

## **Consultation**

Looking to the future - flexibility and public protection

June 2016

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## Looking to the future - flexibility and public protection

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



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**

## Structure and content of the consultation paper

1. Section 1 of this consultation paper (Introduction and Overview) sets out our proposed regulatory approach, why there is a need for change and the benefits that it would bring. It also details the potential impact these reforms may have.
2. Section 2 of this consultation paper (Principles and Codes of Conduct) sets out detail on the development, content, and structure of our proposed new set of SRA Principles, and Codes of Conduct for Solicitors<sup>1</sup> and for Firms. In this section, we describe our approach to developing these proposed new regulatory arrangements. We seek your input and views on a number of key policy issues, as well as on our general approach and the content of the draft Codes themselves.
3. The draft Principles and Codes of Conduct are annexed to this paper (see annexes 1 and 2). These are supported by a Glossary (annex 3) and a rationale document (annex 4) that sets out detail of the drafting principles underpinning the proposed new Principles and Codes.
4. Section 3 of this paper sets out in detail our proposal to allow solicitors to deliver some legal services to the public from providers that are not regulated by the SRA or another legal services regulator.
5. Section 4 looks at consumer protection and the impact the proposed reforms may have.
6. Contact [SRA Innovate](#) if you have been thinking of a new way to serve your clients and run your organisation, or have an idea, but are not sure whether regulation could stop it getting off the ground. SRA Innovate is open to existing firms and new entrants, alternative business structures (ABS) and traditional law firms.

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<sup>1</sup> The Code for Solicitors also applies to RELs and RFLs

## Section 1: Introduction and overview

### Reviewing our regulatory approach - the need for change

7. In November 2015 we published our paper [Looking to the Future](#). This paper set out our vision for the future of how we regulate. It outlined a proposed new approach designed to make sure that our regulation 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 to make it shorter, clearer and easier to use. In this consultation paper, we will set out our thinking in more detail. We invite you to let us know your views on the proposed changes, and our assessment of their likely impact.
8. 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. There is also an expanding alternative legal services market, which is operating across the sector. It provides everything from will writing, legal services relating to social welfare and housing, to advice on media law, commercial contracts and tax.
9. But research tells us that many people and small businesses still cannot access the legal advice that they need, at an affordable price<sup>2</sup>. As a regulator, we have a duty to consider how the way we regulate can help to address this, and to ensure that this gap is narrowed.
10. Our existing regulatory framework makes it challenging for solicitors to compete with providers in the alternative legal services market. Our existing rulebook restricts where and how solicitors can work. While most legal services can be delivered outside of regulation, solicitors, the people who are arguably best placed to deliver quality non-reserved legal services, cannot do so with any degree of ease or flexibility. This is because solicitors must practise through a firm authorised by one of the legal regulators whenever providing services to the public or a section of the public.

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<sup>2</sup> See for example:

<https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>

<https://research.legalservicesboard.org.uk/wp-content/media/How-People-Resolve-Legal-Problems.pdf>

<https://research.legalservicesboard.org.uk/wp-content/media/PUBLISH-The-legal-needs-of-small-businesses-19-October-2015.pdf>

## Overview - our revised regulatory approach

11. We want to do more to allow greater flexibility for solicitors and freedom for firms to innovate, compete and grow. This will help improve access to quality services at affordable prices. We have reviewed the range of restrictions we currently place on solicitors and firms and propose to remove those we consider unnecessary and disproportionate. That includes removing the current restriction preventing solicitors delivering non-reserved activities to the public in businesses that are not regulated by the SRA or any other approved legal services regulator.
12. In this paper, we propose a future regulatory model that makes clear two distinct strands:
13. Two separate Codes of Conduct would underpin this regulatory approach:
  - **SRA Code of Conduct for Solicitors, RELs and RFLs [2017]<sup>3</sup>**: All solicitors<sup>4</sup>, no matter where they practise, will have to comply with this Code. It aims to clearly set out the professional standards and behaviours expected of solicitors
  - **SRA Code of Conduct for Firms [2017]<sup>5</sup>**: This aims to provide more clarity to firms we regulate about the business systems and controls they need to have in place, and what their responsibilities are as an SRA regulated business.

## The benefits of reform

14. The redrafted Codes are shorter, more focused and clearly define the boundary between individual and entity regulation. These would replace detailed and prescriptive requirements with a framework for competent and ethical practice. We think the proposed new Codes of Conduct would help both individuals and firms to better understand the regulation that applies to them. By removing complexity, and increasing flexibility in the way that the standards can be met, the revised approach would also be likely, in our view, to reduce the overall cost of regulatory compliance on firms and individuals in the longer term.
15. The revised model clarifies existing flexibility for providers and individuals to establish themselves in different ways, as well as creating further options. For example:
  - Individuals can obtain a solicitor qualification as a sign of their competence and professionalism. This qualification tells employers and the public that since these individuals are required to comply with the provisions of the Code of Conduct, they are likely to be competent, maintain ethical standards, and are part of a regulated community

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<sup>3</sup> 'Code for Solicitors'

<sup>4</sup> Solicitor includes RELs and RFLs where the context permits

<sup>5</sup> 'Code for Firms'

- Firms could employ solicitors to deliver non-reserved legal services to the public whether or not the firm is itself regulated by us or another legal services regulator. This is not allowed under our current regulatory framework. It would be up to the firm to decide if it wanted to tell consumers and the public that it employs solicitors, as consumers may draw confidence from their professional status. Of course, firms that want to deliver reserved legal services must continue to be authorised by us or by another legal services regulator, as set out in current legislation
  - Firms regulated by us can signal to consumers and the public that they meet our regulatory requirements, that certain additional consumer protections are in place and that they are entitled to carry on reserved legal activities should they wish to do so.
16. We anticipate that our proposals could result in better and cheaper access to qualified solicitors. They bring the SRA in line with other legal services regulators, such as the Institute of Chartered Accountants in England and Wales (ICAEW), Council for Licensed Conveyancers (CLC) and the Chartered Institute of Legal Executives (CILEX), which do not have similar restrictions to those currently included in the SRA Practice Framework Rules 2011.
17. Such an approach would also increase consumer choice. In practice, our proposed changes would mean that consumers would have a wider choice in the way that they access and use the services of a solicitor (where that is what they want or need). Under the proposed new arrangements, consumers would be able to:
- use a solicitor in an SRA regulated firm (with all the consumer protections that brings) - as they can now
  - use a solicitor in a firm within the alternative legal services market (with all the consumer protections that the individual solicitor carries with them) - a new option - or
  - not use a solicitor and continue to access non-solicitor services within the alternative legal services market - again as they can now.
18. Given the level of unmet need in the legal services market<sup>6</sup>, it is important that consumers have as many options as possible available to them. It is also important to give solicitors flexibility to work in different ways and compete with others in the alternative legal services market.

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<sup>6</sup> LSB research indicates that 79% of individuals and 83% of small businesses with a legal problem do not obtain professional help from regulated providers:  
<https://research.legalservicesboard.org.uk/analysis/demand/individual-consumer-needs/>  
<https://research.legalservicesboard.org.uk/wp-content/media/PUBLISH-The-legal-needs-of-small-businesses-19-October-2015.pdf>



19. We should note at this point, that there will be consequential changes to the policy on MDPs that we announced in November 2014, as the policy is based on the current Codes and regulatory structure. The main amendment would be in relation to solicitors who are working under non-SRA regulation as part of mixed teams. The intention is that the SRA Principles and the new Code for Solicitors would apply to those solicitors in full, as it will to solicitors practising in all other situations. However, at the entity level, the SRA Principles and the Code for Firms would only apply to SRA regulated activity within the MDP.

### **Handbook reform project - our phased approach to the review and proposed implementation**

20. We are reviewing the SRA Handbook in two phases but we intend to implement all the proposed changes together on one launch date<sup>7</sup>. The first phase of the review (set out in this paper) sets out our proposed new SRA Principles and Codes of Conduct.
21. In this first phase, we have also started to work through the SRA Practice Framework Rules 2011 (PFRs) and the SRA Authorisation Rules 2011 (Authorisation Rules). These contained the detail about where and how solicitors can practice. These rules would need amending to remove unnecessary restrictions and to allow the greater flexibility described above. We set out the key policy proposals and some of the issues with them here, but not detailed drafting proposals.
22. 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.
23. We have previously made some changes to these rules to allow recognised bodies and recognised sole practices to provide a wider range of services to the public. However, we do not think that these yet go far enough in helping implement our new model of regulation. We are therefore planning to look at the possibility of combining the current PFRs and Authorisation Rules - enabling us to develop a more streamlined and simplified set of Practice and Authorisation Rules - in the second phase of this project.
24. Our vision for a new set of Practice and Authorisation Rules is that they will be shorter, clearer and simpler. In the PFRs, in particular, we propose removing restrictions on practice. ***We are therefore keen to engage with stakeholders on the policy issues set out in Section 3 of this paper.*** As stated above we intend to implement changes coming out of phase one and phase two at the same time.

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<sup>7</sup> This date will be no earlier than November 2017.

## Our enforcement policy

25. We are currently undertaking a comprehensive review of our enforcement strategy and the decision-making framework we use in both supervision and enforcement matters. In addition to a comprehensive internal review and streamlining of this framework, we are using feedback gathered from thousands of stakeholders as part of our recent [Question of Trust campaign](#) to help inform and shape a proposed new approach.
26. With freedom and flexibility comes responsibility. This is core to the concept of being a professional. It is what other lawyers rely upon (e.g. through undertakings) and it is also what the public expects (as our Question of Trust work makes clear). We trust solicitors and firms to use this flexibility to deliver an increasingly wide range of legal services that meet consumer demand and meet the regulatory standards we set for them.
27. If things do go wrong, we will take a proportionate response. But where we find that solicitors or firms have wilfully, carelessly or negligently misused their freedom, or have abused their position, that response can be robust. Within our enforcement strategy, we will look at the context of the wrongdoing, and how serious we believe the issue to be, given full consideration of the circumstances. Although the new Codes cover all aspects of a solicitor's conduct (or an entity's management), we will consider each report on a pragmatic case by case basis taking full account of all the evidence.
28. This may mean that we take into account private conduct in some cases, when considering whether there has been a breach of our Principles (see further below). This may depend on proximity to practice or impact on public confidence in the profession or the delivery of legal services. We will also consider the relative seniority of the wrongdoer, and the degree of harm caused (and to whom) when considering regulatory sanctions. Patterns of behaviour will also be relevant.
29. This approach requires firms and individuals to exercise their judgment in applying our standards to their situation and in deciding the appropriate course of action. If the course of action a firm or individual decides upon is in question, this approach requires us to assess the risk to our regulatory purpose (the need to provide appropriate protection to consumers, and to support the rule of law and administration of justice). We believe that the new Codes, taken together with a clear and defined enforcement strategy, will help both our staff and solicitors to understand our standards and how they can be met. ***We expect to consult on our enforcement policy in 2016.***
30. As part of our ongoing internal work to review our enforcement policy, we are also looking at the current SRA Suitability Test 2011. This test sets out the high personal standards (character, suitability, fitness and propriety) that all those seeking admission or restoration to the roll as a solicitor, as well as

legally qualified and non-legally qualified applicants for certain roles<sup>8</sup> in SRA authorised firms, must meet.

