Solicitors Regulation Authority

Looking to the Future: Phase two of our Handbook reforms

Consultation responses

June 2018

Name	Respondent Type
Publish the response with my/our name ***Responses from organisations***	
Association of Women Solicitors	Representative body
Birmingham Law Society	Law Society
Bristol Law Society	Law Society
Cardiff and District Law Society	Law Society
Cardiff University	University or other education/training provider
Citizens Advice	Other (Organisation)
City of London Law Society - Professional Rules and Regulation Committee	Law Society
City of London Law Society - Training Committee	Law Society
City of Westminster & Holborn Law Society	Law Society
County Societies Group	Law Society
Devon & Somerset Law Society	Law Society
Doncaster and District Law Society	Law Society
Federation of Small Businesses	Representative body
Hampshire Law Society	Law Society
Hexagon Legal Network	Representative body
Howden UK	Other (Organisation)
IJBH ltd	Law firm or other legal services provider
Junior Lawyers Division	Representative body
Kaplan Inc	Academic
Law Centres Network	Representative body
The Law Society	Representative body
LawWorks (Solicitors Pro Bono Group)	Representative body
Lawyers On Demand	Law firm or other legal services provider
Leeds Law Society	Law Society
Legal Ombudsman	Representative body
Legal Risk LLP	Law firm or other legal services provider
Legal Services Consumer Panel	Representative body
Leicestershire Law Society	Law Society
Liverpool Law Society	Law Society
Manchester Law Society	Law Society
Middlesex Law Society	Law Society
National Trading Standards Estate Agency Team	Regulator
Peninsula	Law firm or other legal services provider
Peterborough and District Law Society	Law Society
Riliance	Other (Organisation)
Sheffield & District Law Society	Law Society
Society of Legal Scholars	Representative body
Solicitors Disciplinary Tribunal	Other (Organisation)
Solicitors for the Elderly	Representative body
South Hampshire Junior Lawyers Division	Representative body
University of Law	University or other education/training provider
Yorkshire Union of Law Societies	Law Society
Young Legal Aid Lawyers	Representative body

Responses from individuals

Bennet, Paul	Solicitor
Causton, Peter	Solicitor
Feng, Vicki	Other legal professional
Kyriakides, Klearchos	Solicitor
Yeung, Yves	Other legal professional

Publish the response anonymously
Responses from organisations

ID-069	Anonymous
ID-070	Anonymous
ID-084	Anonymous
ID-086	Anonymous
ID-093	Anonymous
ID-099	Anonymous
ID-125	Anonymous

Responses from individuals

ID-015	Anonymous
ID-025	Anonymous
ID-042	Anonymous
ID-045	Anonymous
ID-054	Anonymous
ID-060	Anonymous
ID-062	Anonymous
ID-079	Anonymous
ID-098	Anonymous
ID-100	Anonymous
ID-131	Anonymous

Publish my/our name but not the response
Responses from Organisations

Action against Medical Accidents	Other (Organisation)
Nottingham Law School	University or other education/training provider

Association of Women Solicitors

Essential for Success

SRA Consultations

Looking to the Future: Phase two of our Handbook Reforms

Looking to the Future: Better information, more choice

Response by Association of Women Solicitors, London

About Association of Women Solicitors, London

Association of Women Solicitors, London was founded in 1992 and its aims include representing, supporting and developing the interests of women solicitors. Membership is open to women solicitors and trainees and associate membership to other women lawyers including barristers, chartered legal executives and paralegals.

For further information please visit our website www.awslondon.co.uk

Response

Thank you for inviting us to attend your recent workshop on these two Consultations.

The main points that emerged were;-

1. The Equality Impact Assessments left something to be desired but you did take our point that as the majority of solicitors involved with distressed clients and in the more difficult types of work (Divorce, Mental Health, etc.) are female the inevitable greater number of complaints could adversely affect the profile of women solicitors.

Our membership includes many women solicitors working within the smaller entities (niche, Sole practitioner, small High St etc) and looking after vulnerable individuals and drawing on that specialist knowledge we have read both Responses submitted by The Law Society and agree with what they have said.

2. We agreed that regulated firms displaying a logo to demonstrate regulated status is a good idea but are concerned about the absence of enforcement of the requirement that unregulated firms disclose unregulated status. This is obviously part of the overall shifting of monitoring to solicitors whilst retaining full disciplinary powers for regulated individuals and firms. Whilst we are not averse to fair competition this proposed arrangement does seem to be unfair.

We also expressed concern that the typical consumer will not understand the distinction anyway.

Also of concern is the fact that unregulated firms with one solicitor will not be regulated by the SRA, but the solicitor shall be responsible for any issues that arise and shall be disciplined should things go wrong. Many women who may be career returners may find themselves more likely to be in this position and therefore will have increased pressure as a result.

3. On publication of prices, timelines etc. the proposal is that the information currently given in the tailored client care letter after an initial meeting with the client will now go on the regulated firm's website in advance. All agreed that publishing such information on a general basis would be extremely difficult particularly in contentious matters and it would have to be hedged about with so many qualifications as to render it useless. For example, Counsel and experts are regularly engaged in litigation and at the outset of a matter, to estimate for these costs is almost impossible.

4. A similar comment applies to publication of the Complaints record. We need to know exactly what information would have to be published and how much explanatory information could be added.

Association of Women Solicitors, London
December 2017

Looking to the future: phase two of our Handbook reforms

Response ID:83 Data

2. About you

1.
First name(s)

Andrew

2.
Last name

Beedham

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Birmingham Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes – this is sensible. For SRA administrative purposes, any address in the UK is readily accessible. It also obviates the need for debate over whether someone who lives in, say, Scotland, but sees clients through a serviced office in London has a practising address in England and Wales or whether they need to apply for a waiver.

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

12.
2a) 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?

This is a difficult judgement call and there will always be debate about whether an additional one, two or three years practice experience before allowing solicitors to set up on their own reduces the risk of them failing financially or failing clients. The restriction was originally imposed in the 1970s because it was felt that, although newly qualified solicitors may be technically competent, there was evidence that some were

unable to cope with both the administrative/compliance requirements of practice and the need to look after clients whilst they were still relatively inexperienced at both. There was also a suspicion that at least some of those who wanted to set up on their own shortly after qualification were the ones unable to get jobs because of flaws in their ability.

In proposing to remove the restriction, the SRA makes much of the obligation on solicitors to be "competent" and only to practice in areas of law where they have the required skills and competence. This is alright in theory, but when a new business is not going as well as planned it is easy to be tempted to take on work that is outside the individual's competence to try and maintain adequate cash flow. Solicitors setting up on their own with a few years practice under their belt usually do so with an established following and are less likely to be tempted to take on work they are unfamiliar with. It is a different story for those newly qualified.

Obviously, newly qualified solicitors will have very different backgrounds and some may have experience of running a business or have spent many years as a paralegal before qualifying so not everyone is in the same position. At present, those who do have the requisite skills and experience have the option of applying for a waiver.

The SRA hopes that in removing the "3 year rule", it will pick up potential problems in authorisation applications. The difficulty there is that the SRA will be under an obligation to grant authorisation unless really serious issues are identified. The reverse is true with the waiver process whereby the applicant has to demonstrate exceptional circumstances.

It is also worth reflecting on the fact that a newly qualified solicitor applying to set up on his/her own is likely to be deemed approved as the COLP and COFA under the Authorisation Rules. Should the Authorisation Rules be amended to exclude those recently qualified from the deeming process? If the SRA decides to allow recently qualified solicitors to set up on their own this needs careful thought.

Overall, we recommend retaining some restriction on newly qualified solicitors setting up on their own.

13.

2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

14.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes. The government clearly intended that immigration services should be provided within authorised firms. It is akin to a reserved legal activity.

15.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Yes – again, it was the government's intention that these should be provided by regulated firms.

4. Consultation questions: Authorising individuals

16.

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?

No. It creates a confusing new type of practice which would allow what are essentially sole practitioners to practice without being fully regulated. The Code of Conduct for individuals would apply but not the Code for Firms (which is expressed only to apply to SRA authorised firms). Therefore, to give some examples, there would be no obligation for this type of practice to have systems and procedures, including those to identify and deal with conflicts, safeguard confidentiality and record undertakings. There will be no obligation to monitor financial stability or to ensure an orderly wind down in the event of closure of the business.

Under these proposals, those who do not want to conduct reserved legal activities would be able to have employees without limitation so could potentially be quite large firms yet they would have no obligation to have any systems and procedures. This must create significant risk for the clients.
It is unclear what other Handbook obligations would apply. Presumably, the information requirements in the Information Regulations would not apply, as these appear only to apply to regulated firms. This would create a whole area of practice where no information on, for example, costs or complaints, need be provided.
The picture is further confused by different conditions applying to those who provide non-reserved legal services and those who provide reserved legal services. The former, for example, do not appear to have any obligation to carry indemnity insurance, can hold client money and can have employees whilst the latter must have indemnity insurance and cannot have employees or hold client money.
Further confusion could be caused, for example, over who might be classified as an employee. Under the "chambers" model of sole practice with shared support services, would solicitors providing reserved legal services be able to use a self-employed IT consultant or administrative assistant – or would these be classified as employees? Would this only be possible for those providing non-reserved legal services?
Overall, we think this proposal has not been properly thought through, is too confused in terms of how this type of practice would be regulated and carries too much risk for the public.

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

This is sensible. The requirement that the SRA "will refuse" an application in certain circumstances gives far too little flexibility to consider the whole, and what might be quite a nuanced, picture. The current test has created a huge amount of stress for some applicants because of the lack of flexibility which has meant that an event which may have happened decades earlier and is of no relevance now has to be treated by the SRA as likely to lead to failure of the application.

18.

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?

Yes – this is the only sensible approach which can be undertaken. Given the complexity of the new system this will enable students under the current system to qualify and in particular the 11-year transitional period appears reasonable. Given the SQE does not map against existing qualifications it appears sensible to rely on either full exemption via existing qualification route or none at all. Part exemption will be unmanageable and difficult for students and firms to understand.

19.

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

Yes – there do not appear to be any risks associated with this change.

5. Consultation questions: Specialist rules

20.

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

Yes – there is no overall loss of protection and the streamlining seems sensible.

21.

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

It is doubtful whether many firms are even aware of the existence of these rules. As they largely duplicate what appears elsewhere in the Code of Conduct and the law there seems no reason not to remove them.

The proposed guidance will help with compliance with the legal requirements which some firms may be unaware of.

22.

11) Do you agree with our new proposed review powers?

Yes – it makes sense for all the review powers to be contained in one set of rules. However, the SRA must ensure that the spirit of its Reconsideration Policy is followed once the new rules are in place. The SRA Reconsideration Policy contains 8 grounds for reconsideration of a decision whereas the new draft Rule 4.2 contains 2 grounds – which it is acknowledged are general grounds but nonetheless the SRA should not be too prescriptive in its operation of its new review procedures.

23.

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

Yes – the 28 day time limit is as good as any but there is no provision in the rules for an extension of time for review. There should be a provision that an extension can be allowed in exceptional circumstances.

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

A revised enforcement strategy is welcome. There are some sensible and solid parameters contained in the draft Enforcement Policy.
However, the SRA must ensure that its frontline investigators (i.e. Forensic Investigation Officers & Regulatory Supervisors) are fully trained in all aspects of this policy. There is nothing new in the policy so they should already be operating under these parameters but this is not always the case.
Further, there needs to be greater appreciation by the frontline investigators of the meaning of the Principles and the Outcomes. The current practice (which has been in place since the 2011 Handbook was introduced) is to allege that 3 or 4 Principles and 2 Outcomes have been breached for a single set of facts. It does nothing to exacerbate the breach and results in greater costs for all parties and more work for the SDT. It is a kitchen sink approach which should be avoided.
Also, there needs to be a greater emphasis on sifting the complaints at an early stage and not investigating every single complaint in minute detail. We are aware of the tendency of firms to report administrative mistakes of an unpopular partner or fee earner and for this report to be treated as an independent report containing independent evidence when nothing could be further from the case. These reports are being used as a method of dispensing with the services of the said partner or fee earner. The SRA needs to adopt a proportionate approach and to always gauge the public interest at an early assessment before embarking upon an investigation which occupies an inordinate amount of time and cost for the SRA and for the individual concerned – which once completed is often abandoned.
As a general and final observation, the SRA should not allow itself to be led by political and media pressure. It does nothing for the reputation of the SRA. We have seen recent examples with the Leigh Day case and the SDLT cases generated by pressure from HMRC. The SRA needs to be wholly independent and must generate respect not opprobrium.

Looking to the future: phase two of our Handbook reforms

Response ID:117 Data

2. About you

1.
First name(s)

Leonie

2.
Last name

Parkin

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Bristol Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

We agree with the proposal.

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

We do not have strong views on this matter.

12.
2a) 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?

We do not agree that this requirement should be removed. We consider that the requirement ensures a minimum level of experience is available in any firm. Three years is a significant amount of time in practice in which an understanding of the core principles of practice and management can be developed. We consider removing the requirement and allowing Solicitors to set up on their own immediately on

qualification is very risky for the consumer and the Solicitor themselves. The alternative safeguards do not appear to adequately meet the requirements. We also consider that this will have an adverse impact on PII premiums.

13.

2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

We have anecdotal evidence of the experience that is gained in the first 3 years of practice as well as the maturity and embedded knowledge that is gained in that time which we consider is essential for sole practice.

14.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

We believe that all legal services should be provided by regulated firms. We don't see the justification for separating out Immigration services only.

15.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

We agree with this proposal. We consider that Solicitors should not be allowed to deliver non-reserved services to the public outside of a regulated firm.

4. Consultation questions: Authorising individuals

16.

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?

Whilst we understand the motivation behind the proposed changes (to enable solicitors to practice alone without the burdensome regulation of setting up as a sole practice) we don't consider that a two-tier system is clear, fair or appropriate. We note that most clients won't understand the difference between a sole practitioner and a freelance solicitor or their rights in relation to the two groups. Whilst the proposal might lift the burden on one group of practitioners it would be equally as disadvantageous to other practitioners.

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

We consider that the SRA should have some flexibility with regard to assessing character and suitability requirements. Imposing conditions on the issue of a practising certificate appears sensible to us if the individual represents a particular risk. We consider that guidance and checklists explaining the rules will be necessary in order to provide applicants with some certainty as to the likely outcome of their application.

18.

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 note that the transitional rules appear to define clearly the options available to Solicitors who have started training when the SQE comes into force which can only be a good thing.

19.

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

We do not have strong views on this matter.

5. Consultation questions: Specialist rules

20.

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

We do not have strong views on this matter.

21.

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

We do not have knowledge of unintended consequences of this change.

22.

11) Do you agree with our new proposed review powers?

We welcome the organisation of guidance into one place. We do not agree that excluding the right to submit evidence is sensible or complies with an individual's right to fair hearing.

23.

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

We do not have strong views on this matter.

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

We agree that transparency and clear guidance on enforcement powers is a positive thing for the profession.

1. (a) Do you agree with our proposal to authorise recognised bodies or recognised practices that have a practising address anywhere in the UK?

   (b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

(a) We agree the proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK. We have taken into account the fact that both Northern Ireland and Scotland have their own regulatory bodies which the SRA will either have, or be able to obtain, a memorandum of understanding with, and both countries are geographically close enough to not warrant a disproportionate increase in regulatory costs for the profession.

(b) We believe the practising address restriction should not currently be expanded outside of the UK for the reasons detailed in (a) above.

2. (a) 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?

   (b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

(a) We do not agree with your proposal that the current requirement for firms to have within the management structure an individual who is "*qualified to supervise should be removed*". We believe that the current requirement is needed to ensure the protection of the public and also to ensure that the reputation of the profession is preserved.

There is a career trajectory that any professional should follow, particularly those in the legal profession. The supervision of themselves and others is something best reserved to qualified staff who have experience of both the practice and business of law.

We are further concerned that the removal of the current requirement could feasibly lead to the exploitation of young and inexperienced members of the profession. Alternative business structures with non-lawyer owners could exploit inexperienced solicitors with their legal managers causing further risk to the public.

We do not believe that the removal of the requirement will increase access to legal services.

(b) We point to the evidence provided by the SDT in response the SRA *Looking to the Future: Phase 1* indicating that a lack of supervision is regularly identified as a cause of misconduct. Junior solicitors who are not properly supervised can misinterpret rules relating to conduct and or general legal principles to the detriment of their clients and will invariably diminish the faith the public places in the profession. A removal of the qualification to supervise would almost certainly increase the number of cases of misconduct amongst junior solicitors.

We also note that other regulators do not allow their junior members to manage others. For example, junior doctors are not allowed to become General Practitioners until they have completed extensive training.

3. Do you agree with our proposal that solicitors, REL's and RFL's should not be able to provide immigration services outside of LSA or OISC-authorised firms ?

We agree with the SRA's proposal. By a remarkable coincidence of timing we have noted a recent case where a solicitor has been struck off by the SDT for persistently making '*tenuous and hopeless'* JR applications against decisions of the Immigration Tribunal (see LSG 16.10.17 re Vay Sui Ip of Sandbrook Solicitors). Perhaps this is a timely reminder that this area of legal practice needs to be properly regulated if members of the public are to be adequately protected.

4. Do you agree with our proposal that solicitors, REL's and RFL's should not be able to provide claims management services outside of LSA or CMR-authorised firms (or equivalent)?

   If you disagree, please explain your reasons why.

We agree with the SRA's proposals. We think it is important that the claims management 'industry' is properly and effectively regulated, particularly in the light of the recent media disclosure of spurious (fraudulent ?) travel insurance claims for food poisoning where dishonest and/or dubious practices have been exposed and highlighted.

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 do not consider that there are any persuasive reasons to alter the status quo. Client protection and public confidence must be paramount and although there are safeguards with regarding to not holding client money, we are concerned that there is no length of service requirement to be a "*freelancer*" and that allied to no supervision is a very dangerous mix.
In addition, the consultation does not state what the '*adequate and appropriate'* level of insurance will be. If this is below the current minimum level then it represents a further dilution of client protection.
It should remembered that the SDT has provided evidence that over the 75% of matters referred to them included reference by the respondent solicitor to lack of supervision as an explanation for their misconduct. Also the Law Society have a system of supervision within Lexcel and Law Society quality marks (such as CQS and WIQS) require clear and effective supervision procedures to allow freelancers to act in this way drives a "*coach and horses*" through those efforts.
We are also concerned that this proposal creates a further tier of the profession and increase consumer confusion. The public will find it complicated and struggle to understand the differences in consumer protections between various types of solicitors. Within the Consultation you state that CMA and the Legal Services Board agree that the lack of information available to help people compare different legal services providers is a significant barrier and this proposal will in our view will only serve exacerbate this situation.

6. What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of

character and suitability?

We agree with the SRA that it would be sensible and proper to consider all the circumstances of an application, rather than considering only those circumstances which are considered to be 'exceptional'. We agree that the SRA should take into account the individual circumstances of the applicant, including the seriousness of the issue and any aggravating or mitigating circumstances. We agree that any decision made about an applicant should be fair, proportionate and transparent.
We support the use of a set of indicative events, and we welcome the SRA's proposals to publish comprehensive guidance, so that applicants, educators and employers are aware of the factors commonly considered by the SRA when assessing applications.
We have concerns about delaying an assessment of character and suitability until the point at which an applicant is seeking admission to the Roll. There is a danger that some applicants will spend years of their lives and considerable amounts of money in training to be a solicitor, and taking appropriate courses and examinations, only to find that they are prevented from being admitted due to a character and suitability issue.
However, we accept that the negative impact of this on applicants may be lessened considerably by the provision of early, indicative advice from the SRA. Without a formal determination at an early stage, though, there is both (a) the possibility that some worthy aspiring solicitors will decide against training to be a solicitor, due to the risk that they might not be admitted at the point of qualification, and (b) the possibility that a candidate takes a risk to undergo training on the strength of favourable indicative advice, only to be refused admittance to the Roll when they apply.
In view of this, could not aspiring solicitors apply for determination at an early stage, as they do now, if there is a concern about character and suitability? Could not a formal determination be made which, if positive, would be conditional on no further character and suitability issues arising between the date of determination and the date of application for admission? This would give those applicants much more assurance than indicative advice from the SRA.
If a formal determination was negative, this could be accompanied by an indication of the factors that might lead the SRA to reverse its decision on a subsequent application nearer the point of admission. In other words, why could an applicant not apply more than once? This would enable an applicant with a negative determination the opportunity to train to be a solicitor anyway, and hope that mitigating factors over time will mean the SRA's decision will be reversed, although it is accepted that an applicant with a negative determination would probably take the decision not to train to be a solicitor.
An early formal determination may have the benefit of improving access to the profession, by encouraging persons with minor criminal convictions (perhaps as a child) to enter the profession. Without an early formal determination, such persons will be deterred from training. As the incidence of criminal convictions may be higher amongst less advantaged socio-economic groups, and possibly among certain ethnic minorities, there is the danger that the lack of an early formal determination will have an inhibiting effect on diversity and access to the profession.
The SRA is concerned about the detrimental effect of an early determination of character and suitability, but if the test is made more flexible, as proposed by the SRA, the SRA will be able to take into account a wider range of factors and it is likely that there will be fewer negative determinations when mitigating factors can be taken

into account.
We also have concerns about the SRA admitting applicants and imposing conditions on their practising certificates. Although we do not disagree with this proposal in principle, we would like to be assured that the SRA will only admit applicants where it is appropriate to do so. Where applicants have a history of debt management issues in many cases it will not be appropriate to admit the applicants to the Roll. There has to be assurance that there will be sufficient protection of the public.
We agree it makes sense to streamline processes and remove duplication of requirements when parts of the SRA's assessment have already been satisfied by another regulator.

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 agree that individuals who have started either a qualifying law degree (QLD) or graduate diploma in law (GDL), or who are further advanced in the route to qualification, at the time that SQE is introduced, should be allowed to continue to qualify under the existing route and should have a full exemption from SQE.
We agree that the proposed transitional period of around 11 years from the introduction of SQE should provide sufficient time for most of those individuals to qualify following the existing route.
We accept the difficulties in providing partial exemptions from SQE, as set out by the SRA in its consultation paper, with one exception.
For the purposes of the transitional arrangements, we suggest that SQE is seen as the equivalent to a QLD/GDL combined with a Legal Practice Course (LPC) and, possibly, the Professional Skills Course (PSC)), and that qualifying work experience (QWE) is treated as the equivalent of the period of recognised training (PRT). We recommend that the SRA allow individuals who have undertaken a QLD/GDL followed by an LPC (and PSC?) to complete the process of qualifying by undertaking QWE instead of having to complete PRT. Whilst we accept that there are differences in QWE and PRT, in essence each is a period of 2 years' work experience. We realise that the SRA considers SQE Part 2 to be the check on the competencies in QWE, but SQE Part 2 contains elements which are already assessed on the LPC and PSC.
The concern here is to protect individuals who begin their route to qualification before the introduction of the SQE. There are already a large number of individuals who have completed a QLD/GDL and an LPC, but who have not secured a training contract. Should not the extra flexibilities of QWE apply to those individuals, so that they can qualify without either (a) obtaining a training contract or (b) sitting (and paying for) SQE 1 and 2 in addition to the QLD/GDL and LPC examinations that they

have already sat and paid for? We recommend therefore that individuals who begin their route to qualification before the introduction of SQE should be able to qualify via either PRT or QWE, without the need in the latter case to sit SQE Stages 1 and 2. Alternatively, could an individual who has undertaken a QLD/GDL followed by an LPC be allowed to qualify by undertaking QWE and SQE Stage 2 combined, i.e. to have an exemption from SQE Stage 1? This would mean that PRT (and PSC) is replaced by a combination of QWE and SQE Stage 2.
The SRA proposes dealing with individuals following the existing route who cannot get a training contract/PRT by way of equivalent means applications. We see problems in this approach, as equivalent means should be reserved for non-standard situations, and it is likely that large numbers of individuals will find themselves without a training contract/PRT after the QLD/GDL/LPC and will not wish to take SQE, particularly SQE Stage 1. The SRA could be faced with a large volume of such applications, which will be time-consuming and expensive to determine. This is another reason for recommending that the SRA treat QWE and PRT as equivalents, or alternatively treat QWE plus SQE Stage 2 as equivalent to PRT and PSC.
Regarding QLTS, we do not understand why all parts of QLTS have to be completed before the introduction of SQE. If a student is part way through the QLTS, why should they not be able to complete QLTS, subject to an appropriate transitional period? We would assume the transitional period would be considerably shorter, though, than the 11 year period suggested for domestic students who have started a QLD/GDL.

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

Yes.
We agree with the proposal that solicitors, RELs and REFs be deemed suitable to be managers or owners of any SRA-authorised body on first admission/registration. However, if the SRA is to admit solicitors who have conditions imposed on their practising certificates from the date of admission, then we recommend that the deeming provision should not apply to those individuals, and that they should be required to seek individual approval.
We agree that other LSA-regulated individuals should have to seek approval when they take up their first role as manager or owner in an SRA-regulated body, but that this approval will be general and they will not have to obtain approval subsequently when they move authorised bodies or when the authorised body itself changes constitution.
We note that there is no question associated with paragraphs 97-99 '*Corporate owners and managers*'. In our view the proposals are sensible.

9. Do you agree with our proposed streamlining of the Overseas Rules and the

European Cross-border Practice Rules?

On the basis that the proposed changes do not substantively alter the content or application of the current Overseas Practice Rules we are content with the proposals to streamline them. We also agree with the proposal that a requirement be included that the CCBE Code be complied with.

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

We agree that removing unnecessary parts of the Handbook such as those relating to legislation that has not been enacted. Although, it is important to ensure that there are no inadvertent gaps created as a result of this removal within the guidance and the revised Handbook, in particular with regard to conflicts of interest. We believe it is important to keep the definitions of 'Sole Agency' and 'Sole Selling Rights' within the guidance and to detail the explanation to be given to clients on instruction.
We agree that presently the numbers of solicitors firms acting as estate agents are extremely low in England and Wales. Indeed, in South East Wales we are only aware of one such firm. However, we are also aware of new businesses that are promoting the concept that solicitors firms should cross over into the property selling market; however we believe that an ABS is a more inviting model for any firm of solicitors wishing to do so.

11. Do you agree with our proposed review powers?

We agree that placing all the powers of review in one place is sensible.

However, we do not agree with the proposal that restricts the addition of further evidence in relation to any review or appeal. If the evidence is relevant, it should be able to be considered at any stage in the process whether initially or as part of a review.

12. Do you agree with the proposed 28 day limit to lodge all requests for internal review?

We agree that a 28 day limit to lodge all requests for internal review is sensible. Although we would hope it would include the discretion to extend this period by agreement in certain circumstances. Particularly where complex issues are involved.

13. Do you agree with our proposed approach to enforcement?

The proposed Enforcement Strategy is detailed and appears proportionate in its approach. Our remaining concern is how an individual solicitor working in a non-regulated entity will be effectively regulated.

On p8 of the Enforcement Strategy, it refers to "…part of being fair and proportionate is ensuring that those within an organisation, with real control and influence over the situation, are held accountable. The context in which professionals work, the culture of an organisation and pressure from peers and managers, is likely to have significant impact on their actions and decisions."

We agree with this statement and it therefore raises concerns that a relatively inexperienced solicitor could work in a non-regulated business where the business may have breached conduct rules, and by implication as the SRA can only regulate the solicitor, any action can only be taken against the solicitor and not the unregulated business. This could potentially result in disproportionate regulatory action being taken against the solicitor while leaving that business free to continue any unethical practice which may have a detrimental impact on consumers of non-reserved legal activities.

We note the SRA have taken on board feedback and changed requirements so that solicitors will be under a duty at the outset of a retainer to tell clients they will not have the same protections as they would with a regulated entity. We feel this is a positive step to try to protect client's interests.

Looking to the future: phase two of our Handbook reforms

Response ID:126 Data

2. About you

1.
First name(s)

Byron

2.
Last name

Jones

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

University or other education/training provider

8.
Please enter the name of your institution

Cardiff University

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

12.
2a) 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?

13.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

14.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

15.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

4. Consultation questions: Authorising individuals

16.

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?

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

We agree with the SRA that it would be sensible and proper to consider all the circumstances of an application, rather than considering only those circumstances which are considered to be 'exceptional'. We agree that the SRA should take into account the individual circumstances of the applicant, including the seriousness of the issue and any aggravating or mitigating circumstances. We agree that any decision made about an applicant should be fair, proportionate and transparent.

We support the use of a set of indicative events, and we welcome the SRA's proposals to publish comprehensive guidance, so that applicants, educators and employers are aware of the factors commonly considered by the SRA when assessing applications.

We have concerns about delaying an assessment of character and suitability until the point at which an applicant is seeking admission to the Roll. There is a danger that some applicants will spend years of their lives and considerable amounts of money in training to be a solicitor, and taking appropriate courses and examinations, only to find that they are prevented from being admitted due to a character and suitability issue.

However, we accept that the negative impact of this on applicants may be lessened considerably by the provision of early, indicative advice from the SRA. Without a formal determination at an early stage, though, there is both (a) the possibility that some worthy aspiring solicitors will decide against training to be a solicitor, due to the risk that they might not be admitted at the point of qualification, and (b) the possibility that a candidate takes a risk to undergo training on the strength of favourable indicative advice, only to be refused admittance to the Roll when they apply.

In view of this, could not aspiring solicitors apply for determination at an early stage, as they do now, if there is a concern about character and suitability? Could not a formal determination be made which, if positive, would be conditional on no further character and suitability issues arising between the date of determination and the date of application for admission? This would give those applicants much more assurance than indicative advice from the SRA.

If a formal determination was negative, this could be accompanied by an indication of the factors that might lead the SRA to reverse its decision on a subsequent application nearer the point of admission. In other words, why could an applicant not apply more than once? This would enable an applicant with a negative determination the opportunity to train to be a solicitor anyway, and hope that mitigating factors over time will mean the SRA's decision will be reversed, although it is accepted that an applicant with a negative determination would probably take the decision not to train to be a solicitor.

An early formal determination may have the benefit of improving access to the profession, by encouraging persons with minor criminal convictions (perhaps as a child) to enter the profession. Without an early formal determination, such persons will be deterred from training. As the incidence of criminal convictions may be higher amongst less advantaged socio-economic groups, and possibly among certain ethnic minorities, there is the danger that the lack of an early formal determination will have an inhibiting effect on diversity and access to the profession.

The SRA is concerned about the detrimental effect of an early determination of character and suitability, but if the test is made more flexible, as proposed by the SRA, the SRA will be able to take into account a wider

range of factors and it is likely that there will be fewer negative determinations when mitigating factors can be taken into account.

18.

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 agree that individuals who have started either a qualifying law degree (QLD) or graduate diploma in law (GDL), or who are further advanced in the route to qualification, at the time that SQE is introduced, should be allowed to continue to qualify under the existing route and should have a full exemption from SQE.

We agree that the proposed transitional period of around 11 years from the introduction of SQE should provide sufficient time for most of those individuals to qualify following the existing route.

We accept the difficulties in providing partial exemptions from SQE, as set out by the SRA in its consultation paper, with one exception.

For the purposes of the transitional arrangements, we suggest that SQE is seen as the equivalent to a QLD/GDL combined with a Legal Practice Course (LPC) and, possibly, the Professional Skills Course (PSC)), and that qualifying work experience (QWE) is treated as the equivalent of the period of recognised training (PRT). We recommend that the SRA allow individuals who have undertaken a QLD/GDL followed by an LPC (and PSC?) to complete the process of qualifying by undertaking QWE instead of having to complete PRT. Whilst we accept that there are differences in QWE and PRT, in essence each is a period of 2 years' work experience. We realise that the SRA considers SQE Part 2 to be the check on the competencies in QWE, but SQE Part 2 contains elements which are already assessed on the LPC and PSC.

The concern here is to protect individuals who begin their route to qualification before the introduction of the SQE. There are already a large number of individuals who have completed a QLD/GDL and an LPC, but who have not secured a training contract. Should not the extra flexibilities of QWE apply to those individuals, so that they can qualify without either (a) obtaining a training contract or (b) sitting (and paying for) SQE 1 and 2 in addition to the QLD/GDL and LPC examinations that they have already sat and paid for? We recommend therefore that individuals who begin their route to qualification before the introduction of SQE should be able to qualifying via either PRT or QWE, without the need in the latter case to sit SQE Stages 1 and 2.

Alternatively, could an individual who has undertaken a QLD/GDL followed by an LPC be allowed to qualify by undertaking QWE and SQE Stage 2 combined, i.e. to have an exemption from SQE Stage 1? This would mean that PRT (and PSC) is replaced by a combination of QWE and SQE Stage 2.

The SRA proposes dealing with individuals following the existing route who cannot get a training contract/PRT by way of equivalent means applications. We see problems in this approach, as equivalent means should be reserved for non-standard situations, and it is likely that large numbers of individuals will find themselves without a training contract/PRT after the QLD/GDL/LPC and will not wish to take SQE, particularly SQE Stage 1. The SRA could be faced with a large volume of such applications, which will be time-consuming and expensive to determine. This is another reason for recommending that the SRA treat QWE and PRT as equivalents, or alternatively treat QWE plus SQE Stage 2 as equivalent to PRT and PSC.

Regarding QLTS, we do not understand why all parts of QLTS have to be completed before the introduction of SQE. If a student is part way through the QLTS, why should they not be able to complete QLTS, subject to an appropriate transitional period? We would assume the transitional period would be considerably shorter, though, than the 11 year period suggested for domestic students who have started a QLD/GDL.

19.

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

5. Consultation questions: Specialist rules

20.

9) Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border

Practice Rules?

21.

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

22.

11) Do you agree with our new proposed review powers?

23.

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

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

Looking to the future: phase two of our Handbook reforms

Response ID:85 Data

2. About you

1.
First name(s)

Claire

2.
Last name

Blades

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Other

8.
Please specify

Citizens Advice

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

12.
2a) 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?

We remain concerned about the risks of removing the 'qualified to supervise' requirement. We believe that a period of time post qualification to gain further experience and embed good practice can contribute to better client protection.

We understand that to an extent the time period is arbitrary and doesn't test actual knowledge and skills but the chance to work closely with more experienced colleagues for a period early in a solicitor's career provides valuable learning opportunities. This period of time also offers protection for solicitors who may inadvertently risk sanction by acting beyond their skills and experience.

Starting a sole practice without existing processes and systems is very different from working within a firm where the regulatory compliance procedures are already embedded. We note that there will be a power to refuse authorisation of a sole practitioner or firm but we are uncertain how this would be assessed and therefore the degree to which this offers sufficient protection.

13.

2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

We have no specific evidence to submit at this stage in advance of a change in the rule. We believe that it will be essential to monitor the impact of a change if it is implemented to ensure that the potential for client detriment is not increased.

14.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

We share the concern that immigration services should be properly regulated.

We are however concerned that the draft rule could be confusing for 'special bodies' who are authorised under section 23 LSA to carry out reserved legal activities but are not authorised by SRA as entities.

Many not for profit organisations will be regulated by OISC for immigration work and also be authorised under LSA to undertake reserved legal activities. We request that the SRA considers rewording this rule to avoid confusion where the organisation the solicitor works for is regulated by OISC and the current wording could be interpreted as restricting them to unreserved legal activities.

'A solicitor, REL or RFL may undertake immigration work, provided that such work is undertaken through a body authorised to carry on reserved legal activities, or (only if the work does not comprise reserved legal activities) through a body regulated by the Office of the Immigration Services Commissioner'

15.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

We agree with this approach.

4. Consultation questions: Authorising individuals

16.

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?

In our response to part 1 of the consultation we expressed concern about solicitors working in unregulated organisations without the consumer protection of indemnity insurance. We were also concerned about the potential for confusion to arise about the wider protections the client can expect when engaging a solicitor. Legal regulation is confusing for consumers and it will be important that they understand exactly how they are protected before they make decisions about who to engage. We have similar concerns about the potential confusion that self employed solicitors might lead to.

In outlining the proposal for self employed solicitors is was stated that there was an intention to avoid the

current complex array of exemptions found in the current handbook.

In paragraph 48 it states 'we are keen not to replicate the current complex and confusing system of exceptions (special bodies, pro bono, telephone services etc.) under the SRA Practice Framework Rules 2011'

We are supportive of an approach which seeks to avoid unnecessary complexity which can cause considerable confusion but we are concerned that further confusion may be inadvertently created by over simplification. We are specifically concerned that the rules for solicitors working in Not for Profit organisations or where solicitors are working with NFP organisations to provide pro bono services. If the rules do not clearly set out conditions for solicitors working in these circumstances the lack of clarity may damage provision in this sector.

The practice framework rules 2011 include explicit rules for Law Centres, charities and other non-commercial advice services (4.16), which offers clarity and a framework for insurance provision. We understand that this rule will not be replicated in the new handbook. If this is the case, we ask for reassurance that sufficiently clear information is provided to enable solicitors working in the sector to be clear how the rules apply to them. If the information is provided by way of guidance, the guidance should be easily accessible, searchable and maintained to ensure that it remains current. Providers must be able to easily find the appropriate information and be able to rely on it when making decisions.

We would welcome an opportunity to meet with the SRA to discuss the best way to establish clarity about how Law Centres, charities and other non-commercial advice services can be clear how the handbook will work for them. We are also keen to discuss how the pro bono sector can be enabled to work with the NFP sector by provision of clear information and guidance about how regulation applies.

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

Subject to the principle of protection of the public and public interest, we agree that it is appropriate to move to a process which allows more flexibility.

18.

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?

19.

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

5. Consultation questions: Specialist rules

20.

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

21.

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

22.

11) Do you agree with our new proposed review powers?

23.

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

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

The City of London Law Society

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DX 98936 – Cheapside 2
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Tim Pearce
Regulation and Education – Policy
Solicitors Regulation Authority
The Cube
199 Wharfside Street
Birmingham
B1 1RN

18th December 2017

By e-mail only: consultation@sra.org.uk

Dear Mr Pearce

CLLS TRAINING COMMITTEE RESPONSE TO THE SRA CONSULTATION: LOOKING TO THE FUTURE: PHASE TWO OF OUR HANDBOOK REFORMS

The City of London Law Society ("CLLS") represents approximately 17,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response to the consultation has been prepared by the CLLS Training Committee.

Consultation 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?

Our understanding of the transitional arrangements is as follows:

- Students who start a QLD, GDL or LPC before the SQE start date (currently the target date is September 2020) can complete their training under their existing route to qualification;
- Apprentices will be required to pass all stages of the SQE, whenever they started their apprenticeship;
- Those seeking to qualify through the QLTS will need to pass all parts of the QLTS before the SQE is introduced;
- There will be no 'mix and match' of the old and new qualification. It will not be possible to switch from the current route to the SQE midstream and, therefore, secure exemptions for any part of the SQE. It should, however, be possible to undertake Qualifying Work Experience and Stage 2 of the SQE instead of the Period of Recognised Training as the equivalent means mechanism for qualification will be available; and
- Assuming the target introduction date for the SQE of September 2020, there will be a cut-off date of 31st December 2031 for qualifying under an existing route.

In setting out the transitional arrangements we recognise the need to balance maintenance of standards and consistency, against fairness to those who have invested significant time and money in the expectation of qualifying under an existing route. On that basis, we do not object to the overall approach taken in the arrangements.

However, we think there are two noteworthy consequences of the proposed transitional arrangements. First, the consequences of insufficient time between finalisation of the detail of the SQE and the introduction of the SQE. Secondly, the likelihood that law graduates who join our member firms from 2022 will be required to take the SQE and will not have the choice of qualifying under the existing system.

As to the first, there will be significant practical difficulties for our members in relation to the proposed implementation dates and lead periods suggested. Firms will need a reasonable period between (i) the SQE curriculum (and other details in relation to the implementation of the SQE) being finalised; and (ii) the SQE start date (or reference date, as set out below). We believe that, to allow sufficient time for suitable SQE preparation courses and other courses to be designed and for firms to make arrangements for the QWE, the period between (i) and (ii) needs to be at least 12 months. We have explained our thinking in further detail below.

The second consequence stems from the fact that the proposed transitional arrangements for the SQE differentiate between law students and non-law students, as follows:

- Any non-law student who began his/her degree in 2017 (and who graduates in 2020) will only be able to qualify under the new system;

- Any non-law student who graduates in 2019 and who does not immediately enrol on a GDL will also only be able to qualify under the new system;
- However, both law students who begin their law degrees in 2018 or 2019, as well as non-law students who graduate in 2019 and immediately enrol on a GDL, will be able to qualify under either the existing system or the new system.

Our member firms currently recruit prospective trainees approximately 2-3 years before the start of their training, and engage with prospective trainees earlier than that as part of the recruitment process.

The combination of the differential treatment of law students and non-law students, and the long lead time for trainee recruitment, has a significant practical impact on our member firms, in particular in relation to trainee intakes for 2022 and 2023.

Trainee intakes in those years will include both those who can only qualify under the new system (i.e. those with non-law degrees who graduated in 2020 or later) and those who can qualify under either the existing system or the new system (i.e. those with law degrees, as well as those with non-law degrees who graduated in 2019 or earlier and enrolled on a GDL before 2020).

For a variety of reasons, including the not inconsiderable additional time and cost of running two different systems in parallel and the desire to treat a single intake consistently, we have concluded that it will not be feasible or practical for our member firms to follow both the existing regime and the SQE in parallel for trainees joining in the same intake. Therefore, firms are likely to require all their trainees from 2022 onwards to qualify under the new system.

On that basis, firms will require certainty on all aspects of the SQE and the timing for its introduction in order to:

- begin engaging with non-law students now, and law students from 2018 onwards, about qualification under the SQE; and
- take the decisions required for the implementation of the SQE, which will need to have been taken by the beginning of the 2019-20 academic year at the very latest (allowing 12 months for the design of the SQE preparation course for non-law graduates to start in 2020).

However, the current timetable for implementation of the SQE (under which development and testing continues until shortly before the proposed introduction of the SQE in 2020) does not appear to allow for this.

If clarity is not available in sufficient time before the introduction of the SQE, then we would urge the SRA not to set the reference date for the transitional arrangements as the date of the introduction of the SQE, but instead extend it to a later date, being at least 12 months after the date of the introduction of the SQE.

We would also suggest that any rules that are made by the SRA now to implement the transitional arrangements specifically allow for the reference date to be:

- automatically put back if certain milestones (in particular, the completion of the development and testing phase) have not been achieved by certain dates; and
- otherwise to be put back at the discretion of the SRA after appropriate consultation.

