

Annual keeping of the roll exercise

Summary of responses

Introduction

1. On 31 March 2014 we issued a consultation paper proposing the removal of the annual requirement on solicitors who do not hold practising certificates (PCs) to complete an online application and pay a fee if they wish their name to remain on the roll of solicitors (the keeping of the roll exercise). We also proposed retaining the power to carry out the exercise at such time as may be considered appropriate in future.
2. The consultation closed on 27 May and this report summarises the key points arising from the responses and the SRA's position as a consequence.

Overview

3. The consultation proposed to change the SRA Handbook by removing the obligation on the SRA to ask every solicitor without a practising once a year whether the solicitor wishes his or her name to remain on the roll. Instead of making this enquiry annually, we proposed to retain a power to make the enquiry at such times as we deem appropriate.
4. There were 138 responses in total the majority from solicitors in private practice, employed solicitors and the majority from retired or non-practising solicitors. Other respondents included the Law Society, local law societies, representative groups and the Information Commissioner's Office (ICO).
5. The vast majority of these individual respondents supported the proposal to stop carrying out the annual enquiry as to whether solicitors without practising certificates wish to remain on the roll. Those who did not support the proposal felt the existing system works well enough and one expressed concern about the possibility of the name of deceased solicitors remaining on the roll. Another respondent was concerned that there should be an effective mechanism to ensure that anyone removed from the roll due to failures of communication could be re-instated without cost or other obstacles.
6. There were no alternative suggestions. Comments made included:
 - "This is a rational step to streamline regulation."
 - "The reasons given by the SRA in support of the proposal seem eminently sensible. For those of us not in practice it is a worry every year to remember to apply to keep our names on the Roll, and those

of us who do not entirely trust the security of computers and the internet are uneasy about paying the annual fee with a credit or debit card online. The point made in the proposal, that the current system is more difficult for older solicitors to cope with, is a good one. Given the ongoing regulatory powers of the SRA, which will not be lost if the proposal is implemented, it is difficult to see a downside to the proposal."

- "It is all a nuisance but most of us would not want to give up the 'non-practising solicitor' title which is why we go through this stuff every year!"
- "I have considered the various proposals and completely agree with the rationale for the favoured option. It is my view that the regulatory process for those of us who are non-practising is burdensome and not cost effective. Should such as I return to legal practice then the need to apply for a new PC satisfying any requirement as to CPD before it being granted ought to be sufficient safeguard for the public interest in having access to competent professional legal advice. The Roll should and quite properly be limited to a formal record of Admission until death, or removal by process whether voluntarily or by direction of a disciplinary body."

The Law Society (TLS)

7. TLS considered that the duty to keep the roll goes further than simply keeping a list of people who once qualified as a solicitor and have not asked to be removed from the list. It suggested that if this is truly a regulatory function then that implies that the roll needs to be as up to date and accurate as possible and the SRA needs to be able to contact those who are on it and therefore subject to SRA's jurisdiction. It said that, as a minimum the SRA should give certainty by setting renewal at less frequent but defined intervals.
8. TLS was concerned about the cost of regulating non-practising solicitors and how this would be met and whether the proposals would lead any real saving of costs to the SRA given that a less frequent updating exercise could be more costly than an annual one.

SRA response

9. The Solicitors Act (SA) is not explicit about what keeping the roll entails. There is no explicit requirement for it to be as up to date as possible. The Act does not direct the manner in which we should keep the roll. We have carried out some enquiries into other jurisdictions and it is interesting to note that neither the Law Society of Northern Ireland nor the Law Society of Ireland carry out regular exercises to update the roll of solicitors in their jurisdictions.
10. There are very few investigations or prosecutions of non-practising solicitors and the fee for remaining on the roll is only intended to cover the cost of administering the annual enquiry process. The SRA applies the "polluter pays" principle through the SRA Cost of Investigations Regulations 2011.

