Changes to the authorisation and supervision of multi-disciplinary practices

Consultation summary and response

Introduction

1. On 7 May 2014 we issued a consultation paper seeking views on policy changes and associated amendments to the SRA Handbook aimed at achieving a proportionate regulatory framework for the authorisation and supervision of multi-disciplinary alternative business structures providing legal and non-legal services.

2. The consultation closed on 18 June 2014, and this report summarises the key points emerging from the responses and the SRA's position as a consequence.

3. A breakdown of the composition of respondents and a list of those respondents that have agreed to their details being published appears at the end of this document.

Overview and next steps

4. The consultation paper proposed that where an SRA authorised ABS that is a multi-disciplinary practice (MDP) carries out non-reserved legal activities, the SRA may agree that these activities will not be SRA regulated subject to:

   - the activity not being carried out or supervised by an authorised individual[1];
   - the type of activity either being subject to suitable external regulation or being a minor and subsidiary part of a non–legal service;
   - the ABS having procedures in place to ensure that clients are aware that the activity is not SRA regulated; and
   - the activity not being of a type that the SRA defines as integral to the provision of reserved services.

5. The consultation paper also discussed the links between this issue and other emerging features of a more dynamic legal market. It considered the impact any changes to rules for ABSs might have on the separate business rule as it applies more generally, including to 'traditional' solicitor firms, and outlined

[1] *As defined in the SRA Glossary –meaning an individual referred to in s18(1)(a) LSA who is authorised to provide one or more reserved legal activities*

plans for a review of that rule and of current restrictions on the range of activities that recognised bodies can carry out. The consultation also clarified the individual regulatory obligations of solicitors practising in authorised non-SRA firms.

6. There were 36 responses to this consultation. On the whole, the consultation responses could be divided into three groups: those who disagree with the proposals and do not think there is a need for the current structure to change; those who agree with our proposals but have suggested minor changes or factors to consider; and those who agree with the intentions of our proposals but do not think that they go far enough in liberalising the regulation of MDPs.

7. Throughout the responses and regardless of the group that respondents fell into, there was a strong desire that consumers should not suffer any detriment as a result of any changes that are brought in. Additionally, a number of respondents wanted us to ensure that consumers would not be without redress in the event of regulatory reform and encouraged us to discuss our proposals fully with the Legal Ombudsman.

8. The Law Society disagreed with the proposals. Its reasons are addressed more thoroughly below in the summary of responses for each question, but generally it felt that 'it is wrong in principle that legal work done in an organisation regulated by the SRA should be subject to different regulators and thus different standards depending on the individual doing the work'. This was coupled with concerns about protection for consumers, potential confusion that may arise, and a perception that the proposals will have a disproportionate negative effect on smaller firms.

9. We received a relatively high number of responses which are critical of the process by which we have undertaken this consultation. 15 respondents stated that the six week consultation period was not sufficient time to consider the proposals that had been put forward, particularly when taken in the context of the three additional consultations which were published on the same timescale.

10. The timing of the consultation was motivated by our desire to act quickly to ensure that barriers to the authorisation of MDPs and the extra costs of regulatory uncertainty for businesses were removed. We were finding it necessary to grant an increasing number of waivers of the separate business rule, therefore we wanted to move quickly to a more transparent policy that would help to reduce costs to businesses. We were also conscious that the proposals were to remove regulation rather than impose them.

11. There were a number of ways in which we engaged and sought views in addition to the consultation. SRA Executive Director Crispin Passmore made a speech outlining the proposals on 2 April 2014[2] which was accompanied by a press release, Q&A, and invitation to interested parties to contact us in relation to the issues in advance of the consultation. We met with a number of individual providers and potential MDPs to discuss the issues. We also set up an external reference group which included: the Law Society, two local law

[2] http://www.sra.org.uk/sra/news/events/conference-2014-04-02-compliance-law- firms.page#Passmore,C

societies, Legal Services Board (LSB), the LSB Consumer Panel, the Legal Ombudsman, the Department for Business, Innovation and Skills, the Institute of Chartered Accountants in England and Wales (ICAEW) and academics to discuss the proposals. This group met twice during the consultation period. We met separately with the City of London Law Society and attended the Law Society Regulatory Affairs Board. The Law Society addressed the SRA Board on the MDP proposals at the meeting on 6 July 2014.

12. Having carefully considered the responses, we remain of the view that the problems that we outlined in the consultation paper, together with requirements on the SRA detailed in paragraph 21 of that paper (including requirements under s28 (3) and s54 of the Legal Services Act (LSA), the regulatory principles and the better regulation principles), mean that we should proceed with our proposals subject to the important amendments set out below.

13. The changes will increase opportunities for practitioners to provide multi professional services, to reach clients in new ways, and attract investment without having to set up expensive separate business structures. The next stage of our reforms will aim to assist recognised bodies in providing a wider range of services without the need to become ABSs.

14. We believe that these changes will benefit consumers by providing greater competition in the provision of legal services, greater opportunities to access holistic services, and potential reductions in cost by services being made available in one place. Multi professional services may particularly (but not exclusively) benefit business clients –including small and medium enterprises (SME's) that currently do not access advice.

15. It is important to place the exclusion of some legal activity within an ABS from the definition of 'SRA regulated activity' within the overall context of continued consumer protection.

16. As we made clear in our proposals, the ABS as a whole will continue to be authorised and regulated as an entity. The MDP and those who own it and work within it will therefore need to comply with the terms of the SRA Authorisation for Legal Services Bodies and Licensable Bodies Rules (SRA Authorisation Rules), as well as with the SRA Principles and other authorisation and practising requirements applicable to licensed bodies and their owners, managers and employees as set out in the SRA Handbook. For example, the SRA Disciplinary Procedure Rules will apply not only to solicitors but also to all other employees and managers of the ABS.

17. Information from across the MDP will be disclosable to the SRA in accordance with the provisions of s93 LSA. Any misconduct of the firm or its members or employees in non-SRA regulated areas may be taken into account in relation to the firm's fitness to hold the licence or compliance with conditions.

18. Secondly, solicitors, RELs and RFLs will continue to be subject to personal regulation by the SRA.

19. Thirdly, any decision to classify any particular legal activity as not included within SRA 'regulated activity' does not impact on the right of a client to take a

complaint to the Legal Ombudsman. As the Ombudsman made clear in his response, it may consider any complaint where legal activity is involved. We can confirm that the duties in the SRA Code of Conduct to co-operate with the Ombudsman and to inform the client of their rights to go to the Ombudsman will apply to all legal activity engaged in by the MDP, regardless of whether it is 'SRA regulated' activity.

20. The question that we were posing in our consultation was the extent to which non-reserved legal activity provided within an MDP by non-legal professionals needs to be an 'SRA regulated activity' i.e. subject to other detailed provisions in the Handbook – including insurance, Compensation Fund provisions, Accounts Rules, and the SRA Code of Conduct. In our view, this must be a question of risk – rather than of an absolute rule one way or another. This will depend on numerous issues including the nature and extent of those legal activities and the structure and practices of the body providing them.

21. We have carefully considered all of the responses, and have made a number of changes, but we wish to draw attention in this overview section to two particular themes that emerged from consultation and which are reflected in our final decision.

22. Firstly, it was said, even by many of those that supported change that the 'suitable external regulation' proposals were complicated and might, for example, be difficult for smaller firms to apply.