### **SRA Suitability Test 2011**

31. It is worth noting that no applicant has an automatic right of admission, restoration or authorisation and it will always be for the applicant to discharge the burden of satisfying suitability under the test. The current test applies to trainee solicitors, qualified lawyers under the SRA Qualified Lawyers Transfer Scheme Regulations 2011, those seeking admission under the SRA Admission Regulations 2011, those seeking to become authorised role holders and those seeking restoration to the roll of solicitors. Although our review is at an early stage, feedback to date is that there is scope for the Suitability Test to be reviewed in more detail, and potentially improved.
32. With that in mind, we are keen to gather your views on the current SRA Suitability Test 2011, how it works in practice, and any particular issues that you have encountered in respect of the practical application of the test (either on an individual basis, or in terms of business procedures or decisions).

#### **Consultation question**

**Question 1.** Have you encountered any particular issues in respect of the practical application of the Suitability Test (either on an individual basis, or in terms of business procedures or decisions)?

### **The role of the SRA competence statement**

33. In March 2015, the SRA Board approved the publication of a competence statement for solicitors. Made up of three parts - a statement of solicitor competence, the threshold standard, and a statement of legal knowledge - the competence statement defines the continuing competences that we require of all solicitors.
34. The competence statement forms an integral part of our new approach to continuing competence. For a solicitor, meeting the competences set out in the competence statement helps to ensure they meet the requirement to provide a proper standard of service to clients. This remains an important focus in the revised Principles and the revised Codes of Conduct. We will ensure that the key changes in the Code for Solicitors and increased emphasis on standards, ethics and behaviours are reflected in our Competence Statement. This will ensure solicitors consider the contents of the Code for Solicitors when reflecting on their practice and addressing identified learning and development needs.

### **Stakeholder engagement**

35. We have involved a wide range of stakeholders to help us develop our thinking so far. We have engaged widely since early 2015, and have also

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<sup>8</sup> Such as compliance officer for legal practice and compliance officer for finance and administration

worked with external experts - an externally commissioned report on the likely economic impact of our proposals is published alongside this paper.

36. We have also published initial impact assessments alongside this consultation, including a regulatory impact assessment and a comprehensive market analysis. We have considered the equality and diversity impacts of our proposals, and have reflected these throughout our impact assessment.
37. We recognise that the views of firms and businesses, employees, the profession and consumers will be crucial to the development of the structure and content of the new Handbook. We will engage widely with key stakeholders during the consultation period and in the period before implementing any changes to ensure we develop a regulatory framework that is both relevant now, and will stand the test of time. We will monitor the effect of the changes to our regulation, and will develop a framework to do so.

## Section 2: Principles and Codes of Conduct

### What the consultation covers

38. We are consulting on the following:
  - A revised set of SRA Principles [2017]

These set out high level ethical principles that comprise the fundamental tenets we expect all those that we regulate to uphold. This includes solicitors and other individuals we authorise, and firms and their managers, owners and employees.
  - The SRA Code of Conduct for Solicitors, RELs and RFLs [2017]<sup>9</sup>

This aims to set out clearly the professional standards and behaviours expected of solicitors in practice.
  - The SRA Code of Conduct for Firms [2017]<sup>10</sup>

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 an SRA regulated business.

### Application of the Principles and the Codes of Conduct

39. The Principles would apply to all solicitors. As is the case now, they would also apply to SRA regulated entities and to their managers and employees. As high level principles, these apply to the conduct of solicitors and others both inside and out of practice. It would be artificial for that not to be the case, and indeed we are required to act on any report that may damage public

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<sup>9</sup> 'Code for Solicitors'

<sup>10</sup> 'Code for Firms'

confidence, or suggests the solicitor might present a risk when in practice (for example, a report of a lack of financial probity).

40. The Code for Solicitors lays out a framework for an individual's ethical and competent practice. The Code for Firms applies to entities we regulate and those working within them. The Code for Firms makes clear that managers are jointly and severally liable for any breaches by their firm and that employees can be personally liable for any breaches their activities cause. Standard 9 of the draft Code sets out the regulatory role of compliance officers, currently found within the Authorisation Rules.
41. Together these are a clear communication of the standards of conduct and behaviour we expect from those we regulate. This structure would be underpinned by an enforcement strategy that ensures we take action in relation to serious breaches where these present a risk to the public interest (as set out in our [Policy Statement](#)). A breach may be serious either in isolation or because it is part of a persistent failure to comply or pattern of behaviour.

### **SRA Principles [2017]**

42. In [Looking to the Future](#), we said that we were keen to explore whether we had the right number and balance of Principles.
43. We are consulting on a revised set of Principles, which we think best reflect the fundamental tenets we expect of those we regulate. We want revised principles to be easily understood, and owned, by the profession and the public alike, and to convey a clear message about our regulatory purpose. This purpose was set out in our [November 2015 Policy Statement](#): to protect consumers of legal services; and support the rule of law and the proper administration of justice.
44. The revised drafting has also taken into account our experience of supervising and enforcing against the current Handbook, including a review of referrals to the Solicitors Disciplinary Tribunal. This has therefore moved us beyond simply adopting the five professional principles from the LSA, which was an alternative option we considered.
45. We have set out these draft revised Principles in the table below. Some of the existing SRA Principles and professional principles are reflected in the revised standards in the draft Codes of Conduct. It is important to emphasise that we do not regard this as a dilution of their importance. The Code standards and the Principles are equally enforceable and are not interdependent. However, the Codes refer more specifically to expected practice standards, which is context specific, rather than overarching values and behaviours.

## SRA Principles [2017]

You<sup>11</sup> must:

1. uphold the rule of law and the proper administration of justice
2. ensure that your conduct upholds public confidence in the profession and those delivering legal services
3. act with independence
4. act with honesty and integrity
5. act in a way that encourages equality, diversity and inclusion
6. act in the best interest of each client.

*In the event of any conflict between the Principles, then the Principle that best serves the public interest in the proper administration of justice will take precedence.*

### Consultation questions

**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?

## Codes of Conduct

### The need for change - our proposed approach

46. The current SRA Code of Conduct (2011) is around thirty pages long, and applies with only limited distinction to individual solicitors, SRA regulated businesses and managers and employees of those firms. We think the current Code is long, confusing and complicated. It can make the line between individual and entity responsibilities blurred and difficult to apply.
47. We consider that we should provide greater clarity around the individual responsibilities of in-house solicitors and the standards they must uphold. If we proceed with the proposal to allow all 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.

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<sup>11</sup> As set out in paragraph 40, this includes all solicitors in and out of practice and regulated firms and their non-solicitor managers and employees

48. Nor does the current Code reflect the variety of modern solicitor practice. It is detailed and prescriptive and retains a strong focus on traditional models of legal practice. In order to reflect the increasingly diverse range of business models, we have had to rely on developing workarounds to the current regulatory arrangements and have granted a significant number of waivers over the past two years. This is not tenable in the longer term. Our Code is clearly not reflecting the realities of the market. In drafting the new Codes, we could have chosen to try producing different Codes for the different models and market segments that currently exist. However, that approach would only work in the short term because the market is constantly changing.
49. Our approach therefore has been to produce proposed Codes that focus on core professional standards and behaviours. This framework for competent and ethical practice will apply to all solicitors, wherever they work. The standards for firms are intended to be sufficiently broad to apply to all business models. The second phase of our review will simplify, and aim to future proof, the rest of our regulatory arrangements within the existing Handbook so that individuals and firms are very clear about the requirements that apply to them.
50. In this first phase, we have chosen to redraft the SRA Code of Conduct as two separate Codes. This will make the distinction clearer between what is expected of an individual solicitor and SRA regulated firms (and by extension, to their managers and employees, and compliance officers). Separate codes will ensure that enforcement is similarly targeted. By adopting a structure that distinguishes between individual and firm regulation, we have also significantly reduced the overall requirements on firms and individuals.
51. On the whole we have sought to deliver a simpler articulation of our current requirements as opposed to a new series of obligations on those we regulate. But in drafting the new Codes we have identified a small number of areas where we consider protections were lacking, or that requirements were not as clear as they should be. Where this was the case, we have added new requirements (for example, obligations to "know your client" and only to act on instructions).

## Supporting material - guidance and toolkits

52. We have provided further information about our approach to drafting the new provisions in annex 4<sup>12</sup>. This will form part of our support package. It sets out the common themes, including streamlining of the current outcomes and identifying and filling regulatory gaps. It also provides illustrative examples from the current and new Codes. During the consultation, we will be discussing the drafts in detail with representative bodies, as well as considering consultation responses. We will produce detailed FAQs and also technical webinars to discuss the detailed drafting.
53. We will be working closely with representative bodies to help us to develop our own online resources to support the new code once implemented. We are also open to working with stakeholders who are looking to develop their own

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<sup>12</sup> Rationale document for proposed Codes of Conduct

bespoke guidance materials. We want to help firms and individuals to comply. The key to doing that is developing comprehensive and useable toolkits.

54. We 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 understand the obligations and responsibilities required of the solicitors they employ, and how they can support them, as well helping the solicitors themselves.
55. As part of this consultation, we have provided case studies to show how certain proposed obligations and requirements may be met in various scenarios. Our toolkit will include a wide ranging set of case studies covering areas where stakeholders tell us help is most needed. We hope that sharing one or two sample case studies will encourage different stakeholders to share views on how this kind of support could work best for them.
56. We welcome views on the case studies we have supplied. We are also keen to explore whether there are any specific provisions in relation to which early guidance or case studies would be helpful. You can comment and contribute to the debate throughout the consultation period - by leaving your comments on the SRA website.

#### **Consultation question**

**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?

### **Code for Solicitors**

57. The revised Code continues to be drafted in an outcomes focused way. It also incorporates many of the Outcomes from the current Code now set out as standards that solicitors, Registered European Lawyers (RELs) and Registered Foreign Lawyers (RFLs) need to meet. We have prepared tracker documents - one highlighting the provenance of each of the proposed provisions and the other highlighting where current provisions might have moved to or have been replaced. The new Code, however, no longer includes Indicative Behaviours. Earlier feedback from stakeholders suggested that many individuals and firms find their status confusing, with many interpreting them as rigid requirements rather than indicators of ways in which they could achieve or evidence compliance with the Outcomes. You will find further detail on this, including examples, at annex 4.
58. However, where we consider it justified, we propose that some of the current Indicative Behaviours will become standards in their own right. Others will be moved to guidance, or will form the basis of case studies to encourage understanding, provide clarity and support compliance with the new Code. Again, you will find examples in the rationale document at annex 4.
59. Our new approach to drafting means that the core provisions also apply to solicitors working in house, with one section of the Code containing provisions



that are only relevant when providing services to the public rather than an employer. We see this to be a vast improvement from the position in our current Code, where in house solicitors were dealt with in add-on provisions at the end of each chapter. Our proposed approach will put them on an equal footing with other solicitors, bound by the same core standards.

