Application for the approval of regulatory arrangements

An application made by the Solicitors Regulation Authority (SRA) Board to the Legal Services Board (LSB) under Part 3 of Schedule 4 to the Legal Services Act 2007 (LSA) for approval of changes to the SRA's regulatory arrangements

August 2018

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Section A: What are we proposing?

Background

1. This application to approve our new regulatory arrangements is the culmination of our Looking to the Future reform programme.

2. Through our reform programme, we will implement a regulatory approach that will be targeted, proportionate and fit for purpose in a diverse, fast-changing and dynamic legal services market.

3. We first set out our new regulatory approach in our Looking to the Future policy statement[1] in 2014 and updated in 2015. We said then that we need to make sure we are keeping pace with a fast-changing legal services market. Our reform programme is designed to make sure we are meeting the needs of the public by regulating solicitors and law firms in the right way. We said that we want to make:

    - our rules focus on what matters – high professional standards
    - it easier for the public to access legal services
    - it easier for solicitors and firms to do business.

4. Since publishing our policy statement, we have developed our approach in detail through a rigorous programme of research, stakeholder engagement and several consultations.

5. Our new regulatory arrangements will:

    - set clear, high professional standards for those we regulate
    - offer flexibility, both for providers in how they structure their businesses and for consumers in how they choose to access legal services
    - keep up with rapid developments in the market while also maintaining appropriate protections for consumers and the public
    - be user friendly, so our rules can be understood by the people and businesses we regulate and their customers.

[1] Approach to regulation and its reform, SRA, November 2015, available at: https://www.sra.org.uk/sra/policy/regulation-reform.page.

6. The key policy changes we are introducing to the way solicitors can practise will:

    - allow solicitors to provide unreserved legal services to the public from businesses that are not authorised by the SRA or regulated by any other legal services regulator (non-LSA regulated business)
    - allow individual self-employed solicitors to provide reserved legal services to the public, subject to certain restrictions.

What changes are we making?

7. This application consists of:

    - a new set of Principles
    - a Code of Conduct for solicitors, registered foreign lawyers (RFLs) and registered European lawyers (RELs)
    - a Code of Conduct for firms
    - simplified Accounts Rules
    - rules 4.3 and 4.4 of the SRA Transparency Rules
    - corresponding changes to our rules and regulations to support our new approach to regulation.

8. We have also included our new Enforcement Strategy, our updated Multi-Disciplinary Practice (MDP) Policy Statement and examples of drafts of our new guidance with this application. These pieces of guidance will support the new regulatory arrangements set out in this application, but we are not seeking LSB approval for these documents as they are not regulatory arrangements.

9. The consultation responses and final impact assessments to the four consultations we undertook to inform our approach are listed at paragraph 38 and available on our website[2]. The consultation responses and impact assessments support this application by setting out in detail:

    - the rationale and evidence for our new regulatory arrangements
    - our detailed assessment of the impact of the changes we are making for those we regulate, consumers and the legal services market
    - our full response to the comments we received about the new regulatory arrangements.

10. In developing our new approach to how we regulate, we have decided we will no longer refer to our rules as the 'SRA Handbook'. We wish to move away from a name that suggests a stagnant rulebook. Instead, we want an alternative name that conveys a more flexible collection of principles, codes and rules. We will finalise the collective name of the new rules following user testing.

11. The full list of rules is on page 14 of this application. The rules we are submitting for approval contain some minor amendments to the versions made by our Board in May 2018. These amendments, along with any other

[2] https://www.sra.org.uk/sra/policy/future/looking-future.page.

amendments that may be required during the approval process, will be made by the SRA Board before the rules take effect.

12. In developing our new rules, we have sought to reduce unnecessary regulation – we have removed prescriptive drafting to produce requirements that:

    - are clearer and more accessible, with duplication removed
    - are easier to understand in terms of purpose and effect
    - are targeted at the issues that really matter
    - operate at a higher level, and so are less detailed and less prescriptive, providing flexibility to apply to changing circumstances.

13. Where possible, we have moved guidance and detailed internal processes to sit outside our rules and we have simplified and reduced the length of the SRA Glossary.

14. The changes we are proposing to make to our regulatory arrangements broadly fall into two categories:

    Policy changes: We are removing restrictions we cannot justify and will allow more freedom for those we regulate to innovate and provide services to meet consumers' needs. Significant policy changes include:

    - A new approach to the SRA Principles and codes for solicitors, RELs, RFLs and firms.
    - Changes to our rules to allow solicitors to provide unreserved services to the public from a non-LSA regulated business.
    - Changes to our rules to allow individual self-employed solicitors (freelancers) to provide reserved legal services without being authorised as an entity.
    - New Accounts Rules, which include a new definition of client money.
    - New requirements for firms to have an authorised person who has practised for three years.
    - Changes to our assessment of character and suitability.
    - Transitional arrangements for the introduction of the SQE.
    - Some other less significant policy changes to some of our rules, for example, changes to some of our manager requirements.

    Simplification: Shorter, clearer rules focused on what matters. We have presented our requirements in a more coherent structure. For example, we now have a Code of Conduct for the individuals we regulate, a Code of Conduct for firms, and we have grouped all authorisation requirements in one set of regulations for individuals and another in a set of rules for firms.

Related areas of work not included in this application

15. This application does not cover changes we are making to our rules for professional indemnity insurance (PII) and the Compensation Fund. We consulted[3] on these changes between March and June 2018 and they will be the subject of a future application to the LSB.

16. Our reform programme includes our Better Information proposals[4] to ensure that more reliable, comparable information about solicitors and firms is available to consumers. Except for two specific provisions in the SRA Transparency Rules that are included in this application (rule 4.3 and rule 4.4), our Better Information proposals were the subject of a separate LSB application and which the LSB approved in August 2018[5].

17. We are also currently consulting on clarifying our approach to how concerns about a solicitor are reported to us. We will apply to the LSB for approval of any resulting changes to our rules later in the year.

18. We have not included any reference to the SRA Quality Assurance Scheme for Advocates in this application as we are planning to consult on a new approach to the regulation of criminal practice in early 2019.

[3] Protecting the users of legal service: balancing costs and access to legal services, SRA, March 2018, https://www.sra.org.uk/sra/consultations/access-legal-services.page.
[4] Looking to the Future: better information, more choice, our post consultation position, SRA, June 2018, https://www.sra.org.uk/sra/consultations/lttf-better-information-consultation.page.
[5] LSB Decision Notice, August 2018, http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/FINAL_Decision_Notice_Inc_Annexes.pdf.

Overall rationale for the project

19. Our reforms are designed to focus our activity on our core purpose of providing protection for the public and supporting the operation of the rule of law and the proper administration of justice.

20. We want to make sure that our regulatory arrangements reflect the high professional standards we expect of those we regulate. Setting and maintaining clear, high professional standards is fundamental to both good consumer protection and public trust and confidence in solicitors and law firms.

21. In addition, our current Handbook is long and complex. We have therefore reviewed all our rules to create a shorter, sharper, clearer set of regulatory arrangements.

22. To reflect the increasingly diverse range of business models, we currently have to rely on developing workarounds to the existing regulatory arrangements and have granted over 1,100 waivers in the past two years. This is not tenable in the longer term. Our code is clearly not reflecting the realities of the market. While we could have chosen to try to produce different codes for the different models and market segments that currently exist, this would have only been appropriate in the short term because the market is constantly changing.

23. Many we regulate agree and consider that the current Handbook duplicates other legislative and regulatory obligations, is too prescriptive and needs changing too often to keep up with changes to the market and/or is often out of date. The LSB's 2015 research on the cost of regulation[6] found that firms also think too much time is spent keeping up to date and complying with regulation. This, alongside PII and compliance with information requirements, are seen by the sector as the highest costs of regulation.

24. We are therefore introducing an individual code for solicitors, RELs and RFLs that will set the core standards we expect of solicitors no matter where or how they practise. This code will aim to make clear to every solicitor, RFL and REL what their professional obligations and responsibilities are to maintain the highest professional standards.

25. A separate code for firms will provide clarity about the systems and controls the firms we regulate need to have to provide good legal services for the

[6] The regulated communities' view on the cost of regulation, LSB, March 2015: https://research.legalservicesboard.org.uk/wp-content/media/Cost-of-Regulation-Survey-Report.pdf.

public. Firms that we authorise must also maintain and support high professional standards.

26. Together, they allow more flexibility for individuals and firms to decide how best to comply with our rules than is provided under our current prescriptive rulebook. They are about the standards and behaviours that must be at the heart of professional practice. They also provide the basis for us to act where solicitors fall short of the standards required.

27. In reviewing our rules, we have looked at the restrictions that exist and considered whether they can be justified. This includes the restrictions on where and how solicitors can practise.

28. Despite the significant size of the legal services market our work and research[7] tells us that many individual people and small businesses are unable to access legal services from a solicitor at a cost they can afford. Fewer than one in 10 people experiencing legal problems instruct a solicitor or barrister[8]. The picture is very much the same for small businesses, the majority of whom have little contact with solicitors or law firms. Over half of small businesses that experience a problem try to resolve it on their own. Accountants are consulted more often than lawyers when small businesses need advice[9]. This demonstrates that there is a substantial amount of legal need not currently being met by regulated lawyers, including solicitors.

29. We have a duty to consider how the way we regulate can help to address this, and to ensure that this gap is narrowed.

30. At the same time, the ways people find, access, and use legal services are changing. In response, solicitors, law firms and other organisations are offering new services in more innovative ways[10] and through new business models.

31. Although there is a core set of 'reserved legal activities' that can only be delivered by individuals regulated by one of the legal regulators, most legal services can be delivered outside of regulation. The LSA does not require

[7] Improving access - tackling unmet legal needs, SRA, June 2017, http://www.sra.org.uk/risk/resources/legal-needs.page.
[8] How People Resolve 'Legal' Problems, Professor Pascoe Pleasence & Dr. Nigel J. Balmer, for the LSB, May 2014, https://research.legalservicesboard.org.uk/wp-content/media/How-People-Resolve-Legal-Problems.pdf.
[9] The legal needs of small businesses, Kingston University for the LSB, October 2015, https://research.legalservicesboard.org.uk/wp-content/media/PUBLISH-The-legal-needs-of-small-businesses-19-October-2015.pdf.
[10] Innovation in legal services, A report for the Solicitors Regulation Authority and the Legal Services Board, Stephen Roper, Jim Love, Paul Rieger, Jane Bourke, July 2015, http://www.sra.org.uk/sra/how-we-work/reports/innovation-report.page.

unreserved legal activities to be regulated. There is an expanding alternative legal services market, providing everything from will writing to advice on commercial contracts and tax.

32. However, our existing rules restrict where and how solicitors can work. This was recognised by the Competition and Markets Authority (CMA) in its study[11] of the legal services market, which recommended that we provide greater freedom about where solicitors can practise.

33. We are also reforming the way solicitors qualify by introducing the Solicitors Qualifying Examination (SQE), which will make sure all solicitors meet consistent, high standards at the point of entry to the profession.

34. We are therefore modernising our approach to regulation to better meet the dual demands of widening access to the legal services market and a changing legal services market. This means removing any restrictions we cannot justify retaining.

35. For consumers, this work helps us to tackle the problem of lack of access to affordable legal services. Modernising our approach and removing restrictions will make is easier for people to get expert legal advice from solicitors that is of a high standard and potentially more affordable. An independent economic assessment[12] of the impact of our changes indicated that consumers can benefit from them, suggesting that the new regulatory arrangements will:

    - widen the variety, number of providers and ways of delivery for consumers to access legal services
    - allow some consumers to trade-off certain protections for other benefits
    - lead to more competition and innovation which might ordinarily be expected to deliver lower prices, alternative pricing arrangements, higher quality and new products/services.

How did we get here?

36. Our approach has built upon the gradual evolution of the different business structures available to solicitors: from legal disciplinary practices in 2009,

[11] Legal services market study, Final report, CMA, December 2016, https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf.
[12] Impact Evaluation of SRA's Regulatory Reform Programme, A Final Report for the Solicitors Regulation Authority, Centre for Strategy and Evaluation Services, April 2018, https://www.sra.org.uk/documents/SRA/research/abs-evaluation.pdf.

through alternative business structures (ABSs) in 2011, to MDPs in 2014 and the removal of the separate business rule in 2015.

37. At each of those stages we have allowed more flexibility in how services can be offered and have been able to monitor[13] the effects of those changes in the market.

38. The Looking to the Future changes are the next step in this evolution. Following the publication of our policy statement in 2014 and an update to it in 2015, we undertook four major consultations:

Phase one: Handbook reforms (2016)[14]

- Shorter, clearer Principles and codes focused on high standards.
- Removing a ban on solicitors providing services to the public in businesses that are not regulated law firms.

Phase two: Handbook reforms (2017)[15]

- Making our other rules simpler and more focused on what matters.
- Changes to rules on how we authorise firms and who can run them.
- An updated enforcement approach.

Accounts Rules (2016)[16]

- Shorter, simpler rules focused on keeping client money safe.
- Option to hold client money in third-party managed accounts.

Better Information, More Choice (2017)[17]

- Making firms publish information on prices and what this covers for seven types of legal service.
- Develop an SRA digital badge and digital register to help the public understand who we regulate and the protections that come with it.
- Publish information about complaints.

[13] Impact Evaluation of SRA's Regulatory Reform Programme, A Final Report for the Solicitors Regulation Authority, Centre for Strategy and Evaluation Services, April 2018, https://www.sra.org.uk/documents/SRA/research/abs-evaluation.pdf.
[14] https://www.sra.org.uk/sra/consultations/code-conduct-consultation.page#download.
[15] https://www.sra.org.uk/sra/consultations/lttf-phase-two-handbook-reform.page.
[16] https://www.sra.org.uk/sra/consultations/accounts-rules-review.page#download.
[17] https://www.sra.org.uk/sra/consultations/lttf-better-information-consultation.page.

Section B: The current regulatory arrangements

39. Our current regulatory arrangements, known collectively as the Handbook, have been in place since 2011. The Handbook represented significant progress towards modern regulation and marked our transition from a rules-based regulator to an outcomes-based regulator, with a focus on managing risk.

40. However, given the rapid changes in the legal services market in recent years, it is necessary and timely to review and update our approach. Our current Handbook mainly reflects the position before the introduction of the LSA, when we overwhelmingly regulated traditional law firms and solicitors practising in those firms or as in-house solicitors. This means it includes restrictions which go further than those set out in the LSA, and is no longer fit for purpose.

41. Our current Handbook is made up of:

    - 10 Principles, which set out the ethical requirements on firms and individuals who are involved in the provision of legal services
    - an SRA Code of Conduct, which sets out conduct requirements
    - detailed Accounts Rules aimed at protecting clients' money, and at ensuring that firms have appropriate systems and procedures in place
    - sets of detailed rules governing the qualification of individuals, the authorisation of firms and individuals, their business structures and their provision of legal services
    - client protection provisions
    - rules relating to overseas practice, and to specialist services including financial services
    - rules relating to disciplinary procedure and the funding of our investigations.

42. The Handbook is now in its 19th version. Each successive version represents changes, often minor, to the same underlying regime. It is long, complex and costly to apply. The level of detail means that we frequently issue waivers to work around the complexity of our arrangements.

43. We are now seeing more diversity in the ways in which legal services businesses are delivering legal services. The legal services marketplace is becoming more competitive. Consumers are readier to consider new

providers, such as financial services or supermarkets and other brands for legal advice[18].

44. Traditional providers are facing competition from volume providers, such as in conveyancing as well as the unbundling of legal services and self-lawyering (or DIY law). This is where individuals take on some or all of the legal work themselves – for example in probate and estate administration, where year-on-year the number of individuals dealing with estates themselves is increasing[19].

45. Many consumers already access alternative legal services or services that include a mixture of SRA regulated work and work that is regulated elsewhere. They may also receive unbundled services – where the solicitor only helps with specific parts of the case. This means there is already a complex set of consumer protections arrangements across the legal service market.

46. As the legal services market moves and adapts to the freedoms brought about by the LSA, we can no longer justify our existing regulatory arrangements. They allow for too much intervention in the legal services market that we do not think can be justified, particularly against the Regulatory Objectives and the Better Regulation Principles.

47. They reflect a regulatory approach focused on specifying which business structures we will authorise, while restricting where solicitors can practise. This, in turn, may unnecessarily limit the availability of good value legal services to the public in ways which are more appropriate to their diverse needs.

48. Section C explores the reasons for each policy change to our existing arrangements in detail.

[18] Research and Analysis, The changing legal services market, SRA, http://www.sra.org.uk/risk/resources/changing-legal-services-market.page.
[19] The future of legal services, The Law Society of England and Wales, January 2018, https://www.lawsociety.org.uk/news/documents/future-of-legal-services-pdf.

Section C: The new regulatory arrangements

49. In reviewing our regulatory arrangements, we have sought to:

- Remove unnecessary regulatory barriers and restrictions and enable increased competition, innovation and growth to better service the consumers of legal services.
- Reduce unnecessary regulatory burdens and cost on regulated firms.
- Ensure that regulation is properly targeted and proportionate for all solicitors and regulated businesses, particularly small businesses.

50. Annex A contains the new regulatory arrangements that make up this application, which include:

Rules	
SRA Principles	The six ethical standards we expect of those we regulate.
SRA Code of Conduct for Solicitors, RELs and RFLs	The professional standards and behaviours we expect of solicitors, RELs and RFLs in practice.
SRA Code of Conduct for Firms	The responsibilities of authorised firms as regulated businesses.
SRA Accounts Rules	Our requirements for how firms should keep their clients' money safe.
SRA Application, Notice, Review and Appeal Rules	How we deal with applications and notifications made to us and our approach to reviews and appeals in relation to decisions we have made.
SRA Assessment of Character and Suitability Rules	How we assess character and suitability of those seeking to join or be restored to the roll, or to become authorised role holders, RELs or RFLs.
SRA Authorisation of Firms Rules	Our requirements relating to the authorisation of entities as recognised bodies, licensed bodies and recognised sole practices.
SRA Authorisation of Individuals (Amendment) Regulations[20]	Amendments to our rules for individuals seeking authorisation as a solicitor, REL or RFL.
SRA Education, Training and Assessment Provider Regulations	Our requirements for organisations providing education, training and delivering assessments to those seeking to be admitted as solicitors.
SRA Financial Services (Conduct of Business) Rules	How firms may carry on the regulated activities outlined in the SRA Financial Services (Scope)

[20] These rules, as they relate to the new Solicitors Qualifying Examination (SQE), were approved by the LSB in March 2018.

	Rules, and the way in which firms that are dually regulated by us and the Financial Conduct Authority (FCA) may conduct their non-mainstream regulated activities. These rules have been submitted to the FCA for approval in parallel with this application.
SRA Financial Services (Scope) Rules	Outlines the scope of the regulated financial services activities that may be undertaken by firms authorised by us and not regulated by the FCA. These rules have been submitted to the FCA for approval in parallel with this application.
SRA Overseas and Cross-border Practice Rules	How we regulate those providing legal services outside England and Wales, and what we expect from those engaged in cross-border practice.
SRA Regulatory and Disciplinary Procedure Rules	How we investigate and take disciplinary and regulatory action for breaches of our rules and regulatory requirements.
SRA Statutory Trust Rules	What we do with money following an intervention into a firm's and/or an individual's practice.
Rule 4.3 and rule 4.4 of the SRA Transparency Rules[21]	Rules 4.3 and 4.4 relate to the transparency requirements for individuals providing unreserved legal services from a non-LSA regulated firm.
SRA Glossary	Definitions of the terms used in our rules.

Simplification of rules

51. We have made our rules shorter and simpler, used clearer language and removed unnecessary duplication of rules elsewhere.

52. In our phase one consultation and impact assessment we set out views on the current Handbook from those we regulate. They included that the Handbook is too long, duplicates other legislative and regulatory obligations, is too prescriptive and needs changing too often to keep up with changes to the market and so is often out of date. Firms think too much time is spent trying to keep up and comply with technical detail. This is seen by the sector as one of the highest costs of regulation.

53. Simplifying our rules will give firms more flexibility, both in how to run their businesses and how to meet our standards. This will also encourage businesses to own and internalise our standards, instead of just implementing

[21] The LSB approved the SRA Transparency Rules, bar rule 4.3 and rule 4.4, in August 2018. See: http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/FINAL_Decision_Notice_Inc_Annexes.pdf.

prescriptive requirements without reflecting on why or how they are appropriate.

54. By stripping out unnecessary regulation and using higher level rules, our new Handbook should better stand the test of time. The detailed and prescriptive rules of the current Handbook need constant updating. Our approach to simplifying the rules is consistent with the Better Regulation Principles of making sure our rules are transparent, proportionate and targeted.

55. When compared to the current Handbook, in the areas within the scope of phases one and two, there will be nearly a 75 percent reduction in the length of our rules. Since we introduced the October 2011 version of the Handbook, we have already reduced the number of pages from more than 600 to around 400. Our approach will also improve the readability of the Handbook.

56. Research by the Centre for Strategy and Evaluation Services (CSES)[22] on the impact of changes to the Handbook highlighted the significant commitment in terms of firms' time and resource each time the Handbook is updated. This includes ensuring that staff are trained, procedures are updated and compliance with the requirements is monitored. While there will be one-off familiarisation costs, we believe that ongoing costs will be lower because we will not need to update the Handbook so frequently.

