Sensitivity: C

Rule Changes on Health and Wellbeing at Work

Consultation response

January 2023

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Executive Summary

In this report we present the responses to our consultation on proposed changes to our Standards and Regulations regarding:

i. appropriate treatment of colleagues by solicitors and law firms
ii. circumstances where a solicitor's health may affect their fitness to practise, including their ability to take part in our regulatory processes.

The consultation closed on 27 May 2022 and received 59 responses. Of these, 41 were from individuals (largely solicitors) and were generally supportive of the proposed changes. The other 18 responses were from organisations including representative bodies, local law societies and law firms. Many of these opposed or questioned aspects of the proposals.

Since the consultation closed we have met several organisations that expressed concerns about the proposals. These included the Law Society (TLS), the Lawyers with Disabilities Division (LDD), the Junior Lawyers Division (JLD), the Sole Practitioners Group (SPG) and LawCare. Our aim was to understand better the concerns raised and explain our approach. We understand that these meetings have helped to address many of the concerns raised, particularly on the issue of solicitors' health and fitness to practise.

We are grateful to all the individuals and organisations who responded to the consultation and have engaged with us about the proposals.

Our Board has carefully considered the key points put forward in response to the consultation. It has decided to make rule changes in line with the proposals set out in the consultation, with one exception.

The consultation proposed a new requirement for individual solicitors to challenge unfair treatment. Many respondents argued this would put an unreasonable burden on individuals. This was a particular concern in respect of junior staff and those experiencing unfair treatment themselves. Our Board accepted that in the current environment, this additional regulatory requirement could cause undue anxiety for some staff. It therefore decided that the requirement to challenge unfair treatment should apply only to managers in firms. This is important to ensure a culture in which concerns are addressed and staff feel safe in raising issues – and we will use guidance to encourage individuals at all levels to challenge unfair treatment where they are able to do so.

The rules our Board has made are set out at Annex 1 to this report. We will now apply to the Legal Services Board (LSB) to approve these rules. Subject to the LSB's approval, we expect the changes to take effect in Spring 2023.

Responses to the consultation highlighted the need for us to explain the circumstances in which we will take action under the new rules. We will publish guidance when the rules come into effect. This will address the issue of what concerns we will investigate and when under the new rules, and will include information on how we support individuals with health problems that may affect their ability to comply with our regulatory processes. We also intend to work with stakeholders to ensure that solicitors are signposted to appropriate support when involved in an investigation or disciplinary process.

Key points raised and our response

Wellbeing and unfair treatment at work

Proposal to add to the Codes of Conduct an explicit requirement for regulated individuals and firms to treat people fairly at work (question 1)

The case for rule changes

Respondents generally accepted there are issues with unfair treatment in the legal profession, and most individual respondents welcomed the proposed changes. However, many organisations and some individuals queried how widespread the problems are, and whether new rules are needed to address them. Some including TLS argued the regulatory risks could be managed via existing rules and additional guidance. Others including the Employment Lawyers Association (ELA) said rules about 'fairness' would be vague and hard to enforce. The charity LawCare stressed the need for training of managers and supervisors. It was not sure that a rule change in itself would reduce the risk of unfair treatment.

There is clear evidence of problems with unfair treatment in the profession. Our consultation paper cited evidence from recent surveys by LawCare and the JLD. These show high levels of reported bullying, harassment and stress in the profession. Our casework records show that each year between 2015 and 2021 we received on average 462 reports about bullying or harassment. On average 144 of these reports met our assessment threshold test and were investigated.

We think this indicates that rules are needed, as well as guidance, to make clear our regulatory standards in respect of behaviours in the workplace. We issued new guidance on the workplace environment in early 2022 to explain our regulatory approach and give examples of good practice. The proposed rule changes would complement that guidance and underpin our Principle 6 to encourage equality, diversity and inclusion.

The case for new rules is reinforced by those responses that argued the proposed rules represent an expansion of our remit (see 'behaviour outside the workplace' below). This suggests a need to be clear about our regulatory role in relation to these issues, and that it would be difficult to achieve the aims of our proposals simply through guidance on our existing rules.

Making the fair treatment of colleagues an explicit regulatory requirement will help to promote the importance of a healthy workplace culture in the profession. It will also reinforce our ability to take action against any case of unfair treatment that poses material regulatory risks. Given some respondents' concerns about the enforceability of rules on 'fairness', we have conferred with other regulators whose rules require fair treatment of colleagues. Having done so, we are confident that we can enforce the rules in a consistent and predictable way. We will use our guidance to demonstrate our thresholds for taking action.

The consultation invited views on the regulatory and equality impact of our proposals. Respondents generally agreed that they would be positive, particularly for certain groups. We have published updated impact assessments in Annex 2 to this report.

Interface with employment law

Some responses argued that employment law already protects people at work, so the proposed rules are not needed or would create duplication or confusion. The purpose of

employment law is to provide protection and redress for individuals and groups of employees in relation to their employment rights in certain situations. Our Standards and Regulations are intended to manage regulatory risks and promote our regulatory objectives, including the protection of the wider public interest and the interests of consumers. Our consultation paper set out how unfair treatment in the profession can pose significant regulatory risks which go beyond the interests of the affected staff.

Risk of over-reporting

A few respondents were concerned that the new rules could encourage more reporting of minor issues, potentially diverting our resources from other casework. We already receive reports about alleged bullying and harassment, not all of which meet the threshold for investigation. However, the proposed rule changes will clarify the types of behaviours which are likely to result in us taking action, and we are preparing to handle an increased level of reporting if needed. We will use guidance and messaging to the profession to make clear our standards and the threshold for enforcement action.

Conclusion

In view of the above, our Board has decided to make rules in our Codes of Conduct for Solicitors and for Firms, to require individuals and firms to treat colleagues fairly and with respect. The rules are at Annex 1 to this report.

Requirement for regulated individuals and firms to challenge behaviour which does not meet the new standard (question 2)

The draft rules on which we consulted required firms and individuals to challenge unfair treatment, and we invited views on that. Most respondents supported it in principle. But many were concerned that in practice a 'challenge' requirement on all individuals would put an unreasonable burden on some people. There were particular concerns about junior staff and people who are victims of unfair treatment or otherwise in a position of disadvantage in the power dynamic. Some also argued that a requirement for firms to challenge unfair treatment was not needed. They noted that firms must already have effective systems in place to comply with our regulatory arrangements as well as with employment law.

We have considered these arguments carefully and discussed them with stakeholders. It is an important element of a safe and ethical workplace that a firm's managers are ready to challenge unfair treatment. And it is not sufficiently clear that this is required by our existing rules. So we think it is reasonable to require managers to challenge unfair treatment.

However, we have accepted that in the current environment, requiring all individuals to challenge unfair treatment could be unduly onerous for some people, including those who are themselves at particular risk of being treated unfairly. So we will not require this in our rules at this time. Instead we will use guidance to encourage individuals at all levels to challenge unfair treatment where they are able to do so. We will keep this under review as we monitor the impact of the new rules.

