

Association of Council Secretaries and Solicitors
Council meeting 30 April 2010

Consultation responses

1. Response to SRA on Practising certificate fees

To report the following activity:

Letter from the President to the Law Society Gazette:

Thursday 25 March 2010

I write in my capacity as president of the Association of Council Secretaries and Solicitors in response to Charles Plant's article 'A fairer structure' (see [2010] *Gazette*, 11 March, 8).

The association and I support the Solicitors Regulation Authority in taking the brave decision to remove unfairness in the practising fee system for solicitors employed in local government. However, I must tackle the myth that 'henceforth, this will result in an increased fee burden on private practice of about 15%'.

Such a statement serves only to highlight the injustice of the current system and is the equivalent of 'half-full or half-empty' thinking. It totally ignores, for example, the fact that public funds from local government have been 'feather-bedding' the legal profession and the legal regulator for many years. Such a position has never been fair, proportionate or sustainable in the public interest, as the alleged '15% burden' should never have been paid by taxpayers.

The 60%/40% firm/individual-based regulation begun to redress the inequity for local government must be continued by the SRA to achieve an 80/20 split. This is especially the case when one realises that solicitors employed in central government continue to benefit from a statutory exemption and pay less than the proposed fees for local government. Our association will continue to lobby the SRA to achieve the 80/20 split within the next two years.

*Dr Mirza Ahmad, President, Association of Council Secretaries and Solicitors,
corporate director of governance, Birmingham City Council*

Response to the SRA on the latest fair fees consultation

16 April 2010

Legal Services Act: new forms of practice and regulation.
Consultation paper 22 - fairer fee policy

As you are aware, the Association of Council Secretaries and Solicitors (ACSeS) has a close interest in the cost to local authorities of Practising Certificate fees, and we have carefully examined the third consultation paper towards securing the SRA's fairer fee policy.

It is accepted that the proposals for fee moderation and discounted fees for new firms apply only to firms, and it is substantially a matter for firms to indicate their views on these proposals. ACSeS therefore offers no preference in relation to the options.

However, it is noted in paragraph 14 option 1, reference is made to the consequence of 'increased costs *for the rest of the profession* as a result of a firm being granted reduced fees.' In addition, in paragraph 25 there is reference to the possibility of 'an overall fee burden shift on to *the rest of the profession* of £160k.' We take the implication of the words 'the rest of the profession' to mean that it would be intended that the net costs of the fee moderation and discounted fees for firms under these proposals, if adopted, would be bourn across the whole profession, rather than being applied to firms only. In other words, individual solicitors, including those in local government, would also bear the net costs of these proposals within their practising certificate fees.

If this is intended, then it clearly flies in the face of the principle, already agreed, that firms alone should collectively bear the cost of regulation applicable to them. The financial effect is to bite into the 40-60 split between individuals and firms. In drawing attention to this apparent inconsistency in the proposals, we wish to make it clear in the strongest terms that we totally oppose any cost of these proposals falling on individuals. Any cost of moderated fees for firms or discounted fees for new firms must be part of the 60% split applicable to firms.

We have already made it clear that we regard the 40-60 split as temporary pending more accurate examination of the actual costs of the SRA in regulating solicitors in local government. The fact that the SRA accepts that 'between 60 per cent and 80 per cent of regulatory activity is focused on firms rather than individuals' means that local authorities would continue to subsidise the regulation of solicitors in private practice under the current split. This is clearly not in the public interest. In the current economic climate involving close scrutiny of all local authority expenditure, both local government officers and their political masters are looking very closely at what they are getting for the public money being spent.

We therefore urge the SRA to commit itself now to reviewing the 40-60 split as soon as the 2010-2011 fees are applied, and in the meantime to ensure that accounting arrangements are in place to calculate the actual costs of regulating local government solicitors and all other sectors of the profession.

In respect of the proposals for moderated fees and discounted fees, if these arrangements are to be adopted, we would also urge that the costs of regulating the firms benefiting from them should also be clearly identified in order to take this into account in the event of such arrangements continuing or being repeated.

Council is asked to note and endorse these representations.

**2. Law Commission Consultation on
SIMPLIFICATION OF CRIMINAL LAW: PUBLIC NUISANCE AND
OUTRAGING PUBLIC DECENCY**

Link to full paper <http://www.lawcom.gov.uk/docs/cp193.pdf>

(extract of chapter 7)

**PROVISIONAL PROPOSALS AND QUESTIONS
FOR CONSULTATION**

Public nuisance

7.1 We provisionally propose that the offence of public nuisance be retained, and that its conduct element should remain in its present form as laid down in Rimmington. (Paragraph 4.27)

7.2 We provisionally propose that public nuisance should be found proved only when D is shown to have acted in the relevant respect intentionally or recklessly with regard to the creation of a public nuisance. That is, D must be shown to have intended to create, or realised that he or she might generate, what ordinary people would regard as a public nuisance. (Paragraph 5.44)

7.3 We provisionally propose:

(1) to restate the offence in statutory form, while altering the fault element as proposed above;

(2) for this purpose, to explore definitions alternative to that given in Archbold.

7.4 Consultees are asked for their views on how the offence of public nuisance should best be defined by statute to give effect to the above proposal. (Paragraphs 6.8 and 6.9)

Outraging public decency

7.5 We provisionally propose that the offence of outraging public decency be retained, and that its conduct element should remain in its present form as laid down in Hamilton. (Paragraph 4.43)

7.6 We provisionally propose that outraging public decency should be found proved only when D is shown to have acted in the relevant respect intentionally or recklessly with regard to the outraging of public decency. That is, D must be shown to have intended to generate, or realised that he or she might generate, outrage, shock or disgust in ordinary people. (Paragraph 5.52)

7.7 We provisionally propose:

(1) to restate the offence in statutory form, while altering the fault element as proposed above;

(2) for this purpose, to use a definition on the lines suggested in paragraph 6.13 above;

(3) to amend the Criminal Law Act 1977 so as to abolish the common law offence of conspiracy to outrage public decency. (Paragraph 6.15)

Additional questions for consultation

7.8 Consultees are asked for any further information they can contribute on the existing practice relating to the offences of public nuisance and outraging public

decency and to the alternative offences, remedies and procedures as described in this paper.

7.9 An impact assessment accompanies this paper. Consultees are asked if they have any comments to make on this assessment, or more generally on the likely impact of the proposed changes.

Council is asked for any views on this consultation with a view to a response being made by ACSeS. (Closing date 30 June)

Tony Kilner
Policy and Development Officer