Solicitors Regulation Authority

Looking to the future: phase two of our Handbook reforms

Consultation

September 2017

Contents

About this consultation

Following our first Looking to the future consultation in summer 2016, we are now consulting on further changes to our Handbook and our proposed revised Enforcement Strategy. This consultation also includes the transitional arrangements for the introduction of the Solicitors Qualifying Examination (SQE).

Through our Looking to the future programme, we are:

- simplifying our regulations so they are clear on the high professional standards we expect and what we will do when solicitors fall short of those standards

- getting rid of unnecessary bureaucracy that drives up costs or restricts access to solicitors, while making sure the right public protections remain in place

- improving the information available to help people make better choices.

This consultation includes the rules to implement our policy decisions from phase one, which will free up solicitors to provide non-reserved legal services outside regulated firms. The detailed rules that give effect to our decisions on professional indemnity insurance (PII) and the Compensation Fund[1] will be included in our wider review of financial protection arrangements. These decisions were set out in our response to our phase one consultation.

The information requirements that will apply to these solicitors as well as to regulated firms are included in our accompanying consultation - Looking to the future: better information, more choice.

You can find information on:

- what has happened with the rules in our existing Handbook, and the proposed sets of rules in our new Handbook, in annex one

- our revised Enforcement Strategy in annex two

[1] After extensive consultation in phase one, we decided we could not require a firm we do not regulate to have professional indemnity insurance ('PII'). We also decided that clients of solicitors working outside SRA regulated firms would not be able to make a claim on the Compensation Fund in any circumstances.

- our assessment of the impacts of these changes in annex three.

We are keen to hear your feedback on these proposals.

This consultation is running from 27 September until 20 December 2017.

After this consultation closes, our next steps will be to collate and analyse all the responses. We will then decide what proposals we need to take forward.

How does this link to our other work?

This consultation is part of a wider programme of work. We are currently consulting on linked issues in Looking to the future: better information, more choice. That consultation sets out our proposals to make information more accessible for consumers. We are proposing to:

- build a digital register which will contain our regulatory data in an easy, and accessible way

- publish information about complaints and what areas firms practise in

- introduce requirements for information that firms should provide themselves to consumers, such as proposals to publish price and a description of the services included in that price in a set number of areas and proposals to make more information on regulatory protections available.

Background to consultation

Our rationale for change

1. Our November 2015 position paper Looking to the future outlined our new model for regulating legal services. This model centres on a targeted and proportionate regulatory approach, which is fit for purpose in our fast changing and dynamic sector. In November 2015 we also updated our policy statement on our approach to regulation and its reform, which underpins all of our work in this area.

2. We have been developing our approach through an ongoing programme of regulatory reform. Realigning the scope and focus of our rules is one component of, and an important channel for, this reform programme. The revised rules will place greater focus on key protections, and enhance this focus by removing extra red tape and making the purpose of rules clearer.

3. As well as modernising our rules, our reforms are designed to focus our activity on our core purpose of providing protection for the public and supporting the operation of the rule of law and the proper administration of justice. Setting and maintaining clear, high professional standards is fundamental to both good consumer protection and public trust and confidence in solicitors and law firms.

4. A phased review of our Handbook is part of this programme. Phase one of this review created two distinct strands:

- A new individual Code for solicitors, registered European lawyers (RELs) and registered foreign lawyers (RFLs) which would apply to them however they practise.

- Businesses entitled to deliver the reserved legal activities[2] would be subject to a new Code of Conduct for Firms.

[2] The six distinct activities that Parliament has decided should only be provided by businesses that are regulated under the Legal Services Act 2007

5. Phase one also set out a revised set of overarching principles, and proposed freeing up solicitors to provide non-reserved legal services outside regulated firms. Our consultation on phase one closed in September 2016. A summary of the views we received in response to that consultation, and our response, are available here. This consultation paper sets out, and asks for your opinion on, phase two of our Handbook review.

Phase two of our Handbook review

6. We made a number of key decisions of principle in phase one, including freeing up solicitors to provide some legal services outside of regulated firms. Our decision document outlines our thinking in these areas. Phase two is principally about:

- reviewing and making our rules clearer and reducing unnecessary bureaucracy
- implementing the phase one decisions.

7. As in phase one[3], we have sought to:

- reduce unnecessary regulation[4] - we have removed prescriptive drafting to produce requirements that:
  - are clearer and more accessible, with duplication removed
  - are easier to understand in terms of purpose and effect
  - are targeted at the issues that really matter
  - operate at a higher level so are less detailed and prescriptive, providing flexibility to apply to changing circumstances.

[3] Annex four to the phase one consultation document provides more detail on these principles.

[4] This is consistent with Government policy on approaches to regulation and a sign of current best regulatory practice - see also https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550542/Prof_Christopher_Hodges_-_Ethics_for_regulators.pdf

- where possible move guidance and detailed internal processes to sit outside our rules and have simplified and reduced the length of the accompanying glossary.

8. We are reorganising how we present our rules to give a more logical and coherent structure. We will ensure that related rules and principles are placed together to avoid the complexity and navigation issues in the current Handbook. One example of this is rationalising our appeals provisions, so that there is only one centralised set (instead of the many that are dotted throughout the current Handbook).

9. We are aiming to 'future-proof' the new rules, as far as that is possible. As of 1 November 2016, the current Handbook is on version 18 since its publication in 2011. Its detailed and prescriptive rules need constant updating. By stripping out unnecessary regulation and using higher level rules the new Handbook should better stand the test of time. This approach also aligns with the better regulation principles of making sure our rules are transparent, proportionate and targeted.

10. As part of future proofing and reducing duplication we have avoided, as far as is possible, repeating legislation in the new rules and regulatory provisions which apply irrespective of our arrangements. However, our intention is that providers will be able to access linked guidance on our website that explains the application of core provisions without needing to turn to the original legislation (such as the requirements in the Legal Services Act 2007 (LSA) relating to when a body needs to be authorised).

11. This approach means our Handbook should be well placed to adapt to any changes in the market. For example, under section 106 of the LSA special bodies have the right to ask us to modify our rules. We consider that our proposed new rules would generally not need modification. However, we would be open to modifying requirements for special bodies if it was proportionate and offered the right balance in relation to the regulatory objectives. Similarly, if Government ever wished to remove the transitional protections for special bodies our proposed rules are well placed to adjust.

Benefits

12. A shorter, clearer Handbook will be easier for those we regulate to navigate and understand. We want to facilitate a focus on high professional standards rather than simply on compliance with our rules. As well as giving solicitors the freedom to run their businesses as best suits them and their clients, higher level requirements, rather than prescriptive rules, call for more thought from our regulated community. However, they also encourage businesses to own and internalise our standards instead of just implementing prescriptive requirements without reflecting on why or how they are appropriate. We consider this approach to be better for standards and better for innovation.

