



## Closed Consultation

### Looking to the future: phase two of our Handbook reforms

14 June 2018

- [Read our post consultation position](https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#headingTwo) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#headingTwo]
- [Download our analysis of responses](https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download]
- The deadline for submission of responses was **20 December 2017**.
- [Download the consultation paper](https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download], or read it below
- This consultation ran in parallel with our consultation on Looking to the future: better information, more choice

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#### [Executive summary](#)

### Looking to the Future: Phase two of our Handbook reforms

Our Handbook sets out the standards we expect solicitors and firms to meet and the rules they should follow. This summary explains the changes we will introduce following our phase two consultation on our Handbook changes.

### What is our Looking to the Future programme?

We need to make sure we are keeping pace with a fast-changing legal services market so in 2014 we started our [Looking to the Future reform programme](https://jobs.sra.org.uk/sra/policy/future/looking-future/). [https://jobs.sra.org.uk/sra/policy/future/looking-future/] This is designed to make sure we are meeting the needs of the public in whose interest we work by regulating solicitors and law firms in the right way.

We want to make:

- our rules focus on what matters – high professional standards
- it easier for the public to access legal services
- it easier for solicitors and firms to do business.

### Our proposals

We split our proposed changes across four major consultations. We have consulted on:

- [Phase one](https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download] and [Phase two](https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/] of changes to our Handbook.
- Changes to [Accounts Rules](https://jobs.sra.org.uk/sra/consultations/consultation-listing/accounts-rules-review/#download) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/accounts-rules-review/#download].
- Plans to make [better information](https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-better-information-consultation/) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-better-information-consultation/] available to help the public choose the right legal service for them.

### What we have done: Phase one and two of our Handbook changes

Last year we confirmed [our decisions on the first phase of changes to the Handbook](https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/] including:



- shorter, clearer Principles and Codes - including a separate code of conduct for solicitors and one for firms
- simpler Accounts Rules, with a focus on keeping clients' money safe
- removing a ban on solicitors working in businesses not regulated by us or another legal services regulator.

We then consulted on a second phase of changes to our other rules covering areas such as who can run firms, how we approve firms, and assess the suitability of those entering the profession. Our focus was again on making these rules simpler, easier to use, and focused on what matters.

The consultation also included our plans for the transitional arrangements for the Solicitors Qualifying Examination (SQE), and a revised enforcement strategy to provide more clarity about how and when we will, or will not, enforce.

### **Why is change needed: a focus on high professional standards**

Setting and maintaining clear, high standards is fundamental to both good consumer protection and public confidence in solicitors and law firms. We are reforming the way solicitors qualify by introducing the SQE, which will make sure all solicitors meet consistent, high standards at the point of entry to the profession.

We also need to make sure that our Principles, Codes and rules set out clearly the high professional standards we expect of solicitors and firms. Our Handbook with its 30-page Code of Conduct and more than 400 pages of rules is long, complex and costly to apply.

Pages and pages of rules, which need regular updates, hinders rather than helps compliance. It creates cost and confusion rather than good practice and consumer protection.

### **Why change is needed: helping more people access legal services**

Our proposals aim to also address the problem that too many people and small businesses struggle to access legal services. Only one in ten people use a solicitor or barrister when they have a legal problem.

Some of our current rules are unnecessary bureaucracy that push up firms' running costs with little or no benefit in terms of consumer protection.

Some of our rules also restrict how and where solicitors can work. They make it difficult for law firms to work in different ways to respond to the needs of the public, or for solicitors to work in businesses outside law firms. This could contribute to the problem that many people do not benefit from the high standards and expertise solicitors offer.

### **Extensive feedback on our proposals**

In reviewing our Handbook we have spoken to more than 14,000 individuals, firms and other organisations. This includes consumer groups, members of the public and solicitors. We had 77 responses to our phase two consultation.

There continues to be widespread support for our plans to remove unnecessary bureaucracy and make the Handbook simpler and easier to use. Respondents were also overwhelmingly in favour of our updated approach to enforcement.

Yet there were areas that were more contentious, such as our plans to allow freelance solicitors, and the removal of a rule that restricts solicitors from practising alone until they have been qualified for three years. We have listened and responded by making changes to our proposals.

### **Our key decisions and how we have responded to feedback**

Areas where we have decided to continue with our planned approach include:

### **Allowing solicitors to work in different ways**

- We will allow solicitors to provide 'reserved legal activities' [1\[#note1\]](#), in certain circumstances, on a freelance basis to the public. Freelancers would not be able to hold client money or employ people. They would need adequate and appropriate indemnity insurance and to comply with our Code of conduct.
- In phase one we also made the decision to allow solicitors to provide non-reserved activities, such as general legal or employment advice, beyond a law firm. This means they could work in a business that is not regulated by the SRA or other legal services regulator. The solicitor would have to comply with our Code of Conduct and cannot hold client money but would not require professional indemnity insurance.
- In both situations, solicitors would need to be clear with prospective clients about their regulatory position, including what insurance arrangement they have in place.

### **Allowing traditional law firms to have a UK practising address**

- Currently all law firms need to have a practising address in England and Wales.
- By allowing traditional law firms in Scotland or Northern Ireland to offer 'reserved legal services' to people in England and Wales, we could potentially increase consumer choice.

### **Transitional arrangements for the SQE**

- The SQE, is set to be introduced, at the earliest, in 2020. All those starting the qualification process from then onwards must take the SQE.
- We want to make sure those who have already started to work towards qualification through the existing routes have a fair opportunity to complete. They will have 11 years after the SQE is introduced to qualify this way.
- Responding to feedback, we have decided to extend the transition period for Qualified Lawyers Transfer Scheme candidates. They will have an extra 12 months to complete their assessments and apply for admission after the SQE is introduced.

### **Updated enforcement approach and guidance**

- Following broad support, our enforcement approach will provide greater clarity for the public and profession and help us focus on the most serious matters.
- We will make sure through guidance that our approach to health and welfare issues of solicitors involved in our procedures is clear.

In other areas we have responded to feedback by changing our approach. These include:

### **Checks to make sure those running firms have appropriate experience**

- The responses to our consultation confirmed that our current existing 'qualified to supervise' rule is confusing.
- We were persuaded by feedback that – in addition to the other protections in place – there should still be a specific rule in this area.
- We will introduce a new rule that any firm we regulate will need at least one manager or employee with three-year's experience. That individual will be responsible for supervising the work carried out.

### **Checks to make sure freelancers have appropriate experience and protections**

- We will extend this three-year rule to solicitors who want to work as a freelancer.
- We have also broadened our requirements, so that freelancers will need adequate and appropriate professional indemnity insurance for all their legal work, not just



'reserved activities'. This will be clearer for their clients.

### **Retaining early character and suitability tests**

- There was support for a clearer yet less rigid approach, allowing us to better consider an individual's circumstances.
- We have also responded to feedback by agreeing to continue to provide an early check on character and suitability for aspiring solicitors. This is so they can understand at an early stage the potential consequences of issues for their admission.

### **Changes to how we regulate overseas practices**

- We have made some further, technical changes to remove rules on overseas practice, in particular where local rules or regulatory systems are better placed to deal with issues.
- We have made sure our rules focus on issues of personal conduct or systemic failures that relate to public confidence in the profession and in the English and Welsh legal jurisdiction.

In addition to changes to our phase two proposals, we have also made some changes to our phase one proposals. For instance, we have now split in two the principle that solicitors must "act with honesty and with integrity", so it is clear that matters of honesty and integrity can be separate issues.

### **Next steps**

- We have now published the final set of rules that will make up our new regulatory approach. These rules are being submitted to the Legal Services Board (LSB) for approval this summer
- Subject to the LSB's approval, we anticipate implementing these changes in April 2019.
- We will not be able to confirm exact timing for implementation until the LSB decision. Yet we recognise that solicitors and firms will need time to prepare for these new rules.
- With this in mind we will work closely with the profession to help them understand the changes which may require solicitors and firms to do things differently, as well as highlighting opportunities for them to work in different ways.

As part of our wider 'Looking to the Future' reform programme, we have also published our decisions around our ['Better information, more choice' consultation](https://jobs.sra.org.uk/sra/consultations/consultation-listing/ttf-better-information-consultation/) [<https://jobs.sra.org.uk/sra/consultations/consultation-listing/ttf-better-information-consultation/>]. This will also need approval from the LSB.

## **Footnotes**

1. There are six specific 'reserved legal activities', such as completing a house sale or carrying out litigation, that can only be provided by those who are approved to do so. At the moment, these activities can only be carried out by a regulated individual, such as a solicitor or barrister, working in a law firm approved by a legal regulator. 'Non-reserved activities' include family, employment or personal injury work, as well as legal advice.

## **Our post consultation position**

### **Introduction**

1. This is the culmination of our Looking to the Future programme of regulatory reform. It marks the end of a process that began in May 2014 with our position paper, Approach to Regulation and its Reform (which we subsequently refined and



- expanded upon in November 2015). That position paper set out our vision for our future work. It outlined a proposed new approach designed to make sure that our regulation is targeted, proportionate and fit for purpose in a diverse, fast changing and dynamic legal services market. It also set out our intention to redraft our existing Handbook to make it shorter, clearer and easier to use.
2. Since that time we have reviewed more than 648 pages of rules in our Handbook and heard views from thousands of stakeholders. We have consulted on the wide range of areas, including our [Principles and Codes](https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download] and our [Accounts Rules](https://jobs.sra.org.uk/sra/consultations/consultation-listing/accounts-rules-review/#download) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/accounts-rules-review/#download].
  3. All this work has been focused on delivering a regulatory regime that:
    - sets clear, high professional standards for those we regulate
    - offers flexibility, both for providers in how they structure their businesses and for consumers in how they choose to access legal services
    - can keep up with rapid developments in the market while also maintaining appropriate protections for consumers and the public
    - is user friendly, so our rules can be understood by the people and businesses we regulate and their customers.
  4. We have had a substantive and inclusive response to this programme of work. Through both phases of our Handbook review we have spoken to more than 14,000 members of the public, solicitors, firms and other organisations. Lots of the feedback we received has been positive, with respondents acknowledging the importance of what we are trying to do. But we have also heard people's concerns, particularly about the possibility of consumers being confused by greater choice in how they can access legal services.
  5. Alongside this, proposals outlined in another consultation – [Better information, more choice](https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-better-information-consultation/) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-better-information-consultation/] – are designed to reduce this risk. Those proposals will make information about firms, the prices they charge and the services and protections they offer more easily available to the public. We will also continue to monitor the effects of our changes using the [impact evaluation framework](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-cses.pdf) [https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-cses.pdf] (PDF 27 pages, 399KB) designed for us by the Centre for Strategy and Evaluation Services.
  6. In [phase one](https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download] of our Handbook review we examined our Principles, Code of Conduct and Accounts Rules. In May 2017 our Board made the policy decision to remove barriers preventing solicitors from working freely across the legal market and beyond, including in the growing number of businesses that are not regulated under the Legal Services Act 2007 (LSA).
  7. Our Board also agreed in principle:
    - a new set of Principles
    - a Code of Conduct for solicitors, registered foreign lawyers (RFLs) and registered European lawyers (RELs)
    - a Code of Conduct for firms
    - simplified Accounts Rules.
  8. These changes aim to make every solicitor clear about their personal obligations and responsibility to maintain the highest professional standards. There are some core standards that are the golden thread running through what it means to be a solicitor wherever and however they practise. The separate code for firms provides clarity about the systems and controls the firms we regulate need to provide good legal services for the public. Authorised firms must also maintain and support high professional standards.
  9. We want to help tackle the problem that too many people cannot access the services of a regulated legal professional. Changing outdated rules that constrain access to solicitors may make it easier for people to benefit from their expertise and high standards, potentially in more affordable ways.
  10. This document sets out our post-consultation position on phase two of our comprehensive review of our Handbook. Our [phase two consultation](https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/] covered:



- the rules implementing policy we consulted on in phase one
  - the other rules in our current Handbook.
11. As in phase one, there are several areas where we have made changes in response to feedback received from respondents. We have therefore divided this paper into two main sections, based on the different proposals we consulted on: areas we are changing our approach to areas where we are continuing as proposed.
  12. The [final sets of rules](https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download] that have been approved by our Board and will, subject to approval by the Legal Services Board (LSB), form our new regulatory arrangements. This position addresses in detail only the most substantive changes. We have made a number of drafting changes in response to both comments provided in consultation and to our own proofreading process as we have finalised the rules. There are also [marked copies of the rules detailing all of these changes](https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download].
  13. Our Board has made these rules subject to LSB approval. We are therefore publishing them alongside this document so that firms have a chance to look at them and see what has changed in response to the consultation. By publishing the rules now, we are also giving firms time to adapt to the new regime.
  14. The LSB approval process may lead to some changes so we will keep you updated. Our current working assumption is that the rules will come into force in April 2019. We will be able to confirm this once we have the LSB's decision and will continue to engage with firms in the build up to implementation.

