# Looking to the Future: Phase two of our Handbook reforms

# Our post consultation position

June 2018

# Contents

# Introduction

1. This is the culmination of our Looking to the Future programme of regulatory reform. It marks the end of a process that began in May 2014 with our position paper, Approach to Regulation and its Reform (which we subsequently refined and expanded upon in November 2015). That position paper set out our vision for our future work. It outlined a proposed new approach designed to make sure that our regulation is targeted, proportionate and fit for purpose in a diverse, fast changing and dynamic legal services market. It also set out our intention to redraft our existing Handbook to make it shorter, clearer and easier to use.

2. Since that time we have reviewed more than 648 pages of rules in our Handbook and heard views from thousands of stakeholders. We have consulted on the wide range of areas, including our Principles and Codes and our Accounts Rules.

3. All this work has been focused on delivering a regulatory regime that:

    - sets clear, high professional standards for those we regulate
    - offers flexibility, both for providers in how they structure their businesses and for consumers in how they choose to access legal services
    - can keep up with rapid developments in the market while also maintaining appropriate protections for consumers and the public
    - is user friendly, so our rules can be understood by the people and businesses we regulate and their customers.

4. We have had a substantive and inclusive response to this programme of work. Through both phases of our Handbook review we have spoken to more than 14,000 members of the public, solicitors, firms and other organisations. Lots of the feedback we received has been positive, with respondents acknowledging the importance of what we are trying to do. But we have also heard people's concerns, particularly about the possibility of consumers being confused by greater choice in how they can access legal services.

5. Alongside this, proposals outlined in another consultation – Better information, more choice – are designed to reduce this risk. Those proposals will make information about firms, the prices they charge and the services and protections they offer more easily available to the public. We will also continue

to monitor the effects of our changes using the impact evaluation framework designed for us by the Centre for Strategy and Evaluation Services.

6. In phase one of our Handbook review we examined our Principles, Code of Conduct and Accounts Rules. In May 2017 our Board made the policy decision to remove barriers preventing solicitors from working freely across the legal market and beyond, including in the growing number of businesses that are not regulated under the Legal Services Act 2007 (LSA).

7. Our Board also agreed in principle:

- a new set of Principles
- a Code of Conduct for solicitors, registered foreign lawyers (RFLs) and registered European lawyers (RELs)
- a Code of Conduct for firms
- simplified Accounts Rules.

8. These changes aim to make every solicitor clear about their personal obligations and responsibility to maintain the highest professional standards. There are some core standards that are the golden thread running through what it means to be a solicitor wherever and however they practise. The separate code for firms provides clarity about the systems and controls the firms we regulate need to provide good legal services for the public. Authorised firms must also maintain and support high professional standards.

9. We want to help tackle the problem that too many people cannot access the services of a regulated legal professional. Changing outdated rules that constrain access to solicitors may make it easier for people to benefit from their expertise and high standards, potentially in more affordable ways.

10. This document sets out our post-consultation position on phase two of our comprehensive review of our Handbook. Our phase two consultation covered:

- the rules implementing policy we consulted on in phase one
- the other rules in our current Handbook.

11. As in phase one, there are several areas where we have made changes in response to feedback received from respondents. We have therefore divided this paper into two main sections, based on the different proposals we

consulted on: areas we are changing our approach toand areas where we are continuing as proposed.

12. The final sets of rules that have been approved by our Board and will, subject to approval by the Legal Services Board (LSB), form our new regulatory arrangements. This position addresses in detail only the most substantive changes. We have made a number of drafting changes in response to both comments provided in consultation and to our own proofreading process as we have finalised the rules. There are also marked copies of the rules detailing all of these changes.

13. Our Board has made these rules subject to LSB approval. We are therefore publishing them alongside this document so that firms have a chance to look at them and see what has changed in response to the consultation. By publishing the rules now, we are also giving firms time to adapt to the new regime.

14. The LSB approval process may lead to some changes so we will keep you updated. Our current working assumption is that the rules will come into force in April 2019. We will be able to confirm this once we have the LSB's decision and will continue to engage with firms in the build up to implementation.

# How did we get here?

## How did we approach this review?

15. Setting and maintaining clear, high professional standards is fundamental to both good consumer protection and public trust and confidence in solicitors and law firms. We are reforming the way solicitors qualify by introducing the Solicitors Qualifying Examination (SQE), which will make sure all solicitors meet consistent, high standards at the point of entry to the profession. We also need to make sure that our Principles and Codes clearly set out the high professional standards we expect of solicitors and firms.

16. Our current Handbook is long, complex and costly to apply. As part of our Looking to the Future work we have reviewed all our rules, creating a shorter, sharper, clearer set of regulatory arrangements. Our approach to reviewing our rules has included:

- streamlining, namely
    - removing prescriptive drafting to produce higher level standards
    - removing duplication by deleting provisions that exist elsewhere
    - delineating firm and individual regulation
    - incorporating relevant content into guidance and case studies
- simplifying the language we use to make our rules more accessible to readers.

