

Council Membership Committee

Report to Council December 2019 Updated on 15/1/2020 following receipt of new data and clarification given to CMs

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Introduction

This report updates Council following the extensive consultation with Council and constituencies on the proposal in CMC’s paper of July 2019.

In the light of the responses and further exchanges with CMs who raised issues on the proposed regional boundary delineations, CMC prepared a revised proposal for discussion with the Joint Council-CMC working party. The proposal as amended in the light of those joint discussions is now presented as attached.

CMC has carefully considered all the responses to its July paper and believes that what is now proposed meets the representational deficits that have been identified in its several earlier papers but is also fair and balanced, in terms of proportionality and representational need, given Council’s new role in the governance structure and the points raised in consultation.

At the request of more recently appointed Council members this report briefly sets out some background issues so that the CMC’s position can be understood, in context, by all. This report does not address the rationale of the proposals as fully as previous papers as to do so would be unduly repetitive. Further CMC propose we now enter a final stage of consultation within and beyond Council, during which we can address continuing concerns which Council members may have.

This consultation period will run until at least the next Council in February at which point CMC hopes to begin the process of putting its proposals formally. The two-day meeting in March may present a final opportunity for discussions.

CMC terms of reference and history preceding reform proposals

Council was last reformed 20 years ago and since then the profession has undergone significant change such that many believe the current that Council needs to be restructured to make it both more representative of and more reflective of today’s profession, taking into account the very clear direction which the profession is taking. There is significant under representation of the fastest growing sectors of the profession being junior and other solicitors under 20 years PQE, business and commercial practitioners, In house solicitors and women.

Under the bylaws and regulations of the Law Society, CMC is charged with monitoring the representational basis of Council and of reporting with recommendations to Council, at least every four years.

Over the last 16 years successive CMC’s have put forward reform proposals. None of those have been accepted. The consequence is that the need for Council to be reformed has increased so the scale of the reform now needed is that much greater. In putting forward these reforms forward CMC hopes that this and future Councils will be more aware of the need to adjust representational balance more regularly and willingly.

That said the reforms now proposed are designed to impact on as relatively few current council seats and their constituencies as is reasonably possible. Of the current 97 seats 64 are either unchanged or relatively unchanged. CMC has strived to secure the new representational balance without significant disruption.

However, CMC also believes that if it is to deliver to the modern profession the quality of contribution and debate that is required then Council needs to be smaller. The paper therefore continues to include our ambition that Council should be further reformed over the next four years to reduce its overall size in a proportionate way. Our proposal for that facilitates the continuation of the constituency interests we have now identified, so long as they continue to reflect the current areas of demographic changes within the profession.

The majority of CMC believe that with the correct constituencies identified and adequate IT support in place then no more than one Council Member is needed to represent a constituency. What matters is not size but getting the issues facing constituents articulated and properly addressed. We are conscious that TLS has and will continue to have limited resources. It is self-evident that on current funding with a smaller Council the greater the amount that can be made available to support its members. So, whilst encouraging the establishment of seats for the significant parts of the profession that are currently underrepresented this is a necessary step on the road but not the end of it.

Core concerns of CMC that need to be addressed in reforms

CMC believe an external observer looking at the key elements of the current Council would be surprised that so worthy a body had such a bizarre, confusing and outdated democratic base

Few of the current 61 geographical seats reflect boundaries that the solicitors of today recognises as relevant to their practice. There are almost no contested elections in these seats and when there are turnouts are low. Local Law societies are the main connect to the membership but outside the main urban areas their level of engagement with members is also low.

There is also a significant democratic deficit in the electoral base of most of the non-geographical seats where few, save the JLD, are elected by the members whom they purport to represent and in respect of which there are also serious concerns about the level of member engagement within the sectors.

Delivering a representational structure which also encourages engagement with members is at the heart of CMC's proposals. That is why we focus on more clearly defined and recognisable constituencies and electorates which are based on the whole of the practicing profession. We also need a system of electronic voting for all seats, which will, pleasingly, be as cost-effective as the present arrangements. We cannot fully transfer to this immediately, but we should do so speedily

When looking at better engagement not least with an eye on the incoming profession and the growing profession of under 20 years P QE (50%) face-to-face engagement is increasingly not the norm and neither is it preferred. Members and local law societies have stated that they prefer email and social media platforms as the way to learn about and engage with Council and its business.