60. Whilst drawing on content from the current Code of Conduct, our overarching aim has been to develop a short, focused Code for all solicitors, wherever they work, that is both clear and easy to understand. We think we have achieved this. As previously mentioned, we will be running technical webinars during the consultation period to discuss detailed drafting with interested parties.
61. We have proposed the drafting detailed in Option 1 below in the proposed new Codes to deal with actual conflict or significant risk of conflict between two or more clients. However, we are interested in views about an alternative version of drafting to reflect a slightly different approach to this issue and that is set out as Option 2 below.

#### Conflict of interests

##### Option 1

You do not act in relation to a matter or particular aspect of it if there is a **client conflict** or a significant risk of such a conflict in relation to that matter or aspect of it, unless:

(a) the **clients** have an agreed common purpose in relation to the matter or the aspect of it, as appropriate, and a strong consensus on how that purpose is to be achieved; or

(b) the **clients** are **competing for the same objective** which, if attained, by one **client** will make that objective unattainable to the other **client**:

and the conditions below are met, namely that:

(i) all the **clients** have given informed consent, given or evidenced in writing, to you acting; and

(ii) where appropriate, you put in place effective safeguards to protect your **clients'** confidential information; and

(iii) the benefits to the **clients** of doing so outweigh the risks to the **clients of you acting**.

##### Option 2

You do not act in relation to a matter or a particular aspect of it if there is a **client conflict** in relation to that matter or aspect of it.

Where there is a significant risk of such a **client conflict** you do not act

unless:

- (a) the **clients** have given informed consent, given or evidenced in writing, to you acting;
- (b) where appropriate, you put in place effective safeguards to protect your **clients'** confidential information; and
- (c) should an actual **conflict** materialise you cease to act for one or more of the **clients**, as appropriate.

- 62. The first version broadly replicates the current outcomes. This allows limited exceptions (with effective safeguards in place, informed consent obtained and risk benefit analysis undertaken) to the prohibition against acting for clients in actual conflict or where there is a significant risk of such (for example, where there is a common purpose or clients are competing for the same objective).
- 63. The second version takes an approach that recognises the safeguards around the current exceptions are really about preventing potential conflicts from becoming actual ones. This second version therefore works on the basis that you should never act if there is an actual conflict, and sets out the parameters for when you can act (i.e. with effective safeguards in place, informed consent obtained and ceasing to act if actual conflict arises) where there is a significant risk of conflict.
- 64. We welcome views from all stakeholders, but particularly the views of individual solicitors and those working in house as to the extent to which they consider we have achieved these objectives in the draft Code of Conduct for Solicitors (see annex 1).

**Consultation questions:**

**Question 6.** Have we achieved our aim of developing a short, focused Code for all solicitors, wherever they work that 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 set out for handling actual conflict or significant risk of conflict between two or more clients and how do you think they will work in practice?

## Code for Firms

- 65. By adopting an outcomes based approach to drafting, we have sought to recognise that firms vary in their form, the services they provide and the clients they have, in the same way that the practice of individual solicitors varies.

66. These provisions cover obligations relating to compliance and business systems, co-operation and information requirements, client money and assets, and competent and ethical practice, including conflict and confidentiality. We have sought to differentiate as clearly as possible between the two Codes - the systems and procedures that a firm would need to have in place, and the ethical and behavioural standards required of individual solicitors, RELs and RFLs.
67. However, there are some areas of overlap between the two Codes. We consider that there are a number of sections in the Code for Solicitors which apply equally, without amendment, to firms. These are the sections relating to:
- Referrals, introductions and separate businesses
  - Conflicts of interest
  - Client identification
  - Complaints handling
  - Client information and publicity.
68. Please note that as the proposed approach to conflict is the same in the Code for Solicitors and the Code for firms, the question around the potential alternative approach set out above applies equally to the Code for Firms.
69. We welcome views from all stakeholders, but particularly the views of firms or their managers or compliance officers, as to the extent to which they consider we have achieved these objectives in the draft Code of Conduct for Firms (see annex 2).

### **Consultation questions**

**Question 10.** Have we achieved our aim of developing a short focused Code for SRA regulated firms that 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?

### **Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA) roles**

70. The LSA makes the HOLP (Head of Legal Practice) and HOFA (Head of Finance and Administration) roles a compulsory part of any alternative

business structure (ABS). Following a consultation, we extended the roles to all firms in 2012, using the generic term COLP and COFA (compliance officers), on the basis that they were an important way of embedding a compliance culture as we began the move towards outcomes based regulation and moved away from prescriptive rules.

71. Although we have received mixed feedback (see below) we are aware that, over time, many firms have found the roles useful in achieving their intended purpose. For example, COLPs and COFAs have told us that the formal role helps give them the authority they need within the firm to ensure compliance by their colleagues. To some extent, the existence of the roles has also created a compliance officer community for passing on good practice and sharing knowledge. In this respect, our annual COLP/COFA conferences are very well attended and receive positive feedback. We also provide regular e-newsletters for compliance officers.
72. We have introduced a number of rule changes to reduce the bureaucracy involved in appointments to these roles. The most recent change was in November 2015, when we allowed the deemed approval of lawyer managers as compliance officers in firms with an annual turnover of less than £600,000.
73. We therefore intend to retain the COLP/COFA roles for all firms and, as set out above, our proposed Code for Firms reflects this approach. We would like, however, to take this opportunity to gather stakeholder views on how these roles are working in practice, the value of these roles, and how effective they are in a range of business models.
74. Discussions with stakeholders about compliance roles (in particular, the COLP role) have brought the following issues to light:
  - there is too much responsibility on the COLP (who is responsible for all compliance apart from compliance with the SRA Accounts Rules)
  - the role works best in small firms, where the COLP is also a manager or closely involved in all the firm's activities
  - it may not always work in large firms, where a number of different role holders have management responsibility for a range of functions
  - having a compliance officer role may (and does) sometimes allow others to abdicate responsibility (thus placing complete reliance on the compliance officer).
75. We are also interested in gathering views on practical issues regarding the current compliance officer roles, and in particular, the extent to which the role and responsibilities are valuable in terms of real and active compliance. For example, is the COLP role too onerous, and if so, how could we improve this? Do you see the role as valuable within an organisation, or does it encourage a 'tick box' approach to compliance?
76. We will be looking to discuss compliance roles more widely with stakeholders in the near future. This consultation paper is therefore just one way of gathering evidence to inform and develop our thinking on the practical

function of the compliance officer roles and ensuing compliance mechanisms within SRA regulated firms.

### Consultation questions

**Question 14.** Do you agree with our intention to retain the COLP and COFA roles for recognised bodies and recognised sole practices?

**Question 14a.** 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 provide further support to compliance officers, in practice?

## Section 3: Our revised approach - where solicitors can practise

### The current SRA Practice Framework Rules 2011 - the issues

77. The current PFRs were introduced in 2011. They consist of existing rules amended in 2011 to accommodate the new ABS approach. Although amended, these rules carried over restrictions on practice from pre-existing provisions. There was no fundamental review at that time to determine whether these restrictions remained necessary or proportionate before they were transferred across into the PFRs. We have learned a lot in the last five years, and we consider that a large number of the current rules can no longer be justified.
78. The PFRs set out the way in which solicitors, RELs and RFLs may practise. The restrictions on solicitors working in an alternative legal services provider sit here. Under these rules a solicitor, REL and RFL can only provide legal services to the public or a section of the public if they are doing so through an organisation we authorise.
79. The PFRs allow individuals to practise as employees of employers who are not authorised. The rules reflect, in a more restrictive way, the requirements of s15(1)-(4) of the LSA. S15(4) allows employees (who are individually authorised) to carry on reserved legal activities for unauthorised employers provided the employer does not provide reserved legal services to the public or a section of the public as part of its business.
80. Under the current rules, a solicitor cannot provide non-reserved legal services to the public unless permitted to do so. These permissions are narrow and prescriptive, having developed over time. We are concerned that they are inflexible and may prevent organisations from responding to consumer demands and from developing in a way that suits their dynamic business

models. We have already acknowledged that our rules exceed the requirements of s15 of the LSA<sup>13</sup>.

81. Accordingly, we are considering removing provisions in the current PFRs that place restrictions (for example to those providing pro bono legal services). This is because we consider that these rules go beyond the requirements of the LSA, and are confusing and difficult to understand. A number of private sector stakeholders have told us that the current rules relating to pro bono work are also preventing them from properly delivering corporate social responsibility programmes.

## Flexibility to practise: our proposals and what they mean

### **Solicitors will be able to provide non-reserved legal services to the public in alternative legal services providers**

82. The key change in our proposals is to remove the current restrictions on solicitors delivering non-reserved legal services to the public or sections of the public through an alternative legal services provider, while using their solicitor title. We consider that this approach ensures our regulation is targeted, proportionate and consistent with underpinning primary legislation.
83. Solicitors who work in alternative legal services providers and decide to provide non-reserved legal services to the public will be subject to the new individual Code. They will be required to make sure that their clients understand whether and how the services the solicitor provides are regulated and about the protections available to them. This aligns with the proposed requirement placed on regulated firms<sup>14</sup> where they will need to tell consumers that they will be covered by the SRA Compensation Fund and Professional Indemnity Insurance (PII) cover. This could be done through various advertising material.
84. We consider that these changes will help to strengthen the overall solicitor 'brand'. With increased visibility and accessibility to competent solicitors, consumers can choose a qualified professional when that is what they want or need. Ultimately, the solicitor brand will stand or fall on whether it remains relevant, and that brand will be strengthened if the reputation for excellence is matched by actual consumer experience.

## Potential impacts of our reforms on the legal services market

85. We think that the following scenarios provide examples of how our reforms may impact on the development of the legal services market:
  - a. Alternative legal services providers currently delivering non-reserved legal services through unqualified staff decide to employ solicitors to undertake and/or supervise some or all of the work (this adds an

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<sup>13</sup> In our response to the Legal Services Board consultation on this issue:  
[http://www.legalservicesboard.org.uk/Projects/thematic\\_review/pdf/2015/SRA\\_S15\\_response.pdf](http://www.legalservicesboard.org.uk/Projects/thematic_review/pdf/2015/SRA_S15_response.pdf)

<sup>14</sup> 7.1(b) in SRA Code of Conduct for Firms [2017]

element of quality control and brand enhancement by employing individual solicitors who are subject to SRA regulation)

- b. Existing businesses currently employing in house solicitors start to provide non reserved legal services to the public.
  - c. Existing businesses delivering other services diversify into legal services and decide to employ solicitors
  - d. New firms set up to deliver non-reserved legal services in the alternative legal sector with solicitors undertaking and/or supervising work
  - e. In increasing numbers, regulated firms, as they can do now, split off the non-reserved part of their legal services offering into a separate business to better compete with the alternative legal sector on price, whilst still using qualified staff
  - f. Firms that are currently regulated and deliver only non-reserved services move out of SRA regulation to better compete with the alternative legal sector on price, whilst still using qualified staff who are personally regulated as solicitors.
86. Our initial view is that of the scenarios above, a. to d. are the most likely to emerge in any numbers. This aligns with our key aim, which is to allow bodies that previously would not have done so to employ solicitors to provide services to the public. These changes would, in our view, represent a positive development within the alternative legal services market. They would prove beneficial not only to a wide range of consumers (by increasing scope of access) but also to the solicitor profession (by providing increased employment opportunities).
87. Scenario e. can already happen under the current arrangements - non-reserved services can be provided by a separate business, or a solicitor can present themselves as a 'non-practising solicitor'. With the changes we propose, solicitors would be holding themselves out transparently as practising solicitors, and they would be subject to all the requirements of the SRA Code of Conduct for Solicitors, RELs and RFLs [2017], thereby providing proportionate consumer protections.
88. The extent to which scenario f. happens will, in practice, be driven by consumer demand and business choices. The following are a few examples of factors that might impact on the appetite to move outside of SRA entity regulation:
- a. desire to maintain the entitlement to carry on reserved legal activities (and potential cost of maintaining a separate business to do so)
  - b. attraction of entity regulation to clients and others such as banks and other lenders, insurers and bulk purchasers of legal services
  - c. criteria for being recognised in other jurisdictions
  - d. whether and how privilege attracts to the advice.