57. While some have argued that a move away from prescriptive rules could result in a disproportionate or particularly high burden on small firms, in the main, firms and individuals who are compliant with our current principles and codes, and who do not want to change arrangements, will not need to do so. The new provisions provide greater flexibility, but firms and individuals do not need to unnecessarily change their arrangements. We will also provide support for firms in the transitional period through, for example, publication of our case studies and guidance.

Guidance

58. Our regulatory arrangements will be supported by new guidance to help those we regulate. We have included a list of the guidance we initially intend to provide with the new rules. Examples of this guidance can be found at Annex B, including our revised SRA Enforcement Strategy. The guidance is still in draft form – we intend to test it with stakeholders and develop and refine it further before publication.

[22] Impact Evaluation of SRA's Regulatory Reform Programme, A Final Report for the Solicitors Regulation Authority, Centre for Strategy and Evaluation Services, April 2018, https://www.sra.org.uk/documents/SRA/research/abs-evaluation.pdf.

59. We have developed our initial guidance in areas we think it is essential, but any future guidance we produce will be driven by the needs of the profession, rather than by us. So, alongside the publication of our new regulatory arrangements, we will set up a feedback mechanism for the profession to request any further guidance it needs.

60. We will also work with other bodies that are well placed to offer guidance and support to those that we regulate. Already, this includes the City of London Law Society, The Law Society of England and Wales, the Council of Bars and Law Societies of Europe (CCBE), the Law Centres Network, and a group of the larger accountancy-based MDPs. We will also be discussing this with groups, such as The Law Society's Small Firms Division, the Sole Practitioners Group and many individual solicitors and firms.

61. The guidance will not create any new regulatory arrangements. It is there to help support solicitors in the judgments they make and comply with our regulations. Our guidance will also explain the application of core provisions without needing to turn to the original legislation (such as the requirements in the LSA about when a legal services business needs to be authorised). The guidance can be added to and adapted in future and without requiring applications to the LSB.

What are the key policy changes?

62. The key policy changes are:

1) New SRA Principles, SRA Code of Conduct for Solicitors, RELs and RFLs and SRA Code of Conduct for Firms.
2) Solicitors providing unreserved services to the public in non-LSA authorised firms.
3) Individual self-employed solicitors and reserved services (freelancers).
4) New Accounts Rules.
5) Requirement for firms to have an authorised person who has practised for three years.
6) Assessment of character and suitability.
7) Transitional arrangements for the introduction of the SQE.

1) New SRA Principles, New SRA Principles, SRA Code of Conduct for Solicitors, RELs and RFLs and SRA Code of Conduct for Firms.

What are we doing?

63. We are introducing:

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

Why change is needed

SRA Principles

64. We want our principles to be easily understood, and owned, by the profession and the public alike, and to convey a clear message about our regulatory purpose: to protect consumers of legal services; and support the rule of law and the proper administration of justice.

65. In our Looking to the Future policy statement[23], we said that we were keen to explore whether we had the right number and balance of principles. We think the new SRA Principles best reflect the fundamental tenets we expect of those we regulate.

66. The new SRA Principles reflect our experience of supervising and enforcing against the current Handbook, including a review of referrals to the Solicitors Disciplinary Tribunal. This moved us beyond simply adopting the five professional principles from the LSA, which was an alternative option we considered.

67. We have also clarified relationships between our principles and standards, as we know this was an area of confusion.

68. Some of the existing principles are reflected in the new codes. This is not to dilute their importance. The principles, codes and rules are equally enforceable and are not interdependent. However, the codes refer more specifically to expected practice standards, which is context specific, rather than overarching values and behaviours.

The SRA Code of Conduct for Solicitors, RELs and RFLs and SRA Code of Conduct for Firms

69. The current SRA Code of Conduct (2011) is around 30 pages, and applies a limited distinction to individual solicitors, SRA regulated businesses and managers and employees of those firms. We think the current code is long, confusing and complicated. It can make the line between individual and entity responsibilities blurred and difficult to apply.

70. We also think we need to provide more clarity about the individual responsibilities of in-house solicitors and the standards they must uphold. This is particularly important if we allow all solicitors to provide services to the public in non-LSA regulated businesses (see policy change number two), as we will need to be very clear about the responsibilities that these solicitors have. The current code does not allow us to do this.

71. We have also identified trends from our profession-wide survey launched in October 2016. The survey was designed to help us further understand the areas where we could provide more support. Over 1,000 individuals completed the survey. This work identified the common areas on which some individuals and firms indicated they would like further clarity. This includes areas where existing requirements are not well understood.

[23] Approach to regulation and its reform, SRA, November 2015, available at: https://www.sra.org.uk/sra/policy/regulation-reform.page.

72. Other sources we used to develop our new codes included:

- analysis of management information issues that are reported to us
- Ethics Helpline and web chat analytics
- SRA website analytics
- feedback from stakeholders during our programme of stakeholder engagement
- feedback from our virtual reference group
- responses to the phase one consultation.

What we were told

73. There was a high level of support for our proposals to simplify the Handbook and the drafting principles we applied. Many respondents to our phase one consultation endorsed our objective of clearer, shorter codes and expressed that – subject to a better understanding of our approach to enforcement – this was a welcome step forward[24].

74. The consultation responses raised a number of comments about the application of the revised SRA Principles and codes. We considered these comments carefully, but we are satisfied that it is appropriate for the Principles to, as now, apply to all we regulate. The Principles address universal behaviours which apply equally to behaviour towards clients, third parties and others.

75. We are satisfied that the Principles should apply outside the practice context as well as within it. This is because they relate to standards of behaviour which, if not met (irrespective of context), would give rise to the need to take action to protect the public or to uphold public confidence in the profession and authorised persons delivering legal services. The way in which we approach this in practice will be set out in our new enforcement strategy.

76. Changes we made as a result of the feedback we received included clarifying the relative status of the principles and codes. Our changes will better distinguish the principles (acting as universal values including outside of practice) and the codes (practice specific). The Principles apply both within and outside practice, whereas the codes only apply when practising or where a firm is engaging in SRA regulated activity.

77. Many respondents to our consultation supported the simplification of the Principles and our focus on overarching values and behaviours. Some

[24] Our response to consultation: Looking to the Future – flexibility and public protection, SRA, June 2017: https://www.sra.org.uk/sra/consultations/code-conduct-consultation.page#download.

respondents, however, felt there was no need for change. We believe the revised set of principles better reflect the universal values we expect all those we regulate to hold. For example, the existing Principles 8 and 9, about running a business, have only a tenuous connection to the majority of in-house lawyers or employees in regulated firms.

78. A number of responses to our phase one consultation suggested reinstating core principles which have been 'lost', such as the obligations to:

    - protect client money and assets
    - comply with legal and regulatory obligations
    - provide a proper standard of service.

79. These obligations remain (within the codes) and are directly enforceable. Some of the principles referred to by respondents (for example, confidentiality) are in fact outcomes in the current Code of Conduct (and remain as standards in the proposed new codes). Therefore, we are satisfied that there is no need to expand the proposed list of principles.

80. To reflect comments from our phase one consultation, we made some changes to the wording of the specific principles. We amended Principle 2 to make it clearer that the obligation is to uphold public trust (emphasising the fiduciary nature of the relationship between solicitor and client) and public confidence. In response to consultation, we amended the wording to confirm that this attaches only to legal services that are regulated by an approved regulator under the LSA. To reflect feedback from our phase two consultation[25], we have split 'act with honesty' and 'act with integrity'. This deals with concerns that anyone would think they were interchangeable, or that both would have to be proven for action to be taken.

81. Some respondents to our consultation (including the SDT) confirmed that they find the new codes to be 'short and focused, clear and easy to understand'. Others expressed concern about the use of language they believe to be 'imprecise' (for example: promptly, persistent, reasonable, appropriate), and the use of absolute obligations (for example: ensure). Some expressed a preference for input measures (for example, reasonable steps), or for obligations to be qualified (for example, to 'knowingly' mislead).

82. Our new approach is to describe the standards to be achieved and give flexibility as to how these apply in any given situation. In doing so, we recognise that what is appropriate (for example, in terms of promptness) will depend on the circumstances and will, as a rule, best be judged by the solicitor or firm involved.

[25] Looking to the Future: phase two of our Handbook reforms, our post consultation position, SRA, June 2018, https://www.sra.org.uk/documents/SRA/consultations/lttf-position-paper.pdf.

83. Also, the judgments as to whether these standards have been met, and what constitutes a serious breach or misconduct, will depend on the circumstances. This will include the individual's attitude towards the events or the extent to which they have responsibility or control over the systems in place. This is particularly an issue for solicitors working outside LSA regulated businesses, as reflected by some of the consultation responses. These judgments will be governed by our new enforcement strategy.

84. We have carefully considered suggestions that we should seek to impose certain obligations on non-LSA regulated businesses via conditions on solicitors' rights to practise within them (for example, introducing a compliance officer role, or to prohibit the business acting in a situation of conflict). However, we do not think it is appropriate to attempt to introduce system regulation in firms that we do not regulate through our jurisdiction over the individual working within the business.

85. We received some suggestions to limit or remove the application of certain standards to those other than the client. However, we believe that the relevant behaviours (misleading others, abuse of position, making submissions that are not properly arguable) should all be prohibited more widely than in the context of a client-solicitor relationship.

What we decided

86. Our final approach has been to produce codes that focus on core professional standards and behaviours. This framework for competent and ethical practice will apply to all solicitors, wherever they work. The standards for firms are intended to be sufficiently broad to apply to all business models.

87. By introducing two separate codes, we will make the distinction clearer between what is expected of an individual solicitor and SRA regulated firms (and by extension, to their managers and employees, and compliance officers). Separate codes will ensure that enforcement is similarly targeted. By adopting a structure that distinguishes between individual and firm regulation, we have also significantly reduced the overall requirements on firms and individuals.

88. Overall, we have sought to deliver a simpler articulation of our current requirements as opposed to a new series of obligations on those we regulate. But, in drafting the new codes, we have identified a small number of areas where we consider protections were lacking, or that requirements were not as clear as they should be. Where this was the case, we have added new requirements (for example, obligations to ‘know your client’ and only to act on instructions).

89. The code for firms applies to entities we regulate and those working within them. The code for firms makes clear that managers are jointly and severally liable for any breaches by their firm and that employees can be personally liable for any breaches their activities cause. Paragraphs 9.1 and 9.2 of the code for firms set out the regulatory role of compliance officers, currently found within the SRA Authorisation Rules 2011.

90. The code for individuals lays out a framework for ethical and competent practice. The revised code continues to be drafted in an outcomes-focused way. It also incorporates many of the Outcomes from the current code now set out as standards that solicitors, RELs and RFLs need to meet.

91. The new codes no longer include Indicative Behaviours. Early feedback from stakeholders suggested that many individuals and firms find their status confusing, with many interpreting them as rigid requirements rather than indicators of ways in which they could achieve or evidence compliance with the Outcomes.

92. We have sought to differentiate as clearly as possible between the two codes – the systems and procedures that a firm would need to have in place, and the ethical and behavioural standards required of individual solicitors, RELs and RFLs. Where there is significant overlap between the two codes, we have cross-referenced requirements contained in the code for individuals in the code for firms – rather than duplicating sections across both codes. There are several sections in the code for individuals which apply equally, without amendment, to firms. These are the sections relating to:

    - referrals, introductions and separate businesses
    - conflicts of interest
    - client identification
    - complaints handling
    - client information and publicity.

93. For licensed bodies, we have also clarified that the principles will apply to the part of their services that we regulate as specified on their licence. This helps to ensure that our regulation is appropriately targeted.

94. The new principles apply to all solicitors. As is the case now, they would also apply to SRA regulated entities and to their managers and employees. As high-level principles, these apply to the conduct of solicitors and others both inside and out of practice. It would be artificial for that not to be the case, and indeed we are required to act on any report that may damage public confidence or suggests the solicitor might present a risk when in practice (for example, a report of a lack of financial probity).

95. This has led to more high-level and purposive standards and a streamlined set of provisions. Alongside these high-level standards, we will provide a range of case studies which will help individuals and firms understand more easily how the standards will apply to them in different scenarios.

What is the impact on firms?

96. We think that our new codes will allow both individuals and firms to introduce flexibility and innovation when and where it is right for them. Firms and individuals who do not want to make changes to their current arrangements will in the main not have, or need, to do so. But by taking a more proportionate and targeted regulatory approach, firms should see a reduction in their overall compliance costs. There will be more flexibility for solicitors and firms about how they meet the standards.

97. We have significantly shortened our principles and codes of conduct and helped to improve their readability. Word count and reading speed are increasingly being used as proxies for reduced compliance costs in public sector consultations. As our phase one impact assessment shows[26], the combined firm and individual codes have a word count that is around one-third that of the current code. If we assume that the same reading speed applies to the current and future codes, the estimated time saved in reading the codes back-to-back is between half an hour (reading speed 275 words per minute) to nearly two hours (75 words per minute).

98. The changes also clarify the application of Principles vs. Code(s) of Conduct for firms, removal of unnecessary prescription and duplication with legislation and regulation elsewhere, meaning improved understanding for firms and individuals of the standards that apply to them.

99. We recognise that there may be some transitional costs for firms who may need to spend time familiarising themselves with the new SRA Principles and Codes and who may prefer a more prescriptive approach. However, the changes have the potential to reduce some of the more significant costs of compliance including:

- lowering the cost of training
- compliance with information requirements which are currently spread across different parts of the handbook
- maintaining an ongoing understanding of changing regulations

[26] Looking to the Future, phase one – final impact assessment, SRA, June 2017, http://www.sra.org.uk/documents/sra/consultations/lttf-impact-assessment.doc.

- record keeping and processes of dealing with rule breaches.

100. All of these areas have been identified as areas of high incremental cost in the LSB's research[27]. Cost savings will also arise from solicitors and firms no longer complying with redundant or duplicated requirements and from the streamlining of responsibilities. By adopting a structure which distinguishes between individual and firm regulation, we have also significantly reduced the overall requirements on firms and individuals. Therefore, we expect the cost of regulation to fall over the long term.

What is the impact on consumers?

101. For consumers, the changes will help their understanding of the standards they should expect from solicitors, thereby enhancing consumer confidence. They will also help to clarify the benefits of using a regulated solicitor (bound by principles/standards).

102. Improving the accessibility and usability of the new SRA Principles and Codes will make it easier for consumers, as well as the wider public, to find out and understand how we expect solicitors to act, and the standards and services they should expect.

103. Our supporting materials will highlight the potential benefit of using a solicitor who must uphold a set of principles and standards when providing certain services or hold particular roles that carry a risk of harm. They provide a framework for ethical and competent practice in line with a prevailing obligation to act in the public interest, and to maintain public confidence/rule of law.

104. We have also clarified a number of standards that are designed to maintain trust in the profession – including by consumers – and the integrity in court proceedings and administration of justice. Specifically, we have clarified our requirements on due diligence in establishing a client's identity and only acting on valid instructions. We have included as a principle that a solicitor's conduct needs to uphold public confidence in the profession and those delivering legal services.

How are we managing the risks we have identified?

105. We are not significantly changing the standards expected of solicitors and firms. Firms that are currently complying with the existing Handbook will not

[27] The regulated communities' view on the cost of regulation, LSB, March 2015: https://research.legalservicesboard.org.uk/wp-content/media/Cost-of-Regulation-Survey-Report.pdf.

suddenly find themselves needing to change what they do because they are in breach of our new standards and our communications messages to the profession emphasise this. This helps mitigate the risk of inadvertent non-compliance with the new rules.

106. To address the risk that people will not understand our new SRA Principles and Codes, we have worked with the profession to review and clarify guidance on the individual and firm obligations. In addition to case studies and guidance, we will also be developing a comprehensive communications strategy for stakeholders and a range of digital content.

107. We recognise that the actual reduction in uncertainty and therefore the cost of regulation will depend on the effectiveness of the measures, including online resources, case studies and guidance we introduce, to help solicitors and firms comply with our new standards. We have already built toolkits to support our Training for Tomorrow reform programme and to support the recent changes we have made to the Consumer Credit rule. Feedback from a survey we carried out in February 2016 showed that 90 percent of those respondents that have adopted the new approach to continuing competence had already found the toolkit useful.

108. There is a risk that the changes will negatively impact on our ability to take enforcement action where it is needed. We are not getting rid of core fundamental requirements of solicitors and firms. With freedom and flexibility comes responsibility – it is core to the concept of being a professional. It is what other lawyers rely upon (eg through undertakings) and it is also what the public expects (as our Question of Trust work makes clear). We trust solicitors and firms to use this flexibility to deliver an increasingly wide range of legal services that meet consumer demand and meet the regulatory standards we set for them.

109. If things do go wrong, we will take a proportionate response. Our revised Enforcement Strategy means that where we find that solicitors or firms have wilfully, carelessly or negligently misused their freedom, or have abused their position, then that response can be robust. We believe that the new codes, taken together with a clear and defined enforcement strategy, will help both the SRA and solicitors to understand and meet our standards.

How we are monitoring and supervising this change

110. Public confidence and trust in solicitors is significantly impacted by how we supervise and enforce these standards. We have undertaken a comprehensive review of our enforcement strategy and the decision-making framework that we use in both supervision and enforcement matters and have

carried out a major internal training exercise to embed the new approach. We used external feedback gathered from thousands of stakeholders as part of the recent Question of Trust consultation to help inform and shape our approach. We have also set up a Regulatory Standards Forum, which consists of senior staff, to help ensure consistency in decision making across the organisation.

111. We have also developed a comprehensive evaluation framework for our reform programme (see p110).

How the new SRA Principles and Codes support the Regulatory Objectives and the Better Regulation Principles

The Regulatory Objectives	
Protecting and promoting the public interest	Provide clear universal standards for solicitors. Allow us to take enforcement action where solicitors and firms fall short of those standards. Principle 2 requires solicitors to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.
Supporting the constitutional principle of the rule of law	The new SRA Principles and Codes support the rule of law by providing clear universal standards for solicitors. Principle 1 requires solicitors to act in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice.
Improving access to justice	The new SRA Principles and Codes may reduce costs by allowing firms more flexibility and therefore facilitate innovation. This in turn may lead to improved access.
Protecting and promoting the interests of consumers	Solicitors will be held to the same standards wherever and however they practise. Simplified codes and guidance for individual solicitors and firms will sharpen the focus on solicitors' ethical duties and their responsibilities to their clients. Allow us to take enforcement action to protect the public where solicitors and firms fall short of those standards.

Promoting competition in the provision of legal services	The new SRA Principles and Codes are more flexible, which may support more competition in the provision of legal services.
Encouraging an independent, strong, diverse and effective legal profession	The new SRA Principles and Codes provide the foundation for solicitors to be able to practise in different ways without compromising the standards the public can expect.
Increasing public understanding of the citizen's legal rights and duties	Improving the accessibility and usability of the new SRA Principles and Codes will make it easier for consumers, as well as the wider public, to find out and understand how we expect solicitors to act, and the standards and service they should expect.
Promoting and maintaining adherence to the professional principles	New SRA Principles and simplified codes, including a code for individual solicitors, will help focus on core ethical duties such as integrity and independence.
Better Regulation Principles	
Transparent	Solicitors will be held to the same standards wherever and however they practise. The SRA Principles and Codes are simpler and easier to understand.
Accountable	Simpler and easier to understand standards will make individuals and firms more accountable.
Proportionate	The clarified and simplified SRA Principles and Codes are proportionate to the risks to the public and to the Regulatory Objectives.
Consistent	Solicitors will be held to the same standards wherever and however they practise. We have removed duplication and inconsistency with legislation and other regulation.
Targeted at cases where action is needed	We have simplified and clarified the duties under the new SRA Principles and Codes and removed unnecessary prescription. These are now targeted at the actual risks in legal services provision.

2) Solicitors providing unreserved legal services to the public

What are we doing?

112. We will allow solicitors to deliver unreserved legal services to the public or sections of the public through a non-LSA regulated business, while using their solicitor title.

113. Solicitors who work at a non-LSA regulated business and decide to provide unreserved legal services to the public will be subject to the new individual code, meaning that we can enforce against these solicitors should it be necessary.

114. They will be required to make sure that their clients understand whether and how the services the solicitor provides are regulated and about the protections available to them.

115. This application also includes rule 4.3 and rule 4.4 of the SRA Transparency Rules, which sets out the specific obligations to explain the PII position and the absence of the Compensation Fund to clients. Rules 1.1 to 4.2 and rules 5.1 to 5.3 of the SRA Transparency Rules were approved by the LSB in the August[28].

116. This change will mean:

- our regulation is targeted, proportionate and consistent with underpinning primary legislation
- more visibility and accessibility to competent solicitors for consumers so that they can choose a qualified professional when that is what they want or need
- increased employment opportunities for solicitors
- greater variety of business models.