Yours faithfully

THE CITY OF LONDON LAW SOCIETY TRAINING COMMITTEE

Training Committee Members

Chair: Ms H. Kozlova Lindsay (Berwin Leighton Paisner LLP)

Ms. L. Gerrand (DLA Piper UK LLP)
Ms. R. Grant (Hogan Lovells International LLP)
Ms C. Janes (Herbert Smith Freehills LLP)
G. Lascelles (Covington & Burlington LLP)
P. McCann (Linklaters LLP)
Ms F. Moore (Slaughter and May)
Ms C. Moss (Winckworth Sherwood LLP)
B. Perry (Sullivan & Cromwell LLP)
Ms S. Tidball (Macfarlanes LLP)

Looking to the future: phase two of our Handbook reforms

Response ID:88 Data

2. About you

1.
First name(s)

Diane

2.
Last name

Parker

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Doncaster and Disttrict

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

We don't agree that the SRA should authorise bodies who are not based in England and Wales. External jurisdictions throw up particular issues for litigators.

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

See above.

12.
2a) 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?

Why 3 years in the existing rule? There must have been a reason. Perhaps the time length should in fact be increased. It is of some concern that this is being introduced to coincide with the introduction of the SQE when it is fair to say that the profession is somewhat cynical as to the quality of lawyers the new qualification will produce.

How does a firm obtain PII if there is no-one with experience of practice at the helm?
What sort of pressures on practitioners is this going to place, particularly on their mental health?

13.

2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

No evidence, just our own experience of high street practice.

14.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes.

15.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Yes.

4. Consultation questions: Authorising individuals

16.

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?

Again what will the position be with PII? How is this a level playing field? How does this protect the consumer who understands "solicitor" as a brand and is unlikely to understand the distinction?

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

We have no objection to streamlining subject to:
a.) There being no additional cost to the profession
b.) There being no additional risk posed by approving those who are perhaps not suitable

18.

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?

Yes.

19.

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

Yes.

5. Consultation questions: Specialist rules

20.

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

Not applicable to our type of practice.

21.

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

No.

22.

11) Do you agree with our new proposed review powers?

Don't remove discretion. It seems counter-intuitive to be seeking to add discretion to "character and suitability" decisions and then remove it elsewhere.

23.

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

Yes, subject to ability to extend subject to the exercise of discretion.

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

Yes.

Mr Crispin Passmore
Executive Director, Policy and Education
Solicitors Regulation Authority
The Cube
199 Wharfside Street
Birmingham
B1 1RN

20 December 2017

Dear Mr Passmore,

SRA: 'LOOKING TO THE FUTURE' CONSULTATIONS

The Federation of Small Businesses (FSB) welcomes the opportunity to respond to the above named consultation.

The FSB is the UK's leading business organisation. It exists to protect and promote the interests of the self-employed and all those who run their own business. The FSB is non-party political, not for-profit organisation and is the largest organisation representing small and medium sized businesses in the UK.

Small businesses make up 99.3% of all businesses in the UK, and make a huge contribution to the UK economy. They contribute 51 per cent of total private sector turnover in the economy and employ 60% of the private sector workforce.

We trust that you will find our comments helpful and that they will be taken into consideration.

Yours sincerely,

Ken Wright
Home Affairs Chairman
Federation of Small Businesses

FSB response to SRA consultations 'Looking to the future: better information, more choice' and 'Looking to the future: phase two of our handbook reforms'

December 2017

INTRODUCTION

The Federation of Small Businesses (FSB) welcomes the opportunity to respond to this consultation document on behalf of its members across the UK.

The law and the legal services which service it are essential building blocks of a well-functioning market economy. The law provides the framework which enables commercial activity to take place. Therefore, an effective commercial legal services sector which facilitates the use of the law by small businesses is crucial to a thriving small business sector and a competitive UK economy.

The legal services sector has not served the small business community as well as it might. A report in 2013 by Pleasence and Balmer identified £100bn worth of unsatisfied legal need among the UK's small business population.[1] More recently, a string of ways in which the current legal services market could better support the UK's smaller businesses were identified by the Competition and Markets Authority (CMA).[2] Further, the regulatory frameworks governing some of the providers of legal services, such as solicitors, have contributed to the failing of the legal services sector to meet the needs of smaller businesses by being costly and not flexible enough to encourage innovation.

FSB welcomed the CMA's final report into the functioning of the legal services market. We supported the broad thrust of the remedies outlined in it by the CMA. Since its publication and the slew of recommendations it contained about how to improve the functioning of the legal services sector for the benefit of its users (including smaller firms) FSB has been encouraged by the overall approach of the legal regulators. They have, initially at least, seemingly picked up the gauntlet from the CMA with some energy. FSB is keen that this continues, momentum is not lost and regulators make significant improvements on the current position. As such, FSB aims to continue to input into the process of the development and implementation of remedies which aim to improve the legal services market for smaller businesses. Consequently FSB are pleased to be able to respond to these two consultations in more detail below.

INFORMATION AND TRANSPARENCY

FSB supports the legal regulators co-ordinating their approach on information and transparency issues so that smaller firms can expect a similar level of standards no matter which kind of regulated provider is providing legal services. Inherently, having multiple-bodies trying to achieve similar goals is more difficult than a single organisations doing so. There is a risk that co-ordination means efforts move more slowly than they might otherwise. Therefore, the CMA should closely monitor developments to make sure:

- They continue apace.
- There is as much collaboration as is needed to deliver the best outcomes i.e. market-wide consistency.

[1] Pleasence, P and Blamer, N J. In Need of Advice: Findings of a Small Business Legal Needs Benchmarking Survey. (2013). Available at: https://research.legalservicesboard.org.uk/wp-content/media/In-Need-of-Advice-report.pdf
[2] CMA. Legal services market study: final report. (2016). Available at: https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf

While we consider the information and transparency measures being consulted upon by the SRA as moves in the right direction we believe that in some areas they must go further. It is only through ambitious measures that significantly improve the quality and quantity of information made available to smaller businesses that the market can substantially improve and close the £100 billion deficit of un-fulfilled demand.

FSB considers that the information and transparency agenda needs to encompass not only firms but individual lawyers. Small businesses, especially those at the larger end of the 'small' business size category who have a more sophisticated approach to navigating the legal market, often want to hire a particular solicitor not just use a particular firm e.g. for expertise reasons. Many solicitors within a firms have their own prices, accreditations and client feedback, all driven by a series of bespoke factors. Given this complex picture, unless clients can assess both firm and individual lawyer information, depending on their particular preferences, there is a clear risk that the information and transparency reforms will fail in their aim of improving the functioning of the legal service market for smaller businesses.

Pricing

It is essential to include pricing in a comprehensive set of transparency requirements for law firms and solicitors. FSB sees little reason why solicitors and firms should not be able to publish fees upfront. Solicitors provide fee information in their first engagement letters whether that is a 'fixed' price or an estimate for the services charged on an hourly basis. A reasonably experienced solicitor and efficient law firm should have a good grasp of their cost base and the prices they can reasonably charge.

Pricing publication requirements should not be limited to specific areas but cover all commercial and corporate law provision to smaller businesses. Both transparency and a comprehensive approach is necessary if a more sophisticated demand side is to develop among small business users.

Full publication of all fixed fee services should be straight forward. In order to enable smaller firms to effectively navigate the market fixed fees need to be fully transparent and include elements like VAT and obvious disbursements. Their publication needs to be clear and simple. Use of extensive exclusions and qualifications for example needs to be prohibited by the SRA.

If fixed fees cannot be offered (and there are some legitimate areas where it's not possible e.g. litigation) then likely pricing ranges should be provided alongside hourly rates. Experienced lawyers and law firms should be able to provide realistic cost ranges. As with fixed fees, estimates need to be reliable (i.e. accurate with minimal qualifications and exemptions). Small businesses need to be able to make and easy comparisons.

Further, to be fully effective pricing needs to be presented in a clear manner. Where 'qualifications' or exemptions might be required, these too need to be transparent. Lengthy and complicated 'bills' that utilise exemptions and qualifications can confuse users and need to be eliminated.

In addition to being clear, prices need to be published prominently. Prices that are hidden in some way are no use to a small business needing to get legal advice to resolve a problem and trying to navigate the market. Therefore, as well as being clear and reliable the SRA should set down 'prominence' rules which solicitors and law firms need to adhere to. The

current proposal for them to be displayed on the firm website needs to be enhanced to ensure that prices are visible and comparable for potential clients. Therefore a more universal prominence principle needs to be established.

If firms and solicitors fail to meet any of the requirements around pricing the SRA should be willing to take appropriate action. If the sector as a whole fails to step-up sufficiently then the SRA should seriously consider requiring prices to be submitted to them where the SRA can then make them available to third party intermediaries.[3] This latter measure would something to consider if evidence emerged that the legal services sector was not responding in the right way to the requirements of clarity, reliability and prominence.

FSB would be happy to see a gradual roll-out of these new pricing standards from a small number of services to begin with but eventually covering all small business focussed legal services offered by law firms. Any roll-out period however should be time-limited. Solicitors could reasonably be expected to have made the requisite adjustments in two years after a short pilot-testing period of the new requirements by the SRA.

Accreditation

Accreditations and similar market signalling mechanisms can be useful tools that help users and potential users on the demand side make better choices about from where to purchase legal services from. They signal to consumers who can reliably provide a particular type of service at a minimum level of competence. The difficulties many smaller firms have in navigating the legal services sector and understanding who is best placed to provide the services they need suggest that accreditation could play a bigger role in helping stimulate the demand side.

However, accreditation is only as good as its rigour and the extent to which clients and potential clients understand what the various accreditations that might be obtained by a legal services provider mean. Without these two crucial factors in place they are largely pointless. In some cases they may even complicate choices for buyers. Therefore, accreditations for specialities need to be meaningful i.e. require specialist training and experience which is tested in some way. If the accreditation route is encouraged, then any accreditation cannot be a 'badge for experience'. Or indeed just something that can be paid for. Accreditation should be earned. Regulatory accreditations (like an SRA badge) are largely meaningless to most small business clients. If other regulators take a similar approach this could make choice a more confusing process for small business consumers. A clearer option, which would overcome the inevitable vagueness of having, for example, an SRA badge, would be to highlight the specific protections that come with using a provider who, for example, is regulated by one of the legal regulators e.g. insurance, complaints mechanisms, codes of ethics etc.

Alongside improving the meaningfulness of accreditation, efforts would need to be made to make small business consumers aware of their meanings. The Legal Choices website for example, or the regulators themselves, should provide a 'guide' to what they mean and why and how they can be relied upon by a potential consumer.

[3] The burden of this could be minimised by requiring submission of hourly rate at the time of practice licence renewal. With updates throughout the rest of the year allowed through submissions using MySRA.

Feedback

In addition to improvements to pricing and accreditation the small business legal services market needs better feedback mechanisms to enable information about the best value for money services to percolate through the market, help improve purchasing choices by smaller businesses and ultimately help close the £100 billion gap of unsatisfied demand.

The proposals to publish regulatory sanctions information could be helpful in the most extreme circumstances i.e. help a small business user avoid the very worst lawyers. However, this information is not the most important for facilitating the small business legal services market at the aggregate level. Such incidents are few and far between and relate to issues of a very serious nature, which are not relevant for the large majority of small business purchases of legal services.

A more effective approach that FSB believe could significantly help the market would be to require solicitors and firms to obtain simple (i.e. a minimum level of[4]) customer feedback from every client.[5] High volumes of feedback would lead to large quantities of statistically useful data about how lawyers and law firms are performing. Commercial tools for obtaining feedback are already available and cost very little to use. Since the advent of the internet and associated data processing technologies it has become very easy to collect and collate such information.[6] The SRA (along with the other legal regulators) should ensure that lawyers and firms implement feedback collection by setting out and monitoring a set of consistent standards for the collection of performance data, while avoiding mandating particular technologies for doing so.[7]

Finally, the SRA needs to ensure its own systems have the flexibility, for example, to inter-operate with the various feedback tools that solicitors and law firms might employ to collect feedback and then would be periodically submitted to the SRA. Such inter-operability would allow the SRA to play the role of a 'hub' for facilitating the development of more effective third party market intermediaries which will, in-turn, help facilitate the small business legal services market.

REGULATORY REFORM

Flexible, proportionate and supportive of innovation

The regulation of legal services providers needs to be designed such that it maintains the traditional strengths of the solicitors' profession e.g. the ethical underpinnings and the high-levels of training (and associated investment) it takes to build up the requisite experience to practice. However, the regulatory framework also needs to be competitive as solicitors

[4] It is important that legal firms and solicitors are not be prohibited from going further in the type of feedback information they ask clients for.
[5] In some cases clients won't want to provide feedback. In such examples it is not possible to get the feedback. Such a regulatory requirement therefore would need to take this into consideration in its design.
[6] In many sectors the combination of the internet and powerful data analytical tools have enabled an explosion in the collection and utilisation of feedback data. For many businesses such information and its analysis are seen as key tools of business competitiveness.
[7] FSB acknowledges that the publication of feedback provides opportunities for misuse and abuse by disgruntled or vindictive people. These are challenges that beset all market intermediary platforms based-upon feedback and user-reviews. Therefore systems may need to be developed that help provide a degree of quality assurance around feedback and 'proof of provenance' of those providing the feedback. Thinking about these problems should be integrated into the 'remedies development process' so that solutions can be built-in, where they are available.

compete with other providers of legal services (regulated and un-regulated). As part of achieving that aim of the regulatory framework enhancing and not impeding competiveness, it needs to leave sufficient space for innovation and adaptation, not least in how legal services can be provided. A competitive regulatory framework:

- Has rules which are clear but minimal i.e. they are sufficient to achieve the desired or necessary ends but do not load costs onto solicitors and law firms. They avoid creating excessively high barriers into the profession or making the costs of practicing significantly higher than for those direct competitors who are not regulated.
- Imposes minimal administrative burdens for the 'regulatee' to comply with. This will minimise the on-going costs of regulation which bear on those practicing and reduce the risk of the regulatory framework making solicitors and firms cost un-competitive. Such administrative costs include the time diverted towards compliance and away from servicing client needs and business development.
- Makes sure regulations are flexible, such that they allow for adaptation to the market. They should not impede the adoption of technology or the re-organisation of firm structures and processes that help to improve efficiency and open up access to previously un-tapped customer demand. Where possible they should encourage these kinds of 'innovations' and 'market expanding' activities.

FSB consider a regulatory framework based upon the above principles would enable the solicitors' profession to face the changing legal service market with confidence and meet its challenges head-on by reducing the costs of operating as a solicitor and a law firm, improving profitability and encouraging innovation by individuals, firms and the sector as a whole. In-turn this supply-side stimulation would help close the £100 billion 'gap' between the legal needs of smaller businesses and what is currently supplied by the market.

A set of rules based upon the 'regulatory' principles described above would enable solicitors to respond more effectively to the more active demand-side stimulated by the better information and greater transparency facilitated by the reforms described in this submission. The result will be, in-turn, less need for formal regulation because some of the reasons for the regulation in the first place (e.g. the asymmetries of information and the knowledge gaps among demanders) will be reduced.

In order for the kinds of transparency reforms to work as effectively as possible there are two areas where new regulatory requirements should be introduced:

- The SRA should set out minimum pricing standards and pro-actively monitor compliance with them and take proportionate regulatory action where necessary to ensure that the pricing meets agreed measures of clarity that small businesses need.
- Firms and individual solicitors, should not only have to make reasonable efforts to collect feedback but additionally to submit it to the SRA on a periodic basis. Subsequently, the SRA should make such data publicly available and use-able by third-party intermediaries.

Regulatory action may be needed to ensure that accreditation is reformed along the lines described in this submission. While encouragement rather than regulatory action is the preferred 'first choice' in relation to improving accreditation in the legal services sector, rules-based action by the SRA should not be ruled out. As with pricing, a progress review after a period should establish whether a move to more robust action by the regulator is required.

With significant reform of the regulatory framework based upon the approach described above, despite the new requirements around information and transparency (pricing and feedback), there should be a net reduction in the regulatory burden on solicitors and law firms. Together the kinds of regulatory changes described should work hand-in-hand and result in a legal service market which can reduce the £100 billion 'demand-gap' because over-time, a better functioning market will:

- Push-out those providers not delivering value-for-money.
- Incentivise the expansion of the best provision so that greater numbers of small business consumers can benefit from it.
- Stimulate new ways of providing legal services.

Looking to the future: phase two of our Handbook reforms

Response ID:75 Data

2. About you

1.
First name(s)

Adrienne

2.
Last name

Edgerley Harrs

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Hampshire

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

We have no evidence on which to base an informed response on this. In particular, any advantages there may be to bringing all UK legal entities under one roof.
The proposal appears premature until we have left the EU and the full impact of this can be assessed.

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

We are in favour of the need to have a practising address in England and Wales.
We do not favour different authorisation systems for different legal entities such as ABS' and recognised bodies.
What is the reason for the current rule and what evil does it seek to address?
It is not clear how to do so achieves the stated purpose of the proposals to simplify the rules and regulation.
They are complex enough already and we are not convinced that the consumer benefits from the current rules or will benefit further from the ones proposed.
We appreciate that a system of waivers can create a lack of consistency and if that is to continue, there

must be strict guidelines as to how a waiver decision is made.
If the need for an address in England and Wales has arisen from the jurisdiction of the Law Society constitution, then a more fundamental change will be required.

12.
2a) 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?

We agree with your proposals over limited companies having a registered UK address (with the additional organisation provisions mentioned in the consultation).These provide protection for the consumer but only if there is someone behind the corporate veil as opposed to another corporate- which could be outside our jurisdiction.
We are cautious about removing managers from responsibility for legal services.
We suggest that there should be technical and practical requirements for those who are "qualified to supervise" for them to understand and to uphold standards in the legal profession.

13.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

It seems that the proposal to remove the restriction is based on problems with interpreting the current rule. It would be preferable to clarify the rule itself that to get rid of it in its entirety.

14.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

We have not sufficient evidence to respond to this proposal.

15.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Please see our response to 3) above

4. Consultation questions: Authorising individuals

16.
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 consider that this will create confusion for the consumer.
It is arguable that law firms become ABS' then we don't need to be regulated by the SRA and as a non-regulated body the SRA will be defunct.
We would like to see the evidence for this proposal and broader consultation with those affected.

17.
6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

Whilst the SRA sees the current rules as prescriptive, they do provide certainty.
We are not able to understand why legal apprentices should have a been accorded a different approach.
Prospective trainees need to know the standards expected of them at the outset. The fact that a period of rehabilitation is not always established at the time they apply for registration, is not, we suggest, a good reason to alter the standards.
It would be helpful to know what categories of individuals are being excluded by the current requirements and why this is adversely affecting the profession and/or consumers so that we can comment more

helpfully.

18.

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 have not been able to consider these proposals in any detail.

19.

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

See our response to 7) above.

5. Consultation questions: Specialist rules

20.

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

We have not been able to consider these proposals in any detail.

21.

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

We have not been able to consider these proposals in any detail.

22.

11) Do you agree with our new proposed review powers?

We have not been able to consider these proposals in any detail.
We agree that terminology should be standardised.

23.

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

We have not been able to consider these proposals in any detail.
You have not specified the time limits in place currently. However, in principle the idea of one period for review across all areas would appear to offer certainty.

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

We have not been able to consider these proposals in any detail.

Looking to the future: phase two of our Handbook reforms

About you

First name(s)

Karen

Last name

Purdy

I am responding..

on behalf of an organisation

On behalf of what type of organisation?

Other

Please specify

Hexagon Legal Network - a support and networking group for lawyers

How should we publish your response?

Please select an option below.

Publish the response with my/our name

Consultation questions: Authorising firms

1 a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

No. There appears to be no need to extend the scope of the SRA beyond England and Wales, as there are already perfectly able bodies in existence to regulate in those jurisdictions and the SRA has no experience of their jurisdictions. We see no benefits to the profession for doing so.

Jurisdictions do not all have similar requirements and the SRA should be promoting a level playing field, so that the firms it regulates require similar levels of insurance, rather than adding different types of firms to its regulation. Also, it needs to be able to enforce its requirements and may not be able to do so in different jurisdictions.

1 b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

Again, there are questions of how a level playing field and enforcement can be carried out in other jurisdictions. The SRA need to be able to compel foreign firms registered within England and Wales to have similar insurance to all other firms in England and Wales, to ensure protection of clients.

The need for altering the current rules on this is not compelling

2a) 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?

No. The management structure needs someone who has experience in order to be able to deal with the breadth of issues which can face a firm and the wisdom to deal with them in an ethical and professional manner.

2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

From personal experience of setting up as a sole practitioner after three years of post qualification experience, 36 months of practising as a solicitor should be the minimum requirement. At that point, they should have sufficient experience of many different challenges and aspects of running a firm and some commercial experience and also sufficient awareness to ask for guidance from others.

Many new solicitors are completely shielded from the management aspects of a firm, whereas working in a smaller firm and having worked in a different, more-commercial environment were crucial for me personally.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes. It appears that this is a loophole which needs to be resolved so that clients/consumers can be reassured that they are receiving a service provided within the quality controls and protections of the SRA's governance.

1) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Yes. As before, this appears that this is a loophole which needs to be resolved so that clients/consumers can be reassured that they are receiving a service provided within the quality controls and protections of the SRA's governance.

Consultation questions: Authorising individuals

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?

There is no compelling reason to make this change and instead seems to introduce confusion for the clients/consumers. Without regulating the entity, there seems a risk to create an uneven playing field – will the self-employed solicitor be subject to the same requirements for PI insurance etc. as existing sole practitioners and firms?

This seems to potentially introduce risks for some legal services being provided via a route subject to different requirements and therefore without the same level of safeguards and protections.

2) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

It is vital for the protection of the public that solicitors are of a suitable professional character. The understandable desire to be able to make case by case decisions should be tempered by a robust Suitability Test, rather than diluting the test.

Being able to give an accurate decision on whether a student will be able to pass such a Suitability Test, prior to incurring tuition fees, is very important for fairness to the individuals involved.

3) 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?

If the transitional arrangements ensure that the individuals who are part-way through their training will all have the appropriate level of training before qualification, then yes.

4) Do you agree with our proposal to expand deeming in this way?

Presumably it has proved to be an unnecessary expense to repeatedly check the same solicitor when moving roles and for refusals by the SRA to be rare, rather than just "highly unlikely in practice"?
On that basis, yes, this seems a sensible approach.

Consultation questions: Specialist rules

5) Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

No. This seems to be very confusing for firms becoming subject to rules but those rules not being in the Handbook and for some things to apply "on an occasional and limited basis", whilst things may need to alter again post-Brexit.

1) Do you know of any unintended consequences of removing the Property Selling

Rules? No.

2) Do you agree with our new proposed review powers?

Yes, but the Law Society's comments on the exclusion of evidence and inadequate chances to answer comments should be taken on-board as they seem to indicate a lack of fairness in the procedure which can be addressed when updating these powers.

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

It seems too short a period of time. Perhaps three months would be more reasonable. There must be the ability to extend the time limit in certain circumstances.

Consultation questions: Our approach to enforcement

3) Do you agree with our proposed approach to enforcement?

No.

When the change was made to Outcomes Focused Regulation, there was concern that the profession would lack guidance on what behaviour was expected of them and what could get them into trouble with their regulating body, as we might stray from the correct path. However, there does not seem to be sufficient evidence to change from this principle-based approach now – have there been any cases where the public has been let down because their advisor acted incorrectly due to a lack of guidance from the rules? Probably not.

The grey area of "giving guidance" which may or may not be legally binding when relied on by the solicitor, seems to be the worst of all options.

Either the profession needs explicit guidance on each point in a big handbook or we need general principles to follow and a short handbook. A rule book plus accompanying guidance still has all the weight of prescriptive regulation, but it is hidden in corners of the internet where the profession may or may not find it and it may or may not have authority when you want to rely on it later.

The enforcement must be fair and proportionate.

More about you

Your age

35-44

Your sex

Female

Looking to the future: phase two of our Handbook reforms

Response ID:110 Data

2. About you

1.
First name(s)

Jenny

2.
Last name

Screech

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Other

8.
Please specify

Broker - Howden UK Group Limited

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Refer pdf document emailed from jenny.screech@howdengroup.com to the contact centre today as agreed by phone on 18/12/2017

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

Refer response as above

12.
2a) 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?

Refer response as above

13.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

Refer response as above

14.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Refer response as above

15.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Refer response as above

4. Consultation questions: Authorising individuals

16.

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?

Refer response as above

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

Refer response as above

18.

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?

Refer response as above

19.

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

Refer response as above

5. Consultation questions: Specialist rules

20.

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

Refer response as above

21.

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

Refer response as above

22.

11) Do you agree with our new proposed review powers?

Refer response as above

23.

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

Refer response as above

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

Refer response as above

Looking to the future: phase two of our Handbook reforms

Response ID:16 Data

2. About you

1.
First name(s)

Ian

2.
Last name

Berkeley-Hurst

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

533504

9.
Please enter your organisation's name

I.J.B.H. Limited

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes.

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

My practice has an English practice address but deals with client's all over the world due to use of the internet. In my view if the Solicitors Regulation Authority does not look forward to more firms using the internet and having staff based in various jurisdictions of the world it may miss the future and find other regulators taking over. I would welcome clarification as to whether firms based in Civil Jurisdictions based around the world and who practice within England and Wales could apply on a case by case basis to be have an overseas office recognised.

13.

2a) 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?

No...while it is not necessary the best way to overcome an issue it is one way to resolve the problem of individuals setting up a legal practice with minimum training. It is not the training course that makes a good Solicitor it is the practice experience thereafter...having a requirement to focus minds of practitioners in their early years means at a minimum they will look towards more experienced staff within their firm or will have been given guidance for three years before practice on their own account.

14.

2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

In my experience the impact of inexperienced Solicitors falls hardest upon the client of the opposition in any matter. The lack of real world practical knowledge of the courts in litigation, in my area Family and Children, can result in missed deadlines and increased hearings that may result in higher costs for all parties.

15.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

No view.

16.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

No view.

4. Consultation questions: Authorising individuals

17.

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?

I have concerns about this new type of practice. In principle competition such as this should be good for the legal profession as a whole. However, I am concerned that when things go wrong and consumers seek financial redress and no insurance is in place then the Solicitors professions will pick up the bill and ultimately up fees for Solicitors like myself who practice via a limited company. I do not hold any client funds, do not employ any other Solicitors and have always likened myself to the Bar in practice terms. I believe the current rules give a value to being a Solicitor that will disappear if removed...it also gives a level of security to the public that each Solicitor has taken the time and trouble to obtain approval.

18.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

I agree.

19.

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?

Yes.

20.

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

Yes

5. Consultation questions: Specialist rules

21.

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

Yes.

22.

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

No view.

23.

11) Do you agree with our new proposed review powers?

Yes

24.

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

Yes

6. Consultation questions: Our approach to enforcement

25.

13) Do you agree with our proposed approach to enforcement?

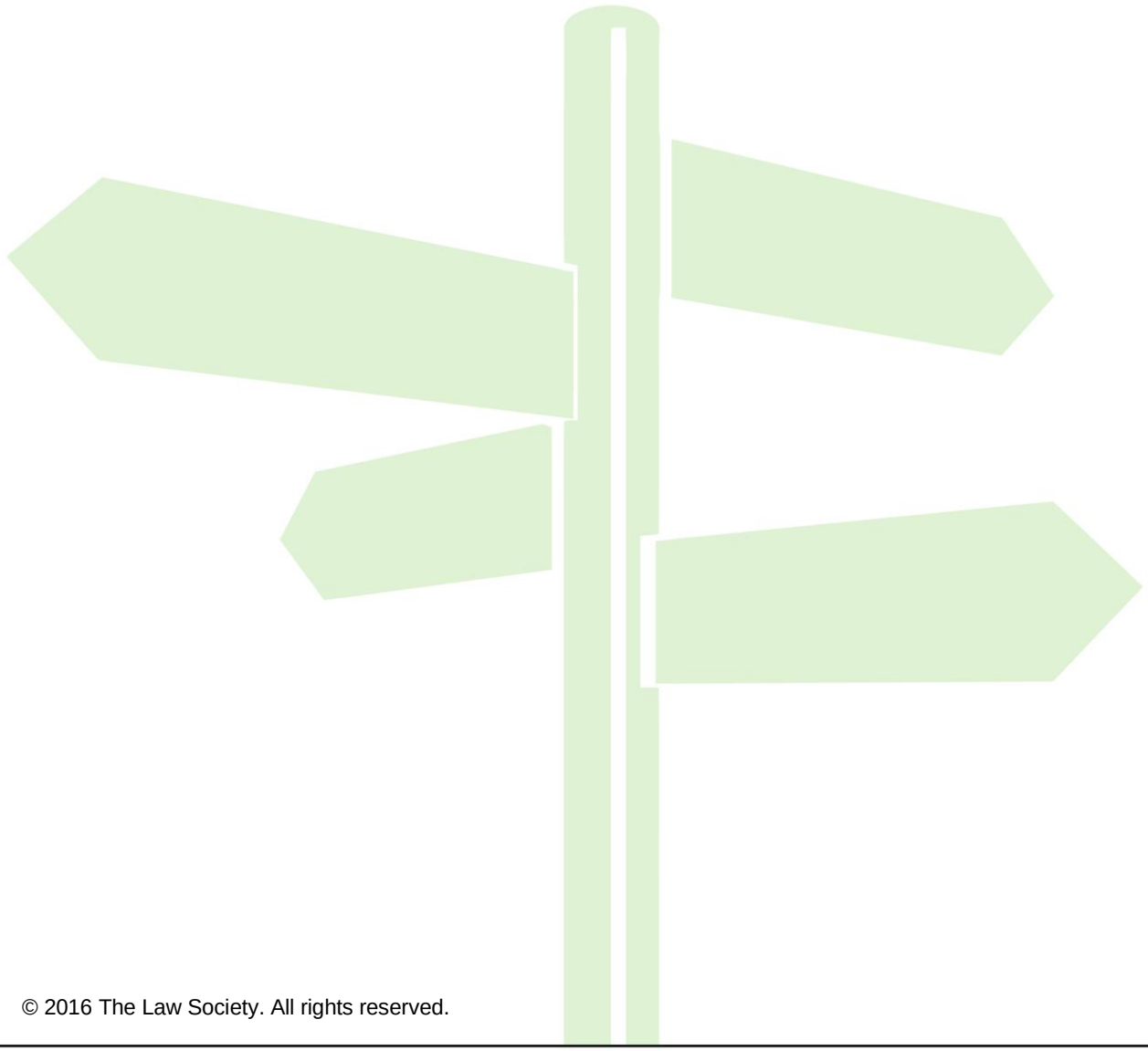
yes

The Law Society

Looking to the future: phase two of our Handbook reforms

The Junior Lawyers Division's response to SRA consultation

December 2017



"Looking to the future: phase two of our Handbook **reforms"**

Junior Lawyers Division response to SRA consultation (September 2017)

The Junior Lawyers Division (JLD) is a division of the Law Society of England and Wales. The JLD is one of the largest communities within the Law Society with approximately 70,000 members. Membership of the JLD is free and automatic for those within its membership group including Legal Practice Course (LPC) students, LPC graduates, trainee solicitors and solicitors one to five years qualified.

Please note, with reference to the SRA's consultation titled "*Looking to the future: phase two of our Handbook reforms*" published September 2017 (the "Consultation"), the JLD's response deals primarily with concerns, which, in the Junior Lawyer Division's ("JLD") view, are of material importance to our 70,000 members.

Question 2

a. 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?

b. If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

The JLD strongly disagrees with the SRA's proposal. As the SRA acknowledges in the Consultation (paragraph 32) - the effect of this rule is that a solicitor cannot set up as a ole Practitioner unless they have been entitled to practice for three years. We disagree that the qualified to supervise rule should be removed in its entirety. The JLD believes that the removal of the rule would be directly contrary to the SRA's stated purpose of protecting the public by ensuring that solicitors meet high standards.

We echo the concerns of the Solicitors' Disciplinary Tribunal ("SDT") and its warning that this proposal will be dangerous in terms of client protection and public confidence and we strongly request the SRA to reconsider this proposal. The Consultation suggests that the SDT have misunderstood a particular nuance of the existing framework, however this is immaterial to the broader points of principle above.

Experience and judgement

The proposal represents a risk to consumers as the effect of introducing it would be that Newly Qualified ("NQ") solicitors could set up as Sole Practitioners. At this stage in their career, they may only have worked for two years at trainee level and may only have completed a six-month training seat in the particular area of law in which they wish to practise (for example family, welfare, criminal or employment law - popular choices for Sole Practitioners to work in and some of which are reserved activities). Even if an NQ had previously worked for some time in a role other than as a solicitor in a particular area(s) of law, for example, as a paralegal, the difference in experience and judgement between this and that of a trainee (or indeed a qualified

solicitor) is likely to be significant. Legal proficiency is also developed 'on the job' as well as in a training seat and accordingly an NQ is very unlikely to have the requisite experience to provide an appropriate level of service to clients.

Aside from the risk it poses to consumers in terms of substandard technical ability, inexperience is additionally dangerous as it can be extremely difficult to detect. In particular, an inexperienced NQ may not be able to identify what they do not know; they will be at risk of 'unknown unknowns' which a more experienced solicitor will not be (as they will have encountered more novel situations within the safety net of supervision). That said, the JLD is mindful that there might be rare occasions when - as a result of a long period of closely supervised high-level paralegal or other experience - an NQ may have attained the experience and judgement to undertake limited, non-contentious work of a non-complex nature (such as residential conveyancing). However, this would be rare and should be dealt with by extremely narrow exemptions to the current rule.

No effect on competition

The Consultation refers to the proposal as representing the removal of a barrier to market entry. The JLD notes the SRA's intention to increase competition in the legal market, and presumes that the SRA envisages that the outcome of this proposal will be lower fees for clients. However, the JLD believes that this would not be the case if the proposal would be enacted. NQ Solicitors would presumably only make the move to sole practice if they thought that they could increase their earning potential, meaning that they will not be inclined to charge lower than market fees. More importantly, we expect that they will incur higher insurance premiums (assuming that they can be insured at all) to reflect their inexperience and these will likely have to be passed on to consumers. This would mean that it is highly unlikely that their fees could realistically be low enough to meaningfully increase competition.

Inadequate safeguards

Paragraph 39 lists various safeguards which the SRA contends will protect consumers in the event of the proposal being successful. The JLD believes that they are inadequate. The SRA's power to refuse to authorise a recognised Sole Practitioner or firm is meaningless as it cannot predict the legal situations which an NQ Sole Practitioner, for example, may encounter (and not be experienced enough to deal with) once they are approved. The JLD notes that the current and future rules will contain the requirement not to act outside one's competence, (and for there to be safeguards in place to detect this) but for the reasons stated above we feel that the inexperience of NQ solicitors means they cannot reliably detect the limits of their competence. Solicitors already have a duty not to act outside their competence as doing so breaches their duty to their client and also makes them professionally negligent. This obligation has not prevented the SDT hearing many cases of negligent solicitors who have acted contrary to that implied duty so we fail to see how this now explicit duty will make a difference.

With respect to the SRA ethics helpline, an NQ may not detect a nuanced ethical problem in the same way a senior colleague would. The proposed digital register will also not act as a safeguard to clients, who will presumably believe that the presence of a solicitor on it means that they are adequately competent regardless of their length of experience (which the JLD believes is not the case). The JLD has made its concerns about the SQE abundantly clear in separate consultation responses, and

does not believe that its introduction will in any way ameliorate the current proposal; if anything, it may make its effects worse.

A useful parallel can be drawn with medical professionals. The GMC's Approved Practice Settings system requires all UK and international medical graduates who are new to full registration to work with appropriate supervision and appraisal arrangements (or assessments). They must work with mechanisms in place to:

1) provide them with appropriate supervision and regular appraisal;
2) identify and act upon concerns about a doctor's fitness to practice;
3) support the provision of relevant training and continuing professional development; and
4) provide regulatory assurance.[1]

Doctors new to registration must practice in such a fashion until they have been through their first 'revalidation', which will usually take place after approximately five years on the medical register.[2] It should be borne in mind that this highly analogous system of protecting patients through making sure junior doctors gain experience whilst being supervised operates even though similar safeguards as those proposed by the SRA (such as acting within competence) already apply to doctors.[3] This clearly indicates that safeguards alone are insufficient.

We note that the SRA has previously been happy to draw comparisons with the medical profession when it comes to the issue of MCQs in the context of the SQE.

Setting junior lawyers up to fail

The consequences of the proposal are compounded when considered in conjunction with the "Better Information" consultation which imposes potentially more onerous obligations on firms and Sole Practitioners, with which we would expect most NQs to struggle. We are therefore significantly concerned that the SRA are setting up solicitors to fail, whilst allowing them to expend significant amounts of time and money on training and setting up on their own in the meantime.

How to address concerns with the existing rule

The Consultation makes the points that the current rule does not make a stipulation about how recent the three year time period must be (paragraph 35), that it can be confusing and conflates several other aspects (paragraph 33). If these are genuine concerns of the SRA then the JLD would urge them to redraft the current rule (so that the effect whereby a solicitor cannot be a Sole Practitioner without a certain number of years' experience is maintained), but with greater clarity as necessary.

In summary, the JLD believes that the current rule safeguards clients, and that this proposal will expose them to risk, without having the beneficial effect the SRA suggest it will have on increasing competition. We ask the SRA to reconsider this proposal in light of its primary purpose to safeguard clients.

[1] https://www.gmc-uk.org/doctors/before_you_apply/approved_practice_settings.asp
[2] https://www.gmc-uk.org/doctors/revalidation/12383.asp
[3] https://www.gmc-uk.org/guidance/good_medical_practice/duties_of_a_doctor.asp

Question 6

What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

The JLD welcomes certain elements of the policy position, in particular more comprehensive guidance, better information for students and using the SRA's power to impose practice conditions at the point of authorisation. However, we strongly disagree with the proposal to cease providing binding determinations to people before they commence their Period of Recognised Training ("PRT") (or future equivalent) that would have previously satisfied the requirements.

The Consultation suggests that the current mechanism restricts the SRA's ability to use its discretion to treat cases on a common-sense case-by-case basis (paragraphs 54 and 57), to take account of aggravating or mitigating circumstances or to demonstrate rehabilitation (paragraph 61). The JLD does not believe this to be the case. The current guidance[4] notes for example that the SRA 'may' or will 'more likely than not' refuse to admit someone in various circumstances. This wording - and the fact that people who currently report an issue must provide two references - clearly indicates discretion and the opportunity for someone to demonstrate rehabilitation, which will obviously be analysed on a case-by-case basis. As such, there does not seem to be a barrier to such an approach at present. If the SRA believes that the current mechanism does not allow it to use its discretion to treat cases on a common sense case-by-case basis and to take account of aggravating or mitigating circumstances, then the JLD does not believe that any change in this respect requires the additional proposed change (whereby binding determinations are never given) to take place.

The JLD assumes that the SRA's intentions in terms of removing the system of binding determinations are aimed at allowing people who would previously have (narrowly) failed the test to take part in activity which mitigates their previous actions and evidences their rehabilitation. This is welcomed and in cases where an applicant has only narrowly fallen below the required standard the JLD agrees that this approach should be taken. However, to apply it more broadly to people who would previously have received a binding determination that they satisfied the requirements would be a significant mistake. As the Consultation notes (paragraph 60) many people pre-emptively apply before undertaking the LPC, so they know whether they will be admitted before committing to course fees. It should be noted that full-time students who are in work will also be weighing up whether they can commit to leaving their jobs to undertake the course. (This situation will not necessarily be ameliorated by the introduction of the SQE since it is expected that preparatory courses will be widely available). Even if early individual advice is given that someone (who under the current system would be definitively told that they satisfy the requirements) will *probably* pass the test on admission, this does not provide the level of reassurance necessary for someone to make the large commitment required to join the profession, including incurring LPC fees or to leaving their job. At best, the proposed new system will mean that someone (who under the current system would be definitively told that they had passed) will spend their LPC year (or years if studying part-time) and PRT under constant pressure as they cannot be confident of admission afterwards. Given the recent reports about the extremely high levels of

[4] https://www.sra.org.uk/solicitors/handbook/suitabilitytest/content.page

stress in the legal profession[5],[6]we are particularly concerned about the impact this additional and unnecessary stress will have on those who suffer from medical conditions such as depression or anxiety. We also fear that in the same circumstances this non-binding determination - even if positive - could mean that an applicant does not continue to pursue a legal career.

In light of the above, the JLD would support a change to the current system whereby people who would otherwise narrowly fail are given a non-binding indication to this effect but are told that there might be scope for them to change this if they can demonstrate rehabilitation through prescribed mitigating activities. This would let the person make an informed decision about their future, and would allow people who have only narrowly failed the test (but show potential) to have a second chance to pass. However, we strongly believe that people who would currently pass the test are given a binding answer in this respect, so that they can justify the significant commitment to the LPC (or its future equivalent) and undertake it and their PRT without the anxiety that they may subsequently fail to satisfy the requirements on admission.

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?

The JLD agrees that a transitional period needs to be considered carefully – in particular, thought should be given to ensure that all routes of qualification are captured, and that the maximum amount of time currently permitted in order to qualify under each route is taken into account for the purposes of formulating the transitional period.

With reference to the inclusion of candidates enrolled on the qualifying law degree ("QLD") and common professional exam ("CPE") courses as being given the choice of which system to qualify under, the JLD is in support of the SRA's proposed position. Further, the JLD supports the SRA's proposal that candidates who started to train before the SQE comes into force, and who complete their training during a transitional period, are permitted a full exemption from the requirement to qualify through the SQE.

"Invested in a QLD"

Paragraph 79 of the Consultation states that candidates who have 'invested' in a QLD at the time the SQE is introduced will be afforded a full exemption. It would be helpful if the SRA could expand on how the term 'invested' will be defined. For example, does 'investment' include candidates who are *applying* for QLD courses, or those who have been *accepted* onto QLD courses or those who have *commenced* study on a QLD – please clarify.

Discretion to approve qualification through a LPC and QWE

[5] http://www.hse.gov.uk/statistics/causdis/stress/stress.pdf
[6] http://communities.lawsociety.org.uk/Uploads/g/x/g/jld-resilience-and-wellbeing-survey-report-2017.pdf

The JLD agrees with the SRA's position that candidates should not be entitled to 'mix and match' old and new qualifications during the transitional period as the difficulties in managing consistency across assessments is recognised. We further recognise the potential risk that candidates may not be assessed on all of the reserved activities should such an approach be adopted.