### Consultation questions

**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 around where solicitors can practice as an individual or as a business?

### Sole solicitors

89. We propose to maintain the current 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 of the approved regulators under the LSA (for example as a RSP). We considered the alternative of allowing a solicitor to provide such services acting, for example, as an individual in a chambers type environment or as a freelance consultant to an unregulated firm. Our view is that this should be treated as the equivalent to a sole trader and brought within the entity regime. To do otherwise would be to make entity regulation entirely optional even for the provision of reserved legal services. ***We are interested in the views of respondents on this point.***
90. In proposing to maintain the status quo, we bore in mind that a relaxation of the current rule could allow firms to create structures that would avoid the requirement for entity regulation altogether, by providing reserved legal services through contracted individual solicitors. In terms of the potential consumer confusion this could create, we thought this outweighed benefits such as flexibility of practice, which could be achieved in other ways, such as a tailored authorisation process for certain types of practice.. We are conscious that this may inhibit the development of solicitors as genuine freelance lawyers and solicitors working in chambers models when delivering reserved activities. We are therefore keen to hear any views on the impact of this restriction and if it is proportionate.

### Consultation question

**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?

### Use of the 'solicitor' title

91. In its recent report ['The Future of Legal Services'](#), the Law Society suggested that solicitors may be more likely in future to give up their title in order to compete in the alternative legal services market. With the changes we propose making to regulation, we do not think that solicitors will need – or should be required - to do so. Solicitors will be able to participate freely in the



alternative legal services market under our proposed reform to our regulatory approach.

92. If practising as a solicitor (within or outside of the alternative legal services market), an individual will need to hold a current practising certificate. This will help bring to an end the situation (which is potentially confusing to consumers) where solicitors who are providing non-reserved services to the public, describe themselves as 'non practising solicitors'. They will be a practising solicitor, and will be holding themselves out, and marketing themselves, transparently as one. This reflects the provisions in sections 1 and 1A of the Solicitors Act 1974 which state that an individual must not "act as a solicitor" (i.e. hold themselves out as a solicitor or do the kinds of things only solicitors can do) without having a practising certificate.
93. We will be doing further work during the consultation period as guidance to help solicitors to understand the requirements of the Act.

## Special bodies

94. We have also sought to design our regime relating to regulated firms in a way that provides a flexible framework for all bodies delivering reserved legal services. In [Looking to the Future](#), we made particular reference to the regulation of charities and not for profit bodies (classed in the LSA as special bodies), which are currently entitled to deliver reserved legal services, under transitional arrangements, within a framework that reflects their unique status.
95. Through our review, we aim to develop a framework that is flexible enough to allow the LSB to consider ending those transitional arrangements, and to bring special bodies within SRA entity regulation. In terms of special bodies, we propose to develop a framework that is broadly similar to the approach we have previously taken to the regulation of multidisciplinary practices (MDPs) with entity regulation applying only where appropriate and proportionate. We believe that such an approach would enhance consumer protections for some of the most vulnerable consumers of legal services.
96. We will work closely with the Legal Services Board and special bodies to develop and take forward our proposed approach. We intend to be in a strong position to license special bodies by the time our reforms are implemented. In the meantime we are keen to speak to, and engage with, special bodies who may want to explore SRA authorisation with us. We invite special bodies to engage with us both face to face and through our SRA Innovate programme, in order to help us identify which of our existing regulations are most, or particularly, problematic.
97. We have also published a statement on our SRA Innovate webpage<sup>15</sup> alongside this consultation, which sets out guidance for any special bodies that may wish to be authorised by the SRA whilst the transitional arrangements remain in place.

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<sup>15</sup> <http://www.sra.org.uk/innovate/>

## Requirement to be "qualified to supervise"

98. We are considering whether we need to make changes to Rule 12 of the current PFRs. This rule requires an individual to be 'qualified to supervise' in certain circumstances (e.g. when practising as a sole practitioner). In order to prove that they are qualified to supervise, the solicitor must have (i) undertaken training as specified by the SRA (currently 12 hours on management skills); and (ii) been entitled to practise as a lawyer for at least 36 months within the past ten years. Changes could potentially allow a newly qualified solicitor to set up in business as a sole practitioner.
99. We question whether this prescriptive rule is necessary given that:
- There are other regulations designed to address the risk. For example, our Authorisation Rules state that we can take into account whether the applicant has sufficient skills or knowledge in relation to the management and control of a business that provides regulated legal services
  - Our emerging data analysis suggests that newly qualified solicitors do not present a significant risk to the delivery of a proper standard of service
  - Our proposed Code for Firms contains systems and controls to ensure the effective management of organisations we authorise
  - Five years on from the introduction of the SRA Handbook, our approach to authorisation is now more sophisticated, comprehensive, and better equipped to identify and prevent consumer detriment.
100. We also question whether the current rule is effective. We do not consider that length of time qualified is a robust measure of competence of an individual or of their ability to supervise the work of another effectively. In any event, being entitled to practise is not the same thing as actually practising - there is no requirement for the time to be concurrent (or even recent).
101. We know from education and training reform work that firms have varied approaches to learning and development to support career progression. In this context, we removed CPD requirements based on undertaking a set amount of training<sup>16</sup>. Similarly, there is a strong rationale for arguing that the requirement to undertake 12 hours of (unspecified) management training before being qualified to supervise is likely to be both too prescribed and yet too vague to add any real value to the regulatory framework.

### Consultation question

**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?

<sup>16</sup> <http://www.sra.org.uk/toolkit/>

## Lawyers - Exempt European Practices (EEPs) and Registered Foreign Lawyers

102. The EEP<sup>17</sup> regime was brought into force on 1 April 2015 to remove barriers in our regulation restricting European law firms from setting up in England and Wales without restructuring home country delivery models or creating a separate English practice if they are not providing reserved legal activities. It also permitted RELs to practice in this type of unregulated entity providing non reserved legal services to members of the public.
103. The introduction the EEP regime has been in some respects a forerunner for our current proposals. It enabled RELs to work in this specific category of unauthorised entities providing non reserved activities to the public subject to certain conditions. Our emerging view is that retaining the EEP regime to enable RELs to provide non reserved legal services through an EEP would no longer be necessary as we plan to remove restrictions on authorised individuals from providing non reserved legal services to the public. Retaining the EEP regime would simply duplicate this permission.
104. We will be engaging with RELs on the proposed approach to consider the feasibility of removing the specific EEP registration process and the suitability of our proposals for these particular businesses.
105. We are also keen to hear from Registered Foreign Lawyers and those firms that employ them as to the impacts of our proposals. It is important that we understand whether our proposals present challenges for RELs, RFLs and the organisations that employ them. We have a number of engagement activities planned to do this, for example, roundtable discussions and webinars

## Section 4 - Handbook Reform: what it means for consumer protection

### Regulatory protections under the new arrangements

106. In the diagram below, we set out the protections currently available to clients of SRA regulated firms compared to clients of alternative legal services providers. We then set out the additional protections that would be available to clients of alternative legal services providers under our proposal to allow solicitors, for the first time, to deliver non-reserved services to the public within those providers. The diagram shows that this adds a level of regulatory protection to the legal services market.
107. Solicitors would bring their training and qualifications, ethical behaviour and commitment to competence to alternative legal services providers and their

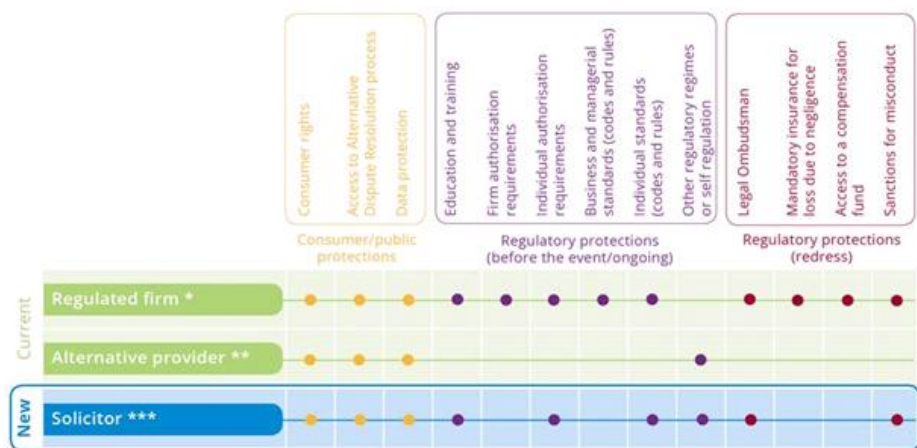
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<sup>17</sup> We define an EEP as any type of structure in which lawyers are permitted to practise in their home Directive state, which is regulated as a lawyer's practice in that state and has its main place of business in a relevant state other than the UK. In addition, an EEP must not be owned by practising lawyers of England and Wales and it cannot carry on any reserved legal activities

clients. The Code for Solicitors would apply to them, as it would any other individual acting as a solicitor.

### A changing landscape for solicitors providing legal services

This table sets out the impact on public protection from our proposals to free up solicitors to provide some legal services working in a business that is not regulated by the SRA or another approved regulator.



\* The full range of legal advice provided by a Solicitor (or other authorised person) working in a firm authorised by the SRA or another approved regulator. This advice includes reserved legal activities - the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths.

\*\* Legal advice that is *not reserved* provided by a legal advisor working in an alternative legal services provider (ie one that has not been authorised by the SRA or any other approved regulator or another legal services regulator).

\*\*\* Legal advice that is *not reserved* provided by a Solicitor working in an alternative legal services provider.

108. As now, there will continue to be additional regulatory protections for clients of SRA regulated firms. These include access to our compensation fund and assurance that the firm is bound by our minimum PII requirements.
109. As part of our policy development, we considered whether we could attach similar protections to individual solicitors wherever they work under our proposals. We concluded that to do so would be disproportionate, unworkable, or both. It would be important, therefore, for solicitors to be very clear which consumer protections apply to their clients (and we will support them to do so by setting out the information requirement in the Codes and including accompanying guidance and case studies).
110. Our policy thinking that led to us decide that certain protections would not apply to solicitors working in the alternative legal services market are set out below.

