

Draft SRA Suitability Test (Annex F9)

[Authority: Made on the [DD day of MM YYYY] by the Solicitors Regulation Authority (SRA) Board under section 28 of the Solicitors Act 1974 with the approval of the Legal Services Board under sections 83 and 84 of, and paragraph 19 of Schedule 4 to, the Legal Services Act 2007

Date: This test came into force on [1 October 2011]

Replacing: The SRA guidelines on the assessment of character and suitability

Applicability: Students and trainee solicitors under the Training Regulations;

Qualified lawyers under the QLTSR;

Those seeking admission as solicitors under the Admission Regulations, fulfilling the duties under section 3 of the Solicitors Act 1974;

Those seeking to become authorised role holders in accordance with rules 8.5 and 8.6 of the Authorisation Rules, fulfilling the duties under Sections 89, 90, 91 and 92 of the Legal Services Act 2007.]

Introduction

We must ensure that any individual admitted as a *solicitor* has and maintains the honesty, integrity and the level of professionalism expected by the public and other stakeholders and professionals, and does not pose a risk to the public or the profession.

The Suitability Test will apply the same high standards to all those seeking admission as a *solicitor*, as well as legally qualified and non-legally qualified applicants for roles in authorised bodies as *authorised role holders*.

The test is the same for non-solicitors as they will be working within the profession and must meet the same high standards that the general public expect of *solicitors*. This document is intended to make it clear to *you* what this standard is in terms of *your* character, suitability, fitness and propriety.

No applicant has the automatic right of admission or authorisation and it will always be for *you* to discharge the burden of satisfying suitability under *this test*. Any application that requires *us* to be satisfied as to character, suitability, fitness and propriety will be determined by reference to *this test*.

There are mandatory, pervasive *Principles* which apply to individuals *we* regulate, whether they are working at a traditional firm of *solicitors*, in house, or within an alternative business structure. They also apply to any organisation *we* regulate. They are to be adhered to at all times. Students should aspire to these *Principles* and outcomes. Outcomes relevant to assessment of suitability are listed beneath *the Principles*.

To train, transfer or to be admitted as a *solicitor*, or to make a successful application for admission or authorisation as an *authorised role holder*, *you* must:

1. uphold the rule of law and the proper administration of justice;
2. act with integrity;
3. not allow *your* independence to be compromised;
4. act in the best interests of each client;
5. provide a proper standard of service to *your* clients;
6. behave in a way that maintains the trust the public places in *you* and in the provision of legal services;
7. comply with *your* legal and regulatory obligations and deal with *your* regulators and ombudsmen in an open, timely and co-operative manner;
8. run *your* business or carry out *your* role in the business effectively and in accordance with proper governance and sound financial and risk management principles;
9. run *your* business or carry out *your* role in the business in a way that encourages equality of opportunity and respect for diversity;
10. protect *client money* and *assets*.

Outcomes

The outcomes which apply to *this test* are that:

- *solicitors* are of the required standard of *character and suitability*;
- *authorised role holders*, whether *solicitors*, *REs* or non-*solicitors*, within authorised legal service providers are fit and proper to hold those roles; and
- *clients*, and the wider public, will have confidence that this has been demonstrated.

You must demonstrate and, where relevant, continue to demonstrate these outcomes.

The outcomes, and the criteria that flow from them, apply to all those who are intending to become *solicitors* – i.e. students, trainee *solicitors*, and qualified lawyers from other jurisdictions seeking qualification via transfer – at the point of student enrolment, admission, and throughout the pre-qualification period. They also apply to compliance officers, owners, and/or managers at the point of and throughout their period of authorisation.

Interpretation and definitions

- (1) Words and phrases not expressly defined in this section, unless the context otherwise requires, bear the same meaning as they bear in the Solicitors Act 1974 and in Chapter 14 of the Solicitors' Code of Conduct [2011].
- (2) In *this test*:

"Admission Regulations" means the SRA Admission Regulations [2011];

"Authorisation Rules" means the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies [2011];

"authorised role holder" means *compliance officer for legal practice (COLP)*, *compliance*

officer for finance and administration (COFA), owner or manager under rules 8.5 and 8.6 of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies [2011];

Guidance note

"Owner" for the purposes of this definition includes owners who have no active role in the running of the business as well as owners who do have an active role.