23. Secondly, a number of respondents pointed out convincingly that the wide definition of legal activity in S12 LSA will, if broadly interpreted, bring in numerous activities of other professionals which it does not seem reasonable or necessary for the SRA to regulate in detail. Given the wide ranging nature of legislation, including data protection, equalities, planning, health and safety legislation and many other examples, it was pointed out that it would be difficult for any professional to carry out their functions without in some way advising their clients on the application of the law.

24. Subject to LSB approval of the rule changes, we intend to implement the proposal set out as Option 1 of the consultation paper as follows:

25. We will take a flexible approach to the question of whether non-reserved legal activity performed by non-authorised persons within an MDP should be SRA regulated activity. Further details on how we will approach the issue are set in the policy statement but the approach is also outlined below.

26. Where the non–reserved legal activity is performed as a subsidiary but necessary part of the exercise of a non-legal profession, then subject to any risks posed in the particular case, we will generally be prepared to agree to exclude this from the description of SRA reserved legal activity on the licence. Examples could include an IT consultant who provides advice on installing a new IT system that includes compliance with data protection legislation, or a human resources consultant that designs a new disciplinary system for a firm which needs to include procedures that are compliant with equalities legislation. As the MDP as a whole will be required to comply with the SRA principles, this will include a duty to ensure that the matter would be referred to an authorised individual when it is in the client's interests to do so, as well as to ensure the accuracy and competence of any advice provided.

27. We believe that the proposed requirement of suitable external regulation does impose a suitable level of protection that should be maintained where the risks posed by the particular MDP justify it, particularly where there might be substantial overlap between the kind of legal work provided by the non-authorised individual and the kind of legal work that an authorised individual would also provide. Taxation advice is one area, but providing legal advice on transactions or disputes in the role of a general consultant or drafting wills are others. In those cases, where providing legal advice could be said to be a core part of the service (and in some cases the only part of the service), we consider that these areas should be subject to suitable external regulation. If no such regulation exists then we would expect to include the work as part of SRA regulated activity.

28. We will implement our proposed test for the 'suitability' of external regulation. A number of respondents indicated that they felt the test was too uncertain and complicated, but it has the virtue at least of being based on the SRA principles. Also, in our view, none of the respondents were able to put forward a workable clear alternative. The circumstances in which the suitable external regulation exception will be required will now be reduced to those set out above, and the policy statement includes a list of external regulators that we have considered and which in our view meet the test.

29. Following up on the proposal in paragraphs 47-50 of the consultation paper, we will include a provision within the suitable external regulation provisions to allow authorised individuals to act as part of a mixed team. A number of respondents have commented that in order to allow mixed professional teams to work together, the SRA will need to simplify these proposals and impose fewer restrictions on authorised individuals working in a mixed team under suitable external regulation. We are persuaded by these arguments.

30. When a mixed team of authorised persons and non-legal professionals is engaged in non-reserved legal activity, then that engagement will fall within SRA regulated activity when it is being carried out under the direction and supervision of an authorised person. This reflects the test set out in s190 LSA for whether legal professional privilege applies. When the engagement is not under the direction and supervision of an authorised person, then it will be covered by the suitable external regulation. However, in the latter case, any solicitors, RFLs, or RELs involved in the work will remain subject to personal regulation by the SRA, the SRA Principles, and a limited subset of the SRA Code of Conduct.

31. Non reserved-legal activities that the SRA regards as integral to the provision of reserved services will continue to be SRA regulated activity and will not be subject to the 'subsidiary and necessary' or 'suitable external regulation' exceptions. Our policy statement seeks to further define those activities. However, the key aim of this provision is to avoid MDPs 'case splitting' in a way that will be detrimental to clients, so inevitably it will not be possible to identify in advance every possible way in which this principle could be breached.

32. A number of the respondents criticised what was stated to be the complicated nature of the proposals. This was linked in their view to a lack of certainty which would impact on clients who could not be expected to understand the

regulatory position. We have simplified the proposals by excluding legal activity performed as a subsidiary and necessary part of a non-legal professional from SRA regulated activity, and by simplifying the provisions for mixed teams within the suitable external regulation exception. Nevertheless, whilst we acknowledge that our policy contains a number of different elements, it is important in our view to distinguish three situations:

- *The SRA's policy and approach when MDPs apply for a licence.* This is what the consultation was concerned with. Given the enormous range of situations that may arise, as well as the varying risks posed, any policy will need to be nuanced and flexible. The policy statement provides details of the principles behind our approach in order to provide transparency and ensure a level of consistency. Whilst it may seem superficially attractive to opt for a simple 'one size fits all' policy solution, there is no such solution that we have been made aware of that will not either continue to frustrate the development of MDPs or fail to take into account risks to clients.

- *The terms of any licence issued to an MDP.* Whilst the policy will be used to arrive at the terms of the licence, the intention is that the licence itself will be specific as to which activities are SRA regulated and which are not. Therefore, for example, the licence will list the categories of non-legal professional in the individual MDP whose 'subsidiary but necessary' legal activity will be excluded from SRA regulated activity. The MDP will sometimes have to exercise judgement in individual cases (for example, as to when a case should be referred to or supervised by an authorised individual) but this is no different in type to the myriad of other judgements that professionals have to take when applying regulatory rules and principles.

- The terms of engagement issued to the client by the MDP which we will require to be clear as to who is performing the work and under what system of regulation they are doing so. We will also expect the MDP to disclose on its website which parts of its business are - and are not - regulated by the SRA. There is no reason why a client or prospective client would need to know about the process of SRA policy or the terms of the licence that have led to that clear position in their own case.

Next steps

33. Subject to LSB approval of the amendments, our intention is to implement the necessary rule changes from 31 October 2014. In an exceptional case, we may grant waivers to bring the policy into operation in the interim period.

34. We intend to launch a further consultation on changes to the separate business rule and on the range of professional activities that can be carried out by recognised bodies in November 2014. We intend to implement any changes by the end of April 2015.

The Responses

Question 1: Do you agree with our analysis of the problems facing MDP applicants and the need to make changes?

35. The Law Society made a general comment about a perceived lack of data within the consultation document, arguing that this 'makes it impossible for the Law Society to assess either extent of the problems facing MDP applicants or whether the solutions suggested would provide any benefit'. This point was also made in relation to topics around conflict of regulation, the number of waivers of the separate business rule the SRA has issued, and analysis of the issues against the relevant regulatory principles. However, the Society did agree that 'the percentage of waivers... is high and that, in general, this is undesirable'. Like a number of other respondents, the Law Society queried why we are focusing on the issue purely from the perspective of its effect on ABSs and questioned whether creating 'a regime of this complexity' to address the problem was the correct way forwards.

36. A number of the respondents reflected the Society's concern about the number of waivers that had been granted, irrespective of whether or not they agreed with our analysis of the need to make changes.

37. The complexity of current rules that can arise for those firms subject to dual regulation was highlighted by other respondents. This was coupled with the need for simplification of the method of regulation. It was also noted that the existing system – whereby we regulate all legal activities within an MDP – is disproportionate and has been a barrier to those wishing to enter the market.

38. A number of the respondents called for a greater liberalisation of the regulation of MDPs than we had proposed, with suggestions including that 'where there is a suitable primary regulator, the SRA will only regulate services led and supervised by a solicitor' and for us to consider 'stepping away from a position where all non-reserved legal activity is regulated'.

