

Dear Sir/Madam,

ACSES RESPONSE TO SRA CONSULTATION ON FAIRER FEES

Please find attached response from the Association of Council Secretaries & Solicitors, which represents the professional interests of all Chief Legal Officers, Monitoring Officers, Corporate Governance Managers and their Deputies in Local Government. You will note that we do not believe the current Practising Certificate Fees are in the public interest or serve solicitors employed in Local Government as they are most disproportionate, inequitable and unjust.

Taking a conservative average of £10,000 paid by each local authority per annum over the last decade, it is estimated that about £50 Million of public funds were paid into the legal profession by local authorities, with little or no value (or return) for Local Government. In the case of the larger authorities, such as Birmingham City Council, their share, alone, would amount to over £1 Million during the last decade. This is a disproportionate level of public subsidy into the legal profession and the regulatory body. Such amounts can not be justified in the public interest and such position is not sustainable in the current economic climate facing public sector employers.

Accordingly, we recommend that the current grossly unfair system for solicitors employed in local government be replaced, at once, with a far more fairer and proportionate charging system which treats solicitors employed in Local Government equally with those employed in the Government Legal Service. Key members of our Association, as indicated in the attached response, are willing to meet the SRA and others, if required, to explain any of the points mentioned in our response. Thanks.

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Moving toward a fairer fee policy

Second consultation

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.



ACSeS' Response:

Promoting Justice for Solicitors employed in Local Government

ACSeS is the professional association for managers of corporate governance (legal, administrative, democratic, scrutiny and standards) and statutory monitoring officers and their deputies employed by local authorities in England and Wales.

The Association plays a leading role in developing governance arrangements in local government and works closely with other associations, Government Departments and agencies. The Association provides an important network for its members to enable discussion, consultation, training and development on legal, corporate & ethical governance issues relating to local governance.

Dr Mirza Ahmad, LL.D (Hon), LL.M, MBA, Barrister
President of ACSeS

Concluded by the President's Group of ACSeS:

Andrew Frosdick, Susan Tovey, Philip McCourt & Mark Hynes.

22nd January 2010

For alternative formats, email contactcentre@sra.org.uk or telephone 0870 606 2555.

Question 1

Do you broadly agree with our conclusion that banded turnover is the best model for the firm based fee? If not, please give your reasons.

This is not a matter upon which we wish to comment, although any regulations introduced following this consultation exercise must make it clear as to the definition of 'turnover' and the 'bands' to avoid complications/confusion arising from various accounting practices within law firms and/or their subsidiary branches. The determination of 'banded turnover' for local authorities and other public sector organisations must also be made clear in the regulations.

Question 2

Do you agree that the split between the individual and firm allocation should be 40/60? If not, please give your reasons.

Whilst the split of 40/60 is a useful starting point, the justification for using this figure is arbitrary and devoid of any evidential base provided in the Consultation Paper. The SRA should clearly provide the evidence to justify the amount and in the absence of that we believe it must rise, in the following year, to a higher level of 20/80, as the burden must be shifted away from individuals and on to law firms, as proposed by both consultations.

Local Government has, for far too long, had an exceptionally poor deal from the Law Society and, now the Solicitors Regulatory Authority, with regard to the cost of Practising Certificates and the opportunity must be taken, at once, to address the injustice that exists with the use of such public funds for private law firms and the legal profession. Accordingly, for Local Government, the first year split of 20/80 must be implemented, at once, as we believe that to be a more accurate reflection of the regulatory burden.

It is also quite surprising that the Law Society and the SRA, now, does not have accurate data in terms of the regulatory impact on local government solicitors to justify the cost of Practising Certificates or the number/amount of sanctions actually imposed on solicitors employed in local government who might have been found to have breached the regulations. We suspect that the figures will be quite small.

Accordingly, it is imperative that proper data is collected, as soon as possible, to assess the impact of regulation on local government solicitors. In doing this the SRA must also be cognisant of the severe pressure upon public expenditure which is anticipated over the life time of the next Parliament. Whilst many of our private sector colleagues may soon move out of recession it is clear that the public sector will not do so on the same timescales.

