

Application by the Solicitors Regulation Authority to Amend its Code of Conduct

A report by the Office of Fair Trading to the Ministry of Justice on the likely competition effects of the Solicitors Regulation Authority modifying Rule 11 of its Code of Conduct under Section 29 and Schedule 4 of the Courts and Legal Services Act 1990

April 2009

OFT1072

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1 INTRODUCTION

1.1 The advice below concerns the application made by the Solicitors Regulation Authority ('SRA') to make modifications to Rule 11 of its Code of Conduct ('the Code'). This advice is given on the basis of information which the Office of Fair Trading ('OFT') was provided with by the Ministry of Justice in a letter dated 6 March 2009. The following documents were included with this letter:

- An SRA Board Executive Summary concerning the changes to Rule 11 of the Code dated 16 October 2008;
- An amended copy of Rule 11;
- A response from the City of London Law Society; and
- A response from the Law Society which incorporates the views of the London Solicitors Litigation Association.

1.2 The SRA is the body responsible for regulating the solicitors' profession within England and Wales.

1.3 Under the Courts and Legal Services Act 1990 ('CLSA90') Section 29 and Schedule 4 (as substituted by Schedule 5 of the Access to Justice Act 1999) if the SRA wishes to modify the Code it must make an application to the Secretary of State for Justice.

1.4 Under Section 29 and Schedule 4 of the CLSA90 the Secretary of State for Justice must seek the advice of the OFT who will consider whether granting the application would have or would be likely to have any significant effect on competition within the legal services market.

1.5 The main aim of the SRA's amendments to Rule 11 is to prevent solicitors from being burdened with unnecessarily onerous regulation with regards to their duty to draw the contents of any documents filed in proceedings and irregularities to the court's attention.

- 1.6 I am authorised by the Office of Fair Trading, under paragraph 12 of Schedule 1 of the Enterprise Act 2002, to carry out competition scrutiny of the proposed alterations as required by the provisions of the CLSA (as amended) set out above.
- 1.7 For the reasons discussed in the following paragraphs the OFT believes that granting the SRA's application to modify Rule 11 will not have or be likely to have any significant effect on competition within the legal services market.

2 RULE 11 – LITIGATION AND ADVOCACY

- 2.1 The SRA wishes to delete Rule 11.01(2)(b) and to redraft Rule 11.01(2)(c) which will become Rule 11.01(2)(b), so that it refers to 'material procedural irregularity' as opposed to 'procedural irregularity.'

Rule 11.01 (2)(b)

- 2.2 Rule 11.01 2(b) currently requires solicitors to draw to the courts attention 'the contents of any document that has been filed in proceedings where failure to draw it to the court's attention might result in the court being misled.' The SRA propose to delete this provision.
- 2.3 The SRA maintains that it is unclear which documents Rule 11.01(2)(b) applies to as there is no guidance provided on this point. The SRA stipulates that if applied literally Rule 11.01(2)(b) would impose a very onerous obligation on solicitors appearing in court, as they would be required to check entire file bundles in order to ensure that the court is fully aware of their contents. We understand from the SRA that the Bar Code of Conduct does not contain any comparable provision. The SRA proposes to delete Rule 11.01(2)(b) from the Code to prevent unnecessary over regulation. As such the OFT believes that it will not have or be likely to have any significant effect on competition within the legal services market.

Rule 11.01(2)(c)

- 2.4 The SRA maintains that Rule 11.01(2)(c) currently requires solicitors to draw to the courts attention 'any procedural irregularity'. The SRA proposes redrafting this provision so as to require solicitors to draw to the courts attention 'any material procedural irregularity.'
- 2.5 The Code does not currently include any guidance on the definition of a 'procedural irregularity' and the SRA believes this provision is open to very broad interpretation. The SRA proposes to make this modification for the sake of clarity and to prevent unnecessary over regulation. As

such the OFT believes that it will not have or be likely to have any significant effect on competition within the legal services market.

3 CONCLUSION

- 3.1 For the reasons given above the OFT believes that the deletion of Rule 11.01(2)(b) and the modification of Rule 11.01(2)(c) will not have or be likely to have any significant effect on competition within the legal services market.

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April 2009**