

# **Looking to the Future: Phase two of our Handbook reforms**

## **Impact assessment**

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June 2018

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## Introduction

1. This document builds on our [initial impact assessment](#) in September 2017. It sets out our assessment of the potential impacts of our final policy positions for phase two of our Handbook reforms. We have taken into account the additional impacts identified through consultation. We have assessed potential benefits and risks of our final policy positions. Where we have identified risks, we have set out mitigations.
2. In summary, our final policy positions cover the following areas:
  - Qualified to supervise
  - Assessing character and suitability
  - Training regulations
  - Individual self-employed solicitors
  - How we regulate overseas practice
  - The requirement to have a practising address in England or Wales
  - property selling
  - Our approach to enforcement
  - Claims management and immigration advice
  - Approving managers and owners
  - The formation and management of authorised bodies
  - Financial services.
3. We assessed the proposals with the regulatory objectives<sup>1</sup>, better regulation principles and our wider equality duty in mind (see Annex 1). We believe that our proposals firmly support our regulatory objectives.
4. Very few respondents commented specifically on our initial impact assessment. But many did offer views that helped us gauge their views on the potential impacts. The Law Society did provide some comment on our initial impact assessment. It indicated that our proposals were not supported by a robust cost benefit analysis which in turn made it difficult for stakeholders to determine whether the proposed reforms supported our regulatory objectives.
5. We have produced a proportionate impact assessment. We have considered who are likely to be affected by our proposals and how they are likely to be affected. We are also

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<sup>1</sup> The Legal Services Act 2007 provides a common framework, and set of objectives, for all of the legal services regulators and for our oversight regulator, the Legal Services Board. In deciding how we regulate we need to have regard to these objectives

committed to evaluating the impacts of our reforms once they have been implemented through a post-implementation review<sup>2</sup>.

6. In June 2017 we published the Centre for Strategy and Evaluation Services' (CSES) [evaluation framework](#). This suggested an approach to assessing the impacts of our Looking to the Future reforms and other initiatives and included metrics to support this assessment. We will evaluate impacts drawing on CSES's evaluation framework in a post-implementation review. This will consider consumer, economic, market, equality and diversity impacts. We intend to carry out evaluations at one year and three years after implementation but this timeframe is flexible and will depend on the reform being evaluated.

## Our final policy position: impacts, risks and mitigations

### Final policy positions

7. In some cases, we have changed our position following consultation and in other areas we have decided to continue with our consultation position. We have also made a number of drafting changes in response to both comments provided in consultation and to our own proofreading process as we have finalised the rules. Table 1 summarises our post consultation position. It explains what we aim to achieve by changing our rules and what we have done in the light of consultation responses. More detail is available in our [post consultation position](#).

**Table 1 - Final policy positions**

Final policy position	What this aims to achieve	In response to/following consultation
<p><b>Generic</b></p> <p>Simplification of rules and removal of duplicated legislation</p>	<ul style="list-style-type: none"> <li>easier to navigate</li> <li>increased flexibility through less prescriptive rules</li> <li>better understanding among firms and individuals</li> <li>reduction in overall cost of regulatory compliance</li> <li>more proportionate and targeted regulatory approach</li> </ul>	<ul style="list-style-type: none"> <li>we have changed the drafting of a number of rules based on feedback</li> <li>based on feedback we have identified guidance that we will issue to help those we regulate to comply with our rules</li> </ul>
<b>Which areas are we changing our approach to?</b>		
<p><b>The 'Qualified to supervise' rule</b></p> <p>Replacing the current rule with a post admission practice restriction requiring any</p>	<ul style="list-style-type: none"> <li>removes confusion on what qualified to supervise means</li> <li>basic safeguard to protect clients from inexperienced and newly qualified</li> </ul>	<ul style="list-style-type: none"> <li>we have amended, rather than removed the rule as we proposed in consultation</li> <li>we have decided that it is appropriate to retain some restriction around setting up</li> </ul>

<sup>2</sup> For example, we have published a post implementation review of changes to our requirements for accountants reports: <https://www.sra.org.uk/sra/how-we-work/reports/evaluating-reforms-accountants-reports.page>

Final policy position	What this aims to achieve	In response to/following consultation
<p>authorised firm to have someone with at least three years practice experience as a solicitor</p>	<p>solicitors providing reserved legal services on their own</p> <ul style="list-style-type: none"> <li>focus on experience of legal practice not business management</li> </ul>	<p>or running a practice regulated by us</p>
<p><b>Assessing character and suitability</b></p> <p>More flexible approach. Establishing indicative events/behaviours which apply to all, taking into account the individual's circumstances and nature of their role</p>	<ul style="list-style-type: none"> <li>more proportionate, targeted, transparent and nuanced decisions</li> <li>fact specific, case by case approach</li> <li>simpler process</li> <li>consistent treatment of trainees and apprentices</li> <li>underpins our Enforcement Strategy</li> </ul>	<ul style="list-style-type: none"> <li>to retain, rather than remove, the option of an early test for the small number of individuals who have concerns about character and suitability issues, as we proposed in consultation. These individuals will still need to satisfy the requirements of the character and suitability test at admission. This will provide some certainty for those concerned about potential character and suitability issues before they commit to course fees</li> <li>we intend to rely on a certificate of good standing from other legal services regulators where they have already approved individuals</li> <li>we will rely on certificates of good standing for other regulators where that regulator's character and suitability requirements are similar to ours</li> <li>role holders authorised by other regulators will be under an ongoing duty to report any new issues that are relevant to our character and suitability rules to us</li> <li>we will also offer non-binding advice to individuals where this is requested</li> </ul>
<p><b>Training regulations</b></p> <p>Introduction of transitional arrangements for those on existing pathways to the solicitor qualification</p>	<ul style="list-style-type: none"> <li>to be fair to those who have already invested in the current system and give them the opportunity to continue to qualify under the current system for a period of time if they want to</li> </ul>	<ul style="list-style-type: none"> <li>we have looked again at timing and transition, to make sure that the proposals are fair to all groups. We propose to allow an extra year for Qualified Lawyers Transfer Scheme (QLTS) candidates who have already passed QLTS 1 to complete the QLTS assessments</li> </ul>

Final policy position	What this aims to achieve	In response to/following consultation
<p><b>Individual self-employed solicitors</b></p> <p>Able to provide reserved legal activity outside entity regulation</p>	<ul style="list-style-type: none"> <li>to increase opportunities for individual self-employed solicitors to practise in ways reflecting a flexible market place</li> </ul>	<ul style="list-style-type: none"> <li>clarification that any matter (whether reserved activity or not) must have 'adequate and appropriate' Professional Indemnity Insurance (PII) insurance and a requirement to explain the PII position to clients</li> <li>introduced a rule that a freelance solicitor cannot provide reserved legal services to the public until they have practised for at least three years</li> </ul>
<p><b>How we regulate overseas practice</b></p> <p>Streamlining the Overseas Rules and the European Cross-border Practice Rules</p>	<ul style="list-style-type: none"> <li>more proportionate and targeted</li> <li>deletion of rules duplicated elsewhere</li> <li>reduces potential for updates to the rule being needed</li> </ul>	<ul style="list-style-type: none"> <li>following feedback we have made some technical drafting changes to the overseas rules</li> </ul>
<p><b>Which proposals are we proceeding with (attracted comment but no change to consultation position)?</b></p>		
<p><b>The requirement to have a practising address in England or Wales</b></p> <p>Authorising recognised bodies and recognised sole practitioners with a practising address anywhere in the United Kingdom</p>	<ul style="list-style-type: none"> <li>enables firms in Scotland and Northern Ireland to provide reserved activities</li> <li>more choice for consumers and the associated benefits that brings<sup>3</sup></li> <li>more competition</li> <li>increased diversity of the profession</li> </ul>	<ul style="list-style-type: none"> <li>no change to proposal but we are working with the Legal Ombudsman (LeO) to establish how LeO can effectively investigate complaints in Scotland and Northern Ireland. We will take this forward as part of our ongoing programme of joint working on shared priorities and areas of mutual interest</li> </ul>
<p><b>Property Selling</b></p> <p>Remove rules but retain two provisions as guidance</p>	<ul style="list-style-type: none"> <li>more proportionate and targeted</li> <li>deletion of rules duplicated elsewhere</li> <li>reduces potential for updates to the rule being needed</li> </ul>	<ul style="list-style-type: none"> <li>no change</li> </ul>
<p><b>Our approach to enforcement</b></p> <p>Clear framework and clarity about how, and when, we will enforce</p>	<ul style="list-style-type: none"> <li>flexibility for firms to interpret, apply and meet our standards in a range of ways and business models</li> <li>clarity and transparency on what we consider to be the most serious issues</li> </ul>	<ul style="list-style-type: none"> <li>make sure that the Enforcement Strategy and any underlying documents provide clear guidance on our approach to the health and welfare of solicitors and</li> </ul>

