

City of Westminster and Holborn Law Society

Legal Services Act: New Forms of Practice and Regulation

**Consultation Paper 15:
Information to be sought from firms for regulatory risk-analysis -
the practical approach for 2009**

This Response to the Paper is given on behalf of City of Westminster & Holborn Law Society.

We have serious doubts whether the approach proposed by the SRA relating to assessment of practising certificate fees is fair or reasonable or indeed in the public interest. Although superficially it might seem to be attractive to base fees upon the level of risk attached to a firm, the SRA's suggested approach seems to be largely based on generally perceived risk, rather than on the actual failings of a firm. The result would be that a firm would potentially be penalized for the size of its turnover, the number of non-solicitor employees, the types of work it carries out and/or "claims" (see later) even though in fact none of those factors has caused additional costs to be incurred by the SRA.

We are further concerned that a consequence of the SRA's approach will be to increase fees of certain firms to such an extent that there might be no firms available to carry out certain types of legal work. We are aware that certain types of work, such as working for the mentally ill, can give rise to a greater number of "claims", even though many are not justified.

Our general view is that there should be standard fees payable. Any costs incurred by the SRA resulting from actual breaches of its rule should be recoverable from the firms concerned. Fees relating to regulation of the profession generally or to inspections which do not lead to specific allegations should be paid by the profession, as a whole, and on the same, unweighted basis.

Our responses to the specific proposals are as follows:

"Please state the firm's total gross fees in your last complete accounting period, arising from work undertaken from offices in England and Wales."

"Please state the firm's total gross fees in your last complete accounting period, from branch offices outside England and Wales."

We do not accept the concept that turnover should be relevant in assessing future fee policy. Reference to turnover in calculating future fees would suggest that a larger firm should pay a higher fee even if the type of work or past claims record were not, in the mind of the SRA, to create greater risk. We do not consider that it is proper for major firms to pay higher fees simply because of the size of their turnover.

"Please confirm the number of non-solicitor fee earners currently based in your offices in England and Wales."

We do not understand what is meant by "fee earner". They could be of widely varying grades and widely varying experience. It is not unknown for personal assistants to carry out a certain element of fee earning work. The aggregate number of non-solicitor fee earners would provide no useful information to the SRA on its own in assessing fee calculation.

The SRA would have more useful information if the extent of actual supervision of non-qualified staff were made available, since this surely is more indicative of risk. The SRA could perhaps identify regulated individuals qualified to supervise and provide a rate of supervision to non-qualified fee earners.

"Please provide a breakdown of the areas of work undertaken by percentage of your gross fees."

We do not consider that a breakdown of work areas will provide useful information to the SRA in assessing fee policy. Work types used by insurers are extremely vague. Often work fits within more than one category, or indeed in none of the insurers' categories. Firms may not be able to break down the work into the specific areas chosen by the SRA for notification, simply because firms record fees in alternative categories. The proposed work types are extremely broad and include within each work type different types of work and vastly different types of risk.

"How many claims were made against the firm in the last complete accounting period?"

"How many claims were paid, whether by the insurers or the firm, in the last accounting period?"

We do not accept that firms should be required to submit their claims history.

First there is no definition of "claim". Is this the point in time at which the firm decide that it ought to notify its insurers, even if there has been no claim from the client? If so it might serve to delay notifications of claims. Or is it only when a formal claim from the client or a third party is submitted?

A client might notify dissatisfaction, but it might be a disagreement or query or an attempt to reduce a bill and this should not necessarily be included in the definition of claims.

Certain types of work tend to generate claims, but claims are not necessarily justified. Furthermore claims are no doubt settled from time to time with a view to avoiding increased costs, without any acceptance of liability.

As regards claims paid, the question does not refer to the amount of any payment, and so the number of claims paid does not give a true picture.

The Legal Complaints Service goes to great lengths to persuade solicitors to settle complaints, with which claims are often closely associated. Solicitors are often persuaded to make a payment to a client to avoid the LCS pursuing a complaint further. Any such payment is often made on cost grounds rather than on the grounds of culpability.

Finally it is noted that the SRA claims that negligence by solicitors is outside the SRA's remit, unless this constitutes inadequate professional service or misconduct. It therefore seems to be inconsistent for the SRA to seek information about a firm's claims record.

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