Why change is needed

117. Our key aim is to allow bodies that previously would not have done so to employ solicitors to provide services to the public. While there are many individuals who qualified as solicitors working for non-LSA regulated businesses currently, they must give up their practising certificate and therefore regulation to do so, or act as an in-house solicitor and supervise or advise others. On the other hand, individuals without any qualifications are

[28] See: http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/FINAL_Decision_Notice_Inc_Annexes.pdf.

permitted to provide this service. We no longer think that these restrictions on where solicitors work can be justified and received support for our proposals in the CMA's year-long market study of legal services[29].

118. Our current rules on solicitors being able to deliver unreserved legal services to the public outside of firms that we, or another legal services regulator, authorise go beyond the legislative restrictions at section 15 of the LSA. The LSB undertook a review of legal regulators' restrictions on in-house lawyers delivering unreserved services to the public in 2015/16. They concluded that existing restrictions are not evidence based.

119. This means that nearly any body but solicitors can deliver unreserved services outside of LSA regulated firms. In contrast, our Practice Framework Rules restrict solicitors from doing so. This is despite all solicitors being qualified and bound by the standards within our SRA Principles and Codes. This means that solicitors must give up their practising certificate to work outside of a regulated firm (using the title 'non-practising solicitor').

120. Our new position reflects the statutory position. It brings us closer in line with other legal services regulators, such as the Institute of Chartered Accountants in England and Wales (ICAEW), Council for Licensed Conveyancers (CLC) and the Chartered Institute of Legal Executives (CILEx), which do not have similar restrictions to those currently included in the SRA Practice Framework Rules 2011.

121. In our November 2015 policy statement, we said that we think that consumers should be able to choose and use legal services flexibly from:

- an unregulated business
- a regulated individual working in an unregulated business (a non-LSA regulated business)
- a fully regulated firm.

122. At the moment, the choice is between the first and last of these options, except in limited circumstances allowed by our rules. For example, solicitors regulated as individuals can already provide services to the public at special bodies such as law centres. They can also provide services via a commercial telephone advice line, including following up via email (although they are not

[29] Paragraph 52 of the CMA's report made a recommendation to: "Remove regulatory restrictions to allow solicitors to practise in unauthorised firms. We believe that current regulatory rules that limit unauthorised providers' ability to employ solicitors to deliver unreserved legal activities may unnecessarily reduce the availability of lower cost options in the sector." Legal services market study, Final report, CMA, December 2016, https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf.

then allowed to check any documents that the client is referring to) and provide unreserved legal advice at foreign law firms based in the UK.

123. As part of our Innovation Space[30] pilot, we granted waivers to a limited number of businesses to permit solicitors to practise as a solicitor in their unregulated firm. The advice these solicitors may provide is limited to unreserved legal activities. In some cases, they are an extension of existing services to the public we have already permitted under our Practice Framework Rules, so allowing face-to-face advice as well as telephone advice.

124. We are increasingly receiving and granting requests from organisations and solicitors who find our restrictions in the way of them delivering services in a way that works for them, their clients and prospective clients, despite presenting very little risk. In 2016/17, we granted 48 waivers of our Authorisation Rules and 69 waivers of our Practice Framework Rules. Both these figures represented an increase on the previous year.

125. The removal in 2015 of the restrictions on solicitors owning or participating in separate businesses that are not regulated under the LSA (the separate business rule) was a first step towards allowing solicitors to practise in a non-LSA regulated business. Research has found that the revision of the separate business rule has not had a detrimental impact on consumers or the legal services market. The CSES impact evaluation[31] of our reforms to date, published in April 2018, found that:

- The revision of the separate business rule has led to new providers entering the market, showing that there is demand for this reform.
- The revision of the separate business rule has enabled greater diversity in business models and ownership, again showing that there is demand for this reform.
- The evidence to date does not suggest that firms with a separate business cause a significantly greater risk to consumers due to misconduct. Reported matters against separate business firms are

[30] We have created an Innovation Space which lets firms explore new ways of running their business. This is a 'safe space' for existing firms, as well as new entrants to the legal services market. It lets firms test out ideas that are likely to benefit the public in a controlled way. Further information about our Innovation Space is available at: https://www.sra.org.uk/solicitors/innovate/sra-innovate.page.

[31] Impact Evaluation of SRA's Regulatory Reform Programme, A Final Report for the Solicitors Regulation Authority, Centre for Strategy and Evaluation Services, April 2018, https://www.sra.org.uk/documents/SRA/research/abs-evaluation.pdf.

more likely to be closed without an investigation (52%) compared to other firms (43%).

- There is no significant difference in the percentage of regulatory actions because of investigation decisions between medium to large separate business firms and other medium to large firms.

- CSES did not find any evidence that firms they spoke to split part of a case with the separate business in such a way that the client loses statutory protection.

- Firms that are connected to a non-LSA regulated business do not pose a greater risk to users of legal services when compared with other firms. There was no evidence to suggest that these reforms have detrimentally impacted, or resulted in a greater risk to, users of legal services.

- There are examples of solicitors' firms (or partners) setting up separate (unregulated) businesses specifically to provide unreserved legal activities. Part of the rationale for setting up such businesses is to ensure that regulatory oversight by the SRA (and thus the associated regulatory burden) is not unnecessarily extended to such activities (although there is no suggestion that the ownership of these firms by solicitors has proved detrimental to consumers).

What we were told

Charities and consumer groups

126. This change received strong support from the charities and consumer groups who attended our focus groups in summer 2016. Attendees at these focus groups considered that increasing opportunities for solicitors to provide their services more widely would benefit consumers through lower priced services and increased access to justice.

127. They also suggested that increased accessibility to solicitors could help to reduce nervousness around using their services, by making them more visible and less intimidating. It was suggested that the greater flexibility for solicitors to offer new, cheaper services may help to reduce the postcode lottery that people in under-served areas currently experience.

128. Some said the opportunities for greater competition between businesses would be good for consumers because, as well as competition on price, they would compete in the way they provide services. So, to stand out, they may offer better services, especially for vulnerable people. Examples given

included improved staff training (particularly for reception staff) and providing services in an inclusive and accessible environment.

129. While generally supporting the idea of extra choice, the Legal Services Consumer Panel (LSCP) highlighted challenges with relying too heavily on information remedies. It suggested that there may be a need for prescriptive rules in certain areas to mitigate the risks of consumer confusion as to the regulatory protections provided. The LSCP noted that it is important to provide the right information at the right time. It suggested consumer testing in developing information remedies. The LSCP also considered that it will be important for us to work with other regulators to guard against harmful information gaps.

130. We agree with the LSCP on the need to consider the complexities around consumer information requirements. It is important that with this extra choice comes clarity for consumers about what it means. Therefore, this change in our policy should be considered alongside our Better Information proposals. Our Better Information proposals will provide consumers with the tools and information they need to make informed choices about the type of provider they choose and the protections that they will have.

Competition and Markets Authority report

131. The CMA report recommended the removal of regulatory restrictions on solicitors providing services to the public outside of firms we regulate. The report states: "This is likely to have a positive impact on consumers by generating greater competitive pressure on price, and creating new routes and choice for consumers to access advice from qualified solicitors." [32]

132. The CMA found that consumers rely on regulated titles such as ‘solicitor’ as an indicator of quality. The restrictions placed on firms outside our regulation from employing solicitors to deliver unreserved legal activities may, therefore, reduce the ability of these firms to compete.

133. The CMA highlighted the potential benefits to consumers (both in terms of improved access to legal advice at a lower cost and improved protections for those using firms outside our regulation). The report also considered the potential risks to uninformed consumers of using providers offering less regulatory protection.

[32] Paragraph 5.107, Legal services market study, Final report, CMA, December 2016, https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf.

134. The CMA found that, provided the proposals we put in place to mitigate consumer confusion were effective, "...the benefits to competition of removing the restriction would likely outweigh the consumer protection concerns identified." [33]

Regulated solicitors and representative bodies

135. We received strong opposition to our consultation proposals, mainly from the Law Society and endorsed by a number of its members. The Law Society thought that our proposals would create a 'two-tier' solicitor profession as a result of different rules and protections applying to clients, depending on whether the solicitor worked in an SRA regulated firm or not. They argued this would have a detrimental effect on consumer understanding and protections.

136. There was a view that unless protections available to clients of solicitors working in firms we do not regulate were broadly similar to those to clients in firms we do regulate, consumers could be confused and potentially disadvantaged, particularly in cases where something went wrong.

137. Respondents also raised the potential tension between a solicitor's professional obligations and responsibilities under the individual code, and the commercial interests of their employer. The obligations around conflicts of interest were seen to be the main area of tension, but respondents cited other potential pressures and suggested these tensions could result in undue pressure being placed on the individual solicitor.

138. Some respondents also suggested that the consultation position provided an unfair commercial advantage to firms outside our regulation, who would find it cheaper to employ solicitors. The possibility that firms we regulate would restructure so as to avoid entity regulation for much of their business was also raised. It was suggested that smaller firms and sole practitioners would be disproportionately disadvantaged by the proposals, on the assumption that most new businesses would be likely to be small in size, and therefore in direct competition with these firms. Respondents considered smaller traditional firms would be less able to take the opportunity to restructure.

139. A number of respondents (including some in-house solicitors) thought that the potential lack of legal professional privilege (LPP) for legal advice provided outside LSA regulated businesses was likely to make giving such advice an unattractive option in practice.

140. Finally, respondents were concerned that the changes may lead to an increase in the level of fees they would need to pay to us because of firms

[33] Paragraph 6.86, ibid.

choosing to leave entity regulation, increased pressure on the Compensation Fund and higher contributions for solicitors working within firms regulated by us.

What we decided

141. We believe there are real benefits for consumers, solicitors and firms in offering this further choice: increased opportunities for innovation, greater competition, a raising of standards and protections in the unregulated sector.

142. We accept that, in some respects, the level of consumer protection may be different, depending which of the three choices is taken. We do not agree with the view that our new arrangements will create two tiers of solicitors. All solicitors will be subject to the same education and training requirements and held to the same ethical standards. The standards are set out more robustly and are more clearly articulated than before in the new code for individuals.

143. From a consumer's perspective, this is far clearer than the current position, where in most cases solicitors can act in the capacity of a ‘non-practising solicitor’ (having given up their practising certificate) or as a supervisor of unqualified staff. It is likely to benefit consumers and to increase in a take up of services in these businesses, if consumers can rely on the title ‘solicitor’ with the protections that title brings with it.

144. The wider legal services market already has different tiers, in that unreserved legal services are delivered outside LSA regulation and outside our jurisdiction. We already see complex and opaque business models driven by the current restrictions. These changes will help bring the role and status of solicitors into the open within some of these businesses. Nevertheless, we accept that more choice can be confusing for some types of consumers. Our Better Information consultation response sets out the tools and information we are developing to make sure consumers can make informed choices about the type of provider they choose and the protections that they will have.

145. We are introducing very clear mandatory information requirements that will apply to all solicitors. We will require solicitors working in businesses that are not regulated by us, or another legal regulator, to be clear with prospective service users about the protections in place. That means that before they begin working with a client, they will need to explain their insurance arrangements position and be clear that their client will not be eligible to submit a claim to the SRA Compensation Fund if things go wrong. We have included the specific rules that relate to these requirements in this application (rules 4.3 and 4.4 of the SRA Transparency Rules).

146. Our Code of Conduct for Solicitors, RELs and RFLs will place responsibility on the solicitor to explain to clients which services are provided by the solicitor as an authorised person and which are provided by others, and whether those persons are authorised or not; and to explain the regulatory protections the clients are entitled to. This will help to mitigate the risk of consumer confusion under the new regulatory arrangements and also address the current position where consumers do not know what protections come with different types of providers, including solicitors.

147. Another risk raised by respondents to our consultation related to the potential tensions between a solicitor's professional obligations and the interests of their employer. This tension already exists within regulated firms, driven, for example, by the need to make profit or please an important client, as well as when working in-house or within a special body. Recent research highlights the pressure that many junior solicitors feel they are put under within regulated firms.[34]

148. The ability to deal with this tension is essential to being an ethical professional. Our guidance and case studies include resources to support solicitors in recognising ethical dilemmas and understanding and meeting the standards that apply to them in this context. We will also produce corresponding guidance for their employers. This guidance will be available to support solicitors and firms through the introduction of the new arrangements.

149. To help support junior solicitors when responding to pressure and applying their professional judgment, the SQE will assess candidates' ability to spot and apply the individual code. Ethical questions will pervade all parts of the assessment. Newly qualified solicitors will, therefore, have been assessed on the standards required of them by the time they enter the profession. This should make sure they are clear on their obligations under the code and able to act accordingly.

150. We do not aim to provide a commercial advantage to any type of firm. We seek to provide an environment where fair competition is enabled. We think regulated firms employing solicitors will continue to provide a strong ‘brand’; the difference is the ability to provide the full range of legal services (including reserved activities), the wider availability of LPP, and a range of consumer protections that are unrivalled by any other profession, either in the UK or internationally.

151. Small firms tell us that they currently get the majority of their business through local contacts and local brand recognition, as well as through word of mouth.

[34] Resilience and wellbeing survey report, The Law Society, Junior Lawyers Division, April 2017: http://communities.lawsociety.org.uk/Uploads/g/x/g/jld-resilience-and-wellbeing-survey-report-2017.pdf.

It is unlikely that this will change significantly in the near future. Added to this, our previous work with small firms indicates they carry out relatively high levels of reserved legal activity for their clients, which only they (and other LSA regulated businesses) can provide.

152. In developing our approach to how we will regulate solicitors in non-LSA regulated businesses we have also considered:

- the operation of the Compensation Fund for clients of those solicitors
- our requirements for PII for these solicitors
- how complaints will be handled
- the LSB's guidance on restrictions on in-house lawyers
- our position for immigration and claims management services
- LPP.

The Compensation Fund

153. Clients of solicitors who work at firms that we do not regulate will not be able to make a claim on the Compensation Fund. The Compensation Fund comprises of contributions from both solicitors and regulated firms. We hold the money on trust and operate the fund under public law principles for the statutory purposes established for compensation arrangements. Any decision to change the way in which the fund operates, including the eligibility requirements for making a claim, would need to be fair, reasonable and subject to open consultation.

154. To set up a compensation scheme for solicitors working in firms outside our regulation would be expensive to establish and maintain. It is likely to push up the costs of delivery of those legal services, act as a bar to employing solicitors and prevent the full benefits of these freedoms being accrued by consumers. Not least because it puts all risk of an unregulated firm onto the solicitor and the Compensation Fund, which would then have to be reflected in the Compensation Fund contribution. Allowing access for such solicitors to the Compensation Fund would also raise complex questions about the personal responsibility of the solicitor in relation to any losses.

155. We also think there would be disproportionate costs associated with running this fund, particularly given that current claims are generally linked to either breaches of our Accounts Rules or misuse of client money and that solicitors working outside firms we regulate will not be permitted to hold client money (under our definition of client money set out in our new Accounts Rules), except in certain exceptional cases.

156. To help ensure that clients are making an informed choice, we have included a specific obligation in rule 4.3 of the SRA Transparency Rules (included in

this application) on solicitors to tell clients before engagement that they will not be able to apply for a grant from the Compensation Fund.

PII

157. We think that asking solicitors in firms we do not regulate to be covered by mandatory PII could undermine our approach by adding costs and reducing the availability of lower cost options for consumers. It would hamper flexibility and could reduce the movement of solicitors into and out of the wider legal services market.

158. In practice, we cannot require a business that we do not regulate to have PII. We expect that PII will normally be arranged by the non-LSA regulated business itself rather than individual employees, such as solicitors. Any claims that a client of the non-LSA regulated business makes will therefore be against the business, rather than against the individual solicitor.

159. To mitigate any risks to consumers, we have introduced information requirements in relation to PII. These requirements are likely to incentivise unregulated businesses to ensure that they do have PII in place. Subject to certain exceptions, Rule 4.3 of the SRA Transparency Rules requires solicitors working in businesses not regulated by the SRA to tell clients before engagement:

- that the solicitor is not required to have PII that complies with the SRA's minimum terms and conditions
- that alternative arrangements exist (where this is the case) and, if the client asks for further information, give them relevant details as to the cover.

160. We also know that our current PII requirements are a significant compliance cost on the firms we regulate. The average premium, according to Law Society research, is around 5 percent of gross fee income[35]. Our own work suggests that solicitors are currently subject to the most wide-ranging PII requirements of any legal professionals internationally, and costs and requirements exceed those of other comparable professions in England and Wales.[36]

[35] Professional Indemnity Insurance research report 2016-17, prepared for The Law Society, July 2017, https://www.lawsociety.org.uk/Support-services/Research-trends/docs/PII-survey-2016-17-report.
[36] Reflecting on Solicitors Professional Indemnity Insurance (PII): market trends and analysis of historic claims data, Crispin Passmore, SRA, 2016, https://www.sra.org.uk/documents/solicitors/colp-cofa/conference-2016-plenary-pii.pdf.

Complaints

161. The statutory right to complain to the Legal Ombudsman (LeO) remains for the service provided by the individual solicitor as an authorised person (whether or not the entity is also authorised) and the solicitor will be required to inform clients of all their rights in this regard. We have reached a shared view with the LeO that clients of solicitors employed outside business we regulate will still have the right to complain to the LeO. We are holding workshops with the LeO to look at case studies and the practical issues involved.

162. Under the new code for individuals, solicitors working at non-LSA regulated businesses will have an obligation to establish and maintain or take part in a procedure for handling complaints for the legal services provided. Clients will also be protected by existing consumer protection legislation.

LSB guidance on in-house lawyers

163. In developing our approach to how we regulate solicitors working in a non-LSA regulated business, we have considered the LSB's guidance and Statement of Policy on section 15(4) of the LSA, which relates to the regulation of in-house lawyers.[37] The LSB requires that any regulatory alterations that pertain to section 15(4) of the LSA should:

- be evidence based, if they go beyond section 15(4) of the LSA or justified if not
- be considered in light of wider regulatory arrangements
- balance access to justice with mitigating risks around potential consumer detriment
- have regard to the principle of consistency.

164. In our response to the LSB's work, we acknowledged that our Practice Framework Rules, which currently set out the way in which solicitors, RELs and RFLs may practise, were overly restrictive on how solicitors working in a non-LSA regulated business could provide legal advice. Under these rules a solicitor, REL and RFL can only provide legal services to the public or a section of the public if they are doing so through an organisation we authorise.

165. The current Practice Framework Rules were developed in 2011 to accommodate the then new approach to authorising ABSs. These rules

[37] Statement of policy on section 15(4) of the Legal Services Act 2007: regulatory arrangements for in-house lawyers, LSB, February 2016, http://www.legalservicesboard.org.uk/Projects/thematic_review/pdf/201602_S15_Statement_Of_Policy.pdf.

carried over restrictions on practice from pre-existing provisions. There was no fundamental review at that time to determine whether these restrictions remained necessary or proportionate before they were transferred across into the Practice Framework Rules. They were therefore unnecessarily restrictive without an evidence base to support them. We have learned a lot in the last five years, and we consider that a large number of the current rules can no longer be justified – this is in line with our wider views that our regulatory arrangements should be targeted.

166. Under the current rules, a solicitor cannot provide unreserved legal services to the public unless permitted to do so. These permissions are narrow and prescriptive, having developed over time. We are concerned that they are inflexible and inconsistent and may prevent organisations from responding to consumer demands and from developing in a way that suits their dynamic business models.

167. We consider that these rules go beyond the requirements of the LSA and are confusing and difficult to understand. A number of private sector stakeholders have told us that the current rules relating to pro bono work are also preventing them from properly delivering corporate social responsibility programmes.

Our position for financial services, immigration and claims management services

168. We will not allow solicitors practising in non-LSA regulated businesses to provide regulated financial services to the public under the scope of our regulation. This is because only a proportion of solicitors practising in non-LSA regulated business would fall within the definition required for part 20 of the Financial Services and Markets Act 2000. In any event they will not be subject to our regulatory requirements for firms (which are an important part of the operation of the part 20 exemption). We have discussed this approach with the FCA, which has indicated its support for our position.

169. Both immigration and claims management services are subject to separate regulatory regimes for those that practise in a non-LSA regulated business via the Office of the Immigration Services Commissioner (OISC) and the Claims Management Regulator (CMR)[38] respectively. At the time these regimes were introduced, it was not conceived that solicitors might offer services to the public outside of a regulated law firm. Our other reforms could therefore extend rights to deliver certain legal services beyond what we believe was envisaged at the time, which is that work in immigration and claims management should only take place within a regulated entity.

[38] The FCA is due to take on responsibility for regulation of claims management companies from April 2019. We do not expect this to require a change to our approach in this area,

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

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

LPP

171. LPP and how it relates to solicitors providing services in non-LSA regulated business is a matter of law for the courts and parliament, and not us, to decide. There may well be situations where advice given by a solicitor working in a non-LSA regulated business will not attract privilege. We recognise the importance of LPP in many situations, but we do not consider it appropriate for us to place artificial barriers in the market simply to make sure all work done by solicitors falls within the legal boundaries of privilege. Further, we consider that the overall advantages of increased access to solicitors outweigh any disadvantages.

172. Advice given by a solicitor, from wherever they practise, will be confidential to the client, and the business will have its own obligations under the laws of confidentiality and data protection. Also, not all communications between solicitors or regulated firms and their clients would attract privilege in any event, nor would the protection from disclosure or inspection this confers be considered necessary by all clients in all situations.

