

## Closed Consultation

### Looking to the Future - flexibility and public protection

12 June 2017

- The deadline for submission of responses was **21 September 2016**
- [Download this consultation paper](https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download) [https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download]
- This consultation ran in parallel with our consultation on the [Accounts Rules](https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/accounts-rules-review/) [https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/accounts-rules-review/]

#### Next steps

- [Download our response to consultation](https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download) [https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download]
- [Download all consultation responses](https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download) [https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/code-conduct-consultation/#download]

A phased review of the SRA Handbook and our regulatory approach - Principles, Code of Conduct and Practice Framework Rules.

### Foreword - Enid Rowlands



The legal sector is changing at pace. That means our regulation must be up to date and fit for purpose, providing public protection without hampering the growth and innovation that drives a competitive and effective legal sector.

I am pleased we have achieved so much in the last two years, cutting unnecessary regulation and freeing up firms to do business. We worked closely with solicitors and groups like the City of London Law Society, the Sole Practitioners Group and local law societies to identify potential changes, while protecting the public interest. We have learned a great deal and I am grateful to all those who have helped.

But there is much more to do.

At the heart of the work of any regulator is setting and maintaining high professional standards – the standards the public expect. And with a clear emphasis on that, we can give solicitors and firms more freedom and flexibility. So we are planning to radically simplify our Handbook, starting with revising the Principles and the Code of Conduct.

For the first time, we are proposing two separate codes – a Code of Conduct for Solicitors and a Code of Conduct for Firms. These replace detailed and prescriptive requirements with a framework for competent and ethical practice. Every solicitor will be absolutely clear about their personal obligations and responsibility to maintain the highest professional



standards. Firms will have clarity about the systems and controls they need to provide good legal services for consumers and the public.

And I want us to help address the problem of access to justice - the widespread unmet need of the public and small businesses. People want affordable and relevant services. It makes no sense that solicitors are banned from offering non-reserved legal services, such as legal advice, in the firms that have grown up to meet that need.

So the key change in these proposals, beyond the two simple Codes of Conduct, is the first ever opportunity for solicitors to freely deliver services outside of regulated firms.

The new shorter, sharper, clearer Handbook will be supported by extra resources, in line with the growing range of dedicated support we already provide. That will include clear guidance for the public on what they can expect and what protections they have.

In further steps, we are consulting alongside this document on new Accounts Rules. Later this year we will be sharing proposals to support the new Codes with changes such as revised authorisation rules and details of the Practice Framework Rules (PFRs). And we will also revise our enforcement policy to give real clarity about what action we will take when solicitors or firms fall short of the high standards we set. Our successful 'Question of Trust' campaign gave us the opportunity to hear the views of more than 5,000 people on what that action should be.

As with reforms we have delivered over the last two years, we are confident that our proposals will help the legal market to grow. That matters; it is good for lawyers, for their business and the economy, but most of all it is the best way to tackle the unmet need. That matters to us all.

These are important reforms so the Board and I, and staff from across the organisation, have spoken to hundreds of solicitors and firms about these changes over the last 18 months. And we will be consulting for an unprecedented 16 weeks.

Please get involved. Respond to the consultation, come to an event, join our virtual reference group. Together we can uphold the highest professional standards, while driving a healthy, growing legal sector that offers real public choice and access.

Enid Rowlands

**Chair, SRA Board**

## **Looking to the Future - a new vision for our regulation**

In November 2015 we published our position paper Looking to the Future. It set out a new vision for our regulation, designed to make sure that our model is targeted, proportionate and fit for purpose in a fast changing and dynamic legal services market. It also set out our intention to redraft our existing Handbook, which contains the detail of our regulatory model, to make it shorter, clearer and easier to use.

We are reviewing our Handbook in two phases. We are now consulting on the first phase of our proposed changes.

The key components of our phase one proposals are:

- A future regulatory model that has two distinct strands:
  - We regulate individuals to use the "solicitor" title. This area of regulation is about education and entry standards, and ongoing competence and ethical behaviours.
  - We regulate firms entitled to deliver reserved legal activities. This is about systems of control in the firm and the availability of additional consumer protections - including professional indemnity insurance (PII) arrangements and access to our Compensation Fund.