17. Our Handbook review forms part of a wider programme of work to modernise our approach to regulation and meet the demands of a changing legal services market. As well as streamlining and simplifying our rules, a key part of this work has been to remove any restrictions we cannot justify retaining. This approach is not new. It has built upon a gradual evolution of the different business structures available to solicitors: from legal disciplinary practices in 2009, through alternative business structures in 2011, to multi-disciplinary practices in 2014 and the removal of the separate business rule a year later. At each of those stages we have allowed more flexibility in how services can be offered and have been able to monitor the effects of those changes in the market. The changes being brought in through Looking to the Future are the next step in this evolution.

# How did we gather views on our proposals?

18. Through the combined two phases of our Handbook review we have engaged with over 14,000 people, firms and other organisations. In addition to our formal consultation process we have held workshops, focus groups and spoken to our reference groups. We have also engaged widely through social media and other online activity, such as webinars.

19. Our formal consultation for phase two closed on 20 December 2017. We received 77 responses. A detailed analysis of those responses is published alongside this document. We have also published all responses unless the respondent requested otherwise.

20. This engagement has helped shape our decisions. Examples of areas where we have responded to feedback include:

- allowing candidates that have begun the Qualified Lawyers Transfer Scheme (QLTS) an extra 12 months to complete their assessments after the date the SQE is introduced

- continuing to provide an early check on character and suitability so students can understand the potential consequences of issues for their admission as a solicitor at an early stage

- amending our Overseas Rules following discussions with firms with overseas offices

- imposing a new three-year practice requirement to replace the current qualified to supervise rule

- extending this three-year practice requirement to freelance solicitors or RELs who wish to provide reserved legal services without being authorised as a recognised sole practitioner and making changes to their proposed professional indemnity insurance (PII) arrangements.

21. We are grateful to the thousands of people, firms and other organisations for their valuable contributions to the consultation process.

# What have we changed since phase one?

22. We have published all of the rules, clearly marked with the changes we have made since our consultation.

23. The new Principles, Codes and Accounts Rules were the focus of the first stage of Looking to the Future in 2016, and the post consultation versions were agreed but not formally made by our Board at that stage.[1]

24. Our Board has now approved the final versions, subject to LSB approval. We identify some changes to the earlier versions below.

**SRA Principles**

25. We have now split "act with honesty and with integrity" into two separate principles "act with honesty" and "act with integrity" to emphasise that these two requirements are not coterminous. This deals with the concern that anyone would think they were interchangeable or that both would have to be proven.

26. We have clarified that for Licensed Bodies the Principles will apply to the part of their services that we regulate as specified on the licence. This means that we can be clear on the licence about which activities that we regulate on a supplier-by-supplier basis, such as where, for example, this includes the regulation of Artificial Intelligence (AI) or other technology driven services. This does not change how we authorise or regulate firms but helps us to make sure that our regulation is appropriately targeted.

**SRA Code for Solicitors, RELs and RFLs**

27. We have amended Standard 4.3 to reflect the outcome of our consultation on freelance solicitors. This Standard confirms that solicitors who practise on their own and meet the 'freelance' requirements under the new SRA Authorisation of Individuals Regulations can hold limited categories of money from clients in their own name. The money must be limited to the category of money set out in Rule 2(1) (d) of the SRA Accounts Rules [2018] i.e. money on account of the solicitors' own charges and any disbursements relating to costs or expenses incurred by the solicitor on behalf of the client and for which the solicitor is liable to the third party. This would therefore, for example, include counsel's fees but not court fees or search fees which the solicitor happens to have paid on their client's behalf. The client must be informed in advance of where and how the money will be held.

28. We have made a change to the reporting requirements at Standards 7.6 and 7.7. We have clarified that relevant criminal and insolvency events need to be reported, as well as any matters that would affect the information on the register.

[1] See https://www.sra.org.uk/sra/consultations/code-conduct-consultation.page

29. We have made a change to Standard 8.4 to emphasise the requirement to provide the relevant information to clients relating to their right to complain to the Legal Ombudsman if any complaint is not resolved within 8 weeks.

30. Standard 8.5 now confirms that the requirement to handle complaints, promptly fairly and free of charge extends beyond complaints from clients. It could include for example complaints from a beneficiary when the solicitor is administering the estate.

**SRA Code for Firms**

31. As with the Principles we have clarified that for Licensed Bodies the Code for Firms will apply to the part of their services that we regulate as specified on the licence.

**Multi-Disciplinary Practices (MDP)**

32. We are also publishing a revised version of the MDP policy statement that reflects the wider regulatory arrangements. We have maintained the current overall policy position as to the circumstances in which we will allow non-reserved legal activity to not be SRA regulated activity. We have therefore kept the existing 'subsidiary but necessary' and 'suitable external regulation' tests.

