The Architecture of Change – Part 2

The new SRA Handbook – feedback and further consultation

Contents

1. Executive summary

1. This consultation is the last opportunity for comments on the SRA's new Handbook which will underpin the regulation of solicitors and law firms from October 2011. It builds on the foundations laid in "The Architecture of Change: the new SRA Handbook" (the May Consultation). The May Consultation initiated the implementation process for outcomes-focused regulation (OFR). This paper takes that process a step further by providing more detail on the regulatory framework for both traditional law firms and alternative business structures (ABSs)—the new kinds of law firms which will come into the legal services market.

2. We are grateful to all those who responded to the May Consultation, whether in writing or orally at our roadshows and other events, including those for equality groups. The responses were impressive in volume and quality. It is clear that respondents have taken the time to go through the proposals in detail and we are pleased at the level of engagement and the steers provided. The comments have provided us with a wide spectrum of views from consumers, special interest groups, traditional law firms of all sizes, and potential owners of ABSs.

3. A list of respondents and details of our engagement activities for the May Consultation are set out at **Annex K**.

4. In this paper we:

   - report on the feedback which we received to our May Consultation;
   - propose further changes to the new SRA Code of Conduct (the Code) and other sets of rules in the Handbook; and
   - consult on further sets of rules.

5. The deadline for responses to this consultation is **13 January 2011**.

Overall messages from respondents

6. We have considered the 83 formal responses and other feedback in great detail. From the large number and wide variety of comments some key themes emerged:

   - strong agreement with our proposals to implement a common standard of consumer protection across traditional law firms and ABSs;
   - a broad welcome for the Handbook proposals and, in particular, our outcomes-focused Code. This was tempered by expressions of concern that we should be clear in our expectations of our regulated community and by apprehension that enforcement might not in practice be genuinely outcomes-focused and proportionate. Some respondents were, however, firmly opposed to our proposals. A further version of the Code is at **Annex C** and includes the new Chapter 3 on conflicts of interests;

- support, particularly from those representing consumer groups, for our focus on the consumer and the broader public interest;

- concern as to whether the SRA has the appropriate expertise and systems to implement successfully OFR in the time available, and as to the regulated community's ability to prepare itself for OFR within the ambitious timetable which has been set. The SRA is undertaking an extensive change programme in order to ensure that both our staff and our operations are able to meet the challenges of implementing OFR. This includes a major IT programme and also assessment and training of our staff. We are also making extensive preparations for a communications programme to guide firms and individuals through the transition to the new Handbook and OFR;

- requests for guidance to help firms understand our expectations and to achieve the right outcomes for clients;

- a split of views on whether, as we have proposed, all firms should be required to appoint a Compliance Officer for Legal Practice (COLP) and a Compliance Officer for Finance and Administration (COFA) to enhance risk management and compliance;

- a desire for more detail on the SRA's new information requirements for firms. Our approach to information requirements is discussed in this paper and we will shortly be issuing prototypes of forms to illustrate the sort of information that we will be requesting;

- a warm welcome for the concept of a glossary. We had intended to include a draft version in this consultation. However, it has become clear that this is not the right time to publish the draft glossary since the rules are in various stages of development. We will be publishing a draft glossary for comment and we intend that this will be in place in the second quarter of 2011;

- support for the destination table, which was felt to be useful information to enable practitioners to make the transition from the existing Code of Conduct to the new Handbook. We intend to provide firms with further information generally to enable them to make the transition. We will publish information on our website during the coming months.

7. Some of the concerns expressed related to our overall approach to supervision and enforcement. We will be giving further information about these in our November 2010 publication.

8. We have considered the possible impacts on equality and diversity throughout our policy development process. We have created an overarching Principle about equality and diversity which demonstrates our commitment to treating people fairly. We have modified this Principle in response to comments made. Handbook provisions have been audited to ensure that they are in step with human rights and equalities legislation. Our equality impact assessment is published at **Annex I**. We are confident that where indirect impacts have been identified these are justified by the public interest. The

cost-benefit analysis on our outcomes-focused regulatory approach will be published in November 2010. We are undertaking this work to ensure that the provisions in the Handbook can be justified in terms of competition and in terms of the likely costs compared with the likely benefits.

9. We look forward to receiving your comments and your continued assistance in helping us to develop the new Handbook.

2. Introduction

10. This consultation follows on from our May Consultation[1]. It represents the second phase in the development of our new Handbook, and we are keen to continue the very positive dialogue with our consultees—including consumer groups, practitioners and others—that has been established.

11. We intend that the new Handbook and our outcomes-focused approach to authorisation, supervision and enforcement, will bring about a culture change in the provision of legal services. One of the key catalysts for this change is the opening up of the legal services market to new entrants. For this reason we were delighted that our proposals were met with both widespread approval and a healthy degree of debate. With limited exceptions, OFR has been welcomed. However, we do recognise the need to ensure that our outcomes-focused approach takes into account both our own experience and that of other regulators and professional bodies.

12. We received 83 responses in total (see **Annex K**). Many of these were from representative groups. For this reason, we do not think it is helpful to present a statistical analysis based on simple numbers. However, we have tried to gauge the strength of feeling on particular issues and to respond to key points that were made.

13. In summary, this paper sets out:

- the revised structure of the new SRA Handbook which will contain all our regulatory requirements for both firms and individuals, for in-house[2] and overseas practice, and explains the implementation timeline;
- further consultation on revisions to the:
    - SRA Principles;
    - SRA Code of Conduct; and
    - requirements contained in the Specialist Services; Authorisation, and Practising Requirements; Discipline and Costs Recovery and Client Protection sections of the Handbook, based on the responses to the May Consultation;
- final version of rules on which we consulted on in May (e.g. the SRA Accounts Rules);

Please note that where we have made changes to the material on which we consulted in May, additions are shown in blue and deletions shown in red. The amendments which were shown as revisions in the May Consultation have been incorporated into the text and are no longer highlighted;

- fresh consultation on:
    - SRA Financial Services (Scope) Rules;
    - SRA Financial Services (Conduct of Business) Rules;
    - SRA Suitability Test;
    - SRA Training Regulations;
    - SRA Admission Regulations;
    - SRA Qualified Lawyers Transfer Scheme Regulations;
    - SRA Higher Rights of Audience Regulations;
    - SRA Compensation Fund Rules;
    - SRA Cost of Investigations Regulations.

14. We invite further views on our revised proposals. We have set out some questions throughout this paper upon which we should be particularly grateful for your views. You will find a complete list of the questions at **Annex M**.

15. We have tried to make this paper as readable as possible. Where we have used abbreviated terms and acronyms, we have listed these at **Annex L**.

3. A new approach to regulation

Strategic objectives – our evidence-based approach

16. We explained in our May Consultation that we were conducting the following assessments of Handbook requirements:

- **Cost-benefit analysis** – our cost-benefit analysis work is being conducted in phases as our Handbook requirements are developed. We will publish the results of the first phase of our work in November this year. To date, no requirements have been assessed as disproportionately costly. Key cost issues are:
    - new information requirements to support risk-based regulation;
    - new authorisation requirements;
    - the requirement to appoint a COLP and COFA; and
    - the impact of an outcomes-focused regulatory regime without prescriptive rules.

Key benefits are:

- risk-based regulation enables the SRA to focus resources on problem firms, which should enhance public confidence in the delivery of legal services and drive down the costs associated with regulating problem firms;
- OFR benefits are increased flexibility, reduced bureaucracy and better client service.

- **Human rights audit** – all Handbook requirements are being assessed for compliance with human rights legislation. To date, no significant issues have been identified. Having said that, we recognise that much will depend on the manner in which our requirements are implemented; for example, how the regulatory process for firms and individuals works in practice. We will comment on this further in our November 2010 publication.

- **Competition analysis** – again, this is being conducted on a phased basis, the first phase of which covered the Code, Authorisation Rules, Practice Framework Rules and Accounts Rules. No rule has been identified which, on its face, obviously failed the test that any restriction of competition was the minimum reasonably necessary to achieve its objective. This work is ongoing.

- **Equality impact assessment** – see section 8 of this paper. This work is ongoing. Where indirect impacts have been identified, we are assessing the impacts to ensure that these are justified in the interests of public protection.

Key points are:

- in general terms we anticipate that the Handbook will help to bring increased certainty and transparency to the regulatory requirements which apply to firms and individuals (however they practise). This will be beneficial to everyone, including clients; and
- in developing the Handbook we have taken the opportunity to address previously identified equality issues as we have amended and adapted the Handbook (for example the issues around mental health in the Suitability Test, and the interest provisions in the Accounts Rules).

Alternative business structures

17. Our objectives in defining the regulatory regime for ABSs are to:

- achieve the same degree of consumer protection for clients of traditional law firms and ABSs;
- facilitate transition between the two statutory regimes (i.e. for recognised bodies and licensed bodies – see below), since we believe

that some firms may, during their lifetime, switch status not infrequently.

18. Question 1 of the May Consultation asked:

Do you agree with our overall approach to implementing ABSs?

Summary of feedback

19. There was broad support from respondents to our approach, and in particular that clients of an ABS should benefit from the same protections as those enjoyed by clients of traditional law firms.

> "The harmonization approach to be taken by the SRA will minimise confusion for consumers and providers alike." – Peninsula Business Services Limited
>
> "The Legal Ombudsman supports the SRA's proposal to put public protection at the heart of its approach. This is very welcome as it is in line with the Legal Ombudsman's focus as well."

20. Some respondents raised concerns about multi-disciplinary practices (MDPs) and how different regulators will co-operate to protect consumers. Concern was expressed as to whether the SRA is able to regulate non-legal services.

21. Some respondents considered that authorisation to conduct one or more reserved legal activity was inappropriate for non-ABS firms.

22. Some respondents also expressed concern regarding new market entrants' understanding of the SRA's expectations, particularly in the light of our move to OFR.

23. A respondent raised the issue of confidentiality in relation to MDP ABSs and the potential for exploiting confidential client information for cross-selling other services.

Our response

24. We welcome the support given to our overall approach to implementing ABSs and continue to believe that it is both in the public interest generally and specifically in consumers' interests that we achieve a common standard of consumer protection, whilst promoting a competitive market in the provision of legal services.

25. On the issue of non-legal services, we explained in our May Consultation our view of our jurisdiction in relation to ABSs. It is not the intention of the SRA to go beyond this jurisdiction and regulate other services over which we do not have jurisdiction.

26. We do not intend to change the basis of licensing recognised bodies and sole practitioners; these will continue to be authorised on the basis set out in the Solicitors Act and the Administration of Justice Act.

27. There also appear to be some misconceptions about "activity-based" licensing. The SRA is not seeking to limit the activities of the ABSs that it will regulate purely to one or more reserved legal activities. ABSs are licensable by virtue of the fact that they conduct one or more reserved legal activities, but the licence that we will grant them will not prevent them from conducting other legal activities, unless a specific licence condition is imposed restricting the activities of the ABS. We are not, in the short term, planning to introduce activity-based licensing along the lines of the approach of the Financial Services Authority (FSA) (i.e. by reference to a detailed list of work types); at present we are considering the practicalities of such a proposal for all types of firm, although we recognise that this is a longer-term initiative.

28. We recognise the need for us to engage with new market entrants to assist them in understanding our expectations, whether such a new market entrant is a traditional law firm or an ABS. In addition, our authorisation process will take account of the level of experience of those involved in (for example) a new ABS; should we have concerns on this issue we would consider the use of licence conditions to mitigate any identified risks to the public, or ultimately we could decline authorisation.

29. On the issue of confidentiality, an MDP ABS (by which we mean an ABS which supplies legal and other professional services) will be subject to the same requirements as other firms and, in particular, will not be able to disclose confidential client information to, for example, other companies within the same group. Neither would we consider it appropriate for any firm to exploit sensitive client information for marketing purposes; we believe that this would call into question whether the firm were considering the best interests of its clients. However, we are aware that existing firms do cross-sell other legal services and indeed the very reason for clients to choose an MDP could be that they will be offered a variety of services. Further, we believe it is not in the public interest for the SRA to constrain activities which may undermine the opening-up of the legal services market. For this reason, we do not intend to impose any further restrictions on MDP ABSs than appear in the draft Code.

Proposed changes to the SRA's powers under the Solicitors Act, Administration of Justice Act and the Legal Services Act

30. The Legal Services Act (LSA) sets out the statutory regime for regulating ABSs from which the SRA derives its regulatory powers. The Solicitors Act (SA) and Administration of Justice Act (AJA) set out the SRA's regulatory powers in relation to solicitors and recognised bodies (RBs). We have identified apparent disparities between these powers which, in certain areas, could have the effect of creating differing levels of consumer protection between traditional law firms and ABSs.

31. The Legal Services Board (LSB) has recently published[3] its consultation on a draft statutory instrument known as a "section 69 Order", which is the mechanism by which the SA, AJA and LSA can be changed. In our discussions with the LSB on the section 69 Order, our objective has been to achieve a common standard of consumer protection through necessary harmonisation of our powers. We have also borne in mind:

- the SRA's major review of its approach to client protection, which is due to report in December 2010;

- our need to achieve the maximum level of operational effectiveness through common processes for ABSs and traditional law firms;

- the likelihood that some firms will move from one authorised status to another; and

- regulatory simplicity and fairness – for the SRA (in exercising similar powers) and for firms (working to one set of provisions and one set of processes, rather than two).

32. We are very appreciative of the positive dialogue that we have had with the LSB on the section 69 order. The draft section 69 order addresses the following issues:

    - section 85 SA – this provides protection for client money in the event of action by a bank against a solicitor/RB and this protection is to be replicated in the LSA;

    - the SRA's ability to collect periodic fees from RBs;

    - the power to obtain information from third parties concerning ABSs;

    - the ability for the SRA to recover the cost of investigations from ABSs (as it is able to do from traditional law firms); and

    - a change to sections 36 and 36A SA to enable the operation of a single compensation fund for traditional law firms and ABSs until December 2012 (allowing for the outcome of the review of client protection[4]).

33. We also intend to consult on a second draft section 69 Order, enabling the SRA to treat recognised sole practitioners (RSPs) as RBs, by removing the need for licensing through the mechanism of an endorsement on the practising certificate, and instead allowing RSPs to be authorised in the same way as RBs.

34. One major area for discussion remains outstanding: the definition of reserved legal services[5]. Entities that provide legal services will only be able to be regulated as ABSs under the LSA if they undertake one or more reserved activities (litigation and advocacy, probate services, conveyancing). If they provide only unreserved legal activities, such as will-writing, legal advice and mediation services, they will be able to do so, as they can at present, on an unregulated basis and with no client protection in place (other than that provided by the general law).

35. The SRA welcomes the LSB's commitment to examine the appropriateness of the extent of reserved legal activities. We have asked that the definition of reserved legal activities be extended to cover all "solicitor activities" for the following reasons:

(i) to secure consistent consumer protection in what may be a rapidly changing legal services market;

(ii) to avoid consumer confusion over which legal services in this new market are regulated and which are not. We have recently conducted consumer research which demonstrates that there is a high degree of confusion amongst consumers about the provision of legal services and a lack of understanding of which services are regulated and the consequences of receiving services from an unregulated provider; and

(iii) our ultimate concern is the fragmentation of the legal services market into unregulated firms which provide poor standards of service and put client money at risk, and high quality, professionally run and regulated firms providing reserved legal services.

36. As a result of our discussions with the LSB we are consulting on the contents of two new sets of rules—the SRA Compensation Fund Rules and the SRA Cost of Investigations Regulations and further changes to other sets of rules. The impact of the proposed section 69 Orders is highlighted throughout this paper.

Multi-disciplinary practices

37. In the May Consultation we explained that we were continuing with our work on MDP ABSs, based on our understanding of our jurisdiction in relation to ABSs. Our priority is to ensure that MDP ABSs are regulated in the most effective manner, avoiding, so far as is possible, regulatory duplication and gaps. Since the May Consultation we have undertaken a considerable amount of work on MDP ABSs with other regulators and professional bodies. We are making good progress. Our work is focused on:

- understanding how the SRA's jurisdiction in relation to MDP ABSs impacts on our Handbook of regulatory requirements. This is reflected in the application provisions of the different sets of rules in the Handbook;

- assessing the risks associated with MDPs. For example, some respondents were particularly concerned about the possibility of an MDP using confidential and sensitive client information to cross-sell other services. Whilst not MDP specific, the Code restricts inappropriate use of sensitive client information. In the Accounts Rules we have protected money arising from legal activities by requiring that it be ring-fenced from other forms of client money;

- deciding whether it is necessary to have specific rules/modified rules governing MDP ABSs (at the moment we have concluded that this is not necessary, provided that the extent of our jurisdiction is clearly delineated in our rules);

- considering how we will share relevant information with other regulators and professional bodies, where we jointly regulate an entity providing a diverse range of professional services. The framework memorandum of understanding (FMOU), which is being developed with other regulators and professional bodies, will address the need to

share information concerning firms and individuals between relevant regulators and professional bodies where it is in the public interest to do so;

- identifying areas of regulatory overlap where more than one regulator/professional body regulates a firm. The FMOU will address how we as regulators can work together to ensure the efficient supervision and investigation of firms and individuals;

- discussing areas for potential harmonisation of regulatory regimes, for example, in relation to client money. The working group of regulators and professional bodies has agreed that we will seek to harmonise regulation to ease the regulatory burden on MDPs; and

- assessing the potential impact of MDP ABSs on the SRA's compensation fund. Again, we have sought to ensure that the Compensation Fund Rules only cover those aspects of an MDP's activities that fall within our jurisdiction.

