Solicitors Regulation Authority

SRA Regulatory Reform Programme

Improving Regulation: proportionate and targeted measures

April 2015

Summary of approach

1. This consultation paper sets out a range of proposals aimed at reducing unnecessary burdens and costs on regulated firms, and to ensure proportionate and targeted regulation.

2. In May 2014 the SRA published a policy statement setting out the rationale and framework for a reform programme designed to:
   - remove unnecessary regulatory barriers and restrictions and enable increased competition, innovation and growth to better serve consumers of legal services;
   - reduce unnecessary burdens and cost on regulated firms;
   - ensure regulation is properly targeted and proportionate for all solicitors and regulated businesses, particularly small businesses.

3. The policy statement sets out the major elements of the reform programme[1], which include:
   - fundamental revisions to the systems for educating, training and developing solicitors;
   - changes to the SRA's regulatory framework and approach to enable increased entry of multi-disciplinary ABS to the market and to ensure regulation of these entities is targeted and proportionate;
   - changes to arrangements for compulsory PII for regulated entities, compensation arrangements, and accounts rules;
   - a package of measures to reduce regulatory burdens on small firms, and to increase the level of such firms from within the SRA;
   - changes to the separate business rule to provide greater freedom to firms about how they structure their businesses, and
   - changes to the way in which in-house solicitors are regulated.

   The SRA has already consulted on all the major elements set out above. The consultations can be found on the SRA's website, together with the consultation analysis[2].

4. This paper sets out a series of proposals that reflect our approach and reform programme but are too narrow in effect to warrant their own consultation. The proposed changes flow from our own internal process reviews, ongoing stakeholder engagement, responses to our recent discussion paper on small firms[3] and Phase 3 of the Red Tape Initiative[4].

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1. The reform programme is underpinned by the SRA's four strategic objectives:
   - reform our regulation to enable growth and innovation in the market and to strike the right balance between reducing regulatory burdens and ensuring consumer protection;
   - work with solicitors and firms to raise standards and uphold core professional principles;
   - improve our operational performance and make fair and justifiable decisions, promptly, effectively and efficiently; and
   - to work with our stakeholders to improve the quality of our services and their experience when using them

[2] http://www.sra.org.uk/sra/consultations/consultations-closed.page

[3] http://www.sra.org.uk/sra/consultations/discussion-papers/small-firms.page

[4] http://www.sra.org.uk/sra/consultations/red-tape-initiative-phase-3.page

5. We welcome feedback from all stakeholders on the proposals included in this consultation, and would particularly welcome stakeholder views as to whether these proposals further the aims stated in our policy statement. This is an 8 week consultation, and will close on 11 June 2015.

Proposals

6. This section of the consultation sets out a range of proposals for regulatory simplification which in brief, comprise:

    - Simplifying compliance officer approval for small firms (1-4 managers)
    - Simplify candidate declaration and notification processes
    - Remove the requirement for firms to carry out reserved legal activities
    - ABS Authorisation - operational changes and improvements
    - Changes to insolvency rules
    - Alternatives to client accounts
    - Guidance on recording of non-material breaches
    - Clarification on the outsourcing of legal and operational functions
    - Recording and reporting of diversity data
    - The Apprenticeship Route to qualification

7. We are also interested in gathering stakeholder views as to whether the current prohibition on making payments to introducers in respect of legal aid customers, or those who are the subject of criminal proceedings, should be retained or removed.

Simplifying Compliance Officer approval process for small firms (1-4 managers)

Background and current position

8. At present, Rules 8.5 and 14.1 of the SRA Authorisation Rules require a separate application to be made for approval of a firm's Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA), both at the time of the firm's initial application for authorisation, and in the event of any change to the individuals occupying those roles.

9. In November 2014, the SRA published a discussion paper to identify improvements in the way we regulate small firms. In that paper, we put forward a proposal to introduce a process for deeming approval of COLPs and COFAs in small firms, and sought views from respondents, advising that we would undertake a formal consultation on this proposal, should respondents be in favour of this change. Respondents were supportive, and we are now consulting on the SRA's proposed approach as set out below.

10. The SRA's proposal aims to make the application process more streamlined for small firms. It does not alter the SRA's view of the key importance of the COLP and COFA within a firm or the nature of these roles. It is, however, considered to be a proportionate approach which avoids duplication of effort for firms and the SRA in situations where there is low risk, given the size of the firm.