We expect firms to put in place effective systems and controls. We also expect them to provide a safe environment for staff to raise concerns, to treat staff with dignity and respect and to create an ethical workplace. However, we have concluded that we do not need a separate requirement to challenge unfair treatment in the Code of Conduct for Firms. This is because paragraph 2.1(b) of the Code already requires firms to ensure their managers and

employees comply with our regulatory arrangements. This will now extend to the new requirement for managers to challenge unfair treatment.

The rules made by our Board (at Annex 1) reflect these conclusions. The rules require managers in firms to challenge unfair treatment, but this requirement does not apply to other individuals.

Requirement should cover colleagues such as contractors, consultants and experts, as well as staff in a formal employment relationship (question 3)

Our consultation paper noted that the proposed rules refer to “colleagues” and that in our view this goes beyond staff in a formal employment relationship. It would therefore cover others with whom solicitors and firms regularly work closely, such as contractors, consultants, barristers and experts instructed by a firm. We invited views on this.

This approach was generally supported. But some thought it unnecessary, since people who are not employees will have contractual relationships with the firm to protect them from unfair treatment. It was also suggested that we would not be able to take action in respect of people who are not employees.

Having considered these points, we still consider that the rules should cover unfair treatment whether or not those involved are employees. Unfair treatment in a work context can affect working culture regardless of the employment status of those involved. And where a client suffers a poor outcome as a result of such treatment, the employment status of the people involved is irrelevant. We do have powers to take action where people involved in the provision of legal services by a firm are not directly employed and in relation to the behaviour directed towards those individuals.

We have therefore retained the term “colleague” in the new rules. Our guidance will confirm that this covers people within and outside an employment relationship.

Behaviour outside of the workplace or the direct delivery of legal services (question 4)

Our consultation paper said that the proposed rules are principally intended to cover behaviour in a work context, whether in an office or remotely. But that our view is that the rules can also cover behaviour away from the direct delivery of legal services. This arises where behaviour is in the context of a relationship between colleagues, rather than a purely personal relationship. We invited views on this.

This was the one consultation question that attracted more opposition than support. Several organisations, including TLS, the ELA and the SPG, argued that there is no evidence to support regulatory intrusion into personal relationships. Some cited the *Beckwith* judgment to support this argument. Others acknowledged that unfair treatment away from work could raise regulatory concerns. But they suggested our existing rules including Principle 2 (upholding public trust and confidence) were sufficient to deal with this. Some respondents also noted that the boundary between a relationship between colleagues and a purely personal relationship would be hard to define.

There is a clear tension between (i) the view that the existing regulatory safeguards on behaviour outside the workplace are adequate. And (ii) the belief that regulatory oversight of such behaviour is inherently disproportionate.

In practice, we do see cases where serious unfair behaviour occurs away from the delivery of legal services, but clearly in the context of a work rather than purely personal relationship. For instance, this can happen at work social events or conferences. The *Beckwith* judgment confirms that our regulatory remit can extend into private life. However, it also requires us to provide identifiable standards for solicitors – and this is consistent with the introduction of explicit rules on unfair treatment, supported by the expanded guidance we will produce on this topic, clarifying that we will only take action where the behaviour in question touches on the practice or standing of the profession in a way that is demonstrably relevant. We also intend to make this clear in the introductions to our Codes of Conduct by adding the wording in Annex 1 to this report.

Other comments on the wording of the new requirements (question 5)

Our consultation paper discussed the approach of other regulators to unfair treatment at work, and proposed new rules similar to those of healthcare regulators. A few consultation responses said healthcare is not an appropriate model for the regulation of solicitors and law firms, because the work of health professionals and solicitors is so different.

In our view healthcare regulation is a helpful comparator for solicitors in this context. Both health and the law involve people in a variety of regulated and unregulated roles working in teams to deliver vital professional services to the public. And in both fields the unfair treatment of colleagues can raise serious regulatory concerns.

Our approach to enforcing the new requirements (question 6)

Some responses to this question from individuals suggested that a law firm should always be given an opportunity to resolve concerns about unfair treatment before the SRA gets involved. Others said individuals must have the option to come straight to the SRA with concerns, and to remain anonymous.

We publish guidance on reporting and notification obligations for solicitors. This explains that where a solicitor has information which raises a concern that someone we regulate has committed a serious breach, they have a duty to report it to us, setting out the nature of the concerns and the likely availability of evidence. And that if appropriate, we can deal with requests for anonymity or confidentiality. Our guidance also notes that those we regulate can seek our advice on potential concerns without providing the identity of the individuals involved. However, we cannot take regulatory action based on such information.

In both the reporting guidance and our Enforcement Strategy, we recognise that firms may wish to investigate themselves to understand whether an issue is serious, and that we want firms to resolve and remedy issues locally where they can. But where a serious breach is indicated we expect firms to engage with us at an early stage, and we may wish to investigate the matter or an aspect of it ourselves.

Regulatory and equality impact (question 7)

Our consultation set out our initial assessment of the regulatory and equality impact of the proposed rule changes relating to unfair treatment. We invited views on our assessments. Most respondents who expressed a view on this agreed the changes would be positive, particularly for certain groups. We have updated our impact assessments in the light of consultation responses. The revised assessments are at Annex 2 to this report.

Solicitors' health and fitness to practise

Proposal to amend our rules to make it clear that fitness to practise covers all aspects of practising as a solicitor, including the ability to meet regulatory obligations and be subject to regulatory proceedings (question 8)

The case for rule changes

Most individual respondents supported the proposed rule changes relating to solicitors' health and fitness to practise. But many organisations – including TLS, the JLD, the LDD, the SPG and LawCare – and some individuals had questions and concerns about aspects of the proposals. These included:

- our intention to make it explicit that fitness to practise as a solicitor includes the ability to meet regulatory obligations. This is in addition to the ability to perform the work of a solicitor. Some respondents disagreed with this as a matter of principle. Others accepted it, but queried the need to spell it out in our rules

- whether our proposals might impose significant new burdens on solicitors. For instance, would solicitors have to submit medical evidence of fitness to practise whenever seeking authorisation or renewing a practising certificate?

- the risk of unintended outcomes. In particular, several organisations said the changes could deter people with a health condition or disability from declaring it to their employer. Or could even put them off joining the profession.

We met with TLS, the JLD, the LDD, the SPG and LawCare to discuss the issues they had raised. We explained that in practice the changes will only impact the very small number of cases where all the following apply:

- a solicitor has a health condition
- that condition means they cannot safely practice or engage with our regulatory processes
- the solicitor has not taken steps to manage the impact of their condition. For instance, by restricting their practice or obtaining the necessary support from their firm.

It follows that we will not take action under the proposed rules simply because someone has a health condition. We will only act in those cases where:

- this combination of circumstances comes to our attention, and
- we are concerned that the solicitor poses significant risks to clients or the public.