38. Our working group involving other regulators and professional bodies will continue to tease out and resolve some difficult issues in relation to MDP ABSs, both in the run up to October 2011 and beyond. These discussions will be reflected in the FMOU which we plan to publish in December 2010 and in other communications. The FMOU will provide a framework for cooperation, coordination and exchange of information in order to facilitate effective public protection and working relationships.

4. Architecture of the new Handbook - bringing principles and outcomes to the heart of our regime

39. The SRA Handbook is the first major step in the practical implementation of our outcomes-focused approach. In May we consulted on the Handbook structure and the sets of regulatory requirements that it will contain. The Handbook is designed to bring all of the SRA's regulatory requirements into a single, coherent structure.

40. We are committed to the implementation of a regulatory regime that has at its heart the right outcomes for consumers whilst being proportionate to the risks that we have identified. Outcomes-focused regulation enables us to move away from a "one size fits all" approach, since it introduces greater flexibility and opportunities for innovation, based on clients' requirements. Overall, the responses to our consultation have confirmed our view that we are taking the right approach.

41. Some respondents have quite rightly stated that the SRA itself needs to change in order successfully to implement the new outcomes-focused Handbook. This we accept. We are, therefore, assessing and training our staff to ensure that they are equipped and competent to deliver OFR [6] in a manner that maintains the right standard of client protection through proportionate and evidence-based policy making and regulatory action.

42. Question 2 of the May Consultation asked:

Do you agree with the new Handbook structure?

Summary of feedback

43. The majority of respondents either had no comment or welcomed the drawing-together of all of the SRA's regulatory requirements in one Handbook. Respondents requested that we make the online Handbook as easy to navigate as possible.

> "The structure appears to us to be fit for purpose." - Solicitors in Local Government

44. There was strong support for a single glossary for the Handbook and for greater harmonisation of the rules in terms of their style.

45. Although this was not related to the question, a number of respondents did express concern about OFR and whether it was appropriate as a regulatory model. One respondent expressed concern about the underlying assumptions behind OFR and that the removal of rules could lead to suggestions that certain conduct is justified by the outcome.

Our response

46. We will endeavour to make the online version of the Handbook as user-friendly as possible. In relation to the glossary, this is still in the process of development, which reflects the fact that our rules themselves are at different stages of completion. We will be consulting on the new glossary in the second quarter of 2011 in order to finalise it prior to October 2011.

47. The SRA is committed to OFR since we believe that this is the model which most accurately reflects our focus on client protection and service.

Further consultation

Introduction to the Handbook

48. We have drafted an Introduction to the Handbook on which we now seek your views. The Introduction is intended to set out clearly in summary the purpose and overall design of the Handbook. It is also intended as an aid to navigation and a helpful tool for both consumers and practitioners alike.

49. The Structure of the Handbook and the Introduction to the Handbook are at **Annex A**.

Implementation timeline

50. Since the publication of the May Consultation, we have been considering the implementation timeline for each set of regulatory requirements. The timeline needs to take account of the following:

- the necessity for certain sets of rules to be in force for ABSs at the point when formal applications for ABSs are being made (mid 2011);

- the operational implications for the SRA of authorising and regulating ABSs and approving individuals/organisations to hold certain roles (e.g. COLPs, COFAs, managers and owners);

- legal disciplinary practices (LDPs) have a grace period, and will not need to switch to ABS status until October 2012;

- some firms (LDPs) and individuals and organisations will be "passported" into certain roles;

- the move to abolish the mechanism for endorsing practising certificates for sole practitioners and instead treat them as a form of recognised body;

- "special bodies" will not need to be authorised as such until March 2013.

51. Details of the overall implementation timeline and details of the commencements and repeals of provisions are set out in **Annex J**. Further information is provided in relevant sections of this paper. In summary, our intention is that the transition to the new Handbook will be as follows:

- 10 August 2011 – Authorisation Rules, the Code, the Principles, Practice Framework Rules and Compensation Fund Rules come into force for ABSs from that date to allow formal applications to be made for authorisation as ABSs from October 2011;

- 1 October 2011– new Indemnity Rules and Indemnity Insurance Rules come into force for all existing firms and proposed firms;

- 6 October 2011– the Code, the Principles, Practice Framework Rules and the Accounts Rules come into force for recognised bodies and recognised sole practitioners, along with the Statutory Trust Rules, Financial Services Rules, Property Selling Rules, Disciplinary Rules, Training Regulations etc., Cost of Investigations Regulations, which come into force for all firms;

- 6 October 2011 – LDPs with non-lawyer managers can choose to passport to ABS status from this date;

- 31 March 2012 – recognised sole practitioners passported to become recognised bodies[7]; all recognised bodies (including those with non-lawyer managers which have not chosen to passport by this date and recognised sole practitioners) transitioned to become subject to the Authorisation Rules. Recognised Bodies Regulations and parts of the Practising Regulations are repealed;

- 31 October 2012 – recognised bodies (with non-lawyer managers) passported to become ABSs. First round of annual reporting for all firms;

- 31 October 2012 – grace period ends for existing recognised bodies (including recognised sole practitioners) to have approval for COLP/COFA;

- around January 2013 – amendment of Authorisation Rules and switching on of these and the Code, Practice Framework Rules, the Principles, Compensation Fund Rules, to permit formal applications from special bodies from that date;

- March/April 2013 – first ABS licences can be issued to special bodies, for special bodies, switch on of Accounts Rules, Statutory Trust Rules, Financial Services Rules, Indemnity Rules and Indemnity Insurance Rules, Disciplinary Rules, Cost of Investigations Regulations if applicable.

Questions:

1. Do you have any comments on the Introduction to the Handbook?

2. Do you have any comments on the implementation timetable?

Principles and guidance

52. Questions 3 and 4 of the May Consultation asked:

Do you agree with the new Principles and our approach to applying them across the Handbook?

In what areas do you think explanatory guidance would be particularly helpful?

Summary of feedback

53. The majority of the responses were supportive of the Principles and our approach to applying them to all Handbook requirements. The main concerns related to Principle 9 which stated that you must "run your business/carry out your role in the business in a way that promotes equality and diversity and not discriminate unlawfully in connection with the provision of legal services". Respondents expressed concern that this Principle not only went beyond what is required by legislation, but also represented a raising of the bar from Rule 6 of the current Code and in fact amounted to an obligation on firms to discriminate positively. Some respondents felt that the Principle was too onerous in requiring those to whom the new Code applies to "promote" equality and diversity, and that a wide-ranging positive obligation to promote equality and diversity (especially when applied to multi-national firms) could pose problems for firms and individuals.

"Yes, with the exception of Principle 9…….There is legislation in place that makes discriminatory practices illegal. We do not see the purpose in having this included as a Principle in the new Handbook." – Bird & Bird

"In summary Which? will continue to support the move to principles-based regulation if it can be proven to deliver better consumer outcomes. However, we believe that the jury is still out on its impact. In particular there needs to be recognition that principles should be seen as a way of going beyond existing rules, to allow future proofing, rather than a replacement for rules." – Which?

54. A small number of respondents queried why confidentiality was not included as a Principle. A minority of respondents queried Principle 10 (the obligation to protect client money and assets) as this was seen by those respondents as an additional burden.

55. Other feedback on the Principles primarily concerned the need for guidance and the concern that the application of the Principles (particularly 8 and 9) to all within a firm, as opposed to principals and managers, would result in individuals being disciplined for matters over which they had no control.

56. On the subject of guidance, there was considerable enthusiasm from many respondents for guidance on a wide variety of issues. Many considered that guidance would aid compliance, improve clarity and minimise uncertainty. However, some respondents were of the opposite view and were concerned that non-mandatory guidance would tend to become rule-making by the back door and would be treated as compulsory by the SRA and Solicitors Disciplinary Tribunal (SDT).

"There is a concern that explanatory guidance if contained in the Code would be referred to by the SDT and effectively become compulsory."

57. One respondent felt that it would be helpful for the SRA to publish details of behaviour that demonstrated achievement and non-achievement of the outcomes in the Code.

"… once the SRA has started making decisions or taking a view as to whether a particular course of action taken by a firm in relation to any of the outcomes is, or indeed is not, acceptable, then such decisions should be published, in a suitably anonymised form, for the guidance of other members of the profession …" – Tunbridge Wells, Tonbridge & District Law Society Regulatory Committee

Our response

58. As a result of the feedback on Principle 9, we have reviewed the wording of the Principle. We remain of the view that the Principle does not represent a raising of the bar, since it replicates the standard required in Rule 6 of the current Solicitors' Code of Conduct. Neither do we accept that the draft

wording for Principle 9 imposes an obligation to discriminate positively. However, in the light of the concerns expressed we have re-drafted the Principle better to reflect our view of the obligations of firms in this area. We have removed reference to what is a general legal obligation concerning unlawful discrimination. Principle 9, as re-drafted states that you must:

> "run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity;"

We have also made a minor change to Principle 8, substituting "or" for "/" to improve clarity.

59. Principle 10 goes to the heart of the duty to act in the best interests of clients, which means protecting and safeguarding their money and assets, over which you have control. The notes to the Principles provide further clarity on this point.

60. Although we had considered a separate Principle on confidentiality, we took the view that:

- confidentiality was already covered by the other Principles, especially Principle 4 (act in the best interests of your client); and
- this issue is fully covered in Chapter 4 (Confidentiality and disclosure).

61. We remain of the view that the Principles should apply both to firms and to all those who work within firms, and this is confirmed in the application provisions to the Principles. With regard to the issue of regulatory action, our notes to the Principles explain that this will very much depend on all the circumstances of the case.

62. We have reconsidered our approach to issuing guidance. Throughout the Handbook, where we consider it appropriate to do so, we have provided guidance (for example in the notes to the Accounts Rules and in the Authorisation Rules). In relation to the Code, we wish to avoid the risk of guidance being regarded as mandatory. We have, therefore, reviewed, and where appropriate amended and expanded the non-mandatory indicative behaviours, which fulfil a similar function to that of guidance. We have added brief non-mandatory "notes" where we think that users will be helped, e.g., in terms of navigation and cross-referencing. We intend to assist users further by publishing material on our website aimed at easing the transition from the current to the new regulatory regime. This will include frequently asked questions, guidance on particular issues that arise, "decision trees" and a user manual that will assist firms and individuals in making the transition to a more outcomes-focused approach to meeting their regulatory obligations. We also agree with the suggestion that we publish anonymised examples of achievement and non-achievement of the outcomes in the Code.

63. We recognise that the transition to OFR will also present challenges to the SRA and that there are concerns that our staff will take an overly-stringent approach or inconsistent approach to the interpretation, in particular, of the outcomes in the new Code. For this reason, our staff are being trained and

assessed in order to ensure that they are equipped and competent to deliver OFR. We will be monitoring our staff against behavioural and technical competencies which are designed to implement a regulatory approach that is proportionate, transparent and consistent.

Further consultation

64. We have applied to solicitors, registered European lawyers and registered foreign lawyers in respect of their activities outside practice:

- Principle 1 (you must uphold the rule of law and the proper administration of justice);
- Principle 2 (you must act with integrity); and
- Principle 6 (you must behave in a way that maintains the trust the public places in you and in the provision of legal services).

We believe that there are circumstances where activity outside practice can, for example, raise questions concerning the integrity of an individual. Whilst we would always seek to act proportionately, it is important that we have the ability to take action to achieve the regulatory objectives.

65. We have endeavoured to answer some of the concerns raised by respondents in the notes to the Principles, but we are mindful of the need to avoid excessive detail, since this detracts from our outcomes-focused approach.

66. A final draft version of the SRA Principles, together with the notes and application and transitional provisions, is attached at **Annex B**.

Questions:

3. Do you have any comments on the revised Principles, application provisions and notes to the Principles?

4. Do you have any comments on our approach to guidance?

5. Conduct of legal services

(a) SRA Code

67. Questions 5, 6 and 7 of the May Consultation asked:

Do you agree with the new Code structure?

Do you have any overall comments on the new format (Principles, outcomes, indicative behaviours)?

Do you think that the outcomes (together with the indicative behaviours) achieve the right balance in providing sufficient clarity on the SRA's expectations for firms whilst enabling firms to operate flexibly?

Summary of feedback

68. The new Code structure was generally welcomed by respondents as it was felt to provide greater clarity on obligations in particular contexts, and to allow easy navigation. The introductions were also said to provide a useful summary of the main aims of each chapter.

> "We agree with the new structure and format of the code which strikes a reasonable balance between allowing the profession greater flexibility in how it achieves the pervasive Principles and related outcomes whilst retaining clarity about key mandatory provisions."

69. A common theme in the responses related to the need to develop trust between the SRA and firms in relation to the interpretation of outcomes.

> "The success of the move to outcomes focused regulation will depend very largely on the success of the relationship between the SRA and law firms and, in particular, the enforcement arm." – Herbert Smith

70. Respondents felt that, whilst they understood the link between the Principles, the outcomes and the indicative behaviours (IBs), there was no need to repeat relevant Principles at the start of each chapter.

71. On the issue of the balance between clarity and flexibility, there was a range of views. Some respondents felt that this is an issue that can really only be assessed once the new Code is in force and firms and individuals can see how it works in practice. Some firms commented that the language of the IBs is more in the nature of outcomes.

> "On the face of it they do [achieve the right balance], although only time will tell whether they work in practice. As with most other areas of the move to OFR a degree of flexibility will be required." – Co-operative Legal Services

72. Consumer groups were concerned that insufficient focus was given to the user of legal services. This is because the Code is addressed to providers of legal services rather than generally adopting the approach of the FSA's treating customers fairly outcomes, which are drafted by reference to the experience of customers.

73. On the IBs, the overall response was positive. However, concern was expressed about the role of IBs in determining whether disciplinary action would be taken and the weight given to non-compliance with the IBs in any action.

"The SPG agree with The Law Society that the concept of 'indicative behaviours' is dangerous. It gives even more opportunity for the use of hindsight and 'disapproval' by the regulator. Solicitors are used to 'guidance' which has worked well in the past and following guidance can be indicative of an intention to work within the rules and provide the best service to the client." – Sole Practitioners Group

"At a high level, our view is that the Indicative Behaviours provide insufficiently detailed application of the circumstances applicable to many different sorts of businesses and sectors, such as the Corporate firms comprised within the CLLS's membership, to provide sufficient clarity and certainty as to the application of the Principles and Outcomes." – City of London Law Society

"It is essential that the establishment of OFR is not undermined by the SRA treating non-compliance with the 'indicative behaviours' as suggesting failure to achieve the required outcomes. To give indicative behaviours a semi-mandatory status would indicate that the avowed move away from over-prescriptive regulation has not been realised in practice and that the essence and spirit of a genuinely outcomes and principles based system has been lost." – The Law Society of England and Wales

74. A number of respondents provided detailed drafting suggestions on the outcomes and IBs. We welcome this feedback and level of engagement.

Our response

75. We have added a fifth section to the Code covering application, waivers and interpretation. In addition, we have removed the Principles from the start of each chapter, stripped out any duplication between outcomes and IBs, and removed any mandatory language from the IBs.

76. We have reviewed the IBs for their application to City firms. We would also stress that IBs are not mandatory and that firms have the option to achieve the outcomes in other ways.

77. Consumers' interests and the broader public interest lie at the heart of the new Handbook. For example, whilst the Handbook may be drafted as obligations on law firms of all types, including solicitors and ABSs, it is clear that many of these are obligations that require firms to consider the needs of consumers. For example, obligations are focused on such matters as service delivery and requiring firms to manage themselves in such a way that they do not put their clients at risk through, for example, poor financial management. This is summed up in a new outcome to treat clients fairly. However, it must also be borne in mind that, unlike providers of other consumer services, lawyers have other duties which in some circumstances take precedence, for example, the duty not to mislead the court.

78. One respondent suggested that the SRA implement a "customer charter". We believe that a more effective means of empowering clients is to provide them with information to help them assess the legal services that they require. We

will also make greater efforts to raise the profile of the SRA amongst consumers. The approach that we are taking also includes:

- publishing for consumers a set of key outcomes that we expect firms to achieve for their clients;
- developing our website and other sources of information (such as leaflets etc. which can be supplied to advice centres) to improve the range of advice and information we provide to consumers on seeking legal advice and obtaining a proper service;
- direct engagement with consumers and fora about how we can empower consumers and enable them to have a more informed relationship with those who provide legal services;
- undertaking research into consumers' experience of legal services. For example, we have recently undertaken research into consumers' understanding of what regulatory protections are, and are not, in place when they purchase legal services.

