

SRA response

SRA submission to the HM Treasury 2016 Autumn Statement

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The SRA is the regulator of solicitors and law firms in England and Wales. We protect consumers and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards.

This submission outlines what we believe is needed to support our vision for a modern, open legal market which, in turn, will support a competitive UK economy post-Brexit. In addition to our clear commitment to supporting and growing the UK share of the international legal market, a competitive domestic legal market also provides accessible, affordable services to the small businesses that are not only the backbone of our economy but also the big businesses of the future.

We believe the Treasury should use the autumn statement as an opportunity to:

1. Reaffirm and acknowledge the importance of a diverse, strong, effective and independent legal profession providing high quality legal services internationally and to the UK commercial market, as well as to the public, and the importance of the rule of law and administration of justice underpinning our economy and international trade.
2. Highlight work already underway to create the conditions that help regulators and firms to reduce unnecessary bureaucracy and barriers to entry so that law firms can grow, innovate and compete, while ensuring the high professional standards that secure the international reputation of English and Welsh law.
3. Acknowledge the wider support throughout government of measures being developed within the sector to support diversity and social mobility through the creation of different routes into the profession, as well as ensuring the high consistent standards that are fundamental to both the public interest and the solicitor brand.
4. Recognise the importance of opening up data and information in the legal market, so the market is better

understood and businesses and consumers can make better, more informed choices, helping to meet unmet need and to grow the market.

Further details of the SRA's work in each of these areas can be found in Annex A [annexA] .

Making the case for full independence for legal regulators

The Autumn Statement also provides an opportunity for the Treasury to provide an update on proposals first put forward on 30 November 2015¹ [note1] for full independence of all legal service regulators from their representative bodies. This paper stated that we "will launch a consultation by spring 2016", yet this consultation's publication remains pending.

At present the SRA is part of the Law Society Group and we have welcomed these proposals to provide legal service regulators with full independence from their representative bodies. We regulate in the public interest and are clear that regulation should be separate from the representation of professional interests and accountable to the public through Parliament or the judiciary. We believe that independent regulation will command greater public confidence, better serve the public, deliver better outcomes and be more cost effective.

The Treasury touched on the case for independence in its anti-money laundering consultation document of April 2016² [note2] , flagging up the problem of perceived conflicts of interest. It stated "it might be easier for law enforcement to share information with supervisors if the supervisory arm is distinct from the representative arm".

The Competition and Markets Authority (CMA) has also recently added to the case for fully independent legal regulators in its current market study into legal services in England and Wales. The CMA's interim report³ [note3] , published 8 July 2016, recognises the progress already made by the SRA, including its work to remove unnecessary bureaucracy, and promote competition by removing barriers to new firms, with new business models entering the market. It also states that, as a key principle, regulation should be fully independent from the providers of legal services.

The oversight regulator, the Legal Services Board, also made the case for independent regulation in September 2016⁴ [note4] . It stated, "the current lack of full independence between the legal services regulators and their associated professions is unlikely to be sustainable" for a number of reasons, including:

it fosters complex governance arrangements to manage relationships between the regulatory and representative functions of approved regulators, which do not achieve full independence of regulation and



which distract senior management attention on both sides from regulatory and representative matters respectively"
it risks undermining the credibility of regulation in the public perception in that some professions are still seen by consumers to be policing themselves (and therefore – whether true or not – inferentially to be ‘protecting their own’)"
it creates scope for representative bodies to delay reforms which would benefit competition and consumers generating regulatory uncertainty and deterring investment"
it results in lack of transparency of the cost of regulation, as a result of (i) sharing of some resources and costs between the regulators and their representative bodies, and (ii) some costs that should be collected from providers as part of optional professional membership arrangements being imposed as a compulsory regulatory levy"
it leads to confusion in other parts of government about which body is responsible for wider regulatory functions, for example under anti-money laundering and insolvency regulations."

The Autumn Statement should re-establish the commitment first made in November 2015, with details of a timetable for its implementation. This is not the time to put the brakes on reforms that will support a healthy legal market, inject more competition and innovation, provide more opportunities for solicitors and improve access to law. Rather than retreat into the past as we leave the EU, there is now an opportunity to reform legal service regulation and make sure legal service providers are able to compete nationally and internationally, while at the same time enhancing public and business access to solicitors.