The JLD does however note at paragraph 82 of the Consultation that if a candidate completes their LPC prior to the introduction of the SQE, but has not secured a training contact (in order to complete their PRT), then such candidates are unable to substitute the PRT for qualifying work experience ("QWE"). We query whether the SRA has considered the potential reaction of the legal market, and the degree of risk that the number of training contracts made available could significantly decline as a result of the SQE's introduction – this would, as a natural byproduct, render a significant number of candidates to a state of limbo, unable to secure a training contract due to dwindling numbers, and denied the opportunity to complete their qualification under SQE with QWE. Whilst the waiver referred to in the Consultation states its use will be reserved for 'exceptional circumstances', we fear the SRA has underestimated the scope of this potential issue and is failing to make reasonable provision.

We note that there may be a risk that candidates qualify without having been assessed at the point of sign-off through a PRT or through SQE stage two if allowed to complete their qualification by undertaking QWE, however, the JLD believes it is imperative that the SRA's discretion is reserved in this respect. The final form of the SQE is still largely unknown, and until tested, the risk for potential unfairness remains significant. For this reason, the JLD believes the SRA should ensure processes are implemented which allow candidates to apply for a waiver, if not widened from the currently proposed position in the Consultation in light of the JLD's comments in the above paragraph.

The rationale for an 11 year cut-off

With regard to the proposed cut-off date of 11 years after the introduction of the SQE, it is unclear how the SRA has arrived at this figure. Please provide the rationale for this calculation. In any event, the JLD believes that the longest possible period of time under each route should be used in the calculation of this period, with an additional period to make provision for any unforeseen circumstances. Further, we believe the SRA should consider a mechanism by which candidates can apply for exemptions to the cut-off, in the event that unique circumstances arise which have not been previously considered. As submitted previously in this response, there are numerous unknown variables involved with the introduction of SQE and we ask that the SRA ensures that (1) it has taken account of all *known* variables; and (2) it makes provision for any *unknown* variables. A hard cut-off does not make provision for the latter.

Qualification by equivalent means

The issues caused by the cut-off date are compounded by the SRA's proposals to withdraw from equivalent means testing for candidates who commence their training after the introduction of SQE.

The JLD notes that many firms are reluctant to sign-off the qualification of candidates by equivalent means as the employer is required to thereafter treat such candidates as solicitors, which has a consequential financial impact to the respective practice. Indeed, more generally, the JLD is concerned that such practices will become increasingly more common under SQE as employers may be required to assist candidates in applying for SQE stage two.

Paragraph 87 of the Consultation states that the SRA believes "*equivalent means will no longer be necessary because we will no longer specify the form that preparatory training must take'*. We ask the SRA to expand on their intention, rationale, and intended timescale for removing equivalent means testing.

Junior Lawyers Division
December 2017

Response to SRA Consultation on

Looking to the Future: Handbook Reform Phase 2

Overview

1. The Law Centres Network is the membership body for Law Centres in England, Wales and Northern Ireland, each of which is a not-for-profit legal practice providing legal help and advice in civil law, with a particular focus on social welfare law. Law Centres support the rule of law and, as part of it, universal access to justice. In particular, they target their services at the most disadvantaged and vulnerable people and groups in society, helping make their rights a reality and aiming to tackle the root causes of their poverty or disadvantage.
2. Law Centres are embedded in local communities and run by committees of elected local people drawn from community, legal sector and health sector organisations. The Law Centres Network ('LCN', the trading name of the Law Centres Federation) has coordinated and represented Law Centres collectively since 1978. There are currently 44 Law Centres across the UK represented by the Network. They are primarily funded by a mix of civil legal aid contracts, local authority grants or contracts and fixed-term project grants from charitable trusts and foundations.
3. LCN members work with clients who are vulnerable, most often because of social, cultural and/ or economic disadvantage. We believe that rules of practice and regulation must be clear and transparent; this is as important in areas that provide for Law Centre clients as it is for practices that provide for middle and high-income clients needs.
4. In our response, we focus on the areas that impact on our members and on those aspects where we consider we can offer the most knowledge and experience.

The Law Centres Network recognises the objectives of the regulator are to reduce and clarify the Handbook and Practice Framework Rules, and align both with current practice and competencies. Our concerns are significant and include lack of clarity in some of the singular proposals and when all are aggregated together, making it difficult to assess impact and the implications for clients of our member Law Centres, and the quality standards of individual solicitors' practice. In particular concerns relate to:

- the impact of removing the qualifying years practice and the potential benefits of peer support framework for newly qualified solicitors if permitted to set up new businesses at the early stages of a career,
- the potential impact of client harm and client confidence due to inexperience of new practice start-ups, and where no supporting evidence or analysis is offered,

- the absence of evidence that these changes are timely or necessary, and
- that they are proposed before time allowed to let the changes in the first stage of Handbook, new training and competency regulations and several others bed in before the impact on vulnerable clients can be understood.

Authorising firms

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?

We recognise that this could provide greater efficiency for providers regulated in other countries and assist a business model where their client work crosses jurisdictions. However before taking this further, we would wish to see how insurance and enforcement measures are addressed to ensure consumers are entitled to the same protections when they access services that are regulated outside of England & Wales.

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?

If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

The consultation explains the apparent obsolete nature of this rule largely as a perceived confusion between firstly, business management and secondly, case management and supervision rules. This is not our experience. Practising solicitors understand the two parts of the Qualification to Supervise Rule. The Rule may need to be reviewed if the SRA finds uncertainty and ineffectiveness in practice, but developing clarity in good quality practice, standards and client protections are not served by simply removing the rule.

It has been suggested that the rule change is supported by the fact that complaints recorded by regulators do not indicate an over-abundance of complaints about those who are under three years PQE, and thus there is no more or less risk in enabling newly qualified practitioners to run their own business. We doubt that the direct link of one with the other is that obvious. Complaints can be made or recorded in the name of the practice rather than individual and the internal complaints records of firms are less than transparent. This is highlighted in the SRA's parallel consultation calling for greater information and transparency in complaints recording from the profession.

Considering the two parts: of business management and skills in supervision:

A) Business operation/management skills and knowledge: these could be embedded with improved impact in the proposed training regulations and made more robust in the capability assessment at the final stage of SQE and at Years 1-3 post qualification. Guidance in the work place content and experience could ensure that those preparing for practise gain business capability during work experience.

B) Experience sufficient to deliver a new solicitor's 'own' practice. We do not agree that trainees are ready to run a business from day one of qualified practice, whether with or

without experienced support staff. Some may have life skills and experience in training that can enable them to do so, that is recognised. However, it is the experience of LCN and our members that most recently qualified are new to the vast range of problems that come up in professional practice and in financial and regulatory requirements. Two years' work experience does not always prepare a person to run a practice: this is particularly so in areas of social welfare and public administrative law – areas that are reducing as public funding cuts impact on delivery. Capacity to build this essential learning in trainee practice (in the period just before qualification) is of particular concern given the uncertainties in the assessment requirements of the new two-year workplace experience provisions.

The initial years' post-qualification does not of course provide the technical skills for all work areas but does provide a transition to enable improved skills and experience to develop in order to run a business: there is much to gain from the mentoring of supportive senior colleagues in practice.

That period, as with many professions, can deliver the initial few years of collaboration, mentoring, confidence building and support from experienced colleagues and is vital for a number of reasons. Anticipating problems in managing complex clients and sometimes gruelling cases does not come easily; the use of solicitors' power to influence and guide clients is a responsibility not quickly learned and its mis-use from lack of experience can have a great impact; coping with the demands and pressures of new, complex and unknown cases can be an isolating experience when working alone.

We consider there is no parallel substitute for the current rule, as is suggested, in the assistance that can be provided for the new solicitor in contacting the SRA regulatory and professional guidance team. That suggestion is not supported by any information or illustration of those that would have the self-awareness or wish to attract that exposure and use that route.

When aggregated with other rule changes, the removal of the 36 month requirement would have the result that the individual can practice in areas in which they may not have had any experience in training or work place experience. These include financial and debt counselling, immigration and claims management which have been acknowledged, elsewhere in the Consultation, as particular areas where clients protection is paramount.

We see a dissonance between the proposal for this rule change, in the levels of Threshold Test in the initial post qualification years and in the SRA's statements of differing levels of experience informing the draft enforcement strategy: these differences are more particularly described in the Law Society Response to this Consultation (paragraphs 42-43)[1] and we support that analysis.

There is a lack of evidence to support the regulator's perception that the 3 year PQE rule is counter-productive to enabling development of businesses per se, or to enabling development in casework and representation that are lacking or poorly served. There is an absence of data to indicate that solicitors with less years qualification to practice are held back by the current benchmark, of whom, if the rule were removed, they would inevitably provide services that sustain access to justice measures, such as legal work in court representation in employment, consumer affairs, family and social welfare law, or in the development of mental health law.

[1] http://www.lawsociety.org.uk/policy-campaigns/consultation-responses/sra-consultation-looking-to-the-future-phase-two-of-our-handbook-reforms-law-society-response/

The practise requirement could be made more effective and transparent by

- changing the requirement from 36 months entitlement to practice to 36 months' actual practice and within the last 6 or 7 years. Such period would take in the need to address equality requirements around breaks in careers due to family life, or long term health conditions, whilst at the same time making post qualification experience more recent,

- improved competency measurements for all practice solicitors, including solicitors in unregulated bodies and individual self-employed solicitors, to ensure that their practices are effective and protective of client rights.

Question 3 Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Question 4 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

These areas should have regulatory oversight. However, we stated in the response to the previous consultation on the Handbook Rules that if one area of legal work required regulation, then all did. Picking out different areas by subject matter and maintaining different regulatory frameworks for the same work areas is a retrogressive step. It can serve to increase complexity in the layering of rules and their enforcement and can only add to confusion in the protections available for clients/consumers who are unfamiliar with investigating the detail of protections and rules.

A problem lies in the lack of will in the regulators to take an alternative approach which is to deal with a revision of the description of reserved legal activities in a changing world of legal services, which area has been substantially discussed in earlier consultations and commentary.

We note that, in relation to immigration, the consultation is confusing when read with the wording of the Authorisation of Individual Solicitors Regulations draft ('AISRD') and we would welcome clarification.

AISRD Rule 9.1 when read with Rule 9.5, appears to deal only with solicitors in non-SRA regulated bodies working in non-reserved activities, and regulation by OISC: these delivery models are understood. Solicitors in Law Centres work in non-SRA regulated entities in reserved immigration work. LCN and other providers of similar services have had extensive discussions with SRA and with OISC relating to this dual regulation (in circumstances where there are no unregulated immigration advisers) and these need not be repeated here.

We welcome confirmation that Solicitors who are regulated by the SRA will continue to be able to practice immigration reserved legal activities and will not be required to register their employing agency with OISC.

Authorising individuals

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?

The proposal is a newly framed rule for solicitors working in sole practice, that is, those not through an otherwise regulated entity: it distinguishes sole practitioners and a new category of individual self-employed solicitors. It refers to indemnity insurance for the latter.

For other groupings, there is a reference to not replicating the current exceptions applying to Special Bodies and pro bono practitioners, amongst others (paragraphs 48 and 49 of the consultation): though nothing further is stated about those categories.

It appears that the purpose of the rule change is to deal only with the three categories, those in regulated entities, those in sole practice and those self-employed: this has created confusion. Absent is a reference to the conditions and client protection framework that applies to Special Bodies, pro bono lawyers (and other exceptions) currently described under Rule 4 of the Practice Framework Rules (PFR). The proposed replacement SRA Authorisation of Individuals Regulations draft ('AIRd') are silent on this item and do not appear to offer clarity.

We understand, from the Consultation, that the new AIRd will remove the current Rule 4 framework (for the agencies listed). This then serves so as to remove clear required standards of practice, and of client protection through PII.

The authority to practise is then by default contained to the Legal Services Act 2007, which requires solicitors to practise lawfully: we have been unable to find a reference to a quality standard or indemnity insurance standard. We are willing to stand corrected but, if our analysis is correct, it is unexpected, as it signals no framework that spells out a consistency of standards and client protection when compared to all other solicitor groups that are set out in the rule: solicitors in regulated bodies, practising as sole practitioners and individually self-employed.

We do not think this was the intention and we request clarification.

However, if it is the intention to leave the draft Rules as they are, it would mean that clients who use services directed at those who have no money to pay, would be required to tease out these differences. Those who use the services of pro bono lawyers, Law Centres and those of other Special Bodies, are less likely to have the resources or experience or circumstances to identify the different levels of regulation framework and client protection and redress and to make appropriate choices. They are most often vulnerable consumers or those making consumer decisions at times of distress. Lack of clarity is increased when this is added to the plans to enable solicitors to work in non regulated bodies in non reserved legal activities.

The SRA's impact assessment for the separate "Better information, More choice" Consultation supports this view:

"*..Our proposals are most likely to assist middle income consumers because high net worth individuals are better placed to make informed purchasing decisions. The most vulnerable*

consumers are less likely to benefit directly as they are unlikely to have the capacity to engage with more information and ways to choose a legal services provider". [2]

The application of the framework rules for our Law Centre members' practice during the 'transition period' of the LSA, as extended, has often proved convoluted for both providers and regulators, and particularly in recent 'transition extension' years: however at least there is a framework. We welcome the suggestion elsewhere in the Consultation for sector discussions with the SRA and recommend that the replacement of PFR Rules 1 and 4 is postponed and the current wording inserted into the AIRd.

We understand that it is intended that plans as to insurance requirements are likely to be consulted upon at some stage in the future, but for now, we are asked for comment on this proposal. We do not agree with the proposal for these reasons.

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

We focus on the areas that impact on our members in order to manage our resources and we have no substantial comment on the inter relationship of the current transition in teaching regulations and how the new assessment would apply or 'sit' with those proposals. As a general recommendation, any changes should be drafted so as to avoid reducing the SRA ability to reasonably extend the requisite period of time for a student to provide evidence of suitability.

We believe that solicitors, at any time, can exhibit a powerful position and influence particularly over vulnerable clients and this should be the guiding factor in the implementation of assessment rules.

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?

For the same reason as above, we do not comment on this proposal in any depth and recognise the greater value in contribution and knowledge that experienced staff who work in the University / Law Schools sector can offer.

Remaining consultation areas

We have focussed on the areas that particularly impact on our members in order to manage our resources and we have no substantial comment.

In summary, we are not persuaded that the changes to flexible regulation levels for individuals as described will open up more service delivery or reduce costs substantially, so as to justify substantive change that creates inconsistent client protection, or open routes to representation in areas where access to justice is reduced or non-existent. Further evidence or explanation may well assist understanding.

[2] SRA, Looking to the future: Better information, better choice consultation, 27 September 2017

It is essential that clients and sector staff alike are able to understand the different delivery and flexible practices that are open to both firms and individuals. A new framework must be supported by clarity as to the retention of consistency in skills and in competency requirements.

There is a need for clear rules and straightforward explanation so that they can be followed. Introducing different layers of rules and subsets of practice with changing client protections, will only cause confusion.

Further, given the aggregate of the many changes proposed across the two consultations and already introduced in recent months, we recommend a better pacing of the proposals around individual solicitors' regulations and those to clarify and reinforce client protection and information requirements. We would encourage the SRA to give time to enable such proposed future transparency and information measures as are decided, to be implemented and to provide the encouragement to further the standards of quality. This information could then provide indicators as to how and at what stage the extensive remit of any solicitors' practice should be subject to more or less regulation.

LawWorks Policy Consultation Response

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

Introduction

We welcome the opportunity to comment on phase two of the SRA's handbook reforms which focuses on authorisation and enforcement. Our response to this consultation builds on comments we have already made on the SRA's strategy, our response to the phase 1 consultation, and to other recent SRA consultations, including consultations on waivers, and on the SQE and training reforms. Our response focuses on matters relevant to pro bono and access to justice. A theme to our response is that existing regulations and regulatory approaches have sometimes inhibited rather than enabled pro bono and the provision of free legal advice.

About LawWorks

LawWorks is the operating name of the Solicitors Pro Bono Group, an independent charity which offers a range of support and brokerage services to bring together lawyers and law students, who are prepared to give their time without charge, and individuals and community groups in need of legal advice and support. LawWorks has 20 years of experience in supporting pro bono clinics and has seen the impact that good quality, timely legal advice has on clients' wellbeing, particularly the provision of advice on a range of legal issues, including housing and homelessness, welfare benefits, immigration, debt, childcare, employment and domestic violence and other related legal and money matters.

General Comments

The proposals for the new handbook demonstrate continuity in the SRA's direction of travel towards a "principles based" and "outcomes focused" handbook, bringing together and rationalising the Code of Conduct and other professional standards and rules in one place, and framed around risks and regulatory proportionality. We are supportive of the SRA's overall approach, however it is essential that in the process of regulatory development the SRA works in dialogue with the Solicitors profession. This is not to deny the importance of leadership, but to caution against getting too far ahead of those who are regulated. It is also important that the SRA grounds its proposals in the regulatory objectives of the Legal Services Act: to improve access to justice, increase public understanding of citizens' legal rights and duties, supporting the rule of law, promoting the public interest, protecting consumers, and encouraging competition in a strong and diverse legal sector adhering to professional principles and standards.

This consultation sits alongside a further set of consultative proposals *Better information, more choice* on mandatory price-reporting in response to last year's market study by the Competition and Markets Authority (CMA).[i] Given that we have less expertise on these matters, we have incorporated comments on the second consultation as an appendix rather than in a separate response. We also note the CMA's second recommendation was that a longer-term review of the regulatory framework should be carried out to ensure that it becomes more flexible, with regulation being better targeted at higher-risk activities, more proportionate and cost effective in its approach, and with a shift away from regulation attaching solely to professional titles.

LawWorks' interest in the regulatory policy agenda is primarily around access to justice, pro bono and how solicitors work in a not-for-profit context. Context is relevant and important, the key point being that solicitors provide pro bono voluntarily, in good faith and without financial remuneration, most often for vulnerable individuals (or charities and not-for-profit organisations supporting them) not eligible for legal aid and otherwise unable to pay. We entirely support the principle that pro bono work must be delivered to the highest professional standards, indeed this principle is written into the Pro Bono Protocol[ii] (supported by the legal professional bodies) along with guidance on the level of supervision, expertise, and required client care. But it is equally important in a risk based regulatory framework for regulators to understand the specific context of pro bono work, the organisations through which pro bono is delivered, and that the risks may be different to those applicable to commercial practice (for example solicitors acting pro bono won't generally hold client funds).

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Supported by The Law Society

Although there is no regulatory requirement on the legal profession to undertake pro bono work or deliver a set number of pro bono hour targets, pro bono is now commonly seen as an essential part of being a lawyer. It is an opportunity to use professional skills, experience and knowledge to support the most vulnerable in our communities to access justice. As the Law Society's Pro Bono Charter says "a commitment to access to justice is at the heart of the legal profession and that pro bono work, as one method of achieving this, is an integral part of the working lives of solicitors."[iii] In our response to the SRA's recent strategy consultation we argued that encouraging pro bono could help the SRA meet its own strategic objective of "providing solicitors and firms the flexibility to innovate and better meet the needs of members of the public."

We assess these reforms on the basis of whether they assist access to justice, including the contribution of pro bono. As the SRA knows, the challenge of unmet need is massive; legal needs research from the *Civil Justice and Social Survey* and other research, has consistently shown that around a third of the population have unresolved civil legal problems at any one time, and that a significant percentage (around half, although the figure varies in different surveys) get no legal advice at all in the face of multiple law related problems. This is evidence of a supply and demand mismatch – or market gap. Put simply there is a lack of services appropriate to the needs of low income consumers, a problem which recent legal aid cuts and restrictions have accentuated. The SRA's overriding focus should be on what policy, regulatory and market interventions and innovations can best address these issues; in this respect the handbook reform is a bit disappointing.

Review of the Handbook and the role of guidance

LawWorks welcomes the SRA's overall policy approach of simplifying the Handbook, for example by removing duplication of rules at the statutory level. We also welcome the SRA's indication that it intends to produce guidance which sits outside its rules, but it is essential that such guidance is clear and helpful. Clear guidance will be especially important for small firms and sole practitioners, and for solicitors working in pro bono clinics or in projects managed by small non-profit agencies, as these organisations do not have the compliance resources of big law firms. The SRA could benefit from working directly with organisations like LawWorks in the design, development and communication of bespoke guidance - for example in relation to pro bono practice issues. As an example of where guidance could be more appropriately framed we cite the SRA's guidance below (see box) on in-house regulations. In light of this we encourage the SRA to consult with stakeholders before issuing guidance around the handbook and/or statutory rules, so as to ensure that it conforms to the SRA's settled policy goal of reducing unnecessary regulatory barriers and simplifying rules.

Example of unclear guidance: In-house solicitors and pro bono

As regards the type of guidance the SRA envisages, a recent example concerns section 15 of the Legal Services Act 2007 governing, among other things, the carrying on of reserved legal activities by employees of non-regulated organisations (e.g. in-house solicitors): http://www.sra.org.uk/solicitors/code-of-conduct/guidance/guidance/Does-my-employer-need-to-be-authorised-by-an-approved-regulator-.page .

Whilst we welcome the good intentions of the SRA in relation to this challenging piece of statutory language, we are not wholly convinced that the guidance is the sort of clarifying quality needed, combining as it does a mixture of factors to consider, some of which are helpful while others are less so. The relevant parts of the guidance are:

> *In deciding whether you are providing reserved legal services in your capacity as an employee, you may wish to consider whether, for example, you are required by your employer to carry out the activities in question, are held out as carrying out the activities on behalf of the employer and/or are paid for the time spent doing them. When considering whether you are, conversely, acting independently, it may also be relevant whether you are providing the services during working hours and/or from your employer's business premises.*

...you will want to consider the extent to which the employer is itself involved with the activities (for example, by requiring you to carry them out, or to hold yourself out as acting on their behalf) and factors such as when and where they are carried out...you may in addition wish to consider:
(a) whether your employer describes its business as including the relevant services,
(b) how regularly it provides the services, the number of employees that do so and the overall proportion of time spent on providing them
(c) the extent to which these services complement or enhance the business of your employer
(d) whether your employer provides management, training or supervision in relation to the provision of these services, or rewards you (directly or indirectly) for doing the work
(e) who provides the necessary indemnity insurance cover.."

LawWorks' concern around the guidance is that it promotes the very misapprehension surrounding section 15 LSA (and the current Rule 4:10 PFR) which has dogged the profession, namely the idea that as soon as an employer permits, encourages or supports its employees to participate in pro bono arrangements outside the organisation the activity is likely to fall within the statutory prohibition, which Parliament could not have intended. For example, whether an employer provides insurance for pro bono work undertaken by employees should not at all be determinative of the scope of the prohibition, nor any other support, such as use of IT or whether pro bono activity is undertaken inside or outside normal working hours.

Whilst we appreciate that the SRA has made a good attempt to carve out a safe space for pro bono within the section 15 LSA prohibition, in doing so it has inadvertently muddied the picture. In the circumstances, we believe that it might have been better for the SRA to have first published its own research dealing with section 15, taking in to account the views of the profession, including organisations like LawWorks that are grappling with the prohibition, and make recommendations for practice and policy. Had the SRA undertaken its own research, we believe that it would have concluded that the real answer to the challenge of section 15 LSA is a statutory amendment, (possible by way of negative resolution procedure under the Legislative and Regulatory Reform Act 2006), using its role as regulator in making recommendations to ensure the LSA is fit for purpose.

This issue is directly relevant to this consultation. Rule 4.10 of the SRA Practice Framework Rules 2011 (PFRs) was intended to reflect s15(4) of the Legal Services Act 2007 rather than go beyond it, and needs to be read in conjunction with Rule 4.16 which allows services to be provided through law centres and advice services which have the benefit of the transitional arrangements under section 23 of the Legal Services Act, and therefore don't need to be authorised in order to provide reserved legal services. In both the phase one of the *Looking to the Future* consultation (paragraphs 80 and 81 in particular), and in a previous response to the Legal Services Board,[iv] the SRA accepted that the wording of Rule 4.10(c) on the question of "relevant services" is ambiguous, and acknowledged that rule 4 as a whole goes beyond the Legal Services Act.

We had understood that following the phase one consultation, the SRA had decided to remove Rule 4 in its entirety, and had planned to include that proposed change in this consultation, in order to remove all of the restrictions that can prohibit solicitors providing unreserved services either as an individual or from a body that isn't authorised. Although this may be the SRA's intention with its new proposals on authorisation, it needs to be spelt out and it is disappointing that Rule 4 ("in house" practice regulations) and related issues for employed solicitors are not specifically covered in the consultation document. We deal with this issue further in our response to Question 5.

The consultation also does not specifically address issues relating to lawyers working or volunteering in charities and other non profit bodies, and how proposals for the new handbook might impact on this sector especially as uncertainty remains around the future treatment of "special bodies" under section 106 of the Legal Service Act, and how long transitional protection will be maintained. Following consultations by the Legal Services Board (LSB) the position remains unclear.[v] Other issues may also arise in relation to pro bono clinics, many of which will not be constituted as their own legal entities (ie not automatically able to benefit of the transitional arrangements under section 23 of the Legal Services Act). We would invite the SRA to discuss with us regulatory approaches that could allow pro bono clinics to deliver reserved activities where the

individuals advising at a clinic have demonstrated to the SRA appropriate experience and competence. We suggest it should be relatively simple to put in place some form of appropriate authorisation procedure.

LawWorks Response to consultation questions.

In this next section we respond on the individual consultations questions and issues.

Authorisation in the UK and overseas

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

We do not have strong views on this issue, so our answer will be brief. We can see the case for the SRA's proposals on practicing addresses in the UK, subject to appropriate arrangements being put in place with relevant bodies across jurisdictions (ie the Law Societies of Scotland and Northern Ireland) to monitor the conduct of firms with a practising address in Scotland and Northern Ireland, and that the SRA is able to enforce effectively. We agree with the SRA's approach of maintaining the current practising address arrangements for overseas firms without any connection to the domestic firms the SRA regulates as any wider lifting the restriction could create enforcement challenges.

Supervision

Q2 (a): 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?
(b): If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

LawWorks regards this proposed reform, as currently presented, as virtually impossible to assess or the practical impact it might have for access to justice and pro bono work. That is because the extent to which it protects the public and promotes other regulatory objectives (like access to justice) will turn entirely on the SRA's approach in practice to its retained discretion, whether or not to authorise new firms (nothing is said regarding previously authorised firms and supervisory staff). We recognise what the SRA is aiming to achieve in that the current rule 12 can be confusing, but the SRA's motivation in scrapping the rule entirely is unclear. In this regard, we note the following statement with some concern: "… the effect of the rule is to create a barrier to market entry, by preventing solicitors establishing their own firms as soon as they qualify".

If it is the SRA's intention, pursuant to its policy of opening up the market for legal services, not to refuse to authorise a firm consisting exclusively of newly qualified solicitors under existing (default) rules pertaining to supervision, then, at the very least, it is hard to see how many of the points made by the SRA in support of this reform are relevant at all to the real reason for its removal (for example, the arbitrariness of the rule or the confusions among some respondents as to the rationale). This would, in our view, represent a potentially dogmatic approach to market liberalisation. If, however, the SRA intends to exercise its discretion retained under these proposals in order to genuinely grapple, case-by-case, with the undeniable arbitrariness inherent in the current 3 years rule then we would have less objections to the reform.

This is a case of the devil being in the detail. We are disappointed that the SRA has not provided sufficient information so as to make this aspect of its reforms clear. We would, therefore, urge the SRA to provide more information so as to properly discharge its duty to consult around this proposed reform, and do so in a meaningful way.

LawWorks would support a reformed rule which permitted the SRA to exercise its discretion as regards qualification to supervise, case-by-case, consistent with the SRA's Draft Enforcement Strategy which rightly recognises the challenges for newly qualified and inexperienced solicitors: *"... We recognise that certain stages in an individual's career can present a steep learning curve – such as becoming a trainee, a newly qualified solicitor, or a partner or the first time. We would expect solicitors to gain a deeper understanding of appropriate behaviour and of the law and regulation governing their work as their career progresses. And for those with more seniority and experience to have higher levels of insight, foresight, more knowledge and better judgement."*

Supervision of pro bono work, for example in a Law School clinics context, is an issue that is regularly discussed at our Forums and we would welcome a discussion with the SRA on supervision issues. In our response to the SRA's draft regulations on the SQE we argued that supervising solicitors in pro bono clinics needed to feel comfortable in signing off student volunteering work as "qualifying work experience" and so there may be need for guidance on what good supervision looks like in particular contexts.

Immigration services and claims management regulation

Q 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-authorised firms?

Q 5 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

We agree with the SRA's proposals on the basis that the statutory regulation of these sectors needs to be applied in a consistent way. These will also be important protections in relation to the self-employed business models covered in this consultation. As the SRA's impact assessment points out - allowing individuals to deliver legal services in claims management and immigration areas outside regulated firms goes against *'the proper policy intention of the regime'.* Both of these markets have grown in response to unmet needs. The regulatory regimes for both claims management and immigration services have been developed over a period of time by statutory intervention, with a strong degree of cross-party support, in response to quite specific concerns and issues. Specifically evidence about practices, standards and consumer detriment in these sectors have highlighted the need for strong regulatory protections, so that injury victims and those in the immigration system can have improved access to justice.

"Freelance" Solicitors

Q5: 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?

Subject to the issues raised below, in principle LawWorks is open to some of the benefits of this proposed reform which would permit individual solicitors to provide reserved legal services as "freelance" lawyers, for example in a chambers style arrangement or other networks, and enable solicitors to provide non-reserved services to the public from a wider range of organisations and platforms. In particular we are interested in how such a reform might enable solicitors to work more easily in non-profit contexts, community projects, pro bono and clinic settings. The notion of professionals "freelancing," including mixed portfolios of paid (consultancy) and voluntary work, is one that is already quite familiar to third sector organisations, and the freelance model is one that could have particular application to purely voluntary work. By practice and definition much pro bono may involve 'sole solicitors' (ie freelance solicitors) acting outside the protections of a recognised sole practice, or corporate practice.

We do recognise the concerns and risks associated with the proposal and the need to guard against poor or unethical practices developing in the market; clients should be able to trust in the brand title of "solicitor" with a

consistent set of regulatory protections. However as the SRA points out, this is essentially how the majority of barristers currently provide services to the public. What is more, barristers are currently open to operate both out of chambers and through a law firm style set up, and to do so simultaneously if they so choose, and are now able to provide “direct access” to the public. With solicitors increasingly acquiring higher rights of audience and undertaking advocacy throughout the court and tribunal systems, it seems appropriate to us that the SRA should consider moving towards greater regulatory alignment. Barristers' chambers are not regulated entities rather they are treated as no more than a pooling of barristers resources, often via an LLP. We assume that this model of delivery is permissible under these reforms, despite the injunction against freelancers employing people (we would invite the SRA to clarify this point). Consequently, on the face it, failure to align the regulatory landscape could lead to a comparative disadvantage for solicitors. In our view, any such differential treatment should be justified only where is clear evidence to support it.

It is important though that consumers and clients can still benefit from regulatory protections under any of the new proposed arrangements, and to rely on professional standards being upheld, including professional privilege, insurance cover, protection of client funds and data, and access to redress. So we address the more detailed issues of regulatory oversight below.

Encouraging Pro Bono

The proposed reform and the additional flexibility they bring may be capable of stimulating additional pro bono activity. In our response to the “Looking to the Future” phase 1 consultation we supported the idea of individual solicitors unconnected to an entity authorised by the SRA being able to provide pro bono services; this might include solicitors on career breaks looking to maintain their skills and experience by volunteering between employment, retired solicitors, and former legal aid practitioners. Previously we have had to rely on obtaining waivers to enable individual solicitors to participate in some LawWorks projects, so the change of approach is welcome (we refer here to our previous response to the SRA’s waivers consultation). However, it is unclear what the SRA means where it says in the consultation "We are keen not to replicate the current complex and confusing system of exceptions (special bodies, pro bono, telephone services etc.) under the SRA Practice Framework Rules 2011."

It appears, based on the limited information from this consultation, that major regulatory inhibitors of pro bono work will still remain in place following these reforms. For example, permitting freelance working does not sidestep Rule 4 Practice Framework Rules 2011 ("PFR"), governing pro bono activity for in-house solicitors, which has dogged the in-house sector since the enactment of the Legal Service Act 2007 (from which the SRA's rule is derived). That is because freelance solicitors would not, we assume, be able to, in effect, contract out of Rule 4 PFR by working for non-regulated commercial organisations in their individual capacity (i.e. freelance). We therefore seek greater clarity from the SRA on these issues, especially the question of whether Rule 4 remains. Annex one provides no detail or clarity on which rules are to be retained, removed or combined with other rules.

Ultimately, the success or failure of the reform to stimulate pro bono will take time to establish. We are interested though in how the model might be usefully developed in a pro bono context, especially for free legal advice clinics where the clinics themselves are not separately constituted legal entities, and may be driven through the initiatives of individual solicitors. Clinics in the LawWorks clinics network are independent and operate through (or associated with) a diverse range of organisations - 9% of clinics are attached to firms whilst 42% of clinics are attached to Law Schools, 22% are attached to local Citizens Advice services and law centres, and the remaining 27% are attached to other not for profit organisations and community projects (not all of which are covered by the ongoing “special bodies” transitional provisions of the Legal Services Act). There are a significant number of solicitors operating in a clinics context. Information from clinic co-ordinators show that last year there were 1,731 qualified solicitors and 506 trainees volunteering in the clinics network. Issues sometimes arise about the regulatory position of the pro bono clinics sector, and we are aware of some examples from registered members of the LawWorks clinics network where advice has been sought from the SRA’s ethics helpline on the boundaries of permissible work for clinics as between the boundaries of

unreserved and reserved legal activities. There are some clinics in our network which have been formed by highly experienced and qualified litigation solicitors as individuals, coming together for example through church groups and other civic associations, and whilst signed up to good practice standards such the Pro Bono Protocol and operating under appropriate PII cover, are nevertheless uncertain of their scope to get involved in county court matters due to the unclear regulatory status of the clinic as an entity.

That there should be any uncertainty in respect of authorisation of competency in such instances is a matter of some concern from an access to justice perspective. Given the well documented problem of litigants in persons in the civil and family courts impacting on the work and effectiveness of the justice system, we would suggest it is the SRA's duty to enable appropriate pro bono resources to be directed towards where they are most needed. We therefore urge the SRA to address these wider regulatory issues for pro bono practice on a more comprehensive basis. In order to give effect to its regulatory objective to improve access to justice, this may require that the SRA take a more "purposive" interpretation of the Legal Services Act (for example in respect of the "conduct of litigation"), or advance new regulatory flexibilities and approaches to the issue.

Regulatory oversight and guidance

In order for this reform to work, regulatory burdens should be kept at a minimum, whilst ensuring the highest standards of protecting the public and consumers, and maintaining professional standards. By way of comparison, Registered Sole Practitioners ("RSP") are required go through a rigorous process of registration, in which they are required to make submissions around the major risk centres, such as conflicts of interests, financial stability and complaints handling. Barristers are also required to adhere to minimum terms and conditions in respect of individuals' professional indemnity insurance. Whilst we accept the SRA's point that the Minimum Terms and Conditions applicable to firms of solicitors (including Registered Sole Practitioners (who are able to employ staff)) may not be appropriate, we do urge the SRA to consider adopting appropriate Minimum Terms and Conditions for freelancers. Other areas where there are risks to be managed include health and safety law, data protection, property, commercial contracts, training on money laundering and Solicitors Accounts Rules. There will be a need for information and guidance on these and other areas. We look forward to seeing more of the detail regarding how the SRA intends to strike the right balance so as to manage these risks, whilst freeing the market place for legal services to develop more innovative models.

One potential problem is that professional indemnity insurance may not be required of freelancers carrying out non-reserved work; currently anyone can provide legal advice (i.e. undertake non-reserved activities) to the public, with many of those providers not subject to similar PII requirements. Arguably solicitors could be placed at a comparative disadvantage as compared with other non-regulated legal advisors were the requirement as to PII to be maintained in respect of freelancers undertaking non-reserved activities. This is a policy challenge for a liberalised legal market that the SRA needs to consider. A possible solution might be to regard legal advice as a core activity, i.e. one which in principle should be treated as akin to a reserved activity under the Legal Services Act 2007 with the aim of achieving greater consistency in protection across different types of activity. However, this is not a change that we would advocate; how advice itself is regulated has very significant implications for access to justice, and we would not want to see a more burdensome approach adopted to the not for profit sector than already exists. Early advice has an important role to play in avoiding dispute escalation and resolving problems is a timely manner as the Law Society's recent report emphasises,[vi] so we would not want see regulators act in any way which might potentially restrict the supply of legal advice.

We welcome the SRA's reassurances in respect of the applicability of the Compensation Fund to freelance solicitors. Furthermore, these reforms do not (nor could they) affect the jurisdiction of the Legal Ombudsman to hear complaints about solicitors. The Ombudsman has the power to require disclosure of solicitors' details, as well as information from any sort of arrangement or entity regarding advice given to the public as well as the reasons, regardless of who is the nominal service provider.

In order to encourage the highest standards for freelance work through chambers style or other arrangements – should the proposals be introduced - we urge the SRA to adopt Practice Management Guidelines,

specifically tailored towards self-employed solicitors, as well as considering promoting standardised best practice indicators, such as, by comparison with the Bar, the Bar Mark or the Quality Mark, as well as tailored Equal Opportunity Policies. Further, we urge the SRA, working with the Law Society, to develop off-the-shelf template protocols and constitutions that can be adopted by freelancers working via a chambers structure, governing intra-chambers, member-to-member issues, including decision-making processes. We would also hope that positive cultural norms (again by comparison to the Bar) might emerge, including a culture of pro bono, to play a role in driving up standards and commitments to obtaining justice for clients. It is not possible to predict with any certainty what cultures and norms will develop among solicitors' chambers and acknowledge the experimental nature of these reforms, but we urge the SRA to take an active role in supporting the profession through any transition.

Character and suitability

Q6 (a) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?
(b) 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?

Subject to some concerns, LawWorks broadly agrees with the principle of deciding character and suitability issues on a case-by-case basis, and agree with the SRA's premise of focusing mandatory character and suitability testing to take place at the "point of entry" to the profession. We do however see real benefit in the current system of rules which signal the profession's attitude to behaviour that falls short in a very clear way. Such clarity is useful in terms of public perception of a sector where there is already a significant imbalance between service provider and end-user, a large degree of trust inherent in a solicitor-client relationship, and an ongoing challenge over the issues of diversity in the legal profession, with the concomitant problem of perception among some communities. As just one example of where the problem of "trust" with the legal profession has been cited, we would mention the Lammy Report into treatment of, and outcomes for, BAME individuals in the criminal justice system.[vii] We would be interested in hearing more about how the SRA proposes to operate a much wider discretion, especially around issues which may involve discrimination.

We support (as does the Law Society) the proposals for moving suitability tests for students from a Period of Recognised Training (PRT) to the point of applying for entry to admission to be a solicitor, and align with the approach adopted for apprenticeships. Essentially this aspect of the proposed reform is a re-packaging of the current system of early advice for students in respect of character and suitability. Indeed, the SRA intends to continue to support a programme of initial advice but is at pains to ensure that such advice is not perceived as, in effect, a final decision; in particular by making it clear that mitigating or rehabilitating factors would not have been factored into any such early stage advice.

Enforcement

Q 13 Do you agree with our proposed approach to enforcement?

LawWorks broadly agrees with the SRA's proposed approach to enforcement. Having said that, we would have expected the SRA to specifically consider the impact, if any, of freelance work on its revised enforcement strategy, for example when it discusses its approach to signalling disapproval of firms, as well as or in place of individuals. Consequently, we urge the SRA to set out what, in its view, are the challenges (if any) that a chambers style or other business model arrangement represent to its enforcement strategy, as well as how it envisages its enforcement strategy will apply to the new context.

Appendix: Better information, more choice

The SRA's second consultation is on the information that is freely available to members of the public about solicitors and their services. Following recommendations of the Competition and Markets Authority, this consultation proposes changes requiring the legal profession to provide better information on price and quality of service with the aim of encouraging the public to compare legal services across the marketplace and to facilitate a good choice of appropriate legal services. This includes:

- making it mandatory for all solicitors and law firms to publish their prices for commonly-used legal services and describe exactly what that price includes
- requiring all solicitors to publish clear, simple information about complaining if something goes wrong
- introducing a new SRA logo that solicitors will need to display, as a quick indicator to people of the protections that are in place if they use a solicitor

The requirement on firms to publish their price for services and a description of the services offered will be limited initially to a select number of legal services such as conveyancing, wills and probate, family, employment tribunal and personal injury, and the new proposed regulations will require firms to publish the required information on their website. The proposals also include requirement for firms to publish data on the first-tier complaints they receive and their areas of practice. This information will also be made available to re-publishers, such as online comparison sites. Firms will be required to make information on SRA regulatory protections available – including introducing a mandatory digital badge that verifies that a firm is regulated by the SRA. In addition, the SRA is proposing to build a digital register to hold key regulatory data about SRA regulated solicitors and firms and make it available to the public, and for use by solicitors in bench-marking their services against other legal service providers.

LawWorks broadly supports the overall objectives of these reforms to achieve greater transparency in the legal services market for consumers, especially for consumers on low incomes. Again we assess these reforms from the perspective of improving access to justice. Increasing the availability of timely, relevant information to help consumers to make informed choices in the legal services market and obtain more affordable legal services – which is a key SRA objective – can better enable access to justice. However, marginally lower cost overall doesn't necessarily assist the most disadvantaged.

The SRA will need to adopt a proportionate approach to implementing these reforms, including non-regulatory methods and guidance on the minimum standards sought. We hope that the SRA can work with stakeholders in producing guidance to help support these changes, using tools such as the Law Society's Price and Transparency Toolkit which includes tips on how to provide the right information at the right time to clients.

Transparency can also play a role in enhancing the profile of pro bono work in the profession, and the impact of firms Corporate Social Responsibility policies. With insufficient recognition of the range, quality and quantity of pro bono work that firms and the solicitors profession undertakes, there is a potential role for regulators in raising the profile of the pro bono work delivered and its impact. We would therefore welcome any positive messaging from the regulator to encourage voluntary commitments to pro bono, such as through the Law Society's Pro Bono Charter. We are not suggesting that there should be mandatory approach to publishing information on pro bono and CSR policies, but rather a best practice approach utilising existing tools such as the Law Society's Pro Bono Charter and Protocol as a way forwards, consistent with the voluntary nature of pro bono activity.