79. The Introduction to the Code has been revised to make it clear both that IBs are not mandatory and that firms and individuals have choices in terms of how they meet the outcomes. We encourage practitioners to meet the outcomes in a way that is most appropriate for their clients, be they FTSE 100 companies or particularly vulnerable individuals. We also make it clear that non-compliance with IBs will not, of itself, constitute grounds for disciplinary action.

80. We have reviewed all of the detailed drafting comments and where appropriate have amended the wording of the Code.

81. Our competition analysis of the Code has not identified any issues of substance.

Specific issues

(a) Conflicts of interests

82. Questions 8, 9 and 10 of the May Consultation asked:

Do you have any comments on the Models (Annex F) for regulating conflicts?

Do you have any comments on the removal of the detailed provisions relating to conveyancing, gifts, etc.?

Do you believe that outcomes provide sufficient clarity for regulating conflicts or do you think rules would be more appropriate?

Summary of feedback

83. Of the models offered, respondents tended to favour Model 2. However, there was broad support for the retention of requirements similar to the existing rules. This was because the majority of respondents felt that now was not the time for significant change to the conflict of interest provisions, despite the re-

drafting of the Code and that the SRA should, therefore, retain both the emphasis in, and form of, the existing provisions. The Legal Services Consumer Panel favoured an outcomes, rather than a rules-based, regime for regulating conflicts.

> "… Model 2 offers the best balance between providing flexibility where the risks to clients' interests are insignificant and disallowing solicitors from acting where this would not be in clients' interests." – Legal Services Consumer Panel
>
> "The current rules have evolved over time and are generally accepted to be clear and easy to follow. The proposed models do not reflect the subtleties that have evolved within the current rule and which ensure that clients are protected. We believe that it is likely to be to the detriment of clients to sweep away the detail within the rule … We do not believe, in this instance, that an outcomes-focused approach provides sufficient clarity." – The Law Society of England and Wales
>
> "With the introduction of the principles this should guide the 'ethical' approach to conflicts and achieve the same outcome as the detailed rules which are to be removed." – Devon and Somerset Law Society

84. There was support for removing the specific provisions on conveyancing conflicts, whereas some respondents did feel that the provisions relating to financial gifts should be expressed in the form of a specific rule.

> "We support the removal of detailed provisos where more general principles and outcomes produce a consistent result. However … acting where a person in [a firm] is likely to be recipient of a lifetime gift or gift on death is a classic example of one where a clear rule – guidance – prohibiting just this event – is required to protect clients and members of the public." – ICAEW

Our response

85. We have had regard to the concerns expressed by respondents about the need for clarity in relation to conflict of interests obligations. However, we have maintained our general approach to identifying the outcomes we require to be achieved. We believe we have done so in a manner which maintains the same level of consumer protection and which also provides clarity for practitioners. The outcomes are supported by IBs. In line with consultation responses, we have removed the specific provisions relating to conveyancing. This is not intended to imply that we have changed our position on acting for buyer and seller. With regard to gifts, we have moved the obligations not to take unfair advantage of your client and to advise your client to take independent legal advice to Chapter 1 (Client care)[8]; such situations must in our view also be subject to the main obligation not to act where your interests conflict with those of your client. See paragraph 96 below.

(b) Separate business rule

86. Question 11 of the May Consultation asked:

Do you agree with our approach to the provision of services through a separate business?

Summary of feedback

87. The majority view was that the separate business rule should remain in force and be applied across the board. However, some firms—both traditional law firms and potential ABSs—felt that the separate business rule, albeit now expressed in outcome form, represented an unduly onerous restriction on providers of legal services and put them at a competitive disadvantage against those seeking to provide non-reserved legal services through an unregulated company with no associated regulated firm.

88. Some respondents provided detailed drafting comments on Chapter 12 of the Code which were gratefully received.

> "It is interesting that this approach is being adopted and it is important that the professionals are not pushed out of what is going to most probably become a very competitive arena. It is vital that professional standards are going to be maintained and that the public know this."
>
> "Separate businesses – the current separate business rule does not address the heart of the real issue, i.e. is a matter a reserved or a non-reserved activity. If a matter is non-reserved it is for a reason and businesses should be free to decide how they might deliver such a service." – Co-operative Legal Services
>
> "We can see that there is a concern that non-reserved legal services may be deliberately provided through a separate business owned by a firm, or an associate of a firm, which is not authorised and regulated by the SRA, and which therefore undermines client protection. Furthermore, such an arrangement would potentially, in our view, give such a separate business a competitive advantage as it would be free from regulatory costs. The temptation to arrange activities in this way would be even greater in the case of an ABS, where there is likely to be a greater proportion of non-regulated activity and a desire to remove it from the regulatory regime intended to apply to the ABS by the SRA. We therefore agree with your intention to continue the current SRA prohibition on conducting certain non-reserved legal activities through a separate unregulated business." – The City of London Law Society

Our response

89. We have reviewed the specific drafting comments. We continue to believe, however, that there is a need to restrict regulated firms (and individuals currently providing reserved legal services) from providing non-reserved legal activities through a separate business. Our justification is that given in our May Consultation: that there is a need to prevent regulatory avoidance in the interests of consumer protection. Our view is supported by the consumer

research that we have undertaken which found that consumers lack understanding of the various providers of legal services and the differing levels of protection associated with purchasing legal services from them.

90. We do not accept that there is any necessity to retain prescriptive rules, particularly given that our primary concern is the end result—the outcome for consumers.

(c) In-house and overseas practice

91. Question 12 of the May Consultation asked:

Do you agree with our proposals concerning the application of the Code to overseas practice, in-house practice, etc.?

Summary of feedback

92. Of those who responded, the majority highlighted the fact that the overseas application of the Code had been extended beyond that contained in the current Code and felt that this extension was not justified. However, most respondents felt that it was appropriate to apply the Code to overseas practice, with some modifications, and that this was an area for further clarification.

> "We agree to the principle of applying the Code to overseas practice, in-house practice, etc. We agree that some of the outcomes described in each chapter are not appropriate to these forms of practice."

93. With regard to in-house practice, there was a concern amongst respondents that some of the outcomes were not applicable to this form of practice and that the application of the Code to in-house lawyers was unclear.

Our response

94. Having reviewed the feedback to the consultation, we decided to reintroduce the solicitor-controlled (albeit now recast as "lawyer-controlled") restriction on the application of the Code to overseas practice (note, however, that the Principles do apply to all overseas practice). We have also reviewed the outcomes, and specifically highlighted those that are not applicable (or should apply in a modified form) to overseas practice. We are, however, undertaking a more general review of the regulation of overseas practice in the next 12 months.

95. We believe that in-house lawyers should exercise their judgement; where outcomes are clearly not applicable to their particular circumstances then self-evidently they will not apply. As with overseas practice, we have reviewed the Code and included further provisions on the application of the Code to in-house practice.

Further consultation

96. The main changes that we have made to the Code as a result of the May Consultation are as follows:

(a) we have removed the references to the Principles at the start of each chapter and stripped out unnecessary detail and duplication;

(b) Chapter 1 (Client care) – we have re-drafted the outcomes and IBs relating to complaint handling, in line with the requirements of the LSB;

(c) Chapter 3 (Conflicts of interests) – this is a new chapter. Whilst we acknowledge the strong support for the retention of the existing rules to cover conflicts of interests, we believe that the rules needed to be reviewed to ensure consistency and clarity and to emphasise the required outcomes. For this reason we have re-drafted the main rules and the exceptions as outcomes, and clarified the extent of the exceptions;

(d) Chapter 10 (You and your regulator) – we have inserted an outcome covering the need to comply with all reporting obligations in the Handbook, wherever they are located;

(e) guidance – we have included a number of notes in the Code. Further help for firms will be provided in the form of, e.g., frequently asked questions, which will be published on our website.

97. The Code will come into force for ABSs on the date on which the SRA is designated as a licensing authority and, for recognised bodies and sole practitioners, on 6 October 2011. The reason for the earlier implementation for ABSs is that the Code contains definitions relevant to the Authorisation Rules and Practice Framework Rules, both of which need to be in force prior to October 2011 in order to enable intending ABSs to make formal applications for authorisation.

98. Provisions in the existing Code of Conduct, that need to remain in force until the Authorisation Rules become applicable to recognised bodies and sole practitioners, have been retained as revisions to the Recognised Bodies Regulations and revisions to the consultation version of the Practice Framework Rules (see **Annex F3 and F4**).

99. The revised SRA Code of Conduct is at **Annex C**.

Questions:

5. Do you have any comments on the revised Code?

6. Do you have any comments on Chapter 3 (Conflicts of interests)?

(b) SRA Accounts Rules

100. Question 13 of the May Consultation asked:

Do you have any comments on the revisions to the Accounts Rules?

Summary of feedback

101. Most respondents agreed with the retention of rules in this high risk area. There was also support for clarifying which parts of the notes are mandatory and which are purely explanatory, by moving the mandatory elements to the Rules and leaving the remainder as non-binding guidance. A limited number of respondents disagreed with the outcomes-focused approach to the interest provisions and to signing on client account. One respondent queried whether the SRA would publish a guide rate for interest that we feel would be appropriate. A small number of respondents also expressed concern about the removal from the Rules of the ***de minimis*** figure for interest payments.

> "In the case of the custodianship of client money and clients accounts surely the client is entitled to see that this money is held on the basis of clear rules rather than on the basis of outcomes focused regulation…" – Sole Practitioners Group
>
> "We do not consider it is helpful to abolish rules relating to interest rates. The abolition will only cause confusion for clients, and create unnecessary work for firms. We do not see what is wrong with the current approach." – Network Rail Infrastructure Limited
>
> "We … agree with the two areas in which a more outcomes focussed approach is proposed, namely signing on client account and the interest provisions."

102. Some respondents felt that it was unclear which money falls outside the scope of the Accounts Rules, and that it would be operationally difficult to ring-fence client money relating to SRA -regulated activity in an MDP ABS.

103. With regard to COFAs, a small number of respondents objected to requiring recognised bodies to appoint such a person and felt that these responsibilities might conflict with the duty of all principals to ensure compliance with the Accounts Rules.

104. A small number of respondents supported a review of:

- the accountant's report regime and the role of the reporting accountant;
- the application of the overseas accounts provisions.

Our response

105. Whilst we accept that it may be operationally difficult to ring-fence client money for SRA -regulated activity, it is imperative that firms do so in order to protect such client money. In any event, the SRA's jurisdiction precludes the use of a single MDP client account, and other regulators may have different rules relating to the treatment of money held for clients. It is therefore not possible simply to treat all money held for clients in an MDP, where there are

multiple regulators or professional bodies with different rules, in the same manner. However, in response to concerns, we have clarified the scope of the rules and what constitutes "out-of-scope" money for the purposes of the Accounts Rules. We have also clarified the treatment of monies received/held for costs where there is an out-of-scope element, and expanded the record keeping requirements to the limited extent necessary to deal with out-of-scope money.

106. We do not propose to revert to detailed rules on interest and signing on client account. These are areas where firms should be able to exercise appropriate judgement without unnecessary prescription, and it is for this reason that we do not currently intend to publish a guide to rates that we would consider "fair and reasonable". There is one exception in relation to signing rights on client account. Although we have retained our more outcomes-focused approach to signing rights, we have prevented an owner who is neither a manager nor an employee of an ABS from being the sole signatory on the client account. We believe that such an owner could not justifiably be given sole signing rights for the client account of an entity in which they were not directly involved as a manager/employee.

107. We do not accept that there is an inconsistency between the obligations of principals and those of the COFA. In practice, COFAs are responsible for implementing the necessary controls in relation to finance and administration, whilst the principals are responsible for the oversight of those controls. This being the case, the duty to ensure compliance with the Accounts Rules rests equally with the principals and the COFA, and we have clarified this in the Rules.

108. The OFR approach taken in respect of interest has meant that we have removed all the prescriptive provisions, including the £20 ***de minimis*** figure. However, firms will be able to include a ***de minimis*** figure in their interest policy.

109. In order to ensure that reports on an ABS are independent, we have prevented an accountancy practice that has an ownership interest in, or is part of the group structure of, an ABS from providing an accountant's report for that ABS.

110. Finally, we have aligned the overseas interest provisions with the new domestic requirement to pay a fair and reasonable amount of interest when it is fair and reasonable to do so.

111. Although the provisions have not changed, we are in the process of reviewing the future role of the reporting accountant and the accountant's report regime and anticipate publishing a consultation on this in 2011. We will also be reviewing overseas practice, including the application of accounts provisions to practice overseas.

112. The revised SRA Accounts Rules are published in their final form at **Annex D**.

(c) Specialist Services

113. Questions 14 and 15 of the May Consultation asked:

Do you have any comments on the structure of the Specialist Services section?

Do you believe that the financial services and property selling exemptions should be extended to ABSs?

Summary of feedback

114. Very few respondents commented on question 14, since for many these areas of practice are not relevant. Those who did comment agreed with our overall approach, and in particular the retention of rules.

> "We consider it proportionate that the regulator expects firms to act in accordance with the standards expected by the FSA, CCBE Code and legislation governing estate agency in respect of the relevant specialist services. This approach reflects the SRA's strategic objective only to place restrictions on firms to the extent it is necessary to mitigate risks to the regulatory objectives, an approach we endorse."

115. With regard to question 15, opinion was divided on this issue but the majority considered that the exemptions should be extended to ABSs. One respondent suggested that ABSs conducting financial services should be directly regulated by the FSA.

116. One respondent expressed concern that the extension of exemptions to ABSs would lead to inappropriate cross-selling.

> "We think that the financial services and property selling exemptions should be extended to ABS. This will help to achieve a level playing field whereby ABS have the same opportunities as non- ABS." – The Law Society of England and Wales

Our response

117. We are pleased that respondents supported our rules-based approach to Specialist Services.

118. We accept that there is a need to prevent firms from inappropriate cross-selling, however, we consider that it is in the public interest that these exemptions should be extended to ABSs since they promote competition. Should we have concerns about a particular firm, we would consider whether the firm were acting in the best interests of its clients in relation to its marketing activities and we may consider imposing a licence condition.

European cross-border practice

Summary of feedback

119. There was very little feedback on the SRA European Cross-border Practice Rules. There was a request for guidance.

Our response

120. At this point we are not minded to provide further guidance in the Handbook. However, we will make helpful information available on our website.

121. The final draft SRA European Cross-border Practice Rules are at **Annex E1**.

Property selling

Summary of feedback

122. Comments on the SRA Property Selling Rules were also very limited and related to clarity of definitions.

Our response

123. We believe that the definitions are sufficiently clear and these will form part of the glossary which is being developed.

124. The final draft SRA Property Selling Rules are at **Annex E2**.

Further consultation

Financial services

125. The general prohibition in the Financial Services and Markets Act 2000 (FSMA) states that no one in the UK can carry on financial services in the UK unless they are authorised by the Financial Services Authority or exempt. The Part XX exemption in FSMA enables solicitors' firms which meet certain conditions to be treated as exempt professional firms and to carry on activities known as exempt regulated activities under the supervision of, and regulation by, the SRA. This is because the SRA, through the Law Society of England and Wales, is a "designated professional body" (DPB).

126. It is a statutory requirement of the Part XX exemption that the DPB makes "rules" to govern the carrying on of regulated activities. The SRA has made the Solicitors' Financial Services (Scope) Rules 2001 (the Scope Rules) for this purpose and these set out the scope of the exempt regulated activities which law firms can carry on under the Part XX exemption together with various prohibitions, restrictions and conditions. Under section 332(3) of FSMA, the FSA must approve any changes to the Scope Rules before they come into force. In addition, the SRA has made the Solicitors' Financial Services (Conduct of Business) Rules 2001 (the COB Rules). The COB Rules set out requirements about how solicitors' firms should conduct financial services activities.

127. The SRA has been discussing two issues with the FSA and has reached agreement as follows. Section 327 of FSMA states that in order to benefit

from the exemption, a person must either be a member of a profession or "controlled or managed by one or more such members". The SRA asked whether the FSA considered that if an ABS is authorised by the SRA to conduct one or more reserved legal activities, and is subject to the SRA Handbook, that entity will be able to satisfy the requirement that it is a member of the profession. The FSA agreed with this interpretation. The FSA also consider that an ABS would in any event be able to rely on the second limb of the definition if that entity is managed at a senior level by one or more members of the legal profession. This means that the FSA takes the view that ABSs can rely on the Part XX exemption and are able to carry on exempt regulated activities, provided that they meet all the requirements of section 327 and comply with the Scope Rules and the COB Rules. The Rules have, therefore, been amended to extend their application to ABSs.

128. There are approximately 80 law firms which are regulated by the SRA and also authorised by the FSA to undertake mainstream financial services. These firms do not work within the Part XX exemption and must comply with requirements set out in the FSA Handbook. They are classified as "authorised professional firms" and they are entitled to rely on some concessions that other authorised entities are not.

129. However, the definition in the FSA's Handbook is slightly, but significantly, different from that given in statute. This means that ABSs which are authorised and regulated by the SRA would not be able to be treated as an authorised professional firm in the same way as traditional law firms. The FSA has agreed to consult on an amendment to the definition in the FSA Handbook so that ABSs can be treated as authorised professional firms.