173. It is down to the individual solicitor to make it clear to their clients what level of protection they have and where such protections would be appropriate and/or relevant. In most circumstances, this will not be an issue but there may be occasions when a solicitor working in a non-LSA regulated business should advise their client on the benefits of privilege. This may include advising them of the option to seek advice from a solicitor in a regulated firm in order to make sure that this attracts LPP. It would also be part of the solicitor's obligation to act in the client's best interests.

What is the impact on consumers?

174. The current position, where solicitors at non-LSA regulated firms can act in the capacity of a 'non-practising solicitor" (having given up their practising certificate) or as a supervisor of unqualified staff can be confusing. Clarifying the status of solicitors working at non-LSA regulated firms will mean that

consumers can rely on the title ‘solicitor’ with the protections and standards that title brings with it.

175. Our changes may increase the level of consumer protection available in certain instances. Solicitors would be able not only to own an alternative provider but also to provide unreserved legal activities through such a provider. This would offer greater protection than in cases where a non-solicitor provides the same (unreserved) services through the same firm (owned by a solicitor).

176. However, we accept that in some respects the level of consumer protection will be different depending on which choice is taken. Our Better Information proposals will ensure that consumers have the correct information and support to help understand the choices that they make.

177. Consumers and consumer bodies that engaged in our consultation, including through focus groups, were broadly supportive of our approach. They often linked accessibility with affordability and felt that this change could mean solicitor services becoming more affordable and accessible.

178. The CMA has recommended the removal of regulatory restrictions on solicitors providing services to the public outside of SRA regulated firms and stated in its report that: “This is likely to have a positive impact on consumers by generating greater competitive pressure on price, and creating new routes and choice for consumers to access advice from qualified solicitors.”[39]

179. The CMA found that consumers rely on regulated titles such as solicitor as an indicator of quality. The restrictions placed on firms outside our regulation from employing solicitors to deliver unreserved legal activities may, therefore, reduce the ability of these firms to compete.

180. The CMA also reported finding little evidence that consumers currently using unregulated providers are at particular risk of receiving an unacceptable poor quality or unethical service. Further, we consider standards and ethics will likely increase by allowing qualified and regulated solicitors more freedom to operate within these unregulated firms.

181. Consumers that need, can afford and value the full range of consumer protections provided by SRA regulated firms will still have that option. The importance of different protections is likely to vary depending on the particular circumstances.

[39]Paragraph 5.107, Legal services market study, Final report, CMA, December 2016, https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf.

182. Research by the LeO and the LSB states that consumers are currently unaware of the full regulatory protection protections and redress that is in place across legal services providers. It is apparent from this research that consumers instead view the title solicitor as a mark of expertise and reliability. This means that the risk of consumers expecting protections that are not actually available can be overstated.

183. However, as well as highlighting the potential benefits to consumers (both in terms of improved access to legal advice at a lower cost and improved protections for those reliant on the unregulated sector), the CMA considered the potential risks to consumers of using providers which offer less regulatory protection on an uninformed basis.

184. Wider than this, the CMA report found that there is a significant lack of transparent information in this market and this is making it hard for consumers to compare providers, undermining competition and reducing the incentives for providers to compete on price, quality and innovation. This lack of information contributes to consumers not seeking legal advice when they have a legal need.

185. We have held a number of focus groups and have worked with the Legal Services Consumer Panel to develop our approach to transparency for our Better Regulation proposals. We will continue to undertake consumer testing methods throughout to understand the information that they need to make good decisions and how this can be effectively presented.

What is the impact on firms?

186. SRA regulated firms will be able to distinguish themselves by the unrivalled and guaranteed protections that they provide including around minimum PII and the Compensation Fund. As now, non-LSA regulated firms will decide what PII requirements they will have in place. This is likely to be driven by what they consider is necessary to attract and maintain clients and to protect themselves from financial risk. Some of these bodies (for example accountancy firms) may also fall under other regulators from outside of the legal sector.

187. We have not received information that significant numbers of regulated firms will stop providing reserved legal activities to step out of entity regulation. Considerations around competitiveness are likely to be a key driver of any decisions to move outside regulation.

188. We recognise that there could be a negative impact on the regulatory fees we charge small firms if a relatively small number of large firms moved

unreserved activity out of SRA regulation, assuming that our regulatory costs did not reduce proportionally. It will be several years before the impacts of our reforms, including any impact on our fees, become apparent. We will therefore monitor the impacts of our reforms and make sure that the burden of fees does not fall disproportionately on regulated firms if there are significant changes in the market.

189. We identified in our impact assessment for our phase one [40]reforms that small firms (similarly impacting disproportionately on some black, Asian and minority ethnic (BAME) and older solicitors) could suffer detriment because they are less able to take advantage of the market developments. However, small firms tell us that they rely on local brand reputation, as well as word of mouth, and this is likely to continue. Added to this, our previous work with small firms indicates they carry out relatively high levels of reserved legal activity for their clients, which only they (and other LSA regulated businesses) can provide.

190. These smaller firms could therefore be less likely to be affected by the competition enabled through allowing solicitors to provide unreserved legal services outside of SRA regulated firms. However, it is difficult to predict what will happen with any certainty.

What is the impact on the market?

191. It is not possible to accurately forecast how the market might take advantage of the opportunities that our reforms provide. As our independent report on the market impacts of the reforms indicated, the precise impacts on solicitors and firms will depend on whether firms take advantage of the separation allowed under the new arrangements and the mix of reserved and unreserved activity a firm carries out.

192. In our impact assessment for phase one. we provided examples of how this reform could impact on the development of the legal services market. We consider that in all cases that we identified, the changes will increase customer choice in terms of the type of provider that they can go to, the prices that these could charge and the consumer protections that would be available.

[40] Looking to the Future, phase one – Final Impact Assessment, SRA, June 2017, https://www.sra.org.uk/documents/SRA/consultations/lttf-impact-assessment.pdf.

How are we managing the risks we identified?

193. Our Better Information requirements will help consumers understand the choices available to them and the protections available and help to mitigate the risk of consumer confusion.

194. We know there is a risk of members of the public being confused or misled into believing that a separate business is regulated by the SRA or another approved regulator when it is not. The Better Information reforms and the requirements of the new code for individuals will help to ensure that clients are clear about the extent to which the services that the SRA-authorised firm and the separate business offer are regulated.

195. We recognise the risk that clients of solicitors in businesses may be confused about how to complain. The LeO has confirmed that complaints against solicitors within unregulated businesses are covered by its jurisdiction. As stated above, we are working closely with the LeO on the practical details.

196. We have not received information that significant numbers of regulated firms will be looking to not undertake reserved legal activities to step out of entity regulation. Considerations around competitiveness are likely to be a key driver of any decisions to move outside regulation.

How we are monitoring and supervising this change

197. We will record whether a solicitor works in non-LSA regulated firm on our public register in a way that is transparent to consumers. We will be able to monitor data in relation to solicitors in non-LSA regulated firms both individually and as a group. As well as taking action in an individual case we will use this information to build up a picture of any more systematic problems. It is likely that this area will be a focus for our risk outlook work after implementation. The LeO will also provide us with any information arising with these solicitors as part of our usual information sharing arrangements with it.

198. To help us understand the impact of this change more broadly, we have published an evaluation framework developed by CSES. This framework provides us with an approach to evaluating our reform programme in general and specifically includes how we can assess the impact of allowing solicitors to provide unreserved services in non-LSA regulated firms. This includes looking at the direct effects on providers of legal services, the wider impacts on providers of legal services and the wider impacts on consumers. As proposed by the framework, indicators that we may look at when evaluating the impact of the reform include: the number of entities providing unreserved

activities, the volume of solicitors by different type of provider, and the proportion of clients of unauthorised entities reporting awareness of the status of the individual providing advice. Sources of data that we may draw on include: SRA data, a survey of firms and surveys and focus groups with clients.

How solicitors providing unreserved legal advice from non-LSA regulated firms support the Regulatory Objectives and Better Regulation Principles

The Regulatory Objectives	
Protecting and promoting the public interest	Removes unnecessary regulatory barriers and restrictions. Increases choice, competition, innovation and growth, which in turn should better serve consumers of legal services and the wider legal system and the UK economy.
Supporting the constitutional principle of the rule of law	Our decisions do not conflict with this regulatory objective.
Improving access to justice	Provides more choice for consumers and potentially increased access to solicitors. Allows firms greater flexibility in how they develop services to meet the needs of consumers and potential consumers. Drives competition and innovation. This should result in services, including new services, that better meet the needs of consumers – improving access to justice and market growth is likely to increase one-stop shops for consumers, improving access.
Protecting and promoting the interests of consumers	Consumer choice likely to increase. Changes may allow more cost-effective delivery of legal services to the consumers who need it and increased standards and protections in the unregulated sector. Likely to increase one-stop shops for consumers.

Promoting competition in the provision of legal services	Changes allow solicitors to provide services in a cost-effective way in a greater diversity of contexts, fostering greater competition in the provision of legal services and meeting currently unmet legal needs.
Encouraging an independent, strong, diverse and effective legal profession	Provides greater opportunities for solicitors.
Increasing public understanding of the citizen's legal rights and duties	Nothing in our decisions conflicts with this regulatory objective.
Promoting and maintaining adherence to the professional principles	Principles and code for individual solicitors will maintain ethical standards for solicitors practising in non-LSA regulated firms.
Better Regulation Principles	
Transparent	Solicitors will be held to the same standards wherever and however they practise, even in non-LSA regulated firms. Replaces complex exceptions to current restrictions, waivers and solicitors working as non-practising solicitors with a consistent and transparent approach.
Accountable	Changes ensure that those that we regulate are fully accountable for compliance with our regulatory requirements, including solicitors practising in non-LSA regulated firms.
Proportionate	The changes remove an unnecessary and disproportionate restriction on where solicitors can practise.
Consistent	Solicitors will be held to the same standards wherever and however they practise, even in non-LSA regulated firms. Replaces complex exceptions to current restrictions, waivers and solicitors working as non-practising solicitors with a consistent and transparent approach.
Targeted at cases where action is needed	Removes an unnecessary restriction. The simplified and clarified duties under the new SRA Principles and Codes are targeted to the actual risks in legal services provision, including where those services are provided by a solicitor through a non-LSA regulated firm.

3) Individual self-employed solicitors and reserved services (freelancers)

What are we doing?

199. We will allow individual self-employed solicitors and RELs that are working alone as freelancers to provide reserved legal services to the public under their individual authorisation. They would not be required to have their practice authorised as a recognised sole practice.

200. These freelance solicitors would have to:

- act as an individual, without any employees or partners, and not work through a service company
- be engaged directly by the client
- not hold client money (except for payments on account of costs and disbursements for which the freelancer is responsible).
- We have also built a number of consumer protections into our arrangements for freelancers which include requirements to:
    - explain their regulatory position to clients before engagement, as set out in the SRA Code of Conduct for Solicitors, RELs and RFLs
    - have adequate and appropriate PII for the legal activity being provided and explain their PII to clients
    - appear on our digital register as authorised to provide reserved legal activities in this capacity (one of our Better Information proposals)
    - comply with our Better Information proposals about transparency for consumers.

201. Clients of individual self-employed solicitors and RELs will have access to the Compensation Fund.

202. Our new rules aim to simplify our provisions in line with the general drafting principles we adopted for this work and the policy statement of 2015. This would mean that an individual sole practitioner or freelancing solicitor would not need to artificially create an entity around them. However, if they choose to do so, the entity must be regulated. Such freelancing solicitors will not be employing individuals as that would lead them to be a body needing authorisation.

Why change is needed

203. In our first Looking to the Future consultation[41], we proposed to maintain the current position whereby an individual solicitor (or REL) can only provide reserved legal services to the public or a section of the public as a recognised sole practice or in, or on behalf of, another entity authorised by the SRA or another of the approved regulators under the LSA.

204. However, we recognised that by not allowing the alternative of individual solicitors providing reserved legal services as freelance lawyers, we might be unnecessarily restricting models of practice and asked for respondents' views.

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

206. We consider that such arguments have force and that, provided the appropriate consumer protections are in place, we should allow more flexibility. We are also keen not to replicate the current complex and confusing system of exceptions (special bodies, pro bono, telephone services, etc) under the SRA Practice Framework Rules 2011.

What we were told and what we decided

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

208. As they would not be in an authorised firm, these individual solicitors and RELs should not be able to hold client money, except for money in respect

[41] Looking to the Future – flexibility and public protection, SRA, June 2016, https://www.sra.org.uk/documents/SRA/consultations/code-of-conduct-consultation.pdf

of fees and disbursements if held or received prior to delivery of a bill for the same and where any money held for disbursements relates to costs or expenses incurred by the solicitor or REL on behalf of their client and for which they are liable.

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

210. A minority of respondents to our phase two consultation agreed with the proposal. Those that gave reasons for their support felt that:

- it would make services more accessible, for example, by reducing costs
- the change reflected the reality of flexible working in the 21st century
- the most important safeguard was the restriction on holding client monies
- it did not make sense that barristers had this freedom and solicitors currently did not
- there is a demand from solicitors to work in more flexible ways
- the proposal would allow clients – particularly small businesses – to access legal services without the extra layer of costs imposed by a firm.

211. Some respondents said their support was conditional on self-employed solicitors being required to maintain PII on our minimum terms and conditions. There were common themes among respondents that disagreed with the proposal, which included the Law Society and several local law societies. They argued that not requiring PII to be on our minimum terms and conditions would reduce client protection.

212. There were also concerns that if solicitors were not authorised as recognised sole practices there would be no check on whether it was appropriate for them to set up on their own. Regulatory safeguards for entities would not be in place. It was felt that clients would be inadequately protected from poor service and be confused by the differences in regulatory protections compared to regulated providers. The LSCP shared these concerns, while recognising that the proposal could increase flexibility for solicitors.

213. We believe the potential benefits of increased flexibility for both freelance solicitors and their clients mean we should proceed with the proposal. It is artificial and disproportionate to force those solicitors who are genuinely working on their own into the same regulatory model as a firm that may

employ hundreds of people. It increases costs for those individuals and these costs are likely to be passed on to clients. We know BAME solicitors are disproportionately represented among sole practitioners and these proposals are particularly likely to benefit them[42].

214. Although some respondents wished to broaden our proposals (for example, by allowing these solicitors to have employees) we will retain the proposed restrictions. These provisions are intended to apply to genuine freelancers and not to those who run a firm employing others or who seek to disguise a firm by restructuring to meet these arrangements.

215. We have also made it clear in the rule that any fees must be paid to the solicitor or REL personally (and not, for example, through a linked company). We have listened to respondents who were concerned that our proposal would allow inexperienced solicitors to provide reserved legal services on their own. We will therefore also introduce a rule that a freelance solicitor cannot provide reserved legal services to the public until they have practised for at least three years. We believe that this will help protect not only the public but also those solicitors who might have been tempted to take this step before they were ready.

216. In response to concerns about PII, these practitioners will be required to take out and maintain cover for all work conducted by the solicitor or REL, and not just to reserved activities as we originally proposed. This will:

- reduce the potential for consumer confusion
- avoid situations where some cases are covered by an insurance obligation and some not
- prevent arguments by insurers over what does or does not constitute reserved legal activity.

217. However, we believe that it is appropriate to maintain the requirement for solicitors working in this way to have ‘adequate and appropriate’ insurance rather than having to comply with our minimum terms and conditions. This maintains appropriate consumer protection while providing flexibility. It removes one of the key barriers to this type of practice that is cited to us, namely the high cost of purchasing PII on our minimum terms and conditions.

218. Our minimum terms and conditions currently impose the same standards on, for example, a large conveyancing firm as on a single solicitor acting as a criminal advocate. It is therefore important to consider the type of

[42] Law firm diversity data tool, SRA, http://www.sra.org.uk/solicitors/diversity-toolkit/law-firm-diversity-tool.page

practitioner who is likely to take advantage of this change. The limitation on the type of client money that can be held by freelancers will exclude them from holding transactional client funds (for example, the proceeds of sale on conveyancing, court fees or the stamp duty payable on a house purchase) or which comprise damages. The solicitor or REL will have to contract personally with the client and not will be able to work through a service company. The tax and civil liability implications of this alone will make this option only attractive to those with genuinely personal and relatively small practices, perhaps as freelance advocates.

What is the impact of the change?

219. This change will provide increased flexibility for both freelance solicitors and their clients. Consumers will benefit from more flexibility in how they access legal services. Individual solicitors will be relieved of an unnecessary burden who work wholly alone to be regulated as an entity as well as an individual. An individual sole practitioner or freelancing solicitor would not need to artificially create an entity around them. However, if they choose to do so, because, for example, they wish to employ individuals, the entity must be regulated.

220. Our approach to drafting the new rules will make them easier to understand. While solicitors have always been able to work on their own as a sole practitioner, the current rules contain a complicated set of exemptions to the general prohibition. Our new rules aim to simplify these provisions in line with our general drafting principles and the policy statement of 2015.

How are we managing the risks we have identified?

221. We are aware of the risk that some practitioners may seek to avoid the need for firm authorisation by artificial arrangements whereby the solicitors concerned all seek to be classified as individual self-employed solicitors. We consider that the requirements to contract personally for services and to have appropriate PII, and the client money restrictions, will make such arrangements unlikely, but we will issue guidance on the issue and take regulatory action where appropriate.

222. We have addressed the risks of clients of these practitioners having less consumer protections by providing them with access to the Compensation Fund. We are also addressing concerns over potential client confusion about regulatory status in the following ways:

- These providers will need to, under our Code of Conduct for Solicitors, RELs and RFLs, explain their regulatory position to clients before engagement.
- They will appear on our digital register as authorised to provide reserved legal activities in this capacity.
- They will be subject to our Better Information requirements, which include publicising details on:
    - prices (in specific areas)
    - how to complain to the firm
    - rights of recourse to the LeO.

223. We have introduced specific requirements at rule 4.3(a) of the SRA Transparency Rules in relation to the provision of information on PII that will apply to freelancers. They will have to explain to the client that they are not covered by our minimum terms and conditions for PII. They will also have to specify that alternative insurance arrangements are in place (together with information about the cover this provides, if requested).

224. To mitigate the risk that inexperienced solicitors will set up as freelancers, freelance solicitors will be subject to our rules, which require three years' experience (see Key Policy Change 5) before they can deliver reserved legal services as a freelancer.

How we are monitoring and supervising this change

225. Freelance solicitors will be required to notify us of their practice and will be listed as freelancers on our register. We will therefore be able to monitor information on this group (complaints received, etc) to look for trends, as well as pursuing issues against individual solicitors as necessary in the usual way.

226. Where we consider that the risks justify it in a specific case, we may impose a condition on an individual solicitor's practising certificate preventing them from practising as a freelance solicitor. A very small number of solicitors are already subject to conditions on their practising certificates which prevent them from practising as sole practitioners. We will review these cases with a view to widening the condition where appropriate to include the prohibition against practising as a freelancer.

How the rules for freelancers support the Regulatory Objectives and the Better Regulation Principles

The Regulatory Objectives	
Protecting and promoting the public interest	The new rules for freelancers: • remove unnecessary regulatory costs and burdens • remove unnecessary regulatory restrictions on how individual solicitors can practice • increase opportunities for individual solicitors to provide services at more competitive rates, which, in turn, should better serve consumers of legal services.
Supporting the constitutional principle of the rule of law	Freelance solicitors will be required to comply with the Principles and Code – including the requirement to act in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice (Principle 2).
Improving access to justice	The rules for freelancers increase opportunities for competition, innovation and growth. This should permit better provision of services that meet the needs of consumers, including access to justice. Allow individual solicitors greater flexibility in how they develop services to meet the needs of consumers and potential consumers. This, in time, may result in new services and greater choice that may help access to justice.
Protecting and promoting the interests of consumers	Consumer choice will potentially be increased by increased flexibility in how legal services are provided. Allow cost-effective delivery of legal services.
Promoting competition in the provision of legal services	Allows individual solicitors to provide services in a cost-effective way.

Encouraging an independent, strong, diverse and effective legal profession	Allowing individual solicitors to be freelancers may increase diversity in the profession by providing opportunities for older solicitors or those that wish to work flexibly due to caring and/or parenting responsibilities. This might include those returning to the profession after a career break.
Increasing public understanding of the citizen's legal rights and duties	Simplification of our rules, and clear rules for freelancers, should make them easier for the public to understand.
Promoting and maintaining adherence to the professional principles	Simplification of our rules for individual solicitors, by removing the requirement for them to be regulated as a sole practitioner, should make them easier for the profession to comply with.
Better Regulation Principles	
Transparent	Changes provide increased clarity and simplification for individual solicitors who operate alone.
Accountable	Changes ensure that individual solicitors are fully accountable for compliance with our regulatory requirements and understand consequences of non-compliance.
Proportionate	Changes remove disproportionate restrictions which required solicitors who worked alone to be regulated like an entity.
Consistent	The new code for individuals means that all solicitors will be held to the same standards wherever and however they practise. This means a more consistent approach for solicitors who work alone as they will be regulated like other solicitors, rather than as an entity.
Targeted at cases where action is needed	Individual solicitors will no longer be subject to regulation that may not be appropriate for their business model.