Accordingly, any assessment of regulation and affordability must properly evaluate the impact upon the difficult financial position of local authorities and the best and easiest solution to implement for Local Government solicitors - without the need for introducing unnecessary elaborate or complicated regulations or bureaucracy for Local Government and the SRA, will be for the SRA to apply the exemption rates paid by the Government Legal Services and CPS to Local Government solicitors with immediate effect. To wait any further will be totally unjustifiable and will not be in the public interest.

Question 3

Do you have any further comments on the proposals in the section dealing with the regulatory fee (Section 3: Fee structure charging proposals)?

As per the answer to Question 2, we urge the SRA to recognise the current injustice in the cost of regulation applied to solicitors in Local Government and move, at once, to the flat PC fee applicable to the Government Legal Services and the CPS. This is the only just and equitable solution, and in the public interest, although we recognise that this will not be a popular option for the private law firms and the wider legal profession, as they have been feathered bedded for far too long by the public purse. This can not and must not go on.

Question 4

Do you agree with the SRA proposal that the Compensation Fund should only be used and funded to pay

- the direct costs of claims,
- the costs of handling those claims, *and*
- any necessary reserves?

We maintain our opposition to solicitors who do not hold client monies from having to contribute to the Compensation Fund. We see such amounts as a firm-based regulation issue and should be funded accordingly; i.e. not by the public purse through practising certificates of solicitors employed in Local Government.

In terms of the question posed, we agree SRA's proposal for law firms and urge the SRA to move to the current single flat fee paid by the Government Legal Services and the CPS be applied, en-bloc, to all solicitors employed in Local Government and other public sectors organisations.

Question 5

Which option for funding the Compensation Fund do you prefer, and why? If you think there is another option, please give details.

- Option 1: Individual: Flat | Entity: Flat Fee
- Option 2: Individual: Flat | Entity: Turnover-based (options 2a and 2b)
- Option 3: Individual: Flat | Entity: based on number of partners/members/directors

Whilst Option 2 provides the fairest option for private law firms and shifts the burden properly onto firms, we urge the SRA to move to Option 1, a flat fee, for all public sector solicitors based upon the current flat fee paid by Government Legal Services and the CPS. Any other method of charging for public sector solicitors will continue the current injustice and will continue the current inequity.

In the interests of the public, there must be regulatory cost conformity across the whole of the public sector and private law firms must pay their full share of the regulatory burden and should not be feather-bedded or rely upon public funds to subsidise their private self-interests.

Question 6

The impact analysis is based on comparing the proposed model with this year's funding structure and funding requirement, and is based on sample data. Therefore, the information we have provided is only indicative of the way in which the model will work. We have not presented the actual figures—as the funding requirement for next year is still to be determined. Please bear this mind as you answer the following questions.

Question 6.1

Do you have any comments with regard to the suggested turnover bandings and rates?

Save for comments made in response to the earlier questions re lack of objective data on regulation, definition of banding, clarity over turnover and the level of fees regulation, we have no further comments to make on this question.

Question 6.2

What do you think about the approach to keeping the proportion paid by firms of different pattern bandings as close as possible to the current model?

Save for comments made in response to the earlier questions re lack of objective data on regulation, definition of banding, clarity over turnover and the level of fees regulation, we have no further comments to make on this question, other than to re-iterate we no longer expect the public sector to be feather bedding private law firms or the private interests of the legal profession. The sooner this issue is sorted, the better it will be for the public interest.

Question 7

If the 40/60 split between the individual and firm-based fee is adopted, there will be a fee burden shift of 15 per cent from solicitors in the employed sector onto private practice. However, what will have more impact on individual firms is the change to basing firm fees on turnover. For example those with a significantly higher-than-average turnover per practising certificate holder will pay significantly more than before; more than 60 per cent of firms will experience either a decrease or an increase of less than 15 per cent.

Question 7.1

Do our worked examples reinforce and reflect the above?

No. We expect the SRA to ensure any modelling is fair, objective and proportionate. If such data does not exist, systems must be put into place to ensure the collation of the same, as regulation without following fair, objective and proportionate principles, will lead to the current injustice and inequity continuing. The public interest demands that the private law firms and the legal profession's self-interests are self-funded and not reliant upon public funds.