Rationale for change

11. Individuals who wish to act as managers, owners or compliance officers of authorised firms are required to make an application to the SRA to be approved to take up that role. This proposal recognises the fact that in the smallest firms these responsibilities will usually fall to the principal or, where they do not, will remain under their very close scrutiny. In larger firms it is more likely that these roles will be specialist roles, often full time and thus separate to management decisions. For small firms this is an unnecessary duplication of the authorisation process in circumstances where the individual is already approved as a manager and the management and compliance functions are inevitably entwined. This is particularly likely to have an impact on smaller firms, in which the same individual is more likely to undertake more than one role within the firm

12. The SRA has set out its commitment to reducing the regulatory burden on small firms, and is therefore seeking views on its proposal to make minor changes to the existing rules to allow the SRA to deem approval for COLPs and COFAs who are lawyers and are managers in the relevant firm, where this has no more than 4 managers, or are sole practitioners. This will remove the requirement to complete a separate standalone application, and have this assessed by the SRA. Our assessments include a review of the information provided in the application form (which may lead to a request for further information if necessary) and a criminal records bureau check. Instead the firm will have to notify the SRA of the proposed appointment[5].

13. This change will be of administrative benefit to many small firms, but will also benefit some medium size firms, as the SRA does not intend to apply any further qualifying criteria (such as a turnover limit) over and above the number of managers in the firm.[6] We are interested in seeking views as to whether this change should apply to all firms: sole practitioners, recognised bodies, and alternative business structures, or whether account should be taken of business structure and/or the involvement of non-lawyers in the ownership or management of the firm.

14. We could continue to seek information in the notification form regarding the individual's experience and employment history. We propose to reserve our right to assess the application in the usual way in certain circumstances, for example where we are concerned that the applicant does not have the capacity or experience to take on the role. We could approach this by including a series of declarations in the notification form which, if not completed satisfactorily, result in the application being passed on for assessment. However, we are unlikely in such circumstances to require the applicant to undertake a DBS (Disclosure and Barring Service) check if they have completed this prior to being granted approval as a manager.

[5] This is likely to be via mySRA, but we are currently considering the necessary process changes and will make an announcement of the method of notification when we make the final decision following the consultation.

[6] the SRA's small firm discussion paper took into consideration firm turnover and number of PC holders as other potential indicators/identifiers.

15. We are keen to hear views from stakeholders on this proposal. We want to hear views as to the circumstances when a sole practitioner or partner in a small firm might be authorised as such but is not suitable to act as COLP or COFA. We particularly want to hear views regarding the criteria which would require referral of an application for assessment if this were to be our approach.

Proposed rule change

Add new Rule 13.3

16. The SRA proposes to add a new Rule (13.3) to the SRA Authorisation Rules. The SRA will deem a person to be suitable as a compliance officer of an authorised body, provided that the individual is either a sole practitioner or a lawyer (who is also a manager) in a firm with no more than 4 managers, and providing that the SRA is given proper notification which satisfactorily meets our criteria, and the SRA has not previously withdrawn approval of that person to be a compliance officer.

Consultation question

Do you agree with the SRA's proposal to introduce deemed approval for the COLP/COFA roles for sole practitioners and 1-4 manager firms?

Do you believe that deemed approval of COLPs/COFAs should be limited to certain types of firms? If so which firms and why?

Do you believe there are certain criteria or characteristics in a prospective COLP/COFA which should require us to assess their application nonetheless? If so which criteria or characteristics, and why?

Simplify candidate declaration and notification processes

Proposed rule change

17. The SRA is consulting on removing the requirement at Rule 14.3 of the SRA Authorisation Rules that requires a candidate for approval as a manager, owner or compliance officer to declare (in the application put forward by the firm in which they propose to take on that role) that the information supplied about them is correct and complete. We propose to remove the need for candidates to sign a declaration separate to the applicant firm.

18. We also propose to remove the requirement in Rule 14.4 for the SRA ‘separately’ to notify both the firm and the candidate of the SRA’s decision to approve or refuse approval. Where there are a significant number of managers, for example, it is disproportionate and unnecessary to notify each individual candidate named in that application. The SRA proposes therefore to remove the requirement for this notification to be made 'separately to the candidate in writing'. Rather, the notification will be to the applicant or

authorised body, although an individual may still choose to receive notification direct.

19. The requirement in Rule 14.6 for the SRA separately to send the candidate and firm a notification if we intend to place conditions on a candidate's approval or refuse an application, remains unchanged.

Consultation question

Do you have any views on the SRA's proposal to simplify candidate declaration and notification processes?

Remove the requirement for firms to carry out reserved legal activities

20. Rule 22.1 sets out the circumstances where the SRA may revoke or suspend a firm's authorisation. One of these circumstances (set out at 22.1 (a) (iii) is that the SRA is satisfied that the body has no intention of carrying on the legal activities for which it has been authorised.

