; consultation and lobbying procedures and knowledge sharing. Mark Stobbs, Director of Legal Policy is attending to talk about joint policy initiatives with The Law Society
- SLG met with Maureen Miller, Head of Membership Services to look at joint working initiatives which are now being progressed, including "train the trainer" for supervising principals, an "audit and review of Lexcel for local authorities to understand why Lexcel is so successful in local authorities and promoting Law Society products and services at SLG's annual weekend school conference
- SLG has released their revamped website www.slgov.org.uk which includes a knowledge bank, a legal update feed from Sweet & Maxwell, and an interactive practice based member forum

Employed Solicitors:

- "Employed Solicitors Forum" – work continues on a feasibility study on the appropriate vehicle for providing support, products and services to this diverse sector of the profession. The initial roundtable meeting of representatives from different parts of this sector is currently being arranged

C&I Group

- Sapna Bedi FitzGerald has been appointed the new Chair of the C&I Group

- The C&I Group attended the AWB dinner on 22 October.

- The Group are meeting the SRA on 5 November to discuss the Code of Conduct. This follows on from the meeting held on 1 September.

- The Group have agreed to participate in the EBC section of the Bar Council Conference in November

JLD

- Nominations for the JLD Pro Bono Awards closed on 19 September and the presentation ceremony will be held on 13 November at the Law Society. Vera Baird MP and Dominic Grieve MP will be making the presentations.
- Four student representatives have recently been appointed to the JLD to represent the specific issues of the JLD student members. One will sit on the executive committee whilst the remaining three will be on the national committee.
- The JLD national committee is meeting on 1 November. The national committee comprises approximately 55 regional groups and 5 co-opted groups. LawCare and Raleigh International will be making presentations. Of the 55 local groups (TSGs, YSGs and joint groups) 26 have now taken steps to rebrand as official JLDs with others considering it.
- The JLD committee continue to meet with main stakeholders and interested parties to discuss education and training requirements affecting junior lawyers. Members of the committee have also met with representatives of young lawyer groups in other jurisdictions as well as speaking at career events and contributing articles in legal journals. The JLD also continues to

respond to consultation documents and advise on issues affecting junior lawyers.
- The JLD Helpline continues to take calls from junior lawyers with volunteers reporting many calls relating to the credit crunch and redundancy.
- Kat Gibson, JLD chair, judged the Junior Lawyer of the Year Award at the Excellence Awards.
- The JLD recently co-hosted the annual International Weekend on 26-28 September which is held to coincide with the Opening of the Legal Year.
- The JLD conference 2009 is scheduled for 11 July 2009.

UK Operations

National initiatives
Office Holder visits have continued with a detailed programme of visits to firms and individual members.

Excellence Awards – Regional Managers have marketed firms to obtain regional/Wales nominations for all the categories. Shortlisted, commended and nominated firms/individuals have been promoted in the regional/Wales media.

The three Money Laundering Reporting Group Officer network meetings in South East, Midlands and Yorkshire have all been well received.

Membership Board was hosted at Wragge & Co in Birmingham. The day also included a reception for local firms and a dinner with Senior Partners of the larger firms.

The Senior Relationship Manager has been involved in the implementation of the corporate strand of the review of the future regulation of legal services. A number of the Top 10 firms (8 UK global law firms) have now been visited and are engaged with the initiative.

As part of on information gathering exercise, UK Operations conducted a short sharp survey of selected firms to see how they fared in the recent round of Profession Indemnity Insurance renewals.

UK Operations is continuing to provide a monthly business intelligence monitor to gauge the business temperature of our members.

Legal Support Trust Walks – Regional Managers have provided support to this initiative in Wales, London, Manchester and Birmingham

Some regional and Wales highlights

South West
Successful JLD launch Party for Bristol Junior Lawyers
Very positive Legal Sector Alliance focus group/workshop held in Bristol
Joint working with ProHelp for national Pro Bono week event to promote legal advice surgeries and volunteer recruitment for Not for Profit agencies

Eastern
Marketing for Legal Aid Conference in partnership with Regional Development Agency is proceeding well – very positive response from members
Funding has been secured for a follow up conference in Spring 2009

A number of meetings arranged with employed solicitors to promote Law Society support and services

Director of Policy visited firms in Cambridge and attended a dinner with Managing Partners, local Government solicitors and employed solicitors.

Yorkshire
Legal Sector Alliance meeting in Sheffield
Legal Aid Careers evening
Money Laundering Reporting Officers group network meetings in Sheffield and Leeds and visits to leading regional firms to discuss compliance with Law Society Policy Adviser
Chinese student placement scheme initiated with firm in Leeds
Leap for Leadership event with Managing Partners in Leeds
Regional Manager attended Yorkshire Lawyer of the Year Awards

West Midlands
Regional Manager arranged hosting of Membership Board at Wragge & Co in Birmingham, with reception and dinner to follow. The reception attracted over 40 solicitor members with nine Senior/Managing partners at the dinner in the evening.
Money Laundering Reporting officers group network meeting
Two day visit to Staffordshire to meet members and firms with Vice President

North West
Regional Manager arranged for the Vice President to speak at the Manchester Evening News debate on 'Manchester as the UK's second city'.
Regional Manager spoke at North West Universities Association Conference on higher skills
RM attended and spoke at Commerce and Industry seminar on 'Adding Value'

North East
Very successful launch of the Association of Women Solicitors group in Newcastle.
Joint initiative with local university to promote diversity in the profession planned for early 2009.