Question 7.2

Does the information we have provided (i.e. worked examples) help you in assessing how your firm might be affected? Is there any other information you would find helpful?

No, we do not find the modelling helpful, as there are no specific examples relating to Local Government. The Consultation Paper, as expected, whilst recognising the current injustice and inequality for local government, fails to totally address the modelling impact changes or indicate the level of the proposed changes for Local Government.

Question 8

Please comment on the renewal process you prefer—one-stage or two-stage—and why.

Question 8.1

What might be the impact (both positive and negative) on your firm if it is one- stage process?

We have no specific comments on this question, but would urge the SRA to act now and not leave this matter just because there might be a back lash from private law firms. The current inequality and injustice must be addressed and addressed promptly in the public interest.

Question 8.2

What might be the impact (both positive and negative) on your firm if it is two-stage process?

See our answer to Question 8.1.

Question 8.3

Can you think of how else a one-stage process or a two-stage process might affect the profession?

See our answer to Question 8.1.

Question 9

Do you think that we should charge additional fees to encourage firms to provide the required information on time? What model do you think is more appropriate for the calculation of such additional fees?

See our answers to Questions 7.1 and 8.1.

Question 10

Do you agree with the rationale of charging UK firms with branches outside of England and Wales a small flat fee in relation to each branch to cover the cost of regulation, or do you think this cost should be borne by the whole profession through regulatory fees?

Please comment on any exceptions and/or anomalies that the described options might bring.

This is not a relevant question for Local Government and, as such, we offer no comment on the same.

Question 11

Please give us your views on whether you support our proposal to charge new firms / sole practitioners in their first practising year:

- A flat not-pro-rated application fee of £180 for new firms, and £90 for sole practitioners
- No further contribution to the Compensation Fund

This is not a relevant question for Local Government and, as such, we offer no comment on the same.

Question 12

Please give us your views on whether you support our approach to new firms / sole practitioners at first renewal:

- New firms with turnover data for less than three months will provide an estimated turnover value similar to that which is provided to indemnity insurers (but only with England and Wales turnover).
- If turnover data is available for a part year (i.e. more than three months), this should be scaled up pro rata.

This is not a relevant question for Local Government and, as such, we offer no comment on the same.

Question 13

Please give us your views on how the SRA should approach setting fees for firms that have merged, and comment further on the following options proposed by us on what these fees should be based on.

- Option 1: the combined annual turnover for the last accounting period for the different firms prior to the merger
- Option 2: the actual turnover generated since the merger which will be scaled up to reflect the yearly gross fees of the merged firm

This is not a relevant question for Local Government and, as such, we offer no comment on the same.

Question 14

Please give us your views on how the SRA should approach collecting fees from firms that have split part way through the practising year, and comment further on the following options we have proposed.

- Option 1: Charge the splitting entities their corresponding stakes based on the combined turnover for their last accounting period. The onus is on the profession to establish the split percentage.
- Option 2: Charge the splitting entities on their actual turnover generated since the split, which will be scaled up to reflect the yearly gross fees of the new independent firm.
- Option 3: charge only the firm that retains the majority of the business post split for the entire turnover.

This is not a relevant question for Local Government and, as such, we offer no comment on the same.

Question 15

In line with the principles of fairness, do you agree that the SRA should adopt the same approach of charging a small flat fee for each overseas office for foreign firms with branches in England and Wales? Are there any other options that you might regard as reasonable?

This is not a relevant question for Local Government and, as such, we offer no comment on the same.

Question 16

Are there any other comments you would like to make?

As will be obvious from our answers to the above questions, we can not and must not allow the inherent inequality and injustice built into the current practising certificates for local government from continuing. We owe it, in the interests of the public, to address such inequality and injustice, without fail and must have the conviction of our leadership and benefits to ensure the public interest - as opposed to the self-interests of law firms or the legal profession - prevails.

We are happy to meet, if it helps to clarify or reinforce the above responses to your questions.

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **22 January 2010**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

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