

## **CMC Paper to Council for discussion and decision on 8<sup>th</sup> September 2020**

### **Reform of the Representative basis of Council – Delivering fair and balanced representation**

We thank Council for an excellent response to the questionnaire on the CMC reform proposals of June 2020 with 92 of a possible 93 responding and almost all completing the questionnaire.

The outcomes show substantial support for the key elements of CMCs proposal and that a significant majority of council members supported the underlying direction of the reform proposal.

CMC believes that the insight into Council members individual perspectives enables CMC now to offer a revised proposal to deliver reforms that should have the support of a clear majority of council members.

#### Access to Survey results and related material

The full survey results, the individual CMs answers, an extracted seat balance breakdown together with the June 2020 Proposal document and its Appendices are to be found with this on Directors Desk in the Council section. We hope shortly to add the latest SRA data on work-practice types which some Council members have asked for.

#### Our June 2020 Proposal and the survey outcomes

The key elements of the June 2020 proposal which the Questionnaire addressed are listed in italics below with the survey outcomes following. Where figures do not add up to 93/100% it is because some responses were unclear. Those can be identified in the documents now on DD

*1. For Council to comprise three types of seats: Geographical/regional; Work/practice area; Characteristic.*

This was supported by 79 CMs (81 %) with 7 CMs preferring either removing all geographical seats or all characteristic seats and the balance not agreeing but not expressing an alternate position.

*2. To address under representation by reducing over representation.*

This was supported by 72% (67) CMs with 25 CM against. We conclude that there is little appetite for a larger Council. A small number stated that there was no under representation.

*3. To replace current geographical seats with Regional seats.*

This was supported by 47 CMs (50%) with 43 against. It was apparent from responses that if regions were smaller and more in number or were segmented and more closely identifies with local law societies then some 55 CMs and possibly more would support a move to Regions.

*4. If Region were supported should there be 12 regions?*

This was supported by 57 CMs with 35 against

5. *For Regional Forums to be established (if we have regions).*

This was supported by 58 CMs with 34 against

6. *For changing the balance of Council seats from the present approximately 60% geographical, 25% Work/practice and 15% Characteristic and making it to approximately 40%,40%/20%.*

For retaining the status-quo 60%/25%/15% there were 14 CMs in favour with another 9 in favour of increasing the proportion of geographical seats above 60%. 4 positions were unclear.

For CMC's proposed rebalancing at 40%/40%/20 % there were 44 CMs in favour and that was by far the most preferred option. For geos seats to be balanced at 45% or less was preferred by 52 CMs. (56%) For Geographical seats to be at 50% there were 12 in favour.

For Characteristic seats to be at approximately 20% there were 65 CMs in favour (70%). For work/practice seats to have approximately 40% of seats there were 55 CMs supporting.

7. *That there should be single- seats for most practice/work areas*

This was supported by 61 CMs with a number questioning whether any such seats should be for more than one CM and others requiring further explanation/clarification

8. *That there should be multiple seats for some (mostly new) practice/work /character areas*

This was supported by 43 CMs with 47 against with requests for further clarity on the rationale of the proposal

In considering the responses we have looked to see where a balance that most of Council would see as delivering fairer and better representation might be.

We have noted constructive suggestions raised about engagement, alignment with local law societies and the need to guard against some urban centres dominating rural interests.

CMC has therefore amended its proposal whilst retaining the integrity of our firm conclusion that key sectors need representation which they either do not have at all or do not have proportionately to the substantial sectors of the profession they represent.

CMC has amended its proposals to increase the proposed number of geographical seats and to reduce the number of practice -work sector seats largely by reducing multiple seats as Council preferred.

Below we describe this in more details and respond to other points raised in responses.

Our proposal which will be put to Council as a series of options to vote on is set out in Appendix A following and, in a format, which will hopefully assist Council's deliberations.

#### CMC revised proposal in the light of the survey.

We agree that we are not in just "a numbers game". Numbers are a result of our perception of what is required to deliver the representational base, which is appropriate for today's profession, but we do not only offer numbers

A majority support reform and including by reducing the number of geographical seats and increasing the number of work/practice sector and characteristic seats.