Wales
Meeting held with Social Justice Minister to discuss proposed CLAN for South East Wales
Delivered, in partnership with Welsh Assembly Government, two seminars on tendering for state aid
Manager Wales attended Economic Summit meeting with First Minister and Welsh Secretary alongside other leading business stakeholders
Mental Health LCO evidence submitted

Greater London
Regional Manager has been working with TLS and SRA to promote and deliver the programme of LPC seminars
Access to Justice Foundation Reception
Programme of visits to firms to promote Lexcel with Lexcel Manager and Membership Development Officer

South East
Delivery of MLRO network group meeting in Maidstone
Arranged programme of visit by President to firms in South East

Working with Membership Development Officer to establish BME group in Southampton

East Midlands

MRLO network group meeting
CLAC in Leicester seeing 30 people a day and running outreach sessions

Legal Policy

Legal Aid

VHCCs

New Panel
Discussions continue between the Legal Services Commission (LSC); Ministry of Justice (MoJ) and the Bar Council on the format for a new VHCC Panel for crime cases. It is anticipated that the experts group will have collected enough data by the end of October to produce a skeleton framework scheme to be considered by the group, with a consultation paper to be produced by December (the sense of urgency emanates mainly from the Bar). This will not be sufficient time for any new scheme to replace the current panel when it ends in July 2009, and it is therefore likely that the LSC will have to extend the current Panel until a new scheme is sufficiently developed to replace it.

The LSC has invited the Law Society to join a separate working group to discuss other aspects of the VHCC process, such as the criteria; the make-up of the Panel; the tender process itself, etc.

The Ministry of Justice has announced an increase in rates for both litigators and advocates working on VHCCs, backdated to January 2008. It will be funded from a reduction in the number of cases granted authority for two Counsel. While this is good news for solicitors undertaking this work, we are disappointed that our requests for some relief as well for solicitors working at grass roots level and struggling to remain in business have been rejected.

Interim Agreement
The Government has agreed to redistribute resources within the VHCC scheme to enable a higher rate to be paid to advocates. This will have a knock-on effect across all VHCC fees, so solicitors on the VHCC Panel will also benefit from the redistribution of resources. The money will come from reducing the number of cases where authority for two Counsel is granted, which have increased by 36% in the past two to three years. The Bar has thus not gained overall since the amount of work for barristers will be reduced.

Virtual Courts

Fees
Discussions between the Society, Practitioner Representative Groups and the LSC and OCJR reached an impasse in September as no agreement could be reached on the fees for the Virtual Court pilot.

LAPB has approved a Practice Note which reminds practitioners of their duties to their clients when taking instructions and advising at the police station in relation to the virtual first court hearing.

LAPB also agreed at its meeting on 18 September to issue the following statement:

"*Although The Law Society is keen to play its part in the development of the pilot of virtual courts in the interests of justice, it is concerned that an appropriate and fair level of remuneration for practitioners must be agreed. Until talks on that aspect are successfully concluded, the Society should make it clear to the OCJR that it is not in a position to participate in development meetings."*

The LSC agreed to meet the Society and Practitioner Groups on 20 October to discuss the proposed fees. The Society put forward proposals for remuneration, which are currently being considered by the LSC and OCJR.

LSC Consultation
The LSC is consulting until 14 November on the changes required to be made to the General Criminal Contract to enable the Virtual Court pilot to go ahead. Since no consultation has taken place on the policy behind the proposals, the Society is treating this consultation as such.

Virtual Court Duty Solicitor Scheme
The LSC has written to firms who undertake Duty Solicitor work in the Virtual Court pilot area, inviting them to register an interest in joining the Virtual Court pilot Duty Solicitor scheme. This letter refers to fee levels and to the details of a Virtual Court Duty Solicitor scheme, both of which are still under consultation / discussion until 14 November, yet the letter to practitioners requires responses by 31 October 2008.

Whilst the Society cannot advise practitioners whether or not to register an interest in the Duty Solicitor scheme, we have issued a note advising practitioners that in considering the invitation, they should consider whether they have enough information to make an informed decision.

The Society has also written to the Chief Executive of the LSC, stating that we believe it is premature to request firms to express an interest in this scheme when the details are yet to be settled, and before they have sufficient information with which to make an informed decision. The letter from the Society also requests the LSC to withdraw the letter and re-issue it once fee levels have been settled.

Criminal Law
The Criminal law Committee has finalised a Practice Note addressing professional standards issues such as confidentiality and client care that may arise when the proposed pilot of virtual first hearing courts commences in the New Year. It is in the process of being edited by Communications Directorate. .

The Law Society has submitted responses to a number of government consultation papers. These include the Attorney General's consultation on extending the power of the Crown Court to prevent fraud and compensate victims, which contains the controversial proposal to allow Crown courts a regulatory power to disqualify solicitors from practise when they are accused or convicted of a fraud offence, which we opposed. We responded to a Ministry of Justice paper on changing the law relating to bail in murder cases, suggesting that no change was in fact required. We raised our concern about the government's intention, set out in the Policing Green

Paper, to legislate to remove the need for a defendant to consent to appear by way of a virtual first hearing court. We submitted a response to a Ministry of Justice consultation on reforming the law relating to murder.

Immigration
The points-based system comes into operation in late November. UKBA is keen to set up a group of advisers who are, in effect, accredited by them so that applications which come from these advisers are, in effect, fast-tracked. This obviously provides a considerable competitive advantage to those firms. In September, they listed two firms on their website. This was without any formal tender process. The Immigration Law Committee had considerable concerns and it was agreed that the Society should intervene in any injunctive proceedings.

In fact, the UKBA compromised and a series of meetings were held with immigration firms who had expressed an interest in joining the scheme and these have now been added to the list. There remain concerns about the implications of the scheme - it is not clear whether the arrangements might create a tension with solicitors' duties to their clients and there is a worry that, in effect, firms will be carrying out UKBA's job them. We are discussing these issues with UKBA.

Banking Crisis
The Banking Crisis gave rise to considerable concerns about the liabilities of solicitors for money held in clients' accounts. In consultation with the SRA a practice note was issued on the subject. There remains a lack of clarity about the position and we are about to hold meetings with the Financial Services Compensation Scheme and the FSA to improve the guidance and lobby for change.

MoJ Cuts
There were well-publicised leaks about cuts proposed by the MoJ. These are likely to affect a number of areas, including the Electronic Filing and Document Management Initiatives, family law and other issues. The President wrote to the Justice Secretary to protest at the cuts and to seek further information. We are in the process of consulting other organisations with a view to undertaking some joint campaigning on this issue.

