APPLICATION MADE BY THE SOLICITORS REGULATION AUTHORITY BOARD TO THE LEGAL SERVICES BOARD UNDER PART 3 OF SCHEDULE 4 TO THE LEGAL SERVICES ACT FOR THE APPROVAL OF THE SRA AMENDMENTS TO REGULATORY ARRANGEMENTS (MULTI -DISCIPLINARY PRACTICES) RULES [2014]

A. PROPOSED ALTERATIONS

1. The SRA Amendments to Regulatory Arrangements (Multi –disciplinary practices) Rules [2014] make changes to implement a new power to exclude non –reserved legal activity from the definition of SRA 'regulated activity' on the licence of a multi- disciplinary practice (MDP) ABS. These changes are to:
    - The SRA Code of Conduct 2011 (" the Code")
    - The SRA Handbook Glossary 2012 ('the Glossary'),
    - The SRA Accounts Rules 2011 (the 'Accounts Rules')
    - The guidance note to Rule 7 of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 (the "Authorisation Rules")

2. The amendments also alter the application provisions of the Code in relation to MDPs and to solicitors, registered foreign lawyers (RFLs) and registered European lawyers (RELs) working in mixed teams of professionals under external regulation.

3. They also amend the SRA Principles 2011 ("the Principles") and the SRA Practice Framework Rules 2011 ("the Practice Framework Rules") to clarify that solicitors working in non SRA authorised entities can provide non-reserved legal activities and amend the Practice Framework Rules to confirm that individuals providing immigration services in an SRA authorised body do not require approval from OISC or another approved regulator.

4. If approved, the changes will come into effect on 31 October 2014.

B. NATURE AND EFFECT OF THE SRA's CURRENT ARRANGEMENTS

The regulation of MDPs

5. The definition of 'regulated activity' (and 'authorised activity') in the SRA Glossary includes all non- reserved legal activity engaged in by MDPs. This has the effect that the full provisions of the SRA Handbook including in particular the Code of Conduct, the Accounts Rules, the SRA Indemnity Insurance Rules 2013 (the Indemnity Insurance Rules) and the SRA Compensation Fund Rules 2011 (the Compensation Fund Rules) apply to all such activity. A table showing the relevant definitions and provisions affected is attached as **Annex 1.**

Solicitors, RELs and RFLs working in non SRA authorised bodies

6. Rule 1.1 of the SRA Practice Framework Rules 2011 states:
'You may practise as a solicitor from an office in England and Wales in the following ways only……..(d) as a manager, employee, member or interest holder of an authorised non-SRA firm, provided that all work you do is: (i) of a sort the firm is authorised by the firm's approved regulator to carry out…..

7. The phrase in paragraph 1.1(d) "of the sort the firm is authorised by the firm's approved regulator to carry out" is intended to refer to services that are required to be authorised under the LSA – i.e. reserved services. So, for example, a solicitor employed by a licensed body authorised for conveyancing and probate services by the Council of Licensed Conveyancers (CLC) could provide those services to the public, but not any other reserved services such as litigation.

8. The intention of Rule 1.1 (d) was not to restrict the non-reserved legal activities that the solicitor can engage in for the non-SRA authorised body. So, in the above example, the solicitor could also carry on non-reserved legal activities in any category of law for the CLC authorised body, unless of course it was prevented from doing so by the terms of the body's licence.

9. However this intention was not as clear as it could be from the drafting of 1.1 (d) (and indeed we have interpreted this differently in the recent past). The same phrase also appears in Rule 2.1, sub-paragraph (d) (i) and in Rule 3.1 sub-paragraph (c) (i) of the Practice Framework Rules in relation to the work RELs and RELS can carry out and in paragraph 3.2(a) of the Principles which applies the Principles to work done in non SRA authorised bodies.

Non- lawyers and others engaged in immigration work within an SRA authorised body

10. Rules 6.1 (e),(f) and (g) and Rule 7.1 ((e),(f) and (g) of the Practice Framework Rules provide that individuals working within an SRA authorised body that are either non- lawyers or are authorised persons but not authorised by their approved regulator for immigration work cannot:

- "undertake the conduct of immigration tribunal proceedings in the UK or advocacy before an immigration tribunal in the UK unless they are authorised by the Immigration Services Commissioner to do that work; or

- prepare documents in the UK for immigration tribunal proceedings unless they are authorised by the Immigration Services Commissioner to do that work, or acting under the supervision of a person qualified to supervise that reserved work; or

- carry out other immigration work in the UK unless they are authorised by the Immigration Services Commissioner to do that work or they do the work under the supervision of an individual working in the *firm* who is authorised under statute to do that work."

C. NATURE AND EFFECT OF THE PROPOSED AMENDMENTS TO THE CURRENT ARRANGEMENTS

11. A copy of the draft SRA Amendments to Regulatory Arrangements (Multi – disciplinary practices) Rules [2014] is attached as **Annex 2**

The regulation of MDPs

12. The key changes to the Glossary are to the definitions of 'authorised activity' and 'regulated activity' to allow non -reserved legal activities to be excluded from regulated activity on the terms of an MDP licence. (The Glossary also now provides a definition of non- reserved legal activity).

13. The amendments to paragraph 13.10 of the Code and Rule 4.2 of the Accounts Rules limit the application of the Code and the Accounts Rules respectively to regulated activity carried out by the MDP.

14. The combined effect will be that if any non- reserved legal activity is excluded from regulated activity on the terms of an MDP's licence then the following provisions of the Handbook will not apply to it:

- The Code
- The Accounts Rules
- The Indemnity Insurance Rules[1]
- The Compensation Fund Rules 2011 [2]

15. However, new paragraph 13.11 of the SRA Code of Conduct brings back in certain outcomes of the Code in relation to that excluded activity:

13.11(b) (i) in relation to the licensed body –

- O1.7 - you inform *clients* whether and how the services you provide are regulated and how this affects the protections available to the *client*;
- O1.9 *clients* are informed in writing at the outset of their matter of their right to complain and how *complaints* can be made;
- O1.10 *clients* are informed in writing, both at the time of engagement and at the conclusion of your *complaints* procedure, of their right to complain to the *Legal Ombudsman*, the time frame for doing so, and full details of how to contact the *Legal Ombudsman*;
- O1.11 *clients' complaints* are dealt with promptly, fairly, openly and effectively;
- O10.6 - you co-operate fully with the *SRA* and the *Legal Ombudsman* at all times including in relation to any investigation about a *claim for redress* against you.

13.11(b) (ii) In relation to a solicitor, RFL or REL engaged in non SRA regulated legal activity (under the direction and supervision of a non- legal professional):

- O1.7 and O1.9-1.1 (as above).
- Chapter 4 (confidentiality and disclosure) – the entire chapter

[1] These rules only apply to 'regulated activity' – see Rule 1.3

[2] These rules only apply to 'regulated activity' – see Rule 3.4

- Chapter 10 (you and your regulator) – the entire chapter
- Chapter 11 (relationships with third parties) – the entire chapter
- Chapters 13 to 15 (application, waivers and interpretation)

16. The change in the definition of' authorised activity' will also have the effect that the COLP within an MDP will not have the obligation to monitor compliance with any statutory obligations of the body, its managers, employees or interest holders in relation to the body's carrying on of non SRA regulated activities. See the Authorisation Rules, Rule 8.5(c)(i)(B))

Solicitors, RELs and RFLs working in non SRA authorised bodies

17. The changes to paragraphs 1.1(d) (i), 2.1(d)(i) and 3.1(c)(i) of the Practice Framework Rules clarify that solicitors, RFLs and RELs can engage in non-reserved legal activities within a non SRA authorised entity (except to the extent that they are precluded from doing so by the entity's approved regulator).

18. The change to paragraph 3.2(a) of the SRA Principles mirrors the changes to the Practice Framework Rules and clarifies that the SRA Principles apply to all work that a solicitor, RFL and REL is authorised to carry out in a non SRA authorised entity including non-reserved legal activity.

Non- lawyers and others engaged in immigration work within an SRA authorised body

19. The changes delete Rules 6.1(e), (f) and (g) and Rule 7.1(e), (f) and (g) of the Practice Framework Rules.

20. This means that immigration work (including immigration tribunal proceedings in the UK or advocacy before an immigration tribunal in the UK) can be performed by a non- lawyer or an authorised person not authorised by their approved regulator for immigration within an SRA authorised entity without OISC accreditation.

D. RATIONALE FOR THE PROPOSED AMENDMENTS

*The regulation of **MDPs***

21. The SRA Board's recent policy statement "Approach to regulation and its reform" sets out a clear framework and rationale for a programme of reform. The statement outlines an immediate programme of work designed to:
    (a) remove unnecessary regulatory barriers and restrictions and enable increased competition, innovation and growth to better serve the consumers of legal services;
    (b) reduce unnecessary regulatory burdens and cost on regulated firms;

    (c) ensure that regulation is properly targeted and proportionate for all solicitors and regulated businesses, particularly small businesses.

22. Changes to the way the SRA authorises and supervises non-reserved legal activity carried out by non-legal professionals within an MDP are an important part of this programme, in particular by removing barriers to the development of mixed professional services.

23. The situation that our reforms are particularly concerned with is where an MDP will be providing some or all of its non-reserved legal services through staff that are non- legal professionals.

24. One example would be an accountancy practice that wishes to become an ABS. Such a firm is likely to be already providing services in relation to a number of areas, including: tax returns; auditing; business advice, including tax effective structures; investment advice; and advice on individual taxation or accounting issues. These services will include advice in relation to actual or potential disputes around areas of law or fact relating to taxation, accounting etc. and the practical application of established laws and procedures to the client's case.

25. This advice will often have involved the accountant engaging in 'legal activity' under the LSA. This is defined in the LSA s12(3) as including:
    '(i) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes;
    (ii) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes……'

26. LSA s12 (5) provides that "legal dispute" includes 'a dispute as to any matter of fact the resolution of which is relevant to determining the nature of any person's legal rights or liabilities'.

27. The LSA does not require that all 'legal activity' has to be carried on by an LSA regulated entity or authorised person - only the reserved legal activities. As outlined above, accountants will of course regularly advise clients on the application of taxation law in their particular case, and will act for them in disputes with HMRC relating to their circumstances. Chartered Accountants are also able to represent their clients at Taxation Tribunals. Any regulation for that advice and representation will be via their accountancy qualification and practice rules.

28. Under current SRA rules, if the accountancy firm wishes to add reserved legal activities to the services that it currently offers and applies to become an ABS, then all of that firm's legal activities including the non–reserved legal activities carried out by the accountants will also fall under SRA regulation. This is in line with SRA rules that require all of the 'legal activity' (as defined in the LSA) carried out by an authorised body to be regulated by the SRA – not just the reserved legal activities.

29. Cases where the requirements for all legal activity to be SRA regulated are likely to be an issue will include a number of other types of professional service MDPs. So for example:

- A firm of chartered surveyors will need to be familiar with planning rules and regulations, and may give general advice on them to clients that would technically count as a legal activity. If such a firm wished to become an

ABS (or own a share in an ABS) employing specialist lawyers who could deal with planning litigation, then under current rules that general advice given by the qualified surveyor would also need to be SRA regulated.

- A management consultancy might offer services to businesses, including advice on restructuring, which will potentially bring into play employment or contract management issues which have a 'legal' aspect. Whilst the consultancy may well bring in specialist legal advice when required, their own non-lawyer specialist consultants (for example human resources experts) would need to be familiar with the framework in which they are operating and may sometimes engage in what would technically be non-reserved legal activities, which would be caught by regulation if the entity became or was connected with an ABS.

30. The rules that require all legal work carried on by SRA Authorised Bodies to be SRA regulated aim to extend consumer protection, avoid the hiving off of work from regulation, and ensure that clients are not misled into thinking that the services that they receive are the subject of protection when they are not.