130. We have redrafted the Scope Rules and the COB Rules to extend their application to ABSs. For the most part, the Rules have not been changed so that, for example, the basic conditions, prohibited and restricted activities, remain the same. The key changes are as follows:

- nomenclature changes in line with other rules in the Handbook;
- extension of application to ABSs;
- defined terms for consistency with definitions in other parts of the Handbook in readiness for the glossary;
- addition of notes to the Scope Rules so that the style is consistent with other rules in the Handbook; and
- updating of references in the notes to the COB Rules to reflect the numbering etc. of the Code.

131. The Scope Rules and the COB Rules are at **Annexes E3** and **E4**.

Question:

7. Do you have any comments on the application of the financial services rules to ABSs?

6. Engaging with the SRA – authorisation and discipline of firms and individuals, and training requirements

Authorisation Rules

132. Question 16 of the May Consultation asked:

Do you agree with our proposals to apply the requirements for a COLP and a COFA to all firms (including recognised sole practitioners)?

Summary of feedback

133. With regard to the title given for these roles, a small number of respondents felt that we should adopt the titles in the LSA of Head of Legal Practice and Head of Finance and Administration.

134. Responses to the issue of whether these roles should apply to all firms (not just ABSs) varied with many large City practices against these proposals. Some firms, many local law societies and other organisations were in favour. A small number of other respondents said their response depended on the SRA taking a proportionate approach towards smaller firms. One concern that a number of respondents raised was that the roles of COLP and COFA would detract from the corporate and individual responsibility for conduct.

"Whilst FOIL understands the SRA's view that the creation of these two new roles within all firms will ensure greater focus on regulatory issues, it believes that more detailed guidance is needed on the nature of the roles and the "fit and proper" criteria to be applied in assessing applicants, to clarify the exact nature of the roles and confirm where the responsibilities for ensuring regulatory compliance sit within a firm ….The extent of the responsibilities on the COLP and the COFA should also be clarified: what will "take all reasonable steps to ensure compliance" mean in practice?; what will "report to the SRA ***any*** failure" mean in practice?" – The Forum of Insurance Lawyers

"Depends on the responsibilities, although seems sensible to have a named contact." – Dickinson Dees LLP

"We agree in principle, although smaller firms might require these positions to be filled by one and the same person." – Russell Jones & Walker

"We feel that firms should be able to opt for 'cabinet responsibility' among partners/members as currently provided by Rule 5 as an alternative. We would agree that each firm should have a point of contact for the SRA for defined reasons, as now, but to facilitate communication and not for disciplinary reasons."

"We appreciate the logic of having a Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA)…However, we are not convinced that these positions need to be extended to other types of firms such as recognised bodies which are comprised of solicitors and lawyers and are regulated as employees etc. of a recognised body and also individually as solicitors and lawyers of their local law society/bar." – Bird & Bird LLP

"We do not believe that the requirements regarding COLPs and COFAs should be applied to non- ABS. It is clear that Parliament intended that the requirements for HOLPs and HOFAs should be applied to ABS, as Parliament recognised that ABS may present additional risks." – The Law Society of England and Wales

135. There were also concerns that the removal of approval by the SRA of a COLP or COFA, in the case of sole practitioners and other small firms, could effectively result in the firm being unable to continue.

136. When we consulted in May we stated that we preferred that COLPs and COFAs should be managers, but that we welcomed comments on whether they could also be employees. Few respondents dealt with this issue, but of those who did, most stated that firms should have the flexibility to appoint either managers or employees to both roles.

Our response

137. We are retaining the titles of COLP and COFA. We believe it is not appropriate to use HOLP and HOFA since the LSA only applies to ABSs and, in any event, we believe the change of title does not alter the responsibilities.

138. We are strongly of the view that having COLPs and COFAs who are specifically responsible for implementing appropriate controls is in the interests of all firms and also the public. The responsibilities of COLPs and COFAs take nothing away from the responsibility of other individuals to operate within those controls and for the governing body to oversee those controls, whether that is the principals of a traditional law firm or the directors of an ABS. We note that it is already common amongst firms to allocate responsibility for compliance and finance to particular individuals, and these proposals are very much in line with that approach. Whilst we accept that the LSA (***per force***) applies only to ABSs, our experience of disciplinary cases and interventions shows a clear need for specified individuals within firms to be responsible for implementing appropriate systems and controls. Further we do not accept that there is clear evidence that the risks for ABSs will be significantly different from those for traditional law firms.

139. Our primary concern is the implementation of effective controls by the firm as a whole. If failings within a firm are identified, we will investigate the circumstances that gave rise to those failings, for example, if it appears that the COLP/COFA was not given appropriate authority or resources, or was not listened to, then we will take appropriate action against the firm either instead of, or in addition to, any action against the COLP or the COFA.

140. In all its decision making, including the removal of approval of a COLP/COFA, the SRA intends to be proportionate and transparent. However, if we believe that it is not in the public interest that an individual continues to hold a particular role, then we will take appropriate action, whilst enabling the firm to make other arrangements, if possible.

141. We have amended the Authorisation Rules to make it clear that COLPs and COFAs can be employees but, whether a manager or an employee, the COLP/COFA should have sufficient authority to fulfil the role effectively. Reporting lines will play an important part in our assessment of a COLP's/ COFA's actual authority.

142. Our competition analysis has highlighted the wide discretion granted to the SRA in relation to certain rules. We recognise that it is of vital importance that the SRA acts proportionately and in a manner that takes into account the potential impact on competition of its decisions.

143. Question 17 of the May Consultation asked:

Do you agree with our contention that more information should be required from applicants to enable the SRA to make the right judgement concerning authorisation?

Summary of feedback

144. We received some comments from respondents on our proposals to collect additional data from firms and individuals. Views expressed included:

- acceptance of the SRA's need to gather information in order for it to adopt a more risk-based and evidence-based approach to authorisation of firms and individuals;
- concern as to whether the data collected would actually assist the SRA's decision making and whether the SRA could cope with the amount of data supplied;
- concern about the additional burden placed on individuals and firms in supplying the information required; and
- concern as to whether the SRA can protect the commercial confidentiality of certain information.

"We further consider that if each firm was to produce business plans and financial projections (whether looking forward one, two, three of five years), the likelihood of them being actively reviewed and considered by SRA staff is slight, given the volume of information involved. Whilst we can see that, for firms where there are doubts as to their viability, it may be appropriate to ask for a business plan or financial projection as part of the SRA's monitoring activities, we believe it is disproportionate to require every firm to provide this information as a matter of course." – Simmons & Simmons

"The SRA will need to ensure that it obtains sufficient and a proportionate amount of information to meet its objectives in authorising firms. However, financial projections for a five year period appear to be a long time. The significance of those plans in a fast moving legal services market place may be challenged." – ILEX Professional Standards

Our response

145. Details of our further proposals in relation to information gathering from firms are set out in paragraphs 155 to 171 below and in **Annex F10**. We believe that data collection from firms will have an essential role to play in our risk-based approach, and that it is not possible for the SRA to identify risks and, therefore, target effectively our resources in the absence of such information. Indeed this has been one of the major criticisms of the SRA in the past.

146. We recognise the additional burden on firms and this aspect has been one of the areas of focus for our cost-benefit analysis. This work is ongoing and will inform the more detailed development work as we refine our data requirements.

147. On the issue of commercial confidentiality, an outcomes-focused approach is very much based on mutual trust and we will, of course, take all appropriate steps to preserve commercial confidences[9]. As a regulator the SRA must, and does, see confidential information relating to firms. Whilst we understand firms' concerns, we believe that our track-record demonstrates our rigorous approach to maintaining the confidentiality of any information received by the SRA.

Further consultation

148. The changes to the Authorisation Rules include:

- notes to explain technical issues;
- amendments to reflect the treatment of sole practitioners as recognised bodies and consequential changes;
- an obligation on prospective firms and managers to agree to be subject to the SRA Disciplinary Procedure Rules; this enables the SRA to use equivalent disciplinary powers (in particular written rebukes and publication of decisions) and to permit internal appeals for all types of body; and
- transitional and passporting provisions to deal with unlimited licences and the timetable for implementation.

149. As stated above, we have amended the Authorisation Rules to make it clear that COLPs and COFAs can be employees.

150. The draft Authorisation Rules require managers in all authorised bodies, owners and COLPs and COFAs to be subject to assessment of fitness and propriety.

151. This test has been renamed the SRA Suitability Test. It is based on the current "character and suitability" test for admission as a solicitor, which is also the basis for assessing eligibility of non-lawyer managers of an LDP. Because the test is based on admission criteria that solicitors have satisfied (and on which they are required to make annual declarations), the SRA will deem solicitors to be approved as suitable to be managers and owners of authorised bodies for the purposes of the Authorisation Rules. RELs and RFLs will not be deemed suitable, since they will not undergo the Suitability Test in order to practise in England and Wales. Should a REL or RFL apply for approval as a role-holder (e.g. manager, owner, COLP or COFA), they will be subject, at that point, to the Suitability Test.

152. There are also transitional provisions to deal with approval of managers/owners of current firms who have not satisfied the current "character and suitability" test. This category covers other lawyers of England and Wales who are currently able to rely on written confirmation from their regulator that they are authorised and entitled to practise in an LDP.

153. All those with a "material interest" in an ABS, including those who propose to acquire a ten per cent share in an ABS (and associates who cumulatively acquire a ten per cent share), will be subject to the test to assess their fitness and propriety to hold such an interest; again, this will be assessed by applying the Suitability Test. Also, we will require an ABS to disclose the ultimate beneficial owners of the firm. This should assist us to identify (and prevent, in the highest risk cases) potential owners who might look to exploit ownership of an ABS in ways that would jeopardise the interests of clients. Further guidance on the authorisation process (including the information to be collected at authorisation) will be included in our November publication concerning the April consultation ("Outcomes-focused regulation – transforming the SRA's regulation of legal services").

154. Further information on the Suitability Test is provided at paragraphs 238 to 246 of this paper. The SRA Suitability Test is at **Annex F9**.

Information requirements

155. As part of its move to risk-based and outcomes-focused regulation, the SRA is reviewing and revising its approach to how, what and when firms report to us, and notify us of event-driven changes to their businesses. Reporting obligations are contained in the Authorisation Rules (Rule 8) and the Accounts Rules (covering the accountant's report). Reporting requirements are supplemented by the event-driven notification requirements in the Code (Chapter 10).

156. Historically, the focus of our work in this area has been in authorising new firms, renewing licences, and maintaining the accountant's reporting regime, designed primarily to protect client money.

157. Information currently collected is limited and essentially quantitative, and constrains our ability to act as a risk-based and outcomes-focused regulator. For this reason, we are reviewing and revising our approach, to identify which information we require in order to be able to assess and monitor the risks firms pose, to protect the public and maintain the trust that the public places

in the provision of legal services. Our information requirements, therefore, flow from our risk framework and are aimed at:

- enabling the SRA to have sufficient information against which to make an assessment of the risks firms pose;
- identifying cases where firms are unable to demonstrate that they are meeting the outcomes and rules within the Handbook; and
- gathering information that is required by the LSB to assist the LSB with its oversight of our work.

158. The areas of risk against which we will be assessing firms, and how we will assess those risks, will be discussed in more detail in our November response to our April consultation, where we will provide more detail on our risk framework. In broad terms these areas of risk are:

- instability or financial failure;
- fraud and dishonesty;
- competency, fitness and propriety (by reference to the Suitability Test);
- market risks;
- operational risks; and
- external risks.

159. Within these broad risk groups, we have identified firm-based risks in relation to meeting the Handbook requirements. We have then identified effective indicators for the given risks, and the data that is required to assess the level of risk presented by firms.

Types of data to be collected

160. We may require firms to:

- respond to questions requiring a "Yes/No" answer;
- select from a series of pre-defined options;
- supply numerical data;
- provide free-form responses;
- submit documentation; and

self-assess or self-certify processes, systems or controls.

161. The SRA is alert to the concerns of firms that this will increase the regulatory burden upon them. Indeed, firms will need to report across a wider range of areas. However, with a view to ensuring that our approach is proportionate,

we are considering using self-certification of achievement of given outcomes. We are looking at models of reporting used by other professional regulators and in some other jurisdictions.

162. So as to determine what data should be required of firms, we have developed a set of tests:

- **justified**: can we justify gathering this data?
- **evidence-based**: is there evidence to support the value of gathering this data?
- **targeted**: does the data address the specific risks being assessed?
- **proportionate**: is the data request proportionate to the risk being addressed?
- **cost-benefit**: do the benefits from collecting the data equal or outweigh the costs?
- **reliable:** is the data sufficiently reliable for the SRA to make a judgement on the risk being addressed?
- **timely**: is the timing of the data collection suitable to address the risk?
- **confidential**: are there sufficient controls in place to ensure the confidentiality of this data?
- **additional and not alternative**: what will be the impact of not gathering this data, and is there a more effective and efficient alternative to gathering it?
- **clear**: can we better articulate this data request to improve clarity and understanding among stakeholders?

Other information sources

163. We will not only be assessing the risk exposure of firms from their own data, but also reviewing indicators from a range of other sources, including:

- third parties – e.g. whistleblowers, complainants, other regulators, the Legal Ombudsman;
- media reports; and
- SRA knowledge of specific firms and sectors.

164. We are also required to provide information to the LSB in relation to firms' performance on equality and diversity, and first tier complaints handling – i.e. handling of initial complaints to a firm. We will, therefore, be asking firms to report this data to us.

165. The changes in reporting requirements will be introduced initially in:

- October 2011 for ABSs only; and in
- October 2012 for all other firms.

166. This is because of the phased implementation of the new regime, which means that the Authorisation Rules will not apply to traditional law firms until March 2012. We currently envisage the timetable for the reporting requirements to follow the existing timetable for annual renewals.

167. Each year we will publish a "Risk Outlook" which will set out the key current and emerging risks in the legal services market. This may in turn result in changes to the annual information requested from firms. Firms will then be given a reasonable time to prepare for the submission of data to the SRA.

168. In certain situations, we may require additional information from certain firms, for example, as a result of sectoral issues or the economic climate. However, this is unlikely to be a common occurrence.

169. We will try to minimise the cost to firms of supplying this information, in particular by enabling it to be supplied online. We are aware that some firms may face initial challenges in moving to online reporting and we are considering options in order to provide as smooth a transition as possible to the new process.

Next steps

170. Further information will be provided in our November response to the April consultation. As part of this response we aim to publish prototype forms on our "Freedom in Practice" microsite. We intend to hold a separate consultation exercise on information requirements in early 2011.

171. Further details of our proposed approach to reporting and notification requirements are at **Annex F10**.

Special bodies

172. The Authorisation Rules do not currently include provisions for authorising "special bodies", such as not-for-profit organisations, as there will be a transitional period of 18 months from October 2011 before special bodies are required to become licensed. If the Ministry of Justice implements the relevant LSA provisions before special bodies need to be licensed, the Authorisation Rules are likely to contain a provision to the effect that we will not accept applications from such bodies until the transitional period is over.

Questions:

8. Do you have any comments on the revised Authorisation Rules?

9. Do you have any comments on the proposed approach to reporting and notification?

SRA Practising Regulations

173. In the May Consultation we consulted on some changes to the Practising Regulations in order to impose requirements on sole practitioners relating to COLPs and COFAs. As sole practitioners will become regulated under the

Authorisation Rules (along with other recognised bodies) in March 2012, these changes will not be necessary, provided that the section 69 Order is granted (see paragraph 33).

174. Since the May Consultation, additions to the Practising Regulations have been made concerning calculation of fees on splits and mergers of firms. The amendments are now in force.

Further consultation

175. The revised Regulations contain transitional provisions which reflect the future treatment of sole practitioners. For example, having satisfied the "character and suitability" requirements on admission or initial registration as a solicitor or REL, all managers will be deemed approved, but subject to confirmation on application for approval that their circumstances have not changed.

176. We have also amended the appeal period to the High Court from 28 to 21 days, in line with a recent change to the Civil Procedure Rules.

177. A revised version of the SRA Practising Regulations is at **Annex F2**.

Question:

10. Do you have any comments on the changes to the SRA Practising Regulations?

SRA Practice Framework Rules

178. Question 18 of the May Consultation asked:

What in-house services to the public should require authorisation?

179. There was a limited response to the question and some of those who did respond did not appear to be aware of the legal background to this issue. Generally speaking there was no clear consensus on the way forward for in-house practice, although the need for authorisation when advising members of the public was broadly acknowledged.

180. Four respondents wanted the same services to require authorisation regardless of whether the providers are in-house. One respondent highlighted the need to strike the right balance, particularly with organisations that provide pro bono work as part of their corporate social responsibility programmes.

> "All services that would fall to be authorised if they were otherwise provided by a recognised firm/sole practitioner." – Hacking Ashton LLP
>
> "Reserved legal services only." – Network Rail Infrastructure Ltd
>
> "All legal services." – Russell Jones & Walker

"If those working in-house are required to gain authorisation for certain specified areas of practice then the same rule should apply across the board." – Co-operative Legal Services

Our response

181. Our work on the regulation of in-house practice is ongoing, primarily because further analysis needs to be undertaken on "special bodies", which will be led by the LSB. For this reason, we expect to be consulting further on special bodies in the autumn/winter 2011 with the intention of authorising the first special bodies in March 2013.