It is also desirable that Council recognises that with the probability if not certainty of the loss of section 51 funding there will be a need to move to a representational levy for all participants. CMC continues to believe that it is the practising profession that council should represent and that

representational engagement by voting and by Council membership should be restricted to those paying and not simply to every solicitor on the roll. As the SRA has ceased deleting retiring solicitors from the role so the number of retired solicitors on the role is increasing disproportionately to the whole.

We recognise that not all practising solicitors have practising certificates, but the vast majority do and almost all can. Contrary to popular belief most solicitors in local government or in corporate institutions have practising certificates. We continue to propose that a practising certificate or the payment of a levy is a requirement that should be imposed on all CMs. Very soon we will not be able to have a functioning law society without contributions from a practising levy

CMC have replaced all non-TLS based organisation seats with TLS/solicitor only linked ones. This does not cut us off from the organisations whose seats have been reidentified and we do not wish that, but it does deliver truer and improved representation of Solicitors.

Finally, having considered the arguments to the contrary we are of the view, that in a modern governance body there should be a limit on the number of years for which a person can be a member of the governing Council. The majority of CMC believe that 12 years is correct. Alternatives have been proposed including 8 and 16, but 12 seems to be most supported although we recognise some remain against any form of limit.

Council members Role and Responsibilities

The second attached paper previously identified as a job description has been submitted to Council for comments at each of the last three Council meetings. CMC hope that all will now be satisfied with what is proposed. It is clear from the consultations that a significant number of council members believe that Council members must be much more accountable to their constituents than at present and the document provides for that.

Otherwise the document is a restructured collection of the output in various documents which currently refer to the role with greater emphasis on engagement. It may look like more work but it's better to look at what most CMs in fact do.

CMC hope the council will at the December Council meeting, agree this document in its current form. So, if you have further comments or amendments could we have these by email ahead of the meeting?

Recommendations for the support for council members

From the beginning the current CMC has recognised the need for Council members to be sufficiently supported in their role and in discharging their responsibilities to their constituents. The most significant need appears to be within the current geographical /regional seats **although support for other seats will have to be delivered at least at the current levels applicable** . CMC hope that the rationalising of the structure into the proposed regions and the consequent sharing of responsibilities between regional council members that will be encouraged, will go some way towards delivering that support albeit it is a form of self-support.

We support and adopt the system of regional meetings that operate in several regions. We believe the regional forum to support regional Council members can exist within those existing structures

without material impact on their arrangements even where, as in the ASWLS, the traditional groupings may be slightly different to the regional structures proposed.

We are aware that there will be costs associated with these but as meetings in the gathering sense, these should be a short-term measure. When email and social media support mechanisms are put in place by the Law Society, we believe these will facilitate the regional forum developing online and using dial in. In the view of CMC establishing a full database of the profession, which is in the control of the Law Society as opposed to the SRA, and with which the members can engage through My Law Society, is an absolute priority and very much overdue.

Until that is delivered it will be necessary for the Law Society centrally to encourage and support regional forum functions by contributing to them. CMC has modified its proposals for regional forums so that they may now comprise no more than an agenda item, albeit an important one, in the current regional structures that exist. In the regions where they do not exist and will have to be established with the support of regional Council members, the Law Society will have a somewhat larger financial cost in the short term but limited to room hire and local travel costs. This will not be substantial for the support and engagement delivered. We have estimated (based on ASWLS costs) that £60,000 pa should cover 4 meetings in all regions. Once effective email communication and social networking is delivered by the Law Society then the cost will fall away to negligible amounts as regional forums will become social network groups.

Timetable to conclusions

After December Council meets next on February 12th and then in strategy mode on 27/8th March but not again as Council until 3rd June when any agreed reform proposals must be formalised as by law changes ahead of the 16th July General Meeting

Next stage

There will be further consultation with CMs and constituencies on the proposals outlined in, and the two attachments to this report. We also hope also to engage with the wider profession.

We hope that in this further consultation stage those who have questioned our proposals on the basis that they will diminish engagement with the profession will think carefully about what level of engagement with the profession is now being delivered. Available data suggests it is probably less than 15% of members based on the turnout in elections and the numbers engaging with their local law societies. If that continues without change the Law Society as we know it cannot survive. These proposed reforms target improved engagement and with a significant part of the profession which has been historically largely ignored. That can only be for the good.