"character and suitability"	satisfies the requirement of section 3 of the Solicitors Act 1974 in order that an individual shall be admitted as a <i>solicitor</i> ;
"discrimination"	has the meaning set out in the Equality Act 2010, being when person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others;
"fit and proper"	satisfies the requirement of Schedule 13 of the Legal Services Act 2007 in order that an individual may be an <i>authorised role holder</i> ;
"QLTSR" or "SRA Qualified Lawyers Transfer Scheme Regulations"	means the SRA Qualified Lawyers Transfer Scheme Regulations 2010 and [2011];
"the Register"	means the Violent and Sex Offender Register;
"this test"	means the SRA Suitability Test;
"Training Regulations"	means the SRA Training Regulations [2011];
"us" and "we"	means the <i>SRA</i> , and " our " should be construed accordingly;
"you"	means any individual intending to be a <i>solicitor</i> , and any <i>person</i> seeking authorisation as an <i>authorised role holder</i> under the <i>Authorisation Rules</i> , and " your " and " yourself " should be construed accordingly.

Part 1 Basic requirements

If *you* are applying for student enrolment or admission, *you* must comply with Part 1. If *you* are applying for authorisation as an *authorised role holder* then *you* must comply with Part 1 and Part 2.

When considering any application under *this test*, we will take the following actions:

1. Criminal offences

- (1) Unless there are exceptional circumstances, we will refuse *your* application if *you* have been convicted of a criminal offence:
- (i) for which *you* received a custodial sentence;
 - (ii) involving dishonesty, fraud and/or bribery;
 - (iii) specifically in relation to which *you* have been included on *the Register*;
 - (iv) associated with obstructing the course of justice;
 - (v) which demonstrated behaviour showing signs of *discrimination* towards others;
 - (vi) associated with terrorism;
 - (vii) which was racially aggravated; and/or
 - (viii) which was motivated by any of the 'protected' characteristics defined within the Equality Act 2010.

Guidance note

The provisions in 1(1)(i) will not be relevant to entities because *bodies corporate*, and other unincorporated bodies and bodies of persons, cannot themselves receive custodial sentences.

- (2) We are more likely than not to refuse *your* application if *you* have:
- (i) been convicted of a criminal offence for which *you* received a suspended sentence;
 - (ii) been convicted of a criminal offence not involving dishonesty;
 - (iii) been included on *the Register* but in relation to *your* inclusion on *the Register*, *you* have not been convicted of a criminal offence; and/or
 - (iv) accepted a caution for an offence involving dishonesty.
- (3) It is likely that we will refuse *your* application if *you* have been convicted of more than one criminal offence;
- (4) We may refuse *your* application if *you* have:
- (i) been convicted of a criminal offence for which *you* received a non-custodial sentence (such as a

conditional discharge);

- (ii) received a local warning from the police;
- (iii) received a simple caution from the police;
- (iv) received a Penalty Notice for Disorder (PND) from the police;
- (v) received a final warning or reprimand from the police (youths only); and/or
- (vi) received a referral order from the *courts* (youths only).

Guidance note

Where a criminal conviction, warning, simple caution, PND and/or inclusion on *the Register* has been disclosed, *we* will not look behind the decision made by the police or the finding made by a *court*. However, *we* will take into account material such as sentencing remarks and any other evidential information. See also Section 7 Evidence.

You should disclose details of any criminal charge(s) *you* may be facing. *We* will not determine *your* application until *you* can confirm that the charge(s) has/have either been dropped or the outcome of *your* case is known.

Cautions and local warnings issued by the police may be subsequently recorded on the Police National Computer (PNC) and these would be discoverable when *we* carry out a PNC check.

Police can only issue a caution if there is evidence that *you* are guilty of an offence and if *you* admit that *you* committed the offence. Therefore, by accepting a caution, please bear in mind that *you* are making an admission of guilt.