13. We have considered the LSA's regulatory objectives throughout this work. The proposals in this consultation aim to balance each of those objectives. We also consider these proposals to be the best way for us to exercise our regulatory function in a way that is consistent with our obligation to promote the regulatory objectives.

14. Any areas where extra support or guidance are needed that become apparent through the responses received to this consultation will be part of our overall support package which we are producing to support firms as any changes are implemented.

Section one: Authorising firms

15. Our new Authorisation of Firms Rules set out the requirements relating to firms we regulate[5]. They combine our authorisation rules and relevant parts of the Practice Framework Rules and cover:

- the effect of authorisation by us on the legal activities firms may undertake
- the requirements for, and how we will decide, applications for authorisation
- the conditions that apply during authorisation and how authorisation may be suspended or terminated.

The requirement to have a practising address in England or Wales

Background

16. Over the last few years people working in legal services have had unprecedented opportunities to innovate: creating new business structures, serving global and domestic clients in new ways and taking advantage of new technology. This has, in part, been helped by more proportionate and flexible regulation. But there is still much more we can do to help. We are committed to continuing to reform our regulation by reducing bureaucracy and increasing the flexibility available.

17. Under our current rules[6], any firm wishing to be regulated by us must have a practising address in England and Wales. For alternative business structures (ABSs) this is a statutory requirement set out in schedule 11 to the LSA, save for companies and LLPs with a registered office in England or Wales. For recognised bodies this requirement stems only from our rules, meaning we can waive it where we see fit.

[5] This includes recognised bodies, licensed bodies and recognised sole practices
[6] Rule 15.4 of our Practice Framework Rules requires all authorised bodies to have at least one practising address in England and Wales.

18. Our rules therefore go further than legislation by requiring all firms we regulate to provide services from a physical base in England or Wales. An entity based abroad looking to provide online services to consumers in England or Wales would currently be unable to offer reserved services to its clients. Our current requirement for a domestic practising address means that we could not authorise them as an entity, meaning their practice is restricted to non-reserved work only.

Our approach

19. The Ministry of Justice (MoJ) has consulted on removing the statutory requirements for ABSs and is currently analysing the responses it received. In our response to their consultation we agreed with the proposal to remove the requirement for ABSs to have a practising address in England and Wales and to provide reserved legal services from that address. Removing the statutory restriction that currently only applies to ABSs would allow a more risk based approach to be fixed in rules made by the regulator.

20. In reviewing our rules, we have considered whether to retain the current requirement for all firms to have a practising address in England or Wales or pare our rules back to match the relevant legislation. Our aim is to ensure that our rules do not unnecessarily restrict the development of either online or cross-border services. Removing this requirement would enable us to authorise entities based outside the jurisdiction to provide reserved legal services in England and Wales (subject to any restrictions in legislation).

21. In considering our position, we looked at whether we could effectively regulate those based outside this jurisdiction. Through our Overseas Rules, we already regulate branch offices of UK firms operating overseas (and individual solicitors working overseas). In these circumstances we regulate through the domestic office and there are close ties to the UK. We would need to take a different approach were we to authorise an overseas entity with no connection to any of the domestic firms that we regulate.

22. If we were to authorise firms based abroad, we would need to be able to verify the suitability of any entity and its owners from another jurisdiction. We would also need to ensure that we could effectively enforce against it. We have granted

a small number of waivers of our practising address requirement to recognised bodies outside of England and Wales. However, these have tended to be to firms based in Northern Ireland or Scotland where difficulties of verification and enforcement do not arise in the same way as they would outside the UK.

23. Finally, we are also conscious that the UK's decision to leave the European Union may create a further need for changes to the requirements for authorising firms abroad. We cannot yet anticipate the precise nature of these possible changes.

24. Having considered all of these issues we are of the view that we should retain the requirement for firms to have a practising address in this jurisdiction, save that in the case of recognised bodies and recognised sole practices we will widen the rule to include anywhere in the United Kingdom.

Question 1:

a. Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

b. Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

Forming and managing authorised bodies

Background

25. The current position on who can be managers of authorised bodies is set out in Practice Framework Rules (PFR) 14 and 16. This list largely reflects the statutory position with two exceptions:

- PFR 14.2, which goes further than required by the LSA by providing that a licensed body must always have a manager that is an authorised individual, as opposed to an authorised person which may include a body corporate.

- PFR 16(1)(f) which provides that only an individual may be a director of a recognised body which is a company.

26. PFR 15 sets out the requirements for authorised bodies that are limited companies.

Our approach

27. We propose to maintain the current restrictions in PFR 15(3) that authorised bodies that are limited companies must either be incorporated in the UK or incorporated in an Establishment Directive state and registered as an overseas company under Part 34 of the Companies Act 2006; or incorporated and registered in an Establishment Directive state as a societas Europaea[7].

28. We consider it unnecessary to go beyond statutory requirements in restricting who can be managers of SRA-authorised bodies. Where an authorised body has a corporate manager, our approval process will allow us to look behind the corporate veil in order to ascertain who ultimately manages and controls that company, and to refuse authorisation if we are not satisfied they are suitable. For the same reason, we will no longer seek to formally approve individual managers of corporate managers as part of the authorisation rules, but instead will look up the chain as appropriate on a pragmatic basis to see whose involvement to take into account in approving the corporate manager itself.

29. We have removed the current requirement in PFR 16(1) (f) for all managers of corporate recognised bodies to be individuals. However it should be noted in relation to limited companies that section 87 of the Small Business, Enterprise and Employment Act 2015[8], if and when brought into force, will place requirements on some limited companies to have only directors that are natural persons, and all authorised bodies will need to comply with the general law.

Manager approval

30. In the past when dealing with large multi-jurisdictional firms the SRA has granted waivers to exempt those managers that do not exercise any significant control

[7] subject to any changes that occur post Brexit

[8] http://www.legislation.gov.uk/ukpga/2015/26/section/87/enacted

over the firm and are not involved in the delivery of legal services in England and Wales (for example partners based overseas). Our draft Authorisation of Firms Rules formalise this position by proposing that we may decide to not require separate approval of a manager if we are satisfied that they are not involved in:

(a) the day to day or strategic management of the authorised body

(b) compliance by the authorised body with the SRA's regulatory arrangements

(c) the carrying on of reserved legal activities, or the provision of legal services in England and Wales.

This does not affect the separate arrangements that will apply to approvals under the money laundering regulations that have recently come into force.

Removing the 'Qualified to Supervise' rule

Background

31. Rule 12 of our current Practice Framework Rules requires all bodies we authorise (and certain individuals[9]) to have within their management structure or be someone who is 'qualified to supervise'. In order to be qualified to supervise a person must have:

- undertaken training as specified by the SRA (currently 12 hours on management skills)

- been entitled to practise as a lawyer for at least 36 months within the past 10 years.

32. The effect of Rule 12, therefore, is that a solicitor may not set up as a sole practitioner unless they have been entitled to practise for at least three years.