### Existing consumer protections

111. Consumer protections already exist for the alternative legal services market, and they are improving. The Consumer Rights Act 2015 (CRA) provides consumers with statutory rights: for services to be performed with reasonable care and skill; for consumers to pay a reasonable price for a service; and for services to be performed in a reasonable time. Alternative Dispute Resolution (ADR) is now also available to all businesses to help when a dispute cannot be settled directly. Prior to the CRA, ADR had only been available in certain sectors. In light of these developments, we have needed to review this area of our regulation.

112. As a result of our proposed reforms, we consider that clients will be more likely to have a wider choice of and have better access to solicitors. By allowing solicitors to work in the alternative legal services market, with the individual protections that apply to all solicitors, we are adding to the protections available to consumers. Clients who want or need the additional protections that are guaranteed with SRA regulated firms can still access those and will be able to continue to do so in the future.
113. Research suggests that many consumers are unclear about the protections available to them. Nevertheless, almost all consumers with serious problems do navigate to the right sort of lawyer. Rather than expecting consumers to understand regulation or its structure, they need to have signals and signposting that help them to choose and use - such as brands. This includes the solicitor brand, the "regulated by the SRA" brand and consumer facing brands. Information provided by their legal advisor and required in our proposed Codes will help inform choices. Looking forward, access to information and services, like comparison sites and other intermediaries, will also play an increasingly vital role.
114. Our proposed drafting in the Codes will therefore require that both solicitors and regulated firms help inform consumers as to the level of protections available to them. In relation to client information and publicity, in the individual and firm Codes we have included a specific standard which states that "You ensure that clients understand whether and how the services you provide are regulated and about the protections available to them".
115. Solicitors working in unregulated firms will be expected to be clear with their clients about what protections they have in relation to PII and other redress mechanisms. We are also considering whether regulated firms should be required to make explicit positive references relating to access to the Compensation Fund in their marketing materials.
116. While it could be argued that choice brings with it the risk of confusion, this risk already exists in the legal services market because the LSA allows alternative legal services providers to provide non-reserved legal services to the public; this is done through a plurality of delivery models.
117. As part of our approach, we want to make it clear to consumers that use of the term "solicitor" or "solicitors firm" is reserved to those authorised by us only. We will emphasise that firms not regulated by us will not be able to use the term "solicitor" in their firm name and will not be able to market themselves as "solicitor firms". This mitigates the risk that consumers are misled as to the level of protection provided. The consumer guides we produce will support any proposed rules. We should be clear though that, just as happens currently, we cannot prevent an unauthorised firm from advertising its services on the basis that it employs, or is led or owned by individuals working as solicitors.

**Consultation question**

**Question 20.** Do you think we should require SRA regulated firms to display detailed information about the protections available to consumers?

## How we are working to help consumers choose and use legal services

118. Our market analysis work, impact assessments and research findings point increasingly to consumer information as a key component of our reform programme. This is also a key strand of the current Competition and market Authority's market study<sup>18</sup>. We are already working on shorter term improvements for consumers in this area, but also have a series of longer term activities in scope:
- rolling out a programme of communications and engagement work to get key messages to consumers about solicitors and legal services;
  - delivering a programme of SRA consumer engagement during 2016 as part of the wider consultation approach; and
  - improving the accessibility of SRA regulatory data for consumers.
119. We are improving the content of our website, and the Legal Choices consumer website<sup>19</sup>, to provide more information on consumer rights, and we are expanding content to include information about the alternative legal services market. We are undertaking a programme of work to find out what information consumers most need to make good decisions about legal services, and how they want to access it - including holding focus groups, and undertaking a bespoke consumer survey.
120. We are also improving access to our data. Whilst this is an ongoing project, we have already made some short term improvements with the recent addition of the [Law Firm Search](#)<sup>20</sup> facility to our website, and a new process for data re-users (like comparison websites), which went live in April 2016. We will continue to engage with stakeholders during the coming year to develop a new SRA data model, giving the market the regulatory information it needs.

### Consultation question

**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?

### Client Money

121. In our original hypothesis published in [Looking to the Future](#), we noted that we would consider attaching some restriction to the holding of client money by individual solicitors where they were working for an alternative legal services provider. As part of our policy development work, we considered

<sup>18</sup> <https://www.gov.uk/cma-cases/legal-services-market-study>

<sup>19</sup> <http://www.legalchoices.org.uk>

<sup>20</sup> <http://www.sra.org.uk/consumers/using-solicitor/law-firm-search.page>

whether there were any mechanisms by which solicitors working in these businesses could personally hold client money - subject to certain restrictions.

122. The SRA Accounts Rules 2011 currently set out the arrangements for holding and handling client money within authorised firms. These are business level controls. Firms outside of SRA regulation are of course able to hold and handle money for and on behalf of clients without complying with these rules. This does not change if they employ a solicitor (and we are not proposing that it should).
123. We therefore consider that it would be artificial and confusing to have different obligations on an individual solicitor compared to the business in which they are working. The compliance responsibility would place an unrealistic, disproportionate, and impractical burden on the individual solicitor. Such an approach is at odds with the type of flexible regulation we are developing. In any event, any restrictions that we set on the solicitor can simply be avoided by the business holding the money in its own name.
124. In any event, issues relating to client money will generally be a firm based issue, and we do not have jurisdiction over these firms' systems and controls, as they will sit outside SRA regulation. Seeking to impose obligations on the alternative legal services providers as a condition of them employing solicitors would a) extend our regulatory reach unnecessarily and b) be a major deterrent to employing solicitors.
125. We therefore propose that individual solicitors working for an alternative legal services provider will not be permitted to hold client money separately in their own name. We have therefore included a provision in the Code for Solicitors that solicitors who are working outside a LSA authorised firm do not personally hold client money. Some in-house solicitors and solicitors in special bodies have indicated that they currently hold client money as individuals. We would like to hear more about the circumstances where this might happen to help understand the potential impact of our proposals in this area.
126. It should be noted that we are consulting separately on our proposals for the Accounts Rules and on a simplified definition of client money. The proposed definition is based around money held by the firm in connection with the delivery of legal services for a client or money held on behalf of a third party as well as when acting as a trustee. This includes money paid by the client for payments to other parties for which the client remains liable, such as Stamp Duty Land Tax. Under the proposals, all of the firm's fees, as well as disbursements for which the solicitor is liable (for example, counsel fees), will be treated as the firm's money.
127. The proposed change in definition, if implemented, will mean that the restrictions in the Code for Solicitors would not apply to payments for fees or payments for which the solicitor is liable.
128. We have also included a provision that individual solicitors (wherever they are working) safeguard money and assets entrusted to them by clients and others (during the course of their work). We have deliberately drafted this provision to safeguard money and assets entrusted by clients to be wider than the proposed definition of client money. This would ensure that where the firm

holds client money, or handles assets belonging to their clients, the solicitor will be responsible for any personal misconduct relating to those assets whether or not the firm is authorised by us.

### Consultation questions

**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?

### SRA Compensation Fund

129. As part of our policy development, we considered whether clients of solicitors working in alternative legal services providers should be able to make a claim on the SRA Compensation Fund in certain limited circumstances - and, in particular, where there had been losses to the consumer as a result of dishonesty on the part of the solicitor.

### Our proposals and position

130. Following careful consideration, our proposal is that clients of solicitors outside of authorised firms will not be able to make a claim on the Compensation Fund in any circumstances. We consider it disproportionate to require those solicitors to contribute to the fund where they don't hold client money so therefore we have taken the view that we should remove all claims. Further, we have identified three major barriers to allowing clients of solicitors working in alternative legal services providers to make a claim on the Compensation Fund.

131. First, claims to the Compensation Fund are generally linked to either breaches of the SRA Accounts Rules 2011, or misuse of client money. As the Accounts Rules do not apply to firms not regulated by the SRA, and our proposal is that solicitors working in alternative legal services providers do not hold client money, it would not be appropriate for the Compensation Fund to apply to clients of these solicitors - it would be disproportionate to require those solicitors to contribute to the Compensation Fund when they do not hold client money.

132. Secondly, we consider that if clients of solicitors in alternative legal services providers were entitled to make a claim to the Compensation Fund, it is very likely that it would become the first 'port of call' for insurers or clients of the employer. It would also raise a number of complex questions about the personal responsibility of the solicitor in relation to any losses.

133. Thirdly, although we can take regulatory action against the individual solicitor, and will not hesitate to do so where required, because we do not have direct powers over the alternative legal services provider<sup>21</sup> it will be more difficult, in

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<sup>21</sup> We will not be able to take regulatory action against the alternative legal services provider, given that they fall outside our regulation.



practice, to intervene. There will also be limits on our ability to manage safely the distribution of any money and assets that we take control of, or to protect the Compensation Fund.

134. Clients of these solicitors will be protected by existing consumer protection legislation, and solicitors will have (under our proposed arrangements) an obligation to provide information to their clients about their complaints handling system and any access to it. The statutory right to complain to the Legal Ombudsman remains for the service provided by the individual solicitor as an authorised person (whether or not the entity is also authorised) and the solicitor will be required to inform clients of all their rights in this regard. The client can also report any alleged misconduct relating to the individual solicitor to the SRA.
135. It will be the responsibility of the solicitor to advise clients of the regulatory protections they are entitled to, and where appropriate, to inform clients explicitly that they are not eligible to make a claim on the Compensation Fund.
136. If we choose to adopt this approach, we will need to review our approach to calculating contributions to the Compensation Fund. It would not be appropriate, in our view, for solicitors working in alternative legal services providers to pay for those purposes of the Fund that their clients do not benefit from.<sup>22</sup>
137. Subject to the outcome of this consultation, we will look to include this proposal in further planned consultations on the Compensation Fund and fees, which we are currently planning to launch in Autumn 2016.

#### **Consultation question**

**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?

**Question 25a.** If not, what are your reasons?

## **Professional Indemnity Insurance (PII)**

### **Our proposals and position**

138. We have considered whether it would be appropriate to maintain a requirement on a solicitor providing services to the public within an alternative legal services provider to meet minimum terms and conditions for PII set by the SRA.

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<sup>22</sup> Section 36A(9) of the Solicitors Act 1974 - <http://www.legislation.gov.uk/ukpga/1974/47/section/36A>

139. However, we are of the view that such a requirement would blur the clear line between individual and entity regulation which underpins our proposed regulatory approach. In the revised Code though, there will be a provision stating that "you ensure that *clients* understand whether and how the services you provide are regulated and about the protections available to them".
140. In practice though, legal services providers generally choose to obtain insurance to ensure that they and their employees are protected from liability. It would not be practicable, in our view, to expect the solicitor to be able to separate his or her own practice from the rest of the firm's business, and then decide the level of insurance that is appropriate. Such a requirement would be a significant deterrent to solicitors working in alternative legal services providers and would impose potentially disproportionate restrictions on practice - something we are seeking to avoid. To take just one example, it would be unclear how a solicitor in a large accountancy firm who may be working as part of a team is supposed to separate out their own insurance requirements from those of their team.
141. We will leave it to the individual solicitor to evaluate the risk in terms of whether their work is covered by any appropriate insurance. Individual solicitors in alternative legal services providers will more than likely wish to have PII cover in place through their employers. We do not think that it is appropriate to make this a separate regulatory requirement on the individual.