39. Respondents placed an emphasis on the importance of ensuring consumers are not confused by any changes brought in, balanced with the need to ensure that consumers are not placed at risk by any changes. The Legal Ombudsmen commented that it expects us to carry out an impact assessment of proposals on consumers in addition to the impact on businesses, whilst another respondent suggested that it is easier to explain that an entity is regulated by two regulators rather than to seek out and explain which work is regulated by the SRA and which by another regulatory regime.

40. The ICAEW stated that it considers the SRA to be struggling to 'reconcile its role as a regulator of firms versus that of a regulator of individuals' and recommends that we reconsider what we define as a 'legal service', setting out clearly the standards expected of regulated individuals versus regulated entities. ICAEW proposes that a change of terminology may be an appropriate aid to such a distinction, stating that “the ABSs that are beginning to emerge in the market are innovative and bring very different product offerings. But the impact of a widely drawn legal services definition is to bring the traditional operational and non-regulated aspects of their business under the regulation of the SRA under current rules. An ABS therefore which

included a car servicing capability would bring into regulation the legal advice given by a car mechanic in issuing an MOT under the Road Traffic Acts, or a doctor in a surgical practice committing a patient under the Mental Health Act could have this decision regulated by the SRA."

41. The City of London Law Society stated that an option should have been put forward that proposed that only reserved legal services and high risk non-reserved services would be regulated. In its view, a risk based approach should be taken to non-reserved legal activities, and 95% of such activities could be safely deregulated.

42. Finally, a number of respondents commented that the issues highlighted do not just affect ABSs, and that we should focus on the wider issue of the separate business rule.

SRA response

43. We have dealt with the issue of data in our response below in relation to the impact assessment (see below). However, it would never be possible to estimate exactly how many firms may have been deterred by a restrictive policy, or to 'model' the precise impact that a policy change of this nature would have on the market. Based on the information that we have, we believe that our duties under the LSA, the regulatory principles, and the better regulation principles (as outlined in detail in paragraph 21 of the consultation paper) mean that it is appropriate to proceed with these reforms, and that if we do not do so, we will be impeding the development of MDPs in a way that breaches those duties and principles.

44. In particular, forcing MDPs to either set up separate businesses or lose the opportunity of providing reserved legal services sets up what we consider is an unjustifiable barrier to multi professional services, thus reducing potential consumer choice and opportunities for cost reductions to be passed on.

45. We consider that a risk based approach to the regulation of non–reserved legal activity is appropriate. Our policy changes are based on removing areas from detailed SRA regulation and supervision where it is felt that the risks to clients would not be disproportionate compared to the potential benefits. However, the question of risk to consumers cannot be settled simply by declaring that some categories of law are 'high risk' and some are not, even supposing that these could be identified. There are a host of other factors at play, such as the circumstances of the individual clients and their previous experience (if any) as a purchaser of legal services, the route the client has taken to access the service, what is at stake in the individual case, the compliance culture of the firm and so on.

46. It is worthwhile considering the potential implications if non-reserved legal activities provided by authorised individuals within an ABS were not to be 'regulated' at all. Would it mean that the lawyers, managers or employees involved in such work within the ABS were not bound by the regulatory principles or by duties to co-operate with the SRA or their own individual regulators, or were not bound to co-operate with the Legal Ombudsman and could cause the ABS to breach the terms of its licence with impunity? Would it mean that the solicitor within an SRA authorised firm could, for example, sit in front of the client and say, in effect, 'normally I act as a solicitor and I am

bound by the SRA principles and disciplinary rules, but I am not acting as one when I provide this legal advice to you, and therefore you have no comeback to me if I act unprofessionally other than by finding another solicitor and taking me to court'?

47. Of course, these are rhetorical questions, and we believe that any responsible regulator would give the answers to both questions in the negative. The proper debate is really about the form that regulation of non-reserved legal activity provided within an authorised entity and by authorised individuals should take.

48. As set out in the 'three tier model' at paragraph 30 of the consultation paper:

- There are duties on the authorised entity and its managers, owners and staff which will apply whatever activity it is engaged in. These reflect the duties imposed by the LSA (for example, in relation to the Ombudsman, or providing information), the SRA Principles 2011, and by the SRA Authorisation Rules 2011 (such as requirements to have appropriate systems in place).

- Whenever work is provided by a solicitor, then that solicitor will be personally regulated. In practice, other authorised individuals will also be subject to the provisions of their own professional regulator.

- The remaining issue is therefore to define when the full provisions of the SRA Handbook, including the Code of Conduct, Accounts Rules, and Compensation Fund Rules will apply to the non-reserved work, i.e. when this will be an 'SRA regulated activity' in that particular sense.

49. We have sympathy for arguments that a very wide definition of legal activity brings in work incidental to the exercise of other professions which cannot have been the intention of the LSA to bring within the scope of SRA regulated activity. As set out below, we intend to allow MDP licences to exclude such work from detailed SRA regulation. However, the problems we identify cannot be completely resolved by a redefinition of legal activity, nor in our view would it be possible to do so in a way that reasonably distinguished, for example, between advice provided by a solicitor on a disputed or uncertain issue of taxation law and advice by a chartered accountant on the same matter.

Question 2: Do you agree with the proposed external regulation exception?

50. There was a mixed response to this question. It should be noted that not all those who disagreed with the proposed external regulation exception did so because they do not want regulatory reform. A number felt that the proposals put forward do not go far enough.

51. The Law Society consider that the proposed exception is 'ill-thought out, complex and likely to prove near impossible to implement' as well as likely to cause confusion to clients due to the different regulators involved. It suggests that the proposal could lead to firms offering services in circumstances which would not have been permissible if a solicitor were carrying out the service, and that it would not remove the need for a separation of legal work based on the provider, arguing that such an arrangement will only be able to work in

larger firms. It calls for clarity around both the application (or not) of legal professional privilege in circumstances where legal work is carried out in a regulated entity by a non-lawyer and around the role of the Legal Ombudsman. It also queries the proposed approach to calculating firm fees solely on the basis of regulated activity, countering that we will regulate the whole ABS - albeit to a lesser extent. The Law Society agrees with the proposal that a firm's indemnity insurance should meet the SRA's minimum terms and conditions in relation to all legal work.

52. Those who agreed with our proposed external regulation exception felt that it was a 'pragmatic and proportionate' approach which will liberalise the market by removing 'unnecessary duplication of regulation'. They were also pleased to see that we do not propose to restrict regulation solely to reserved activities as it was considered that this would not be a risk based approach and would lead to 'very little' legal work being regulated. However, the Junior Lawyers Division provided the caveat that it would not agree were the exception to apply automatically, as control to authorise must remain with the SRA and even then it should only be applied where all four conditions in the consultation paper are met.

53. Of those who disagreed with the proposed exception, there were two categories of response: those who agreed with the Law Society; and those who felt that the proposal does not go far enough in its scope.

54. Respondents who agreed with the Law Society, in addition to the concerns raised by the Society, were also more generally against all of the proposals that we made, and tended to be of the opinion that all legal work done in an SRA regulated practice should be regulated by us.

55. Those calling for a wider approach provided a number of suggestions about what could be achieved. These included:

- those activities which an MDP has always provided and which have never been regarded as activities required to be regulated by a legal services regulator should remain as such;
- regulating only when solicitors lead or supervise a matter rather than whenever they have involvement;
- setting a 'bright line' test so that firms can be certain whether they are subject to suitable external regulation; and
- where an activity could be subject to multiple regulators, the SRA only having oversight on individual lawyers engaged in the activity if the firm has a different lead regulator.