We typically manage those risks by using proportionate conditions to limit the scope of the solicitor's practice. For instance, if a solicitor is not managing a health issue which affects their ability to perform certain tasks, and that adversely affects clients. In such a case we can use conditions to ensure the individual is supported in handling those tasks.

While such situations are unusual they do occur, almost always arising in the context of a concern or allegation about misconduct. In a snapshot of open cases in 2021, around 5% involved concerns about a health condition affecting participation in an investigation or disciplinary process. In two recent cases a Solicitors Disciplinary Tribunal hearing has been stayed indefinitely for health reasons but the solicitor remains able to work. In such cases

the solicitor is effectively practising without meaningful regulatory oversight, and that poses an unacceptable risk.

When the rule changes take effect we will update our guidance and processes. These changes will make it absolutely clear that we regard fitness to practise as covering the ability to meet regulatory obligations. So we will ask if people are able to meet our regulatory standards when renewing a practising certificate, as well as on admission.

That may sometimes lead an individual or firm to advise us of a health condition. We do not intend to introduce a general requirement for solicitors to provide medical evidence of their fitness to practise when seeking authorisation or renewal. We will only ask for medical evidence where required in order to establish the nature or impact of a health issue.

We recognise from our discussions with stakeholders that it will be important to explain clearly to the profession how we deal with health concerns. This applies both to investigations and disciplinary processes and to other processes such as authorisation. We will produce guidance and resources on this. And we want to work with stakeholders to ensure that solicitors with health conditions are appropriately supported when they engage with us.

A separate formal process for health concerns

Our consultation paper set out recent changes to the way we handle health issues in our disciplinary work. The changes are aimed at identifying issues early on and managing them quickly and sensitively to protect solicitors and the public.

Some respondents said that we should introduce a separate formal procedure, possibly involving medical professionals, in a similar way to some other regulators. We have considered this, but do not think it would add any benefit. Our updated processes are designed to ensure medical evidence is obtained and properly considered where necessary, and enable us to take a fair and proportionate approach.

A separate formal procedure may only add to delays and stress for the solicitor involved. We understand that in practice, regulators which have a separate formal procedure for healthcare issues resolve most health-related cases through more informal means. As we noted in our consultation paper, the DHSC consulted in 2021 on proposals to remove health as a separate ground for action in healthcare regulators' rules. This will mean that health concerns would instead be handled under the grounds of misconduct or competence.

Other issues raised in consultation

Other issues raised by the JLD in its consultation response included:

- How we could justify refusing to issue a practising certificate on health grounds, when it is not possible to strike off someone solely for health reasons.
    - Refusing to issue a certificate is a 'before the event' measure to prevent risks crystallising. This may in some circumstances be a reasonable way of managing serious regulatory risks associated with a health condition. In contrast, striking off is a retrospective disciplinary measure which removes rights to practise.

- What happens if someone raises health issues during a disciplinary process but is unable to fund their own medical evidence.

    - We have published guidance on instructing medical experts. This says the onus to obtain medical evidence is usually on the individual who is the subject of investigation or proceedings. However, it confirms that we will consider whether to obtain our own expert evidence or consider joint instruction of an expert where appropriate. This can include cases where an individual is unable to fund the production of such evidence themselves.

- An individual will suffer detriment if they are unable to work while awaiting the outcome of an NHS assessment.

    - We will not take action on health grounds in the absence of medical evidence. But in some cases it may be necessary and proportionate to restrict an individual's practice - on conduct rather than health grounds - in these circumstances.

Conclusion

In view of the above, our Board has decided to make the changes on which we consulted. The changes affect our Assessment of Character and Suitability Rules and our Authorisation of Individuals Regulations. The amended rules are at Annex 1.

Comments on the wording of the amendments (question 9)

Some respondents suggested changes to narrow the scope of the proposed wording. This was because they felt the wording was too wide in effect or, conversely, because they felt it was not needed. For instance, it was suggested that we remove the proposed reference in the Suitability Rules to regulatory investigations or proceedings.

We consider that narrowing the new wording would be unhelpful. A key purpose of the proposed changes is to clarify that fitness to practise as a solicitor includes the ability to meet regulatory obligations and to be subject to regulatory proceedings. This is in addition to the ability to perform the work of a solicitor.

Our approach to managing health concerns (question 10)

Our consultation summarised the process we use to manage health concerns in disciplinary casework. Several respondents raised questions about the process, including:

- whether the experience and training of SRA staff is appropriate and adequate in this context
- how fitness to practise would be interpreted in casework
- how conditions on practising certificates would be targeted effectively at the risks arising from a health condition
- how cases can be closed fairly but quickly where possible, to minimise the stress and anxiety experienced by those involved
- how individuals would be supported through the disciplinary process
- how the SRA will ensure that health processes are transparent and proportionate.

After the consultation closed we discussed these issues with several organisations that had expressed concerns. We explained how we already handle health issues in our casework. This includes involving suitably trained and experienced staff and signposting people to sources of help. We outlined our experience of using targeted conditions to manage risks posed by health issues, without restricting practice unnecessarily. And we confirmed that we recognise the importance of providing appropriate support to people involved in disciplinary processes, which are inherently stressful.

We think the measures we have put in place to deal with health concerns in our disciplinary process are fair and robust. We want to continue to work with stakeholders during implementation of the rule changes. Our aim is to help the profession understand how we handle health concerns in our disciplinary processes, and to explore further how those we regulate can best be supported.

Regulatory and equality impact (question 11)

Our consultation set out our initial assessment of the regulatory and equality impact of the proposed rule changes relating to solicitors' health and fitness to practise. We invited views on our assessments.

Several organisations expressed concern about equality impacts, particularly for disabled solicitors. As discussed above, we expect the rule changes to have a direct impact only in a small number of cases, and we consider that in those cases they are needed to manage significant regulatory risks, and are a proportionate response.

We have updated our impact assessments in the light of consultation responses. The revised assessments are at Annex 2 to this report.

Analysis of responses

We received 59 responses, 41 from individuals and 18 from organisations, as follows.

Individual solicitor	29
Other individual legal professional	4
Non-legally qualified individual working in legal services	4
Individual academic	1
Other individual	3
Law firm or other legal services provider	5
Local law society	6
Representative group (including the Law Society)	5
Other organisation (including charities and statutory bodies)	2

1) Do you agree with our proposal to add to the Codes of Conduct an explicit requirement for regulated individuals and firms to treat people fairly at work? Please explain the reasons for your answer.