Care Proceedings Fees
The Law Society was granted permission to intervene in the proceedings which were heard on 22nd and 23rd October. At the time of writing, judgement is awaited.

Insurance Fraud
A useful meeting was held with the Insurance Fraud Bureau and work is under way to draft a practice note to inform solicitors of the issues in this area.

Queen's Counsel
A review of the operation of the new QC system is under way and the Law Society will be working to make the system more accessible for outstanding solicitors in their area of practice. The issue will come to Council once the report of the system has been issued.

Counter-Terrorism Bill
The Law Society achieved notable successes in its lobbying on the issue of 42 days and private inquests in that both proposals were defeated in the Lords and the Government has indicated that these provisions will not remain in the Bill.

Regulation

Regulatory Projects
The new projects have commenced.

Legal Practice Course Road Shows
The Education and Training Committee will be holding a series of meetings about the new Legal Practice Course, in conjunction with the SRA, in November and December.

Insurance
The RAU will be looking at the concerns that have been expressed about insurance and its cost and availability to see whether representations need to be made to the SRA or to insurers on this subject.

Public Affairs Unit

Corporate issues

Excellence Awards 2008
The Excellence Awards 2008 held at Old Billingsgate on 23 October was an impressive high-profile event that showcased the Society as a modern, professional representative organisation. Hosted by BBC presenter Kirsty Wark, winners and highly commended entries were announced in a range of categories including excellence in client service, social responsibility, marketing and business development, pioneering legal services and exporting legal services. Four individual awards were made to the Legal Executive, Barrister, Junior Lawyer and Solicitor of the Year.

The event was attended by more than 550 people and the feedback was overwhelmingly positive. The Awards have received extensive press coverage which will continue in the coming weeks. The enthusiastic involvement of several high-profile sponsors - including the principal sponsor, Mercedes-Benz - demonstrated that the Awards are now established as a prestigious event in the legal calendar.

A booklet covering the awards will be circulated with the Gazette edition of week commencing 3 November.

Postal ballot
I have reported by letter on the outcome of the postal ballot :

Number of papers distributed: 138,131
Votes cast: 17,684 (12.8%) of which 17,568 were valid votes

For the amendment: 7,123 (40.5%)
Against the amendment: 10,445 (59.5%)

Accordingly the motion is lost

Environmental Management Scheme

Before changing to recycled paper for white A4, predicted forecast impact reduction:

Basis: 100,000 kilos paper
Saving: 3 million litres water
Saving: 653,000 kWh power
Saving: 17,000 kg of CO2

Saving: 2,400 trees
Diverting: 100,000 kg waste from landfill

Impact for Gazette after recently moved to 100% recycled:

Basis: 1.68 million kilos of paper
Saving: 53 million litres of water
Saving: 11 million kWh of power
Saving: 292,000 kg of CO2
Saving: 40,000 trees
Diverting: 1.68 million kg waste from landfill

Presidential year
The Presidential year, the plan for which was approved by Council, was successfully launched with a well-received speech at the OLY breakfast. Paul Marsh also recorded a video outlining the key messages of his term office, which is available to view on the Society's website.

The programme of regional visits and introductory meetings with leading figures in the legal world is well under way.

Legal breakfasts
The third event in the series of discussion events to explore the opportunities for the legal services sector arsing from the new regulatory regime created by the Legal Services Act was held in September. Leading figures from City law firms and their clients, potential investors, parliamentarians and policy-makers heard the Chairman of the Legal Services Board outline his vision for the future. He was joined on the platform by the Managing Director of Co-operative Legal Services and the senior partner of a large law firm. A summary of the discussion and a video of the three speakers in conversation with Paul Marsh, who chaired the event, can be viewed at http://www.lawsociety.org.uk/legalbreakfast.page

Future events in the series over the coming year will contribute to the debate generated by Lord Hunt's review of the future regulatory requirements of the sector.

Public affairs group
In response to ongoing debates about lobbying in Brussels and Westminster, a meeting was held for law firms which represent their clients to governments and parliaments. It was agreed that a better understanding of the nature and extent of this area of practice should be gained. Research will be undertaken in order to develop a fuller picture of the service being offered to clients. The public administration select committee enquiry into lobbying, to which the Society gave evidence, is due to report this autumn. The publication of the report will be an opportunity to restate the message that solicitors, as a regulated profession, offer the highest ethical standards in the lobbying industry.

Migrant lawyers
Responding to serious concerns about the impact of the new points-based immigration system (PBS) being introduced by the Home Office representations have been made to increase government understanding of the potential damage to law firms if they are not able to recruit the best talent internationally and develop networks and business opportunities across all the jurisdictions in which they operate.

Significant improvements to the guidance issued by the UK Border Agency on the implementation of the PBS have been achieved. In order to facilitate the exchanges, internships and secondments with are important to the development of international networks for individuals and firms, the Society is seeking Ministry of Justice support for an application to become and overarching sponsor body for Tier 5 migrants under the scheme.

Political engagement
A programme of meetings between front-bench spokespeople and Office Holders was arranged at each of the three main political party conferences. Regular briefings are also held throughout the parliamentary year in Westminster. Robert Heslett recently gave a presentation to the Conservative front-bench justice team and was joined by Des Hudson in answering question's about the Society's policy objectives in a wide range of areas.

The Law Society press office has again achieved significant coverage in the media. The team achieved coverage in 652 items across 273 media outlets between July and September 2008. This equated to a PR Value of over £11 million (£11,335,500). The Law Society appeared in 57 Headlines, including "Law Society goes International", "Law Society keen to keep on top of money laundering", "New Law Society President wants business like attitude" and "Record numbers enter Law Society awards".

During last quarter Media Measurement, analysed 782 items across 288 media outlets. The biggest result of the quarter was a dramatic increase in beneficial coverage. The volume of beneficial attributed Column Centimetres (ccm) was the highest in this period since the start of the quarterly Review. Usually this rolls at around a 4% average and is extremely difficult to increase, but with campaigns such a Legal Sector Alliance and the work of the press office to actively promote the Law Society in a positive light for its role change to representative body the quarter result was higher than usual.