33. However, the statement now confirms that, as discussed above the Principles and Firm Code apply to the work within the MDP that we regulate as set out on the licence. The boundaries of that work will be set by the licence itself and we have therefore removed the current detailed 'mixed team' requirements which have proved to be complicated in practice. The revised statement also confirms that the SRA Code for Solicitors, RELS and RFLs will apply in full to all the work of these individuals that is carried out as part of their practice, whether or not the particular work falls within our regulation for the entity as a whole.

**Professional Indemnity Insurance requirements for solicitors in special bodies**

34. We made proposals for PII requirements for solicitors in special bodies'[2] as part of our first Looking to the Future consultation in 2016. In our response to consultation[3], we proposed maintaining our current requirement that solicitors in special bodies providing reserved legal services should be covered by insurance 'reasonably equivalent' to that required by our Indemnity Insurance Rules.

35. We are aware that there have been difficulties in the past when interpreting what 'reasonably equivalent' means. In practice, when dealing with special bodies we have interpreted this requirement as one that allows those bodies to purchase insurance they consider to be appropriate for the case load of their solicitors. This is the most practical meaning of the provision. This may involve

[2] Special bodies are charities and other not for profit bodies classified in the Legal Services Act 2007 as entitled to deliver reserved legal services under transitional arrangements within a framework that reflects their unique status.
[3] At paragraph 115

limits that are either higher or lower than our minimum terms and conditions, depending on what is needed, but that is a decision best made by the special body itself.

36. We will therefore reflect this reality by changing the 'reasonably equivalent' PII requirement on solicitors providing reserved legal services on behalf of special bodies to one to have "adequate and appropriate" insurance. Our discussions with special bodies have indicated that this change is broadly welcomed and will reflect the desire for flexibility expressed by most responses from the not-for-profit sector.

## How did we consider the impact of these changes?

37. We have published a full impact assessment alongside this paper, covering each of the changes proposed in phase two.

38. Where there may be specific impacts on equality, diversity or inclusion by a change we have proposed, we have addressed these individually.

39. We are committed to reviewing the impact of our changes on an ongoing basis. However, we are aware that it is very difficult to predict the impacts of liberalising changes. We have therefore identified the possible risks in our proposals and will mitigate them wherever possible. For those risks that cannot be mitigated, we will monitor over time whether they materialise in line with our impact evaluation framework. If they do, we will act accordingly.

## How does this work relate to our open consultation?

40. Through Looking to the Future we have proposed removing some of the restrictions on how solicitors can offer services. We have outlined two key new business models:

- Allowing solicitors to provide non-reserved legal services to the public from businesses that are not authorised by the SRA or regulated by any other legal services regulator. This proposal was made in phase one.

- Allowing individual self-employed solicitors to offer reserved activities to the public, subject to certain restrictions. This proposal was made in phase two.

41. As we set out these new ways of working, we also outlined the PII requirements we would impose on solicitors offering services in this way, and the potential for their clients to access the Compensation Fund.

42. Our consultation on the rules that govern our approach to PII and the Compensation Fund is open until 15 June 2018. Some of the technical rules that will apply to solicitors working in the new ways listed above are included in that consultation. However, that consultation does not revisit the policy behind these decisions. It simply asks for views on whether the rules being consulted on accurately implement that policy.

# Where are we changing our position as a result of consultation?

43. In this section we outline areas where we have changed our position from what we consulted on in response to feedback we received.

## Removing the 'Qualified to Supervise' rule

44. We proposed removing the rule that requires all regulated entities and in-house legal departments to employ a solicitor[4] who is 'qualified to supervise'. To do this a solicitor must have been admitted for at least three years and have completed at least 12 hours of management training. In fact, the rule does not impose any obligation for the individual to supervise the work. Nor does it require any actual practice experience (the solicitor must only have been 'entitled to practise' for three years).

45. In our consultation we pointed out that the current rule is confusing. The responses to consultation confirmed that view. The rule does not directly address or deal with issues of technical competence and supervision of work, or the management experience of competence of those running a legal business. It is widely misunderstood as a requirement that solicitors must themselves be supervised for at least three years post admission, or that a solicitor must have three years' experience before they can set up as a sole practitioner.

46. The effect of the rule is to prevent someone practising alone until they have been qualified for three years.

47. We set out several other ways to make sure that inexperienced solicitors do not practise beyond their competence. These include:

- Rule 3.2 of the new Code of Conduct for Solicitors, RELS and RFLs requires a solicitor to make sure the service they provide to clients is competent. It would be a breach of this requirement for a newly qualified solicitor to set themselves up as a sole practitioner in an area they were not competent in unless they were able to employ staff with the appropriate expertise.

- We can impose conditions on solicitors where we consider there is a risk to clients (for example a condition preventing them from being a manager of a firm).

- The new approach to continuing competence and rule 3.3 of the new Code of Conduct for Solicitors, RELs and RFLs require solicitors to maintain their competence to practise and keep their professional knowledge and skills up to date. Our new approach became compulsory for all solicitors in November 2016. It will therefore have

[4] Or other lawyer manager in the case of an entity

been in force for at least two years by the time our new rules are introduced.