4) New Accounts Rules

What we are doing

227. Our proposed changes to regulatory arrangements will:

Simplify the Accounts Rules by focusing on key principles and requirements for keeping client money safe, including:

- keeping client money separate from firm money
- ensuring client money is returned promptly at the end of a matter
- using client money only for its intended purpose
- proportionate requirements for firms to obtain an annual accountant's report.

This will put the focus on what is important and allow firms greater flexibility to manage their business. The Accounts Rules are also simpler and easier to understand – with the aim of increasing compliance and reducing compliance costs.

Provide the option for firms to hold limited types of client money outside of client account where this is the only type of client money held and the client has been informed in advance. The exemption relates to money held for the solicitor's fees or disbursements for which the solicitor is liable (for example counsel fees). If the firm holds other types of client money, for example those for which the client is liable such as stamp duty land tax – all client money must continue to be held in client account in the usual way.

Provide an alternative to the holding of client money: through the introduction of clear and consistent safeguards around the use of third-party managed accounts (TPMA) as a mechanism for managing payments and transactions.

Why change is needed

228. Effective mitigation of the risk that client money will be misused has always been, and remains, a priority for the SRA. This is done through a combination of outcomes in the Code of Conduct; detailed provisions in the Accounts Rules for the separation and handling of client money, and obligations placed on a firm's managers and Compliance Officer for finance and administration (COFA). However, our experience shows that detailed rules cannot guard against all risks to client money.

229. The current Accounts Rules have not changed significantly for many years. They are prescriptive and restrictive, and focused on ensuring all firms handle

money in the same way. In our view, the rules currently in force would not pass any assessment against the better regulation principles.

230. Our data from accountant's reports shows that many firms find themselves in technical breach of the Accounts Rules in circumstances where there are no real risks to client money. For example, of the approximately 9,000 firms that hold client money, in the period June 2012 to December 2013, over 50 percent received a qualified accountant's report but only 179 were referred to consideration for further regulatory action. This suggests that our Accounts Rules are too complicated and are not focused on the key risks to client money.

231. The current Accounts Rules set out in minute detail how firms should run their accounting systems. This creates logistical problems for some firms to be compliant and makes it difficult for many firms to comply at all. Such complexity often ends up resulting in technical breaches. It drives confusion, cost and non-compliance rather than good practice. For example, a sole practitioner in a rural area has to drive to the bank several times a week to make sure cheques from clients are deposited within 48 hours of receipt as required by our rules. While sometimes this may be necessary, there is little flexibility for the solicitor to decide what is best in the circumstances and best for their clients overall.

232. The new rules are clear on the standards we expect. They can be more easily understood by firms – particularly new entrants who often cite the current Accounts Rules as a barrier to them entering the legal market. They can also be more easily understood by consumers – who will be able to understand what to expect when a firm handles their money.

Our Accounts Rules changes in detail

Change 1: Simplifying the Accounts Rules

233. We have simplified the Accounts Rules by removing prescriptive rules and requirements and reduced duplication with our other rules. The new rules are more proportionate – focusing on the key objective of keeping client money safe, rather than prescribing how firms should run their accounts.

What we were told

234. The high levels of prescriptive detail in the current Accounts Rules mean that firms are often in technical breach of the rules, without there ever being any

real threat or risk to client money. We introduced changes to the accountants' report requirements in phases one and two of our Accounts Rules review[43].

235. These changes encouraged reporting accountants to apply an outcomes-based approach to assessing compliance, with a greater focus on risks to client money. When consulting on these changes, we highlighted statistics from the period of June 2012 to December 2013, where more than 50 percent of the approximately 9,000 firms that hold client money received a qualified report. Of this number, only 179 were referred for consideration for further regulatory action. This shows the extent to which firms are in 'technical' breach of our rules and is an approach that is unlikely to meet any of the tests for better regulation.

236. Most respondents to our consultations about our Accounts Rules supported our objective to simplify the rules and agreed that our proposals achieved this aim[44]. Many respondents also welcomed the removal of the detail in the rules, stating that removing the risk of 'technical' breaches will make compliance with the rules easier. Respondents also anticipated that the new rules will improve compliance and reduce cost.

237. The Law Society confirmed that solicitors would like the rules to be simplified and are supportive of any serious attempt to reduce their regulatory burden. Solicitors have also stated that it is important to update the rules, bringing them into line with current business sectors and industries. However, they were concerned that there could be negative unintended practical consequences. This included increased bureaucracy and administrative costs for new systems and staff training arising from the proposed changes.

238. Some respondents stated that the rules are less precise, making them more difficult to apply in practice. Others were concerned as to whether the new rules would be effective, as they leave more room for interpretation. Firms are familiar with the detailed prescriptive requirements of the existing rules and worry they may find the application of the new rules time-consuming and challenging. Many stated that, while the proposed rules are simpler and easier to understand, it is difficult to say if they will be workable in practice without seeing the guidance that we have proposed, should we go ahead with the rules.

239. A number of respondents stated that there is a risk we are perceived as trying to 'regulate by the back door' by issuing guidance in areas that were

[43] These changes were approved by the LSB in September 2015: http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2015/20150903_SRA_Accounts_And_Overseas_Rules_2015_Final_Decision_Notice.pdf

[44] Looking to the Future, Accounts Rules review, June 2016, https://www.sra.org.uk/sra/consultations/accounts-rules-review.page.

previously rules. Other respondents cautioned against issuing too much guidance and case studies, as this would not achieve our objective of simplification and would rather complicate the situation for firms trying to achieve compliance with the rules.

What we decided

240. The new rules are intended to give firms more flexibility to decide what is best for their clients and for their business while being very clear as to the standards we expect. Where firms decide not to make changes, we expect that they will still be in compliance with the new rules. This addresses the concern raised by the Law Society in relation to the potential burden.

241. We have kept the following requirements from the existing rules:

- The duties to remedy have been retained as we consider that they are important.
- The existing requirement on firms to ensure that they have a written policy on the payment of interest will be removed and reflected in provisions in the draft Code of Conduct of Solicitors (standard 8.8). Rule 8 sets out client accounting systems requirements.

242. We have retained the requirement to obtain bank statements and do reconciliations every five weeks (at a minimum) as we consider that both are important mechanisms to ensure firms, their reporting accountants and our supervisory and enforcement functions can check compliance.

243. We are introducing key principles for when withdrawals from client account can be made, based around the purpose for which the client money is being held and a much simpler requirement that other withdrawals can be made in circumstances that we prescribe. This will allow us to place the detail of the thresholds and safeguards into more flexible and expanded guidance.

244. We have decided that mixed payments must be allocated to the correct account promptly (rather than within 14 days). We did receive objections to this proposal, which were concerned about this being an unnecessary removal of client protection and about the risk that firms will use client funds to manipulate their cash position. However, we were not persuaded. If a firm were to use client money to manipulate its cash position, it is likely it would be in breach of our rules. Firms will still be required to move money between accounts promptly and comply with all our other rules. This includes the requirement to act in a client's best interest to not retain funds for longer than necessary and to act with honesty and integrity.

245. We have removed the requirement for firms to have a published interest policy. This duplicates with the new standard 8.8 in the code for individuals and does not comprise a change in policy. Firms are still required to have a clear interest policy in place. The requirement to have an interest policy also applies to firms through rule 7.1(c) in the Code of Conduct for Firms.

246. The rules allow for a different arrangement with the client or the third party for whom the money is held as to the payment of interest, as long as sufficient information is provided to enable them to give informed consent. The level of information that will be sufficient will depend on the circumstances. It is for a firm to satisfy themselves that they have given the client the opportunity to give informed consent. The prominence and the ease of access to the information will be important in determining this.

247. There were concerns that the introduction of terms such as ‘promptly’, ‘fair’ and ‘appropriate’ to the rules requires an exercise of judgment and that many will prefer prescriptive requirements. The changes will be an adjustment for many firms that are used to the detailed and prescriptive nature of the current Accounts Rules. However, we do not think this provides sufficient justification for retaining rules which we know are often breached with no real impact on keeping client money safe.

248. In terms of simplification of our rules, the main changes we made because of our consultation were:

Removal of Compliance Officer for Finance and Administration (COFA) from rule 1.2

249. Rule 1.2 in the version of the rules we consulted on stated that the firm's managers and COFA are jointly and severally responsible for compliance by the firm, its managers and employees with the rules. We reflected on feedback that suggested that this wording made the COFA directly responsible for compliance with the rules, which would place an unreasonable burden on the COFA that does not exist in the current rules. We were persuaded by respondents to our consultation. The rule now emphasises that the Accounts Rules create obligations on the firm and its managers, not on the COFA. The COFA’s obligations under the Code of Conduct to take all reasonable steps to ensure compliance with the Accounts Rules and report any concerns from a position of independence will still apply.

New definition of regulated services

250. In the version of the rules we consulted on, we used the terminology ’legal services’ in relation to the services that a firm provides to a client. Some respondents commented that as there is no definition of ‘legal services’ there

was a risk that firms and the SRA would interpret this differently. We have changed the wording in the final version of the rules to ‘regulated services’ to ensure that this captures all of the legal and professional services regulated by the SRA. We believe that this terminology provides a clearer definition of what activities fall within the scope of the Accounts Rules and should clarify the obligations of firms.

The need for reconciliations for joint accounts – rule 9.1

251. We had proposed introducing a requirement on firms to carry out reconciliations for joint accounts. Firms are currently not required to do this. Some respondents to our consultation suggested that this introduced a burden on firms and it could be difficult to comply with this obligation as the firm would not always have access to all the relevant records to perform the reconciliation. We have removed the reconciliation requirement for joint accounts from the rules. The obligation to obtain statements at least every five weeks and to keep a readily accessible central record of bills and other notifications of costs still apply.

New approach to final accountants' reports

252. Under the current rules, when a firm stops holding or receiving client money we require it to obtain a final accountant’s report. This has to be delivered to us whether it is a qualified report or not. These are commonly known as ‘cease to hold reports’. The aim is to ensure that when a firm shuts down and closes its client account, we can be confident that all client money has been properly dealt with in accordance with the rules. If not, and we are alerted to risks to an orderly closure or to clients, we can take action to control those risks. This would either by way of an investigation and disciplinary action or by us refusing to revoke the firm’s authorisation. We may grant a waiver in line with our waiver policy from the requirement to obtain a cease to hold report on a case-by-case basis.

253. Under the current rules, these reports must be obtained in all circumstances when a firm we regulate ceases to hold client money, even in the case when a firm changes its legal status from one form to another, without any cessation in the provision of legal services. The effective impact this has on the holding of client money is simply a change in the name of the client account to reflect the new firm name. The cease to hold reports we receive in these circumstances have little value to us as a regulator, and are an additional cost for the firms we regulate.

254. Reflecting on feedback we received during consultation, we changed this rule to better reflect our approach to risk. We will now require firms to submit a ‘cease to hold’ report for client money, if we believe that it is necessary, for

example, when a firm shuts down and closes its client account on a case-by-case basis. We think this approach strikes a better balance between regulatory burden and consumer protection as it reduces the burden on firms that simply change their legal status or firms that hold small amounts of client money and have a good compliance record.

What is the impact on firms?

255. We expect that many firms, at least at first, will continue to operate as they do under the current rules and in doing so will remain compliant with the new Accounts Rules.

256. We received wide support for the decision to remove prescriptive rules that currently result in 'technical' breaches. This will have a positive effect on all firms, individual solicitors and support the role of the reporting accountant.

257. For those firms that want to make changes we will be providing a range of supporting materials, which will be published in advance of the rules being implemented and will be there to support compliance. Our aim along with the rest of the guidance is to help guide firms to make decisions and form their own judgments as to what is acceptable under the new standards.

258. The new rules will be easier to navigate and understand by removing ambiguous terms. There will be more flexibility and fewer prescriptive and onerous rules and fewer updates. This will provide firms with the opportunity to develop bespoke systems that meet the needs of the firm and its clients and potentially to extract more value from their accountant’s report. While there will be a one-off transitional ('familiarisation') cost for all firms and some uncertainty about what constitutes compliance, our toolkit of resources will support firms through this.

What is the impact on consumers?

259. Our changes will lead to more clarity for consumer about how client money is held and received. This will lead to improved understanding of regulatory obligations on solicitors and protections for consumers, enhancing consumer confidence.

260. The changes we have made to the definition of client money address the primary concerns raised in the consultation responses regarding the potential reduction in consumer protection.

How are we managing the risks we identified?

261. The most common breaches of the current Accounts Rules include:

- Failure to file an accountant's report on time.
- Failure to account to client or others.
- Shortage on client account.

262. These will continue to be breaches under the new rules. We have however, removed scope in the rules for minor technical breaches, for example, failing to pay money into the firm's business account within a certain number of days, as firms will now need to ensure that they deal with the movement of money promptly. These breaches have in the past resulted in qualified accountant's' reports, which, when considered by us, result in no action as there is no evidence of consumer harm or a malicious endeavour to breach the rules.

Change 2: A new definition of client money

263. Our revised approach to client money means that:

- we have simplified the definition of client money and addressed the confusion that exists around the issue of agreed and fixed fees
- the vast majority of firms can carry on as they are now and not incur costs of system changes and training (unless they choose to)
- there is additional flexibility for firms that only hold money in relation to advance payments for fees and unpaid disbursements not to operate a client account, provided that the client is informed in advance of where and how the money will be held.

What we were told

264. In our 2016 consultation about the Accounts Rules, we proposed a change to the definition of client money to simplify the current complex rule and allow firms to accept money for fees and professional disbursements (for which the firm is liable) as their own.

265. We highlighted in the consultation that we anticipated this proposal, of all of the proposals in the Accounts Rules consultation, would have the biggest impact on firms. We sought specific feedback on the impacts for both firms and the public.

266. Our proposal was to reduce the scope of what is considered client money (ie money that must be held separately in client account) by excluding these categories from the definition of client money. Under this proposal, monies held in relation to transactions (for example, completion funds or settlement monies) and payments for which the client is liable (such as payments to be made to HMRC) would be considered client money.

267. Under our current rules, the only type of advance fee a firm can take as its own are ‘agreed fees’ – defined as those which cannot be varied up or down and most importantly are payable in any event. This is, in effect, much narrower than a ‘fixed fee’ – which, if required in advance, would have to be paid by the firm into the client account until the work had been billed. For example, a client may agree that a fixed fee for conveyancing services is payable if the transaction does not complete. This would be an agreed fee. If, for example, only a percentage of the fee would be due, this would not be an agreed fee and therefore falls within our current definition of client money. Feedback we received during our consultation suggested the distinction between agreed and fixed fees is often misunderstood. This supported our view that the approach to fees in the current definition is overly complex.

268. We also sought views from respondents on whether greater flexibility was needed as to what could be paid into the client account. For example, clients of a litigation firm making regular payments on account might request they continue to be paid into client account, even though these payments are no longer defined as client money (to ensure protection through separation of monies in the client account). Firms may also choose to do so as a matter of policy.

269. Feedback from our consultation included that:

- Only client money (as defined) should be held in the client account and that firms should not have the flexibility to choose to pay other types of money into client account.
- Firms would want the flexibility to choose what could be paid into the client account so that they could continue with their current systems and processes.
- Firms were concerned about our proposal to exclude fees and professional disbursements from the definition of client money.
- The consequence of the proposed change to the definition of client money would be that all firms would have to change their systems and incur significant costs in doing so. This would impose a cost of compliance that does not exist for any of our other reforms.
- While many firms have been positive about the changes to the definition, the majority wish to continue to operate as they do now and feel strongly about doing so.
- Firms would feel obliged continue to hold professional disbursements in a separate account in any event to meet what they considered to be trust obligations.
- A restriction on holding payments on account in client account would deter their clients from making advance payments at all and significantly affect the viability of their business. (It is common practice for litigation firms to

require payment on account due to the risks of non-payment, if the client is not happy with the outcome of the case.)

- Changing the definition of client money as we had proposed would mean that VAT would become payable by the firm at an earlier stage than at present. (This in turn would mean that firms would need to change their accounting systems and software to accommodate earlier VAT payments.)

270. Respondents to our consultation also raised concerns about the potential reduction in consumer protection. Many respondents stated that the alternative protections (consumer credit legislation, the LeO and the Compensation Fund) that we referred to in the consultation do not provide adequate safeguards for consumers. For example, some respondents stated that it is difficult to make a successful claim against a credit card provider using section 75 of the Consumer Credit Act. Others cited that consumers would be unsecured creditors in the event of insolvency. Some respondents stated the risk of theft would be increased where money was not held in the client account.

What we decided

271. Having considered the points raised during the consultation, we amended our proposal for the definition of client money in the final version of the rules to allow firms with a client account to continue to operate as they do now. We provided some flexibility for those firms that do not wish to operate a client account by creating an exemption from doing so where the only client money they hold is in relation to fees and disbursements relating to expenses which they have incurred on their client's behalf (such as counsel's fees). This does not enable firms to hold other types of client money (such as a house deposit or stamp duty) outside of client account. Firms that handle these categories of client money will still be required to hold the money in client account or a TPMA unless otherwise agreed with the client (as is currently permitted for all firms).

272. This approach has allowed us to simplify the definition and provide greater clarity to firms, members of the public and small businesses. All fees and disbursements paid in advance are considered client money until the point at which they are billed. These payments must therefore be held in a client account, unless they are the only categories of client money held by the firm and the firm takes advantage of the exemption (in new rule 2.2).

273. For the majority of firms with a client account, the new definition means that fees and disbursements paid in advance are considered client money and therefore have to be paid into client account until they are billed, as is the case now.

274. This will mean that the majority of firms that wish to operate a client account can continue with their current accounting systems with no changes to systems and processes other than those they choose to make due to the increased flexibility in the rules.

275. There will be no need for firms operating under the exemption to comply with many of the requirements in the Accounts Rules, which are focused on the holding of client money in a client account (such as the requirement to obtain an accountants' report or to pay interest).

276. However, such firms are still required to comply with the relevant systems and controls requirements (set out at rule 8), (for example, the requirement to obtain bank statements of all accounts run by the firm at least every five weeks and the requirement to keep a central record of all bills or other written notifications of costs). They are also required to have a COFA to ensure compliance with the relevant systems and controls requirements. The COFA must also oversee whether there is a need to have a client account, and keep this under review should the firm start to handle other categories of client money. All firms must comply with the standards in the Code of Conduct, including the requirement to act in each client's best interests and to safeguard money and assets belonging to clients.

What is the impact on consumers?

277. These changes may lead to greater variety in business models, which will provide more choice to consumers. Where a firm continues to operate a client account, the consumer protections will be the same as now. Money held in client account is kept separate from the firm's money. In the event of insolvency, that money cannot be accessed by the insolvency practitioner as their statutory powers only extend to the assets actually owned by the insolvent person. In the event of theft (either by the firm or through cyber crime), eligible consumers will be able to make a claim on our Compensation Fund.

278. Where a firm does not operate a client account (because they intend to rely on the exemption), they will need to ensure that the client is given sufficient information to make an informed decision. A key risk that will need to identified and properly understood by consumers is what happens in the event of insolvency as the money would not be separated.

279. If a firm fails before the work has been done, the client would be treated like any other creditor. This impact could be greater for vulnerable consumers who might not have easy access to additional funds to pay for services, should the original firm become insolvent. However, it is important to be clear

that our discretion to make payments from the Compensation Fund is not limited to money that was lost from a client account. The client would, therefore, be able to make a claim on the Compensation Fund in these circumstances. Clients could also claim on the Compensation Fund in the event of theft. In practice, it therefore does not matter where the 'lost' money was being held. The protections we have in place will apply regardless of whether the lost money was being held in a client account or not. In both cases, if the work is not completed and the firm refuses to complete the work or return the money, eligible clients would be able to seek redress via the LeO.

What is the impact on firms?

280. A large proportion of SRA authorised firms hold or receive client money (as at 7 March 2017, the renewal exercise for 2016/17 confirmed that there were 7,665 firms holding client money). Any changes we make will therefore impact the majority of firms that we regulate. We have considered the potential impacts of our decisions in finalising our policy position[45]. The impact on firms has been a key consideration in our revised approach to the definition of client money.

281. As part of the practising certificate renewal exercise (PCRE) for 2015/16, 7,528 authorised firms declared that they held client money. Firms that hold client money are also required to make a contribution to our Compensation Fund, which provides a discretionary safety net in the event of dishonesty or a failure to account. These firms are also required to comply with the current Accounts Rules, and the associated costs of running a client account. While there are some benefits to firms in terms of interest and better banking terms, the costs of running a client account are significant.

282. The exact costs of complying with the Accounts Rules are difficult to quantify, however, we know that approximately 6,000 firms are required to obtain an accountant's report. We understand from practitioners that a small firm may pay around £800 for each annual accountant's report, but that larger firms may pay several thousand pounds[46].

283. As a proportionate regulator we need to consider whether these obligations can be justified. The changes we are proposing to the definition of client money will help ensure that the protections provided by the Accounts Rules apply only where needed.

[45] See also Accounts Rules – Final Impact Assessment, June 2017, https://www.sra.org.uk/documents/SRA/consultations/accounts-rules-response-impact-assessment.pdf.
[46] Proportionate regulation: changes to reporting accounting requirements, SRA, June 2014, http://www.sra.org.uk/sra/consultations/reporting-accountant.page.