On Penalty Notices for Disorder or driving offences no admission of guilt is required, and by paying the penalty, a recipient discharges liability for conviction for the offence – however, *you* should still disclose such matters as *we* will need to consider them.

2. Disclosure

- (1) If *you* do not disclose any material information relating to *your* application this will amount to prima facie evidence of dishonest behaviour and will result in *your* application being refused or further action being taken.
- (2) *You* must disclose any matters that have occurred in the *UK* and/or overseas.

Guidance note

You should bear in mind that Regulation 26 of the SRA Training Regulations [2011]: Part 1 – Qualification

Regulations requires all those seeking admission as *solicitors* to apply for a standard disclosure from the Criminal Records Bureau (CRB). We will also perform a PNC check at the student enrolment stage and have reciprocal arrangements with other jurisdictions in order to gather similar information on lawyers from other countries.

If you are seeking approval as an *authorised role holder*, you should bear in mind that Rule 14 of the *Authorisation Rules* allows us to seek other information relating to *your* application and this would normally include CRB disclosure.

It is therefore highly likely that matters will come to light.

3. Behaviour not compatible with that expected of a prospective *solicitor* or *authorised role holder*

Unless there are exceptional circumstances we will refuse *your* application if *you* have:

- (i) been responsible for behaviour:
 - (a) of a dishonest nature;
 - (b) of a violent nature;
 - (c) where there is evidence of *discrimination* towards others;
- (ii) misused *your* position to obtain pecuniary advantage; and/or
- (iii) misused *your* position of trust in relation to vulnerable *clients*.

4. Assessment offences

Unless there are exceptional circumstances we will refuse *your* application if *you* have committed and/or have been adjudged by an education establishment to have committed a deliberate assessment offence which amounts to plagiarism or cheating to gain an advantage for *yourself* or others.

Guidance note

Exceptional circumstances may include where the finding does not amount to cheating or dishonesty, e.g. incorrect referencing, or failure to attribute correctly, in an essay or paper.

5. Financial behaviour

- (1) Unless there are exceptional circumstances we will refuse *your* application if:
 - (i) there is evidence that *you* have unmanageable debts arising from *your*:

- (a) recklessness;
 - (b) incompetence; and/or
 - (c) dishonesty;
- (ii) there is evidence that *you* have deliberately sought to avoid responsibility for *your* debts; and/or
- (iii) there is evidence of dishonesty in relation to the management of *your* finances.
- (2) If *you* have been declared bankrupt, entered into any individual voluntary arrangements (IVA) or have had a County Court Judgement issued against *you* it will raise a presumption that there has been evidence of financial recklessness, incompetence, and/or dishonesty.

Guidance note

The following might help to establish confidence in *your* ability to run *your* business/carry out *your* role in the business effectively and in accordance with proper governance and sound financial and risk management principles:

the bankruptcy/IVA/County Court Judgement occurred many years ago and there is evidence of subsequent sound financial management and conduct to show that creditors have been repaid; *you* were affected by exceptional circumstances beyond *your* control which *you* could not have reasonably foreseen.

6. Regulatory history

- (1) Unless there are exceptional circumstances we will refuse *your* application if *you*:
- (i) have been made the subject of a disciplinary finding, sanction or action by a regulatory body and/or any *court* or other body hearing appeals in relation to disciplinary or regulatory findings;
 - (ii) have failed to disclose information to a regulatory body when required to do so, or have provided false or misleading information;
 - (iii) have breached the requirements of a regulatory body;
 - (iv) have been refused registration by a regulatory body; and/or
 - (v) have failed to comply with the reasonable requests of a regulatory body.

- (2) We may refuse *your* application if *you* have been rebuked, reprimanded or received a warning about *your* conduct by a regulatory body, unless there are exceptional circumstances.

Guidance note

"Regulatory body" includes *us* and the Solicitors Disciplinary Tribunal, approved regulators under the Legal Services Act 2007, as well as any other body responsible for regulation of a profession.

