

Legal Services Act: New forms of practice and regulation

Consultation paper 15

Information to be sought from firms for regulatory risk-analysis – the practical approach for 2009

6 January 2009

Introduction and overview – purpose of the consultation

1. The SRA is developing processes to regulate firms as well as individuals, as a means of regulating legal services more effectively and efficiently, and according to risk. This consultation is about the information we propose to seek from firms in 2009, as a first step.
2. The consultation follows an earlier one, “Legal Services Act: Information requirements from firms in the context of a risk-based approach to regulation”, which was published on the Solicitors Regulation Authority (SRA)’s website in February 2008. A report on the responses that we received to that consultation can be found on our website.¹
3. This consultation does not deal with the questions to be asked on initial application. The initial application form and accompanying notes will be available on the SRA website shortly.²
4. The SRA has considered the feedback from the previous consultation to ensure that the information we are requesting for firm regulation is in keeping with the principles of better regulation. We have concentrated on what information is necessary or important for us to have from October 2009. We will only be collecting information that we need to help us develop a new fee strategy for 2010 onwards, or that we believe is required for the development of risk based regulation.

¹ See www.sra.org.uk/sra/consultations/439.article

² See www.sra.org.uk/LSA

5. The proposals for 2009 are limited, in part because we do not want to ask for information that we cannot use effectively with our current technology. We will develop the annual return for 2010, subject to further consultation.
6. In light of the views received, the SRA proposes to require information on the following as part of the recognised body renewal process in October 2009:
 - Turnover
 - Work types
 - Number of non-solicitor fee earners
 - Negligence claims
7. We are seeking views on the effectiveness and clarity of the requirements. We are keen to make the annual return of information as workable as possible for both the profession and the SRA. We will also ensure that the information we gather is appropriate and can be used effectively for our regulatory work to protect the public interest and maintain the standards of the profession, and maintain public confidence.

Turnover

8. The primary need to collect information about turnover is to help us develop the future fee policy for firm-based regulation. Without this information, we cannot do the sort of modelling required to develop meaningful proposals for new fee structures. Also, other regulators ask for information on turnover as an indicator of size and regulatory impact for the purpose of risk assessment. There was considerable support in response to the consultation that turnover is information the SRA should have.
9. We propose to ask for turnover as a sum of gross fees from offices in England and Wales. Firms currently provide similar information to their insurers, and so we believe this information should be readily available.
10. The Minimum Terms and Conditions for qualifying insurers defines “gross fees” to include “all professional fees of the firm for the latest complete financial year including remuneration, retained commission and income of any sort whatsoever of the firm (including notarial fees)”. What is specifically excluded is interest, reimbursement of disbursements, VAT, remuneration from a non private practice source, dividends, rents and investment profit. We propose to replicate this in the guidance notes for completion of the renewal form.
11. The definition of “accounting period” will be taken from rule 36 (accounting periods) of the Solicitors’ Accounts Rules 1998.
12. For new firms, we may ask for an estimate of gross fees, as they might not have a last annual accounting.
13. We also propose to ask for gross fees from branch offices of the recognised body outside England and Wales. At this stage we have not reached a view

whether or how to deal with overseas offices as part of any future fee policy for recognised bodies, but having this information will help assess the options. We will soon be consulting on the new fee policy and will ask for your views on whether or how to deal with overseas offices in that paper.

Proposed requirement

“Please state the firm’s total gross fees in your last complete accounting period, arising from work undertaken from offices in England and Wales.”

“Please state the firm’s total gross fees in your last complete accounting period, from branch offices outside England and Wales.”

Consultation questions

Do you think the proposed request in paragraph 13 could be worded differently? If so, please provide your suggestions and reasoning.

If you work in a solicitors’ firm, would your firm easily be able to provide the information in answer to the proposed questions on turnover in paragraph 13? If not, why not?

Do you have any other comments?

