

Sent by email only to HandbookReform@sra.org.uk.



5 January 2017

Dear Sir/Madam

Looking to the future: phase two of SRA's Handbook reforms

The Legal Services Consumer Panel (the Panel) welcomes the opportunity to respond to the second consultation on the SRA's Handbook review. We have outlined the Panel's overarching concerns and responded to the individual questions asked in the consultation document.

Consumer confusion and protection

The Panel would like to emphasise that consumers find it hard to navigate the complexities of the legal services market, as consumers typically lack the knowledge and experience to understand it. We know that consumers do not readily comprehend the difference between regulated and unregulated providers or the difference in the types of lawyers they can procure services from. Some of the proposals in the SRA's consultation document will compound existing complexities. If implemented, there will be different levels of regulated solicitors with varying consumer protection liabilities. There will also be varying access to the Legal Ombudsman. Additionally, some proposals remove key consumer protection in order to introduce greater flexibility. We do not believe that the SRA has struck the right balance between flexibility and the need for consumer protection in a number of these areas. When taken together these proposals are unlikely to assist consumers, especially vulnerable ones, in choosing services at times of distress.

Answers to the consultation questions

Question 1: Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK? Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

The Panel welcomes the SRA's proposal to authorise recognised bodies and sole practitioners that have a practising address anywhere in the UK. However, it would be useful if the SRA outlines provisions for monitoring the conduct of solicitors with a practising office outside of England and Wales. This should include the monitoring of online and electronic services which may be more difficult to monitor than traditional file based work.

Question 2: Do you agree with our proposal that the current requirement for firms to have within the management structure an individual who is “qualified to supervise” should be removed?

The Panel believes the current “qualified to supervise” requirement should be maintained, updated and clarified. There is no evidence to suggest that the mischief which this rule seeks to address no longer exists. Two years’ pre-qualification work experience does not necessarily prepare a person to run a practice. We are not persuaded that newly qualified solicitors will always be able to deliver a full service, as sole practitioners, without acquiring technical and consumer-facing skills from experience post qualification.

We recognise efforts to attract providers into areas that serve vulnerable consumers, especially as these areas have suffered reductions in funding. However, we are not persuaded that removing a qualification condition will achieve this. Also, it is not certain that insurance companies will provide Professional Indemnity Insurance (PII) at an affordable price or at all in work areas where the practitioner has no experience.

The Panel responded to the first consultation on the SRA’s Handbook¹ and agreed that there should be a minimum qualification level in the absence of research into this, but found it difficult to advocate for a particular threshold due to lack of research. Whatever is put in place needs to ensure minimum standards, as well as avoid excluding those returning to work or bringing experience from other services

Question 3 and 4: Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorized firms? Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide claims management services outside of LSA or CMR-authorized firms (or equivalent)?

The Panel agrees on both accounts that solicitors, registered European lawyers (RELs) and registered foreign lawyers (RFLs) should not be able to provide the above services outside of the LSA, OISC or CMR-authorized firms (or equivalent). Immigration services are mostly accessed by vulnerable consumers in distressed times. Therefore, the regulatory status offers a minimum standard that we support.

Question 5: Do you agree with our proposal to allow individual self-employed solicitors to provide reserved legal services to the public subject to the stated safeguards?

We recognise that allowing self-employed solicitors to provide reserved legal services to the public could improve flexibility of practise for solicitors. We would expect to see clarity and consistency in consumer protection and remedies in this proposal. This consultation proposes to provide ‘the appropriate consumer protections by those who effectively operating as a law firm’ but appears silent on the details.²

The Panel is particularly concerned about:

- I. The level of experience and skills required to deliver a practice equivalent to a law firm. It is unclear whether the Rule 12 of the current Practice Framework Rules will stand requiring self-employed solicitors to have 36 months capability

¹ Looking to the future: flexibility and public protection, Legal Services Consumer Panel, September 2016.

² Looking to the future: phase two of our Handbook reforms, Solicitors Regulated Authority, 2017.

to practise and management training. Please see the concerns and recommendations on this point set out under Question 2 above.

- II. The standard of remedies insurance is drafted as 'to take out and maintain adequate and appropriate levels in PII'. This needs to be clearly defined that the level of protection and consumer risk is the same as for sole practitioner firms, and for reserved and unreserved activities.

The draft regulation would also allow self-employed solicitors to provide non-reserved legal services without any key consumer protection. We acknowledge the improved consumer choice, however, we are concerned, first, on the inexistent level of protection, and second, on the increased consumer confusion this proposal could bring.

Additionally, it can be difficult for consumers to understand the level of protection offered by the current and the proposed types of solicitors. The Panel would recommend:

- I. Similar levels of protection for self-employed solicitors delivering unregulated services, as for solicitors working in unregulated firms. The Panel argued before for consideration of varying levels of contribution to the PII and/or compensation funds where there are clearly identifiable reduced risks for solicitors' practice in unregulated firms.³ Consumers should be able to differentiate easily between a self-employed solicitor delivering regulated services or unregulated services or a sole practitioner that delivers the same but with different protections for example.
- II. If the proposal is approved, self-employed solicitors should be required to operate under the same requirements for transparency required by the CMA, as the other sole solicitors regulated by the SRA.