- Revised Principles and a separate new Code of Conduct for Solicitors and a new Code of Conduct for Firms.
- Freeing up solicitors to provide some legal services outside of regulated firms. This change is designed to benefit the public by allowing solicitors to work in the emerging 'alternative' legal market and provide high-quality services.
- Making sure that the right levels of public protection are in place.
- A short, sharp and focussed Handbook for solicitors, based on the high professional standards we set, without lengthy and prescriptive rules.
- Resources to support the Handbook, including clear guidance for the public.

We are in the process of scoping the second phase of the review. This will consider the rest of the content of the Handbook including any detailed revisions to the PFRs and the Authorisation Rules. We intend to consult on phase two later this year.

## **Our consultation is the first phase of the Handbook review**

The formal consultation is divided into four parts.

Section 1 is the introduction and overview.

In section 2 of the consultation we propose a new ethical and professional framework to underpin our approach. The current SRA Code of Conduct 2011 is around 30 pages long, and applies to individual solicitors, SRA-regulated law firms and the managers and staff of those firms. The 'one size fits all' approach makes the current Code too long, confusing and complicated. It blurs the line between individual and organisation responsibilities, making it difficult to understand and apply.

And we want to provide greater clarity around the individual responsibilities of in-house solicitors – solicitors who do not provide services direct to the public – and the professional standards we expect of them. If we take forward the proposals to allow solicitors to provide services to the public in alternative legal services providers, we will also need to be very clear about the responsibilities that these solicitors have. The current Code does not allow us to do this.

We are therefore consulting on:

- A revised set of SRA Principles [2017]: These set out high level ethical principles which comprise the fundamental standards that we expect all those that we regulate to uphold. This includes solicitors and other individuals that we authorise, and firms and their managers, owners and employees.
- The SRA Code of Conduct for Solicitors [2017]: This aims to set out clearly the professional standards and behaviours expected of solicitors in practice.
- The SRA Code of Conduct for Firms [2017]: This aims to provide more clarity to firms that we regulate about the business systems and controls that they need to have in place and what their responsibilities are as a SRA-regulated business.

We are proposing to retain the Compliance Officer roles all firms have in place, and our proposed Code of Conduct for Firms reflects this approach. We are taking this opportunity to gather views on how these roles are working in practice, the value of these roles, and how effective they are in a range of different businesses.

## **Allowing more flexible practice**

Section 3 of the consultation contains proposals for more flexible practice. The ways people find, access, and use legal services are changing. In response solicitors, law firms and other organisations are offering new services in more innovative ways and through new business models. Although there are a core set of 'reserved activities' that can only be delivered by individuals regulated by one of the legal regulators, most legal services can be delivered outside of regulation. That means there is also an expanding alternative legal services market, providing everything from will writing, legal services relating to social welfare, housing and employment, to advice on media law, commercial contracts and tax.

But research tells us that many people and small businesses still cannot access the legal advice that they need, at an affordable price. We have a duty to consider how the way we regulate can help to address this, and to ensure that this gap is narrowed.

And yet our existing rulebook restricts where and how solicitors can work. Solicitors, who are arguably best placed to deliver quality non-reserved legal services, cannot do so easily. This is because solicitors must practise through a firm authorised by one of the legal regulators whenever providing services to the public.

The key change in our proposals is to remove the current restrictions on most solicitors, so that they can deliver non-reserved legal services to the public through an alternative legal services provider and use the title solicitor. We also want to improve public protection by making sure that charities and not for profit bodies (classed in the Legal Services Act as special bodies) are regulated in a flexible and appropriate way. These special bodies can deliver reserved legal services, under transitional arrangements, within a framework that reflects their unique status. We are proposing a framework that would allow consideration of ending those transitional arrangements, and to bring special bodies into our regulation.

We will work closely with the Legal Services Board and the special bodies to develop and take forward our proposed approach. We invite special bodies to engage with us both face to face and through our SRA Innovate programme in order to help us identify what works best for them.

## **Making sure consumers are protected**

Section 4, the final section of the consultation looks at consumer protection and the impact of our proposed reforms.

Increased access to services provided by solicitors will provide benefits to consumers, and we want to make sure that the public are clear about what to expect and what protections they have in place should things go wrong. This section looks at what sort of information will help – for example, should SRA-regulated firms display detailed information about the protections available to clients?

We also propose that solicitors working in an alternative legal services provider should not be allowed to hold client money in their own name. Alongside that, we suggest their clients would not be able to claim from our Compensation Fund if things go wrong.