## How did we get here?

### How did we approach this review?

15. Setting and maintaining clear, high professional standards is fundamental to both good consumer protection and public trust and confidence in solicitors and law firms. We are reforming the way solicitors qualify by introducing the Solicitors Qualifying Examination (SQE), which will make sure all solicitors meet consistent, high standards at the point of entry to the profession. We also need to make sure that our Principles and Codes clearly set out the high professional standards we expect of solicitors and firms.
16. Our current Handbook is long, complex and costly to apply. As part of our [Looking to the Future](https://jobs.sra.org.uk/sra/policy/future/looking-future/) [https://jobs.sra.org.uk/sra/policy/future/looking-future/] work we have reviewed all our rules, creating a shorter, sharper, clearer set of regulatory arrangements. Our approach to reviewing our rules has included:
  - streamlining, namely
    - removing prescriptive drafting to produce higher level standards
    - removing duplication by deleting provisions that exist elsewhere
    - delineating firm and individual regulation
    - incorporating relevant content into guidance and case studies
  - simplifying the language we use to make our rules more accessible to readers.
17. Our Handbook review forms part of a wider programme of work to modernise our approach to regulation and meet the demands of a changing legal services market. As well as streamlining and simplifying our rules, a key part of this work has been to remove any restrictions we cannot justify retaining. This approach is not new. It has built upon a gradual evolution of the different business structures available to solicitors: from legal disciplinary practices in 2009, through alternative business structures in 2011, to multi-disciplinary practices in 2014 and the removal of the separate business rule a year later. At each of those stages we have allowed more flexibility in how services can be offered and have been able to monitor the effects of those changes in the market. The changes being brought in through Looking to the Future are the next step in this evolution.

### How did we gather views on our proposals?





18. Through the combined two phases of our Handbook review we have engaged with over 14,000 people, firms and other organisations. In addition to our formal consultation process we have held workshops, focus groups and spoken to our reference groups. We have also engaged widely through social media and other online activity, such as webinars.
19. Our formal [consultation](https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/] for phase two closed on 20 December 2017. We received 77 responses. A [detailed analysis of those responses](https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download] is published alongside this document. We have also [published all responses](https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download] unless the respondent requested otherwise.
20. This engagement has helped shape our decisions. Examples of areas where we have responded to feedback include:
  - allowing candidates that have begun the Qualified Lawyers Transfer Scheme (QLTS) an extra 12 months to complete their assessments after the date the SQE is introduced
  - continuing to provide an early check on character and suitability so students can understand the potential consequences of issues for their admission as a solicitor at an early stage
  - amending our Overseas Rules following discussions with firms with overseas offices
  - imposing a new three-year practice requirement to replace the current qualified to supervise rule
  - extending this three-year practice requirement to freelance solicitors or RELs who wish to provide reserved legal services without being authorised as a recognised sole practitioner and making changes to their proposed professional indemnity insurance (PII) arrangements.
21. We are grateful to the thousands of people, firms and other organisations for their valuable contributions to the consultation process.

## What have we changed since phase one?

22. We have [published all of the rules](https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download], clearly marked with the changes we have made since our consultation.
23. The new Principles, Codes and Accounts Rules were the focus of the first stage of Looking to the Future in 2016, and [the post consultation versions](https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download] were agreed but not formally made by our Board at that stage. <sup>1</sup> [note1a]
24. Our Board has now approved the final versions, subject to LSB approval. We identify some changes to the earlier versions below.

## SRA Principles

25. We have now split "act with honesty and with integrity" into two separate principles "act with honesty" and "act with integrity" to emphasise that these two requirements are not coterminous. This deals with the concern that anyone would think they were interchangeable or that both would have to be proven.
26. We have clarified that for Licensed Bodies the Principles will apply to the part of their services that we regulate as specified on the licence. This means that we can be clear on the licence about which activities that we regulate on a supplier-by-supplier basis, such as where, for example, this includes the regulation of Artificial Intelligence (AI) or other technology driven services. This does not change how we authorise or regulate firms but helps us to make sure that our regulation is appropriately targeted.

## SRA Code for Solicitors, RELs and RFLs



27. We have amended Standard 4.3 to reflect the outcome of our consultation on freelance solicitors. This Standard confirms that solicitors who practise on their own and meet the 'freelance' requirements under the new SRA Authorisation of Individuals Regulations can hold limited categories of money from clients in their own name. The money must be limited to the category of money set out in Rule 2(1) (d) of the SRA Accounts Rules [2018] i.e. money on account of the solicitors' own charges and any disbursements relating to costs or expenses incurred by the solicitor on behalf of the client and for which the solicitor is liable to the third party. This would therefore, for example, include counsel's fees but not court fees or search fees which the solicitor happens to have paid on their client's behalf. The client must be informed in advance of where and how the money will be held.
28. We have made a change to the reporting requirements at Standards 7.6 and 7.7. We have clarified that relevant criminal and insolvency events need to be reported, as well as any matters that would affect the information on the register.
29. We have made a change to Standard 8.4 to emphasise the requirement to provide the relevant information to clients relating to their right to complain to the Legal Ombudsman if any complaint is not resolved within 8 weeks.
30. Standard 8.5 now confirms that the requirement to handle complaints, promptly fairly and free of charge extends beyond complaints from clients. It could include for example complaints from a beneficiary when the solicitor is administering the estate.

### **SRA Code for Firms**

31. As with the Principles we have clarified that for Licensed Bodies the Code for Firms will apply to the part of their services that we regulate as specified on the licence.

### **Multi-Disciplinary Practices (MDP)**

32. We are also publishing a revised version of the MDP policy statement that reflects the wider regulatory arrangements. We have maintained the current overall policy position as to the circumstances in which we will allow non- reserved legal activity to not be SRA regulated activity. We have therefore kept the existing 'subsidiary but necessary' and 'suitable external regulation' tests.
33. However, the statement now confirms that, as discussed above the Principles and Firm Code apply to the work within the MDP that we regulate as set out on the licence. The boundaries of that work will be set by the licence itself and we have therefore removed the current detailed 'mixed team' requirements which have proved to be complicated in practice. The revised statement also confirms that the SRA Code for Solicitors, RELS and RFLs will apply in full to all the work of these individuals that is carried out as part of their practice, whether or not the particular work falls within our regulation for the entity as a whole.

### **Professional Indemnity Insurance requirements for solicitors in special bodies**

34. We made proposals for PII requirements for solicitors in special bodies' <sup>2</sup> [\[#note2a\]](https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/) as part of our first Looking to the Future [consultation](https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/) in 2016. In our [response](https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download) [\[#download\]](https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download) to consultation <sup>3</sup> [\[#note3a\]](https://jobs.sra.org.uk/solicitors/handbook/indemnityins/content/), we proposed maintaining our current requirement that solicitors in special bodies providing reserved legal services should be covered by insurance 'reasonably equivalent' to that required by our [Indemnity Insurance Rules](https://jobs.sra.org.uk/solicitors/handbook/indemnityins/content/) [\[#content\]](https://jobs.sra.org.uk/solicitors/handbook/indemnityins/content/).
35. We are aware that there have been difficulties in the past when interpreting what 'reasonably equivalent' means. In practice, when dealing with special bodies we have interpreted this requirement as one that allows those bodies to purchase insurance they consider to be appropriate for the case load of their solicitors. This is the most practical meaning of the provision. This may involve limits that are either higher or lower than our [minimum terms and conditions](#)





[<https://jobs.sra.org.uk/solicitors/handbook/indemnityins/appendix-1/content>], depending on what is needed, but that is a decision best made by the special body itself.

36. We will therefore reflect this reality by changing the 'reasonably equivalent' PII requirement on solicitors providing reserved legal services on behalf of special bodies to one to have "adequate and appropriate" insurance. Our discussions with special bodies have indicated that this change is broadly welcomed and will reflect the desire for flexibility expressed by most responses from the not-for-profit sector.

## How did we consider the impact of these changes?

37. We have published a [full impact assessment](https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-phase-two-handbook-reform/#download) alongside this paper, covering each of the changes proposed in phase two.
38. Where there may be specific impacts on equality, diversity or inclusion by a change we have proposed, we have addressed these individually.
39. We are committed to reviewing the impact of our changes on an ongoing basis. However, we are aware that it is very difficult to predict the impacts of liberalising changes. We have therefore identified the possible risks in our proposals and will mitigate them wherever possible. For those risks that cannot be mitigated, we will monitor over time whether they materialise in line with our [impact evaluation framework](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-cses.pdf) (PDF 27 pages, 399KB). If they do, we will act accordingly.

## How does this work relate to our open consultation?

40. Through Looking to the Future we have proposed removing some of the restrictions on how solicitors can offer services. We have outlined two key new business models:
  - Allowing solicitors to provide non-reserved legal services to the public from businesses that are not authorised by the SRA or regulated by any other legal services regulator. This proposal was made in phase one.
  - Allowing individual self-employed solicitors to offer reserved activities to the public, subject to certain restrictions. This proposal was made in phase two.
41. As we set out these new ways of working, we also outlined the PII requirements we would impose on solicitors offering services in this way, and the potential for their clients to access the Compensation Fund.
42. [Our consultation](https://jobs.sra.org.uk/sra/consultations/consultation-listing/access-legal-services/) on the rules that govern our approach to PII and the Compensation Fund is open until 15 June 2018. Some of the technical rules that will apply to solicitors working in the new ways listed above are included in that consultation. However, that consultation does not revisit the policy behind these decisions. It simply asks for views on whether the rules being consulted on accurately implement that policy.

## Where are we changing our position as a result of consultation?

43. In this section we outline areas where we have changed our position from what we consulted on in response to feedback we received.

## Removing the 'Qualified to Supervise' rule

44. We proposed removing the rule that requires all regulated entities and in-house legal departments to employ a solicitor [4](#) who is 'qualified to supervise'. To do this a solicitor must have been admitted for at least three years and have completed at least 12 hours of management training. In fact, the rule does not impose any obligation for the individual to supervise the work. Nor does it require any actual practice experience (the solicitor must only have been 'entitled to practise' for three years).
45. In our consultation we pointed out that the current rule is confusing. The responses to consultation confirmed that view. The rule does not directly address or deal with issues of technical competence and supervision of work, or the management experience of competence of those running a legal business. It is widely

misunderstood as a requirement that solicitors must themselves be supervised for at least three years post admission, or that a solicitor must have three years' experience before they can set up as a sole practitioner.

46. The effect of the rule is to prevent someone practising alone until they have been qualified for three years.
47. We set out several other ways to make sure that inexperienced solicitors do not practise beyond their competence. These include:
  - Rule 3.2 of the new Code of Conduct for Solicitors, RELS and RFLs requires a solicitor to make sure the service they provide to clients is competent. It would be a breach of this requirement for a newly qualified solicitor to set themselves up as a sole practitioner in an area they were not competent in unless they were able to employ staff with the appropriate expertise.
  - We can impose conditions on solicitors where we consider there is a risk to clients (for example a condition preventing them from being a manager of a firm).
  - The new approach to continuing competence and rule 3.3 of the new Code of Conduct for Solicitors, RELs and RFLs require solicitors to maintain their competence to practise and keep their professional knowledge and skills up to date. Our new approach became compulsory for all solicitors in November 2016. It will therefore have been in force for at least two years by the time our new rules are introduced.
  - Our [Professional Ethics Helpline](https://jobs.sra.org.uk/home/contact-us/) (<https://jobs.sra.org.uk/home/contact-us/>) provides support for all solicitors (including sole practitioners) who encounter difficult ethical questions.
  - Our proposal to create a more accessible digital register of solicitors means that consumers will be able to find when a solicitor was admitted, and therefore how much experience they have.
  - In future, the SQE will mean all qualified solicitors have passed a rigorous assessment of their technical competence (although the SQE will not assess whether a candidate is competent in business or management skills).

### **What did people say?**

48. Although there was recognition that the current rule is flawed, most respondents opposed complete removal of the rule despite the other safeguards that will be in place. The three-year rule was considered a basic safeguard to protect clients from inexperienced and newly qualified solicitors practising on their own. Although some respondents accepted that there was no particular evidence for a three-year period, it was felt that it enables a newly qualified solicitor to develop a better understanding of their strengths and weaknesses. As a result, an individual is less likely to act above their competence and an individual has a better understanding whether they are suited to being responsible for a firm.

### **What are we going to do?**

49. Given the concerns that have been raised over two consultations on this issue, we have decided that it is appropriate to retain some restriction around setting up or running a practice regulated by us. Anyone, whether qualified or not can provide unreserved legal services and it would be an unjustified market restriction in our view for a newly-qualified solicitor not to be able to do so, especially given the other safeguards that are in place for those solicitors.
50. We will therefore replace the existing rule with a requirement that any firm we authorise (including recognised sole practitioners) must have at least one manager or employee who has practised as an authorised person for three years. In all cases, that individual will be responsible for supervising the work undertaken by the authorised body.
51. We will also introduce a restriction on solicitors and RELS practising on their own, requiring them to have three years of experience before they can deliver reserved legal services to the public.



52. This new rule matches a key element of the current rule while tightening up the requirement to mean that actual experience is necessary as opposed to mere entitlement to practise and that the individual will have an obligation to supervise the work as opposed to merely being employed in the firm.
53. We do not consider it appropriate to retain the requirement to attend a 12 hour management course. The new rule focuses on experience of legal practice and not business management. We have also moved away from rigid training requirements in favour of a competence approach. Authorised firms will be required by the new Code for firms to have effective management systems and practices in place.

## Assessing character and suitability

54. Having reviewed and benchmarked our current suitability test against other professional regulators, we drafted and consulted on a revised [Assessment of Character and Suitability](https://jobs.sra.org.uk/sra/consultations/consultation-listing/litf-phase-two-handbook-reform/#download1) [https://jobs.sra.org.uk/sra/consultations/consultation-listing/litf-phase-two-handbook-reform/#download1]. The updated assessment:
  - clarifies the overriding principles that govern our assessment of character and suitability
  - introduces a set of indicative behaviours, aggravating or mitigating factors, which will apply equally to all
  - considers the individual's circumstances and the nature of their role
  - assesses whether RELs and RFLs are in good standing with their regulator.
55. We consulted on removing our current requirement for students to disclose any character and suitability issues before entering a period of recognised training. In line with our approach to apprentices, we proposed an assessment of character and suitability should occur at the point of admission.
56. We also considered whether to remove the current option to apply for an early decision, for those who may have concerns about character and suitability issues. We would replace early decisions with general advice provided by our ethics guidance team.
57. We were clear that the onus would remain on the individual under the new arrangements to provide evidence to support their application.
58. We also proposed the following improvements to our current arrangements:
  - Using our existing powers more effectively to impose practising certificate conditions at the point of authorisation (where this will help us to admit an individual while mitigating any risk they might present).
  - To look at the process for approving authorised persons who are already regulated by us or by another approved regulator.