31. However, the problem under discussion relating to MDP authorisation concerns a situation that was not specifically envisaged by the rules - namely that the non-reserved legal services are provided by non- legal professionals that have never been subject to legal regulation and indeed may well be already regulated elsewhere. Imposing SRA regulation on these services is likely to lead to:

    - Duplication and conflict of regulation – with different codes of practice, complaints procedures, client money rules, and insurance requirements potentially applying to the same work streams. This is arguably in breach of the provisions of LSA s54 which states that licensing authorities should take such steps as are reasonably practicable to prevent regulatory conflict or unnecessary duplication with 'external' (i.e. non–LSA) regulatory regimes.

    - Confusion for the ABS applicant, licensed bodies and clients, as to the boundaries and overlaps between regulatory systems.

    - Disputes as to which part of turnover will be subject to which regulators' practising fees.

    - Unnecessary restrictions on business models, and therefore detriment to competition and consumer choice.

32. The problem has already led to delays in processing ABS applications. It is important to bear in mind that these issues not only complicate the current process for ABS authorisation, but also act to deter potential MDPs from applying to the SRA for approval at all. This is evidenced by, for example, SRA's ongoing discussions with well-regulated organisations that would like to become ABSs but are currently prevented from doing so.

33. One 'work around' has involved applicants structuring their business such that other professional services are provided in separate legal entities from the proposed ABS and then applying for a waiver of the SRA's 'separate

business rule'. The use of separate business waivers and intensive one-to-one work with applicants has been necessary to achieve the sort of market entry and effective regulation that the SRA has sought to deliver. As at the end of August 2014, there had been 55 waivers to the separate business rules granted to ABS applicants. This may have added costs to firms and deterred entry. We are concerned that this could have impacted on consumers of legal services by providing them with less choice than might otherwise have been available. We had particularly noted that small business consumers are acknowledged as poorly served by the existing legal market.[3]

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

35. This risk based approach means that the SRA will therefore exercise discretion on an entity by entity basis as to whether to require non-reserved legal activity performed by non- legal professionals to be SRA regulated. The rule changes are therefore designed to be permissive in nature – rather than prescribing the exact circumstances in which non-reserved legal activity will or will not be SRA regulated. To ensure transparency and consistency, this discretion will be exercised in accordance with our published policy statement attached as **Annex 3.**

36. The context for the policy change is:

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

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

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

[3] See 2013 'Small business legal needs survey'
https://research.legalservicesboard.org.uk/reports/consumers-unmet-legal-needs/

37. Subject to any risks posed by the particular applicant body, the SRA will be prepared to agree that non-reserved legal activity carried out by non-authorised individuals will be excluded from SRA regulated activity on the terms of the MDP's licence if either:

    (a) the non –reserved legal activity is 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)

    Or

    (b) the activity is subject to suitable external regulation.

38. Non reserved-legal activity carried out by authorised individuals or under their supervision will be SRA regulated activity. The exception will be where the activity is under the direction and supervision of a non–legal profession as part of a mixed professional team and is covered by suitable external regulation.

39. Reserved legal activity, immigration work, and other legal activity integral to these activities will always be SRA regulated activity.

40. In arriving at this position, we have taken into account the responses received on consultation. We agree with respondents who have argued that it is inappropriate for the SRA to seek to regulate in detail all of those non-reserved legal activities which have traditionally been carried on as a subsidiary part of the exercise of a profession outside the range of legal regulation. Although we give some examples of the sort of activity or profession concerned in our policy statement, we accept that it is not going to be possible to prepare a definitive list that will apply across the board to all MDPs. However, we think it is important that excluded activities relevant to any particular MDP are recorded on the terms of that MDP's licence so that the firm can operate with a sufficient level of certainty and provide a clear explanation to clients and prospective clients.

41. Where there might be a substantial overlap between legal activity provided by a non-legal professional and the kind of legal work that an authorised individual[4] would also provide or would be expected to supervise, then we are likely to require there to be suitable external regulation in place if the activity is not to be SRA regulated. Taxation advice is one such activity, but providing legal advice on transactions or disputes in the role of a general consultant, drafting wills, legal advice on debt or insolvency are others. In those cases, where providing legal advice could be said to be the core part of the service, we consider that extra protections should be in place, either through the SRA or through the provisions of a suitable external regulator.

42. For us to accept that an external regulatory scheme would be suitable for these purposes, we will need to be satisfied that compliance with the scheme will ensure that the Principles will be complied with. This is consistent with the current obligation on all SRA authorised bodies to

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

comply with the Principles. These Principles are set out in the policy statement, together with any specific comments on what we would expect to see in this context.

43. In applying this test, the SRA is not purporting to judge the adequacy or otherwise of the arrangements of external regulators for the purpose for which they were created. We are trying to assess whether there is enough of a fit with the SRA regime such that applying both detailed set of regulations would lead to conflict and duplication, and that relying on the external regulation will provide adequate consumer protection in the particular context of the delivery of legal services. Although some respondents to the consultation felt this test was too uncertain, no more precise or workable test for addressing this problem has been put forward by respondents, and our proposed test has the logic of being based on the SRA Principles with which an ABS already has to comply in any event.

44. We agree that we need to apply the test flexibly in order to achieve a purposive approach, and there may be some circumstances where we may need to impose extra conditions to address what may be gaps in the external regulation.

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

    (a) The significant reduction in the range of circumstances in which the exception will be needed by virtue of our discretion to exclude subsidiary but necessary legal activity performed by non- legal professionals from SRA regulated activity without the need for the suitable external regulation test to be met; and

    (b) The publication of a list of those regulators that we have currently assessed as meeting the test. The policy statement includes a list of regulators where we have examined the arrangements and agree that there is a sufficient fit to satisfy us that the SRA principles will be complied with. This is not an exclusive list – there will be other regulators whose schemes we have not yet considered who will be added as the issue arises on applications.

46. In circumstances where MDPs are engaging in legal activity under SRA regulation and suitable external regulation, we consider that it is important that mixed teams of authorised individuals and non-legal professionals can work together to provide holistic services. We agree with respondents to the consultation who argued that we need to allow flexibility in our arrangements if mixed professional teams including both authorised individuals and non-legal professionals are to be viable.

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

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

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

49. Where an activity is led and supervised by the non-legal professional, then an authorised individual will be able to provide that activity under the external regulation (subject to certain safeguards). If the authorised individual is a solicitor, RFL or REL, they will remain personally regulated subject to a limited subset of the Code.

Solicitors, RELs and RFLs working in non SRA authorised bodies

50. The amendments to Rules 1.1(d) (i), 2.1(d) (i) and 3.1(c) (i) of the Practice Framework Rules clarify that solicitors, RFLs and RELs working in a non SRA authorised body are not restricted by the SRA as to the non-reserved legal activities that they can engage in for that body.

51. The amendment to paragraph 3.2(a) of the Principles clarifies that this work is subject to the SRA Principles.

52. These changes have been welcomed by the Institute of Chartered Accountants in England and Wales in its response to the consultation.

Staff engaged in immigration work within an SRA authorised body who are not individually authorised for that work

53. The changes confirm that those working in an SRA authorised body do not require individual accreditation from an approved regulator or OISC to undertake immigration work.

54. This reflects the position under the Immigration and Asylum Act 1999 (IAA). The new provision in section 84(2)(ba) was inserted by the LSA and came into force on 1 April 2011:

"[(2) A person is a qualified person if he is--
(a) a registered person,
(b) authorised by a designated professional body to practise as a member of the profession whose members the body regulates,
[(ba) a person authorised to provide immigration advice or immigration services by a designated qualifying regulator,]
(c) the equivalent in an EEA State of--
(a) a registered person, or
(b) a person within paragraph (b) [or (ba)],

(d) a person permitted, by virtue of exemption from a prohibition, to provide in an EEA State advice or services equivalent to immigration advice or services, or
(e) acting on behalf of, and under the supervision of, a person within any of paragraphs (a) to (d) (whether or not under a contract of employment)."

55. The list of designated qualifying regulators in section 86A of the IAA is as follows:

(a) the Law Society;

(b) the Institute of Legal Executives;

(c) the General Council of the Bar.

56. All immigration work carried out within an SRA authorised entity will be by definition, carried on by someone acting on behalf of, and under the supervision of, 'a person authorised to provide immigration advice or immigration services by a designated qualifying regulator'. The SRA (which exercises the regulatory functions of the Law Society) is a designated qualifying regulator, a licensed body is a person authorised to provide immigration advice or immigration services by a designated qualifying regulator and any advisors will be operating under the licensed body's supervision and on its behalf.

57. This means that:

- It is unnecessary to specify in regulations that this work must be carried out under supervision of a person authorised to carry out the work (see Rules 6.1(f) and (g) and Rule 7.1 (f) and (g)), and

- the OISC jurisdiction does not apply to the activities of an SRA authorised body in any event

58. Current Practice Framework Rules 6.1 (e), (f) and (g) and 7.1 ((e) (f) and (g) are therefore both unnecessary and misleading.

E. STATEMENT IN RESPECT OF THE REGULATORY OBJECTIVES

Protecting and promoting the public interest:

59. We do not consider that the effect of these proposals, which will open up new types of practice, will impact adversely on particular communities or locales. Making it easier for reserved legal services to be provided together with other professional services - including with those with links with local communities - may broaden access, including for more diverse groups of clients. Opening up the market to new participants and to existing firms seeking to expand their business without over burdensome regulation may therefore have a positive impact on communities.

Supporting the constitutional principle of the rule of law:

60. It is not our view that allowing some areas of non-reserved legal activity to be carried on outside of SRA regulation will adversely impact on the rule of law. These activities are, in general, already being carried on by organisations outside of LSA regulation. Our proposals will assist MDPs to add reserved legal services and become ABSs and thus bring them within the ambit of the LSA.

Improving access to justice:

61. Our view is that our proposals taken together are likely to increase access to justice by increasing market entry and new forms of practice.

62. There is evidence that the current rules do not facilitate the development of MDPs –including those that offer wider services to business. At its January

2014 meeting, the LSB Board discussed an analysis of the 418 applications for ABS status received as at that date[5]. Its analysis showed (paragraph 21) "that, aside from firms where it was not possible to determine what services they offer, the least successful applicants so far have been applicants classed as business services; only 43% of these applicants have been granted a licence. These are firms that typically offer HR, employment or other services to businesses. The next least successful are those categorised as "other" and the category of accountants, IFAs or wealth managers" or MDPs; only 45% of applicants from these categories have been successful."

63. The LSB report continued

"(23)…. Applicants that are more complex businesses or are offering services that are not necessarily akin to a traditional law firm appear to have to wait longer for a decision to be made and are more likely to withdraw their application. This apparent preference towards traditional law firm-like applicants may be impacting the level of innovation and so competition in the market for legal services. The Act was passed with the intention of liberalising the market for legal services and for greater provision of "one-stop-shop" style services for individual consumers and business.

64. (24). We also understand that some of those atypical applicants have felt compelled to set up separate law businesses when there are no commercial drivers to do so. Also we have been told by applicants that the SRA is insisting on regulating all "legal activities" – including tax advice – even when it is clear that these activities are subject to other regulatory oversight by other bodies. This has led to the situation where some atypical applicants that have been granted licences have had to alter their business model in a manner that they would not have chosen to do so."

65. The conclusion that the development of mixed professional services is not being encouraged by the current rules is reinforced by research on ABSs that we published in May 2014[6]. Respondent firms (from the survey of licensed ABSs) were asked to consider the relative importance and contribution of legal services to their overall business activities. Ninety percent of all successful ABS respondents considered the provision of legal services to represent their core business, with only seven per cent apportioning an equal rating to other non-legal services.

66. As indicated earlier, in order to allow organisations that offer multiple services to provide legal services, we have granted a series of waivers of the separate business rules so that legal services provided by the ABSs concerned are delivered separately from the other professional services. To date there have been 55 waivers of the separate business rule in relation to ABSs. However, forcing applicants to split their business and apply for a waiver leads to delay and expense in applications, deters applicants that do not wish to restructure their business, and can deprive clients of the benefits of the type of holistic services that the LSA was designed to help achieve.