Further consultation

182. We have decided to amend our in-house exemption in relation to reserved legal work. Where there is a nexus between the organisation and the "client", an in-house solicitor will be able to provide reserved services (e.g., acting for fellow employees or related companies in the employer's group). Where there is insufficient nexus the "client" will be regarded as "a section of the public" for the purposes of the LSA, and the body would need to be licensed to provide reserved services. Rule 4 has been amended to reflect this, as follows:

Commercial legal advice services (4.15) – the Rule has been redrafted to exclude reserved work. We do not anticipate the need for transitional provisions as organisations will have notice of this change and the work by its nature tends to involve short-term matters;

Law centres and other not-for-profit organisations (4.17) – such bodies have been given an 18-month grace period by the LSB, so the need for amendments will be addressed as part of the work on special bodies (see paragraph 172 above).

Pro bono work (4.10) – the SRA will be unable to continue to permit solicitors to provide pro bono reserved legal services to the public through an organisation which is not authorised, because of the lack of any nexus between the organisation and the clients. As this change in approach will impact on good work carried out by many in-house solicitors, we are endeavouring to resolve this issue in co-operation with the LSB. This will not in any event affect ABSs and traditional firms doing pro bono reserved work. We expect that this issue can be resolved, but if it cannot, we propose to use transitional provisions to permit ongoing work to be completed. The draft of Rule 4 includes in square brackets the drafting which will be necessary if we are unable to resolve the pro bono reserved work issue.

Other changes

183. The exception that allows in-house solicitors working for associations (4.12) has been re-drawn to modify the extent of the exception so that it applies to organisations whose members have a specialist interest in common. The association exemption will, therefore, no longer cover organisations whose members do not share a specialist interest. If such organisations wish to employ solicitors to carry out legal work for their members, they will have to

apply for a licence. We have taken this step because we believe that the current exemption is being exploited, which is not in the public interest.

184. Other changes to the Practice Framework Rules have been made to deal with the fact that sole practitioners will be treated as recognised bodies from 31 March 2012, and to include some guidance.

185. During the consultation period, we identified that there is a regulatory gap: firms with a very small non-lawyer involvement of a specified type will not be licensable as ABSs. Such firms will, through a revision to Rule 13.1(b), be regulated as recognised bodies.

186. We have decided to retain the requirement in Rule 12 for all types of firm to have a lawyer who is "qualified to supervise". Two respondents pointed out that the requirement should be retained as it tackles a different issue (supervision of legal work) from the risk management areas which the new roles of COLP and COFA are intended to cover. In addition, if the requirement were lifted, new firms could set up with newly qualified lawyers which would be a significant policy change.

187. The SRA Practice Framework Rules are at **Annex F3**.

Question:

11. Do you have any comments on the proposed changes to the SRA Practice Framework Rules?

SRA Recognised Bodies Regulations

188. These Regulations did not form part of the May Consultation as, at that point, they were to be repealed in October 2011. However, as the Authorisation Rules will not apply to recognised bodies until March 2012, the Recognised Bodies Regulations will need to remain in force until then. We have made essential changes to the Regulations to include those parts of Rule 14 of the current Code (bearing in mind that the current Code will be repealed in October 2011 and the relevant provisions will form part of the Authorisation Rules). Therefore, the changes to these Regulations provide a stop-gap for recognised bodies, so that the Rule 14 provisions will continue to apply to them under these Regulations until March 2012.

189. We have also amended the appeal period to the High Court from 28 to 21 days, in line with a recent change in the Civil Procedure Rules.

190. The SRA Recognised Bodies Regulations are at **Annex F4**.

Question:

12. Do you have any comments on the proposed changes to the SRA Recognised Bodies Regulations?

SRA Disciplinary Procedure Rules

191. There are significant differences between the SRA's disciplinary powers under the current SA regime and those under the LSA regime. The SRA is

seeking to manage the risks associated with different statutory regimes and to provide a framework for a transparent, proportionate and consistent set of disciplinary procedures, in accordance with the principles of better regulation.

Summary of feedback

192. Approximately a third of overall respondents commented on the proposals in the May Consultation on the Disciplinary Procedure Rules.

193. Questions 19 and 20 of the May Consultation asked:

Do you believe that the disciplinary frameworks should be further harmonised?

Should there be a single system of findings with appeal to an independent tribunal?

194. In relation to question 19, the overwhelming majority of respondents were in favour of:

- a harmonised set of powers for the SRA; and
- common disciplinary procedures for traditional law firms and ABSs.

"It is important that there is equality and fairness in the disciplinary approach applied to ABSs and traditional law firms. To the extent that harmonisation can be achieved, then this is a good thing provided the end result is equal and fair for all."

"In principle yes, but we await further details." – Birmingham Law Society

"Harmonisation is especially welcome in areas, such as the sanctioning toolkit, where the same approach is needed to deliver equal protection for consumers." – Legal Services Consumer Panel

"We think that the Solicitors Disciplinary Tribunal should deal with disciplinary issues arising from an SRA -regulated ABS unless and until a new legal disciplinary tribunal covering the whole area of regulated legal services is established." – The Law Society of England and Wales

195. In most cases this appeared to be motivated by a desire for fairness in the manner in which traditional firms and ABSs are regulated. There were, however, a small minority of respondents who felt that the different entities should be treated differently for disciplinary purposes.

196. With regard to question 20, there was an unfortunate error (for which we apologise) which meant that a different question 20 was answered by those who submitted an automated web response. The web version of question 20 asked:

Do you believe that the amount which the SRA can fine firms of solicitors (recognised bodies) should be increased commensurate with our powers to fine ABSs?

197. Whilst there was some support for the SRA having equal fining powers in respect of all types of firm, respondents were not necessarily supportive of the SRA having unlimited fining powers.

> "We agree that it would beneficial to have a single system of findings with an appeal to an independent tribunal. It is important for there to be a uniform approach for providers of legal services, be it firms or ABSs."

198. Other points of note were that:

- it was commonly stated that any financial penalty should be appropriate to the financial means of the person or organisation subject to the fine;
- few respondents commented on the detail of the proposals;
- some concerns were raised about the SRA's existing disciplinary procedures and the wording of the current Disciplinary Procedure Rules; and
- two respondents who did consider the draft SRA Disciplinary Procedure Rules expressed reservations about:
- the appropriateness of applying the existing decision-making processes to the exercise of new powers; and
- the ability of the SRA to exercise new powers "in-house"; and
- the appropriateness of applying the existing decision-making processes to the exercise of new powers.

Our response

199. We were pleased to note the feedback which was broadly supportive of our approach.

200. Our general view is that all firms should be subject to the same procedures and sanctions, since we consider this to be the fairest approach and in the public interest. This is particularly important because we anticipate that firms will move from one status to another, and there is no justification in principle for having a different procedure or standard depending on the type of practice. Having two separate regimes could lead to a complex set of procedures; inefficiency; possible inconsistency, and the potential for regulatory arbitrage. A key objective, therefore, is that all individuals and firms are subject to fair and proportionate disciplinary procedures and sanctions.

201. The tenor of the responses confirms our view that it is appropriate for the SRA to have equivalent fining powers for all types of firm. Additionally, the

SRA, as a regulator, needs to be able to fine to a level that creates a credible deterrent to misconduct. We do appreciate, however, that not all respondents may have addressed this issue and we invite further comments.

202. On the issue of decision making, we are reviewing our existing processes in the light of comments made and in preparation for ABSs.

203. Details of further proposals and a commentary on revisions to the Disciplinary Procedure Rules are set out below.

Further consultation

204. We have made a number of revisions to the drafting of the Disciplinary Procedure Rules in light of comments received, including the addition of criteria for disqualification from involvement in an ABS.

Specific issues

(a) Financial penalty criteria

205. Section 95(1) of the LSA provides that financial penalties may be imposed in respect of ABSs by a licensing authority in "accordance with its licensing rules". It provides that penalties may be imposed on:

- a licensed body;
- a manager of a licensed body; and/or
- an employee of a licensed body.

206. In terms of when a financial penalty is appropriate, the existing disciplinary rules under the SA regime set out an appropriate test at Rule 3(1), and we consider that the SRA should adopt the same test for ABSs. However, by October 2011 the SRA is likely to have powers to levy significantly larger financial penalties under the LSA regime, and will be regulating increasingly diverse business models. The Rules, therefore, set out a new set of financial penalty criteria at Appendix 2 to the Rules.

207. The Rules include new concepts for the SRA, e.g., discounting for early admissions and restitution and suspension of a penalty.

208. Rules 8(2) and (3) provide for suspension of a financial penalty, depending on the behaviour of the regulated person.

209. Suspension of penalties could be a useful method of encouraging future compliance and self-reporting, and facilitating the early resolution of regulatory matters.

(b) Standard of proof

210. The proposed rules apply the civil (balance of probabilities) standard of proof.

(c) Disqualification from working in an ABS

211. The LSA gives the SRA power to disqualify for misconduct an individual or an entity from being a manager, employee, Head of Legal Practice (HOLP) or Head of Finance and Administration (HOFA) within an ABS.

212. The Rules impose two conditions for disqualification:

- that the SRA is satisfied that it is undesirable for the person to engage in such activities; and
- that the SRA is satisfied that disqualification is a proportionate outcome in the public interest.

213. The Rules also make provision for the review of a disqualification, and Appendix 3 to the Rules sets out specific criteria in respect of disqualification decisions.

214. We will be dealing with increasingly complex and serious matters "in-house" and have, therefore, made some revisions to Part 3 of the Rules which deals with decision making. We would be particularly interested to receive feedback on our approach. One option would be to include rules similar to those likely to be applied by the First Tier Tribunal of the General Regulatory Chamber in dealing with statutory appeals in matters relating to ABSs. We therefore invite comments on that approach and the content and suitability of those rules[10], particularly in relation to case management and enforcement of directions.

215. The LSA does not give a right of appeal against a decision to disqualify or to refuse to bring a disqualification to an end, but there is discretion to create a right of appeal within the Rules themselves. The Rules provide an external right of appeal to the General Regulatory Chamber. The benefit of creating this external right of appeal is that it is consistent with other decision-making processes under the Rules, and is consistent with our intention to be a fair and transparent regulator.

216. The SRA Disciplinary Procedure Rules are at **Annex G1**.

Question:

13. Do you have any comments on the revised SRA Disciplinary Procedure Rules?

SRA Cost of Investigations Regulations

217. The LSA amended section 44C of the SA and section 14 of the AJA to provide that the SRA could make regulations prescribing charges to be paid by those subject to a disciplinary investigation. As a result, the SRA Cost of Investigations Regulations 2009 came into force on 31 March 2009. In summary the Regulations provide that:

- the SRA may recover charges incurred during an investigation from a regulated person who has been found to have committed misconduct or a breach of our rules (or who has admitted misconduct by agreement with the SRA);

- the SRA may also recover costs from a non-solicitor who has been subject to an order made by the SRA under section 43 of the SA;

- decisions about the amount of the charges are made by adjudicators or persons with delegated authority.

218. The LSA also gives the SRA power to make decisions about the regulation of ABSs, without the need to refer to the SDT. This includes the power to levy unlimited fines and disqualify persons from being involved in ABSs. However, the LSA does not provide for the recovery by the SRA (or any other licensing authority) of any costs from ABSs or from individuals involved in an ABS.

219. The SRA's ability to charge for the costs of our investigations is an important tool. We believe that the costs of investigations should be borne, so far as practicable, by those found to have committed acts of misconduct. The current regime for recovery of costs is that charges should only be imposed where a finding has been made, and based upon bands of costs related to the number of hours spent. We believe that the SRA should have an equivalent power in respect of ABSs. We have, therefore, sought a section 69 Order (see paragraph 32) to achieve this effect. This would allow us to apply the existing Regulations, with some minor amendments, to ABSs.

220. The proposed SRA Cost of Investigations Regulations are at **Annex G2**.

Question:

14. Do you have any comments on the SRA Cost of Investigations Regulations?

Training requirements for individuals - a new structure for education and training

Format and structure of the new regulations

221. Professional competence is one of the cornerstones of the solicitors' profession. We ensure competence through the education and training requirements leading to the qualification of solicitor. We also ensure that competence is maintained and further developed to meet the needs of consumers.

222. The following regulations currently control qualification as a solicitor, admission to the Roll, transfers from other jurisdictions and the exercise of higher rights of audience:

- Training Regulations 2009;

- Admission Regulations 2009;

- Qualified Lawyers Transfer Scheme Regulations 2010; and

- Higher Rights of Audience Regulations 2010.

223. Many detailed requirements flow from these regulations, which are currently published as "guidance". This approach may be confusing for those seeking to comply with the regulations as well as for those applying them.

224. To improve their clarity, and to be consistent with the other regulations in the Handbook, these regulations have been redrafted. Substantive changes to the regulations have been kept to a minimum. A few minor changes have been made to address certain issues and these are set out below.

225. We thank those who have already provided valuable feedback on our current regulations, and we welcome any further feedback, whether it is:

(a) specific – for example on:

- requirements for the standard of English language skills of new entrants;
- whether the LPC should continue to be a lifetime qualification; or

(b) general, such as the perceived value of management training requirements.

226. In the meantime, we have:

- simplified the language;
- included in the regulations all mandatory requirements; and
- included non-mandatory guidance within the regulations.

227. The main change is that the Training Regulations have been re-cast into three parts:

- **Qualification Regulations** (governing the domestic training stages for individuals and student enrolment);
- **Training Provider Regulations** (governing provision of training contracts and the Professional Skills Course by organisations, containing most of the mandatory guidance currently in "Training Trainee Solicitors");
- **CPD Regulations** (governing the ongoing training requirements for solicitors and RELs).

228. The Training Provider Regulations do not cover providers of academic courses, the Legal Practice Course (LPC) or CPD, as they are regulated through separate regulations and policy, which are outside the scope of the Handbook.

Changes of substance

(a) Removal of age criteria for eligibility to attempt the Common Professional Examination (CPE)

229. Non-graduates can attempt the CPE by virtue of being "mature students" or by holding a qualification in magisterial law, provided they are at least 25 years old. They are also required to satisfy us as to their character and suitability and their English language abilities. For reasons of consistency, we have removed the age limit requirement and the requirement for non-graduate CPE students to demonstrate character and suitability and English language abilities.

(b) Removal of age requirement from "qualifying employment" definition

230. We use the term "qualifying employment" in the Training Regulations 2009 to describe the experience that members of ILEX must have in order to be eligible to attempt the CPE and enter into a training contract. However, we say that any such experience can only be gained after the age of 18. We propose removing this age limit from the definition of "qualifying employment" within the new Training Regulations.

(c) Amendment to the point at which Exempting Law Degree students must apply for student enrolment

231. The Training Regulations currently state that no person may proceed beyond the first year of a course leading to an Exempting Law Degree (ELD)[11] without student enrolment. We propose amending the Regulations to state that ELD students must apply for student enrolment before they begin the third year of the course.

(d) Amendment to the validity period of certificates of student enrolment

232. The Training Regulations currently state that the first certificate of student enrolment lasts for two years. We propose amending the Regulations to extend the validity of the certificate to the remainder of the calendar year in which a student applies, plus another four years.

(e) Additional requirement on providers of training contracts to check potential trainees' student enrolment

233. We have included an additional requirement on training providers to ensure that the trainee has a valid student enrolment before entering a training contract. This is an extension to what we currently expect firms to do.

(f) Additional regulation to govern termination of training contracts arising from case law

234. We have added a regulation to provide more clarity about the requirements for termination of a training contract, in line with recent cases.

(g) Amendment to the Professional Skills Course (PSC) and training contract commencement requirements

235. We have amended the Regulations to allow individuals who have taken all of the LPC assessments but not received their Stage 2 results to be able to start a training contract and commence the PSC.

(h) Addition of exemptions from LPC subjects

236. One of the intentions behind the "new" LPC, which was implemented in 2009/10, was to allow students to apply for exemption from attendance on the course—but not assessment of LPC subjects. Exemptions would be based on accreditation of prior certificated learning. We have added to the Training Regulations the criteria and process for considering and awarding such exemptions. We have recently consulted on this approach. In addition, we now propose a five-year limit on the age of qualifications, in line with the five-year time limit on completing the LPC.

237. The SRA Training Regulations are at **Annex F5**; the SRA Admission Regulations are at **Annex F7** and the SRA Higher Rights of Audience Regulations are at **Annex F8**.

Question:

15. Do you have any comments on the changes which we have made to the regulations concerning training, admission and rights of audience?

SRA Suitability Test

238. The current Training, Qualified Lawyers Transfer Scheme and Admission Regulations all require individuals applying for admission to satisfy us as to their character and suitability to be solicitors. The obligation on, and authority for, us to make this requirement comes from the SA.

239. Neither the SA nor the Regulations define the term "character and suitability". This is currently done in separate guidelines—policy which has been developed over a number of years, and which was last subject to formal consultation in early 2007. Character and suitability is currently considered at specific points, but the requirement to be of suitable character applies throughout the qualification process and beyond.