The volume of campaign coverage also increased this quarter compared to last quarter - highlighting the need for consistent campaigns to push the positive work of the Society. 31% of items were from trade & technical publication including legal publications). 26% of items were from regional daily publications, and 21% was from regional weekly publications.

The total attributable column centimetres amounted to 4,072 ccm this quarter. Tone of coverage was predominantly factual (81%), 16% was beneficial and just 3% was adverse. Items amounted to a circulation of 22,218,000 and produced 56,751,000 opportunities to see.

Paul Marsh (President) appeared in most items (122) dominating coverage, both in items and ccm measurement. Paul Marsh has already appeared in twice the number of items than his predecessor Andrew Holroyd. 60% was news related coverage, 24 features, 11% Diary/column (this has doubled from last quarter and is predominantly factual/beneficial). Nina Goswami (The Lawyer), Frances Gibb (The Times) and Joshua Rozenberg (Telegraph wrote the most stories about the Law Society. Coverage this quarter has remained high and quality of coverage strong.

Webinar
The Law Society's first online seminar, 'Dealing with the credit crunch', took place on 20 October. Feedback from participants was 100% positive, with solicitors enthusiastic about being able to update their knowledge without leaving their desks. The Communications Directorate is currently exploring ways in which the Society can further exploit online technologies to benefit members.

The Law Society

COUNCIL **Item 20(i)**
12 November 2008

Classification – Public

Purpose – For noting

YEAR END REPORT OF THE CHAIR OF THE MEMBERSHIP BOARD

The Issues
The Law Society is seeking to strengthen its membership offer; to increase its attractiveness to our core membership, reflect the changing legal services market and broaden our appeal to a wider cross-section of individuals and firms. The Law Society's strategic objectives include:

- business at home and around the world views solicitors qualified in England and Wales as trusted business partners and the pre-eminent source of legal advice in English law as the jurisdiction of choice
- solicitors consider the Society to be the most effective representative organisation for them, delivering relevant practical support throughout their careers and a leading voice on the business of law.

Remit
The Board's Terms of Reference are:
(1) To set and oversee the implementation of policy for managing relationships with the profession, including (but not limited to) local law societies, Law Society groups, associations, sections, networks and divisions. (2) To set and oversee the implementation of policy relating to services for members and others to include, but not be limited to, family members, potential entrants to the profession, non-solicitor employees of firms and to the public. (3) To set and oversee the implementation of policy to support Council members in their work.

Policy Position
Not applicable.

Financial and Resource implications
There are no financial and resource implications arising directly from this paper.

Equality and Diversity implications
There are no equality and diversity implications arising directly from this paper.

Consultation
This paper was prepared for the Council based on activities arising from the Membership Board's 2008 workplan.

Annex A	Membership Board Workplan 2008
Annex B	Membership Board Workplan 2009

Author	Kevin Martin, Chair of the Membership Board
Date of report	27 October 2008

Background
1. The Membership Board was established in July 2007 as one of four new representative Boards within the Law Society.

2. In November 2007 the Board agreed its workplan for 2008 which has been reviewed and updated at subsequent Board meetings.

3. The Board has now prepared a 2009 workplan taking forward some of its ongoing activities and incorporating projects which arise from the work of the Directorates over which it has a supervisory role.

Excellence debate
4. The Board has achieved its objectives in relation to the Excellence debate and the accreditation consultation. It has recommended that the Society should take control of the voluntary accreditation panels by January 2009. Discussions are ongoing with the SRA and the Board, with RAB, will present some recommendations to the Council in December.

5. The oversight of the transfer of the voluntary accreditation panels back to the Society will be a priority for the Board in 2009.

Membership Structure
6. The Board presented its proposals for new and amended membership categories to the SGM in July and to the Council in October. The Council agreed to the proposed amendments of 'Student Member of the Law Society', 'Associate Member of the Law Society', and 'Member of the Law Society' categories and to the creation of a non-solicitor 'Affiliate' category, subject to the result of the postal ballot.

7. At our October meeting, we considered whether we should have an alternative plan to allow for the result of the postal ballot, although any future changes to the 'Associate' category would be affected too.

8. The Board will discuss membership structure, delivery and timetable at its November meeting. The delivery of the agreed membership structure will be a priority for the Board in 2009.

Stakeholder management
9. The Board produced and agreed a protocol for improved relationships and effective communication between the Society and local law societies.

10. A protocol for communication between the Society and external practitioner associations will be addressed by the Board in 2009.

Membership services
11. The Board oversaw the facilitation of the following:
- the transfer of membership cards back to the Society and their re-design
- re-launch and re-design of the *Gazette*
- re-design of the online *Gazette*
- launch of the online bookshop and Library online
- the introduction of new affinity schemes
- launch of a Law Society branded helpline service

12. The Board remains concerned that the delay in the delivery of Matrix may affect the delivery of membership services in 2009.

Council member support
13. The Board's remit includes the setting and overseeing of policy to support Council members in their work. A working group was set up in August 2007 to review Council member induction and training and it presented its report to the Board at its October meeting. The Board will discuss this and Council member engagement in November.

14. Council member induction, training and engagement will be a priority for the Board in 2009.

Regional visits
15. Since its inception, the Board has visited three of the top 100 law firms in England: Cobbetts LLP in Manchester, Mills & Reeve LLP in Cambridge and Wragge & Co LLP in Birmingham. The Board has met with over 100 members during these visits and been given an insight into the pressures being faced by solicitors from both members of the firms and the Regional Managers.

16. The Board plans at least two regional visits in 2009.

17. The Board also met in the Brussels Office in September where it met with MEPs and representatives from other professional membership organisations and discussed membership services and engagement at EU level. The Brussels Office ensures that the Society keeps a high profile with target stakeholders in EU institutions and promotes itself to the membership.