Our approach

33. The current rule is confusing. It conflates technical competence, supervision arrangements and running a business. It is widely misunderstood as a

[9] See PFR 12.1

requirement that solicitors must themselves be supervised for at least three years post-admission, or that a solicitor must have three years' experience before they can set up as a sole practitioner. The justification for the rule is commonly expressed as the need to ensure that an individual has developed the technical and business competences to run a business. Many respondents to our Looking to the future phase one consultation supported the rule on this basis.

34. For example, the Solicitors Disciplinary Tribunal (SDT) suggested[10] that removing the qualified to supervise requirement would be dangerous in terms of client protection and public confidence in providers of legal services. The SDT suggested that we should only review the requirement once our new competence statement and approach to continuing professional development are well embedded. The SDT also provided evidence that out of 138 judgments over the previous 12 months, seven (5percent) included reference by the respondent solicitor to lack of supervision as an explanation for their misconduct. This comment shows the confusion the rule creates, as it does not actually impose any supervision requirement.

35. The rule as drafted does not provide any guarantee of competence. For example:

- The three-year time period is arbitrary. There is also no requirement in the rule for the time to be recent.

- It does not relate to or safeguard the actual level of technical or business competence of an individual.

- The training requirement is also arbitrary and out of step with our new approach to continuing competence, in which individuals must identify and undertake the training they need to be competent in their role.

[10] at p2215-2216

36. Further, the rule prevents an individual becoming a sole practitioner, but it does not prevent them becoming an owner of a legal business or exercising management control from the day they qualify.

37. But the effect of the rule is to create a barrier to market entry, by preventing solicitors establishing their own firms as soon as they qualify. Having sought to address barriers to entry through liberalising the requirements for training contracts, and permitting solicitors to practise unreserved legal services in a non-LSA-regulated entity, it would seem counterproductive to retain this provision unless it is needed in order to protect consumers of legal services.

38. The current rule is therefore hard to justify. A number of respondents to our phase one consultation understood our concerns. However, the consensus was that while the current rule might not be ideal, it did provide an important safeguard to ensure that newly qualified solicitors did not set up their own firm without some experience.

39. We understand the concerns raised. We have therefore considered the other safeguards, including those we are proposing to introduce in the new Handbook, that provide a more targeted and proportionate way of addressing these. These include:

- We have the power to refuse to authorise a recognised sole practice or firm if we consider it will not meet necessary standards or comply with regulation.

- Both the current and new code contain the requirement to not act outside of competence. Rule 3.2 of the new Code of Conduct for individuals requires a solicitor to ensure the service they provide to clients is competent. It would be a breach of this requirement for a newly qualified solicitor to set themselves up as a sole practitioner in an area they were not competent in.

- As the SDT mentions, the new approach to continuing competence, and rule 3.3 of the new Code of Conduct for individuals require solicitors to maintain their competence to practise and keep their professional knowledge and skills up to date. Our new approach became compulsory for all solicitors in November 2016,

and will therefore have been in force for at least two years by the time our new rules are introduced.

- Both the current and new code require firms to have in place certain safeguards to ensure competence. Rule 2.1 of the new Code of Conduct for firms requires entities we regulate to have effective business controls in place, including systems for supervising client matters and ensuring staff are competent and keep their skills up to date.

- Our Ethics Helpline provides support for all solicitors (including sole practitioners) who encounter difficult ethical questions.

- Our proposal to create a more accessible digital register of solicitors[11] means that consumers will be able to find when a solicitor was admitted, and therefore how much experience they have.

- In future, the SQE will mean all qualified solicitors have passed a rigorous assessment of their technical competence (although the SQE will not assess whether a candidate is competent to own or run a business).

40. We believe that these measures provide better consumer protections than the current rule. We therefore propose to remove this requirement.

Question 2:

a. Do you agree with our proposal that the current requirement for firms to have within the management structure an individual who is "qualified to supervise" should be removed?

b. If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

[11] See the Looking to the future: better information, more choice consultation

Immigration, claims management and financial services

Our approach

41. We do not propose to allow solicitors practising in non-LSA-regulated providers to provide regulated financial services to the public under the scope of our regulation. This is because only a proportion of solicitors practising in non-LSA-regulated firms would fall within the definition required for Part 20, and in any event they will not be subject to our regulatory requirements for firms (which are an important part of the operation of the Part 20 exemption). We have discussed this approach with the Financial Conduct Authority (FCA) which has indicated its support for our position.

42. Both immigration and claims management services are subject to separate regulatory regimes for those that practise outside of LSA-regulated firms via the Office of the Immigration Services Commissioner (OISC) and the Claims Management Regulator (CMR) respectively. At the time these regimes were introduced it was not conceived that solicitors might offer services to the public outside of a regulated law firm. Our other reforms could therefore extend rights to deliver certain legal services beyond what we believe was envisaged at the time, which is that work in immigration and claims management should only take place within a regulated entity.

43. Having discussed the position with both the OISC and the CMR, we think it is important that those we regulate are not able to avoid the intention behind those statutory arrangements by setting up unauthorised firms in these areas. We are therefore proposing that solicitors, RELs and RFLs will only be able to:

- practise immigration work in a firm authorised under the LSA or by the OISC

- provide claims management services in a firm authorised under the LSA or by the CMR or its equivalent.

Question 3:

Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC authorised firms?

Question 4:

Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide claims management services outside of LSA or CMR authorised firms (or equivalent)?

If you disagree, please explain your reasons why.

Section two: Authorising individuals

44. Our new Authorisation of Individuals Rules set out the requirements for individuals[12] we regulate. They cover:

- admission as a solicitor (including the new SQE regulations)
- eligibility and criteria for granting practising certificates
- effect of authorisation and conditions of practice
- registration as a European (REL) or foreign lawyer (RFL)

Individual self-employed solicitors

45. In our first consultation on the Looking to the future proposals, we proposed to maintain the current position whereby an individual solicitor (or REL)[13] can only provide reserved legal services to the public or a section of the public as a Recognised Sole Practice or in, or on behalf of, another entity authorised by the SRA or another of the approved regulators under the LSA. However, we recognised that by not allowing the alternative of individual solicitors providing reserved legal services as freelance lawyers we might be unnecessarily restricting models of practice and asked for respondents' views.

46. While a majority of respondents supported the status quo, a number felt that we were being unnecessarily restrictive particularly in denying individual practitioners (who often face significant costs) more flexible ways of providing services and sharing expenses - for example in a chambers style arrangement. This freedom is of course already open to practitioners at the Bar.

[12] Solicitors, Registered European Lawyers, Registered Foreign Lawyers
[13] Subject to an exception for administering oaths and statutory declarations under rule 10(2)(c)(ii) SRA Practice Framework Rules 2011

47. We consider that such arguments have force and that provided the appropriate consumer protections are in place we should allow more flexibility.

48. We are also keen not to replicate the current complex and confusing system of exceptions (special bodies, pro bono, telephone services etc.) under the SRA Practice Framework Rules 2011.