Non-solicitor fee earners

14. To further expand the SRA’s options for fee modelling, we also propose to ask for of non-solicitor fee earners. A number of commentators have suggested that the number of fee earners could be a factor in any firm based fee calculation. We have no fixed views on this, and will be seeking your views soon—but having this information will help assess the options. We also believe this information is currently sought by many insurers and should therefore be known to firms.

Proposed request

“Please confirm the number of non-solicitor fee earners currently based in your offices in England and Wales.”

Consultation questions

Do you think the proposed question in paragraph 14 could be worded differently to gain better information? If so, please provide your suggestions and reasoning.

If you work in a solicitors’ firm, would your firm easily be able to provide the information in answer to the proposed question in paragraph 14? If not, why not?

Do you have any other comments?

Work types

15. Solicitors already have the opportunity to declare their personal work areas on the RF1 and RF3 practising certificate renewal forms. It makes more

sense to collect this information from the firm to see if there appears to be a link between work undertaken and regulatory risk. We also propose to ask for a breakdown of work types by percentage of gross fees, as commonly provided to insurers, as this will make the information more meaningful.

16. As with turnover, it is proposed that our categories of work will reflect as far as possible those used by the insurers. The Annex contains a list of work types currently available in our regulatory database. We are working on consolidating this list of work types to ensure it is current and relevant to modern practice, and matches, as far as possible, the work types used by insurers. We hope that firms will be able to easily transfer information provided to insurers into the annual return.

Proposed request

"Please provide a breakdown of the areas of work undertaken by percentage of your gross fees." [A list of work types will be attached.]

Consultation questions

Do you think the proposed question in paragraph 16 could be worded differently to gain better information? If so, please provide your suggestions and reasoning.

If you work in a solicitors' firm, would your firm easily be able to provide the information in answer to the proposed question in paragraph 16? If not, why not?

Do you have any other comments?

Negligence claims

17. We increasingly believe that a firm's claims history will be relevant to the assessment of regulatory risk.
18. We do not expect to take action solely on the basis of the information provided about negligence claims, but the number of claims could be seen as a risk indicator, when looking at patterns and trends, and may be used in proactive profiling of firms to assist the planning of supervision activities in future.

Proposed request

"How many claims were made against the firm in the last complete accounting period?"

"How many claims were paid, whether by the insurers or the firm, in the last accounting period?"

Consultation questions

Do you think the proposed questions in paragraph 18 could be worded differently to gain better information? If so, please provide your suggestions and reasoning.

If you work in a solicitors' firm, would your firm easily be able to provide the information in answer to the proposed questions in paragraph 18? If not, why not?

Do you have any other comments?

How to respond

For information on how to respond, please visit our website.

- Go to www.consultations.sra.org.uk.
- Select **Regulatory-risk information requirements – 2009**.
- Click **How to respond**.

Submission deadline

The deadline for responses is **31 March 2009**.

Annex

Work types as currently recorded in our regulatory database.

Administrative and Public Law	Immigration and Nationality
Advocacy	Insolvency and Bankruptcy
Agricultural Law	Insurance
Aviation	Intellectual Property
Banking Law	International Law (Non-EC)
Business Affairs	Landlord and Tenant - Residential
Chancery	Libel and Defamation
Charity Law	Liquor Licensing / Gambling
Children Law	Litigation - Commercial
Civil Liberties/Human Rights	Litigation - General
Commercial Property	Maritime/Shipping/Admiralty
Common Law	Media/Entertainment Law
Computer and IT Law	Mediation - Civil/Commercial
Construction/Civil Engineering	Mediation - Family
Consumer Problems	Medical Negligence
Conveyancing Residential	Mental Health
Corporate Finance	Mergers and Acquisitions
Crime - General, Motor, Juvenile	Military Law
Debt and Money Advice	Neighbour Disputes
Education	Pension Law

Employment	Personal Injury
Energy and Natural Resources	Planning Law
Environment Law	Professional Negligence
European Community Law	Taxation
Family	Transport Road and Rail
Financial and Investment Services	Travel and Tourism
Fraud	Trusts
Immigration - Asylum	Welfare Benefits
Immigration - Other	Wills and Probate