240. The Authorisation Rules require applicants for the roles of manager, owner, interest holder or COLP and COFA within authorised bodies to be "fit and proper". The LSA requires us to include procedures for satisfying ourselves as to fitness and propriety. In our May Consultation we suggested that this test would form part of the Authorisation Rules.

241. We intend to have one test for both purposes because we believe it is in the public interest for the same standard to apply across the board. It is for the applicant to discharge the burden of satisfying the test which we have named the SRA Suitability Test.

242. We have taken the following factors into account when developing the Suitability Test:

- the relationship between a solicitor and his or her client is a fiduciary one, i.e. based on confidence and trust, and frequently relating to money and/or property;

- trust in a solicitor's undertaking lies at the heart of many transactions; and

- those holding key roles within firms that provide legal services must act with propriety to maintain public trust and confidence in the legal system and ensure access to justice.

243. The Suitability Test is intended to:

- be transparent and robust;
- explain to whom the test applies and why;
- mitigate the risk that pre-admission/approval behaviour represents to the public by preventing unsuitable individuals from qualifying or being approved;
- clearly state our expectations as to honesty;
- be a discrete test at the student enrolment and admission stages, with an ongoing requirement to maintain the standard throughout the period of student enrolment and post-admission; and
- be applied at the point of application for approval, and throughout their authorisation, as key role-holders (including owners) under the Authorisation Rules.

244. The Suitability Test is in the Authorisation and Practising Requirements section of the Handbook and appears at **Annex F9**.

Policy changes

245. The Suitability Test has been strengthened and clarified compared with the existing character and suitability guidelines:

- the test is aligned with the principles established in case law concerning the assessment of suitability of individuals for eventual admission. In particular, recent case law established that there is a rebuttable presumption of dishonesty where issues have not been disclosed that call into question an individual's suitability eventually to be admitted as a solicitor;
- mental health issues or addiction to alcohol or drugs will not of themselves be grounds for failing the Test. However, issues of this nature will be taken into account when considering an individual's overall suitability and the public interest.

246. This strengthening is necessary to:

- ensure that there are clear criteria for applicants, SRA decision-makers, and adjudicators to assess new entrants and role-holders;
- ensure that a proper process and criteria are in place to protect the public and provide fairness to applicants; and
- maintain confidence in the legal system and those permitted to provide regulated legal services.

247. It should be noted that the SRA Principles form the backdrop to consideration of suitability.

Question:

16. Is the SRA Suitability Test a robust, clear, transparent and fair assessment for members of the profession and authorisation as role holders in ABSs and RBs?

7. Protecting the public

248. In the May Consultation, we published draft:

- Solicitors Indemnity Insurance Rules (SIIR);
- Solicitors Indemnity Rules (SIR); and
- SRA Intervention Powers (Statutory Trust) Rules.

249. Question 21 of the May Consultation asked:

Do you agree with our overall approach to applying indemnity requirements to ABSs?

"Yes, [we do agree] although there is more work to be done in making the overall position in relation to all indemnity and compensation arrangements satisfactory from the consumer perspective." - SIFA Ltd

"Client protection is key but it may not be appropriate to replicate current arrangements across all types of ABSs." – ICEAW

"We agree with the SRA's overall approach as it involves applying the same indemnity requirements to ABS and non-ABS. This helps to ensure appropriate levels of redress and protection of clients against negligence and fraud, whilst at the same time…maintaining a level playing field across the legal market." – The Law Society of England and Wales

250. Feedback on the individual sets of rules is set out below.

Indemnity Insurance Rules

Summary of feedback

251. Approximately one third of respondents commented on the general approach to applying the same requirements for all types of firm, with the remainder largely making no comment. The Association of British Insurers raised a number of general concerns about the scope of the SRA's jurisdiction over ABSs and the need for clarity about the extent of insurers' liability in relation to the non-legal activities of ABSs. It called for "fundamental reform" of the Qualifying Insurers' Agreement and the Minimum Terms and Conditions.

Our response

252. The Rules that we published made it clear that the Handbook applies to the "regulated activity" of an ABS. This is defined as meaning:

- any reserved legal activity;
- any legal activity; and
- any other activity in respect of which a licensed body is regulated pursuant to Part 5 of the LSA.

253. We will conduct further discussions with qualifying insurers on how this definition will apply to, e.g., an MDP ABS in practice.

254. On the point concerning the need for reform, the SRA is conducting a major review of our client protection measures. For this reason, revisions to the SIIR have not been published in this paper, but will be published following the completion of the review.

Indemnity Rules

Summary of feedback

255. Responses on the SIR specifically were very limited and identified a small number of minor typographical errors, and possible cross-referencing issues and definition updates. These have been corrected where appropriate in the new draft. No changes of policy have been made as a result of responses received to the consultation.

Other developments

256. The draft SIR have been revised to incorporate purely consequential changes to reflect the intention to remove the sole practitioner endorsement mechanism.

257. A final version of the SRA Indemnity Rules is at **Annex H1**.

Intervention Powers (Statutory Trust) Rules

Summary of feedback

258. There were no responses on these Rules.

259. A final version of the SRA Intervention Powers (Statutory Trust) Rules is at **Annex H2**.

Further Consultation

Compensation Fund Rules

260. In the May Consultation we stated that we would be consulting on our Compensation Fund Rules in October. In the meantime, we have been holding extensive discussions with stakeholders, including the LSB, concerning our approach on this issue. The SRA's approach is, of course,

subject to the outcome of the client protection review, upon which we intend to consult in December 2010. To that extent, the solution described below is interim.

261. Pending the outcome of the client protection review, we have focused on:

(i) ensuring that the SRA has client protection powers, in relation to compensation arrangements for ABSs under the LSA, that are as extensive as those under the SA;

(ii) adopting an interim solution for compensation arrangements that provides a similar level of client protection for ABS clients as for those of traditional law firms.

262. Regarding (i), we have suggested that the LSA be amended to ensue that the SRA has the same powers under the LSA as it currently has under the SA. We consider this to be essential for the effective operation of a compensation fund for ABSs.

Options

263. We have had to consider whether, pending the outcome of the review, we should seek to apply the existing compensation fund for broader purposes, or establish a separate compensation fund for ABSs. We intend to adopt the former approach on the basis that:

- it provides clarity for consumers—two funds would create confusion as to which fund applied;
- it avoids complex disputes about which compensation fund should deal with particular losses, especially where a firm may have changed status from an ABS to a traditional law firm (or vice versa);
- it makes sense administratively;
- the overall risk profile for ABSs is not obviously different from that of RBs; our intention, in any event, is to seek to mitigate risks through licence conditions. We are currently in the process of undertaking some financial modelling to assess the impact on the existing compensation fund; and
- establishing a new fund would create a bar to new entrants, including traditional law firms wanting to be ABSs, since the levy required would be disproportionately high.

264. An alternative is to establish a separate fund for ABSs. Arguments for creating a separate fund are that:

- solicitors have contributed to the current fund for many years and the existing fund should therefore not bear claims arising from default by ABSs. However, given the profile of claimants, it may equally be the case in the future that ABSs are contributing disproportionately to a fund that largely pays out for defaults of small RBs. Moreover, the existing fund admits on average 100 new practices every month of

varying business types and risk profiles, most of which have not paid into the existing fund;

- the impact of ABSs—particularly MDPs—is uncertain. Whilst we acknowledge the uncertainty surrounding ABSs, we are taking steps to mitigate the risks posed by ABSs in the following ways:

    - confirming the jurisdiction of the SRA in relation to MDP ABSs and reflecting that view in our rules, including the SRA Compensation Fund Rules, to mitigate the risks of claims not related to SRA -regulated activity;

    - developing a risk framework that takes account of the potential risks associated with all types of firm, and enables us to risk-assess individual firms/types of firm and respond appropriately through licence conditions/tighter supervision;

    - ensuring that our supervisory tools are fit for purpose.

265. The LSB is currently consulting on possible changes to legislation by a section 69 Order (see paragraph 32). This would provide that:

- the SRA will be granted the same powers under the LSA as it currently has under the SA;

- the SRA will be empowered, on a permissive basis, to operate a single compensation fund for all types of firm; our intention is to use the existing compensation fund;

- the SRA will be empowered to use monies in the existing compensation fund for the future broader set of firms (i.e. ABSs as well as traditional law firms).

The above powers will be granted to the SRA until 31 December 2012, in recognition of the fact that this is an interim solution, pending the outcome of the review.

266. The main changes proposed to the current Solicitors' Compensation Fund Rules are as follows:

- the existing compensation arrangements are applied to an ABS in respect of its "regulated activity", i.e., to its reserved legal activity, legal activity, and non-legal activity subject to a condition on the ABS's licence. This limits the scope of grants which can be made from the fund in respect of an ABS;

- the SRA is enabled to maintain a single fund and to make grants from it in respect of default by an ABS in connection with the ABS's regulated activity;

- ABSs are required to make contributions to the fund;

- these arrangements are expressed as being in force until 31 December 2012; and

- the fund covers acts or omissions by regulated firms (including licensed bodies and former licensed bodies), managers, employees and owners. In relation to acts or omissions by owners of licensed bodies, who are neither managers nor employees, we believe that clients should be compensated for the acts or omissions of such persons and will be seeking an amendment to the draft section 69 Order on which the LSB are consulting to address this issue.

267. The SRA Compensation Fund Rules are at **Annex H3**.

Questions:

17. Do you agree with our proposal to apply the existing compensation fund to ABSs?

18. Do you agree with our proposal to adopt the same compensation fund rules for ABSs by extending the application of the existing rules?

19. Do you agree with our proposal for the compensation fund to cover acts or omissions of owners of licensed bodies who are neither managers nor employees?

8. Equality and diversity

268. Question 22 of the May Consultation asked:

Do you have any comments on our Initial Equality Impact Assessment, and are there any additional equality issues that we should consider as we work further on the Handbook?

Summary of feedback

269. There was very limited feedback in response to this question. Of those who made substantive comments, these related more to the Code and Principle 9, rather than our Impact Assessment. Two respondents felt that smaller firms would be most affected by the change in approach; this would have an indirect impact on ethnic minorities, which tend to be over-represented in small firms. One respondent felt that the SRA should give greater consideration to the needs of persons with a disability.

270. One respondent stated that they were interested to learn more about steps the SRA might take to remove/mitigate any adverse impact on minority groups.

> "…the ability to demonstrate compliance with the required outcomes without having to comply with rigid rules requiring specific paperwork is an improvement in equality terms." – Leicestershire Law Society

"As usual, ethnic minorities and solicitors with lower income will bear the brunt." – Legal Team Ltd

Our response

271. See our comments at paragraph 58 concerning Principle 9.

272. We continue to analyse the possible equality issues. We have also made it clear in the Code that the controls which firms should put in place should be appropriate to the nature, scale and complexity of their firm; that is, we are not expecting all firms to have complex systems and controls, but rather to tailor them to their business and their clients. This should go some way to mitigating the impact on smaller firms.

Further consultation

273. Our overall equality impact assessment, covering the key equality issues raised by the transition to the new Handbook (and the changes in our regulatory policy and requirements which it involves) is at **Annex I**.

Question:

20. Do you have comments on our equality impact assessment, and are there any additional equality issues that we should consider as we work further on the Handbook?

9. Timetable and next steps

274. Question 23 of the May Consultation asked:

Do you have any comments on the timetable?

Summary of feedback

275. There was a limited response to this question. Of those who did respond, comments included that the timetable:

- is tight but achievable/aggressive (this was the majority view);
- provides insufficient time for proper consideration by respondents and also for the SRA to introduce the new Handbook, operations and the necessary culture change (a view held by a small number of respondents);
- must allow firms at least six months for implementation; and
- should be shortened to introduce ABSs before October 2011 (one respondent).

"It appears to be wholly achievable within an appropriate and realistic timeframe."

"We do not believe that the interests of the public and the profession should be put at risk as a result of an unquestioning commitment to the timescale set out." - City of Westminster and Holborn Law Society

Our response

276. We are confident that the timetable, although challenging, is achievable and we will make every endeavour to assist firms (both existing firms and new) and others to be ready to meet our requirements within the timeframe. We will assist firms and individuals in the following ways:

- further roadshows/seminars to explain the Handbook and receive feedback;
- publication on our website of the implementation timetable by reference to the type of firm;
- publication of a transition manual to help firms make the transition to outcomes-focused regulation; and
- provision of further updates.

277. It remains our intention to provide firms with six months from the date on which Handbook provisions are made to implement the new requirements.

Reminder of the timeline

278. As explained in the Introduction, responses to this consultation should be sent to the SRA by **13 January 2011**.

279. This consultation forms part of a major transformation of the SRA's approach to regulating and supervising firms, in the context of the opening up of the legal services market. The overall timetable is set out below:

Date	Action
November 2010	Report on and response to April 2010 Consultation ("Outcomes-focused regulation – transforming the SRA's regulation of legal services")
13 January 2011	Closing date for written responses to this consultation
April 2011	Publication of final Handbook
August 2011	Anticipated designation of SRA as a Licensing Authority for ABSs
6 October 2011	First ABSs licensed and implementation of new

	Handbook
April 2013	Special bodies able to apply to be licensed

Annexes

Annexes F10, I, K and L appear below. For all other annexes, please visit **www.sra.org.uk/handbook**

Annex F10 – Approach to reporting and notification requirements

Section 6 of this paper sets out the background to our reporting and notification requirements.

The examples below illustrate our current thinking on the new information requirements.

Example 1

Financial stability is an area of concern for the SRA, and we may wish to ask for information that would enable us to assess the risks which firms pose. One of the potential questions could be:

Have you breached any bank facility limits or covenants associated with your financing in the last reporting period?

Yes	
No	

If yes, please give details and the steps taken to address the issue (re-finance, re-negotiate etc.)

Do you forecast that you will remain within your current banking facilities and comply with covenants for the next 12 months from the date of this report?

Yes	
No	

If no, what are your plans to mitigate these financial risks?

This kind of information would enable us to:

- assess elements of risk around financial stability; and
- assess and give credit for controls or mitigation plans that may be in place.

We hope that by asking questions about forecasting and mitigation planning we will prompt firms to improve their own monitoring in this area, encouraging strong financial management.

Example 2

As part of our implementation of OFR, we may ask questions in respect of client care and complaints handling:

Client care

Please assess and rate the extent to which you have achieved the outcomes in the Code for client care:

Achievement of the outcomes

In structuring this type of question we would use drop-down menus allowing a firm to rate their own levels of compliance, in accordance with the outcomes and indicative behaviours in the Code.

Complaints handling

Please assess and rate your controls for dealing with complaints handling with reference to the following:

Policy in place	Procedures to implement policy	Implementation regularly assessed and reviewed	Plan to implement improvements

Is the client told, in writing, at the outset of how and to whom to complain, and of their right to complain to the Legal Ombudsman at the conclusion of the complaint process?

Yes	
No	

If you wish to clarify or make comments on these arrangements, please do so here.

Complaints data

Please provide a breakdown of any complaints dealt with in the last period by:

Complaint category	Number received	Number resolved	Number referred to LeO
Costs information deficient			
Delay			

Discrimination			
Failure to advise / poor advice			
Failure to follow instructions			
Failure to keep informed			
Failure to keep papers safe			
Failure to progress			
Total			

We are considering introducing self-assessment or self-certification as a way of assessing risk, as illustrated by these examples.

Self-assessment or self-certification is a regulatory tool that is used by other regulators in the UK, but in the legal services context is most notably used by regulators in New South Wales and Queensland in Australia. As a regulatory tool it has a number of benefits. It allows the regulator to make assessments of systems and controls in firms without needing to see large amounts of policy documentation or process manuals, and avoids the need to carry out inspections of all firms to assess the quality of controls.

If completed openly and with a realistic assessment of the quality of the policy or procedure, self-assessment can bring real benefits to firms in terms of improved performance. Research in New South Wales has shown that following the completion of the self-assessment process, firms have seen a reduction in complaints of almost one third, with corresponding improvements in outcomes for clients.

The use of self-assessment also demonstrates the kind of relationship we are expecting to have with the regulated community. Self-assessment relies on a mutual trust if the benefits it can bring are to be realised.

As part of this self-assessment approach, we are also considering benchmarking the answers given by firms. By answering the questions honestly a firm will be able to establish its relative performance against that of similar firms, which could prove a valuable aid to improving performance.

In developing an approach to both risk-assessment and corresponding information requirements, we will be identifying:

- core data – we will request this from all firms, to allow the minimum level of risk assessment;
- other data – we will only request this from higher risk firms, where the additional information will assist us to monitor those risks and target our resources.

Annex I – Equality Impact Assessment

Introduction

1. The second draft of the Handbook is now published for further consultation and contains some revised and some new draft rules and a revised draft SRA Code of Conduct. The consultation paper explains the changes and identifies the new areas in more detail.

2. The SRA's approach is to consider equality impact in all policy development work and discuss policy options with external stakeholders as work progresses to ensure that equality issues are addressed as they arise. For example, equality groups were represented in the Financial Assurance Reference Group which assisted the SRA with the draft SRA Accounts Rules.