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[5] http://www.legalservicesboard.org.uk/about_us/board_meetings/pdf/20140129_29_January_2014/20140328_14_01_SRA_Performance_In_ABS_Authorisation.pdf

[6] http://www.sra.org.uk/documents/SRA/research/abs-quantitative-research-may-2014.pdf

67. The range of services offered by MDPs should ultimately provide greater choice for consumers. This may particularly be the case for small businesses who, at present, do not fully access legal services, and when they do, 'seek to "muddle through" rather than obtain advice since seeking formal advice is perceived as expensive, serious, and a last resort'[7].

68. A survey carried out as part of the LSB evaluation of changes in competition in different legal markets published in October 2013[8] showed that while ABS organisations provide services to a wide range of consumers, they are more likely to serve business consumers as opposed to individuals.

69. A website review of the 43 ABSs granted waivers by the end of April 2014[9] shows that 29 provide services to business[10] either through themselves or their related business, and that all but 3 of these include services for SMEs.

Protecting and promoting the interests of consumers:

70. By promoting our other objectives, including access to justice and competition, we will be promoting the interests of consumers. Removing barriers to authorisation will assist in achieving a legal services market driven by the needs and preferences of consumers rather than by dictating the structure of firms in a way that has historically inhibited innovation and presented barriers to entry.[11]

71. For those that have an issue that involves multiple strands, the ability to instruct a one-stop-shop that has the capability to manage all issues in one service will be an important benefit, and may lead to reduced costs of services. Likewise, consumers will be able to obtain legal services from firms where they have an existing relationship in other areas such as accountancy services.

72. MDPs will usually already have a track record of delivering other professional services. There is no reason in principle why becoming SRA authorised and being able to add reserved legal services to their portfolio should lead to client detriment.

73. However, a number of responses to the consultation have focused on the risk of consumer confusion with different regulation within an MDP, usually arguing that it will be a simpler position for clients if all legal activity is regulated by the SRA. However, in our view this analysis fails to take into account the realities of non-legal professionals carrying out work in MDPs.

74. Firstly, the 'legal activity' of those professionals is likely to be already regulated elsewhere, meaning there will be dual regulation under this 'simpler' option.

75. Secondly, it is already the case that non-legal activity within an ABS is not included as SRA regulated activity. Given the wide definition of legal activity in s12 LSA, the work of a non-legal professional is likely to move in and out

[7] Research note, The legal services market, Legal Services Board, August 2011
[8] https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-REPORT.pdf
[9] Excludes 2 waivers granted to related trust companies and one ABS that ceased trading
[10] Excluding insurance services
[11] Research note, The legal services market, Legal Services Board, August 2011

of ‘legal activity’. In those circumstances and under the current rules, the same piece of work would move in and out of SRA regulation.

76. Taking the example of a client instructing a chartered accountant regulated by ICAEW in an SRA authorised MDP, we consider that it is simpler for the client if the accountant is able to say to them ‘My work is regulated by ICAEW’ rather than ’My work is regulated by ICAEW, except where I am engaged in legal activity as defined in S12 of the Legal Services Act, in which case my work is regulated by both ICAEW and the SRA’.

77. Although the group of ABSs granted separate business waivers are not a direct match of the likely profile of MDPs, they do provide analogies in providing a range of different services to clients only some of which are SRA regulated. Our data shows that, as at the end of July 2014, of the 46 ABSs then in operation that had been granted separate businesses waivers, there had been only one report submitted to the SRA risk centre in relation to a possible separate business issue. This is clearly a situation that needs to be monitored over time, but at present our information does not suggest that consumer risks have materialised to any significant degree in relation to the links between legal and other businesses.

78. It is important to consider the impact on consumers if changes are not made. If the SRA continues its current position, consumers that require multi professional services will be likely to continue to be forced to go to different entities to handle different aspects of their problem. These entities will have different regulators and the onus will be on the consumer to work out the interaction and negotiate the different rules and complaint systems when the entities provide services on the combined issues. The consumer will also of course have to pay any extra costs of duplication.

79. Authorising an MDP that would not otherwise have been licensed (or only licensed in part, with other work being split into an unregulated separate business) will bring more activity within the ambit of the Legal Ombudsman. This is a positive development for clients. Because the right to go the Ombudsman will not be restricted to SRA regulated activity, our rules will impose the obligations to inform the client of this right and to co-operate with the Ombudsman across all of the activities of the MDP. They also maintain duties in the Code in relation to informing clients of their rights to complain at the outset and handling complaints promptly fairly openly and effectively.

80. Our reforms contain a number of other important consumer protection measures. For example:

    - The MDP will remain regulated as an entity by the SRA.
    - Solicitors (and RFLs and RELs) will remain individually regulated
    - Work integrally linked to reserved legal activity will remain SRA regulated
    - The organisation will be under a duty to ensure clients are properly informed of the regulation that apples in their own case.
    - We will require suitable external regulation where there is significant cross over between the activity being carried out by the non-legal professional and the work that it would be expected a lawyer would provide

Promoting competition in the provision of services such as are provided by authorised persons

81. These proposals should promote competition by removing restrictions on entry to the market and on the structures of firms that can be authorised. Making it easier for firms to form an MDP providing a number of professional services in a 'one-stop-shop' may open up an attractive option for growth. The effect of s1 LSA is that the duty to promote competition includes non–reserved legal activities and our proposals will facilitate these activities being provided by entities that also provide reserved legal services.

82. Although our discussions with potential providers have indicated that the number of MDPs authorised within the next few months is likely to be small, we consider that they are likely to grow as a proportion of the market in future if the rules are amended to facilitate this. For example, 21% of the respondents who identified future plans in the SRAs survey of ABSs published in May 2014[12] indicated that they intended to develop multi-disciplinary services in the future.

Encouraging an independent, strong, diverse and effective legal profession:

83. Some respondents to the consultation focussed on the potential impact of the proposals on small firms. These comments came from two main perspectives.

84. Firstly, it was said the proposals would be too complicated for small firms that wish to become ABSs to implement, and that there needed to be a cost analysis of the status quo versus the reforms for small firms. We are unable to undertake such a cost analysis as the variables involved would be too complex to identify positive or negative effects. In any event we are not imposing the requirements on ABS applicants who will retain the status quo option of having all of their legal activity regulated by the SRA. Rather, we are offering additional ways in which it will be possible for an MDP to be authorised, and we believe that the final form of our proposals will be suitable for operation by MDPs of any size.

85. The second point made was that the proposals would be unfair to existing recognised bodies (including small firms in particular) in that MDPs will be under different 'more favourable' rules, with some work non-SRA regulated. This is in a context where BME solicitors are disproportionately represented in small solicitor practices[13].

86. However, we do not consider that the proposals in themselves put MDPs in an either more or less favourable position than recognised bodies. What might give MDPs greater access to certain client groups is the fact that they provide a range of different professional services in one place. Recognised bodies already have the option of extending their services if they wish to

[12] http://www.sra.org.uk/documents/SRA/research/abs-quantitative-research-may-2014.pdf

[13] 50.5% of BME solicitors work in sole practices or firms with 2 to 4 partners compared to 28.7% of White European solicitors and 30% of BME solicitors work in firms with 26 or more partners compared with 42.6% of White European solicitors.
https://research.legalservicesboard.org.uk/wp-content/media/Review-of-published-evidence-on-the-equality-of-pay-in-legal-services-Final.pdf

(for example to include financial services, estate agency or management consultancy), in which circumstances their non-legal work is not SRA regulated and we consider that recognised bodies should be able to offer an even wider range of services should they choose to do so. This proposition gained broad support in the MDP consultation. We intend to launch a separate consultation on this issue shortly alongside separate business issues, for implementation in April 2015. This will provide further opportunities for firms to compete and increase their client base. This may have a positive impact on consumers, and specifically small business, as firms compete for clients.

87. Sufficient data does not yet exist to consider the impact of ABSs generally on the legal profession, or of course of MDPs, in particular given their restricted development so far. As we stated in the May 2014 research[14]: 'In exploring the impact of ABSs on the legal services market, it is important to note the diversity of the ABSs licensed so far. These firms range from previously SRA regulated law firms that have formally included an existing non-solicitor in their ownership structure, to large conglomerates providing legal services alongside other professional services. In many cases, the one common characteristic shared by these businesses is their legal status as an ABS. Attempting to treat them as a homogenous group is, therefore, often unhelpful. Genuine comparative analysis of different 'subgroups' of ABSs will become more viable as the population of these firms increases"

88. From our discussions with potential applicants, we do not consider the number of MDPs that are likely to be authorised in the period before April 2015 will be large (probably in single figures). However, we consider that there will be greater impact of these reforms on the market over time, and we will need to monitor this as part of our ongoing commitment to measuring the impact of ABSs.

89. In our Risk Outlook for 2013[15], we identified the lack of a diverse and representative profession as one of our key risks. This arises from issues such as a lack of diversity at senior positions in many firms, and a slight under representation of practising certificate holders from BME groups.

90. The LSBs initial discussions with stakeholders in 2011 indicated that the general feeling at that time was that the best assumption was that the introduction of ABS would have a neutral impact on diversity of the legal profession as there was insufficient evidence that ABSs would have either more of a positive or more of a negative impact. [16] The LSB published a baseline report on market impacts of legal services in October 2012[17] and will publish further reports to monitor the impacts.

91. We do not have the data to indicate whether more MDPs being authorised would impact on the numbers of such firms. The LSB's October 2013 report[18] showed limited changes in market concentration since the introduction of ABSs – except in the personal injury sphere where there are other important factors at work such as the Jackson reforms and the

[14] http://www.sra.org.uk/documents/SRA/research/abs-quantitative-research-may-2014.pdf
[15] http://www.sra.org.uk/solicitors/freedom-in-practice/ofr/risk/outlook/risk-outlook-2013-2014
[16] Research note, The legal services market, Legal Services Board, August 2011
[17] http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20121023_evaluation_baseline_report_final.pdf
[18] https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-REPORT.pdf

referral fee ban. However, in so far as the proposals will allow practice in 'non-traditional' ways, they may increase opportunities for BME solicitors.

92. One of the proposed policy changes is "the drive to reduce the burden of regulation on small businesses"[19]. The proportion of BME regulated individuals is much higher in smaller firms than in larger firms, where 23% of regulated individuals working in firms with 4 or less regulated individuals are BME, compared to 10% of regulated individuals in firms with over 10 regulated individuals.

93. It is not possible to calculate in detail the effect of policy changes for the authorisation and supervision of MDPs on small and medium sized firms. Option 1 proposes that where an SRA authorised ABS that is an MDP carries out non-reserved legal activities, the SRA may agree on the terms of the licence that some or all of these activities will not be SRA regulated. We are unsure of how many small and medium sized firms would wish to exploit this option by becoming ABSs. However, as we have set out above, ABS applicants will retain the 'status quo' option of having all of their legal work SRA regulated.

94. To understand the nature and type of the 278 ABS the SRA has licensed since 2011, we have looked in detail at the number of licensed bodies (ABS), recognised bodies and sole practitioners by ethnicity, gender, age and disability of regulated individuals[20] in order to identify potential equality trends.