21. The SRA considers this rule to be unnecessarily restrictive. The SRA takes the view that authorisation confers an entitlement on bodies to carry out certain (in particular, reserved) legal activities. We therefore believe bodies should be entitled to retain their authorisation if they are considered suitable to deliver legal services, and whether or not they choose to do so at any particular point in time is a matter for them.

22. We also propose to make changes to Rule 4.2 and 4.3, to make it clear that the SRA may grant an application in relation to one or more reserved legal activities, but remove the current requirement for a body to include a statement setting out which reserved legal activities it seeks authorisation for.

Consultation question

Do you agree with our proposal to simplify authorisation by removing the requirement for firms to carry out reserved legal activities?

ABS authorisation - operational changes and improvements

Background and current position

23. As part of our ongoing work to improve our operational processes and drive continuous improvement, the SRA has been working on a range of proposals aimed at removing unnecessary restrictions and regulatory burdens when authorising firms. Specifically, we have also been in discussion with the LSB during 2014 and early 2015, regarding the SRA's interpretation of Schedule 13 of the LSA and how we apply that Schedule when considering applications from licensable bodies.

24. Schedule 13 of the LSA relates to the ownership of Licensed Bodies (ABS). It includes a number of safeguards including the requirement for certain owners to obtain prior approval of their fitness to own. In its guidance to licensing authorities on the contents of licensing rules, the LSB stated that licensing authorities should "implement the ownership tests required by the Act in a proportionate way to ensure that they do not unduly restrict different types of ABS ownership."[7]

25. The work undertaken to date has only considered approval requirements as they apply to Schedule 13 owners, and not approval of managers under Part 4 of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011. The SRA will continue to look for areas where our current processes can be streamlined and simplified, and where these can be implemented, the SRA will not hesitate to do so. We welcome further suggestions from stakeholders and invite respondents to make those in response to this consultation.

Rationale for change

26. As noted above, the SRA's recent work in this area combined with our operational experience over a number of years has led to the identification of areas where we consider there is some immediate scope for a better focus of some of the current requirements.

27. If the proposals are accepted post-consultation, any Rule changes will not be implemented until November 2015. However, our assessment is that these requirements go further than Parliament required and are not consistent with LSB guidance. In our experience of authorising ABS they add complexity, delay and cost but do not significantly reduce the risk of unsuitable ownership. We have waived these requirements in certain cases and would be willing to consider any requests for a waiver until a decision is made post consultation.

Proposed rule changes to the SRA Authorisation Rules

a) Remove requirement for approval of managers in ABS corporate owners

28. The SRA proposes to remove the current requirement in Rule 8.6 (a) (ii) for the SRA to approve individual managers within ABS corporate owners.

29. The corporate owner would still require approval under Schedule 13 of the LSA, and therefore any concerns about individual managers in the corporate owner which affect the suitability of the body to own a legal business, can be considered as part of that separate authorisation decision.

b) Remove the 7 day notification requirement for an authorised manager or owner of an ABS.

7 http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/abs_guidance_on_licensing_rules_guidance.pdf

30. Rule 13.2 sets out the conditions under which an applicant can be deemed to be the authorised manager or owner of an ABS. The SRA proposes to remove the current requirement at 13.2 (c) that firms must notify the SRA at least 7 days in advance of such appointments. This requirement is unnecessary, and the vast majority of applications are made online through an update to my SRA. The rule will be amended accordingly but will still require firms to notify the SRA in advance of all such appointments.

31. We also propose to make a minor change to Rule 13.2 (d), to make it clear that the application will only be deemed approved in circumstances where the SRA has not previously withdrawn its approval for that person to be a manager or owner.

Consultation question

Do you agree with our proposals to simplify the authorisation process for ABSs by:
a) removing the requirement for approval of managers in ABS corporate owners;
b) removing the 7 day notification requirement for authorised manager or owner of an ABS

Do you have any specific concerns regarding the SRA's proposals to simplify the authorisation process for ABSs? If so, please specify what these are.

Do you have any specific suggestions for the further simplification or streamlining of ABS authorisation?

Changes to insolvency rules

Background and current requirements

32. Regulation 3 of the SRA Practising Regulations 2011 allows the SRA to refuse or impose conditions on an application for renewal of a practising certificate following certain events, and it provides the SRA with the opportunity to promote and maintain adherence to the professional principles and to protect consumers of legal services. These events include bankruptcy, insolvency or administration of those applying for the practising certificate, or entities for which they have been partners (members), managers or directors.