49. We therefore propose to allow individual self-employed solicitors and RELs to provide reserved legal services to the public or a section of the public on their own account without the need to be a Recognised Sole Practice or to work through an authorised body. The solicitor or REL would need to be practising as an individual (and therefore without employees or partners and not through a service company) and would need to be engaged personally by the client. They would be required to maintain adequate and appropriate professional indemnity insurance and to be based in the UK. The Compensation Fund provisions would apply as would the provisions of the new SRA Code for Solicitors, RELs and RFLs.

50. As they would not be in an authorised firm, we propose that these individual solicitors and RELs should not be able to hold client money, except for money in respect of fees and disbursements if held or received prior to delivery of a bill for the same and where any money held for disbursements relates to costs or expenses incurred by the solicitor or REL on behalf of their client and for which they are liable. [14]

51. We consider that these requirements will make sure that services can be provided by individual freelance solicitors in a way that is safe and effective, and that those who are effectively operating as a law firm are authorised as such.

52. The draft rule is below:

[14] See Rules 2.1(d) and 2.2 of the draft SRA Accounts Rules 2018
http://www.sra.org.uk/sra/consultations/accounts-rules-review.page#download

Draft regulations for sole solicitors

1.1 Subject to regulation 1.2, if you are a ***solicitor*** or ***REL*** you must not act as a ***sole practitioner*** unless your practice is authorised as a ***recognised sole practice***.

1.2 If you otherwise would be, you will not be regarded as acting as a ***sole practitioner***, if:

(a) your practice consists entirely of carrying on activities which are not ***reserved legal activities***; or

(b) any ***reserved legal activities*** you carry on are provided:

(i) through a body authorised by the ***SRA*** or another ***approved regulator*** to carry on ***reserved legal activities***; or

(ii) in circumstances in which you:
(A) are self-employed;
(B) do not have any employees and do not practise through a service company;
(C) are engaged directly by the ***client***;
(D) have a practising address in the ***UK***;
(E) take out and maintain insurance that provides adequate and appropriate cover in respect of those activities; and
(F) do not hold ***client money*** except where it falls within rule 2.1(d) of the SRA Accounts Rules and is held in accordance with rule 2.2 of those rules**,**

and you choose for your practice not to be authorised as a ***recognised sole practice*****.**

Question 5:

Do you agree with our proposal to allow individual self-employed solicitors to provide reserved legal services to the public subject to the stated safeguards?

Assessing character and suitability

Background

53. Our current Suitability Test was introduced in 2011. It sets out the events we take into account when assessing the character and suitability of people applying to us:

- for admission to the roll of solicitors
- for restoration to the roll of solicitors
- to hold approved role holder positions within businesses we regulate.

Our approach

54. Our current Suitability Test is very prescriptive. It restricts our discretion to treat each application on a case by case basis to consideration of 'exceptional circumstances'. We want to be able to consider each application on a case by case basis, taking into account all of the individual circumstances. This will align more closely with our wider approach to enforcement and decision making.

55. Where a person reports a character or suitability issue to us, we want to be able to take into account evidence relating to factors such as the seriousness of the issue and any aggravating or mitigating circumstances. This will allow us to make a decision that is fair, proportionate and transparent to the applicant.

56. Our starting point was to benchmark the current Suitability Test against similar assessments undertaken by other professional services regulators. We looked at a number of regulators, including all of the legal services regulators, and a number of other regulators with a similar approach to character and suitability and/or fit and proper requirements. We concluded that, compared to the approach taken by other regulators with similar regulatory powers and sanctions, our current test is unnecessarily rigid in comparison.[15]

57. Because of the inflexibility of our current test, it also means that we do not have the ability to apply a common-sense case by case approach – that allows us to fully take account of harm and mitigating factors, and to take a nuanced and transparent view of each application. Instead, each application has to be

[15] Regulators considered were Bar Standards Board, General Dental Council, General Medical Council, General Pharmaceutical Council, Nursing and Midwifery Council, the Teaching Agency, Health and Care Professions Council, ICAEW, FCA, Architects Registration Board, CILEX, CLC, Costs Lawyers Standards Board, and the Notaries Society.

considered within the current rigid framework, meaning that we are not able to admit some individuals that we think (on balance) should be admitted to the profession (as they either pose no current regulatory risk, or that regulatory risk can be effectively managed by conditions on their practising certificate).

58. Through the new assessment we are clarifying the overriding principles which govern our assessment of appropriate character and suitability, ie protection of the public and of the public interest. We are moving to a set of indicative events or behaviours, aggravating and mitigating factors, which will apply equally to all, taking into account the individual's circumstances and the nature of their role (eg solicitor, COLP etc). For RELs and RFLs we will look at whether they are in good standing with their regulator.

Changes affecting students

59. We intend to remove character and suitability testing from students and people about to enter, or within, a Period of Recognised Training (PRT). This would align with the approach we have adopted for apprenticeships. Instead, there will be a requirement to assess character and suitability at the point individuals apply for admission as a solicitor.

60. Currently students can seek an early decision on their character and suitability before they start the Legal Practice Course (LPC), so they know whether they could be admitted before they commit to course fees. Under our new arrangements, we will give students early, individual advice instead. Although this may not provide the same level of reassurance as a regulatory decision on which students can have ‘cast iron’ reliance, we think it is a better option than an early negative decision for a number of reasons.

61. Our experience of the current system of an early check (introduced in 2014) is that it can make the situation worse for applicants, because it is an actual determination. Students who have committed a misdemeanour as an undergraduate, and who apply to us for a check have no opportunity to demonstrate rehabilitation. They fail the character and suitability test as a result.

62. Under our new proposals, we will provide an indication that if they were applying immediately for entry, they would fail the character and suitability requirements, but that if they are able to demonstrate rehabilitation by the point of application we will be able to take that into account. Whilst this does not offer them a guarantee, it keeps the door open, and allows them to make an informed judgment as to whether or not to carry on.

63. In order to help and support students and education providers, we will produce comprehensive guidance, and a checklist that explains our character and suitability rules, and our approach to what we are likely to take most (or least) seriously, and which misdemeanours are most likely to lead to a negative decision. We will provide this direct to law schools and employers, and will also signpost it clearly on our website.

64. Where students want further clarification or advice, we will make that available through our Professional Ethics service. We will also draw candidates' attention to our requirements for character and suitability, and the availability of this advice service, when they first register for the SQE, and provide a link to our online guidance.

What are we proposing?

65. We will streamline our processes but the onus will remain on the individual to provide evidence to support their application for assessment of their character and suitability.

66. In addition to the changes we have set out above, we also propose the following changes to our approach to assessing character and suitability:

- using our existing powers more effectively to impose practising certificate conditions at the point of authorisation, where this will enable us to admit an individual while mitigating any risk they might present. For example, for someone with previous debt management issues we could impose a condition that they may not be a sole practitioner when first admitted, at least until they can show that those issues have been resolved

- looking at the process for approving authorised persons who are already regulated by us or another approved regulator. Where we can we will simplify and streamline the process and remove duplication of requirements when parts of our own assessment have already been satisfied by another regulator.