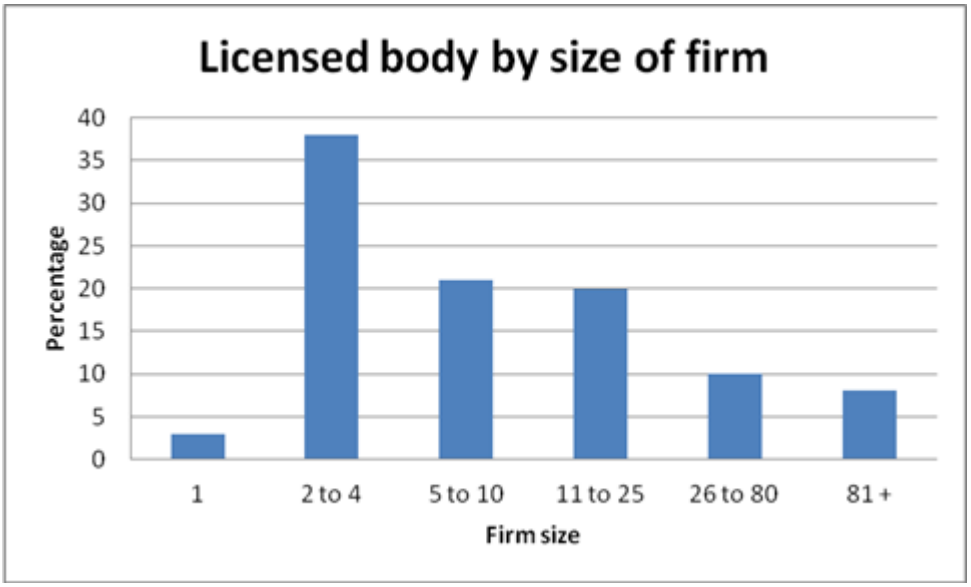
95. In summary, due to the small number of licensed ABS, there is very little data with which to draw conclusions. We can see that:-

- the majority of licensed ABS are found within a 2 – 4 firm size;
- there is a very slight increase of BME individuals found in ABS of a 5 – 10 firm size;
- women are proportionally represented across ABS firm size;
- there is a slight increase of disabled individuals found in larger sized ABS.

96. There are 105 (38%) licensed bodies with 2 – 4 individuals. In firms with 5 – 10 individuals, 58 (21%) are licensed bodies. Only 9 (3%)licensed bodies are found in firms with 1 individual. The majority of licensed bodies are therefore found within a firm size of 2- 4 individuals which indicates that current rules have not discouraged these firms from applying for a license. We cannot specify the extent to which the change in policy may encourage further growth of firms this size. Encouraging the growth of small businesses may have a positive impact for consumers, who can potentially access a number of services from one business.

[19] MDP Consultation; Page 6: http://www.sra.org.uk/sra/consultations/multi-disciplinary-practices.page

[20] The data relates only to regulated individuals e.g. partners, directors, members, associates, assistant solicitors, lawyer managers, non-lawyer managers etc. The data does not show non-regulated individuals such as paralegals, accountants, human resources staff, secretarial staff etc.

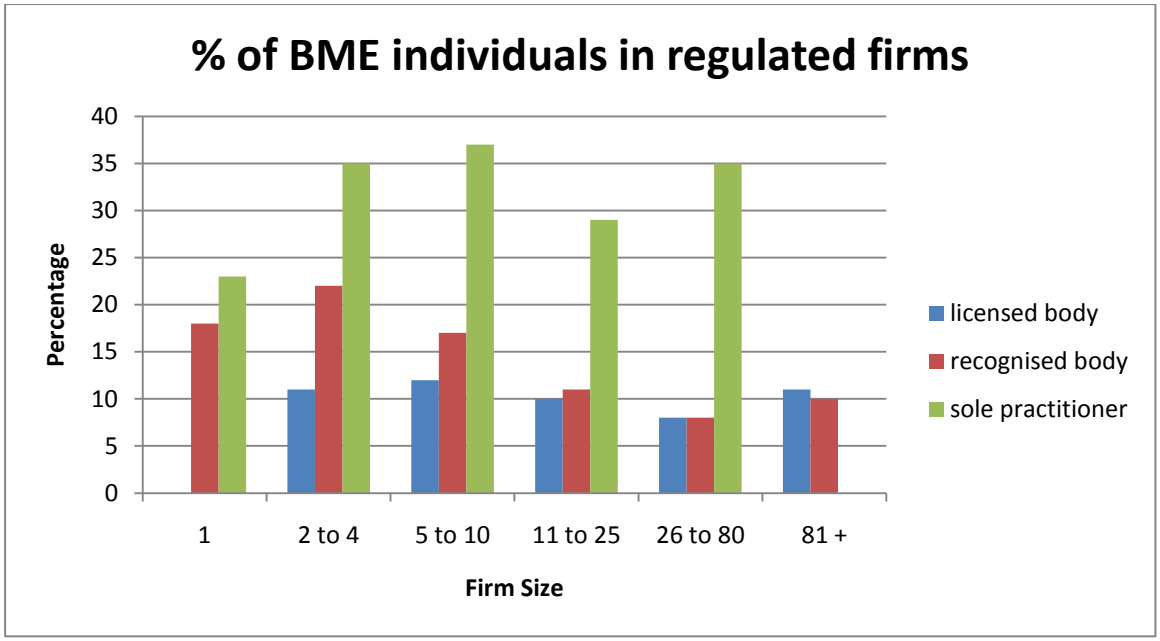


Ethnicity

97. The ethnic diversity of licensed bodies in 2014 is comparable to that of recognised bodies across all firm sizes.

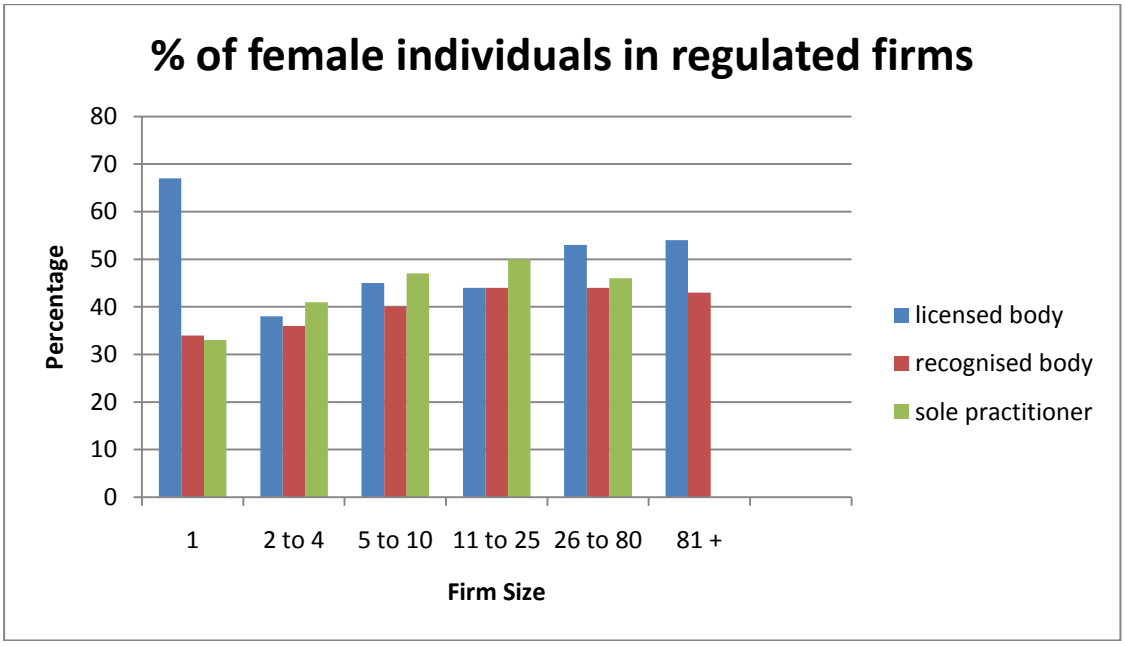
98. The ethnicity breakdown for licensed bodies ranges from 14% (1 ABS) in a firm with 1 partner, to 11% in firms with 81 or more individuals in the firm. The ethnicity profile for licensed bodies is fairly consistent across firm size, with a slightly higher proportion of BME individuals found within a firm size of 5 – 10 individuals. There are fewer BME individuals found in licensed bodies as compared to sole practitioners. The ethnicity profile for licensed bodies is similar to the ethnicity profile of recognised bodies, although in the 2 – 4 firm size the ethnicity profile for a recognised body is 22% as compared to a licensed body at 11%.

99. The number of BME regulated individuals, although higher within the small firm and sole practitioner population, is relatively consistent across the 278 small, medium and large ABS which have been licensed. There is no current identified trend of BME individuals migrating towards the smaller ABS.



Gender

100. Proportionally more women are found in licensed bodies, 6 (67%) in firms with 1 individual as compared to recognised bodies and sole practitioners. The data of firms with 1 individual is very small and it is therefore difficult to draw comparisons. For firm sizes of 2 and above, women are evenly distributed across licensed bodies, recognised bodies and sole practitioners although there is a slight increase of women in large licensed bodies. 53% of women are found in licensed bodies of 26 – 80 individuals, and 54% in firms with 81 or more individuals.



101. The proportion of female regulated individuals is slightly higher in larger firms than in smaller firms. 44% of regulated individuals working in firms with more than 10 regulated individuals are female, compared to 36% of regulated individuals in firms with 4 or less regulated individuals.

Age

102. There are no 22 – 30 year olds found in licensed bodies in a firm size of 1 or less. The percentage of regulated individuals in licensed bodies in the 22-30 age group increases the larger the firm size, with 16% of 22 – 30 year olds in a firm size of 81 or more individuals.

103. An increase is also shown in the 31 – 40 age group where 69 (23%) of individuals are found in firms of 2- 4 individuals. This increases to 1,992 (41%) of individuals in licensed bodies of 81 or more individuals in the firm.

104. In the 41 – 50 age group, there is a higher proportion of individuals in small ABS firms.

Disability

105. There are very few regulated individuals with a disability who are found in licensed bodies on which to reach a conclusion. There is a slight increase for disabled individuals found within the larger ABS.

106. In summary, although evidence is limited, our conclusions are that we consider that these proposals will provide wider opportunities for lawyers to work with other professionals. We will monitor and review the ABS market as it grows and will assess potential impact on equality as the number of ABS increase. This is, of course, a wider issue than the growth of MDPs as not all ABSs provide multiple professional services.

107. We do not consider that working in an ABS or MDP structure is in itself a risk to the independence of legal professionals given the protections that the LSA and the regulations and rules made under it have put in place. The work carried out or supervised by authorised persons will continue to be SRA regulated[21].

Increasing public understanding of the citizen's legal rights and duties;

108. Increasing consumer choice and removing unnecessary restrictions on business models is likely to promote this objective.

109. The survey contained in the LSB's October 2013 report showed that ABSs appear to use technology to deliver services to a greater extent than other firms do. In all, 91% of survey respondents indicated having a website that they used to deliver information and other services to their customers. This compared to just 52% of other solicitors' firms having a website they used for advertising, and 6% using legal networks websites. [22]

[21] In the case of the limited mixed team exception paragraph x of the consultation document solicitors remain subject to SRA regulation.

[22] https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-REPORT.pdf

110. This is supported by evidence from the SRA's May 2014 research into ABSs, where 62% of respondents indicated that they intended to use the extra investment that becoming an ABS brought them for new technology and new ways of delivering services to customers.

Promoting and maintaining adherence to the professional principles:

111. We are proposing a number of measures in support of this objective. The SRA will continue to authorise the whole entity – the licensed body, managers, employees and owners will continue to have the general obligations set out in the LSA and in the SRA Handbook – such as the duty not to do anything that could cause the licensed body to breach its regulatory arrangements and duties to comply with the SRA Principles 2011.

112. The duty to maintain client confidentiality in relation to information provided in respect of legal services will apply across the entity.

113. Our requirements for suitable external regulation include an assessment of whether those arrangements will ensure that the SRA Principles 2011 will be complied with. Reserved legal services including litigation and exercising rights of audience will continue to be regulated by the SRA.

114. According to the survey in the LSB's October 2013 report[23], reported complaints received, resolved, and referred to the Legal Ombudsman compared to turnover show that LDPs and ABS had better complaints resolution ratios than traditional practices.

115. We are focussed on the need to make sure that the re-definition of boundaries with non SRA regulation within an MDP does not make enforcement more difficult. We will discuss these issues with other key regulators to help ensure effective co-operation and information sharing.

F. STATEMENT IN RESPECT OF THE BETTER REGULATION PRINCIPLES

116. The SRA considers that the alterations requested fulfil our obligation to have regard to the Better Regulation Principles, under section 28 of the Legal Services Act.