56. Concerns were raised by respondents around the difficulty of producing a definitive list of legal activities as this was considered to be a ‘moveable feast’. Additionally, there was concern that the proposals could lead to conflict and duplication of regulation and potentially even drawing into regulation work that is currently unregulated. This was seen as contrary to the Government's 'Red Tape Challenge'.

57. Irrespective of their response, a recurring theme across the responses was the need to ensure that consumers are protected, informed as to the redress that will be available to them, and not subject to unnecessary confusion.

SRA response

58. We believe that some of the criticisms of the complexity of the proposed arrangements misunderstand the nature of the problem. The point about external regulation is that it is already in place in relation to the services that the MDP will be providing. If a body carries out mainstream investment business, it will be regulated by the FCA. If it is a firm of chartered accountants, it will be regulated by one of the professional bodies. The policy choice, and the choice for the MDP concerned -whether large or small - is not between a 'simple' position where all of the legal activity is SRA regulated, and a 'complex' position of choosing between two possible regulatory regimes. The actual choice is between double regulation for the same work and a more proportionate approach which seeks to minimise the problems this duplication will cause.

59. Therefore we do not accept that the option of continuing to insist that all legal activity must be SRA regulated necessarily makes things simpler either for an MDP (of any size) or for clients. Of course, non-legal activity is not SRA regulated activity within an ABS under current rules. In relation to legal activity, the reality is that, given the wide definition in the LSA and the enormous range of areas covered by statutory provisions and procedures, then advice given by a non-legal professional or a multi-disciplinary team will slip in and out of 'legal activity', although the great bulk of this advice will usually be of a non-legal nature and be regulated elsewhere. Therefore the client is going to be faced with a situation where there will be different or multiple regulation of the same piece of work in any event. It is unclear how, for example, a client who has instructed a non-legal professional such as a surveyor is expected to work out which bit of the advice is 'legal activity' (and therefore SRA regulated) and which is not.

60. In our view, this issue is a nettle that needs to be grasped if MDPs are to become a practical proposition and if clients are to be clear on the regulatory position. There are considerable potential benefits for consumers in being able to access services together, not only in terms of reduced cost, but the ability to have all of their problems dealt with in a holistic way.

61. However, in order to make our proposals more proportionate relative to the risk to consumers, we have decided to restrict the circumstances in which the suitable external regulation exception will need to operate. In particular, where there might be a substantial overlap between legal activity provided by a non-legal professional and the kind of legal work that an authorised individual would also provide or would be expected to supervise, then we are likely to include the work as SRA regulated activity unless it is subject to suitable external regulation. Taxation advice is one such activity, but providing legal advice on transactions or disputes in the role of a general consultant, debt recovery, advice services, or drafting wills are others. In those cases, where providing legal advice could be said to be the core part of the service, we consider that extra protections should be in place.

Question 3: Do you agree with the way that we propose to consider the suitability of external regulation?

62. The Law Society stated that the criteria for assessing suitability of a regulator lacks detail and is therefore difficult to assess. It voiced concerns that we deem the ICAEW suitable due to its regulatory system for probate practitioners being approved by the LSB, as the Society consider this regulatory system to differ substantially from that governing accountants' other activities. Additionally, it is concerned that ICAEW currently has no equivalent of the Legal Ombudsman, and as such considers that it would not comply with Principle 7 of the SRA Code of Conduct. The Law Society also considers it crucial that any external regulator has a knowledge of and expertise in both the ethics and values of the legal profession so as to be consistent with the approach of the SRA. Finally, it queries the extent to which, in the event that there is a potential for conflicts, a client will be told about any implications this may have on them.

63. A number of respondents supported the proposals and the suggestion that we will publish a list of approved regulators. One respondent asked for clarity about whether external regulation by ICAEW would apply in relation to all or only a subset of an accredited firm's activities. Their concern was that treating a subset of activities as covered by external regulation would decrease the practicality of the proposal.

64. A general query was raised about the suitability of self-regulatory regimes as the respondent felt that the quality of self-regulation is highly variable.

65. Those calling for a more liberal approach to the regulation of MDPs propose that services that have never been regulated in an MDP as legal activities and which clients have never seen as such should not now become subject to SRA regulation as they view this as creating an unnecessary burden. Instead, they encourage the creation of as flexible a framework as possible, as whilst there is agreement that an external regulator must have a code of conduct, it does not need to be as prescriptive as that proposed in the consultation document.

66. Some respondents emphasised that our focus should be that the firm is subject to suitable external regulation rather than on a particular activity carried out within the firm. One respondent in particular queried why that if we consider an external regulator does provide an adequate level of regulation, we consider the need to retain the proposed level of SRA regulation over the provision of those services?

67. Another respondent stated that they consider that we are deciding on the adequacy of an external regulator's code of practice in imposing detailed requirements. However, they do not believe that the SRA has jurisdiction to prescribe conditions in the regulatory framework of a statutory body or non-statutory professional body which has been recognised by statute. Additionally, they consider that individual members should be required to hold a relevant recognised qualification to provide services which are being regulated by the external regulator, but it is not for us to determine the adequacy of such qualifications.

68. Irrespective of their answer to the question, there were queries raised by respondents about how we will:

- assess suitability in an accurate and consistent way in practice;
- assure regulatory regimes designed primarily for other purposes will fit with the SRA Principles;
- keep our assessments up to date;
- deal with situations where another form of regulation conflicts with our own;
- deal with situations where over time a suitable regulator becomes unsuitable.

69. Respondents felt that it is important that whatever form external regulation took, it must provide adequate safeguards. The Legal Ombudsman considered that anything that falls under the definition of legal services under S12 LSA already gives access to the Ombudsman and there would be no legal reason it to refuse to accept complaints in this area under existing scheme rules. It stressed that it will be important that the SRA's regulatory regime ensures that those regulatory obligations necessary to support the work of the Ombudsman apply (sign posting, cooperation etc.) to the MDP. It added that, when licencing, the SRA will have to keep regulation as narrow as possible in order to avoid dual regulation, but should make sure that by doing this they are not narrowing access to redress.

SRA response

70. As we stated in the consultation paper, the SRA is not purporting to judge the adequacy or otherwise of the arrangements of external regulators for the purpose for which they were created. We are trying to assess whether there is enough of a fit with the SRA regime such that applying both detailed set of regulations would lead to conflict and duplication, and that relying on the external regulation will provide adequate consumer protection in the particular context of the delivery of legal services. No more precise or workable test for addressing this problem has been put forward by respondents, and our proposed test has the logic of being based on the SRA Principles with which an ABS has to comply in any event. Nevertheless, we agree that we need to apply the test flexibly in order to achieve a purposive approach, and there may be some circumstances where we may need to impose extra conditions to address what may be gaps in the external regulation.

71. We believe that any uncertainties over the application of the test will be greatly reduced by:

- the reduction in the range of circumstances in which the suitable external regulation exception will be used; and
- - the publication of a list of those regulators that we have currently assessed as meeting the test.

72. We indicated in the consultation paper that we would regard ICAEW's regulation as meeting the test. We confirm that this is not only in relation to accounting activities, but to other non-reserved activities that it regulates for its accredited firms.