## What did people say?

59. Respondents were generally supportive of our approach, considering it to be sensible and logical. They welcomed the flexibility the new test introduces to the decision-making process. As one local law society commented, 'we agree that the current character and suitability requirements are too rigid to achieve fairness. They make no allowance for youthful misdemeanours'.
60. Respondents highlighted the importance of having guidance available to potential solicitors, so they can be clear about our requirements and whether to proceed with legal training. Some respondents made minor drafting suggestions.
61. Some respondents wanted to retain the option of an early assessment, for a range of reasons. These respondents included universities, education and training providers and the Law Society. Views on whether an early decision could or should then be binding at the point of admission differed.

## What are we going to do?

62. We have made minor drafting changes to the rules in response to consultation feedback. Specifically, we have removed reference to local warnings and penalty notices for disorder (PND). Under the new assessment we will only ask for details of



cautions or above. We have also amended the drafting to provide more clarity about patterns of criminal behaviour and what events will be a cause for concern. Any decision will of course be case specific and depend on the individual's circumstances.

#### **Retaining the early decision**

63. At the moment students can seek an early decision on their character and suitability before they start the Legal Practice Course (LPC). They therefore know whether they could be admitted before they commit to course fees. Under the new arrangements, we proposed to give students early, individual, advice instead of a binding formal decision at that stage.
64. We have been persuaded by respondents, such as the Law Society's Junior Lawyers Division, who argued that students with issues that may affect their character and suitability would benefit from a formal decision before embarking on the cost and time commitment of training to be a solicitor. The numbers who apply for an early decision in practice are small, but we agree that this small cohort should be able to receive this assurance before embarking on the cost and time commitment of training to be a solicitor.
65. We will therefore retain the facility for students to obtain a formal character and suitability decision at any time before making an application for admission. including therefore before embarking on the LPC. This decision will at a point in time and any future application for admission will be assessed on the evidence available at that later time.
66. We will make clear when rehabilitation will be likely to have an effect should a subsequent application be made. Overall, we think that these proposals could have a positive impact on equality and diversity, because they support those seeking to rehabilitate from past misdemeanours. At the same time, our clear rules will help individuals with serious character and suitability issues to make an informed decision about whether or not to commence or commit any financial resource to seeking to become a solicitor.

#### **Assessing people who have already been approved by other regulators**

67. We said we would explore ways of streamlining our character and suitability assessment for people applying for roles in authorised businesses (as manager, owner, or compliance officer) who have already been authorised by another regulator. This proposal did not attract significant comment either way.
68. Where the person is a lawyer and has already been approved by another legal services regulator under the Act, we already rely on a certificate of good standing from that regulator. This prevents us from second guessing the decisions of other approved regulators.
69. We are satisfied that an authorised legal professional in good standing with an approved regulator (under a regime overseen by the LSB) should be suitable to undertake significant roles within a law firm authorised by us and therefore we are proceeding with the consultation proposal to deem these authorised persons to be suitable as role holders in authorised bodies going forward after our initial approval.
70. This consultation also stated that we would work with regulators in other fields (for example, chartered accountancy) to explore how to streamline the arrangements for approval of their members. We therefore intend to include a provision in our new assessment of character and suitability that allows us to rely on a certificate of good standing from another regulator. This will be dependent on us being satisfied that the regulator operates a suitable equivalent regime.

#### **Ongoing reporting requirement**

71. If we approve a role holder authorised by another regulator, that role holder will be under an ongoing duty to report any new issues that are relevant to our character and suitability rules to us. This includes a requirement to tell us about any action



taken against them by their own regulator. This will allow us to withdraw, or impose conditions on, our approval if necessary.

## Our Training Regulations

72. We set out transitional arrangements for people who have started on the path to qualification under the existing routes at the time the SQE is introduced. We proposed that anyone who:

- has started a Qualifying Law Degree (QLD) or
- has started the Common Professional Examination (CPE) or
- is further advanced than either of the above two points in their route to qualification

before the SQE is introduced may continue under that route up to a cut-off date of 11 years after the SQE is introduced.

73. We proposed maintaining our current [Equivalent Means](https://jobs.sra.org.uk/become-solicitor/legal-practice-course-route/equivalent-means-information-pack/) route to qualification for those remaining under the current system. We also proposed that anyone who had started the QLTS assessments before the SQE was introduced must also complete all parts of the QLTS and apply for admission by the time the SQE is introduced.

## What did people say?

74. Few stakeholders raised any issues with our 11 year cut-off date or with the principle that candidates must choose between either the old or the new processes for admission. A small number of law firm respondents suggested we should provide additional time for candidates to take the CPE and qualify under the existing system, so that they would be able to deal with trainees arriving through both the QLD and CPE routes under the same set of our regulations regarding their period of recognised training. We also received comments from some QLTS candidates and Kaplan (the QLTS assessment provider) suggesting that we should give longer to individuals who have started the first part of the QLTS (QLTS 1) to complete the second part (QLTS 2) and apply for admission.
75. A small number of respondents (including the Law Society and the City of London Law Society) raised concerns about there being insufficient time between finalising the SQE and introducing it.

## What are we going to do?

76. The key principle underlying our transitional proposals is that we want to be fair to those who have invested significant time and money in the current system while making sure standards are maintained during the transitional phase. Qualified lawyers who have already passed QLTS 1 will have invested time and money in the expectation that they can qualify under the current system. While we can give early notice of the change from the QLTS to the SQE, we recognise it may take longer for candidates who have passed QLTS 1 to complete QLTS 2. So, we have decided to allow candidates who have already passed QLTS 1 an additional 12 months after the SQE introduction to complete the QLTS assessments and apply for admission.
77. We will not provide additional time for candidates to take the CPE and qualify under the existing system. Students with a non-law degree who wish to become solicitors (but have not yet begun any legal training) will be able to qualify as solicitors through the SQE route.
78. We recognise that stakeholders need sufficient time to plan for the introduction of the SQE and will announce a firm introduction date as early as possible.

## Individual self-employed solicitors

79. We proposed allowing individual self-employed solicitors and RELs to provide reserved legal services to the public without being authorised as recognised sole





practitioners. This would be subject to the following restrictions and requirements:

- Needing to act as an individual and therefore without any employees or partners, and not working through a service company.
- Being engaged directly by the client.
- Not holding client money except for payments on account of costs and disbursements for which the solicitor or REL is responsible.
- Adequate and appropriate PII for the reserved legal activity being provided.

## What did people say?

80. A minority of respondents agreed with the proposal. Those that gave reasons for their support felt that it would make services more accessible, for example by reducing costs. It was also stated that the change reflected the reality of flexible working in the 21st century. One respondent said that the most important safeguard was the restriction on holding client monies. Another felt that it did not make sense that barristers had this freedom and solicitors currently did not.
81. A non-LSA regulated business that has a number of years' experience of providing practising solicitors to work in house on projects for commercial clients responded in support of the proposal. They felt it would be welcomed by self-employed solicitors and allow them to offer a wide range of services. They believed that the high number of applications that they receive from solicitors means that there is a demand to work in more flexible ways. They also felt that proposal would allow clients- particularly small businesses - to access legal services without the extra layer of costs imposed by a firm. In relation to PII cover, they stated that in their experience there was not much demand for a high level of cover from commercial clients who understood the trade-off between cost and nature of service.
82. However, some respondents said their support was conditional on self-employed solicitors being required to maintain PII on our [minimum terms and conditions](https://jobs.sra.org.uk/solicitors/handbook/indemnityins/appendix-1/content1) [\[https://jobs.sra.org.uk/solicitors/handbook/indemnityins/appendix-1/content1\]](https://jobs.sra.org.uk/solicitors/handbook/indemnityins/appendix-1/content1).
83. There were common themes among respondents that disagreed with the proposal, which included the Law Society and several local law societies. They argued that not requiring PII to be on our minimum terms and conditions would reduce client protection. There were also concerns that if solicitors were not authorised as recognised sole practices there would be no check on whether it was appropriate for them to set up on their own. Regulatory safeguards for entities would not be in place. These respondents felt that clients would be inadequately protected from poor service and be confused by the differences in regulatory protections compared to regulated providers. The Legal Services Consumer Panel shared these concerns, while recognising that the proposal could increase flexibility for solicitors.

## What are we going to do?

84. We believe the potential benefits of increased flexibility for both freelance solicitors and their clients mean we should proceed with the proposal. It is artificial and disproportionate to force those solicitors who are genuinely working on their own into the same regulatory model as a firm that may employ hundreds of people. It increases costs for those individuals and these costs are likely to be passed on to clients. We know that Black, Asian and minority ethnic solicitors are [disproportionately represented](https://jobs.sra.org.uk/solicitors/resources-archived/diversity-toolkit/law-firm-diversity-tool-2/) [\[https://jobs.sra.org.uk/solicitors/resources-archived/diversity-toolkit/law-firm-diversity-tool-2/\]](https://jobs.sra.org.uk/solicitors/resources-archived/diversity-toolkit/law-firm-diversity-tool-2/) among sole practitioners and these proposals are particularly likely to benefit them.
85. Although some respondents wished to broaden our proposals (for example by allowing these solicitors to have employees) we will retain the proposed restrictions. These provisions are intended to apply to genuine freelancers and not to those who run a firm employing others or who seek to disguise a firm by restructuring to meet these arrangements. We have also made it clear in the rule that any fees must be paid to the solicitor or REL personally (and not, for example, through a linked company).
86. We have listened to respondents who were concerned that our proposal would allow inexperienced solicitors to provide reserved legal services on their own. As set out





above, we will therefore also introduce a rule that a freelance solicitor cannot provide reserved legal services to the public until they have practised for at least three years. We believe that this will help protect not only the public but also those solicitors who might have been tempted to take this step before they were ready.

87. In response to concerns about PII for these practitioners we have extended the requirement so that cover must apply to all work conducted by the solicitor or REL, and not just to reserved activities. This will:
- reduce the potential for consumer confusion
  - avoid situations where some cases are covered by an insurance obligation and some not
  - prevent arguments by insurers over what does or does not constitute reserved legal activity.
88. However, we believe that is appropriate to maintain the requirement for solicitors working in this way to have 'adequate and appropriate' insurance rather than having to comply with our minimum terms and conditions. This maintains appropriate consumer protection while providing flexibility. It removes one of the key barriers to this type of practice that is cited to us, namely the high cost of purchasing PII on our minimum terms and conditions. Our minimum terms and conditions currently impose the same standards on, for example, a large conveyancing firm as on a single solicitor acting as a criminal advocate.
89. It is therefore important to consider the type of practitioner who is likely to take advantage of this change. The limitation on the type of client money that can be held by freelancers will exclude them from holding transactional client funds (for example the proceeds of sale on conveyancing, court fees or the stamp duty payable on a house purchase) or which comprise damages. The solicitor or REL will have to contract personally with the client and not will be able to work through a service company. The tax and civil liability implications of this alone will make this option only attractive to those with genuinely personal and relatively small practices, perhaps as freelance advocates.
90. The 'adequate and appropriate' obligation for freelancers echoes the overall requirement on regulated firms to assess the suitability of their insurance in our current Code of Conduct [5 \[note5a\]](#) (as well as meeting the MTCs). We have proposed replacing this particular requirement with the wording 'adequate and appropriate insurance' in our consultation on [insurance and compensation arrangements](#) [<https://jobs.sra.org.uk/sra/consultations/consultation-listing/access-legal-services/>]. In practice, this provides a level of continuity and consistency. Firms are used to assessing the insurance needs of their business and many already purchase top-up cover.
91. We confirm that clients of these practitioners will have access to the Compensation Fund.
92. We are also addressing concerns over potential client confusion about regulatory status in the following ways:
- These providers will be required by our Code for Solicitors, RELs and RFLs to explain their regulatory position to clients before engagement.
  - They will appear on our digital register as authorised to provide reserved legal activities in this capacity.
  - They will be subject to our [Better Information](#) [<https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-better-information-consultation/>] requirements, which include publicising details on:
    - Prices (in specific areas).
    - How to complain to the firm.
    - Rights of recourse to the Legal Ombudsman.
93. Some respondents that expressed concerns about PII issues in relation to freelance solicitors repeated those and other concerns in relation to our decision to allow solicitors to practise providing non-reserved services to the public in businesses that are not regulated under the LSA.
94. While we are not revisiting that decision, we have introduced specific requirements through our [Better Information requirements](#) [<https://jobs.sra.org.uk/sra/consultations/consultation-listing/lttf-better-information-consultation/>] in relation to the provision of information on PII. These will apply both to freelancers



and to solicitors working in entities that are not authorised under the LSA more widely. These requirements are to:

- explain to the client that they are not covered by our minimum terms and conditions for PII
- specify that alternative insurance arrangements are in place if this is the case (together with information about the cover this provides, if requested).

## How we regulate overseas practice

95. We proposed streamlining the Overseas Principles and Overseas Accounts Rules in line with changes already made to modernise our domestic Principles and Accounts Rules. We also proposed removing drafting that duplicates the Code of the Council of Bars and Law Societies of Europe (CCBE) from our European Cross-border Practice Rules. This would be replaced by a requirement for those operating in European jurisdictions or cross border to comply with the CCBE's Code.