- Our Professional Ethics Helpline provides support for all solicitors (including sole practitioners) who encounter difficult ethical questions.
- Our proposal to create a more accessible digital register of solicitors means that consumers will be able to find when a solicitor was admitted, and therefore how much experience they have.
- In future, the SQE will mean all qualified solicitors have passed a rigorous assessment of their technical competence (although the SQE will not assess whether a candidate is competent in business or management skills).

### What did people say?

48. Although there was recognition that the current rule is flawed, most respondents opposed complete removal of the rule despite the other safeguards that will be in place. The three-year rule was considered a basic safeguard to protect clients from inexperienced and newly qualified solicitors practising on their own. Although some respondents accepted that there was no particular evidence for a three-year period, it was felt that it enables a newly qualified solicitor to develop a better understanding of their strengths and weaknesses. As a result, an individual is less likely to act above their competence and an individual has a better understanding whether they are suited to being responsible for a firm.

### What are we going to do?

49. Given the concerns that have been raised over two consultations on this issue, we have decided that it is appropriate to retain some restriction around setting up or running a practice regulated by us. Anyone, whether qualified or not can provide unreserved legal services and it would be an unjustified market restriction in our view for a newly-qualified solicitor not to be able to do so, especially given the other safeguards that are in place for those solicitors.

50. We will therefore replace the existing rule with a requirement that any firm we authorise (including recognised sole practitioners) must have at least one manager or employee who has practised as an authorised person for three years. In all cases, that individual will be responsible for supervising the work undertaken by the authorised body.

51. We will also introduce a restriction on solicitors and RELS practising on their own, requiring them to have three years of experience before they can deliver reserved legal services to the public.

52. This new rule matches a key element of the current rule while tightening up the requirement to mean that actual experience is necessary as opposed to mere entitlement to practise and that the individual will have an obligation to supervise the work as opposed to merely being employed in the firm.

53. We do not consider it appropriate to retain the requirement to attend a 12 hour management course. The new rule focuses on experience of legal practice and not business management. We have also moved away from rigid training requirements in favour of a competence approach. Authorised firms will be required by the new Code for firms to have effective management systems and practices in place.

## Assessing character and suitability

54. Having reviewed and benchmarked our current suitability test against other professional regulators, we drafted and consulted on a revised Assessment of Character and Suitability. The updated assessment:

- clarifies the overriding principles that govern our assessment of character and suitability
- introduces a set of indicative behaviours, aggravating or mitigating factors, which will apply equally to all
- considers the individual's circumstances and the nature of their role
- assesses whether RELs and RFLs are in good standing with their regulator.

55. We consulted on removing our current requirement for students to disclose any character and suitability issues before entering a period of recognised training. In line with our approach to apprentices, we proposed an assessment of character and suitability should occur at the point of admission.

56. We also considered whether to remove the current option to apply for an early decision, for those who may have concerns about character and suitability issues. We would replace early decisions with general advice provided by our ethics guidance team.

57. We were clear that the onus would remain on the individual under the new arrangements to provide evidence to support their application.

58. We also proposed the following improvements to our current arrangements:

- Using our existing powers more effectively to impose practising certificate conditions at the point of authorisation (where this will help us to admit an individual while mitigating any risk they might present).

- To look at the process for approving authorised persons who are already regulated by us or by another approved regulator.

## What did people say?

59. Respondents were generally supportive of our approach, considering it to be sensible and logical. They welcomed the flexibility the new test introduces to the decision-making process. As one local law society commented, 'we agree that the current character and suitability requirements are too rigid to achieve fairness. They make no allowance for youthful misdemeanours'.

60. Respondents highlighted the importance of having guidance available to potential solicitors, so they can be clear about our requirements and whether to proceed with legal training. Some respondents made minor drafting suggestions.

61. Some respondents wanted to retain the option of an early assessment, for a range of reasons. These respondents included universities, education and training providers and the Law Society. Views on whether an early decision could or should then be binding at the point of admission differed.

## What are we going to do?

62. We have made minor drafting changes to the rules in response to consultation feedback. Specifically, we have removed reference to local warnings and penalty notices for disorder (PND). Under the new assessment we will only ask for details of cautions or above. We have also amended the drafting to provide more clarity about patterns of criminal behaviour and what events will be a cause for concern. Any decision will of course be case specific and depend on the individual's circumstances.

*Retaining the early decision*

63. At the moment students can seek an early decision on their character and suitability before they start the Legal Practice Course (LPC). They therefore know whether they could be admitted before they commit to course fees. Under the new arrangements, we proposed to give students early, individual, advice instead of a binding formal decision at that stage.

64. We have been persuaded by respondents, such as the Law Society's Junior Lawyers Division, who argued that students with issues that may affect their character and suitability would benefit from a formal decision before embarking on the cost and time commitment of training to be a solicitor. The numbers who apply for an early decision in practice are small, but we agree that this small cohort should be able to receive this assurance before embarking on the cost and time commitment of training to be a solicitor.