73. As we pointed out in paragraph 25 of the consultation paper, a client's right to pursue a complaint to the Legal Ombudsman does not depend on whether the case falls within an SRA regulated activity or some other regulation such as that of ICAEW (this incidentally is the answer to the objection raised by the Law Society, to the effect that ICAEW regulation cannot be stated to be suitable as it has no equivalent of the Legal Ombudsman provisions). We will ensure that MDPs continue to have the duties across all of their activity to inform their client of their right to pursue a complaint (including to the Ombudsman) at the outset of the engagement, to handle complaints promptly, fairly, openly and effectively and to co-operate with the Ombudsman where appropriate. On authorisation, we will also expect an MDP to demonstrate that it has procedures in place to comply with these duties.

Question 4: Are there any other non-reserved legal activities (in addition to activity as part of human resources advice) that you consider we should allow outside of SRA activity regulation as minor and subsidiary to a non-legal service?

74. The Law Society considers that we have failed to provide any evidence as to why regulating this work is impractical. It thinks that creating a prescriptive list will inevitably cause difficulties and that it would be better to have guidance as to what is minor and subsidiary to a non-legal service. Finally, it comments that if a firm is not prepared to stand by all its legal advice and deliver it to a consistent standard then it should not be considered suitable for regulation by the SRA.

75. The ICAEW considered that, by regulating all areas of legal activity, the SRA was potentially bringing in work carried out by other professions that it had no competence to regulate. It stated that whilst the definition of non-reserved legal activities was so widely drawn, it could list every single activity and service provided by an accountancy firm which invariably has some form of law attached to it. It suggested that this proposed category of exclusion from detailed SRA regulation should be expanded and linked to the normal lack of involvement of a solicitor in these activities. ICAEW suggested, for example, that legal activity performed by professionals such as undertakers and renting agents should not be brought into regulation otherwise it would discourage these sorts of bodies for applying to become an ABS.

76. One respondent suggested that training services and public legal education should not be required to be SRA regulated under this exception. Another gave the example of an IT consultancy as part of an ABS that gave advice to clients on implementing systems that comply with data protection legislation.

77. A number of respondents felt that a defined list of services would not be effective in practice and could have the unintended consequence of being too restrictive and impeding innovation. The Legal Services Consumer Panel suggested that a better approach might be to develop guidance which includes a non-exhaustive list on what is more likely to be granted a waiver,

whilst others suggested it would be better to start from the premise of what the SRA will regulate and, by default, other activities will not be subject to its regulation.

78. Conversely, some respondents felt that a list should be as limited as possible due to the potential for misapplication and consumer confusion. In one response, it was felt that any case where an unregulated person was providing legal advice as an incidental and subsidiary part of their work should not be excluded.

SRA response

79. We agree with respondents who have argued that it is inappropriate for the SRA to seek to regulate in detail all of those non-reserved legal activities which have traditionally been provided as a subsidiary part of exercise of a profession outside the range of legal regulation. Where the non–reserved legal activity is performed as a subsidiary but necessary part of the exercise of a non-legal profession, then subject to any risks posed in the particular case, we will be prepared to agree to exclude this from the description of SRA reserved legal activity on the licence.

80. Although we give some examples of the sort of activity or profession concerned in our policy statement, we accept that it is not going to be possible to prepare a definitive list that will apply across the board to all MDPs. However, we think it is important that excluded activities relevant to any particular MDP are recorded on the terms of that MDP's licence so that the firm can operate with a sufficient level of certainty and provide a clear explanation to clients and prospective clients.

Question 5: Do you agree with our proposal in relation to cases involving multiple teams?

81. The Law Society considers that the exemption we describe would appear to be almost impossible to apply, suggesting that 'a solicitor cannot choose to ignore parts of the Code for certain pieces of work, particularly those as fundamental as the outcomes on conflicts'. It is of the opinion that we ought to have an oversight of all aspects of the legal work provided by the firm. Where legal work is undertaken by a solicitor then it ought to be regulated. The Society feels it is unclear how the SRA can regulate the person but not the legal work they undertake. It states that if the SRA sends the signal that it will not look at particular areas in which legal advice has been involved, there is an increased danger for professional duties to come under pressure or be compromised. Finally, the Society thinks that it is unclear what will happen if a person's role changes from subsidiary to substantial.

82. There was strong support from some other respondents of the proposal to define individual regulation at paragraph 50 of the consultation paper, with a number of respondents suggesting this should be the basis for regulation of all activities in the MDP involving solicitors which are not led and supervised by a solicitor.

83. Some respondents agreed with the requirements generally, with one respondent taking comfort from our proposal to introduce a 'rigorous' process. However, another respondent stated that whilst they agree with the majority of the proposed requirements, they consider the requirement that the

authorised individual's involvement be subsidiary as impractical and unnecessary, suggesting that it would not be possible either for the MDP or the client to identify at what point in time lawyer involvement ceases to be 'subsidiary' with any meaningful accuracy.

84. A number of the respondents considered that the proposal is not flexible enough, calling instead for the scope of our regulation to focus on the individual rather than the service. The proposals for a more flexible scheme suggested that:

- the main regulator of the entity should have responsibility if it is an activity that would have been previously covered by that entity regulator, particularly where the involvement of the lawyer is minimal;
- we regulate based on who supervises the work; the whole engagement should be an SRA matter only if there is a lawyer responsible for the engagement, otherwise the lawyer would be only regulated in relation to what they actually do;
- our regulatory remit should be confined wherever possible to what could be conveniently described as 'lawyering done by lawyers', as it would not be right to apply the entirety of the SRA Handbook to the activity of a mixed team where the firm as a whole is regulated externally; and
- a situation where the team providing a non-legal service should be able to call upon the expertise of an authorised person without the provision of that service necessarily falling under SRA regulation.

85. Respondents who supported a version of this proposal stressed that it was important that two key safeguards were in place. First, that the solicitors should not escape personal accountability, and second, that the engagement is not represented to the client as SRA regulated. There was support amongst these respondents for the definition of personal regulation of solicitors as set out in paragraph 50 of the consultation paper.

86. Where respondents did not agree at all with the proposal, the main reasons cited were:

- the potential for client confusion;
- a view that where legal work is undertaken it should be regulated by the SRA;
- a concern that it would become an incentive for firms to have as little work done by solicitors as possible;
- a concern that what amounts to 'subsidiary' service might be difficult to measure objectively;
- concern that the proposal has the potential to produce anomalous results for MDPs where the activities undertaken by lawyers and non-lawyers may overlap;

- a belief that this would add yet a further complication to what appears to be a fairly complicated process; and

- a view that there will not always be clear division between the services offered by an MDP, with a need for clarity about which services are covered by which regulator, making it more difficult, not less, to avoid client confusion.

87. One respondent concerned about anomalies felt that these could be significantly reduced if the SRA introduced some of the more flexible measures mentioned above and, as a result, can make it clear that, in the case of mixed teams, only certain limited aspects of SRA regulation would be applied, and then only to the individual lawyer involved in the mixed team.

88. One respondent felt that, if the regulatory requirements of two regulators are similar, a simpler option would be for firms to put in place systems to comply with both, rather than seeking to only be regulated under one regime.

89. The Legal Ombudsman felt that an MDP in receipt of a complaint should have an obligation to precisely narrow down which regulator has jurisdiction and signpost the consumer to the appropriate organisation for obtaining redress.