#### **Consultation questions**

**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?

#### **Professional indemnity insurance in special bodies**

142. Entities regulated by the SRA are required to have indemnity insurance of a minimum of £2 million with a qualifying insurer that meets minimum terms and conditions. The purpose of the cover is to provide clients with a basic level of protection in the event that an entity is negligent or dishonest which results in the claimant suffering a loss.
143. Under the current Practice Framework Rules (PFR's) solicitors and RELs employed by special bodies must have a 'reasonably equivalent' level of cover to that required by the SRA Indemnity Insurance Rules. This provides clients of special bodies with equivalent protection to that provided to clients of SRA regulated entities.
144. We are considering whether to retain that provision for special bodies because unlike the other 'unregulated' entities, special bodies can provide reserved legal services to the public. In those circumstances it would be reasonable to expect that consumers who use special bodies/non-commercial bodies are entitled to the protection that PII provides in the same way as clients of traditional law firms.

145. We propose that we maintain insurance requirements on solicitors in special bodies when they provide reserved legal services to the public or a section of the public. We do not propose to impose insurance requirements if they are only delivering non reserved work. This would therefore be a relaxation of current arrangements, rather than an additional burden.
146. However, we are seeking views as to what insurance requirements we should impose and the meaning of the current 'reasonably equivalent' provision in practice. We will need to consider whether we can be flexible in considering alternatives to the current standard requirements, whether that is related to the level of cover or the terms and conditions of the insurance (taking into account the nature of the organisation, the type of work it undertakes, the other obligations to which it is subject, and the risk it presents).
147. This approach would have the advantage of removing the need to have waivers in place to allow special bodies to have a lower level of PII than would normally be required under the minimum terms and conditions (MTC). We could, for example, allow lower levels of cover automatically where conveyancing or probate services are not being provided (special bodies are very unlikely to provide these services).
148. We are interested in discussing this issue with special bodies (and other interested stakeholders) as part of the consultation process. In particular, we are keen to explore the issue of alternatives to 'reasonably equivalent' levels of insurance.

#### **Consultation questions**

**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?

#### **Legal professional privilege (LPP) - position in relation to alternative legal services providers**

149. At common law, LPP does not apply to any professional other than a qualified lawyer - a solicitor or barrister or an appropriately qualified foreign lawyer. This was confirmed by the Supreme Court in 2013<sup>23</sup>.
150. Statute extends the reach of privilege to SRA regulated firms, and sets out the position as to when advice provided to clients attracts LPP. Advice provided by a recognised body, for example, will attract privilege in the same way as if the advice had been provided by a solicitor (as an authorised person)<sup>24</sup>. Equally, in the case of alternative business structures, advice provided to clients will attract privilege when that advice is provided to clients

<sup>23</sup> *R (on the application of Prudential plc) v Special Commissioner of Income Tax* [2013] UKSC 1; [2013] 2 AC 185 (23 January 2013)

<sup>24</sup> paragraph 36(1) of Schedule 2 to the Administration of Justice Act 1985

either by a regulated lawyer or by those who are under the supervision of one<sup>25</sup>.

151. Whether LPP would apply where a solicitor provides legal advice to a client of an alternative legal services provider is a matter of substantive law. We have no power to affect the ambit of this substantive law.
152. It follows from recent case law that legal advice provided by a solicitor employed by, for example, an alternative legal services provider (i.e. not authorised by the SRA or any of the other approved regulators) "X", which goes out to the client, as it very likely would, as advice from X, will not be privileged. This is because, irrespective of whether the advice was prepared by a solicitor, the firm would not be covered by the statutory provisions referred to in paragraph 151 above, such as to bring its advice within the ambit of legal professional privilege.
153. It is theoretically possible that a lawyer working in an alternative legal services provider could in a particular case contract to provide legal advice in his own name to a client. Although such circumstances seem rather unlikely in practice<sup>26</sup>, if such circumstances did arise, then privilege might apply to the solicitor's advice.
154. So, where a solicitor working in such a firm prepares advice for that firm and provides that advice to a client of the firm, no legal professional privilege will arise. In such a firm, even if all the partners are practising solicitors (i.e. authorised persons), where they have chosen to be an unauthorised entity not carrying on reserved legal activities ("scenario f.") then advice provided to clients which goes out in the name of that entity is not likely to attract privilege. Any legal advice given by the firm to its clients will of course provide legal advice to its clients will of course be confidential to the client, but that advice given by that firm will not be protected from inspection on the basis of legal professional privilege. It is therefore down to the individual solicitor to make clear to their clients what level of protections that client has. This obligation is set out in the new Code for Solicitors.

### **Entity regulation - the threshold approach**

155. For the reasons set out above, we do not consider it likely that a significant number of firms would look to take advantage of the proposed reforms by leaving SRA regulation. The main aim of our reforms is to benefit consumers and the profession by providing new opportunities for solicitors in the wider market. We recognise, however, that some firms may choose to do so. These firms would still offer important protections for consumers (for example, by virtue of individual solicitors being subject to the Code and clients still having recourse to the Legal Ombudsman).
156. We consider that it is important to maintain a clear distinction between SRA regulation of the solicitor at an individual level and the requirement for SRA regulation of the entity and that this is understood by clients. In response to this, solicitors that come together to form alternative legal services providers

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<sup>25</sup> ss190(3) and (4) LSA 2007

<sup>26</sup> e.g. issues as to professional indemnity insurance cover would likely arise

delivering non reserved legal services will not be able to use the term 'solicitor' or 'solicitors' in the firm title and will be under a duty to ensure that clients are not misled about the regulatory position.

157. We do not consider that such firms should be disadvantaged, compared to other alternative legal services providers that employ solicitors. Accordingly, we do not think that we should impose additional restrictions on the way that solicitors should be required to work together when providing non-reserved legal services (for example, as several solicitors in partnership) such as introducing a threshold requirement which triggers the need for regulation.
158. Although some other regulators (not legal services regulators) choose to apply a 'threshold' which triggers the requirement for the firm to be regulated- for example, where any firm has more than 50% of principals who are regulated individuals - our view is that a threshold approach is not desirable for the following reasons:
- The LSA prescribes the circumstances in which entities must be authorised for the carrying on of reserved legal activities but does not prohibit alternative legal services providers from carrying out non-reserved activities;
  - Any additional threshold would be arbitrary and would not necessarily make the situation any clearer to clients. For example, it would be difficult to explain why we regulated an entity with 51 solicitor partners in a 100-partner firm, but not one with 50 solicitor partners.
  - Such a limit would create a clear market disadvantage for solicitors working together, compared to other entities that would be able to employ solicitors without the extra burdens of entity regulation.

### Consultation questions

**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?

## Intervention - position in relation to individual solicitors and regulated firms versus unregulated firms

### Individual solicitors and regulated firms

159. We can intervene into an individual solicitor's practice, into a firm regulated by us, or into both<sup>27</sup>.

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<sup>27</sup> Our powers to intervene in this way and their scope are set out in section 35 and Schedule 1 to the Solicitors Act 1974 (relating to individual solicitors) and paragraph

160. A solicitor may have an identifiable individual practice within a regulated firm, but it may be that intervention into the regulated firm alone is sufficient to protect clients and the public. However in appropriate cases, we may choose to intervene only into an individual solicitor's practice, leaving other individuals and the firm to continue as usual - although this is likely to be quite rare<sup>28</sup>. Any decision on how to approach intervention will be fact sensitive; factors we will consider include why we need to intervene and how we can best deal with risks to clients and to the public.
161. It is to be noted that although we have no power to intervene into a firm that we do not regulate, we *can* intervene into the individual solicitor's practice within that unregulated entity if the relevant basis for doing so is made out<sup>29</sup>. In practice this could be a rather complex matter, as there may be, for example, issues as to what belongs to the individual solicitor rather than the firm when it comes to intervention and the concomitant powers to seize files and/or other assets. For example, there may be a lack of clarity as to who holds files where the solicitor has been working with other colleagues within the unregulated entity. Additionally, the firm, over which the SRA has no power to intervene, will likely hold the client money.
162. The SRA has, however, other statutory powers it can rely upon: it can require information to be provided and documents to be produced, and these powers could prove useful in the context of ensuring an unregulated firm's assistance in an SRA investigation<sup>30</sup>.

#### **Consultation question**

**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?

#### **SRA regulated activity within a recognised body or a recognised sole practice (RSP)**

163. The current position is that the SRA regulates all activity within a recognised body or RSP. This means that the SRA Principles, SRA Code of Conduct, SRA Accounts Rules and Compensation Fund and PII requirements apply to that activity.
164. This is the case even where the activity is 'non legal' activity, or where it is activity regulated by the Financial Conduct Authority (FCA), or where the activity is carried out by an Insolvency Practitioner.

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32(1) of Schedule 2 to the Administration of Justice Act 1985 (relating to a recognised body)

<sup>28</sup> It happened in the case of *Simms v Law Society [2005] EWCA Civ 849*

<sup>29</sup> See section 35 and Schedule 1 to the Solicitors Act 1974

<sup>30</sup> Sections 44B and 44BB of the Solicitors Act 1974

165. The position for a recognised body or RSP contrasts with the case of an ABS where the default position is that the SRA only regulates ‘legal activity’<sup>31</sup>. Under the terms of the multidisciplinary practice (MDP) arrangements for ABSs<sup>32</sup>, we can also agree to exclude some non-reserved legal activity from ‘regulated activity’ on the terms of a licence. This is where that activity is: (a) carried out under suitable external regulation (e.g. by one of the chartered accountancy regulators); or (b) performed as a subsidiary but necessary part of the activity of a non-legal professional whose main activity does not involve the provision of legal advice or services. For example, this might be a surveyor whose advice touches on issues of planning law.
166. As part of the separate business rule consultation in 2014<sup>33</sup>, we asked respondents whether we should explore the possibility of achieving similar arrangements for recognised bodies – with the option of some activities being excluded from SRA regulated activity.
167. Responses were mixed, with some considering that this would be a sensible liberalisation of the market with others such as the Law Society wishing to maintain the principle that all work within a solicitor’s firm should be SRA regulated.
168. We stated that we would return to this issue in this consultation. Having considered the matter further, we do not propose to alter the current position. In other words, all activity within a recognised body or RSP will continue to be SRA regulated.
169. Our reasons for maintaining this position are as follows:
- A key driver for the development of the MDP Policy has been the duplication and conflict between the provisions of different regulators of the entity. However, a solicitor’s firm will not generally be regulated as an entity other than by the SRA. Taking accountancy as an example, neither ICAEW nor ACCA will regulate an entity unless at least 50% of the partners or controlling members are chartered accountants. Within a recognised body or RSP, this issue will therefore not arise.
  - Creating boundaries between SRA regulated and non-regulated activities with a recognised body or RSP could lead to unnecessary complication and consumer confusion.
  - Crucially, our recent reforms to the separate business rule and the proposal to allow solicitors to practise in those separate businesses mean that recognised bodies and RSPs will now have the flexibility to create vehicles to deliver joint services with other professions should they wish to do so.