LOD

Solicitors Regulation Authority
Regulation and Education
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Dear Sirs,

Response of Lawyers On Demand Limited (LOD) to the SRA Consultation – Looking to the future – phase two of our Handbook reforms

We are giving a short response to this consultation, focussed on that area where we believe LOD has the most experience and insight to offer - individual self-employed solicitors (Question 5). We consider that LOD is in a strong position to comment on this proposal as a result of our model which since 2012 has been an unregulated body which utilises self-employed solicitors.

Background

Over the period of LOD's operation since 2007 we have consulted regularly with the SRA to ensure that our models, driven by observation on how clients and solicitors wish to work together, comply with the existing framework.

Initially, by default, LOD was a new division of a regulated law firm (Berwin Leighton Paisner LLP) but in 2012 the business spun out to a separate corporate entity. That LOD entity is not an authorised body, although LOD lawyers who are solicitors practice and are individually regulated as such. They are able to do so as they practice as members of the in-house team of our clients.

This response is given in the context of our experience with business clients. These will be mainly in-house lawyers buying services on behalf of their organisation.

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 safeguard?

Yes, we agree with the proposal. We believe that it would be welcomed by self-employed solicitors who would be able to offer a wider range of services. LOD's continuing take-up by large numbers of solicitors looking for a different way of working and the high level of applications which we receive indicates that there remains unmet need to be fulfilled.

The proposal would potentially allow a broader range of clients, smaller businesses in particular, to access those services. It would give clients the option to remove the layer of 'the firm' where it would lead them to be over-serviced (with corresponding additional cost and complexity) in comparison with their needs.

It would also offer potential to expand the offering from our online platform at www.spoke.law and others like it which are designed to open up flexible lawyering to a wider range of solicitors and clients.

Finally, though we understand its background, we would expect the prohibition on carrying out reserved activities through a personal service company would have the effect of limiting the numbers of solicitors who would take up this way of carrying out reserved services. If this restriction could be lifted over time, we believe that it would have a beneficial effect on uptake.

PII cover

With regard to 'adequate and appropriate professional indemnity insurance', it is our experience that for the primary secondment service lines that LOD provides to its clients there is in most cases no expectation of a high level of mandatory PI cover.

Commercial clients understand that there is a trade-off between cost and nature of the service. However, we wonder whether there is a distinction to be made here between those trading as consumers and those trading as a business.

If you have any questions on our response or need clarification, please do contact us.

Yours faithfully

Simon Harper
Co-Founder & Director

LEEDS LAW SOCIETY

RESPONSE TO "LOOKING TO THE FUTURE: PHASE TWO OF OUR HANDBOOK REFORMS"

This consultation response is submitted on behalf of the members of Leeds Law Society ("**LLS**") and is intended to be reviewed alongside our previous responses to the SRA's consultations on the SQE and changes to the SRA Handbook.

SRA QUESTIONS AND RESPONSES

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?

We agree that any firm practising in England and Wales must have a practising address in the jurisdiction. We do not consider that law firms who practice solely in the jurisdictions of Scotland and Northern Ireland should be excluded from this requirement.

This is for several reasons, namely:

1. ease of service of claims against law firms, should this become necessary;
2. to ensure appropriate protections for clients/consumers of legal services; and
3. to enable the SRA to take appropriate enforcement action against law firms in breach.

It is not clear at present whether the SRA would be able to take action against defaulting law firms based solely in Scotland and Northern Ireland and this needs to be clarified. It is also unclear if the SRA would be able to check if the law firms outside England and Wales had the appropriate protections in place for clients/consumers of legal services.

More information is needed on this. Clarity is also required as to the interrelationship with regulators in other jurisdictions.

b. Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

We agree that the SRA should maintain its current practising address restrictions.

We will respond as appropriate to any further consultations in relation to changes arising from the UK leaving the European Union.

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?

No. LLS is strongly against this proposal. Newly qualified solicitors must be supported and supervised by more experienced solicitors who not only have experience in particular areas of law but also who are qualified to supervise as a result of practising in those areas for a certain amount of time. This is to protect both the solicitor and their clients. To allow law firms to employ newly qualified solicitors to practice without appropriate and regulated supervision structures in place greatly increases the risks of negligence, poor advice or fraud which in turn will impact on the reputation of the profession, increase professional indemnity costs and increase claims to the Compensation Fund.

The alternatives put forward by the SRA are not sufficient to protect solicitors and their clients. Whilst it is understood that a strict rule cannot apply to all circumstances, the SRA already has appropriate systems in place should a firm apply for a waiver of this rule (although we understand this is rarely exercised). The proposed change to the safeguards transfer the risk to junior solicitors requiring them to self-assess and decide whether they are capable to act without supervision.

We cannot see how removal of this requirement benefits either the profession, individual solicitors or clients/consumers of legal services. It is likely to impact negatively on the legal profession's standing with members of the public and potential consumers of legal services, who will see that solicitors are not required to be adequately supervised. It will also impact on the standing of the profession internationally at a time when the strength and reliability of the English legal jurisdiction and profession should be promoted.

The rule also provides comfort to junior solicitors who know that there is a structure in place to ensure that they are adequately supervised, which can be pointed to in the event that a law firm fails to fulfil its duties. Similarly, it gives law firms the opportunity to close supervise over-confident junior solicitors without undermining them.

Newly qualified solicitors may be left unable to obtain adequate supervision and unable to press or demand this without the support of the SRA rules. It is noted that there have been several cases before the SDT in recent months involving junior solicitors who felt unable to approach their supervisors for assistance. This rule change is likely to exacerbate this and result in more junior solicitors being struck off due to avoidable failings, and the subsequent increased costs to the SRA and damage to the profession.

LLS also considers it highly likely that any law firm who does not implement a structured supervision programme involving more experienced solicitors overseeing those more junior will struggle to obtain professional indemnity insurance either at all or without prohibitive costs. These costs are likely to be passed onto clients by increased fees. In turn, law firms are more likely to fail at increased costs to the profession in terms of both reputation and claims on the Compensation Fund.

b. If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

LLS believes that the current restriction of three years is generally appropriate, but that this should be based on practising experience in the area the solicitor intends to supervise, rather than time holding a practising certificate. Therefore, it is more likely that the supervising solicitor has the appropriate experience to support and supervise junior solicitors.

A certain amount of experience is required to supervise another party. Whilst it is difficult to say at what stage someone has the appropriate amount of experience, particularly given that many new solicitors have a certain amount of pre-qualification experience, LLS agrees that three years seems appropriate.

LLS is also keen to point out that supervision should not and typically does not stop after the three year PQE mark. Many, if not all, solicitors continue to seek supervision and advice from other members of the profession.

Question 3

Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

LLS considers that all legal services should be provided through a regulated practice. As such, we agree that immigration services should not be provided outside authorised firms.

Question 4

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-authorised firms (or equivalent)?

If you disagree, please explain your reasons why.

LLS agrees that claims management services should not be performed by solicitors outside of LSA and CMR authorised firms.

Allowing this would create a patchwork of different regulators which would only increase confusion and risk for clients/consumers of legal services.

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?

LLS does not agree with this proposal, and notes only limited information has been provided to show that there is any need for these changes.

These proposals pose a significant risk to clients, as solicitors will be able to act without any supervision or appropriate protections. It is in the interest of clients and the public for solicitors to regulated in a clear and consistent manner.

These changes are likely to increase confusion in the marketplace, where clients are already unsure what the various different descriptors of legal practitioners are and what protections/regulations are

in place (i.e. many lay clients are unlikely to understand the difference between solicitor/lawyer/barrister/paralegal/legal executive). Introducing further distinguishers will exacerbate this issue, leaving clients further confused and undermining the brand of solicitor. It is not accepted that the average consumer of legal services would be able to make an informed decision about who to instruct based on a review of the terms and conditions of business of different professionals.

It is noted that no post-qualification experience is required to set up as a freelance solicitor, and further that should the requirements for supervision by someone up to three years qualified be removed, newly qualified solicitors will be able to practice without supervision immediately upon qualifying. This poses substantial risks to clients, the newly qualified solicitor, and the profession.

LLS is concerned that those most likely to set-up on their own after qualification are those that are unable to find jobs, either due to a lack of demand or due to a lack of ability. These people are the least likely to succeed in their endeavours, particularly when the cost of insurance for such junior solicitors is factored in.

The consultation does not say what insurance will be required by freelance solicitors. It is assumed that this will be the same as the minimum terms and conditions that all members of the profession must comply with, but for the avoidance of doubt LLS maintains that no exceptions or alterations to these requirements should be made for freelance solicitors.

In any event, professional indemnity insurance is likely to be costly for freelance solicitors, and also increase the costs across the profession as insurers look to spread the risk and recoup losses. It has already been noted by various bodies that the cost of PI can be expensive, particularly for smaller firms, and this may exacerbate issues for these law firms that continue to do important work in an ever changing market place.

The proposal to allow sole solicitors to provide to practice in non-regulated areas without meeting any regulatory requirements, such as PI, places clients at substantially increased risk and further increases the potential for damage to the profession and claims to the Compensation Fund. It is not accepted that the average consumer of legal services would appreciate the importance and consequences of "non-regulation" and may not be able to understand terms and conditions of business which might have in the small print a statement regarding lack of PI insurance.

The various issues posed to freelance solicitors and the inherently less stable elements of such a role are likely to greatly increase the claims and therefore costs to the Compensation Fund and therefore the rest of the profession. Prima facie these solicitors might charge less to clients as they will have lower costs if no PI, however not only does this put them at an advantage over other law firms but if should something to go wrong it does not ensure any protection for the public.

LLS notes that there will be a consultation regarding PI next year and will respond as appropriate. However, LLS' primary position is likely to be that comprehensive PI with a high indemnity limit should remain a strict practicing requirement.

Overall, there is insufficient information about the risk or benefit to clients of introducing these changes and as such, LLS cannot support these proposals. At present, the risks clearly outweigh the benefits and it is unlikely that there are a great number of solicitors who would practice in this manner.

Question 6

What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

LLS believes that the character and suitability requirements are an essential requirement to joining the profession and becoming an officer of the Court. These requirements and high standards protect both the profession and the brand of solicitor and therefore the professional generally.

LLS agrees in principle that the SRA should be able to take into account evidence and individual circumstances when making a decision on suitability. This seems appropriate and proportionate.

It is noted that it is not clear how the SRA will check that a person is fit to practice. LLS hopes that further guidance will be provided for comment.

LLS is concerned that people may undertake expensive training and later be found unfit to practice. Therefore, guidance provided before students commence training should be clear and comprehensive. Warnings should also be given that, even if the SRA does approve a person for qualification, firms may be unwilling to hire people with a criminal record or other suitability issue.

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?

LLS refers to its responses to the SRA's previous consultations regarding the SQE and particularly the responses from our members to the surveys circulated.

LLS agrees with the exemptions proposed for candidates who started to train before the SQE comes into force, including those that have commenced a QLD. However, it is noted that this may cause issues for universities. The process for apprentices is agreed.

It is agreed that a 'mix and match' approach to the SQE and old style training should generally be discouraged. This would increase confusion for employers and reduce the efficacy of either course of qualification.

The proposed long-stop date appears reasonable, however LLS suggests it may be appropriate for the SRA to retain a discretion where candidates are unable to qualify in that period due to unforeseen circumstances (such as ill health).

LLS continues to support the recommended minimum salary for trainee solicitors, and extends this to include solicitor apprentices. Whilst many of LLS members believe that the minimum salary should be reintroduced as a regulatory requirement, we would want to undertake a further survey of our members before formalising our position on this. LLS would welcome the SRA revisiting this controversial decision.

LLS notes that the Law Society has reviewed the SRA Education, Training and Assessment Provider Regulations and adopts their concerns. LLS anticipates that a consultation will be provided on these regulations to allow our members to comment further.

Our comments regarding removal of supervision requirements and allowing newly qualified solicitors to set up their own firms or go freelance are repeated here. This greatly increases the risk to clients, individual solicitors and the profession in addition to increasing the burden and therefore costs on PI providers and Compensation Fund. It is not yet clear that the SQE as proposed will allow solicitors to gain sufficient experience to undertake such a serious role.

Question 8

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

LLS agrees this will reduce the burden on authorised persons, on the basis that the SRA will continue to regulate and take enforcement action as appropriate against any authorised person and their new/existing bodies.

LLS agrees that non-authorised persons should seek approval every time they become an owner or a manager of a different SRA-authorised body.

Question 9

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

LLS appreciates the SRA's aim is to reduce the size of Handbook and Regulations solicitors are subject to. However, LLS notes that instead of referring the Handbook, solicitors will need to refer to the CCBE's Code of Conduct to be fully aware of their obligations. Therefore, solicitors will need to refer to more source material to understand their duties, which further increases the burden on them.

LLS notes that these changes will impact on UK-EU relationships and are likely to need to be further varied in the near future. As such, LLS considers that changes should be reserved until Brexit is finalised to avoid numerous changes and amendments at a time of regulatory turmoil across Europe.

Question 10

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

LLS notes that solicitors are exempted from the Estate Agents Act 1979 due to the standards already required of solicitors. As long as these standards are maintained, LLS cannot currently foresee any issues.

Question 11

Do you agree with our new proposed review powers?

LLS agrees that it would be useful for rules relating to review powers to be collated and compiled in one place.

However, LLS does not agree that evidence should be restricted on review/appeal. Full evidence should be available, with powers to limit this where appropriate if it is felt that a party is attempting to overwhelm the other with irrelevant documents.

LLS has reviewed the Law Society's comments with regard to experiences reported by specialist regulatory lawyers and adopts these comments.

Question 12

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

LLS agrees that this time frame appears appropriate but suggests that a discretion to extend this should be added to the rules to cover exceptional circumstances.

Question 13

Do you agree with our proposed approach to enforcement?

LLS supports the SRA's efforts to make enforcement and its use of enforcement powers more transparent. LLS looks forward to receiving copies of the SRA's case studies to assist in understanding how the updated rules and enforcement policies will apply to difficult and complex areas. It may also be useful to provide guidance for more straight forward areas to assist solicitors further.

LLS considers that the SRA should ensure that its decisions are transparent to both the solicitor in question, the profession and the public. More detail is required on the new rules, and LLS anticipates that it will respond fully to any consultation on these changes.

LLS has reviewed the Law Society's comments on the proposed changes to enforcement and adopts these.

LEGAL RISK LLP
SOLICITORS

Solicitors Regulation Authority

Email: consultation@sra.org.uk

Contact: Frank Maher
Our Ref: FRM SRA
Your Ref:
Date: 19 December 2017

Dear Sirs

Response to the SRA Consultation on the SRA Handbook Review - Looking to the future: phase two of our Handbook reforms

This is the response of Legal Risk LLP to the consultation.

We confine our remarks to the need to revisit the issue of alternative legal services providers; other points of detail are addressed by the Law Society and other bodies in their submissions.

We are an SRA-regulated firm of solicitors specialising in professional regulation (including anti-money laundering, which is relevant to this response) and professional indemnity. We have advised over 40 top 100 UK firms and many leading overseas law firms.

In our response to the first consultation by letter dated 20 September 2016, we identified a number of objections. Specifically, of relevance to this response, we commented -

> The threats posed by such changes are, in our view, significant. The effect of the proposal to allow solicitors to practise through unregulated alternative legal services providers would be to allow the equivalent of unregulated Alternative Business Structures (ABSs), without requiring those owning or controlling them to satisfy the SRA Suitability Test. It would pose a significant increase in the risk of criminals controlling law firms. The SRA itself has identified the risk of bogus law firms under the current regulatory regime.[1] These proposals have the potential to legitimise them.

[1] http://www.sra.org.uk/risk/resources/risks-associated-bogus-firms.page

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> It would be easy to design notepaper for an alternative legal services providers which would readily confuse consumers, without breaching any law or regulation. A solicitor employed by the provider could legitimately add the title 'solicitor' to the signature block.

The National Risk Assessment 2017 commented that 'Innovation within the legal services market may pose a further supervisory challenge, as criminals could identify new opportunities to access legal services without engaging a supervised firm'. This echoes our concerns about the proposal for unregulated alternative legal services providers and we urge that the matter be reconsidered.

In addition, the SRA's role as supervisor (on behalf of the Law Society) under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 poses practical difficulty in supervision of solicitors employed by unregulated alternative legal services providers because the scope of regulatory compliance under the Regulations is not coextensive with reserved legal activities. Individual solicitors would be subject to SRA supervision, when the organisations employing them would not, and the proposed regime would not afford the SRA any control over those organisations, in stark contrast to the ABS regime.

Yours faithfully

FRANK MAHER
Partner
For Legal Risk LLP

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 Handbook[1] 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-authorised 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-authorised 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-authorised 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 remedies[4] 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 advices 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 years[6] 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 delivered 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 CMA[10] 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.

Yours sincerely

Dr Jane Martin

Chair

[9] Open Data, Legal Services Consumer Panel, 2016.
[10] Legal services market study, Competition and Market Authority, 2016.

SRA Consultations

Looking to the Future: Phase two of our Handbook Reforms

Looking to the Future: Better information, more choice

Response by Leicestershire Law Society

Leicestershire Law Society
Non contentious business sub committee
December 2017

RESPONSE

Our geographical legal sector area Leicestershire and Rutland is heavily populated with the smaller entities (niche, sole practitioner, small High St LLP) many owned by ethnic minority solicitors and looking after vulnerable individuals.
Drawing on that specialist knowledge we have read both Responses submitted by The (national) Law Society and endorse everything they have said.

In particular our feeling is that individual clients will not understand the difference between a regulated and insured firm and an unregulated and not necessarily insured provider. Our view is that an SRA logo indicating regulated status for regulated entities will not be sufficient when unregulated firms cannot be required to declare unregulated status. Whilst the legal sector is not averse to fair competition we consider that this arrangement would not offer a "level playing field"

We are also sceptical about the value of advance information on pricing particularly in contentious matters. Such information on the website prior to meeting the individual client would have to be hedged about with so many qualifications as to render it meaningless.

About Leicestershire Law Society

Leicestershire law Society was founded in 1860 as an organisation for local solicitors. Its current objects include representing the interests of its members locally and nationally. Further information can be found on our website www.leicestershirelawsociety.org.uk.

Looking to the future: phase two of our Handbook reforms

Response ID:102 Data

2. About you

1.
First name(s)

Ann

2.
Last name

Murphy

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Liverpool Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes.

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

LLS agree the approach.

12.
2a) 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?

LLS strongly disagree with the wholesale removal of the requirement because of the need to safeguard consumers. Whilst it is acknowledged that the present requirement is something of a blunt tool, in that it focuses upon length of qualification rather than competency, LLS feel that it is a good starting point.

13.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification

restriction and the length of time that is right for such a restriction?

If anything, LLS take the view that the current requirement ought to be modified rather than removed entirely. Modifications could be made to incorporate reference to professional competencies and to give credit for experience in other, relevant jurisdictions. Such modifications would, however, have to be easily measurable and meaningful.

14.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes.

15.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Yes.

4. Consultation questions: Authorising individuals

16.
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?

No. There is real concern amongst LLS members that the current proposals will create a two tier legal system that consumers will struggle to navigate and that will leave regulated firms at a significant commercial disadvantage.

17.
6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

LLS are not in favour of the policy position. Potential entrants to the profession need a definite decision as to their suitability, before incurring the considerable costs of undertaking studies leading to relevant, professional qualifications.

18.
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?

Yes.

19.
8) Do you agree with our proposal to expand deeming in this way?

Yes.

5. Consultation questions: Specialist rules

20.
9) Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

Yes.

21.

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

No.

22.

11) Do you agree with our new proposed review powers?

LLS broadly agree with the proposed review powers. However, they are concerned that Rule 3.5(a) only refers to the affected professional being given notice of a decision, in order to start time running against them to apply for a review. In order to enable the professional to identify possible grounds for review, LLS feel that they would need an explanation of the reasons why a negative decision has been reached. It is submitted that the trigger date ought, therefore, to be when the professional receives the decision and an explanation setting out the reasons why that decision was reached or, if provided separately, the later date.

23.

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

LLS consider the proposed time limit to be unnecessarily restrictive. Bearing in mind that affected professionals may wish to take independent legal advice, LLS suggests a longer time limit of at least 56 days from the receipt of the decision and supporting reasons enable that to occur.

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

LLS consider that it would be helpful for solicitors to have the information set out and that, if it results in consistency, it would be a positive development.

Looking to the future: phase two of our Handbook reforms

Response ID:120 Data

2. About you

1.
First name(s)

Danielle

2.
Last name

Best

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Manchester Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

We adopt the position in the Law Society's response.

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

We adopt the position in the Law Society's response.

12.
2a) 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?

This radical proposal causes significant concern. Only the most confident and possibly those willing to take risks would likely want to set up a regulated law firm upon qualification. The public would likely mistakenly believe that they are dealing with a solicitor with some experience and would likely believe that solicitors have similar experience when deciding who to instruct. The quality of work that can be produced by a newly qualified solicitor will generally be less than experienced lawyers would be capable of and so there

is a risk of more complaints and for the potential for dilution of the public perception of solicitors.

13.

2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

We consider that current SRA vetting procedures are insufficient to establish whether a newly qualified solicitor who wishes to set up their own firm has suitable experience. We believe that the SQE does not appear to cover management training since the focus is on qualification and there seems to be very little support for or monitoring of newly qualified lawyers. Current support and monitoring of newly qualified solicitors invariably comes from more experienced colleagues.

Currently people can apply for a waiver if they wish to set up a regulated law firm when they have less than three years of practising certificates and we feel that this is sufficient to allow those with appropriate experience to be able to set up a regulated law firm.

We oppose the removal of this rule and consider that it would be more appropriate to tighten up the current rule to require three years of experience in practice rather than three years of practicing certificates in order to be able to set up a regulated law firm.

14.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

This accords with our view that all legal services reserved to authorised persons by statute should be provided by regulated firms with proper client protections.

15.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

We agree with this proposal.

4. Consultation questions: Authorising individuals

16.

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?

This would appear to be a proposal to create another tier within the profession in which some solicitors would not require SRA authorisation to practice and may not require the same professional indemnity insurance. The proposal therefore removes some of the protections that clients benefit from if they use a regulated firm.

We do not consider that it is reasonable or realistic to expect clients to be able to distinguish between and assess the implications of using different tiers of solicitor and those with and without insurance. There is a risk that confidence in the profession could be undermined by some practitioners being able to act on an uninsured basis. There would likely be a lot of bad press if a claim were to be made against an uninsured practitioner.

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

Whilst this could create opportunities for some, it could also result in people pursuing legal training when they have no chance of qualifying. There should be significant emphasis on early indicative advice which candidates will be able to rely upon.

18.

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 adopt the position in the Law Society's response.

19.

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

We adopt the position in the Law Society's response.

5. Consultation questions: Specialist rules

20.

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

We adopt the position in the Law Society's response.

21.

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

We adopt the position in the Law Society's response.

22.

11) Do you agree with our new proposed review powers?

We agree that it will be easier to follow if all review powers are in one place.
However, we consider it unfair if a solicitor is deprived of the opportunity to introduce additional evidence on appeal or review. The SRA's proposal is only to allow such additional evidence if it is satisfied that this is necessary to ensure the fair disposal of the matter. But it is the SRA who decide this and what criteria will the SRA adopt to ensure transparency in making such a decision? In representing solicitors in appeals/reviews, specialist regulatory lawyers within Manchester Law Society have identified many inconsistencies/errors made by the caseworkers in their presentation of the case for adjudication. Similarly, the decisions made by adjudicators can be based on reasons which differ from the evidence disclosed by the SRA and where there has been no opportunity for the solicitor to respond. The outcome could have devastating effects on the career of a solicitor/person subject to a s43 order for example and the profession needs to have confidence that the process will be fair.

23.

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

We adopt the position in the Law Society's response.

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

We support a more transparent enforcement process, but there are some areas which require clarification and further consideration. For example, the proposals state that one of the aims is to help practitioners to decide whether or not they need to self report and go on to indicate that minor motoring offences are not

something that the SRA is concerned with, but there is no explanation as to what might constitute a minor motoring offence. The current proposals therefore do not give sufficient certainty.

If consistency and transparency could be improved then the proposed enforcement strategy could be positive but we consider that as a minimum the following areas need to be addressed:

• At present the decision making process by the SRA is exclusively internal with very little transparency to the solicitor being disciplined. There are currently investigations that have been ongoing for several years. Not knowing how long the process will take can have an extremely detrimental effect on the solicitors involved. We would expect clear, practical timescales to be within the enforcement strategy.

• The proposed publication of enforcement decisions is concerning because it is unclear and has the potential to be inconsistent. Our view is that publications should be restricted to rebukes and fines only. If there is to be an increase in the amount of decisions that are published then the SRA should consult upon the appropriate guidelines for when publications will be made and the factors that will be taken into consideration in deciding whether or not to publish a decision. To help ensure fairness to solicitors, the rules should retain the factors listed in the current rules including (amongst other things) whether in all the circumstances the impact of publication on the solicitor is disproportionate.

• Trust in SRA decision-making is crucial. Given that the proposed changes to the Handbook would reduce it substantially, steps should be taken to ensure that legitimate interpretation of the handbook is not punished.

Middlesex Law Society

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?

We note the purpose of the rule change but it seems to inevitably involve additional cost rather than any saving for SRA.

Have the following impacts been assessed as we do not see any in the impact assessment?

There are challenges to enforcing any breach; have SRA provided for the costs for this change? Intervention risks may be increased; we can envisage complaints arising in respect of client account and SRA having difficulty in obtaining information.

We do not see the current requirements as burdensome and indeed the requirement for practising address in the same market place as for most clients brings a measure of transparency for other practitioners who may have dealings with an entity.

We do not on balance favour this change as we do not see it as liberating demand; if SRA is aware it is not mentioned. On the other hand it may encourage businesses to go offshore which seems to be a perverse message to other tax payers.

If the change proceeds then firms in Northern Ireland and Scotland should be authorised only if the level of protection guaranteed for clients is as effective as that required for firms located in England & Wales.

In relation to Q1b we agree that the SRA should continue to maintain the present practising address restrictions for overseas firms without any connection to the domestic firms which are regulated by the SRA.

Question 2 and Question 5

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?

If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

No. A newly qualified solicitor has, at best, a limited understanding of what it means to be a solicitor in terms of a) Competence in work b) Understanding of the responsibilities, risks and duties involved in running a

running legal practice. Skills are acquired over a period of time and during this period it is important for a solicitor to confidentially access experienced colleagues for advice. The relaxation increases risk to the public and will result in an increase in claims and complaints with resulting damage to the reputation of the profession.

The current requirement is backed by the need for suitable training and is the mainstay for the way suitable supervision arrangements are maintained. It is quite separate from the 3 year qualification rule for setting up in practice. Any firm with employees is required to ensure there is a level of experience in management of others. The role of COLP and COFA are quite distinct and bearing in mind the rate at which supervision failures occur in everyday practice and result in fines imposed by SRA the reform sends a poor message to firms and their employees and clients . The impact assessment does not provide for any increase in reported breaches with additional work for COLPS and COFAs and regulatory action by SRA and we question that.

Removal of the rule enables solicitors to enter into practice upon qualifying- and at this time the standard of future qualification is unclear and therefore market confidence in it is someway off.

Some solicitors by virtue of their experience might be fit to manage their own firm but many others will not be and as proposed there is no fetter on this entitlement. We do not see that there are sufficient safeguards where anyone can provide services to the public on qualifying and without relevant experience. The burden of risk may be passed to insurers which shares the costs of failure with the rest of the market that is insured which is burdensome and unfair. Again we see no scoping of this risk in the impact assessment.

Q5 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?

In addition to the above response we believe this will damage the reputation of the profession and destabilise the market by adding complexity with the scope for complex models of practice and further confusing consumers. We share the view expressed by the SDT.

The restriction on sole solicitors are not practicable save for really tiny business operations and so will encourage arrangements that circumvent restrictions on employing others. Outsourcing may increase poor standards of work and claims. Bearing in mind the long tail to claims on legal work and especially certain reserved activity work this is not a good idea.

The current rule requiring 3 years post qualification experience and the qualified as fit to supervise act to provide a level of assurance that will need to be replaced and SRA has not developed or sufficiently shared its plans as to how it will be effective in gatekeeping and in onward scrutiny for new firms created under the relaxation proposed. Again we find there is no evaluation or cost assessment of risks to clients or the SRA.

We strongly disagree with the policy of creating different levels of solicitor with differing levels of client protection. It is confusing and difficult for consumers to understand the risks they will be taking and most clients do not have the knowledge and experience to enable them to buy services as they do with other types of consumer purchase of goods or services such as holidays or dry cleaning.

Question 3

Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes. However we would also advocate that no work should be conducted by solicitors outside of LSA authorised firms because of the difficulties outlined in part one of the SRA handbook consultations. Such as the reduced client protections, the lack of compulsory supervision and the inability of the

SRA to supervise such solicitors without the cooperation of the unregulated entity as well as the risk to legal professional privilege.

Question 4

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-authorised firms (or equivalent)?

If you disagree, please explain your reasons why.

Yes. Please see our answer to question 3. The same reasoning applies.

Question 6

What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

We believe this creates uncertainty for students who are looking to qualify and who may expend large amounts of time and money studying to become solicitors only to be refused entry at the last hurdle.

That is unfair. Where rehabilitation requirements have been given and fulfilled they should be taken into account.

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?

This appears reasonable

Question 8

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

This appears reasonable

Question 9

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

We offer no expert view but ask that any change takes into consideration.

a The need for clarity

b The risk of compliance challenges

c flexibility to take account of any Brexit settlement .

Question 10

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

There is no objection provided the current position of solicitors selling in the market is not adversely affected in relation to the regulation affecting agents generally.

Question 11

Do you agree with our new proposed review powers?

Our members have concerns as any small firm facing regulatory action finds itself in a situation where it will have inadequate resources and any restriction on calling the evidence which can be called would increase potential unfairness.

Question 12

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

See Q11 and our reply. All the time constraints and limits operate harshly on small firms where timing can be present great difficulty because of holiday illness and client demands. In that light 28 days can be too short a period.

So any Question 13

Do you agree with our proposed approach to enforcement?

A more flexible approach is encouraged so long as consistent application of standards is maintained. SRA practices and processes should be transparent so that all practitioners can know what they are entitled to expect.

Looking to the future: phase two of our Handbook reforms

Response ID:14 Data

2. About you

1.
First name(s)

Robert

2.
Last name

Brown

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Regulator

8.
Please specify

Estate Agents

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

12.
2a) 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?

13.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

14.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

15.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

4. Consultation questions: Authorising individuals

16.
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?

17.
6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

18.
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?

19.
8) Do you agree with our proposal to expand deeming in this way?

5. Consultation questions: Specialist rules

20.
9) Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

21.
10) Do you know of any unintended consequences of removing the Property Selling Rules?

As the lead enforcement authority for the purposes of the Estate Agents Act 1979, the National Trading Standards Estate Agency Team ("NTSEAT"), would prefer the Code of Conduct to retain a qualification to the term of a solicitor acting "in the course of their profession" for the purposes of Section 1(2) of the Estate Agents Act 1979.

NTSEAT has concerns of a gap in consumer protection where, for example, a struck off solicitor can legitimately escape sanctions available under the Estate Agents Act 1979 while misconduct was undertaken during their activity as a solicitor; a former solicitor that has been struck off for dishonesty cannot be prohibited, from estate agency work, if that dishonesty was undertaken while practicing as a solicitor.

NTSEAT has no objection to certain ancillary activities associated with "estate agency work" to be exempted, such as probate and conveyancing, though the activities of specifically marketing and selling houses should fall outside the exemption.

This ambiguity can be addressed in any revised Code of Conduct.

22.
11) Do you agree with our new proposed review powers?

23.
12) Do you agree with the proposed 28 day time limit to lodge all requests for internal review?

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

The National Trading Standards Estate Agency team believe the a Prohibition Order or Warning Order under Sections 3 and 4 of the Estate Agents Act 1979 to be appropriately considered when enforcement action is appropriate when dealing with property sales. Such enforcement action cannot apply to solicitors if it is deemed the misconduct requiring enforcement, concerning property sales, is attributed to a solicitor acting "in the course of their profession". NTSEAT's view is the selling of properties is not the activity of a solicitor acting in the course of "their profession" (being the provision of legal services) and sanctions for concerning estate agency work should not be enforced by the SRA.

Looking to the future: phase two of our Handbook reforms

Response ID:58 Data

2. About you

1.
First name(s)

Ellen

2.
Last name

Singer

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

9.
Please enter your organisation's name

Peninsula

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes. The purpose of the changes is to simplify the systems and put the focus firmly back on the service being provided. The physical location of the practicing address has no bearing on the service provided and relies heavily on the premise of the model of the traditional law firm where clients physically visit the premises.
The increased demand for telephone and online services, in addition to the ongoing innovation in alternative methods for delivering legal services means that the need for a physical practicing address in England & Wales can act as an unnecessary barrier to client choice in accessing competent services in line with their preference for service delivery within the UK.
It is also worth noting that technological advances mean that an ever increasing number of people carry out activities in the national arena. As long as the company they are seeking assistance from is able to advise on the appropriate law and assist in the relevant jurisdiction, the location of their physical office, if they have one, should not matter.

12.

1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

We do believe that it is appropriate to have a practicing address within the UK in order to practice within the UK. A waiver can be granted to this rule in circumstances where the SRA is satisfied that there are appropriate measures in place to ensure the provision of reserved services at the required level and access to the Solicitors Compensation Fund and Legal Ombudsman.

The growth in internet services has increased the size of the market place for consumers looking to access legal services in relation to their options. However, the global market place has its difficulties for consumers who cannot always recognise that legal information available online may not be relevant to the specific geographical region. The requirement to have a physical, regulated presence within the UK in order to provide reserved services provides a valuable safeguard along with the ability to maintain efficient monitoring.

We believe that this restriction strikes the right balance between an open market place and consumer protection.

13.

2a) 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?

Yes. As the SRA will be reviewing the firm in any event to determine if it meets the required standard then this appears unnecessary. The evidence from the SDT in relation to lack of supervision put forward in defence during an investigation demonstrates that the current rule does not ensure adequate supervision in any event.

The rule assumes that someone who is qualified to supervise will actually be carrying out that supervision which is not contained within these rules. The length of time that someone has been qualified is not any indication of their capability generally or specifically as a supervisor. The requirement does not even specify that they must have any experience in the area of law where they may be acting as a supervisor. Firms instead should be taking adequate steps to ensure that any solicitors employed have adequate supervision as required.

The greatest difficulty in this area is in solicitors recognising the limits of their knowledge and ability but that is not something that necessarily improves in line with the length of time the individual has been practicing. It is the quality of experience, rather than the quantity, that determines its usefulness, coupled with the willingness to recognise and learn from mistakes. Similarly, attending a 12 hour management course does not make someone a good manager. Consideration should be given as to the management structure of a firm, including whether it has sufficient expertise to ensure the work is completed competently at all levels, when deciding on whether or not to authorise it but the decision should be based on the specific circumstances and not an arbitrary set of rules that do not provide any safeguards.

14.

2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

n/a

15.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes, we agree with this proposal for the reasons stated. The specialist and reserved nature of this work, combined with the particular vulnerability of those needing this service and the consequences of any errors mean that strong safeguards need to be in place. We agree that this restriction provides the appropriate level of protection in the circumstances.

16.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Yes, we agree with this proposal. It is important that work of this kind is only carried out with appropriate regulation due to the nature of the work and the consequences for consumers in the event of any problems. While it is not necessary for the firm to be regulated by the SRA to carry out work of this kind it does need to be subject to some scrutiny and authorisation.

4. Consultation questions: Authorising individuals

17.
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 agree with this proposal subject to the relevant safeguards. If the SRA is satisfied that an individual is fit to practice as a solicitor, then they should be able to do so provided that they do so in a competent and professional manner. We would say that anyone acting in this way should be required to provide relevant data for comparison purposes so that consumers can understand the protections available to them along with any limitations and the relevant experience of the solicitor to assist them with their particular issue.

18.
6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

This seems to be a sensible approach. If information and guidance is available to those thinking of entering the profession so that they can determine if they are likely to pass the test when they have completed their course, then it will help them make an informed decision. Similarly, the ability to look at each application on a case by case basis with proper consideration of any issues using a common sense approach helps to ensure more diversity within the profession and increase the understanding of consumers.
Where a different regulator is applying a similar test then it would seem to be an unnecessary duplication to have a second assessment on the same points. However, we would suggest that there needs to be co-operation between the regulators to ensure consistency so that if someone has been rejected by one regulator any other regulator is able to see the reason for that rejection. This can then be taken into account to decide if discretion justifies acceptance due to assessment differences.

19.
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?

Yes. It seems impractical to try to mix and match across the two schemes, particularly with the difficulty in ensuring that all the relevant training is carried out. The extended time to complete training under the old scheme would appear to strike an appropriate balance for transition.

20.
8) Do you agree with our proposal to expand deeming in this way?

We agree in part. It seems sensible that once a solicitor or barrister is approved as suitable on first application they should not need to keep reapplying when there has not been a change in circumstances. However, we would question why this is not being applied equally to non-authorised persons as they are no more likely to become unsuitable by virtue of a change in constitution or firm.
If the firm is authorised and so under the supervision of the SRA there should be no need for non-authorised owners/managers to seek approval every time. We would suggest that the initial approval should spell out the circumstances where a reassessment would be appropriate.
We can appreciate that if the new firm operates in different fields then it may be sensible to reassess the suitability of a non-authorised person to be an owner/manager in the new firm. However, when there is

simply a change of constitution or the individual is moving from one company to another where both firms carry out the same work in the same manner there is no reason that a non-authorised person would need further checking when a solicitor or barrister would not. They are no more likely to suddenly become unsuitable.
This proposed difference in treatment will discourage the involvement of non-authorised people in businesses which goes against the principles of the Legal Services Act and does not appear to have any justification.

5. Consultation questions: Specialist rules

21.
9) Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

Yes.

22.
10) Do you know of any unintended consequences of removing the Property Selling Rules?

No.

23.
11) Do you agree with our new proposed review powers?

Yes.

24.
12) Do you agree with the proposed 28 day time limit to lodge all requests for internal review?

Yes as long as there is the option to extend time where there is a legitimate reason for the review not being filed within the set period and the subsequent application is submitted within a further reasonable period.

6. Consultation questions: Our approach to enforcement

25.
13) Do you agree with our proposed approach to enforcement?

We agree that the approach to enforcement should be governed by an assessment of behaviour in keeping with the shift to focussing on professional judgment ensuring quality and client care.
However, we believe it is important not to conflate the decision not to pursue enforcement with a lack of informal action. For example, the decision may be taken not to pursue a breach of the handbook because the costs of doing so for what may be a minor or unintentional infraction is not in the public interest. However, this does not stop notification to the solicitor/firm in breach of the fact of the breach and the steps they need to take to correct it. If the solicitor/firm do not rectify the breach after being told of the problem, then this becomes a deliberate and wilful breach of the rules at which point enforcement should be reconsidered.
Enforcement is not the only action open to the SRA to take. It will be much more effective if coupled with the option for a lesser step simply giving notice requiring corrective action within a set time scale to fix the option without the need for intervention and enforcement.

Looking to the future: phase two of our Handbook reforms

Response ID:90 Data

2. About you

1.
First name(s)

Kirstie

2.
Last name

Goulder

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Peterborough and District Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

12.
2a) 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?

• No, a newly qualified solicitor should be supervised and supported by more experienced lawyers for the benefit of both the client and the solicitor in question.
• As a Society, we currently have one of the youngest Presidents nationally, Mrs Kirstie Goulder, who has 4.5 years' PQE. Kirstie says "Although I feel happy and confident in my role as President of PADLS, I undoubtedly benefit from the experience of more experienced peers on the committee. Furthermore, given the importance to the client (individual or otherwise) I do not feel that any solicitor less than 3 years' PQE should be permitted to manage a legal organisation. Personally, at this stage in my career, I do not believe I have breadth and depth of technical knowledge and client service skills to provide the highest class of

service to all clients. I would not want that weight on my shoulders whilst trying to learn and develop at the same time."

13.

2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

14.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

15.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

4. Consultation questions: Authorising individuals

16.

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?

• No, a private individual consumer is unlikely to be able to distinguish between reserved and unreserved legal services.
• There is a real risk of the self-employed solicitors "slipping through the net" in the eyes of the SRA and/or, once operating, providing services beyond those permitted.
• All solicitors should be entitled to a level playing field.
• For reasons outlined above and those set out in the Law Society's Response, we are concerned this proposal will increase consumer confusion.

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

18.

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?

19.

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

5. Consultation questions: Specialist rules

20.

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

21.

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

22.

11) Do you agree with our new proposed review powers?

23.

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

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

RESPONSE TO CONSULTATION

SOLICITORS REGULATION AUTHORITY

LOOKING TO THE FUTURE: PHASE TWO OF OUR HANDBOOK REFORMS

Riliance Group Limited

This response has been prepared by the Riliance Group Limited in its role as a provider of risk and compliance solutions and services to law firms and other regulated entities; these services include:

- Cloud-based risk and compliance software
- Cloud-based learning management system
- Face-to-face compliance training
- Compliance consultancy services
- Compliance Helpline

The Riliance Group Limited utilises the current data provided by the Solicitors Regulation Authority (SRA) for various purposes, including:

- Segmenting legal services providers
- Marketing
- Contacting law firms about regulatory and compliance matters

Our compliance advisors have significant experience in advising law firms in relation to their regulatory and compliance obligations; we also have specialists who have significant experience of working within law firms and the requirements of the SRA; these specialists also have significant amounts of experience interacting with regulators and participating in their working groups.

Consultation Responses

Question 1

a. Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes.

b. Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

No; the proposed regulatory approach makes sense.

Question 2

a. 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?

Yes; as has been said in the consultation, firms are confused about this requirement, especially when they have to have a Compliance Officer for Legal Practice and see this person as being qualified to supervise.

b. If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

Question 3

Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC authorised firms?

Yes, for the reasons given in the consultation.

Question 4

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 authorised firms (or equivalent)?

If you disagree, please explain your reasons why.

Yes, for the reasons given in the consultation.

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?

Yes; entrepreneurial lawyers are now looking to practise in ways that are different from the past, and need the regulatory regime to fit the new legal services market and consumer demands. It also does not make sense that barristers are able to be self-employed yet solicitors are not.

Question 6

What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

The proposals make sense and allow far more flexibility in the decision making process.

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?

Yes.

Question 8

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

Yes; the more that can be done to reduce bureaucracy, but not client protections, the better.

Question 9

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

Yes; the more that can be done to reduce bureaucracy, but not client protections, the better.

Question 10

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

No.

Question 11

Do you agree with our new proposed review powers?

Yes.

Question 12

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

Yes.

Question 13

Do you agree with our proposed approach to enforcement?

Yes.