Yes	No	Other	No response
39	13	5	2

Views for and against the proposal

Most respondents were in favour of the proposal. Supportive comments included:

> "Yes - making this an explicit stand-alone requirement, rather than simply dealing with it under other headings, can only improve clarity, outcomes, and our reputation across the public and other professions" (individual solicitor)

> "We agree that solicitors and colleagues should work together effectively and treat each other with respect and dignity. We are glad that the SRA are addressing this with the seriousness it requires, given the evidence of bullying, discrimination and harassment in the profession" (Junior Lawyers Division)

A number of individual respondents who supported the proposal stated they had experienced bullying, harassment and unreasonable demands at work. Some respondents related the proposals to what they regard as discrimination issues in the profession.

> "Yes. There are firms that treat junior solicitors very poorly and do it in such a manner that if anything goes wrong they can blame that solicitor. Bullying and abuse, especially of female solicitors, is very common." (individual solicitor)

However, some respondents raised concerns about the need for an explicit requirement and its impacts. The Law Society questioned whether there was sufficient evidence to justify the change, and stated that the existing regulatory framework could be used.

> "These proposals will significantly widen the responsibilities placed on solicitors, without any clarity as to why they are necessary, how these would be managed in terms of enforceability, or how far reaching the impact may be… the requirement under principle 5 to act with integrity, would require solicitors to refrain from bullying clients, colleagues, or others and from discriminatory behaviour of any kind."

The view was echoed by an individual solicitor.

> "No - the approached proposed is unnecessary and seeks to take the SRA into employment law and partnership dispute issues which will drain the SRA's resources and delay resolution of such disputes and thus damage the public interest."

Would the proposal support the standards of legal services provision?

Some respondents thought that an explicit requirement to treat people fairly at work could support the standards of legal services provision and ultimately benefit the public.

> "Yes. It is important that we set out the requirement to treat people fairly at work explicitly in the Codes of Conduct. People who are bullied or mistreated at work are less effective and are likely to provide a reduced standard of service through no fault of their own" (anonymous)

LawCare, the mental wellbeing charity for the legal community, said:

> "We… believe this is an important step forward to addressing the deep-seated challenges in the culture and practice of law, which undermine mental wellbeing. Solicitors with poor mental wellbeing are more likely to make mistakes or poor ethical decisions, so addressing the factors that can lead to poor mental wellbeing in legal workplaces protects the public and maintains confidence in the legal profession."

However, LawCare added:

> "We question the need for this explicit requirement in the Codes of Conduct… it is unclear how the proposed requirement will operate alongside the Equality Act 2010, which already imposes a legal obligation to treat people fairly at work, and not to bully, harass, or discriminate against them because of a protected characteristic."

Some respondents said the proposals would allow issues faced by law firms' staff to be addressed more effectively.

> "I've seen cases of staff being treated unfairly by partners, which they think because of their status its acceptable, which clearly it is not. It makes it harder for management to challenge them on their behaviour. This requirement would hold them accountable and hopefully make them change their ways, or at least there would be repercussions?" (anonymous)

However, the Law Society thought the proposals could impede firms' handling of issues.

> "Supervisors should possess the skills, knowledge, experience, and confidence to manage their team effectively. This naturally includes having difficult conversations with individuals who are underperforming, or whose behaviours are out of line with the expectations of the firm and/or the Standards and Regulations 2019. The SRA

proposals inadvertently risk undermining the proactive effective supervision of such individuals by giving them a route to defer or delay engagement about their own negative behaviour or performance."

Would the proposals improve regulatory clarity?

Respondents had differing views as to whether the proposal would improve the clarity of the current requirements.

> "Yes, feel that it has always been an unwritten part of the code that has been open to interpretation. Think it can only improve the profession and assist in change" (anonymous)

> "No, it is a hopelessly vague requirement and therefore impossible to comply with" (individual solicitor)

> "In the absence of clear and detailed guidance and consensus on what is meant by 'treating people fairly' in the workplace, we are concerned that the proposal would introduce a level of uncertainty that would mean it will be impossible for firms and individuals to comply with this rule... A new 'fairness' concept would cut across the current frameworks both of employment rights and obligations as well as regulation." (Employment Lawyers Association)

> "Fairness within the workplace is not an objective professional conduct standard. It varies from firm to firm from individual to individual and does not lend itself to consistent enforcement. Any rule would also duplicate firms' obligations under existing employment law." (Birmingham Law Society)

Whistle-blowing

The whistle-blowing charity Protect agreed with the proposals, but said any rule should be accompanied by clear guidance to protect individuals who report breaches.

> "This requirement will not be effective without appropriate whistleblowing protections and arrangements in place to ensure that people speak up where this standard is not met and are protected in doing so... 70% of whistleblowers in the financial sector calling Protect between 2017-2019 were victimised, dismissed, or felt they had no choice but to resign."

2) Do you agree with our proposal to include an explicit requirement for regulated individuals and firms to challenge behaviour which does not meet the new standard? Please explain your reasons.

Yes	No	Other	No response
33	17	8	1

A slightly smaller majority of responses than in Question 1 supported our proposal. These were typical comments.

> "Yes I do. By being silent to inappropriate behaviour you are in effect consenting to it and fuelling a negative and poisonous environment." (anonymous)

> "Yes as culture often goes unchallenged due to the power imbalance and I think if it's part of the Code juniors will be more protected and supported." (anonymous)

However, a law firm said:

> “It is our understanding that the SRA already has the power to challenge behaviours of individuals who work within a law firm – when it relates to their conduct in the domain of providing legal services. The other main question we have is – how far does a firm have to go to show that it challenges such behaviours which do not meet the new standard and what will suffice from an SRA perspective?”

The Law Society saw the proposal as unnecessary:

> “We would expect firms to have effective and robust HR policies, which include a grievance and whistleblowing procedures to challenge behaviour that does not meet the required standard … It is unclear what the SRA believe these proposals add in terms of positive impact.”

Liverpool Law Society argued that the proposal would introduce subjectivity:

> “…charging every regulated person within the workplace with the task of calling out unfair behaviour will not only put an undue burden on those individuals, but will also mean that the first determination of what is and is not fair comes down to the subjective view of that individual.”

The Employment Lawyers Association said:

> "As these challenges are likely to take place in an employment context, there is a risk that in making an incorrect challenge, or challenging inappropriately, an employee or employer may undermine the implied term of trust and confidence. This risks breaching the employment contract. Employment law and regulation could find themselves acting in opposition."

Several respondents said that the requirement might create problems for individuals who challenge or report behaviour.

> “Our experience of 25 years of listening to legal professionals talk about their working lives, is that it is very difficult in practice, particularly for junior staff, to call out inappropriate behaviour in colleagues.” (LawCare)

> “Historically, employees find it very difficult to make challenges, particularly involving those senior to them. What does 'challenging' look like? What does this requirement actually mean? There is a concern that a failure or delay through fear to challenge could then result in the affected employee being penalised by the SRA.” (Lawyers with Disabilities Division)

The Junior Lawyers Division argued there should be different requirements in the Codes of Conduct for solicitors and firms.

