

SRA BOARD

21 January 2020

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*This paper will be published***Policy development process****Purpose**

- 1 This paper sets out the proposed policy development process and how we will engage with the Board on matters of policy. The Board is asked to agree that we apply this approach to our workplan for 2020.

Recommendation

- 2 The Board is asked to agree the proposed approach to policy development.

If you have any questions about this paper please contact: Chris Handford, Director of Regulatory Policy, chris.handford@sra.org.uk

Equality, Diversity and Inclusion considerations

Consideration	Paragraph nos
The proposed policy process puts a focus on evidence-based policy, expert input and stakeholder engagement. We will consider EDI through each of these categories.	10, 12 - 17
EDI considerations will be prominent in all policy workstreams, which will be impact assessed, and in the reporting to the Board relating to them.	12, 19 - 22
EDI impacts form a key strand of our policy monitoring and evaluation work.	29

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**Policy development process****Background**

- 3 Our aim is to ensure, and to provide assurance to the Board, that policy development at the SRA is robust, evidence-based, informed by the views of relevant external and internal stakeholders, and is focused on the organisation's strategic objectives. The development process therefore needs to provide for:
- Appropriate Board oversight and engagement in policy development, to include setting strategy, agreeing the major policy workstreams, and scrutinising progress at key stages of major policy streams
 - Mechanisms to ensure appropriate external expertise and input into the policy development process
 - Detailed development work and drafting, including minor and "business as usual" policy decisions being taken by the Executive

The policy development process and governance

- 4 Our proposed process is designed to give appropriate Board oversight of the policy development process, whilst empowering the executive to respond to evolving risks and develop policy in less significant areas, escalating to the Board as appropriate. There are four categories of policy work:
- There is day to day operational policy that is directed by the Executive and is not at a level that requires specific Board input or oversight. This might include for example:
 - i. responding to queries around interpreting particular standards and regulations or applying our enforcement strategy
 - ii. responding to external consultations that do not raise strategic questions for the SRA
 - iii. responding to queries or requests for assistance from other regulators, ombudsmen, government departments etc.
 - There is operational policy work that is directed by the Executive and reported to the Board due to its profile, strategic significance or resource implications. This will usually be through the Chief Executive's Board update. For example, our work to implement the 5th Money Laundering Directive and our wider AML supervisory work.
 - There is strategically important and wide impacting work, where the Board will formally agree to start the project and make final decisions. This will often be accompanied by workshops to allow the Board to steer the strategic direction of the policy development work. For example, the recent work developing our post-consultation position in relation to Professional Indemnity Insurance and the operation of our Compensation Fund.
 - There is also strategically important and wide impacting work that is time limited and is likely to benefit from Board member advisory input outside of scheduled

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meetings. Short life working groups may be appropriate in these circumstances, for example as we have set up for the Solicitors Qualifying Examination.

- 5 Expanding on this, we have set out below how the policy development process will work, based around three stages:
- Identifying and defining the problem
 - Designing and developing policy options
 - Deciding, implementing, monitoring and evaluating policy solutions

Stage one – Identifying and defining the problem

- 6 The first step in the policy development process is to identify and define the problem or need for change. This work will normally be done at a high level through the Corporate Strategy and Business Planning process where we agree with the Board a workplan for the year(s) ahead.
- 7 The Board will agree in principle for work to start in certain areas through this process. We would not then anticipate going back to the Board for approval to begin the policy development and design process. For example, through the development of the draft Corporate Strategy, the Board has agreed to a greater focus on legal technology. The more detailed workplan to underpin this will be developed as part of the business planning process which the Board will be discussing in April.
- 8 However, policy issues will also arise in year that were not set out through this process. These will originate from different sources, internal and external to the SRA. For example, new legislation regularly impacts on our obligations as an Anti-Money Laundering supervisor. Another example would be legislation requiring us to introduce a fee limit for claims work done by those we regulate in relation to financial products and services. We may also be alerted to new problems through our business as usual activity, our research and analysis work or through information provided by external stakeholders (including the Legal Services Board, the Competition and Markets Authority etc),
- 9 In these circumstances, the Executive will first decide that work should begin. Generally, if the issue is new and of strategic significance to the SRA, the Executive will then go to the Board for a decision on whether and how to proceed.
- 10 The preliminary work which would take place to inform the Board decision includes consideration of some or all of the following, which complement our published decision making principles and criteria¹:
- How the issue relates to our public interest purpose and objectives as well as best regulatory practice
 - Our legal position/authority for acting
 - Impact on SRA strategy and priorities – including an initial assessment of whether / how we can operationalise any changes
 - Assessment of existing evidence, including any gaps in understanding

¹ <https://www.sra.org.uk/sra/decision-making/guidance/make-decisions-criteria-apply/>

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- Feedback from any initial stakeholder engagement where appropriate
 - How we are going to build the evidence base, through our internal research and analysis function and external expert input where appropriate
 - Any straw man thoughts on possible solutions (untested at this stage)
 - Identifying potential ethnicity, diversity and inclusion considerations
 - How we will resource the work
 - High level project milestones including Board reporting and formal decision points
- 11 The Executive will then advise the Board on the problem, our intention to do further work and our likely direction of travel. For smaller issues, we expect to use the CEO update for this step. Larger, more significant, issues will involve a full paper for formal decision to continue. This may be preceded by an informal workshop when needed to contextualise the problem and proposed approach.