Looking to the future: phase two of our Handbook reforms

Response ID:129 Data

2. About you

1.
First name(s)

Charles

2.
Last name

Neal

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Sheffield & District Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

We do not agree that the SRA should authorise bodies who are not based in England and Wales. There are significant jurisdictional obstacles which would lead to confusion and complication. Foreign jurisdictions give rise to very particular issues especially in litigation.

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

See above

12.
2a) 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?

We think this should be approached with extreme caution, the existing 3 years rule should perhaps be increased. There needs to be someone with experience managing a firm and this will always take time.

13.

2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

We work in highly regulated field and are highly qualified and specialised. All of that can only come together in a coherent and manageable way over a period of time gaining genuine experience.

14.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Possibly.

15.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Possibly

4. Consultation questions: Authorising individuals

16.

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 believe there should be a level playing field and we understand that the public generally expect the protection (as a consumer) that is only given in practice by a qualified solicitor in a regulated firm. The only relevant safeguards would be the same as the regulation which currently exists.

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

Provided this does not in fact lead to additional costs and complexity or even additional risk.

18.

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?

This is not the place to comment on SQE but since it appears to be coming in then the proposed transitional arrangements should be in place.

19.

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

Yes.

5. Consultation questions: Specialist rules

20.

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

We are not sure that this is immediately relevant but if consistency of approach and streamlining is possible then it would be acceptable.

21.

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

No.

22.

11) Do you agree with our new proposed review powers?

Discretion should be included here.

23.

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

Yes.

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

Yes.

Looking to the future: phase two of our Handbook reforms

Response ID:132 Data

2. About you

1.
First name(s)

Stephen

2.
Last name

Bailey

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative group

8.
Please enter the name of the group

Society of Legal Scholars

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

12.
2a) 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?

13.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

14.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

15.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

4. Consultation questions: Authorising individuals

16.

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?

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

We do not support the proposed new arrangements. It is unreasonable to remove the certainty provided for students at an early stage before they commit resources to pursuing qualification as a solicitor merely to benefit the small number of students who would receive a negative answer at that early stage but who would be able to demonstrate rehabilitation. An alternative route could be devised for students in this latter category on the lines proposed.

18.

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?

Yes

19.

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

5. Consultation questions: Specialist rules

20.

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

21.

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

22.

11) Do you agree with our new proposed review powers?

23.

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

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

Looking to the future: phase two of our Handbook reforms

Response ID:97 Data

2. About you

1.
First name(s)

Susan

2.
Last name

Humble

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Other

8.
Please specify

SDT

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Introduction
When responding to this and other Consultations, the Solicitors Disciplinary Tribunal ("the Tribunal") must have in mind that it should not make public statements (even in the context of consultation) which might give rise to a complaint at a future date from those appearing before it of predetermination and/or apparent bias. The Tribunal is able to respond to a Consultation highlighting difficulties or issues that have been encountered while sitting to determine cases. That is an appropriate function enabling the Tribunal to pass on knowledge and experience to policy makers. However the Tribunal must not stray outside that parameter.

The observations in this response pay due regard to the Tribunal's overriding objective when managing cases, as expressed in its Practice Direction No. 6, namely to ensure that they are dealt with justly.

The Tribunal makes no comment in answer to this question, as the content is not directly relevant to its judicial function.

11.

1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

The Tribunal makes no comment in answer to this question, as the content is not directly relevant to its judicial function.

12.

2a) 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 Tribunal repeats the concerns expressed in its response to phase 1 of the SRA's consultation on Handbook reforms. The Tribunal notes the safeguards that the SRA says that it will have in place in order to provide protection for the public and maintain public confidence in the reputation of the profession. It is for the SRA as the regulator to satisfy itself that those safeguards are sufficiently robust to militate against the removal of the restriction. The Tribunal will, in due course, adjudicate on cases where the safeguards have fallen short and will pass judicial comment on those safeguards in its Judgments on those found to be in breach.

13.

2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

The Tribunal makes no comment in answer to this question - see answer 2a) above.

14.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

The Tribunal agrees with the SRA's proposal.

15.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

The Tribunal agrees with the SRA's proposal.

4. Consultation questions: Authorising individuals

16.

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?

The Tribunal makes no comment in answer to this question, as the content is not directly relevant to its judicial function.

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

The Tribunal makes no comment in answer to this question, as the content is not directly relevant to its judicial function.

18.

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?

The Tribunal makes no comment in answer to this question, as the content is not directly relevant to its judicial function.

19.
8) Do you agree with our proposal to expand deeming in this way?

The Tribunal makes no comment in answer to this question, as the content is not directly relevant to its judicial function.

5. Consultation questions: Specialist rules

20.
9) Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

The Tribunal makes no comment in answer to this question, as the content is not directly relevant to its judicial function.

21.
10) Do you know of any unintended consequences of removing the Property Selling Rules?

The Tribunal makes no comment in answer to this question, as the content is not directly relevant to its judicial function.

22.
11) Do you agree with our new proposed review powers?

The Tribunal makes no comment in answer to this question, as the content is not directly relevant to its judicial function.

23.
12) Do you agree with the proposed 28 day time limit to lodge all requests for internal review?

The Tribunal makes no comment in answer to this question, as the content is not directly relevant to its judicial function.

6. Consultation questions: Our approach to enforcement

24.
13) Do you agree with our proposed approach to enforcement?

The Tribunal repeats the limits under which it operates when responding to public consultations. The Tribunal will not comment in any detail on the Enforcement Strategy proposed by the SRA. The absence of comment represents the neutral position appropriate for a judicial body responsible for adjudication of cases prosecuted, in the majority of cases, by the SRA. It would therefore be inappropriate for the Tribunal to endorse or criticise proposals which may result in decisions being taken by the SRA to refer or not to refer specific cases to the Tribunal for hearing.
The Tribunal urges the SRA to keep the public interest focus at the forefront of enforcement. It is essential for the SRA to publish openly and transparently its key performance indicators for the period from the date of decision to refer a case to the Tribunal to the point at which the case is delivered to the Tribunal for that purpose. Currently there are no published parameters against which the SRA's performance can be measured for the purpose of the accountability which the organisation accepts as being necessary.
The Tribunal will continue to analyse carefully all agreements reached by the SRA which result in Regulatory Settlement Agreements and Agreed Outcomes. It is part of the Tribunal's statutory function to ensure that such agreements are in the public interest and that they truly enable the public to continue to have confidence in the reputation of the profession. Confidence will inevitably come under pressure if one section of the regulated community, with the benefit of legal representation or otherwise, is able to

> influence the SRA to agree a plea-bargain when that bargain is not available to the regulated community as a whole. Such agreements must always be authentic and not merely expeditious.
> The Tribunal is concerned that the SRA has extracted and paraphrased, not always accurately, aspects of the Tribunal's Guidance Note on Sanctions at Appendix A. This could be misleading to readers, and potentially undermines the message that the Tribunal is wholly independent of the SRA. It is essential that the Guidance Note on Sanctions is read in its entirety and in context. A direction to the Tribunal's website is all that is required."

Looking to the future: phase two of our Handbook reforms

Response ID:103 Data

2. About you

1.
First name(s)

John David

2.
Last name

Sinclair

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative group

8.
Please enter the name of the group

SOLICITORS FOR THE ELDERLY

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

No

12.
2a) 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?

No - this is an important safeguard. We feel that, particularly in relation to elderly client law within firms, the work of newly qualified solicitors should be supervised.

13.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

For our members who deal with older and vulnerable clients, there are individuals within the firm who have experience in supervising newly qualified solicitors specializing in elderly client matters such as certificates of capacity for Lasting Powers of Attorney. The evidence of the need for the post-qualification restriction is highlighted regularly to our members as they supervise work and correct advice that may be given, or deal with complaints - examples can be made available,if required. There can also be issues of undue influence or duress when making a Will, when supervision is definitely required. We feel that this type of supervision is required for a minimum of 3 years.

14.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Not our area of expertise.

15.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Not applicable to our organisation.

4. Consultation questions: Authorising individuals

16.

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?

No - we feel that there needs to be a restriction of at least 5 years PQE and an assessment of competency before this would be allowed. For our members who might wish to continue their areas of law working on a self-employed basis, this may be a suitable alternative and cost effective for the consumer.

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

We do not hold a firm view on this subject.

18.

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?

Any proposal that improves the training of people entering the profession is to be welcomed.

19.

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

So long as the person is authorised initially, then any future change to the person's circumstances without the need for further authorization, would be welcomed by our members as it cuts down on bureaucracy.

5. Consultation questions: Specialist rules

20.

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

This is not applicable to members.

21.

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

Not of direct interest to our members.

22.

11) Do you agree with our new proposed review powers?

Yes.

23.

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

Yes.

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

Yes - so long as it is fair and not unfairly biased to the consumer.

Looking to the future: phase two of our Handbook reforms

Response ID:118 Data

2. About you

1.
First name(s)

James

2.
Last name

Kitching

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative group

8.
Please enter the name of the group

South Hampshire Junior Lawyers Division

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

No comment

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

No comment

12.
2a) 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 SHJLD strongly disagrees with the SRA's proposal to remove the current requirement for firms to have within their management structure an individual who is "qualified to supervise".

As referred to in the Consultation at paragraph 32, the effect of the current rule is that a solicitor cannot establish themselves as a Sole Practitioner unless they have been entitled to practice as s Solicitor for

three years. The SHJLD recognises that there will, of course, be occasions when it may be appropriate for Solicitors with less than the requisite 3 years' experience to practice without supervision; however, we feel that this should be the exception rather than the rule, and disagree that the qualified to supervise rule should be removed entirely. The SHJLD believes that the removal of this rule directly contradicts the SRA's purpose of protecting clients by ensuring that all solicitors meet high standards.

The SHJLD agrees with the concerns of the Solicitors' Disciplinary Tribunal (the "SDT") and its concerns that the SRA's proposal will be dangerous in terms of client protection and public confidence in the profession, and we strongly urge the SRA to reconsider their current proposals.

13.

2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

Experience and judgement:

The effects of the SRA's proposal would be that newly qualified ("NQ") solicitors can set up "on their own" as Sole Practitioners. However, this represents a clear risk to clients. At this extremely early stage in their legal careers, a NQ is likely to have only worked for two years at trainee level, and may only have completed a six-month seat (or less) in the area of law in which they wish to practice. Even if a NQ had previously worked for some length of time in a role other than as a Solicitor in the area of law they wish to practice in (for example, as a paralegal), there is likely to be a great significance in the level of expertise and judgement of a paralegal, and that of a trainee solicitor (or indeed a NQ). There is no question that legal expertise is developed 'on the job'; to this end, a NQ is unlikely to have this level of expertise after such a short time in practice, and will therefore not be able to provide an appropriate level of service to clients.

Inexperience is often extremely objective and difficult to detect; a NQ is unlikely to be able to identify what they do not know and will be more at risk to "unknown unknowns" as opposed to a Solicitor with the appropriate level of supervision and guidance from an established firm. This further puts clients at risk and may inevitably lead to an increase in complaints and subsequent judgements.

However, the SHJLD does recognise that there may be occasions where a NQ might have obtained the requisite level of experience and judgement to undertake limited, non-contentious work which is relatively simple in nature (for example, a senior paralegal who has been closely supervised in that particular area of law). However, such cases are extremely rare and, as mentioned previously, are should be the exception rather than the rule.

No effect on competition:

The Consultation makes reference to the proposal as removing a barrier to market entry. Whilst the SHJLD understands the SRA's intention to increase competition in the legal market and presumes that the SRA envisages that the intended outcome would be lower fees for clients, the SHJLD does not think this would be the case is the proposal was enacted.

NQ's usually only become sole practitioners if they think they can increase their earning potential; therefore, they are not inclined to charge lower than market fees. Furthermore, we anticipate that they will undoubtedly incur high insurance premiums to reflect their inexperience (based on the assumption that they will be insured at all). This in turn will be passed on to clients, resulting in higher legal fees. As a result, it is highly unlikely that their fees could realistically be low enough to have any real impact on competition in the legal market.

Inadequate safeguards:

Paragraph 39 of the proposal details the safeguards which the SRA states will protect clients, in the event this proposal is enacted. Whilst the SHJLD notes these safeguards, we feel that they are wholly inadequate.

Firstly, the SRA's power to refuse to authorise a Sole Practitioner or firm is meaningless; the SRA cannot possibly predict the legal situations and challenges that an NQ will face once they have been authorised. The SHJLD notes that current and future rules contain the requirement for an NQ not to practice outside of their competence, we feel that the inexperience of NQ's means that they cannot detect the limits of their competence until they are placed in a situation where they have realised that they are incompetent to deal with the matter before them.

Furthermore, NQ's could be 'easy targets' for money laundering and criminal tactics; issues such as the 'cleaning' of proceeds of crime may increase given an NQ's lack of prior experience and valuable supervision from such individuals who have possibly been in the same position as the NQ and will therefore be able to spot signs before they become problems, and ensuring that the NQ follows robust AML policies.

With respect to the proposed digital register, whilst this could possibly ensure openness and transparency, the SHJLD does not believe that it will act as a safeguard to clients, as presumably clients will assume that because a Solicitor is present on the register, they will be competent, regardless of their length of experience.

A useful example can be drawn in relation to medical professionals. The GMC's Approved Practice Settings systems require all UK and international medical graduates to work with the appropriate supervision and appraisal arrangements when they are still new to full registration at the beginning stages of their careers. These mechanisms must:

1. Provide them with appropriate supervision and regular appraisals to keep them updated as to their progress;
2. Identify and, if applicable, act upon concerns about a doctor's fitness to practice;
3. Support the provision of relevant training and continuing professional development throughout the course of their careers; and
4. Provide regulatory assurance(1).

Junior doctors who are new to registration must practice in line with these mechanisms until their first 'revalidation'; these usually occur after 5 years on the medical register(2). The SHJLD feels it is worth bearing in mind that this highly rigorous procedure aims to protect patients by ensuring that junior doctors gain ample experience under supervision. Similar safeguards proposed by the SRA already apply to the medical profession, which clearly shows that safeguards alone are insufficient.

SHJLD's solutions to concerns with the existing rule:

The Consultation believes that the current rule does not stipulate how recent the 3 year time period must be, that the current rule is confusing and conflates various other aspects. If these concerns are genuine, the SHJLD would urge the SRA to redraft the current rule, which states that a Solicitor cannot be authorised as a Sole Practitioner without a certain number of years' experience, to provide greater clarity as they deem appropriate.

The SHJLD believes that the current rule already provides security and safeguards clients, and this proposal may expose them to greater risk rather than having the beneficial effects of increasing competition in the legal market as the SRA suggests. In light of the SRA's overarching purpose to safeguard the interest of clients, the SHJLD urges the SRA to reconsider this proposal.

(1) https://www.gmc-uk.org/doctors/before_you_apply/approved_practice_settings.asp
(2) https://www.gmc-uk.org/doctors/revalidation/12383.asp

14.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

No comment

15.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

No comment

4. Consultation questions: Authorising individuals

16.

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?

No comment

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

The SHJLD welcomes certain aspects of the policy provision, particularly the introduction of more comprehensive guidance, better information for students and the utilisation of the SRA's powers to impose practice conditions at the point of authorisation. However, the SHJLD disagrees with the proposal to cease providing binding determinations to people before they commence their Period of Recognised Training ("PRT") who would have previously satisfied the character and suitability requirements.

The Consultation suggests that the current mechanism for determining a Solicitor's character and suitability to practice restricts the SRA's ability to use its discretion to treat cases on a case-by-case basis, with a common sense approach. And to take into account aggravating/mitigating circumstances, or to even demonstrate rehabilitation. However, the SHJLD does not believe that this is the case. Current guidance, for example, states that the SRA 'may', or will 'more likely than not' refuse to admit someone as a Solicitor in various circumstances(3). This wording clearly indicates discretion and provides ample opportunity for someone to demonstrate rehabilitation, which is clearly reviewed on a case-by-case basis. Therefore, there does not appear to be any barrier to this approach at present. If the SRA is genuinely concerned that the current mechanism does not allow it to use its discretion to treat cases on such a basis, the SHJLD does not believe that any changes in this respect require the additional proposals to take place.

The SHJLD presumes that the SRA's intention in terms of removing the system of binding determinations intend to allow people who may previously have failed the test to take part in activity which mitigates their previous actions and evidences their rehabilitation. The SHJLD welcomes this and agrees that this approach should be taken in cases where an applicant has only narrowly fallen below the required standard. However, to apply this more broadly would, in the opinion of the SHJLD, be a significant mistake.

The Consultation notes that many people pre-emptively apply before undertaking the LPC so they know whether they will be admitted before committing to course fees; moreover, full-time students currently in work will also be considering whether they can realistically leave their jobs to undertake the LPC, and even if early advice is given to someone who is definitively told that under the current system, they would satisfy the requirements and will probably pass the test upon admission, this does little to provide the necessary

reassurance to a person who needs to make a large commitment to leaving their job or incurring LPC fees to join the legal profession. At best, the SRA's proposals mean that someone will spend their time on the LPC and PRT under constant pressure, as they cannot be certain that they will be admitted after their efforts. The SHJLD is particularly concerned of the effects this proposal will have on people who suffer from mental health conditions such as depression and anxiety, as this additional stress will have an impact on their condition. Given the recent reports about the extremely high levels of stress within the legal profession(4), the SHJLD feels that this places additional, unnecessary stress on applicants, which could mean that an applicant does not continue to pursue a legal career.

In light of the points discussed above, the SHJLD supports a change to the current character and suitability requirements whereby people who would otherwise narrowly fail the requirements are given a non-binding indication to this effect but are told that they could change this if they can demonstrate rehabilitation through certain mitigating activities. This would allow the individual to make an informed decision about their future in the legal profession, and provide those individuals who have narrowly failed the test with a second chance to pass, if they show potential.

However, we strongly believe that individuals who would currently pass the test are given a binding answer in order for them to justify the significant commitment and expense to the LPC and PRT, without the added stress and uncertainty that they may fail to satisfy the requirements upon admission.

(3) https://www.sra.org.uk/solicitors/handbook/suitabilitytest/content.page
(4) https://communities.lawsociety.org.uk/Uploads/g/x/g/jld-resilience-and-wellbeing-survey-report-2017.pdf

18.

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?

The SHJLD strongly agrees with the point that any transitional period needs to be considered carefully, and thought should be given to ensure that all routes to qualification as a Solicitor are captured. The maximum amount of time currently permitted for qualification under each route should also be taken into consideration when formulating a transitional period.

The SHJLD supports the SRA's proposed position that candidates enrolled on the qualifying law degree ("QLD") and common professional exam ("CPE") courses are included and are given the choice of which system under which they wish to qualify. Furthermore, we agree that candidates who have started their training before the SQE comes into force and complete their training during a transitional period are permitted a full exemption from the requirement to qualify through the SQE.

"Invested in a QLD":

The SHJLD notes in the SRA's Consultation that candidates who are already 'invested' in a QLD at the time that the SQE is introduced will be given a full exemption. Whilst we welcome this, it would be helpful if the SRA could provide a more comprehensive definition of the term 'invested'; does this include candidates, who are in the process of applying for a QLD course, or those who have accepted their place on a QLD course, or even those who have commenced their studies?

Discretion to approve qualification through a LPC and QWE:

The SHJLD agrees with the SRA's point that candidates should not be allowed to 'mix' old and new qualifications during the transitional period, and recognises the difficulties in managing consistency and quality of assessments as such.

However, we note in the Consultation that if a candidate completes their LPC before the SQE is introduced

but has not secured a training contract, such candidates cannot substitute the PRT for qualifying work experience ("QWE"). The SHJLD is concerned that the SRA has not fully considered the potential reaction of the legal market, and the possibility that the number of training contracts available could significantly decline as a result of the SQE's introduction – as such, this would place a significant number of candidates in an uncertain position, unable to secure a training contract due to dwindling numbers and denied the opportunity to qualify. Whilst the waiver in the Consultation states that this will only be used in 'exceptional circumstances', the SHJLD fears that the SRA has significantly underestimated the scope of this issue and has failed to make reasonable provision.

We note the SRA's concern that there may be a risk that candidates qualify without being properly assessed through a PRT or through SQE stage 2 if allowed to qualify through undertaking QWE, but it is vital that the SRA's discretion remains reserved in this respect. The final form of the SQE is still relatively unknown and the risk for potential unfairness remains significant until the SQE has been adequately tested. As such, the SHJLD feels that the SRA should ensure that processes are in places to allow candidates to apply for a waiver.

Rationale for 11 year 'cut-off':

The SRA has proposed an 11 year cut-off date after the introduction of the SQE, but the SHJLD would welcome further clarification and rationale as to how the SRA arrived at this figure, in order to provide comment.

The SHJLD believes that the longest possible transition period under each route should be used in the calculation of this period, with additional time allowed for unforeseen circumstances. We understand that the SRA should consider a mechanism by which candidates can apply for exemptions to the cut-off. As previously discussed above, the SHJLD asks that the SRA ensures that all known variables are considered, and provision is made for any unknown variables. There are many unknown variables involved with the introduction of the SQE, and the SHJLD does not feel that a hard cut-off makes provision for these unknowns.

Qualification through equivalent means:

The SRA proposes to withdraw from equivalent means testing for candidates who commence training after the introduction of SQE.

The SHJLD notes that many firms are reluctant to sign-off the qualification of candidates by equivalent means, as the employer must treat such candidates as qualified solicitors which will have a financial impact on their respective practice. The SHJLD is concerned that these practices will become increasingly more common under SQE as employer could be required to assist candidates in applying for SQE stage 2.

We also therefore ask the SRA to expand on their intention and rationale for removing equivalent means testing, and the intended timescales.

19.
8) Do you agree with our proposal to expand deeming in this way?

No comment

5. Consultation questions: Specialist rules

20.
9) Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

No comment

21.

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

No comment

22.

11) Do you agree with our new proposed review powers?

No comment

23.

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

No comment

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

No comment

Response to the SRA consultation

Looking to the future: phase two of our Handbook reforms

Law Society response

December 2017

Introduction

1. The Law Society's response to this consultation, "Looking to the future: phase two of our Handbook reforms", should be considered together with our response to the previous Handbook consultation.

2. The Society has significant concerns with the implications of some of the changes. In particular we would draw attention to three proposals:

SRA proposal or decision	Law Society viewpoint
Removal of the "qualified to supervise" rule. This rule requires all firms to have, within their structure, an individual who has undertaken training as specified by the SRA, and been entitled to practise for 36 months in the past ten years.	Supervision by a solicitor with practising experience helps to ensure a high-quality service to clients. This rule provides support for newly qualified solicitors, and it provides security for clients. We oppose the removal of this rule.
To permit "sole solicitors" (freelance solicitors) to act outside the protections of a recognised sole practice. These solicitors would not be subject to entity regulation. The proposal is that freelance solicitors could deliver non-reserved services. They could also deliver reserved services, subject to certain requirements, i.e. being engaged directly by the client, not holding client money, and ensuring that they hold adequate insurance cover.	This proposal, as outlined, removes some of the protections that clients benefit from if they use a regulated firm. One such example is the fact that a regulated firm must have professional indemnity insurance equivalent to the SRA's minimum terms and conditions, whereas the freelance solicitor would not need to purchase insurance to this level. It is not reasonable or realistic to expect clients to understand the difference between a recognised sole practice and a sole solicitor. We oppose this proposal.
Allowing solicitors to deliver non-reserved legal services from unregulated entities.	This decision would remove or reduce crucial client protections, such as mandatory professional indemnity insurance, access to the compensation fund, and legal professional privilege. We have seen no evidence that this proposal will deliver benefits or reduce the price of legal services. At the same time, it places an unrealistic burden on clients to understand the different regulatory

	status of solicitors working in different entities and different models of practice We oppose this proposal, and urge the SRA Board to reconsider its decision.

3. We have set out below the Society's assessment of the implications of this consultation for clients and the profession.

Client impact

Unmet legal need

4. The stated aim of a number of the proposed reforms, particularly in phase one, is to address unmet legal need. While we note that the definition of legal need is a "contested concept"[1] there are clearly unmet needs in certain sections of the population. This is why we continue to campaign for access to justice and for properly funded legal aid. Our *LASPO 4 years on*[2] report contains recommendations which we believe can help to address unmet legal need. We would encourage the SRA to support our campaign.

5. However, we reject a number of the SRA's proposed reforms because we believe there is no evidence that they will achieve the stated aim of alleviating unmet legal need. There is, however, substantial evidence that they will make the situation significantly worse for the very clients who the SRA should be protecting, by removing client protections. The SRA will not encourage more people to buy legal services by removing regulatory protections.

Client confusion

6. In its report on the legal services market, the Competition and Markets Authority said: *"consumers generally lack the experience and information they need to find their way around the legal services sector and to engage confidently with providers".*[3] In a market where there is a pronounced information deficit between what clients know and what practitioners know, and where it is difficult to gauge the quality of a service, sometimes until years after it is purchased, it is appropriate that regulatory protections are clear and consistent. One of the strengths of the current regulatory rules is that this is the case.

7. Unless and until the SRA can confidently say that the public, en masse, is well equipped to understand the nuances of regulation, it is clearly inappropriate to remove vital client protections with the aim of introducing more flexibility. Given

[1] Pleasence and Balmer: https://research.legalservicesboard.org.uk/wp-content/media/How-People-Resolve-Legal-Problems.pdf
[2] http://www.lawsociety.org.uk/support-services/research-trends/laspo-4-years-on/
[4] Consumer behaviour research: A report by London Economics and YouGov for the Law Society - 2.4.4 Awareness of and expectations about regulation and insurance.

that the legal services market is inherently complex and the role of a solicitor is to provide expert advice, it is unlikely that the public will reach this stage of understanding in the near future.

8. The Law Society has commissioned its own research into the behaviour of consumers when considering and purchasing legal services. The research clearly demonstrates that clients do not have a sophisticated understanding or awareness of the nuances of regulation. Many participants thought regulation was important, but did not have a clear understanding of what it meant for providers to be regulated. In fact, many participants assumed all legal service providers were regulated in the same way, and when informed this was not the case they were shocked, upset or dissatisfied.[4] We also found that many participants were unlikely to consider regulation and protections to be important considerations in their purchasing decisions until they were informed of things that could go wrong, or unless they considered their legal needs to be complex.[5] We provide further details of our research and analysis in our response to the Looking to the Future: more information, better choice consultation.

9. Currently clients of firms regulated by the SRA are afforded essential protections such as:

- the safeguarding of confidential information between solicitor and a client which derives from Legal Professional Privilege (LPP);
- rules preventing solicitors from acting for a potential client in circumstances where a conflict of interest exists or is likely to arise;
- redress protections: mandatory professional indemnity insurance (PII), the Compensation Fund, and access to the Legal Ombudsman - a complaints scheme that can order solicitors to pay compensation of up to £50,000.

10. The Society is firmly of the view that these client protections should not be optional. A client of a solicitor should not have to tell the difference between a regulated and unregulated business in order to understand what regulatory protections they are receiving. A client should simply be able to trust in the title of "solicitor", receiving a consistent set of regulatory protections whether they know about them or not. Our consumer research suggests that educating clients on the differences in protection between different types of providers will be challenging, let alone differences between different types of solicitors.[6]

11. The SRA's proposal to enable solicitors to provide non-reserved services to the public from unregulated entities places an unacceptable burden on clients to understand differences in regulation and manage risks. The same can be said of the proposal to permit freelance solicitors, if this proposal results in differing levels of client protection (e.g. reduced PII cover).

12. The proposals will lead to the creation of different tiers of the profession under one solicitors' brand, but with different rules and protections applying to clients,

[4] Consumer behaviour research: A report by London Economics and YouGov for the Law Society - 2.4.4 Awareness of and expectations about regulation and insurance.
[5] Consumer behaviour research – 2.4.2 How do key decision-making elements change as consumers experience more harm.
[6] Ibid.

depending on where the solicitor is working. Such change will, inevitably, increase confusion.

Weakened protections

13. We can highlight some of the areas where client protections would become inconsistent or weakened as a result of the SRA's proposed reforms:

    a. Freelance solicitors delivering reserved activities would not be required to have professional indemnity insurance at the level of the minimum terms and conditions. Freelance solicitors carrying out non-reserved work would not be required to have any insurance.

    b. Solicitors in unregulated entities would not be required to have professional indemnity insurance.

    c. Clients of solicitors in unregulated entities would have no access to the Compensation Fund.

    d. The proposal to remove the 'qualified to supervise' rule diminishes safeguards for clients and removes vital protections for newly qualified solicitors. This needs to be viewed alongside the (potentially) less rigorous work experience requirements that will be introduced as part of the Solicitors Qualifying Exam.[7]

    e. Clients using solicitors working in unregulated firms may face difficulties in receiving compensation through the Legal Ombudsman because the service provider would be the unregulated employer and not the solicitor. The unregulated firm would also lack the protection of client account rules.

Poor outcome for vulnerable clients

14. The most vulnerable clients are those who are least likely to understand nuances between different tiers of the solicitors' profession and the differing levels of regulatory protections they would receive depending on where and under what model a solicitor is operating.

15. The SRA's impact assessment for the separate "better information, more choice" consultation confirms this view: *"our proposals are most likely to assist middle-income consumers because high net worth individuals are better placed to make informed purchasing decisions. The most vulnerable consumers are less likely to benefit directly as they are unlikely to have the capacity to engage with more information and ways to choose a legal services provider"*.[8]

16. The consumer research commissioned by the Law Society also found that consumers in vulnerable circumstances face difficulties accessing, or assessing, the information needed to make a decision in relation to the purchase of legal services.[9]

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[7] http://www.lawsociety.org.uk/policy-campaigns/consultation-responses/a-new-route-to-qualification-law-society-response/

[8] SRA, *Looking to the future: Better information, better choice* consultation, 27 September 2017.

[9] Consumer behaviour research: A report by London Economics and YouGov for the Law Society.

17. We are concerned that these reforms may result in the interests of the most vulnerable within our society being placed in the hands of unregulated providers with significantly reduced protections. The result is damage to the public interest and trust in the rule of law.

Implications for the profession

Disproportionate impact on small firms and sole practitioners

18. The SRA's decision to move away from prescriptive rules could increase the regulatory burden on small firms and sole practitioners. Small firms and sole practitioners do not have the compliance resources of big law firms and the clarity of a prescriptive approach can help them ensure appropriate conduct and avoid misunderstanding or disputes with the regulator. Typically, legal issues tend to have a long tail and so proper record-keeping and systems are necessary but also impose a significant cost on regulated firms.

19. In addition, as noted in our previous response and in the SRA's impact assessment, this raises diversity implications because solicitors from a black, Asian or ethnic minority background are disproportionately based in small firms and sole practices.[10]

The role of guidance

20. One of the SRA's stated aims is to shorten the Handbook, and thereby reduce the compliance burden for firms. The role that guidance plays will be critical in determining whether this aim is met. If the result of removing large sections of the Handbook is simply to displace this information to guidance that practitioners must understand and apply, then it is no simplification at all. In fact, compliance may become more complex, because firms will need to consult a wider range of sources of regulatory information.

21. Without seeing the draft guidance, it is not possible to provide a full assessment of the degree to which the new Handbook will be simpler. But as it seems inevitable that guidance will take on an increased significance, we would make the following suggestions:

    a. Any guidance must be easily searchable on the SRA website.
    b. It must be clear whether a requirement is mandatory, or whether it is non-binding guidance. If something is mandatory then it should take the form of a regulatory rule, not guidance.
    c. When guidance is updated, then every effort must be made to bring these updates to the attention of practitioners. The SRA should also put in place robust controls when changing guidance, to show a clear audit trail of what was changed on a particular date.

Increased regulatory uncertainty

22. Stability and certainty of the legal system is vital to the healthy and continuous functioning of the legal services market, and benefits wider society in

[10] http://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2015/

supporting the rule of law. The effect of a stable, independent legal regime is to encourage investment, market exchange and innovation which drives the UK economy and delivers benefits to the public.

23. The legal services sector makes a substantial contribution to the economy, estimated at £25.7 billion.[11] Given the current uncertainty associated with Brexit, any additional instability, unwarranted change or excessive amendment to regulatory frameworks could undermine the health of this sector of the economy.

24. We are concerned that the SRA's proposals will increase uncertainty for the profession and are likely to cause compliance challenges. Although the changes will result in a shorter Handbook, its less prescriptive rules and lack of indicative behaviours could lead to ambiguity. Firms may not be sufficiently clear about accepted behaviour, or the circumstances in which enforcement action may be triggered. For example, the current SRA Financial Services (Scope) Rules set out the basic conditions when carrying out financial services in conjunction with a legal service. These rules contain an important provision reminding practitioners that any financial benefit must be passed on to the client. In the proposed shorter rules this reminder is not given and practitioners must refer directly to the Financial Services and Markets Act 2000.

25. A further example is about the type of investments that firms must not advise on or deal with (unless directly authorised by the Financial Conduct Authority). These are known as "prohibited activities"[12] and the current rules state that solicitors are not able to set up a "collective investment scheme", which is clearly defined in the current Handbook.[13] Under the draft revised rules, solicitors are simply referred to Section 327, Financial Services and Markets Act 2000, rather than the rule being clearly set out in the Handbook. The rule has not changed in substance, but it has become harder for practitioners to find.

Other issues

Limited impact assessment

26. The Legal Services Act 2007 requires the legal services regulators to ensure that regulation is transparent, proportionate, accountable and in accordance with regulatory best practice.[14] Changes in regulation must only be introduced where they transparently support the regulatory objectives. Otherwise there could be negative impacts on the productivity of the regulated community,[15] and unintended consequences for the public.

[11] Economic value of the legal services sector, March 2016, The Law Society.
[12] Rule 3, SRA Financial Services (Scope) Rules 2001.
[13] Rule 3.1(g), SRA Financial Services (Scope) Rules 2001.
[14] Legal Services Act 2007, section 3 (3).
[15] The regulatory objective to encourage an independent, strong, diverse and effective legal profession is relevant here (Section 1(1)(f) of the Legal Services Act).

27. In addition, the Regulators' Code[16] requires regulators not to impose costs and obligations on business, social enterprise, individuals and community groups unless a robust and compelling case has been made. Regulatory changes proposed by regulators need to be justified by a cost-benefit analysis on the regulated communities and individual groups.[17]

28. The changes proposed by the SRA present a major shift in how practitioners are regulated. As a result, solicitors and firms may need to substantially modify their operating procedures which will come at a cost to the profession and consumers.

29. The approach that the SRA has taken in its impact assessment is almost entirely qualitative in nature. It does not contain a robust cost-benefit analysis. Without such an analysis, it is extremely challenging for consultation respondents, or indeed the SRA, to determine whether the proposed reforms will enhance or undermine the regulatory objectives.

30. The impact assessment over-simplifies the impact of a shorter Handbook. Paragraphs 12-16 of the impact assessment explain, based on feedback from a single firm, that the SRA anticipates a reduced compliance burden because there will be fewer updates to the Handbook, and therefore fewer occasions when firms need to retrain their staff. However, what is not factored into this analysis is the time and cost which will be incurred in following updates to SRA guidance, which will take on increased significance under the new system. The cost of training staff on SRA guidance should be factored into the final impact assessment.

[16] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf
[17] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

Responses to individual questions

Question 1
a. Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

31. Individual solicitors have the flexibility to practise in any law firm in England and Wales, Scotland, Northern Ireland, or overseas and to provide reserved legal services. However, in the public interest, firms in Scotland and Northern Ireland (or elsewhere) should only be authorised by the SRA, if the same level of protection can be guaranteed for clients. For example:

- compulsory insurance held by the firm on the same basis for solicitors in England and Wales;[18]
- access to the Compensation Fund by clients;
- client money is kept safe and protected in the event of insolvency of a firm;[19]
- sufficient supervision and enforcement powers.

32. There is also a supervision and enforcement aspect to this issue. The SRA needs to demonstrate it has appropriate arrangements in place to monitor the conduct of firms with a practising address in Scotland and Northern Ireland, and is able to enforce effectively in cases of potential malpractice. Authorised firms outside England and Wales should be monitored in the same way as firms within the jurisdiction. Firms should only be authorised outside of England and Wales if the SRA's current statutory powers to intervene will be sufficient. Before considering extending authorisation to firms outside England and Wales there must be a thorough analysis of whether all of the SRA's powers will enable it to regulate effectively.

Question 1
b. Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

33. Solicitors practising overseas should only be able to offer reserved legal activities if they hold insurance cover that is equivalent to that obtained by a firm in England and Wales.

34. We agree with the SRA's approach of maintaining the current practising address restrictions for overseas firms without any connection to the domestic firms the SRA regulates. Lifting the restriction would create enforcement challenges as it could be difficult for the SRA to enforce its decisions cross-border over solicitors and firms operating in other jurisdictions without close ties to the UK firms.

[18] In accordance with the Minimum Terms and Conditions as set out in the Annex to the SRA Indemnity Insurance Rules.
[19] Section 85, Solicitors Act 1974 protects money in a client account from any claim by the Bank.

Question 2

a. 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?

35. We do not support this proposal. We have considered this proposal previously in relation to the phase one consultation and concluded that newly qualified solicitors should be supported by more experienced solicitors, as this is a key driver of quality of service. Without such a rule, both clients and newly qualified solicitors could be put at risk, creating a negative impact on the standing of the profession.

36. We are not convinced that the alternative safeguards put in place would adequately replace the three-year rule. The alternative safeguards all rely on an individual solicitor having high-levels of self-awareness, for example to identify that an ethical question is being raised in order to decide that they might be in danger of acting outside of their competence, or to identify that they might need to call the SRA’s ethics helpline. These proposals are not an effective replacement for requiring an appropriately experienced lawyer in the management of a firm.

37. We note that similar restrictions apply to barristers to ensure adequate safeguards for clients. For example, the Code of the Bar Standards Board requires barristers to practise for a total of three years following the completion of their pupillage prior to setting up their own practice.[20]

38. We have also considered regimes in other jurisdictions. For example, in New Zealand, barristers and solicitors need to have three years’ practising experience before they can practise on their own. In countries where solicitors can set up in practice immediately after qualifying, such as many European jurisdictions and the USA (New Jersey, New York and California) there is a much longer training period required in comparison to England and Wales. This ensures that a minimum level of training and experience is obtained prior to setting up in practice.

39. The Junior Lawyers Division has expressed concern, noting that, *“The JLD believes that the removal of the rule would be directly contrary to the SRA’s stated purpose of protecting the public by ensuring that solicitors meet high standards.”*

40. There is a practical barrier to removal of the rule. It is unlikely that firms without a solicitor with three years’ experience would be able to obtain professional indemnity insurance at a reasonable price.

41. We are concerned that removing this rule will not only put newly qualified solicitors and clients at risk, but that it could also undermine the internationally recognised position of the English and Welsh jurisdiction. This is particularly concerning now, when the international standing of the profession is already at risk due to the uncertainties caused by Brexit.

[20] The Bar Standards Board Handbook, Rule 20, Scope of practice, authorisation and licensing rules.

Question 2

b. If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

42. As stated in our response to the phase one consultation, we believe that there should be a clear rule that prevents newly qualified solicitors from setting up a firm until they have sufficient experience and that those wishing to set up a firm should be required to demonstrate an adequate knowledge of the regulatory requirements. We believe that the existing benchmark of three years is one that has worked and has been proven over a long period of time. In any event, upon qualification a solicitor will only have achieved Level 3 of the Threshold Standard, which is insufficient to run a firm without a more experienced solicitor present. This is because the threshold test at qualification does not involve full responsibility as required at Levels 4 and 5.[21]

43. The SRA's draft enforcement strategy supports this view. It says *"We recognise that certain stages in an individual's career can present a steep learning curve – such as becoming a trainee, a newly qualified solicitor, or a partner for the first time. We would expect solicitors to gain a deeper understanding of appropriate behaviour and of the law and regulation governing their work as their career progresses. And for those with more seniority and experience to have higher levels of insight, foresight, more knowledge and better judgement."*[22]

44. However, we do believe the rule could be improved. We suggest the current restriction should be rephrased to require '36 months of practising experience' as currently all that is required is for solicitors to have been entitled to practise i.e. holding a practising certificate rather than using it.

Question 3

Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

45. We agree with the proposal that immigration work should only be carried out in entities authorised by an approved statutory regulator, but there is no basis to distinguish immigration services from other legal services. We strongly advocate that all legal services must be provided through a regulated practice to ensure clients are adequately protected.

[21] http://www.sra.org.uk/solicitors/competence-statement/threshold-standard.page
[22] Page 7, Draft SRA Enforcement Strategy.

Question 4

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-authorised firms (or equivalent)?

If you disagree, please explain your reasons why.

46. We agree with the proposal to prevent claims management work being performed by solicitors outside of a regulated firm. This rule is only necessary because of the radical proposal that solicitors should be able to deliver non-reserved activities outside of regulated firms, and operate on a freelance basis without authorisation or insurance on similar terms to those required of regulated firms.

47. The SRA's impact assessment points out that allowing individuals to deliver legal services in claims management and immigration areas outside regulated firms goes against *'the proper policy intention of the regime'*.[23] We agree with this assessment and believe it applies to other legal services.

48. We are concerned that removing restrictions on where solicitors can practise, and placing patchwork constraints on some areas, is an example of creating needless complexity. It risks increasing confusion for clients about regulatory oversight and protections. Moreover, it is not future-proofed and may require placing additional restrictions on other services in the future to protect clients and the public.

49. That is why we strongly recommend that the SRA should reconsider its original proposal and that it must not allow solicitors to deliver non-reserved services to the public outside of regulated firms.

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?

50. We can see significant disadvantages and risks to clients if the proposal was to be implemented, because it would reduce or remove the client protections that come from entity regulation.

51. We reiterate our view that it is in the interests of clients and the public for there to be a clear, consistent and strong set of regulatory protections in place for the solicitors' profession. It should not be incumbent upon clients to investigate the regulatory status of the solicitor that they are seeing.

52. We are concerned that this proposal could create a further tier of the profession and increase consumer confusion as clients will find it difficult to understand differences in consumer protections between various types of solicitors. As noted earlier, the consumer research we commissioned demonstrates the low

[23] SRA Looking to the future: phase two of our Handbook reforms, Impact assessment, September 2017, p 19.

levels of awareness and understanding that consumers have regarding regulation in the current framework of the legal services market.[24] The situation is likely to be far more complex and confusing if the Handbook changes are implemented as the SRA is proposing.