SRA response

90. It is already the case that there are many situations where a solicitor is individually regulated in circumstances where the entity or work they carry out is not SRA regulated. Examples include employed solicitors, or solicitors practising within a non-SRA authorised entity. In these situations, the work should not be presented to the client as SRA regulated, but the client can make a complaint to the SRA about the solicitor, and the SRA can take disciplinary action against them (for example, if they breach the SRA Principles).

91. In a related context, we also note that the Law Society has provided guidance on how practitioners can 'unbundle' their family services for clients – providing limited services restricted to particular activities within a case without going on the record, with the client therefore having regulatory protection in place only in relation to those limited parts of the same case.[3]

92. We consider that we need to allow greater flexibility in the arrangements if mixed professional teams including both authorised individuals and non-legal professionals (which are one of the main potential benefits of MDPs for clients) are to be viable.

93. In particular, we agree that the issue of whether SRA or the external regulation will apply should depend on who is leading the engagement to provide non-reserved legal activity.

94. An activity will be SRA regulated if it is carried out at the direction and under the supervision of an authorised individual. This wording matches the definition in s190 LSA of the circumstances where legal professional privilege applies. The MDP should ensure that the activity should be covered by legal

[3] http://www.lawsociety.org.uk/advice/practice-notes/unbundling-family-legal-services/

professional privilege when it is in the client's interests to do so.

95. We may agree on the terms of the MDP licence that the activity carried out by a mixed team will be covered by suitable external regulation, provided that all of the following conditions are met:

- the activity is led and supervised by the non-legal professional
- the authorised individual is not providing a reserved service in the same matter
- the authorised individual is not holding client money.

96. Where the authorised individual is engaged as part of mixed team in legal activity covered by suitable external regulation in accordance with this exception, then if they are a solicitor, RFL or REL then they will remain individually regulated in accordance with the proposal set out at paragraph 50 of the consultation paper. However, in light of the concerns raised about differences between different regulatory regimes in relation to conflict of interest, we will also impose a specific duty on the solicitor, RFL or REL not to act where there is a conflict of interest unless the client has given informed consent and appropriate safeguards can be put in place that are consistent with the SRA Principles. We will also, for the avoidance of doubt, apply Outcomes O1.9 to O1.11 (relating to complaints and to the Legal Ombudsman) to the solicitor, RFL or REL in this situation, although in practice in these cases the client's main engagement is likely to be with the non-legal professional who will fulfil those requirements on behalf of the entity.

Question 6: Are there any other non-reserved legal activities that should be considered as integral to the provision of reserved services?

97. The Law Society responded that it believes that all legal services provided by a firm authorised by the SRA ought to be subject to our jurisdiction and think that our approach may lead to considerable confusion. Whilst it agrees that claims management and other work which is ancillary to any form of litigation should be considered as integral to the provision of reserved services, it cannot understand why we propose to separate the grant of probate from the administration of an estate. It is concerned that an approach of this sort may lead to an incentive for firms to move as much as they can into an area which is not regulated by the SRA.

98. A number of respondents agreed with the Law Society that the administration of an estate should be included in the list of non-reserved legal activities that should be considered integral to the provision of reserved services. In addition, respondents suggested that will writing should be considered integral, with the Legal Services Consumer Panel expressing a desire to explore the matter further with the SRA.

99. ICAEW supported the proposal to allow the administration of estates to be regulated by an external regulator, stating that our approach reflected the detailed assessment carried out by the LSB when coming to its decision not to recommend that estate administration become a reserved activity.

100. There were respondents who countered that it is 'fairly simple to identify a boundary between the reserved and non-reserved legal work and to explain this to clients', particularly in relation to debt recovery and ABSs that are also insurers. These respondents felt that our proposed approach is overly complex and could result in creating over burdensome regulation rather than providing a solution to it. They called for clarity around whether a non-reserved legal activity will be regarded as integral to the provision of reserved services only in those instances of an MDP carrying out the reserved services, and proposed that a more proportionate approach should be adopted.

101. Finally, there were concerns that the perceived end point of a list of legal activities pre-defined as integral bears a considerable resemblance to the separate business rule and would again lead to burdensome regulation.

SRA response

102. We echo the desire stated by many respondents to ensure that consumers are appropriately protected. Such protection requires principles to prevent a case being artificially separated in order to avoid regulation, and cases being moved in and out of regulation in a way that will cause consumer confusion and detriment.

103. We have therefore maintained these principles and have provided further guidance in our policy statement on when work will be regarded as integral to reserved activity.

104. We agree with respondents who felt that the administration of estates should not be separated from the grant of probate, and that both of these activities will need to be SRA regulated activity within an MDP.

105. In this regard we have noted that ICAEW's response conflicts with its own practice in that it regulates estate administration as part of authorised work, along with the grant of probate. In its application to the LSB to become an approved regulator and licensing authority 4 ICAEW stated: 'Conscious of the need to ensure that the Act's regulatory objectives of consumer protection and protection of the public interest are fostered, ICAEW has elected to include estate administration within the scope of its regulation where this activity is conducted by an accredited probate firm'.

106. We do not think that it would be appropriate to state that the drafting of wills is integrally linked to the grant of probate, and we note that in 2013 the Government rejected the LSB's call to make will drafting a reserved activity. Nevertheless, we are aware that the drafting of wills is an area that can lead to significant problems for consumers. We do not consider the current voluntary will writers' schemes as suitable external regulation (because of lack of enforcement procedures) but other potential regulators could include the accountancy or taxation advisor regulators. We will therefore take a 'risk based' view of will writing in that we will normally expect it to fall within SRA regulation, but will consider suitable external regulation where the provider has a track record of successful delivery of the service under that regulation.

[4] http://www.legalservicesboard.org.uk/Projects/pdf/20121214_icaew's_probate_application.pdf

107. We have decided to allow non-reserved debt recovery activity to be included within the suitable external regulation exception. Whilst we consider that this activity should be regulated within an SRA authorised entity, we will accept FCA regulation of consumer credit activity as suitable external regulation, thus avoiding potential significant duplication. We are conscious that maintaining a requirement that all pre litigation activity had to be included within SRA regulation would be likely to have led to such work being put in a separate business rather than providing any extra protection.

Question 7: Do you have any comments on the draft changes to the SRA Handbook in Annex A?

108. We received comments from seven respondents in response to this question.

109. The Law Society felt that there is a lack of detail about how the changes in definition impact on the various provisions in the Handbook, and that without this information it is impossible to answer the question. However, it is content with the changes on the rules relating to the provision of immigration advice, as long as those providing advice remain properly supervised.

110. The majority of those that responded to this question felt that the draft changes reflect our policy proposals. However as these respondents were calling for a different approach to the issue of regulating MDPs they each felt that the changes need amending to reflect their individual responses.

111. One respondent advised us that there would need to be clarity about which parts of the Handbook entities are required to adhere to in respect of the non-reserved legal work that falls within the exception, and that this should be stated clearly on the entity's licence or in the Handbook. They also preferred for the Handbook to contain a definition of what the impact will be in terms of the exact scope of SRA regulation should the external regulator exception apply.

112. The Legal Ombudsman noted that it is important to ensure that consumer protection does not suffer when the draft changes are implemented, and consider that the minimum standard that external regulators need to meet should be a high standard of consumer protection, comparable to what is currently available through the SRA.