## What did people say?

96. About half of respondents who answered this question agreed with this proposal. Respondents that did not answer yes to this question were split between saying they needed more information to answer and saying no. By far the most common query from this group was to ask how Brexit might affect this area. The Law Society (and those that endorsed their response) felt that "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".

## What are we going to do?

97. Following feedback from a number of stakeholders with overseas offices, we have made some technical drafting changes to the Overseas Rules. These changes include removing our proposed Overseas Principle seven, which required a proper standard of service to be provided to clients and Overseas Principle eight, concerning the effective running of the business. We agree with respondents that the types of issues that may be caught by these principles are more likely to be dealt with by the local rules or regulatory systems in place, and that the focus of our regulation of overseas practices should be proportionate and targeted towards issues of personal conduct or systemic failures that touch on public confidence in the profession and in the English and Welsh legal jurisdiction.
98. We have also changed the scope of our jurisdiction over managers of overseas offices so that this is focussed on those involved in the day to day or strategic running of the overseas practice, recognising that in large global entities there may be a large number of partners or members who have no direct involvement or responsibility. Finally, we have removed our power to authorise withdrawals from overseas client account as, once again, this will be more properly governed locally.

## Which proposals are we proceeding with?

99. In this section we have set out the areas that attracted stakeholder comment and save for any minor drafting changes, remain substantively as consulted on. There were many other areas that we are proceeding with that did not attract significant comment. These include:
- Immigration, claims management and financial services (immigration and claims management appear in our [Authorisation of Individuals Regulations](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-authorisation-individuals-regulations.pdf) [https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-authorisation-individuals-regulations.pdf], and financial services appear in our [Financial Services \(Scope\) Rules](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-financial-services-scope-rules.pdf) [https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-financial-services-scope-rules.pdf] and our [Financial Services COB Rules](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-financial-services-cob-rules.pdf) [https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-financial-services-cob-rules.pdf]).



- Financial services (appear in our [Financial Services \(Scope\) Rules](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-financial-services-scope-rules.pdf) [<https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-financial-services-scope-rules.pdf>] and our [Financial Services COB Rules](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-financial-services-cob-rules.pdf) [<https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-financial-services-cob-rules.pdf>]).
- Approving managers and owners (appears in our [Authorisation of Firms Rules](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-authorisation-firms-rules.pdf) [<https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-authorisation-firms-rules.pdf>]).
- Our [Notice, Application, Review and Appeal Rules](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-application-notice-review-appeals-rules.pdf) [<https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-application-notice-review-appeals-rules.pdf>].
- RELs (appear in our new [Authorisation of Individuals Regulations](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-authorisation-individuals-regulations.pdf) [<https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-authorisation-individuals-regulations.pdf>]).

## **The requirement to have a practising address in England or Wales**

100. We currently require firms we regulate to have a practising address in this jurisdiction. We consulted on widening this so recognised bodies and recognised sole practices could have their practising address anywhere in the United Kingdom. Firms based in Scotland and Northern Ireland would then be able to offer reserved legal services to consumers in England and Wales. We expect this to lead to more consumer choice and scope for greater diversity in both delivery models and in the solicitor profession.
101. We also asked for views on whether we should expand this proposal so that firms we authorise can have their practising addresses anywhere in the world. Most people agreed with our decision not to take that approach.

### **What did people say?**

102. More than two thirds of respondents agreed with this proposal. Of those that did not, the primary concern was that we should not create a 'redress gap' for consumers outside England and Wales. The Legal Ombudsman noted that while it did not oppose this change in principle, its jurisdiction only extends to persons authorised in England and Wales.

### **What are we going to do?**

103. We will proceed with this proposal. We do not intend to widen this restriction to include practising addresses outside the United Kingdom. We will work closely with the Legal Ombudsman to address their jurisdictional issues, building on the joint working already underway in relation to solicitors working in firms not authorised under the Act. We described the joint working between our two organisations in our recent [response](https://jobs.sra.org.uk/sra/consultations/consultation-responses/legal-ombudsman-response/) [<https://jobs.sra.org.uk/sra/consultations/consultation-responses/legal-ombudsman-response/>] to the Legal Ombudsman's 2018-19 business plan consultation.

## **Corporate owners and managers**

104. In our consultation we proposed introducing the requirement that a firm must intend to deliver legal services to be authorised by us. This is to make sure that our procedures are operating in line with our statutory purpose, which is to authorise and regulate individuals and firms that deliver legal services. The proposal was likely to impact on Corporate Manager Owners (CMOs) as we currently authorise a number of non-trading recognised bodies purely so they can be managers and/or owners of other recognised bodies. To do this, we often waive several of our requirements including the requirement to have Compliance Officers for Legal Practice and for Finance and Administration.

### **What did people say?**

105. During the consultation we contacted 203 firms that are currently structured in this way to bring their attention to the consultation and ask their views. We received a limited response. One firm got in contact to discuss its options in relation to possible conversion to an ABS and could see several potential advantages.

### **What are we going to do?**

106. We have decided to proceed with this proposal for the reasons set out in the consultation. The new rule means that firms can continue to structure themselves using corporate vehicles for tax or other purposes, but the corporate managers or owners would not be authorised by us separately. Therefore, the underlying firm would have a non-authorised corporate owner or manager and would instead have to be authorised as an ABS. The new rule gives us the power, where we are satisfied that it is in the public interest to authorise the body, to do so even though they do not intend to deliver legal services.

## **Property selling**

107. We proposed removing sections of the Handbook that set out prescriptive requirements around property selling. Many of the rules were based on sections of the Estate Agents Act 1979 that have never been enacted, or duplicate rules elsewhere in the Handbook.

### **What did people say?**

108. Respondents were generally positive about the proposals and did not identify any unintended consequences. Several respondents cautioned the need to make sure that no consumer rights were lost because of the proposed changes.
109. The lead enforcement authority of the Estate Agents Act 1979 responded to raise some concerns and challenges over jurisdiction.

### **What are we going to do?**

110. We do not consider that the differing interpretation of jurisdiction put forward by the lead enforcement agency should affect our decision in relation to these rules. We therefore intend to proceed with the proposals to remove the Property Selling Rules, and issue guidance on the two key terms used for fee charging (sole agency and sole selling rights).

## **Our approach to enforcement**

111. In 2016 we committed to reviewing our current Enforcement Strategy, and to replacing it with a revised and updated strategy to underpin our new regulatory arrangements.
112. Our starting point for the review was our wide engagement through the Question of Trust campaign in 2015. The data we collected from more than 5,000 people allowed us to test and develop our thinking on the potential behaviours of solicitors falling along a spectrum from least to most serious. This made an important contribution to our subsequent work on our overall approach to enforcement.
113. Our approach to enforcement is guided by our public interest purpose. The updated Enforcement Strategy will be one of the key tools moving us towards regulatory best practice and a model that seeks to:
- enforce standards through a transparent framework that people can clearly understand
  - set standards that establish clear expectations, but also build in appropriate flexibility as to how individuals can behave to meet those standards
  - move to a principles-based, flexible approach to enforcement that helps us focus effectively on serious breaches of our rules



- make clear our reasons for our decisions and rationale for taking (or not taking) action in any case or circumstances
  - help our staff and the profession better understand the risks posed by different behaviours
  - provide the transparency and assurance that solicitors and firms have been asking for.
114. We also consulted on a revised set of Regulatory and Disciplinary Procedure Rules. These were expanded to cover our approach to assessment and investigation of all complaints and regulatory concerns. They were designed to follow a more chronological pathway through our decision-making process. The new rules address the full range of powers available to us, including orders made under Section 43 of the Solicitors Act 1974 and decisions to attach conditions to practising certificates.
115. The new rules make sure that we provide information to the regulated person and their employer at the outset of an investigation, as well as providing details of allegations and all supporting documents for comment before we make a decision.

### **What did people say?**

116. Respondents were overwhelmingly in favour of our revised approach to enforcement. Most respondents agreed with our approach without adding any additional comments. A small number of respondents commented on our previous and current approach to enforcement, and issues that they or others had previously encountered. The majority of those that commented welcomed the more flexible approach and move towards focusing on serious breaches.
117. Lawworks asked whether any specific account had been taken of the impact of freelance work on our revised approach to enforcement. Another respondent expressed concerns that the draft Enforcement Strategy did not cover mental health issues adequately. They suggested we should consider moving more closely to the fitness to practice model used by health regulators.
118. A few respondents noted that clear, transparent and easily accessible guidance will be important.

### **What are we going to do?**

119. Based on feedback received, we will make sure that the Enforcement Strategy and any underlying documents provide clear guidance on our approach to the health and welfare of solicitors and firms involved in our procedures. This was raised as a key omission in the document by a small number of respondents. We do, of course, take health (including mental health) issues into account on a case by case basis but agree we should make our approach transparent.
120. Our Enforcement Strategy will be supported by guidance on specific topics. This will include:
- Updated indicative fining guidance.
  - Updated guidance on reporting concerns and whistleblowing.
  - a suite of guidance around the grey areas highlighted in our consultation, for example covering our approach to allegations of driving with excess alcohol, criminal behaviour out of practice, abuse of social media, and competence and service issues.
121. We will publish all materials relating to our approach to enforcement together.

### **Costs of investigations**

122. We have decided not to consult on the substance of our [Cost of Investigation Regulations](https://jobs.sra.org.uk/solicitors/handbook/costinvestigations/content) [https://jobs.sra.org.uk/solicitors/handbook/costinvestigations/content] for the time being. However, we have simplified and updated those rules, and inserted these within the Regulatory and Disciplinary Procedure Rules. This has included aligning our powers to charge investigation costs to disciplinary investigations which result in any of the orders now included within those rules. We have also removed the power in the current rules to charge for unsuccessful appeals.



## Footnotes

1. See [/sra/consultations/consultation-listing/code-conduct-consultation.page](https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation.page) [<https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/>]
2. Special bodies are charities and other not for profit bodies classified in the Legal Services Act 2007 as entitled to deliver reserved legal services under transitional arrangements within a framework that reflects their unique status.
3. At paragraph 115
4. Or other lawyer manager in the case of an entity
5. Outcome 7.13 states "you assess and purchase the level of professional indemnity insurance cover that is appropriate for your current and past practice, taking into account potential levels of claim by your clients and others and any alternative arrangements you or your client may make."

## Consultation

### About this consultation

Following our first Looking to the future consultation in summer 2016, we are now consulting on further changes to our Handbook and our proposed revised Enforcement Strategy. This consultation also includes the transitional arrangements for the introduction of the Solicitors Qualifying Examination (SQE).

Through our Looking to the future programme, we are:

- simplifying our regulations so they are clear on the high professional standards we expect and what we will do when solicitors fall short of those standards
- getting rid of unnecessary bureaucracy that drives up costs or restricts access to solicitors, while making sure the right public protections remain in place
- improving the information available to help people make better choices.

This consultation includes the rules to implement our policy decisions from phase one, which will free up solicitors to provide non-reserved legal services outside regulated firms. The detailed rules that give effect to our decisions on professional indemnity insurance (PII) and the Compensation Fund [1](#) [[#note1](#)]. will be included in our wider review of financial protection arrangements. These decisions were set out in our [response to our phase one consultation \(PDF 54 pages, 708K\)](#) [<https://jobs.sra.org.uk/globalassets/documents/sra/consultations/ltrf-our-response.pdf>].

The information requirements that will apply to these solicitors as well as to regulated firms are included in our accompanying consultation - Looking to the future: better information, more choice.

You can find information on:

- what has happened with the rules in our existing Handbook, and the proposed sets of rules in our new Handbook, in [annex one](#) [[#download](#)]
- our revised Enforcement Strategy in [annex two](#) [[#download](#)]
- our assessment of the impacts of these changes in [annex three](#) [[#download](#)].

We are keen to hear your feedback on these proposals.

This consultation is running from 27 September until 20 December 2017.

After this consultation closes, our next steps will be to collate and analyse all the responses. We will then decide what proposals we need to take forward.

### How does this link to our other work?





This consultation is part of a wider programme of work. We are currently consulting on linked issues in [Looking to the future: better information, more choice](https://jobs.sra.org.uk/sra/consultations/consultation-listing/ltf-better-information-consultation/) [<https://jobs.sra.org.uk/sra/consultations/consultation-listing/ltf-better-information-consultation/>]. That consultation sets out our proposals to make information more accessible for consumers. We are proposing to:

- build a digital register which will contain our regulatory data in an easy, and accessible way
- publish information about complaints and what areas firms practise in
- introduce requirements for information that firms should provide themselves to consumers, such as proposals to publish price and a description of the services included in that price in a set number of areas and proposals to make more information on regulatory protections available.

## Background to consultation

### Our rationale for change

1. Our November 2015 position paper [Looking to the future](https://jobs.sra.org.uk/sra/policy/future/resources/position-paper/) [<https://jobs.sra.org.uk/sra/policy/future/resources/position-paper/>] outlined our new model for regulating legal services. This model centres on a targeted and proportionate regulatory approach, which is fit for purpose in our fast changing and dynamic sector. In November 2015 we also updated our policy statement on our approach to regulation and its reform, which underpins all of our work in this area.
2. We have been developing our approach through an ongoing programme of regulatory reform. Realigning the scope and focus of our rules is one component of, and an important channel for, this reform programme. The revised rules will place greater focus on key protections, and enhance this focus by removing extra red tape and making the purpose of rules clearer.
3. As well as modernising our rules, our reforms are designed to focus our activity on our core purpose of providing protection for the public and supporting the operation of the rule of law and the proper administration of justice. Setting and maintaining clear, high professional standards is fundamental to both good consumer protection and public trust and confidence in solicitors and law firms.
4. A phased review of our Handbook is part of this programme. Phase one of this review created two distinct strands:
  - A new individual Code for solicitors, registered European lawyers (RELs) and registered foreign lawyers (RFLs) which would apply to them however they practise.
  - Businesses entitled to deliver the [reserved legal activities](http://www.legislation.gov.uk/ukpga/2007/29/section/12) [<http://www.legislation.gov.uk/ukpga/2007/29/section/12>]<sup>2</sup> [[#note2](#)] would be subject to a new Code of Conduct for Firms.
5. Phase one also set out a revised set of overarching principles, and proposed freeing up solicitors to provide non-reserved legal services outside regulated firms. Our consultation on phase one closed in September 2016. A summary of the views we received in response to that consultation, and our response, are available here. This consultation paper sets out, and asks for your opinion on, phase two of our Handbook review.