<sup>3</sup> [MoJ is analysing responses to its consultation on removing these statutory requirements for ABS](#)

<b>Final policy position</b>	<b>What this aims to achieve</b>	<b>In response to/following consultation</b>
	<ul style="list-style-type: none"> <li>• more proportionate and targeted approach</li> <li>• single resource for everyone we regulate that includes all the elements, rules and circumstances we will consider in our enforcement activity</li> </ul>	<ul style="list-style-type: none"> <li>• firms involved in our procedures</li> </ul>
<b>Which proposals are we proceeding with (no significant comment and no change to consultation position)</b>		
<p><b>Claims management and Immigration advice</b></p> <p>Restricted to regulated entities (SRA, LSA or sector specific regulators)</p>	<ul style="list-style-type: none"> <li>• aligns practise rights with public policy</li> <li>• restricts immigration and claims management advice to regulated entities</li> </ul>	<ul style="list-style-type: none"> <li>• clarified that this change is about providing immigration advice to the public</li> <li>• amended the wording of our rules to clarify the provision of reserved services and special bodies</li> </ul>
<p><b>Approving managers and owners</b></p> <p>Simplifying process for approving owners and managers</p>	<ul style="list-style-type: none"> <li>• reduces occasions on which individuals must seek approval as role holders</li> <li>• more proportionate and targeted regulation</li> <li>• simplification of rules</li> <li>• reduced costs for applicants and us</li> <li>• barrier to innovation removed</li> </ul>	<ul style="list-style-type: none"> <li>• clarified that those with conditions attached to their practising certificate will not be deemed</li> </ul>
<p><b>Financial Services Rules</b></p> <p>Simplification</p>	<ul style="list-style-type: none"> <li>• shorter and more simple rules</li> </ul>	<ul style="list-style-type: none"> <li>• respondents raised concerns that the removal of secondary legislation from the rules would mean that firms would have to maintain their knowledge of such legislation. We will provide appropriate guidance.</li> </ul>
<p><b>Notice, Application and Review Rules 2018</b></p> <p>New rules to bring provisions about reviewing our decisions into one place</p>	<ul style="list-style-type: none"> <li>• clearer drafting</li> <li>• more consistent approach</li> </ul>	<ul style="list-style-type: none"> <li>• minor drafting changes to clarify how notifications should be made and who will determine a review</li> </ul>
<p><b>Disciplinary Procedure Rules</b></p> <p>Simplification of drafting and broadening to cover all regulatory breaches or misconduct</p>	<ul style="list-style-type: none"> <li>• easier to understand</li> <li>• clarifies our approach to all allegations of regulatory breach or misconduct</li> </ul>	<ul style="list-style-type: none"> <li>• we have aligned our approach to cost of investigations to reflect the broader scope of the Regulatory and Disciplinary Procedure rules in term of finding of a breach or misconduct</li> <li>• we have retained the charging framework that we</li> </ul>

Final policy position	What this aims to achieve	In response to/following consultation
		currently use to recover costs where we sanction firms/individuals <ul style="list-style-type: none"> <li>• we have included a provision for costs in the rules</li> <li>• we have removed the fee we charge for unsuccessful appeals</li> </ul>
<b>Forming and managing authorised bodies</b>  Allowing more corporate managers of authorised bodies	<ul style="list-style-type: none"> <li>• removes artificial barrier to authorisation</li> <li>• allows firms/individuals to structure themselves in most efficient way</li> </ul>	<ul style="list-style-type: none"> <li>• no change</li> </ul>

### Summary of potential impacts of our decisions

8. Table 2 summarises the key impacts that could occur because of our reforms. This incorporates the views provided to us in response to our consultation, as well as our own analysis. We have not weighted the potential impacts in this table. We have then set out some more detail on impacts in the remainder of this paper.



**Table 2 - Summary of potential impacts of our reforms**

In table 2 the upward arrows show potential benefits; downward arrows potential risks

Proposed change	Market	Firms	Solicitors/Intending solicitors	Consumers
<b>Simplification of rules</b>	<ul style="list-style-type: none"> <li>↑ opportunities for innovation created by increased flexibility</li> </ul>	<ul style="list-style-type: none"> <li>↑ easier to navigate</li> <li>↑ lower compliance costs</li> <li>↑ increased flexibility of less prescriptive rules</li> <li>↑ improved understanding</li> <li>↑ less frequent updates needed to our regulatory arrangements</li> <li>↑ less need to apply for waivers</li> <li>↑ shorter and more focused</li> <li>↑ more proportionate and targeted regulation</li> <li>↓ transitional ('familiarisation') cost</li> <li>↓ burden on small firms that may be used to prescription</li> <li>↓ potential uncertainty about what constitutes compliance</li> </ul>	<ul style="list-style-type: none"> <li>↑ easier to navigate</li> <li>↑ lower compliance costs</li> <li>↑ increased flexibility of less prescriptive rules</li> <li>↑ improved understanding</li> <li>↑ less frequent updates needed to our regulatory arrangements</li> <li>↑ less need to apply for waivers</li> <li>↑ shorter and more focussed</li> <li>↑ more proportionate and targeted regulation</li> <li>↓ transitional ('familiarisation') cost</li> <li>↓ potential uncertainty about what constitutes compliance</li> </ul>	<ul style="list-style-type: none"> <li>↑ potential for lower compliance costs to be passed on in cheaper prices</li> <li>↑ our regulations can be more easily understood by consumers</li> </ul>
<b>Which areas are we changing our approach to?</b>				
<p><b>The 'Qualified to supervise' rule</b></p> <p>Replacing the current rule with a post admission practice restriction requiring any authorised firm to have someone with at least three</p>	<ul style="list-style-type: none"> <li>↑ assurances that skills have been developed, and experience obtained of practice in a professional, regulated environment before an individual can practise unsupervised</li> </ul>	<ul style="list-style-type: none"> <li>↑ removes confusion about rule</li> </ul>	<ul style="list-style-type: none"> <li>↑ removes confusion about rule</li> </ul>	<ul style="list-style-type: none"> <li>↑ appropriate protections provided through our other regulations</li> <li>↑ assurances that skills have been developed, and experience obtained of practice in a professional, regulated environment</li> </ul>

Proposed change	Market	Firms	Solicitors/Intending solicitors	Consumers
years' practice experience as a solicitor				before an individual can practice unsupervised
<p><b>Assessing character and suitability</b></p> <p>More flexible approach. Establishing indicative events/behaviours which apply to all, taking into account the individual's circumstances and nature of their role</p>	<p>↑ more proportionate, transparent, and nuanced decisions</p>	<p>↑ deemed suitability for authorised persons to be managers or owners</p>	<p>↑ fact specific, case by case approach and more discretion in decision making will enable decisions to be more fair, proportionate and transparent for the applicant</p> <p>↑ increased ability to admit some individuals that we think (on balance) should be admitted to the profession (as they either pose no current regulatory risk, or that regulatory risk can be effectively managed by conditions on their practising certificate).</p> <p>↑ continued ability for candidates with possible issue to apply for early check before commit to cost and time of professional courses.</p> <p>↑ same test applies to solicitors, registered European lawyers (RELs) and registered foreign lawyers (RFLs)</p> <p>↑ clearer rules</p>	<p>↑ consumers can have increased confidence in our character and suitability assessment</p>