65. We will therefore retain the facility for students to obtain a formal character and suitability decision at any time before making an application for admission. including therefore before embarking on the LPC. This decision will at a point

in time and any future application for admission will be assessed on the evidence available at that later time.

66. We will make clear when rehabilitation will be likely to have an effect should a subsequent application be made. Overall, we think that these proposals could have a positive impact on equality and diversity, because they support those seeking to rehabilitate from past misdemeanours. At the same time, our clear rules will help individuals with serious character and suitability issues to make an informed decision about whether or not to commence or commit any financial resource to seeking to become a solicitor.

*Assessing people who have already been approved by other regulators*

67. We said we would explore ways of streamlining our character and suitability assessment for people applying for roles in authorised businesses (as manager, owner, or compliance officer) who have already been authorised by another regulator. This proposal did not attract significant comment either way.

68. Where the person is a lawyer and has already been approved by another legal services regulator under the Act, we already rely on a certificate of good standing from that regulator. This prevents us from second guessing the decisions of other approved regulators.

69. We are satisfied that an authorised legal professional in good standing with an approved regulator (under a regime overseen by the LSB) should be suitable to undertake significant roles within a law firm authorised by us and therefore we are proceeding with the consultation proposal to deem these authorised persons to be suitable as role holders in authorised bodies going forward after our initial approval.

70. This consultation also stated that we would work with regulators in other fields (for example, chartered accountancy) to explore how to streamline the arrangements for approval of their members. We therefore intend to include a provision in our new assessment of character and suitability that allows us to rely on a certificate of good standing from another regulator. This will be dependent on us being satisfied that the regulator operates a suitable equivalent regime.

*Ongoing reporting requirement*

71. If we approve a role holder authorised by another regulator, that role holder will be under an ongoing duty to report any new issues that are relevant to our character and suitability rules to us. This includes a requirement to tell us about any action taken against them by their own regulator. This will allow us to withdraw, or impose conditions on, our approval if necessary.

# Our Training Regulations

72. We set out transitional arrangements for people who have started on the path to qualification under the existing routes at the time the SQE is introduced. We proposed that anyone who:

- has started a Qualifying Law Degree (QLD) or
- has started the Common Professional Examination (CPE) or
- is further advanced than either of the above two points in their route to qualification

before the SQE is introduced may continue under that route up to a cut-off date of 11 years after the SQE is introduced.

73. We proposed maintaining our current equivalent means route to qualification for those remaining under the current system. We also proposed that anyone who had started the QLTS assessments before the SQE was introduced must also complete all parts of the QLTS and apply for admission by the time the SQE is introduced.

### What did people say?

74. Few stakeholders raised any issues with our 11 year cut-off date or with the principle that candidates must choose between either the old or the new processes for admission. A small number of law firm respondents suggested we should provide additional time for candidates to take the CPE and qualify under the existing system, so that they would be able to deal with trainees arriving through both the QLD and CPE routes under the same set of our regulations regarding their period of recognised training. We also received comments from some QLTS candidates and Kaplan (the QLTS assessment provider) suggesting that we should give longer to individuals who have started the first part of the QLTS (QLTS 1) to complete the second part (QLTS 2) and apply for admission.

75. A small number of respondents (including the Law Society and the City of London Law Society) raised concerns about there being insufficient time between finalising the SQE and introducing it.

### What are we going to do?

76. The key principle underlying our transitional proposals is that we want to be fair to those who have invested significant time and money in the current system while making sure standards are maintained during the transitional phase. Qualified lawyers who have already passed QLTS 1 will have invested time and money in the expectation that they can qualify under the current system. While we can give early notice of the change from the QLTS to the SQE, we recognise it may take longer for candidates who have passed QLTS 1 to complete QLTS 2. So, we have decided to allow candidates who have already passed QLTS 1 an additional 12 months after the SQE introduction to complete the QLTS assessments and apply for admission.

77. We will not provide additional time for candidates to take the CPE and qualify under the existing system. Students with a non-law degree who wish to become solicitors (but have not yet begun any legal training) will be able to qualify as solicitors through the SQE route.

78. We recognise that stakeholders need sufficient time to plan for the introduction of the SQE and will announce a firm introduction date as early as possible.

# Individual self-employed solicitors

79. We proposed allowing individual self-employed solicitors and RELs to provide reserved legal services to the public without being authorised as recognised sole practitioners. This would be subject to the following restrictions and requirements:

- Needing to act as an individual and therefore without any employees or partners, and not working through a service company.
- Being engaged directly by the client.
- Not holding client money except for payments on account of costs and disbursements for which the solicitor or REL is responsible.
- Adequate and appropriate PII for the reserved legal activity being provided.

