



THE FRAUD
LAWYERS ASSOCIATION

Comments in response to the consultation by the Law Society of England and Wales on a draft Practice Note – ‘Legal Professional Privilege: The Law Society Guidance on its Usage’

This is a response by the Fraud Lawyers Association (FLA), an organisation established in 2012 to educate and train its members in all matters relating to their practice as fraud lawyers. Its membership consists of solicitors and barristers who practice mainly in the area of criminal and civil fraud: www.thefraudlawyersassociation.org.uk/.

The FLA welcomes this timely proposal, and fully supports its aims. Our membership is only too aware of recent criticisms levied at companies and individuals who maintain legal professional privilege (LPP), and of the challenges typically encountered by practitioners asserting LPP on their clients’ behalf. We believe that a Practice Note would be of assistance to practitioners whose clients are put under pressure to waive LPP, and believe that all practitioners in the legal justice system would agree that such pressure is not appropriate.

The FLA understands that the Practice Note seeks to address only one instance in which LPP has recently come under attack, although there are many other examples (the webpage announcing the consultation refers to the proposed amendments to the SRA Handbook). We agree that the incidence of challenges of this type from law enforcement bodies and regulatory authorities merits a profession-wide response. It is, indeed, the experience of our membership that clients may come under pressure to waive LPP from a number of sources, in a number of forms.

The FLA agrees that the application of LPP in the context of criminal and regulatory investigations often raises complex issues, and welcomes guidance from the Law Society on this point. It would be helpful if the Practice Note could direct practitioners to any existing sources of additional information.

It would also be helpful if the Law Society could collate information from its membership about the types of situations where pressure is put on clients or their lawyers to waive LPP. Where appropriate, the Law Society should raise the matter with the relevant authority or intervene. Perhaps the same email address used for the consultation (privilege@lawsociety.org.uk) could be used for this purpose.

The FLA welcomes the proposed Practice Note and looks forward to its speedy publication. We hope that the Practice Note will highlight the scale and extent of the problem faced by practitioners advising clients in criminal and regulatory investigations. To practitioners outside of this area the Practice Note will serve as a reminder of the importance of LPP, and of the practitioner’s obligation to ensure that it is properly maintained at all times.

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