53. In addition, relaxing the current provisions could create a potential risk of artificial arrangements being made by some solicitors to avoid entity regulation.[25]

54. The SRA appears to work on the assumption that freelance solicitors will service clients currently accessing legal advice on a pro-bono basis. Hence the proposal to abolish the current system of exceptions granted to special bodies, pro bono and telephone services under the SRA Practice Framework Rules 2011. Special bodies and pro bono services play an important role in providing legal services to vulnerable people who do not have the means to pay for legal services at any price point. We believe the idea that freelance solicitors will cater for the needs of this group is overly optimistic and not supported by any projections or evidence.

55. The consultation states that self-employed solicitors providing reserved activities will be required to maintain insurance cover and contribute to the Compensation Fund, but does not give details on what the 'adequate and appropriate' level will be. If this is below the level of the minimum terms and conditions, then this represents a watering-down of client protections that we would not support.

56. In addition, the proposal to allow sole solicitors to provide non-reserved legal services without restriction removes further vital client protections such as professional indemnity insurance cover, access to the Compensation Fund and the protection of client accounts. This puts clients at risk.

57. The assessment does not consider any of these issues or provide any quantifiable risk analysis of the proposals to illustrate potential risk to clients.

Question 6

What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

58. Assessment of appropriate character and suitability plays an important part in protecting both the public and public interest. We agree that in order to take a robust and objective view of each application on a case by case basis, the SRA will need to take into account not only evidence but also the circumstances of each case.

59. As outlined in our response to the Handbook phase one consultation, the Law Society is supportive of the removal of student enrolment prior to the start of

[24] Consumer behaviour research: A report by London Economics and YouGov for the Law Society.
[25] SRA Looking to the future: phase two of our Handbook reforms, Impact assessment, September 2017, p 20.

the Legal Practice Course (LPC). However, we would like to stress the importance of clear and appropriate information regarding the suitability test being made available to students at an early stage.

60. The SRA plans to produce guidance and checklists explaining the rules and to make further clarification available through the Professional Ethics service. However, we do not believe that merely providing students with advice will deliver the level of certainty required. In order to provide assurance to those who are about to incur considerable expense to enter the profession, the SRA should be able to offer an early indicative decision which the candidates will be able to rely on.

61. The SRA's indicative decision should be relative to the circumstances disclosed by the potential applicant. It should provide assurance that if the SRA concludes that the matters disclosed will not create a barrier to admission, this advice would still be valid at the point of admission. In the case that circumstances preventing an individual from entering the profession have been identified, the SRA should propose the best form of rehabilitation, if that is a possibility.

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?

62. We are pleased to see more clarity on the proposed transitional arrangements, and agree that candidates who started to train before the SQE comes into force, and who complete their training during a transitional period, should have full exemption from the requirement to qualify through the SQE. We do, however, note that the transitional period may raise practical challenges for firms and academic institutions.

63. In line with the existing policy to remove the minimum wage for trainees, the SRA is in paragraph 91 proposing to extend this policy to cover solicitor apprentices. We would like to reiterate our opposition to the abolition of the minimum trainee salary and restate our recommendation that, as a matter of good practice, providers of training contracts should pay their trainees a minimum salary of £20,913 in London and £18,547 outside London.

64. We believe that the implementation of a recommended minimum salary for trainee solicitors will have a positive impact on equality and diversity within the legal profession, in addition to being good practice in supporting entrants to the profession.

65. We have reviewed the new SRA Education, Training and Assessment Provider Regulations. We are very concerned about the removal of the requirement for the training to provide practical experience in at least three distinct areas of English and Welsh law and practice and to ensure that the trainee knows the requirements of the Principles and is able to comply with them. In addition, we are concerned that various changes are not made apparent on the face of the consultation. For example, the idea that a training principal can himself or

herself decide that up to six months of alternative training should count towards the two-year requirement (a change we do not necessarily oppose but would like to see explained). Consultees should not be made to hunt around in associated documents to understand what changes the SRA wishes to make.

66. We believe that these changes in conjunction with the proposals allowing newly qualified solicitors to set up a regulated law firm are likely to put clients at risk and will negatively affect the reputation of the legal profession. Additionally, removing the requirement to provide experience in at least three areas could lead to situations where those in work-based learning only see one area of law which will limit their ability to make an informed decision about their future specialisation. The period of recognised training should help aspiring solicitors to make that decision. They would not be able to make that decision based on the information available at degree level.

Question 8

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

67. The SRA has proposed to only require specific approval for barristers and other authorised persons on the first occasion they take up a manager or owner role.

68. There is no data in the consultation to suggest when re-approvals of barristers, chartered legal executives or other types of authorised person have been refused by the SRA. The consultation indicates that it is rare, but does not cite any specific evidence. On the basis that this proposal will reduce red tape for firms looking to appoint these authorised person partners we do not oppose expanding deeming provisions in this way because these individual authorised persons will be regulated by their own regulatory bodies. We also agree that non-authorised persons, without any oversight from a professional body, must not be deemed approved.

69. Partners who are qualified solicitors, RFLs and RELs already do not need to be approved when moving firms, but we agree other types of legally qualified Partners should not be subject to the unnecessary administration of having to go through the approvals process more than once.

Question 9

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

70. We recognise that the Overseas Rules will need to be amended to reflect overall changes to the Handbook and Accounts Rules announced in June this year. However, it will be important to ensure that the transition to a new set of rules does not result in reduced clarity.

71. The proposal to remove parts of the European Cross Border Practice Rules and instead require solicitors and firms to comply with the CCBE's Code of Conduct may cause compliance challenges. Solicitors will have to refer

separately to the CCBE's Code. This is an example of the Handbook getting shorter, but the burden of regulation not diminishing.

72. In addition, this proposal appears to bring the Code within the scope of domestic regulations. 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.

Question 10

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

73. We support the aim of removing parts of the Handbook that are not necessary, for example because they relate to legislation that has not been enacted. It is important to ensure that there are no inadvertent gaps created as a result of this removal.

74. Solicitors are exempted from the requirements of the Estate Agents Act 1979, on the basis that the standards contained in that Act are already required of solicitors. Before removing the property selling rules from the Handbook, the SRA should reassure itself that the removal would not undermine the rationale for this exemption.

75. For example, it will be important to ensure that the property selling rules relating to "transactions in which you have a personal interest" (covered by section 21 of the Estate Agents Act) are fully covered by the revised conflict of interest rules in the Handbook.

Question 11

Do you agree with our new proposed review powers?

76. Placing all the review powers in one place is sensible. However, we oppose the provision restricting evidence that is allowed on appeal or review. The reasons include the following:

- The experience of specialist regulatory lawyers is that first instance decisions and internal appeals heard by adjudicators often give reasons which do not relate to the reports disclosed to the solicitor. Therefore, additional evidence is often required to address the decision given at first instance. This quote from a recent case explains the point:

  ". . . in my view the failure of the decision makers and most importantly of the Committee to raise with the appellant the points that were troubling them, and on which they decided his application, was unfair. None of them gave him the opportunity to address or comment on the points that they considered to be important. These changed at each stage of the decision

making process so at each stage the appellant was told of a refusal of his application for different reasons.".[26]

- Often solicitors only seek professional representation at the point when the initial decision has been made. On the advice from a regulatory lawyer, further evidence is often necessary.

- The SRA would in any event be making two decisions: on the substantive appeal and also on the preliminary issue of whether to exclude the evidence, which would have to be read. There is no efficiency gained in seeking a blanket provision to exclude evidence.

- Seeking to exclude evidence when there is a further right of external appeal is not helpful, as the excluded evidence would be submitted in the external appeal to the Solicitors Disciplinary Tribunal, or High Court.

77. The Law Society's position is that new evidence should be considered as a matter of course and not be subject to an unnecessary preliminary decision.

Question 12

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

78. We do not oppose the initial period, but there should be a discretion built in the rules to give an extension when reasonable in the circumstances, for example if the practitioner has a health condition.

79. It is the experience of specialist disciplinary practitioners that the SRA often take many months to investigate potential allegations, but then only a short amount of time is given to the solicitor to respond. With particularly complex cases, more than 28 days may be required in order to properly consider whether an appeal should be made.

Question 13

Do you agree with our proposed approach to enforcement?

80. As a matter of principle, we support the transparency that the strategy brings to the SRA's use of enforcement powers. We have made a number of comments about the strategy and disciplinary procedure rules (the rules) which will help:

- solicitors respond to enforcement action;
- reduce uncertainty for all parties;
- create a fair process;
- respect an independent Solicitors Disciplinary Tribunal;
- promote the administration of justice in disciplinary proceedings;

[26] Selwyn Strachan v The Law Society [2014] EWHC 1181 (Admin), para 70 as per Charles J.

- build trust with the SRA on enforcement.

81. Our comments should be taken in the context of our established support for use of the criminal standard of proof in making disciplinary decisions, whether they are made by the Solicitors Disciplinary Tribunal (SDT) or the SRA, given the serious consequences for solicitors. We also support the use of the SDT as an independent tribunal, that should be the primary appeal body for decisions made by the SRA.

82. No comment is made about the future proposals for the recovery of costs of an SRA investigation, as we note that it will be dealt with in a separate consultation.

83. Our comments are put forward to help improve the SRA's enforcement strategy and rules and one of the most effective ways to do this is to provide helpful information for solicitors to respond effectively to SRA enforcement action.

Helping solicitors with enforcement

A guide to enforcement should contain all policies in one place

84. A simple and straightforward guide to enforcement is required, as many practitioners respond to SRA investigations without any professional representation. A single source of information will assist practitioners, rather than having to find and consider different policies and sets of rules. In particular, the decision to refer a solicitor to the SDT is at the heart of the strategy and should be included. Signposting rules and statutory provisions that deal with practising certificates may also assist.[27] We feel a clear link between the SRA Principles and the enforcement strategy should be emphasised to reflect the importance of the Principles.

A guide should help practitioners decide whether they should make a report to the SRA

85. The revised guidance does not necessarily assist when deciding whether conduct should be reported, or not. For example, practitioners are not clear if minor criminal offences, outside of legal practice, should be reported. The guidance states that minor motoring offences are not something which the SRA is concerned with, but they are still a criminal offence. What offences are considered to be "minor" motoring offences? If a solicitor relying on the guidance decided it was not necessary to make a report, the concerns are that the SRA may take a different interpretation. It would be helpful if the guidance can be amended to avoid subjective judgements, for example about what is "minor".

86. In addition, where a solicitor interprets a provision of the guidance in a reasonable manner, which is different to the interpretation that the SRA takes, this must not result in them being penalised.

Proportionate outcomes and use of regulatory settlement agreements

[27] Rule 6.2, Draft SRA Authorisation of Individuals Regulations and Section 13A, Solicitors Act 1974.

87. The strategy should look to the least regulatory action that is necessary in the circumstances. At each stage of an investigation, the SRA should consider whether the matter could be resolved by agreement with the solicitor, for example with a regulatory settlement agreement (RSA). Resolving matters of concern by agreement has the benefit of shortening investigations, creating a proportionate outcome and providing an opportunity for solicitors to rectify a breach, where possible. Effective use of RSAs will help avoid the concern from solicitors that unnecessary proceedings are lodged before the SDT leading to a disproportionate amount of time and cost.

Clear explanation of allegations

88. The experience of specialist regulatory practitioners is that drafting of charges before the SDT appear to involve the use of templates, or copying from other statements lodged with the Tribunal. It should be clear from allegations about how the facts had arisen in the particular circumstances of the case, rather than adopting a generic template.[28]

Signposting help for solicitors

89. The strategy could also provide important signposts from where solicitors can get help. For example, reference could be made to The Law Society, as the solicitors' representative body, and LawCare.

Reducing uncertainty for all parties in the enforcement process

90. The decision to take enforcement action has a significant impact on a solicitor, their business and others including employees and clients. Creating more certainty about the timing of the outcome of an investigation and avoiding delays are two key issues we would ask the SRA to consider in developing their strategy.

Closing an investigation

91. Solicitors should be notified, within a stated period of time, when an investigation has concluded. There have been instances where solicitors subject to investigations have not been informed of the outcome, while still having to declare such matters to their professional indemnity insurers, employers and others.

Transparency about proceedings in the SDT

92. There should be a timescale in the strategy or rules for lodging proceedings with the SDT, following the initial referral decision. The experience of regulatory lawyers is that there is often significant delay in lodging proceedings with the SDT, impacting solicitors' wellbeing and employment. Such delays are unfair in cases where the allegations are not upheld, or where a more serious sanction is not made, for the following reasons:

[28] Strachen, Ibid.

- solicitors may experience difficulties with re-employment while the matter is ongoing;
- membership of professional schemes, such as the Conveyancing Quality Scheme could be affected;
- normal career choices may be difficult to pursue;
- proceedings cause distress and affect practitioners' mental health.

93. Transparency of the SRA's performance is important in relation to the timely lodging of proceedings before the SDT and we propose that the strategy should include a commitment to publish key performance indicators on how long the SRA is currently taking to issue proceedings.

94. Disciplinary proceedings should proceed without delay from the date that the SRA is aware of the facts leading to the investigation and solicitors are entitled to a fair hearing within a reasonable period in order to comply with the law.

95. The investigation stage of enforcement should precede any decision to start disciplinary proceedings. When a decision has been made to refer a solicitor to the SDT, the proceedings should not become drawn out by continuing with investigative work that should have been done at an earlier stage.

Creating a fair process

Publication of enforcement decisions must be fair

96. The proposed rules on publication are far wider than the current policy. For example, it could extend to minor decisions, such as letters of advice. The statutory authority to publish decisions relates to the sanctions to rebuke and fine.[29] The SRA should consider carefully whether to restrict publication to those sanctions. To help ensure fairness to solicitors, the rules should retain the factors listed in the current rules which take into account:

- a person's confidential or legally privileged information;
- a person's confidential medical condition or treatment;
- current legal proceedings or regulatory or disciplinary investigations;
- a person's rights under Article 8 of the European Convention on Human Rights;
- whether in all the circumstances the impact of publication on the solicitor is disproportionate.

97. Removing these considerations increases the risk of a challenge to publication and of unfair treatment for solicitors.

Personal mitigation

98. We propose that the personal circumstances of the solicitor should be considered at the outset of an investigation and at appropriate stages throughout the enforcement process. For example, if the solicitor has any disability or medical condition that will affect how they can respond, or difficult

[29] Section 44D, Solicitors Act 1974.

personal circumstances, such as bereavement of a family member, this should be taken into account and reflected in the strategy. Currently in the strategy, in relation to "personal mitigation" it states:

"For the avoidance of doubt, we will generally only take into account personal mitigation, such a character and testimonial evidence, following an investigation into the events, when we are considering the appropriate outcome." This approach is confirmed in Section 2.2, *". . .personal mitigation which is usually more relevant to sanction."*

99. Personal mitigation is not just relevant to the outcome, it is also relevant to the process.

SRA should focus on conduct, not negligence or service

100. There should be a clear distinction between issues of negligence which are for the Court to consider and conduct which is for the regulator. The strategy should also avoid addressing issues of service, which fall within the remit of the Legal Ombudsman.

Factors should not be considered in isolation

101. The actual harm suffered by a client is a factor, but the general consequences should be considered. For example, a solicitor who takes or misuses a client's money should be subject to disciplinary action even if the client suffers no actual harm because the Compensation Fund steps in to make good the client's loss.

Respecting an independent Tribunal

102. Sanctions relating to the powers of the SDT should not be the subject of any SRA policy. The Tribunal is independent of the SRA and has its own guide to disciplinary sanctions.[30] For example, the strategy includes an appendix referring to suspension and striking off the Roll by the SDT. These powers are not available to the SRA. The SRA's sanctions table lists factors for striking a solicitor from the Roll which are not the same as the SDT's guidance. For example, the SDT refers to the protection of the reputation of the legal profession as one reason to consider a strike-off. Having two guides to the same sanctions could be confusing for unrepresented solicitors.

Promoting the administration of justice in disciplinary proceedings

Clear explanation of allegations

103. In addition to helping solicitors understand the case against them, clear allegations are also fundamental to the proper administration of justice. As set out above, charges before the SDT should not be drafted using templates, and should clearly explain the facts relating to the allegation against the solicitor.

[30] Guidance note on Sanctions (5th Edition) December 2016.

Assessment of reports

104. The strategy should include a reference to how reports about solicitors will be assessed and also commit to informing solicitors when a report is made against them.

Request for an oral hearing

105. We propose that the rules contain an express right for the solicitor to request an oral hearing. This request should be considered as a separate issue, as opposed to an immediate preliminary decision to the substantive adjudication. This would avoid duplication of time and cost in making an unnecessary detailed written submission, when the SRA adjudicator may decide to proceed with an oral hearing. Under the rules as drafted, solicitors must make detailed written representations in all cases, on the assumption that the SRA will decide against an oral hearing.

Review of certain decisions

106. The information that is contained in this section is about a change in circumstances. The heading of this section should be altered to say 'A change in circumstances' rather than referring to review of certain decisions.

Reference to antecedents when making decisions

107. The rules should reflect that the entire disciplinary history of a solicitor should not necessarily be taken into account if the matters are historic or irrelevant. There appears to be no current SRA policy on considering a solicitor's antecedents and the enforcement strategy and rules should address this. Before a caseworker's report is prepared that makes reference to any previous sanctions the following factors should be considered:
    a. the seriousness of the breach;
    b. time of breach, and
    c. similarity of facts to the current alleged breach.

108. To reflect the proper administration of justice, previous findings should only be relevant to the level of sanction, not a decision about liability. There should be appropriate safeguards in place to ensure that SRA decision making remains impartial.

Firms need to be able to trust the SRA on enforcement

109. Getting the enforcement strategy right is a crucial part of this Handbook review. If the SRA moves away from prescriptive rules, and grants more discretion to firms, then it makes it critical that firms are able to trust the SRA's enforcement decisions. If that trust does not exist, then firms will rationally pursue very risk-averse compliance approaches. Publishing a coherent strategy can help improve the level of trust, but this must be matched by a change of practice in day to day enforcement activities. It will be important for firms to feel like there is no "presumption of guilt" in place, and for the quality of decisions to be paramount.

110. Transparency will also help to build trust. Where decisions or regulatory settlement agreements are published, the way that a particular rule has been applied needs to be clearly explained if the profession is to be able to learn from the published decision. This has not always been the case in the past.

Other Issues

Proposed changes to the SRA Authorisation Rules on corporate managers

111. One key change for practitioners that the SRA does not appear to be consulting on, is that the SRA will not authorise a corporate body acting as a partner or director (or in the case of a limited liability partnership, a member) of an SRA authorised firm, if:

- that corporate partner provides no legal services and
- the SRA deems this not to be in the public interest.

112. A number of firms have for many years used this corporate partner arrangement for tax and other reasons. This is a significant change to existing arrangements. The SRA points out that it would be possible for those firms wishing to have corporate body arrangements to become Alternative Business Structures, although this could increase both time and expense for practitioners.

113. Given that firms which are already authorised by the SRA have "lifetime" recognition, we ask the SRA to clarify that:

- these proposals will not affect existing firms authorised as recognised bodies;
- applications for new corporate partners in an existing recognised body will be authorised without the current structure being forced into Alternative Business Structure status;
- if the proposals are carried forward, new firm applications that only have to become an ABS because of these changes to the rules, will not be subject to any additional fees.

Financial services

114. The Financial Services and Markets Act 2000, Part 20 provides a carve-out that allows the SRA to regulate solicitors' provision of certain financial services activities ("exempt regulated activities"). The logic of this exemption is that the SRA imposes high standards on firms and solicitors, and this reduces the need for a dual regulation.

115. The SRA's Financial Services Rules govern how SRA-regulated firms undertake exempt regulated activities. However, the proposed change to the SRA's Financial Services Rules will not allow solicitors practising in non-LSA

regulated firms to provide regulated financial services to the public. The FCA will have to regulate such work. It means practitioners who provide certain services in non-LSA regulated firms could face dual regulation – the Handbook for their non-financial work, and the FCA regulation for the financial work.

116. We share the SRA's view that regulated financial services are activities that require significant practitioner expertise, and that consumers and the public must be protected. However, the SRA needs to work closely with the FCA to limit the impact of this change on the profession and reduce the extent of dual regulation. In practice it would entail establishing areas where the FCA is best suited to ensure consumer protections, e.g. for financial services provided through a firm that does not fall under the SRA's remit, and areas where the SRA's jurisdiction would guarantee sufficient protections. In addition, sufficient guidance should be available to practitioners to make them aware of the changes and to signpost them to the FCA source.

Looking to the future: phase two of our Handbook reforms

Response ID:124 Data

2. About you

1.
First name(s)

Kevin

2.
Last name

Griffiths

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

University or other education/training provider

8.
Please enter the name of your institution

The University of Law

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

No response.

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

No response.

12.
2a) 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?

1. We disagree with this proposal (Q2a), and with the reasons advanced for the removal of the current requirement. Whilst we consider there is a case for reviewing the rules on when an individual can practice on their own, we do not support simply removing the current restrictions.

2. We note the comment in paragraph 39 that the SRA understands the concerns raised on this point in

previous consultations (as apparently identified in paragraph 38, namely that the rule provides an important safeguard to ensure that newly qualified solicitors did not set up their own firm without some experience). However, we are unable to agree that these concerns are met by the measures identified in the detail of paragraph 39. In particular:

• We are concerned that the power to refuse to authorise a recognised sole practice is to be substantially reduced by the proposal relating to consultation question 5 (namely the proposal to allow self-employed solicitors to practice without requiring authorisation as a recognised sole practice). In our view, this would significantly weaken this measure.

• The proposal around competence is not a new measure, but already applies to all solicitors. The difficulty with this measure in this context is that it can only apply retrospectively after problems have emerged, and does not provide the safeguard identified in paragraph 38.

• The approach to continuing competence has not yet been tested. We respectfully submit that it would be high risk to rely on this new approach before there has been an opportunity to test whether it is effective. Even if it is effective, it does not deal with the immediate competence of a person to practise on their own (but could then provide a useful basis for a person to assess their individual competence to practise without supervision after some years in practice).

• The rules around effective business controls have the same issue as those around competence; they will only provide retrospective control after there are known difficulties, and do not provide proactive, advance protection for the public.

• Support from the ethics helpline does not provide the safeguard identified in paragraph 38.

• We are deeply concerned by the suggestion that providing an accessible digital register is a safeguard in this context. The implication is that it is for members of the public to protect themselves by carrying out their own risk assessment on a solicitor and his/her experience level. We do find it difficult to reconcile this approach with the obligation to protect the public.

• The details of the SQE have not yet been finalised, and the actual exams have not been developed or piloted. Whilst we understand the desire of the SRA that the SQE should be a rigorous assessment, until it is tested and proven to be effective, we suggest that it is extremely high risk to make additional regulatory changes based on an assumption that the SQE will guarantee competence from day 1 of its launch.

3. Our view therefore is that whilst it is not impossible that the SQE and rules around continuing competence could prove in time to be sufficient to allow solicitors to practise on their own immediately following qualification, it is premature to make that change at this stage before there is any evidence to demonstrate the effectiveness of those developments either at all or, most importantly, in this context.

4. Even if there is such evidence in the future, and especially given the acknowledgement in paragraph 39 that the SQE tests only technical competence and not a person's competence to run a business, we respectfully suggest that some process to authorise practice is preferable to protect the public, rather than relying purely on retrospective enforcement.

13.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

5. We do not have evidence relevant to this question (Q2b), but would welcome the opportunity to work with the SRA to gather evidence going forward (for instance, on the effectiveness of the SQE in assuring the standards achieved by successful candidates) to assist in making appropriate decisions that will promote public access to high quality and reliable legal services.

14.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

No response.

15.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

No response.

4. Consultation questions: Authorising individuals

16.

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?

6. We disagree with this proposal (Q5), especially when considered alongside the proposal leading to consultation question 2

7. The proposed safeguards are all retrospective; they will allow disciplinary action to be taken if the requirements are breached, but involve no regulation or oversight in advance of the individual practising as a self-employed solicitor. This does not provide any protection for the public in advance of the individual providing legal services.

8. We note the concern that the current process is unnecessarily restrictive. Whilst it might well be that the process for establishing a recognised sole practice could be streamlined, and by adopting a risk-based approach become significantly less burdensome for some applicants than the current procedure, we respectfully submit that requiring some process and evidence (e.g. of the insurance in place) leading to a registration that could be checked by the public, would give some level of reassurance prior to services being provided. We note that an effective process would also be of assistance to those seeking recognition, by providing applicants with guidance and structure to help them ensure their business plans are comprehensive and adequate.

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

9. (Q6) We support and welcome greater flexibility in the assessment of character and suitability issues, and in the use of appropriate practising certificate conditions to manage any regulatory risk identified.

10. However, we remain concerned at the lateness of the decision and refer to our submission made in the consultation on the SQE regulations where we encourage the SRA to provide a mechanism for binding determination well in advance of the point of admission for applicants who have a concern.

11. The timing of decisions on character and suitability has major implications for the candidate (who has to commit years of study and/or QWE with uncertainty over the final outcome) and for employers (who are looking to provide support with study, or offering QWE with a view to the applicant qualifying whilst working for them).

12. We recommend that binding decisions be possible at the early indication stage (especially positive decisions). Where a positive decision is not possible, then meaningful guidance has to be given to the applicant over the chances of rehabilitation being recognised, and what would likely count as

rehabilitation. We accept that where a decision would be negative if made at the early indication stage, but has a chance of being positive several years later, it is good to keep that option open; we also however consider it only fair to applicants to give meaningful and specific guidance in those circumstances, and not simply generic information about the requirements of the rules.

18.

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?

13. We do not agree with the proposed transitional arrangements. Our view is that the current proposal creates unnecessary complexity and cost, is likely to mislead applicants, and is uncertain in several respects.

14. Trigger event for compulsion

14.1. The proposed transitional arrangements for those on a standard path to qualification are based on the date of commencement of the academic stage of training. By establishing a trigger date that is linked to the commencement date of training courses, this inevitably means that the new route to qualification (based on the SQE) will apply to non-law graduates sooner than law graduates, when looking at the standard current paths of (1) non-law degree plus CPE, and (2) QLD, given the different lengths of the CPE and a QLD. This has various practical consequences, including:

14.1.1. any employer currently offering training contracts (periods of recognised training) that recruits both non-law and law graduates will have to administer both new and old systems of qualification simultaneously; and
14.1.2. training providers will have to provide courses catering for both systems of qualification simultaneously at volume for longer during the transitional period.

14.2. Running multiple qualification systems and training programmes simultaneously creates both cost and complexity. It risks distorting the recruitment process, by creating an artificial distinctions between candidates with law and non-law degrees, and making non-law graduates more burdensome to recruit in the first years of the SQE. It is likely to increase costs of training courses in the short term, and/or lead to reduced availability of some training courses across the country, as some options could become uneconomic in some regions when multiple routes have to be supported.

14.3. The alternative is for the transitional provisions to be based on the date of completion of the academic stage of training for the standard path students. This would line up the route with the start of the qualifying work experience for the majority of applicants, reduce inefficiencies for training providers and employers, and as a result produce a simpler system for candidates to understand.

14.4. The implication of this change would be to delay the compulsory application of the SQE to CPE students. The exact date should be subject to wider consultation, but we would suggest either September 2022 (to align with students completing a 3 year law degree) or September 2023 (to align with students completing a 4 year law degree. There could be an exception for any students who have to take a year out during a degree, or who are on part time programmes, preserving a choice for such students until the ultimate cut-off date.

14.5. This does not imply that the introduction of the SQE should be delayed until 2022 or 2023. It is required earlier for solicitor apprentices, could be taken by paralegals or others who feel they are ready for the SQE, and can replace the QLTS. However by aligning the compulsory start with the point where the majority of applicants complete their academic stage it will make for a smoother and easier transition for the bulk of applicants, employers, and training providers.

14.6. Although we note that the target date for the introduction of the SQE remains September 2020, we

respectfully suggest that this is very optimistic for a full introduction; given the timeline for the appointment of the Assessment Provider, and the work that such body will need to carry out (as published at the start of the procurement process). The practical implications of the change suggested above on the overall introduction of the SQE are therefore likely to be limited, for significant benefits (as identified).

15. Cut-off date

15.1. We consider that the transitional provisions stretch over too long a period. Whilst there is a superficial attraction in allowing candidates to complete based on the method of training they initially embarked upon, we suggest it is unlikely to be a practical option. We anticipate that the LPC, PRT, and PSC will become unavailable prior to the end of the transitional period (and therefore qualification become impossible) for several reasons:

a) Under the transitional provisions, there will be a sharp fall in the number of students who are eligible to take the LPC from 2024 (when those on full time law degrees cease to have the option). The LPC is therefore likely to be uneconomic to provide significantly before the end of the transitional period.
b) Employers are unlikely to wish to run multiple systems for long (as noted above, this is more complex and expensive than running a single system). The availability of PRTs is therefore likely to cease significantly before the end of the transitional period.
c) As PRTs decline in number, demand for the PSC will also decline – and again it is likely to become unavailable before the end of the transitional period.

15.2. Given the likelihood that it will be impossible to complete training under the existing route to the end of the proposed transitional period, we respectfully suggest that it would be fairer to candidates to have cut-off dates that are more likely to match availability of routes. We would suggest that the SRA consult with training and PRT providers to assess the realistic end date for qualification by the current route, and set the final cut-off date accordingly.

16. Definitions

16.1. It is not clear what is meant by the "introduction of the SQE". It could mean the first sittings of the SQE, or it could mean the date when the new route to qualification (including aspects other than the SQE) comes into force. Clarity over the meaning would be appreciated, as the implications are substantial.

16.2. Paragraph 88 refers to "individuals who have started … a QLD". We anticipate that this will cause difficulties, as whether a law degree is a QLD can in many cases only be assessed at the end of the programme. There are also students on law degrees that include many elements of a QLD, but not all, and who top up with GDL modules. This issue would fall away if the definition became the end of the academic stage of training, rather than the beginning (as set out in para 14 above).

19.
8) Do you agree with our proposal to expand deeming in this way?

No response.

5. Consultation questions: Specialist rules

20.
9) Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

No response.

21.

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

No response.

22.

11) Do you agree with our new proposed review powers?

No response.

23.

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

No response.

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

No response.

Question 1

a. Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes. Subject to any matters arising as a result of Brexit, particularly in Northern Ireland, we see no reason why the SRA cannot accept applications for authorisation from those providing reserved activities within the jurisdiction from a practising address within the UK but outside of the jurisdiction. Each application will naturally fall to be considered on its own merits but there is no principled reason to impose an absolute bar on applications based on practising address. The SRA will, of course, need to be satisfied that the lack of a practising address within the jurisdiction does not affect its ability to regulate the applicant and does not expose the SRA to an unacceptable risk of costly jurisdictional disputes or legal challenges brought in unfamiliar jurisdictions. In our view there is little such risk associated with other UK jurisdictions and no reason to insist on a particular geographic restriction for UK based practices.

b. Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

There are a number of potential issues arising in relation to overseas practice more broadly, including the impact of foreign legislation which could seriously restrict the ability of the SRA to effectively regulate firms without a UK presence.

The lack of a UK presence, in the form of a practising address, could give rise to difficult questions of conflicts of laws which are likely to be resolved in different ways depending on the legal system applicable in the country in which the applicant/practice is based. This could have the impact of removing regulatory protections and depriving clients of effective remedies – most obviously if their personal data or confidential information is lost or stolen and/or where there has been poor service but potentially also in other important respects. How could clients enforce a LeO award (for example) if their solicitor has no UK presence? Would such an award even be recognised in any other jurisdiction than England and Wales? Who would bear the additional cost of pursuing an organisation without a UK address if applications needed to be made for service out of the jurisdiction or if the UK courts declined jurisdiction over any particular solicitor/client dispute. It is beyond the SRA's power to control these issues; the best that can be done is to ensure that solicitors offering services to consumers in England and Wales are required to submit to the jurisdiction of the English Courts and have at least an address for service in the UK in order to avoid the myriad difficulties which might arise in the event of a dispute.

The issues of money laundering and location of client accounts are also potential areas of risk. It is not clear from the SRA's consultation whether the lack of a UK practising address would also infer the lack of a UK client account. We would have further serious concerns if that were the case since it is important that any client monies held are capable of being protected, if necessary by the SRA exercising its powers of intervention. That may not be possible in any jurisdiction not subject to the Solicitors Act 1974, Administration of Justice Act 1985 or Legal Services Act 2007.

We would anticipate that these issues could potentially be addressed on a case by case basis however the costs of assessing and monitoring regime changes which may impact the SRA's ability to regulate may prove to be disproportionate. There are regimes which we would expect to be immediately blacklisted – ie, firms with their only practising address in particular jurisdictions should not be considered at all because of the risks associated with the current regime in that jurisdiction. This might include, for example, places where the government/court system does not recognise the

judgment of any court other than its own in respect of entities within its jurisdiction since such a standpoint would render a number of the SRA's key statutory powers toothless, and no assistance the SRA could command from the High Court could remedy the situation. The SRA would be at a severe disadvantage attempting to regulate in those circumstances.

Question 2

a. **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?**

No. Although somewhat to our surprise, we are persuaded that the SRA's current approach, focussed on 3 years post qualification experience, whilst having the benefit of certainty, does not withstand detailed scrutiny. We would suggest retaining the requirement of having a person qualified to supervise but removing the temporal limits associated with it in favour of more stringent training/specific experience requirements such as those the SRA considers when approving individuals to act as COLPs and COFAs.

We are of the view that there should be certain types of training specifically mandated before an individual is able to manage a business and hold client money. It seems to us that it is all very well to rely on the Competence Statement and the generic need to have effective management structures in place, however it is difficult to see how an inexperienced solicitor would be able to comprehend the breadth of what they don't know about the management of a firm and, in particular the proper stewardship of client money. They may, accordingly, believe that they have the requisite competence and be entirely wrong.

Further, there are numerous cases which have been before the SDT in which a junior partner has trained at a firm and learned bad habits. Issues such as round sum transfers, offering banking facilities to clients, not dealing properly with referral fees and failures in AML processes are issues which arise time and again. We consider it dangerous to rely on the Competence Statement in circumstances where solicitors may not be in a position to question the propriety of what they learned in the firm in which they trained.

The ability to identify red flags in, for example, high value investments or conveyancing matters should also be covered as well as reporting requirements to the SRA. We consider that simply relying on the Competence Statement alone is setting solicitors up to fail. They need to be given the tools they require to understand risks arising from their lack of experience. No amount of self reflection will get them there. Specified training, dealing with issues which repeatedly arise when solicitors who are not sufficiently experienced take on management roles, will at least give potential managers the tools needed to learn from the mistakes of others. Those lessons are not currently well disseminated across the profession.

We advocate specific training/assessment of experience rather than a designated length of experience because there is no guarantee that individuals will have had exposure to the management side of a firm and, in particular, the technical requirements associated with dealing with client money which, in many firms, will be dealt with by an accounts or compliance team such that fee earners would not have exposure to it.

b. **If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?**

As stated above, we do not advocate any particular length of experience and we expect that the SRA can regulate the issue in a similar way to the current COLP/COFA approval process.

Our members have experience of representing inexperienced solicitors at the SDT in circumstances where they simply have not had the requisite knowledge or experience to undertake a proper analysis of particular courses of conduct. Their inexperience generally caused them to lack insight into their actions at the time they were confidently certain of their ability to manage a firm and client money. This seems to us the major flaw in relying on the requirements of the Competence Assessment in order to establish whether a solicitor should be in a management role. The SRA is assuming that inexperienced solicitors would be able to make a critical assessment of their own ability when, in truth, they may vastly overestimate their own knowledge and understanding of regulatory requirements.

Question 3

Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes. The legislature has imposed specific regulation for a reason and the regulation of firms as well as individuals is a central part of the regulatory structure.

Question 4

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-authorised firms (or equivalent)?

Yes. The legislature has imposed specific regulation for a reason and the regulation of firms as well as individuals is a central part of the regulatory structure.

If you disagree, please explain your reasons why.

Not applicable

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?

No. We cannot see that the stated safeguards are adequate. If there is a regulatory need for a sole practice to be authorised as such, the stated safeguards undermine the protection afforded by the requirement to an alarming degree. If there is no regulatory need for a sole practice to be specifically authorised, there is no need to make any such exemption.

There is no reason self-employed solicitors should be restricted from providing non reserved services, subject to the requirement to have adequate indemnity insurance, since it is necessary and appropriate to ensure that the reputation of the profession is upheld, including by insisting on minimum standards of client protection.

Question 6

What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

We agree that the current character and suitability requirements are too rigid to achieve fairness. They make no allowance for youthful misdemeanours. In particular, our members have come across numerous cases where a failure by a student member to report a minor issue to the SRA has been escalated out of all proportion by the presumption that a failure to report is prima facie evidence of

dishonesty. This issue should naturally fall away in light of the abolition of the requirement to be a student member of the Law Society however it does demonstrate the unintended consequence of the current provisions.

We would also advocate much clearer guidelines on what character issues are reportable and when. We have had experience of solicitors or prospective solicitors being unclear as to whether minor issues such as fines for failure to wear a seatbelt, penalty fares and parking tickets are reportable. If a failure to report were not treated as prima facie evidence of dishonesty, the lack of clarity would be less pressing. As matters stand, we take the view that clarity is important given the consequences of the SRA making an ex post facto decision that there has been a failure to report.

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?

The timeframe proposed by the SRA seems excessive. Whilst we recognise that there will need to be a period of transition, we can see no reason for such a lengthy period. In our view, the transitional period need only account for those who have or will have undertaken the LPC by the time the SQE is introduced. We cannot see any basis on which transitional periods need to account for those who have done a law qualifying degree or the GDL since such courses are not the vocational stage of training but rather academic.

Question 8

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

Yes.

Question 9

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

We have no comment save that any work on the European Cross-Border Practice Rules may need to be redone when the picture emerging from the Brexit negotiations is clearer.

Question 10

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

No.

Question 11

Do you agree with our new proposed review powers?

We are concerned that the proposed review powers are likely to lead to confusion and/or procedural unfairness.

Dealing first with the issue of confusion, the SRA's draft rules contain two different powers referred to as "review" one is in the draft Application Notice Review and Appeal Rules at Rule 3.1 and the other is contained in the draft Regulatory & Disciplinary Procedures Rules at Rule 7. This latter is the right, unfettered by any time constraint for a person disqualified from holding certain roles or

subject to a s.43 Order to make an application to have that disqualification reviewed upon a material change in circumstance.

We note in passing that we disagree that the application for such a review should be limited to where there has been a material change in circumstance. The concept of a "material change in circumstance" is, in our view, an unnecessary restriction on a person's right to make an application. We would submit that, in the context of a s.43 Order, a successful period of employment, under supervision and with the permission of the SRA may well be sufficient to persuade the SRA that a s.43 order is no longer necessary but it may not amount to a material change in circumstance. Similarly, a person notifying the SRA of their intention never to work in a law firm again may amount to a material change of circumstance but should not dictate a revocation of a measure intended to ensure public protection. The test should be whether, in all the circumstances, a person subject to disqualification or a s.43 order has demonstrated that the restriction is no longer required for the protection of the public. There is no basis to restrict the application process to those who can demonstrate something as subjective as a material change in circumstance.

Returning to the key point we seek to make; the use of the term "review" to describe two different processes pursuant to different rules is likely to cause confusion. We would suggest that the term "review" should be reserved for applications pursuant to Rule 7 of the draft Regulatory & Disciplinary Procedures Rules and that a term such as "reconsideration" be adopted for the Application Notice Review and Appeal Rules.

There can be no objection in principle to the suggestion that the SRA should have power to revisit decisions it has made where there has been an error in the original decision making process or where new information comes to light.

The proposed power for the SRA to review its decisions under Rule 3.1(b) of the draft SRA Application Notice Review and Appeal Rules is, however, not limited in any way and even the 1 year time limit is not absolute. There are no procedural safeguards in relation to the proposed reviews, save for the requirement for the SRA to give notice and allow an affected person to make representations pursuant to draft rule 3.6. The express requirement that reviews be conducted on paper rather than by way of an oral hearing is unduly restrictive.

It seems to us that the SRA should be keen to ensure that it gets its decisions right first time. That is plainly the right and proportionate aim in the public interest. Accordingly, the power of review should be the exception rather than the norm. To us, that implies that it is more, rather than less, likely that a full and transparent oral hearing may be required to ensure that justice is not only done but seen to be done. This conclusion must naturally follow in circumstances where the SRA has wished to revisit a decision it has already made (presumably on paper).

We add that the questions the SRA has asked in relation to its proposed draft rules are very limited. We trust that the SRA will consult more fully on the changes to the rules once the responses to this consultation have been assimilated.

We add at this juncture (since there is no question on the issue) that we hope that the introduction of the term "authorised decision maker" in the draft rules with reference to a separate delegation document does not indicate an intention on the SRA's part to delegate regulatory decisions to its permanent employees. We expect that the SRA is alive to the risk of serious breaches of natural justice and the rights of solicitors/firms and their employees if there is not a proper and clear separation of its investigatory/prosecutorial functions and its decision making functions as regards the imposition of sanctions.

Question 12

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

Yes, subject to the ability to seek an extension of time if appropriate in all the circumstances.

Question 13

Do you agree with our proposed approach to enforcement?

We welcome the SRA's commitment to clarity and transparency. The SRA's proposed approach to enforcement is a step forward however much of the profession, in our experience, has been dismayed by interactions with the regulator due to perceptions of over prosecution and the imposition of unrealistic deadlines for the production of information together with uncertainty as to the need to self-report issues which are alternatively "material" or "serious" depending on which rule applies.

We hope that the SRA's new approach to enforcement will enable some trust to be rebuilt so that firms and individuals can be confident that a self-report will not result in a disproportionate investigation and will remove the perception that solicitors are guilty until proven innocent in the eyes of their regulator.

Looking to the future: phase two of our Handbook reforms

Response ID:105 Data

2. About you

1.
First name(s)

David William Martin

2.
Last name

Barraclough

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

The Yorkshire Union of Law Societies, the umbrella organisation for all the local law societies in Yorkshire which represent over 8000 solicitors

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

We could not agree with your proposal unless it can be clearly demonstrated that recognised bodies and sole practices that have practising addresses other than in England and Wales would be subject to the same regulatory requirements as recognised bodies and sole practices that do have practising addresses in England and Wales and would be subject to the same levels of supervision and enforcement by the SRA. The playing field must be completely level. There must be no diminution in the level of protection given to clients particularly in relation to levels of insurance cover.

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

We agree that the current restrictions referred to in the consultation document must remain but would again stress that the playing field must be completely level and that there must be no diminution in the level of protection given to clients particularly in relation to levels of insurance cover.

12.

2a) 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?