> “Requiring solicitors to challenge behaviour … unfairly puts the burden on individuals, who may be being bullied themselves… However we do agree with this wording for firms, as senior management are in a position to set the tone and culture of a firm, and should be actively challenging staff members to comply with the culture and behaviour required.”

A law firm said:

> “The obligation to challenge may be better placed on firms by putting requirements on them to create the right environment and to demonstrate a culture which enables challenging unacceptable behaviour”

Similarly, an individual academic discussed the culture underlying reporting of behaviour:

> "Research indicates that there is a link between effective bystander intervention and organisational safety. Those in positions of power should ensure a culture of safety where bystanders and observers who intervene to challenge and report inappropriate behaviour are protected from negative consequences."

3) Do you agree that this requirement should cover colleagues such as contractors, consultants and experts, as well as staff in a formal employment relationship? Please explain your reasons.

Yes	No	Other	No response
35	11	10	3

Views for and against the proposal

A majority of respondents agreed with our proposal – for example, the Lawyers with Disabilities Division said:

> "Yes, if it applies to employees then the requirement should extend to anyone working in the sector, otherwise there becomes a two (or more) tier system."

An anonymous respondent said:

> "Yes. Case law around the Employment Rights Act 1996 makes it clear that requirements around fair treatment extend to contractors etc. both in terms of how they are entitled to be treated and how they are expected to treat others when in a workplace. It would be perverse if similar standards were not required by regulators."

However, some respondents opposed the proposal. The Employment Lawyers Association said:

> "Dealings between firms and contractors, consultants and experts are already governed by independently negotiated commercial contracts. We are concerned that the expansion of this requirement could result, in practice, in the inclusion of an additional 'fairness' term in dealings between a firm and its commercial counterparties. This could result, for example, in counter-parties alleging that a firm has acted "unfairly" in a case of a genuine commercial dispute."

Several respondents including the Junior Lawyers Division, Newcastle upon Tyne Law Society and individuals said the term 'colleagues' would need to be defined.

4) Do you agree that these new obligations should apply to behaviour outside of the workplace or the direct delivery of legal services? This is where behaviour is in a relationship between colleagues rather than a purely personal relationship. If so, should this be made explicit in the new wording?

Yes	No	Other	No response
20	22	13	4

Views for and against the proposal

Respondents' views on this question were finely balanced, with slightly more against than in favour. Many of those who agreed with the proposal did not elaborate on their views, but a typical statement from a respondent who agreed was:

> "I absolutely support this. I accept that there is legitimate argument that some things which are clearly not OK in the workplace, may be OK in an entirely social or other setting outside it; however, if the fundamental duty to treat colleagues fairly ends at the office door, it becomes easily possible to harass, discriminate and victimise colleagues in ways which have just as serious an effect on them, without ever technically breaking the rules." (individual solicitor)

A law firm questioned our proposal.

> "It is not clear why the new obligations need to apply to behaviour outside of the workplace. This seems to be an area that would be fraught with ambiguity and extremely difficult for firms and COLPs to apply. Additional and detailed guidance would be needed to make clear what constitutes 'behaviour in the context of a relationship between colleagues' as compared to a 'purely personal relationship' and where/how the distinction between the two is drawn."

Some themes were common on both sides of the debate. One was that solicitors' behaviour towards others can be a significant regulatory issue away from the workplace. This response from an individual solicitor summed up this point.

> "I think that it is difficult extending this outside an explicit work environment. Certainly it needs to apply to work based social occasions and other occasions which flow from being colleagues rather than interacting in another context, but I do not think one should extend things beyond that boundary … But, I do sympathise with the idea that these standards are what one expects members of the profession to exhibit in all aspects of their lives and that there is a level at which reputational damage to the profession is an issue irrespective of any lack of workplace context to their behaviour"

Another, connected theme was that the SRA should limit the scope of its requirements in order to focus resources on where action is most needed.

> "In my experience the SRA has not intervened quickly even in cases of sexual harassment between colleagues - so to suggest the SRA could significantly broaden its scope does not seem possible to me. It would likely result in even weaker responses to serious issues in the workplace." (anonymous)

> "I would not extend the requirements outside the workplace. Frankly, it's bad enough within workplaces so we should tackle it there first." (anonymous)

Several respondents raised the need to define the meaning of 'workplace' in the modern environment:

> "…with the increase in hybrid/remote working styles it is imperative that the definition of 'workplace' extends beyond a physical location in order to protect those who may be fully/partially remote." (anonymous)

Scope of regulation

The scope of SRA regulation was raised by several organisations. The Employment Lawyers Association said our proposal would extend the scope of regulation too far.

> "Regulated individuals would be under an obligation as a result of this proposal to behave in social situations in a manner that is currently undefined. This would impose upon that regulated individual a standard of behaviour higher than others in society… We are concerned that the additional requirement to challenge behaviour would impose on firms a difficult requirement to police behaviour in social situations."

The Law Society also opposed our proposal on the grounds of scope and clarity. They said:

> "Interactions between staff outside of the workplace is not a matter for the SRA. It would be difficult, if not impossible, to be clear about where any line would be drawn, and regulatory requirements are consequently an inappropriate way to deal with a potentially nuanced situation."

Manchester Law Society also disagreed with our proposal, saying it would not reflect recent case law (Birmingham Law Society made a similar point).

> "We disagree and feel it is a step too far to extend SRA regulation into the personal lives of solicitors where there is a relationship between colleagues. The SRA must treat a solicitor's right to a private life with respect – Beckwith v SRA [202]EWHC3231(Admin) confirms this … 'such rules represent an intrusion into private life that cannot at the level of principle be justified by the public interest in the regulation of a profession' (para 49)"

5) Do you have any other changes to suggest to our proposed wording for the new requirements? If so, please give details.

Yes	No	Other
23	35	1

Some respondents who supported our proposals suggested additional requirements.

> "For the 'firms' wording, and under the duty to challenge offending behaviour, I would like to see a reference to positive encouragement and protection for employees who do so." (individual solicitor)

> "The Codes should include a mandatory requirement for firms to have a documented set of ethical standards. Firms should communicate how they will treat staff fairly and promote a strong ethical culture… A tailored approach should be taken when drafting a set of ethical standards based on the demographic of the firm's staff." (anonymous)

Two respondents commented on the impact of the broad drafting of our proposed requirements.

> "When rules that impact on individuals are widely drafted the individual will often err on the side of caution. Erring on the side of caution for these proposed changes could have serious detrimental effects on that individual's career progression." (individual solicitor)

> "When the wordings are broad, what the wordings mean will rely on the actual enforcement actions." (anonymous)

Manchester and Birmingham Law Societies suggested the wording "discriminate unfairly" in the proposed new rules should be reconsidered because 'fairness' is not a concept in discrimination law.

6) Do you have any comments on our proposed approach to enforcing the new requirements on unfair treatment at work?

Yes	No
37	22

There was a wide variety of comments on enforcement – for example, in relation to reporting and anonymity.

