

By email only (under s203 of the Legal Services Act 2007)



**LEGAL SERVICES
BOARD**

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Paul Philip,
Solicitors Regulation Authority,
The Cube,
199 Wharfside Street,
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20 July 2015

Dear Paul,

Decision notice for the Solicitors Regulation Authority (SRA) application for approval of changes to its regulatory arrangements in respect of Separate Business and Services Rules 2015.

Please find enclosed our final decision notice granting the SRA's application for approval of changes to its regulatory arrangements concerning separate businesses and activities that can be carried out by recognised bodies and recognised sole practices.

This decision notice should be considered effective as of today, 20 July 2015. A copy of the notice and this letter will be published on our website on 22 July 2015.

I have sent an identical letter to Enid Rowlands and copied this letter to Mark Stobbs and Simon Garrod at The Law Society.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Richard Moriarty', with a stylized flourish at the end.

Richard Moriarty
Chief Executive

E richard.moriarty@legalservicesboard.org.uk

Enclosures: Separate Business Rule Decision Notice



Decision notice

Issued by the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007

The Solicitors Regulation Authority's application for approval of changes to its regulatory arrangements in respect of Separate Business and Services Rules 2015.

The Legal Services Board (LSB) has granted an application from the Solicitors Regulation Authority (SRA) approving alterations to the regulatory arrangements in respect of Separate Business and Services Rules 2015. The Law Society is an approved regulator and the SRA is the regulatory arm to which The Law Society has delegated its regulatory functions.

This decision notice sets out the decision taken, including a brief description of the changes. The notes at the end of this notice explain the statutory basis for the decision. The chronology for the LSB's handling of this application is set out at the end of this decision notice.

Purpose of notice
To grant an application from the SRA approving alterations to its regulatory arrangements in respect of Separate Business and Services Rules 2015.
Main changes being made by SRA
<ul style="list-style-type: none">• Removing prohibitions on SRA authorised bodies and individuals having links with separate businesses that carry on non-reserved legal activities;• Extending two existing consumer protection outcomes in Chapter 12 of the Code of Conduct to apply to all separate businesses;• Introducing a new Outcome requiring "informed consent" from clients prior to sharing information or work with a separate business;• Extending the services that recognised bodies or recognised sole practices can carry out within their firms, to include "accountancy services" and "professional and specialist support services to business, including: human resources; recruitment; systems support; outsourcing; transcription and translating."
Why the LSB is granting the application in full
<p>The changes, which have been consulted upon and comprehensively reviewed by the SRA, are consistent with the LSB's strategic objective of breaking down regulatory barriers.</p> <p>They are expected to promote the regulatory objectives in the Legal Services Act 2007 (LSA). Removing blanket restrictions on solicitors and SRA authorised bodies and</p>

individuals having links with separate businesses should help to promote competition, improve access to justice and increase consumer choice.

The changes carry some risks to consumers. However, the LSB is satisfied that the SRA is proposing a proportionate and adequate response to mitigating these risks. In this regard, the LSB welcomes the SRA's commitment to undertake a comprehensive review of the impact of the changes two years after implementation. The LSB also considers that there would be risks to consumers in not seeking to reform the current requirements, through maintaining rules that have the potential to stifle competition, innovation and choice.

LSB Decision

Having fully assessed the application against the refusal criteria in the LSA, the LSB sees no reason to refuse this application.

Proposed changes

1. The proposed changes (of which the main ones are summarised above) are set out in "SRA Amendments to Regulatory Arrangements (Separate Business and Services) Rules [2015]", which make amendments to the SRA's Code of Conduct, Handbook Glossary and Practice Framework Rules.

Key issues considered in the assessment of the application

2. The LSB welcomes the overall intention of the changes, which would remove blanket regulatory restrictions that the SRA does not believe are a necessary or proportionate means to protect consumers. We consider the approach taken to be consistent with the LSB's strategic objective of breaking down regulatory barriers. It is also consistent with the findings from the LSB's review of "Regulatory restrictions on business ownership"¹, published in October 2014.
3. The changes do present some risks to consumers. Those who receive services from separate businesses will not have the same protections as those using a regulated firm. For example, they are unlikely to have recourse to the Legal Ombudsman or the SRA's Compensation Fund and their provider may not have professional indemnity cover. Therefore a notable risk is that consumers do not understand the possible implications of using a separate business.
4. The LSB raised some questions concerning how risks to consumers would be mitigated. We sought to assure ourselves that an appropriate balance had been struck between removing unnecessary restrictions in order to promote competition, access and choice and protecting consumers against potential detriment.

¹http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2014/20141009_Business_Restrictions_Report.pdf

5. We also sought to clarify some points concerning the implementation and impact of the proposed changes. The outcome of our enquiries is presented below.