<p>Stage one oversight summary</p> <p>Corporate Strategy and Business planning process to agree priorities and work plan</p> <p>CEO update for smaller scale projects notifying Board of work underway</p> <p>Formal Board decision to start strategically significant projects (not included in the workplan)</p>

Stage two – Policy design and development

- 12 Having identified and defined the problem (and having the appropriate authority to begin work) the Executive will develop the potential options and assess their relative benefits, risks and impacts. This is to some degree an iterative process alongside evidence gathering – working closely with our research and analysis function.
- 13 This section mainly focuses on a policy issue where we consult on change, with a view to introducing or amending a regulatory obligation. A similar process may be followed for different types of projects e.g. publishing a position statement, or report that is not consulted upon or changing a process.

Developing the evidence base

- 14 We will complete desk research, identify existing published evidence (either our own or external) and may decide to conduct or commission our own research. This will likely include looking at what happens with other jurisdictions, sectors and regulators. We may also consider a call for evidence at this stage. This can be an effective tool for floating initial policy thinking and getting early input as well as gathering evidence. We have occasionally taken this approach in the past, for example, in the early stages of designing and developing our price and service transparency options

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***Expert advice***

- 15 Getting early input from external, expert advisors can be beneficial. This kind of input helps to ensure we have well developed and considered proposals before we move into the formal consultation and stakeholder engagement process. In the past we have done this through the Policy Committee stage and through early stakeholder engagement including our well-developed network of Virtual Reference Groups, which we intend to maintain. For the Accounts Rules review we established an external working group to test proposals with reporting accountants and their representative bodies. We went on to engage with other impacted stakeholders such as software providers, who were able to provide insights and inform our approach ahead of formal consultation.
- 16 Going forward, we propose to set up a standing expert panel to provide advice and diverse perspectives when needed during the policy development process. We expect membership to represent a range of views, for example those of:
- Consumers
 - Different types of provider e.g. sole practice, high street, city, multi- disciplinary practices, innovators, vulnerable client specialists etc
 - Regulatory and compliance specialists
 - Regulatory academics
 - Education and training experts
 - Regulatory economists
 - Data experts and technologists.
- 17 A standing panel would have the advantage of building familiarity with our wider work. We could put in place protocols around information sharing and confidentiality.
- 18 We will tailor external input to the specifics of what we need, utilising particular people for particular tasks. The standing panel provides us with this flexibility. For some issues we might want to engage the whole of the Panel. For others we might engage with a subset of the panel or individual members. On other occasions it may also be necessary to engage experts not on the standing panel for narrow or specific issues, for example in relation to immigration and asylum process if considering issues in that area.

Board oversight

- 19 The main vehicle for Board involvement outside of formal meetings will be workshops and seminars. These sessions have proved useful to build Board member understanding of and allow informal input into challenging and strategic issues. For example, recent sessions on:
- Our approach to evaluating our reform programme
 - The backdrop to our advocacy consultation
 - Potential future regulatory frameworks.
- 20 They can also provide Board with the opportunity to identify pros and cons of different options. For example, we held two workshops after our consultation on Compensation

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Fund reforms closed. This allowed the Board to debate our position ahead of making its decision on the post consultation policy position.

- 21 For some strategically significant issues, we may establish a short-life working group made up of Board members. These groups would have a specific focus, limited life span and clear terms of reference. Their use, membership and terms of reference would be at the discretion of the Board Chair. We anticipate these being few in number, with only one identified for this year (for SQE). We have in the past used short-life working groups for initiatives such as our Public Engagement Charter and for developing our Key Performance Indicators.
- 22 Towards the end of this stage is where we would ordinarily expect to come back to the Board for a workshop, to develop our emerging thinking in advance of finalising proposals for consultation or action. We would then return to the Board for a final decision on the proposals – which depending on the issue may include draft rules for consultation. Annex 1 provides some examples of how the Board will oversee forthcoming workstreams.

Consultation

- 23 Any formal written consultation documents would be agreed by the Executive ahead of publication. Consultation itself involves significant and inclusive stakeholder engagement. For each consultation, a targeted engagement plan is developed and implemented by the Executive. For the most significant consultations, we may opt to keep the Board updated (via CEO update) during the consultation itself. Where formal written consultation is not required, we would still engage stakeholders to ensure our decisions are well informed and tested. Our published “Approach to Consultation” document allows for and sets out the benefits of such a targeted approach².