This section states that the Framework Practice Rules are to be replaced. However, there is no information about where practitioners and consumers will find Framework advice and guidance around pro bono solicitors. It may be that guidance is to be drafted later. In the absence of that clarity, we reiterate the Panel's view that those who use the services regularly provided by free-at-source solicitors, are less likely to have the resources, experience or circumstances to easily work through the maze of different levels of regulation framework, client protection and redress. They are more often making consumer decisions on topics they have not encountered before, at times of distress. The absence of clarity is increased when these proposed changes are added to the plans to enable solicitors (employed, not self-employed) to work in non-regulated commercial bodies within non reserved legal activities.

We have previously encouraged the use of our research on information remedies⁴ to reduce consumer confusion to explain differences in consumer protection provided by different business models. We recommend the SRA to carry out thorough consumer testing to gauge consumer understanding of its information remedies about the new types of solicitors to be introduced by the Handbook reforms. Additionally, the SRA should use these results to amend its consumer remedies to reduce consumer confusion and increase consumer choice.

³ Looking to the future: flexibility and public protection, Legal Services Consumer Panel, 2016.

⁴ Information Remedies, Legal Services Consumer Panel, 2017.

Question 6: What are your views on the policy position to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

We welcome this proposal, as it would allow the SRA to consider each student's individual circumstances and offer tailored advice and support. We agree with the arguments put forward for this proposal. The Panel supports the intention of this proposal to give students the opportunity to demonstrate, for example 'rehabilitation'⁵ from default payments or misdemeanours they have undertaken prior to committing to become a solicitor.

If this proposal is implemented, we would welcome evidence as to how this achieves the objectives of more flexible processes, but also the removal of barriers. One means may be the publication of a regular review assessing how this change has served to reduce barriers and any impact on increasing the diversity of background and experience of those admitted as qualified.

We would also recommend that the guidance and the checklist that explains the SRA's character and suitability requirements are tested and piloted with students and education providers before they are made mainstream.

Question 7: Do you agree with our proposed transitional arrangements for anyone who has started along the path to qualification under the existing routes when the SQE comes into force?

We welcome the details of the proposed transitional arrangements for would-be solicitors who start the path to qualification when the Solicitors Qualifying Exam (SQE) comes into force. The Panel believes that the proposed transition period of 11 years⁶ for the two systems to be aligned is long enough to allow students the possibility to finish their qualification under the current system.

During transition, it is recognised that individual regulatory rules cannot be made for each individual student that moves through training between the two systems. The Panel does not have a view on the proposed arrangements offering students the flexibility to 'mix and match' between the current and the new regulation. We note the full exemption to qualify through the new system for students who commenced the Qualifying Law Degree at the time the SQE is introduced and the exception for apprentices who are required to pass all stages of the SQE.

We acknowledge the difficulties raised by allowing to 'mix and match' by permitting partial exemptions from parts of the SQE. The dangers would be that it would allow for gaps in students' knowledge and how they are assessed, and this would affect the quality and potential veracity of service they would deliver as qualified solicitors. Therefore, the Panel believes that during the transition period, it is crucial the SRA continues to ensure that standards are consistent and not compromised for candidates choosing between the current and the new system.

We support SRA's decision to allow students who are unable to become a solicitor under the current system due to unforeseen circumstances to still qualify by preparing for the SQE. However, we would encourage the SRA to clarify what they find acceptable as 'unforeseen circumstances'.

⁵ Looking to the future: phase two of our Handbook reforms, Solicitors Regulated Authority, 2017.

⁶ The proposed period is from September 2020 to 31 December 2031.

Question 8: Do you agree with our proposal to expand deeming in this way?

The SRA proposes that solicitors and other LSA-regulated individuals will be considered suitable to be managers or owners of regulated firms on first registration only. They will not have to seek individual approvals for further managerial roles they take up, as it is currently required, and they should only update their 'mySRA' account to inform the regulator about the change.

We acknowledge the proposal that may have the potential to reduce administration tasks in some practices where there is significant practice turnover. In order to support this proposal the Panel would like to see evidence of how this will make firms more cost efficient. Moreover, we would expect to see an online 'vetting mechanism' put in place that would check all the key information has been disclosed when solicitors move authorised bodies, and the information is provided before solicitors updated their status under 'mySRA' account'. This would allow the SRA to ensure key information, such as unpaid debt, is checked and solicitors are transparent with their records.

The Panel supports the requirement that non-authorised persons will have to seek approval every time they become an owner or a manager.

Question 9: Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

The Panel notes the proposed changes. We do not have any consumer concerns about this proposal, but we would encourage the SRA to consider how the recognition of solicitors' ability to practice in the European Union would affect the profession after the UK has left the Union.

Question 10: Do you know of any unintended consequences of removing the Property Selling Rules?