How are we managing the risks we identified?

284. The risk of theft (either by the firm or through cybercrime) exists whether money is held in a client account or not. We have paid out approximately £9m from the Compensation Fund (between 2013 and 2017) in circumstances where the claim related to a firm's failure to account for money paid on account for fees and disbursements.

285. The risk exists even with the current, high levels of prescription in the rules and the requirement for the money to be held in a client account. We do not think that detailed Accounts Rules can mitigate a risk that a solicitor will be dishonest.

286. The key risk of absent dishonesty lies in what happens in the event of insolvency. If, for example, a client pays £2,000 in advance for legal fees and for a medical report, then, under the new exemption, the firm would be able to pay this money into their business account. If the firm goes into insolvency before the work is done, the money would be lost and the client treated as any other unsecured creditor. The money would not have the protection of being held in a client account. However, the client would still be able to make a claim to the Compensation Fund in these circumstances. Clients could also make a claim to the Compensation Fund in the event of theft. The protections we have in place apply, regardless of whether the lost money originated from a client account or not.

287. If the work is not completed and the firm refuses to complete the work or return the money, eligible clients would also be able to seek redress via the LeO. We are increasingly of the view that all firms should ensure clients are clear about the nature and basis of any advance payments they are asked to make.

288. Where a firm makes use of the new exemption and does not operate a client account, clients should be clearly informed that the money is not being held in a client account and agree to this in the knowledge of what it means. We will also consider whether additional information should be provided on the Legal Choices website to help consumers with questions to ask and things to consider when instructing a law firm.

289. We have considered the comments from respondents that some experts (for example, medical experts) who work on a deferred fee basis will be less likely to accept instruction from firms that do not have a client account because their payment will not be protected in the event of insolvency or an SRA intervention. This could lead to a consumer's detriment as their case might

not be progressed and they might need to take a loan to pay the upfront cost of an expert.

290. If an expert is not willing to take instruction from a firm that does not operate a client account, we think there are ways to work around this. One way would be for the solicitor to simply facilitate the contact between the client and the expert and for them to arrange a suitable payment method. Another way could be for the firm to find a way to assure the expert that they have the ability to pay. It would be for the firm to establish and maintain relationships with the experts they need to instruct in their clients' matters.

291. On balance, we consider that the potential advantages for consumers outweigh the limited risks. The new definition is simpler, with a clearer position on the status of all advance payments. This will make it easier for consumers to understand the basis on which they are being asked to pay money in advance.

292. We have decided against the sort of full flexibility we sought views on in the consultation. This would have allowed firms to decide whether or not to hold payments for fees and professional disbursements in client account. While such an approach would have mitigated many of the concerns from firms with regards to the potential systems changes (they could simply choose to do so as a matter of firm policy), the regulatory position would be less clear to consumers. It might also have led to inconsistency across different clients within a firm and created practical issues for reporting accountants, or for us when we investigate and/or intervene into a firm. This view was shared by respondents to the consultation.

Change 3: TPMA

293. We define a TPMA as an account where a third party (a payment service provider) holds money on behalf of two or more transacting parties. In this case, a third party would hold funds for a law firm and their client. Historically, there has been confusion around whether solicitors are allowed to use these types of product. We already allow those we regulate to use TPMAs (there is nothing in our current rules which prohibits the use of them), the new Accounts Rules will set out the standards we expect of the firms we regulate, and the standards we expect them to ensure a TPMA provider meets. This provides additional flexibility through an alternative to running a client account.

What we considered and what we were told

294. In our consultation we proposed to allow TPMAs to be used for all types of client money. It would be for each firm to determine if, and how, they wanted

to use a TPMA in discussion with their clients. The majority of respondents to our consultation [47]stated that they had no objections to the use of TPMAs and in principle supported the introduction of these types of products. Many commented that the use of TPMA would not be a viable option for their firm, due to uncertainty surrounding timings of payment and firms being uncomfortable with the control over client funds resting with a third party. Others said that while TPMA may not be for them, it could be useful for smaller firms that do not handle large amounts of client money. A minority stated that they would wait and see what products the market develops before determining if TPMA was an option for them.

295. A number of respondents expressed concern about the use of TPMAs for transactional money, particularly in relation to conveyancing. As this is time sensitive work they were concerned that a TPMA may not allow for the same level of control as a traditional client account, given that the money is not controlled directly by the firm. The new rules will provide greater certainty than under the current regime on the regulatory position for solicitors that want to use TPMAs, and we might therefore expect to see greater variety in the types of products available. This includes those suitable for transactional work.

296. Other respondents suggested that while there are questions about the suitability and practicality of using TPMAs for all areas of work, it should be for to each firm to determine what best suits their business, and not for us to stipulate.

297. BARCO, the Bar Council's equivalent of a TPMA, has expressed strong support for our proposal to allow TPMAs as an alternative to client account. BARCO has stated that allowing the use of TPMAs will help us achieve our regulatory objectives of promoting competition in the provision of legal services. It also said that the use of TPMA ensures there is greater protection and choice for consumers. BARCO also considers it appropriate for TPMAs to be used for transactional monies and says it has have been successfully assisting with commercial conveyancing for some time.

298. The Law Society's response supported the introduction of TPMAs. However, it also highlighted the risk that that client protection arrangements for those using TPMAs are likely to be much more complex than those for traditional client accounts. This is because TPMA providers are regulated by the FCA and fall within the jurisdiction of the Financial Ombudsman Service (FOS), whereas comparable complaints about a solicitors' operation of a client account are the responsibility of LeO. They stated that the use of TPMAs

[47] Our response to consultation – Accounts Rules Review, SRA, June 2017, https://www.sra.org.uk/documents/SRA/consultations/accounts-rules-our-response.pdf.

could lead to increased consumer confusion around redress schemes and uneven client protections.

299. Other respondents to the consultation raised concerns on the suitability of TPMAs being under FCA regulation, uncertainty surrounding the business structure of TPMAs and safeguards if, for example, a firm goes out of business and whether eligible clients could make a claim on the Compensation Fund in these circumstances.

What we decided

300. Our approach is to allow firms to use a TPMA if:

- The TPMA is either: an authorised payment institution (API) and, as a result, has mandatory safeguarding arrangement, or is a small payment institution (SPI) which has adopted voluntary safeguarding arrangements.

- The firm can demonstrate that it has suitable arrangements for the implementation, use and monitoring of TPMAs. For example, that appropriate information is provided to clients and appropriate internal controls are in place.

301. We will not impose any restrictions on the types of monies firms can hold in a TPMA, this will be for each firm to determine what is appropriate for them in discussion with their client. We recognise the concerns raised by respondents that at the time of consultation there may not have been many products available in the TPMA market that suit all types of transactions.

302. The decision to use a TPMA must be made in accordance with our requirements, but money held in a TPMA will not be subject to the standards in our Accounts Rules. Money held in a TPMA is not held or received by the solicitor or firm, but by the TPMA provider. It does not meet the definition of client money as set out in the new accounts rule 2.1. This means that the provisions in the Accounts Rules relating to holding client money do not apply to monies in a TPMA.

303. We will restrict the use of TPMAs to those operated by payment services providers that are regulated by the FCA under the Payment Services Regulations 2017. We therefore do not propose any additional requirements relating to TPMA providers. The nature of how TPMAs are structured means that they already fall within the regulatory remit of the FCA. We would be duplicating the FCA's regulation by imposing rules relating to the functioning of TPMA's.

304. The solicitor will not be responsible for the monies in the TPMA, as these are held by the TPMA provider and are not under the solicitor's direct control. The solicitor will however be required to ensure that they comply with the requirements in the Accounts Rules relating to the use of TPMAs. We will not ask firms who choose to use a TPMA to report it to us. We are confident that firms that comply with our requirements will make sure that they are using a product that is appropriate and compliant with the rules.

What is the impact on firms?

305. Many respondents to our consultation who supported the introduction of TPMAs in principle raised questions regarding the uncertainty surrounding TPMAs, as there is currently not a strong market of providers.

306. The success of the TPMA market will depend on TPMA providers offering a service in a way that is commercially attractive to firms (and their clients) as an alternative to holding a client account, and which offers sufficient speed and security of transactions.

307. In December 2017 we published guidance for firms that clarifies that they can use these products, and this guidance sets out the standards we expect. This guidance has been drafted to be future-proof for the new Accounts Rules (subject to relevant changes in rule references).

308. From the second half of 2017 and onwards, we have been contacted by several businesses who have been looking at developing TPMA solutions aiming at the legal services market. Providing more clarity around these types of products has no doubt started to take effect among providers, which we expect will lead to more interest from firms in using these types of services as an alternative or addition to a traditional client account.

309. We believe that all types of firms could have an interest in using a TPMA. It removes the burden of operating a client account and shifts compliance with detailed regulatory obligations on to the TPMA provider to ensure that money is kept safe, leaving solicitors free to focus on providing legal services. Any firm that considers using a TPMA will need to ensure that they comply with the SRA Principles and therefore, be satisfied that the arrangements are in the client's interests.

What is the impact on consumers?

310. We think that regulation by the FCA provides an appropriate level of oversight in relation to the regulation of TPMAs as financial service providers and ensures adequate consumer protection.

311. As well as making sure the TPMA is an API or SPI, solicitors will have to ensure that they comply with the standards in the Code of Conduct, including the duty to act in clients' best interests and safeguard money and assets belonging to clients. We would expect this would include an assessment of the suitability of the product in the particular circumstances and for the particular client. We would also expect that clients understand that the basis on which the money is held and that it is different to a regular client account.

How are we managing the risks we identified?

312. The misuse of client money is found across a wide range of firms, for example, practices failing to detect a rogue individual or group through weak prevention systems or where money is sometimes used to prop up the business. We will monitor developments and collate information on whether the holding of client money in a TPMA removes these risks and also whether there is increased opportunity for small firms and new entrants to compete in a market that allows for innovation and flexibility in approach.

313. We will also continue to work with professional indemnity insurers to review whether the use of TPMA could reduce firm exposure to risks such as cybercrime or poor systems and controls. Where risks are managed using a TPMA we will look to see if this results in any consequential reduction in insurance premiums.

How we are monitoring and supervising this change

314. We will keep under review the types of firms that continue to breach the rules and consider what can be done to support a better understanding of the standards required. Accountants reports are a key piece of information in this regard.

315. As the revised rules continue to reflect key requirements on firms to ensure that client money is protected, simplifying the requirements on firms does not reduce or dilute obligations on firms, their managers or employees to keep money safe. Simplified rules will not eradicate dishonest behaviour or the failure to act in the client's best interests and we will continue to take enforcement action, where appropriate, to ensure consumers are protected.

316. We do however, consider that introducing a rule which allows us to call for information at any stage to check compliance, for example, a cease to hold report, is a proportionate way of allowing us to use our resources more effectively and target risks to client money.

How the new Accounts Rules support the Regulatory Objectives and the Better Regulation Principles

The Regulatory Objectives	
Protecting and promoting the public interest	Simpler rules which focus on the requirement to keep client money safe continue to ensure an adequate level of protection for clients. Accounts Rules are clearer for consumers to understand. Onus on the firm to consider the needs of the client and any vulnerabilities that could impact on a client's decision. The use of a TPMA has the potential to increase the level of control a client has in terms of the movement of money as they will be required to agree to the terms on which the money is held by a third party.
Supporting the constitutional principle of the rule of law	Nothing in our proposals for the Accounts Rules conflicts with this regulatory objective.
Improving access to justice	Simpler rules and revised definition of client money allow flexibility for firms but also highlight the need to ensure that proper controls are in place to protect client money. New rules allow small firms and clients looking for firms that offer innovative ways of delivering services and have effective systems and controls to protect client money.
Protecting and promoting the interests of consumers	We are removing unnecessary prescription for those we regulate which can have a negative impact on competition that could benefit consumers. Revised definition of client money allows firms to engage with clients in a way which means that consumers will need to be informed of the protections that apply depending on how money is held.

Promoting competition in the provision of legal services	Removing unnecessary regulatory burdens of our current Accounts Rules will help firms devote resources to the quality and competitiveness of their services. Firms will benefit from the removal of prescription that currently dictates for example, the number of days in which certain types of money must be moved from one account to another. New firms will also be able to benefit from our new arrangements as they may have previously been put off by prescriptive and inflexible rules. Firms will also be able to consider different approaches for individual clients and their business generally.
Encouraging an independent, strong, diverse and effective legal profession	The changes will benefit all firms as our new rules will reduce costs that are linked to the current level of prescription. Firms that decide to use TPMAs or can benefit from the exemption of operating a client account are likely to make efficiency savings.
Increasing public understanding of the citizen's legal rights and duties	Firms that operate within the exemption or use a TPMA will need to ensure that their clients are informed of any associated risks and of the protections that apply. This is enhanced through requirements in the new codes which require clients to be informed of the protections available to them.
Promoting and maintaining adherence to the professional principles	Removing prescription from the rules means that firms will now need to properly assess the needs of their clients and how they ensure compliance rather than relying on a set of rules which in effect become a tick-box exercise.
Better Regulation Principles	
Transparent	The new definition of client money is much clearer about what client money is and the

	point at which it can be taken as the firm's - i.e. when a bill has been issued.
Accountable	The rules make solicitors more accountable to their clients. For example, those who operate under the new exemption and do not operate a client account, should clearly inform clients that the money is not being held in a client account. The rules continue to ensure that those that we regulate are fully accountable for significant breaches of the rules - this will ensure that we can take targeted action against those that act in breach.
Proportionate	New rules reduce burdens on firms, as they will be allowed to structure compliance in a way that reflects their business practice and the needs of their clients.
Consistent	The rules continue to promote the need for all authorised firms to act with integrity, maintain proper standards of work, and act in their clients' best interests.
Targeted at cases where action is needed	The new rules remove unnecessary prescription to focus on the most important aspects of managing client money. Firms that are satisfied that their arrangements are currently compliant will not have to change.

5) Requirement for firms to have an authorised person who has practised for three years

What we are doing

317. Rule 12 of our current Practice Framework Rules requires all bodies that we authorise (and certain individuals - see rule 12.1) to either have within their management structure or be 'qualified to supervise'. To be qualified to supervise a person must have:

- undertaken training as specified by the SRA (currently 12 hours on management skills)
- been entitled to practise as a lawyer for at least 36 months within the past 10 years.

318. One of the effects of rule 12 is that a solicitor may not set up as a sole practitioner unless they have been entitled to practise for at least three years.

319. We are replacing rule 12 with a requirement for any firm that we authorise (including recognised sole practices) to either have at least one manager or employee who has practised as an authorised person for three years or procure the services of an individual that meets this requirement.

Why change is needed

320. We want to be clear about the experience we think it is necessary for firms to have before we authorise them. We do not think the current rule does this. It conflates technical competence, supervision arrangements and running a business. It is widely misunderstood as a requirement that solicitors must themselves be supervised for at least three years post-admission, or that a solicitor must have three years' experience before they can set up as a sole practitioner. The justification for the rule is commonly expressed as the need to ensure that an individual has developed the technical and business competences to run a business. Many respondents to our Looking to the Future phase one consultation supported the existing rule on this basis.

321. For example, the SDT suggested that removing the qualified to supervise requirement would be dangerous in terms of client protection and public confidence in providers of legal services. The SDT suggested that we should only review the requirement once our new competence statement and approach to continuing professional development are well embedded. The SDT also provided evidence that out of 138 judgments over the previous 12 months, seven (5%) included reference by the respondent solicitor to lack of

supervision as an explanation for their misconduct[48]. This comment shows the confusion the rule creates, as it does not actually impose any supervision requirement.

322. However, the existing rule as drafted does not provide any guarantee of competence. For example:
    - The three-year entitled to practise period does not require any actual practice. There is also no requirement in the rule for the time to be recent.
    - It does not relate to or safeguard the actual level of technical or business competence of an individual.
    - The training requirement is also arbitrary and out of step with our new approach to continuing competence, in which individuals must identify and undertake the training they need to be competent in their role.

323. The existing rule creates a barrier to market entry, by preventing solicitors establishing their own firms as soon as they qualify. We have sought to address barriers to entry through liberalising the requirements for training contracts and permitting solicitors to practise unreserved legal services in a non-LSA regulated business. The current rule is therefore hard to justify.

What we were told and what we decided

324. We initially consulted on whether to keep the current 'Qualified to Supervise' rule in our phase one consultation and subsequently revised our approach for our phase two consultation. A number of respondents to our phase one consultation understood our concerns and told us that the current rule was overly prescriptive without providing any real assurance of competence, that other regulations provide similar assurances and protections and that the existing rule did not reflect the reality of modern practice. Others questioned the disconnect between the qualified to supervise requirements and our new approach to continuing competence.

325. Some respondents to our phase one consultation felt that our proposal to remove the rule would mean that firms without someone of three years post qualification experience would find it hard to get professional indemnity insurance or would find it prohibitively expensive. Any higher costs were likely to be passed on to clients which would make sole practices run by newly qualified solicitors uncompetitive. Based on research by the Law Society, sole practitioners PII premium relative to turnover is already higher than larger

[48] Our response to consultation: Looking to the Future phase one - flexibility and public protection, June 2017, https://www.sra.org.uk/documents/SRA/consultations/lttf-our-response.pdf.

firms (for example 7 per cent relative to 5.5 percent for firms with 2 - 4 partners) [49].

326. The consensus was that while the current rule might not be ideal, it did provide an important safeguard to ensure that newly qualified solicitors did not set up their own firm without some experience. A number of local law societies argued that removal would increase consumer detriment because inexperienced solicitors would be encouraged to become sole practitioners. It was felt that a period of supervised practice enables solicitors to embed their learning and increase their management and practical experience. For example, the Junior Lawyers Division and others argued that the removal was potentially unfair to the newly (36 months) qualified solicitors who benefit from support and supervision during that period.

327. Although some respondents to our consultations accepted that there was no particular evidence for a three-year period, it was felt that it enables a newly qualified solicitor to develop a better understanding of their strengths and weaknesses. As a result, an individual is less likely to act above their competence and an individual has a better understanding whether they are suited to being responsible for a firm.

328. Reflecting on the feedback we received from two consultations, we decided that it is appropriate to retain some restriction around setting up or running a practice regulated by us. Anyone, whether qualified or not can provide unreserved legal services and it would be an unjustified market restriction in our view for a newly-qualified solicitor not to be able to do so, especially given the other safeguards that are in place for those solicitors.

329. We will therefore replace the existing rule with a requirement that any firm we authorise (including recognised sole practitioners) must have at least one manager or employee who has practised as an authorised person for three years.

330. In all cases, that individual will be responsible for supervising the work undertaken by the authorised body. We will also introduce a restriction on solicitors and RELs practising on their own as “freelancers”, requiring them to have three years of experience before they can deliver reserved legal services to the public. This new rule matches a key element of the current rule while tightening up the requirement to mean that actual experience is necessary as opposed to mere entitlement to practise and that the individual will have an obligation to supervise the work as opposed to merely being employed in the firm.

[49] Professional Indemnity Insurance research report 2016-17, prepared for The Law Society, July 2017, https://www.lawsociety.org.uk/Support-services/Research-trends/docs/PII-survey-2016-17-report.

331. We do not consider it appropriate to retain the requirement to attend a 12 hour management course. The new rule focuses on experience of legal practice and not business management. We have also moved away from rigid training requirements in favour of a competence approach. Authorised firms will be required by the new code for firms to have effective management systems and practices in place.

What is the impact?

332. Our new rule will mean that actual experience is necessary, as opposed to entitlement to practise with a focus on experience of legal practice not business management. In addition, the individual will have an obligation to supervise the work as opposed to merely being employed in the firm. This provides a basic safeguard to protect clients from inexperienced and newly-qualified solicitors providing reserved legal services on their own.

333. The changes also remove confusion about the existing rule and about what qualified to supervise means.

334. The rule will provide assurance that skills have been developed, and experience obtained of practice in a professional, regulated environment before an individual can practise unsupervised.

How are we managing the risks we identified?

335. There is a risk that the changes could stifle competition by preventing new entrants to market without providing assurance of standards and that could result in a 'training contract bottleneck' (which is being addressed through introduction of SQE) moving to point of admission. We will monitor the market impacts, particularly any evidence of bottleneck at point of admission. (Part of that will be looking at any differential impacts on groups of solicitors, including BAME solicitors and solicitors with disabilities.) However, this risk exists with the current rule, and for the first time newly qualified solicitors will now have the option of providing non -reserved services to the public outside of a regulated entity.

336. We also recognise the risk of ensuring competence of those who supervise. Therefore, in deciding our approach, we have considered other safeguards, including those we are introducing with our other new rules, to help mitigate this risk. These include:

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

- Both the current and new code contain the requirement to not act outside of competence. Rule 3.2 of the new code for individuals requires a solicitor to ensure the service they provide to clients is competent. It would be a breach of this requirement for a newly qualified solicitor to set themselves up as a sole practitioner in an area they were not competent in.
- The new approach to continuing competence and rule 3.3 of the new code for individuals require solicitors to maintain their competence to practise and keep their professional knowledge and skills up to date. Our new approach became compulsory for all solicitors in November 2016 and will therefore have been in force for at least two years by the time our new rules are introduced.
- Both the current and new code require firms to have in place certain safeguards to ensure competence. Rule 2.1 of the new code for firms requires entities we regulate to have effective business controls in place, including systems for supervising client matters and ensuring staff are competent and keep their skills up to date.
- Our Ethics Helpline provides support for all solicitors (including sole practitioners) who encounter difficult ethical questions.
- Our digital register of solicitors, set out in our Better Regulation proposals, means that consumers will be able to find when a solicitor was admitted, and therefore how much experience they have.
- In future, the SQE will mean all qualified solicitors have passed a rigorous assessment of their technical competence (although the SQE will not assess whether a candidate is competent to own or run a business).