Rationale for change

33. This regulation does not cover the situation where the applicant is a member of a partnership that has entered into administration but where there has not yet been an individual voluntary arrangement (IVA), partnership voluntary arrangement (PVA) or declared bankruptcy. As administration can often precede any of these individual insolvency arrangements, we require the regulations to cover such an event. Regulation 3.1 (k) (iv) already covers the situation where the applicant is a member of an LLP or director of a company

that has gone into administration, and the amendment is needed to close this gap for partnerships.

Proposed rule change

34. The proposed rule change will ensure partnerships who have entered administration but have not yet been subject to insolvency or bankruptcy will be covered by regulation 3.1k(iii) of the practising regulations.

Consultation questions

Do you agree with our proposal to adjust the regulations to cover the event of partnerships entering administration?

Alternatives to client accounts

Background and current requirements

35. The SRA is reviewing the full range of financial protection elements within our regulatory arrangements to identify improvements to enable us to reduce costs, target protections, and ensure our regulatory restrictions and requirements are proportionate. As part of this programme of work, the SRA has committed to a major review of the rules relating to client accounts over the next two years.

36. The existing Accounts Rules provide a framework and a set of principles designed to keep clients' money safe, primarily via the operation of client accounts with proper accounting systems and controls.

37. Protecting consumers of legal services is a key theme of the SRA's regulatory reform programme. A consistent risk to consumers, and one that is reflected in the number of cases related to the misuse of money or assets, is the misuse of funds from client accounts.

38. In light of this, the SRA has begun to explore alternatives that may offer appropriate consumer protection. We are currently considering an approach that would allow authorised entities to use third party managed account facilities, where these facilities have the necessary protections in place to ensure that clients' money is kept safe. A third party managed account as an alternative to holding client accounts, is a model operated elsewhere in the legal services industry, including third party companies operated by the Bar Council and the Carpa in the French legal system. These models operate an escrow-style service and require a dual authorisation, on the part of the consumer and practitioner, to approve access to funds.

39. A suggested list of desirable features of third party managed accounts is included at **Annex A**. Please note that this is a non-exhaustive list. The SRA welcomes stakeholder views on this list, and on any additional or alternative

safeguards that we should consider in authorising the use of third party managed accounts.

40. At present the list is intended as an indicative, rather than strict, set of criteria, because in the early stages of considering alternatives to client accounts we will need to review each case carefully and learn from experience. We welcome respondents' comments on this area in particular.

41. Client accounts are expensive to run, both for firms, and also in the costs of regulation associated with ensuring that they are not misused, accounting, investigations, and where necessary, compensation. The use of third party managed accounts may offer a lower cost alternative that continues to provide appropriate protection. Consumers, meanwhile, do not necessarily require their money to be held by lawyers, where funds can be disbursed directly from bank to bank.

Proposed rule changes

42. The SRA proposes to permit the use of third party managed accounts as an alternative to client accounts, where the client protection arrangements provided by the third party managed accounts are assessed by the SRA as being suitable, in accordance with the criteria set out above and at **Annex A.** We are consulting on two approaches to this assessment:

    Option 1: Under Option 1, the SRA would approve all specific third party managed accounts that may be used (either generally or in relation to a particular firm's specific circumstances);

    Option 2: That if all relevant safeguards can be identified up front (the SRA has suggested a range of potential safeguards, and invites stakeholder views and comments on these), that the SRA places appropriate criteria in rules, and has no role in approving specific schemes.

43. Option 2 would be the SRA's preferred option, as it removes a layer of decision making and complexity for both the provider and the consumer of that product.

44. Whilst the proposed rule changes would provide a clear and express basis for the use of third party managed accounts under specific circumstances, these would not be implemented until November 2015. This approach is intended to provide flexibility and increased protection for consumers ahead of the third and final phase of the review of the SRA Accounts Rules.[8]

45. Given that the current Accounts Rules do not prevent the use of alternative arrangements, the SRA considers that there is no good reason to deny practitioners the flexibility offered by the new approach until the next version of the Handbook is released. We will therefore consider any request to use such an arrangement on a case by case basis, by considering the features listed at **Annex A**. Firms that wish to use third party managed accounts should contact the SRA's Regulation and Education Team for approval.

[8] http://www.sra.org.uk/sra/consultations/reporting-accountant-requirements.page

Consultation question

Should the SRA approve third party managed accounts?

If so,

- **should these be assessed and considered by the SRA on a case by case basis, or**
- **should the SRA identify a minimum set of safeguards that should apply to all third party managed accounts?**

Are there any additional safeguards, not set out in Annex A, that you think we should consider in authorising the use of third party managed accounts?