The SRA has identified two potential risks with this approach: (1) consumers might not understand when they are liable to pay a fee and (2) consumers might receive less information using a solicitor than they would through an estate agent. In order to mitigate these risks we welcome the SRA's proposal that solicitors should explain clearly, in writing to consumers the terms 'sole agency' and 'sole selling rights' if they are using one of these charging methods.

We also welcome the requirement in the new Code of Conduct for solicitors to make sure that consumers receive the best possible information about cost. We would stress, however, that consumers should have access to this information at the pre-engagement stage.

Question 11: Do you agree with our new proposed review powers?

The SRA is proposing to substantially simplify and reduce the Financial Services (Scope) Rules in order to make the Rules clearer, accessible and reduce duplication. The proposed changes will reduce the word count of the specialist services section of the Handbook by about one third. While we acknowledge the need for this change the danger with this proposal, as recognised in this consultation, is that the duplicated legislation to be removed is secondary legislation. Firms, especially smaller ones, and sole practitioners are exposed to the risk that they would find it hard to stay up to date with the Rules. In order to reduce this risk we encourage the SRA to have the input of firms on how to simplify the Financial Services Rules and how to design the support

package for firms. The SRA should also carry out testing of the support package with smaller firms and sole practitioners to ensure it delivers the intended support.

The SRA believes that the intent of Part 20 of the Financial Services and Markets Act 2000 (FSMA)⁷ is wide enough to cover solicitors practising in non-regulated firms, so it proposes not to allow solicitors practising in non-regulated firms to deliver regulated financial services to the public. Any such work will need to be regulated by the Financial Conduct Authority (FCA).

However, there is no explanation offered for not following the intent of Part 20 of FSMA, in continuing this split arrangement and differentiation between the same services being offered by different vehicles and the resultant continuation with dual regulation of some solicitors' services. Particularly, with the SRA's plans for increased information for consumers, including supporting solicitors in non-regulated providers, self-employed solicitors, and solicitors providing unregulated services in non-regulated firms, this objection would seem to go against the current tendency to increase clear straightforward choices for consumers who use services and to promote transparency to consumers. It also means that consumers again have different information remedies and lack access to the Legal Ombudsman, for example in services provided by the same solicitor. We would recommend reconsidering the rationale for this objection to including all the SRA regulated solicitors providing financial services by whatever vehicle.

Question 12: Do you agree with the proposed 28-day time limit to lodge all requests for internal review?

We agree in principle with the proposed 28-day time limit to lodge all requests for internal review or external appeal. Prior to implementation we would seek clarity as to whether the 28 days are calendar or working days. There should also be clear provision for extension of the 28 days for external appeals that might need or take a longer time.

Question 13: Do you agree with our proposed approach to enforcement?

We note that the proposed SRA Enforcement Strategy moves away from a prescriptive compliance model towards a flexible and transparent one. This has the potential to provide more clarity for providers, consumers and the wider public. The Panel would like the SRA to consider whether current enforcement processes provide sufficient deterrence across the spectrum of firms and individuals subject to enforcement sanctions.

In addition, we would like the SRA to consider the role enforcement decisions could play in contributing to better-informed consumers. The Panel notes that there is currently very little evidence or focus around how to use enforcement data to empower and inform consumers' decision making. We know that in the financial services sector, 41% of consumers surveyed said that fines for financial misconduct would influence their decision 'a great deal' when choosing a financial services provider.⁸ Additionally, 25% of respondents said that if their current financial provider had been convicted of a crime, e.g. manipulation of interest rates, they would decide to switch providers.

⁷ Part 20 of FSMA enables firms authorised and regulated by the SRA to carry on certain activities, known as exempt regulated activities, without being regulated by the FCA.

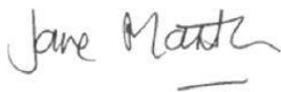
⁸ Ipsos Mori on behalf of the Financial Services Consumer Panel conducted a Face to Face Omnibus Survey, 2014.

The Panel believes that legal services regulators could do more to empower consumers to make informed decisions by making enforcement decisions readily and easily available. In our Open Data report,⁹ we recommended that regulators should establish a single portal for regulatory history and conduct information. The CMA¹⁰ further developed this idea and recommended that regulators should consider the feasibility of a single digital register.

We are pleased that the SRA is leading this strand of work with a clear commitment to getting it right. The Panel believes that the single digital register should contain enforcement decisions. Although enforcement decisions are generally publicly available, it is rarely easily accessible and certainly not conveniently located in one place. We believe the collation and presentation of enforcement decision on the digital register will improve the way in which consumers engage with enforcement information. It will also contribute positively to the SRA's transparency agenda.

We would be happy to discuss any aspect of this response in further detail. Please contact Lau Ciocan for further queries at lau.ciocan@legalservicesconsumerpanel.org.uk.

Yours sincerely

A handwritten signature in black ink that reads "Jane Martin". The signature is written in a cursive style. Below the signature is a short horizontal line.

Dr Jane Martin
Chair

⁹ Open Data, Legal Services Consumer Panel, 2016.

¹⁰ Legal services market study, Competition and Market Authority, 2016.