Question 6:

What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

Our Training Regulations

Background

67. Our current Training Regulations set out requirements:

- for anyone seeking to be admitted as a solicitor through the domestic route to qualification
- for authorised firms about the training they provide
- relating to assessment providers.

Our approach

68. In the new Handbook, the current admission requirements are set out in the SRA Authorisation of Individuals Regulations. They will sit alongside the new SQE regulations until the existing requirements for qualification are phased out.

69. When the SQE is introduced, anyone seeking admission as a solicitor in England and Wales will be able to qualify by passing the SQE (or, in the case of qualified lawyers, gaining exemptions from some elements of the SQE) and satisfying our other admission requirements.

70. Our Authorisation of Individuals Regulations will include transitional arrangements setting out how the SQE provisions will apply to individuals who have started along the path to qualification under the existing routes at the time the SQE is introduced.

71. In 2015, we published a policy statement setting out the principles which would govern the transitional arrangements for our new education and training requirements.

72. We said then that Qualifying Law Degree (QLD) and Common Professional Examination (CPE) graduates could complete those courses but then they must switch to the new system. Candidates who had got to the LPC stage or beyond would have a choice: they could either complete under the old system or transfer to the new system. Candidates who had started to train would not be required to repeat a stage of training they had already completed.

73. We expanded on this approach in our first consultation on the SQE in 2015. We proposed then that QLD and CPE graduates would get exemptions from those parts of the SQE which corresponded to examinations which they had already taken. For Qualified Lawyers Transfer Scheme (QLTS) candidates who had completed the first but not the second part of the QLTS, we said that they could choose to complete through either QLTS 2 or SQE stage 2.

74. We published a second SQE consultation in October 2016. By the time of this consultation, we had developed a draft Assessment Specification. This made clear that our approach to the SQE would integrate assessment of subjects currently studied both in the academic and professional stages of training. We therefore proposed and consulted on a different approach to transition.

75. We widened the group of candidates who would be able to choose to qualify either under the old or new systems, extending it to include QLD and CPE graduates, as well as LPC graduates. However, we also said that that while anyone who had started the academic stage of training before the introduction of the SQE could choose to complete their qualification under either the old or new system, we would require candidates to meet all the requirements of the system they chose. We would not permit a combination of the two. This would mean

that candidates, including those in the transitional cohort, could not gain exemptions from the SQE based on previous qualifications. We also said again that QLTS candidates who had completed the first QLTS assessment, but not the second, could choose to qualify either by passing QLTS 2 or SQE stage 2.

76. We included a specific question on whether we should offer exemptions from the SQE when it was introduced. Stakeholders were broadly supportive of offering the minimum number of exemptions because to do otherwise would defeat the point of having an independent, centralised assessment. There was some support for giving exemptions to students with QLDs.

77. We have now given further thought to the approach to transition (including exemptions from the SQE during the transitional period), and whether we should allow candidates to 'mix and match' between the old and new regulations. In doing so we have recognised the need to ensure standards are maintained during the transitional phase. This must be balanced against the need to be fair to those who have investigated significant time and money in the reasonable expectation that a qualification will lead to admission as a solicitor.

78. The SQE is intended to be a robust, fair and transparent assessment which provides a high level of consumer protection. We have considered carefully whether we should offer exemptions from the SQE to candidates for a transitional period.

Full exemption

79. We have concluded that we should permit candidates who started to train before the SQE comes into force, and who complete their training during a transitional period, to have full exemption from the requirement to qualify through the SQE. This includes those who have commenced or invested in a QLD at the time the SQE is introduced.

80. The exception to this is apprentices, who must pass all stages of the SQE whenever they started their apprenticeship. This is because the requirement to pass the SQE is part of the assessment plan for the apprenticeship standard leading to qualification as a solicitor.

Partial exemption

81. We have also considered whether we should permit candidates to 'mix and match' old and new qualifications during the transitional period by permitting exemptions from parts of the SQE. We have reached the position that we should not generally do so because we believe that this would present a risk to standards by threatening the integrity of the SQE, for the following reasons:

    - The approach to coverage of Foundations of Legal Knowledge varies between QLD providers, both in terms of the content taught and the approach to teaching (historical, philosophical or socio-legal approach etc). The assessments reflect this. However, SQE stage 1 assesses functioning legal knowledge – that is candidates' ability to apply legal principles to address clients' problems through dispute resolution mechanisms or within transactions.

    - None of the proposed SQE stage 1 assessments correspond exactly to courses of study in either the QLD or the LPC. Instead they integrate a mixture of both. It would be very difficult to identify individual questions from which candidates might be exempt. We would need to look at the detailed content of individual courses, and could need to write a large number of bespoke examinations. This would be expensive and could be unmanageable. The variability between the different examination papers would make standard setting difficult, if not impossible. And it would be likely to mean that we could not be sure that candidates were being assessed to the same standard.

    - Worse still, there is a risk that we would not assess particular elements at all. For example, were we to continue to propose that QLTS candidates who had passed QLTS 1 could choose between QLTS 2 and SQE stage 2 assessments, those who chose to take a combination of QLTS 1 plus SQE stage 2 would not have been assessed on all the reserved activities, because they are assessed in QLTS 2 but not in SQE stage 2.

82. We have also considered whether we could permit candidates who have completed the academic and professional stages of training (ie the QLD/CPE and the LPC, or an Exempting Law Degree) to complete their qualification by undertaking Qualifying Work Experience (QWE), as an alternative to a Period of Recognised Training (PRT). In this situation however, candidates would not have had any assessment of end-point competence either by a solicitor at point of sign-off, or through SQE stage 2.

83. We do, however, recognise the potential unfairness for a very small number of candidates who want to complete their qualifications through the current route but for some reason cannot. For these candidates, we will retain the flexibility of the equivalent means mechanism. This will enable us to look at their qualifications and experience to determine whether they are competent to be admitted as a solicitor. For example, we could recognise QWE and SQE stage 2 as an equivalent to PRT. Of course, in exceptional circumstances, we can also use our waiver powers.

Cut-off date

84. Our proposals are designed to give a choice to individuals who have invested significant time and money in the reasonable expectation that a particular qualification will lead to admission as a solicitor. They are not intended to guarantee that everyone who has started a QLD, CPE or the QLTS before the SQE is introduced can qualify under our current regulations. There could be many circumstances which may delay an individual's progress to qualification.

85. We are however proposing a lengthy cut-off date of 11 years after the introduction of the SQE. This would permit most candidates who have started to train to complete the current route to admission on either a full or part-time basis and to have a full exemption from the requirement to qualify through the SQE accordingly. Those candidates can therefore choose to qualify under the old or new system.