Guidance on recording of non-material breaches

46. Rule 8.5 of the SRA Authorisation Rules requires compliance officers to record any failure by the relevant firm to comply with their regulatory obligations, and to make these records available to the SRA on request. The statutory requirement is to report breaches rather than to record.

47. The SRA has been made aware of concerns that the requirement to record is disproportionate, citing our previous decision to remove the requirement for recognised bodies to report non material breaches, on an annual basis. The rationale provided was that it is disproportionate to expect compliance officers to make a separate record of non-material breaches, where these will be monitored and assessed in the course of daily business.

48. We have carefully considered the issues raised, and reviewed the current requirements. The obligation to record non-material breaches under Rule 8.5 does not require a record to be made in any particular form, nor does it require the COLP or COFA to make a separate record of each non-material breach of which a record already exists in the firm's papers.

49. How such breaches are recorded and monitored is therefore a matter for firms to decide as part of their compliance plan, bearing in mind that it is necessary for a firm to be able to detect patterns of non-material breaches which (when taken together) amount to material non-compliance which the firm is obliged to report with suitable immediacy. ABSs also need to bear in mind the obligations imposed upon the COLP and COFA respectively to report non-material failures as part of the annual information report

Proposed action

50. The SRA does not consider that a general duty to record non-material breaches is disproportionate, given the responsibility on firms to monitor compliance. However, we have been persuaded that there may not be sufficient clarity on the current position, and the degree of flexibility this affords to firms in how they comply with guidance. We intend, therefore, to amend the

existing guidance note to reflect the position set out in paragraphs above, in order to provide further clarity.

51. However, given that the SRA is primarily concerned with ensuring that breaches are appropriately identified, acted on and reported where appropriate, we would be interested in gathering views as to whether the rule requiring firms to record breaches assists firms in doing so, or whether we should introduce a rule change removing this requirement.

Consultation question

Does the SRA's additional guidance on recording of non-material breaches provide further clarity on this requirement?

Should the SRA also give consideration to removing the requirement for firms to record such breaches at all? If so, why?

Cloud computing and law firms

52. Outcome 7.10(b) of the SRA Code of Conduct states that where firms outsource operational functions they must '… ensure that such outsourcing is subject to contractual arrangements that enable the SRA or its agent, to obtain information from, inspect the records (including electronic records) of, **or** enter the premises of, the third party, in relation to the outsourced activities or functions'.

53. This rule has been subject to some debate amongst stakeholders, particularly with regard to the use of cloud computing, with the requirement to 'enter the premises' being seen as a stumbling block for firms, effectively preventing the use of newer technologies such as cloud computing.

54. However, in interpreting Outcome 7.10, it is important to note that (as the connecting word is **'or**' enter the premises, and not '**and**'), provided that a firm has an agreement to obtain or inspect the information, there would be no specific requirement to be able to enter any relevant premises.

Rationale for change

55. The SRA does not wish to prevent firms from taking advantage of new and emerging technologies to manage their businesses.

56. The purpose of Outcome 7.10 is to ensure that the SRA is able to exercise its regulatory powers in respect of the authorised person, notwithstanding the outsourcing of legal activities or operational functions to a third party (including the use of cloud computing). Firms must ensure that their contractual arrangements with third parties are adequate for these purposes, and this will depend on the nature of the activities or operations outsourced.

57. It will not be necessary for all such arrangements to include a right to enter the third party's premises, however this will depend on the nature of the activities outsourced, and the arrangements in place for carrying these out.

Proposed action

58. The SRA welcomes views on whether the current rule is preventing firms from utilising all technology options available to them and whether additional guidance is needed.

59. If respondents feel that additional guidance is needed, the SRA is consulting on two options to provide further clarity to firms on the requirements of Outcome 7.10.

    Option 1 - would provide further clarity through additional guidance. The guidance would make it clear that the purpose of Outcome 7.10 is to ensure that the SRA is able to exercise its regulatory powers in respect of the authorised person notwithstanding the outsourcing of legal activities or operational functions to a third party. The guidance will also note that:
    - contractual arrangements with third parties must be adequate for these purposes, and will depend upon the nature of the activities or operations outsourced: and
    - it will not be necessary for all such arrangements to include a right to enter the third party's premises (depending on the nature of the activities outsourced and the arrangements in place for carrying these out).

    Option 2 - would make changes to the Outcome to make clear the following; that contractual arrangements need to allow for the SRA (or its agent) to be able to monitor compliance; that this may include entry to premises as appropriate, and that the arrangements must require the third party to provide to the SRA or its agent, copies of records and information.

Consultation question

Does the current rule in relation to outsourcing present unforeseen difficulties to firms wishing to take advantage of cloud computing options?