### What did people say?

80. A minority of respondents agreed with the proposal. Those that gave reasons for their support felt that that it would make services more accessible, for example by reducing costs. It was also stated that the change reflected the reality of flexible working in the 21st century. One respondent said that the most important safeguard was the restriction on holding client monies. Another felt that it did not make sense that barristers had this freedom and solicitors currently did not.

81. A non-LSA regulated business that has a number of years' experience of providing practising solicitors to work in house on projects for commercial clients responded in support of the proposal. They felt it would be welcomed by self-employed solicitors and allow them to offer a wide range of services. They believed that the high number of applications that they receive from solicitors means that there is a demand to work in more flexible ways. They also felt that proposal would allow clients- particularly small businesses - to access legal services without the extra layer of costs imposed by a firm. In

relation to PII cover, they stated that in their experience there was not much demand for a high level of cover from commercial clients who understood the trade-off between cost and nature of service.

82. However, some respondents said their support was conditional on self-employed solicitors being required to maintain PII on our minimum terms and conditions.

83. There were common themes among respondents that disagreed with the proposal, which included the Law Society and several local law societies. They argued that not requiring PII to be on our minimum terms and conditions would reduce client protection. There were also concerns that if solicitors were not authorised as recognised sole practices there would be no check on whether it was appropriate for them to set up on their own. Regulatory safeguards for entities would not be in place. These respondents felt that clients would be inadequately protected from poor service and be confused by the differences in regulatory protections compared to regulated providers. The Legal Services Consumer Panel shared these concerns, while recognising that the proposal could increase flexibility for solicitors.

## What are we going to do?

84. We believe the potential benefits of increased flexibility for both freelance solicitors and their clients mean we should proceed with the proposal. It is artificial and disproportionate to force those solicitors who are genuinely working on their own into the same regulatory model as a firm that may employ hundreds of people. It increases costs for those individuals and these costs are likely to be passed on to clients. We know that BAME solicitors are disproportionately represented among sole practitioners and these proposals are particularly likely to benefit them.

85. Although some respondents wished to broaden our proposals (for example by allowing these solicitors to have employees) we will retain the proposed restrictions. These provisions are intended to apply to genuine freelancers and not to those who run a firm employing others or who seek to disguise a firm by restructuring to meet these arrangements. We have also made it clear in the rule that any fees must be paid to the solicitor or REL personally (and not, for example, through a linked company).

86. We have listened to respondents who were concerned that our proposal would allow inexperienced solicitors to provide reserved legal services on their own. As set out above, we will therefore also introduce a rule that a freelance solicitor cannot provide reserved legal services to the public until they have practised for at least three years. We believe that this will help protect not only the public but also those solicitors who might have been tempted to take this step before they were ready.

87. In response to concerns about PII for these practitioners we have extended the requirement so that cover must apply to all work conducted by the solicitor or REL, and not just to reserved activities. This will:

- reduce the potential for consumer confusion

- avoid situations where some cases are covered by an insurance obligation and some not

- prevent arguments by insurers over what does or does not constitute reserved legal activity.

88. However, we believe that is appropriate to maintain the requirement for solicitors working in this way to have 'adequate and appropriate' insurance rather than having to comply with our minimum terms and conditions. This maintains appropriate consumer protection while providing flexibility. It removes one of the key barriers to this type of practice that is cited to us, namely the high cost of purchasing PII on our minimum terms and conditions. Our minimum terms and conditions currently impose the same standards on, for example, a large conveyancing firm as on a single solicitor acting as a criminal advocate.

89. It is therefore important to consider the type of practitioner who is likely to take advantage of this change. The limitation on the type of client money that can be held by freelancers will exclude them from holding transactional client funds (for example the proceeds of sale on conveyancing, court fees or the stamp duty payable on a house purchase) or which comprise damages. The solicitor or REL will have to contract personally with the client and not will be able to work through a service company. The tax and civil liability implications of this alone will make this option only attractive to those with genuinely personal and relatively small practices, perhaps as freelance advocates.

90. The 'adequate and appropriate' obligation for freelancers echoes the overall requirement on regulated firms to assess the suitability of their insurance in our current Code of Conduct[5] (as well as meeting the MTCs). We have proposed replacing this particular requirement with the wording 'adequate and appropriate insurance' in our consultation on insurance and compensation arrangements. In practice, this provides a level of continuity and consistency. Firms are used to assessing the insurance needs of their business and many already purchase top-up cover.

91. We confirm that clients of these practitioners will have access to the Compensation Fund.

92. We are also addressing concerns over potential client confusion about regulatory status in the following ways:

[5] Outcome 7.13 states "you assess and purchase the level of professional indemnity insurance cover that is appropriate for your current and past practice, taking into account potential levels of claim by your *clients* and others and any alternative arrangements you or your *client* may make."

- These providers will be required by our Code for Solicitors, RELs and RFLs to explain their regulatory position to clients before engagement.

- They will appear on our digital register as authorised to provide reserved legal activities in this capacity.

- They will be subject to our Better Information requirements, which include publicising details on:

    - Prices (in specific areas).