Proportionality

117. These changes make the SRA's regulation more proportionate by:
    (a) Accepting that we do not need to regulate in detail activities carried out by non–authorised individuals as a subsidiary part of the exercise of a non-legal profession.
    (b) Amending the framework to reflect the reality in MDPs of multi professional teams by removing the requirement for duplication contained in the current rules and allowing suitable external regulation

[23] https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-REPORT.pdf

to replace detailed SRA rules where there is a significant cross over between work provided by lawyers and by the other professionals.

Accountability

118. The SRA is accountable to all its stakeholders in relation to regulatory matters including: consumers; the profession; the participating insurers; BME groups. The SRA has to balance the need to protect consumers with the need not to restrict entry to the market unnecessarily and in a way that itself reduces access to services and potentially increases costs for those consumers. The SRA's approach to regulation is subject to intense political and professional scrutiny. These proposals have been subject to meaningful scrutiny: during our consultation process; through our own internal governance arrangements; and now, as part of the LSB's oversight and approval process.

119. The SRA Board's recent policy statement "Approach to regulation and its reform" sets out a clear framework and rationale for a programme of reform.

Consistency

120. Although the previous 'absolute' SRA rule that all non -reserved legal activity had to be SRA regulated appeared to give the virtue of consistency, in practice the need for the significant use of separate business waivers showed that the rule was unsustainable and not possible to apply in a consistent manner. The publication of the policy statement will provide clear guidance for consistency in decision making by the SRA in future.

Transparency

121. The exercise of discretion in line with the principles set out in the detailed policy statement provides for a more transparent system of decision making than a serious of individual waivers.

Targeted

122. The changes will target greater regulatory protection on those areas that most require it namely
    (a) -reserved legal activity and immigration work and activities integral to them
    (b) 'mainstream' non- reserved legal activities where the consumer is likely to expect regulatory protection in an SRA authorised body

G. STATEMENT IN RELATION TO DESIRED OUTCOMES

123. The changes with respect to the authorisation and supervision of MDPs are being made in accordance with the programme of reform set out in the SRA Board's recent policy statement "Approach to regulation and its reform".

H. STATEMENT IN RELATION TO IMPACT ON OTHER APPROVED REGULATORS

124. The amendments to paragraphs 1.1(d) (i), 2.1 (d)(i) and 3.1 (c) (i) of the Practice Framework Rules will be of assistance to other approved regulators by clarifying that solicitors, RFLs and RELs can carry out non-reserved legal activities in bodies that they regulate. The ICAEW, which had objected to the SRA's previous restrictive interpretation of the rules, responded on consultation saying ' We note with approval the clarification of practice rule 1.1(d) of the SRA's Practice Framework rules 2011. In previous discussions ICAEW had had with the SRA, it had been suggested by some officials that the rule covered non-reserved services and therefore considerably constrained the operability of qualified solicitors practising in ABSs outside those licensed by the SRA. This appeared to us to be an inappropriate limitation given the LSA statutory objectives, and not necessarily what the rule itself was requiring. We therefore welcome this statement of clarification.'

125. The wider MDP proposals will help meet the SRA's obligations under s54 LSA by ensuring that external regulation is taken into account in deciding when activity will be SRA regulated.

I. IMPLEMENTATION TIMETABLE

126. If approved, the changes will come into effect on 31 October 2014.

J. STAKEHOLDER ENGAGEMENT

127. The SRA carried out a full public consultation between 7 May 2014 and 18 June 2014 on these proposals. This consultation was published on our website in the usual way.

128. A copy of the report on consultation responses and SRA conclusions is attached as **Annex 4**.

129. Respondents included the Law Society and a number of local Law Society branches, the Legal Ombudsman, the LSB Consumer Panel and individual recognised bodies, ABSs and potential MDPs. The consultation responses could be divided into three groups; those who disagreed with the proposals and do not think there is a need for the current structure to change, those who agreed with our proposals but have suggested minor changes or factors to consider, and those who agreed with the intentions of our proposals but do not think that they go far enough in liberalising the regulation of MDPs.

130. The Law Society is opposed to the proposals. It feels that 'it is wrong in principle that legal work done in an organisation regulated by the SRA should be subject to different regulators and thus different standards depending on the individual doing the work'. This is coupled with concerns about protection for consumers, potential confusion that may arise from what they describe as over complex proposals, and a perception that the proposals will have a disproportionately negative effect on smaller firms which the Law Society feels will not be able to avail themselves of the proposals.

131. Those who support the direction of travel but feel that the proposals do not go far enough included some potential MDPs and the ICAEW. The latter consider that an overly broad interpretation of 'legal activity' is leading to the SRA regulating the activities of non–legal professionals unnecessarily and without having the expertise to do so.

132. We have listened carefully to the consultation responses and made a number of changes to make our proposals simpler and more workable as set out above. Other changes include agreeing with the Law Society and others that we consider it to be in the interests of consumers for the administration of estates and the grant of probate to be both covered by SRA regulation within an SRA authorised body.

133. We received a relatively high number of responses which were critical of the process by which we have undertaken this consultation. 15 respondents stated that the six week consultation period was insufficient time to consider the proposals that had been put forward, particularly when taken in the context of the three additional consultations which were published on the same timescale.

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

135. There were a number of ways in which we engaged and sought views in addition to the consultation. Our Executive Director of Policy made a speech outlining the proposals on 2 April 2014[24] which was accompanied by a press release, Q&A, and invitation to interested parties to contact us in relation to the issues in advance of the consultation. We met with a number of individual providers and potential MDPs to discuss the issues. We also set up an external reference group which included: the Law Society, two local law societies, Legal Services Board (LSB), the LSB Consumer Panel, the Legal Ombudsman, the Department for Business, Innovation and Skills, ICAEW and academics to discuss the proposals. This group met twice during the consultation period. We met separately with the City of London Law Society and attended the Law Society Regulatory Affairs Board. The Law Society addressed the SRA Board on the MDP proposals at the meeting on 6 July 2014.

K. FURTHER EXPLANATORY INFORMATION

136. The next stage of our proposed reforms in this area is to launch a consultation covering two related issues.

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

The reform of the separate business rule

137. As a second stage of this work, we intend that there should be a wider review of the separate business rule. Whilst this review will look at restrictions that could be unnecessarily holding back the market and consumer choice, we would wish to ensure that appropriate safeguards remain in place. Although the risk of consumer confusion might seem to be lower where different professional services are split into separate entities, such a split may not be apparent from the client's perspective. We will therefore want to look at the reality of different situations and maintain requirements for clients to be made clearly aware of what services they are buying and who regulates them. The SRA will want to ensure that the rules and authorisation processes will prevent the splitting of services into separate entities in order to avoid appropriate regulation. This would suggest a flexible approach to separate business provisions that is focused on the consumer rather than on business structure or on a list of activities.

Amending the regulatory framework to allow recognised bodies to perform a wider range of services

138. The SRA is committed to a level playing field in that there should be no favours or benefits for particular business models. However, where the issues that we are tackling are different in different market segments, we must respond in a manner that is consistent with the better regulation principles. We therefore think that there is scope to consider different provisions for different types of firms recognising the variety of firms, services, and consumers

139. However, there are currently a number of non-legal services that recognised bodies are allowed to carry out as exceptions provided by rules made under s9(1A). In particular, Rule 13.2 of the Practice Framework Rules allows recognised bodies to carry out activities within their firm that could be offered through a permitted separate business under chapter 12 of the Code. These services include estate agency and management consultancy. In tandem with our review of the separate business rule, we will consider the widening of these exceptions as part of a further consultation. Our view is that s9 (1A) needs to be interpreted in light of the changed environment brought about by the LSA and our regulatory objectives under that Act. Given those objectives, our preliminary view is that we do not consider that it should be necessary for a recognised body to have to bring in non-lawyer ownership and apply to become an ABS in order to offer a wide range of multi-disciplinary professional services.

140. Initial responses on these issues gained as part of the MDP consultation were generally in favour of the principle of reform in these areas, subject to seeing detailed proposals. It is our intention to launch a consultation in November 2014.

ANNEXES

Annex 1: Table of current regulatory provisions for MDPs

Annex 2: SRA Amendments to Regulatory Arrangements (Multi –disciplinary practices) Rules [2014]

Annex 3: SRA policy statement on the regulation of non –reserved legal activity in MDPs

Annex 4: Report on consultation responses and SRA conclusions

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Date: 25 September 2014

Annex 1

Current key provisions in the SRA Handbook relevant to the scope of regulation of non- reserved legal activity in MDPs

1	**SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011**	
	Rule 7 – Terms and conditions of authorisation Guidance notes (i) Where a firm is authorised by the SRA, as well as undertaking the activities set out in Rule 7, the firm will also be able to carry out other non-reserved legal activities. The SRA's jurisdiction over the firm includes the reserved and other legal activities, as defined under section 12 of the LSA, and other activities which are subject to conditions on the body's licence. (ii) If a firm carries out a range of legal and non-legal activities (a multi-disciplinary practice or "MDP") the SRA's jurisdiction will not generally extend to cover the "non-legal" activities of the licensed body (unless covered by a specific condition on the licence). Such non-legal activities may be regulated by another regulator, and some activities may not fall within the regulatory ambit of any regulator.	
2	**SRA Handbook Glossary 2012**	
	authorised activities means: **(i)**	

	any *reserved legal activity* in respect of which the body is authorised; **(ii)** any other *legal activity*; **(iii)** any other activity in respect of which a *licensed body* is regulated pursuant to Part 5 of the *LSA*; and **(iv)** any other activity a *recognised body* carries out in connection with its *practice*. **legal activity** has the meaning given in section 12 of the *LSA*, and includes any *reserved legal activity* and any other activity which consists of the provision of legal advice or assistance, or representation in connection with the application of the law or resolution of legal disputes. **MDP** means a *licensed body* which is a multi-disciplinary practice providing a range of different services, only some of which are regulated by the *SRA*. **regulated activity** means: **(i)** subject to sub-paragraph (ii) below: **(A)** any *reserved legal activity*; **(B)** any other *legal activity*; and **(C)** any other activity in respect of	

	which a *licensed body* is regulated pursuant to Part 5 of the *LSA*; and **(ii)** in the *SRA Financial Services (Scope) Rules*, an activity which is specified in the *Regulated Activities Order*.	
3	**SRA Principles 2011**	
	Paragraph 3 – Application of the SRA Principles in England and Wales. 3.1(c) – applies the SRA Principles to an authorised body.	The application provisions do not limit the application of the Principles to the "regulated activities" of a licensed body.
4	**SRA Code of Conduct 2011**	
	Chapter 13 – Application and waiver provisions. 13.10 – Where in accordance with this chapter, the requirements of the Code apply to a *licensed body*, this extends to the *reserved legal activities* and other activities regulated by the *SRA*.	This does not specify the activities that are regulated by the SRA, but any change to those activities would affect the application of the Code.
5	**SRA Accounts Rules 2011**	
	Rule 4 – Persons governed by the rules Rule 4.2 – In relation to an *MDP*, the rules apply only in respect of those activities for which the *MDP* is regulated by the *SRA*. Rule 18 – Receipt of mixed payments. This introduces the concept of "out of scope money" which is money held or received by an MDP relating to activities not regulated by the SRA	This does not specify the activities that are regulated by the SRA but any change to those activities would affect the application of the Accounts Rules.
6	**SRA Indemnity Insurance Rules 2012**	
	Rule 1 – Authority and commencement Rule 1.3 – These Rules require *solicitors, RELs, RFLs, recognised bodies* and their *managers* and *licensed bodies* (in respect of their *regulated activities*) in *private practice* in England and Wales to take out and maintain professional indemnity insurance with *qualifying insurers* with effect from 1 October 2012. Appendix 1 – SRA minimum terms and conditions of professional indemnity insurance Clauses 1.5, 1.7, 2.1 and 6.9 include references to "regulated activities" in relation to licensed bodies.	Licensed bodies are only required to have professional indemnity insurance cover in respect of their "regulated activities". This term is defined in the Glossary (see above) and includes 'any other legal activity'. Any change to the activities that are regulated by the SRA will affect the indemnity insurance requirements.
7	**SRA Compensation Fund Rules 2011**	
	Rule 3 – Grants which may be made from the Fund **3.4** For any grant to be made out of the Fund	The Compensation Fund will only cover defaulting licensed bodies where

	(save in respect of a grant made under rule 5), an *applicant* must satisfy the *SRA* that: **(a)** he has suffered or is likely to suffer loss in consequence of the dishonesty of a *defaulting practitioner* or the *employee* or *manager* or *owner* of a *defaulting practitioner*; or **(b)** he has suffered or is likely to suffer loss and hardship in consequence of a failure to account for money which has come into the hands of a *defaulting practitioner* or the *employee* or *manager* or *owner* of a *defaulting practitioner*, which may include the failure by a *defaulting practitioner* to complete work for which he was paid; in the course of an activity of a kind which is part of the usual business of a *defaulting practitioner* and, in the case of a *defaulting licensed body*, the act or default arose in the course of performance of a *regulated activity*. There are further references to "*regulated activity*" in rules 6.1, 8.1, 9.2 and 10.4.	losses are incurred in the course of performance of a "regulated activity". This term is defined in the Glossary (see above) and includes 'any other legal activity'. Any change to the activities regulated by the SRA will affect the question of whether the activity is covered by the Compensation Fund.