Item 20 (i) Annex A

Membership Board – 2008 workplan

The Membership Board has been given the following remit by Council:

To set and oversee the implementation of policy for managing relationships with the profession, including (but not limited to) local law societies, Law Society groups, associations, sections, networks and divisions.

To set and oversee the implementation of policy relating to services for members and others to include, but not be limited to, family members, potential entrants to the profession, non-solicitor employees of firms and to the public

To set and oversee the implementation of policy to support Council members in their work

BOARD RESPONSIBILITITIES	ACTIVITIES & PROJECTS	DEADLINE FOR COMPLETION	STATUS
Excellence debate A key priority for the Board will be to participate in the pursuit of excellence debate, to work with RAB on the accreditation consultation and to make recommendations to council on the role of accreditation, kitemarks, panels and special interest groups within the Law Society.	Chair to speak at Council debate on excellence	January 2008	Green
	Board to review Council debate and make suggestions for next steps	February 2008	Green
	Input to SRA consultation	February/March 2008	Green
	Input to joint RAB/Membership Board paper on next steps to facilitate the transfer of accreditation schemes to TLS	June	Green
	Depending on SRA response recommend transfer of voluntary accreditation schemes to the Law Society	November	Green
Membership structure It is essential that the representative Law Society has a structured, appropriate and understandable membership model. The Board will work with Council	Input to debate on associate/fellow/corporate membership at Council meeting	April 2008	Green
	Review Council debate and agree next steps	May 2008	Green

BOARD RESPONSIBILITITIES	ACTIVITIES & PROJECTS	DEADLINE FOR COMPLETION	STATUS
and office holders to devise and recommend a suitable structure and work with staff to market it to the membership.	Participate in facilitated membership structure away day	May 2008	Green
	Review proposed membership structure and agree areas for further research	June 2008	Green
	Discuss draft membership structure & service delivery model and finalise recommendations to Council	September 2008	Green
	Make recommendations to Council for proposed membership structure	October 2008	Green
	Facilitate the delivery of new membership structure	January 2009	Amber
	Facilitate the transfer of Membership cards from the SRA	March 2008	Green
	Facilitate the re-branding of the practising certificate	March/April 2008	Red
Special interest groups The Board will support and monitor progress towards the creation of a single, best practice model for Law Society interaction with special interest groups, it will advise on possible new SIGs and facilitate the delivery of new divisions.	Attend section chair meetings	February/May 2008	Green
	Facilitate the end of hypothecation of section income	Phased during 2008	Green
	Advise on potential new SIGs	Ongoing	Green
	Assist with the launch of new SIGs (e.g. BME, Commercial, Competition, Employed, Government/Public sector lawyers)	Ongoing during 2008/09	Green
Local law society relationship management The Board will agree a protocol for managing the relationship with local law societies and work to improve communication and joint working with this important stakeholder group.	Agree a protocol for working with local law societies	January 2008	Green
	Devise a communication plan between TLS and local law societies	June 2008	Green
Stakeholder management The Board will review communications between the Law Society and external practitioner associations and	Discuss current contact with practitioner associations	Deferred until 2009	Red

BOARD RESPONSIBILITITIES	ACTIVITIES & PROJECTS	DEADLINE FOR COMPLETION	STATUS
agree a protocol for future working.			
Membership services A key role for the Board will be to discuss and suggest relevant new membership services and work with staff to facilitate their delivery in a timely manner.	Away day to brainstorm new member services	November 2007	Green
	Discuss possible new member benefit schemes with Head of Business Development	June 2008	Green
	Monitor the delivery of proposed new services (e.g. affinity schemes, indemnity insurance, PII, events, CPD)	Ongoing	Amber
	Gazette – meeting with new editor to discuss revamp	February 2008	Green
	Gazette – facilitate the re-launch and redesign	June 2008	Green
	Gazette – facilitate the delivery of new interim gazette website	June 2008	Green
	Find a Solicitor – facilitate the delivery of an improved FAS service	September 2008	Red
	Law Society helplines – facilitate the delivery of a cohesive help line service in partnership with external suppliers	June 2008	Green
Council Member Support	Council member induction – review and update arrangements	October 2008	Amber
	Devise a communications plan to improve volunteer engagement with the work of the Law Society	November 2008	Amber
	Devise a programme to support Council Member communications with constituents and other volunteers' communications with those in their practices/LLSs	November 2008	Amber

Membership Board – 2009 workplan

The Membership Board has been given the following remit by Council:

To set and oversee the implementation of policy for managing relationships with the profession, including (but not limited to) local law societies, Law Society groups, associations, sections, networks and divisions.

To set and oversee the implementation of policy relating to services for members and others to include, but not be limited to, family members, potential entrants to the profession, non-solicitor employees of firms and to the public

To set and oversee the implementation of policy to support Council members in their work

BOARD RESPONSIBILITITIES	ACTIVITIES & PROJECTS	DEADLINE FOR COMPLETION
Excellence debate A key priority for the Board will be to participate in the pursuit of excellence debate, to work with RAB on the accreditation consultation and to make recommendations to council on the role of accreditation, kitemarks, panels and special interest groups within the Law Society.	Facilitate the transfer of voluntary accreditation schemes from the SRA to the Law Society	Q1 2009
	Review current schemes and make proposals for future delivery	Q3 and 4
	Assist the implementation of Law Society branded accreditation schemes	Q4 2009 and 2010
Membership structure It is essential that the representative Law Society has a structured, appropriate and understandable membership model. The Board will work with Council and office holders to implement the agreed membership structure and research further developments.	Assist with the delivery of the agreed Law Society membership structure	2009 - 2010
	Review proposed Law Society student membership category with relevant products and services	Q2
	Facilitate research into possible fellow and honorary fellow membership categories	Q3
Special interest groups	Agree the criteria for the creation of new special interest groups	Q1