### Phase two of our Handbook review

6. We made a number of key decisions of principle in phase one, including freeing up solicitors to provide some legal services outside of regulated firms. Our [decision document \(PDF 54 pages, 708KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/ltf-our-response.pdf) [<https://jobs.sra.org.uk/globalassets/documents/sra/consultations/ltf-our-response.pdf>] outlines our thinking in these areas. Phase two is principally about:
  - reviewing and making our rules clearer and reducing unnecessary bureaucracy
  - implementing the phase one decisions.
7. As in phase one, we have sought to:



- reduce unnecessary regulation [4 \[note4\]](#) - we have removed prescriptive drafting to produce requirements that:
    - are clearer and more accessible, with duplication removed
    - are easier to understand in terms of purpose and effect
    - are targeted at the issues that really matter
    - operate at a higher level so are less detailed and prescriptive, providing flexibility to apply to changing circumstances.
  - where possible move guidance and detailed internal processes to sit outside our rules and have simplified and reduced the length of the accompanying glossary.
8. We are reorganising how we present our rules to give a more logical and coherent structure. We will ensure that related rules and principles are placed together to avoid the complexity and navigation issues in the current Handbook. One example of this is rationalising our appeals provisions, so that there is only one centralised set (instead of the many that are dotted throughout the current Handbook).
  9. We are aiming to 'future-proof' the new rules, as far as that is possible. As of 1 November 2016, the current Handbook is on version 18 since its publication in 2011. Its detailed and prescriptive rules need constant updating. By stripping out unnecessary regulation and using higher level rules the new Handbook should better stand the test of time. This approach also aligns with the better regulation principles of making sure our rules are transparent, proportionate and targeted.
  10. As part of future proofing and reducing duplication we have avoided, as far as is possible, repeating legislation in the new rules and regulatory provisions which apply irrespective of our arrangements. However, our intention is that providers will be able to access linked guidance on our website that explains the application of core provisions without needing to turn to the original legislation (such as the requirements in the Legal Services Act 2007 (LSA) relating to when a body needs to be authorised).
  11. This approach means our Handbook should be well placed to adapt to any changes in the market. For example, under section 106 of the LSA special bodies have the right to ask us to modify our rules. We consider that our proposed new rules would generally not need modification. However, we would be open to modifying requirements for special bodies if it was proportionate and offered the right balance in relation to the regulatory objectives. Similarly, if Government ever wished to remove the transitional protections for special bodies our proposed rules are well placed to adjust.

## Benefits

12. A shorter, clearer Handbook will be easier for those we regulate to navigate and understand. We want to facilitate a focus on high professional standards rather than simply on compliance with our rules. As well as giving solicitors the freedom to run their businesses as best suits them and their clients, higher level requirements, rather than prescriptive rules, call for more thought from our regulated community. However, they also encourage businesses to own and internalise our standards instead of just implementing prescriptive requirements without reflecting on why or how they are appropriate. We consider this approach to be better for standards and better for innovation.
13. We have considered the LSA's regulatory [objectives](#) (<http://www.legislation.gov.uk/ukpga/2007/29/section/1>) throughout this work. The proposals in this consultation aim to balance each of those objectives. We also consider these proposals to be the best way for us to exercise our regulatory function in a way that is consistent with our obligation to promote the regulatory objectives.
14. Any areas where extra support or guidance are needed that become apparent through the responses received to this consultation will be part of our overall support package which we are producing to support firms as any changes are implemented.

## Section one: Authorising firms



15. Our new Authorisation of Firms Rules set out the requirements relating to firms we regulate. [5 \(#note5\)](#) They combine our authorisation rules and relevant parts of the Practice Framework Rules and cover:
  - the effect of authorisation by us on the legal activities firms may undertake
  - the requirements for, and how we will decide, applications for authorisation
  - the conditions that apply during authorisation and how authorisation may be suspended or terminated.

## The requirement to have a practising address in England or Wales

### Background

16. Over the last few years people working in legal services have had unprecedented opportunities to innovate: creating new business structures, serving global and domestic clients in new ways and taking advantage of new technology. This has, in part, been helped by more proportionate and flexible regulation. But there is still much more we can do to help. We are committed to continuing to reform our regulation by reducing bureaucracy and increasing the flexibility available.
17. Under our current rules [6 \(#note6\)](#), any firm wishing to be regulated by us must have a practising address in England and Wales. For alternative business structures (ABSs) this is a statutory requirement set out in [schedule 11](#) [\[http://www.legislation.gov.uk/ukpga/2007/29/schedule/11\]](http://www.legislation.gov.uk/ukpga/2007/29/schedule/11) to the LSA, save for companies and LLPs with a registered office in England or Wales. For recognised bodies this requirement stems only from our rules, meaning we can waive it where we see fit.
18. Our rules therefore go further than legislation by requiring all firms we regulate to provide services from a physical base in England or Wales. An entity based abroad looking to provide online services to consumers in England or Wales would currently be unable to offer reserved services to its clients. Our current requirement for a domestic practising address means that we could not authorise them as an entity, meaning their practice is restricted to non-reserved work only.

### Our approach

19. The Ministry of Justice (MoJ) has consulted on removing the statutory requirements for ABSs and is currently analysing the responses it received. In our response to their consultation we agreed with the proposal to remove the requirement for ABSs to have a practising address in England and Wales and to provide reserved legal services from that address. Removing the statutory restriction that currently only applies to ABSs would allow a more risk based approach to be fixed in rules made by the regulator.
20. In reviewing our rules, we have considered whether to retain the current requirement for all firms to have a practising address in England or Wales or pare our rules back to match the relevant legislation. Our aim is to ensure that our rules do not unnecessarily restrict the development of either online or cross-border services. Removing this requirement would enable us to authorise entities based outside the jurisdiction to provide reserved legal services in England and Wales (subject to any restrictions in legislation).
21. In considering our position, we looked at whether we could effectively regulate those based outside this jurisdiction. Through our Overseas Rules, we already regulate branch offices of UK firms operating overseas (and individual solicitors working overseas). In these circumstances we regulate through the domestic office and there are close ties to the UK. We would need to take a different approach were we to authorise an overseas entity with no connection to any of the domestic firms that we regulate.
22. If we were to authorise firms based abroad, we would need to be able to verify the suitability of any entity and its owners from another jurisdiction. We would also need to ensure that we could effectively enforce against it. We have granted a small number of waivers of our practising address requirement to recognised bodies outside of England and Wales. However, these have tended to be to firms based in



Northern Ireland or Scotland where difficulties of verification and enforcement do not arise in the same way as they would outside the UK.

23. Finally, we are also conscious that the UK's decision to leave the European Union may create a further need for changes to the requirements for authorising firms abroad. We cannot yet anticipate the precise nature of these possible changes.
24. Having considered all of these issues we are of the view that we should retain the requirement for firms to have a practising address in this jurisdiction, save that in the case of recognised bodies and recognised sole practices we will widen the rule to include anywhere in the United Kingdom.

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

## Forming and managing authorised bodies

### Background

25. The current position on who can be managers of authorised bodies is set out in Practice Framework Rules (PFR) 14 and 16. This list largely reflects the statutory position with two exceptions:
  - PFR 14.2, which goes further than required by the LSA by providing that a licensed body must always have a manager that is an authorised individual, as opposed to an authorised person which may include a body corporate.
  - PFR 16(1)(f) which provides that only an individual may be a director of a recognised body which is a company.
26. PFR 15 sets out the requirements for authorised bodies that are limited companies.

### Our approach

27. We propose to maintain the current restrictions in PFR 15(3) that authorised bodies that are limited companies must either be incorporated in the UK or incorporated in an [Establishment Directive state](https://jobs.sra.org.uk/sra/regulatory-framework/establishment-lawyers-directive-98-5-ec/) [https://jobs.sra.org.uk/sra/regulatory-framework/establishment-lawyers-directive-98-5-ec/] and registered as an overseas company under Part 34 of the Companies Act 2006; or incorporated and registered in an Establishment Directive state as a *societas Europaea*. [7 \[note7\]](#)
28. We consider it unnecessary to go beyond statutory requirements in restricting who can be managers of SRA-authorised bodies. Where an authorised body has a corporate manager, our approval process will allow us to look behind the corporate veil in order to ascertain who ultimately manages and controls that company, and to refuse authorisation if we are not satisfied they are suitable. For the same reason, we will no longer seek to formally approve individual managers of corporate managers as part of the authorisation rules, but instead will look up the chain as appropriate on a pragmatic basis to see whose involvement to take into account in approving the corporate manager itself.
29. We have removed the current requirement in PFR 16(1) (f) for all managers of corporate recognised bodies to be individuals. However it should be noted in relation to limited companies that section 87 of the Small Business, Enterprise and Employment Act 2015, [8 \[note8\]](#) if and when brought into force, will place requirements on some limited companies to have only directors that are natural persons, and all authorised bodies will need to comply with the general law.

### Manager approval



30. In the past when dealing with large multi-jurisdictional firms the SRA has granted waivers to exempt those managers that do not exercise any significant control over the firm and are not involved in the delivery of legal services in England and Wales (for example partners based overseas). Our draft Authorisation of Firms Rules formalise this position by proposing that we may decide to not require separate approval of a manager if we are satisfied that they are not involved in:
- a. the day to day or strategic management of the authorised body
  - b. compliance by the authorised body with the SRA's regulatory arrangements
  - c. the carrying on of reserved legal activities, or the provision of legal services in England and Wales.

This does not affect the separate arrangements that will apply to approvals under the money laundering regulations that have recently come into force.

## Removing the 'Qualified to Supervise' rule

### Background

31. Rule 12 of our current Practice Framework Rules requires all bodies we authorise (and [certain individuals](https://jobs.sra.org.uk/solicitors/handbook/practising/content) <sup>9</sup>) to have within their management structure or be someone who is 'qualified to supervise'. In order to be qualified to supervise a person must have:
- undertaken training as specified by the SRA (currently 12 hours on management skills)
  - been entitled to practise as a lawyer for at least 36 months within the past 10 years.
32. The effect of Rule 12, therefore, is that a solicitor may not set up as a sole practitioner unless they have been entitled to practise for at least three years.

### Our approach

33. The current rule is confusing. It conflates technical competence, supervision arrangements and running a business. It is widely misunderstood as a requirement that solicitors must themselves be supervised for at least three years post-admission, or that a solicitor must have three years' experience before they can set up as a sole practitioner. The justification for the rule is commonly expressed as the need to ensure that an individual has developed the technical and business competences to run a business. Many respondents to our Looking to the future phase one consultation supported the rule on this basis.
34. For example, the Solicitors Disciplinary Tribunal (SDT) suggested <sup>10</sup> that removing the qualified to supervise requirement would be dangerous in terms of client protection and public confidence in providers of legal services. The SDT suggested that we should only review the requirement once our new competence statement and approach to continuing professional development are well embedded. The SDT also provided evidence that out of 138 judgments over the previous 12 months, seven (5percent) included reference by the respondent solicitor to lack of supervision as an explanation for their misconduct. This comment shows the confusion the rule creates, as it does not actually impose any supervision requirement.
35. The rule as drafted does not provide any guarantee of competence. For example:
- The three-year time period is arbitrary. There is also no requirement in the rule for the time to be recent.
  - It does not relate to or safeguard the actual level of technical or business competence of an individual.
  - The training requirement is also arbitrary and out of step with our new approach to continuing competence, in which individuals must identify and undertake the training they need to be competent in their role.
36. Further, the rule prevents an individual becoming a sole practitioner, but it does not prevent them becoming an owner of a legal business or exercising management



control from the day they qualify.

37. But 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. Having sought to address barriers to entry through liberalising the requirements for training contracts, and permitting solicitors to practise unreserved legal services in a non-LSA-regulated entity, it would seem counterproductive to retain this provision unless it is needed in order to protect consumers of legal services.
38. The current rule is therefore hard to justify. A number of respondents to our phase one consultation understood our concerns. However, the consensus was that while the current rule might not be ideal, it did provide an important safeguard to ensure that newly qualified solicitors did not set up their own firm without some experience.
39. We understand the concerns raised. We have therefore considered the other safeguards, including those we are proposing to introduce in the new Handbook, that provide a more targeted and proportionate way of addressing these. These include:
- We have the power to refuse to authorise a recognised sole practice or firm if we consider it will not meet necessary standards or comply with regulation.
  - Both the current and new code contain the requirement to not act outside of competence. Rule 3.2 of the new Code of Conduct for individuals requires a solicitor to ensure the service they provide to clients is competent. It would be a breach of this requirement for a newly qualified solicitor to set themselves up as a sole practitioner in an area they were not competent in.
  - As the SDT mentions, the new approach to continuing competence, and rule 3.3 of the new Code of Conduct for individuals require solicitors to maintain their competence to practise and keep their professional knowledge and skills up to date. Our new approach became compulsory for all solicitors in November 2016, and will therefore have been in force for at least two years by the time our new rules are introduced.
  - Both the current and new code require firms to have in place certain safeguards to ensure competence. Rule 2.1 of the new Code of Conduct for firms requires entities we regulate to have effective business controls in place, including systems for supervising client matters and ensuring staff are competent and keep their skills up to date.
  - Our Ethics Helpline provides support for all solicitors (including sole practitioners) who encounter difficult ethical questions.
  - Our proposal to create a more accessible digital register of solicitors [11\[<sup>#note11</sup>\]](#) means that consumers will be able to find when a solicitor was admitted, and therefore how much experience they have.
  - In future, the SQE will mean all qualified solicitors have passed a rigorous assessment of their technical competence (although the SQE will not assess whether a candidate is competent to own or run a business).
40. We believe that these measures provide better consumer protections than the current rule. We therefore propose to remove this requirement.