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<sup>31</sup> As defined in s12 LSA

<sup>32</sup> <http://www.sra.org.uk/sra/policy/policies/multi-disciplinary-practices-sept-2014.page>

<sup>33</sup> See <http://www.sra.org.uk/sra/consultations/separate-business-rule.page>

**Consultation question**

**Question 33.** Do you agree with our proposal that all work within a recognised body or an RSP should remain regulated by the SRA?



## 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?

## How to respond to this consultation

### Online

Use our online [consultation questionnaire](#) to compose and submit your response. (You can save a partial response online and complete it later.)

### Email

Please send your response to [consultation@sra.org.uk](mailto:consultation@sra.org.uk). You can download and attach a [Consultation questionnaire](#).

Please ensure that

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

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

Solicitors Regulation Authority  
Regulation and Education - Policy - Handbook 2017  
The Cube  
199 Wharfside Street  
Birmingham  
B1 1RN

### Deadline

Please submit your response by 21 September 2016.

### Confidentiality

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

## Annex 1

### Draft SRA Code of Conduct for Solicitors, RELs and RFLs [2017]

### SRA Code of Conduct for Solicitors, RELs and RFLs [2017]

#### Introduction

The SRA Principles comprise the fundamental tenets of ethical behaviour that we expect all those that we regulate to uphold. This includes you, as well as authorised firms and their managers and employees. The principles are as follows:

You:

1. uphold the rule of law and the proper administration of justice
2. ensure that your conduct upholds public confidence in the profession and those delivering legal services
3. act with independence
4. act with honesty and integrity
5. act in a way that encourages equality, diversity and inclusion
6. act in the best interests of each *client*

The Code of Conduct describes the standards of professionalism that we, the SRA, and the public expect of individuals (solicitors, registered European lawyers and registered foreign lawyers) authorised by us to provide legal services. They apply to conduct and behaviour relating to your practice, and comprise a framework for ethical and competent practice which applies irrespective of your role or practice setting; although section 8 applies only when you are providing legal services to the public or a section of the public.

You must exercise your judgement in applying these standards to the situations you are in and deciding on a course of action, bearing in mind your role, responsibilities and the nature of your clients and areas of practice. You are personally accountable for compliance with the Code - and our other regulatory requirements that apply to you - and must always be prepared to justify your decisions and actions. Serious breach may result in our taking regulatory action against you. A breach may be serious either in isolation or because it comprises a persistent failure to comply or pattern of behaviour.

The Principles and Codes are underpinned by our Enforcement Strategy, which explains in more detail our approach to taking regulatory action in the public interest.

## Maintaining trust and acting fairly

- 1.1 You do not unfairly discriminate by allowing your personal views to affect your professional relationships and the way in which you provide your services.
- 1.2 You do not abuse your position by taking unfair advantage of *clients* or others.
- 1.3 You perform all *undertakings* given by you, and do so within an agreed timescale or if no timescale has been agreed then within a reasonable amount of time.
- 1.4 You do not mislead or attempt to mislead your *clients*, the *court* or *others*, *either by your own acts or omissions or allowing or being complicit in the acts or omissions of others (including your client)*.

## Dispute resolution and proceedings before courts, tribunals and inquiries

- 2.1 You do not misuse or tamper with evidence, or attempt to do so.
- 2.2 You do not seek to influence the substance of evidence, including generating false evidence or persuading witnesses to change their evidence.
- 2.3 You do not provide or offer to provide any benefit to witnesses dependent upon the nature of their evidence or the outcome of the case.
- 2.4 You only make assertions or put forward statements, representations or submissions to the *court* or others which are properly arguable.
- 2.5 *You do not place yourself in contempt of court, and you comply with court orders which place obligations on you.*
- 2.6 You do not waste the *court's* time.
- 2.7 You draw the *court's* attention to relevant cases and statutory provisions, or procedural irregularities which are likely to have a material effect on the outcome of the proceedings.

## Service and competence

- 3.1 You only act for *clients* on instructions from the *client*, or from someone authorised to provide instructions on their behalf. If you have reason to suspect that the instructions do not represent your *client's* wishes, you do not act unless you have satisfied yourself that they do.
- 3.2 You ensure that the service you provide to *clients* is competent and delivered in a timely manner.

- 3.3 You maintain your competence to carry out your role and keep your professional knowledge and skills up to date.
- 3.4 You consider and take account of your *client's* attributes, needs and circumstances.
- 3.5 Where you supervise or manage others providing legal services:  
(a) you remain accountable for the work carried out through them; and  
(b) you effectively supervise work being done for *clients*.
- 3.6 You ensure that the individuals you manage are competent to carry out their role, and keep their professional knowledge and skills up to date.

### Client money and assets

- 4.1 You properly account to *clients* for any *financial benefit* you receive as a result of their instructions.
- 4.2 You safeguard money and *assets* entrusted to you by *clients* and others.
- 4.3 Unless you work in an *authorised body*, you do not personally hold *client money*.

### Referrals, introductions and separate businesses

#### Referrals and introductions

- 5.1 ***In respect of any referral of a client by you to another person, or of any third party who introduces business to you or with whom you share your fees, you ensure that:***
- (a) *clients* are informed of any financial or other interest which you or your business or employer has in referring the *client* to another *person* or which an *introducer* has in referring the *client* to you;
- (b) *clients* are informed of any fee sharing *arrangement* that is relevant to their matter;
- (c) the agreement is in writing;
- (d) you do not receive payments relating to a referral or make payments to an *introducer* in respect of *clients* who are the subject of criminal proceedings; and
- (e) any *client* referred by an *introducer* has not been acquired in a way which would breach the *SRA's regulatory arrangements* if the *person* acquiring the *client* were regulated by the *SRA*.

## Separate businesses

- 5.2 You ensure that *clients* are clear about the extent to which the services that you and any *separate business* offer are regulated.
- 5.3 You do not represent a *separate business* or any of its services as being regulated by the *SRA*.
- 5.4 You only:
- (a) refer, recommend or introduce a *client* to a *separate business*;
  - (b) put your *client* and a *separate business* in touch with each other; or
  - (c) divide, or allow to be divided, a *client's* matter between you and a *separate business*,
- where the *client* has given informed consent to your doing so.
- 5.5 Where you and a *separate business* jointly publicise services, you ensure that the nature of the services provided by each business is clear.

## Conflict, confidentiality and disclosure

### Conflict of interests

- 6.1 You do not act if there is a conflict of interest between you and your *client* or a significant risk of such a conflict.
- 6.2 You do not act in relation to a matter or particular aspect of it if there is a *client conflict* or a significant risk of such a conflict in relation to that matter or aspect of it, unless:
- (a) the *clients* have an agreed common purpose in relation to the matter or the aspect of it, as appropriate, and a strong consensus on how that purpose is to be achieved; or
  - (b) the *clients* are *competing for the same objective* which, if attained, by one *client* will make that objective unattainable to the other *client*.
- and the conditions below are met, namely that:
- (i) all the *clients* have given informed consent, given or evidenced in writing, to you acting; and
  - (ii) where appropriate, you put in place effective safeguards to protect your *clients'* confidential information; and
  - (iii) the benefits to the *clients* of doing so outweigh the risks to the *clients of you acting*.



## Confidentiality and disclosure

- 6.3** You keep the affairs of *clients* confidential unless disclosure is required or permitted by law or the *client* consents.
- 6.4** Where you are acting for a *client*, you make that *client* aware of all information material to the matter of which you have knowledge, except when:
- (a) the disclosure of that information is prohibited by law;
  - (b) your *client* gives informed consent, given or evidenced in writing, to the information not being disclosed to them;
  - (c) you have reason to believe that serious physical or mental injury will be caused to your *client* or another if the information is disclosed; or
  - (d) the information is contained in a privileged document that you have knowledge of only because it has been mistakenly disclosed.
- 6.5** You do not act for a *client* in a matter where that *client* has an interest adverse to the interest of another current *client* or a former *client* for whom your business or employer holds confidential information which is material to that matter, unless:
- (a) all effective measures have been taken which result in there being no real risk of disclosure of the confidential information; or
  - (b) the *client* has given informed consent, given or evidenced in writing, to you acting, including to any measures taken to protect their information.

## Cooperation and accountability

- 7.1** You keep up to date with and follow the law and regulation governing the way you work.
- 7.2** You are able to justify your decisions and actions in order to demonstrate compliance with your obligations under the *SRA regulatory arrangements*.
- 7.3** You cooperate with the *SRA*, other regulators, ombudsmen and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services.
- 7.4** You respond promptly to the *SRA* and:
- (a) provide full and accurate explanations, information and documents in response to any request or requirement;

- (b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the **SRA**.
- 7.5 You do not attempt to prevent anyone from providing information to the **SRA**.
- 7.6 You notify the **SRA** promptly if you become aware:
  - (a) of any material changes to information previously provided to the **SRA**, by you or on your behalf, about you or your practice; and
  - (b) that information provided to the **SRA**, by you or on your behalf, about you or your practice is or may be false, misleading, incomplete or inaccurate.
- 7.7 You ensure that a prompt report is made to the **SRA** or another **approved regulator**, as appropriate, of any serious breach of their **regulatory arrangements** by any **person** regulated by them (including you) of which you are aware. If requested to do so by the **SRA** you investigate whether there have been any serious breaches that should be reported to the **SRA**.
- 7.8 You act promptly to take any remedial action requested by the **SRA**.
- 7.9 You inform **clients** promptly of any act or omission which could give rise to a claim by them against you. If requested to do so by the **SRA** you investigate whether anyone may have a claim against you.
- 7.10 Any obligation under this section to notify, or provide information to, the **SRA** will be satisfied if you provide information to your firm's **COLP** or **COFA**, as and where appropriate, on the understanding that they will do so.

## When you are providing services to the public or a section of the public:

### Client identification

- 8.1 You take appropriate steps to identify who you are acting for in relation to any matter.

### Complaints handling

- 8.2 You ensure that, as appropriate in the circumstances, you either establish and maintain, or participate in, a procedure for handling **complaints** in relation to the legal services you provide.
- 8.3 You ensure that **clients** are informed in writing at the time of engagement about their right to complain about your services and your charges, and how **complaints** can be made.

- 8.4** You ensure that *clients* are informed, in writing:
- (a) both at the time of engagement and, if a *complaint* has been brought at the conclusion of your *complaints* procedure, of any right they have to complain to the *Legal Ombudsman*, the time frame for doing so and full details of how to contact the *Legal Ombudsman*; and
- (b) if a *complaint* has been brought and your *complaints* procedure has been exhausted:
- (i) that you cannot settle the *complaint*;
  - (ii) of the name and website address of an alternative dispute resolution (ADR) approved body which would be competent to deal with the *complaint*; and
  - (iii) whether you agree to use the scheme operated by that body.
- 8.5** You ensure that *clients' complaints* are dealt with promptly, fairly and free of charge.