7. Evidence

- (1) To help *us* consider an application where a disclosure has been made, *you* should include the following evidence, where relevant:
- (i) at least one independent report relating to the event(s), including sentencing remarks following a criminal conviction;
 - (ii) references from at least two independent professional people (of which one should preferably be from an employer or tutor) who know *you* well and are familiar with the matters being considered;
 - (iii) evidence of any rehabilitation (e.g. probation reports, references from employers and/or tutors);
 - (iv) documentary evidence in support of *your* case and where possible, an independent corroboration of *your* account of the event(s);
 - (v) *your* attitude towards the event(s);
 - (vi) the extent to which *you* were aware of the rules and procedures governing the reference of material, or the use of group work or collaborative material;
 - (vii) the extent to which *you* could reasonably have been expected to realise that the offence did not constitute legitimate academic practice;
 - (viii) credit check information (in the relevant circumstances); and/or
 - (ix) actions *you* have taken to clear any debts and satisfy any judgements.
- (2) The onus is on *you* to provide any evidence *you* consider necessary and/or appropriate. However, should we consider that *you* have provided insufficient evidence, we reserve the right to carry out *our* own investigation and/or refuse the application if further evidence is not forthcoming.

8. Rehabilitation

- (1) It is for *you* to demonstrate that *you* have undergone successful rehabilitation, where relevant. The

individual circumstances *you* put forward must be weighed against the public interest and the need to safeguard members of the public and maintain the reputation of the profession. However, we will consider each application on its own merits and at *our* discretion.

- (2) If the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (as amended) is applicable to *your* occupation, profession or role, *you* must declare all convictions, even if they are deemed to be spent in accordance with the Act.
- (3) In accordance with paragraph 2 above (disclosure), if *you* fall within the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 and *you* fail to disclose information about convictions for criminal offences, whether they are spent or unspent, we will consider this as amounting to prima facie evidence of dishonest behaviour and this will result in *your* application being refused.

Guidance note

The provisions of the Rehabilitation of Offenders Act 1974 (as amended) and the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (as amended) will be taken into account by *us* in considering any application *you* make.

If *you* fall within the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (as amended), the fact that the conviction is spent, and the time that has passed since the conviction was given, together with any other material circumstances will be taken into account by *us* when determining any application made by *you*.

A period of rehabilitation, particularly after we have decided to refuse *your* application, will not in itself result in automatic admission/authorisation. We need *you* to show, through a period of good behaviour, that *you* have taken steps to rehabilitate *yourself* by *your* own volition.

Part 2 Additional requirements to become authorised under the *Authorisation Rules*

9. All applicants must comply with Part 1

Under *this test*, when considering any application by an individual seeking to become an *authorised role holder*, all of the tests set out in Part 1 will apply in addition to this Part.

10. Additional requirements

Unless there are exceptional circumstances we may refuse *your* application if:

- (i) *you* have been removed from the office of trustee for a charity by an order imposed by the Charities Act 1993;
- (ii) *you* have been removed and/or disqualified as a company director;
- (iii) any *body corporate* of which *you* are/were a manager or owner has been the subject of a winding up order, an administrative order or an administrative receivership, or has otherwise been wound up or put

into administration in circumstances of insolvency; and/or

- (iv) *you* have a previous conviction which is now spent for a criminal offence relating to bankruptcy, IVAs or other circumstances of insolvency;
- (v) *you* are a corporate person/entity subject to a relevant insolvency event defined in rule 1.2(ee) of the *Authorisation Rules*;
- (vi) *you* are a corporate person/entity and other matters that call *your* fitness and propriety into question are disclosed or come to light; and/or
- (vii) *you* have committed an offence under the Companies Act 2006.
- (viii) *we* have evidence reflecting on the honesty and integrity of a person *you* are related to, affiliated with, or act together with where *we* have reason to believe that the person may have an influence over the way in which *you* will exercise *your* role.

Guidance note

The provisions of the Rehabilitation of Offenders Act 1974 (as amended) and the Rehabilitation of Offenders Act 1974 (Exemptions order) 1975 (as amended) do not apply to corporate persons/entities, so if *you* are a corporate person/entity *you* must disclose any and all matters in *your* application.

Other matters under 10(iv) include but are not limited to debts, corporate criminal matters, Companies Act transgressions such as late submission of accounts, and taking steps without submitting proper documents to Companies House.