SRA response

113. Subject to the approval of the LSB, we will proceed with the rule changes as approved by the SRA Board which can be found at http://governance.lawsociety.org.uk/corporatediary/view=viewmeeting.law?MEETINGID=4780&COMMITTEEID=10754. The main thrust of the changes is to allow the SRA to limit the definition of SRA regulated activity on an MDP licence in order to give effect to the stated policy. The consultation paper contained details of the policy that we proposed to implement and outlined the effect around specific issues such as the Compensation Fund, professional indemnity insurance, the application of the Code of Conduct, and continued obligations on entities. The policy statement published today sets out how that policy will be applied. The approach taken in the rules is permissive rather than prescriptive in order to reflect the need to make decisions based on the risks of individual MDPs and in line with the SRA's continued move away from detailed rules.

114. The SRA Amendments to Regulatory Arrangements (Multi –disciplinary practices) Rules [2014] therefore make the necessary changes to the SRA Glossary, the Accounts Rules, the Code of Conduct and the notes to the SRA Authorisation Rules to reflect the new power to exclude some non – reserved legal activity from the definitions of 'regulated activity' and 'authorised activity' on the MDPs licence. They amend the application provisions of the Code of Conduct to reflect the proposals on individual regulation of solicitors, RFLs and RELs working in mixed teams. They also implement proposals to clarify the Practice Framework Rules for solicitors working in non SRA authorised entities and for those providing immigration services in SRA authorised bodies. Both of these proposals were generally supported by those that responded to them.

Question 8: Are there any other ways in which you consider the SRA could act to make its regulation of MDPs more proportionate and targeted?

115. The Law Society are concerned about the perceived level of complexity of the proposed exemptions and suggest that, for most firms, working out what could be exempt from regulation and ensuring separation of the work from any authorised person within the firm is likely to be as complicated as dual regulation. It is also concerned about how clearly the proposal could be explained to consumers. As a separate point, it considers that the specificity of the regulation, which it views as designed primarily to allow accountancy firms to become SRA regulated without their tax advice being caught by SRA regulation, has led to the creation of a 'detailed and inflexible exception' with limited consideration of how it might work in practice outside a large firm. Finally, the Law Society questions the extent to which the exception will speed up the processing of ABS applications as the use of any exception would need to be considered on a risk basis and be governed by conditions at authorisation.

116. A number of measures were suggested by respondents. These were:

- adopting a more flexible approach to the PII requirement of a MDP, particularly in terms of use of qualifying insurers;
- ensuring that the Accounts Rules apply only to the provisions of SRA regulated matters and the bank accounts connected to the regulated legal practice, rather than the whole MDP;
- removing debt collection from the list of services integral to the provision of reserved services, as the respondent considers that the clients of these services tend to be commercial organisations who would understand that it is only the conduct of litigation that is regulated, not antecedent services;
- limiting the reach of SRA regulation so that it would not cover normal professional activity by non-legal professions;
- structuring the approach to ABSs in a different fashion to that of individuals to take account of low risk environments outside the legal profession; and

- nominating a lead regulator who would be responsible for the prevention of fraud and money laundering, nominated on a firm-by-firm basis depending on the composition of the firm.

117. Where concerns were raised in relation to MDPs, respondents felt that:

- there will be different regulatory burdens and associated costs between some ABSs and traditional firms;
- there will be conflicts between the rules of different regulators which will require uniform rules that will be impossible to achieve in practice; and
- option 1 suggests MDPs provide cost savings however these occur by regulation. Instead, they occur by premises and administrative staff sharing, something that currently is not permitted unless the whole business is regulated by the SRA.

118. A number of respondents called for wider liberalisation of the regulation of MDPs than we are currently proposing. Measures suggested included:

- if the SRA consider that part of a business is subject to an adequate level of regulation for its non-reserved work (or non-legal work) then the SRA should place its trust in that regulator's ability to oversee that part of the business;
- the connected separate business rule should be removed;
- each professional business being regulated by its natural regulator, not as is the case now by a 'contrived' regulator; and
- the SRA only regulating reserved legal activities within an MDP (and potentially all firms) to reflect what the respondent perceived as the low regulatory risk of the majority of non-reserved areas.

119. There were calls for us to consult with the Legal Ombudsman and the Legal Services Board on the application of the Ombudsman's regime to all legal activities in an MDP. It was felt that this creates unnecessary confusion and duplication as to what are and what are not regulated legal activities, and will act as a deterrent to an MDP wishing to enter the legal market.

120. One respondent suggested that one other area of uncertainty is the extent to which activities fall within the definition of legal activity under section 12(3) LSA. They do not consider advice on the implementation of structures based on settled interpretation of laws, processing of tax returns or advice on compliance with the regulatory requirements of an external regulator such as the FCA to be legal activity.

121. The Legal Ombudsman suggested that if regulators and professional trade associations could agree to common terms and conditions for their codes of conduct, establishing the same high standards of consumer protection and redress, then all regulated professions and business structures would be competing within an agreed harmonised framework. This would help avoid

the need to introduce additional rules to address potential unfairness to traditional solicitor practices.

SRA response

122. We have simplified the proposed approach in order to reduce the circumstances where suitable external regulation will be required, and to allow subsidiary but necessary non-reserved legal activity to be excluded from SRA regulated activity.

123. This will make it easier for MDPs of all sizes to become authorised. Clearly, however, ABS applicants who prefer all of their non-reserved legal activity to be SRA regulated will continue to have that option in the future.

124. We do not consider it to be in the client's interests for the issue of the scope of the right to complain to the Ombudsman to be determined by whether or not a matter is within SRA regulated activity. It is important that clients are made aware of those rights, and we will ensure that MDPs will remain under the duty in Outcome 1.10 of the SRA Code of Conduct to inform clients of those rights and to cooperate with the Ombudsman even if the activity is not SRA regulated. Outcomes 1.9 (informing clients of their right to complain) and 1.11 (complaints handling) will also apply to all of their activity.[5]

125. In relation to the position of recognised bodies as opposed to MDPs, we consider it appropriate (and indeed necessary) that the SRA's regulatory regime reflects the realities that different professionals with different regulatory regimes will operate within the latter. Nevertheless, we consider it appropriate that recognised bodies are allowed to conduct a wider range of activities and that changes are made to facilitate that. This will be the subject of a separate consultation.

Question 9: Do you agree with our analysis of the disadvantages of option 2?

126. The Law Society considers the analysis of the disadvantages to be based on an assertion and that there is no real evidence on which to weigh the pros and cons of the option. It does not think it clear that we have any evidence as to how many firms, particularly those that cater to SMEs, would find this proposal practical or attractive to implement. It also considers that the paper does not address what it believes to be potentially significant competition problems for existing law firms who will find themselves regulated on a different basis simply because they have not chosen to take non-lawyers into the ownership or management of the firm.

127. There were a number of respondents who agree with our analysis, with one adding that the continued forced use of separate entities would move in the opposite direction to BIS's initiative to make ownership more transparent.

128. Those who disagreed with the analysis argued that they do not consider that 'the burden of regulation is reduced' by implementing option one as, under option 1, an entity would still have to undertake a detailed analysis of the

[5] See also LSB Guidance on S112 LSA first tier complaints http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/lsb_first_tier_complaints_handling_requirements_and_guidance_final.pdf

respective sets of rules and put controls in place to ensure it adheres to those rules as they already do under dual regulation. There was also some agreement with the Law Society's comment that SMEs may find option 2 the more attractive.