BOARD RESPONSIBILITITIES	ACTIVITIES & PROJECTS	DEADLINE FOR COMPLETION
The Board will support and monitor progress towards the creation of a single, best practice model for Law Society interaction with special interest groups. It will advise on possible new SIGs and facilitate the delivery of new divisions.	Facilitate the delivery of a common platform for new and existing special interest groups	Q2
	Advise on potential new SIGs	Ongoing
	Assist with the launch of new SIGs (e.g. Lawyers with Disabilities, Competition, Government/Public sector lawyers)	Q1 and Q3 2009
Relationship management	Help to strengthen the relationships with individual solicitors, law firms and new legal entities	Ongoing
	Assist with the delivery of account management programme across England and Wales	Ongoing
Stakeholder management The Board is responsible for the development of effective working relationships with key stakeholders including local law societies, practitioner associations and other professional organisations.	Review the relationship between the Law Society and external practitioner associations and agree a protocol for future working.	Q2 2009
	Input into the programme for the annual Leadership Summit	February 2009
	Monitor ongoing relationship with local law societies	Ongoing
Membership services A key role for the Board is to comment on existing and new membership services and work with staff to facilitate their delivery and communication to the wider profession.	Monitor the delivery of new services (e.g. legal information services, affinity schemes, new Lexcel modules, events, online CPD)	Quarterly during 2009
	Monitor the income streams from new and existing membership services (e.g. advertising, sponsorship, delegate income)	Quarterly during 2009
	Facilitate the delivery of a new Find a Solicitor (FAS) service	Q4 2009
Communication	Input to development of the 2009 campaign to promote the solicitor brand	April 2009
	Review proposed categories for the 2009 Excellence Awards	February 2009
	Monitor the effectiveness of online video communications	July 2009
	Generate ideas for campaigns to address issues faced by members	Ongoing

BOARD RESPONSIBILITITIES	ACTIVITIES & PROJECTS	DEADLINE FOR COMPLETION
Council Member Support	Review impact of measures agreed at November 2008 meeting (induction, communications support) and consider adjustments	November 2009

The Law Society

COUNCIL
12 November 2008 **Item 20 (ii)**

Classification – Public

Purpose – For noting

REPORT OF THE CHAIR OF THE REGULATORY AFFAIRS BOARD

The Issues

This paper reports on the progress of the RAB since the last meeting. It also includes a draft workplan for 2009 setting out the main areas of work that RAB will be considering.

Remit

1. To set and oversee the implementation of policy for the promotion of solicitors' interests in all regulatory matters.

2. To assist the Management Board in carrying out its function of scrutinising the regulatory boards.

Policy Position

The paper deals with policy making proposals.

Financial and Resourcing implications

The projects in 2008 have suffered from a lack of resources. This will be remedied in 2009.

Equality and Diversity implications

These will be taken into account.

Consultation

This document has been prepared for Council.

Director: Mark Stobbs, Director of Legal Policy
Author: Mark Stobbs
Date of report: 28 October 2009

1. Council will find the table at Annex B setting out progress with the workplan for 2008. In 2008, RAB has suffered from a lack of resources and support arising from staff departures and the restructuring of the Legal Policy Directorate. It is expected that this restructuring will be complete by early in 2009. A further draft workplan for 2009 is attached at Annex A. It is likely to be added to considerably in the course of the year.

2. In addition to the regulatory projects discussed elsewhere on Council's agenda, the Board has been looking at the following issues.

Legal Complaints Service

3. The decision by the LCS not to continue with its proposals for publishing complaints statistics was welcomed by RAB.

SRA Waiver to Bostalls

4. The Board had received a response from the SRA on the subject but was concerned that the SRA had moved from granting waivers to advice agencies and not for profit concerns to commercial bodies. It has written to seek more information.

Relations with the SRA

5. Antony Townsend attended the meeting to discuss the plans for 2008. The Board agreed that he, or a member of his team, ought to attend every second meeting in order for the Board to maintain links and provide the Board with a knowledge of the SRA's work.

Remuneration Certificates

6. The RAB met representatives of the LCS to discuss whether there should be an approach to the MoJ to seek an early abolition of the Remuneration Certificate system. The system will no longer exist following the implementation of the Legal Services Act and the LCS and SRA were proposing to seek rule changes to implement this early.

7. The Board considered that it was inappropriate to do so and that the complexities of dealing with remuneration certificate issues within the IPS jurisdiction, as proposed, would not justify the change.

Higher Rights of Audience

8. The Board noted the SRA's decision on this topic. It will report to Council on this issue in December.

QLTR

9. The Board's Education and Training Committee had provided initial comments on the SRA's draft consultation paper. It was clear, however, that further work would be needed to develop the policy and ideas in response to the paper when it was issued.

European Transparency Initiative

10. The Board approved a draft practice note intended to advise firms on compliance with the EU policy on Transparency as it affected them in their lobbying capacity.

Education and Training

11. The Education and Training Committee has held an away day to discuss major issues of policy and its work for the future.

Annex A

DRAFT WORKPLAN 2009

During 2009, it is proposed that RAB will undertake the following projects.

Regulatory Policy

1. Support the Hunt Review and the review of corporate firms, assess their reports and determine how they should be carried forward;
2. Develop policy on the rules for Alternative Business Structures;
3. Monitor the implementation of Legal Disciplinary Partnerships;

Guidance for the Profession

1. Further practice notes and guidance on client care and complaints handling.
2. A detailed practice note on LDPs.
3. Looking at the costs of insurance and identifying changes to the rules and lobbying the SRA and insurers accordingly.
4. Providing guidance and information on mortgage fraud.