Annex 2

SRA Amendments to Regulatory Arrangements (Multi-disciplinary Practices) Rules [2014]

Preamble

Rules dated [date of approval by LSB] made by the Solicitors Regulation Authority Board under Part I, Part II, section 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985 and section 83 of, and Schedule 11 to, the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

Rule 1

In paragraph 3.2 (a) of the SRA Principles 2011, after "*approved regulator*" insert "or carrying on any other activity that is not precluded by the terms of your authorisation from the firm's *approved regulator"*.

Rule 2

Chapter 13 of the SRA Code of Conduct 2011 shall be amended as follows:

(a) in paragraph 13.1, replace "2 to 10" with "13.2 and 13.7 to 13.11";

(b) replace paragraph 13.10 with:

"**13.10** Where in accordance with this chapter, the requirements of the Code apply to a *licensed body*, this Code applies to the *regulated activities* carried on by the body."; and

(c) insert a new paragraph 13.11 as follows:

"**13.11** Where the *licensed body* is an *MDP,* the Code applies to the body, any *solicitor*, *REL* or *RFL* who is a *manager*, *employee* or *owner* of the body and any other person who is a *manager* or *employee* of the body as follows:

(a) in relation to any *regulated activities;* and
(b) in relation to any other *non-reserved legal activities*:
    (i) outcomes 1.7, 1.9 to 1.11, and 10.6 apply to the body; and
    (ii) outcomes 1.7, 1.9 to 1.11, chapters 4, 10, 11 and 13 to 15, apply to a *solicitor*, *REL* or *RFL* who is a *manager*, *employee* or *owner* of the body."

Rule 3

In rule 4.2 of the SRA Accounts Rules 2011, replace "those activities for which the *MDP* is regulated by the *SRA*" with "*your regulated activities*".

Rule 4

The SRA Practice Framework Rules 2011 shall be amended as follows:

(a) in Rule 1.1, replace sub-paragraph (d)(i) with:

"**(i)** *reserved legal activity* of a sort the firm is authorised by the firm's *approved regulator* to carry out or any other activity that is not precluded by the terms of your authorisation from the firm's *approved regulator*; or";

(b) in Rule 2.1, replace sub-paragraph (d)(i) with:

"**(i)** *reserved legal activity* of a sort the firm is authorised by the firm's *approved regulator* to carry out or any other activity that is not precluded by the terms of your authorisation from the firm's *approved regulator*; or";

(c) in Rule 3.1, replace sub-paragraph (c)(i) with:

"**(i)** *reserved legal activity* of a sort the firm is authorised by the firm's *approved regulator* to carry out or any other activity that is not precluded by the terms of your authorisation from the firm's *approved regulator*; or";

(d) in Rule 6.1, delete sub-paragraphs (e), (f) and (g); and

(e) in Rule 7.1, delete sub-paragraphs (e), (f) and (g).

Rule 5

Replace the guidance notes to Rule 7 of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 with:

"Guidance note

(i) If a licensed body carries out a range of legal and non-legal activities (a multi-disciplinary practice or "MDP") the SRA's jurisdiction will not generally extend to cover the "non-legal" activities of the licensed body (unless covered by a specific condition on the licence). Such non-legal activities may be regulated by another regulator, and some activities may not fall within the regulatory ambit of any regulator. The SRA's jurisdiction may also not extend to some non-reserved legal activities in accordance with the terms of the licence.".

Rule 6

The SRA Handbook Glossary 2012 shall be amended as follows:

(a) replace the definition of "**authorised activities**" with:

"authorised activities

means:

(i) any *reserved legal activity* in respect of which the body is authorised;

(ii) any *non -reserved legal activity* except, in relation to an *MDP*, any such activity that is excluded from *regulated activity* on the terms of the licence;

(iii) any other activity in respect of which a *licensed body* is regulated pursuant to Part 5 of the *LSA*; and

(iv) any other activity a *recognised body* carries out in connection with its *practice*.";

(b) after the definition of "**non-registered European lawyer**" insert:

"**non-reserved legal activity**

means a legal activity that falls within section 12(3)(b) of the *LSA.*";

(c) replace the definition of "**regulated activity**" with:

"regulated activity

means:

(i) subject to sub-paragraph (ii) below:

(A) any *reserved legal activity*;

(B) any *non-reserved legal activity* except, in relation to an *MDP*, any such activity that is excluded on the terms of the licence;

(C) any other activity in respect of which a *licensed body* is regulated pursuant to Part 5 of the *LSA*; and

(ii) in the *SRA Financial Services (Scope) Rules*, an activity which is specified in the *Regulated Activities Order*."; and

(d) replace the definition of "**out-of-scope money**" with:

"**out-of-scope money**

means money held or received by an *MDP* in relation to the *MDP's regulated activities*."

Rule 7

These amendment rules shall come into force on 31 October 2014 or the date of approval by the Legal Services Board, whichever is the later.

Annex 3

Multi–disciplinary practices - policy statement

The regulation of non-reserved legal activity

1. A multi-disciplinary practice (MDP) is a licensed body that combines the delivery of reserved legal activities with other legal and other professional services. 'Reserved legal activity' and 'legal activity' have the meaning prescribed by s12 of the Legal Services Act 2007(LSA).

2. When licensing an MDP, our approach to the regulation of non-reserved legal activity performed by non-legal professionals will be a flexible one - driven by the risks posed by the particular circumstances. However, we will exercise this particular discretion having regard to the principles set out in this statement.

3. The context when any particular non-reserved legal activity will be excluded from SRA 'regulated activity' is that:

    a) Reserved activity will always be SRA regulated

    b) The MDP as a whole will be authorised and regulated by the SRA. The MDP and those who own it and work within it will need to comply with the terms of the SRA Authorisation Rules for Legal Service Bodies and Licensable Bodies, as well as with the SRA Principles and other authorisation and practising requirements applicable to licensed bodies and their owners managers and employees as set out in the SRA Handbook. For example, the SRA Disciplinary Procedure Rules will apply to all employees and managers. Information from across the MDP will be disclosable to the SRA in accordance with the provisions of s93 LSA and any misconduct of the firm or its members or employees in non-SRA regulated areas may be taken into account in relation to the firm's fitness to hold the licence, or compliance with conditions.

    c) Solicitors, RELs and RFLs will continue to be subject to personal regulation by the SRA. Other authorised individuals will be subject to the relevant personal requirements of their own regulator[25].

    d) However an activity that falls out of SRA regulated activity will not be subject to many of the other detailed provisions in the Handbook – including the professional indemnity insurance and Compensation Fund provisions, the Accounts Rules and many of the provisions in the SRA Code of Conduct.

4. Reserved legal activity and immigration legal activity will always be SRA regulated activity, as will those activities that are integral to them. Linked to this requirement is the obligation to act in the client's best interests and not to 'case split' in a way that removes appropriate protections or which will leave the client

[25] Note that S52 LSA provides that in any conflict between the rules of the Approved Regulator (an entity requirement) and the rules of another regulator (an individual requirement) the entity requirement prevails.

confused as to the regulatory position. The following is a non- exclusive list of activity that we prescribe as integral to reserved legal activity or immigration activity when carried out within the MDP:

- Claims management, when the MDP is instructed to conduct the litigation
- Administering an estate when the MDP is acting on the grant of probate
- Legal advice on liability or quantum when the MDP is instructed to conduct the litigation
- Providing employment advice on a client's right to enter or remain in the UK when the MDP is acting for the client in relation to the visa application.
- 'Administering' a client's conveyancing matter whilst the MDP is instructed to draft the reserved instruments

5. We are particularly concerned that cases involving the provision of reserved legal activities do not move between regulated and unregulated services in a way that causes detriment. However the same principle will also apply when an authorised individual is providing unreserved legal activity in the same matter as another professional

Subsidiary but necessary

6. Where the non–reserved legal activity is 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), then subject to any risks posed in the particular case we will generally be prepared to agree to exclude this from the description of SRA regulated legal activity on the licence. Examples could include an IT consultant whose work may from time to time involve 'legal activity' such as providing advice on installing a new IT system that includes compliance with data protection legislation, or a human resources consultant who designs new disciplinary systems for firms which need to include procedures that are compliant with equalities legislation. As the MDP as a whole will be required to comply with the SRA Principles, this will include a duty to ensure that the matter would be referred to an authorised individual when it is in the client's interests to do so, as well as to ensure the accuracy and competence of any advice provided.

7. The greater the amount of legal activity involved, and/or the closer it may be to reserved legal activity, the less likely we will be to exclude this activity from SRA regulated activity on this ground. So, for example, we are unlikely to exclude will writing, general legal advice, debt recovery, legal advice on debt or personal injury liability or the work of a chartered accountant who regularly acts in disputed tax matters from SRA regulation under this heading (but the suitable external regulation exception may apply).

8. We think it important in the interests of certainty for providers and the effectiveness and transparency of supervision and enforcement by the SRA that a description of the activities that are excluded from SRA regulation is contained on the terms of the licence.

9. Example 1: a firm of chartered surveyors wants to open a legal department to act in contested planning matters and apply to the SRA for authorisation as a licensed body. The normal work of the surveyor may from time to time involve providing what is effectively legal activity in relation to planning requirements.

We are satisfied that the applicant firm has to date successfully delivered this service outside of legal services regulation with no consumer protection issues and has in place appropriate arrangements to refer the client to the legal team (e.g. if the matter becomes contested or there is an issue of disputed law). We therefore agree to exclude this activity from SRA regulated activity. In this case, the relevant wording on the licence could read:

'The following will be SRA regulated activity:
-All reserved legal activity and immigration work
- All non–reserved legal activity except for any such activity carried out by a surveyor as a subsidiary but necessary part of the provision of surveying services

Suitable external regulation

10. Where there might be a substantial overlap between legal activity provided by a non -legal professional and the kind of legal work that an authorised individual[26] would also provide or would be expected to supervise, then we are likely to include the work as SRA regulated activity unless it is subject to suitable external regulation. Taxation advice is one such activity, but providing legal advice on transactions or disputes in the role of a general consultant and legal advice on debt or insolvency are others. In those cases, where providing legal advice could be said to be the core part of the service, we consider that extra protections should be in place.

11. For us to accept that an external regulatory scheme would be suitable for these purposes, we will need to be satisfied that compliance with the scheme will ensure that the SRA principles will be complied with. These principles are set out below, together with any specific comments on what we would expect to see in this context.