86. We are aware that whatever the cut-off date, we cannot make provision for all. However, where an individual, perhaps because of an unforeseen circumstance,

is unable to complete the route to admission under the current system, they will not be deprived of the opportunity to qualify as a solicitor. Learning from a QLD, CPE or any subsequent qualification will help an individual prepare for the SQE assessments.

87. In addition, we are proposing to maintain our current equivalent means route to qualification for those who have started to train under the current system. This provides additional flexibility during the transitional period. In certain circumstances, equivalent means could give us the flexibility to protect candidates who have started but not completed their route to admission under the current system by the cut-off date. For candidates who start to train after the introduction of the SQE, equivalent means will no longer be necessary because we will no longer specify the form that preparatory training must take.

Summary

88. We propose that:

- Individuals who have started either a QLD or CPE, or are further advanced in the route to qualification, before the SQE is introduced may continue under that route subject to a cut-off date. The cut-off date we propose is the end of the calendar year 11 years after the SQE is introduced. So, for example, if the SQE is introduced in September 2020 (the target date), the cut-off date will be 31 December 2031.

- As in the 2016 consultation, we propose that candidates who (a) started to train under the current system before the introduction of the SQE; and (b) completed their training by the cut-off date, are fully exempt from the requirement to qualify through the SQE. This means those candidates can choose to qualify under the current or new system. For the reasons set out above we are not proposing partial exemptions from the SQE are generally available.

- Individuals who have started the QLTS assessment must have completed all parts of the QLTS by the time the SQE is introduced. Consistent with

the position for QLD/CPE candidates, we are proposing that candidates, who are part way through the QLTS when the SQE is introduced, cannot have a partial exemption from the SQE. However, in accordance with our approach to recognition of qualified lawyers, we will take account of any QLTS assessments they have passed as part of any application for recognition which they make.

Regulations relating to authorised providers

89. We have redrafted and moved the regulations relating to authorised education and training providers under pre-SQE arrangements into a new set of SRA Education, Training and Assessment Provider Regulations.

90. We have clarified our powers to authorise and monitor education and training providers, and clarified that obligations regarding trainees' training records and character and suitability assessment are for the training principal.

91. In accordance with our drafting principle of not duplicating legislation in our rules, we do not propose to include the current rule requiring training providers to pay the minimum wage to trainees in accordance with the minimum wage legislation. Training providers are already obliged to comply with this, as they are with any other legislation. This means, however, that training providers offering solicitor apprenticeships will be able to apply any relevant exceptions in the legislation applying to apprentices. We do not consider that it is the SRA's role to set salaries in the profession, and we do not wish to place additional barriers in the way in which providers offer apprenticeships or training contracts.

Question 7:

Do you agree with our proposed transitional arrangements for anyone who has started along the path to qualification under the existing routes when the SQE comes into force?

Approving managers and owners

Background

92. Under our current Authorisation Rules, authorised persons need our approval every time they become a manager or owner of a new body, or their existing body changes constitution eg moving from a partnership to a limited company. Although we currently reduce the impact of this on solicitors, RFLs and RELs by a process of deeming, other authorised persons such as barristers and licensed conveyancers have to go through an approval process each time.

Our approach

93. It is highly unlikely in practice that an authorised person who we have assessed as suitable to be a manager or owner of one SRA-authorised body will not be approved for the same role in another one. Making authorised persons obtain approval each time they move authorised body or whenever the constitution of that body changes is, in our view, an unnecessary burden. These individuals are already under our supervision so we will be aware of issues as and when they arise. These individuals are also under a duty to keep us updated on character and suitability issues. The current system is also likely to slow down innovation (for example in relation to firms converting to an ABS).

94. We therefore propose to replace this with a system where:

- solicitors, RELs and RFLs will be deemed suitable to be managers or owners of any SRA-authorised body on first admission/registration and will not have to seek individual approval for any such roles they take up. The only requirement will be to update mySRA to let us know about the change

- other LSA-regulated individuals such as barristers will have to seek our approval (and be required to satisfy character and suitability requirements) when they take up their first role as manager or owner in an SRA-authorised body. However, as with solicitors, this approval will be general and they will not then have to be re-approved to fill those roles in new firms. As with solicitors, they will be required to update mySRA.

95. While we will continue to require non-authorised persons to seek approval every time they become an owner or a manager of a different SRA-authorised body, we will also work with regulators in other fields (for example chartered accountancy) to explore how to streamline the arrangements for approval of their members. Greater flexibility in our approach to assessing character and suitability would facilitate this work.

96. We think this change will reduce unnecessary cost and bureaucracy. It should also lead to more effective co-operation between regulators without materially increasing risk or compromising the regulatory objectives.

Question 8:

Do you agree with our proposal to expand deeming in this way?

Corporate owners and managers

97. The draft Authorisation of Firms Rules includes an eligibility requirement for authorisation that a firm must intend to deliver legal services to be authorised by us. This is to ensure that our procedures are operating in line with our statutory purpose which is to authorise and regulate individuals and firms that deliver legal services. This is likely to impact on Corporate Manager Owners (CMOs) as we currently authorise a number of non-trading recognised bodies purely so they can be managers and/or owners of other recognised bodies. We often waive several our requirements, including the requirement to have a COLP and COFA, for these firms.

98. In the future, the new rule would mean that firms could of course structure themselves using corporate vehicles for tax or other purposes, but that these bodies would not be authorised by us as separate authorised firms. Therefore, the underlying firm would have a non-authorised corporate owner or manager and would instead be authorised as an ABS.

99. The new rule gives us the power, where we are satisfied that it is in the public interest to authorise the body, to do so even though they do not intend to deliver

legal services. We would like to hear particularly from firms currently with CMOs as to whether there are any scenarios that would – or alternatively could not - be addressed using this power. We will be engaging with some of these firms, and the firms that they manage or own, during the consultation process to explore the impact of these proposals.

Section three: Specialist rules

How we regulate overseas practice

Background

100. The Overseas Rules in our current Handbook govern the practice of solicitors established outside England and Wales. They contain the Overseas Principles, which broadly reflect our domestic Principles, and key standards relating to the handling of client money and assets plus information and reporting requirements. Alongside this, the separate European Cross-border Practice Rules set conduct standards for professional activity in, or contact with a lawyer of, a country whose legal profession is a member of the Council of Bars and Law Societies of Europe (CCBE).

101. The Overseas Rules offer a more proportionate regulatory regime for firms than being subject to our domestic Principles and full Code of Conduct and Accounts Rules. We are aware that firms operating overseas subject to our Overseas Rules:

- will also be regulated in the jurisdiction where they are based

- will not be providing reserved legal services into England or Wales except on an occasional and limited basis.

Our approach

102. The proposed changes do not substantively alter the content or application of the current Overseas Rules. We have maintained the separation between the Overseas Principles and the SRA Principles but updated the Overseas Principles and the Accounts Rules provisions to reflect the changes made in phase one of our Handbook review. We have also incorporated what are currently the European Cross-border Practice Rules. The guidance which is currently embedded in the rules has been removed and will be placed without separate guideline resources.