11. Whilst the cost of more occasional updating of the roll, may be higher, we believe it will be proportionate to the numbers involved and the fee for remaining on the roll can be adjusted to reflect any increased cost. The main aim of the proposals is to reduce the burden of regulation on the 30,000 or so individuals affected each year.

Information Commissioners Office (ICO)

12. The ICO raised concerns about the approach of carrying out updates to the roll on an open ended basis. It raised concerns about:
 - **Accuracy of data:** The fourth data principle of the Data Protection Act 1998 is that "Personal data shall be accurate and, where necessary, kept up to date." The ICO was concerned that in ceasing regular updates of the roll, the information recorded will deteriorate in quality over time. This would be due both to out of date address details appearing on the roll and a failure to remove the names of solicitors who are deceased. As a data controller the SRA is required to take "reasonable steps" to ensure the accuracy of data it holds. In this context, the impact on individuals of holding inaccurate data is important.
 - **Privacy of personal information:** If the quality of information recorded deteriorates, this gives rise to a potential for inappropriate disclosures should the SRA need to contact individuals using incorrect contact details.
 - **The need for a privacy impact assessment -** The impact of the proposal on privacy needs to be explored and the ICO recommend that this is done through a privacy impact assessment. The ICO notes the positive factor that mySRA is available for individuals to update their details on an ad hoc basis.

SRA response

13. We are grateful to the ICO for raising these important issues. We have spoken with a representative of the ICO who made it clear that the purpose of their response was to ensure that consideration was given to the accuracy of data and any impact on privacy. We feel we were able to satisfy them that we have fully considered these issues.
14. We have considered the guidance on the ICO web site, including the Code of Practice on Privacy Impact Assessments and do not consider that this is a project where a full privacy impact assessment is appropriate. We have reviewed the privacy impact assessment screening questions annexed to the Code of Practice (See Appendix 1) and can answer all the questions in the negative.
15. We consider that the availability of the SRA's online system, mySRA, to non-practising solicitors as a means of keeping their details up to date, serves to mitigate the possibility of data become inaccurate. The SRA makes reasonable adjustments for solicitors who have difficulty accessing mySRA due to disability. For example such individuals may update their details through correspondence or by telephone.

16. To further mitigate the risk of deterioration of the information held on the roll, the SRA can include reminders to keep contact details up to date in standard communications sent to solicitors. For example we can target those solicitors who do not renew their Practising Certificates in the standard communications sent to them when their old Practising Certificate is revoked.
17. We have checked with the General Registrar's Office who confirmed that Registrars are obliged to notify the Law Society following the death of someone known to be a solicitor or former solicitor. This enables us to remove the names of deceased solicitors from the roll. In addition, relatives of deceased solicitors often contact the SRA to notify us of a death.
18. We believe that, taken together, these measures amount to reasonable steps to ensure the accuracy of data on the roll.
19. To determine when a full update of the roll is needed we will use indicators such as an increase in the number of solicitors on the roll without practising certificates which might suggest that some names should be removed. We will issue reminders to update details and monitor the extent of returned communications. We will also monitor the level of any complaints about misdirected communications.
20. We have considered the impact on privacy and believe this is limited as most correspondence from the SRA to non-practising solicitors is sent by email only which limits the possibility of inappropriate disclosure. No sensitive personal information is involved as communications are of a routine nature. Should an individual open a letter addressed to a non-practising solicitor, this is unlikely to indicate more than the fact that a named individual is a non-practising solicitor. This is information which is in the public domain as the roll is open to public inspection. In the rare cases where a solicitor without a PC is subject to investigation, we will introduce a procedure for supervisors to cross check addresses by reference to the electoral roll.

Other responses

21. The majority of responses supported the proposals.
22. The Tunbridge Wells and Tonbridge District Law Society felt there is a need for the roll to be maintained by updates at least every five years and favoured some certainty as to when the roll is to be updated.
23. Updating the roll at fixed intervals of five years was one of the options considered when the keeping of the roll was first reviewed. We feel that this approach is too rigid and inflexible and that is better for the SRA to have the ability to decide when updates are required in the light of circumstances at the time.
24. The City of London Law Society (CLLS) pointed out that non-practising solicitors remaining on the roll remain subject to SRA regulation and discipline and in particular can be held responsible for undertakings "given as a solicitor". They went on to say that there is a lack of clarity as to the circumstances in which this regulation bites and that the opportunity should be taken to clarify this.