We continue to prefer the adoption of a regional framework to deliver support to geographical council members and if we have regions, for there to be 12 regions. With the widespread adoption of virtual communication an effective regional framework can be delivered simply and at low cost and should be tried. However, we recognise that simply having regional seats in a regional structure may need refinement. We can achieve this by creating defined seats within those regions rather than just having overreaching regional seats. In Appendix A we propose a structure that we suggest delivers that and delivers the changes that some Council members sought to protect against urban dominance and disengagement from Local Law Societies (we identify those currently active). Some existing region-based constituencies may prefer to retain the current approach and that can be easily accommodate. We have also added seats in the North West, South West, West, and East Midlands, in the East, and in Yorkshire.

CMC believe that in respect of work/practice seats our proposal was broadly correct in identifying the appropriate seats though we have made small changes. We largely accept the preference for the single seat approach save for Sole Practitioners but maintain that some new seats should have multiple representation, though we have reduced the numbers.

In respect of Characteristic seats our proposal as to the proportions and numbers was largely supported so we make no change there. One member raised concern that the reduction in geographical seats as then proposed would result in reduced BAME representation. We have considered this but do not agree that as a consequence to be any more likely than the exiting risk of that happening. Most BAME held seats are not materially affected by our proposal. If Counsel disagree, then we suggest increasing by 1 the Ethnic Minority seats.

#### Issues raised in the consultation which we have considered or reconsidered in our revised approach.

1. There is no under representation and geographical seats can represent everyone.

Whilst this is theoretically possible the reality is quite different. Of the current 61 geographical seats just 22 are held by women which is 36% for a group who represent 51% of the profession. Only nine geographical seats are held by BAME who are at least 17% of the profession. There is only one geographical seat held by an in-house corporate solicitor compared with 15% of the profession. Outside the JLD seats there are only two JLD qualifying council members with that sector representing some 20% of the profession. 47% of the profession work the larger mostly corporate commercial sector but only 17 council members are from those firms.

It is suggested that with focus and encouragement this can be rectified. But in respect of the 2020 elections now in progress it is unlikely that there will be any change in the balance of Council. Most of the elections are uncontested. In the 11 uncontested seats all 5 of the new Council members are men one of whom replaces a woman who was also the only geographical in-house lawyer. And in two of the seats, both geographical, there are no candidates. There have never been vacancies in other seat types.

We also bear in mind that current CMC first proposal to Council offered a structure which largely retained geographical seats but split some of them between the key underrepresented sectors. The proposal was rejected by Council.

## 2. It is not just about numbers but issues

We agree. We have always made it clear that the numbers are not where we started from but where we have got to after focussing on the facts of what today's profession is and where it is clearly going.

We believe that by reforming Council in the way we recommend a wider range of issues can be discussed, with a wider range of views but also with more focus, because each major practice area and work-based will have a principal spokesperson who when that issue or area was being debated or relevant would be expected to make a significant contribution.

We believe that by increasing the number of work – practice and characteristic sector seats as we propose, though not as many as we had wished, it will attract with increased identification with those areas having a core voice on Council. More practice- work sectors can only help deliver that, not least in an environment where important solicitor work sectors are poorly if at all represented.

## 3. There is an inherent democratic unfairness in the present system which our proposals do not cure

We agree, and we set this out at some length in our 2019 paper. And we have gone some way to try and cure the concern that some council members have more choices both in which to sit as a council member and in which to vote and that this is unfair and that too many seats are nominated which is also unfair

This system is attributable in part to the hotch pot way in which Council has been reformed in the past. The Charter anticipates elections. We strongly support a move to proper elections for all Council seats. We also propose that every member should have one vote in one geographical seat and one vote in one practice/work area sector (save Legal Aid and 6-12PQE). Additional votes will then be limited to those who have identified with specific characteristics. We do not think the characteristic constituencies should be either a no choice or a merged with work-practice single choice which is the only practical alternative. That would be unfair

It is said to be inappropriate to have new and increased multiple seats in some practice areas. We have previously set out why we believe it is important that those characteristic sectors and some of the new practice/work area sector seats should have multiple seats at least at this stage in the development of the profession's representational base. We do not agree that starting with a low/lower base of representative is appropriate for the new work-practice seats proposed because the present level of underrepresentation in those areas is significant and needs urgent rectification. With the characteristic seats we maintain our position that these seats need to be maintained at this time not only at the present level but need to be increased. We note that our position was seemingly significantly supported by Council members

In summary we believe there is a compromise in the voting unfairness to be made at this stage and we offer one which is reasonably balanced and fair. However, we should continue to monitor this and change it if the impact became material.