Education and Training

The Education and Training Committee will be presenting a programme to the RAB for approval. The main themes are likely to be:

1. Preparing for work-based learning;
2. Quality assurance of the academic stage;
3. Quality assurance of the Legal Practice Course;
4. The quality of supervision of trainees;
5. Ethics training
6. The QLTR

Responding to the SRA

It is known that the SRA will undertake considerable consultation on rule changes. The Board will respond to these and, in particular, raise issues about:

1. Conflicts of interest;
2. Assessment of Risk
3. Referral fees

Annex B

REF	THEME	OBJECTIVE	BOARD	CURRENT STATUS	Q1	Q2	Q3	Q4	COMMENTS ON Q1 STATUS
2007- 1	LCS	To represent the profession on the proposals to publish solicitors complaints records.	RAB	Completed - on time	Green	Green	Green		Response sent in. LCS not proceeding with the project.
2007- 2	SRA	To represent the profession's views in relation to the SRA review of referral fees	RAB	On track	Green	Green	Green		Liaison with SRA and government continuing
2007- 3	Other	To improve our knowledge on ethics in legal training to enable formulation of policy position and strategy for future work	RAB	On track	Green	Green	Green		Report received and being considered by Education and Training committee.
2007- 4	Other	To promote solicitors as the first choice for delivering legal services by developing a brochure.	RAB & LAPB	Requires monitoring	Amber	Amber	Amber		Resources due to be allocated for this project
2007 - 5	Other	To support the voluntary sector by developing Practice Notes on how certain aspects of the Code of conduct apply to the voluntary sector, and the implications of ABSs for the voluntary sector	RAB	Behind schedule	Red	Amber	Amber		Due to work pressures and the deadline for this project needs to be reviewed
2007 - 6	SRA	To influence the SRA approach to and to develop a Law Society strategy on accreditation	RAB/MB/LAPB	Completed - on time	Green		Green		Further discussions to take place with the SRA.
2007- 8	SRA	To lobby the SRA on the profession's concerns about the Code of Conduct	RAB	On track	Green		Green		
2007- 9	LCS	To represent the profession's views in relation to the LCS review of the compensation fund and insurers	RAB	Completed - on time	Green				
2007- 10	Other	To make representations on behalf of the profession to the FSA on third party capture of claims by insurers	RAB	Completed - on time	Green				
2007- 11	SRA	To respond to consultation on collaborative arrangements in relation to qualifying law degrees	RAB	Completed - on time	Green				
2007- 12	SRA	To make representations on behalf of the profession in relation to the Solicitors Accounts Rules	RAB	Completed - on time	Green				
2007 - 13	Other	To prepare a practice note on a key regulatory issues for wills practitioners.	Wills and Equity & LAPB	Completed - publication due at end of July	Green	Green	Green		Due for publication in November
2007 - 14	SRA	To provide Membership Board with information about the Joint Tribunal that resolves disputes between solicitors and barristers. The SRA wants TLS to take over the running of this area.	MB	Completed - on time	Green				
	LCS	To develop practice notes on client care and complaint handling	RAB	On track	Green	Green	Green		
	Other	To monitor the reputational threat posed by cases of mortgage fraud and to assist solicitors to protect themselves from clients seeking to involve them in such fraud	RAB	On track	Green	Green	Green		
	Other	Respond to the BERR consultation on the Golden Rules of Good Guidance. Closing date 31/03/08.	RAB	Completed - on time	Green				
	SRA	Feedback to the SRA on their proposal to drop IP regulator status	RAB	Completed - on time		Green			
	SRA	Respond to the SRA consultation on Higher Rights voluntary accreditation scheme	RAB	On track		Green		Green	SRA decision now received. Paper to Council due in December
	SRA	QLTR - TLS working group established in order to formulate policy position. SRA review has commenced.	RAB	On track		Green	Green		

The Law Society

Item 20 (iv)

COUNCIL
12 November 2008

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 highlighting issues which the Board considered at its meeting on 21 October.

Policy Position

Not applicable.

Financial and Resourcing Implications

None arising directly from this report.

Equality and Diversity Implications

None arising directly from this report.

Consultation

This report has been prepared for the Council directly.

Author Linda Lee, Chair of the Legal Affairs and Policy Board
Date of report 31 October 2008

Clients funds

1. The Board noted that a Practice Direction had gone out to the profession with regard to protecting clients' funds but felt that further work was needed. It was agreed that a paper would be brought to the Board in December to look at the issue of protection of clients' funds but also to consider the wider issues of mortgage fraud.

TransAction Plus Project

2. Work had started on improving and modernising the transaction protocol for conveyancing. It was noted that the project had fallen considerably behind schedule due to recruitment problems.

3. The Board asked that at its December meeting a new timetable be agreed together with a detailed plan of work.

Judicial Appointments

4. Work to improve the ratio of solicitors appointed had not progressed and a paper was not available. The preliminary work was to look at the reasons why solicitors fair so poorly in competition for judicial posts and what lobbying/ changes would be required to redress the situation.

5. This will be reviewed in November.

Parliamentary Update

6. It was noted that the Board required a closer working relationship with the Public Affairs Unit and in particular, it felt that it would be appropriate to have a detailed calendar of events and information about the outcome of those events, particularly meetings with parliamentarians and others. Nicky Edwards, Head of the Public Affairs Unit, would be invited to the next Board meeting to discuss how this information could be made available to the Board and to Committees and others within the Society who may find this information relevant.

Restructuring of the Committees

7. In order for Council to be able to make a decision about the future of the committee structure which may have budgetary implications, it was necessary for the Board to bring a paper to the November Council meeting. It was acknowledged that there are diverse views among the Committees as to the desired outcome of the restructuring and a full options paper should be put to Council as agreed rather than the Board attempting to make the decision for Council.

8. The Board noted that the ADR Committee had an ambitious work-plan to promote the use of ADR but it was felt this was not a priority for the Board or the profession at the present time. Furthermore, it was noted that the Dispute Resolution Section could, if it chose to, address some of these issues if it was felt appropriate by its members to do so.

9. It was also noted that the work could be absorbed by the Civil Litigation Committee and other specialist committees such as Family Law. Indeed it was proposed that if the ADR Committee be abolished, both the Civil Litigation

Committee and the ADR Committee would be invited to fill an ADR seat. This matter was to be put to Council for decision.

10. It was noted that the E-Law Committee's work was mostly focussed on supporting the work of other committees and indeed, in time, it may be that it could support the work of the Board or Council or sections. It was felt appropriate that an option to re-focus the work of the group as a reference group rather than as a standing committee may be appropriate and would attract some savings and indeed may enable the committee to work more efficiently.