25. CLLS goes on to express concern that the SRA does not draw to the attention of non-practising solicitors to the fact that they remain subject to regulation and suggest the SRA should notify them of this when they first fail to renew their practising certificate.
26. CLLS also point out that solicitors without practising certificates are not required to notify the SRA of material changes to relevant information about them such as serious financial difficulty or action taken by another regulator. They feel that this absence of a disclosure obligation poses a reputational issue.
27. CLLS express concern that the proposal will lead to increased proportion of deceased solicitors' names on the roll and that this could provide a target for fraudsters seeking to pass themselves off as non-practising solicitors.
28. The current review is limited to considering how best to fulfil the SRA's obligation to continue to keep the roll whilst being proportionate in its requirements of non-practising solicitors. The proposals are limited to making limited changes to the SRA Keeping of the Roll Regulations 2011. The suggestions made by CLLS would involve changes to the SRA Code of Conduct 2011.
29. We have considered whether the current proposal increases the risk of fraud and feel that this is minimal since it is of greater advantage to a potential fraudster to impersonate a practising solicitor.
30. We agree that the integrity of the system is of great importance. To ensure this we intend to carry out regular data sampling to identify when we need to carry out further updates to the roll in future.
31. The City of Westminster and Holborn Law Society welcomed the initiative, suggesting that the process is burdensome for the solicitors involved and for the SRA. They drew attention to problems encountered with the SRA's IT system. They argued that a person qualified as a solicitor should be able to continue describing them as such for the rest of their life and expressed a concern that additional requirements may be imposed on those returning to practice after a career break.
32. The Association of Women Solicitors London (AWSL) agreed with the proposal, provided there is no change to the flexibility with which those who wish to come off the roll and then go back on again, can do so. They considered there was a greater impact on women solicitors, as women are more likely than men to take a career break. They went on to say that many solicitors returning to practice wish to undergo an initial induction period as an unqualified person under supervision and off the roll.
33. We welcome the support for the proposal and confirm that no change is proposed to the regulations governing solicitors being able to request removal of their name from the roll and, subsequently, to apply to have their name restored to the roll. We agree that there may be a greater impact on women solicitors taking a career break but feel that the impact of the proposals is a positive one as they will be able to stay on the roll without making annual applications. The rules and processes for applying to be restored to the roll remain unaffected.

34. The Solicitors Sole Practitioner Group (SSPG) supported the proposal, saying, "The proposal seem sensible and , provided power is retained to refuse removal if the individual concerned is subject to disciplinary proceedings or a complaint, appears to be an appropriate reduction in regulation that is unlikely to have any harmful results."
35. The Junior Lawyers Division of the Law Society (JLD) did not agree with the proposal. They suggested it went against the tradition of providing full and accurate information to the public about solicitors on the roll. They also felt it was left unclear what circumstances would trigger an update of the roll under the proposals. We have explained in paragraph 20 above the indicators we will have regard to when deciding whether an update of the roll is needed.
36. JLD said the roll is used regularly by members of the public and the profession to check that individuals purporting to give legal advice and guidance are in fact registered to do so. They should be entitled to rely on the accuracy of the roll. The annual update of the roll should continue for the protection of the profession and the public.
37. We note the JLD's concern that the public and the profession should be able to rely on the accuracy of the information contained in the roll. The change proposed to the annual updating of the roll applies only to less than 19% of solicitors on the roll. The majority of these are retired or otherwise non-practising solicitors, a small proportion are solicitors exempt from holding practising certificates, mainly those working in Government departments. The SRA will continue to carry out updating exercises when necessary to ensure that the roll remains reasonably accurate.
38. The solicitors that are likely to be the subject of searches of the roll for the protection of consumers are likely to be those who are practising. Their details will continue to be kept up to date annually through the annual practising certificate renewal exercise.