We strongly disagree the proposal. The retention of the three year rule is essential not only for the benefit of newly qualified solicitors but also for the benefit of clients. The three year rule is intended to ensure that high standards are maintained in the profession by providing that there is a period of post qualification working under supervision.
Discussions with professional indemnity insurers indicate that cover for solicitors with less than three years post qualification experience intending to practise without supervision is likely to be prohibitively expensive.
Removal of the restriction would mean that it would be open to less competent trainees who are not offered positions by the firms with whom they have trained to simply set up their own practices immediately after qualification.

13.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

We consider the three year restriction is a tried and tested though somewhat arbitrary yardstick. We further consider that for the reasons given in the consultation paper and to give the public greater protection the three year restriction povisions should be significantly strengthened to provide that a solicitor must be able to demonstrate three years proper post qualification experience rather than simply show that the solicitor has held a practising certificate for three years post qualification.

14.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

We consider that for the protection of the public all legal services must be provided through a regulated practice and that there is no justification for treating immigration services as different from any other legal services.

15.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

We agree that claims management work should not be provided by solicitors outside a regulated firm and would strongly argue that solicitors should not be allowed to provide non-reserved services other than through regulated firms.

4. Consultation questions: Authorising individuals

16.
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 strongly disagree with the proposal. We consider it vital that to protect the brand of solicitor all solicitors should be subject to precisely the same degree of regulatory control and that clients should be able to expect precisely the same degree of regulatory protection from all solicitors.
To adopt the proposal would be to allow the creation of a two tier profession subject to different regulatory controls and offering different levels of client protection.
We doubt that the public would find it easy to distinguish between the two tiers of the profession and to differentiate between the levels of client protection offered. That cannot be in the interests of the public.

17.
6) What are your views on the policy position set out above to streamline character and suitability

requirements, and to increase the flexibility of our assessment of character and suitability?

We have no objection to the proposal to streamline character and suitability requirements and to increase the flexibility of the assesment of character and suitability provided that there is clarity what the requirements are from the outset and provided that there is no diminution in the level required to meet the character and suitability requirements.

18.

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 broadly agree with the proposed transitional arrangements but remain concerned that the proposed removal of the requirement to have practical experience in at least three areas of law would not only reduce the breadth of general legal knowledge all solictors should have (if only to recognise matters that are not within their area of expertise) but would also reduce the exposure of trainees to different areas of law to enable those trainees to make a more informed choice as to the area of law they wanted to specialise in.

19.

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

We have no objection to the proposal to expand deeming on the strict understanding that the relevant authorised persons will be subject to regulation by their own regulatory bodies.

5. Consultation questions: Specialist rules

20.

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

We consider that it would be premature to tamper with the Overseas Rules and European Cross-border Practice Rules until the future arrangements between the UK and the EU are resolved.

21.

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

We have no obection to the removal of the Property Selling Rules provided that the relevant matters, in particular the question of conflict of interest, are fully covered in the revised Handbook.

22.

11) Do you agree with our new proposed review powers?

We could only agree to the new proposed review powers if the provision restricting evidence that is allowed on appeal or review is removed.

23.

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

We could only agree to the proposed 28 day time limit if there were provisons for the period to be extended if there were reasonable grounds for the period to be extended.

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

> We agree with the proposals to the extent that they are intended to create clarity and fairness in the enforcement process. It is vital that solicitors should be able to easily understand the enforcement process and that all guidance should avoid the need to make subjective judgements. Any involvement with the enforcement process has a very considerable and stressful impact on all solicitors and their practices. Every effort must be made to make the process transparent, fair and not subject to avoidable delay. Discrepancies between the procedures adopted by the SRA and the procedures adopted by the SDT and the independence of the SDT must be respected

YOUNG LEGAL AID LAWYERS

Response to the Solicitors Regulation Authority Consultation on Looking to the future: Phase two of our Handbook reforms

20 December 2017

About Young Legal Aid Lawyers

1. Young Legal Aid Lawyers (YLAL) was formed in 2005 and has over 3,000 members. We are a group of lawyers committed to practising in those areas of law, both criminal and civil, which have traditionally been publicly funded. YLAL's members include students, paralegals, trainee solicitors, pupil barristers and qualified junior lawyers based throughout England and Wales. We believe that the provision of good quality publicly funded legal help is essential to protecting the interests of the vulnerable in society and upholding the rule of law.
2. This is our response to the Solicitors Regulation Authority (SRA) Consultation on *Looking to the future: phase two of our Handbook reforms*. This consultation concerns a number of issues, including the introduction of a common professional assessment for intending solicitors: the Solicitors Qualifying Examination (SQE), and the streamlining of the SRA's current character and suitability requirements for solicitors. We have therefore chosen to respond only to the questions which are most relevant to our membership.

Introduction

3. Within this document you will find our response to Questions 6 and 7 of the consultation which relate to reform of the character and suitability requirements for new entrants to the profession and the transitional arrangements for the roll out of the SQE.
4. YLAL continues to have concerns regarding the cost of the SQE to aspiring solicitors and other essential elements of qualifying for practise as a solicitor. In relation to this consultation we ask for clarity on the cost of the character and suitability assessment as well as clarification as to who will bear these costs.
5. At the outset YLAL would like to raise a few key issues in line with our objectives as an organisation, which are: (1) to campaign for a sustainable legal aid system which provides good quality legal help to those who could not otherwise afford to pay for it; (2) to increase social mobility and diversity within the legal aid sector; and (3) to promote the interests of new entrants and junior lawyers; to provide a network for like-minded people beginning their careers in the legal aid sector.

6. YLAL has previously stated that we are in theory supportive of a standardised assessment which will ensure high quality provision of legal services to consumers and also provide potential lawyers with a predictable route into qualifying as a solicitor. We have also stated that we support any change to the current scheme which lowers the financial burden currently on those studying the traditional route of Qualifying Law Degree (QLD) or Graduate Diploma in Law (GDL) and then the Legal Practice Course (LPC). However, we remain to be convinced that the SQE is the best way of addressing these issues.
7. YLAL has also previously voiced concerns about the effect the proposed changes to the route to qualification will have on access to the profession. To date, the SRA has failed to provide any clear information about how much it expects the SQE to cost. We reiterate our concerns regarding this lack of information and again call on the SRA to clearly outline the expected cost of the SQE and all other required tests prior to entry onto the roll of solicitors, as well as to make clear on whom the burden of these costs will fall.
8. YLAL also continues to have concerns about the possible effect of the introduction of the SQE on social mobility and diversity, particularly within the legal aid sector.
9. YLAL wishes to make clear our concerns regarding the removal of all civil legal aid subjects from the syllabus for both SQE parts 1 and 2, and particularly the SRA's decision not to include any of these areas within the contexts in65 which SQE 2 will be tested. We are concerned about this matter for a number of reasons: the failure include civil areas of law traditionally funded by legal aid tends to show a lack of respect for or interest in these areas of law, and we fear this will encourage students to move away from these areas and will therefore increase the problem of recruitment and retention in the legal aid sector. We also fear that a decision not to give any attention to these areas may provide encouragement to the government to cut legal aid provision further.
10. We also believe that social welfare law, family and all other civil legal aid areas require their own specific expertise, and we do not believe that the skills learned through practice of commercial areas are necessarily properly transferable to our often vulnerable and complex clients. We feel a failure to cover these areas in the SQE will leave new entrants wholly unprepared for a career in legal aid. We also feel that the skills gained through work experience in the sector will not be properly rewarded and recognised within the SQE in its current suggested form.
11. YLAL notes the SRA's view that the new rules relating to character and suitability requirements will allow for greater flexibility and will in turn encourage social mobility and diversity in the profession. We welcome and support the SRA's recognition of the importance of protection of the public and the public interest. Below we have provided our response to the consultation based on the information provided thus far; however, we believe that further information is required in a number of areas before a properly informed opinion can be given.
12. YLAL is concerned with ensuring that the new system does not impose any additional financial burden onto our members as they work to qualify. We are also concerned to ensure that any reforms will make the profession more, not less, accessible. We continue to support accessibility to work in the legal sector for all those with the requisite skills and knowledge, and we welcome any reforms which increase accessibility. We continue to encourage the SRA to ensure that its policy

and framework for this new system of qualification helps to improve, rather than hinder, social mobility, particularly within the legal aid sector.

13. Finally, YLAL recognises that the transitional arrangements are extremely important to employers, training providers, current students and potential aspiring solicitors alike, and we therefore encourage the SRA to provide as much detail and clarity on this area as possible at the earliest opportunity in order to allow the various interested parties above to properly plan and prepare for the changes.
14. YLAL welcomes the detailed and continuing engagement with the profession during the development of the new system for qualification; however, we ask that the SRA works towards providing more transparency in all areas of the SQE and greater detail within the proposals in order to enable respondents to properly and fully respond to all consultations on this important issue.

Question 6

What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

15. YLAL agrees that the current suitability test for new entrants to the profession is very prescriptive. We welcome the SRA's decision to introduce an element of flexibility and to judge each application "on a case by case basis".
16. YLAL welcomes the suggestion that mitigating and aggravating factors will be taken into account when assessing applications for the Suitability Test. We further welcome any increase in transparency, fairness and proportionality within the system, which we believe will benefit applicants, including many of our members.
17. YLAL also welcomes the SRA's approach to these reforms in that they have investigated equivalent assessments applied in similar professions, and we welcome their conclusion that the current system is too rigid.
18. YLAL agrees that greater flexibility may well encourage new applicants, who may previously have been prevented or discouraged from considering a career in law, to pursue a career in the legal profession. We believe that the decision maker's ability to take mitigating factors into account and also employ the consideration of the application of conditions onto practising certificates in order to manage potential regulatory risks will allow for greater diversity in the profession. We hope that eventually this will promote social mobility within the legal profession and encourage new practitioners into the legal aid sector.
19. YLAL welcomes the decision to restate the overriding principles of protection of the public and of the public interest and agree these are principles which run through all that we do as lawyers.
20. We agree with the decision to introduce a clear list of indicative events as well as to consider personal circumstances and the nature of the applicant's proposed role. We however feel unable to properly provide a response on this issue without a detailed list of the factors which will be taken into account. We further ask for clarification as to whether the list will be entirely prescriptive or whether additional factors can be taken into account at the decision maker's discretion.

21. Though we agree with the decision to create fewer hurdles for new entrants to the profession, as well as the alignment of rules for apprentices and those taking the SQE route to qualification, we do fear that a decision not to allow applicants to take the Suitability Test until they have completed their education and training means that some students may invest a great deal of time and money into training for their profession, only to find at the point of qualification that they are ineligible to practice under the character and suitability requirements.
22. As stated above, we are concerned that people will not be able to properly rely on the individual advice given at an early stage. The SRA accepts that this system will not "provide the same level of reassurance as regulatory decision". The SRA states that this method would be preferable to an early negative decision, and we accept the problems caused by these negative decisions and also recognise the fact that rehabilitation cannot be demonstrated in this situation. We further recognise the reassurance provided by the SRA that states that guidance will be given to applicants on how they may be able to show rehabilitation and gain a positive result in the Suitability Test at point of entry to the profession.
23. We ask that the SRA go further, and we would recommend that individual advice is given, in writing and that the advice be binding, e.g. should the applicant meet all of the requirements laid out within the advice, they will be deemed rehabilitated and they will receive a positive decision. We also ask that if the SRA do not believe an applicant will successfully pass the Suitability Test at any stage due to the severity of their circumstances, then this must be made clear to applicants so they do not make financial and time investments which will never result in entry to the legal profession.
24. These issues also raise concerns regarding the application of a decision maker's discretion. Discretion can help or hinder in equal measure. We feel that it is risky for students and applicants to invest in the process of qualification without any way of knowing for certain the outcome of their application. We look forward to full and detailed guidelines on the factors which will be considered and the way in which the system will be implemented. We do not feel that a potential applicant should have to rely on an "indication" when investing large amounts of time and money, and we would encourage the SRA to strengthen this part of their proposal in favour of the student applicant.
25. YLAL welcomes the rules being made available to law schools and employers. We acknowledge it will also be made available to members of the public on the website but suggest that all colleges providing Law at A Level or other secondary education levels are made aware of this guidance, as we believe that it is very important that young people understand the affect their behaviour may have have on future chances of employment at an early stage.
26. YLAL seeks more assurance in the form of clearer documents and details of how the SRA will provide an advice service for potential applicants before committing money, time and effort. Furthermore, we are concerned that the proposal does not account for disabled applicants, especially those with long-term health conditions impacting on their behaviour. We would like the SRA to provide these assurances and provide suitable guidance on this.
27. We welcome the suggestion that the process will be simplified and streamlined by removing duplication of requirements for those already regulated by the SRA or other approved regulators. We look forward to further detail on this matter.

28. YLAL also calls for clarification as to whether there will be an appeal or reconsideration process available, and if so how this will be applied and administered. We would encourage the SRA to consider the addition of such a process.

Question 7

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

29. YLAL welcomes the SRA's introduction of transitional arrangements for the introduction of the SQE. Many of our members will be affected by the changes to the routes to qualification and we welcome the provision of further information regarding the way in which the crossover from one system to another will work in practice.
30. YLAL welcomes the SRA's decision to adapt the transitional arrangements as the SQE has developed and consultation responses have been received. YLAL is broadly supportive of the proposals in respect of transitional arrangements, but is concerned that the arrangements continue to present a potential for unfairness for candidates who commence their training before the introduction of the SQE, but are unable to complete it within the 'normal' timescale. We are also concerned about the SRA's acceptance that they will not be reintroducing a minimum salary or including national minimum wage requirements within the regulations for employers and training providers.
31. YLAL supports the decision to allow candidates who complete their studies during the transitional period to gain full exemption from qualification through SQE.
32. YLAL welcomes the SRA's decision to widen the group of candidates eligible to choose to qualify under either the old system or the SQE to include those who will have embarked on or invested in their academic stage training at the time that the SQE is introduced. To do so recognises the reality that many prospective QLD students, particularly those from non-traditional backgrounds, may not be aware of the impending implementation of the SQE and may therefore commence or commit to a QLD course on the reasonable assumption that it will lead to qualification as a solicitor via the old route.
33. YLAL accepts that it is appropriate to treat apprentices as ineligible for SQE exemption, given that qualification via the apprenticeship route has always been envisaged as dependant on successful completion of the SQE.
34. YLAL notes the SRA's general position against permitting candidates to 'mix and match' between old and new qualification routes, i.e. to permit partial exemption from the SQE in recognition of pre-existing qualifications, on the basis that to do so would pose a risk to the integrity of the SQE. YLAL notes the reasons offered by the SRA by way of justification for this position, but remains concerned that it creates a potential disadvantage for those who have, at the time of the introduction of the SQE, completed a GDL/CPE but have been unable to complete the LPC. As we have pointed out previously, such individuals would face a choice between undertaking the expensive LPC, or undertaking the SQE without any credit for their existing qualifications.

35. As YLAL has made clear previously, we are concerned that the continued availability of the LPC following the introduction of the SQE may create a two-tier system with candidates and employers seeing those who have obtained an LPC as having a competitive edge over those have completed SQE. We feel that should the LPC remain available, there will be continued pressure on aspiring solicitors to undertake the prohibitively expensive LPC or risk being less likely to secure future employment. Assuming that such a hypothetical candidate elected to undertake the SQE, to deny them any recognition for their previous qualifications in respect of the SQE in such circumstances would mean their being required to invest further time in securing qualification.
36. We also note that there may be similar problems with the QLD remaining available. As has been made clear by potential employers and training providers, those with a QLD are likely to preferred over those without. It is possible that instead of saving law students money, the introduction of the SQE will simply add another cost and stage of qualification to the process. If so, this would be detrimental to social mobility, diversity and access to the profession, and would be a significant concern for YLAL.
37. YLAL supports the decision to extend the cut-off date for transitional arrangements from five years to 11 years.
38. We accept the SRA's declaration that learning from a QLD and other qualifications can be applied when preparing for the SQE, even if a candidate falls outside of the 11 year cut-off. We also accept that the period has been based on the length of time it would take for somebody to qualify if studying in the current system on a part time basis. We are however concerned that the decision may discriminate against many groups, particularly those who have had to take time out due to illness or disability, and also parents and carers.
39. YLAL welcomes the decision to continue to allow qualification via equivalent means. We do however call for much greater transparency on the equivalent means scheme: how it will be applied, criteria which must be met, and how it will be assessed. We also call for the SRA to publish clear guidance as to how that mechanism will operate to alleviate any potential unfairness, so that candidates can be clear as to their prospects of qualification.
40. We are disappointed by the SRA's decision not to include the requirement for training providers to pay the national minimum wage (NMW) to all staff in the updated regulations for training providers. We understand that the SRA wishes to allow providers to apply exemptions to NMW laws to apprentices where possible. We are concerned this will lead to training providers and employers preferring the apprenticeship route over others. We are concerned that instead of promoting social mobility and diversity in the profession this may discourage it. We are also disappointed to see this statement, which seems to us to suggest that the SRA does not intend to take any further steps to re-introduce a minimum salary for trainee solicitors. As will be shown by our updated social mobility report (to be published in early 2018), low pay is major concern for trainees and paralegals in the legal aid sector, and is contributing to problems of recruitment and retention, and lack of social mobility.

Conclusion

41. The fact that the cost of the SQE remains unclear following several consultations is still a significant cause for concern for YLAL, in particular given that it cannot be said with any certainty that aspiring solicitors will be able to pursue qualification at a lower cost than under the current route to qualification.
42. YLAL welcomes any reforms which will encourage greater social mobility and diversity in the profession, and which will broaden access to the profession for those from under-represented or disadvantaged groups.
43. YLAL welcomes the changes to the Suitability Test, which include greater flexibility and the recognition that people are capable of being rehabilitated. We ask the SRA to consider providing further detail of the requirements and mitigating and aggravating factors.
44. We encourage the SRA to consider an appeal or reconsideration process for the Suitability Test.
45. YLAL notes the SRA's commitment, in its September 2017 Impact Assessment, to provide support in the form of case studies and guidance to employers and candidates. YLAL is concerned to ensure that the SRA considers whether such support will be sufficient to overcome the administrative burdens that will be imposed during the transition period.
46. YLAL is disheartened to see the SRA's decision not to impose additional security for trainees and apprentices including the establishment of the mandatory national minimum wage for training providers or a minimum salary for trainee solicitors. We believe this may discourage aspiring solicitors from entering the profession, particularly in the underfunded and financially strained legal aid sector. This in turn will worsen social mobility within the profession, rather than improve it as the SRA has stated it intends to do.
47. As ever, YLAL supports any moves towards greater diversity in the profession, and greater protection, clarity, and transparency for aspiring and junior lawyers. However, we continue to have concerns about the transition, implementation, administration and application of the SQE.

Young Legal Aid Lawyers
December 2017
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ylalinfo@gmail.com
@YLALawyers

Looking to the future: phase two of our Handbook reforms

Response ID:77 Data

2. About you

1.
First name(s)

Paul

2.
Last name

Bennett

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Aaron & Partners LLP

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

No

13.
2a) 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?

No. The current rule is worded poorly and does not achieve the aim of ensuring recent competence by having someone with 3 years experience in practice. the requirement should be rewritten as follows: Each recognised body shall have someone "qualified to supervise" as an authorised manager. Qualified to

supervise should be defined as follows: Experience of the practice of law as demonstrated by undertaking the provision of legal advice for a minimum of 3 years within either : a) within in-house setting or b) within a recognised body authorised by the SRA in which the person qualified to supervise provided legal advice at least 50% of the time or supervised those that did.

14.

2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

When I was 3 years PQE I started a law firm having spend 5 years pre qualification in law. Additionally I had spent some years in commerce and run a successful non law firm. I had also undertaken a specialist management course whilst in commence which I relied on heavily for management and business skills and experience.
Even with this experience the challenge was stiff. In my view (personal opinion based on having done it) those without a management background or without more case experience will find it a huge challenge and this is a risk to consumers. the current rule needs to be revised to do what it is perceived to do to ensure sufficient legal experience before operating a firm.

15.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

No. Immigration clients are vulnerable and should be subject to enhanced protection.

16.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Agree

4. Consultation questions: Authorising individuals

17.

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?

No the confusion this will cause will undermine the perceived benefits. This proposal risks undermining the Solicitor brand. It is highly dangerous and like a genie once out of the bottle the effects will be uncertain and high risk. The SRA should instead focus on access to justice in other ways which do not impact on consumer protections. The theory and the reality differ and the SRA's understanding of the reputational risk to the Solicitor brand is limited. These well intentioned proposals are deeply flawed and risk the SRA's credibility as the solicitor brand. Instead of proceeding the SRA should work with the insurers to develop the chambers models to increase access to justice and replicate the Bar Council model od self employed, self insured on mutual basis. This would mean individuals and firms being treated differently to encourage cost savings but would protect consumers. The minimum terms of insurance should omit run off cover and self employed individuals should not hold client money if under the proposal above - ensuring the parity with the Bar by way of this model and use of escrow accounts. The SRA could then have far more oversight and protect the interests of consumers.

18.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

Logical and make sense.

19.

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?

Yes

20.
8) Do you agree with our proposal to expand deeming in this way?

Yes

5. Consultation questions: Specialist rules

21.
9) Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

No - the risks to consumers may be increased.

22.
10) Do you know of any unintended consequences of removing the Property Selling Rules?

No

23.
11) Do you agree with our new proposed review powers?

No - current oversight is proportionate. This is change for change sake and the risk of poor decision making is higher as proposed.

24.
12) Do you agree with the proposed 28 day time limit to lodge all requests for internal review?

Yes - it is a logical harmonisation.

6. Consultation questions: Our approach to enforcement

25.
13) Do you agree with our proposed approach to enforcement?

No. The broad picture is fine but the detail is a concern.

The proposals do not reflect the SRA's statutory duties under the Equality Act 2010 (EQ2010) concerning mental health as an issue in the profession. The enforcement approach is one dimensional and fails to address that mental health plays a part in most disciplinary matters. The enforcement approach should mirror those of health regulators with distinct processes for health and misconduct matters. This distinction would protect consumers, comply with the EQ2010 and enable the SRA to build trust and confidence within the profession.

The proposals omission of substantive mental health and physical issue impact in contrast to other regulators demonstrates the well intentioned proposals are deeply flawed and need revision.

The proposals, like the current regime, are wide open to challenge on the grounds of disability discrimination and will be challenged when the the right cases arise to rewrite the SRA's approach in my view. It is therefore appropriate for the SRA to revise its proposals to take mental and physical health into account and address the statutory obligations arising from the Legal Services Act 2007 Section 1 obligations:

"(d) protecting and promoting the interests of consumers;
....
(f) encouraging an independent, strong, diverse and effective legal profession;"

The SRA proposals are not consistent with Section 1 (f) of the LSA2007 and do not encourage a diverse profession. The health regulators have addressed the issues and balanced the consumer (read patient) issues and the health and well being of professionals.

The SRA proposals are otherwise clear but the guidance relies on the SRA applying this proportionately. As a professional regularly advising those under investigation the main concern arising is that the SRA's tendancy to over engineer and over complicate matters undermines this in practice from a consistency perspective. A training issue exists to ensure proportionate enforcement and supervision enhancements are necessary to ensure consistency.

Another concern is no other regulator charges a breach of principles and a substantive rule breach. Why does the enforcement strategy continue this practice? The High Court guidance in Chan and separately in Anderson Solicitors cases indicates the smallest number of charges so why adopt this practice?

The SRA demonstrating to the profession and public it is a fair prosecutor is essential and the proposals need to be amended to deal with the challenges outlined above.

Looking to the future: phase two of our Handbook reforms

Response ID:7 Data

2. About you

1.
First name(s)

Peter

2.
Last name

Causton

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

ProMediate (UK) Limited

9.
Please specify if you are

an in-house solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

No

13.
2a) 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?

Yes

14.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

15.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes

16.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

I do not understand the need for this restriction

4. Consultation questions: Authorising individuals

17.
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?

Yes

18.
6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

This appears to be sensible

19.
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?

Yes

20.
8) Do you agree with our proposal to expand deeming in this way?

Yes

5. Consultation questions: Specialist rules

21.
9) Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

Yes

22.
10) Do you know of any unintended consequences of removing the Property Selling Rules?

No

23.
11) Do you agree with our new proposed review powers?

Yes

24.

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

Yes

6. Consultation questions: Our approach to enforcement

25.

13) Do you agree with our proposed approach to enforcement?

Yes

Dear Sirs or Madam,

I am a PRC lawyer who is recently considering to sit for exams and I would like to express **my OBJECTION** to in paragraph 88, "Individuals who have started the QLTS assessment must have completed all parts of the QLTS by the time the SQE is introduced. Consistent with the position for QLD/CPE candidates, we are proposing that candidates, who are part way through the QLTS when the SQE is introduced, cannot have a partial exemption from the SQE."

My view is that QLTS candidates who passed the QLTS 1 (i.e MCT) should be given a chance to access to SQE 2 by the time the SQE is introduced.

The reasons are as follows:

Firstly, unlike full-time students, lawyers, as you would appreciate, are always very busy, and it is not easy for us to be granted a 2-week holiday flying all the way to London for the QLTS Part 2. Therefore, it is not uncommon for a full-time lawyer candidate to complete all the QLTS assessments in 2-3 years.

Secondly, if current proposal is adopted, all of our effort to pass the QLTS 1 would be totally meaningless if we cannot make it before September 2020, and we would have to do a MCT again.

Therefore, it makes no sense to improve the quality of legal service but waste the time and money for a group of people have strong passion to work as a UK lawyer.

Thank you for your time and consideration and I am looking forward to hear from your on next consultation.

Sincerely,
Vicki

Dear Sir/Madam

Re: SRA Consultation – 'Looking to the future: phase two of our Handbook reforms'

I refer to the Solicitors Regulation Authority ('SRA') Consultation mentioned above.

At points 1 to 4 below, I offer some personal comments and recommendations relating to the said Consultation. However, at the outset of this submission, I declare an interest. I am an Assistant Professor in the School of Law of the Cyprus Campus of the University of Central Lancashire. I have held this role since September 2015. I currently teach on a variety of undergraduate LLB Degree modules, including three modules devoted to Lawyers' Skills. In all three modules, I teach my students about the principles of ethics and professionalism, as embodied in classic books, such as *Nicomachean Ethics* by Aristotle, in relevant legislation, in the SRA's *Code of Conduct* (2011), as amended, and in case law.

From 2004 until 2015, I was a Senior Lecturer in the School of Law of the University of Hertfordshire where I taught on various undergraduate and postgraduate modules. These included an undergraduate module partly devoted to Ethics; these also included the postgraduate Legal Practice Course module devoted to Professional Conduct and Regulation.

From 2003 until 2007, I practised as a solicitor in private practice in London. Since 2007, I have been a non-practising solicitor and I have also served on the Executive Committee of the West London Law Society; from 2010 until 2011, I was honoured to serve as its elected President and I remain a Committee member to this day.

In the light of the above, I have composed this submission with the aim of giving the SRA some insights from somebody who has more than 10 years of experience of teaching ethics and professional conduct 'at the coalface' of both the LLB and the LPC.

All that being said, I emphasise that the comments which follow are purely personal. Accordingly, they should not be interpreted as the views of any organisation which I have - or have had - any relationship. My comments are mine and mine alone.

1. Introductory comments

It is disquieting that the SRA is minded to embark upon yet another radical overhaul of the regulatory regime governing the solicitors' branch of the legal profession.

Within the space of a mere ten years, the following has taken place: (i) in 2007, the Law Society's *Guide to the Professional Conduct of Solicitors* (1999) was replaced by the SRA's *Solicitors' Code of Conduct* (2007); (ii) in 2011, the SRA's *Solicitors' Code of Conduct* (2007) was replaced by the SRA's *Code of Conduct* (2011); and (iii) in 2017, the SRA has proposed replacing its *Code of Conduct* (2011), as amended, with a new regulatory regime.

It is one thing for the SRA to amend or update an existing code of conduct, as it has done from time to time since 2011; that is entirely understandable and reasonable. However, it is quite another thing for the SRA to engage in yet another radical regulatory overhaul.

As I am sure the SRA is aware, dangers may arise if any organisation regularly overhauls its policies or procedures, especially if the overhaul takes place from the top down and when there is scepticism from the bottom up. Each such overhaul is inherently capable of causing concern, confusion, disruption and, in the solicitors' branch of the legal profession,

potentially adverse consequences for solicitors and their clients, not to mention law lecturers and their law students.

As a matter of principle, I would encourage the SRA to rethink its whole approach. As the future unfolds, I would also encourage the SRA to refrain from embarking upon any future radical overhauls of regulation unless any specific changes are reasonably necessary for one specific reason or another.

Put simply, there are virtues in stability and small 'c' conservatism.

2. The SRA's proposed removal of the 'qualified to supervise' rule

To put it mildly, I am deeply disturbed that the SRA is minded to remove the long-standing 'qualified to supervise' rule. Any self-regarding professional body must have a rule of this nature built into its regulatory framework and its associated regulatory culture.

I agree with the concerns raised by the Law Society of England and Wales, as expressed in its own published response to the above Consultation, dated December 2017. That said, I set out below some personal insights of my own.

It is of the utmost importance that every trainee solicitor must learn under an experienced and suitably qualified supervisor who, in turn, has himself or herself learnt under an experienced and suitably qualified supervisor. Without an experienced and qualified supervisor and without a 'qualified to supervise' rule to guarantee the existence of such a supervisor, how is a trainee solicitor going to learn properly the art and the skills of being an effective solicitor?

As a law lecturer who has devoted much of his professional career to helping law students to bridge the wide gap between law school and legal practice, I have always worked on the assumption that all aspiring trainee solicitors will end up training in a professional legal environment where they will be supervised by and where they will learn from at least one experienced solicitor who is qualified to supervise. I am unsettled by the thought of teaching law students, some of whom may find themselves working as trainee solicitors under the wings of persons who are not subject to the existing 'qualified to supervise' rule.

If the SRA has its way and if the 'qualified to supervise' rule is removed, this may have adverse consequences for trainee solicitors and also for legal education, the mindset of law lecturers and the mindset of law students.

I invite the SRA to clarify whether it has carried out any risks assessments in relation to the proposed removal of the 'qualified to supervise' rule. If so, I will be grateful if these risk assessments may be placed into the public domain (unless they are already there in which case I will be pleased to find out where they are). I will also be pleased to receive clarification as to whether any such risk assessments covered the various issues arising from the potential impact of the removal of the 'qualified to supervise' rule upon undergraduate and postgraduate legal education.

In the meantime, I urge the SRA to reconsider its position and refrain from doing away with the existing 'qualified to supervise' rule.

3. The SRA's proposed replacement of the ten existing 'Mandatory Principles' with six new 'Principles'

Whereas SRA's *Solicitors' Code of Conduct* (2007) was built upon six 'Core Duties', the SRA's *Code of Conduct* (2011), as amended, has been built on ten 'Mandatory

Principles'. By contrast, I understand from the draft documentation published by the SRA that the SRA proposes to replace the ten existing 'Mandatory Principles' with six new 'Principles'. (See Annex 1, 'SRA Principles' at www.sra.org.uk/sra/consultations/code-conduct-consultation.page#download)

Every organisation, especially a professional body, must be built upon ethical values which are reasonably clear, credible, concise and comprehensive. In addition, each such value ought to be, as a general rule, durable and otherwise timeless. With that in mind, I invite the SRA to clarify why, within the space of only ten years or so, it has not only switched from six 'Core Duties' (in 2007) to ten 'Mandatory Principles' (in 2011) but it is now (in 2017) proposing to switch to six 'Principles'. What message is such a pattern of switching going to send to solicitors, their clients and the wider world?

As it happens, my personal view is that the ten existing Mandatory Principles are generally excellent and, subject to the comments and recommendations set out below, they ought to be retained. The ten existing Mandatory Principles provide an ethical, intellectual and regulatory framework which enables law students, trainee solicitors, qualified solicitors and others to absorb and to digest the main values and responsibilities of individual solicitors and of others who are intimately involved in the solicitors' branch of the legal profession.

The ten Mandatory Principles also provide a solid and robust foundation upon which the main body of the *Code of Conduct* (2011) has been built. Each of the existing chapters therein neatly inter-relates with one or more of the ten existing Mandatory Principles.

To quote the wording of the six proposed new 'Principles', as published by the SRA (at www.sra.org.uk/documents/sra/consultations/lttf-annex-1-principles.doc):

'You [must]:
'1. uphold the rule of law and the proper administration of justice
'2. act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons
'3. act with independence
'4. act with honesty and with integrity
5. act in a way that encourages equality, diversity and inclusion
'6. act in the best interests of each client'.

I endorse the addition of honesty alongside integrity. However, I am concerned that the principle relating to integrity has been relegated from Mandatory Principle 2 (where it currently stands) to proposed new Principle 4. This sends out the wrong message. The principle of integrity is of such enormous importance that it ought to be second or third in any list of professional principles, i.e. behind the principle or principles relating to the rule of law and the proper administration of justice.

I am likewise concerned that the six proposed 'Principles' do not include or reflect existing Mandatory Principles 5, 7, 8 and 10. Each of these existing Mandatory Principles is reproduced below and, as you will see, each relates to a major area of law or a major principle of professionalism which, in my submission, ought to figure prominently in any short-list or pre-eminent regulatory principles. To quote four Mandatory Principles (as they currently appear at www.sra.org.uk/solicitors/handbook/code/content.page) which the SRA proposes to omit from the six new 'Principles':

'You must: …

'5. provide a proper standard of service to your clients;

‘7 comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;

‘8 run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;

‘10 protect client money and assets.’

Back in 2011, Mandatory Principles 5, 7, 8 and 10 were no doubt originally included in the *SRA Code of Conduct* (2011) in the light of the then recent financial crash. From my standpoint as a law lecturer, I was pleased to see them included in 2011 as they collectively gave the ten Mandatory Principles a thematic scope and an intellectual depth missing from the six ‘Core Duties’ introduced in 2007.

The omission of Mandatory Principles 5, 7, 8 and 10 from the six new proposed ‘Principles’ has collectively rendered those ‘Principles’ thematically narrow and intellectually shallow.

Accordingly, I invite the SRA to reconsider its position.

4. A proposed new list of 12 Mandatory Principles

As indicated above, I have come to appreciate the ten Mandatory Principles in the *SRA Code of Conduct* (2011), as amended. They encapsulate many of the chief characteristics of ethics and professionalism. That said, I agree that some of the existing Mandatory Principles are open to refinement. I also hold to the view that a couple of important matters are conspicuous by their absence from the ten ‘Mandatory Principles’ as they currently exist.

One of these matters relates to the critical role of each solicitor as an officer of the court. This role ought to be highlighted, especially in view of the observations of Mr Justice Wilkie and of the Lord Chief Justice in the judgment of the High Court in *Brett v The Solicitors Regulation Authority* [2014] EWHC 2974 (Admin).

The second matter relates to the general duty of confidentiality which is subject to other duties under *inter alia* anti-money laundering law. These duties are of the utmost importance. Yet, they are not expressly reflected in any of the ten existing Mandatory Principles. In my submission, they ought to be.

In the light of the above, I set out below a suggested list of 12 Mandatory Principles which I have composed. Each of these retains, builds upon or adds to the ten existing Mandatory Principles. I invite the SRA to consider them.

‘You must:

‘**1.** uphold the rule of law;

‘**2.** uphold the proper administration of justice and, if you are a solicitor, you must also act in a manner commensurate with your professional status as an officer of the court;

‘**3.** act ethically and, thus, with honesty and with integrity;

‘**4.** act in a way that upholds public trust and confidence in the solicitors’ branch of the legal profession and in legal services provided by authorised persons;

‘**5.** act with independence;

‘**6.** act in the best interests of each client;

‘**7.** keep the affairs of each client confidential and protect personal data unless disclosure is required or permitted by law or if the client consents;

‘**8.** provide a proper standard of service to each of your clients;

‘**9.** comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;

‘**10.** run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;

‘**11.** run your business or carry out your role in the business in a way that encourages equality of opportunity, inclusion and respect for diversity; and

‘**12.** protect client money and assets.’

Closing thoughts

I hope that the above personal comments give you an insight into what I consider to be the defects, deficiencies and dangers which are inherent in the SRA’s proposed overhaul of regulation. I also hope my comments offer the SRA some food for thought as the future unfolds.

Needless to say, should the SRA require any clarification or further details, please let me know, preferably by email.

Finally, I take this opportunity to wish the staff at the SRA a Merry Christmas and a Happy New Year.

Yours faithfully

Dr Klearchos A. Kyriakides
LLB (Hons), MPhil, PhD, Solicitor (non-practising)

Dear Sir or Madam,

I am a lawyer from China who passed QLTS MCT in July and I would like to express my objection to the latest consultation on SQE in paragraph 88, “Individuals who have started the QLTS assessment must have completed all parts of the QLTS by the time the SQE is introduced. Consistent with the position for QLD/CPE candidates, we are proposing that candidates, who are part way through the QLTS when the SQE is introduced, cannot have a partial exemption from the SQE.”

My view is that QLTS candidates who passed the QLTS 1 (i.e MCT) should be given a chance to access to SQE 2 by the time the SQE is introduced. Unlike full-time students, lawyers, as you would appreciate, are always very busy, and it is not easy for us to be granted a 2-week holiday flying all the way to London for the QLTS Part 2. Therefore, it is not uncommon for a full-time lawyer candidate to complete all the QLTS assessments in 2-3 years. If current proposal is adopted, all of our effort to pass the QLTS 1 would be totally meaningless if we cannot make it before September 2020, and we would have to do a MCT again. In my opinion, it serves no purpose to improve quality of legal service but waste our time and money.

Thank you for your consideration, and I look forward to hearing your next consultation.

Yours sincerely,

Yves Yeung

Looking to the future: phase two of our Handbook reforms

Response ID:69 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes.

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

No.

13.
2a) 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?

No.

14.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

During the period of pre qualification training most trainees will lack thorough experience in many areas of practice, for example not seeing through matters from beginning to end during a 6 or 12 month seat in a department. There is no further examination to test capability, and many newly qualified solicitors will have no business acumen. Their lack of experience may also mean that they don't even realise they are not competent to deal with certain matters.

15.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

N/A

16.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

N/A

4. Consultation questions: Authorising individuals

17.
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?

No. We have major concerns about these individuals not being subject to SRA competencies. Just because they have no staff they would not be subject to the fundamental principles as set out by the SRA. In practice a self employed person could work in the areas of wills, trusts, crime, family, employment and general litigation. All these areas have clients who are vulnerable and for whom insurance cover would not redress the balance if there were negligence, and they would not have the ability to make a claim if they had received a bad service where there was no technical negligence. Clients may also be at risk of exhorbitant costs, a practice which is already seen amongst unregulated will writers who tempt clients with a seemingly cheap Will and then use hard sell techniques to get clients to sign up for very expensive packages of services they do not require.

18.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

We are happy with the policy position set out.

19.

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?

Yes.

20.

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

Yes.

5. Consultation questions: Specialist rules

21.

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

N/A

22.

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

No.

23.

11) Do you agree with our new proposed review powers?

Yes.

24.

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

Yes.

6. Consultation questions: Our approach to enforcement

25.

13) Do you agree with our proposed approach to enforcement?

> Yes, and would ask that consideration be given to taking no action where there had been an unintentional breach and where the firm are putting in place measures to avoid a recurrence of the same.

Looking to the future: phase two of our Handbook reforms

Response ID:70 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes – the proposal to allow recognised bodies or sole practitioners to have a practising address anywhere in the United Kingdom demonstrates a more flexible approach by the SRA as to who can and cannot practice law in England and Wales. It may be that as a result of this, more online legal services can be provided from locations including Northern Ireland and Scotland which will give clients more options when it comes to selecting a legal services provider. The flexibility of the change will create a more competitive environment that will cater to the changes that we are seeing in legal services through the use of technology. Having previously granted waivers to recognised bodies and sole practitioners in Northern Ireland and Scotland, it is a logical next step that the SRA opens up the scope to these jurisdictions.

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

Restricting a practising address to anywhere in the United Kingdom still provides enough scope for the SRA to monitor the entities that are practising law in England and Wales. Creating too broad of a scope would inevitably lead to challenges when it comes to monitoring professional bodies engaged in providing legal services.

The view taken on overseas practices is an accurate account of the challenges that would be faced in regulating an overseas entity. Where a firm did not have any tie with the United Kingdom or a firm that practices in England and Wales, then it may be difficult to verify and enforce action against these firms in their home jurisdiction. The nature of the legal profession requires that we all work at a certain standard with high regard for the public/customer best interests at all times and attempting to uphold the integrity of the profession across multiple jurisdictions would be a logistical and costly challenge for a UK based regulator.

It has been correctly identified that in the wake of Brexit, making a change to this rule may require further changes down the line once we have a fuller picture of what will happen. For that reason it also appropriate that the scope is not widened to overseas jurisdictions at this time.

It may be that in the future the SRA will be able to have a wider scope in place when it comes to practising addresses but this will take a lot of time to plan and possible pilot schemes to ensure any issues can be ironed out prior to full roll out.

The SRA will still retain its right to waive this rule where it sees fit that it can appropriately verify and enforce its rules and regulations. We believe that taking this as a case by case approach is the correct way to

continue with as it ensures that appropriate evidence can be obtained to demonstrate a firm's ability to comply with necessary regulations before a waiver is or is not granted.

13.

2a) 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?

No – It is accepted that removing "qualified to supervise" will mean that the new requirement will be less confusing than the current requirements. Whilst it is acknowledged that there is a need for less confusion, it is important that safeguards remain in place to ensure that an individual (e.g. a newly qualified solicitor) does not breach Rule 3.2 of the new Code of Conduct. The changes proposed do not in our view go far enough to ensure that an individual does not act outside of competence and that they comply with necessary standards when it comes to operating as a sole practice. As a minimum, if this change was to be introduced, we would also suggest some period of monitoring from the SRA on sole traders/newly established firms to ensure competence e.g. they be subject to at least one SRA audit/inspection in their first 3 years of trading and be required to submit an annual report setting out e.g. the number and details of professional indemnity insurance claims and notifications, complaints and material and non-material breaches of the Handbook.

14.

2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

The current 3 year rule is not perfect but better than the proposed change with no time served post qualification. We have taken 13 trainees though their training contracts to qualification and although all have reached a satisfactory standard for new qualifiers, they all still require supervision and support, especially in their first couple of years as an NQ. There are simply far too many mistakes made at this early stage in their careers and we therefore believe this active supervision and support for the initial years post qualification are not only important, but frankly essential, to ensure a proper standard of service and to protect the public/customers.

15.