Proposed change	Market	Firms	Solicitors/Intending solicitors	Consumers
<p><b>Training regulations</b></p> <p>Introduction of transitional arrangements for those on existing pathways to the solicitor qualification</p>	<p>↑ period to allow individuals to qualify under the current system</p> <p>↑ Solicitors Qualifying Examination (SQE) provides the mechanism for candidates to qualify through alternative pathways</p> <p>↑ period of choice during transition gives market time to adjust to new system</p>	<p>↑ firms able to plan for introduction of the SQE and how it might impact their current and future trainees</p> <p>↓ some firms may need to run two systems in parallel for a period of time</p>	<p>↑ period to allow individuals that have started to qualify under the current system to complete</p> <p>↑ SQE provides mechanism for candidates to qualify through alternative pathways increasing access to the profession</p>	<p>↑ SQE provides assurance of consistent, high professional standards</p>
<p><b>Individual self-employed solicitors</b></p> <p>Able to provide reserved legal activity outside entity regulation</p>	<p>↑ removes restriction on practise</p>	<p>No impact</p>	<p>↑ more flexible ways of providing services and sharing costs</p> <p>↑ solicitors able to offer services without creating artificial and unnecessary firm structures</p> <p>↑ diversity benefits – opportunities for flexible working or people returning to work after a break (childcare, carers leave etc)</p> <p>↓ potential risk of artificial arrangements being made to avoid entity regulation</p>	<p>↑ consumers have more choice</p>
<p><b>How we regulate overseas practice</b></p> <p>Streamlining the Overseas Rules and the European Cross-border Practice Rules</p>	<p>= neutral – approach is the same</p>	<p>↑ removal of duplication of rules elsewhere increases clarity and accessibility of our rules</p>	<p>↑ removal of duplication of rules elsewhere increases clarity and accessibility of our rules</p>	<p>= neutral – approach is the same</p>

Proposed change	Market	Firms	Solicitors/Intending solicitors	Consumers
<b>Which proposals are we proceeding with (attracted comment but no change to consultation position)?</b>				
<p><b>The requirement to have a practising address in England or Wales</b></p> <p>Authorising recognised bodies and recognised sole practitioners with a practising address anywhere in the United Kingdom</p>	<p>↑ increased competition and choice</p> <p>↓ enforcement could be more complicated and/or expensive for those outside England and Wales</p>	<p>↑ relaxation of rules provides opportunities for prospective firms</p> <p>↑ no longer a need to apply for a waiver</p> <p>↑ increased diversity of profession</p> <p>↑ increased diversity of business models</p> <p>↑ increased diversity of supply mechanisms</p> <p>↓ more competition for incumbent firms</p>	<p>↑ increased diversity of profession</p>	<p>↑ consumers have more choice</p> <p>↑ competition could drive down price, increase accessibility to the legal service market and reduce unmet demand</p> <p>↓ operational challenges for LeO</p>
<p><b>Property Selling</b></p> <p>Remove rules but retain two provisions as guidance</p>	No impact	<p>↑ removal of duplication of rules elsewhere increases clarity and accessibility of our rules</p>	<p>↑ removal of duplication of rules elsewhere increases clarity and accessibility of our rules</p>	No impact
<p><b>Our approach to enforcement</b></p> <p>Clear framework and clarity about how, and when, we will enforce</p>	<p>↑ improved consistency of internal decision making</p>	<p>↑ flexibility to interpret, apply and meet our standards in a number of ways and in different business models</p> <p>↑ increased clarity and transparency on what we consider to be serious issues and when we will act</p>	<p>↑ flexibility to interpret, apply and meet our standards in a number of ways and in different business models</p> <p>↑ increased clarity and transparency on what we consider to be serious issues and when we will act</p>	<p>↑ public confidence that solicitors held to account for serious breaches</p>

Proposed change	Market	Firms	Solicitors/Intending solicitors	Consumers
<b>Which proposals are we proceeding with (no significant comment and no change to consultation position)?</b>				
<b>Claims management and immigration advice</b> Restricted to regulated entities (SRA, LSA or sector specific regulators)	No impact	No impact	↑ able to provide non-reserved legal services outside of LSA-regulated firm	↑ greater clarity about regulatory protection
<b>Approving managers and owners</b> Simplifying process for approving owners and managers	↑ removal of duplication between regulators ↑ reduction in number of waivers ↑ lower volume of cases for us to assess means lower costs	↑ more streamlined process ↑ less bureaucratic ↑ less costly ↑ no duplication of regulation	↑ more streamlined process ↑ less bureaucratic ↑ less costly ↑ no duplication of regulation	No impact
<b>Financial Services Rules</b> Simplification	↑ easier to understand for all stakeholders with an interest in financial rules	↑ shorter and more focussed ↑ lower compliance costs ↓ transitional effort involved in complying	↑ shorter and more focussed ↑ lower compliance costs ↓ transitional effort involved in complying	No impact
<b>Notice, Application and Review Rules 2018</b> New rules to bring provisions about reviewing our decisions into one place	No impact	↑ easier to understand as provisions brought together into one new, simpler set of rules ↑ more consistent and clearer drafting approach	↑ easier to understand as provisions brought together into one new, simpler set of rules ↑ more consistent and clearer drafting approach	No impact
<b>Disciplinary Procedure Rules</b> Simplification of drafting and broadening to cover all regulatory breaches or misconduct	↑ clarity on our approach to all allegations of regulatory breach or misconduct	↑ greater clarity on our approach to all allegations of regulatory breach or misconduct ↑ greater clarity, transparency and consistency of approach to	↑ greater clarity on our approach to all allegations of regulatory breach or misconduct ↑ greater clarity, transparency and consistency of approach to	↑ greater clarity on our approach to all allegations of regulatory breach or misconduct

Proposed change	Market	Firms	Solicitors/Intending solicitors	Consumers
		regulatory investigations and decision making	regulatory investigations and decision making	
<b>Forming and managing authorised bodies</b>  Allowing more corporate managers of authorised bodies	↑ removes artificial barriers to authorisation ↑ focus on those who really control the firm	↑ allows firms to structure themselves in most efficient way	↑ allows solicitors to structure firms in most efficient way for them	No impact

## Potential risks of reforms and mitigating actions

9. We recognise that there are risks and we have identified, and put in place, measures/initiatives to guard against these impacts emerging. Table 3 summarises some of the key risks that have been identified during our analysis, stakeholder engagement and research.

**Table 3 - Potential risks of reforms and mitigating actions**

Proposed change	Risk	Mitigation
<b>Which areas are we changing our approach to?</b>		
<p><b>The ‘Qualified to supervise’ rule</b></p> <p>Replacing the current rule with a post admission practice restriction requiring any authorised firm to have someone with at least three years practice experience as a solicitor</p>	<ul style="list-style-type: none"> <li>could stifle competition by preventing new entrants to market without providing assurance of standards</li> <li>could result in “training contract bottleneck” (which is being addressed through introduction of SQE) moving to point of admission</li> </ul>	<ul style="list-style-type: none"> <li>monitor market impact and, in particular, any evidence of bottleneck at point of admission</li> </ul>
<p><b>Training regulations</b></p> <p>Introduction of transitional arrangements for those on existing pathways to the solicitor qualification</p>	<ul style="list-style-type: none"> <li>candidates could have started their route into the profession based on the current system</li> <li>some candidates may be unable to qualify under the existing system because they have to take time out for reasons such as illness or caring responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>the transitional arrangements provide a reasonable opportunity for individuals who have invested time and money on the existing qualification framework when the SQE comes into force to have a period in which to complete in the existing system</li> <li>lengthy transitional period – 11 years</li> <li>give reasonable notice of transitional arrangements including warnings of long-stop date</li> </ul>
<p><b>Individual self-employed solicitors</b></p> <p>Able to provide reserved legal activity outside entity regulation</p>	<ul style="list-style-type: none"> <li>potential risk of artificial arrangements being made by some practitioners to avoid entity regulation</li> <li>increased consumer confusion about regulatory protections</li> <li>increased client risk if checks currently imposed on recognised sole practitioners are removed</li> </ul>	<ul style="list-style-type: none"> <li>the requirement to contract personally for services and to have ‘adequate and appropriate’ PII/client money restrictions will make such arrangements unlikely. However, we will issue guidance on the issue, and take regulatory action where appropriate</li> <li>through our Better Information reforms we will require solicitors to provide clarity about the regulatory protections available</li> </ul>