Does the addition of the proposed guidance note on Outcome 7.10 provide sufficient clarity, or should the SRA make changes to this Outcome to provide further guidance to firms?

Recording and reporting of diversity data

Background

60. The SRA requires firms to submit data regarding the diversity make up of their workforce on an annual basis. To date, the SRA has advised firms on the process to follow through the provision of information and ad hoc advice. However, although we have placed this requirement on firms, this is not currently reflected in Chapter 2 of the SRA's Code of Conduct (which addresses Equality and Diversity requirements).

Proposed action

61. We propose to include a new Outcome (Outcome 2.6) that requires solicitors to have in place appropriate arrangements for monitoring, reporting and publishing workforce diversity data. The SRA also intends to provide links from the Code of Conduct to sites providing information on collecting, reporting and publishing diversity data (including compliance with data protection legislation).

62. We appreciate that appropriate arrangements will differ between type of firm, or size of firm. With that in mind, we also intend to make minor changes to the indicative behaviours section as follows. At IB (2.1) we will make it clear that the written equality and diversity policy may be contained within one or more documents, including one or more other policy documents, as appropriate. We also propose to remove IB (2.1) (g) as this is covered by the changes set out above.

63. The SRA considers that this will provide transparency and clarity, and will assist firms in meeting this obligation. There should be no impact on firms, who are already required to collect and report this data. This is a minor amendment to the rules to reflect existing requirements.

Consultation question

Do you have any comments on the SRA's proposal to clarify the current requirements for the recording and reporting of diversity data?

Enable qualification as a solicitor through an apprenticeship route

Background

64. In our October 2013 position statement, *Training for Tomorrow,* we set out our response to the 2013 report of the Legal Education and Training Review. We identified that the two core objectives of our reforms should be to focus more rigorously on assuring standards of competence and to encourage further innovation and flexibility around how those standards could be met by intending and practising solicitors.

65. The first phase of our work was to define more precisely the competences required for practice as a solicitor, and this phase of work culminated in the publication on 1 April 2015 of a new Competence Statement for solicitors. We are now working on the development of an assessment framework for the Competence Statement for intending solicitors.

66. In *Training for Tomorrow*, we signalled our support for the development of new apprenticeship routes to qualification. We pointed out that a regulatory regime based on assessing clearly articulated standards would facilitate flexibility, and "make it possible for apprenticeships, and other potential new and non-graduate pathways to qualification, to be developed and benchmarked against our competence standard." We suggested that it was for employers and

education providers, not us, to take forward the development of these pathways; and that our role should be to ensure that appropriate mechanisms are in place for individuals seeking to qualify via these routes to demonstrate that they meet our standard.

English and Welsh apprenticeship models

67. The development of new apprenticeship pathways began immediately, with the launch, also in October 2013, by the Department for Business, Innovation and Skills (BIS) of Trailblazers, a new approach to apprenticeships in England, designed to make apprenticeships better aligned to the requirements of employers. Since then the SRA has been working alongside an employers' group (established by BIS) to develop an Apprenticeship Standard leading to qualification as a solicitor. The Apprenticeship standard for qualification as a solicitor was approved by BIS in 2014 and the associated assessment plan is now being developed. Once the assessment plan has been approved by BIS, it is expected that the apprenticeship will become available for delivery in England from September 2016.

68. In parallel, we have been working with Skills for Justice (the Sector Skills Council representing legal services) who have been commissioned by the Welsh Government to develop a Level 7 Higher Apprenticeship in Legal Practice. Also leading to qualification as a solicitor, this apprenticeship framework was approved by the Welsh government in April, and may be available for delivery in Wales from September 2015.[9]

69. For both Welsh and English apprenticeships, the role of the SRA has been to ensure that both pathways enable apprentices to demonstrate that they have met the standards set out in the Competence Statement for safe practice as a solicitor.

Rationale for change

70. The SRA Education and Training Requirements (Regulation 2) set out the route to admission as a solicitor. This is currently limited to the following pathways:
    - through the completion of specified academic and vocational stages of training;
    - through exemption from all or part of the academic or vocational stages (through the process of equivalent means), or
    - for lawyers from other jurisdictions, through compliance with Qualified Lawyer Transfer Scheme (QLTS) Regulations.

71. Regulation 4 of the Admissions Regulations states that application for admission may only be made after complying with one of the above requirements.