#### Client information and publicity

- 8.6** You give *clients* information in a way they can understand. You ensure they are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them.
- 8.7** You ensure that *clients* receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs incurred.
- 8.8** You ensure that any *publicity* you are responsible for in relation to your practice is accurate and not misleading, including that relating to your charges and the circumstances in which *interest* is payable by or to *clients*.
- 8.9** You ensure that *clients* understand whether and how the services you provide are regulated and about the protections available to them.

#### Supplemental notes

Powers, commencement/transitional provisions

## Annex 2

### Draft SRA Code of Conduct for Firms [2017]

#### SRA Code of Conduct for Firms [2017]

##### Introduction

The SRA Principles comprise the fundamental tenets of ethical behaviour that we expect all those that we regulate to uphold. This includes all individuals and firms that we regulate, including authorised firms and their managers and employees. The principles are as follows:

You:

1. uphold the rule of law and the proper administration of justice
2. ensure that your conduct upholds public confidence in the profession and those delivering legal services
3. act with independence
4. act with honesty and integrity
5. act in a way that encourages equality, diversity and inclusion
6. act in the best interests of each *client*

This Code of Conduct describes the standards and business controls that we, the SRA, and the public expect of firms authorised by us to provide legal services. These aim to create and maintain the right culture and environment for the delivery of competent and ethical legal services to consumers. If you are a MDP, the SRA Principles and these standards apply in relation to your [regulated activities](#).

Sections 8 and 9 set out the requirements of managers and compliance officers in those firms, respectively.

Serious breach may lead to our taking regulatory action against the firm itself as an entity, or its managers or compliance officers, who all share responsibility for ensuring that the standards and requirements are met. We may also take action against employees working within the firm for any breaches for which they are responsible. A breach may be serious either in isolation or because it comprises a persistent failure to comply or pattern of behaviour.

##### Maintaining trust and equality and diversity

- 1.1** You do not abuse your position by taking unfair advantage of *clients* or others.

- 1.2 You monitor, report and publish workforce diversity data, as *prescribed* by the *SRA*.

## Compliance and business systems

- 2.1 You have effective governance structures, arrangements, systems and controls in place that ensure:
- (a) you comply with all the *SRA's regulatory arrangements*, as well as with other regulatory and legislative requirements, which apply to you;
  - (b) your *managers* and *employees* comply with the *SRA's regulatory arrangements* which apply to them;
  - (c) your *managers*, *employees* and *interest holders* and those you employ or contract with do not cause or substantially contribute to a breach of the *SRA's regulatory arrangements* by you or your *managers* or *employees*;
  - (d) your *compliance officers* are able to discharge their duties under rules 9.1 and 9.2 below.
- 2.2 You keep and maintain records to demonstrate compliance with your obligations under the *SRA's regulatory arrangements*.
- 2.3 You remain accountable for compliance with the *SRA's regulatory arrangements* where your work is carried out through others, including your *managers* and those you employ or contract with.
- 2.4 You actively monitor your financial stability and business viability. Once you are aware that you will cease to operate, you effect the orderly wind-down of your activities.
- 2.5 You identify, monitor and manage all material risks to your business, including those which may arise from your *connected practices*.

## Cooperation and information requirements

- 3.1 You keep up to date with and follow the law and regulation governing the way you work.
- 3.2 You cooperate with the *SRA*, other regulators, ombudsmen and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services.
- 3.3 You respond promptly to the *SRA* and:

- (a) provide full and accurate explanations, information and documentation in response to any requests or requirements;
  - (b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the **SRA**.
- 3.4** You act promptly to take any remedial action requested by the **SRA**.
- 3.5** You inform **clients** promptly of any act or omission which could give rise to a claim by them against you. If requested to do so by the **SRA** you investigate whether anyone may have a claim against you.
- 3.6** You notify the **SRA** promptly:
- (a) of any indicators of serious financial difficulty relating to you;
  - (b) if a **relevant insolvency event** occurs in relation to you;
  - (c) of any change to information recorded in the **register**.
- 3.7** You provide to the **SRA** an information report on an annual basis or such other period as specified by the **SRA** in the **prescribed** form and by the **prescribed** date.
- 3.8** You notify the **SRA** promptly if you become aware:
- (a) of any material changes to information previously provided to the **SRA**, by you or on your behalf, about you or your **managers, owners** or **compliance officers**; and
  - (b) that information provided to the **SRA**, by you or on your behalf, about you or your **managers, owners** or **compliance officers** is or may be false, misleading, incomplete or inaccurate.
- 3.9** You promptly report to the **SRA** or another **approved regulator**, as appropriate, any serious breach of their **regulatory arrangements** by any **person** regulated by them (including you) of which you are aware. If requested to do so by the **SRA** you investigate whether there have been any serious breaches that should be reported to the **SRA**.

## Service and competence

- 4.1** You only act for **clients** on instructions from the **client**, or someone authorised to provide instructions on their behalf. If you have reason to suspect that the instructions do not represent your **client's** wishes, you do not act unless you have satisfied yourself that they do.

- 4.2 You ensure that the service you provide to **clients** is competent and delivered in a timely manner, and takes account of your **client's** attributes, needs and circumstances.
- 4.3 You ensure that your **managers** and **employees** are competent to carry out their role, and keep their professional knowledge and skills up to date.
- 4.4 You have an effective system for supervising **clients'** matters.

### Client money and assets

- 5.1 You properly account to **clients** for any **financial benefit** you receive as a result of their instructions.
- 5.2 You safeguard money and **assets** entrusted to you by **clients** and others.

### Conflict and confidentiality

#### Conflict of interests

- 6.1 You do not act if there is a conflict of interest between you and your **client** or a significant risk of such a conflict.
- 6.2 You do not act in relation to a matter or a particular aspect of it if there is a **client conflict** or a significant risk of such a conflict in relation to that matter or aspect of it, unless:
  - (a) the **clients** have an agreed common purpose in relation to the matter or the aspect of it, as appropriate, and a strong consensus on how that purpose is to be achieved; or
  - (b) the **clients** are **competing for the same objective** which, if attained, by one **client** will make that objective unattainable to the other **client**.and the conditions below are met, namely that:
  - (i) all the **clients** have given informed consent, given or evidenced in writing, to you acting;
  - (ii) where appropriate, you put in place effective safeguards to protect your **clients'** confidential information; and
  - (iii) the benefits to the **clients** of doing so outweigh the risks to the **clients of you acting**.

#### Confidentiality and disclosure

- 6.3 You keep the affairs of **clients** confidential unless disclosure is required or permitted by law or the **client** consents.

- 6.4** Any individual who is acting for a *client* makes that *client* aware of all information material to the matter of which the individual has knowledge except when:
- (a) legal restrictions prohibit them from passing the information to the *client*;
  - (b) the *client* gives informed consent, given or evidenced in writing, to the information not being disclosed to them;
  - (c) there is evidence that serious physical or mental injury will be caused to the *client* or another if the information is disclosed; or
  - (d) the information is contained in privileged documents that the individual has knowledge of only because they have been mistakenly disclosed.
- 6.5** You do not act for a *client* in a matter where that *client* has an interest adverse to the interest of another current *client* or a former *client* for whom you hold confidential information which is material to that matter, unless:
- (a) all effective measures have been taken which result in there being no real risk of disclosure of the confidential information; or
  - (b) the *client* has given informed consent, given or evidenced in writing, to you acting, including to any measures taken to protect their information.

### Applicable Outcomes in the SRA Code of Conduct for Solicitors and RELs 2017

- 7.1** The following sections of the SRA Code of Conduct for Solicitors, RELs and RFLs 2017 apply to you in their entirety as though references to "you" were references to you as a *firm*:
- (a) Referrals, introductions and separate businesses (5.1 to 5.5);
  - (b) Standards which apply when providing services to the public or a section of the public, namely Client identification (8.1), Complaints handling (8.2 to 8.5), and Client information and publicity (8.6 to 8.9).

### Managers in SRA authorised firms

- 8.1** If you are a *manager*, you are responsible for compliance by your *firm* with this Code. This responsibility is joint and several if you share management responsibility with other *managers* of the *firm*.

### Compliance officers

- 9.1** If you are a *COLP* you take all reasonable steps to:



- (a) ensure compliance with the terms and conditions of your *firm's authorisation*;
- (b) ensure compliance by your *firm* and its *managers, employees* or *interest holders* with the *SRA's regulatory arrangements* which apply to them;
- (c) ensure that your *firm's managers, employees* and *interest holders* do not cause or substantially contribute to a breach of the *SRA's regulatory arrangements*;
- (d) as soon as reasonably practicable, report to the *SRA* any serious breach of the terms and conditions of your *firm's authorisation*, or the *SRA's regulatory arrangements* which apply to your *firm, managers* or *employees*;

save in relation to the matters which are the responsibility of the *COFA* as set out in rule 9.2 below.

**9.2** If you are a *COFA* you take all reasonable steps to:

- (a) ensure that your *firm* and its *managers* and *employees* or the *sole practitioner* comply with any obligations imposed upon them under the *SRA Accounts Rules*;
- (b) as soon as reasonably practicable, report to the *SRA* any serious breach of the *SRA Accounts Rules* which apply to them.

### Supplemental notes

Powers, commencement/transitional provisions.

## Annex 3

SRA Glossary for Code of Conduct for Solicitors, RELs and RFLs and Code of Conduct for Firms – definitions that substantively differ under the proposals

### *SRA Glossary [2017] for Code of Conduct for Solicitors, RELs and RFLs and Code of Conduct for Firms [2017]*

Glossary terms	Definition
<i>client conflict</i>	means a situation where your separate duties to act in the best interests of two or more <i>clients</i> conflict
<i>manager</i>	means: (i) the sole <i>principal</i> in a <i>recognised sole practice</i> ; (ii) a <i>member</i> of a <i>LLP</i> ; (iii) a <i>director</i> of a <i>company</i> ; (iv) a <i>partner</i> in a <i>partnership</i> ; or (v) in relation to any other body, a member of its governing body
<i>Register</i>	means the roll kept under Part I of the <i>SA</i> , and the registers of: (i) <i>RELs</i> kept under European Communities (Lawyer's Practice) Regulations 2000; (ii) <i>RFLs</i> kept under the Courts and Legal Services Act 1990; (iii) <i>authorised firms</i> kept under the <i>AJA</i> and the <i>LSA</i> .
<i>separate business</i>	means, where you <i>own</i> , manage or are employed by an <i>authorised body</i> , a separate business which you <i>own</i> , are <i>owned by</i> , <i>actively participate in</i> or are <i>connected with</i> and which is not an <i>authorised body</i> , an <i>authorised non-SRA firm</i> , or an <i>overseas practice</i> .

To note: this Glossary covers only new or substantively different definitions, which apply to both proposed Codes and is not a full glossary. Other defined terms in these Codes remain as set out in the SRA Handbook Glossary 2012.