Proposed change	Risk	Mitigation
	<ul style="list-style-type: none"> <li>they could provide reserved legal services with insufficient experience</li> </ul>	<ul style="list-style-type: none"> <li>we will require freelancers to have a minimum three years practising experience before they can set up as freelancer</li> </ul>
<b>Which proposals are we proceeding with (attracted comment but no change to consultation position)?</b>		
<p><b>The requirement to have a practising address in England or Wales</b></p> <p>Authorising recognised bodies (RB) and recognised sole practitioners with a practising address anywhere in the United Kingdom</p>	<ul style="list-style-type: none"> <li>enforcement more complicated/expensive against firms we regulate outside the current jurisdiction</li> <li>reputational risk if we find it difficult to address emerging issues</li> <li>inconsistency of requirements for RBs/ recognised sole practitioners and alternative business structures (ABSs)</li> <li>potential limitations for redress of consumer complaints to LeO as outside their jurisdiction</li> <li>difficulty in obtaining information from those we regulate</li> </ul>	<ul style="list-style-type: none"> <li>difficulties of verification and enforcement do not arise in the same way as they would outside of United Kingdom.</li> <li>if Parliament removes the statutory requirements for ABS we will widen our rules in the same way for those firms.</li> <li>we are working with LeO to make sure appropriate redress options for firms outside of England and Wales as this is beyond LeO's jurisdiction Firms/individuals are required under the Code to provide the information that we ask for</li> </ul>
<p><b>Our approach to enforcement</b></p> <p>Clear framework and clarity about how, and when, we will enforce</p>	<ul style="list-style-type: none"> <li>lack of clarity on what we regard as breaches of regulatory arrangements</li> <li>lack of clarity about how we would take mental health into account</li> </ul>	<ul style="list-style-type: none"> <li>we will provide examples of 'grey areas' alongside the final strategy in the form of topic guides, and associated guidance material.</li> <li>single resource for everyone we regulate that includes all the elements, rules and circumstances we will consider in our enforcement activity</li> <li>developing new guidance on issues and events that those that we regulate need to report to us</li> <li>we will make sure that the enforcement strategy and/or underlying documents provides clear guidance on our approach to health and welfare of solicitors and firms involved in our procedures</li> </ul>
<b>Property Selling</b>	<ul style="list-style-type: none"> <li>consumers might not understand situations in</li> </ul>	<ul style="list-style-type: none"> <li>retain as guidance some of the requirements setting out the</li> </ul>



Proposed change	Risk	Mitigation
Remove rules but retain two provisions in guidance	<p>which they are liable to pay a fee</p> <ul style="list-style-type: none"> <li>consumers might receive less information using a solicitor than they would from an estate agent</li> </ul>	<p>specific charging structures used in estate agency</p> <ul style="list-style-type: none"> <li>expectation that solicitors will provide information on the terms 'sole agency' and 'sole selling rights'</li> </ul>
<b>Which proposals are we proceeding with (no significant comment and no change to consultation position)</b>		
<p><b>Claims management and Immigration advice</b></p> <p>Restricted to regulated entities (SRA, LSA or sector specific regulators)</p>	<ul style="list-style-type: none"> <li>potential overlap of regulatory functions where solicitors work in a body overseen by the sector specific regulator</li> <li>insufficient clarity about the proposals relating to the provision of reserved services and special bodies</li> </ul>	<ul style="list-style-type: none"> <li>we continue to work with the sector specific regulators Office of the Immigration Services Commissioner (OISC), Claims Management Regulator (CMR)</li> <li>we have clarified rules around the provision of immigration advice in respect of reserved services and special bodies</li> </ul>
<p><b>Approving managers and owners</b></p> <p>Simplifying process for approving owners and managers</p>	<ul style="list-style-type: none"> <li>we may not be aware of events that could occur in relation to those individuals approved by other regulators</li> </ul>	<ul style="list-style-type: none"> <li>requiring good standing confirmation from other regulators on first approval</li> <li>requirement to indicate whether anything has happened that impacts on their fitness specifically as a role holder</li> </ul>
<p><b>Financial Services Rules</b></p> <p>Simplification and removal of rules which duplicate legislation</p>	<ul style="list-style-type: none"> <li>firms may find it more difficult to stay up to date with secondary legislation that is currently in the rules if this is removed</li> </ul>	<ul style="list-style-type: none"> <li>will take this into account when we design support package for firms</li> </ul>
<p><b>Notification, Application and Review Rules 2018</b></p> <p>New rules to bring provisions about reviewing our decisions into one place</p>	<ul style="list-style-type: none"> <li>none identified – simplification only</li> </ul>	
<p><b>Forming and managing authorised bodies</b></p> <p>Enabling licensed bodies to be managed by a corporate body</p>	<ul style="list-style-type: none"> <li>may allow opaque structures where it is unclear which individuals are responsible</li> </ul>	<ul style="list-style-type: none"> <li>we will consider ultimate control, before granting approval, through our authorisation process</li> </ul>

Proposed change	Risk	Mitigation
<p><b>Disciplinary Procedure Rules</b></p> <p>Simplification of drafting and broadening to cover all regulatory breaches or misconduct</p>	<ul style="list-style-type: none"> <li>• none identified - simplification and broadening only</li> </ul>	

10. We believe that on balance our proposals will:

- increase opportunities for innovation
- enhance competition
- improve standards
- reduce unnecessary bureaucracy.

## Our proposals

### Simplification of rules

Decisions on simplifying rules
<ul style="list-style-type: none"><li>• Shorter and simpler.</li><li>• Remove unnecessary duplication of rules elsewhere.</li><li>• Clearer language consistent with our approach to the Principles and Codes in Looking to the Future phase one.</li></ul>



11. In our phase one [consultation](#) and [impact assessment](#) we set out views on our Handbook from those we regulate. They included that the current Handbook:

- is too long
- duplicates other legislative and regulatory obligations
- is too prescriptive
- needs changing too often to keep up with changes to the market and so is often out of date.

12. We note that firms think too much time is spent trying to keep up and comply with technical detail. This is seen by the sector as one of the highest costs of regulation.

13. We noted that, overall, individuals who are compliant with our current Principles and Codes, and who do not want to change arrangements, will not need to do so. We also noted that we would provide support for firms in the transitional period through, for example, publication of guidance.

14. In our phase one impact assessment we identified that a move away from prescriptive rules could result in a disproportionate or particularly high burden on small firms. This could translate to impacts on Black and Asian and minority ethnic (BAME) and older solicitors because they are disproportionately represented in small firms and sole practices.

#### *Consultation responses*

15. The Law Society felt that we had over-simplified the impacts of shortening our current Handbook in our initial impact assessment. They also felt we had not taken into account the guidance we plan to publish alongside our new regulatory arrangements in order to help firms/individuals comply with our rules.

16. We are still developing this guidance. However, we believe that the overall impact of our simplification of our regulatory arrangements, alongside our guidance documents, will reduce compliance costs for the firms/individuals we regulate.

#### *Impact of simplifying our rules*

17. We have significantly reduced the length of our regulatory arrangements with our proposed reforms to the current Handbook and simplified it to make it easier for the user.

18. We believe this simplification will give firms more flexibility both in how to run their businesses and how to meet our standards. This will also encourage businesses to own and internalise our standards instead of just implementing prescriptive requirements without reflecting on why or how they are appropriate.