As part of the same approach, we are asking for comments on whether solicitors working in alternative legal services providers should have personal professional indemnity insurance. Our preference is that professional indemnity insurance should not apply, so that solicitors are operating and competing on the same terms as others in this market. It would also mean that the public can access affordable services, as insurance costs can be high.

We also set out our proposal to maintain the current provisions that require all work within certain businesses - recognised bodies or recognised sole practice - to be SRA regulated. Recent reforms to the separate business rule and the proposal in this consultation to allow solicitors to practise in those separate businesses means that 'traditional' solicitors firms will have real flexibility in future to deliver joint services with other professions if they chose to do so.

## **Supporting the public and the profession**

We will be working closely with consumer groups and the public to gather their views and to design clear guidance on what to expect and what protections are in place for people using legal services. And we will be inviting views through the Legal Choices website and our Virtual Reference Group. We recognise that introducing change for the profession and firms will require resources. Some firms (particularly smaller firms) and solicitors may want more support and guidance from the SRA.

There have already been extensive discussions with representative bodies, law firms and solicitors as we developed our proposals. Throughout the consultation, we will be discussing



the detail with representative bodies, as well as considering consultation responses. We will hold a series of technical webinars to discuss the detailed drafting and will be working closely with a variety of bodies to help us to develop online resources to help. We are also open to working with stakeholders who are considering developing their own bespoke guidance materials. We will be guided by what the profession tells us it needs, but we think that resources should include a toolkit aimed at small and medium-sized 'high street' practices. We also would look to produce a compliance toolkit targeted particularly at in-house solicitors to support the proposed new Code. And a similar toolkit targeted at solicitors working in the alternative legal services market. This would help employers as well helping the solicitors themselves.

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The consultation document we issued on the 1 June 2016 included several case studies. They were designed to illustrate our thinking and help readers understand how some of the proposed obligations and requirements could be met in a range of scenarios.

Based on feedback received, we decided to move some of this material to Your questions. We subsequently revised and re-published several specimen case studies.

If you downloaded an early version of the consultation annex package below with the original case studies included, you can continue to use them to help you understand our proposals.

We are interested in hearing from you about scenarios or proposed obligations where you think further clarity or support would be helpful. We encourage you to submit to us your views on how you interpret, understand or would apply our proposed obligations.

Our final toolkit will include a wide ranging set of case studies covering areas identified by stakeholders.

[Download full consultation below \[#download\]](#).

## Consultation questions

### Question 1

Have you encountered any particular issues in respect of the practical application of the test (either on an individual basis, or in terms of business procedures or decisions)?

### Question 2

Do you agree with our proposed model for a revised set of Principles?

### Question 3

Do you consider that the new Principle 2 sets the right expectations around maintaining public trust and confidence?

### Question 4

Are there any other Principles that you think we should include, either from the current Principles or which arise from the newly revised ones?

### Question 5

Are there any specific areas or scenarios where you think that guidance and/or case studies will be of particular benefit in supporting compliance with the Codes?

### Question 6

Have we achieved our aim of developing a short, focused Code for all solicitors, wherever they work which is clear and easy to understand?

### **Question 7**

In your view is there anything specific in the Code that does not need to be there?

### **Question 8**

Do you think that there anything specific missing from the Code that we should consider adding?

### **Question 9**

What are your views on the two options for handling conflicts of interests and how they will work in practice?

### **Question 10**

Have we achieved our aim of developing a short focused Code for SRA regulated firms which is clear and easy to understand?

### **Question 11**

In your view is there anything specific in the Code that does not need to be there?

### **Question 12**

Do you think that there anything specific missing from the Code that we should consider adding?

### **Question 13**

Do you have any specific issues on the drafting of the Code for Solicitors or Code for Firms or any particular clauses within them?

### **Question 14**

Do you agree with our intention to retain the COLP and COFA roles for recognised bodies and recognised sole practices?

In responding to this question, please set out the ways in which the roles either assist or do not assist with compliance.

### **Question 15**

How could we improve the way in which the COLP/COFA roles work or to provide further support to compliance officers, in practice?

### **Question 16**

What is your view of the opportunities and threats presented by the proposal to allow solicitors deliver non-reserved legal services to the public through alternative legal services providers?