> "I think this probably goes without saying, but firms must be given the opportunity to deal effectively with complaints through internal process, before the SRA intervenes to do so." (individual solicitor)

> "Firms should be obliged to undertake independent investigations into allegations and not manage things themselves. As things stand, teams investigate accusations and then quickly brush them under the carpet." (anonymous)

> "The complaint directly to SRA should be possible, without a requirement to submit a complaint inside the law firm or the workplace first." (individual solicitor)

> "I think the SRA would capture much more instances of poor behaviour if there was a method to report behaviour to the SRA on an anonymous basis or an assurance that anonymity can be guaranteed." (anonymous)

Several respondents commented that the proposals may widen the scope and scale of the SRA's enforcement actions.

> "The term 'fairness' has a wide and subjective nature, and there are resulting concerns that the proposal could create a 'hair trigger' for regulatory reporting thereby opening the floodgates to regulator involvement." (Employment Lawyers Association)

Other respondents noted that the question of enforcement scope interacts with cultural and managerial issues in law firms.

> "The proposed approach to enforcement and focus on 'serious regulatory failure' seems appropriate. We note that this is unlikely to cover many of the scenarios which currently lead to poor mental health and low levels of wellbeing in parts of the legal profession, for example, where working extremely long hours and feeling under constant pressures in terms of billing hours has become largely normalised… to be effective, this approach must be undertaken in tandem with efforts to promote wider structural and cultural change within the legal profession." (individual academic)

> "How will it be determined that a culture is one in which 'unethical behaviour can flourish' or that 'staff are persistently unable to raise concerns or have issues addressed'? Although it is stated in the consultation that the SRA would not expect to get involved in disagreements about targets or work allocation, our experience at

> LawCare would suggest that these are sometimes used as ways of discriminating against regulated individuals by setting unrealistic targets or the allocation of low-quality work." (LawCare)

7) Do you have any comments on the regulatory or equality impact of our proposed changes on wellbeing and unfair treatment at work?

Yes	No
27	32

Several respondents said the proposals would have a positive effect in terms of equality.

> "The changes will likely give those members of the profession (and wider society) who have historically been subject to such treatment a greater sense of inclusivity within the profession." (individual solicitor)

A smaller number had negative comments.

> "Better not to bother. It is a can of worms." (anonymous)

Other comments included:

> "We can see why the changes, if properly and proportionately enforced, might have a positive impact on solicitors suffering from stress/mental health issues (brought about by poor behaviour in the workplace) and also those more junior employees, subject to our comments above concerning the risk that by imposing an obligation to 'call out' such behaviour might increase the stress placed on such members of staff." (Manchester Law Society)

> "We wish to express our disappointment that the consultation omits to reference the experiences or negative impact behaviours on LGBT+ individuals in the profession such as bullying, harassment or discrimination. The complete lack of acknowledgement of such negative behaviour on LGBT+ individuals in the entire consultation paper is a serious oversight… Improvements to working culture are likely to benefit women, ethnic minority staff and disabled staff. We also believe that it will benefit LGBT+ staff. We do not believe that additional regulation is the way to achieve this change, though." (The Law Society)

8) Do you agree with our proposal to amend our Rules and Regulations to make it clear that fitness to practise covers all aspects of practising as a solicitor, including the ability to meet regulatory obligations and be subject to regulatory proceedings? Please explain the reasons for your answer.

Yes	No	Other	No response
30	12	12	5

Views for and against the proposal

Most respondents agreed with our proposal.

> "The Tribunal considers it important that all solicitors understand that fitness to practise covers all aspects of practising as a solicitor, including the ability to meet

> regulatory obligations and be subject to regulatory proceedings. It is of significant concern to the Tribunal when a respondent before it is too unwell to participate in regulatory proceedings but is continuing to practise. The Tribunal considers that this poses a potential risk to the public but unfortunately does not have any interim powers and is reliant on the SRA to manage the risk pending the determination of the proceedings." (Solicitors Disciplinary Tribunal's Policy Committee)
>
> "Yes - I confess I hadn't realised this wasn't already the case. Since the alternative is that some aspects of practising are excluded or exempted, I think the appropriate question isn't 'why should all aspects be included' but rather, 'why should any be excluded?'" (individual solicitor)

Some supportive respondents added caveats.

> "If regulatory obligations cannot be enforced it would seem to follow that the solicitor is not fit to practice but it should be appreciated that a party may be unwell as a result of abuse they have suffered from a fellow solicitor" (anonymous)
>
> "Yes, but it must be understood that if lawyers are made ill by firms who pressure them to work too hard, they are not to be disciplined for it or lose their jobs (which is the usual implied threat)" (anonymous)

The Lawyers with Disabilities Division said they had concerns about the proposal:

> "We already know that disclosure of disabilities is woeful in the profession and we consider that this will force disclosure numbers even lower for fear of having to jump yet another hurdle in what is a difficult environment for many people with disabilities. We also consider that firms who have been challenged, for example, due to not providing reasonable adjustments, or because they have discriminated against a solicitor on the grounds of disability, may see an opportunity to challenge competency in another way."

A law firm said:

> "The proposed approach is likely to create a reluctance from people to come forward with and to possibly conceal health issues, particularly mental health issues due to fear of it impacting their career."

The Law Society said:

> "We strongly oppose these proposals as they are unclear and risk opening the door to a repressive regulatory regime for those affected… This is a sensitive and complicated area, with a danger that individuals will be stigmatised or discriminated against because of their health, particularly where the issues relate to mental health."

Local law societies highlighted possible consequences in relation to regulatory proceedings.

> "We agree that the rules should make reference to being able to take into account a solicitor's health. However, we have concerns about fitness to practice being used in relation to the ability to be subject to prosecutions in the SDT… Even if the solicitor was found not guilty of the alleged offence, the rule change would mean that the solicitor would be unable to practise and earn a living because the SRA will say they aren't fit to practise." (Manchester Law Society)
>
> "We do not agree that fitness to practice should be taken to include the ability to be subject to prosecutions in the Solicitors Disciplinary Tribunal. Effectively, that would mean a solicitor who was subject to a severe mental health condition, possibly made

> worse by the threat of disciplinary action, would be prohibited from practising as a solicitor because they were suffering, possibly from a temporary, but severe, mental health condition." (Birmingham Law Society)

9) Do you have any changes to suggest to our proposed wording for the amendments? If so, please give details.

Yes	No
16	43

There were a number of comments on our proposed wording. The Law Society stated:

> "Health is a broad concept and a definition of the term in this context is necessary. The human rights principle of 'nothing about us without us' should be used as a guiding ideal, that no policy should be decided without the full and direct participation of members of the group(s) affected by that policy. As such, disabled peoples' organisations should be consulted in the drafting of these changes."

Birmingham Law Society stated that the proposed change "goes much too far" and suggested alternative wording.