19. By stripping out unnecessary regulation and using higher level rules our new regulatory arrangements should better stand the test of time. As of 1 October 2017, the current Handbook is on version 19 since its publication in 2011. Its detailed and prescriptive rules need constant updating. Our proposals are consistent with the better regulation principles of making sure our rules are transparent, proportionate and targeted.

20. We will assess these impacts as part of our post implementation review to gauge whether firms believe their compliance costs have changed as a result of the revised and simplified regulatory arrangements (and associated guidance). We will aim to establish, in our post implementation review, whether smaller firms' compliance costs are impacted differently to larger firms.

21. We will evaluate the impacts of our reforms using CSES' evaluation framework. This framework explicitly includes equality, diversity and inclusion impacts.

## **Which areas are we changing our approach to?**

### **The 'Qualified to Supervise' rule**

#### **Decisions on qualified to supervise**

- Replace the existing qualified to supervise rule with a practice restriction so that any SRA authorised firm (including a Recognised Sole Practice) must have at least one manager or employee who has practised as an authorised person for three year's post-admission.
- Option for firms to procure the services of an individual that meets this requirement.
- Restriction on solicitors and RELs practising on their own, requiring them to have three years' experience before they can deliver reserved legal services as a freelancer.
- Removed our requirement to attend a 12-hour management course.

22. Our current rules require the firms we regulate to have an individual who is 'qualified to supervise' within their management structure.
23. The rule was introduced to make sure that an individual has developed the technical and business competences to run a business, but it has caused some confusion. For example, we have heard the mistaken views that solicitors must themselves be supervised for at least three years post-admission, or that a solicitor must have three years' experience before they can set up as a sole practitioner. The rule has effectively created a barrier to market entry, by preventing solicitors establishing their own firms as soon as they qualify.

#### *Consultation responses*

24. Some respondents felt that our proposal to remove the rule would mean that firms without someone of three years post qualification experience would find it hard to get professional indemnity insurance or would find it prohibitively expensive. Any higher costs were likely to be passed on to clients which would make sole practices run by newly qualified solicitors uncompetitive. Based on the Law Society research<sup>4</sup> sole practitioners PII premium relative to turnover is already higher than larger firms (for example 7 per cent relative to 5.5 percent for firms with 2 - 4 partners).
25. Some argued that it removed a barrier to entry but at the cost of lower customer protection. In turn this was thought to increase the risks of poor quality of service, increased complaints and reputational damage to the profession.

#### *Potential impacts*

26. Our new rule will mean that actual experience is necessary as opposed to mere entitlement to practise with a focus on experience of legal practice not business management. In addition, the individual will have an obligation to supervise the work as opposed to merely being employed in the firm.
27. This provides a basic safeguard to protect clients from inexperienced and newly-qualified solicitors providing reserved legal services on their own.
28. A potential impact is that this could stifle competition by preventing new entrants to market, without providing any assurance of standards. It could also result in "training contract bottleneck" (which is being addressed through introduction of SQE) moving to point of admission. We will monitor market impacts particularly any evidence of bottleneck at point of admission. Part of that will be looking at any differential impacts on groups of solicitors, including BAME solicitors and solicitors with disabilities.

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<http://www.lawsociety.org.uk/support-services/research-trends/law-society-annual-professional-indemnity-insurance-survey-confirms-favourable-market-for-firms/>

## Assessing character and suitability

### Decisions on assessing character and suitability

- Maintaining the facility for students to obtain a formal character and suitability decision at any time before making an application for admission, including therefore before embarking on the Legal Practice Course.
- More flexible approach - moving to a set of indicative events/behaviours, aggravating and mitigating factors which will apply equally to all, taking account of an individual's circumstances and the nature of their role.
- Extend elements of the test to apply to RELs and RFLs for the first time.
- We will continue to rely on certificates of good standing for individuals authorised by other legal services regulators.
- We will rely on certificates of good standing for other regulators where we are satisfied that the regulator operates a suitable equivalent regime.
- Role holders authorised by other regulators will be under an ongoing duty to report any new issues that are relevant to our character and suitability rules to us.
- Using our existing powers more effectively to impose practising certificate conditions at the point of authorisation.

29. We explained in our [phase one response document](#) that our current suitability test is rigid and very binary in its approach. We are not convinced that a one-size-fits-all test works for admissions, qualified lawyer transfers, restoration to the Roll, and approval of managers or owners as authorised role holders.

30. Our approach to assessing character and suitability is compatible with our [revised Enforcement Strategy](#). However, it does not replicate it. It is right that we use a different test depending on whether we are considering access to rights (admission to the profession) or retaining rights (removing an individual's right to practise).

31. We will monitor the profile of solicitors we assess for any impacts on particular groups.

### *Consultation responses*

32. Respondents were generally supportive of our proposed approach. However, some respondents wanted to retain the early decision, including universities, education and training providers, and the Law Society. Education providers were concerned that the onus could be put on them to advise students on character and suitability issues.

33. One respondent asked us to consider how best to monitor the effects of the proposal (particularly with regard to reducing barriers and increasing the diversity of background and experience of those admitted as qualified).

### *Potential impacts*

34. The combination of our retention of the early test and the greater flexibility of our new approach will give greater scope for admission to the profession than our current approach.
35. Retention of the early test provides a safeguard for students so that they are less at risk of spending money on training but being denied admission to the profession.

### *Support tools*

36. We will offer advice to students at any time before applying for admission. This advice would be non-binding. We will also retain the option of applying for an early assessment.
37. We will streamline our processes but the onus will remain on individuals to provide evidence to support their application for assessment of their character and suitability. That will be the case for admission, approval as a role holder, or restoration to the roll.

## **Our Training Regulations**

### **Decisions on transitional arrangements**

- Introduce transitional arrangements for anyone who has invested significant time and money in the current system at the time the SQE is introduced:
  - individuals who have passed the QLTS assessment 1 must have completed their QLTS assessments within one year of the SQE being implemented
  - for individuals on other pathways (eg QLD/CPE) to have completed within 11 years of the introduction of the SQE.
- Not to include the rule requiring training providers to pay the minimum wage to trainees in accordance with the minimum wage legislation.

38. We are proposing that any individual who has started, or who has entered into a contractual agreement or made a non-refundable financial commitment to start, any of the following:

- a Qualifying Law Degree
- a C
- an Exempting Law Degree
- an Integrated Course
- the Legal Practice Course
- a period of recognised training

before the SQE comes into force will be able to continue on that pathway. However, this will be subject to a cut-off date of 11 years after the SQE is introduced. Alternatively, they will also be able to choose to qualify under the SQE.

39. For those individuals who have started the QLTS assessment before the SQE is introduced we are proposing that they complete the QLTS within one year of the SQE's implementation.
40. We have not included the current rule requiring training providers to pay the minimum wage to trainees in accordance with the minimum wage legislation. Training providers are already obliged to comply with this, as they are with any other legislation. This means, however, that training providers offering solicitor apprenticeships will be able to apply any relevant exceptions in the legislation applying to apprentices. We do not consider that it is the SRA's role to set salaries in the profession, and we do not wish to place additional barriers in the way in which providers offer apprenticeships or training contracts.

#### *Consultation responses*

41. Some respondents disagreed with our position on removing the minimum wage requirement for trainees. One respondent's view was that a minimum salary for trainee solicitors has a positive impact on equality and diversity within the legal profession.
42. One respondent indicated that individuals from a BAME background account for a high proportion of QLTS candidates. The respondent suggested that our transitional arrangements should not prevent candidates from continuing that course of study – they should be allowed to finish subject to a long-stop date.

#### *Potential impacts*

43. For a period of 11 years individuals will be able to satisfy our training regulations through two routes - the current pathways or the SQE. For this period we will operate two processes to assess an individual's admission to the profession.
44. Our transitional arrangements will allow individuals who have started on the existing qualification framework, and invested a significant amount of time and money, a period to qualify. In response to consultation we will allow an extra year for candidates who have already passed QLTS 1 to complete their QLTS assessments. This will be of benefit to BAME candidates who are disproportionately represented on QLTS.
45. One respondent suggested that our proposals could lead to training providers and employers preferring the apprenticeship route over others which could impact on social mobility and diversity in the profession.