## 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?

## Immigration, claims management and financial services

### Our approach

41. We do not propose to allow solicitors practising in non-LSA-regulated providers to provide regulated financial services to the public under the scope of our regulation. This is because only a proportion of solicitors practising in non-LSA-regulated firms





would fall within the definition required for Part 20, and in any event they will not be subject to our regulatory requirements for firms (which are an important part of the operation of the Part 20 exemption). We have discussed this approach with the Financial Conduct Authority (FCA) which has indicated its support for our position.

42. Both immigration and claims management services are subject to separate regulatory regimes for those that practise outside of LSA-regulated firms via the Office of the Immigration Services Commissioner (OISC) and the Claims Management Regulator (CMR) respectively. At the time these regimes were introduced it was not conceived that solicitors might offer services to the public outside of a regulated law firm. Our other reforms could therefore extend rights to deliver certain legal services beyond what we believe was envisaged at the time, which is that work in immigration and claims management should only take place within a regulated entity.
43. Having discussed the position with both the OISC and the CMR, we think it is important that those we regulate are not able to avoid the intention behind those statutory arrangements by setting up unauthorised firms in these areas. We are therefore proposing that solicitors, RELs and RFLs will only be able to:
  - practise immigration work in a firm authorised under the LSA or by the OISC
  - provide claims management services in a firm authorised under the LSA or by the CMR or its equivalent.

### 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.

## Section two: Authorising individuals

44. Our new Authorisation of Individuals Rules set out the requirements for individuals <sup>12</sup>[\[#note12\]](#) we regulate. They cover:
  - admission as a solicitor (including the new SQE regulations)
  - eligibility and criteria for granting practising certificates
  - effect of authorisation and conditions of practice
  - registration as a European (REL) or foreign lawyer (RFL)

### Individual self-employed solicitors

45. In our first consultation on the Looking to the future proposals, we proposed to maintain the current position whereby an individual solicitor (or REL) <sup>13</sup>[\[#note13\]](#) can only provide reserved legal services to the public or a section of the public as a Recognised Sole Practice or in, or on behalf of, another entity authorised by the SRA or another of the approved regulators under the LSA. However, we recognised that by not allowing the alternative of individual solicitors providing reserved legal services as freelance lawyers we might be unnecessarily restricting models of practice and asked for respondents' views.
46. While a majority of respondents supported the status quo, a number felt that we were being unnecessarily restrictive particularly in denying individual practitioners (who often face significant costs) more flexible ways of providing services and sharing expenses - for example in a chambers style arrangement. This freedom is of course already open to practitioners at the Bar.



47. We consider that such arguments have force and that provided the appropriate consumer protections are in place we should allow more flexibility.
48. We are also 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.
49. We therefore propose to allow individual self-employed solicitors and RELs to provide reserved legal services to the public or a section of the public on their own account without the need to be a Recognised Sole Practice or to work through an authorised body. The solicitor or REL would need to be practising as an individual (and therefore without employees or partners and not through a service company) and would need to be engaged personally by the client. They would be required to maintain adequate and appropriate professional indemnity insurance and to be based in the UK. The Compensation Fund provisions would apply as would the provisions of the new SRA Code for Solicitors, RELs and RFLs.
50. As they would not be in an authorised firm, we propose that these individual solicitors and RELs should not be able to hold client money, except for money in respect of fees and disbursements if held or received prior to delivery of a bill for the same and where any money held for disbursements relates to costs or expenses incurred by the solicitor or REL on behalf of their client and for which they are liable. [14 \[note14\]](#)
51. We consider that these requirements will make sure that services can be provided by individual freelance solicitors in a way that is safe and effective, and that those who are effectively operating as a law firm are authorised as such.
52. The draft rule is below:

### **Draft regulations for sole solicitors**

1.1 Subject to regulation 1.2, if you are a *solicitor* or *REL* you must not act as a *sole practitioner* unless your practice is authorised as a *recognised sole practice*.

1.2 If you otherwise would be, you will not be regarded as acting as a *sole practitioner*, if:

- a. your practice consists entirely of carrying on activities which are not *reserved legal activities*; or
- b. any reserved legal activities you carry on are provided:
  - i. through a body authorised by the *SRA* or another *approved regulator* to carry on *reserved legal activities*; or
  - ii. in circumstances in which you:
    - A. are self-employed;
    - B. do not have any employees and do not practise through a service company;
    - C. are engaged directly by the *client*;
    - D. have a practising address in the *UK*;
    - E. take out and maintain insurance that provides adequate and appropriate cover in respect of those activities; and
    - F. do not hold *client money* except where it falls within rule 2.1(d) of the SRA Accounts Rules and is held in accordance with rule 2.2 of those rules,

and you choose for your practice not to be authorised as a *recognised sole practice*.

### **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?

### **Assessing character and suitability**

#### **Background**

53. Our current [Suitability Test](https://jobs.sra.org.uk/solicitors/handbook/introAuthPrac/suitabilitytest/) [https://jobs.sra.org.uk/solicitors/handbook/introAuthPrac/suitabilitytest/] was introduced in 2011. It sets out the events we take into account when assessing the character and suitability of people applying to us:
  - for admission to the roll of solicitors
  - for restoration to the roll of solicitors
  - to hold approved role holder positions within businesses we regulate. Our approach
54. Our current Suitability Test is very prescriptive. It restricts our discretion to treat each application on a case by case basis to consideration of 'exceptional circumstances'. We want to be able to consider each application on a case by case basis, taking into account all of the individual circumstances. This will align more closely with our wider approach to enforcement and decision making.
55. Where a person reports a character or suitability issue to us, we want to be able to take into account evidence relating to factors such as the seriousness of the issue and any aggravating or mitigating circumstances. This will allow us to make a decision that is fair, proportionate and transparent to the applicant.
56. Our starting point was to benchmark the current Suitability Test against similar assessments undertaken by other professional services regulators. We looked at a number of regulators, including all of the legal services regulators, and a number of other regulators with a similar approach to character and suitability and/or fit and proper requirements. We concluded that, compared to the approach taken by other regulators with similar regulatory powers and sanctions, our current test is unnecessarily rigid in comparison. [15 \[note15\]](#)
57. Because of the inflexibility of our current test, it also means that we do not have the ability to apply a common-sense case by case approach – that allows us to fully take account of harm and mitigating factors, and to take a nuanced and transparent view of each application. Instead, each application has to be considered within the current rigid framework, meaning that we are not able to admit some individuals that we think (on balance) should be admitted to the profession (as they either pose no current regulatory risk, or that regulatory risk can be effectively managed by conditions on their practising certificate).
58. Through the new assessment we are clarifying the overriding principles which govern our assessment of appropriate character and suitability, ie protection of the public and of the public interest. We are moving to a set of indicative events or behaviours, aggravating and mitigating factors, which will apply equally to all, taking into account the individual's circumstances and the nature of their role (e.g. solicitor, COLP etc). For RELs and RFLs we will look at whether they are in good standing with their regulator.

## Changes affecting students

59. We intend to remove character and suitability testing from students and people about to enter, or within, a Period of Recognised Training (PRT). This would align with the approach we have adopted for apprenticeships. Instead, there will be a requirement to assess character and suitability at the point individuals apply for admission as a solicitor.
60. Currently students can seek an early decision on their character and suitability before they start the Legal Practice Course (LPC), so they know whether they could be admitted before they commit to course fees. Under our new arrangements, we will give students early, individual advice instead. Although this may not provide the same level of reassurance as a regulatory decision on which students can have 'cast iron' reliance, we think it is a better option than an early negative decision for a number of reasons.
61. Our experience of the current system of an early check (introduced in 2014) is that it can make the situation worse for applicants, because it is an actual determination. Students who have committed a misdemeanour as an undergraduate, and who apply to us for a check have no opportunity to demonstrate rehabilitation. They fail the character and suitability test as a result.
62. Under our new proposals, we will provide an indication that if they were applying immediately for entry, they would fail the character and suitability requirements, but



that if they are able to demonstrate rehabilitation by the point of application we will be able to take that into account. Whilst this does not offer them a guarantee, it keeps the door open, and allows them to make an informed judgment as to whether or not to carry on.

63. In order to help and support students and education providers, we will produce comprehensive guidance, and a checklist that explains our character and suitability rules, and our approach to what we are likely to take most (or least) seriously, and which misdemeanours are most likely to lead to a negative decision. We will provide this direct to law schools and employers, and will also signpost it clearly on our website.
64. Where students want further clarification or advice, we will make that available through our Professional Ethics service. We will also draw candidates' attention to our requirements for character and suitability, and the availability of this advice service, when they first register for the SQE, and provide a link to our online guidance.

## What are we proposing?

65. We will streamline our processes but the onus will remain on the individual to provide evidence to support their application for assessment of their character and suitability.
66. In addition to the changes we have set out above, we also propose the following changes to our approach to assessing character and suitability:
  - using our existing powers more effectively to impose practising certificate conditions at the point of authorisation, where this will enable us to admit an individual while mitigating any risk they might present. For example, for someone with previous debt management issues we could impose a condition that they may not be a sole practitioner when first admitted, at least until they can show that those issues have been resolved
  - looking at the process for approving authorised persons who are already regulated by us or another approved regulator. Where we can we will simplify and streamline the process and remove duplication of requirements when parts of our own assessment have already been satisfied by another regulator.

## 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?

## Our Training Regulations

### Background

67. Our current [Training Regulations](https://jobs.sra.org.uk/solicitors/handbook/trainingregs2014/part1/content) [https://jobs.sra.org.uk/solicitors/handbook/trainingregs2014/part1/content] set out requirements:
  - for anyone seeking to be admitted as a solicitor through the domestic route to qualification
  - for authorised firms about the training they provide
  - relating to assessment providers.

### Our approach

68. In the new Handbook, the current admission requirements are set out in the SRA Authorisation of Individuals Regulations. They will sit alongside the new SQE regulations until the existing requirements for qualification are phased out.
69. When the SQE is introduced, anyone seeking admission as a solicitor in England and Wales will be able to qualify by passing the SQE (or, in the case of qualified lawyers, gaining exemptions from some elements of the SQE) and satisfying our other admission requirements.

70. Our Authorisation of Individuals Regulations will include transitional arrangements setting out how the SQE provisions will apply to individuals who have started along the path to qualification under the existing routes at the time the SQE is introduced.
71. In 2015, we published a policy statement setting out the principles which would govern the transitional arrangements for our new education and training requirements.
72. We said then that Qualifying Law Degree (QLD) and Common Professional Examination (CPE) graduates could complete those courses but then they must switch to the new system. Candidates who had got to the LPC stage or beyond would have a choice: they could either complete under the old system or transfer to the new system. Candidates who had started to train would not be required to repeat a stage of training they had already completed.
73. We expanded on this approach in our first consultation on the SQE in 2015. We proposed then that QLD and CPE graduates would get exemptions from those parts of the SQE which corresponded to examinations which they had already taken. For Qualified Lawyers Transfer Scheme (QLTS) candidates who had completed the first but not the second part of the QLTS, we said that they could choose to complete through either QLTS 2 or SQE stage 2.
74. We published a second SQE consultation in October 2016. By the time of this consultation, we had developed a draft Assessment Specification. This made clear that our approach to the SQE would integrate assessment of subjects currently studied both in the academic and professional stages of training. We therefore proposed and consulted on a different approach to transition.
75. We widened the group of candidates who would be able to choose to qualify either under the old or new systems, extending it to include QLD and CPE graduates, as well as LPC graduates. However, we also said that that while anyone who had started the academic stage of training before the introduction of the SQE could choose to complete their qualification under either the old or new system, we would require candidates to meet all the requirements of the system they chose. We would not permit a combination of the two. This would mean that candidates, including those in the transitional cohort, could not gain exemptions from the SQE based on previous qualifications. We also said again that QLTS candidates who had completed the first QLTS assessment, but not the second, could choose to qualify either by passing QLTS 2 or SQE stage 2.
76. We included a specific question on whether we should offer exemptions from the SQE when it was introduced. Stakeholders were broadly supportive of offering the minimum number of exemptions because to do otherwise would defeat the point of having an independent, centralised assessment. There was some support for giving exemptions to students with QLDs.
77. We have now given further thought to the approach to transition (including exemptions from the SQE during the transitional period), and whether we should allow candidates to 'mix and match' between the old and new regulations. In doing so we have recognised the need to ensure standards are maintained during the transitional phase. This must be balanced against the need to be fair to those who have investigated significant time and money in the reasonable expectation that a qualification will lead to admission as a solicitor.
78. The SQE is intended to be a robust, fair and transparent assessment which provides a high level of consumer protection. We have considered carefully whether we should offer exemptions from the SQE to candidates for a transitional period.

### **Full exemption**

79. We have concluded that we should permit candidates who started to train before the SQE comes into force, and who complete their training during a transitional period, to have full exemption from the requirement to qualify through the SQE. This includes those who have commenced or invested in a QLD at the time the SQE is introduced.
80. The exception to this is apprentices, who must pass all stages of the SQE whenever they started their apprenticeship. This is because the requirement to pass the SQE is





part of the assessment plan for the apprenticeship standard leading to qualification as a solicitor.