In respect of the unfairness of the closed nomination process which is applied in a minority seats of some 16 current seats, we agree that by today's standards of governance and the focus of openness transparency and fairness this is neither right nor acceptable. We do not believe that any seats should be excepted from this and we understand that this is accepted in most of the seats in question but not all. The only certain and fair correction is to provide that nominations is open to all and determined by all in the constituency.

#### 4 Geographical seats should not be perceived as bad or wrong

We agree and have never suggested that. Our concern is with impact on under representation of the current balance and the extent to which the current geographical arrangements facilitate that. There are no other identifiable areas where over representation is significant.

That the proposed geographical regions are too big and current engagement links to local law societies are at risk we recognise. That a regional structure particularly one with regional forums will be bureaucratic and costly we do not agree

We have no desire to add bureaucracy or cost and do not believe our proposals do that. Our proposal did not involve regions being a tier within the governance structure. We see Regions purely as a support mechanism to facilitate council members liaise with one another about issues of mutual relevance and to be able to engage more specifically with their constituents in a defined and accessible way. Almost certainly in the light of recent experience virtual technology can deliver this at modest if any cost. We have made it clear that we strongly support the continuation and strengthening of relevant local law societies. The current level of active local law society structures with exceptions, does not fully match the current geographical constituency network

We have noted the variety of views expressed about how our proposal for regions could be improved or varied to meet concerns expressed including the distance factor and the urban centric consequence that could arise within a regional framework of the type we proposed. That was not our intention, but we see the risk and so offer Council a proposal that we believe reduces those risks. Simply increasing the number of geographical seats is not a solution if we are to maintain and deliver increased representation in non-geographical seats as most council members wish. We cannot simply swap numbers around but must also get a right and fair representational balance.

We noted that that the numbers we proposed in some regions was felt to be not enough and we have accepted those where the numbers of practitioners relative to the areas size justified that.

Finally, whilst we do not believe the proposal is London centric given the very large numbers which practice there, we have proposed reducing the London Central seat by one and that has contributed to the suggest additional regional seats. We have also reduced the proposed Major Corporate and In-house Corporate seats by one each. To go beyond the now proposed 46 geographical seats would unfairly impact on the representational balance indicated by overall responses

#### 5. Sizes of main practice-work areas and how they are defined, seat numbers and proportionality.

We apologise for the fact that aspects of our proposal here were not sufficiently explained or the figures not readily identified. In fact, the numbers material was available within the appendices in all

cases where figures were available and where not available, they were identified. The TLS has largely to rely on SRA data for this information. The latest figures extracted from that were used in our proposal. They will be available on Directors Desk.

As we will all know the SRA site offers an extensive but not complete lists/descriptions of practice areas for selection. It offers multiple choices and it lists and publishes that data on an annual basis. Because of the multiple options the totals assigned to each group exceed 100% in total, but it is possible to make a relatively accurate assessment of the probable number of practitioners in the practice areas as defined by the SRA. It was this data that was listed in the appendices to original proposal. There are significant numbers of practitioners in civil litigation, in business affairs, in property et cetera. Those data fields assisted us in defining the larger practice areas. That system of identification usage has in fact been used by the Law Society for definition and electoral purposes for over 20 years. Most are proposed unchanged

The SRA also gathers data about work sectors and this information is also provided to the Law Society and forms a significant part of our annual statistics report which is available to all council members and the key extracts of which were set out in our proposal appendices.

The issue of proportionality addresses whether the larger areas should have multiple seats. Most Council members do not think there should be and that has been CMC's position but to reflect Council's views our revised proposal removes several multiple seats and redefines them as single seats.

We have noted concerns that some proposed were arguably a subset of a bigger practice area. We have removed one proposed new practice areas where on reflection it was a subset (IP/IT).

A small number of Council members appeared to support that proportionality with balanced representation within the main practice areas seats and therefore offer multiple seats in those. If we were to adopt that it would disproportionately increase the number of seats in work- practice areas at the expense of geographical and characteristic seats and we do not believe that that is a reasonable approach to take given the overall views expressed by Council.