129. The Legal Ombudsman expressed an interest in seeing evidence of whether option 2 is worse than option 1 with regards to cost, expense and time, commenting that the advantage of having a single regulator is that everyone knows and complies with the same rules, regardless of the type of business structure.

SRA response

130. We refer to our previous responses. Option 2 (the status quo) does not mean a single regulator for legal activities for MDPs. Instead, it usually means dual regulation, hence the need for separate business applications and waivers. If a particular MDP wishes to retain all of its legal activity as 'SRA regulated activity' then that option will remain open to them. They can simply not ask the SRA to exercise the discretion to exclude any such activity from the definition of regulated activity on their licence. By definition, a more flexible approach gives a greater number of options which will make it easier overall for MDPs to become authorised.

131. An indication of the type of firm that might benefit from the new arrangements can be obtained by considering the ABSs that have so far been granted waivers of the separate business rules. An overview of the services that these entities provide is contained in the impact assessment.

132. Whilst there is some limited evidence that ABSs are more likely to serve business clients, our view is that by opening up the market to more competition, and by giving effect to one of the core intentions of the LSA (to allow multidisciplinary services), this reform, together with others being taken forward by the SRA, is likely to provide greater access to services and bear down on costs.

Question 10: What changes to the separate business rule do you think that we should consider for further consultation?

133. The Law Society agrees that the separate business rule needs to be reviewed, but considers that the implications of changing the rule will need to be fully analysed as this is a complex area. It has concerns that doing unreserved legal work outside of the regulatory framework could lead to results that will cause damage for consumers, and that client protection should be key when considering any changes. It also considers it essential to explore how any changes will affect various segments in the market, and, in particular, small firms who are unlikely to be able to take advantage of any changes.

134. The majority of those that responded to this question were in favour of change to the rule. Comments included

- The list of permitted and prohibited separate business activities should be removed, and instead the SRA should provide stringent rules surrounding information provided to clients and members of the public.

- There should be a re-examining of the outcomes sought by the rule and of the regulatory framework.

- Changes must ensure that entities are clear about their regulated status.

- Any changes should mirror the MDP proposals as much as possible.

SRA response

135. . We have noted the comments received. We will issue a consultation on the separate business rule with the intention of implementing any changes from April 2015.

Question 11: Do you agree that recognised bodies should be able to provide a wide range of professional services if they wish to do so?

136. The majority of those that responded to this question, including the Law Society, support steps to allow recognised bodies to provide a wide range of professional services.

137. The Legal Ombudsman stated that the legal profession should not be disadvantaged by not being able to do so, however this must depend on the consumer demand, and that, if it proceeds, there must be appropriate regulatory and client cover in place.

138. One respondent said that there should be a limit on the types of compatible services which can be offered if recognised bodies were able to provide a range of professional services.

SRA response

139. We have noted the comments received. We will seek further views on this issue as part of the consultation on the separate business rule, with the intention of implementing any changes from April 2015.

Question 12: Do you agree with our analysis in Annex B of the impact of the proposals in option 1, and are there any other impacts or available data or research that we should consider?

140. The Law Society considers that we have provided limited evidence of either the problem we seek to address or the impact of the changes. It argues that there is limited consideration given to consumer protection issues, the cost to firms and to the SRA of attempting to implement a complex exception and the numbers likely to enter the market using the exception. It also notes that the analysis of the effect on black and minority ethnic (BME) solicitors highlights that such solicitors are disproportionally found in smaller firms but fails to consider how an exception to regulation that small firms cannot use will impact on them.

141. A number of respondents agreed with the Law Society's perception that there has been limited consideration of the impact of the proposals. In particular, Asian Lawyers GB felt concerned that we had not appeared to have conducted an Equality Impact Assessment in relation to our proposals which they termed 'radical and potentially damaging reforms'.

142. Other respondents agreed with the impact statement. Where respondents provided examples of other impacts, available data, or research that we should consider in addition to the points made by the Law Society, they suggested that we:

- include the number of enquiries we have received about the licensing of an ABS;
- include the number of applications that have been made and the number that have translated to approval;
- provide a comparison benchmark to indicate realisation from the rule changes; and
- carry out an assessment focused on the impact on small legal practices.

143. One respondent felt that, although the proposals are a step forward, there would be problems in applying them in practice as they do not go far enough. They contended that the proposals will not promote competition, will complicate and make unattractive to a firm the use of mixed teams, and will confuse consumers, firms, and regulators due to the resulting regulatory duplication and conflict. These concerns were echoed by another respondent.

144. The ICAEW commented that the combination of our rule changes and the introduction of other licensing authorities may change the future shape of the market quite significantly.

SRA response

145. Even if it were possible (given the complexities involved), it would not be productive to attempt to model the potentials costs of option 1 (as revised) versus the costs of the status quo for firms (or for small firms) since, as we have made clear, applicants retain the option of all of their legal activity being SRA regulated. They can therefore make an individual commercial choice. In considering the impact of these proposals we also need also to bear in mind that we are removing regulatory restrictions rather than imposing them.

146. We have dealt with some of the concerns raised about the complexity of the proposals by reducing the circumstances in which it will be necessary to demonstrate suitable external regulation, simplifying the mixed team proposals, and allowing subsidiary but necessary non-reserved legal activity performed by non-legal professionals to be excluded. This will make it easier for applicants; including small firms, to avail themselves of the exceptions should it be appropriate.

147. One way to consider the potential impact on the market is to look at those ABSs that are part of a group offering different services that have applied for a waiver of the separate business rule. However, caution needs to be exercised here, as the actual ABSs used will be different in size and structure from those that could have been authorised had the rules been different.

148. More broadly, there is clearly a significant range of potential impacts on the market. If the proposals prove unworkable, as some respondents allege, then

clearly they will have ailed in their intent and would have no impact on the market compared to the status quo. Conversely, if as we believe the revised proposals are practicable, then more MDPs will be authorised and there will be an impact. The evidence we have suggests that the number of potential MDPs is currently low, therefore the short term impact on the overall market should not be significant. However, as a result of a range of market changes, the longer term impact in combination of other measures is likely to be more significant, although it is not currently possible to isolate the likely effects of this particular measure.

149. 3.138. These issues are discussed in more detail in the impact statement. (Annex 7 SRA Board paper)

Respondent information

150. We received 36 responses submitted by, or on behalf of, a range of organisations as follows:

Breakdown of respondents

The Law society 1

Local law society 13

Law firm/other practice 12

Personal response 2

Representative group 7

Other 1

Respondents to the consultation

This list includes only those respondents who have agreed to their names appearing in a list of respondents

Alexander & Co. Solicitors LLP

Asian Lawyers GB

Birmingham Law Society

Building Societies Association

Cambridge and District Law Society

Chester & North Wales Incorporated Law Society

City of London Law Society

Clifton Ingram LLP

Devon and Somerset Law Society

Gill Akaster LLP

Harrison Morgan Solicitors

ICAEW

Irwin Mitchell

Junior Lawyers Division

Khiara Law LLP

Law Centres Network

Legal Ombudsman

Legal Services Consumer Panel

Maurice Guyer

Middlesex Law Society

Newcastle upon Tyne Law Society

Northamptonshire Law Society

Plymouth Law Society

Sole Practitioners Group

Southend on Sea District Law Society

Sunderland Law Society

Surrey Law Society

The Law Society

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