How we are monitoring and supervising this change

337. See the section above about how we are managing the risks of this change.

How the requirement for firms to have an authorised person who has practised for three years supports the Regulatory Objectives and Better Regulation Principles

The Regulatory Objectives	
Protecting and promoting the public interest	Focus on actual experience, experience of legal practice and an obligation to supervise the work.
Supporting the constitutional principle of the rule of law	The change is likely to be neutral in relation to this Regulatory Objective.
Improving access to justice	Improves access to justice by promoting quality in the provision of legal services.
Protecting and promoting the interests of consumers	Provides a basic safeguard to protect clients from inexperienced and newly-qualified solicitors providing reserved legal services on their own.
Promoting competition in the provision of legal services	The change is likely to be neutral in relation to this Regulatory Objective.
Encouraging an independent, strong, diverse and effective legal profession	Helps to drive quality in legal services. Supporting changes to the Code place emphasis on competence.
Increasing public understanding of the citizen's legal rights and duties	The change is likely to be neutral in relation to this Regulatory Objective.
Promoting and maintaining adherence to the professional principles	Ensures that solicitors have developed skills and have experienced practice in a professional, regulated environment before they can practise unsupervised.
Better Regulation Principles	
Transparent	Clarifies a widely misunderstood rule which conflates technical competence, supervision arrangements and running a business.
Accountable	Solicitors must have been subject to adequate supervision before setting up a practice.

	New rules clarify that the supervisor is responsible for supervising the work undertaken by the authorised body.
Proportionate	Removed requirement to attend a 12 hour management course. The new rule focuses on experience of legal practice and not business management. New rule reflects move away from rigid training requirements in favour of a proportionate competence approach.
Consistent	Removes inconsistency in our approach that means that current rule prevents an individual becoming a sole practitioner, but it does not prevent them becoming an owner of a legal business or exercising management control from the day they qualify.
Targeted at cases where action is needed	New rule targeted at ensuring competence, rather than conflating competence with business management skills.

6) Assessment of character and suitability

What are we doing?

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

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

339. We have reviewed and benchmarked our current Suitability Test against other professional regulators and revised our approach to assessing a would-be solicitor's character and suitability. The updated assessment:

- Clarifies the overriding principles which govern our assessment of a person's character and suitability.
- Sets out factors we will consider, including criminal findings, regulatory findings and other behavioural and conduct issues.
- Among the indicative behaviours we will consider, sets out aggravating or mitigating factors, including:
    - a person's rehabilitation and remorse
    - their position (for example, in a position of trust) at the time of criminal or other behaviour
    - the vulnerability of those affected by the actions
- Assesses whether RELs and RFLs are in good standing with their regulator.

340. We are removing our current requirement for students to disclose any character and suitability issues before entering a period of recognised training. In line with our approach to apprentices, we propose an assessment of character and suitability should occur at the point of admission.

Why change is needed

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

342. Our phase one consultation set out our intention to review the Suitability Test and asked whether respondents had encountered any particular issues in

applying the Suitability Test (either on an individual basis, or in terms of business procedures or decisions). A small proportion of respondents suggested some issues with the existing requirement, and made suggestions for improvements to the test including:

- To avoid issues coming to light only once students reach the point of admission, and when they have already committed considerable time and financial resource. We could be more proactive in flagging the Suitability Test to students at an early stage.
- The test is not user-friendly for non-lawyers, who can easily misinterpret the questions.
- It takes a long time to complete the manual process, and applicants are left waiting for a decision.
- The test is too rigid and does not allow for discretion (eg, where offences are historical, and/or have already been considered by another regulator).
- We should ask for certain types of information only once, and not at different points, as is the current situation.
- We should consider "deeming" approval – where another regulator has already undertaken a similar or equivalent suitability test.
- We should also consider dropping the requirement for a 'certificate of good standing', which is a duplication of effort.

343. We benchmarked the current Suitability Test against similar assessments undertaken by other professional services regulators, including all of the legal services regulators, and a number of other regulators with similar requirements to ours. We concluded that, compared to the approach taken by other regulators with similar regulatory powers and sanctions, our current test is unnecessarily rigid in comparison.

344. The inflexibility of our current test means that we do not have the ability to apply a common-sense case by case approach that allows us to fully take account of harm and mitigating factors, and to take a nuanced and transparent view of each application. Instead, each application has to be considered within the current rigid framework, meaning that we are not able to admit some individuals that we think (on balance) should be admitted to the profession (as they either pose no current regulatory risk, or that regulatory risk can be effectively managed by conditions on their practising certificate).

What we were told and what we decided

345. Through a new assessment we are clarifying the overriding principles which govern our assessment of appropriate character and suitability, ie protection of the public and of the public interest. We are moving to a set of indicative events or behaviours, aggravating and mitigating factors, which will apply

equally to all, taking into account the individual's circumstances and the nature of their role (eg solicitor, COLP etc). For RELs and RFLs we will look at whether they are in good standing with their regulator.

346. Respondents to our phase two consultation were generally supportive of this approach, considering it to be sensible and logical. They welcomed the flexibility the new test introduces to the decision-making process.

347. Under the new assessment we will only ask for details of cautions or above. Following consultation feedback, have made our rules clearer about patterns of criminal behaviour and what events will be a cause for concern. Any decision will of course be case specific and depend on the individual's circumstances.

348. At the moment students can seek an early decision on their character and suitability before they start the Legal Practice Course (LPC). They therefore know whether they could be admitted before they commit to course fees. Our phase two consultation had proposed giving students early, individual, advice instead of a binding formal decision at that stage.

349. We were persuaded by respondents to our consultation, such as the Law Society's Junior Lawyers Division, who argued that students with issues that may affect their character and suitability would benefit from a formal decision before embarking on the cost and time commitment of training to be a solicitor. The numbers who apply for an early decision in practice are small, but we agree that this small cohort should be able to receive this assurance before embarking on the cost and time commitment of training to be a solicitor.

350. We will therefore retain the facility for students to obtain a formal character and suitability decision at any time before making an application for admission, including before embarking on the LPC. This decision will apply at a point in time and any future application for admission will be assessed on the evidence available at that later time. We will make clear when rehabilitation will be likely to have an effect should a subsequent application be made.

351. Where the person is a lawyer and has already been approved by another legal services regulator under the Act, we already rely on a certificate of good standing from that regulator. This prevents us from second guessing the decisions of other approved regulators. We are satisfied that an authorised legal professional in good standing with an approved regulator (under a regime overseen by the LSB) should be suitable to undertake significant roles within a law firm authorised by us and we will therefore to deem these

authorised persons to be suitable as role holders in authorised bodies going forward after our initial approval.

352. We have included a provision in our new assessment of character and suitability that allows us to rely on a certificate of good standing from a regulator in a different field (eg accountancy). This will be dependent on us being satisfied that the regulator operates a suitable equivalent regime.

353. If we approve a role holder authorised by another regulator, that role holder will be under an ongoing duty to report any new issues that are relevant to our character and suitability rules to us. This includes a requirement to tell us about any action taken against them by their own regulator. This will allow us to withdraw, or impose conditions on, our approval if necessary.

What is the impact of this change?

354. Overall, we think that these changes could have a positive impact because they support those seeking to rehabilitate from past misdemeanours. At the same time, our clear rules will help individuals with serious character and suitability issues to make an informed decision about whether or not to commence or commit any financial resource to seeking to become a solicitor.

355. Our approach also means that consumers can have confidence in our character and suitability assessment, which will be more nuanced and proportionate.

356. The combination of our retention of the early test and the greater flexibility of our new approach will give greater scope for admission to the profession than our current approach. It also provides a safeguard for students so that they are less at risk of spending money on training but being denied admission to the profession.

357. By taking a more proportionate, transparent, and nuanced approach to our decisions, there is less potential for challenges against our decisions. We are also providing a longer period to demonstrate rehabilitation and avoid early definitive refusal because there has not been the time for rehabilitation.

How are we managing the risks we identified?

358. There is a risk that the revised assessment will impact disproportionately on a particular group. We will monitor the diversity of solicitors we assess for any impacts on particular groups.

359. We are also aware of the risk that the changes could create uncertainty about what constitutes compliance. We will therefore provide information on character and suitability requirements to students through learning providers and the SQE programme. We will also offer (non-binding) advice to students at any time before applying for admission and retain the option of applying for an early assessment.

How we are monitoring and supervising this change

360. The revised rules will allow us to fully take account of harm and mitigating factors, and to take a nuanced and transparent view of each application. The revised rules align with the updated Enforcement Strategy and codes of conduct, and we have additional training already underway to ensure staff are ready for the change in approach. For example, the General Counsel and an Executive Director are currently leading monthly case discussions with the authorisation teams (who consider Character and Suitability at the point of admission). These sessions are focused on building capability and capacity in the team to exercise judgment consistently, recognising that a more flexible set of regulatory arrangements requires this even more than the current regime.

361. We also intend to use our existing powers more effectively to impose practising certificate conditions at the point of authorisation, where this will enable us to admit an individual while mitigating any risk they might present. Decision makers will be trained in this area to ensure that regulatory decisions are fair, efficient and transparent (and that decisions taken at authorisation about imposing conditions are consistent with those taken when imposing conditions on those already admitted).

How the changes to our assessment of character and suitability support the Regulatory Objectives and the Better Regulation Principles

The Regulatory Objectives	
Protecting and promoting the public interest	The new assessment clarifies the overriding principles which govern our assessment of appropriate character and suitability, ie protection of the public and of the public interest.
Supporting the constitutional principle of the rule of law	The change is likely to be neutral in relation to this Regulatory Objective.
Improving access to justice	A less arbitrary, more nuanced assessment of character and suitability may lead to more solicitors entering the profession, potentially increasing access to justice.
Protecting and promoting the interests of consumers	Consumers can have confidence in our character and suitability assessment, which will be more nuanced and proportionate.
Promoting competition in the provision of legal services	A less arbitrary, more nuanced assessment of character and suitability may lead to more solicitors entering the profession, potentially increasing competition.
Encouraging an independent, strong, diverse and effective legal profession	Move to a set of indicative events or behaviours, aggravating and mitigating factors, which will apply equally to all, taking into account the individual's circumstances and the nature of their role (eg solicitor, COLP etc).
Increasing public understanding of the citizen's legal rights and duties	The change is likely to be neutral in relation to this Regulatory Objective.
Promoting and maintaining adherence to the professional principles	Move to a set of indicative events or behaviours, aggravating and mitigating factors, which will apply equally to all, taking into account the individual's circumstances and the nature of their role (eg solicitor, COLP etc).

Better Regulation Principles	
Transparent	More proportionate, transparent, and nuanced approach to our decisions means less potential for challenges against our decisions. Longer period to demonstrate rehabilitation and avoid early definitive refusal because there has not been the time for rehabilitation.
Accountable	Retention of the early test and the greater flexibility of our new approach gives greater scope for admission to the profession than our current approach. Safeguard for students so that they are less at risk of spending money on training but being denied admission to the profession.
Proportionate	Will be able to rely on a certificate of good standing from other regulators. A longer period to demonstrate rehabilitation and avoid early definitive refusal because there has not been the time for rehabilitation.
Consistent	Our new character and suitability assessment is more consistent with the approach taken by other similar regulators than our previous assessment.
Targeted at cases where action is needed	More nuanced and proportionate test, focused on indicative behaviours and allowing more time to demonstrate rehabilitation.

7) Transitional arrangements for the introduction of the SQE

What are we doing?

362. We plan to introduce a new, independent centralised assessment, the SQE, for all would-be solicitors in late 2020. The SQE will mean that everyone who becomes a solicitor will meet the same high standards in a consistent way.

363. We are taking a gradual approach to introducing the SQE. Our initial SQE regulatory arrangements were approved by the LSB in March 2018[50]. We will be making a further application to the LSB to approve further regulatory arrangements required for the SQE in 2019.

364. This part of the application sets out our plans for introducing transitional arrangements for individuals who have started on the path to qualification under the existing routes at the time the SQE is introduced. We consulted on our approach as part of our phase two consultation.

365. Our new arrangements allow anyone who has started or entered into a contractual agreement or made a non-refundable financial commitment to start:

- a Qualifying Law Degree
- the Common Professional Examination (CPE)
- an Exempting Law Degree, an Integrated Course
- the Legal Practice Course
- a period of recognised training

before the SQE is introduced to continue under that route up to a cut-off date of 11 years after the SQE is introduced.

366. We will also allow candidates who have already passed QLTS 1 an additional 12 months after the SQE introduction to complete the QLTS assessments and apply for admission.

Why are we doing this?

367. We want to give a choice to individuals who have invested significant time and money in the reasonable expectation that a particular qualification will lead to admission as a solicitor. They are not intended to guarantee that everyone who has started a QLD, CPE or the QLTS before the SQE is

50 http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/FINAL_decision_notice.pdf.

introduced can qualify under our current regulations. There could be many circumstances which may delay an individual's progress to qualification.

368. Individuals who have started either a QLD or CPE, or are further advanced in the route to qualification before the SQE is introduced, may continue under that route subject to a cut-off date. The cut-off date will be the end of the calendar year 11 years after the SQE is introduced.

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

370. While we can give early notice of the change from the QLTS to the SQE, we recognise it may take longer for candidates who have passed QLTS 1 to complete QLTS 2. We have therefore provided these candidates with an additional 12 months after the introduction of SQE to complete the QLTS assessments and apply for admission.

What we were told and what we decided

371. Few stakeholders raised any issues with our 11 year cut-off date or with the principle that candidates must choose between either the old or the new processes for admission. A small number of law firm respondents suggested we should provide additional time for candidates to take the CPE and qualify under the existing system, so that they would be able to deal with trainees arriving through both the QLD and CPE routes under the same set of our regulations regarding their period of recognised training.

372. In our consultation we proposed that Individuals who have started the QLTS assessment must have completed all parts of the QLTS by the time the SQE is introduced and that candidates, who are part way through the QLTS when the SQE is introduced, cannot have a partial exemption from the SQE. We received comments from some QLTS candidates and Kaplan (the QLTS assessment provider) suggesting that we should give longer to individuals who have started the first part of the QLTS (QLTS 1) to complete the second part (QLTS 2) and apply for admission.

373. The key principle underlying our transitional approach is that we want to be fair to those who have invested significant time and money in the current system while making sure standards are maintained during the transitional phase. Qualified lawyers who have already passed QLTS 1 will have invested time and money in the expectation that they can qualify under the current system. While we can give early notice of the change from the QLTS to the

SQE, we recognise it may take longer for candidates who have passed QLTS 1 to complete QLTS 2.

374. So, we have decided to amend our original position and allow candidates who have already passed QLTS 1 an additional 12 months after the SQE introduction to complete the QLTS assessments and apply for admission. This will be of benefit to BAME candidates who are disproportionately represented on QLTS.

375. A small number of respondents (including the Law Society and the City of London Law Society) raised concerns about there being insufficient time between finalising the SQE and introducing it. We will not provide additional time for candidates to take the CPE and qualify under the existing system. Students with a non-law degree who wish to become solicitors (but have not yet begun any legal training) will be able to qualify as solicitors through the SQE route.

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

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

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

379. In addition, we will maintain our current equivalent means route to qualification for those who have started to train under the current system. This provides additional flexibility during the transitional period. In certain circumstances, equivalent means could give us the flexibility to protect candidates who have started but not completed their route to admission under

the current system by the cut-off date. For candidates who start to train after the introduction of the SQE, equivalent means will no longer be necessary because we will no longer specify the form that preparatory training must take.

What is the impact of the change?

380. We recognise the likely impact these changes have on those who have started to qualify under the existing system. These transitional arrangements provide a reasonable opportunity for individuals who have invested time and money on the existing qualification framework when the SQE comes into force to have time in which to complete under the existing system. For a period of 11 years individuals will be able to satisfy our training regulations through two routes - the current pathways or the SQE. For this period we will operate two processes to assess an individual's admission to the profession.

381. In response to consultation we allowed an extra year for candidates who have already passed QLTS 1 to complete their QLTS assessments. This will be of benefit to BAME candidates who are disproportionately represented on QLTS.

382. For consumers, the SQE provides assurance of consistent, high professional standards.

How are we managing the risks we have identified?

383. We recognise that the risk that these changes may have a disproportionate impact on those with caring responsibilities or illness which has led them to take time out or qualifying through the existing routes. To mitigate this, we have maintained flexibility in our approach to allow us to maintain the equivalent means mechanism. We have also proposed a lengthy transition period so that people who study part-time or who take time out have a reasonable period in which to complete the qualification under the current system

384. The arrangements also provide time for firms to plan for the introduction of the SQE and how it might impact their current and future trainees. We have also allowed a period of choice during transition gives market time to adjust to new system. This helps to mitigate the risk of uncertainty for the market and firms following the introduction of the SQE.

385. To be fair to those who have already invested time and money in QLTS, we will allow candidates to apply for exemption from SQE once introduced. We will also ensure we engage with qualified lawyers so that they know that QLTS will come to an end after 12 months.

How we are monitoring and supervising this change

386. We have been clear that the provision of a lengthy transitional period does not mean that we can guarantee that training providers will continue to offer training and courses under the current system until the end of the transitional period. And we cannot guarantee that everyone who has started on the current route will be able to complete it before the end of the transitional period. This is a matter for the market. So we do not think there is any clear regulatory benefit in monitoring these arrangements. We have the tools to address any specific cases which may arise during the transitional period. For example, we have retained the option to apply to us for equivalent means and we have a power of waiver in appropriate circumstances.

How the transitional arrangements for the SQE support the Regulatory Objectives and the Better Regulation Principles

387. While the introduction of the SQE is likely to have a positive impact on all of the Regulatory Objective, the impact of this specific change on the majority of the Regulatory Objectives is likely to be neutral. This assessment against the Regulatory Objectives and Better Regulation Principles is focused only on those where there is likely to be an impact in relation to the transitional arrangements for SQE.

The Regulatory Objectives	
Protecting and promoting the public interest	Standards will be retained during the transitional period because individuals will still have to complete the full route to qualification under the current system or they will have to demonstrate competence through the SQE.
Supporting the constitutional principle of the rule of law	The impact of this change is likely to be neutral on this Regulatory Objective.
Improving access to justice	The impact of this change is likely to be neutral on this Regulatory Objective.
Protecting and promoting the interests of consumers	The impact of this change is likely to be neutral on this Regulatory Objective.
Promoting competition in the provision of legal services	The impact of this change is likely to be neutral on this Regulatory Objective.

Encouraging an independent, strong, diverse and effective legal profession	SQE provides mechanism for candidates to qualify through alternative pathways increasing access to the profession. Transitional arrangement also allow time for people who are studying part-time or who take a break to complete under the current system. Change to allow candidates who have already passed QLTS 1 an additional 12 months after the SQE is introduced to complete the QLTS assessments and apply for admission. This will be of benefit to BAME candidates who are disproportionately represented on QLTS.
Increasing public understanding of the citizen's legal rights and duties	The impact of this change is likely to be neutral on this Regulatory Objective.
Promoting and maintaining adherence to the professional principles	The change will help prepare the market for the introduction of the introduction of the SQE.
Better Regulation Principles	
Transparent	Giving reasonable notice of lengthy transitional arrangements, including warnings of long-stop date.
Accountable	The impact of this change is likely to be neutral on this Principle.
Proportionate	Period to allow individuals that have started to qualify under the current system to complete under that system.
Consistent	The impact of this change is likely to be neutral on this Principle.
Targeted at cases where action is needed	The impact of this change is likely to be neutral on this Principle.

What other policy changes are we making?

388. As we have set out earlier in the application, our approach to reviewing the current Handbook has been to justify the retention of any restrictions as opposed to justifying their removal. The previous section of our application sets out where this has resulted in significant policy changes which have been the focus of consultation.

389. There are a number of other areas where our review has led to what we consider to be less significant policy changes or to a change in the way the rules are structured and/or grouped together. These include:

8) Change to the requirement to have a practising address in England or Wales.
9) Streamlining overseas principles and overseas accounts rules requirements.
10) Corporate Manager Owners.
11) Manager requirements.
12) Regulatory and Disciplinary Procedure Rules.

390. These changes were set out as such in consultation. Our assessment of their nature and lower impact was supported by the responses we received, which did not highlight any major concerns with these changes. We have therefore grouped our analysis of the impact of these changes on the Regulatory Objectives and Better Regulation Principles in the table on p103.

8) Change to the requirement to have a practising address in England or Wales

What are we doing?

391. We are retaining our current requirement for firms to have a practising address in this jurisdiction but, for recognised bodies and recognised sole practices, we are proposing to widen the rule to include anywhere in the United Kingdom. This reflects the legislative position and is in line with our approach to only go beyond statutory restrictions where it can be justified.