> "Solicitors have a statutory duty to comply with our regulatory arrangements and such compliance is part of what it means to practise as a solicitor. Therefore, in assessing your suitability the SRA will take into account ~~anything~~ all relevant factors, including your health, which indicates you are unfit to meet your regulatory obligations~~ or to be subject to regulatory investigations or proceedings~~."

Other responses to this question revisited the policy issue of whether the rule changes were appropriate in principle.

10) Do you have any comments on our approach to managing health concerns in the context of the proposed changes to our rules?

Yes	No
30	29

There were a wide range of comments in response to this question. The Lawyers with Disabilities Division raised a number of practical questions:

> "It would be good to have examples of how someone's health would make them unfit to practise. It all seems to be applying a very ableist model… Who will assess fitness to practise? Will there be a cost for the disabled person and will there be a waiting time for such an assessment and if so who will cover any potential loss of salary."

Some respondents mentioned taking health into account early in an investigation.

> "It is essential that physical and mental health are considered at an early stage of any investigation to make sure that such factors are taken into account as appropriate." (anonymous)

Some respondents felt there should be more focus on workloads in the profession, while others linked health and bullying.

> "The focus should be on monitoring firm's policies of how they monitor performance. Major focus on financial targets, like in my firm, puts fee earners under tremendous sustained pressure and impacts on mental health. The SRA should take action against these policies, not against the individuals who suffer the consequences." (anonymous)

> "Law firms and other organisations should have an explicit obligation to provide physical and mental health policy, which details what efforts the employer makes to improve physical and mental health of the employees, how to complain about bullying and harassment, and how to submit proposals for what else can be done." (individual solicitor)

The Solicitors Disciplinary Tribunal said:

> "In a very small number of cases the SRA currently commence proceedings before the Tribunal where it is clear that the respondent has significant health issues… These proceedings tend to be stayed or adjourned on several occasions due to the health issues. If the SRA know that a respondent is too unwell to participate in regulatory proceedings the Tribunal considers that the SRA should have sufficient powers to ensure that the person involved cannot practise until the health issues are resolved. This protects the individual solicitor, their clients and the public."

11) Do you have any comments on the regulatory or equality impact of our proposals on solicitors' health and fitness to practise?

Yes	No
20	39

There were a number of comments. LawCare said:

> "Careful consideration needs to be given to the implication of any 'fitness to practice' regime and its impact on people with existing physical or mental health conditions or those groups who are most impacted by working practices and culture in the law. What steps will be taken to monitor this? Data collection will be important to identify the factors that may be leading to health issues affecting a solicitor's ability to practice, so that steps can be taken to address these through education and training about any underlying causes that may be due to workplace practice and culture."

The Lawyers with Disabilities Division said:

> "The need to periodically prove fitness to practise will be stressful and may discourage people from identifying as disabled. How much more information will need to be disclosed and to whom? Who assesses whether someone is fit to practise? Someone's medical report may be lengthy and on the face of it sound 'awful' – but without actually reflecting them as individuals and what they can do."

A law firm raised concerns about objectivity of health assessment and equality:

> "The key question here is how will the SRA view [a solicitor's mental health] – will there be an objective assessment and if so, who will carry this out?... Is this another way of imposing a rule which could prevent solicitors from working if they have mental health issues that stem from practising – is this in keeping with the rights and/or aligned with the legislation that is contained within the Equality Act 2010?"

The Law Society said:

> “These proposed requirements will have an impact on some disabled people or those with a long term health condition in the profession, unless other steps are taken in parallel to create a more inclusive and supportive environment, including amongst all those who engage in fitness to practise cases.”

Other comments included:

> “This could cause more stress to people who already have health conditions… Yes there absolutely needs to be protection for clients and colleagues, but also support / signposting put in place for the person…” (anonymous)

> “We believe these changes will only add to the stress for solicitors, particularly those suffering from health conditions. It may force them to have to divulge sensitive personal information (about their health) to their employer, when this may not be necessary or appropriate.” (Liverpool Law Society)

> “The SRA notes that men and Black, Asian and other minority ethnic solicitors are over-represented in concerns raised with it, and in cases it takes forward for investigation. We consider that solicitors from these backgrounds may be more likely to be affected by the proposals than others, leading to claims of discrimination under the Equality Act 2010 against the practitioners’ employers.” (Employment Lawyers Association)

Annex 1 Wording of the rule changes

Rule changes on unfair treatment at work

Code of Conduct for Solicitors, RELs and RFLs

New standard in section 1 (maintaining trust and acting fairly):

"1.5 You treat colleagues fairly and with respect. You do not bully or harass them or discriminate unfairly against them. If you are a manager you challenge behaviour that does not meet this standard."

Code of Conduct for Firms

New standard in section 1 (maintaining trust and acting fairly):

"1.6 You treat those who work for and with you fairly and with respect, and do not bully or harass them or discriminate unfairly against them. You require your employees to meet this standard."

Rule changes on solicitors' health and fitness to practise

Assessment of Character and Suitability Rules

New section in Rule 2 (assessment):

"2.6 Solicitors have a statutory duty to comply with our regulatory arrangements and such compliance is part of what it means to practise as a solicitor. Therefore in assessing your suitability the SRA will take into account anything, including your health, which indicates you are unfit to meet your regulatory obligations or to be subject to regulatory investigations or proceedings."

Authorisation of Individuals Regulations

Changes (shown in bold) to Regulation 7.2 (determination of applications):

"7.2 The SRA may impose conditions under regulation 7.1(b) if it is satisfied **for any reason, including health issues, lack of competence or misconduct,** that you:

(a) are unsuitable to undertake certain activities or engage in certain business or practising arrangements;

(b) are putting, or are likely to put, at risk the interests of clients, third parties or the public;

(c) will not comply**, or are unable to comply,** with the SRA's regulatory arrangements **(which includes your ability to engage with your regulator on any matter that may require investigation and take part in any regulatory or disciplinary process)** or require monitoring of compliance with the SRA's regulatory arrangements; or

(d) should take specified steps conducive to the regulatory objectives."

Ancillary changes to the introductions to the Code of Practice for Solicitors, RELs and RFLs and the Code of Practice for Firms

New sentence to be added to the Introduction to the Code of Conduct for Solicitors (after the second paragraph) and the Introduction to the Code of Conduct for Firms (after the first paragraph). The Introductions to the Codes of Conduct do not themselves form part of the Codes, so these additions are not themselves rule changes but are ancillary.

> "Conduct does not need to take place in a workplace in order to relate to your practice – these requirements capture conduct which touches realistically upon your practice of the profession, in a way that is demonstrably relevant."

Annex 2 Updated impact assessments

Wellbeing and unfair treatment at work

Regulatory impact

Our consultation paper set out our view that in terms of overall regulatory impact, our proposal would:

- benefit legal services consumers by reducing the risk that unfair treatment of staff and colleagues may lead to behaviour which is against the interests of clients
- promote the wellbeing of people who work in law firms by reducing the risk that they will be treated unfairly. This would encourage an independent, strong, diverse and effective legal profession
- have no negative cost or other impact on firms, which should already be taking reasonable steps to ensure that their staff are treated fairly. If our proposal means some firms take stronger measures to ensure fair treatment, we consider that to be a reasonable burden as effective measures should already be in place.