72. In order to enable apprentices to qualify, we therefore need to amend the training regulations to permit qualification through the English or Welsh

[9] http://www.afo.sscalliance.org/frameworks-library/index.cfm?id=FR03202

apprenticeship pathways. Qualification through these pathways will require apprentices to demonstrate that they have met the requirements set out in the assessment plan for the Trailblazer apprenticeship or in the apprenticeship framework for the Welsh apprenticeship, including passing an assessment conducted or approved by the SRA. The first apprenticeship assessments will not be available before 2018.

Proposed rule change

73. We propose to make minor changes to Education and Training Requirements (Regulation 2) to give effect to the proposed change above.

74. We also intend to include the following definitions in the SRA Handbook Glossary:

Apprenticeship

The Apprenticeship Standard for a Solicitor (England) means the standard approved by the Department for Business, Innovation and Skills in 2014 and as varied from time to time.

The Level 7 Higher Apprenticeship in Legal Practice (Wales) means the standard approved by the Welsh Government in March 2015 and as varied from time to time.

Consultation question

Do you agree with our proposal to enable qualification as a solicitor through an apprenticeship route?

Fee sharing and referrals

75. Chapter 9 of the SRA Code of Conduct deals with the protection of consumer interests and upholding of the professional principles in relation to arrangements with third parties. This includes fee sharing arrangements or referral arrangements with introducers.

76. As part of our regulatory reform agenda we are exploring the barriers consumers face in accessing legal services. Outcome 9.6 of the Code of Conduct has been highlighted to us as one example of a barrier to consumer choice.

77. Outcome 9.6 prohibits payments to introducers in respect of customers who are the subject of criminal proceedings, or who have the benefit of public funding. Third party introducers (who trade on an offer to connect consumers with legal services that meet their needs) are therefore prohibited from doing so in these circumstances.

78. As noted in the introduction, the SRA is interested in gathering stakeholder views on whether the current prohibition on making payments to introducers in

respect of legal aid customers, or those who are the subject of criminal proceedings, should be retained or removed.

79. The SRA is conscious that this is a topic of concern for many people. Understandably, many lawyers find it distasteful and unethical to use referral fees to pass clients between businesses. This has been seen as particularly the case where consumers are making a distress purchase such as in many criminal matters.

80. However, the criminal legal market has been in a state of flux for some years, with changes to legal aid fees, the introduction of means testing, and wider changes in the justice system, all of which have led to smaller volumes in many parts of the systems. These changes are all having impacts on the structure of the market, to the extent that the traditional roles of solicitor and barrister have become blurred.

81. Solicitors, and solicitors firms, are more involved in advocacy than was originally the case. And some expect to see barristers chambers involved in, or delivering, criminal services beyond advocacy. Other firms that are neither traditional solicitor firm, nor barrister in chambers, may be increasingly involved. The breakdown of these roles means that the flow of cases through the system, or sections of the legal market, is different to that it might have been historically. It is right to therefore question if the traditional rule banning referrals from this market is still sustainable.

82. Furthermore, some people allege that referral fees are already being paid directly or indirectly, for example, to acquire advocacy cases or to 'swap' multi-handed cases. We have seen very little clear evidence of this but are interested to receive that evidence so that we can assess this issue properly. As well as evidence of this happening in practice, evidence of the impact on consumers, access to justice and the rule of law is also important in helping us reach a clear view.

Current position

83. Amongst the SRA's regulatory objectives are the improvement of access to justice, and the promotion of the interests of consumers of legal services. Whilst the proposal to remove the limits on the role of third parties in these circumstances appears on the face of it to be a straightforward measure to improve access to justice, it is important to note that these categories of consumer were previously specifically excluded on ethical and public policy grounds.

84. We understand the economic imperatives that might lead to referral fees being an important part of the business model throughout the criminal market, but that does not necessarily mean that it is in the interests of vulnerable consumers or the rule of law.

85. However, a business that refers clients to an appropriate lawyer might increase the take up of legal advice in the police station or reduce the costs of providing such services. The lawyer would still be bound by the same obligations relating to competence and ethical standards. Similarly, the need

for the criminal client to navigate between police station adviser, solicitor and advocate may mean that properly aligned incentives can ensure that any lawyer or business involved refers appropriately rather than retaining cases when it may not be in the client's best interests to do so.

86. The SRA is interested in gathering stakeholder views on this issue - the decision to carve out these provisions was taken some 15 years ago, and in a very different environment. Consumers are also more used to (and adept at) accessing a wide range of services from internet platforms which provide cost and service comparisons between providers for a profit, for example.

87. We are primarily interested in generating an open discussion on this issue. Any changes to the Code of Conduct will be dependent upon the outcome of this consultation. We are aware that the Legal Aid Agency, like any purchaser, can ban referral fees in criminal contracts and we make no comment on that. Our focus is simply to consider the extent to which as a regulator we should restrict business practices given our regulatory objectives.