## 6. Non-TLS bodies excluded unfairly

A small number of council members raised this, and we think it is important to restate CMC's position which has been fully set out in previous papers. The Law Society represents solicitors and its members are exclusively solicitors. Its governing council represents the interests of solicitors. CMC believes that the views reflected, and the representational base of council should be those of and that of the solicitor's profession. We happily recognise the contribution to law reform and to the promotion of issues made by other bodies external to the Law Society. We also recognise that some find themselves as external due to long-standing issues with the law society often not of their making. We do not seek to disengage from those bodies to the extent that they may also represent solicitors interests but our inquiries show that some do not have that objective and either do not represent solicitors but represent firms or other providers of legal services or represent the interests of clients as a primary concern, or represent solicitors along with multiple others

We deal with some specific situations. Our view about LAPG is that the seat which they hold should be one held by a solicitor who practices legal aid work and is elected by solicitors who practice legal aid work. LAPG is a worthy body. We very much hope that the link between LAPG and Council will otherwise continue. But it is an organisation to which individual solicitors cannot be members

though individual barristers can. Solicitors can only engage through an organisation albeit one that delivers legal aid. Multiple types of legal aid service deliverers are entitled to be members. The LAPG does not know how many solicitors engage with because it does not collect that data, indeed it cannot as solicitors cannot be members. We agree the Law Society ought to collect that data and our proposals will endeavour to do that.

In respect of APIL and FOIL these are bodies whose primary function is not the promotion of the interests of solicitors. In the case of the former it is the interests of injured persons and in the latter law businesses whose principal clients are insurers. It is not surprising therefore that there are conflicts between them. Historically the TLS has been seen to be more aligned with the injured party than the insurer. Whether that has been helpful or unhelpful to the promotion of the Law Society's interests in other areas has been a matter of speculation. CMC's view is that whilst there is legitimacy in representation on council of solicitors undertaking personal injury work, as a major practice area, Council is not the right place for arguments of the type that continue between the two sides. Historically those issues have been dealt with within the civil litigation committee where both are active and represented. CMC certainly believe that both bodies should continue to be represented by solicitors on that committee. We do not accept that a practitioner of on or other "side" cannot represent the interests of PI solicitors generally.

In respect of the Sole Practitioners Group and Commerce & Industry which are external to the Law Society we have previously set out our position and will not repeat it. We absolutely support continued engagement with them, but it should be all solicitors practicing in those areas that chose their representatives and the nomination of Council members by committees must end.

Our position that the Local Government seat should be a single elected seat remains unchanged.

## 7. Covid and the impact of virtual engagement on CMC proposals

CMC believe that after three years of consideration by Council it is unreasonable to describe bringing this matter to conclusion as navel-gazing at an inappropriate time. We believe as other Council members do, that we should now finish this reform discussion, decide, and bring it to conclusion. The proposals will not in any event take effect until over a year's time and will be implemented progressively over four years. We accept that there may be some covid influenced changes in the profile of the profession in future years but we doubt they are going to be so significant as to materially affect the basis of representation given the current profile of the profession and the direction it has been proceeding in recent years.

Yes, we agree that virtual engagement has shown the capacity to increase levels of engagement while saving in time and cost and must feature significantly as part of our future relationship with members, local law societies and others. We don't believe that is a justification for making council bigger as the time which can be allotted by practising solicitors will still be finite in terms of contribution and increasing numbers on Council will lengthen meetings and have other unintended consequences which will detract from the effective delivery of counsel's responsibilities

## Bye law proposal

The AGM is on 15 October and bylaws implementing any decisions taken by Council must be filed by 2nd September. CMC have therefore drafted bylaws which would implement their recommended proposal at Appendix A. If Council rejects all proposals the proposed bylaw amendments the motion will be withdrawn. If Council accepts one of the alternatives offered it will be a relatively

easy matter to adapt the proposed byelaws to the regime which Council has approved. If another proposal emerged from Council that might also be easily adapted, and the changes then submitted as amendments at the AGM or could be filed as byelaw changes by Council. The draft Bye laws are Appendix B

#### Recommendation

That Council approve a change to the representational base of Council and consequent bye law changes to provide for 46 Geographical seats allocated to 12 Regions, to provide for 33 Work-Practice seats and to provide for 17 Characteristic seats as provided in Appendix A with all seats to be open to all Solicitors in identified with the constituency and elected by those solicitors