3. An initial equality impact assessment of the Handbook was published (as annex K) with the first consultation paper published in May 2010. That report set out some of our early thoughts for each of the Handbook sections.

4. We have now looked in further detail at the potential equality impact of each section of the Handbook and this report provides a summary of that work. The summary is based on 10 equality impact assessments which are being published separately and which will be referred to as they are summarised in this report.

5. A full equality impact assessment report will be published to accompany the final version of the Handbook that will be submitted for approval by the SRA Board and the Legal Services Board.

6. Since publishing the first draft of the Handbook for consultation, the new Equality Act 2010 has come into force. This Act replaces the previous equality legislation and seeks to apply a more consistent approach to equality for all 'protected characteristics'. This term describes the various equality strands that are now covered, namely: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

7. The Equality Act 2010 also introduces a new public sector equality duty which (from its implementation in April 2011) will cover all of the protected characteristics, other than marriage and civil partnership. The SRA has already adopted a single equality approach, extending its existing legal equality duties (in relation to disability, gender and race) to the other equality areas. As we take our equality impact assessment work forward we will be taking into account the new public sector equality duty requirements and guidance.

Stakeholders

8. Our main stakeholders are:

   - Consumers of legal services and the wider public

- All individuals and bodies regulated by the SRA and all individuals and bodies which may wish to seek recognition/authorisation from the SRA

- The Law Society, the Legal Services Board and other approved regulators, the Solicitors Disciplinary Tribunal, the Legal Ombudsman, the Ministry of Justice and organisations providing legal training.

Promoting equality and diversity through the Handbook

9. In our initial impact assessment of the Handbook, we covered the two particular features of the Handbook which are expressly designed to promote equality and diversity: the inclusion of an overarching Principle relating to equality and diversity (the new Principle 9) and the inclusion in the Code section of the Handbook of specific equality and diversity outcomes which firms must achieve (which effectively replace rule 6 from the current Code of Conduct).

10. During the first consultation, we received comments on the proposed wording of Principle 9. There was some concern that the principle required firms to go beyond the current requirements of Rule 6 (the equality and diversity section of the Code of Conduct) which is not the case. We decided to revise the wording to make the position clearer for firms and in its revised format we remain of the view that it has real potential to encourage the regulated community to embed equality and diversity and as such should have a positive impact on equality across all equality groups. We will be thinking through further guidance for firms on how this could work in practice.

11. In our initial equality impact assessment of the Handbook, we reviewed those provisions of the new Code which are intended to replace the current Rule 6 which sets out the requirements in relation to equality and diversity. The new Code reflects the changes introduced by the Equality Act referred to above in its reference to equality across the protected characteristics. Since we published the first draft of the Code, we have not received any submissions or evidence to suggest that there was a need to revise the relevant provisions further.

12. We remain of the view that the new Code provides a real opportunity to encourage equality of opportunity and respect for diversity across the profession.

Alternative business structures

13. One of the reasons why we have had to revise the whole range of rules and regulations that apply to those we regulate is because we will be applying to the Legal Services Board (LSB) to become structures a licensing authority for alternative business structures.

14. As this change is likely to have wider implications for the profession, we decided to carry out a separate equality impact assessment, which will cover these wider implications as well as the specific issues arising from the approach taken across the Handbook to harmonise the rules for alternative business structures with those for traditional firms.

15. The consultation paper reports the outcome of our first consultation on the Handbook in relation to our proposed approach to alternative business structures and provides an update in relation to the LSB's recently published draft section 69 Order. Section 69 of the Legal Services Act allows the LSB to make changes to the current regulatory legislation and is the mechanism being used to harmonise the regulatory regime for traditional firms and the new alternative business structures, so far as possible, to achieve a common standard of consumer protection.

16. Our dialogue with the LSB on these matters is ongoing and we will consider the equality impact of the changes as this area develops and report further in the new year.

17. We have published our early findings on the equality impact of alternative business structures entering the legal service market. It is clear that small firms and groups representing Black and Minority Ethnic (BME) solicitors remain concerned about the impact of alternative business structures on their ability to practise. We will address these concerns and look further at the available evidence as we develop our work on this equality impact assessment. However we consider that alternative business structures will have a positive impact, both in terms of employment opportunities for members of the profession and because of the increased access to legal services available to consumers.

Evidence considered for the equality impact assessments

Data relating to the current regime

18. As we have carried out our equality impact assessment work on the different areas covered by the Handbook we have looked at each set of rules and the draft Code and considered how they are going to change, and whether on the face of them they are likely to have an impact on equality.

19. For each of the individual equality impact assessment reports that are being published at the same time as the second Handbook consultation paper, we have also considered, where possible, evidence about how the current rules are being applied. This has been useful, but can only offer provisional indications about the potential impact of the new Handbook which is intended for use within our new outcomes-focused regime from October 2011 - we will be publishing further information about our new approach in November 2010.

20. Where disproportionality has been found it is often difficult to differentiate whether this is being caused by the rules themselves, the way that they have been applied or some other unrelated factor. As we move toward outcomes-focused regulation and the Handbook goes live in October 2011, we will be closely monitoring regulatory outcomes across all of the protected characteristics to identify if and how any current disproportionality might change.

Stakeholder engagement

21. In addition to the evidence that we have reviewed from the current rules, we have conducted an extensive programme of engagement with our

stakeholders in addition to the first consultation paper. Further information about the activities that we have undertaken are included at annex K and in the individual equality impact assessments that have been published alongside the second Handbook consultation paper.

22. The SRA has taken note of Lord Ouseley's criticism of its engagement activity in his review of the regulatory outcomes for BME solicitors published in 2008. In his 2009 review report, Lord Ouseley noted the considerable improvements, in particular through the roadshows we ran in 2009.

23. We have developed our engagement work further as we have been preparing the move to outcome-focused regulation and drafting the Handbook. The relationships we have forged and developed with consumers and the profession have helped us enormously in taking this work forward and will be crucial to the success of our new approach.

24. We recognise that there is a long way to go and there may be sectors of the profession that will be more difficult to convince about the potential benefits of our new approach than others. However, we intend to build on our engagement work and will be developing an engagement strategy to help us maintain the momentum and establish more permanent engagement mechanisms going forward.

Costs benefit analysis

25. We have commissioned a cost benefit analysis to better understand the potential burden of the new requirements for all firms. This work is being conducted on a phased basis and is ongoing. The report on the first phase will be published separately in November.

Summary of our equality impact assessment of the Handbook

26. We have reviewed the various sections of the Handbook under the three headings: conduct of legal services; engaging with the SRA – authorisation and discipline; and protecting the public. For each of the main headings we will summarise our conclusions from the equality impact assessments that we have published.

Conduct of Legal Services

27. Under this section we have considered the equality impact of the Code, the Accounts Rules and Specialist Services

The Code

28. The consultation paper sets out the outcome of the first consultation and explains the changes incorporated into the second draft of the Code.

29. In our equality impact assessment of the new Code, the main concern, arising from the consultation and from engagement with the profession was that the outcomes-focused approach of the new Code could be perceived as being more onerous for small firms. It was felt that the prescriptive, rule based approach provided certainty and without this, smaller firms would feel more

exposed and less clear about what they should be doing to comply with the rules and regulations.

30. We know from data about the profession, that there are disproportionately more BME and female small firms (firms with 1 or 2 partners) which means that an impact on this sector would indirectly impact disproportionately on BME and female firms. Firms are classified according the equality grouping of the majority of the partners. In 2009, BME firms were over represented in 1 and 2 partner firms, making up 12% of the overall firm population but 16% of 1 partner firms and 14% of 2 partner firms. Female firms were over represented in 1 partner firms, making up 24% of the overall firm population but 29% of 1 partner firms.

31. We have revised the second draft of the Code by clarifying the outcomes and indicative behaviours where we could. The outcomes-focused approach is intended to allow firms the flexibility to deliver the expected outcomes in a way that best suits them. In addition to the Code, we will be publishing frequently asked questions on the SRA website and providing communications, advice and education to the profession about the Handbook.

32. We anticipate that these revisions will help all firms to understand what is expected of them and will minimise the potential adverse impact on small firms. The impact will also be minimised by the flexibility that is built in to our proposed approach to supervision and enforcement.

33. Overall, we have decided that rather than spend further time looking back at each of the rules under the current Code of Conduct, it would be more productive to look forward to the implementation of the new Code and monitor the outcomes for regulated firms and individuals – both in terms of their experience of supervision and in terms of the cases that will have to be referred on for enforcement. As we monitor each area of the new Code, we will refer back to the outcomes for the profession from the current Code of Conduct to assess the equality impact for all of the protected characteristics.

34. We considered overall that the second draft of the Code has the potential to impact positively on equality. However, given the concerns expressed by small firms, we will be closely monitoring how the new Code will impact on this sector as the new approach is implemented from October 2011.

SRA Accounts Rules

35. As indicated in our initial equality assessment of the Handbook, the draft SRA Accounts Rules are based largely on the current rules and remain fairly detailed and prescriptive as this was felt to be necessary to provide a high level of protection for clients.

36. A summary of the further changes made following the first consultation is set out in the second consultation paper. There were no specific concerns about equality arising from the SRA Accounts Rules either from the consultation responses or the SRA's Financial Assurance Reference Group, which is a stakeholder group assisting the SRA in developing these rules.

37. Unless any further issues are raised with us during the second consultation period, we will be in a position to conclude overall that the rules will have a

positive impact on equality as a result of the improved clarity and the flexibility given in some areas, in particular the interest arrangements which improve equality for some religious groups.

38. Further details can be seen in our published equality impact assessment of the draft SRA Accounts Rules. In that report we have also considered the evidence that we have identified in relation to enforcement of the existing accounts rules. There is evidence of disproportionate outcomes for BME solicitors, men and solicitors over 41 in relation to the incidence of forensic inspections into alleged breaches of the existing accounts rules and in relation to the action taken as a result of the late filing of accountant's reports. This will be addressed further as we consider our forensic investigation function further and as we develop our approach to enforcement under the new outcomes-focused regime.

Specialist Services

39. As explained in the consultation paper, these specialist services include European cross border practices, property selling and financial services. There are particular statutory rules applicable to solicitors in these areas and they do not lend themselves to an outcomes-focused approach, we have therefore moved these rules from the Code, and placed them in a separate section of the Handbook.

40. We have looked in more detail at these areas since our initial impact assessment of the first draft of the Handbook and have not identified any further equality issues. We have published our equality impact assessment of this area.

41. Whilst we will continue to monitor the regulatory outcomes of action taken in relation to these rules, we are satisfied that there is no adverse impact on equality of the rules themselves.

Engaging with the SRA – Authorisation and Discipline of firms and individuals

42. To cover this section of the handbook, we have conducted five separate equality impact assessments, all of which are published separately:

- Authorisation and practising requirements
- SRA Disciplinary Procedure Rules
- SRA Cost of Investigations Regulations
- Training requirements (which covers four sets of rules) and
- the new Suitability Test.

Authorisation and practising requirements

43. The authorisation and practising requirements section of the Handbook applies to individuals, recognised firms and recognised sole practitioners as

well as to alternative business structures that will be allowed to apply for authorisation to practise from October 2011.

Authorisation

44. The two main changes proposed for the authorisation of new firms are:

- the requirement to appoint compliance officers for legal practice and for finance and administration
- the requirement to provide much more information about the firm at the point of authorisation and on an annual basis.

45. We were aware at the outset that sole practitioners and small firms were concerned that these new requirements may be burdensome and these concerns were raised in the first consultation. A summary of the comment received about our new proposals for authorisation is set out in the second consultation paper together with our response.

46. We will consider the findings of the initial cost benefit analysis when published in November. If these concerns about small firms are borne out, this would indicate a potential indirect adverse impact for BME firms and female firms in particular (the disproportionality figures for 2009 are set out above in the section on the new Code).

47. We believe that the impact of these changes will be marginal as firms are already required to have arrangements in place for the effective management and supervision of their business. The changes reflect the need recognised under the Legal Services Act for firms to have specific individuals responsible for compliance and reporting.

48. We will be looking further at this as we develop our approach to authorisation, taking into account the further response that we receive from the second handbook consultation.

Practice Framework

49. The Practice Framework Rules set out matters relating to framework and rights of practice, structure of firms and eligibility for authorisation. The Practice Framework Rules are the first place to look to establish what methods of practising are permitted, and what route to authorisation and individual arrangements are possible.

50. These rules deal with the position of in-house solicitors. With the advent of alternative business structures, the regulatory status of in-house solicitors was under review to assess whether the exemptions that currently apply to in-house practice should remain. The primary concern is that where services are being provided to the public, the bodies through which they are provided are brought, so far as possible, within the regulatory regime set up by the Legal Services Act.

51. The October consultation provides more detail of the changes that are now being proposed following responses to the first consultation and further discussions with the Legal Services Board.

52. We will look at the statistical data that we can gather to identify the equality breakdown of SRA regulated lawyers in this group, so far as we can, to see whether there is a potential for disproportionate impact.

SRA Practising Regulations 2009 and the SRA Recognised Bodies Regulations 2009

53. The SRA Practising Regulations deal with applications for practising certificates by solicitors and for registration by European lawyers and foreign lawyers; applications for authorisation to practise as a sole practitioner; practising certificates and registration. These rules are fairly technical and relate largely to the process by which regulated individuals apply to renew their practising certificates or registration each year (as well as the process for sole practitioners to be recognised).

54. The Recognised Bodies Regulations set out the process for recognition of firms and will apply until March 2012, the authorisation rules in the new Handbook will apply to all firms, including sole practitioners so that all traditional solicitors firms are dealt with in the same way i.e. as 'recognised bodies'. The Recognised Bodies Regulations will, therefore, be repealed in March 2012.

55. We have not identified any equality issues arising from these two sets of rules.

SRA Disciplinary Procedure Rules

56. The SRA has statutory powers to take disciplinary action against regulated individuals or entities when a finding has been made that they have breached the rules. These powers are set out in the SRA (Disciplinary Procedure) Rules (the 2010 rules) which set out the SRA's powers to fine, rebuke, warn and give advice to solicitors when a finding has been made against them. The draft new rules for 2011 in the Handbook are very similar to the 2010 rules - the main change being the need to address the powers applicable to alternative business structures. We have tried, where possible, to harmonise, the disciplinary powers applicable across all regulated bodies and individuals from October 2011.

57. We have published a detailed report of our equality impact assessment work in this area so far, looking in particular at: the disciplinary powers; the process of decision making under the rules; the decision to impose a financial penalty and the supporting criteria; decisions to disqualify; referral to the Solicitors Disciplinary Tribunal (SDT); and the publication of disciplinary decisions.

58. We concluded that the draft rules have the potential to impact positively on equality by setting our more clearly in one place the disciplinary powers and rules with supporting transparent and published criteria.

59. The response to the first consultation did not give rise to any particular concern about equality but the financial penalty criteria and a number of other matters are included in the second draft of the rules as part of the second Handbook consultation. There is more detail about this in the second consultation paper. We will review the outcome of the second consultation, particularly in relation to the new areas, and report further in the new year.

60. Despite our provisional conclusions about the rules, we recognise that there are underlying equality issues in relation to disciplinary outcomes for the profession – in particular the disproportionate over representation of BME solicitors.

61. We have undertaken a range of activities, captured in our Equality and Diversity Strategy and action plan, to understand the reasons for these disproportionate outcomes including some further research by Pearn Kandola which has now been published.

62. Key findings from the Pearn Kandola report were that the intelligence and referrals to the SRA were disproportionate in the first instance and that whilst in some areas this disproportionality was compounded by the work of the SRA, in others it was reduced or was neutral.

63. We will be closely monitoring disciplinary outcomes under the new regime from October 2011 and in the meantime we are working on the following areas:

- Undertaking a comprehensive programme of equality impact assessment for all our decision making criteria
- Delivering the detailed action plan identified within the Pearn Kandola report which have been incorporated into the SRA's business delivery plans for 2011
- Following up on our commitment to consider the equality impact of our publications policy, including the potential adverse impact on good race relations which may be caused by the disproportionate presence of BME solicitors in the data published about findings made against the profession.

The Cost of Investigations Rules

64. The Cost of Investigations Regulations empower the SRA to recover charges (relating to the cost of the investigation) from regulated individuals and firms who have been found to have committed, or have admitted, misconduct or a breach of the SRA's rules. The draft rules for inclusion in the Handbook have been extended to cover alternative business structures.

65. From our initial assessment of these rules, we did not identify any adverse equality impact; however, we have decided to review the whole area of costs recovery in 2011 and will carry out a full equality impact assessment at that time.

Authorising individuals to practise

66. The regulations that apply to the authorisation of individuals to practice will be part of the SRA's new Handbook and are being published for the first time in October 2010 for consultation. This part of the Handbook will cover the following sets of rules:

- The Training Regulations

- The Admission Regulations
- Qualified Lawyer Transfer Scheme Regulations
- Higher Rights of Audience Regulations.

67. Further detail about our initial conclusions about the equality impact of this section of the Handbook can be found in our published equality impact assessment report. A brief summary of the four areas is set out in the following paragraphs.