#### *Support tools*

46. We will provide support, including case studies and guidance, for candidates and employers on:
- the different ways to meet the requirements of the period of qualifying work experience



- our policy for recognising qualified lawyers.

## Individual self-employed solicitors

Decisions on individual self-employed solicitors
<ul style="list-style-type: none"><li>• We propose to allow individual self-employed solicitors to provide reserved legal services to the public, subject to a number of safeguards including:<ul style="list-style-type: none"><li>○ adequate and appropriate PII</li><li>○ access to the Compensation Fund</li><li>○ restrictions on holding client money.</li></ul></li></ul>



47. We propose to allow individual self-employed solicitors or RELs to provide reserved legal services to the public or a section of the public on their own account without the need to become a Recognised Sole Practice or to work through an Authorised Body.

48. The solicitor or REL would:

- need to be acting as an individual (and therefore without employees or partners and not through a service company) and the client would have to engage and pay them personally
- need a practising address in the UK
- be required to take out and maintain insurance that provides adequate and appropriate insurance cover in respect of the activities
- not be allowed to hold client money except in respect of fees and disbursements if held or received prior to a bill (where any money that comprises disbursements relates to costs or expenses incurred by the solicitor or REL on behalf of their client and for which they are liable).

### *Consultation responses*

49. A minority of respondents agreed with the proposal. Reasons given for that support included:

- it would make services more accessible and a lower cost than a regulated law firm
- The change reflected the reality of flexible working in the 21<sup>st</sup> century enabling self-employed solicitors to offer a wide range of services and enable them to work in more flexible ways.
- it would give solicitors the same freedoms as barristers to operate in this way

- Commercial clients recognised the trade-off between cost and nature of services and did not require a high level of insurance cover.

50. Some respondents said that their support for the proposal was conditional on the self-employed solicitors being required to maintain PII on the SRA's minimum terms and conditions (MTCs).

51. Where respondents disagreed, reasons given were largely around consumer protection. For example:

- no requirements to comply with our MTCs on PII
- no obligation to have in place systems and procedures, including those to identify and deal with conflicts, safeguard confidentiality and record undertakings
- confusion about the regulatory protections available from a recognised sole practitioner and an individual self-employed solicitor.

#### *Potential impacts*

52. Our new rules will mean that an individual freelance solicitor would not need to artificially create an entity around them. The potential advantages of operating as a self-employed solicitor, rather than as a recognised sole practitioner or through a regulated firm, include:

- Reduced PII costs where the practice is low risk.
- Not having to appoint and get approval for a Compliance Officer for Legal Practice and a Compliance Officer for Finance and Administration.
- Not being required to comply with the provisions of the Code for firms.
- Not being subject to the process or the £200 application fee for authorisation as a Recognised Sole Practice.

53. We are aware from previous research that BAME solicitors are more likely to set up business on their own partly because they are less likely to achieve partnership than white solicitors (this is especially the case for BAME female solicitors).<sup>5</sup> Proposals that make it easier to set up as a freelance solicitor are therefore likely to benefit BAME solicitors.

#### *Support tools*

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<sup>5</sup> See <http://www.sra.org.uk/sra/how-we-work/reports/diversity-legal-profession.page>

54. We are aware of a potential risk that some practitioners may seek to avoid the need for firm authorisation by artificial arrangements and be classified as individual self-employed solicitors. We consider that the requirements to contract and be paid personally for services and to have appropriate PII, and the client money restrictions, will make such arrangements unlikely, but we will issue guidance on the issue and take regulatory action where appropriate.

55. To avoid client confusion about regulatory status and regulatory protections solicitors will be required to:

- explain their regulatory position to clients before engagement, including PII arrangements
- appear on our digital register
- be subject to our [Better Information requirements](#) to publish details on prices, complaints procedures and recourse to LeO.

## How we regulate overseas practice

### Decisions on regulation of overseas practice

- Streamlining the Overseas Rules and European Cross-border Practice Rules.
- Stripping out prescriptive drafting that originates in the Council of Bars and Law Societies of Europe (CCBE's) Code.
- Removing Principle 7 that required a proper standard of service to be provided to clients.
- Requirement for those operating in European jurisdictions or cross border to have regard to the CCBE Code.

56. The European Cross Border Practice Rules largely duplicate parts of the CCBE's Code of Conduct. We do not consider it necessary to continue this duplication. However, in response to consultation we have made some changes to the technical drafting of the rule.

### *Consultation responses*

57. Around half of respondents who answered this question agreed with our proposal. The responses we received were:

- Our proposals would not mean any loss of protection.
- It would not reduce regulatory burden – because of a shorter rule – because firms would have to separately look at the CCBE Code.

- it could increase regulatory burden as it appeared to impose higher standards than currently in place (the current requirement to report ‘material and systemic breaches’ and the proposed ‘any serious breach’).
- we should not pursue this proposal until the outcome of the Brexit negotiations is known.

### *Potential impacts*

58. By referring users to the provisions of the CCBE Code we avoid the need to mirror any updates to the CCBE’s Code in our rule. This will help to make sure that our rule remains valid into the future, without needing constant updating.

## **Which proposals are we proceeding with (attracted comment but no change to consultation position)?**

### **The requirement to have a practising address in England or Wales**

<b>Decisions on loosening restrictions on practising addresses</b>
<ul style="list-style-type: none"> <li>• Widening our rule so that we can authorise recognised bodies and recognised sole practitioners that have a practising address anywhere in the United Kingdom (this is currently restricted to England and Wales).</li> </ul>



59. The Legal Services Act requires ABS – save for companies and LLPs with a registered office in England or Wales – to have a practising address in England or Wales. For recognised bodies and recognised sole practitioners this requirement stems only from our rules ie our rules go further than legislation by requiring all firms we regulate to provide services from a physical base in England or Wales. We proposed amending our current requirement so that recognised bodies or recognised sole practices could have a practising address anywhere in the UK.

60. The Ministry of Justice (MoJ) has [consulted on removing the statutory requirement for ABS](#) and is currently analysing the responses it received. We agreed with the MoJ’s position that a consistent approach should be taken and that there is no reason why there should be statutory restrictions for ABSs when they do not exist for other types of legal services firms. If and when Parliament removes the statutory requirements for ABS we will widen our rules in the same way for those firms.

### *Consultation responses*

61. There was broad support for this proposal. Some respondents endorsed our views from the initial impact assessment that this reform could increase competition by removing an unnecessary barrier to customer choice. Some particularly noted that it could give rise to increased online provision of legal services.

62. However, some respondents suggested that it posed issues for enforcement. One respondent suggested that it could increase our enforcement costs. Others questioned the implications for customers' ability to seek redress owing to the jurisdiction of LeO being confined to England and Wales.

*Potential impacts*

63. Firms based in Scotland and Northern Ireland will be able to offer reserved legal services to consumers in England and Wales. We expect this to lead to more consumer choice and scope for greater diversity in both delivery models and the solicitor profession.

64. We will discuss jurisdictional issues with LeO.

65. We do not anticipate any significant increase in our enforcement costs arising from this proposal as we expect the number of cases involved will be small.

66. Authorising businesses with a practising address anywhere in the United Kingdom could potentially increase diversity in the profession if new entrants have different characteristics to incumbent firms. Respondents to the consultation indicated that it would remove unnecessary restrictions, give more choice to consumers and lead to a more competitive environment. We will monitor the profile of the businesses we authorise to establish whether diversity is increased.

**Property Selling**

<b>Decisions on Property Selling Rules</b>
<ul style="list-style-type: none"><li>• Remove property selling rules from our current Handbook.</li><li>• Issue guidance on the two key terms used for fee charging (sole agency and sole selling rights).</li></ul>



67. These rules mirror provisions in the Estate Agents Act 1979, including references to some sections which have never been enacted. Our approach to our new regulatory arrangements is to remove provisions that duplicate legislation as it is an unnecessary repetition of requirements set out elsewhere.