    - How to complain to the firm.

    - Rights of recourse to the Legal Ombudsman.

93. Some respondents that expressed concerns about PII issues in relation to freelance solicitors repeated those and other concerns in relation to our decision to allow solicitors to practise providing non-reserved services to the public in businesses that are not regulated under the LSA.

94. While we are not revisiting that decision, we have introduced specific requirements through our Better Information requirements in relation to the provision of information on PII. These will apply both to freelancers and to solicitors working in entities that are not authorised under the LSA more widely. These requirements are to:

- explain to the client that they are not covered by our minimum terms and conditions for PII

- specify that alternative insurance arrangements are in place if this is the case (together with information about the cover this provides, if requested).

## How we regulate overseas practice

95. We proposed streamlining the Overseas Principles and Overseas Accounts Rules in line with changes already made to modernise our domestic Principles and Accounts Rules. We also proposed removing drafting that duplicates the Code of the Council of Bars and Law Societies of Europe (CCBE) from our European Cross-border Practice Rules. This would be replaced by a requirement for those operating in European jurisdictions or cross border to comply with the CCBE's Code.

## What did people say?

96. About half of respondents who answered this question agreed with this proposal. Respondents that did not answer yes to this question were split between saying they needed more information to answer and saying no. By far the most common query from this group was to ask how Brexit might affect this area. The Law Society (and those that endorsed their response) felt that "given uncertainty over the future of the UK-EU trade relationship, the SRA should refrain from this proposal until the outcome of the Brexit negotiations is known".

## What are we going to do?

97. Following feedback from a number of stakeholders with overseas offices, we have made some technical drafting changes to the Overseas Rules. These changes include removing our proposed Overseas Principle seven, which required a proper standard of service to be provided to clients and Overseas Principle eight, concerning the effective running of the business. We agree with respondents that the types of issues that may be caught by these principles are more likely to be dealt with by the local rules or regulatory systems in place, and that the focus of our regulation of overseas practices should be proportionate and targeted towards issues of personal conduct or systemic failures that touch on public confidence in the profession and in the English and Welsh legal jurisdiction.

98. We have also changed the scope of our jurisdiction over managers of overseas offices so that this is focussed on those involved in the day to day or strategic running of the overseas practice, recognising that in large global entities there may be a large number of partners or members who have no direct involvement or responsibility. Finally, we have removed our power to authorise withdrawals from overseas client account as, once again, this will be more properly governed locally.

# Which proposals are we proceeding with?

99. In this section we have set out the areas that attracted stakeholder comment and save for any minor drafting changes, remain substantively as consulted on. There were many other areas that we are proceeding with that did not attract significant comment. These include:

- Immigration, claims management and financial services (immigration and claims management appear in our Authorisation of Individuals Regulations, and financial services appear in our Financial Services (Scope) Rules and our Financial Services COB Rules).

- Financial services (appear in our Financial Services (Scope) Rules and our Financial Services COB Rules).

- Approving managers and owners (appears in our Authorisation of Firms Rules).

- Our Notice, Application, Review and Appeal Rules.

- RELs (appear in our new Authorisation of Individuals Regulations).

## The requirement to have a practising address in England or Wales

100. We currently require firms we regulate to have a practising address in this jurisdiction. We consulted on widening this so recognised bodies and recognised sole practices could have their practising address anywhere in the United Kingdom. Firms based in Scotland and Northern Ireland would then be able to offer reserved legal services to consumers in England and Wales. We expect this to lead to more consumer choice and scope for greater diversity in both delivery models and in the solicitor profession.

101. We also asked for views on whether we should expand this proposal so that firms we authorise can have their practising addresses anywhere in the world. Most people agreed with our decision not to take that approach.

### What did people say?

102. More than two thirds of respondents agreed with this proposal. Of those that did not, the primary concern was that we should not create a 'redress gap' for consumers outside England and Wales. The Legal Ombudsman noted that while it did not oppose this change in principle, its jurisdiction only extends to persons authorised in England and Wales.

### What are we going to do?

103. We will proceed with this proposal. We do not intend to widen this restriction to include practising addresses outside the United Kingdom. We will work closely with the Legal Ombudsman to address their jurisdictional issues, building on the joint working already underway in relation to solicitors working in firms not authorised under the Act. We described the joint working between our two organisations in our recent response to the Legal Ombudsman's 2018-19 business plan consultation.

## Corporate owners and managers

104. In our consultation we proposed introducing the requirement that a firm must intend to deliver legal services to be authorised by us. This is to make sure that our procedures are operating in line with our statutory purpose, which is to authorise and regulate individuals and firms that deliver legal services. The proposal was likely to impact on Corporate Manager Owners (CMOs) as we currently authorise a number of non-trading recognised bodies purely so they can be managers and/or owners of other recognised bodies. To do this, we often waive several of our requirements including the requirement to have Compliance Officers for Legal Practice and for Finance and Administration.