Consultation question

Do you consider that Outcome 9.6 should be retained or removed? Please give your reasons why.

Impact assessment

88. An initial high level impact assessment is attached at **Annex B**. This lists each proposal in turn, and sets out the SRA's early assessment of the likely impact of each of the proposals (which we consider to be, in the main, either neutral, or likely to have a positive impact, albeit modest in some cases). The SRA would welcome views from respondents, with a particular emphasis on the following questions.

- **Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?**
- **Do you agree with our assessment of impacts for each proposal?**

Consultation questions

Simplifying compliance officer approval for small firms (1-4 managers)

CQ1 Do you agree with the SRA's proposal to introduce deemed approval for the COLP/COFA roles for sole practitioners and 1-4 manager firms?

CQ2 Do you believe that deemed approval of COLPs/COFAs should be limited to certain types of firms? If so, which firms and why?

CQ3 Do you believe there are certain criteria or characteristics in a prospective COLP/COFA which should require us to assess their application nonetheless? If so, which criteria or characteristics, and why?

Simplify candidate declaration and notification processes

CQ4 Do you have any views on the SRA's proposal to simplify candidate declaration and notification processes

Remove the requirement for firms to carry out reserved legal activities

CQ5 Do you agree with our proposal to simplify authorisation by removing the requirement for firms to carry out reserved legal activities?

ABS Authorisation - operational changes and improvements

CQ6 Do you agree with our proposals to simplify the authorisation process for ABSs by:

a) removing the requirement for approval of managers in ABS corporate owners;
b) removing the 7 day notification requirement for authorised manager or owner of an ABS
c) revising the rules relating to reserved legal activity?

CQ7 Do you have any specific concerns regarding the SRA's proposals to simplify the authorisation process for ABSs? If so, please specify what these are.

CQ8 Do you have any specific suggestions for the further simplification or streamlining of ABS authorisation?

Changes to insolvency rules

CQ9 Do you agree with our proposal to adjust the regulations to cover the event of partnerships entering administration?

Alternatives to client accounts

CQ10 Should the SRA approve third party managed accounts?

CQ11 If so,

- should these be assessed and considered by the SRA on a case by case basis, or
- should the SRA identify a minimum set of safeguards that should apply to all third party managed accounts?

CQ12 Are there any additional safeguards, not set out in **Annex A**, that you think we should consider in authorising the use of third party accounts?

Guidance on recording of non-material breaches

CQ13 Does the SRA's additional guidance on recording of non-material breaches provide further clarity on this requirement?

CQ14 Should the SRA also give consideration to removing the requirement for non-ABS firms to record such breaches? If so, why?

Clarification on the outsourcing of legal and operational functions

CQ15 Does the current rule in relation to outsourcing present unforeseen difficulties to firms wishing to take advantage of cloud computing options?

CQ16 Does the addition of a guidance note on Outcome 7.10 provide sufficient clarity, or should the SRA make changes to this Outcome to provide further guidance to firms?

Recording and reporting of diversity data

CQ17 Do you have any comments on the SRA's proposal to clarify the current requirements for the recording and reporting of diversity data?

Update on Apprenticeship Route to qualification

CQ18 Do you agree with our proposal to enable qualification as a solicitor through an apprenticeship route?

Fee sharing and referrals

CQ19 Do you consider that Outcome 9.6 should be retained or removed? Please give your reasons why.

Impact Assessment

CQ 20 **Annex B** sets out the SRA's initial assessment of the impact of the measures set out in the review:

- Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?
- Do you agree with our assessment of impacts for each proposal?

How to respond to this consultation

Online

Use our online consultation questionnaire {insert link} to compose and submit your response. (You can save a partial response online and complete it later.)

Email

Please send your response to consultation@sra.org.uk You can download and attach a Consultation questionnaire.

Please ensure that

- you add the title "Regulatory Reform Programme" in the subject field,
- you identify yourself and state on whose behalf you are responding (unless you are responding anonymously),
- you attach a completed About You form,
- you state clearly if you wish us to treat any part or aspect of your response as confidential.

If it is not possible to email your response, hard-copy responses may be sent instead to

Solicitors Regulation Authority
Regulation and Education Team
The Cube
199 Wharfside Street,
Birmingham,
B1 1RN

Deadline

Please send your response by 11 June 2015.

Confidentiality

A list of respondents and their responses may be published by the SRA after the closing date. Please express clearly if you do not wish your name and/or response to be published. Though we may not publish all individual responses, it is SRA policy to comply with all Freedom of Information requests.