### Partial exemption

81. We have also considered whether we should permit candidates to 'mix and match' old and new qualifications during the transitional period by permitting exemptions from parts of the SQE. We have reached the position that we should not generally do so because we believe that this would present a risk to standards by threatening the integrity of the SQE, for the following reasons:
- The approach to coverage of Foundations of Legal Knowledge varies between QLD providers, both in terms of the content taught and the approach to teaching (historical, philosophical or socio-legal approach etc). The assessments reflect this. However, SQE stage 1 assesses functioning legal knowledge – that is candidates' ability to apply legal principles to address clients' problems through dispute resolution mechanisms or within transactions.
  - None of the proposed SQE stage 1 assessments correspond exactly to courses of study in either the QLD or the LPC. Instead they integrate a mixture of both. It would be very difficult to identify individual questions from which candidates might be exempt. We would need to look at the detailed content of individual courses, and could need to write a large number of bespoke examinations. This would be expensive and could be unmanageable. The variability between the different examination papers would make standard setting difficult, if not impossible. And it would be likely to mean that we could not be sure that candidates were being assessed to the same standard.
  - Worse still, there is a risk that we would not assess particular elements at all. For example, were we to continue to propose that QLTS candidates who had passed QLTS 1 could choose between QLTS 2 and SQE stage 2 assessments, those who chose to take a combination of QLTS 1 plus SQE stage 2 would not have been assessed on all the reserved activities, because they are assessed in QLTS 2 but not in SQE stage 2.
82. We have also considered whether we could permit candidates who have completed the academic and professional stages of training (ie the QLD/CPE and the LPC, or an Exempting Law Degree) to complete their qualification by undertaking Qualifying Work Experience (QWE), as an alternative to a Period of Recognised Training (PRT). In this situation however, candidates would not have had any assessment of end-point competence either by a solicitor at point of sign-off, or through SQE stage 2.
83. We do, however, recognise the potential unfairness for a very small number of candidates who want to complete their qualifications through the current route but for some reason cannot. For these candidates, we will retain the flexibility of the Equivalent Means mechanism. This will enable us to look at their qualifications and experience to determine whether they are competent to be admitted as a solicitor. For example, we could recognise QWE and SQE stage 2 as an equivalent to PRT. Of course, in exceptional circumstances, we can also use our waiver powers.

### Cut-off date

84. Our proposals are designed to give a choice to individuals who have invested significant time and money in the reasonable expectation that a particular qualification will lead to admission as a solicitor. They are not intended to guarantee that everyone who has started a QLD, CPE or the QLTS before the SQE is introduced can qualify under our current regulations. There could be many circumstances which may delay an individual's progress to qualification.
85. We are however proposing a lengthy cut-off date of 11 years after the introduction of the SQE. This would permit most candidates who have started to train to complete the current route to admission on either a full or part-time basis and to have a full exemption from the requirement to qualify through the SQE accordingly. Those candidates can therefore choose to qualify under the old or new system.
86. We are aware that whatever the cut-off date, we cannot make provision for all. However, where an individual, perhaps because of an unforeseen circumstance, is





unable to complete the route to admission under the current system, they will not be deprived of the opportunity to qualify as a solicitor. Learning from a QLD, CPE or any subsequent qualification will help an individual prepare for the SQE assessments.

87. In addition, we are proposing to maintain our current Equivalent Means route to qualification for those who have started to train under the current system. This provides additional flexibility during the transitional period. In certain circumstances, Equivalent Means could give us the flexibility to protect candidates who have started but not completed their route to admission under the current system by the cut-off date. For candidates who start to train after the introduction of the SQE, Equivalent Means will no longer be necessary because we will no longer specify the form that preparatory training must take.

## Summary

88. We propose that:

- Individuals who have started either a QLD or CPE, or are further advanced in the route to qualification, before the SQE is introduced may continue under that route subject to a cut-off date. The cut-off date we propose is the end of the calendar year 11 years after the SQE is introduced. So, for example, if the SQE is introduced in September 2020 (the target date), the cut-off date will be 31 December 2031.
- As in the 2016 consultation, we propose that candidates who (a) started to train under the current system before the introduction of the SQE; and (b) completed their training by the cut-off date, are fully exempt from the requirement to qualify through the SQE. This means those candidates can choose to qualify under the current or new system. For the reasons set out above we are not proposing partial exemptions from the SQE are generally available.
- 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. However, in accordance with our approach to recognition of qualified lawyers, we will take account of any QLTS assessments they have passed as part of any application for recognition which they make.

## Regulations relating to authorised providers

89. We have redrafted and moved the regulations relating to authorised education and training providers under pre-SQE arrangements into a new set of SRA Education, Training and Assessment Provider Regulations.
90. We have clarified our powers to authorise and monitor education and training providers, and clarified that obligations regarding trainees' training records and character and suitability assessment are for the training principal.
91. In accordance with our drafting principle of not duplicating legislation in our rules, we do not propose to include the current rule requiring training providers to pay the minimum wage to trainees in accordance with the minimum wage legislation. Training providers are already obliged to comply with this, as they are with any other legislation. This means, however, that training providers offering solicitor apprenticeships will be able to apply any relevant exceptions in the legislation applying to apprentices. We do not consider that it is the SRA's role to set salaries in the profession, and we do not wish to place additional barriers in the way in which providers offer apprenticeships or training contracts.

## 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?

## Approving managers and owners



## Background

92. Under our current Authorisation Rules, authorised persons need our approval every time they become a manager or owner of a new body, or their existing body changes constitution, e.g. moving from a partnership to a limited company. Although we currently reduce the impact of this on solicitors, RFLs and RELs by a process of deeming, other authorised persons such as barristers and licensed conveyancers have to go through an approval process each time.

## Our approach

93. It is highly unlikely in practice that an authorised person who we have assessed as suitable to be a manager or owner of one SRA-authorised body will not be approved for the same role in another one. Making authorised persons obtain approval each time they move authorised body or whenever the constitution of that body changes is, in our view, an unnecessary burden. These individuals are already under our supervision so we will be aware of issues as and when they arise. These individuals are also under a duty to keep us updated on character and suitability issues. The current system is also likely to slow down innovation (for example in relation to firms converting to an ABS).
94. We therefore propose to replace this with a system where:
- solicitors, RELs and RFLs will be deemed suitable to be managers or owners of any SRA-authorised body on first admission/registration and will not have to seek individual approval for any such roles they take up. The only requirement will be to update mySRA to let us know about the change
  - other LSA-regulated individuals such as barristers will have to seek our approval (and be required to satisfy character and suitability requirements) when they take up their first role as manager or owner in an SRA-authorised body. However, as with solicitors, this approval will be general and they will not then have to be re-approved to fill those roles in new firms. As with solicitors, they will be required to update mySRA.
95. While we will continue to require non-authorised persons to seek approval every time they become an owner or a manager of a different SRA-authorised body, we will also work with regulators in other fields (for example chartered accountancy) to explore how to streamline the arrangements for approval of their members. Greater flexibility in our approach to assessing character and suitability would facilitate this work.
96. We think this change will reduce unnecessary cost and bureaucracy. It should also lead to more effective co-operation between regulators without materially increasing risk or compromising the regulatory objectives.

## Question 8

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

## Corporate owners and managers

97. The draft Authorisation of Firms Rules includes an eligibility requirement for authorisation that a firm must intend to deliver legal services to be authorised by us. This is to ensure that our procedures are operating in line with our statutory purpose which is to authorise and regulate individuals and firms that deliver legal services. This is likely to impact on Corporate Manager Owners (CMOs) as we currently authorise a number of non-trading recognised bodies purely so they can be managers and/or owners of other recognised bodies. We often waive several of our requirements, including the requirement to have a COLP and COFA, for these firms.
98. In the future, the new rule would mean that firms could of course structure themselves using corporate vehicles for tax or other purposes, but that these bodies would not be authorised by us as separate authorised firms. Therefore, the

underlying firm would have a non-authorised corporate owner or manager and would instead be authorised as an ABS.

99. The new rule gives us the power, where we are satisfied that it is in the public interest to authorise the body, to do so even though they do not intend to deliver legal services. We would like to hear particularly from firms currently with CMOs as to whether there are any scenarios that would – or alternatively could not – be addressed using this power. We will be engaging with some of these firms, and the firms that they manage or own, during the consultation process to explore the impact of these proposals.

## Section three: Specialist rules

### How we regulate overseas practice

#### Background

100. The [Overseas Rules](https://jobs.sra.org.uk/solicitors/handbook/overseasrules/content) [https://jobs.sra.org.uk/solicitors/handbook/overseasrules/content] in our current Handbook govern the practice of solicitors established outside England and Wales. They contain the Overseas Principles, which broadly reflect our domestic Principles, and key standards relating to the handling of client money and assets plus information and reporting requirements. Alongside this, the separate [European Cross-border Practice Rules](https://jobs.sra.org.uk/solicitors/handbook/euro/content) [https://jobs.sra.org.uk/solicitors/handbook/euro/content] set conduct standards for professional activity in, or contact with a lawyer of, a country whose legal profession is a member of the Council of Bars and Law Societies of Europe (CCBE).
101. The Overseas Rules offer a more proportionate regulatory regime for firms than being subject to our domestic Principles and full Code of Conduct and Accounts Rules. We are aware that firms operating overseas subject to our Overseas Rules:
- will also be regulated in the jurisdiction where they are based
  - will not be providing reserved legal services into England or Wales except on an occasional and limited basis.

#### Our approach

102. The proposed changes do not substantively alter the content or application of the current Overseas Rules. We have maintained the separation between the Overseas Principles and the SRA Principles but updated the Overseas Principles and the Accounts Rules provisions to reflect the changes made in phase one of our Handbook review. We have also incorporated what are currently the European Cross-border Practice Rules. The guidance which is currently embedded in the rules has been removed and will be placed without separate guideline resources.
103. The existing European Cross-border Practice Rules largely duplicate the parts of the CCBE's Code of Conduct that are not reflected elsewhere in our Handbook. However, we are keen to ensure that our new Handbook remains valid into the future, without needing constant updating. For this reason, we propose removing the drafting that duplicates the CCBE's code.
104. We wish to continue to ensure that those we regulate meet the CCBE's standards as we are keen to facilitate and build confidence in cross-border relationships wherever possible. We have therefore included a requirement for those operating in European jurisdictions or cross border to comply with the CCBE Code.

### Question 9

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

### Property Selling



## Background

105. The Specialist Services section of our Handbook contains our Property Selling Rules 2011. The rules mirror some of the provisions in the Estate Agents Act 1979, including references to some sections of legislation that have never been enacted. The rules cover:
- competence requirements (not enacted)
  - deposit limits (not enacted)
  - rules on accepting instructions (including the requirement to define sole agency, sole selling rights etc)
  - conflicts of interest (rules on selling property in which you have a personal interest).

## Our approach

106. We intend to remove the Property Selling Rules on the basis that most of the legislation has not been enacted. In addition, the provisions on conflicts of interest are covered by our new codes.
107. We propose that two provisions from the existing Property Selling Rules should be retained, but in the form of guidance. These are two of the key terms used in defining fee structure: 'sole agency' and 'sole selling rights'. Under the Estate Agents Act 1979, estate agents must communicate the meaning of these terms to clients. Our guidance will set out that solicitors should adequately explain these terms if they are used.
108. We do not believe that it is common for solicitors to act as estate agents in England and Wales. However, we would welcome any data on whether this is widespread. As the exemption only applies to the practice of 'solicitors', we are not seeking information from ABSs here.

## Question 10

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

## Financial Services

### Background

109. Under the [Financial Services and Markets Act 2000](http://www.legislation.gov.uk/ukpga/2000/8/contents) (<http://www.legislation.gov.uk/ukpga/2000/8/contents>) (FSMA), the Financial Conduct Authority (FCA) must regulate anyone carrying on regulated financial services activities. However 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. As a Designated Professional Body under FSMA, we are required to make rules governing how firms undertake exempt regulated activities. Our [Financial Services \(Scope\) Rules](https://jobs.sra.org.uk/solicitors/handbook/finserscope/content) (<https://jobs.sra.org.uk/solicitors/handbook/finserscope/content>) set out the scope of the regulated activities that firms may undertake without being regulated by the FCA. Our [Financial Services \(Conduct of Business\)](https://jobs.sra.org.uk/solicitors/handbook/finsconduct/content) (<https://jobs.sra.org.uk/solicitors/handbook/finsconduct/content>) Rules regulate how firms undertake these activities.

### Our approach

110. The Financial Services Rules have been amended on numerous occasions over many years but have never been properly reviewed. Consequently, they are not as clear or accessible as they could be and a great deal of legislation is duplicated. We are therefore proposing to simplify and reduce the length of the rules to align with our drafting principles.
111. Under part 20 of FSMA the revised rules will require the approval of the FCA. We have shared an early draft with them but the rules are still subject to their approval.



112. Although part 20 of FSMA is wide enough to cover some solicitors practising in non-LSA-regulated providers, as set out above we will not allow solicitors practising in non-LSA-regulated providers to provide regulated financial services to the public under the scope of our regulation. Any such work will need to be regulated by the FCA.
113. It should be noted that the redrafted regulations do not cover insurance mediation activities. This area is subject to further amendment in order to implement the requirements of the Insurance Distribution Directive (EU 2016/97) by late February 2018. We will be consulting separately on those changes.