103. The existing European Cross-border Practice Rules largely duplicate the parts of the CCBE's Code of Conduct that are not reflected elsewhere in our Handbook. However, we are keen to ensure that our new Handbook remains valid into the future, without needing constant updating. For this reason, we propose removing the drafting that duplicates the CCBE's code.

104. We wish to continue to ensure that those we regulate meet the CCBE's standards as we are keen to facilitate and build confidence in cross-border relationships wherever possible. We have therefore included a requirement for those operating in European jurisdictions or cross border to comply with the CCBE Code.

Question 9:

Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

Property Selling

Background

105. The Specialist Services section of our Handbook contains our Property Selling Rules 2011. The rules mirror some of the provisions in the Estate Agents Act 1979, including references to some sections of legislation that have never been enacted. The rules cover:

- competence requirements (not enacted)
- deposit limits (not enacted)
- rules on accepting instructions (including the requirement to define sole agency, sole selling rights etc)
- conflicts of interest (rules on selling property in which you have a personal interest).

Our approach

106. We intend to remove the Property Selling Rules on the basis that most of the legislation has not been enacted. In addition, the provisions on conflicts of interest are covered by our new codes.

107. We propose that two provisions from the existing Property Selling Rules should be retained, but in the form of guidance. These are two of the key terms used in defining fee structure: 'sole agency' and 'sole selling rights'. Under the Estate Agents Act 1979, estate agents must communicate the meaning of these terms to clients. Our guidance will set out that solicitors should adequately explain these terms if they are used.

108. We do not believe that it is common for solicitors to act as estate agents in England and Wales. However, we would welcome any data on whether this is widespread. As the exemption only applies to the practice of 'solicitors', we are not seeking information from ABSs here.

Question 10:

Do you know of any unintended consequences of removing the Property Selling Rules?

Financial Services

Background

109. Under the Financial Services and Markets Act 2000 (FSMA), the Financial Conduct Authority (FCA) must regulate anyone carrying on regulated financial services activities. However part 20 of FSMA enables firms authorised and regulated by the SRA to carry on certain activities, known as exempt regulated activities, without being regulated by the FCA. As a Designated Professional Body under FSMA, we are required to make rules governing how firms undertake exempt regulated activities. Our Financial Services (Scope) Rules set out the scope of the regulated activities that firms may undertake without being regulated by the FCA. Our Financial Services (Conduct of Business) Rules regulate how firms undertake these activities.

Our approach

110. The Financial Services Rules have been amended on numerous occasions over many years but have never been properly reviewed. Consequently, they are not as clear or accessible as they could be and a great deal of legislation is duplicated. We are therefore proposing to simplify and reduce the length of the rules to align with our drafting principles.

111. Under part 20 of FSMA the revised rules will require the approval of the FCA. We have shared an early draft with them but the rules are still subject to their approval.

112. Although part 20 of FSMA is wide enough to cover some solicitors practising in non-LSA-regulated providers, as set out above we will not allow solicitors practising in non-LSA-regulated providers to provide regulated financial services to the public under the scope of our regulation. Any such work will need to be regulated by the FCA.

113. It should be noted that the redrafted regulations do not cover insurance mediation activities. This area is subject to further amendment in order to implement the requirements of the Insurance Distribution Directive (EU 2016/97) by late February 2018. We will be consulting separately on those changes.

Our Notice, Application, Review and Appeal Rules

Our approach

114. We are consulting on a new set of rules which aim to:

- combine at a high level general provisions about how a person can make an application to us and how we notify them of our decisions. Specialist application-specific provisions will be in the relevant specialist rules

- set out comprehensively all rights to review our decisions in a consistent and transparent way.

115. The provisions relating to reviews of our decisions are currently contained in a number of places in our current Handbook and lack consistency in terminology, using variously the terms 'review' and 'appeal'. We also adopt a practice whereby we give a right to appeal all final decisions that determine someone's rights or professional standing, but not to administrative or procedural decisions. We have, separately, powers to reconsider decisions of our own motion where we believe they have been wrongly reached.

116. We have brought all the provisions together into one new, simpler set of rules and adopted a more consistent and clearer drafting approach.

117. In these rules we have clarified that we will not generally allow additional evidence unless satisfied that this is necessary to ensure the fair disposal of the matter. We have specified the grounds on which an application for a review can be made and on which we can review our own decisions. The new rules also set out clearly which decisions attract this right of review.

118. This does not affect rights to appeal to the SDT or the High Court which are contained in statute. The rules also deal with the time limits for applying for an internal review or external appeal, and harmonise these to a standard time limit of 28 days. They also deal with the taking effect of decisions where a review or appeal has been sought.

Question 11:

Do you agree with our new proposed review powers?

Question 12:

Do you agree with the proposed 28 day time limit to lodge all requests for internal review?

Section four: Our approach to enforcement

A revised Enforcement Strategy

119. In Looking to the future phase one we said that we would review our Enforcement Strategy, which underpins the Principles and Codes of Conduct we consulted on last year. The starting point for our review of the Enforcement Strategy was the wide engagement that we carried out as part of the Question of Trust campaign in 2015. That work engaged the legal profession and the public to help us to develop our approach to the factors we should take into account when considering seriousness, and what action to take in respect of breaches of our rules.

120. The Question of Trust campaign sought the views of more than 5,000 individuals between September 2015 and January 2016. We worked with the public, the profession and other stakeholders to understand what they considered acceptable behaviour for a solicitor or individual regulated by the SRA, and what sanctions they thought should be applied when things go wrong. The data collected allowed us to test and develop our thinking on the behaviours that fall along a spectrum from least serious, to most serious, and has made an important contribution to key strands of our work:

- the revised and updated Enforcement Strategy

- a revised and an updated sanctions and controls table

121. Our Question of Trust work confirmed our view on the most and least serious matters, and helped us refine our views on the factors we will consider (such as intent and motivation, harm and impact, vulnerability, role and seniority, and patterns of behaviour). It also helped us to recognise that there is likely to be a degree of inter-relationship between a range of factors in any case. The revised Enforcement Strategy also sets our approach to evidence of remediation, and other areas such as our position on criminal convictions and solicitors' conduct in their private life.

Our approach

122. Our approach to enforcement is guided by our public interest purpose. Our 2015 Policy Statement explains more about how we approach our regulatory role and seek to meet the regulatory objectives in the LSA. Our updated Enforcement Strategy is part of our approach to proportionate regulation, and is one of the key tools moving us towards regulatory best practice.

123. We are moving away from enforcing compliance with prescriptive rules, towards a model which seeks to enforce standards through a transparent framework that those we regulate can clearly understand. We set standards that establish clear expectations but also build in appropriate flexibility as to how solicitors ought to behave to meet those standards. The revised Enforcement Strategy will act as a guide to the expected behaviours which underpin our standards.