Why change is needed

392. The Ministry of Justice (MoJ) has previously consulted on removing the statutory requirements for ABSs to have a practising address in England and

Wales and to provide reserved legal services from that address. In our response to their consultation we agreed with the proposal. In reviewing our rules, we therefore considered whether to retain the current requirement for all firms to have a practising address in England or Wales or pare our rules back to match the relevant legislation (which currently only requires this of ABS).

393. Our final position, while retaining a requirement for a domestic practising address, allows firms based in Scotland and Northern Ireland to be able to offer reserved legal services to consumers in England and Wales. We expect this to lead to more consumer choice and scope for greater diversity in both delivery models and in the solicitor profession.

Background

394. Under our current rules, any firm wishing to be regulated by us must have a practising address in England and Wales. For ABS this is a statutory requirement set out in Schedule 11 to the LSA, save for companies and LLPs with a registered office in England or Wales. For recognised bodies this requirement stems only from our rules, meaning we can waive it (and have done so) where we see fit. Our rules therefore go further than legislation by requiring all firms we regulate to provide services from a physical base in England or Wales.

395. The majority of those who responded to our consultation agreed with our approach. However, there was concern that we should not create a 'redress gap' for consumers outside England and Wales. In its response to our phase 2 consultation, LeO noted that while it did not oppose this change in principle, its jurisdiction only extends to persons authorised in England and Wales.

396. We are therefore working closely with LeO to address these jurisdictional issues, building on the joint working already underway in relation to solicitors working in firms not authorised under the LSA. We described the joint working between our two organisations in our recent response to LeO's 2018-19 business plan consultation[51]. We have a planned workshop that will focus on case studies and also consider other areas of joint interest.

[51] Response to the Legal Ombudsman's consultation on the business plan and budget 2018-19, SRA, January 2018, https://www.sra.org.uk/sra/consultations/consultation-responses/legal-ombudsman-response.page.

9) Streamlining overseas principles and overseas accounts rules requirements

What are we doing?

397. We have streamlined our overseas principles and overseas accounts rules requirements in line with the changes we have already made to modernise our domestic principles and accounts rules. We have also removed drafting that duplicates the Code of the CCBE from our European Cross-border Practice Rules. This has been replaced by a requirement for those operating in European jurisdictions or cross border to comply with the CCBE's Code.

Why change is needed

398. The changes, which are set out in our new SRA Overseas and Cross-border Practice Rules, do not substantively alter the content or application of the current overseas rules but we are keen to ensure that our rules remain valid into the future, without needing constant updating.

Background

399. We consulted with several stakeholders with overseas offices and reflected their feedback in some technical drafting changes to our overseas rules. These changes included removing an overseas principle that we had proposed in our consultation, which required a proper standard of service to be provided to clients and an overseas principle, concerning the effective running of the business. We agreed with feedback that the focus of our regulation of overseas practices should be proportionate and targeted towards issues of personal conduct or systemic failures that touch on public confidence in the profession and in the English and Welsh legal jurisdiction.

400. We have also changed the scope of our jurisdiction over managers of overseas offices so that this is focused on those involved in the day to day or strategic running of the overseas practice, recognising that in large global entities there may be a large number of partners or members who have no direct involvement or responsibility. Finally, we have removed our power to authorise withdrawals from overseas client account as, once again, this will be more properly governed locally.

10) Corporate Manager Owners (CMOs)

What we are doing?

401. We have introduced a new rule which will mean that firms must intend to deliver legal services to be authorised by us (rule 1.1 of the SRA Authorisation of Firms Rules).

Why change is needed

402. We are making this change to ensure that our procedures are operating in line with our statutory purpose, which is to authorise and regulate individuals and firms that deliver legal services. The rule is likely to impact on CMOs as we currently authorise a number of non-trading recognised bodies purely so they can be managers and/or owners of other recognised bodies in order for them to have corporate owners without having to be authorised as an ABS. To do this, we often waive several of our requirements including the requirement to have a COLP and COFA.

Background

403. Our new requirements will allow firms to be structured using corporate vehicles if they choose to for tax or other purposes, but these bodies would not be authorised by us separately. Therefore, the underlying firm would have a non-authorised corporate owner or manager and would instead be authorised as an ABS. The new rule gives us the power, where we are satisfied that it is in the public interest to authorise the body, to do so even though they do not intend to deliver legal services. The new rules will apply to new bodies that we authorise and will leave existing firms unaffected for the time being.

404. During the consultation we wrote to the 203 firms that are currently structured in this way to alert them to the potential changes. We received one response from a firm that could see a number of advantages to restructuring as an ABS. However, our final position leaves these firms unaffected as it will only apply to new applications going forward.

11) Manager requirements

What we are doing

405. We have relaxed the requirement in our current rules which require us to approve all managers of authorised bodies. Our new Authorisation of Firms

Rules state that we may decide not to require separate approval of a manager if we are satisfied that they are not involved in:

- the day to day or strategic management of the authorised body
- compliance by the authorised body with the SRA's regulatory arrangements
- the carrying on of reserved legal activities, or the provision of legal services, in England and Wales.

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

Why change is needed

407. Our existing rules can be an unnecessary burden for some firms, such as large LLPs, which may have several hundred partners, many of whom will have no involvement at all in the UK legal business. We manage this in practice through the use of waivers.

Background

408. In the past, when dealing with large multi-jurisdictional firms, we have granted waivers to exempt those managers that do not exercise any significant control over the firm and are not involved in the delivery of legal services in England and Wales (for example partners based overseas). Changing our approach relieves this burden and is therefore more aligned with best regulatory practice.

12) Regulatory and Disciplinary Rules

What are we doing?

409. Alongside the revised Enforcement Strategy, the new Sanctions and Controls table, and updated Indicative Fining Guidance, we have introduced the new SRA Regulatory and Disciplinary Procedure Rules. This suite of new documents explain and underpin our enforcement approach to the new codes and rules.

Why change is needed

410. Although our current Disciplinary Procedure Rules are quite detailed, in practice they only cover part of our regulatory tool kit. As drafted, they cover only a decision to fine, rebuke, disqualify, and make a referral to the SDT.

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

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

413. We consider this to be a more transparent approach which will make our processes clearer to those we regulate, irrespective of whether they are the subject of an investigation.

414. The new provisions will also ensure that we provide sufficient information to the regulated person and their employer at the outset of an investigation, as well as us providing details of allegations and all supporting documents, for comments, at the end of an investigation before we decide.

415. These also make sure that decisions to conclude an investigation, whether with advice or a warning as to the person's future conduct, are accompanied by reasons. By liaising directly with the firm and the individual from the outset of the process, we will provide a fairer, more transparent and streamlined process which is likely to be less stressful for the individual concerned as well as being a better use of our own resources.

How the less significant policy changes support the Regulatory Objectives and Better Regulation Principles

The Regulatory Objectives	
Protecting and promoting the public interest	Remove unnecessary regulatory costs and burdens. Remove unnecessary regulatory barriers and restrictions – for example where our rules go further than statutory restrictions. Increase opportunities for competition, innovation and growth, which in turn should better serve consumers of legal services. Improved consistency in enforcement with a focus on serious breaches. Transparent processes for our disciplinary procedures will give consumers confidence in our ability to take action when things go wrong.
Supporting the constitutional principle of the rule of law	Our revised Regulatory and Disciplinary Procedure Rules give us the power to take action where individuals and firms fall short of the professional standards we expect.
Improving access to justice	Increase opportunities for competition, innovation and growth. This should permit better provision of services that meet the needs of consumers, including access to justice. Allow firms greater flexibility in how they develop services to meet the needs of consumers and potential consumers. This in time may result in new services and greater choice that may help access to justice.
Protecting and promoting the interests of consumers	Potential for consumer choice to increase. Regulations focused on areas of most risk will mean that our resources can be

	targeted to those areas that have the biggest impact on consumers.
Promoting competition in the provision of legal services	Remove unnecessary regulatory costs, burdens and restrictions to increase opportunities for the legal sector to grow.
Encouraging an independent, strong, diverse and effective legal profession	Clear standards for solicitors practising overseas.
Increasing public understanding of the citizen's legal rights and duties	Simplification of our rules should make them easier for the public to understand.
Promoting and maintaining adherence to the professional principles	Simplification of our rules should make them easier for the profession to comply – less of a focus on 'technical breaches'.
Better Regulation Principles	
Transparent	Changes likely to reduce the need for waiver requests. Our new Regulatory and Disciplinary Procedure Rules provide information on our full range of powers and will also ensure that those that are the subject of investigations are given the information they need.
Accountable	Clear professional standards for those we regulate. Clarity on our regulatory and disciplinary procedures by grouping all the information in a single set of rules.
Proportionate	Going further than statutory restrictions only where necessary. Stripping out prescriptive drafting from the Overseas and Cross Border Practice Rules which duplicates the CCBE's Code of Conduct.
Consistent	All rules drafted in a consistent style and restructured in a logical and coherent way.
Targeted at cases where action is needed	Clear and documented processes for enforcement action.

Key supporting guidance

416. While not regulatory arrangements that require LSB approval, these key pieces of guidance have been included in the application at Annex B to support our application.

MDP policy statement

417. An MDP is a licensed body that combines the delivery of reserved legal activities with other legal and professional services. We have published a revised version of the MDP policy statement that reflects our new regulatory approach.

418. Our MDP policy statement sets out how we decide whether we need to regulate unreserved legal activity performed by non-legal professionals. Our approach is flexible and driven by the risks posed by the circumstances.

419. We have maintained the current overall policy position about when we will allow unreserved legal activities to not be regulated by us. We have therefore kept the existing 'subsidiary but necessary' and 'suitable external regulation' tests.

420. However, the statement now confirms that the SRA Principles and code for firms apply to the work within the MDP that we regulate as set out on the licence. The boundaries of that work will be set by the licence itself and we have therefore removed the current detailed 'mixed team' requirements which have proved to be complicated in practice. The revised statement also confirms that the SRA Code for Solicitors, RELs and RFLs will apply in full to all the work of these individuals that is carried out as part of their practice, whether or not the particular work falls within our regulation for the entity as a whole.

SRA Enforcement Strategy

421. We are also introducing a new Enforcement Strategy. While not a set of rules, it will underpin our new regulatory arrangements and so is included to supplement this application.

422. Our Enforcement Strategy will be supported by guidance on specific topics. This will include:
- updated indicative fining guidance
- updated guidance on reporting concerns and whistleblowing
- a suite of guidance around the grey areas, for example covering our approach to allegations of driving with excess alcohol, criminal behaviour

out of practice, abuse of social media, and competence and service issues.

423. In 2015 we committed to reviewing our current Enforcement Strategy, and to replacing it with a revised and updated strategy to underpin our new regulatory arrangements[52].

424. We wanted to be clear about how we will hold to account the small minority of solicitors who fall short of the standards we expect. A transparent and flexible Enforcement Strategy is essential if we are to maintain the confidence of the public.

425. Our starting point for the review was our wide engagement through the Question of Trust campaign in 2015[53]. The data we collected from more than 5,000 people allowed us to test and develop our thinking on the potential behaviours of solicitors falling along a spectrum from least to most serious. This made an important contribution to our subsequent work on our overall approach to enforcement.

426. Our approach to enforcement is guided by our public interest purpose. The updated Enforcement Strategy is one of the key tools moving us towards regulatory best practice and a model that seeks to:
- enforce standards through a transparent framework that people can clearly understand
- set standards that establish clear expectations, but also build in appropriate flexibility as to how individuals can behave to meet those standards
- move to a principles-based, flexible approach to enforcement that helps us focus effectively on serious breaches of our rules
- make clear our reasons for our decisions and rationale for taking (or not taking) action in any case or circumstances
- help our staff and the profession better understand the risks posed by different behaviours
- provide the transparency and assurance that solicitors and firms have been asking for.

427. Following feedback we received during the consultation period, we will also ensure that the Enforcement Strategy and any underlying documents provide clear guidance on our approach to the health and welfare of solicitors and firms involved in our procedures.

[52] See: https://www.sra.org.uk/sra/strategy/sub-strategies/sra-enforcement-strategy.page.
[53] Further information about our Question of Trust work is available at: https://www.sra.org.uk/home/hot-topics/A-question-of-trust.page.

Section D: Rationale for amendments

428. Our overall rationale for our reform programme is set out at Section A, and for each specific policy change at Section C. We were clear in our 2015 policy statement[54] about our aim and to ensure that:

- all solicitors are bound by clear ethical standards, deliver a proper standard of service and meet the competences set out in our Competence Statement[55]

- people receiving legal services from solicitors and regulated firms benefit from the appropriate protections, including rights of complaint and redress, and understand what the protections are

- regulation does not present unnecessary barriers or restrictions and will enable growth and innovation in the market, benefiting both the profession and users of legal services, increasing access to legal services and helping to reduce current levels of unmet need.

[54] Approach to regulation and its reform, SRA, November 2015, available at: https://www.sra.org.uk/sra/policy/regulation-reform.page.
[55] https://www.sra.org.uk/solicitors/competence-statement.page

Section E: Statement in respect of the LSA Regulatory Objectives

429. We consider that our new regulatory arrangements will support and promote the Regulatory Objectives. We have provided an assessment of each key policy change against the Regulatory Objectives in Section C of this application, as well as an overarching assessment against the Regulatory Objectives for the less significant policy changes.

Section F: Statement in respect of the Better Regulation Principles

430. We consider that our new regulatory arrangements will support and promote the Better Regulation Principles. We have provided an assessment of each key policy change against the Better Regulation Principles in Section C of this application, as well as an overarching assessment against the Better Regulation Principles for the less significant policy changes.

Section G: Statement in relation to desired outcomes

431. The purpose of legal services regulation is to protect consumers of legal services and support the operation of the rule of law and the proper administration of justice. While this is not explicit in the regulatory objectives set out at section 1 of the LSA, we believe that the regulatory objectives collectively express the importance of protecting consumers of legal services and supporting the operation of the rule of law and the proper administration of justice.

432. As a regulator, we understand an inherent imbalance between providers and consumers: that providers' knowledge and expertise potentially puts the consumer at a disadvantage in selecting and evaluating legal services. We follow the LSA's definition of consumers as anyone who could benefit from legal services. So, we focus on access to justice and growth of the legal market as well as the protection of each client.

433. Our new regulatory arrangements will help deliver these desired outcomes. They will:

- Allow greater flexibility, both for providers in how they structure their businesses and for consumers in how they choose to access legal services – in turn, this will promote competition and increase access to justice.
- Allow us to regulate in a way which reflects a rapidly developing and diversifying market while also maintaining appropriate protections for consumers and the public.
- Be clearer, and therefore more easily understood by those we regulate and their customers.

Evaluation

434. To help us understand whether the changes are achieving our desired outcomes, we have developed a comprehensive approach to evaluating the reforms. In June 2017, we published the CSES' impact evaluation framework[56]. This suggested an approach to assessing the impacts of our Looking to the Future reforms and other initiatives and included metrics to support this assessment.

[56]Impact evaluation of SRA's Regulatory Reform Programme, Impact Evaluation Framework, a report to the SRA, June 2017, https://www.sra.org.uk/documents/SRA/consultations/lttf-cses.pdf.

435. We will evaluate the impact of our work drawing on CSES' evaluation framework in a post-implementation review and will seek to review and refine our approach based on our post-implementation work. This will consider consumer, economic, market, equality and diversity impacts. We intend to carry out evaluations at one year and three years after implementation but this timeframe is flexible and will depend on the reform being evaluated.

436. Our Policy Committee will oversee the detailed content of each review. We have already agreed that we will look at how the requirements for freelancers to have adequate and appropriate PII are operating in practice. We are considering how we may look at the freelance sector more broadly or at PII arrangements across the new models of practice.

437. In developing our post implementation evaluation approach, we have also considered early stage evaluation of our other reforms in the sector, including the introduction of ABS and those affecting accountants' reports, multi-disciplinary practices, the separate business rule and substantial 'red tape challenge' changes.

438. The key findings are contained in our Impact Evaluation of the SRA's regulatory reform programme published in April 2018[57]. The evaluation shows that the impact of these reforms has been gradual and incremental. Early indications show that users of legal services are beginning to see benefits. Introducing ABS and MDPs and removing restrictions on firm ownership (the separate business rule), have allowed new entrants (including foreign law firms, firms owned by professional services firms, local authority owned firms and retail brands) into the market. The Impact Evaluation showed that firms that are connected to an unauthorised separate business do not pose a greater risk to users of legal services, when compared with other firms.

[57] Impact evaluation of the SRA's regulatory reform programme, SRA, April 2018, http://www.sra.org.uk/sra/how-we-work/reports/abs-evaluation.page.

Section H: Consultation and stakeholder engagement

439. We have engaged extensively with stakeholders since we first published our policy statement in 2014. We also conducted a campaign to research perceptions of what consumers should expect from solicitors and appropriate enforcement (A Question of Trust). Although most directly relevant to our new enforcement strategy, the findings also provided a significant background to our work in developing our new regulatory arrangements.

440. Most importantly, we consulted very widely. We held four formal consultations:

- on the new SRA Principles and Codes, and on allowing solicitors to deliver unreserved legal services to the public outside traditional law firms
- on the new Accounts Rules (as part of a phased approach to reforming accounting requirements on solicitors)
- on the remainder of the rules making up our new regulatory arrangements
- on our transparency proposals.

441. The results of these consultations and supporting impact assessments are available on our website. This application shows at Section C how we reflected the feedback we received from our consultations. Specifically, in response to the feedback we received, we changed our approach to:

- the 'Qualified to Supervise' rule
- assessing character and suitability
- our Training Regulations
- individual self-employed solicitors
- how we regulate overseas practice.

Section I: Statement about impact on other approved regulators

442. Our four formal consultations provided the other approved regulators with an opportunity to comment on our approach. We have also communicated our approach to the other approved regulators throughout the course of our work, by, for example, providing updates at the Regulators' Forum.

443. We do not anticipate our reforms having any direct impact on the other approved regulators.

Section J: Implementation timetable

444. A key aim for our reform programme has been to seek to minimise disruption to those we regulate by ensuring firms that are compliant with our current regulatory arrangements will still be compliant with the new arrangements.

445. Nevertheless, we expect that firms will need to review the changes and consider this for themselves and that they will need time to do so. Through an extensive programme of communications, we will also be highlighting the opportunities available to firms and the many benefits of the new regulatory arrangements.

446. We are currently working towards the following timetable for implementation, although we have been clear both internally and externally that timings are subject to this LSB application and our ongoing Modernising IT (MIT) programme.

- **Ongoing** - operational training and readiness, consistent with the new approach to our rules and enforcement strategy.
- **May 2018** – SRA Board makes new regulatory arrangements.
- **August 2018** – SRA submits regulatory arrangements to LSB for approval.
- **November 2018** – anticipated date of LSB decision – confirm go live date publicly.
- **Autumn 2018** – undertake extensive programme of communications about our new rules to support the transition to the new approach.
- **31 December – 30 April 2019** - likely implementation of the new regulatory arrangements and revised Enforcement Strategy.

Section K: Who to contact about this application

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Section L: Annexes to the application

447. The following are annexed to this application.

Annex A – new SRA regulatory arrangements:

SRA Principles

SRA Code of Conduct for Solicitors, RELs and RFLs

SRA Code of Conduct for Firms

SRA Accounts Rules

SRA Application, Notice, Review and Appeal Rules

SRA Assessment of Character and Suitability Rules

SRA Authorisation of Firms Rules

SRA Authorisation of Individuals (Amendment) Regulations[58]

SRA Education, Training and Assessment Provider Regulations

SRA Financial Services (Conduct of Business) Rules

SRA Financial Services (Scope) Rules

SRA Overseas and Cross-border Practice Rules

SRA Regulatory and Disciplinary Procedure Rules

SRA Statutory Trust Rules

Rules 4.3 and 4.4 of the SRA Transparency Rules[59]

SRA Glossary

[58] These rules, as they relate to the new SQE, were approved by the LSB in March 2018: http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/FINAL_decision_notice.pdf.

[59] This application seeks the approval of rule 4.3 and rule 4.4 of the SRA Transparency Rules only. The remainder of the SRA Transparency Rules were approved by the LSB in August 2018. See: http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/FINAL_Decision_Notice_Inc_Annexes.pdf.

Annex B – Examples of guidance

1. SRA Enforcement Strategy
2. SRA MDP policy statement
3. List of guidance we intend to produce initially
4. Businesses that are not authorised by a legal services regulator and that employ SRA-regulated lawyers
5. Giving information to clients of businesses that are not authorised by a legal services regulator
6. Q&A – Do I need a client account
7. Discrimination case study
8. Does my employer need to be authorised by an approved regulator – decision tree
9. Improper use of client account as a banking facility – warning notice[60]
10. Topic guidance – criminal offences outside of practise
11. Topic guidance – driving with excess alcohol convictions
12. Topic guidance – competence and standard of service
13. Topic guidance – use of social media and offensive communications

[60] This warning notice has already been published on our website. References to our rules will be updated. Case studies to support this warning notice are available at: http://www.sra.org.uk/solicitors/code-of-conduct/guidance/case-study/improper-use-client-account-banking-facility.page.