## **Our Notice, Application, Review and Appeal Rules**

### **Our approach**

114. We are consulting on a new set of rules which aim to:
- combine at a high level general provisions about how a person can make an application to us and how we notify them of our decisions. Specialist application-specific provisions will be in the relevant specialist rules
  - set out comprehensively all rights to review our decisions in a consistent and transparent way.
115. The provisions relating to reviews of our decisions are currently contained in a number of places in our current Handbook and lack consistency in terminology, using variously the terms 'review' and 'appeal'. We also adopt a practice whereby we give a right to appeal all final decisions that determine someone's rights or professional standing, but not to administrative or procedural decisions. We have, separately, powers to reconsider decisions of our own motion where we believe they have been wrongly reached.
116. We have brought all the provisions together into one new, simpler set of rules and adopted a more consistent and clearer drafting approach.
117. In these rules we have clarified that we will not generally allow additional evidence unless satisfied that this is necessary to ensure the fair disposal of the matter. We have specified the grounds on which an application for a review can be made and on which we can review our own decisions. The new rules also set out clearly which decisions attract this right of review.
118. This does not affect rights to appeal to the SDT or the High Court which are contained in statute. The rules also deal with the time limits for applying for an internal review or external appeal, and harmonise these to a standard time limit of 28 days. They also deal with the taking effect of decisions where a review or appeal has been sought.

### **Question 11**

Do you agree with our new proposed review powers?

### **Question 12**

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

## **Section four: Our approach to enforcement**

### **A revised Enforcement Strategy**

119. In Looking to the future phase one we said that we would review our Enforcement Strategy, which underpins the Principles and Codes of Conduct we consulted on last year. The starting point for our review of the Enforcement Strategy was the wide engagement that we carried out as part of the Question of Trust campaign in 2015. That work engaged the legal profession and the public to help us to develop our approach to the factors we should take into account when considering seriousness, and what action to take in respect of breaches of our rules.



120. The Question of Trust campaign sought the views of more than 5,000 individuals between September 2015 and January 2016. We worked with the public, the profession and other stakeholders to understand what they considered acceptable behaviour for a solicitor or individual regulated by the SRA, and what sanctions they thought should be applied when things go wrong. The data collected allowed us to test and develop our thinking on the behaviours that fall along a spectrum from least serious, to most serious, and has made an important contribution to key strands of our work:
- the revised and updated Enforcement Strategy
  - a revised and an updated sanctions and controls table
121. Our Question of Trust work confirmed our view on the most and least serious matters, and helped us refine our views on the factors we will consider (such as intent and motivation, harm and impact, vulnerability, role and seniority, and patterns of behaviour). It also helped us to recognise that there is likely to be a degree of inter-relationship between a range of factors in any case. The revised Enforcement Strategy also sets our approach to evidence of remediation, and other areas such as our position on criminal convictions and solicitors' conduct in their private life.

## **Our approach**

122. Our approach to enforcement is guided by our public interest purpose. Our 2015 Policy Statement explains more about how we approach our regulatory role and seek to meet the regulatory objectives in the LSA. Our updated Enforcement Strategy is part of our approach to proportionate regulation, and is one of the key tools moving us towards regulatory best practice.
123. We are moving away from enforcing compliance with prescriptive rules, towards a model which seeks to enforce standards through a transparent framework that those we regulate can clearly understand. We set standards that establish clear expectations but also build in appropriate flexibility as to how solicitors ought to behave to meet those standards. The revised Enforcement Strategy will act as a guide to the expected behaviours which underpin our standards.
124. Moving to a principles-based, flexible, approach to enforcement will help us to focus more effectively on serious breaches of our rules. We will be proactive in our approach to enforcement, and will use a variety of regulatory tools and approaches to engage effectively with individuals and firms. These will include, but may not be limited to, data mapping, identifying trends, issuing warning notices, undertaking thematic reviews, undertaking targeted visits, and publicising the outcomes of our enforcement action.
125. We consider the public will also be better able to understand our decisions and rationale for taking or not taking enforcement action in any case or circumstances. Clarity about how seriously we view different behaviours will help solicitors and firms to understand what constitutes a serious, reportable, breach of our requirements. The Enforcement Strategy provides the clarity about how, and when, we will enforce (or where we will not enforce). It aims to help both our staff and the profession better understand the risks posed by different behaviours. It also facilitates proportionate action by outlining the aim behind different outcomes. Together with the new Codes of Conduct, the revised Enforcement Strategy provides the transparency and assurance that solicitors and firms have been asking for.
126. We will be developing case studies to provide some examples of 'grey areas' and address some of the more difficult and complex areas, and are happy to work with others to do so, and review guidance from firms or representative bodies if they ask us to do that. This is what solicitors have told us that they need to understand how the strategy will work in practice.

## **Question 13**

Do you agree with our proposed approach to enforcement?

## **Our Regulatory and Disciplinary Procedure Rules**





## Background

127. Although our current Disciplinary Procedure Rules (DPRs) are quite detailed, in practice they only cover part of our regulatory tool kit. As drafted, they cover only a decision to fine, rebuke, disqualify, and make a referral to the SDT. The DPRs were later supplemented by the production of Indicative Fining guidance.
128. Alongside the revised Enforcement Strategy, the new Sanctions and Controls table, and updated Indicative Fining Guidance, the SRA Regulatory and Disciplinary Procedure Rules form part of the suite of new documents that explain and underpin our enforcement approach to the new codes and rules. We will be consulting separately on costs issues, including the updated Indicative Fining Guidance.

## Our approach

129. We are consulting on revised Disciplinary Procedure Rules. The new rules are broader in scope than the current ones. They have been expanded to cover our approach to assessment and investigation of all complaints or regulatory concerns, and to follow a more logical and chronological pathway through our decision-making process. The rules address the full range of powers available to the SRA, including orders made under section 43 of the Solicitors Act 1974, and decisions to attach conditions to practising certificates in order to mitigate and control identified risks. This will ensure greater clarity, transparency and consistency of approach to regulatory investigations and decision-making. The new provisions ensure that we provide information to the regulated person and their employer at the outset of an investigation, as well as us providing details of allegations and all supporting documents, for comments, at the end of an investigation before we decide. These also make sure that decisions to conclude an investigation, whether or not with advice or a warning as to the person's future conduct, are accompanied by reasons.
130. The rules are focused on high level rights, obligations and criteria. Detailed operational processes will underpin them, and detailed decision making criteria will be set out elsewhere in the Enforcement Strategy or other guidance documents, as appropriate. We will publish this guidance to ensure full transparency.

## Cost of investigations

131. As part of our review of enforcement, we will be considering the scope and purpose of the SRA Cost of Investigation Regulations 2011 ('CIR'), which set out the basis of the charges we can impose to recover the costs of handling disciplinary investigations and prosecutions.
132. At present, we only seek to recover costs that our supervision function incurs when we impose an internal sanction. This contrasts with our prosecutions before the SDT where we seek to recover all of our costs (including legal costs, any on-site inspection charges and supervision).
133. Our work in this area will seek to address a number of issues. They are likely to include (but may not be limited to):
  - whether we retain our position on the importance of 'polluter pays', which underpins our approach to the current CIR
  - whether, when we impose an internal sanction, we seek to charge for more of our investigation costs (eg for on-site work and for any legal costs) or for less. This will include the costs and financial implications of a move in either direction
  - how we calculate our charges
  - other comparable regulators' schemes and best practice.
134. We propose to consult on these issues in early 2018, and to implement any changes to our costs rules at the same time as implementing our new regulatory arrangements (ie not before late 2018).

## Our questions in full



We are keen to hear your views on our changes to our Handbook. An uninterrupted list of our questions is below.

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

**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?

**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-authorized 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-authorized firms (or equivalent)?

If you disagree, please explain your reasons why.

**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?

**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?

**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?

**Question 8**

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

**Question 9**

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

**Question 10**

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

**Question 11**



Do you agree with our new proposed review powers?

### Question 12

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

### Question 13

Do you agree with our proposed approach to enforcement?

## Notes

1. After extensive consultation in phase one, we decided we could not require a firm we do not regulate to have professional indemnity insurance ('PII'). We also decided that clients of solicitors working outside SRA regulated firms would not be able to make a claim on the Compensation Fund in any circumstances.
2. The six distinct activities that Parliament has decided should only be provided by businesses that are regulated under the [Legal Services Act 2007](http://www.legislation.gov.uk/ukpga/2007/29/contents) [<http://www.legislation.gov.uk/ukpga/2007/29/contents>]
3. [Annex four](https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download) [<https://jobs.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download>] to the phase one consultation document provides more detail on these principles.
4. This is consistent with Government policy on approaches to regulation and a sign of current best regulatory practice - see also [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/550542/Prof\\_Christopher\\_Hodges\\_-\\_Ethics\\_for\\_regulators.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550542/Prof_Christopher_Hodges_-_Ethics_for_regulators.pdf) [[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/550542/Prof\\_Christopher\\_Hodges\\_-\\_Ethics\\_for\\_regulators.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550542/Prof_Christopher_Hodges_-_Ethics_for_regulators.pdf)]
5. This includes recognised bodies, licensed bodies and recognised sole practices
6. Rule 15.4 of our Practice Framework Rules requires all authorised bodies to have at least one practising address in England and Wales.
7. subject to any changes that occur post Brexit
8. <http://www.legislation.gov.uk/ukpga/2015/26/section/87/enacted> [<http://www.legislation.gov.uk/ukpga/2015/26/section/87/enacted>]
9. See PFR 12.1
10. at p2215-2216
11. See the Looking to the future: better information, more choice consultation
12. Solicitors, Registered European Lawyers, Registered Foreign Lawyers
13. Subject to an exception for administering oaths and statutory declarations under rule 10(2)(c)(ii) SRA Practice Framework Rules 2011
14. See Rules 2.1(d) and 2.2 of the draft SRA Accounts Rules 2018 <http://www.sra.org.uk/sra/consultations/consultation-listing/consultation-listing/accounts-rules-review/#download> [<https://jobs.sra.org.uk/sra/consultations/consultation-listing/accounts-rules-review/#download>]
15. Regulators considered were Bar Standards Board, General Dental Council, General Medical Council, General Pharmaceutical Council, Nursing and Midwifery Council, the Teaching Agency, Health and Care Professions Council, ICAEW, FCA, Architects Registration Board, CILEX, CLC, Costs Lawyers Standards Board, and the Notaries Society.



## Downloadable document(s)

- [Post consultation position \(PDF 27 pages, 393KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-position-paper.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-position-paper.pdf]
- [Impact Assessment \(PDF 39 pages, 339KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-impact-assessment-phase-two.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-impact-assessment-phase-two.pdf]
- [Analysis of responses \(PDF 45 pages, 513KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-analysis-responses.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-analysis-responses.pdf]
- [Consultation responses \(PDF 257 pages, 5.9MB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-phase-consultation-responses.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-phase-consultation-responses.pdf]
- [Post consultation rules \(PDF 151 pages, 969KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-post-consultation-rules.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-post-consultation-rules.pdf]
- [Revised SRA MDP Policy statement \(PDF 5 pages, 141KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-policy-statement.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-policy-statement.pdf]
- [Rules change after consultation \(marked up\) \(PDF 155 pages, 1.1MB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-rule-changes-after-consultation.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-rule-changes-after-consultation.pdf]
- [Closed consultation: Phase two of our Handbook reforms \(PDF 51 pages, 674KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-phase-two-consultation.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-phase-two-consultation.pdf]
- [Closed consultation summary \(PDF 4 pages, 293KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-summary.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/lttf-summary.pdf]
- [Closed consultation: Annex one - What have we done with the rules in the existing Handbook? \(PDF 3 pages, 21KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-annex-one.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-annex-one.pdf]
- [Closed consultation: Annex two - SRA Enforcement Strategy - \(PDF 21 pages, 554KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-annex-two.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-annex-two.pdf]
- [Closed consultation: Impact assessment \(PDF 31 pages, 266KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-impact-assessment.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-impact-assessment.pdf]
- [SRA Application Notice Review and Appeals Rules \(PDF 8 pages, 65KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-application-notice-review-appeals-rules.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-application-notice-review-appeals-rules.pdf]
- [SRA Assessment of Character and Suitability Rules \(PDF 10 pages, 61KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-assessment-character-suitability-rules.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-assessment-character-suitability-rules.pdf]
- [SRA Authorisation of Firms Rules \(PDF 15 pages, 91KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-authorisation-firms-rules.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-authorisation-firms-rules.pdf]
- [SRA Authorisation of Individuals Regulations \(PDF 14 pages, 56KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-authorisation-individuals-regulations.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-authorisation-individuals-regulations.pdf]
- [SRA Education Training and Assessment Provider Regulations \(PDF 5 pages, 22KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-education-training-assessment-provider-regulations.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-education-training-assessment-provider-regulations.pdf]
- [SRA Financial Services \(Scope\) Rules \(PDF 3 pages, 15KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-financial-services-scope-rules.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-financial-services-scope-rules.pdf]
- [SRA Financial Services COB Rules \(PDF 8 pages, 59KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-financial-services-cob-rules.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-financial-services-cob-rules.pdf]
- [SRA Glossary \(PDF 22 pages, 110KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/sra-glossary.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/sra-glossary.pdf]
- [SRA Overseas Rules and Cross-border practice Rules \(PDF 5 pages, 45KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-overseas-rules-cross-border-practice-rules.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-overseas-rules-cross-border-practice-rules.pdf]
- [SRA Regulatory and Disciplinary Procedure Rules \(PDF 6 pages, 63KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-regulator-disciplinary-procedure-rules.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-regulator-disciplinary-procedure-rules.pdf]
- [SRA Statutory Trust Rules \(PDF 3 pages, 49KB\)](https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-statutory-trust-rules.pdf)  
[https://jobs.sra.org.uk/globalassets/documents/sra/consultations/phase-two-statutory-trust-rules.pdf]

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