



Consumer Panel Briefing – Separate Business Rule

What is the issue?

The SRA is proposing changes to a rule which forbids solicitors from having defined links to certain separate businesses. It wishes to relax current restrictions and introduce a series of measures to provide consumer protection, including:

- Making sure clients understand which services are regulated
- Referrals to separate businesses may happen only when this is in the client's best interests and clients give their informed consent. Clients must be told about the connection between the solicitor and the separate business
- Referrals will be prohibited in certain areas of law in order to prevent solicitors firms from enticing clients and then hiving off the work to separate businesses
- Solicitors who provide services to the public within a separate business will no longer be able to describe themselves as 'non-practising solicitors' to avoid client confusion

The Panel's view

The Panel would like the list of reserved activities (those only regulated lawyers are allowed to provide) to be reformed so this is based on a consumer protection rationale. Were this to happen there would be no need for a separate business rule at all. However, since such a review unlikely in the near future, and the current separate business rule is not delivering good consumer protection, we agree with the SRA that it needs to be changed now.

The key arguments in favour of changing the rule include reducing the cost of legal services, encouraging new entrants and market innovation, and widening choice – all these things can help tackle the problem of people not accessing advice to resolve their legal problems. These considerations have to be balanced against the risks of increased consumer confusion and loss of consumer protections if the changes lead to growth in the unregulated market.

On balance the Panel gives qualified support to the SRA proposals conditional on the safeguards being strengthened and the information remedies being subject to rigorous consumer testing. In coming to this view, we concluded that the rule is not suitable for the modern legal services market which contains a wide variety of business models. Relaxing the rule could help to unlock the competition and innovation required to meet the huge levels of unmet legal need. With a strengthened set of safeguards and active monitoring, a substantially revised rule seems a proportionate response to the risks facing consumers.

What is the Consumer Panel doing about it?

The Panel's qualified support for the SRA's proposals is conditional on the safeguards they propose being strengthened to deliver better consumer protection.

The strengthened safeguards we would like to see include:

- The information remedies being tested with consumers and revised if necessary
- Prohibiting referrals in all high risk areas of law. Also, referrals should be prohibited from unregulated to regulated businesses as well as the other way around
- The SRA issuing guidance to make clear that a referral would not be in the client's best interests if the separate business is not part of an independent redress scheme. Also, the SRA should use its influence to promote access to redress across the legal services market including in situations where referrals do not take place
- The approved regulators working together to pursue a common approach to help consumers understand the regulated status of services and the implications of this
- Compliance with the safeguards should be actively monitored by the SRA since solicitors firms have a commercial incentive to mislead consumers about the regulated status of services or fail to act in their interests when making referrals

The SRA will now consider all the responses to its consultation exercise. If it decides to go ahead with the changes, these will need to be approved by the Legal Services Board.

For more information:

[Consultation response to the SRA, February 2015](#)

About the Legal Services Consumer Panel

The Legal Services Consumer Panel is a central feature of a regulatory framework in England and Wales which is designed to transform the legal services market around the needs of its users. Created by the Legal Services Act 2007 we are an independent arm of the Legal Services Board. As a permanent, discrete champion for consumers we have an essential responsibility to ensure that regulators are able to consider and act on the user perspective.

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