*Consultation responses*

68. Nearly all respondents to the consultation did not identify any unintended consequences of removing the Property Selling Rules or did not respond to the question.

69. The lead enforcement authority of the Estate Agents Act 1979 responded to consultation raising some concerns and challenges over jurisdiction.

*Potential impacts*

70. We have identified two potential risks with this approach:

- consumers might not understand when they are liable to pay a fee
- consumers might receive less information using a solicitor than they would through an estate agent.

71. To mitigate these risks, we propose that businesses provide information on the meaning of the terms 'sole agency' and 'sole selling rights' if they are using one of these charging structures. We will also have a requirement in the new Code of Conduct for solicitors to make sure that clients receive the best possible information about how their matter will be priced.

### **Our approach to enforcement**

<b>Decisions on our Enforcement Strategy</b>
<ul style="list-style-type: none"><li>• Clear framework that solicitors and firms should find much easier to understand.</li><li>• Provides guide to the expected behaviours that underpin our standards.</li><li>• Clarity about how, and when, we will and will not enforce.</li><li>• Clarity about events that those that we regulate need to report to us.</li></ul>



72. Our revised Enforcement Strategy underpins our Principles and Codes of Conduct. We have made it clear and transparent to both the profession and our staff. The strategy moves away from a prescriptive compliance model towards a flexible and transparent framework that can be clearly understood by those we regulate.

73. Our approach requires firms and individuals to exercise their judgment in applying our standards to their situation and deciding the appropriate course of action. If our standards are not met, we will assess the risks posed to both the public and to our regulatory objectives as set out in the LSA. We then take appropriate action.

#### *Consultation responses*

74. Comments from respondents included:

- the strategy could be too fluid with a need to keep documents up-to-date. This could reduce regulatory certainty for firms/individuals. the proposal to include guidance/case studies alongside the enforcement strategy signalled that the strategy was not sufficiently detailed.
- that we should have a separate process for health and misconduct matters in the same way that health regulators do.

#### *Potential impacts*

75. When viewed together with the new Codes, we are confident that our revised Enforcement Strategy will allow solicitors an appropriate level of flexibility to interpret, apply and meet our standards in a number of ways and in different business models. We are clear that we will not, on the one hand, say we will allow solicitors to make decisions about how they can meet our standards, and then on the other hand act against them when they do not meet those standards in a certain way.

76. We believe that our revised Enforcement Strategy and the supporting material we are developing provide more clarity on the factors we may take into account to determine what is, and is not, serious. The benefits this will provide are:

- More consistency in internal decision making.
- Transparency of approach.
- Fairness for those that we regulate.

## **Which proposals are we proceeding with (no significant comment and no change to consultation position)**

### **Claims management and immigration advice**

<b>Decisions on provision of immigration and claims management advice</b>
<ul style="list-style-type: none"><li>• Solicitors, RELs and RFLs should not be able to provide:<ul style="list-style-type: none"><li>○ immigration services outside of LSA or OISC authorised firms</li><li>○ claims management services outside of LSA or CMR (or equivalent) authorised firms.</li></ul></li></ul>



77. Separate statutory regulatory regimes already exist for immigration and claims management work undertaken outside LSA regulated entities.

78. At the time these regimes were introduced it was not conceived that solicitors might offer services to the public outside of a regulated law firm or special body. Our other reforms could therefore extend rights to deliver certain legal services beyond what we think is the proper public policy intention of the regimes, which is that work in immigration and claims management should only take place within a regulated entity.

### *Consultation responses*

79. Respondents largely agreed with our proposals for the reasons set out in the consultation. Some respondents also felt that clients in this area of law were particularly vulnerable and therefore needed the additional protection.



80. We have clarified our immigration rule to address concerns raised by respondents to the consultation about special bodies and reserved services.

### *Potential impacts*

81. Our proposals will mean that both claims management and immigration advice have to be provided from a regulated entity. This will provide regulatory protections to consumers (such as access to LeO) that would not exist if these services were provided from non-regulated entities. We recognise that those using immigration services are particularly vulnerable<sup>6</sup> and our proposals mean protections, such as access to LeO, will be available to them.

82. We continue to work with OISC and CMR to understand any implications for their regulatory regimes for instance potential regulatory overlap.

83. On claims management LeO highlighted their demographic research<sup>7</sup> that indicated over 50 percent of those who use claims management companies earn below £25,000 per annum and are statistically more likely than the general population to be unemployed and from a lower social grade. LeO felt the way these services were regulated strengthened people's powers of redress.

### **Approving managers and owners**

<b>Decisions on approving managers and owners</b>
<ul style="list-style-type: none"><li>• All solicitors, RELs and RFLs, except for those with conditions attached to practising certificates, should be deemed suitable to be managers and owners of authorised bodies on admission or registration.</li><li>• Other LSA-authorized persons, except for those who have conditions attached to their approval for a role, should be deemed to be suitable as owners or managers of authorised bodies following an initial approval process.</li></ul>



84. Under our current Authorisation Rules, authorised persons need our approval every time they:

- become managers or owners of a new body or
- their existing body changes constitution eg moving from partnership to a limited company.

85. Although we currently reduce the impact of this on solicitors, RFLs and RELs through a process of deeming, other authorised persons such as barristers and licensed conveyancers must go through an approval process each time. We propose to replace this with a system where solicitors, RELs and RFLs will be deemed suitable to be

<sup>6</sup><https://www.sra.org.uk/sra/how-we-work/reports/asylum-report.page>

<sup>7</sup> <http://www.legalombudsman.org.uk/profile-of-claims-management-consumers-revealed/>

managers or owners of any SRA authorised body on first admission/registration and will not have to seek individual approval for any such roles they take up. The only requirement will be for them to update mySRA.

86. In addition, other LSA regulated persons such as barristers will have to provide certificates of good standing from their regulator in order to take up their first role as manager or owner in an SRA authorised body. However, as with solicitors, this approval will be general and will not need repeating for roles in new firms. As with solicitors, they will be required to update MySRA.

#### *Consultation responses*

87. Most respondents that answered this question agreed with our proposal. Where a reason was given, it was usually on the ground of reducing unnecessary bureaucracy. In relation to other authorised persons, it was felt that control by their own regulator was an important safeguard.

88. Comments were made that solicitors whose practising certificates were subject to conditions, other authorised persons who had conditions imposed on their approval for a role or newly qualified solicitors, should not be brought within the deeming process.

#### *Potential impacts*

89. Between April 2016 and April 2017, we approved 266 LSA authorised persons as manager/owners. Our proposals would mean that each of these individuals would not need to be reapproved to fill these roles in new firms or if their existing firm changed constitution.

90. In addition to reducing unnecessary cost and bureaucracy we think this should lead to more effective co-operation between regulators without materially increasing risk or compromising our [regulatory objectives](#). We will be imposing similar requirements on these individuals as we do on solicitors in terms of notifying us of events that could affect that approval.

### **Simplifying our Financial Services Rules**

<b>Decisions on Financial Services Rules</b>
<ul style="list-style-type: none"><li>• Simplify rules.</li><li>• Remove duplication.</li></ul>



91. We have amended the Financial Services (Scope) Rules eight times since we introduced our current Handbook. However, over this period the rules have not been substantially reviewed. We have identified that they are not clear or accessible and a great deal of legislation is duplicated. We are therefore proposing to substantially simplify and reduce

their length. Our proposed changes will reduce the word count of the financial services section of the Handbook by about a quarter.

#### *Consultation responses*

92. One respondent suggested that our proposals would impact firms, especially small firms, because they would have to take steps to keep up to date with the arrangements that would apply. The respondent suggested that we work with firms to review the guidance and support that might be needed.
93. One respondent suggested that consumers could be confused about the regulation of services and options for redress. Solicitors providing financial services advice outside of SRA-regulated firms would need to be authorised by the Financial Conduct Authority (FCA).

#### *Potential impacts*

94. The duplicated legislation that we propose to remove is secondary legislation and may not be easily accessible. Firms have argued that they may therefore struggle to stay up to date with the rules. To mitigate this risk we are considering how to design our support package for firms.
95. Firms that are outside of SRA regulation will already need to be regulated by the FCA for these activities and employing solicitors will not change the position. We do not therefore consider that consumers are likely to be confused by the change.