11. The Board felt very keenly that there was work to be done by a public and constitutional affairs committee and that further details could be worked up provided a budget was approved. Accordingly, Council was to be given an option of allowing a greater sum of the budget to be allocated to the establishment of a new committee. The Board was conscious that ultimately this option may prove unattractive since the earlier decision of Council to hold flat the PC Fee for the period November 08 to Oct 09 before Pension Deficit funding meant that any increased spending would have to be financed by cuts from other areas of work carried out by the Society. Advice would be requested from the the Finance Director as to where the savings might be made subject to final approval of Management Board and / or Council.

12. If, no additional funding .was available for this additional committee, then existing resources in the directorate may have to be used to fund such a committee.

13. One option would be not to form such a committee.

14. Another option would be to take resources from all of the committees to enable this work to take place.

15. The most controversial option and one least likely to find favour with Council in the opinion of the Board would be to put forward a straight swap in that one committee could be disestablished to enable support to be given to a public and constitutional affairs committee in the future.

16. The initial paper before the Board had suggested that the Housing Law Committee may be appropriate as it did not have a detailed programme of work at the present time. However, the Board also felt that other options should be considered based on the information provided on work-plans and the research carried out over the previous year. It highlighted the Mental Health Committee which similarly had a very thin programme and the Planning Law Committee which, whilst it had a very full programme and was highly recognised in its field, affected only a small number of solicitors. The Board suggested all of these options with reluctance but recognised that Council had indicated that it would wish to consider this option. The role of the Board was to do the preliminary work to enable Council to have a range of options to consider.

Committees

17. The Committee Chair Handbook will shortly be available and the Chairs will be consulted on the rules. In particular there are a number of rules which it was felt the committees may wish to revise, one of which is the requirement that a committee chair retires from the committee after completion of his/her term of office.

18. It was also suggested that greater visibility could be given to the committees on the website and it was agreed that this would be looked into further. It was noted that the website had recently been amended to give greater visibility to membership services outlets and it was felt that the committees would also benefit from much wider exposure. It may be that ultimately we could move to a page for each committee to update but at the present time, simply having access to the list of committees and public minutes of those committees would assist in promotion of their work.

19. It had been intended that a group of committee chairs be formed to work on a best practice guideline but at present there are not sufficient resources to support this group. It was hoped that the resources would be available before the end of the year.

20. The Board will be looking at performance review in future after consultation with the committees.

21. It was noted that there were still a number of vacancies to be filled in the policy teams and it was hoped that some of the work could be completed shortly including plans to promote the work of the committees to Council by preparing annual reports from each committee to the Council.

22. It was also agreed that the Council would be invited to change the name of the Civil Litigation Committee to the Civil Justice Committee.

23. The Conveyancing and Land Law Committee would be invited to review the committees and subgroups reporting to them.

24. It was agreed that the paper amended to reflect the discussions by the Board would be prepared and circulated to the affected committees as soon as possible so that they may prepare reports to accompany the Board paper before Council in November.

Queens Counsel

25. The President of the Law Society and the Chairman of the Bar have asked Sir Duncan Nichol to conduct a review of the Silk selection process. The current selection process still leads to very few solicitors applying or being successful.

26. The Selection Panel has undertaken two competitions to date with the third currently in process. In 2005-2006, 12 solicitors applied out of whom 4 were successful and in 2007-2008, 1 solicitor out of 6 applicants obtained Silk. In the current competition, only 4 solicitors have applied.

27. A preliminary view of the selection process, which was developed by the Law Society and the Bar Council, does suggest it favours the work traditionally undertaken by barristers as opposed to solicitors.

28. The Board's preliminary view was that they would await the outcome of the review by Sir Duncan Nichol but that it might be appropriate once this review had been completed for the Society to review its position with regard to the process.

The Sharee Council Code of Practice

29. A request had been received from the Sharee Council in Dewsbury to assist in establishing a Code of Practice regulating the service they provide and to provide legal advice. This had been considered by a number of committees some of whom had expressed reservations about the Law Society's involvement.

30. The Board did not feel they could commit resources to this work but did wish the Council well in their future endeavours.

Working Groups

31. The City Working Group, the first of the working groups, had met and had produced a useful paper on their view of further representation by the Law Society for the City. The Board felt the paper would provide a useful base although a new member of staff was yet to be recruited whose work would be to look at policy support for the City.

32. Regrettably, the other working groups have not yet met although there are a number of willing volunteers and chairs identified; purely there is a lack of policy support to carry out this work. It was hoped that preliminary meetings of all these groups would take place before December.

Contingency Fees

33. A draft paper is to be put before Council to consult the profession on contingency fees which would inform a review of policy.

Collective Redress

34. The Board was provided with an update on the position with regard to collective redress and will receive a full paper including a view on the opt in/opt out provisions for review in November.

Administrative Redress – public bodies and the citizen

35. The Law Commission has consulted on administrative redress and the citizen. The substantive project considered the general question of when and how an individual should be able to obtain redress against a body that has acted wrongly.

36. Members of the Civil Litigation Committee who are on the Board agreed that this could be covered by the Civil Litigation Committee although an extension of time would be needed to permit this work to be carried out. It was agreed that this work would ideally be carried out by a newly formed public and constitutional affairs committee.

Information

37. It was noted that the administrative redress consultation had not been picked up in sufficient time to enable work to be carried out. Part of the difficulty was that there was no particular committee focussed on this area of work. However, it was also noted that the Law Commission publish their planned consultations well ahead of time. It was felt that there was a place for this information to be researched and made public by means of a calendar which would be a resource useful to Council, Boards, Committees and Sections in planning their future work.

Accordingly, it was requested that work begin immediately on setting up such a calendar of events.

Accreditation

38. The current position with regard to the SRA's views on accreditation was noted and the Board agreed that it would support the Membership Board and Regulatory Affairs Board in requesting as early as possible a return on voluntary accreditation to the Law Society.

Work-Plan

39. A draft work-plan has been prepared but further work will need to be done to complete the work-plan. In part this will be formed by the decisions of Council at the November Council meeting.