Stage two oversight summary

Workshop(s) with full Board to develop policy options and prepare Board for decision points

Short life working group for large, discrete projects

Board decision on proposals for consultation or action (full Board or delegated to e.g. Chair/ chair for smaller issues)

Stage three – decision, implementation, monitoring and evaluation

- 24 The final stage of our policy development process begins with a decision from the Board as to how to proceed.

² <https://www.sra.org.uk/sra/consultations/consultation-approach/>

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- 25 Where there has been formal consultation, the first step is to prepare a report setting out a summary of responses (broken down by respondent types) and our initial analysis of the responses. This will be completed soon after the consultation closes.
- 26 The Executive would then consider the options and whether there was anything in the responses that would lead us to consider adjusting one or more of the proposals, research / explore alternative options or end the project.
- 27 We would update the Board at this point. For major issues, this is likely to be a two-step process whereby we update the Board on consultation feedback after the consultation closes. Next steps would also be agreed, including whether and when further Board engagement is required. For example, if we were to consider alternative options or look again at our rationale for change in light of the information received, we may hold a Board workshop at this point. We would then return subsequently seeking agreement to the final policy position (and potentially rule changes). Where rule changes are required, we would then obtain approval from the LSB before moving ahead with implementation.
- 28 From an internal SRA perspective, this is also the point at which we develop our more detailed business change plan. This builds on work to assess operational readiness completed throughout the policy development process.
- 29 Our approach to monitoring and evaluation and proposed timetable would also be firmed up at this stage. The policy changes may still require further adjustments after implementation so our general practice will be to set a date for review. For larger programmes such as the Standards and Regulations, this has been set at one, three and five years. For smaller changes a different approach is likely to be taken. It will depend on the nature of the policy change.

Stage three oversight summary

Report to Board on responses to consultation (where applicable) – via CEO update or standalone paper for larger projects

Workshop(s) with full Board to develop policy options following consideration of consultation responses where required

Board decision on final policy position and rules where required

Recommendation: the Board is asked to agree the proposed approach to policy development.

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Next steps

- 30 The Board discussed the potential future policy agenda for 2020 in December's workshop. Attached at annex 2 is a working draft of the Board schedule for this policy agenda.
- 31 At its March meeting the Board will be discussing in workshop responses to our recently closed consultation on "Assuring advocacy standards³", alongside our approach to our budget and business plan. We will also ask the Board to consider some initial work to identify and define potential issues relating to assuring the on-going competence of solicitors. The formal Board meeting will consider our response to our Corporate Strategy consultation and the next steps for our work in Wales.
- 32 In April, the Board will have its strategy away day. Areas for discussion will include the development of the workplans in support of the Corporate Strategy following the finalisation of the new Strategy.

³ <https://www.sra.org.uk/sra/consultations/consultation-listing/advocacy/?s=c#download>

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**Supporting information****Links to the Corporate Strategy and/or Business Plan**

- 33 This document sets out the policy development process for work that develops and delivers the relevant parts of our Corporate Strategy and Business Plans. Robust internal systems such as this will help to meet our Corporate Strategy objective of working better together and with others to improve our overall effectiveness, our responsiveness and the delivery of our regulatory functions

How the issues support the regulatory objectives and best regulatory practice

- 34 This process is designed to ensure quality policy development work. As set out in our Policy Statement, supporting the regulatory objectives and better regulation principles are core considerations in setting and delivering policy workstreams. This is reflected in the process set out in this document, for example see paragraph 10. As now, reporting on how the work supports the regulatory objectives and best regulatory practice will be required at each formal Board sign off point.

Public/Consumer impact

- 35 The policy development process puts in place infrastructure that will help us deliver quality work to meet our Corporate Strategy and Business Plan commitments to improve regulation in the interest of the public and consumers. The process sets out our on-going commitment to evidence-based policy which includes assessing the potential impacts on the public and consumers. We also reinforce our existing commitment to targeted and inclusive stakeholder engagement to ensure that impacts are properly understood.

What engagement approach has been used to inform the work and what further communication and engagement is needed?

- 36 This is a document about the internal policy development processes, which include targeted and inclusive engagement for every policy work area. We undertake targeted and inclusive communication and engagement around the Corporate Strategy, Business Plan and as part of the policy development process for individual workstreams.

What equality and diversity considerations relate to this issue?

- 37 Equality and diversity considerations are built into the policy development process set out in this document at each stage. Please see the EDI section on the cover page for further information.

How the work will be evaluated

- 38 Evaluations is addressed in paragraph 29.

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Annexes

Annex 1 Examples - oversight of policy workstreams

Annex 2 Working draft of policy agenda Board schedule

NB: the annexes to this paper will not be published as they relate to emerging policy.