1. **Uphold the rule of law and the proper administration of justice**

2. **Act with integrity**

3. **Not allow your independence to be compromised** (We would expect rules to provide for referrals to be made in the best interests of the clients and for any interest the firm has in the referral to be declared).

4. **Act in the best interests of each client** (We would expect rules to protect clients in the event of conflicts of interest, and rules to ensure the confidentiality of clients' information).

5. **Provide a proper standard of service to clients**

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

(We would expect there to be arrangements for qualification, for competence of service, and for supervision of staff).

6. **Behave in a way that maintains the trust the public places in you and in the provision of legal services**

7. **Comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner**

   (We would expect the regulatory scheme to provide for complaints, disciplinary procedures and enforcement. We would not consider external regulation to be suitable unless there are effective mechanisms to enforce the rules. If, for example, a member can escape liability by simply resigning their membership and yet continue in practice, this could not provide an effective remedy. We would also expect the regulator to maintain regular reporting requirements and to carry out assurance checks/visits on a risk basis).

8. **Run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles**

9. **Run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity; and**

10. **Protect client money and assets.** (We would expect rules to make specific arrangements for protecting client assets and money).

We agree that we need to apply the text flexibly in order to achieve a purposive approach, and there may be some circumstances where we may need to impose extra conditions to address what may be gaps in the external regulation.

We have already reviewed the schemes of the following regulators using these principles and are satisfied that they currently meet the test:

The Association of Chartered Certified Accountants
The Association of Taxation Technicians
The Chartered Institute of Taxation
The Financial Conduct Authority
The Insolvency Practitioners Association
The Institute of Chartered Accountants in England and Wales
The Royal Institution of Chartered Surveyors

Authorised individuals

12. Subject to paragraph 13 below, any legal activity carried out by authorised individuals or under their direction or supervision will remain SRA regulated activity.

13. However there will be circumstances where the non-reserved legal activity will be provided under suitable external regulation by a mixed team of legal and non-legal professionals and that activity will be under the direction and supervision of the non –legal professionals. Therefore, if allowed on the terms of the MDP licence, an authorised individual may provide a non–reserved legal service as part of a mixed team and be covered by the suitable external regulation exception where all of the following conditions are met:

    - the activity is carried out at the direction and under the supervision of the non-authorised person (i.e. the non-legal professional)
    - the authorised person is not providing a reserved service in the same matter
    - the authorised person is not holding client money.

14. In the circumstances outlined in paragraph 13, although the work will not be SRA regulated activity, the SRA Principles will continue to apply to the work of the authorised individual. These principles include acting in the best interests of each client, upholding the rule of law and the administration of justice and not allowing your independence to be compromised. The authorised individual will remain subject to the SRA Disciplinary Rules – and in practice disciplinary action is often taken on the basis of a breach of a principle rather than breach of a detailed rule. If that individual is a solicitor, REL or RFL then the following provisions of the SRA Code of Conduct will also apply to them in conducting this activity:

    Chapter 1 – the following outcomes: O1.7, O1.9 to O1.11
    Chapter 4 (confidentiality and disclosure) – the entire chapter
    Chapter 10 (you and your regulator) –the entire chapter
    Chapter 11 (relationships with third parties) –the entire chapter
    Chapters 13 to 15 (application, waivers and interpretation)

15. In addition the solicitor, REL or RFL will be under a general duty not to act where there is a conflict of interest unless the client has given informed consent and appropriate safeguards can be put in place that are consistent with the SRA Principles. This will include acting in the client's best interests – in these circumstances this includes an element of an objective test i.e. that a reasonable onlooker would regard your view that you are acting in the clients best interests as a reasonable one in light of the information available at the time.

16. In deciding whether to allow this exception, the factors that we will consider will include the firm's arrangements for clear terms of engagement and for deciding when it will be in the client's interests for the matter to be supervised by an authorised individual; as well as the nature of their client base (for example are the clients principally corporate and professional clients who are likely to have experience of purchasing legal services and other professional services?).

17. The MDP should ensure that the activity is carried out at the direction and under the supervision of an authorised individual when it is in the client's interests to do so – for example when it is important for the work to attract legal professional privilege.

18. Example 2: An accountancy firm is regulated overall by the Institute of Chartered Accountants in England and Wales (ICAEW). All of its activities are subject to the ICAEW Code of Ethics, professional indemnity insurance provisions, and (if the activity forms a significant part of turnover) the inspection regime. As well as

providing taxation advice and assistance in taxation disputes, the firm provides general consultancy services that are likely to include legal activities which would fall into the normal range of what a lawyer would deliver .We agree that a mixed team exception is appropriate.

If the firm is authorised, the description on the licence could read:

"The following will be SRA regulated activity:

- *All reserved legal activity and immigration work*
- *All legal activity prescribed by the SRA as integral to reserved activity*
- *All non–reserved legal activity performed under the supervision of an authorised individual*
- *All non- reserved legal activity performed by an authorised individual (except where: (a) the authorised individual is operating at the direction and under the supervision of a non- authorised individual as part of a team providing accountancy, auditing or business consultancy services* ***and*** *(b) the authorised individual is not providing a reserved service or holding client money in the same matter. ."*

19. The background to this decision will be that the rest of the firm's non-reserved 'legal activity' will be regulated by ICAEW. We would place a condition on the licence that the MDP has a duty to notify us if their regulatory position changes or there is disciplinary action taken against them by another regulator.[27]

Clients, complaints and the Legal Ombudsman

20. Any MDP must have procedures in place to ensure that clients are aware of their regulatory position – and which activity is SRA regulated and which is not in their particular case.

The exclusion of work from SRA regulated activity does not impact on the right of a client to take a complaint to the Legal Ombudsman or on the duties of the entity in relation to complaints. The following duties in the SRA Code of Conduct will apply to all activity engaged in by the MDP, whether or not it is 'SRA regulated' activity:

- to inform the client in writing at the outset of the matter of their right to complain and how complaints can be made (O1.9);
- to inform the client in writing, both at the time of engagement and at the conclusion of the complaints procedure of their right to complain to the Legal Ombudsman, the timeframe for doing so and the full details of how to contact the Ombudsman (O1.10);
- to deal with clients' complaints promptly, openly, fairly and effectively (O1.11); and
- to co-operate fully with the SRA and the Legal Ombudsman at all times (O10.6).

The Compensation Fund

21. Under the SRA Compensation Fund Rules 2011, the Fund will only cover defaulting licensed bodies where losses are incurred in the course of

[27] Note the firm may well have additional regulators, for example the FCA for investment advice

performance of a “regulated activity”. Therefore, defaults will not be covered if they fall outside of SRA regulated activity.

Professional Indemnity Insurance

22. We would prefer the same insurer across the MDP to avoid consumers being prejudiced by disputes over which policy covers a particular situation. We would expect that all legal activity whether SRA regulated or within the external regulation exception should be covered by a policy that meets the SRA’s minimum terms and conditions. However, we will consider requests for waivers on a case-by case basis where acceptable alternative arrangements may be in place.

Turnover

23. Appendix 3 to the SRA’s fee determination for licensed bodies defines turnover for the purposes of SRA periodical fees as: “a firm’s total estimated gross fees arising from regulated activities undertaken from offices in England and Wales……”

24. Non-reserved legal activities that fall out of SRA regulated activity will therefore not be included in turnover for the purpose of calculating periodical fees.

Annex 4

MDP consultation summary and response

1. Introduction

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

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

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

2. Overview and next steps

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

- the activity not being carried out or supervised by an authorised individual[28];
- the type of activity either being subject to suitable external regulation or being a minor and subsidiary part of a non–legal service;
- the ABS having procedures in place to ensure that clients are aware that the activity is not SRA regulated; and
- the activity not being of a type that the SRA defines as integral to the provision of reserved services.

2.2. The consultation paper also discussed the links between this issue and other emerging features of a more dynamic legal market. It considered the impact any changes to rules for ABSs might have on the separate business rule as it applies more generally, including to 'traditional' solicitor firms, and outlined plans for a review of that rule and of current restrictions on the range of activities that recognised bodies can carry out. The consultation also clarified the individual regulatory obligations of solicitors practising in authorised non-SRA firms.

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

2.4. Throughout the responses and regardless of the group that respondents fell into, there was a strong desire that consumers should not suffer any detriment as a result of any changes that are brought in. Additionally, a number of

[2828] As defined in the SRA Glossary –meaning an individual referred to in s18(1)(a) LSA who is authorised to provide one or more reserved legal activities

respondents wanted us to ensure that consumers would not be without redress in the event of regulatory reform and encouraged us to discuss our proposals fully with the Legal Ombudsman.

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

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

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

2.8. There were a number of ways in which we engaged and sought views in addition to the consultation. SRA Executive Director Crispin Passmore made a speech outlining the proposals on 2 April 2014[29] which was accompanied by a press release, Q&A, and invitation to interested parties to contact us in relation to the issues in advance of the consultation. We met with a number of individual providers and potential MDPs to discuss the issues. We also set up an external reference group which included: the Law Society, two local law societies, Legal Services Board (LSB), the LSB Consumer Panel, the Legal Ombudsman, the Department for Business, Innovation and Skills, the Institute of Chartered Accountants in England and Wales (ICAEW) and academics to discuss the proposals. This group met twice during the consultation period. We met separately with the City of London Law Society and attended the Law Society Regulatory Affairs Board. The Law Society addressed the SRA Board on the MDP proposals at the meeting on 6 July 2014.

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

2.10. The changes will increase opportunities for practitioners to provide multi professional services, to reach clients in new ways, and attract investment without having to set up expensive separate business structures. The next

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

stage of our reforms will aim to assist recognised bodies in providing a wider range of services without the need to become ABSs.

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

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

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

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

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

2.16. Thirdly, any decision to classify any particular legal activity as not included within SRA 'regulated activity' does not impact on the right of a client to take a complaint to the Legal Ombudsman. As the Ombudsman made clear in his response, it may consider any complaint where legal activity is involved. We can confirm that the duties in the SRA Code of Conduct to co-operate with the Ombudsman and to inform the client of their rights to go to the Ombudsman will apply to all legal activity engaged in by the MDP, regardless of whether it is 'SRA regulated' activity.

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

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

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

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

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

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

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

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

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

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

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

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

2.29. A number of the respondents criticised what was stated to be the complicated nature of the proposals. This was linked in their view to a lack of certainty which would impact on clients who could not be expected to understand the regulatory position. We have simplified the proposals by excluding legal activity performed as a subsidiary and necessary part of a non-legal professional from SRA regulated activity, and by simplifying the provisions for mixed teams within the suitable external regulation exception. Nevertheless, whilst we acknowledge that our policy contains a number of different elements, it is important in our view to distinguish three situations:

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

ii. *The terms of any licence issued to an MDP.* Whilst the policy will be used to arrive at the terms of the licence, the intention is that the licence itself will be specific as to which activities are SRA regulated and which are not. Therefore, for example, the licence will list the categories of non-legal professional in the individual MDP whose 'subsidiary but necessary' legal activity will be excluded from SRA regulated activity. The MDP will

sometimes have to exercise judgement in individual cases (for example, as to when a case should be referred to or supervised by an authorised individual) but this is no different in type to the myriad of other judgements that professionals have to take when applying regulatory rules and principles.

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

Next steps

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

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

3. The Responses

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

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

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

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

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

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

3.6. The ICAEW stated that it considers the SRA to be struggling to 'reconcile its role as a regulator of firms versus that of a regulator of individuals' and recommends that we reconsider what we define as a 'legal service', setting out clearly the standards expected of regulated individuals versus regulated entities. ICAEW proposes that a change of terminology may be an appropriate aid to such a distinction, stating that “the ABSs that are beginning to emerge in the market are innovative and bring very different product offerings. But the impact of a widely drawn legal services definition is to bring the traditional operational and non-regulated aspects of their business under the regulation of the SRA under current rules. An ABS therefore which included a car servicing capability would bring into regulation the legal advice given by a car mechanic in issuing an MOT under the Road Traffic Acts, or a doctor in a surgical practice committing a patient under the Mental Health Act could have this decision regulated by the SRA.”