We noted that our proposal may lead to more reports to us of concerns about unfair treatment at work. We said that since these proposals are intended to clarify our role rather than widen the scope of our work, we do not expect any material change to the number of cases we investigate. However, we would keep this under review.

Several respondents said they thought our proposals would be likely to increase the number of reports to the SRA. We agree this is possible, and will prepare to handle a higher level of reports if necessary. When the new rules take effect we will have in place updated guidance on the workplace environment to set out the threshold for enforcement action in respect of the rules. The guidance will give examples of when we would and would not expect to take action. We expect this to help manage the risk of a significant increase in reports about matters which would not meet the threshold for enforcement action.

A few respondents said some firms do not currently have effective management controls on unfair treatment, and would have to invest in order to meet the new requirements. As we said in our consultation, we consider that to be a reasonable burden where firms are not already taking effective measures to ensure staff are treated fairly.

Equality impact

Our consultation said we expected our proposal to have a positive impact for everyone, and in particular for women, people from a Black, Asian or minority ethnic background, those with a disability, and junior solicitors, given the evidence that people with these characteristics are more likely to experience unfair treatment.

Respondents generally agreed that the proposals would have a positive impact on the groups we had identified. The Law Society said we should also have highlighted the potential positive impact on LGBTQ+ individuals as people from these groups are also vulnerable to unfair treatment at work, and we agree.

Although many respondents agreed there was unfair treatment at work which should be addressed, not all agreed that we needed to address the issues through additional regulatory requirements. We think that including a requirement to treat people fairly within our Codes will have a positive impact, but we agree that there are other opportunities to promote fair treatment at work which both we and others can pursue.

There were some concerns about imposing a regulatory requirement on all individuals to challenge unfair treatment, in particular for people who may themselves experience unfair treatment. As discussed in the consultation report, we recognise the difficulties that such a requirement may create for some individuals and as a result, we have decided not to pursue this aspect of our proposals at this time.

Solicitors' health and fitness to practise

Regulatory impact

Our consultation paper said we expected the changes to promote public confidence in the profession and benefit consumers. We thought the changes should:

- reduce the risk that health problems may cause a solicitor to fail to act in a client's best interests or meet the required ethical standards
- reduce the delay, uncertainty and stress that arise where a health concern affects the progress of a disciplinary case.

And we thought the changes would also be positive for solicitors. We noted that some stakeholders had argued that we should introduce formal fitness to practise procedures to deal with health concerns. We said we did not think separate procedures relating to health grounds are needed.

A few respondents noted the importance of data collection to identify factors that may lead to a health issue affecting a solicitor's ability to practise. One respondent said this could add a compliance and management burden for small firms. As discussed in our report, the rule changes will only affect a very small number of cases. These are where a solicitor:

- has a health condition which could affect their ability to practise safely or comply with their regulatory obligations, and
- does not take steps to manage that condition.

Most solicitors with a health condition manage its impact with no need for our involvement. So we do not expect our proposals to create a material new compliance burden for firms.

Equality impact

Our consultation paper noted that where a solicitor has health issues, this will not always affect their ability to practise. In many cases health conditions will not impact their work or, if they do then this can be managed and any reasonable adjustments arranged. We will only become involved where there is evidence of a potential risk to the public. And we will only act as far as required to protect clients and the public.

We said the changes will make it clear that ability to take part in our regulatory processes is an inherent element of fitness to practise. This applies both on admission and in practice. This clarification should have a positive impact, by:

- encouraging those whose health issues may affect their fitness to practise, including those with a disability, to be proactive in managing any issues
- encouraging the firms within which they work to be responsible for supporting them in doing so
- fostering frank discussions between individuals, firms and us as the regulator about support and reasonable adjustments where needed.

We noted that there may be intersectionality between health and other characteristics. There is evidence that people with certain characteristics are more likely than others to experience bullying, harassment or discrimination at work. These include women, people from a Black, Asian or minority ethnic background and those with a disability. This experience may in turn lead to stress and other health issues. In respect of age, past surveys indicate a high incidence of mental health issues in young lawyers compared with the general population. While age-related health conditions may affect older solicitors.

We said we had considered how these proposals may have a negative impact on individuals within our disciplinary processes. We know from our monitoring data that men and Black, Asian and other minority ethnic solicitors are over-represented in concerns raised with us. And also in cases we take forward for investigation. We were therefore mindful that solicitors from these backgrounds may be more likely to be affected by our proposals than others.

We explained that we have measures in place to make sure our processes for managing health issues are applied in a transparent and proportionate manner. These measures will include monitoring case outcomes. We will consider equality impacts as part of our monitoring, to make sure our processes are not disproportionately affecting solicitors from these groups.

In response to the consultation, several organisations expressed concern about the impact of the proposals on disabled solicitors. Some thought the proposals could have much wider implications than we had set out. For example, the LDD and TLS asked if solicitors would have to declare a disability or health conditions at authorisation and annually. And potentially also to provide medical evidence in relation to this. They highlighted recent research showing low disclosure rates among disabled solicitors, linked to fears that disclosure would lead to discrimination in the workplace.

We met the LDD and TLS and reassured them that the purpose of the proposals is to clarify our approach in specific and limited situations. For example, when a solicitor advises us that they are not well enough to engage with our regulatory process. The solicitor will then be on notice that we will also consider the wider circumstances to determine whether they are well enough to practice. We know most solicitors who experience health issues or have a disability continue to practise safely without us needing to get involved.

The consultation confirmed our view that some groups are more likely to have a health condition which affects their ability to engage with our regulatory processes. Such groups will therefore be more affected by the proposed rule changes. These may include:

- groups who are overrepresented in our enforcement processes – men, solicitors from a Black, Asian and minority ethnic background, older solicitors (55 and over)
- disabled people - but only to the extent that some may be more likely to develop health conditions which would impact on practice
- younger / more recently qualified solicitors. Although under-represented in our enforcement processes, they may find the regulatory process more stressful. Findings from LawCare and others have highlighted high levels of stress in these groups.

In each case where there is a health condition that raises a fitness to practise issue, we will consider all the circumstances. We will obtain relevant evidence when necessary and make sure any action we take to impose conditions is proportionate and justified. We will continue

to provide reasonable adjustments to solicitors who need them as we progress our investigation and disciplinary work. We will signpost people to sources of support. And as set out in our consultation paper, we will monitor the impact of the changes.

Having considered the consultation responses carefully, we have concluded that we are justified in taking forward the proposed rule changes. This is because they are a proportionate response to circumstances which can carry significant regulatory risks to consumers and the public.