Annex A

Opening up the market / Better regulation

We have already removed more than 40 pieces of unnecessary regulation over 18 months and have plans to do much more.

We recently undertook a formal consultation (which closed on 21 September⁵ [note5]) on the first phase of our major reform programme, on plans to radically simplify our rules and codes of conduct. In this we also proposed allowing solicitors to work outside organisations regulated by the legal regulators. There is a growing 'unregulated market' providing non-reserved activities such as legal advice. The proposition is that changing the regime so that solicitors are no longer restricted to authorised firms will make access to solicitors much easier for many people, increasing overall access to legal services.

Supporting diversity and social mobility

Standards start with education, training and entry to the profession. We want to promote fairer access to the profession for people from all backgrounds by making sure there are consistent standards, costs are kept down, and that there are a variety of routes to qualification.

We are proposing the introduction of a single, professional assessment that all aspiring solicitors must pass - a consistent, rigorous assessment would make sure all solicitors meet the same high standards required for practice, regardless of their pathway into the profession. In our view, the Solicitors Qualifying Examination (SQE) would benefit employers and the public: they will know solicitors meet the required independently set standards. The initial consultation in early 2016 generated a high level of response and some opposition, including from training providers.

We published a further consultation earlier this month (3 October 2016), which provides a detailed view of what the SQE might look like. It maps out a proposed model that includes extensive testing, covering knowledge of the law, legal process, legal thinking, drafting, writing, presenting, negotiating, arguing a case and analysing claims and transactions. The consultation also offers a fuller picture of how all the requirements come together, including the legal work experience needed and education standards. We propose to encourage a more flexible and innovative training market, which we hope will benefit candidates from disadvantaged groups, by keeping costs down, allowing students to decide for themselves which route suits them best, and by providing data to help inform student choice of provider.

Under the proposed new system, candidates would be required to have had at least 18 months workplace training. However, this training could now include experience in a student law clinic, a sandwich degree placement, as a paralegal, or under a formal training contract. They would also be required to have a degree or equivalent qualification, such as an apprenticeship. The consultation runs until 9 January 2017.

Supporting consumers

The recent Competition and Markets Authority (CMA) report found that the legal services market for small businesses and the public is not functioning as well as it might. The CMA highlighted, in particular, the lack of transparency on price and service which makes it harder for consumers to compare providers and identify value for money. The report suggests that this undermines competition and reduces incentives for firms to compete on price, quality and innovation. It also means that often consumers are not seeking legal advice when faced with a legal issue – they simply don't know who to turn to.

In April 2016 we launched a law firm search on our website⁶ [\[#note6\]](#) . Here you can find basic information about a regulated firm, such as address and their contact information. We are now looking to find a longer-term strategic solution which will provide clear, accessible and comprehensive information to help consumers make well-informed decisions about the purchase of legal services. The sort of information being proposed for publishing includes enforcement action, complaints and claims data, and the proposal

is that the information will be made available to all re-publishers, not just those in the legal sector, as the market is best placed to develop comparison tools that deliver real choice to consumers.

We are planning to launch a discussion paper later in 2016 on how we can provide more transparent information about those regulated, to help people make more informed decisions when buying legal services.

Notes

1. HM Treasury (November 2015) A better deal: boosting competition to bring down bills for families and firms [<https://www.gov.uk/government/publications/a-better-deal-boosting-competition-to-bring-down-bills-for-families-and-firms>]
2. HM Treasury (April 2016) Call for Information: Anti-Money Laundering Supervisory Regime [<https://www.gov.uk/government/consultations/call-for-information-anti-money-laundering-supervisory-regime>]
3. Competition and Markets Authority (July 2016) Legal Services Market Study Interim Report [<https://www.gov.uk/cma-cases/legal-services-market-study>]
4. Legal Services Board (September 2016) Delivering Better Outcomes for Consumers and Citizens
5. SRA (June 2016) Looking to the Future consultation [<https://www.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/>]
6. Search for information about SRA-regulated law firms in England and Wales [<https://www.sra.org.uk/consumers/using-solicitor/law-firm-search>]