124. Moving to a principles-based, flexible, approach to enforcement will help us to focus more effectively on serious breaches of our rules. We will be proactive in our approach to enforcement, and will use a variety of regulatory tools and approaches to engage effectively with individuals and firms. These will include, but may not be limited to, data mapping, identifying trends, issuing warning notices, undertaking thematic reviews, undertaking targeted visits, and publicising the outcomes of our enforcement action.

125. We consider the public will also be better able to understand our decisions and rationale for taking or not taking enforcement action in any case or circumstances. Clarity about how seriously we view different behaviours will help solicitors and firms to understand what constitutes a serious, reportable, breach of our requirements. The Enforcement Strategy provides the clarity about how, and when, we will enforce (or where we will not enforce). It aims to help both our staff and the profession better understand the risks posed by different behaviours. It also facilitates proportionate action by outlining the aim behind different outcomes. Together with the new Codes of Conduct, the revised Enforcement Strategy provides the transparency and assurance that solicitors and firms have been asking for.

126. We will be developing case studies to provide some examples of 'grey areas' and address some of the more difficult and complex areas, and are happy to work with others to do so, and review guidance from firms or representative bodies if they ask us to do that. This is what solicitors have told us that they need to understand how the strategy will work in practice.

Question 13:

Do you agree with our proposed approach to enforcement?

Our Regulatory and Disciplinary Procedure Rules

Background

127. Although our current Disciplinary Procedure Rules (DPRs) are quite detailed, in practice they only cover part of our regulatory tool kit. As drafted, they cover only a decision to fine, rebuke, disqualify, and make a referral to the SDT. The DPRs were later supplemented by the production of Indicative Fining guidance.

128. Alongside the revised Enforcement Strategy, the new Sanctions and Controls table, and updated Indicative Fining Guidance, the SRA Regulatory and Disciplinary Procedure Rules form part of the suite of new documents that explain and underpin our enforcement approach to the new codes and rules. We will be consulting separately on costs issues, including the updated Indicative Fining Guidance.

Our approach

129. We are consulting on revised Disciplinary Procedure Rules. The new rules are broader in scope than the current ones. They have been expanded to cover our approach to assessment and investigation of all complaints or regulatory concerns, and to follow a more logical and chronological pathway through our decision-making process. The rules address the full range of powers available to the SRA, including orders made under section 43 of the Solicitors Act 1974, and decisions to attach conditions to practising certificates in order to mitigate and control identified risks. This will ensure greater clarity, transparency and

consistency of approach to regulatory investigations and decision-making. The new provisions ensure that we provide information to the regulated person and their employer at the outset of an investigation, as well as us providing details of allegations and all supporting documents, for comments, at the end of an investigation before we decide. These also make sure that decisions to conclude an investigation, whether or not with advice or a warning as to the person's future conduct, are accompanied by reasons.

130. The rules are focused on high level rights, obligations and criteria. Detailed operational processes will underpin them, and detailed decision making criteria will be set out elsewhere in the Enforcement Strategy or other guidance documents, as appropriate. We will publish this guidance to ensure full transparency.

Cost of investigations

131. As part of our review of enforcement, we will be considering the scope and purpose of the SRA Cost of Investigation Regulations 2011 ('CIR'), which set out the basis of the charges we can impose to recover the costs of handling disciplinary investigations and prosecutions.

132. At present, we only seek to recover costs that our supervision function incurs when we impose an internal sanction. This contrasts with our prosecutions before the SDT where we seek to recover all of our costs (including legal costs, any on-site inspection charges and supervision).

133. Our work in this area will seek to address a number of issues. They are likely to include (but may not be limited to):

- whether we retain our position on the importance of 'polluter pays', which underpins our approach to the current CIR

- whether, when we impose an internal sanction, we seek to charge for more of our investigation costs (eg for on-site work and for any legal costs) or for less. This will include the costs and financial implications of a move in either direction

- how we calculate our charges

- other comparable regulators' schemes and best practice.

134. We propose to consult on these issues in early 2018, and to implement any changes to our costs rules at the same time as implementing our new regulatory arrangements (ie not before late 2018).

Our questions in full

We are keen to hear your views on our changes to our Handbook. An uninterrupted list of our questions is below.

Question 1

Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

Question 2

Do you agree with our proposal that the current requirement for firms to have within the management structure an individual who is “qualified to supervise" should be removed?

If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

Question 3

Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?

Question 4

Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide claims management services outside of LSA or CMR-authorised firms (or equivalent)?

If you disagree, please explain your reasons why.

Question 5

Do you agree with our proposal to allow individual self-employed solicitors to provide reserved legal services to the public subject to the stated safeguards?

Question 6

What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?

Question 7

Do you agree with our proposed transitional arrangements for anyone who has started along the path to qualification under the existing routes when the SQE comes into force?

Question 8

Do you agree with our proposal to expand deeming in this way?

Question 9

Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

Question 10

Do you know of any unintended consequences of removing the Property Selling Rules?

Question 11

Do you agree with our new proposed review powers?

Question 12

Do you agree with the proposed 28 day time limit to lodge all requests for internal review?

Question 13

Do you agree with our proposed approach to enforcement?

Our next steps

Consultation dates

This consultation is running from 27 September until 20 December 2017.

Our decision

Once the consultation closes, we will analyse responses. We will then decide what proposals we need to take forward.

Publishing responses

Please note that, unless otherwise stated, we will publish responses to our consultations.

Get involved

Your views matter, which is why we are keen to engage with you outside of formal consultations.

Attend one of our events

To attend one of our events, or to see us at an event we are participating in, keep an eye on all our upcoming events by visiting our website.

Invite us to speak at your event

If you would like to invite an SRA speaker to your event, please fill in our speaker request form.

Follow us on social media

Join a virtual reference group

Our virtual reference groups allow you to stay in touch and learn more about what we are working on. Visit our website to join one or more of these groups:

Diversity matters

Members of our Diversity matters reference group are helping us to think about how we can progress our work on equality, diversity and inclusion.

Looking to the future

We are setting out major changes we think are necessary to the way we regulate. We want to hear what you think of our proposals and how they might work in practice.

Small firms

We want to make sure that thinking about how our work affects sole practitioners and other small firms is embedded in our operations and our regulatory reform programme.

SRA Innovate

We want to make sure that thinking about how regulation affects innovation and growth in legal services is embedded in our operations and regulatory reform programme.

How to respond

This consultation is open from 27 September until 20 December 2017.

Online questionnaire

Our online consultation questionnaire is a convenient, flexible way to respond. You can save a partial response online and complete it later. You can download a copy of your response before you submit it.

Start your response now

Reasonable adjustment requests and questions

Read our reasonable adjustments policy

Contact us if you need to respond to this consultation using a different format or if you have any questions about the consultation.

Publishing responses

We will publish and attribute your response unless you request otherwise.