

To:	Legal Services Board	
Date of Meeting:	29 September 2014	Item: Paper (14) 45

Title:	Review of regulatory restrictions on business ownership	
Workstream(s):	Regulator Performance and Oversight	
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Status:	Official	

Summary:

One of the thematic reviews that we decided to conduct this year was to review the extent to which regulation unnecessarily prevents legal services providers from being connected with, investing in and owning a range of businesses because we were concerned that some of the restrictions might not be evidence-based, proportionate or targeted with an adverse impact on the regulatory objectives on consumer protection and promoting competition.

Annex A sets out the findings of our review. It begins by explaining the issue and briefly covers some of the reasons why restrictions on ownership have been supported in the past. It then considers whether there are any statutory requirements that restrict the businesses that lawyers can own or have an interest in. Next, it considers the impact of the current restrictions on the regulatory objectives in the Act and considers whether they are consistent with the better regulation principles. The review then summarises the approach of each regulator and assesses the potential impact of the different approaches.

The report concludes that regulators need to balance the competing (and sometimes contradictory) implications of the regulatory objectives when considering what, if any, restrictions need to be imposed on authorised persons being connected with, investing in or owning other businesses. Our view is that it is possible for separate, reputable businesses to conduct their affairs in ways that support the regulatory objectives and do not lead to consumer detriment. In those cases, which may well be the majority, regulators should not restrict legitimate commercial activities by blanket prohibitions. However, there may be circumstances in which the regulatory objectives are furthered by imposing restrictions on the types of business a law firm can be associated with; it may be that these restrictions need to be relatively onerous if there evidence that there is a high risk of consumer detriment. But any restrictions must be proportionate and targeted.

Our intention is to publish the report as a final document in early October in order to influence the work that some regulators are already doing in this area. We do not want to delay this by formally consulting on the document as a policy statement or statutory guidance and the document therefore makes clear that it does not have the status of the outcome of a formal investigation, although that would be an option for the future were progress to slow down.

Recommendation(s):

The Board is invited:

- (1) to comment on the paper
- (2) delegate sign off for publication to the CEO

Risks and mitigations

Financial: None

Legal: None

Reputational: The SRA's separate business rule has been considered as part of the review. This is a controversial issue and is likely to attract considerable interest and comment. We understand that the SRA is due to consult soon on a review of the separate business rule; this may increase focus on our paper.

Resource: Can currently be managed within existing resources

Consultation	Yes	No	Who / why?
Board Members:	Y		Advance draft sent to Ed Nally and Marina Gibbs
Consumer Panel:		N	
Others:	Approved regulators are being consulted for factual accuracy on the chapters entitled "statutory basis" and each regulators relevant section from the chapter entitled "current regulatory approaches"		

Freedom of Information Act 2000 (Fol)

Para ref	Fol exemption and summary	Expires
Annex A	Section 22: information intended for future publication	n/a