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

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

SRA response

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

we will be impeding the development of MDPs in a way that breaches those duties and principles.

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

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

3.12. It is worthwhile considering the potential implications if non-reserved legal activities provided by authorised individuals within an ABS were not to be 'regulated' at all. Would it mean that the lawyers, managers or employees involved in such work within the ABS were not bound by the regulatory principles or by duties to co-operate with the SRA or their own individual regulators, or were not bound to co-operate with the Legal Ombudsman and could cause the ABS to breach the terms of its licence with impunity? Would it mean that the solicitor within an SRA authorised firm could, for example, sit in front of the client and say, in effect, 'normally I act as a solicitor and I am bound by the SRA principles and disciplinary rules, but I am not acting as one when I provide this legal advice to you, and therefore you have no comeback to me if I act unprofessionally other than by finding another solicitor and taking me to court'?

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

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

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

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

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

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

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

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

3.17. The Law Society consider that the proposed exception is 'ill-thought out, complex and likely to prove near impossible to implement' as well as likely to cause confusion to clients due to the different regulators involved. It suggests that the proposal could lead to firms offering services in circumstances which would not have been permissible if a solicitor were carrying out the service, and that it would not remove the need for a separation of legal work based on the provider, arguing that such an arrangement will only be able to work in larger firms. It calls for clarity around both the application (or not) of legal professional privilege in circumstances where legal work is carried out in a regulated entity by a non-lawyer and around the role of the Legal Ombudsman. It also queries the proposed approach to calculating firm fees solely on the basis of regulated activity, countering that we will regulate the whole ABS - albeit to a lesser extent. The Law Society agrees with the proposal that a firm's indemnity insurance should meet the SRA's minimum terms and conditions in relation to all legal work.

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

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

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

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

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

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

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

SRA response

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

3.25. Therefore we do not accept that the option of continuing to insist that all legal activity must be SRA regulated necessarily makes things simpler either for an MDP (of any size) or for clients. Of course, non-legal activity is not SRA regulated activity within an ABS under current rules. In relation to legal activity, the reality is that, given the wide definition in the LSA and the enormous range of areas covered by statutory provisions and procedures, then advice given by a non-legal professional or a multi-disciplinary team will slip in and out of ‘legal activity’, although the great bulk of this advice will usually be of a non-legal nature and be regulated elsewhere. Therefore the client is going to be faced

with a situation where there will be different or multiple regulation of the same piece of work in any event. It is unclear how, for example, a client who has instructed a non-legal professional such as a surveyor is expected to work out which bit of the advice is 'legal activity' (and therefore SRA regulated) and which is not.

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

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

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

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

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

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

3.31. Those calling for a more liberal approach to the regulation of MDPs propose that services that have never been regulated in an MDP as legal activities and

which clients have never seen as such should not now become subject to SRA regulation as they view this as creating an unnecessary burden. Instead, they encourage the creation of as flexible a framework as possible, as whilst there is agreement that an external regulator must have a code of conduct, it does not need to be as prescriptive as that proposed in the consultation document.

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

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

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

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

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

SRA response

3.36. As we stated in the consultation paper, the SRA is not purporting to judge the adequacy or otherwise of the arrangements of external regulators for the purpose for which they were created. We are trying to assess whether there is enough of a fit with the SRA regime such that applying both detailed set of regulations would lead to conflict and duplication, and that relying on the

external regulation will provide adequate consumer protection in the particular context of the delivery of legal services. No more precise or workable test for addressing this problem has been put forward by respondents, and our proposed test has the logic of being based on the SRA Principles with which an ABS has to comply in any event. Nevertheless, we agree that we need to apply the test flexibly in order to achieve a purposive approach, and there may be some circumstances where we may need to impose extra conditions to address what may be gaps in the external regulation.

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

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

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

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

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

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

3.41. The ICAEW considered that, by regulating all areas of legal activity, the SRA was potentially bringing in work carried out by other professions that it had no competence to regulate. It stated that whilst the definition of non-reserved legal activities was so widely drawn, it could list every single activity and service provided by an accountancy firm which invariably has some form of law attached to it. It suggested that this proposed category of exclusion from

detailed SRA regulation should be expanded and linked to the normal lack of involvement of a solicitor in these activities. ICAEW suggested, for example, that legal activity performed by professionals such as undertakers and renting agents should not be brought into regulation otherwise it would discourage these sorts of bodies for applying to become an ABS.

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

3.43. A number of respondents felt that a defined list of services would not be effective in practice and could have the unintended consequence of being too restrictive and impeding innovation. The Legal Services Consumer Panel suggested that a better approach might be to develop guidance which includes a non-exhaustive list on what is more likely to be granted a waiver, whilst others suggested it would be better to start from the premise of what the SRA will regulate and, by default, other activities will not be subject to its regulation.

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

SRA response

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

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

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

3.47. The Law Society considers that the exemption we describe would appear to be almost impossible to apply, suggesting that 'a solicitor cannot choose to ignore parts of the Code for certain pieces of work, particularly those as fundamental as the outcomes on conflicts'. It is of the opinion that we ought to have an oversight of all aspects of the legal work provided by the firm. Where legal work is undertaken by a solicitor then it ought to be regulated. The Society feels it is unclear how the SRA can regulate the person but not the legal work they undertake. It states that if the SRA sends the signal that it will not look at

particular areas in which legal advice has been involved, there is an increased danger for professional duties to come under pressure or be compromised. Finally, the Society thinks that it is unclear what will happen if a person's role changes from subsidiary to substantial.

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

3.49. Some respondents agreed with the requirements generally, with one respondent taking comfort from our proposal to introduce a 'rigorous' process. However, another respondent stated that whilst they agree with the majority of the proposed requirements, they consider the requirement that the authorised individual's involvement be subsidiary as impractical and unnecessary, suggesting that it would not be possible either for the MDP or the client to identify at what point in time lawyer involvement ceases to be 'subsidiary' with any meaningful accuracy.

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

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

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

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

- the potential for client confusion;
- a view that where legal work is undertaken it should be regulated by the SRA;
- a concern that it would become an incentive for firms to have as little work done by solicitors as possible;

- a concern that what amounts to 'subsidiary' service might be difficult to measure
  objectively;
- concern that the proposal has the potential to produce anomalous results for MDPs where the activities undertaken by lawyers and non-lawyers may overlap;
- a belief that this would add yet a further complication to what appears to be a fairly complicated process; and
- a view that there will not always be clear division between the services offered by an MDP, with a need for clarity about which services are covered by which regulator, making it more difficult, not less, to avoid client confusion.

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

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

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

SRA response

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

3.57. In a related context, we also note that the Law Society has provided guidance on how practitioners can 'unbundle' their family services for clients – providing limited services restricted to particular activities within a case without going on the record, with the client therefore having regulatory protection in place only in relation to those limited parts of the same case.[30]

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

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

3.60. An activity will be SRA regulated if it is carried out at the direction and under the supervision of an authorised individual. This wording matches the definition

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

in s190 LSA of the circumstances where legal professional privilege applies. The MDP should ensure that the activity should be covered by legal professional privilege when it is in the client's interests to do so.

3.61. We may agree on the terms of the MDP licence that the activity carried out by a mixed team will be covered by suitable external regulation, provided that all of the following conditions are met:
- the activity is led and supervised by the non-legal professional
- the authorised individual is not providing a reserved service in the same matter
- the authorised individual is not holding client money.

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

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

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

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

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

3.66. There were respondents who countered that it is 'fairly simple to identify a boundary between the reserved and non-reserved legal work and to explain this

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

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

SRA response

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

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

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

3.71. In this regard we have noted that ICAEW's response conflicts with its own practice in that it regulates estate administration as part of authorised work, along with the grant of probate. In its application to the LSB to become an approved regulator and licensing authority [31] ICAEW stated: 'Conscious of the need to ensure that the Act's regulatory objectives of consumer protection and protection of the public interest are fostered, ICAEW has elected to include estate administration within the scope of its regulation where this activity is conducted by an accredited probate firm'.

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

3.73. We have decided to allow non-reserved debt recovery activity to be included within the suitable external regulation exception. Whilst we consider that this activity should be regulated within an SRA authorised entity, we will accept FCA

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

regulation of consumer credit activity as suitable external regulation, thus avoiding potential significant duplication. We are conscious that maintaining a requirement that all pre litigation activity had to be included within SRA regulation would be likely to have led to such work being put in a separate business rather than providing any extra protection.

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

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

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

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

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

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

SRA response

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

3.80. The SRA Amendments to Regulatory Arrangements (Multi –disciplinary practices) Rules [2014] therefore make the necessary changes to the SRA Glossary, the Accounts Rules, the Code of Conduct and the notes to the SRA Authorisation Rules to reflect the new power to exclude some non –reserved

legal activity from the definitions of ‘regulated activity’ and ‘authorised activity’ on the MDPs licence. They amend the application provisions of the Code of Conduct to reflect the proposals on individual regulation of solicitors, RFLs and RELs working in mixed teams. They also implement proposals to clarify the Practice Framework Rules for solicitors working in non SRA authorised entities and for those providing immigration services in SRA authorised bodies. Both of these proposals were generally supported by those that responded to them.

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

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

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

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

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

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

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

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

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

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

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

SRA response

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

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

3.90. We do not consider it to be in the client’s interests for the issue of the scope of the right to complain to the Ombudsman to be determined by whether or not a matter is within SRA regulated activity. It is important that clients are made aware of those rights, and we will ensure that MDPs will remain under the duty in Outcome 1.10 of the SRA Code of Conduct to inform clients of those rights and to cooperate with the Ombudsman even if the activity is not SRA regulated.

Outcomes 1.9 (informing clients of their right to complain) and 1.11 (complaints handling) will also apply to all of their activity.[32]

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

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

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

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

3.94. Those who disagreed with the analysis argued that they do not consider that 'the burden of regulation is reduced' by implementing option one as, under option 1, an entity would still have to undertake a detailed analysis of the respective sets of rules and put controls in place to ensure it adheres to those rules as they already do under dual regulation. There was also some agreement with the Law Society's comment that SMEs may find option 2 the more attractive.

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

SRA response

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

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

a greater number of options which will make it easier overall for MDPs to become authorised.

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

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

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

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

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

- The list of permitted and prohibited separate business activities should be removed, and instead the SRA should provide stringent rules surrounding information provided to clients and members of the public.
- There should be a re-examining of the outcomes sought by the rule and of the regulatory framework.
- Changes must ensure that entities are clear about their regulated status.
- Any changes should mirror the MDP proposals as much as possible.

SRA response

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

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

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

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

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

SRA response

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

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

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

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

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

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

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

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

SRA response

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

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

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

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

3.115. These issues are discussed in more detail in the final impact statement *(insert link).*

Respondent information

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

Breakdown of respondents

- The Law society 1
- Local law society 13
- Law firm/other practice 12
- Personal response 2
- Representative group 7

- Other 1

Respondents to the consultation

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

- Alexander & Co. Solicitors LLP
- Asian Lawyers GB
- Birmingham Law Society
- Building Societies Association
- Cambridge and District Law Society
- Chester & North Wales Incorporated Law Society
- City of London Law Society
- Clifton Ingram LLP
- Devon and Somerset Law Society
- Gill Akaster LLP
- Harrison Morgan Solicitors
- ICAEW
- Irwin Mitchell
- Junior Lawyers Division
- Khiara Law LLP
- Law Centres Network
- Legal Ombudsman
- Legal Services Consumer Panel
- Maurice Guyer
- Middlesex Law Society
- Newcastle upon Tyne Law Society
- Northamptonshire Law Society
- Plymouth Law Society
- Sole Practitioners Group
- Southend on Sea District Law Society
- Sunderland Law Society
- Surrey Law Society
- The Law Society
- Tunbridge Wells, Tonbridge & District Law Society
- Winston Solicitors LLP

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