Proportionate mitigation of risks to consumers

6. Whilst responses to the SRA's consultation were largely positive, a number of respondents emphasised the risks to consumers. Notably, the Legal Services Consumer Panel gave qualified support for the proposed changes, conditional on the safeguards being strengthened and information remedies being subject to rigorous consumer testing. Given that the SRA actually decided to slightly relax the proposed safeguards following consultation, the LSB sought to assure itself that risks to consumers would be adequately and proportionately addressed by the proposed approach.
7. We sought clarification on the SRA's plans for engaging consumers in assessing the adequacy of its safeguards. The SRA emphasised the commitment in its Consumer Impact Statement to provide clear and publicly available information on the difference between LSA regulated services and the various types of alternative legal services. It will test draft material in consumer focus groups prior to implementation in November 2015 and will undertake a review within two years of implementation ('the two year review') which will consider the impact of the reforms on diverse groups of consumers.
8. We also asked for further detail on what would constitute "informed consent" in line with the new Outcome 12.4 in the Code of Conduct. The SRA explained that it would not be prescriptive in this regard. It envisages that many firms will wish to protect themselves by obtaining signed confirmation but in other cases it will be possible to assume informed consent. The obligation on solicitors to provide certain information is clear and the SRA expects them to be able to demonstrate that this has been done.
9. Finally, we wanted to better understand what approach the SRA would take to supervision and specifically the extent to which it would be seeking proactive assurance of compliance. The SRA confirmed that it will collect information on separate business links through the annual return process. This will not involve asking firms about procedures for ensuring that the outcomes in Chapter 12 are met. Relationship Managers for larger firms will be briefed to discuss separate business links, which will provide some proactive assurance of compliance. For other firms the SRA will not proactively assess compliance but will act upon intelligence and referrals that come through the Risk Centre. If a significant number of reports are coming through the risk centre, the SRA will consider undertaking some proactive thematic work in this area.
10. In considering whether the safeguards outlined by the SRA will adequately and proportionately mitigate the risks, the LSB has assessed the impact on all of the regulatory objectives. The proposed changes are likely to contribute positively to a number of the regulatory objectives, including promoting competition, improving access to justice and promoting the interests of consumers through increasing consumer choice. There are risks to consumers in not reforming the current rules and thereby maintaining barriers to realisation of these positive impacts. Therefore, in our view, it is acceptable for some risk to be present in the proposed approach, as this must be balanced against the risks to consumers in not acting.

11. In our assessment, no material evidence has been presented that would justify refusal against the refusal criteria. On the basis of the additional information provided by the SRA, the LSB is reassured that the safeguards that are in place should provide proportionate mitigation of the risks. The two year review that the SRA has committed to will be important in terms of assessing how effectively the risks have been mitigated, in practice, and the LSB is encouraged by the commitments to involve qualitative work with consumers in this assessment. We also hope that the review will examine how informed consent is being interpreted by firms, and whether consumers are, in fact, making informed decisions.
12. We welcome the SRA's commitment to consider the case for thematic work in this area and believe that this would be a valuable exercise, particularly if the annual return process identifies that a significant number of firms that are not subject to relationship management have links to separate businesses.

Extension of safeguards to new types of separate business

13. We identified that the new rules would have the effect of extending the outcomes in Chapter 12 to apply to new separate businesses. This is because the previous restrictions and safeguards only applied to defined separate businesses undertaking "mainstream" or "solicitor like" services. Now, with the proposed removal of the concept of "permitted" and "prohibited" separate businesses, all separate businesses will be subject to the safeguards in Chapter 12. We wanted assurance that the SRA had fully considered the impact of this extension.
14. The SRA explained that it does not believe that the outcomes will have a significant impact on separate businesses that are far removed from legal services. Its draft guidance explains that less information will need to be shared with consumers for such separate businesses. The draft guidance includes illustrative examples on this point. In addition, referrals to non-legal separate businesses will already be subject to requirements in Chapter 6 concerning introductions to third parties, which are similar to the requirements for informed consent.
15. The LSB is reassured that the SRA has considered the impact of the extension of the safeguards in Chapter 12 and that any impact will be proportionate in the light of the perceived benefits.

Impact on SRA Practice Framework Rules

16. In its summary of responses to its consultation, the SRA recognised that there was some uncertainty regarding the extent to which hands-on supervision of a particular matter would amount to practising as a solicitor. This is important because solicitors cannot practise from a separate business. Representations made to the SRA by some respondents to the consultation suggested that such uncertainty meant that the proposed changes should not be brought in until the SRA has completed its wider review of its Practice Framework Rules. The LSB asked the SRA how the identified uncertainty would be handled in the interim period.

17. The SRA clarified that matters would be dealt with under the existing Practice Framework Rules and any investigations would focus on whether services are being provided as an 'in house' solicitor or whether solicitors are in effect providing services to external clients. The SRA explained the factors that would be considered in determining this and stated that it expected this issue to be covered in ongoing discussions concerning the draft guidance with stakeholders.
18. The LSB supports the SRA's approach and considers it important that appropriate guidance is given to solicitors so that there is clarity on what is permitted under the revised approach.