### What did people say?

105. During the consultation we contacted 203 firms that are currently structured in this way to bring their attention to the consultation and ask their views. We received a limited response. One firm got in contact to discuss its options in relation to possible conversion to an ABS and could see several potential advantages.

### What are we going to do?

106. We have decided to proceed with this proposal for the reasons set out in the consultation. The new rule means that firms can continue to structure themselves using corporate vehicles for tax or other purposes, but the corporate managers or owners would not be authorised by us separately. Therefore, the underlying firm would have a non-authorised corporate owner or manager and would instead have to be authorised as an ABS. The new rule gives us the power, where we are satisfied that it is in the public interest to authorise the body, to do so even though they do not intend to deliver legal services.

# Property Selling

107. We proposed removing sections of the Handbook that set out prescriptive requirements around property selling. Many of the rules were based on sections of the Estate Agents Act 1979 that have never been enacted, or duplicate rules elsewhere in the Handbook.

### What did people say?

108. Respondents were generally positive about the proposals and did not identify any unintended consequences. Several respondents cautioned the need to make sure that no consumer rights were lost because of the proposed changes.

109. The lead enforcement authority of the Estate Agents Act 1979 responded to raise some concerns and challenges over jurisdiction.

### What are we going to do?

110. We do not consider that the differing interpretation of jurisdiction put forward by the lead enforcement agency should affect our decision in relation to these rules. We therefore intend to proceed with the proposals to remove the Property Selling Rules, and issue guidance on the two key terms used for fee charging (sole agency and sole selling rights).

# Our approach to enforcement

111. In 2016 we committed to reviewing our current Enforcement Strategy, and to replacing it with a revised and updated strategy to underpin our new regulatory arrangements.

112. Our starting point for the review was our wide engagement through the Question of Trust campaign in 2015. The data we collected from more than 5,000 people allowed us to test and develop our thinking on the potential behaviours of solicitors falling along a spectrum from least to most serious. This made an important contribution to our subsequent work on our overall approach to enforcement.

113. Our approach to enforcement is guided by our public interest purpose. The updated Enforcement Strategy will be one of the key tools moving us towards regulatory best practice and a model that seeks to:

- enforce standards through a transparent framework that people can clearly understand

- set standards that establish clear expectations, but also build in appropriate flexibility as to how individuals can behave to meet those standards

- move to a principles-based, flexible approach to enforcement that helps us focus effectively on serious breaches of our rules

- make clear our reasons for our decisions and rationale for taking (or not taking) action in any case or circumstances

- help our staff and the profession better understand the risks posed by different behaviours

- provide the transparency and assurance that solicitors and firms have been asking for.

114. We also consulted on a revised set of Regulatory and Disciplinary Procedure Rules. These were expanded to cover our approach to assessment and investigation of all complaints and regulatory concerns. They were designed to follow a more chronological pathway through our decision-making process. The new rules address the full range of powers available to us, including orders made under Section 43 of the Solicitors Act 1974 and decisions to attach conditions to practising certificates.

115. The new rules make sure that we provide information to the regulated person and their employer at the outset of an investigation, as well as providing details of allegations and all supporting documents for comment before we make a decision.

## What did people say?

116. Respondents were overwhelmingly in favour of our revised approach to enforcement. Most respondents agreed with our approach without adding any additional comments. A small number of respondents commented on our previous and current approach to enforcement, and issues that they or others had previously encountered. The majority of those that commented welcomed the more flexible approach and move towards focusing on serious breaches.

117. Lawworks asked whether any specific account had been taken of the impact of freelance work on our revised approach to enforcement. Another respondent expressed concerns that the draft Enforcement Strategy did not cover mental health issues adequately. They suggested we should consider moving more closely to the fitness to practice model used by health regulators.

118. A few respondents noted that clear, transparent and easily accessible guidance will be important.

## What are we going to do?

119. Based on feedback received, we will make sure that the Enforcement Strategy and any underlying documents provide clear guidance on our approach to the health and welfare of solicitors and firms involved in our procedures. This was raised as a key omission in the document by a small number of respondents. We do, of course, take health (including mental health) issues into account on a case by case basis but agree we should make our approach transparent.

120. Our Enforcement Strategy will be supported by guidance on specific topics. This will include:

- Updated indicative fining guidance.
- Updated guidance on reporting concerns and whistleblowing.
- a suite of guidance around the grey areas highlighted in our consultation, for example covering our approach to allegations of driving with excess alcohol, criminal behaviour out of practice, abuse of social media, and competence and service issues.

121. We will publish all materials relating to our approach to enforcement together.

*Costs of investigations*

122. We have decided not to consult on the substance of our Cost of Investigation Regulations for the time being. However, we have simplified and updated those rules, and inserted these within the Regulatory and Disciplinary Procedure Rules. This has included aligning our powers to charge investigation costs to disciplinary investigations which result in any of the orders now included within those rules. We have also removed the power in the current rules to charge for unsuccessful appeals.