### **Question 17**

How likely are you to take advantage in the greater flexibility about where solicitors can practice as an individual or as a business?

**Question 18**

What are your views about our proposal to maintain the position whereby a sole solicitor (or REL) can only provide reserved legal services for the public (or a section of the public) as an entity authorised by the SRA (or another approved regulator)?

**Question 19**

What is your view on whether our current 'qualified to supervise' requirement is necessary to address an identified risk and/or is fit for that purpose?

**Question 20**

Do you think we should require SRA regulated firms to display detailed information about the protections available to consumers?

**Question 21**

Do you agree with the analysis in our initial Impact Assessment?

**Question 22**

Do you have any additional information to support our initial Impact Assessment?

**Question 23**

Do you agree with our approach that solicitors working in an alternative legal services provider should not be allowed to hold client money in their own name?

**Question 24**

What are your views on whether and when in house solicitors or those working in Special Bodies should be permitted to hold client money personally?

**Question 25**

Do you agree with our proposal that the SRA Compensation Fund should not be available to clients of solicitors working in alternative legal services providers?

If not, what are your reasons?

**Question 26**

Do you agree with our proposal not to make individual PII cover for solicitors a regulatory requirement on the individual solicitor?

**Question 27**

Do you think that there are any difficulties with the approach we propose, and if so, what are these difficulties?

**Question 28**

Do you think that we should retain a requirement for Special Bodies to have PII when providing reserved legal activities to the public or a section of the public?

**Question 29**

Do you have any views on what PII requirements should apply to Special Bodies?





### Question 30

Do you agree with our view that it is not desirable to impose thresholds on non-SRA regulated firms, which are mainly or wholly owned by SRA authorised solicitors?

### Question 31

Do you have any alternative proposals to regulating entities of this type?

### Question 32

Do you have any views on our proposed position for intervention in relation to alternative legal services providers, and the individual solicitors working within them?

### Question 33

Do you agree with our proposal that all work within a recognised body or an RSP should remain regulated by the SRA?

## Downloadable document contents

### Code of Conduct consultation

Looking to the future - flexibility and public protection

Annex 1 - Draft SRA Code of Conduct for Solicitors, RELs and RFLs [2017]

Annex 2 - Draft SRA Code of Conduct for Firms [2017]

Annex 3 - SRA Glossary for Code of Conduct for Solicitors, RELs and RFLs and Code of Conduct for Firms

### Supporting consultation documents: Annexes 4-9

Annex 4 - Rationale document for proposed Codes of Conduct

Annex 5 - Initial Regulatory Impact Assessment – Looking to the Future

Annex 6 - Economist's report

Annex 7 - Tracking document for SRA Code of Conduct 2011

Annex 8 - Looking to the Future: a strategy to increase understanding and support implementation

Annex 9 - Case studies (removed)

## Downloadable documents

- [Our response to consultation: Looking to the Future - flexibility and public protection \(PDF 54 pages, 709KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-our-response.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-our-response.pdf]
- [Consultation responses \(PDF 2848 pages, 17MB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-consultation-responses.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-consultation-responses.pdf]
- [Annex 1 - SRA Principles \(PDF 2 pages, 65KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-annex-1-principles.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-annex-1-principles.pdf]
- [Annex 2 - Code of Conduct for Solicitors \(PDF 7 pages, 115KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-annex-2-solicitors.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-annex-2-solicitors.pdf]
- [Annex 3 - Code of Conduct for firms \(PDF 6 pages, 124KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-annex-3-firms.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-annex-3-firms.pdf]
- [Annex 4 - Glossary for Principles Codes and Accounts Rules \(PDF 14 pages, 162KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-annex-4-glossary.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-annex-4-glossary.pdf]





- [Impact assessment \(PDF 39 pages, 951KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-impact-assessment.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-impact-assessment.pdf]
- [CSES - Impact evaluation of SRA's Regulatory Reform Programme \(PDF 27 pages 407KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-cses.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/lttf-cses.pdf]
- [Closed consultation - Looking to the Future: flexibility and public protection \(PDF 58 pages, 548KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/code-of-conduct-consultation.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/code-of-conduct-consultation.pdf]
- [Supporting closed consultation documents - Annexes 4-9 \(PDF 207 pages, 1.5MB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/code-of-conduct-annexes.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/code-of-conduct-annexes.pdf]

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