### **New Notice, Application, Review and Appeal Rules 2018**

<b>Decisions on our Notice, Application, Review and Appeal Rules</b>
<ul style="list-style-type: none"><li>• To bring provisions relating to reviews of SRA decisions into one place.</li><li>• To adopt a more consistent and clearer drafting approach.</li><li>• To have 28 days in which to lodge a request for an internal review.</li></ul>



96. Provisions relating to reviews of our decisions are contained in a number of places in our current Handbook and lack consistency in terminology. We propose to bring these requirements together in our new rule.

#### *Consultation responses*

97. Most respondents agreed with our proposals. Those that gave reasons felt that they provided a more consistent approach.
98. There was broad support for the proposed 28 day time limit. However, respondents also felt that there ought to be scope to extend the time limit in appropriate cases, perhaps

where more complex issues are raised, or the solicitor is in ill health. Where respondents disagreed, they suggested either 56 days or three months would be more appropriate.

99. Some disagreed with the proposal to restrict the evidence that would be allowed on review or appeal.

### *Potential impacts*

100. We expect our proposal to bring provisions relating to reviews of SRA decisions into a single rule to make things easier for the profession and provide a more consistent approach. This is in terms of being able to understand our approach, how to make an application to us and how we notify our decisions. We have also clarified that there is a 28 day time limit to lodge all requests for internal review. We have generally rationalised and extended this time limit which should provide adequate time to lodge a request. However, where an individual's circumstances mean they find this difficult they could ask for a reasonable adjustment per our reasonable adjustments policy<sup>8</sup>.

### **Widening our Disciplinary Procedure Rules**

#### **Decisions on Disciplinary Procedure Rules**

- Expanded rules to cover our approach to assessment and investigation of all allegations of regulatory breach or misconduct.
- Aligned our approach to cost of investigations to reflect the broader scope of the Regulatory and Disciplinary Procedure rules (RDPRs) in terms of finding of a breach or misconduct.
- Removed the fee we charge for unsuccessful appeals.
- Follow a more logical and chronological pathway through our decision-making process.

101. We consulted on revised Disciplinary Procedure Rules which have been broadened to cover our approach to assessment and investigation of all allegations of regulatory breach or misconduct.

### *Consultation responses*

102. We did not receive any substantive comments on the proposed disciplinary procedure rules.

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<sup>8</sup> <http://www.sra.org.uk/documents/SRA/equality-diversity/easy-read-reasonable-adjustments.pdf>

### *Potential impacts*

103. The new rules address the full range of powers available to the SRA, including orders made under section 43 of the Solicitors Act 1974, and decisions to attach conditions to practising certificates in order to mitigate and control identified risks. This will make sure there is greater clarity, transparency and consistency of approach to regulatory investigations and decision making.

104. We have also provided more clarity about which sanctions we are likely to seek costs for and made our rules consistent with our powers under section 44C of the Solicitors Act 1974. We have included these provisions within the SRA Regulatory and Disciplinary Procedure Rules, rather than having a separate set of Cost Regulations. While in theory this extends the scope of the sanctions we may seek costs for (for example to include practising conditions), the rules provide that we will have to make a finding before imposing any such conditions. We think that the impact on those we regulate will be low. In addition we have removed the current ability to charge £250 for unsuccessful appeals.

### **Forming and managing authorised bodies**

<b>Decisions of forming and managing authorised bodies</b>
<ul style="list-style-type: none"><li>• Enable recognised bodies to be managed by corporate entities.</li><li>• Allow the Authorised Person within a licensed body to be an Authorised Body.</li><li>• We will no longer seek to formally approve individual managers within corporate manager entities as part of the authorisation rules.</li></ul>



105. Our current rules go beyond statutory requirements in restricting who can be managers of businesses we authorise. For example, Practice Framework Rule 14.2 requires licensed bodies to be managed by individuals rather than a corporate entity. This creates an unnecessary burden. We propose to remove these unnecessary restrictions.

### *Potential impacts*

106. Our proposal will mean that we do not artificially restrict the structures that firms consider best for their purposes. We will no longer seek to formally approve individual managers within corporate manager entities as part of the authorisation rules. Instead we will look up the chain as appropriate on a pragmatic basis to see whose involvement to take into account in approving the corporate manager itself.

## Annex 1 - Assessment of our proposals with our regulatory objectives and the better regulation principles

LSA objectives	Our proposals
Protect and promote the public interest	<ul style="list-style-type: none"> <li>• provide clear universal standards for solicitors</li> <li>• solicitors will be held to the same standards wherever and however they practise</li> <li>• remove unnecessary regulatory costs and burdens</li> <li>• remove unnecessary regulatory barriers and restrictions</li> <li>• increase opportunities for competition, innovation and growth, which in turn should better serve the users of legal services</li> <li>• improved consistency in enforcement with a focus on serious breaches</li> </ul>
Support the constitutional principle of the rule of law	Nothing in our proposals conflicts with this regulatory objective.
Improve access to justice	<ul style="list-style-type: none"> <li>• increase opportunities for competition, innovation and growth. This should permit better provision of services that meet the needs of consumers, including access to justice</li> <li>• allow firms greater flexibility in how they develop services to meet the needs of consumers and potential consumers from every community. This in time may result in new services and greater choice that may help access to justice.</li> <li>• should result in services, including new services, that better meet the needs of consumers - improving access to justice and market growth</li> </ul>
Protect and promote the interests of consumers	<ul style="list-style-type: none"> <li>• solicitors will be held to the same standards wherever and however they practise</li> <li>• consumer choice will be increased</li> <li>• allow cost-effective delivery of legal services</li> <li>• improved consistency in enforcement with a focus on serious breaches</li> </ul>
Promote competition in the provision of services	<ul style="list-style-type: none"> <li>• allow solicitors to provide services in a cost-effective way in a greater diversity of business models</li> </ul>
Encourage an independent, strong, diverse and effective legal profession	<ul style="list-style-type: none"> <li>• make profession more effective in providing legal services</li> <li>• allowing wider business models throughout the UK may increase diversity in the profession</li> <li>• simplifying the qualified to supervise rules may support diversity               <ul style="list-style-type: none"> <li>• simplifying the self-employed requirements will provide an alternative to recognised sole practice, particularly benefitting BAME solicitors</li> </ul> </li> <li>• the introduction of the SQE and the supporting changes will contribute to diversity in the profession</li> </ul>

<b>LSA objectives</b>	<b>Our proposals</b>
Increase public understanding of the citizens' legal rights and duties	<ul style="list-style-type: none"> <li>• simplification of our rules should make them easier for the public to understand, supported by our wider work on public legal education</li> </ul>
Promoting and maintaining adherence to the professional principles	<ul style="list-style-type: none"> <li>• simplification of our rules should make them easier for the profession to comply</li> </ul>
<b>Better regulation principles</b>	<b>Changes to our regulatory arrangements</b>
Transparent	<ul style="list-style-type: none"> <li>• changes provide increased clarity and simplification across our regulatory arrangements and Enforcement Strategy</li> </ul>
Accountable	<ul style="list-style-type: none"> <li>• changes will make sure that those that we regulate are fully accountable for compliance with our regulatory requirements and understand consequences of non-compliance</li> <li>• simpler and easier to understand standards will make individuals and firms more accountable</li> </ul>
Proportionate	<ul style="list-style-type: none"> <li>• changes remove disproportionate restrictions eg assessing character and suitability, deeming provisions for managers/owners</li> </ul>
Consistent	<ul style="list-style-type: none"> <li>• solicitors will be held to the same standards wherever and however they practise</li> <li>• more consistent approach to enforcement</li> <li>• more consistent approaches to assessment of character and suitability</li> </ul>
Targeted at cases where action is needed	<ul style="list-style-type: none"> <li>• our Enforcement Strategy focuses on those issues that are most serious</li> </ul>