Conclusion

39. The proposal will be implemented, subject to the approval of the Legal Services Board.

Respondents

Association of Women Solicitors London

Birmingham Law Society

City of Westminster and Holborn Law Society

Information Commissioner's Office

Junior Lawyers Division of the Law Society of England and Wales

Lawyers with Disabilities Division

Newcastle upon Tyne Law Society

Solicitors Sole Practitioners Group

The City of London Law Society

Tunbridge Wells, Tonbridge & District Law Society

Individual responses (57)

Alan John Squires - Non-practising solicitor

Anna Louise Pearson

Anthony Brabury - None (retired)

Anthony Rory Coule - retired solicitor

Brian Malcolm Gunn - non practising solicitor

Charlotte Amelia Sandilands - retired solicitor

Cheng Kang Wong - Retired lawyer

Christopher Butterworth

Christopher James Wark - Solicitor in private practice

Colin Robert Humphrey - Retired Solicitor

David Elfed Jones - Non-practising solicitor

David Ian Thomas - Retired

David John Maddison-Roberts - Non-Practising solicitor

David Miles

David Rees Goddard - Retired solicitor

David Short - As a non-practising solicitor currently on the roll (employed as a director but not as a legal professional)

David Thomas - retired solicitor

Edward Richard Austin - Enderley Consulting Limited

Emma Marsh - non-practising solicitor

Frank Evans - Retired solicitor

George Trevor Carney

Heather Dianne Barker - Retired solicitor

Henri Spehar

James Harvey - employed solicitor

Jane Petrie - non-practising solicitor

Jennifer Manning - solicitor on a career break

John Young - retired solicitor

Joshua Hunter - non-practising solicitor

Lesley Malpas - HM Land Registry

Lydia Srebernjak

Marguerite Chisholm - retired solicitor

Mark Harvey - solicitor in private practice

Mark Tyler - Salutaris Legal

Martin Tanfield Smith - Martin T Smith

Mary-Elizabeth Patricia Flynn - non practising solicitor

Matthew Hunt

Michael Breton - Retired solicitor

Michael Sandbrook Howells - Retired solicitor

Nial Farrell - non practising solicitor

Otilie Sefton

Patricia Witts - as a non-practising solicitor

Paul Bird

Peter Jordan - Retired Solicitor

Peter Alan Youatt - retired solicitor

Peter Harold Anthony Austin

Peter Michael Laverick - Retired Solicitor

Ravinder Singh Chumber - Rashid & Co. Solicitors

Raymond Charles Parkes - Non-practising Solicitor

Richard Denys Snow - retired solicitor

Richard Seymour Champness - retired solicitor

Robin Llewellyn Arthur - retired lawyer

Roger David Hicks - retired solicitor

Rosemary Escott - solicitor in private practice

Sarah Thorpe - non-practising solicitor

Siew Lai Huang - non-practising solicitor

Susan Willis McFadden - non practising solicitor

Walter Thomas - non-practising solicitor

William Holmes - retired solicitor

70 respondents wished their responses to remain unattributed.

Appendix 1

Privacy impact assessment screening questions

These questions are intended to help you decide whether a PIA is necessary. Answering 'yes' to any of these questions is an indication that a PIA would be a useful exercise. You can expand on your answers as the project develops if you need to.

You can adapt these questions to develop a screening method that fits more closely with the types of project you are likely to assess.

Will the project involve the collection of new information about individuals?

Will the project compel individuals to provide information about themselves?

Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information?

Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?

Does the project involve you using new technology that might be perceived as being privacy intrusive? For example, the use of biometrics or facial recognition.

Will the project result in you making decisions or taking action against individuals in ways that can have a significant impact on them?

Is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For example, health records, criminal records or other information that people would consider to be private.

Will the project require you to contact individuals in ways that they may find intrusive?