3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes – as immigration and claims management services are subject to separate regulatory schemes, then it makes sense to have separate entities that are regulated to the necessary standards of compliance by these bodies. Attempt to integrate these regulatory regimes may become time-consuming and confusing for all those involved. It therefore makes sense to allow the OISC and CMR to continue to regulate the relevant entities under their supervision.

16.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Yes – as per the response to question 3 this ensures that there is no confusion when it comes to ensuring that there is compliance with statutory regulations and ensures all entities are held to the exact same standards.

4. Consultation questions: Authorising individuals

17.

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?

Yes to an extent – it is important as a profession we progress with the times and bring ourselves in to the

21st century. Nowadays, many people want to have the ability to work flexibly or as a self-employed individual to allow them to have more time to spend with their family for example. The prior rigid model was unsuitable for this but providing a more flexible model that is protected by safeguards will open up the profession to more individuals who would be happier to work in such a flexible manner.
It is important that safeguards are in place as already recognised in the draft rule. This ensures that the best interests of the public are at the forefront of the minds of the individual who wants to provide more flexible legal services as a self-employed solicitor and also of the SRA.
It may be important to consider the next steps in relation to this proposal such as how an individual's files would be subject to file audits, and what criteria they must satisfy in order to be able to continue practising as a self-employed solicitor. The standards must be set to a similar level of that by which an individual practising in a regular firm must hold themselves to when completing work. Consideration should also be given to how a self-employed solicitor could ensure effective compliance as they will essentially be carrying out the role of solicitor, COLP and COFA when it comes to risk management.
Also would there be any changes to the requirements to hold professional indemnity insurance at the minimum amount of £2,000,000, as sole traders are unlikely to be dealing with £2million deals. Also, if a solicitor was carrying out non reserved legal activity in a nonregulated firm they would not be required by the SRA to have PII in place. Therefore self-employed solicitors are more likely not to carry out reserved legal activity if they can do this without being regulated and having to face the costs of regulation (SRA costs and PII).
On a minor point, we do not understand the rationale behind the proposed restriction in the draft rule 1.2(b)(ii)(B) not to have any employees as e.g. the self-employed person may want to hire some support e.g. with finance, compliance, IT, administration etc

18.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

We believe that it is correct to move to a more flexible approach that is considered on a case-by-case basis as every person differs from one another. It is important to consider any mitigating factors surrounding personal circumstances as they arise and all should be treated fairly and proportionately rather than against a rigid structure.
With regards to students entering the profession, it may be better to retain the approach of being able to seek an early decision to give some comfort as to whether they would be admitted to the Roll. It would also give students the opportunity to demonstrate rehabilitative behaviour. Consider a more serious offence vs a minor offence; whilst both may be able to demonstrate rehabilitative behaviour, it may be likely that someone with a more serious offence would still receive a negative outcome after completing their professional legal studies. We think that a combination of both approaches would be better suited depending on the needs of the individuals and the issues that they may be facing that would be adverse to the character and suitability assessment. It would be unfair to allow someone to continue through professional legal studies if the outcome would still be against admission to the Roll where the severity and nature of the offence is severe enough to restrict this. Therefore it is important that the SRA does give thorough guidance on the rules, so that students can make an informed decision early on as to whether to continue with the process of becoming a solicitor and the costs involved in education and admission.
In relation to removing duplication of requirements where they have already been satisfied by another regulator, careful consideration should be given to the evidence that should be provided to demonstrate that the SRA requirements have been satisfied. Not every regulator will regulate to the same standard as the SRA. Thought should be given in relation to which regulators the SRA would be satisfied to have met character and suitability requirements of the SRA and what evidence is necessary to demonstrate this. It could be an option that the SRA set out a list of bodies it would be happy to receive evidence from to make it clear from the outset.

19.

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?

Yes – we believe that it is important to acknowledge that those who have already started on the path to qualification will have incurred cost and time when pursuing such their chosen route. Providing these individuals with the flexibility to decide on how they wish to qualify is a fair and appropriate way to deal with a change in the route to qualification. It is also pleasing that there is the opportunity to retain this flexibility if there is a reason an individual cannot qualify by the means that they had planned to. This helps to ensure fairness irrespective of the route to qualification. The cut-off date suggested is lengthy which ensures that there is a satisfactory amount of time that would allow the majority of candidates to qualify under their chosen route.

We also believe it is correct to not allow there to be a "mix and match" approach to qualifying under the current route and the SQE route. The risks set out consider a number of factors and correctly acknowledge the differences in applying through the SQE and the current route. We believe that setting standards in qualification through a "mix and match route" would be difficult and may not guarantee an appropriate standard. There is also a concern that detailing plans for standards to meet through a mixed route would be complicated, time consuming and costly as all courses would need to looked at in depth and assessed on an individual case by case basis.

Overall we believe a detailed consideration has been provided regarding the transitional period and an element of flexibility has been acknowledged that would appropriately address concerns of those who are unsure which route they would wish to qualify under.

In terms of salary for trainee solicitors, there is the National Minimum Wage and living wage provisions from Government and therefore it is no longer necessary to set a prescriptive or recommended amount of salary. The Law Society also publish a recommended minimum salary for trainees and we do not think it necessary for the SRA to go any further than this.

20.

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

Yes – this approach will help to reduce unnecessary costs and repetition in the process of authorising an individual every time that they becoming a manager or owner of an SRA authorised body. By carrying out checks on Barristers that satisfy criteria the first time they are authorised, it will again reduce unnecessary costs and repetition in the process of needing to be re-authorised each time that an individual takes up a new role.

5. Consultation questions: Specialist rules

21.

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

Yes – it is necessary that regulation of these firms continues to the same, if not a higher, standard that they are already adhering to under the SRA Overseas handbooks. For this reason, the fact that there is no substantive alteration to the content or application of these rules ensures that standards will be maintained. As the handbook changes are to streamline and reduce unnecessary duplication where possible, we believe it is correct to remove the duplication of the Council of Bars and Law Societies of Europe as firms operating in Europe are already bound by these rules. Including a simple requirement that those cross-border or in Europe must satisfy these regulations should be satisfactory in terms of streamlining the handbook whilst maintaining high standards of regulation.

22.

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

No – unaware of any unintended consequences to the removal of these rules.

23.

11) Do you agree with our new proposed review powers?

Yes – we think that it is a logical step to adopt a more consistent and clearer approach to rules in regards to the review powers of the SRA. The new rules should set out a clearer approach as to which decisions attract the right of review under the SRA rules.

24.

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

Yes – this should be sufficient enough time to lodge requests for internal review when required.

6. Consultation questions: Our approach to enforcement

25.

13) Do you agree with our proposed approach to enforcement?

Yes – it is important that a flexible and transparent approach is taken towards enforcement of the regulations that underpin the profession. The Question of Trust campaign (which sought the views of over 5000 respondents) was a great starting point in terms of helping the SRA to refine the views on regulating enforcement and has ensured that wider opinions have been sought and considered in the reviewing of enforcement procedures.

It is always necessary to ensure that whatever rules are in place that they are clear to all who must follow them. Developing case studies where there are grey areas will help firms and individuals to identify where potential breaches arise as they will be able to view these in a practical context. The SRA being open to reviewing guidance from firms and representatives shows that the SRA are playing a key role in ensuring that firms are compliant and understand the necessary enforcement regulations.

Providing a more flexible approach will ensure that firms are assisted in an appropriate manner where there is has been a risk or breach that may not be deemed to be serious. It will also ensure that more serious breaches can be focused on and mean that where necessary, appropriate action is taken.

Looking to the future: phase two of our Handbook reforms

Response ID:84 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

12.
2a) 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?

No

We share the concerns of those who consider that there must be some form of regulation beyond qualification as a solicitor and admission to the Roll, before an individual can set up as a sole practitioner, or have sole responsibility for others working within their legal business. The concerns expressed by the Solicitors Disciplinary Tribunal are well founded.

The existing Rule 12 may be confusing (both in its wording and the perception it creates).We suggest the appropriate way to address this is not to simply abolish the rule, but to rewrite it to provide effective regulation for those both seeking to practice without supervision, and those who have responsibility for supervising others. Such a rule might therefore regulate the position of those who are "Qualified to Supervise" and those who are "Qualified to Practice Unsupervised", providing the necessary safeguards to guarantee competence in both categories, whether by reference to time period, currency, competence and training.

If the effect of the current rule 12 creates a barrier to market entry by preventing any solicitor from establishing their own firm as soon as they qualify, it is a good thing. A refreshed rule should do likewise. The SRA gives no grounds for its conclusion that it "is therefore hard to justify" a rule preventing newly qualified from solicitors from immediately practising on their own.

The provisions of rule 3.2 of the new Code of Conduct (requiring competency of client service) would not provide appropriate protection for consumers. Where individuals transgress – which might be done in the misguided belief that an individual is a competent to provide the service sought by their client – the position of the consumer becomes one of remedy (be it to complain and/or seek compensation) . The role of the Regulator should be to prevent them having to seek such remedy. Likewise, rule 3.3 does not have a preventative effect from the perspective of the consumer

The SRA itself acknowledges that the SQE will not assess whether a successful candidate is competent to

own or run a business. However rigorous the SQE will be (something as yet unknown in the absence of exemplars of the levels of assessment), determining an individual's capabilities to qualify and be admitted as a Solicitor to the Roll does not equate to their capability to practice unsupervised

13.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

14.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

15.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

4. Consultation questions: Authorising individuals

16.
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?

17.
6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

We agree that there should be some flexibility in the application of clearly defined rules regarding character and suitability, in particular to remove rigidity where an individual might demonstrate aggravating or mitigating circumstances, or evidence rehabilitation following previous inappropriate character and suitability issues. Taking full account of any mitigating factors and a more nuanced and transparent view of each application would be welcomed.

However, we disagree with the proposal that character and suitability should only be assessed at the point when an individual applies for admission as a solicitor. Delaying assessment until the point of admission could result in an individual expending significant time and effort in education and training only to discover that a suitability and character issue is a bar to Admission.

We would suggest that a character and suitability assessment should be a prerequisite before any individual undertakes the SQE (and a similar parallel requirement maintained during transitional period for those about to undertake the Legal Practice Course) and then again prior to Admission

The proposed alternative of giving students "early individual advice" would not in our view, be sufficient. If the SRA is committed to reviewing the position of students concerned they have transgressed character and suitability requirements, this should be dealt with by means of a formal determination rather than informal advice. This would not commit the SRA to making a binding early negative decision, the decision could be conditional on future rehabilitation. Clearly stated conditions of what an individual must/must not do before (and indeed after) Admission would generate both the flexibility the SRA is proposing but also certainty for students

The current proposal is potentially more likely to generate work for the SRA, than if it simply imposed a character and suitability test requirement, before an individual undertakes the SQE - revisited if appropriate prior to Admission should any further issues be declared by an individual in respect of matters arising during their education and training. Indeed, such a process would hopefully also concentrate the mind of

an individual to avoid conduct which might fall foul of the character and suitability requirements

18.

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 have three comments on the proposed transitional arrangements

The first is in relation to the proposed cut-off date for those qualifying under the current regulations. The 11 year period does suggest a reasonable period of time for a student commencing a GDL or LLB in or before September 2019 (assuming introduction of the SQE in September 2020) to ultimately qualify as a Solicitor. It provides a 12 year window to complete the academic stage of training, the LPC (including through part-time study), secure and complete a Period of Recognised Training

However, we do have evidence of LPC students commencing a Training Contract some 10 years after completing the LPC. It therefore does seem quite plausible that in the future an individual commencing the academic stage of training prior to introduction of the SQE and having then progressed to an LPC, might not have qualified by 2031.

We recognise there has to be some form of long stop date, but would suggest this should contain a caveat so that in exceptional circumstances, an individual could qualify and be admitted under the existing regulations after 2031.

It would seem contrary to the fundamental tenets of LETR that an individual who has expended time, effort and cost in a process of education and training under the current regulations should have to start all over again, if they did not quite make the 2031 cut-off date. We do not agree with the SRA's suggestion that learning, training and education undertaken under the current regulations will of itself prepare an individual for SQE assessments. They would inevitably have to expend additional time and cost undertaking further training/education, particularly to prepare for SAQE Stage 1. We would not envisage there being a significant pool of individuals who would have to be considered through such an exemption provision, but we suggest they should be catered for.

Secondly, we welcome the suggestion at paragraph 82 that candidates who have completed the academic and professional stages of training under the current regulations might be able to complete qualification by undertaking Qualifying Work Experience as an alternative to a Period of Recognised Training, through the current Equivalent Means route to qualification; or through the possibility that an alternative to PRT would be QWE plus SQE Stage 2.

However, we consider there should be greater flexibility, and the SRA should not maintain its current position that students who have undertaken and LLB/GDL plus LPC could not then qualify having undertaken more flexible Qualifying Work Experience. It seems to us that more flexible QWE is entirely at one with the underlying tenets of LETR. If the SRA is satisfied that more flexible QWE provides a means of workplace experience which is as resilient (if not more) and more flexible than the current arrangement, then this should be an opportunity
available to all ; and not just those who go through the SQE route

The SRA's rationale for not relaxing this approach includes reliance/assumptions on an individual undertaking Stage 2 SQE at the end of their period of QWE.

The level at which Stage 2 assessments will be set is not yet known (including whether the assessment of legal skills will be any more rigorous/demanding than currently required of students undertaking the LPC). However, students may wish to undertake and pass Stage 2 and/or employers may require this before an individual commences their period of QWE – in order to have training and demonstrate competencies of the skills required to undertake QWE. One of the stated concerns about SQE Stage 1 is the limited

assessment of skills, and the possibility that students undertaking it may have limited their legal education to focus on what is necessary to pass SQE 1, and not focus on the skills which will be required in practice (as is currently provided by the LPC). Moreover, individuals who undertake QWE in more atypical environments (such as pro bono/law clinics) are unlikely to have done so in the practice context currently stipulated as a requirement for Stage 2

Finally, para 90 of the consultation document references clarification of the SRA's powers to authorise and monitor education and training providers. Mindful that the SRA does not intend to authorise/regulate any provider of education/training to prepare candidates for the SQE, we were not sure what this referenced

19.

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

5. Consultation questions: Specialist rules

20.

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

21.

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

22.

11) Do you agree with our new proposed review powers?

23.

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

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

Looking to the future: phase two of our Handbook reforms

Response ID:86 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

13.
2a) 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?

No - We do not agree with the complete removal of the 'qualified to supervise' rule. We consider that the current three year requirement is a more suitable approach than a complete removal of the rule.
It should however be recognised that whatever the prescribed time limit, applicants will inevitably obtain varying levels of experience – some gaining far greater knowledge than others. It seems that instead of imposing a prescriptive time requirement, the assessment of whether somebody is deemed 'qualified to supervised' should be based upon a measurement of suitability and competency.
At present, the current rule requires 'attendance at or participation in any course(s), or programme(s) of learning, on management skills involving attendance or participation for a minimum of 12 hours'. The courses undertaken are therefore varied so introducing a centralised course would ensure consistency in competency/ understanding of regulatory requirements in those who are practising as sole practitioners or setting up new firms.

14.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

Removing this restriction could mean that a NQ solicitor may have only had 6 months experience in any one area of law before setting up a sole practice and even where training is thorough, may not have had an in depth exposure to the application of regulatory requirements.
For example, it will often be the case that client money is largely managed by a separate finance department. We, as a primarily LEI funded law firm do not generally have exposure to privately paying clients and the management of client money.
Additionally, removing this requirement could result in ABS' functioning without a solicitor within the management structure which seems inconsistent with the requirements of those law firms who have a more 'traditional' structure.

15.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

16.

4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

4. Consultation questions: Authorising individuals

17.

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?

18.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

It is unclear how the process will be streamlined. It is arguable that creating a more flexible approach which determines suitability on a case by case basis will make the process less efficient and more difficult for applicants to understand the process. This could easily lead to inconsistent outcomes.

Students will need to be made aware of the professional ethics line in order to obtain adequate information as regards to the suitability requirements. We would be concerned that not enough will be done to bring this guidance to the attention of the student meaning that time and costs could be incurred for the SQE with no real prospect of admission.

Whilst flexibility is advantageous for those who would previously have been denied admission under the rigid suitability requirements, the proposed new approach will put the burden on the law schools and employers to cascade the information to applicants and provide advice. Without prescriptive guidelines, employers may feel it necessary to carry out their own checks to ensure that they do not invest in an unsuitable candidate.

We consider that a definitive answer as to character and suitability requirements should be provided prior to starting the Recognised Period of Training in order to provide certainty to the employer and trainee.

19.

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?

20.

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

5. Consultation questions: Specialist rules

21.

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

22.

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

23.

11) Do you agree with our new proposed review powers?

24.

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

6. Consultation questions: Our approach to enforcement

25.

13) Do you agree with our proposed approach to enforcement?

Looking to the future: phase two of our Handbook reforms

Response ID:93 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

No issues to raise. Broadly supportive.

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

No issues to raise. Broadly supportive.

13.
2a) 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?

No issues to raise. Broadly supportive.

14.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

N/A.

15.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

No issues to raise. Broadly supportive.

16.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

No issues to raise. Broadly supportive.

4. Consultation questions: Authorising individuals

17.
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?

No issues to raise. Broadly supportive.

18.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

No issues to raise. Broadly supportive.

19.

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?

No issues to raise. Broadly supportive.

20.

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

No issues to raise. Broadly supportive.

5. Consultation questions: Specialist rules

21.

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

No issues to raise. Broadly supportive.

22.

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

No issues to raise.

23.

11) Do you agree with our new proposed review powers?

No issues to raise.

24.

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

No issues to raise.

6. Consultation questions: Our approach to enforcement

25.

13) Do you agree with our proposed approach to enforcement?

No issues to raise.

Looking to the future: phase two of our Handbook reforms

Response ID:99 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

No

13.
2a) 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?

No - this is an important safeguard. We feel that, particularly in relation to elderly client law within firms, the work of newly qualified solicitors should be supervised.

14.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

For our staff who deal with older and vulnerable clients, there are individuals within the firm who have experience in supervising newly qualified solicitors specializing in elderly client matters such as certificates of capacity for Lasting Powers of Attorney. The evidence of the need for the post-qualification restriction is highlighted regularly to our staff as they supervise work and correct advice that may be given, or deal with complaints - examples can be made available,if required. There can also be issues of undue influence or duress when making a Will, when supervision is definitely required. We feel that this type of supervision is required for a minimum of 3 years. Those who have been qualified for less time are often less capable of standing up to family members and others who are responsible for duress.

15.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

I have no knowledge of this.

16.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

As above - not applicable

4. Consultation questions: Authorising individuals

17.

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?

No - we feel that there needs to be a restriction of at least 5 years PQE and an assessment of competency before this would be allowed.

18.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

I don't have a strong view on this.

19.

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?

I welcome any provision which strengthens the training and associated competency of any solicitors entering the profession.

20.

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

So long as the person is authorised initially, then any future change to the person's circumstances without the need for further authorisation, would be welcome.

5. Consultation questions: Specialist rules

21.

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

Not applicable to Bonnetts

22.

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

No

23.

11) Do you agree with our new proposed review powers?

Yes

24.

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

Yes

6. Consultation questions: Our approach to enforcement

25.

13) Do you agree with our proposed approach to enforcement?

Yes, providing it is not biased too far in favour of clients.

Looking to the future: phase two of our Handbook reforms

Response ID:125 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

(a) We agree the proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK. We have taken into account the fact that both Northern Ireland and Scotland have their own regulatory bodies which the SRA will either have, or be able to obtain, a memorandum of understanding with, and both countries are geographically close enough to not warrant a disproportionate increase in regulatory costs for the profession.

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

(b) We believe the practising address restriction should not currently be expanded outside of the UK for the reasons detailed in (a) above

13.
2a) 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?

We agree that the current rule does not provide any guarantee of competence.

However, if the rule is removed, there is a risk that a newly qualified solicitor could set up a practice on their own and they will not have either the requisite legal or business skills to manage their own practice. This could in turn lead to risks to consumers and damage the reputation of the profession. As the SRA will have the power to impose a condition on a practising certificate when the first practising certificate is issued, we accept this may negate some of the risk identified above.

It will therefore be for the SRA to demonstrate to the profession that its authorisation process is robust.

14.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

15.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

We agree with your proposal.

16.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

We agree with your proposal.

4. Consultation questions: Authorising individuals

17.
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 agree with your proposal, subject to the stated safeguards.

18.
6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

We agree with the proposal to require assessment of character and suitability at the point individuals apply for admission as a solicitor. We also agree that the assessment should allow for a common sense approach to be taken.

19.
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 agree with your proposed transitional arrangements.

20.
8) Do you agree with our proposal to expand deeming in this way?

We agree with your proposal to expand deeming.

5. Consultation questions: Specialist rules

21.
9) Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

On the basis that the proposed changes do not substantively alter the content or application of the current Overseas Practice Rules we are content with the proposals to streamline them. We also agree with the proposal that a requirement be included that the CCBE Code be complied with.

22.
10) Do you know of any unintended consequences of removing the Property Selling Rules?

We are not aware of any unintended consequences.

23.
11) Do you agree with our new proposed review powers?

We agree with your proposed review powers.

However, we do not agree with the proposal that restricts the addition of further evidence in relation to any review or appeal. If the evidence is relevant, it should be able to be considered at any stage in the process whether initially or as part of a review.

24.
12) Do you agree with the proposed 28 day time limit to lodge all requests for internal review?

We agree with your proposal that a 28 day limit to lodge all requests for internal review is sensible. Although we suggest it should include the discretion to extend this period by agreement in certain circumstances, for example, where complex issues are involved.

6. Consultation questions: Our approach to enforcement

25.

13) Do you agree with our proposed approach to enforcement?

The proposed Enforcement Strategy is detailed and appears proportionate in its approach. Our remaining concern, raised previously in our response to Phase 1 of your Consultation, is how an individual solicitor working in a non-regulated entity will be effectively regulated.

On p8 of the Enforcement Strategy, it refers to "…part of being fair and proportionate is ensuring that those within an organisation, with real control and influence over the situation, are held accountable. The context in which professionals work, the culture of an organisation and pressure from peers and managers, is likely to have significant impact on their actions and decisions."

We agree with this statement and it therefore raises concerns that a relatively inexperienced solicitor could work in a non-regulated business where the business may have breached conduct rules, and by implication as the SRA can only regulate the solicitor, any action can only be taken against the solicitor and not the unregulated business. This could potentially result in disproportionate regulatory action being taken against the solicitor while leaving that business free to continue any unethical practice which may have a detrimental impact on consumers of non-reserved legal activities.

We note the SRA have taken on board feedback and changed requirements so that solicitors will be under a duty at the outset of a retainer to tell clients they will not have the same protections as they would with a regulated entity. We feel this is a positive step to try to protect client's interests.

Looking to the future: phase two of our Handbook reforms

Response ID:15 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

I do not see why there is a need to restrict the addresses to the UK. You give two reasons in the paper - checking suitability and enforcement. I agree that it will be difficult to make checks in some countries but this is not universal, so you could leave yourselves with a discretion - and place the burden on applicants to provide suitable verifications. I have practice from France for the past 8 years and as an English Solicitor I assume you would accept my suitability. If I formed a firm here run by English solicitors I do not see where your checking problem would arise. Similarly on the question of enforcement. The main deterrent form a solicitor's point of view is the risk of disciplinary procedures which might affect his right to practice. This applies wherever the solicitor lives. You may have an issue about enforcement of fines and costs orders, but like other debts these can be enforced in most likely locations. If you had a serious concern you could avoid particular countries.

13.
2a) 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?

I disagree. I have been practicing in a small ABS where I was the COLP and COFA. I took the job seriously of course, but although my partner who was not an English solicitor (in fact did not hold a legal qualification) complied with requirements whenever I explained these to him, I do not think it would have worked without an English solicitor to act as the enforcer. It may be OK with the giant ABS's who run as businesses and will have professional compliance officers, but even there I have my doubts. Businessmen are businessmen and they do not work to the same professional standards as solicitors are used to doing.

14.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

My comment is initially that there must be a qualified to supervise person who is a solicitor in every practice. I would not feel so strongly about your reducing the qualifying period in suitable cases. But the sort of situation I have described in 2(a) requires considerable maturity and gravitas. So I do not believe that one size fits all.

15.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide

immigration services outside of LSA or OISC-authorised firms?

16.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

4. Consultation questions: Authorising individuals

17.
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?

Yes. But the elephant in the room is PI insurance. Under present conditions the costs is prohibitive for people who might want to operate like this. You would need to rethink the PI requirements.
I also think you need to be careful about the distinction between reserved and non reserved legal services. The public has no idea of what you are talking about. For example I do commercial work and arbitration, none of which is reserved, but for which many people want a qualified solicitor. There are many other examples. The present rule which requires an enrolled solicitor who works within a firm of solicitors to hold a current practicing certificate presumably recognises this. I'm not clear whether you are leading to the situation where an enrolled solicitor without a practicing certificate could hold himself out as a solicitor so long as he does only non-reserved work (or at least says he does).

Some of your discussion does not make sense to me. The new style firms (like Gunnercooke) do effectively work as chambers with independent practitioners operating under their brandname. I don't see the advantage of allowing individual self-employed solicitors to band together like counsel's chambers. The public will not understand (note how often Barristers' Chambers are called "firms" in the news media).

Finally I cannot see why such professionals, if allowed, should not be entitled to work through service companies. This is often a good way of managing liability and tax. I don't see any distinction between sole practitioners and whatever the new individuals will be called in this respect. (what will they be called? It must not be something which confuses potential clients)

18.
6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

I'm all in favour of flexibility, but it relies on the SRA having top quality staff whose discretion can be relied on. I doubt whether you will save money by doing this. Probably the contrary.

19.
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?

20.
8) Do you agree with our proposal to expand deeming in this way?

5. Consultation questions: Specialist rules

21.
9) Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

22.

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

23.

11) Do you agree with our new proposed review powers?

24.

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

6. Consultation questions: Our approach to enforcement

25.

13) Do you agree with our proposed approach to enforcement?

I don't think that it brings clarity. The mere fact that you have develop case histories to explain it shows that. Once the rules degenerate to a level of generality there is too much discretion in the enforcement body. I don't trust anyone with these powers including the SRA. There is no way that you can maintain a consistently high quality level of enforcement discretion.

Looking to the future: phase two of our Handbook reforms

Response ID:25 Data

2. About you

7.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

8.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

9.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

No

10.
2a) 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?

No. Of course someone has to be qualified to supervise. To suggest otherwise is insane

11.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

Over thirty years experience. Newly qualified solicitors simply don't have the experience to run a firm safely. Three years minimum

12.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

No thoughts on that

13.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Agree

4. Consultation questions: Authorising individuals

14.
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?

In the same way sole practitioners do now but not otherwise

15.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

Don't water it down. The profession is already filling up with spies so don't make it even worse. Once upon a time you could trust another solicitor but not any longer

16.

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?

No idea

17.

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

No

5. Consultation questions: Specialist rules

18.

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

No

19.

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

No. Good idea

20.

11) Do you agree with our new proposed review powers?

No

21.

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

No

6. Consultation questions: Our approach to enforcement

22.

13) Do you agree with our proposed approach to enforcement?

No

Looking to the future: phase two of our Handbook reforms

Response ID:42 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

13.
2a) 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?

Yes

14.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

15.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes

16.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Yes

4. Consultation questions: Authorising individuals

17.
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?

NO

18.
6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

I agree

19.

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?

Yes

20.

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

Yes

5. Consultation questions: Specialist rules

21.

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

Yes

22.

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

No

23.

11) Do you agree with our new proposed review powers?

Yes

24.

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

Yes

6. Consultation questions: Our approach to enforcement

25.

13) Do you agree with our proposed approach to enforcement?

Yes

Looking to the future: phase two of our Handbook reforms

Response ID:45 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

No

13.
2a) 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?

No

14.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

15.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes

16.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Yes

4. Consultation questions: Authorising individuals

17.
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?

Yes

18.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

This is a sensible proposal that would allow individual solicitors greater freedom to innovate and adapt to market changes without putting the general public at greater risk.

19.

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?

Yes

20.

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

No

5. Consultation questions: Specialist rules

21.

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

No opinion

22.

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

No

23.

11) Do you agree with our new proposed review powers?

yes

24.

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

yes

6. Consultation questions: Our approach to enforcement

25.

13) Do you agree with our proposed approach to enforcement?

Would need more information to have an opinion

Looking to the future: phase two of our Handbook reforms

Response ID:54 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

13.
2a) 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?

14.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

15.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

16.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

4. Consultation questions: Authorising individuals

17.
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?

Ultimately, the status quo will be supported by traditional firms who wish to scupper innovation and restrict access to the market. I did not respond to the initial consultation, but I do wonder whether the SRA has received adequate engagement from the self-employed market. Is it not the case that those who are currently operating on this basis - and there are many "consultants" operating on the margins of the current rules - would be unlikely to draw attention to a practice which may be deemed unacceptable?

If the SRA wishes to be innovative, it should take industry establishment feedback on innovative matters with a pinch of salt. That being said, my feedback on the stated safeguards are as follows:

1. With regards to 1.2 (b) (ii) (A) & (B): Many organisations will not engage with individuals on a sole trader basis, and may insist on the existence of a limited company. In some instances, organisations may insist that sole traders are engaged via an appointed employment agency. In any event, where the individual has appropriate insurances and does not have employees, what is the purpose of restricting the trading entity other than to restrict entry to the legal services market?

2. With regards to 1.2 (b) (ii) (C): There may be confusion here with regards to the definition of direct engagement. What would indirect engagement look like? Would an instruction via a third party online platform/marketplace be considered to be direct or indirect?

3. With regards to 1.2 (b) (ii) (D): Please consider the concept of a Practicing Address for this area of the legal market. Many will work from home. Many may wish to spend a portion of their time abroad.

18.
6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

19.
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?

20.
8) Do you agree with our proposal to expand deeming in this way?

5. Consultation questions: Specialist rules

21.
9) Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

22.
10) Do you know of any unintended consequences of removing the Property Selling Rules?

23.
11) Do you agree with our new proposed review powers?

24.
12) Do you agree with the proposed 28 day time limit to lodge all requests for internal review?

6. Consultation questions: Our approach to enforcement

25.
13) Do you agree with our proposed approach to enforcement?

Looking to the future: phase two of our Handbook reforms

Response ID:60 Data

2. About you

8.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

9.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

No comment.

10.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

No comment.

11.
2a) 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?

Yes.

12.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

N/A.

13.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes.

14.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

No. The proposal unfairly restricts solicitors in the market particularly as against their non-qualified rivals.

4. Consultation questions: Authorising individuals

15.
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?

Yes.

16.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

It isn't clear from the SRA Consultation page on 'phase 2 handbook reform' if the above document (downloadable in PDF) constitutes the proposed new form of the Character and Suitability Rules and whether there is further explanatory material. I presume that the above document does constitute the proposed new form of the Character and Suitability Rules and that there is no further explanatory material. I make the following observations on that basis:

'Local warning' – no definition provided and unlike 'final warning' does not have a commonly understood or statutory meaning

Exactly what is it that constitutes a 'local warning'? This must be clearly stated in the rules.

Neither the Metropolitan police nor the SRA itself has provided guidance in response to enquiry. In contemplation of this, my response to proposals, two written enquiries have been made of the SRA and neither has been responded to in many months (both have been acknowledged as received). Lack of definition causes confusion, potentially distress to applicants seeking admission (or embarking upon a course of legal studies with a view to the profession), and results in a wholly subjective approach to disclosure - one which the SRA should be keen to avoid.

A Google search of the phrase "local warning" reveals that the SRA is the only entry to use it in a penalties context.

The phrase is not used by DBS and is not understood by them. When one completes a DBS application form the reference to 'warning' given in that form is to a 'final warning' only.

The SRA must take urgent steps to address this issue.

Incorrect terminology

At 1.3 The handbook refers to 'the criminal findings and examples of misconduct set out in rules 2 and 3 below'. Rule 2 then refers to 'Criminal findings'. Further inappropriate references to 'Criminal findings' are made.

Only a court of law (or certain tribunals) can make criminal findings, the police cannot, and yet many matters which do not constitute a criminal finding are bound up by the SRA under such headings with those that do. The SRA must take more care with the terminology used and its impact.

Requirement of disclosure of matters which do not require evidence, conviction, or admission of guilt etc.

The requirements are not in line with admission requirements for like admissions in other jurisdictions and not in line with the requirements for admission to the Bar.

The SRA has not provided clear reasons for its inclusion of such matters or of the usefulness for such disclosure to its assessment.

These requirements open the SRA to claims (likely to be successful) that it has taken account of matters in respect of determinations surrounding an individual without lawful entitlement to do so.
The SRA must not consider matters which are extra-judicial and at the whim of a police officer. The SRA seems to have a much higher, and misplaced, regard for police integrity than is warranted.

Considering 'a Penalty Notice for Disorder' would significantly and disproportionately impact upon the BME community.

A Penalty Notice for Disorder requires no charge; is wholly extra-judicial; requires no evidence – not even a complaint; requires no proof or admission of guilt; stands on police file whether an objection and/or evidence to the contrary is provided to the police; and is made on subjective grounds. By way of example, a junior officer may issue one in instances where a more senior officer would not. How can such disclosure be of lawful use to the SRA in its determination of suitability to practice?

A definition of local warning is not given (see above) however, to the best of my knowledge any warning other than a 'final warning' requires no charge; is wholly extra-judicial; requires no evidence – not even a complaint; requires no proof or admission of guilt; stands on police file whether an objection and/or evidence to the contrary is provided to the police; and is made on subjective grounds. By way of example, a junior officer may issue one in instances where a more senior one would not. How can such disclosure be of lawful use to the SRA in its determination of suitability to practice?

'One specific example is where you are charged with, or arrested in relation, to a criminal offence. You must then inform the SRA within seven days if you are committed to prison in
civil or criminal proceedings, or are charged with or convicted of a criminal offence. You must also inform us about the outcome of the matter.'

If an individual does not need to report to the SRA if she is arrested in relation to an alleged offence, then why include the part highlighted yellow? It serves only to confuse matters and is superfluous.

'Where a criminal conviction, warning, simple caution, Penalty Notice for Disorder (PND) and/or inclusion on the Violent and Sex Offender Register has been disclosed to us, we will not look behind the decision made or any court finding. However, we will take into account any material provided, such as sentencing remarks and any other independent information, where relevant.'

Reference to a 'warning' is given here. Does the SRA refer to a 'final warning' or to a 'local warning' or to both (and note that no definition for the latter has been provided generally)?

If intended to include a 'local warning', then the SRA must look at the decision made behind it for the reasons stated above and must not state that it will not do so – such a statement is profoundly concerning and exposes the SRA to claims, most likely successful, of improper assessment.

'Questions we ask about convictions or cautions will, therefore, exclude a protected conviction or caution and failure to disclose will not be considered to amount to evidence of dishonest behaviour.'

If the SRA will exclude matters which necessarily include proven and/or admission of guilt it is perverse that it imposes a higher standard in respect of matters which do not require proven and/or admission of guilt.

I infer from the SRA's 'Useful Information – Criminal Findings' (again the wrong terminology is used) that even if a Penalty Notice for Disorder or local warning occurred 2 years or more ago that it is still disclosable to the SRA even though a caution, which requires admission of guilt, is not. The SRA must understand the insanity of its position and work to remedy it.

The exceptions in the Exceptions Order are prescriptive in respect of matters which constitute convictions and the exceptions do not expressly extend to matters which do not constitute convictions. This is because the legislators did not contemplate that affected individuals would be required to disclose matters which do not constitute convictions.

The SRA should, of its own volition, act in the spirit of the Exceptions Order, and all relevant legislation surrounding disclosure of convictions, and state in the Assessment of Character and Suitability Rules that Penalty Notice for Disorder and all warnings should be treated as protected convictions (if they satisfy the limitation periods).

17.

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?

No comment

18.

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

No comment.

5. Consultation questions: Specialist rules

19.

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

No.

20.

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

No.

21.

11) Do you agree with our new proposed review powers?

No.

22.

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

No comment.

6. Consultation questions: Our approach to enforcement

23.

13) Do you agree with our proposed approach to enforcement?

No.

Looking to the future: phase two of our Handbook reforms

Response ID:62 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

10.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes.

11.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

Yes.

12.
2a) 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?

Yes

13.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

14.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes.

15.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Yes.

4. Consultation questions: Authorising individuals

16.
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?

Yes.

17.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

There is a serious discrimination under current proposal that there is not even a short cut-off period for QLTS candidates who are parting way through the QLTS (i.e. MCT). I suggest at least set up a cut-off period for 5 years for those who have passed MCT to continue to take OSCE.

18.

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?

No.There is a serious discrimination under current proposal that there is not even a short cut-off period for QLTS candidates who are parting way through the QLTS (i.e. MCT). I suggest at least set up a cut-off period for 5 years for those who have passed MCT to continue to take OSCE.

19.

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

No.

5. Consultation questions: Specialist rules

20.

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

Yes.

21.

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

So far no.

22.

11) Do you agree with our new proposed review powers?

Yes.

23.

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

Yes.

6. Consultation questions: Our approach to enforcement

24.

13) Do you agree with our proposed approach to enforcement?

Yes.

Looking to the future: phase two of our Handbook reforms

Response ID:79 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

No

13.
2a) 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?

No.
Nothing prevents a newly qualified solicitor from employing a 3+ PQE solicitor, even on a part-time basis and.or as a consultant, if the newly qualified solicitor intends to practice as a sole practitioner or as a limited company.

14.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

I set up my practice [limited company] as a newly qualified solicitor in 2009 and employed 2 solicitors with 4+ PQE. Getting PI insurance could not have been possible otherwise, and this may be the case if there is no post-qualification restriction. That said, I had much more management experience due to extensive prior training I took than the 2 employees, but still needed them to "tick the boxes". Therefore, your proposal is acceptable to me, but insurers may need to have at least 1 solicitor-manager to give PII

15.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes

16.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Yes

4. Consultation questions: Authorising individuals

17.

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?

Yes

18.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

The SRA should save on costs and take no action [other than a warning/advisory note] in a case such as this: one-off lapse in judgement by a solicitor that have nothing to do with client work or fitness to practice [e.g. a brawl leading to contact with the police/ criminal justice system/ non-custodial sentence]

19.

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?

Yes

20.

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

Yes

5. Consultation questions: Specialist rules

21.

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

Yes

22.

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

No

23.

11) Do you agree with our new proposed review powers?

No comment

24.

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

No comment

6. Consultation questions: Our approach to enforcement

25.

13) Do you agree with our proposed approach to enforcement?

Yes.
The SRA need not take action [other than an advisory letter if necessary] in conduct of solicitors that have noting to do with client work, honesty or fitness to practice. An example is one-off lapse of judgement

> leading to a low level domestic brawl leading to a brush with the criminal justice system.

Looking to the future: phase two of our Handbook reforms

Response ID:98 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

yes

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

no

13.
2a) 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?

no

14.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

I think experience is needed

15.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

dont know

16.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

dont know

4. Consultation questions: Authorising individuals

17.
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?

No - I think that there needs to be a restriction of at least 5 years PQE and an assessment of competency

before this would be allowed.

18.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

think they should remain

19.

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?

20.

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

So long as the person is authorized initially, then any future change to the person's circumstances without the need for further authorization, would be welcomed as it cuts down on bureaucracy.

5. Consultation questions: Specialist rules

21.

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

22.

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

23.

11) Do you agree with our new proposed review powers?

yes

24.

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

yes

6. Consultation questions: Our approach to enforcement

25.

13) Do you agree with our proposed approach to enforcement?

Looking to the future: phase two of our Handbook reforms

Response ID:100 Data

2. About you

8.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

9.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

No

10.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

You are poor at regulation in the UK -it is hard to see why you think you would be capable of scrutinising foreign registered law firms.....

11.
2a) 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?

No. Newspapers are edited by journalists. IT companies are headed up by people who know about IT. There is no engineering company in this country that does not have as its CEO a qualified engineer. De professionalising the management of law would be very bad indeed for clients/consumers/customers. The idea of the free standing non qualified manager is a cult and a chimera.

12.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

People need to do a job for a while and get good at it before they should be allowed to set up shop and masquerade as having expertise. It is especially obvious that that ought to apply to professional jobs. It is obvious too that to manage something it helps to know something abut the job - other than in certain very limited respects. De professionalization is something lawyers don't like but that isn't where I am coming from; it bad for clients/consumers/customers. That is where I am coming from.

13.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes.

14.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

No. No qualified solicitors should be able to provided claims management services in any context.

4. Consultation questions: Authorising individuals

15.

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?

No - your proposed safeguard will not protect clients/consumers/customers.

16.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

They are so woolly I cannot follow what you are getting at.

17.

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?

No - 11 years! Get real.

18.

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

No.

5. Consultation questions: Specialist rules

19.

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

No.

20.

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

No.

21.

11) Do you agree with our new proposed review powers?

No.

22.

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

No.

6. Consultation questions: Our approach to enforcement

23.

13) Do you agree with our proposed approach to enforcement?

No.

Looking to the future: phase two of our Handbook reforms

Response ID:131 Data

2. About you

10.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions: Authorising firms

11.
1a) Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Yes

12.
1b) Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

.

13.
2a) 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?

No

14.
2b) If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

As a Training Principal for over a decade, and a partner supervising junior lawyers of various levels of PQE for considerably longer, it has always been obvious that a newly qualified solicitor is no more fit to practice unsupervised than a newly qualified driver is fit to drive a high performance car at speed on the roads. Both (always with the odd, very rare, exception) are a danger to the public, not least because of the surge of confidence that the mere passing of a test can bring. There is probably no one size fits all period, but 3 years is not excessive. The 3 years should be time spent in supervised practice (ie not mere existence without practising) within the past 5 years.

15.
3) Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Yes

16.
4) 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-authorised firms (or equivalent)? If you disagree, please explain your reasons why.

Yes

4. Consultation questions: Authorising individuals

17.

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?

No. The safeguards will not safeguard clients who do not understand the various nuances proposed.

18.

6) What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

In general I support the proposals - again based on experience of dealing with trainees who have had some misguided moments at school or university. However, I think the SRA will need to give them more of an indicative steer. It is not fair to encourage young persons to spend lots of time and money qualifying if they are very unlikely to be accepted as solicitors. Equally, it is wrong to discourage those who are likely, all being well, from qualifying.

19.

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?

Yes

20.

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

Yes

5. Consultation questions: Specialist rules

21.

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

Yes

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.

23.

11) Do you agree with our new proposed review powers?

No

24.

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

In my view the time is much too short, given my experience of dealing with often lengthy and delayed SRA submissions which require complex responses much too quickly

6. Consultation questions: Our approach to enforcement

25.

13) Do you agree with our proposed approach to enforcement?

> Cautiously