Scope of the two year review

19. The LSB wished to clarify whether the two year review would incorporate the extension of work that can be undertaken by recognised bodies. The SRA confirmed that the review will cover these changes as well as the changes concerning separate businesses.

Decision

4. The LSB has considered the SRA's application against the criteria in paragraph 25(3) of Schedule 4 to the LSA. It considers that there is no reason to refuse this application; accordingly, the application is granted.
5. The Annex to this decision notice contains the specific amendments to the SRA's regulatory arrangements approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the SRA on 23 June 2015.
- The 28 day initial decision period for considering the application ends on 20 July 2015.
- This decision notice is effective from 20 July 2015.
- The decision notice will be published on our website on 22 July 2015.

Richard Moriarty, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
20 July 2015

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that
 - (a) granting the application would be prejudicial to the regulatory objectives
 - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest
 - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
 - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

² Rules for Rule Change Applications – Version 2 (November 2010)

**SRA Amendments to Regulatory Arrangements (Separate Business and Services)
Rules [2015]**

Rules dated [date of LSB approval to be inserted] made by the Solicitors Regulation Authority Board, under sections 31, 79 and 80 of the Solicitors Act 1974, section 9 and 9A of the Administration of Justice Act 1985 and section 83 of the Legal Services Act 2007 with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

Rule 1

Chapter 12 of the SRA Code of Conduct 2011 shall be replaced with the following:

“Outcomes

You must achieve these outcomes:

- O (12.1)** you ensure, and have safeguards in place to ensure, that *clients* are clear about the extent to which the services that you and the separate business offer are regulated;
- O(12.2)** you do not represent, directly or indirectly, the separate business as being regulated by the SRA or any of its services as being regulated by the SRA;
- O (12.3)** the *separate business* does not carry on:
- (a) reserved legal activities; or
 - (b) *immigration work* unless that work is regulated by the Office of the Immigration Services Commissioner;
- O (12.4)** you only:
- (a) refer, recommend or introduce a *client* to the *separate business*;
 - (b) put your *client* and the *separate business* in touch with each other; or
 - (c) divide, or allow to be divided, a *client’s* matter between you and the *separate business*,
- where the *client* has given informed consent.”

Rule 2

In paragraph 13A.3 (j) of the SRA Code of Conduct 2011, replace “outcomes 12.3 to 12.6” with “chapter 12”.

Rule 3

The SRA Handbook Glossary 2012 shall be amended as follows:

- (a) in the definition of “**connected with**”, replace “(i) having one or more *partner(s), owners(s), director(s) or member(s)* in common with the separate business” with the following:

“(i) where an *owner or manager* of an *authorised body* is a *partner, owner, director, member* or member of the governing body of the *separate business*.”;

- (b) delete the definitions of “**permitted separate business**” and “**prohibited separate business**”; and

- (c) replace the definition of “**separate business**” with:

“separate business

means a business, wherever situated, which you *own, are owned by, actively participate in* or are *connected with* and which is not any of the following:

- (i) an *authorised body, an authorised non-SRA firm, or an overseas practice*; or
(ii) an *in-house practice* or practice overseas which is permitted by the *SRA Practice Framework Rules*.”

Rule 4

Rule 13.2 of the SRA Practice Framework Rules 2011 shall be amended as follows:

- (a) after “business of a *recognised body*” insert “or recognised sole practice”;
- (b) at the end of paragraph (b), replace “.” with “; and”;
- (c) delete “but this does not prevent a *recognised body* providing services within Chapter 12 (Separate businesses) of the *SRA Code of Conduct*, or holding an interest in a *company* which is a *separate business*”;
- (d) insert paragraph (c) as follows:

“(c) the following services (whether or not they are also included in paragraph (a))

- (i) alternative dispute resolution;
(ii) financial services;
(iii) estate agency;
(iv) management consultancy;
(v) company secretarial services;
(vi) other professional and specialist support services to business including human resources, recruitment, systems support, outsourcing, transcription and translating;
(vii) acting as a parliamentary agent;
(viii) practising as a lawyer of another jurisdiction;
(ix) acting as a bailiff;
(x) accountancy services;
(xi) education and training activities; and
(xii) authorship, journalism and publishing.”; and

(e) replace Guidance note (ii) with:

"(ii) Rule 13.2 lists the services that can be carried out within a *recognised body* or a recognised sole practice: either solicitor services, notary services, services of a *lawyer* or as exceptions to these services under section 9(1A) of the Administration of Justice Act 1985. Professional services 'of the sort that can be carried out by solicitors' include any *legal activity* under the LSA. Nothing in Rule 13.2 affects any requirements that may be imposed by legislation or non SRA-regulation in relation to the listed activities. See also the SRA Property Selling Rules 2011 in relation to estate agency services."

Rule 5

These rules come into force on 1 November 2015 or the date of approval by the Legal Services Board, whichever is the later.