68. We have identified positive impacts for equality arising from the revised training regulations relating mainly to the removal of a number of unjustifiable age limits and generally trying to introduce as much flexibility as we can into the regulations to improve access to the profession for students from all equality groups.

69. We have not identified any impact arising from the changes made to the admission regulations.

70. The draft new Qualified Lawyer Transfer Scheme Regulations and the draft new Higher Rights of Audience Regulations have changed little. Both sets of regulations were introduced recently and full equality impact assessments were completed and published - for QLTSR, and HRA Regulations.

The new Suitability Test

71. The new Authorisation Rules will require applicants for the roles of manager, owner, and interest holder in alternative business structures and applicants for the compliance officer roles referred to above to be “fit and proper”.

72. The obligation and authority for this stems from the Legal Services Act 2007. This act demands that we include procedures for satisfying ourselves as to fitness and propriety, but it is silent on what “fitness and propriety” mean in detail.

73. The current Training, Qualified Lawyers Transfer Scheme and Admission Regulations all require individuals applying for admission to satisfy the SRA as to their “character and suitability” to be solicitors. The obligation on, and authority for, the SRA to do this comes from the Solicitors Act 1974.

74. This obligation and authority for this stems from the Solicitors Act, but the act does not define the phrase “character and suitability”. The SRA currently relies on the "Character and Suitability Guidelines" which have been developed over a number of years, and were last subject to formal consultation in early 2007.

75. We are proposing a single test for both purposes, which will be referred to as the “Suitability Test” and have determined that it is in the public interest that the test for solicitors and for the non-solicitor managers, owners or compliance officers roles is stringent.

76. We have published a detailed report of our initial equality impact assessment and concluded that there are equality issues, in particular for ethnicity, gender

and disability that arise in relation to the Suitability Test. We have taken steps to mitigate these potential impacts and promote equality in drafting the new criteria but we will be carrying out a full equality impact assessment to address the issues in more detail.

77. In summary the equality issues in relation to gender and ethnicity arise from the data that we have on outcomes from the application of the current criteria for character and suitability. Although the figures are too small for us to be able to draw firm conclusions, there are trends to suggest there may be some disproportionate outcomes for BME applicants and differences between the genders. We need to consider the data further and if necessary, review the draft Suitability Test to identify whether there is anything we can do to mitigate any disproportionality.

78. The concern in relation to disability equality arose from the way that the current character and suitability guidelines deal with mental health as one of the criteria for consideration. We have taken this into account in drafting the criteria for the new Suitability Test, removing the reference to a person's mental health condition as potentially indicating a risk.

79. However, we recognise that there may be cases where we are concerned about a person's conduct, and their physical or mental health may be relevant for us in evaluating that conduct. Accordingly, any relevant issues of this nature will continue to be considered as either mitigating or aggravating factors. In this consultation we are asking whether we have got the right approach and we will work further with disability groups on this.

Protecting the public

80. This section of the Handbook will contain the rules covering indemnity and indemnity insurance, the compensation fund and statutory trusts. We have published a short equality impact assessment of these rules, although the SRA is currently reviewing the whole area of indemnity insurance and client protection. We are considering the equality impact as part of this review and will be publishing an initial equality impact assessment with the consultation paper setting out our proposals, which is due to be released in December 2010.

81. The current draft rules proposed for inclusion in the Handbook are likely to need further revision as a result of the review. The changes at this stage are related almost exclusively to the need to extend their scope to incorporate alternative business structures.

82. The consultation paper sets out some of the concerns that have been expressed about the proposed changes to the Compensation Fund Rules. The concern arises from the impact on consumers of extending the compensation fund to alternative business structures. It is not clear how these changes might affect equality at this stage and we will examine the equality issues as we consider this area further.

Human rights impact

83. There are parts of the Handbook where we anticipated that particular human rights would be engaged. We commissioned a human rights audit for the new rules in the Handbook and have taken into account the findings of that audit as we have developed the rules.

84. We are satisfied that the provisions of the Handbook rules do not adversely impact on human rights.

Conclusions

85. Introducing equality and diversity into the overarching principles applicable to the Handbook, and our attempts to embed equality and diversity more broadly through the Code, we hope will have a positive impact on equality across all of the protected characteristics.

86. We have moved away from a set of prescriptive rules in relation to the new draft Code. The approach we are taking in relation to the Code is essential to our outcomes-focused approach. We believe that the potentially positive impact on equality will be realised as firms are able to develop systems and procedures that are proportionate and suitable to their size, areas of work and client base.

87. For the other sets of rules and regulations on the Handbook, we anticipate that the changes being introduced will bring increased certainty and transparency for the regulated community and consumers.

88. A common concern about the impact of the changes on smaller firms runs through the equality impact work we have carried out in relation to the Code, the new authorisation rules, the impact of alternative business structures entering the market place and this is likely to also be a concern in the review we are undertaking in relation to professional indemnity insurance.

89. We intend to assist all those we regulate with readily accessible and easy to understand information about the introduction of the new Handbook and outcomes-focused regulation. We believe that this will be of particular assistance to smaller firms which might otherwise lack the resources to readily assimilate the new information. We believe that this, and our other package of education and information initiatives, will help address any disproportionate impact on smaller firms and, therefore, any resulting disproportionate equalities impact.

90. We will also be considering this further when we have the final outcome of the cost benefit analysis we are undertaking – this work has considered the potential different perspectives which firms may have according to their size.

91. As the impact of the new Handbook will not be felt until its rules are applied we will be closely monitoring the regulatory outcomes for the profession after October 2011. The impact will depend as much as what the Handbook says as the way in which we regulate. We will be saying more about the equality issues arising from our work in developing our new outcome focused approach in November 2010.

92. Our new approach to regulation will also be supported by the work we are doing to transform the SRA itself. This includes the introduction of new IT systems and more web based communication with the profession. As this develops we will take account of the need to remain accessible to those we are engaging with. It will also include the work we are doing to promote a new organisational culture and equip our staff to work in the new regime.

93. In the new year, we will be publishing our equality framework for 2011-12 and this will include an action plan to tackle some of the systemic issues identified by the Pearn Kandola report and to address the work we still need to do to embed equality into the transformation process.

94. In the meantime, we have updated and added to the action plan published with our initial equality impact assessment report published with the May consultation paper.

Action plan

Outcome	Actions	Update
Have a clear analysis of the statistical data that we need to assess equality impact across all equality groups	The diversity census returns have been added but we have not been able to produce equality breakdowns for groups other than age, ethnicity and gender	The diversity census returns have been added but we have not been able to produce equality breakdowns for groups other than age, ethnicity and gender
	Prepare up to date statistics across all areas required	We have gathered some of the required statistics but not all will be available
	Analyse the statistical data for disproportionate impact	We have reviewed all available data for disproportionate impact
Gather additional data to assist with the equality impact assessment	Desk based research	Done and ongoing
	Dialog with other regulators	Considered in some areas
	Consider the outcome of the cost benefit analysis	The CBA is an ongoing process and a report will be published in

		November
Engagement with stakeholders to develop our understanding of the potential impacts	Workshops with the profession in relation to the Code	Done and ongoing for many of the areas being considered
	Roadshows with the profession	Done and ongoing
	Focus groups with the profession and consumers	Done and ongoing for many of the areas being considered
	Dialogue with key stakeholder organisations	Done and ongoing for many of the areas being considered
Make informed decisions on the introduction/ implementation of the new policy/procedure	Draw conclusions on the impact across all equality groups	Done and ongoing
	Consider alternative options and changes to mitigate any adverse impact found	Done and ongoing
	Consider justification of any potential indirect impact	Currently being considered as we prepare the full equality impact assessment of the Handbook
Keep stakeholders updated about the findings of our equality impact assessment work	Publish an updated equality impact assessment report with the second Handbook consultation	Done
Continue to review relevant areas during the second consultation	Through further engagement as described above	
Ensure that the final Handbook is accompanied by a full equality impact	Publish a full equality impact assessment for the Handbook	

assessment		

Annex K – Details of respondents to May 2010 consultation on the Handbook, and of SRA roadshows and other stakeholder engagement

Respondents

- Abbey Protection Group Ltd
- Addleshaw Goddard LLP
- Allen & Overy
- Ambrose
- APIL
- ASAUK
- Association of British Insurers
- Baker Tilley LLP
- Bar Standards Board
- Barclays Wealth
- Berwin Leighton Paisner LLP
- Bird & Bird
- Birmingham Law Society
- Brighton Housing Trust
- Bristol Risk Managers Group
- Cafcass
- City of London Law Society
- City of Westminster & Holborn LS
- Clifford Chance
- Co-operative Legal Services
- Devon & Somerset Law Society
- DLA Piper
- Dickinson Dees LLP
- Foot Anstey Solicitors
- Forum of Insurance Lawyers
- Freshfields Bruckhaus Deringer LLP
- Hacking Ashton LLP
- Heenan Blaikie
- Herbert Smith LLP
- Holman Fenwick Willan LLP
- Horwich Farrelly Solicitors
- ICAEW
- ICAEW — Solicitors Special Interest Group Special Reports and Accountants Panel Legal Services Working Party
- ILCA
- ILEX Professional Standards
- ILEX
- Irwin Mitchell LLP
- Jomati Consultants LLP
- Kent Law Society
- Law Society of England and Wales
- Lawyers with Disabilities Division

- Legal Complaints Service
- Legal Ombudsman
- Legal Services consumer Panel
- Legal Risk LLP
- Legal Team Ltd
- Leicestershire Law Society
- Linklaters
- Lovetts plc
- Mayer Brown
- Network Rail Infrastructure Ltd
- Norton Rose LLP
- Olswang LLP
- Osborne Clarke
- Paul Giles Tax
- Peninsula Business Services
- Practice Standards Unit, SRA
- RBS
- Russell Jones & Walker
- S Abraham Solicitors/SPG
- St James Place plc
- SIFA
- Simmons & Simmons
- Skadden, Arps, Slate, Meagher & Flom (UK) LLP
- Solicitors in Local Government
- Solicitors Own Software Ltd
- Sole Practitioners Group
- Top 100 London firms
- Tunbridge Wells, Tonbridge & District Law Society
- Which?

Plus 13 respondents who asked for their name to be kept confidential.

SRA Freedom in practice roadshows

25 May 2010	London
27 May 2010	Bristol
8 June 2010	Leeds
9 June 2010	Manchester
15 June 2010	Birmingham

16 June 2010	Liverpool
16 June 2010	Cambridge
22 June 2010	Exeter
24 June 2010	Newcastle
28 June 2010	Cardiff
29 July 2010	London (BME)

OFR-related speaking engagements/meetings attended since June 2010

8 June	Managing Partners Annual Compliance for Law Firms Conference
17 June	IBC Legal's Annual Professional Negligence and Liability Conference
29 June	Consumer Focus
6 July	Junior Lawyers Forum
16 Aug	ABS Reference Group
20 Aug	Bristol Risk Managers Group
8 Sept	Birmingham Risk Mangers Group
14 Sept	GC100 group meeting
14 Sept	Manchester Risk Managers Group

16 Sept	Professional Discipline and Regulatory Reform meeting
17 Sept	Financial Assurance Reference Group meeting
22 Sept	ILCA Annual luncheon
29 Sept	Legal Services Act conference
1 Oct	Legal Practice Management webinars
4 Oct	SRA Disability Advisory Group
7 Oct	LMS Junior Lawyers Forum
8 Oct	Legal Wales Conference
11 Oct	Sole Practitioners Group meeting
12 Oct	Regulation & Monitoring of Solicitors Conference
12 Oct	Connect2Law Annual Conference
14 Oct	Lexcel Quality Forum
20 Oct	Property Section Annual Conference

Annex L – Abbreviations used in this consultation paper

ABS	alternative business structure
Accounts Rules	SRA Accounts Rules
Admission Regulations	SRA Admission Regulations
AJA	Administration of Justice Act 1985

Authorisation Rules	SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies
COB Rules	SRA Financial Services (Conduct or Business) Rules
Code	SRA Code of Conduct
COFA	compliance officer for finance and administration
COLP	compliance officer for legal practice
Compensation Fund Rules	SRA Compensation Fund Rules
Cost of Investigations Regulations	SRA Cost of Investigations Regulations
CPD	Continuing Professional Development
CPE	Common Professional Examination
CRB	Criminal Records Bureau
Cross-border Rules	SRA European Cross-border Practice Rules
Disciplinary Procedure Rules	SRA Disciplinary Procedure Rules
DPB	designated professional body
ELD	Exempting Law Degree
FMOU	Framework memorandum of understanding
FSMA	Financial Services and Markets Act 2000
FSA	Financial Services Authority
Higher Rights of Audience Regulations	SRA Higher Rights of Audience Regulations

HoFA	head of finance and administration
HoLP	head of legal practice
IB	indicative behaviour
LDP	legal disciplinary practice
LPC	Legal Practice Course
LSA	Legal Services Act 2007
LSB	Legal Services Board
MDP	multi-disciplinary practice
MDP ABS	alternative business structure which provides multi-disciplinary services
OFR	outcomes-focused regulation
Practice Framework Rules	SRA Practice Framework Regulations
Practising Regulations	SRA Practising Regulations
Principles	SRA Principles
PSC	Professional Skills Course
QLD	Qualifying Law Degree
Qualified Lawyers Transfer Scheme Regulations	SRA Qualified Lawyers Transfer Scheme Regulations
RB	recognised body
Recognised Bodies Regulations	SRA Recognised Bodies Regulations
REL	registered European lawyer
RFL	registered foreign lawyer

RSP	recognised sole practitioner
SA	Solicitors Act 1974
Scope Rules	SRA Financial Services (Scope) Rules
SDT	Solicitors Disciplinary Tribunal
SIIR	Solicitors' Indemnity Insurance Rules
SIR	SRA Indemnity Rules
SRA	Solicitors Regulation Authority
Statutory Trust Rules	SRA Intervention Powers (Statutory Trust) Rules
Suitability Test	SRA Suitability Test
Training Regulations	SRA Training Regulations

Annex M – List of questions for consultation

1. Do you have any comments on the Introduction to the Handbook?

2. Do you have any comments on the implementation timetable?

3. Do you have any comments on the revised Principles, application provisions and notes to the Principles?

4. Do you have any comments on our approach to guidance?

5. Do you have any comments on the revised Code?

6. Do you have any comments on Chapter 3 (Conflicts of interests)?

7. Do you have any comments on the application of the financial services rules to ABSs?

8 Do you have any comments on the revised Authorisation Rules?

9. Do you have any comments on the proposed approach to reporting and notification?

10. Do you have any comments on the changes to the SRA Practising Regulations?

11. Do you have any comments on the proposed changes to the SRA Practice Framework Rules?

12. Do you have any comments on the proposed changes to the SRA Recognised Bodies Regulations?

13. Do you have any comments on the revised SRA Disciplinary Procedure Rules?

14. Do you have any comments on the SRA Cost of Investigations Regulations?

15. Do you have any comments on the changes which we have made to the regulations concerning training, admission and rights of audience?

16. Is the SRA Suitability Test a robust, clear, transparent and fair assessment for members of the profession and authorisation as role-holders in ABSs and RBs?

17. Do you agree with our proposal to apply the existing compensation fund to ABSs?

18. Do you agree with our proposal to adopt the same compensation fund rules for ABSs, by extending the application of the existing rules?

19. Do you agree with our proposal for the compensation fund to cover acts or omissions of owners of licensed bodies who are neither managers nor employees?

20. Do you have any comments on our equality impact assessment and are there any additional equality issues that we should consider as we work further on the Handbook?

How to respond

Download and complete an electronic form

1. Download a consultation questionnaire and an "About you form".
2. Save the files locally—before and after completing them.
3. Return your completed forms as email attachments, or by post.

For our telephone numbers and opening hours, and our email and postal addresses, please visit www.sra.org.uk/contact-us.

Download documents at www.sra.org.uk/sra/consultations/OFR-handbook-October.page#download

Send us an email

Please ensure that

- you identify the consultation you are responding to,
- identify yourself and state on whose behalf you are responding (unless you are responding anonymously), and
- if you wish us to treat any part or aspect of your response as confidential, state this clearly.

Deadline for receipt of responses

The deadline for receipt of responses is **13 January 2011**.

Notes

1. N.B. This paper does not address the responses to our April Consultation "Outcomes-focused regulation – transforming the SRA's regulation of legal services". We will publish our report on that document in November 2010.

2. See in particular paragraphs 95, and 182-183 for in-house practice.

3. See www.legalservicesboard.org.uk/what_we_do/consultations/2010/pdf/section_70_consultation_document.pdf (PDF)

4. This is discussed in greater detail in paragraphs 260-267 of this paper.

See Professor Stephen Mayson's report "Reserved Legal Activities – History and Rationale"

5. See also paragraph 63

6. This is dependent on a section 69 Order; see paragraph 33.

7. The obligation not to take unfair advantage of your client is now expressed as a duty to treat your client fairly.

8. The outcome of certain cases that have come before the Solicitors Disciplinary Tribunal is a matter of public record.

9. See www.tribunals.gov.uk/tribunals/documents/rules/grcrulesconsolidated.pdf

10. The Exempting Law Degree is a course combining the Qualifying Law Degree and the Legal Practice Course.